O. KATOLYK

TO:
CHAIR AND MEMBERS
ENVIRONMENT AND TRANSPORTATION COMMITTEE

FROM:
R. PANZER
GENERAL MANAGER OF PLANNING AND DEVELOPMENT

SUBJECT:
NOISE BY-LAW - PUBLIC MEETING
MEETING ON April 27, 2009

RECOMMENDATION

That, on the recommendation of the General Manager of Planning and Development, the proposed Noise By-law, attached as Appendix B and proposed by-law to adopt the Community Event (Class 1) Noise Policy, attached as Appendix C, BE INTRODUCED at the Municipal Council meeting on May 4, 2009.

PREVIOUS REPORTS

December 10, 2007, PC, Agenda Item #7
May 28, 2008 ETC Agenda Item #7
July 14, 2008, ETC Agenda, Item #1
November 10, 2008, ETC, Agenda Item #1
March 2, 2009, ETC, Agenda Item #9

BACKGROUND

On March 2, 2009, a public meeting was held before the Environment and Transportation Committee to receive comments on the proposed draft Noise By-law. Comments received at the meeting are summarized as Appendix A of this report.

Based on comments received during the public circulation period of the draft by-law, this report summarizes revised changes to draft noise by-law to address specific noise issues.

PROPOSED BY-LAW UPDATE

1. Residential Noise - 24/7 regulation

Numerous public comments were received regarding the issue of amplified sound and shouting/yelling etc. in residential areas. At the March 2, 2009 public meeting, the draft by-law contained provisions addressing both of these potential violations at points of reception in residential areas related to specific time periods. Several members of the public found the draft regulations confusing and difficult to interpret due to the inclusion of time periods in the regulations. In an effort to clarify the regulations associated with amplified music and shouting/yelling in residential areas, section 2.4 (b) and (c) were amended to specifically exclude any time restrictions. These two sections clearly state that these forms of potential noise violations are applicable and enforceable “at any time”. This change will provide a clear direction that noise in residential areas from stereos etc. and shouting etc. may be enforced 24/7.

2. Noise Exemptions

The proposed by-law presented at the March 2, 2009 public meeting included a section outlining a process for temporary noise permits. It was proposed that applications be made to the Manager of By-law Enforcement who would then prepare a report to the Hearings Committee.
who would then recommend to Council whether to grant or refuse a noise permit including any
terms or conditions. The revised process streamlines the temporary noise requests process.
The Manager of By-law Enforcement is delegated the authority to issue noise exemption
permits. At a minimum, the exemptions must contain conditions on the volume of amplified
sound and time restrictions. If the applicant is not satisfied with the decision of the Manager of
By-law Enforcement, an appeal may be made to the Hearings Committee. This revised process
should result in timely decisions, and a due process for appeals.

3. Quantitative Noise By-law

The quantitative Noise provisions (noise that is measured by a decibel reader) were previously
contained in an amending by-law. These provisions of the by-law are now included as Part 3 in
the Noise By-law. This section of the by-law will be enforced by MLEOs trained in the use of
decibel readers.

The by-law is to come into force and effect on July 1, 2009. This should provide sufficient time
for the City to obtain a set fine order for the new by-law.

This report was prepared in consultation with Lynn Marshall, City Solicitor’s Office.

CONCLUSIONS

On March 2, 2009, a public meeting was held before the Environment and Transportation
Committee to receive comments on the proposed draft Noise By-law. The by-law has been
further amended in response to public comments specifically to address residential noise issues
and temporary noise permits. It is recommended that the proposed Noise By-law be introduced
at the Council meeting on May 4, 2009.

O. KATOLYK
MANAGER OF BY-LAW ENFORCEMENT

G. KOTSIFAS, P.ENG.
DIRECTOR OF BUILDING CONTROLS

R. W. PANZER
GENERAL MANAGER OF PLANNING AND DEVELOPMENT

Cc: Lynn Marshall, City Solicitor’s Office.
I hereby certify that the Municipal Council, at its session held on March 9, 2009 resolved:

4. That, on the recommendation of the General Manager of Planning and Development, the following actions be taken with respect to the proposed new Noise By-law:

(a) the proposed revised Noise By-law, attached as Appendix 'A', BE MADE AVAILABLE to the public for discussion at a Public Participation Meeting on April 27, 2009;

(b) the proposed by-law to approve a Community Event (Class 1) Noise Policy, attached as Appendix 'B', BE MADE AVAILABLE to the public for discussion at a Public Participation Meeting on April 27, 2009;

(c) the proposed Quantitative Noise By-law, attached as Appendix 'C', BE RE-SUBMITTED for discussion at a Public Participation Meeting on April 27, 2009; and

(d) the Civic Administration BE REQUESTED to review the difference in the fine structure between individuals and corporations;

it being noted that the ETC heard verbal presentations from O. Katolyk, Manager of By-law Enforcement, and L. Marshall, Solicitor II, and received written communications from the following individuals with respect to this matter:

- a Municipal Council resolution adopted at its meeting being held on November 17, 2008;
- M. Diamond, 1037 Patricia Street, dated February 20, 2009;
- S. Bentley, 34 Mayfair Drive, dated March 1, 2009; and
- R. Millard and M. Raftcliffe, 193 Regent Street, dated February 27, 2009;

it being pointed out that at the public participation meeting associated with this matter, the following individuals made an oral submission connection therewith:

- D. Pellarin, 1019 Waterloo Street – (see attached submission);
- M. Harrison, 1406 Warbler Woods Walk – indicating that the proposed new by-law is too complicated; advising that he likes the existing by-law; if the neighbours are asked to turn the music down, they usually comply with the request; indicating that the expenditure of $80,000 is a lot of money to spend checking noise levels after hours; indicating that the money could be better spent assisting students; noting that the fine for running a red light is $180; advising that 25 feet is not that far; advising that the rest of the students should not be punished because of the actions of the students on Fleming Drive; asking that students not be slammed in the ground; and inquiring as to whether or not property owners would take into consideration the fact that they are buying a house near Fanshawe College or the University of Western Ontario;
- M. Recker, 1460 Norman Avenue – (see attached submission);
- J. Fracasso, 314 Piccadilly Street – indicating that the by-law should be simplified by being enforced 24 hours a day, 7 days a week; expressing confusion over the notwithstanding clauses in the by-law; advising that a city is great when it has balance; indicating that he loves living in the area he does because he can walk to Victoria Park and attend the festivals in the summer, however, if there are too many festivals, it will cause concern; and inquiring as to why there is not one exemption for all forms of noise;
- W. Kinghorn, 522 Princess Avenue – indicating that he understands section 2.1, but that the addition of section 2.4 adds confusion; indicating that section 2.4(a) sets times for the volume of radios but not for animals and indicating that noise is noise, no matter what form it is in; advising that community leaders talk to the people who are making too much noise, provide them with a copy of the current by-law and people comply with the by-law because it is in force 24 hours a day, 7 days a week; also advising that the new by-law will require the use of Municipal Law Enforcement Officers; advising that there
may be issues for shift workers; indicating that people who do not work from 9:00 a.m. to 5:00 p.m. are being treated as second class citizens and inquiring as to why have the times in the by-law if they don’t have an impact on the by-law;

- H. Chapman, 152 Albert Street – advising that she is opposed to the by-law amendments from 24 hours a day to 7 days a week to fragmented times; advising that their townhouse condominium corporation has been having trouble with people leaving the bars on Richmond Street; expressing interest in what is going to be done with respect to noise concerns with other buildings; advising that noise issues need to be addressed at all times of the day and night; advising that you strengthen the downtown core by making it worthwhile for people to enjoy their properties; and advising that the new by-law may be too restricting;

- E. Ditrolio, 14 St. George Street – advising that the different times in the noise by-law cause confusion; indicating that he doesn’t remember reading 12:00 p.m. in the by-law; indicating that many people think that 11:00 p.m. is sacred and that they can make noise until then; and advising that the by-law should be enforced 24 hours a day, 7 days a week;

- E. Marcoccia, Director, Marketing & Corporate Communications, Fanshawe College - (see attached submission);

- J. Young, Programmer/Building Manager, Fanshawe College – advising that he has run events for 25 years following the current by-law and it serves Fanshawe College well; they have held over 100 events with very few complaints;

- R. Yake, 190 Regent Street – advising that people are not being taught respect for others and responsibility for themselves; indicating that he is responsible for what he does and if he had to pay a fine, he would do so; indicating that your personal expression may impinge on someone else; advising that there needs to be enforcement because respect and responsibility are no longer being taught to children; advising that teachers cannot be expected to teach other people's children; and indicating that enforcement helps pay for itself;

- S. Boerson, 310 Huron Street – advising that she is pleased with the increase in the number of by-law enforcement officers; advising that the key to enforcement is the central method of dispatching and noting a concern that there is not the same problem with front and backyard parking where you had to know which number to dial; advising that the times are confusing; and that the by-law being enforced 24 hours a day, 7 days a week is helpful; indicating that the time restrictions should be removed as they are discriminatory to shift workers and parents with young children, who still nap in the afternoon; expressing concern with special events, public events and parades as you need to consider the entire community that may be affected; has spent a great deal of time talking to the University of Ontario to try to keep the disturbances down; advising that this year, they have been able to charge the University of Western Ontario; indicating that if complaints are received about noise, the problem should be handled immediately and not reoccur; and inquiring as to what the repercussions are if noise permits are breached;

- R. Millard, 193 Regent Street – expressing concern with the different enforcement times in the by-law; advising that the enforcement of the noise by-law 24 hours a day, 7 days a week is the best thing that London has going for it; advising that the University of Western Ontario does not have the will or the authority to control noise; advising that during Orientation Week, only the freshmen can attend so it is not a public event; advising that the University of Western Ontario has been informed of the neighbours' misgivings and indicating that you could still hear the noise as far away as Masonville Place; indicating that once outdoor concerts are permitted, they won't be discontinued; and advising that the enforcement of the by-law 24 hours a day, 7 days a week should be rigorously adhered to;

- G. Lightfoot, 170 St. Bees Close – (see attached submission);

- G. Kulczycki, Vice-President, Resources & Operations, University of Western Ontario – (see attached submission);

- J. Cole, Vice President, University Affairs, University Students Council – (see attached submission);

- applauding the Environment and Transportation Committee for taking this on; inquiring as to how sporadic noise, such as dogs barking, will be dealt with; and advising that he has called the Police about a dog barking in the middle of the night, but that the dog is taken indoors before the Police arrive;
O. KATOLYK

- J. Poole, 415 Darlene Crescent – advising that the wording in clause 24(a) is subjective and inquiring as to what the definition of "persistent" sound is; advising that she is concerned with the noise coming from off-leash dog parks; indicating that more off-leash dog parks will be opened in residential areas in the future; advising that there is a constant turn over of barking dogs in the dog parks; and expressing support for the addition of Municipal Law Enforcement Officers as they are reluctant to call the Police as the Police have better things to do;

- D. Taylor, Fair/Marketing Manager, Western Fair Association – indicating that he appreciates the Western Fair Association being classified as a Category 1 Community Event; and

- A. Beech, #38 – 410 Ambleside Drive – advising that the last three years he has been involved in organizing the University of Western Ontario’s Orientation Week and the University has worked hard to ensure that the noise by-law is followed; and advising that potentially loud events are held indoors or the University has found a way to keep the events quieter. (2009-P07-00) (4/6/ETC)
APPENDIX B

Bill No.
2009

By-law No. PW-

A By-law to provide for the Regulation and Prohibition of Noise

WHEREAS section 9 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS subsection 10(1) of the Municipal Act, 2001 provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the Municipal Act, 2001 provides that a municipality may pass by-laws respecting: in paragraph 5, Economic, social and environmental well-being of the municipality; in paragraph 6, Health, safety and well-being of persons; in paragraph 7, Services and things that the municipality is authorized to provide under subsection (1); in paragraph 8, Protection of persons and property; in paragraph 9, Animals; in paragraph 9, Structures including fences and signs;

AND WHEREAS section 129 of the Municipal Act, 2001 provides that, without limiting sections 9 and 10 of the Act, a municipality may: (a) prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination, including indoor lighting that can be seen outdoors; and (b) prohibit the matters described in clause (a) unless a permit is obtained from the municipality for those matters and may impose conditions for obtaining, continuing to hold and renewing the permit, including requiring the submission of plans;

AND WHEREAS section 128 of the Municipal Act, 2001 provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council are or could become public nuisances;

AND WHEREAS in the opinion of Council for the City of London, certain kinds of noise are or could become a public nuisance;

AND WHEREAS subsection 391(1) of the Municipal Act, 2001 provides that a municipality may impose fees and charges on persons,

(a) for services or activities provided or done by or on behalf of it;
(b) for costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and,
(c) for the use of its property including property under its control;

AND WHEREAS section 444 of the Municipal Act, 2001 provides that the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contraventing activity, and any person who contravenes such an order is guilty of an offence;
AND WHEREAS section 447.8 of the Municipal Act, 2001 provides that a by-law of a municipality made under this or any other Act may,
(a) adopt by reference, in whole or in part, with such changes as the council considers appropriate, any code, standard, procedure or regulation as it stands at a specific date, as it stands at the time of adoption or as amended from time to time; and
(b) require compliance with any code, standard, procedure or regulation so adopted;

AND WHEREAS section 195 of the Highway Traffic Act, R.S.O. 1990, c. H.8 provides in section 195 that “If a provision of a municipal by-law passed by the council of a municipality...for regulating noise...created by the operation of motor vehicles on the highways...is inconsistent with this Act or the regulations, the provision of the by-law shall be deemed to be repealed upon the inconsistency arising”;

AND WHEREAS section 179 of the Environmental Protection Act, R.S.O. 1990, c. E.19 provides in section 179 “Where a conflict appears between any provisions of this Act or the regulations and any other Act or regulation in a matter related to the natural environment or a matter specifically dealt with in this Act or the regulations, the provision of this Act or the regulations shall prevail”;

THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

PART I

DEFINITIONS

1.1 For the purpose of this by-law:

“Agricultural Operation” has the same meaning as contained in the Farming and Food Production Protection Act, 1998, S.O. 1998, C. 1, as amended, or any successor legislation;

“Animal” means any member of the animal kingdom, other than a human, and without limiting the generality of the foregoing, includes dogs, cats, and birds;

“City” means The Corporation of the City of London;

“Community Event (Class 1)” means: the Western Fair Association’s annual week-long Western Fair held at the Western Fairgrounds; the annual week-long orientation events and campus life events that are held on campus at the University of Western Ontario and affiliated colleges; and the annual week-long orientation events and campus life events that are held on campus at Fanshawe College;

“Community Event (Class 2)” means: an event open to the public, including a public fair, public exhibition, public celebration, public sporting event, public concert; or a university or college event; or a school board event. A Community Event (Class 2) does not include a Special Event or a Community Event (Class 1);

“Construction” includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing, earth moving, grading, excavating, the laying of pipe and conduit whether above or below ground level, street and highway building, concreting, equipment installation and alteration and the structural installation of construction components and materials in any form for any purpose, and includes any work in connection therewith;

“Conveyance” includes a vehicle and any other device employed to transport a person or persons or goods from place to place but does not include any such device or vehicle if operated only within the premises of a person;

“Council” means the Council for the City;

“Hearings Committee” means a person or body that has been delegated the power or duty to hold
a hearing or provide an opportunity to be heard for the purposes of this By-law;

“Manager of By-law Enforcement” means the Manager of By-law Enforcement for the City, or his or her designee;

“Municipality” means the land within the geographic limit of the City of London;

“Normal Farm Practice” has the same meaning as contained in the *Farming and Food Production Protection Act, 1998*, S.O. 1998, C. 1, as amended, or any successor legislation;

“Point of Reception” means any point on the premises where sound originating from other than those premises is received;

“Residential Area” means any area of the Municipality where residential use is permitted under the provisions of the City’s Zoning By-law from time to time, including but not limited to land zoned R1, R2, R3, R4, R5, R6, R7, R8, R9, R10, or R11;

“Rural Area” means land in the Municipality zoned AG, AGC, or UR from time to time under the City’s Zoning By-law;

“Special Event” means a Special Event as defined in the City’s Special Events Policies and Procedures Manual, and that is recognized by the City as a special event;

“Stationary Source” means a source of sound which does not normally move from place to place, and includes the premises of a person as one stationary sound on those premises is Construction or a Conveyance;

1.2 Any word or term not defined in this By-law, that is defined in the Ontario Ministry of the Environment Publication Noise Pollution Control NPC-101, 102, 103, 104, 115, 205, 206, 215 or 232 (as set out in Part 3 of this By-law) shall have the meaning ascribed to it in such NPC Publication.

PART 2 – QUALITATIVE NOISE PROHIBITIONS

General Prohibition

2.1 No person shall make, cause or permit an unreasonable noise, or a noise that is likely to disturb the inhabitants.

Prohibitions - deemed

2.2 Without limiting the generality of section 2.1 of this By-law, the provisions of sections 2.3 through 2.4 shall be deemed to be unreasonable noise, or noise that is likely to disturb the inhabitants.

Prohibitions – deemed - any time, any location

2.3 At any time or location in the Municipality:

Vehicle - Warning Device - Unreasonable Period

(a) the sounding of any bell, horn, siren or other warning device on any motor vehicle or vehicle for an unnecessary or unreasonable period of time, except when permitted by law;

Vehicle - Disrepair - Maladjustment

(b) the grating, grinding or rattling sound caused by the condition of disrepair or maladjustment of any motor vehicle or vehicle or part or accessory thereof;

Vehicle – Load – Improperly Secured
(c) the sound created by the operation of any motor vehicle, trailer or other vehicle bearing material, articles or things that are loaded upon such vehicle in such manner as to create excessive noise;

Vehicle - Exhaust - except through muffling device
(d) the sound from the discharge into the open air of the exhaust of any steam engine, internal combustion engine (including the engine of any motor vehicle), or pneumatic device without an effective exhaust or intake muffling device in good working order and in constant operation that prevents excessive noises that are loud or explosive;

Vehicle - Speakers
(e) the sound from or created by any radio, amplifier, loud speaker, public address system, or equipment, device or instrument that emits sound when the same is used or operated from any motor vehicle, trailer or vehicle that is clearly audible at least 8 metres (25 feet) from the vehicle;

Attracting attention - to Performance - Advertising
(f) the sound from or created by any instrument, radio, amplification device, loud speaker, public address system, equipment or device that emits sound when the same is used or operated for the purpose of advertising or for attracting attention to any performance or sale, show or display of goods or services and projects such sound into any street or other public place;

Whistle - attached to boiler - other mechanism
(g) the sound from any steam whistle or air whistle attached to or used in connection with a boiler or other machine or mechanism, except for the purpose of giving notice of the time to commence or cease work, or as a warning of danger;

Alarm - Warning Device
(h) the sounding of any alarm, bell, horn, siren or other warning device for an unnecessary or unreasonable period of time.

Prohibitions - deemed - Residential Area
2.4 At the specified times and clearly audible at a Point of Reception in a Residential Area:

Animal - any time
(a) the persistent sound by any Animal under the care, control or ownership of the person that is clearly audible at a Point of Reception in a Residential Area at any time;

Amplified Sound - television - stereo - speakers - amplifiers - any time
(b) the sound created by any electronic device or group of connected electronic devices incorporating one or more loudspeakers or other electro-mechanical transducers intended for the production, reproduction or amplification of sound, including but not limited to a radio, television, amplifier, loud speaker, public address system, sound equipment, that is clearly audible at a Point of Reception in a Residential Area at any time;

Shouting, Yelling, Loud Hooting, Loud Whistling, Loud Singing - any time
(c) any shouting, yelling, loud hooting, loud whistling or loud singing that is clearly audible at a Point of Reception in a Residential Area at any time;

Construction - Excavation - 6 p.m. to 7 a.m.
(d) the noise arising from Construction that is clearly audible at a Point of Reception in a Residential Area between 6:00 p.m. and 7:00 a.m. of the following day (or 9:00 a.m. if the following day is Sunday);

Firearms - discharge - 9 p.m. to 7 a.m.
O. KATOLYK

(e) the sound caused by the discharge of any gun or other firearm, air gun, spring-gun of any class or type that is clearly audible at a Point of Reception in a Residential Area between 9:00 p.m. and 7:00 a.m. of the following day (or 9:00 a.m. if the following day is Sunday), except if lawfully discharged by a peace officer in the performance of their duties;

Power Equipment - use - 10 p.m. to 7 a.m.

(f) the sound caused by the use or operation of a lawnmower, chain-saw, leaf-blower, or any other such noise-generating tool or device that is clearly audible at a Point of Reception in a Residential Area between 10:00 p.m. of any day and 7:00 a.m. of the next following day (or 9:00 a.m. if the following day is Sunday).

PART 3 - QUANTITATIVE NOISE - STATIONARY SOURCES

ADOPTION OF STANDARDS AND PROCEDURES

3.1 The following Ontario Ministry of Environment Publications (NPC - Noise Pollution Control) standards and procedures are adopted and incorporated by reference into this by-law:

NPC 101 - Technical Definitions, as set out in the Ministry of the Environment's "Model Municipal Noise Control By-law, Final Report, August 1978";

NPC 102 - Instrumentation, as set out in the Ministry of the Environment's "Model Municipal Noise Control By-law, Final Report, August 1978";

NPC 103 - Procedures, as set out in the Ministry of the Environment's "Model Municipal Noise Control By-law, Final Report, August 1978";

NPC 104 - Sound Level Adjustments, as set out in the Ministry of the Environment's "Model Municipal Noise Control By-law, Final Report, August 1978";

NPC 115 - Construction Equipment, as set out in the Ministry of the Environment's "Model Municipal Noise Control By-law, Final Report, August 1978";

NPC 205 - Sound Level Limits for Stationary Sources in Class 1 & 2 Areas (Urban), dated October 1995;

NPC 206 - Sound Levels Due to Road Traffic, dated October 1995;

NPC 216 - Residential Air Conditioning Devices, dated October 1993;

NPC 232 - Sound Level Limits for Stationary Sources in Class 3 Areas (Rural), dated October 1995

QUANTITATIVE NOISE PROHIBITIONS

3.2 No person shall emit or cause or permit the emission of sound from a Stationary Source such that the level of sound from that source at the Point of Reception:

(a) in a Residential Area exceeds the applicable sound level limit prescribed in publication NPC-205 - Sound Level Limits for Stationary Sources in Class 1 & 2 Areas (Urban), dated October 1995; or

(b) in a Rural Area exceeds the applicable sound level limit prescribed in publication NPC-232 - Sound Level Limits for Stationary Sources in Class 3 Areas (Rural), dated October 1995; or

(c) in a Residential Area exceeds the applicable sound level limit prescribed in publication NPC-216 - Residential Air Conditioning Devices, dated October 1993.
Where a source of sound is subject to more than one subsection in section 3.2, the least restrictive provision shall prevail.

PART 4 – TEMPORARY NOISE PERMIT - CONSTRUCTION – COMMUNITY EVENT (CLASS 2)

Application for a Temporary Noise Permit

4.1 (1) Any person may submit an application for a temporary noise permit for Construction or for a Community Event (Class 2).

(2) The application in subsection (1) shall be made in writing to the Manager of By-law Enforcement, and shall contain all of the following:
   (a) the name and address of the applicant;
   (b) a description of the event and how it meets the definition of Community Event (Class 2) or Construction;
   (c) the location of the event or activity for which the temporary noise permit is sought;
   (d) a description of the source of sound and level of sound for which the temporary noise permit is sought;
   (e) the times of day, and the period of time (not in excess of six months) for which the temporary noise permit is sought;
   (f) the reasons why the temporary noise permit should be granted;
   (g) a statement of the steps, if any, planned or presently being taken to minimize the noise or sound;
   (h) a non-refundable application fee of $75.00; and
   (i) a temporary noise permit fee of $100.00, refundable if the application is not approved.

(3) The following power and authority is delegated to the Manager of By-law Enforcement with respect to Construction or a Community Event (Class 2):
   (a) to issue a temporary noise permit; and
   (b) to refuse to issue, cancel, revoke or suspend a temporary noise permit, and to impose conditions (including special conditions) on a temporary noise permit.

(4) In making his or her determination under subsection (3), the Manager of By-law Enforcement shall:
   (i) determine whether the event falls within the definition of Construction or Community Event (Class 2);
   (ii) consider any negative effects the issuance of the temporary noise permit may have on neighbouring properties or on the City;
   (iii) consider any benefits the issuance of the temporary noise permit may have for neighbouring properties or for the City;
   (iv) consider any previous violations of this By-law or temporary noise permit conditions by the applicant; and
   (v) consider anything the Manager of By-law Enforcement reasonably considers relevant.

(5) (a) The Manager of By-law Enforcement may impose conditions on a temporary noise permit, including but not limited to:
   (i) the type and volume of sounds that may be made;
   (ii) the times during which sounds may be made;
   (iii) the date of expiry of the temporary noise permit (not in excess of six months);
   (iv) requiring the posting of security prior to the activity; and
   (v) that the applicant, City staff or a professional engineer monitor the sound levels resulting from the event or activity and require a report of the findings of the engineer be filed with the Manager of By-law Enforcement within 30 days of the
event or activity, all at the applicant’s expense.

(b) The Manager of By-law Enforcement shall impose conditions on a temporary noise permit for Community Event (Class 2) with respect to:
   (i) the volume of amplified sound that may be made; and
   (ii) the times during which sounds may be made.

(c) The minimum conditions that the Manager of By-law Enforcement shall impose under subsection (5)(b) are:
   (i) the volume of amplified sound that may be made shall not exceed a sound pressure of at most 90 decibels beyond at least 30m (100 feet) from the source of the amplified sound; and
   (ii) the times during which sound may be made shall be limited to the hours of 9:00 a.m. at the earliest and to 11:00 p.m. at the latest.

(6) Where the Manager of By-law Enforcement has made a decision under subsection (3)(b), he or she shall give written notice of that decision to the applicant by regular mail to the last known address of that person. The written notice shall:
   (a) set out the grounds for the decision;
   (b) give reasonable particulars of the grounds;
   (c) be signed by the Manager of By-law Enforcement;
   (d) state that the applicant is entitled to a hearing by the Hearings Committee if the applicant delivers to the City Clerk a request for a hearing within 10 days after the notice is given, and pays the appeal fee of $150.

(7) Where no appeal is received within 10 days after the notice is given, the decision of the Manager of By-law Enforcement shall be final.

(8) The Manager of By-law Enforcement shall report to Council annually on the temporary noise permits issued and refused.

Hearings Committee
(9) Where the applicant requests a hearing in accordance with subsection (6)(d), the Hearings Committee shall hold a hearing in accordance with the Statutory Powers and Procedure Act.

(10) The Statutory Powers Procedure Act, except sections 17, 17.1, 18 and 19, applies to the Hearings Committee.

(11) Subsections (4) and (5) of this By-law apply with necessary modifications to the Hearings Committee. The Hearings Committee shall recommend to Council that a temporary noise permit be issued (including imposing any conditions), or that a temporary noise permit be refused.

(12) Upon receiving the recommendation of the Hearings Committee, Council may direct the Manager of By-law Enforcement to issue the temporary noise permit (including imposing any conditions), or refuse to issue the temporary noise permit.

Temporary Noise Permit Expiry
4.2 Any temporary noise permit issued under this By-law shall expire on the date set out on the temporary noise permit, or if no date is set out on the temporary noise permit, forty-eight hours after its issuance.

Breach of Terms or Conditions
4.3 Breach by the holder of the temporary noise permit of any of its terms or conditions shall render the temporary noise permit null and void.
Offence – Fail to Comply with Terms and Conditions
4.4 No holder of a temporary noise permit shall fail to comply with the terms and conditions of the temporary noise permit.

PART 5 – ENFORCEMENT

ORDERS

Order to Discontinue Activity
5.1 If a municipal law enforcement officer or a London Police Service police officer is satisfied that this by-law has been contravened, the officer may make an order, known as an Order to Discontinue Activity, requiring the person who contravened the by-law, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravention.

Order to Discontinue Activity - particulars
5.2 An Order to Discontinue Activity shall set out:
(a) the municipal address of the property on which the contravention occurred;
(b) the date of the contravention;
(c) the reasonable particulars of the contravention of the by-law; and
(d) the date by which there must be compliance with the order.

Order to Discontinue Activity - service
5.3 The Order to Discontinue Activity may be served personally on the person to whom it is directed or by regular mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed. Service on a corporation can be effected by registered mail to the corporate mailing address.

Contravention of Order
5.4 No person shall contravene an Order to Discontinue Activity.

Inspection Fee
5.5 (1) Where the municipal law enforcement officer determines that an activity producing noise or sound is not in compliance with this by-law or with an Order to Discontinue Activity, the fee or charge set out in the applicable Fees and Charges By-law for inspection may be imposed on the owner, person responsible for the noise or sound, or temporary noise permit holder.

(2) The fees imposed constitute a debt of the person to the City. The City Treasurer may add fees to the tax roll and collect them in the same manner as municipal taxes on any property for which all the owners are responsible for paying the fees.

Hinder or Obstruct
5.6 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this By-law, including carrying out an inspection.

By-law Enforcement – London Police Service - enforce
5.7 This by-law may be enforced by a City municipal law enforcement officer or a London Police Service police officer.

PART 6 - EXEMPTIONS

6.1 Despite any provision of this By-law, this By-law shall not apply to the following sounds arising from:
Police – Fire Services – Ambulance
(a) a vehicle of the London Police Service, provincial or federal police, London Fire Services, or ambulance, while in performance of their duty;

Railway – Airport – operations
(b) any activity that is integral to the operation of any railway or airport within the legislative authority of Parliament;

Public Necessity - Emergency
(c) a matter of public necessity or public emergency;

City Equipment – City Snow Removal - Road Cleaning Equipment - etc
(d) the operation of machines and equipment by or on behalf of the City, including but not limited to snow removal equipment, road cleaning equipment, grass cutting or field maintenance equipment, tree and shrub pruning and mulching equipment, painting machines for crosswalks and highways;

Garbage & Recycling Collection / Disposal - City
(e) the collection or disposal of garbage, waste or recyclable material by or on behalf of the City;

Signalling Devices
(f) signalling devices utilized as traffic and pedestrian control devices at intersections and crosswalks;

City Construction Projects
(g) the operation of equipment in conjunction with City Construction projects, City general maintenance projects, and City emergency maintenance projects;

Fireworks – Pyrotechnics
(h) the discharge of consumer fireworks, display fireworks or pyrotechnic special effects fireworks if such discharge complies with the City’s Fireworks By-law;

Bells – Clocks – Religious – City
(i) bells, chimes, carillons or clocks associated with religious or public buildings or uses;

Industrial Use in Industrial Zone
(j) activities from industrial uses located in lands zoned for industrial use if sound is in accordance with the terms and conditions of a valid Certificate of Approval, provisional Certificate of Approval or other approval issued under the Environmental Protection Act, R.S.O. 1990, c. E.19, where such approval addresses sound as a source of contamination;

Normal Farm Practice
(k) activities as part of a Normal Farm Practice and carried on as part of an Agricultural Operation;

Public Utilities
(l) operation of machinery by or on behalf of a public utility where work needs to be done to minimize service interruptions;

Work Approval Permit - Streets By-law
(m) operation of construction equipment where the City has issued a Work Approval Permit under the Streets By-law and in issuing such permit the City requires the work to be done to minimize traffic impacts;
Public election - gathering - authorized
(n) the use in a reasonable manner of any apparatus or mechanism for the amplification of the human voice or of music in a public park or any other commodious space in connection with any public election meeting or other lawful gathering between 9:00 a.m. and 6:00 p.m.;

Special Event - compliance with Special Events Policy Manual
(o) a Special Event but only if it is in compliance with the City’s Special Events Policy and Procedures Manual;

Community Event (Class 1) - compliance with Community Event (Class 1) Policy
(p) a Community Event (Class 1) but only if it is in compliance with the City’s Community Event (Class 1) Noise Policy;

Permit - Construction - Community Event (Class 2)
(q) Construction or a Community Event (Class 2) for which a valid temporary noise permit has been issued, but only if the terms and conditions of the temporary noise permit are complied with;

Parade - band - authorized
(r) a military or other band in a parade if the parade is operating under written permission of the City;

Tradesman - plying call - legitimacy - moderation
(s) any newsboy, pedlar, hawker or petty tradesman plying his calling legitimately and moderately;

Snow Removal - Private Property
(t) the use in a reasonable manner of vehicles and equipment when utilized for the clearing and the removal of snow from private property;

Animals - City - Police
(u) an Animal under the care or control of the City, including but not limited to those located at Storybook Gardens, and animals under the care or control of London Police Service or provincial or federal police.

6.2 Despite any provision of this By-law, this By-law shall not apply where:
(a) a sound is from a facility that has been designed, developed, built, operated and maintained in accordance with the terms and conditions of a valid Certificate of Approval, provisional Certificate of Approval or other approval issued under the Environmental Protection Act, R.S.O. 1990, c. E.19, where such approval addresses sound as a source of contamination; or
(b) an order or permit has been issued under the Environmental Protection Act that addresses the sound as a source of contamination.

PART 7 - PENALTY

7.1 (1) Any person who contravenes any provision of this By-law is guilty of an offence.
(2) A director or officer of a corporation who knowingly concurs in the contravention of this By-law is guilty of an offence.

7.2 Any person convicted under this By-law is liable:
(a) upon a first conviction, to a minimum fine of $175.00 and a maximum fine of $5,000.00;
(b) upon a subsequent conviction, to a minimum fine of $500.00 and a maximum fine of $10,000.00.
7.3 Despite section 7.2, where the person convicted is a corporation, the corporation is liable,
(a) upon a first conviction, to a minimum fine of $175 and a maximum fine of not more than Ten Thousand Dollars ($10,000); and
(b) upon any subsequent conviction, to a minimum fine $1000 and a maximum fine of not more than Twenty Five Thousand Dollars ($25,000).

7.4 If this by-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted.

PART 8– MISCELLANEOUS

8.1 By-law W-4 and any amendments thereto are hereby repealed.

8.2 This by-law may be referred to as the "Noise By-law".

8.3 This by-law shall come into force and effect on July 1, 2009.

PASSED in Open Council this day of , 2009

Anne Marie DeCicco-Best
Mayor

Kevin Bain
City Clerk

First reading -
Second reading -
Third reading --
APPENDIX C

Bill No.
2009

By-law No.

A By-law to adopt the Community Event (Class 1) Noise Policy.

WHEREAS subsection 5(3) of the Municipal Act, 2001 provides that a municipal power shall be exercised by by-law;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The City of London’s Community Event (Class 1) Noise Policy, attached as Schedule A to this By-law, is adopted.

2. This by-law shall come into force and effect on July 1, 2009.

PASSED in Open Council, 2009

Anne Marie DeCicco-Best
Mayor

Kevin Bain
City Clerk

First reading -
Second reading -
Third reading -
Time Limit

1. The amplification of sound for a Community Event (Class 1) shall be limited to the hours of 9:00 a.m. to 11:00 p.m.

2. Security – minimum $1,000 – noise violation in previous year
   (a) If there was a noise violation from the previous year, the Community Event (Class 1) operator will be required to post at least a $1,000 security (cash or letter of credit) or such higher amount as determined by the Manager of By-law Enforcement or designate (taking into account previous violations and the size/nature of the special event). If there are no noise violations during the Community Event (Class 1) the security will be returned, and in the following year a $500 security will be required. However, if there are noise violations during the Community Event (Class 1), the security will be forfeited and the Community Event (Class 1) will be required to apply for a Community Event (Class 2) temporary noise permit.
   (b) At the discretion of the Manager of By-law Enforcement or designate a Community Event (Class 1) may be required at its cost to monitor the sound levels to ensure compliance. This does not preclude inspection and enforcement of sound levels by London Police Service or Municipal Law Enforcement Officers.

Effect of Non-compliance

3. If the Community Event (Class 1) fails to comply with this Noise Policy, the provisions of the City of London’s Noise By-law apply, and any person failing to comply with the Noise By-law may be subject to By-law charges.

Decibel Level Limit

4. Amplified sound shall not exceed a sound pressure 90 decibels beyond 30m (100 feet) from the front edge of the stage, or where there is no stage, from the speakers. The decibel level within the 30m zone shall be at the discretion of the Community Event (Class 1) operator, however sound equipment and speaker placement must be designed such that the 90 decibel level is not exceeded at the 30m limit.

Decibel Level Monitoring

5. The Community Event (Class 1) operator shall ensure that the decibel levels are monitored with a decibel sound meter once every ½ hour during the amplified concert.

Mail-out

6. The Manager of By-law Enforcement or designate may require the Community Event (Class 1) operator to do a mail-out to surrounding neighbours. The mail-out would include the following information:
   (a) a contact name and telephone number that the public can reach during each event so that the operator can immediately address any neighbourhood concerns;
   (b) a synopsis of the history, purpose and benefits of the event.

Definitions:

Amplified Sound: means any sound created by any electronic device or group of connected electronic devices incorporating one or more loudspeakers or other electro-mechanical transducers intended for the production, reproduction or amplification of sound, including but not limited to a radio, television, amplifier, loud speaker, public address system, sound equipment.

Community Event (Class 1): means the Western Fair Association’s annual week-long Western Fair held at the Western Fairgrounds; the annual week-long orientation events and campus life events that are held on campus at the University of Western Ontario; and the annual week-long orientation events and campus life events that are held on campus at Fanshawe College.