Executive Summary:

At its November 7, 2017 meeting, Council received Information Report Number 17-302, Nuisance Party By-Law. The report provided an overview of the concept of a Nuisance Party By-Law as a local enforcement tool, identified best practices from other Ontario municipalities, and outlined next steps for the development and implementation of the by-law in Kingston, which included conducting public consultation and reporting back to the Administrative Policies Committee with a draft by-law.

Staff consulted with the general public and identified stakeholder groups using a variety of forums, including a Public Meeting held on November 27, 2017 at Portsmouth Olympic Harbour, a dedicated email address, in-person stakeholder meetings and online through Get Involved Kingston (the City's public engagement tool).

Based on best practices research conducted by staff and feedback obtained through the public consultation process, a draft by-law has been prepared for consideration (Exhibit A to Report Number AP-18-006). The by-law incorporates concepts from Nuisance Party by-laws passed in other Ontario municipalities, revised where appropriate, to provide further clarity and ensure enforceability. Its intended scope is limited to addressing behaviour specific to the context of large social gatherings/parties, rather than a catch-all by-law attempting to curtail all public nuisance behaviour.

Under the proposed by-law, the exercising of authority to declare that a social gathering constitutes a “Nuisance Party” is given to the Chief of Police, or his or her designate. In practice, Police Officers at the scene of a large social gathering would be responsible for communicating information pertaining to the scale and nature of the nuisance behaviours to a designated Police
Supervisor, which the Supervisor would then use to make a determination regarding a potential Nuisance Party declaration.

Subject to this declaration being made, a Police Officer or By-Law Enforcement Officer could order that the behaviour (Nuisance Party) cease and that the persons not residing at a residence where the social gathering is occurring disperse. A host or attendee who fails to comply with an Order made under this authority risks being ticketed under the proposed by-law.

The draft by-law also contains additional provisions in alignment with comments and concerns expressed during the consultation process. Of note, the draft by-law contains a provision requiring that landlords be notified of an initial Nuisance Party occurrence at their property by way of a Warning Notice. This is intended to provide landlords with an opportunity to take steps in attempting to deter future nuisance behaviours from occurring at their property. Furthermore, the proposed by-law also requires that attendees of a declared Nuisance Party be issued a verbal Order to disperse, thus affording them the opportunity to comply with Police directions before being found in violation of the by-law.

In consultation with Legal Services and subject to approval by the Ministry of the Attorney General, staff are recommending a set fine of $500. With the addition of provincially mandated and predetermined court costs ($5) and Victim Fine Surcharge ($125), the total fine amount for persons found in violation of the Nuisance Party By-Law as proposed is $630. The set fines associated with public nuisance and Nuisance Party By-Laws in other Ontario municipalities range from $250 to $750, with total payable fines ranging from $305 to $880 with the addition of court costs and associated Victim Fine Surcharges.

Public education has been identified as integral to the effective implementation of this new set of regulations, and would be initiated upon Council approval of the proposed by-law. Staff would continue to work closely with representatives from landlord, tenant and neighbourhood groups to develop proactive communications tailored to their respective communities, with an emphasis on the actions each respective group can take to mitigate Nuisance Party occurrences.

This report is at this special meeting of the Administrative Policies Committee as staff were to report back with a draft by-law prepared for consideration early in the new year.

**Recommendation:**

That the Administrative Policies Committee recommend to Council that the draft by-law, attached as Exhibit A (Draft Nuisance Party By-Law) to Report Number AP-18-006, be approved; and

That pending approval of the proposed by-law, attached as Exhibit A (Draft Nuisance Party By-Law to Report Number AP-18-006), staff be directed to submit the required Set Fine Schedule to the Ministry of the Attorney General for approval.
Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER
Lanie Hurdle, Commissioner, Community Services

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER
Gerard Hunt, Chief Administrative Officer

Consultation with the following Members of the Corporate Management Team:
Desirée Kennedy, Chief Financial Officer & City Treasurer Not required
Denis Leger, Commissioner, Corporate & Emergency Services
Mark Van Buren, Acting Commissioner, Transportation & Infrastructure Services
Options/Discussion:

At its November 7, 2017 meeting, Council received Information Report Number 17-302, Nuisance Party By-Law. The report was prompted by ongoing concerns expressed by residents across the City regarding the continuing impact of nuisance behaviours associated with large social gatherings in their neighbourhoods. Some of these gatherings/parties have involved behaviours including the excessive consumption of alcohol, very high noise levels, the overcrowding of premises and congregation of large numbers of persons on public property resulting in the blockage of pedestrian and vehicular traffic, and violations of federal and provincial statutes and municipal by-laws. These large parties can create a substantial risk to the health and safety of participants and neighbourhoods, and have constituted persistent disruptions.

The information report provided an overview of the concept of a Nuisance Party By-Law as a local enforcement tool, identified best practices from other Ontario municipalities and outlined next steps for the development and implementation of the by-law in Kingston, which included conducting public consultation and reporting to the Administrative Policies Committee with recommendations and a draft by-law.

Existing Regulatory Mechanisms
An inventory of existing regulations in the City’s by-laws and in provincial and federal statutes is attached as Exhibit B. Each has been utilized to various degrees in an attempt to address the impacts created by nuisance parties.

Definition of Nuisance Party
By-laws focused on regulating behaviours commonly associated with large social gatherings often define what constitutes a “Nuisance Party”. Under the proposed by-law, “Nuisance Party” is defined as a gathering on a premises which, by reason of the conduct of any one or more of the person(s) in attendance, is characterized by any one or more of the following elements:

- Public intoxication;
- The unlawful sale, furnishing, or distribution of alcoholic beverages or controlled substances;
- The unauthorized deposit of refuse on public or private property;
- Damage to public or private property;
- The obstruction of vehicular or pedestrian traffic, or interference with the ability to provide emergency services;
- Sound that is unusual or excessive, or that is likely to be unwanted by or disturbing to persons, including but not limited to loud music or shouting;
- Unauthorized open burning or the display of unauthorized fireworks;
- Public fights;
- Outdoor public urination or defecation; or
- Use of or entry upon a roof not intended for such occupancy.
While only a single criterion from the above list is required to be present or occurring to warrant a Nuisance Party declaration, it is expected that more than one element will be present in most such cases.

The regulatory purpose of the proposed Nuisance Party By-Law is to create a duty upon those hosting a social event or party to control the participants, and to give Police and By-Law Enforcement a mechanism to control and disperse people where the event has become a public nuisance but may not have reached the standard of an unlawful assembly under the Criminal Code. Criminal charges for causing a disturbance, charges under provincial statutes (i.e. Liquor Licence Act, Trespass to Property Act, Highway Traffic Act) and by-law charges for noise, littering and parking will continue to be enforced where Police or By-Law Enforcement Officers deem it appropriate to do so. While Nuisance Party by-laws often include many regulations contained in existing by-laws, they also include prohibitions of nuisance-type behaviours that provide Police with the ability to efficiently address potential safety concerns, such as the overcrowding of balconies or persons on rooftops. Consolidation of several nuisance behaviours under one by-law can also provide for more effective enforcement.

The introduction of a Nuisance Party By-Law should not be interpreted as exempting any person from the requirement to comply with any other City by-law. In the event of conflict between the provisions of the Nuisance Party By-Law and any other City by-law, the provisions which are more protective of the public assets of the City, the economic, social and environmental well-being of the City, the health, safety and well-being of persons in the City, and persons and property in the City, shall apply.

Public Consultation
Staff consulted with the general public and with stakeholder groups including Queen’s University and Queen’s Alma Mater Society (AMS), St. Lawrence College, and the Kingston Rental Property Owners’ Association (KRPOA) on the concept and proposed details of a Nuisance Party By-Law. Consultation was conducted using a variety of forums, including a Public Meeting held on November 27, 2017 at Portsmouth Olympic Harbour, a dedicated email address, in-person stakeholder meetings and online through Get Involved Kingston (the City’s public engagement tool).

A small number of residents attended the November 27th Public Meeting. Support was expressed for the by-law by those in attendance and a concern was expressed that persons who are found in violation of the City’s existing by-laws, particularly for noisy parties and nuisance behaviours, should be ticketed or charged rather than repeatedly warned.

Staff also received 496 visits and 23 questions and comments through the City’s online engagement tool, with an additional 13 questions and comments submitted via the dedicated email address. The questions and comments submitted through Get Involved Kingston along with staff’s public responses can be viewed here.
Feedback received through online channels and discussions with stakeholder groups was generally supportive of the concept of a Nuisance Party By-Law. However, a number of aspects of the concept were flagged for staff consideration, including the following:

- Concern that a high fine would pose a significant financial burden for those ticketed;
- Requests to include provisions that ensure the by-law would be enforced fairly;
- Questioning whether the by-law would target specific neighbourhoods or demographics;
- Questioning why the City needed a new by-law, with associated suggestions to increase the level of enforcement of existing by-laws;
- Requests that landlords be warned and then subsequently charged for repeat nuisance parties occurring at their property;
- Concerns surrounding landlord capacity and authority under the Residential Tenancies Act to manage or control their tenants' behaviours on their properties;
- Concerns from tenants that, should a landlord be fined for a nuisance party occurrence, the fine amount would be passed on to the tenant for payment; and
- Concerns from persons that they could be issued a ticket for being an attendee at a large social gathering, immediately upon Police declaring it to be a nuisance party.

Proposed Nuisance Party By-Law

Based on staff's research of best practices and on the feedback received from the consultation process, a draft by-law (Exhibit A) has been prepared for consideration. The draft incorporates concepts from Nuisance Party By-Laws passed in the cities of London and Guelph, who’s Enforcement Managers were supportive of their respective by-laws and felt each was serving its intended purpose. While the draft staff is proposing is largely based on the wording used in Nuisance Party provisions passed in Guelph and London, the proposed by-law has been revised where deemed appropriate to enhance clarity and ensure enforceability.

The draft by-law also contains additional provisions in response to comments and concerns expressed during the consultation process by landlords and by persons who may attend a large social gathering.

These additional provisions include the following requirements:

- That landlords not residing at a property be notified of an initial Nuisance Party occurrence at the property by way of a Warning Notice and that the landlord not be eligible to be charged for permitting a Nuisance Party on this initial occasion, unless there is evidence that the landlord created, caused, hosted, sponsored or conducted the Nuisance Party; and

- That attendees of a declared Nuisance Party must be issued a verbal Order to disperse, thus allowing persons the opportunity to comply with Police directions before being found in violation of the by-law. An attendee would not therefore automatically be eligible to be ticketed for being present at a declared Nuisance Party prior to being issued an Order to disperse. However, an attendee who fails to disperse upon being issued an Order to do
so by a Police Officer or By-Law Enforcement Officer could be ticketed for a Nuisance Party violation.

The Nuisance Party By-Law in Practice

The proposed Nuisance Party By-Law provides Police and By-Law Enforcement with the ability, under one City by-law, to address the negative impacts on neighbourhoods of behaviours associated with larger social gatherings at residences and in public spaces. Under the proposed by-law, this would typically be enforced through the exercising of authority given to the Chief of Police or his or her designate (in practice, this would be a Police Supervisor) to declare that a social gathering constitutes a “Nuisance Party”, should it meet the definition contained therein. Officers in attendance at the scene of a large social gathering would be responsible for communicating information pertaining to the nature and scale of the nuisance behaviours present or occurring to the Police Supervisor to allow for an informed decision to be made regarding a potential Nuisance Party declaration.

Subsequent to this declaration, a Police Officer or By-Law Enforcement Officer could order that the behaviour (Nuisance Party) cease and that the persons not residing at a residence where the social gathering is occurring disperse. A host or attendee who fails to comply with an Order made under this authority risks being ticketed under the proposed by-law.

An Order made under this by-law must identify the premises at which the Nuisance Party occurred and the reasonable particulars of the contravention(s). In practice, the Order would typically be issued to hosts verbally and/or in written form, issued to attendees verbally, and issued to owners of the premises as soon as it is practicable following the declaration of a Nuisance Party through a Warning Notice sent by registered mail. The Warning Notice will identify the date on which the Nuisance Party occurred, the premises at which it occurred, and the reasonable particulars of the contravention(s) of this by-law, and will be accompanied by literature listing actions that a landlord could take to mitigate these behaviours occurring on his or her property. An owner who permits a subsequent Nuisance Party at the same premises within two years of receipt of a Warning Notice may be charged under the proposed by-law.

The focus of the proposed Nuisance Party By-Law is limited to addressing behaviour specific to the context of large social gatherings, rather than a catch-all by-law attempting to curtail all Public Nuisance behaviour. As mentioned above, the scope of the proposed by-law would therefore only include instances where the Kingston Police are in attendance and make a determination based on the circumstances that a gathering warrants being declared a “Nuisance Party” under the authority granted exclusively to the Chief of Police (or his or her designate).

The provisions of the proposed Nuisance Party By-Law are intended to be enforced with discretion. In consultation with Kingston Police, who are strongly in favour of proceeding with a Nuisance Party By-Law, staff is following the examples set by the cities of London and Guelph by including certain provisions as a required exercise of discretion. Authority to declare a social gathering to be a “Nuisance Party” is assigned to the Chief of Police or his or her designate. Kingston Police have preliminarily advised that the Chief would delegate that authority to an
Officer of Sergeant rank. In practice, this would mean that an Officer with rank of Sergeant or higher would need to determine if conditions are met to declare a social gathering to be a “Nuisance Party” before any Nuisance Party provisions could be enforced.

The proposed Nuisance Party By-Law applies to any public or private place in the municipality, including but not limited to highways, parks, parking lots, yards appurtenant to a building or dwelling and vacant lands. Any person who creates, causes, hosts, sponsors, conducts, continues or permits a Nuisance Party could be charged under the proposed Nuisance Party By-Law. Further, any person who individually or jointly with others, is an owner, occupant, tenant, or who otherwise has rightful possession of a premises, who permits a Nuisance Party could be held responsible. The proposed by-law also provides an enforcement mechanism for “brewfing” (the consumption of alcohol by persons on rooftops), as it is considered to be a nuisance behaviour and public safety concern.

Property Owner/Landlord Responsibility
Property owners and landlords have a responsibility to act with due diligence in preventing the occurrence of a Nuisance Party and as proposed, could be held legally accountable for failing to do so. Examples of appropriate steps a property owner or landlord could take in attempting to deter Nuisance Party occurrences at their properties are listed below:

Proactive
• Obtain references from prospective renters;
• Include rules for a tenants’ conduct in the lease (in accordance with the Residential Tenancies Act); and
• Educate tenants on their responsibilities and obligations as residents of the local community (an information brochure describing tenants’ rights and responsibilities will be developed in collaboration between the City and landlord and tenant groups).

In Response to Receipt of a Warning Notice (required to be issued to a landlord under proposed provisions of the Nuisance Party By-Law):

• Communicate in writing to tenant(s) as often as continues to be warranted, advising of receipt of a Warning Notice, indicating the property owner’s expectations for tenants to be in compliance with all municipal by-laws and provincial and federal Acts as well as conditions of their lease, and providing a warning of potential consequences for failure to comply with lease conditions, including Termination for Cause sections contained in the Residential Tenancies Act (for an Illegal Act, Damage, Reasonable Enjoyment, Impair Safety and Too Many Persons); and
• Monitor property on a regular basis (in accordance with the Residential Tenancies Act) – either personally or by contracting a property management service.

Should a subsequent Nuisance Party occur at a property owner or landlord’s property within two years of a receipt of a Warning Notice, the owner or landlord could be required to demonstrate
that they have made or are making a reasonable effort to address repeat nuisance behaviours and activities occurring on their property.

**Fine Amounts**

In consultation with Legal Services and subject to approval by the Ministry of the Attorney General, staff is recommending a set fine of $500. With the addition of provincially mandated and predetermined court costs ($5) and Victim Fine Surcharge ($125), the total fine amount for persons found in violation of the Nuisance Party By-Law as proposed is $630. The set fines associated with public nuisance and Nuisance Party By-Laws in other Ontario municipalities range from $250 to $750, with total payable fines ranging from $305 to $880 with the addition of court costs and associated Victim Fine Surcharges. A relatively high fine is seen as necessary to achieving general deterrence, as those who are aware of the financial consequences of exhibiting this behaviour are more likely to be dissuaded from doing so. For those who do commit nuisance behaviours, a higher fine is intended to act as a specific deterrent to repeating such behaviour.

Violation clauses are also being proposed in the by-law for persons who unlawfully use a highway that has been temporarily closed by Police in accordance with the *Highway Traffic Act*, or who remove or deface any barricade, flashing light, warning device, detour sign, notice or other device placed on a highway that has been temporarily closed by Police. A comparable set fine of $500 is recommended for each of these nuisance behaviours.

To support Police efforts to enforce these provisions, it is further proposed that failure on the part of any person to provide proof of identification satisfactory to an Officer when requested to do so shall constitute obstruction of an Officer. The standard set fine for obstruction of an Officer in the exercise of a power or the performance of a duty under the City's by-laws is $375.

For violations of the proposed Nuisance Party By-Law, staff considers $500 to be, in most cases, high enough to provide the intended deterrent effect. Repeat offenders can be prosecuted in court where the opportunity exists to seek a substantially higher fine. The maximum fines proposed for persons and corporations found guilty of an offence under this by-law include:

- For every person, other than a corporation, a fine of not more than $10,000 for a first offence and $25,000 for any subsequent offence; and
- For every corporation, and every officer or director of a corporation who knowingly concurs in such contravention, a fine of not more than $50,000 for a first offence and $100,000 for any subsequent offence.

These maximum fine amounts are authorized by the *Municipal Act* and are in alignment with the maximum fines approved in recent years for several of the City’s by-laws including the Noise By-Law, Sign By-Law, Tree By-Law and Sewer By-Law.

In addition to fines, staff considered the inclusion of additional authority to impose a fee upon any person involved in a Nuisance Party, including the owner of the property, to cover any of the
administrative and enforcement costs incurred by the City in responding to and addressing the Nuisance Party. Staff are recommending not to proceed with this additional authority, given the variableness of the costs incurred and the added administration required to implement.

Public Education
Public education has been identified as integral to the effective implementation of this new set of regulations, and would be initiated upon Council approval of the proposed by-law. To this end, staff will continue to work with representatives from landlord, tenant and neighbourhood groups to develop proactive communications tailored to their respective communities. Emphasis will be placed on communicating in plain language, actions or steps each respective group can take to mitigate Nuisance Party occurrences.

Existing Policy/By-Law:
The City of Kingston does not currently have a Nuisance Party By-Law. Many behaviours that could be characterized as public nuisances are regulated in existing City by-laws including By-Law Number 2004-52 “A By-Law to Regulate Noise”, By-Law Number 2004-190 “A By-Law to Regulate the Use of Streets”, By-Law Number 2010-128 “A By-Law to Regulate Parking”, and By-Law Number 2014-5 “Solid Waste Management By-Law”; in provincial legislation including the Liquor Licence Act, Trespass to Property Act and the Highway Traffic Act; and in Federal statutes including the Criminal Code and the Controlled Drugs and Substances Act.

Notice Provisions:
The Public Meeting held November 27, 2017 at Portsmouth Olympic Harbour was advertised by way of a news release on November 13, 2017 and via social media channels. Additional opportunities to ask questions and give feedback were provided on the City’s online engagement site, Get Involved Kingston at https://getinvolved.cityofkingston.ca/npbylaw. Comments were also accepted via the email address: npbylaw@cityofkingston.ca until December 8, 2017.

Accessibility Considerations:
Not applicable

Financial Considerations:
Not applicable

Contacts:
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Lacricia Turner, Manager, Licensing and Enforcement 613-546-4291 extension 3222
Ian Semple, Manager, Service Development, Transportation Services 613-546-4291 extension 2306

Greg McLean, Policy and Program Coordinator 613-546-4291 extension 1336

Matt Kussin, Workforce Development Analyst 613-546-4291 extension 1333

**Other City of Kingston Staff Consulted:**

Sarah Gareau, Associate Legal Counsel, Legal Services

**Exhibits Attached:**

Exhibit A    Draft Nuisance Party By-Law

Exhibit B    Existing Regulatory Mechanisms
By-Law Number 2018-XX

“A By-Law to Regulate Nuisance Parties within the City of Kingston”

Passed: [Meeting Date]

Whereas section 425 of the Municipal Act, 2001 provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under that Act is guilty of an offence; and

Whereas section 429 of the Municipal Act, 2001 provides that a municipality may establish a system of fines for offences under a by-law of the municipality passed under that Act; and

Whereas section 10 of the Municipal Act, 2001 provides that a municipality may pass by-laws respecting: economic, social and environmental well-being of the municipality; heath, safety and well-being of person; the protection of persons and property; and structures, including fences and signs; and

Whereas section 128 of the Municipal Act, 2001 provides that a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances, and the opinion of Council under this section, if arrived at in good faith, is not subject to review by any court; and

Whereas sections 435 and 436 of the Municipal Act, 2001 provide for the exercise of powers of entry of a municipality; and

Whereas section 444 of the Municipal Act, 2001 provides that a municipality may make an Order requiring a person who contravened a 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 contravening activity; and

Whereas section 431 of the Municipal Act, 2001 provides that if any by-law of a municipality passed under that Act is contravened and a conviction entered, in additional 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; and

Whereas, in the opinion of Council, the matters addressed in this by-law are, or could become or cause public nuisances, and notwithstanding the generality of the foregoing, Council is of the opinion that a Nuisance Party (as defined herein) is a public nuisance;

Therefore be it Resolved That the Council of The Corporation of the City of Kingston enacts as follows:
1. Definitions:

In this By-law,

“Chief of Police” means the Chief of Police of the Kingston Police, or his or her designate;

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

“Highway” includes a common and public highway, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles or persons, and includes the area between the lateral property lines thereof, including sidewalks and boulevards;

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

“Nuisance Party” means a gathering on Premises which, by reason of the conduct of any one or more of the Person(s) in attendance, is characterized by any one or more of the following elements:

(a) Public intoxication;
(b) The unlawful sale, furnishing, or distribution of alcoholic beverages or controlled substances;
(c) The unauthorized deposit of refuse on public or private property;
(d) Damage to public or private property;
(e) The obstruction of vehicular or pedestrian traffic, or interference with the ability to provide emergency services;
(f) Sound that is unusual or excessive, or that is likely to be unwanted by or disturbing to persons, including but not limited to loud music or shouting;
(g) Unauthorized open burning or the display of unauthorized fireworks;
(h) Public fights;
(i) Outdoor public urination or defecation; and
(j) Use of or entry upon a roof not intended for such occupancy;

“Officer” means a Provincial Offences Officer of the City who has been assigned the responsibility of administering or enforcing this by-Law, or an officer of the Kingston Police or other police force assisting the Kingston Police;

“Person” means a corporation as well as an individual;

“Premises” means any public or private place in the Municipality, including but not limited to Highways, parks, parking lots, yards appurtenant to a building or dwelling, or vacant lands.
2. Administration:

2.1 The City’s Licensing and Enforcement Division is responsible for the administration of this by-law.

3. Interpretation:

3.1 This by-law shall not be interpreted as exempting any Person from the requirement to comply with any other City by-law. In the event of conflict between the provisions of this by-law and any other City by-law, the provisions which are more protective of the public assets of the City, the economic, social and environmental well-being of the City, the health, safety and well-being of persons in the City, and persons and property in the City, shall apply.

3.2 Any reference herein to any by-law or Act of any government shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto then in force.

4. Regulation of Nuisance Parties:

4.1 A social gathering shall only be declared a Nuisance Party by the Chief of Police, or his or her designate.

4.2 Subject to the declaration of a Nuisance Party pursuant to Section 4.1 of this by-law, no Person shall create, cause, host, sponsor, conduct, continue, or permit a Nuisance Party.

4.3 Subject to the declaration of a Nuisance Party pursuant to Section 4.1 of this by-law, an Officer may issue an Order directing that the Nuisance Party cease and that all Persons not residing at the Premises where the Nuisance Party has been declared shall immediately leave said Premises.

4.4 An Order under Section 4.3 of this by-law shall identify:

(a) The Premises at which the contravention occurred; and
(b) The reasonable particulars of the contravention of this by-law.

4.5 An Order under Section 4.3 of this by-law may be given verbally or may be served personally on the Person(s) to whom it is directed.

4.6 No Person shall fail to comply with an Order issued pursuant to Section 4.3 of this by-law.

4.7 As soon as is practicable following the declaration of a Nuisance Party pursuant to Section 4.1 of this by-law, the Licensing and Enforcement Division shall send a Warning Notice to the owner(s) of the Premises at which time the Nuisance Party has been declared.
4.8 A Warning Notice issued pursuant to Section 4.7 of this by-law shall identify:

(a) The date on which the contravention occurred;
(b) The Premises at which the contravention occurred; and
(c) The reasonable particulars of the contravention of this by-law.

4.9 Receipt of a Warning Notice shall be deemed to have occurred:

a) On the date of delivery, if delivered personally;
b) Three (3) business days after the date of mailing, if delivered by registered mail
to an address within the City of Kingston;
c) Five (5) days after the date of mailing, if delivered by registered mail to an
address outside of the City of Kingston;

4.9.1 Receipt of a Warning Notice shall be deemed to have occurred if delivered
personally or to the last known address of the owner of the property.

4.10 No Person who, individually or jointly with others, is an owner or who otherwise
has rightful possession of or possessory control of any Premises, shall permit a
subsequent Nuisance Party on said Premises after receipt of a Warning Notice.

4.10.1 For greater clarity, a subsequent Nuisance Party is a Nuisance Party that occurs
within two (2) years after a declaration of a Nuisance Party pursuant to Section 4.1
of this By-law, at the Premises identified in the Warning Notice.

5. Close Public Highway:

5.1 The Chief of Police, or his or her designate, may temporarily close any Highway or
portion thereof to public travel where a Nuisance Party is occurring on or adjacent to
the Highway, in accordance with the Highway Traffic Act.

5.2 Where a Highway or portion of a Highway has been closed, the common law right of
passage, by the public over the Highway and the common law right of access to the
Highway by an owner of land abutting the Highway are restricted, as directed by the
Chief of Police, or his or her designate.

5.3 No Person shall, without lawful authority, use a Highway or portion thereof that has
been closed temporarily in accordance with Section 5.1 of this by-law.

5.4 No Person shall, without lawful authority, remove or deface any barricade, flashing
light, warning device, detour sign, notice or other device placed on a Highway that
has been temporarily closed in accordance with Section 5.1 of this by-law.

6. Enforcement and Inspection:

6.1 The provisions of this by-law may be enforced by an Officer.
6.2 No Person shall obstruct or hinder or attempt to obstruct or hinder an Officer or other authorized employee or agent of the City in the exercise of a power or the performance of a duty under this by-law.

6.3 Every Officer shall have the right to enter lands and Premises to conduct an inspection to determine whether the provisions of this by-law and any order(s) issued hereunder are being complied with in accordance with the provisions of Sections 435 and 436 of the Municipal Act, 2001.

6.4 Where an Officer has reasonable grounds to believe that an offence under this by-law has been committed by a Person, the Officer may require the name, address, and proof of identity of that Person.

6.5 Failure to provide proof of identification satisfactory to an Officer when requested to do so pursuant to Section 6.4 of this by-law shall constitute obstruction of an Officer under Section 6.2 of this by-law.

7. Penalty:

7.1 Every Person, other than a corporation, who contravenes any provision of this by-law is guilty of an offence and on conviction is liable to a fine of not more than $10,000 for a first offence and $25,000 for any subsequent offence.

7.2 Every corporation that contravenes any provision of this by-law and every officer or director of a corporation who knowingly concurs in such contravention is guilty of an offence and on conviction is liable to a fine of not more than $50,000 for a first offence and $100,000 for any subsequent offence.

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

8. Validity:

8.1 If a court of competent jurisdiction declares any provision, or any part of a provision, of this by-law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this by-law that each and every provision of this by-law authorized by law, be applied and enforced in accordance with its terms to the extent possible according to law.

9. Short Title of By-Law:

9.1 This by-law may be referred to as the “Nuisance Party By-Law”.

10. Commencement:

10.1 This by-law shall come into force and take effect on the date of its passing.
Given First and Second Readings [Meeting Date]

Given Third Reading and Passed [Meeting Date]

____________________________
John Bolognone
City Clerk

____________________________
Bryan Paterson
Mayor
Existing Regulatory Mechanisms
City of Kingston By-Laws

- By-Law Number 2004-52, “A By-Law to Regulate Noise”, including restrictions to control amplified music, yelling, shouting, hooting, whistling and singing, the playing of musical instruments including percussion instruments, and the setting off of fireworks;
- By-Law Number 2004-190, “A By-Law to Regulate the Use of Streets”, including prohibitions of the following behaviours within the boundaries of a highway, defined to include the street, sidewalk and city boulevard: blocking or obstructing, damaging, destroying or removing an object, setting fire to anything, climbing on a utility pole, light standard or tree, or climbing over a fence or barrier;
- By-Law Number 2010-128, “A By-Law to Regulate Parking”, including parking a vehicle so as to interfere with a civic service, blocking traffic, and parking on a city boulevard or front yard;

A provision exists in all of the above listed by-laws that prohibit the obstructing or hindering of an Officer in the performance of his/her duties.

Provincial Statutes

- *Liquor Licence Act*, including unlawful sale, possession or consumption of alcohol, and public intoxication;
- *Trespass to Property Act*, including entering premises without permission, engaging in activities prohibited or restricted on a premise, and failing to leave a premise when directed to do so;
- *Highway Traffic Act*, including offences related to the operation of a vehicle or other prohibited activities on a highway.

Under the *Fire Protection and Prevention Act*, Kingston Fire and Rescue has the authority to clear premises when the occupant load has been exceeded. However, the exercise of such authority is costly, and can only be exercised by Fire and Rescue, not by Police or By-law Enforcement who are already present at the scene.

Federal Statutes

- Criminal Code, including unlawful assembly, causing a disturbance in a public place, mischief to property, and committing a common nuisance which endangers the lives, safety or health of the public or causes physical injury to a person;
- *Controlled Drugs and Substances Act*, including illegal possession, and trafficking.