

ADOPTED by Council at its meeting held December 5, 2011 [M358-2011]

/AA

Windsor, Ontario December 5, 2011

REPORT NO. 18 of the
PUBLIC SAFETY STANDING COMMITTEE
of its meeting held November 16, 2011

Present: Councillor Jones, Chair
Councillor Dilkens
Councillor Gignac
Councillor Maghnieh

Regrets: Councillor Payne

That the following recommendation of the Public Safety Standing Committee **BE APPROVED** as follows:

Moved by Councillor Gignac, seconded by Councillor Dilkens

I. THAT City Council **RECEIVE FOR INFORMATION** the following report in response to Council Resolution 367/2010;

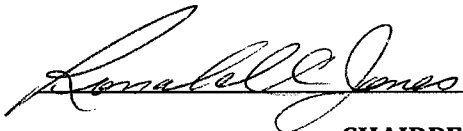
II. That City Council **RECONSIDER** its previous direction to increase night inspections from April to October as outlined in CR368/2010;

III. That Council **ELIMINATE** regularly scheduled night inspections and that the related staff be moved to the day shift in order to increase enforcement efficiencies and enforcement effectiveness.

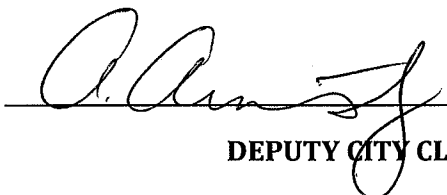
Carried.

Clerk's Note: The report dated October 6, 2011 titled "CR367/2010 – Regarding Noise Complaints and CR368/2010 – Regarding Night Inspections" is attached as background information.

Livelihood 15267, AB2011



CHAIRPERSON



DEPUTY CITY CLERK

NOTIFICATION :

Name	Address	Email Address	Telephone	FAX
See notification on report				



THE CORPORATION OF THE CITY OF WINDSOR
Public Safety Standing Committee – Administrative Report

**MISSION STATEMENT:**

"The City of Windsor, with the involvement of its citizens, will deliver effective and responsive municipal services, and will mobilize innovative community partnerships"

LiveLink REPORT #: 15267 AB2011	Report Date: October 6, 2011
Author's Name: Ann Kalinowski, Manager of Compliance and Enforcement	Date to Public Safety Standing Committee: November 16, 2011
Author's Phone: 519 255-6100 ext. 1931	Classification #:
Author's E-mail: akalinowski@city.windsor.on.ca	

TO: Public Safety Standing Committee

SUBJECT: CR367/2010 – Regarding Noise Complaints and CR368/2010 Regarding Night Inspections

1. RECOMMENDATION: City Wide: Ward(s): _____

- I. THAT City Council **RECEIVE FOR INFORMATION** the following report in response to Council Resolution 367/2010;
- II. That City Council **RECONSIDER** its previous direction to increase night inspections from April to October as outlined in CR368/2010;
- III. That Council **ELIMINATE** regularly scheduled night inspections and that the related staff be moved to the day shift in order to increase enforcement efficiencies and enforcement effectiveness.

EXECUTIVE SUMMARY:

N/A

2. BACKGROUND:

On October 4, 2010 Council adopted the following resolutions (CR367/2010) and (CR368/2010):

CR367/2010

"That the following recommendations 1 through 6 from the Report of the Chief Building Official dated July 6, 2010 entitled "Response to Council Question CQ38-2010 Regarding Noise Complaints" BE REFERRED to the Business Improvement Area Development Officer to allow for further consultation with the Hospitality Resource Panel, the DWBIA, the business owners within the DWBIA, as well as other residents from all areas of the City":

- i. That the License Commissioner **BE DIRECTED** to investigate the feasibility of controlling garage doors and noise abatement measures through the licensing process for Hospitality and Entertainment Lounge Licensees;
- ii. That the Licence Commissioner consider making recommendations to the AGCO requesting that conditions **BE PLACED** onto the liquor license of business establishments that have chronic by-law violations;
- iii. That Licensing, through the Windsor Licensing Commission, consider sanctions on businesses featuring garage doors and other methods of creating large openings onto the sidewalk. Tighter controls on the size of garage doors, and hours of opening, for offenders will be considered;
- iv. That joint enforcement be pursued with Windsor Police Services, Building Department Compliance & Enforcement, Windsor Fire & Rescue, Windsor-Essex Health Unit, Alcohol and Gaming Commission (AGCO);
- v. That Administration request the Ontario Provincial Police (OPP), who regulate security personnel in bars under the Private Security and Investigative Services Act, to conduct enforcement reviews within the City of Windsor to ensure compliance;
- vi. That Legal Counsel review the Emission of Sound By-law 6716 in an effort to improve the language and make it easier to obtain a conviction, i.e. definition of noise;

CR/368/2010:

"That the following recommendations 7 through 10 from the Report of the Chief Building Official dated July 6, 2010 entitled "Response to Council Question CQ38-2010 Regarding Noise Complaints" **BE APPROVED** as follows:

- vii. That a "Complaint Template" **BE DEVELOPED** by the Legal Department for use by persons wishing to lodge a noise complaint. The template would assist complainants by directing them to collect data such as the date the offence occurred, the time of day, the length of offence, etc;
- viii. That the Building Department Compliance & Enforcement Unit alter work scheduled from April 1st to October 31st in an effort to conduct more night inspections within the BIA and target locations within the City where there is a history of site specific noise complaints;
- ix. That the Chief Building Official (CBO) canvas municipalities' best practices for noise abatement measures;
- x. That Legal Counsel research the feasibility of having the Ministry of Labour Inspectors review sound levels in bar type establishments to determine whether there is a negative effect on the health and safety of employees under the Occupational Health and Safety Act".

3. DISCUSSION:

CR367/2010 Regarding Noise Complaints

Administration has met on several occasions with the Hospitality Resource Panel (HRP), Downtown Residents Association (DRA), the Quality of Life Committee (sub-group of the DRA), the DWBIA and the Entertainment Guild (Licensed business owners downtown) and most recently on September 29th and October 6, 2011 in an effort to answer questions and find solutions. The outcome of these discussions resulted in the following consensus:

- If any changes to the Hospitality and Entertainment Lounge Schedules to By-law 395-2004, being a *By-law Respecting the Licensing and Regulation of Various Businesses*, are to be recommended, they would be vetted through the Windsor Licensing Commission for public consultation.
- That the Alcohol and Gaming Commission (AGCO) already places conditions on all new liquor licenses and has committed to keeping the lines of communication open with the Licensing Department.
- The Windsor Licensing Commission is an independent statutory body with full authority to make decisions on applications relating to licensing matters. The Commission is a five (5) member quasi-judicial body. The decisions of the Commission can be to suspend, revoke or place conditions on a business license.
- That joint enforcement with Police, AGCO and the Windsor Police Morality Unit has occurred in the past and will take place in the future. Other agencies such as Fire and the Health Unit can also be added at any time if needed.
- That the Ontario Provincial Police can and have conducted random reviews to ensure compliance with the Private Security and Investigation Act.
- That the review of Emission of Sound By-law 6716 can be reviewed any time at the will of Council.
- That Council consider forming a hands on task force comprised of representatives from the entertainment industry and residents who can be proactive with noise solutions;
- That education initiatives be developed through the task force as a means of assisting stakeholders (i.e. businesses and residents).
- That the Building Department Compliance & Enforcement Unit conduct joint blitz night enforcement when required by Building Management;

CR368/2010 Regarding Night Inspections

In October 2010, Administration put forth a recommendation to increase night inspections from April to October in an effort to deal with noise complaints. The decision to increase night inspections from two nights a month to four nights a month was suggested in the hopes that it would assist complainants and lead to more charges being laid. This has not been the case. Investigations into noise complaints often result in the distribution of noise tracking forms which are to be completed by the person disturbed by the noise and returned to the investigating Officer however, few are returned. Compliance & Enforcement Officers cannot be complainants if they hear noise while performing their job duties as the courts have held that Police and By-law Enforcement Officers who hear noise are just doing their job and are not disturbed by the noise. It is therefore incumbent upon the complainants to document the noise on a noise tracking form (noise tracking form attached as Appendix "B") and submit it to the Compliance & Enforcement Unit for review. If there is enough evidence to proceed, a charge will be laid. All noise complaints received through 311, the City website or through an e-mail will be investigated with a noise tracking form being issued.

The Building Department Compliance & Enforcement Unit investigated a total of 7,715 complaints so far in 2011. Of these complaints, 3,313 were for concerns of potential violations under By-law 3-2006, *A By-law to Establish Standards Respecting Yard Waste & Exterior Maintenance and to Prohibit Littering in the City of Windsor*, also known as the *Dirty Yard*

By-law. Given these statistics, it can be affirmed that approximately 43 percent of an Officer's time is spent on the investigation and enforcement of dirty yard complaints. However, the Compliance & Enforcement Unit is also responsible for investigating and enforcing a total of 39 Licensing Schedules under the Licensing By-law and 21 Regulatory By-laws, as well as all enforcement under the Provincial Dog Owners Liability Act.

The following information discloses the total number of complaints sent to Compliance & Enforcement for investigation in 2011 (January 1st to October 24th) and 2010:

Requests For Service

Nature of Complaint	# Received for 2011	# Received for 2010
1. Dirty yards (tall grass and weeds, dilapidated vehicles, standing water, garbage and debris)	3,313	3,982
2. Snow Removal	1,093	468
3. Collection of Refuse	895	1478
4. Licensing	811	1033
5. Dog Control	711	939
6. Signs	312	75
7. Noise	283	375
8. Keeping of Animals	135	96
9. Swimming Pools	116	0
10. Miscellaneous	46	89
Total Number of Complaints Received	7,715	8,535

The data identifies a gradual reduction in a number of the complaints from 2010 to 2011. Although the 2011 year has not ended, the seasonal complaints such as dirty yards and collection of refuse have slowed down. Of the 283 noise complaints investigated by the Compliance & Enforcement Unit in so far in 2011, only 26 were complaints received or investigated in the Downtown Business Improvement Area boundaries (Attached as Appendix "A").

It should also be noted that due to synergies between the Building Inspections area and Compliance & Enforcement, further Regulatory By-laws such as Swimming Pools, Signs, Fences and Property Standards, are in the process of being transferred over to the Compliance and Enforcement Unit as part of the 2011/2012 Building Department Business Plan.

City Council, at its meeting held on October 4, 2010, adopted CR368/2010 directing that the Building Department Compliance & Enforcement Unit alter its work schedule from April to October in an effort to **increase night inspections**. When scheduling a night shift from 6:00 p.m. to 2:00 a.m., the afternoon shift (2:00 p.m. to 10:00 p.m.) is cancelled for that day. Removing the afternoon shift to incorporate a night shift reduces productivity due to lack of daylight hours in which to conduct inspections. Considering the statistics provided above, and the fact that pulling staff off the afternoon shift (2:00 p.m. to 10:00 p.m.) to work a night shift (from 6:00 p.m. to 2:00 a.m.) reduces the Officers' ability to deal with inspections such as dirty yards, **it is being recommended that Council reconsider its direction to increase night inspections from April to October and furthermore remove night inspections altogether as a requirement of the Compliance & Enforcement Unit.** To date, Compliance & Enforcement Unit have completed twelve (12) night inspections since April 2011 with no charges for noise being laid during this time.

The Building Department Compliance & Enforcement Unit will continue to ensure businesses (i.e. downtown) are licensed and complying with the regulations of their licensing schedules. It is not necessary to complete these inspections during the night on a regular basis. Work schedules will be altered occasionally for nightly joint noise enforcement, special events or other enforcement priorities as determined by Building Management.

NOISE ENFORCEMENT

By-law 6716, *A By-law Respecting The Emission Of Sounds In The City Of Windsor*, specifies that noise must disturb an individual's peace and quiet while inside a residence. Compliance & Enforcement Officers usually do not encounter violations to justify the time spent from 11:00 p.m. to 2:00 a.m. while working night shifts (6:00 p.m. to 2:00 a.m.). Operationally, noise and licensing complaints can be addressed more efficiently during regular day and afternoon shifts. In most cases, noise complaints are received after the 2:00 a.m. shift or when there is no night shift scheduled. Noise complaints can be investigated by supplying the complainants with a "noise complaint tracking form" to complete and supply back to Compliance & Enforcement Officers. If the Officers feel there is sufficient evidence to proceed with a charge, they will do so on behalf of the complainant. The day and afternoon shifts allow for more inspection reviews to be completed during daylight hours which give the Officers more time to spend inspecting complaints such as garbage and debris, tall grass and weeds, illegal signs, blitz enforcement, licensing matters, etc. **It should also be noted that the courts have held that Police and By-law Enforcement Officers who hear noise are just doing their job and are not disturbed by the noise.** There needs to be a complainant who is prepared to give a statement to the effect that he/she heard the noise in an office, dwelling, house etc. and his/her peace, quiet, comfort, repose was disturbed by the noise and is prepared to give that evidence in court. Very often complainants do not want to go to court.

The Windsor Police Services (WPS) Deployment Plan enacted for a second year showed positive results of enforcement and charges from WPS Patrol Enforcement, WPS Traffic Enforcement, WPS Morality and the Alcohol and Gaming Commission (AGCO). WPS will investigate complaints, take witness statements and lay charges if warranted. By-law Enforcement Officers also follow this process whereby investigations are conducted, noise tracking forms issued and charges laid if warranted. The difference here is that this process will take place, for the most part, during regular daytime working hours.

Administration met with WPS on May 20, 2011 and they clarified that noise complaints rank fourth in their priorities with priority 1 being crimes in progress, 2 being crimes that just occurred such as break and enters, 3 being offences such as car accidents.

MUNICIPAL BEST PRACTICES

Sampling of similar sized municipalities indicate the following:

City of London:

- Receives approximately 400 noise complaints a year.

- Disbanded By-law Enforcement night inspections for health and safety reasons. Noise complaints are primarily enforced by their Police Services Division; however they do conduct joint inspections for special events.

City of Burlington:

- Receives approximately 50 noise complaints a year.
- Noise complaints are handled by their Police Services Division.

City of Kitchener:

- Receives approximately 950 noise complaints a year.
- Enforces noise complaints through three (3) dedicated Noise Enforcement Officers who also can respond to parking complaints.
- Maintains a pool of eight (8) part time Officers who are cross trained to do parking and noise complaints.

City of Hamilton:

- Received 1100 noise complaints in 2010 from across the City as well as from McMaster University and Mohawk College.
- Noise complaints are handled by six Special Enforcement Officers who have been trained in violence in the workplace (internally and externally) and understand the use of force and tactical commands when confronted with aggressive individuals. Each Officer has a police radio and cell phone. For health and safety reasons, the Officers do not work past 1:00 a.m.

City of Guelph:

- Receives approximately 2500 noise calls a year.
- Noise complaints are called into Guelph Police Service. The Police dispatcher reviews the calls and determines who should attend based on the circumstances and dispatches the appropriate staff (By-law Officer or Police Officer). For health and safety reasons, By-law Officers attend all noise calls in pairs.
- Has a total of 16 full time Officers and 4 part time Officer. Service is provided 24 hours a day, 365 days a year. Each officer works four 12 hour shifts and then has four days off.

MINISTRY OF LABOUR

Regulation 851 to the *Occupational Health and Safety Act* is applicable to "Industrial Establishments". The Ministry of Labour has confirmed that it considers a bar to be an "Industrial Establishment". The Regulation states that: "Every employer shall take all measures reasonably necessary in the circumstances to protect workers from exposure to hazardous sound levels". Employers are required to ensure that workers are not exposed to a sound level greater than an equivalent sound exposure level of 85 dBA. The Ministry of Labour has confirmed that "workers" would include both the bar's employees and our own enforcement staff who are required to enter the bar to conduct compliance inspections.

The Ministry of Labour has also confirmed that we can make a formal complaint on behalf of our employees. We would have to identify the source/bar and provide an address. If we want to be kept informed we need to provide our contact information as well. The complaint would receive an event number and an industrial inspector would be assigned. As the complainant, we

would be entitled to the inspector's report. The Ministry Inspector may determine that a noise assessment is required and if so we would be entitled to the results. If there is a breach, the Inspector could order the bar to take measures to comply with the regulations regarding noise.

As indicated by the Ministry of Labour, enforcement staff can be considered a "worker" and therefore file a formal complaint on behalf of the employees. Although Administration is recommending that night inspection shifts end, work schedules can be altered occasionally if requests are made.

Night Shift Inspections (from 6:00 p.m. to 2:00 a.m.) have been conducted by Building Department Compliance & Enforcement staff and carried out as a dedicated duty on average four (4) nights each month. Five or six staff are normally assigned to the night shift on the select dates with no staff working the afternoon shift (2:00 p.m. to 10:00 p.m.) on these days.

The removal of both the night and afternoon shift would allow for more time to be spent addressing By-laws that could lead to physical injury hazards, such as dirty yards and ice and snow removal, and impacts on claims against the City. It should be noted that the elimination of these shifts does not in any way exclude the enforcement of the Noise By-law.

4. FINANCIAL MATTERS:

Suspending weekly night shifts would achieve cost savings by eliminating payment of shift premiums for staff working nights.

Incremental salary savings from suspending afternoon and night shifts (January thru December) with staff working day shifts only would result in a savings of \$8,118.

- afternoon shift premium, \$6,318
- night shift premium based on current annual select schedule of night shifts worked, \$1,800.

5. CONSULTATIONS:

As a follow up to the September 21, 2011 Public Safety Standing Committee meeting, Administration met with members from the Downtown Residents Association (DRA), Hospitality Resource Panel (HRP), Downtown Windsor Business Improvement Association (DWBIA), Entertainment Guild, Alcohol and Gaming Commission (AGCO), and other various stakeholders on September 29th and October 6, 2011 to allow for further discussion on solutions and an action plan moving forward. The key messaging centered on the following:

Education

The development of a hands on task force was thought to be an effective tool to use as a means to educate the stakeholders (i.e. business and residents downtown) in a proactive way instead of reactive. It was also felt that with a more focused and action oriented mandate; this task force could tackle issues by taking a more cohesive approach to focusing on the topic and coming up with solutions. This approach is similar to a model currently being used in the City of Ottawa whereby meetings are held by-monthly with stakeholders in an effort to find solutions to noise problems.

Enforcement

The recognition that there is still a need to conduct downtown inspections and a realization that joint enforcement can occur with the AGCO during blitz inspections. However, there is a more effective and efficient way to deal with noise than what has happened in the past. The previous practice had five or six Compliance & Enforcement Officers working a night shift (6:00 p.m. to 2:00 a.m.) covering the East side of Windsor, West side of Windsor and downtown core. The Officers assigned to the downtown core would walk the beat to ensure compliance with regulatory and licensing by-laws. However, understanding the legal requirement to have a complainant who is disturbed by the noise while in their residence and the need to have documented evidence provided by that complainant, the investigation can take place through regular business hours.

Communication

Acknowledging that noise complaints sent to Compliance & Enforcement are low and realizing that further education on who complainants should be and how evidence should be documented may change those statistics. Communication is important moving forward and can be delivered through websites such as the DRA and City of Windsor as well as through the creation of a self governing committee or structure such as the task force. Education initiatives can also be developed and communicated through the stakeholders (i.e. businesses and residents).

Collaboration

There needs to be a cooperative effort put forth by all the stakeholders in an effort to identify viable solutions and it is felt that this can be achieved through these recommended initiatives.

Internal Consultation:

Lee Anne Doyle, Chief Building Official
Michael Chantler, Supervisor of Licensing / Deputy Licence Commissioner.
Susan Hirota, Legal Counsel

6. CONCLUSION:

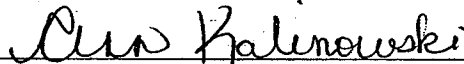
CR367/2010

After further consultation with all the stakeholders on September 29th and October 6, 2010, five of the original six recommendations identified in the October 4, 2010 Council Report on CQ38-2010 Regarding Noise Complaints have been agreed upon with no objections from any of the participating stakeholders. Recommendation one has been removed as it is already covered under recommendation three through the Windsor Licensing Commission.

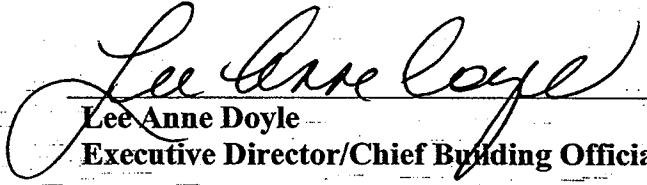
CR368/2010

Compliance & Enforcement Officers manage multiple priorities during the year. These include but are not limited to blitz enforcement on signs, enforcement around the University of Windsor in April, blitz enforcement of vacant lots from May to September, swimming pool enforcement, one week safety lane inspections (all licensed taxicabs and livery vehicles) in May and October, daily enforcement of 6 regulatory and licensing by-laws, etc. In an effort to ensure that we are maximizing our staff resources and customer service effectively, Administration is

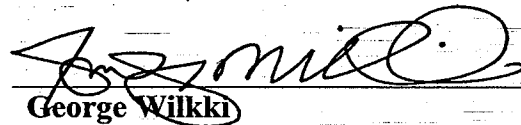
recommending that noise complaint information be gathered during the day shift by completion/collection of noise complaint tracking forms from complainants disturbed by noise. Communication will be provided to 311, the City website and other stakeholders. Once again, the courts have ruled that By-law Enforcement Officers who hear noise are simply doing their job and not disturbed by the noise. There needs to be a complainant who is prepared to give a statement to the effect that he/she heard the noise in an office, dwelling, house etc. and his/her peace, quiet, comfort, repose was disturbed by the noise and is prepared to give that evidence in court. The Emission of Sound By-law will continue to be enforced, however the frequency and manner in which complaints are being investigated has changed. Stakeholders have recognized that there are ways to deal with noise mitigation through education, communication and collaboration in addition to noise enforcement.



Ann Kalinowski
Manager of Compliance & Enforcement



Lee Anne Doyle
Executive Director/Chief Building Official



George Wilkki
**City Solicitor and Corporate Leader,
Economic Development and Public Safety**

AK/lh

APPENDICES:

Appendix "A" being a copy of a Map of the DWBIA

Appendix "B" being a copy of the Noise Complaint Witness Statement

Appendix "C" being copies of the stakeholder meeting notes from September 21st and October 6, 2011

DEPARTMENTS/OTHERS CONSULTED:

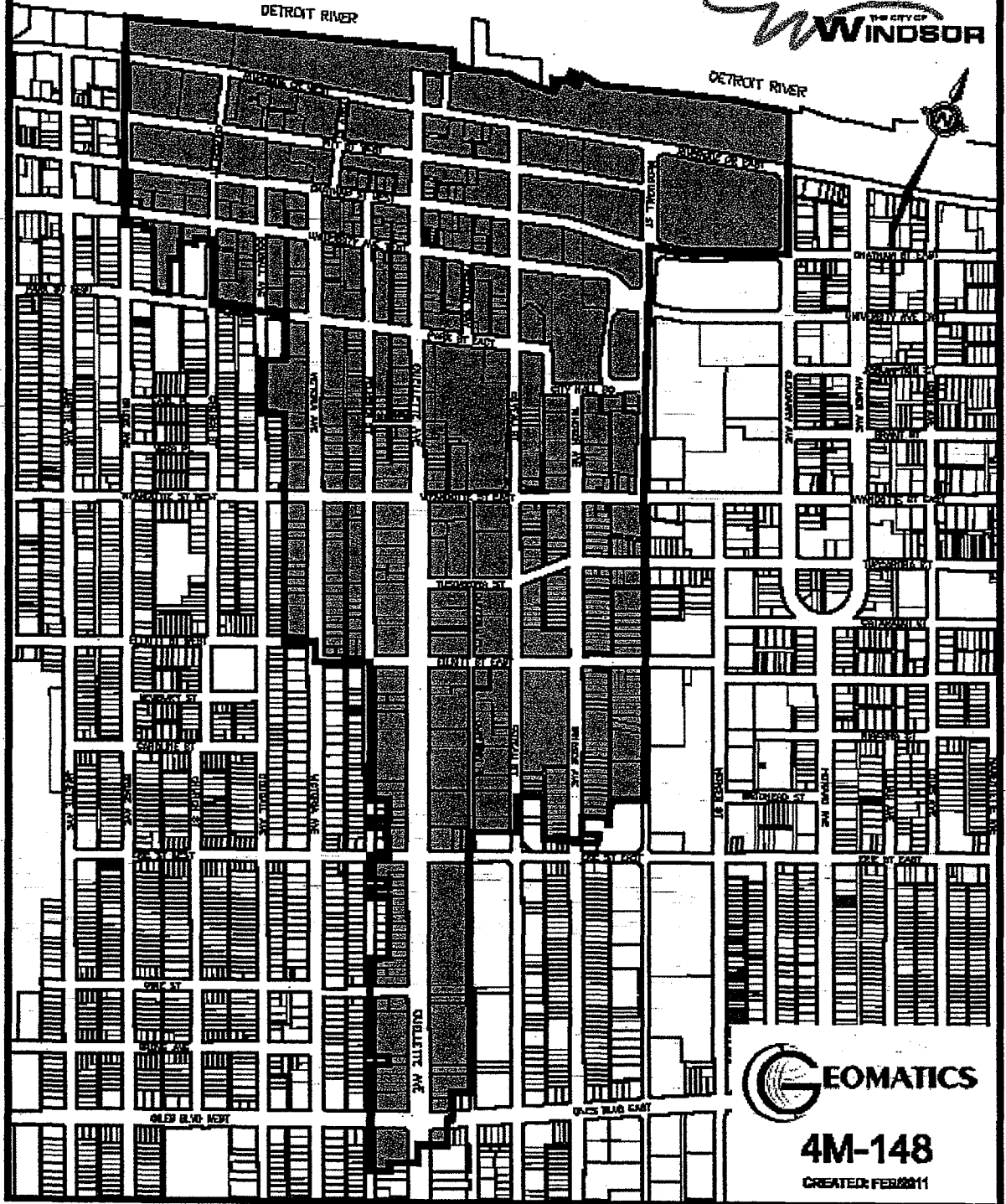
Name:

Phone #: 519 ext.

NOTIFICATION :

Name	Address	Email Address	Telephone	FAX
Bob Labute Vince Power	Windsor Police Services P.O Box 60 Windsor ON N9A 6J5	rlabute@police.windsor.on.ca	519-255-6700	
Kevin Holman, AGCO Inspector	250 Windsor Ave, 4 th Floor Windsor, ON N9A 6V9	kevin.holman@agco.ca	519-981-5889	
Alex Trillanes AGCO Inspector	250 Windsor Ave, 4 th Floor Windsor, ON N9A 6V9	alexander.trillanes@agco.ca	519-258-0544	
Dave Ferris AGCO	250 Windsor Ave, 4 th Floor Windsor, ON N9A 6V9	daveferris@ontario.ca	519-257-0516	
Dan Michaud AGCO	250 Windsor Ave, 4 th Floor Windsor, ON N9A 6V9	dan.michaud@ontario.ca	519-258-6521	
Bob Williams HRP Project Coordinator	474 Ouellette Ave. Windsor, On N9A 1B2	hrp@downtownwindsor.ca	519-252-5723 ex 22	
Philip Haddad, Downtown Residents Association	75-1108 Riverside Dr E. Windsor, On N9A 2T6	philiphaddad@excite.com	519-258-2019	
Mike Holdsworth Downtown Residents Association		Mnh61@cogeco.ca	519-253-4567	
Maureen Michea Quality of Life Committee	302-380 Pelissier Windsor, On N9A 6V7	moemichea955@hotmail.com	519-973-0766	
Renaldo Agostino Entertainment Guild	300 Ouellette Ave. Unit 140 Windsor, On N9A 2T1	renaldoago@mac.com	519-979-6433	
Virginia Cosco- Pizzuti DWBIA	474 Ouellette Ave. Windsor, On N9A 1B2	vcosco@hotmail.com	519-816-8801	
Ron Balla		ronballa@gmail.com	519-971-7472	
Scott Stevens		Scott.stevens@hotmail.com	519-984-8380	
James McVeity		windsor@honestlawyer.com	519-977-0599	
Jude Quick			519-253-3817	
Fred Baehr			519-256-1074	
Joe Passa		Joseph@passa.com	519-252-0775	

APPENDIX A DOWNTOWN BUSINESS IMPROVEMENT AREA



4M-148

CREATED: FEB 2011

APPENDIX B

NOISE COMPLAINT, CITY OF WINDSOR BY-LAW 6716

WITNESS STATEMENT

I, (NAME) _____

OF (ADDRESS OF RESIDENCE) _____

STATE THAT THE FOLLOWING INFORMATION IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF
(PLEASE ATTACH ADDITIONAL PAGES IF REQUIRED):

PARTICULARS	DETAILS
Date of Incident	
Description Of Noise (Include as many details as possible)	
From where did noise originate? (Include address) How do you know it came from there?	
Where were you when you heard the noise? (Include Address)	
Were Windows/Doors Open? At your location? At offence location?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
Did it interfere with your quality of life? If so, in what way?	

Signature of Witness

Date

APPENDIX C

NOISE ENFORCEMENT MEETING

MINUTES

THURSDAY, SEPTEMBER 29, 2011

2:30 PM TO 4:00 PM

PRESENT:

Ann Kalinowski, Chair

Lee Anne Doyle, Executive Director, Chief Building Official

Councillor Fulvio Valentinis

Michael Chantler, Supervisor of Licensing, Deputy License Commissioner

Susan Hirota, Legal Council

Renaldo Agostino

Fred Baeha

Ron Balla

Virginia Cosco-Pizzuti

Debi Croucher

Dave Ferris

Philip Haddad

Mike Holdsworth

Kevin Holman

Bob Labute, Windsor Police

James McVeilty

Maureen Michae-Hunckler

Scott Stevens

R. J. (Bob) Williams

Regrets: Alex Trillanes

The meeting began promptly at 2:30 pm with Ann Kalinowski thanking everyone for their attendance and asked each person to introduce themselves to everyone who was present.

Ann Kalinowski read the recommendations to Council (CR 368-2010) and discussion ensued.

ITEM #1

That the License Commission BE DIRECTED to investigate the feasibility of controlling garage doors and noise abatement measure through the licensing process for Hospitality and Entertainment Lounge Licensee

DISCUSSION:

Mike Holdsworth read a suggestion which he received from the City of Ottawa.

“My downtown Ottawa central area ward, has a once every two month” problem properties” meeting. The local councillor consults with police, fire and community groups and chooses a particular address that presents an enforcement problem and is know in the community to be a problem as well. Then all community groups in the area meet with the City Councillor and representatives from all City agencies such as by-law enforcement, police, fire and others. Together all of these stakeholders attempt to come to a resolution.”

Councillor Valentinis suggested placing conditions on license holders. This could be accomplished as simply as closing the garage/bay doors earlier, say for example 9:00 pm-during the work day and 11:00 pm during the weekend.

ITEM #2

That the Licence Commission consider making recommendations to the AGCO requesting that conditions BE PLACED onto the liquor license of business established that have chronic by-law violations.

DISCUSSION:

Phil Haddad had questioned whether or not By-Law has received complaints about 29 Park Street and over the number of complaints which have been made. Ann Kalinowski advised that there have not been any complaints received by the By-Law Office. This was followed by Councillor Valentinis asking if he receives a complaint – who he sends it to. Ann suggested he get in contact with the 311 operators. Mike Holdsworth suggested that noise complaints should be dealt with on a one-to-one basis.

Bob Labute from Windsor Police gave some statistics on noise complaints that 911 operators receive. He further advised that 29 Park Street has been charged and this is currently before the courts. Ann Kalinowski further added that By-Law has not received any calls from Windsor Police regarding noise complaints and that you must be disturbed by the noise. Fred Baeha advised that every weekend he is being kept up until at least 3:00 – 4:00 am. Phil Haddad suggested increasing the fines, however Susan Hirota pointed out that she is not seeing charges been laid. Maureen Michae-Hunkler updated the panel that Joe Passa has been complaining of the noise coming from the VOODOO club for over 1 year and that she has been complaining about 29 Park Street. Susan Hirota commented that she is only aware of 2 complaints.

Susan Hirota explained to the participants that the number of complaints does not make a difference. She suggested that people should keep a log/tracking sheets indicating the time of day or night, the type of noise emitting and the length of time noise persists. Phil Haddad expressed that there is no justice – no complaint and that the lawyers for these establishments push back and nothing seems to happen to these complaints. He also wanted to know what the penalty would be for a noise complaint. Susan Hirota advised that once a ticket is issued the fine would be \$105.00 provided there is a guilty plea. She also explained that if this was a **first offense** the fine would be **dropped** to approximately **\$50.00 or \$60.00**. For a Part III the maximum fine would be \$5000.00, but this would be at the discretion of the Justice of the Peace.

Virginia Cosco-Pizzuti declared that the process is flawed and that she had a discussion with Rob Labute from Windsor Police to see if we can follow Mike Holdsworth practice of meeting with the "problem properties", Councillors, By-Law Enforcement and Windsor Police and have an open dialogue with them.

Ron Balla agrees and suggested the changes be made to the by-law to protect the citizens and fix the noise problems. Ann Kalinowski made a strong point and re-iterated that we are not getting rid of the By-Law Enforcement Officers and that we will continue to do blitz's efficiently and that this department has other priorities. Lee Anne Doyle suggested that staff be mobilized and to bring forth any ideas to the table to reinforce the way we do business. We need to further refine from owners and obtain resident input. This is a valuable source of information.

ITEM #3:

That Licensing, through the Windsor Licensing Commission, consider sanctions on businesses featuring garage doors and other methods of creating large openings onto the sidewalk. Tighter controls on the size of garage doors, and hours of opening, for offenders will be considered.

DISCUSSION:

Michael Chantler informed the panel that sanctions can be placed on an establishment and you **do not** need a conviction to go before the Windsor Licensing Commission.

Maureen Michea-Hunkler updated the panel by saying that the "TREEHOUSE" is not closing the doors at 9:00 pm and she would like to see all the bars close their doors when music is being played. Ann Kalinowski apprised everyone on the difference between hospitality versus entertainment establishments. The main difference between them would be that an entertainment establishment has a dance floor. Maureen wanted to know how we can be fair to everyone. Fred Baeha suggested keeping the music to a certain decibel level; Michael Chantler advised that this would penalize good establishments. Renaldo Agostino recommended merging By-Law city wide.

ITEM #4:

That joint enforcement be pursued with Windsor Police Services, Building Department Compliance & Enforcement, Windsor Fire & Rescue, Windsor-Essex Health Unit, Alcohol and Gaming Commission (AGCO).

DISCUSSION:

Kevin Holman opened this discussion by advising that the AGCO needs a complainant who lives in the neighbourhood to bring their complaint known. He advised that the AGCO has a Board and a Tribunal who hears these complaints. He also alluded that noise is not restricted to music, but talking loudly or screaming or yelling produces noise. Maureen Miche-Hunkler is upset over the bass sound. Kevin stated that there are conditions and constant vibration and the onus on AGCO is huge. Fred Baeha likes the idea of bringing the community together and educating the resident's of how to register their complaints. Kevin stated that this boils down to all the Provinces band together and change the perception of noise; it is not only inside noise which is bothersome, but outside noise as well. Document the times, dates and types of noise (i.e. music, shouting, yelling, screaming, etc.) and persist until all avenues have been exhausted. Ron Balla

would like to see a joint enforcement with WPS and By-Law. Ann Kalinowski spoke and advised that we do not share information with Windsor Police and vice versa.

Bob Labute advised that heavy education is required and home owners were not educated properly. A warning to bar owners and that Windsor Police enforcement is one tool and we need to look elsewhere for further enforcement. Also the design of the buildings was not looked into; whereby a bank was converted into a bar and does not have double glass pane windows or double doors. This would have to be looked at by the Building Department. Lee Ann Doyle spoke to this matter and advised that the Building Department does not have the authority to ask bar owners to do this and this would not be a building issue. Also to have a spirit of cooperation between bar owners, resident's, WPS and By-Law enforcement. Balance is needed and Lee Anne wants everyone to make some suggestions and a formal submission and to set standards among the panel.

Renaldo Agostino stated that this would be a vantage point by bar owners and try to be cooperative. He further added that many things are out of their control, namely the smoking by-law has changed and the amount of people on the street and traffic; namely motorcycles on the streets, they make noise and added that more listening and less talking would be the answer.

ITEM #5:

That Administration request the Ontario Provincial Police (OPP), who regulate security personnel in bars under the Private Security and Investigative Services Act, to conduct enforcement reviews within the City of Windsor to ensure compliance.

DISCUSSION:

Ann Kalinowski instructed that this has already happened and gone forward.

ITEM #6:

That Legal Counsel review the Emission of Sound By-Law 6717 in an effort to improve the language and make it easier to obtain a conviction, i.e. definition of noise."

DISCUSSION:

Ann Kalinowski instructed that recommendations be made to develop a template for 368-2010 and that By-Law Officers would be out more often and conduct reviews.

SUMMARY

Ann Kalinowski had concerns as to how Ottawa is dealing with this plan. Phil Haddad wants direction with HRP mainly with physical structures and to engage and engineer and address particular problems such as how to contain sound within a building and how to contain sound to help the neighbours.

Bob Williams suggested acoustic/vibrations be dealt with and perhaps look at sound systems in various establishments. He has attended 5 meetings regarding this and hopes for an overview with density issues.

Councillor Fulvio Valentinis suggested HRP prepare a report and come back to Council with the thought of reaching a consensus with respect to HRP to narrow down the issues and allow

Council to make a proposal or suggestion. Partner up and we need to zero in on this issues or nothing is going to be done about the noise. He suggested an increase in fines, changes to the by-laws and joint information between all parties.

Mike Holdsworth advocates a pro-active approach with chronic abusers mechanism be in place. Bob Williams suggested re-facing the buildings and using double pane windows to alleviate some of the noise. Lee Anne Doyle put forward action items to be identified and time-frames set.

Virginia Cosco-Pizzuti likes Mike Holdsworth's recommendation. Bob Labute stated that noise has never been solely a police problem. He further stated that all calls to WPS are listed in priority and By-Law is an extra set of eyes and ears for the public. He further added that the first priority is for the safety of the public.

Debi Croucher identified Health and Safety issues and wants the statistics for 2011. Maureen Michea-Hunkler would like By-Law Enforcement and Windsor Police be assigned in joint talks on how to answer noise complaints.

Meeting was adjourned at 4:00 pm. Next meeting to be held on Thursday, October 6, 2011 in the 400 City Hall Square East Building, Suite 409 beginning at 2:00 pm to 4:00 pm

NOISE ENFORCEMENT MEETING

MINUTES

Thursday, October 6, 2011
400 City Hall Square East, Suite 409
2:00 p.m. – 3:30 pm

PRESENT:

Ann Kalinowski, Chairperson, Manager of Compliance & Enforcement

Lee Anne Doyle, Executive Director, Chief Building Official

Councillor Fulvio Valentinis

Michael Chantler, Supervisor of Licensing, Deputy License Commissioner, was present but due to an emergency, was called away and excused himself. M. Chantler re-attended the meeting at 3:10 pm

Susan Hirota, Legal Counsel

Renaldo Agostino, Entertainment Guild, Boom Boom Room

Fred Baehr, Resident

Ron Balla, Resident

Virginia Cosco-Pizzuti, DWBIA

Dave Ferris, AGCO

Philip Haddad, DRA (Downtown Resident Association)

Mike Holdsworth, DRA (Downtown Resident Association)

Bob Labute, Windsor Police Service

James McVeilty, Entertainment Guild – Honest Lawyer

Dan Michaud (AGCO)

Joe Passa, Resident

Jude Quick, Resident

Scott Stevens, Entertainment Guild – Bar Owner

Alex Traillanes, AGCO

REGRETS:

Debi Croucher, DWBIA

Kevin Holman, AGCO

Maureen Michae-Hunckler, Resident

R. J. (Bob) Williams, Hospitality Resource Panel

The meeting began at 2:10 pm with Ann Kalinowski thanking everyone for their attendance and advised that the room was needed at 4:00 pm for another meeting. This meeting is being held today in order to come up with some viable solutions to this report.

The main **ISSUE** is noise concerns from residents due to music from establishments and outside noise such as motorcycles/yelling or screaming. **SOLUTIONS** would be to develop a problematic task force driven by the Councillor. And **ACTION PLANS** such as organizing a committee to meet bi-monthly to address problematic establishments and be committed to handing out noise tracking forms and charging if evidence is provided.

A copy of the minutes of the last meeting was distributed at the meeting for review and comments.

Councillor Valentinis recommends hiring a sound engineer to identify specifically the way(s) to reduce noise such as sound containment and to come up with solutions to the problem. Such as

double entry doors or moving the speakers in an establishment to reduce noise and sound carrying outside. What can we (bar owners, DWBIA, WPS, DRA, By-Law, City of Windsor and the resident's) do to keep the sound from escaping? The main focus is on moving forward. Ann Kalinowski had placed a telephone call to her counterpart, Linda Anderson, Manager of By-Laws in the City of Ottawa. Linda advised that there are two (2) main downtown wards. One was set up by Councillor Holmes where he developed a problematic task force which addresses issue through bi-monthly meetings. This task force tries to come up with a cohesive approach to deal with the issues. This task force is driven and set up by the Councillor looking for solutions to the problems. The task force would include Police, Housing, By-Laws, Building, Licensing, business owners and AGCO. The second deals more with student housing issues. Councillor Valentinis strongly recommends a creation of committee to involve the stakeholders and this would be self-governed. He further added that the Hospitality Resource Panel lacks specific structure.

Renaldo Agostino suggested this would be an opportunity and cooperative effort and not to use the word **problem** and recommended educational methods such as moving speakers from one place to another. Also by enhancing the sound by use of repeaters, this would be done by adding a speaker to carry the sound from one spot to another and not amplify or carry sound further. Another tactic would be to have repeat speakers set up intermittently, also there are "throw" speakers to end sound after a certain distance; and/or to create vestibules in the front doors area and have a grass roots, hands on approach by sitting down and having a friendly discussion(s). Renaldo also suggested that having signage near the entrance advising patrons to "*be a good neighbour*". This would prove that the Community is forward thinking and Windsor could be the model.

Joe Passa added that this is a simple fix and would contain sound, but added that too many people are going in and out to smoke and are opening the doors for those who are entering and exiting. Joe stated that this is a \$5000.00 fix and expressed his opinion that when the doors are shut people can live with the sound, but when the doors are open, they cannot. Renaldo Agostino suggested that a professional be brought in to talk to the residents. This would educate them and try different ideas which may or may not work. He mentioned the possibility of having designated smoking areas or closed in smoking areas; and having sanctions in front of the bars. Renaldo also wanted to see if there is any grant money available for establishments to do some renovations to their property.

Joe Passa advised that his building is spending \$300,000.00 to reglaze the windows where he lives to deter noise from coming in. Phil Haddad agreed and spoke about the goodwill of the bar owners and that they would have to buy into this. Therefore cooperation and goodwill will be needed. He further stated that not everyone was willing to come forward and buy into this cooperative measure.

Ron Balla agrees with Councillor Valentinis and suggested open dialogue and to get HRP involved. He further commented that 90% will follow suit and buy in but 10% will not. Ann Kalinowski reiterated that By-Law is not getting the evidence required to lay a charge. Susan Hirota again explained the process of laying a charge and people giving credible evidence and coming forward and keeping the tracking sheets up to date. She further mentioned that the VOO DOO Club has had 1 charge withdrawn and 1 is awaiting trial in July, 2012.

Lee Anne Doyle suggested that the Licence Commissioner consider making recommendations to the AGCO requesting that conditions be placed onto the liquor license of business establishments that have chronic by-law violations and those standards need to be clear and consistent.

Dan Michaud from the AGCO suggested a “*good neighbour clause*” and deal with these issues honestly and with integrity. Outside noise is more difficult and the AGCO can help the bar owners by buying-in and have a compliance type approach. By doing this together as a door to door approach, everyone would be working in a partnership by working towards compliance. AGCO also added that all of the complaints go through to the website directly.

Mike Holdsworth expressed that by educating the public and the DRA and the City website are valuable tools in showing who is complaining and what is not a complaint. Tenant and Condo Associations would have to be involved. Ann added that 311 does not take anonymous complaints.

Renaldo once again spoke about educating the customer, being a good and kind neighbour; having signage available and by doing so, this would show that everyone respects the community in which we all live in.

Ron Balla mentioned safety issues and that Edmonton has By-Law Officers going out with the Police Department.

Bob Labute of Windsor Police suggested that by doing so, would put other people in danger; however, having another extra set of eyes and ears would be very helpful especially in Court Proceedings. By-Law charges do not have to be put in right away (when they happen) just make certain to write down the details of the complaint, such as time of day or night, how long this went on, what type of noise was it, was it music blaring or bass or was it people yelling and screaming. He further added that Windsor Police convictions in court would be more viable and having the extra testimony in Court would make the charge stand. As well he mentioned that no charge would be laid, unless the WPS obtains a signed statement from the complainant.

Sue Hirota apprised the panel that charges require a person to be disturbed by the noise and that they must give evidence, such as the date, time and when this case comes to Court, the Justice of Peace looks to see if this is a first offence or 2nd.

Ann Kalinowski again mentioned to the panel that since June, 2011 the Enforcement Unit has not received 1 call for a noise complaint from the downtown area. Ann also added that the Enforcement Unit has been going out 4 times a month and that this was redundant as By-Law Officer's had no evidence to lodge a complaint.

Lee Anne Doyle also advised that there are 12 By-Law Enforcement Officers and 60 different by-laws to be dealt with on a daily basis throughout the City. She also mentioned that the By-Law Officers are going out in the entire City and during peak season (April to October) the visibility of being seen is a good thing. In order for Enforcement to be effective we need to have complaint tracking forms and witnesses coming in and register the complaint.

Dan Michaud suggested identifying the places where the noise complaints are coming from, note the times and that he is willing to send out his staff to go out with the Enforcement Officers.

Bob Labute advised that WPS laid charges early in the season and instead of everyone calling in to complain, have one (1) assigned liaison person calling in to report these complaints.

Dan Michaud reported that the AGCO hasn't received a complaint all season. Phil Haddad advised that people don't think of calling the AGCO. Dan Michaud suggested that this be the first place to go and lodge the complaint on the website. He was very adamant and stated that the AGCO always checks to see if any complaints have come in.

Lee Anne Doyle commented on going through with the revisions and drafting a report which is going out to the Public Safety Committee on November 16th. Recommendations could include to re-establish HRP, show how the structure is funded; education, this would give an opportunity to educate the resident's/bar owners, etc. Hire a sound engineer and explore with the BIA to find grant monies available for noise containment/abatement; to have a joint inspection during the busy season, fine tune with signage and messaging/posters available to all establishments.

Ann Kalinowski advised that a separate report will be authored on the HRP.

Virginia Cosco-Pizzutti questioned about health and safety issues and did not want to scare people from coming downtown. She asked that the Health & Safety sections be re-worded in the next version.

Ron Balla suggested that things have to change that there is still a noise problem downtown and that the report does not reflect this.

Ann Kalinowski stated that information is provided through 311 and Enforcement is not receiving any complaints.

Virginia, DWBIA believes that the HRP need Councillors to convince Council that noise is a problem. Lee Anne advised that Ann Kalinowski has the numbers and that people do not know how to complain. This is an obvious problem. We need input from the stakeholders. Bob Labute suggested building in the education component and do some research on getting a sound engineer.

Dan Michaud has seen patrols out in the street and recommends that joint enforcement be pursued with Windsor Police Services, Building Department Compliance & Enforcement, Windsor Fire & Rescue, Windsor-Essex Health Unit, Alcohol and Gaming Commission (AGCO).

Renaldo Agostino doesn't want an admission of guilt placed on his establishment.

James McVeity had a question for Virginia and wanted to know at what point would the DWBIA step in as he went before Council and communicated his concern and would like a joint venture represented. Virginia suggested to stream line the panel. Renaldo advised that the old HRP had no communication. This represents 27 bars downtown, community acting as Board Members and would like a system in place to report to the stakeholders.

Virginia commented that the first version of the report was flawed and that they want what everyone wants, to live in harmony together with the intention to pursue communications and keep the lines open to everyone.

Councillor Valentinis suggested that the City and the different BIA's have a resource person.

Bob Labute would like to see a sub-committee formed with people who want to complain and really don't know how to complain become educated via the City Website and the DRA.

Michael Chantler re-attended this meeting at 3:10 pm and spoke to the question of garage door openings on bars and placing sanctions to the Windsor Licensing Commission. He advised that there are 2 different types of situations. One would address chronic offenders through the Windsor Licensing Commission by placing conditions on the existing license. A preventative measure would be to do an amendment to the By-Law however you can put anything you want in the by-law but you won't know how good it is until it is challenged in Court. This is a long and tedious process for something that may eventually get defeated in Court and part of the By-Law may be disallowed.

Renaldo Agostino wanted to thank everyone for their attendance at the table to solve the noise problem.

Ann Kalinowski suggested that everyone review the Public Safety Standing Committee report whereby the changes are shown in red and asked for feedback from everyone. It was noted that the report must be finalized prior to the November 1st, 2011, Public Safety standing Committee deadline. The next meeting of the Public safety Standing Committee is November 16, 2011.

The meeting adjourned at 3:35 pm.