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<b>TO:</b>	<b>CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE</b>
<b>FROM:</b>	<b>GEORGE KOTSIFAS, P. ENG. MANAGING DIRECTOR, DEVELOPMENT &amp; COMPLIANCE SERVICES &amp; CHIEF BUILDING OFFICIAL</b>
<b>SUBJECT:</b>	<b>APPLICATION BY: CITY OF LONDON ENTERTAINMENT ON OUTDOOR PATIOS PUBLIC PARTICIPATION MEETING ON TUESDAY MAY 13, 2014</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Manager, Zoning and Public Property Compliance, based on the direction received by Municipal Council relating to amendments to the City's Zoning By-law for Entertainment on Outdoor Patios associated with Restaurants and Taverns, the attached proposed by-law, **BE INTRODUCED** at the Municipal Council meeting of May 20, 2014 to amend Zoning By-law No. Z-1, in conformity with the Official Plan, to permit non-amplified acoustical music; it being noted that, this amendment will allow the Municipality to assess any impacts of permitting non-amplified acoustical music on Outdoor Patios for all Restaurants and Taverns throughout the City for the 2014 patio season and report back on any impacts of the amendment in early 2015.

<b>BACKGROUND</b>
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Civic Administration was directed to report back on possible amendments to the Zoning By-law to permit some acoustic music on outdoor patios. This request relates to a resolution of Municipal Council on August 27, 2013:

That the Civic Administration **BE DIRECTED** to report back to the appropriate Standing Committee, with respect to potential by-law amendments that would permit acoustic music on patios, during reasonable hours, in the City of London for the Committee's consideration.

On April 1, 2014 Municipal Council resolved:

That, on the recommendation of the Managing Director, Development and Compliance & Chief Building Official, the Civic Administration **BE DIRECTED** to report back at a public participation meeting of the Planning and Environment Committee, on Tuesday May 13, 2014, with proposed amendments to the Zoning By-law to implement a pilot program permitting acoustic music on outdoor patios associated with restaurants or taverns, during reasonable hours.

<b>PURPOSE AND EFFECT OF RECOMMENDED ACTION</b>
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The purpose and effect of the requested Zoning By-law amendment is permit non-amplified acoustical music on an outdoor patio associated with a restaurant or tavern in the City of London for the 2014 patio season



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<b>RATIONALE</b>
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- 1) The proposed amendment is consistent with the City of London Official Plan;
- 2) The proposed amendment is consistent with the policies of the *Provincial Policy Statement, 2005*;
- 3) The proposed amendment can be monitored and enforced via the City of London Noise By-law; and
- 4) The proposed Pilot Program will provide Municipal Council with an opportunity to review any impacts from the implementation of the proposed amendments after one-year.

<b>PUBLIC LIAISON:</b>	On April 10, 2014 and April 24, 2014, Notice was placed in the Londoner	
<b><u>Item not to heard before 5:00 p.m.</u></b>		
<b>City-Wide - Notice of Application and Notice of Public Meeting</b> - The purpose of the requested Zoning By-law amendment is to implement a pilot program permitting acoustic music on outdoor patios associated with restaurant or tavern, during reasonable hours, in the City of London. The proposed amendments include amending Section 4.18 (5) of Zoning By-law Z-1. This proposed amendment has been scheduled for a Public Participation Meeting on May 13, 2014 at 5:00 p.m. before the Planning and Environment Committee at City Hall. <b>(File Z-8335 – Entertainment on Patios – L. Pompilii)</b>		
<b>Responses:</b> None to date		

<b>ANALYSIS</b>
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The current Zoning By-law regulations for entertainment on outdoor patio associated with restaurants and taverns is contained in section 4.18 (5) of the Zoning By-law as follows:

**4.18 (5) ENTERTAINMENT**

No music (whether performed live or recorded), dancing or other forms of entertainment shall be permitted.

The Zoning By-law regulations relating to outdoor patios have been in effect since 1993. These regulations prohibit entertainment (live or recorded) on outdoor patios. In part, these regulations are intended to implement the general intent of the Official Plan in achieving compatibility amongst adjacent land uses by eliminating or reducing conflict arising from noise. The outdoor patio policies have been effective in this regard, as well as its locational, capacity, lighting and parking regulations.

Many Municipalities within the Province have similar Zoning regulations relating to outdoor patios and a general prohibition for live or recorded entertainment on these patios. A recent staff survey of various Municipalities highlights a comparison of regulations in Zoning By-laws for Patio Entertainment (APPENDIX I).

Municipal Council has directed staff to report back with potential by-law amendments that would permit acoustic music on patios, during reasonable hours, in the City of London.

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Civic Administration is recommending that an amendment to the Zoning By-law implementing a pilot program for the 2014 outdoor patio season to permit non-amplified acoustic music on outdoor patios. The recommended amendment reinforces the primary intent of the Zoning By-law regarding entertainment on outdoor patios to prohibit amplified and/or electrical entertainment on patios. The amendment proposed by staff to implement the direction received is as follows:

#### 5) ENTERTAINMENT

No amplified or electronic music (whether performed live or recorded), dancing or other forms of entertainment shall be permitted, with the exception of non-amplified acoustical music.

Acoustic music generally comprises music that solely or primarily uses instruments which produce sound that is not electronically enhanced, modified or amplified. It is important to note that current provisions and full enforcement of the Noise By-law shall continue to apply throughout any proposed pilot program. No exemptions or exceptions are being considered to the City's current Noise By-law through this initiative. Amplified sound or noise and entertainment that exceed the limits of the Noise By-law which is clearly audible at a point of reception in a residential area shall continue to be prohibited. Generally, the Noise By-law is enforced in response to complaints. The By-law is enforced by the London Police Services and the City's Municipal Law Enforcement Officers (MLEO). While the Zoning by-law is the regulatory tool used to control land uses and development, it cannot be used to establish hours of operation of uses. The enforcement and implementation of the Noise By-law should provide an appropriate mechanism to control unreasonable noise at any time. The intention of this pilot program is to examine the impacts of introducing some limited forms of non-amplified entertainment on patios, within reasonable hours while maintaining protection in terms of unreasonable noise or noise likely to disturb inhabitants/occupants in nearby properties.

Many municipalities, including the City of London, have implemented pilot programs to introduce amendments to a By-law and assess impacts, and refine regulations in response to customer service and community issues that may arise while the pilot program is in place. Civic Administration will report back to the Planning and Environment Committee in early 2015. At that time staff will be seeking direction to either maintain the amendment related to entertainment on patios adopted through this subject amendment or repeal it and replace it with refined regulations that may include site specific provisions to mitigate any impacts reported or found during the term of this pilot program.

<b>CONCLUSION</b>
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The Zoning By-law regulations relating to outdoor patios have been in effect since 1993. These regulations prohibit entertainment (live or recorded) on outdoor patios. Municipal Council has directed staff to report back with potential by-law amendments that would permit acoustic music on patios, during reasonable hours, in the City of London.

Civic Administration is recommending that an amendment to the Zoning By-law implementing a pilot program for the 2014 outdoor patio season to permit non-amplified acoustic music on outdoor patios. The recommended amendment reinforces the primary intent of the Zoning By-law regarding entertainment on outdoor patios to prohibit amplified and/or electrical entertainment on patios. The current provisions and full enforcement of the Noise By-law in response to complaints shall continue to apply throughout any proposed pilot program. No exemptions or exceptions are being considered to the City's current Noise By-law through this initiative. Amplified sound or noise and entertainment that exceed the limits of the Noise By-law that is clearly audible at a point of reception in a residential area shall continue to be prohibited.

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<b>PREPARED AND RECOMMENDED BY:</b>	<b>SUBMITTED BY:</b>
<b>LOU POMPILII, MPA, RPP MANAGER ZONING AND PUBLIC PROPERTY COMPLIANCE</b>	<b>GEORGE KOTSIFAS, P. ENG. MANAGING DIRECTOR, DEVELOPMENT &amp; COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL</b>
<b>REVIEWED &amp; CONCURRED BY:</b>	
<b>OREST KATOLYK, MLEO ( C ), RPP CHIEF MUNICIPAL LAW ENFORCEMENT OFFICER</b>	

May 2, 2014  
lp/Attach.

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**APPENDIX I  
COMPARISON OF REGULATIONS IN ZONING BY-LAWS FOR PATIO  
ENTERTAINMENT/MUSIC**

BRAMPTON		REGULATIONS
<b>Current Zoning Provision</b>		<ul style="list-style-type: none"> <li>• Could not find any provisions or definitions related to patio music.</li> </ul>
<b>Current Noise Bylaw Provision</b>		<ul style="list-style-type: none"> <li>• <i>Bylaw is very vague, makes no reference to specific noise sources of this nature. (Likely to disturb inhabitants standard)</i></li> </ul>
<b>Email Response</b>		<ul style="list-style-type: none"> <li>• No return email response received</li> </ul>
BURLINGTON		REGULATIONS
<b>Current Zoning Provision</b>		<ul style="list-style-type: none"> <li>• <i>Patio, Outdoor (Definition) An outdoor patio shall be used exclusively for dining and shall not include any recreational or entertainment use or activity.</i></li> </ul>
<b>Current Noise Bylaw Provision</b>		<ul style="list-style-type: none"> <li>• <i>No specific provisions for patio music made. This type of <b>electronic</b> noise is regulated by the 'clear audibility standard' by time and place or by the technical standards of NPC-205 if operated outside of restricted times and places.</i></li> </ul>
<b>Email Response</b>		<ul style="list-style-type: none"> <li>• "... the zoning by-law would determine if the use is permitted or not. This would be enforced by way of a notice and part III laying of information to the property owner.</li> <li>• The noise and nuisance by-law would be utilized to address the noise complaint right away, probably our first approach when acting on a noise complaint and both who causes and or permits the noise would be responsible, enforcement for this violation could be address by way of a part 1 ticket. "</li> </ul>
HAMILTON		REGULATIONS
<b>Current Zoning Provision</b>		<ul style="list-style-type: none"> <li>• <b>Prohibition of Commercial Entertainment and Recreation:</b> That portion of a lot on which the outdoor patio is permitted shall not be used for commercial entertainment or commercial recreation including live or recorded music or dance facilities.</li> </ul>
<b>Current Noise Bylaw Provision</b>		<ul style="list-style-type: none"> <li>• <i>Currently not enforced under this bylaw as the zoning bylaw prohibits it.</i></li> </ul>
<b>Email Response</b>		<p>"...The City of Hamilton has passed a by-law to govern Outdoor Commercial Patio's, which I've attached for your reference. You will notice that this by-law repeals and amends the existing 6 former zoning by-laws that comprise the City of Hamilton, as we have yet to roll out a consolidated by-law after amalgamation. Notwithstanding this, you will see within this amending by-law that a prohibition has been incorporated into all former zoning by-laws prohibiting the outdoor commercial patio as being used for commercial entertainment or commercial recreation including live or recorded music, or dance facilities."</p>
Bylaw 09-210		<ul style="list-style-type: none"> <li>• <i>"Prohibition of Commercial Entertainment and Recreation: That portion of a lot on which the Outdoor Commercial Patio is permitted shall not be used for commercial entertainment or commercial recreation including live or recorded music or dance facilities."</i></li> </ul>
MARKHAM		REGULATIONS
<b>Current Zoning</b>		

<b>Provision</b>	
<b>Current Noise Bylaw Provision</b>	<ul style="list-style-type: none"> <li>No specific provisions for patio music made. This type of noise is regulated by the 'clear audibility standard' by time and place or by the technical standards of NPC-205 if operated outside of restricted times and places.</li> </ul>
<b>Email Response</b>	<ul style="list-style-type: none"> <li>No return email response received</li> </ul>
<b>MISSISSAUGA</b>	<b>REGULATIONS</b>
<b>Current Zoning Provision</b>	<ul style="list-style-type: none"> <li>Could not find any provisions or definitions related to patio music.</li> </ul>
<b>Current Noise Bylaw Provision</b>	<ul style="list-style-type: none"> <li>Bylaw is very vague, only a qualitative standard applies to noise in general, although specific reference is made to music annoying or disturbing inhabitants in residential settings.</li> </ul>
<b>Email Response</b>	<ul style="list-style-type: none"> <li>Outdoor patios in the City of Mississauga are only permitted either by Committee of Adjustment approval or site plan approval as part of the development.</li> <li>Regarding Committee of Adjustment approval, the committee may impose conditions in the decision restricting use of the patio including time, lighting and live or recorded music. Further conditions of the Business license may impose conditions of use similar to that of the committee if issues arise regarding the location.</li> <li><b>The City of Mississauga is also considering an Entertainment License that would regulate all types of entertainment and would regulate location and type of entertainment.</b></li> <li>Noise Bylaw regulations can also regulate live music that may be an issue however the evidence of noise is associated with the residence in the area.</li> </ul>
<b>OAKVILLE</b>	<b>REGULATIONS</b>
<b>Current Zoning Provision</b>	<ul style="list-style-type: none"> <li>Does not specifically prohibit patio music, although does define it by stating that meals or refreshments are served to the public for consumption.</li> </ul>
<b>Current Noise Bylaw Provision</b>	<ul style="list-style-type: none"> <li>No specific provisions for patio music made. This type of <b>electronic</b> noise is regulated by the technical standards of the bylaw and only permits noise from an electronic device to have a sound pressure level of 55dBA when measured outside of a commercial establishment or residential receptor during permitted times.</li> <li>Unamplified music is regulated by time and place as well.</li> </ul>
<b>Email Response</b>	<ul style="list-style-type: none"> <li>Not regulated specifically by the zoning bylaw.</li> <li>This type of thing is regulated through the noise bylaw as stated above.</li> </ul>
<b>OTTAWA</b>	<b>REGULATIONS</b>
<b>Current Zoning Provision</b>	<ul style="list-style-type: none"> <li>S.85 Allows for outdoor commercial patios but has distance separations from residential zones of 30m, is screened or blocked by a structure preventing noise and light pollution (unless distance separation is 75m or more)</li> </ul>
<b>Current Noise Bylaw</b>	<ul style="list-style-type: none"> <li>UNUSUAL NOISE, NOISE LIKELY TO DISTURB</li> <li>"No person shall operate or use or cause to be operated or used any</li> </ul>

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<b>Provision</b>	sound reproduction device originating from or in connection with the operation of any commercial establishment between 0700 hours and 2300 hours of the same day the noise from which sound reproduction device when measured in any business, dwelling house, apartment house, hotel or any other type of residence has an equivalent sound level (Leq) greater than 45 dBA”
<b>Email Response</b>	<ul style="list-style-type: none"> <li>No return email response received</li> </ul>
<b>WATERLOO</b>	<b>REGULATIONS</b>
<b>Current Zoning Provision</b>	<ul style="list-style-type: none"> <li>Could not find any provisions or definitions related to patio music.</li> </ul>
<b>Current Noise Bylaw Provision</b>	<ul style="list-style-type: none"> <li><i>No specific provisions for patio music made. This type of <b>electronic</b> noise is regulated by the ‘clear audibility standard’ by time and place or by the technical standards of NPC-205 if operated outside of restricted times and places.</i></li> <li><i>Unamplified music is regulated by time and place as well.</i></li> </ul>
<b>Over the phone info</b>	<ul style="list-style-type: none"> <li>Property Standards officer confirms that music from patios is covered by the noise bylaw and potentially the business licencing bylaw.</li> </ul>

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**“SCHEDULE - A”**

Bill No. (number inserted by Clerk's Office)  
2014

By-law No. Z.-1-14\_\_\_\_\_

A by-law to amend By-law No. Z.-1 to apply to all lands within the City of London for the purpose of regulating entertainment on an Outdoor Patio associated with a Restaurant or Tavern

WHEREAS The Corporation of the City of London wishes to amend the regulations for Entertainment on Outdoor Patios associated with a Restaurant or Tavern to permit non-amplified acoustical music, as set out below

AND WHEREAS this rezoning conforms to the Official Plan;

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

- 1) Section 4.18 5) (of the General Provisions of By-law No. Z.-1 is amended by deleting the existing provisions relating to Entertainment on Patios and replacing it with the following text:

5) ENTERTAINMENT

No amplified or electronic music (whether performed live or recorded), dancing or other forms of entertainment shall be permitted, with the exception of non-amplified acoustical music.

This By-law shall come into full force and effect and be deemed to come into force in accordance with Section 34 of the *Planning Act, R.S.O. 1990, c. P13*, either upon the date of this passing or as otherwise provided by the said section.

PASSED in Open Council May 20, 2014

Joe Fontana  
Mayor

Catherine Saunders  
City Clerk

First Reading – May 20, 2014  
Second Reading – May 20, 2014  
Third Reading – May 20, 2014