TO: Mayor and Members of Council
FROM: Terry Willing, Acting Commissioner, Community Services
RESOURCE STAFF: Kim Leonard, Acting Director, Building & Licensing
DATE OF MEETING: October 5, 2010
SUBJECT: The Beer Store, 121 Cataraqui Street – Application for Noise Exemption

EXECUTIVE SUMMARY:
Staff recommended in 2004 that Council deny a noise exemption request for The Beer Store which is located at 121 Cataraqui Street. The applicant had requested that the exemption cover operations between the hours of 7:00 p.m. and 12:00 midnight from Sunday to Thursday and included Statutory Holidays to allow for deliveries at its main warehouse located at 121 Cataraqui Street. Staff determined that the request was not reasonable and that the impact of such a request would cause too much disruption to the residents in the area. Council supported staff’s recommendation and an exemption was not granted.

The Beer Store has taken many steps to mitigate the noise at its 121 Cataraqui Street location and has revamped its operations to help address the noise concerns from the neighbours. The Beer Store was requesting an exemption to cover operations between 7:00 p.m. and 10:00 p.m. for a total of 36 weekdays per 12 month calendar year, with no more than 6 weekday exemptions per calendar month, however given the public objection to the exemption the time frame has been reduced to between 7:00 p.m. and 9:00 p.m.

RECOMMENDATION:
THAT The Beer Store is granted an exemption to Schedule B of By-Law 2004-52 “A By-Law To Regulate Noise”, to permit operations between 7:00 p.m. and 9:00 p.m. Monday to Friday but not on any Statutory Holiday at its 121 Cataraqui Street location for a maximum of 36 weekdays per 12 month calendar year, with no more than 6 weekday exemptions per calendar month, and;

THAT The Beer Store will notify the City Manager, Licensing and Enforcement, of each exemption occurrence as it occurs, and;

THAT Staff report back to Council in October of 2011 advising of the number and frequency of occurrences that were utilized over the 12 month period and of any impacts the exemption may have had on the neighbourhood.
AUTHORIZING SIGNATURES:

<table>
<thead>
<tr>
<th>ORIGINAL SIGNED BY COMMISSIONER</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Terry Willing, Acting Commissioner, Community Development Services</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Gerard Hunt, Chief Administrative Officer</td>
<td></td>
</tr>
</tbody>
</table>

CONSULTATION WITH THE FOLLOWING COMMISSIONERS:

<table>
<thead>
<tr>
<th>Cynthia Beach, Sustainability &amp; Growth</th>
<th>N/R</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denis Leger, Transportation, Properties &amp; Emergency Services</td>
<td>N/R</td>
</tr>
<tr>
<td>Jim Keech, President and CEO, Utilities Kingston</td>
<td>N/R</td>
</tr>
</tbody>
</table>

*(N/R indicates consultation not required)*
OPTIONS/DISCUSSION:
In 2004 The Beer Store made application for an exemption to the noise control by-law to permit extended hours for deliveries to its 121 Cataraqui Street Warehouse. The City had received several complaints about excessive noise due to late night deliveries at the 121 Cataraqui Street location. The Beer Store had requested an exemption to the noise control by-law to allow them to deliver between the hours of 7:00 p.m. and 12:00 midnight from Sunday to Thursday and including Statutory Holidays on a permanent basis. The staff recommendation to refuse the request was based on the impacts of the exemption to the community and the negative feedback that was received as a part of the public notification.

Since 2004 the Beer Store has advised staff that they have made many changes to try to address the concerns of the neighbourhood and to allow them to continue to operate their warehouse at 121 Cataraqui Street, correspondence outlining the changes made is attached to this report as Exhibit “A”. The Beer Store currently operates between the hours of 6:00 a.m. and 10:00 p.m. All on site noise activities that would fall outside of the permitted times are currently being performed behind closed doors.

The Beer Store operates on a “just-in-time” basis, which means that customer orders are processed and delivered within a very short timeframe. The Beer Store has changed its business model for the Kingston area in order to comply with the Noise Bylaw. Under the current process, Kingston-area customers are required to submit their product orders by 11 a.m. The orders are then assembled in bulk and shipped on transport trucks from the Whitby distribution center to the Kingston cross-dock warehouse facility. The transport trucks leave Whitby by 2pm and arrive in Kingston, on average, by no later than 5pm. The transport trucks switch trailers and return to Whitby with an empty trailer (this takes a minimum of 30 minutes). The orders are then assembled for specific customers from the bulk shipment and are delivered using local delivery trucks the next day.

The process set out above is a new process that was designed to reduce the work performed at the Whitby distribution center in order to ensure that The Beer Store would be able to continue regular business operations while complying with the Bylaw (i.e. the arrival of transport trucks at the Kingston facility, the loading and unloading of transport trailers, and the departure of transport trucks from the Kingston facility). The new bulk order process has now been fully implemented throughout the Kingston-area.

Residents have provided an itemized list of by-law infraction dates from April 16, 2009 to December 22, 2009. The list indicates that the Beer Store delivered or made some type of noise outside of the permitted times as follows:

<table>
<thead>
<tr>
<th>Monday To Friday</th>
<th>Saturday</th>
<th>Sunday</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 - 6 a.m.</td>
<td>3:30 p.m.</td>
<td>10:45 a.m.</td>
</tr>
<tr>
<td>6 - 7 a.m.</td>
<td>3-4 p.m.</td>
<td></td>
</tr>
<tr>
<td>7-8 p.m.</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>8-9 p.m.</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>10-11 p.m.</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

These are dates that the residents observed however they have indicated that there may have been occurrences when they were not at home. They also note that they regularly observed the warehouse bringing in or moving large trucks around 8:00 p.m., breaking bottles until 9:00 p.m., moving trucks between 5:00 and 6:00 a.m. and trucks arriving on Sundays. One date was recorded in 2010 being May 27th at 7:35 p.m. The Beer Store indicates that no noise resulting from their activity is or will be experienced before 7:00 a.m. as is permitted in the by-law and this has also been confirmed by an area resident. A petition has been submitted by residents in the area and is attached to this report as Exhibit “C”. Complaints have still been received about the noise at the 121 Cataraqui Street warehouse but the number of complaints has declined over the past year.
The changes in The Beer Store operations have eliminated the possibility of noise occurring from its operations before 7:00 a.m. However there are still uncontrollable factors which can impact their ability to comply with the 7:00 p.m. cut off of noise as required under the by-law. Transport trucks leaving the Whitby location bound for Kingston can experience many delays such as weather conditions, road conditions, construction, traffic volumes and accidents on the 401 highway. The Beer Store has requested the exemption to be utilized only when such delays have been experienced. It is hard to estimate the number of times that delays may occur however The Beer Store feels confident that no more than the proposed number of exemptions would be required over a 12 months period. The Beer Store will notify the City Manager, Licensing and Enforcement when they utilize the noise exemption and provide reasons for the exemption.

EXISTING POLICY/BY LAW:
Council has granted exemptions to By-Law 2004-52 “A By-Law To Regulate Noise” and the authority to do so is specifically granted to Council under Subsection 129 (3) of the Municipal Act.

NOTICE PROVISIONS:
An advertisement of this request for exemption was placed on the City Page in the Kingston Whig-Standard on Tuesday, August 31, 2010. Objections were accepted up until Friday, September 10, 2010. The advertisement did state that anyone wishing to object to the exemption should deliver their concerns in writing or by e-mail before September 10, 2010 to the Manager of Licensing and Enforcement. There have been objections submitted to this request and they are attached to this report as Exhibit “C”. The Municipal Act no longer requires public notification, but notice is given in order to provide Council with some community feedback before deciding on these requests.

ACCESSIBILITY CONSIDERATIONS:
This report is available in alternate format upon request.

FINANCIAL CONSIDERATIONS:
A $100.00 fee was received to help cover the cost of processing noise exemption requests. The Beer Store paid for the notice in the paper.

CONTACTS:
Kim Leonard, Manager, Licensing & Enforcement (613) 546-4291 ext. 3222

OTHER CITY OF KINGSTON STAFF CONSULTED:
Brian Fleming, Kingston City Police

EXHIBITS ATTACHED:
Exhibit A – The Beer Store Application
Exhibit B - Noise Exemption Request Advertisement
Exhibit C - Objections to Noise Exemption Request
EXHIBIT “A”

THE BEER STORE
NOISE BYLAW EXEMPTION APPLICATION

Summary
Applicant: Brewers Retail Inc., operating as The Beer Store
Location: 121 Cataraqui Street, Kingston (Retail outlet and cross-dock warehouse facility)
Request: A limited exemption from City of Kingston Bylaw No. 2004-52 between the hours of 7:00pm and 10:00pm for a total of 36 weekdays per 12 month calendar year, with no more than 6 weekday exemptions per calendar month.

Background
Brewers Retail Inc., operating as The Beer Store, was established in 1927 and is the primary distribution and sales channel for beer in Ontario. The Beer Store’s staff of over 7,000 employees and its fleet of 300 vehicles deliver beer to over 17,000 retail outlets, restaurants and bars in Ontario.

Two provincial government agencies, the Alcohol and Gaming Commission of Ontario (AGCO) and the Liquor Control Board of Ontario (LCBO), oversee several aspects of The Beer Store’s operations, including hours of sale, selling price and approval of store locations.

Distribution
The Beer Store operates a very effective and proficient supply chain. It has eight strategically located distribution centers throughout Ontario, including one in Whitby, as well as eight separate cross-docks, including one in Kingston, all of which assist in ensuring effective and efficient product distribution throughout Ontario.1 Every year, The Beer Store’s distribution centers ship more than 24 million cases of beer and 500,000 kegs throughout Ontario. The distribution centers and cross-dock facilities, combined with the addition of modern business system and processes, have resulted in an overall improvement in customer service for brewers, licensees, retail partners and other customers.

The Beer Store’s Kingston cross-dock warehouse facility, which is located at 121 Cataraqui Street, has been in operation for over 40 years. It currently operates each weekday between 6am and 10pm. Between 7pm and 10pm, employees assemble customer-specific orders and sort bottles in connection with The Beer Store’s recycling program. Employees only work on the weekends in rare circumstances.

1 A cross-dock is a facility at which products are unloaded from an inbound transport truck and loaded onto an outbound transport truck with little or no storage in between.
Remedial Actions

The Beer Store has implemented a number of remedial actions in order to comply with the Bylaw and to address some recent complaints:

1. The Beer Store operates on a “just-in-time” basis, which means that customer orders are processed and delivered within a very short timeframe. The Beer Store has changed its business model for the Kingston area in order to comply with the Bylaw. Under the current process, Kingston-area customers are required to submit their product orders by 11am. The orders are then assembled in bulk and shipped on transport trucks from the Whitby distribution center to the Kingston cross-dock warehouse facility. The transport trucks leave Whitby by 2pm and arrive in Kingston, on average, by no later than 5pm. The transport trucks switch trailers and return to Whitby with an empty trailer (this takes a minimum of 30 minutes). The orders are then assembled for specific customers from the bulk shipment and are delivered using local delivery trucks the next day.

   The process set out above is a new process that was designed to reduce the work performed at the Whitby distribution center in order to ensure that The Beer Store would be able to continue regular business operations while complying with the Bylaw (i.e. the arrival of transport trucks at the Kingston facility, the loading and unloading of transport trailers, and the departure of transport trucks from the Kingston facility). The new bulk order process has now been fully implemented throughout the Kingston-area.

2. Since January 2010, local delivery trucks are not started until at least 7am.

3. When recycled bottles are being sorted by The Beer Store’s employees, the overhead bay doors are closed to contain the noise.

Unfortunately, the actions taken by The Beer Store are not sufficient to guarantee compliance with the Bylaw because the transport trucks are impacted by, among other things, weather conditions, road conditions, construction, and traffic volumes, all of which are beyond The Beer Store’s control. As such, The Beer Store requires an exemption as a measure of protection against factors that are beyond its control and which may interfere with its ability to comply with the Bylaw.

Exemption Proposal

The Beer Store requests the following permanent limited exemption to Kingston Bylaw No. 2004-52 for 121 Cataraqui St., Kingston, including all vehicles destined for or departing from the location:

- Exemption between 7:00pm and 10:00pm for a total of 36 weekdays per 12 month calendar year, with no more than 6 weekday exemptions per calendar month.

In connection with the proposed exemption, The Beer Store will designate an employee to handle all exemption notifications and any other noise-related complaints. The designated employee will notify the City Manager, Licensing and Enforcement, of each exemption occurrence as it occurs. The Beer Store will notify the City Manager, Licensing and Enforcement, of other noise-related complaints and will attempt to resolve any resulting concerns.
The remedial actions that have already been taken by The Beer Store (which are set out above) fully address potential pre-7am complaints and are expected to decrease and/or eliminate the number of potential post-7pm complaints. The exemption described above is a reasonable one which takes into account the operational restrictions of The Beer Store, the external factors that impact on The Beer Store’s ability to comply with the Bylaw and the wishes of The Beer Store’s neighbors.

All of which is respectfully submitted.

______________________________
Sandeep J. Joshi, Torys LLP
Lawyers for the Applicant
EXHIBIT “B”

August 31, 2010 – Kingston Whig Standard Advertisement

Public Notice Section

Noise Exemption

The Beer Store has made application for an exemption to Noise Control By-Law 2004-52 Schedule “B” to permit deliveries at 121 Cataraqui Street. The applicant has requested that the exemption cover operations between the hours of 7:00 p.m. and 10:00 p.m. Monday to Friday excluding any Statutory Holidays. The exemption has been requested for a total of 36 weekdays per year with a maximum of 6 weekdays per month.

The current by-law only permits this activity from Monday to Saturday between the hours of 7:00 a.m. and 7:00 p.m. and excludes Sundays and Statutory Holidays.

Anyone wishing to object to this exemption should deliver their concerns in writing or by e-mail before 4:00 p.m. on September 10, 2010 to:

City of Kingston
Kim Leonard, Manager, Licensing & Enforcement
216 Ontario Street
Kingston, ON K7L 2Z3

Phone: 613-546-4291, ext. 3222
Fax: 613-542-1332
Email: kleonard@cityofkingston.ca
Located at 216 Ontario Street

This matter will be considered during the regular Council Meeting that commences at 7:30 p.m. on Tuesday, October 5, 2010.

NOTICE OF COLLECTION: Personal Information collected is pursuant to the Municipal Freedom of Information and Protection of Privacy Act (and all other applicable privacy provincial and federal legislation). Such legislation is reviewed and applied for the collection, use, disclosure and destruction of the information. The personal information collected as a result of this public notice will be used to assist in making a decision on this matter. All names, addresses, opinions and comments collected will be made available for public disclosure. Questions regarding this collection should be forwarded to Kim Leonard, Manager of Licensing and Enforcement, 216 Ontario Street, Kingston, Ontario, K7L 2Z3 or by e-mailing kleonard@cityofkingston.ca
To:

Kim Leonard
Manager
Licensing & Enforcement

and

Councillor Hutchison

Dear Ms Leonard and Councillor Hutchison,

I would like to voice my strenuous objection to the application for an exemption made by The Beer Store to Noise Control Bylaw 2004-52 Schedule "B" to permit deliveries at 121 Cataraqui St.

The Beer Store has requested that the exemption cover operations between the hours of 7 p.m. and 10 p.m. Monday to Friday excluding any Statutory Holidays. The exemption has been requested for a total of 36 weekdays per year with a maximum of 6 weekdays per month.

The current bylaw permits this activity from Monday to Saturday between the hours of 7 a.m. and 7 p.m. and excludes Sundays and Statutory Holidays. I and the residents of Cataraqui St. think that the current bylaw is actually far too generous for the delivery of beer in a residential neighborhood.

I would also like to take this opportunity to voice my concern over the Beer Store's consistent use of 18 wheel tractor trailers. The numerous right hand turns from Rideau St onto Cataraqui St are not only annoying: they damage sidewalks. Cataraqui Street is being rebuilt and the use of 18 wheeled vehicles poses an obvious problem: it is nearly impossible for drivers to execute a right hand turn onto Cataraqui from Rideau St. without mounting the sidewalk. Obvious long term damage will occur. There is also an alternate route available from Montreal St via Russel to Bagot.

Most, if not all, of the residents on our street would like to see the end of 18 wheel tractor trailers driving down our short, narrow and newly refurbished street.

I would like to know how the residents of our street can formally request to:

1) Curtail the Beer Store's current delivery schedule.
2) Ban the use of 18 wheel tractor trailers on Cataraqui St.

Sincerely and on the behalf of most (it's probably all, we are getting signatures) of the residents of Cataraqui Street.

John Queenan
306 Rideau St
(corner of Cataraqui St.)
Phone: 618 531 6578
City of Kingston  
Kim Leonard, Manager, Licensing & Enforcement  
216 Ontario Street  
Kingston, ON K7L 2Z3  

Tuesday, September 8, 2010  

To: Kim Leonard, Manager, Licensing & Enforcement  
Re: Application for Noise Exemption: The Beer Store  

We, families and residents living on Cataroqui and James Street, object to the exemption of the noise bylaw as applied by The Beer Store at 121 Cataroqui Street.  

Sincerely,  

Name               Address  
Matt Dumphney       97 Cataroqui  
Wayne Norris        101 Cataroqui St.  
John Queenan       306 Ridout St.  
Harriet Richardson  306 Ridout St.  
Gayle Walker        91 Cataroqui St  
Elaine Marshall     27 James St.  
Fran Kish           27 James St.  
Catherine Girlie    85 James St.  
Bob Powers          23 James and York  
Katie White         21 James, 2nd Floor  
Tim McIntyre        87 Cataroqui  

Kendra Noble  
97 Cataroqui Street  
Kingston, ON K7L 1Z8  
dumphney@gmail.com
Sept 9, 2010

Public Notice: Noise Exemption
The Beer Store
121 Cataragui St.
Kingston, Ont.

Dear Mrs. Leonard,

I am writing to you to object to the noise exemption for The Beer Store at 121 Cataragui Street.

My concerns are the noise that comes from these transport trucks, air break noise, containers hooking up and banging around and the reverse噪 are all extremely loud.

I first started complaining in 2004 because I had been awakened many times by the Beer Store transport trucks coming in at 2:00 AM to 3:00 AM, which was extremely loud. So it had to stop.

The By-law - Noise Control - 2004-52 Schedule "B" 7:00 AM to 7:00 PM was enforced by the By-law officers in 2009. Unfortunately, the Beer Store is still not abiding by this By-law.
They are still bringing these transport trucks after 7:00 pm. So I can imagine the sounds and noise that these transport trucks are going to make at 9:30 pm - 10:00 pm. The thing is we that the Beer Store sits empty 90% of the day with no movement from these trucks nor these transports.

How many times is this exemption going to be reviewed?

This is a residential area and people do have to get up for work or school. I think 7:00 pm to 10:00 pm is too late for all the noise in this area.

I do hope you will give my concerns some consideration when voting for this exemption.

Thanks for your time,
Cindy Joyce
39 James St.
Kingston, Ont
K7K-1Z1.