



CITY OF KINGSTON
REPORT TO COUNCIL

Report No.: 12-023

TO: Mayor and Members of Council

FROM: Cynthia Beach, Commissioner, Sustainability & Growth

RESOURCE STAFF: Terry Willing, Director, Building & Licensing
Kim Leonard, Manager, Licensing & Enforcement

DATE OF MEETING: January 10, 2012

SUBJECT: Brewers Retail Inc. Operating as “The Beer Store” - Noise Exemption

EXECUTIVE SUMMARY:

At its regular meeting held on February 1, 2011 Council resolved:

THAT The Beer Store be granted an exemption to Schedule B of By-Law No. 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 12 weekdays per 12 month calendar year, with no more than 1 weekday exemption per calendar month;

- and further –

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

- and further –

THAT Staff report back to Council in January of 2012 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.

Based on the Beer Store’s activities over the past 10 months, staff are supporting a more permanent exemption to the noise control By-Law for the Cataraqui Street Beer Store. The

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noise by-law provides for this type of exemption as outlined in section 3.4 which states that “*If Council approves the application, the exemption will be in effect for the dates specified, and Council may impose any conditions that it considers appropriate*”. Staff are recommending that the conditions that were approved by Council in February of 2011 remain in place with the understanding that contravention of the conditions would result in the revocation of this exemption.

RECOMMENDATION:

THAT Brewers Retail Inc. operating as “The Beer Store” be granted an exemption to the noise control by-law in accordance with section 3.4 of By-Law No. 2004-52, “A By-Law To Regulate Noise” to permit noise between the hours of 7:00 p.m. and 9:00 p.m. Monday to Friday but not on any Statutory Holiday at its 121 Cataragui Street location for a maximum of 12 weekdays per 12 month calendar year, with no more than 1 weekday exemption per calendar month.

AUTHORIZING SIGNATURES:

ORIGINAL SIGNED BY COMMISSIONER Cynthia Beach, Commissioner, Sustainability & Growth
ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER Gerard Hunt, Chief Administrative Officer

CONSULTATION WITH THE FOLLOWING COMMISSIONERS:

Lanie Hurdle, <i>Community Services</i>	N/R
Denis Leger, <i>Transportation, Properties & Emergency Services</i>	N/R
Jim Keech, <i>President and CEO, Utilities Kingston</i>	N/R

(N/R indicates consultation not required)

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OPTIONS/DISCUSSION:

On February 1, 2011 Council received a report requesting that The Beer Store be 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 Cataraqi Street location for a maximum of 36 weekdays per 12 month calendar year, with no more than 6 weekday exemptions per calendar month. The request for exemption was advertised and as a result there were objections submitted by the public to the request and a delegation presented their opposition as well to the amendment at the January 13, 2011 Administrative Policies Committee meeting. Council amended the staff recommendation to allow for the exemption for a maximum of 12 weekdays per 12 month calendar year, with no more than 1 weekday exemption per calendar month. As part of the resolution staff were directed to report back to Council in January of 2012 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.

Staff have received two reports of utilization of the noise exemption between February 1, 2011 and December 16, 2011. Neighbours reported both of the recorded incidents. The first incident occurred on June 2, 2011 when a truck left the Cataraqi location at 7:31 p.m. The second incident occurred on August 8, 2011 and it was reported that the truck left the Cataraqi location at 8:45 p.m. Both incidents occurred after the permitted time of 7:00 p.m. No other incidents have been reported. The Beer Store did not notify the Manager of Licensing & Enforcement on either occurrence as was directed in the February recommendation. Staff have discussed the impacts of not reporting their occurrences with the Beer Store and they have assured staff that in the future they will notify the Manager of Licensing & Enforcement each time they utilize the noise exemption.

Three of the original complainants have been contacted to determine if the exemption has resulted in any impacts on the neighbourhood. At the time of this report two responses have been received. Both responses support the exemption with the condition that it only allows for a maximum of 12 weekdays per 12 month calendar year, with no more than 1 weekday exemption per calendar month as is recommended.

EXISTING POLICY/BY LAW:

Council has granted temporary 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*. Council also has the authority to grant more permanent exemptions.

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 & Enforcement. The *Municipal Act* no longer requires public notification, but notice was given in order to provide Council with some community feedback before deciding on this request.

ACCESSIBILITY CONSIDERATIONS:

This report is available in alternate format upon request.

FINANCIAL CONSIDERATIONS:

N/A

CONTACTS:

Kim Leonard, Manager, Licensing & Enforcement

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OTHER CITY OF KINGSTON STAFF CONSULTED:

Mark McLaughlin, Senior Legal Counsel

613-546-4291 ext. 1365

EXHIBITS ATTACHED:

N/A