

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON APRIL 8, 2014
FROM:	CATHY SAUNDERS, CITY CLERK
SUBJECT	APPLICATION TOURISM EXEMPTION <i>RETAIL BUSINESS HOLIDAYS ACT, R.S.O. 1990, c.R.30</i> LABATT BREWERIES OF CANADA LP

RECOMMENDATION

That, should the Municipal Council deem it appropriate to do so, having considered the regulatory criteria, the attached proposed by-law (Appendix "C") to exempt the Labatt Breweries of Canada LP London's brewery and the associated retail store located at 150 Simcoe Street, London, Ontario under section 4(1) of the Retail Business Holidays Act, R.S.O. 1990, Chapter R.30, to permit the brewery to operate tours and the associated retail store to be opened on Victoria Day, Canada Day, Labour Day and Thanksgiving Day" BE INTRODUCED at the Municipal Council Meeting to be held on April 15, 2014.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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None.

BACKGROUND

Municipal Council, at its meeting of February 11, 2014, passed the following motion:

"That the following actions be taken with respect to the request from C. Morley, Senior Director, Corporate Affairs, Labatt Breweries, for the City of London to pass a by-law to allow a tourism exemption under the Retail Business Holidays Act for Labatt Breweries' London brewery, and the associated retail store located at the brewery:

- a) the verbal information provided by the City Clerk and the City Solicitor regarding the process and criteria for granting the requested exemption BE RECEIVED;
- b) Labatt Breweries BE REQUESTED to provide the Civic Administration with additional information as to how its request meets the Province's regulations; and
- c) the Civic Administration BE REQUESTED to take the appropriate next steps to move the request forward."

Mr. Chris Morley, Senior Director, Corporate Affairs of Labatt Breweries of Canada LP submitted the attached letter (Appendix "A") dated January 24, 2014 requesting a tourism exemption under the Retail Business Holidays Act "for Labatt Breweries' London's brewery, and the associated retail store located at the brewery".

Subsequent to the submission of that letter, and in accordance with part b) of the February 11, 2014 Council resolution, the Civic Administration has been in discussion with Mr. Morley to seek additional information as to how the request meets Provincial legislation. Attached as Appendix "B" is additional correspondence from Mr. Morley dated March 14, 2014, in response to the Civic Administration's request for further information.

The application submitted by Labatt Breweries of Canada LP, as we understand it, is to request an exemption under section 4(1) of the Retail Business Holiday Act (RBHA) to permit the brewery located at 150 Simcoe Street to conduct tours and for the associated retail store to be open on the following Statutory Holidays: Victoria Day, Canada Day, Labour Day and Thanksgiving Day.

The Retail Business Holidays Act

Section 4(1) of the RBHA states that "...the council of a municipality may by by-law permit retail business establishments in the municipality to be open on holidays for the maintenance or development of tourism".

Section 4(2) states: "The council in passing a by-law under subsection (1) shall take into account the principle that holidays should be maintained as common pause days".

Section 4(3) states: "A by-law may be passed under subsection (1) only if there is compliance with the tourism criteria set out in the regulations made under this section".

Tourism Criteria – Ontario Regulation 711/91

Ontario Regulation 711/91 sets out the tourism criteria that must be met when considering applications for exemption under section 4(1) of the RHBA. The following summarizes the criteria established by O. Reg. 711/91. The documentation provided by Labatt's in support of their application is attached as Appendix "A" and Appendix "B" to this report.

"2(1) A retail business establishment may be exempted if,

- (a) it is located within two kilometres of a tourist attraction; and
- (b) it is directly associated with a tourism attraction or relies on tourists visiting the attraction for business on a holiday."

"2(3) For the purposes of this section, a tourist attraction is limited to,

- (a) natural attractions or outdoor recreation attractions;
- (b) historical attractions; and
- (c) cultural, multi-cultural or educational attractions".

"3. Each retail business establishment that on days other than holidays normally uses a total area of 2,400 square feet or more for serving the public or normally has four or more employees serving the public must, in addition to meeting the tourism criteria set out in subsection 2(1), provide goods or services on holidays primarily to tourists."

"5.(1) Despite any other provision of this Regulation, retail business establishment in a municipal may be exempted for up to five holidays a year during which a fair, festival or other special event is being held in that municipality."

5(2) subsection (1) does not apply to parades.

6.(1) An application for an exemption under subsection 4(3) of the Act shall contain the following:

- 1. A description of the area or the retail business establishment for which the exemption is sought.
- 2. The justification, in relation to the seasonal nature, if any of the tourist attraction, for the time period sought in the exemption.
- 3. Information establishing that the tourism criteria set out in this Regulation are met.

A "retail business establishment" means the premises where a retail business is carried on."

Discussion

Section 4(7) of the RBHA states that "The council is not required to pass the by-law even if the tourism criteria are met".

Before enacting a by-law under section 4(1) of the RHBA, Municipal Council must satisfy itself that the following provisions of the RHBA:

- i) Municipal Council has taken into account the principle that holidays should be maintained as common pause days;
- ii) Municipal Council has determined that the application and proposed by-law will comply with the tourism criteria established by O. Reg.711/91 or subsection 4(10) of the Act; and,

- iii) Municipal Council has determined that the enactment of the proposed by-law is for the maintenance or development of tourism.

If Municipal Council, after considering the tourism criteria set out in Ontario Regulation 711/91 and all other provisions set out in the RBHA, deems it appropriate to pass a by-law under Section 4(1) of the RHBA, the by-law would come into force on the thirty-first day after it is passed by council (May 16, 2014 if the by-law is passed on April 15, 2014), unless the by-law is appealed to the Ontario Municipal Board. Any person who objects to the by-law may appeal to the Ontario Municipal Board by filing a notice of appeal with the Board setting out the objection to the by-law and the reasons in support of the objection not later than thirty days after the by-law is passed by council.

PREPARED BY:
CATHY SAUNDERS CITY CLERK

Attachment

APPENDIX "C"

Bill No.
2014

By-law No.

A by-law to exempt the Labatt Breweries of Canada LP London brewery and the associated retail store located at 150 Simcoe Street, London, Ontario under section 4 of the *Retail Business Holidays Act*, R.S.O. 1990, Chapter R.30, to permit the brewery to operate tours and the associated retail store to be opened on Victoria Day, Canada Day, Labour Day and Thanksgiving Day.

WHEREAS under subsection 4(1) of the *Retail Business Holidays Act*, R.S.O. 1990, Chapter R.30, (the "Act") as amended, the council of a municipality, may by by-law permit, despite section 2 of the Act, retail business establishments in the municipality to be open on holidays for the maintenance or development of tourism;

AND WHEREAS Labatt Breweries of Canada LP has applied for an exemption under subsection 4(1) of the Act to permit the London brewery and the associated retail store located at 150 Simcoe Street, London Ontario to operate tours and be opened on Victoria Day, Canada Day, Labour Day and Thanksgiving Day;

AND WHEREAS the Corporate Services Committee held a public meeting on April 8, 2014 in respect to the application and the proposed by-law, notice of which was published on February 27, 2014, in a newspaper having general circulation in the municipality and at which persons in attendance were give the opportunity to make representation in respect of the proposed by-law;

AND WHEREAS the Municipal Council of The Corporation of the City of London (the "Council") has taken into account the principle that holidays should be maintained as common pause days;

AND WHEREAS the Council has considered the representations of any persons taking the opportunity to make representation at the public meeting;

AND WHEREAS the Council has determined that the application and proposed by-law will comply with the tourism criteria established by regulation under subsection 4(10) of the Act;

AND WHEREAS the Council has determined that the enactment of the proposed by-law is for the maintenance or development of tourism;

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

1. The retail businesses, being the Labatt Breweries of Canada LP's London's brewery and the associated retail store located at 150 Simcoe Street, London, Ontario, shall be permitted to operate tours and be open on Victoria Day, Canada Day, Labour Day and Thanksgiving Day.
2. Subject to section 4.3 of the Act, this by-law comes into force and effect on the 31st day after its enactment.

PASSED in Open Council on April 15, 2014.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First Reading – April 15, 2014
Second Reading – April 15, 2014
Third Reading – April 15, 2014