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<b>TO:</b>	<b>CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE MEETING ON JUNE 17, 2014</b>
<b>FROM:</b>	<b>JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER</b>
<b>SUBJECT:</b>	<b>EXPANSION OF AND AMENDMENT TO BY-LAW CP-2 – LONDON DOWNTOWN BUSINESS ASSOCIATION IMPROVEMENT AREA</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director, Planning and City Planner with the concurrence of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer and the City Clerk, the following actions be taken regarding the London Downtown Business Improvement Area request for expansion:

- a) the attached proposed by-law ( Appendix “A”) being a by-law to amend By-law CP-2 “A by-law to provide for the Improvement Area to be known as the London Downtown Business Association Improvement Area and to establish a Board of Management therefor” **BE APPROVED IN PRINCIPLE** to:
  - i) expand the area designated as an improvement area;
  - ii) amend the board of management;
  - iii) amend certain procedures; and
  - iv) amend the levy procedures and in particular the method for calculating the special charges to be levied against the rateable property in the business improvement area;
- b) that Civic Administration **BE DIRECTED** to proceed with issuing notices in accordance with section 210 of the *Municipal Act, 2001* to every person who on the last returned assessment roll is assessed for rateable property that is in a prescribed business property class which is located in the proposed expanded improvement area; and,
- c) that Civic Administration **BE DIRECTED** to provide notice of the proposed amendments to the board of management, certain procedures and the levy procedures to the London Downtown Business Improvement Association Area Board of Management in accordance with the City’s Public Notice Policy.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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None

<b>BACKGROUND</b>
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On February 11, 2014 Municipal Council passed the following resolution:

*“That the communication dated January 21, 2014, from the London Downtown Business Association Improvement Area, with respect to a boundary expansion request and a review of the current Downtown Business Improvement Area By-law (CCP-2) BE REFERRED to the Civic Administration for consideration and to report back at a future meeting of the Planning and Environment Committee;*



*It being noted that the Planning and Environment Committee reviewed and received the following communications with respect to this matter:*

- a) *a communication dated January 21, 2014 from R.T. Usher, Board Chair, London Downtown Business Association and J. MacDonald, Executive Director, Downtown London; and,*
- b) *a communication dated December 10, 2013 from D. Winkler, Richmond Row."*

The communications referred to in the above-noted resolution includes a request from Richmond Row to be included in an expanded London Downtown Business Improvement Area (BIA) and a request from the London Downtown BIA to significantly expand the currently existing BIA to include Richmond Row.

The City's Planning Services has reviewed the specific boundary changes requested by the Downtown BIA and the communication from Richmond Row and is in support of the proposed by-law changes and the proposed expansion of the BIA area. The proposed boundary changes and by-law amendments are reflected in the attached draft by-law.

The request from the London Downtown BIA also included a request to update their existing by-law so as equalize the levy rate in all areas of a newly expanded BIA area. The existing by-law contains differential levy rates established in 1979 by By-law approved by an Order of the Ontario Municipal Board. These rates, established in 1979, are now generally considered to be out of date and inappropriate. Civic Administration is proposing that the provisions for the differential rates be removed from the existing by-law and that the City annually raise the amount required for the purposes of the Board of Management in accordance with paragraph 208(2)(a) of the Municipal Act, 2001 which provides for a levy upon rateable property in the improvement area that is in a prescribed business property class.

In order to expand the Downtown BIA and change its by-law as requested, the Municipal Council will need to pass a by-law in accordance with section 204 of the *Municipal Act, 2001*. Before passing such a by-law, Municipal Council is required, in accordance with section 210 of the Act, to send a notice to every person who, on the last returned assessment roll, is assessed for rateable property that is in a prescribed business property class and is located in the in the proposed expanded improvement area. Every person who receives such a notice from the City is required, within 30 days after the notice is mailed, to give a copy of the notice to each tenant of the property who is required to pay all or part of the property taxes. Every person who receives a notice from the City is also required to give the City Clerk a list of every tenant at the property to which the notice relates and who is required to pay property taxes.

In accordance with section 210(3) of the *Municipal Act, 2001*, Municipal Council is not permitted to pass the by-law amendment to designate an expanded business improvement area with new levy rules, if written objections are received by the City Clerk and those objections have been signed by at least one-third of the persons entitled to receive a notice as described in the previous paragraph. Those persons must also be responsible for at least one-third of the taxes levied for purposes of the general local municipal levy on rateable property in all prescribed business property classes in the improvement area to stop the passage of the by-law amendment. In addition, the by-law is not permitted to be passed by council if one-third of the persons entitled to receive a notice submit written objections and those person are responsible for at least one-third of the taxes levied for purposes of the general local municipality levy on rateable property only in the area proposed for expansion.

Any objections must be received within 60 days of the City mailing the last notices. If the objections received do not meet the criteria set out in section 210(3) of the Act, then council may proceed with passing the attached by-law. The attached by-law, if passed, would maintain the currently existing corporation in accordance with subsection 204(2) of the Act, with the proposed new boundaries.

In accordance with section 205 of the *Municipal Act, 2001*, the Board of Management of a BIA is required to prepare an annual budget for submission to Municipal Council for its approval. The Board of Management of a BIA is also required to hold at least one annual meeting of the entire Improvement Area membership to discuss the annual budget. The City is then required to raise the amount required for the purposes of a Board of Management by levy upon the rateable property in the Improvement Area that is in a prescribed business property class.

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We would like to acknowledge the significant contribution of staff in the Legal Services, the City Clerk’s office, the City IT services, the City Treasurer services and other departments who have participated in the preparation of this report and attachment.

<b>SUMMARY</b>
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In summary, it is recommended that the attached by-law be approved in principle and Civic Administration be directed to proceed with the notices as required under section 210 of the *Municipal Act, 2001*.

<b>PREPARED BY:</b>	<b>CONCURRED BY:</b>
<b>JIM LOGAN DIVISION MANAGER – TAXATION &amp; REVENUE</b>	<b>MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER</b>
<b>CONCURRED BY:</b>	<b>RECOMMENDED BY:</b>
<b>CATHY SAUNDERS CITY CLERK</b>	<b>JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER</b>

Attach.

c. Jennifer Smout



**APPENDIX A**

Bill No.  
2014

By-law No.

A by-law to amend by-law CP-2 “A by-law to provide for the Improvement Area to be known as the London Downtown Business Association Improvement Area and to establish a Board of Management Therefor” to expand the area designated as an improvement area; to amend the board of management; to amend certain procedures; and to amend certain levy procedures for the purpose of managing the London Downtown Business Improvement Area.

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS subsection 10(1) of the *Municipal Act, 2001* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting: in paragraph 1, Governance structure of the municipality and its local boards; paragraph 2, Accountability and transparency of the municipality and its operations and of its local boards and their operations; paragraph 3, Financial Management of the municipality and its local boards; in paragraph 7, Services and things that the municipality is authorized to provide under subsection (1);

AND WHEREAS subsection 204(1) of the *Municipal Act, 2001* provides that a local municipality may designate an area as an improvement area and may establish a board of management,

- (a) to oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in the area beyond that provided at the expense of the municipality generally; and
- (b) to promote the area as a business or shopping area;

AND WHEREAS subsection 209 of the *Municipal Act, 2001* provides for the municipality to alter the boundaries of an improvement area and the board of management for that improvement area is continued as the board of management for the altered area;

AND WHEREAS subsection 216(1) of the *Municipal Act, 2001* provides for a local municipality to dissolve or change a local board;

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

1. The London Downtown Business Association Improvement Area Board of Management is continued as a body corporate with all of the powers, rights and privileges vested in it except as modified and amended by this By-law.



2. By-law CP-2 being a by-law to provide for the Improvement Area to be known as the London Downtown Business Association Improvement Area and to establish a Board of Management therefor is amended by deleting the recitals and replacing them with the following new recitals:

*“WHEREAS subsection 5(3) of the Municipal Act, 2001, S.O. 2001, c. 25 as amended provides that a municipal power shall be exercised by by-law;*

*AND WHEREAS section 9 of the Municipal Act, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;*

*AND WHEREAS subsection 10(1) of the Municipal Act, 2001 provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;*

*AND WHEREAS subsection 10(2) of the Municipal Act, 2001 provides that a municipality may pass by-laws respecting: in paragraph 1, Governance structure of the municipality and its local boards; paragraph 2, Accountability and transparency of the municipality and its operations and of its local boards and their operations; paragraph 3, Financial Management of the municipality and its local boards; in paragraph 7, Services and things that the municipality is authorized to provide under subsection (1);*

*AND WHEREAS subsection 204(1) of the Municipal Act, 2001 provides a local municipality may designate an area as an improvement area and may establish a board of management,*

*(a) To oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in the area beyond that provided at the expense of the municipality generally; and*

*(b) To promote the area as a business or shopping area;*

*AND WHEREAS section 208 of the Municipal Act, 2001 provides that a local municipality shall annually raise the amount required for the purposes of a board of management, including any interest payable by the municipality on money borrowed by it for the purposes of the board of management;*

*AND WHEREAS subsection 208(2)(a) of the Municipal Act, 2001 provides that a municipality may establish a special charge for the amount to be raised by levy upon rateable property in the improvement area that is in a prescribed business property class;”*

3. By-law CP-2 being a by-law to provide for the Improvement Area to be known as the London Downtown Business Association Improvement Area and to establish a Board of Management therefor” is amended by deleting sections 1 through 4 in their entirety and by replacing them with the following new sections:

**“Definitions**

1.1 For the purpose of this by-law,

**“Board of Management”** means the corporation established under this by-law under the name *The London Downtown Business Improvement Association Board of Management;*

**“ London Downtown Business Improvement Area”** means the area as described in section 2.1 and shown on the attached Schedule “A”.

**“City”** means *The Corporation of the City of London;*

**“Council”** means *the Council of the City;*

**“Member”** means *the persons who are assessed, on the last returned assessment roll, with respect to rateable property in the area that is in a prescribed business property class and tenants of such property.*



**1.0 Designation of the Business Improvement Area**

2.1 *The area comprising those lands in the City of London indicated within the boundary shown on Schedule "A" attached to this by-law, generally bounded on the south of the Canadian National Rail tracks; on the west by the Thames River between the Canadian National Rail tracks and Oxford Street East; on the north by lands abutting Oxford Street East between the west side of Wellington Street and Oxford Street East and including lands abutting Richmond Street and the south side of Sydenham Street and the one property facing Talbot Street; and on the east by lands abutting the west side of Wellington Street between Oxford Street East and Piccadilly Street, and including lands abutting the north side of Piccadilly Street westerly from the Wellington-Oxford Streets intersection to a line parallel with the rear property lines of 700 Richmond Street, then southerly to the Canadian Pacific Rail tracks, then easterly following the Canadian Pacific Rail tracks to Waterloo Street, then including lands abutting the north side of Pall Mall Street west of Waterloo Street to a line coinciding with the rear of the lands facing Wellington Street between Pall Mall Street, southerly to Centennial Lane and including 277 and 279 Hyman Street and 284, 286, 288, 290, 291 and 292 Central Avenue, then including lands abutting the south side of Dufferin Avenue easterly from Centennial Lane to Waterloo Street, then lands abutting the west side of Waterloo Street from Dufferin Avenue southerly to the rear of the lands abutting Dundas Street between Waterloo Street and Colborne Street and including lands abutting the west side of Colborne Street between 435 Colborne Street and the Canadian National Rail tracks is hereby designated as an improvement area to be known as the London Downtown Business Improvement Area.*

**3.0 Board of Management Established**

3.1 *A Board of Management is established under the name The London Downtown Business Improvement Association Board of Management.*

3.2 *The Board of Management is a corporation.*

3.3 *The Board of Management is a local board of the City for all purposes.*

3.4 *The objects of the Board of Management are:*

(a) *to oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in the area beyond that provided at the expense of the municipality generally; and*

(b) *to promote the area as a business or shopping area.*

3.5 *The Board of Management is not authorized to:*

(a) *acquire or hold an interest in real property; or*

(b) *to incur obligations or spend money except in accordance with section 6.*

3.6 *The head office for the Board of Management shall be located in the City of London.*

**4.0 Board Composition**

4.1 *The Board of Management shall consist of nine (9) directors as follows:*

(a) *at least one director appointed by Council; and*

(b) *the remaining directors selected by a vote of the Members and then appointed by Council.*

4.2 *Council may refuse to appoint a Member selected under section 4.1(b) in which case Council may:*

(a) *leave the position vacant; or*

(b) *direct that a meeting of the Members be held to select another candidate for Council's consideration.*



- 4.3 *Directors shall serve for a term that is the same as the term of the Council that appoints them or until their successors are appointed.*
- 4.4 *The seat of a director becomes vacant if a director is absent from the meeting(s) of the Board of Management for three consecutive meetings without being authorized to do so by a resolution of Council.*
- 4.5 *If the seat of a director becomes vacant for any reason, the Council may fill the vacancy for the remainder of the vacant director's term.*
- 4.6 *A director may be reappointed to the Board of Management.*
- 4.7 *Council may, by a resolution passed by a majority of its members, remove a director at any time.*
- 4.8 *Directors shall serve without remuneration.*
- 5.0 **Board Procedures****
- 5.1 *Council may pass by-laws governing the Board of Management and the affairs of the Board of Management and the Board of Management shall comply with such by-laws.*
- 5.2 *By-laws passed by the Board of Management must not conflict with City by-laws passed under section 5.1.*
- 5.3 *The Board of Management shall pass by-laws governing its proceedings, the calling and conduct of meetings, and the keeping of its minutes, records and decisions consistent with any requirements set out in a by-law of the City.*
- 5.4 *A majority of the directors constitutes a quorum at any meeting of the Board of Management.*
- 5.5 *Despite any vacancy among the directors, a quorum of directors may exercise the powers of the Board of Management.*
- 5.6 *A director has only one vote.*
- 5.7 *The meetings of the Board of Management and the meetings of the Members shall be open to the public and only those persons that the Board of Management considers to have engaged in improper conduct at a meeting may be excluded from the meeting.*
- 5.8 *The Board of Management may close a meeting, or a part of the meeting to the public only in accordance with section 239 of the Municipal Act, 2001.*
- 5.9 (1) *The Board of Management shall hold at least ten (10) meetings during each fiscal year and the interval between one meeting and the next shall not exceed sixty (60) days.*  
 (2) *A majority of directors may requisition a special meeting of the Board of Management by serving a copy of the requisition on the chair or vice-chair of the Board of Management.*  
 (3) *The chair of the Board of Management may call a special meeting of the Board of Management at any time whether or not he or she has received a requisition under subsection (2).*
- 5.10 (1) *The Board of Management shall elect from its directors a chair and vice-chair.*  
 (2) *The chair and vice-chair are eligible for re-election.*
- 5.11 (1) *The Board of Management shall appoint a secretary who shall:*  
 (a) *give notice of the meetings of the Board of Management;*  
 (b) *keep all minutes of meetings and proceedings of the Board of Management;*



- (c) *record without note or comment all resolutions, decisions and other proceedings at a meeting of the Board of Management whether it is closed to the public or not; and*
- (d) *perform such duties, in addition to those set out in clauses (a), (b) and (c) as the Board of Management may from time to time direct.*

5.12 (1) *The Board of Management may appoint such committees as it determines necessary to conduct the business of the Board of Management .*

(2) *Each committee appointed shall be composed of not fewer than three (3) directors of the Board of Management and shall perform such duties and undertake such responsibilities as the Board of Management specifies and shall report only to the Board of Management.*

(3) *Any director may be the chair or vice-chair of a committee.*

5.13 *The Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50 applies to the directors and Members.*

5.14 *Council may designate an appointed official of the City who shall have the right to attend meetings of the Board of Management and its committees and to participate in their deliberations but is not entitled to vote, be the chair or vice-chair or act as the presiding officer at a meeting.*

5.15 *The Board of Management shall comply with all applicable provisions of the Municipal Act, 2001 including, but not limited to, those relating to business improvement areas, meetings, records, remuneration and expenses, the development of policies and procedures and financial administration.*

**6.0 Financial**

6.1 (1) *The Board of Management shall prepare and submit to the Council annually a budget of its estimated revenues and expenditures by the date and in such form and detail as required by the City Treasurer.*

(2) *The Board of Management shall hold a meeting of the Members for discussion of the budget.*

(3) *Prior to submitting the budget to the Council, the Board of Management shall hold a meeting of the Members for discussion of the budget.*

(4) *Council may approve the budget in whole or in part and may make such changes to it as Council considers appropriate, but Council may not add expenditures to it.*

6.2 *The Board of Management shall not:*

(a) *spend any money unless it is included in the budget approved by the Council or in a reserve fund established by the Council under section 417 of the Municipal Act, 2001;*

(b) *incur any indebtedness extending beyond the current year without the prior approval of the Council; or*

(c) *borrow money.*

6.3 *The fiscal year of the Board of Management is the same as the fiscal year of the City.*

6.4 *The accounts and transactions of the Board of Management shall be audited annually by the auditor of the City.*

6.5 *The Board of Management shall prepare and submit to Council, not later than March 31<sup>st</sup> each year an annual report for the preceding year which shall include the audited financial statements.*

6.6 *The Board of Management shall provide the City Treasurer with such financial information as the City Treasurer may require.*





- 6.7 (1) *The Board of Management shall keep proper books of account and accounting records with respect to all financial and other transactions of the Board of Management, including, and without limiting the generality of the foregoing:*
- (a) *records of all sums of money received from any source whatsoever and disbursed in any manner whatsoever; and*
  - (b) *records of all matters with respect to which receipts and disbursements take place in consequence of the maintenance, operation and management of the Board of Management.*
- (2) *The Board of Management shall keep or cause to be kept and maintained all such books of accounts and accounting records as the City Treasurer may require.*
- 6.8 *The Board of Management shall make all of its books and records available at all times to such persons as the City Treasurer may require and shall provide certified true copies of such minutes, documents, books, records or any other writing as the City Treasurer may require.*
- 6.9 (1) *Council may require the Board of Management:*
- (a) *to provide information, records, accounts, agendas, notices or any paper or writing; and*
  - (b) *to make a report on any matter, as Council determines, relating to the carrying out of the purposes and objects of the Board of Management.*
- (2) *The Board of Management shall:*
- (a) *file with the City Treasurer all such information records, accounts, agendas, notices, paper and all other materials as the City Treasurer may require; and*
  - (b) *make such reports within the time specified by the City Treasurer and containing such content as the City Treasurer may require.*
- 6.10 (1) *The Board of Management shall from time to time provide the City Treasurer as requested with statements of:*
- (a) *revenues and expenditures;*
  - (b) *profit and loss; and*
  - (c) *such financial matters or operating expenditures as the City Treasurer may require.*
- (2) *The statements referred to in subsection (1) shall be in such form as the City may require.*
- 6.11 (1) *The City is entitled to receive any profits resulting from the operations of the Board of Management and is responsible for any losses incurred by the Board of Management.*
- (2) *Council may determine what constitutes profits for the purpose of subsection (1).*
- 6.12 (1) *Upon dissolution of the Board of Management, the assets and liabilities of the Board of Management become the assets and liabilities of the City.*
- (2) *If the liabilities assumed under subsection (1) exceed the assets assumed, the Council may recover the difference by imposing a charge on all rateable property in the former improvement area that is in a prescribed business property class.*



**7.0 Indemnification & Insurance**

7.1 (1) *Subject to subsection (2), every director or officer of the Board of Management and his or her heirs, executors, administrators and other legal personal representatives may from time to time be indemnified and saved harmless by the Board of Management from and against,*

(a) *any liability and all costs, charges and expenses that he or she sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him or her for or in respect of anything done or permitted by him or her in respect of the execution of the duties of his or her office; and*

(b) *all other costs, charged and expenses that he or she sustains or incurs in respect to the affairs of the Board of Management.*

(2) *No director or officer of the Board of Management shall be indemnified by the Board of Management in respect of any liability, costs, charges or expenses that he or she sustains or incurs in or about any action, suit or other proceeding as a result of which he or she is adjudged to be in breach of any duty or responsibility imposed upon him or her under any Act unless, in an action brought against him or her in his or her capacity as director or officer, he or she has achieved complete or substantial success as a defendant.*

(3) *The Board of Management may purchase and maintain insurance for the benefit of a director or officer thereof, except insurance against a liability, cost, charge or expense of the director or officer incurred as a result of his or her failure to exercise the powers and discharge the duties of his or her office honestly, in good faith and in the best interests of the Board of Management, exercising in connection therewith the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.*

7.2 *The Board of Management shall obtain and maintain at all times insurance coverage in a form acceptable to the City of the types and amounts appropriate for a Board of Management of its size and business type which coverage shall include the City with respect to any loss, claims or demands made against the Board of Management.*

**8.0 Meetings of Members**

8.1 *The Board of Management shall call at least one (1) meeting of the Members in each calendar year.*

8.2 *Notice for all Members' meetings shall be:*

(a) *Sent by prepaid mail to each Member not less than 15 days prior to the meeting. Notice shall be mailed to the address last provided by the Member to the Board of Management or, where no address is provided, to the property address of the owner(s) indicated on the last municipal assessment roll; or*

(b) *Delivered personally to each Member.*

8.3 *Notice of a meeting of the Members shall include an agenda.*

8.4 *Each Member has one vote regardless of the number of properties that the Member may own or lease.*

8.5 *A Member that is a corporation may nominate in writing one individual to vote on its behalf.*

8.6 *A majority of the Members constitutes a quorum at any meeting of the Members.*

8.7 *The Board of Management has the authority to call any special meeting of the Members it deems necessary.*



**9.0 General**

9.1 *Council may by by-law dissolve the Board of Management and any property of the Board of Management remaining after its debts have been paid vests in the City.*

9.2 *This by-law may be referred to as the "London Downtown Business Improvement Association Board of Management By-law".*

4. Part 5 of By-law CP-2 being a by-law to provide for the Improvement Area to be known as the London Downtown Business Association Improvement Area and to establish a Board of Management therefor is amended by deleting the heading and replacing it with "10.0 Repeal – Enactment" and by renumbering the section to "10.1".

5. By-law CP-2 being a by-law to provide for the Improvement Area to be known as the London Downtown Business Association Improvement Area and to establish a Board of Management therefor is amended by deleting Schedule "A" in its entirety and replacing it with Schedule "A" attached to this By-law.

6. This by-law comes into force and effect on the day it is passed.

PASSED in Open Council

, 2014.

Joe Fontana  
Mayor

Catharine Saunders  
City Clerk

First reading –  
Second reading –  
Third reading –