

CITY OF VANCOUVER



ADMINISTRATIVE REPORT

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TO: Standing Committee on Planning and Environment
FROM: General Manager of Corporate Services
SUBJECT: BC-Alberta Trade, Investment and Labour Mobility Agreement (TILMA)

RECOMMENDATION

THAT Council support and participate as appropriate in the involvement of the Union of BC Municipalities in the negotiations over the next two years that relate to how British Columbia municipalities will be affected by the BC-Alberta Trade, Investment and Labour Mobility Agreement.

CITY MANAGER'S COMMENTS

When the BC-Alberta Trade, Investment and Labour Mobility Agreement (TILMA) is fully implemented in April 2009, it will apply to BC and Alberta municipalities. While there has been much speculation about what the impacts of the TILMA will be, negotiations concerning municipalities are still underway.

To the extent the TILMA contributes to a stronger local economy, this will be positive for the City, although it will not result in significant new municipal revenues. The negative implications of this Agreement may involve potential restrictions on City Council's powers of local autonomy, and/or increased administrative costs associated with complying to the TILMA, which are both elaborated on in this report.

It is critical that the City take an active role in the negotiations between now and April 2009, which will determine how BC municipalities are subject to the TILMA. This is best done through the Union of BC Municipalities, who has been asked to appoint a representative to take part in these negotiations.

While there is no legislation currently in place that will require the City to comply with the TILMA, staff will continue to monitor the negotiations and assess what actions the City need take with respect to the TILMA, and report back to Council as appropriate.

COUNCIL POLICY

There is no applicable Council policy.

PURPOSE

This report is provided to Council in response to the January 16, 2007 request that staff look into the implications of the BC-Alberta Trade, Investment and Labour Mobility Agreement for the City of Vancouver.

This report does not address the question of whether the TILMA is on the whole beneficial or not for British Columbia, Alberta and/or other municipalities. Rather, it looks at the TILMA from the City of Vancouver's point of view, addressing the following two questions:

Will the City of Vancouver benefit directly or indirectly from the TILMA?

Will the TILMA have negative impacts on/implications for the City?

BACKGROUND

In April 2006, the BC and Alberta provincial governments signed the BC-Alberta Trade, Investment and Labour Mobility Agreement (TILMA), which came into effect on April 1, 2007. The TILMA is a comprehensive free trade agreement between Alberta and British Columbia, that expands on the existing Agreement on Internal Trade (AIT). The AIT is an intergovernmental trade agreement that was signed by the federal, provincial, Northwest Territories and Yukon governments in 1994. There is no legislation in place that requires the City of Vancouver to comply with the AIT.

The TILMA is intended to harmonise government measures that affect trade, investment and labour mobility. One key goal of the Agreement is that standards and regulations be mutually recognised and/or reconciled in order to alleviate restrictions on trade, investment or labour mobility. Another is that government bodies in each province do not discriminate unfairly against businesses or individuals from the other province in their procurement and other activities.

DISCUSSION

HOW THE TILMA COULD AFFECT THE CITY OF VANCOUVER

As of April 1, 2007, the Agreement came into effect for the signatories. As of April 1, 2009, municipalities will also be included in the TILMA. In the coming two years, termed the “transition period,” BC and Alberta are to negotiate any special provisions, exclusions or transitional measures to determine the extent of the coverage of the Agreement regarding municipalities. According to the Agreement, during this transition period, municipalities may not adopt any measures that would be inconsistent with the TILMA, or amend or renew any measure in a manner that would decrease its consistency with the TILMA. (Noting that there is no legislation in place at this time that requires the City of Vancouver to comply to TILMA.)

While there was no formal consultation with BC municipalities during the development of the Agreement, the BC Minister of Economic Development has recently invited the UBCM to nominate a representative to participate in negotiations related to the TILMA, going forward.

THE PUBLIC POLICY DEBATE AROUND THE TILMA

There has been a vigorous policy debate about the impacts of the TILMA among the various stakeholders. Some of the commentators have come out against the TILMA, such as the Canadian Action Party, CUPE BC, the Canadian Centre for Policy Alternatives, the Council of Canadians, the BC Official Opposition Critics for Local Government and for Economic Development. Others, such as the Conference Board of Canada and the Canada West Foundation, support the Agreement.

While there is a large and growing body of commentary on the TILMA, there are only a few publications that specifically address how the TILMA might affect BC municipalities. Both the City of Burnaby and the City of Saskatoon have published reports which discuss the potential negative impacts of the TILMA on their organisations. Appendix A contains a list of publications about the TILMA, noting that there have been an abundance of articles in the press about the TILMA, that have not been listed here.

Since the TILMA is new and not yet implemented, much of what has been written about it is relatively speculative. This is especially true of the discussion of how the TILMA will ultimately affect local governments, as negotiations pertaining to them are still underway.

KEY ELEMENTS OF THE TILMA

The following is an overview of the TILMA elements that are most relevant to local governments. Much of the information in this section is taken from www.tilma.ca.

- **MEASURES NOT RESTRICTIVE:** The TILMA requires municipalities to ensure their measures do not restrict/impair trade, investment or labour mobility. In this context,

a “measure” can refer to any legislation, regulation, standard, directive, requirement, guideline, program, policy or administrative practice or procedure.

- **NON-DISCRIMINATION:** The City is obliged to give the highest level of consideration to all “... *like, directly competitive, or substitutable goods; persons; services and investors or investments ...* .”
- **STANDARDS AND REGULATIONS:** Existing standards and regulations must be mutually recognised and/or reconciled to remove differences between the provinces. The Agreement provides an incentive for reconciliation at the lower of the two standards in question.
- **LEGITIMATE OBJECTIVES:** The Agreement allows for municipalities to adopt measures that may impair trade, investment or labour mobility, if these measures are deemed absolutely necessary to achieve a specified set of “legitimate objectives.” This list is currently comprised of:
 - public security and safety,
 - public order,
 - protection of human, animal or plant life or health,
 - protection of the environment,
 - conservation and prevention of waste of non-renewable or exhaustible resources,
 - consumer protection,
 - protection of the health, safety and well-being of workers,
 - provision of social services and health services within the territory of a Party,
 - affirmative action programs for disadvantaged groups, or
 - prevention or relief of critical shortages of goods essential to a Party.
- **ANNUAL REVIEW:** The way the TILMA is written, everything is included unless expressly excluded. All exceptions to the Agreement are subject to an annual review by a Ministerial Committee, that will look at “... *how the exceptions can become more consistent with the general rules and special provisions of the agreement.*”
- **ENFORCEMENT:** The TILMA dispute resolution mechanism will have three stages: dispute avoidance, consultation and a dispute panel. Governments that are alleged to be restricting or impairing trade, investment or labour mobility per the terms of the Agreement may be taken to a binding dispute resolution process by any individual or

corporation within either of the two provinces. Under the Agreement, the dispute panel has the power to impose financial penalties up to \$5 million per dispute. The financial awards are intended as penalties, not as compensation for damage claims. According to a January 10, 2007 publication by the BC Ministry of Economic Development, municipalities are not required to defend their own measures or pay monetary penalties, and only provincial governments can be subject to the dispute settlement process.

POTENTIAL BENEFITS FOR THE CITY OF VANCOUVER

In their September 2005 report prepared for the BC Ministry of Economic Development, the Conference Board of Canada has come out in strong support of this Agreement, citing economic benefits for the provincial economy. The report discusses the anticipated impact of the TILMA on specific industry sectors, and in the various regions of BC.

According to the Conference Board's analysis, the Lower Mainland/Southwest and Northeast BC are the two regions that stand to benefit most from the TILMA. About this, the authors say:

One of the largest beneficiaries in the province from the implementation of the proposed agreement will be the Lower Mainland and Southwest region This region is currently upgrading its port infrastructure which will mean more goods flowing through the ports. The coordination of transportation regulations will make it easier and more profitable for B.C. transportation workers to ship these goods to the Alberta market.

The coordination of the regulations will also be beneficial to the region's manufacturing sector. With larger market availability and reduced transportation costs, the region's manufacturing sector is expected to invest to meet growing demand. The FIRE [finance, insurance and real estate] sector is expected to fare very well if the proposed agreement is implemented. This region has a lot of expertise in providing financial services and the opening of the Alberta market to these companies will likely lead to more investment and business establishment in B.C.

Businesses in the commercial services and retail industries are also expected to benefit thanks to the spin off activity created by gains in the other industries and the increased consumer demand generated by lower prices in general.

While a stronger local economy is generally good for the City of Vancouver, the City would receive little or no *direct* financial benefit as a result. And further, the potential benefits to the City associated with a generally stronger economy must be assessed in the context of any negative impacts, such as restrictions on the City's powers of local autonomy, and/or increased administrative costs. These potential impacts are discussed in the next section.

POTENTIAL IMPACTS ON/IMPLICATIONS FOR THE CITY OF VANCOUVER: LOCAL AUTONOMY

The following is a summary of the illustrative list of examples, in which local government measures may be deemed as inconsistent with the TILMA concepts of standardisation, harmonisation and non-discrimination.

- **INCENTIVES TO LOCAL BUSINESS:** If the City wished to provide a grant, loan, loan guarantee, goods or services, free land or any other form of financial assistance that was not available on the free market to a local business, this could be deemed in contravention to the TILMA.
- **PROCUREMENT POLICIES:** According to the TILMA, municipal procurement must give the highest level of consideration to "... *like, directly competitive, or substitutable goods; persons; services and investors or investments.*" This may have an impact on the City's ability to select preferred suppliers of goods and/or services. For example, if Council wished to exclude a particular Alberta company because that company's conduct or operations are contrary to Council's public policy position, or to award a procurement contract to an organisation that reside or have a head office in Vancouver, either of these may be seen as contravening the TILMA.
- **TENDERING THRESHOLDS:** Per the TILMA, thresholds that require municipalities to tender are decreased from current regulations under the AIT, to \$10,000 for goods, \$75,000 for services and \$100,000 for construction. These are significantly lower than the AIT thresholds, which are \$100,000 for goods and services, and \$125,000 for construction. While these lower thresholds may be relevant for smaller municipalities, they will be administratively inefficient for the City.
- **REGULATORY BYLAWS:** According to www.tilma.ca: "*TILMA will not restrict the ability of local governments to make by-laws that are in the best interest of their citizens, such as zoning by-laws, height restrictions or rules applying to signage. The provincial governments also do not expect TILMA to affect land use decisions with respect to agricultural land reserves or parks.*" Many of the City's regulatory bylaws will not be relevant to the TILMA and/or will be protected under the "legitimate objectives" section of the Agreement, but some may not be. For example, a building regulation bylaw amendment to require particular local building materials or a zoning

bylaw that by design prohibits an Alberta business operation could be seen as restrictive under the TILMA.

- **BUSINESS LICENSE CONDITIONS:** If Council wishes to impose extraordinary business license conditions (e.g., provision of personal and private data from a second-hand goods store), this may be viewed as contravening the TILMA.

A great number of other examples of potential municipal impacts are discussed in the various publications about the TILMA. These include implications for: property tax incentives, grants, store hour or smoking regulations, preservation of agricultural lands, conservation of heritage sites, maintenance of scenic views, residential-commercial integration issues, economic development promotion and sign bylaws.

Already-incorporated exceptions to the TILMA include measures relating to: aboriginal peoples, water, and services and investments pertaining to water, taxation, revenue generation, including royalties and mark-ups, regulated rates established for the public good or public interest, social policy, including labour standards and codes, minimum wages, employment insurance, social assistance benefits and worker's compensation, disposition of rights, exploration and development and management or conservation of energy or mineral resources, renewable and alternative energy, management and disposal of hazardous and waste materials, disposition of harvesting rights and management and conservation of forests, fish and wildlife.

Regional economic development initiatives may be exempt, provided they "*... do not restrict trade more than necessary, do not unduly harm the economic interests of persons, goods, services or investments in the other province, minimise discriminatory effects and impacts on trade, investment and labour mobility, and, are consistent with TILMA restrictions on business subsidies.*"

POTENTIAL IMPACTS ON/IMPLICATIONS FOR THE CITY OF VANCOUVER: ADMINISTRATIVE COSTS

Some of the potential costs to the City associated with complying with the TILMA include:

- preparing for the TILMA over the next two years, including taking part in the transition period negotiations to ensure appropriate municipal exclusions, reviewing new/amended measures to assess compliance with the TILMA,
- complying to TILMA on an ongoing basis, e.g., reviewing all new or amended measures to ensure compliance with the TILMA,
- responding to allegations of contraventions, and/or
- increased administrative costs associated with tendering at the significantly-lowered tendering thresholds.

THE CITY'S OBLIGATION TO COMPLY WITH THE TILMA

The TILMA is an agreement between BC and Alberta, and has no legal effect on the City of Vancouver unless the Province enacts or amends legislation that would apply specifically to the City. There are a number of ways the Province could require compliance by local government, such as:

- imposing TILMA-related conditions in relation to grants,
- using existing or new legislation to supersede or reject a local government measure, and/or
- seeking indemnity from a municipality that contravenes a TILMA provision that results in the Province having to pay a monetary penalty.

THE NEXT TWO YEARS

- **TRANSITION-PERIOD NEGOTIATIONS:** During the two-year transitional period, during which municipalities are exempt from the TILMA (April 2007 - April 2009), the Provinces of BC and Alberta will be consulting with local governments and their associations, in order to negotiate any required special provisions or exclusions. The UBCM has been invited to nominate an individual to take part in these negotiations. It is important that, working with the UBCM over the next two years, the City be engaged in the negotiations that are intended to determine what measures will be excluded from the TILMA, and to reconcile the difference in standards and regulations that govern the sixty or so occupations listed in the Agreement.
- **CURRENT APPLICATION:** As of April 2007, the TILMA requires that no municipal regulation or policy should be amended or renewed in a manner that would decrease its consistency with the TILMA (Article 9, Rules Relating to Transitional Measures). During the transition period, staff will monitor new and amended measures in the context of this requirement.

FINANCIAL IMPLICATIONS

There are no financial implications related to the recommendations in this report.

CONCLUSION

The TILMA may require the City of Vancouver to make changes to some of our regulations and other measures, and to some of our procurement practices, after April 2009. It is difficult at this point to determine how exactly the City will be affected over the longer term by this

Agreement. While there is no legislation in place requiring the City to comply with all terms of the TILMA, it is possible that the provincial government may either directly or indirectly require the City to comply. It is important that the City be actively involved with the UBCM in the TILMA negotiations over the next two years, while exclusions for municipal governments are to be negotiated.

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REFERENCE LIST FOR THE BC-ALBERTA TRADE, INVESTMENT AND LABOUR MOBILITY AGREEMENT

DATE	DOCUMENT TITLE	SOURCE
2005-Sept	An Impact Assessment of the BC/Alberta Trade, Investment and Labour Mobility Agreement	Conference Board of Canada, prepared for the BC Ministry of Economic Development
2006-Apr-28	Joint press release re: TILMA, "Alberta and BC Break Down Barriers to Create Single Large Market"	Provinces of BC and Alberta
2006-May	Death by a Thousand Paper Cuts: The Effect of Barriers to Competition on Canadian Productivity	Conference Board of Canada
2006-Oct-19	The BC/Alberta Trade, Investment and Labour Mobility Agreement – Impacts on Local Government	CUPE British Columbia
2007-Jan	What is TILMA: Examining the Trade, Investment and Labour Mobility Agreement Between BC and Alberta	The Canada West Foundation
2007-Jan-10	Backgrounder: Fact, not fiction, on TILMA	Province of BC
2007-Jan-29	Letter to Vancouver City Council	Canadian Action Party
2007-Jan-31	Letter to the UBCM, Alberta Urban Municipalities Association and the Alberta Association of Municipal Districts and Counties	BC Minister of Economic Development and Alberta Minister of International, Intergovernmental & Aboriginal Relations
2007-Feb	Asking for Trouble: The Trade, Investment and Labour Mobility Agreement	Canadian Centre for Policy Alternatives (author: Ellen Gould)
2007-Feb	Facing the Facts about TILMA	The Council of Canadians
2007-Feb-8	Letter to Vancouver City Council	Mayor, City of Burnaby
2007-Feb-26	Legislative Report No. 2-2007	City of Saskatoon (author: Saskatoon City Solicitor)
2007-Feb-27	Package from the BC Minister of Economic Development: Set of fact sheets (Overview, Municipalities, Procurement, Business, Labour), set of "For the Records" (TILMA and the Environment & TILMA's Benefits)	Provinces of BC and Alberta
2007-Feb-28	Transcription of Budget Reply Speech	Charlie Wyse, BC Official Opposition Critic for Local Government
2007-Mar	Letter to UBCM Members on TILMA	BC Minister of Economic Development
2007-Mar-7	Letter to Vancouver City Council	BC Official Opposition Critics for Economic Development and Local Government
2007-Mar-12	Letter to Vancouver City Council	The Council of Canadians
2007-Mar-21	Letter to Vancouver City Council (attached: article by February 2007 Ellen Gould, CCPA; March 2007 memo to UBCM members from UBCM Secretariat; various emails)	President, CUPE BC
2007-Mar-27	Trade, Investment and Labour Mobility Agreement: Overview of Immediate Implications for Local Government	Lidstone, Young and Anderson, prepared for the for the UBCM
2007-Apr-20	Letter to the President of the Union of BC Municipalities	BC Minister of Economic Development
2007-Apr-28	Trade, Investment and Labour Mobility Agreement Between British Columbia and Alberta	Provinces of BC and Alberta
n/a	www.tilma.ca	Provinces of BC and Alberta