

Backgrounder:

There has been recent interest in exploring a by-law under the *Retail Business Holidays Act* to permit certain businesses to be open on Statutory Holidays. This backgrounder is intended to provide background information that would assist in an informed discussion and consideration of this issue.

- The *Retail Business Holidays Act* is provincial legislation that prohibits the opening of retail businesses on statutory holidays. The Ministry of Consumer Services administers the legislation.
- Local municipalities or regions are given the authority under the legislation to pass by-laws that would exempt businesses from the requirement to be closed on statutory holidays.
- There are currently nine statutory holidays:
 - New Year's Day
 - Family Day (third Monday in February)
 - Good Friday
 - Easter Sunday
 - Victoria Day
 - Canada Day
 - Labour Day
 - Thanksgiving Day
 - Christmas Day

(The Act does apply to other holidays declared by proclamation of the Lieutenant Governor to be a holiday under the Act).

- Certain businesses can stay open on holidays including the following:
 - Small stores employing not more than 3 persons at one time on that day and having a total area for serving the public of less than 2400 square feet who are selling:
 - Foodstuffs
 - Antiques
 - Handicrafts (or a combination thereof)
 - Gasoline
 - Pharmacy
 - Nursery stock or flowers and accessory gardening supplies
 - Fresh fruit or vegetables (April 1 to November 30)
 - Books, newspapers or periodicals
 - Establishments with a liquor license

- Tourism establishments licensed under the *Tourism Act*
 - Premises for education, recreational or amusement purposes
 - Necessary services – such as laundromats, rental of vehicles, servicing of vehicles, and prepared meals
- A municipality normally develops a guideline for applications.
 - For all other businesses that are not subject to an exemption, they must meet certain criteria to be eligible.
 - The Act provides that despite the prohibition to be open on a statutory holiday, a municipality may pass a by-law to allow businesses to be open.
 - Council's consideration of a by-law is generated by a request of an individual business or group of businesses.
 - Council is to consider the principle that holidays "should be maintained as common pause days." Council is not required to approve a by-law even if the criteria are met.
 - The criteria set out under the Act to qualify include the following:

An exemption may be granted to an individual business based on the following:

- a) It is located within 2 km of a tourist attraction; and
- b) It is directly associated with the tourist attraction or relies on tourists visiting the attraction for business on a holiday.

An exemption may be granted on area basis if the following are met:

- a) All the retail establishments in the area are within 2 km of the tourist attraction;
- b) The area does not exceed that necessary to encompass all of the retail business establishments for which an exemption is sought; and
- c) At least 25 percent of the retail business establishments in the area are directly associated with the tourist attraction or rely on tourists visiting the attraction for business on a holiday.

An attraction is limited to:

- Natural attractions or outdoor recreational attractions;
- Historical attractions; and
- Cultural, multi-cultural or educational attractions.

- The onus is on the applicant to provide information that:
 - Describes the area or the retail business for which the exemption is sought; and
 - Provides justification in relation to the criteria set out in the Regulation to the Act.

- Council must give notice and hold a public meeting. Council is not required to approve the by-law even where the criteria are met.

- After the public meeting, Council considers a by-law. The by-law can apply to an individual business or a group of businesses within an area such as the DIA.

- The by-law can be appealed to the Ontario Municipal Board.

- In reviewing other municipal examples, most have a standard application form and fee associated with covering certain costs for the municipality to process the request