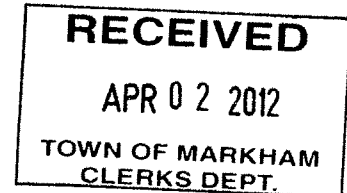




Regional Clerk's Office
Corporate Services Department

March 27, 2012

Ms. Kimberley Kitteringham
Town Clerk
Town of Markham
101 Town Centre Boulevard
Markham, ON L3R 9W3



Dear Ms. Kitteringham:

Re: Revisions to the *Retail Business Holidays Act* Exemption Application Process and Review

Regional Council, at its meeting held on March 22, 2012, adopted the recommendations of the Planning and Economic Development Committee regarding the report entitled "Revisions to the *Retail Business Holidays Act* Exemption Application Process and Review", as amended.

X A copy of Clause No. 1, Report No. 3 of the Planning and Economic Development Committee is enclosed for your information. Please note recommendation 3 requesting comments on the application process as set out in the report. Comments should be forwarded to Dino Basso, Executive Director, Corporate and Strategic Planning by May 31, 2012.

Please contact Joy Hulton, Regional Solicitor, at 905-830-4444, ext. 1418, or Dino Basso, Executive Director, Corporate and Strategic Planning, at ext. 1500, if you have any questions with respect to this matter.

Sincerely,

Denis Kelly
Regional Clerk

G. Boulianne/kc
Attachments

Clause No. 1 in Report No. 3 of the Planning and Economic Development Committee was adopted, as amended, by the Council of The Regional Municipality of York at its meeting on March 22, 2012.

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**REVISIONS TO THE *RETAIL BUSINESS HOLIDAYS ACT*
EXEMPTION APPLICATION PROCESS AND REVIEW**

(Regional Council at its meeting on March 22, 2012 adopted the following report with the inclusion of the following additional recommendations:

- 4. The public meeting for the current application be held at the May 2, 2012 meeting of the Planning and Economic Development Committee***
- 5. Council hold a Workshop following this public meeting to assess the process and future options***
- 6. Staff report back to the Committee on the results of the City of Toronto's process.)***

The Planning and Economic Development Committee recommends:

- 1. Receipt of the presentation by Joy Hulton, Regional Solicitor and Dino Basso, Executive Director, Corporate and Strategic Planning; and**
- 2. Adoption of the recommendations contained in the following report dated January 25, 2012, from the Executive Director, Corporate and Strategic Planning and the Regional Solicitor.**

1. RECOMMENDATIONS

It is recommended that:

- 1. Council delegate to the Planning and Economic Development Committee the responsibility for holding public meetings with respect to applications for exemption under the *Retail Business Holidays Act*.**
- 2. Council approve a fee of \$1,000 for the administration of applications under the Act, and that applicants also be required to pay all advertising costs associated with their application.**

3. The Regional Clerk circulate this report to the Clerks of the local municipalities and seek their comments on the application process as set out in this report.

2. PURPOSE

This report responds to a request from Council, in May 2011, to review the current application and decision-making process with respect to applications for exemption under the *Retail Business Holidays Act* (the “Act”), and to make recommendations for improvements within the context of the current legislation.

3. BACKGROUND

The *Retail Business Holidays Act* governs the opening of retail businesses on statutory holidays and provides municipalities the ability to grant exemptions to the Act

The Act was enacted in 1990 and requires most retail establishments to be closed on the statutory holidays identified in the Act. There are exemptions for specific categories of retailers such as pharmacies and convenience stores.

Ontario Regulation 711/91 (“Tourism Criteria”), made under the Act, permits municipalities to grant exemptions from the Act and establishes the criteria that must be applied in considering applications for exemption. For a business to be granted an exemption it must demonstrate it is within 2km of a tourist attraction and it is either directly associated with the tourist attraction or relies on tourist traffic for business on the holiday.

Since 1995, the Region has enacted 15 bylaws granting exemptions to a variety of businesses (see Attachment 1 – Retail Business Holidays Act Chart). The exemptions reflect a range in the type of applicants that have been granted permission to open on holidays. For example, exemptions have been granted for an entire municipality; an area within a local municipality; shopping malls; and most recently a grocery store. Despite these variations, the application and decision making process should ensure that: (1) legislative requirements are satisfied; (2) the concerns of all stakeholders are addressed; and (3) each decision, supported by a review process, is consistent and reflective of Council’s position on retail businesses holidays.

4. ANALYSIS AND OPTIONS

A review of the current application process has identified several areas for possible improvement

Staff undertook a thorough review of the current application process and found that applicants provide only minimal information in their applications, leaving staff and

Council with a challenge to make fully informed decisions. Staff found several other challenges:

- (a) reliance on applicants to determine what information is necessary for review;
- (b) variance in the types of businesses seeking exemptions;
- (c) no formal input from local municipalities; and
- (d) no clear approach upon which to consistently base decisions.

The Region has an opportunity to improve and enhance its decision making by adopting the best practices of other upper-tier municipalities

A comparative review of practices among Ontario's six upper-tier municipalities was conducted focusing on: submission deadlines, fees, advertising costs, responsible department, public meetings, staff reports, the role of council, processing time, the role of the local municipality and expiry of exemptions.

Table 1 illustrates the findings of this review. In the areas of submission deadline, Council's role and processing time, the Region's processes are similar to those of the majority of upper-tier municipalities. The differences appear when comparing the administrative activities related to an exemption application i.e. the collection of fees, responsible department, public meetings, staff reports and the role of the local municipality.

The comparative review has provided the Region with the opportunity to review and improve or revise its own processes and decision making practices. Any revisions to the exemption application process would need to ensure Council's concerns are adequately addressed to reflect the concerns of all stakeholders including the local municipality and its constituents, provide better information on the application and that applications are reviewed and exemptions are granted according to Council's position on retail businesses being open on holidays.

The Region received approximately 3 inquiries in 2011 about exemptions which resulted in 1 application that year, a volume that is similar to that of Peel Region. Peel Region's process, application and requirements are all posted online, which means there are few inquiries made directly to the staff and when applications are submitted they are complete and have an increased chance of being approved. Niagara Region receives a large volume of inquiries which are driven by businesses in close proximity to the falls and border crossings. Many businesses opt to open without an exemption and pay a fine in lieu of having to wait for a bylaw to be enacted. Waterloo, Halton and Durham have a demonstrably low volume of both inquiries and applicants making it easier to manager applications as they are submitted.

Table 1
Exemption Application Practices among Upper-Tier Municipalities

Municipality	York	Durham	Halton	Niagara	Peel	Waterloo
1. Submission Deadline	None	None	None	None	4 times per year	None
2. Average volume per year¹	1-2	0	1	2-4	1-2	0
3. Application Fee	0	\$1500.00 > 223m ² \$500.00 < 223m ²	\$1025.00	\$750.00 ²	\$3200.00 ³ Brampton & Mississauga \$2575.00 for Caledon	\$1000.00
4. Advertising Cost	Cost recovery	\$1000.00 deposit - balance is refunded after costs are paid	Included in fee	Included in fee	Included in fee	Included in fee
5. Responsible Department	Legal Services	Planning & Economic Development Department	Business Development Division	Regional Clerk & Solicitor	Planning Department & Development Planning Services Section	Licensing Office
6. Public Meeting Host	Regional Council	Planning & Economic Development Department	Standing Committee of Regional Council	Integrated Community Planning Committee	Regional Council	Licensing & Retail Committee
7. Review Staff Report	Regional Council	Planning & Economic Development Committee	Standing Committee of Regional Council	Integrated Community Planning Committee	Regional Council and other prescribed persons and agencies	Licensing Office
8. Council Role	Provide final decision	Provide final decision	Provide final decision	Provide final decision	Provide final decision	Provide final decision
9. Processing Time	90 days	90 days	90 days	90 days	120 days	90 days
10. Comment from Local Municipality	NO	NO	NO	YES	YES	Advises applicant to notify local municipality and seek its support
11. Exemption expiry	NO	NO	NO	NO	NO	NO

PROPOSED SOLUTIONS

¹ A 0 entry means there has been no application in the last 3 years.

² Where a municipal or business association application is made includes businesses larger than 223m² an additional \$100 is charged for each large business within a group application.

³ Fees are partially refundable if regional council does not proceed to a public meeting.

HOSTING THE PUBLIC MEETING

Staff recommend that public meetings required under the Act be conducted by the Planning and Economic Development Committee and that such meetings be scheduled twice per year

The Act requires a public meeting be held to consider the application. Currently the public meeting is held during a regularly scheduled Council meeting. Prior to this meeting there is no review of the application by a committee of Council. Council renders its decision based on a report from the Regional Solicitor's office which presents the application and outlines the criteria to be applied.

Council may delegate the responsibility for holding the public meeting to a committee. Several municipalities have chosen to do this and have tasked the committee with the process and review of the applications.

As illustrated in Table 1, Planning and Economic Development or a similar committee is delegated this task, but the final decision on an exemption application remains with Council.

Staff recommend that Council delegate to the Planning and Economic Development Committee the responsibility to review the exemption applications, provide oversight for the process, conduct the public meeting and make a recommendation on the application for Council's consideration

The review of current practices suggests that both the applicant and Council could benefit from more predictability in the application and hearing process. Table 2 below provides an example of an inquiry made on January 10, 2012, by a retailer seeking an exemption for Good Friday (April 6, 2012). The timing is based upon the process that is currently in place and illustrates the minimum length of time that is required for the process to take place.

Most businesses make inquiries about exemptions in the weeks leading up to a holiday and upon learning about the processing time are frustrated by the length of the process. The timing is the result of the requirements of the Act for notice, a public meeting and the appeal period, but applicants are unaware of the legislative requirements and assume that they can obtain an exemption within a matter of weeks.

Table 2
Processing Time for Application and Bylaw Enactment

Date	Action	Explanation
Monday January 16, 2012	Application is received on and reviewed in that week	Review and contact applicant with any questions regarding application and the cost of the advertising
Monday January 23, 2012	Advertising is ordered in the local newspaper to appear in the Sunday edition of the local paper.	Newspapers need at least 4 – 6 days for preparation. The Region bills the applicant.
Sunday January 29, 2012	The advertisement appears in the paper and serves as 30 days notice to the public	Legislative requirement in accordance with the <i>Retail Business Holidays Act</i> that public be notified at least 30 days prior to a public meeting being held. (<i>RBHA, R.S.O 1990, Ch. R. 30 s. 4(6)</i>)
Monday February 27, 2012	Date from which a public meeting may be held	This is the 30 th day after the notice upon which a public meeting can be held
Thursday March 22, 2012	Public meeting is held during Regional Council Regional Council may or may not enact a bylaw	York Region's process is for the public meeting to be held during the next regional council date.
Sunday April 22, 2012	If a by-law is enacted, the applicant may open on a holiday on or after this date.	Legislative requirement in accordance with the <i>Retail Business Holidays Act</i> . By-laws come into force on the 31 st day after it is passed by Regional Council. (<i>RBHA, R.S.O 1990, Ch. R. 30 s. 4(8)</i>)

As noted in Table 1, Peel Region has addressed this concern by setting submission deadlines and applicants are advised to time their application appropriately, as the process takes 120 days. To ensure there is predictability in the Region's process and practices when exemption applications are submitted for consideration, it is further recommended that submissions be received only twice per year on set dates in April and September.

ENGAGING LOCAL MUNICIPALITIES

Obtaining comments from the local municipality may assist Regional Council with its decision making

Local Municipalities have no formal role in the review process under the Act. A number of upper-tier municipalities circulate a copy of the application or a report for comment to the local municipality. Obtaining input from the local municipality not only provides the upper tier municipality with a local context to the application that is separate from that of the applicant business, but also provides the local municipality with notice of the application by a local business. Despite the lack of a formal process for local comment, many businesses are already taking this step and some municipalities may choose to forward comment on the matter to the Region, but this practice is neither formal nor consistent.

Although there is no requirement to do so under the Act, staff believe there is value in receiving comment from the local municipality to aid council's decision making on an application. It is recommended that the Region work with local municipalities to develop an application process that will allow for input from local municipalities.

ESTABLISHING ADMINISTRATIVE FEES

Staff recommend establishing an administrative fee of \$1000 plus advertising costs, for the processing and review of exemption applications

The Region is currently the only upper-tier municipality that does not charge an administration fee for applications, although advertising costs are associated with the application, these are paid by the applicant. Other municipalities impose fees to account for the administrative resources required to process applications. These fees range from \$750 in Niagara Region to \$3200.00 in Peel Region and may include the costs of advertising the public meeting, legal review, printing and mailings.

The Region currently charges the cost of advertising the public meeting directly to the applicant and should continue to do so as advertising rates between the publications available throughout the Region range from \$500.00 to \$2000.00.

Staff recommend a fee of \$1000.00 plus advertising costs be approved for the processing and administration of applications and advertising costs continue to be charged directly to applicants.

INCREASING THE INFORMATION REQUIREMENTS

Staff recommend applicants be required to provide more information which will further assist Regional Council's decision making process

The Regulation prescribes information that must be included in an application for exemption. This includes:

- a) a description of the area;
- b) the justification in relation to the seasonal nature, if any, of the tourist attraction for the time period sought in the exemption; and
- c) information establishing that the tourism criteria are met.

Currently the Region's application requires only the minimal amount of information as prescribed in the Regulation. As a result, when considering applications Council currently relies on whatever information the applicant has provided, and all such information is provided from the applicant's perspective. As a result, there has been a variation in the content of the applications presented to Council.

The Act does not preclude Council from requiring additional information as part of the application process. Other upper-tier municipalities require more detailed submissions. For example, Peel Region requires applicants to provide documentation prepared by a consultant or similar expert, supporting the application with comprehensive data and a map outlining the 2km requirement.

Staff recommend the application requirements be revised to require additional information that would aid the Planning and Economic Development Committee in making an informed recommendation to Council.

CHALLENGES STILL REMAIN

The exemptions granted in the past reflect a broad interpretation of the Act and Regional Council may wish to consider whether or not this interpretation reflects its policy position with respect to retail business holidays

Council may want to consider how broadly it wants to define a tourist attraction and how liberally to interpret the Act.

As illustrated in Attachment 1, the exemptions granted by Council cover a broad range of businesses and geographic areas. These exemptions reflect a broad interpretation of the Act, but may raise a number of questions, for example: (a) should a retail business located near a seasonal tourist attraction be allowed to open on holidays in the off-season? (b) should shopping malls be recognized as tourist attractions? and (c) how strictly should the 2 km radius be applied?

The proposed requirement for applicants to obtain comments from the local municipality together with the requirement for more detailed applications as outlined in this report should assist Council in addressing some of these issues. The issues relating to shopping malls may also be addressed by relying on other factors, as set out below.

SHOPPING MALLS

Shopping malls are no longer just a place to shop; they now provide recreational and cultural opportunities and act as gathering places for the community

Shopping malls do not fit within the strict definition of “tourist attraction” in the Act. A tourist attraction is defined as:

- (a) natural attractions or outdoor recreational attractions
- (b) historical attractions
- (c) cultural, multi-cultural or educational attractions

Despite the narrow definition in the Act, major shopping malls are now commonly regarded as “tourist attractions”. Several municipalities, including the Region, have approved shopping malls for exemption under the Act as if they were a tourist attraction. In some cases, such as Pacific Mall, exemptions have been granted on the basis that the mall includes a cultural or multi-cultural site. Council may look to examples of criteria set by provincial ministries and agencies that support cultural enterprises and activities (i.e. the eligibility criteria set by the Ontario Cultural Attractions Fund for cultural or heritage organizations; under the Ministry of Tourism, Culture and Sports programs a cultural business is one which creates, produces and distributes cultural and creative goods and services). Council may also wish to rely on tourism promotional material used to promote major malls as tourist attractions.

Decisions on retail business holiday exemptions are challenging, and there is no simple method to establishing a policy position

While the policy issues with respect to shopping malls may become less challenging as the practice of recognizing major malls as tourist attractions becomes more prevalent, Council may continue to be challenged with fundamental policy issues in its decision making process:

- (a) should retail businesses be encouraged to remain closed on holidays to maintain the concept of the common pause days; OR
- (b) should exemptions for retail business openings on holidays be more permissive to encourage tourism and commerce?

Unlike the City of Toronto, the Region and other upper tier municipalities do not have the legislative authority to develop criteria for exemptions beyond those prescribed in the Act. In addition, the cultural and ethnic diversity within the Region and the Greater Toronto Area creates the challenge that some statutory holidays, prescribed by senior levels of government, are no longer a true reflection of the observant holidays among residents.

THE CITY OF TORONTO CONSULTATION

The results of the City of Toronto’s current public consultation on retail business holidays may provide some information to assist Regional Council in establishing a policy framework for its decision making

Many municipalities are struggling with the issue of retail business holidays. The City of Toronto is currently conducting a 4-month long public consultation which includes input from businesses, labour groups, faith based organizations and its citizens on 2 general questions: (1) should businesses be allowed to open every day of the year at the owner’s discretion; and (2) Are there any holidays where businesses should remain closed? This is the largest consultation to be undertaken by the City of Toronto and the first to formally include faith based groups and the general public.

It is anticipated this consultation will provide a direction for Toronto's City Council to make its decisions on this matter. This consultation is expected to conclude in March 2012 and a report to Toronto's City Council will follow.

Council may wish to consider the results of this consultation and the impact that any policy change in the City of Toronto may have on retail businesses within the Region prior to setting its own policy framework for retail business holiday exemptions.

NEXT STEPS

Staff will monitor the City of Toronto consultation and report back to Council on the results and any policy directions that may be adopted by the City, as well as the potential impact, if any, on retail businesses in the Region. Council may then wish to direct staff to provide a further report on a proposed policy direction.

Link to Key Council-approved Plans

This report is consistent with the 2011 to 2015 Strategic Plan objective of continuously improving processes and practices.

5. FINANCIAL IMPLICATIONS

On average, the Region receives 1-2 applications for exemptions in a year. The recommended fees of \$1000 will support the processing and administration of applications. Applicants will continue to be required to pay the advertising costs, which range from \$500 to \$2,000.

6. LOCAL MUNICIPAL IMPACT

The process changes recommended in this report will give local municipalities the opportunity to provide input to Council with respect to retail business holidays. Such input will allow Council to formally consider the perspective of the local community.

7. CONCLUSION

The process improvements outlined in this report will streamline the exemption application process, establish very clear requirements and deadlines for applicants, and provide Committee and Council with additional information needed to make informed and consistent decisions on future exemption applications.

For more information on this report, please contact Joy Hulton, Regional Solicitor at Ext. 1418.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause is attached to this report.)

1108917-1007 February 28, 2012

RETAIL BUSINESS HOLIDAY ACT EXEMPTIONS

Retail Business Holidays Act provides for the following "holidays": New Year's Day, Family Day, Good Friday, Easter Sunday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day and any other day proclaimed by the Lieutenant Governor

Table showing Schedule A of By-law LI-8-95-76 being a By-law to permit retail business establishments to be open on holidays. Includes subsequent amendments.

By-law	Date Enacted	Municipality	Businesses	Location	Holidays	Hours
LI-8(a)-95-128 (additions to LI-8-95-76)	Nov. 23, 1995	Aurora	NONE	NONE		
LI-8(a)-95-128 (additions to LI-8-95-76)	Nov. 23, 1995	East Gwillimbury	Brice's Sports Centre Limited	20287 Woodbine Avenue, Queensville	All, except Christmas Day	11:00 a.m. to 5:00 p.m.
LI-8(a)-95-128 (additions to LI-8-95-76)	Nov. 23, 1995	East Gwillimbury	677957 Ontario Inc. c.o.b. as Vince's Country Market	19101 Leslie Street, Sharon	All, except Christmas Day and New Year's Day	9:00 a.m. to 7:00 p.m.
LI-8(c)-1999-133 (substitution)	Mar. 25, 1999	East Gwillimbury	Old McDonald's Furniture and Appliances (SUBSTITUTION)	19937 Woodbine Avenue, Queensville	All, except Christmas Day and New Year's Day	9:00 a.m. to 6:00 p.m.
LI-0008(h)-2004-013	Feb. 19, 2004	East Gwillimbury	Queensville Antique Mall	20091 Woodbine Avenue, Queensville	All, except Christmas Day and New Year's Day	10:00 a.m. to 6:00 p.m.
LI-8(a)-95-128 (additions to LI-8-95-76)	Nov. 23, 1995	Georgina	All	Within the geographic boundaries of the Town of Georgina	All, except Christmas Day and New Year's Day	9:00 a.m. to 6:00 p.m.

By-law	Date Enacted	Municipality	Businesses	Location	Holidays	Hours
		King	NONE	NONE		
LI-8(a)-95-128 (additions to LI-8-95-76)	Nov. 23, 1995	Markham	All	OLD TOWN OF MARKHAM CORE: An area of the Old Town of Markham generally bounded: on the south by the King's Highway No. 7; on the east by Washington Street and George Street to approximately 143 Main Street on the east side and 158 Main Street on the west side; and on the west by Water Street, Robinson Street and the Rouge River	All, except Christmas Day	9:00 a.m. to 6:00 p.m.
LI-8(a)-95-128 (additions to LI-8-95-76)	Nov. 23, 1995	Markham	All	UNIONVILLE CORE: in the former Police Village of Unionville in the Town of Markham on Main Street, Unionville from the CNR tracks to the bridge crossing the Rouge River tributary	All, except Christmas Day	9:00 a.m. to 6:00 p.m.
LI-0008(d)-2000-064 (addition to LI-8-95-76)	Aug. 31, 2000	Markham	Pacific Mall Heritage Town	4300 Steeles Avenue East, south half of the 2 nd floor from Units A1-201, W2, W1, A1-222M to Units V2, F-7, F-8 and V-1, inclusive, Town of Markham	All	11:00 a.m. to 11:00 p.m.
LI-0008(e)-2000-107 (addition to LI-8-95-76)	Oct. 26, 2000	Markham	Market Village Markham Inc.	4350 Steeles Avenue East, Town of Markham	All	8:00 a.m. to 12:00 midnight
LI-0008(f)-2001-003 (addition to LI-8-95-76)	Jan. 18, 2001	Markham	York Region Condominium Corporation 890, c.o.b. Pacific Mall	4300 Steeles Avenue East, Town of Markham	All	8:00 a.m. to 12:00 midnight

By-law	Date Enacted	Municipality	Businesses	Location	Holidays	Hours
LI-8(b)-96-1 (addition to LI-8-95-76)	Jan. 11, 1996	Newmarket	All	NEWMARKET DOWNTOWN, within the following boundaries: North: south limit of Davis Drive; East: east limit of Prospect St. and Bayview Ave; South: south limit of College St. and Cane Parkway; West: west limit of William St., Church St. and Niagara St.	All, except Christmas Day, New Year's Day and Good Friday	8:00 a.m. to 10:00 p.m.
2011-20	May 19, 2011	Richmond Hill	Oak Ridges Food Market	13144 Yonge Street, Town of Richmond Hill	Good Friday, Victoria Day, Canada Day, Labour Day	8:30 a.m. to 6:00 p.m.
LI-8(a)-95-128 (additions to LI-8-95-76)	Nov. 23, 1995	Vaughan	All	KLEINBURG CORE, within the following boundaries: East side of Islington Ave. from 10365 Islington Ave. to 10565 Islington Ave.; West side of Islington Ave. from 10406 Islington Ave. to 10576 Islington Ave.; South and North sides of Nashville Road from Islington Ave. to Highway 27	All, except Christmas Day	8:00 a.m. to 10:00 p.m.
LI-0008(i)-2004-086 2008-64 2009-57 2010-17	Nov. 18, 2004 Oct. 23, 2008 Dec. 16, 2009 Mar. 25, 2010	Vaughan	Vaughan Mills Mall Campus	VAUGHAN MILLS MALL CAMPUS, including Vaughan Mills Mall and the Outparcels located within the following boundaries: Rutherford Road to the north, Jane Street to the east, Bass Pro Mills Drive to the south and Highway 400 to the west and more particularly shown on the attached Appendix "A"	All, except Christmas Day Good Friday and Easter Sunday	8 a.m. to 10 p.m.
LI-8-95-76	May 30, 1995	Whitchurch-Stouffville	All	Within the geographic boundaries of the Town of Whitchurch-Stouffville	July 1 in each year	8:00 a.m. to 10:00 p.m.

DK/ Last updated May 24, 2011