

Staff Report

Report To: Economic Development & Tourism Advisory Committee
Report From: Pam Coulter, Director of Community Services
Meeting Date: December 6, 2017
Report Code: CS-17-172
Subject: The *Retail Business Holidays Act* - Draft Guideline and Application

Recommendations:

That in consideration of Staff Report CS-17-172 respecting the Retail Business Holidays Act and draft guideline and application, the Economic Development & Tourism Advisory Committee recommend Council:

1. Receive the guideline and form and recommend that as a next step the material be forwarded to the City solicitor for review; and
2. Pending the results of the legal review the guideline and application be adopted by the City and that staff would undertake the next steps as identified in Staff Report CS-17-172.

Strategic Initiative:

Economy: Retain and grow existing local businesses and business opportunities.

Background:

The Chair of the Economic Development & Tourism Advisory Committee brought forward an idea to explore a by-law under the *Retail Business Holidays Act* to permit certain businesses to be open on Statutory Holidays; however, at this time, the City has not received a formal request from a business, group of businesses or an association.

At the meeting on September 15, 2017, a report was provided to provide background information that would assist in an informed discussion and consideration of this issue.

Committee resolved:

ED-170915-002

That in consideration of Staff Report CS-17-148 respecting the Retail Business Holidays Act, the Economic Development and Tourism Advisory Committee receive the report and direct staff to:

- 1. Develop an application form and criteria that will be used by businesses to apply for statutory holiday exemption under the Retail Business Holidays Act, and*
- 2. Present the application form and criteria to the Economic Development and Tourism Advisory Committee for review.*

It was noted in the September report that because this is not an area of expertise for staff, any application form, etc. should have legal review before being adopted by the City.

Analysis:

Committee is reminded of the following:

- The *Retail Business Holidays Act* is provincial legislation that prohibits the opening of retail businesses on statutory holidays. The legislation is administered by the Ministry of Consumer Services.
- 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 (as defined by the Act):
 - 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
- 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.

A draft Guideline and Application form is attached to the report.

If Council supports moving this forward in 2018, next steps would include:

- Legal review and review by the City's Clerks Division;
- Branding the initiative;
- Creating a web page which would include a fillable form; and
- Hosting a public information session with the DIA and Chamber members to discuss the opportunity and how a business, group of businesses or an association would undertake an application.

As was noted in the previous report, the material that is to be provided is very specific in the Act and the Regulations. The onus is put on the applicant to provide this information.

A sample complete application and supporting information has been obtained from Halton and is attached for information.

Financial/Budget Implications:

Application fees are intended to offset costs incurred in such a process.

If the initiative proceeds, a fee reflecting the cost to process would be required to be set through an amendment to the City's Fees & Charges By-law. Other municipalities have a fee of approximately \$1000.

If the initiative proceeds, there is a possibility of an appeal and the City could incur costs associated with defending the by-law at the Ontario Municipal Board.

Retail Business Holidays Act Exemption Process & Application



City of Owen Sound
808 2nd Avenue East
Owen Sound, ON N4K 2H4
Tel: 519-376-1440
Website: www.owensound.ca

Application Process:

1. A completed application form must be submitted to the City of Owen Sound Clerks Division along with the \$xxxxx application fee, payable to the City of Owen Sound.
2. Provided the application is complete, the City will publish notice of a public meeting in the newspaper having general circulation in the municipality at least 30 days in advance of the date of the public meeting.
3. A public meeting will be held as part of a Council meeting. The meeting will provide any person in attendance the opportunity to make representation in respect of the application. Any written submissions received in advance of the public meeting would be provided to Council.
4. Council may consider two or more applications at the same public meeting.
5. City staff will prepare a staff report to accompany the application at the time of the public meeting to provide necessary background and context for the subject application.
6. In considering the request for an exemption under Section 4.1 of the *Retail Business Holidays Act*, Council will consider the following as required by the Act:
 - a. The principle that holidays should be maintained as common pause days;
 - b. That a by-law may be passed only if there is enough information to conclude that there is compliance with the tourism criteria set out in the Regulations; and
 - c. That Council is not required to pass a by-law even if the tourism criteria are met.

7. Tourism Criteria
 - a. A retail business may be exempted if:
 - i. It is located within 2 km of a tourist attraction;
 - ii. It is directly associated with the tourist attraction or relies on tourists visiting the attraction for business on a holiday.
 - b. An exemption may be granted for a retail area if:
 - i. All of the retail business establishments in the area are within 2 km of the tourist attraction;
 - ii. The area does not exceed that necessary to encompass all of the retail business establishments for which an exemption is sought; and
 - iii. At least 25 percent of the retail business establishments in the area are directly associated with the tourism attraction or rely on tourists visiting the attraction for business on a holiday.
8. If Council grants an exemption, the City Clerk will prepare the necessary by-law to give effect to this exemption.
9. Council may approve a by-law that limits the statutory holiday(s) to which the exemption applies and restricts the opening to certain times of year or certain times of day.
10. If any person who objects to a by-law passed by Council under Section 4 of the *Retail Business Holidays Act* 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. The notice of appeal must be filed by the Board not later than 30 days after the day the by-law is passed by Council.
11. If there are no appeals to the Board, the by-law will come into force on the thirty first day after it is passed by Council.
12. If one or more appeals to the Board have been filed within the 30 day appeal period, the by-law shall not come into force until:
 - a. The day all appeals have been dismissed under Section 4.3 subsection (3) or clause 4 (a) of the *Retail Business Holidays Act*; or
 - b. The day the by-law is amended in the manner specified by the Board under section 4.3, subsection (4) (b) of the *Retail Business Holidays Act*.

Application for Exemption:

Part 1: Applicant information (include all applicants)

Name:	
Mailing Address:	
Postal Code:	
Phone:	
Email:	

Name:	
Mailing Address:	
Postal Code:	
Phone:	
Email:	

Name:	
Mailing Address:	
Postal Code:	
Phone:	
Email:	

If the Applicant is an Association:

Name of Association:	
Contact Person:	
Agent (if applicable):	
Mailing Address:	
Postal Code:	
Phone:	
Email:	

Is the Association Incorporated Yes No
(Please attach a copy of the Articles of Incorporation)

Please list all directors and officers of the corporation.

Please provide a brief description of the Association mandate, the area served and the types of business it represents.

Please provide a map or other sufficient information where the applicant is an association that covers an area and sufficient information to identify the area to which a by-law is proposed to apply.

Part 2: General Requirements

Describe how the exemption sought under the *Retail Business Holidays Act* will, if granted, assist in the maintenance or development of tourism and briefly identify the parts of any study or other material submitted with this application that justify this statement (attach additional sheets if necessary).

Attraction	Time period during which tourists visit	Justification for the time period sought in the exemption

If the attraction(s) is not seasonal in nature, please provide evidence to support the conclusion and a justification for the time period sought in the exemption:

Part 4: Location, Type, Area and Number of Employees of each Business for which an Exemption is Sought:

Business Name and Address	Type of Business	Area in square feet dedicated to serving the public	Normal number of employees engaged in serving the public at one time

If the application is for an area, please list any businesses that are not included and the reason they are not included:

Business Name and Address	Type of Business	Rationale for not including this business in the application for exemption for an area

Part 5: Tourism Criteria

Summarize and identify the part of any study or other material submitted with this application which provides evidence or justifies the information or evidence justifying the conclusion that:

If the application is for an individual business, the business:

Is directly associated with the tourist attraction: or

Relies on tourists visiting the attraction for business on a holiday:

If the application is for multiple businesses within an area, that at least 25 percent of the retail business in the area for which the exemption is sought:

Are directly associated with the tourism attraction: or

Rely on tourists visiting the attraction for business on a holiday:

If the application is for a group of business, list all the businesses that meet the 25 percent criteria:

Part 6: Exemption Period

For each business, indicate the time period for which the exemption is sought (be specific):

Business	Period during the year to which the exemption is sought

Indicate the holidays to which an exemption is sought during the time period specified (check all that apply):

- New Year’s Day
- Family Day (third Monday in February)
- Good Friday
- Easter Sunday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day

I, _____, hereby confirm that the statements contained in this application and in any attached material in support of the application are correct.

Date

Signature of Applicant