

The Corporation of the City of Owen Sound

By-law No. 2019-132

A By-law respecting retail business holiday closures in the City of Owen Sound

WHEREAS section 148 of the *Municipal Act, 2001*, S.O. 2001 c.25 authorizes the Council of The Corporation of the City of Owen Sound (the "City") to pass a by-law requiring that retail business establishments be closed to the public on a holiday; and

WHEREAS pursuant to section 1.2 of the *Retail Business Holidays Act*, R.S.O. 1990, c. R.30 (the "RBHA"), the RBHA does not apply to a municipality where the municipality has passed a by-law providing that the RBHA does not apply to it; and

WHEREAS on July 15, 2019, City Council passed Resolution No. R-190715-018 directing staff to bring forward a by-law to exempt local business from the RBHA on Victoria Day, Canada Day, Labour Day and Family Day, in consideration of staff report CS-19-081 presented to the Economic Development & Tourism Advisory Committee at its meeting held June 21, 2019;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF OWEN SOUND HEREBY ENACTS AS FOLLOWS:

Short Title

1. This by-law shall be known as the "Holiday Shopping By-law".

Interpretation

2. In this by-law:

"City" means the City of Owen Sound;

"holiday" means:

- a. New Year's Day;
- b. Family Day;
- c. Good Friday;
- d. Easter Sunday;
- e. Victoria Day;
- f. Canada Day;
- g. Labour Day;
- h. Thanksgiving Day;
- i. Christmas Day; and
- j. Any other public holiday declared by proclamation of the Lieutenant Governor of the Province of Ontario to be a holiday for the purposes of the RBHA;

"officer" means a police officer of Owen Sound or a by-law enforcement officer appointed by the City of Owen Sound;

"RBHA" means the *Retail Business Holidays Act*, R.S.O. 1990, c. R.30 as amended;

"retail business" means the selling or offering for sale of goods or services by retail; and

"retail business establishment" means the premises where a retail business is carried on.

The RBHA Does Not Apply to the City of Owen Sound

3. The Retail Business Holidays Act does not apply to a retail business establishment in the City as of the effective date of this by-law.
4. Retail business establishments in the City may remain open on a holiday unless prohibited to do so under this by-law.

Prohibition

5. No person carrying on a retail business in a retail business establishment shall:
 - a. Sell or offer for sale any goods or services therein by retail; or
 - b. Admit members of the public thereto on: New Year's Day, Good Friday, Easter Sunday, Thanksgiving Day or Christmas Day.
6. No person employed by or acting on behalf of a person carrying on a retail business in a retail business establishment shall engage in any prohibited activity listed in section 5.

Exemption

Small Stores

7. Sections 5 and 6 of this by-law do not apply in respect of the carrying on of a retail business where:
 - a. The only goods available for sale by retail in the retail business establishment are:
 - i. Foodstuffs;
 - ii. Tobacco or articles required for the use of tobacco;
 - iii. Antiques; or
 - iv. Handicrafts;
 - v. Or any combination of them, or where the principal business is the sale of goods referred to in subclauses (i) to (iv), or any of them, by retail and no other goods are available for sale except as sundries; and
 - b. The number of persons engaged in the service of the public in the establishment does not at any time exceed three; and
 - c. The total area used for serving the public or for selling or displaying to the public in the establishment is less than 2,400 square feet.

Necessary Services

8. Sections 5 and 6 of this by-law do not apply in respect of goods or services sold or offered for sale by retail in the form of or in connection with:
 - a. Prepared meals;
 - b. Living accommodation;
 - c. Laundromats and other coin operated services;
 - d. Rental of vehicles or boats; or
 - e. Servicing and repair of vehicles or boats.

Pharmacies

9. Sections 5 and 6 of this by-law do not apply in respect of the carrying on of a retail business in a pharmacy accredited under the *Drug and Pharmacies Regulation Act*, where the principal business of the pharmacy is the sale of goods of a pharmaceutical or therapeutic nature or for hygienic or cosmetic purposes and no other goods are available except as sundries.

Special Services

10. Sections 5 and 6 of this by-law do not apply in respect of the carrying on of a retail business in a retail business establishment where the only goods available for sale by retail in the establishment are:
 - a. Gasoline and motor oil and, in conjunction therewith, other goods for consumption in the operation of a motor vehicle;
 - b. Nursery stock or flowers, and in conjunction therewith, accessory gardening supplies; or
 - c. Books, newspapers or periodicals provided that no other goods are available for sale except as sundries, the number of persons engaged in the service of the public in the establishment does not at any time exceed three and the total area used for serving the public or for selling or displaying to the public in the establishment is less than 2,400 square feet.

Liquor

11. Sections 5 and 6 of this by-law do not apply in respect of the sale or offering for sale by retail of liquor under the authority of a licence or permit issued under the *Liquor Licence Act*.

Art Galleries

12. Sections 5 and 6 of this by-law do not apply in respect of the carrying on of the retail business of an art gallery where the number of persons engaged in the service of the public in the establishment does not at any time exceed three and the total area used for serving the public or for selling or displaying to the public in the establishment is less than 2,400 square feet.

Tourist Establishments

13. Sections 5 and 6 of this by-law do not apply in respect of the sale or offering for sale of retail goods or services from tourist establishments or tourist attractions.
14. For the purposes of section 13, "tourist establishment" means any premise operated to provide sleeping accommodation for the travelling public or sleeping accommodation for the use of the public engaging in recreational activities, and includes the services and facilities in connection with which sleeping accommodation is provided, but does not include:
 - a. A camp operated by a charitable corporation approved under the *Charitable Institutions Act*;
 - b. A summer camp within the meaning of the regulations made under the *Health Protection and Promotion Act*; or
 - c. A club owned by its members and operated without profit or gain.
15. For the purposes of section 13, "tourist attraction" is limited to:
 - a. Natural attractions or outdoor recreational attractions;
 - b. Historical attractions; and
 - c. Cultural, multicultural or educational attractions.

Education, Recreation, Amusement

16. Sections 5 and 6 of this by-law do not apply in respect of the admission of the public to premises for educational, recreational or amusement purposes or in respect of the sale or offering for sale of goods or services incidental thereto.

Application of the *Employment Standards Act, 2000*

17. Despite any provision of this by-law, Part XVII of the *Employment Standards Act, 2000*, S.O. 2000, c.41 applies to all retail business establishments in the City.

Offences

18. Every person who contravenes sections 5 or 6 of this by-law is guilty of an offence and on conviction is liable to a fine of not more than the greater of:
- a. \$50,000; or
 - b. the gross sales in the retail business establishment on the date on which the contravention occurred.
19. Every person who coerces, requires or counsels another person to contravene section 5 or 6 of this by-law is guilty of an offence and on conviction is liable to a fine of not more than the greater of:
- a. \$50,000; or
 - b. the gross sales in the retail business establishment on the date on which the contravention occurred.
20. The minimum penalty for an offence under this by-law is \$500 for a first offence, \$2,000 for a second offence and \$5,000 for a third or subsequent offence.
21. In determining the amount of the penalty, the court shall take into consideration any evidence respecting the gross sales in the retail business establishment on the date on which the contravention occurred.
22. Where a sign or advertisement gives the hours of operation of a retail business establishment, it shall be presumed that the retail business establishment was open during those hours, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.
23. For the purpose of enforcing this by-law, the total area of a retail business establishment used for servicing the public or for selling or displaying to the public on those days listed at subsection 5(b) shall be deemed to be the greater of:
- a. the total area actually used on the holiday listed in subsection 5(b) for serving the public or for selling or displaying to the public; and
 - b. the total area normally used for serving the public or for selling or displaying to the public on days other than those listed in subsection 5(b).

Inspections

24. An officer, for the purpose of determining compliance with this by-law, may enter a retail business establishment to carry out an inspection and may:
- a. require the production for inspection of documents or things relevant to the inspection;
 - b. inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts; and
 - c. take photographs necessary for the purpose of the inspection.

Enactment

25. This by-law shall come into full force and effect on the date it is passed, at which time all by-laws, policies and resolutions that are inconsistent with the provisions of this by-law are hereby amended or repealed insofar as it is necessary to give effect to the provisions of this by-law.

FINALLY PASSED AND ENACTED this 12th day of August, 2019.

Signature on file

Mayor Ian C. Boddy

Signature on file

Briana M. Bloomfield, City Clerk