



**City of Kingston  
Report to Council  
Report Number 16-056**

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**To:** Mayor and Members of Council  
**From:** Cynthia Beach, Commissioner, Corporate & Strategic Initiatives  
**Resource Staff:** John Bolognone, City Clerk  
**Date of Meeting:** January 26, 2016  
**Subject:** Application to declare the Downtown Kingston Business Improvement Area a tourism area for the purposes of exempting businesses in the BIA from restrictions of the Retail Business Holidays Act on a year round basis

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**Executive Summary:**

An application has been received from the Board of Management of the Downtown Kingston! Business Improvement Area (BIA) requesting City Council to consider passing a by-law to declare the BIA a “Tourist Area”, for the purpose of exempting businesses in the BIA from restrictions of the Retail Business Holidays Act, on a year round basis. If granted, this exemption would permit retail businesses in the downtown BIA to operate on New Year’s Day, Good Friday, Easter Sunday, and Christmas Day in addition to Victoria Day, Canada Day, Labour Day and Thanksgiving Day which are already exempted from the restrictions of the Act. Staff note that Family Day is not included on the list of “holidays” as defined in the Act. The purpose of this report is to provide Council with information with respect to process and timeline to be followed in dealing with the aforementioned request.

**Recommendation:**

**That** the application from the Board of Management of the Downtown Kingston! Business Improvement Area (BIA) be received to consider passing a by-law to declare the downtown BIA a “Tourist Area”, as defined by the Retail Business Holidays Act (the Act), for the purposes of exempting business in the Business Improvement Area from restrictions of the Act on a year round basis; and

**That** a special meeting of Council in respect of the proposed by-law, in a public meeting format, be held on March 9, 2016, commencing at 6pm, in the Council Chamber, City Hall, 216 Ontario Street or at such other appropriate place as the Clerk may determine; and

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**That** staff be directed to provide notice of the required public meeting in accordance with Retail Business Holidays Act.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY COMMISSIONER  
**Cynthia Beach, Commissioner,  
Corporate & Strategic Initiatives**

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER  
**Gerard Hunt, Chief Administrative Officer**

**Consultation with the following Members of the Corporate Management Team:**

Lanie Hurdle, Community Services	Not required
Denis Leger, Transportation, Facilities & Emergency Services	Not required
Jim Keech, President and CEO, Utilities Kingston	Not required
Desiree Kennedy, Chief Financial Officer & City Treasurer	Not required

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**Options/Discussion:**

Under the Retail Business Holidays Act (the Act), municipal councils in Ontario may pass by-laws to permit retail business establishments to be open on public holidays for the maintenance or development of tourism. The Act indicates that a municipal Council in the passing of a by-law under section 4(1) shall take into account the principle that holidays should be maintained as common pause days. The Act also expressly provides that a Council is not required to pass the by-law even if the tourism criteria are met.

In 1998, Kingston City Council enacted and passed By-law 98-127 which permits retail businesses operating in the entire municipality of Kingston to be open on public holidays from the 1<sup>st</sup> day of May to the 15<sup>th</sup> day of October, inclusive, in each calendar year. The holidays included in the current exemption are: Victoria Day, Canada Day, Labour Day, and Thanksgiving Day. The Board of Management of the Downtown Kingston! BIA has requested that Council consider passing a by-law to declare the downtown BIA a "Tourist Area", as defined by the Act, for the purpose of exempting retail businesses in the downtown BIA from the restrictions of the Act on a year round basis. The proposed changes, if approved, would permit retail businesses operating in the downtown BIA, to be open on New Year's Day, Good Friday, Easter Sunday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, and Christmas Day. Retail openings on these days would be not be permitted elsewhere in Kingston if Council were to pass the by-law as requested.

The scope of the bylaw making powers is described in the Act. A by-law passed under section 4(1) may:

- (a) apply to one or more retail business establishments or to one or more classes of retail business establishments;
- (b) apply to all or any part or parts of the municipality in case of a by-law or to all or any part of a territory without municipal organization in the case of a regulation;
- (c) limit the opening of retail business establishments on holidays to specific times or to a certain number of hours;
- (d) permit the opening of retail business establishments on some holidays and not on others;
- (e) restrict the opening of retail business establishments on holidays to specific periods of the year; and
- (f) classify retail business establishments.

Ontario Regulation 711/91 passed under the Act gives more detail related to the tourism criteria that must be met before a municipality may pass a by-law. Specifically, section 2(2) indicates that an exemption granted on an area basis may only be given if,

- (a) all the retail business establishments in the area are within two kilometers 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

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- (c) at least 25 per cent 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.

Section 2(3) states that a tourist attraction is limited to natural attractions or outdoor recreational attractions, historical attractions; and cultural, multi-cultural or educational attractions. Section 6 (1) provides that an application for an exemption under subsection 4(3) of the Act shall contain the following:

1. a description of the area or the retail business establishment for which the exemption is sought;
2. the justification, in relation to the seasonal nature, if any, of the tourist attraction, for the time period sought in the exemption.; and
3. information establishing that the tourism criteria set out in this Regulation are met.

In their application, attached to this report as Exhibit A, the Board of Management of the Downtown Kingston! BIA, provides their justification for meeting these requirements.

The Act requires that prior to passing a by-law Council shall hold a public meeting in respect of the by-law and publish a notice of the meeting in a newspaper which has general circulation in the municipality at least thirty days before the meeting is to be held. It should be noted that there are impending amendments to the Act related to these notice requirements. Staff will monitor the proclamation of the amendments to ensure compliance. At the date of the drafting of this report the process set out complies with the Act.

The Act also requires that Council shall permit any person who attends the meeting the opportunity to make presentations in respect of the proposed by-law. If, after the public meeting, Council decides to pass the by-law it does not come into force until thirty-one days after it has been passed by Council. Anyone who objects the by-law may appeal this decision directly to the Ontario Municipal Board (OMB). If appealed, the by-law shall not come into force until all the appeals have been dismissed, or the day the by-law specified by the OMB.

**The proposed next steps in processing this application, subject to Council direction, include:**

- February 2, 2016 – Notice of a public meeting to be posted in the newspaper.
- March 9, 2016 – Public meeting is held by Council.
- April 5, 2016 – Results of the public meeting to be reported back to Council for their decision regarding the proposed by-law. Note: Council is not required to pass the by-law even if the tourism criteria are met.
- April 12, 2016 – If a by-law is passed, notice will be provided.
- May 6, 2016 – If the By-law is passed, and no appeals are made to the Ontario Municipal Board (OMB), the by-law will come into force.

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**Existing Policy/By-Law:**

By-law 98-127, A By-Law to Permit Retail Businesses to Operate on Statutory Holidays During the Period Between May 1 to October 15, Inclusive in the Calendar Year for the Maintenance of Tourism in the City of Kingston

**Notice Provisions:**

Notice of the public meeting will be provided in accordance with the Retail Business Holidays Act, R.S.O. 1990, Chapter R.30. If a by-law is passed by Council, Notice of Passing will be provided in accordance with the provisions of the Retail Business Holidays Act.

**Accessibility Considerations:**

This report is AODA compliant and may be available in alternate formats upon request.

**Financial Considerations:**

Not applicable.

**Contacts:**

John Bolognone, City Clerk, 613-546-4291 extension 1247

Blair Johnson, Corporate Records and Information Officer, 613-546-4291 extension 1316

**Other City of Kingston Staff Consulted:**

Alan McLeod, Senior Legal Counsel

**Exhibits Attached:**

Exhibit A – Application from the Board of Management of the Downtown Kingston! Business Improvement Area

Exhibit B – By-law 98-127, A By-Law to Permit Retail Businesses to Operate on Statutory Holidays During the Period Between May 1 to October 15, Inclusive in the Calendar Year for the Maintenance of Tourism in the City of Kingston

Exhibit C – Retail Business Holidays Act, R.S.O. 1990, Chapter R.30

Exhibit D – Ontario Regulation 711/91, Tourism Criteria, of the Retail Business Holidays Act, R.S.O. 1990, Chapter R.30

**To:** Application to City of Kingston  
**From:** The Board of Management of the Downtown Kingston! Business Improvement Area  
**Date:** December 14, 2015  
**Re:** Passing a By-Law declaring the DK! BIA a Tourism Area for purposes of exempting businesses in the BIA from the restrictions of the Retail Business Holidays Act on a year round basis

The Board Motion:

December 9, 2015

Moved by: Justine Scala  
Seconded by: Cyndy Gibson

That the Board of Management of the Downtown Kingston! BIA ask City Council to consider passing a by-law declaring the BIA a “Tourist Area” for purposes of exempting businesses in the BIA from restrictions of the Retail Businesses Holidays Act on a year round basis.

CARRIED

Currently there are 9 holidays in Ontario – New Years Day, Family Day, Good Friday, Easter Sunday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day and Christmas Day. The current City of Kingston by-law allows retail stores (city wide) to be open on holidays between May 1 to Oct 15.

**The Act:**

The RBHA prevents a small sub set of businesses from opening unless they seek a **Tourism exemption:**

4 (1) states “Despite section 2, the council of a municipality may, by by-law, permit retail business establishments in the municipality to be open on holidays for the maintenance or development of tourism. 1991, c.43, s 1 (1).”

4 (3) states “A by-law may be passed under subsection (1) only if there is compliance with the tourism criteria set out in the regulations made under this section 1991, c.43, s 1 (1).”

**The Regulation (ont.reg 711/91)**

- 2 (2) States “An exemption granted on an area basis may only be given if,
- (a) All of the retail business establishments in the area are within two kilometres 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 per cent 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. O. Reg 711/91, s.2(2)”

- 2 (3) States “For the purpose of this section a tourist attraction is limited to,
- (a) Natural attractions or outdoor recreational attractions;
  - (b) Historical attractions; and
  - (c) Cultural, multi-cultural or educational attractions. O. Reg. 711/91, s 2(3).”

6 (1) States “ An application for an exemption under subsection 4(3) of the Act shall contain the following:

1. A description of the area or the retail business establishment for which the exemption is sought.
2. The justification, in relation to the seasonal nature, if any, of the tourist attraction, for the time period sought in the exemption.
3. Information establishing that the tourism criteria set out in this Regulation are met. O. Reg 711/91, s.6(1).”

#### A Description of the Area: Downtown Kingston!

Downtown Kingston! is one of the City of Kingston’s primary tourist attractions, if not the primary tourist attraction. All retailers rely on sales to visitors, and are part of the attraction.

#### **Natural Attractions:**

Many kilometres of waterfront, marinas, many parks, bike lanes, pedestrian friendly street treatments, trails, and the Springer Market Square Skating Rink are some of the “natural attractions” and “outdoor recreational attractions” within the BIA boundary, or within 2 kilometres of the BIA boundary.

#### **Historical Attractions:**

City Hall, Springer Market Square, The Prince George Hotel, Murney Towers, St. Georges Cathedral, St. Andrew’s Church, The Kingston Public Farmers Market, St. Paul’s, hundreds of other historic properties housing downtown shops and restaurants, and “Old Sydenham Heritage Conservation District” form our incredibly rich list of “historical attractions”. Fort Henry, Queen’s University, Marine Museum, Pump House Steam Museum and the Royal Military College are within 2 kilometres of the Downtown Kingston! BIA.

#### **Cultural Attractions:**

The Grand Theatre, Fort Henry, The Rogers K-Rock Centre, Springer Market Square (Public Market and Skating Rink) and the hundreds of events, concerts, sports events and festivals that they host attract thousands of visitors year round.  
Feb Fest, Kingston Buskers Rendezvous, Limestone City Blues Festival, and many more events, attract visitors on a year round basis.

Art galleries, crafts shops, artisanal breweries, restaurants featuring local food and nightclubs offering live performances are numerous within the BIA, and form a key component of the Tourism Area.

Businesses Already Allowed to be Open:

The RBHA does not apply to a wide range of businesses – Accommodations (hotels, motels, B&B’s, etc), Professional Services (Doctors, Dentists, Accountants, Lawyers etc.) Entertainment (Rogers K-Rock Centre, Grand Theatre, Screening Room etc.) and Restaurants.

And by way of exemptions in the Act, it does not apply to:

RBHA 3. (1) Exemptions: small stores

“(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.”

“Idem, pharmacies

(2) Section 2 does not apply in respect of the carrying on of a retail business on a holiday in a pharmacy accredited under the Drug and Pharmacies Regulation Act”

“Idem, special services

(3) Section 2 does not apply in respect of the carrying on of a retail business in a retail business establishment of a holiday where, on that day, 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; or
- (b) Nursery stock or flowers, and in conjunction therewith accessory gardening supplies; or
- (c) Fresh fruit or vegetables in respect of holidays falling between the 1<sup>st</sup> day of April and the 30<sup>th</sup> day of November of the same year; or
- (d) Books, newspapers or periodicals provided that no other goods are available for sale except as sundries”

“Idem, art galleries

(4) Section 2 does not apply in respect of the carrying on of the retail business of an art gallery on a holiday”

“Exemptions, liquor

(5) Section 2 does not apply in respect of the sale or offering for sale by retail of liquor”

“Exemption, tourist establishments

(5.1) Section 2 does not apply in respect of the sale or offering for sale of retail goods or services from tourist establishments”

“Exemptions, education, recreation, amusement

(6) Section 2 does 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.”

“Idem, necessary services

(7) Section 2 does not apply in respect of services sold in connection with the sale or offering for sale by retail of any goods permitted by this Act to be sold, and does 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) Rentals of vehicles or boats;
- (e) Servicing and repair of vehicles or boats”

(Some of the above exemptions include square footage or number of employees requirements.)

#### The Cities (or districts within them) Already Declared Tourism Areas and Exempt Year Round

Ontario municipalities that have captured this tourist marketing advantage include – Gananoque, Ottawa, Markham, Windsor, Oakville, Port Hope, and Prince Edward County.

In Toronto, the Distillery District, and Downtown Yonge BIA are exempt on a year round basis.

The full list of 29 municipalities (up to 2012) exempt year round is attached.

#### Employment Standards Act

The Ministry of Labour regulates and enforces the Employment Standards Act which governs most retail businesses. The act states that most employees have the right to refuse to work on a public holiday if they so choose. The act also regulates the rate of pay and/or substitute day off if they do work on a public holiday.

#### Discussion:

Holidays create travel. The largest tourist segment in Kingston is “Visiting Friends or Relatives” (VFR). These visits often occur on holidays.

Restaurants and coffee shops are often the venues chosen by family and friends to gather together. After they have enjoyed their meal together, they continue their conversation as they stroll the streets of downtown.

We often get calls from hotels who have been asked by guests, “Why aren’t the stores open?”

If any business that operates in an entertainment cluster like downtown Kingston can preserve or create a job because of the foot traffic that is generated by their location, they should not be prohibited from doing so.

The legislation seems outdated in today's multicultural society, and non-inclusive, and, for many, it seems irrational – why would a bookstore and a tobacco outlet be exempt, but not a fashion boutique or gift shop?

Competition on the retail market continues to increase. Consumers have the ability to shop online for goods on any public holiday from the comfort of their own home. Those that choose to venture out to traditional bricks and mortar shops have plenty of choice in New York State where retailers are able to operate whenever they choose.

### **Recommendation**

The “Tourist Area” exemption does not force any business to open on a holiday, or force any employee to work.

It gives the right to choose to open to service the visitor market created by a holiday.

The Board of Management of the Downtown Kingston! BIA asks council to consider passing a by-law declaring the DK! BIA a “Tourist Area” for purposes of exempting businesses in the BIA from the restrictions of the Retail Holidays Act on a year round basis.

### Attachments

- Retail Business Holidays Act
- Regulation (ont.reg 711/91)
- List of Municipalities exempt year round (2012)
- BIA Area Map plus 2km radius from Bagot and Princess

## Retail Business Holidays Act

R.S.O. 1990, CHAPTER R.30

**Consolidation Period:** From December 15, 2009 to the [e-Laws currency date](#).

Last amendment: 2009, c. 33, Sched. 24, s. 5.

### Definitions

1. (1) In this Act,

“holiday” means,

- (a) New Year’s Day,
- (b) Good Friday,
- (c) Victoria Day,
- (d) Canada Day,
- (e) Labour Day,
- (f) Thanksgiving Day,
- (g) Christmas Day,
- (h) Easter Sunday, and

(i) any other public holiday declared by proclamation of the Lieutenant Governor to be a holiday for the purposes of this Act; (“jour férié”)

“municipality” means a regional municipality and a local municipality, other than a local municipality within a regional municipality, but does not include the City of Toronto; (“municipalité”)

“retail business” means the selling or offering for sale of goods or services by retail; (“commerce de détail”)

“retail business establishment” means the premises where a retail business is carried on. (“établissement de commerce de détail”) R.S.O. 1990, c. R.30, s. 1 (1); 1993, c. 14, s. 1; 1993, c. 27, Sched.; 1996, c. 34, s. 1 (1); 2002, c. 17, Sched. F, Table; 2006, c. 11, Sched. B, s. 12 (1).

### Holidays designated for closing

(2) The Lieutenant Governor may by proclamation declare any day that is a public holiday other than a day named in clauses (a) to (h) of the definition of “holiday” in subsection (1) to be a holiday for the purposes of this Act. R.S.O. 1990, c. R.30, s. 1 (2); 1996, c. 34, s. 1 (2); 2006, c. 11, Sched. B, s. 12 (1).

### Non-application, City of Toronto

1.1 (1) This Act does not apply to the City of Toronto and it does not apply in respect of any by-law of the City or any retail business establishment located in the City. 2006, c. 11, Sched. B, s. 12 (2).

### Exception

(2) Despite subsection (1), Part XVII of the *Employment Standards Act, 2000* shall be applied as if this Act applies to the City and to retail business establishments located in the City. 2006, c. 11, Sched. B, s. 12 (2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 2006, chapter 32, Schedule D, subsection 15 (1) by adding the following section:**

### Non-application, municipalities

1.2 (1) This Act does not apply to a municipality and does not apply in respect of any by-law of the municipality or any retail business establishment located in the municipality if there is in effect a by-law passed by the municipality providing that this Act does not apply to it. 2006, c. 32, Sched. D, s. 15 (1).

### Condition for by-law to take effect

(2) A by-law under subsection (1) does not take effect until the municipality passes a by-law under section 148 of the *Municipal Act, 2001* requiring that one or more classes of retail business establishments be closed on a holiday. 2006, c. 32, Sched. D, s. 15 (1).

**By-law valid**

(3) Nothing in section 7 invalidates a by-law passed by a municipality under section 148 of the *Municipal Act, 2001* if the municipality has passed a by-law under subsection (1) providing that this Act does not apply. 2006, c. 32, Sched. D, s. 15 (1).

**Exception**

(4) Despite subsection (1), Part XVII of the *Employment Standards Act, 2000* shall be applied as if this Act applies to the municipality and to retail business establishments located in the municipality. 2006, c. 32, Sched. D, s. 15 (1).

**See: 2006, c. 32, Sched. D, ss. 15 (1), 18 (2).**

**Prohibition**

2. (1) 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 a holiday.

**Onus on employees, etc.**

(2) No person employed by or acting on behalf of a 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 a holiday. R.S.O. 1990, c. R.30, s. 2.

**Exemptions: small stores**

3. (1) Section 2 does not apply in respect of the carrying on of a retail business on a holiday where, on that day,

- (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,

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. R.S.O. 1990, c. R.30, s. 3 (1).

**Idem, pharmacies**

(2) Section 2 does not apply in respect of the carrying on of a retail business on a holiday in a pharmacy accredited under the *Drug and Pharmacies Regulation Act*, where, on that day,

- (a) the dispensing of drugs upon prescription is available to the public during business hours; and
- (b) 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 for sale except as sundries; and
- (c) the total area used for serving the public or for selling or displaying to the public in the establishment is less than 7,500 square feet. R.S.O. 1990, c. R.30, s. 3 (2); 1998, c. 18, Sched. G, s. 72.

**Idem, special services**

(3) Section 2 does not apply in respect of the carrying on of a retail business in a retail business establishment on a holiday where, on that day, 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; or
- (b) nursery stock or flowers, and in conjunction therewith, accessory gardening supplies; or
- (c) fresh fruit or vegetables in respect of holidays falling between the 1st day of April and the 30th day of November of the same year; or
- (d) 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. R.S.O. 1990, c. R.30, s. 3 (3).

**Idem, art galleries**

(4) Section 2 does not apply in respect of the carrying on of the retail business of an art gallery on a holiday, where on that day the number of persons engaged in the service of the public in the art gallery 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 art gallery is less than 2,400 square feet. R.S.O. 1990, c. R.30, s. 3 (4).

**Exemptions, liquor**

(5) Section 2 does 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*. 2009, c. 33, Sched. 24, s. 5.

**Exemption, tourist establishments**

(5.1) Section 2 does not apply in respect of the sale or offering for sale of retail goods or services from tourist establishments. 2009, c. 33, Sched. 24, s. 5.

**Definition**

(5.2) In subsection (5.1),

“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*, or
- (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. 2009, c. 33, Sched. 24, s. 5.

**Exemptions, education, recreation, amusement**

(6) Section 2 does 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. R.S.O. 1990, c. R.30, s. 3 (6).

**Idem, necessary services**

(7) Section 2 does not apply in respect of services sold in connection with the sale or offering for sale by retail of any goods permitted by this Act to be sold, and does 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) rentals of vehicles or boats;
- (e) servicing and repair of vehicles or boats. R.S.O. 1990, c. R.30, s. 3 (7).

**Tourism exemption**

4. (1) Despite section 2, the council of a municipality may by by-law permit retail business establishments in the municipality to be open on holidays for the maintenance or development of tourism. 1991, c. 43, s. 1 (1).

#### **Common pause day principle**

(2) The council in passing a by-law under subsection (1) shall take into account the principle that holidays should be maintained as common pause days. 1991, c. 43, s. 1 (1).

#### **Tourism criteria**

(3) A by-law may be passed under subsection (1) only if there is compliance with the tourism criteria set out in the regulations made under this section. 1991, c. 43, s. 1 (1).

#### **Application for by-law**

(4) Subject to the regulations made under this section, the council shall consider a by-law under subsection (1) only on the application of one or more persons carrying on retail business in the municipality or on the application of an association, whether or not incorporated, representing persons carrying on retail business in the municipality. 1991, c. 43, s. 1 (1).

#### **Local municipality**

(5) In a regional municipality, the council of a local municipality may also apply for a by-law under subsection (1). 2002, c. 17, Sched. F, Table.

#### **Public meeting**

(6) Before passing a by-law under subsection (1), the council,

(a) shall hold a public meeting in respect of the proposed by-law;

(b) shall publish notice of the public meeting in a newspaper having general circulation in the municipality at least thirty days before the meeting is to be held; and

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is repealed by the Statutes of Ontario, 2006, chapter 32, Schedule D, subsection 15 (2) and the following substituted:**

(b) shall publish notice of the public meeting in a manner determined by the council;

**See: 2006, c. 32, Sched. D, ss. 15 (2), 18 (2).**

(c) shall permit any person who attends the public meeting the opportunity to make representations in respect of the proposed by-law. 1991, c. 43, s. 1 (1).

#### **Council not obligated**

(7) The council is not required to pass the by-law even if the tourism criteria are met. 1991, c. 43, s. 1 (1).

#### **Commencement of by-law**

(8) Subject to section 4.3, a by-law under this section comes into force on the thirty-first day after it is passed by the council. 1991, c. 43, s. 1 (1).

#### **Procedures**

(9) Subject to the regulations made under this section, the council may,

(a) establish procedures and fees for the processing of applications;

(b) combine two or more applications;

(c) hold one public meeting with respect to two or more applications;

(d) limit the number of applications that will be considered in any year. 1991, c. 43, s. 1 (1).

#### **Regulations**

(10) The Lieutenant Governor in Council may make regulations,

(a) prescribing tourism criteria for the purposes of this section;

(b) governing the procedures and fees for processing applications, the combining of applications and public meetings and limitations on the number of public meetings held by a council;

(c) setting out the contents of the application;

(d) requiring that a by-law that applies to a retail business establishment within such class of retail business establishments as may be set out in the regulation may be considered only on the application of the person carrying on the business. 1991, c. 43, s. 1 (1).

**Idem**

(11) A regulation under clause (10) (a) or (d) may classify retail business establishments and may prescribe different tourism criteria for the different classes of retail business establishments. 1991, c. 43, s. 1 (1).

**Unorganized territory**

**4.1** The Lieutenant Governor in Council may by regulation permit retail business establishments in territory without municipal organization to be open on holidays. 1991, c. 43, s. 1 (1).

**Contents of by-laws and regulations**

**4.2** A by-law under section 4 or a regulation under section 4.1,

- (a) may apply to one or more retail business establishments or to one or more classes of retail business establishments;
- (b) may apply to all or any part or parts of the municipality in case of a by-law or to all or any part of a territory without municipal organization in the case of a regulation;
- (c) may limit the opening of retail business establishments on holidays to specific times or to a certain number of hours;
- (d) may permit the opening of retail business establishments on some holidays and not on others;
- (e) may restrict the opening of retail business establishments on holidays to specific periods of the year;
- (f) may classify retail business establishments. 1991, c. 43, s. 1 (1).

**Appeal to O.M.B.**

**4.3** (1) Any person who objects to a by-law made by the council of a municipality under section 4 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. 1991, c. 43, s. 1 (1).

**Time for appeal**

(2) The notice of appeal must be filed with the Board not later than thirty days after the day the by-law is passed by the council. 1991, c. 43, s. 1 (1).

**Dismissal without hearing**

(3) The Board may, if it is of the opinion that the objection to the by-law set out in the notice of appeal is insufficient, dismiss the appeal without holding a full hearing, but before doing so shall notify the appellant and afford the appellant an opportunity to make representations as to the merits of the appeal. 1991, c. 43, s. 1 (1).

**Powers of O.M.B.**

- (4) The Board may,
  - (a) dismiss the appeal;
  - (b) dismiss the appeal on the condition that the council amend the by-law in a manner specified by the Board; or
  - (c) quash the by-law. 1991, c. 43, s. 1 (1).

**Commencement of by-law**

- (5) If one or more appeals are taken under this section, the by-law shall not come into force until,
  - (a) the day all appeals have been dismissed under subsection (3) or clause (4) (a); or
  - (b) the day the by-law is amended in the manner specified by the Board under clause (4) (b). 1991, c. 43, s. 1 (1).

**Correction of errors**

(6) The Board may, without a hearing, correct an error in an order or decision under this section if the error arises from an accidental slip or omission. 1991, c. 43, s. 1 (1).

**Ontario Municipal Board Act, s. 43**

(7) Section 43 of the *Ontario Municipal Board Act* does not apply to an appeal under this section. 1991, c. 43, s. 1 (1); 2009, c. 33, Sched. 2, s. 66.

**Time for decision**

(8) The Board shall use its best efforts to decide appeals under this section within the period of time prescribed under subsection (9). 1991, c. 43, s. 1 (1).

## **Regulations**

(9) The Lieutenant Governor in Council may make regulations prescribing a period of time for the purpose of subsection (8). 1991, c. 43, s. 1 (1).

**4.4 REPEALED:** 1993, c. 14, s. 2.

## **Sunday exception**

**5.** (1) Despite any other provision of this or any other Act or the by-laws or regulations under this or any other Act, a retail business may be carried on in a retail business establishment on a Sunday if the retail business establishment is always closed to the public throughout another day of the week by reason of the religion of the owner of the retail business.

## **Definition**

(2) For the purpose of subsection (1),

“religion of the owner” means,

- (a) in the case of a sole proprietorship, the religion of the sole proprietor,
- (b) in the case of a partnership, the religion named in a written agreement between the partners which is the religion of one of the partners,
- (c) in the case of a corporation, the religion named in the by-laws of the corporation.

## **Affiliated corporation**

(3) The exception set out in subsection (1) does not apply to a corporation that is the affiliate of another corporation unless all the retail business establishments in Ontario of the corporation and its affiliates close on the same day.

## **Deemed affiliation**

(4) For the purposes of this section,

- (a) a corporation shall be deemed to be affiliated with another corporation if one of them is the subsidiary of the other or both are subsidiaries of the same corporation or each of them is controlled by the same person; and
- (b) the affiliates of every corporation shall be deemed to be affiliated with all other corporations with which the corporation is affiliated.

## **Deemed control**

(5) For the purposes of this section, a corporation shall be deemed to be controlled by a person if,

- (a) securities of the corporation to which are attached more than 50 per cent of the votes that may be cast to elect directors of the corporation are held other than by way of security only by or for the benefit of that person; and
- (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation.

## **Deemed subsidiaries**

(6) For the purposes of this section, a corporation shall be deemed to be a subsidiary of another corporation if,

- (a) it is controlled by,
  - (i) that other,
  - (ii) that other and one or more corporations each of which is controlled by that other, or
  - (iii) two or more corporations each of which is controlled by that other; or
- (b) it is a subsidiary within the meaning of clause (a) of a corporation that is that other’s subsidiary. R.S.O. 1990, c. R.30, s. 5.

## **Commercial tenants**

**6.** A provision in a lease or other agreement that has the effect of requiring a retail business establishment to remain open on a holiday or on a Sunday or on December 26 is of no effect even if the lease or agreement was made before section 2 of the *Boxing Day Shopping Act, 1996* comes into force. 1996, c. 34, s. 2.

## **Invalidity of certain municipal by-laws**

**7.** (1) Subject to subsection (2), a by-law of a municipality passed under any other Act is invalid to the extent that it requires the closing of a retail business establishment on a holiday. R.S.O. 1990, c. R.30, s. 7 (1).

**Transitional**

(2) The following transitional rules apply to the by-laws of municipalities that were in force under this or any other Act at the end of the 30th day of November, 1991 and that relate to the opening or closing of a retail business establishment on holidays:

1. By-laws in force on the 3rd day of June, 1991 continue in force until the 1st day of December, 1992 or until the by-law is repealed, whichever is first.
2. By-laws that come into force on or after the 4th day of June, 1991 are repealed on the 1st day of December, 1991. 1991, c. 43, s. 1 (3).

**Interpretation**

(3) The definition of "municipality" in subsection 1 (1) does not apply for the purposes of this section. 2006, c. 11, Sched. B, s. 12 (3).

**Penalty**

**8.** (1) Every person who contravenes section 2 or a regulation under section 4 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 holiday on which the contravention occurred.

**Idem, municipal laws**

(2) A by-law under subsection 4 (1) requiring a retail business establishment to be closed on a holiday shall provide that any person who contravenes the 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 holiday on which the contravention occurred.

**Idem, coercion or counselling**

(3) Every person who coerces, requires or counsels another person to contravene section 2, a regulation under section 4 or a by-law under subsection 4 (1) 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 holiday in respect of which the offence under this subsection occurred. R.S.O. 1990, c. R.30, s. 8 (1-3).

**Minimum penalty**

(3.1) The minimum fine for an offence under this Act, other than for a contravention of subsection 2 (2), is \$500 for a first offence, \$2,000 for a second offence and \$5,000 for a third or subsequent offence. 1991, c. 43, s. 1 (4).

**Gross sales to be considered in determining fines**

(4) In determining the amount of the fine, the court shall take into consideration any evidence respecting the gross sales in the retail business establishment on the holiday on which the contravention occurred.

**Advertisements admissible as evidence**

(5) A sign or advertisement giving the hours of a retail business establishment is admissible as evidence that the retail business establishment was open during those hours.

**Determination of total area of a retail business establishment**

(6) For the purpose of enforcing this Act or a by-law or regulation under this Act, the total area of a retail business establishment used for serving the public or for selling or displaying to the public on a holiday shall be deemed to be the greater of,

- (a) the total area actually used on a holiday 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 a holiday. R.S.O. 1990, c. R.30, s. 8 (4-6).

**Court orders**

9. (1) Upon the application of counsel for the Attorney General or of a municipality to the Superior Court of Justice, the court may order that a retail business establishment close on a holiday to ensure compliance with this Act or a by-law or regulation under this Act. R.S.O. 1990, c. R.30, s. 9 (1); 2001, c. 9, Sched. D, s. 14.

**Idem**

(1.1) In addition to its powers under subsection (1), the Superior Court of Justice, on the application of any interested person, may order that a retail business establishment close on a holiday to ensure compliance with this Act or a by-law or regulation under this Act. 1991, c. 43, s. 1 (5); 2001, c. 9, Sched. D, s. 14.

**Idem**

(2) An order under subsection (1) or (1.1) is in addition to any penalty that may be imposed and may be made whether or not a proceeding is commenced under the *Provincial Offences Act* for a contravention of section 2 or of a by-law or regulation under this Act. 1991, c. 43, s. 1 (6).

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**Retail Business Holidays Act**

**ONTARIO REGULATION 711/91**

**TOURISM CRITERIA**

**Consolidation Period:** From November 5, 2015 to the e-Laws currency date.

Last amendment: O. Reg. 321/15.

*This is the English version of a bilingual regulation.*

1. This Regulation sets out the tourism criteria that must be met before a municipality may pass an exempting by-law under subsection 4 (1) of the Act. O. Reg. 711/91, s. 1.

2. (1) A retail business establishment may be exempted if,

- (a) it is located within two kilometres 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. O. Reg. 711/91, s. 2 (1).

(2) An exemption granted on an area basis may only be given if,

- (a) all of the retail business establishments in the area are within two kilometres 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 per cent 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. O. Reg. 711/91, s. 2 (2).

(3) For the purposes of this section, a tourist attraction is limited to,

- (a) natural attractions or outdoor recreational attractions;
- (b) historical attractions; and
- (c) cultural, multi-cultural or educational attractions. O. Reg. 711/91, s. 2 (3).

3. Each retail business establishment that on days other than holidays normally uses a total area of 2,400 square feet or more for serving the public or normally has four or more employees serving the public must, in addition to meeting the tourism criteria set out in subsection 2 (1), provide goods or services on holidays primarily to tourists. O. Reg. 711/91, s. 3.

4. The two kilometre restriction set out in subsections 2 (1) and (2) does not apply to a retail business establishment located in a local municipality, including a local municipality located in a district or regional municipality or the County of Oxford, having a population of less than 50,000. O. Reg. 711/91, s. 4.

5. (1) Despite any other provision of this Regulation, retail business establishments in a municipality may be exempted for up to five holidays a year during which a fair, festival or other special event is being held in that municipality. O. Reg. 711/91, s. 5 (1).

(2) Subsection (1) does not apply to parades. O. Reg. 711/91, s. 5 (2).

6. (1) An application for an exemption under subsection 4 (3) of the Act shall contain the following:

1. A description of the area or the retail business establishment for which the exemption is sought.
2. The justification, in relation to the seasonal nature, if any, of the tourist attraction, for the time period sought in the exemption.
3. Information establishing that the tourism criteria set out in this Regulation are met. O. Reg. 711/91, s. 6 (1).

(2) An application in respect of a retail business establishment described in section 3 shall be made only by that retail business establishment. O. Reg. 711/91, s. 6 (2).

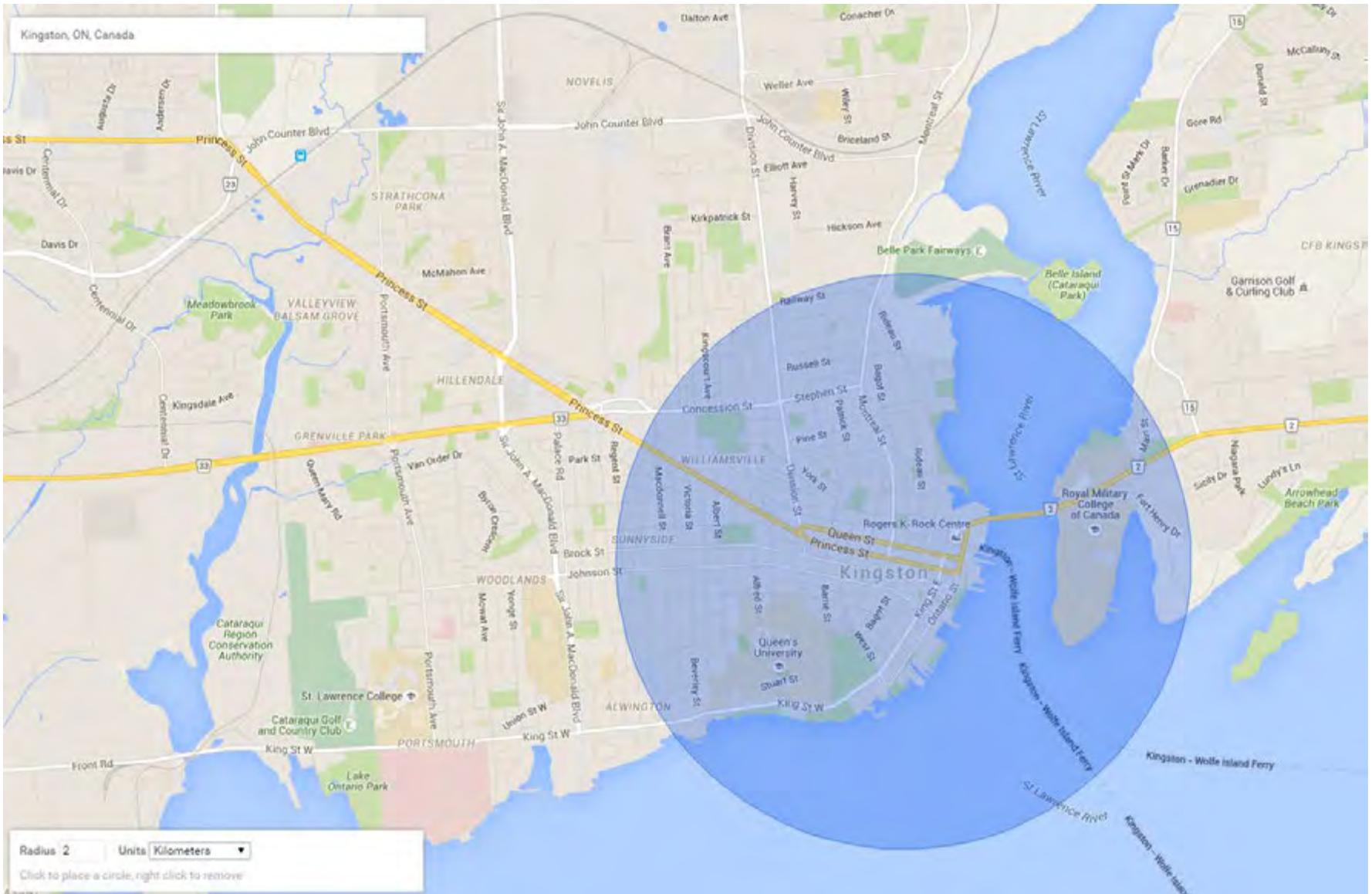
Français

**Permit Holiday Shopping on 9 Days:**

New Year's Day, Family Day, Good Friday, Easter Sunday, Victoria Day, Canada Day, Labour Day, thanksgiving Day, and Christmas Day

<b>Municipality</b>	<b>Date</b>
Acton	1992
Arran-Elderslie	2001
Athens	1992
Bancroft	1995
Bonnechere Valley	2008
Brudenell	2008
Burlington	1992
Distillery Historic District - Toronto	2005
Downtown Yonge Street BIA - Toronto	2002
Erin	2005
Gananoque	1994
Kawartha Lakes	2006
Lambton Shores	2008
Madawaska Valley	1987
Markham	1995
Meaford	2009
Northern Bruce Peninsula	2005
Oakville	1992
Ottawa	1991
Penetanguishene	1996
Port Hope	2006
Prince Edward County	2008
Sarnia	1992
Saugeen Shores	2009
Scugog	2005
Smith-Ennismore-Lakefield	2004
Tweed	2005
Wasaga Beach	1992
Windsor	1982

\*Source: City of Toronto Holiday Shopping Staff Report October 4, 2012



2 kilometer radius from Princess/Bagot intersection

**BY-LAW NO. 98-127**

**A BY-LAW TO PERMIT RETAIL BUSINESSES TO OPERATE ON STATUTORY HOLIDAYS DURING THE PERIOD BETWEEN MAY 1 TO OCTOBER 15, INCLUSIVE IN THE CALENDAR YEAR FOR THE MAINTENANCE OF TOURISM IN THE CITY OF KINGSTON**

**PASSED:** July 14, 1998

**WHEREAS** the Retail Business Holidays Act, R.S.O. 1990, c. R.30 provides that no person carrying on a retail business in a retail business establishment shall sell any goods or services therein by retail or admit members of the public thereto on a holiday;

**AND WHEREAS** Section 4. (1) of the Retail Business Holidays Act, R.S.O. 1990, c. R.30, provides that the Council of the municipality may by by-law permit retail business establishments in the municipality to be open on holidays for the maintenance or development of tourism;

**AND WHEREAS** the Council of The Corporation of the City of Kingston has taken into account the principle that holidays should be maintained as common pause days;

**AND WHEREAS** there is compliance with the tourism criteria set out in the regulations made under Section 4. of the Retail Business Holidays Act, R.S.O. 1990, c. R.30;

**AND WHEREAS** application has been made by certain persons carrying on retail business in the City;

**AND WHEREAS** Council has considered the written material submitted in support of the application;

**AND WHEREAS** Council has held a public meeting in respect of this by-law;

**AND WHEREAS** Council has published notice of the public meeting in a newspaper having general circulation in the Municipality at least thirty (30) days prior to the date on which the meeting was held;

**AND WHEREAS** by Order of the Minister of Municipal Affairs and Housing, The Corporation of the Township of Kingston, The Corporation of the Township of Pittsburgh and The Corporation of the City of Kingston were amalgamated on January 1, 1998 to form The Corporation of the City of Kingston as the successor municipal corporation;

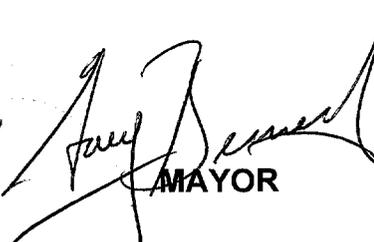
**NOW THEREFORE** the Council of The Corporation of the City of Kingston enacts as follows;

1. The following definitions shall be used for the purposes of this by-law:
  - (a) "Municipality" shall mean The Corporation of the City of Kingston, inclusive of the amalgamated areas formerly known as The Corporation of the City of Kingston, The Corporation of the Township of Kingston and The Corporation of the Township of Pittsburgh;
  - (b) "Holiday" shall include the following days: New Year's Day; Good Friday; Victoria Day; Canada Day; Labour Day; Thanksgiving Day; Christmas Day; Easter Sunday and any other public holiday declared by proclamation of the Lieutenant Governor to be a holiday, as defined in the Retail Business Holidays Act, R.S.O. 1990, c. R.30;
  - (c) "Retail Business" and "Retail Business Establishment" shall be as defined in the Retail Business Holidays Act, R.S.O. 1990, c. R.30;
2. Any retail business in a retail business establishment located within the municipality of The Corporation of the City of Kingston shall be permitted to sell goods and services to members of the public on holidays from the 1st day of May to the 15th day of October inclusive in each calendar year, for the purposes of maintenance and development of tourism.
3. The provisions of this By-Law shall be applicable to retail business as defined in the Retail Business Holidays Act.
4. This By-Law shall come into force and take effect thirty-one days following the date of its passing.

**GIVEN FIRST AND SECOND READINGS** June 9, 1998

**GIVEN THIRD READING AND FINALLY PASSED** July 14, 1998

  
CITY CLERK

  
MAYOR

Français

**Retail Business Holidays Act**

R.S.O. 1990, CHAPTER R.30

**Consolidation Period:** From December 15, 2009 to the [e-Laws currency date](#).

Last amendment: 2009, c. 33, Sched. 24, s. 5.

**Definitions****1.** (1) In this Act,

“holiday” means,

- (a) New Year’s Day,
- (b) Good Friday,
- (c) Victoria Day,
- (d) Canada Day,
- (e) Labour Day,
- (f) Thanksgiving Day,
- (g) Christmas Day,
- (h) Easter Sunday, and

- (i) any other public holiday declared by proclamation of the Lieutenant Governor to be a holiday for the purposes of this Act; (“jour férié”)

“municipality” means a regional municipality and a local municipality, other than a local municipality within a regional municipality, but does not include the City of Toronto; (“municipalité”)

“retail business” means the selling or offering for sale of goods or services by retail; (“commerce de détail”)

“retail business establishment” means the premises where a retail business is carried on. (“établissement de commerce de détail”) R.S.O. 1990, c. R.30, s. 1 (1); 1993, c. 14, s. 1; 1993, c. 27, Sched.; 1996, c. 34, s. 1 (1); 2002, c. 17, Sched. F, Table; 2006, c. 11, Sched. B, s. 12 (1).

**Holidays designated for closing**

(2) The Lieutenant Governor may by proclamation declare any day that is a public holiday other than a day named in clauses (a) to (h) of the definition of “holiday” in subsection (1) to be a holiday for the purposes of this Act. R.S.O. 1990, c. R.30, s. 1 (2); 1996, c. 34, s. 1 (2); 2006, c. 11, Sched. B, s. 12 (1).

**Non-application, City of Toronto****1.1** (1) This Act does not apply to the City of Toronto and it does not apply in respect of any by-law of the City or any retail business establishment located in the City. 2006, c. 11, Sched. B, s. 12 (2).**Exception**(2) Despite subsection (1), Part XVII of the *Employment Standards Act, 2000* shall be applied as if this Act applies to the City and to retail business establishments located in the City. 2006, c. 11, Sched. B, s. 12 (2).**Note:** On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 2006, chapter 32, Schedule D, subsection 15 (1) by adding the following section:**Non-application, municipalities****1.2** (1) This Act does not apply to a municipality and does not apply in respect of any by-law of the municipality or any retail business establishment located in the municipality if there is in effect a by-law passed by the municipality providing that this Act does not apply to it. 2006, c. 32, Sched. D, s. 15 (1).

**Condition for by-law to take effect**

(2) A by-law under subsection (1) does not take effect until the municipality passes a by-law under section 148 of the *Municipal Act, 2001* requiring that one or more classes of retail business establishments be closed on a holiday. 2006, c. 32, Sched. D, s. 15 (1).

**By-law valid**

(3) Nothing in section 7 invalidates a by-law passed by a municipality under section 148 of the *Municipal Act, 2001* if the municipality has passed a by-law under subsection (1) providing that this Act does not apply. 2006, c. 32, Sched. D, s. 15 (1).

**Exception**

(4) Despite subsection (1), Part XVII of the *Employment Standards Act, 2000* shall be applied as if this Act applies to the municipality and to retail business establishments located in the municipality. 2006, c. 32, Sched. D, s. 15 (1).

**See: 2006, c. 32, Sched. D, ss. 15 (1), 18 (2).**

**Prohibition**

2. (1) 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 a holiday.

**Onus on employees, etc.**

(2) No person employed by or acting on behalf of a 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 a holiday. R.S.O. 1990, c. R.30, s. 2.

**Exemptions: small stores**

3. (1) Section 2 does not apply in respect of the carrying on of a retail business on a holiday where, on that day,

- (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,

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. R.S.O. 1990, c. R.30, s. 3 (1).

**Idem, pharmacies**

(2) Section 2 does not apply in respect of the carrying on of a retail business on a holiday in a pharmacy accredited under the *Drug and Pharmacies Regulation Act*, where, on that day,

- (a) the dispensing of drugs upon prescription is available to the public during business hours; and
- (b) 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 for sale except as sundries; and
- (c) the total area used for serving the public or for selling or displaying to the public in the establishment is less than 7,500 square feet. R.S.O. 1990, c. R.30, s. 3 (2); 1998, c. 18, Sched. G, s. 72.

**Idem, special services**

(3) Section 2 does not apply in respect of the carrying on of a retail business in a retail business establishment on a holiday where, on that day, 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; or
- (b) nursery stock or flowers, and in conjunction therewith, accessory gardening supplies; or
- (c) fresh fruit or vegetables in respect of holidays falling between the 1st day of April and the 30th day of November of the same year; or
- (d) 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. R.S.O. 1990, c. R.30, s. 3 (3).

**Idem, art galleries**

(4) Section 2 does not apply in respect of the carrying on of the retail business of an art gallery on a holiday, where on that day the number of persons engaged in the service of the public in the art gallery 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 art gallery is less than 2,400 square feet. R.S.O. 1990, c. R.30, s. 3 (4).

**Exemptions, liquor**

(5) Section 2 does 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*. 2009, c. 33, Sched. 24, s. 5.

**Exemption, tourist establishments**

(5.1) Section 2 does not apply in respect of the sale or offering for sale of retail goods or services from tourist establishments. 2009, c. 33, Sched. 24, s. 5.

**Definition**

(5.2) In subsection (5.1),

“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*, or
- (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. 2009, c. 33, Sched. 24, s. 5.

**Exemptions, education, recreation, amusement**

(6) Section 2 does 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. R.S.O. 1990, c. R.30, s. 3 (6).

**Idem, necessary services**

(7) Section 2 does not apply in respect of services sold in connection with the sale or offering for sale by retail of any goods permitted by this Act to be sold, and does 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) rentals of vehicles or boats;
- (e) servicing and repair of vehicles or boats. R.S.O. 1990, c. R.30, s. 3 (7).

**Tourism exemption**

4. (1) Despite section 2, the council of a municipality may by by-law permit retail business establishments in the municipality to be open on holidays for the maintenance or development of tourism. 1991, c. 43, s. 1 (1).

#### **Common pause day principle**

(2) The council in passing a by-law under subsection (1) shall take into account the principle that holidays should be maintained as common pause days. 1991, c. 43, s. 1 (1).

#### **Tourism criteria**

(3) A by-law may be passed under subsection (1) only if there is compliance with the tourism criteria set out in the regulations made under this section. 1991, c. 43, s. 1 (1).

#### **Application for by-law**

(4) Subject to the regulations made under this section, the council shall consider a by-law under subsection (1) only on the application of one or more persons carrying on retail business in the municipality or on the application of an association, whether or not incorporated, representing persons carrying on retail business in the municipality. 1991, c. 43, s. 1 (1).

#### **Local municipality**

(5) In a regional municipality, the council of a local municipality may also apply for a by-law under subsection (1). 2002, c. 17, Sched. F, Table.

#### **Public meeting**

- (6) Before passing a by-law under subsection (1), the council,
- (a) shall hold a public meeting in respect of the proposed by-law;
  - (b) shall publish notice of the public meeting in a newspaper having general circulation in the municipality at least thirty days before the meeting is to be held; and

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is repealed by the Statutes of Ontario, 2006, chapter 32, Schedule D, subsection 15 (2) and the following substituted:**

- (b) shall publish notice of the public meeting in a manner determined by the council;

**See: 2006, c. 32, Sched. D, ss. 15 (2), 18 (2).**

- (c) shall permit any person who attends the public meeting the opportunity to make representations in respect of the proposed by-law. 1991, c. 43, s. 1 (1).

#### **Council not obligated**

- (7) The council is not required to pass the by-law even if the tourism criteria are met. 1991, c. 43, s. 1 (1).

#### **Commencement of by-law**

(8) Subject to section 4.3, a by-law under this section comes into force on the thirty-first day after it is passed by the council. 1991, c. 43, s. 1 (1).

#### **Procedures**

- (9) Subject to the regulations made under this section, the council may,
- (a) establish procedures and fees for the processing of applications;
  - (b) combine two or more applications;
  - (c) hold one public meeting with respect to two or more applications;
  - (d) limit the number of applications that will be considered in any year. 1991, c. 43, s. 1 (1).

#### **Regulations**

- (10) The Lieutenant Governor in Council may make regulations,
- (a) prescribing tourism criteria for the purposes of this section;
  - (b) governing the procedures and fees for processing applications, the combining of applications and public meetings and limitations on the number of public meetings held by a council;
  - (c) setting out the contents of the application;
  - (d) requiring that a by-law that applies to a retail business establishment within such class of retail business establishments as may be set out in the regulation may be considered only on the application of the person carrying on the business. 1991, c. 43, s. 1 (1).

**Idem**

(11) A regulation under clause (10) (a) or (d) may classify retail business establishments and may prescribe different tourism criteria for the different classes of retail business establishments. 1991, c. 43, s. 1 (1).

**Unorganized territory**

**4.1** The Lieutenant Governor in Council may by regulation permit retail business establishments in territory without municipal organization to be open on holidays. 1991, c. 43, s. 1 (1).

**Contents of by-laws and regulations**

**4.2** A by-law under section 4 or a regulation under section 4.1,

- (a) may apply to one or more retail business establishments or to one or more classes of retail business establishments;
- (b) may apply to all or any part or parts of the municipality in case of a by-law or to all or any part of a territory without municipal organization in the case of a regulation;
- (c) may limit the opening of retail business establishments on holidays to specific times or to a certain number of hours;
- (d) may permit the opening of retail business establishments on some holidays and not on others;
- (e) may restrict the opening of retail business establishments on holidays to specific periods of the year;
- (f) may classify retail business establishments. 1991, c. 43, s. 1 (1).

**Appeal to O.M.B.**

**4.3** (1) Any person who objects to a by-law made by the council of a municipality under section 4 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. 1991, c. 43, s. 1 (1).

**Time for appeal**

(2) The notice of appeal must be filed with the Board not later than thirty days after the day the by-law is passed by the council. 1991, c. 43, s. 1 (1).

**Dismissal without hearing**

(3) The Board may, if it is of the opinion that the objection to the by-law set out in the notice of appeal is insufficient, dismiss the appeal without holding a full hearing, but before doing so shall notify the appellant and afford the appellant an opportunity to make representations as to the merits of the appeal. 1991, c. 43, s. 1 (1).

**Powers of O.M.B.**

- (4) The Board may,
  - (a) dismiss the appeal;
  - (b) dismiss the appeal on the condition that the council amend the by-law in a manner specified by the Board; or
  - (c) quash the by-law. 1991, c. 43, s. 1 (1).

**Commencement of by-law**

- (5) If one or more appeals are taken under this section, the by-law shall not come into force until,
  - (a) the day all appeals have been dismissed under subsection (3) or clause (4) (a); or
  - (b) the day the by-law is amended in the manner specified by the Board under clause (4) (b). 1991, c. 43, s. 1 (1).

**Correction of errors**

(6) The Board may, without a hearing, correct an error in an order or decision under this section if the error arises from an accidental slip or omission. 1991, c. 43, s. 1 (1).

**Ontario Municipal Board Act, s. 43**

(7) Section 43 of the *Ontario Municipal Board Act* does not apply to an appeal under this section. 1991, c. 43, s. 1 (1); 2009, c. 33, Sched. 2, s. 66.

**Time for decision**

(8) The Board shall use its best efforts to decide appeals under this section within the period of time prescribed under subsection (9). 1991, c. 43, s. 1 (1).

#### **Regulations**

(9) The Lieutenant Governor in Council may make regulations prescribing a period of time for the purpose of subsection (8). 1991, c. 43, s. 1 (1).

**4.4** REPEALED: 1993, c. 14, s. 2.

#### **Sunday exception**

**5.** (1) Despite any other provision of this or any other Act or the by-laws or regulations under this or any other Act, a retail business may be carried on in a retail business establishment on a Sunday if the retail business establishment is always closed to the public throughout another day of the week by reason of the religion of the owner of the retail business.

#### **Definition**

(2) For the purpose of subsection (1),

“religion of the owner” means,

- (a) in the case of a sole proprietorship, the religion of the sole proprietor,
- (b) in the case of a partnership, the religion named in a written agreement between the partners which is the religion of one of the partners,
- (c) in the case of a corporation, the religion named in the by-laws of the corporation.

#### **Affiliated corporation**

(3) The exception set out in subsection (1) does not apply to a corporation that is the affiliate of another corporation unless all the retail business establishments in Ontario of the corporation and its affiliates close on the same day.

#### **Deemed affiliation**

(4) For the purposes of this section,

- (a) a corporation shall be deemed to be affiliated with another corporation if one of them is the subsidiary of the other or both are subsidiaries of the same corporation or each of them is controlled by the same person; and
- (b) the affiliates of every corporation shall be deemed to be affiliated with all other corporations with which the corporation is affiliated.

#### **Deemed control**

(5) For the purposes of this section, a corporation shall be deemed to be controlled by a person if,

- (a) securities of the corporation to which are attached more than 50 per cent of the votes that may be cast to elect directors of the corporation are held other than by way of security only by or for the benefit of that person; and
- (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation.

#### **Deemed subsidiaries**

(6) For the purposes of this section, a corporation shall be deemed to be a subsidiary of another corporation if,

- (a) it is controlled by,
  - (i) that other,
  - (ii) that other and one or more corporations each of which is controlled by that other, or
  - (iii) two or more corporations each of which is controlled by that other; or
- (b) it is a subsidiary within the meaning of clause (a) of a corporation that is that other’s subsidiary. R.S.O. 1990, c. R.30, s. 5.

#### **Commercial tenants**

**6.** A provision in a lease or other agreement that has the effect of requiring a retail business establishment to remain open on a holiday or on a Sunday or on December 26 is of no effect even if the lease or agreement was made before section 2 of the *Boxing Day Shopping Act, 1996* comes into force. 1996, c. 34, s. 2.

#### **Invalidity of certain municipal by-laws**

**7.** (1) Subject to subsection (2), a by-law of a municipality passed under any other Act is invalid to the extent that it requires the closing of a retail business establishment on a holiday. R.S.O. 1990, c. R.30, s. 7 (1).

**Transitional**

(2) The following transitional rules apply to the by-laws of municipalities that were in force under this or any other Act at the end of the 30th day of November, 1991 and that relate to the opening or closing of a retail business establishment on holidays:

1. By-laws in force on the 3rd day of June, 1991 continue in force until the 1st day of December, 1992 or until the by-law is repealed, whichever is first.
2. By-laws that come into force on or after the 4th day of June, 1991 are repealed on the 1st day of December, 1991. 1991, c. 43, s. 1 (3).

**Interpretation**

(3) The definition of "municipality" in subsection 1 (1) does not apply for the purposes of this section. 2006, c. 11, Sched. B, s. 12 (3).

**Penalty**

**8.** (1) Every person who contravenes section 2 or a regulation under section 4 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 holiday on which the contravention occurred.

**Idem, municipal laws**

(2) A by-law under subsection 4 (1) requiring a retail business establishment to be closed on a holiday shall provide that any person who contravenes the 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 holiday on which the contravention occurred.

**Idem, coercion or counselling**

(3) Every person who coerces, requires or counsels another person to contravene section 2, a regulation under section 4 or a by-law under subsection 4 (1) 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 holiday in respect of which the offence under this subsection occurred. R.S.O. 1990, c. R.30, s. 8 (1-3).

**Minimum penalty**

(3.1) The minimum fine for an offence under this Act, other than for a contravention of subsection 2 (2), is \$500 for a first offence, \$2,000 for a second offence and \$5,000 for a third or subsequent offence. 1991, c. 43, s. 1 (4).

**Gross sales to be considered in determining fines**

(4) In determining the amount of the fine, the court shall take into consideration any evidence respecting the gross sales in the retail business establishment on the holiday on which the contravention occurred.

**Advertisements admissible as evidence**

(5) A sign or advertisement giving the hours of a retail business establishment is admissible as evidence that the retail business establishment was open during those hours.

**Determination of total area of a retail business establishment**

(6) For the purpose of enforcing this Act or a by-law or regulation under this Act, the total area of a retail business establishment used for serving the public or for selling or displaying to the public on a holiday shall be deemed to be the greater of,

- (a) the total area actually used on a holiday 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 a holiday. R.S.O. 1990, c. R.30, s. 8 (4-6).

**Court orders**

9. (1) Upon the application of counsel for the Attorney General or of a municipality to the Superior Court of Justice, the court may order that a retail business establishment close on a holiday to ensure compliance with this Act or a by-law or regulation under this Act. R.S.O. 1990, c. R.30, s. 9 (1); 2001, c. 9, Sched. D, s. 14.

**Idem**

(1.1) In addition to its powers under subsection (1), the Superior Court of Justice, on the application of any interested person, may order that a retail business establishment close on a holiday to ensure compliance with this Act or a by-law or regulation under this Act. 1991, c. 43, s. 1 (5); 2001, c. 9, Sched. D, s. 14.

**Idem**

(2) An order under subsection (1) or (1.1) is in addition to any penalty that may be imposed and may be made whether or not a proceeding is commenced under the *Provincial Offences Act* for a contravention of section 2 or of a by-law or regulation under this Act. 1991, c. 43, s. 1 (6).



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## Retail Business Holidays Act

### ONTARIO REGULATION 711/91 TOURISM CRITERIA

**Consolidation Period:** From November 5, 2015 to the [e-Laws currency date](#).

Last amendment: O. Reg. 321/15.

*This is the English version of a bilingual regulation.*

1. This Regulation sets out the tourism criteria that must be met before a municipality may pass an exempting by-law under subsection 4 (1) of the Act. O. Reg. 711/91, s. 1.

2. (1) A retail business establishment may be exempted if,

(a) it is located within two kilometres 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. O. Reg. 711/91, s. 2 (1).

(2) An exemption granted on an area basis may only be given if,

(a) all of the retail business establishments in the area are within two kilometres 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 per cent 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. O. Reg. 711/91, s. 2 (2).

(3) For the purposes of this section, a tourist attraction is limited to,

(a) natural attractions or outdoor recreational attractions;

(b) historical attractions; and

(c) cultural, multi-cultural or educational attractions. O. Reg. 711/91, s. 2 (3).

3. Each retail business establishment that on days other than holidays normally uses a total area of 2,400 square feet or more for serving the public or normally has four or more employees serving the public must, in addition to meeting the tourism criteria set out in subsection 2 (1), provide goods or services on holidays primarily to tourists. O. Reg. 711/91, s. 3.

4. The two kilometre restriction set out in subsections 2 (1) and (2) does not apply to a retail business establishment located in a local municipality, including a local municipality located in a district or regional municipality or the County of Oxford, having a population of less than 50,000. O. Reg. 711/91, s. 4.

5. (1) Despite any other provision of this Regulation, retail business establishments in a municipality may be exempted for up to five holidays a year during which a fair, festival or other special event is being held in that municipality. O. Reg. 711/91, s. 5 (1).

(2) Subsection (1) does not apply to parades. O. Reg. 711/91, s. 5 (2).

6. (1) An application for an exemption under subsection 4 (3) of the Act shall contain the following:

1. A description of the area or the retail business establishment for which the exemption is sought.

2. The justification, in relation to the seasonal nature, if any, of the tourist attraction, for the time period sought in the exemption.

3. Information establishing that the tourism criteria set out in this Regulation are met. O. Reg. 711/91, s. 6 (1).

(2) An application in respect of a retail business establishment described in section 3 shall be made only by that retail business establishment. O. Reg. 711/91, s. 6 (2).

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