

THE REGIONAL MUNICIPALITY OF YORK

**REPORT NO. 1
OF THE REGIONAL SOLICITOR**

**For Consideration by
The Council of The Regional Municipality of York
on January 24, 2008**

**1
RETAIL BUSINESS HOLIDAYS ACT
APPLICATION FOR EXEMPTION**

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council consider the application from Neamsby Investments Inc., on behalf of the Kennedy & Denison Shopping Centre (the “Applicant”) and determine whether to grant an exemption from the *Retail Business Holidays Act* to allow the Kennedy & Denison Shopping Centre to remain open on holidays.
2. The Regional Solicitor be directed to prepare the necessary by-law to give effect to the exemption, if granted by Council.

2. PURPOSE

The purpose of this report is to advise Council of an application for exemption from the *Retail Business Holidays Act* to allow the Kennedy & Denison Shopping Centre to be open on statutory holidays.

3. BACKGROUND

The *Retail Business Holidays Act* (the “Act”) requires businesses to be closed on statutory holidays unless they are exempted. The holidays to which the Act applies are:

- New Year's Day
- Family Day
- Good Friday
- Easter Sunday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day

Family Day, being the third Monday of February of every year, has now been declared a statutory holiday in Ontario for the purposes of the Act.

The Act does not apply to the Civic Holiday in August, and therefore exemptions are not required for that day.

The Act sets out statutory exemptions for certain types of businesses and also provides that Regional Council may permit businesses to remain open for the maintenance or development of tourism. A public meeting must be held to consider the application.

Notice of the public meeting has been advertised in accordance with the Act.

The following application has been received:

Municipality	Business	Requested Dates	Hours
Markham	Kennedy & Denison Shopping Centre (Neamsby Investments Inc.) 1661 Denison Street, Markham	All Holidays	8 a.m. to 12:00 midnight

A copy of the application is appended to this report as Attachment 1.

The Applicant first submitted an application for exemption under the Act in 2004. On November 18, 2004, Regional Council held a public meeting to consider the application. Council deferred the application to its December 16, 2004 meeting. On December 16, 2004, Regional Council denied the application.

The Applicant has now submitted a new application for exemption under the Act. The application requests exemption for the same holidays and hours as submitted in the first application.

4. ANALYSIS AND OPTIONS

4.1 Compliance with the Act

The Act provides that Regional Council may permit retail business establishments to open on holidays for the maintenance or development of tourism.

A by-law may be passed only if there is compliance with the tourism criteria set out in the Regulation. In addition, even if the tourism criteria are met, Council is not required to pass the by-law but may exercise its discretion to refuse the application.

4.2 Tourism Criteria

The Regulation sets out the criteria that must be met before Regional Council may pass an exempting by-law. A copy of the applicable Regulation is appended to this report as Attachment 2.

The Applicant submits that it complies with Section 2 of the Regulation, which provides that a business can be exempted if:

- it is located within two kilometres of a tourist attraction; and
- it is directly associated with the tourist attraction or relies on tourists visiting the attraction for business on a holiday.

For the purposes of Section 2, a tourist attraction is limited to:

- natural attractions or outdoor recreational attractions;
- historical attractions; and
- cultural, multi-cultural or educational attractions.

Both the Pacific Mall and the Market Village are within 2 kilometres of the Kennedy and Denison Shopping Centre and have been granted exemption for all holidays between 8:00 a.m. and 12 midnight. A chart showing businesses within the Region which have been granted exemptions is appended to this report as Attachment 3.

The Applicant takes the position that both the Pacific Mall and Market Village are tourist attractions, with the Pacific Mall being the largest Asian-themed shopping centre in North America. The Kennedy & Denison Shopping Centre hosts Asian-themed on-site promotional and cultural activities and often participates in events hosted by the Pacific Mall and the Market Village.

The Applicant is an ethno-cultural business establishment geared towards the East Asian community, which offers a wide variety of Chinese retail goods and services, as well as Chinese herbs and traditional medicine, prepared Chinese foods and restaurants and entertainment. Many visitors are from outside of the Region and on a daily basis tourist buses in the area drop off tourists in the parking lot.

4.3 Exemptions under the Act

The Applicant notes that many of the businesses in the centre are retail enterprises which are already exempt under Section 3 of the Act.

Section 3 exempts small stores selling foodstuff, tobacco, antiques, handicrafts, and books/ newspapers. These businesses shall not exceed three employees and the total area used for service shall be less than 2,400 square feet. Other businesses which are exempt are businesses selling gasoline, nursery stock/flowers, and fresh fruit and vegetables.

The Act does not apply to pharmacies as they are governed under the *Drug and Pharmacies Regulation Act*. As well, the selling of liquor is governed under the *Liquor Licence Act*, and therefore does not apply to the Act.

A copy of the Act is appended to this report as Attachment 4.

4.4 Enactment of By-law

Should Council decide to grant the exemption, the by-law will come into force on the thirty-first day after it is enacted, in this case February 24, 2008. This is to allow for the possibility of an appeal which may be made within thirty days after the passing of the by-law by any person who objects to the exemption. An appeal may only be made if an exemption is granted. There is no provision for an applicant to appeal if an exemption has been denied.

It is open to Council to grant the exemption as requested, or to make amendments to the permitted days or hours of business.

4.5 Amendments to the *Municipal Act, 2001*

Recent amendments to the *Municipal Act, 2001* would permit the Region to directly regulate holiday closings for retail businesses. The relevant sections have not yet been proclaimed in force, however, and no date for proclamation has been announced. Upon proclamation, the Region would be empowered to enact a by-law to govern holiday closings that would supersede the *Retail Business Holidays Act*. This could enable the Region to develop criteria that may not be strictly limited to tourism. Staff await

proclamation of this provision and will seek Council's direction as to whether this alternative should be pursued.

5. FINANCIAL IMPLICATIONS

There are no direct financial implications to the Region as a result of this application.

6. LOCAL MUNICIPAL IMPACT

Approval of an exemption under the Act is intended to contribute to tourism in a particular location, in this case in the Town of Markham.

7. CONCLUSION

An application has been received from the Kennedy & Denison Shopping Centre requesting an exemption from the Act to permit the centre to remain open on all holidays.

Regional Council is respectfully requested to review this application and determine whether to enact an exempting by-law, with due consideration to the criteria set out in the Act and Regulation.

If Council elects to pass a by-law, the by-law will come into effect on February 24, 2008.

(The attachments referred to in this clause are attached to this report.)

Respectfully submitted,

**January 24, 2008
Newmarket, Ontario**

**J. Hulton
Regional Solicitor**

THE RETAIL BUSINESS HOLIDAYS ACT

APPLICATION FOR EXEMPTION

NEAMSBY INVESTMENTS INC. (name of business) hereby applies to the Council of The Regional Municipality of York for an exempting by-law pursuant to Section 4(1) of the Retail Business Holidays Act, as follows:

<u>Business</u>	<u>Location</u>	<u>Holidays</u>	<u>Hours</u>
<u>KENNEDY DENISON SHOPPING CENTRE</u>	<u>1661 DENISON STREET MARKHAM, ONTARIO</u>	<u>ALL</u>	<u>8:00 AM - 12:00 MIDNIGHT</u>

Enclosed in support of the application is the following (itemize all of the material submitted in support of the application):

1. ESTABLISHMENT DETAIL, INCLUDING LIST OF PRESENT TENANTS AND PATRONAGE SURVEY.
2. AERIAL MAP OF THE LOCATION (Large map available in the Clerk's Department)

Continue on separate page if more space required.

Dated at TORONTO this 8th day of NOVEMBER, 2007.

[Signature]
Signature L. PAUL SHENTON SOLICITOR FOR NEAMSBY INVESTMENTS INC.
Relationship to business (President, Partner, Owner, etc.)

Please provide the following information:

1. Name, address and telephone number of the business.

NEAMSBY INVESTMENTS INC.
7501 KEELE STREET, SUITE 100, VAUGHAN, ONTARIO L4K 1Y2
(905) 761-8200

2. Name, address and telephone number of the contact person.

JOSEPH C. VIENI, BARRISTERS ATTENTION: L. PAUL SHENTON
4950 YONGE STREET, SUITE 1800, TORONTO, ONTARIO M2N 6K1
(416) 221-8181 FAX (416) 221-0303

3. The name, or a description, including location, of the tourist attraction, or attractions, relied on:

MARKET VILLAGE - 4350 STEELES AVENUE EAST, MARKHAM, ONTARIO
PACIFIC MALL - 4300 STEELES AVENUE EAST, MARKHAM, ONTARIO

4. If the retail business establishment to be exempted is located in the Town of Markham, the Town of Richmond Hill, or the City of Vaughan, is the business within 2 km of the tourist attraction?

YES, AS ABOVE.

5. Please indicate the category of tourist attraction (natural; outdoor recreational; historical; cultural; multi-cultural or educational).

CULTURAL AND MULTICULTURAL

6. Is the retail business establishment directly associated with the tourist attraction? If yes, explain the nature and extent of the association.

YES. AS FURTHER Laid OUT IN THE ACCOMPANYING DOCUMENTATION, IT INDEPENDENTLY AND JOINTLY HOSTS CULTURAL EVENTS AND CATERES TO TOURIST BUSINESS.

7. Does the retail business establishment provide goods or services on holidays primarily to tourists?

YES. IT PROVIDES GOODS AND SERVICES ON HOLIDAYS PRIMARILY TO TOURISTS.

NOTE: Under the Retail Business Holidays Act the Regional Council is not required to pass an exempting by-law even if the tourism criteria are met.

For further information, please contact The Regional Municipality of York Legal Department, 17250 Yonge Street, Newmarket, Ontario, L3Y 6Z1. Telephone 905-895-1231, ext. 1402, Fax 905.895.3768.

**APPLICATION BY NEAMSBY INVESTMENTS INC.
FOR A "TOURIST AREA" EXEMPTION
UNDER THE *RETAIL BUSINESS HOLIDAYS ACT***

ESTABLISHMENT DETAIL

THE DENISON CENTRE

The Denison Centre is a retail complex located at the corner of Denison Street and Kennedy Road, at 1661 Denison Street in Unionville. It is an ethno-cultural business establishment comprising 19,200 sq.ft. of retail space geared towards the East Asian community. The Denison Centre has shops, many owner operated, offering a wide variety of Chinese retail goods and services, as well as Chinese herbs and traditional medicine, prepared Chinese foods and restaurants and entertainment. A list of the present tenants of the Centre is attached as a schedule to the Application.

ASIAN-THEMED TOURIST AREA

The Denison Centre is located in a well-known Asian-themed tourist area, including neighbouring Asian-themed shopping centres. A similar but larger neighbouring Chinese shopping centre is Market Village at 4390 Steeles Avenue East, Unionville, Ontario. The Denison Centre is directly related to the Market Village by proximity and common ownership. Also, the largest Asian-themed shopping centre in North America is the Pacific Mall located at 4390 Steeles Avenue East, Unionville, Ontario. Both Pacific Mall and Market Village are only about one kilometer away from the Denison Centre.

Like Pacific Mall and Market Village, the Denison Centre attracts visitors of East Asian origin, many of whom travel widely to the Denison Centre from adjacent regions. A recent survey has indicated that half of the weekend visitors to the Denison Centre came from outside the region. A copy of the traffic patronage survey is attached as a schedule to the Application.

As well as hosting its own Asian-themed on-site promotional and cultural activities, the Denison Centre often participates in events hosted by the nearby attractions. In recent days, Market Village and Pacific Mall hosted a variety of events attended by the local community and tourists from the Pacific Rim. Taste of Asia was held on Saturday June 23, 2007 and Sunday June 24, 2007, in which the Denison Centre was a participant. This event attracted over 50,000 people, exposing York Region to Chinese food and culture, and moreover it brought in significant tourist dollars to York Region. Additionally, on Friday, September 8, 2006, Saturday September 9, 2006 and Sunday, September 10, 2006, the Denison Centre independently hosted the Toronto International Night Market, which showcased regional talent and promoted multiculturalism.

EXEMPTIONS OBTAINED FOR ASIAN-THEMED TOURIST BUSINESSES

Both Market Village and Pacific Mall have obtained exemptions to the Retail Business Holidays Act, in order to cater to the large East Asian community of York Region and the Greater Toronto Area

and to contribute to tourism, thus bringing in tourist revenues for York Region. (Market Village obtained its exemption on October 26, 2000 and Pacific Mall on August 31, 2000 and January 18, 2001.) In fact, both are well known tourist attraction for people of the Pacific Rim, and along with the Denison Centre, they cater to and attract the same tourists and clientele and host events which have the added benefit of furthering understanding, mutual respect and cooperation.

ASIAN-THEMED TOURISM AND BENEFIT TO YORK REGION

Tourism is a key economic activity within York Region. Studies have shown that shopping is the single most common activity participated in by tourists. For many people, shopping can be the primary reason to travel to a destination. Consequently, providing opportunities to shop within a well-defined and unified tourist area enhances a visitor's stay and maximizes the economic benefits.

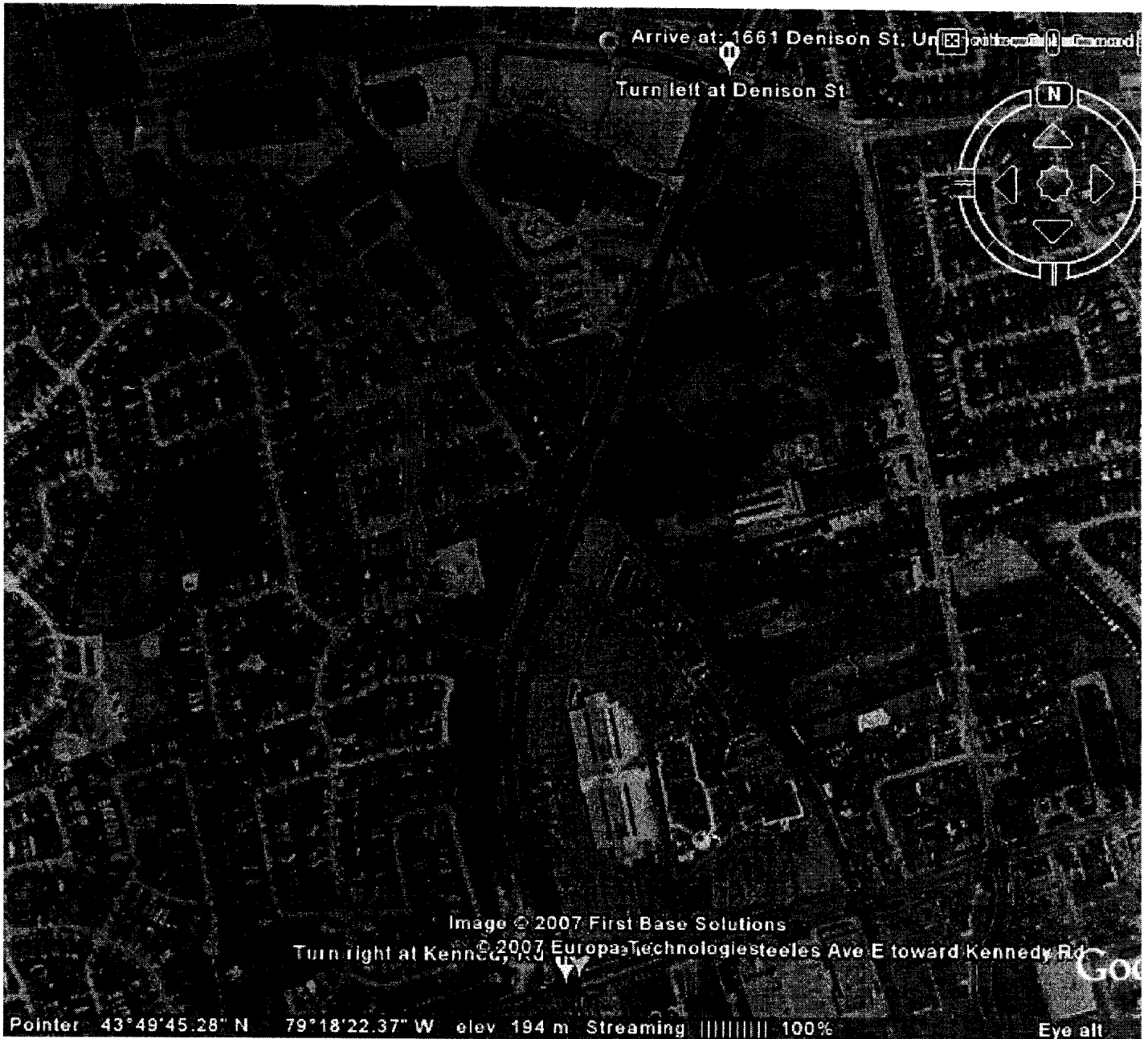
Accordingly, in order to enable this particular business and tourist area to maximize its ability to cater to the Asian community and to tourists, we ask that Denison Centre also be granted the same exemption as Market Village and Pacific Mall. The Denison Centre could form part of a modern suburban "China Town", which would represent an important cultural aspect of the Region and form part of the overall tourism strategy of the Region and Town of Markham.

Such exemptions, particularly in areas representing diverse cultural and religious backgrounds, are a recognition of the diversity within our community. All this contributes to the vibrancy of communities in York Region and the vigour of York Region in general. It only makes sense to allow those business which cater to this diversity to be allowed to open on holidays, which are their busiest tourist days and thus contribute to the community's economic viability.

In passing, in addition to the exemption for tourism purposes, many of the businesses located at the Denison Centre are involved in retail enterprises for which the Act independently provides an express exemption under Section 3.

A MAP OF THE TOURIST AREA

The Denison Centre is located at 1661 Denison Street in Unionville. The map below shows that at their most distant two points, the Denison Centre is less than 1.4 kilometres away from the Pacific Mall and at their nearest points it is about 700 metres away. The map of Denison Centre and its distance from the Pacific Mall can be viewed in more detail by viewing the link below.
<http://maps.google.ca/maps?f=d&hl=en&geocode=&saddr=4300+Steeles+Ave+E,+Unionville,+ON&daddr=1661+Denison+St,+Unionville,+ON&sl=43.707081,-79.396865&sspn=0.01244,0.025492&ie=UTF8&t=h&z=15&om=1>



In fact, the proximity of the tourist areas is such that tourist buses drop off visitors to the area at the Denison Centre's parking lot on a daily basis, and as may be expected, such traffic increases on holidays. With similar establishments directed to similar clientele, the Centre serves the needs of its own visitors and, as well, persons visiting the nearby attractions of Pacific Mall and Market Village, which often include references to the Denison Centre in their promotional materials. The parking lot of the Denison Centre is used by visitors attending events sponsored by the nearby attractions, from which visitors are transferred from one spot to the other by special shuttle buses.

THE LEGISLATION AND THE "TOURIST AREA" EXEMPTION UNDER THE RETAIL BUSINESS HOLIDAYS ACT

The Retail Business Holidays Act requires that an establishment be a tourist attraction or within 2 kilometres from a tourist attraction in order to obtain such an exemption. As well as being an attraction in its own right, Denison Centre is between 700 metres and 1.4 kilometres from the already recognized attraction of Pacific Mall. In fact, as noted above, due to the proximity and relatedness between the three sites, many people park their cars at the Denison Centre parking lot and are shuttled to and fro to the neighbouring attractions. The Denison Centre clearly fulfills all the criteria for a "tourist area" exemption under the Act.

Much to the credit of the York Region Council, in York Region, there are now many area comprising hundreds of businesses as well as individual businesses which have obtained various exemptions to the Act, including downtown Newmarket, the old town of Markham core, the Unionville core, Pacific Mall, Market Village, and the entire town of Georgina. A full listing of exemptions is attached hereto.

The Legislation in depth

The *Retail Business Holidays Act* prohibits the operation of retail businesses on the prescribed holidays. It states:

2(1) No person carrying on 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.

Section 3 of the Act explicitly provides exemptions for a number of different retail categories, including stores selling foodstuffs, tobacco, antiques, handicrafts, gasoline/motor oil, nursery stock, flowers, fresh fruit, books, newspapers, periodicals and art galleries, of less than 2,400 sq. ft. and employing less than four persons; pharmacies less than 7,500 sq. ft. Stores licensed to sell liquor under the *Licence Act*, or to sell goods and services under the *Tourism Act* are also exempted from the requirement to close on designated holidays, as are restaurants, hotels, laundromat and other coin-operated services, automobile and boat rental establishments and service, repair facilities.

The Act also grants what is commonly referred to as a tourist exemption to this rule. The Act says:

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...

Subsection 4(3) provides for the prescribing of regulatory criteria, which must be met before an exemption by law may be passed:

4(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.

Ontario Regulation 711/91 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. under subsection 43 of the Act:

The regulation prescribes criteria for two types of exemptions: one for individual businesses, and one for groups of businesses in an "area". The applicable provisions of the regulation are as follows:

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 a tourist attraction or relies on tourists visiting the attraction for business on a holiday.

2. An exemption granted on an area basis may be given if
 - (a) all of the retail business establishments in the area and 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
 - © at least 25% of the retail business establishments in the area are directly associated with the tourist attraction and rely on tourists visiting the attraction for business on a holiday.

3. For the purposes of this section, a tourist attraction is limited to:
 - (a) natural attractions or outdoor recreational attractions; and
 - (b) historical attractions; and
 - (c) cultural, multi-cultural or educational attractions.

**DENISON CENTRE
TENANTS**

Unit #	INTERNAL TENANT	GENERAL DISCRPTION	PRODUCTS SOLD
T-2	Denison Supermarket	Grocery Retail	Produce dairy, seafood, poultry, beef, dry goods, tinned goods, frozen foods, kitchen cookware, cleaning supplies, plants, personal hygiene, personal care, beverage, snack foods, etc.
T-4	Zellers (temp closed)		Fixture warehouse
T-9	Shoppers Drug Mart #846	Drug Store Retail	Confection, snack foods, bottled beverage, picnic/party products, bath, beauty prod, magazines, books, pharmacy, prscriptions, film, post office, novelty items.
T-13	Neo Home	Retail	Footwear, electric fans, rice cookers, cookware, dishware, plastic shelves, dishware, plastic shelves, kitchen & bathroom novelty items, lazy boy chairs.
T-15	Priyas	Retail	Dresses, costume jewellery, bottled beverages, frozen food produce, dairy, tinned goods, spices, CDs, videos, phone cards, hair products.
T-16	Dragon Source.Com	Bookstore	Books, calendar, videos, CDs, magazines, newspapers, ornamental dolls.
T-17	Hongs Ticket & Tobacco	Retail	Tobacco, lottery tickets, transit cards tickets, phone cards
T-18	Heavens Gold	Fastfoods	Asian food, take out
T-19	Tai Wong Kee BBQ	Fastfoods	Asian food, take out
T-20	OK Computer	Retail	Computers, accessories, software
T-21	MR. Pro Shoes	Retail	Repair service, orthotics, shoe products - polish, laces
T-22	Vacant (Tamsyn)	Retail	
T-24	Temp - Harbor Int'l Grp (7-23-12-31-04)		Furniture (temp tenant)
T-27	L.S. Cosmetics	Retail	Cosmetics, women's clothing, aesthetic services
T-29	Kam Yuen Herbs	Retail	Asian herbs, accupuncure, candy
T-31B	Katherines Accessories	Retail	Sunglasses, luggage, handbags, hair accessories, lingerie, hats, umbrellas, back packs, belts.
T-31A	Les Chateaux Bakery	Bakery	Pastry shop, hot & cold beverages.
T-33B	Sumi Boutique	Retail	Men's women's children's clothing, scarves, belts, pillow covers, lingerie.
T-33A	Bonnie Shoes	Retail	Men's women's children's footwear, handbags, belts, hair accessories, hats, umbrellas.
T-35A	Vacant (partymart)		
T-36	Dollar Mart	Retail	T-shirts, denim shorts, picture frames, cards, gift wrap, party & cookware, tinned foods, light household cleaning products & tools, dishes, glassware, hair accessories & products, office & school supplies, light hardware items.
T-38	Supertouch Hair Design	Parlor	Hair care servies, accessories, hair products, some aesthetic services
T-37	Golden Pacific Travel	Travel Agent	Travel services
T-39	Your Health Partners	Health Clinic	Chiropractor Massage therapy, weight loss dietician
T-41	Academy of Math & Science	Education	Tutoring service
T-43	Optical Shop Of Markham Inc	Speciality	Optical exams, eye glasses and accessories
T-45	Denison Garden	Fastfoods	Asian foods - take out
T-47	Reggie Remisar (former Capt	Fastfoods	Indian food - take out
T-50	Subway Sandwich	Fastfoods	Subway take out
	EXTERNAL TENANT		
T-1	Swiss Chalet	Restaurant	Chicken, beef, foods- restaurant, take out, liquor license
T-3	Mix Two KTV	Entertainment	Billard hall, karaoke bar
T-8	Maydoh Restaurant	Restaurant	Asian food, restaurant & take out
T-26	Dragon Boat Restaurant	Restaurant	Asian food, restaurant & take out

**DENISON CENTER - TRAFFIC PATRONAGE SURVEY
FROM NOV 12 - NOV 14, 04**

	TORONTO	NORTH YORK	SCARBOROUGH	MARKHAM	RICHMOND HILL	THORNHILL	MISSISSAUGA	OTHERS	OTHER LIST	TOTALS
12-Nov-04		1	5	14	2					20
		4	5	15				1	OAKVILLE	26
<i>FRI</i>	3		1	17	1	1		2	SUTTON, NORTH BAY	26
	1		6	17	1					25
		4	6	10		2	3			25
	1		2	20	1	1				25
SUBTOTAL	5	9	23	93	6	4	3	3		
13-Nov-04		1	6	15	1			2	PICKERING, BRAMPTON	25
		1	5	16	1			2	BOLTON, WHITBY	25
	10	1		12		1		1	BRAMPTON	25
	1		6	14	4					26
	2		6	14	1		1	1	WHITBY	26
<i>SAT</i>	1	1	1	6				1	BRAMPTON	10
	1		5	14	2	1		2	WHITBY, BARRIE	25
		1	4	19			1			25
	4		3	13	1	1	1	2	HAMILTON, NEWMARKET	25
	1	2	4	16				2	QUELPH, WINDSOR	25
		1	2	15		1		3	OTTAWA, US, WHITBY	25
	1		4	7	1					13
		4	4	11	2	1	2	1	PICKERING	25
SUBTOTAL	21	12	50	175	13	5	5	17		
14-Nov-04			5	1	2	1				9
	3		5	17						25
	2		6	14	1			1	BRAMPTON	24
<i>SUN</i>	15	1	2	6				1	OSHAWA	25
	2	1	3	22						25
		1	3	8			1	1	AURORA	16
		1	9	15						25
		2	2	19			1	1	WINNIPEG	23
	1	1	8	12	1			2	OSHAWA, WOODBRIDGES	25
		1	5	15		1		1	EDMONTON	25
SUBTOTAL	23	7	48	130	4	2	2	7		
TOTALS	46	28	121	398	22	11	10	27		668



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bagroup@bagroup.com

November 16, 2004

Wayne Chan
Remington Group
7501 Keele Street, Suite 100
Vaughan, ON L46K 1Y2

Dear Mr. Chan:

Re: 1661 Denison Street, Markham

Attached please find two copies of an aerial photograph (at 1:2000 scale) of the area west of Old Kennedy Road, between Steeles Avenue and Denison Street. The photograph which was taken in April 2004, shows Market Village / Pacific Mall at the northeast corner of Steeles Avenue / Kennedy Road intersection and the retail plaza at the southwest corner of Kennedy Road / Denison Street intersection.

As requested, we have measured the distances between the two retail commercial centres along Kennedy Road and wish to confirm that the distance between Market Village and the retail plaza at 1661 Denison Street is approximately 1.0 km.

Please contact me directly with any questions concerning the attached drawing.

Sincerely,
BA Consulting Group Ltd.

A handwritten signature in cursive script that reads 'John Barrington'.

John Barrington
Senior Associate

Enclosure (2)

Retail Business Holidays Act
Loi sur les jours fériés dans le commerce de détail

ONTARIO REGULATION 711/91

TOURISM CRITERIA

Consolidation Period: From November 27, 1991 to the e-Laws currency date.

No amendments.

This Regulation is made in English only.

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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RETAIL BUSINESS HOLIDAY ACT EXEMPTIONS

Retail Business Holidays Act provides for the following "holidays": New Year's Day, Good Friday, Easter Sunday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day and any other day proclaimed by the Lieutenant Governor
 Table showing Schedule A of By-law LI-8-95-76 being a By-law to permit retail business establishments to be open on holidays. Includes subsequent amendments.

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

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

By-law	Date Enacted	Municipality	Businesses	Location	Holidays	Hours
LI-8(b)-96-1 (addition to LI-8-95-76)	Jan. 11, 1996	Newmarket	All	NEWMARKET DOWNTOWN, within the following boundaries: North: south limit of Davis Drive; East: east limit of Prospect St. and Bayview Ave; South: south limit of College St. and Cane Parkway; West: west limit of William St., Church St. and Niagara St.	All, except Christmas Day, New Year's Day and Good Friday	8:00 a.m. to 10:00 p.m.
LI-8(a)-95-128 (additions to LI-8-95-76)	Nov. 23, 1995	Richmond Hill	NONE	NONE		
LI-0008(i)-2004-086	Nov. 18, 2004	Vaughan	All	KLEINBURG CORE, within the following boundaries: East side of Islington Ave. from 10365 Islington Ave. to 10565 Islington Ave.; West side of Islington Ave. from 10406 Islington Ave. to 10576 Islington Ave.; South and North sides of Nashville Road from Islington Ave. to Highway 27	All, except Christmas Day	8:00 a.m. to 10:00 p.m.
LI-8-95-76	May 30, 1995	Whitchurch-Stouffville	All	1 Bass Pro Mills Drive, City of Vaughan Within the geographic boundaries of the Town of Whitchurch-Stouffville	New Year's Day Victoria Day Canada Day Labour Day Thanksgiving Day July 1 in each year	12:00 p.m. to 5:00 p.m. 10:00 a.m. to 6:00 p.m. 8:00 a.m. to 10:00 p.m.

Français

Retail Business Holidays Act

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

Consolidation Period: From January 1, 2007 to the e-Laws currency date.

Last amendment: 2006, c.32, Sched.D, s.15.

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.

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.

Exemptions, under licences or other Acts

- (5) Section 2 does not apply in respect of the sale or offering for sale by retail,
- (a) of liquor under the authority of a licence or permit issued under the *Liquor Licence Act*;
 - (b) of goods or services under the authority of a tourist establishment licence issued under the *Tourism Act*.

Idem, 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. R.S.O. 1990, c. R.30, s. 3 (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.

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.

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.

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.

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).

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.

Ontario Municipal Board Act, ss.43, 95

(7) Sections 43 and 95 of the *Ontario Municipal Board Act* do not apply to an appeal under this section.

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).

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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