

THE REGIONAL MUNICIPALITY OF YORK

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

**For Consideration by
The Council of The Regional Municipality of York
on November 15, 2007
(deferred from October 18, 2007 Regional Council)**

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

(Report No. 1 of the Regional Solicitor was not adopted by Regional Council at its meeting held on November 15, 2007.)

(Report No. 1 of the Regional Solicitor was deferred to the November 15, 2007 Regional Council meeting, by Regional Council at its meeting held on October 18, 2007.)

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council consider the application from Leon's Furniture Limited and determine whether to grant an exemption from the *Retail Business Holidays Act* to allow Leon's 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 Leon’s Furniture Limited (“Leon’s”) 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
- Good Friday
- Easter Sunday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day

It should be noted that 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 applications.

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

The following application has been received:

Municipality	Business	Requested Dates	Hours
Vaughan	Leon’s Furniture Limited 299 Bass Pro Mills Drive, Vaughan	New Year’s Day Victoria Day, Canada Day, Labour Day, Thanksgiving Day	12:00 p.m. to 5:00 p.m. 10:00 a.m. to 6:00 p.m.

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

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. The Region of York actively promotes tourism as part of its economic development strategy. Tourism contributes over \$200 million to the Region's economy and brings in almost three million visitors to the Region.

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 (Attachment 2).

Section 2 of the Regulation 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.

Leon's takes the position that it complies with the tourism criteria. Leon's is part of the same major development as Vaughan Mills. Vaughan Mills is located at 1 Bass Pro Mills Drive and is one of the largest shopping and entertainment centres in the Region. Vaughan Mills was granted exemption by Regional Council on November 18, 2004, pursuant to By-law No. LI-0008(i)-2004-086. A copy of By-law No. LI-0008(i)-2004-086 is attached to this report (Attachment 3). Leon's has requested to be open during the same holidays and times as the Vaughan Mills Shopping Centre.

Canada's Wonderland is an outdoor recreational tourist attraction located within two kilometres of Leon's.

Both Vaughan Mills and Canada's Wonderland attract tourists from Canada, the USA and overseas.

4.3 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 November 19, 2007. 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.

4.4 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 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 City of Vaughan.

7. CONCLUSION

An Application has been received from Leon's requesting an exemption from the Act to permit Leon's to remain open on certain holidays. The exemptions would allow Leon's to remain open on the requested 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 November 19, 2007.

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

Respectfully submitted,

**October 18, 2007
Newmarket, Ontario**

**J. Hulton
Regional Solicitor**

THE RETAIL BUSINESS HOLIDAYS ACT

APPLICATION FOR EXEMPTION

Leon's Furniture Limited 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>
Leon's Furniture Store	299 Bass Pro Mills Drive Vaughan, Ontario	New Year's Day Victoria Day Canada Day Labour Day Thanksgiving Day	12pm – 5pm 10am – 6pm 10am – 6pm 10am – 6pm 10am – 6pm

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

1. Letter from Terry Leon dated August 15, 2007
2. _____
3. _____

Dated at Toronto this 15th day of August, 2007.



Signature

President & CEO

Relationship to business

Please provide the following information:

1. Name, address and telephone number of the business

Leon's Furniture Limited
299 Bass Pro Mills Drive
Concord, Ontario
L4K 5Z6
Tel: (905) 532-0141

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

Leon's Furniture Limited (Home Office)
45 Gordon MacKay Road
P.O. Box 1100, Station B
Weston, Ontario
M9L 2R8
Tel: (416) 243-7880
Contact: John A. Cooney, Corporate Counsel

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

- Canada's Wonderland
- Vaughan Mills Mall

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

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

Outdoor recreational and cultural

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

Not directly related to Paramount Canada's Wonderland but is in the same major development as Vaughan Mills.

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

The retail business is attractive to both tourists and non-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. 1420, fax 905-895-3768.



YORK LEGAL
AUG 15 2007
CCTO

LEON'S FURNITURE LIMITED

August 15, 2007

Via Courier

The Regional Municipality of York
Corporate Services Department, Legal Services Branch
17250 Yonge Street
Newmarket, Ontario L3Y 6Z1

Attention: Elizabeth Wilson

Dear Madam:

**RE: Application for Exemption under The Retail Business Holidays Act
By Leon's Furniture Limited ("Leon's")**

Please find enclosed Application for Exemption under The Retail Business Holidays Act, R.S.O. 1990, c. R.30 (the "Act") for the Leon's Furniture Store located at 299 Bass Pro Mills Drive, Vaughn, Ontario (the "Leon's Store").

As you will note, the Leon's Store is located within the larger Vaughan Mills development, being adjacent to the Vaughan Mills mall site located at 1 Bass Pro Mills Drive, Vaughan (the "Vaughan Mills Mall"). As you are aware, By-Law No. LI-0008(i)-2004-086, passed by The Regional Municipality of York, permitted the Vaughan Mills Mall the ability to be open on New Year's Day from 12:00 pm to 5:00 pm, and on Victoria Day, Canada Day, Labour Day and Thanksgiving Day from 10:00 am to 6:00 pm. Given that the Leon's Store is part of the larger Vaughan Mills development, we believe that Leon's should be entitled to open on the same days and times as the Vaughan Mills Mall.

The Leon's Store is also located within two kilometers from Canada's Wonderland.

Given the proximity of the Leon's Store to both Vaughan Mills Mall and Canada's Wonderland, and the number of tourists who come to both Canada's Wonderland and the Vaughan Mills Mall throughout the year, tourists who also patronize the Leon's Store, we believe that we fit within the tourism criteria set out under Ontario Regulation 711/91.

As a result, we hereby apply for a By-law to be passed by the Regional Municipality of York exempting the Leon's Store from the application of the Act.

Please do not hesitate to contact John Cooney of our office at 416-243-4069 should you have any questions or concerns with respect to this application.

Sincerely,

LEON'S FURNITURE LIMITED

Per:

Terrence J. Leon
President and CEO

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).