

THE REGIONAL MUNICIPALITY OF YORK

BYLAW NO. 2017-55

A bylaw respecting retail business holiday closures
in The Regional Municipality of York

WHEREAS Section 148 of the *Municipal Act, 2001*, S.O. 2001, c. 25 authorizes the Council of The Regional Municipality of York to pass a bylaw requiring that retail business establishments be closed to the public on a holiday;

AND WHEREAS pursuant to Section 1.2 of the *Retail Business Holidays Act*, R.S.O. 1990, c. R.30 (the “RBHA”), the RBHA does not apply to a municipality where the municipality has passed a bylaw providing that the RBHA does not apply to it;

NOW THEREFORE, the Council of The Regional Municipality of York hereby enacts as follows:

1 INTERPRETATION

1.1 In this bylaw:

“**holiday**” means (a) New Year’s Day, (b) Family Day (c) Good Friday, (d) Victoria Day, (e) Canada Day, (f) Labour Day, (g) Thanksgiving Day, (h) Christmas Day, (i) Easter Sunday, and (j) any other public holiday declared by proclamation of the Lieutenant Governor of the Province of Ontario to be a holiday for the purposes of the RBHA;

“**officer**” means a police officer of the York Regional Police;

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

“**Region**” means The Regional Municipality of York;

“**retail business**” means the selling or offering for sale of goods or services by retail; and

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

2 THE RBHA DOES NOT APPLY TO THE REGION

- 2.1 The *Retail Business Holidays Act* does not apply to a retail business establishment in the Region as of the effective date of this bylaw.
- 2.2 Retail business establishments in the Region may remain open on a holiday unless prohibited to do so under this bylaw.

3 PROHIBITION

- 3.1 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 Christmas Day.
- 3.2 No person employed by or acting on behalf of a person carrying on a retail business in a retail business establishment shall engage in any prohibited activity listed in Section 3.1.

4 EXEMPTIONS

Small Stores

- 4.1 Section 3 of this bylaw does not apply in respect of the carrying on of a retail business where,
 - (a) the only goods available for sale by retail in the retail business establishment are:
 - (i) foodstuffs;
 - (ii) tobacco or articles required for the use of tobacco;
 - (iii) antiques; or
 - (iv) handicrafts,

or any combination of them, or where the principal business is the sale of goods referred to in subclauses (i) to (iv), or any of them, by retail and no other goods are available for sale except as sundries; and

- (b) the number of persons engaged in the service of the public in the establishment does not at any time exceed three; and
- (c) the total area used for serving the public or for selling or displaying to the public in the establishment is less than 2,400 square feet.

Necessary Services

4.2 Section 3 of this bylaw 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; or
- (e) servicing and repair of vehicles or boats.

Pharmacies

4.3 Section 3 of this bylaw does not apply in respect of the carrying on of a retail business in a pharmacy accredited under the *Drug and Pharmacies Regulation Act*, where the principal business of the pharmacy is the sale of goods of a pharmaceutical or therapeutic nature or for hygienic or cosmetic purposes and no other goods are available for sale except as sundries.

Special Services

4.4 Section 3 of this bylaw does not apply in respect of the carrying on of a retail business in a retail business establishment where the only goods available for sale by retail in the establishment are:

- (a) gasoline and motor oil and, in conjunction therewith, other goods for consumption in the operation of a motor vehicle;

- (b) nursery stock or flowers, and in conjunction therewith, accessory gardening supplies; or
- (c) books, newspapers or periodicals provided that no other goods are available for sale except as sundries, the number of persons engaged in the service of the public in the establishment does not at any time exceed three and the total area used for serving the public or for selling or displaying to the public in the establishment is less than 2,400 square feet.

Liquor

- 4.5 Section 3 of this bylaw 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*.

Art Galleries

- 4.6 Section 3 of this bylaw does not apply in respect of the carrying on of the retail business of an art gallery where the number of persons engaged in the service of the public in the 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.

Tourist Establishments

- 4.7 Section 3 of this bylaw does not apply in respect of the sale or offering for sale of retail goods or services from tourist establishments or tourist attractions.
- 4.8 For the purpose of Section 4.7,
“tourist establishment” means any premise operated to provide sleeping accommodation for the travelling public or sleeping accommodation for the use of the public engaging in recreational activities, and includes the services and facilities in connection with which sleeping accommodation is provided, but does not include,

- (a) a camp operated by a charitable corporation approved under the *Charitable Institutions Act*,
- (b) a summer camp within the meaning of the regulations made under the *Health Protection and Promotion Act*, or
- (c) a club owned by its members and operated without profit or gain.

For the purpose of Section 4.7,

“tourist attraction” is limited to,

- (a) natural attractions or outdoor recreational attractions;
- (b) historical attractions; and
- (c) cultural, multicultural or educational attractions.

Education, recreation, amusement

4.9 Section 3 of this bylaw 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.

5 APPLICATION OF THE *EMPLOYMENT STANDARDS ACT, 2000*

5.1 Despite any provision of this bylaw, Part XVII of the *Employment Standards Act, 2000*, S.O. 2000, c. 41 applies to all retail business establishments in the Region.

6 OFFENCES

6.1 Every person who contravenes Section 3 of this bylaw is guilty of an offence and on conviction is liable to a fine of not more than the greater of,

- (a) \$50,000; or
- (b) the gross sales in the retail business establishment on the date on which the contravention occurred.

6.2 Every person who coerces, requires or counsels another person to contravene Section 3 of this bylaw is guilty of an offence and on conviction is liable to a fine of not more than the greater of,

- (a) \$50,000; or
- (b) the gross sales in the retail business establishment on the date on which the offence occurred.

6.3 The minimum penalty for an offence under this bylaw is \$500 for a first offence, \$2,000 for a second offence and \$5,000 for a third or subsequent offence.

6.4 In determining the amount of the penalty, the court shall take into consideration any evidence respecting the gross sales in the retail business establishment on the date on which the contravention occurred.

6.5 Where a sign or advertisement gives the hours of operation of a retail business establishment, it shall be presumed that the retail business establishment was open during those hours, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.

6.6 For the purpose of enforcing this bylaw, the total area of a retail business establishment used for serving the public or for selling or displaying to the public on Christmas Day shall be deemed to be the greater of:

- (a) the total area actually used on Christmas Day 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 Christmas Day.

7 INSPECTIONS

7.1 An officer, for the purpose of determining compliance with this bylaw, may enter a retail business establishment to carry out an inspection and may:

- (a) require the production for inspection of documents or things relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts; and
- (c) take photographs necessary for the purpose of the inspection.

8 REPEAL AND ENACTMENT

- 8.1 Bylaw No. LI-8-95-76 and all amendments to it are repealed as of December 31, 2017.
- 8.2 Despite the repeal of By-law LI-8-95-76, as amended, that bylaw shall continue to apply to any acts, omissions or occurrences, and to any offences that took place prior to the coming into force of this bylaw.
- 8.3 The short title of this bylaw is the Holiday Shopping Bylaw.
- 8.4 This bylaw shall come into force on January 1, 2018.

ENACTED AND PASSED on November 16, 2017.

Christopher Raynor

Wayne Emmerson

Regional Clerk

Regional Chair

Authorized by Clause 4, Report 16 of the Committee of the Whole, adopted by Regional Council at its meeting on November 16, 2017