

**CITY OF HAMILTON**

**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
***Economic Development Division***

<b>Report to:</b> Chair and Members Planning & Economic Development Committee	<b>Submitted by:</b> Lee Ann Coveyduck General Manager Planning and Economic Development Department
<b>Date:</b> March 17, 2006	<b>Prepared by:</b> Neil Everson (905) 546-2424 Ext. 2359

**SUBJECT: Store Hours Policies and Procedures (PED06111) (City Wide) –  
Referred from Planning and Economic Development Committee on  
November 2, 2004**

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**RECOMMENDATION:**

- a) That the City of Hamilton adopt the Retail Business Holidays Act, R.S.O., 1990, Chapter R.30, attached as Appendix A to Report PED06111, as the authority to regulate store hours within the City of Hamilton.
- b) That the draft by-law, to repeal By-law R79-202, as amended, the Regional Store Hours By-law, attached as Appendix C to Report PED06111, be enacted by City Council.
- c) That the Store Hours By-law item, referred from the Planning and Economic Development Committee on November 2, 2004, be identified as completed and removed from the Planning and Economic Development Committee Outstanding Business List.

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Lee Ann Coveyduck  
General Manager  
Planning and Economic Development Department

**EXECUTIVE SUMMARY:**

The City of Hamilton is one (1) of only two (2) major municipalities in the Province which rely on its own Store Hours By-law. The majority rely on the Retail Business Holiday Act to regulate store hours. The retail landscape has changed considerably since Hamilton first enacted this By-law in 1979. Consumers are now looking for more choice and are willing to travel to neighbouring municipalities to shop for an extended time

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period if they can do so. To prevent economic/retail leakage and to ensure a level playing field with neighbouring municipalities, the recommendation is being made that Hamilton follow the Retail Business Holiday Act to regulate store hours, as is the practice of the majority of urban centres in Ontario.

**BACKGROUND:**

Hamilton is only one (1) of two (2) major municipalities in the Province (the other being Sudbury) which rely on a municipal Store Hours By-law to regulate hours.

The majority of municipalities surveyed – 13 out of the 14 surveyed by the Downtown Renewal Division regulate store hours solely by reference to the Retail Business Holidays Act.

**Hamilton's Store Hours By-law**

In December 1979, the former Regional Municipality of Hamilton-Wentworth enacted By-law No. R79-202 to regulate the hours of closing of retail shops within the regional area. The By-law has been amended over subsequent years and dictates that all classes of shops within the City of Hamilton shall close each day of the year by 9:00 p.m. Mondays-Saturdays and shall remain closed until 5:00 a.m. the next day.

All classes of shops within the City of Hamilton shall be closed and remain closed during the whole of each of the following days until 5:00 a.m. the next day including: New Year's Day; Good Friday; Victoria Day; Canada Day; Labour Day; Thanksgiving Day; Christmas Day; and any day appointed by proclamation of the Governor General or Lieutenant Governor as a public holiday.

There are a number of classes of shops in the City of Hamilton that are exempt including barber/beauty shops, fruit/vegetable shops, butcher shops, garden centres and nurseries, to name a few.

Further exemptions are allowed under By-law R79-202 where a shop in the City of Hamilton may file an application with the City Clerk to open for a special occasion such as an opening or closing sale, anniversary or sidewalk sale for example on a day not more than 30 days prior to a holiday as defined in the Retail Business Holidays Act.

The exemptions outlined under By-law R79-202 are included in Appendix B.

**Administration of By-law 79-202, as amended:**

By-law 79-202 is administered by the Clerk of the City of Hamilton.

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**The Retail Business Holidays Act**

The Retail Business Holidays Act dictates that no person carrying on a retail business in a retail business establishment shall sell or offer for sale any goods or services; or, admit members of the public thereto on a “holiday”. Holidays are defined as: New Year’s Day; Good Friday; Victoria Day; Canada Day; Labour Day; Thanksgiving Day; Christmas Day; Easter Day; and, any other public holiday declared by proclamation of the Lieutenant Governor to be a holiday.

The Retail Business Holidays Act allows exemptions for small stores, pharmacies, special services such as gasoline and nursery stock, art galleries and necessary services such as laundromats. There are further exemptions for the sale of liquor under the Liquor Licence Act and establishments licenced under the Tourism Act. 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.

The Retail Business Holidays Act and a summary of the exemptions are included in Appendix A.

**ANALYSIS/RATIONALE:**

**Results of Staff Consultation and Research:**

The Downtown Renewal Division carried out research on other municipalities, tourism districts, Business Improvement Areas and four (4) malls in the GTA/Niagara Peninsula/Southwestern Ontario to gain information and compare their experience and practices with those in Hamilton.

**- Other Municipalities**

Of the 14 municipalities surveyed, 13 of them rely upon the Retail Business Holidays Act to regulate store hours. These include: Brantford, Burlington, Cambridge, Grimsby, Guelph, Kingston, London, Mississauga, Oakville, St. Catharines, Toronto, Waterloo and Windsor; the City of Sudbury has enacted its own store hours by-law.

**- Sudbury’s Store Hours By-law**

The City of Sudbury has a store hours by-law which stipulates that all retail businesses must close on Mondays-Saturday by 10:00 p.m. until 5:00 a.m. the next day and close on Sundays by 6:00 p.m. with some exceptions. As the Mayor of Sudbury has declared Civic Holiday and Boxing Day both Civic Holidays, retail stores must close on those days.

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**- Tourism Districts**

The Retail Business Holidays Act does provide for a retail business establishment or an “area” of businesses to be open on Statutory Holidays for tourism purposes. The Retail Business Holidays Act clearly spells out the process for approving a municipal by-law that would allow an area or an establishment to remain open on a Statutory Holiday for the maintenance and development of tourism.

The City of Kingston, for instance, through its By-law 98-127, permits retail businesses to operate on Statutory Holidays from May 1 – October 15 of each year for the purpose of maintaining tourism.

The City of Toronto has three (3) districts that are considered tourist areas which are permitted to be open on Statutory Holidays including the Eaton Centre/Yonge Street Corridor, Harbourfront and Yorkville.

**- Ontario Business Improvement Areas**

Nine (9) Business Improvement Areas (BIAs) were contacted across the Province including Kitchener Downtown BIA, Guelph Downtown, Old East Village London BIA, Downtown Windsor BIA, Uptown Waterloo, Streetsville BIA (Mississauga), Downtown Oakville BIA, Burlington Downtown BIA and Clarkson Village Centre BIA (Mississauga).

Stores within these BIAs are generally open:

- Mondays-Wednesdays until 5:30 p.m. or 6:00 p.m.
- Thursdays and Fridays until 8:00 p.m. or 9:00 p.m.
- Few open on Sundays

**- Malls in Neighbouring Municipalities**

Five (5) malls were contacted – three (3) in the GTA (in the cities of Burlington, Oakville and Mississauga), and one (1) each in Niagara and Kitchener-Waterloo to determine the hours of operation. All of the malls surveyed closed at 9:00 p.m. Mondays-Saturdays and at 6:00 p.m. on Sundays. These malls are not open on Statutory Holidays.

As part of this research, it was determined which of these malls open for extended shopping hours for special events like a Midnight Madness sale:

Hopedale Mall, Oakville	NO
Erin Mills Centre, Mississauga	NO
Pen Centre, St. Catherines	Two (2) Midnight Madness sales in December
Conestoga Mall, Kitchener-Waterloo	Four (4) late openings before Christmas; close at 11:00 p.m. due to bus scheduling
Mapleview, Burlington	NO - Open until 10:00 p.m. each night the two (2) weeks before Christmas

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**City-Wide Public Input**

Following the review of store hours practices in other urban communities, the Planning and Economic Development Committee held a Special Public Meeting on October 27, 2005, to consider public input. This meeting was advertised in the local newspapers by inviting all of the BIAs and contacting by phone all of the major shopping centres in the City. The meeting, which commenced at 6:00 p.m. in the Council Chambers at City Hall, heard five (5) delegations. A wide range of views were expressed, but there was no real consensus.

The spokesperson for the Downtown Hamilton BIA, Kathy Drewitt, requested that the store hours regulations remain as they are, with a couple of minor changes since the regulations provide uniform hours of operation, permit certain exemptions and allow adequate hours of opening. According to Ms. Drewitt, any change to these regulations which permitted extended hours, could have an adverse impact on the quality of life of workers and operators, and could cause hardship for smaller businesses.

The delegation noted that the only clarifications needed were around Civic Holiday opening hours and the need to reduce the long list of exemptions. The Downtown Hamilton BIA spokesperson also advised Committee that the Hamilton Association for Business Improvement Areas (HABIA) had not reached a consensus on whether the existing regulations should be retained.

Tracy Fox, a Hamilton resident, requested that no additional opening hours be permitted for retail businesses, and that the by-law should not allow any exemptions. Ms. Fox cited numerous reasons for maintaining the status quo, including the adverse impact of longer store hours on the retail workers and owners, the impact on residents who live near shopping malls and areas, and the possibility that extended hours would favour the larger retail operations, at the expense of smaller businesses. Ms. Fox requested that the issue of Sunday shopping be placed as a question on the ballot forms for the next municipal election.

Amy Rolfe and Lorraine Murphy, both with Mountain Plaza Mall, addressed Committee in favour of permitting longer hours for shopping centres and retail stores. They requested that City Council move forward with the changing economic and social situations, and allow more freedom of choice to the retail sector in the hours of opening. Ms. Rolfe emphasized that opening on holidays and for special midnight madness sales was popular with customers and essential to operators, and that if store hours were not extended, customers would go elsewhere to shop, creating an adverse impact on Hamilton's economy. Ms. Murphy advised that consumers' shopping habits have changed, and it is essential to permit flexibility in store hours to keep up with these changing trends.

Richard Saker from Eastgate Mall addressed Committee on the issue. Mr. Saker explained that Eastgate Mall has no issues with the current by-law and that things are

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working well. However, he explained that the malls in the surrounding area generally kept the same hours, and should this change, he would request flexibility to keep in line.

Committee discussed the issues raised by the delegations and staff, and directed staff to report back with recommendations, regarding store hours, taking into consideration all the points raised during the discussion.

**ALTERNATIVES FOR CONSIDERATION:**

- This report recommends:
  - That the City rely on the Retail Business Holidays Act as the authority to regulate store hours within the City of Hamilton.
  - That By-law R79-202, as amended, be repealed.
- Other options:
  - Maintain the status quo with the City continuing to follow the Store Hours By-law. However, there would be significant competition issues with retailers in surrounding municipalities with shoppers travelling to neighbouring municipalities to shop in stores with longer hours thereby taking dollars out of the municipality.
  - Revise City By-law R79-202 to update it and to allow additional “special openings” and to potentially define tourist areas.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

- Financial - The City of Hamilton could lose assessment revenue if retailers choose not to locate in Hamilton because of a restrictive Store Hours By-law.
- Staffing - Implications on Clerk’s staff which currently processes requests for amendments to the Store Hours By-law. Enforcement could still be an issue as staff is currently called on to deal with noise complaints and receive reports of late openings.
- Legal - By repeal of the existing By-law, Council gives up control over store hours, enforcement and, where applicable, the authority to declare that stores be closed on statutory holidays. Enforcement will become a Provincial responsibility, which may require the involvement of Police. The City would no longer have staff answering questions for the public about retail hours/closings.

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**POLICIES AFFECTING PROPOSAL:**

- The Retail Store Hours By-law
- Noise By-law

**RELEVANT CONSULTATION:**

Planning and Economic Development Department

- Downtown Renewal

Corporate Services Department

- Office of the City Clerk

City Manager's Office

- Legal Services and Corporate Counsel

**CITY STRATEGIC COMMITMENT:**

It is important to position the City of Hamilton on an equal footing with other municipalities when it comes to store hours. This is critical and in line with Council's number one priority to grow the City's economy. Creating a level playing field with regards to store hours will appropriately position the City and contribute to attracting and retaining business as well as keeping Hamilton competitive on the retail front.

By evaluating the "**Triple Bottom Line**", (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

**Community Well-Being is enhanced.**       Yes    No

Bringing Hamilton's store hours in line with other municipalities will provide consumers with more choice locally.

**Environmental Well-Being is enhanced.**       Yes    No

**Economic Well-Being is enhanced.**       Yes    No

In line with Council's number one priority to grow the City's local economy, creating a level playing field for retail store hours will both attract and retain business and keep Hamilton competitive in the retail sector.

**Does the option you are recommending create value across all three bottom lines?**

Yes    No

**Do the options you are recommending make Hamilton a City of choice for high performance public servants?**

Yes    No

NE:rp  
Attachs. (3)

## Summary of Exemptions to the Retail Business Holidays Act

### Exemptions:

- a) **Small stores** where 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**;
  - iv) **handicrafts; or, any combination of them** or where the principal business is the sale of goods referred to in i) – iv) and no other goods are available for sale except as sundries; **and**, the number of persons engaged in the service of the public in the establishment must not exceed at any time three (3); **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.
  
- b) **Pharmacies** accredited under the Drug and Pharmacies Regulation Act where on that day:
  - i) the dispensing of drugs upon prescription is available to the public during business hours; **and**,
  - ii) 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**
  - iii) 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.
  
- c) **Special services** where, on that day, the only goods available for sale by retail in the establishment are:
  - a) **gasoline and motor oil** and, in conjunction, other goods for consumption in the operation of a motor vehicle; or,
  - b) **nursery stock or flowers**, and in conjunction, 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 no other goods are available for sale except as sundries; **and**, the number of persons engaged in the service of the public in the establishment does not at any time exceed three (3); **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.
  
- d) **Art galleries**, where on that day the number of persons engaged in the service of the public in the art gallery does not exceed three (3); **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.

- e) **Necessary services**, where goods or services sold or offered for sale by retail in the form of or in connection with:
  - i) **prepared meals;**
  - ii) **living accommodation;**
  - iii) **Laundromats and other coin-operated services;**
  - iv) **rentals of vehicles or boats; and,**
  - v) **servicing and repair of vehicles or boats.**

**Exemptions under Licenses or other Acts:**

- a) the sale or offering for sale by retail, of liquor under the authority of a licence or permit issued under the Liquor Licence Act.
- b) the sale or offering for sale, of goods or services under the authority of the tourist establishment licence issued under the Tourism Act

**Tourism Exemption:**

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. *Note: the Tourism Act dictates the process by which a municipality may pass a by-law to permit retail business establishments in the municipality to be open on holidays for the maintenance or development of tourism.*

## **Retail Business Holidays Act**

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

.Amended by: 1991, c. 43, s. 1; 1993, c. 14; 1993, c. 27, Sched.; 1996, c. 34, ss. 1, 2; 1998, c. 18, Sched. G, s. 72; 2001, c. 9, Sched. D, s. 14; 2002, c. 17, Sched. F, Table.

### **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, except in section 7, a regional municipality and a local municipality, other than a local municipality within a regional municipality; (“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.

### **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).

### **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 1<sup>st</sup> 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
- (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) or A regulation under clause (10) (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, 43, 95 ss.***

- (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).

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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,

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- (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:

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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).
- (3) Repealed: 2002, c. 17, Sched. F, Table.

## **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).

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### **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.

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### 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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## City of Hamilton By-law No. R79-202

### Exemptions:

The following classes of shops in the City of Hamilton are exempt: **barber shops, beauty parlour shops, shoe shine shops; hat cleaning and blocking business shops; shops for the retail sale of fresh fruit and vegetables; pharmacies, as defined in subsection 117 of the Health Disciplines Act; shops for the retail sale of motor vehicles; tobacco shops; news dealer shops; confectionery shops; boat and marine supply shops; grocery store shops; butcher shops; shops for the retail sale of fowl; shops for the retail sale of fish; shops for the retail sale of dairy products including dairy bar; delicatessen shops; books shops; rural general store shops; garden centre and nursery shops; and, golf course professional shops.** Note: notwithstanding the above exemption, shops for the retail sale of motor vehicles shall be closed and remain closed at 10:00 p.m. Mondays through to Fridays until 5:00 a.m. the following day and at 6:00 p.m. Saturdays until 5:00 a.m. the following day.

**Music centre stores and music stores** shall be closed at 9:30 p.m. Mondays through to Fridays until 5:00 a.m. the following day and at 6:00 p.m. Saturdays until 5:00 a.m. the following day.

### Further Exemptions:

The occupier of a shop in the City of Hamilton may apply for an exemption from the By-law for the purpose of a **special occasion**, by filing an application for the exemption with the City Clerk. Special occasions includes: **a store opening sale; a store closing sale; a fire sale; a bankruptcy sale; an anniversary sale; a street or sidewalk sale; and, a sale on a day not more than 30 days prior to a holiday as defined in the Retail Business Holidays Act.**

The Clerk may grant an exemption from the By-law to the occupier of a shop for a period not exceeding two (2) consecutive days in duration, and for not more than two (2) periods in any year, where the Clerk is satisfied that the exemption for a special occasion is not likely to result in excessive noise or traffic congestion in the vicinity of the shop.

