1
RETAIL BUSINESS HOLIDAYS ACT

1. RECOMMENDATIONS

It is recommended that:

1. This report be received for information.

2. PURPOSE

The purpose of this report is to respond to a request from Regional Council for additional information on exemptions granted under the *Retail Business Holidays Act*.

3. BACKGROUND

At its meeting on November 18, 2004, Regional Council held a public meeting to consider applications from Vaughan Mills and from the Kennedy and Denison Shopping Centre for exemptions from the *Retail Business Holidays Act* (the "Act").

Following the public meeting, Council granted the exemption for Vaughan Mills but deferred the application from Kennedy and Denison Shopping Centre to the meeting on December 16, 2004. Council requested that a report be brought forward setting out a summary of the exemptions granted to date and addressing how applications may be administered more consistently.

4. ANALYSIS AND OPTIONS

4.1 Current By-Laws

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

Exempting by-laws cannot be enacted by Regional Council on its own initiative but must be in response to an application on behalf of the business. An application may be made by.

a) a retail business;
b) an association representing a number of business; or
c) the council of an area municipality

Attachment 1 shows the exempting by-laws that are currently in place. These by-laws are in force for an indefinite period, in accordance with the originating applications.

In addition to these by-laws, Council has, from time to time, granted exemptions for specific dates that were limited to a calendar year. An example of this is the exemption granted for holidays for the latter part of 2003 to assist businesses in recovering economically from the consequences of the SARS outbreak in that year. This was granted on the basis of requests made by each area municipality on behalf of all their retail businesses.

Attachment 2 shows applications which have been denied by Regional Council.

4.2 Administration of the Act

As noted above, Regional Council's role is essentially to respond to applications submitted by or on behalf of businesses. Exemptions may be granted only if there is compliance with the tourism criteria set out in the Regulation. A copy of the Regulation is attached for reference as Attachment 3.The onus is on the applicant in each case to provide objective evidence that it has complied with these criteria.

Even if an applicant has demonstrated full compliance with the tourism criteria, Regional Council retains the discretion not to grant an exemption. An applicant has no right of appeal if Council elects not to pass an exempting by-law.

Although Council's role under the Act is primarily to assess and respond to applications, it is open to Council to adopt a policy as to how applications are to be considered to promote consistency. For instance, Council could determine that exemptions will not be granted for particular holidays or for particular hours of business.

Staff were asked to consider whether exemptions previously granted may be revisited. The Act sets out in detail the process for considering applications, including publishing of notice and holding a public meeting. The Act does not, however, prescribe any process for repealing or amending existing by-laws on the initiative of Council.

As a matter of general principle, the power to enact a by-law implies the power to repeal it, if there is no provision to the contrary. Furthermore, any process prescribed for enacting a by-law should be followed to the extent possible in its repeal or amendment.

Should Council wish to revisit any of its previous decisions, it is recommended that Council follow, at a minimum, the notice and public meeting requirements set out in the Act. It would also be advisable to give any affected businesses ample notice of any proposed changes so that any negative impacts would be minimized.

5. FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

6. LOCAL MUNICIPAL IMPACT

There is no local municipal impact associated with this report.

7. CONCLUSION

This report sets out for information of Council details of the exempting by-laws currently in force under the *Retail Business Holidays Act*. Staff also recommend that should Council wish to revisit any earlier decisions, the procedural and notice requirements prescribed for assessing original applications be followed.

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