



## Staff Report

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**Report To:** Rebekah Msuya-Collison, Chief Administrative Officer/Deputy Clerk

**From:** **Alex Wolfe, Acting Clerk**

**Date:** December 18 2023

**Report:** CL21-2023

**Subject:** *Retail Business Holidays Act and Liquor Licence and Control Act*

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### **Recommendations:**

**That South Huron Council receives the report of Alex Wolfe, Acting Clerk re: *Retail Business Holidays Act and Liquor Licence and Control Act* for information.**

### **Purpose:**

The purpose of this report is to provide Council with information regarding the *Retail Business Holidays Act, R.S.O 1990*, and the *Liquor Licence and Control Act, 2019* as requested by Council resolution.

### **Background and Analysis:**

At their October 16, 2023 Regular Council meeting, Council received a request for an exemption to Municipal By-Law 62-2004 from a local business owner to permit the business to be open and sell alcohol on additional holidays. At that meeting, Council passed the following resolution:

Motion: 414-2023  
Moved: T. Oke  
Seconded: A. Neeb

That South Huron Council direct a staff report back on the *Retail Business Holidays Act* and *Liquor Licence and Control Act*, including obtaining feedback from Exeter BIA and Chamber of Commerce, outlining options for Council consideration.

Disposition: Carried (6-0)

### ***Retail Business Holidays Act, R.S.O. 1990 (the "Act")***

The *Retail Business Holidays Act*, R.S.O. 1990 ("Act"), is provincial legislation that requires most retail businesses to be closed on most holidays in Ontario. However, the *Act* provides various options for municipalities to adopt by-laws to allow certain stores to open on certain holidays for specified hours.

The *Act* sets out regulatory framework that prohibits most retail businesses from selling or offering for sale any goods or services by retail or admitting the public into their establishments on a holiday<sup>1</sup>.

The *Act* defines "holiday" to include the following days<sup>2</sup>:

- New Year's Day
- Good Friday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day
- Easter Sunday
- Any other public holiday declared by proclamation of the Lieutenant Governor to be a holiday for the purposes of this *Act*.

The *Act* does not apply to all retail businesses as the regulatory framework provides exemptions for small stores, pharmacies, special services, art galleries, tourist establishments and necessary services. Attached as Appendix "A" to this report is an excerpt with those details.

Further, the *Act* does not apply in respect of the sale or offering for sale of liquor, other than liquor sold at a retail store as defined in the *Liquor Licence and Control Act*, 2019.

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<sup>1</sup> Section 2(1) Retail Business Holidays Act, R.S.O. 1990, R.30, [www.ontario.ca/laws/statute/90r30](http://www.ontario.ca/laws/statute/90r30)

<sup>2</sup> Ibid, p1

The *Act* provides municipalities the ability to pass a by-law to exempt any or all of its retail business establishments that are subject to the *Act* on the following requirements:

- that it meets the “tourism exemption” for the maintenance or development of tourism
- that Council holds a public meeting with the proper notice to the public prior to passing the by-law
- by-laws that are passed only come into effect on the 31<sup>st</sup> day after being passed

The *Act* provides Council with the opportunity to hear requests for exemptions on a case-by-case basis. It does require that any applications for exemptions would need a public meeting with respect to the request.

In December 2016, the Province proclaimed into force section 1.2 of the *Act*, which provided for municipalities to choose to be exempt from the application of the *Act*. It reads as follows:

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).

(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)

The relevant language from the *Municipal Act* reads as follows:

*148 (1) Without limiting sections 9, 10 and 11, a local municipality may require that retail business establishments be closed to the public at any time. 2006, c. 32, Sched. A, 81*

...

*(4) A by-law passed under this section does not apply to the sale or offering for sale by retail of,*

- (a) goods or services in the form of or in connection with prepared meals or living accommodation;*
- (b) liquor, other than liquor sold at a retail store as defined in the Liquor Licence and Control Act, 2019; and*
- (c) any other prescribed goods or services.*

This allows Council to enact a by-law that would exempt the entire municipality from the *Act*, as long as the municipality designated at least one day as a required Holiday closing. This is supported by Section 148 of the *Municipal Act, 2001*, while subsection four outlines specific exemptions that must be considered. Council would need to enact a by-law that sets a common closure date (ex. December 25). Exceptions to the common closure date can be made for specific retailers, including necessary services such as food preparation, living accommodations, laundry facilities, pharmacies, gas stations and vehicle repair. Exceptions may also be granted to dedicated tourist establishments.

### ***Liquor Licence and Control Act, 2019, SO. 2019, c.15, Sched.22***

The *Liquor Licence and Control Act, 2019* defines a “retail store” to mean a “store for the sale of liquor to the public that is established by the LCBO or operated under the authority of a licence, including a store that operates online or through a means other than at a fixed location”<sup>3</sup>.

The Alcohol and Gaming Commission of Ontario (“AGCO”) is a provincial regulatory agency that reports to the Ministry of the Attorney General. Part of its responsibility is the regulation of alcohol through administering the *Liquor Licence and Control Act, 2019*. The AGCO provides that retail stores that sell liquor may be permitted to open on a holiday in accordance with the permissible hours of sale depending on the laws or by-laws applicable to the business, such as the *Retail Business Holidays Act* (RBHA) and municipal retail holiday by-laws.<sup>4</sup>

### **South Huron By-law 62-2004**

South Huron, through By-law 62-2004, is a blanket exemption by-law for retail business establishments in the municipality using the tourism criteria as set out in the *Act*. This By-Law replaced By-Law #17-2000 (Town of Exeter).

By-Law 62-2004 is attached as Appendix “B” to this report and confirms an exemption for all retail businesses that they may open for only three of the eight regulated holidays:

- Victoria Day
- Canada Day
- Labour Day

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<sup>3</sup> *Liquor Licence and Control Act, 2019, S.O. 2019, c. 15, Sched. 22, Section 1*

<sup>4</sup> <https://www.agco.ca/alcohol/hours-liquor-sale-service-and-delivery>

The By-Law, in accordance with the *Act*, came into effect on the 31<sup>st</sup> day after its date of passing (November 15<sup>th</sup>, 2004).

### **Request received**

Council has received a request from Huron Mini Mart for an exemption to Municipal By-Law 62-2004 to permit the sale of alcohol on additional holidays other than those included in the Municipal By-Law. The Huron Mini Mart itself may be exempt to the *Act* due to its size for selling specific goods, however, it does not meet the exemption to sell liquor as set out in the *Act*, or as required by the AGCO.

### **Consultation**

As directed by Council, staff reached out to the Chamber of Commerce and the Exeter BIA to see if there was any feedback from local businesses about the expansion of the holiday exemptions. Staff did not receive any feedback from businesses affected by the *Act*.

Based on the exemptions outlined in the *Act*, it appears it does not apply to several of the businesses within the Exeter BIA area. As a public meeting is a requirement for any changes to the by-law or requests for an exemption to the by-law, members of the public would be provided the opportunity to voice any concerns/comments at that time.

### **Options available to Council:**

1. Leave the by-law as is, this would provide individuals the opportunity to request exemption to the by-law which Council would consider on a case-by-case basis. (Recommended by staff as no feedback was received for interest in expanding holidays)
2. Amend the by-law to expand the holidays or provide a blanket exemption for all holidays. This would provide retailers with the ability to choose the dates they wish to be open (except for the common closure date as required under the *Municipal Act, 2001*).

The *Act* requires a public meeting be held to consider amendments to the by-law, or any exemption requests to the by-law.

### **Timelines:**

It is important to note that any exemption or amendment to the By-law would require Council to give public notice and hold a public meeting. The exemption by-law (case by case consideration) or amendment to the by-law

would come into effect on the 31<sup>st</sup> day following the day the by-law is passed, subject to any appeals that may be submitted during that period of time. Currently, the possible effective date the amended by-law or exemption for the by-law to come into effect would be no sooner than March 7, 2024.

### **Operational Considerations:**

Whether Council chooses to leave the by-law as is, providing for members of the public to request exemptions, or amend the by-law to expand the holidays, public notice is necessary and a public meeting held as required by the *Act*.

Staff notes that By-Law Enforcement for the Municipality is on a complaint basis.

### **Financial Impact:**

Should Council choose to leave the by-law as is, there would be additional staff time involved as requests for exemptions come in. Council could consider including an application fee in the Fees and Charges By-Law for cost recovery of administrative time for processing these applications.

Further, should Council wish for proactive by-law enforcement on this matter, there would be additional costs associated with having by-law enforcement attend on holidays.

### **Legal Impact:**

There are no legal implications as a result of the recommendations outlined in this report.

### **Staffing Impact:**

There will be increased staff time should requests on a case-by-case basis be received for exemptions.

### **Communication Actions:**

The required public notice would be provided on the Municipal Website, social media, and local newspaper.

### **Policies/Legislation:**

- [Retail Business Holidays Act](#), R.S.O. 1990, Chapter R.30
- [Liquor Licence and Control Act](#), 2019, SO. 2019, c.15, Sched.22

- [Municipal Act, 2001](#), S.O. 2001, c.25

**Consultation:**

- South Huron BIA and Chamber of Commerce

**Related Documents:**

Appendix A – Excepts from Retail Business Holiday’s Act (Exemptions)

Appendix B – Municipal By-Law 62-2004

Respectfully submitted,

**Alex Wolfe, Acting Clerk**

**Report Approval Details**

Document Title:	CL21-2023 - Retail Business Holidays Act and Liquor Licence and Control Act.docx
Attachments:	- Appendix A - to Staff Report CL21-2023 - Exemptions to Retail Business Holidays Act.docx - Appendix B - by-law 62-2004 to provide exemption from Retail Business Holidays Act R.S.O 1990.pdf
Final Approval Date:	Dec 13, 2023

This report and all of its attachments were approved and signed as outlined below:

**Julia Warwick - Dec 11, 2023 - 8:47 AM**

**Rebekah Msuya-Collison - Dec 13, 2023 - 9:35 AM**