

THE CORPORATION OF THE MUNICIPALITY OF EAST FERRIS

BY-LAW NO. 2023-17

BEING A BY-LAW TO REQUIRE THAT RETAIL BUSINESS ESTABLISHMENTS IN THE MUNICIPALITY OF EAST FERRIS CLOSE TO THE PUBLIC ON CERTAIN DAYS.

WHEREAS Section 148 of the *Municipal Act, 2001*, S.O. 2001, c. 25 authorizes the Council of the Corporation of the Municipality of East Ferris to pass a by-law requiring that retail business establishments be closed to the public on a holiday;

AND WHEREAS Section 1.2 of the *Retail Business Holidays Act*, R.S.O. 1990, c. R.30 (hereinafter “RBHA”) authorizes the Corporation of the Municipality of East Ferris to pass a by-law providing that the RBHA does not apply to it and does not apply in respect of any by-law of the municipality or any retail business establishment located in the municipality;

AND WHEREAS the Council of the Corporation of the Municipality of East Ferris deems it expedient to pass a by-law pursuant to the *Municipal Act, 2001* and the RBHA to regulate the closing of retail business establishments on holidays;

NOW THEREFORE BE IT RESOLVED THAT THE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF EAST FERRIS HEREBY ENACTS AS FOLLOWS:

1 Definitions

1.1 In this by-law:

“**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;

“**Municipal Law Enforcement Officer**” means a person appointed by Council as a Municipal Law Enforcement Officer of the Corporation of the Municipality of East Ferris;

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

“**Municipality**” means the Corporation of the Municipality of East Ferris;

“**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 RETAIL BUSINESS HOLIDAY ACT (RBHA) DOES NOT APPLY TO THE MUNICIPALITY

2.1 The *Retail Business Holidays Act* does not apply to a retail business establishment in the Municipality as of the effective date of this by-law.

2.2 Retail business establishments in the Municipality may remain open on a holiday unless prohibited to do so under this by-law.

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 any of the following holidays:
New Year's Day, Good Friday, Easter Sunday and 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 by-law 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 4,500 square feet.

Necessary Services

4.2 Section 3 of this by-law 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 by-law 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 by-law 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 4,500 square feet.

Liquor

- 4.5 Section 3 of this by-law 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 by-law 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 4,500 square feet.

Tourist Establishments

- 4.7 Section 3 of this by-law 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,
- a) “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,
 - i. a camp operated by a charitable corporation approved under the Charitable Institutions Act,
 - ii. a summer camp within the meaning of the regulations made under the Health Protection and Promotion Act, or
 - iii. a club owned by its members and operated without profit or gain.
 - b) “tourist attraction” is limited to,
 - i. natural attractions or outdoor recreational attractions;
 - ii. historical attractions; and
 - iii. cultural, multicultural or educational attractions.

Education, recreation, amusement

- 4.9 Section 3 of this by-law 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 by-law, Part XVII of the *Employment Standards Act, 2000*, S.O. 2000, c. 41 applies to all retail business establishments in the Municipality.

6 OFFENCES

- 6.1 Every person who contravenes or causes or permits any contravention of any of the provisions of this 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 date on which the contravention occurred.
- 6.2 Every person who coerces, requires or counsels another person to contravene Section 3 of this 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 date on which the offence occurred.
- 6.3 The minimum penalty for an offence under this by-law 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 by-law, the total area of a retail business establishment used for serving the public or for selling or displaying to the public on New Year's Day, Good Friday, Easter Sunday, and Christmas Day shall be deemed to be the greater of:
- a) the total area actually used on New Year's Day, Good Friday, Easter Sunday and 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 New Year's Day, Good Friday, Easter Sunday, Christmas Day.
- 6.7 In addition to any penalty imposed and any other remedy, the court in which the conviction had been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the violation by the person convicted.

7 ENFORCEMENT AND INSPECTIONS

- 7.1 Unless otherwise provided in this by-law, the by-law shall be enforced by the Municipal Law Enforcement Officer of the Municipality of East Ferris.
- 7.2 A Municipal Law Enforcement Officer, for the purpose of determining compliance with this by-law, 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.

7.3 Every person enforcing this By-law shall have the right of entry on any property or into any building not actually being used as a dwelling for the purpose of carrying out an inspection to determine whether this by-law is being complied with and for the enforcement of this by-law pursuant to section 436 of the Municipal Act, 2001, S.O. 2001, c.25, as amended from time to time.

8 VALIDITY AND SEVERABILITY

8.1 Every provision of this By-law is severable and if any provisions of this by-law should for any reason be declared invalid by any court, it is the intention and desire of council that the remaining provisions shall remain in full force and effect.

8.2 Where a provision of this by-law conflicts with the provision of another by-law in force within the Municipality of East Ferris, the provisions that establish the higher standards to protect the health, safety and welfare of the general public shall prevail.

8.3 Nothing in this by-law relieves any person from complying with any provision of any Federal or Provincial legislation or any other by-law of the Municipality of East Ferris

9 ENACTMENT

9.1 The short title of this by-law is the Holiday Shopping By-law

9.2 This by-law shall come into force on the day of passing.

READ A FIRST AND SECOND TIME this 25th day of April, 2023.

READ A THIRD TIME AND FINALLY PASSED this 25th day of April, 2023.

Mayor

Pauline Rochefort

Clerk

Monica L. Hawkins