
Subject: Applications for Tourism Exemptions for Holiday Openings under the Retail Business Holiday Act – Metro Inc. operating as Food Basics Grocery Stores – 3770 Montrose Road and 6770 McLeod Road in the City of Niagara Falls

Report to: Corporate Services Committee

Report date: Wednesday, February 20, 2019

Recommendations

1. That Report CLK 04–2019, Applications for Tourism Exemptions for Holiday Openings under the *Retail Business Holidays Act*, Metro Inc. operating as Food Basic Grocery Stores, 3770 Montrose Road and 6770 McLeod Road in the City of Niagara Falls, **BE RECEIVED**;
2. That the applications from Metro Ontario Inc., requesting tourism exemptions under the *Retail Business Holidays Act*, to permit the Food Basics grocery stores located at 3770 Montrose Road and 6770 McLeod Road in the City of Niagara Falls, to open on New Year's Day and Good Friday from 7:00 a.m. to 10:00 p.m., **BE APPROVED**; and
3. That the necessary by-law **BE PREPARED** and **PRESENTED** to Regional Council for consideration.

Key Facts

- The purpose of this report is to seek Committee's approval for the applications for tourism exemptions, under the *Retail Business Holidays Act*, to permit the Food Basics grocery stores located at 3770 Montrose Road and 6770 McLeod Road in Niagara Falls to open on New Year's Day and Good Friday from 7:00 a.m. to 10:00 p.m.
- These days are in addition to the exemption already granted to both stores to be open on Family Day, Victoria Day, Canada Day, Labour Day and Thanksgiving Day (By-laws 8990-98, 60-2002 and 07-2012).
- Since the last requests for Tourism Exemptions for Holiday Openings from Metro Inc. for these two stores were approved by Regional Council, other grocery stores in Niagara Falls have been granted exemptions to include New Years Day and Good Friday (Sobey's – By-law 39-2012, Zehrs – By-law 85-2012 and Freshco – By-law 30-2013).
- A motion supporting these applications has been received from the City of Niagara Falls Council in response to the Region's request for comments.

Financial Considerations

There are no financial considerations.

Analysis

The applications received from Metro Inc., operating as Food Basics grocery store, 3770 Montrose Road, Niagara Falls and Food Basics grocery store 6770 McLeod Road, Niagara Falls, requests tourism exemptions under the *Retail Business Holidays Act* to permit these stores to open on New Years' Day and Good Friday from 7:00 a.m. to 10:00 p.m. These applications have been processed in accordance with By-law No. 6728-92, being a by-law to establish procedures and fees for the processing of applications for holiday openings for tourism under the *Retail Business Holidays Act* and related Ontario Regulation 711/91. The applications are available as Appendix 1.

By-law 6728-92 requires that a public meeting be held in order that any interested persons have the opportunity to comment on the applications. A notice of the public meeting respecting these applications was posted on the Region's website on January 16, 2019 and in Niagara This Week on January 24, 2019.

On December 14, 2018, a letter was sent to the City of Niagara Falls requesting their comments regarding these applications. Correspondence was received from the City of Niagara Falls on January 17, 2019, advising of a motion of support for the request for the tourism exemptions for Metro Inc. (Appendix 2).

The following two requirements of "Tourism Criteria" in O. Reg. 711/91, s. 2, must both be met by the applicant:

- (a) The tourist attractions which the retail establishment must be "within 2 km" of are "natural", "outdoor recreational", "historical", "cultural, multi-cultural or educational" as defined in s. 2 of O. Reg. 711/91. Council previously approved applications for exemptions for both stores in accordance with these criteria. The application includes supporting detail (Appendix 1).
- (b) The applicant may be exempted from closing on holidays if "it is directly associated with the tourist attraction or relies on tourists visiting the attraction for business on a holiday." These stores are located in Niagara Falls, which in itself may be considered to be a tourist attraction. The application submitted (Appendix 1) includes further detail responsive to these criteria.

The *Retail Business Holidays Act* also requires that Councils "shall take into account the principle that holidays should be maintained as common pause days". Section 6 of Part III of the application gives an applicant the opportunity to justify the opening in light of this principle. The applicant has responded that since their last application for an

exemption in 2012, three nearby grocery retailers (Sobey's, Zehrs and Freshco) have been granted the exemption to open on, among other holidays, Good Friday and New Years Day. Metro Inc. states that they are only requesting the same exemptions that have already been granted to these other stores to ensure a level playing field and that there is no competitive disadvantage.

Alternatives Reviewed

Council could decide not to approve these applications for Tourism Exemptions for Holiday Openings for these two stores. As there are currently other grocery retailers within a short distance who have exemptions to be open on New Years Day and Good Friday, denying this application is not recommended.

Relationship to Council Strategic Priorities

This report aligns with Council's Strategic Priority of Doing Business Differently by promoting strategies that foster economic prosperity in Niagara.

Other Pertinent Reports

ICP 39-2013 – Application for Tourism Exemption – Freshco	April 10, 2013
ICP 85-2012 – Application for Tourism Exemption – Zehrs	October 4, 2012
ICP 39-2012 – Application for Tourism Exemption – Sobey's	April 25, 2012

Prepared and Recommended by:

Ann-Marie Norio
Regional Clerk

Submitted by:

Ron Tripp, P.Eng.
Acting Chief Administrative Officer

Appendices

Appendix 1	Applications for Tourism Exemptions
Appendix 2	Letter of Support from the City of Niagara Falls



Metro Ontario Inc.
5559 Dundas Street West
Toronto, Ontario
M9B 1B9
www.metro.ca

Jeffrey Burkett – Legal Counsel Tel.: (416) 234-6592 Fax: (416) 234-6000
Email: jeff.burkett@metro.ca

RECEIVED OCT 19 2018

October 18, 2018

DELIVERED BY COURIER

The Regional Municipality of Niagara
1815 Sir Isaac Brock Way
P.O. Box 1042
Thorold, ON L2V 4T7
Attention: Regional Clerk

Niagara Region Clerk's Office
Original to: Clerk

CAO	<input type="checkbox"/>	ICP	<input type="checkbox"/>
Chair	<input type="checkbox"/>	Leg. Asst.	<input type="checkbox"/>
Comm. Ser.	<input type="checkbox"/>	Legal	<input type="checkbox"/>
Corp. Ser.	<input type="checkbox"/>	NRP	<input type="checkbox"/>
Councillors	<input type="checkbox"/>	Public Health	<input type="checkbox"/>
HR	<input type="checkbox"/>	Public Works	<input type="checkbox"/>

File: _____ Initials: _____

Dear Sir or Madam:

RE: Metro Ontario Inc.'s application for a tourism exemption for the Food Basics grocery store located at 3770 Montrose Road, Niagara Falls ("Montrose FB Store") and the Food Basics grocery store located at 6770 McLeod Road South, Niagara Falls ("McLeod FB Store")
Our File E-149

Please find enclosed:

- (1) An Application requesting a tourism exemption for the Montrose FB Store to open on New Year's Day and Good Friday together with a proposed draft by-law.
- (2) An Application requesting a tourism exemption for the McLeod FB Store to open on New Year's Day and Good Friday together with a proposed draft by-law.

If there is any way the enclosed Applications can be processed and approved in time for New Year's Day 2019, we would be most appreciative.

We also enclose, in a single cheque for \$1,695.00 payable to Niagara Region, the combined application fee for the two (2) Food Basics Stores (\$750 plus HST for each store).

Should you have any questions, please do not hesitate to contact the undersigned, at the coordinates set out in the Applications.



Metro Ontario Inc.
5559 Dundas Street West
Toronto, Ontario
M9B 1B9
www.metro.ca

Thank you for your assistance with this matter.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Jeff Burkett". The signature is fluid and cursive.

Jeffrey Burkett
Legal Counsel

cc: Chris MacDonald, Senior Director, Discount Operations, East

Enclosures.

Bill 6715, *as amended by By-law No. 19-2010.*

THE REGIONAL MUNICIPALITY OF NIAGARA
APPLICATION FOR TOURISM EXEMPTION
RE HOLIDAY OPENINGS

The undersigned hereby applies to the Council of the Regional Municipality of Niagara for an exempting by-law under subsection 4(1) of the Retail Business Holidays Act, R.S.O. 1990, Chapter R. 30.

If more than one person carrying on retail business is represented in this application, please list information for each on a separate page and attach to form.

Pursuant to the Regulations under the Act, an application relating to a retail business establishment that on days other than holidays normally uses a total area of 2,400 square feet or more for serving the public or normally has four or more employees serving the public shall be made only by that business establishment.

(PLEASE PRINT OR TYPE AND ADD EXTRA PAGES, IF NECESSARY)

PART 1 – APPLICANT INFORMATION

1. Type of applicant (please check one):

- ☒ one or more person carrying on retail business in the Regional Municipality of Niagara
- ☐ an association, whether or not incorporated, representing persons carrying on retail business in the Regional Municipality of Niagara
- ☐ a council of a local municipality

2. Name of Applicant:

METRO ONTARIO INC.

Mailing Address of Applicant:

5559 Dundas Street West

Etobicoke, ON M9B 1B9

Telephone No. of Applicant:

416-234-6192 Fax No.: 416-234-6006

Email Address of Applicant

Legal@metro.ca

Bill 6715, *as amended by By-law No. 19-2010.*

3. Applicant's Authorized Agent
(to whom all correspondence
will be sent)

N/A

Mailing Address of Applicant:

Telephone No. of Applicant:

Fax No.:

Email Address of Applicant

4. Location of Retail Business Establishment

Municipal Address

Street Number, Municipality

FOOD BASICS

3770 Montrose Road

Niagara Falls, ON L2H 3K3

5. If you wish the exemption to apply to one or more classes of retail business
establishments, please define and specify the classes:

Grocery store

Pharmacy

Total No. of Sq. Ft. normally used for serving the public:

40,000 approx.

Total No. of Employees normally serving the public:

90 approx.

Bill 6715, *as amended by By-law No. 19-2010.*

PART II – TOURISM CRITERIA

Tourist attractions are limited to:

- a) Natural attractions or outdoor recreational attractions;
- b) Historical attractions; and
- c) Cultural, multi-cultural or educational attractions.

The two (2) kilometre restriction set out in the Regulations to the Act does not apply to a retail business establishment located in a local municipality within the Regional of Niagara, having a population of less than 50,000

1. Is business located within two kilometres of a tourist attraction? Yes ☒ No ☐

If yes, describe the nature of tourist attraction:

See schedule attached

2. Describe nature of direct association with the tourist attraction or reliance on tourists visiting the attraction for business on a holiday.

See schedule attached

3. Where the application involves a business that on days other than holidays normally uses a total area of 2,400 square feet or more for serving the public, or normally has four or more employees serving the public, please outline the goods or services provided primarily to tourists.

see schedule attached

Bill 6715, *as amended by By-law No. 19-2010.*

This section relates only to applications to grant exemptions on an area basis.

4. a) In what local municipality is it located?

- b) Describe subject area (in words):

(Please attach a map or sketch)

- c) How many businesses are included in this application?

- d) Are all the retail business establishments in the described area within two kilometres of the tourist attraction?

- e) Does the area exceed that necessary to encompass all of the retail business establishments for which an exemption is sought?

If not, explain how it does not:

- f) How many of the businesses are directly associated with the tourist attraction or rely on tourists visiting the tourist attraction for business on a holiday? (Regulations to the Act require at least 25% of the businesses)

Bill 6715, *as amended by By-law No. 19-2010.*

- g) If application is submitted by an association, describe briefly the purpose of the association, the area and type of businesses it represents.

PART III - GENERAL

1. Indicate which holidays, and which specific times or specific number of hours you wish to be open on those holidays:

New Year's Day from 7:00am to 10:00pm.
Good Friday from 7:00am to 10:00pm.

2. Is request seasonal in nature, e.g. summer months only?
If yes, what time period is sought?

No.

3. What is the justification in relation to the seasonal nature, if any, of the tourist attraction, for the time period sought in the exemption?

See Schedule attached

Bill 6715, *as amended by By-law No. 19-2010.*

4. Is request related to a special event?

NO.

NOTE: A retail business establishment may be exempted for up to five holidays a year during which a fair, festival or other special event (but not solely a parade) is being held in that municipality.

For what holidays is exemption being sought?

Describe special event, duration and time of year

5. Indicate how the exemption would, if granted, be for the maintenance or development of tourism and briefly identify other material submitted with this application that supports this conclusion:

See Schedule attached

6. What justification is there for the opening of the retail business establishment(s) on holidays in light of the principle, stated in the Retail Business Holidays Act, that holidays should be maintained as common pause days?

See Schedule attached

Bill 6715, *as amended by By-law No. 19-2010.*

EXECUTION BY APPLICANT

I, Judith Howard
(Name of Applicant) of the City
(City, Town, or Township) of Toronto in the
(Name of Municipality)
do solemnly declare that all of the statements contained in this
(Region, County, District, Single Tier)
application are true and I make this solemn declaration conscientiously, believing it to
be true and knowing that it is of the same force and effect as if made under oath and by
virtue of the Canada Evidence Act.

Declared before me at the

City
(city, town, or municipality)

of Toronto

in the Province of Ontario,

this 18th day of

October, 2018

Judith Howard
(Applicant)

[Signature]
A Commissioner, etc.

APPOINTMENT OF AUTHORIZED AGENT

I/We, [Click here to enter text.](#) hereby appoint [Click here to enter text.](#) of [Click here to enter text.](#) to act as my/our authorized agent in this application.

Witness:

Signed:

Date:

Bill 6715, *as amended by By-law No. 19-2010.*

NOTES:

1. It is required that the original application be filed with the Regional Clerk, together with appropriate documentation, accompanied by a cheque in the amount of \$750, made payable to:

THE REGIONAL MUNICIPALITY OF NIAGARA

This fee will cover the following:

- publication costs
 - legal costs to review applications
 - administrative costs i.e. printing, mailing
2. Applications are to be filed at the Clerk's Department, the Regional Municipality of Niagara, 2201 St. David's Road, Thorold, Ontario, L2V 4T7 to the attention of the Regional Clerk (685-1571).
 3. This application and any by-law passed by the Region are subject to the provisions of the Retail Business Holidays Act. It is strongly suggested that Applicants contact their solicitor with respect to the provisions of the Act.
 4. It is preferred where possible that applicants submit a proposed exemption by-law with their applications.
 5. Each application must be accompanied by a scaled plan or map of the area covered by the proposed by-law showing:
 - (a) the retail business establishment(s);
 - (b) the tourist attraction; and
 - (c) the scale of the plan or map enabling the distances to be measured.

Schedule to Metro Ontario Inc.'s Application for Tourism Exemption

**Food Basics #858,
3770 Montrose Road
Niagara Falls, Ontario L2H 3K3**

PART II- TOURISM CRITERIA**1. Describe the nature of the tourist attraction:**

The region of Niagara Falls in its entirety has become a tourist site, with its history and plethora of activities. There are also many tourist attractions specifically located in close proximity to Food Basics Store #858 at 3770 Montrose Road (the "Store") (see Exhibit "A" for map), including:

- i. Canada One Factory Outlets, located at 7500 Lundy's Lane, has over 30 retail stores and is open on Good Friday and New Year's Day;
- ii. Bruce Trail;
- iii. Firemen's Park is a 135-acre natural park which offers the following draws to tourists: trails for hiking, fishing and concerts. It is located on the Niagara Escarpment;
- iv. Gale Centre, recreation and cultural centre, where the Al Boone Memorial Hockey League Classic and the Tyke Jamboree (hockey tournaments) take place on weekends in and around New Year's Day;
- v. Local wineries; and
- vi. Outlet Collection at Niagara, located at 300 Taylor Rd and received an exemption in 2014 to open on Good Friday and New Year's Day

2. Describe the nature of direct association with the tourist attraction or reliance on tourists visiting the attraction for business on a holiday.

Tourists, particularly those visiting the attractions listed above, account for a considerable amount of the sales at the Store. The Store relies heavily on such business, especially on long weekends. In order to better serve tourists, the Store offers unique and specific products targeted at this important segment of the market, as described below.

3. Where the application involves a business that on days other than holidays normally uses a total area of 2,400 square feet or more for serving the public, or normally has four or more employees serving the public, please outline the goods or services provided primarily to tourists.

The Store offers a wide assortment of food and non-food products that are popular among tourists including, but not limited to:

- i. Pre-packaged meals and snacks;
- ii. Grocery products such as, beverages, produce, meat and baked goods;
- iii. In-store Pharmacy with full line of over-the-counter (OTC) products;
- iv. General Merchandise (i.e. sunscreen, insect repellent, batteries, etc.);
- v. First aid equipment;

- vi. Propane tanks and refills; and
- vii. Beer and wine

PART III- GENERAL

3. What is the justification in relation to the seasonal nature, if any, of the tourist attraction, for the time period sought in the exemption?

Niagara Falls is one of the most travelled tourist destinations in Ontario, with over 14 million tourists arriving every year.¹ With respect to New Year's Day, the winter holiday season is a popular time for tourists to visit Niagara Falls because of the special events happening in the area. Every December 31st, there is a New Year's Eve Concert that takes place in Queen Victoria Park, which is in close proximity to the Store. The concert itself draws in approximately 50,000 people to Queen Victoria Park.² Since the concert ends after midnight, most tourists stay the night in Niagara Falls, spending all or part of New Year's Day in the city. If granted the exemption, the Store would provide these tourists with the opportunity to purchase food and non-food products they may desire on New Year's Day, making the tourist overnight experience more enjoyable.

Similarly, Good Friday is the beginning of the Easter long weekend and usually coincides with spring break for Americans³ and so the downtown core of Niagara Falls plans many activities for families visiting that weekend, including Easter egg hunts.⁴

5. Indicate how the exemption would, if granted, be for the maintenance or development of tourism and briefly identify other material submitted with this application that supports this conclusion:

If granted, the Store would better satisfy the demand tourists have for our food and non-food products and help improve the tourism experience in the Niagara Region. There is greater tourist traffic during the Easter⁵ and New Year's long weekends because it is a statutory holiday for both Canadians and Americans. American tourists who visit the downtown core of Niagara Falls are inclined to shop at local retailers, including grocery stores, given the strength of the US currency relative to the Canadian dollar⁶ and the comparable pricing. Visiting tourists will also find the Store conveniently located from the downtown core.

The Store also supports the surrounding tourist attractions by providing tourists with alternate options for meals as well as non-food items they may want on their trip. One of these attractions is the Outlet Collection at Niagara. This Mall has over 100 outlet brands and provides tourists a shopping experience just minutes away from the city's downtown area and the Store. In 2014 the Mall received an exemption to open on New Year's Day and Good Friday, the same two holidays for which the Store is seeking an exemption. If the Store receives the same exemption, then visitors of

¹ <https://www.niagarafallstourism.com/info/media/tourism-research/>

² <https://www.cliftonhill.com/events/niagara-falls-new-years>

³ https://www.cliftonhill.com/falls_blog/american-spring-break-in-niagara-falls-ontario/

⁴ https://www.cliftonhill.com/falls_blog/niagara-region-easter-egg-hunts/

⁵ <https://www.canada.ca/en/border-services-agency/news/2018/03/easter-long-weekend---cbsa-tips-for-travellers-for-returning-re.html>

⁶ <https://www.niagarafallsreview.ca/news-story/8196734--one-of-the-best-years-for-tourism/>

the Mall would not have to travel far to purchase the food and non-food products the Store offers, creating a more positive overall tourist experience.

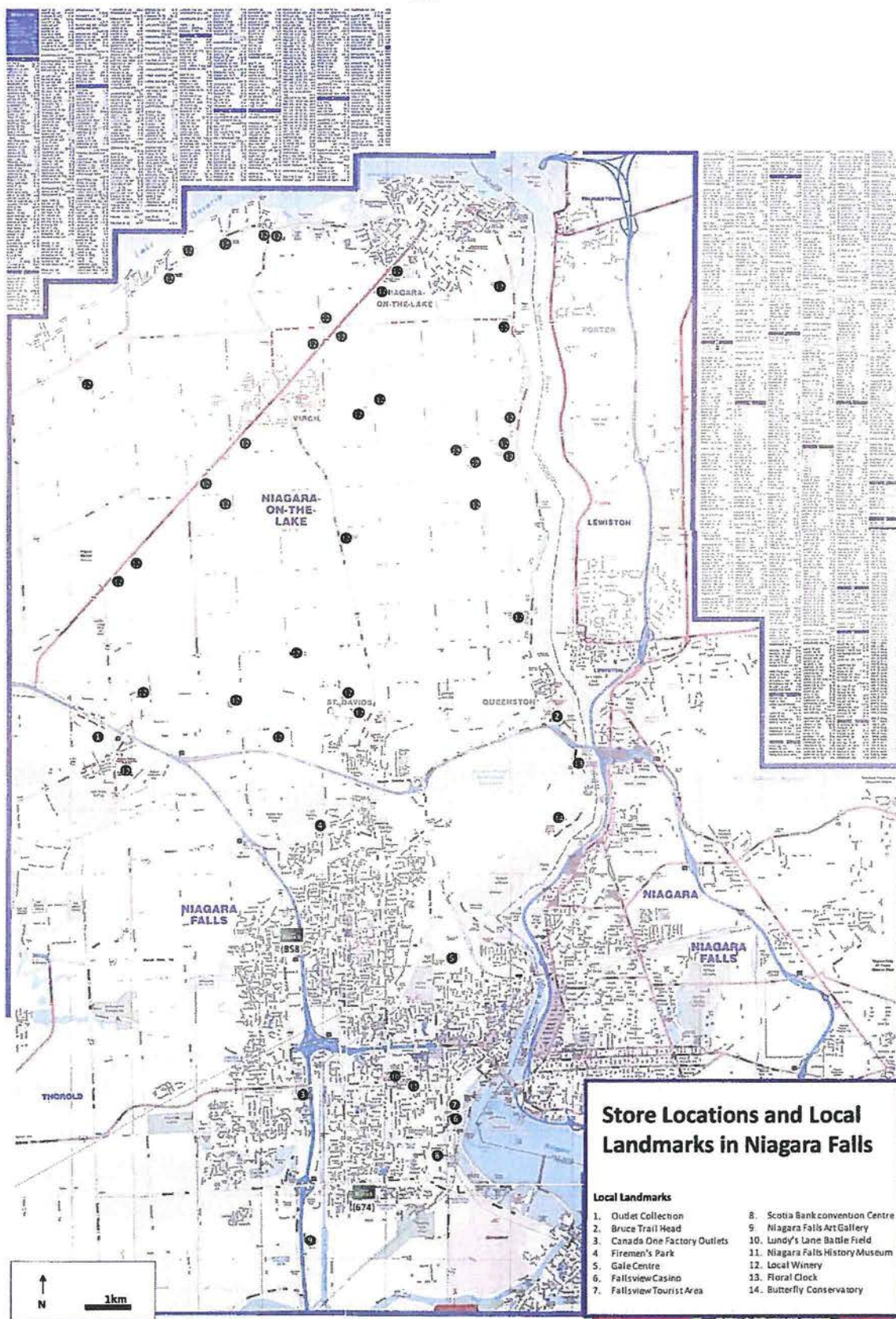
6. What justification is there for the opening of the retail business establishment(s) on holidays in light of the principle, stated in the Retail Business Holidays Act, that holidays should be maintained as common pause days?

Since our last application in 2012, three nearby grocery retailers, Sobey's on May 3rd, 2012, Zehrs Markets on October 4th, 2012, and Freshco Grocery Store on April 18th, 2013 were granted the exemption to open on, among other holidays, Good Friday and New Year's Day. We are only requesting the same exemptions that have already been granted to other grocery retailers to ensure a level playing field and that we are not at a competitive disadvantage.

In addition, many workers in the service area are accustomed to working on holidays since the Niagara Region has a prominent tourism industry. The local economy stands to benefit even further by the fact that Store employees, who are already willing to work on existing exempted holidays and have expressed a willingness to work on Good Friday and New Year's Day, would be paid premium wages (time and a half) as per the applicable collective bargaining agreement.

Subsequent to 2012, the Store received authorization to sell beer and wine from the AGCO. The feedback we have received from our customers who visit the Store specifically to purchase beer and wine is that they are disappointed the Store is closed on Good Friday and New Year's Day (both long weekends). These are days when many families get together and have company from out-of-town and rely upon nearby grocery stores to be open so that they can purchase beer and wine, especially since LCBO is closed on all statutory holidays.

EXHIBIT "A"



Bill 6715, *as amended by By-law No. 19-2010.*

THE REGIONAL MUNICIPALITY OF NIAGARA
APPLICATION FOR TOURISM EXEMPTION
RE HOLIDAY OPENINGS

The undersigned hereby applies to the Council of the Regional Municipality of Niagara for an exempting by-law under subsection 4(1) of the Retail Business Holidays Act, R.S.O. 1990, Chapter R. 30.

If more than one person carrying on retail business is represented in this application, please list information for each on a separate page and attach to form.

Pursuant to the Regulations under the Act, an application relating to a retail business establishment that on days other than holidays normally uses a total area of 2,400 square feet or more for serving the public or normally has four or more employees serving the public shall be made only by that business establishment.

(PLEASE PRINT OR TYPE AND ADD EXTRA PAGES, IF NECESSARY)

PART 1 – APPLICANT INFORMATION

1. Type of applicant (please check one):

- ☒ one or more person carrying on retail business in the Regional Municipality of Niagara
- ☐ an association, whether or not incorporated, representing persons carrying on retail business in the Regional Municipality of Niagara
- ☐ a council of a local municipality

2. Name of Applicant:

METRO ONTARIO INC.

Mailing Address of Applicant:

5559 Dundas Street West

Etobicoke, ON M9B 1B9

Telephone No. of Applicant:

416-234-6192 Fax No.: 416-234-6006

Email Address of Applicant

Legal@metro.ca

Bill 6715, *as amended by By-law No. 19-2010.*

3. Applicant's Authorized Agent
(to whom all correspondence
will be sent)

N/A

Mailing Address of Applicant:

Telephone No. of Applicant:

Fax No.:

Email Address of Applicant

4. Location of Retail Business Establishment

Municipal Address

Street Number, Municipality

FOOD BASICS

6770 McLeod Road South

Niagara Falls, ON L2G 3G6

5. If you wish the exemption to apply to one or more classes of retail business
establishments, please define and specify the classes:

Grocery store

Total No. of Sq. Ft. normally used for serving the public:

30,000 approx.

Total No. of Employees normally serving the public:

60 approx.

Bill 6715, as amended by By-law No. 19-2010.

PART II – TOURISM CRITERIA

Tourist attractions are limited to:

- a) Natural attractions or outdoor recreational attractions;
- b) Historical attractions; and
- c) Cultural, multi-cultural or educational attractions.

The two (2) kilometre restriction set out in the Regulations to the Act does not apply to a retail business establishment located in a local municipality within the Regional of Niagara, having a population of less than 50,000

1. Is business located within two kilometres of a tourist attraction? Yes ☒ No ☐

If yes, describe the nature of tourist attraction:

See Schedule attached

2. Describe nature of direct association with the tourist attraction or reliance on tourists visiting the attraction for business on a holiday.

See Schedule attached

3. Where the application involves a business that on days other than holidays normally uses a total area of 2,400 square feet or more for serving the public, or normally has four or more employees serving the public, please outline the goods or services provided primarily to tourists.

See Schedule attached

Bill 6715, *as amended by By-law No. 19-2010.*

This section relates only to applications to grant exemptions on an area basis.

4. a) In what local municipality is it located?

- b) Describe subject area (in words):

(Please attach a map or sketch)

- c) How many businesses are included in this application?

- d) Are all the retail business establishments in the described area within two kilometres of the tourist attraction?

- e) Does the area exceed that necessary to encompass all of the retail business establishments for which an exemption is sought?

If not, explain how it does not:

- f) How many of the businesses are directly associated with the tourist attraction or rely on tourists visiting the tourist attraction for business on a holiday? (Regulations to the Act require at least 25% of the businesses)

Bill 6715, *as amended by By-law No. 19-2010.*

- g) If application is submitted by an association, describe briefly the purpose of the association, the area and type of businesses it represents.

PART III - GENERAL

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New Year's Day from 7:00am to 10:00pm
Good Friday from 7:00am to 10:00pm

2. Is request seasonal in nature, e.g. summer months only?
If yes, what time period is sought?

No

3. What is the justification in relation to the seasonal nature, if any, of the tourist attraction, for the time period sought in the exemption?

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Bill 6715, *as amended by By-law No. 19-2010.*

4. Is request related to a special event?

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NOTE: A retail business establishment may be exempted for up to five holidays a year during which a fair, festival or other special event (but not solely a parade) is being held in that municipality.

For what holidays is exemption being sought?

Describe special event, duration and time of year

5. Indicate how the exemption would, if granted, be for the maintenance or development of tourism and briefly identify other material submitted with this application that supports this conclusion:

See Schedule attached

6. What justification is there for the opening of the retail business establishment(s) on holidays in light of the principle, stated in the Retail Business Holidays Act, that holidays should be maintained as common pause days?

See Schedule attached

Bill 6715, *as amended by By-law No. 19-2010.*

EXECUTION BY APPLICANT

I, Judith Howard
(Name of Applicant), of the City
(City, Town, or Township) of Toronto
(Name of Municipality) in the
(Region, County, District, Single Tier)
do solemnly declare that all of the statements contained in this
application are true and I make this solemn declaration conscientiously, believing it to
be true and knowing that it is of the same force and effect as if made under oath and by
virtue of the Canada Evidence Act.

Declared before me at the

City
(city, town, or municipality)

of Toronto

in the Province of Ontario,

this 18th day of

October, 20 18

Judy Howard
(Applicant)

[Signature]
A Commissioner, etc.

APPOINTMENT OF AUTHORIZED AGENT

I/We, Click here to enter text. hereby appoint Click here to enter text. of Click here to enter
text. to act as my/our authorized agent in this application.

Witness:

Signed:

Date:

Bill 6715, *as amended by By-law No. 19-2010.*

NOTES:

1. It is required that the original application be filed with the Regional Clerk, together with appropriate documentation, accompanied by a cheque in the amount of \$750, made payable to:

THE REGIONAL MUNICIPALITY OF NIAGARA

This fee will cover the following:

- publication costs
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 5. Each application must be accompanied by a scaled plan or map of the area covered by the proposed by-law showing:
 - (a) the retail business establishment(s);
 - (b) the tourist attraction; and
 - (c) the scale of the plan or map enabling the distances to be measured.

Schedule to Metro Ontario Inc.'s Application for Tourism Exemption

**Food Basics #674,
6770 McLeod Road South
Niagara Falls, Ontario L2G 3G6**

PART II- TOURISM CRITERIA

1. Describe the nature of the tourist attraction:

Food Basics Store #674 is located at 6770 McLeod Road South (the "Store") (see Exhibit "A" for map), and McLeod Road South is one of the main entrances tourists use to access Niagara Falls and the downtown core area. The Store is also within close proximity to a number of significant tourist attractions, including:

- i. Fallsview Casino;
- ii. Fallsview Tourist Area, which includes a view of the Falls, accommodations and casinos;
- iii. Canada One Factory Outlet Mall, located at 7500 Lundy's Lane, has over 30 retail stores, and is open on Good Friday and New Year's Day;
- iv. Scotia Bank Convention Centre that hosts conferences, concerts and trade shows;
- v. Niagara Falls Art Gallery; and
- vi. Lundy's Lane Battlefield, a Historical Museum that holds walking tours.

2. Describe the nature of direct association with the tourist attraction or reliance on tourists visiting the attraction for business on a holiday.

Tourists, particularly those visiting the attractions listed above, account for a considerable amount of the sales at the Store. The Store relies heavily on such business, especially on long weekends. In order to better serve tourists, the Store offers unique and specific products targeted at this important segment of the market, as described below.

3. Where the application involves a business that on days other than holidays normally uses a total area of 2,400 square feet or more for serving the public, or normally has four or more employees serving the public, please outline the goods or services provided primarily to tourists.

The Store offers a wide assortment of food and non-food products that are popular among tourists including, but not limited to:

- i. Pre-packaged meals and snacks;
- ii. Grocery products such as, beverages, produce, meat and baked goods;
- iii. BMO ABM;
- iv. Over the counter medication;
- v. General Merchandise (i.e. sunscreen, insect repellent, batteries, etc.);
- vi. Propane tanks and refills; and
- vii. In-store wine boutique

PART III- GENERAL

3. What is the justification in relation to the seasonal nature, if any, of the tourist attraction, for the time period sought in the exemption?

Niagara Falls is one of the most travelled tourist destinations in Ontario, with over 14 million tourists arriving every year.¹ With respect to New Year's Day, the winter holiday season is a popular time for tourists to visit Niagara Falls because of the special events happening in the area. Every December 31st there is a New Year's Eve Concert that takes place in Queen Victoria Park, which is near the Store area. The concert itself draws in approximately 50,000 people to Queen Victoria Park.² Since the concert ends after midnight, most tourists stay the night in Niagara Falls, spending all or part of New Year's Day in the city. If granted the exemption, the Store would provide these tourists with the opportunity to purchase food and non-food products they may desire on New Year's Day, making their overnight experience more enjoyable.

Similarly, Good Friday is the beginning of the Easter long weekend and usually coincides with spring break for Americans³ and so the downtown core of Niagara Falls plans many activities for families visiting that weekend, including Easter egg hunts.⁴

5. Indicate how the exemption would, if granted, be for the maintenance or development of tourism and briefly identify other material submitted with this application that supports this conclusion:

If granted, the Store would better satisfy the demand tourists have for our food and non-food products and help improve the tourism experience in the Niagara Region. The Store also supports the surrounding tourist attractions by providing tourists with alternate options for meals and easy accessibility to general items they may want on their trip. There is greater tourist traffic during the Easter⁵ and New Year's long weekends because it is a statutory holiday for both Canadians and Americans. American tourists who visit the downtown core of Niagara Falls are inclined to shop at local retailers, including grocery stores, given the strength of the US currency relative to the Canadian dollar⁶ and the comparable pricing. Visiting tourists will also find the Store conveniently located from the downtown core.

6. What justification is there for the opening of the retail business establishment(s) on holidays in light of the principle, stated in the Retail Business Holidays Act, that holidays should be maintained as common pause days?

Since our last application in 2012, three nearby grocery retailers, Sobey's on May 3rd, 2012, Zehrs Markets on October 4th, 2012, and Freshco Grocery Store on April 18th, 2013, were granted the exemption to open on, among other holidays, Good Friday and New Year's Day. We are only

¹ <https://www.niagarafallstourism.com/info/media/tourism-research/>

² <https://www.cliftonhill.com/events/niagara-falls-new-years>

³ https://www.cliftonhill.com/falls_blog/american-spring-break-in-niagara-falls-ontario/

⁴ https://www.cliftonhill.com/falls_blog/niagara-region-easter-egg-hunts/

⁵ <https://www.canada.ca/en/border-services-agency/news/2018/03/easter-long-weekend---cbsa-tips-for-travellers-for-returning-re.html>

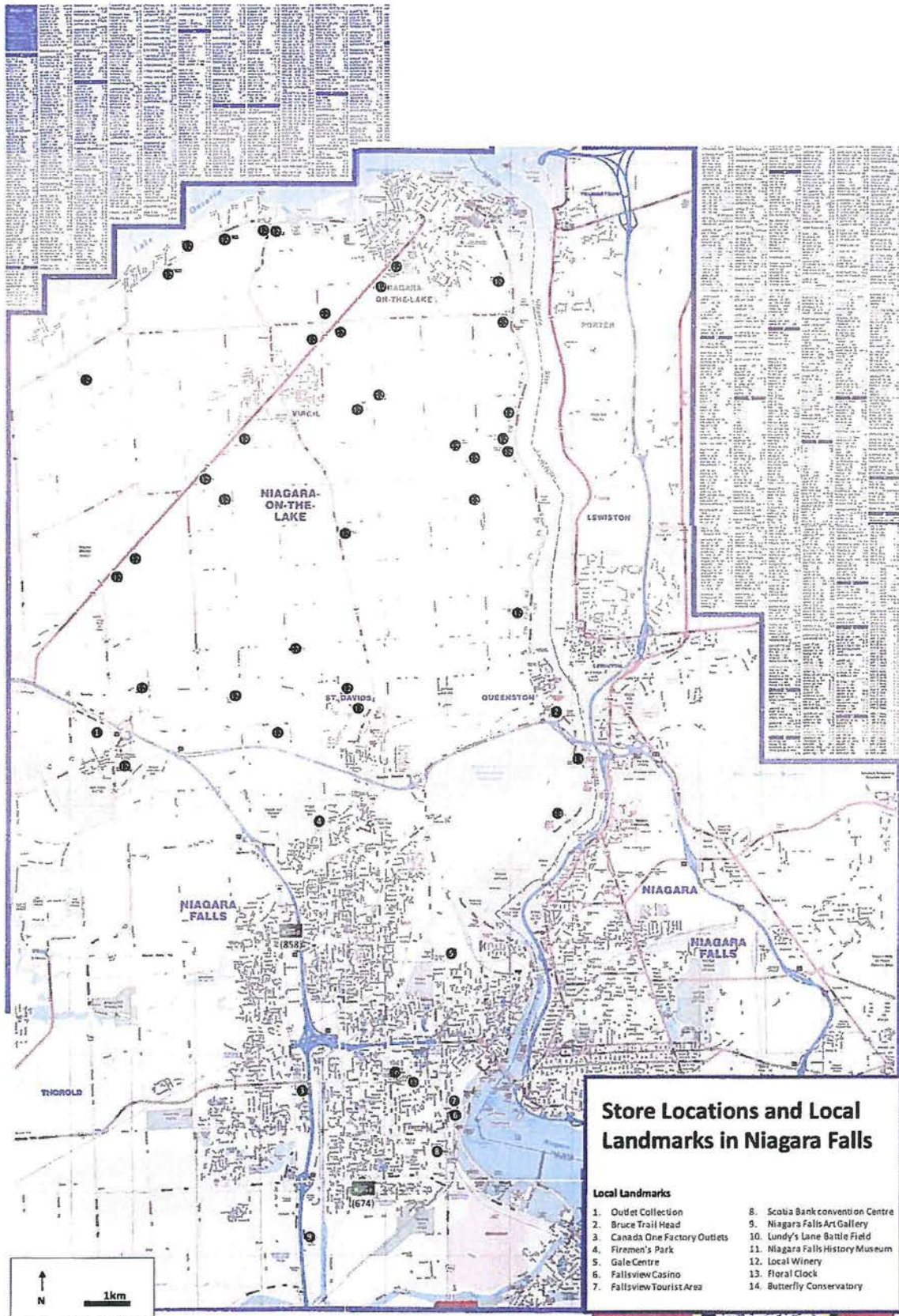
⁶ <https://www.niagarafallsreview.ca/news-story/8196734--one-of-the-best-years-for-tourism/>

requesting the same exemptions that have already been granted to other grocery retailers to ensure there is a level playing field and that we are not at a competitive disadvantage.

In addition, many workers in the service area are accustomed to working on holidays since the Niagara Region has a prominent tourism industry. The local economy stands to benefit even further by the fact that Store employees, who are already willing to work on existing exempted holidays and have expressed a willingness to work on Good Friday and New Year's Day, would be paid premium wages (time and a half) as per the applicable collective bargaining agreement.

The feedback we have received from our customers is that they are disappointed by the Store's closure on Good Friday and New Year's Day (both long weekends). If granted, the in-store wine boutique will be open for customers to purchase wine during long weekends when families get together and have company from out of town. This service is particularly important to have available for tourists since LCBO is closed on all statutory holidays. By permitting the Store to be open, we will help to maintain the tourism industry of the Niagara Region by satisfying the needs of our customers on those long weekends.

EXHIBIT "A"





January 17, 2019

Niagara Region
1815 Sir Isaac Brock Way
P.O. Box 1042
Thorold, ON L2V 4T7

Ms. Kelly Lotimer:

Sent via E-mail

Re: Tourist Exemption for Retail Holiday Openings

Please be advised that at the January 15, 2019 meeting of Niagara Falls City Council, the following motion was passed:

ORDERED on the motion of Councillor Thomson, seconded by Councillor Ioannoni that Council support the request made from both Food Basics Grocery Stores at 3770 Montrose Road and 6770 McLeod Road, Niagara Falls, for the tourist exception for retail holiday openings on future New Year's Days and Good Fridays.

If you have any questions, please contact me directly.

Sincerely,

Bill Matson
Acting City Clerk