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**Subject:** Application for Tourism Exemption for Holiday Openings under the *Retail Business Holiday Act* – 2664479 Ontario Limited operating as Sobeys Grocery Store - 450 Garrison Road in the Town of Fort Erie

**Report to:** Corporate Services Committee

**Report date:** Wednesday, February 12, 2020

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## Recommendations

1. That Report CLK 2-2020, Application for Tourism Exemption for Holiday Openings under the *Retail Business Holidays Act*, 2664479 Ontario Limited operating as Sobeys Grocery Store - 450 Garrison Road in the Town of Fort Erie, **BE RECEIVED**;
2. That the application from 2664479 Ontario Limited, requesting a tourism exemption under the *Retail Business Holidays Act*, to permit the Sobeys grocery store, located at 450 Garrison Road, in the Town of Fort Erie, to open on Family Day, Victoria Day, Canada Day, Labour Day and Thanksgiving Day from 7:00 a.m. to 11:00 p.m., Good Friday from 7:00 a.m. to 7:00 p.m. and any other public holiday declared by proclamation of the Lieutenant Governor to be a holiday for the purposes of the *Retail Business Holiday Act*, **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 application for tourism exemption, under the *Retail Business Holidays Act*, to permit the Sobeys grocery store located at 450 Garrison Road in the Town of Fort Erie to open on Family Day, Victoria Day, Canada Day, Labour Day and Thanksgiving Day from 7:00 a.m. to 11:00 p.m, Good Friday from 7:00 a.m. to 7:00 p.m. and any other public holiday declared by proclamation of the Lieutenant Governor to be a holiday for the purposes of this Act.
- By-law No. 7396-93, granted a tourism exemption to the IGA Grocery store located at 200 Garrison Road, in the Town of Fort Erie to open on New Year's Day, Victoria Day, Canada Day, Labour Day, Thanksgiving Day and the 26<sup>th</sup> day of December.
- A letter supporting this application, received from the Town of Fort Erie in response to the Region's request for comments, is attached as Appendix 2 to this report.

## Financial Considerations

There are no financial considerations.

## Analysis

The application received from 2664479 Ontario Limited, operating as Sobeys grocery store, 450 Garrison Road, Fort Erie, requests a tourism exemption under the *Retail Business Holidays Act* to permit the store to open on Family Day, Victoria Day, Canada Day, Labour Day and Thanksgiving Day from 7:00 a.m. to 11:00 p.m., Good Friday from 7:00 a.m. to 7:00 p.m. and any other public holiday that may be declared by proclamation of the Lieutenant Governor to be a holiday for the purposes of the *Retail Business Holidays Act*.

This application has 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 application is available as Appendix 1 to this report.

By-law 6728-92 requires that a public meeting be held in order that any interested persons have the opportunity to comment on the application. A notice of the public meeting respecting this application was posted on the Region's website on January 3, 2020 and in the Fort Erie Observer on January 9, 2020.

On November 28, 2019, a letter was sent to the Clerk of the Town of Fort Erie requesting comments regarding this application. Correspondence dated January 6, 2020, received from the Town of Fort Erie in support of this request for the tourism exemption for Sobeys grocery store is attached to this report as 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. The applicant has stated that Mathers Park is 1.7 km from the store.
- 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."

The applicant refers to Regional By-law 7396-93 in the application. This by-law, passed by Regional Council on November 18, 1993, grants permission for the IGA grocery store located at 79 Courtwright Steet ("soon to be located at 200 Garrison Road") in the Town of Fort Erie to open on New Year's Day, Victoria Day, Canada Day, Labour Day, Thanksgiving Day and the 26<sup>th</sup> day of December for the "maintenance of development

of tourism.” The applicant has stated that the IGA grocery store located at 200 Garrison Road was later moved to 450 Garrison Road, the banner name of the store changed to Sobeys and as such, the store has continued to remain open on the days granted under this by-law as they were unaware that the by-law was for a specific location only.

### **Alternatives Reviewed**

Council could decide not to approve this application for a Tourism Exemption for Holiday Openings for this store.

### **Relationship to Council Strategic Priorities.**

This report aligns with Council’s Strategic Priority of Supporting Businesses and Economic Growth, specifically Economic Growth and Development (Strategic Objective 1.1).

### **Other Pertinent Reports**

None.

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#### **Prepared and Recommended by:**

Ann-Marie Norio  
Regional Clerk

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#### **Submitted by:**

Ron Tripp, P. Eng.  
Acting Chief Administrative Officer

### **Appendices**

Appendix 1	Application for Tourism Exemption
Appendix 2	Letter of Support from the Town of Fort Erie

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:

2664479 ONTARIO LTD. (SOBEYS FONT ERIE)

Mailing Address of Applicant:

450 GARRISON ROAD

FONT ERIE, ONTARIO

L2A 1N2

Telephone No. of Applicant: 905-871-0463

Fax No.: 905-871-1555

Email Address of Applicant

mike.barnes@sobeys.com

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

MICHAEL BARNES

Mailing Address of Applicant:

450 GARRISON ROAD

Font Enie, ONTARIO

L2A 1N2

Telephone No. of Applicant:

289-696-1605

Fax No.:

905-871-1555

Email Address of Applicant

mike.barnes@sobeys.com

4. Location of Retail Business Establishment

Municipal Address

Street Number, Municipality

450 GARRISON ROAD

Font Enie, ONTARIO

L2A 1N2

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

SUPERMARKET

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

35,272 (TOTAL STORE)

Total No. of Employees normally serving the public:

100 TOTAL EMPLOYEES



**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:

MATHEUS PARK (Arch) 1.7 km

Old Fort Erie 2.1 km

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

Provide Food & BEVERAGES TO Purchase  
For TOURISTS & LOCALS

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.

DELI PREPARED MEALS, GROCERIES  
AND BEVERAGES

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

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

Font Erie

- b) Describe subject area (in words):

GOOGLE MAPS ATTACHED.

(Please attach a map or sketch)

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

1

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

YES

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

YES

If not, explain how it does not:

BUSINESS IS LARGER THAN

2,400 SQUARE FEET WITH MORE THAN

4 EMPLOYEES

- 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)

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Google Maps

Mather Arch, Niagara Pkwy, Fort Erie, ON to Sobeys Fort Erie Walk 1.4 km, 19 min



Map data ©2019 Google

200 m



via Garrison Rd/Niagara 3

4 min

Fastest route, despite the usual traffic

1.7 km



via Lakeshore Rd and Concession Rd

5 min

2.6 km



via Garrison Rd/Niagara 3

19 min

Mostly flat

1.4 km



# Google Maps Old Fort Erie to Sobeys Fort Erie

Drive 2.1 km, 4 min



Map data ©2019 Google 200 m

## Old Fort Erie

350 Lakeshore Rd, Fort Erie, ON L2A 1B1

↑ 1. Head north on Lakeshore Rd toward Dominion Rd  
5 s (62 m)

↶ 2. Turn left onto Dominion Rd/Niagara 1  
20 s (170 m)

## Take Concession Rd to Niagara 3

↗ 3. Turn right at the 1st cross street onto Radford St  
400 m

↗ 4. Turn right onto Albany St  
300 m

↶ 5. Turn left onto Concession Rd  
800 m

↶ 6. Turn left onto Niagara 3  
41 s (350 m)

## Drive to your destination

18 s (58 m)

➤ 7. Turn right

28 m

➤ 8. Turn right

 Destination will be on the left

30 m

## Sobeys Fort Erie

450 Garrison Rd, Fort Erie, ON L2A 1N2

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

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

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**PART III - GENERAL**

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

FAMILY DAY 7am-11pm, GOOD FRIDAY 7am-7pm,

VICTORIA DAY 7am-11pm, CANADA DAY 7am-11pm,

LABOUR DAY 7am-11pm + THANKSGIVING DAY 7am-11pm

ANY OTHER PUBLIC HOLIDAYS DECLARED BY PROCLAMATION OF THE LIEUTENANT GOVERNOR TO BE A HOLIDAY FOR THE PURPOSE OF THIS ACT

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

NO

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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?

NONE

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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:

BY-LAW NO. 7396-93 WAS GRANTED TO IGA

WHICH WAS LOCATED AT 200 GARRISON ROAD WHICH LATER

MOVED TO 450 GARRISON ROAD AND SWITCHED BRANDS NAMES

TO SOBEY. SOBEYS HAS CONTINUED TO OPEN ON HOLIDAYS NO  
REALIZING THE BY-LAW DIDN'T MOVE WITH THE STORE.

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?

WITH THE INFORMATION ABOVE I FEEL

NOT HAVING A SUPERMARKET OPEN IN FORT

THAT WOULD HAVE A NEGATIVE IMPACT ON THE COMMUNITY

AND THE TOURIST WHO CAMP AND COTTAGE IN  
THE AREA.



Bill 7390

THE REGIONAL MUNICIPALITY OF NIAGARA

BY-LAW NO. 7396-93

A BY-LAW TO PERMIT IGA CURRENTLY LOCATED  
AT 79 COURTWRIGHT STREET AND SOON TO BE  
LOCATED AT 200 GARRISON ROAD IN THE TOWN  
OF FORT ERIE, TO BE OPEN ON CERTAIN HOLIDAYS  
FOR THE MAINTENANCE OR DEVELOPMENT OF TOURISM

WHEREAS pursuant to section 4(1) of the Retail Business Holidays Act, R.S.O. 1990, Chapter R.30, as amended, the Council of the Region may by by-law permit retail business establishments in the Region to be open on holidays for the maintenance or development of tourism;

AND WHEREAS Regional Council has taken into account the principle that holidays should be maintained as common pause days;

AND WHEREAS there is compliance with the tourism criteria set out in the regulations made under section 4 of the Retail Business Holidays Act;

AND WHEREAS application has been made by certain persons carrying on retail business in the Region and by the Corporation of the Town of Fort Erie;

AND WHEREAS Regional Council has considered the written material submitted in support of the application;

AND WHEREAS Regional Council has held a public meeting in respect of this by-law;

AND WHEREAS Regional Council has published notice of the public meeting in a newspaper having general circulation in the Municipality at least thirty days before the meeting was held;

THEREFORE the Council of The Regional Municipality of Niagara enacts as follows:

1. The following retail business establishment in the Town of Fort Erie may be open on New Year's Day, Victoria Day, Canada Day, Labour Day, Thanksgiving Day and the 26th day of December:

IGA, currently 79 Courtwright Street, and soon to be 200 Garrison Road.



Bill 7390

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2. This by-law shall come into force and take effect, subject to an appeal under section 4.3 of the Retail Business Holidays Act, on the thirty-first day after it is passed.

THE REGIONAL MUNICIPALITY OF NIAGARA

  
\_\_\_\_\_  
(Brian E. Merrett, Regional Chair)

  
\_\_\_\_\_  
(Sandra McDougall, Acting Regional Clerk)

Passed: November 18, 1993

**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.

**EXECUTION BY APPLICANT**

I, MICHAEL BARNES, of the Town of Font Enfant in the  
(Name of Applicant) (City, Town, or Township) (Name of Municipality)


Niagara Region 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

Region of Niagara  
(city, town, or municipality)

of the City of Thorold

in the Province of Ontario,

  
(Applicant)

this 26<sup>th</sup> day of

November, 20 19<sup>th</sup>

**Deputy Clerk**  
Regional Municipality of Niagara

  
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:



## Community Services

### Legislative Services

January 6, 2020  
File No. 110301

Sent via Email: "Norio, Ann-Marie" <Ann-Marie.Norio@niagararegion.ca>

Ms. Ann-Marie Norio  
Regional Clerk  
Regional Municipality of Niagara  
1815 Sir Isaac Brock Way  
P.O. Box 1042  
Thorold, ON L2V 4T7

Dear Ms. Norio:

**Re: Request for Comments on Application for Tourism Exemption for Holiday  
Openings – Sobeys, 450 Garrison Road, Fort Erie**

Further to your letter dated November 28, 2019 regarding the above-referenced matter, please be advised that I circulated your enquiry to the relevant parties and their comments are as follows:

Mr. Al Stouffer, Coordinator – Community Liaison and Business Licencing advised that Sobeys' have two licences:

1. New Business Licence issued on July 2, 2019, only expires when ownership changes or location changes. The licence number is 2019-45.
2. Restaurant/Fresh Food Licence issued on July 2, 2019 is an annual licence expiring on December 31 of the current year. Licence number is 2019-44.

No other pertinent information.

Ms. Ann-Marie Norio  
Regional Clerk

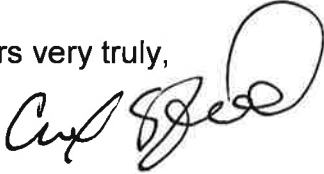
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Ms. Caralee Grummett, Ec.D., Manager, Economic Development & Tourism Services advised that from an economic development and tourism perspective, there is no objection to Sobey's application for a tourism exemption under the *Retail Business Holiday Act*.

Trusting this information is of assistance to you.

Yours very truly,



Carol Schofield, Dipl. M.A.  
Manager, Legislative Services/Clerk  
[cschofield@forterie.ca](mailto:cschofield@forterie.ca)

CS/cw