

## **Regulation of Holiday Shopping**

<b>Date:</b>	February 6, 2008
<b>To:</b>	Economic Development Committee
<b>From:</b>	Duncan H. Ross, Executive Director, Tourism Section Economic Development, Culture & Tourism Division
<b>Wards:</b>	All
<b>Reference Number:</b>	P:\2008\Cluster A\EDCT\ECON DEV\ed0802-010 (AFS# 4682)

### **SUMMARY**

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The purpose of this report is to recommend a new regulatory framework to govern store openings on designated holidays in Toronto. These recommendations were developed after undertaking an extensive consultative process respecting a variety of policy options.

The process included input from the general public, retail industry, tourism industry, retail sector employees, Business Improvement Areas (BIAs), small business interests as well as an examination of current and previous legislation relating to holiday shopping.

Three basic policy options were considered during the process:

1. To keep the status quo regulatory framework, with some streamlining and updating introduced;
2. To permit retailers in the city core to open on designated holidays except Christmas Day; and
3. To permit all retailers in the city to open on all designated holidays except Christmas Day.

Based on the analysis of the issues and public input process, staff is recommending that stores be allowed to open on all designated holidays except for Christmas, between the hours of 11:00 a.m. and 6:00 p.m. This is considered to represent a sound balance among the various interests related to this matter.

## RECOMMENDATIONS

The Executive Director of EDCT - Tourism recommends that Council:

1. Permit all retail operations inside the geographic boundaries of the city to remain open on all designated holidays except for Christmas Day, (i.e. New Year's Day, Family Day, Good Friday, Easter Sunday, Victoria Day, Canada Day, Labour Day and Thanksgiving Day) between the hours of 11:00 a.m. and 6:00 p.m., if they wish. To include a condition "That a provision in a lease or other agreement that has the effect of requiring a retail business establishment to remain open on a designated holiday is of no effect even if the lease or agreement was made before the amendments to By-law 8-2007 Chapter 510 came into place.";
2. Permit pharmacies accredited under the *Drug and Pharmacies Regulation Act* to remain open on Christmas Day as well as on all the designated holidays referred to in recommendation 1, if they wish, providing that the principal business of the pharmacy is the sale of goods of a pharmaceutical or therapeutic nature or for hygienic or cosmetic purposes and that dispensing of drugs is available to the public; and
3. Authorize the City Solicitor to bring forward amendments to Municipal Code Chapter 510, Holiday Shopping, reflecting these recommendations.

## Financial Impact

Enforcement costs to date have been minimal, but there may be a requirement to report at a later date on the overall enforcement of Chapter 510 of the Municipal Code as amended by City Council when it considers the proposed recommendations of this report.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## DECISION HISTORY

A staff report from the Solicitor on November 24, 2006 advised that the upcoming proclamation of the City of Toronto Act would mean that the *Retail Business Holidays Act* regulating holiday shopping hours, would no longer apply to Toronto. As a temporary measure, it was recommended that Council adopt a by-law maintaining the status quo until a review of holiday shopping practices in Toronto could be completed. <http://www.toronto.ca/legdocs/2007/cc/bgrd/20061205-cc1.3.pdf>

Toronto Council passed By-law 8-2007 Chapter 510 on December 6, 2006. (See Attachment No. 1) The by-law passed under the authority of the *City of Toronto Act, 2006*, S.O. 2006, c. 11 and came into force upon proclamation of section 12, Schedule B

of the *Stronger City of Toronto for a Stronger Ontario Act, 2006*, and the *City of Toronto Act, 2006*, S.O. 2006, c. 11. [http://www.toronto.ca/legdocs/municode/1184\\_510.pdf](http://www.toronto.ca/legdocs/municode/1184_510.pdf)

## **ISSUE BACKGROUND**

Until January 1, 2007, the *Retail Business Holidays Act*, R.S.O. 1990, c.R.30 (RBHA) required retail businesses in Toronto (as well as in the rest of Ontario) to close on designated ‘holidays’. The designated holidays were New Year’s Day, Good Friday, Easter Sunday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, and Christmas Day.

The RBHA specifically permitted about fifteen categories of retail business to be open on these holidays, including small pharmacies, smaller stores, stores of convenience, art galleries, etc.

Under the RBHA, Toronto Council was empowered to enact by-laws permitting individual businesses or businesses within a defined area to open on holidays providing they met certain criteria related to supporting tourism. Areas in Toronto that have received their Tourism Area Exemption include The Eaton Centre and The Bay Queen Street Store; Queen Quay Terminal; the Downtown Yonge BIA; Bloor Yorkville BIA and The Distillery District.

With the proclamation of the “City of Toronto Act, 2006”, the provincial law, pertaining to holiday shopping, the RBHA, no longer applied to Toronto retailers. Council passed By-law 8-2007 Chapter 510 to maintain the status quo regulatory framework. This by-law exempted the same categories of retail businesses, from the requirement that they close on holidays as the RBHA. It included the same penalties for non-compliance, as well as all other provisions of the Act. It exempted the same geographic areas as had previously received Tourism Area Exemptions (see Attachment No. 1 for specifics about Chapter 510).

Council instructed the General Manager of Economic Development, Culture and Tourism (EDCT) to undertake a consultative process seeking input from the general public, retail industry, retail sector employees, small business interests, BIAs and the tourism industry with respect to policy options on the regulation of holiday shopping and report back to the Economic Development Committee recommending a new regulatory framework governing holiday shopping.

## **COMMENTS**

### Overview

The policy review undertaken by EDCT – Tourism was conscious of the need to establish a regulatory framework that would strike a balance among a range of public interests.

These include the following:

1. The principle that holidays should be maintained as “**common pause days**”, days on which the majority of people do not have to work and can enjoy leisure time;
2. The **tourism development** benefits of having stores open on holidays so that residents and visitors can enjoy shopping as a leisure activity;
3. The principle of providing a “**Level Playing Field**” to all retailers and avoiding granting a competitive advantage to some by permitting them to open when others must close;
4. The need to provide opportunities for people to make “**Convenience and Emergency**” purchases on holidays, especially regarding health care needs and basic or fresh food products;
5. The desirability of having **clear regulations** that are straightforward for the public, retailers and enforcement officers to understand and work within;
6. The desirability of enabling **efficient administrative processes** that minimize both public and private sector costs of meeting the regulations; and
7. The recognition that changing the regulatory framework governing holiday shopping within Toronto will create **regional differences** within Ontario that may be confusing to the public and retailers, and pressure other municipalities into designating more of their shopping districts as “Tourism area exemptions” under the RBHA to avoid losing competitive advantage to Toronto.

Reviewing the current provisions of By-law 8-2007 Chapter 510 of the Municipal Code in consultation with the public has led staff to the conclusion that the current regulations require updating in three respects:

1. The legacy of considering tourism area exemption applications on a case-by-case basis has led to a **confusing patchwork of regulations for different areas**. For example, The Eaton Centre and the Queen Street Bay Store are forced to close on Good Friday and Easter Sunday, when the rest of the Downtown Yonge BIA (a BIA that both are members of) are allowed to open on these days. This can also be seen in the Queen’s Quay Terminal where the exemption includes a store size limitation, requiring large stores such as Sobeys to close while the rest of the retailers are permitted to open. The boundaries of the exemption areas are confusing to the public since they are based on the jurisdiction of the association applying the exemption rather than on a cohesive assessment of where visitors to Toronto like to shop.
2. **The 7500 square foot limitation on the size of pharmacy** permitted to open (Section 510-4 of Chapter 510) is based on the standard sized drugstore that

existed twenty years ago, when the RBHA was developed. As noted by representatives of a large pharmacy chain, store sizes have significantly increased since that time to meet the public's desire to combine basic drug store purchases with other forms of convenience shopping and to compete more effectively with "big box" stores. Today, the average size of a pharmacy is 13,000 square feet. Representatives of one large pharmacy chain have advised us that in today's environment, about 50% of its outlets must remain closed on designated holidays. This is particularly problematic since today pharmacies play an increasing role in the Health Care System. As front-line providers of health-related care, pharmacies ease the demand on emergency care and emergency room pressure and allow patients access to needed medications and medical advice.

3. A review of the current views held by the Toronto public and retailers as to the extent to which "**common pause days**" on holidays are valued versus the opportunity to shop on those days as a component of leisure activities.

### Policy Review Process and Results

In order to understand the public's current perspective on these issues, a review of public and business interests was undertaken by EDCT – Tourism staff.

The review included:

- An examination of the regulations governing the operation of other employment sectors found that precedents for operating on designated holidays already exist (restaurants, transportation, attractions, etc). In fact, the retail sector appears to be the only type of business required to close on holidays;
- An examination of previous legislation passed by Toronto Council relating to Holiday Shopping, noting that in recent years, Christmas Day was not granted as a day retailers were allowed to open;
- An evaluation of research indicates that many tourists consider shopping an important activity when on vacation;
- A random survey conducted by The Environics Research Group of Toronto residents found that a majority of respondents felt that individual storeowners should decide whether to open or not on designated holidays, with the exception of Christmas Day. (Attachment No. 2); and
- A questionnaire distributed to businesses in the tourism sector as part of The Premier Ranked Tourism Destination Framework Audit revealed that 60% of businesses with an opinion about the legislation governing store openings on holidays felt that changes should be made. 88% of these businesses felt that more stores should be permitted to open on holidays. (Attachment No. 3)

This work has led staff to conclude that the square foot limit on pharmacy/drug store operations should be removed. Pharmacies that are accredited under the *Drug and Pharmacies Regulation Act* should be allowed to remain open on designated holidays, regardless of size or number of employees. This change will enable full-service pharmacies to operate and provide health care advice and products to the public on all holidays. While it is acknowledged that people also will be able to purchase the other non-health related products sold by pharmacies, the proposed regulation will require that the principal business of the pharmacy be the sale of goods of a pharmaceutical or therapeutic nature or for hygienic or cosmetic purposes and that the dispensing of drugs is available to the public.

Consideration was given to the introduction of other measures for limiting the type of goods sold by pharmacies, such as requiring that aisles be roped off and/or that no more than a few employees be permitted to work on designated holidays. Staff does not recommend that such measures be introduced since they have been shown to result in arbitrarily poor levels of service and public frustration when tested in other jurisdictions. Such limitations also would complicate enforcement.

#### Draft Policy Options

Three policy options were drafted for discussion. (Attachment No. 4) Each of these provides a workable solution to balancing the various interests discussed previously.

- Option 1 – A policy based on a philosophy similar to the current regulations but with minor modifications and a more streamlined process for applying for a “tourism area exemption”. Policy Objectives: to maintain the designated 8 holidays as “common pause” days while providing for limited emergency and leisure-oriented shopping opportunities.
- Option 2 – A policy based on a philosophy similar to Option 1, but significantly streamlining the designation of “tourism area exemption “ by allowing all retailers in the central area of Toronto to open on all designated holidays except for Christmas Day, if they choose. Central Toronto would be defined as Wards 19, 20, 27 and 28. All shopping districts within this area are within 2 km of at least one tourist attraction as well as being near the city’s largest concentration of hotels. They would therefore meet the proposed criteria set for obtaining a tourism area exemption. Any shopping area applying for a tourism area exemption (per Option 1) would probably be successful. Stores located outside of Wards 19, 20, 27 and 28 would be able to apply for tourism area exemptions by following the process outlined in Option 1.
- Option 3 – A policy providing freedom of choice for retailers throughout the city to remain open on all designated holidays except for Christmas Day.

These options were presented to the public through direct email to over 350 stakeholders (including organizations with expanded memberships). Information about the policy

review and the options under consideration has been posted on the City’s website since October inviting people to provide their input. Media advisories were issued prompting a number of Toronto media outlets to run the story in October and January.

The public was invited to attend a public meeting held at Toronto City Hall on January 17, 2008.

To date, the public response to the options is:

- 52% are in favour of Option 3
- 32% are in favour of Option 1
- 8% are in favour of closing all stores on Holidays
- 7% are in favour of Option 2
- 1% had no opinion

Copies of the comments received and notes from the public meeting are on file in the EDCT-Tourism Section.

Summary of Staff Evaluation of Options

**Option 1  
Status Quo with some streamlining**

Consideration	
Common Pause Day	Maintains; most stores required to close on holidays
Animate Tourism Areas	Only in specific areas with tourism area exemptions
Level Playing Field	No; some stores are permitted to open while others selling similar goods must close
Convenience & Emergency Shopping	Allows for convenience and emergency shopping within the defined categories of stores that are permitted to open and designated Tourism area exemptions
Clarity	Tourism area exemptions and types of stores permitted to open can be confusing
Efficiency	Improvements recommended over current regulations and processes, but retailers wishing to open must research and submit Tourism area exemption applications which staff and Council must review, consider and amend by-law to approve.
Regional Differences	Minimal between Toronto and the rest of Ontario except respecting the permission of pharmacies larger than 7,500 square feet to open

**Option 2**  
**Retailers in Core permitted to open**

Consideration

Common Pause Day	Maintains to a lesser degree than Option 1; most stores outside of the core are required to close, but within the core stores are permitted to open
Animate Tourism Areas	Allows the core and other areas with Tourism area exemptions to be animated.
Level Playing Field	No; some stores are permitted to open while others selling similar goods must close. Entire core is given a competitive advantage over retailers in the rest of the city.
Convenience & Emergency Shopping	Allows for convenience and emergency shopping within the defined categories of stores that are permitted to open, the core, and other designated Tourism area exemptions.
Clarity	Clearer than Option 1 in that stores throughout the entire core would be permitted to open; in the remainder of the city, tourism area exemptions and types of stores permitted to open would continue to be confusing
Efficiency	Improved over Option 1 since stores in the core are not required to submit individual applications for tourism area exemptions. Outside the core, retailers wishing to open must research and submit Tourism area exemption applications which staff and Council must review, consider and amend by-law to approve
Regional Differences	Minimal between Toronto and the rest of Ontario except respecting the permission of pharmacies larger than 7,500 square feet to open.

**Option 3**  
**Retailers permitted to open throughout the city**

Consideration

Common Pause Day	Stores and employees may choose whether or not to operate on holidays; however, fear of losing sales (and employment hours) to the competition may motivate operating and working on holidays
Animate Tourism Area	Provides for the most flexibility for Tourism-oriented shopping throughout the city
Level Playing Field	Yes, within Toronto – all retailers governed by the same rules
Convenience & Emergency Shopping	Yes
Clarity	Clearest option for public, retailers and enforcement officers
Efficient Regulation	Most efficient of three options
Regional Differences	Creates significant differences in the regulations found inside and outside of Toronto

Preferred Option:

It is the conclusion of staff that a modified version of “Option 3” achieves the best balance among the interests being considered in regulating retail operations on designated



holidays. It is recommended that stores throughout the city be permitted to open on all designated holidays except for Christmas Day between the hours of 11:00 a.m. and 6:00 p.m. It is recommended that the by-law include restrictions on leases so that landlords cannot require their retail tenants to open on holidays.

Limitations on hours are recommended to ensure retailers and their employees a shortened operating day on holidays, partially addressing the very legitimate societal interest in maintaining “common pause days”. It is noted that while the majority opinion expressed in the resident survey, the business survey and the comments on the three options all favoured enabling retailers to make a choice to open on all holidays except for Christmas, it is a significant minority view that “common pause days” on holidays should be maintained in Toronto.

It also is noted that many of the comments received presented a spectrum of views about whether or not retailers truly have a choice to open on designated holidays if their competitors are open, and whether or not employees really have a choice to work even though their rights to refuse to work on holidays are protected under the Employment Standards Act, 2000 (ESA). While staff were unable to identify any quantitative research about this matter, the anecdotal experience with Sunday shopping is interesting. Although most major retail chains and shopping centres do appear to open on Sundays in Ontario, a shortened day is typical. Additionally, some individual businesses have resisted the competitive pressure to open on Sundays. A similar experience can be anticipated on holidays.

Some of the concerns expressed about Option 3 noted that it will provide Toronto retailers with an unfair competitive advantage over the rest of the Province. It is anticipated that this advantage will be temporary as the *Municipal Statute Law Amendment Act, 2006* provides that other municipalities in Ontario may pass by-laws requiring that retail businesses be closed on holidays. This provision of the Act has yet to be proclaimed by the Province of Ontario, and therefore is not currently in effect. If and when it is proclaimed, the *Retail Business Holidays Act* will no longer apply. Some of the comments staff have received have noted that if City Council adopts Option 3, other municipalities are likely to follow suit thereby ending "common pause days" on holidays throughout Ontario.

All municipalities in Ontario currently have the authority to approve tourism area exemptions under the RBHA, and a number of significant shopping districts surrounding Toronto already have done so (e.g. Vaughan Mills, Unionville Downtown).

In bringing forward this recommendation to Council, staff emphasize that both Options 1 and 2 also provide workable regulatory frameworks for the city. In the event that the majority of Council favours maintaining a “common pause day” to a greater extent than the staff recommendation enables and adopt either Option 1 or 2, it is recommended that amendments to Chapter 510 of the Municipal Code be brought forward to add “Family Day” to the list of holidays on which stores must close.

If Council prefers Option 2, Council may wish to note that some of the comments received recommended narrowing the boundaries of the area within which stores will be permitted to open from Wards 19, 20 27 and 28 to the area bounded by Lake Ontario to the South, Davenport Road on the North, Spadina Avenue to the West and Parliament Street to the East.

Staff recommended the larger area to provide for enhanced flexibility for tourist-oriented shopping to expand outside of the narrower boundaries. But the comments received legitimately note that the majority of current tourist-oriented businesses are located within the narrower boundaries.

In the event that either Option 1 or 2 is Council's preferred option, Attachment No. 4 provides the detailed content on which the amendment to Chapter 510 of the Municipal Code should be based.

In terms of enforcement, all three options simplify the regulatory framework and should therefore reduce the pressures on enforcement. To date, enforcement costs have been minimal. However, there maybe a requirement to report at a later date on the overall enforcement of Chapter 510 of the Municipal Code as amended by City Council when it considers the proposed recommendations of this report.

### Conclusions

It is staff's conclusion that Chapter 510 of the Municipal Code should be amended to enable pharmacies accredited under the *Drug and Pharmacies Regulation Act* to remain open to open on all designated holidays so that the public's health care needs can be addressed more effectively than currently is the case.

In addition, amendments should be made to permit stores throughout the city to open on all holidays except for Christmas Day between the hours of 11:00 a.m. and 6:00 p.m. Restrictions on leases so that landlords cannot require their retail tenants to open on holidays should be introduced.

In the event that Council prefers to maintain a "common pause day" on designated holidays to a greater extent than is enabled by the staff recommendation, either Option 1 or Option 2 as outlined in Attachment No. 4 also provide workable regulatory frameworks from a staff perspective. If either of these two Options is chosen, Council should add "Family Day" to the list of designated holidays on which stores will be required to close.

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## **SIGNATURE**

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## **ATTACHMENTS**

- Attachment No. 1 – Chapter 510 of the Municipal Code
- Attachment No. 2 – Results of the 2006 Environics Research Group poll
- Attachment No. 3 – Results of the Premier Ranked Tourism Destination Framework Audit
- Attachment No. 4 – Detailed Explanation of Draft Policy Options