

## **Holiday Shopping**

<b>Date:</b>	March 30, 2010
<b>To:</b>	Economic Development Committee
<b>From:</b>	General Manager, Economic Development and Culture
<b>Wards:</b>	All
<b>Reference Number:</b>	P:/2010/Cluster A/EDC/ECON DEV/April/1004-013

### **SUMMARY**

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This report recommends amending Municipal Code Chapter 510 Holiday Shopping to allow all retail stores to open or close on public holidays at the discretion of the owner and/or manager.

The enactment of the City of Toronto Act in 2006 meant that the (Ontario) Retail Business Holidays Act (RBHA) which regulates the operation of retail stores on Public Holidays would no longer apply within the City of Toronto. Consequently, as a temporary measure, City Council adopted a by-law to in essence maintain the status quo until a review of holiday shopping practices in Toronto could be completed.

This review, including extensive research and consultation, was undertaken in 2007 and a staff report submitted to Economic Development Committee for consideration at its February 20, 2008 meeting. The Committee's recommendations were considered by City Council at its meeting on March 3, 4 and 5, 2008. City Council voted to receive the item for information only. Thus, the status quo remains in effect.

Since that time, the issue of retail closures on public holidays has been raised on numerous occasions by businesses in discussions with City staff. The Toronto Association of Business Improvement Areas (TABIA), Oxford Properties/Yorkdale Shopping Centre and Sherway Gardens wrote to the City, in January and February 2010 respectively, expressing concern about the "inconsistent, confusing and unfair business climate" created by the current policy framework and asking that Council establish a level playing field for retail operations.

In summary, the inequities in the current policy framework arise from the facts that:

- The requirement for privately owned businesses to close on public holidays applies only to the retail sector. Employers and employees in all other sectors are permitted to make their own decisions.
- Within the retail sector, subject to compliance with the Employment Standards Act, the (Ontario) Retail Business Holidays Act and the City's Municipal Code Chapter 510 provide numerous exemptions, including stores selling foodstuffs, tobacco, antiques, handicrafts, gasoline/motor oil, nursery stock, flowers, fresh fruit, books, newspapers, periodicals and art galleries, of less than 2,400 square feet and employing less than four persons; pharmacies less than 7,500 square feet, restaurants, hotels, laundromats and other coin-operated services, automobile and boat rental establishments and service/repair facilities. Movie theatres, casinos, attractions and places of entertainment are also permitted to open on public holidays.
- Within the City of Toronto, several areas (Eaton Centre and Hudson Bay Company Queen Street Store, Downtown Yonge BIA, Bloor-Yorkville, Queen's Quay Terminal, and The Distillery Historic District, applied for and received tourism area exemptions under the RBHA (prior to the City of Toronto Act).
- Chapter 510 of the Municipal Code does not provide a process for any other areas within the City to apply for an exemption.
- Also within the City, many retail operators are either unaware or choose to disregard the provisions of Chapter 510 and open on public holidays.
- Retail stores in other Ontario municipalities, still subject to the RBHA, have applied for and received exemptions.
- Different areas within the City are subject to different competitive pressures, e.g. Sherway Gardens, Yorkdale, Splendid China, Fairview Mall and other suburban retail areas directly compete with retail operators in surrounding municipalities that have been exempted from provisions of the RBHA.
- British Columbia, Alberta, Saskatchewan, Yukon Territories, Nunavut, Northwest Territories and most US States permit retailers to make their own choice to open or close on public holidays.

This report recognizes that Toronto is one of the most diverse, multi-cultural cities in the world today and that not everyone experiences holidays in the same way, and recommends that retail businesses, like those in other sectors, be permitted to make their own choice to open or close on public holidays. In a city the size of Toronto, some individuals will choose to use some public holidays as a day of rest as the best way to improve their quality of life, other will choose to take advantage of additional hours of commerce, or employment at a wage premium, for the same reason. This report recommends a course of action that respects both choices and provides for a harmonized, fair and equitable regime for operating retail stores on Public Holidays in Toronto. The right of all employees in all sectors, including retail, to refuse to work on public holidays without repercussion is protected by the (Ontario) Employment Standards Act.

## RECOMMENDATIONS

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The General Manager of Economic Development and Culture recommends that:

1. City Council allow all retail stores to open or close on Public Holidays including New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day, Easter Sunday and Family Day at the discretion of the owner and/or manager; and
2. City Council authorize the City Solicitor to bring forward amendments to Municipal Code Chapter 510, Holiday Shopping to reflect this recommendation.

### Financial Impact

There are no financial implications arising from the adoption of this report.

### DECISION HISTORY

A staff report from the City 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. 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)

At its meeting on March 3, 2008 City Council received Item ED12.5  
<http://www.toronto.ca/legdocs/mmis/2008/cc/decisions/2008-03-03-cc17-dd.pdf> that made three recommendations relating to the operation of retail stores on Public Holidays. City Council received the item for information only and the status quo remains in effect.

Subsequently, technical adjustments have been brought forward for Council approval, including synchronizing the holiday shopping provisions of the Eaton Centre and the Hudson Bay Company Queen Street Store with the rest of the Downtown Yonge Street Business Improvement Area  
<http://www.toronto.ca/legdocs/mmis/2008/cc/bgrd/backgroundfile-16540.pdf> as well as the inclusion of Family Day as a Public Holiday  
<http://www.toronto.ca/legdocs/bylaws/2008/law1324.pdf>

## COMMENTS:

### Background

The Toronto Association of Business Improvement Areas, representing more than 27,000 business and property owners, Oxford Properties/Yorkdale Shopping Centre and Sherway Gardens have both written to the City requesting a fair resolution to the inequities created by the current retail business holidays regulations. Both have requested that this issue be resolved in this term of Council.

The governance of holiday shopping has a long history and dates back to 17<sup>th</sup> century British law (see Attachment No. 1). In Canada, the *Lord's Day Act* of 1907 stipulated that stores must be closed on Sundays. In 1975, an *Act to Regulate Holiday Closings for Retail Businesses* prohibited many stores from opening on Public Holidays. Public Holidays were identified as: New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day, Christmas Day, Boxing Day, and Sundays. The Act provided for a variety of exemptions based on products sold and size of operation. It also permitted retail operations essential to tourism development or maintenance to open, but did not set out any criteria.

Almost immediately following the enactment of the *Canadian Charter of Rights and Freedoms* in 1982, challenges to Sunday closings were initiated. In 1985, the Supreme Court of Canada struck down the federal Lord's Day Act as infringing on the Charter's guarantee of freedom of religion.

In 1991, the Retail Business Holidays Act was amended to provide municipalities with the authority to enact by-laws granting tourist area exemptions that would enable retailers to open on Public Holidays under the following conditions:

- (a) the retail businesses were located within two kilometres of a tourist attraction; and
- (b) businesses were directly associated with the tourist attraction or relied on tourists visiting the attraction for business on a holiday

Exemptions for retail areas could only be granted if

- (a) all of the retail business establishments in the area were within two kilometres of the tourist attraction;
- (b) the area did not exceed that necessary to encompass all of the retail business establishments for which an exemption was sought; and
- (c) at least 25 per cent of the retail business establishments in the area were directly associated with the tourist attraction or relied on tourists visiting the attraction for business on a holiday.

Tourist attractions were defined as

- (a) natural attractions or outdoor recreational attractions;
- (b) historical attractions; and
- (c) cultural, multi-cultural or educational attractions.

Within the City of Toronto, the following areas applied for and were granted tourist area exemptions: Eaton Centre and Bay Queen Street Store, Downtown Yonge BIA, Bloor-Yorkville, Queen's Quay Terminal, and The Distillery Historic District.

In 1992, the Province passed legislation to permit retail operators to open on Sundays at their discretion, and added Easter Sunday to the list of public holidays in the RBHA. In addition to the tourist area exemptions, current regulations (Ontario Retail Business Holidays Act, and City of Toronto Municipal Code Chapter 510) explicitly allow a variety of retail stores that fit certain criteria to be open on Public Holidays. These exemptions include stores selling foodstuffs, tobacco, antiques, handicrafts, gasoline/motor oil, nursery stock, flowers, fresh fruit, books, newspapers, periodicals and art galleries, of less than 2,400 square feet and employing less than four persons; and pharmacies less than 7,500 square feet.

Additionally, stores licensed to sell liquor under the Liquor Licence Act or to sell goods and services under the Tourism Act are also exempted from the requirement to close on Public Holidays including, restaurants, hotels, laundromats and other coin-operated services, automobile and boat rental establishments and service/repair facilities. Movie theatres, casinos, attractions and places of entertainment are not covered and therefore are also permitted to be legally open on all Public Holidays. All other retail stores must remain closed unless they are within one of the Tourist Designation Areas. The City of Toronto Municipal Code Chapter 510 does not include a process to establish new Tourist Designation Areas,

On January 18, 2010 the Toronto Association of Business Improvement Areas (TABIA), representing more than 27,000 business and property owners, wrote to the Chair of the Economic Development Committee expressing concerns with respect to the ambiguity, lack of reflection of the city's diverse communities, and problems with enforcement of the current retail business holidays regulations. TABIA proposed that all retail businesses in the City of Toronto regardless of size be permitted to open on designated holidays at the business owner's discretion. On February 3, 2010, Yorkdale Shopping Centre wrote to the Chair of the Economic Development Committee and Councillor Moscoe, requesting that City Council to revise and improve the inconsistent, confusing and unfair business climate within the City created by the current policy framework. Yorkdale Shopping Centre requested that 'all businesses across the entire City be afforded the opportunity to voluntarily open their doors'. On March 8, 2010, Sherway Gardens wrote to the Chair of the Economic Development Committee and Councillor Milczyn, requesting Council level the playing field for the City's business community by allowing businesses across the City to open their doors if they believe there is a business case for doing so.

In discussions with City staff, some retailers have indicated that given a choice they would still remain closed on most, if not all, Public Holidays, for a number of reasons.

## **Enforcement**

City of Toronto Municipal Code Chapter 510 identifies nine designated Public Holidays: New Year's Day, Good Friday, Easter Sunday, Victoria Day, Canada Day, Family Day, Labour Day, Thanksgiving Day and Christmas Day, and provides that any person who carries on a retail business on a holiday in contravention of Chapter 510 is guilty of an offence and on conviction is liable to a maximum fine of not more than the greater of:

- (1) \$50,000; or
- (2) The gross sales in the retail business establishment on the holiday in respect of which the offence occurred.

Any person who requires or counsels another person to contravene Chapter 510 is guilty of an offence and on conviction is liable to a maximum fine of not more than the greater of:

- (1) \$50,000; or
- (2) The gross sales in the retail business establishment on the holiday in respect of which the offence occurred.

Any person that contravenes any other provision of the chapter is guilty of an offence and on conviction is liable to a minimum fine of \$500 for a first offence, \$2,000 for a second offence and \$5,000 for a third or subsequent offence.

Despite these provisions, some retailers still choose to remain open on the designated holidays regardless of any potential consequences or penalties. Prior to the enactment of the City of Toronto Act (CoTA), Toronto Police Services was solely responsible for the enforcement of legislation in place at the time. With the new legislation, the Toronto Police Services and Municipal Licensing & Standards officers have authority to enforce Chapter 510 of the Municipal Code, however, since Chapter 510 came into effect no charges have been laid. ML&S does not have staff on duty on the designated holidays and therefore follows up on a complaint basis only. ML&S has also begun some activity aimed at educating businesses about the Municipal Code Chapter 510 provisions

## **Employment Standards Act**

The regulation of business in Ontario is also governed by the Employment Standards Act. The Act guarantees the rights of employers and workers. It entitles employees to safe, fair working conditions and compensation. The Act specifically addresses fair compensation and terms for employees who choose to work on any Public Holiday. The collective agreements of most unions also protect the rights of workers and stipulate provisions for workers who choose to work on Public Holidays. Workers have the right to refuse to work on Public Holidays without repercussion.

All businesses, including manufacturers and factories, professional services, offices and commercial enterprises are allowed to operate on any Public Holiday and must adhere to the terms and conditions stipulated in the Ontario Employment Standards Act.

## **Other Jurisdictions**

Other municipalities within Ontario are still operating under the auspices of the Retail Business Holidays Act and have been establishing Tourist Designation Areas to permit retail stores within their jurisdiction to open on Public Holidays. Most notable is York Region where Vaughan Mills, the Pacific Mall and the Kennedy & Denison Shopping Centre are allowed to open on Public Holidays.

In Sarnia and Windsor, City Councils designated the entire city as a Tourist Areas to permit retail operations to open on some Public Holidays. The City of Stratford allows small tourism related businesses to be open during Stratford's Tourism Designated season which is May 1 to November 12. The by-law stipulates the hours that retail businesses may open and the size of retail operation.

The following Canadian provinces and territories allow retailers to open on Public Holidays: British Columbia, Alberta, Saskatchewan, Yukon Territories, Nunavut and the Northwest Territories. Additionally, almost all U.S. states permit retail stores to open on public holidays as they do not have legislation mandating closures.

## **CONCLUSION:**

The enactment of the City of Toronto Act in 2006 meant that the (Ontario) Retail Business Holidays Act (RBHA) which regulates the operation of retail stores on Public Holidays would no longer apply within the City of Toronto. Consequently, City Council adopted a By-law to in essence maintain the status quo, as a temporary measure, until a review of holiday shopping practices in Toronto could be completed.

The current regulatory framework creates a number of inequities that place many retail businesses within the City of Toronto at a competitive disadvantage. Chapter 510 of the Municipal Code requiring retail stores to close on public holidays applies only to the retail sector. Additionally, there are numerous exemptions based on the type, size and location of retail operations. While some geographic areas within the City previously received tourism area exemptions under the (Ontario) Retail Business Holidays Act, Chapter 510 does not provide a process for additional exemptions. Retail businesses outside the City have been exempted from the provisions of the (Ontario) Retail Business Holidays Act permitting certain retail stores to open on public holidays. Stores in several other provinces and most states are permitted to open on public holidays.

The Toronto Association of Business Improvement Areas, representing more than 27,000 business and property owners, Oxford Properties/Yorkdale Shopping Centre and Sherway Gardens have written to the City requesting a fair resolution to the inequities created by the current holidays shopping restrictions. They have requested that this issue be resolved in this term of Council.

The overarching legislation regulating employment in Ontario is the Ontario Employment Standards Act. The rights of employees are protected under this legislation which establishes the right of employees to refuse to work on public holidays without repercussion and to be receive public holiday pay if they do work on public holidays.

This report recognizes that Toronto is one of the most diverse, multi-cultural cities in the world today and that not everyone experiences holidays in the same way, and recommends that retail businesses, like those in other sectors, be permitted to make their own choice to open or close on public holidays. In a city the size of Toronto, some individuals will choose to use some public holidays as a day of rest as the best way to improve their quality of life, others will choose to take advantage of additional hours of commerce, or employment at a wage premium, for the same reason. This report recommends a course of action that respects both choices and provides for a harmonized, fair and equitable regime for operating retail stores on Public Holidays in Toronto.

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## **SIGNATURE**

Michael H. Williams, General Manager  
Economic Development and Culture

## **ATTACHMENTS**

Attachment No. 1: Chronology of Retail Business Holiday Shopping Governance



## Chronology of Retail Business Holiday Shopping Governance (source: Public records)

Date	Legislation	Result
1677	England <i>An Act for the Better Observation of the Lord's Day, Commonly Called Sunday</i>	<ul style="list-style-type: none"> <li>To compel observance of Sunday as a Christian holy day and to prevent activities on that day deemed to be profanatory</li> </ul>
1845	Upper Canada <i>An Act to Prevent the Profanation of the Lord's Day, Commonly Called Sunday</i>	<ul style="list-style-type: none"> <li>Made it unlawful “to do or exercise any worldly labour, business or work on one’s ordinary calling”, with the exception of certain works of necessity or charity</li> <li>Used in Province of Ontario after Confederation in 1867</li> <li>Further restrictions added in 1885, 1896 and 1897 to include transportation, agriculture and bakeshops</li> <li>In 1903, the <b>1897 Act to Prevent the Profanation of the Lord's Day</b> was found to be unconstitutional by the Judicial Committee of the Privy Council</li> </ul>
1907	Federal Government of Canada <i>Lord's Day Act</i>	<ul style="list-style-type: none"> <li>Law prohibited selling or purchasing goods or real estate; carrying out any work, business or labour for gain or employing a person to do so; engaging in any public game or contest for gain; providing or attending any performance or public meeting, other than in a church, at which any fee is charged directly or indirectly.</li> <li>Exceptions included – works of necessity and mercy – (selling drugs and medicine); conveying travellers; carrying mail and delivering milk.</li> <li>Law allows provinces opportunity to opt-out of the legislation.</li> </ul>
1950	Province of Ontario <i>Lord's Day (Ontario) Act</i>	<ul style="list-style-type: none"> <li>Province allowed municipalities to permit public games and sports – except horse racing – between 1:30 and 6:00 on Sundays providing it was approved by municipal electors in a referendum</li> </ul>
1960s	Province of Ontario <i>Amendments to Lord's Day (Ontario) Act</i>	<ul style="list-style-type: none"> <li>Province allows cultural and recreational activities, agricultural and trade shows, scientific exhibitions and horse racing</li> </ul>

		<ul style="list-style-type: none"> <li>• Removes the need for a referendum for municipal sports exemptions</li> </ul>
1975	Province of Ontario <i>The Retail Businesses Holidays Act, 1975</i>	<ul style="list-style-type: none"> <li>• Province restricted retail businesses from opening on holidays. Holidays defined as New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day, Christmas Day, Boxing Day and Sundays. Some retail operations are exempt based on product sold and size of operation. A provision included allowing retailers essential to tourism development or maintenance to open – no provincial criteria set</li> </ul>
1982	Federal Government of Canada <i>Canadian Charter of Rights and Freedoms</i>	<ul style="list-style-type: none"> <li>• Challenges to the Lord's Day begin across Canada</li> </ul>
1985	<b>Supreme Court of Canada</b>	<ul style="list-style-type: none"> <li>• Federal Lord's Day Act is struck down – infringed on the Charter's guarantee of freedom of religion</li> </ul>
1987	Province of Ontario <i>Amendments to Retail Business Holidays Act</i>	<ul style="list-style-type: none"> <li>• Allows for the opening of book stores and art galleries, with restrictions on their size and number of employees.</li> </ul>
1991	Province of Ontario <i>The Retail Businesses Holidays Act, 1991</i>	<ul style="list-style-type: none"> <li>• Legislation brought in that allowed Sunday shopping in the month of December</li> <li>• Province amended law to allow municipalities the right to allow retailers to open providing they meet Tourism criteria set by the province</li> </ul>
1992	Province of Ontario <i>Amendments to Retail Business Holidays Act</i>	<ul style="list-style-type: none"> <li>• Legislation passed to allow all retailers the right to open on Sundays</li> <li>• Easter Sunday is added to list of public holidays where retailers are required to close</li> </ul>
1996	Province of Ontario <i>Boxing Day Shopping Act, 1996</i>	<ul style="list-style-type: none"> <li>• Legislation passed allowing retailers to open on Boxing Day -a day previously listed as a holiday where retailers were required to close.</li> </ul>
2006	Province of Ontario <i>City of Toronto Act, 2006</i>	<ul style="list-style-type: none"> <li>• Province passes legislation passing many provincial responsibilities to the City of Toronto including legislation relating to retail openings</li> </ul>
2007	City of Toronto <i>By-law 8-2007 Chapter 510</i>	<ul style="list-style-type: none"> <li>• City passes by-law which maintains the status quo of the provincial RBHA legislation until such time as new legislation can be passed</li> </ul>