

To: The City of Toronto Economic Development Committee

From: Peter Thoma MCIP, RPP, PLE, Partner (*acting on behalf of Oxford Properties*)

Date: November 5th, 2012

RE: HOLIDAY SHOPPING, A REQUEST FOR DECISIVE POLICY ACTION

AT ISSUE

The introduction of the *Toronto Act, 2006*, extended to the City of Toronto a whole suite of additional powers from the Province which were designed to give the City greater control to over its own affairs. Among the changes, Toronto is no longer beholden to the *Ontario Retail Business Holiday Act*.

One of the unintended impacts of this change has been the creation of a policy *blackhole* in Toronto whereby there is no policy mechanism is available to evaluate the merits of expanding the base of retail businesses eligible to be opened on Statutory Holidays. In essence, the lack of policy in this regard has created an enshrined monopoly for certain retail districts in Toronto (such as the Eaton Centre, Queen's Quay Terminal and parts of the Downtown Core to operate on Statutory Holidays), whereas all other areas must remain closed, without any opportunity to seek out comparable status.

In May 2010, the previous Council considered a Staff Report from the General Manager of Economic Development and Culture which recommended that changes to Section 510 of the Municipal Code related to Holiday Shopping needed to be adopted, and that the City should allow merchants and businesses across all segments of the commercial sector to open *voluntarily* on Statutory Holidays should they choose to do so.

Such a measure, as it was laid out, would help "level the playing-field" between certain areas the city, ultimately creating a single City-wide approach rather than a patchwork of regulations. The recommended policy which was proposed by Economic Development Staff would also be more reflective of Toronto's diverse business community, and would put the City's commercial sector on the same footing as all other industries (i.e. manufacturing, transportation, the public sector, etc) which have no comparable restrictions on business activities on Statutory Holidays.

The previous iteration of council did not reject the notion of voluntary store openings on Statutory Holidays, instead they asked that Staff undertake additional consultation with the retail industry, labour organizations, faith organizations and the public to determine the level of support and the impact that it would have on the City. The following motion was adopted by council on May 12, 2010:

That City Council refer this Item back to the General Manager, Economic Development and Culture with a request to conduct further public consultation with all stakeholders, including Business Improvement Areas, existing community groups, the Workers Action Centre, Legal Clinics and others who represent employees, and Members of Council, on the issue of holiday shopping for report to the Economic Development Committee in the next term of Council.

At the September 14, 2011 Economic Development Committee meeting, a subcommittee made up of three councillors (Sarah Doucette, Ward 13; Josh Colle, Ward 15; and Mary Fragedakis Ward 29) was struck to work with the General Manager of Economic Development and Culture to establish a consultation process on Holiday Shopping and to successfully resolve this matter.

Over the past six to nine months, Staff have held extensive industry and public consultation across the City. To be clear, I have attended each and every public consultation held on this issue, in addition to attending industry consultations with retailers and Business Improvement Area representatives held at City Hall.

KEY CONSIDERATIONS FOR SUCCESSFULLY RESOLVING THE HOLIDAY SHOPPING ISSUE IN THE CITY OF TORONTO

- Choice is the cornerstone of this issue. The City need not intervene in the daily lives of Torontonians. If people choose to shop, and if people in the stores choose to work, stores and businesses ought to have a choice to open. Chapter 510 of the Municipal Code is not representative of the diversity in this City, and does not represent good public policy – particularly in its current form.
- The *Ontario Employment Standards Act* provides all workers with the right to refuse requests by their employer to work, without repudiation from the employer, on all Statutory Holidays. The ESA further requires that all workers be fairly remunerated a minimum of 1.5 times their normal hourly rate.
- The retail sector is the ONLY industry in the local economy whereby business owners cannot voluntarily open their establishments on the days of their choosing if there is a market need or business opportunity to do so. Such restrictions do not occur in any other segments of the economy.
- The city-wide approach for voluntary store openings on statutory holiday has been endorsed by the Toronto Association of Business Improvement Areas ("TABIA"), as well as a consortium of Toronto's major mall owners, including Oxford Properties (Yorkdale, Scarborough Town Centre) and Cadillac Fairview (Sherway Gardens).
- The notion that certain areas of the City can be open on certain days, whereas others cannot, is inherently unfair not only to businesses, but also their employees and customers who want to seek out goods and services on days of their choosing.
- The retail sector is made up of a large cross-section of part-time and full-time workers. Many of the workers are students or hold down multiple jobs to make ends meet. The opportunity to earn time-and-a-half is something which we believe would be welcomed by most employees in this sector.

- Holiday exemptions granted in other neighbouring jurisdictions such as Mississauga (Square One, etal), Vaughan (Vaughan Mills, etal) and Markham (Pacific Mall, etal) have put Toronto merchant groups at a disadvantage. Shoppers from the City of Toronto are now flocking to these exempted shopping areas on Statutory Holidays.
- The current landscape of holiday shopping in the GTA is becoming increasingly more convoluted. Today, consumers need to consult the media to find out what is open or closed. The majority of Torontonians simply don't understand why they can buy a pair of shoes at the Eaton Centre on Labour Day but they can't buy the same pair of shoes from the same shoe store at Scarborough Town Centre.
- Tourism research prepared by the Province of Ontario has shown that shopping is one of the single most important motivators leading to a decision to travel to a destination. The quality and availability of shopping experiences are critical to a large segment of tourists. Moreover, shopping is consistently ranked as one of the most popular activities sought out by tourists.

OUR REQUEST

We are asking that Toronto City Council take a more proactive position on Holiday Shopping. Specifically we would like Council to consider the following points with respect to this issue:

1. THAT all businesses throughout the City of Toronto be granted the CHOICE to open or close their commercial establishments in accordance with their customers' unique demands, provided that they adhere to the obligations of the *Ontario Employment Standards Act*.
2. THAT that the current Policy framework (Chapter 510) is broken, and must, therefore be resolved expeditiously by *this* term of Council.
3. THAT the City establishes a new policy framework that does not create multiple classes of businesses and workers predicated on geography or random factors such as square footage.
4. THAT Council acknowledges and accepts that Staff recommendations on this issue are based on thorough and extensive public and industry consultation.
5. THAT Council acknowledges and accepts that nobody is being *forced* to work (or shop) on Statutory Holidays. The Employment Standards Act provides specific legislation related to the obligations and expectations of employers and employees in this regard.
6. THAT Council acknowledges and accepts that labour law is not a matter of municipal jurisdiction, and as such, the City should not be making arbitrary rules about which specific Statutory Holidays in Ontario are "acceptable" for retail or any other employees unless these days are summarily applied to **ALL workers in the City**.

A copy of our forthcoming presentation to the Economic Development Committee on November 8th, 2012 is appended to this letter for your consideration.

CONCLUSION

Holiday Shopping has become a “repeat” issue in the City of Toronto. The issue has come before previous iterations of council on several occasions, but has failed to be addressed decisively.

As this term of Council moves forward, it is clear that strong leadership on this matter is urgently needed. We are looking for all factions of Council to come together to support the recommendations of senior Economic Development Staff which have consistently advocated that Holiday Shopping and the hours of operation should ultimately be left to the discretion of the business community. The days which Staff has brought forward to the Committee (i.e. Victoria Day, Canada Day, Labour Day and Thanksgiving Day) are already a compromise position. While it is our opinion that there may be other days which might have been added, most notably Family Day, we believe that the Staff recommendation helps, at least partially re-level the playing-field.

Should you have any questions or comments, please feel free to contact the undersigned.

Respectfully Submitted,

urbanMetrics inc.



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City of Toronto Holiday Shopping Chapter 510 A Request for Prompt Policy Change

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Partner, urbanMetrics**

**Submitted to the City of Toronto Economic Development Committee
November 8, 2012**

The Background on this Issue Looks Like This

Council Motion: May 12 2010 (previous out-going Council)

That City Council refer this Item back to the General Manager, Economic Development and Culture with a request to conduct further public consultation with all stakeholders, including Business Improvement Areas, existing community groups, the Workers Action Centre, Legal Clinics and others who represent employees, and Members of Council, on the issue of holiday shopping for report to the Economic Development Committee in the next term of Council.

Municipal Chapter 510: A Policy Black Hole

City of Toronto

Chapter 510

Reform

2006

2008

2010

2012 ?

This is what an “Unlevel Playing-field” Looks Like.



Can You Pick the Difference?

Option
to Open



City of Toronto Policy Gap



No Option
to Open



Same Business, Same Workers, Same Taxes
But Different City Policies

Geographic Schisms: Lumpy Rules



Steeles Avenue : **Same Intersection.** **Different Rules**



Geographic Schisms – Lumpy Rules



Yonge Street: **Same Street.** **Different Rules**



Geographic Schisms – Lumpy Rules



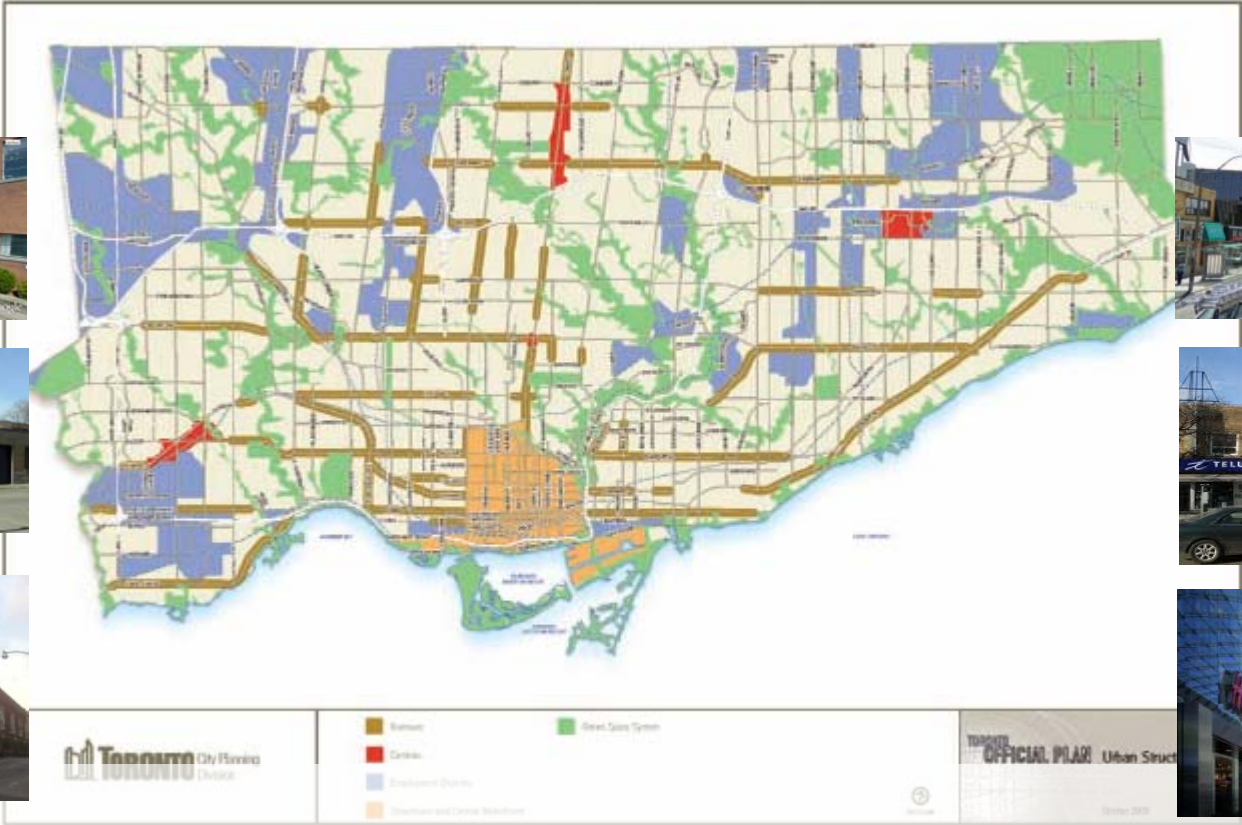
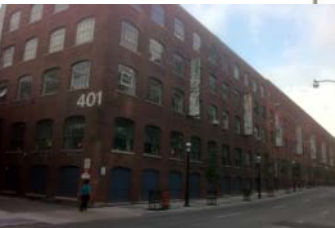
Queen Street West

Bloor Street West



The City Doesn't Regulate Labour Laws in its **Employment Districts.**

Option to Open

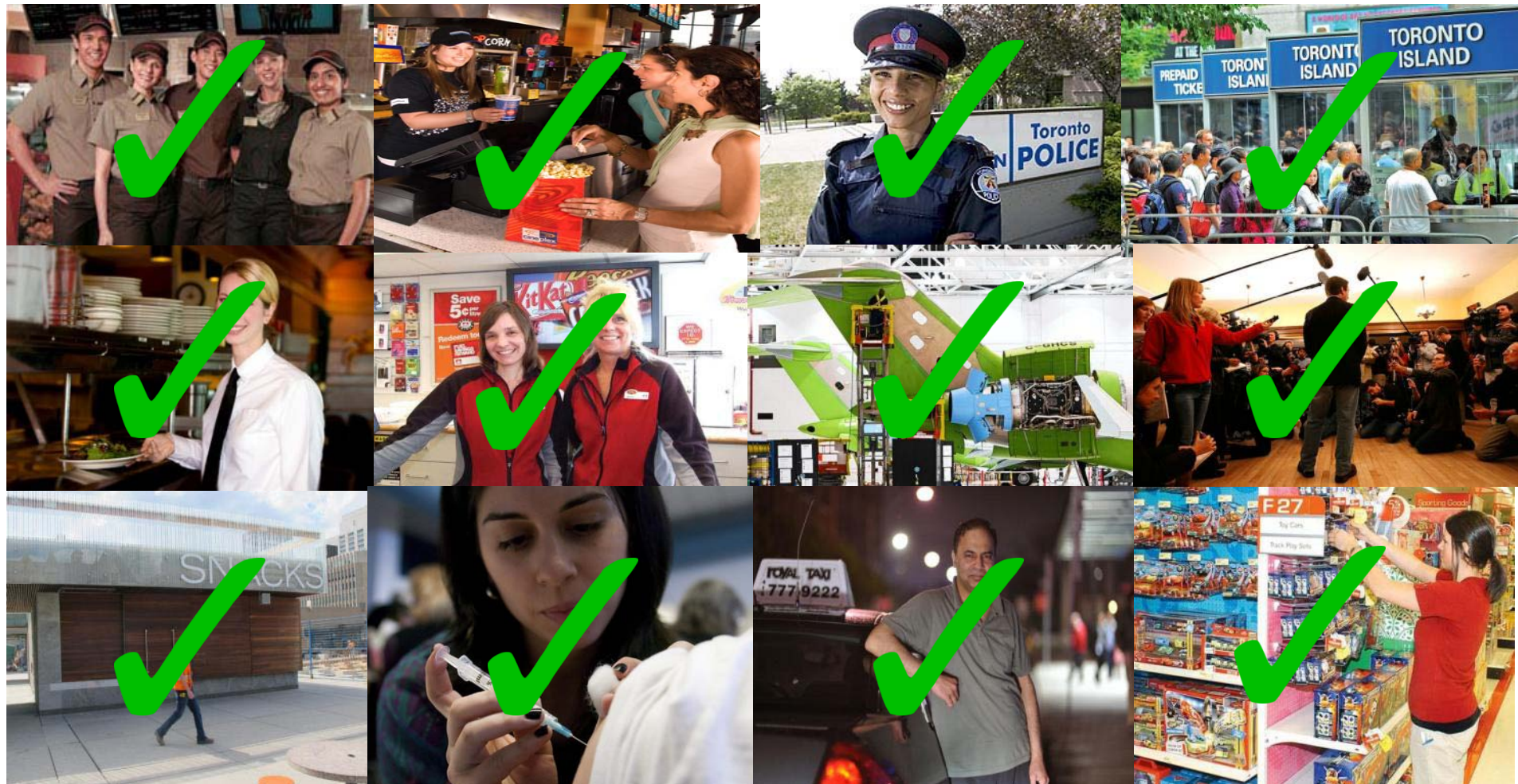


No Option to Open

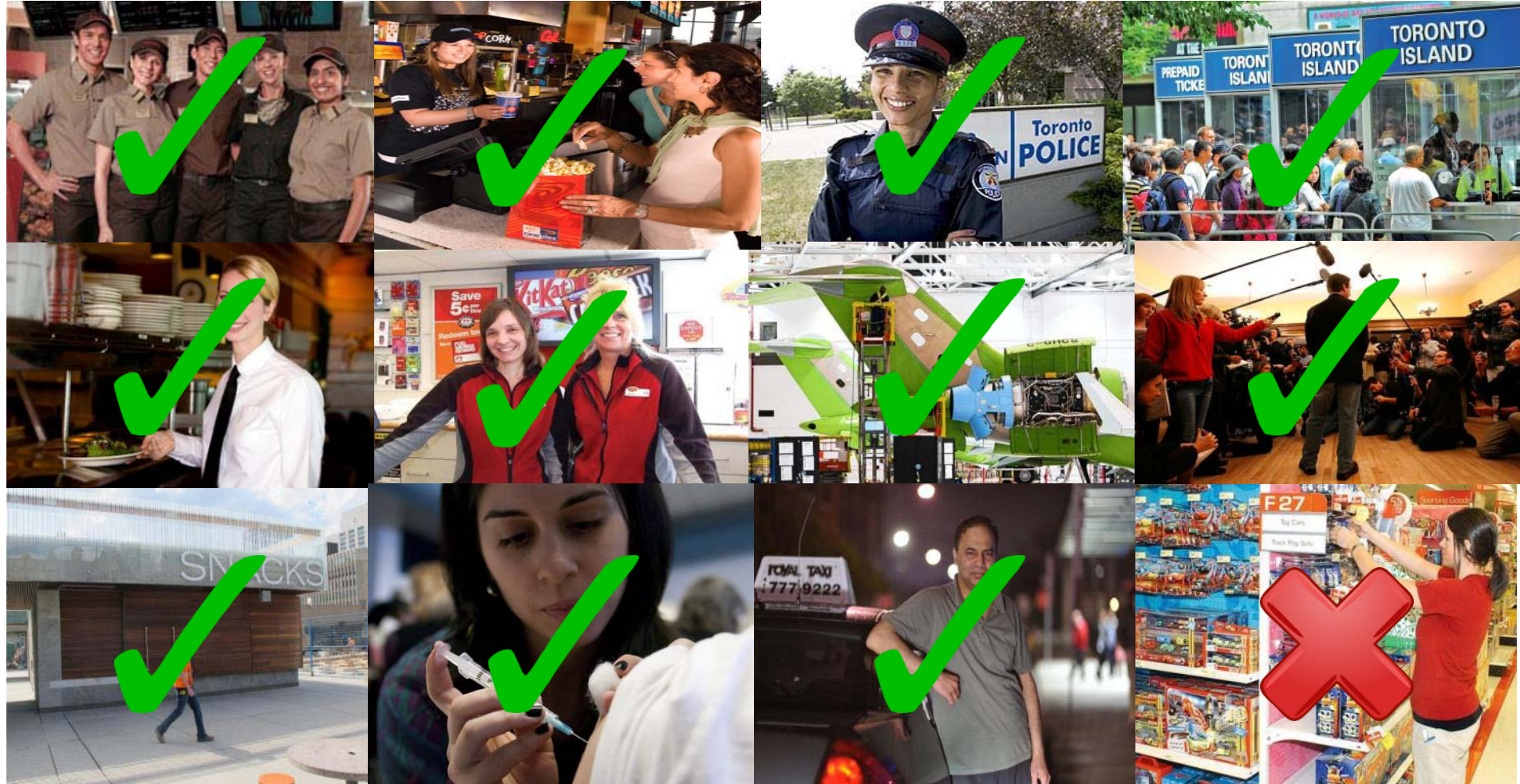


Then why do we do it in **Commercial Districts** (Avenues and Urban Growth Centres)?

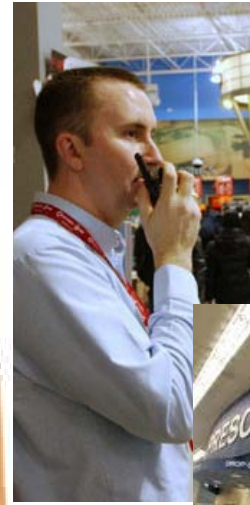
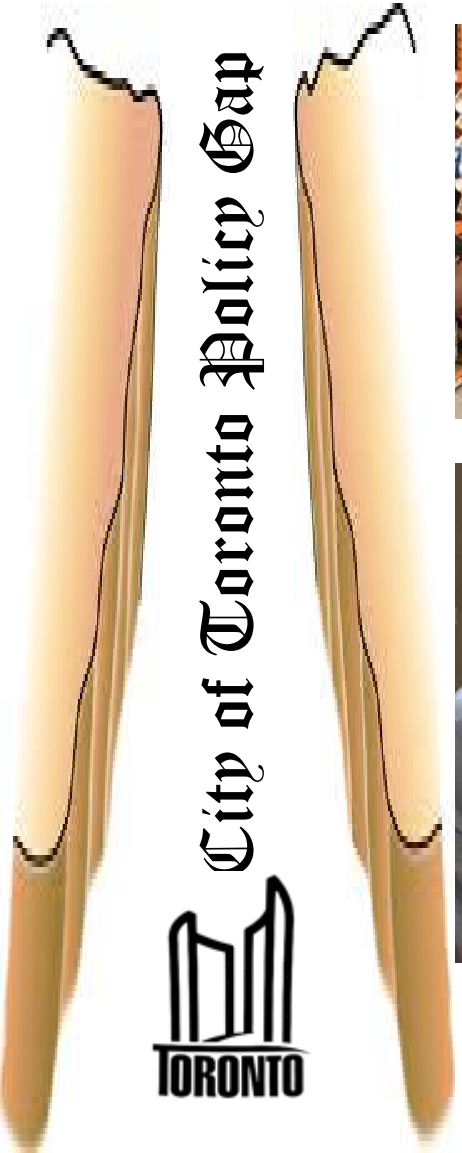
Which of these workers in Toronto is fully protected under the Ontario Employment Standards Act?



Which of these workers is eligible to earn time-and-a-half on a Stat Holiday in Toronto?

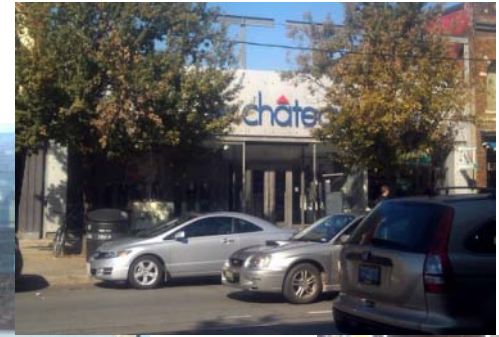


Chapter 510 enshrines a **Two-Tier Policy** for workers and businesses in Toronto's **Commercial Sector**



What do all these businesses have in Common?

They all opened “illegally” on Thanksgiving Day, 2012



As a closing observation,
even the City of Toronto's own Commercial Tenants
are opening ("illegally") on Stat Holidays!



Kensington Parking Municipal ("P") Garage, Thanksgiving Day, 2012 @ 2:00PM

What Can the Ec. Dev. Committee Do?

- Provide ALL businesses the **CHOICE** to open or close their establishments in accordance with their customer's unique demands.
- Acknowledge and Accept that current Policy Framework on this issue is BROKEN, and **must to be resolved**. Quickly.
- Establish a policy that does not create multiple classes of businesses and workers based on geography or random factors such as square footage. There must be **a City-wide approach**.
- Acknowledge and accept that thorough and **extensive public and industry consultation was conducted** by STAFF on this issue over the past year, and their recommendation was balanced.
- Acknowledge and accept that **nobody is being forced to shop or work** on Statutory Holidays. The Ontario Employment Standards Act provides specific legislation in this regard. Moreover, **labour law isn't a matter of municipal jurisdiction**.