

ED18.6.31

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CITY CLERK'S OFFICE
SECRETARIAT SECTION

2012 NOV 23 P 3: 12

**mccarthy
tétrault**

November 23, 2012

Via Email (clerk@toronto.ca)

Mayor and Members of Council
City of Toronto
c/o Economic Development Committee
Toronto City Hall
100 Queen Street West
10th Floor West Tower
Toronto ON M5H 2N2

Dear Sirs/Mesdames:

**Re: Item ED 18.6 Holiday Shopping
City of Toronto Council Meeting, November 27 and 28, 2012**

Please find attached my letter of November 7, 2012 to the Economic Development Committee with respect to the above-noted item and the handout on the *Employment Standards Act* provided to the Committee on November 8th during my deputation. I ask that the points raised be considered by Council in its decision making process on Item ED18.6 Holiday Shopping. In regard to points 4. and 5. of the letter, I ask that you also consider the enclosed extract from the City's website on the City of Toronto Act.

Further, I was at the November 7th Economic Development Committee meeting and a question was put to at least one deputant by Councillor Fletcher asking whether or not the statutory holidays set out in the *Retail Business Holidays Act*, or those listed in Chapter 510 of the City of Toronto Municipal Code, are constitutionally protected. I can advise that they are not. The days in question are statutorily protected holidays that have been so protected through a constitutionally-legitimate exercise of government power, but the holidays themselves are not constitutionally-protected ones. For instance, I do not have a constitutional right to observe Family Day, Thanksgiving Day, Canada Day, etc....

Thank you for your consideration of the submissions contained herein/attached.

Yours truly,

McCarthy Tétrault LLP

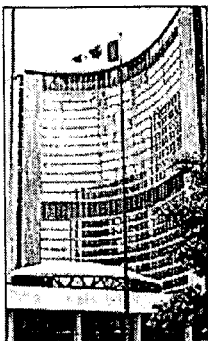

Tara L. Piurko

c. Anthony Casalanguida, Oxford Properties Group Inc.
Kathy Meyers, Oxford Properties Group Inc.
John Giddings, Oxford Properties Group Inc.
Peter Thoma, urbanMetrics Inc.


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Governing Toronto – City of Toronto Act

- Governing Toronto
- City of Toronto Act
- Schedule A
- Summary of Act
- Background
- Toronto-Ontario Cooperation and Consultation Agreement
- Civic Engagement
- Statutory Accountability Requirements
- Ministry of Municipal Affairs



Toronto is Canada's 6th largest government and needs the flexibility to focus on strategic issues that matter to residents and businesses. The new *City of Toronto Act* – which came into force on January 1, 2007 – recognizes this need. It introduces new powers to provide tools and options to the new Toronto government to help achieve "made-for-Toronto" policies that support achieving prosperity, opportunity and liveability for all.

The new Act is also part of the Ontario provincial government's overall municipal reform efforts, which recognize cities as strong economic engines. A strong Toronto means a strong province. A strong province means an even stronger country.

Learn more about [how you can get involved](#).

New powers, new opportunities

Parts of the new Act include many rules and regulations the City has always followed. The difference is that there are new, broader powers that allow the Toronto government to the following:

- **Pass by-laws** that promote the economic, social and environmental well-being of the City, protect the health, safety and well-being of its people and authorize any service the City considers necessary or desirable.
- **Delegate powers and service responsibilities** to boards and establish City corporations. For instance, the City can establish City boards and change board procedures and powers. It can create corporations, nominate a person to act as a director or officer, and even acquire an interest in a corporation. There is also the opportunity to delegate decisions on local matters, which would strengthen the individual and neighbourhood voices.
- **Establish new revenue tools** to support City priorities and goals, such as improving our environment. These new revenue tools do not address the City's long-term fiscal imbalance. However, the Act supports the stronger inter-government relations and agreements needed to achieve financial sustainability.
- **Exercise major planning powers** to shape how Toronto's land is developed. Examples include the authority to control the density and height of development, regulate and reject the demolition of residential rental properties and to have a say on external design features.
- **Have a stronger voice** when talking to the provincial or federal governments about programs and issues that affect Toronto. For the first time, the City of Toronto can enter into an agreement with a government without having to go to the province for permission.



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November 7, 2012

Via Email (edc@toronto.ca)

Ms. Merle MacDonald
City of Toronto
Planning and Growth Management Committee
Toronto City Hall
100 Queen Street West
10th Floor West Tower
Toronto ON M5H 2N2

Dear Ms. MacDonald:

Re: **Item ED 18.6 Holiday Shopping**
Economic Development Committee Meeting, November 8, 2012

I represent Oxford Properties Group Inc. with respect to the Yorkdale Shopping Centre and the Scarborough Town Centre and have been monitoring Holiday Shopping matters in the City of Toronto for a number of years.

The following statement appears in the October 4, 2012 Holiday Shopping report to the Economic Development Committee, and similar text appears in related City reports that follow:

"Under the City of Toronto, Municipal Code Chapter 510, Holiday Shopping, retail stores are required to be closed on the following nine public holidays: New Year's Day, Family Day, Good Friday, Easter Sunday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, and Christmas Day.

The (Ontario) Retail Business Holidays Act (RBHA), which governs jurisdictions outside the City of Toronto, has similar requirements. Both the City's Municipal Code and Provincial Statute provide numerous exemptions by type and size of store, as well as exemptions for designated areas within a municipality. Some Councils have exempted their entire municipality from the requirements of the RBHA. It should be noted that subject to proclamation, the RBHA is slated to be amended. These amendments will bring the retail shopping provisions applicable to other areas of the province more in line with the provisions currently applicable to the City of Toronto."

We ask that the Economic Development Committee have in mind the following when considering Item 18.6 on its November 8, 2012 agenda.

1. With respect to the statement that the RBHA is slated to be amended one assumes that the change noted is imminent. I had the opportunity to speak with a representative at the Ministry of Consumer Services, the Ministry that administers the RBHA, on

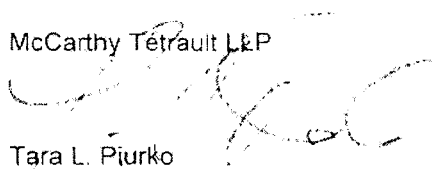
November 7, 2012. I can advise that there has been no announcement that the Province intends to bring into force Section 1.2 of the RBHA which would permit a municipality to pass a by-law exempting itself from the RBHA. Further, the representative was not aware that such an announcement was on its way. This not in force provision in the RBHA has been in limbo since 2006 and it remains as such.

2. The statement that Councils of some municipalities have exempted their entire municipality from the RBHA is correct, however, it should be kept in mind that such municipalities would have had a population of less than 50,000 at the time of such exemption. A municipality with a population of 50,001 cannot take advantage of the provision set out in Section 4. of O.Reg. 711 that would permit such an exemption
3. The provisions currently applicable to the City of Toronto are set out in Chapter 510 of the City of Toronto Municipal Code. Those provisions do not allow a retail business establishment to apply for an exemption to open on a statutory holiday unlike the application mechanism which currently available to the rest of the Province. While the RBHA requires retail business establishments to remain closed on statutory holidays, and while there are exemptions similar to those applicable to the City of Toronto related to type and size of store, there is also a mechanism for a retail business establishment to apply for an exemption and such an exemption may be granted if the tourism criteria set out in Section 2 of O. Reg. 711 are satisfied. Further, the separate application set out in Section 5. of O.Reg 711 is not available in the City of Toronto. This application permits a retail business establishment to apply for an exemption for up to five (5) holidays a year during which a fair, festival or other special event, not including a parade, is being held in the subject municipality.
4. Amendments to Chapter 510 of the Municipal Code were passed in December 2006 to close a regulatory gap that would be created as of New Year's Day 2007 wherein all stores in the City of Toronto would be permitted to open after the passing of *The Stronger City of Toronto for a Stronger Ontario Act, 2006*. The amendments were passed to maintain the status quo pending a consultative process to be undertaken by the General Manager of Economic Development, Culture and Tourism regarding the regulation of holiday shopping. As can be seen from the attached excerpt of the Minutes of the December 5 and 6, 2006 meeting of City of Toronto Council, Council passed a motion that the City Solicitor be authorized to introduce a bill to close the regulatory gap in substantially the same manner as was applicable to the rest of the Province. That did not happen. While the status quo with respect to which establishments that already had an exemption was maintained, the status quo with respect to an application mechanism was not.
5. With respect to the interim measure passed in December 2006 to close an imminent regulatory gap that would exist as of January 1, 2007, I submit that the intention was not to close Toronto for business on all statutory holidays. As can be seen from the attached December 2006 Minutes, the intention was for the City to come up with a process to govern the regulation of holiday shopping in the City of Toronto not to simply close up shop. The name of the Act behind the change, *The Stronger City of Toronto for a Stronger Ontario Act, 2006*, is at odds with the current effect of Chapter 510 of the City of Toronto Municipal Code for those retail establishments that were not already exempt in December 2006.

Thank you for your consideration of the submissions contained herein.

Yours truly,

McCarthy Tétrault LLP



Tara L. Piurko

TLP/csb

- c. Anthony Casalanguida, Oxford Properties Group Inc.
Kathy Meyers, Oxford Properties Group Inc.
John Giddings, Oxford Properties Group Inc.
Peter Thoma, urbanMetrics Inc.

Agenda

These Minutes are to be confirmed by City Council on February 5, 2007.

**MINUTES OF THE COUNCIL
OF THE
CITY OF TORONTO
FIRST MEETING**

**TUESDAY, DECEMBER 5, 2006, AND
WEDNESDAY, DECEMBER 6, 2006**

December 5, 2006

The Members of Council of the City of Toronto, for the four-year term commencing December 1, 2006, met on Tuesday, December 5, 2006, at 2:00 p.m. in the Council Chamber, City Hall, Toronto.

The City Clerk, Ulli S. Watkiss, presided in accordance with the provisions of the *Municipal Act, 2001*.

The meeting opened with the singing of the National Anthem by Ms. Simone Soman.

Council rose and observed a moment of silence and personal reflection.

1.1 CONFIRMATION OF ELECTION RESULTS

The City Clerk welcomed the Members of Council to the First Meeting of the Council of the City of Toronto, and reported that she had declared the 2006 Municipal Election results, as to the persons elected and entitled to be Members of the Council of the City of Toronto, for a four-year term of office starting on December 1, 2006.

On behalf of the City Manager and the Toronto Public Service, the City Clerk extended her congratulations to Mayor David Miller and the Members of Council.

2. The Deputy City Manager and Chief Financial Officer be authorized to make cash disbursements up to \$2.800 billion net to fund expenditures during the period January 1, to April 30, 2007, including cash transfers up to \$482.910 million to Agencies, Boards and Commissions as detailed in the attached Appendix 1.
3. The appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Link to Background Information

Council considered the following:

- Report (December 4, 2006) from the Deputy City Manager and Chief Financial Officer. (CC1.2 Revised)
(<http://www.toronto.ca/legdocs/2007/cc/bgrd/20061205-cc1.2r.pdf>)

1.14 Regulation of Holiday Shopping upon Proclamation of the *City of Toronto Act, 2006*

CC1.3	NO AMENDMENT			
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Motion:

Councillor Carroll moved that City Council adopt the staff recommendations contained in the Recommendations Section of the report (November 24, 2006) from the City Solicitor, entitled "Regulation of Holiday Shopping Upon Proclamation of the *City of Toronto Act, 2006*".

Vote:

The motion by Councillor Carroll carried.

City Council Decision

City Council adopted the following motions:

1. The City Solicitor be authorized to introduce a bill regulating holiday shopping on the eight days a year currently regulated by the *Retail Business Holidays Act* in substantially the same manner as is currently provided for in the *Retail Business Holidays Act* and maintaining the "tourist area" exemptions that have been previously approved by Council.
2. The General Manager of Economic Development, Culture and Tourism

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 by December 31, 2007 recommending a new regulatory framework governing holiday shopping.

Link to Background Information

Council considered the following:

- Report (November 24, 2006) from the City Solicitor. (CC1.3)
(<http://www.toronto.ca/legdocs/2007/cc/bgrd/20061205-cc1.3.pdf>)

1.15 Appointment of an Investigator under Bill 130

CC1.4	NO AMENDMENT			
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Motion:

Deputy Mayor Pantalone moved that City Council adopt the staff recommendation contained in the Recommendation Section of the report (November 27, 2006) from the City Manager, entitled "Appointment of an Investigator under Bill 130".

Vote:

The motion by Deputy Mayor Pantalone carried.

City Council Decision

City Council on December 5 and 6, 2006, adopted the following motion:

1. The City Manager be authorized to select and enter into an agreement with a qualified person from a faculty of law at a Toronto university to serve as interim investigator to handle any public complaints about improperly closed meetings of City Council, committees or local boards in accordance with the *City of Toronto Act, 2006*.

Link to Background Information

Council considered the following:

Submitted by Jara Plunko
ED 18.6.25

Holiday Shopping - City of Toronto

Application of *Employment Standards Act, 2000*, S.O. 2000, c. 14

Should retail business establishment currently not exempt under Section 3 of the *Retail Business Holidays Act* be allowed to open on a public holiday, there are employment protection provisions in the *Employment Standards Act, 2000* for employees who may not want to work on a public holiday.

Retail Business Holidays Act, R.S.O. 1990, c. R.30 ("RBHA")

Subsection 1.1(2) of the RBHA provides that despite non-application of the RBHA to the City of Toronto Part XVII of the *Employment Standards Act, 2000* applies as if the RBHA applies to the City and to retail business establishments located in the City.

Employment Standards Act, 2000, S.O. 2000, c.14, PART XVII

PART XVII **applies** to retail business establishments (premises where a retail business is carried on); employees employed to work in those establishments; and employers of those employees (Subsection 72(1) (a) – (c)).

PART XVII **does not apply** to retail business establishments in which the primary retail business is one that (a) sells prepared meals; (b) rents living accommodations; (c) is open to the public for educational, recreational or amusement purposes; or (d) sells goods or services incidental to a business described in (a), (b) or (c) and is located in the same premises as that business (Subsection 72(2)). Exemptions for opening on a holiday are provided for such retail business establishments under Section 3 of the RBHA.

Right to Refuse Work - An employee of a retail business establishment may refuse to work on a public holiday (Subsection 73(1)). Also, an employee may refuse to work on a Sunday (Subsection 73(2)).

Notice of Refusal by Employee - An employee who agrees to work on a public holiday or a Sunday may then decline to work on that day, but only if he or she gives the employer notice that he or she declines at least 48 hours before he or she was to commence work on that day (Subsection 73(3)).

Reprisals by Employer Prohibited – Pursuant to Part XVIII of the *Employment Standards Act, 2000* no employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so because, among other things: the employee asks the employer to comply with the *Employment Standards Act, 2000* and the regulations; makes inquiries about his or her rights under the *Act*; files a complaint under the *Act*; exercise or attempt to exercise a right under the *Act*; or gives information to an employment standards office under the *Act*. The onus of proof lies with the employer to show that the *Act* was not contravened. (Subsections 74(1) and (2))