



REPORT FOR ACTION

Results of Consultation on Chapter 510, Holiday Shopping

Date: October 6, 2017

To: Licensing and Standards Committee

From: Executive Director, Municipal Licensing and Standards and General Manager, Economic Development and Culture

Wards: All

SUMMARY

On April 26, 2017, City Council adopted a report on the Holiday Shopping Bylaw review and directed staff to undertake further public consultations on the impact of expanding the application of the prepared meals exemptions in the Holiday Shopping Bylaw to beyond restaurants to explicitly permit other retailers who serve prepared meals to operate on public holidays.

Chapter 510, Holiday Shopping, requires that retail stores that do not meet the exemption criteria 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.

Currently, exemptions for retail businesses to open on public holidays are based on the type of store and/or services offered, restrictions on the size of the store and the number of employees, and includes retail establishments selling "goods or services in the form of, or in connection with, prepared meals".

The City has historically interpreted that only restaurants were permitted to open in accordance with the Holiday Shopping Bylaw through the "prepared meals" exemption as per the provisions of the City of Toronto Act (COTA). Section 97 in COTA, prevents the City from regulating operating hours, including closing times, of business establishments involved in "the selling or provision of goods or services in the form of, or in connection with, prepared meals".

The changing nature of business practices in retail over time is now challenging the previously accepted convention of types of businesses that meet the prepared meals exemption. This is seen in cases such as the expansion of multi-purpose grocery stores that offer for sale extensive prepared meals alongside other more traditional grocery store items, or pharmacies expanding into the retailing of groceries and meals.

On September 2015, the City Solicitor submitted a report to City Council on a court ruling dealing with the City's Holiday Shopping Bylaw. The City was unsuccessful in prosecuting Longo's under Toronto Municipal Code, Chapter 510, Holiday Shopping for operating two locations on a public holiday. The City appealed that decision, however, the court once again found in Longo's favour. In both instances, Longo's successfully argued to the court that they met the exemption provided in the Bylaw for premises "selling goods or services in the form of, or in connection with, prepared meals". The City had historically taken the position that this exemption applied solely to restaurants.

This report outlines the feedback regarding the potential impacts of expanding the application of the prepared meals exemption in the Holiday Shopping Bylaw. Feedback was received through public consultation and stakeholder meetings with various groups. Stakeholders included business, industry and trade representatives from the Retail Council of Canada, Canadian Federation of Independent Grocers, Ontario Convenience Stores Association, and Toronto Association of Business Improvement Areas (TABIA). Staff consulted with labour and union representatives including Unifor, Toronto and York Region Labour Council, United Food and Commercial Workers Canada, and the Worker's Action Centre. Staff also consulted with the Ontario & Toronto Coalition for Better Child Care.

Various viewpoints were heard from stakeholders. However, those in attendance at the public consultation were largely against any changes to the Bylaw. Grocery store workers identified that if required to work on public holidays they may not be able to find adequate childcare or reliable public transit because childcare centres are closed and there is reduced public holiday transit service.

Conversely, staff heard that business models continue to change, while the City's Holiday Shopping Bylaw has not changed to meet new business realities. Grocery store industry representatives supported changing the Bylaw to permit them to determine their operating hours to best cater to their respective communities.

As directed by City Council, this report summarizes consultation feedback from the public and stakeholders on the impact of expanding the application of the prepared meals exemptions in the Holiday Shopping Bylaw. Expanding the prepared meals exemption would permit retailers beyond restaurants who serve prepared meals to operate on public holidays.

Legal Services was consulted in the preparation of this report.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards and the General Manager of Economic Development and Culture recommend that:

1. City Council direct the Executive Director, Municipal Licensing and Standards in consultation with the General Manager, Economic Development and Culture and the City Solicitor, to expand the prepared meals exemption based on the direction of Council and report back to the Licensing & Standards Committee with recommended amendments to the Holiday Shopping Bylaw.

FINANCIAL IMPACT

There are no financial impacts beyond what has already been approved in the current year's budget.

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

DECISION HISTORY

At its meeting of April 26, 2017, City Council adopted with amendments [LS.18.3 Review of Chapter 510, Holiday Shopping - Next Steps](#), and directed the Executive Director, Municipal Licensing and Standards and the General Manager, Economic Development and Culture to conduct public consultations on the impact of expanding the application of the prepared meals exemption on the Holiday Shopping Bylaw.

At its meeting of September 30, 2015, City Council adopted [CC9.5 Report on the Recent Court Decision Dealing with the City's Holiday Shopping Bylaw](#), and directed the Executive Director, Municipal Licensing and Standards to conduct a review of Chapter 510, Holiday Shopping and report back to Licensing and Standards Committee on options available to address the concerns raised in the court ruling.

At its meeting of November 27, 2012, City Council received for information [ED18.6 Holiday Shopping](#), a report from the General Manager, Economic Development and Culture to City Council with proposed recommendations to the Bylaw following extensive consultation on Chapter 510, Holiday Shopping.

At its meeting of May 11, 2010, City Council referred [ED.29.4 Holiday Shopping](#), a report by the General Manager, Economic Development and Culture for further consultation.

At its meeting of March 3, 2008, City Council received for information [ED12.5 Regulation of Holiday Shopping](#), a report on proposed regulations from the General Manager, Economic Development and Culture.

At its meeting of December 6, 2006, City Council passed [Bylaw 8-2007 \(now Chapter 510 of the City of Toronto Municipal Code\)](#) under the authority of the City of Toronto Act, 2006, S.O. 2006, c. 11.

At its meeting of November 24, 2006, City Council adopted [Regulation of Holiday Shopping Upon Proclamation of the City of Toronto Act, 2006](#), and directed the City Solicitor to introduce a bill regulating holiday shopping and directed the General Manager of Economic Development and Culture to undertake a consultative process and to report back on policy options on the regulation of holiday shopping.

COMMENTS

Chapter 510, Holiday Shopping

Prior to 2006, the *Retail Business Holidays Act (RBHA)*, a provincial legislation, regulated holiday shopping in Toronto. Through the enactment of the *City of Toronto Act ("COTA")*, the City was given the authority to enact its own Holiday Shopping Bylaw. On December 6, 2006, the City enacted a Holiday Shopping Bylaw, Chapter 510. The new Bylaw copied the regulations found in the *RBHA*.

Under Municipal Code Chapter 510, Holiday Shopping, retail stores that do not meet the exemption criteria 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.

Currently, exemptions for retail businesses to open on the above noted holidays is based on type of store and/or services offered, restrictions on the size of the store and the number of employees, and includes retail establishments selling "goods or services in the form of or in connection with prepared meals". Restaurants have always been exempted from the Holiday Shopping Bylaw through this "prepared meals" exemption in line with the provisions of the *COTA*.

Other exempted premises include retail businesses with less than 2,400 square feet and no more than three persons serving the public and businesses selling tobacco, foodstuff or fresh fruit, magazines, books, antiques or art. Laundromats, nurseries, gas stations, and businesses that repair boats or vehicles are also permitted to open. Businesses licensed under the *Liquor Licence Act* may also open, as well as pharmacies less than 7,500 square feet and accredited under the *Drug and Pharmacies Regulation Act*.

The Holiday Shopping bylaw also includes "Tourist Area exemptions", which were enacted prior to 2006 under the Provincial *RBHA*. These exemptions were granted for businesses that are within a defined area and who met the *RBHA* tourism criteria and include; Queens Quay West, Toronto Eaton Centre and the Hudson's Bay, Downtown Yonge Street Business Improvement Area, Bloor-Yorkville Business Improvement Area, and Distillery Historic District. There have been no additions to this list since the Bylaw was enacted.

Challenge to "Prepared Meals" Exemption Criteria

The City Solicitor prepared a report for Council at its meeting on September 30, 2015 headed "*Recent Court Decision Dealing with the City's Holiday Shopping Bylaw*". The report outlined a recent appeal decision of the Ontario Court of Justice regarding the exemption provisions found in the Municipal Code, Chapter 510, Holiday Shopping. The City lost an appeal of the trial judge's ruling, dismissing charges against Longo's.

On September 2, 2013, Longo's was charged with two counts of offering goods or services for sale on a holiday. It was charged under the Municipal Code, Chapter 510, s.2.

Longo's did not dispute that two of their locations were retail establishments open on Labour Day, a designated holiday. It argued that the establishments were permitted to remain open for business on a designated holiday because they satisfied the exemption provided in the Bylaw for premises "selling goods or services in the form of or in connection with prepared meals".

The evidence of the case established that several hundred prepared meals options were available for sale (such as sushi, pizza, salad bar, sandwiches, ready-to-serve meat, seafood, and one location had a full-service restaurant). However, evidence also indicated that non-food items were made available for sale, such as lottery tickets, magazines, flowers, detergent, and light bulbs.

The Justice of the Peace interpreted the meaning of the exemption for premises selling "goods or services in the form of or in connection with ... prepared meals" contained in section 4. In doing so, the court concluded that the exemption extended to a range of establishments that offer prepared meals and "connected goods or services".

The City appealed the decision to the Ontario Court of Justice and argued that the court should give a broad and purposive interpretation, consistent with the purpose of the Bylaw. The court dismissed the City's appeal citing the ambiguity in the exemption.

City of Toronto Act and the "Prepared Meals" Exemption

Section 97 of the *COTA*, prevents the City from regulating the operating hours, including the closing times, of business establishments involved in the selling or provision of "goods or services in the form of or in connection with prepared meals or living accommodations". This exemption historically had been interpreted to mean only restaurants and hotels were permitted to operate on public holidays.

No definition of "prepared meals" exists in the *COTA* or the *RBHA*. Changing business practices in retail over time are now challenging the convention of what types of businesses may be the purveyors of prepared meals. This change has been seen with the expansion of multi-purpose grocery stores with extensive prepared meals for sale alongside other more traditional grocery store items. Further, pharmacies are now moving towards a similar model and providing items that could be considered prepared meals. This is presenting challenges on how to interpret what retailers fall within the prepared meals exemption.

Regulatory Approaches in Other Jurisdictions

Staff conducted research into other jurisdictions on the question of "prepared meals" exemption and found that most holiday shopping in Canada is regulated by provincial and territorial governments. Regulations vary across the country, with no restrictions on retail business hours on holidays in Saskatchewan, Alberta, British Columbia, Yukon, Northwest Territories, and Nunavut. All types of retail businesses in these jurisdictions are permitted to operate on public holidays.

Retail businesses are required to be closed on public holidays in Central and Eastern Canada. This includes Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador. Exemptions are provided in these provinces based on the type of business, the number of employees, or the size of the business.

Exemptions are also provided for sellers of groceries and prepared meals in Nova Scotia, Prince Edward Island, New Brunswick, Manitoba, and Quebec. However, there are limitations on the number of employees working and maximum retail size of business permitted.

In Ontario, the *RBHA* currently permits fifteen categories of retail business to remain open on holidays including: small pharmacies, smaller stores, stores of convenience, and art galleries. In addition, the *RBHA* exempts "goods or services sold or offered for sale by retail in the form of or in connection with, prepared meals". As of January 1, 2017 the *RBHA* enables Ontario municipalities to pass their own Bylaws governing retail business hours on public holidays. Municipalities within the Greater Toronto Area, such as Mississauga, have approved exemptions for some larger specialty grocery stores, under the *RBHA* tourist exemption provision.

Worker's protections under the *Employment Standards Act*

Retail business workers have protections under the *Employment and Standards Act, 2000 (ESA)*, which is a provincial statute that provides the minimum standards for most employees working in Ontario. It sets out the rights and responsibilities of employees and employers in most Ontario workplaces. The *ESA* covers a wide range of employment standards including: minimum requirements for employment; public holidays; minimum wage, pay; hours of work; and mechanisms for compliance, and enforcement.

The *ESA* prescribes employee's rights to public holidays and public holiday pay. Most employees of a retail business have the right to refuse to work on a public holiday even if the employee does not qualify for the public holiday. The City of Toronto does not have a role in investigating or enforcing potential breaches of the *ESA*.

Transformation of Grocery and Supermarket Sector

Grocery and supermarket industry is an important economic sector for the City. According to the 2016 Toronto Employment Survey (TES), over 400 grocery stores are located in Toronto and they employed close to 25,000 people. The Holiday Shopping Bylaw impacts almost 136,000 employees or approximately 41% of all retail jobs. Grocery store workers represent 18% of workers impacted by the Bylaw.

This sector is seeing increasing competition and growth of e-commerce with more grocery stores offering customers the option to purchase their items on-line and either picking them up from the store or having them delivered.

Furthermore, the lines between grocery store, pharmacy and convenience store retailers are blurring. Grocery and pharmacy retailers have expanded their product offerings to include "prepared meals" such as pizzas, sushi and rotisserie chicken which has further complicated previous assumptions about where "prepared meals" are offered.

Public Consultation and Stakeholder Engagement

The consultation process included one public meeting and two separate stakeholder meetings in September 2017; one with business, trade and industry representatives and another for labour and union representatives.

Public Consultation Feedback

Staff hosted a public consultation held on September 19, 2017. At the consultation the public was invited to share their input on what the impacts would be if grocery stores and other sellers of prepared meals were permitted to open on public holidays. A majority of attendees of the consultation did not support any changes to the Holiday Shopping Bylaw and some of the key feedback staff heard were:

- Majority of attendees preferred the prepared meals exemption only permit restaurants to operate on public holidays.
- Concerns were expressed about the lack of access to adequate child care with most childcare centres being closed on public holidays.
- Precarious workers such as grocery store workers were identified as being unlikely to be able to exercise their right to refuse work as they fear reprisal from their employer.
- Common days of rest are needed not only to spend time with family and friends but as a mental health break.

Stakeholder Feedback

Separate stakeholder meetings and conversations were held with business, trade and industry representatives and labour/union representatives. In addition, staff at the Ontario & Toronto Coalition for Better Child Care were consulted on the availability of adequate childcare on public holidays. These perspectives are summarized below:

Business, Trade and Industry Groups

- City staff engaged various business stakeholders for feedback on the impact of expanding the prepared meals exemption including the Retail Council of Canada, Canadian Federation of Independent Grocers, Ontario Convenience Stores Association and the Toronto Association of Business Improvement Areas (TABIA). Overall business representatives felt the Bylaw was burdensome and supported a repeal of the Bylaw, expressing that operators should determine their hours. Some business stakeholders indicated that they support allowing operators of grocery stores and prepared meals sellers to determine if they operate on public holidays.
- Toronto Association of Business Improvement Areas (TABIA) shared that they felt allowing grocery stores to open would be disadvantaging other retailers and

instead the City should set a level playing field for business by repealing the Holiday Shopping Bylaw.

- The convenience store owners represented by the Ontario Convenience Stores Association had a divergent opinion from other business stakeholders and opposed any expansion of the exemptions. Their members are currently permitted to operate on public holidays and are concerned about a significant loss in revenue if larger retail businesses are allowed to operate on public holidays.

Labour and Union Groups

- City staff engaged various labour and union representatives for feedback on the impact of expanding the prepared meals exemption including Unifor, Toronto and York Region Labour Council, United Food and Commercial Workers Canada (UFCW), and the Worker's Action Centre. All labour and union representatives were against any changes to the Bylaw and identified their preference was for the City not to allow grocery stores or other sellers of prepared meals besides restaurants to operate on public holidays.
- Representatives from labour and union groups identified concerns that grocery store workers are mostly in part-time positions that make them vulnerable and unlikely to exercise their right to refuse to work for fear of reprisal.
- Stakeholders highlighted concerns about the social impact on workers unable to spend public holidays with their families or friends if required to work.

Ontario & Toronto Coalition for Better Child Care

- Staff heard from the Ontario & Toronto Coalition for Better Child Care on the impacts that allowing grocery stores and others who sell prepared meals to open on public holidays would have on workers needing child care. They identified that childcare centres are typically closed on public holidays. The stakeholders also identified that this would place a burden on workers who have children to find suitable child care arrangements especially with a shortage of childcare spaces in Toronto.

Options for Expanding Prepared Meals Exemption

In light of changing business practices of retailers with some grocery stores now selling food that may be considered a prepared meal, staff have identified two potential approaches to this issue:

1. Permitting stores that primarily sell 'prepared meals' to operate on public holidays:

Expanding the prepared meals exemption to permit stores that primarily sell prepared meals to operate on public holidays to beyond restaurants. This approach is more restrictive and could allow grocery stores that primarily sell prepared meals (like sushi, pizza and rotisserie chicken) to operate, but restrict grocery stores from opening that do not offer prepared meals. The City could place additional reasonable and defensible restrictions to limit the exemption, such as by requiring at least fifty percent (50%) of retail space be dedicated to the selling of prepared meals to qualify for the exemption.

2. Permitting stores that primarily sell 'food' to operate on public holidays:

Expanding the prepared meals exemption to permit stores that sell food to operate on public holidays. This is a more permissive approach that would permit businesses that are selling food and prepared meals, like grocery stores and pharmacies to remain open. Within this approach, City Council could place further reasonable and defensible restrictions on the exemption that could limit the businesses that can open. For example, criteria could be created that would permit a pharmacy that sells groceries to be open but not permit a shoe store that sells chips. Further criteria could include directing that a certain percentage of the store or the sales would need to be food. This could restrict large retailers like Wal-Mart and COSTCO from being open on public holidays.

Based on an analysis of the potential approaches, staff have identified the second approach as being an effective, reasonable attempt at resolving the concerns raised by stakeholders and the issues discussed in the Longo's court case while remaining consistent with the limits on the City's authority to regulate the selling of prepared meals.

This change would bring greater clarity to the Bylaw and allow retail establishments whose principal business is the selling of food and or beverages, such as grocery stores, to be permitted to operate on public holidays.

To enact this approach, the Bylaw could be amended to add a definition of "food premises" and it be added as a category of business to the exempted retail establishments.

A proposed definition of "food premise" could be: premises whose principal business is engaged in the selling of food and or beverages to the public, but does not include a retail mall with a food court. Principal business could be interpreted as a retail business area where a minimum of fifty percent (50%) is dedicated to the serving, selling or displaying of food or beverages to the public.

The impact of this approach would be the clarification of the prepared meals exemption to permit retailers such as grocery stores to operate on public holidays. This approach would allow any store that primarily provides prepared meals and goods and services in connection with prepared meals (like grocery stores) to operate but keep most pharmacies (those that do not currently meet pharmacies exemptions in the Bylaw) closed and ensure that large retailers like Wal-Mart and COSTCO that only provide a small portion of prepared meals as part of their business would also be required to be closed on public holidays.

Next Steps

As directed by City Council, this report summarizes consultation feedback from the public and stakeholders on the impact of expanding the application of the prepared meals exemptions in the Holiday Shopping Bylaw. Expanding the prepared meals exemption would be a significant change and would permit retailers beyond restaurants who serve prepared meals to operate on public holidays.

Staff are seeking direction from City Council on potential amendments to Chapter 510, Holiday Shopping to resolve the ambiguity in applying the prepared meals exemption.

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