

Subject: Retail Business Holidays Act - Blanket Exemption - City Wide

Reference:

Date to Council: July 23, 2018
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Policy, Gaming, Licensing & By-Law Enforcement
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To: Mayor and Members of City Council

Recommendation:

THAT Council **DIRECT** the City Solicitor to prepare a by-law that exempts the City of Windsor from the *Retail Business Holidays Act (RBHA)* and provides retail business establishments with a blanket exemption from holiday closures with the exception of one mandatory closure date, with specified exemptions for necessary services, as authorized by the *RBHA* and the *Municipal Act, 2001*; and further,

THAT Council **REPEAL** the by-laws passed under the authority of the *RBHA* and the *Municipal Act, 2001* that granted holiday closure exemptions to specific retail business establishments for five particular holidays.

Executive Summary:

N/A

Background:

The *RBHA* is a piece of provincial legislation outlining specific holidays on which retail businesses must be closed. These holidays are; New Year's Day, Family Day, Good Friday, Easter Sunday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day and Christmas Day. The Act did include language allowing municipalities the power to enact by-laws, which may allow retailers who meet certain criteria to remain open on the holidays noted above. In December of 2016, the Province proclaimed into force section 1.2 of the Retail Holiday Business act, which allows municipalities to choose to be exempt from the application of the Act. It reads as follows:

1.2 (1) *This Act does not apply to a municipality and does not apply in respect of any by-law of the municipality or any retail business establishment located in the municipality if there is in effect a by-law passed by the municipality providing that this Act does not apply to it. 2006, c. 32, Sched. D, s. 15 (1).*

(2) *A by-law under subsection (1) does not take effect until the municipality passes a by-law under section 148 of the Municipal Act, 2001 requiring that one or more classes of retail business establishments be closed on a holiday. 2006, c. 32, Sched. D, s. 15 (1).*

The relevant language from the *Municipal Act* reads as follows:

148 (1) *Without limiting sections 9, 10 and 11, a local municipality may require that retail business establishments be closed to the public at any time. 2006, c. 32, Sched. A, 81*

...

(4) *A by-law passed under this section does not apply to the sale or offering for sale by retail of,*

(a) *goods or services in the form of or in connection with prepared meals or living accommodation;*

(b) *liquor under the authority of a licence or permit issued under the Liquor Licence Act; and*

(c) *any other prescribed goods or services.*

In essence, section 1.2 of the *RBHA* allows a municipal council to enact a by-law exempting an entire municipality from the Act, as long as the municipality designates at least one day as a required Holiday closing. Section 148 of the *Municipal Act* supports this action, while subsection four outlines specific exemptions that must be considered. Some Ontario municipalities, the majority of which choose to designate Christmas Day (December 25) as a common closure date, have already enacted a blanket exemption from the *RBHA* on this basis. Exceptions to the common closure date can be made for specific retailers, including necessary services such as food preparation, living accommodations, laundry facilities, pharmacies, gas stations and vehicle repair. Exceptions may also be granted to dedicated tourist establishments. Council may want to consider allowing these exceptions as per the norm in areas which have enacted exemptions already.

Presently, the City of Windsor operates with an exemption system that has been in place since the early 1990's. When a retailer wishes to remain open during a holiday they must make application to the City along with a \$200 application fee. A notice of public meeting is then posted in the newspaper and a meeting occurs 30 days later. The purpose of the public meeting is to allow anyone who wants to comment on the retailer's holiday opening the opportunity to do so. When determining whether or not to

grant the exemption, Council must consider the initial intent of the Act, which was to provide a common day of pause for workers. If Council does decide to grant the exemption, the City Solicitor is directed to draft a by-law specific to each exemption granted. Appeals against the by-law can be filed with the Ontario Municipal Board within 30 days of it passing. If there are no appeals within the timeframe the by-law comes into force and the exemption is granted. The exempting by-law has permitted the retailers to be open on Victoria Day, Canada Day, Labour Day and “any other public holiday declared by proclamation of the Lieutenant Governor to be a holiday for purposes of the Act (INCLUDES FAMILY DAY)”. An exemption for the Civic Holiday has been permitted through By-Law 7402 under the authority of the Municipal Act, 2001.

Discussion:

The case-by-case exemption system operated by the City has proven to be difficult to enforce and time consuming. Exemptions are generally granted to those retailers who apply and challenges are not often made. Retailers who have not applied for an exemption and therefore remain closed on all holidays have complained about other retailers who have obtained an exemption but remain open on holidays not identified in the exempting by-laws. There have been complaints about a lack of enforcement by the City in enforcing the exemption by-laws. In most cases, the cost of enforcement far outweighs any fine amounts that may be gained through active holiday enforcement.

As noted in the background section, Council may choose to exempt the entire municipality as per section 1.2. There are a number of reasons council may decide to do so, one of the most prevalent of which being the importance of both cross-border and regional tourism in the City. Over the past decade, great strides have been made in positioning Windsor as a first-rate tourism destination. New facilities have been built including the WFCU Centre and the Windsor International Aquatic and Training Centre and Adventure Bay Waterpark. These facilities have attracted a number of events drawing in thousands of visitors a year. Caesar’s Windsor operates as a venue, hotel and gaming destination drawing both long stay and short term visitors to the downtown core. There is a strong, and growing, food and beverage scene with many Windsor restaurants and bars winning international awards for their creations. A number of smaller districts and neighbourhoods offer specific experiences and a big-city feel such as Walkerville, Little Italy, Old Sandwich Towne, etc. During the spring, summer and fall there is a different festival or event happening each weekend, many of which are nationally recognized. The proximity of Windsor to Detroit has always been a draw, with many tourists and shoppers crossing the border to utilize their considerable spending power.

While taking the above into consideration, it is important to note that Windsor is also the gateway to Essex County, which boasts a number of award winning wineries and

experiences, restaurants, harbours, marinas, coastline, agricultural offerings and more. The Windsor-Essex area is located within reach of one of North America's largest markets; Detroit, Toledo and Cleveland within 100KMS, Columbus, Niagara and Buffalo within 200KMS and Cincinnati, Chicago and Toronto within 300KMS. Tourists from these areas are taking notice of Windsor as a total destination, offering shopping at great exchange rates for American tourists, a great food scene and various entertainment options in a safe environment.

As noted, the City of Windsor has been granting exemptions through municipal by-laws under the authority of the *RHBA*. The case-by-case system currently operating in Windsor has not been reviewed for efficiency since its inception and has since shown itself to be time consuming and cost prohibitive. In order to create an equitable marketplace for retailers, Administration is recommending the creation of a blanket exemption by-law for the entire City of Windsor. In doing so, retailers are able to choose the dates that they wish to be open. The City would be freed from the cost of holiday enforcement and all retail businesses would have equal opportunity to open if they choose to. In addition, this action by the city may also spur surrounding municipalities who admit to similar enforcement issues, to follow suit, assisting in regional tourism as a whole.

Risk Analysis:

There are two reputational risks associated with changing the by-law as presented. The first involves a potential reaction from retail employees who feel they may be forced to work on holidays. With the proposed changes the retailer has a choice whether or not to open and employees are protected by additional legislation – namely the Employment Standards Act. The ESA states that employees do not have to work holidays and if they do choose to there must be an agreement between them and their supervisor in writing or electronically, including an agreed upon date to be taken in lieu of the holiday or payment of a premium wage for working during the holiday. Although there may be an initial misunderstanding regarding the City's role in holiday work, the legislative protections do exist and will work to mitigate this issue.

The second risk is potentially rectified by the nature of the advised by-law change. The By-Law Enforcement division experiences difficulty in enforcing the current exemption system. Complaints are often received retroactively, in relation to businesses being open on holidays. Proactive enforcement has been seen to be difficult and expensive to carry out. In order to provide the best level of municipal services, proactive enforcement is best but unfortunately not viable in this specific situation. Creating a blanket exemption will help to alleviate By-law Officer's already heavy workload and allow them to focus on more effective enforcement activities.

Financial Matters:

In order to effectively enforce the exemption system as it exists currently, at least two officers would be required for a full eight hour shift on a given holiday, along with one supervisor for health and safety reasons. The cost of an officer's time for a holiday is \$54.03 per hour, plus the pay that they would receive as holiday pay as per collective agreements with a full day's cost of \$609.19 per officer. The supervisor's wage for the day would be roughly \$880. With that being said, the staffing costs on a single holiday would equal \$2,098.38. This cost would be repeated for all nine holidays covered in the Act, roughly costing the corporation \$18,885 per year. Applications for exemptions cost \$200 and the City receives limited requests per year. As such, the funds received from this revenue stream are negligible.

Consultations:

By-Law Enforcement

Licensing

Legal

Finance

Tourism Windsor Essex Pelee Island

Conclusion:

The City of Windsor is a growing tourist destination with a large market at its doorstep. More events are being held in Windsor each year and the Windsor brand is growing as an overall tourist destination. Creating a blanket exemption in line with the terms of the *RBHA*, Section 1.2, will allow retailers to choose whether to open or not and allow them to contribute to the international tourist market while alleviating enforcement burden on the City's By-Law Officers. Designating a common closure date of Christmas Day would allow the Corporation to do so, in line with Section 148 of the *Municipal Act*.

Approvals:

Name	Title
Katherine Donaldson	Corporate Policy Coordinator
Gary Cian	Deputy License Commissioner/Manager of Policy, Gaming, Licensing and By-Law Enforcement

Name	Title
Shelby Askin Hager	City Solicitor
Valerie Critchley	City Clerk
Onorio Colucci	Chief Administrative Officer

Notifications:

Name	Address	Email

Appendices:

P & C Memo included for Mayor and members of Council only.