





INFORMATION REPORT

TO:	Mayor and Members Planning Committee
COMMITTEE DATE:	April 20, 2021
SUBJECT/REPORT NO:	LCBO Holiday Hours (PED21102/LS21015) (City Wide)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY:	Ken Leendertse Director, Licensing and By-law Services Planning and Economic Development Department
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SIGNATURE:	

COUNCIL DIRECTION

At its meeting on March 31, 2021, Council directed that “That the motions to Permit Copetown General Store (Item 6.1), Lynden General Store (Item 6.2) and Carlisle Cleaners & LCBO/Beer Store (Item 6.3) to Operate the LCBO Convenience Outlet Component of Their Business on Family Day, Victoria Day, Canada Day, Labour Day and Thanksgiving Day, be referred to Legal staff to report back to Planning Committee.”

INFORMATION

Background

Recently the City of Hamilton (City) was approached by a number of LCBO Convenience Outlet Stores that were seeking approval from the City to operate their stores during the following holidays:

- Victoria Day;
- Canada Day;
- Labour Day;

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OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

- Thanksgiving Day; and,
- Family Day.

This Report responds to the above-noted Council direction and raises the following questions:

- 1) Does the City have the authority to grant these permissions?
- 2) Is a Council Resolution appropriate “approval” or is a By-law required?

Legal Analysis

The *Retail Business Holidays Act*, R.S.O. 1990, c. R.30 (the “RBHA”) generally states that no retail business may operate on a holiday, unless otherwise exempt by the Act. Under the RBHA, “holiday” means:

- (a) New Year’s Day;
- (b) Good Friday;
- (c) Victoria Day;
- (d) Canada Day;
- (e) Labour Day;
- (f) Thanksgiving Day;
- (g) Christmas Day;
- (h) Easter Sunday; and,
- (i) any other public holiday declared by proclamation of the Lieutenant Governor to be a holiday for the purposes of this Act.

There are exemptions to this rule, most notably, section 1.2 (1) states that:

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.

Hamilton does not have a By-law pursuant to section 1.2 above.

The LCBO and the LCBO Convenience Outlet Stores (previously known as “Government Stores”) are governed by the *Liquor Control Act*, R.S.O. 1990, c. L.18 (the “*Liquor Control Act*”) and section 4.0.3 (2) of that Act states that “The Board is for all purposes an agent of Her Majesty and its powers may be exercised only as an agent of Her Majesty.”

Under section 71 of the *Legislation Act*, 2006, S.O. 2006, c. 21, Sched. F (the “*Legislation Act*”) it states that “No Act or regulation binds Her Majesty or affects Her Majesty’s rights or prerogatives unless it expressly states an intention to do so.” The RBHA does not stipulate that it binds the Crown/Her Majesty. It follows, therefore, that the LCBO is not

bound by the RBHA and that the City does not need to pass a By-law to exempt the LCBO Convenience Outlet Stores from operating during certain holidays.

Furthermore, under the *Liquor Control Act*, there is a regulation that deals with the sale of liquor in Government Stores (now called LCBO Convenience Outlet Stores) (*O. Reg. 232/16: Sale of Liquor in Government Stores*). Section 5 of that regulation gives the LCBO the authority to regulate operating hours:

5. A government store shall be kept open for the sale of liquor during such hours as the Board from time to time directs.

It is staff's understanding that as per the LCBO's "authorization" or "agreement" with the LCBO Convenience Outlet Stores, the stores may sell beverage alcohol products on the following holidays, *provided the operator obtains approval from the local Municipal Authority*:

- Victoria Day;
- Canada Day;
- Labour Day;
- Thanksgiving Day; and,
- Family Day.

Note: If the LCBO Convenience Outlet is located within an unorganized township, local approval is not required, and the Operator may be open for business on the above holidays.

The Operator is not permitted to sell beverage alcohol products on the following holidays:

- Good Friday;
- Easter Sunday;
- Christmas Day; and,
- New Year's Day.

The above information may be found in the LCBO Convenience Outlet Manual (https://www.lcbo.com/content/dbwl/en/basepage/home/Wholesale/lcbo-convenience-outlet/FormasAndManuals/_jcr_content/content2/attachments_75703994_2134983858/file.res/LCBO%20Convenience%20Outlets%20Manual%20v1.0.pdf)

Conclusion

As the LCBO is an agent of the Crown, and the RBHA does not bind the Crown, and the LCBO has the legislated authority to dictate the hours of operation for all government/LCBO Convenience Outlet stores, it is staff's conclusion that a municipal by-law is not required to permit these outlet stores from operating on certain holidays outlined in the RBHA. That said, in so much as the LCBO's agreement with these operators requires the operator to obtain local municipal approval to open on these holidays, staff believe that a Council Resolution to that effect is sufficient to meet this purpose.

Accordingly, on a go forward basis, City Clerks will advise the appropriate Ward Councillor if a request has been received from a LCBO Convenience Outlet Store to operate its business on any of Family Day, Victoria Day, Canada Day, Labour Day and Thanksgiving Day. The Ward Councillor can use the motion template, attached as Appendix "A" to Report PED21102/LS21015, to bring the request to Council for consideration.

Clerks, Legal and Licensing and By-law Services were consulted in the preparation of this Information Report.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" – LCBO Convenience Outlet Stores Motion Template

MC:LF:eo