

Presentations and Delegations

Report Prepared By	Division Review
Caroline Hallsworth General Manager, Citizen and Leisure Services	

Executive Summary

On July 8, 2003 the Planning Committee approved and Council ratified the expansion of the Parks and Open Space Background Study, which was a background paper to the Official Plan, to include a Leisure Master Plan which would provide a framework for recreation planning and facility renewal and development over the next ten years. (Resolution #2003-126)

Background

The Parks, Open Space and Leisure Master Plan will be presented to Council by Jean Monteith, President of Monteith Brown Planning Consultants. As described in the Leisure Master Plan itself,

The Parks, Open Space and Leisure Master Plan addresses a broad variety of issues related to parks, open space, and leisure facilities, programs and services. Through in-depth analysis of public input, facility usage, demographic data, trends, and financial realities, the Master Plan identifies detailed strategies that will guide the ongoing provision and management of municipal parks and leisure services and facilities to the year 2014 and beyond.

The Master Plan examines all aspects of parks and leisure in an effort to address current and future needs in a prioritized, fiscally responsible, and community-responsive manner. The scope of the Plan is quite broad and addresses issues relating to infrastructure management and provision, facility requirements (e.g., parks, trails, arenas, soccer fields, etc.), and the delivery of services (e.g., leisure programs, community development, user fees, etc.).

The Parks, Open Space and Leisure Master Plan contains in excess of fifty recommendations, many of which will require assignment of extensive resources if they are to move from recommendation to realization. As part of the process of identifying which recommendations contained within the Leisure Master Plan should be planned for action in the first year of plan implementation, Councillors will be surveyed in early July as to their priorities for implementation. Following receipt of the Leisure Master Plan and the survey of Councillors, staff will work over the summer months to develop an implementation plan for the period of 2004 - 2005 which implementation plan will be submitted to Council in September of 2004 for approval. The implementation plan will identify the opportunities and challenges presented by the actions planned for the first year of implementation, together with strategies to overcome challenges and move Council's priorities forward.

The Leisure Master Plan has been presented to Council under separate cover and is also available on the City of Greater Sudbury website.

Request for Recommendation Priorities Committee



Type of Decision									
Meeting Date	June 23rd, 2004				Report Date	June 3rd, 2004			
Decision Requested	<input checked="" type="checkbox"/>	Yes		No	Priority	<input checked="" type="checkbox"/>	High		Low
	Direction Only				Type of	<input checked="" type="checkbox"/>	Open		Closed

Report Title

Store Closing By-Laws

Policy Implication + Budget Impact

This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.

The policies of the former municipalities with respect to store hours have remained; it is recommended these be repealed or made uniform.

There is no budget impact.

Background Attached

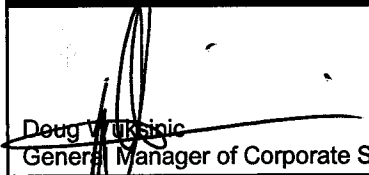
Recommendation

THAT the Priorities Committee recommends to Council that the existing five Store Closing By-Laws of the Former Municipalities be repealed;

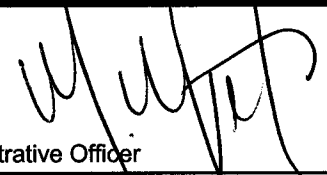
AND THAT the Priorities Committee provide direction on the issue of Store Closing Hours in the City of Greater Sudbury.

Recommendation Continued

Recommended by the General Manager



Doug Luksinic
General Manager of Corporate Services

Recommended by the C.A.O.


Mark Mieto
Chief Administrative Officer

Report Prepared By

Division Review


Ron Swiddle, City Solicitor and Doug Nadorozny,
General Manager of Planning and Economic Development

Background

In November of 2003, City Council was presented with a request from the General Manager of the New Sudbury Shopping Centre. This request was for an exemption from the former City of Sudbury Store Closing By-Law for four Saturdays prior to Christmas.

Council passed a resolution turning down that request.

However, Council had a discussion on the larger issue of store closing (and holiday closing), and referred this larger issue and the staff recommendation to repeal the existing By-Laws to the new Council.

In the meantime, a request came forward from the New Sudbury Shopping Centre for an exception from the former City of Sudbury Store Closing By-Law for the Sears Store there to participate in a National Promotion until 9:00 p.m. on Saturday, May 1st.

Council passed a resolution turning down that specific request as well, but the larger issue has not been dealt with by Council.

A. EXISTING SITUATION

The existing situation is extremely complex and is not uniform across the City of Greater Sudbury. There is not one "Store Closing By-Law" in the City; there are areas without any limitation; there are three Store Hours By-Laws, and two Boxing Day Closure By-Laws. By-laws in some former municipalities remain in effect where passed, meaning that there are different rules for different stores in different parts of the City. Moreover, the five Closing By-Laws appear to be arbitrary and not reflective of current shopping practices.

There is also a sixth By-Law, which is not a Closing By-Law, but instead is a Permissive By-Law. It allows certain tradeshow to be open on Retail Business Holidays.

1. The Former Towns of Walden and Onaping Falls, and the Previously Unorganized Areas Added to the City of Greater Sudbury

There are no restrictions on shopping which relate to closing hours or related to holiday closing in any of these former municipalities or areas now forming part of the Greater City of Sudbury. Stores then are governed entirely by *Retail Business Holidays Act* and other Provincial Legislation, but they are not restricted by the City.

These unregulated settlements include Lively, Naughton, Levack, Onaping and Dowling.

2. Former Town of Nickel Centre

In the former Town of Nickel Centre, there is no By-Law regulating store hours or holiday closing with the exception of the former Town of Coniston. By virtue of a 1972 By-Law still in effect, ten classes of stores are required to be closed all day Wednesday of every week, except in a week of a public holiday and except the last two weeks of December.

These restricted stores are Hardware Stores, Furniture Stores, Fancy Goods Stores, Butcher Shops, Jewellery Stores, Tailor Shops, Dry Goods Stores, Barber Shops, Millinery Stores and Paint Shops. Although these stores must be closed on Wednesdays, there are no limited hours on Sundays. There are no limitations on any other stores.

These stores shall close at 6:00 p.m. on other days of the week except Tuesdays where they may be open until 9:00 p.m. Barber Shops must close at 7:00 p.m. except Tuesday and Saturday when they may be open until 9:00 p.m.

The remainder of the former Town of Nickel Centre, including Garson, Falconbridge, and Wahnapiatae is unregulated by any By-Law.

3. Former Town of Capreol

The former Town of Capreol is governed by a By-Law passed in 1978 and amended once in 1984. It provides that all stores shall be closed on:

- Monday, Tuesday, Wednesday from 6:00 p.m. to 7:00 a.m. (9:00 p.m. to 7:00 a.m. in December);
- Thursday, Friday, from 9:00 p.m. to 7:00 a.m.;
- Saturday from 6:00 p.m. to 7:00 a.m.;
- December 24th and on December 31st from 6:00 p.m.;
- Boxing Day, Civic Holiday, New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day and any day proclaimed as a Civic Holiday;
- and that three classes of stores may be open until midnight on all days;
- and seven classes of businesses are exempt entirely.

The stores that may be open to midnight are Confectionary Stores, Neighbourhood Convenience Stores and Tobacco Stores. The seven classes of stores that are unrestricted are Drugstores, Florists, Fresh Fruit and Vegetable Shops, Public Garages, Souvenir Shops, Victualling Houses, and licensed Hotels and Taverns.

There are no restrictions on Sundays in Capreol.

4. Former City of Valley East and Former Town of Rayside-Balfour

Valley East and Rayside-Balfour store hours are not controlled with the exception of Boxing Day. By By-Laws passed in 1998, all classes of shops with seven exceptions must close on Boxing Day.

These seven exceptions are Bait Shops, Public Garages, Convenience / Confectionary Shops, Restaurants, Drugstores, Hotel / Motels, and Video Rental Shops.

These unregulated (except for Boxing Day) settlements include Val Therese, Hanmer, Val Caron, Blezard Valley, Chelmsford and Azilda.

5. Former City of Sudbury

The former City of Sudbury has in place a By-Law from 1984 that has been amended numerous times since. This By-Law requires the following:

- all stores shall be closed on Civic Holiday;
- all stores shall be closed on Boxing Day;
- all stores shall be closed to Monday to Friday from 9:00 p.m. to 5:00 a.m. and on Saturday from 6:00 p.m. to 5:00 a.m.;
- all stores shall be closed all day on Sundays;
- all stores shall close at 6:00 p.m. on December 24th and December 31st.

There are 18 classes of stores that are not affected by the above limitations and 15 classes that are only affected by the Civic holiday and Boxing Day holiday provisions.

These 18 unrestricted classes are:

- bait shops;
- bake shops;
- barber shops;
- beauty parlours
- confectionary shops
- drug stores
- florists
- fresh fruit and vegetable shops
- hat cleaning and blocking businesses
- marine supply shops
- neighbourhood convenience stores
- public garages
- shoe repair shops
- souvenir shops
- tobacco shops
- video cassette shops
- bookstores

The 15 classes only affected by Civic Holiday and Boxing Day are:

- bait shops;
- bake shops;
- barber shops;
- confectionery shops;
- drug stores;
- florists;
- fresh fruit and vegetable shops;
- hat cleaning and blocking businesses;
- marine supply shops;
- neighbourhood convenience stores;
- public garages;
- shoe shine shops;
- souvenir shops;
- tobacco shops
- bookstores

Drug stores may be open to 1:00 a.m.

Beauty Parlours and Shoe Repair Shops can be open 7 days a week to 9:00 p.m. and are exempt from the Christmas and New Year provisions.

There are similar special provisions for bait shops, specialty shops, barber shops, video cassette shops, video game shops, trade shows, book stores and building supply yards, all of which are slightly different.

These special provisions are as follows:

- drugstores must be closed from 1:00 a.m. to 5:00 a.m.;
- beauty parlours must be closed from 9:00 p.m. until 5:00 a.m.;
- in December, beauty shops and shoe repair shops may stay open until 10:00 p.m.;
- bait shops must be closed from 9:00 p.m. to 5:00 a.m.;
- bake shops, confectionary shops, florists and tobacco shops must close at 11:59 p.m. until 5:00 a.m.
- barber shops must be closed:
 - on January 2;
 - on Mondays except during weeks in which Christmas Day and New Year's Day fall on a day other than Monday or Sunday or in the week in which Good Friday falls, in which case they may be open until 9:00 p.m. On Tuesdays through Fridays they must close from 9:00 p.m. until 5:00 p.m. and on Saturdays and Sundays from 6:00 p.m. until 5:00 p.m.;
- video shops shall close from 11:59 p.m. until 5:00 a.m.;
- video game shops shall close from 11:59 pm. until 5:00 a.m.;
- trade shows shall be closed from 9:00 p.m. until 5:00 a.m. on Monday through Thursday from 10:00 p.m. until 5:00 a.m. on Friday and Saturday, and from 6:00 p.m. until 5:00 a.m. on Sunday;
- book stores shall be closed from 11:00 p.m. until 5:00 a.m.

6. Former Regional Municipality of Sudbury

A sixth By-Law must also be reviewed for the purpose of this report, but it is not a Store Closing By-Law; it is instead a Permissive By-Law.

In 1988, the former Region passed a By-Law, 88-13, that is still in effect in all parts of the City except the unorganized areas that were added to the new City.

This By-Law permits trade shows to operate on Retail Business Holidays. Trade shows are defined in the By-Law to mean shows organized by a promoter with a theme or general subject, and with a minimum of five individual merchants.

It is not recommended that Council change or repeal this By-Law at this time. Under the *Retail Business Holidays Act*, no such change or repeal could occur without a specific public hearing held on this By-Law.

This being the case, this By-Law is not referred to again in this Report, and should not be considered one of the five Store Closing By-Laws.

SUMMARY OF EXISTING SITUATION

These five By-Laws create a very confusing situation over the City Area. The By-Laws are by and large, written in archaic terms. They are not generally enforced. Some of the prohibitions, such as the general prohibition in Coniston of Wednesdays, and the general prohibition in the former City of Sudbury on Sundays, are being violated on a very wide scale.

These wide-scale violations do not appear to create undue problems, judging by the lack of complaints to By-Law Enforcement or the Police.

If Council decides to retain these By-Laws unchanged, however, this will be taken as confirmation of their contents, and enforcement will be undertaken. Given the wide-spread nature of the violations, especially on Sundays in the former City of Sudbury, it would appropriate to begin such enforcement with an advertising campaign advising that charges will be laid if the action continues.

LEGAL ANALYSIS

An analysis of legal considerations has been provided to Council under separate cover.

OTHER CONSIDERATIONS

Public Consultations

Council has often in the past expressed its desire to consult with the public on issues like this one. Indeed, the former City of Sudbury had many public hearings and consultations regarding this subject as late as 1999.

The recent Oracle Poll conducted by the City asked citizens to agree and disagree with the following statement: "Store owners should be allowed to set their own hours of operation without the City regulating them." Sixty per cent agreed with the statement.

If Council wishes to consult with the Public, advertising to this effect will be done, with perhaps one or two evenings set aside for the item.

Similarly, Council may feel that this issue has already been voiced at length, and that the recent municipal elections gave voters an opportunity to review this item with the candidates. If so, Council may feel that they are aware of all the issues, and that nothing new is likely to surface in public hearings.

Council is not required to hold a public hearing before amending or repealing the Store Closing By-Laws.

Business Considerations

The City of Greater Sudbury Community Development Corporation has agreed with the requests for change. As a recent article in the Sudbury Star indicates, out-of-town malls such as the North Gate Mall in North Bay are advertising in Sudbury that they are open for business longer.

Some concerns have also been raised by national chain stores. If a nation-wide advertising campaign is launched for, say, a "Midnight Madness Sale", the former City of Sudbury stores remain unopened, although many citizens show up, expecting the stores to be open. Meanwhile, stores in unregulated portions of the City have been holding such Midnight Madness Sales.

Labour Considerations

The following issues have been raised in the past and are repeated here for the assistance of Council.

The suggestion has been made that many stores who are tenants in a mall cannot set their own hours or days of work, having entered into a contract with the mall owners.

Under Section 6 of the *Retail Business Holidays Act*, however,

"A provision in a lease or other agreement that has an effect of requiring a retail business establishment to remain open on a holiday or on a Sunday or on December 26th, is of no effect....."

Accordingly, no lease can require opening on these days, but a provision of a lease dealing with hours of opening on other days would still be effective.

Another issue commonly raised is the right to refuse to work on holidays. In Ontario, only persons employed in a hospital, a continuous operation, hotel, motel, tourist resort, restaurant, or tavern may be required by their employer to work on a public holiday that falls on their regular working days. Moreover, employees in Ontario who work in retail business establishments, with some exemptions, have the express right to refuse to work on a public holiday, even if they had earlier agreed to do so - provided that they give sufficient notice to their employer. This is pursuant to the *Employment Standards Act 2000*.

This applies only to holidays for the purpose of the *Retail Business Holidays Act*, and thus, does not apply to Boxing Day unless that day has been proclaimed as a holiday by the Lieutenant Governor. (This has not occurred recently).

Additionally, an employee may still refuse to work on a Sunday for reasons of religious beliefs or religious observance.

SUMMARY

The existing five Store Closing By-Laws are badly in need of attention. The Coniston By-Law requiring Wednesday closing is the most extreme example of this, and the Sudbury By-Law requiring stores to be closed on Sundays is equally out of step with current practices.

At a minimum, Council should provide for a uniform over the entire City. If Council wishes to continue to regulate store hours, this would mean imposing restrictions where none exist today.

If Council feels public consultation should be obtained, a direction to that effect should be given.

If Council decides to proceed with public consultations, it may wish to give a direction that it is considering, or it may wish to hear from the public before choosing a direction. Council may wish to consider developing a By-Law that is similar to the general understanding on the community of what the existing situation is, even though this is not accurate. This belief would probably centre around stores being allowed to open all days of the week and being required to close from 9:00 p.m. to 5:00 a.m. on weekdays, 5:30 p.m. on Saturdays and Sundays.

OPTIONS AND RECOMMENDATION

If Council wishes to take action on this matter, there are three options that Council can consider:

1. The first option would be to hold public meetings on the subject either before or after giving the public an indication of Council's direction. Council may wish to rough out a new By-Law, and then call for public comment.
2. Council could provide direction to staff to prepare a new uniform Store Closing By-Law to cover the whole of the City, removing the archaic provisions in the existing By-Laws, and allowing shopping all days of the week.
3. It is recommended by staff that Council repeal the five existing Store Closing By-Laws and not replace them. A resolution to this effect has been prepared. If Council passes this resolution, a By-Law to repeal the By-Laws, tentatively placed on the Council Agenda for Thursday, June 24th, will proceed. If other direction is given, the By-law will be pulled from the Agenda.

It is recommended by staff that Council simply repeal all existing Store Closing By-Laws and not replace them.