

<b>TO:</b>	<b>CHAIR AND MEMBERS COMMUNITY AND PROTECTIVE SERVICES COMMITTEE MEETING ON JUNE 21, 2016</b>
<b>FROM:</b>	<b>G. KOTSIFAS, P. ENG. MANAGING DIRECTOR, DEVELOPMENT &amp; COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL</b>
<b>SUBJECT:</b>	<b>BUSINESS LICENSING BY-LAW - PROPOSED NEW CATEGORIES AND EXISTING CATEGORY REGULATORY CHANGES</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director, Development & Compliance Services and Chief Building Official, Civic Administration **BE REQUESTED** to report back with a draft by-law amendment and thereafter hold a public participation meeting with respect to new categories of businesses to be licensed as well as amendments to existing business category regulations; it being noted that consultations with affected stakeholders will occur prior to presenting proposed by-law amendments.

<b>BACKGROUND</b>
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The purpose of this report is to:

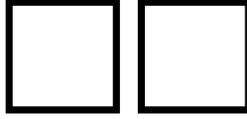
- present proposed new categories of businesses to be licensed for a variety of different municipal purposes; and
- identify existing categories of businesses licensed under the City’s Business Licensing By-law which require updated regulations.

For the new categories, the report outlines the reasons for the regulations, an analysis of the issues, and a scan of municipal by-laws related to the issues and proposed regulations.

In summary, the following new categories of businesses requiring City licences include:

- Door-to-Door Sales Persons
- Payday Loan Lenders
- Group Homes
- Pet Shops
- Donation Bin Operators
- Personal Service Establishments
- Adult Entertainers/Massage Parlour Attendants
- Tobacco Vendors
- Contractors
- Fireworks Sales
- Tow Truck Operators
- Driving School Instructors

A series of meetings will be held with affected stakeholders to discuss proposed regulations. As a result of these discussions, some new issues may be identified which will be reported to the Community and Protective Services Committee (CPSC). A public participation meeting will be held before CPSC to receive public comments on the proposed by-law amendment which will be released in a subsequent report to the CPSC.



## **NEW CATEGORIES PROPOSED FOR LICENSING:**

### **Type of Business: Door-to-Door Sales Persons**

As outlined in Section 10.2 of the Business Licensing By-law, door-to-door sales refers to any business, person, or organization that has sales conducted by door-to-door solicitors. This section of the By-law also describes door-to-door sales as the sale of goods and not services.

#### **Reason for Regulation:**

The City of London currently regulates door-to-door sales alongside other hawkers and peddlers for the purpose of ensuring the vendor is following all federal and provincial laws as well as health regulations, ensuring the business is not a hazard, nuisance or has a negative aesthetic impact on the municipality, and to protect the consumer who is purchasing the product being sold.

#### **Analysis:**

At the January 20, 2015 meeting of CPSC, a motion was passed directing City staff to review regulations which could be enacted on licensed door-to-door sales after some concerns were raised that some constituents (specifically the elderly) were falling victim to predatory door-to-door salespeople. During the course of the debate on this motion, it was indicated by City staff that incidences and complaints regarding door-to-door sales were relatively small in relation to all other complaints received. City staff also differentiated that the current By-law only covers door-to-door sales of goods and that services such as home or water heating services are not covered by the current By-law.

In Ontario, citizens are afforded protections with respect to door-to-door sales under the *Consumer Protection Act, 2002*. This legislation stipulates certain conditions regarding door-to-door sales including a cooling-off period during which consumers may cancel the deal free of charge.

More recently, a private members bill was put before the Ontario Legislature by MPP Yvan Baker entitled “an Act to Prohibit Door-to-Door Sales of Certain Products”. Under this bill, which passed first reading, sales of air conditioners, furnaces, water heaters or any other type of home services, would be prohibited.

#### **Municipal Scan:**

Many municipalities across Ontario have regulated door-to-door sales in a similar manner already done in London via the Business Licensing By-law. These municipalities include Hamilton, Barrie, Windsor, Ottawa, Niagara Falls, Stratford, Kingston and Guelph.

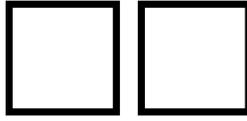
Rather than adopt further municipal regulations on door-to-door sales, municipalities from Hamilton, Mississauga, Brampton, Toronto and Thunder Bay have advocated for greater action by the Provincial Government on this matter. Some have gone so far as to openly support MPP Baker’s Private Members Bill in the Ontario Legislature.

#### **Proposed Regulations:**

- Require businesses conducting door-to-door sales to maintain a list of employees;
- Require door-to-door sales employees to submit police record checks (by-law regulations will include thresholds to maintain approved licences).

### **Type of Business: Payday Loan Lenders**

Payday loans are defined in the Ontario *Payday Loans Act, 2008* as “an advancement of money in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature but not for any guarantee, overdraft protection or security on property and not through a margin loan, pawnbroking, a line of credit or a credit card”.

**Reason for Regulation:**

Payday loans ought to be regulated for the purpose of consumer protection so as to protect vulnerable individuals from unfair business practices and to ensure compliance with federal and provincial legislation on this type of business.

**Analysis:**

On September 20, 2015, CPSC requested City staff investigate and report back to the Committee on a number of topics regarding payday loans including the possibility of municipally licensing payday loan lenders.

In 2008, Ontario passed the *Payday Loans Act, 2008* which created a licensing system for payday loan lenders; mandated a price ceiling that lenders can charge for loans (\$21 dollars per \$100 advance); prohibited certain industry practices such as concurrent or rollover loans; mandated the creation of an Ontario Payday Lending Education Fund, to be paid for by licensees, and; ordered payday lenders to clearly display posters outlining their rates, the costs of the loan and comparisons of the payday loan to a credit card. The current provincial license costs \$990 per year.

In 2012, the United Way of London and Middlesex conducted research on the payday loan industry in London. Its key findings were that the number of payday loan lenders was 35 and was rising and the majority of payday loan borrowers in London were low-income individuals dependent on ODSP, OW or some other form of social assistance, and often with poor credit histories. Another key finding was there is widespread agreement among payday loan borrowers and lenders for a more comprehensive financial education program, however there was no consensus in the report as to what organization should lead the education program.

The findings of the United Way report echoed many of the concerns held by anti-poverty and social assistance groups in Canada, who argue that payday loans disproportionately affect low-income individuals and forces individuals to accept unending cycles of debt due to exorbitant interest rates and the short payback periods of the loans. This is likely due to the fact that such loans are usually used to cover normal day-to-day expenses to sustain a living and combined with the fact that they are often unable to seek alternate sources of funding.

In 2014, a report on the existing *Payday Loans Act, 2008* was conducted by Deloitte and comprised of volunteer stakeholders in the payday loans industry, as well as consumer protection and anti-poverty groups. One of the groups involved with the drafting of this report was the United Way of London and Middlesex. This report outlined the current payday loan industry in Ontario and proposed a number of recommendations for the Ontario Government going forward. This report found approximately 400,000 Ontarians take out payday loans annually and the payday loan industry conducts between \$1.1B and \$1.5B of business a year. The report also detailed there were 796 payday loan stores in Ontario. The report recommended addressing online/mobile payday loans, the issue of unlicensed lenders, and better education in terms of financial literacy of the use of payday loans. The Ontario Government accepted this report and is now in the process of reviewing its recommendations. Bill-156 is currently before the Ontario legislature in second reading and implements some of these recommendations, however changes are still expected to be made as the Ontario Government has been conducting public consultations on this topic as recently as April 2016.

The Canadian Payday Loan Association (CPLA), the largest industry association of payday loan lenders, will be consulted as part of the Business Licensing By-law review.

**Municipal Scan:**

A number of municipalities in Ontario and across Canada have pursued municipal by-laws to address payday loan lenders. *The Municipal Act, 2001*, in Ontario clearly delineates the powers of municipalities in regard to both the licensing of business and the use of municipal lands into two separate categories of licensing by-laws and zoning by-laws. The Act states municipalities cannot use licensing by-laws to restrict the use of land for certain business practices. Instead, that must be addressed through zoning by-laws which are subject to the *Planning Act*.

This has led to differences in how municipalities address payday loans in their by-laws. For instance, the municipalities of Surrey, Winnipeg, and Barrie have all instituted zoning by-laws



restricting the placement of payday loan stores in their communities. Furthermore, both Toronto and Ottawa city councils are reviewing ways to restrict the creation of new payday loan stores via zoning by-laws. Ottawa City Council has requested the Ontario Government give additional powers under the *Municipal Act* to control zoning of payday lenders and limit their location and number. In February 2016, Hamilton passed a by-law that mandated a separate licensing system for payday loan lenders as well as further educational information to be posted at stores.

**Proposed Regulations:**

- Require payday loan lenders to post interest rate information to the satisfaction of the Licensing Manger;
- Require payday loan lenders to maintain a referral list of debt counselling agencies available to clients.

**Type of Business: Group Homes**

The Business Licensing By-law regulates rooming and boarding houses under the category of Lodging Housing. The regulations include the requirement for an up-to-date list of lodgers and inspections by a number of regulatory and enforcement agencies including Fire Prevention, Property Standards and the London-Middlesex Health Unit. The main difference between lodging units and group homes is the level of care required by the residents in order to maintain an independent living environment.

**Reason for Regulation:**

Group homes ought to be regulated for the purpose of consumer protection so as to protect vulnerable individuals from unfair business practices and delinquent housing conditions, ensure compliance with federal and provincial legislation on this type of housing accommodation, and ensure the group home business is not a nuisance by having a negative aesthetic impact on the municipality.

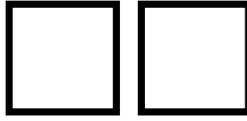
**Analysis and Municipal Scan:**

In 2006, the Ministry of Community and Social Services issued guidelines for the creation of domiciliary standards. Service Managers across Ontario with domiciliary shelters, including London at the time, created standards for these providers of housing for persons in need of supports to daily living. In 2013, the introduction of the Ontario Community Homelessness Prevention Initiative (CHPI), refocused funding and programs to more directly prevent, address and reduce homelessness. CHPI aimed to improve access to adequate, suitable and affordable housing linked to flexible need-based services. The CHPI program and funding was comprised of a consolidation of five provincial homelessness-related programs, including those that previously supported domiciliary hostels.

Through the CHPI program, domiciliary hostels were effectively redefined as Housing With Related Supports. This service category included providing operating funding for long-term and transitional housing, as well as supports related to the delivery of that housing.

Under the "Housing with Related Supports" category, long-term housing was defined as housing that is safe and adequate, and available in the longer term and specific standards were established to ensure private service providers were meeting the long term housing needs of those with service needs to support daily living. The Province outlined expectations under which a Service Manager had to develop standards for their program as a requirement to receive funding. The continued support of former domiciliary hostels required continued compliance with the requirements.

London's Housing with Related Supports were able to continue under the revised CHPI program, but in other centres, including Hamilton, some requirements for operators not working within the new CHPI funding or program, were subject to similar by-laws.



Municipal Council requested a review of the Hamilton Residential Care Facility By-law as part of the Business Licensing review. A review was also undertaken of the Edmonton Group Home By-law.

- **Hamilton**

Schedule 20 of City of Hamilton Business Licensing lays out the regulations to operate a “Residential Care Facility”. The regulations govern the licensing process, credentials of the operator, process of admitting tenants, care services that must be provided, records and reports that must be kept, and regulations for inspection and enforcement.

To obtain a licence to operate a Residential Care Facility, the operator must submit information identifying his/her age, education, and relevant experience. He/she must also submit a premise plan, a single facility incident plan, a Certificate of Electrical Safety, a certificate from the Medical Officer of Health regarding health and safety standards of the facility, a certificate from the insurer of the facility, and documentation as to the age and education of all employees.

Regulations regarding the operation of the facility include guidelines related to employees and volunteers including the collection of personal information and evidence of each employee’s age, education, employment experience, and ability to communicate with tenants.

Operators are required to maintain a certain standard of maintenance. They must provide an adequate supply of potable and hot water. There are requirements for bedrooms including the minimum size, the distance beds have to be apart, necessity of windows, and where in a building a bedroom can be located. There are also requirements regarding storage. Tenants must have access to a closet, clean linens, and a secure storage space. Bedrooms must also have a door that locks. There are additional requirements related to provisions for the existence, minimum size, and capacity of dining areas and sitting rooms.

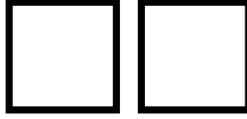
There are specifications regarding the location of toilets, ratio of tenants to toilet facilities, and the existence of facilities for people with special needs including grab bars and non-skid pads on the bottom of tubs/showers. The regulations also govern the storage of waste, interior and exterior lighting, ventilation, ramps and stairways, floors, balconies, and construction and zoning. There are standards requiring the facility to be clean, sanitary, and free from insects and rodents. Finally, it is required that the facility is safe, free from hazards, has heat, proper food storage, and meets all building codes.

Prior to admission, tenants must provide an up-to-date assessment from a physician or other health care professional that states the tenant’s required level of care. The facility operator must also provide a notice regarding the collection of personal information and privacy standards.

Of particular note, are the many regulations surrounding care services an operator is required to provide. Operators are required to keep drugs locked up and are only to provide them to those they are prescribed to. The facility is required to serve sufficient food of good quality and adequate nutritional and caloric value daily. It is required to ensure all regulations for control of infectious diseases are complied with including tuberculosis screening, immunization programs, reporting requirements, and outbreak-control measures.

Operators are required to arrange for emergency medical care when the tenant or next-of-kin is unable to and allow physicians and other health care professionals to enter the facility to care for tenants. Finally, the operator is required to provide any additional care deemed necessary by a health care professional. Operators are to provide referrals to community care access centres or private community agencies, support tenants’ rehabilitative goals, and, in the event they determine the facility is no longer right for the tenant, they are to make provisions for arranging a transfer to a different type of facility.

Operators are required to maintain up-to-date tenant lists which include tenant’s name, sex, date of birth, age, and date of admission. They are also required to keep separate detailed files for each tenant. Finally, they are required to maintain a record of assaults, injuries, or deaths.



The Medical Officer of Health, General Manager of Planning and Economic Development, Chief Fire Prevention Officer, Chief of Police, Issuer of the licence, or any officer may inspect the facility at any time. Additionally, the Medical Officer of Health or a member of a regulated health profession authorized by them may inspect the file of a tenant at any time.

- **Edmonton**

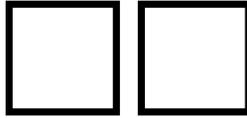
Edmonton's Zoning By-Law regulates Group Homes and Limited Group Homes. It sets a maximum occupancy and what types of structures may be used for each. Limited Group Homes are defined as "a building used for congregate living with not more than six residents, excluding staff, who have moderate and non-severe physical, cognitive or behavioural health issues and who require on-site professional care and supervision to perform daily living tasks, improve wellness, achieve stable and harmonious tenancy, or to exit safely in the event of an emergency. A Limited Group Home is a home which provides continuous (24/7) on-site professional care and supervision by staff licensed or certified to provide such care, can reasonably expect two or fewer visits by emergency services per month and is located in a purpose-built freestanding structure or single detached housing converted for that purpose.

A Group Home is defined as a building or part of a building used for congregate living for residents who have moderate and non-severe physical, cognitive or behavioral health issues and who require daily or frequent professional care and supervision to perform daily living tasks, improve wellness, achieve stable and harmonious tenancy, or to exit safely in case of an emergency event.

Regulations set out the criteria for Apartment Housing or Group Homes to be considered a Supportive Community. Supportive Community housing is housing in which care is provided to residents in a permanent, residential setting. It regulates the percentage of floor space that must be devoted to common areas and landscapes must be designed to enhance the wellness of residents. It specifies that internal common space must be designed to facilitate safety, circulation and resident interaction by setting out building specifics such as corridor width. It mandates that dwellings and sleeping space must meet inclusive design regulations. It stipulates that these facilities must meet Crime Prevention Through Environmental Design (CPTED) standards. It dictates the necessity of pedestrian amenities like sidewalks and parking requirements. Importantly, these regulations state that facilities must meet eligibility requirements from the Province of Alberta for supportive living accommodations.

Alberta's Supportive Living Accommodation Licensing Act dictates the need for a licence when operating a Supportive Living Accommodation. It provides information on the application, licensing procedure, inspections, and dealing with complaints and investigations. It then provides detailed standards regarding the following:

- Building Code Requirements
- Safety Requirements
- Maintenance Requirements
- Environmental Requirements
- Personalizing Spaces
- Window Coverings
- Bedding
- Laundry
- Personal Choice Services
- Medication Assistance or Reminders
- Contracted Services
- Social or Leisure Activities
- Nutritional Requirements
- Menu Requirements
- Cleaning Requirements
- Continuation of Services
- Prevention of Abuse
- Resident Safety and Security
- Trust Accounts
- Safeguarding of Personal Possessions



- Water Temperature
- General Information
- Information Regarding the Supportive Living Provision
- Concerns and Complaints
- Assessment
- Reassessment
- Risk Management
- Safety and Security
- Job Descriptions
- Residents Personal Affairs
- Criminal Records Checks
- Privacy and Personal Information

**Proposed by-law regulations**

The function of operating a set of “supports” for vulnerable persons living independently in the community requiring assistance for daily living but operating outside of Housing with Related Support or other permanent or transitional care facilities should be subject to similar minimum standards to ensure the safety and appropriate services are available to the associated vulnerable tenants and clients.

This bylaw will establish:

1. Relevant Definitions and Service Parameters of housing and/or related services;
2. Administrative standards and processes for proprietors and operators to registering existing and new businesses;
3. Standard Operating Procedures related to categories of service and provision of care;
4. Remedies and penalties for those who endeavor to apply to the proposed bylaw but operate outside the bylaw requirements or those not retaining standards; and
5. Actions to support tenants and clients in the event of a remedy which may impact their provided supports and services.

The purpose of these standards are to provide a minimum set of guidelines and expectations, similar to those for Housing with Related Supports, except where the services are provided by private or non-profit proprietors/operators where the housing and services are not otherwise regulated by existing government program or funding guidelines.

The intent of the bylaw is to ensure that the minimum standards for a business providing housing and or supports to vulnerable persons requiring assistance to daily living are able to receive these services in a fair and predicable manner. Where the standards within the proposed conflict with any applicable federal, provincial, or municipal laws, by-laws, regulations, codes, orders or directives such laws etc. shall prevail. The standards within the proposed bylaw are not intended to be exhaustive. Therefore, for issues not covered by this bylaw, it is expected that proprietors/owner/operators will exercise reasonable judgment and/or consult with expert community services where necessary.

It is intended that compliance to the proposed bylaw and related standards will be reviewed and renewed by the City on an annual basis, subject to the conditions for licence renewal. Compliance will also be achieved in response to complaints and agency referrals.

With regards to standard operating procedures, specific attention will be directed at nutritional care and infection control requirements.

It is important for the operator to ensure that adequate nutrition is provided to help ensure the health of those living in the home. Nutritional standards and food safety practices must be adhered to. A menu that includes healthy food choices and options for those with dietary restrictions must be followed. Staff involved in supervising the food preparation must be knowledgeable in food skills and have a certificate in safe food handling. Infection control practices are important to follow so that illnesses can be prevented and measures can be followed to control the spread of an outbreak. Standards associated with



adequate spacing between beds, the provision of hot and cold potable water and adequate cleaning supplies, safe disposal of sharps and proper laundering of clothing and linens are critical in supporting a clean and sanitary environment.

**Summary of Proposed Regulations:**

- Building Inspection - Property Standards, Fire Prevention, Health Unit
- Operator - Police Records Check (vulnerable), Insurance
- Submission by the Operator and approval of Standard Operating Procedures by the Licence Manager on the following: nutritional care, medical care (including the distribution of medication), record keeping, infection control, and supportive living programming (including schedule of on-site supervision)

**Type of Business: Pet Shops**

Pet shops are any businesses involved in the retail sale of animals and accessory products and services.

**Reason for Regulation:**

The City of London ought to regulate pet shops for the purpose of health and safety of the animals being looked after or sold on the premises as well as the health and safety of all the patrons and occupants of the store, and for the purpose of consumer protection and ensuring that such pet stores operate legally in accordance with other municipal and provincial legislation.

**Analysis:**

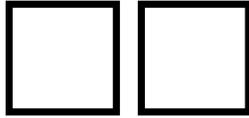
In the last decade, animal welfare associations have lobbied Ontario municipalities to not only regulate pet shops that sell animals for retail sale, but also ban certain industry practices, most notably the sale of animals that originated from commercial sources other than humane societies and shelters. Concerns over “puppy mills” and other ethical animal welfare concerns around such business practices have concerned many citizens nationally.

Such advocacy has occurred in London, most notably in 2013 regarding London City Council’s position to adopt a “no-kill” strategy towards animals in the care of the Municipality. This decision directed that 90% of all stray animals would exit City shelters alive. Therefore, it could be argued that any by-law regulating pet shops and explicitly prohibiting the sale of animals from commercial sources and mandating they come from municipal shelters or humane societies, would assist in achieving and maintaining the spirit of Council’s “no-kill” strategy. The issue of the retail sale of animals in pet stores goes beyond just companion animals. There is some uncertainty of the source of some other forms of animals including amphibians and raptors.

**Municipal Scan:**

A number of municipalities in Ontario have passed by-laws and adopted licensing regulations for pet shops. Toronto, Ottawa, and Waterloo have all adopted by-laws establishing licensing systems for pet shops and banned the acquisition and sale of animals by pet stores from commercial sources other than shelters or humane societies. Ottawa’s by-law included a five-year transition period to allow pet shops to change their business practices and accommodate those changes without incurring significant financial hardship on pet stores.

Other municipalities such as Pickering, Kitchener, Oshawa, Mississauga and Windsor have passed by-laws that license pet shops and enact further provisions on pet shops but did not require pet shops to sell animals only from shelters or humane societies. Cambridge is currently having discussions on a pet store licence program.



**Proposed Regulations:**

- Limit the source of companion animals for retail sale to registered rescues, humane societies and animal shelters and the Licence Manager to maintain a list of permitted animals for sale;
- Prohibit the sale of animals at flea markets.

**Type of Business: Donation Bin Operators**

Donation bins are generally considered to be any receptacle located outdoors for the purpose of collecting items including, but not limited to, clothing, shoes, books, toys, electronics, and other household process that are to be donated by the public on an ongoing basis. They may be operated by either for-profit or non-profit organizations.

**Reason for Regulation:**

The City of London ought to regulate donation bins for the purpose of prohibiting public nuisances or a negative aesthetic to the adjoining property or surrounding area as a result of the accumulation of garbage and debris around the bins.

**Analysis:**

In 2012, City Administration raised a concern of the proliferation of donation bins where the public was able to drop off used items such as clothing, books, toys and other products. Staff reported many cases of how the areas surrounding such bins became littered with garbage and debris akin to “mini-dumping grounds” especially after weekend garage sales and spring student move-out. In many cases, including on City property, bins were placed on properties without the property owner’s knowledge. The clean-up and restoration of these bins can be hampered by the clear lack of identification as to who owns/operates the bins.

In addition, members of the London non-profit community who operate donation bins, complained that some of the bin operators impeded the work of local charitable non-profits by having competing donation bins where the items donated were later sold for profit. It was estimated in 2012, nearly \$138M in used clothing alone was sold by for-profit companies in Ontario.

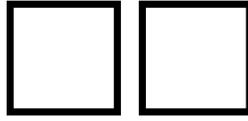
There has been some discussion within the City of London as to whether a licensing system or by-law addressing donation bins ought to assess a licensing fee on Canada Revenue Agency (CRA) registered charities. Former Federal Member of Parliament, John Bryden, who commissioned two parliamentary reports on Canada’s charitable sector suggested CRA registered charities be assessed the same licensing fees as for-profit bin operators. The underlying argument behind this position is the City ought to apply licensing regulations to stem the nuisance complaints from the littering surrounding the bins rather than getting embroiled in the competition for donated products between the non-profit and for-profit bin operators.

**Municipal Scan:**

Many municipalities in Ontario have passed by-laws and regulations on donation bins. There are some similarities in municipal regulations such as requiring police checks on bin operators, banning the placement of such bins on municipal property, requiring written permission of the property owner to store the unit on his/her property, requiring the bin to be clearly marked with all necessary information, and finally mandating that the bins are routinely cleaned and emptied. Some municipalities such as Toronto, Markham, Welland, Guelph and Waterloo charge licensing fees on bin operators. Others such as Ottawa, Chatham-Kent, Sarnia and Brantford have passed by-laws but have not required additional licensing fees.

**Proposed Regulations:**

- Permission of property owner;
- Standards around cleanliness and refuse control and posted information;
- Metal bins only.



## **Type of Business: Personal Service Establishments**

Personal Service Establishments (PSE) is a catch-all term generally used to describe any premise in which it provides services but not limited to activities, facilities or treatments for the improvement of a person's physical or psychological health or appearance. A PSE can include, but is not limited to, hair salons, tattoo parlours, tanning salons, spas, electrolysis, nail salons, personal fitness centres, and aesthetician salons, but shall not include a body rub parlour.

### **Reason for Regulation:**

The City of London ought to regulate Personal Service Establishments for the purpose of ensuring that any activity or undertaking does not affect or could possibly adversely affect the health and safety of consumers or workers or result in illness, hazardous conditions, injury, or harm to any of these individuals, and for the purpose of consumer protection against unfair or potentially unfair business practices that could result in loss on the part of the consumer.

### **Analysis:**

The City's Business Licensing By-law, currently provides regulations for the licensing of both hairstyling shops and body modification in two separate categories. The latter term encompasses businesses including tattoo parlours, electrolysis, and body piercing establishments.

Over the past five years, a number of municipalities in Ontario amalgamated or collapsed their multiple categories into one common licensing category - Personal Service Establishments. This new term encompasses all businesses mentioned above but can also include nail salons, spas, personal fitness centres, and tanning salons.

The Middlesex London Health Unit, the primary agency for conducting health and safety inspections on these types of facilities, is supportive of such an amalgamation of uses under the new Licensing By-law review. Over the years, the MLHU has identified and addressed a variety of health-related issues regarding tattoo parlours, nails salons, and tanning salons in London.

### **Municipal Scan:**

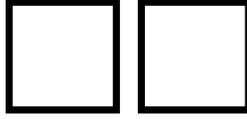
As noted above, a number of other municipalities in Ontario have passed municipal licensing regulations under the Personal Service Establishment category including Toronto, Brampton, Cambridge, Welland and Guelph. However, the use of this category does not mean the regulations are equal across municipalities. For instance, Cambridge uses the term to describe only massage facilities other than body rub massage parlours. Brampton further classifies Personal Services Establishments into subcategories include one on the piercing or colouring of the skin, another that covers hair/nail salons, and a final separate class for tanning, each with its own regulations.

In summary, there is a lack of uniformity or consensus among municipalities about the definition and the regulations that municipalities in Ontario have placed upon such businesses. Some advocates including Health Units in Ontario have requested the Provincial Government in Ontario take the lead on adopting uniform regulations on Personal Service Establishments rather than letting municipalities adopt wide-ranging local regulations.

In 2013 the Ontario legislature passed the *Skin Cancer Prevention Act (Tanning Beds), 2013* which banned the use of tanning beds by youth under 18 years of age. It also requires that tanning bed operators request identification from anyone who appears under 25 years old; all individuals using tanning beds are provided with protective eyewear; all tanning bed operators provide written notice of their location and business contact information to the local Medical Officer of Health; sets fines for tanning bed owners/operators who fail to comply and; authorizes inspectors to inspect and enforce these requirements.

### **Proposed Regulations:**

- Amalgamation of a variety of Personal Service Establishment categories;
- Common health-related regulations regarding cleanliness;
- Compliance with any age-related provincial regulations.



### **Type of Business: Adult Entertainers/ Massage Parlour Attendants**

Adult Entertainment Establishments are defined in the Municipal Act as “any premises or part of them that is an adult entertainment establishment if goods, entertainment or services that are designed to appeal to erotic or sexual appetites or inclinations are provided, in the pursuance of business, in the premises or part of the premises”. The Business Licensing By-law separates live adult entertainment parlours (strip clubs) from body rub parlours.

#### **Reason for Regulation:**

The City of London ought to regulate adult entertainment/body rub parlour attendants for the purposes of protecting the health and safety of the attendants/entertainers and the consumer protection of those individuals who attend and partake in services.

#### **Analysis:**

The Ontario Municipal Act permits municipalities to license, regulate and govern adult entertainment establishments and body rub parlours. The Act allows municipalities to define the area of the municipality in which adult entertainment establishments may or may not operate and limit the number of adult entertainment establishments in any defined area in which they are permitted and prohibit any person carrying on or engaged in an adult entertainment establishment business from permitting any person under the age of 18 years to enter or remain in the adult entertainment establishment or any part of it.

The Act does not allow municipalities to prohibit these uses and, in fact, by specifically referring to these uses, the Act expressly allows the existence of such businesses in any municipality. However, the Act allows many different regulatory tools for municipalities to regulate adult entertainment establishments and body rub parlours including both zoning by-laws and licensing by-laws.

While the City of London currently regulates and licenses adult entertainment establishments and body rub parlours, there are additional regulations that the City can put in place. The By-law licenses the owners and managers of the businesses but there is currently no provision for the regulation of the entertainers/attendants. In the past decade, the trend has been for municipalities to expand licensing to the entertainers/attendants themselves. This is done to help ensure the entertainers/attendants are not under age and are afforded some workplace protections.

In July 2012, the Government of Canada stated it would no longer process work permits for foreigners entering Canada to work in adult entertainment businesses such as strip clubs, escort services and body rub parlours in a bid to crack down on human trafficking and the illegal sex trade in Canada.

#### **Municipal Scan:**

Most municipalities in Ontario have passed by-laws and regulations for adult entertainment establishments. However, there is little uniformity in such regulations with most municipalities defining adult entertainment establishments differently. For example, some municipalities include adult video stores in their by-laws. Others such as London regulate body-rub parlours separately from adult entertainment establishments.

However, as mentioned previously, many municipalities have enacted similar regulatory regimes for adult entertainment establishments including zoning and licensing by-laws. Most municipalities have zoning by-laws which limit the number of such establishments in their municipalities and their proximities to places such as churches, schools and public pools. In terms of licensing by-laws, most municipalities license the owners of the businesses and several license the entertainers/attendants and this includes Barrie, Hamilton, Thunder Bay, Burlington, Niagara Region and Windsor. Mississauga licenses body rub attendants but only requires registration of adult entertainers.

#### **Proposed Regulations:**

- Police record checks for adult entertainers/attendants.



### **Type of Business: Tobacco Vendor**

Tobacco vendors are generally referred to as a person or company engaged in the business of selling tobacco products. The Smoke Free Ontario Act defines tobacco products as tobacco in any processed or unprocessed form that may be smoked, inhaled or chewed, including, but not limited to, snuff/dip, tobacco shisha, cigarillos, cigars, pipe tobacco and cigarettes. E-cigarettes are any vaporizer or inhalant-type device, whether called an electronic cigarette or any other name, that contains a power source and heating element designed to heat a substance and produce a vapour intended to be inhaled by the user of the device directly through the mouth whether or not the vapour contains nicotine.

#### **Reason for Regulation:**

The City of London ought to regulate tobacco vendors and e-cigarettes to ensure compliance with federal and provincial laws regarding the sale and use of tobacco products and the consumer protection of those individuals who purchase tobacco products from the vendor.

#### **Analysis:**

The use and sale of tobacco products are clearly indicated in federal legislation (Tobacco Act) and provincial legislation (The Smoke-Free Ontario Act). Both Acts lay out regulations for the production, sale, marketing and use of tobacco products. However, Health Units across Canada have asked their local municipalities to create their own additional licensing regulations regarding tobacco vendors, to help ensure compliance and enforcement of provincial and federal laws.

Electronic Cigarettes are a relatively newer phenomenon and the Federal and Provincial Governments across the Country are continuing to evaluate regulatory options. In 2009, Health Canada issued an advisory effectively banning e-cigarettes in Canada but there has been little active enforcement of this provision. It has been estimated the e-cigarette industry grew to \$140M in Canada in 2015. The Federal Government's reluctance to regulate e-cigarettes stems from the lack of medical evidence on the negative effects of e-cigarettes and the claim increasingly being backed by researchers that e-cigarettes are an effective means of quitting smoking more harmful tobacco products. On the provincial level, Ontario has passed a law that restricts the use and consumption of e-cigarettes similarly to the already existing restrictions on normal smoking.

The Health Unit recommends licensing those two categories of products separately as some vendors may sell one but not the other.

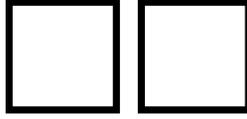
#### **Municipal Scan:**

Many municipalities in Ontario have passed by-laws and regulations regarding the sale of tobacco products. While the names and definitions range from tobacco vendor, tobacconist, retailers etc., most municipal regulations consist of mandating compliance and enforcement with provincial and federal laws regarding tobacco products and the public posting of the accurate tobacco licenses with up-to-date and correct information. Ottawa, Toronto, Mississauga, Windsor, Waterloo and Hamilton are all examples of municipalities where this takes place.

In regard to e-cigarettes, the action taken by municipalities (Calgary, Red Deer, Vancouver, and Toronto) across Canada has been to effectively ban/restrict the use of e-cigarettes similarly to existing bans/restrictions on normal smoking. However, no municipality has introduced regulations on e-cigarettes in their business licensing by-laws.

#### **Proposed Regulations:**

- Compliance with federal and provincial regulations.

**Type of Business: Contractors**

Trades are generally referred to businesses that involve manual work in a particular trade or craft requiring skill. Examples of trades include construction, renovation, heating, drain, or driveway contactors, plumbers, fence or drain layers, HVAC contractors, and pool contractors.

**Reason for Regulation:**

The City of London ought to regulate such trades for the purpose of consumer protection against unfair or potentially unfair business practices that could result in loss on the part of the consumer.

**Analysis:**

In 2009, the Province of Ontario created the Ontario College of Trades (OCOT) as a regulatory agency mandated to protect the public interest and promote the skilled trades in Ontario. Comprised of representatives of the Ontario Government as well as representatives of employees and employers in skilled trade fields including construction, industrial, motive power, and services fields. The OCOT specifies two categories of trades in Ontario. The first is compulsory trades, which requires provincial certification for a person to participate in the activities constituting that trade including plumbers and electricians. The other is voluntary trade which does not require certification for a person to participate in activities constituting that trade. However, one must be certified to hold oneself out as certified in that trade. Examples of non-compulsory trades are construction millwright and help desk support analyst.

The OCOT was designed for the express purpose of consumer protection to ensure consumers were protected from harmful underground business practices that can lead to massive overrun costs as well as incomplete work. Many consumer protection advocates strongly supported the creation of the College.

However, the OCOT has also received opposition from critics who argue the increased levels of regulations and the costs associated with membership and compliance with the OCOT harms legitimate businesses by placing additional costs on businesses which often means reductions in employees or increased costs for consumers.

There have been several occurrences in London specifically in the home renovation industry where the hired renovator did not complete the project or overcharged for a project due to the demographic of the client (senior citizen).

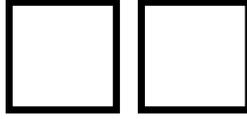
**Municipal Scan:**

While most municipalities rely on the OCOT as the primary regulatory body for businesses in skilled trade, the municipalities of Oakville and Mississauga have included provisions within their own municipal by-laws governing trades including construction, renovation, heating, drain, or driveway contactors, plumbers, fence or drain layers, HVAC contractors, and pool contractors.

These regulations usually involve the businesses demonstrating certain amounts of liability insurance, the signage requirements for contractor vehicles, compliance with municipal certification exams in some fields, and regulations regarding the contracts made with consumers for these types of work.

**Proposed Regulations:**

- Licensing contractors – including renovation work, HVAC, home improvement, driveway contractors, and pool installers;
- Requirement for written quotations;
- Liability insurance;
- Compliance with municipal/provincial building regulations.



### **Type of Business: Firework Vendors**

Firework vendors are generally considered to be any person or business that sells or provides pyrotechnic devices that explode when ignited for recreational or professional use. The Explosives Act (Government of Canada) classifies three categories of fireworks in Canada: Consumer fireworks (low-hazard and designed for recreational use); Display fireworks (high-hazard fireworks designed for professional use); and Pyrotechnic effect pyrotechnics (high-hazard pyrotechnics designed for professional use in live stage performances and the film and television industry). The focus of this review is on consumer fireworks.

#### **Reason for Regulation:**

The City of London currently regulates the use and some aspects of the sale of fireworks through the Fireworks By-law, PW-11. The City of London ought to regulate fireworks vendors for the purpose of ensuring the vendor is in compliance with all federal laws, ensuring the business is not a hazard, nuisance nor a negative aesthetic impact on the municipality, and to protect the consumer who is purchasing the product being sold.

#### **Analysis:**

The Explosives Act, enacted by the Federal Government, places many regulations and stipulations on the sale of fireworks including limits to the amount of fireworks (1,000 kilograms) allowed to be stored at one time, how fireworks ought to be stored, restrictions on the sale of fireworks that forbid the selling of fireworks to people under the age of 18, and requirements that the vendor offer the consumer instructions on the safe use of the fireworks being sold.

Sections 120 and 121 of the Municipal Act allow municipalities to prohibit and regulate the manufacture, storage, transportation, use and sale of fireworks within the municipality. Municipal Law Enforcement Services receives complaints on a yearly basis regarding fireworks being sold either before or after the permitted time periods (one week immediately preceding Victoria Day or Canada Day). The Business Licensing By-law permits the sale of fireworks as “Seasonal Sales”, however there are no prohibitions or regulations associated with the issuance of the license.

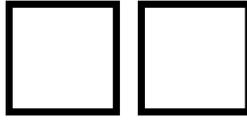
#### **Municipal Scan:**

Almost all major municipalities have passed fireworks by-laws regulating the usage of fireworks within their jurisdictions. Most of these fireworks by-laws include provisions and regulations on the sale of fireworks, ensuring that firework vendors are in compliance with federal provisions in the Explosives Act, reaffirming restrictions on the amount of fireworks that can be stored, barring the sale of fireworks to minors, and stipulating certain storage standards. Toronto and Ottawa include regulations/restrictions on the sale of fireworks within the existing fireworks by-law. London follows a similar path with some restrictions and regulations placed on the sale of fireworks.

However, a number of municipalities have introduced firework vendors within their business licensing by-laws in addition to their existing fireworks by-laws, thus creating a regulatory regime for fireworks vendors (Oakville, Mississauga, Barrie, and Markham). Windsor chooses to include fireworks into its Hawker/Peddler class of business license and so regulates those vendors accordingly.

#### **Proposed Regulations:**

- Compliance with all federal regulations respecting the sale of consumer fireworks;
- Compliance with the City of London Fireworks By-law.



### **Type of Business: Tow Truck Operators**

Tow truck operators are generally referred to as any individual or business operating a motor vehicle used for hire for towing or otherwise conveying vehicles whether or not any such towed or conveyed vehicle is intact or in an inoperable condition.

#### **Reason for Regulation:**

The City of London ought to regulate tow truck operators for the purposes of protecting the health and safety of the operators, to ensure the business is not a nuisance or hazard to the surrounding properties, neighbourhood, and roadways, and the consumer protection of those individuals who engage in services of the tow truck operator.

#### **Analysis:**

Interest in the regulation of the tow truck industry stemmed from the rise of complaints by consumers about the perceived harmful business practices carried out by tow truck operators. The two primary complaints were accident 'chasing' whereby tow truck operators troll roadways and highways for potential accidents in attempts to secure the business first rather than the typical method of waiting until the driver's insurance company recommends/calls a tow truck company. There have been numerous incidences where tow truck operators get into accidents themselves and exhibit "road rage" just to acquire clients. Another major complaint by consumers has been the allegation that certain tow truck operators prey on distressed drivers by quoting them one price as an estimate and then surprising the consumer with substantial cost increases later on after the services have been performed. Secondary concerns include the allegation that some tow truck operators receive financial compensation (kickbacks) in return for the tow truck operator recommending the consumer have his/her vehicle repaired at a certain business.

Other relevant facts about the tow truck industry include approximately 1,200 tow truck operators in business in Ontario and the total number of drivers equals 3,000 in 2014. In 2010, a study was conducted by the Ontario Government that found the collision rate for tow truck operators was 19.7% compared to the 3% for personal private vehicles and 1% for commercial vehicles (transport trucks).

The response by governments in addressing the tow truck industry started at the municipal level with 17 municipalities (mostly in the GTA) creating extensive tow truck by-laws. The Government of Ontario began seriously considering regulating the industry following the recommendations made by the Ontario Automobile Insurance Anti-Fraud Task Force (2012 and which had the support of the Provincial Towing Association of Ontario as a key stakeholder) and a KPMG-authored report by the Towing and Storage Advisory Group to the Ministry of Consumer Services (2014). In both reports, it was suggested the Ontario Government create a regulatory system for tow trucks in an attempt to facilitate consumer protection and improve health and safety by reducing the practice of accident chasing by opportunistic tow truck drivers.

In 2014, the Ontario Government introduced Bill 15, the Fighting Fraud and Reducing Insurance Rates Act. The Bill was passed in the latter part of 2015 with regulations slated to take effect in 2017 to allow tow truck operators to transition to the new requirements. The regulations under this legislation require the tow truck operator to get the permission of the consumer before charging any amount for towing or storage; post prices and other operator contract information; accept credit cards and other traditional forms of payment; provide invoices of all services provided; and cap final prices to be no more than 10% of what was originally quoted/estimated before the service was carried out. The Bill also prohibits operators from recommending/colluding with repair or storage facilities, legal or health care firms unless requested by the consumer.

Other regulations enacted in this bill include the addition of tow trucks to the definition of commercial motor vehicles under the Highway Traffic Act. Tow trucks would therefore be governed by the Commercial Vehicle Operator Registration (CVOR). This latter stipulation would require daily safety vehicle inspections and would limit the number of hours of service a driver may work per day.

The decision to restrict the number of service hours for tow truck operators was widely criticized by the industry who organized mass protests at Queens Park where 1500 tow trucks from



across Ontario blocked traffic in Toronto roadways that snarled traffic throughout the City in December of 2014. Further protests involving hundreds of tow trucks occurred in April 2016 to demonstrate the industry's continued opposition to provincial regulations. The argument of the tow truck operators is that Ontario's proposed regulations place undue costs on the tow truck industry that will only make the situation worse for consumers as these costs will in turn be passed along to consumers and it may also encourage more unregulated tow truck operators to go into business. Another argument made by tow truck operators is this regulation would exacerbate rather than complement existing municipal legislation on tow trucks.

#### **Municipal Scan:**

Approximately 17 municipalities in Ontario have enacted regulatory systems for tow trucks. In most municipalities, the licensing and regulation of the industry is outside of business licensing by-laws and in separate bylaws. In the case of Windsor and Brampton, the municipalities included regulations about tow trucks in by-laws that govern public vehicles.

Bill 15 was crafted by taking various best practices from municipal legislation primarily from Hamilton, Brampton and Richmond Hill. However, the municipal examples of tow truck regulations have been more in depth than that of the provincial legislation. In London, Municipal Law Enforcement Officers are in discussions with provincial staff on the implementation of Bill 15. No municipality in Ontario has yet enacted tow truck by-laws after the Provincial Government enacted Bill 15.

#### **Proposed Regulations:**

- Compliance with Bill 15 (posting prices, hours of work, collusion with auto repair shops).

#### **Type of Business – Driving Schools:**

Driving Schools are generally referred to as any individual or business which directly or indirectly carries out the function of teaching persons to operate a motor vehicle for monetary or other consideration. Driving Schools must be registered with the Ministry of Transportation Ontario (MTO). Driving Schools usually distinguish between Driving School Operators, who manage the overall business, and Driving School Instructors, who carry out the actual teaching.

#### **Reason for Regulation:**

The City of London ought to regulate driving schools for the purposes of protecting the health and safety of the consumers, instructors and other drivers on the road, to ensure the business is not a nuisance or hazard to the surrounding properties, neighbourhood, and roadways, and the consumer protection of those individuals who engage in services of the driving schools.

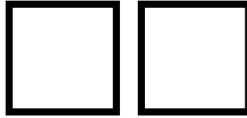
#### **Analysis:**

The regulation of driving schools in Ontario is primarily the jurisdiction of the Provincial Government. Provincial regulations surrounding driving schools are outlined in the Highway Traffic Act Regulation - 473/07. This regulation outlines the duties and obligations of driving school operators and driving school instructors. It also sets out the regulations on the vehicles themselves.

The Ministry of Transportation sets out the curriculum, the Beginner Driver Education (BDE) and makes changes as required. The Ontario Government also maintains lists of driving schools that are in compliance with their curriculum and regulations as well as lists of driving schools that have lost their provincial accreditation.

#### **Municipal Scan:**

A number of other municipalities in Ontario have created regulations and licenses for driving schools. Some municipalities such as Toronto, Ottawa and Guelph include driving schools in their business licensing by-laws whereas others such as Mississauga include them in a separate vehicle licensing by-law that includes food trucks and tow trucks. Furthermore, some cities distinguish between driving school operators and driving school instructors with cities like Ottawa having two separate classes of licenses.



However, one unique policy undertaken by the City of Guelph even goes so far as to include a list of roadways that driving school operators and instructors are prohibited from using for instruction unless approval is first sought from the municipal issuer of the license.

**Proposed Regulations:**

- Criminal record checks for driving instructors;
- Compliance with provincial legislation.

**EXISTING CATEGORIES OF BUSINESSES**

A number of existing business category regulations are proposed to be amended.

**Flea Markets** - are licensed for the purpose of ensuring vendors are following all required health regulations to ensure the consumer does not become ill, the business is not a nuisance, and protect the consumer who is purchasing products or services being offered for sale. Additional regulations are proposed for market vendors who are operating in markets offering a variety of services and products in addition to food sales. Many of the vendors are longer-term tenants in the market and are involved in offering products and services which would require business licenses if they were located along storefronts in London's neighborhoods. For purposes of fairness, these uses ought to be licensed. Such services may include food sales, tattoo parlours, and the sale of second-hand goods.

**Parking Facilities** - are licensed for the purpose of consumer protection such that a consumer will know who to contact in the case of fee disagreements or other difficulties faced by the consumer at a parking facility. Many parking facility operators issue trespass notices which appear to be very similar to City parking tickets. One consideration is that operators of parking facilities issue official City parking tickets under the authority of the private parking enforcement program. Generally, parking ticket fines are substantially lower than trespassed notices. With parking tickets, there is also an appeal process allowing the consumer to challenge the ticket. Further discussions with parking facility operators are underway.

**Second-Hand Dealers** - are licensed for the purposes of protecting the consumer purchasing items and to ensure these establishments are not utilized to sell stolen goods. Operators of second-hand shops are required to maintain a record of all transactions including the date and time of the transaction, full description of the article and serial number if applicable, can ship consideration given and the name and address of the person from whom the article was acquired. This record is open to inspection by London Police. Consideration is being given to requiring second-hand dealers to obtain common software which would allow for immediate sharing of information regarding transactions to allow for product identification of allegedly stolen products. Discussions have begun with respect to software specifications to implement a seamless transaction record. Issues of privacy and recent case law will be considered in the drafting of the regulations.

**Climate Change Disclosures** - on March 30, 2016, a presentation was made by R. Shirkey of Our Horizon regarding placing climate change disclosures on gas pumps. Although Civic Administration supports promoting environmental initiatives through a number of different marketing techniques, requiring licensed fuel-related automobile establishments to place mandatory warnings on gas pump handles cannot be supported by the municipal purpose for business licensing of consumer protection necessary for licensing regulations and accompanying prohibitions and fines. This matter is best handled at the Provincial or Federal Government level. Civic Administration would encourage voluntary messaging (not regulated messaging) that encourages wise driving behavior from an environmental viewpoint such as reduced idling, avoiding fast starts, energy efficient vehicles, etc.

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<b>CONCLUSION</b>
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Based on the municipal purposes of public health and safety, nuisance control and consumer protection, a number of new business categories are recommended to be licensed under the City's Business Licensing By-law. Some existing categories are recommended to be enhanced as a result of a review of new technologies and best practices. Consultations with affected stakeholders will occur over the next several months. Civic Administration will report back with proposed regulations. An advertised public participation meeting will be held in the fall of 2016.

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