



TO:	CHAIR AND MEMBERS COMMUNITY AND PROTECTIVE SERVICES COMMITTEE MEETING ON AUGUST 28, 2017
FROM:	OREST KATOLYK LICENCE MANAGER
SUBJECT:	ADULT ENTERTAINMENT BODY RUB PARLOUR 2190 DUNDAS STREET

RECOMMENDATION

That, on the recommendation of the Licence Manager, this report **BE RECEIVED** for information purposes.

BACKGROUND

This report is made pursuant to section 5.11 of the Business Licensing By-law L-6 for the purpose of:

- a) notifying the Community and Protective Services Committee that an Adult Entertainment Body-rub Parlour licence for the location at 2190 Dundas Street has expired without renewal and:
- b) the Committee giving consideration to whether or not the Business Licensing By-law L-6 should be amended in accordance with section 5.3(d) of the By-law to delete 2190 Dundas Street as a location for an Adult Entertainment Body-rub Parlour licence.

For clarity, the full text of the applicable provisions of the Business Licensing By-law L-6 is set out in Appendix A.

Section 5.4 of the Business Licensing By-law L-6 limits the number of Adult Entertainment Body-rub Parlour licences to 7 and provides that the maximum number of licences shall be reduced to 5 as operator's licences expire without renewal or as licences are otherwise surrendered or revoked.

This regulation has been in place for a number of years and in fact the numerical limitations have been historically reduced by previous Municipal Councils.

For the 2015 licence year, the City issued 7 Adult Entertainment Body-rub Parlour licences. One of those licences was issued to 1748801 Ontario Inc. ("Mirage") which operated its business at 2190 Dundas Street. On December 29, 2015, Mirage notified the Licencing Office that it did not intend to renew its licence. The licence issued to Mirage expired on December 31, 2015 and was not renewed. On January 20, 2016 City staff conducted an inspection of 2190 Dundas Street and confirmed that the Adult Entertainment Body-rub Parlour was no longer in operation.

In accordance with ss. 5.4(2) of the By-law, effective January 1, 2016, the number of Adult Entertainment Body-rub Parlour licences was reduced from 7 to 6. For the 2016 and 2017 licence years, all of the other 6 licensees renewed their licences and no new licences were available.

On January 8, 2016 City staff were notified by George Nikopoulos that he intended to apply for an Adult Entertainment Body-rub Parlour licence to operate from the premises at 2190 Dundas Street. On December 23, 2016 a business licence application was submitted by George Nikopoulos on behalf of Touché Spa Inc. for an Adult Entertainment Body-rub Parlour licence.

On August 3, 2017, the Licence Manager refused Touché Spa Inc.'s application for an Adult Entertainment Body-rub Parlour Licence for the premises at 2190 Dundas Street on the grounds that all of the 6 licences authorized under the By-law had been issued or renewed. The Licence Manager cannot issue a licence beyond the maximum limit prescribed in the By-law. Touché Spa Inc. is entitled to appeal the Licence Manager's decision and request a hearing before the City's Hearings Officer. Touché Spa Inc. has until August 16, 2017 to deliver a notice of appeal.

Section 5.11 of the By-law provides that where a licence that has been issued for a defined area or location on Schedule "K" has expired without renewal or is otherwise surrendered or revoked, the Licence Manager shall notify the Community and Protective Services Committee for the purpose of the Committee giving consideration to whether or not the By-law should be amended in accordance with section 5.3(d) of the By-law. Section 5.3(d) provides that Council may consider amending the By-law to delete a location listed in Schedule "K".

Currently, the By-law permits 6 Adult Entertainment Body-rub Parlour licences. The locations for body rub parlours is limited to those set out in Schedule "K".

Section 5.5 of of the Business Licensing By-law L-6 provides locational requirements for Adult Entertainment Body-rub Parlours that apply to new locations and new licences but not to renewal licences. These requirements include separation distances of 100m from certain types of land uses including lands zoned for residential uses. With the expiration of the licence for 2190 Dundas Street, the locational requirements as per section 5.5 would apply to any new application.

The property at 2190 Dundas Street does not meet the location requirements in section 5.5 because lands on the south of Dundas Street that are approximately 35 metres away from lands that are zoned for residential uses. Appendix B attached provides a map showing the 100m radius.

If the City Council wishes to amend the Business Licensing By-law L-6 to delete 2190 Dundas Street as a location from Schedule "K", it may direct Civic Administration to report back to the Community and Protective Services Committee with an amending By-law. An amendment to the Business Licensing By-law requires public notice in accordance with the City's Public Notice Policy set out in By-law A.-6151-17.

RECOMMENDED BY:
O. KATOLYK, MLEO (C) LICENCE MANAGER CHIEF MUNICIPAL LAW ENFORCEMENT OFFICER

APPENDIX A

Part 5 ADULT ENTERTAINMENT BODY-RUB PARLOUR

5.1 Definitions

In this part,

Adult entertainment body-rub parlour - defined

“Adult entertainment body-rub parlour” means any premises or part thereof in which is provided in pursuance of a trade, calling, business or occupation, any services as defined in this Part appealing to or designed to appeal to erotic or sexual appetites or inclinations.

Attendant - defined

“Attendant” means a person who provides an encounter involving physical contact in an adult entertainment body-rub parlour appealing to or designed to appeal to erotic or sexual appetites or inclinations.

Encounter involving physical contact - defined

“Encounter involving physical contact” means the kneading, manipulating, rubbing, massaging, or touching by any means, of a person’s body or part thereof but does not include medical or therapeutic treatment given by a person otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario.

Operator - defined

“Operator” in this part means a person who, alone or with others, operates, manages, supervises, runs or controls an adult entertainment body-rub parlour, and “operates” has a corresponding meaning.

Owner - defined

“Owner” means a person who, alone or with others, has the right to possess or occupy or actually does possess or occupy an adult entertainment body-rub parlour and includes a lessee of an adult entertainment body-rub parlour or of premises in which an adult entertainment body-rub parlour is located.

Provide - defined

“Provide” when used in relation to services, includes to furnish, perform, solicit or give such services, and “providing” and “provision” have corresponding meanings.

Services - defined

“Services” means any encounter involving physical contact.

Services appealing to or designed to appeal to erotic or sexual appetites or inclinations - defined

“Services appealing to or designed to appeal to erotic or sexual appetites or inclinations” includes but is not limited to:

- (a) services of which a principal feature or characteristic is the nudity or partial nudity of the torso of an attendant; and
- (b) services in respect of which the word “sensual”, “sexy” or any other word or any picture having like meaning or implication is used in any advertisement advertising the services.

5.2 Business - without valid licence - prohibited

No person shall, in the City, carry on the business of an adult entertainment body-rub parlour without holding a current valid licence for such business issued under the provisions of this by-law.

5.3 Designated locations – Schedule “K”

- (a) Subject to section 5.5, no person shall operate an adult entertainment body-rub parlour in the City and no attendant shall perform or provide services in an adult entertainment body-rub parlour in the City except in a defined area or location designated on Schedule “K” to this By-law.
- (b) No operator shall operate all of the adult entertainment body-rub parlour locations in the City.

- (c) Not more than one adult entertainment body-rub parlour licence shall be issued for any separate area or location identified on Schedule “K”.
- (d) Council may, at any time, consider an application to amend Schedule “K” of the by-law to delete a location, to substitute a new location for an existing location, or to add a new location.
- (e) Before Council considers an application to amend Schedule “K” of the by-law to substitute a new location for an existing location, or to add a new location, the applicant shall provide a statutory declaration to the Licence Manager stating that the new location satisfies the location requirements of section 5.5 and the Licence Manager shall provide a report to the Community and Protective Services Committee on the suitability of the new location that includes the applicant’s statutory declaration.

5.4 Number of Licences Authorized

- (1) Subject to subsection (2), the number of licences for operators carrying on the business of adult entertainment body-rub parlours that may be issued under this Part is limited to seven (7) licences.
- (2) The total number of adult entertainment body-rub parlour licences shall be reduced as licences expire without renewal or as the operators’ licences are otherwise surrendered or revoked until there are five (5) adult entertainment body-rub parlour licences.
- (3) Where the total number of adult entertainment body-rub parlour licences falls below the number five (5) by reason of the surrender or revocation of a licence, a licence may be issued to the first applicant who makes application after the surrender or revocation whose application complies with the provisions of the by-law.

5.5 Location requirements

- (1) In addition to any other locational and licensing requirements contained in this by-law in order for a licence to be issued, an adult entertainment body-rub parlour must conform to the following criteria:
 - (a) An adult entertainment body-rub parlour shall not be located within 100 metres of the premises of a school, day-care facility or a place of worship of a religious institution, existing on the date of the licence application. The separation distance of 100 metres from any point on a property line of the parcel of land containing the adult entertainment body-rub parlour shall be measured in any direction in a straight line to the nearest point on a property line of the parcel of land containing the school, day-care facility or the place of worship of a religious institution.
 - (b) An adult entertainment body-rub parlour shall not be located within 100 metres of the premises of a parcel of land zoned, including compound zones, in:
 - (i) a residential R1, R2, R3, R4, R5, R6, R7, R8, R9, R10 and R11 zone according to the Z.-1 Zoning By-law;
 - (ii) HR, RR, SR Zones according to By-law 5000 (formerly Township of London) Zones;
 - (iii) R1, R2, R3, R4, R5, R6, R7, R8 and R9 Zones according to By-law 2000 (formerly the Town of Westminster);
 - (iv) R1 and R2 Zones according to By-law 8-1984 (formerly the Township of Delaware);
 - (v) CR, RR, HR, R1, R2, R3 and FR Zones according to By-law No. 63-91 (formerly Township of West Nissouri);
 - (vi) HR, R1, R2, R3 and MHP Zones according to By-law 20-95 (formerly the Township of North Dorchester).

The separation distance of 100 metres from any point on a property line of the parcel of land containing the adult entertainment body-rub parlour shall be measured in any

direction in a straight line to the nearest point on a property line of the parcel of land zoned, including compound zones, in the zones listed under subsections 5.5(1)(b)(i), (ii), (iii), (iv), (v) and (vi).

- (c) an adult entertainment body-rub parlour shall not be located on lands zoned, including compound zones, in:
 - (i) a residential R1, R2, R3, R4, R5, R6, R7, R8, R9, R10 and R11 zone according to the Z.-1 Zoning By-law;
 - (ii) HR, RR, SR Zones according to By-law 5000 (formerly Township of London) Zones;
 - (iii) R1, R2, R3, R4, R5, R6, R7, R8 and R9 Zones according to By-law 2000 (formerly the Town of Westminster);
 - (iv) R1 and R2 Zones according to By-law 8-1984 (formerly the Township of Delaware);
 - (v) CR, RR, HR, R1, R2, R3 and FR Zones according to By-law No. 63-91 (formerly Township of West Nissouri);
 - (vi) HR, R1, R2, R3 and MHP Zones according to By-law 20-95 (formerly the Township of North Dorchester).
- (2) Subsection (1) shall not apply to the renewal of any annual licence.
- (3) For the purposes of this section,

“Day-care facility” means a “day nursery” as defined by the *Day Nurseries Act* and includes lands used in connection therewith;

“Place of Worship of a Religious Institution” means a place of worship exempt from assessment pursuant to the *Assessment Act*;

“School” means an institution for education or instruction as defined in the *Education Act* and includes lands used in connection therewith;

5.6 Application - licence - requirements

Every application for the issuance or renewal of an adult entertainment body-rub parlour licence shall be made to the Licence Manager and shall contain the following information, including any documentation supporting the information as required by the Licence Manager:

- (a) the full name, street address and mailing address of the applicant;
- (b) whether or not the applicant is a sole proprietorship, partnership or corporation;
- (c) where the applicant is a sole proprietorship or partnership, the full name, street address, mailing address, occupation and date of birth, of the individual comprising the sole proprietorship or of each individual who is a member of the partnership;
- (d) where the applicant is a corporation or a partnership of which a member is a corporation, the date and jurisdiction of incorporation, and the full name, street address, mailing address, occupation, and date of birth of each officer, director and shareholder of record, the total number of shares held by each shareholder, and the number of voting shares held by each shareholder;
- (e) particulars of the nature of business or employment during the previous three (3) years of the individual comprising the sole partnership or of each member of the partnership or of each officer, director and shareholder of the corporation;
- (f) the full name and address of any individual or corporation whose name is not otherwise disclosed and who has any financial interest beneficially in or otherwise exercises control or direction over the applicant;
- (g) particulars of any conviction, except one in respect of which a pardon has been granted, or any proceedings currently pending under the *Criminal Code (Canada)* or under this by-law involving the applicant or any person whose name is disclosed in the application;

- (h) the name under which the adult entertainment body-rub parlour is to be operated;
- (i) the street address at which the adult entertainment body-rub parlour is to be operated;
- (j) the current zoning of the premises in which the adult entertainment body-rub parlour is to be operated and, where the use of the premises for that purpose is not permitted or does not conform to the current zoning, the particulars of any minor variance or legal non-conforming use allowing the use of the premises for that purpose, and;
- (k) evidence that the owner or operator has an interest in the lands and premises upon which the adult entertainment body-rub parlour is to be operated which will enable the owner or operator to carry on the business.

5.7 Application - incomplete - information missing

Every application for the issuance or renewal of an adult entertainment body-rub parlour licence or attendant licence shall be accompanied by:

- (a) a sworn statement of the applicant stating that he has knowledge or has informed himself of the facts set out in the application and that he believes those facts to be true;
- (b) the fee prescribed in Schedule "A" of this by-law;
- (c) the information required under section 5.6 and any documentation supporting that information as required by the Licence Manager

and the application is incomplete so long as the sworn statement is lacking or any fees due are unpaid, or any information required under section 5.6, and any documentation supporting that information as required by the Licence Manager, has not been provided.

5.8 Application - to appropriate officials - by Licence Manager

The Licence Manager shall provide a copy of every application for the issuance or renewal of an adult entertainment body-rub parlour licence to:

- (a) the Chief Building Official;
- (b) the Chief Fire Prevention Officer;
- (c) the Chief of Police;
- (d) the Medical Officer of Health; and
- (e) to such other Civic Departments, Boards, Commissions, Authorities or other Agencies as the Licence Manager considers may have an interest in the application;

who shall submit comments or recommendations to the Licence Manager in respect of the application within such time as the Licence Manager may specify.

5.9 Issuance - rejected - conditions

The Licence Manager shall issue an adult entertainment body-rub parlour licence to an applicant, except where:

- (a) the past conduct of the applicant, or an individual who is a member of a partnership that is the applicant, affords reasonable grounds for belief that the business of the adult entertainment body-rub parlour will not be carried on in accordance with law;
- (b) the applicant is a corporation or a partnership of which a member is a corporation and the past conduct of its officers, or directors, or of a shareholder who owns or controls ten percent (10%) or more of its issued and outstanding voting and non-voting shares, affords reasonable grounds for belief that the business of the adult entertainment body-rub parlour will not be carried on in accordance with the law;
- (c) the applicant is carrying on activities that are, or will be, if the applicant is licensed, in contravention of this by-law;
- (d) the premises in which the adult entertainment body-rub parlour is, or will be, located do not comply with the provisions or requirements of this by-law;
- (e) in the case of an application for a licence, all licenses authorized by this Part of this by-law have been issued or renewed and are outstanding; and
- (f) the application therefore is incomplete.

5.10 General Conditions - licence

- (a) Every licence that is issued for the first time, and every renewal thereof, is subject to the following conditions of obtaining, continuing to hold or renewing a licence, all of which shall be performed or observed by the operator of an adult entertainment body-rub parlour at all times while the licence is in force:
 - (i) the operator shall post the adult entertainment body-rub parlour licence in a prominent place near the main entrance;
 - (ii) the operator shall maintain a record of employees which identifies employees by full name, date of birth and current address;
 - (iii) the operator shall not employ any person under the age of eighteen (18) years and shall not permit any person actually or apparently under the age of eighteen (18) years to enter or remain in any adult entertainment body-rub parlour owned or operated by him;
 - (iv) the operator shall not permit any alcoholic beverages on the premises;
 - (v) the operator shall provide clean contact surfaces, including tables, mats and other such surfaces, upon which persons lie or sit, while being given or provided with any services, which are clean and in good repair, and shall have a top surface of impervious material that is able to be readily cleaned and sanitized between clients;
 - (vi) the operator shall ensure that any surface referred to in subsection (e) hereof, is covered with a fresh clean individual paper or cloth sheet before any person receives any services thereon;
 - (vii) the operator shall ensure that all linens are changed between services of different individuals;
 - (viii) the operator shall ensure that all linens are laundered after each use;
 - (ix) the operator shall keep clean and soiled linens separate at all times;
 - (x) the operator shall provide a hand wash basin on the premises, accessible to service attendants and clients;
 - (xi) the operator shall supply each basin with hot and cold running water;
 - (xii) the operator shall provide liquid soap and paper towels for hand washing;

- (xiii) the operator shall provide the name and address of every attendant or other person performing services in the adult entertainment body-rub parlour, including the date of commencement and the date of termination of such services;
 - (xiv) the operator shall not perform or permit to be performed services in any adult entertainment body-rub parlour by or upon any person whom the operator has reasonable cause to suspect has been exposed to or is suffering from any communicable disease including any communicable skin disease or infestations;
 - (xv) the operator shall maintain the adult entertainment body-rub parlour and related common areas in a clean and sanitary manner;
 - (xvi) the operator shall be able to demonstrate either a contract with a professional laundering service or the provision of onsite laundry facilities;
 - (xvii) the operator shall provide service in such a way as to prevent the spread of communicable disease;
 - (xviii) the operator shall ensure that the adult entertainment body-rub parlour, including the common area, is not more than 225m² in size;
 - (xix) the operator shall have a contractual or proprietary interest in the lands and premises upon which the business is to be operated which will enable the owner or operator to carry on the business;
 - (xx) the operator shall ensure that no services are visible from outside the premises in which the adult entertainment parlour is located;
 - (xxi) the operator shall not permit any person to use any camera or other photographic recording device, except for permanently mounted security cameras, on the premises other than a person authorized to enforce this by-law or any other legislation or regulation governing the premises;
 - (xxii) if the operator permits permanently mounted security cameras on the premises, the operator shall post signs with print at least 8 centimeters in height in clearly visible places inside the premises indicating that such cameras are in use.
- (b) Every operator who fails to comply with a condition listed under subsection 5.10(a) is guilty of an offence.

5.11 Non-issuance licence - defined location - Licence Manager to report

Where a licence that has been issued for a defined area or location in Schedule "K" has expired without renewal or is otherwise surrendered or revoked, the Licence Manager shall notify the Community and Protective Services Committee for the purpose of the Community and Protective Services Committee giving consideration to whether or not the by-law should be amended in accordance with paragraph (d) of section 5.3 of this Part of the by-law.

APPENDIX B