



INFORMATION REPORT

TO:	Mayor and Members Planning Committee
COMMITTEE DATE:	May 31, 2016
SUBJECT/REPORT NO:	Massage Parlours - Enforcement of Illegal Businesses – (Outstanding Business List Item) (PED16077) (City Wide)
WARD(S) AFFECTED:	City Wide
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SIGNATURE:	

Council Direction:

At the meeting of February 2, 2016, the Planning Committee directed staff to prepare a report outlining recent changes related to the possible operation of illegal massage parlours in the City. The Committee also directed that the report highlight the current challenges of enforcing contraventions to Hamilton’s Licensing By-law, including, but not be limited to, the impact of recent Federal sex trade laws (Information Item (h)(iv) of Planning Committee Report 16-002).

Information:

There are three types of massage license businesses available in Hamilton:

1. Massage by a Registered Massage Therapist, licensed by the Province;
2. Massage appealing to an erotic or sexual appetite (Body-Rub Parlour - Schedule 4 of Licensing By-law 07-170); and,
3. Massage done by someone who is not a Registered Massage Therapist (Personal Wellness Services Establishments - Schedule 15 of Licensing By-law 07-170).

In 2011, the City passed a By-law which created Schedule 15 to Licensing By-law 07-170 to regulate Personal Wellness Services Establishments. The By-law was formed to regulate holistic businesses providing services involving physical touching and to differentiate businesses that operate as body-rub parlours where physical touching is designed to appeal to erotic or sexual appetites. This Schedule ensured that holistic

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service providers, including businesses offering such services as Aromatherapy Massage, Reiki, Hot Stone Massage, Shiatsu or Reflexology were operating with a licence, ensuring consumer protection and health and safety. Personal Wellness Service Establishments (Schedule 15) are restricted only by hours of operation (7:00 a.m. to 10:00 p.m.) and keeping the premises clean and sanitary.

Under the authority of the *Municipal Act, 2001*, the Licensing By-law has the ability to limit the number of Body-Rub Parlour licences. Currently, there are two licensed Body-Rub Parlours and to date, there has been no further discussion to increase this number. By comparison, there are six licensed Personal Wellness Services Establishments (Schedule 15). There are also 644 Personal Aesthetic Services (Schedule 13) licensed and some of these have multiple licences that also allow for activities related to massaging. There are several unlicensed massage parlours within the City operating outside of the scope of Schedules 4 and 15 and they are currently in different investigative stages by the Licensing Section.

In the past, By-law charges have been laid for businesses operating as Body-Rub Parlours (Schedule 4) without a proper licence. The Licensing Section, in conjunction with the Hamilton Police Service (HPS), has previously worked together in identifying these illegal massage parlours.

The new challenge, however, is that Federal legislation has been changed relative to sex trade workers. This follows the Supreme Court of Canada's decision to strike down Canada's prostitution laws in *Bedford* and in the implementation of Bill C-36 *Protection of Communities and Exploited Persons Act* (see Appendix "A" attached to Report PED16077). The new law changed how Police Services across Canada deal with persons involved in the sex trade. The HPS has adopted the approach that follows the intent of the legislation that takes a victim-centered approach and does not victimize women who make a choice to work in the sex trade. The HPS periodically enters massage parlours pro-actively to check for criminal activities, as well as the well-being of those working at the establishments, to ensure that they are not being coerced or exploited in any manner and to build a positive relationship with them.

The Licensing Section is focused on ensuring that no massage parlour is operating without a licence or outside the restriction of their licence. Unfortunately, Schedule 15 allows a Personal Wellness Services Establishment to obtain a licence legally, but then under the guise of Schedule 15 offer illegal erotic services.

As it is no longer a criminal offence for an attendant to offer services above what is legally allowed, the collection of evidence to prosecute a by-law has become more difficult.

Licensing enforcement is disadvantaged in that:

- (a) Municipal Law Enforcement Officers are not trained in the methods of approaching sex trade workers and gaining evidence used to prosecute successfully. There is also significant risk involved for the MLE Officers in this approach; and,
- (b) These activities occur in private, where the only persons evidencing the activity are the client and worker.

Although it is an offence to knowingly advertise an offer to provide sexual services for consideration, those who sell their own services are protected from the criminal liability of committing this offence.

Further complicating the enforcement of massage parlours is the decision in *Vaughan (City) v. Tsui*, 2013 ONCJ 643 (CanLII). In 2013, Justice Shousterman held that the Body-Rub Parlours Section of the City of Vaughan's Licensing By-law attempted to legislate prostitution, which is within the scope of criminal law to regulate, not municipal by-laws. The Justice also found the rules dictating hours of operation to be discriminatory based on how late adult entertainment venues, including strip clubs, were allowed to be open. The City of Vaughan is appealing this decision.

Some of the enforcement challenges in dealing with Illegal Massage Parlours include the following:

- With only two Body-Rub Parlours allowed to be licensed within the City of Hamilton, Personal Wellness Services Establishments are fronting their operations to skirt around the rules to offer body rubs that are designed to appeal to erotic or sexual natures.
- There is a perception that all massage parlours are involved in illegal activities. However, staff recognize that this is not the case as many are legitimate businesses.
- The lack of advertising due to the new legislation has also made successful enforcement more challenging, as it is difficult for staff to locate the establishment.
- The Provincial Prosecutor requires "solid evidence" to secure a prosecution. Circumstantial evidence of a possible violation is insufficient for a conviction in the Courts.

- If the loophole used by some Personal Wellness Services Establishments is closed by repealing the Schedule (Schedule 15 - Personal Wellness Services Establishments.), the City's ability to charge and prosecute would be simplified. However, this scenario will create a situation where legitimate businesses operating under Schedule 15 would not require a business license.

Other municipal jurisdictions are also challenged with similar prosecution difficulties in their attempts to prove, by circumstantial evidence, that such businesses are operating as Body-Rub Parlours. Some have attempted to restrict how the workers dress, restrict hours of operation and prohibit certain materials on location that may be used in Body-Rub Parlours versus Personal Wellness Services Establishments.

As the Licensing Section is in the process of re-writing the Body-Rub and Personal Wellness Services Establishments Schedules in the Licensing By-law, staff will continue to research and look for best practices in other municipalities. Consideration will be given to best practices to ensure that there is a distinction between the holistic businesses to that of Body-Rub Parlours that are operating under the guise of Personal Wellness Services Establishments.

Appendices Attached

Appendix "A": The Supreme Court of Canada's Decision to Strike Down Canada's Prostitution Laws

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