



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Licensing and By-law Services Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	July 10, 2018
SUBJECT/REPORT NO:	Burlesque Entertainment – Amend Business Licensing By-law 07-170 (Schedule 1 Adult Entertainment) (PED18151) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Ken Leendertse (905) 546-2424 Ext. 3059
SUBMITTED BY:	Ken Leendertse Director, Licensing and By-law Services Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That Schedule 1 (Adult Entertainment Establishments) of the City of Hamilton’s Business Licensing By-law 07-170 be amended to add a definition of “burlesque entertainment” and to amend the definition of “adult services” to create an exemption for burlesque entertainment, as described in Report PED18151;
- (b) The subject to approval of Recommendation (a), the Business Licensing By-law 07-170 be amended and enacted by Council, with content acceptable to the General Manager of Planning and Economic Development and in a form satisfactory to the City Solicitor;
- (c) That the item respecting the feasibility of amending the Licensing By-law including comparators across the country to clearly define adult services in relation to the distinction between strip clubs and other performances, including but not limited to burlesque, be identified as complete and removed from the Planning Committee Outstanding Business List.

EXECUTIVE SUMMARY

At its meeting of January 17, 2017, Council approved Item (g)(i) of Planning Committee Report 17-001 directing staff to report back on the feasibility of amending the Licensing By-law including comparators across the country to clearly define adult services in relation to the distinction between strip clubs and other performances, including but not limited to burlesque.

A detailed comparison of 27 municipalities, attached as Appendix “A” to this Report, was conducted and it was determined that there was no distinction within the definitions of the by-laws reviewed that differentiated between “adult services” and “burlesque entertainment”. To define adult entertainment establishment most municipalities rely on the definition contained in the *Municipal Act, 2001, Sec 154(2)(a)* being: “goods, entertainment or services that are designed to appeal to erotic or sexual appetites or inclinations,” which references services for which a principal feature is nudity, or partial nudity of a person.

A scholarly review approach better distinguishes the difference between adult services and burlesque. The main distinction is the intent of the entertainment; adult services aim at sexual arousal while burlesque does not.

With this distinction in mind, staff recommends an amendment to Schedule 1 of the Business Licensing By-law to add a definition of burlesque entertainment and to amend the current definition of adult services to exclude burlesque entertainment.

Alternatives for Consideration – See Page 4

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: Schedule 1 of the Business Licensing By-law 10-070 will be amended to add a definition of burlesque entertainment and to exclude burlesque entertainment from the definition of adult services.

HISTORICAL BACKGROUND

In August 2016, By-law charges were laid against two burlesque dancers and a business owner for engaging in a business of adult services without a licence. After the charges were issued, the two performers appeared before Committee urging the City to change the definition of adult services to exclude burlesque dancing because they believed their performance was art and not stripping. Staff was directed to examine the difference and look at municipal comparators.

On March 5, 2018, both performers plead guilty to engaging in the business of adult services attendant without a licence.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

N/A

RELEVANT CONSULTATION

Legal Services was consulted in the preparation of this Report.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Schedule 1 of the Business Licensing By-law 07-170 defines adult services as services appealing to or designed to appeal to erotic or sexual appetites or inclination and includes, but is not limited to:

- (a) services of which a principal feature or characteristic is the nudity, or partial nudity or any person;
- (b) services in respect of which the word nude, naked, topless, bottomless, sexy or any other word or any picture, symbol or representation having like meaning or implication is used in any advertisement; or,
- (c) activities, facilities, performances, dances, exhibitions, viewings and encounters in an adult services entertainment establishment.

The essence of burlesque entertainment does fall within the current definition as reflected in the numerous Municipal By-laws which characterizes the performance or dance with partial nudity or characteristics of nudity.

The definition of burlesque, according to the Webster dictionary, is a performance which is based on satire and humour and partial nudity. There is a growing trend for communities and citizens to be involved with burlesque dancing as a form of entertainment. The principal feature of burlesque is that of entertainment versus that of sexual arousal.

When examining the roots of burlesque dancing and how it has developed and is currently being portrayed in our communities, it is a form of entertainment and satire versus a performance designed to appeal for sexual appetite. This is never more evident in the crowds that attended burlesque entertainment as they are usually couples, unlike what you would find in a typical strip club.

Examining other specific definitions throughout North America, the City of Phoenix best delineates the difference of activities and their intent. An excerpt from the definition of “adult cabaret” for licensing is as follows:

“Nothing in the definition of "adult cabaret" shall be construed to apply to the presentation, showing, or performance of any play, drama, or ballet in any theatre, concert hall, fine arts academy, school, institution of higher education, or other similar establishment as a form of expression of opinion or communication of ideas or information, as differentiated from the promotion or exploitation of nudity for the purpose of advancing the economic welfare of a commercial or business enterprise.”

The Phoenix By-law does not look to license entertainment which is “a form of expression of opinion or communication of ideas or information, as differentiated from the promotion or exploitation of nudity for the purpose of advancing the economic welfare of a commercial or business enterprise”. This definition also exempts some theatre shows/plays that involve nudity. In our opinion, burlesque entertainment would not fall under the definition adult cabaret if the intent is not arousal.

In the scholarly article titled “Undressing the First Amendment and Corseting the Striptease Dancer,” anthropologists found that forms of dance serve as forms of non-verbal communication. Also, dance is a language in the sense of being a systemic means of communicating ideas or feelings. Music and costume as well as pantomime and role-playing may enhance the messages.

If there is a conclusion that burlesque is an expression/communication of ideas, satire or comedy, then the Phoenix By-law is useful when considering possible amendments to Schedule 1 of the Business Licensing By-law 07-170.

A proposed definition of Burlesque Entertainment for amendments to this Schedule is:

Burlesque Entertainment: *means a type of variety show or performance, including comic or musical sketches that may be both provocative and comedic, and that may feature minimum costuming, sexually related dialog, witty remarks and dancing for the purpose of entertainment, ridicule, satire and humor, rather than the sexual arousal of its audience.*

ALTERNATIVES FOR CONSIDERATION

Special Events Permit (Burlesque Entertainment)

An alternative would be to create a Special Events Permit to allow for burlesque entertainment as a specific activity for a limited period of time.

Currently Schedule 1 of the Business Licensing By-law restricts the number of licences and the location of all adult services to locations currently licensed as Adult Entertainment Establishments. There is currently one active licence, however Section

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

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

**SUBJECT: Burlesque Entertainment – Amend Business Licensing By-law 07-170
(Schedule 1 Adult Entertainment) (PED18151) (City Wide) - Page 5 of 5**

7(1) of Schedule 1 of the Business Licensing By-law allows for two locations, but only in very restricted locations.

If the Committee continues to support the interpretation of “adult services” as including burlesque entertainment, an alternative to the current conditions would be to develop a temporary Special Events Permit. This permit would allow for burlesque entertainment to occur throughout the City with permission for single events. This alternative will change the current By-law to permit this activity, while reducing the restrictions currently imposed for burlesque entertainment versus that of all adult services under the Schedule.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Healthy and Safe Communities

Hamilton is a safe and supportive city where people are active, healthy, and have a high quality of life.

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A”: Municipal Comparison on Adult Entertainment

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