

December 5, 2018

To: Members
Executive Committee

Re: Plan to Engage the Public and Stakeholders on the Regulation of Massage Parlours

RECOMMENDATION

**RECOMMENDATION OF THE EXECUTIVE COMMITTEE
- OCTOBER 10, 2018**

1. Approve the Public Engagement Plan as described in the body of this report and detailed in Appendix A, including the following:
 - a. Community meetings with interested and invested stakeholder groups and organizations as identified in consultation with City of Regina Community Services and Regina Police Service
 - b. Targeted Adult Services providers (both establishment operators and service practitioners) as identified in consultation with Regina Police Services
2. Approve the regulatory and policy options related to Massage Parlours as described in the body of this report and summarized in Appendix B as the focus of public and stakeholder engagement.
3. Direct the Administration to return to Executive Committee by the end of the second quarter of 2019 with a recommendation on how to regulate Massage Parlours and a high-level implementation plan for the recommendation.
4. That this report be forwarded to the December 17, 2018 meeting of City Council for approval.

EXECUTIVE COMMITTEE – OCTOBER 10, 2018

The Committee adopted a resolution to concur in the recommendation contained in the report.

Councillors: Bob Hawkins (Chairperson), Lori Bresciani, John Findura, Jerry Flegel, Joel Murray, Mike O'Donnell, Andrew Stevens and Barbara Young were present during consideration of this report by the Executive Committee.

The Executive Committee, at the **PRIVATE** session of its meeting held on October 10, 2018, considered the following report from the Administration:

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3. Direct the Administration to return to Executive Committee by the end of the second quarter of 2019 with a recommendation on how to regulate Massage Parlours and a high-level implementation plan for the recommendation.
4. That this report be forwarded to the December 5, 2018 public meeting of Executive Committee and the December 17, 2018 meeting of City Council for approval.

CONCLUSION

The City of Regina (City) has seen a growth in the presence of massage parlours. This report is intended to provide options to ensure that these establishments, which are generally legal under the *Criminal Code*:

- Do not unduly affect the character of a neighbourhood
- Do not create unsafe circumstances for the surrounding neighbourhood, the workers in the establishments and their clients.

Regulatory options range depending on the City's policy intentions in relation to massage parlours. The Administration has crafted two policy options based on two different policy intentions.

It is worthwhile to engage the public in the exploration of the policy intentions and their implications for the community. It is also worthwhile to engage those working in and operating massage parlours to ensure that proposed regulation meet intended outcomes.

Administration recommends that interested and invested stakeholder groups and organizations, those working in and operating massage parlours and the general public be provided with opportunities to provide input on the options under consideration and to refine them to achieve the desired objectives.

BACKGROUND

This report is provided in response to an undertaking made in 2015. There are no documented resolutions directing this work. Since 2015, there has been no public discussion of this issue at

Executive Committee or City Council. The Administration has the delegated authority to engage the public on policy options in advance of providing advice to City Council. However, there is a risk of undertaking public engagement on these issues in the absence of a discussion in public by Executive Committee. This report is provided to Executive Committee, prior to the launch of public engagement.

Historical Background

For historical context, it is helpful to understand the background not only of this issue in front of City Council, but also of the other contextual issues leading to some of the decisions.

In January of 2014 the provincial *Alcohol Control Regulations* were amended to allow strippers to perform in licensed establishments.

In February of 2014 the Administration proposed amendments to the *Regina Zoning Bylaw No. 9250* (Zoning Bylaw) to change definitions related to adult entertainment in response to the changes to the *Alcohol Control Regulations*.

In December of 2014 the Government of Canada amended the *Criminal Code* in response to a Supreme Court ruling on prostitution. The amendment shifts the criminality from the selling of sexual services to the purchase of sexual services (obtaining sexual services for consideration). The change in the law has resulted in a significant increase in establishments offering services that might be interpreted as sexual services.

While there is no definition of “sexual services” in the *Criminal Code*, the federal Department of Justice has defined “sexual services” as, “*a service that is sexual in nature and whose purpose is to sexually gratify the person who receives it. ‘Obtaining a sexual service for consideration’ involves an agreement for a specific sexual service in return for payment or another kind of consideration, including drugs or alcohol. It doesn’t matter whether payment is made by the person who receives the sexual service or by another person. Activities that amount to ‘obtaining a sexual service for consideration’, if a person pays for them, include: sexual intercourse; masturbation; oral sex; lap-dancing, which involves sitting in a person’s lap and simulating sexual intercourse; and, sado-masochistic activities, provided that the acts can be considered to be sexually stimulating or gratifying.*”

In January of 2015 City Council considered a recommendation to approve a discretionary use application to locate a strip club in the industrial area of the city. The proposed club met all zoning requirements as per the Zoning Bylaw. When the recommendation was considered, twenty delegations appeared and petitions with in excess of 2,500 signatures were received. All were against the approval of the discretionary use application.

In denying the recommendation, City Council cited the following concerns:

- The legal uncertainty arising from recent changes to federal criminal legislation provincial liquor regulations
- Public health and safety concerns, notably as expressed by the public, the lack of regulation and licensing of workers, as well as the potential for increased costs of law enforcement

- Insufficient parking for the proposed development
- Lack of collaboration among agencies to ensure worker health and safety
- Lack of information regarding the building ownership and/or corporate structure of the applicant
- Adverse impact on adjacent properties and the related negative impact on the overall neighbourhood.

The minutes of the January 2015 meeting include no referral to the Administration for additional review of Adult Entertainment. However, the Administration made an undertaking to investigate the licensing of adult services. This report is a follow-up to that undertaking.

In April of 2015, after briefly permitting strippers in licensed establishments, the Government of Saskatchewan amended liquor regulations to ban strippers where alcohol is served (including special event permits). The regulations provide for a “once a year” exception to raise money for charities. This represents the only Provincial regulation of adult services.

Prior to embarking on a discussion of options there are two context pieces that are provided:

1. Definitions and terms to clarify language for the purposes of this report.
2. Background on issues that have emerged during the development of this report

Definitions

The City of Regina has established several definitions related to adult services in the Zoning Bylaw. Detail on these can be found in Appendix C.

In this report, any reference to the specific land uses above will use the term from the Zoning Bylaw. Where this report is referring to the collection of these services, it will refer to “adult services”. The report makes recommendations to change some definitions and language. Where these changes add additional clarity, the new terms are used.

Contextual Issues

“Sexual Services”

The *Criminal Code* allows individuals to sell sexual services as long as they are providing them (i.e. the sexual services are not being sold by an agent). However, the *Criminal Code* also prohibits the purchase of sexual services. The Federal Department of Justice, in a circular on the issue, asserts that this means that prostitution itself is still illegal.

Authorities Under *The Cities Act*

The Cities Act lays out the jurisdiction within which a City can enact bylaws. The areas listed in the Act that are relevant to the issues discussed in this report are (s 8(1)):

- (b) the safety, health and welfare of people and the protection of people and property;
- (d) nuisances, including property, activities or things that affect the amenity of a neighbourhood
- (h) businesses, business activities and persons engaged in business;

Any bylaw enacted by the City must be for a municipal purpose.

Section 8(3) of *The Cities Act* elaborates on the City's authority to enact bylaws, by describing its authority to issue licences. Within this authority, the following points are relevant to the issues under discussion in this report:

- (c) provide for a system of licences, inspections, permits or approvals, including any or all of the following:
 - (iii) prohibiting any development, activity, industry, business or thing until a licence, permit or approval has been granted or an inspection has been performed;
 - (iv) providing that terms and conditions may be imposed on any licence, permit or approval and setting out the nature of the terms and conditions and who may impose them;
 - (vi) setting out the conditions that must be met before a licence, permit or approval is granted or renewed, the nature of the conditions and who may impose them;
 - (vii) providing for the duration of licences, permits and approvals and their suspension or cancellation for failure to comply with a term or condition of the bylaw or for any other reason specified in the bylaw;
 - (viii) determining the manner in which any licence, permit or approval is to be allocated;

If inspection is required to enforce a bylaw, the authority to inspect must be provided within the bylaw. *The Cities Act* provides the following:

324(1) If this Act or a bylaw authorizes or requires anything to be inspected, remedied, enforced or done by a city, a designated officer may, after making reasonable efforts to notify the owner or occupier of any land or building to be entered to carry out the inspection

This authority is limited such that an inspector cannot enter a private dwelling without at least one of: 1) permission of the owner; or 2) a warrant. For any property that is not a private dwelling, an inspector has the right to enter during 'reasonable hours' upon providing reasonable notice. If entry is denied, a warrant can be requested. *The Cities Act* provides that if a person refuses to allow or interferes with an inspection of a business premise or if a person fails to respond to reasonable requests for an inspection of a business premise then a judge may issue a warrant authorizing entry.

Clarifying Intention

City Council's rationale for denying the Discretionary Use application for a strip club in 2015 provides some insight into potential intentions for exploring the regulation of adult services more fully than has been the case up to now. City Council noted both public health and safety concerns (for both clients and workers in the sector) as well as adverse impacts on adjacent properties and the surrounding neighbourhood.

If, indeed, the objective of further regulation of adult services is safety for workers and clients, then there are factors that must be taken into consideration. Crime Prevention Through Environmental Design (CPTED) principles (the application of which is a policy goal of *Design Regina: The Official Community Plan Bylaw 2013-48 (OCP)*), would argue that such establishments should be located in high traffic areas that are well lit with visible entries and

exits. These principles would argue against zoning adult services into areas like industrial, where traffic is low. Such zoning would more than likely be inconsistent with the other concern noted by City Council, the adverse impacts on adjacent properties and the surrounding neighbourhood. These two themes provide the framework for the options presented.

Zoning

All land uses for adult services are Discretionary Uses in Industrial Zones. Adult services are not permitted in any other zone. There are currently no adult services establishments operating in compliance with the Zoning Bylaw.

The Term “Massage”

The City of Regina’s Zoning Bylaw uses the term “Massage Parlour” to describe the business operations under discussion in this report. There is potential for the term to be confused with therapeutic massage. In response to this concern, most jurisdictions in Canada have introduced the term “Body Rub Parlours” and “Body Rub Practitioners” to avoid confusion. The Administration recommends that the City of Regina transition to this term and begin to use it for the proposed public engagement.

DISCUSSION

Options to Regulate Massage Parlours

The options that are proposed as the subject of the public engagement process are not necessarily mutually exclusive. They are organized based the primary intention that would be satisfied by the option. The purpose of public engagement at this stage is to educate the public on some of the issues related to adult services in general and to obtain input to refine the options prior to making a recommendation to City Council. Further public engagement may be required depending on the final recommendation and City Council’s decision as part of the development of future bylaws. Note that, the term “massage” is seldom used by other jurisdictions in relation to adult services because of potential confusion with therapeutic massage. For clarity’s sake, the Administration recommends using the term “body rub” to distinguish the adult service under discussion. This is the term most commonly used across Canada.

1. Primary Intention: to minimize impact on adjacent properties and the surrounding neighborhood
 - Key Approach: Enforce the current Zoning Bylaw, which permits body rub parlours only as Discretionary Use in Industrial Zones. Any currently operating body rub parlours are not compliant with the Zoning Bylaw.
 - Key Outcome: Body rub parlours operate only in industrial zones where discretionary use approval has been obtained. Any currently operating body rub parlours would be required to move from their current location. Any future location would have to be in specified Industrial Zones and would be subject to City Council’s discretionary use approval. This approval would consider issues like separation distances and impact on the area and surrounding businesses.

- Key Implications:
 - Increased cost for zoning investigation and enforcement
 - Elimination of body rub parlours on major arterials
 - Cost not recoverable

- 2. Primary Intention: to enhance the safety of adult services workers and their clients
 - Key Approach: Establish an Adult Services Licensing Bylaw that requires both body rub establishments and body rub practitioners to be licensed. Change zoning to allow for body rub establishments as a discretionary use in some commercial zones (major arterials and corridors and downtown).

 - Key Outcome: Body rub establishments would be subject to new regulations designed to address public and worker safety, including the application of Crime Prevention Through Environmental Design (CPTED) principles.

 - Key Implications:
 - Establishments: Would be located in areas with high vehicular and pedestrian traffic that are subject to routine police patrols. Licensing criteria would control the appearance and operation of establishments, such as:
 - Zoning, including separation distances, which will require some establishments to move from their current locations
 - Saskatchewan Health Authority's *Saskatchewan Personal Service Facility Best Management Practices* (subject to inspection by the Saskatchewan Health Authority)
 - Licensed body rub practitioners exclusively
 - CPTED safety standards for site design, lighting, etc.
 - Appearance standards that do not unduly disrupt the business area in which they are located (signage, etc.)
 - Criminal record check
 - Practitioners: Criteria would be established limiting who could work in body rub establishments:
 - Criminal record check
 - 18 years of age or older
 - Legally able to work in Canada
 - Potential to require that practitioners have participated in training about personal safety and exiting the sector
 - Some enforcement costs recoverable through licensing fees.

Public Engagement Plan

Full detail of the public engagement plan is provided in Appendix A.

The objective of the public engagement plan is to gather feedback on the two options that Council will consider for regulating body rub parlours.

- Body Rub Sector Consultation:

- Approach: focus groups and/or key informant interviews. Participants would be identified in cooperation with Regina Police Service. The process will need to be a confidential, no-consequence interaction in small groups or one-on-one conversations.
- Implications: Small resource requirement for meeting rooms and refreshments.

- Interested and Invested Stakeholder Groups and Community Organizations:
 - Approach: Focus groups in structured conversation. Participants would be identified in cooperation with Regina Police Service and Community Services
 - Implications: Small resource requirement for meeting rooms and refreshments

- Residents
 - Approach: Notification will be provided via the media and through published copies of this report via the public Executive Committee meeting agenda for November 14th. Residents who wish to respond may respond in writing or inquire about the focus group process.

- Timing: There are challenges associated with undertaking engagement in the month of December. It is recommended engagement occur early in the new year.

RECOMMENDATION IMPLICATIONS

Financial Implications

Resources to implement the public engagement plan are minimal and will be found within existing budgets.

Environmental Implications

None related to this report

Policy and/or Strategic Implications

The recommendations are unconnected with the corporate strategic plan. The extent to which other City policies and bylaws are affected are detailed within the report.

Other Implications

None related to this report

Accessibility Implications

None related to this report

COMMUNICATIONS

Significant cross jurisdictional research has been undertaken in the development of this report. Engagement has already occurred with the following:

- City of Saskatoon, including meetings and discussions with City personnel.
- Saskatchewan Health Authority
- Regina Police Service (which participated in the project team developing these recommendations)
- Massage Therapists Association of Saskatchewan

No engagement with the public or the body rub sector has taken place in advance of this report. This report recommends a significant public engagement process to test and refine the options, the details of which are found in Appendix A.

DELEGATED AUTHORITY

The recommendations in this report are under the delegated authority of the Executive Committee.

Respectfully submitted,

EXECUTIVE COMMITTEE



Jim Nicol, Secretary