

Appendix E

Issues and Choices

1. Regulation vs. Banning

There are two key elements to this question: the impact of a ban on the safety of those working in massage parlours and the legal authority to enact a ban.

Impact of a ban. Virtually all of those participating in the engagement, including those advocating for a ban, concurred that a ban on massage parlours in Regina would result in either the workers moving to another city to continue their work or the workers remaining in Regina but transitioning to more risky forms of sex work such as escort work or street prostitution. There was no suggestion that a ban would result in positive options for those working in the sector. There were occasional suggestions that workers might use the opportunity to get out of the sector, but most agreed that this was unlikely without significant interventions. Research evidence supports the conclusion that banning will result in further stigmatization of sex workers, which increases the risks they face.

Legal Authority

Municipalities do not have the authority to pass criminal laws, or laws which unjustifiably infringe the charter protected rights of individuals. Bylaws enacted for the purpose of prohibiting the sale of sex have been found to be outside the jurisdiction of a municipality and laws that made it illegal to sell sex from a building have been found to unjustifiably infringe the Charter rights of sex workers. A bylaw prohibiting the operation of body rub parlours is susceptible to challenge on the same basis that these laws were struck down.

Jurisdictional limits. While a municipality can regulate matters covered by the criminal law a municipality cannot act for criminal law purposes. Prohibiting of the sale of sex or the prevention or punishment of human trafficking are criminal law purposes. Any bylaw enacted for these purposes is likely to be struck down as invading the federal criminal law powers. In a 1983 case the Supreme Court of Canada found that a municipal bylaw which prohibited being in the street for the purposes of prostitution, enacted under a street use power, was an attempt to prohibit prostitution and therefore invaded the exclusive federal jurisdiction in relation to the criminal law.

Charter infringement. In 2013 the Supreme Court of Canada struck down the *Criminal Code* provisions which prohibited living off the avails of prostitution and operating a bawdy house (the *Bedford* decision). Three women working in the sex industry challenged these provisions on the basis that the laws made it illegal for them to take safety precautions and therefore deprived them of their *Charter* protected right to *security of the person*. The Court accepted the social science evidence presented at trial that it was far safer for the women to operate out of a building than on the street. The Court therefore found that the provisions prohibiting the operation of a bawdy house violated their *Charter* rights. The prohibition on operating within a building was found not to be justifiable because its impact on the sex workers' safety, was

not outweighed by the federal government's objective of combatting neighbourhood disruption.

2. **Confusion with Massage Therapy**

In Saskatchewan there are two bodies that regulate therapeutic massage – Massage Therapist Association of Saskatchewan, Inc. and Natural Health Practitioners of Canada. Both organizations require 2,200 hours of professional training and practice to become a Registered Massage Therapist. The ethical standards and guidelines of each of these associations prohibit sex work as part of the profession and such activity would result in a loss of recognition by the association.

The recommendations address this issue by suggesting changing the name for *massage parlours* to *body rub establishments*, the name most commonly used by other jurisdictions. The recommendations also propose changes to the *Zoning Bylaw* to specifically define massage therapy to distinguish it from other forms of massage, which will improve the City's ability to enforce its current or any future zoning for massage parlours.

Such options are not fool proof. Edmonton has enacted similar regulations, with significant success, but still has several legitimately licensed Registered Massage Therapists performing sex work in their businesses. Privacy legislation prohibits the City from reporting such activity to the registering associations, but the City is working with the associations to improve their ability to identify and regulate massage therapists performing sex work.

3. **Zoning**

Zoning is a mechanism to regulate land use within a municipality. Typically it is designed to ensure that incompatible land uses are not established adjacent to one another. It also establishes conditions that affect the character of districts and neighbourhoods, such as setbacks (the minimum distance which a building or other structure must be set back from a street or road, or other place which is deemed to need protection).

Two key zoning issues must be addressed:

- a. **Location of massage parlours.** Although the *Zoning Bylaw* restricts massage parlours to industrial zones, only two suspected massage parlours are currently operating in an industrial zone. The majority are operating on Victoria Avenue and Broad Street. One other is in a central residential neighbourhood. The reality is that no massage parlour wants to move. Based on responses gathered through public engagement, residents do not want these operations located near schools, churches or to private residences.

If the City continues to restrict massage parlours to industrial zones, all but one suspected massage parlour will have to move or shut down. If the City amends zoning to allow massage parlours in Major Arterial Commercial zones (or the equivalent in the new zoning bylaw), but creates requirements for separation distances from schools and churches, fewer establishments will be affected, but at least two suspected massage parlours would still be forced to move or shut down.

A key consideration is the Crime Prevention Through Environmental Design (CPTED) approach. CPTED principles argue that the more visible a business is, the more likely it is to be safe. Street lighting, pedestrian and vehicular traffic, as well as the frequency of routine police patrols, all play a role in adding to the relative safety of any location. In theory, allowing massage parlours to remain on Victoria Avenue or Broad Street will ensure workers are safer than if they were required to operate in industrial zones.

- b. **Discretionary vs permitted use.** Currently all adult services are a discretionary use in the *Zoning Bylaw*. Most of these services are not common in Regina (e.g. strip clubs, adult movies, etc.) and discretionary use applications seldom arise. The absence of enforcement regarding massage parlours has meant that most are not complying with location requirements and none have received discretionary use approval. If the City decides to increase the regulation of massage parlours, there will be a requirement to comply with zoning. If massage parlours remain a discretionary use in Regina all applications for massage parlours would be subject to review by both the Regina Planning Commission and City Council. However, Section 53 of *The Planning and Development Act* provides that, if a council passes a bylaw that makes a particular use a *discretionary use*, council is deemed to have approved the use if the use exists at the time of passing of the bylaw. Any existing massage parlour that is compliant with the amended zoning bylaw would be deemed to have been approved at the time the amending bylaw is approved. For any future massage parlours, a discretionary use application must be approved by City Council. Alternatively, Council has an option to establish strict zoning, including separation distances, but make massage parlours a permitted use or to delegate the authority to a Development Officer to approve discretionary use for this class of business.

4. **Licensing**

Licensing is a mechanism to regulate a business or sector. Licences are provided exclusively to those who meet the terms and conditions of the licence. *The Cities Act* provides the City with the authority to conduct routine inspections for any licensee to ensure that the terms and conditions of the licence are being met.

A key consideration in licensing is the safety of those working in the industry. There are numerous reports of financial and other forms of coercion among those who work in massage parlours, including from the RPS. While licensing is not intended to address or regulate human trafficking, its presence can limit the ability of those who use coercive techniques on vulnerable women, improving their safety while working in the sector.

Another consideration is the cost of the process to licence purchasers. Edmonton initially established a program that was cost prohibitive for both massage parlour operators and workers, and the result was low compliance. Its revised system focuses much more heavily on harm reduction. Now, operators have an annual licence fee of \$630 and workers are licensed at no charge. RPS Vice Squad agreed with this approach, but recommended that the penalties for non-compliance be significant to create a financial incentive to work within the system instead of outside it.

There are several options available regarding licensing:

- *License both massage parlours and workers.* This option provides the strictest conditions on massage parlours and their workers. The primary concern with this option relates to the workers' privacy. Licence information is not considered private and therefore is not protected by Saskatchewan's privacy laws. Many workers are opposed to documenting their work in this way. Many have indicated that this information would jeopardize their future careers or their ability to travel internationally.

Licence requirements can address many of the issues outlined in the table below:

Licence Requirements for Massage Parlours	Licence Requirements for Workers
<ul style="list-style-type: none">– Hours of operation– Signage/general appearance/CPTED principles– Compliance with provincial health standards and guidelines for personal services– Criminal record checks– Business ownership checks– Property ownership checks– Requirement to use only licensed massage parlour workers– Requirement to report any and all advertising	<ul style="list-style-type: none">– Legal age– Legally able to work in Canada– Criminal record checks– Training regarding personal health, safety, and exiting the sector– Requirement to work in only licensed massage businesses– Requirement to report any and all aliases– Requirement to report any and all personal advertising

- *License businesses only.* To address the above privacy concerns, this option considers licensing only massage parlours. This option could address most of the regulatory issues addressed by licensing workers by including them as part of the responsibility of the business operators. Thus, to qualify for a business licence, massage parlours would be responsible to ensure all workers:
 - are of legal age;
 - are legally able to work in Canada;
 - have obtained criminal record checks; and
 - have participated in training regarding personal health, safety, and exiting the sector.
- *No licensing.* This option considers the issue raised by academic researchers regarding the treatment of massage parlours in a way that is exceptional when compared to other body work such as massage therapy or tattoo. In this case, regulation would be limited to the regulation offered by zoning.