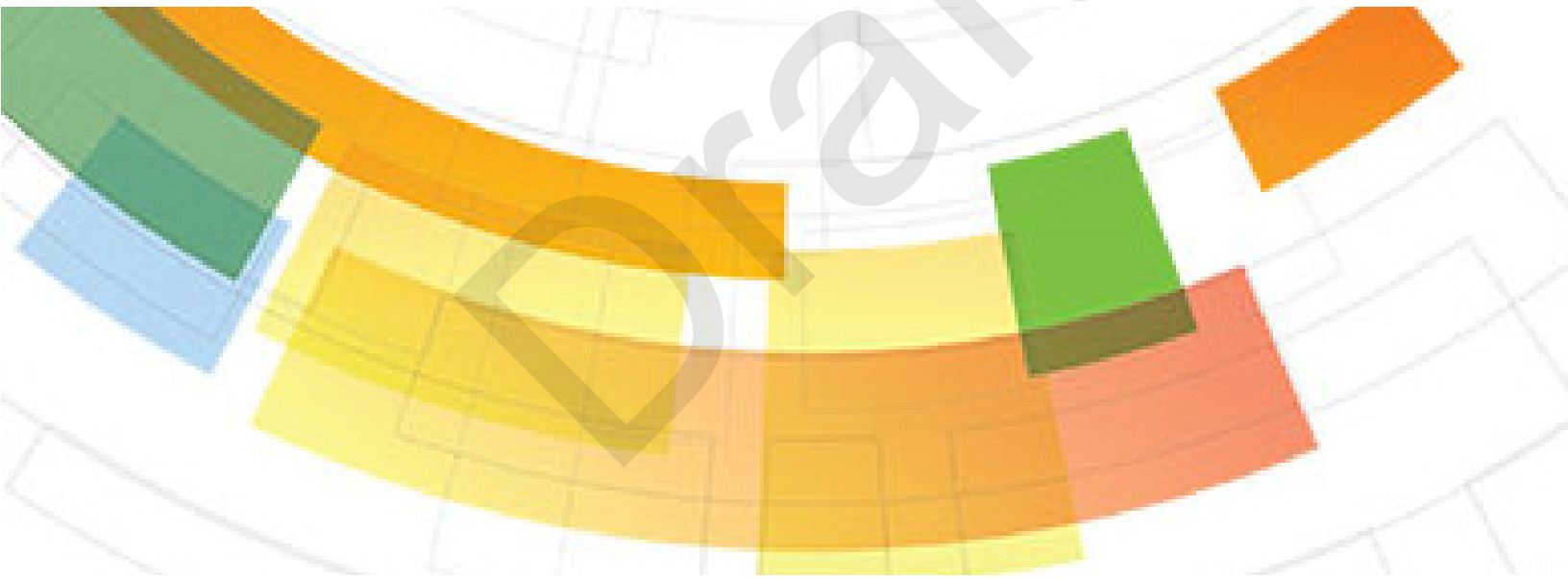


# City of MARKHAM

## Task 17: **Review & Assessment of Adult Entertainment & Sex Industry**

Comprehensive Zoning By-law Project



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# 1. INTRODUCTION

## 1.1 Purpose

The purpose of this report is to identify and review issues associated with *adult entertainment and sex industry uses* that need to be addressed prior to drafting a new comprehensive zoning by-law and to provide options for addressing these issues. Chapter 2 of this report will provide a review of relevant Markham Official Plan policies and zoning by-law regulations that deal with these uses. The chapter will also review the relevant sections of Markham's Stationary Business Licensing By-law 2012-158 that deal with adult entertainment parlour services and body rub owners, operators and attendants. Chapter 3 will review some examples of research and studies on the topic. Chapter 4 will examine case studies of five other municipalities (Toronto, Ottawa, Hamilton, Mississauga, and Oakville) on how their respective zoning by-laws control issues associated with adult entertainment and other uses associated with the sex industry. Finally, Chapter 5 will identify the issues reviewed in this report and provide options for dealing with these issues in the new zoning by-law.

## 1.2 Types of Uses & Their Definitions

There are generally five types of land uses and activities that have been identified to date that deal with *adult entertainment and sex industry uses*:

1. Adult entertainment establishments or parlours;
2. Body rub establishments or parlours;
3. Adult goods and/or adult video outlets;
4. Brothels, bawdy-house, or ‘swingers’ clubs; and
5. Apartment-based brothels which take place in hotels and apartment buildings.

Some of these uses are currently defined in one or more of Markham’s zoning by-laws and others are not. Markham’s Official Plan currently has no defined terms associated with adult entertainment or sex industry-related uses. Some terms are not even identified in zoning by-laws as land uses, but need to be considered in evaluating the trends that relate to emerging land uses.

As identified in the *Task 5 – Review & Assessment of Zoning By-law Definitions Report*, *adult entertainment parlour* is the term used in Markham’s zoning by-laws, which is currently defined four different, but similar ways. The definition of this use was first amended city-wide in 1986 under By-law 74-86, and subsequently was further amended in 2001 by By-law 2001-93. The most commonly used definition in the Markham zoning by-laws dealing with this use:

### *Adult Entertainment Parlour*

“means any premises or part thereof in which is provided, in pursuance of a trade, calling, business or occupation, services appealing to or designed to appeal to erotic or sexual appetites or inclinations; which services include activities, facilities, performances, exhibitions, viewings and encounters, a principal feature or characteristic of which is the nudity or partial nudity of any person, or 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.”<sup>1</sup>

Adult entertainment parlours (strip clubs and strip bars) have been around for many decades and have been recognized as a land use that is legal to operate under the laws of Ontario and Canada. Therefore, municipalities have used both business licensing by-laws and zoning by-laws to control the number and location of such uses within a municipality. As a legal use, zoning by-laws cannot ‘prohibit’ the use everywhere in the municipality.

In 1986, Markham had included the selling of adult goods and adult videos as part of the definition of adult entertainment parlours. These were subsequently deemed to be separate uses, and in 2001 the definition of adult entertainment parlours was changed again to exclude such uses as part of the definition. In association with the 2001 amendment, definitions for “adult goods” and “adult video outlet” were established in five parent zoning by-laws (2053, 165-80, 108-81, 177-96, and 2004-196) and are as follows:

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<sup>1</sup> By-law 177-96, City of Markham, Section 3 Definitions, Adult Entertainment Parlour, p.14 (May 2014 Version)

### *Adult Goods*

“means slides, films, videotape, pre-recorded magnetic tape and computerised or electronically generated images, the container or contents of which are designed or held out as designed to appeal to erotic or sexual appetites or inclinations through the pictorial, photographic or other graphic depiction of subject matter distinguished or characterised by the portrayal of one or more persons involved or engaging in actual or simulated sexual intercourse, ejaculation, sodomy, including anal intercourse, oral sexual intercourse or direct physical stimulation of unclothed genital organs or through depiction of the anus or the genitals.”<sup>2</sup>

### *Adult Video Outlet*

“means any premise in which the principal business is the sale or rental of “adult goods” or in respect of which the advertisements refer to ‘adult’, ‘X-rated’, ‘XXX’ or similar description in reference to the goods offered or provided in the premise, but shall not include any screening or viewing facilities, incidental or otherwise, for the adult goods within the premise. Without limiting the generality of the foregoing, the provision of adult goods shall not be accessory to any other business except in circumstances where adult goods are provided in conjunction with the sale or rental of videotape and the area from which adult goods are provided or the total area occupied by adult goods does not exceed 17.0 square metres.”<sup>3</sup>

It is important to note that the definition of “adult goods” does not include material printed on paper, presumably because adult magazines are sold with other magazines in variety stores and so by including them in the list of goods under the definition it would make every variety store an “adult goods” store, which was never the intent of the zoning by-law. Secondly, the establishment of a definition for “adult video outlet” was in response to the growth in this type of retail outlet. In more recent years, the technology has changed and the advancement of the internet has significantly reduced (if not eliminated) adult video outlets from the urban landscape.

Under Section 154 (2) the *Municipal Act, 2001*, an adult entertainment establishment includes:

“(a) goods, entertainment or services that are designed to appeal to erotic or sexual appetites or inclinations are provided in the premises or part of the premises; or

(b) body-rubs, including the kneading, manipulating, rubbing, massaging, touching or stimulating by any means of a person’s body, are performed, offered or solicited in the premises or part of the premises, excluding premises or part of them where body-rubs performed, offered or solicited are for the purpose of medical or therapeutic treatment and are performed or offered by persons otherwise duly qualified, licensed or registered to do so under a statute of Ontario. 2006, c. 32, Sched. A, s. 82.”<sup>4</sup>

This broad definition is confusing as it brings together both *adult entertainment parlours* and *body rub parlours* under the common term “adult entertainment establishment”, which the licensing

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2 By-law 177-96, City of Markham, Section 3 Definitions, Adult Goods, p.14 (May 2014 Version)

3 By-law 177-96, City of Markham, Section 3 Definitions, Adult Video Outlet, p.14 (May 2014 Version)

4 Municipal Act, 2001, Section 154 – Restrictions re adult entertainment establishments, Subsection (2) Premises.

regulations for Markham's Stationary Business Licensing By-law 2012-158<sup>5</sup> are drawn from. Although not identified nor defined in any of Markham's current zoning by-laws, *Markham's Stationary Business Licensing By-law 2012-158* defines *body rub* as:

#### *Body Rub*

"includes the kneading, manipulating, rubbing, massaging, touching or stimulating 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 to do so under the laws of the Province of Ontario."<sup>6</sup>

This definition would apply to all forms of body rub establishments, including those designed for holistic healing purposes such as massage services by persons *other than* recognized medical or health professionals that may be in association with such services as reiki energy therapy, hypnosis, reflexology, life coaching, "TAP" therapy, or acupuncture. Other types of body rub establishments, which relate more to the sex industry, involve massage services by persons *other than* recognized medical or health professionals that are for the purposes of appealing to erotic or sexual appetites or inclinations.<sup>7</sup>

Another type of sex industry which is rarely mentioned in municipal regulations is the *brothel or common bawdy house*. This use has been considered an illegal use under the laws of Canada until recent challenges and subsequent decisions by the Supreme Court of Canada. Another form of such use are 'swingers clubs', which are organized in slightly different ways than brothels, but are similar in many ways as a land use. In anticipation of changes to prostitution laws in this country, municipalities may need to consider how common bawdy houses and swingers clubs (if considered legal under the law of Canada) should be regulated by zoning by-laws. Therefore, brothel (or common bawdy house) is currently not a term used nor defined in zoning by-laws found in Ontario, but is generally defined by the *Canadian Criminal Code* as:

#### *Common Bawdy House*

"a place that is kept or occupied, or resorted to by one or more persons, for the purposes of prostitution or the practice of acts of indecency."<sup>8</sup>

Another emerging activity or 'land use' is the *apartment-based brothel*. Again, although not identified nor defined in any zoning by-laws, prostitution activities have moved from the street and into private residences and hotels.

It is important to note that municipalities cannot have zoning regulations for land uses that are deemed to be an illegal use and which are considered by federal legislation as a criminal offense. This explains why there are currently no zoning by-laws in Canada that deal with brothels or common bawdy houses.

5 City of Markham's By-law 2012-158 defines "Adult Entertainment Parlour" under Schedule 2, "Body Rub" and "Body Rub Parlour" under Schedule 9.

6 By-law 2012-158, City of Markham, Stationary Business Licensing, Schedule 9- Relating to Body Rub Owners, Operators and Attendants, 1. Definitions, p.48

7 As noted in Section 4.1 of this report, the City of Toronto established in its city-wide zoning by-law definitions for "Body Rub Service" and "Wellness Centre" to distinguish between sexual related and non-sexual related services that may involve massage and other forms of touching and could regulate different locations for these two types of uses.

8 Duhaime.org , *Bawdy House Legal Definition*



## 1.3 Federal Legislation

Federal legislation regulates issues related to prostitution, which may affect sex industry-related uses. In December 2013, the Supreme Court of Canada found that laws prohibiting brothels, public communication for the purposes of prostitution and living on the profits of prostitution to be unconstitutional. The Court gave the Canadian parliament 12 months to rewrite the prostitution laws. Bill C-36, *Protection of Communities and Exploited Persons Act*, was introduced on June 12, 2014 and became law December 6, 2014, which has made the purchase of sexual services illegal.<sup>9</sup>

Bill C-36 amends the *Criminal Code* to, among other things:

- (a) create an offence that prohibits purchasing sexual services or communicating in any place for that purpose;
- (b) create an offence that prohibits receiving a material benefit that derived from the commission of an offence referred to in paragraph (a);
- (c) create an offence that prohibits the advertisement of sexual services offered for sale and to authorize the courts to order the seizure of materials containing such advertisements and their removal from the Internet;
- (d) modernize the offence that prohibits the procurement of persons for the purpose of prostitution;
- (e) create an offence that prohibits communicating — for the purpose of selling sexual services — in a public place, or in any place open to public view, that is or is next to a school ground, playground or daycare centre;
- (f) ensure consistency between prostitution offences and the existing human trafficking offences; and
- (g) specify that, for the purposes of certain offences, a weapon includes anything used, designed to be use or intended for use in binding or tying up a person against their will.

The enactment also makes consequential amendments to other Acts.<sup>10</sup>

Bill C-36 redefined “common bawdy house” to remove the reference to prostitution. Keeping a common bawdy house (which is now defined as “for the practice of acts of indecency, a place that is kept or occupied or resorted to by one or more persons” continues to be illegal under section 210.

The intent of Bill C-36 is to criminalize the purchase, as opposed to the sale, of sexual services. Individuals cannot be prosecuted for the sale of their own sexual services, including from a fixed indoor location.

The change in legislation permits the sale of sex indoors, so long as the activity does not fit within the meaning of “the practice of acts of indecency.” According to Bill C-36, prostitution is not an indecent act in and of itself. However, the Canadian Bar Association, in their comment about Bill C-36, explained that the new law will still restrict prostitution houses:

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9 Bill C-36 received Royal Assent on November 6<sup>th</sup>, 2014. Under the Bill, Section 49 states. “The provisions of this Act, other than sections 46 to 48, come into force 30 days after the day on which this Act receives royal assent.” [Bill C-36 the Protection of Communities and Exploited Persons Act, S.C. 2014, ch 25, s 49.](#)

10 [Bill C-36 Protection of Communities and Exploited Persons Act. https://openparliament.ca/bills/41-2/C-36/.](https://openparliament.ca/bills/41-2/C-36/)

“While sections 197 and 210 no longer criminalize keeping a prostitution house, whether keeping a prostitution house is possible given other restrictions in Bill C-36 is questionable. It appears unlikely that many prostitutes could benefit from this change without relying on those who would be captured by the material benefit offence under section 286.2.”<sup>11</sup>

The bill was only recently enacted, which means it will take time to see how it will affect bawdy houses and brothels.

## 1.4 Provincial Legislation

There are no specific regulations within the *Ontario Planning Act* related to adult entertainment or other sex industry-related uses. The legislative power given to the Province of Ontario is the control over the administration of the criminal law.<sup>12</sup> Premier Kathleen Wynne has announced that Ontario will follow the rules of the new prostitution law.<sup>13</sup>

Because municipalities receive their authority from the provincial legislature, similar regulations that apply at the provincial and federal levels regarding the *Criminal Code* also apply at the local level. Municipalities do not have the power to create regulations for prostitution, which are incorporated in criminal legislation.<sup>14</sup> Instead, local authorities are more likely to use municipal by-laws to regulate prostitution, given that it is easier to issue tickets for an infraction of a by-law than to collect evidence for a criminal charge. By-laws can also be more easily designed for local contexts.

## 1.5 Municipal Act, 2001

Under the *Municipal Act, 2001*, Part IV, Licences, the province has granted to municipalities in Ontario the authority to license certain businesses and to have particular control over adult entertainment establishments. As noted below, section 153 of the *Act* allows municipalities the right to grant licenses for certain businesses and that conditions for granting such licenses may include that their use must comply with the zoning by-law, but that the municipality cannot refuse to grant a license to a business purely on the basis of location. Section 153 states:

“153. (1) Despite sections 9, 10, 11 and 151, a municipality shall not, except as otherwise provided, refuse to grant a licence for a business under this Act by reason only of the location of the business. 2006, c. 32, Sched. A, s. 82.

### **Compliance with land use control by-law**

(2) Despite subsection (1), a by-law providing for a system of licences for a business may require as a condition of obtaining, continuing to hold or renewing a licence that the business comply with land use control by-laws or requirements under the *Planning Act* or any other Act. 2006, c. 32, Sched. A, s. 82.”<sup>15</sup>

11 The Canadian Bar Association. *Bill C-36, Protection of Communities and Exploited Persons Act*. October 2014, p. 10.

12 *Constitution Act, 1867* s. 92(14).

13 Keith Leslie. “Ontario will follow prostitution laws despite concerns, says Kathleen Wynne.” *The Toronto Star*. December 19, 2014.

14 *Constitution Act, 1867* s. 92(8).

15 *Municipal Act, 2001*, Part IV, Licences, Section 153, Limitation re location of business

Under section 154 of the *Act*, adult entertainment establishments include goods, entertainment, and body rubs that are designed to appeal to erotic or sexual appetites or inclinations. Section 154 states:

**“Restrictions re adult entertainment establishments**

**154.** (1) Without limiting sections 9, 10 and 11, a local municipality, in a by-law under section 151 with respect to adult entertainment establishments, may,

(a) despite section 153, define the area of the municipality in which adult entertainment establishments may or may not operate and limit the number of adult entertainment establishments in any defined area in which they are permitted; and

(b) prohibit any person carrying on or engaged in an adult entertainment establishment business from permitting any person under the age of 18 years to enter or remain in the adult entertainment establishment or any part of it. 2006, c.32, Sched. A, s. 82.

**Premises**

(2) Any premises or any part of them is an adult entertainment establishment if, in the pursuance of a business,

(a) goods, entertainment or services that are designed to appeal to erotic or sexual appetites or inclinations are provided in the premises or part of the premises; or

(b) body-rubs, including the kneading, manipulating, rubbing, massaging, touching or stimulating by any means of a person’s body, are performed, offered or solicited in the premises or part of the premises, excluding premises or part of them where body-rubs performed, offered or solicited are for the purpose of medical or therapeutic treatment and are performed or offered by persons otherwise duly qualified, licensed or registered to do so under a statute of Ontario. 2006, c.32, Sched. A, s.82.

**Power of entry**

(3) Despite subsection 436(1), a local municipality may exercise its administrative power of entry under section 436 at any time of the day or night to enter an adult entertainment establishment. 2006, c. 32, Sched. A, s. 82.

**Evidence rule**

(4) For the purpose of a prosecution or proceeding under a by-law with respect to adult entertainment establishments, the holding out to the public that the entertainment or services described in subsection (2) are provided in the premises or any part of them is admissible in evidence as proof, in the absence of evidence to the contrary, that the premises or part of them is an adult entertainment establishment. 2006, c. 32, Sched. A, s. 82.”<sup>16</sup>

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16 Municipal Act, 2001, Part IV, Licences, Section 154, Restrictions re adult entertainment establishments

In the case of the City of Markham, By-law 2012-158 was established to provide for the licensing and regulation of stationary businesses, including adult entertainment parlours and body rub parlours (see Section 2.3 of this report).

## 1.6 Case Law – 741623 Ontario Ltd. v. Peterborough (City): Adult Entertainment Uses Regulated by Official Plans

The following is an example of a case in which the Ontario Municipal Board approved Official Plan policies which confined the use of adult entertainment parlours to limited locations. However, this decision is an outlier, as zoning by-laws, not the Official Plans, are usually the means used to regulate specific land use.

The OMB decision approves the City of Peterborough's Official Plan policies regulating adult entertainment parlours, setting out criteria regarding the location of adult entertainment parlours in Peterborough. A report from Gowlings LLP summarized the decision as follows: "Ultimately, the Board was satisfied with the official plan amendment, despite its prohibition of a specific land use. The Board held, at paragraph 24, that the amendment:

[P]rovides guidelines and policies on what is a very difficult matter in this municipality and in other municipalities as well. Instead of pushing the issue away until it explodes as municipalities sometimes do with controversial land use matters, the city has in the past several months taken a constructive path to find a solution that may not please everyone but which attempts to deal fairly between property owners, residents, business operators, adult entertainment parlours, and the persons who wish to use those facilities. There is a balance sought here between the rights of the public, the public interest and the rights of the individual. The board believes that has been fairly struck."<sup>17</sup>

The report further explains, "There was no discussion in this case of whether, regardless of the efficacy and suitability of the policy, it should have been implemented by a zoning by-law, rather than at the official plan level. For this reason...it is likely that this case is an outlier and official plans are not the proper vehicles for prohibiting or regulating specific land uses and performance standards."<sup>18</sup>

Even though this case is an anomaly, it represents the importance of official plans providing policy direction on adult entertainment uses. With this direction, zoning by-law regulations can ultimately better implement city policy.

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17 (1989), 23 O.M.B.R. 57, 1989 CarswellOnt 3512 (O.M.B.).

18 Michael Polwin and Graydon Ebert. "Official, but illegal: Are Official Plans being used in a manner that is a "bridge too far?"

## 1.7 Example - City of Vaughan Official Plan Policies Relating to Adult Entertainment & Body Rub Parlours

Under Volume 2, Chapter 12, *Area Specific Policies*, of the City of Vaughan Official Plan, the plan identifies certain areas of the municipality where adult entertainment and body rub uses are permitted and is a good example of where Official Plan policy can help provide direction and control. The Official Plan includes under Section 12.5 of the plan, policies regarding adult entertainment parlours and body rub parlours, as follows:

### “12.5.1 Adult Entertainment Parlours

12.5.1.1. Adult entertainment parlours, as defined in Section 154 of the Municipal Act, and body rub parlours, as defined in Section 154 of the Municipal Act, are prohibited in the City of Vaughan with the following exceptions:

- a. they are limited to the following locations:
  - i. a portion of the lands located east of Keele Street and south of Langstaff Road, being part of Lots 7, 8, 9, and 10, Concession 3, as identified on Map 12.5.A;
  - ii. a portion of the lands located south of Doughton Road and Killaloe Road, and east of Maplecrete Road, being part of Lots 4 and 5, Concession 4, as identified in Map 12.5.A; and,
  - iii. the property located at the northwest corner of Doughton Road and Maplecrete Road, municipally known as 170 Doughton Road, being part of Lot 5, Concession 4, as identified on Map 12.5.A;
- b. adult entertainment parlours shall be located at least 100 metres from an arterial road or Provincial highway, and shall not be located on lots abutting such roadways;
- c. any adult entertainment parlour shall be located at least 1000 metres from any other adult entertainment parlour;
- d. an adult entertainment parlour shall be located at least 500 metres from any lands designated in the Official Plan for residential purposes, and any residential use. This restriction shall not apply to the two existing farm dwellings located on the west side of Jane Street within Lot 4, Concession 5; and,
- e. an adult entertainment parlour shall be located only in a building where the adult entertainment parlour is the sole occupant of the building.

### 12.5.2 Body Rub Parlours

12.5.2.1. Body rub parlours, as defined in Section 154 of the Municipal Act, are prohibited in the City of Vaughan with the following exceptions:

- a. they are limited to the following locations:

- i. a portion of the lands located east of Keele Street and south of Langstaff Road, being part of Lots 8 and 9, Concession 3; as identified on Map 12.5.A; and,
  - ii. a portion of the lands located south of Killaloe Road and east of Costa Road, being parts of Lots 4 and 5, Concession 4, as shown on Map 12.5.A;
- b. a body rub parlour may not exceed 150 square metres in Gross Floor Area; and,
- c. a body rub parlour is restricted to a maximum of one per lot, and when in a multiunit building is also restricted to a maximum of 15% of the Gross Floor Area of the multi-unit building.<sup>19</sup>

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<sup>19</sup> City of Vaughan, Official Plan, Volume 2, Area Specific Policies, Section 12.5, pp. 12-35-12-36.

## 2. REVIEW OF OFFICIAL PLAN & EXISTING ZONING BY-LAWS

### 2.1 Markham Official Plan Part I

The Markham Official Plan Part I does not have any specific policy directed at adult entertainment parlours or any other sex industry land uses. However, in Chapter 8, Land Use, there are three specific policies identifying “adult entertainment” in a list of uses that are explicitly **not** permitted:

1. Policy 8.5.2.4 g), lands designated ‘Business Park Employment’, adult entertainment is not permitted.<sup>20</sup>
2. Policy 8.5.3.4 j), lands designated ‘Business Park Office Priority Employment’, adult entertainment is not permitted.<sup>21</sup>
3. Policy 8.5.5.4 s), lands designated ‘General Employment’, adult entertainment is not permitted.<sup>22</sup>

Also in Chapter 8, under policy 8.5.4.3 s), adult entertainment is considered a discretionary use on lands designated ‘Service Employment’, and may be zoned to permit the use provided it is not located within 1,000 metres of lands within a ‘Residential’ or ‘Mixed Use’ designation.<sup>23</sup> Further, consideration of permitting an adult entertainment use in these circumstances must also be in accordance with policies 8.5.1.2 and 8.5.1.3 of the Official Plan, which pertain to sensitive land uses and discretionary land uses when evaluating a site specific development applications in areas designated Employment Lands.

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20 [City of Markham, Official Plan Part I, Policy 8.5.2.4 g\)](#)

21 [City of Markham, Official Plan Part I, Policy 8.5.3.4 j\)](#)

22 [City of Markham, Official Plan Part I, Policy 8.5.5.4 s\)](#)

23 [City of Markham, Official Plan I, Policy 8.5.4.3 s\)](#)

While the term ‘adult entertainment’ is not defined in the Official Plan, it is noted that within the definition of the land use term “place of entertainment”, that a place of entertainment “shall not include an adult entertainment parlour”.<sup>24</sup>

As for any other references to any other uses in the sex industry, the Official Plan has no policy on these matters.

## 2.2 Markham’s Current Zoning By-laws

Each of Markham’s 46 parent zoning by-laws include the definition of *adult entertainment parlour* and five parent zoning by-laws also include definitions for *adult goods* and *adult video outlet*. There are a number of site specific amendments which either amend one of the definitions relating to these uses or establish permissions or restrictions on such uses. There are no known references in any of the 46 parent zoning by-laws to “body rub parlours” or “brothels”.

### 2.2.1 Definitions

As stated and reviewed in Section 1.2 of this report, there are currently four variations of the definition of *adult entertainment parlour* throughout the 46 parent by-laws. These are outlined in the *Task 5 – Review & Assessment of Zoning By-law Definitions Report*. The first definition is found in parent By-laws 304-87 and 242-90. The second definition is found in By-law 177-96. The third definition is found in By-law 2004-196. The fourth definition is found in amending By-law 2001-93, which amended By-laws 73-86, 74-86, 75-86, 88-76, and 118-76, which all amended parent By-laws 1229; 1442; 1507; 1767; 1914; 2053; 2150; 2237; 2402; 2489; 2551; 2571; 2612; 2284-68; 2325-68; 11-72; 122-72; 77-73; 83-73; 84-73; 119-73; 151-75; 127-76; 250-77; 145-78; 162-78; 163-78; 184-78; 72-79; 91-79; 118-79; 134-79; 153-80; 165-80; 72-81; 90-81; 108-81; 190-81; 193-81; 209-81; 221-81; 28-82; 194-82; 196-82; and 47-85. It is important to note that the four definitions are similar and only differ in terms of certain words and sentence structure.

Definitions for *adult goods* and *adult video outlet* have been established for five parent zoning by-laws. This was done in 2001 to remove such uses as part of the definition of adult entertainment parlour and to establish them as distinct uses to themselves. Both terms were established in By-law 2053 as amended by By-law 2001-94; By-law 165-80 as amended by By-law 2001-95; By-law 108-81 as amended by By-law 2001-96; By-law 177-96 and By-law 2004-196.

There are no definitions for “body rub parlours” or “brothels” in any of the 46 parent zoning by-laws or related amending by-laws. It is noted that in the definitions for *nightclub*, *place of entertainment*, *recreational establishment*, and *theatre* they all include in their definitions the phrase “but shall not include an *adult entertainment parlour*” either by itself or in a list of specific uses.

### 2.2.2 Zoning Provisions

There are not many zoning provisions dealing with *adult entertainment parlours* or other uses associated with the sex industry in the existing 46 parent zoning by-laws. In 1986, amending By-law 73-86 had the key effect of defining *adult entertainment parlours* as a use, as well as establishing it as a prohibited use in the 44 parent zoning by-laws that existed at the time (see Section 2.2.3 of this report).

In 1987, By-law 307-87 pertaining to Markham’s rural area, incorporated the same definition for *adult entertainment parlours* as By-law 73-86 into Section 2 of that by-law, and listed *adult entertainment*

<sup>24</sup> City of Markham, Official Plan Part I, Chapter 11, Interpretation, Place of entertainment definition.



*parlours* as one of the prohibited uses in Section 5.3.7 of that by-law. Interestingly, By-law 19-94 established in 1994 pertaining to the Buttonville Core Area (a predominantly residential area) neither defines nor permits *adult entertainment parlours*, but it also doesn't list it as a prohibited use.

By-law 177-96 pertaining to Markham's new urban area (OPA 5 communities) was originally passed in 1996 and establishes in Section 3 definitions for *adult entertainment parlours*, *adult goods*, and *adult video outlet*. None of these uses are listed in any zone in the by-law as a permitted use, nor are they listed as prohibited uses in the by-law. However, under Section 6.8.2 of By-law 177-96 (Home Occupation – Prohibited Uses) it lists under item (e) “dating bureaus/ escort services” as prohibited home occupation uses. These land use terms are not defined in the by-law, but do suggest that there is an issue related to a sex industry use.

Finally, By-law 2004-196 pertaining to Markham Centre which was passed in 2004, includes definitions for *adult entertainment parlours*, *adult goods*, and *adult video outlet*. Like By-law 177-96, none of these uses are listed in any zone in the by-law as a permitted use, nor are they listed as prohibited uses in the by-law. It is important to note that uses that are defined in a zoning by-law do not necessarily need to be listed as a permitted or prohibited use in the zoning by-law, but merely defined in case such a use is identified by virtue of a development application.

### 2.2.3 Zoning By-law Amendments

Between 1986 and 2014 there have been a number of “area wide” zoning by-law amendments to the parent zoning by-laws dealing with *adult entertainment parlours*, *adult goods*, and *adult video outlet* dealing with issues around definitions, areas where certain uses are permitted within a parent by-law area, and outright prohibition in a parent by-law area. The following are the “area” amendments:

1. By-law 73-86 which amends parent By-laws 1229; 1442; 1507; 1767; 1914; 2053; 2150; 2237; 2402; 2489; 2571; 2612; 2284-68; 2325-68; 11-72; 122-72; 77-73; 83-73; 84-73; 119-73; 151-75; 127-76; 250-77; 145-78; 162-78; 163-78; 184-78; 72-79; 91-79; 118-79; 134-79; 153-80; 165-80; 72-81; 90-81; 108-81; 190-81; 193-81; 209-81; 221-81; 28-82; 194-82; 196-82 and 47-85 adds the definition of *adult entertainment parlours* to the parent by-law definitions sections and prohibits *adult entertainment parlours* anywhere within the boundaries of these parent by-laws.
2. By-law 2014-25 which amends parent By-law 122-72 as amended by By-law 2003-167 adds the definitions of *adult goods* and *adult video outlet* to the definitions section of the parent by-law, and under the Heritage Main Street (HMS) Zone it lists *adult video outlet* as a prohibited use.
3. By-law 2001-93 which amends by-laws 73-86, 74-86, and 75-86 by deleting references to adult goods from the definition of *adult entertainment parlour*.
4. By-law 2001-94 which amends parent By-law 2053 adds the definitions of *adult goods* and *adult video outlet* to the definitions section of the parent by-law. It also permits adult video out in particular areas shown on Schedule 'A' of the amending by-law and that there is no minimum gross floor area for the use.
5. By-law 2001-95 which amends parent By-law 165-80 adds the definitions of *adult goods* and *adult video outlet* to the definitions section of the parent by-law. It also permits adult video out in particular areas shown on Schedule 'A' of the amending by-law and that there is no minimum gross floor area for the use.

6. By-law 2001-96 which amends parent By-law 108-81 adds the definitions of *adult goods* and *adult video outlet* to the definitions section of the parent by-law. It also permits adult video out in particular areas shown on Schedule 'A' of the amending by-law and that there is no minimum gross floor area for the use.

## 2.2.4 Site Specific Amendments

Based on our review under the Task 4a – Review & Assessment of Site Specific Zoning Amendments Report, we noted a few site specific amendments involving the issue of *adult entertainment parlours*. These are as follows:

### 2.2.4.1 175-185 Anderson Avenue “Friction”

By-law 74-86 which amends parent By-law 88-76 adds a definition for *adult entertainment parlour* to the parent by-law and establishes development criteria for *adult entertainment parlours* for an area on the east side of Highway 48, west of the CN railway line, south of Major Mackenzie Drive East, and north of 16<sup>th</sup> Avenue. The development criteria deals with: i) not more than 1 *adult entertainment parlour* is permitted within the identified area; ii) an *adult entertainment parlour* shall not be closer than 120 metres to a residential use; iii) parking for the *adult entertainment parlour* shall be at a rate of 1 space per 9 square metres of gross floor area; and iv) a minimum landscape strip of 3 metres in width shall be provided along the side and rear lot lines of the property.

The schedule associated with this site specific amendment was modified by the Ontario Municipal Board on November 18, 1986<sup>25</sup> to only include a certain set of lands on the east side of Highway 48, west of the Canadian National Railway, near what is today the intersection of Anderson Avenue and Castlemore Avenue.

In September 1984, By-law 184-94 further amended By-law 88-76 by adding a definition of *night club*, which by definition does not include an *adult entertainment parlour* for a property with two parts at 175 and 185 Anderson Avenue. It further permits one *adult entertainment parlour* on “part 2” of the property having a maximum gross floor area of 666 square metres and subject to By-law 74-86 (a by-law that amends the parent by-law regarding the definition of *adult entertainment parlour*). Parking for the *night club* on “part 1” and the *adult entertainment parlour* on “part 2” shall be provided as shown on Schedule 'A' of the site specific by-law. An adult entertainment parlour was known as “Friction” and operated at 175 Anderson Avenue until 2004.

In December 2004, By-law 2004-351 amended By-law 88-76 to add places of worship, day nurseries and private schools to the list of uses permitted and to revise the landscaping and loading space requirements of the by-law for 175 and 185 Anderson Avenue. The subject site is zoned Select Industrial (M.I.) under By-law 88-76 and is designated Business Park Employment under Markham's Official Plan. Although no *adult entertainment parlour* exists on the site today, it is unclear that amending By-law 2004-351 actually removed the land use permission for this use, since By-laws 74-86 and 184-94 were never repealed.

### 2.2.4.2 Langstaff Road (between Ruggles Avenue and Essex Avenue)

By-law 75-86 which amends parent By-law 2551 adds a definition for *adult entertainment parlour* to the parent by-law and establishes development criteria for *adult entertainment parlours* for lots on the south side of Langstaff Road as depicted on Schedule 'A' of the amending by-law. The development criteria deals with: i) not more than 1 *adult entertainment parlour* is permitted within the identified area; ii) an *adult entertainment parlour* shall not be closer than 120 metres to a residential

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See Ontario Municipal Board Decision R860241, date November 18, 1986

use; iii) parking for the *adult entertainment parlour* shall be at a rate of 1 space per 9 square metres of gross floor area; and iv) a minimum landscape strip of 6 metres in width shall be provided along all lot lines that abut a street and a minimum landscape strip of 3 metres in width along all side and rear lot lines. Zoned predominantly Rural Industrial (R. Ind.) under By-law 2551 and a mixture of Mixed Use Office Priority, Mixed Use High Rise, and Residential High Rise. Based on the information reviewed there does not appear to be any *adult entertainment parlour* in the area described under By-law 75-86, yet this by-law has not been repealed.

#### **2.2.4.3 North-East Corner of Highway 7 and Warden Avenue**

On October 8, 1985 Council passed By-law 380-85 which amends parent By-law 118-79 adds a definition for *adult entertainment parlour* to a site at the northeast corner of Warden Avenue and Highway 7 zoned Community Commercial (CC). The site was subsequently amended on June 12, 1990 when Council passed By-law 130-90 which substituted the list of uses to allow places of entertainment provided that it does **not** include adult entertainment parlours.

#### **2.2.4.4 South-West Corner of Highway 7 and the Canadian National Railway**

On June 27, 1995 Council passed By-law 119-95 which amends parent By-law 122-72 as amended by By-law 375-85 by listing under Section 1.2.2 of the parent by-law *adult entertainment parlours* as **prohibited uses** for lands zoned SC1 (Special Commercial I) and identified on Schedule 'A' of the amending by-law which are located on the south side of Highway 7 and west of the CN rail corridor.

#### **2.2.4.5 West Side of Kennedy Road, South of Highway 7**

On June 14, 1994 Council passed By-law 126-94 which amends parent By-law 122-72 as amended by By-law 263-87 by listing under Section 1.3(b) of the parent by-law *adult entertainment parlours* as **prohibited uses** for lands zoned SC1 (Special Commercial I) and identified on Schedule 'A' of the amending by-law which are located on the west side of Kennedy Road, south of Highway 7.

#### **2.2.4.6 South-East Corner of Cochrane Drive and Lanark Road**

On April 23, 1985 Council passed By-law 139-85 which amends parent By-law 165-80 to add a site specific exception to a property at the south-east corner of Cochrane Drive and Lanark Road to permit restaurant and banquet hall provided that *adult entertainment parlours* whether accessory to a principal use or not, shall **not be permitted**. The amendment also includes its own description of what *adult entertainment parlours* are for the purposes of this section.

## **2.3 Markham's Stationary Business Licensing By-law 2012-158**

By-law 2012-158 is a by-law to provide for the licensing and regulation of stationary businesses throughout the City of Markham, which municipalities are allowed to provide under Section 151 of the *Municipal Act, 2001 S.O. 2001, c.25*. This is a consolidated licensing by-law which replaced, in part, By-law 2002-287 (A By-law to License and Regulate Adult Entertainment Parlours within the Town of Markham) and By-law 2002-286 (A By-law to License and Regulate Adult Entertainment Parlours for the Provision of Goods in the Town of Markham), which have both been repealed.<sup>26</sup> The by-law currently recognizes and regulates 24 different businesses, which include three that are related to adult entertainment parlours and other sex industry-related uses:

<sup>26</sup> By-law 2002-286 and 2002-287 both contain and make reference to schedules and area maps to where adult entertainment parlours (services or goods) may be located. By-law 2012-158 maintained the references in the text to schedules and area maps, but did not include schedules and maps in the new consolidated by-law.

1. Adult Entertainment Parlours (Services)
2. Adult Entertainment Parlours (Goods)
3. Body Rub Parlours

It is noted in Section 9 of By-law 2012-158 that “no license shall be issued contrary to the provisions of any City Zoning By-law.”<sup>27</sup> While there appears to be a consistency between the zoning by-law definition and the business licensing by-law definition of *adult entertainment parlours*, the business licensing by-law differs in that it defines and distinguishes between those involving “services” and “goods”. The zoning by-law, by comparison, defines *adult entertainment parlour* as those activities associated with the “services” only, and sets out different definitions such as *adult goods* and *adult video outlet* to control those associated with the “goods” aspects. A big difference between the zoning by-law definitions and the business licensing by-law definitions is the terms “body rub” and “body rub parlours”, which are only defined in the business licensing by-law. There needs to be a consistent approach to defining these terms in both the business licensing by-law and the new city wide zoning by-law.

### 2.3.1 Adult Entertainment Parlours – Services

Schedule 2 to By-law 2012-158 relates to adult entertainment parlours – services and incorporates the following:

#### Relevant Definitions

1. “*Adult Entertainment Parlour*” means any *premises* or part thereof in which is provided, in pursuance of a trade, calling, *business* or occupation, *services* appealing or designed to appeal to erotic or sexual appetites or inclinations.
2. “*Defined Areas*” means those two areas of the *City* which are shown as the shaded areas out in Appendixes “B” and “C” attached hereto.
3. “*Services*” includes activities, facilities, performances, exhibitions, viewings and encounters.
4. “*Services Design To Appeal To Erotic Or Sexual Appetites Or Inclinations*” includes: (i) *Services* of which a principle feature or characteristic is the nudity or partial nudity of any PERSON; (ii) *Services* in respect of which “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.

#### Relevant Regulations

- #23 A *license* shall not be issued for any *adult entertainment parlour* unless it is located in a *defined area*.
- #24 Only one *license* shall be issued for each *defined area*.
- #25 The number of *licenses* that may be issued pursuant to this By-law is limited to two.
- #26 A *license* shall not be issued for any adult entertainment parlour, unless all the conditions as set out in APPENDIX ‘A’ attached hereto have been satisfied.
- #31 That Appendixes “A”, “B”, and “C” attached to the *schedule* form part of this By-law.

27 By-law 2012-158, Stationary Business Licensing By-law, Regulation 9.1, p.7

### Appendix "A" – Conditions

1. An Adult Entertainment Parlour shall not be permitted within 120 metres of a residential use.
2. Parking shall be provided for an Adult Entertainment Parlour at one space per 9 m<sup>2</sup> of gross floor area of the premises.
3. A minimum landscaping strip of 3 metres in width shall be provided along the side and rear lines of the property.

Interestingly, the conditions associated with the 120 metre separation distance from a residential use, the parking rate, and the 3 metre landscaping strip established in the business licensing by-law are consistent with that applied in the zoning by-law under site specific By-law 74-86, which amended By-law 88-76, as well as for By-law 75-86, which amended By-law 2551. However, in the case of the latter by-law, a further requirement of a 6 metre landscaping strip was required along any portion of the land abutting a street. There would appear to be a need, when re-evaluating the conditions in the new zoning by-law for adult entertainment parlours, that the conditions be consistent with regards to separation from all forms of sensitive uses, not just residential, and that the site conditions (landscaping and parking rate) be in the zoning by-law and not necessarily in the business licensing by-law.

### **2.3.2 Adult Entertainment Parlours – Sale of Goods**

Schedule 3 to By-law 2012-158 relates to adult entertainment parlours – sale of goods and incorporates the following:

#### Relevant Definitions

1. "*Adult Entertainment Parlour (Goods)*" means any *premises* or part thereof in which is provided, in pursuance of a trade, calling, *business* or occupation, goods appealing or designed to appeal to erotic or sexual appetites or inclinations.
2. "*Adult Videotape*" means any videotape, the container or contents of which are designed or held out as designed to appeal to erotic or sexual appetites or inclinations, through the pictorial, photographic or other graphic depiction of subject matter distinguished or characterized by the portrayal of one or more *persons* involved or engaged in specified sexual activities as defined by this By-law. "Adult videotape": also includes, in the absence of evidence to the contrary, a videotape classified by the Ontario Film Review Board as "restricted" and required to be characterized with the added information piece "adult sex film".
3. "*Class 'A' Adult Entertainment Parlour (Goods)*" means an *adult entertainment parlour* (goods) in which the principle business is the provision of goods or in similar respect of which advertisements refer to "adult", "X-rated", "XXX" or similar description in reference to the goods provided in the *premises*.
4. "*Class 'B' Adult Entertainment Parlour (Goods)*" means an *adult entertainment parlour* (goods) in which the portion of the floor area devoted to the sale of goods to the public is less than 10% of the total area devoted to the sale of all merchandise within the *business premises*.

Relevant Regulations Respecting Class A Adult Entertainment Parlour (Goods)

- #3.5 No *person* may operate a Class “A” *adult entertainment parlour* (Goods):
- (a) within 120 metres of any lands zoned to permit residential uses by the relevant zoning By-law at such time as the application for *license* is submitted to the City;
  - (b) within 120 metres of any *school*, place of worship or child day care centre in existence when the application for *license* is submitted to the City; and
  - (c) within 120 metres of any other *adult entertainment parlour* (goods), body-rub parlour or *adult entertainment parlour* (services) in existence at the time when the application is submitted to the City, regardless of whether such other BUSINESSES are licensed or not.
- #3.6 An existing licensed *adult entertainment parlour* (Goods) is not disqualified from the renewal of a *license* if one of the listed land uses locates within the separation distance.
- #3.8 The number of *adult entertainment parlours* (goods) which may be licensed in the City of Markham shall be limited to five.
- #3.9 No *person* may operate an *adult entertainment parlour* (Goods) from an area except those areas described on *schedule “A”* hereto.
- #3.10 The City shall review this section and Appendix “A” within 5 years from the enactment of this By-law, and every five years thereafter, for the purpose of ensuring that these provisions continue to achieve the objects of the By-law. An element of that review shall include consideration of the increase of population in the City in relation to the maximum number of permitted *licenses*.

Appendix “A”

1. The premises at each of the following municipal addresses shall be permitted to operate, subject to all applicable law, as a Class “A” Adult Entertainment Parlour (Goods) as long as the premises are in lawful, actual, continual, uninterrupted and licensed use as a Class “A” Adult Entertainment Parlour (Goods) from May 9, 2006:
  - (a) the premises at 5261 Highway 7 operating as Adult Time Video; and
2. Should premise(s) referred to in Section 1 cease to be used for the purpose of a Class “A” Adult Entertainment Parlour (Goods), any license issued under this By-law shall be revoked and no renewal or further license shall be issued for those premises.
3.
  - (a) Figure 2 is and shall form part of Schedule “A”;
  - (b) Each of Area 1, 2 and 4 on Figure 2 are hereby designated as an area in which, subject to the provisions of this By-law, one license for a Class “A” Adult Entertainment Parlour (Goods) may be issued.
  - (c) Area 3 on Figure 2 is hereby designated as an area in which, subject to the provisions of this By-law, more than one license for a Class “A” Adult Entertainment Parlour (Goods) may be issued.

### 2.3.3 Body Rub Owners, Operators and Attendants

Schedule 9 to By-law 2012-158 relates to body rub owners, operators and attendants and incorporates the following:

#### Relevant Definitions

1. “*Body Rub*” includes the kneading, manipulating, rubbing, massaging, touching or stimulating 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 to do so under the laws of the Province of Ontario.
2. “*Body Rub Parlour*” is included in the definition of ‘*adult entertainment parlour*’ in the *Municipal Act, 2001* and includes any *premises* or part thereof where a body-rub is performed, offered or solicited in pursuance of a trade, calling, *business*, or occupation, but does not include any *premises* of part thereof where the body-rubs performed are for the purposes of medical or therapeutic treatment and are performed or offered by *persons* otherwise duly qualified, licensed or registered to do so under the laws of the Province of Ontario.
3. “*Health And Social Club*” means a body-rub parlour, provided that the area used with a *premises* operated by a *Health And Social Club* for the provision of body-rubs does not exceed 20% of the gross floor area of the premise and provided the gross floor area of the *premises* is not less than 650.3 square metres (7,000 sq.ft.).

#### Relevant Regulations Respecting Body Rub Owners, Operators and Attendants

- 2(s) Every *owner* shall post and maintain in the lobby or entrance of the *body rub parlour*, in a manner that is satisfactory to the *licensing officer*, a *sign* which provides as follows: “This *premises* is licensed as a *body rub parlour* by the *City* of Markham. The By-law regulating this *premises* makes it an offence for any *person* to provide services in a body-rub parlour that are designed to appeal to erotic or sexual appetites.”
6. No person may own or operate a body-rub parlour:
  - (a) within five hundred (500) metres of any residential zone in existence when the application for license is submitted to the *City*;
  - (b) within five hundred (500) metres of any school, church or child day care centre in existence when the application for license is submitted to the *City*;
  - (c) within one (1) kilometer of any other body-rub parlour in existence at the time when the application is submitted to the *City*, regardless of whether such other body-rub parlour is licensed or not.
7. The number of body-rub parlours which may be licensed within the *City* of Markham shall be limited to ten (10).

By comparison to *adult entertainment parlours*, *body rub parlours* have significantly greater separation distances (500 metres compared to 120 metres) from residential areas, are separated as well from other sensitive land uses (schools, places of worship, day care) and have separation distances between all forms of *body rub parlours* that are double the separation requirements than that of sensitive land uses.

## 3. REVIEW OF RESEARCH AND STUDIES

This chapter focuses on three areas of research. First, a review of the recent history and existing situation regarding adult entertainment parlours, body rub parlours, brothels and bawdy houses in the City of Markham based on information from the City's By-law and Licensing Division. Second, an examination of how the City of Toronto developed distinctive land use terms and approaches to regulating massage-related services and how they are distinguished under their new zoning by-law. Third, a review of a thesis study undertaken by Nicholas Danford of Queen's University in 2013 about by-laws and brothels and how other jurisdictions have tried to regulate them.<sup>28=</sup>

### 3.1 Markham Issues

#### Adult Entertainment Parlours in the City of Markham

Based on the information available to date, it would appear that in recent decades there have been only two adult entertainment parlours that have operated in the municipality. One was an establishment known as Studio 134 at 134 Wellington Street West, which was part of a commercial plaza that existed at the time, and the other was at 175 Anderson Avenue in the Mount Joy Industrial area. Both have since closed down. The latter has been redeveloped as a place of worship in 2004. Notwithstanding that there are no known adult entertainment parlours existing in Markham to date, as noted in section 2.2.4 of this report, there exists zoning permissions for two locations where adult entertainment parlours may be located- one area in the Langstaff area and the second in the Mount Joy industrial area as a result of an Ontario Municipal Board decision in November 1985. This is further reflected in Markham's business licensing By-law 2012-158, in that there are only two

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28 Bylaws and Brothels: An analysis of Toronto's adult entertainment governance strategy, Nicholas Danford, M.PL. Candidate 2013, Queen's University, A report submitted to the School of Urban and Regional Planning in partial fulfillment of the requirements for the degree of Master of Urban and Regional Planning.



licenses recognized for adult entertainment parlours that are services. By-law 2012-158 has up to five licenses for adult entertainment parlours that are for goods (adult video stores and adult good stores).

#### Body Rub Parlours in the City of Markham

Based on information from the City of Markham By-laws and Licensing Department, the city currently licenses two body rub parlours and there are likely many more unlicensed establishments. The two licensed body rub parlours are both located in areas designated Service Employment in the Official Plan. One is located in a local commercial plaza and the other in a multi-tenant industrial building. In both cases they involve operations with high vacancies that from a landlord's perspective could accommodate the use. In the case of the local commercial plaza location, the *personal service shop* allowance in the Local Commercial (LC) zoning was the use claimed to establish the use in this location. In the case of the industrial building, health club use was the use claimed to establish the use in that location. It is noted that Markham's business licensing By-law 2012-158 allows up to ten licenses to be issued within the City of Markham.

### 3.2 Review of Adult Entertainment-type Uses and Holistic Service-type Uses, City of Toronto

The City of Toronto in undertaking their background research for a new city-wide zoning by-law noted in a report that initially they were to use and define the term "holistic centre" to complement the existing city's licensing by-law which also used, defined, and regulated that use. At the time none of the existing zoning by-laws had used that term. The key was to distinguish 'holistic services' from 'adult entertainment-type services', such as body rubs. The existing licensing system had the effect of controlling all forms of holistic services, including 'adult entertainment-type services', in order to control body rub services which were disguising themselves as holistic services. The result was that it made it difficult to establish holistic services that were of a non-adult entertainment form anywhere in the city, as some of these services do not involve practitioners that are registered or recognized by provincial legislation. The other complicating factor was that the *Municipal Act, which outlines how municipalities can establish a licensing system for these uses* (see section 1.5 of this report), lumped together adult entertainment parlours, adult goods, and body rub services under the same term as 'adult entertainment'. To address this issue, the new zoning by-law took the approach of distinguishing the 'adult entertainment-type' holistic uses from the 'non-adult-entertainment-type' holistic uses by defining them and regulating them differently.

As a January 22, 2013 staff report states:

"Adult entertainment-type establishments fall into two categories:

1. Businesses where live nude dancing primarily on a stage is a major activity. Generally they offer a group experience between an adult audience and the dancers. Food and beverage may be offered for sale. The businesses are referred to as adult entertainment parlours or sometimes adult entertainment establishments.

2. Businesses where the adult experience is private between a customer and an attendant in closed private rooms and that involves touching. These businesses are referred to as body-rub parlours or sometimes body-rub establishments.”<sup>29</sup>

At the time the City of Toronto, which inherited licensing legislation from the former Municipality of Metropolitan Toronto, permitted under its licensing by-law 63 adult entertainment licenses and 25 body rub parlour licenses. As of October 2012, there were only 16 adult entertainment parlours operating and all 25 body rub parlour licenses were in use. This statistic suggests that there is a sharp decline in adult entertainment parlours as a use, but not body rub parlours. In addition, the city established 422 licensed ‘holistic centres’<sup>30</sup> involving 2,378 licensed holistic practitioners. The licenses for holistic centres can be acquired only if the zoning permits the use. In a July 2005 report, it was estimated that operators intent on establishing illegal operations that offer sexual services (i.e., body rubs) under the guise of ‘holistic centres’, represented about half of all holistic centres. The approach for the new city-wide zoning by-law was to establish definitions and regulations around adult entertainment, body rub service, massage therapy, and wellness centre. The definitions proposed in the report were as follows:

- “1. Adult Entertainment – means premises used for entertainment including activities, facilities, performances, exhibitions, viewings or encounters designed to appeal to erotic or sexual appetites or inclinations which in principal feature or characteristic is the nudity or partial nudity of any person.
3. Body Rub Service – means premises used for services involving the kneading, manipulating, rubbing, massaging, touching or stimulating by any means of a person’s body for the purposes of appealing to erotic or sexual appetites or inclinations.
4. Massage Therapy – means premises providing massage therapy by persons who are medical or health professionals licensed or registered under Province of Ontario legislation.
5. Wellness Centre – means premises providing services for therapeutic and wellness purposes, such as reiki energy therapy, hypnosis, reflexology, life coaching, “TAP” therapy, acupuncture, or massage service by persons other than medical or health professionals licensed or registered under Province of Ontario legislation.”<sup>31</sup>

The result was that massage therapy and wellness centre uses, which are non-adult entertainment type uses, are permitted in commercial zoned areas, whereas body rub service, which is an adult entertainment type use, was limited to one type of employment zone with separation distance regulations. Adult entertainment use was not a permitted use as-of-right in any zone, although separation distance regulations are applied to the use should there be future rezoning applications to consider one (see section 4.1 of this report). Key to establishing the differences of body rub from massage therapy and wellness centre uses, from a planning perspective, was that body rub parlours tend to have windows and door openings that are covered. Body rub services, unlike other commercial uses including wellness centres, conceal views into to the premises and limit their services to specific times and clientele. While it was recognized that zoning cannot regulate the outward appearance of store fronts, the licensing by-law could assist in that way.

29 Final Report on the City-wide Zoning By-law, City of Toronto Planning & Growth Management Committee, from the Chief Planner & Executive Director, City Planning Division, January 22, 2013, p. 6

30 This is a term that is defined in the City of Toronto’s Licensing By-law.

31 Final Report on the City-wide Zoning By-law, City of Toronto Planning & Growth Management Committee, from the Chief Planner & Executive Director, City Planning Division, January 22, 2013, p. 7

### 3.3 Bylaws and Brothels: An analysis of Toronto's adult entertainment governance strategy

A thesis undertaken by Nicholas Danford entitled, *Bylaws and Brothels: An analysis of Toronto's adult entertainment governance strategy*, has reviewed the issues surrounding adult entertainment and other sex industry land uses and the various options on how they can be regulated by municipal government. Danford outlines the differences between brothels, adult entertainment and other sex industry uses and notes the term “laddering”, which refers to the classification of types of adult entertainment according to different hierarchy.<sup>32</sup> The hierarchy ranges from adult magazine shops to prostitution – the degree to which there is (or is not) human interaction. Danford notes that at the time of the writing of the thesis that brothels in Canada are officially illegal. However, in March 2012 the Court of Appeal of Ontario was asked to address certain provisions in the Criminal Code which suggested that the legislation in the Criminal Code is unconstitutional. Therefore, municipalities need to prepare themselves for the possibility of regulating brothels should they be considered a legal use in the future. Danford also notes, that while body rub parlours and holistic centres are uses that are recognized in zoning by-laws and require municipal licenses, they have also been known to operate as illegal sex industry establishments.

Danford's thesis looks at other jurisdictions regarding brothels where the use is considered legal and notes the examples found in Sydney, Brisbane, and Auckland. He reviews that there have been three approaches to zoning for the sex industry: 1) Clustering Model – where all the sex industry uses are located next to each other, such as in the case of a 'red light district'; 2) City Periphery Model – where the sex industry uses are located at the outer edges of the municipality, often in industrial areas; and 3) Scattered Model – where the sex industry uses are scattered throughout the municipality with minimal separation distances restrictions from such uses as schools and places of worship.<sup>33</sup> Danford also examines the models and regulation environment under the three example cities and provides the following table:

**Table 1 – Australia & New Zealand Examples Summary<sup>34</sup>**

	<b>Sydney, Australia</b>	<b>Brisbane, Australia</b>	<b>Auckland, New Zealand</b>
<b>Brothel Legal Status</b>	Decriminalized	Licensed	Decriminalized
<b>Legislation and/or By-law</b>	Adult Entertainment and Sex Industry Premises Development Control Plan (DCP)	Prostitution Licensing Authority (PLA)	Bylaw 30 – Bylaws and Commercial Sex Premises
<b>Locational Strategy</b>	Scattered	Scattered	Clustered

32 *Bylaws and Brothels: An analysis of Toronto's adult entertainment governance strategy*, Nicholas Danford, 2013, Executive Summary, p. ii.

33 *Bylaws and Brothels: An analysis of Toronto's adult entertainment governance strategy*, Nicholas Danford, 2013, Chapter 4. Zoning The Sex Industry, pp. 19-25.

34 *Bylaws and Brothels: An analysis of Toronto's adult entertainment governance strategy*, Nicholas Danford, 2013, Table 1- International Example Summary, p. 35.

	<b>Sydney, Australia</b>	<b>Brisbane, Australia</b>	<b>Auckland, New Zealand</b>
<b>Licensing Criteria</b>	Follows regular development application procedures, same process as any other type of business	Licensee assessed on eligibility and suitability criteria  Application, Licensee, and room fees required	Premises must conform to locational, health, and operational criteria  Licensing fee required
<b>Health &amp; Safety Measures</b>	Internal design elements outlined in DCP to ensure safety  Compliance with occupational health regulations required	Prostitution Regulation 2000 contains occupational health and safety requirements  Safety requirements	Limited health and safety requirements outlined include health standards around education of workers and cleanliness standards
<b>Operational Guidelines</b>	Plan of Management exists and must be followed by the operators (included as appendix of DCP)	Not Available	Not Available
<b>Other Key Features</b>	External design guidelines to ensure business fits with neighbouring buildings	Brisbane Council adult entertainment bylaws not available, PLA regulations	External signage standards included in the bylaw

The thesis reviews how the new zoning by-law in the City of Toronto addresses adult entertainment and body rub establishments in terms of separation distances (see sections 4.1.2 and 4.1.3 of this report) and how it deals with these matters under the *City of Toronto Act*, which limits adult entertainment establishments in terms of locations and number of licenses, as well as controlling and limiting adult goods and body rub establishments.<sup>35</sup> Another point raised on the brothel discussion is that strict zoning on adult entertainment in Toronto's by-law does not connect to the reality of the adult entertainment industry. Most notably is the existence of apartment-based brothels.<sup>36</sup> The thesis raises the question whether or not these types of "at home" businesses should be regulated. The thesis notes that across the City of Toronto the adult entertainment and sex industry by-laws follow a scattered zoning approach, by using minimal distance regulations between establishments. On the matter of 'apartment-based brothels', the thesis notes that a different approach might be required, including such aspects as 'vertical minimal distances' and that separation from residential areas may need to be revisited to accommodate such establishments. The thesis suggests that even minimal separation distances between establishments and sensitive land uses 'should be reconsidered'.

<sup>35</sup> [City of Toronto Act](#), Section 92 (1) and (2)

<sup>36</sup> [Bylaws and Brothels: An analysis of Toronto's adult entertainment governance strategy](#), Nicholas Danford, 2013, Chapter 6.4 Zoning Strategy for Brothel Placement, pp.46-47.

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“Eliminating these restrictions would still allow for a scattering zoning strategy; however, intensity of use of lots zoned as sensitive land uses, most notably places of worship, should be considered when setting minimum separation distances.”<sup>37</sup>

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37 Bylaws and Brothels: An analysis of Toronto's adult entertainment governance strategy, Nicholas Danford, 2013, Chapter 7.4 Zoning Approach, pp.54.

## 4. CASE STUDIES

This chapter of the report reviews five municipal zoning by-law case studies (Toronto, Ottawa, Hamilton, Mississauga and Oakville) to show how they regulate and control adult entertainment and sex industry uses in their respective by-laws. The chapter examines the relevant definitions, zones that uses are permitted in or prohibited from, and regulations that may apply to a particular adult entertainment or sex industry use.

### 4.1 City of Toronto Zoning By-law 569-2013

#### 4.1.1 Definitions (Chapter 800)

##### *Adult Entertainment*

“means **premises** used for entertainment including activities, facilities, performances, exhibitions, viewings or encounters designed to appeal to erotic or sexual appetites or inclinations which a principal feature or characteristic is the nudity or partial nudity of any person. A **body rub service** is not an **adult entertainment**.”

##### *Body Rub Service*

“means **premises** used for services involving the kneading, manipulating, rubbing, massaging, touching or stimulating by any means of a person’s body for the purposes of appealing to erotic or sexual appetites or inclinations. An **adult entertainment**, **massage therapy**, or **wellness centre** is not a **body rub service**.”

It is important to note that the by-law also includes definitions for *cabaret*, *entertainment place of assembly*, and *nightclub* which all include that they are not an *adult entertainment* use. Further, the by-law has definitions for *massage therapy* and *wellness centre* which include that they are not a *body rub service*.

### 4.1.2 Zones Permitting Adult Entertainment, Body Rub Service, and other Sex Industry Uses (Chapters 5 through 100)

#### *Adult Entertainment*

While the zoning by-law defines adult entertainment as a use, it is not a use found listed as a “permitted use”, or a “permitted use with conditions” in any of the zones established under the zoning by-law. This would imply that such a use would require a rezoning in order to be considered in any location in the City of Toronto.

#### *Body Rub Service*

This use is a permitted use in only one zone in the City of Toronto, that being the “E” (Employment Industrial) zone, subject to condition #32, which states:

#### “Body Rub Service – Separation Distance

In the E zone, a lot that has a body rub service must be:

- (A) at least 100.0 metres from a lot in the Residential Zone category or Residential Apartment Zone category; and
- (B) at least 500 metres from a lot with a public school, private school, or place of worship, or a lot in a IS zone or IPW zone; and
- (C) at least 500 metres from a lot that has an adult entertainment use or 100 metres from a lot that has a body rub service.”<sup>38</sup>

#### Other Sex Industry Uses

There is no definition, mention, or regulation pertaining to any other sex industry use in the zoning by-law.

### 4.1.3 Regulations specific to Adult Entertainment, regardless of zone (Chapter 150)

Although the by-law does not permit adult entertainment as a use in any zone in the City of Toronto, Section 150.110 of the by-law establishes certain separation distance provisions for that use, which presumably need to be considered as part of any rezoning application to consider such a use. The regulation states:

#### “(1) Adult Entertainment – Separation Distance

A lot with an adult entertainment use must be:

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38 City of Toronto Zoning By-law 569-2013, provisions 60.20.20.20 (1) and 60.20.20.100 (32)

- (A) at least 100 metres from a lot in the Residential Zone category or residential Apartment Zone category;
- (B) at least 500 metres from a lot with a public street, private school, or place of worship, or a lot in a IS zone or IPW zone; and
- (C) at least 500 metres from a lot with an adult entertainment use or a body rub service.”<sup>39</sup>

#### 4.1.4 Parking Regulations (Chapter 200)

Parking rates are based on “policy areas”, which are categories of areas close to higher order of public transit. There are four policy areas and “rest of the City”. The zoning by-law has parking requirements for adult entertainment, but not for body rub service.

##### Adult Entertainment

“Parking spaces must be provided:

- (A) in Policy Area 1 (PA1) at a minimum rate of 3.0 for each 100 square metres of gross floor area;
- (B) in Policy Area 2 (PA2) at a minimum rate of 4.4 for each 100 square metres of gross floor area;
- (C) in Policy Area 3 (PA3) at a minimum rate of 5.5 for each 100 square metres of gross floor area;
- (D) in Policy Area 4 (PA4) at a minimum rate of 5.5 for each 100 square metres of gross floor area; and
- (E) in all other areas of the City, at a minimum rate of 7.0 for each 100 square metres of gross floor area.”<sup>40</sup>

The table also includes a “parking occupancy rate” which is used when a use is located on a lot with other uses, then a “shared parking space calculation (minimum)”<sup>41</sup> can be applied. For adult entertainment use the morning parking (6am to 12pm) occupancy rate is 25%, the afternoon parking (12pm to 6pm) occupancy rate is 100%, and the evening parking (6pm to 6am) occupancy rate is 100%.

## 4.2 City of Ottawa Zoning By-law 2008-250

### 4.2.1 Definitions (Part 1, Section 54)

The Ottawa zoning by-law defines *adult entertainment parlour* as follows:

#### *Adult entertainment parlour*

“means any premises or part thereof in which is provided, in pursuance of a trade, calling, business or occupation, live entertainment or services appealing to or designed to appeal to erotic or sexual appetites or inclinations, and includes a body rub parlour.”

<sup>39</sup> City of Toronto Zoning By-law 569-2013, provision 150.110.30.1 (1)

<sup>40</sup> City of Toronto Zoning By-law 569-2013, provision Table 200.5.10.1 Parking Space Rates and Parking Space Occupancy

<sup>41</sup> City of Toronto Zoning By-law 569-2013, provision 200.5.10.1 (6)



## 4.2.2 Zones Permitting Adult Entertainment Parlour & Other Sex Industry Uses

As noted in the definition, adult entertainment parlour includes a body rub parlour. The use, as defined, is not permitted as of right in any zone in the City of Ottawa, and as such would require a rezoning to consider permitting such a use in the future. There is no reference in any zone in the zoning by-law to any other sex industry use.

## 4.2.3 Regulations specific to Adult Entertainment & Other Sex Industry Uses (Section 80)

Section 80 of the zoning by-law states:

- “(1) Where an adult entertainment parlour is permitted, the lot on which it is located must not be:
- (a) within 500 metres of a residential use building, day care, place of worship, school, library, community centre, community health and resource centre or park, or any residential, institutional, open space or leisure zone; or
  - (b) within 1000 metres of a lot occupied by another adult entertainment parlour.
- (2) No adult entertainment parlour may be located on a lot having frontage on a rural arterial road as shown on Schedule 4 of this by-law.”<sup>42</sup>

There is no reference in Ottawa’s zoning by-law to any other sex industry use.

## 4.2.4 Parking Regulations (Part 4)

Parking rates are based on four “areas” identified under Schedule 1 of the zoning by-law, which generally pertains to three areas within the urban portion of Ottawa, and one area pertaining to the rural area of Ottawa.

### Minimum Number of Parking Spaces Required for Adult Entertainment Parlour

1. In Area ‘A’ on Schedule 1 and MC Zone at Tunney’s Pasture (Central Area) – 0.75 per 100 square metres of gross floor area.
2. In Areas ‘B’ (Inner City Area), ‘C’ (Suburban Area), and ‘D’ (Rural Area) – 6 per 100 square metres of gross floor area.

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42 City of Ottawa Zoning By-law 2008-250, Part 3 Specific Use Provisions, Section 80 Adult Entertainment Parlours

## 4.3 City of Hamilton Zoning By-law 05-200

### 4.3.1 Definitions (Section 3)

The definitions involving *body rub* and *body rub establishment* were all introduced into By-law 05-200 in 2010 by By-law 10-076, which in part deleted an old definition for *body rub parlour*.

#### *Adult Entertainment Parlour*

“Shall mean a use which provides entertainment or services that are designed to appeal to erotic or sexual appetites or inclinations provided on the premises and shall include a Body Rub Parlour.”

#### *Body Rub*

“Shall mean the kneading, manipulating, rubbing, massaging, touching, or stimulating, by any means, of a person’s body or part of a person’s body appealing to or designed to erotic or sexual appetites or inclinations including but not limited to a body rub advertised by any means as “sensual”, “sexy” or by any other word or any depiction having like meaning or implication, and does not include a body rub performed for the purpose of medical or therapeutic treatment provided by a person otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario.”

#### *Body Rub Establishment*

“Shall mean any premises or part thereof where a body rub is performed, offered or solicited in pursuance of a business but shall not include an Alternative Massage Establishment medical or therapeutic treatment given by a person otherwise duly qualified, licensed or registered.”

By-law 10-076 also established definitions for *alternative massage* and *alternative massage establishment* which deal with non-therapeutic treatment and non-erotic or sexual forms of massage.

### 4.3.2 Regulations on Adult Entertainment Parlour and Body Rub Establishment

There does not appear to be any zone that either permits or prohibits *adult entertainment parlour* or *body rub establishment* as a use. There are no specific provisions found in By-law 05-200 regarding either of these uses. There are no parking requirements that are specific to these uses. It is therefore assumed that any *adult entertainment parlour* or *body rub establishment* would require a rezoning no matter where it is proposed in By-law 05-200. It is noted that Section 4.1 of the by-law states: “with respect to any lands to which this By-law applies, all uses are prohibited unless specifically permitted in this By-law.”<sup>43</sup>

43 City of Hamilton Zoning By-law 05-200, Section 4 General Provisions, Provision 4.1 Prohibited Uses, p. 4-1

## 4.4 City of Mississauga Zoning By-law 0225-2007

### 4.4.1 Definitions (Part 1)

#### *Adult Entertainment Establishment*

“means a *building, structure* or part thereof, in which is provided, in pursuance of a trade, calling, business or occupation, services appealing to or designed to appeal to erotic or sexual appetites or inclinations which include: (1) services of which a principal feature or characteristic is the nudity or partial nudity of any person; (2) services in respect of which any of the words nude, naked, topless, bottomless, sexy, exotic, or any other word, picture symbol or representation having like meaning or implication is used in any advertisement.”

#### *Adult Video*

“means a video, the content of which is designed or held out as designed, to appeal to erotic or sexual appetites or inclinations, through the pictorial, photographic or other graphic depiction of subject-matter distinguished or characterized by the portrayal of one (1) or more persons involved or engaging in *specified sexual activities*, or by an emphasis on the display of human *specified body areas*; and in the absence to the contrary, a *video* classified by the Ontario Film Review Board as restricted with the added information piece adult sex film shall be deemed to be an adult video, while a *video* without such classification and the information piece shall be deemed not to be an adult video.”

#### *Adult Video Store*

“means a *building, structure* or part thereof, where the principal *use* is the carrying on of the business of selling, offering to sell or displaying for sale by retail or renting, offering to rent or displaying for rental *adult videos*, whether or not the cost, fee or other consideration passes at the time of such sale or rental, or is effected through the cost of membership, subscription, admission or any other manner.”

#### *Specified Body Areas*

“means one (1) or more of the following: (1) in the case of a female person, her areolae; (2) in the case of all persons, the genitals and the anus.”

#### *Specified Sexual Activities*

“means one (1) or more of the following: actual or simulated sexual intercourse, masturbation, urination, defecation, ejaculation, sodomy, including bestiality, anal intercourse, and oral sexual intercourse, direct physical stimulation of unclothed genital organs, flagellation and torture in relation to a sexual activity.”

#### *Video*

“means cinematographic film, video and any other medium from which may be produced visual images that may be viewed as moving pictures.”

### *Body-Rub Establishment*

“means a *building, structure* or part thereof, where a body-rub is performed, offered, or solicited in pursuant to a trade, calling, business or occupation, but shall not include any premises or parts thereof, where massages for the purpose of medical or therapeutic treatment are performed or offered by persons licensed or registered by the Province of Ontario.”

#### **4.4.2 Zones Permitting Adult Entertainment Establishment, Body-Rub Establishment and Adult Video Store (Part 8, Employment Zones)**

*Adult entertainment establishment, adult video store, and body-rub establishment* are all permitted uses in two employment zones in the City of Mississauga- the E2 (Employment) and the E3 (Industrial) zones, all subject to criteria set out in Part 2 – General Provisions 2.1.2.1.1 – Minimum Separation Distance.<sup>44</sup>

#### **4.4.3 Regulations specific to Adult Entertainment Establishment, Body-Rub Establishment and Adult Video Store (Part 2, General Provisions)**

Section 2.1.2 of the by-law is entitled *Minimum Separation Distance From Residential Zones and Other Restrictions* and under Table 2.1.2.1.1 adult entertainment establishment, body-rub establishment, and adult video store all have a minimum separation distance of 800 metres. The minimum separation distance is measured in a straight line from the nearest part of the building or structure, or portion of the building or structure containing the use, to the closest lot line in a residential zone.<sup>45</sup>

#### **4.4.4 Parking Regulations (Part 3)**

Table 3.1.2.2 of By-law 0225-2007 sets out the required number of parking spaces for non-residential uses. In the list of uses is adult entertainment establishment which requires a minimum off-street parking of 16.3 spaces per 100 square metres of non-residential gross floor area.<sup>46</sup> There are no specific parking requirements for body-rub establishment or adult video store. There are various parking requirements for *retail store*, but this defined a separate use from an *adult video store*.

44 City of Mississauga Zoning By-law 0225-2007, Part 8- Employment Zones, Table 8.2.1, p. 8.2.1~2

45 City of Mississauga Zoning By-law 0225-2007, Part 2 – General Provisions, provision 2.1.2.1.2, p. 2.1~2

46 City of Mississauga Zoning By-law 0225-2007, Part 3 – Parking, Loading and Stacking Lane Regulations, Table 3.1.2.2, line 3.0, p. 3.1~7

## 4.5 Town of Oakville Zoning By-law 2014-014

### 4.5.1 Definitions (Part 3)

#### *Adult Entertainment Establishment*

“means any *premises* or part thereof *used* in the pursuance of a business, if: a) entertainment or services that are designed to appeal to exotic or sexual appetites are offered or provided in the *premises* or part of the premises, and without limiting the generality of the foregoing, includes services or entertainment in which a principal feature or characteristic is nudity or partial nudity of any person; or, b) body rubs, including the kneading, manipulating, rubbing, massaging, touching or stimulating by any means of a person’s body are performed, offered or solicited in the *premises* or part of the premises, but does not include *premises* or part thereof where body-rubs performed, offered or solicited are for the purpose of medical or therapeutic treatment and are performed or offered by persons otherwise duly qualified, licensed or registered to do so under the laws of the Province of Ontario; or, c) *adult videos* are sold, rented, or offered or displayed for sale or rental, where the proportion of *adult videos* to other videos exceeds a ratio of 1:10.”

#### *Adult Video*

“means any cinematographic film, videotape, video disc, or other medium designed to produce visual images that may be viewed as moving pictures, classified by the Ontario Film Review Board or any successor agency, as both “restricted” and “adult sex film”, or any similar successor designation.”

### 4.5.2 Zones Permitting Adult Entertainment Establishment (Parts 7 and 10)

#### Midtown Oakville Zones

- MTE (Midtown Transitional Employment) permits the use *adult entertainment establishment*, without any associated conditions or restrictions.

#### Employment Zones

- E2 (Business Employment) and E3 (Industrial) permits the use adult entertainment establishment, subject to conditions: 1) Prohibited on a lot within 800.0 metres of a Residential Zone; and 2) Shall only be located within a freestanding building as the exclusive use on the lot.<sup>47</sup>

### 4.5.3 Parking Regulations (Part 5)

#### Minimum Number of Parking Spaces for an Adult entertainment establishment

1. 1.0 per 18.0 square metres of net floor area.<sup>48</sup>

47 Town of Oakville Zoning By-law 2014-014, Part 10 – Employment Zones, Additional Regulations 4 and 10, p. 10-3

48 Town of Oakville Zoning By-law 2014-014, Part 5 – Parking, Loading, & Stacking Lane Provisions, Table 5.2.1 Ratios of Minimum Number of Parking Spaces, p. 5-4.

## 5. ISSUES IDENTIFIED AND POTENTIAL OPTIONS

Based on the review and assessment federal and provincial legislation, Markham's Official Plan policies, the current 46 parent zoning by-laws and site specific by-laws relating to the subject, Markham's Stationary Business Licensing By-law 2012-158, history of adult entertainment and sex industry-related uses in Markham, planning reports and studies on the topic, and case studies from other municipal zoning by-laws dealing with the matter, this report has identified a number of issues surrounding adult entertainment and sex industry-related uses.

### 5.1 Issues Identified

#### ***Important to identify and define land uses***

The use of the term 'adult entertainment parlour' has been used in the Markham zoning by-laws and the Markham licensing by-law to apply to many different things and uses. It will be importance to identify and define the different land uses that are both associated with the sex industry and those not associated with the sex industry which have been confused between the zoning by-laws and the licensing by-law.

#### ***Consideration for new Official Plan policies/definitions***

While the Markham Official Plan has identified specific land use designations where 'adult entertainment' is provided for as a discretionary use , the Official Plan does not define 'adult entertainment', nor does it refer to the zoning by-law term 'adult entertainment parlour'. The Official Plan and the zoning by-laws have no policy or regulations specifically for 'body rub parlours', whereas the licensing by-law defines and has separate regulations that are different from 'adult entertainment parlours'. If an Official Plan amendment is not approved before the new zoning

by-law is approved, then the new zoning by-law regulations to control these uses will be done so without any Official Plan policy context.

***Adult Entertainment Parlours currently do not exist in Markham***

The two adult entertainment parlours (strip bars) that existed in Markham and which the zoning by-laws identified and permits them, no longer exist. There is a question as to why current zoning would still permit these uses when they have both been replaced by other uses for a substantial period of time. Like other municipalities in Ontario, the traditional adult entertainment parlour is a dying use that may no longer exist in the near future with the changing social attitudes and economics for these land uses.

***Body Rub Parlours currently do exist in Markham***

This is a land use that may or may *not* be designed to appeal to erotic or sexual appetites, yet it is a land use that is *not* defined in any of Markham's existing zoning by-laws but is defined and regulated under Markham's licensing by-law. The licensing by-law is very clear in terms of definitions and regulations that body rub parlours are *not* designed to appeal to erotic or sexual appetites; however, substantial distance separation requirements from sensitive land uses (residential, schools, places of worship, child day care centres, and other body rub parlours) suggests that the land use does involve activities that are designed to appeal to erotic or sexual appetites- otherwise what are the justifications for the distance separations? The other important factor is to identify what activities which are designed to appeal to erotic or sexual appetites in body rub parlours are considered 'acts' which are *not* considered acts of prostitution.

***Recent changes to Federal Legislation on Prostitution***

As noted in this report, Federal legislation has changed regarding the legality of prostitution in Canada. However, the current legislation has resulted in a mixed opinion as to whether or not prostitution is legal in Canada since the emphasis has been changed to those seeking sexual services as being illegal, from those who sell sexual services which are now deemed legal under the latest legislation. This result does not assist municipalities in Canada from determining whether they should (or should not) recognize brothels as a legal land use that should be recognized and regulated under local zoning legislation.

## 5.2 Potential Options

***Define and distinguish between different Land Uses***

It may be appropriate to consider that the new zoning by-law define a set of land uses that may or may not involve sex industry related activities. The new zoning by-law should continue to define *adult entertainment* (either parlour or establishment), *body rub* (either parlour or establishment involving activities that appeal to erotic or sexual appetites), *massage therapy* (or similar term for persons licensed as a medical or health professional under provincial legislation), and *wellness centre* (or similar term for persons providing services for therapeutic and wellness purposes that are not licensed as a medical or health professional under provincial legislation and which are not to appeal to erotic or sexual appetites). There should also be consideration to make changes to Markham's licensing by-law that would make it consistent with the new zoning by-law land use definitions. Those land uses involving activities that appeal to erotic or sexual appetites (*adult entertainment* and *body rub*), but which are not considered activities associated with prostitution, would be identified and regulated in the new zoning by-law as well as have other regulations governed under a revised municipal licensing by-law. The massage therapy and wellness centre

land uses could be regulated under the zoning by-law only and would not require any licensing provisions under the municipal licensing by-law.

### ***Consistency of land use definitions, terms and potential policy***

There needs to be a consistency of land use terms and their definitions between the Official Plan, the new zoning by-law, and the licensing by-law. In particular, the term *adult entertainment* (parlour or establishment) should be applied across all three pieces of legislation; the term *body rub* (parlour or establishment) should be in the new zoning by-law and consistent with the licensing by-law. It may be appropriate to consider establishing policies in the Official Plan on adult entertainment and body rub establishments, but it is not necessarily a requirement to establish regulations in the new zoning by-law. New land use terms dealing with massage therapy and wellness centres could be established in the new zoning by-law, without the need for any policy changes to the Official Plan, or licenses under the licensing by-law.

### ***Repeal Existing Adult Entertainment Establishment Permissions/ Establish city-wide regulations***

As noted in this report the two locations for adult entertainment parlours recognized in the existing zoning by-laws and the licensing by-law no longer exist. In the case of one of the sites, the site was redeveloped 11 years ago as a place of worship with associated school and day care permissions as additional permitted uses. There is no evidence that the by-laws which permitted adult entertainment parlour on the same site were ever repealed, and that the site specific by-law made no mention of the 'other uses' allowed on the site. It may be appropriate to consider that the site specific by-laws permitting adult entertainment parlours not be carried forward in the development of the new city wide zoning by-law. The new zoning by-law should set out criteria (zones, distance separations, etc.) for future adult entertainment parlours and require that such uses require a rezoning application that is subject to the criteria set out in the zoning by-law.

### ***Establish Body Rub Establishment Regulations and Other Land Use Regulations***

The new zoning by-law may want to consider including a body rub establishment land use definition that deals with massage establishments that are designed to appeal to erotic or sexual appetites, but which do not involve activities that could be considered "sexual services" under the laws of Canada. The municipal licensing by-law could be amended to reflect licenses for these uses. The distance separation and location regulations could be established in the new zoning by-law and the licensing by-law could focus regulations such as required signage, age of operators, activities that are not permitted, etc. The new zoning by-law could also recognize massage therapy and wellness centre land uses and permit them in appropriate zones that differ from body rub establishments. Given the non-sexual relationship of these latter two uses there would be no need to have any licensing requirements, other than to ensure that municipal licensing officers could check on these establishments to ensure that they are what they say they are.

### ***No need for zoning regulations on Brothels at this time***

There are no current zoning regulations found in any municipality in Canada as it pertains to brothels and common bawdy houses. Given the recent changes to the Criminal Code as it relates to prostitution in Canada it is not appropriate to address the issue under the new zoning by-law. While the sale of one's own sexual services continues to be legal, the purchase of sexual services is prohibited in Canada, so there is no need to recognize the sale of such services as a land use in Markham at this time. Should the laws of Canada change again to make prostitution 100% legal,



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then Markham can consider introducing land use regulations at that time and can look at other municipal jurisdictions (Australia, New Zealand, or parts of the state of Nevada) where prostitution is a legal activity.

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