

TO: CITY MANAGER August 22, 2001
FROM: DIRECTOR PLANNING AND BUILDING OUR FILE: 17.932
SUBJECT: **ADDITIONAL REGULATIONS PERTAINING TO ADULT SERVICE BUSINESSES**
PURPOSE: To propose regulations on adult telephone services, body rub salons, escort services, pornographic film studios and unlicensed karaoke box establishments to supplement those currently outlined in the Burnaby Adult Service Business Regulation Bylaw.

RECOMMENDATIONS:

1. **THAT** the Burnaby Adult Service Business Regulation Bylaw be amended to regulate specific businesses as follows:
 - a. hours of operation for adult telephone services, body rub salons, escort services, and pornographic film studios to be restricted to 8 a.m. to midnight, Sunday through Thursday, and 8 a.m. to 1 a.m. on Fridays and Saturdays
 - b. entrance doors to all rooms used for body rubs, adult telephone services, or the making of pornographic materials and all karaoke box rooms in unlicensed premises to be free of any locking device
 - c. all rooms used for body rubs, adult telephone services, or the making of pornographic materials and all karaoke box rooms in unlicensed premises to be equipped with a non-opaque window which has a minimum area of 1,000 square centimetres, with no side having a dimension of less than 25 centimetres, and which is unobstructed at all times, and visible from a common area.
 - d. all rooms used for body rubs and all karaoke box rooms in unlicensed premises to meet an illumination standard of 550 lux at all points in the room, with such lighting to remain on whenever the entrance door to the room is closed or the room is occupied.
2. **THAT** annual Business Licence fees for adult telephone services, body rub salons, and pornographic film studios be increased to \$3,000 for the first and subsequent years of operation.

REPORT

1.0 BACKGROUND

At its meeting of 2001 March 26, Council approved the development of a bylaw under the provisions of the Provincial Local Government Act to prohibit the employment or presence on the business premises of anyone under the age of nineteen years in certain types of commercial establishments. In approving development of the bylaw, Council was responding to June 1998 recommendations from the City's Task Force on the Sexual Exploitation and Prostitution of Children and Youth, which concluded that there were safety risks to minors employed or involved in certain classes of business. During its discussion of the proposed bylaw, Council also asked that staff consider and report back on additional business regulations for the identified types of establishments, including locational and other restrictions included in similar bylaws in the cities of Richmond, Surrey and North Vancouver.

This report responds to that request.

2.0 BURNABY ADULT SERVICE BUSINESS REGULATION BYLAW

Burnaby's new Adult Service Business Regulation Bylaw was given Final Reading by Council on 2001 July 9. The bylaw, a copy of which is *attached* as Appendix 1, applies to adult telephone services, body rub salons, escort services and pornographic film studios. It imposes a number of restrictions and requirements on those businesses, including:

- a prohibition against employing or allowing on the premises anyone who is under the age of nineteen years, with proof of age being required before employment or entry into the premises
- a requirement for the owner or operator to permit unimpeded and immediate inspection of his/her premises at any time during business hours by a police officer or City staff
- a requirement for the owner or operator to display at all times a legible sign noting that is unlawful for persons under the age of nineteen to enter the premises
- a requirement for the owner or operator to produce a written record of the name, address and age of each current employee, as well as proof of age, should they be requested by a police officer or City staff.¹

¹Other local municipalities have imposed reporting requirements for changes in personnel. Such a requirement was considered by the Burnaby RCMP to be too onerous for its officers to monitor. It was deemed more appropriate to put the onus on the owner/operator to ensure that employees are of age, and to have that proof of age available should it be requested.

3.0 DISCUSSION OF ADDITIONAL REGULATIONS

3.1 Context for Amendments to Burnaby's Bylaw

City staff from the Planning Department and the Licence Office have discussed with the City Solicitor and representatives from the Burnaby RCMP the need for additional regulatory provisions - such as those outlined in the Richmond, Surrey and North Vancouver bylaws - on the identified types of establishments. In addition to age restrictions on employees and others on the premises, the bylaws in those other local municipalities also include provisions concerning:

- room size and other physical attributes of premises
- lighting levels and other visibility features within premises
- reporting requirements for physical changes to premises
- record- keeping pertaining to persons provided with services
- dress codes for employees
- reporting requirements for changes in personnel
- hours of operation
- signage and other types of advertisement
- locational restrictions

The concept of municipal licensing and regulating of body rub salons, escort agencies and similar services is not without controversy. Opponents of municipal licensing suggest that it actually legitimizes and provides respectability for the businesses, and facilitates their integration into the community. Others suggest that licensing simply allows monitoring and control by police and municipal authorities in order to ensure that businesses do offer the goods and services they purport to, and that their activities are legal.

In recommending regulations, staff believe it is important to strike a balance between the rights of legitimate businesses to operate in an environment relatively free of encumbrances, and the need for the City to ensure public safety while not exposing itself to challenges under the Charter of Rights and Freedoms. Staff believe it is also important that any recommended regulations reflect the original intent of the Burnaby Adult Service Business Regulation Bylaw, which is to eliminate safety risks to minors who might otherwise be employed or involved in certain classes of business. In order to achieve the desired balance and adhere to the bylaw's intent, staff have concluded that there is a need in Burnaby for some of the types of restrictions outlined above. These are discussed in Section 3.2. below. However, in the view of staff, the utility of others of the above-noted provisions in protecting the safety of minors is questionable and, as outlined in Section 3.3, such restrictions are not recommended at this time.

3.2 Proposed Additions to Bylaw

3.2.1 *Restrictions on Hours of Operation*

Staff have concluded that it would be wise to restrict the hours of operation of adult telephone services, body rub salons, escort services and pornographic film studios to preclude twenty-four hour operation. The hours of operation stipulated in the Surrey bylaw are 8 a.m. to midnight, seven days per week, while Richmond allows similar hours Sunday through Thursday, with an additional hour of operation - until 1 a.m. - on Fridays and Saturdays. The City of North Vancouver exercises tighter restrictions, allowing operation from 8 a.m. until only 10 p.m. seven days per week. Staff propose that Burnaby adopt similar hours of operation to those allowed in Richmond. Staff and the RCMP believe that regulations which are too restrictive could have the effect of driving the identified types of establishments “underground”, rendering monitoring and/or control by public authorities more difficult.

3.2.2 *Ease of Access to and Surveillance of All Rooms Within Premises*

Staff have concluded that police officers and City staff must be allowed unrestricted access not only into the identified types of establishments, as provided for in the existing Burnaby Adult Service Business Regulation Bylaw, but also into all rooms within the premises in order to ensure that minors are not present. The bylaws in other local municipalities differ in their requirements for access and ease of surveillance. The Richmond, North Vancouver and Surrey bylaws all require that rooms used for body rubs or similar services be free of locking devices. Richmond and North Vancouver also require such rooms to be equipped with a window which must be visible from the reception area. In contrast, the Surrey bylaw prohibits windows or any means, other than the entrance door to the room, by which a person might view the interior of the room. This window prohibition is intended to ensure those in the room a degree of privacy, and to preclude vicarious enjoyment on the part of those outside the room. Staff propose that Burnaby impose requirements for windows and restrictions against locking devices in rooms used for body rubs, adult telephone services, or the making of pornographic materials, and on karaoke box rooms in unlicensed establishments². It is proposed that windows be required to have

²Karaoke box establishments were not included in the original bylaw which provided age restrictions given that licensed karaoke establishments are already subject to age restrictions under the Liquor Control Act and given the popularity of unlicensed karaoke establishments for children’s birthday parties. The ability of police and City staff to enter unlicensed karaoke box rooms in order to monitor activities is, however, deemed important.

a minimum area of 1,000 square centimetres, with no side having a dimension of less than 25 centimetres, and to be non-opaque, unobstructed at all times, and visible from a common area.

3.2.3 *Illumination in Rooms on Premises*

To assist police and City staff with enforcing the bylaw and ensuring minors are not present on the premises, staff have concluded that minimum standards for lighting in rooms used for body rubs, and in karaoke box rooms in unlicensed establishments should be imposed. Surrey requires that rooms used for body rubs or similar services be equipped with lighting of at least 50 foot candle power at all points in the room, and that such lighting remain "on" when the door is closed. North Vancouver requires that rooms used for body rubs be equipped with lighting of at least 51 foot candle power, which must remain "on" at all times that the room is occupied or the door is closed. Richmond requires that rooms used for body rubs or similar services be equipped with lighting of at least 550 lux³, which must remain illuminated when either the door into the room is closed or the room is occupied. In order to assist police and City staff with bylaw enforcement, staff propose that Burnaby adopt similar lighting standards to those required by Richmond - that is 550 lux, with lighting to remain on when the door is closed or the room is occupied.

3.2.4 *Business License Fee Increases*

Burnaby's Business License fee for personal service establishments, the category into which most of the identified types of establishments fall, is \$468 for the first year of operation, and \$152 for renewal in subsequent years. Burnaby's annual Business License fees for escort agencies is \$3,000, for first and subsequent years of operation. The fees in other local municipalities for body rub salons, escort agencies and other similar businesses range from \$3,000/year in Surrey, Richmond and North Vancouver to \$6,992 in Vancouver. Recent pre-bylaw experience in Burnaby suggests that a considerable level of RCMP and City staff resources is required for monitoring activities in the identified types of establishments. The need to enforce the new Burnaby Adult Service Business Regulation Bylaw will likely increase those resource requirements. In order to help offset the costs of bylaw enforcement, staff recommend that adult telephone services, body rub salons, and pornographic film studios be differentiated from other personal service establishments, and that the annual Business License fees for the new category of businesses be increased to

³Lux is the metric measurement for lighting intensity. One foot candle power is equivalent to 10 lux.

\$3,000. As noted above, such a fee is consistent with annual Business License fees already charged in Burnaby for escort agencies, and with fees for similar types of establishments in other local municipalities. Staff also propose that RCMP and staff time spent in enforcement be tracked over the next twelve months. If, after that period, an adjustment in license fees is warranted, staff will report back to Council on the matter.

3.3 Regulations Considered But Not Recommended At This Time

3.3.1 Locational Restrictions

Neither the Richmond nor Surrey bylaws impose locational restrictions on body rub establishments, other than a requirement for commercial zoning. The City of North Vancouver Zoning Bylaw, however, has been amended to prohibit body rub establishments, with the consequence that new establishments cannot locate in the City, and the one existing establishment has become legally non-conforming. The City of New Westminster has implemented a special zoning category for unregistered massage therapists.

Under the Burnaby Zoning Bylaw, the identified types of business establishments can locate in most of Burnaby's commercial districts. Tighter restrictions could be imposed in the form of:

- locational guidelines within existing zoning districts which seek to ensure establishments do not locate in close proximity to sensitive uses
- Comprehensive Development (CD) zoning or
- the establishment of a special zoning category similar to that which currently applies to arcades and pool halls.

In the opinion of staff, the question of additional locational restrictions is sensitive and must be carefully considered. On the one hand, staff and RCMP representatives agree that it would be best if the identified types of establishments were not able to locate within a specified distance of schools, playgrounds, recreation centres, and other venues where young people can be expected to congregate. On the other hand, stringent regulations could create a number of legally non-conforming establishments, while potentially forcing other operations to go "underground" and beyond the ability of public authorities to regulate and monitor. In addition, the imposition of locational criteria would not likely have an impact on the activities of escort agencies given that the primary activity at an agency is the fielding of phone calls. Given the complexity of the issue, staff do not recommend locational restrictions be imposed at this time. However, staff propose to gather additional information regarding the location of

current relevant establishments and the likely impact of the various types of restrictions on their ability to operate, and to report back to Council on the question of locational restrictions.

3.3.2 Dress Code for Employees

Bylaws in Surrey, Richmond and City of North Vancouver impose dress code restrictions on employees of body rub salons. Those dress codes stipulate that garments must be clean, non-transparent and must cover the body between the neck and the knees. Given that the existing Burnaby bylaw already protects the safety of children and youth by prohibiting their presence in the identified types of establishments, Burnaby staff do not recommend the imposition of a similar dress code in Burnaby.

3.3.3 Signage and Advertisement

Bylaws in Surrey and North Vancouver prohibit the owners or operators of body-rub establishments from exhibiting nude bodies or body parts or any printed words which might indicate that the premises offers sexual or nude entertainment in windows or on signage inside or outside of the premises. The Richmond bylaw is silent on signage and advertisement. As with the employee dress code issue, Burnaby staff do not recommend prohibitions on signage and advertisement given the weak connection between such marketing and protecting the safety of minors, who are prohibited by the existing bylaw from being on the premises. Should suggestive signage in the identified types of establishments occur and be deemed to have a negative impact on the safety of children and youth, Council could amend the bylaw at a later date.

3.3.4 Room Size

The Surrey and North Vancouver bylaws stipulate that rooms used for body rubs must have minimum dimensions of 8 feet by 8 feet. The intent is to ensure that rooms are actually large enough for massages to be provided. Those bylaws also require the owner or operator of a body rub establishment to provide a scale plan of the premises, and to advise appropriate City departments of any proposal to alter the floor plan. The Richmond bylaw does not address room size. Again, because the intent of the Burnaby bylaw is to ensure the safety of minors, and because the existing bylaw prohibits the presence of minors, staff do not recommend the imposition of room size standards at this time.

3.3.5 Record of Customers

The Richmond bylaw requires escort services to maintain a written list of customers, including name and current address, for a period of six months after the service is

provided. The North Vancouver bylaw requires the same type of written record for customers of body rub services. The Surrey bylaw does not require customer records. Burnaby staff do not recommend a requirement for customer records, both because monitoring such records could prove to be a drain on police resources, and because such records would not have an impact on the safety of minors who, as noted above, are not allowed on the premises of the identified types of establishments.

4.0 BYLAW CONTRAVENTION

4.1 Owners/Operators

The existing Burnaby Adult Service Business Regulation Bylaw imposes penalties for contravention of the bylaw as provided for in the Offence Act. Those penalties are fines charged to the owner or operator of the establishment convicted of bylaw contravention. Maximum fines are \$2,000. The RCMP believe that fines will not deter the operations of the identified types of businesses, given the lucrative nature of their activities. They believe that suspension or cancellation of the Business License would be a more effective means of ensuring compliance. The Local Government Act does provide the City with authority to suspend or revoke a business license for contravention of municipal bylaws, assuming a test of reasonableness can be passed. Staff recommend an approach to bylaw enforcement which reflects zero tolerance for bylaw contravention. Recommendations to suspend or revoke a business licence will be forwarded to Council on a case-by-case basis.

4.2 Employees/Others Under the Age of 19 Years

Given that the intent of the bylaw is to protect the safety of children and youth, guidelines must be in place concerning the removal of minors found on the premises by police or City staff. The Burnaby RCMP has an existing protocol with the Ministry for Children and Family Development which stipulates that RCMP officers will turn a minor found in a circumstance which poses a danger to him/herself over to the custody of the Ministry. Ministry staff would then offer the minor support and services. City staff who encounter a suspected minor on premises they inspect would defer to police officers to enforce age restrictions and facilitate the transfer process to the Ministry.

5.0 SUMMARY AND CONCLUSIONS

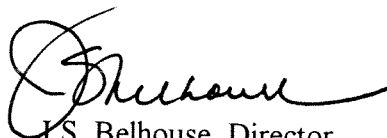
Burnaby's new Adult Service Business Regulation Bylaw regulates the age of people who can enter and/or be employed in body rub salons, escort services, adult telephone services and pornographic film studios in Burnaby. This report discusses possible amendments to the bylaw to expand the regulatory context for such establishments, and to extend some regulations to unlicensed karaoke box establishments. Because the intent of Burnaby's bylaw

is to protect minors, who are not allowed in the identified types of establishments anyway, staff do not recommend that the City regulate signage and advertisement, room size of body rub rooms, or the dress of employees. Staff also do not recommend requirements for customer records, or locational regulations for reasons noted above.

In order to ensure the safety of minors, staff do recommend that the Burnaby Adult Service Business Regulation Bylaw be amended to regulate specific businesses as follows:

- hours of operation for adult telephone services, body rub salons, escort services, and pornographic film studios to be restricted to 8 a.m. to midnight, Sunday through Thursday, and 8 a.m. to 1 a.m. on Fridays and Saturdays
- entrance doors to all rooms used for body rubs, adult telephone services, or the making of pornographic materials and all karaoke box rooms in unlicensed premises to be free of any locking device
- all rooms used for body rubs, adult telephone services, or the making of pornographic materials and all karaoke box rooms in unlicensed premises to be equipped with a non-opaque window which has a minimum area of 1,000 square centimetres, with no side having a dimension of less than 25 centimetres, and which is unobstructed at all times, and visible from a common area
- all rooms used for body rubs and all karaoke box rooms in unlicensed premises to meet an illumination standard of 550 lux at all points in the room, such lighting to remain on whenever the entrance door to the room is closed or the room is occupied

Staff also recommend that annual Business License fees for adult telephone services, body rub salons, and pornographic film studios be increased to \$3,000 to help offset the costs of bylaw enforcement and to ensure consistency of fees both across municipal boundaries and within Burnaby for similar types of businesses. Given that enforcement of the new Burnaby Adult Service Business Regulation Bylaw will likely require increased staff and police resources, staff propose that RCMP and staff time spent in enforcement be tracked over the next twelve months. If, after that period, an adjustment in licence fees is deemed warranted, staff will report back to Council on the matter.



J.S. Belhouse, Director
PLANNING AND BUILDING

JS/sa

Attachment

cc: Deputy City Manager, Corporate Services
Director Finance
Director Parks, Recreation and Cultural Services
OIC - Burnaby RCMP
City Solicitor

CITY OF BURNABY

BYLAW NO. 11254

A BYLAW to regulate the activities of and the classes of persons that may be involved in certain types of businesses

The Council of the City of Burnaby ENACTS as follows:

1. This Bylaw may be cited as **BURNABY ADULT SERVICE BUSINESS REGULATION BYLAW, 2001.**

2. In this Bylaw, unless the context otherwise requires
 - (a) "adult telephone service business" means a business that provides or offers to provide to the customer telephone conversation of a sexual or erotic nature for a fee;

 - (b) "body rub" means the touching, manipulation or massaging of a person's body or any part thereof, but does not include:
 - (i) touching, manipulation or massaging administered for a medical or therapeutic purpose by a person licenced, certified or registered to carry out that activity under a statute of the Province of British Columbia other than the *Local Government Act*;

 - (ii) barbering, as defined under the *Barbers Act*;

 - (iii) the services of a cosmetologist, as defined under the *Cosmetologists Act*;

- (iv) touching, manipulation or massaging administered for a medical or therapeutic purpose by a person as a bona fide part of that person's education or training:
 - (A) in a program of education or training offered by a university, college or other educational institute, or a hospital, governed by or registered under a statute of the Province of British Columbia; or
 - (B) under the direction of a person licensed, certified or registered as described in subsection 2.(b)(i);
- (c) "body rub salon" means any business or premises, other than a day spa, where body rub is performed or offered;
- (d) "Chief Constable" means the officer in charge of the Burnaby Detachment of the Royal Canadian Mounted Police;
- (e) "day spa" means a business or premises that performs or offers a broad range of cosmetological services which may include massage therapy, whether or not performed by a person described in section 2(b), as a minor part of those services;
- (f) "escort service" means a business that provides the services of a person or persons as social escorts or companions to its customers for a fee;
- (g) "pornographic film studio" means any business or premises where pornographic photographs, films, videos or other electronic or mechanical visual representations are made.

3. No owner or operator of an adult telephone service business, body rub salon, escort service or pornographic film studio shall

- (a) employ or engage any person on its business premises or for the purposes of its business unless that person is nineteen (19) years of age or older;
- (b) permit any person to be on its business premises at any time unless that person is nineteen (19) years of age or older.

4. No owner or operator of an adult telephone service business, body rub salon, escort service or pornographic film studio shall permit any person to enter its business premises unless that person produces a valid British Columbia drivers licence or at least one other piece of picture identification which shows the name, address and birthdate of that person.

5. Every owner or operator of a body rub salon, pornographic film studio, adult telephone service business or escort service shall at all times that its business is open, and at any other reasonable time, permit the Chief Constable or any other police officer under this command or the Chief Licence Inspector for the City of Burnaby or any member of his or her staff to enter its business premises to determine whether the provisions of this Bylaw are being complied with, and shall provide immediate and unrestricted access to its business premises for that purpose at all times that its business is open.

6. Every owner or operator of an adult telephone service business, body rub salon, escort service or pornographic film studio shall maintain at its business premises a written record of the name, address and age of each employee, and require its employees to carry with them while on the premises the identification referred to in section 4, all of which shall be made available for inspection by the Chief Constable or any police officer under his command.

7. Every owner or operator of an adult telephone service business, body rub salon, escort service or pornographic film studio shall post and keep posted at all times at every entrance to its business premises a clearly visible and legible sign, not less than 21.51 cm (8 ½ inches) by 27.83 cm (11 inches) in dimension, containing the following words:

"It is unlawful for any person under the age of 19 years to enter."

8. Every person who contravenes a provision of this Bylaw is guilty of an offence and is liable upon conviction to the penalties provided for in the *Offence Act*.

Read a first time this	18th	day of	June	2001
Read a second time this	18th	day of	June	2001
Read a third time this	18th	day of	June	2001
Reconsidered and adopted this	9th	day of	July	2001



MAYOR



CLERK

