



CITY OF RICHMOND

REPORT TO COMMITTEE

TO: General Purposes Committee **DATE:** July 12, 2000
FROM: Jim Bruce **FILE:** 8060-20-7135
 General Manager, Finance and Corporate Services
RE: AMENDMENTS TO BYLAW RELATING TO MASSAGE THERAPISTS AND RELATED BUSINESSES

STAFF RECOMMENDATION

That Business Regulation Amendment Bylaw No. 7135, which establishes closing hours for Registered and/or Unregistered Massage Therapists at 9:30 daily, and closing hours for Body Painting/Body Rub Studios at midnight Sunday through Thursday and 1:00 a.m. on Friday and Saturday, be forwarded to Council for first, second and third readings.

Jim Bruce
General Manager, Finance and Corporate Services.

Att. 3

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Routed To:	CONCURRENCE	CONCURRENCE OF GENERAL MANAGER
Law.....	Y <input type="checkbox"/> N <input type="checkbox"/>	_____
Clerks	Y <input type="checkbox"/> N <input type="checkbox"/>	

STAFF REPORT

ORIGIN

Council, at its meeting of July 10th, 2000 referred the matter of setting closing hours for Massage Therapists (Registered), Massage Therapists (Unregistered) and Body Rub studios to the General Purposes Committee.

Council wished to have a fuller explanation as to why staff were recommending earlier closing hours for the (massage therapists) and later hours for Body Rub Studios.

FINDINGS OF FACT

A copy of the original report is attached that sets out some of the rational for the hours suggested and this report will expand and clarify those comments.

As well, at the Council meeting, Ms Green, who represents the four businesses that challenged our bylaws in court, once again indicated that, in her opinion we should defer taking action on enforcement until the court process is completed. Attached to this report is a letter from Mr. Ray Young who represented the City, and sets out the status of the case.

Ms Green has also suggested to the City Solicitor that her clients would drop their lawsuit if the hours were set at 2:00 a.m. It was also suggested, in the alternative, that the four businesses that she acts for, should be "grandfathered" and be allowed to stay open until 2:00 a.m. even if the other Body Rub Studios have more restricted hours. Staff does not agree that any Body Rub studios should be allowed to stay open until 2:00 a.m. and would prefer that the hours be set as recommended with no exceptions.

ANALYSIS

The early closing hours suggested for Massage Therapists (Registered) were recommended in the report dated June 28th and were a result of consultation and agreement of the operators. We have also been in contact with a number of businesses that provide massage therapy employing massage therapists (unregistered). They are also satisfied with the suggested closing time of 9:30 p.m. In fact as of the writing of this memo, the Palm Springs Executive Club is the only licenced Massage Therapist (unregistered) that is open later than 9:30 p.m. and employs massage therapists (unregistered).

Without restricting the hours of operation of businesses providing massage therapy there is no reason why any business would call themselves a Body RubStudio, and would therefore have no incentive to meet the bylaw requirements regarding physical layout, lighting, clothing and any of the other regulations that were brought in to ensure the safety of staff and customers, especially late at night with all the potential problems this can create. By calling themselves a Massage Therapist, the business can avoid paying the higher licence fee and as well would not have to provide any of the safety features Council intended.

The City, through the Zoning Bylaw, has limited Body Rub Studios to the C6 Automobile-Oriented Commercial District. This was to ensure that these types of businesses would not be located in residential neighbourhoods. If the hours as set out are not adopted, there is no incentive to take out a body rub studio business licence. These businesses would then be allowed to take the

Massage Therapist (unregistered) licence and would therefore be allowed in most commercial zones, and could locate again in areas like the mall at No. 4 Road and Steveston Highway.

The main deterrent for carrying on an illegal business activity is the loss of a business licence. While this deterrent is the same for both those calling themselves Massage Therapists and those who call themselves Body Rub Studios – one is risking the loss of \$100 licence, while the other is risking the loss of a \$3,000 business licence. Having the inappropriate business licence means there is also the savings with not having to undertake the associated renovations to get the appropriate business licence which then negates our efforts to provide safety to employees and staff.

FINANCIAL IMPACT

Not applicable

CONCLUSION

The strategy of encouraging Body Rub Studios to obtain the correct licence, will ensure these businesses locate in the correct area, are a safe environment for the staff and customers and that they pay a licence fee that reflects the high cost of policing these types of businesses.

Jim Bruce
General Manager, Finance and Corporate Services

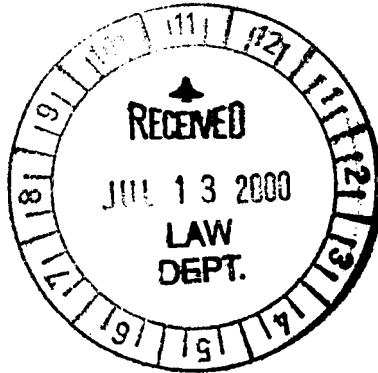
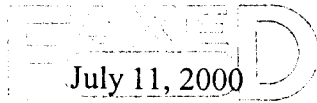
JWB:pk

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VIA FAX



REPLY TO: VANCOUVER OFFICE

Mr. Paul Kendrick
Solicitor
City of Richmond
7577 Elmbridge Way
Richmond, BC V6X 2Z6

Dear Mr. Kendrick:

Re: *Swan Lake 88 Enterprises Co. Ltd. et. al. v. City of Richmond*
S.C.B.C. No. C99584, Vancouver Registry
Our File No. 00057-0230

We write to update you on the status of the above-referenced action commenced by four Plaintiffs seeking a declaration that seven provisions of the City's Business Regulation Bylaw and the City's Business Licence Bylaw were *ultra vires*. The Plaintiffs each operate a "body rub studio" in the City.

The action was commenced on December 24, 1999, an Appearance was entered on December 31, 1999 and the Plaintiffs thereupon applied for an interlocutory injunction restraining the City from enforcing the various bylaw provisions. The interlocutory injunction application was heard before Madam Justice Morrison on April 12, 2000.

Madam Justice Morrison dismissed the injunction application as to six of the challenged bylaw provisions and allowed the injunction as to one provision. The latter provision S. 5A1.1(c) of the Business Regulation Bylaw required each body rub studio to keep the name and address of customers for six months and to make such list available for inspection by the Licence Inspector or Police Chief. This provision has (we are advised) been repealed or is about to be repealed and thus no further issue in the action will arise as to it.

The Plaintiffs, having been unsuccessful in obtaining an injunction, are now (as they always were) subject to the law and must comply with it. We understand that they have, through their counsel Ms. Green, been negotiating and/or making representations to Council for a change in the bylaw. Whether Council makes any amendments is a legislative policy decision and not a legal matter.

In the interim, steps in the Court action have been deferred. Ms. Green now advises that she wishes to proceed to trial. The first steps in that direction are discovery of documents and

perhaps oral discoveries of representatives of the parties. If these steps proceed it is unlikely they will be complete until September or October. Ultimately a trial date may be had in the fall of 2001 or if a summary procedure was available then perhaps by late 2000 or early 2001. This particular matter is well suited to summary procedure.

In terms of possible results should this matter go to trial, we are of the view that the Plaintiffs' case is not strong. This was confirmed during the injunction hearing, where the strength of the Plaintiffs' case was examined as part of the balance of convenience test. Her Ladyship stated [taken from our notes]:

“Dealing with the balance of convenience – in my view it does not favour the Plaintiffs as the case is weak.”

Also the Court noted:

“It is not in the public interest to grant the injunction. I question the strength of the Plaintiffs' case and nor do I believe the Plaintiffs have made their case on the evidence to show harm.”

Our opinion remains that the City's bylaws will be upheld should this matter proceed.

If you have any questions in respect of the above, please do not hesitate to contact the undersigned.

Yours very truly,

LIDSTONE, YOUNG, ANDERSON

Raymond E. Young
young@lya.bc.ca

REY/sz



CITY OF RICHMOND

REPORT TO COMMITTEE

TO: General Purposes Committee

DATE: June 28, 2000

FROM: Paul Kendrick
City Solicitor

FILE: 8060-20-7135

**RE: AMENDMENTS TO BYLAWS REGARDING MASSAGE THERAPISTS AND
RELATED BUSINESSES**

STAFF RECOMMENDATION

That Bylaw 7135, which amends the Business Regulation Bylaw regarding Body-Rub Parlours, and Bylaw 7149, which amends the Municipal Ticket Information Authorization Bylaw to add the ability to issue tickets for offences to the Massage Parlour and Body-Rub Parlour regulations, each be introduced and be given first, second and third readings.

Paul Kendrick
City Solicitor

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	CONCURRENCE OF GENERAL MANAGER

STAFF REPORT

ORIGIN

On June 12th, 2000, Council heard delegations on the existing and proposed Massage Parlour regulations. As a result of the comments and questions raised, Council asked for further information, and adopted the following referral resolution:

That the report (dated May 31st, 2000, from the City Solicitor) regarding Business Regulation Amendment Bylaw 7135 and Municipal Ticket Information Amendment Bylaw 7136, be referred to the City Solicitor:

- (a) to clarify the status of the legal issues currently before the Court;***
- (b) to provide an explanation on the definitions of the various business types regulated by the Business Regulation Bylaw, and how the bylaw would address situations where several business types such as massage therapy and body-rubs were being conducted in the same facility;***
- (c) to report on whether the proposed amendment to the closing time was justified in light of the issues addressed in item (b) above;***
- (d) to contact Ms. Chin and Ms. Green regarding the current and any proposed amendments to the definitions in the Business Regulation bylaw.***

FINDINGS OF FACT

Status of Legal Action:

The City adopted a bylaw in December 1999, that regulated Body-Rub Parlours, setting out standards for dress, cubicles, staff, hours of operation and the keeping of lists of customers. Four of the massage parlour operators challenged the bylaw in Supreme Court by applying for an "interim injunction" to stop the City from enforcing these new regulations. In April of this year, a court ruled that the City could enforce the bylaw, except for the section that required the keeping of customer's names. This court order is still in place, and thus the City is fully within its rights to enforce the new regulations and to issue tickets for a breach of those regulations.

The next step in the court proceeding would be for the operators of the businesses that are challenging the validity of the bylaw, to set the matter down for a hearing. To date, this has not been done, and until it is done, and a court ruling is made stopping the City from enforcing its bylaw, the City can and should continue to enforce the regulations established by the bylaw. The lawyer representing the City on this matter is confident that the City's bylaws will be upheld.

Definitions

The scheme in the bylaw was designed to have three separate designations for those providing massages.

The first category is the "Massage Therapist (Registered)" – these are businesses that only employ massage therapists those who are registered by the Association of Physiotherapists and Massage Practitioners of British Columbia. These businesses are not regulated in any way beyond the general regulations that apply to every business in the City.

The second category is the “Massage Therapist (Unregistered)” – these are the practitioners of alternative therapies such as shiatsu, reflexology etc. Under the City’s current regulations, the only requirement for this category of business is the keeping of an up to date list of employees’ names. The operating hours of these businesses are not regulated, but it has been suggested that they should be required to close at 9:30 p.m. Unfortunately, there is no recognized association for the various therapies listed in the definition, and thus, the definition is by necessity, vaguer than one would normally prefer.

The third category is the “Body-Rub Parlours” - these are businesses which provide a massage by someone who is either not provincially registered (first category above), or not performing one of the alternative touch therapies (second category above). This third category has many special requirements, in order to obtain a business licence including a \$3,000 business licence fee, and 11:00 p.m. closing hours each day.

We have been in contact with the lawyers who appeared before Council, and their main concern is the restricted hours of operation. One of the lawyers, Ms. Green, suggested that her clients would prefer that they be allowed to stay open until 2:00 a.m., however, the RCMP point out that 2:00 a.m. would be later than allowed in other jurisdictions. Surrey and Vancouver require midnight closing; New Westminster has a 9:00 p.m. closing, and Burnaby has no restrictions on the hours of operation.

ANALYSIS

Operators of some “Massage Parlours (Unregistered)” claim that they require hours later than 9:00 p.m. However, we have surveyed 13 registered Massage Therapists, as well as contacting the provincial association, and all would be agreeable to a section in the bylaw that would require a 9:30 p.m. closing for their business. Logically the same hours should be suitable for those providing the therapies done by the “Massage Parlours (Unregistered)”, and the bylaw amendments reflect this.

Establishing a closing time of 2:00 a.m. for “Body-Rub Parlours” can not be justified, however Council could consider amending the bylaw, to require “Body-Rub Parlours” to close at midnight on weekdays and at 1:00 a.m. on weekends. The RCMP are prepared to accept these suggested hours, and the bylaw amendment attached reflects this as well.

While, at first blush, it would seem illogical to restrict the hours of businesses that do not cause the City any concerns such as the registered massage services listed above, and give those which have been a problem (Body Rub Parlours) less restricted hours, this variance in hours can be justified. It encourages those who do not offer either registered massage services or the therapeutic touch techniques to obtain the appropriate business licence thus enabling the City to better regulate these services. The body rub licence and accompanying regulations encourage a physical layout that help ensure the safety of the customers and employees, and has a licence fee that reflects the higher cost of policing these businesses.

FINANCIAL IMPACT

Not applicable

CONCLUSION

Business Regulation Amendment Bylaw 7135, which removes the requirement for keeping customer names, and which establishes the closing hours for Massage Parlours, Massage Parlours (Unregistered) and Body-Rub Parlours should be adopted. At the same time, Municipal Ticket Information Authorization Amendment Bylaw 7136, which allows the issuing of tickets for violations of the bylaw, should also proceed. If there is a successful challenge to these bylaws, subsequent amendments will be required to both.

Paul Kendrick
City Solicitor

PK:pk

CITY OF RICHMOND
BUSINESS REGULATION BYLAW NO. 6902,
AMENDMENT BYLAW NO. 7135

The Council of the City of Richmond enacts as follows:

1. Bylaw No. 6902 is amended by deleting clause (b) of sub-section 5A.1.1, and by substituting the following:

“(b) permit such business to be open only during the following hours:

Monday, 8:00 a.m. to midnight
Tuesday, 8:00 a.m. to midnight
Wednesday, 8:00 a.m. to midnight
Thursday, 8:00 a.m. to midnight
Friday, 8:00 a.m. to 1:00 a.m. Saturday
Saturday, 8:00 a.m. to 1:00 a.m. Sunday
Sunday, 8:00 a.m. to midnight”

2. Bylaw No. 6902 is amended by deleting clause (c) of section 5A.1.1 (Body-Painting/Body-Rub Studio Regulation).
3. Bylaw No. 6902 is amended by adding the following as Part Eight A:

“PART EIGHT A: MASSAGE THERAPIST (REGISTERED)

8A.1 Operator Obligations

8A.1.1 Every **Massage Therapist (Registered) operator** must permit such business to be open only between the hours of 8:00 a.m. and 9:30 p.m. each day.”

4. Bylaw No. 6902 is amended by deleting section 9.1 (Massage Therapist [Unregistered] Regulation - Operator Obligations) and by substituting the following:

“9.1 Operator Obligations

9.1.1 Every **massage therapist (unregistered) operator** must:

- (a) provide the **Licence Inspector** with 24 hours' written notice of any changes in the personnel employed or engaged in such **business**, and the applicable provisions of the **Business Licence Bylaw** apply to any new persons proposed to be employed or engaged by the said **massage therapist (unregistered)**; and
- (b) permit such business to be open only between the hours of 8:00 a.m. and 9:30 p.m. each day.”

5. This bylaw is cited as **“Business Regulation Bylaw No. 6902, Amendment Bylaw No. 7135”**.

FIRST READING

SECOND READING

THIRD READING

ADOPTED

CITY OF RICHMOND
APPROVED for content by originating dept.
APPROVED for legality by Solicitor

MAYOR

CITY CLERK