

THE CORPORATION OF THE CITY OF BURLINGTON

BY-LAW NUMBER 1-2008

A by-law for Adult entertainment establishments licensing in the City of
Burlington.

File: 502-02-48 (CD-3-08)

WHEREAS the *Municipal Act, 2001* S.O. 2001, c.25, as amended (the *Municipal Act, 2001*), provides that a lower-tier municipality may pass by-laws in relation to business licensing and that by-law may license, regulate and govern any business wholly or partly carried on within the municipality even if the business is being carried on from a location outside the municipality; and

WHEREAS the *Municipal Act, 2001* authorizes the Council of the City of Burlington as part of its licensing by-law to define the area of the municipality in which Adult Entertainment Establishments may or may not operate and limit the number of licences granted in any defined area in which they are permitted; and

WHEREAS the *Municipal Act, 2001* authorizes the Council of the City of Burlington to enact an Adult Entertainment Establishment By-law which is specific or general and differentiates between and within classes of licenses in any way and on any basis the Council considers appropriate; and

WHEREAS the *Municipal Act, 2001* authorizes the Council of the City of Burlington to prohibit and regulate signs and advertising devices used to promote Adult Entertainment Establishments; and

WHEREAS on September 25, 2006 Council of the City of Burlington instructed the Directors of Planning and Building to undertake a study of the appropriate location of Adult Entertainment Businesses and the land use and regulatory issues associated therewith; and

WHEREAS the Council of the City of Burlington has adopted zoning by-law and official plan amendments regulating the location of Adult Entertainment Businesses, it now considers it desirable and necessary to license, regulate, and govern of Adult Entertainment Businesses; and

WHEREAS the Council of the City of Burlington also considers it desirable and necessary to consolidate its other Adult Entertainment Establishment By-laws, being the Body-Rub Business By-law 12-2002 and the Adult Video By-law 114-2002 as part of this Adult Entertainment Establishments By-law;

NOW THEREFORE the Council of The Corporation of the City of Burlington hereby ENACTS as follows:

DEFINITIONS AND INTERPRETATION

1. In this by-law:

“*Additional Fee*” means a fee, in addition to the licence fee, imposed by the municipality on a business at any time during the term of the license

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for costs incurred by the municipality attributable to the activities of the business;

“Adult Entertainment Business” means any premise or part thereof in or on which is provided in pursuance of a trade, calling, business or occupation, or to which an admittance or other fee is required, service of an employee, entertainer or other person including an attendant who exposes to view any portion of the nipple or areola of the female breast or any portion of his or her pubic hair, anus, cleft of the buttocks, penis, vulva or genitals, or any other service designed to appeal to erotic or sexual appetites or inclinations.

“Adult Entertainment Establishment” means an Adult Entertainment Business, Body-Rub Business or a Class “A” Adult Videotape Store;

“Adult Video” and *“Adult Videotape”* mean any Videotape, the 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 engaging in specified sexual activities, or by emphasis on the display of specified human body areas or a videotape classified by the Ontario Film Review Board as “restricted” with the added information piece “adult sex film” shall be deemed to be an Adult Videotape;

“Adult Videotape Area” means an identifiable part of any premises, which part is used for the provision of Adult Videotapes;

“Adult Videotape Store” means any premises or part thereof where Adult Videotapes are provided in the pursuance of a business;

“Applicant” means a person applying for a new or renewing a License under this by-law;

“Attendant” means a person who, in pursuance of a trade, business or occupation, provides services at a Body Rub Business and who holds and maintains or is required to hold and maintain a valid City of Burlington Body-Rub Attendant’s licence;

“Attendant’s Licence” means a licence issued and in good standing under this By-law held by an attendant;

“Body-Rub” is an activity where the primary function is 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 so to do under the laws of the Province of Ontario;

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“Body-Rub Business” means 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 or part thereof where Body-rubs are performed for medical or therapeutic reasons by persons otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario;

“Body-Rub Licence” means a licence issued and in good standing pursuant to this By-law;

“Building Department” means the City of Burlington’s Building Department;

“City” means The Corporation of the City of Burlington.

“Class “A” Adult Videotape Store Attendant”, is defined as the Owner, Operator or any person employed in a Class A Adult Videotape Store and who is at least eighteen (18) years of age or older on the date of making application for a licence to work in such premises;

“Class “A” Adult Videotape Store” means a business which offers adult videotapes to the public where the proportion of adult videotapes to all videotapes offered exceeds the ratio of 10:100;

“Class B Adult Videotape Store” means a business which offers adult videotapes to the public where the proportion of adult videotapes to all videotapes offered does not exceed the ratio of 10:100;

“Clerk” means the Clerk of the Corporation of the City of Burlington or their duly appointed Deputy;

“Corporation” means The Corporation of the City of Burlington;

“Council” means the Council for The Corporation of the City of Burlington;

“Customer” includes any person seeking, soliciting, receiving or requesting a services from an adult entertainment establishment;

“Designate” means the person in charge of and responsible for the operation of the Body-rub Business in the absence of the Owner;

“Entertainer” means a person who, in pursuance to a trade, business or occupation, provides services designed to appeal to erotic or sexual appetites or inclinations at an Adult Entertainment Business;

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“Erotic or sexual appetites” means the bent of mind, desire, inclination or preference to satisfy a craving or desire pertaining to or related to sex;

“Individual” means a natural person and does not include a corporation, partnership or association;

“Inspector” means a duly appointed Municipal Law Enforcement Officer and includes members of the Halton Regional Police Service;

“Licence” means the authorization issued under this By-law to carry on a trade, calling, business or occupation as an Owner, Operator, Entertainer, Attendant or Class A Adult Videotape Store Attendant, as specified therein and the document, certificate or card issued shall provide evidence of such authority as the context may allow;

“Licensee” means any person who has been issued and maintains a valid licence pursuant to the terms of this By-law;

“Licensing Committee” means a Committee of Council duly appointed by Council to conduct hearings under this by-law;

“Licensing Officer” means the Director of Building or designate appointed by the City of Burlington to issue Licences;

“Licensing Office” means the Building Department of the City;

“Main Stage” means, in relation to an Adult Entertainment Business, the principal setting, scene or area on any floor in the premise upon which performances, services or an event or a series of events are presented, exclusive of patron seating areas;

“Medical Officer of Health” means the Medical Officer of Health for the Regional Municipality of Halton, duly appointed under the *Health Protection and Promotion Act*, R.S.O. 1990, c. H. 7, as amended, and includes any staff official acting on behalf of the Medical Officer of Health;

“Municipal Act, 2001” means the *Municipal Act, 2001*, S.O. 2001, c.25, as amended and any regulations there under;

“Municipality” means The Corporation of the City of Burlington;

“Notice of Additional Fee” means a written notice from the Licence Officer to a Licensee advising them of their requirement to pay an Additional Fee;

“Operator” includes a person who is licensed or required to be licensed under the provisions of this By-law, and/or who alone or with others, operates, manages, supervises, runs or directs the trade, calling, business

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or occupation carried on at an Adult Entertainment Establishment and “operate” and “operation” and other words of like import or intent shall be given a corresponding meaning;

“*Owner*” includes a person who alone or with others owns and/or has the ultimate control over and/or who directs the operation of the trade, calling, business or occupation carried on at an Adult Entertainment Establishment and includes an owner, lessee, tenant or licensee of the premises from which the Adult Entertainment Establishment is operated and “own” and “ownership” and words of like import or intent shall be given corresponding meaning;

“*Partnership*” means an association of two or more persons to carry on, as co-owners, a business, calling or trade;

“*Person*” includes a corporation and its directors and officers, sole proprietor, and partnership and the heirs, executors, assignees and administrators or the other legal representatives of an Individual and their respective successors and assignees;

“*Premises*” include lands, and any fence, buildings, sheds or similar structures situated thereon;

“*Restaurant*” means any premises or part thereof where food is prepared and offered for sale to the public for consumption within the building or structure or off the premises and may include a drive-through window;

“*Services*” includes Body-Rubs, performances, dances, exhibitions and viewings;

“*Services designed to appeal to erotic or sexual appetites or inclinations*” includes services of which a principal feature or characteristic is the nudity or partial nudity of any person.

“*Shareholder*” and any words referring to the holding of shares includes all persons having a beneficial interest of any kind in the shares of a corporation.

“*Sign*” means any surface, structure and other component parts, which are used or capable of being used as a visual medium to attract attention to a specific subject matter, for identification, information, or advertising purposes and includes an advertising device or notice;

“*Sole Proprietorship*” means a form of business in which only one person has the sole control, and/or power over the business, and/or sole ownership over the assets of the business, and the only person to receive the profit of the business;

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“Specified Body Areas” means, in the case of a female, any portion of the nipple or areole of the female breast, and in the case of all persons, the anus, cleft of the buttocks, buttocks, penis, vulva, genitals, the pubic area and the perineal and perianal areas;

“Specified Sexual Activities” means one or more of the following:

- actual or simulated sexual intercourse, masturbation, urination, defecation, ejaculation, sodomy, including bestiality, anal intercourse, oral sexual intercourse, direct physical stimulation of unclothed or clothed genital organs, or flagellation or torture in the context of a sexual relationship or activity;

“To provide” means any one or more of the following:

- when used in relation to Services includes to furnish, perform, solicit, or give such services and “providing” and “provision” have corresponding meanings.
- when used in relating to any Videotape, means to sell, offer to sell or display for sale by retail, or to rent, offer to rent or display for rental, whether or not the cost, fee or other consideration passes at the time of such rental or sale, or is effected through the cost of membership, subscription, admission or any other manner.

“Videotape” means cinematographic film, digital video disc, videotape, video disc, computer diskettes or any other medium from which may be produced visual images that may be viewed as moving pictures;

“Videotape store” or *“Video rental outlet”* means any premises or part thereof where pre-recorded videotape, video discs, DVD's, game cartridges, video cameras or video players/recorders are provided or offered as a principal or secondary business activity, but shall not include the sale of electronic video equipment and other electronic home entertainment products unless permitted by the applicable zoning designation.

“Zoning Certificate” means a certificate duly issued by the City approving the use for which the License application has been made on the building and/or property where the business is located or is proposed to be located.

LICENSING REQUIRED

2. (1) Every person who owns, carries on, conducts, operates, manages, maintains or supervises, runs or directs or has ultimate control over or keeps any of the businesses listed in this By-law shall procure and maintain a licence or licences from the City in accordance with this By-law,

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- (2) No Person shall carry on or engage in any business listed in this By-law within the boundaries of the City unless the person has a valid license or licenses permitting the person to do so.
- (3) No Person shall act as an Attendant, Entertainer or Class A Adult Video Attendant unless they are licensed under this By-law.

REPRESENTATION OF LICENSING

- 3. No person shall hold himself or herself out to be licensed if the person is not.

LICENSING OFFICE

- 4. The Licensing Office shall:
 - (1) Receive and process all applications for Licences and for renewal of Licences;
 - (2) Issue all Licences when an application is made in accordance with the provisions of this By-law and attached Schedules, and meets all requirements as provided for under this By-law and attached Schedules;
 - (3) Maintain complete records showing all applications received and licenses issued;
 - (4) Enforce the provisions of this By-law and attached Schedules; and
 - (5) Generally perform all the administrative functions conferred upon it by this By-law and the attached Schedules.

APPLICATION FOR A LICENCE AND FOR RENEWAL OF A LICENCE

- 5.
 - (1) An application for a Licence and an application for the renewal of a Licence shall be completed on the forms provided by the Licensing Office.
 - (2) Each executed application shall be submitted to the Licensing Office by the Person making the application and shall be accompanied by:
 - (a) the fee in the appropriate amount as set out in Schedule 1 to this By-law;

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- (b) in the case of Owners and Operators, a Zoning Certificate indicating that the use for which the application has been made is approved under the Zoning By-law as an approved use of the premises;
- (c) a Police Criminal Record Data Request form duly executed by the Halton Regional Police;
- (d) proof of the Applicant's age by way of their birth certificate, passport, valid Province of Ontario driver's licence or valid Province of Ontario health card with a photograph of the applicant;
- (e) if the Person is a Corporation, a copy of the incorporating document and a copy of the last annual information filed or, if a registered partnership, a copy of the registered declaration of partnership and a copy of the business name registration;
- (f) in the case of a Partnership or a corporation a copy of the registered declaration of partnership, a copy of the business name registration and a list of all current partners, officers, directors and shareholders of the corporation together with their addresses and phone numbers.
- (g) every Person applying for an Owner's licence shall file with the Licensing Officer, documentation satisfactory to the Licensing Officer, and demonstrating the Applicant's right to possess or occupy the premises used by the Applicant as an Adult Entertainment Establishment and if such Applicant is not the registered Owner or Owner in fee simple of the property upon which the Adult Entertainment Establishment is located, such Applicant shall file with the Licensing Officer, at the same time a copy of the lease, if any, and of any other document constituting or affecting the legal relationship between the said Applicant and the said registered owner or owner in fee simple of the real property.
- (h) every Person who is applying for an Owner's licence is not the registered owner or owner in fee simple of the real property, that Person must also provide a letter of acknowledgement from the registered owner or owner in fee simple that the said owner is aware of the intended use of the property as an Adult Entertainment Establishment.

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- (i) depending on the type of licence application, such additional information as required in Schedules 3, 4 and 5 of this By-law.
 - (3) Notwithstanding paragraph 5(2) (d), where an Applicant applies for a renewal of a licence no proof of age is required.
 - (4) Notwithstanding paragraph 5(2)(b), where an application is made for the renewal of a Licence and where a Zoning Certificate has been received, approving the use of the property for that which the renewal application has been made, no new Zoning Certificate is required.
 - (5) Where an application is made for a new Licence or the renewal of a Licence and where a Zoning Certificate has been issued based upon the use being approved by a Committee of Adjustment Decision, the Zoning Certificate is subject to all conditions and restrictions imposed by the Committee of Adjustment or the Ontario Municipal Board on the use, including the term that the use is permitted, and upon expiry of the term, as permitted by the Committee of Adjustment or the Ontario Municipal Board, the Zoning Certificate shall no longer be valid.
 - (6) Where an application for a Licence or for renewal of a Licence is refused, the fee paid pursuant to paragraph 5(2)(a) shall be fully refunded.
 - (7) Notwithstanding the above, no refund shall be made where an Additional Fee imposed pursuant to this By-law remains outstanding at the time of renewal and where the Additional Fee is equal to or greater than the Licence renewal fee, except where the outstanding, Additional Fee is less than the renewal fee for the Licence, the Applicant shall be refunded the difference between the renewal fee and the Additional Fee outstanding.
 - (8) The Owner and the Operator must each obtain separate licences for each of the premises at which the Owner and the Operator carry on business.
 - (9) The Licensing Officer may require the applicant to obtain more than one licence under this By-law, if the nature of the trade, calling, business or occupation of the applicant qualifies under more than one licensing category under this By-law.
6. (1) Each executed application for an Attendant's, Entertainer's or Class A Adult Videotape Store Attendant's Licence shall be submitted to the Licensing Office by the Applicant and be accompanied by:

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- (a) the fee in the appropriate amount as set out in Schedule 1 to this By-law;
 - (b) proof of the applicant's legal entitlement to work in Canada
 - (c) proof of age
 - (c) in the case of Attendants, a medical certificate from a physician qualified to practice in the Province of Ontario, dated within thirty (30) days of the date of application, certifying that the Attendant is free from communicable diseases and is medically fit to perform Body-rubs.
- (2) No corporation may hold a Licence under this section 6.
- (3) Where an application for a Licence or for renewal of a Licence is refused, under this section the fee paid pursuant to paragraph 6(1)(a) shall be fully refunded.
- (4) Notwithstanding the above, no refund shall be made where an Additional Fee imposed pursuant to this By-law remains outstanding at the time of renewal and where the Additional Fee is equal to or greater than the Licence renewal fee, except where the outstanding Additional Fee is less than the renewal fee for the Licence, the Applicant shall be refunded the difference between the renewal fee and the Additional fee outstanding.

INSPECTION

7. (1) On receipt of an application for a Licence or for renewal of a Licence or as a condition of the continuation of a Licence, the Licensing Officer or Inspector may:
- (i) At any reasonable time enter upon the business premises of the Owner or Operator to make an inspection to ensure that all the provisions of this By-law, other municipal by-laws and other laws have been complied with;
 - (ii) At any reasonable time inspect as much of any house, place or premises as is used for the carrying on, conducting, operating, maintaining or keeping of any business in respect of which any Person is required to have a licence under this By-law;
 - (iii) At any reasonable time inspect any vehicle, any goods, articles, books, records and other documents of or relating to any such business established under this By-law; and
 - (iv) Circulate the application and supporting documents to all or any other departments within the City, the Regional

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Municipality of Halton, the Halton Regional Police Service, Medical Officer of Health or any other person or agency as may be deemed necessary, for their review and comment.

- (2) No person shall obstruct, hinder or in any way interfere with the Inspector inspecting, investigating or enforcing this By-law, or withhold, destroy, conceal or refuse to furnish information required;
- (3) No individual shall be licensed under this By-law unless the individual is eighteen (18) years of age or over.

ISSUE OF LICENCE OR RENEWAL OF LICENCE

- 8. (1) When an application for a Licence or for a renewal of a Licence is made in accordance with the provisions of this By-law and the Applicant meets all the requirements of this By-law the Licensing Office shall issue a Licence.
- (2) No person shall enjoy a vested right in the continuance of a licence and upon the suspension or revocation, the Licence, which is property of the City, shall be returned.

SIGNS AND ADVERTISING

- 9. Notwithstanding the City's Sign By-law, no person may erect or maintain any sign or other device advertising an Adult Entertainment Establishment, except in accordance with the following additional regulations:
 - (1) No person shall erect or maintain any of the following signs or other advertising devices in respect of an Adult Entertainment Establishment or in respect of any services provided at an Adult Entertainment Establishment:

an awning sign	a canopy sign
a projecting sign	an inflatable sign
a portable sign	a trailer sign
a sandwich board sign	
 - (2) The size of all signage shall be restricted to the following:

Fascia sign: 15% of the building elevation on which the sign is located

Ground sign: 3.6m² maximum sign area
 - (3) No person may circulate, post, distribute or cause to be circulated, posted or distributed any poster, flyer, handbill or other form of

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printed sign or advertising device on or at premises or locations, other than the Adult Entertainment Establishment, with the exception of advertising located in a newspaper or telephone directory or website;

- (4) Nothing in this By-law shall be deemed to constrain any person from erecting or maintaining any sign or other advertising device on any interior wall of an Adult Entertainment Establishment, provided the content of such sign is not visible from the exterior of the Establishment;
- (5) No person may erect or maintain any sign or other advertising device which includes any letters, markings, symbols, pictures or representations, except in the name of the Adult Entertainment Establishment as recorded on the application for licence, and any logo or symbol is not permitted; and
- (6) No person shall erect or maintain any flashing or electronic light or animation either on the exterior of the premises or on the interior of the premises if it is visible from the exterior of the Adult Entertainment Establishment.

LICENCE ON TERMS AND CONDITIONS

- 10. (1) Notwithstanding any other provisions of this By-law, Council may impose terms and conditions on any Licence at issuance, at renewal or at any time during the Licence period, including special conditions, as are necessary to give effect to this By-law and may include, but are not limited to, conditions restricting the hours of business other than those set out in this By-law and the attached Schedules or conditions that the business Owner or Operator, as the case may be, have employees in attendance at the business location during the hours of operation to ensure compliance with this By-law.
- (2) It shall be a term of every Licence that the Licensee shall comply with the provisions of this By-law, other by-laws and all provincial and federal legislation, as applicable;
- (3) The Owner or Operator, as the case may be shall:
 - (i) ensure such compliance, as set out in subsection 2 by every other person involved in carrying out the business;
 - (ii) at all times maintain and keep clean, safe, in good condition and repair any place or premises for which a Licence has been issued under this By-law

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- (iii) not cause, tolerate or permit a nuisance to arise in connection with the place or premises for which the Licence has been issued.
 - (iv) not cause, tolerate or permit shouting, noise or disturbance on, in, or in connection with the place or premises for which a Licence was issued, which is unnecessary, unreasonable or contrary to any By-law prohibiting the same, and if such shouting, noise or other disturbance occurs, the Licensee shall at once take immediate steps to cause the nuisance to be abated.
 - (v) not cause, tolerate or permit any profane, offensive or abusive language in connection with any place or premises for which the Licence was issued.
- (4) Notwithstanding any other provisions of this By-law, Council may impose Additional Fees on a Licensee, by way of a Notice of Additional Fee at any time during the term of the Licence for costs incurred by the municipality attributable to the activities of the Licensee.
- (5) The Notice of Additional Fee shall be sent to the Licensee by Registered Mail and shall provide the Licensee with sixty (60) days to pay the outstanding amount from the date of such Notice.

GROUND'S FOR REFUSAL TO ISSUE OR TO RENEW A LICENCE

11. An Applicant whose application meets all the requirements of this By-law and its Schedules is entitled to a Licence or the renewal of a Licence except where:
- (1) The application is not complete or the fee payable in respect of the licence or renewal has not been paid; or
 - (3) There are reasonable grounds to believe that any application or other document provided to the Licensing Office by or on behalf of the applicant contains a false statement or provided false information; or
 - (4) Any information contained in the original application form or any other information provided to the Licensing Office, has ceased to be accurate and the Licensee has not provided up-to-date accurate information to the Licensing Officer to allow the Licensing Officer to conclude that the Licence should continue; or

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- (5) Any Additional Fee imposed on a Licence remains unpaid after the due date as indicated in the Notice of Additional Fee sent to the Licensee; or
- (6) The financial position of the Applicant affords reasonable grounds to believe that the activity for which he or she is to be licensed or to continue to be licensed in accordance with law will not be carried on in a financially responsible manner;
- (7) The Applicant has failed to pay the fine or fines imposed by a court as a sentence arising from convictions for breach of a By-law enacted by the City or has failed to pay the fines for convictions under the *Provincial Offences Act* which are due and unpaid or where a prohibition or other Court Order made upon conviction has not been complied with; or
- (8) There are reasonable grounds to believe that the Applicant does not meet all the requirements of this By-law or any other By-law, or that the building, premises or place or part thereof in which the business is carried on or intended to be carried on does not comply with the provisions of this By-law, or with any other law including provincial or federal law, or by-law, including any applicable zoning and building requirements; or
- (9) The Licensee has contravened any provision or provisions of this By-law within any twelve-month period.
- (10) There are reasonable grounds to believe that the building, premises or place or part thereof in which the business is carried on or intended to be carried on is dangerous or unsafe; or
- (11) There are reasonable grounds to believe that the equipment, vehicles, and other personal property used or kept for hire in connection with the carrying on of or engaging in the business is dangerous or unsafe; or
- (12) The Applicant or Licensee has failed to comply with any condition or direction of the Licensing Officer or Inspector or failed to permit any investigation by the Licensing Officer or Inspector; or
- (13) Adverse comment or comments have been received by the Licensing Officer from any City Department or any of the agencies to which the application, renewal or request was circulated; or
- (14) The Applicant fails or refuses to comply with any requirement set out in the By-law to obtain or maintain or renew a Licence issued under this By-law; or

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- (15) The past or present conduct of the Applicant, or of any partner, in the case of an Applicant which is a partnership, or of any director or officer, employees or agents of the corporation, if the Applicant is a corporation, affords reasonable grounds for the belief that the Applicant will not carry on the activity for which he or she is to be licensed or to continue to be licensed, in accordance with law and with integrity and honesty; or
- (16) The Applicant or Licensee has been convicted of a criminal offence during the preceding five years, or
- (17) The Applicant or Licensee has been convicted of an indictable offence under any Statute of Canada, including but not limited to the Criminal Code of Canada, the *Narcotic Control Act*, the *Food and Drug Act*, and the *Controlled Drug and Substances Act* during the preceding five years.
- (18) The Applicant or Licensee has been convicted under the *Liquor Licence Act* of the Province of Ontario and the charge relates to the operation of the Adult Entertainment Establishment or the provision of Services therein.
- (19) The Licensee fails to ensure that any Attendant, Entertainer or Class A Adult Videotape Store Attendant providing services as part of the Adult Entertainment Establishment has a valid Licence in accordance with this By-law; or,
- (20) The Licensing Officer becomes aware of any fact or facts, which, if known at the time of the application of the Licence, may have resulted in the Licensing Officer refusing or revoking the Licence; or
- (21) The issuance of the Licence or renewal of the Licence would be contrary to the public interest;

POWER TO REFUSE TO ISSUE OR, RENEW A LICENCE OR REVOKE OR SUSPEND A LICENCE

- 12. The Licensing Officer may refuse to issue a Licence, refuse to renew a Licence or may revoke or suspend a Licence where the Applicant is disentitled to a Licence under Section 11 or impose terms and conditions on a Licence.
- 13. (1) Before the Licensing Officer refuses to issue or to renew a Licence, or cancels, revokes or suspends a Licence, or imposes terms and conditions, written notice shall be given to the Applicant or Licensee

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- by the Licensing Officer, advising the Applicant or Licensee of the recommendation.
- (2) The written notice of recommendation to be given under subsection 13(1), shall:
- (a) set out the grounds for the recommendation;
 - (b) give reasonable particulars of the grounds
 - (c) be signed by the Licensing Officer; and
 - (d) state that the Applicant or Licensee is entitled to a hearing by the Licensing Committee if the Applicant or Licensee delivers to the Clerk, within seven (7) days after the Notice under subsection 13(1) is served, a notice in writing requesting a hearing by the Licensing Committee and the appeal fee as set out in Schedule 1 of this By-law.
- (3) Where no appeal is registered within the required time period, the recommendation of the Licensing Officer is final.
- (4) The City Clerk, upon receipt of a written request from the Applicant or licensee within the time limit specified in this section 13 , shall schedule a hearing before the Licensing Committee and send written notice of the hearing to the parties, which notice may be personally delivered or sent via facsimile or sent by regular or registered mail, to the address in the application unless the request for a hearing specifies a different address.

THE HEARING BEFORE THE LICENSING COMMITTEE

14. (1) Sections 5 to 15 and 21 to 24 of the *Statutory Powers Procedure Act* shall apply to all hearings conducted by the Licensing Committee.
- (2) The Licensing Committee shall be composed of three members of the Council's Community Development Committee, appointed by the Community Development Committee.
- (3) When the Applicant or Licensee who has been given written notice of the hearing does not attend at the appointed time and place, the Licensing Committee may proceed with the hearing in his or her absence and the Applicant or Licensee shall not be entitled to any further notice of the proceedings.
- (4) At the conclusion of a hearing the Licensing Committee shall as soon as practicable, submit a written report on the hearing to Council and the report shall:

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- (a) Summarize the evidence and the arguments presented by the parties to the hearing;
- (b) Set out the findings of fact and the recommendations made by the Licensing Committee; and
- (c) Set out the reasons for the recommendation.

COUNCIL AFTER THE HEARING

15. Council may uphold or vary the recommendation of the Licensing Committee or do any act or make any decision that it might have done had it conducted the hearing itself and the Applicant or Licensee shall not be entitled to a further hearing on the matter before Council and the decision of Council shall be final.

RETURN OF THE LICENCE AFTER REVOCATION OR SUSPENSION

16. (1) When a Licence has been revoked, deemed unrenovable, cancelled or suspended, the holder of the Licence shall return the Licence to the Licensing Office within twenty-four (24) hours of service of written notice of the decision of Council and, the Licensing Officer, may enter upon the business Premises of the Licensee for the purpose of receiving, taking, or removing the said Licence.
- (2) When a person has had his or her Licence revoked or suspended under this by-law that person shall not refuse to deliver up or in any way obstruct or prevent the Licence Officer from obtaining the Licence in accordance with subsection (1).

CANCELLATION OF A LICENCE

17. Any Licence issued under this By-law may be cancelled at any time upon the written request of the Licensee.

LICENCE TRANSFERABLE

18. A Licence is valid only in respect of the Person and the premises named in the Licence. No Licence may be sold, transferred, encumbered, leased or loaned or in other way assigned or dealt with.

RIGHT OF INSEPTION OF LICENSED PREMISES

19. (1) The Inspector or Licensing Officer may at any reasonable time enter upon and inspect the business Premises of any Licensee to ensure that the provisions of this By-law are complied with.

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- (2) Upon an inspection every person shall produce all relevant Licences and permits, invoices, vouchers, or like documents which may be removed for the purpose of photocopying and returned to the Licensee within forty eight (48) hours of removal.
- 20. No person shall obstruct the person inspecting or withhold, destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purpose of the inspection under this By-law.

DISPLAY OF LICENCE

- 21. (1) Every Owner and Operator shall prominently display their Licences at the licensed premises at all times and shall produce the Licence upon request by the Licensing Officer or an Inspector.
- (2) Every Attendant, Entertainer and Class A Adult Videotape Store Attendant shall carry his/her Licence at all times while working at an Adult Entertainment Establishment and shall produce the Licence upon request by the Licensing Officer or an Inspector.

NOTIFICATION OF CHANGE OF INFORMATION

- 22. (1) A Licensee shall carry on business in the City in the name which is set out on the Licence and shall not carry on business in the City in any other name.
- (2) When a Licensee changes his or her name or address or any information relating to the Licence, that person shall notify the Licensing Office within two (2) business days of the change of address or any other information relating to the Licence and shall return the Licence immediately to the Licensing Office for amendment.
- (3) When the Licensee is a corporation, and there is any change in the following information given on the application namely: the names and addresses of officers and directors, the location of the corporate head office, change of ownership of shares, the Licensee shall report the change to the Licensing Office within seven (7) days of the change, and if necessary, the Licence shall be returned immediately to the Licensing Office for amendment.
- (4) A Licensee shall not alter, erase or modify or permit such alteration, erasure or modifications of their Licence or part thereof unless approved by the Licensing Officer.

ORDER TO COMPLY

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23. Where a Licensee contravenes any provision of this By-law, or its Schedules the Inspector may:
- (1) Serve a written notice on the Licensee, advising of the contravention and directing compliance; or
 - (2) Direct in a written order that a thing or matter is required to be done and in default of such matter or thing being done, the matter or thing will be done at the Licensee's expense by the City and the City will recover the expense by action or in like manner as municipal taxes.

NOTICE

24. (1) Any notice or order required to be given or served under this By-law is sufficiently given or served if delivered personally or sent by registered mail, addressed to the person to whom delivery or service is required to be made at the last address for service appearing on the records of the Licensing Unit.
- (2) When service is made by registered mail, the service shall be deemed to be effected on the seventh (7) day after the date of mailing.

PENALTY

25. (1) Every person or corporation who contravenes any provision of this By-law, and every director or officer of a corporation who knowingly concurs in such contravention by the corporation is guilty of an offence and on conviction is liable to a fine, exclusive of costs, not exceeding \$100,000 or to imprisonment for a term not exceeding one year, or to both.
- (2) Every person who fails to comply with an order to comply made by an Inspector under subsection 23(1) is guilty of an offence and on conviction, in addition to the penalties mentioned in subsection (1), is liable to a fine of not more than \$10,000 per day for every day the offence continues after the time given for complying with the order to comply has expired.

SEVERABILITY

28. Notwithstanding that any section of this By-law, or any part thereof may be found by any court of law to be invalid or beyond the power of the Council to enact, such section or part thereof shall be deemed to be severable, and the remainder of the By-law shall continue to be validly enacted.

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SCHEDULES

29. All schedules referred to in this By-law and attached to this By-law shall be deemed to be a part of the By-law.

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INTERPRETATION

30. (1) The provisions of the *Interpretation Act*, R.S.O. 1990, c. I. 11, shall apply to this By-law as required.
- (2) In this By-law, unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the masculine gender shall include the feminine and further, the converse of the foregoing also applies where the context so requires.

SHORT TITLE

31. This By-law shall be known as the Adult Entertainment Establishment Licensing By-law.

REPEAL

32. Part 26 of By-law 102-2002 as amended, being the Adult Entertainment Parlour section of Business Licensing By-law 102-2002, as amended, is hereby repealed.
33. All references to Adult Entertainment Establishment Licence Fees in Part 24 of By-Law 102-2002, as amended, are hereby repealed.
34. By-law 114-2002 being the Adult Video By-law is hereby repealed.
35. By-law 12-2002 being the Body-Rub Parlour By-law is hereby repealed.

ENACTED AND PASSED this 17th day of March, 2008

Cam Jackson Mayor

Kim Phillips City Clerk

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SCHEDULE INDEX

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Adult Entertainment Business Defined Area Map	3.1
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Adult Videotape Store Business, Existing Businesses	4.1
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SCHEDULE 1

Relating to fees

<u>TYPE OF LICENCE</u>	<u>Original</u>	<u>Renewal</u>
Adult Entertainment Business Owner	4,000.00/year	4,000.00/year
Adult Entertainment Business Operator	850.00/year	850.00/year
Entertainer	200.00/year	200.00/year
Adult Videotape Store Class "A" Owner	1,000.00/year	1,000.00/year
Adult Videotape Store Class "A" Attendant	75.00/year	75.00/year
Adult Videotape Store Class "B" Owner	150.00/year	150.00/year
Body-rub Business Owner	4,000.00/year	4,000.00/year
Body-rub Business Operator	850.00/year	850.00/year
Attendant	200.00/year	200.00/year
<u>OTHER FEES</u> (taxes not included)		
Licensing Committee Hearing Fee	\$340.00	
Replacement Licence Fee	\$12.00	
Late Fee (for renewals submitted past the expiry date of licence)	\$50.00	

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SCHEDULE 2

Relating to Licence Expiry Dates

1. Every Licence issued under this By-law is valid for a period of twelve (12) months from date of issuance unless otherwise specified.
2. Every Licence shall expire on the date set out in the Licence unless it is renewed in accordance with the provisions of the By-law.
3. Every Licensee under the By-law shall be required to renew the Licence issued pursuant to this By-law prior to its expiry date.
4. Any Licence issued under this By-law may be cancelled by the Licensing Officer at any time upon the request of the Licensee.

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SCHEDULE 3

Relating to Adult Entertainment Businesses

1. In addition to the general licensing provisions contained in this By-law, every Applicant for a new Adult Entertainment Business Owner's or Operator's or Entertainer's Licence shall submit:
 - (1) Two Passport size photographs of the Applicant and where the Owner or Operator is a partnership, for each partner and where the Owner or Operator is corporation for each director of the corporation;
 - (2) In the case of the Owner's or Operator's application, a floor plan of the Adult Entertainment Business, in a fashion acceptable to the Licensing Officer, which clearly depicts where the Main Stage is in relation to all patron seating areas in the Adult Entertainment Business;
 - (3) Every Applicant for an Owner's License shall at the time of making the application, file with the Licensing Officer, a list showing the names of all Operators and all such persons intended or expected to be employed in the Adult Entertainment Business and shall thereafter maintain an up-to-date list of all Operators and employees and submit the updated list whenever there is a change in an Operator or an employee;
 - (4) In the case of the Owner's or Operator's application, an inspection letter issued and signed by the Medical Officer of Health within 90 days of the Licence application.
2. (1) No licence will be issued or renewed under this By-law and this Schedule unless;
 - (i) The Owner or Operator is Licensed under the Business Licensing By-law to operate a Restaurant and that Licence is in good standing; or
 - (ii) The Owner is a holder of a Licence issued under the *Liquor Licence Act*, R.S.O. 1990, c. L. 19, as amended; and
 - (iii) The Adult Entertainment Business is located in a zone and area where such use is permitted under the City of Burlington Zoning By-law 2020, or any successor City Zoning By-law;

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DEFINED AREAS AND LIMITATION ON THE NUMBER OF ADULT ENTERTAINMENT BUSINESS LICENCES

3. (1) The total number of Owner's or Operator's Licences for Adult Entertainment Businesses in the City of Burlington which may be issued under and in accordance with this By-law shall hereby be limited to two (2):
 - i.) One licence may be issued for the location described as 53 Plains Road East, if in compliance with all other laws, eligible to apply for and be considered for Owner's and Operator's licences;
 - ii.) The remaining licence shall be restricted to the locations within the geographic areas designated on Schedule 3.1 of this By-law;
 - iii.) An owner shall only own one of the Adult Entertainment Businesses and an operator may operate only one of the Adult Entertainment Businesses. No owner may own both of the Adult Entertainment Businesses and no operator may operate both of the Adult Entertainment Businesses and no person or corporation including its officers, directors or shareholders who own or operate one Adult Entertainment Business shall have any interest in the second Adult Entertainment Business if a licence is issued.
- (2) The Adult Entertainment Business may continue to locate in the premises listed in clause (i) of subsection (3) so long as the Owner continues to renew the Licence or sells the business and the use as an Adult Entertainment Business continues with no period of interruption in the business;
- (3) If the use as an Adult Entertainment Business in the premises listed in clause (i) of subsection (3) ceases for any period of time or if the Owner's Licence is not renewed or if the Owner's Licence is revoked by Council, no further Owner's Licence shall be issued for that location;
4. (1) Where an Owner does not personally operate the Adult Entertainment Business every person operating such Adult Entertainment Business shall obtain a Licence to do so, but nothing herein relieves such an Owner from the requirement to obtain a Licence as Owner of such Adult Entertainment Business.

CONDUCT ON PREMISES

5. No Owner or Operator shall,

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- (1) Permit any individual under the age of eighteen (18) years to enter or remain in the Adult Entertainment Business or any part thereof;
 - (2) Employ or otherwise use the services of individuals under the age of eighteen (18) years;
 - (3) Allow any person to act as an Entertainer who is under the age of eighteen (18) years;
 - (4) Permit any Entertainer to touch, sit, or rest on, or make any physical contact with the breasts, buttocks, genital or pubic areas of any other person;
 - (5) Permit any employee or patron to touch, sit, or rest on, or make any physical contact with the breasts, buttocks, genital or pubic areas of any Entertainer;
 - (6) Permit any Entertainer to perform any service in a location which is not clearly visible from the Main Stage and from a patron seating area for that particular floor of the Adult Entertainment Business, and which location is without obstruction by any person or any thing, including but not limited to walls, curtains, glass, enclosures, structures, fog, or inadequate lighting;
 - (7) Permit any person to loiter, create a disturbance or cause undue noise while on the licensed premises;
 - (8) Advertise or cause or permit to be advertised an Adult Entertainment Business in any way or by any means, or publish anything, erect, post or maintain any sign, notice or any other publication or device, relating to or drawing attention to an Adult Entertainment Business, except as specifically permitted in this By-law;
 - (9) Permit the Adult Entertainment Business to be open for business unless the Owner or Operator is in attendance at all times at which the business is open;
 - (10) Permit any person who appears to be intoxicated by alcohol or a drug to enter or remain in the Adult Entertainment Business
6. No Entertainer shall:
- (1) Permit any person to touch or make any physical contact with their breasts, buttocks, genital or pubic areas;

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- (2) Touch, sit, or rest on, or make any physical contact with the breasts, buttocks, genital or pubic areas of any other person; or
- (3) Perform any services in a location which is not clearly visible from the Main Stage and from a patron seating area for that particular floor of the Adult Entertainment Business and which location is without obstruction by any person or any thing, including but not limited to walls, curtains, glass, enclosures, structures, fog, or inadequate lighting;
- (4) Provide services at an Adult Entertainment Business unless there is in attendance a person at the premises holding an Adult Entertainment Business Owner's Licence or an Adult Entertainment Business Operator's Licence.

MAIN STAGE

- 7. No Owner or Operator, as the case may be, shall make or cause to be made a Main Stage or make or cause to be made any alterations to the composition, design or location of the Main Stage for the Owner's Adult Entertainment Business without first receiving approval from the Licensing Officer for such alterations.

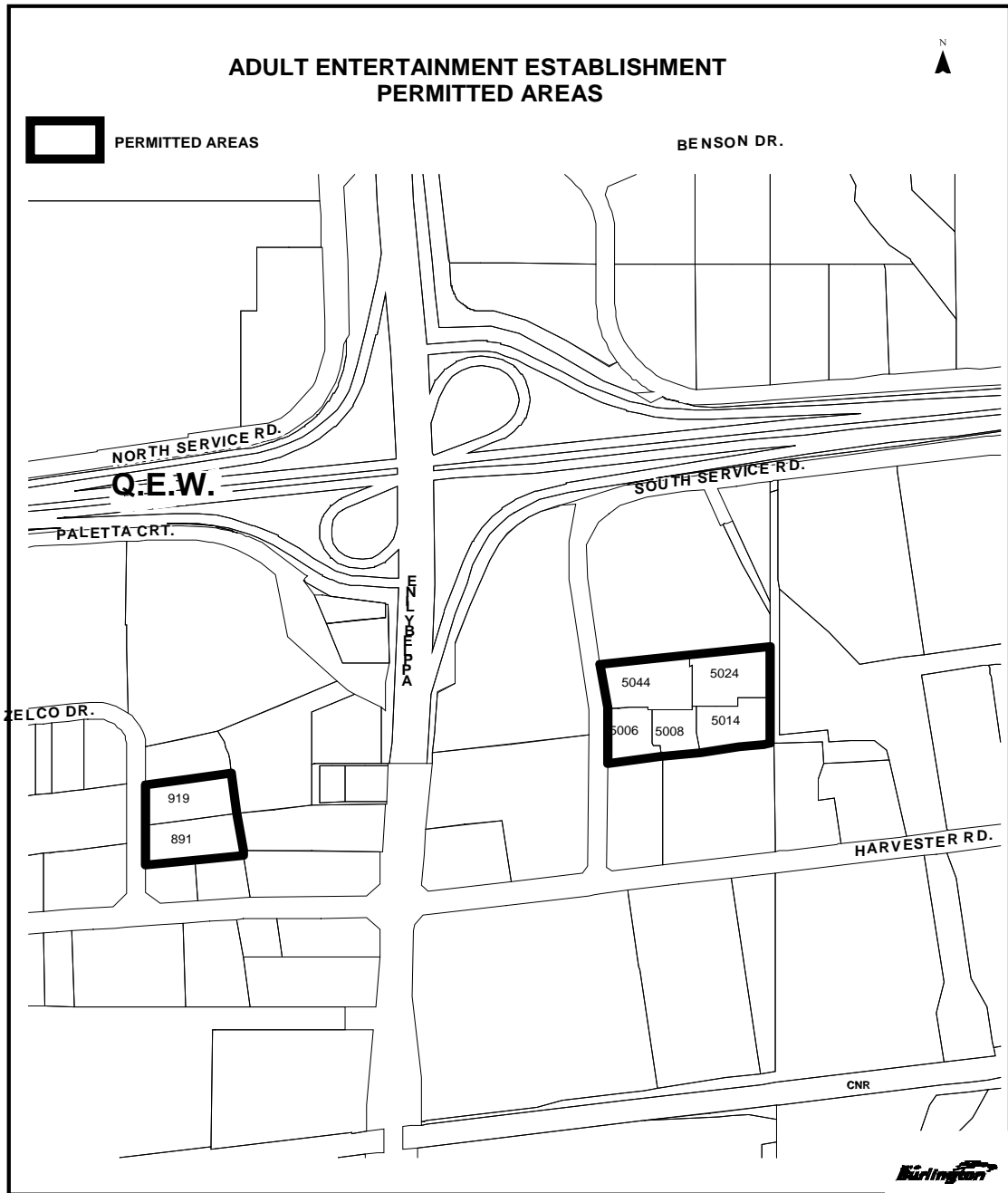
BUSINESS OPERATION

- 8
 - (1) No Owner or Operator shall, open the Adult Entertainment Business for business or permit the same to be or to remain open for business or permit services of any kind to be provided at any time between the hours of 2:00 o'clock in the forenoon of any day and 11:00 o'clock in the forenoon of the same day.
 - (2) During the hours of operation of an Adult Entertainment Business the Owner or Operator shall ensure that the principal means of access into the Adult Entertainment Business shall be kept unlocked and available so that anyone coming into the business may enter therein without hindrance or delay.
- 9. Every Owner or Operator, as the case may be, shall keep the premises in a clean and sanitary condition.

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SCHEDULE 3.1



SCHEDULE 3.1



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SCHEDULE 4

Relating to Adult Videotape Stores

1. In addition to the general licensing provisions contained in the By-law, every Applicant shall obtain the proper class of Adult Videotape Store licence. The classes are described as follows:

 “Class “A” Adult Videotape Store” means a business which offers adult videotapes to the public where the proportion of adult videotapes to all videotapes offered exceeds the ratio of 10:100;

 “Class B Adult Videotape Store” means a business which offers adult videotapes to the public where the proportion of adult videotapes to all videotapes offered does not exceed the ratio of 10:100;
2. Notwithstanding the provisions of this By-law and Schedule, a licence is not required under this By-law in respect to any videotape store or other premises which offers videotapes for sale, rent or exchange/trade as a principal or secondary business activity provided said videotape stores or other premises do not offer for sale, rent or exchange/trade any adult videotapes.

REGULATIONS APPLICABLE TO "CLASS A" ADULT VIDEOTAPE STORES

3. Every Licensee shall maintain on the premises, available for inspection by the Licensing Officer or designate, and any by-law enforcement officer or any police officer, during all business hours, a current list of all adult videotapes available on the premises;
4.
 - (a) No Owner, Operator or any person working in a Class A Adult Videotape Store shall permit any person under the age of eighteen (18) years to enter or remain in such premises.
 - (b) No Owner, Operator or any other person shall work in a Class A Adult Videotape Store unless such person is of the age of eighteen (18) years or older and is licensed as a Class A Adult Videotape Store Attendant.
 - (c) No owner, Operator or any person working in a Class A Adult Videotape Store shall release for sale, rent or exchange any adult videotape to persons who are not at least eighteen (18) years of age.
5. Every Owner and Operator shall post and keep posted at every entrance to any Class A Adult Entertainment/Videotape Business operated by such owner or operator, and in a prominent location inside such premise, signs sufficient to indicate clearly to any person approaching or entering the premises and to every

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person in the premises, that no person under the age of eighteen (18) years is permitted to enter or remain in such premises.

6. Every Owner and Operator of a Class A Adult Videotape Store shall ensure that no adult videotape container for an adult videotape or any other printed material or visual images are displayed in such a manner so as to be visible from outside of the premises.

REGULATIONS APPLICABLE TO "CLASS B" ADULT VIDEOTAPE STORES

7. Every Licensee:
 - (a) shall ensure that no adult videotape, adult videotape covers/jackets or other adult videotape advertising or adult videotape promotional material is displayed where it can be seen by persons in the store;
 - (b) shall store all adult videotapes behind the main counter which is manned by an employee;
 - (c) shall not release for sale, rent or exchange any adult videotape to persons who are not at least eighteen (18) years of age;
 - (d) shall not make available to the public any adult videotapes through automated vending/dispensing equipment without intervening and having the age of the person duly verified by the Owner **or** Operator or an employee of the licensee at the time of any sale, rental or exchange/trade;
 - (e) shall maintain a current listing of all adult videotapes and that make that listing available to persons eighteen (18) years of age or older upon request;
 - (f) shall not play or preview within the premises any adult videotape;
 - (g) shall be restricted on any exterior and/or interior signs and advertisements to the words "adult video" "adult videotapes" or "adult videotape sales, rentals or exchange" and shall not include pictorial representation of specified body areas, specified sexual activities or specific titles of any adult videotapes.
8. The Owner and Operator of a Class B Adult Videotape Store shall be required to instruct all employees of the requirements pertaining to adult videos as outlined in this By-law and shall ensure that every person working in such an establishment complies with all requirements of this By-law relating to the provision of adult videotapes.

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**DEFINED AREAS AND LIMITATION ON NUMBERS CLASS A ADULT
VIDEOTAPE STORE LICENCES**

9. The following are defined as areas of the City of Burlington in which Class A Adult Videotape Stores may operate and limitations on the number of licences that may be issued in such areas:
 - (a) The total number of Class A Adult Videotape Store licences that may be issued within the City of Burlington under this By-law is limited to three (3).
 - (b) The three licences referred to in paragraph 9(a) shall be restricted to the following locations:
 - (i) One (1) Class A Adult Videotape Store licence may be issued for the location described in Schedule 4.1 to this By-law subject to the requirements and limitations set forth in this Schedule 4; and,
 - (ii) The remaining two (2) Class A Adult Videotape Store licences shall be restricted to locations within the geographic area designated on Schedule 4.2 to this By-law.
10. Class B Adult Videotape Stores are not restricted to those locations within the geographic areas designated on the attached Schedules 1 and "A" to this by-law. Class B Adult Videotape Stores are permitted to operate in other areas of the City consistent with the City's Zoning By-laws.

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SCHEDULE 4.1

ADULT VIDEOTAPE STORE

1. That part of the premises, at the following municipal address, in actual use for the purpose of an adult video business as of February 15, 1993:
 1. 4021 Upper Middle Road, Unit 4.

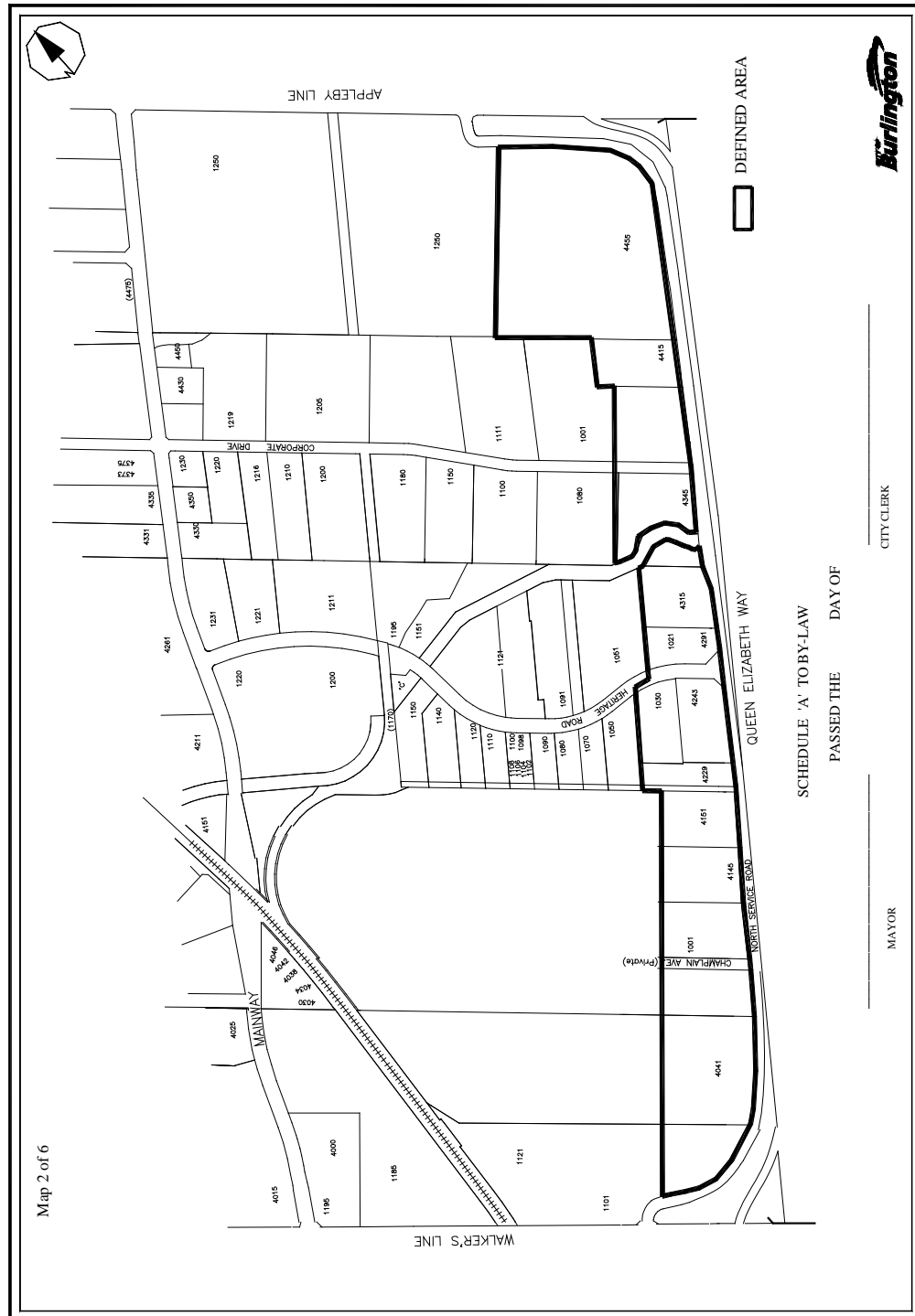
is hereby defined as an area in which a Class A Adult Entertainment/Videotape Business is located if in compliance with all other applicable laws. A Class A Adult Entertainment/Videotape Business is permitted to operate and is eligible to be licensed for so long as such premise continues to be lawfully used for such purposes.
 2. Should the area referred to in Section 1 of this Schedule cease to be used for the purposes of a Class A Adult Videotape Store, any licence issued under this By-law may be revoked. No renewal or further such licence shall be issued, and any future Class A Adult Entertainment/Videotape Business will be required to locate in the designated areas shown on the maps attached to this By-law, and a licence may be issued for such Class A Adult Entertainment/Video Business subject to compliance with all applicable laws including the enactment by Council of amendments to its zoning by-laws.
 3. The maps attached to this By-law as Schedule '4.2' shall form part of this By-law.

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SCHEDULE 4.2

ADULT VIDEOTAPE CLASS A STORE DEFINED AREA MAPS



ADULT VIDEOTAPE CLASS A STORE DEFINED AREA MAPS

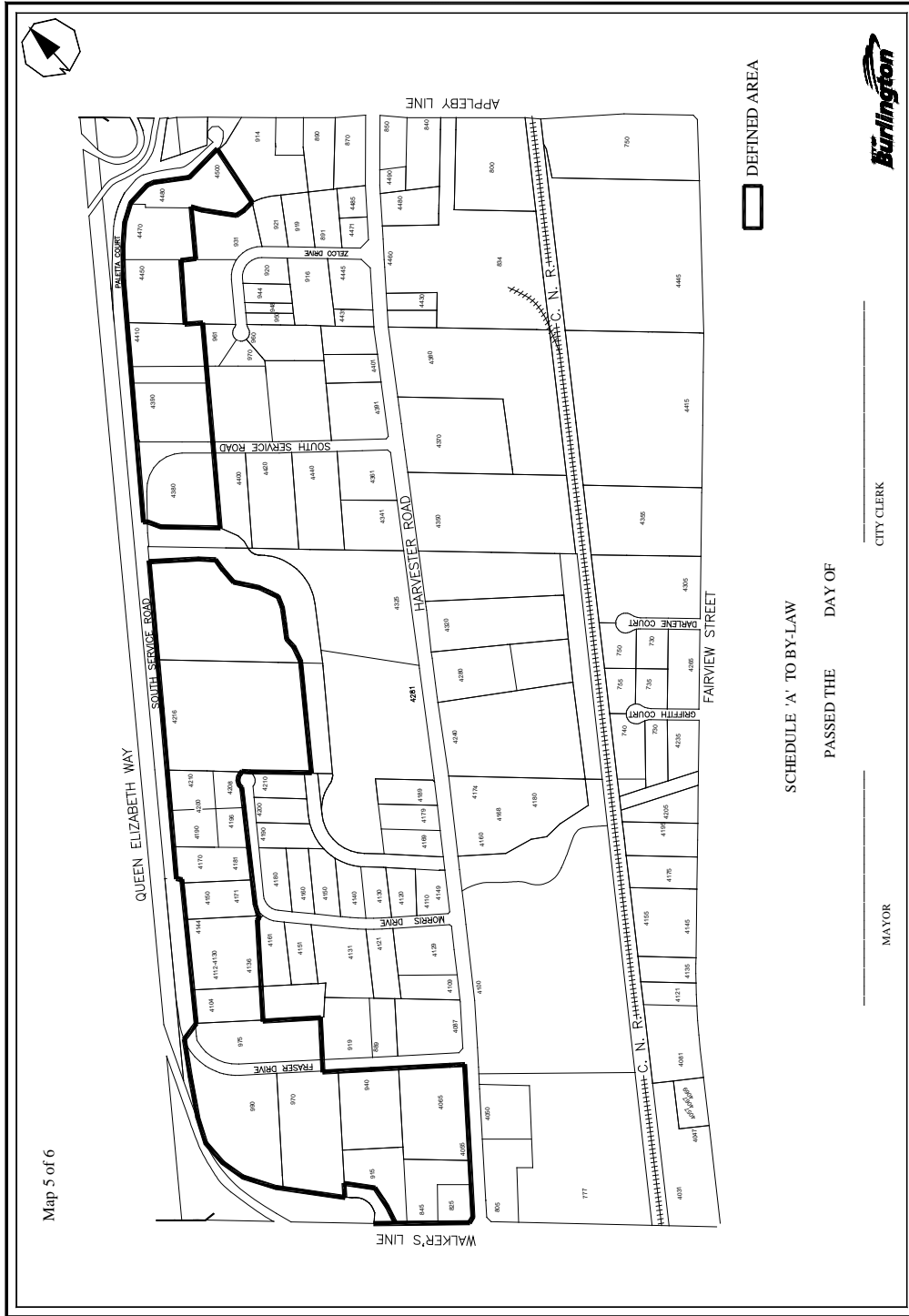


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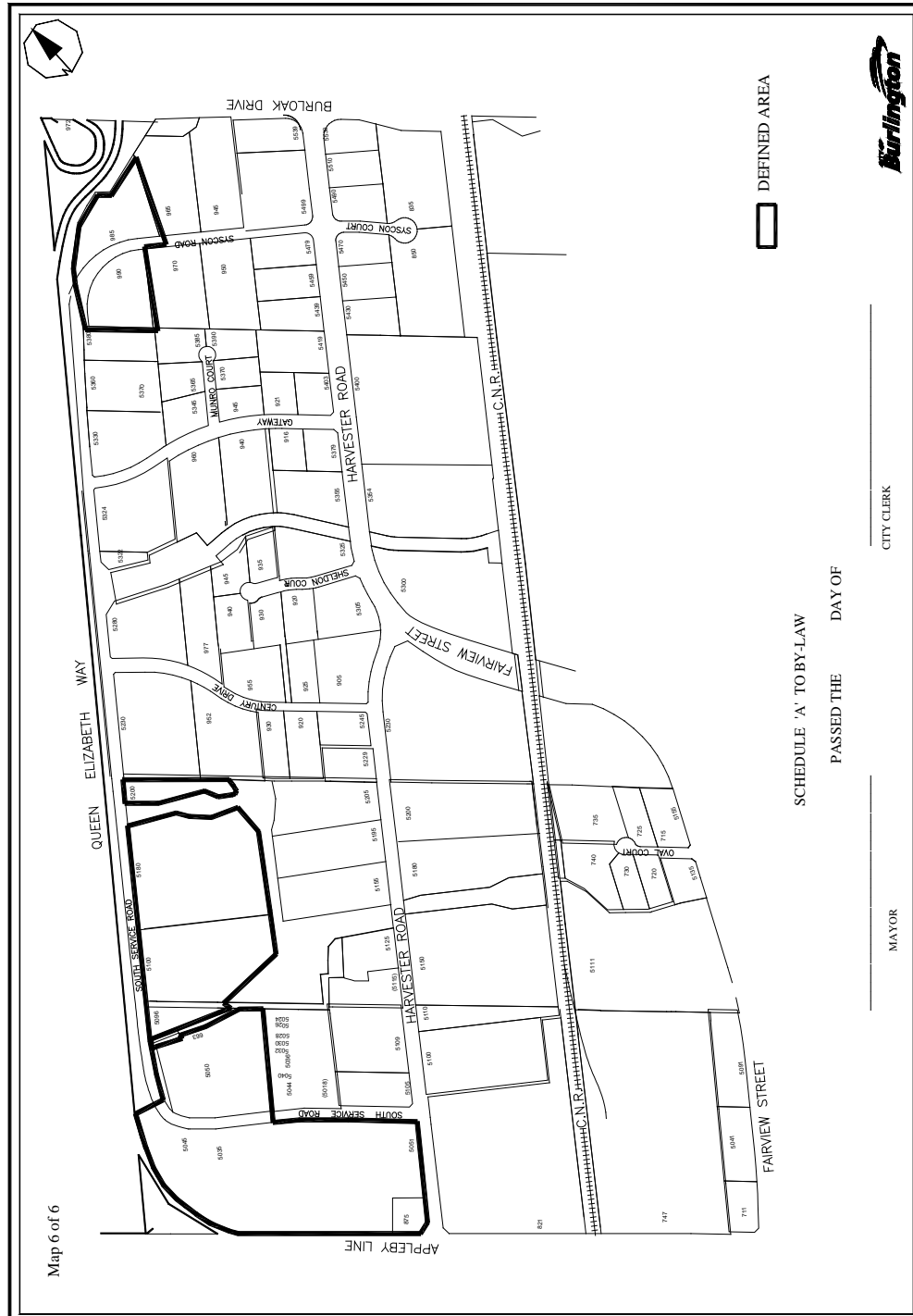
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SCHEDULE 4.2

ADULT VIDEOTAPE CLASS A STORE DEFINED AREA MAPS



ADULT VIDEOTAPE CLASS A STORE DEFINED AREA MAPS



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SCHEDULE 5

Relating to Body-Rub Businesses

1. In addition to the general licensing provisions contained in this By-law, every Applicant for a new Body Rub Business Owner's or Operator's or Attendant's Licence shall submit:
 - (1) Two Passport size photographs of the Applicant and where the Owner or Operator is a partnership, for each partner and where the Owner or Operator is corporation for each director of the corporation;
 - (2) In the case of the Owner's or Operator's application, a floor plan showing the designated room or rooms for the provision of Body-Rubs and no person may provide Body-Rubs in any other room, cubicle, enclosure or partitioned area located within the Body-Rub Business. In the event that the Owner or Operator wishes to amend the floor plan, he shall first file with the Licensing Officer a copy of the amended floor plan and shall not proceed to make such alterations without first obtaining the approval of the Licensing Officer;
 - (3) Every Applicant for an Owner's License shall at the time of making an application, file with the Licensing Officer, a list showing the names of all Operators and all such persons intended or expected to be employed in the Body-Rub Business and shall thereafter maintain an up-to-date list of all Operators and employees and submit the updated list whenever there is a change in an Operator or an employee;

BUSINESS OPERATION

2. Every Body-Rub Business Owner, Operator and Attendant shall, in carrying on or engaging in the business of a Body-Rub Business, comply with the following requirements:
 - a) no person may provide services in a Body-Rub Business to any person under the age of 18 years;
 - b) no person under the age of 18 years may enter, be allowed to enter, remain in or be allowed to remain in, any part of a Body-Rub Business;
 - c) every Body-Rub Business Owner and Operator shall ensure that there is posted in a prominent location at every entrance to the Body-Rub Business a sign indicating that no person under the age of 18 years may enter or remain in such premises; no Owner or Operator shall permit any employee

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or person to work at a Body-Rub Business unless such person is at least 18 years of age;

- d) every Body-Rub Business Owner and Operator shall, before permitting any person to provide services at a Body-Rub Business, provide a copy of the general regulations in this By-law to such person, and instruct such person with respect to all of the regulations;
- e) every Body-Rub Business Owner and Operator shall ensure that no services are provided at the Body-Rub Business other than in accordance with the requirements of this By-law;
- f) no Body-Rub Business Owner or Operator may permit a Body-Rub Business to be open for business unless the Owner or the Operator is in attendance at all times at which the Body-Rub Business is open for business;
- g) no Body-Rub Business Owner or Operator may permit any person who appears to be intoxicated by alcohol or a drug to enter or remain in a Body-Rub Business;
- h) no person may advertise or promote a Body-Rub Business or the provision of services at a Body-Rub Business except in accordance with the provisions of this By-law respecting "Signs and Advertising";
- i) no Body-Rub Business Owner or Operator may permit a Body-Rub Business to open or to remain open for business except in compliance with the provisions of this By-law respecting "Hours of Operations";
- j) no person may own or operate a Body-Rub Business except in compliance with the provision of this By-law respecting "Design of Premises";
- k) no Body-Rub Business Owner or Operator may permit a person, except a person holding an attendant's licence, to perform any service at a Body-Rub Business;
- l) no Body-Rub Business Attendant may provide services at a Body-Rub Business unless there is in attendance a person at the premises holding a Body-Rub Business Owner's licence or a Body-Rub Business Operator's licence;
- m) every contract for services or other document pertaining to the relationship between a Body-Rub Business Owner or Operator and any attendant at a Body-Rub Business shall be in writing and shall be made available to the Licensing Officer upon request, for inspection at any time during the

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business hours of the Body-Rub Business and at all times when Body-Rubs are provided, and shall be retained for a period of six months after the termination or completion of such contract;

- n) every Owner or Operator of a Body-Rub Business shall post, in a prominent location that is satisfactory to the Licensing Officer, a copy of all attendant licences in relation to persons providing services at the Body-Rub Business;
- o) every Owner, operator, attendant and every customer at a Body-Rub Business shall be clothed in a manner in which such person's pubic area and in the case of a woman, also her breasts, are fully covered by opaque material at all times;
- p) no Owner or Operator may use or permit to be used any camera or other photographic, or other electronic recording device at a Body-Rub Business by any person, but this paragraph shall not prohibit:
 - i) the use of any camera or other device used by a public authority for the enforcement of the law, or
 - ii) the maintenance of a camera in the entrance area of premises for security purposes only.
- q) where the Owner of a Body-Rub Business is other than a natural person, there must be one or more licensed operators sufficient to comply with the requirements of this By-law;
- r) Every Owner or Operator shall post and maintain in the lobby or entrance of the Body-Rub Business, in a manner satisfactory to the Licensing Officer, a sign which provides as follows: "This premises is licensed as a Body-Rub Business by the City of Burlington. The By-law regulating the premises makes it an offence for any person to provide services in a Body-Rub Business that are designed to appeal to erotic or sexual appetites".

DEFINED AREAS AND LIMITATION ON THE NUMBER OF BODY-RUB BUSINESS LICENCES

- 3. (1) No Person shall own or operate a Body-Rub Business in the City of Burlington and no attendant shall perform or provide a Body-Rub at a Body-Rub Business, except in the areas designated as "Permitted Areas" in Schedule "5.1" of this By-law.
- (2) The maximum, total number of licences which may be issued under and in accordance with this By-Law for Body-Rub Business within the City of

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Burlington shall be limited to two (2). Further an Owner shall only own one of the Body-Rub Business and an Operator may operate only one of the Body-Rub Business. No Owner may own both of the Body-Rub Business and no Operator may operate both of the Body-Rub Business and no person or corporation including its officers, directors or shareholders who own or operate one of its Body-Rub Business shall have any interest in the second Body-Rub Business if a licence is issued.

DESIGN OF PREMISES

4. No person may engage in the business as an Owner or an Operator of a Body-Rub Business, except in accordance with the following regulations:
 - (1) Save and except for one room designated by the Owner or Operator for use as an office and one room designated by the Owner or Operator as a storage room, every Owner or Operator shall ensure that no means of access to any room, cubicle, enclosure or partitioned area in a Body-Rub Business, that is used to provide Body-Rubs is equipped or constructed with a locking device of any kind or with any other device structure which could delay or hinder anyone from entering or obtaining access to such area;
 - (2) During the hours of operation of a Body-Rub Business the Owner or Operator shall ensure that the principal means of access into the Body-Rub Business shall be kept unlocked and available so that anyone coming into the Body-Rub Business may enter therein without hindrance or delay;
 - (3) No premises or part thereof used as a Body-Rub Business shall be used as a dwelling or for sleeping purposes or contain therein any bed or other furniture which is commonly used or which may be used for sleeping purposes;
 - (4) Every Body-Rub Business shall be provided with adequate ventilation and with lighting that is adequate to ensure visibility and that is uniformly distributed throughout the premises;
 - (5) Every owner or Operator as the case may be, shall keep the premises in a clean and sanitary condition;
 - (6) the premises for which the Body-Rub Business licence is required shall be subject to the following criteria:
 - i) the maximum gross floor area of the Body-Rub Business shall be no more than 150 square meters,

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- ii) a maximum of one Body-Rub Business per lot, and
- iii) when a Body-Rub Business is located in a multi-unit building, it shall not exceed 15% of the gross floor area of the multi-unit building.

HOURS OF OPERATION

5. (1) No Body-Rub Business shall be open to the public, no Owner or Operator of a Body-Rub Business may permit services to be provided and no attendant at a Body-Rub Business may provide services, except between the following days and hours:

Monday to Sunday from 9:00am to 1:00am of the following day.

- (2) No Complementary Health Care Service Provider shall be open to the public or provide any health care service except between the hours of 8:00am and 9:00pm of the same day. Further, every Owner, Operator, and Attendant of a healthcare service provider as well as the Customers, shall be clothed in a manner in which such person's pubic area and in the case of a woman, also her breasts, are fully covered by opaque material at all times.

EXEMPTIONS

6. For purposes of the section:

- (1) "Complementary Health Care Organization" means an association, organization or institution demonstrated to be established for the purpose and with the continuing intent, of ensuring the safe and proper provision of one or more kinds of alternative health care services, through:
- i) The admission to membership of persons qualified to provide such service or services;
 - ii) The promulgation and enforcement of a code of ethics respecting the provision of such service or services;
 - iii) Maintaining, providing and recognizing measurable standards for practices and procedures in the provision of such service or services;
 - iv) The communication of information relating to such service or services; and

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- v) Involvement in ongoing research, development and education relating to the safe and proper provision of such service or services.
- (2) "Complementary Health Care Service Provider" means an individual providing health care service who:
- i) Has demonstrated qualifications to provide the particular kind of health care service through successful completion of one or more formal courses of education and training in the provision of such service offered by an organization or institution which has demonstrated qualifications to provide such courses, in accordance with this Schedule;
 - ii) Has demonstrated himself or herself to be a member in good standing of a Complementary Health Care Organization; and
 - iii) Has demonstrated acceptance and practice of the procedures, practices and ethics of the Complementary Health Care Organization of which the individual is a member.
- (3) "Formal Course of Education and Training" means any such course offered or recognized by a Complementary Health Care Organization as qualifying the individual, in accordance with the procedures, practices and ethics of such organization, to provide safe and proper health care service of the kind which is the subject matter of the area of interest and jurisdiction of the organization and of the course.
7. The provisions of this By-law and Schedule:
- (1) Are not applicable in relation to 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; and
 - (2) Save and except for the provisions of Section 5.2 of this Schedule, are not applicable in relation to health care services provided by a Complementary Health Care Service provider in accordance with and under the conditions prescribed in the provisions of this By-law.
8. Any exemption provided by section 7 (2) of this Schedule applies only in respect of services which:
- (1) Are health care services provided pursuant to the qualifications referred to in this Schedule and in accordance with the procedures, practices and

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ethics of the Complementary Health Care Organization of which the individual is a member; and

- (2) Are made the subject of a permanent record describing the service provided to the recipient by name and accessible by him or her at any time.

9. For the purposes of this Schedule:

- (1) Demonstration of the academic qualifications of a Complementary Health Care Service Provider shall be made by filing with the Licensing Officer upon request, a certified true copy of the diploma, certificate or other proof of successful completion of the course in question;
- (2) Demonstration of the qualifications of an organization or institution to provide a course leading to qualification in the provision of a kind of health care service, shall be made by filing in writing, upon request disclosing:
 - i) Name of organization;
 - ii) The names, addresses and phone numbers of its principals and officers for contact purposes;
 - iii) Every kind of health care service which is the subject matter or interest of the organization, and a full description of the nature of the service;
 - iv) A short history summarizing the organization's activities and achievements to date;
 - v) The qualifications of the organization to provide the course; and
 - vi) A description of every course offered, of any degree, diploma, certificate or other status or qualification awarded for successful completion, and the kind of service or services which such status or qualification qualifies one to provide.
- (3) Demonstration of the nature of a Complementary Health Care Organization shall be made by filing in writing upon request providing disclosure of:
 - i) Name of the organization;

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- ii) The names, addresses and phone numbers of its principals and officers for contact purposes;
 - iii) Every kind of health care service which is the subject matter or interest of the organization, and a full description of "the nature of the service";
 - iv) A short history summarizing the organization's activities and achievements to date;
 - v) An outline of the procedures and practices pursued by the organization and its members;
 - vi) A copy of the organization's code of ethics;
 - vii) The nature of the health care service or services provided by the organization and its members, and of the qualifications required to provide every such service;
 - viii) A list of criteria for membership in the organization, and a list of its members; and
 - ix) A list of course and qualifications recognized or provided by the organization.
- (4) Demonstration of membership in an organization shall be made by filing a copy of a valid membership card or other valid proof of membership held by the complementary health care provider for the current year.
10. The filing of any record or document referred to in this Schedule may be made by the complementary health care service provider or by the complementary health care organization in respect of its members.
11. Acceptance of filing of any document or record does not constitute approval or acceptance by or on behalf of the City or its Licensing Officer of the truth or accuracy of any information contained therein.
12. It shall be the joint responsibility of every complementary health care service provider and the complementary health care organization of which he or she is a member, to file up-to-date information relating to the circumstances affecting any exemption in respect of which the record or information is relevant, any changes in such circumstances as they occur, and an undertaking upon each such filing that the information or record filed is accurate and that this Schedule will be strictly adhered to.

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13. Any document or record filed as demonstration of the information contained therein may be made by either a complementary health care service provider or a complementary health care organization, in which latter case, no member in respect of whom the information is relevant shall be required to make any such further filing, provided that at all times the organization maintains the information accurate and current.
14. In the case of doubt as to whether or not any exemption provided in this By-law applies, where the Licensing Officer is not able to resolve such doubt through communication with affected parties, the Licensing Officer may refer the matter to Council, or a Committee of Council, which shall provide any party affected the opportunity to attend at a meeting with the Committee or Council to provide information in support of a claim to an exemption.

SCHEDULE 5.1

