

Consolidated Clause in Planning and Transportation Committee Report 6, which was considered by City Council on July 19, 20, 21 and 26, 2005.

6

Licensing Strategy to Deal with Illegal Body Rub Activity In Licensed Premises

City Council on July 19, 20, 21 and 26, 2005, amended this Clause:

(1) by amending the recommendations of the Planning and Transportation Committee:

(a) by deleting Recommendation (1)(a) and inserting instead the following:

“(1) City Council:

(a) adopt the staff recommendations contained in the Recommendations Section of the report (June 20, 2005) from the Executive Director, Municipal Licensing and Standards, subject to:

(i) amending Recommendation (4)(x) by deleting the words ‘within 200 metres’ and inserting instead, the words ‘within 500 metres’, so that Recommendation (4)(x) now reads as follows:

‘(4)(x) No Holistic or Traditional Medicine Establishment shall be located within 500 metres of any licensed Adult Entertainment Parlour and Body Rub Parlour;’,

and deferring consideration of this recommendation, as amended, until the Chief Planner and Executive Director, City Planning reports to the Planning and Transportation Committee on possible amendments to the Zoning By-law which would have the same effect;

(ii) deleting Recommendation (4)(ix) and inserting instead the following:

‘(4)(ix) No premises in which a Holistic or Traditional Medicine Establishment is located shall be constructed or equipped so as to hinder or prevent the enforcement of the By-law, however, Holistic Practitioners working in a Holistic

Centre shall be permitted to lock the doors of the Centre and the treatment room while working with a client, for their mutual security and safety, while indicating in a manner clearly visible from outside the Holistic Centre when they will be available, and unlock the door by that time;'; and

- (iii) *deleting the following Recommendation (6), as there is no reasonable purpose for requiring health checks for holistic practitioners:*

'(6) the Medical Officer of Health be requested to report to the Board of Health, such report to be then forwarded to the Executive Director of Municipal Licensing and Standards to prepare a corresponding report to the Planning and Transportation Committee, dealing with the appropriateness of requiring health checks for Body Rub Attendants and Holistic and Traditional Medicine Practitioners;';

- (b) *by adding to Recommendation (2) the words 'and the Executive Director of Municipal Licensing and Standards consult with the Holistic Health Research Foundation of Canada in the evaluation of submissions from the Associations', so that Recommendation (2) now reads as follows:*

'(2) the fees for Holistic licenses be maintained as presently constituted and the Executive Director of Municipal Licensing and Standards consult with the Holistic Health Research Foundation of Canada in the evaluation of submissions from the Associations;'; and

- (c) *in accordance with the staff recommendations contained in the Recommendations Section of the confidential report (July 13, 2005) from the City Solicitor, subject to amending Recommendation (2) by adding the words 'and the hearing be limited only to matters that pertain to the increase in fees to other than holistic categories'. The following staff recommendations, as amended, are now public and the balance of the report remains confidential, in accordance with the provisions of the Municipal Act, 2001, as it contains information which is subject to solicitor-client privilege:*

'It is recommended that:

- (1) *Recommendation (3) of the Planning and Transportation Committee, that the 2005 Business Licensing Fees (both for new licences and renewals thereof) for all other businesses licensed under the Toronto Municipal Code Chapter 545, be increased by \$35.00, not be adopted; and*

- (2) *Recommendation (3) of the Planning and Transportation Committee be referred back to the Committee for further consideration after public notice of the Committee's intention to discuss a proposed licensing by-law increasing licensing fees for all licensed businesses has been given in accordance with the requirements of the Municipal Act, 2001, and Toronto Municipal Code Chapter 545, Notice, Public, and the hearing be limited only to matters that pertain to the increase in fees to other than holistic categories.';*
- (2) *to provide that the current Licensing By-law requirement that prospective Holistic Establishment Owner/Operators provide a letter from their landlord stipulating their awareness that their prospective tenant is a Holistic Establishment Operator, be struck out and a requirement be substituted instead that, on conclusion of the negotiation of a lease, the Holistic Establishment Operator must provide a copy of a letter to Municipal Licensing and Standards demonstrating that they have notified the property owner in writing of the nature of their business operation, including a copy of the licensing regulations affecting Holistic Establishments attached to that letter, and also a copy of their lease; and*
- (3) *by adding the following:*
- "That:*
- (a) *the Mayor be requested to write to the Attorney General to impress upon the judicial system the seriousness of Criminal Code offences originating from illegal body rub activities;*
- (b) *the Toronto Police Services Board be requested to direct that the Toronto Police Service establish a formal protocol to co-ordinate operations and share information with Municipal By-law Enforcement to control the sex trade;*
- (c) *the Police Chief be requested to delegate a senior official to work closely with Municipal Licensing and Standards on shutting down all illegal Body Rub Establishments;*
- (d) *the Deputy City Manager be requested to report to the Planning and Transportation Committee on the feasibility of requiring Landlords to include in their leases with Body Rub Parlours, Holistic Centres, or Traditional Medicine Centres, an explicit provision that the lease will be terminated upon conviction of the Body Rub Parlour, Holistic Centre, or Traditional Medicine Centre for operating without a valid business license issued pursuant to Chapter 545 of the Toronto Municipal Code, or for a criminal conviction related to the operation of the Body Rub Parlour, Holistic Centre or Traditional Medicine Centre;*

- (e) *the Executive Director, Municipal Licensing and Standards, in consultation with appropriate officials from the City of Markham, report to the Planning and Transportation Committee on October 6, 2005, on the effectiveness of the implementation of the Markham Registry By-law, in order to inform future actions regarding regulatory structures for the holistic health community to the exclusion of the sex trade in Toronto;*
- (f) *the Executive Director, Municipal Licensing and Standards designate a staff liaison with whom representatives of the holistic community can be in regular contact, to:*
 - (i) *provide information and guidance to Municipal Licensing and Standards management and staff to assist in the effective implementation of the regulatory regime supported by Council; and*
 - (ii) *receive reports on the progress of, and issues arising from, that implementation;*
- (g) *the Executive Director of Municipal Licensing and Standards be requested to:*
 - (i) *submit amendments to the Municipal Licensing By-law to the October 6, 2005 meeting of the Planning and Transportation Committee which would:*
 - (1) *amend the hours of operation for Holistic and Traditional Medicine Establishments to be 8:00 a.m. to 9:00 p.m., Monday to Saturday, and 12:00 noon to 5:00 p.m. on Sundays and Holidays;*
 - (2) *amend the hours of operation for Body Rub Parlours to be 9:00 a.m. to 9:00 p.m., Monday to Saturday, and 12:00 noon to 5:00 p.m. on Sundays and Holidays; and*
 - (3) *permit public entry to any Holistic or Traditional Medicine Establishment only from the primary entrance which must be facing the main street frontage of the premises;*
 - (ii) *report to the Planning and Transportation Committee on mechanisms for permitting unannounced access for inspectors, without requiring an unlocked front door;*
 - (iii) *prepare a report for the purpose of regulating and/or prohibiting indecent, pornographic, inappropriate or specific items of public nuisance, as it pertains to advertising for body rub parlours, massage parlours and/or holistic designations, and consult with appropriate industry representatives, Business Improvement Associations and Ratepayers Associations in the preparation of this report;*

- (iv) *report to the Planning and Transportation Committee meeting to be held on March 6, 2006, on a replacement of the licensing system for holistic establishments and practitioners, with a registry system requiring practitioners to show membership in a City-accredited professional association; and*
- (v) *establish formal protocols for sharing licensing information about problem properties and investigations with surrounding municipalities;*
- (h) *the Chief Planner and Executive Director, City Planning Division, be requested to report to the October 6, 2005 meeting of the Planning and Transportation Committee with amendments to the City-wide Zoning Code to provide for the following restriction:*
 - ‘No establishment whose use is the provision of physical contact for sexual gratification as defined in the Municipal Act, 2001, be located within 200 metres of any residential zone, licensed Adult Entertainment Parlour, or Body rub Parlour.’;*
- (i) *no person with a criminal record be permitted to obtain or renew a Holistic License, unless they have first appeared before the Toronto Licensing Tribunal to give reasons as to why they should be granted a License, and any Holistic owner convicted of criminal offences have its Licenses reviewed immediately by the Licensing Tribunal; and*
- (j) *volunteers and students be permitted to operate in non-profit settings, such as hospitals and hospices, for no remuneration, without being required to obtain a Holistic Practitioner licence.”*

Council also considered additional material, which is noted at the end of this Clause.

The Planning and Transportation Committee recommends that:

(1) City Council:

- (a) **adopt the staff recommendations contained in the Recommendations Section of the report (June 20, 2005) from the Executive Director, Municipal Licensing and Standards, subject to deleting the following Recommendation (4 (x):**
 - “(4)(x) No Holistic or Traditional Medicine Establishment shall be located within 200 metres of any licensed Adult Entertainment Parlour and Body Rub Parlour;”;**

- (b) discontinue the licensing of Traditional Chinese Medicine and Acupuncture pending provincial legislation of the practice as referred to in the communication (June 27, 2005) from George Smitherman, Minister of Health and Long-Term Care;**
- (2) the fees for Holistic licenses be maintained as presently constituted;**
- (3) the 2005 Business Licensing fees (both for new licences and renewals thereof) for all other businesses licensed under Toronto Municipal Code Chapter 545, Licensing be increased by \$35.00;**
- (4) the City Solicitor be requested to submit a report to the Planning and Transportation Committee on:**
 - (a) how the City could place greater onus on landlords who rent to body rub establishments and, if necessary, obtain outside legal assistance in this matter; and**
 - (b) the feasibility of utilising medical malpractice insurance as a means of separating the sex trade from legitimate holistic practitioners;**
- (5) the Executive Director, Municipal Licensing and Standards be requested to submit a report to the Planning and Transportation Committee on how holistic practitioners could be permitted to instruct students without having to license them;**
- (6) copy of the report (June 20, 2005) from the Executive Director, Municipal Licensing and Standards be forwarded to:**
 - (a) Members of the Toronto Licensing Tribunal for their information;**
 - (b) the Team negotiating the new City of Toronto Act; and**
 - (c) the Toronto Police Services Board for their information; and**
- (7) the Executive Director, Municipal Licensing and Standards be requested to:**
 - (i) ensure that future reports separate the issue of the licensing or registering of Holistic practices and the issue of body rub parlours; and**
 - (ii) submit a report to the Planning and Transportation Committee in one year's time on how the new process is working.**

The Planning and Transportation Committee held a public meeting on June 27, 2005, in accordance with the Municipal Act, 2001, and notice of the proposed amendment to Toronto Municipal Code Chapter 545, Licensing, was posted on the City's web site for a minimum of four days.

The Planning and Transportation Committee submits the report (June 20, 2005) from the Executive Director, Municipal Licensing and Standards Division:

Purpose:

This report responds to numerous and related requests of City Council, detailed within the background, concerning the presence of illegal enterprises within the licensed business community--primarily in the areas of Holistic, Traditional Medicine and Body Rub Establishment and Practitioners/Attendants.

Financial Implications and Impact Statement:

Business licensing costs to the City are funded through the collection of licensing fee revenue by the Municipal Licensing and Standards Division under authority of the Municipal Act which sets out provisions for the recovery of costs associated with the administration and enforcement of business licensing activities. There is currently a \$2.5 million budget shortfall associated with the cost of investigating and prosecuting the illegal operations. The recommendations set out in this report propose that an alternative model for collecting this shortfall is needed and will include changes to the by-law, and financing alternatives to offset a \$2.5 million budget shortfall.

For Holistic and Traditional Medicine Establishment licences, it is estimated that a fee adjustment from \$232 for new applications and \$115 for renewals to \$712 for new applications and \$595 for renewals for Holistic and Traditional Medicine Establishment Licences and from \$262 for new applications and \$149 for renewals to \$322 for new applications and \$209 for renewals for Practitioner Licences would recover the costs associated with the regulation of these licences and would reduce the revenue shortfall by \$385,000. With an implementation date of October 2005, the additional revenue to the Municipal Licensing and Standards' budget is \$79,000 in 2005, and an annualized full-year impact of \$306,000 in 2006.

A further fee adjustment, as recommended in this report, would be to recognize that enforcement of purely illegal operations is an implicit purpose of the general business licensing authority and should be recovered broadly from across the full spectrum of licensed business activities regulated under the Licensing B-law. With an approximate volume of 61,000 licences per annum, an upward fee adjustment of \$35 would be needed to recover the balance of the \$2.5 million shortfall; that is, \$2.115M. Should this alternative be adopted with the implementation date of October 2005, the additional revenue to the Municipal Licensing and Standards' budget is \$533,750 in 2005, and an incremental impact of \$1,581,250 in 2006.

In total, both fee adjustments together would be needed to fully recover the \$2.5 million shortfall, which will be mitigated in 2006.

If none or only one of these options are considered, the resulting shortfall will continue to be drawn from the City's tax base.

The Deputy City Manager and Chief Financial Officer have reviewed this report and concurs with the Financial Impact Statement.

Recommendations:

It is recommended that:

- (1) this report be forwarded to the Federal Minister of Human Resources Development as a demonstration of the concerns arising from certain institutions which issue Holistic Practitioner Accreditation, under the authority of approvals granted by this agency, and to convey an understanding of some of the impacts resulting from those approvals;
- (2) Professional Holistic and Traditional Medicine Associations be invited to submit proposals to the Executive Director of Municipal Licensing and Standards not later than September 1, 2005, setting out, at minimum, the following information:
 - (a) their purpose in and continuing intent to ensure safe and appropriate provision of one or more modalities of Holistic or Traditional Medicine;
 - (b) the modalities and holistic and/or traditional medicine practices that the organization oversees;
 - (c) proof of the registered not-for-profit status of the organization;
 - (d) all by-laws and procedures governing requirements for membership in the association, including a description of minimum training requirements to be attained by prospective members,
 - (e) requirements and process of enforcement exercised by the organization relating to their code of ethics respecting the provision of services;
 - (f) the maintenance, provision and recognition of measurable standards for practices and procedures in the provision of holistic services;
 - (g) their means of communicating and reinforcing their principles among their membership;
 - (h) their existing or proposed disciplinary system; and
 - (i) the membership of their board of directors, and confirmation that it is comprised of a majority of licensed Holistic and/or Traditional Medicine Practitioners, duly elected by a majority of practitioner members in good standing.

and that the Executive Director of Municipal Licensing and Standards evaluate these submissions and report her evaluation and recommendations back to the Planning and Transportation Committee at their meeting scheduled in November of 2005.

Such recommendations will ultimately result in the designation of authority for those approved associations to be relied upon for the purpose of ensuring the proper accreditation of Holistic and Traditional Medicine Practitioners.

- (3) staff investigate and report back to the Planning and Transportation Committee on the need for and, if recommended, operating standards to be applied to the licensing of other businesses, which have been identified as potential concerns, such as nail and tanning salons;
- (4) the following amendments be made to Article XI of Toronto Municipal Code Chapter 545, Licensing:
 - (i) replace the term “complementary healthcare organization” with “professional holistic association” and redefine the term to include a requirement that such associations must be not-for-profit organizations with boards of directors elected by the member practitioners;
 - (ii) strengthen provisions pertaining to the submission of documents by requiring submission of original documents, in person, during the licence application process;
 - (iii) exclude all Provincially licensed and regulated healthcare providers from the City’s business licensing requirements;
 - (iv) repeal requirement to have an itemized bill for every patient available for inspection;
 - (v) clarify that a single practitioner operating out of their home (in compliance with the relevant zoning by-law) or who makes offsite calls, may do so legally with only a holistic practitioner’s licence;
 - (vi) amend the provisions prohibiting the possession of drugs and alcohol on the premises to provide for the availability of ethanol, for the preparation of herbal medicines;
 - (vii) amend provisions as they prohibit contact with specified body areas to permit manipulation of the region of the axilla (the flank of the breast near the armpit) or of buttock muscles;
 - (viii) amend and strengthen requirements pertaining to appropriate attire and conduct to require clean, opaque professional clothing and to be civil and well behaved to members of the public;
 - (ix) no individual room, cubicle or door providing access to areas where Holistic or Traditional Medicine Services are provided shall be locked, and no premises in which a Holistic or Traditional Medicine Establishment is located shall be constructed or equipped so as to hinder or prevent the enforcement of the by-law; and
 - (x) No Holistic or Traditional Medicine Establishment shall be located within 200 metres of any licensed Adult Entertainment Parlour and Body Rub Parlour.

- (5) the Business Licensing Thresholds be amended to reflect that offences pertaining to the provision of services by minors within Holistic and Traditional Medicine Establishments be reclassified as a restriction code 8 offence;
- (6) the Medical Officer of Health be requested to report to the Board of Health, such report to be then forwarded to the Executive Director of Municipal Licensing and Standards to prepare a corresponding report to the Planning and Transportation Committee, dealing with the appropriateness of requiring health checks for Body Rub Attendants and Holistic and Traditional Medicine Practitioners;
- (7) the appropriate City officials be authorized and directed to take any necessary action to give effect to the recommendations set out in this report; and
- (8) the City Solicitor be directed to introduce the necessary bills to give effect to the recommendations in this report.

Background:

At its meeting of June 22, 23 and 24, 2004, City Council amended the Policy and Finance Committee's Clause 11 of Report 5, Review of Business Licensing Fees/Establishment of Traditional Medicine Establishment and Practitioner Licences by, among other things, requiring the Commissioner of Urban Development Services to report to the Planning and Transportation Committee on the establishment of testing panels, such panels to be comprised of licensed Holistic Practitioners, to assess whether applicants for Holistic Establishment Licences are appropriately qualified to receive a licence including, but not limited to, a review of the training and accreditation process they have been subject to as Holistic Practitioners.

Stakeholders were engaged for the purpose of soliciting their input and expertise with respect to the establishment of a system that would effectively prevent illegitimate practitioners from receiving a holistic business or practitioner licence. Participants in this consultation included professional holistic associations, holistic educational institutions, holistic business owners and holistic practitioners. Consultations took place over seven meetings during a six-month period.

Staff of the Legal Division attended the consultation sessions.

Additionally, at its meeting of March 7, 2005, the Planning and Transportation Committee adopted a motion directing staff to report on a number of issues with respect to body rub parlours. Specifically, it directed the Commissioner of Urban Development Services to report back to the Planning and Transportation Committee on the following issues:

- (a) clarification of current definitions and classifications of holistic centres and body rub parlours;
- (b) a requirement that all employees of body rub parlours must be twenty-one years of age or older (and if this is not possible, eighteen years of age or older);
- (c) a requirement that all employees of body rub parlours must be Canadian citizens;

- (d) a requirement that body rub parlours provide proof of proper filing of GST and PST;
- (e) a requirement that an annual audit be conducted on all body rub parlours;
- (f) a requirement that body rub parlours' hours of operation be restricted to 9:00 a.m. – 5:00 p.m.;
- (g) a requirement that all employees of body rub parlours be required to have appropriate certification and training in proper hygiene practices; and
- (h) a requirement that the names of all body rub parlours be reviewed and approved by the City.

City Council, at its June 22, 23 and 24, 2004 meeting, requested the Executive Director of Municipal Licensing and Standards, in consultation with the Medical Officer of Health, to report on how other cities around the world have dealt with sex trade issues in the context of licensing legitimate holistic practitioners.

City Council also adopted, at its meeting of November 30, and December 1 and 2, 2004, a motion requiring that:

- (1) the Commissioner of Urban Development Services delay, for one year, the continuation of the consultation process and the reporting on the outstanding licensing issues, in order that the Province of Ontario may introduce the appropriate legislation to provide for self-regulation of Traditional Chinese Medicine and Acupuncture Practitioners;
- (2) formally request that the Province introduce such legislation in as expeditious a manner as practical; and
- (3) request that the Province advise the City, through the City Clerk's Office, of the expected timeframe for the introduction of the legislation.

City Council also adopted at its meeting of May 17, 2005, a motion to:

- (1) return the mandate of licensing Traditional Chinese Medicine Practitioners to the Provincial Ministry of Health;
- (2) consider amending Chapter 545, Licensing, in order to delete those provisions relating to Traditional Chinese Medicine Practitioners; and
- (3) hold a public meeting to consider this matter at an upcoming meeting of the Planning and Transportation Committee.

Finally, Council adopted a motion at its June 14, 15, and 16, 2005, meeting requesting the Executive Director to report to the Planning and Transportation Committee on the possibility of adding provisions affecting holistics to the restriction code 8 schedule of the business licensing thresholds. This is addressed in this report's recommendations, effectively treating any violations pertaining to minors in a holistic establishment as a serious offence for threshold purposes.

Comments:

Summary:

The report is prepared so as to assist in the understanding of the issues, with detailed descriptions of the current environment and proposed by-law amendments in the areas of:

- (a) who is to be licensed and how licences should be issued;
- (b) the standards that would apply to those licensed businesses and practitioners;
- (c) standards not recommended for adoption;
- (d) enforcement, including co-ordination with the Toronto Police Service, court proceedings, and options for expedited hearings before the Licensing Tribunal;
- (e) financial/resource impacts and fees;
- (f) implementation of new guidelines;
- (g) minor and related technical amendments to support overall objectives; and
- (h) proposals for legislative change.

(1) Introduction and Context:

While much of the discussion concerning the appearance of sexual services in the licensed business community has been focussed around Holistic Medicine/Treatment Establishments, it is important to note that legitimate Holistic establishments and practitioners have also been a victim of this situation. The reputation of professional holistic practitioners and business operators has been maligned by enterprises which have taken advantage of their status as an emerging health profession, and the lack of clearly recognized standards across their profession and among the general public.

In fact, members of Council and enforcement staff are beginning to witness situations where professional sexual services are being offered in other business environments such as nail and tanning studios. I propose that staff continue this study as it may impact on certain other aspects of the business community, and report back to the Planning and Transportation Committee with recommendations as to whether or not other businesses should be subject to business licensing, and, if so, what minimum standards should be required for their operation in the community.

One of the core problems presented by the current situation is that Holistic and Traditional Medicine Businesses are legitimate retail/professional operations and, as such, are permitted to locate within neighbourhood retail and commercial areas. Further to the principle that these businesses are treated as retail/professional operations, there is no authority to cap the number of licences issued to such businesses.

In contrast to these rules, Adult Entertainment and Body Rub Establishments are clearly defined within the Licensing By-law and the Municipal Act as Adult Establishments and, as such, the issuance of a licence for such a business automatically invokes a zoning/land use standard; that is, those establishments are only given a licence to operate their business when it is clear that they are operating at a location where an adult business is permitted to locate, in accordance with the pertinent zoning by-law. Further, in recognition that these businesses are of an adult nature, other specific rules and

authorities exist within the Municipal Act which allow for stricter regulation of advertisement, and to cap the number of licences issued. A copy of Section 150 of the Municipal Act, which deals with Adult Business Licences, is attached as Appendix A.

Clearly there is room for improvement in the City's controls, and such recommendations are set out as matters to be addressed within the new City of Toronto Act, or to the Province of Ontario, if authority is not divested to the City in the areas where improved regulation is recommended.

The analysis and recommendations set out in this report attempt to assist in more clearly defining the licensing standards which should appropriately apply to holistic businesses, and to develop new and strengthen existing policies, tools and enforcement mechanisms to protect the public and holistic practitioners from illegitimate operators.

I would be remiss if I did not recognize the commitment of the Holistic and Traditional Medicine practitioners who assisted staff in better understanding their profession and in the development of the licensing model set out in this report. The benefit of their assistance was immeasurable, and helped us understand the problems within this sector in a new light.

Staff have also consulted with enforcement and policing agencies across the GTA as well as the Toronto Police Service, Legal Services Division, Finance Division, and the Medical Officer of Health, in preparing this report.

As is the case with most areas of business licensing, it is important to fully understand the environment we are attempting to regulate with a clear focus on the goals and objectives of our licensing regulations. It is important to avoid unintended, adverse consequences to the business community, and especially to more vulnerable, emerging sectors.

The steps outlined in this report will undoubtedly improve the regulatory and enforcement environment for dealing with the problems that exist, but we do not underestimate the determination of the illicit operations to find new ways to operate. Staff will continue their work within the business and enforcement community and as new problems arise and solutions or responses are found, we will continue to make recommendations to amend the licensing regulations and improve enforcement opportunities.

(2) Holistic Practitioners Licence Requirements and Concerns:

2.1 Current Requirements:

Obtaining a Holistic Practitioner's licence requires a person to demonstrate that an applicant has completed a course of training at an educational institution in Canada within the meaning of Section 118.5 of the Income Tax Act, R.S.C. 1985, c.1 as amended, or membership in a complementary health care organization, and accepts the procedures, practices and ethics of that organization. Section 118.5 of the Income Tax Act defines that an educational institution may be almost any post-secondary school level institution, other than courses designed for university

credit, that furnish or improve a person's skills in an occupation. Most holistic training institutions are certified by the Minister of Human Resources Development. Certification requires the provision of basic information on the institution, including a description of courses offered, and the Ministry will assess whether the program offers skills in an occupational skill; if so, approval is granted.

The alternative option to obtaining a Holistic Practitioner's Licence requires membership in a complementary health care organization. These associations are not governed by any common requirements and are formed on a voluntary basis to represent and advance the interests of holistic practitioners. A number of these associations have adopted minimum formal training standards as well as standards for professional conduct. In many cases, these associations will represent one or a number, but not all, modalities or practices. This membership standard also provides an alternative for those who have received their education and/or formal training outside Canada.

A recent local media investigation suggested, and staff have been advised of similar concerns, that certain institutions offering to train in alternative or holistic medicine will issue training certificates merely upon payment of a fee, without providing training. In this matter, we recommend that the Federal Ministry of Human Resources Development be advised of these concerns.

It is clear that the provision of a Holistic Practitioner's Licence solely on the premise of a training certificate provides some assurance that training has been provided, but not necessarily that such training underscores the practitioner's ongoing commitment to the ethical and professional practice of Holistic or Naturopathic Medicine.

2.2 Alternative Licensing Model for Holistic Practitioners:

Section 150(1)(e) of the Municipal Act, 2001, permits Municipalities to determine licence qualifications including requiring membership in a complementary health care organization.

It should be noted that there is currently great variation of opinion across this sector as to the appropriate number and diversity of practices, the standards within a given modality, and the development and administration of examinations to permit someone to practice in the field of Holistic Medicine. When those discussions have evolved sufficiently, as is the objective with Traditional Chinese Medical Practitioners, to come to agreement on national and/or provincial standards for their practice, proposals are made to the Provincial Government for self-regulatory status. At such time as this may occur, under the current legislation, the City would no longer be permitted to license such businesses.

In the interim, however, and given that authority exists to license such businesses and practitioners, and to require membership in an appropriate organization, it is my recommendation that an alternative model for licensing holistic and traditional

medicine practitioners be developed which relies upon a relationship between the City of Toronto and appropriate Professional Associations. As such, the City would request proposals from Professional Associations that met the City's criteria. Associations accepted under this process would be required to operate as non-profit agencies, and be relied upon (as is the case with Provincial self-regulated professions) to receive membership applications, determine whether an agreed upon standard of training had been attained, requiring the applicant to agree to abide by a code of conduct and professional standard which would include ensuring no harm occur to any person as a result of their treatment, etc. The City could also establish, as an aspect of their agreement with such associations, that prospective practitioners be required to agree to ensure that they will not use their membership in such association as a means to administer nude and/or sexual services.

Finally, all associations applying for such consideration would have to set out clear guidelines for professional conduct including a clear reflection of conduct which would be deemed unacceptable and explicit guidelines and timelines for dealing with complaints, including the potential for expulsion from that association. Such incidents would be required to be reported to Municipal Licensing and Standards and could form the basis to initiate licence revocation proceedings before the Toronto Licensing Tribunal.

The effect of this system would be to rely on appropriate professional associations to establish an accreditation system for holistic and traditional medicine licence qualification, rather than the City attempting to replicate that very complex process internally, as was recommended. A further reason for recognizing existing professional associations is to acknowledge the wide range of modalities and treatments currently offered under the ambit of Holistic and Traditional Medicine. In the recommended model, a number of associations could be recognized, each reflecting some, but not all, modalities and treatments.

Since Traditional Medical Practitioners have not yet been granted self-regulatory status by the Province, it is recommended that business establishments and practitioners within the field of Traditional Medicine continue to be subject to the same guidelines and requirements as other somewhat similar Holistic businesses and practitioners.

2.3 Operating Standards Recommended for Holistic and Traditional Medicine Establishments:

With the introduction of new and strengthened provisions requiring association memberships including provisions for oversight of those associations, as well as amendments to operating standards as set out below, a number of requirements which were introduced into the Licensing By-law by City Council in June of 2004, as pre-requisites for obtaining a Holistic or Traditional Medicine Establishment or Practitioner Licence, can be repealed.

During the consultation process, the more technical standards set out in the by-law were also reviewed with a view to clarifying the objectives and to get a better understanding of their impacts. As a result of this review, we are recommending amendments to a number of those standards, as follows:

- (a) the term “complementary healthcare organization” is recommended to be amended throughout the by-law to better align with the term in use within the professional sector, that is “professional holistic association”;
- (b) requirements pertaining to the submission of documents in the licence application processes should be strengthened to require submission of original documents, in person;
- (c) exclude all Provincially licensed and regulated healthcare providers from the City’s business licensing requirements;
- (d) the requirement to have an itemized bill available for inspection available for all patients is both intrusive and is not useful as an enforcement tool, as we believe was its intention. Most holistic and traditional medicine practices will keep patient records in a form appropriate, and in accordance with association requirements;
- (e) clarify that a single practitioner may operate legally out of his or her home (in compliance with the relevant zoning by-law) or on a house call/offsite basis with a holistic practitioner’s licence, without being required to also have a holistic centre licence;
- (f) amend the provisions prohibiting the possession of drugs and alcohol on the premises to provide for the availability of ethanol, which is often used in the preparation of herbal medicines;
- (g) amend the provisions as they prohibit contact with specified body areas to permit manipulation of the region of the axilla (the flank of the breast near the armpit) or of buttock muscles; and
- (h) amend and strengthen requirements pertaining to appropriate attire and conduct to require clean, opaque professional clothing and to be civil and well behaved to members of the public (similar to requirements currently applied to taxi, towing and other similar operators).

2.4 Operating Standards Not Recommended for Holistic and Traditional Medicine Establishments:

Areas of the by-law and/or new proposals which were not supported by the consultation group are set out below. While we stand by our recommendations, as noted, there may be an opportunity in future to review whether these provisions are still needed, at a later date. The areas of disagreement were few, but are set out below. The consultation group recommended that:

- (a) Volunteers and student practitioners should not require a Holistic Practitioner's Licence;
- (b) Holistic Medicine, as licensed by the City of Toronto, should be amended to exclude healthcare which does not involve touch, such as herbology;
- (c) Doors to Holistic Establishments should be permitted to be locked;
- (d) Holistic Establishment Licensees should not be required to hold a Holistic Practitioner Licence; and
- (e) Holistic Establishments should not be required to obtain letters from their landlords recognizing that they are Holistic Establishments and acknowledging the requirements of their licence.

Through discussions and consultation with the Toronto Police Service, it is their experience that much of the business associated with the provision of sexual services, where it exists, occurs in an environment that is designed to encourage employees to offer sexual services, while the establishment owners/operators deny their authorization or awareness of the practice. For example, this occurs when employees are contracted to work on a fee-for-service basis, earning a very small portion of the fee paid to the owner of the premise for the licensed service. It is felt that this environment is intended to pressure disadvantaged employees to offer additional and unauthorized services to ensure they earn a liveable wage. Often, when enforcement officials identify illegal bawdy houses, owner/operators will deny knowledge of the employee's conduct and sever their employment relationship with the practitioner.

Since many of the problems associated with the illegal operations appear to be created by the owners and/or operators of those premises, I believe it is not advisable to relieve them from Practitioner Licence requirements at this time. Further, requiring such a licence, within the amended guidelines being proposed, will ensure that they are fully aware of the professional and ethical obligations of the profession they manage and operate within.

An additional key concern of enforcement officials, including the Toronto Police Service, is the lack of requirement for Holistic and Traditional Medicine Establishments to provide access to their business premises. This is a requirement that was proposed to the consultation group but was strongly rejected.

Illegitimate operations will generally lock the front door to their businesses to prevent access by enforcement officials. Currently, adult businesses including Adult Entertainment and Body Rub Establishments as well as premises licensed by the Alcohol and Gaming Commission require access to their premises by licensing and enforcement officials; this is achieved by a regulation that prohibits the locking of doors to the premises. At the current time, a similar requirement is necessary within the Holistic and Traditional Medicine Establishment provisions and is recommended. Again, should the environment improve over time, this regulation could be reviewed.

The final area of amendment requested through the consultation process but rejected on enforcement grounds was the requirement introduced at City Council in June of 2004, such that Holistic Establishment licensees must obtain a letter from their landlord acknowledging that they are a Holistic Establishment, and setting out the requirements of those businesses including, for example, the limitations on hours of operation. The consultation group reported that this provision has been used by landlords to extract unfair rents or unilaterally impose unfair terms within their lease. The City has no means to protect legitimate operators from such unscrupulous practices. On the other hand, illegal operators whose businesses are believed to earn substantially more than true Holistic Establishments would have less difficulty paying those higher rents.

2.5 Additional Licensing Proposals; Recommendations from Enforcement Officials, Toronto Police Service and Members of Council:

Additional matters pertaining to standards to be reviewed arose during the course of consultation with enforcement officials, the Toronto Police Service and Members of Council, as follows:

- (a) review the hours of operation pertaining to both Holistic Establishments and Body Rub Parlours;
- (b) whether jurisdiction exists to increase the minimum age to be employed at a Holistic Establishment or Body Rub Parlour;
- (c) introducing a new Business Licence category called “Adult Massage Establishment”, with a maximum number of establishments and establishing separate standards including, for example, security requirements;
- (d) increasing the existing cap on Body Rub Parlour licences from the current level of 25;
- (e) introducing limiting distances between other Holistic Establishments, Adult Entertainment Premises, Body Rub Parlours, residential zones, places of worship, all schools, daycares, libraries, parks or Municipal recreational facilities; and
- (f) the introduction of public health related requirements pertaining for Holistic Establishments, as currently exist for Body Rub Parlours.

A body rub is defined as the “kneading, manipulating, rubbing, massaging, touching, or stimulating, by any means, of a person’s body or part thereof, but does not include medical or therapeutic treatment given by a person otherwise duly qualified, licensed or registered to do so under the laws of the Province of Ontario”.

Holistic services are defined as “any modality used as a tool for therapeutic and wellness purposes but does not include body rubs and does not include medical or therapeutic treatment performed or offered by persons otherwise duly qualified, licensed or registered to do so, under the laws of the Province of Ontario”.

Holistic Establishments are required to close at 10 p.m., while Body Rub Establishments may stay open until 2 a.m. Compliance with these requirements continues to be an enforcement challenge with respect to illegal operators; however, it is believed that the existing licence requirements pertaining to hours of operation are appropriate.

There is no jurisdiction to increase the minimum age of employment at either a Holistic or Body Rub Establishment. The by-law currently provides both types of establishments to employ persons of a minimum age of 18.

We do not recommend the introduction of an additional class of licence, as it might serve to further complicate enforcement of the existing rules. One of the key enforcement difficulties, which was suggested when the Holistic Licence category was originally introduced to Council in reports dated June 30, 1998, from the City Solicitor and September 21, 1998, both to the Emergency and Protective Services Committee, is the difficulty in the technicalities of defining and distinguishing Holistic and Traditional Medical practices from the practices of Body Rub Establishments. It is highly recommended that a further category not be created.

It is Council’s prerogative, however, to adjust (increase or decrease) the cap on the number of Body Rub Establishment licences. The by-law currently permits the issuance of 25 Licences. This cap was introduced at the time the Body Rub licence category was created, in 1975, and has not been adjusted since that time. A reduction in the cap would effectively grandparent the existing licences and allow for businesses to close over time and would result in the eventual reduction in this number, although there would be no immediate impact. An increase in the number of Body Rub Establishment Licences would allow for additional licences to be issued in accordance with the licensing standards permitting such businesses where adult establishments are permitted under the Zoning By-law. It has been suggested that increasing the number of Body Rub Establishment Licences may relieve some of the pressure that is currently presenting itself under the guise of Holistic Establishments, although there is no research or evidence that I can provide to assist Council in determining whether this course of action would be prudent and, in fact, achieve the intended result. There has been no study of the impact of having introduced the Body Rub Establishment licence class, although it is believed that the introduction of the licence class at that time was intended for a similar purpose.

As part of our enforcement strategy, and since indications of the breadth of this problem became evident approximately 18 months ago, detailed information of complaints and by-law enforcement activity are being kept. Our enforcement strategy is dealt with further into this report.

One proposal being recommended at this time, is the introduction of a limiting distance between Holistic Establishments and licensed Body Rub and Adult Entertainment premises. There has been a strong correlation between the location of numerous illegal operations (many operating under the guise of a Holistic Establishment Licence), and licensed Adult Entertainment Premises.

The Adult Entertainment Association has expressed significant concern that their reputation is adversely impacted when communities experience a high influx of these illegal operators which, they believe, locate in the vicinity of long-standing licensed Adult Entertainment premises in an effort to entice Adult Entertainment clients to their premises. They have strongly advocated for the introduction of measures to counter this problem.

The introduction of a 200-metre limiting distance is recommended. We feel that this is an appropriate limiting distance to deal with the concerns expressed.

2.6 Amendments to Thresholds:

City Council, at its meeting of June 14, 15 and 16, 2005, adopted a motion proposing that staff review the business licensing thresholds as they apply to by-law offences committed by Holistic and Body Rub Establishments.

On review, I believe that the majority of the thresholds are appropriate for their intended purpose in their current form. I do recommend, however, that offences pertaining to services being delivered by minors at Holistic or Body Rub Establishments should be moved to restriction code 8, reflecting their more serious implication.

2.7 Introduction of Health Requirements for Holistic and Traditional Medicine Practitioners:

At the present time, Body Rub Attendants are required to submit documents attesting to their general health as a condition of licensing. The purpose of this requirement appears to have been to attest to the general health of individuals who routinely operate in a health care environment with the general public. This is also a long-standing by-law provision, apparently introduced at the time the class of Body Rub licence was created.

Only Body Rub attendants are subject to this requirement; Holistic and Traditional Medicine Practitioners are not. The health check is only required at the time of licensing. The true value of this provision, as a means of protecting the health of either the worker or the patrons of the establishment, is unclear.

I have consulted with and recommend that the Medical Officer of Health be requested to review this existing standard as it pertains to Body Rub Attendants, and its value as a means of public health protection, and its appropriateness to be similarly introduced for Holistic and Traditional Medicine Practitioners.

(3) Enforcement:

3.1.1 Community Concerns:

It is clear that the presence of these illegal operations is of concern to communities across the City. Concerns are largely expressed regarding the significant increase in visible store-front operations within the retail and commercial areas, including:

- (a) apparent young and possibly underage workers soliciting patrons from the street in front of the premises;
- (b) nuisance and criminal activities emanating from these premises in the form of noisy and/or otherwise disruptive evening operations, substance abuse and/or sale on and around the premises, etc.;
- (c) harassment and threats toward area residents;
- (d) transmission of sexually transmitted diseases; and
- (e) collections of similar illegal operations squeezing out and discouraging new legitimate commercial business activity in neighbourhoods.

3.2 Statistical Analysis:

It was estimated around this time last year that the number of illegal premises equalled the number of legal premises. There were approximately 250 licensed Holistic Establishments at that time, and there are now just over 300 such establishments. Evidence indicated that over 50 percent of licensed Holistic Establishments had been the subject of complaints, investigations and/or prosecutions as a result of the offering of sexual services within the premises. This information does not include an analysis of police complaints and investigations.

Statistically, the extent to which new businesses and illegal operations are appearing is relatively consistent. The difficulty lies in the compounding effect of the appearance of additional new premises, since many of the illegal operations identified in 2004 and earlier continue to operate while we endeavour to obtain closure orders through prosecutions before the courts. There is no inspection capacity to conduct a comprehensive proactive effort within this program area at the present time, given broad responsibilities for inspection services across the Division, although I will speak later to the adoption of a more effective enforcement model for these types of significant enforcement concerns.

3.3 Routine Inspection and Complaint Response Standard:

All licensed Holistic and Body Rub Establishments are inspected quarterly. These inspections may be a combination of uniformed or under-cover inspections

which may or may not be co-ordinated with the Toronto Police Service, depending on the complaints associated with and histories of those operations. These inspections are not pre-arranged.

It is our goal to respond to complaints of illegal operations within three to five days. Delays may result, however, where police have active investigations ongoing at the premises. Also, there may be need to co-ordinate the inspection with the police either for the effectiveness of the investigation or the safety of the Municipal Licensing and Standards Officer, and the officers shifts need to be co-ordinated. Those investigations are always carried out on an unannounced, undercover basis.

3.4 Co-ordination of Enforcement Efforts:

Through a process of consultation and research over the past year leading up to the preparation of this report, a more comprehensive enforcement strategy is being developed. Our primary partner in this matter is the Toronto Police Service.

It is important to understand the role of By-law (Licensing, Zoning, and Property Standards) Enforcement Officers as compared with the role of the Toronto Police Service. We each serve the public, receive complaints and respond to community concerns, although with somewhat different methods, objectives and authorities.

As such, and as is the case in the protocol developed in responding to Marijuana Grow Operations/Clandestine Drug Laboratories, the police are the primary responders in any clear instance of criminal activity. While our objectives are similar, our role differs significantly as it impacts the premises itself. The Toronto Police Service will investigate and prosecute individuals involved in criminal behaviour. The Municipal Licensing and Standards Officer's objective, when such illegal operations are identified, is to prosecute with a view to closing the premises unless it is clear that the charges resulted from an isolated situation and/or minor matter. Whether or not a business licence is in place, a Provincial Offences Court may issue a closure order against any premises running such an operation. These Court Orders permit the Municipal Licensing and Standards Office to hire a contractor and effectively board up and prevent access to the property in question. Further enforcement opportunities exist before the Toronto Licensing Tribunal, where a business licence has been issued.

Simply stated, the police service tends to deal primarily with criminal matters implicit in the operation while the By-law officials may bring charges in Provincial Offences Court against the operators and/or practitioners but may also seek a sentencing order to close the premises. Co-ordinating these efforts more closely, will improve the effectiveness of the enforcement response overall.

We have been advised that the Toronto Police Service is currently developing an internal procedure that will ensure closer co-ordination of their efforts with the Municipal Standards Officers. We are also re-inforcing our expectation among

our officers that they contact the Toronto Police Service when investigating any such matter. It is often difficult to co-ordinate such investigations when both workforces operate on shifts, and must respond to independent types of emergencies, court appearance requirements, etc. Staff will continue their discussions, however, to achieve joint or concurrent investigations as often as possible, where the effectiveness of their efforts are maximized through such joint efforts.

In meetings with the Toronto Police Service, we understand that they have set out three primary goals for their work in this regard; standardization of practices across the 16 police divisions, provision of training for police officers and improved information gathering. We will continue to work collaboratively with the Police to assist and share information, as requested.

In addition, we are also developing lines of communication with other GTA Municipalities to share information regarding illegal operators in jurisdictions outside the City of Toronto. Our objective is to avoid issuing licences to operators who have left other municipalities as a result of enforcement in that community, and to improve our sentencing material with information relating to convictions in other jurisdictions.

3.5 Charges and Prosecutions:

One of the difficulties we currently face in court are sophisticated defences which can and have resulted in numerous adjournments and delays before matters come to trial. While adjournments are granted or denied at the discretion of the court, we will continue discussions with the Prosecutions Unit of Legal Services in an effort to proceed to trial on a more aggressive basis, wherever possible, on a case-by-case basis.

It should be noted that these types of charges are continuing offences and charges can continue to be laid as long as the illegal operation continues. Until such time as a trial results in a verdict of guilt and the issuance of a closure order, however, the operation will often continue.

3.6 New Enforcement Model Needed:

Following amalgamation and the integration of numerous by-law enforcement services within Municipal Licensing and Standards, a new service delivery model was developed based on the theme of a generalist inspector who would be appropriately trained and have resources available to deal with all of the by-law issues arising within the community, with the exception of mobile businesses. Mobile business enforcement services are centralized for the more effective assignment of resources as responding to taxi, tow truck, driving school, street vending, etc., concerns.

With a growing number of more serious matters under investigation within Municipal Licensing and Standards, it is clear that there is a need for a dedicated enforcement unit with appropriate expertise to deal with such matters. A dedicated team will also serve to ensure that the resource allocation directed to these matters will remain consistent and can be established at a level that ensures sufficient follow up and coordination with other agencies. There is a clear need to prioritize these types of inspections, although there will be an impact on response times associated with other matters.

A review of service demand and priorities will be conducted division-wide collaboratively by the management and enforcement team of the Municipal Licensing and Standards Division over the coming months. It is my intention to bring forward a report following that review to more clearly articulate service levels associated with the range of program responsibilities across the Municipal Licensing and Standards Division.

3.7 Role of the Toronto Licensing Tribunal:

Regardless of whether either criminal or by-law charges have proceeded before the courts, the opportunity exists to bring a licence holder, where an illegal operation is found within a licensed premises, before the Toronto Licensing Tribunal.

The Tribunal cannot grant fines, but they do have the power to suspend, revoke, or impose conditions on a business licence.

At its meeting of January 27, 28 and 29, 2004, during the debates around the introduction of Business Licensing Thresholds, City Council requested that staff investigate the possibility of the Licensing Tribunal being empowered to issue Administrative Suspensions, where the most serious by-law and or criminal offences were involved. In addition to the matters discussed in this report, such suspensions might also apply in cases involving a licensed vehicle operator (taxi, livery or tow truck operator) found driving while their licence was under suspension or where the driver was under the influence of alcohol, where a business operator used their business as a means to distribute narcotics, uninspected meat, etc. Such a process should only be invoked when the health and safety of the public are compromised.

The City Solicitor has advised that the Municipal Act does not provide authority for the administrative suspension of a business licence, without a hearing.

For this reason, staff recommend that upon identification of a serious concern of this nature, notice be issued immediately to a licensee, and an interim hearing be held where the City would present submissions regarding why it is in the public interest to suspend the licence prior to a full hearing. The licensee would have the opportunity to present submissions regarding why the suspension should not be granted. In the case where an interim suspension is granted, an expedited full hearing would take place within approximately fourteen days, depending on the availability of witnesses and the ability to produce appropriate evidence.

At the full Tribunal hearing staff would make specific recommendations as to whether the licence should be revoked, suspended or whether it should have conditions placed on it. The Licensing Tribunal could then confirm, modify or rescind these recommendations in accordance with its independent, quasi-judicial role.

(4) Legislative Authority:

Staff should be directed to investigate opportunities to improve licensing regulations within the context of the new City of Toronto Act. Earlier in this report a number of issues were identified; for example, the opportunity to introduce a cap on the number of certain types of business licences being issued on the basis of the types of nuisance concerns arising relative to those businesses.

Further areas for exploration would include the authority to set out obligations enforceable by property owners against illegal business operations within their premises. Current enforcement practices include sharing information, where permitted under the Municipal Freedom of Information and Protection of Privacy Act, with property owners who may be unwitting enablers of such illegal operations. We are often told that their lease may not permit them to evict the illegal operation, even when it is their desire to do so and is understood to be in the interest of the community.

In the most serious cases, the Municipality should be permitted to immediately revoke a licence and also close a business operation which clearly violates generally accepted principles of public health and safety. In any such case, the law would naturally allow the operator the ability to appeal and be entitled to compensation if the City exercised such powers inappropriately. The tension associated with this right of appeal would help to ensure the fair, reasonable and judicious use of such extraordinary powers.

Another option for improved response to illegal operations would be to expand the authority of the Toronto Licensing Tribunal to permit them to order the payment of fines to recover the often extraordinary costs associated with these investigations and which is currently being borne, for the most part, by the general taxpayer.

In case of either a fine pronounced by a court, a delinquent licence fee or a service charge it would also be appropriate to have broader authority to ensure that such fines were collectible on a priority basis through property and business tax collection systems.

Many of these issues have been raised before and staff will undertake a thorough study of the licensing and enforcement authorities which are conferred with the new City of Toronto Act.

(5) Financial Implications and the Legislative Framework for Cost Recovery:

5.1.1 Financial Implications:

At the time of reporting to City Council on June 22, 23 and 24, 2004, we noted a financial shortfall of \$2.5M associated with the cost of investigating and prosecuting these illegal operations.

5.2 Legislative Framework:

The Municipal Act sets out provisions for the recovery of the costs associated with the administration and enforcement of business licensing activities. This framework provides that those costs should be passed on to all licence holders within that class of business.

The difficulty with this provision, in this case, is that the illegal activity that is of concern and which is often the subject of these investigations, is not the intended purpose of the Holistic or Traditional Medicine business licence and, as such, is not a cost that should be borne solely by individuals within this class of licence.

For example, if these costs were recovered against the Holistics Establishment licence class, those licence fees would be adjusted from their current level of \$200 per licence, to over \$10,000 per licence. Also, by way of example, if these costs were recovered against the Body Rub Establishment licence class, those fees would be adjusted from their current level of \$10,000 to approximately \$105,000 per licence.

The purpose of the legislation appears, in part, to permit the licensing unit to operate on a self-sustaining cost-recovery basis and separately from the general tax base. Further, prosecutions which result in fines against the illegal operators are paid into the court system and do not offset the cost of the licensing enforcement operation. Additional licensing revenues arising from the fees report adopted by Council in June of 2004 allowed for the reduction of the net budget, which was then offset on an equal basis by new business licensing revenues.

5.3 Adjustment to Current Fees:

The new licensing regime for Holistic and Traditional Medicine Establishment and Practitioner licences, as set out in this report, should be increased to more closely reflect the costs of the actual administration of those licences, separate from the extraordinary costs associated with investigations around the illegal operations. Currently, the licensing fees for Holistic and Traditional Medicine Establishments are set at \$232 for a new application and \$115 for the renewal thereof. Practitioner licence fees are set at \$262 for a new licence and \$149 for a renewal thereof. Given the new licensing application provisions, amended standards to be reviewed at the time of licensing and the need for regular quarterly inspections, it is recommended that the licence fees for Holistic and Traditional Medicine Establishments be raised to \$712 for a new licence and \$595 for a renewal thereof for an establishment owner, and to \$322 for a new licence and \$209 for a renewal thereof for practitioners.

The financial implications of the adjusted fees, as noted above, would result in an incremental increase of approximately \$79,000 for 2005 (vis-a-vis the 2005 Budget as amended by Council with respect to holistic centre fees), and a further incremental impact of \$306,000 in 2006 for a total annualized revenue adjustment of \$385,000.

In addition, a more appropriate recovery of extraordinary licensing enforcement expenditures would be to recognize that enforcement associated with illegal operations within the business environment is an implicit purpose of the business licensing authority and should be recovered broadly from across the full spectrum of licensed business activities regulated under the City's Licensing By-laws. At the current rate of licensing activity (approx. 61,000 licences per annum), the recovery of the remaining \$2.115 million shortfall would be recovered with the upward adjustment of all business licensing fees by \$35.

If none of these options are considered, the licensing revenue shortfall will continue to be drawn from the City's general tax base.

6.0 Implementation:

The implementation of the new provisions is a three-(3) phase process. These phases include the application of the technical amendments to the standards; the impacts of the introduction of limiting distances and the identification of associations to be recognized for the accreditation of holistic practitioners.

6.1 Application of New Technical Standards:

A series of amendments to the technical requirements for the operation of these businesses have been recommended including amendments to the provisions as they prohibit contact with specified body areas to permit manipulation of the region of the axilla (the flank of the breast near the armpit) or of buttock muscles, and amendments to strengthen requirements pertaining to appropriate attire and conduct to require clean, opaque professional clothing and to be civil and well behaved to members of the public (similar to requirements currently applied to taxi and towing operators), etc.

These provisions will apply to licensed practitioners and establishments immediately upon adoption of the by-law.

6.2 Introduction of Limiting Distances:

As noted earlier, concern has been expressed that a high influx of illegal operators are located in the vicinity of long-standing licensed Adult Entertainment premises in an effort to entice their clients to their premises. The introduction of a 200-metre limiting distance has been recommended between Holistic Establishments and licensed Body Rub and Adult Entertainment premises.

All new applications for licences would be required to be in compliance with this provision. However, existing lawfully licensed businesses will be permitted to continue to operate at their present locations. Provincial legislation mandates that the City may not refuse to grant or renew a licence by reason only of the location of the business if the business was being lawfully carried on at that location at the time the by-law came into force so long as it continues to be carried on at that location.

6.3 Identification of Associations to be Recognized for the Accreditation of Holistic and Traditional Medicine Practitioners:

As has been pointed out, the acceptance of qualification certificates from holistic schools or educational programs under the current by-law provisions has proven to be a questionable policy in terms of assuring the quality and legitimacy of practitioners. For this reason, this requirement has been removed entirely from the by-law. In its place, a stricter and expanded requirement for membership in a Professional Association has been created.

Under the new proposed requirements for holistic practitioner licences, applicants will be required to be members in good standing of a Professional Holistic Association listed in an appendix of the Licensing By-law. Upon adoption of this report, staff shall review those associations that have an interest in being included in the Appendix, and shall report back to Planning and Transportation at its October meeting.

Upon adoption of the appendix by Council, existing licensees would have three months to come into full compliance with the new renewal requirements of the bylaw. New applicants would be required to be in compliance immediately. It was widely agreed by staff and stakeholders that no grandparenting should be granted to existing licence holders.

It should be noted, however, that only the Licensing Tribunal has the authority to revoke a business licence. Under the circumstances, enforcement of this provision, as it affects current licensees, where and if Practitioners and Establishment owners fail to demonstrate compliance with the Professional Association membership requirement, will fall to the Licensing Tribunal for consideration.

Conclusions:

Our research and advice canvasses a broad range of opinions and options relating to how the legitimate operators should be regulated, and the various means to respond to the problems arising from the situation.

There has been extensive consultation among the professionals in these fields, as well as the Toronto Police Service, staff of the Legal Services Division, Finance Division and of the office of the Medical Officer of Health, as well as the experience of officers and staff involved with the investigation and prosecution of these matters.

Explanations of the recommendations are provided, and suggested actions which are less certain to improve the environment have been set aside.

Ultimately, this report provides a comprehensive strategy to deal with illegal body rub activity in licensed business premises.

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List of Attachments:

Appendix A: Extract from Municipal Act, 2001.

Appendix A
Extract from Municipal Act, 2001, S.O. 2001, Chapter 25

Adult entertainment establishments:

151. (1) A by-law under section 150 that licenses, regulates and governs adult entertainment establishments may:

- (a) despite subsection 150 (12), 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;
- (b) regulate and prohibit the placement, construction, size, nature and character of signs, advertising, and advertising devices, including any printed matter, oral or other communication or thing used to promote adult entertainment establishments; and
- (c) prohibit any person carrying on or engaged in an adult entertainment establishment business for which a licence is required from permitting any person under the age of 18 years to enter or remain in the adult entertainment establishment or any part of it 2001, c. 25, s. 151 (1).

Premises:

- (2) Any premises or any part of them is an adult entertainment establishment if, in the pursuance of a business:
 - (a) goods, entertainment or services that are designed to appeal to erotic or sexual appetites or inclinations are provided in the premises or part of the premises; or
 - (b) body-rubs, including the kneading, manipulating, rubbing, massaging, touching or stimulating by any means of a person's body, are performed, offered or solicited in the premises or part of the premises, but does not include premises or part of them where body-rubs performed, offered or solicited are for the purpose of

medical or therapeutic treatment and are performed or offered by persons otherwise duly qualified, licensed or registered to do so under the laws of the Province of Ontario. 2002, c. 17, Sched. A, s. 34.

Power of entry:

- (3) A municipality may, at any time of the day or night, enter any adult entertainment establishment licensed, regulated or governed by a by-law under section 150 to determine whether the by-law is being complied with and, for this purpose, may make such examinations, investigations and inquiries as are necessary. 2001, c. 25, s. 151 (3).

Other powers not affected:

- (4) Nothing in this section affects the power that may be exercised by a municipality under this or any other Act to license, regulate or govern any other business. 2001, c. 25, s. 151 (4).

Evidence rule:

- (5) For the purpose of a prosecution or proceeding under a by-law licensing, regulating or governing adult entertainment establishments, the holding out to the public that the entertainment or services described in subsection (2) are provided in the premises or any part of them is admissible in evidence as proof, in the absence of evidence to the contrary, that the premises or part of them is an adult entertainment establishment. 2001, c. 25, s. 151 (5).

The Planning and Transportation Committee also submits the communication (May 27, 2005) from the City Clerk:

City Council on May 17, 18 and 19, 2005, re-opened Policy and Finance Committee Report 5, Clause 11, headed “Review of Business Licensing Fees/Establishment of Traditional Medicine Establishment and Practitioner Licences”, only as it pertains to traditional medical establishments and practitioners, and adopted the balance of the following Motion, as amended:

J(6) Licensing of Traditional Medical Establishments and Practitioners

Moved by Councillor Altobello, seconded by Councillor Chow

“WHEREAS last year, City Council placed a moratorium on the implementation of licensing traditional medical establishments and practitioners and also stopped the consultation with this sector, as the Province of Ontario had indicated its willingness to regulate this industry; and

WHEREAS City staff is to report in July 2005 on its consultation regarding massage parlours and the moratorium is to expire the end of the year; and

WHEREAS the Ministry of Health established a task force, chaired by MPP Tony Wong, which has recently concluded its consultations on this matter, and both the Premier of Ontario and the Ministry of Finance have pledged to take action; and

WHEREAS the City of Toronto has urged the Provincial Government to regulate traditional medical establishments and practitioners through the Ministry of Health, and given recent developments, there is no need for the City to duplicate the efforts of the Province;

NOW THEREFORE BE IT RESOLVED THAT, in accordance with §27-49 of Chapter 27 of the City of Toronto Municipal Code, Policy and Finance Committee Report 5, Clause 11, headed 'Review of Business Licensing Fees/Establishment of Traditional Medicine Establishment and Practitioner Licences', be re-opened for further consideration, only as it pertains to traditional medical establishments and practitioners;

AND BE IT FURTHER RESOLVED THAT the City of Toronto return the mandate of licensing traditional medicine establishments and practitioners to the Provincial Ministry of Health;

AND BE IT FURTHER RESOLVED THAT City Council consider amending Chapter 545-452, Licensing, in order to delete those provisions relating to traditional medical establishments and practitioners;

AND BE IT FURTHER RESOLVED THAT the Planning and Transportation Committee hold a public meeting to consider this matter and that notice of the meeting be given, as required by the *Municipal Act, 2001*, and Chapter 162, Notice, Public;

AND BE IT FURTHER RESOLVED THAT the Executive Director of Municipal Licensing and Standards be requested to report to the public meeting of the Planning and Transportation Committee on this matter."

Council also considered the following:

- Fiscal Impact Statement (May 18, 2005) from the Deputy City Manager and Chief Financial Officer.

The Planning and Transportation Committee also submits the communication (Undated) from Councillor Olivia Chow:

Recommendation:

The City of Toronto should return the mandate of licensing traditional Chinese medicine practitioners to the provincial Ministry of Health. Also, the position by-law 658-2004, as it relates to Traditional Chinese Medical practitioners be cancelled.

Background:

Last year, the City of Toronto, placed a moratorium on the implementation of licensing traditional Chinese medical practitioners. It has also stopped the consultation with this sector as the Province of Ontario has indicated its willingness to regulate this industry.

City staff is to report in July its consultation regarding the massage parlour, and the moratorium is to expire the end of the year.

Since then, the Ministry of Health has established a task force chaired by MPP Tony Wong and it has concluded its consultation recently. Both the Premier of Ontario and the Ministry of Finance have pledged to take action.

The City of Toronto has urged the provincial government to regulate traditional Chinese medical practitioners through the Ministry of Health. Given the recent development, there is no need for the city to duplicate the efforts of the provincial government.

The Planning and Transportation Committee also submits the communication (June 27, 2005) from the Honourable. George Smitherman, Minister, Ministry of Health and Long-Term Care:

Thank you for your letter dated June 24, 2005. I appreciate your interest in the actions our government is taking to regulate Traditional Chinese Medicine and Acupuncture in Ontario.

The regulation of Traditional Chinese Medicine and Acupuncture is an important priority for our government. As you note in your letter, we have appointed Mr. Tony Wong and three other MPPs to hold consultations with the public to determine the best and safest way to regulate this important practice.

Their report is expected to be presented to me in the next few weeks. This report will help inform legislation that is expected to be introduced this fall on the regulation of Traditional Chinese Medicine and Acupuncture.

Passage of this legislation will fulfill an important commitment of this government made during the previous election.

Thanks again for taking the time to write.

The Planning and Transportation Committee also considered:

- (1) a confidential report (June 23, 2005) from the City Solicitor, entitled Proposed Holistic Regulations – Legal Issues”, such report to be considered in-camera as the subject matter relates to the receiving of advice that is subject to solicitor-client privilege, including communications necessary for that purpose; and

- (2) communications from the following persons:
- (i) (June 24, 2005) from Councillor Giorgio Mammoliti, York West,
 - (ii) (June 24, 2005) from Ms. Celina Ainsworth, Clinical Herbalist,
 - (iii) (June 24, 2005) from Mr. Darryl Burgwin, PhD Candidate, Graduate Programme in Sociology, York University,
 - (iv) (June 24, 2005) from Mr. Eric Brown,
 - (v) (June 26, 2005) from Mr. Eric Brown,
 - (vi) (June 26, 2005) from Mr. Brian Maguire, Acting Chair of Confederation of Resident & Ratepayer Associations in Toronto (CORRA),
 - (vii) (June 26, 2005) from Mr. William H. Roberts, Director, Swansea Area Ratepayers Association,
 - (viii) (June 24, 2005) from Mr. Don Reid, RRPr, Governmental Affairs, RRCO,
 - (ix) (June 22, 2005) from Alex Macdonald, Senior Associate, Strategic Communications Activation Analysis Group Inc., and
 - (x) (June 27, 2005) from George Smitherman, Minister of Health and Long-Term Care.
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Pam Coburn, Executive Director, Municipal Licensing and Standards, provided a presentation with respect to this matter and filed a copy of her presentation.

The following persons addressed the Planning and Transportation Committee:

- Tim Lambrinos, Executive Director, Adult Entertainment Association of Canada, who provided a power point presentation and filed a copy of his presentation and deputation;
- Alex MacDonald, Association of Massage Therapists and Holistic Practitioners;
- Danielle Sade, Canadian Federation of Aroma Therapists, and filed a written submission;
- Tim Phillips, Healing on the Danforth, and filed a written submission;
- Victoria Lorient-Faibish, M.Ed., RPP, Registered Polarity Practitioner, Ontario Polarity Therapy Association and filed a written submission;
- Paul Overy, M.Sc., CTP, Canadian Trager Association, and filed a written submission;

- David Pinto, BA, RPP, RCST, IMP, Craniosacral Therapy Association of North America Integrative Manual Therapy Association, and filed a written submission;
- Angie Leavey, CAHP, HHP, Canadian Federation of Aromatherapists, and filed a written submission;
- Don Reid, RRPr, Governmental Affairs, Reflexology Registration Council of Ontario, and filed a written submission;
- Allison Erdmann, B.Sc. CST, Past President, Shiatsu Therapy Association of Ontario;
- Peggy Barrett, President, Ontario Aromatherapy Association, and filed a written submission;
- Sandra Johnston and read a submission from Gail Sandler and filed a copy of this submission;
- Ruby Hurlbut, and filed a written submission;
- Nadine Feldman;
- Debra De Monte;
- Terry Koumoudouros, President, House of Lancaster, and filed a written submission;
- Nick Bakoias;
- Peter Kudryk;
- Sasa Goutzoulis;
- Craig Netten;
- Serge Rico;
- Spiros Koumoudouros, Vice-President, House of Lancaster;
- Tracy Thompson;
- Thomas Daly and filed a written submission;
- Celina Ainsworth, Clinical Herbalist, Vice President of the Ontario Herbalists Association, Owner and Director of The Herbal Clinic and Dispensary;
- Darryl Burgwin;
- Bonnie Smith, Canadian Reiki Association;

- Jeanette Sarkissian, Reflexology Association of Canada, Toronto Chapter and filed a written submission;
- Vicki Rostant;
- Enza Ierullo;
- LuSinda Dionne, on behalf of Eric Brown;
- William Roberts;
- E.R. Evaneshen;
- France Trudeau, Reflexology Association of Canada, and filed a written submission;
- Dr. Ben Wu, President, Ontario College of Traditional Chinese Medicine; and
- Sean Didier, who provided a power point presentation.

The following Members of Council also addressed the Planning and Transportation Committee:

- Councillor Olivia Chow, Trinity-Spadina;
- Councillor George Mammoliti, York-West;
- Councillor Frances Nunziata, York South-Weston; and
- Councillor Bill Saundercook, Parkdale-High Park.

City Council – July 19, 20, 21 and 26, 2005

Council also considered the following:

Communications:

- (July 8, 2005) from Alex Macdonald, Senior Associate, Strategic Communications Activation Analysis Group Inc. [Communication 6(a)];
- (July 11, 2005) from Hongjian Sun, Member of the Association of Massage Therapists and Wholistic Practitioners [Communication 6(b)(1)];
- (July 14, 2005) from Ted Hazen, Manager, Serenity Chair Massage [Communication 6(b)(2)];
- (July 15, 2005) from Adela Gorodzinsky [Communication 6(b)(3)];
- (July 15, 2005) from D. Leistner [Communication 6(b)(4)];
- (July 15, 2005) from Leisa Bellmore [Communication 6(b)(5)];
- (July 18, 2005) from David Pinto; Allison Erdmann, Past President, Shiatsu Therapy Association of Ontario; Victoria Lorient-Faibish; Don Reid, Governmental Affairs,

- Reflexology Registration Council of Ontario; Paul Overy and Angie Leavey [Communication 6(b)(6)]; and*
- *(undated) from Timothy Phillips, Holistic Clinic Owner and Certified Shiatsu Therapist [Communication 6(b)(7)].*
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- *Confidential report (June 23, 2005) from the City Solicitor [Confidential Communication C.13(a)]. This report remains confidential, in its entirety, in accordance with the provisions of the Municipal Act, 2001, as it contains information which is subject to solicitor-client privilege.*
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- *Confidential report (July 13, 2005) from the City Solicitor [Confidential Communication C.13(b)]. The following staff recommendations contained in the Recommendations Section of the report, as amended by Council, are now public and the balance of this report remains confidential, in accordance with the provisions of the Municipal Act, 2001, as it contains information which is subject to solicitor-client privilege:*

“It is recommended that:

- (1) Recommendation (3) of the Planning and Transportation Committee, that the 2005 Business Licensing Fees (both for new licences and renewals thereof) for all other businesses licensed under the Toronto Municipal Code Chapter 545, be increased by \$35.00, not be adopted; and*
- (2) Recommendation (3) of the Planning and Transportation Committee be referred back to the Committee for further consideration after public notice of the Committee’s intention to discuss a proposed licensing by-law increasing licensing fees for all licensed businesses has been given in accordance with the requirements of the Municipal Act, 2001, and Toronto Municipal Code Chapter 162, Notice, Public, and the hearing be limited only to matters that pertain to the increase in fees to other than holistic categories.”*