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File No.

MEMORANDUM

Date: April 27, 2009

To: Mayor David Miller and Members of City Council

From: City Solicitor

Reference: East York Community Council - Item 26.30
Massage Parlour Licences - 9 Milvan Drive

Toronto Licensing Tribunal ("TLT")

This clause as written is out of order as City Council may not direct the TLT in its decisions. The TLT is a quasi-judicial adjudicative body mandated to make independent decisions after a hearing respecting whether a licence should be issued, refused, suspended, revoked or have conditions placed upon it (§ 545-3 B2). Any attempt by City Council to direct a decision of the TLT would be in direct violation of Chapter 545 and of the rules of administrative law which govern its proceedings.

There are no provisions in Chapter 545 for the "sharing" of information with the TLT. Under Chapter 545, there are only two ways for a matter to come before the TLT:

- (1) MLS refers a matter to it for a hearing on whether an existing licence should be revoked, suspended or have conditions placed on it; or
- (2) MLS, after investigation, refuses an application for a licence or for a renewal, and the applicant requests a hearing with respect to that decision (§545-4 B).

There are no provisions for the TLT to deal with a licence in any other manner. The initial decision to issue or renew a licence lies with the Executive Director of MLS who has delegated the authority to issue or to renew business licences. While City Council or individual Councillors may certainly refer their concerns to the Executive Director, there are no provisions in Chapter 545 which allow City Council to direct the Executive Director not to issue particular licences.

The jurisdiction of the Executive Director over the issuing of licences must be exercised in accordance with law. Pursuant to Chapter 545, licensees and applicants for a licence are entitled to a licence and MLS must issue it unless, after investigation, MLS determines that there are grounds not to (§ **545-4C 1**). The grounds for refusing, revoking, suspending or having conditions placed upon a licence are found in §§ **545-4C(4)** and **4C.1** of the Toronto Municipal Code, Chapter 545, Licensing and relate to the conduct of the particular applicant or licensee. Refusal of a licence on grounds other than those specified in the by-law would, in my opinion, be contrary to law.

Concerns regarding a history of infractions for a particular licensee or licensees may certainly be referred to the Executive Director for investigation and a determination by MLS whether grounds exist to refuse an application for a licence or to refer a particular licensee to the TLT and Council may wish to amend the recommendation accordingly.

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