ADAM M. VASSOS, B.A., LL.B.
Barrister and Solicitor

1100-110 Yonge Street
Toronto, Ontario
M5C 1T4

Tel: 416-364-1972
Fax: 416-862-1869
Direct Dial: 416-364-2066
Email: adam@vassoslaw.ca

October 18, 2012

File No. 12971

Delivered by Hand

Licensing and Standards Committee
10th Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Re: Adult Entertainment Parlour Bylaw Review and Proposed Amendments to Bylaw

Please be advised that I am the Solicitor acting on behalf of the Adult Entertainment Association of Canada (the Association). Pursuant to the recommendation of Council, City staff were direct to consult with stakeholders in the adult entertainment field regarding proposed amendments to the Bylaw regulating adult entertainment. The Association was invited to a meeting that was held on September 6, 2012 at which time staff presented to them a document entitled "Adult Entertainment Parlour Bylaw Review, Options for Consideration". Said document contained seventeen (17) proposed amendments to the current Bylaw.

The Association was given thirteen (13) days to prepare a reply to the proposed amendments and to set out the Associations concerns, suggestions and recommendations to the staff's proposed amendments.

On September 11, 2012, I prepared a reply on behalf of the Association setting out the Association's comments and suggestions regarding the proposed amendments. The reply was presented to Municipal Licensing and Standards (MLS) at a meeting which took place on September 19, 2012. In total the Association made eight (8) suggestions and/or recommendations with respect to the proposed amendments to the Bylaw.

On October 12, 2012, staff published their final report containing the recommended amendments to the Adult Entertainment Bylaw. Staff's report did not take into consideration any of the recommended amendments made by the Association. In fact, in addition to not making any changes to their preliminary report of September 6, 2012, there were additional changes which were made without any consultation or information being provided to the Association in advance.

The entire purpose of the public consultation was to allow the stakeholders an opportunity to provide feedback, comments and recommendations to staff regarding proposed changes to the Bylaw which staff would take into consideration in their final report to the Committee. In this

situation it does not appear that City staff took any of the feedback, comments or recommendations into consideration as no changes were made based on the input from the stakeholders. In fact, the addition of more amendments to the Bylaw in the final staff report, amendments that were not even brought forward to the Association, reflect an on-going attempt to push through the recommended changes without taking into consideration any of the information received from the public consultation process.

This results in a complete breakdown of the public consultation process and represents a total disregard of the stakeholder's opinions and recommendations.

Accordingly, on behalf of the Association I am hereby requesting a deferral of the consideration of these amendments so as to allow the Association to provide their comments to the Committee directly.

I am enclosing herein a copy of the following attachments:

1. Comment Brief;

2. A copy of my correspondence dated September 11, 2012; and

3. A spreadsheet setting out an analysis of the proposed changes, the Associations recommendation and the final staff recommendations;

Thank you for your consideration.

Yours very truly,

Adam M. Vassos

/tv
Encl.

ADAM M. VASSOS, B.A., LL.B.
Barrister and Solicitor

1100-110 Yonge Street
Toronto, Ontario
M5C 1T4
Tel: 416-364-1972
Fax: 416-862-1869
Direct Dial: 416-364-2066
Email: adam@vassoslaw.ca

September 11, 2012

Delivered by Hand

File No. 12971

Municipal Licensing and Standards
12th Floor, East Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Ms. Tracey Cook, Executive Director
Municipal Licensing & Standards

Dear Ms. Cook:

Re: Adult Entertainment Parlour Bylaw Review

Further to the above-noted matter, please be advised that I am the Solicitor acting on behalf of the Adult Entertainment Association of Canada ("the Association"). At our meeting on September 6, 2012, you provided us with a Power Point presentation outlining the options for consideration regarding changes to the current by-laws. You had requested that the Association provide you with its comments to the proposed changes and with a follow-up meeting in a week, as follows:

1. The proposed prohibited contact clause provides:

   (i) An entertainer not permitted to touch, sit, or rest on, or make any physical contact with the covered, partially covered, or uncovered breasts, buttocks, mouth, genital or pubic areas, of a patron or any other person (while services are being provided);

   (ii) A patron not permitted to touch, sit, or rest on, or make any physical contact with the covered, partially covered, or uncovered breasts, buttocks, mouth, genital or public areas, of an entertainer.

With regard to Item 1(i) (the provision concerning entertainers), the Association believes that this definition is not practically workable as it would literally prohibit various types of benign contact between a patron and an entertainer. The Association would actually be in favour of not amending the existing provision in the by-law – thus, keeping it the same – since the courts have upheld that benign contact is not considered to be a violation.

Alternatively, the Association is also in favour of properly amending the provision. The Association is proposing that a) and b) be adopted with the City's amended version and recommend c) through e) as alternatives, listed in order of preference:

(a) that the proposed prohibited physical contact provision be amended by adding the words "no sexual touch" instead of "touch";

(b) that the proposed prohibited contact provisions also be amended by deleting the words, "touch, sit or rest on". This is necessary since the proposed wording of "physical contact" is already thoroughly inclusive. In defining prohibited activity in the proposed way, action or contact that is benign in nature could occur in practice and be caught under this provision. With the Association's recommendation, the benign nature of these acts would not be the target of the provision;

(c) that the proposed prohibited contact provision be completely deleted and replaced with wording similar to what other municipalities have implemented, such as Mississauga's wording of prohibited "Specified Sexual Activities" (reproduced below), or at least, complemented with Mississauga's wording for apparent clarity.

"Prohibited Specified Sexual Activities" means one or more of the following:

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

(d) that the determination as to what is permissible with respect to the prohibited contact provisions be governed by the definition of what actions are permissible under the current criminal code;

(e) that the proposed prohibited contact provision for patrons be deleted and replaced with:

"No patron shall be permitted to engage in any uninvited physical contact in any manner whatsoever involving any part of the entertainer's body either while services are being provided or at any time or in any location in an adult entertainment club."

This change is needed to allow an entertainer additional control in prohibiting any form of uninvited or unwanted contact.

2. With respect to the proposed wording regarding of unobstructed-view, the provisions being considered read as follows:

   (i) Services permitted only in the designated entertainment area shown on the approved floor plan filed with Municipal Licensing and Standards.

   (ii) Services not permitted in any portion of the premises that is fully obstructed from the view of any patrons, entertainers or security personnel.

With regard to these proposed provisions, we have the following concerns:

   (a) The basis for the creation of a designated entertainment area and design restrictions for VIP rooms are unnecessary for the City of Toronto. The designated entertainment area wording is borrowed from the existing Ottawa by-law. However, their definitions, as worded, caused significant confusion that proved to be significant with the industry in their initial implementation with respect to ambiguous definitions, formal approvals and licensing of all the areas;

   (b) The definition as to where an entertainer may provide services (VIP Room) should be amended to be "within an area that is within public view to which the public has unhindered access." This revision is satisfactory to the Association and the simple changes would be sufficient to correct the existing clause; and

These simple measures could be implemented proficiently and would avoid such extreme measures of knocking down many walls merely by ensuring that all separate areas are readily viewable to the satisfaction of city inspectors.

3. The wording considered, with respect to the licensing vs. registration of entertainers states that no change is to be made to the by-law. However, adult entertainers are required to be licensed.

   The Association proposes that the licensing requirement be deleted, and instead, a registration pilot project be initiated for the entertainers for the duration of at least one (1) year.

4. The proposed wording for changes to "private rooms, booths, cubicles or other enclosures" read as follows:

   (i) All private rooms or other floor-to-wall enclosures must be constructed of a non-opaque material and must be viewable and accessible (no door permitted);

(ii) All private booths or cubicles must be of a maximum height of 4 feet and they must be viewable and accessible (no door permitted);

(iii) All private rooms, booths, cubicles and enclosures must be equipped with an alert system or signalling device (to be monitored at all times).

a) With regard to the proposed changes for "private rooms, booths, cubicles or other enclosures" in item 4(i), we recommend that the current provision be maintained without change.

You advised at the meeting that the reason that these changes were being included was because the current provisions of the by-law contains restrictions with respect to obstruction or locking of individual rooms. To this end, I can advise that your information is incorrect.

The current provision of the Bylaw can be seen at §545-376 of the Toronto Municipal Code. The provision is reproduced below:

§545-376. Obstruction or locking of individual rooms or cubicles prohibited.

(i) No owner or operator shall permit the door to any room or cubicle where services are or may be provided to be equipped or constructed with a locking device of any kind, or with any other device or structure which could delay or hinder anyone from entering or obtaining access to such a room or cubicle.

(ii) No one may in an adult entertainment parlour provide any service in a room, cubicle or other enclosure with a door or other means of access which is equipped or constructed with a locking device of any kind or which is equipped or constructed in such a way as to permit the obstruction, hindrance or delay of any person attempting to gain entry thereto.

However, *§545-393* provides an exemption to this provision for adult entertainment parlours that are licenced under the Liquor License Act. §545-376 is one of the exemptions encompassed under §545-393. As such, this provision does not apply to adult entertainment establishment licensed under the Alcohol and Gaming Commission of Ontario. Accordingly, there is no reason to change the wording of the by-law.

The Association is not opposed to properly outlining that entertainers' services can only be provided in an area that would be viewable and easily accessible for the club or by-law officers to inspect without having obstruction from entry. As discussed on September 6th, a provision would also call for the mandatory implementation of installation security-alert cubicles' buttons with signalling light devices in the VIP rooms. Staff should be aware that there are already several existing clubs in

the city with present mechanisms. Standardized implementation of this measure is acceptable by the Association within the timelines being proposed by staff.

b) With regard to the proposed additional requirements in the "private rooms, booths, cubicles or other enclosures" in item 4(ii), that provides "all private booths or cubicles must be of a maximum height of 4 feet and they must be viewable and accessible (no door permitted)", it is the Association's position that the 4 foot maximum limit should be deleted. There is no basis for requiring that walls be only 4 feet in height. The sole concern in this area is to ensure that the private rooms or cubicles are not fully obstructed. As such we recommend the following wording (which is consistent with the wording regarding the unobstructed view provisions):

> *"All private booths or cubicles must be viewable and accessible and shall not be fully obstructed from the view of patrons, entertainers or security personnel"*

5. The proposed changes regarding the inclusion of a provision pertaining to security personnel reads as follows:

   (i) All security personnel to be licensed under the *Private Security and Investigative Services Act* in the Province of Ontario.

   (ii) The designated entertainment area, including private rooms, booths, cubicles and any other enclosure to be adequately and frequently patrolled by security personnel.

The Association would agree that Security personnel be in place and licensed under the *Private Security and Investigative Services Act* in the Province of Ontario, if the wearing of a security designation be made optional to the individual club. The Association members' establishments have no issues fulfilling this currently proposed provision within the timelines being proposed by the city. However, we confirm that our agreement is contingent upon there being no ratio requirement for security staff to capacity

6. The proposed addition of a provision with regard to a person of authority reads as follows:

   (i) A list of all persons of authority for the establishment to be filed with the MLS. Such a list must include current contact information for each person on the list;

   (ii) An owner or operator to designate at least one person named on the list to be on the premises at all times when the club is open for business.

With regard to the proposed provision dealing with a person of authority, we believe that the proposed addition would be unnecessary. The intent of this premised addition is already encompassed in §545-364(D) of the Toronto Municipal Code. The provision is reproduced

below:

> *Every applicant for an owner's license shall, at the time of making his or her application, file with the Municipal Licensing and Standards Division a list showing the names of all operators and attendants providing services in his or her adult entertainment parlour and all such persons intended or expected by him, or her to be employed or to provide services in his or her adult entertainment parlour and shall l thereafter maintain a list showing at all times the names of all operators and attendants providing services in his or her adult entertainment parlour; and such owner shall, upon a request made to him or her by the municipal Licensing and Standards division, any peace officer or by-law enforcement officer, produce the list, brought up to date as of the time of the request, to such officer.*

As such the inclusion of this provision is superfluous. However, the Association has no issues in fulfilling this administrative process being proposed by staff to ensure ongoing and continuing good working relations and agree to the inclusion of this proposed provision, as such.

7. The proposed addition of a provision with regard to a floor plan reads as follows:

   (i) Current owners and new applicants to file floor plans with the MLS.

   With regard to this proposed provision, the Association has no concerns.

8. The proposed addition of a provision with regard to written contracts of service reads as follows:

   (i) Written contract of service to be filed and to include any and all fees charged to the entertainer for the provision of services (e.g. disc jockey fees, shift fees, performance or stage fees)

   The Executive Director of Municipal Licensing & Standards has already agreed that this item is not something that the City is most likely genuinely considering at this time. We expect that this will not be proposed as an additional provision at the current time. However, we are in agreement with a development of working relations to address specific concerns outlined by the Executive Director on September 6th, 2012.

9. The proposed addition to the use of cameras or other photographic or recording devices provision reads as follows:

   (i) Cameras may be used for security purposes, and such cameras are not permitted to be installed in the designated entertainment area, washrooms, and change rooms.

In such case, signs to be posted in the area under surveillance notifying patrons and entertainers.

You advised that the reason for this addition was as a result of the fact that the use of cameras or photographic recording devices was presently not permissible at licensed adult entertainment establishments. With respect to your comments, we respectfully disagree.

§545-393 specifically exempts licensed establishments from the restriction pertaining to the use of cameras, other photographic or recording devices. As such, to impose new restrictions on adult entertainment parlors would severely compromise the establishment's ability to insure safety and security for its staff, entertainers and patrons, for example:

(a) The establishments have spent thousands of dollars on security systems in order to ensure that their premises operate properly and in accordance with the law;

(b) It has become expected that security cameras and surveillance systems be installed in all premises and throughout their premises;

(c) The security cameras and recording devices are necessary to protect an establishment from liability claims and tort actions should same arise;

(d) Security cameras and recording devices are essential when dealing with insurance claims;

(e) Security cameras and recording devices are important to allow an owner to ensure that its premises are being operated in a accordance with the law and that its staff are abiding by the policies and procedures in place at each establishment;

(f) Security cameras and recording devices are one important factor in ensuring the safe and responsible operation of an establishment and the safety and security of staff, entertainers and patrons in any licensed establishment;

(g) The Toronto establishments feel that security cameras are necessary for the purpose in which they were originally purchased and installed that is: for security purposes. The concerns raised are without foundation and would apply to any industry where employees are required to change into costumes or uniforms at their place of business;

(h) There has not been one case where photographs or photographs of entertainers working in Toronto have been obtained while in the establishment and then used for an unlawful purpose;

(i) There are no security cameras installed in the VIP areas. As well, there are no cameras installed in the change-rooms or washrooms used by entertainers. Security cameras are installed in areas where they are necessary and not so as to impact on anyone's privacy.

(j) As pointed out on September 6, 2012, video camera phones are not allowed in the clubs; signs are posted throughout the establishments; and the prohibition of video camera phones are strictly enforced. Because all clubs have made policies banning camera phones, this has created compliance from patrons who understand that camera phones are prohibited. The concern that photographs could be possibly posted on the internet is slight. We are not aware of such an occurrence happening. Accordingly, clubs having done a very good job to ensure that the use of security cameras is for security purposes only.

(k) Entertainers who wish to video themselves as a tool of stage improvement can and should be able to do so by requesting to use the stage either before work or after work. This request does not happen often but entertainers do regularly use the stage to practice their dancing and shows, but under no circumstances will stage shows or practice shows be videotaped.

As such, we recommend that these proposed changes to the by-law not be made.

The Association feels that some of these changes, as referred to above, will be of benefit to the industry. However, the Association feels that there should be a grandfathering provision for all existing establishments.

I also confirm that we were not provided with the draft of the proposed changes prior to the meeting which took place on September 6, 2012. Given that you have advised that the proposed changes are being forwarded to committee in early October, I believe that if we had an opportunity to review these changes in advance with all members in a timely fashion, we would have had additional comments and concerns to share with you.

Should you have any questions, please feel free to contact my office.

Yours very truly,

Adam M. Vassos
/dg
Encl.

c. **Toronto City Council**
Councillor Frances Nunziata

Adult Entertainment Association of Canada
Attn: Tim Lambrinos

§ 545-376. Obstruction or locking of individual rooms or cubicles prohibited.

A. No owner or operator shall permit the door to any room or cubicle where services are or may be provided to be equipped or constructed with a locking device of any kind, or with any other device or structure which could delay or hinder anyone from entering or obtaining access to such a room or cubicle.

B. No one may in an adult entertainment parlour provide any service in a room, cubicle or other enclosure with a door or other means of access which is equipped or constructed with a locking device of any kind or which is equipped or constructed in such a way as to permit the obstruction, hindrance or delay of any person attempting to gain entry thereto.

§ 545-364. Application requirements.

A. On every application by an individual person for an owner's, operator's or attendant's licence or for the renewal thereof, the applicant shall attend in person and not by an agent at the offices of the Municipal Licensing and Standards Division and shall complete the prescribed forms and shall furnish to the Municipal Licensing and Standards Division such information as the Municipal Licensing and Standards Division may direct.

B. In the case of an adult entertainment parlour owned or operated by a partnership, the attendance required under Subsection A of this section shall be by one of the partners, and in the case of an adult entertainment parlour owned or operated by a corporation, such attendance shall be by an officer of the corporation.

C. Every applicant for an attendant's licence, and every individual person applying for an owner's licence or operator's licence, shall submit with his or her application two passport-size photographs of his or her face, one of which photographs shall be attached to the licence, and the other shall be filed with the Municipal Licensing and Standards Division; and upon application for renewal of any licence, the applicant shall furnish new photographs if required so to do by the Municipal Licensing and Standards Division.

D. Every applicant for an owner's licence shall, at the time of making his or her application, file with the Municipal Licensing and Standards Division a list showing the names of all operators and attendants providing services in his or her adult entertainment parlour and all such persons intended or expected by him or her to be employed or to provide services in his or her adult entertainment parlour and shall thereafter maintain a list showing at all times the names of all operators and attendants providing services in his or her adult entertainment parlour; and such owner shall, upon a request made to him or her by the Municipal Licensing and Standards Division, any peace officer or by-law enforcement officer, produce the list, brought up to date as of the time of the request, to such officer.

§ 545-393. Exemption from certain provisions for adult entertainment parlours licensed under the *Liquor Licence Act*.

A. Sections 545-375, 545-376, 545-377, 545-378, 545-380, 545-382, 545-386, 545-387, 545-388, and 545-390 of this article do not apply to adult entertainment parlours licensed under the *Liquor Licence Act*.[137]

B. Every owner or operator applying for a licence in respect of an adult entertainment parlour included in the class of such parlours defined in the definition of "burlesque entertainer" in § 545-362 of this article shall file with or produce to the Municipal Licensing and Standards Division a copy of any licence or permit issued under the *Liquor Licence Act*[138] in respect of such premises, and shall, after such licence has been issued to him or her, advise the Municipal Licensing and Standards Division in writing forthwith upon any suspension, cancellation, revocation or termination of such licence or permit or of any change in such licence or permit, or any of its terms.

Provision	September 6, 2012 Staff Report Setting Out Suggested Amendments to Bylaw	September 11, 2012 AEAC Response to Suggested Amendments to Bylaw	October 12, 2012 Staff Report + Appendices
No-touch provisions	An entertainer not permitted to touch, sit, or rest on, or make any physical contact with the covered, partially covered, or uncovered breasts, buttocks, mouth, genital or pubic areas, of a patron or any other person (the intent of the notouch provisions is maintained) A patron not to be permitted to touch, sit, or rest on, or make any physical contact with the covered, partially covered, or uncovered breasts, buttocks, mouth, genital or pubic areas, of an entertainer. (Patrons may be held accountable under the bylaw- **consultations with Legal are ongoing)**	a) that the proposed prohibited physical contact provision be amended by adding the words "no sexual touch" instead of "touch"; b) that the proposed prohibited contact provisions also be amended by deleting the words, "touch, sit or rest on". This is necessary since the proposed wording of "physical contact" is already thoroughly inclusive. In defining prohibited activity in the proposed way, action or contact that is benign in nature could occur in practice and be caught under this provision. With the Association's recommendation, the benign nature of these acts would not be the target of the provision; c) that the proposed prohibited contact provision be completely deleted and replaced with wording similar to what other municipalities have implemented, such as Mississauga's wording of prohibited "Specified Sexual Activities", or at least, complemented with Mississauga's wording for apparent clarity. (d) that the determination as to what is permissible with respect to the prohibited contact provisions be governed by the definition of what actions are permissible under the current criminal code; (e) that the proposed prohibited contact provision for patrons be deleted and replaced with: "No patron shall be permitted to engage in any uninvited physical contact in any manner whatsoever involving any part of the entertainer's body either while services are being provided or at any time or in any location in an adult entertainment club."	*§ 545-395. Owners and operators not to permit entertainers to have physical contact with specified body areas of other persons.* *No owner or operator in respect of any adult entertainment club owned, operated, supervised or managed by him or her shall* *(i) permit any entertainer to touch, sit, or rest on, or make any physical contact with the covered, partially covered, or uncovered breasts, buttocks, genital, pubic, anal and perineal areas of a patron or any other person when providing services at the adult entertainment club* *(ii) permit any employee or patron to touch, sit, or rest on, or make any physical contact with the covered, partially covered, or uncovered breasts, buttocks, genital, pubic, anal and perineal areas of any entertainer or any other person.* *§ 545-396. Entertainers not to have physical contact with specified body areas of other persons.* *No entertainer shall touch, sit, or rest on, or make any physical contact with the covered, partially covered, or uncovered breasts, buttocks, genital, pubic, anal and perineal areas of a patron or any other person when providing services at the adult entertainment club.* *§ TBD No patron of an adult entertainment club shall touch, sit, or rest on, or make any physical contact with the covered, partially covered, or uncovered breasts, buttocks, genital, pubic, anal and perineal areas of any entertainer or any other person.*

Provision	September 6, 2012 Staff Report Setting Out Suggested Amendments to Bylaw	September 11, 2012 AEAC Response to Suggested Amendments to Bylaw	October 12, 2012 Staff Report + Appendices
Unobstructed-view provisions	Services permitted only in the designated entertainment area shown on the approved floor plan filed with Municipal Licensing and Standards. Services not permitted in any portion of the premises that is fully obstructed from the view of any patrons, entertainers or security personnel	(a) The basis for the creation of a designated entertainment area and design restrictions for VIP rooms are unnecessary for the City of Toronto. The designated entertainment area wording is borrowed from the existing Ottawa by-law. However, their definitions, as worded, caused significant confusion that proved to be significant with the industry in their initial implementation with respect to ambiguous definitions, formal approvals and licensing of all the areas; and (b) The definition as to where an entertainer may provide services (VIP Room) should be amended to be "within an area that is within public view to which the public has unhindered access." This revision is satisfactory to the Association and the simple changes would be sufficient to correct the existing clause;	*§ 545-397. Entertainers to perform only within the designated entertainment area* *A. No owner or operator shall permit services to be provided in any area of the premises other than a designated entertainment area shown on the approved floor plan filed with Municipal Licensing and Standards* *B. No owner shall change or cause a change to be made to the designated entertainment area without first submitting a revised floor plan containing the information described in 545-364 (G) and obtaining the approval of the Executive Director of Municipal Licensing and Standards or his or her designate* *C. No owner or operator shall permit any portion of the premises, where services are provided or received to be fully obstructed from the view of any patrons, entertainers or security personnel.*

Provision	September 6, 2012 Staff Report Setting Out Suggested Amendments to Bylaw	September 11, 2012 AEAC Response to Suggested Amendments to Bylaw	October 12, 2012 Staff Report + Appendices
Private Rooms, Booths, Cubicles or other enclosures	All private rooms or other floor-to-wall enclosures must be constructed of a non-opaque material and must be viewable and accessible (no door permitted) All private booths or cubicles must be of a maximum height of 4 feet, , and they must be viewable and accessible (no door permitted) All private rooms, booths, cubicles and enclosures must be equipped with an alert system or signalling device (to be monitored at all times)	Recommended that the current provision be maintained without change. * We were advised at the meeting that the reason that these changes were being included was because the current provisions of the by-law contains restrictions with respect to obstruction or locking of individual rooms. This is incorrect. See Letter dated September 11, 2012. The Association is not opposed to properly outlining that entertainers' services can only be provided in an area that would be viewable and easily accessible for the club or by-law officers to inspect without having obstruction from entry With regard to the proposed additional requirements that provides "all private booths or cubicles must be of a maximum height of 4 feet and they must be viewable and accessible (no door permitted)", it is the Association's position that the 4 foot maximum limit should be deleted. There is no basis for requiring that walls be only 4 feet in height. The sole concern in this area is to ensure that the private rooms or cubicles are not fully obstructed. As such we recommend the following wording (which is consistent with the wording regarding the unobstructed view provisions): "All private booths or cubicles must be viewable and accessible and shall not be fully obstructed from the view of patrons, entertainers or security personnel"	*§ 545-376. Private rooms, booths or cubicles requirements; obstruction or locking prohibited* *A. All private rooms, private booths or cubicles, must have one side that is either open; or constructed of non-opaque material, such as glass or plexiglass; or, if constructed of opaque material, at a height not to exceed 4 feet, shall not be obstructed by any curtain, means of access equipped or constructed with a locking device of any kind, or other view-obstructing devices or materials; and such room or enclosure must permit an unobstructed view of the interior to anyone in its immediate vicinity in all lighting conditions.* *B. All private rooms, booths, cubicles and enclosures referred to in subsection 546-376 A must be equipped with an alert system or signalling device, and such system or device must be in good working order and must be monitored by security personnel, an owner, or an operator, all times* *C. No one may in an adult entertainment club provide any service or permit any services to be provided in a private room, private cubicle or booth that does not comply with the requirements under subsections 545-376 A and B.*

Provision	September 6, 2012 Staff Report Setting Out Suggested Amendments to Bylaw	September 11, 2012 AEAC Response to Suggested Amendments to Bylaw	October 12, 2012 Staff Report + Appendices
Licensing of Entertainers	No change to the bylaw Development of an Access to Personal Information policy for burlesque entertainers to protect their information from routine disclosure.	The Association proposes that the licensing requirement be deleted, and instead, a registration pilot project be initiated for the entertainers for the duration of at least one (1) year	*Staff does not recommend the elimination of the current City of Toronto requirement that the entertainers be licensed*

Provision	September 6, 2012 Staff Report Setting Out Suggested Amendments to Bylaw	September 11, 2012 AEAC Response to Suggested Amendments to Bylaw	October 12, 2012 Staff Report + Appendices
Licensed Security Personnel	All security personnel to be licensed under the Private Security and Investigative Services Act in the Province of Ontario. The designated entertainment area, including private rooms, booths, cubicles and any other enclosure to be adequately and frequently patrolled by security personnel.	The Association would agree that Security personnel be in place and licensed under the Private Security and Investigative Services Act in the Province of Ontario, if the wearing of a security designation be made optional to the individual club. The Association members' establishments have no issues fulfilling this currently proposed provision within the timelines being proposed by the city. However, we confirm that our agreement is contingent upon there being no ratio requirement for security staff to capacity	*Staff will be recommending that all security personnel employed in the Adult Entertainment Club be required to comply with the Private Security and Investigative Services Act (PSISA) in the Province of Ontario, and be licensed accordingly.* *The PSISA, defines a security guard as "a person who performs work, for remuneration, that consists primarily of guarding or patrolling for the purpose of protecting persons or property". The individuals who perform such work must possess a license issued under the provisions of the Act. The definition includes bouncers - the type of security personnel often found in the AEP establishments. The individuals who are employed to ensure security at the AEP's, are in charge of ensuring security and safety of the entertainers, club owners, and the general public, as well as their property. Research, as well as the information received during the consultation process with the entertainers, indicates that introducing a screening process and ensuring training of the potential security personnel in the clubs, including "bouncers", would be of significant assistance. See Appendix, pg 27*

Provision	September 6, 2012 Staff Report Setting Out Suggested Amendments to Bylaw	September 11, 2012 AEAC Response to Suggested Amendments to Bylaw	October 12, 2012 Staff Report + Appendices
Use of cameras or other photographic or recording devices	Cameras may be used for security purposes, and such cameras are not permitted to be installed in the designated entertainment area, washrooms, and change rooms. In such case, signs to be posted in the area under surveillance notifying patrons and entertainers	To impose new restrictions on adult entertainment parlors would severely compromise the establishment's ability to insure safety and security for its staff, entertainers and patrons, for example: (a) The establishments have spent thousands of dollars on security systems in order to ensure that their premises operate properly and in accordance with the law; (b) It has become expected that security cameras and surveillance systems be installed in all premises and throughout their premises; (c) The security cameras and recording devices are necessary to protect an establishment from liability claims and tort actions should same arise; (d) Security cameras and recording devices are essential when dealing with insurance claims; (e) Security cameras and recording devices are important to allow an owner to ensure that its premises are being operated in a accordance with the law and that its staff are abiding by the policies and procedures in place at each establishment; (f) Security cameras and recording devices are one important factor in ensuring the safe and responsible operation of an establishment and the safety and security of staff, entertainers and patrons in any licensed establishment;	*Staff are recommending amendment to the provision to permit the installation of cameras to be used for security purposes, but cameras will not be permitted to be installed in the designated entertainment area, washrooms, and change rooms. In the areas where cameras are installed, signs must be posted in the areas under surveillance so notifying patrons and entertainers.* *A. No owner or operator or entertainer shall use or permit to be used any camera or other photographic or recording device in, or at an adult entertainment club by any person other than a peace officer, Medical Officer of Health or a public health inspector or a by- law enforcement officer.* *ADD NEW:* *B. Subsection (B) shall not apply to cameras used for security purposes in areas other than a designated entertainment area, washrooms, and change rooms.* *C. When using camera equipment for security purposes every owner or operator shall ensure that signs are posted in the area under surveillance notifying patrons and entertainers.* *D. Nothing in Subsection (A) shall preclude an entertainer from using a camera or other photographic or recording device, outside of operating hours of an adult entertainment club, for the purpose of recording his or her own performance or practice.*

		(g) The Toronto establishments feel that security cameras are necessary for the purpose in which they were originally purchased and installed that is: for security purposes. The concerns raised are without foundation and would apply to any industry where employees are required to change into costumes or uniforms at their place of business; (h) There has not been one case where photographs or photographs of entertainers working in Toronto have been obtained while in the establishment and then used for an unlawful purpose; (i) There are no security cameras installed in the VIP areas. As well, there are no cameras installed in the change-rooms or washrooms used by entertainers. Security cameras are installed in areas where they are necessary and not so as to impact on anyone's privacy. (j) As pointed out on September 6, 2012, video camera phones are not allowed in the clubs; signs are posted throughout the establishments; and the prohibition of video camera phones are strictly enforced. Because all clubs have made policies banning camera phones, this has created compliance from patrons who understand that camera phones are prohibited. The concern that photographs could be possibly posted on the internet is slight. We are not aware of such an occurrence happening. Accordingly, clubs having done a very good job to ensure that the use of security cameras is for security purposes only. (k) Entertainers who wish to video themselves as a tool of stage improvement can and should be able to do so by requesting to use the stage either before work or after work. This request does not happen often but entertainers do regularly use the stage to practice their dancing and shows, but under no circumstances will stage shows or practice shows be videotaped. As such, we recommend that these proposed changes to the by-law not be made.	

Provision	**September 6, 2012 Staff Report Setting Out Suggested Amendments to Bylaw**	**September 11, 2012 AEAC Response to Suggested Amendments to Bylaw**	**October 12, 2012 Staff Report + Appendices**
Removal of the exemption from certain provisions for adult entertainment parlours licensed under the Liquor Licence Act	Delete the exemption	There should be a grandfathering provision for all existing establishments.	~~*§ 545-393.*~~ ~~*Sections 545-375, 545-376, 545-377, 545-378, 545-380, 545-382, 545-386, 545-387, 545-388, and 545-390 of this article do not apply to adult entertainment parlours licensed under the Liquor Licence Act.*~~

Provision	September 6, 2012 Staff Report Setting Out Suggested Amendments to Bylaw	September 11, 2012 AEAC Response to Suggested Amendments to Bylaw	October 12, 2012 Staff Report + Appendices
Health and Information Notices to be Posted	Notices to be posted in designated areas in the format approved by the MLS, that include the following information: - touching/no touching rules - Public health information with applicable contact phone numbers - Contact phone numbers of MLS Complaints and Information lines, non-emergency telephone number of Toronto Police Service, and a number of the Ontario Ministry of Labour Health and Safety Centre		*A. An owner or operator shall post in a conspicuous location in the entertainers' dressing or locker or change room, at all public entrances or exits, in the washrooms, and in the designated entertainment area, including all private rooms cubicles, booths, and other enclosures where services are provided, notices, in the format approved by the Municipal Licensing and Standards, that includes the following statements:* *(i) physical contact with the entertainers' breasts, buttocks, genital, pubic, anal and perineal areas, as well as other unwanted physical contact is prohibited under the Municipal Code Chapter and may also constitute an assault or sexual assault under the Criminal Code of Canada; and* *(ii) Health Notice: "Certain sexually transmitted infections such as Herpes and the Human Papilloma Virus (HPV) an be passed on through genital and skin-to-skin contact.* *For more information on this or any other sexual health concern, please call the AIDS and Sexual Health InfoLine at 416-338-2437* *For other Health or social services information , you may call 211 to be linked to an appropriate service" or the Workers Action Centre 416 531-0778.* *B. An owner or operator shall post, in a conspicuous location , in the entertainers' dressing or locker or change room and at all public entrances or exits a notice, in the format approved by the Municipal Licensing and Standards including telephone numbers of Municipal Licensing and Standards Complaints and Information line 416 392 3082 and 1-877-868-2947, non-emergency telephone number of Toronto Police Service 416-808-2222, and telephone number of the Ontario Ministry of Labour Health and Safety Centre 1-877-202-0008*

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Change/Dressing Room(s) to be provided	Owner must designate an enclosed area, outside of the designated entertainment area, as a change or dressing or locker room for entertainers with adequate light and ventilation, shall have all fixtures, surfaces, and equipment therein regularly washed and kept in a sanitary condition.		*Every owner must designate an enclosed area, outside of the designated entertainment area, as a change or dressing or locker room for exclusive use of entertainers, and such area shall have adequate light and ventilation and have all fixtures, surfaces, and equipment therein regularly washed and kept in a sanitary condition; and shall provide for a secure place for each entertainer, such a s a locker, to store each entertainer's personal belongings.*

Provision	September 6, 2012 Staff Report Setting Out Suggested Amendments to Bylaw	September 11, 2012 AEAC Response to Suggested Amendments to Bylaw	October 12, 2012 Staff Report + Appendices
Transitional Provisions	Owners licensed on the effective date of the amendments to this bylaw must comply with the new sections regarding constructions of booths/rooms, installation of alert system and provision of security personnel, no later than one (1) year from the date when the amendments come into force		*Every owner of an adult entertainment club licensed on the date when the amendments to this bylaw come into effect must comply with the new provisions with respect to construction of private booths/rooms/cubicles, provision of security personnel, and the installation of an alert system or signalling device no later than one (1) year from the date when the amendments come into effect.*

ADAM M. VASSOS, B.A., LL.B.
Barrister and Solicitor

1100-110 Yonge Street
Toronto, Ontario
M5C 1T4

Tel: 416-364-1972
Fax: 416-862-1869
Direct Dial: 416-364-2066
Email: adam@vassoslaw.ca

Comment Brief

This brief sets out four (4) areas where the concerns of the stakeholders were not taken into consideration by Staff in their October 12, 2012 Staff Report:

1. §545-395 – The prohibited contact provision no longer contains the word "knowingly," which makes a violation of this section an absolute liability offence – the result being that no due diligence defence is available

Section 545-395 currently states that "no owner or operator shall … *knowingly* permit any attendant … to touch, or be touched by, or have physical contact with any other person." In Staff's proposed amendment, the word "knowingly" is removed. This is of great concern to the Adult Entertainment Association of Canada (the "Association"), as well as to other stakeholders.

The reason for this concern is because of the changed status of the offence. With the word "knowingly" included in the criteria of the offence, an establishment is able to defend itself by relying on the fact that it acted reasonably and diligently. If there is physical contact between an entertainer and a patron that occurred in a concealed or hidden manner and in such a way so that it could not have possibly been detected by an owner acting prudently, then the owner would have a valid defence to a charge under this section.

With the removal of the word "knowingly," the offence becomes one of absolute liability, where no due diligence defence is available.

2. §545-395 – The prohibited contact provision captures more than just entertainers (i.e. any employee), thus prohibiting any physical contact between all employees and patrons

In addition to the removal of the word "knowingly" from §545-395 of the bylaw, subsection (ii) of the proposed amendment prevents *any employee* to make any physical contact with any other person.

This puts Adult Entertainment Clubs in a disadvantaged position as employees in non-adult entertainment clubs are not under the same prohibition.

The Association sees no reason why the Adult Entertainment Club employees should be held to a different standard than that of a restaurant or nightclub employee.

3. §545-390 – The "use of cameras or other photographic or recording devices" provision severely compromises the establishment's ability to ensure safety and security for its staff, entertainers and patrons. This is closely tied in with §545-362's definition of "Designated Entertainment Area." The definition is too broad, and needs to be amended so that it is more specific

Staff has proposed that:

> A. No owner or operator or entertainer shall use or permit to be used any camera or other photographic or recording device in, or at an adult entertainment club by any person other than a peace officer, Medical Officer of Health or a public health inspector or a by- law enforcement officer.
>
> B. Subsection [(A)] shall not apply to cameras used for security purposes in areas other than a designated entertainment area, washrooms, and change rooms.
>
> C. When using camera equipment for security purposes every owner or operator shall ensure that signs are posted in the area under surveillance notifying patrons and entertainers.
>
> D. Nothing in Subsection (A) shall preclude an entertainer from using a camera or other photographic or recording device, outside of operating hours of an adult entertainment club, for the purpose of recording his or her own performance or practice.

A "Designated Entertainment Area" is defined as "any area within the club … in which services may be provided … and shall include all private booths, rooms, cubicles, or any other area where services are provided."

As such, the entire establishment, except for washrooms and change rooms, is covered by the definition.

Accordingly, the use of cameras anywhere in the establishment would, under the proposed provision, be contrary to the provisions.

This would create an impossible working situation for the establishment for the following reasons:

(a) The establishments have spent thousands of dollars on security systems in order to ensure that their premises operate properly and in accordance with the law;

(b) It has become expected that security cameras and surveillance systems be installed in all premises and throughout their premises;

(c) The security cameras and recording devices are necessary to protect an establishment from liability claims and tort actions should same arise;

(d) Security cameras and recording devices are essential when dealing with insurance claims;

(e) Security cameras and recording devices are important to allow an owner to ensure that its premises are being operated in a accordance with the law and that its staff are abiding by the policies and procedures in place at each establishment;

(f) Security cameras and recording devices are one important factor in ensuring the safe and responsible operation of an establishment and the safety and security of staff, entertainers and patrons in any licensed establishment;

(g) The Toronto establishments feel that security cameras are necessary for the purpose in which they were originally purchased and installed that is: for security purposes. The concerns raised are without foundation and would apply to any industry where employees are required to change into costumes or uniforms at their place of business;

(h) There has not been one case where photographs or photographs of entertainers working in Toronto have been obtained while in the establishment and then used for an unlawful purpose;

(i) There are no security cameras installed in the VIP areas. As well, there are no cameras installed in the change-rooms or washrooms used by entertainers. Security cameras are installed in areas where they are necessary and not so as to impact on anyone's privacy.

(j) As pointed out on September 6, 2012, video camera phones are not allowed in the clubs; signs are posted throughout the establishments; and the prohibition of video camera phones are strictly enforced. Because all clubs have made policies banning camera phones, this has created compliance from patrons who understand that camera phones are prohibited. The concern that photographs could be possibly posted on the internet is slight. We are not aware of such an occurrence happening. Accordingly, clubs having done a very good job to ensure that the use of security cameras is for security purposes only.

(k) Entertainers who wish to video themselves as a tool of stage improvement can and should be able to do so by requesting to use the stage either before work or after work. This request does not happen often but entertainers do regularly use the stage to practice their dancing and shows, but under no circumstances will stage shows or practice shows be videotaped.

As such, the Association recommends that these proposed changes to the by-law not be made. To resolve this issue, the Association recommends that cameras not be used on the "performance stage."

4. §545-370 – The "licensing requirements of owners and operators" provision imposes a significant cost on operators

Initially, in the September 6, 2012 report, Staff recommended that, with regard to a "person of authority," a list of all persons of authority for the establishment would be filed with the MLS. Such list would include current contact information for each person on the list.

In the October 12, 2012 report, Staff instead proposed that every person who operates, manages, supervises, runs or controls an adult entertainment club be required to obtain a licence.

This imposes an economic hardship on both Adult Entertainment Clubs and "operators". The definition of "operator" should not include managers. The cost of obtaining an operator licence for an adult entertainment club is approximately $6,000. Having to licence multiple operators manage and supervise per venue is cost prohibitive.