

AGENDA

REGULAR MEETING OF CITY COUNCIL

2012 04 18

4:30 P.M.

COUNCIL CHAMBERS

1. ADOPTION OF MINUTES
2. QUESTIONS AND INFORMATION ARISING OUT OF THE MINUTES AND NOT OTHERWISE ON THE AGENDA

3. APPROVE AGENDA AS PRESENTED

Mover: Councillor L. Turco

Seconder: Councillor B. Watkins

Resolved that the Agenda for 2012 04 18 City Council meeting as presented be approved.

4. DELEGATIONS/PROCLAMATIONS

PART ONE – CONSENT AGENDA

5. COMMUNICATIONS AND ROUTINE REPORTS OF CITY DEPARTMENTS, BOARDS AND COMMITTEES

PART TWO – REGULAR AGENDA

6. **REPORTS OF CITY DEPARTMENTS, BOARDS AND COMMITTEES**
 - (1) **ADMINISTRATION**
 - (2) **COMMUNITY SERVICES DEPARTMENT**
 - (3) **ENGINEERING**
 - (4) **FIRE**
 - (5) **LEGAL**
 - a) **Regulation of Common Bawdy Houses**

A report of the City Solicitor is attached for the consideration of Council.

The relevant By-law 2012-78 is listed under Item 10 of the Agenda and will be read with all other by-laws listed under that item.
 - (6) **PLANNING**
 - (7) **PUBLIC WORKS AND TRANSPORTATION**
 - (8) **BOARDS AND COMMITTEES**
7. **UNFINISHED BUSINESS, NOTICE OF MOTIONS AND RESOLUTIONS PLACED ON AGENDA BY MEMBERS OF COUNCIL**
8. **COMMITTEE OF THE WHOLE FOR THE PURPOSE OF SUCH MATTERS AS ARE REFERRED TO IT BY THE COUNCIL BY RESOLUTION**
9. **ADOPTION OF REPORT OF THE COMMITTEE OF THE WHOLE**
10. **CONSIDERATION AND PASSING OF BY-LAWS**
11. **QUESTIONS BY, NEW BUSINESS FROM, OR ADDRESSES BY MEMBERS OF COUNCIL CONCERNING MATTERS NOT OTHERWISE ON THE AGENDA**

12. ADDENDUM TO THE AGENDA

13. ADJOURNMENT

Mover: Councillor L. Turco

Seconded: Councillor P. Mick

Resolved that this Council now adjourn.

NUALA KENNY
CITY SOLICITOR

MELANIE BOROWICZ-SIBENIK
ASSISTANT CITY SOLICITOR



LEGAL
DEPARTMENT

File No. R.1.2.1.

2012 04 18

Mayor Debbie Amaroso and
Members of City Council

RE: REGULATION OF COMMON BAWDY HOUSES

PURPOSE

The purpose of this report is to formally codify the moratorium passed by resolution at the open Council meeting of April 16, 2012 concerning bawdy houses. The report recommends that the moratorium be imposed via an interim control by-law.

BACKGROUND

On April 16, 2012 Council passed the following resolution moved by Councillor Krmpotich and seconded by Councillor Frank Manzo:

"Whereas the Ontario Court of Appeal in the case Bedford v. Canada (Attorney General) [2012] O.J. No. 1296("Bedford") recently struck down certain sections of the Criminal Code of Canada, effectively legalizing brothels and bawdy houses; and

Whereas the Ontario Court of Appeal in Bedford further suspended the declaration of these sections of the Criminal Code of Canada for a period of twelve (12) months to permit the Parliament of Canada an opportunity to re-draft a Charter-compliant provision; and

Whereas the City of Sault Ste. Marie Zoning By-law 2005-150 controls the use of land in the City by dividing the municipality into land use zones and specifying the uses permitted in each zone; and

- more -

Whereas the City of Sault Ste. Marie Zoning By-Law 2005-150 is silent on what zone in the City of Sault Ste. Marie a brothel or bawdy house would be permitted; and

Whereas there has been no discussion or public input as to what zone in the City of Sault Ste. Marie Zoning By-Law 2005-150 a brothel or bawdy house would be permitted,

Therefore be it resolved that Council institute a moratorium on all brothels and bawdy houses until such time as the Ontario Court of Appeal lifts the suspension of the invalidity of these sections of the Criminal Code of Canada and further, until such time as a formal review of the City's Zoning By-Law has been completed with public input so that appropriate consideration can be made to the appropriate location of such brothels and/or bawdy houses."

On March 26, 2012 the Ontario Court of Appeal issued its decision in the case of Bedford. The case considered three sections of the Criminal Code of Canada dealing with prostitution. The sections were:

1. s.210 prohibiting the operation of common bawdy houses;
2. s.212(1)(j) prohibiting living on the avails of prostitution; and
3. s.213(1)(c) prohibiting communicating for the purpose of prostitution.

The Court found that the Criminal Code sections dealing with bawdy houses and *living on the avails of prostitution* were contrary to the Constitution. Although prostitution is legal in Canada, the associated activities such as bawdy houses and communication for the purpose are illegal. Under the Charter every person has the right to life, liberty and security of the person. The Court found that criminalizing bawdy houses forces prostitutes to work on the street or on a call out basis thereby increasing risk to the worker and jeopardizing the worker's security of the person.

Similarly, the Court found the prohibition against *living on the avails* was overly broad in its wording. The Court amended this section so that only where exploitation occurs is it illegal to live on the avails.

The section dealing with communicating for the purpose of prostitution was found to be constitutional and continues to be in full force and effect.

Importantly, the Court suspended the declaration of invalidity regarding bawdy houses for a period of 12 months. The delay was to provide Parliament with an opportunity to redraft the bawdy house provisions to comply with the Charter if it so chose.

Accordingly, bawdy houses are currently illegal. Still the City has learned and local media has reported that some individuals intend to open bawdy houses as early as this week.

ANALYSIS

In the event that the bawdy house provision is struck from the Criminal Code it will fall to municipalities to regulate them. This is a previously unexplored territory for municipalities. Before staff can make any recommendation to Council it will be necessary to study and understand the use at question. The best way in which to do this will be via an interim control by-law. Section 38 of the Planning Act authorizes City Council to pass a by-law freezing development for a set period of time to allow for a study to be undertaken of the appropriate land use planning policies. Interim control by-laws are typically employed where an unforeseen issue arises and the municipality requires "breathing space" to study the issue and determine the appropriate policy controls for dealing with the situation. Unlike standard rezoning by-laws interim control by-laws do not require prior notice. Notice is only required after the by-law is passed.

IMPACT

There is no significant financial impact associated with this report.

STRATEGIC PLAN

Not applicable.

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RECOMMENDATION

Interim control by-law 2012- 78 is located elsewhere on your agenda tonight and it is recommended for your approval.

Respectfully submitted,



Nuala Kenny
City Solicitor
Legal Department
NK/on

RECOMMENDED FOR APPROVAL



Joseph M. Fratesi
Chief Administrative Officer

LEGAL\STAFF\COUNCIL REPORTS\2012\REGULATIONS BAWDY HOUSES.DOC

THE CORPORATION OF THE CITY OF SAULT STE. MARIE

BY-LAW 2012-78

REGULATIONS: (R.1.2.1) A by-law to establish interim control provisions for the City of Sault Ste. Marie to prohibit the establishment of common bawdy houses for an interim period of one (1) year in order to allow for the completion of a planning study on the potential regulation of these uses.

WHEREAS subsection 38 of the Planning Act, R.S.O. 1990 c.P.13, as amended, permits the Council of a municipality to pass an interim control by-law where the Council has directed that a review or study be undertaken in respect of land use planning policies within the municipality or in any defined area or areas thereof;

AND WHEREAS Section 4.3 of the City of Sault Ste. Marie Official Plan allows for the passing of an interim control by-law;

AND WHEREAS Council of the Corporation of the City of Sault Ste. Marie deems it appropriate to enact such interim control by-law;

AND WHEREAS a land use study is necessary in order to determine the appropriate land use regulations for common bawdy houses in the City of Sault Ste. Marie as shown on Schedule "A" attached hereto;

AND WHEREAS the proposed interim control by-law conforms to the City of Sault Ste. Marie Official Plan;

NOW THEREFORE the Council of the Corporation of the City of Sault Ste. Marie enacts as follows:

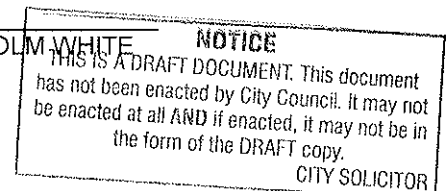
1. For the purposes of this interim control by-law, "common bawdy house" is defined as follows:
a place that is
 - (a) kept or occupied; or
 - (b) resorted to by one or more personsfor the purpose of prostitution.
2. While this by-law is in force and effect no common bawdy houses will be permitted on lands within the municipal boundaries of the City of Sault Ste. Marie as shown on the plan attached hereto and identified as "SUBJECT AREA" on Schedule "A".
3. This By-law shall be in force and effect for a period of one (1) year from the date of passing of this by-law.

PASSED in Open Council this 18th day of April, 2012.

MAYOR – DEBBIE AMAROSO

CITY CLERK – MALCOLM WHITE

cf/Bylaws\2012\2012-78 brothei



2012-78

