Minute No. 307
Report - Standing Policy Committee on Protection and Community Services - March 7, 2005

Item No. 5 **Body Modification By-law No. 40/2005**
File EH-1

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and adopted the following:

1. That the Body Modification By-law No. 40/2005 including consequential amendments to the License By-law No. 6551/95 be approved.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Further, the Standing Policy Committee on Protection and Community Services referred the matter to the Standing Policy Committee on Property and Development for consideration of the consequential amendments to the License By-law No. 6551/95 and to submit its recommendation to the Executive Policy Committee.

Report - Standing Policy Committee on Protection and Community Services - March 7, 2005

DECISION MAKING HISTORY:

Moved by Councillor Steeves,
That the recommendation of the Standing Policy Committee on Protection and Community Services be adopted.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 16, 2005, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On March 7, 2005, the Standing Policy Committee on Protection and Community Services concurred in the administrative recommendation and submitted its recommendation to the Executive Policy Committee and Council.

Further, the Standing Policy Committee on Protection and Community Services referred the matter to the Standing Policy Committee on Property and Development for consideration of the consequential amendments to the License By-law No. 6551/95 and to submit its recommendation to the Executive Policy Committee.

COUNCIL DECISION:

On March 26, 2003, Council adopted Item 5 of the Report of the Standing Policy Committee on Protection and Community Services dated March 10, 2003, which directed the Administration to develop a Body Modification By-law and amendments to the License By-law.

STANDING COMMITTEE RECOMMENDATION:

On March 10, 2003, the Standing Policy Committee on Protection and Community Services concurred in the administrative recommendations 1 to 4 and recommended to Council:

1. That the Administration be directed to develop a Body Modification By-law, based on the administrative report dated March 3, 2003, which by-law would then replace the existing Tattoo Studio By-law No. 4653/87.

Report - Standing Policy Committee on Protection and Community Services - March 7, 2005

DECISION MAKING HISTORY (continued):

2. That the Administration be directed to prepare a report on the following corresponding amendments to the License By-law, namely:

   A. That the License By-law be amended to include license categories consistent with the categories as determined by the proposed Body Modification By-law and that applicable license fees be recommended that will permit full cost recovery;

   B. That the License By-law be further amended to require that no license be issued to an applicant unless the applicant first obtains and files with the Chief License Inspector a Certificate of the Public Health Inspector that deems the establishment or practitioner to have met all necessary requirements of the Body Modification By-law;

   and the Standing Policy Committee on Property and Development be requested to give favourable consideration to the foregoing.

3. That Council approve a one-time additional appropriation in the amount of $12,000.00 to the 2003 Operating Budget of the Community Services Department, to cover one-time costs for the additional training that Environmental Health Officers require to enforce a new by-law that regulates body modification practices not previously regulated; and for the costs associated with the preparation of the certification exam that industry practitioners must complete in order to be licensed.

4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing, including the preparation of the necessary by-law for submission to Council.

ADMINISTRATIVE REPORT

RE: Proposed Body Modification By-law

FOR SUBMISSION TO: Standing Policy Committee on Protection and Community Services

ORIGINAL REPORT SIGNED BY: Ursula Stelman, Director
Community Services Department

REPORT DATE: February 21, 2005

RECOMMENDATION(S):

1. That City Council consider this report and enact the proposed Body Modification By-law including amendments to the License By-law No. 6551/95.

2. That this report be referred to the Standing Policy Committee on Property and Development for their concurrence on the consequential amendments to the License By-law No. 6551/95.

REPORT SUMMARY:

Key Issues:

- The proposed Body Modification By-law replaces the existing Tattoo Studio By-law and has been developed in response to both changing body modification practices and industry requests in order to ensure safer body modification practices.

- It is recommended that the Body Modification By-law and corresponding amendments to the License By-law take effect on January 1, 2006. This will provide the industry sufficient time to complete licensing requirements and any required business renovations.

- Significant highlights of the new by-law include:
    - Consequential amendments to the License By-law to support changes in the licensing of both the establishment and the technician so that testing, certification, and licensing is done to ensure safer body modification practices
    - Applicable license fees to ensure full cost recovery
    - Parental or guardian consent forms to be required for any body modification performed on a client under the age of 18 years and the attendance of the parent/guardian during the procedure

- A requirement that client records will be kept by the establishment to ensure documentation of each client and the procedure performed.

- This by-law does not recommend the regulation of piercing of the ear. As per the National Environmental Health Association, there is a lack of current epidemiological evidence of health risk associated with the use of ear-piercing guns on the outer perimeter and lobe of the ear. Inclusion and enforcement of ear piercing establishments would result in a requirement for a significant increase in staff resources. Given the low risk associated with ear piercing, inclusion of this practice could not be justified. Changes to the by-law with respect to ear-piercing could be considered in the future should this need be demonstrated.

- A communication strategy has been developed to ensure that existing businesses are aware of the new by-law requirement. An information letter will be sent to each business with a copy of the By-law and an invitation to an information session where specific questions and concerns may be clarified.

Implications of the Recommendation(s):

General implications:

None

X **For the organization overall and/or for other departments**

X **For the community and/or organizations external to the City of Winnipeg**
Involves a multi-year contract
Comment(s):
Most operators within the body modification industry support a by-law that reflects current trends and practices. Feedback from the industry and the community indicates a desire to regulate existing and emerging body modification practices.

Businesses may require time prior to the by-law taking effect to ensure that any required changes to their facilities are completed.

As well, sufficient lead-in time is required to allow technicians to prepare for and complete the required technician certification exam in order to meet license requirements. Preparation for the technician certification exam will be the responsibility of the individual.

Policy implications:

No

X **Yes**

Comment(s):
Instituting regulations for both technicians and establishments will support safer practices within this industry and protect the health and safety of those who choose to use these services.

The proposed by-law replaces the existing Tattoo Studio By-law and has been expanded to encompass all similar body modification practices.

Environmental implications:

No

x **Yes**

Comment(s):
This proposed by-law addresses the handling and disposal of wastes including sharps and other bio-hazardous wastes.

Human resources implications:

X **No**

Yes

Comment(s):
Since the number of body modification establishments is relatively small (18 in inner Winnipeg and 9 in the suburbs), the impact on staff resources is minimal.

The current Tattoo By-law is enforced by City of Winnipeg Health Inspectors within inner Winnipeg and Provincial Health Inspectors in the suburbs. The proposed Body Modification By-law replaces the Tattoo By-law.

Financial implications:

X Within approved current and/or capital budget

Current and/or capital budget adjustment required

Comment(s):
The proposed license fees will offset the administrative and enforcement costs related to this by-law.

REASON FOR THE REPORT:

On March 26, 2003, City Council adopted the report of the Standing Policy Committee on Protection and Community Services from March 10, 2003 recommending:

1. That the Administration be directed to develop a Body Modification By-law, based on the administrative report dated March 3, 2003, which by-law would then replace the existing Tattoo Studio By-law No. 4653/87.
2. That the Administration be directed to prepare a report on the following corresponding amendments to the License By-law, namely:
    a. That the License By-law be amended to include license categories consistent with the categories as determined by the proposed Body Modification By-law and that applicable license fees be recommended that will permit full cost recovery;
    b. That the License By-law be further amended to require that no license be issued to an applicant unless the applicant first obtains and files with the Chief License Inspector a Certificate of the Public Health Inspector that deems the establishment or practitioner to have met all necessary requirements of the Body Modification By-law;

    And the Standing Policy Committee on Property and Development be requested to give favourable consideration to the foregoing.
3. That Council approve a one-time additional appropriation in the amount of $12,000 to the 2003 Operating Budget of the Community Services Department, to cover the one-time costs for that additional training that Environmental Health Officers require to enforce a new by-law that regulates body modification practices not previously regulated; and for the costs associated with the preparation of the certification exam that industry practitioners must complete in order to be licensed.
4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing, including the preparation of the necessary by-law for submission to Council.

This report with the proposed new by-law is being submitted to Council for review and approval. Council approval is required to: repeal the existing Tattoo Studio Bylaw #4653/87, enact a new Body Modification By-law, and amend the License By-law #6551/95.

HISTORY:

The current Tattoo Studio By-law 4653/87 has been in place since 1987, with periodic amendments. Over the last several years, new and emerging body modification practices have become more mainstream and prevalent.

Many of these new practices are not currently regulated by the Tattoo Studio By-law. This includes body piercing, branding, scarification and permanent cosmetics. Injuries, infections, and transmission of disease, particularly blood-borne illnesses, can and are occurring as a result of improper body modification practices or aftercare procedures.

In response to changing techniques and practices, members of the body modification industry approached the City recommending improvements to legislation in order to better regulate and control the industry.

Civic administration invited industry representatives from each body modification establishment to attend a facilitated group session. Input on the specific components of a proposed by-law was received from the representatives. Many of the recommendations put forward by these stakeholders have been incorporated in the development of the attached proposed bylaw.

DISCUSSION:

Significant consultation has occurred with health experts from the Winnipeg Regional Health Authority (WRHA) and with Manitoba Conservation when developing the proposed bylaw. Reference material on this topic from Health Canada and from the National Environmental Health Association in the U.S. was also reviewed. Other major municipalities in Canada are in the process of developing similar by-laws. To date, none have completed their review to the point where they can be used as a model.

The appended Body Modification By-law will provide for more comprehensive control of this industry. Most types of invasive body modification procedures will be regulated and consequently increase protection of health for the citizens using these services.

Significant components of the proposed by-law are highlighted below.

- ***Key Components of the By-law:***

Scope
The proposed by-law will regulate practices of tattooing, and body piercing. It will prohibit scarification and implants under the skin from being performed in body modification establishments. The latter procedures require medical expertise and are considered too high a health risk to be performed in a body modification establishment.

The proposed by-law will exclude the regulation of ear piercing for the following reasons:

a) as per the National Environmental Health Association, there is a lack of current epidemiological evidence of disease transmission or conclusive medical evidence of cartilage injury from the use of ear-piercing guns on the outer perimeter and lobe of the ear and,
b) Inclusion and enforcement of ear piercing establishments would require a significant increase in staff resources. Given the low documented health risk associated with ear piercing, inclusion of this practice cannot be justified.

Licensing Requirements

The City of Winnipeg's License By-law #6551/95 requires corresponding amendments to reflect the proposed implementation of the Body Modification By-law. The new by-law will require the licensing of both the body modification establishment and each technician.

The proposed by-law will require that establishments comply with provisions of the Body Modification By-law, and be inspected, approved and licensed annually. In addition, amendments to the License By-law #6551/95 will require that:

- License categories consistent with the businesses of Body Modification establishment and Body Modification technicians be adopted and that applicable license fees be established that will permit full cost recovery.

- No license to carry on the trade of Body Modification Establishment shall be issued to an applicant unless the Chief License Inspector receives verification from the Public Health Inspector that the establishment or practitioner has met all necessary requirements of the Body Modification By-law.

- Annual license fees of $460 per establishment and $110 per technician (with 3% annual increases respectively) are proposed in the License By-law amendment. This license fee will permit full cost recovery for the administration and enforcement of the by-law as carried out by Environmental Health Services and the License Branch.

Body modification technicians require an individual license. Technicians will be required to:

- Successfully complete a certification exam every 3 years. The exam is set and administered by Environmental Health Services. The exam will ensure a minimum level of skills and knowledge in routine precautions, disease transmission, sterilization procedures, and proper hygienic practices. A fee of $150 including G.S.T. for taking the required certification exam every three years is proposed.

- Obtain and file with the Chief License Inspector, a Certificate of the Record Review Board, including a Vulnerable Sector Search, stating the applicant has not been convicted of an offence, which in the opinion of the Record Review Board indicates that the issuance of the License would not be injurious to the public interest.

- An annual technician license fee of $110 is also proposed.

- The following chart summarizes the fees associated with this by-law:

Description of License Fee	Current Fee	Proposed By-Law Fee (62551/95)
Tattoo Studio	$181.00	N/A
Body Modification Establishment		$460.00
Body Modification Technician		$110.00
Certification Exam (every 3 years)		$140.19
Approximate Establishments in the City of Winnipeg that will be effected are 27		
The proposed license fees will offset the City's administrative and enforcement costs related to this By-law.		

Record and Consent Issues

The by-law requires that every operator maintain a record of each procedure performed along with the pertinent details on the procedure itself and information on the client. The technician is required to advise the client that for certain medical conditions, the procedure may pose a particular risk if the client has any of these conditions.

The by-law requires that a parent or guardian accompany each individual under 18 years of age to the establishment, remain present during the procedure, and provide a written consent at the time of the procedure. The consent must be kept as part of the client record of the procedure.

Resource and Training Implications

Inspections will be conducted on a regular basis taking into account risk assessment of body modification establishments and the practices used by individual technicians. Enforcement of the Body Modification By-law will be conducted by Public Health Inspectors as they have expertise in health inspections and organized systems for inspection, complaint response, and laying of charges.

The License Branch will enforce the License By-law as it relates to the Body Modification business. The Branch will ensure that zoning, safety and health requirements are in place prior to issuing respective licenses. The Branch will provide ongoing monitoring for compliance with certification requirements and will coordinate and maintain a licensing database.

The certification exams will initially be developed using contracted services that have particular expertise in this area. The process for administering the exam, and regularly reviewing and updating the content will be managed within existing operational resources.

Provincial Public Health Inspection staff has been working collaboratively with City of Winnipeg Environmental Health Services in the development of the content of the proposed new by-law.

Provincial and City inspectors have participated in some preliminary training on the health related aspects and practices of body modification. It is anticipated that training specifically for enforcement of the bylaw is necessary and will occur pending Council approval of the bylaw.

The City will not provide body modification technician education/training to prepare them for the certification exams. Acquiring this education will be the responsibility of the individual. This training may be provided through courses developed by the private sector, mentoring or home study. Many of the technicians currently practicing have the necessary background and experience to successfully complete the exam.

Implementation Strategy

The recommendation is to enact the Body Modification By-law on January 1, 2006 at which time the Tattoo Studio By-law #4653/87 will be repealed.

This implementation strategy will:

- Provide inspectors time to work with operators to identify necessary improvements to their facility, equipment, and practices.
- Provide time for businesses to make the necessary structural changes to their facility as required.
- Provide time for the development of several certification exams.
- Provide time for body modification technicians to receive certification.
- Permit time for requisite staff training to occur related to the new by-law and its application.

Communication Strategy

Since there are a relatively small number of businesses affected directly, a targeted strategy will be most effective. An information letter will be sent to each business to advise them of the impending new legislation, provide them with a copy of the new by-law, and invite them to an information session where they may clarify any questions directly with civic administration. This session will be scheduled well in advance of the date the by-law becomes effective so that the industry will have the information they require to make any necessary changes.

The Senior Public Health Inspector will be the main contact for the industry to ensure consistency in how queries are addressed and to provide leadership to City and Provincial staff in the implementation of the new by-law.

Financial Impact Statement

Date: February 18, 2005

Project Name:
Proposed Body Modification By-Law

First Year of Program 2006

	2006	2007	2008	2009	2010
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
External	-	-	-	-	-
Grants (Identify)	-	-	-	-	-
Reserves, Equity, Surplus, Other	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	(14,831)	-	-	-	-
Net Cost/(Benefit)	$ 14,831	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	14,831	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments:

The proposed license fees will offset the City's administrative and enforcement costs related to this by-law.

"Original signed by"
Cindy Fernandes, B. Comm (Hon), CMA
Acting Manager of Finance & Administrative Services

IN PREPARING THIS REPORT THERE WAS CONSULTATION WITH, AND CONCURRENCE BY:

Environmental Health Services

License Branch

Legal Services

THIS REPORT SUBMITTED BY:

Community Services Department
Prepared by: Kelly Goldstrand, Manager of Community Resource, Protection & Safety Services
File No.