

1978

c 17 The Municipal Amendment Act, 1978 (No. 1)

Ontario

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CHAPTER 17

An Act to amend The Municipal Act*Assented to May 8th, 1978*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 2 of section 368*a* of *The Municipal Act*, s. 368*a* (2), re-enacted being chapter 284 of the Revised Statutes of Ontario, 1970, as enacted by the Statutes of Ontario, 1975, chapter 56, section 8, is repealed and the following substituted therefor:

(2) A by-law passed under this section may provide for regulating the placement, construction, size, nature and character of signs, advertising, and advertising devices, including any printed matter, oral or other communication or thing, posted or used for the purpose of promoting body-rub parlours or for the prohibition of such signs, advertising, or advertising devices. Signs, advertising, etc.

- (2) Subsection 3 of the said section 368*a* is amended by adding at the commencement thereof "Notwithstanding subsection 6 of section 246". s. 368*a* (3), amended

- (3) The said section 368*a* is amended by adding thereto the following subsections: s. 368*a*, amended

(5*a*) A by-law passed under this section may prohibit any person carrying on or engaged in the trade, calling, business or occupation for which a licence is required under this section from permitting any person under the age of eighteen years to enter or remain in the body-rub parlour or any part thereof. Age restriction

(5*b*) For the purpose of any prosecution or proceeding under a by-law passed under this section, the holding out to the public that services described in this section are provided in premises or any part thereof, is admissible in evidence as *prima facie* proof that the premises or part thereof is a body-rub parlour. *Prima facie* proof

Other
powers not
affected

(5c) Nothing in this section affects the power that may be exercised by a municipality under this or any other general or special Act to license, regulate or govern any other trade, calling, business or occupation.

s. 368b,
enacted

2. The said Act is amended by adding thereto the following section:

Licensing,
regulating,
etc.
adult enter-
tainment
parlours

368b.—(1) By-laws may be passed by the councils of all municipalities for licensing, regulating, governing, classifying and inspecting adult entertainment parlours or any class or classes thereof and for revoking or suspending any such licence and for limiting the number of such licences to be granted, in accordance with subsection 3.

Signs,
advertising,
etc

(2) A by-law passed under this section may provide for regulating the placement, construction, size, nature and character of signs, advertising, and advertising devices, including any printed matter, oral or other communication or thing, posted or used for the purpose of promoting adult entertainment parlours or any class or classes thereof or for the prohibition of such signs, advertising or advertising devices.

Defined
areas,
limitation
on numbers

(3) Notwithstanding subsection 6 of section 246, a by-law passed under this section may define the area or areas of the municipality in which adult entertainment parlours or any class or classes thereof may or may not operate and may limit the number of licences to be granted in respect of adult entertainment parlours or any class or classes thereof in any such area or areas in which they are permitted.

Construc-
tion and
equipment
of premises

(4) A by-law passed under this section may provide that no premises in which an adult entertainment parlour is located shall be constructed or equipped so as to hinder or prevent the enforcement of the by-law.

Entry

(5) Where a medical officer of health or a public health inspector acting under his direction, or a peace officer, has reason to suspect that a breach of any provision of a by-law passed under this section has occurred in respect of an adult entertainment parlour, he may enter such adult entertainment parlour, at any time of the night or day, for purposes of carrying out the enforcement of a by-law passed under this section.

Hours of
operation

(6) Notwithstanding subsection 2a of section 246 and section 355, a by-law passed under this section may regulate the hours of operation of adult entertainment parlours or any class or classes thereof.

(7) A by-law passed under this section may prohibit any person carrying on or engaged in the trade, calling, business or occupation for which a licence is required under this section from permitting any person under the age of eighteen years to enter or remain in the adult entertainment parlour or any part thereof.

Age
restriction

(8) By-laws passed under this section do not apply to premises or trades, callings, businesses or occupations carried on in premises licensed under *The Theatres Act* or licensed under *The Liquor Licence Act, 1975* or licensed under a by-law passed under section 368a of this Act.

Non-
application
of by-laws
R.S.O. 1970,
c. 439
1975, c. 40

(9) In this section,

Interpre-
tation

- (a) "adult entertainment parlour" means any premises or part thereof in which is provided, in pursuance of a trade, calling, business or occupation, goods or services appealing to or designed to appeal to erotic or sexual appetites or inclinations;
- (b) "goods" includes books, magazines, pictures, slides, film, phonograph records, prerecorded magnetic tape and any other reading, viewing or listening matter;
- (c) "to provide" when used in relation to goods includes to sell, offer to sell or display for sale, by retail or otherwise such goods, and "providing" and "provision" have corresponding meanings;
- (d) "to provide" when used in relation to services includes to furnish, perform, solicit, or give such services and "providing" and "provision" have corresponding meanings;
- (e) "services" includes activities, facilities, performances, exhibitions, viewings and encounters;
- (f) "services designed to appeal to erotic or sexual appetites or inclinations" includes,
 - (i) services of which a principal feature or characteristic is the nudity or partial nudity of any person,
 - (ii) services in respect of which the word "nude", "naked", "topless", "bottomless", "sexy" or any other word or any picture, symbol or representation having like meaning or implication is used in any advertisement.

*Prima
facie
proof*

(10) For the purpose of any prosecution or proceeding under a by-law passed under this section, the holding out to the public that goods or services described in this section are provided in premises, or any part thereof, is admissible in evidence as *prima facie* proof that the premises or part thereof is an adult entertainment parlour.

*Other
powers not
affected*

(11) Nothing in this section affects the power that may be exercised by a municipality under this or any other general or special Act to license, regulate or govern any other trade, calling, business or occupation.

*ss. 466a,
470a, 470b,
enacted*

3. The said Act is further amended by adding thereto the following sections:

*Statement
of clerk,
etc., as to
licensing or
non-
licensing*

466a. For the purpose of any prosecution or proceeding under a by-law for licensing, regulating, governing, classifying or inspecting any trade, calling, business or occupation, a statement as to the licensing or non-licensing of any premises or person in respect of any trade, calling, business or occupation, purporting to be signed by the clerk of a municipality or of a regional or metropolitan municipality or by the chief administrative officer of a board of commissioners of police or of a licensing commission, is, without proof of the office or signature of the said clerk or officer, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in such prosecution or proceeding.

Offence

470a.—(1) A by-law passed under section 368a or 368b may provide that every person who contravenes the by-law, and every director or officer of a corporation who concurs in such contravention by the corporation, is guilty of an offence and on summary conviction is liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year, or to both.

*Corpora-
tion,
maximum
penalty*

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed on the corporation is \$25,000 and not as provided therein.

*Order
closing
premises*

470b.—(1) Where a person is convicted of carrying on or engaging in, on, in or in respect of any premises or part thereof, a trade, calling, business or occupation, without a licence required by a by-law passed under section 368a or 368b, the court shall order that the premises or part thereof be closed to any use for any period not exceeding two years.

Idem

(2) Where a person is convicted of a contravention of a by-law passed under section 368a or 368b, other than

carrying on or engaging in a trade, calling, business or occupation without a licence so to do, and the court decides that the owner or other person occupying the premises or part thereof in respect of which the conviction was made knew or ought to have known of the conduct which formed the subject-matter of the conviction or of any pattern of similar conduct, the court may order that the premises or part thereof be closed to any use for any period not exceeding two years.

(3) Upon the application by originating notice of motion of any person who has an interest in the premises ordered closed under subsection 1 or 2 and upon, Suspension of closing order

(a) being satisfied that the use to which the premises will be put will not be in contravention of any by-law passed under section 368*a* or 368*b*; and

(b) the posting by the applicant of a cash bond in the sum of \$10,000 or such greater sum as the court determines, for such term as the court determines, for the purpose of assuring that the premises will not be used in contravention of any such by-law,

the court may make an order suspending any order made under subsection 1 or 2 for such period and upon such conditions as are specified by the court.

(4) Where, upon application brought by originating notice of motion, the court is satisfied that, Discharge of closing order

(a) there has been or will be a *bona fide* change in effective ownership of the premises subsequent to the commission of an offence described in subsection 1 or 2; and

(b) the new owner satisfies the court that he can ensure that there will be no contravention of any by-law passed under section 368*a* or 368*b*,

the court may discharge an order made under subsection 1 or 2.

(5) Where an order is made under subsection 1 or 2, the police force responsible for policing in the municipality or regional or metropolitan municipality, shall bar entry to all entrances to the premises or part or parts thereof named in the order until the order has been suspended or discharged pursuant to this section. Barring of entry

Forfeiture
of bond

(6) Where an order made under subsection 1 or 2 is suspended under subsection 3 and a person is thereafter convicted of an offence for contravention of a by-law passed under section 368*a* or 368*b* in respect of the premises or part thereof referred to in the order, a judge of the county or district court may, upon summary application, order the forfeiture of the bond and the payment to the Crown of the proceeds and may order that the suspension of the order be lifted and that the order be reinstated.

No appeal

(7) No appeal lies from an order made under subsection 6.

Service of
notice

(8) The municipality or metropolitan or regional municipality which passed a by-law described in subsection 1 or 2, the contravention of which was the basis for an order made under the provisions of either such subsection, is a party to any proceedings instituted under subsection 3, 4 or 6 in respect of such order, and shall be served in accordance with the rules of the court with a copy of the notice initiating the proceedings.

Where
by-law
deemed
passed by
council

(9) For the purposes of subsection 8, where the by-law under which the conviction was made was passed by a board of commissioners of police or by a licensing commission for a municipality, or regional or metropolitan municipality, as the case may be, the by-law shall be deemed to have been passed by the council of the municipality or regional or metropolitan municipality, as the case may be.

Application
for sus-
pension or
discharge of
closing
order

(10) Where an appeal is taken from an order made under subsection 1 or 2 or from a conviction in respect of which the order was made, the appellant may apply under subsection 3 for an order suspending the order made under subsection 1 or 2 until the disposition of the matter under appeal, or any person may apply under subsection 4 for a discharge of the order, but the fact that such an appeal is commenced does not stay the order.

Term of
closing
order

(11) An order made under subsection 1 or 2 shall take effect upon the pronouncement thereof and shall remain in effect during the term of the order, except to the extent that it is suspended pursuant to subsection 3 or until it is discharged pursuant to subsection 4.

Description
of premises

(12) The description of any premises or part thereof affected by an order made under subsection 1 or 2 shall be sufficiently made in such order by reference to the municipal address of such premises.

(13) An order made under subsection 1 or 2 may be registered in the land registry office in which the title to the place described in the order is recorded. ^{Registration}

(14) In subsections 1 and 2, "court" means a "summary conviction court" or an "appeal court" as defined by *The Summary Convictions Act*, and in subsections 3 and 4, "court" means the county or district court of the county or district in which the premises are situate. ^{Interpretation}
^{R.S.O. 1970, c. 450}

4. This Act comes into force on the day it receives Royal Assent. ^{Commencement}
5. The short title of this Act is *The Municipal Amendment Act, 1978*. ^{Short title}

