Bylaws and Brothels: An analysis of Toronto’s adult entertainment governance strategy

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EXECUTIVE SUMMARY

Planning for the adult entertainment and sex industry is incredibly controversial. Issues of morality, safety, and health all play major roles on where adult entertainment and sex establishments should be located in cities. Given the municipal government’s role in land-use planning it holds strategic position to influence where legal bawdy-houses (brothels) are located. Municipalities have taken a variety of approaches to regulating the location of adult entertainment establishments. As more jurisdictions legalize brothels, municipalities will need to ensure that these establishments are located in the optimal location to ensure safety and security for the workers, their patrons, and the general public.

While it is anticipated that this report will generate recommendations applicable to many municipalities across Canada, it will focus on the City of Toronto’s adult entertainment and sex industry governance strategy. This report will present and analyse the City of Toronto’s current governance practices as they pertain to legal adult entertainment establishments. Such practices include the review of bylaws, business licensing processes and procedures, and legal regulations governing adult entertainment businesses in Toronto. This report will make recommendations on how the governance tools and regulations can be improved to include brothels and will propose strategies for implementing proposed regulations.

Background
Prior to analysing how Toronto’s adult entertainment governance tools can be improved and modified to incorporate brothels, they must understand how they are situated in the realm of adult entertainment and the sex industry. In order to understand the public’s contention with brothels they must be placed in the context of other adult entertainment establishments and understand
There are differences between brothels and other adult entertainment businesses. At the core of the adult entertainment hierarchy is “laddering” (Cameron, 2004). Laddering refers to the classification of types of adult entertainment according to different hierarchy. For example a society ranks establishment according to perceived social stigma and the level of human contact that is involved. The example Cameron uses is an adult magazine shop involves much less human contact as compared to visiting a prostitute (Cameron, 2004).

Officially, brothels are illegal in Canada; however it is widely known that brothels operate “underground” or under aliases. These establishments are generally inconspicuous in nature in order to not draw attention to the safety and discretion of both the workers and patrons. In Toronto, establishments operating under the licensing of “Body Rub Parlours” or “Holistic Centers” established in the city’s licensing parameters, are not policed but have been known to operate as an illegal sex industry establishment.

However, in March 2012 the Court of Appeal for Ontario was asked to address three provisions of Criminal Code, R.S.C. 1985, c. C-46, known as “the Bedford case”. The respondents argued that the provisions deprive them of their right to life, liberty and security of the person as protected under s. 7 of the Canadian Charter of Rights and Freedoms. The respondents also argued that the communicating provision violates the guarantee of freedom of expression covered under s. 2(b) of the Charter.
The Court of Appeal for Ontario held that the Criminal Code provisions are unconstitutional and must be struck down because they do not accord with the principles of fundamental justice enshrined in s. 7 of the Canadian Charter. In April 2012, the Federal Government of Canada launched an appeal to the Supreme Court of Canada on the Court of Appeal for Ontario’s decision. The hearing is set for early 2013.

Findings
The findings of this report were derived from a variety of sources and methods of data collection: a literature review of adult entertainment zoning strategies; a review of international examples drawn from brothel zoning approaches in Sydney, Brisbane, and Auckland, a policy review of Toronto’s bylaws and licensing processes and interviews with two informants.

The literature review outlines ways in which municipalities have used a variety of zoning techniques to control where adult businesses operate. The review highlights the history of the zoning of the sex industry, examining the three different approaches: red light districts, placing businesses at the city periphery, and scattering businesses throughout the city. Some cities have taken the approach of grouping similar adult entertainment businesses in a concentrated district. Others have zoned so that adult entertainment establishments are located at the periphery of the city in industrial areas. Municipalities have also taken the approach of scattering adult businesses throughout the city with minimal distance restrictions from institutions such as schools and places of worship.

The review of international examples introduced a number of policy and governance practices that can potentially be adopted by Toronto, pending the decriminalization of brothels in Canada. Sydney (Australia) introduced a new tool
that accompanies the municipal bylaws and licensing process, the Adult Entertainment and Sex Industry Premises Development Control Plan (2006). The tool represents a comprehensive document that covers all elements of governing the sex industry in the city of Sydney. Locational restrictions, internal and external design standards, operational requirements, and health and safety standards are all detailed in a single document that serves to protect owners, employees, and patrons of a variety of adult entertainment and sex industry establishments.

Brisbane (Australia) highlighted the importance of a common governance structure and common definition across jurisdictions of the sex industry. A state-wide body, the Prostitution Licensing Authority, defines the regulations for an entire jurisdiction, allowing for slight variance within certain municipalities. The common definitions and regulations enables state officials, police, prospective and current establishment owners, and employees to be familiar with the regulations regardless of their location in the state of Queensland. Finally, Auckland (New Zealand) exercises a different locational restriction approach to Sydney and Brisbane. Auckland’s regulations foster a clustered approach to zoning the adult entertainment industry, creating a small “red-light district”.

In the review of Toronto’s adult entertainment bylaws and administrative processes gaps were identified. Interviews with a planner and a sex worker advocate highlighted thoughts on future directions for the inclusion of brothels in land use policy and how the sex industry can be better governed. Although no specific policies are developed for brothels, there are bylaws and regulations that govern other types of sex industry establishments including body rub parlours and strip clubs.

**Recommendations**

The major policy components of the report are: regulatory authority, consultation processes, governance tools, and locational zoning approach. The
recommendations address the identified issues and steps moving forward. The recommendations are intended for the administrators of the governance tools, city planning officials. The political climate must be considered prior to implementation of the recommendations. The recommendations are proposed in a technical manner, however political sensitivity should be exercised when moving to implementation. Additionally, the recommendations are put forward at a strategic level. If decriminalization becomes a reality in Canada, specific regulations included within the recommended governance tools will need to be worked out further with consultation from a wider stakeholder group. The recommendations include:

**Recommendation 1** – Establish common governance tools, definition of sex and adult industry establishments (including brothels) and locational restrictions for all areas of the city. The City of Toronto government should continue to set regulations and manage the tools.

**Recommendation 2** – Establish regulations specific to brothels must be an inclusive process involving relevant stakeholders and should be initiated and led by the municipal authority. Consultation should take place via a variety of methods deemed necessary by a working group with representation from relevant stakeholders.

**Recommendation 3** – Create a single governance tool that details all aspects of regulation for the adult entertainment and sex industry including locational restrictions, design standards, operational standards, and health and safety regulations.

**Recommendation 4** – Continue to take a scattered approach to zoning adult entertainment and sex industry establishments. Minimal distances between establishments should also continue; however separation distances between establishments and sensitive land uses (places of worship and schools) should be reconsidered.

**Conclusion**

The report has taken an investigative nature and has identified areas for Toronto to develop and improve policies and governance tools related to regulating the sex industry, more specifically inclusion of brothels as a type of sex establishment.
The recommendations of this report are geared to municipal decision makers and aim to begin the discussion and set out a strategic direction on this important and pressing planning topic. It is also important, however, that the political climate is considered prior to implementation of any of the recommendations outlined in this report. It is imperative for the safety of the community, sex workers, and their clients that municipalities begin this policy discussion now. It is clear that, although not at the forefront of municipal policy-makers, this topic is of interest.

Future research can further examine specific regulations relating to brothel location, managerial/operational standards, design guidelines, and health and safety regulations. Any one of the above mentioned areas can be investigated and recommendations about the specific regulations can be an outcome of the research. Additionally, if brothels are decriminalized and regulations have been put in place by municipalities, research can take place in studying the impact of these regulations and their success.
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1. INTRODUCTION
Throughout history, governments around the world have debated the legalization of prostitution and the associated repercussions. Each jurisdiction has a different take on legality and morality of the adult entertainment industry as a whole, passing laws and legislation of varying restriction. Some jurisdictions, such as New South Wales and Queensland, Australia and New Zealand have chosen to either license or decriminalize and regulate certain aspects of prostitution. Others have criminalized the purchase of sex, but not the sale of it. In Canada, prostitution is not illegal however the Criminal Code indirectly restricts the practice of prostitution.

Planning for the adult entertainment and sex industry is incredibly controversial. Issues of morality, safety, and health all play major roles on where adult entertainment and sex establishments should be located in cities. Given the municipal government’s role in land-use planning it is in a prime strategic position to influence where decriminalized bawdy-houses (brothels) are located. Municipalities have taken a variety of approaches to regulating the location of adult entertainment establishments. As more jurisdictions legalize brothels, municipalities will need to ensure that these establishments are located in the optimal location to ensure safety and security for the workers, their patrons, and the general public.

The importance of stakeholder consultation is all the more necessary for a contentious topic such as brothel placement. It is imperative to include stakeholders from all sides of the discussion throughout the governance and

**Definition: Bawdy-house (Brothel):**
A place that is kept or occupied, or resorted to by one or more persons, for the purpose of prostitution or the practice of acts of indecency (Canadian Criminal Code, 1985)
policy development process. The discussion surrounding brothel placement should be inclusionary and must not take place behind closed doors. The goal of this report is to begin the discussion in an open forum to pave the way for appropriate placement of this type of sex industry establishment.

While it is anticipated that this report will generate findings applicable to many municipalities across Canada, it will focus on the City of Toronto’s adult entertainment and sex industry governance strategy. This report will present and analyse the City of Toronto’s current governance practices as they pertain to legal adult entertainment establishments. Such practices include the review of bylaws, business licensing processes and procedures, and legal regulations governing adult entertainment businesses in Toronto. This report will make recommendations on how the governance tools and regulations can be improved to include brothels and will propose strategies for the implementation of proposed regulations.

1.1 Defining the Problem
A decision by the Ontario Court of Appeals in March 2012 deemed provincial legislation outlawing brothels unconstitutional. The decision is set to be appealed to the Supreme Court of Canada in 2013, by the Canadian Federal Government. Consequently, Canadian municipalities may be faced with the introduction of a new land use into the planning environment. In anticipation for this historic hearing it is important that municipalities examine their land use policies and tools that govern and regulate the adult entertainment and sex industry, in particular, how brothel establishments can be incorporated into these regulations.
1.2 Research Questions
The primary research question that will be addressed in this report is: if brothels are to become decriminalized in Canada, what governance tools can cities use to regulate the placement of brothels?

Supplementary questions include:
• What regulation elements should be included in the governance tools?
• How can the governance tools and regulations be implemented in the City of Toronto?

1.3 Report Structure
The report is presented in eight chapters: an introduction to the research methods undertaken throughout the research report (Chapter 2). Chapter three and four outline the background context of regulating the adult entertainment industry and will analyse how the sex industry has been governed in the past and present practices. The literature review examines the three most common strategies in locating the sex industry. While the international examples highlighted in Chapter five looks specifically at current regulatory practices in three specific jurisdictions. Chapter six reviews the adult entertainment industry in the Toronto context, examining Toronto’s current governance tools and reports on common themes discovered throughout the key informant interview process. Finally, Chapter seven presents key recommendations derived from the research findings and Chapter eight concludes the findings and offers recommendations for future research.
2. RESEARCH METHODOLOGY

2.1 Description and Rationale
This report study’s how municipal governance tools and regulations can be used to control the placement and associated operational aspects of brothels in the City of Toronto. In order for the scope to be manageable in the limited timeframe of the project specific research methods and limitations have been identified. Selected research methods are qualitative, and a case study approach is being used to analyze best practices. Qualitative methods are often used for a case study approach to research as it best describes the complexity of multiplicity of decisions made by public officials to implement direction (Yin, 2009). The nature of qualitative research allows the researcher to dive deeper into the reasons behind the decision-making and how stakeholders have been or can be affected by these decisions. Because of the vast amount of information generated from qualitative studies, a researcher can be limited to the amount of case studies that can be undertaken. Given this constraint, this report will examine a single case study – Toronto, Ontario. The report will draw on examples from international jurisdictions where brothels are currently decriminalized or licensed to inform recommendations.

In order to gather the data, three different methods will be employed. These methods will be used in order to triangulate the data gathered, ensuring all bases of information are covered in gathering of data (Yin, 2009). The analysis of this data resulted in conclusions and recommendations for the City of Toronto. This chapter will explain the reason for using each methodology and how it was executed. Measures to ensure research integrity are also highlighted in this chapter of the report.
2.1.1 Case Study Method
The essence of a case study is to illustrate a decision or set of decisions, why they were taken, how they were implemented and what was the result (Schramm, 1971). Case study research allows the investigator to understand the real-life phenomena within a current or past context (Yin, 2009). This report will use the case study method to enlighten the reader on the placement of brothels in the urban context as this topic presents an issue with no clear, single set of outcomes at the onset of the research.

The single case study approach will be taken in this report. Toronto, Ontario has been selected as the study area for two reasons. First, Toronto was where legal action was launched in the Attorney General of Canada and Attorney General of Ontario v. Terri Jean Bedford, Amy Lebovitch and Valerie Scott (2012) case (Bedford case), the case that argued that the Criminal Code violates a sex worker’s right to life, liberty, and security under the Charter. Second, Toronto is Canada’s most populous municipality, and the reality of brothels would be much more imminent if the Supreme Court of Canada ruling is to be in favour of decriminalizing brothels in 2013. More specifically, the research report investigates Toronto’s current (2013) governance tools on the adult entertainment industry.

2.1.2 Research Methodology
The research is conducted using three methods: a review of relevant literature and analysis of international examples, a review of municipal planning policies, and semi-structured interviews with a planner and a sex worker advocacy group in order to gather different perspectives on this topical issue. Each method is outlined below and represented visually in Figure 1 – Research Protocol:
**Literature Review**
The purpose of the literature review is to contextualize brothels in the realm of the adult entertainment industry, and how they pertain to land use planning. Much academic literature first defines adult entertainment establishments and zoning strategies to regulate and control the location of these businesses; academics, politicians, and society as a whole debate this definition for decades (Ryder, 2004). As a result, a lot of literature has been produced since the 1960s (Hubbard, Matthews, Scoular, & Agustin, 2008). By conducting a literature review prior to analyzing specific case studies, researchers are able to apply academic theory to their findings (Greek & Thompson, 1992). The literature is integral to situating how businesses similar to brothels have been governed in the past.

**Municipal Policy and International Example Review**
The second stage of the research report was to conduct a thorough municipal policy review and a synopsis of international examples in governing the adult entertainment industry. This consisted of a review of Toronto’s bylaws and licensing processes related to the placement of adult entertainment establishments. The policy review provided content to inform interviews that took place as the next phase of the research. As brothels are currently illegal no documentation includes this type of establishment as adult entertainment, this is where international examples become relevant for the report.
recommendations. The example review aimed to outline the various policy approaches Toronto should consider when tackling the brothel issue.

Stakeholder Interviews
The final research component completed before the analysis phase was two semi-structured interviews with key stakeholders involved with this issue. The two main stakeholders identified were a planning professional and a sex worker advocacy group. These stakeholders were selected because of their involvement in shaping the governance tools in the future. A planning professional was selected because of their expertise of zoning and regulation from a planning perspective. The Planning consultant does not work for a municipal government, which represents a limitation on the governance and regulatory development process of the regulations. Conversely, the outside planning perspective on the governance issues that face a municipality is valuable in generating fresh approaches and ideas on tackling such a contentious issue. A sex worker advocate was interviewed to gain a better understanding of sex workers’ needs and expectations on the municipal governance of brothels. The involvement of the sex worker advocate is beneficial to the research as the perspective from who the regulations impact is incredibly useful in developing fair and sustainable policies for long-term governance. One interview took place with each stakeholder.

Interviews were used primarily for verification of research discovered in the literature and document review report components. However, inevitably important perspectives on direction were also gathered throughout the interview process. All Queen's University’s guidelines for research ethics were complied with when involving outside participants in this study including protection of their identity where requested. Sample questions are provided in Appendix – Sample Interview Questions.
2.2 Limitations of the Research
To ensure this report was of high academic quality, two considerations were addressed: research validity and reliability.

Construct, internal, and external validity are all key considerations when presenting a research report. Construct validity is defined as identifying correct operational measures for the concepts being studied (Yin, 2009). In order to address this type of validity the report triangulates the sources of evidence. Internal validity refers to the researcher seeking to establish a causal relationship, where certain conditions are believed to lead to other conditions (Yin, 2009). The report aims to increase internal validity through building explanations during the data analysis phase of the research. Finally external validity, or generalizability is defined as stating the domain to which a study’s findings can be generalized (Yin, 2009). As this research report is a single-case study, the literature review and examination of international examples will be used as a tactic to ensure the findings are generalizable across other Canadian municipalities.

Research reliability is defined by Yin as demonstrating the operations of the study can be repeated with the same results (Yin, 2009). The use of case study protocol will aid in ensuring the results of the study are reliable. Additionally, studies evaluating similar research topics, namely Andrew Prior’s (2008) study evaluating the regulation of gay bathhouses in Sydney, Australia followed similar research methodology as what is being undertaken in this report.

In order to mitigate researcher bias the report draws on multiple sources. By drawing on multiple sources the research demonstrates transparency of experience and knowledge gained throughout the research process. The triangulation of the data ensured the researcher’s point of view was not the
only perspective taken into account. The perspectives of a planner and sex worker advocate were the two main perspectives used to balance the differing points of view. The research could have benefited from a legal perspective from either a law enforcement officer or lawyer, however because of the time constraints of the report this was unable to take place.
3. BROTHELS IN A CANADIAN CONTEXT

3.1 Brothels as an Adult Entertainment Establishment

Prior to analysing how Toronto’s adult entertainment governance tools can be improved and modified to incorporate brothels they must be situated in the realm of adult entertainment and sex industry. In order to understand the public’s contention with brothels they must be placed in the context of other adult entertainment establishments and understand differences between brothels and other adult entertainment and sex-related businesses.

There are differences between brothels and other adult entertainment businesses. At the core of the adult entertainment hierarchy is “laddering” (Cameron, 2004). Laddering refers to the classification of types of adult entertainment according to different hierarchy. For example a society ranks establishments according to perceived social stigma and the level of human contact that is involved. The example Cameron uses is an adult magazine shop involves much less human contact as compared to visiting a prostitute (Cameron, 2004).

Figure 2 – Adult Entertainment Establishment Hierarchy illustrates a continuum in which adult establishments exist. This continuum is similar to that described by Cameron. Two major variables determine where on the continuum a type of establishment will sit; these variables are moral contention and health and

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**Definition: Adult Entertainment Establishment:** Any premises or part of in which is provided services appealing to or designated to appeal to erotic or sexual appetites or inclinations (City of Toronto, 2000)

**Definition: Sex Industry Establishment:** Any premises where sexual acts including touching, oral, vaginal, or anal sex, takes place
safety concerns (usually associated with human contact). On the lower step of the hierarchy sits Triple-X or XXX shops that sell products such as sex toys, adult videos, and other sex-related merchandise are less morally contentious (or more commonly accepted in society). These establishments have been part of society for many years, and are considered to be adult entertainment establishments. Although not all people agree with the existence of these types of establishments their prevalence in society is far more accepted than any other adult entertainment establishment. Evidence of this can be seen through the sale of adult magazines in gas stations and other magazine shops, therefore not being limited to XXX shops.

Moving up the steps of the hierarchy, establishments become increasingly morally contentious and there is a perceived increase in health and safety risks.
As establishments become increasingly morally contentious and are perceived to be less safe there is one common characteristic; the increased probability of human contact (i.e. sex on the premises) which involves the exchange of money for sex, and can also be considered as sex industry establishments. For example, strip clubs that are located in the middle of the hierarchy are more morally contentious than XXX shops or adult movie theatres because of the element of human interaction element associated with strip clubs (but sex is not usually performed on the premises). Because of this human interaction the health and safety concerns for the workers and patrons become an issue, more so than in a XXX shop.

Brothels sit at the top of the hierarchy. The decriminalization of brothels contributes to the morality debate. Additionally, brothels are the only establishment where there is a direct exchange of money for sexual services. This differs from bathhouses and sex clubs as in these instances both parties engaging in the sexual act are paying for admission to the establishment. It stands to reason that, if a business permits sex on the premises then risk of sexually transmitted infections (STIs) and HIV increases. Moreover, personal safety becomes an issue at brothels, as there is a power exchange in the act of paying for sex. The risk of STIs is high at an establishment such as a bathhouse or sex club however the variable of one individual paying another individual for sex does not exist at these establishments. It should be noted that the safety and health risks could be considerably decreased by providing safer sex education to employees and the presence of appropriate security measures within brothels (Pisani, 2008).

3.2 Current Legal Status of Brothels in Toronto, Canada

Officially, brothels are illegal in Canada. However it is widely known that in some municipalities brothels operate “underground” or under aliases. These
establishments are generally inconspicuous in nature in order to not draw attention for the safety and discretion of both the workers and patrons. In Toronto, establishments operating under the licensing of “Body Rub Parlours” or “Holistic Centers” established in the city’s licensing parameters, are policed on a complaint driven basis and have been known to operate as an illegal sex industry establishment.

Holistic Health Centre establishments are businesses that offer services of any modality used as a tool for therapeutic and wellness purposes. The services they offer may generally be considered alternative forms of health related services, which are available to the general public. The services offered are by persons who are not licensed or registered under Province of Ontario legislation (City of Toronto, 2013). While there are legitimate operations, this business license type may bypass many of the restrictions that adult entertainment type uses must abide by, including zoning restrictions.

The former Municipality of Metropolitan Toronto originally enacted the licensing bylaws to regulate and require licenses for adult entertainment parlours and body-rub parlours. A maximum of 63 adult entertainment parlour licenses may be issued. As of October 2012 there were only 16 properties in the City licensed for as an adult entertainment parlour. The maximum number of body-rub parlour

**Definition: Body-Rub Parlour:** Includes any premises where a body-rub (kneading, manipulating, rubbing, touching of a person’s body not including medical or therapeutic treatment) is performed (City of Toronto, 2000).

**Definition: Holistic Centers:** Any premises which holistic services (body-rubs, unlicensed medical or therapeutic treatment, or traditional Chinese medicine) are performed (City of Toronto, 2000).
licenses that may be issued is 25. All 25 licenses have been issued since the former Municipality of Metropolitan Toronto enacted the by-law in 1975. There are 422 licensed holistic centers in the City and 2,378 licensed holistic practitioners. These licenses can be acquired only if the zoning permits the use (City of Toronto, 2013).

Operators intent on establishing illegal operations that offer sexual services have obtained holistic center licenses to give their operations a public sense of legitimacy even though they provide illegal services. The Report “Licensing Strategy to Deal With Illegal Body Rub Activity in Licensed Premises” from Municipal Licensing and Standards considered by Council in July 2005 estimates that about half of the holistic centers were subject of complaints and investigations resulting from the offering of sexual services. The report estimates that the number of unlicensed premises offering sexual services is about equal to the number of holistic centers (City of Toronto, 2013).

However, in March 2012 the Court of Appeal for Ontario was asked to address three provisions of Criminal Code, R.S.C. 1985, c. C-46, known as “the Bedford case”. The provisions include:

1. Section 210, prohibits the operation of common bawdy-houses. This prevents prostitutes from offering their services out of fixed indoor locations such as brothels, or even their own homes;
2. Section 212(1)(j), which prohibits living on the avails of prostitution. This prevents anyone, including but not limited to pimps, from profiting from another’s prostitution; and
3. Section 213(1)(c), which prohibits communicating for the purpose of prostitution in public. This prevents prostitutes from offering their services in public and particularly on the streets.

(Canada (Attorney General) v. Bedford, 2012)

The respondents argued that the above-mentioned provisions deprive sex workers of their right to life, liberty and security of the person as protected under s. 7 of the Canadian Charter of Rights and Freedoms. The respondents also argued
that the communicating provision violates the guarantee of freedom of expression covered under s. 2(b) of the Charter. Both arguments were claimed by the respondents to not be justified under s.1 of the Charter (Canada (Attorney General) v. Bedford, 2012):

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society

   (Canadian Charter of Rights and Freedoms, 1985)

The Court of Appeal for Ontario held that the Criminal Code provisions are unconstitutional and must be struck down because they do not accord with the principles of fundamental justice enshrined in s. 7 of the Canadian Charter. The reasoning behind this decision was that the prostitution laws “exacerbate the harm that prostitutes already face by preventing them from taking steps that could enhance their safety” (Canada (Attorney General) v. Bedford, 2012). In this instance the ruling of the Court will allow decriminalized brothels in Ontario.

In April 2012, the Federal Government of Canada launched an appeal to the Supreme Court of Canada on the Court of Appeal for Ontario’s decision. The hearing is set for early 2013.
4. ZONING THE SEX INDUSTRY
Adult entertainment establishments are controversial businesses in cities around the world. Municipalities have used a variety of zoning techniques to control where adult businesses operate. Some cities have taken the approach of grouping similar adult entertainment businesses in a concentrated district. Others have zoned so that adult entertainment establishments are on the periphery of the city in industrial areas. Municipalities have also taken the approach of scattering adult businesses throughout the city with minimal distance restrictions from institutions such as schools and places of worship. These three techniques are illustrated in Figure 3 – Adult Entertainment Zoning Models. This chapter outlines the history of the zoning of the sex industry, examining the three different approaches: red light districts, placement at the city periphery, and scattering businesses throughout the city.

4.1 Red Light Districts (Clustering) Model
Dating back to before the 19th century adult entertainment districts (also known as vice districts or red light districts) have been features of many cities throughout the world (Ryder, 2004). These districts are often distinct, well known
such as the Tenderloin District in San Francisco or Times Square in New York City (Shumsky & Springer, 1981). In many cities (including San Francisco) adult entertainment districts can be found in a number of locations across the city: alongside the business core, at gateways to the city, such as alongside railway stations or bus terminals, and near waterfronts (Ryder, 2004).

Many researchers have argued that modern day adult entertainment districts have been relegated to marginal areas due to social stigma and automatically relate the areas with criminals and drug addicts (Papayanis, 2000). This type of stigma led to Mayor Rudolph Giuliani’s controversial campaign in the mid-1990’s where he introduced dramatic new zoning regulations to restrict sex-oriented businesses to a small number of relatively isolated non-residential neighbourhoods only perpetuating the social stigma attached to these types of businesses (Papayanis, 2000).

In some instances, the sex industry can play a key role in some city’s economy’s where demand for pornography, strip clubs, escorts, and sex tours can draw affluent consumers to the area (Bernstein, 2001). The most notable example of this is Amsterdam. With this in mind, business licencing is another tool governments have used in the past to either restrict or promote the adult entertainment industry within an urban space (Hubbard, 2012). Studies analysing the restriction of licencing sex-industry establishments are limited, however the ones that do exist suggest that while there is a presumption towards allowing sex-related businesses to open, officials will consider factors such as likely clientele, the good character of the owner/manager, and the
nature of the entertainment prior to issuing the licence (Hubbard, Matthews, Scoular, & Agustin, 2008).

Controversy surrounding red light districts is often rooted in the secondary effects and cumulative impacts on neighbourhoods surrounding adult entertainment premises (Papayanis, 2000). The effects of formal land-use planning processes provides often conflicting discourses about secondary impacts and cumulative effects (Kerkin, 2004). For example, the (perceived or assumed) increase in crime because of a high concentration of adult entertainment establishments is a negative secondary effect, whereas, safer conditions for those individuals involved in the sex industry is a positive secondary effect. These impacts and effects are considered and applied within the land-use planning process to create order in urban space with the understanding that sex industry establishments can negatively affect other land uses nearby, such as schools and churches (Ryder, 2004).

4.2 City Periphery Model
According to Andrew Ryder (2004), in the late 1990's/early 2000's there was a decrease in traditional adult entertainment districts in many North American cities. Ryder highlights the

**Definition: Secondary Effects:** The effects that are caused by a particular land use that emerges at a later date, but are believed to be reasonably foreseeable (Prior, 2008).

**Definition: Cumulative Impacts:** The impacts that occur through persistent additions or losses of the same land uses within a particular locality, and through the compounding effects as a result of the coming together of two of more secondary effects (Prior, 2008).

**Definition: City Periphery Model:** Locating adult entertainment and sex industry establishments at the edge of the city limits, often in industrial zoned areas.
increased policing, new land use regulations, and the escalation of enforcement of existing regulations have attributed to the decline (Ryder, 2004).

Scholars have long considered the ways in which land-use planning processes use zoning and land-use regulations to manage and control presence of sexualities, such as prostitution and homosexuality in Western cities (Prior, 2008). Often for political reasons sex-related businesses have been strategically located in areas that will excite the least opposition (Hubbard, Matthews, Scoular, & Agustin, 2008), such as deserted areas on the city’s periphery. These areas are often industrial areas that are utilized primarily during regular business hours. As Ryder points out, this is accomplished through a variety of ‘command-and-control’ techniques such as licensing, zoning, and planning powers (Ryder, 2004).

A large driver of relegating adult entertainment establishments to the periphery of cities is the geographical debates concerning NIMBYism (Greek & Thompson, 1992). Proponents of NIMBYism are often middle-class residents and property groups who are opposed to opening, in this context sex-related businesses, by associating fears of bodily impurity and uncleanness onto consumers of such venues (Greek & Thompson, 1992). The emergence of new spaces for sexual encounters can trigger moral approbation and anxiety in some instances and is the source for NIMBY-style campaigns against sex-
related businesses (Hubbard, Matthews, Scoular, & Agustin, 2008). The moral distaste for sex industry has large political pull and thus forces these types of businesses to be out of sight from the general public.

In addition to adult entertainment establishment location on city peripheries and industrial zones minimizing the potential for offending citizens, or causing secondary effects the city periphery has less incompatibility issues with other land uses. City peripheries are often considered more homogenous, single purpose areas, thus incompatibilities with “sensitive land uses” are less likely (Schreyer, 2012).

4.3 Scattering Model
Purposely scattering adult entertainment establishments throughout the city is a relatively new strategy employed by cities. In order to implement this type of zoning, cities commonly place limits on the distance between establishments and sensitive land uses and/or other similar types of businesses. In the United States, zoning ordinances have been widely used since the 1970s to prevent a variety of adult businesses from opening in particular locales. In particular, this zoning prohibits sex-related businesses in residential areas and near schools and religious facilities, and restricts them to locating in industrial areas (Kelly & Cooper, 2000), by default.

This approach to zoning tries to maximize the number of elements that could ensure that businesses are not concentrated in one area. By scattering
establishments throughout the city, municipalities lessen the potential of negative secondary impacts on a single neighbourhood of the city (e.g. potential drug and gang issues and social spatial stigmatization).

Regulations that encourage scattering establishments throughout the city rather than restricting their location to the city periphery also have safety advantages for workers and patrons. Scattering establishments throughout the city can require external design guidelines to ensure the brothels fit and blend in with the surrounding buildings and land uses of the neighbourhoods. By enforcing external building design requirements a municipality can lessen the chance of NIMBYism and community opposition to the existence of the adult entertainment establishment in the neighbourhood.

Creating bylaws and regulations that scatter adult entertainment establishments can be difficult. In Canada, municipalities must ensure that the locational restrictions do not completely zone-out the possibility adult entertainment establishments, as this practice in Canada will be deemed as unconstitutional. For example, in the case of KIS Films Inc. v. Vancouver City, the city passed a by-law that prohibited any theatre within 1,000 feet of a school from showing adult motion pictures between 1 am and 9 pm. The petitioner challenged the by-law on the basis that it infringed upon the petitioner’s right to freedom of expression as guaranteed by s. 2(b) of the Charter of Rights and Freedoms. The city applied for a declaration that its by-law was constitutionally valid, and moved for an injunction to prohibit the petitioner’s operation in contravention of the by-law. The bylaw was found to be constitutionally valid, as it did not completely restrict the applicant’s ability to show adult movies. The applicant was only restricted to do so during certain times of the day and a certain distance from schools. The court also ruled that the city established that the bylaw had an important objective, and that there
existed a reasonable apprehension of harm (KIS Films Inc. v. City of Vancouver, 1992).

As demonstrated through the variety of approaches the various policy and regulation tools satisfy different planning and business factors. The strategies outlined in this section refer to zoning districts that relate where specific uses can be located within the city limits. Design and development standards that are sometimes incorporated into similar tools as the zoning restrictions apply to the development controls over size, scale, massing, lot size, height, and signage. These types of restrictions can be housed in a separate document from the zoning regulations.

The varieties of zoning strategy models each have strengths and weaknesses. A municipality can implement policies and bylaws containing locational restrictions that foster a certain type of development model. When a municipality reflects on adult entertainment and sex industry placement within their cities, factors such as secondary effects, cumulative impacts, and NIMBYism must be considered in order to ensure safety and satisfaction for the neighbourhood, the employees of the establishments, and their patrons.
5. GOVERNING SEX IN CITIES: INTERNATIONAL EXAMPLES

Jurisdictions in Australia and New Zealand have decriminalized or licensed brothels. Since the decriminalization or licensing of brothels, these jurisdictions have implemented governance techniques, policies, and land-use planning instruments to aid in governing where adult entertainment establishments can exist in urban areas. This chapter takes a closer look at the governance tools and regulations used in Sydney, Australia, Brisbane, Australia, and Auckland, New Zealand to regulate brothels. Table 1 – International Examples Summary is located at the end of Chapter 5 and outlines some of the key features of each plan. These examples are useful to develop an understanding of the strengths and weaknesses of the various approaches to zoning for brothels. The examples can be used to inform recommendations for the Toronto context.

5.1 Sydney, Australia

In 1995, the sex industry in New South Wales (NSW) was decriminalized by the Disorderly Houses Amendment Act that allowed for the legal operation of brothels subject to approval under planning laws (University of New South Wales, 2012). The steps to decriminalized prostitution in NSW have resulted in many positive impacts on the health of Sydney’s sex industry (University of New South Wales, 2012). Australia’s largest city, Sydney, has taken measures to institute plans to control not just where the sex industry should reside but how businesses operate. The result of this is City of Sydney’s Adult Entertainment and Sex Industry Premises Development Control Plan (DCP) (2006).

The DCP draws on State guidelines and industry practice of health standards and operational requirements, but mainly outlines the zoning
and bylaw requirements for the placement of all types of adult entertainment businesses, including brothels (City of Sydney, 2006). The main purpose of the DCP is “to provide a framework for the development and operation of adult entertainment and sex industry premises within the City of Sydney Local Government Area” (City of Sydney, 2006). In addition to planning and design controls, the DCP provides health standards for the establishments covered under the DCP as well as a comprehensive approach for development assessment and monitoring of adult entertainment venues (City of Sydney, 2006). The document acts as a “one stop shop” for business owners to understand the regulatory requirements of opening an adult entertainment establishment. Brothels are treated the same as any other adult entertainment establishment in the DCP, with extra regulations regarding the internal design and facilities of the premises and in the Plan of Management document required for operation.

The format of the plan differs immensely from a typical land use bylaw or business licencing procedure. For each element regulated by the DCP (i.e. location, external design, internal design, facility access, and operation) a set of objectives are presented in order to understand the end goal of the controls set out in the document. The information contained in the plan is supplementary to the regulations contained in the regular city bylaws.

Specific regulations regarding location of adult entertainment establishments are covered under Section 3.1 of the plan. The objectives of the appropriate location of adult entertainment establishments include to optimise safety and security of staff and visitors, ensure premises do not have an adverse effect on character of the neighbouring properties, and avoid accumulation of adult entertainment and sex premises (City of
Sydney, 2006). The specific controls include distance regulations similar to that of Toronto, such as:

3.1.2 Controls
(1) ...*must not be located in areas zoned residential, within buildings containing a residential use, or immediately adjacent to or directly opposite land developed for residential purposes.*
(2) ...*must not be located adjacent to or directly opposite a sensitive land use (i.e. day care, primary or secondary schools, churches, parks, playgrounds, or any other place regularly frequented by children)*
(3) ...*must not be located within a radius of 75 meters from an existing, approved adult entertainment or sex industry premises...*

Demonstrated by the controls above, Sydney is taking the zoning approach of scattering adult entertainment businesses throughout the city. The controls are avoiding clustering, but not relegating businesses to the edge of the city.

In addition to locational restrictions the DCP regulated the external design features of an adult entertainment establishment. The design controls aim to ensure the establishment fits with the surrounding properties, maintains safety and privacy for workers and patrons. This is achieved through controls on signage and lighting schemes, architectural character of entrances, and restricting visibility of any internal features of the premises.

Internal design controls, access controls, and operational guidelines of the establishment are distinctive features included in the DCP. Although not directly related to the research questions of this report, regulations controlling these features differentiate brothels from other adult entertainment premises. The controls associated with these components of the plan aid in ensuring the social elements associated with the adult
entertainment industry. The internal design of facilities enables a safer and healthier working environment, enforcing compliance with occupational health and safety regulations. Access controls ensure the sites are accessible to all members of the community. Finally, the plan promotes operation of an adult entertainment premises as fundamental to limiting any detrimental impact on the amenity of the neighbouring premises. For this reason ensuring a Plan of Management (outlined in an appendix of the plan) exists and is followed by the operators.

5.2 Brisbane, Australia

In Queensland brothels are considered licenced (legal), where brothels or individual sex workers can apply to the state for license to operate (University of New South Wales, 2012). Under the Prostitution Act 1999 there are two forms of legal sex work in Queensland:

1. Private work where a single sex worker works alone, but it is an offence to publically solicit for the purposes of prostitution
2. Sex work conducted in a licensed brothel

Any other form of sex work is illegal. This includes unlicensed brothels or parlours, street workers, two sex workers sharing one premises, and out-calls provided by a licensed brothel (Prostitution Licensing Authority, 2009).

The Queensland State government has implemented a governmental authority to oversee the licensing and governance of brothels for the entire state, the Prostitution Licensing Authority (PLA). This form of governance has been seen as a means of excluding “undesirable” persons from the sex industry and of enhancing government control over the number, location, and operation of brothels, critics believe that licensing in this way has not lived up to the expectations (University of New
South Wales, 2012). Statistics released in 2009 by PLA, show that only 205 brothels (less than 10%) have joined the scheme set out by the Authority (Prostitution Licensing Authority, 2009).

The PLA has a comprehensive website with step-by-step, easy to read instructions on how to apply for a brothel license. The website outlines the locational restrictions, business licensing process, health and safety regulations, and operational guidelines.

Similar to other jurisdictions the decision on where a brothel may be located is a matter for the municipal government. However, there are overarching restrictions imposed by the PLA. These include:

Brothel development or license will nor be granted if the proposed establishment:

- is in or within 200 meters of the closest point on any boundary of a primarily residential area or an area approved for residential development or intended to be residential in character; or
- is within 200 meters of the closest point on any boundary of land on which there is a residential building, place of worship, hospital, school, kindergarten or any other facility or place regularly frequented by children for recreational or cultural activities; measured according to the shortest route a person may reasonably or lawfully take, by vehicle or on foot, between the application land and the other land; or
- the application land is within 100m of the closest point on any boundary of land on which there is a residential building, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities, measured in a straight line; or
- has more than five rooms, which are to be used for providing prostitution.

(Prostitution Licensing Authority, 2009)
The above-mentioned restrictions do not prevent possible clustering of businesses or the possibility for a municipality to relegate businesses to industrial areas or the city periphery. Also, it is possible for the local authority of a town with less than 25,000 residents to automatically refuse development applications for brothels, if the local authority has sought and received approval from the Minister to be an exempt town under the Sustainable Planning Act.

In order to establish a brothel an applicant must apply for a business license to the PLA. The applicant is assessed on eligibility and suitability criteria. The application fee for a brothel license is AUD$6,261, AUD$8,156 for the license fee, with an additional cost of AUD$3,262 per extra room (Prostitution Licensing Authority, 2012).

Health and safety regulations are governed by a variety of acts and guidelines. The Prostitution Regulation established in 2000 contains occupational health and safety requirements for brothel licensees. Safety regulations include the requirement of a brothel licensee or approved manager to be on site at all times. Additionally, internal safety design features are outlined. Although not as extensive and specific as those in Sydney the PLA outlines the requirement that each room in the brothel is fitted with a concealed alarm button, appropriate lighting in all rooms and significant signage throughout the brothel promoting safer sex activities on premises.

5.3 Auckland, New Zealand
Prostitution was decriminalized in New Zealand in 2003. Decriminalization is the removal of most of the criminal penalties applying to adult prostitution is based on an essentially pragmatic acceptance that sex work is here and to stay, so priority is given to protecting human rights and public
health (University of New South Wales, 2012). In this instance restriction on
sex work remains, however local government rather than police
administers regulations.

In Auckland, Bylaw 30 – Bylaws and Commercial Sex Premises (2006)
regulates brothels in the city. The bylaws states it's objective is to
“introduce control measures that are designed to manage the potential
impacts of brothels and commercial sex premises on sensitive activities”
(City of Auckland, 2006). The bylaw contains provisions that regulate
brothel location, business licensing system, and regulations regarding signs
and advertising on the location of the brothel.

The Auckland bylaw outlines the locational restrictions and touches on the
standards for signage however the detail is not as exhaustive as that of
Sydney. The bylaw concerns itself with internal design elements of the
establishments, only so far as limited health and safety regulations.

As per the bylaw, brothels are no longer in force, however commercial sex
premises are restricted to operating in certain areas of the city.
Commercial sex premises cannot operate in a residential zone and are
not able to operate in specific precincts of the central city. No minimum
distance restrictions to “sensitive land uses” are enforced. This is a major
difference between the city of Auckland’s governance restrictions and
that of any of the other cities researched. Moreover the restrictions
outlined open the opportunity for city periphery locations and/or
establishment clustering.

Under Bylaw 30 brothels are prohibited from placing signs on the outside
of the building that:
a. Displays any information other than the name of the person who conducts the brothel business or the registered name of the business; or
b. Displays words or images or models which in the opinion of the council are sexually explicit, lewd or otherwise offensive; or
c. Exceeds 1 meter by 0.3 meters in size; or
d. Is illuminated by flashing lights or contains neon lighting; or
e. Is visible from a residential area

(City of Auckland, 2006)

As in other jurisdictions, business licencing is used as a tool to govern the adult entertainment industry in Auckland. In order for a business license to be issued to a brothel, the operator must ensure the premises conform to the locational regulations. Additionally, the premises must comply with the Health Act, Building Act, and Building Regulations.

Finally the bylaw refers to operational, health, and safety requirements. These requirements also help ensure a healthy, clean working environment. The limited bylaw requirements outlined include health standards around education of workers and cleanliness standards.
<table>
<thead>
<tr>
<th>Brothel Legal Status Legislation and/or Bylaw</th>
<th>Sydney, Australia</th>
<th>Brisbane, Australia</th>
<th>Auckland, New Zealand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decriminalized</td>
<td>Licensed</td>
<td>Decriminalized</td>
<td></td>
</tr>
<tr>
<td>Adult Entertainment and Sex Industry Premises Development Control Plan (DCP)</td>
<td>Prostitution Licensing Authority (PLA)</td>
<td>Bylaw 30 – Bylaws and Commercial Sex Premises</td>
<td></td>
</tr>
<tr>
<td>Locational Strategy</td>
<td>Scattered</td>
<td>Scattered</td>
<td>Clustered</td>
</tr>
<tr>
<td>Licensing Criteria</td>
<td>Follows regular development application procedures, same process as any other type of business</td>
<td>Licensee assessed on eligibility and suitability criteria Application, Licensee, and room fees required</td>
<td>Premises must conform to locational, health, and operational criteria Licensing fee required</td>
</tr>
<tr>
<td>Health and Safety Measures</td>
<td>Internal design elements outlined in DCP to ensure safety Compliance with occupational health regulations required</td>
<td>Prostitution Regulation 2000 contains Occupational health and safety requirements Safety requirements include operational guidelines</td>
<td>Limited health and safety requirements outlined include health standards around education of workers and cleanliness standards</td>
</tr>
<tr>
<td>Operational Guidelines</td>
<td>Plan of Management exists and must be followed by the operators (included as appendix of DCP)</td>
<td>Not Available</td>
<td>Not Available</td>
</tr>
<tr>
<td>Other Key Features</td>
<td>External design guidelines to ensure business fits with neighbouring buildings</td>
<td>Brisbane Council adult entertainment bylaws not available, PLA regulations</td>
<td>External signage standards included in the bylaw</td>
</tr>
</tbody>
</table>
6. SEX IN TORONTO: GOVERNANCE REVIEW AND ANALYSIS

The City of Toronto is the case study for this research report. This chapter examines the current tools and regulations overseeing the adult entertainment industry in Toronto. In order to build a stronger understanding of the current governance situation in Toronto an analysis was conducted of relevant bylaws and business licensing documents. These documents included:

- City of Toronto Act (2006)
- Land Use Bylaw Chapter 150 “Specific Use Regulations”
- Final Report on City-wide Zoning Bylaw (2013)

The information gathered for this case study is categorized into four sections of this chapter and represents the key themes: these sections are: Regulation and Governance Authority, Consultation and Establishment of Governance Tools, Governance Tool Elements, and Zoning Strategy for Brothel Placement. Interviews were also conducted with a planning consultant (identified by Planning consultant) and locally based sex worker advocacy organization (identified by Advocate) to gain a better understanding of the needs of individuals in the sex industry. The interview responses are also included within this analysis chapter.

It should be noted again that brothels are currently illegal in Toronto and all governance tools analyzed are purely for adult entertainment venues that are currently legal in the jurisdiction and not for sex industry establishments such as brothels.
6.1 Regulation and Governance Authority
The City of Toronto Act (2006) (hereafter referred to as the Act) contains a section restricting adult entertainment establishments. Section 92 of the Act includes restrictions on establishment placement enabling the City to limit the number of adult entertainment establishments in a defined area, avoiding establishment clustering. The Act also further defines an adult entertainment premises as similar to that of the definition included in proposed Chapter 150 of the Bylaw. The City of Toronto Act refers to the power of entry permissible to the City under section 376 of the City of Toronto Act where the City can enter premises at any reasonable time for the purpose of carrying out an inspection to ensure compliance with the bylaw.

Despite the Act containing definitions and restrictions on adult entertainment establishment licensing and placement each area of Metro Toronto provides a different bylaw definition of adult entertainment. East York, Toronto, Scarborough and York all define adult entertainment as “Premises providing goods or services appealing to or designated to appeal to erotic or sexual appetites or inclinations” (City of Toronto Act, Section 92.2) (City of Toronto, 2012). Etobicoke does not define adult entertainment. Additionally, regulations for adult entertainment parlours may differ depending on what area of the Metro Toronto an establishment wishes to open. For example in East York adult entertainment establishments are not permitted in any land use zone. Where in Scarborough adult entertainment parlours are not permitted in any zone except in hotels with 50 or more bedrooms (City of Toronto, 2012).

The predominant issue at play is the multiple levels of government exercising authority over a single matter. Adult entertainment regulations across the Metro Toronto region differ depending on which former municipality the establishment operates (City of Toronto, 2012). The lack of consistency across
the Metro area can cause confusion amongst lawmakers, planners, establishment owners and operators, and workers. The regional specificity of the regulations across the city is consistent with the view expressed by Advocate who expressed the need for a common definition and regulations across the metro area (Advocate, 2013). A staff report was recently delivered (January 2013) to the Planning and Growth Management Committee on city-wide zoning adult entertainment and body-rub parlours that aims to address the disparities in definition and regulations across the Metro Toronto area (City of Toronto, 2013).

6.2 Consultation Process and Establishment of Governance Tools
The governance tools that exist govern the currently licensed adult entertainment establishments – “strip clubs” and “body rub parlours”. Although not explicitly considered brothels, the emergence of “underground” brothels moonlighting as wellness centres and holistic treatment centres has become a practice by business owners to avoid legal constraints around brothel legislation (Kohm & Selwood, 2004). It is important for planners to differentiate the types of sex industry businesses legislatively, as the emergence of the underground sex industry can lead to malpractice and dangerous situations for workers and clients. Additionally, legislation and laws that force businesses underground makes monitoring of these establishments an issue for municipalities.

In early summer 2012, the City of Toronto undertook a citywide public consultation survey hoping to gather perspectives on licencing on adult entertainment establishments (City of Toronto, 2012). The survey was released following the Ontario Court of Appeal’s judgement on the legalization of brothels in Ontario (City of Toronto, 2012). The consultation took place with Toronto’s strip club establishments. Advocate reported that the survey was
distributed to burlesque entertainer license holders and management, where there was reported that at least 1 club had dancers bring the surveys in for management (Advocate, 2013). Issues arose from this approach as sometimes the worker’s opinion was not reported or reported by the owner on the worker’s behalf. This highlights the importance of direct contact with all stakeholders and the need for the city to implement a variety of consultation vehicles. The results from the survey are not currently posted but will serve a future research city report on the adult entertainment industry including the public’s view on licencing of adult entertainment establishments.

The secondary effects such as crime and human trafficking associated with the sex industry could influence the discussion, adding to the complexity of the consultation process. Planning consultant recognized the secondary effects, as being a major struggle that planners will need to contend with when regulating brothels. Citing the role of NIMBYism as a major determinant on how the discussion of brothel placement will take place (Consultant, 2013). Planning consultant also identified that the subject of brothel location is understandably a sensitive matter for municipalities and a concerted approach to their locational regulations must be undertaken (Consultant, 2013).

Advocate identified the necessity to involve a variety of sex worker stakeholders in order to include a variety of perspectives and ensure the rights of the workers are heard (Advocate, 2013). Licensed escort, strippers and massage parlour workers should be included in the discussion. As well sex worker organizations should be involved potentially within a working group scenario. Additionally, Advocate identified the local police, planners, and local businesses and community group representation can also be invited to the table for discussion. Planning consultant echoed the necessity for the above-mentioned stakeholders to be involved as well as social workers,
planning academics and health practitioners. Planning consultant expressed the need to include as many people in the discussion as possible. This will ensure an understanding of the various perspectives and promote the openness of the discussion amongst all stakeholders (Consultant, 2013).

6.3 Governance Tools
Currently, in Toronto, the adult entertainment industry is governed by a variety of mechanisms and tools. Municipal regulation of the industry exists at the highest legal level – the City of Toronto Act. The Act details at a high level what restrictions can be imposed by the city re: adult entertainment establishments. Section 92 of the Act states:

92. (1) Without limiting sections 7 and 8, a by-law under those sections with respect to adult entertainment establishments may, (a) despite section 90, define the area of the City in which adult entertainment establishments may or may not operate and limit the number of adult entertainment establishments in any defined area in which they are permitted; (b) prohibit any person carrying on or engaged in an adult entertainment establishment business from permitting any person under the age of 18 years to enter or remain in the adult entertainment establishment or any part of it. 2006, c. 11, Sched. A, s. 92 (1).

Premises
(2) Any premises or any part of them is an adult entertainment establishment if, in the pursuance of a business, (a) goods, entertainment or services that are designed to appeal to erotic or sexual appetites or inclinations are provided in the premises or part of the premises; or (b) body-rubs, including the kneading, manipulating, rubbing, massaging, touching or stimulating by any means of a person’s body, are performed, offered or solicited in the premises or part of the premises, but does not include premises or part of them where body-rubs performed, offered or solicited are for the purpose of medical or therapeutic treatment and are performed or offered by persons otherwise duly qualified, licensed or registered to do so under a statute of Ontario.
This is then translated into specific city bylaws pertaining to adult entertainment establishments. As previously mentioned the proposed Chapter 150 in the city bylaw restricts minimal distances. The actual minimal distance restrictions will be discussed in the next section. The restrictions contained in the bylaws differ depending on area of Metro Toronto.

In addition to bylaw restrictions the City of Toronto also uses business licensing to control adult entertainment establishments. The major difference in the effects of bylaws versus licensing regulations is that while bylaws provide a tool for segregating land use and separation distances; licensing regulations provide ongoing, detailed oversight of the specific establishment. The use of licensing regulations as a governance tool means municipalities can choose to enforce the regulations at their discretion without possibly being challenged at the Ontario Municipal Board (OMB). Licensing assessments are generally related to public health and safety and consumer protection, as appropriate licensing may not be renewed if regulations are not met. The licensing code contains regulations for “body rub parlours” and “adult entertainment parlours” as adult entertainment establishment types. Planning consultant also warned that the municipalities must ensure they are not infringing on any human rights through their regulations, as per the Ontario Human Rights Commission (OHRC) (Consultant, 2013). A precedent was set in 2012 when the OHRC took action on land use zoning human right issues in Toronto with regards to zoning for group homes (Ontario Human Rights Commission, 2012).

The Articles in the code outline the business requirements of a prospective establishment in order to be licensed. The Articles outline some regulations for operations of both a body rub parlour and adult entertainment parlour. Examples of these regulations include provision for adequate lighting and
ventilation of the facility, adequate washroom and toilet accommodation including provisions for hot water and soap dispensers. The operational regulations outlined in Article 545-345 for “Body rub parlours” and Article 545-378 for “Adult entertainment parlours” mimic to some extent the internal design standards outlined in the Sydney DCP. Advocate indicated that although regulation does exist much of the parameters are largely regulated in the public space of these establishments and are not concerned with the space reserved for employees. Advocate also suggested that this might lead to poor working conditions for employees of the establishment (Advocate, 2013). An example was given that although there is a provision to provide a space for safekeeping of customer’s valuables, there have been instances where employees are not provided with the same standard of security.

External design standards are also regulated only with regards to signage. With regards to signage, adult entertainment parlours may display illuminated signs on the outside of their establishment within parameters described in Article 545-349 as:

Every owner and operator licensed under this chapter shall exhibit over the street door or in the lower front window of the premises in respect to which such person’s licence is issued or in some other conspicuous place on the exterior of such premises satisfactory to the Municipal Licensing and Standards Division a sign issued by the Municipal Licensing and Standards Division bearing the words “LICENSED BODY-RUB PARLOUR NO. ”, (inserting after “NO.” the owner’s licence number). “Comments regarding this business may be made to the Municipal Licensing and Standards Division of the City of Toronto."

(City of Toronto, 2000)

Size restrictions and content parameters are also detailed for non-illuminated signs within this Article as well. Both Advocate and Planning consultant agreed that by the very nature of brothels in Canadian culture it is in a business’s best
interest for both the clients and the employees for the business to exist inconspicuously (Advocate, 2013; Consultant, 2013). Therefore overt signage, large window displays, or deviation from the neighbourhood character design should be prohibited.

Finally, Advocate identified that Occupational Health and Safety (OH & S) guidelines are missing from any regulation in the City of Toronto. Although the licensing code does speak to certain aspects of health and safety the regulations are not exhaustive of the needs of adult entertainment employees and their clients (Advocate, 2013). Additionally, depending on the type of adult entertainment establishment OH & S restrictions and measures will differ. For example, the licensing code details parameters for sanitary facilities and at a high level speaks to the health of the workers, but does not detail parameters for linen and mattress sanitation and other related equipment.

6.4 Zoning Strategy for Brothel Placement
The current zoning strategy for adult entertainment parlours and body rub parlours is part of the proposed Chapter 150 “Specific Use Regulations” of the City of Toronto's Land Use Planning Bylaw. The section includes a general definition of an “Adult Entertainment Establishment” and lot regulations. The City of Toronto must ensure effective governance tools and regulations are in place to successfully control the placement of brothels, whether these regulations are incorporated into the adult entertainment establishment category or not.

The City of Toronto currently has bylaws that restrict the locations of adult entertainment businesses. These bylaws are covered under Chapter 150 – Adult Entertainment Establishment of the Toronto Land-Use Planning Bylaw. The bylaw defines adult entertainment (not the sex industry) as a:
“premises in which are provided, in the pursuance of a business, trade, or occupation, services designed to appeal to erotic or sexual appetites or inclinations… includes: services of which a principal feature or characteristic is the nudity or partial nudity of any person; or service in respect of which the word nude, naked, topless, bottomless, sexy or any other work or any other picture, symbol or representation having like meaning or implication is used in any advertisement.”

(City of Toronto, 2012)

The City of Toronto also details specific use regulations of adult entertainment establishments through zoning district separation distance; stating:

If an adult entertainment establishment is permitted, it must comply with the following:

(A) A lot containing an adult entertainment establishment must be a minimum of 500 metres from a lot in a Residential Zone category, Residential Apartment Zone category or Institutional School Zone; and

(B) A lot containing an adult entertainment establishment must be a minimum of 100 metres from any other lot containing an adult entertainment establishment

(City of Toronto, 2012)

By Toronto restricting the concentration of adult entertainment establishments through the enforcement of the minimum distance requirement between adult entertainment establishments one can infer that the goal is to lessen the perception of potential crime from individuals who frequent adult entertainment establishments.

Both interviewees agreed that a scattered approach, that is encouraged by the current bylaws is the zoning strategy best suited for the Toronto context. Issues of safety, NIMBYism, and legality of establishments outside a designated red light district were raised by both interviewees (Advocate, 2013; Consultant, 2013). The approach of a red light district was seen as not necessary or
appropriate in the Canadian context. For Advocate issues of potential industrial area restrictions for brothels or periphery zoning were major reasons to not zone for red light districts (Advocate, 2013). Planning consultant also pointed out that creating a red light district on the periphery of the city would not make for a safe environment for workers and their clients (Consultant, 2013). Advocate also disagreed with a periphery-based approach as access to public transportation as well as safety concerns of walking through dark deserted places put both clients and workers at risk (Advocate, 2013).

The minimal distance regulations imposed on adult entertainment establishments in Chapter 150 of the bylaw are currently under review. The suggested changes would bring all separation distances throughout Metro Toronto in line with each other; meaning regulations would be the same across the city. However according to the January 2013 staff report separation distances from Residential Zone category or Residential Apartment Zone category will remain at least 100 meters. A minimum 500-meter distance is to be enforced between adult entertainment land uses and lots with a public or private school or place of worship. Additionally, a minimum of 500-meter buffer will exist between an establishment and another adult entertainment or body rub service (City of Toronto, 2013).

Although a definition of a brothel is included in the Canadian Criminal Code, depending on their size, discretion, and interaction with adjacent land uses a brothel may have varying effects on the area in which it is located. Advocate indicated that the strict zoning that exists in Toronto does not match the reality of the adult entertainment industry, notably

Definition: Apartment-based Brothels:
A small sized brothel working out of a sex workers or workers place of residence; generally with no more than three or four workers.
the reality of apartment-based brothels. Given the political sensitivity around brothel placement, the existence of an apartment-based brothel may not be feasible, as by it’s very definition exists within a residential zoning district. However, it should be acknowledged that currently some sex workers choose to provide sex work from their apartment (Advocate, 2013). The question can be raised whether or not these types of “at home” businesses should be regulated.

The issue of apartment-based versus stand alone “bricks and mortar” brothels was raised by both interviewees. Advocate pointed to examples in other jurisdictions such as Amsterdam, Netherlands where regulations differed depending on how many workers occupied a place of work (Advocate, 2013). Planning consultant also discussed the potential need to evaluate business licensing and zoning on a case-by-case basis, stating that municipalities should take into account brothel size and the frequency of use of the establishment (Consultant, 2013).

Planning consultant recognized that a case-by-case zoning approach may put increased workload on municipal workers but could prove to be more effective in governing this type of establishment. Additionally the potential for a slower development approval process is more likely in a case-by-case approval system (Consultant, 2013), which could be a good thing when development applications or business licences for these types of establishments are proposed, given their contentious nature. Furthermore, as the city grows the minimal distance issue could become one of vertical distance compared to conventional horizontal minimal distances. This point is particularly relevant to apartment-based brothels.

**Definition: Bricks and Mortar Brothel:**
A single building on an independent land use lot; larger scale establishment with more than two or three rooms employing more than three workers.
Planning consultant expressed the challenge municipal planners face in implementing regulation that fits all stakeholders. Planning consultant stated that the benefit of minimal distances is that it is a “black and white” process and is easy to enforce (Consultant, 2013). However, it is important to consider that each land use application is unique with a range of variables set to each location. Planning consultant stressed the importance of justifying minimal distance standards if they are implemented (Consultant, 2013). Keeping this in mind it is important for planners to remember that it is the role of the municipality to create a fair, equitable, and transparent governance process that is defensible at an Ontario Municipal Board hearing.

Planning consultant noted that minimal separation distances from sensitive land uses, such as schools and places of worship should be re-examined or at least analysed on a case-by-case basis (Consultant, 2013). The idea that especially places of worship need to be at a minimal distance from an adult entertainment establishment needs to be considered in relation to the intensity and frequency of the use as well as hours of operation. Additionally, the reasoning behind the implementation of minimal separation distances must be re-examined by the municipality to ensure that the restrictions remain relevant in modern society.

Advocate views brothels and body rub parlours as any other small business and should be zoned accordingly (Advocate, 2013). Additionally, Advocate stated that minimum separation distances between adult entertainment establishment and schools and places of worship should not exist. Another important element for placement of brothels expressed by Advocate was the proximity to public transportation for both the workers accessibility to their place of work as well as the clients (Advocate, 2013).
7. DISCUSSION AND RECOMMENDATIONS

The previous three chapters presented the research findings for this report. It included a literature review of adult entertainment governance practices in cities; an analysis of international example approaches to zoning and governing brothels from Sydney, Brisbane, and Auckland; and an analysis of the current situation of the adult entertainment industry in Toronto.

The review of international examples introduced a number of policy and governance practices that could potentially be adopted by Toronto, pending decriminalization of brothels in Canada. Sydney introduced a new tool that accompanies the municipal bylaws and licensing process, the Adult Entertainment and Sex Industry Premises Development Control Plan (2006). The tool represents a comprehensive document that covers all elements of governing the sex industry in the city of Sydney. Locational restrictions, internal and external design standards, operational requirements, and health and safety standards are all detailed in a single document that serves to protect owners, employees, and patrons of a variety of adult entertainment and sex industry establishments. Brisbane highlighted the importance of a common governance structure and common definition across jurisdictions of the sex industry. A state-wide body, the Prostitution Licensing Authority, defines the regulations for an entire jurisdiction, allowing for slight variance within certain municipalities. The common definitions and regulations enables state officials, police, prospective and current establishment owners, and employees to be familiar with the regulations regardless of their location in the state of Queensland. Finally, Auckland exercises a different locational restriction approach to Sydney and Brisbane. Auckland’s regulations foster a clustered approach to zoning the adult entertainment industry, creating a small “red-light district”.

In the review of Toronto’s adult entertainment bylaws and administrative processes gaps were identified. Interviews with a planning consultant and a sex worker highlighted thoughts on future direction for inclusion of brothels and how the sex industry can be better governed. Although no specific policies are developed for brothels, there are bylaws and regulations that govern other types of sex industry establishments including body rub parlours and strip clubs.

In this chapter the issues identified in the analysis of Toronto’s governance tools are analysed with the literature review results and examples of Sydney, Brisbane, and Auckland. The major policy components of the report are: regulatory authority, consultation processes, governance tools, and locational zoning approach. This chapter includes recommendations to address the identified issues and steps moving forward. The recommendations are intended for the administrators of the governance tools, city planning officials. The political climate must be considered prior to implementation of the recommendations. The recommendations are proposed in a technical manner, however political sensitivity should be exercised when moving to implementation. Additionally, the recommendations are put forward at a strategic level. If decriminalization becomes a reality in Canada specific regulations included within the recommended governance tools will need to be worked out further with consultation from a wider stakeholder group.
7.1 Regulatory Authority

Recommendation 1 – Establish common governance tools, definition of sex and adult industry establishments (including brothels) and locational restrictions for all areas of the city. The City of Toronto government should continue to set regulations and manage the tools.

The importance of common governance tools across a single metropolitan region such as Toronto is paramount in establishing fair governance and a monitoring structure for sex industry and adult entertainment establishments. Regulations, restrictions, and the oversight of these bylaws should be continuous throughout the City of Toronto. Differences in minimal distance restrictions should not differ depending on where an establishment exists within the jurisdiction. Steps towards this are already being made through the city-wide zoning report recommendations put forward by staff in 2013.

The definition of a brothel must be agreed upon at the municipal level. The differences between an apartment-based brothel and a stand alone “bricks and mortar” brothel should be explicit in the bylaws and governance tools, as both types of brothels require different zoning and regulatory needs. These differences exist mainly on the size of the establishment and the managerial/operational differences in conducting business within these two types of establishments.

Metro Toronto is the level of government most appropriate to manage the governance tools. The municipality currently governs adult entertainment and sex industry establishments and is best fit for understanding the needs of the communities in the Metro Toronto area. Additionally, under section 92 of the City of Toronto Act, the municipal government has been given the authority to
restrict adult entertainment establishments, as the municipality deems necessary.

7.2 Consultation Process

Inclusive regulatory development is key to the success of bylaws regulating controversial issues such as sex industry establishments. The needs of all relevant stakeholders should be taken into account to ensure the successful implementation, adherence, and oversight of these regulations.

An optimal way to gain perspectives from stakeholders is to form an adult entertainment and sex industry regulatory working group. The group should be comprised of city planning officials as well as representatives from sex worker advocacy groups; holistic centre and body rub parlour owners/managers; local community groups; and law enforcement. This cross section of membership will allow for a variety of opportunities and concerns to be brought to the table for incorporation in regulations. Additionally, by including key stakeholders from the beginning of the discussion likelihood of “buy-in” and adherence to the regulations once they are implemented could increase.

Finally, although the discussion of regulation of the sex industry is controversial and can become very political, it is important that the municipality demonstrate leadership. If brothels are decriminalized in Canada the municipality will inevitably receive business license applications. The municipality must demonstrate to its citizens that the regulatory process has
been thoroughly examined, and it is making decisions that are in the best interest of the community given the new reality of decriminalized brothels.

7.3 Governance Tools

As discussed throughout the report there are many elements to take into account when governing the sex industry. Locational restrictions that are currently housed within bylaws represent only one type of regulation. By creating a single adult entertainment and sex industry plan for the City of Toronto, the city would concentrate its governance strategy into a single location for ease of accessibility, regulation of future development and monitoring of establishments.

The single governance tool should include a number of elements and standards that establishments must adhere to in order to operate legally in Metro Toronto. These elements and standards include content that is currently housed in bylaws and licensing code. For legal reasons, bylaws regulating adult entertainment and sex industry zoning as well as business licensing processes should remain in place; however the adult entertainment development control plan will provide the added element of an overall strategic governance and implement an overall plan for these types of establishments.

The content of the plan can be based on Toronto’s governance precedence and industry best practices. The best practices can be agreed upon through
the stakeholder engagement process that will be facilitated through the implementation of recommendation two.

**7.4 Zoning Approach**

Metro Toronto’s adult entertainment and sex industry bylaws currently follow a scattered zoning approach. Given the goals and desired direction expressed throughout the interview process by both key informants it would be in the best interest to retain minimal distance regulations between establishments. This direction is consistent with the recommendation from city staff for zoning of body rub parlours and holistic centers in the city-wide zoning report.

An important factor unique to brothels compared to other types of sex industry establishments is the prospect of apartment-based brothels. The differences between the two types of brothels will require different restrictions governing these establishments. Aspects such as vertical minimal distances and separation from residential areas will need to be revised in order to accommodate this type of brothel establishment. It is not in the interest of the municipality and the industry to disregard this type of brothel establishment as a business type.

Finally, minimal separation distances between establishments and sensitive land uses should be reconsidered. Eliminating these restrictions would still allow for a scattered zoning strategy; however, intensity of use of lots zoned as sensitive land uses, most notably places of worship, should be considered when setting minimum separation distances.
8. CONCLUSION
Throughout this report the complexities that exist in zoning for adult entertainment and sex industry businesses have been discussed. Given the municipal government’s role in land-use planning it is in a prime strategic position to influence where legal brothels are located. With the impending decision from the Bedford hearing for the decriminalization of brothels now is the time for municipalities to begin this discussion.

By investigating three jurisdictions that currently regulate decriminalized or legalized brothels this report contributes to efforts that build a better understanding of the aspects needed to fully govern this type of sex industry establishment. The lessons learned from other jurisdictions can be applied to the Toronto context. Toronto is Canada’s most populous municipality and the prospect of decriminalized brothels existing within this jurisdiction is likely pending the Supreme Court of Canada’s decision.

This report has identified areas for Toronto to develop and improve policies and governance tools related to regulating the sex industry, more specifically inclusion of brothels as a type of sex establishment. Planning policies concerning socially controversial establishments such as brothels can benefit from future research that focuses specifically on the implementation of the strategic recommendations of this report. It is important that the political climate is considered prior to implementation of any of the recommendations outlined in this report. Future research can look at how Canadian municipalities have approached zoning of other controversial establishments or land uses, such as needle exchanges or half way houses. Additional research can examine specific regulations relating to brothel location, managerial/operational standards, design guidelines, and health and safety
regulations. Any one of the above mentioned areas can be investigated and recommendations about the specific regulations can be an outcome of the research. Additionally, if brothels are decriminalized and regulations have been put in place by municipalities, monitoring can take place in studying the impact of these regulations and their success (as described by a Working Group or Steering Committee).

The motivation of this report was to highlight an area of planning policy that has not been examined in the Canadian context. The recommendations of this report geared to municipal decision makers aim to begin the discussion and set out a strategic direction on this important and pressing planning topic. It is imperative for the safety of the community, sex workers, and their clients that municipalities begin this policy discussion now. It is clear that, although not at the forefront of municipal policy-makers, this topic is of interest. The findings and recommendations of this report will be presented in Vancouver, BC at the 2013 Canadian Institute of Planners (CIP) Conference. By including such a discussion at the national conference, it proves that planners should be and need to be open to this discussion. By publishing this report and presenting at the 2013 CIP Conference the discussion is only beginning.
GLOSSARY OF TERMS

**Adult Entertainment Establishment**: Any premises or part thereof in which is provided services appealing to or designated to appeal to erotic or sexual appetites or inclinations (City of Toronto, 2000).

**Apartment-based Brothels**: A small-sized brothel working out of a sex workers or workers place of residence; generally with no more than three or four workers.

**Bawdy-house (Brothel)**: A place that is kept or occupied, or resorted to by one or more persons, for the purpose of prostitution or the practice of acts of indecency (Canadian Criminal Code, 1985).

**Body-Rub Parlour**: Includes any premises where a body-rub (kneading, manipulating, rubbing, touching of a person’s body not including medical or therapeutic treatment) is performed (City of Toronto, 2000).

**Bricks and Mortar Brothel**: A single building on a separate land use lot; larger scale establishment with more than two or three rooms employing more than three workers.

**Command-and-control techniques**: The use of various planning tools and powers to control where adult entertainment establishments should be placed in the city.

**Cumulative Impacts**: The impacts that occur through persistent additions or losses of the same land uses within a particular locality, and through the compounding effects as a result of the coming together of two or more secondary effects (Prior, 2008).

**Governance Tools**: Mechanism by which a municipality enforces regulations overseeing a specific issue (e.g. strategic plan, bylaws, administrative processes).

**Holistic Centers**: Any premises which holistic services (body-rubs, unlicensed medical or therapeutic treatment, or traditional Chinese medicine) are performed (City of Toronto, 2000).

**NIMBY**: “Not in my backyard”; communities not wanting certain types of businesses or development in their neighbourhood.

**City Periphery Model**: Locating adult entertainment and sex industry establishments at the edge of the city limits, often in industrial zoned areas.
Red Light Districts (Clustering) Model: Grouping of similar adult entertainment and sex industry establishments in a concentrated area.

Scattering Model: Scattering adult businesses throughout the city with minimal distance restrictions from institutions such as schools and places of worship.

Secondary Effects: The effects that are caused by a particular land use that emerges at a later date, but are believed to be reasonably foreseeable (Prior, 2008).

Sensitive Land Uses: Municipal zones or types of building uses such as residential zones, schools, places of worship, and day care centers.

Sex Industry Establishment: Any premises where sexual acts including touching, oral, vaginal, or anal sex, takes place.
Bibliography

Advocate. (2013, 01 29). (N. Danford, Interviewer)


Appendix – Sample Interview Questions

Planning Consultant
Do the current governance tools adequately regulate the adult entertainment industry in Toronto? If not, what improvements would you make?

Should brothels be regulated in the same way as other adult entertainment establishments?

Are there elements missing in the current governance tools that should be added with the legalization of brothels?

Which zoning approach is most relevant to that of Toronto? Red-light, scattered, or periphery? Where in the city is the best location for brothels?

What social, safety, and economic considerations are taken into consideration when deciding on the location of the adult entertainment industry? How would these considerations change for brothel placement?

What type of specific elements would you like to see included in brothel regulations?

What kind of consultation takes place with sex worker advocacy groups when developing bylaws for the adult entertainment industry?

Advocate
Do the current governance tools adequately regulate the adult entertainment industry in Toronto? If not, what improvements would you make?

Should brothels be regulated in the same way as other adult entertainment establishments?

Are there elements missing in the current governance tools that should be added with the legalization of brothels?

In your opinion, where in the city is the best location for brothels?

What social, safety, and economic considerations should be taken into consideration when deciding on the location of the adult entertainment industry?
What type of specific elements would you like to see included in brothel regulations?

What kind of consultation takes place with sex worker advocacy groups when developing bylaws for the adult entertainment industry?

In your view, how can municipal regulations work in order to ensure safety for sex workers and their clients?