



Development Services
Staff Report to Council

File Category: 3310-15

DATE: September 5, 2017
TO: Mayor and Council
FROM: Gina MacKay, Manager of Long Range Planning and Special Projects
SUBJECT: Issuance of Business License to Joe Kerekes (Decadent Ink)

RECOMMENDATION: Council consider and resolve:

To direct staff on the issuance of a business license to Decadent Ink (Joe Kerekes) to allow the operation of a tattoo parlour in the Downtown.

BACKGROUND:

On November 21, 2016 Council removed tattoo parlour shops from the list of permitted uses in the Core Commercial Downtown One (CCD1) Zone. Council removed this use and other such uses from the downtown core as a means to facilitate business revitalization.

Prior to the adoption of the Bylaw, Mr. Kerekes of Decadent Ink submitted a business licence application for a tattoo parlour at 33177A Railway Avenue. In response, council resolved to grandfather Mr. Kerekes' business based on the provisions of legal non-conformance and on compassionate grounds for Mr. Kerekes.

However, when Mr. Kerekes informed the owner of the Railway Avenue property that his business would also offer esthetician services, the property owner informed Mr. Kerekes that he could not lease the space as an esthetician business was already committed to leasing the adjacent space. So as not to have adjacent competing businesses, Mr. Kerekes applied to relocate his business to a new location in the Downtown at 33071B 1st Avenue. It is understood that the 33071B First Avenue site was once home to a tattoo parlour, although it has since closed.

Consequently, staff are seeking clarification from Council whether the change in location of the tattoo parlour in the downtown is acceptable in the context of Council's previous grandfathering decision and moreover in the context of Council's broader objective to remove such uses from the downtown completely.

Notwithstanding that the provision of legal non-conformance use in the *Local Government Act* specifically speaks to "land, or a building or other structure" and not the use itself (see section 528 of the *LGA*), staff are willing to issue a business licence for the new location provided clarification from Council is received.

DISCUSSION AND ANALYSIS:

Typically, when a bylaw is adopted by a council and specific uses are removed, the intent is to ultimately phase out those uses over time. According to the *Act*, this "phasing out" occurs primarily if the non-conforming use is discontinued for a continuous period of 6 months, after which any subsequent use of the land, building or other structure becomes subject to the bylaw at hand. The *Act* also states that in relation to land, the provision does not authorize the non-conforming use of land to be

continued on a scale or to an extent or degree greater than that at the time of the adoption of the bylaw.

Given the above, staff want confirmation that Council's decision to grandfather this particular business is transferrable to the new location. Staff do not want to be presumptuous of Council's decision if the intent was to ultimately exclude such uses from the downtown. Staff are also unsure whether Mission's Downtown Business Association (DBA) and the surrounding area businesses were relying on the bylaw to firmly restrict these uses in the downtown and whether the relocation of this business to a site other than the one initially considered is acceptable.

Staff have reviewed the resolution of Council from the November 7, 2016 meeting. It reads as follows:

The mayor advised Joe Kerekes' tattoo shop will be exempt (grandfathered) from the proposed changes to the bylaw and therefore, will be issued a business license. The tattoo shop would then become a legal non-conforming business within the District of Mission.

District staff are seeking Council direction to issue the business license for a tattoo parlour shop at 33071 1st Avenue as the resolution did not specifically identify a location for the business where discussions surrounding the grandfather of this use was primarily in the context of the Railway Avenue property.

SUMMARY AND CONCLUSION:

District staff are seeking Council's direction with respect to the issuance of a business license for Decadent Ink, to be located at 33071 1st Avenue.

SIGN-OFFS:



Gina MacKay, Manager of Long Range Planning and Special Projects



Reviewed by:
Dan Sommer, Director of Development Services

Comment from Chief Administrative Officer:
Reviewed