

Authority: Item 5, Planning Committee
Report: 11-007 (PED 10063(b))
CM: April 13, 2011

Bill No. 111

CITY OF HAMILTON

BY-LAW NO. 11-111

To Amend By-law No. 07-170, a By-law to License and Regulate Various Businesses

and

To Amend By-law No. 10-221, a By-law to Prescribe Standards for the Maintenance and Occupancy of Property.

WHEREAS Council of the City of Hamilton enacted a by-law to license and regulate various businesses being City of Hamilton By-law No. 07-170;

AND WHEREAS Council of the City of Hamilton enacted a by-law to prescribe standards for the maintenance and occupancy of property being City of Hamilton By-law No. 10-221;

AND WHEREAS this By-law provides for various housekeeping and technical amendments to City of Hamilton By-law No. 07-170;

AND WHEREAS the amendment to City of Hamilton By-law No. 01-170 adding a requirement for a visual barrier to Schedule 22 necessitates the deletion of this requirement from City of Hamilton By-law No. 10-221;

AND WHEREAS this By-law provides for various housekeeping and technical amendments to City of Hamilton By-law No. 10-221;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

By-law No. 07-170

1. Paragraph 1(1)(g) of the General Provisions of By-law No. 07-170 is deleted

and the subsequent paragraphs relettered accordingly.

2. Subsection 5(1) of the General Provisions of By-law No. 07-170 is amended by deleting the word “declarations” and replacing it with “certifications”.
3. Paragraph 6(1)(d) of the General Provisions of By-law No. 07-170 is amended by deleting the word “declarations” and replacing it with “certifications”.
4. Subsection 15(1) of the General Provisions of By-law No. 07-170 is amended by deleting the words “Appendices “C” and “D” to this By-law” and replacing them with “Appendices “A” and “B” to these General Provisions”.
5. Section 19 of the General Provisions of By-law No. 07-170 is amended by adding the following new subsection 19(5):

(5) On behalf of the City Clerk, the Issuer of Licences may sign a statement as to the licensing or non-licensing of any premises or person under this By-law as provided for under subsection 447.6(4) of the Municipal Act, 2001.
6. Subsection 27(1) of the General Provisions of By-law No. 07-170 is amended by deleting the words “Schedules 1 and 4” and replacing them with “Schedule 1 or 4”.
7. Subsections 7(2), (3), (4) and (5) of Schedule 1 of By-law No. 07-170 are deleted and replaced by the following new subsections 7(2), (3), (4), (5) and (6):

(2) Council may consider a request to substitute a new location for an existing adult services entertainment establishment location provided that any requested new location shall be located entirely within the area shown on Map 1 or the area shown on Map 2 attached to and forming part of this Schedule.
(3) Despite subsection 7(2), the premises at the following municipal addresses licensed and in actual use as a adult services entertainment establishment on April 14, 2010, are each deemed

to be a location where one adult services entertainment establishment is permitted to operate and eligible to be licensed only for so long as the premises continues to be used for such purposes, the business owner maintains their licence and the business carried on therein is in compliance with this By-law and all other applicable law:

- (a) 92 Barton Street East, Hamilton;
- (b) 1038 Barton Street East, Hamilton.

(4) No new business owner licence shall be issued for a location listed in subsection 7(3).

(5) When an adult services entertainment establishment business owner licence expires and is not or cannot be renewed or such licence is otherwise surrendered or revoked, then upon receipt of a complete application which otherwise complies with this By-law, the Issuer of Licences shall carry out a selection process for a licence as follows:

- (a) the available business owner licence shall be advertised in the Hamilton Spectator newspaper and on the City's website inviting the submission of applications within a specified period of time;
- (b) a draw shall be conducted from all of the submitted, complete applications which otherwise comply with this By-law; and
- (c) the winner of the draw may be issued a business owner licence for an existing or new location provided that such existing or new location conforms to subsection 7(2) and is approved by Council.

(6) No business owner shall have an interest, whether as a corporation, a partnership or an individual, in more than one adult services entertainment establishment business owner licence.

8. Subsections 10(2), (3), (4) and (5) of Schedule 1 of By-law No. 07-170 are deleted and replaced by the following new subsections 10(2), (3), (4), (5) and (6):

(2) Council may consider a request to substitute a new location for

an existing Class A adult film store location provided that any requested new location shall be located entirely within the area shown on Map 1 or the area shown on Map 2 attached to and forming part of this Schedule.

- (3) Despite subsection 10(2), the premises at the following municipal addresses licensed and in actual use as a Class A adult film store on April 14, 2010, are each deemed to be a location where one Class A adult film store is permitted to operate and eligible to be licensed only for so long as the premises continues to be used for such purposes, the licence holder maintains their licence and the business carried on therein is in compliance with this By-law and all other applicable law:
 - (a) 8 Fennell Avenue West, Hamilton;**
 - (b) 128 Parkdale Avenue North, Hamilton.****
- (4) No new licence shall be issued for a location listed in subsection 10(3).**
- (5) When a Class A adult film store licence expires and is not or cannot be renewed or such licence is otherwise surrendered or revoked, then upon receipt of a complete application which otherwise complies with this By-law, the Issuer of Licences shall carry out a selection process for a licence as follows:
 - (a) the available licence shall be advertised in the Hamilton Spectator newspaper and on the City's website inviting the submission of applications within a specified period of time;**
 - (b) a draw shall be conducted from all of the submitted, complete applications which otherwise comply with this By-law; and**
 - (c) the winner of the draw may be issued a licence for an existing or new location provided that such existing or new location conforms to subsection 10(2) and is****

approved by Council..

- (6) No licence shall be issued under subsection 10(5) to an applicant who has an interest, whether as a corporation, a partnership or an individual, in a current and valid Class A adult film store licence.**

9. Schedule 1 of By-law 07-170 is amended by attaching Map 1 and Map 2 attached as Appendix 1 to this By-law.

10. Subsections 3(2), (3), (4) and (5) of Schedule 4 of By-law No. 07-170 are deleted and replaced by the following new subsections 3(2), (3), (4), (5) and (6):
 - (2) Council may consider a request to substitute a new location for an existing body-rub parlour location provided that any requested new location shall be located entirely within the area shown on Map 1 or the area shown on Map 2 attached to and forming part of this Schedule.**
 - (3) Despite subsection 3(2), the premises at the following municipal addresses licensed and in actual use as a body-rub parlour on April 14, 2010, are each deemed to be a location where one body-rub parlour is permitted to operate and eligible to be licensed only for so long as the premises continues to be used for such purposes, the business owner maintains their licence and the business carried on therein is in compliance with this By-law and all other applicable law:**
 - (a) 893 King Street East, Hamilton;**
 - (b) 549 Kenilworth Avenue North, Hamilton.**
 - (4) No new business owner licence shall be issued for a location listed in subsection 3(3).**
 - (5) When a body-rub parlour business owner licence expires and is not or cannot be renewed or such licence is otherwise surrendered or revoked, then upon receipt of a complete**

application which otherwise complies with this By-law, the Issuer of Licences shall carry out a selection process for a licence as follows:

- (a) the available business owner licence shall be advertised in the Hamilton Spectator newspaper and on the City's website inviting the submission of applications within a specified period of time;**
- (b) a draw shall be conducted from all of the submitted, complete applications which otherwise comply with this By-law; and**
- (c) the winner of the draw may be issued a business owner licence for an existing or new location provided that such existing or new location conforms to subsection 3(2) and is approved by Council.**

(6) No business owner shall have an interest, whether as a corporation, a partnership or an individual, in more than one body-rub parlour business owner licence.

- 11. Subsections 6(1) and 7(1) of Schedule 4 of By-law No. 07-170 is amended by the deleting each occurrence of the word "declaration" and replacing it with "certification".
- 12. Schedule 4 of By-law 07-170 is amended by attaching the Map 1 and Map 2 attached as Appendix 2 to this By-law.
- 13. Paragraph 14(2)(d) of Schedule 4 of By-law No. 07-170 is amended by deleting each occurrence of the words "statutory declaration" and replacing them with "certification".
- 14. Subsection 5(b) of Schedule 12 of By-law No. 07-170 is amended by deleting the words "zoning by-law of the former municipality, in which the place where goods are offered for sale, is located" and replacing them with "applicable zoning by-law".

15. Subsections 3(a) and 3(b) of Schedule 14 4(2) of By-law No. 07-170 are amended by deleting the word "fifteen" in each and replacing it with "thirty".
16. Paragraph 5(3)(d) of Schedule 16 of By-law No. 07-170 is amended by deleting the words "of the former municipality in which the premises are located".
17. Section 6 of Schedule 22 of By-law No. 07-170 is amended by adding the following new subsection 6(g):

Visual Barrier

- (g)(i) That a visual barrier be installed and maintained between any outdoor area used for their business and all adjoining properties including all adjoining road allowance and that:**
 - (ii) the visual barrier be not less than 2 m in height;**
 - (iii) all material related to the use of a property as a salvage or second-hand goods shop or yard that is not located indoors be:**
 - 1. enclosed within the visual barrier;**
 - 2. located not less than 1 m from the visual barrier; and**
 - 3. where located between 1 m and 5 m from the visual barrier, no higher than the visual barrier.**
 - (iv) all activity related to the use of a property as a salvage or second hand goods shop or yard that is not located indoors be enclosed within the visual barrier.**
 - (v) any opening required in the visual barrier for ingress or egress be covered by a gate that:**
 - 1. is the same height as the visual barrier;**
 - 2. does not open over a traveled portion of road allowance including a sidewalk; and**
 - 3. is kept clear of obstructions so that the gate may be opened fully at any time.**
18. Schedule 22 of By-law No. 07-170 is amended by adding the following new section 7:

- 7(1) For the purposes of subsection 6(g), “visual barrier” means a barrier that acts as a screen consisting of:**
- (a) a wall or fence;**
 - (b) a continuous planting of suitable and healthy trees or shrubs;**
 - (c) an earth berm; or**
 - (d) any combination of the above.**
- (2) No visual barrier under subsection 6(g) shall be in contravention of any other applicable by-law.**
- (3) Where a zoning by-law, site plan or subdivision agreement entered into under the Planning Act requires a visual barrier, the requirement in such zoning by-law, site plan or subdivision agreement prevails in the event of a conflict with subsection 6(g).**
19. Subsection 3(b) of Schedule 23 of By-law No. 07-170 is amended by deleting the words “of the former municipality in which the property is located”.
20. Subsection 4(c) and 4(d) of Schedule 23 of By-law No. 07-170 are amended by deleting the words “of the former municipality in which the property, upon which seasonal produce is offered for sale, is located”.
21. Schedule 25 of By-law No. 07-170 is amended by deleting each occurrence of the “sworn declaration” and replacing them with “certification”.
22. Subsection 3(b) of Schedule 25 of By-law No. 07-170 is amended by deleting the phrase “, from any point within the City to any point outside the City”.
23. Section 11 of Schedule 25 of By-law No. 07-170 is amended by adding the following new subsection 11(12):
- (12) Except when an on-board camera is being serviced in accordance with this Schedule and the City’s Access and Privacy Policy for Security Cameras in Taxicabs:**
- (a) no person shall damage, tamper with or obstruct the**

view of such on-board camera;

(b) no taxicab driver, taxicab owner or taxicab broker shall permit any person to damage, tamper with or obstruct the view of such on-board camera.

24. Sections 33 to 42, both inclusive, of Schedule 25 of By-law No. 07-170 are deleted.

25. Subsection 64(1) of Schedule 25 of By-law No. 07-170 is amended by adding the following new paragraph (o.1) after paragraph (o):

(o.1) ensure that before the on-board camera required under paragraph 64(1)(o)(i) is serviced, the contractor has entered into a confidentiality agreement with the City as provided for in the City's Access and Privacy Policy for Security Cameras in Taxicabs;

26. Appendix 1 (Taxicab Tariff/Fares) of Schedule 25 of By-law No. 07-170 is amended by deleting the words "Federal Goods and Services Tax" and replacing them with "Harmonized Sales Tax".

27. Subsection 3.1(d) of Schedule 26 of By-law No. 07-170 is amended by deleting the words "solemn declaration" and replacing them with "certification".

By-law No. 10-221

28. Subsection 9(1) of By-law No. 10-221 is deleted and replaced with following new subsection 9(1):

9(1)(a) A door, window, hatch or other opening and its frame shall be maintained to properly perform its intended functions and repaired or replaced if damaged including but not limited to an exterior door, window, hatch or other opening and its frame being constructed to minimize drafts and heat loss

through the infiltration of outside cold air.

(b) For the purposes of paragraph 9(1)(a) "damaged" includes but is not limited to:

- (i) rotted or missing weather-stripping, caulking or hardware; or
- (ii) broken or missing glass.

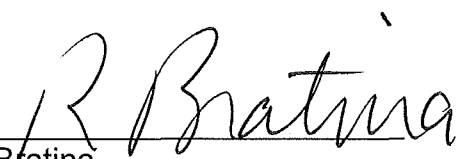
29. Subsection 22(3) of By-law No. 10-221 is deleted and the subsequent subsection renumbered accordingly.

30. Subsection 22(4) of By-law No. 10-221, renumbered as subsection 22(3), is deleted and replaced with the following new subsection 22(3):

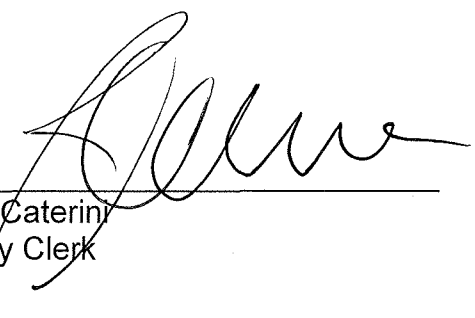
22(3) Where a zoning by-law, site plan or subdivision agreement entered into under the Planning Act requires a visual barrier, the requirement in such zoning by-law, site plan or subdivision agreement prevails in the event of a conflict with subsection 22(2).

31. This By-law comes into force on the day it is passed.

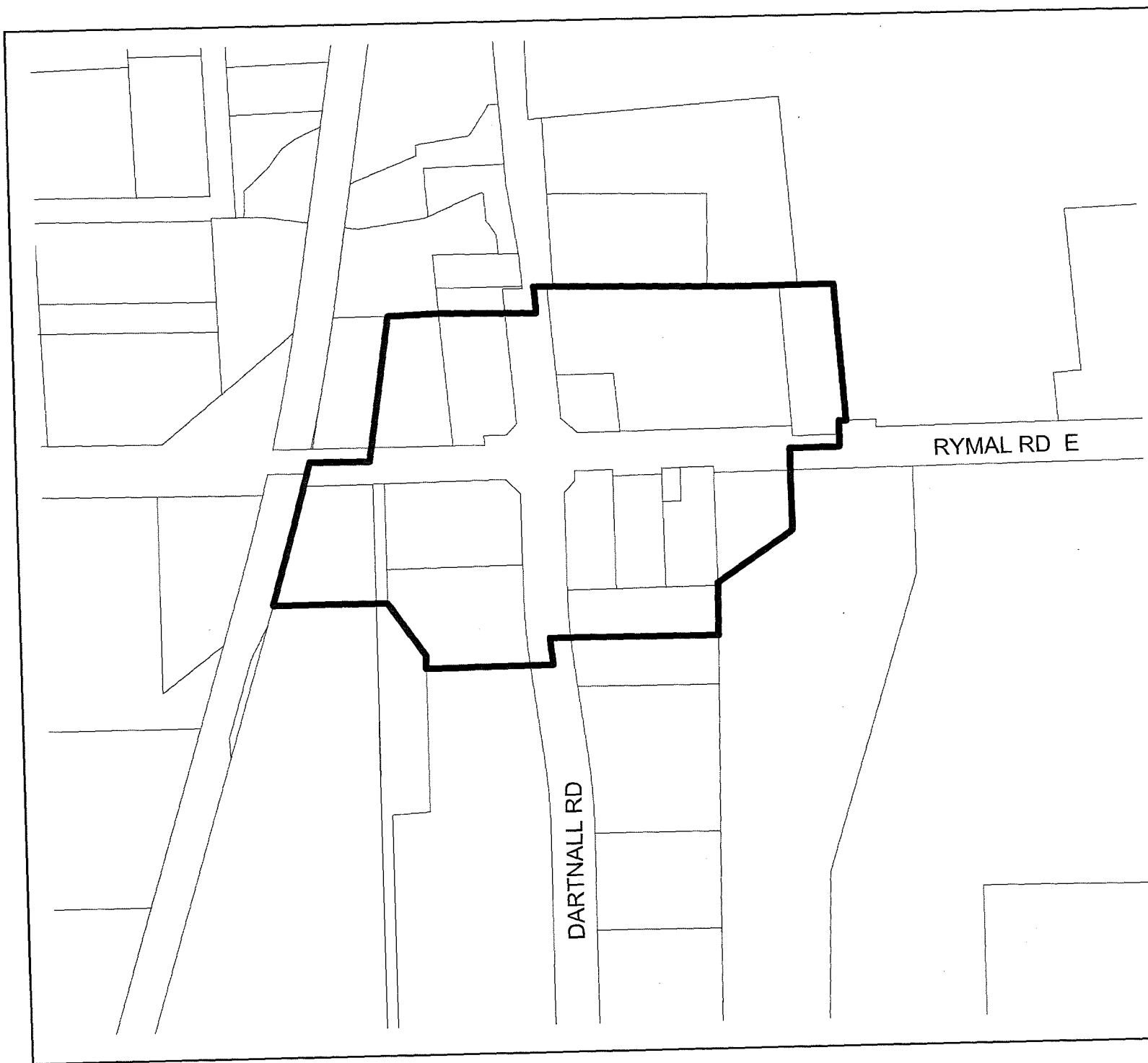
PASSED this 13th day of April, 2011.



R. Bratina
Mayor




R. Caterini
City Clerk



RYMAL RD E

DARTNALL RD

Legend

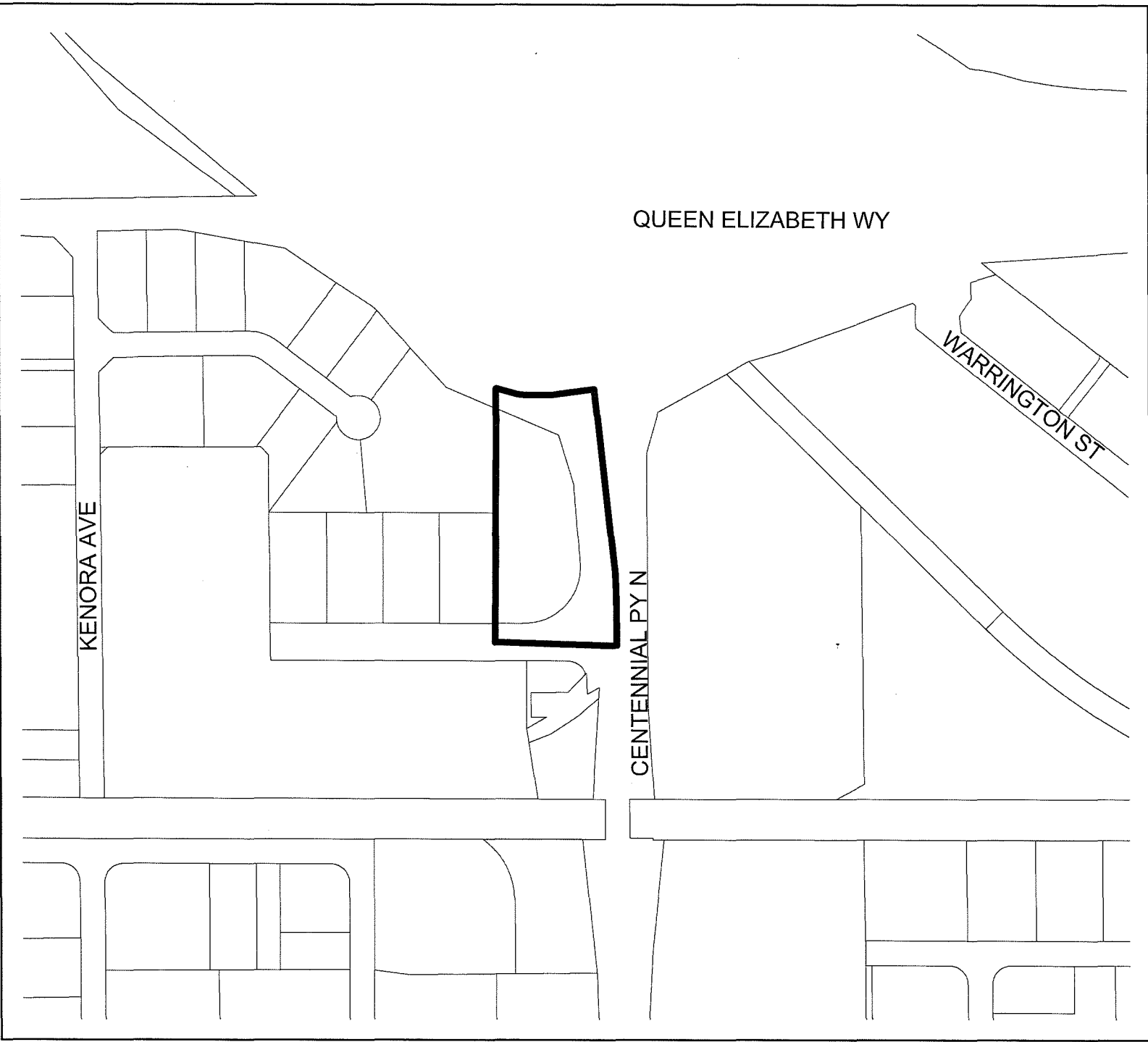
-  Area permitting Adult Service Establishments, Entertainment Establishments, Body-rub Parlour, Class A Adult Film Establishments

Map 1

Date:
JFebruary 2011



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QUEEN ELIZABETH WY

KENORA AVE

CENTENNIAL PKWY

WARRINGTON ST

Legend

-  Area permitting Adult Service Entertainment Establishments, Body-rub Parlour, Class A Adult Film Establishments

Map 2

Date:
JFebruary 2011



Hamilton

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