



ADMINISTRATIVE REPORT

Report Date: November 10, 2010
Contact: Carlene Robbins
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VanRIMS No.: 08-2000-20
Meeting Date: December 2, 2010

TO: Standing Committee on Planning and Environment
FROM: Chief Building Official and Director of Licenses and Inspections
SUBJECT: Unit #27 - 701 Kingsway - Request for Injunctive Relief

RECOMMENDATION

THAT the Director of Legal Services is hereby authorized, in her discretion, to commence a legal action or proceeding seeking to discontinue the unauthorized use of the premises at Unit #27 - 701 Kingsway as an Adult Retail/Entertainment Store in contravention of City by-laws.

GENERAL MANAGER'S COMMENTS

The General Manager of Community Services RECOMMENDS approval of the foregoing.

COUNCIL POLICY

Section 334 of the Vancouver Charter allows the City to seek a court order requiring a person to comply with any of the City's by-laws.

PURPOSE

The purpose of this report is to request Council approval to seek a court order requiring the unauthorized use of Unit # 27 in the building at 701 Kingsway, "The Fantasy Factory", as an Adult Retail/Entertainment Store to be discontinued.

BACKGROUND

The building at 701 Kingsway is located at the corner of Kingsway and Fraser and is in a C-2 Commercial District. Unit # 27 is licensed to TSG Sales Limited doing business as video retail/rental. In March of 2010, complaints from neighbouring residents were filed advising that the use of the premises had changed to an Adult Retail Store "The Fantasy Factory".

Adult Retail Store is defined in the Zoning and Development By-law as:

"The use of premises to display or retail either or both of the following:

- (a) a sex object;
- (b) adult magazines using more than 3.0 linear metres of shelving, being a maximum of .6m in depth"

This is a conditional use under the C-2 District Schedule.

Further, the License By-law defines an Adult Entertainment Store as follows:

"means any premises wherein the business of selling or offering for sale either sex paraphernalia or graphic sexual material is carried on, or wherein one or more pornographic film viewers are made available for use by the public."

In response to the complaints, the District Property Use Inspector inspected the premises and reported that the premises had been converted into two separate areas.

- The first area contained items for sale such as movies, DVD's, magazines, books and sexual paraphernalia. There were no movie rentals available.
- The second area contained 10 coin operated, "single seat" peep show booths and two preview "bench" booths for viewing full length movies.

The business owner/operator was directed to make application for the required Development Permit for this change of use and for a Building Permit for the modifications made to the premises, or to cease the unauthorized use of the premises as Adult Retail Store.

On July 16, 2010, the operator submitted an application for Development Permit DE 414076.

The Development Permit application process included a neighbourhood notification and a review of all pertinent regulations, policies and guidelines and was found to be non-supportable. Accordingly, on September 3, 2010, the Director of Planning refused the Development Permit. A subsequent appeal to the Board of Variance was disallowed on October 13, 2010.

Following the Board of Variance decision, the City issued another order to the operator to cease use of the premises as an Adult Retail Store immediately and to remove all associated signage by November 15, 2010.

A recent inspection by the District Property Use Inspector revealed that the operator has not complied with the City's order and continues to operate the business in contravention of the Zoning and Development By-law and the License By-law.

CONCLUSION

The business located at #27 - 701 Kingsway, "The Fantasy Factory", is operating as an Adult Retail/Entertainment Store contrary to the provisions of the Zoning and Development By-law and the License By-law. Therefore, subject to Council approval, I will refer this matter to the Director of Legal Services to request that she commence a legal action or proceeding seeking to discontinue the unauthorized use of the premises at #27 - 701 Kingsway as an Adult Retail/Entertainment Store.

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