

LICENCE

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WHEREAS it is deemed expedient to exercise the powers conferred on Council by the *Municipal Act, 2001*, S.O. 2001, c. 25;

AND WHEREAS Council has determined that those holding themselves out as complementary health care providers should have a minimum level of educational and training qualifications to protect consumers purchasing their services;

AND WHEREAS Council has determined that consumers should be protected from unknowingly entering a Class D Adult Entertainment Parlour as set out in Chapter 502 of the City of Kitchener Municipal Code or a

common bawdy house as defined in the *Criminal Code* R.S. 1985, c. C-85 when seeking alternative massage;

AND WHEREAS Council has determined that certain restrictions on behaviour of both consumers and attendants reduces transmission of disease that would have an adverse effect on the health of both consumers and attendants;

AND WHEREAS Council has determined that the ability to ensure operators of alternative massage centres meet certain minimum standards with respect to fire and building safety protects consumers and attendants and contributes to their safety;

AND WHEREAS Council has determined that licensing owners of alternative massage centres that are not provincially regulated protects consumers, as there is a record of licence holders and the ability to require legal and honest operation of such businesses and to hold the licensees responsible when the business is not conducted in accordance with the law or with integrity;

AND WHEREAS Council has determined that the ability to add conditions to, suspend, revoke, or refuse licences encourages licensees and operators of alternative massage centres to comply with the by-law requirements.

Article 1 INTERPRETATION

508.1.1 Alternative massage - defined

“alternative massage” includes the kneading, manipulating, rubbing, massaging, touching, or stimulating by any means, of a person’s body or part thereof but does not include services designed to appeal to erotic or sexual appetites or inclinations and does not include medical or therapeutic treatment performed or offered by persons otherwise duly qualified, licensed, or registered to do so under the laws of the Province of Ontario.

508.1.2 Alternative massage centre - defined

“alternative massage centre” means any premises or part thereof in which alternative massage is provided for hire or gain or respecting which a licence has been granted. However, in the case of a publicly or privately funded post-secondary institution licensed pursuant to this Chapter, an “alternative massage centre” shall mean the portion of the premises identified pursuant to Sections 508.2.14 and 508.2.15 during the class times specified thereon provided alternative massage is not provided or offered outside of the specified hours or location or provided to patrons for hire or gain.

508.1.3 Attendant - defined

“attendant” means an individual who provides or offers to provide alternative massage or other services in an alternative massage centre and shall include any person who works in an alternative massage centre when it is open to patrons or the public, when patrons or the public can enter, or when alternative massage or other services are provided, available, or offered in the alternative massage centre.

508.1.4 Complementary health care organization - defined

“complementary health care centre” means an alternative massage centre in which all of the attendants providing alternative massage are complementary health care providers.

508.1.5 Complementary health care organization - defined

“complementary health care organization” means an association, organization, or institution that: has at least 35 members who pay dues to it; has been in existence for two or more years prior to the date of application by the person seeking to be licensed as a complementary health care centre; and has been demonstrated to be established for the purpose and with the continuing intent of ensuring the safe and proper provision of one or more kinds of alternative massage through:

- (a) the admission to membership of persons qualified to provide such alternative massage;
- (b) the promulgation and enforcement of a code of ethics respecting the provision of such alternative massage;
- (c) maintaining, providing, and recognizing measurable standards for practices and procedures in the provision of such alternative massage;
- (d) the communication of information relating to such alternative massage; and
- (e) involvement in ongoing research, development, and education relating to the safe and proper provision of such alternative massage.

508.1.6 Complementary health care provider - defined

“complementary health care provider” means a person who:

- (a) has successfully completed one or more formal courses of education and training in the provision of a particular type of complementary health care;
- (b) is a member in good standing of a complementary health care organization at the time of application and remains a member in

good standing for the period for which the licence is in force;
and

- (c) has demonstrated acceptance and practice of the procedures, practices, and ethics of the complementary health care organization of which the individual is a member.

508.1.7 Formal course of education and training - defined

“formal course of education and training” means any course involving teaching, demonstration, or supervised practice, offered or recognized by a complementary health care organization as qualifying the individual, in accordance with the procedures, practices, and ethics of such organization, to provide safe and proper alternative massage of the kind which is the subject matter of the area of interest and jurisdiction of the organization and of the course.

508.1.8 Licence - defined

“licence” when used in the provisions of Chapter 500, Chapter 501, and this Chapter for the purposes of this Chapter only shall mean a licence to operate an alternative massage centre or a complementary health care centre, issued by the Manager of Licensing pursuant to this Chapter.

508.1.9 Licensee - defined

“licensee” shall mean the individual or business to which a licence has been issued.

508.1.10 Lingerie - defined

“lingerie” shall include but not be limited to:

- (a) any bra, underwear, or teddy;
- (b) any garment that an officer reasonably believes to have a sexual connotation such that it would be inappropriate attire for employees in a health care setting such as a registered massage therapist’s office, a doctor’s office, or a hospital; and
- (c) any garment that an officer reasonably believes to have the appearance of lingerie.

508.1.11 Municipal Act, 2001 - defined

“*Municipal Act, 2001*” shall mean the *Municipal Act, 2001*, S.O. 2001, c. 25.

508.1.12 Officer - defined

“officer” shall include a municipal law enforcement officer, a by-law officer, and a member of the Waterloo Regional Police Services.

508.1.13 Operator - defined

“operator” means a person who, alone or with others, operates, manages, runs, or controls an alternative massage parlour and “operate(s)” shall have a corresponding meaning. “Operator” shall specifically include the alternative massage parlour’s licensee, designated manager(s), designated supervisor(s), and any person who is working alone in the alternative massage centre when it is open to patrons or the public, when patrons or the public can enter, or when alternative massage or other services are provided, available, or offered in the alternative massage centre.

508.1.14 Services - erotic - sexual - defined

“services designed to appeal to erotic or sexual appetites or inclinations” shall include:

- (a) services of which a principal feature or characteristic is the nudity or partial nudity of any person; and
- (b) services in respect of which the word “nude”, “naked”, “topless”, “bottomless”, “sexy”, “sensual”, or any other word, picture, symbol, or representation having like meaning or implication is used in any advertisement.

**Article 2
GENERAL PROVISIONS**

508.2.1 General provisions - Chapter 500

The provisions of Chapter 500 of the City of Kitchener Municipal Code shall apply to this Chapter. In the event of any conflict, the provisions of this Chapter shall apply.

508.2.2 Fees - Chapter 501

The provisions of Chapter 501 of the City of Kitchener Municipal Code shall apply to this Chapter and the fees for a licence under this Chapter shall be as set out therein.

508.2.3 Schedule ‘A’ - Business Licence Procedure

The provisions of Schedule ‘A’ shall form a portion of this Chapter.

508.2.4 Applicable - all locations - within - outside - City

The provisions of this Chapter apply to any trade, occupation, calling, or business described herein that is carried on either wholly or partly within the City even if the business is being carried on from a location outside the City.

508.2.5 Operations - without licence - prohibited

No person shall operate or permit to be operated an alternative massage centre unless a valid licence has been issued respecting the alternative massage centre.

508.2.6 Licence fee - not required

An applicant for a licence with respect to a complementary health care centre is exempt from the requirement of paying a licence fee under this Chapter. All other provisions of this Chapter will apply to complementary health care centres.

508.2.7 Attendants - operator - licensee compliance

Attendants, operators, and licensees at a complementary health care centre must comply with all requirements of this Chapter unless specifically exempted therefrom.

508.2.8 Accredited school - licence fee exemption

An accredited publicly funded college or post-secondary institution, and a privately funded post-secondary institution offering a formal course of education and training is exempt from the requirement of paying a licence fee under this Chapter for such formal course of education and training but shall comply with all other provisions of this Chapter.

508.2.9 Licence fee required - conditions

Notwithstanding Section 508.2.8 if alternative massage is provided or offered outside of the hours or location specified pursuant to Sections 508.2.14 and 508.2.15, or provided to patrons for hire or gain, the requirement to pay a licence fee will apply.

508.2.10 Operation at adult entertainment parlour - prohibited

No person shall operate an alternative massage centre at a location where a business licensed under Chapter 502 of the City of Kitchener Municipal Code is operating.

508.2.11 Advertising - licence number included

Every licensee shall ensure that the licensee's current licence number is included in every advertisement for the alternative massage centre.

508.2.12 Location accessible during operation - doors unlocked

During the hours of operation of the alternative massage centre, as provided to the Manager of Licensing pursuant to Sections 508.2.14, and 508.2.15, every operator and attendant shall ensure that the principal means of access into the alternative massage centre is kept unlocked and accessible so that any person enforcing this Chapter may enter without hindrance or delay.

508.2.13 Rooms - where service provided - no locks

Every licensee shall ensure that there are no locks or locking mechanisms on the door of any room where an attendant provides services or is likely to provide services given the physical set-up of the room, and that there is unencumbered access to and egress from such a room at all times.

508.2.14 Individual application - information requirements

In addition to complying with the requirements set out in Chapter 501, every person other than a corporation who applies for a licence or renewal of licence to operate an alternative massage centre shall provide the following information to the Manager of Licensing and operate in accordance with such information:

- (a) a list of all services offered or provided in, upon, or at the alternative massage centre and the fees charged for each service;
- (b) the hours of operation of the alternative massage centre;
- (c) a list of all individuals designated to act as a manager or supervisor of the alternative massage centre when the licensee is not physically present in the alternative massage centre or written confirmation that no other individuals are designated to act as manager or supervisor of the alternative massage centre; and
- (d) in the case of a publicly or privately funded post-secondary institution shall provide a curriculum outline and the times and specific locations of alternative massage classes including room numbers if applicable.

508.2.15 Corporation - application - information requirements

In addition to complying with the requirements set out in Chapter 501, every corporation that applies for a licence or renewal of licence to operate an alternative massage centre shall provide the following information to the Manager of Licensing and shall operate in accordance with such information:

- (a) a list of all services offered or provided in, upon, or at the alternative massage centre and the fees charged for each service;
- (b) the hours of operation of the alternative massage centre;
- (c) a list of all individuals designated to act as a manager or supervisor of the alternative massage centre; and
- (d) in the case of a publicly or privately funded post-secondary institution, shall provide a curriculum outline and the times and specific locations of alternative massage classes including room numbers if applicable.

508.2.16 Notice requirement - change of information

Every licensee of an alternative massage centre may, upon giving forty-eight hours notice in writing to the Manager of Licensing, change:

- (a) the services provided at the alternative massage centre;

- (b) the fees charged for such services;
- (c) the hours of operation of the alternative massage centre;
- (d) the individual(s) designated to act as a manager or supervisor of the alternative massage centre; and
- (e) where applicable, the curriculum outline and the times and specific locations of alternative massage classes;

provided that any such change is in accordance with all of the provisions of this Chapter.

508.2.17 Charges - for services - as listed only

Every operator shall ensure that no charge, demand, or request for payment for any services offered or performed in the alternative massage centre takes place, except in accordance with the list provided to the Manager of Licensing pursuant to Sections 508.2.14 and 508.2.15.

508.2.18 List of services - fees - posted conspicuous

Every licensee shall post a copy of the list of services and fees referred to in Section 508.2.14(c) and every operator shall ensure that such list remains posted in a conspicuous place in the interior of the alternative massage centre so that it is plainly visible to any person upon entering the alternative massage centre.

508.2.19 Individual manager - supervisor - present at all times

Where the licensee is an individual, the licensee shall ensure that at least one person who is designated as a manager or supervisor of the alternative massage centre pursuant to Section 508.2.14(c) is present at all times that the alternative massage centre is open and the licensee is absent from the alternative massage centre.

508.2.20 Corporation - manager - supervisor present at all times

Where the licensee is a corporation, the licensee shall ensure that at least one person who is designated as a manager or supervisor of the alternative massage centre on the list provided to the Manager of Licensing pursuant to Section 508.2.15(c) is present at all times that the alternative massage centre is open.

508.2.21 Services - provided - hours of operation

Every operator shall ensure that the alternative massage centre is not open to patrons or the public, that patrons or the public cannot enter the alternative massage centre, and that no alternative massage or other services are provided, available, or offered in the alternative massage centre unless it is both;

- (a) between the hours of 9:00 am and 8:00 pm; and

- (b) during the hours submitted to the Manager of Licensing pursuant to Section 508.2.14 and 508.2.15.

508.2.22 Services on other attendants - prohibited

Every operator shall ensure that no person or attendant performs alternative massage on an attendant in an alternative massage centre.

508.2.23 Services on other attendants - exception

Section 508.2.22 shall not apply where:

- (a) an attendant in a complementary health care centre performs alternative massage on another attendant for the purpose of maintaining credentials with a complementary health care organization when no patrons are present; or
- (b) when a student or teacher at a privately or publicly funded post-secondary institution performs alternative massage on another student or teacher for the purpose of instruction when no patrons are present.

508.2.24 Attendant - clothing requirement - responsibility

Every operator shall ensure that no attendant is present in the alternative massage centre while nude, topless, bottomless, or wearing lingerie visible to another person.

508.2.25 Attendant - nude - other visible - prohibited

No attendant shall be in an alternative massage centre while nude, topless, bottomless, or wearing lingerie that is visible to another person.

508.2.26 Genital - anal areas - covered - operation responsibility

Every operator shall ensure that no attendant in an alternative massage centre provides alternative massage to a person or has any physical contact with a person whose genital, perineal, and anal areas are not covered.

508.2.27 Genital - anal areas - not covered - service prohibited

No attendant in an alternative massage centre shall provide alternative massage to a person or have any physical contact with a person whose genital, perineal, and anal areas are not covered.

508.2.28 Touching - private areas - prohibited - responsibility

Every operator shall ensure that no attendant in an alternative massage centre touches the genital, perineal, or anal area of any person.

508.2.29 Touch - private areas - by attendant prohibited

No attendant in an alternative massage centre shall touch the genital, perineal, or anal area of any person.

508.2.30 Sexual materials - prohibited - operator responsibility

Every operator shall ensure that no condoms, or sexual or erotic devices or materials are present in the alternative massage centre.

508.2.31 Valid licence posted - conspicuous - responsibility

Every operator shall ensure that the alternative massage centre is not open to patrons or the public unless a valid licence for the alternative massage centre is posted in a conspicuous place that would be readily visible to members of the public or patrons entering the alternative massage centre.

508.2.32 Licence - location specific

Every licence issued pursuant to this Chapter applies only with respect to the specified location.

508.2.33 Condition on licence - violation - prohibited

No person shall violate any condition placed on a licence.

508.2.34 Operation - while suspended - revoked - prohibited

No person shall operate or permit to be operated an alternative massage centre while the applicable licence is suspended or revoked.

**Article 3
ENFORCEMENT**

508.3.1 Fine - for contravention

Every person who contravenes any provision of this Chapter and every director or officer of a corporation who concurs in such contravention by a corporation is guilty of an offence and is liable, upon conviction, to a fine for each offence, not exceeding:

- (a) on a first offence, Twenty-Five Thousand Dollars (\$25,000);
- (b) on a second offence, Fifty Thousand Dollars (\$50,000); and
- (c) on a third or subsequent offence, One Hundred Thousand Dollars (\$100,000).

508.3.2 Fines - exclusive of costs

The fine amounts in Section 508.3.1 are exclusive of costs and are recoverable under the *Provincial Offences Act*.

508.3.3 Inspection - power of entry at any time

In addition to powers of entry set out in Chapter 500, the City including any agent or representative thereof, may conduct an inspection:

- (a) of any premises to which any provisions of this Chapter apply, at any reasonable time including all times when services are or appear to be offered or performed therein; and

- (b) of any premises other than a complementary health care centre to which any provisions of this Chapter apply and at which body-rubs are being conducted, at any time of the night or day.

508.3.4 Inspection - purpose

An inspection of any premises to which any provisions of this Chapter apply may be conducted to determine whether or not the following are being complied with:

- (a) any by-law under the *Municipal Act, 2001*, including this Chapter;
- (b) a direction or order of the City made under the *Municipal Act, 2001* or made under a by-law of the municipality passed under the *Municipal Act, 2001*;
- (c) a condition of a licence issued under a by-law of the municipality passed under the *Municipal Act, 2001*;
- (d) an order made under section 431 of the *Municipal Act, 2001*.

508.3.5 Inspection documents - interview - testing

For the purposes of an inspection of any premises to which any provisions of this Chapter apply, the City including any agent or representative thereof may:

- (a) require the production for inspection of documents or things relevant to the inspection;
- (b) inspect documents or things relevant to the inspection;
- (c) require information from any person concerning a matter related to the inspection; and
- (d) alone or in conjunction with a person possessing special or expert knowledge, make examination or take tests, samples, or photographs necessary for the purposes of the inspection.

508.3.6 Enforcement - authorization

Council of the City hereby authorizes the Waterloo Regional Police Services or any officer thereof to act as agent for the City for the purpose of enforcing this Chapter.

**Article 4
VALIDITY**

508.4.1 Severability

It is hereby declared that each and every of the foregoing Sections of this Chapter is severable and that, if any provisions of this Chapter should for any reason be declared invalid by any court, it is the intention and desire of Council that each and every of the then remaining provisions hereof shall remain in full force and effect.

**Article 5
REPEAL- ENFORCEMENT**

508.5.1 By-law - previous

By-law 2008-48, By-law 2008-116, By-law 2008-126 and the contents of Chapter 508 are hereby repealed as of January 18, 2010.

508.5.2 Effective date

This Chapter comes into force and effect on January 18, 2010. By-law 2010-014, 18 January, 2010.

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SCHEDULE

Schedule 'A' - Application Process - Definitions

1. For the purposes of this Schedule 'A',
"City Council" shall mean Council of The Corporation of the City of Kitchener and "Council" shall include both City Council and a Licensing Committee that has been constituted by City Council.
2. Upon receipt of a complete licence application the Manager of Licensing shall either issue or renew a licence hereunder or shall refer the matter to Council.
3. Save as otherwise provided herein, every licence issued or renewed pursuant to this Chapter shall be issued in the name of City Council by the Manager of Licensing.
4. The Manager of Licensing shall not process an application where that application is incomplete. An application will be deemed incomplete where:
 - (a) required information has not been provided on the application form;
 - (b) information or documentation required by the Manager of Licensing as part of the application process has not been provided;
 - (c) the prescribed licence fee is unpaid; or
 - (d) the Manager of Licensing has received an unsatisfactory report regarding an investigation carried out pursuant to Chapter 500 of the City of Kitchener Municipal Code or any other by-law of the City and the conditions causing the report to be unsatisfactory have not been remedied.
5. Where the Manager of Licensing receives an incomplete application, the Manager of Licensing shall, where an address or other contact information has been provided, notify the applicant that the application is incomplete and of the steps required to complete the application.
6. Where the Manager of Licensing decides an application is incomplete, the applicant shall have the right to appeal that decision to Council.

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7. If the Manager of Licensing is unable to determine whether an application is incomplete, he/she may refer the matter to Council for consideration.

8. The Manager of Licensing may refer an application or a licence to Council where:

- (a) the applicant or licensee does not meet the requirements of this Chapter or any other applicable law or by-law;
- (b) there are reasonable grounds for belief that an application or other document provided to the Manager of Licensing by or on behalf of an applicant or licensee contains a false statement or provides false information;
- (c) the past or present conduct of any person, including the officers, directors, employees, or agents of a corporation, affords reasonable cause to believe that the person will not carry on or engage in the business in accordance with the law or with honesty and integrity;
- (d) without limiting the generality of Section 8(c) above, any person, including the officers, directors, employees, or agents of a corporation, has contravened this Chapter or any other by-law or federal or provincial statute or regulation while engaged in or conducting the business;
- (e) any special conditions placed on a former or current licence of the applicant or licensee under this Chapter have not been met; or
- (f) the provisions of this Chapter provide grounds not to issue or renew in the circumstances.

9. When any matter has been referred or appealed to Council, the applicant or licensee shall be given reasonable notice of the time and place of the hearing and shall be invited to make submissions.

10. When any matter has been referred or appealed to Council, after due consideration of the application or licence and after Council has heard such representations as the applicant or licensee and staff may care to make, Council may direct that the licence be issued or renewed, or may refuse, suspend, revoke, or add conditions to a licence where:

- (a) the applicant or licensee does not meet the requirements of this Chapter or any other applicable law or by-law;

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- (b) information or documentation required by the Manager of Licensing as part of the application process has not been provided;
- (c) the application is incomplete or the prescribed licence fee is unpaid;
- (d) the Manager of Licensing receives an unfavourable report regarding an investigation carried out pursuant to Chapter 500 of the City of Kitchener Municipal Code or any other by-law of the City;
- (e) there are reasonable grounds for belief that an application or other document provided to the Manager of Licensing by or on behalf of an applicant or licensee contains a false statement or provides false information;
- (f) the past or present conduct of any person, including the officers, directors, employees, or agents of a corporation, affords reasonable cause to believe that the person will not carry on or engage in the business in accordance with the law or with honesty and integrity;
- (g) without limiting the generality of Section 9(f) above, any person, including the officers, directors, employees or agents of a corporation, has contravened this Chapter of any other by-law or federal or provincial statute or regulation while engaged in or conducting the business;
- (h) any special conditions placed on a former or current licence of the applicant or licensee under this Chapter have not been met;
- (i) the provisions of this Chapter provide grounds not to issue or renew in the circumstances; or
- (j) the applicant or licensee has consented to the refusal, suspension, revocation, or adding of conditions to the licence.

10. A decision of Council under Section 9 of this Schedule shall be final.

11. Where a licensee is convicted of an offence under any federal or provincial Act, any regulation made thereunder, of any by-law of the City in relation to or during the carrying on of the trade, calling, business, or occupation licensed hereunder, the licence may be suspended forthwith by Council until such time as the matter can be heard and finally determined by Council. By-law 2010-014, 18 January, 2010, Schedule 'A'.