

LICENCE

Chapter 508 ALTERNATIVE MASSAGE CENTRES

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Schedule 'A' - Business Licence Procedure

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 providers should have certain minimal educational and training qualifications to protect consumers purchasing their services;

AND WHEREAS Council has determined that consumers should be protected from unknowingly entering a bawdy-house when seeking alternative massage;

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

AND WHEREAS Council has determined that licensing operators 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 licensees re-

sponsible 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 operators of alternative massage centres to comply with the by-law requirements;

AND WHEREAS notice of a public meeting was given by advertisement in a local newspaper on January 25, 2008;

AND WHEREAS a public meeting was held on February 11, 2008 to allow any person attending to make representations with respect to this by-law.

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.

508.1.3 Attendant - defined

“attendant” means an individual who provides alternative massage.

508.1.4 Certificate of Exemption - defined

“Certificate of Exemption” shall mean a certificate issued by the Manager of Licensing or his/her delegate stating that an alternative massage centre operator is the operator of a complementary health care centre and is therefore exempt from the requirement of holding a licence hereunder.

508.1.5 Complementary health care centre - defined

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

508.1.6 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 identified as a complementary health care provider or as an operator of 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.

508.1.7 Complementary health care provider - defined

“complementary health care provider” means an attendant 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 or notice 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.

508.1.8 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.

508.1.9 Licence - defined

“licence” when used in the provisions of Chapter 500, Chapter 501, this Chapter 508 and Schedule ‘A’ hereto for the purposes of this Chapter only shall be read to include a Certificate of Exemption as defined in this Chapter 508.

508.1.10 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 in Chapter 501 thereof.

508.2.3 Schedule ‘A’ - Business Licence Procedure

The provisions of Schedule ‘A’ hereto 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 Operation - without licence - prohibited

No person shall operate or permit to be operated an alternative massage centre unless the operator of the alternative massage centre holds a valid licence issued under this Chapter by the Manager of Licensing or his/her delegate, or a Certificate of Exemption issued by the Manager of Licensing or his/her delegate stating that such operator is the operator of a complementary health care centre and is therefore exempt from the requirement of holding a licence by operation of Sections 508.2.6 and 508.2.8.

508.2.6 Complementary health care centre - requirements

The operator of a complementary health care centre is exempt from the requirement of holding a licence under this Chapter if he/she/it has a Certificate of Exemption. The operator of such business must comply with all other provisions of this Chapter including the requirement that he/she/it make application to the Manager of Licensing and allow inspections.

508.2.7 Complementary health care centre - attendant

Attendants at a complementary health care centre must comply with all requirements of this Chapter respecting attendants.

508.2.8 Accredited college - trainer - exemption - requirements

An accredited college or person offering a formal course of education and training is exempt from the requirement of holding a licence under this Chapter for such formal course of education and training. The operator of such business must comply with all other provisions of this Chapter including the requirement that he/she/it make application to the Manager of Licensing and allow inspections.

508.2.9 Operation - 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.

508.2.10 Advertisement - current licence number included

Every operator obtaining a licence under this Chapter shall include or have included in every advertisement of his/her/its business the operator's current licence number.

508.2.11 Access - unlocked - accessible - at all times

During the hours of operation of the alternative massage centre, as provided to the Manager of Licensing pursuant to Section 508.2.13, every operator 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.

508.2.12 Locks - attendant service areas - prohibited

Every operator of an alternative massage centre shall ensure that there are no locks or locking mechanisms on the door of any room where an attendant provides services and that there is unencumbered access to and egress from such a room at all times. By-law 2008-48, 25 February, 2008.

508.2.13 Information requirements - licensee

In addition to complying with the requirements of Chapter 501, every person 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:

- (a) a list of all services offered or provided in, upon, or at his or her alternative massage centre and the fees charged for each service;
- (b) the hours of operation of the alternative massage centre; and
- (c) a list of persons designated to act as a manager or supervisor of the establishment in the absence of the operator of the alternative massage centre.

508.2.14 Hours of operation

Every operator shall ensure that the alternative massage centre is not open to the public, patrons can not enter the alternative massage centre, and no services are provided in the alternative massage centre except:

- (a) any time(s) 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 508.2.13. By-law 2008-48, 25 February, 2008.

508.2.15 Charge of services - hours of operation - notice

Every operator 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; and
- (c) the hours of operation of the alternative massage centre,

provided that any such change is in accordance with all of the provisions of this Chapter. By-law 2008-48, 25 February, 2008.

508.2.16 Charges - as listed - only

Every operator, manager, and supervisor 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 Section 508.2.13.

508.2.17 Services - fees - listed - posted

Every operator of an alternative massage centre shall post a copy of the list of services and fees referred to in Section 508.2.13 and ensure that it 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.

508.2.18 Services - performed on attendant - prohibited

- (a) Every operator, manager, and supervisor shall ensure that no person or attendant performs alternative massage on an attendant in an alternative massage centre.
- (b) Section 508.2.18(a) shall not apply where 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. By-law 2008-116, 9 June, 2008.

508.2.19 Operator - to ensure - no nudity

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

508.2.20 Attendant - nude - topless - other - prohibited

No attendant shall be in an alternative massage centre while nude, topless, bottomless, or wearing visible lingerie. By-law 2008-126, 23 June, 2008.

508.2.21 Patron - covered - nudity - prohibited

Every operator, manager, and supervisor 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.

508.2.22 Patron - 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.

508.2.23 Inappropriate touching - prohibited - responsibility

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

508.2.24 Attendant - inappropriate touching - prohibited

No attendant in an alternative massage centre shall touch the genital, perineal, or anal area of any person. By-law 2008-116, 9 June, 2008.

508.2.25 Licence - notice - location specific

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

508.2.26 Operation - licence suspended - revoked - prohibited

No person shall operate or permit to be operated an alternative massage centre while the licence issued under this Chapter is suspended or revoked by Council.

508.2.27 Operation - notice suspended - revoked - prohibited

No person shall operate a complementary health care centre while a notice issued under this Chapter is suspended or revoked by Council.

508.2.28 Condition of licence or notice - compliance

No person shall violate any condition that Council places on a licence or notice issued under this Chapter.

508.2.29 Condition of licence or notice - compliance

No person shall violate any condition that Council places on a licence or notice issued under this Chapter. By-law 2008-48, 25 February, 2008

508.2.30 Manager present at all times

Every operator of an alternative massage centre shall ensure that, if they are not present personally, that at least one person who is designated as a manager or supervisor of the establishment is present at all times that the establishment is open and that such individual is named on the list provided to the Manager of Licensing pursuant to Section 508.2.13.

508.2.31 Condoms - sexual material - prohibited

Every operator, manager, and supervisor shall ensure that no condoms, or sexual or erotic devices or materials are present in an alternative massage centre. By-law 2008-116, 9 June, 2008.

**Article 3
ENFORCEMENT**

508.3.1 Fine - for contravention - person

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 under this Chapter, Twenty-Five Thousand Dollars (\$25,000);

- (b) on a second offence under this Chapter, Fifty Thousand Dollars (\$50,000); and
- (c) on a third or subsequent offence under this Chapter, One Hundred Thousand Dollars (\$100,000).

508.3.2 Fine - for contravention - corporation

The fines amounts in Section 508.3.1 are exclusive of costs and are recoverable under the *Provincial Offences Act*. By-law 2008-48, 25 February, 2008.

508.3.3 Inspection - any reasonable time - while open

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 may be conducted to determine whether or not the following are being complied with:

- (a) any by-law passed 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*, c. 25.

508.3.5 Inspection - authorization - types

For the purposes of an inspection 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 examinations or take tests, samples or photographs necessary for the purposes of the inspection.

508.3.6 Authority to act - agent for City

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. By-law 2008-116, 9 June, 2008.

**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**

508.5.1 By-law - previous

By-law 2004-234 and the contents of Chapter 508 are hereby repealed as of March 31, 2008 and this Chapter comes into force and effect on March 31, 2008. By-law 2008-48, 25 February, 2008.

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SCHEDULE

Schedule 'A' - Business Licence Procedure

1. 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 or a Committee of Council where appropriate under the provisions of this Chapter or any other by-law of Council.
2. Save as otherwise provided herein, every licence issued or renewed pursuant to this Chapter shall be issued in the name of Council by the Manager of Licensing.
3. 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.
4. 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.
5. Where the Manager of Licensing decides an application is incomplete, the applicant shall have the right to appeal that decision to Council or a Committee of Council.
6. If the Manager of Licensing is unable to determine whether an application is incomplete, he/she may refer the matter to Council or a Committee of Council for consideration.
7. The Manager of Licensing shall refer an application or a licence to Council or a Committee of Council where:

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- (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 7(c), 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.
8. When any matter has been referred or appealed to Council or a Committee of 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.
9. When any matter has been referred or appealed to Council or a Committee of Council, after due consideration of the application or licence and after Council or a Committee of 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:

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

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- (j) the applicant or licensee has consented to the refusal, suspension, revocation or adding of conditions to the licence.
10. Where a licensee is convicted of an offence under any federal or provincial Act, any regulation made thereunder, or 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 2008-48, 25 February, 2008, Schedule 'A'.