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## **BY-LAW NUMBER 2002-121**

OF THE

CORPORATION OF THE CITY OF KITCHENER

(Being a by-law to licence Alternative Massage Centres.)

WHEREAS it is deemed expedient to exercise the powers conferred on Council by the *Municipal Act* R.S.O. 1990, c. M.45;

NOW THEREFORE the Council of the Corporation of the City of Kitchener enacts as follows:

1. In this By-law:

- (a) "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 as defined in Chapter 505 of the City's Municipal Code 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;
- (b) "alternative massage Centre" means any premises or part thereof in which alternative massage is provided for hire or gain;
- (c) "attendant" means an individual who provides alternative massage;
- (d) "City" means the Corporation of the City of Kitchener;
- (e) "complementary health care centre" means an Alternative Massage Centre in which all of the attendants are complementary health care providers;
- (f) "complementary health care organization" means an association, organization or institution that: has at least 35 dues paying members, has been in existence for two or more years prior to the date of application of 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 services, through:
  - (i) the admission to membership of persons qualified to provide such service or services;
  - (ii) the promulgation and enforcement of a code of ethics respecting the provision of such service or services;
  - (iii) maintaining, providing and recognizing measurable standards for practices and procedures in the provision of such service or services;
  - (iv) the communication of information relating to such service or services; and
  - (v) involvement in ongoing research, development and education relating to the safe and proper provision of such service or services;

- (g) "complementary health care provider" means an individual providing health care service who:
    - (i) has successfully completed one or more formal courses of education and training in the provision of a particular type of complementary health care;
    - (ii) 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
    - (iii) has demonstrated acceptance and practice of the procedures, practices and ethics of the complementary health care organization of which the individual is a member.
  - (h) "Council" means the Council for the Corporation of the City of Kitchener;
  - (i) "formal course of education and training" means any such 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 health care service of the kind which is the subject matter of the area of interest and jurisdiction of the organization and of the course;
  - (j) "operator" means every person who, alone or with others, operates, manages, supervises, runs or controls an alternative massage Centre; and
  - (k) "person" includes an individual, a corporation, a partnership and the heirs, executors, administrators and other legal representatives of a person to whom the context can apply according to law.
2. No person shall operate or permit to be operated an alternative massage Centre unless the operator(s) of the alternative massage Centre hold(s) a valid licence issued under this By-law by the Manager of Licensing or his/her delegate, or a notice issued by the Manager of Licensing or his or her delegate stating that such operator(s) is(are) the operator of a complementary health care centre and is therefore exempt from the requirement of holding a licence by operation of section 6 hereof.
3. Every application under this by-law shall contain:
- (a) the full name, street address, mailing address and telephone number of the registered owner;
  - (b) whether the registered owner is a sole proprietorship, partnership or corporation;
  - (c) where the registered owner is a sole proprietorship or partnership, the full name, street address and mailing address of the individual comprising the sole proprietorship or of each individual who is a member of the partnership;
  - (d) where the registered owner is a corporation, a copy of the Certificate of Incorporation, a copy of the last annual information return filed, the full name, street address and mailing address of each officer and director of the corporation;
  - (e) the municipal address of the alternative massage Centre; and

(f) such other information as the manager of Licensing or his/her delegate may require.

4. The appropriate licence fees payable for a licence shall be:

First licence:		
Within 3 weeks of commencing business		\$100
After 3 weeks		\$200
Renewal:		
On or before March 15		\$100
After March 15		\$200

5. Where an application is made for licence to operate an alternative massage Centre within 3 weeks of commencing operation of the alternative massage Centre or where an operator's licence is surrendered for a partial calendar year, the licence fee charged or refunded in respect of such licence shall be pro rated according to the following formula:

- (a) between January 1 and March 15 in any year
- |               |                                |
|---------------|--------------------------------|
| for issuance  | 100 per cent of the annual fee |
| for surrender | 75 per cent of the annual fee  |
- (b) between March 16 and June 30 in any year
- |               |                               |
|---------------|-------------------------------|
| for issuance  | 75 per cent of the annual fee |
| for surrender | 50 per cent of the annual fee |
- (c) between July 1 and December 31 in any year
- |               |                               |
|---------------|-------------------------------|
| for issuance  | 50 per cent of the annual fee |
| for surrender | no refund                     |

6. Notwithstanding Section 2 of this by-law an operator of complementary health care centre is exempt from the requirement of holding a licence. The operator of such business must comply with all other provisions of this by-law including the requirement that he/she/it make application to the Manager of Licensing and allow inspections.

7. No person shall operate an alternative massage centre at a location where a business licensed under Chapter 505 of the City of Kitchener Municipal Code is operating.

8. Upon receipt of an application for the grant of a licence pursuant to this By-law, the Manager of Licensing or his/her delegate shall make or cause to be made all investigations that he/she deems necessary or that are required by the Council relative to the application.

9. Every licence and every notice issued pursuant to this By-law is personal and applies only with respect to the specified premises and may not be assigned or transferred.

10. Every operator obtaining a licence under this By-law shall keep the licence posted in a conspicuous place in the specified premises and shall keep the licence posted during the period it is in force.

11. Every operator obtaining a notice under this By-law shall keep the notice posted in a conspicuous place in the specified premises and shall keep the notice posted during the period it is in force.

12. Each licence and each notice issued pursuant to this by-law shall expire on the 31st day of December in each year.
13. The Manager of Licensing shall issue a licence except where:
  - (a) the applicant does not meet the requirements of this by-law or any other applicable law or by-law;
  - (b) the application therefore is incomplete or the prescribed licence fee is unpaid.
14. Council or a Committee of Council may refuse, suspend, revoke or add conditions to a licence where:
  - (a) 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 licence-holder contains a false statement or provides false information; or
  - (b) the past or present conduct of the applicant or licence-holder affords reasonable grounds for belief that the operator will not act in accordance with the law and with integrity and honesty;
15. Every person who has received a licence or a notice pursuant to this by-law shall:
  - (a) allow the Licensing Inspector and any other person duly authorized, including the Waterloo Regional Chief of Police or any Police Officer and the Director of Enforcement or any Municipal Law Enforcement Officer, to inspect the alternative massage centre premises at any reasonable time; and
  - (b) act as an operator in conformity with the provisions of any applicable Federal or Provincial Act, any regulation made thereunder and any applicable by-law.
16. Every operator obtaining a licence under this By-law shall include or have included in every advertisement of his/her/its business the operator's current licence number.
17. Every operator shall notify the Manager of Licensing in writing of any change in the information contained in his/her/its application within 72 hours after such change.
18. No person shall permit any person to perform alternative massage on an attendant in an alternative massage centre.
19. No person shall permit any attendant to provide alternative massage in an alternative massage centre while nude, topless or bottomless.
20. No attendant shall provide alternative massage in an alternative massage centre while nude, topless or bottomless.
21. No person shall permit an attendant to provide alternative massage in an alternative massage centre on a person who is not covered in the genital and perineal areas.
22. No attendant shall provide alternative massage in an alternative massage centre on a person who is not covered in the genital and perineal areas.
23. No person shall permit an attendant in an alternative massage centre to touch the genital or perineal area of any person.

- 24. No attendant in an alternative massage centre shall touch the genital or perineal area of any person.
- 25. Each and every of the provisions of this By-law is severable and if any provision of this By-law should for any reason be declared invalid by any court, it is the intention and desire of this Council that each and every of the then remaining provisions hereof shall remain in full force and effect.
- 26. Every person who contravenes this By-law, and every director or officer of a corporation who concurs in such contravention by the corporation, is guilty of an offence and on conviction is liable to a penalty as provided for in the *Municipal Act*, R.S.O. 1990 Chapter M. 45.
- 27. The Clerk is hereby directed to make this By-law a part of The City of Kitchener Municipal Code by adding it to the Concordance and arranging and numbering it so as to fit within the scheme of the Code.

PASSED at the Council Chambers in the City of Kitchener this 17th day of June 2002, A.D. 2001.

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Mayor

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Clerk

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