

Authority: Item 29, Planning Committee
Report : 10-001 (PED10075(a))
CM: December 15, 2010

Bill No. 017

CITY OF HAMILTON

BY-LAW NO. 11-017

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

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

AND WHEREAS this By-law provides for the addition of a new Schedule to City of Hamilton By-law No. 07-170, Schedule 15 – Personal Wellness Services Establishments, and for housekeeping and technical amendments to the General Provisions and Schedule 4 of City of Hamilton By-law No. 07-170 required as a result of the addition of the new Schedule;

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

1. Subparagraph 6(1)(e)(i) of the General Provisions of By-law No. 07-170 is amended by deleting the words “Schedule 15 Reserved”.
2. Section 30 of the General Provisions of By-law No. 07-170 is amended by deleting “(Reserved)” after “Schedule 15” and replacing it with “Personal Wellness Services Establishments”.
3. Subsection 1(a) of Schedule 4 of By-law No. 07-170 is deleted and replaced with the following new subsection:

(a) **“body-rub”**:

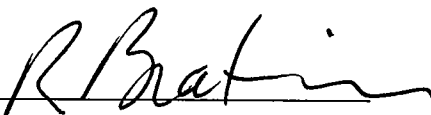
- (i) means the kneading, manipulating, rubbing, massaging, touching, or stimulating, by any means, of a person’s body or part of a person’s body appealing to or designed to appeal to erotic or sexual appetites or inclinations including but not limited to such kneading, manipulating, rubbing, massaging,

touching or stimulating advertised by any means as "sensual", "sexy" or by any other word or any depiction having like meaning or implication; and


- (ii) does not include a body-rub performed for the purpose of medical or therapeutic treatment provided by a person otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario;

- 4. By-law No. 07-170 is amended by adding the new Schedule 15, entitled "Personal Wellness Services Establishments", attached as Appendix A to this By-law.
- 5. This By-law comes into force on the day it is passed.

PASSED this 12th day of January, 2011.



R. Bratina
Mayor



R. Caterini
City Clerk

APPENDIX A

SCHEDULE 15

PERSONAL WELLNESS SERVICES ESTABLISHMENTS

PART I: DEFINITIONS

1. In this Schedule,

- (a) **“alternative massage”** means the kneading, manipulating, rubbing, massaging, touching, or stimulating, by any means, of a person’s body or part of a person’s body, but does not include such services:
- (i) performed for the purpose of medical or therapeutic treatment provided by a person otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario; or
 - (ii) appealing to or designed to appeal to erotic or sexual appetites or inclinations including but not limited to such services advertised by any means as “sensual”, “sexy” or by any other word or any depiction having like meaning or implication;
- (b) **“personal wellness services establishment”** means any premises or part thereof where an alternative massage is performed, offered or solicited in pursuance of a business;
- (c) **“operator”** means a person who operates, manages, supervises, controls or is responsible for the business of a personal wellness services establishment;
- (d) **“to provide”**, when used in relation to an alternative massage or a service that appeals to or is designed to appeal to erotic or sexual appetites or inclinations including but not limited to services advertised by any means as “sensual”, “sexy” or by any other word or any depiction having like meaning or implication, includes to furnish, perform, solicit, or give such alternative massage or service and “providing”

and “provision” have corresponding meanings;

PART II: LICENCES

GENERAL

2. No person shall carry on or engage in the business of an operator of a personal wellness services establishment without holding a current, valid licence issued under this By-law.

INFORMATION TO BE PROVIDED BY APPLICANT

3. On every application for a licence or for the renewal of a licence:
 - (a) the applicant shall file the application provided by the Issuer of Licences and shall furnish such information as the Issuer of Licences may direct; or
 - (b) if the applicant is not an individual, the application shall be filed and updated from time to time as this By-law requires by an individual duly authorized by the applicant to sign such application on behalf of the applicant and to bind it, and the individual filing such application shall certify the truth and completeness of the information provided.
4. When filing an application for a licence, in addition to complying with the General Provisions of this By-law, an applicant shall file:
 - (a) a detailed floor plan, drawn to scale, of the personal wellness services establishment that has been approved by the Issuer of Licences and the details of such floor plan shall include but are not limited to depicting the location of reception areas, offices, rooms where alternative massages are provided, washrooms, storage areas and entrances/exits;
 - (b) an itemized list describing each service that will be provided, what services may be provided during a single appointment and how appointments will be scheduled;
 - (c) information on the training and/or the experience of the operator and their

employees with respect to each service that will be provided, as requested by the Issuer of Licences;

- (d) if the applicant is a corporation:
 - (i) a current copy of the corporation profile report;
 - (ii) a list containing the full name of each officer, director and shareholder, the address of their ordinary residence, their telephone number;
 - (iii) the name or names under which the applicant intends to carry on in the business; and
 - (iv) the address of the corporation to which the Issuer of Licences may send or deliver any notice or other document required or authorized by law;

- (e) if the applicant is a partnership:
 - (i) a current copy of the limited partnerships report;
 - (ii) a list containing the full name of each partner, the address of their ordinary residence, their telephone number;
 - (iii) the name or names under which the applicant intends to carry on in the business; and
 - (iv) the address of the partnership to which the Issuer of Licences may send or deliver any notice or other document required or authorized by law;

- (f) if the applicant is an individual:
 - (i) the name of the individual, the address of their ordinary residence, their telephone number; and
 - (ii) the address of the individual to which the Issuer of Licences may send

or deliver any notice of other document required or authorized by law.

5. When filing an application for a licence renewal, in addition to complying with the General Provisions of this By-law, an applicant shall, at the time of making an application:
 - (a) sign a form certifying that there are no changes to the information required to be filed under the General Provisions or this Schedule;
 - (b) if the applicant is a corporation, file every third year a current copy of the corporation profile report;
 - (c) if the applicant is a partnership, file every third year as current of the limited partnerships report.
6. Every licence holder shall advise the Issuer of Licences immediately in writing of any change to the information required to be filed in respect of their licence under the General Provisions or this Schedule, provided that no licence holder shall change or cause a change to be made to a floor plan without first obtaining the approval of the Issuer of Licences.

EXPIRATION

7. No licence issued under this Schedule is transferable.
8. Where:
 - (a) by a transfer of existing shares, by an issue of new or existing shares, or by some other means, the controlling interest in a corporation holding a licence is determined by the Issuer of Licences to have changed hands; or
 - (b) one or more partner in a partnership holding a licence is determined by the Issuer of Licences to have ceased to be a partner or the partnership is determined by the Issuer of Licences to have ceased to exist,

a licence issued under this Schedule shall be deemed to have expired.

PART III: DUTIES OF OPERATORS

9. Every operator shall:

Premises

- (a) not equip the personal wellness services establishment so as to impede the enforcement of this By-law;
- (b) on each day when the personal wellness services establishment is open for business, open or cause it to be opened only between the hours of 7:00 a.m. and 10:00 p.m.;
- (c) post their licence in a conspicuous place in the personal wellness services establishment at all times;
- (d) keep the premises in a clean and sanitary condition;
- (e) ensure that each advertisement of the personal wellness services establishment legibly bears the words "Licensed Personal Wellness Services Establishment, Licence No. _____", complete with the licence number inserted;

Alternative Massage

- (f) not permit any service to be provided to a customer or any person that appeals to or is designed to appeal to erotic or sexual appetites or inclinations including but not limited to services advertised by any means as "sensual", "sexy" or by any other word or any depiction having like meaning or implication;
- (g) ensure any service provided complies with the "Ministry of Health Infection Control in Personal Services Settings Protocol", 2008, as amended from time to time, and with any other requirements of the Medical Officer of Health; and

Records

- (h) keep a record of each alternative massage provided, which record shall:

- (i) include the name of the person who provided the alternative massage and the time and date of the alternative massage;
- (ii) be kept for at least one year after the date of the alternative massage;
and
- (iii) be produced upon demand to a person assigned or appointed by the Issuer of Licences to enforce this Schedule.

PART IV: ENFORCEMENT AND INSPECTION

10. A person assigned or appointed by the Issuer of Licences to enforce this Schedule may, at all reasonable times, inspect a personal wellness services establishment.