TO:  Chair and Members  
Economic Development and Planning Committee  

WARD(S) AFFECTED: CITY WIDE  

COMMITTEE DATE: April 6, 2010  

SUBJECT/REPORT NO:  
“Alternative Massage Establishments” Report (PED10075) (City Wide)  

SUBMITTED BY:  
Tim McCabe  
General Manager  
Planning & Economic Development Department  

PREPARED BY:  
Vincent Ormond 905-546-2424 ext 1358  

SIGNATURE:  

RECOMMENDATION:  

(a) That the draft amending by-law to establish an “Alternative Massage Establishment” licence category, attached as Appendix “A” to Report No. PED10075, which has been prepared in a form satisfactory to the City Solicitor, be received;  

(b) That staff be directed to conduct further public consultation and report back to the Economic Development and Planning Committee with final recommendations and an amending by-law respecting the creation of an “Alternative Massage Establishment” licence category within 6 months.  

EXECUTIVE SUMMARY  

In 2007, staff was again directed to review the possibility of licensing Aromatherapy businesses. After extensive review, and preliminary stakeholder consultation, staff recommend licensing “Alternative Massage Establishments” and defining them differently from “Body Rub Parlours” and “Aesthetic Services Facilities” for enforcement purposes. Staff intend to use the draft by-law attached as Appendix “A” to this report as a basis for further consultation with alternative massage service providers, the public
and City departments, from which detailed recommendations and a final amending by-law will be developed for the Economic Development and Planning Committee's consideration.

Alternatives for Consideration – See Page 4

**FINANCIAL / STAFFING / LEGAL IMPLICATIONATIONS** (for Recommendation(s) only)

N/A

**HISTORICAL BACKGROUND** (Chronology of events)

The (former) Licensing Committee requested an investigation into the feasibility of licensing Aromatherapy businesses as far back as 2001. In February 2007, the (former Building & Licensing) Operational Review Committee directed staff to report back on how many aromatherapy businesses are licensed versus how many exist in the City of Hamilton. At its December 10, 2009 meeting, the Operational Review Committee finalized all of the outstanding business related to the 2007 Operational Review of the former Building and Licensing Division, but referred three items from its outstanding business list (i.e. item “J” – Aromatherapy Businesses, item “K” – Categories of Licences and item “V” – Private Clubs) to the Economic Development and Planning Committee as these items are more related to policy than operational matters.

**POLICY IMPLICATIONS**

N/A

**RELEVANT CONSULTATION**

Legal Services and the Hamilton Police Service were consulted in the preparation of this report.

Preliminary stakeholder consultation consisted of a public meeting on November 25, 2009 where 29 individuals representing 17 local businesses attended and provided feedback. Written comments were solicited and accepted from the public via mail or email until December 4, 2009.
Currently, the Licensing By-law requires that any service that involves “touching” is required to be licensed as a “body rub” except services provided for the purpose of medical or therapeutic treatment by person otherwise duly qualified, licensed or registered to do so by the Province.

The recommendation is to continue investigating the creation of an “Alternate Massage Establishment” licence category which will include such services as aromatherapy massage, reiki, hot stone massage, shiatsu, reflexology, etc which are also known as “Holistic” services. Many of these services could currently be captured in the “Body Rub Parlour” licence category, and appropriately licensed. However, the Licensing By-Law currently restricts the number of “Body Rub Parlour” licences in the City to a maximum of two.

There is currently no by-law provision to differentiate “Holistic” businesses providing services involving physical touching from body rub parlours where physical touching is designed to appeal to erotic or sexual appetites or inclinations. Therefore, “Holistic” service providers, including businesses offering such services as aromatherapy massage, reiki, hot stone massage, shiatsu or reflexology, operate without a business licence, thereby creating potential for consumer protection and health and safety issues. Concerned stakeholders allege that illegal (i.e. unlicensed) body rub parlours often use a “Holistic” business as a front to offer illegal services.

A telephone survey of Ontario municipalities (i.e. Greater Sudbury, London, Ottawa, Toronto, Guelph, Oakville, Vaughan, Newmarket, Kitchener, Orillia, Burlington and Barrie) reveals that many others are also struggling with the question of whether or not to recognize “Holistic” businesses separate from body rub parlours. The Provincial Government is considering regulations for “alternative medicine practitioners” which may include some “holistic service providers”. However, no legislation is forthcoming to-date.

Of the 12 municipalities surveyed, 7 said either they do not license “Holistic” businesses, or they do not recognize them as separate from body rub parlours. The remaining 5 have created a licensing category for “Holistic” businesses and some have tried to establish a certification process to address issues respecting qualifications and training of service providers.

On November 25, 2009, a public meeting was held to solicit stakeholder input regarding the possibility of licensing “Alternative Massage Establishments”. Twenty-nine individuals representing 17 local businesses attended the meeting where attendees were encouraged to ask questions and provide feedback about whether a new licence
category should be created. Also, written comments were accepted until December 4, 2009. The comments received were related mainly to licence and inspection fees, and to how/if the City would verify the qualifications of licence applicants. Virtually all of the legitimate alternative massage service providers support the creation of a licence category to allow them to distance themselves from illegal operators/activities.

After a comprehensive review, staff recommends continuing to consult with stakeholders on the development of detailed regulations associated with the proposed “Alternative Massage Establishment” licence category intended to:

- discourage the use of “Holistic” business as fronts for illegal body rub parlours by applying specific regulations
- facilitate by-law administration and enforcement by differentiating between businesses that provide services involving touching intended to appeal to erotic/sexual appetites or inclinations, and those providing touching services not intended to appeal to erotic/sexual appetites or inclinations.
- regulate “Holistic” businesses in the interest of consumer health and safety without endorsing or attesting to the value of the service to the consumer, or to the qualifications or certification of the service provider

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<tr>
<th>ALTERNATIVES FOR CONSIDERATION:</th>
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<td>(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)</td>
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Council could choose to update the definition of “body rub” in the Licensing By-law to exclude “Alternative Massage Establishments” and to not licence businesses involving touching in a non-sexual/erotic manner.

Council could choose to uncap the number of “Body Rub Parlour” licences allowed in the City and to licence all businesses involving touching as “Body Rub Parlours”.

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<th>CORPORATE STRATEGIC PLAN  (Linkage to Desired End Results)</th>
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**Growing Our Economy**
- Competitive business environment
- An improved customer service

**Healthy Community**

Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.
Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
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SCHEDULE XX

ALTERNATIVE MASSAGE 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:

(i) such services 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;

(ii) such services performed by an instructor during an exercise or similar session such as a swimming lesson or yoga class; or

(iii) a body-rub;

(b) “alternative massage establishment” means any premises or part thereof where an alternative massage is performed, offered or solicited in pursuance of a business;

(c) “body-rub” 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;

(d) “operator” means a person who operates, manages, supervises,
controls or is responsible for the business of an alternative massage establishment; and

(e) “to provide”, when used in relation to an alternative massage includes to furnish, perform, solicit, or give such services 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 an alternative massage 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 attend in person, and not by an agent, at the office of the Issuer of Licences to 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) if the applicant is a corporation:

(i) a copy of its letters of incorporation or other incorporating document certified by the proper government official or department, a copy of the last information return filed for the corporation and any changes or corrections to the information it contains;

(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;

(b) if the applicant is a partnership:

(i) a list containing the full name of each partner, the address of their ordinary residence, their telephone number;

(ii) the name or names under which the applicant intends to carry on in the business; and

(iii) 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;

(c) 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; and

(b) if the applicant is a corporation, file every third year a copy of the last information return filed for the corporation and any changes or corrections to the information it contains; and

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.

7. When filing an application for a licence, an applicant shall file a detailed floor plan, drawn to scale, of the alternative massage 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.

EXPIRATION

8. No licence issued under this Schedule is transferable.

9. A licence issued under this Schedule shall be deemed to have expired where:
(a) by transfer of existing shares (including as a result of the death of a shareholder), 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 (including as a result of death) or the partnership is determined by the Issuer of Licences to have ceased to exist.

PART III: DUTIES OF OPERATORS

10. Every operator shall:

Premises

(a) not equip the alternative massage establishment so as to impede the enforcement of this By-law;

(b) on each day when the alternative massage establishment is open for business, open or cause it to be opened only between the hours of 7:00 a.m. and 8:00 p.m.;

(c) ensure that, at any time when the alternative massage establishment is open for business, the public entrances/exits are unlocked and can be accessed without delay;

(d) post their licence in a conspicuous place in the alternative massage establishment at all times;

(e) keep the premises in a clean and sanitary condition;

(f) ensure that each advertisement of the alternative massage establishment bears the words “Licensed Alternative Massage Establishment, Licence No. ____”, complete with the licence number inserted;
Alternative Massage

(g) not permit any service including but not limited to a body-rub to be provided to a customer or any person that appeals to or is designed to appeal to erotic or sexual appetites or inclinations;

(h) not permit an alternative massage to be provided to a customer or any person who they reasonably suspect has been exposed to or is suffering from a communicable disease; and

Records

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

(ii) include the name of the person who provided the alternative massage and the time and date of the alternative massage;

(iii) be kept for at least one year after the date of the alternative massage; and

(iv) be produced upon demand to a person assigned or appointed by the Issuer of Licences to enforce this Schedule.

PART IV: ENFORCEMENT AND INSPECTION

11. A person assigned or appointed by the Issuer of Licences to enforce this Schedule may, at all reasonable times, inspect an alternative massage establishment.