Agenda – Council – February 26, 2014

Report – Standing Policy Committee on Protection and Community Services – February 10, 2014

Item No. 1 Massage Regulations (formerly Holistic Medical Establishments)

STANDING COMMITTEE RECOMMENDATION:

On February 19, 2014, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and submitted the following to Council:

1. That proposed amendments to the *Doing Business in Winnipeg By-law No. 91/2008* pertaining to the licensing of massage services, as per draft amending by-law (Appendix A), be approved:

    1.1 That the terms "*Massagist"* and "*Massage Parlour*" be changed to "*Body Rub Practitioner"* and "*Body Rub Parlour"*;

    1.2 That members of the Massage Therapy Association of Manitoba be exempt from licensing requirements;

    1.3 That the Director of the Department responsible for Licensing be granted authority to exempt from licensing individuals whose therapeutic practices include some form of massage and are members of an organization that meet standards as proposed in the By-law amendment for education, practice standards and discipline;

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Standing Policy Committee on Protection and Community Services – February 10, 2014

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 19, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Protection and Community Services, and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On February 10, 2014, the Standing Policy Committee on Protection and Community Services concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

On November 7, 2013, the Standing Policy Committee on Protection and Community Services referred the matter to the Winnipeg Public Service for report back in 90 days.

On September 30, 2013, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management concurred in the recommendation of the Winnipeg Public Service:

1. That the recommendations in the report pertaining to current regulations regarding massage contained in the Doing Business in Winnipeg By-law 91/2008 be referred to the Standing Policy Committee on Protection and Community Services.

STANDING COMMITTEE DECISION:

On September 30, 2013, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management concurred in the recommendation of the Winnipeg Public Service, that all matters pertaining to zoning be received as information.

STANDING COMMITTEE RECOMMENDATION:

On September 9, 2013, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management granted a further extension of time to its meeting on September 30, 2013, for the Winnipeg Public Service to report back on the matter.

Report – Standing Policy Committee on Protection and Community Services – February 10, 2014

DECISION MAKING HISTORY (continued):

STANDING COMMITTEE RECOMMENDATION (continued):

On June 24, 2013, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management granted a further extension of time to its meeting on September 9, 2013, for the Winnipeg Public Service to report back on the matter.

On March 4, 2013, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management concurred in the recommendation of the Winnipeg Public Service, as amended, namely:

1. That Standing Policy on Downtown Development, Heritage and Riverbank Management accept this status report as information.

2. That a 90-day extension be granted for receipt of the final report and recommendations on this matter.

On November 29, 2012, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management further laid over the matter for ninety (90) days to allow the Winnipeg Public Service to conduct further consultations with industry representatives.

On September 10, 2012, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management laid over the matter for ninety (90) days to allow the Winnipeg Public Service to conduct further consultations with industry representatives.

On June 11, 2012, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management granted an extension of time of 60 days, for the Winnipeg Public Service to report back on how the Winnipeg Downtown Zoning By-law 100/2004 can accommodate holistic medicine and alternative treatment establishments that should not be included in the designation “Massage Parlour”.

On November 28, 2011, the Standing Policy Committee on Downtown Development, requested the Winnipeg Public Service to report back within 180 days on how the Winnipeg Downtown Zoning By-law 100/2004 can accommodate holistic medicine and alternative treatment establishments that should not be included in the designation “Massage Parlour”.

ADMINISTRATIVE REPORT

Title: **Review of Existing Massage Licensing Regulations**

Critical Path: **Standing Policy Committee on Protection and Community Services – Executive Policy Committee - Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Fifer	C. Wightman	N/A	D. Joshi, A-CAO

RECOMMENDATIONS

1. That Council approve the proposed amendments to the *Doing Business in Winnipeg By-law 91/2008* pertaining to the licensing of massage services, as per draft amending By-law (Appendix A), to achieve the following:

    1.1 That the terms "*Massagist"* and *"Massage Parlour*" be changed to *"Body Rub Practitioner"* and *"Body Rub Parlour"*;

    1.2 That members of the Massage Therapy Association of Manitoba be exempt from licensing requirements;

    1.3 That the Director of the Department responsible for Licensing be granted authority to exempt from licensing individuals whose therapeutic practices include some form of massage and are members of an organization that meet standards as proposed in the By-law amendment for education, practice standards and discipline;

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

On November 28, 2011, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management requested that the Winnipeg Public Service to report back in 180 days on how the Winnipeg Downtown Zoning By-law 100/2004 can accommodate holistic medicine and alternative treatment establishments that should not be included in the designation "Massage Parlour".

On September 10, 2012, representatives of the Massage Therapy Association of Manitoba (MTAM) appeared as a delegation at the meeting of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management, to request that the Public Service consider changing the name of Massage Parlours and Massagists, in its By-laws, to names that would distinguish these businesses

and services from those of massage services provided by formally trained and registered massage therapists.

On September 30, 2013, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management referred the matter to the Standing Policy Committee on Protection and Community Services for a review of the regulations pertaining to massage, as contained in the Doing Business in Winnipeg By-law 91/2008.

Council approval is required to amend the *Doing Business in Winnipeg By-law No. 91/2008*.

IMPLICATIONS OF THE RECOMMENDATIONS

The intent of the recommended by-law changes contained in this report is to:

- more clearly distinguish between therapeutic practitioners who utilize massage techniques in their practice, versus untrained and unregulated individuals who provide massages, and
- acknowledge the expanding number of widely-recognized health and wellness related services that employ some form of massage as part of their services, such as Reiki, Shiatsu, etc., and exempt them from licensing under the By-law.

Terminology – 'Body Rub Practitioner' and 'Body Rub Parlour'

The inter-jurisdictional research conducted for this report indicates that Calgary, Edmonton, Vancouver, Hamilton and Toronto all use the terms "body rub parlour" and "body rub practitioner" to describe and classify the licences that the Doing Business in Winnipeg By-law describes as "massage parlour" and "massagist". This change will bring Winnipeg in line with most major municipalities in Canada, by using terminology that is commonly used to describe this business type. (See Appendix B)

No formal training in massage or any other health or wellness discipline is currently required by Winnipeg by-laws in order to obtain a massagist license. MTAM and other organizations that represent individuals who have obtained certification in massage from a recognized school and maintain high standards of professionalism in their practice, were consulted as part of this process. All expressed concern that inclusion of the term "massage" in these titles is misleading to members of the public seeking the services of a trained and certified massage practitioner.

Replacing the term "massage parlour" with "body rub parlour", and "massagist" with "body rub practitioner" will serve to more clearly differentiate between the services available from a body rub practitioner in a body rub parlour, from those available from individuals who are highly trained and certified in scientifically-based massage therapy.

Proposed Licensing Exemptions

<u>Members of the Massage Therapy Association of Manitoba</u>

The Massage Therapy Association of Manitoba (MTAM) has instituted educational and practice standards and enforcement mechanisms which provide a reasonable assurance of competent and ethical practice by its members. Accordingly, it is proposed that members of MTAM be exempted from the licensing provisions of this By-law. This allows Registered Massage Therapists (RMTs) who graduated from earlier education programs (those who have been essentially "grandfathered" under MTAM) to also be exempt from licensing.

Other Professional Organizations

There is a growing body of widely-recognized therapeutic practices that include massage as part of their therapy, but are not included in the practice of regulated health professions, or of massage therapists (i.e. Reiki, Shiatsu, etc.). The proposed By-law amendments allow for such organizations to meet certain standards with respect to the education, supervision and discipline of their membership and as such for their members to be exempt from licensing requirements. It is proposed that the Director responsible for licensing would be given the authority to provide these exemptions.

In order to be exempt, these organizations would have to meet the following standards as proposed in the By-law amendments with respect to the education, supervision, and discipline of their members:

- the organization must have been in existence as a corporation in Canada for at least five years
- members must be governed by a comprehensive code of ethics that includes provisions prohibiting sexual relations between the practitioner and patient/client
- members must have graduated from a recognized school that requires supervised practical work
- continued competency must be mandatory for membership renewal and the organization must exercise control over the quality of the course work for renewal
- members must possess valid professional liability insurance
- a complaints resolution process must be in place that works in collaboration with law enforcement as required, with outcomes that can include suspension of membership for cause
- other criteria which are established by the designated employee to ensure that the organization provides appropriate supervision over the provision of a recognized therapeutic service to the public.

Accordingly, these organizations would be required to provide the Director or designated employee with an annual list of members and to report immediately if a member is suspended or expelled, or has his or her practice restricted.

As referenced in the Consultation section of this report, there have been consultations with a number of associations and organizations in the development of the proposed amendments to the *Doing Business in Winnipeg By-law 91/2008* pertaining to the licensing of massage services. While not all consultations have resulted in concurrence on all issues, the Public Service is confident that the changes proposed reflect a strengthened by-law for both the industry and the municipality.

HISTORY

On November 28, 2011, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management requested that the Winnipeg Public Service to report back in 180 days on how the Winnipeg Downtown Zoning By-law 100/2004 can accommodate holistic medicine and alternative treatment establishments that should not be included in the designation "Massage Parlour".

On September 10, 2012 the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management considered a recommendation by the Winnipeg Public Service that Holistic Medical Establishments be considered under the Personal Services category on the Downtown Winnipeg Zoning By-law 100/2004, where supporting documentation is provided by the applicant, and laid the matter over for 90 days to allow the Winnipeg Public Service to conduct consultation with industry representatives. Representatives of the Massage Therapy Association of Manitoba (MTAM) appeared as a delegation at the meeting, to request that the Public Service consider changing the name of Massage Parlours and Massagists, in its By-laws, to names that would distinguish these

businesses and services from those of massage services provided by formally trained and registered massage therapists.

On November 29, 2012 the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management further laid over the matter for another 90 days to allow the Winnipeg Public Service to conduct further consultations with industry representatives.

On June 24, 2013 the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management granted an extension to its September 9, 2013 meeting

On September 9, 2013, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management received an informational report that provided information on massage regulations in other Canadian cities, and feedback received from organizations and associations that have an interest in massager regulations. The report indicated that based on the research, changes to massage regulations contained in the Doing Business in Winnipeg By-law 91/2008 would be recommended for the consideration of the Standing Policy Committee on Protection and Community Services.

On September 30, 2013, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management referred the matter to the Standing Policy Committee on Protection and Community Services for a review of the regulations pertaining to massage, as contained in the Doing Business in Winnipeg By-law 91/2008.

On November 7, 2013, the Standing Policy Committee on Protection and Community Services referred the matter to the Winnipeg Public Service for report back in 90 days.

The Doing Business in Winnipeg By-law was passed by Council on April 23, 2008, and implemented on June 1, 2008. The By-law has three key principles for licensing businesses in Winnipeg: 1) Public Health Protection; 2) Fire Safety; and 3) Crime Prevention.

FINANCIAL IMPACT

Financial Impact Statement

Date: January 16, 2014

Project Name:

Review of Existing Massage Licensing Regulations

First Year of Program **2014**

	2014	2015	2016	2017	2018
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: The intent of the report is to define establishments that should be licenced. The number of licences are not affected and no financial impact.

"Original signed by"
Cindy Fernandes, CMA
Department Controller

CONSULTATION

In preparing this report there was consultation with:

Legal Services Department
Winnipeg Police Service
Planning Property and Development Department

Massage Therapy Association of Manitoba (MTAM)
Manitoba Health
Manitoba Chiropractors Association
Manitoba Physiotherapy Association
College of Physicians and Surgeons Manitoba
Healing Touch Association of Canada
Natural Health Practitioners of Canada Association
Canadian Health Care Anti-fraud Association

SUBMITTED BY

Department:	Community Services
Division:	Community By-law Enforcement Services
Prepared by:	Marcia Fifer
	Patti Regan
	Kurtis Kowalke
Date:	January 16, 2014
File No.:	

Appendix A: Draft Amending By-law

By-law No. _____/2014

THE CITY OF WINNIPEG

BY-LAW NO.

A By-law of THE CITY OF WINNIPEG to amend the Doing Business in Winnipeg By-law with respect to massagists and massage parlours

THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

Doing Business in Winnipeg By-law amended

1 The Doing Business in Winnipeg By-law No. 91/2008 is amended by this By-law.

Division Six renamed

2 Division Six is renamed *"**Division Six – Body Rub Practitioners and Body Rub Parlours**"*.

Definitions amended

3 Section 49 is amended by

(a) repealing the definitions *"massage parlour",* and *"massagist"*;

(b) adding the following definitions in alphabetical order:

"body rub parlour" *means any premises, or part of any premises, where more than one individual carries on the business of a body rub practitioner;*

"body rub practitioner" *means an individual who provides or offers to provide massages for a fee but does not include an individual who provides or offers to provide massages in the course of his or her practice as one of the following:*

(a) a "regulated member" as defined in The Regulated Health Professions Act*, C.C.S.M., c. R117 or a health professional whose practice is governed by an Act set out in Schedule 2 of that Act;*

(b) a massage therapist;

(c) an individual who carries on a business or occupation which is limited exclusively to massaging the feet, hands, head or face;

(d) a Provincially-certified esthetician who administers massages as part of a skin care treatment, where the massage is for the purposes of product

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application and is a minor or incidental and secondary part of the treatment; or

(e) a member in good standing of an exempt organization;

***"Director"** means the Director of the department of the City which has been given responsibility for administering and enforcing this By-law;*

***"exempt organization"** means an organization that has been declared by the Director to be exempt under section 49.1 and which has not had the exemption withdrawn;*

***"massage therapist"** means*

(a) a member in good standing of the Massage Therapy Association of Manitoba;

(b) a member in good standing of the College of Massage Therapists of British Columbia, the College of Massage Therapists of Ontario, the College of Massage Therapists of Newfoundland and Labrador, or any other college of massage therapists that has been recognized by a Provincial regulatory statute;

(c) a person who can provide evidence satisfactory to the Director that he or she has graduated from a school of massage therapy or educational program in massage therapy which requires a minimum of 2200 hours of study or completion of a 2 year program of study prior to graduation.

***"member in good standing"** means a member of an organization whose membership is not currently suspended or restricted.*

"Massage parlour" and "massagist" replaced

4(1) The term *"massage parlour"* is replaced with *"body rub parlour*" wherever is appears in the By-law.

4(2) The term *"massagist"* is replaced with *"body rub practitioner"* wherever is appears in the By-law.

Section 49.1 added

5 The following section is added immediately after section 49:

Authority of Director to exempt organizations

49.1(1) The Director is authorized to declare an organization whose members are engaged in providing therapeutic services to the public through massage to be exempt under this By-law if the organization can demonstrate to the satisfaction of the Director that it meets all of the following criteria:

(a) the organization has been registered as a corporation within Canada for at least five years;

(b) the members of the organization are governed by a comprehensive code of ethics which includes provisions that either explicitly prohibit sexual relations between its members and their patients or clients, or which have been consistently interpreted to prohibit this behaviour;

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(c) membership is restricted to individuals who have met rigorous educational standards or who have graduated from credible educational institutions which require supervised practical work as a condition of graduation;

(d) continued membership requires continuing competency in the practice of the therapeutic service;

(e) membership requires that the member be covered by professional liability insurance;

(f) the organization has in place an effective complaints investigation and resolution process that works with law enforcement agencies when appropriate and employs sanctions that include suspension of membership or expulsion of members; and

(g) other criteria established by the designated employee to ensure that the organization provides appropriate supervision over the provision of a therapeutic service to the public.

49.1(2) An exempt organization must

(a) annually provide a list of its members to the Director in a form acceptable to the Director; and

(b) immediately notify the Director when a member of the organization is suspended or expelled or has his or her practice restricted.

49.1(3) After providing notice to an exempt organization and giving the organization an opportunity to be heard, the designated employee may withdraw the exemption if the organization no longer meets the criteria set out in subsection (1) or has failed to comply with the requirements of subsection (2).

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DONE AND PASSED, this day of , 2014.

_____
Mayor

_____
City Clerk

Approved as to content:

_____
Director of Community Services

Approved as to form:

_____
For Director of Legal Services/City Solicitor