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## **Licensing Regime for Personal Wellness Establishments Staff Report to Council**

Report Number: 2021-46

Department(s): Legislative Services

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Meeting Date: June 16, 2021

### **Recommendations**

1. That the report entitled Licensing Regime for Personal Wellness Establishments dated June 16<sup>th</sup>, 2021 be received; and,
2. That staff be directed to proceed to a statutory public meeting in order to amend the Town's Zoning By-laws to consider Personal Wellness Establishments; and,
3. That Business By-law 2020-31 be amended to adopt the proposed Personal Wellness Establishment regulations; and,
4. That the proposed Personal Wellness Establishment regulations within the Business By-law 2020-31 take effect at the same time that a future proposed amendment to the Zoning By-laws for Personal Wellness Establishments is deemed effective; and,
5. That Schedule 7: Body-Rub Parlours of By-law 2002-151 be repealed; and,
6. That the AMPS By-law 2019-62, Schedule A be amended as proposed in Attachment #2; and,
7. That the Fees and Charges By-law 2020-09, Schedule F be amended as proposed in Attachment #3; and,
8. That staff be directed and authorized and directed to do all things necessary to give effect to this resolution.

### **Executive Summary**

The Town's existing body rub parlour regulations are under review as part of the Regulatory Services Division project plan for 2021. An initial licensing framework was adopted by Council in 2002, however, the massage service industry has greatly evolved since implementation. This report presents Council with a draft by-law and proposed regulations in response to further direction provided at the May 10, 2021 Council meeting.

## Purpose

The purpose of this report is to present Council with next steps regarding the licensing of Personal Wellness Establishments through the adoption of proposed regulations within the Town's Business Licence By-law.

## Background

### Legislative Authority

Under the Municipal Act, the Town may provide for a system of licences with respect to certain classifications of business by adopting a licensing by-law. As specified in the Municipal Act, a licensing by-law should relate to consumer protection, the economic and social well-being of the municipality, and the health, safety, and well-being of persons in the municipality. Conditions may be imposed on a licence to ensure a business is compliant with regulations established to reflect community objectives.

Section 34 of the Planning Act provides the authority for municipalities to enact zoning bylaws to regulate the use of land and structures.

A zoning by-law controls the use of land in your community by stating exactly how land may be used, where buildings and other structures can be located, the types of buildings that are permitted and how they may be used, and the lot sizes and dimensions, parking requirements, building heights, and setbacks from the street.

### Historical Content

In 2002, the Town's [Licensing By-law 2002-151](#) was adopted and a licensing framework was implemented for body rub parlours at that time.

On March 25, 2019, a [Regulatory Review Workshop](#) was conducted with Council, which identified a body rub parlour by-law review to be brought forward by Q4 2020.

On December 23, 2020, [Information Report 2020-39](#) was provided to Council to highlight the Regulatory Services Division project plan. Body rub parlours were identified by Council as a priority and a regulatory review was requested to be brought forward by Q2 2021. Following this direction, Town staff began drafting a consultation and implementation plan.

In late January 2021, an online survey was posted to [HeyNewmarket](#) to engage the public as a first step in the consultation process. A total of 19 responses were received.

On February 16, 2021, a virtual [Public Information Centre \(PIC\)](#) was held to engage stakeholders and receive feedback on potential regulatory changes. This was an interactive presentation that allowed participants to answer polling questions throughout. Staff also included an open forum question and answer period at the end of the presentation in order to receive additional feedback.

On March 8, 2021, Town staff conducted a virtual [Council Workshop](#) to present feedback received to date by the community. This Workshop also highlighted four potential options that staff explored in relation to a licensing framework for massage service providers in Newmarket.

Following the Workshop presentation, Council provided comments to staff which referenced further consultation efforts, reviewing the proposed options with relevant stakeholders, and providing Council with advanced options at a future Council meeting. Following this Workshop, Town staff then proceeded to request further public engagement by presenting staff's proposed options as part of an online survey, in addition to holding one-on-one virtual meetings with interested stakeholders and community advocacy groups. The results from all rounds of consultation were summarized and presented on May 3<sup>rd</sup>, 2021 in [Staff Report 2021-36](#). Upon receiving this report, Council directed Staff to proceed with drafting proposed regulations that would repeal the Town's Body-Rub Parlour classification and introduce a Personal Wellness Establishment classification that would strictly prohibit services that appeal to sexual or erotic inclinations, while requiring business owners to only permit persons with enhanced levels of training to perform alternative massages in Newmarket.

Following this direction from Town Council, Staff engaged in further rounds of public consultation that included one-on-one meetings, phone calls to local businesses, email correspondence, and engagement with our community through a [Webinar](#) posted on the Town's YouTube page to present draft regulations in a plain language context.

Using the information gained through all forms public consultation, in addition to closely reviewing regulations established in other municipalities, Town staff has drafted proposed regulations for Council's consideration, as presented in this report.

## **Discussion**

While reviewing regulations pertaining to alternative massage services, Town staff quickly noted that there is "no one-size-fits-all" model. Many municipalities have drafted regulations unique to their community's needs or expectations. Best practices have been reviewed throughout various municipalities to help form Town staff's direction. However, it is relevant to note that the draft regulations presented in this report reflects best practices pre-established in the Town of Newmarket and shared with us by our local business community. In addition to this feedback, Town staff has also received strong input from many advocacy groups throughout Ontario. All forms of feedback have been included in the proposed regulations for Council's consideration, while working under the direction of Council to increase the standards of our community through a licensing framework for Personal Wellness Establishments (PWEs).

## Consultation completed between May 3 – June 4, 2021

Following the consultation completed and highlighted in previous reports (see Background section of this report), Staff has further engaged local business owners, community advocacy groups, the College of Registered Massage Therapists, and other interested stakeholders. A summary of all consultation completed between May 3 and June 4, 2021 is provided below.

### Pre-established Local Businesses in Newmarket

Recognizing that the proposed regulations may have an impact on existing businesses throughout Town, staff notified and engaged with the business community using a variety of different methods. A list of 30 local businesses were initially identified to be Personal Wellness Establishments. This list was compiled by utilizing York Region's Business directory, performing online searches, and completing in-person inspections of known commercial locations throughout Newmarket. All 30 businesses were notified through a combination of emails, mailed letters, and hand-delivered notices.

Of the 30 businesses notified:

- 4 have recently closed or relocated outside of Newmarket, bringing Staff's list of potentially impacted businesses to 26.

Of the remaining 26 businesses identified:

- 17 responded and engaged via Zoom meetings, phone calls, or email exchanges.
- Through further engagement with these businesses, it was determined that 11/17 businesses are not offering the services of a PWE, but instead were identified as Personal Service Shops (i.e. hair salon, nail salon, or some form of beautician).

The remaining 6 businesses identified were engaged to better understand different aspects of their business practices. This included:

- the level of training obtained by their attendants;
- the types of services being provided; and
- any practices that they believe should become best practices for the community as a whole.

Of the 6 businesses identified as offering PWE services:

- 4 businesses reported that staff members have training from an accredited institution; and
- 2 businesses stated that staff members do have some level of training that could be submitted to the Town, but not from an accredited institution, as the services provided are not offered through any accreditation program.

For a complete list of comments received from local business owners, please refer to **Attachment #1** of this report.

Despite every effort, Town staff were not able to engage with the remaining 9 local businesses believed to be operating as a body rub parlour or some form of alternative massage services. Town staff attempted contact using all of the following methods per business:

- 1) multiple email attempts using their advertised email addresses;
- 2) personal phone calls using their advertised phone numbers;
- 3) hand delivered letters posted directly to the business premises; and
- 4) mailed letters to the last known business address.

### **Community Advocacy Groups**

Town staff requested input from interested community advocacy groups and the consultation process was extended to any advocacy group without limitation to their geographical location (i.e. not Newmarket specific). Staff received feedback from the following 5 community advocacy groups:

- Butterfly: Asian and Migrant Sex Worker Support Network;
- HIV Legal Network;
- BridgeNorth;
- Parents against Child Trafficking – Markham & Richmond Hill; and
- Women against Sex Trafficking in York Region.

While each group represented various positions and perspectives, Town staff believes it is relevant to summarize a few key points as follows:

- one advocacy group has requested that the name of the licence classification be changed from “Personal Wellness Establishment” to a new defined term that no other municipality has used prior.
  - Rationale for doing so is related to stigma: a belief that rebranding body rub parlours will not stop pre-existing body rub parlours from believing (even optically) that the Town will licence them, despite being associated with adult entertainment businesses rather than PWEs;
- strong feedback from various groups to ensure all applications and by-laws are translated into different languages in order to ensure all members of our community have the ability to understand the rules and regulations;
- feedback that not all modalities of alternative massage have training programs offered through accredited institutions in Canada;
- recognition by nearly all advocacy groups that a humanistic approach is needed when implementing or enforcing this by-law; and
- Town staff were strongly encouraged to utilize our community partners to ensure businesses and employees are supported throughout the licensing process.

### **College of Registered Massage Therapists**

Town staff contacted the College of Registered Massage Therapists (CMTO) for input. The CMTO regulates massage therapy throughout Ontario and are governed by the

[Massage Therapy Act, 1991](#). Town staff was redirected to the specific requirements of the CMTO for the purpose of becoming a Registered Massage Therapist in Ontario. A brief summary of the information received is as follows:

- successful completion of a Massage Therapy diploma program recognized by the Ministry of Training, Colleges, and Universities (or equivalent);
- successful completion of CMTO's certification exam;
- ability to satisfy the Registration Committee that the applicant has not been convicted or charged with, and not found "guilty" of an offence that affects their ability to engage in the practice of the profession;
- demonstration that the applicant is a Canadian Citizen, a permanent resident of Canada, or authorized under the Immigration and Refugee Protection Act (Canada) to engage in the practice of Massage Therapy;
- ability to satisfy the Registration Committee that their past and present conduct provides reasonable grounds for the belief that they will:
  - practice Massage Therapy with decency, honesty and integrity, and in accordance with the law;
  - does not have any physical or mental condition or disorder that could affect their ability to practice Massage Therapy in a safe manner; and
  - will display an appropriate and professional attitude.

Town staff has reviewed the requirements of a Registered Massage Therapist (RMT) in Ontario and are recommending several similar provisions in the proposed by-law to mirror the requirements established by the CMTO as a best practice for all forms of massage services. However, it is relevant to clarify that Town staff are not proposing to licence RMTs as part of the PWE classification. The information gathered has assisted staff in proposing regulations which increase the overall standards of our community in relation to alternative massage services.

### **Other Interested Stakeholders**

In addition to the consultation highlighted above, a Webinar was posted on the Town's YouTube page. The Webinar used plain language to present an initial draft of the proposed regulations in order to spark further feedback and engagement. Several stakeholders, including advocacy groups, local residents, and local businesses, provided additional input following their review of the Webinar. A summary of any follow up meetings conducted with Town staff, in addition to all correspondence received, has been provided for Council's reference under **Attachment #1**. However, it is relevant to highlight that there was a strong sense of support for the draft regulations proposed.

### **Proposed Regulations for Business Licence By-law 2020-31**

In an effort to increase the standards of our community, Town staff recommends adopting modernized regulations to capture an ever-evolving alternative massage industry. When drafting the proposed regulations, Town staff focused on having all regulations be clear and concise, enforceable, and ensure that public health and safety

are prioritized. Through consultation with various stakeholders and a review of standard practices in other municipalities, Town staff are proposing the following licensing requirements for Personal Wellness Establishments:

### **1. Section 3: General Regulations**

Town of Newmarket Business Licence By-law 2020-31, which was adopted in June 2020, already contains general regulations that apply to all classifications of business established by by-law. Under the general regulations, PWEs will also be required to comply with all applicable provisions therein. A summary of key provisions previously adopted by Town Council as general regulations are highlighted as follows:

- the requirement for a business to obtain and display a business licence;
- the requirement for a business to comply with all federal, provincial and municipal legislation;
- the requirement to ensure all licensed businesses only advertise services that they are authorized and approved to offer;
- the requirement to ensure all licensed businesses only advertise using the business name identified on their application; and
- all applicants provide proof to demonstrate they are authorized to work in Canada.

### **2. Section 7: Suspension, Cancellation and Refusal**

Section 7 of By-law 2020-31 provides the Town Manager or their designate with the authority to suspend, cancel or refuse a business licence. A summary of key provisions previously adopted by Town Council as powers to issue, suspend, or refuse a business licence are highlighted as follows:

- Section 7(1) authorizes the Town to suspend, cancel or refuse a licence to an applicant or licensee where past conduct affords reasonable grounds for belief that the business owner will not operate its business in accordance with the law or with honest and integrity.
- Section 7(1)(b) also authorizes the Town to refuse a licence to an applicant who has been found to provide the Town with false information in order to obtain a business licence;
- Section 7(11) also contains enforceable provisions, such as the ability for the Town to post a notice on the premises to advise that any business operating is doing so without a Town-approved business licence. This provision demonstrates to the community that the Town is aware of noncompliance and is taking steps to remedy. It is clear and transparent and Council previously approved a fine amount of \$600 for removing any posted notice from the premises prior to resolving the matter in full (i.e. obtaining a licence or closing the premises).

### **3. Section 8.6 – Proposed Regulations for PWEs:**

This section is newly proposed for the purpose of establishing specific regulations pertaining to PWE owners and attendants. Town staff is proposing to only licence business owners in order to hold them accountable for all staff and attendants therein. This direction aligns with all other licensing classifications recently brought forward for Council's consideration. The proposed regulations as summarized as follows:

#### **Sections 8.6(3)(b) and 8.6 (3)(c): Proof of training required for attendants**

- Requires every owner to submit a list of all PWE attendants and their qualifications to be reviewed and approved by the Town's Licensing Division;
- Qualification standards proposed include training from an accredited institution in Canada.
- An alternative standard is proposed through **Section 8.6(3)(c)**, where no accredited institution offers training for the services provided. An example of this would be Osteopathy being performed by any person other than a RMT, as no accredited institution offers Osteopathic training. In this instance, a fulsome review of the credentials provided, in conjunction with other regulations contained in the proposed by-law, will be utilized to consider the issuance of a business licence.

#### **Section 8.6(4): Other application requirements**

- This section provides Town staff with the authority to conduct application interviews with PWE business owners and their attendants in order to ensure that they are duly qualified to offer alternative massage services. Staff will use these interviews to better understand the owner or attendant's experience, training and knowledge of the modality of alternative massage they intend to offer to ensure no persons are obtaining a licence under false pretenses.
  - Through public consultation, staff have learned the importance of utilizing translation services throughout these interviews in order to ensure a fair process for all members of our community.
  - Public consultation also encouraged us to utilize these interviews to help spot signs of exploitation, so that we can better work with our community partners at York Regional Police to help address criminal activity.
- **Section 8.6(4)(b)** provides Staff the authority to conduct an onsite inspection prior to the approval of an application. This will empower Town staff to confirm details of the application and ensure all services provided comply with federal, provincial, and municipal legislation.
- **Section 8.6 (4)(c)** provides Town staff the authority to circulate any application received to specific community partnerships (i.e. Public Health, York Regional Police, etc.) for the purpose of providing a non-binding report. Should that report be negative or unfavorable, it will assist the Town in denying the application.
  - Through consultation with York Regional Police, Town staff has confirmed a process and procedure in which applications can be reviewed, and staff remains confident that this section will help create barriers for businesses



associated with criminal activity from obtaining a business licence.

**Section 8.6(5)(e): No sexual services are permitted to be offered, provided, or advertised within commercial storefronts**

In keeping with direction provided by Council at May 3<sup>rd</sup> Committee of the Whole, in addition to feedback received from relevant stakeholders, the proposed regulations expressly prohibit the offering, providing, or advertising of sexual services within commercial storefronts throughout Town. It is relevant to note that the intention of this review is to increase the standards of our community through a licensing framework. Respecting federal and provincial legislation, the proposed by-law focusses on licensing powers and the overall scope of a municipality to enact such by-laws. The provision referenced above is included to clarify and ensure that all businesses understand their requirement to comply with all federal, provincial, and municipal legislation.

**Zoning By-law 2010-40**

Section 34 of the Planning Act provides the authority for municipalities to enact zoning bylaws to regulate the use of land and structures. The Town's zoning by-laws define Body-Rub Parlours (BRPs) and permits their use in the General Employment and Heavy Employment zones. Currently, a 500m separation distance is imposed under the Town's Licensing By-law 2002-151, Schedule 7, which requires all BRP to also be located at least 500m from all schools, daycares, churches, and arterial roadways. The current zoning imposed is highly restrictive and does not capture the existing business practices throughout our community.

On May 10, 2021, Town Council directed staff to proceed with repealing the Town's BRP classification and adopting a Personal Wellness Establishment licensing framework. In order to do so, there are zoning considerations that requires Council direction in order to proceed. Staff has consulted with the Town's Planning Department, in addition to obtaining an external legal opinion, to determine the best course of action regarding potential zoning amendments and their implications. The recommendation received from both is as follows:

1. Amend Zoning By-law 2010-40 and Urban Centres Zoning By-law 2019-06 to repeal the definition of BRP and any reference to BRPs throughout; and
2. Introduce a new definition for Personal Wellness Establishments and permit them in all Urban Centre zones, all Mixed Use zones, the Mixed Employment (EM) zone, as well as in the following Commercial zones:
  - Convenience Commercial (CC);
  - Service Commercial (CS); and
  - Retail Commercial (CR-1 and CR-2).

Repealing BRP provisions from Town zoning by-laws is an important step in ensuring zoning regulations remain consistent with the Town's licensing by-laws and the direction of Council. By repealing BRPs and enacting new regulations pertaining to Personal

Wellness Establishments, the overall licensing framework seeks to increase the standards and expectations of our community while simultaneously identifying the appropriate locations for businesses to legitimately operate within Newmarket.

The proposed zones above reflects pre-established zones in the Town's zoning bylaws which permits Personal Service Shops to operate (i.e. hair salons, nail salons, and other forms of beauticians). Town staff recommends mirroring these zones due to the feedback received from local business owners to advise that their business practices offers a combination of both classifications. As part of a second phase of this review, Town staff will be proposing a licensing framework for Personal Service Shops at a later date. In order to ensure that no businesses become impacted due to zoning restrictions, Town staff strongly recommends that zoning be adopted as proposed.

However, in order for these changes to be made, Town staff is seeking direction from Council to proceed to a statutory public meeting in order to amend Zoning By-law 2010-40 and Urban Centres Zoning By-law 2019-06. In consultation with the Town's Planning Department, an estimated timeframe to enact such amendments will be approximately six months, in order to account for the notification period, public meeting, Committee and Council scheduling, and appeal periods.

## **Conclusion**

Following a comprehensive review and extensive consultation process, Town staff is recommending the adoption of the proposed licensing framework pertaining to Personal Wellness Establishments. Town staff is also requesting Council direction to proceed to statutory public meeting to initiate proposed amendments to the Town's zoning by-laws. The adoption of the proposed licensing framework will take effect upon the adoption of all zoning amendments.

## **Business Plan and Strategic Plan Linkages**

The strategic vision of the Town of Newmarket is rooted in the concept of being *Well Beyond the Ordinary* – this vision is achieved through focus on the well being of our community. The wellness of our community has at all times been first and foremost in the actions taken to date.

## **Consultation**

Consultation with the Town's Planning department has occurred to confirm the proposed amendments to the Town's zoning by-laws.

An external legal opinion through AIRD BERLIS has also been received as part of this review.

Direct consultation or a review of applicable by-laws has also been completed with the following municipalities: Cambridge, Edmonton, Guelph, Hamilton, Kitchener, Toronto, Vancouver, and Windsor.

Finally, consultation with relevant stakeholders has also been completed and has been included throughout this report.

## **Human Resource Considerations**

The adoption of a licensing framework for PWEs will result in minimal impacts to existing staff resourcing. Legislative Services will utilize the existing compliment of staff within the Licensing Division to review applications, and to implement and enforce regulations, as needed.

## **Budget Impact**

Revenue is anticipated as a result of imposing a licensing regime on PWEs. Through consultation, Town staff has confirmed there are six known PWE businesses within Town, with potentially nine additional businesses that were not able to be consulted (see Discussion section of this report). Town staff is proposing an annual licensing fee of \$150 per business, which will generate approximately \$2,250 in annual revenue.

In addition to the annual licensing fees, staff anticipates additional revenue through enforcement action to be taken for noncompliance, which is proposed to be enforced through the Town's AMPS By-law.

## **Attachments**

Attachment #1 – Consultation with Stakeholders

Attachment #2 – Amended AMPS By-law

Attachment #3 – Amended Fees and Charges By-law

Attachment #4 – Draft Amendments to Business Licence By-law 2020-31

## **Approval**

Lisa Lyons, Director/Town Clerk, Legislative Services

Jason Unger, Director, Planning & Building Services

Esther Armchuk, Commissioner, Corporate Services

Peter Noehammer, Commissioner, Development & Infrastructure

## **Contact**

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