



Work Plan for Review of Chapter 545, Licensing, Body Rub Parlours and Holistic Centres

Date: March 28, 2018

To: Licensing and Standards Committee

From: Executive Director, Municipal Licensing and Standards

Wards: All

SUMMARY

This report outlines a work plan for the review of the current municipal regulations governing Body-Rub Parlours (BRPs) (Toronto Municipal Code, Chapter 545, Article 31), and Holistic Centres and Practitioners (Toronto Municipal Code, Chapter 545, Article 11). Staff will report back in the first half of 2019 with recommendations intended to update the regulations and to enhance oversight and enforcement related to these industries.

In 2017, the Auditor General reviewed the licensing regime for holistic centres and holistic practitioners and questioned the City's reliance on professional holistic associations (PHAs) as effective governing bodies. This report recommends instituting a moratorium on the issuance of new licences to holistic practitioner applicants associated with the five professional holistic associations (PHAs) linked to 98% of all bylaw charges and 97% of all convictions incurred by holistic practitioners from 2014 to 2017.

The moratorium is an interim measure pending the outcomes of a comprehensive review. The moratorium will not prevent existing holistic practitioner licensees from renewing their licence.

Holistic centre owners and holistic practitioners are required to be licensed under Chapter 545, Licensing, for the purposes of therapeutic and wellness services. On October 27, 2017, the Auditor General reported to Audit Committee on an audit assessing the effectiveness of business licensing and bylaw enforcement relating to licensed holistic centres in the city of Toronto. On November 7, 2017, City Council adopted the Auditor General's report with recommendations, as amended, and directed staff to conduct a detailed review of the existing bylaws and legislative framework governing the licensing of BRPs and holistic centres.

This report provides an overview of the issues surrounding the BRP and Holistic Centres and Practitioners bylaws, describes the interim moratorium, and outlines a work plan for a comprehensive review and consultations.

Staff have consulted with Social Development, Finance and Administration (SDFA), Legal Services, and City Planning in the preparation of this report.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards recommends that:

1. City Council amend Toronto Municipal Code, Chapter 545, Licensing so that no application for a new holistic practitioner licence be accepted from members associated with the following professional holistic associations and that if such an application be received it will be treated as incomplete and will be returned to the applicant, effective upon adoption of this recommendation and pending the completion of a comprehensive review of body-rub parlours and holistic centre regulations:
 - a. Canadian Examining Board of Health Care Practitioners Inc.
 - b. Examining Board of Natural Medicine Practitioners
 - c. Health and Healing Holistic Association
 - d. National Certification Board for Natural Therapies
 - e. World Peace and Natural Health Association

FINANCIAL IMPACT

There are currently no financial implications beyond what has already been approved in the current year's budget.

The Acting Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

On November 7, 2017, City Council adopted [AU10.3, A Review of Municipal Licensing and Standards Division's Management of Business Licences - Part Two: Licensed Holistic Centres](#) (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.AU10.3>) with amendments, directing the Executive Director, Municipal Licensing and Standards, to conduct a detailed review of regulations for body rub parlours, holistic centres, and professional holistic associations, and report back on changes to ensure effective oversight and enforcement.

On December 16, 2013, City Council adopted [EX36.13, Initiatives to Address Human Trafficking](#) (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX36.13>) with amendments, directing the Executive Director, Municipal Licensing and Standards, in consultation with the Toronto Police Service undertake a review of businesses that are destinations for human trafficking to establish measures and policies aimed at addressing the consequences of human trafficking from the perspectives of health and safety, and crime prevention.

On May 24, 2012, Licensing and Standards Committee referred [LS13.8, Conditions for the Licensing of Holistics Establishments](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.LS13.8) (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.LS13.8>), to the Executive Director, Municipal Licensing and Standards to report on implementing licensing measures to better control the nuisances created by holistic establishments.

On June 28, 2012, the Licensing and Standards Committee referred [LS14.3, Request for a Staff Report to increase and ensure effective prosecution of charges against body rub, holistic and adult entertainment establishments - Motion MM23.29 referred by City Council on May 8 and 9, 2012](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.LS14.3) (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.LS14.3>), to the Executive Director, Municipal Licensing and Standards.

On May 17, 2011, Council referred [LS3.1, Review of Application to be Included in the City's List of Approved Professional Holistic Associations](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.LS3.1) (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.LS3.1>), to Licensing and Standards Committee for further consideration in conjunction with the forthcoming report on a review of the current regulatory regime for holistic centres.

COMMENTS

Background

The *City of Toronto Act, 2006* (COTA) authorizes the City to license businesses where there is a municipal purpose. A municipal purpose includes public health and safety, nuisance control, and consumer protection.

Holistic centre owners and holistic practitioners are required to be licensed under Chapter 545, Licensing, for the purposes of therapeutic and wellness services. There are currently 410 licensed holistic centres in Toronto.

Body-rub parlours (BRPs) offer non-medical and non-therapeutic massage services. BRP owners, operators, and body rubbers are required to be licensed under Chapter 545, Licensing. There are currently 25 BRP owner licences, which is the maximum permitted under the Bylaw. This cap has been in place since the enactment of the Bylaw in 1975 and has not been reviewed or updated since then.

Staff are aware that many licensed holistic centres are not in compliance with regulations, and are using these licences to provide unauthorized services not related to holistic care, such as body-rub services. Based on inspections conducted from December 2017 to February 2018, staff estimate that a large number of licensed holistic centres offer services not authorized under their licence category.

On October 27, 2017, the Auditor General reported to Audit Committee on the effectiveness of business licensing and bylaw enforcement relating to licensed holistic centres in the city of Toronto. On November 7, 2017, City Council adopted the Auditor General's report with recommendations, as amended, and directed staff to conduct a detailed review of the existing bylaws and legislative framework governing the licensing of BRPs and holistic centres.

Regulations for holistic centres

A holistic centre is “any premises or part thereof in which holistic services are provided or offered.” Holistic services are “any modality used as a tool for therapeutic and wellness purposes”. This excludes body rubs, medical or therapeutic treatments performed by practitioners that are otherwise licensed, registered, or qualified to do so under provincial law, and traditional Chinese medicine or acupuncture.

The Bylaw requires holistic practitioners to be members of one of the 37 approved professional holistic associations (PHAs).

Professional Holistic Associations (PHAs)

In 2005, the City introduced the requirement that holistic practitioners have proof of membership with an approved PHA. The introduction of this requirement was intended to ensure that practitioners are skilled at providing holistic services. The requirement for holistic practitioners to hold membership with a PHA was also intended to ensure that only legitimate holistic service providers were licensed by the City. There are currently thirty-seven (37) PHAs covering a vast number of holistic modalities and more than 2,211 licensed holistic practitioners.

A PHA is defined in the Licensing Bylaw as “a registered not-for-profit organization ... established for the purpose, and with the continuing intent, of ensuring safe and proper provision of one or more kinds of holistic services ...” through various means, such as admission of qualified members, enforcement of the code of ethics, and the establishment of a disciplinary system. Each PHA is expected to apply its governing bylaws, regulations, and procedures to regulate members and achieve its purpose and intent. PHAs are not required to hold a City of Toronto licence.

Staff have stopped accepting new applications for PHA accreditation as they have been reviewing the effectiveness of the PHA requirement in certifying holistic centres and practitioners and in response to concerns around the legitimacy of some of the approved PHAs.

Regulations for body-rub parlours

COTA provides the City the authority to limit the number of adult entertainment establishments permitted to operate. Under COTA, adult entertainment establishments include body rub services. With this authority, the City has limited the number of BRPs to 25. This cap has been in effect since 1975 in response to concerns about the presence of unregulated massage parlours/sex-related businesses that were proliferating at that time.

The Bylaw defines a body rub as a service that “includes the kneading, manipulating, rubbing, massaging, touching, or stimulating, by any means, of a person’s body or part thereof but does not include medical or therapeutic treatment given by a person otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario”.

Previous stakeholder feedback

Over the last number of years, numerous consultations were held with holistic services providers, PHAs, BRPs, and other stakeholders. Staff also received comments and submissions via telephone and in writing. Key comments based on the experiences of the participating stakeholders included the following concerns:

- Many businesses with holistic licenses offer unauthorized services.
- There has been proliferation of holistic centres offering unauthorized services in residential and local business areas under the auspices of holistic licences.
- Local communities are concerned that BRPs attract crime and create nuisance in neighbourhoods.
- The legitimate BRP industry has been adversely affected by the illegitimate holistic operators who offer unauthorized services at a discounted price and who do not abide by regulations.
- The rules for holistic centres and practitioners has not resulted in an effective validation of qualifications of holistic businesses.
- A number of PHAs on the approved list do not provide fulsome screening of the applicants before issuing memberships and do not employ their code of ethics and disciplinary processes when holistic centres are in breach of Chapter 545.
- The holistic licence offers a false impression to the public that a particular practitioner is a legitimate holistic service provider and that the centre has been screened for any improper or unlawful operation.

Licensing and Enforcement

The number of licensed holistic centres has increased from 113 in 1998 to 410 as of December 2017. Some of these holistic centres operate in a professional manner and satisfy a genuine demand amongst the general public for legitimate wellness and therapeutic services.

Others, however, provide services that are not in compliance with holistic centre licence requirements, including body rub services. From 2014 to 2017, MLS has issued 1604 charges to holistic centres and holistic practitioners related to activities and conditions that were found to be non-compliant. Around 900 convictions have been registered for the same period. Typical offences include permitting services to an uncovered customer, providing services that are not listed, touching specific body areas, offering services outside of prescribed hours, and locking entry doors to the centre without posting a notice. From 2014 – 2017, 14 licensed holistic centres were charged with operating a body-rub parlour without a licence.

The City also continues to experience regulatory and enforcement challenges within the industry, such as:

Regulatory Challenges

- City does not have direct regulatory oversight of PHAs;
- Bylaw provisions have not prevented operators who are intent on providing unauthorized or illegal services from obtaining a holistic centre licence, thereby giving their business a false impression of legitimacy; and

- Holistic centres that provide unauthorized or illegal services operate throughout the City and in sensitive use areas such as near schools.

Enforcement Challenges

- The collection of evidence for charge and prosecution purposes, given that services between client and practitioner are offered privately in a locked room; and
- Charges of a lesser nature do not always reflect the full scope of the problem and are not significant enough to obtain a closure order and/or loss of business licence.

In the following months, staff will conduct a comprehensive review of issues and regulations associated with holistic services, body rub services and PHAs.

Interim Recommendation

Pending the comprehensive review, staff recommend placing a moratorium on the issuance of licences to new holistic practitioner applicants from the five PHAs that staff have found to be associated with the greatest number of non-compliant holistic practitioners. The moratorium will not prevent existing holistic practitioner licensees from renewing their licence.

The November 2017 Auditor General report (AU10.3) included a review of PHAs with the largest membership. The Auditor General conducted research and site visits of these PHAs and found that:

- Many of the licensed holistic centres that appear to offer unauthorized services are owned and operated by licensed holistic practitioners who are affiliated with the largest PHAs;
- Many had questionable addresses; and
- 2 PHA directors were convicted for operating an unlicensed BRP and one PHA director was convicted of an assault under the Criminal Code.

Using municipal bylaw charges and convictions, as well as Toronto Licencing Tribunal data, staff identified the top 5 PHAs affiliated with the largest number of non-compliant holistic practitioners. The PHAs listed below are linked to 98% of all bylaw charges and 97% of all convictions since 2014. They also have the largest number of members associated with these charges and convictions.

- National Certification Board for Natural Therapies: 725 charges
- Examining Board of Natural Medicine Practitioners: 559 charges
- Canadian Examining Board of Health Care Practitioners Inc.: 385 charges
- Health and Healing Holistic Association: 298 charges
- World Peace and Natural Health Association: 225 charges

Next Steps

Research – May to August, 2018

Research will include conducting interviews with other jurisdictions to better understand the circumstances around their regulatory approaches to addressing these industries; analyzing complaints and investigations of holistic centres; reviewing enforcement and prosecutions processes; and evaluating the licensing process.

Consultation – September to October, 2018

Staff will conduct comprehensive stakeholder and public consultations on proposed changes. Consultation will include an internal working group, stakeholder meetings, and public sessions.

MLS staff will lead a working group consisting of Toronto Police Service, SDFa, Toronto Public Health, City Planning, and Legal Services to support this review. Throughout the consultation phase, staff will consult with community partners, including organizations that work with sex workers, people with lived experience, holistic centre owners and operators, holistic practitioners, BRP owners and operators, body rubbers, and PHAs.

MLS will continue to participate as members of the City of Toronto's Steering Committee (SC) to Address Human Trafficking, comprised of several City Divisions, Agencies and Corporations. The SC is led by SDFa and the members are collaborating with key community partners to identify sustainable and long-term support services for persons that are vulnerable to being trafficked, as well as survivors of human trafficking; to identify key actions required by the City; and to implement prevention strategies.

Although the issue of human trafficking is extremely complex and extends beyond holistic or body rub services, it is included as an important area of focus in the review.

Recommendations Report – First half of 2019

Based on an analysis of enforcement and conviction data, best practice research from other municipalities, and feedback obtained through stakeholder consultations, staff will recommend an approach that will propose bylaw changes and a strategy for enforcement. Staff will report to Licensing and Standards Committee in the first half of 2019.

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SIGNATURE

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