LOCAL GOVERNMENT ORDINANCE 1961
(NO. 11 of 1961)

AND

CITY OF KOTA KINABALU ENACTMENT 1996
(No. 15 of 1996)

CITY OF KOTA KINABALU (BEAUTY AND HEALTH CENTRE) BY-LAWS 2018
(G.N.L 10 of 2018)

ARRANGEMENT OF BY-LAWS

PART I
PRELIMINARY

By-Law

1. Citation, commencement and application
2. Interpretation

PART II
LICENSING

3. Prohibition of beauty or health centre without a licence
4. Application of licence
5. Licence fee paid not refundable
6. Licence not to be transferred
7. Forfeiture of deposit
8. Refund of deposit

Sabah LawNet

9. Revocation or refusal to renew licence
10. Disqualification
11. Prohibition
12. Licence shall be exhibited
13. Replacement of licence

PART III
EMPLOYEE

14. Register of employee
15. Medical examination

PART IV
PREMISES

16. Signboard
17. Time of operating business
18. Full partitioning of area used for massage not permitted
19. Ventilation and lighting
20. Fire-fighting equipment, staircases, exits and doors
21. Sanitary requirements
22. Maintenance of cleanliness
23. Disposal of refuse
24. General maintenance and repair

PART V
MISCELLANEOUS

25. Power of arrest
26. The mayor or any authorised officer may eject any person who contravenes any provision of these By-laws
27. Power of seizure and forfeiture
28. Penalty

Sabah LawNet

29. Compounding of offences
30. Closure or demolition of any premises
31. Exemption
32. Repeal and transitional provision

FIRST SCHEDULE
SECOND SCHEDULE

Sabah LawNet

LOCAL GOVERNMENT ORDINANCE 1961
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CITY OF KOTA KINABALU (BEAUTY AND HEALTH CENTRE) BY-LAWS 2018
(G.N.L 10 of 2018)

In exercise of the powers conferred upon him by section 50 of the Local Government Ordinance 1961 (No. 11 of 1961) and the City of Kota Kinabalu Enactment 1996 (No. 15 of 1996), the Mayor of the City of Kota Kinabalu with the approval of the Chief Minister has made the following By-Laws:

PART I

PRELIMINARY

Citation, commencement and application

1. (1) These By-Laws may be cited as the City of Kota Kinabalu (Beauty and Health Centre) By-Laws 2018.

(2) These By-Laws shall come into operation on the date of its publication in the *Gazette. [01.11.2018]*

(3) These By-Laws shall be applicable to the entire areas under the general jurisdiction of the Mayor of the City of Kota Kinabalu.

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Interpretation

2. In these By-Laws, unless the context otherwise requires -

"beauty centre" means any premises used to provide the treatment prescribed in the First Schedule;

"beauty treatment" means any treatment by application of cosmetics or herbal treatment on the body or any part of the body, face or scalp for the purpose of treating or improving the complexion or condition of the body, face or scalp, for body slimming, facial massage, manicure and pedicure, sauna or herbal bath but does not include any form of plastic surgery;

"bed" includes couch and reclining chair;

"cosmetics" means any substance used for treating or maintaining the complexion, skin, scalp, teeth, nail or any part of the body and includes toiletries;

"health centre" means any premises used to provide body massage, treatment or physical fitness exercise with or without equipment but does not include a hospital or a clinic where patients are treated under the supervision of a medical practitioner registered under the Medical Act 1971 *(Act 50)*, an infirmary, a nursing or convalescent home or any other similar establishment. The types of treatments of facilities are as prescribed in the First Schedule.

"herbal treatment" means any treatment using herbal substance or a mixture of herbal substances produced by the process of drying crushing or comminuting, but without subjecting to any other process, a natural substance or substances of plant, animal or mineral origin or any part of such substance or substances.

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"licensee" means a person who holds a licence issued under these By-Laws;

"Mayor" means the Mayor of the City of Kota Kinabalu;

"Ordinance" means the Local Government Ordinance, 1961 (No.11 of 1961);

"treatment" means any type of treatment prescribed in the First Schedule.

PART II

LICENSING

Prohibition of beauty or health centre without licence

3. No person shall operate a beauty or health centre without a licence issued by the Mayor under these By-Laws.

Application for licence

4. (1) An application for the issuance or may renewal of a licence shall be made to the Mayor in such form and manner as the Mayor may determine.

(2) The mayor may require the applicant to attend in person and in the case of a firm or body corporate, by a director, employee or any person authorised by the firm or body corporate at the time the application is made.

(3) The applicant shall made payment of the processing fee as prescribed in the Second Schedule upon submission of the application and it shall not be refundable irrespective of whether or not the application is approved by the Mayor.

(4) The issuance of a licence shall be at the sole discretion of the Mayor.

(5) Upon approval of the application, the Mayor may issue a licence subject to -

(a) any conditions and restrictions as may be specified therein;

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(b) payment of the licence fee as prescribed in the Second Schedule; and

(c) payment of a deposit of such sum and in such mode of payment as the Mayor may determine to ensure that the conditions and restrictions of the licence and the provisions of these By-Laws are duly observed:

Provided that upon renewal of the licence, no further deposit shall be required.

(6) The licence shall be in such form as determined by the Mayor.

(7) The Mayor may issue a licence for any period not exceeding three years and is renewable, subject to payment of the licence fee as prescribed in the Second Schedule.

(8) The licensee shall comply with all the conditions and restrictions specified by the Mayor under subparagraph (5*)(a).*

Licence fee paid not refundable

5. Any licence fee paid under subparagraph 4(5)*(b*) shall not be refundable.

Licence not to be transferred

6. (1) No licensee shall transfer or otherwise part with the possesion of the licence to any person except with the prior written the approval of the Mayor.

(2) Any application for the transfer of a licence shall be made in such form and manner as the Mayor may determine.

(3) A processing fee as prescribed in the Second Schedule shall be paid upon submission of the application and it shall not be refundable irrespective of whether or not the application is approved by the Mayor.

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Forfeiture of deposit

7. (1) The Mayor may, after giving the licensee an opportunity of being heard, forfeit the deposit paid under subparagraph 4(5)*(c*) in whole or in part if the Mayor is satisfied that there has been a breach of the conditions or restrictions of the licence or in contravention of the provisions of these By-Laws.

(2) Upon forfeiture of such deposit the licence shall be deemed to have been cancelled, unless the Mayor, on the application of the licensee, allows the licence to continue to be in force subject to repayment of the deposit which has been forfeited.

Refund of deposit

8. The deposit paid under subparagraph 4(5)*(c*) shall, unless forfeited under by-law 7, be refunded after the Mayor is notified in writing by the licensee that he has ceased operating the beauty or health centre and upon surrender of the licence in the event that the licence has not expired.

Revocation or refusal to renew licence

9. The Mayor may, in his discretion, revoke or refuse to renew a licence if the licensee -

(a) has contravened any of the provisions of these By-Laws;

(b) has contravened any condition or restriction specified in the licence; or

(c) has been convicted of an offence under these By-Laws.

Disqualification

10. No licence shall be issued -

(a) to an applicant under the age of eighteen years;

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(b) to an applicant who, according to the record of the Mayor, had been a holder of a licence but had his licence revoked due to non-compliance of any provision of these By-Laws or breach of any condition or restriction of the licence;

(c) If the applicant fails to give an undertaking that only persons with the necessary qualifications will be employed.

Prohibition

11. No licensee shall -

(a) allow any person whom he knows or reasonably suspects to suffering from an infectious or communicable disease to enter the beauty or health centre;

(b) employ in the beauty or health centre any person whom he knows or has reason to believe to be suffering from an infectious or communicable disease;

(c) display any obscene picture or article in the beauty or health centre;

(d) dress indecently or allow his employee to dress indecently in the beauty or health centre;

(e) allow any animal to enter or remain in the beauty or health centre;

(f) organize or permit in the beauty or health centre any entertainment as defined in the Public Entertainment Ordinance 1958 (No. 23 of 1958) without a licence;

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(g) permit any person whom he knows or has reason to believe to be a person of bad character to enter or remain in the beauty or health centre;

(h) employ in the beauty or health centre any person whom he knows or has reason to believe to be a prostitute or a person of bad behavior;

(i) employ in the beauty or health centre any person who is under the age of eighteen years;

(j) permit any gaming, consumption of intoxicating liquor, drug abuse or disorderly conduct of any kind in the beauty or health centre.

Licence shall be exhibited

12. The licensee shall exhibit his licence at all times at a conspicuous place on the licensed premises.

Replacement of licence

13. (1) Where the Mayor is satisfied that any licence granted has been lost, defaced or damaged, the Mayor may issue a replacement licence in place thereof upon payment of a processing fee as prescribed in the Second Schedule.

(2) Where the licence is defaced or damaged, a replacement licence shall only be issued upon surrender of the original licence to the Mayor for cancellation.

PART III

EMPLOYEE

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Register of employee

14. (1) The licensee shall maintain a register containing the names, identity card numbers, residential addresses, qualifications and any other relevant particulars of his employees as well as the photographs of his employees and shall produce the register for inspection whenever required by the Mayor.

(2) The licensee shall, on hiring an employee, submit the particulars of the employee mentioned in paragraph (1) to the Mayor and shall inform the Mayor of any change of particulars of an employee and of any change of employee.

Medical examination

15. The licensee shall ensure that his employee undergoes medical examination by a registered medical practitioner once a year.

PART IV

PREMISES

Signboard

16. Every licensee shall, at all times, display in a conspicuous place outside the beauty or health centre a signboard showing clearly the name of the beauty or health centre and the reference number of the licence.

Time of operating business

17. The licensee shall not operate his business except between the hours of 9.00 a.m. and 3.00 a.m. the following day.

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Full partitioning of area for massage not permitted

18. (1) The licensee shall not partition or permit to be fully partitioned any area in the beauty or health centre which is used for massage or any beauty treatment or any treatment for maintaining any part of the body of face.

(2) The licensee may, in area used for massage or treatment mentioned in paragraph (1), use curtain or other screens to separate the beds used for massage or treatment but such curtain or screen shall not exceed any height specified by the Mayor.

(3) Every door in the area where massage or treatment is administered shall not be fitted with any locking mechanism and shall be kept unfastened during the business hours.

Ventilation and lighting

19. The licensee shall ensure that -

(a) there is adequate ventilation and lighting on the premises;

(b) the ventilation system on the premises is kept in good working condition at all times; and

(c) every staircase, passage and emergency exit of the premises is provided with adequate lighting.

Fire-fighting equipment, staircases, exits and doors

20. The licensee shall ensure that -

(a) adequate fire-fighting equipment are installed in the beauty or health centre and maintained in good working condition at all times;

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(b) adequate staircases and exits are provided in the beauty or health centre as may be required by the Mayor and properly maintained at all times; and

(c) all staircases, passages and exits of the beauty or health centre are kept clear of obstruction and every door on the premises is constructed and fitted as to be readily opened at all times.

Sanitary requirements

21. The Mayor may impose any sanitary requirement as the Mayor deems necessary and the licensee shall comply with any such sanitary requirement.

Maintenance of cleanliness

22. The licensee shall ensure that -

(a) all water closets, pumps, urinals, fittings and drainage system in the beauty or health centre are kept clean and in good working condition at all times;

(b) all bathrooms, bath tubs and washing basins in the beauty or health centre are kept clean at all times;

(c) all staircases, passages, landings and exits of the beauty or health centre are kept clean at all times; and

(d) all beds, appliances and equipment used for treatment or the provisions of services, including clothes, bedding or linen shall be kept in a clean and sanitary condition and free vermin at all times.

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Disposal of refuse

23. The licensee shall ensure that -

(a) adequate refuse bins are provided for the disposal of refuse;

(b) all waste is placed in plastic bags or other suitable containers before they are deposited in refuse bins or receptacles; and

(c) all waste shall be disposed of in such manner as directed by the Mayor.

General maintenance and repair

24. (1) All mechanical or electrical equipment used in a beauty or health centre shall be maintained in good working condition at all times.

(2) All yards, areas, forecourts and open spaces forming part of a beauty or health centre shall be kept clean and free from filth or refuse at all times.

PART V

MISCELLANEOUS

Power of arrest

25. (1) The Mayor or any officer duly authorised by him may arrest without warrant any person who commits in his presence or whom he reasonably believes to have committed any offence under these By-Laws -

(a) if the name or address of the person is unknown to him and the person declines to give his name or address; or

(b) If there is reason to doubt the accuracy of his name or address.

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(2) A person arrested under these By-Laws shall be detained and shall be brought before a Magistrate's Court within twenty-four hours unless his name and address are sooner ascertained.

The Mayor or any authorised officer may eject any person who contravenes any provision of these By-Laws

26. The Mayor or any authorised officer may summarily eject a person who acts or removes from the beauty or health centre, an equipment, a vehicle, a machinery, an article or any other thing whatsoever which is used in contravention of any of the provisions of these By-Laws or an order or direction given by the Mayor or any authorised officer under the provisions of these By-Laws.

Power of seizure and forfeiture

27. (1) The Mayor or any officer duly authorised by the Mayor may require the production by any person of the licence issued under By-Laws 4 for any act done or committed by such person for which such licence is required under these By-Laws.

(2) If the Mayor or any officer duly authorised by the Mayor has reason to believe that any person had committed an offence under these By-Laws, he may seize and detain any produce, item, tool, instrument, machinery, equipment or other thing whatsoever used or reasonably suspected of having been used in or about the commission of an offence.

(3) All produce, items, tools, instruments, machinery, equipment or other thing whatsoever liable to seizure under these By-Laws shall be liable to forfeiture:

Provided that the Mayor or any officer duly authorised by the Mayor may, in his absolute discretion, temporarily release such produce, item, tool, instrument, machinery, equipment or other thing to the owner of the same on security being furnished to his satisfaction that such produce, item, tool, instrument, machinery, equipment or other

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thing shall be surrendered to him on demand or to produce it before a Court of competent jurisdiction:

Provided further that if there be no prosecution with regard to anything seized under these By-Laws, such produce, item, tool, instrument, machinery, equipment or other thing shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure unless claim thereto is made before the date.

(4) Any person asserting that he is the owner of any produce, item, tool, instrument, machinery, equipment or other thing liable to forfeiture under these By-Laws and that it is not liable to forfeiture may personally or by his agent authorised in writing give notice to the Mayor that he claims the same provided that any such application shall be made before the expiration of one calendar month from the date of seizure.

(5) Notwithstanding anything in these By-Laws if anything seized under these By-Laws is subject to speedy and natural decay or deterioration, the Mayor or any officer duly authorised by the Mayor may sell the thing and shall thereafter deal with the proceeds of such sale as he would have dealt with such thing had it not been sold.

(6) All things forfeited shall be delivered to the Mayor or any officer duly authorised by the Mayor and shall be sold in accordance with the provision of the Ordinance or any other law for the time being in force.

Penalty

28. Any person who contravenes any provision of these By-Laws or breaches any condition subject to which a license has been granted shall be guilty of an offence and shall, upon conviction, be liable to a fine not less than five thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both, and in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which such offence is continued.

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Compounding of offences

29. (1) The Mayor may compound any offence committed by any person under these By-Laws by making a written offer to the person to compound the offence upon payment by that person of a sum of money not exceeding five thousand ringgit.

(2) An offer under paragraph (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted.

(3) Where the amount specified in the offer is not paid within the time specified in the offer, or within such extended period as may be granted by the mayor, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(4) Where an offence has been compounded under paragraph (1), no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made.

Closure or demolition of any premises

30. Whenever it appears to any Magistrate that certain premises was constructed or used in the commission of an offence under these By-Laws, the Magistrate shall, upon written application made by the Mayor to close or demolish such premises, order the closure or demolition of such premises forthwith.

Exemption

31. These By-Laws shall not apply to the business of a hairdresser.

Repeal and transitional provision

32. (1) The Kota Kinabalu Municipal Council (Massage Establishment) By-Laws 1979 (G.N.L 18 of 1979) is hereby repealed.

(2) Any notice, order, compound, licence or documents made or issued under the revoked By-Laws shall be deemed to be made or issued under these By-Laws, and shall continue to remain in force until revoked thereof.

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FIRST SCHEDULE

(By-law 2)

Beauty and Health Centre

(a) Beauty Centre

Type of treatment

(1) Application of cosmetics or herbal treatment

(2) Treatment on the body or face including body

(3) Waxing, exfoliation or body scrub

(4) Manicure and pedicure

(5) Tattoo

(6) Body slimming

(7) Herbal, milk or flower bath

(8) Scalp treatment or hair transplant

(9) Any other beauty treatment permitted by the Mayor

(b) Health Centre

Type of treatment

(1) Massage -

(a) traditional massage

(b) handicapped massage

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(c) foot reflexology

(d) aromatheraphy

(e) modern massage using any equipment including automated massage chair

(f) bekam

(2) Sauna

(3) Spa including hot or cold water pool or jacuzzi

(4) Aerobics centre

(5) Fitness centre or gymnasium

(6) Any other health treatment permitted by the Mayor

SECOND SCHEDULE

[Subparagraph 4(5)*(b)*, paragraphs 4(7), 5(3) dan 13(1)]

FEES

1. Processing Fee		
(a)	application for licence:	RM 50.00
(b)	transfer of licence:	RM 20.00
(c)	replacement of licence:	RM 30.00

2. Licence Fee		
Floor area -		
		per month
(a)	not exceeding 140 square metres:	RM 100.00

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(b)	exceeding 140 square metres but does not exceed 465 square metres:	RM 200.00
(c)	every additional square metre exceeding 465 square metres or part thereof:	RM 0.50/square metre

Dated at Kota Kinabalu this 3rd day of July 2018.

DATUK YEO BOON HAI,
Mayor of the City of Kota Kinabalu

I approve the foregoing By-Laws.

Dated at Kota Kinabalu this 18th day of September 2018.

DATUK SERI PANGLIMA HAJI MOHD SHAFIE BIN HAJI APDAL,
Chief Minister of Sabah.

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