

**LICENSING BY-LAW  
BY-LAW NUMBER 2002-151**

**SCHEDULE 2**

**ADULT VIDEO STORES**

## BY-LAW NUMBER 2002-151

### SCHEDULE 2

TO REGULATE AND GOVERN THE SALE AND DISPLAY OF ADULT ENTERTAINMENT GOODS AND TO LICENSE, REGULATE AND GOVERN VIDEOTAPE STORES IN WHICH ADULT VIDEOTAPES ARE PROVIDED AND TO LICENSE, REGULATE AND GOVERN ADULT VIDEOTAPE STORES.

#### **DEFINITIONS**

2.1 In this By-law – Schedule 2

- a) **"adult videotape"** means any videotape, the content of which is designed or held out as designed, to appeal to erotic or sexual appetites or inclinations, through the pictorial, photographic or other graphic depiction of subject-matter distinguished or characterized by the portrayal of one or more persons involved or engaging in specified sexual activities, or by an emphasis on the display of human specified body areas;
- b) In the absence of evidence to the contrary, a videotape classified by the Ontario Film Review Board as "restricted" with the added information piece "adult sex film" shall be deemed to be an adult videotape, while a videotape which has been otherwise classified by the Ontario Film Review Board, without such classification and information piece shall be deemed not to be an adult videotape;
- c) **"adult videotape area"** means an identifiable part of any premises, which part is used for the provision of adult videotapes;
- d) **"adult videotape store"** means any premises:
  - i) used for the carrying on of the business of the provision of adult videotapes; or
  - ii) in which adult videotapes are provided in the pursuance of a business and to which premises entry by persons under the age of 18 years is prohibited, or in respect of which premises it is advertised or notice is given that such entry is prohibited; or
  - iii) in which adult videotapes are provided in the pursuance of a business and in respect of which it is advertised, or notice is given either by signs or other advertising devices on or in the premises, or otherwise, that the premises are an "adult video store", an "adult videotape store", an "adult video rental store."
- e) **"operator"** includes a proprietor, or any other person who alone or with others, manages, supervises, runs or controls a videotape store;

- f) **"owner"** means a person who alone or with others has a right to possess or occupy a videotape store or actually does possess or occupy a videotape store and includes a lessee of a videotape store or of premises upon which a videotape store is located;
- g) **"to provide"** when used in relation to any videotape, means to sell, offer to sell or display for sale by retail, or to rent, offer to rent or display for rental, whether or not the cost, fee or other consideration passes at the time of such rental or sale, or is effected through the cost of membership, subscription, admission or any other manner;
- h) **"videotape"** means cinematographic film, videotape and any other medium from which may be produced visual images that may be viewed as moving pictures;
- i) **"videotape store"** means any premises or part thereof in which videotapes are provided in the pursuance of a business, and includes an adult videotape store.
- j) **"Town"** means the Corporation of the Town of Newmarket in the Regional Municipality of York.
- k) **"Town Clerk"** means the Clerk of the Town of Newmarket or his/her designate.

## **LICENSE REQUIREMENT**

- 2.2 There shall be taken out by every operator of an adult videotape store, a license from the Town of Newmarket authorizing him/her to carry on such business in the Town for which license the person obtaining the same shall pay to the Town at or before the time of taking out such license, the fee fixed by this By-law, and no person shall, within the limits of the Town, carry on or engage in such business until he/she has procured such license so to do.
- 2.3 There shall be taken out by every operator of any videotape store in which the provision of adult videotapes is only incidental to the carrying on of the business of the provision of videotapes which are not adult videotapes, a license from the Town of Newmarket authorizing him/her to carry on such business in the Town for which license the person obtaining the same shall pay to the Town at or before the time of taking out such license, the fee fixed by this By-law, and no person shall, within the limits of the Town, carry on or engage in such business until he/she has procured such license so to do, and the regulations contained in this By-law relating to the display of adult videotapes and to the prohibition of admission to all or part of the premises by persons under the age of 18 years, shall apply to all videotape stores.

## **ADMINISTRATION**

2.4 The Town Clerk shall:

- a) receive and process all applications for licenses and renewal of licenses required under this By-law;
- b) administer the issuance of licenses in accordance with the provisions of this By-law;
- c) maintain and keep records of all applications received and licenses issued;
- d) generally perform administrative functions incidental and necessary to the due administration and enforcement of this By-law.

## **APPLICATIONS FOR LICENSES**

2.5 Every person applying for a license under this By-law shall file with the Town Clerk a duly completed application in the form provided by the Town Clerk in which the applicant shall provide all information sought in such application form.

2.6 The applicant shall, at the time of the filing of the application form required under subsection 2.5, deliver to the Town Clerk the following:

- a) cash, money order or certified cheque in the amount set out in Schedule 'A' of this By-law, which sum is hereby fixed as the license fee for every license required under this By-law and for the renewal thereof;
- b) if the applicant is a corporation, a copy of the incorporating document and a copy of the last annual information return filed, and a list of the names and home addresses of the directors, shareholders and officers of the corporation;
- c) if the applicant is a partnership, a list of the names and home addresses of the partners, and if a registered partnership, a copy of the registered declaration of partnership.

2.7 Upon receipt of an application under this By-law, the Town Clerk shall forward a copy of such application to York Regional Police, the Planning Department, the Building Department and any other department of the Town or other agency which may be affected for a report on whether the application complies with all municipal or other requirements.

2.8 If the reports contain no recommendation adverse to the license being issued to the applicant, the Town Clerk may thereupon issue the license.

2.9 If a report adverse to the application is received by the Town Clerk notice of this fact and the reasons therefore are to be served upon the applicant at the address shown on the application form, and the applicant may refer the matter to the Council, or to a Committee established by the Council for the holding of hearings under this By-law.

- 2.10 The Town Clerk shall, in any notice served under subsection 2.9, include in such notice a statement that the applicant may require a hearing of the application by the Council, or to a Committee established by the Council, by serving a notice in writing to that effect upon the Town Clerk within 15 days of the date of the notice, and a statement that if no such notice is served by the applicant the application may not be granted and the applicant will not be entitled to any further notice in the proceedings.
- 2.11 Where the Town Clerk received notice from an applicant requiring a hearing in accordance with section 2.10, the Town Clerk shall forthwith refer the application to the Council or Committee as the case may be, for a hearing.
- 2.12 Where the Town Clerk does not receive notice from an applicant requiring a hearing in accordance with this section, the Town Clerk need not process the application further, and no further notice is required to be served upon the applicant.
- 2.13 Where an application has been referred to the Council or the Committee for a hearing under this section, and the applicant does not attend before the Council or Committee at the time and place of which notice has been served upon such applicant in accordance with this By-law, the Council or the Committee may hold a hearing in the absence of the applicant or may decide to take no further action with respect to the application, and no further notice is required to be served upon the applicant and the decision of the Council or Committee is final.
- 2.14 Where the Town Clerk has referred an application to the Council or a Committee for a hearing pursuant to section 2.11 of this By-law, the Council or the Committee may, after a hearing, or after an opportunity for a hearing has been given to the applicant:
- a) grant the application in whole or in part and direct that the license be issued subject to compliance with this By-law;
  - b) grant the application subject to such conditions as the Council or the Committee, as the case may be, considers just and equitable in attaining the purposes of this By-law, and as are accepted by the applicant, and direct that the license be issued subject to such conditions and in compliance with this By-law;
  - c) refuse in whole or in part in grant the application upon grounds contained in this By-law or otherwise by law; or
  - d) adjourn the application in accordance with this By-law, or make such other disposition as may be permitted under this By-law and is in accordance with law. The decision of the committee is final.
- 2.15 An applicant for a license who complies with the provisions of this By-law is, subject to the provisions of this By-law, entitled to be issued a license, except where:
- a) there are reasonable grounds for belief that any application or other document provided to the Town Clerk by or on behalf of the applicant contains a false statement or provides false information; or

- b) the past or present conduct of the applicant, or of any partner, in the case of an applicant which is a partnership, or of any director, shareholder or officer of the corporation, if the applicant is a corporation, affords reasonable ground for belief that the business in respect of which the application is made will not be carried on in accordance with the law and with integrity and honesty; or
- c) there are reasonable grounds for belief that the carrying on of the said business will result in a breach of this By-law or any other law, including any applicable zoning requirement; or
- d) the financial position of the applicant affords reasonable grounds to believe that the business will not be carried on in a financially responsible manner; or
- e) there are reasonable grounds for belief that the application does not meet all the requirements of this By-law, or in respect of which the issuing of a license in respect of the business is not permitted by this By-law; or
- f) there are reasonable grounds for belief that the building, premises or place in which the business is carried on or intended to be carried on does not comply with the provisions of this By-law, or with any other law, including any applicable building requirements or zoning By-law, or is dangerous or unsafe; or
- g) the conduct of the applicant or one or more of the persons referred to in paragraph 2.15b of this subsection affords reasonable grounds for belief that the carrying on of the business in respect of which the license is sought would infringe the rights, or endanger the health or safety of one or more members of the public; or
- h) the fee payable in respect of the license applied for has not been paid.

### **REVOCAATION, CANCELLATION, SUSPENSION**

- 2.16 The Council may revoke, cancel or suspend any license issued under this By-law for breach of any of the provisions of this By-law, provided that no license shall be revoked, cancelled or suspended except after a hearing by the Council, or a Committee appointed by By-law for the holding of one or more hearings, or after an opportunity for such a hearing has been afforded to the licensee as set out in section 2.13 of this By-law.
- 2.17 The Town Clerk may, where he/she has reasonable grounds to believe that any one or more grounds exist upon which a license could be revoked or suspended, provide written notice to the licensee and to the Council of such fact, and provide notice to the licensee of a right to a hearing in accordance with this By-law and other applicable law.

### **ISSUANCE AND TERMS OF LICENSES**

- 2.18 Every license issued under this By-law shall expire on December 31 of the year in which it is issued.

- 2.19 A license issued under this By-law is personal to the licensee, and cannot be transferred.
- 2.20 The rights granted by a license issued under this By-law apply only to the location for which the license is issued.
- 2.21 Where a license has been revoked, the licensee is not entitled to a refund of all or any part of the license fee.

### **NOTICE**

- 2.22 Any notice required to be given under this By-law is sufficiently given if delivered personally or by telephone transmission of a facsimile or sent by registered or certified mail addressed to the person to whom delivery is required to be made according to the Town Clerk application or license records.
- 2.23 Where service is affected by registered mail or certified mail, it shall be deemed to be made on the seventh (7th) day after the date of mailing.
- 2.24 Where service is made by telephone transmission of a facsimile between 5:00 p.m. and midnight, it shall be deemed to have been made on the following day.

### **REGULATIONS APPLICABLE TO ADULT VIDEOTAPE STORES**

- 2.25 Every licensee shall:
- a) prominently display the license at the premises licensed at all times and shall produce the license upon request by the Town Clerk any By-law enforcement officer and any police officer;
  - b) keep the premises in a clean and sanitary condition;
  - c) maintain on the premises, available for inspection by the Town Clerk any By-law Enforcement Officer or any Police Officer, during all business hours, a current list of all adult videotapes available on the premises;
  - d) carry on business only in the name in which the license is issued, or such other business or trade name provided to the Town Clerk and shown on such license;
  - e) advertise, promote and carry on such business only under the name in which the license is issued, or such other business or trade name provided to the Town Clerk and shown on such license.
- 2.26 No owner, operator or any person working in an adult videotape store shall permit any person under the age of eighteen years to enter or remain in such store;
- 2.27 No owner, operator or any other person shall work in an adult videotape store, or in that part of any videotape store in which adult videotapes are provided, unless such person is of the age of eighteen years or older.

## **SIGNS AND ADVERTISEMENT**

### **Advertisement**

- 2.28 No person shall publish, display or circulate any poster, handbill, sign, card, novelty or other matter used to advertise or promote the business of an adult videotape store, except to publish its name, address and telephone number in a telephone book.
- 2.29 Every owner or operator shall obliterate, withdraw, remove or destroy any such poster, handbill, card, novelty, notice, advertisement or other matter which may be published, displayed or circulated immediately upon becoming aware of same or upon being ordered to do so by the Town Clerk whichever shall first occur.

### **Signs**

- 2.30 Every operator shall post and keep posted at every entrance to any adult videotape store operated by such operator, and in a prominent location inside such store, signs sufficient to indicate clearly to any person approaching or entering the store and to every person in the store, that no person under the age of eighteen years is permitted to enter or remain in such store or any part thereof.
- 2.31 No person shall erect any sign advertising an adult videotape store unless the sign conforms to the regulations of this and every other By-law of the Town of Newmarket. Notwithstanding the provisions of any other By-law of the Town of Newmarket, all signs advertising an adult videotape store shall comply with the following regulations:
- a) Notwithstanding the provisions of any other By-law, no sign may be erected advertising or promoting an adult videotape store except on the exterior wall of the premises from which the adult videotape store operates.
  - b) Not more than two (2) non-illuminated signs may be erected on the exterior walls of the premises.
  - c) The maximum size of any sign or signs erected on the exterior wall of the premises shall not exceed fifty (50) square feet in the aggregate and where only one sign is erected, the maximum area of such sign shall be fifty (50) square feet.
    - (i) Any sign advertising an adult videotape store shall not include any letters, markings, symbols, pictures or representations except the name of the adult videotape store as recorded on the application for a license and shall be restricted to the words "adult videos", "adult videotapes" or "adult videotapes sales or rentals".
    - (ii) For the purposes of this By-law, a "sign" shall include any letters, markings, symbols, pictures, or representations on any building, surface, object, or vehicle whether movable or immovable.
- 2.32 Every owner or operator shall obliterate, withdraw, remove or destroy any sign which has been erected contrary to the provisions of this By-law immediately upon

becoming aware of same or upon being ordered to do so by the Town Clerk whichever shall first occur.

## **REGULATIONS APPLICABLE TO ALL VIDEOTAPE STORES**

- 2.33 Every owner and every operator of a videotape store whether or not he/she is required to be licensed under this By-law, shall, in the carrying on of such business, comply with the regulations contained in this By-law relating to the provision of adult videotapes;
- 2.34 Every owner and operator referred to in subsection 2.27 shall ensure that every person working in such videotape store complies with all requirements of the By-law relating to the provision of adult videotapes and the prohibition of access to all or part of the premises to persons under the age of eighteen years, as required by this By-law;
- 2.35 Every person working in a videotape store shall comply with all requirements of this By-law relating to the provision of adult videotapes and the prohibition of access to all or part of the premises to persons under the age of eighteen years, as required by this By-law.
- 2.36 No owner or operator of a videotape store in which adult videotapes are provided, shall permit any person under the age of eighteen years to enter or remain in any part of such store where adult videotapes are provided, or within three metres of any adult videotape unless such adult videotape is located in an adult videotape area;
- 2.37 Every owner and operator of a videotape store in which any adult videotape is provided, shall affix, in a prominent location inside such store and at every entrance to any adult videotape area, a sign or signs sufficient to indicate clearly to persons in the store, that no person under the age of eighteen years is permitted to enter or remain in any adult videotape area in accordance with this By-law;
- 2.38 Every operator of a videotape store, including an adult videotape store, and every person working in such store, shall ensure that no person under the age of eighteen years is permitted to enter an adult videotape store, or any adult videotape area, in accordance with this By-law;
- 2.39 Every operator of a videotape store and every person working in such store shall ensure that no adult videotape, or container for an adult videotape shall be displayed in such a manner so as to be visible from outside the store;

- 2.40 Every operator of a videotape store and every person working in such store shall ensure that no adult videotape, or container for an adult videotape, shall be displayed in a videotape store that is not an adult videotape store, in a location where it can be seen by persons in the store, unless such adult videotape or container is in a separate location in such store to which persons under the age of eighteen years are not permitted to enter, and such adult videotape or container is displayed in a location where it cannot be seen from outside such area.
- 2.41 Any person who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction, is liable to a fine as provided for under the *Provincial Offences Act*.