

## CITY OF NIAGARA FALLS

### **By-law No. 2002 - 198**

#### **ADULT VIDEOTAPES, MAGAZINES AND OTHER GOODS BY-LAW**

**A by-law to provide for the licensing, regulating, governing, classifying and inspecting of certain classes of stores and businesses engaged in the provision of adult videotapes, adult magazines and adult goods.**

WHEREAS Part XVII.1 of the *Municipal Act* (the "Act") authorizes councils of local municipalities to pass by-laws for licensing, regulating and governing businesses carried on within the municipality, and provides a number of specific powers with respect thereto, which also apply to the exercise by the council of specific licensing powers under other provisions of the Act;

AND WHEREAS section 225 of the Act authorizes councils of all municipalities to pass by-laws for licensing, regulating, governing, classifying and inspecting adult entertainment parlours or any class or classes thereof and for revoking or suspending any such licence;

AND WHEREAS the Council deems it desirable to enact a by-law for the exercise of its powers outlined above with respect to the class of adult entertainment parlours and other businesses engaging in the sale, rental, display and other provision of adult videotapes, adult magazines and adult goods, and the showing of adult sex films;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF NIAGARA FALLS ENACTS AS FOLLOWS:**

### GENERAL PROVISIONS

#### **INTERPRETATION**

##### Definitions

1. (1) In this By-law:
  - (a) "adult area" means an identifiable part of any premises, which part is used for the provision of:
    - (i) adult videotapes;
    - (ii) adult goods;
    - (iii) adult magazines; or
    - (iv) the showing or viewing of adult videotapes,or any combination of any or all of the matters referred to in clauses (i), (ii), (iii) and (iv);

- (b) "adult goods" means goods appealing or designed to appeal to erotic or sexual appetites or inclinations, described as follows: dildos, vibrators and other masturbatory devices; toys, devices and novelties described or advertised as appropriate due to their sexual nature or use only for adults; clothing, devices and other goods advertised as related, or relating, to fetishism, or otherwise used for the satisfaction of sexual appetites or interests; goods generally referred to as "erotica"; any postcard, photograph or other pictorial photographic or 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 emphasis on the display of human specified body areas; and any other goods referred to as "adult" in a sexual context, individually or in any combination thereof;
- (c) "adult magazine" means any magazine, the content or cover 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 emphasis on the display of human specified body areas;
- (d) "adult store", subject to subsection (2), means:
  - (i) any adult videotape store;
  - (ii) any store used for the carrying on of the business of the provision of:
    - A. adult videotapes;
    - B. adult goods;
    - C. adult magazines; or
    - D. the showing or viewing of adult videotapes,or any combination of the matters referred to in subclauses A, B, C and D;
  - (iii) any store in which adult videotapes, adult magazines or adult goods, or the showing or viewing of adult videotapes, or any combination of any or all of them, 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;
  - (iv) any store in which adult videotapes, adult goods or adult magazines, or the showing or viewing of adult videotapes, or any combination of any or all of them, are provided in the pursuance of a business, and in respect of which any advertisement or notice is utilized, either by signs or other advertising devices on or in the premises, or otherwise, referring to "adult store", "adult-only store", "adult video store", "adult videotape store", "adult movies", "adult magazines", or "adults only", or otherwise described in advertising by words of like meaning, or other words indicating the availability of goods, services or entertainment having sexual content not suitable for minors; or

- (v) any store in which adult videotapes, adult goods or adult magazines, or the showing or viewing of adult videotapes, or any combination of any or all of them, are provided in the pursuance of a business which is advertised in the telephone Yellow Pages available in the municipality under the heading "Sex Shops";
- (e) "adult videotape" means any videotape the content or container 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, and any videotape classified by the Ontario Film Review Board as "restricted", with the added information piece "adult sex film";
- (f) "adult videotape store" means any premises:
  - (i) subject to subsection (2), 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", "adults only", or "adult video rental store", or are otherwise described by words of like meaning, or other words indicating the availability of goods, services or entertainment not suitable for minors due to sex-related content;
- (g) "applicant" means a person applying for a licence under this By-law;
- (h) "business" includes a trade or occupation;
- (i) "by-law enforcement officer" means a person appointed to enforce this By-law or the by-laws of the City generally;
- (j) "City" means The Corporation of the City of Niagara Falls;
- (k) "Clerk" means the Clerk of the Corporation of the City of Niagara Falls, any person designated by the Council or the Clerk to exercise the duties of the Clerk under this By-law or, where an agreement exists between the City and The Regional Municipality of Niagara Police Services Board to provide for the administration of licence applications in respect of one or more classes of licences under this By-law, the Issuer of Licences for that Board;

- (l) "committee" means a committee of the Council appointed to conduct one or more hearings under the provisions of this By-law;
- (m) "Council" means the Council of The Corporation of the City of Niagara Falls, and with respect to the holding of hearings, or any hearing, includes, as the context allows, a committee;
- (n) "customer" includes any person seeking, purchasing, renting, soliciting, or receiving, or to whom is provided or offered any adult videotape, adult magazine or other adult goods at a store;
- (o) "he or she", "him or her" and "his or her" shall be deemed to include reference to corporations and partnerships, as the context allows, including "it" and "its", as the case may be;
- (p) "licence" means an authorization under this By-law to carry on the business specified therein and the document providing evidence of such authorization, as the context may allow;
- (q) "licensed" means licensed under this By-law;
- (r) "licensee" means a person who holds a licence issued, valid and subsisting under the provisions of this By-law;
- (s) "Medical Officer of Health" means the Medical Officer of Health for the Regional Municipality of Niagara and includes any employee acting on his or her behalf;
- (t) "Municipality" means the geographical area in respect of which the City has jurisdiction;
- (u) "owner" means a person who alone or with others has the right to possess or occupy an adult store or actually does possess or occupy an adult store, and includes a lessee of an adult store or premises upon which an adult store is located, and includes an owner who operates his or her own adult store;
- (v) "owner's licence" means a valid and subsisting licence, issued under this By-law to an owner as defined in this section;
- (w) "person" includes a corporation and a partnership, as the context allows;
- (x) "premises" includes a building or any part thereof, and any place;
- (y) "to provide", when used in relation to adult magazines or adult goods, means to sell, offer to sell or display for sale, by retail or otherwise, such adult magazines or adult goods;

- (z) "to provide" when used in relation to any videotape, means to sell, offer to sell or display for sale, by retail or otherwise, 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; and includes causing or permitting such provision;
  - (aa) "sign" means any advertising device or notice, including its structure and other component parts, which is used or is capable of being used to attract attention to a specific subject matter;
  - (bb) "specified body areas" means one or more of the following:
    - (i) in the case of a female person, her nipples, and areolae; and
    - (ii) in the case of all persons, the pubic, perineal, perianal areas, the genitals, anus, and the buttocks;
  - (cc) "specified sexual activities" means one or more of the following:
    - actual or simulated sexual intercourse, masturbation, urination, defecation, ejaculation, sodomy, including bestiality, anal intercourse, oral sexual intercourse, physical stimulation of genital organs, and flagellation, bondage or torture in the context of a sexual relationship or activity;
  - (dd) "videotape" means any cinematographic film, videotape, disc, and any other medium from which may be produced visual images that may be viewed as moving pictures;
  - (ee) "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.
- (2) A business shall not be deemed to be an adult videotape store or any other adult store by reason only of clause 1(1)(d)(ii) or clause 1(1)(f)(i) in respect of any videotape store or other store in which the provision of adult videotapes, adult magazines or adult goods, or the showing or viewing of adult videotapes, or any combination of them or any of them, respectively, is only incidental to the carrying on of the business of the provision and display of videotapes, magazines or goods respectively which are not adult videotapes, adult magazines or adult goods, respectively, but the regulations contained in this By-law relating to the placement and display of adult videotapes, adult magazines and adult goods, 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 and other stores.

### **Licence Requirement**

2. (1) There shall be taken out by every owner of an adult store a licence from the Council authorizing him or her to carry on such class of business in the Municipality, for which licence the person obtaining the same shall pay to the Council at or before the time of taking out such licence, the fee fixed by this By-law.
- (2) No person shall, within the limits of the Municipality, carry on or engage in any of the businesses referred to in subsection (1) unless such person holds a valid and subsisting licence in good standing issued under this By-law authorizing him or her to do so.

### **Owners' Licences - Limitations**

3. (1) The requirement of obtaining a licence under this By-law is in addition to, and not in substitution for, any other requirement to obtain a licence or other regulatory approval under any other federal, provincial or municipal regulation.
- (2) No licence shall be issued under this By-law in respect of any business or use of land carried on in breach of the City's Zoning By-law or any other law, nor shall any licence or the issuance of any licence under this By-law be deemed to authorize contravention of any such law.

### **Administration - Duties of the Clerk**

4. The Clerk shall, subject to the provisions of this By-law:
  - (a) receive and process all applications for licences and renewal of licences to be issued under this By-law;
  - (b) co-ordinate the administration and enforcement of this By-law;
  - (c) perform all of the administrative functions conferred upon him or her by this By-law;
  - (d) make such inquiries and inspections and obtain and review such information and documents relevant to the application, as the Clerk considers necessary for the proper processing of the application and to determine whether an applicant meets the requirements of this By-law and all other applicable laws;
  - (e) issue licences to persons who, in the opinion of the Clerk comply in full, and will comply in full, with the requirements of this By-law, and may suspend licences where authorized by this By-law;
  - (f) where a licence has been issued pursuant to this By-law and otherwise remains in full force and effect, renew the licences of persons who meet the requirements of this By-law; and

- (g) perform all other duties and responsibilities and exercise all powers imposed or conferred upon him or her by this By-law.

### **Applications for Licences**

- 5. (1) Every applicant for a licence to which this By-law relates, shall appear in person at the offices of the Clerk, complete the forms available in the Clerk's office and provide all information requested thereon, and furnish to the Clerk such information as the Council may direct generally or in respect of such application. In the case of premises owned or operated by a partnership such appearance shall be made by one of the partners, provided the application shall be signed by all of the partners, and in the case of premises owned or operated by a corporation such appearance shall be made by an officer of the corporation, having authority so to do.
- (2) The applicant shall, at the time of the filing of the application form required under subsection (1), deliver to the Clerk the following:
  - (a) cash, money order or certified cheque payable to the City in the amount of the licence fee required by this By-law in respect of the particular adult store, or for the renewal thereof;
  - (b) if the applicant is a corporation, 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 copy of the partnership agreement, and a list of the names and home addresses of all of the partners.

### **Application Forms - Requirements**

- 6. Every application form for a licence for an adult store shall include a requirement that the applicant provide, at a minimum, the following information:
  - (a) the name and address of the applicant;
  - (b) the address of the applicant and of the intended licensee to whom the City or its licensing section may send or deliver any notice or other document required or authorized by law;
  - (c) the municipal address of the building, premises or place in respect of which a licence is sought where the business licensed or required to be licensed is or is intended to be carried on;
  - (d) the name and address of the owner of any building, premises or place in which any such business is carried on or is intended to be carried on;
  - (e) any trade or business name or description used or to be used in relation to the business;
  - (f) the telephone number of such business;

- (g) a record of all offences, other than offences relating to motor vehicles, under any by-law, provincial statute or federal statute in respect of which the applicant, any of the partners, if the applicant is a partnership, and any of the directors, shareholders and officers of a corporation, if the applicant is a corporation, has or have been convicted;
- (h) proof satisfactory to the Clerk that the applicant, if an individual, is at least 18 years of age;
- (i) written confirmation, satisfactory to the Clerk, that the applicant is the owner of the adult store in respect of which the licence is sought.

### **Applications for Renewal**

7. The provisions of this By-law relating to an application for a licence shall apply, with necessary modifications, to an application for the renewal of a licence or to amend a licence or a condition of such licence, except that where the applicant notifies the Clerk in writing prior to the expiry of the term of the licence that the information on file with the Clerk has not changed, the applicant need not, unless so required by the Clerk, complete a new application form or amendment thereto in respect of an application for renewal.

### **Applications for a Licence by a Partnership**

8. (1) Without limiting the generality of any other provision in this By-law, persons associated in any partnership applying for a licence under this By-law shall file with their application a statutory declaration in writing signed by all members of the partnership, which declaration shall state:
- (a) the full name of every partner and the address of his or her ordinary residence;
  - (b) the name or names under which they carry on or intend to carry on business;
  - (c) that the persons therein named are the only members of the partnership;
  - (d) the mailing address for the partnership;
  - (e) the identity of every person having a beneficial interest, directly or indirectly in the premises or in the business to be carried on to which this By-law relates, of every person having a right to receive income, revenue or benefit of any kind arising out of the operation of such premises or business, and of any person who in fact receives such income, revenue or benefit, and the terms upon which such interest or right is conferred; and
  - (f) the identity of all persons or entities having an interest, direct or indirect, any trust arrangement, or any financial or contractual or understood arrangement, with respect to the ownership or operation of the premises or the adult store

or the control or management of same, and the terms upon which such interest or right is conferred.

- (2) If any member of a partnership applying for a licence is a corporation, such corporation shall be deemed to be a corporation applying for a licence and if such licence is issued to the partnership such corporation shall be deemed to be a corporation holding an owner's licence.

### **Applications for a Licence by a Corporation**

9. (1) Without limiting the generality of any other provision in this By-law, every corporation applying for a licence shall file with the Clerk, at the time of making its application, copies of its articles of incorporation or other incorporating document, and shall file with the City a statutory declaration, in writing, signed by an officer of the corporation, which declaration shall state:
  - (a) the full name of every shareholder and the address of his or her ordinary residence;
  - (b) the name or names under which it carries on or intends to carry on business;
  - (c) that the persons therein named are the only shareholders of the corporation;
  - (d) the mailing address for the corporation;
  - (e) the names of its officers, agents, directors and employees, and of the owner of the property on which the business is to be conducted;
  - (f) the identity of every person having a beneficial or other interest, directly or indirectly in the premises or in the business to be carried on to which this By-law relates, of every person having a right to receive income, revenue or benefit of any kind arising out of the operation of such premises or business, and of any person who in fact receives such income, revenue or benefit, and the terms upon which such interest or right is conferred; and
  - (g) the identity of all persons and entities having an interest, direct or indirect, any trust arrangement, or any financial or contractual or understood arrangement, with respect to the ownership or operation of the premises or the adult store or the control or management of same, and the terms upon which such interest or right is conferred.
- (2) Every corporation applying for a licence shall also file with the Clerk, at the time of the making of its application:
  - (a) a certified copy of its most recent filing with the Ministry of Consumer and Commercial Relations listing all directors and officers and the address of the head office of the corporation;

- (b) a resolution of the directors of the corporation authorizing the application for a licence; and
- (c) the name and address of every person having responsibility for the operation or management of the business of the applicant.

### **Applications by an Individual - Photograph Required**

10. Every individual applicant for a licence as an owner of an adult store, and every person applying for any licence on behalf of a corporation or a partnership, shall submit with the application;

- (i) a passport-sized (minimum measurements 7.5 cm x 6.4 cm) facial photograph of such person, taken within the previous six months, which shall be affixed to or accompany the application and be maintained in the files of the Clerk. A further photograph, may be required upon any renewal or any application for a new licence; and
- (ii) proof of such person's date of birth, in a form satisfactory to the Clerk.

### **Administration - Powers and Duties of Clerk**

11. (1) The Clerk may, for the purpose of processing the application or reporting to the Council with respect thereto, require the applicant to provide such further information relevant to the licence application as the Clerk should see fit, and every applicant, officer, director or partner of any corporate or partnership applicant, respectively, shall provide such information, including the provision of one or more interviews with the Clerk, or a hearing before the Council, should the Clerk or Council decide to require further information in order to deal with the application.
- (2) Any hearing before the Council shall be governed by the applicable provisions of the *Statutory Powers Procedure Act*.
- (3) The Clerk may at any time seek directions from the Council with respect to the manner of processing any application for a licence or the obtaining of information in connection thereto, or may give notice to the applicant of his or her right to request a hearing by the Council or a committee therein as to whether or not the application should be proceeded with, or whether it should be granted or refused, or whether conditions should be imposed upon any such licence which might be granted.
- (4) By the making of an application for a licence pursuant to this By-law, every applicant agrees that the Clerk may make such inquiries and seek and obtain such information or records as the Clerk should see fit as relevant to the processing of the application and whether or not such licence should be granted or issued, including requiring the applicant or one or more representatives of the applicant designated by the Clerk, to be interviewed by such Clerk.

- (5) By the making of an application for a licence pursuant to this By-law, every applicant also agrees that the City, the Clerk, the Medical Officer of Health, and any person or persons making inquiries on behalf of the City or at its request or by circulation relevant to the processing of the application, shall have the right at any time to inspect the premises for that purpose, and the applicant will co-operate in every way in ensuring that such inspection, and entry on the premises for that purpose, shall be facilitated and completed to the satisfaction of the Clerk.
- (6) The Clerk may, at any time, seek directions from the Council with respect to administrative matters affecting the processing of any licence application or imposing requirements of providing additional information in connection with such application.
- (7) If any shareholder of a corporate applicant or licensee is a corporation, such corporation shall be deemed to be a corporation applying for or holding a licence, as the case may be, and all of the information required by this By-law relating to every corporation having any interest in the adult store or the operation of its business, shall be disclosed, as required of a corporate applicant.

#### **Processing of a Licence Application**

12. (1) Without limiting the generality of any other provision of this By-law, the Clerk, upon receiving an application completed in accordance with the requirements of this By-law:
  - (a) shall submit a copy of the application to the Medical Officer of Health, to the City's Chief Zoning Official, and to the Niagara Regional Police Service, for comment;
  - (b) may submit a copy of the application to any other government official or functionary for comment;
  - (c) may make such other inquiries and obtain and review such other information and documents relevant to the application, as the Clerk considers necessary for the proper processing of the application;
  - (d) shall carry out such investigation or verification relating to the application as he or she may deem necessary for the purposes of the administration of this By-law and shall, subject to paragraph (e), if the investigation or any other information available to the Clerk discloses no reasonable grounds to believe that the application is not in compliance with the By-law, or that the applicant may not be entitled to the issuance of a licence on the grounds referred to in this By-law or by reason of any other provision of this By-law or other applicable law, issue the licence;
  - (e) if the investigation or any other information available to the Clerk discloses reasonable grounds to believe that the applicant may not be entitled to the issuance of a licence on grounds referred to in this By-law, or by reason of

any other provision of this By-law or other applicable law, or, if for any reason, the Clerk believes that the application should be dealt with by the Council, the Clerk shall forthwith cause notice of this fact and the reasons therefor to be served upon the applicant at the address shown on the application form.

- (2) The Clerk shall, in any notice served upon an applicant under clause (1)(e), include in such notice a statement that the applicant may require a hearing of the application by the Council or a committee, by serving a notice in writing to that effect upon the Clerk within 15 days of the service 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.
- (3) Where the Clerk receives notice from an applicant requiring a hearing in accordance with subsection (2), the Clerk shall forthwith refer the application to the Council or committee as the case may be, for a hearing.
- (4) Where an application has been referred to the Council or a committee, the Clerk shall prepare a report to the Council or committee summarizing the general nature of the application and relevant facts pertaining thereto, including any information relevant to terms which the Council might consider including as conditions of any licence which it might issue, but shall not include the text of any reports or other documents containing such allegations or information adverse to the applicant, but the nature of such allegations or documents may be referred to in the report.
- (5) Where the Clerk does not receive notice from an applicant requiring a hearing in accordance with subsection (2), the Clerk need not process the application further, and no further notice is required to be served upon the applicant.
- (6) 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 licence be issued, subject to compliance with this By-law;
  - (b) grant the application subject to such conditions as the Council, in accordance with this By-law, considers just and equitable in attaining the purposes of this By-law, and are accepted by the applicant, and direct that the licence be issued subject to such conditions and to compliance with this By-law;
  - (c) in considering conditions to be imposed pursuant to paragraph (b), determine if all building inspections have been carried out, and whether satisfactory reports have been received from the Medical Officer of Health, the Fire Chief of the municipality, and the Building and Inspections Division of the City, if any are required;
  - (d) refuse in whole or in part to grant the application upon grounds contained in this By-law or otherwise in accordance with the law; or

- (e) 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.
- (7) Where an application has been referred to the Council or a 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.
- (8) The applicable provisions of the *Statutory Powers Procedure Act* shall apply to all hearings conducted by a committee.
- (9) Upon the conclusion of a hearing conducted by a committee under this By-law, the committee shall as soon as practicable make a written report to the Council providing the recommendations, if any, of the committee on the application or matter in respect of which the hearing has been conducted.
- (10) After conducting a hearing or considering the report of the committee, the Council may thereupon in respect of such application or matter, make any decision permitted under this By-law in respect of the granting or refusal of a licence, the imposing of conditions on a licence, or the revocation or suspension of a licence, that it might have made had it conducted the hearing itself.

### **Licence Fees - Requirement**

- 13. (1) For a licence under this By-law, every applicant shall pay to the City the annual fee set forth in Schedule B, including a non-refundable administration fee in accordance with Schedule B. In the event that the licence is granted for a term of less than one year, the fee may be pro-rated on a quarterly basis.
- (2) Acceptance of an application or a licence fee by the City shall not be deemed approval of the application for the issuance of a licence nor shall it obligate the City to issue such licence.

### **Grounds of Refusal, Revocation or Suspension of a Licence**

- 14. The Council may:
  - (1) refuse to grant a licence; or
  - (2) revoke or suspend a licence;upon any one or more of the following grounds:

- (a) there are reasonable grounds for belief that any application or other document provided to the Clerk by or on behalf of the applicant contains a false statement, false information or misrepresentation; omits material information; or is intentionally misleading;
- (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 grounds 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;
- (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 requirements;
- (d) the financial position or history of the applicant or any one or more of the persons referred to in paragraph (b) of this subsection affords reasonable grounds to believe that the business will not be carried on in a financially responsible manner;
- (e) there are reasonable grounds for belief that the application does not meet the requirements of this By-law, or that the business is carried on or intended to be carried on in an area of the City where such business is prohibited by law from being carried on, or in respect of which the issuing of a licence in respect of the business is not permitted by this By-law;
- (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 is dangerous or unsafe;
- (g) the past or present conduct of the applicant or of any one or more of the persons referred to in paragraph (b) of this subsection affords reasonable grounds for belief that the carrying on of the business in respect of which the licence is sought would infringe the rights, or endanger the health or safety, of one or more members of the public;
- (h) the fee payable in respect of the licence applied for has not been paid;
- (i) where information provided to the City by or on behalf of the applicant or licensee, whether oral or in writing, is not accurate or has ceased to be accurate, and the applicant or licensee has not provided up-to-date accurate information to the City sufficient to allow the Council to conclude that the licence should be granted or maintained as valid and subsisting;
- (j) the applicant does not accept or ensure compliance with any condition imposed under this By-law upon the business or upon the licensee, as a requirement of obtaining, continuing to hold or renewing a licence;

- (k) there are reasonable grounds for belief that any of the grounds set out in this subsection exist with respect to any other licence issued or granted to or held by the licensee, or any person or person related to the licensee described in section 16, or in respect of any other business carried on in the municipality by the licensee, or such other person or persons; or
- (l) where the applicant or licensee has failed to comply with any provision of this By-law requiring notice to be provided by or on behalf of a licensee to the Clerk.

### **Licence - Conditions**

15. (1) Despite any other provision of this By-law, the Council may grant a licence or allow a licence to continue upon such conditions as the Council may see fit to impose for the purpose of ensuring the proper and lawful carrying on of the business, or such other conditions, as are authorized by law.
- (2) It shall be deemed to be a condition of every licence that the licensee comply with and ensure compliance with the requirements of this By-law and of Schedule A hereto applying to the business licensed or to be licensed.

### **Conduct - Applicant**

16. For the purposes of section 14, "conduct of the applicant" and "conduct of the licensee" include:
- (a) where the applicant or licensee is a partnership, the conduct of one or more of its partners or former partners or an employee of the partnership;
  - (b) where the applicant or licensee is a corporation, the conduct of one or more of its current or former officers, shareholders, directors, employees or agents; and
  - (c) in the case of every applicant and licensee, the conduct of one or more employees, agents, independent contractors, or any other person currently or previously involved in, or to be involved in, the carrying on of the business or the provision of any services therein.

### **Evidence**

17. In deciding whether to grant, refuse, revoke or suspend a licence, or allow a licence to continue subject to conditions, the Council may receive relevant evidence of and act upon, the fact that one or more persons have been convicted of an offence, but may also consider and act upon evidence of conduct, whether or not prohibited by this By-law or any other law, or which could be the subject matter of a charge under this By-law or any other law, whether or not any charge or conviction may have resulted or may in the future result, from such conduct.

### **Hearings**

18. (1) The Council or a committee may, upon receiving information, indicating that any of the grounds referred to in section 14 may exist with respect to any application or any licence granted or sought to be granted pursuant to this By-law, or the conduct of any person with respect thereto, hold a hearing to determine whether or not the licence should be granted or continued or should be suspended, revoked or have conditions imposed upon it, in accordance with applicable law.
- (2) The Council or committee shall hold a hearing such as that referred to in subsection (1) where, at the applicant's request, the Clerk has referred the application to the Council.

### **Revocation - Suspension - Hearing Requested**

19. Subject to section 21, no licence shall be revoked or suspended under this By-law, except after a hearing by the Council or a committee, or after the licensee has been given the opportunity for such a hearing, in accordance with applicable law.

### **Probationary or Conditional Licences**

20. (1) Where the Council or a committee concludes that grounds exist upon which a licence may be refused, suspended or revoked, the Council may in lieu thereof issue a licence for any period up to a full licence period on probation, or without a term of probation, subject to such conditions as the Council may impose and the applicant or licensee accepts, and are in accordance with law.
- (2) The Clerk shall, where he or she has reasonable grounds to believe that any one or more grounds exist upon which a licence could be refused, revoked or suspended, or render it appropriate that one or more conditions be imposed as a requirement of continuing to hold a licence, provide written notice to the applicant or licensee and to the Council of such fact, and provide written notice to the applicant or licensee of such fact and of the right to a hearing in accordance with this By-law and other applicable law.

### **Suspension - Authority of Clerk - Conditions**

21. (1) The Clerk may suspend a licence where there are reasonable grounds to believe that such is urgently required to prevent a breach of the By-law or to ensure compliance with the By-law.
- (2) A suspension under subsection (1) shall take effect upon service of written notice thereof to the licensee, or upon the delivery of written notice to the business premises of the licensee at the address shown on the City's records.
- (3) A suspension under subsection (1) shall remain in effect until the next meeting of the Council or the end of 15 days after its issuance, whichever last occurs.

**Suspension - Report to Council - Recommendation**

22. Following suspension of a licence under section 21, the Clerk shall prepare a written report to the Council, advising of the suspension and:

- (a) recommending that the Council or a committee hold a hearing to determine whether the suspension should continue, or be terminated, and whether the Council should give consideration to whether or not the licence should be revoked or otherwise dealt with pursuant to this By-law;
- (b) recommending reinstatement of the licence on the basis that the conditions leading to the suspension have been remedied; or
- (c) recommending that no action be taken upon the termination of the suspension.

**Licence - Privilege - Property of City**

23. (1) Every licence is personal to the person to whom it was issued, and cannot be transferred to any other person.
- (2) No person shall enjoy a vested right in the continuance or renewal of a licence and the value of a licence shall be the property of the City and shall remain so irrespective of the issue, renewal or revocation thereof.
- (3) When the holder of an owner's licence ceases for any reason to carry on the business in respect of which the licence was granted, such person or his or her estate, in the case of the death of a licensee, shall notify the Clerk in writing forthwith, and upon receipt of such notice, the licence is terminated unless the Council decides otherwise, after a hearing.

**Licence - Expiry - December 31 - Exceptions**

24. The term of every licence shall commence upon the date that it is issued, and expire on December 31<sup>st</sup> of that year, provided that each annual and other fee required by this By-law to be paid has been paid within the time limits prescribed, and provided that the licence has not been revoked or otherwise ceased to be valid and subsisting during such period.

**Business - Operation - Under Licensed Name**

25. No person licensed to carry on business under this By-law shall advertise or promote or carry on such business under any name other than the name endorsed by the Clerk upon the licence.

**Location - Endorsed on Licence**

26. Every owner's licence shall have endorsed by the Clerk thereon the location of the premises; such endorsement shall be for one location only; and such licence shall be valid only for the location endorsed thereon.

**Licence - posted - conspicuous - on premises**

27. (1) Every owner shall keep his or her licence issued in respect of any adult store posted in a conspicuous place in the said premises, satisfactory to the Clerk, at all times during the currency of the licence.
- (2) No owner shall operate an adult store other than the adult store endorsed by the Clerk on his or her licence and at the location endorsed by the Clerk thereon.

**Licensee - information provided - upon request**

28. Every owner of any class of adult store in the Municipality and every owner licensed under this By-law in attendance at an adult store in the Municipality whether or not engaged in his or her respective trade, calling, business or occupation at that time, shall, upon a request made by any peace officer, by-law enforcement officer, Medical Officer of Health, or the Clerk provide his or her name and residential address, and if licensed under this By-law in respect of any trade, calling, business or occupation relating to such adult store, produce the said licence.

**The Duty to Co-operate with Enforcement Officials**

29. (1) Every owner shall, during the operating hours of any adult store, and at all times when goods or services are offered, available or provided therein, make available for inspection by the Clerk, a peace officer, the Medical Officer of Health, a provincial offences officer or a by-law enforcement officer the original of any document or record referred to in this By-law.
- (2) Every owner of any adult store shall, at all times, whether or not during the hours of operation of the adult store, permit the entry by, and the inspection of all parts of the premises by any by-law enforcement officer, provincial offences officer, clerk,

Medical Officer of Health or peace officer, and shall produce his or her licence issued in respect of the business to such officer upon demand therefor.

- (3) No person shall obstruct or hinder the entry or the inspection of any adult store or any part thereof by any by-law enforcement officer, provincial offences officer, clerk, Medical Officer of Health or peace officer.
- (4) No premises in which an adult store is located shall be constructed or equipped so as to hinder or prevent the enforcement of this By-law.

### **Revocation of Licence - Refund of Fees**

30. Where a licence has been revoked, the licensee is entitled to a refund of a part of the license fee proportionate to the unexpired part of the term for which it was granted, on a quarterly basis.

### **Changes and Information**

31. (1) Every licensee shall notify the Clerk in writing within five days after any change in any of the information provided under this By-law, providing full particulars with respect to such change.
- (2) Where a change has occurred in the name or business name of a licensee, the licensee shall attend within four days of the date of the change at the office of the Clerk, to have the licence and licence records amended accordingly.
- (3) Every licensed owner shall report in writing to the Clerk particulars of any proposed change in direct or indirect ownership of his or her adult store business which is the subject of the licence, at least 30 days prior to such change taking effect, by filing an application for a licence in the name of the owner as such will exist after the change has been effected, and the provisions of this By-law applicable to applications for licences shall apply.
- (4) Without limiting the generality of subsection (3), if a change in the ownership will result in a change in actual or legal control of the store or business, respectively, every prospective remaining owner or the prospective new owner, as the case may be, shall forthwith comply with the requirements of this By-law in respect of any person assuming ownership or control of the adult store or business as if such person were applying for an owner's licence.
- (5) Upon receipt of the information required to be filed pursuant to subsections (3) and (4), the Clerk shall circulate and review notice of the change in ownership in accordance with this By-law, and shall, upon completion of that circulation and review, notify in writing every prospective remaining owner, and the prospective new owner, as the case may be, of:
  - (a) their being approved as licensed owners; or

- (b) that before such licensing status may be approved, a hearing must be held by the Council, or a committee of the Council, and the provisions with respect to notice of an application being referred to the Council shall apply.
- (6) Every licensed owner shall report in writing to the Clerk particulars of any proposed change in the location of the business which is the subject of a licence at least 60 days prior to such change taking effect, by filing an application for a licence in accordance with the provisions of this By-law, and the provisions of this By-law with respect to an application, and with respect to the location of such a business, apply in respect of consideration as to whether or not the proposed change in location may be effected under the current licence, or whether such licence will lapse and be terminated.

### **Partnership - Corporation - Approval Requirements**

32. Where a partnership or corporation is licensed under this By-law and there has been or is intended or expected to be a change in the composition of the partnership or the shareholders of the corporation, the person licensed hereunder shall within five days advise the City of such change. Where the Council receives information of a change in a partnership or corporation holding or applying for a licence, the Council may hold a hearing in accordance with this By-law and other applicable law to decide whether the licence should be granted, continued as valid and subsisting, with or without such conditions as the Council may see fit to impose, or in accordance with the law, suspended or revoked.

### **Corporation - Change in Controlling Interest - Approval**

33. Where there is to be a change in the composition or the controlling interest of the shareholders of a corporation licensed under this By-law, the corporation shall provide prior notice of such change to the Clerk, who may, if the circumstances warrant, treat such notice as a new application for a licence. Where there has been any change in the controlling interest of the corporation by virtue of a number of transactions, the licence may be suspended, until an application for a new licence is processed.

### **Facts - Misrepresentation of - Deemed Violation**

34. No person carrying on or engaged in any business or activity to which this By-law relates shall make a false or intentionally misleading recital of fact, statement or representation, or omission of a material fact or information, orally or in any agreement, statutory declaration or application form, or any other document, submitted or produced pursuant to this By-law, to the Council, a committee, the Clerk, a by-law enforcement officer, the Medical Officer of Health, a public health inspector or a peace officer, and the making of such a false or intentionally misleading recital of fact, statement, representation or omission constitutes an offence.

### **Compliance - Applicable Provisions - All Persons**

35. Every person shall comply with the provisions of this By-law applicable to such person, whether or not such person is licensed or required to be licensed under this By-law or any law, or whether or not a licence issued to such person is valid and subsisting.

**Schedules - Part of By-law**

36. Schedules A and B form part of this By-law.

**Notice - Delivery and Service**

37. (1) Any notice, order or other document required or authorized to be given under this By-law is sufficiently given if delivered personally or sent by prepaid ordinary mail addressed to the person to whom delivery is required to be made at the last address for delivery appearing on the records of the Clerk.
- (2) Where service or delivery is effected by prepaid ordinary mail, it shall be deemed to be made on the third day after the date of mailing, unless the person on whom service is being made establishes that he or she did not, acting in good faith, through absence, accident, illness or other cause beyond his or her control, receive the notice, order or document until a later date.

**Service - provided - in contravention - prohibited**

38. No owner shall permit any adult videotapes, adult magazines or adult goods to be provided in any adult store in breach of any of the provisions of this By-law.

**Attire - cleanliness - behaviour - owner**

39. Every owner and every employee of an adult store shall, while engaged in his or her respective trade, calling, business or occupation in the adult store, be neat and clean in his or her person and civil and well-behaved to members of the public with whom he or she is dealing.

**Signs prohibiting entry by persons under 18 years**

40. (1) Every owner shall post and keep posted at every entrance to any adult store operated by such owner, and in a prominent location inside such premises, signs sufficient to indicate clearly to any person approaching or entering the premises, and to every person in the premises, that no person under the age of eighteen years is permitted to enter or remain in such premises or any part thereof.
- (2) No person may provide any adult videotapes, adult magazines or adult goods in an adult store to any person under the age of 18 years.
- (3) No person under the age of 18 years may enter, be allowed to enter, remain in or be allowed to remain in, any part of an adult store.

**Regulations - supplied - instructions - to all employees**

41. Every owner shall, before permitting any person to provide videotapes, magazines and goods at an adult store, provide to such person a copy of the regulations in this By-law, and instruct such person with respect to each of the regulations.

**Compliance with By-law required**

42. Every owner of any adult store shall comply and ensure compliance by all other persons employed in such adult store, with the requirements of this By-law, including its Schedules, with respect to the adult store.

**Regulations**

43. Every licensee shall:

- (1) prominently display the licence at the premises licensed at all times and shall produce the licence upon request by the Clerk, any by-law enforcement officer and any police officer;
- (2) keep the premises in a clean and sanitary condition;
- (3) carry on business only in the name in which the licence is issued, or such other business or trade name provided to the Clerk and endorsed by the Clerk upon such licence; and
- (4) advertise, promote and carry on such business only under the name in which the licence is issued, or such other business or trade name provided to the Clerk and endorsed by the Clerk upon such licence.

**Enforcement**

44. (1) Every person who contravenes any provision of this By-law, including of any of its Schedules, and every director or officer of a corporation who concurs in such contravention by the corporation, is guilty of an offence and on conviction is liable to a fine, exclusive of costs, not exceeding \$25,000.00.
- (2) Where a corporation is convicted of an offence under this By-law, the maximum penalty, exclusive of costs, that may be imposed on the corporation is \$50,000.00, and not as provided in subsection (1).

**Intention to Maintain Valid Provisions by Severance**

45. The Council hereby declares and confirms its intent that should any provision or any part of any provision of this By-law be held by a court of competent jurisdiction to be invalid, or of no force and effect, it is the intent of the Council in enacting this By-law, that each and every other provision of this By-law, and every part of any provision, authorized by law, stand and be applied and enforced in accordance with its terms to the extent possible according to law.

**Short Title**

46. This By-law may be referred to as the “City of Niagara Falls Adult Videotapes, Magazines and Other Goods By-law”.

Passed this 25th day of November, 2002.

.....  
DEAN IORFIDA, CITY CLERK

.....  
WAYNE THOMSON, MAYOR

First Reading: November 25, 2002.  
Second Reading: November 25, 2002.  
Third Reading: November 25, 2002.

**SCHEDULE A  
TO BY-LAW NO. 2002 - 198**

**REGULATIONS WITH RESPECT TO ALL STORES,  
INCLUDING ADULT VIDEOTAPE STORES  
AND OTHER ADULT STORES**

**Definitions**

1. (1) Except where otherwise provided in the General Provisions of this By-law or this Schedule, the definitions contained in the General Provisions apply to words used in this Schedule.
- (2) In this Schedule, “store” refers to every store in the Municipality, including, but not limited to, adult stores, as the context allows.

**Prohibited Entry to persons under 18 years of age**

2. (1) No owner, or any person working in an adult store or any adult area, shall permit any person under the age of eighteen years to enter or remain in such store or area.
- (2) No owner, or any other person, shall enter, remain or work in an adult store or any adult area, or in any part of any store in which adult videotapes, adult magazines or adult goods are provided, unless such person is of the age of eighteen years or older.

**Signs prohibiting entry to persons under 18 years of age**

3. Every owner shall post and keep posted at every entrance to the adult store operated by such owner, 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.

**Regulations Applicable to All Stores**

4. (1) Every owner of a store, including a videotape store, whether or not he or she is licensed or 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, adult magazines and adult goods.
- (2) Every owner referred to in subsection (1) shall ensure that every person working in such store complies with all requirements of this By-law relating to the provision of adult videotapes, adult magazines or adult goods 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.

- (3) Every person working in a store shall comply with all requirements of this By-law relating to the provision of adult videotapes, adult magazines or adult goods and the prohibition of access to all or part of the premises to persons under the age of eighteen years.

#### **Display of adult videotapes, magazines and goods**

5. In addition to full compliance with the other provisions of this Schedule, every person providing adult videotapes, adult magazines or other adult goods in any store, in an area accessible to persons under the age of eighteen years, shall place the adult videotape, adult magazine or other adult goods and their containers:

- (a) at a height of 1.5 metres or more above floor level; and
- (b) behind an opaque barrier of a size and nature so that the adult videotapes, adult magazines or adult goods, and their containers, while on display, except for the name or title thereof, may not be seen by any member of the public.

#### **Regulations governing stores which provide adult videotapes, magazines or goods**

6. (1) Every owner of a store that is not an adult store and every person working in such store shall ensure that no adult videotape, or container for an adult videotape, or any adult magazine or adult goods, shall be displayed in a location where such can be seen by persons in the store, unless such adult videotape, container, magazine or goods is located in a separate adult videotape area, other adult area or other location in such store to which persons under the age of eighteen years are not permitted to enter, and every such adult videotape or container, adult magazine or adult goods shall be displayed in a location where it cannot be seen from outside such area.
- (2) Every owner of a store in which any adult videotapes, adult magazines or adult goods are provided shall affix, in a prominent location inside such store and at every entrance to every adult videotape or other adult 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 or adult videotape area or other adult area, in accordance with this By-law.
- (3) Every owner of a store, including an adult videotape store or other adult store, and every person working in such store, shall ensure that no person under the age of eighteen years is permitted to enter the adult videotape store or other adult store, or any adult videotape area or other adult area, in accordance with this By-law.
- (4) Every owner of a store and every person working in such store shall ensure that no adult videotape, or container for an adult videotape, or any adult magazine or adult goods shall be displayed in such a manner so as to be visible from outside the store.
- (5) No owner of any store, or any person working in such a store, shall play, preview or display, or permit to be played, previewed or displayed, or cause to be played, previewed or displayed, any adult videotape for view within the store.

**Prohibition of access to persons under 18 years of age**

7. Every owner, and every person working in any store in which adult videotapes, adult magazines or adult goods are provided, shall:

- (a) ensure that no adult videotape, adult videotape cover, adult magazine, adult goods or container of any adult goods, or, except as permitted in this By-law, any promotional material or advertising, shall be displayed in such a manner so as to be visible from outside the store, or from inside the store where it may be visible to any person under the age of 18 years;
- (b) ensure that no adult videotape, adult magazine or other adult goods is or are sold, rented or otherwise provided to any person who is not at least 18 years of age;
- (c) not make available to the public any adult videotapes, adult magazines or adult goods through automated vending or dispensing equipment without intervening and having the age of the person duly verified by the owner, operator or employee at the time of any sale, rental or other provision;
- (d) inform himself or herself of the requirements of this By-law pertaining to adult videotapes, adult magazines and other adult goods, and in the case of every owner and operator, ensure that every person working in the store complies with all such requirements.

**Sign - posted - exterior - licence number - other**

8. Every licensed owner shall exhibit over the street door or in the lower front window of the premises in respect of which such person's licence is issued or in some other conspicuous place on the exterior of such premises satisfactory to the Clerk, a sign issued by the Clerk bearing the words, "Licensed Adult Store No.", (inserting after "No." the owner's licence number), and "Comments regarding this business may be made to the City Clerk [at the telephone and facsimile numbers of the Clerk].

**SCHEDULE B  
TO BY-LAW NO. 2002 - 198**

**LICENCE FEE SCHEDULE**

The following shall be the fee required to be paid in respect of each annual licensing period in respect of all or part of which any fee is required to be paid with respect to any licence application or licence pursuant to the provisions of this By-law:

LICENCE FEE

<u>Class</u>	<u>Fee</u>
Owner of an Adult Store	\$ 200.00

NON-REFUNDABLE ADMINISTRATIVE FEE

Owner of an Adult Store	\$ 100.00
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