

THE CORPORATION OF THE CITY OF NORTH BAY

BY-LAW NO. 1999-65

BEING A BY-LAW FOR REGULATING AND GOVERNING EXPLICIT ADULT VIDEO STORES AND OTHER VIDEOTAPE STORES IN WHICH EXPLICIT ADULT VIDEOS ARE PROVIDED

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A. M.

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BEING A BY-LAW FOR THE REGULATING AND GOVERNING OF EXPLICIT ADULT VIDEO STORES AND OTHER VIDEOTAPE STORES IN WHICH EXPLICIT ADULT VIDEOS ARE PROVIDED.

WHEREAS section 225 of the *Municipal Act*, R.S.O. 1990, c.M.45 (the "*Act*") authorizes councils of all municipalities to pass by-laws for regulating, governing, classifying and inspecting adult entertainment parlours or any class or classes thereof and for revoking or suspending any such licence;

AND WHEREAS "adult entertainment parlour" is defined in subsection 225(9) of the *Act* to mean any premises or part thereof in which is provided in pursuance of a trade, calling, business or occupation, goods or services appealing to or designed to appeal to erotic or sexual appetites or inclinations;

AND WHEREAS "goods" is defined in subsection 225(9) of the *Act* to include books, magazines, pictures, slides, films, phonograph records, pre-recorded magnetic tape and other reading, viewing or listening matter;

AND WHEREAS s. 257.2 of the *Act* authorizes councils of local municipalities to pass by-laws for regulating and governing any business carried on within the municipality including the power to define classes of the businesses and to separately license, regulate and govern each class;

AND WHEREAS the Council of the Corporation of the City of North Bay (the "Council") has deemed it desirable to enact a by-law for the regulating and governing of adult videotape stores and certain other videotape stores as classes of adult entertainment parlours pursuant to the provisions of sections 225 and 257.2 of the *Act*.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF NORTH BAY HEREBY ENACTS AS FOLLOWS:

DEFINITIONS:

1. In this By-Law:
 - (a) (i) "adult videotape" means any videotapes the content of which is designed or held out as principally 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;
 - (ii) 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 without such classification and information piece shall be deemed not to be an adult videotape;
 - (b) "adult videotape area" means an identifiable part of any premises, which part is used for the provision of adult videotapes;
 - (c) "adult videotape store" is a class of adult entertainment parlour as defined in the *Municipal Act*, R.S.O. 1990, c.M. 45, s. 225, as amended, and means any premises;

- (i) used for the carrying on of the business of the provision of adult videotapes where more than 10% of the entire area of the premises devoted to the provision, display and/or storage of videotapes is used for the provision, display, storage, sale or rental 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 eighteen (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", or are otherwise described by words of like meaning;
- (d) "City" means The Corporation of the City of North Bay;
- (e) "Committee" means a committee of the Council appointed by by-law to conduct hearings;
- (f) "Council" means the Council of The Corporation of the City of North Bay;
- (g) "general videotape store" means any premises or part thereof in which videotapes are provided in the pursuance of a business, where 10% or less of the entire area of the premises devoted to the provision, display and/or storage of videotapes but more than 0% of such area, is used for the provision, display, storage, sale or rental of adult videotapes;
- (h) "Licence Manager" means the Manager of Corporate Support of the City or, in his or her absence, any person authorized to fulfil the responsibilities of the licence manager;
- (i) "operator" includes a proprietor, or any other person who alone or with others manages, supervises, runs or controls an adult videotape store or general videotape store;
- (j) "owner" means a person who alone or with others has a right to possess or occupy an adult videotape store or general videotape store or actually does possess or occupy either class of videotape store and includes a lessee of such videotape stores or of premises upon which either class of videotape store is located;
- (k) "to provide" when used in relation to any videotape means to sell, offer to sell or display for sale by retail or 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 manner and "provision" has a similar corresponding meaning;
- (l) "specified body areas" means any one or more of the following:
- (i) in the case of a female, her areolae; and
 - (ii) in the case of all persons, the genitals and the anus;
- (n) "specified sexual activities" means one or more of the following:
actual or simulated sexual intercourse, masturbation, urination, defecation, ejaculation, sodomy, including bestiality, anal intercourse, and oral sexual intercourse, direct physical simulation of unclothed genital organs, and flagellation or torture in the context of a sexual relationship or activity;

- (o) "videotape" means cinematographic film, videotape and any other medium from which may be produced visual images that may be viewed as moving pictures;

ADULT VIDEO STORES

2. (1) No owner, operator or any person working in an adult video store shall permit any person under the age of eighteen (18) years to enter or remain in such store.
- (2) No owner, operator or any other person shall work in an adult video store, or in that part of any video store in which adult videos are provided, unless such person is of the age of eighteen (18) years or older.
- (3) Every operator shall post and keep posted at every entrance to any adult video store operated by such operator, and in a prominent location inside such stores, 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 (18) years is permitted to enter or remain in such store or any part thereof.
- (4) Exterior signs and advertisements relating to adult video stores and to the provision of adult videos, shall be restricted to the words "adult videos", "adult videotapes", or "adult videotapes sales and rentals" and shall not include pictorial representation of specified body areas or specified sexual activities.
- (5) No person may view the inside of such adult entertainment parlour from a position outside of the parlour through any window or the like and, to that end, opaque covering shall be affixed to such windows and the like.
- (6) Signs with "Persons Under 18 Not Permitted", dimensions of such signs are not less than 46 centimetres and by 30 centimetres, and the letters on such signs are not less than 4 centimetres high and 2.5 centimetres wide.

GENERAL VIDEO STORES

3. (1) Every owner or operator of a video store in which adult videos are provided, shall not permit any person under the age of eighteen (18) years to enter or remain in any part of such store where adult videos are provided, or within three (3) metres of any adult videos unless such adult video is located in an adult video area to which such person does not have physical or visual access.
- (2) Every owner and operator of a video store in which adult videos are provided, shall affix, in a prominent location inside such store and at every entrance to any adult video area, a sign or signs sufficient to indicate clearly to persons in the store, that no person under the age of eighteen (18) years is permitted to enter or remain in any adult video area in accordance with this By-law.
- (3) Every owner or operator of a video store and every person working in such stores shall ensure that no adult video, or container for an adult video shall be displayed in such a manner so as to be visible from outside the store.
- (4) Every owner or operator of a video store and every person working in such store shall ensure that no adult video, or container for an adult video, shall be displayed in a video store that is not an adult video store, in a location where it can be seen by persons in the store,
- (a) unless such adult video or container is in a separate location in such store to which persons under the age of eighteen (18) years are not permitted to enter, and such adult video or container is displayed in a location where it cannot be seen from outside such area, or

- (b) unless such adult videos, video covers, video containers and jackets, which display the specified body areas or specified sexual acts, being transported from the designated area to the cashier if outside the designated area, shall be enclosed in an opaque bag or other container, so that such pictorial content is not visible. .
- (5) No adult videos are displayed at a height of less than 1.5 metres above the floor level, unless such videos are in a part of a place to which the public is not permitted access.
- (6) Signs with "Persons Under 18 Not Permitted" shall have dimensions of which are not less than 46 centimetres and by 30 centimetres, and the letters on such signs which are not less than 4 centimetres high and 2.5 centimetres wide.
- (7) Where less than the whole store is designated as the adult video area, the owner or operator shall ensure that:
 - (a) entrances to the designated area shall be equipped with a solid, opaque, self closing full length door; and
 - (b) all adult videos, video covers, video containers and jackets, which display the specified body areas or specified sexual acts, being transported from the designated area to the cashier if outside the designated area, shall be enclosed in an opaque bag or other container, so that such pictorial content is not visible.
 - (c) An owner or operator of a video store providing adult videos shall be responsible for informing any employees of the video store of the boundaries of the adult video area designated and the requirement that persons under the age of eighteen (18) years old not be allowed to enter or remain in the area designated.
- (8) No person shall be allowed to view adult videos on the premises.

RECORDS FOR INSPECTION

- 4. Every Operator of an Adult Video Store shall keep and maintain on the premises, available for inspection by the Licence Manager, any by-law enforcement officer or any police officer, during all business hours, a Register which shall include the following information:
 - (1) Name and address of the Owner and Operator;
 - (2) The measurements of the vertical and horizontal dimensions of the area in the premises in which videotapes are or are to be provided, and of the area, if such is smaller, used or to be used for the provision of adult videotapes;
 - (3) A current list of all adult videotapes available on the premises.

PENALTY

- 5. (1) Every person who contravenes any provision of this By-law, 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 or to imprisonment for a term not exceeding one (1) year, or to both.
- (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).

VALIDITY

6. If a court of competent jurisdiction declares any provision, or any part of a provision, of this By-law to be invalid, or to be of no force and effect, it is the intention of the Council in enacting this By-law, that each and every other provision of this By-law authorized by law, be applied and enforced in accordance with the terms to the extent possible according to law.

EFFECTIVE DATE

7. This by-law shall be deemed to come into effect six months from the date of its enactment.

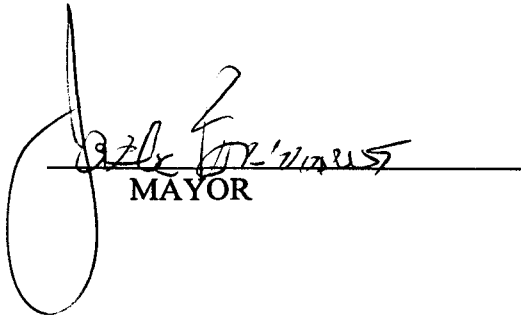
SHORT TITLE

8. This by-law may be referred to as the Video Store By-law.

READ A FIRST TIME IN OPEN COUNCIL THE 29TH DAY OF JUNE, 1999.

READ A SECOND TIME IN OPEN COUNCIL THE 25th DAY OF OCTOBER, 1999.

READ A THIRD TIME IN OPEN COUNCIL AND ENACTED AND PASSED THIS 25th DAY OF OCTOBER, 1999.



MAYOR



CITY CLERK