

The Corporation of the City of Kawartha Lakes

Office Consolidation of By-Law 2013-192

Consolidated on January 23, 2017

Passed by Council on November 12, 2013

Amendments:

- 1) By-law 2016-209 November 22, 2016 Sections 5 and Sch. A

Note: This consolidation is prepared for convenience only. For accurate reference the original by-laws should be reviewed.

The Corporation of the City of Kawartha Lakes

By-Law 2013-192

A By-Law to Define Areas in The City of Kawartha Lakes in Which Adult Entertainment Bookstores and Adult Videotape Stores May Operate and to Licence, Regulate and Limit the Number of Adult Entertainment Bookstores and Adult Videotape Stores Elsewhere in The City of Kawartha Lakes.

Recitals

1. Sections 150 – 153 of the Municipal Act, 2001, S.O. 2001 c.25, as amended, authorizes Council to licence, regulate and govern businesses and events.
2. Section 154 of the Municipal Act, 2001, S. O. 2001, c.25, as amended, specifically authorizes Council to licence, regulate and govern adult entertainment establishments.
3. The authority includes but is not limited to: the power to issue licences, to issue licences on condition, to revoke licences, to suspend licences, to regulate or govern the place used in the carrying on of such businesses and to prevent the carrying on of such businesses without a licence.
4. Section 425(1) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under the Municipal Act, 2001, S.O. 2001, c.25, as amended, is guilty of an offence.
5. Section 429(1) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, provides that a municipality may establish a system of fines for offences under a by-law passed under the Municipal Act, 2001, S.O. 2001, c.25, as amended.

Accordingly, the Council of the Corporation of the City of Kawartha Lakes enacts this By-law 2013-192.

Section 1.00: Definitions and Interpretation

Definitions: In this by-law:

“adult book or magazine” means any book or magazine appealing to or designed to appeal to sexual or erotic appetites or inclinations.

"adult entertainment bookstore" means any premises in which the principal business carried on is the provision of adult books or magazines.

- (i) "Book or magazine appealing to or designed to appeal to sexual or erotic appetites or inclinations" means any book or magazine which is primarily dedicated to or whose appeal to the reader is primarily based on, the portrayal or depiction, by means of photographs, drawings or otherwise, but does not include the printed word, of the specified body areas of any

- person or persons or the specified sexual activities, or of which a feature or characteristic of a substantial part thereof is such portrayal or depiction.
- (ii) Notwithstanding the generality of sub-paragraph (i), nothing contained therein shall be deemed to apply to any book or magazine other than those referred to in section 154 of the *Municipal Act 2001 S. O. c.25*, as amended.

“adult videotape” means a videotape classified by the Ontario Film Review Board as "restricted", with the added information piece "adult sex film";

- (i) in the absence of such classification and added information piece, 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.

“adult videotape area” means a separate identifiable part of any premises, which part is used for the provision of adult videotapes where the videotapes cannot be seen from outside the area and which is designed to permit an operator to restrict access to persons under the age of 18 years.

“adult videotape store” means any premises used primarily for the carrying on of the business of the provision of adult videotapes.

“by-law” means this by-law, as it may be amended from time to time. The Recitals to, and the Schedules attached to this By-law are considered integral parts of it.

“Chief Building Official” means the person within the City’s administration who fulfills the function of the chief building official as required by the Building Code Act, 1992 S. O. 1992 c.23, as amended.

“City”, “City of Kawartha Lakes” or “Kawartha Lakes” means The Corporation of the City of Kawartha Lakes and includes its entire geographic area.

“city area” means the area within the geographic boundaries of the Corporation of the City of Kawartha Lakes as determined by the Council from time to time.

“City Clerk” means the person within the administration of the City which fulfills the function of the City Clerk as required by the Municipal Act 2001 S. O. 2001 c.25, as amended.

“Consolidated Fees By-law” means City of Kawartha Lakes By-law 2016-206 or if it has been repealed any subsequent City of Kawartha Lakes By-law known as the Consolidated Fees By-law.

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“Council” means the municipal council for the City.

“Department Head” means the person who holds that position and his or her delegate(s) or, in the event of organizational changes, another person designated by Council.

“employee” means a person other than an owner or an operator, who is employed by an owner or an operator of an entertainment bookstore, whether full-time, part-time or on a contract basis and does not provide services to appeal to erotic or sexual appetites or inclinations.

“exit” means an exit as defined in and as required by the Building Code Act 1992 S. O. 1992 c.23, as amended or Regulations, or other applicable statute, regulation or by-law.

"incidental" means less than 40% of the total floor area of the store or less than 40% of the total revenues from the sale and rental of adult entertainment books, magazines or video tapes or less than 40% of the gross revenue of the premises.

"Licensing Officer" means the municipal Licensing Officer for the City, responsible for the issuing, administration and approval of licences in accordance with provincial legislation and City by-law, policies and procedures, or his or her delegate.

"Manager of Customer Services" means the person who holds that position and his or her delegate(s) or, in the event of organizational changes, another person designated by Council.

"Medical Officer of Health" means the Medical Officer of Health or acting Medical Officer of Health having jurisdiction over the City of Kawartha Lakes pursuant to the Health Protection and Promotion Act, R.S. O. 1990, c.H.7, as amended and, where the context requires or necessarily implies, may include any associate Medical Officer of Health or Public Health Inspector acting under the Medical Officer of Health's instructions.

"Municipal Law Enforcement Officer" is a person duly appointed within the City's administration to enforce the by-laws of the City, and includes the Licensing Officer.

"Municipal Act" means the Municipal Act, 2001 S. O. 2001 c.25 as amended from time to time.

"operator" means a person who alone or with others operates, manages, supervises, runs or controls an adult videotape or adult entertainment bookstore and "operate", "operation" and words of like import or intent shall have a corresponding meaning.

"owner" means a person who alone or with others has the right to possess or occupy any adult videotape or adult entertainment bookstore or actually does possess or occupy any adult videotape or adult entertainment bookstore and includes a lessee of any adult videotape or adult entertainment bookstore or of premises upon which an adult videotape or adult entertainment bookstore is located and "own", "ownership" and words of like import or intent shall be given a corresponding meaning.

"Peace Officer" includes but is not limited to the mayor, sheriff, deputy sheriff, sheriff's officer, justice of the peace, jailer or keeper of a prison, and a police officer, bailiff, municipal law enforcement officer or other person employed for the preservation and maintenance of the public peace, or for the service or execution of civil process, or any officer appointed for enforcing or carrying out the provisions of this by-law.

"person" includes but is not limited to an individual, a sole proprietorship, a partnership, an unincorporated association, a trust, a body corporate, a natural person.

"Police" means the Chief of Police or other designated officer in charge of a police service within the jurisdiction in the relevant geographic area of Kawartha Lakes, or his or her delegate.

"to provide" when used in relation to any videotape, book or magazine, 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, "providing" and "provision" shall have corresponding meanings.

“**services**” include activities, facilities, performances, exhibitions, viewing and encounters but does not include the exhibition of film approved under the Theatres Act, as amended and shall include the provision of a body-rub.

“**services designed to appeal to erotic or sexual appetites or inclinations**” include striptease dancing or other like services of which a principal feature or characteristic is the nudity or partial nudity of any person.

“**specified body areas**” means any one or more of the following:

- (i) in the case of all persons, perineal and perianal areas and the buttocks.

“**specified sexual activities**” means one or more of the following: actual or simulated sexual intercourse, masturbation, urination, defecation, ejaculation, sodomy, bestiality, anal intercourse, and oral sexual intercourse, direct physical stimulation of unclothed genital organs, and flagellation or torture in the context of a sexual relationship or activity.

“**store**” means any premises or part thereof in which adult videotapes or adult books or magazines are provided or is incidental to the carrying on of the business of the provision of goods other than adult books, magazines or videotapes, and does not include an adult entertainment bookstore or an adult videotape store.

“**videotape**” means cinematographic film, videotape and any other medium from which may be produced visual images that may be viewed as moving pictures.

1.02 **Interpretation Rules:**

- (a) The Schedules attached to this by-law form part of the by-law, and are enforceable as such.
- (b) The words “include” and “including” are not to be read as limiting the meaning of a word or term to the phrases or descriptions that follow.
- (c) Wherever this by-law refers to a person or thing with reference to gender or the gender neutral, the intention is to read the by-law with the gender applicable to the circumstances.

1.03 **Statutes:** References to laws in this by-law are meant to refer to the statutes, as amended from time to time, that are applicable within the Province of Ontario.

1.04 **Severability:** If a court or tribunal of competent jurisdiction declares any portion of this by-law to be illegal or unenforceable, that portion of this by-law shall be considered to be severed from the balance of the by-law, which shall continue to operate in full force and effect.

1.05 **Conflicts:** If a provision of this by-law conflicts with a provision of any applicable Act, regulation or by-law, the provision that establishes the higher or more restrictive standard to protect the health, safety and welfare of the general public shall prevail.

1.06 **Short Title:** Adult Entertainment Book and Video Store By-law.

Section 2.00: Duties of Administrators

2.01 **Duties of the Licensing Officer:** The Licensing Officer shall:

- (a) receive and process all applications for licences and renewal of licences required under this by-law;
- (b) administer the issuance of licences in accordance with the provisions of this by-law;

- (c) maintain and keep records of all applications received and licences issued; and
 - (d) generally perform administrative functions incidental and necessary to the administration and enforcement of this by-law.
- 2.02 **Duties of Municipal Law Enforcement Officers or Police:** The duties of the Municipal Law Enforcement Officer or Police as set out in this by-law shall be in addition to any other duties assigned.
- 2.03 **Confidentiality of Administrators:** Every person employed in the administration of this by-law, including any person making an inspection or an investigation, shall preserve confidentiality in respect of all matters that come to their knowledge in the course of their duties, employment, inspection or investigation and shall not communicate any such matters to any other person, except:
- (a) as may be required in the course of administration or in any proceedings under the by-law;
 - (b) to Council in closed session;
 - (c) to their counsel; or
 - (d) with the consent of the person to whom the information relates.

Section 3.00: Liability of Administrators

- 3.01 **Personal Liability:** Every person employed in the administration of this by-law while properly acting in the course of carrying out their duty under this by-law, shall be relieved from all personal liability for any damage that may accrue to corporations, persons or property as a result of any act required or permitted in the discharge of their official duties.
- 3.02 **Defence:** Any suit instituted against any Municipal Law Enforcement Officer or other officer or employee of the city because of an act performed by them in the lawful discharge of their duties and under the provision of this by-law, shall be defended by the legal representative as designated by the City until final determination of the proceedings. This section does not apply to any action of the Ontario Provincial Police.
- 3.03 **Costs:** In no case shall the Municipal Law Enforcement Officer or other officer or employee of the city be liable for costs in any proceedings of any nature whatsoever that may be instituted in pursuance of or as a result of the enforcement or application of the provisions of this by-law, and any Municipal Law Enforcement Officer or other officer or employee of the City, acting in good faith and without malice shall be free from liability for acts performed under any of the provisions of this by-law or by reason of any act or omission in the performance of their official duties in connection therewith.

Section 4.00: Location & Number of Establishments

- 4.01 **Location:** No owner or operator shall own or operate any "adult entertainment bookstore" and or "adult videotape store" and no licences shall be issued for an owner, operator with respect to any adult videotape store or adult entertainment bookstore except within the following defined areas in the City:
- (a) any areas zoned within the applicable zoning by-law that allows this type of activity.
- 4.02 It will still be in the sole discretion of the Licencing Officer to issue or refuse to issue a licence pursuant to the provisions of this by-law.

- 4.03 If during the term of a licence that is issued pursuant to subsection 4.02, the said adult book store or adult videotape store ceases to operate as such a store, then the licence will be deemed to have been revoked and be of no further effect.

Section 5.00: Licences

5:01 There shall be taken out by:

- (a) every owner of an adult entertainment bookstore or adult videotape store;
- (b) every operator of an adult entertainment bookstore or adult videotape store;

a licence from the City authorizing them respectively to carry on such a business in the City, for which said licence the person obtaining the same shall pay to the City at the time of taking out such licence the fee set out in Schedule B-3 to the Consolidated Fees By-law. No person shall, within the limits of the City, carry on or engage in such businesses until they have first procured such licence to do so.

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- 5.02 A separate owner's licence shall be taken out in respect of each store owned by the owner. A separate operator's licence shall be taken out in respect to each store operated by the operator.
- 5.03 No person shall open for business, operate or have operated or permit to open for business, operate or have operated any adult store unless its owner is licensed as such under this by-law.
- 5.04 No owner shall perform the services of an operator in the book or video store of which they are the owner without first obtaining an operator's licence to do so, in addition to their owner's licence. There shall be at least one owner and one operator for each adult entertainment book or video store.
- 5.05 A licence is not required under this by-law in respect of any store in which the provision of adult entertainment books or magazines is only incidental to carrying on of the business of the provisions of goods which are not adult entertainment books or magazines, but the regulations contained in section 15 of this by-law relating to the display of adult entertainment books and magazines and to the prohibition or admission to all or part of the premises by persons under the age of 18 years, shall apply to all stores in the City.
- 5.06 A licence is not required under this by-law in respect of any store in which the provision of adult entertainment books, magazines and videotapes is only incidental to the carrying on of the business of that store, but the regulations contained in section 14, 15 and 16 of this by-law shall apply to all stores.
- 5.07 Notwithstanding subsection 5.05, a licence shall be required for any store that contains an adult book, magazine or videotape area that exceeds either 750 square feet of floor area or 40% of the total floor area of the store or from which revenues from the sale and rental of books, magazines or adult videos tapes or the combination of the provision of adult videotapes and adult books or magazines, as defined in this by-law, account for 40% or more of the gross revenue of the premises.
- 5.08 No person shall own or operate or permit to be owned or operated an adult videotape store in the City except as permitted under this by-law and pursuant to a licence issued under this by-law.
- 5.09 No person shall own or operate or permit to be owned or operated an adult entertainment bookstore or a store described in subsection 5.07 in

the City except as permitted under this by-law and pursuant to a licence issued under this by-law.

- 5.10 **Term of Licences:** Licences shall be issued for a maximum period of one year, unless they are sooner forfeited, suspended or revoked, and shall come into effect on the date that they are issued, and expire on December 31 of that same year.
- 5.11 **Fees:** The fees for licences which shall be paid to the City in respect of adult entertainment bookstores or adult videotape stores shall be the amount set forth in Schedule B-3 to the Consolidated Fees By-law..
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- 5.12 **Payment of Fees:** Every owner or operator applying for a licence pursuant to subsection 5.01, shall deliver to the City at the time of application, payment in full, by cash, debit or credit card or certified cheque payable to the City, the licence fee as set out in Schedule B-3 to the Consolidated Fees By-law.
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- 5.13 **Non-Issuance of Licence - Refund of Payment:** The payment required by subsection 5.10 to be paid shall, if the Licensing Officer grants the application and issues the licence applied for, be applied toward the payment of the licence fee for the licence period in respect of which the licence is issued. However, if the Licensing Officer decides not to issue a licence, such payment shall be returned to the applicant, provided however if investigations conducted pursuant to Section 9 hereof reveal that the applicant has furnished false information with their application, as determined in the sole discretion of the Licence Issuer, fifty (50) percent of the fee shall be retained by the City.
- 5.14 **Rights In Licences:** No person shall enjoy a vested right in the continuance of a licence and upon the issue, renewal, transfer, cancellation or suspension thereof the value of the licence shall be the property of the City.
- 5.15 **Change of Address or Business Name:** Every owner or operator who changes their address for notification purposes, shall, within four business days after such change, attend at the licensing office and notify the City of such change of address and produce their licence for the change to be entered thereon. Every owner or operator who changes their business operating name, shall in advance of such change, attend at the City office and notify the City of such change and produce their licence for the change to be entered thereon.
- 5.16 No owner's licence shall be transferred, and if an owner sells, leases or otherwise disposes of their store or premises or part thereof upon or in which a store is operated, to any person, their licence in respect of such store or premises shall, notwithstanding any other provision of this by-law terminate.
- 5.17 Upon the sale, lease or other disposition of a store, every operator's licence issued in respect of such store shall terminate.

Section 6.00: Applications

- 6.01 **General:** Upon application for an operator's licence, or for the renewal thereof, respecting any of the businesses, the applicant shall fully complete the prescribed forms and shall furnish to the City such information as the City may direct to be furnished.
- 6.02 **Individual Applicant:** Upon every application by an individual person for an owner or operator licence or for the renewal thereof, the applicant shall attend in person and not by an agent at the licensing office and shall

complete the prescribed forms and shall furnish to the City such information as the City may direct.

- 6.03 **Firm as Applicant:** In the case of an adult entertainment bookstore or an adult videotape store owned or operated by a partnership, the attendance required under subsection 6.02 of this section shall be by one of the partners who has the authority to bind the Corporation and whose statement to such effect shall be deemed to bind such partnership. In the case of a store owned or operated by a corporation such attendance shall be by an officer of the corporation who has authority to bind the Corporation and whose statement to such effect shall be deemed to bind such Corporation.
- 6.04 **Birth Date:** On every application for an owner or operator licence by an individual, Corporation or Partnership, the applicant, partners or corporate officers shall state their date of birth.
- 6.05 **Proof of Age:** Every applicant referred to in subsection 6.04 , shall file with or produce to the City satisfactory proof of their age, if required to do so, unless the Licensing Officer or designate is satisfied that every such person is of the full age of eighteen years.
- 6.06 **Right to Premises:** Every person applying for an owner or operator licence shall file with the City documentation satisfactory to the City demonstrating the applicant's right to possess or occupy the premises used by them as a store. If such a person is not the registered owner of the property upon which the store is located, such person shall file with the City at the same time a copy of their lease, if any, and of any other document constituting or affecting the legal relationship between the said applicant and the said registered owner or owner in fee simple of the real property.
- For the purpose of this subsection, "registered owner" means the owner as registered pursuant to the Land Titles Act, as amended or the Registry Act, as amended as the case may be.
- 6.07 **Applicants Name:** Every owner or operator applying for a licence must use their own legal name in making such application. No such licence shall be issued to any person in any name other than their own legal name. Every owner or operator applying for a licence as a Partnership or Corporation shall use the Partnership or Corporation legal name in making such application. No such licence shall be issued to any Partnership or Corporation in any name other than the legal name of the Partnership or Corporation.
- 6:08 **Disclosure of Private Information:** It shall be a condition of every licence that an owner or operator shall consent to the disclosure of all records and personal information with respect to any licence application, approval refusal or revocation to any law enforcement agency, provincial ministry, federal department, agency, board or commission thereof or any other municipality, or to the owner of the adult entertainment bookstore or adult videotape store, pursuant to the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990,c.m.56,s.32, as amended.
- 6.09 **Police Criminal Record Check:** Every owner and operator applying for a licence shall provide a Police Criminal Record Check with their application. Every owner, operator and performer who is issued a licence under this by-law shall provide the Licencing Officer with an updated Police Criminal Record Check every three (3) months. In the case of a Partnership or Corporation, each partner or Corporate Officer shall provide a Police Criminal Record Check with their application and update it every three (3) months.

Section 7.00: Application by a Corporation

- 7.01 Every corporation applying for an owner or operator licence shall file with the City at the time of its application a certified copy of its incorporating documents together with a list of all the current officers, directors, and shareholders of the corporation and such list shall include a list of the shareholders of any other corporation that is a shareholder of such applicant corporation and a list of the shareholders of any third corporation that is a shareholder of such other corporation and so on until the names of all living persons are shown and identified as the shareholders of any or all corporations having an interest direct or indirect in the shares of the applicant corporation.
- 7.02 Every officer of a corporation shall be held personally liable in relation to the information contained on the application and operation of the business licenced under this by-law.
- 7.03 Where, by a transfer of existing shares, or by an issue of new or existing shares, the controlling interest of a corporation holding one or more owner or operator licences has changed hands, the new controlling owner must attend at the City office and notify the City of such change of ownership within four days of such change.
- 7.04 When there has been a change in the controlling interest of a corporation holding one or more owner or operator licences, such licence or licences shall be terminated forthwith, and the City may issue a new licence or new licences upon approval of a completed application and payment of the prescribed fee. The City may refuse to issue a new licence or licences in accordance with Section 11 hereof.
- 7.05 For the purpose of this section, "shareholder" and any other words referring to the holding of shares includes all persons having a beneficial interest of any kind in the shares of the corporation.

Section 8.00: Application by a Partnership

- 8.01 Persons associated in a partnership applying for an owner or operator licence shall file with its application to the City a declaration in writing signed by all members of the partnership, which shall state:
- (a) the full name of every partner and the address of their 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; and
 - (d) the mailing address of the partnership.
- 8.02 If any member of a partnership applying for a licence is a corporation, such corporation shall for the purposes of Section 9 of this by-law be deemed to be a corporation applying for an owner or operator licence.
- 8.03 Every partner of a partnership shall be held personally liable in relation to the information contained on the application and the operation of the business licenced under this by-law.
- 8.04 It shall be the duty of every member of a partnership to advise the City immediately in writing of any change in the membership of the partnership and of any other change in any of the particulars relating to the partnership or its business which are required to be filed with the City, and the City may, in its discretion, determine whether or not a new licence should be issued to the partnership as then constituted.

Section 9.00: Approval by the Licensing Officer

- 9.01 **Investigations:** Upon the receipt of a fully completed application form, the prescribed fee and all supporting documentation, the Licensing Officer 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. Provided the investigation or any other information available to the Licensing Officer 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, the Licencing Officer shall issue the licence.
- 9.02 **Grounds for Refusal to Licence or Renew or for Revocation:** Upon the receipt of a fully completed application and all supporting documentation, the Licensing Officer may consider but is not limited to the following grounds in determining whether to grant or refuse the application:
- (a) whether there are reasonable grounds for belief that any application or other document provided to the Licensing Officer by or on behalf of the applicant contains a false statement or provides false information; or
 - (b) whether 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; or
 - (c) whether 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) whether 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) whether there are reasonable grounds for belief that the application does not meet all 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 this 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; or
 - (f) whether 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 and fire safety requirements, or is dangerous or unsafe; or
 - (g) whether the conduct of the applicant or of 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 is not in the public interest or would infringe the rights, or endanger the health or safety, of one or more members of the public; or
 - (h) whether the fee payable in respect of the licence applied has not been paid; or

- (i) whether the owner or operator has failed to pay any outstanding business taxes with respect to any business, trade or calling connected with the adult entertainment bookstore or adult videotape store or any outstanding realty taxes with respect to the house, place, or premises from which the business, trade or calling is carried on; or
- (j) any other matter that the Licensing Officer deems to be in the public interest.

Section 10.00: Granting, Refusal and Revocation Of Licenses

10.01 **Grant Licence:** The Licensing Officer shall issue a licence or licence renewal where the applicant is in full compliance with the terms of this by-law and all other applicable by-laws, Provincial and Federal legislation and regulations.

10.02 **Grant Licence With Conditions:** The Licensing Officer may, where the provisions of this by-law have been met, propose in writing to the applicant to grant the licence subject to conditions if appropriate. If within five (5) days following the written proposal to grant the licence with conditions, the applicant has not indicated an objection to the licence with conditions, the licence is deemed to have been issued on the day of the notice of the proposal to grant.

The Licensing Officer shall revoke a licence granted with conditions if the applicant has not met the imposed conditions within the stipulated time frame.

10.03 **Refuse Licence:** In the event that the Licensing Officer refuses to grant for any reason, suspends or revokes a licence, and the applicant requests that the matter be considered by Council, the Licensing Officer shall prepare a report for the consideration of Council and the applicant shall be provided with at least two (2) weeks notice of the meeting of Council to consider the refusal to grant, revocation or suspension and shall have the opportunity to address Council prior to Council making a decision.

10.04 **Council Discretion:** Council may in its sole discretion grant, grant with conditions, refuse to grant, or revoke or suspend a licence.

In the exercise of its discretion under section 10.03 such discretion shall be exercised,

- a) upon such grounds as are set out in this by-law; or
- b) upon the grounds where the conduct of a person, or in the case of a corporation, the conduct of its officers, directors, employees or agents affords reasonable grounds for belief that the person will not carry on or engage in the business in accordance with the law or with honesty and integrity.

10.05 **Notice of Revocation:** Notice of the revocation of any licence may be given by the City by registered letter, signed by the Licensing Officer, mailed to the address given by the licensee in their application for the licence, or by communication to the licensee in any manner whatsoever, and upon such notice the licence revoked shall cease and terminate and be of no further effect.

10.06 **Suspension or Revocation:** Upon suspension or revocation of a licence issued under this by-law, the licensee shall return to the Licensing Officer all licensed documents issued by the City with reference to such licence, and any person authorized by the Council shall have access to any premises, vehicle or other property of the licensee for the purpose of receiving or taking the licensed documents, and no person shall refuse to

deliver the licensed documents to such person authorized by the Council or shall in any way prevent or hinder such person from receiving or taking the same.

Section 11.00: Owner's and Operator's Duties

- 11.01 No licenced owner or operator of a store or premises shall permit any person other than a licensed operator to operate such store.
- 11.02 No owner or operator shall permit the provision of services unless such person is licensed under this by-law.
- 11.03 No operator not being the owner of a store shall operate the said store unless the owner of the said store is duly licensed as owner under this by-law.
- 11.04 No operator may operate a store unless they first notify the City of the name of the owner whose store they intend to operate and has endorsed upon their licence the said owner's name accordingly, and every operator before operating any other store in this City shall notify the City of their intention to do so and obtain a licence accordingly.

Section 12.00: Age Restriction

- 12.01 No person under the age of eighteen years may obtain an owner's licence and/or an operator's licence or provide services in such a store.
- 12.02 No one may provide any services in such a store to a person who is or who appears to be under the age of eighteen years.
- 12.03 No owner or operator shall permit any person actually or apparently under the age of eighteen years to enter or remain in any such store owned or operated by them.

Section 13.00: Regulations Applicable To Adult Entertainment Bookstores

- 13.01 Every licensee shall:
 - (a) prominently display the licence inside the premises at all times, and shall produce the licence upon request by the Licensing Officer, municipal law enforcement officer and any police officer; and
 - (b) 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 Licensing Officer and shown on such licence.
- 13.02 Every owner and every operator of an adult entertainment bookstore or any other store, whether or not he or 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 books or magazines.
- 13.03 Every owner and operator referred to in subsection 13.02 shall ensure that every person working in such adult entertainment bookstore complies with all of the requirements of this by-law relating to the provision of adult books and magazines 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.
- 13.04 Every person working in an adult entertainment bookstore shall comply with all of the requirements of this by-law relating to the provision of adult books and magazines and the prohibition of access to all or part of the

- premises to persons under the age of eighteen (18) years, as required by this by-law.
- 13.05 No owner, operator or any person working in an adult entertainment bookstore shall permit any person under the age of eighteen (18) years to enter or remain in such store or to purchase any adult books or magazines.
- 13.06 No owner, operator or any other such person shall work in an adult entertainment bookstore unless they are eighteen (18) years of age or older.
- 13.07 Every operator shall post and keep posted at every entrance to any adult entertainment bookstore 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 (18) years is permitted to enter or remain in such store.
- 13.08 Exterior signs and advertisements or any advertising means that promote or draw attention to the licensed adult entertainment bookstore, its services or goods, (including the use of any printed material, posted materials, newspapers, magazines, publications or broadcasts) relating to adult entertainment bookstores and to the provision of adult books and magazines shall be restricted to the following:
- (a) the operator's proper legal name as shown on their licence;
 - (b) the name, if any, under which the operator carries on business as endorsed on their licence in respect of the said adult entertainment bookstore;
 - (c) the address of the adult entertainment bookstore;
 - (d) the telephone number of the adult entertainment bookstore;
 - (e) the operating hours of the adult entertainment bookstore;
 - (f) the words "**adult**", "**books**", "**magazines**", or "**XXX**";
- and shall not include pictorial representation of the specified body areas of any person or specified sexual activities.
- 13.09 Notwithstanding subsection 13.08, and in addition to the display of the licence referred to in subsection 13.01, there shall be displayed flat against the exterior portion of a wall or door of a adult entertainment bookstore and visible to all persons approaching or entering the adult entertainment bookstore, one non-illuminated sign of which the facade shall not exceed 2 square-feet in size, which shall bare the following:
- "This is a licensed adult entertainment bookstore. It deals with materials that are primarily sexual in nature. No one under the age of eighteen (18) shall be admitted.**
- Comments regarding this business may be made to the City at 705.324.9411."**

Section 14.00: Regulations Applicable To Adult Videotape Stores

- 14.01 Every licensee shall:
- (a) prominently display the licence inside the premises at all times, and shall produce the licence upon request by the Licensing Officer, and by-law enforcement officer and any police officer; and

- (b) 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 Licensing Officer and shown on such licence.
- 14.02 No owner, operator or any person working in an adult videotape store shall permit any person under the age of eighteen (18) years to enter or remain in such store.
- 14.03 No owner, operator or any other person working in an adult videotape store shall permit any person under the age of eighteen (18) years to purchase, borrow or rent any adult videotapes.
- 14.04 No owner, operator or any other person shall work in an adult videotape store, or in that part of any store in which adult videotapes are provided, unless such person is of the age of eighteen (18) years or older.
- 14.05 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 (18) years is permitted to enter or remain in such store or any part thereof.
- 14.06 Exterior signs and advertisements or any advertising means that promote or draw attention to the licensed adult videotape store, its services or goods, (including the use of any printed material, posted materials, newspapers, magazines, publications or broadcasts) relating to adult videotape stores and to the provision of adult videotapes shall be restricted to the following:
- (a) the operator's proper legal name as shown on their licence;
 - (b) the name, if any, under which the operator carries on business as endorsed on their licence in respect of the said adult videotape store;
 - (c) the address of the adult videotape store;
 - (d) the telephone number of the adult videotape store;
 - (e) the operating hours of the adult videotape store;
 - (f) the words "**adult videos**", "**adult videotapes**", "**sales**", "**rentals**", or "**XXX**"; and shall not include pictorial representation of the specified body areas of any person or specified sexual activities.
- 14.07 Notwithstanding subsection 14.06, and in addition to the display of the licence referred to in subsection 14.01, there shall be displayed flat against the exterior portion of a wall or door of a adult videotape store and visible to all persons approaching or entering the adult videotape store, one non-illuminated sign of which the facade shall not exceed 2 square-feet in size, which shall bare the following:
- "This is an adult videotape store. It deals with materials that are primarily sexual in nature. No one under the age of eighteen (18) shall be admitted.**
- Comments regarding this business may be made to the City at 705-324-9411."**

Section 15.00: Regulations Applicable To All Adult Book and Magazine stores

- 15.01 Every licensee shall:

- (a) prominently display the licence inside the premises at all times, and shall produce the licence upon request by the Licensing Officer, and municipal law enforcement officer and any police officer; and
 - (b) 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 Licensing Officer and shown on such licence.
- 15.02 No owner or operator of a store in which adult books, magazines or videotapes are provided, shall permit any person under the age of eighteen (18) years to enter or to purchase any adult books or magazines, or remain in the adult videotape area.
- 15.03 Every owner and operator of a store in which any adult books and magazines are provided, shall affix, in a prominent location inside such store 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 purchase any adult books or magazines.
- 15.04 Every owner and operator of a store, whether or not he or 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 and display of adult videotapes, any advertisements promoting the provisions of adult videotapes and the prohibition of access to persons under the age of eighteen (18).
- 15.05 Every owner and operator referred to in subsection 15.04 shall ensure that every person working in such store complies with all requirements of this by-law relating to the display and provision of adult videotapes, any advertisements promoting the provision of adult videotapes and the prohibition of access to persons under the age of eighteen (18) years, as required by this by-law.
- 15.06 Every person working in a store shall comply with all requirements of this by-law relating to the display and provision of adult videotapes, any advertisement promoting the provision of adult videotapes and the prohibition of access to persons under the age of eighteen (18) years, as required by this by-law.
- 15.07 Every owner and operator of a store in which any adult videotape is provided in an adult videotape area, 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 (18) years is permitted to enter or remain in any adult videotape area or to purchase or rent an adult videotape in accordance with this by-law.
- 15.08 Every operator who provides adult books or magazines in any store shall comply with the following regulations in respect of such premises or part thereof:
- (a) No adult book or magazine shall be displayed at a height of less than 1.5 metres above floor level and all adult books or magazines displayed in such premises shall be placed behind an opaque barrier of a size and nature which shall ensure that the cover of every such book or magazine while so displayed, except for the name thereof, may not be seen by any member of the public; unless such adult books or magazines are displayed in an area of the premises where persons under the age of eighteen (18) years are not permitted physical access and from which the adult books or magazines are not visible to persons outside the area.

- 15.09 Every owner and operator of a store in which any adult videotape is provided in an adult videotape area, 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 (18) years is permitted to enter or remain in any adult videotape area or to purchase or rent an adult videotape in accordance with this by-law.
- 15.10 Every owner and operator of a 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 or from the common area of the mall.
- 15.11 No owner, operator or any other person working in a store that provides adult videotapes shall permit any person under the age of eighteen (18) years to purchase, borrow or rent any adult videotapes.
- 15.12 Every owner or operator who provides adult videotapes in any premises or part thereof other than an adult videotape store shall comply with the following regulation in respect of such premises or part;
- (a) No adult videotape shall be displayed at a height of less than 1.5 metres above floor level with only the side of the videotape or container facing outward so that the front cover of the videotape or container cannot be seen by any member of the public; unless such adult videotape is in an adult videotape area or is otherwise in a place where it is not visible to the general public.
- 15.13 Exterior signs and advertisements or any advertising means that promote or draw attention to the sale of adult books or magazines in a store, or draw attention to the sale or rental of adult videotapes in a store, (including the use of any printed material, posted materials, newspapers, magazines, publications or broadcasts) shall be restricted to the following:
- (a) the name and address of the store;
- (b) the telephone number of the store;
- (c) the operating hours of the store;
- (d) the words "**adult**", "**books**", "**magazines**", "**adult videos**", "**adult videotapes**", "**sales**", "**rentals**", or "**XXX**"; and shall not include pictorial representation of the specified body areas of any person or specified sexual activities.

Section 16.00: Inspections

- 16.01 **Inspection:** A Municipal Law Enforcement Officer, Licensing Officer, Police or other person duly authorized by the City or by this by-law may at any time of the day or night enter any adult bookstore or video store and inspect as much of any house, place or premises as is used for the carrying on of any trade, calling, business or occupation in respect of which any person has or is required to have a licence under this by-law, and any such person so authorized may inspect any goods, articles, books, records and other documents of or relating to any such trade, calling, business or occupation, and no person who has or is required to have a licence under this by-law shall obstruct or hinder the making of the inspection, or cause or permit the same to be obstructed or hindered. Failure to comply with this section is an offence.

Section 17.00: Other By-laws

17.01 Notwithstanding any provision of this by-law nothing herein permits the contravention of any provision of any other by-law of the City, or any Provincial or Federal Legislation or Regulation

Section 18.00: Offence and Penalty

18.01 **Offence and Penalty**: Every person who contravenes any provision of this bylaw is guilty of an offence and upon conviction is liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.

18.02 **Offence and Penalty**: Every person who contravenes any provision of this by-law is guilty of an offence, and upon conviction, is liable to a maximum fine of not more than \$100,000.00, as provided for by Section 429 of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended.

18.03 **Corporation**: A director or officer of a corporation who knowingly concurs in the violation or contravention by the corporation of any provision of this by-law is guilty of an offence and upon conviction, is liable to a maximum fine of not more than \$100,000.00, as provided for by Section 429 of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended.

18.04 **Multiple Offences**: The conviction of a person, partner, director or officer of a corporation for the contravention or breach of any provision of this by-law shall not operate as a bar to the prosecution against the same person, partner, director or officer of a corporation for any subsequent or continued breach or contravention of any provision of this by-law. Each day that the offence continues shall be deemed a separate and distinct offence.

18.05 **Additional Penalty**: Section 430 of the Municipal Act, 2001, as amended, allows an additional penalty regarding adult entertainment establishments. A person who is convicted of an offence may be liable to a term of imprisonment not exceeding one year in addition to any other applicable penalties.

Section 19.00: Enforcement:

19.01 **Enforcement**: Municipal Law Enforcement Officers, Police, the Licensing Officer or any person appointed by council may enforce this by-law.

19.02 Where a Medical Officer of Health, a public health inspector or a Peace Officer acting under his or her direction, has reason to suspect that a breach of this by-law has occurred in respect of an adult video and entertainment bookstores, he or she may enter such adult video and entertainment bookstores, at any time of the night or day, for purposes of carrying out the enforcement of any part thereof.

Section 20.00: Administration and Effective Date

20.01 **Administration**: The Manager of Customer Services is responsible for the administration of this by-law.

20.02 **Effective Date**: This By-law shall come into force and take effect on January 1, 2014.

20.03 **Caveat**: Any adult video and entertainment bookstore licencing process underway prior to the passage of this by-law shall follow the process described in By-law 2005-12, as amended, providing the disposition is carried through by December 31, 2013 at which point this by-law will apply.

By-law read a first, second and third time, and finally passed, this 12th day of November, 2013.

Ric McGee, Mayor

Judy Currins, City Clerk



2013-192 Set
Fines.pdf

Schedule “A”

to the Adult Entertainment Book and Video Store By-law 2013-192 of the Corporation of the City of Kawartha Lakes

Licence Fees

In accordance with Schedule B-3 to the Consolidated Fees By-law