



Town of Whitby

By-law # 3327-93

Adult Magazine and Videotape By-law

Being a By-law to regulate the display and sale of adult magazines and adult videotapes

Whereas, Subsection 225(1) of the Municipal Act, R.S.O. 1990, c. M.45, provides that by-laws may be passed by the councils of all municipalities for licensing, regulating, governing, classifying and inspecting adult entertainment parlours or any class or classes thereof;

And Whereas, Subsection 225(9) of the Municipal Act, R.S.O. 1990, c. M.45, defines an "adult entertainment parlour" as 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, Subsection 225(9) of the Municipal Act, R.S.O. 1990, c. M.45, defines "goods" as including books, magazines, pictures, slides, film, phonograph records, pre-recorded magnetic tape and any other reading, viewing or listening matter;

And Whereas, the Council of the Corporation of the Town of Whitby considers it desirable to pass a by-law to regulate the display of adult magazines and adult videotapes;

Now therefore, the Council of The Corporation of the Town of Whitby enacts as follows:

Definitions

1. In this by-law,
 - (a) "adult magazine" means any magazine 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,
 - (i) the portrayal of one or more persons involved or engaging in specified sexual activities; or,
 - (ii) by an emphasis on the display of human specified body areas.
 - (b) "adult videotape" means any videotape 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,
 - (i) the portrayal of the one or more persons involved or engaging in specified sexual activities; or,

- (ii) by an emphasis on the display of human specified body areas.
- (c) “adult videotape area” means a room which is separate and distinct from any other part of the premises, which room or an identifiable part of any premises, which room or identifiable part is devoted principally to the provision of adult videotapes, or of such videotapes and any other goods designed to appeal to erotic or sexual appetites or inclinations, and where the adult videotape area is not a separate and distinct room, it includes the area within three metres of any adult videotape;
- (d) “operator” means every person,
 - (i) who provides, in any premises or part thereof, in pursuance of a trade, calling, business or occupation, either or both adult magazines or adult videotapes; or,
 - (ii) who operates any premises or part thereof in which either or both adult magazines or adult videotapes are so provided.
- (e) “specified body areas” means one or more of the following:
 - (i) in the case of a female person, her nipples or areolae; and
 - (ii) in the case of all persons, the genitals, perineum or the anus.
- (f) “specified sexual activities” means one or more of actual or simulated sexual intercourse, masturbation, urination, defecation, ejaculation, sodomy, including bestiality, anal intercourse, oral sexual intercourse, direct physical stimulation of unclothed genital organs, and flagellation or torture in the context of a sexual relationship or activity; and,

General

2. Every operator who provides adult magazines in any premises or part thereof, or who operates such premises or part thereof, shall comply with the following regulations in respect of such premises or part thereof:
 - (a) no adult magazines shall be displayed at a height of less than 1.5 metres above floor level, unless such magazine is in part of the premises to which the public is not permitted physical access; and,
 - (b) every adult magazine offered for public sale or publicly displayed in such premises, or part thereof, shall be placed behind an opaque barrier of a size and nature which shall ensure that the cover of such magazine while being so displayed, except for the name thereof, cannot be seen by any member of the public.

3. Every operator who provides adult videotapes in any premises or part thereof, or who operates such premises or part thereof, may provide an adult videotape area in such premises or part thereof, according to the following regulations:
 - (i) no operator shall permit any person under the age of eighteen years to enter or remain in any adult videotape area or in which any adult videotape are provided; and,
 - (ii) every operator shall post and keep posted at every approach to such adult videotape area, signs sufficient to indicate clearly to every person approaching or entering such area and to every person in such area, that no person under the age of eighteen years is permitted to enter or remain in such area.
4. (1) Every operator who provides adult videotapes in any premises or part thereof, other than an adult videotape area, or who operates premises or part thereof, in which such videotapes are provided, shall comply with the following regulations in respect of such premises or part thereof:
 - (i) no adult videotape or cover or container thereof shall be displayed at a height of less than 1.5 metres above floor level, unless such videotape is in part of the premises to which the public is not permitted physical access; and
 - (ii) all adult videotapes offered or displayed for provision in such premises or part thereof shall be placed behind an opaque barrier of a size and nature which shall ensure that the cover or container of every such videotape while being offered or displayed, except for the name thereof, may not be seen by any member of the public
- (2) Any operator who, in respect of any premises or part thereof operated by him in which he provides or in which is provided adult videotapes, provides an adult videotape area in accordance with the requirements of Section 3 of this by-law in respect of all such videotapes provided therein, shall not be required to comply with Subsection 4(1) of this by-law.
5. No operator who provides adult magazines or adult videotapes in any premises or part thereof, or who operates such premises or part thereof shall sell, rent or otherwise provide an adult magazine or an adult videotape to any person under the age of eighteen years.

Penalties

6. Any person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction thereof is liable to a fine of not more than

\$5,000.00, exclusive of costs, which shall be recoverable under the provisions of the Provincial Offences Act and all the provision of the said Act shall apply to any prosecution for any offence under the provisions of this by-law.

Short Title

7. This by-law may be referred to as the Adult Magazine and Videotape By-law

Validity

8. Should any section, subsection, clause or provision of this by-law be declared by a Court of competent jurisdiction to be invalid, the same shall not affect the validity of this by-law as a whole or any part thereof other than the part so declared to be invalid.

Effective Date

9. The provisions of this by-law shall come into force and take effect on the 1st day of October, A. D., 1993.

By-law read a first, second and third time and finally passed this 12th day of July, A.D., 1993.

Original Signed By

Don McKay, Clerk

Original Signed By

Tom Edwards, Mayor