

THE CORPORATION OF THE TOWN OF
NEW TECUMSETH

BY-LAW

Number 93-96

"ADULT MAGAZINES AND VIDEOTAPES BY-LAW"

A by-law to regulate the display of
adult magazines and videotapes in
the Town of New Tecumseth

WHEREAS Section 225 of the Municipal Act, R.S.O. 1990, c. M.45 provides for the regulation of the display and sale of adult magazines and videotapes;

AND WHEREAS Section 329 Subsection (1) and (2) of the Municipal Act, R.S.O. 1990, c. M.45 provides for establishing penalties for any contravention of a by-law passed under section 224 or 225 of the Municipal Act, R.S.O. 1990, c. M.45;

AND WHEREAS it is deemed advisable that controls be placed on the accessibility by persons under the age of eighteen years to the said adult magazines and videotapes;

NOW THEREFORE the Council of the Corporation of the Town of New Tecumseth enacts as follows:

1. DEFINITIONS

1.1 For the purposes of this by-law the following definitions shall apply:

1.1.1 "**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:

1.1.1.1 the portrayal of one or more persons involved or engaging in specific sexual activities; or

1.1.1.2 by an emphasis on the display of human specified body areas.

1.1.2 "**Adult Videotape**" means any videotape classified as a *Restricted Adult Sex Film* by the Ontario Film Review Board.

1.1.3 "**Adult Videotape Area**" means an identifiable part of any premises, which part is devoted principally to the provision of adult videotapes, or such videotapes and any other goods designed to appeal to the erotic or sexual appetites or inclinations.

1.1.4 "**Operator**" means every person:

1.1.4.1 who provides, in any premises or part thereof, in pursuance of trade, calling, business or occupation, either or both adult magazines, or adult videotapes; or

1.1.4.2 who operates any premises or part thereof in which either

or both such magazines or such videotapes are so provided.

1.1.5 "**Specified Body Areas**" means any or more of the following:

1.1.5.1 in the case of a female person, her nipples or areolae; and

1.1.5.2 in the case of all persons, the genitals, perineum or the anus.

1.1.6 "**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.

2. GENERAL REGULATIONS

2.1 Notwithstanding any provision of this by-law no person shall display, sell, offer for sale or in any way provide access to any magazine or videotape which is considered obscene and contrary to the Criminal Code of Canada.

2.2 A word interpreted in the singular number has a corresponding meaning when used in the plural.

2.3 Any reference in this by-law to "he" and "she" or "his" or "her" shall be interpreted to be gender neutral and the provisions of this by-law shall be interpreted to apply equally to both male and female persons.

2.4 The word "**May**" shall be construed as permissive.

2.5 The word "**Shall**" shall be construed as imperative.

3. GENERAL PROVISIONS

3.1 Adult Magazines

3.1.1 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 provisions:

3.1.1.1 No adult magazines shall be displayed at a height of less than 1.5 metres (5 feet) above floor level, unless such magazine is in a part of the premises to which the public is not permitted physical access;

3.1.1.2 All adult magazines offered for sale or 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 every such magazine while being so displayed, except for the name thereof, may not be seen by any member of the public.

3.2 Adult Videotapes

3.2.1 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 provisions:

3.2.1.1 No operator shall permit any person under the age of eighteen years to enter or remain in any adult videotape area operated by him or in which he provides any adult videotapes;

3.2.1.2 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.

3.2.2 Every operator who provides adult videotapes in any premises or part thereof, other than an adult videotape area as set out in subsection 3.2.1 of this by-law, or who operates premises or part thereof, in which such videotapes are provided, shall comply with the following provisions:

3.2.2.1 no adult videotape or cover or container thereof shall be displayed at a height of less than 1.5 metres (5 feet) above floor level, unless such videotape is in a part of the premises to which the public is not permitted physical access;

3.2.2.2 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;

3. PENALTY

3.1 Every person who contravenes 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, if an individual, to a fine not exceeding \$25,000.00 or to imprisonment for a term not exceeding one year, or to both, and if a corporation, to a fine not exceeding \$50,000.00.

4. VOLUNTARY PAYMENT

4.1 Notwithstanding all other provisions of this by-law in respect of penalties for violations, any person may, upon

presentation of a violation tag issued alleging commission of such an offence under this by-law, pay out of Court at the Administration Centre of the Town of New Tecumseth, in person or by mail, within fifteen (15) days from the date of said tag, a penalty of a set fine of fifty dollars (\$50.00), and upon such payment no further proceedings shall be taken under this by-law in respect of the said offence alleged in the violation tag.

5. SEVERABILITY

5.1 Should any section, subsection, clause, paragraph or provision of this by-law, including any part of schedules be declared by a court of competent jurisdiction to be ultra vires, invalid or illegal for any reason, the same shall not affect the validity of the by-law as a whole.

6. CITING

6.1 This by-law shall be cited as the "Adult Magazines and Videotapes By-Law".

7. ENACTMENT

7.1 This by-law shall come into force and take effect on passing thereof.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED
THIS 17th DAY OF AUGUST, 1993.

MAYOR

CLERK