

THE CORPORATION OF HALDIMAND COUNTY

BY-LAW NO. 298/02

Being a by-law to provide for the licensing, regulating and inspecting of adult entertainment parlours and adult sex film parlours, owners and operators of adult entertainment parlours and adult sex film parlours and entertainers at adult entertainment parlours.

WHEREAS Section 225 of the Municipal Act, R.S.O. 1990, c. M. 45, as amended, provides that by-laws may be passed by the councils of local municipalities for the licensing, regulating, governing, classifying and inspecting of adult entertainment parlours or any class or classes thereof and for revoking or suspending any such licence and for limiting the number of such licences to be granted;

AND WHEREAS Section 257.2(1)(i) of the aforesaid *Act* provides that the councils of local municipalities may pass by-laws for licensing, regulating and governing the place or premises used in the carrying on the business and the persons carrying it on;

AND WHEREAS it is deemed desirable to licence the owners and operators of Adult Entertainment Parlours and Adult Sex Film Parlours, and the entertainers performing at Adult Entertainment Parlours;

NOW THEREFORE the Council of the Corporation of Haldimand County enacts as follows:

PART I - DEFINITIONS

1. In this By-law,
 - a) "Adult Entertainment Services" means any services appealing, or designed to appeal, to erotic or sexual appetites or inclinations and for the purposes of this definition:
 - i) "services appealing, or designed to appeal, to erotic or sexual appetites or inclinations" includes:

- (1) services of which a principal feature or characteristic is the nudity or partial nudity of any person;
 - (2) services in respect to which the word "nude", "naked", "topless", "bottomless", "sexy" or any other word or any picture, symbol or representation having like meaning or implication is used in any advertisement.
- b) "Adult Entertainment Parlour" means any premises or part thereof in which is provided, in pursuance of a trade, calling, business or occupation, Adult Entertainment Services and for the purposes of this definition:
- i) "provide", when used in relation to services, includes to furnish, perform, solicit or give such services in pursuance of a trade, calling, business or occupation and "provided", "providing" and "provision" have corresponding meanings;
 - ii) "services" includes activities, facilities, performances, exhibitions, viewings and encounters, but does not include the exhibition of films approved under the Theatres Act;
- c) "Adult Sex Film" means:
- i) any Film, the contents of which are designed or held out as designed to appeal to erotic or sexual appetites or inclinations through 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 Contact as defined in this By-law, or by an emphasis on the display of nudity or partial nudity of any person, or
 - ii) in the absence of evidence to the contrary, a Film depicting explicit sexual acts visible by the viewer which the Ontario Film Review Board has classified as restricted and approved for viewing as an "adult sex film" pursuant to the Theatres Act, R.S.O. 1990, c. T-6, as amended.
- d) "Adult Sex Film Area" means an identifiable part of any premises, which part is used for the provision of Adult Sex Films, or the display of Adult Sex Films or containers for Adult Sex Films depicting the specified sexual activities or the display of nudity or the partial nudity of any person.
- e) "Adult Sex Film Parlour" means a business which offers for sale, lease or rent, Adult Sex Films to the public.
- f) "Applicant" means a Person applying for a licence under this By-law.
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- g) "Charitable Adult Entertainment Event" means an event providing Adult Entertainment Services conducted by a recognized service club with a branch located in Haldimand County, the proceeds of which shall be utilized for a purpose beneficial to the community provided such purpose is in the interest of social welfare and is not for private benefit or profit. Such purpose beneficial to the community shall not be deemed to include any activities which are of a predominantly commercial nature, carried out principally for the pecuniary advantage of the person carrying on the adult entertainment or the pecuniary advantage of any other person in the community.
 - h) "Class A Adult Sex Film Parlour" includes a business which offers Adult Sex Films to the public where the proportion of Adult Sex Films to all films offered exceeds the ratio of 10:100 Adult Sex Films to non-Adult Sex Films of the total number of films offered for sale, rent or trade.
 - i) "Class B Adult Sex Film Parlour" includes a business which offers Adult Sex Films to the public where the proportion of Adult Sex Films to all films offered does not exceed the ratio of 10:100 Adult Sex Films to non-Adult Sex Films of the total number of films offered for sale, rent or trade.
 - j) "Clearance Certificate" means a certificate issued by Immigration Canada to a person who is neither a Canadian citizen nor a permanent resident who provides evidence of his or her legal authority to work in Canada.
 - k) "Clerk" means the Clerk of The Corporation of Haldimand County.
 - l) "Council" means the Council of The Corporation of Haldimand County.
 - m) "Entertainer" means a person other than a licensed Owner or Operator who provides services or services designed to appeal to erotic or sexual appetites or inclinations at an Adult Entertainment Parlour.
 - n) "Fire Chief" means the Fire Chief of the Corporation of Haldimand County or in the alternative, someone designated to act on his or her behalf.
 - o) "Issuer of Licences" means the Issuer of Licences of the Corporation of Haldimand County and includes the Clerk, or in the alternative, someone designated to act on his or her behalf.
 - p) "Licencee" means a person to whom a licence is issued under the provisions of this By-law.
 - q) "Municipality" means The Corporation of Haldimand County.
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- r) "Owner" means a person who has any proprietary interest in an Adult Entertainment Parlour or Adult Sex Film Parlour business, including but not limited to partners in a partnership and shareholders in a corporation.
- s) "Operator" means a person who operates, manages, supervises, runs or controls an Adult Entertainment Parlour or Adult Sex Film Parlour and may include one or more persons and includes a person who operates a Charitable Adult Entertainment Event.
- t) "Person" includes individuals, partnerships, associations, trusts, unincorporated organizations and corporations and in the case of partnerships, associations, trusts, unincorporated organizations and corporations, includes individuals employed by, or belonging to, the partnership, association, trust, unincorporated organization and corporation, jointly and severally.
- u) "Board of Health" means the Haldimand-Norfolk Health Unit.
- v) "Sexual Contact" includes any kind of touching of breasts, buttocks, genitals or digital penetration, fellatio, cunnilingus, masturbation or intercourse.
- w) "Film" means any cinematographic film, videotape, video disk, computer diskette, or other tangible medium which may store or produce visual images that may be viewed as moving pictures.

PART II - CLASSES OF LICENCES

2. Every:

- a) Owner of an Adult Entertainment Parlour;
- b) Operator of an Adult Entertainment Parlour;
- c) Entertainer at an Adult Entertainment Parlour;
- d) Owner of a Adult Sex Film Parlour; and
- e) Operator of an Adult Sex Film Parlour

shall procure, and maintain in good standing, a licence from the Municipality in accordance with this By-law authorizing him or her to carry on or engage in any trade, calling, business or occupation listed above within the boundaries of the Municipality.

Prohibition

3. No Person shall carry on or engage in any trade, calling, business or occupation listed in Section 2 of this By-law within the boundaries of the Municipality unless he or she has a valid and current licence permitting him or her to do so.

Licences Non-Transferable

4. No licence of any class issued under this By-law may be transferred from a Licencee to any other Person.

Other Required Approvals

5. 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 licences or other regulatory approval under any other federal, provincial or municipal regulation.
6. Notwithstanding Section 3, the provisions of Section 2 do not apply to Charitable Adult Entertainment Events.

Charitable Adult Entertainment Events

7. In the case of a Charitable Adult Entertainment Event, the Operator shall obtain a licence from Council authorizing the event to be conducted in Haldimand County in accordance with the following provisions:
 - a) the Operator shall file an application with the Issuer of Licences at least 90 days in advance of the date proposed for the event indicating a desire to stage a Charitable Adult Entertainment Event;
 - b) the Operator shall specify that the event is being held for a purpose beneficial to the community and in the interests of social welfare, and that the event is not for private benefit or profit;
 - c) the Operator shall specify how proceeds from the event will be used for purposes beneficial to the community;
 - d) the Operator shall pay the fee prescribed Schedule 1; and
 - e) notwithstanding Section 6, the Operator of a Charitable Adult Entertainment Event shall be subject to all other terms and provisions relating to Operators contained in this By-law.
 8. A Charitable Adult Entertainment Event licence shall be issued for a single event only and an operator who wishes to hold more than one event shall re-apply on a per-event basis.
 9. Notwithstanding Section 7, any charitable Adult Entertainment Event that, prior to the enactment of this By-law, has been carried on by a
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service club located in the Municipality on a regular basis, may continue to be carried on for the same frequency and at the same location as prior to the enactment of this By-law in accordance with the following provisions:

- a) the Operator shall file an application with the Issuer of Licences at least 90 days in advance of the date proposed for the event indicating a desire to stage a Charitable Adult Entertainment Event;
 - b) the Operator shall specify that the event is being held for a purpose beneficial to the community and in the interests of social welfare, and that the event is not for private benefit or profit;
 - c) the Operator shall specify how proceeds from the event will be used for purposes beneficial to the community;
 - d) the Operator shall pay the fee prescribed Schedule 1;
 - e) Upon review of the documentation submitted by the Operator, the Issuer of Licences may issue a licence to operate a Charitable Adult Entertainment Event provided that:
 - i) there is no other information known to the Issuer of Licences that the Operator will not carry on business in conformity with the regulations of the Municipality, the Province of Ontario or the laws of Canada or with honesty or integrity;
 - f) Where an Operator's Licence is issued by the Issuer of Licences pursuant to this Section, the Issuer of Licences shall notify the Clerk who shall notify Council of the issuance of the licence by placing the matter on the agenda of the first available regularly scheduled meeting of the General Council in Committee for ratification;
 - g) In the event that the Issuer of Licences refuses to issue a licence, the Issuer of Licences shall notify the Applicant by sending the Applicant a Notice of Refusal.
 - h) Where the Applicant returns the Notice of Refusal to the Issuer of Licences indicating a desire to have the matter heard before Council, the Issuer of Licences shall notify the Clerk who shall place the matter on the agenda for a hearing by Council in accordance with the procedures of Council.
 - i) Where a hearing is to be conducted pursuant to this Section, the Clerk shall provide the Operator with a Notice of Hearing setting out the date, time and place of the hearing.
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- j) At the date, time and place so appointed, Council shall hear and consider the application, the report of the Issuer of Licences and any submissions by the Operator in accordance with Council procedures.
 - k) Council shall, in accordance with the provisions of the Municipal Act,
 - i) grant the licence to the Operator;
 - ii) refuse to grant the licence to the Operator; or
 - iii) grant the licence and impose conditions on the licence at the time it is granted.
 - l) Council shall not exercise its powers under this Section without issuing written reasons for its decision, and any decision to grant a licence or to refuse to grant a licence with conditions shall be founded upon the following grounds:
 - i) that the Operator, or in the case of a corporation, the officers, directors, employees or agents of the corporation, has not complied with any applicable provision of this By-law;
 - ii) that the Operator, or in the case of a corporation, the officers, directors, employees or agents of the corporation, has been convicted of an offence relating to this or any other by-law in respect of any Adult Entertainment Events in Canada;
 - iii) that the Operator, or in the case of a corporation, the officers, directors, employees or agents of the corporation, has been convicted of an offence under the Criminal Code of Canada, the Controlled Drug and Substances Act relating to the operation of any Adult Entertainment Event in Canada;
 - iv) that the Operator, or in the case of a corporation, the officers, directors, employees or agents of the corporation, has been convicted of an offence under the Liquor Licence Act of Ontario relating to the operation of any Adult Entertainment Event in Ontario, or any equivalent territorial legislation in any other Province in Canada; or
 - v) the conduct of the Operator, or in the case of a corporation, the officers, directors, employees or agents of the corporation, affords reasonable grounds for belief that the Applicant has not or will not carry on business in accordance with the law or with honesty and integrity.
 - m) The Clerk shall, on behalf of Council, provide written notice of the decision of Council to the Operator;
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- n) Notwithstanding Section 6, the Operator of a Charitable Adult Entertainment Event licenced under this Section shall be subject to all other terms and provisions relating to Operators contained in this By-law.

PART III - OWNER'S LICENCES

Operating Name

10. Every Owner shall obtain an Owner's Licence in respect of each Adult Entertainment Parlour or Adult Sex Film Parlour in which that Person has an interest, and the licence shall be issued in the operating name of the Adult Entertainment Parlour or Adult Sex Film Parlour business as disclosed on the application.

Application Requirements

11. Every Person wishing to make application for an Adult Entertainment Parlour Owner's Licence or an Adult Sex Film Parlour Owner's Licence or any renewal thereof, shall attend in person at the County offices and file with the Issuer of Licences:
- a) A completed application form;
 - b) The fee prescribed by Schedule 1 of this By-law;
 - c) In the case of a premises that is rented, the name and address of the owner of the building, premises or place upon, in and from which the business is to be carried out pursuant to the licence applied for;
 - d) Proof satisfactory to the Issuer of Licences that the Applicant is at least 18 years of age, which may be evidenced by the production of such of the following documents as the Issuer of Licences may require, without limitation:
 - i) birth or baptismal certificate;
 - ii) driver's licence;
 - iii) valid Canadian passport; or
 - iv) Social Insurance card;
 - e) Particulars of the class and status of any licence issued to or required to be obtained by the Applicant or another Person under the Liquor Licence Act, R.S.O. 1990, c.L 19, as amended, in respect of any building, premises or place in or at which the Adult Entertainment Parlour or Adult Sex Film Parlour for which the licence is sought is to be carried on in by the Applicant;
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- f) A current, true copy of a Criminal Record Check as provided by the Ontario Provincial Police or other police agency within 45 days of the date of application;
- g) A report or a letter of clearance for the proposed parlour from each of the Board of Health, the Planning Division, the Fire Chief, and the Building and By-law Enforcement Division of the Municipality indicating that the premises have been inspected and identifying comments from each of the indicated agencies regarding the proposed use of the premises as an Adult Entertainment Parlour or Adult Sex Film Parlour, as the case may be.

Fee for Multiple Owners of a Single Business

- 12. Notwithstanding Section 11.b) , where more than one Person is an Owner of an Adult Entertainment Parlour or Adult Sex Film Parlour, the fee prescribed in Schedule 1 shall be payable in respect of only one Owner for each such Parlour.

Partnerships as Owners

- 13. In the case of an Adult Entertainment Parlour or Adult Sex Film Parlour owned by a partnership, attendance shall be made by all of the partners who shall comply with the requirements of Section 11.
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Corporations as Owners

14. In the case of an Adult Entertainment Parlour or Adult Sex Film Parlour owned by a corporation, attendance shall be made by a principal officer of the corporation with the authority to bind the corporation, who shall comply with the requirements of Section 11 and shall additionally file on behalf of the corporation:
 - a) A copy of the most recent filing with the Ministry of Consumer and Business Services listing all directors and officers and the address of the head office for the corporation;
 - b) A resolution of the directors of the corporation authorizing the application for a licence;
 - c) The name and address of every person having responsibility for the management or operation of the business of the Applicant; and
 - d) A current, true copy of a Criminal Record Check as provided by the Ontario Provincial Police or other police agency for:
 - i) every director and officer listed in the filing with the Ministry of Consumer and Business Services referenced in Section 14.a) , and
 - ii) every person having responsibility for the management or operation of the business referenced in Section 14. c).

Issuer of Licences Investigations

15. Upon receipt of an application for an Owner's Licence, the Issuer of Licences shall:
 - a) Review any criminal record provided in respect of each Applicant;
 - b) Determine whether or not any Applicant has been convicted of an offence relating to this or any other By-law in respect of Adult Entertainment Parlours or Adult Sex Film Parlours;
 - c) Review the report or letter of clearance from the Board of Health of the Municipality outlining the objections, if any, to the application;
 - d) Review the report or letter of clearance from the Planning Division of the Municipality outlining the objections, if any, to the application;
 - e) Review the report or letter of clearance from the Fire Chief of the Municipality outlining the objections, if any, to the application;
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- f) Review the report or letter of clearance from the Building & By-law Enforcement Division of the Municipality outlining the objections, if any, to the application; and
- g) Request from the Clerk a report outlining the objections, if any, to the application.

Recommendation for Initial Applications

16. In the case of a first, or initial, application for an Owner's licence; upon completion of the investigations and searches set out above, the Issuer of Licences shall prepare a recommendation to Council for authorization to issue an Owner's Licence provided that:
- a) The provisions of Section 11 have been complied with;
 - b) The criminal record search discloses no criminal record in respect of any Applicant;
 - c) No Applicant has been convicted of an offence under this or any other by-law relating to Adult Entertainment Parlours or Adult Sex Film Parlours in Canada;
 - d) No adverse comment is received from any of the agencies to which the application was circulated;
 - e) Each Applicant is 18 years of age or older;
 - f) Any outstanding fines that have been imposed against the Applicant pursuant to any provision of this By-law have been paid; and
 - g) There is no other information known to the Issuer of Licences that the Applicant will not carry on business with honesty or integrity.

Council Consideration of Initial Applications

17. At the date, time and place so appointed, Council shall consider the recommendation of the Issuer of Licences, any report of the Clerk and any submissions by the Applicant or Applicants in accordance with Council procedures.
18. Council shall, when considering the recommendation of the Issuer of Licences with respect to an initial application for an Owner's Licence, in accordance with the provisions of the Municipal Act:
- a) Grant the licence to the Applicant;
 - b) Refuse to grant the licence to the Applicant; or
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- c) Grant the licence and impose conditions on the licence at the time it is granted.

Written Decision

- 19. Council shall not exercise its powers under Section 18 without issuing written reasons for its decision, and any decision to refuse to grant a licence or to grant a licence with conditions shall be founded upon the following grounds:
 - a) That the Applicant, or in the case of a corporation, the officers, directors, employees or agents of the corporation, has not complied with any provision of this By-law;
 - b) That the Applicant, or in the case of a corporation, the officers, directors, employees or agents of the corporation, has been convicted of an offence relating to this or any other by-law in respect of Adult Entertainment Parlours or Adult Sex Film Parlours in Canada;
 - c) That the Applicant, or in the case of a corporation, the officers, directors, employees or agents of the corporation, has been convicted of an offence under the Criminal Code of Canada or the Controlled Drug and Substances Act relating to the operation of an Adult Entertainment Parlour or an Adult Sex Film Parlour in Canada;
 - d) That the Applicant, or in the case of a corporation, the officers, directors, employees or agents of the corporation, has been convicted of an offence under the Liquor Licence Act of Ontario relating to the operation of an Adult Entertainment Parlour in Ontario, or any equivalent territorial legislation in any other Province in Canada; and
 - e) The conduct of the Applicant, or in the case of a corporation, the officers, directors, employees or agents of the corporation, affords reasonable grounds for belief that the Applicant has not or will not carry on business in accordance with the law or with honesty and integrity.

Issuance of Licence

- 20. Where Council authorizes the first or initial issuance of an Owner's Licence, the Issuer of Licences shall issue the licence.

Notice of Refusal

- 21. In the event that Council refuses a licence pursuant to Section 19, the Clerk shall notify the Applicant of the refusal to issue the licence by sending the Applicant a Notice of Refusal.
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Owner's Licence Renewals

22. In the case of an application for the renewal of an Owner's licence; upon completion of the investigations and searches set out above by the Issuer of Licences, the Issuer of Licences shall issue an Owner's Licence, subject to ratification by Council, provided that:
- a) The provisions of Section 11 have been complied with;
 - b) The criminal record search discloses no criminal record in respect of any Applicant;
 - c) No Applicant has been convicted of an offence under this or any other By-law relating to Adult Entertainment Parlours in Canada;
 - d) No adverse comment is received from any of the agencies to which the application was circulated;
 - e) Each Applicant is 18 years of age or older;
 - f) Any outstanding fines that have been imposed against the Applicant pursuant to any provision of this By-law have been paid; and
 - g) There is no other information known to the Issuer of Licences that the Applicant will not carry on business with honesty or integrity.

Council Ratification of Renewals

23. Where an Owner's Licence is issued by the Issuer of Licences pursuant to Section 22, the Clerk shall place the matter on the agenda of the next regularly scheduled meeting of the General Council in Committee for ratification.
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Refusal to Licence

24. In the event that the Issuer of Licences refuses to issue a licence pursuant to Section 21, the Issuer of Licences shall notify the Applicant of the refusal to issue the licence by sending the Applicant a Notice of Refusal in Form 4.

Appeal of Refusal

25. Where an Applicant has been refused a licence and where:
- a) the reasons for the refusal of the licence do not deal with non-compliance with the Municipality's Zoning By-law; and
 - b) the Applicant has returned the Notice of Refusal to the Issuer of Licences indicating a desire to have the matter heard before Council;
- the Issuer of Licences shall notify the Clerk who shall place the matter on the agenda for a hearing by Council in accordance with the procedures of Council.

Notice of Appeal Hearing

26. Where a hearing is to be conducted pursuant to Section 25, the Clerk shall provide the Applicant with a Notice of Hearing setting out the date, time and place of the hearing.

Appeal Hearing

27. At the date, time and place so appointed, Council shall hear and consider the application, the report of the Clerk and any submissions by the Applicant or Applicants in accordance with Council procedures.
28. Council shall, in accordance with the provisions of the Municipal Act,
- a) Grant the licence to the Applicant;
 - b) Refuse to grant the licence to the Applicant; or
 - c) Grant the licence and impose conditions on the licence at the time it is granted.
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Written Decision

29. Council shall not exercise its powers under Section 28 without issuing written reasons for its decision, and any decision to refuse to grant a licence or to grant a licence with conditions shall be founded upon the following grounds:
- a) That the Applicant, or in the case of a corporation, the officers, directors, employees or agents of the corporation, has not complied with any provision of this By-law;
 - b) That the Applicant, or in the case of a corporation, the officers, directors, employees or agents of the corporation, has been convicted of an offence relating to this or any other by-law in respect of Adult Entertainment Parlours or Adult Sex Film Parlours in Canada;
 - c) That the Applicant, or in the case of a corporation, the officers, directors, employees or agents of the corporation, has been convicted of an offence under the Criminal Code of Canada, the Controlled Drug and Substances Act relating to the operation of an Adult Entertainment Parlour or an Adult Sex Film Parlour in Canada;
 - d) That the Applicant, or in the case of a corporation, the officers, directors, employees or agents of the corporation, has been convicted of an offence under the Liquor Licence Act of Ontario relating to the operation of an Adult Entertainment Parlour or and Adult Sex Film Parlour in Ontario, or any equivalent territorial legislation in any other Province in Canada; or
 - e) The conduct of the Applicant, or in the case of a corporation, the officers, directors, employees or agents of the corporation, affords reasonable grounds for belief that the Applicant has not or will not carry on business in accordance with the law or with honesty and integrity.

Notice of Decision

30. The Clerk shall, on behalf of Council, provide written notice of the decision of Council to each Applicant.
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Ownership Changes

31. Every Owner shall report in writing to the Issuer of Licences particulars of any proposed change in ownership of the Adult Entertainment Parlour or Adult Sex Film Parlour business that is the subject of a licence at least thirty days prior to such change taking effect;
32. Without limiting the generality of Section 31, if a change in ownership will result in a change in actual or legal control of the Adult Entertainment Parlour business or Adult Sex Film Parlour business, the prospective remaining Owners, or the prospective new Owners, as the case may be, shall forthwith make application for a new licence in accordance with this By-law, and the existing licence shall be deemed revoked at such time such change in ownership takes effect.

PART IV - OPERATOR'S LICENCES

Non-Requirement for Operator's Licence

33. An Owner who has procured and who maintains in good standing a valid Owner's Licence and who is also an Operator shall not be required to procure an Operator's Licence to operate his or her Adult Entertainment Parlour or Adult Sex Film Parlour.

Operators Application

34. Every Person wishing to make application for an Adult Entertainment Parlour Operator's Licence or Adult Sex Film Parlour Operator's Licence shall attend in person at the County offices and file with the Issuer of Licences:
 - a) a completed application form;
 - b) the fee prescribed by Schedule 1 of this By-law;
 - c) proof satisfactory to the Issuer of Licences that the Applicant is at least 18 years of age, which may be evidenced by the production of such of the following documents as the Issuer of Licences may require, without limitation:
 - i) birth or baptismal certificate;
 - ii) driver's licence;
 - iii) valid Canadian passport; or
 - iv) Social Insurance card;
 - d) a current, true copy of a Criminal Record Check as provided by the Ontario Provincial Police or other police agency within 45 days of the date of application.
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Issuer of Licences's Investigation

35. Upon receipt of an application for an Operator's Licence, or renewal thereof, the Issuer of Licences shall:
- a) review any criminal record in respect of the Applicant; and
 - b) determine whether or not the Applicant has been convicted of offences relating to this or any other by-law in respect of Adult Entertainment Parlours or Adult Sex Film Parlours in Canada.

Conditions for Issuance of Licence

36. Upon completion of the investigations and searches set out above, the Issuer of Licences shall issue or renew an Operator's Licence, subject to ratification by Council, provided that:
- a) the provisions of Section 34 above have been complied with;
 - b) the criminal record search discloses no criminal record;
 - c) there are no prior convictions under this or any other by-law relating to Adult Entertainment Parlours or Adult Sex Film Parlours in Canada;
 - d) any outstanding fines that have been imposed pursuant to any provision of this By-law have been paid; and
 - e) the Applicant is eighteen years of age or older.

Council Ratification of Applications

37. Where an Operator's Licence is issued by the Issuer of Licences, the Issuer of Licences shall notify the Clerk who shall notify Council of the issuance of the licence by placing the matter on the agenda of the first available regularly scheduled meeting of the General Council in Committee for ratification.

Refusal to Licence

38. In the event that the Issuer of Licences refuses to issue a licence, the Issuer of Licences shall notify the Applicant of the refusal to issue the licence by sending the Applicant a Notice of Refusal.

Appeal of Refusal

39. Where the Applicant returns the Notice of Refusal to the Issuer of Licences indicating a desire to have the matter heard before Council, the Issuer of
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Licences shall notify the Clerk who shall place the matter on the agenda for a hearing by Council in accordance with the procedures of Council.

Notice of Appeal Hearing

40. Where a hearing is to be conducted pursuant to Section 38 above, the Clerk shall provide the Applicant with a Notice of Hearing setting out the date, time and place of the hearing.

Appeal Hearing

41. At the date, time and place so appointed, Council shall hear and consider the application, the report of the Issuer of Licences and any submissions by the Applicant or Applicants in accordance with Council procedures.
42. Council shall, in accordance with the provisions of the Municipal Act:
 - a) Grant the licence to the Applicant;
 - b) Refuse to grant the licence to the Applicant; or
 - c) Grant the licence and impose conditions on the licence at the time it is granted.

Written Decision

43. Council shall not exercise its powers under Section 40 without issuing written reasons for its decision, and any decision to refuse to grant a licence or to grant a licence with conditions shall be founded upon the following grounds:
 - a) that the Applicant, or in the case of a corporation, the officers, directors, employees or agents of the corporation, has not complied with any provision of this By-law;
 - b) that the Applicant, or in the case of a corporation, the officers, directors, employees or agents of the corporation, has been convicted of an offence relating to this or any other by-law in respect of Adult Entertainment Parlours or Adult Sex Film Parlours in Canada;
 - c) that the Applicant, or in the case of a corporation, the officers, directors, employees or agents of the corporation, has been convicted of an offence under the Criminal Code of Canada, the Controlled Drug and Substances Act relating to the operation of an Adult Entertainment Parlour or an Adult Sex Film Parlour in Canada;
 - d) that the Applicant, or in the case of a corporation, the officers, directors, employees or agents of the corporation, has been convicted of an offence under the Liquor Licence Act of Ontario relating to the operation of an
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Adult Entertainment Parlour or an Adult Sex Film Parlour in Ontario, or any equivalent territorial legislation in any other Province in Canada; or

- e) the conduct of the Applicant, or in the case of a corporation, the officers, directors, employees or agents of the corporation, affords reasonable grounds for belief that the Applicant has not or will not carry on business in accordance with the law or with honesty and integrity.

Notice of Decision

- 44. The Clerk shall, on behalf of Council, provide written notice of the decision of Council to the Applicant.

PART V - ENTERTAINER'S LICENCES

Application

- 45. Every Person wishing to make an application for an Adult Entertainment Parlour Entertainer's Licence, or a renewal thereof, under Section 2 c. of this By-law shall attend in person at the County offices and file with the Issuer of Licences the following documents:
 - a) A completed application form;
 - b) The fee prescribed by Schedule 1 of this By-law;
 - c) Proof satisfactory to the Issuer of Licences that the Applicant is at least 18 years of age, which may be evidenced by the production of such of the following documents as the Issuer of Licences may require, without limitation:
 - i) birth or baptismal certificate;
 - ii) driver's licence;
 - iii) valid Canadian passport; or
 - iv) Social Insurance card;
 - d) Proof satisfactory to the Issuer of Licences that the Applicant is legally entitled to work in Canada which may be evidenced by either proof of Canadian citizenship, proof of permanent residency or a Clearance Certificate issued by Immigration Canada; and
 - e) A current, true copy of a Criminal Record Check as provided by the Ontario Provincial Police or other police agency within 45 days of the date of application.

Use of Legal Name

46. Every Person applying for an Entertainer's Licence must use his or her legal name and no licence shall be issued to any Person in any name other than his or her legal name.

Issuer of Licences's Investigation

47. Upon receipt of an application for an Entertainer's Licence, or renewal thereof, the Issuer of Licences shall:
- a) review any criminal record in respect of the Applicant; and
 - b) determine whether or not the Applicant has been convicted of offences relating to this or any other by-law in respect of Adult Entertainment Parlours.

Conditions of Issuance of Licence

48. Upon completion of the investigations and searches set out above, the Issuer of Licences shall issue or renew an Entertainer's Licence provided that:
- a) the provisions of Section 44 have been complied with;
 - b) the criminal record search discloses no criminal record;
 - c) there are not two (2) or more contraventions under this or any other by-law relating to Adult Entertainment Parlours in Canada;
 - d) any outstanding fines that have been imposed pursuant to any provision of this By-law have been paid;
 - e) the Applicant is 18 years of age or older; and
 - f) there is no other information known to the Issuer of Licences that the Applicant will not carry on business with honesty or integrity.

Notice to Council

49. Where an Entertainer's Licence is issued by the Issuer of Licences, the Issuer of Licences shall notify the Clerk and the Clerk shall notify Council of the issuance of a licence by placing the matter on the agenda of the next regularly scheduled meeting of the General Committee of Council for Council's ratification.

Refusal to Licence

50. In the event that the Issuer of Licences refuses to issue or renew a licence, the provisions of Sections 38 through 44 shall apply.
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PART VI - REVOCATION OF LICENCES

Grounds for Revocation of Licences

51. Where, in respect of an Owner's, Operator's or Entertainer's Licence:
- a) A Licencee is convicted an offence under the Criminal Code of Canada, the Controlled Drug and Substances Act that relates to the operation of the Adult Entertainment Parlour or Adult Sex Film Parlour or the provision of services therein;
 - b) A Licencee is convicted of an offence under the Liquor Licence Act of the Province of Ontario and the charge relates in any way to the operation of the Adult Entertainment Parlour or the Adult Sex Film Parlour or the provision of services therein;
 - c) A Licencee is convicted for contravening any provision or provisions of this By-law within any twelve month period;
 - d) There are reasonable grounds for belief that any application or any other document or information provided by or on behalf of a Licencee contains a false statement or provides false information;
 - e) Information contained in the original application form or any other information provided to the Issuer of Licences or the Clerk by or on behalf of the Applicant, has ceased to be accurate and the Licencee has not provided up-to-date accurate information to the Issuer of Licences to allow the Issuer of Licences to conclude that the licence should be maintained as valid;
 - f) The conduct of the Licencee affords reasonable grounds for belief that the Licencee will not carry on business in accordance with the law or with honesty and integrity;
 - g) The Licencee breaches a condition of the licence;
 - h) The Issuer of Licences or the Clerk becomes aware of any fact or facts which, if known at the time of application, may have resulted in the Licencee or Council refusing the licence;

the Issuer of Licences shall notify the Clerk who shall recommend to the Council that the licence issued under this By-law be revoked, by serving a Notice of the Recommendation to Revoke a Licence on the Licencee.

Suspension of Licence

52. Where the Clerk serves a Notice of Recommendation to Revoke a Licence, the Licence issued to a Licencee shall be deemed to be immediately suspended until such time as a decision on the matter is made by Council.

Hearing

53. A recommendation of the Clerk under Section 52 shall be referred to Council for a hearing in accordance with Council procedures.

Notice of Hearing

54. A Licencee shall be given a Notice of Hearing and shall be entitled to attend the hearing and adduce evidence and make submissions either personally or through a representative in accordance with the procedures of Council.

Decision of Council

55. Council may, after the hearing, in accordance with the provisions of the Municipal Act,
- a) revoke the licence;
 - b) reinstate the licence; or
 - c) reinstate the licence and impose conditions on the licence.
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Written Decision

56. Council shall not exercise its powers under Section 55 without issuing written reasons for its decision, and any such decision shall be founded upon the following grounds:
- a) that the Licencee has been convicted of an offence under the Criminal Code of Canada or the Controlled Drug and Substances Act that relates to the operation of an Adult Entertainment Parlour or an Adult Sex Film Parlour in Canada or the provision of services therein;
 - b) that the Licencee has been convicted under the Liquor Licence Act of the Province of Ontario and the conviction relates in any way to the operation of an Adult Entertainment Parlour or Adult Sex Film Parlour in Ontario or the provision of services therein;
 - c) that the Licencee has been convicted for contravening any provision or provisions of this By-law within any twelve month period;
 - d) that any application or any other document or information provided by or on behalf of the Licencee to the Issuer of Licences or the Clerk contains a false statement or provides false information;
 - e) that information contained in the original application form or any other information provided to the Issuer of Licences or the Clerk by or on behalf of the Licencee, has ceased to be accurate and the Licencee has not provided up-to-date accurate information to the Issuer of Licences to allow the Issuer of Licences to conclude that the licence can or should be maintained as valid;
 - f) that the Licencee has breached a condition of the licence;
 - g) that the Licencee has failed to register an Entertainer in accordance with Part VII of this By-law;
 - h) that Council has become aware of any fact or facts which, if known at the time of application, may have resulted in the Issuer of Licences or Council refusing the licence; or
 - i) that the conduct of the Licencee affords reasonable grounds for belief that the Licencee will not carry on business in accordance with the law or with honest and integrity.
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Notice of Decision

57. The Clerk shall provide the Licencee with a Notice of the Decision of Council.

PART VII - GENERAL PROVISIONS RELATING TO OWNERS AND OPERATORS

Licensed Operator

58. Every Owner of an Adult Entertainment Parlour or Adult Sex Film Parlour shall ensure that no Person other than a licenced Operator acts as Operator of such Adult Entertainment Parlour or Adult Sex Film Parlour.

Duty to Ensure Licenced Entertainer

59. Every Owner and every Operator of an Adult Entertainment Parlour shall ensure that an Entertainer does not perform until such Entertainer is properly licenced in accordance with this By-law.

Presence of Licenced Owner/Operator

60. Every Owner shall ensure that during the operating hours of an Adult Entertainment Parlour or Adult Sex Film Parlour there is in attendance at the Adult Entertainment Parlour or Adult Sex Film Parlour a licenced Owner or Operator.

Daily Register

61. Every Owner and Operator of an Adult Entertainment Parlour shall maintain a daily register, to be signed by each Entertainer, of all Entertainers that have or are providing services at the Adult Entertainment Parlour on that date.
62. Every Owner and Operator shall produce the register referred to in Section 61, for inspection on demand of a Peace Officer, a Municipal By-law Enforcement Officer, or the Issuer of Licences or the Clerk.
63. The register referred to in Section 61 shall be retained by every Owner and Operator for a period of at least twelve (12) months and shall remain the property of the Municipality.
64. Every Owner and every Operator shall ensure that every Entertainer has been added to and has signed the daily register prior to performing at an Adult Entertainment Parlour.
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Posting of Licence

65. Every Owner and every Operator shall post their respective licences in a conspicuous place viewable to the public in the Adult Entertainment Parlour or Adult Sex Film Parlour.

Duty to Enforce Age Restrictions

66. Every Owner and every Operator shall ensure that no person under the age of 18 is allowed to enter into or remain in any Adult Entertainment Parlour or Adult Sex Film Parlour owned or operated by him or her.

Viewing Restrictions

67. Every Owner and every Operator shall ensure that no Adult Entertainment service can be viewed from outside of the Adult Entertainment Parlour or Adult Sex Film Parlour.

Conditions for Provision of Services

68. Every Owner and every Operator shall ensure that services provided by Entertainers are provided in a large, singular performance room without any obstructions such as doors, walls, curtains, booths, pits or any enclosures or accessible adjoining rooms that are in any way hidden from view from anywhere else in the performance room or which are obstructed such as to interfere with the view of any person including any Peace Officer or Municipal By-law Enforcement Officer.
69. No Owner or Operator shall, in respect of any Adult Entertainment Parlour owned or operated by him or her, permit any Entertainer while providing services as an Entertainer to make any Sexual Contact with any Person;
70. No Entertainer, while providing services as an Entertainer, shall have Sexual Contact with any Person.

Observance of Laws

71. Every Licencee and every Person shall ensure the observance and performance of all the provisions of this By-law by him or her self and any Person and any directors, officers, employees and assistants of a Licencee and by all Persons, including directors, officers and employees of any person, with whom the Licencee has a contractual relationship.
 72. Every Licencee, in addition to any other requirements of this By-law or any term or condition identified in the licence shall:
 - a) Maintain and keep clean, safe and in good condition, the Adult Entertainment Parlour or Adult Sex Film Parlour to which the licence relates and promptly repair the premises when required;
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- b) Not cause, or permit to be caused, any nuisance to arise in, or in connection with, the Adult Entertainment Parlour or Adult Sex Film Parlour to which the licence relates;
- c) Not cause, or permit to be caused, any obstruction of any highway, lane or public place in front of or adjacent to the Adult Entertainment Parlour or Adult Sex Film Parlour to which the licence relates;
- d) Not cause, or permit to be caused, any breach of any other by-law of the Corporation of Haldimand County or any provincial or federal law, regulation, or Order in Council in, or in connection with, any activity occurring at the Adult Entertainment Parlour or Adult Sex Film Parlour to which the licence relates.

PART VIII – SIGNAGE

73. No Owner or Operator of an Adult Entertainment Parlour or an Adult Sex Film Parlour shall place or permit to be placed any sign or any other advertising device on any premises occupied by an Adult Entertainment Parlour or Adult Sex Film Parlour, save and except a sign or any other advertising device containing the words “Adult Entertainment Parlour”, “Adult Sex Film Parlour” or “Adult Video Parlour”, as the case may be, and the name under which the business operated provided such name does not include any of the following words: “nude”, “naked”, “topless”, “bottomless”, “sexy”.

PART IX - GENERAL PROVISIONS

74. No Person under the age of eighteen (18) years shall enter or remain in an Adult Entertainment Parlour, a Class A Adult Sex Film Parlour or a designated Adult Sex Film Area in a Class B Adult Sex Film Parlour.

Term of Licence

75. a) Every licence issued pursuant to this By-law shall expire one (1) year following the date the licence was issued unless earlier suspended, terminated or revoked;
- b) Notwithstanding 75.(a), above, the licence of an Entertainer who is neither a Canadian citizen nor a permanent resident shall expire on the date that that Entertainer’s authorization to work in Canada expires, unless the licence is earlier suspended, terminated or revoked.

Notification of Change of Address

76. Every Licencee who changes his or her address shall, within seven days after such change, attend at the office of the Issuer of Licences and notify
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the Issuer of Licences of such change of address and produce his or her licence for the change to be entered thereon.

Hours of Operation

77. Every Owner and every Operator shall ensure that no performance takes place at any Adult Entertainment Parlour at any time other than the time allowed for hours of operation in accordance with the provisions of any permit that may be issued for the Adult Entertainment Parlour under the Liquor Licence Act.

Terms of By-law

78. It shall be a condition of every licence that every Licencee shall, in carrying on business, comply with the provisions of this By-law and ensure such compliance by every other Person involved in the carrying on of such business.
79. The Council may issue a licence under this By-law also conditional upon compliance with any other terms and conditions as the Council may impose and consider appropriate.

Notice Provisions

80. Any notice required by this By-law to be given to an Applicant or to a Licencee may be given:
- a) By mailing a copy of the notice by pre-paid ordinary post to the residence address of the Applicant or the Licencee, as the case may be, listed on his or her most recent application for a licence;
 - b) By delivering a copy of the notice personally to the Applicant or the Licencee;
 - c) By leaving a copy of the notice at the residence address of the Applicant or Licencee listed on the most recent application for a licence; or
 - d) By leaving a copy of the notice at the address of the Applicant's proposed employer or at the Licencee's employer listed on the most recent application for a licence.
81. Any notice served by pre-paid ordinary post in accordance with this section shall be deemed to be received by the Applicant on the fourth day following mailing.

PART X - GENERAL PROVISIONS RELATING TO ADULT SEX FILM PARLOURS

Class A Adult Sex Film Parlours

82. Every Owner and every Operator of a Class A Adult Sex Film Parlour shall:
- a) Prominently display the licence at the premises licenced at all times and shall produce the licence upon the request of a Peace Officer or Municipal By-law Enforcement Officer;
 - b) Maintain on the premises, available for inspection by a Peace Officer or a Municipal By-law Enforcement Officer on demand during all business hours, a current list of all Adult Sex Films available on the premises;
 - c) Advertise, promote and carry on such business only in the name in which the licence is issued, or such other business or trade name provided to the Municipality and shown on such licence.

Employees in Class A Sex Film Parlours

83. No Owner or Operator shall permit any Person to work in a Class A Adult Sex Film Parlour unless such Person is of the age of eighteen (18) years or older.

Signage

84. Every Owner and every Operator shall post and keep posted at every entrance to any Class A Adult Sex Film Parlour operated by such Operator, 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 (18) years is permitted to enter or remain in such premises.
85. Every Owner and every Operator shall ensure that exterior signs and advertisements relating to a Class A Adult Sex Film Parlour and to the provision of Adult Sex Films shall not include any pictorial representation of the nudity or partial nudity of any person, specified Sexual Contact or specific titles of any Adult Sex Films.

Age Restrictions

86. No Owner, Operator or Person working in a Class A Adult Sex Film Parlour shall permit any person under the age of eighteen (18) years to enter or remain in such premises.
87. No Owner or Operator shall release for sale, rent or exchange any Adult Sex Film to any Person who is not at least eighteen (18) years of age.
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Class B Adult Sex Film Parlours

88. Every Owner and every Operator of a Class B Adult Sex Film Parlour:
- a) shall ensure that no Adult Sex Film, Adult Sex Film cover or jacket or any other Adult Sex Film advertising or Adult Sex Film promotional material is displayed where it can be seen by Persons in the premises, unless in an physically designated Adult Sex Film Area, subject to the following regulations:
 - i) signs shall be posted at every approach and entrance to the designated Adult Sex Film Area, indicating that no Person under the age of 18 years old is permitted to enter or remain in the designated area;
 - ii) Adult Sex Film covers or jackets shall be displayed only in the designated Adult Sex Film Area in such a manner that they may not be viewed by any member of the public outside the designated area;
 - b) shall store all Adult Sex Films behind a main counter which is manned by an employee;
 - c) shall not release for sale, rent or exchange any Adult Sex Film to any person who is not at least eighteen (18) years of age;
 - d) shall not make available to any member of the public any Adult Sex Film through automated vending or dispensing equipment without intervening and having the age of the Person duly verified by the Owner or Operator or an employee of the Licencee at the time of any sale, rental, exchange or trade;
 - e) where there is no designated Adult Sex Film Area, shall maintain a current listing of all Adult Sex Films on the premises and make that listing available to persons eighteen (18) years of age or older upon request;
 - f) shall not play or preview for public view within the premises any Adult Sex Film;
 - g) shall prominently display the licence at the premises licenced at all times and shall produce the licence upon request of a Peace Officer or Municipal By-law Enforcement Officer;
 - h) shall be restricted to the use of only the following wording on any exterior and/or interior signs or advertisements, "Adult Sex Films", "Adult Videos", "Adult Video Tapes" or "Adult Video Tape Sales,
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Rentals or Exchange” and shall not include any pictorial representations of the nudity or partial nudity of any person, specified Sexual Contact or specific titles of any Adult Sex Film.

Duty to Inform Employees

89. Every Owner and Operator of a Class A or a Class B Adult Sex Film Parlour shall be required to instruct all employees of the requirements pertaining to Adult Sex Films as outlined in this By-law and shall ensure that every person working in such an establishment complies with all requirements of this By-law relating to the provisions of Adult Sex Films.

PART XI – DEFINED AREAS

90. Every Adult Entertainment Parlour and every Adult Sex Film Parlour shall comply with all applicable zoning and land use requirements of the Municipality.
 91. Notwithstanding Section 90, any Charitable Adult Entertainment Event carried on by a service club located in Haldimand County prior to the enactment of this By-law may continue on the same frequency and at the same location as prior to the enactment of this By-law, subject to the licensing provisions identified in Section 7 of this By-law
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PART XI - INSPECTION

92. A Peace Officer or a Municipal By-law Enforcement Officer may require any Person to produce at any reasonable time, any licence, records or other documents identified in this By-law for the purpose of determining whether such Person is validly licenced under this By-law, or whether this By-law is being contravened.
93. Before a licence is issued under this By-law, an Owner shall authorize, in writing, as a condition of the licence, the periodic inspection of the Adult Entertainment Parlour or Adult Sex Film Parlour by a Peace Officer or a Municipal By-law Enforcement Officer.

PART XII - OFFENCES AND PENALTIES

94. 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 upon conviction, is liable to a fine not exceeding \$25,000.00 or to imprisonment for a term not exceeding one year, or both, pursuant to Section 329(1) of the Municipal Act, R.S.O. 1990, c. 45 as may be amended from time to time.
95. Where a corporation is convicted of an offence under this By-law, the maximum penalty that may be imposed on the corporation is \$50,000.00 pursuant to Section 329(2) of the Municipal Act, R.S.O. 1990, c. 45 as may be amended from time to time.

PART XIII - PARTIAL INVALIDITY

96. Should any section, clause or provision of this By-law or the application thereof be held by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this By-law and the application thereof to circumstances other than to those held to be invalid or unenforceable shall not be affected thereby and each section, clause and provision of this By-law shall be separately valid and enforceable to the fullest extent permitted by law.
 97. Where a form of words or expression are prescribed in this By-law, deviations therefrom not affecting the substance, or calculated to mislead, do not vitiate them.
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PART XIV - REPEAL OF PREDECESSOR BY-LAWS

98. That By-law 1113/94 of the former Town of Haldimand, now Haldimand County and By-law #94-38 of the former City of Nanticoke, now Haldimand County and any other by-law or provision of any by-law of the Corporation of Haldimand county inconsistent with this by-law be, and is hereby, repealed.

PART XV - ENACTMENT

99. This By-law comes into force and effect on the date of final passing.

100. This By-law shall be deemed to expire on the earlier of five (5) years after it comes into force, or the day it is repealed in accordance with Section 257.2(5) of the Municipal Act.

101. The short title of this By-law is the Adult Entertainment Licensing By-law.

Read a First and Second time this 4th day of November, 2002.

Read and Third time and finally passed this 4th day of November, 2002.

MAYOR

CLERK

By-law No.298/02

Schedule 1

For current fees please refer to the Licence Fee Index which is located under Documents with the General Licences on the Haldimand County website www.haldimandcounty.on.ca
