

Authority: Planning and Transportation Committee Report No. 7, Clause No. 2,
as adopted by City of Toronto Council on June 24, 25 and 26, 2003
Enacted by Council: June 26, 2003

CITY OF TORONTO

BY-LAW No. 524-2003

**To adopt a new City of Toronto Municipal Code Chapter 832, Videotape Stores, Licensing,
Article I, East District.**

WHEREAS Section 150 of the *Municipal Act, 2001*, S.O. c. 25, authorizes Councils of local municipalities to pass by-laws for licensing, regulating and governing any business carried on within the municipality, subject to the *Theatres Act* and the *Retail Business Holidays Act*; and

WHEREAS Clause 150(8)(d) of the Act, without limiting subsection 150(1), provides that the power to licence, regulate and govern a business under subsection 150(1) includes the power to define classes of businesses and to separately licence, regulate and govern each class; and

WHEREAS Section 151 of the Act provides that by-laws licensing, regulating and governing adult entertainment establishments may define the area of the municipality in which adult entertainment establishments may or may not operate, and limit the number of such licences to be granted; and

WHEREAS “Adult Entertainment Establishment” is defined in clause 151(2)(a) of the Act to mean any premises or part of them in which goods, entertainment or services that are designed to appeal to erotic or sexual appetites or inclinations are provided in the pursuance of a business; and

WHEREAS the Council for the City of Toronto has deemed it desirable for the protection of consumers to enact a by-law for the licensing, regulating and governing of adult videotape stores and certain other videotape stores as classes of adult entertainment establishments and to limit the number of licences to be granted in respect of adult videotape stores pursuant to the provisions of sections 150 and 151 of the Act for the East District only (formerly City of Scarborough);

The Council of the City of Toronto HEREBY ENACTS as follows:

1. The City of Toronto Municipal Code is amended by adding the following chapter:

Chapter 832

VIDEOTAPE STORES, LICENSING

ARTICLE I EAST DISTRICT

§ 832-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADULT VIDEOTAPE – a videotape, DVD (digital versatile disc or digital video disc), CD-ROM (compact disc, read-only-memory), and any other medium that can produce visual images that may be viewed as moving pictures, where the Ontario Film Review Board has classified the videotape, DVD, CD-ROM or other medium as “restricted” with the information piece “adult sex film”.

ADULT VIDEOTAPE AREA – an identifiable part of any premises that is used for the provision of Adult Videotapes.

ADULT VIDEOTAPE STORE – a class of adult entertainment establishment and means any premises:

- A. Used for the carrying on of the business of the provision of adult videotapes where more than 10% of the gross floor area is used for the display, sale or rental of adult videotapes; or
- B. In which adult videotapes are provided in the pursuance of a business and in respect of which it is advertised, or notice is given either by signs or other advertising devices on or in the premises, or otherwise, that the premises are an “adult video store”, an “adult videotape store”, an “adult video rental store”, a “strictly adult video store” or are otherwise described by words of like meaning.

DISTRICT – the East District of the City of Toronto, formerly the City of Scarborough.

COMMISSIONER – the Commissioner of Urban Development Services for the City of Toronto or a designate.

FAMILY VIDEOTAPE STORE – any premise or part thereof in which videotapes are provided in the pursuance of a business, and where there is no display, sale or rental of adult videotapes.

GENERAL VIDEOTAPE STORE – a class of adult entertainment establishment and means any premises or part thereof in which videotapes are provided in the pursuance of a business, where 10% or less of the gross floor area, but more than 0% of such area is used for the display, sale or rental of adult videotapes.

GROSS FLOOR AREA – the area of all floors, including basements and mezzanine floors, except that storage rooms and washrooms located in the basement, parking structures including ramps and driveways, and utility rooms shall not be included. Gross floor area shall be measured to the external faces of the exterior walls, except that the gross floor area of a business occupying a portion of a building shall be measured to the centre line of dividing walls and the external faces of the exterior walls. Where there is no dividing wall between businesses, the gross floor area shall be measured to the dividing line between businesses.

MUNICIPAL LAW ENFORCEMENT OFFICER – a person appointed as a municipal law enforcement officer in accordance with Chapter 150 of The City of Toronto Municipal Code, as amended.

OWNER – a person who alone or with others has a right to possess or occupy an adult videotape store or general videotape store or actually does possess or occupy either class of videotape store, and includes a lessee of either class of videotape store.

OPERATOR – includes a proprietor or any other person who, alone or with others, manages, supervises, runs or controls an adult videotape store or a general videotape store.

TO PROVIDE – when used in relation to any videotape, 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 membership, subscription, admission or any other manner.

§ 832-2. Licence requirement.

Every owner of an adult videotape store and every owner of a general videotape store in the District shall take out a licence from the City authorizing him or her to carry on his or her business in the District. The person obtaining the licence shall pay the fee fixed by this chapter at or before the time of taking out each licence, and no person shall, within the limits of the District, carry on or engage in such business until he or she has procured such licence so to do.

§ 832-3. Licence fees.

The licence fee for adult videotape stores and general videotape stores is set at \$1000.00 per annum.

§ 832-4. Limitation on number of licences and locations.

- A. The total number of licences for adult videotape stores or general videotape stores in the District that may be issued under and in accordance with this chapter shall be limited to 10.
- B. No licence shall be issued for an adult videotape store or general videotape store unless the store is located in an area zoned for industrial use only.

- C. All adult videotape stores or general videotape stores shall be subject to any zoning standards or provisions as contained in the applicable City Zoning By-law, as amended.
- D. Despite Sections 4 and 5, nothing shall prevent the City from issuing licences for adult videotape stores or general videotape stores existing in the District as of the date of passage of this chapter.
- E. Any part of an adult videotape store or general videotape store for which application was made prior to the passage of this chapter for a building permit for alterations to enable the expansion of an existing adult videotape store shall be deemed to be included as part of the area defined in respect of those premises, provided such permit is granted.
- F. No person shall operate an adult videotape store or general videotape store in the District except as permitted under this chapter.

§ 832-5. Applications for licences.

- A. On an application for a licence or the renewal of a licence, the applicant shall complete the prescribed forms and shall furnish to the Municipal Licensing and Standards Division such information as Municipal Licensing and Standards Division may direct to be furnished.
- B. Every owner and operator shall deliver to the Municipal Licensing and Standards Division with his or her application, payment in full, by cash or certified cheque, of the licence fee required by this chapter to be paid in respect of such licence.
- C. If the applicant is a corporation, a copy of the incorporating documents, the last annual information return filed, and a list of the names and home addresses of the directors, shareholders and officers of the corporation shall be delivered to the Municipal Licensing and Standards Division with the application.
- D. If the applicant is a partnership, a list of names and home addresses of the partners and, if a registered partnership, a copy of the registered declaration of partnership shall be delivered to the Municipal Licensing and Standards Division with the application.
- E. If the applicant is a sole proprietor, a copy of the declaration of sole proprietorship shall be delivered to the Municipal Licensing and Standards Division with his or her application.
- F. The applicant shall be refunded 50% of the application fee in the event an application for a licence or the renewal of a licence is refused.

§ 832-6. Issuance or denial of licence, hearing.

- A. The Municipal Licensing and Standards Division shall, upon receipt of an application for a licence or the renewal of a licence, make or cause to be made all investigations as may be necessary with respect to such application and shall:

- (1) If the investigation or any other information available to the Municipal Licensing and Standards Division discloses reasonable grounds to believe that the applicant may not be entitled to the issuance or renewal of a licence on the grounds referred to in Section 19, forthwith cause notice of this fact to be sent by prepaid mail to the applicant at the address as shown on the application form; or
 - (2) Subject to the provisions of this chapter, direct that the licence be issued or renewed.
 - (3) The service of the notice required by Subsection (1) shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom the notice is given or that person's agent for service establishes that, acting in good faith, through absence, accident, illness or other unintentional cause the notice was not received until a later date.
- B. A notice sent pursuant to Subsection 15(1) shall include:
- (1) A statement that the applicant may request a hearing of the application by the Toronto Licensing Tribunal by delivering a written request for a hearing to the Municipal Licensing and Standards Division within 30 days of the date of the notice sent pursuant to Subsection 15(1); and
 - (2) A statement that if no request for a hearing is delivered by the applicant in accordance with Subsection (1) of this section, the application for a licence or renewal of a licence will not be granted.
- C. Where the Municipal Licensing and Standards Division receives a request for a hearing from an applicant for a licence in accordance with Subsection 16(1), the application for a licence shall be referred forthwith to the Toronto Licensing Tribunal for a hearing.
- D. If, before the expiry of a licence, the applicant has applied for renewal of the licence and has remitted the prescribed fee, the licence shall be deemed to continue:
- (1) Until the renewal is granted; or
 - (2) If the licensee is served with a notice under Subsection 15(1), until the time for requesting a hearing has expired or, where a hearing has been requested, until the Toronto Licensing Tribunal has made a disposition of the application.

§ 832-7. Grounds for denial of licence.

- A. An applicant for a licence or for the renewal of a licence is, subject to the provisions of this chapter, entitled to be issued the licence or renewal, except where:
- (1) The conduct of the applicant affords reasonable grounds for belief that the applicant has not carried on, or will not carry on, his or her trade, business or occupation in accordance with law and with integrity and honesty; or

- (2) There are reasonable grounds for belief that the carrying on of the trade, business or occupation by the applicant has resulted, or will result, in a breach of this chapter or any other law; or
 - (3) The applicant is a corporation and its conduct or the conduct of its officers, directors, employees or agents affords reasonable grounds for belief that its trade, business or occupation has not been, or will not be, carried on in accordance with law and with integrity and honesty; or
 - (4) The conduct of the applicant or other circumstances afford reasonable grounds for belief that the carrying on of the trade, business or occupation by the applicant has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, the health or safety of other members of the public.
- B. Notwithstanding any decision of, or statement by, the Toronto Licensing Tribunal, the Commissioner, the Executive Director, or any employee of the Municipal Licensing and Standards Division, respecting the granting of a licence or application for a licence, no person shall be deemed to be licensed to carry on or engage in the business for which such licence is required until he or she has paid the fee required to be paid with respect to such licence and has received the physical licence.
- C. The Commissioner or his or her designate shall sign all licences issued pursuant to this chapter, and his or her signature may be printed or mechanically reproduced upon each licence issued, and such licence shall be in such form as the Commissioner may from time to time approve.

§ 832-8. Toronto licensing tribunal hearings.

- A. The Toronto Licensing Tribunal shall consider at a public hearing all applications for licences or renewal of licences that are referred to it under Section 17. The Toronto Licensing Tribunal may, subject to this chapter, grant the licence applied for, refuse to grant such licence, or grant the licence to the applicant upon such conditions as the Tribunal considers appropriate and are authorized by law.
- B. The Municipal Licensing and Standards Division may refer to the Toronto Licensing Tribunal for a hearing any matter in respect of which a licence may be refused, suspended, revoked or have conditions imposed.
- C. The Toronto Licensing Tribunal may, for any of the reasons set out in Section 19 of this chapter,
 - (1) Suspend or revoke any licence issued under this chapter;
 - (2) Impose such conditions upon a licence as it considers appropriate and as are authorized by law; and

- (3) Suspend a licence or continue the suspension of a licence where a hearing has been commenced and for any reason is adjourned, pending final disposition of the hearing.
- D.
 - (1) Despite Section 24, the Toronto Licensing Tribunal may, having regard to the conduct of the business by the licensee, suspend the passing of penalty and direct that the licence continue on such conditions as the Toronto Licensing Tribunal considers just and are authorized by law.
 - (2) Where a licensee who is bound by conditions issued in accordance with Subsection (1) of this section is found to have contravened those conditions or any provision of this chapter, in addition to any penalty that the Toronto Licensing Tribunal may impose in respect of that contravention, the panel of the Tribunal which issued the conditions may:
 - (a) Impose any suspension or revocation of the licence that could have been imposed had the passing of penalty not been suspended; and
 - (b) Impose such further conditions as the Toronto Licensing Tribunal considers just and as are authorized by law.
- E. Upon suspension or revocation of a licence issued under this chapter, the licensee shall return the licence to the Municipal Licensing and Standards Division. The Municipal Licensing and Standards Division shall have access to any premises of the licensee for the purpose of receiving or taking the licence, and no person shall refuse to deliver the licence to the Municipal Licensing and Standards Division or shall in any way prevent or hinder the receiving or taking of the licence.
- F. Notice of the revocation of any licence may be given by the Municipal Licensing and Standards Division by registered letter mailed to the address given by the licensee in his or her application for the licence, or by communication to the licensee in any manner whatsoever. Upon such notice, the revoked licence shall cease and terminate and be of no further effect.
- G. The Municipal Licensing and Standards Division shall, prior to the commencement of any hearing before the Toronto Licensing Tribunal, give to the licensee or applicant at least seven (7) days notice of such hearing, mailed or delivered to the address last known to the Municipal Licensing and Standards Division.
- H. The proceedings of the Toronto Licensing Tribunal shall be taken down and recorded by a court reporter.

§ 832-9. Issuance and terms of licences.

- A. Every licence issued under this chapter shall expire one year from the date of issuance.
- B. A licence issued under this chapter is non-transferrable.

- C. The rights granted by a licence issued under this chapter apply only to the location for which the licence is issued.
- D. Where a completed application form for the renewal of a licence is not submitted to the Commissioner before the expiry date, the licence shall be revoked for that location and the applicant shall be required to submit a new application together with the licence fee.
- E. Every owner or operator shall advise the Commissioner in writing within five days of changes in any information required to be filed at the Municipal Licensing and Standards Division or of a business ceasing to operate.

§ 832-10. Regulations applicable to adult videotape stores and general videotape stores.

- A. Every licensee shall,
 - (1) Prominently display the licence of the premises at all times and shall produce the licence upon request by the Commissioner, any Municipal Law Enforcement Officer or any Police Officer.
 - (2) Keep the premises in a clean and sanitary condition.
 - (3) Maintain on the premises, available for inspection by the Commissioner, any Municipal Law Enforcement Officer or any Police Officer, during all business hours, a current list of all adult videotapes available on the premises.
- B. No owner, operator or any person working in an adult videotape store shall permit any person under the age of eighteen years to enter or remain in an adult videotape store or to work in an adult videotape store.
- C. Every owner or operator of an adult videotape store shall post and keep posted at every entrance to any adult videotape store 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 years is permitted to enter or remain in such store or any part thereof.
- D. Every owner or operator of an adult videotape store or general videotape store shall ensure that no adult videotape or container for an adult videotape is displayed in such a manner so as to be visible from outside the store.
- E. Every owner or operator of an adult videotape store or general videotape store shall ensure that the store's exterior signs and advertisements relating to the provision of adult videotapes are restricted to the words "adult videotapes" or "adult videotape sales or rentals", and do not include any pictorial representation.
- F. Every owner or operator of a general videotape store shall maintain all adult videotapes in a separate and enclosed room.

- G. Every owner or operator of a general videotape store shall ensure that no person under the age of eighteen years is permitted to enter or remain in any adult videotape area.
- H. Every owner or operator of a general videotape store shall ensure that no adult videotape or container for an adult videotape is displayed in a location where it can be seen by persons in the store outside of the adult videotape area.

§ 832-11. Offence.

Any person who contravenes any provision of this chapter and every director or officer of a corporation who concurs in such contravention by the corporation is guilty of an offence.

§ 832-12. Effect.

Every owner or operator of an existing adult videotape store or general videotape store shall apply for a licence within 30 days of the date of enactment of this chapter.

ENACTED AND PASSED this 26th day of June, A.D. 2003.

CASE OOTES,
Deputy Mayor

ULLI S. WATKISS
City Clerk

(Corporate Seal)