

Corporation of the Town of Newmarket

By-law 2002-151

OFFICE CONSOLIDATION

This is a consolidation of the Town's By-law to regulate and govern any business carried on within the Town of Newmarket, being By-law 2002-151, as amended by the below listed by-laws and is prepared for reference and information purposes only. The following consolidation is an electronic reproduction made available for information only. It is not an official version of By-law 2002-151. Official versions of all by-laws can be obtained from Legislative Services by calling 905-953-5300. If there are any discrepancies between this consolidation and By-law 2002-151 and listed amending by-laws the official by-laws shall prevail.

2004-182 – October 25, 2004	Fees – Taxi Rate Increase
2006-19 – January 23, 2006	Licensing Fees – Schedule A
2006-109 – June 26, 2006	Licensing Fees – Schedule A
2006-142 – August 28, 2006	Significant changes to Taxis. Repeals and replaces Schedule 18.
2007-13 – February 12, 2007	Licensing Fees – Replace Schedule 'A' with Schedule 'L'
2007-127 – November 26, 2007	Repeals 2007-13. New Schedule A added. 2007-127 later amended by 2008-12
2008-55 – September 29, 2008	Significant changes to Taxis. Schedule 18 of 2002-151 repealed. Bylaw 2006-142 repealed. *Later repealed by 2013-28 (Taxi Licensing Bylaw)
2008-59 – October 15, 2008	Related to Taxi Fees
2008-77 – November 10, 2008	Removes Schedule A
2008-79 – November 10, 2008	Repeals Schedule 17 – Second Hand Goods
2009-55 – June 15, 2009	Repealed entirety of Schedule 10. (Refreshment Vehicle Licensing Bylaw) *Later repealed by 2016-55
2009-78 – September 21, 2009	Repeals Schedule 9 - Carnivals
2015-18 – May 11, 2015	Repeals Schedule 11 - Fireworks
2016-29 – June 7, 2016	Repeals Schedule 16 – Outdoor Serving Areas
2016-52 – October 19, 2016	Repeals Schedule 10
2019-35 – May 27, 2019	Repeals Schedules 3, 5, 6, 8, 13 & 14
2020-22 – April 27, 2020	Amends Section 8

Corporation of the Town of Newmarket

By-law 2002-151

A BY-LAW TO LICENSE, REGULATE AND GOVERN ANY BUSINESS CARRIED ON WITHIN THE TOWN OF NEWMARKET.

(Licensing By-law)

WHEREAS the Municipal Act, R.S.O. 1990, c. M.45, (“*the Act*” as amended) authorizes Council to pass by-laws for licensing regulating and governing any business carried on within the municipality;

AND WHEREAS several bylaws have been enacted by the Town of Newmarket to license, regulate and govern certain businesses carried on with the Town of Newmarket;

AND WHEREAS it is deemed appropriate to establish a consolidated business licensing by-law based on the current enacted business licensing by-laws as amended;

BE IT THEREFORE ENACTED by the Municipal Council of the Corporation of the Town of Newmarket as follows:

TYPES OF LICENSES

1. THAT the license by-laws of the Town of Newmarket as enacted in accordance with *the Act* as amended be re-enacted as attached hereto as follows:

Adult Entertainment Parlours	SCHEDULE 1
Adult Video Stores	SCHEDULE 2
REPEALED	SCHEDULE 3
RESERVED SCHEDULE FOR FUTURE USE	SCHEDULE 4
REPEALED	SCHEDULE 5
REPEALED	SCHEDULE 6
Body Rub Parlours	SCHEDULE 7
REPEALED	SCHEDULE 8
REPEALED	SCHEDULE 9
REPEALED	SCHEDULE 10
REPEALED	SCHEDULE 11
Hawkers and Pedlars	SCHEDULE 12
REPEALED	SCHEDULE 13
REPEALED	SCHEDULE 14
Newspaper Boxes	SCHEDULE 15
REPEALED	SCHEDULE 16
REPEALED	SCHEDULE 17
REPEALED	SCHEDULE 18
REMOVED	SCHEDULE ‘A’

SHORT TITLE

2. THAT the short title of this by-law be the “Licensing By-law”.

APPLICATION

3. Every applicant, unless otherwise provided in the Schedules hereto, shall appear in person before the Town Clerk or his/her designated and shall complete such license application forms as may be provided

from time to time in accordance with the requirements of this By-law and shall provide all information requested thereon.

4. THAT the personal information collected pursuant to this by-law is collected under the authority of the *Act*, as amended and the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56.*
5. Should any section of this by-law be declared invalid by a court of competent jurisdiction, such section shall be construed, as being severed here from and the remainder of the by-law shall continue in full force and effect.
6. In the event of any conflict between any provisions of this by-law and any other by-law heretofore passed the provision of this by-law shall prevail.

FEES

7. THAT the fees for the licenses defined in the Licensing By-law are attached thereto as Schedule 'A'.

PENALTY

8. THAT, unless otherwise defined in the attached Schedules, any person who contravenes the provisions of this By-law, including every person who fails to perform a duty imposed herein or who performs an act prohibited herein and every director or officer of a corporation who concurs in such a contravention is guilty of an offence and, upon conviction pursuant to the provisions of the *Municipal Act, R.S.O. 1990 c. M.45* and *Provincial Offences Act R.S.O. 1990, c .P, 33*, as amended is guilty of an offence and upon conviction is liable to a fine and/or penalty as provided for herein for each offence and such penalty and/or fine shall be recoverable under the *Provincial Offences Act R.S.O. 1990, c. P. 33*, as amended.

REPEAL

9. THAT By-laws 1992-115, 1996-71, 2000-83, 1994-64, 1991-164, 1990-90, 1990-89, 1999-3, 1990-88, 1989-132, 1989-230, 1989-98, 1994-34, 1994-28, 1995-48, 1997-57, 1978-76, 1995-143, 1999-93, 2000-57, 1993-28, 1993-50, 1995-82, 1998-43, 2001-136, 2001-154, 1994-78, 1994-111, 1995-79, 1996-121, 1998-27, 1999-89 are hereby repealed.

ENACTMENT

10. THAT this by-law shall come into force and effect upon the passing of the By-law.

ENACTED THIS 16TH DAY OF DECEMBER 2020

Tom Taylor, Mayor

Anita Moore, Town Clerk

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SCHEDULE 1

ADULT ENTERTAINMENT PARLOURS

TO LICENSE, REGULATE AND INSPECT ADULT ENTERTAINMENT PARLOURS WITHIN THE TOWN OF NEWMARKET.

DEFINITIONS:

1.1 In this By-law – Schedule 1

- a) **“adult entertainment parlour”** means 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:
- b) **“adult entertainment parlour licensed under the *Liquor License Act*”** means any premises or part thereof in respect of which a license or permit has been issued and is in full force and effect pursuant to the provision of the *Liquor License Act*, at

which is offered services appealing to or designed to appeal to erotic or sexual appetites or inclinations;

- c) **“applicant”** means a person applying for a license under this By-law;
- d) **“Council”** means the Council for the Corporation of the Town of Newmarket;
- e) **“Entertainer”** means any person who provides services designed to appeal to erotic or sexual appetites or inclinations at an adult entertainment parlour, other than a person who is a licensed Owner or a licensed Operator;
- f) **“goods”** includes books, magazines, pictures, slides, films, phonograph records, pre-recorded magnetic tape and any other reading, viewing or listening matter;
- g) **“license”** means authorization under this By-law to carry on the trade or business specified therein;
- h) **“licensed”** means licensed under this By-law;
- i) **“Licensing Officer”** means the Town Clerk of the Town or a Licensing Officer appointed by the Town Clerk from time to time;
- j) **“Medical Officer of Health”** means the Medical Officer of Health for the Regional Municipality of York;
- k) **“Operator”** means a person who alone or with others operates, manages, supervises, runs or controls an adult entertainment parlour;
- l) **“Owner”** means a person who alone or with others has the right to possess or occupy an adult entertainment parlour and includes a lessee of an adult entertainment parlour or premises upon which an adult entertainment parlour is located;
- m) **“person”** includes a corporation and their heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law;
- n) **“services”** means services designed to appeal to erotic or sexual appetites or inclinations and includes activities, facilities, performances, exhibitions, viewings and encounters but does not include the exhibition of film approved under the *Theatres Act*;
- o) **“services designed to appeal to erotic or sexual appetites or inclinations”** includes,
 - (i) services of which a principal feature or characteristics is the nudity or partial nudity of any person;
 - (ii) services in respect of which the word “nude”, “naked”, “topless”, “bottomless”, “sexy”, or any other word or any

other picture, symbol or representation having like meaning or implication is used in any advertisement;

- p) **“to provide”** when used in relation to goods includes sell, offer to sell or display for sale, by retail or otherwise such goods, and “providing” and “provision” have corresponding meanings;
- q) **“to provide”** when used in relation to services includes to furnish, perform, solicit, or give such services and “providing” and “provision” have corresponding meanings;
- r) **“Town”** means the Corporation of the Town of Newmarket in the Regional Municipality of York

LICENSE REQUIREMENT

- 1.2 No person shall, within the geographic limits of the Town carry on or engage in the trade, calling, business, or occupation of an Owner of an adult entertainment parlour until he/she has procured a license to do so and such license shall be known as an Adult Entertainment Parlour Owner’s License (A.E.P. Owner’s License).
- 1.3 No person shall, within the geographic limits of the Town carry on or engage in the trade, calling, business or occupation of an Operator of an adult entertainment parlour until he/she has procured a license to do so and such license shall be known as an Adult Entertainment Parlour Operator’s License (A.E.P. Operator’s License).
- 1.4 No person shall, within the geographic limits of the Town carry on or engage in the trade, calling, business or occupation of an Entertainment at an adult entertainment parlour until he/she has procured a license to do so and such license shall be known as Adult Entertainment Parlour Entertainer’s License (A.E.P. Entertainer’s License)

NATURE OF LICENSE

- 1.5 No person shall enjoy a vested right in the continuance of a license and the value of a license shall be the property of the Town and shall remain so irrespective of the issue, renewal or evocation thereof.
- 1.6 No person licensed to carry on business under this By-law shall advertise or promote or carry on such business under any name other than the name endorsed upon his license.
- 1.7 The license for the Owner, Owner/Operator or Operator set out in this By-law shall be for a six (6) month period, to and including the 31st day of January and the 31st day of July in the year of issuance and in the case of an Entertainer, shall be for a one (1) year period, to and including the 31st day of January of the year following the year of issuance, unless they are sooner forfeited or revoked.
- 1.8 A license issued pursuant to the provisions of this By-law shall not be renewed unless an application for renewal has been completed in the form prescribed by this By-law and the applicant meets all the requirements of this By-law.

- 1.9 No license shall be transferred, and if an Owner sells, leases or otherwise disposes of his adult entertainment parlour or the premises of part thereof upon or in which an adult entertainment parlour is operated, to any person, his license in respect of such adult entertainment parlour or premises shall, notwithstanding any other provision of this By-law, be revoked.
- 1.10 Every adult Entertainment Parlour Owner's License shall have endorsed thereon the location of such adult entertainment parlour and such endorsement shall be for one location only and such be valid only for the location endorsed thereon;
- 1.11 Every Adult Entertainment Parlour Operator's License shall have endorsed thereon the location and the name of the adult entertainment parlour with respect to which it is issued and such endorsement shall be for one location only and such license shall be valid only for the location and the adult entertainment parlour endorsed on such license.

APPLICATION

- 1.12 Every applicant shall appear in person at the office of the Town Clerk and shall complete the prescribed forms and provide all information requested therein, and shall furnish to the Licensing Officer such information as the Council may direct and in the case of an adult entertainment parlour owned or operated by a partnership such appearance shall be made by one of the partners, provided the application shall be signed by all of the partners, and in the case of an adult entertainment parlour owned or operated by a corporation such appearance shall be made by an officer of the corporation and not by an agent thereof.
- 1.13 Every applicant for an Adult Entertainment Parlour Owner's License, where such applicant is a natural individual, and every applicant for an Adult Entertainment Parlour Operator's License and every applicant for an Adult Entertainment Parlour Entertainer's License shall submit to having his photograph taken by the Licensing Officer.
- 1.14 Prior to obtaining a license under this By-law, every applicant shall pay to the Town the fee set forth in Schedule 'A' hereto, provided such fee shall not be reduced in the event that the period for which the license is granted is less than six (6) months or one (1) year, as the case may be and which fee shall be non-refundable.
- 1.15 Acceptance of the application and/or the license fee by the Town shall not represent approval of the application for the issuance of a license nor shall it obligate the Town to issue such license.
- 1.16 Without limiting the generality of any other provision in the By-law, every application for a license may be submitted by the Licensing Officer to the Medical Officer of Health, the York Region Police Department and any other government official or functionary for the report, and where any such report is negative or unfavourable to the applicant and, in the opinion of the Licensing Officer, shows adequate reason why a license should not be granted, the applicant shall be furnished with a copy of such report and shall have the right to appear before the Council to show cause why his application should be granted.

- 1.17 Without limiting the generality of any other provision in this By-law, persons associated in a partnership applying for a license under their By-law shall file with their application an affidavit, in writing, signed by all members of the partnership, with declaration shall state:
- a) the full name of every partner and the address of his ordinary residence;
 - b) the name or names under which they carry on business;
 - c) that her persons therein named are the only members of the partnership; and
 - d) the mailing address for the partnership.
- 1.18 If any member of a partnership applying for a license is a corporation, such corporation shall be deemed to be a corporation applying for a license and if such license is issued to the partners such corporation shall be deemed to be a corporation which holds an Owner's or Operator's license.
- 1.19 Without limiting the generality of any other provision in the By-law, every corporation applying for a license shall file with the Licensing Officer, at the time of making its application, a copy of it's article of incorporation or other incorporating documents and shall file with the Town an affidavit, in writing, signed by an officer of the corporation, which affidavit shall state:
- a) the full name of every officer, director and shareholder and the address of his ordinary residence;
 - b) the name or names under which it carries on or intends to carry on business;
 - c) that the persons therein named are the only shareholders of the corporation; and
 - d) the mailing address for the partnership.
- 1.18 If any member of a partnership applying for a license is a corporation, such corporation shall be deemed to be a corporation applying for a license and if such license is issued to the partners such corporation shall be deemed to be a corporation which holds an Owner's or Operator's license.
- 1.19 Without limited the generality of any other provision in the By-law, every corporation applying for a license shall file with the Licensing Officer, at the time of making it's application, a copy of it's articles of incorporation or other incorporating document and shall with the Town an affidavit, in writing, signed by an officer of the corporation, which affidavit shall state:
- a) the full name of every officer; director and shareholder and the address of his ordinary residence;
 - b) the name or names under which it carries on or intends to carry on business;
 - c) that the persons therein named are the only shareholders of the corporation; and
 - d) the mailing address of the corporation.
- 1.20 Every person applying for an Adult Entertainment Parlour Owner's license shall file with the Licensing Officer documentation satisfactory to the Licensing Officer demonstrating the applicant's right to possess or occupy the premises to be used by him as an adult entertainment parlour, and if such person is not the registered Owner or Owner in fee simple of the property upon which the adult entertainment parlour is

located, such person shall file with the Licensing Officer, with his application for an Adult Entertainment Parlour Owner's license, a copy of his lease, if any, and a copy of any other document constituting or affecting the legal relationship between said applicant and the registered Owner and Owner in fee simple of the said real property.

- 1.21 Without limiting the generality of any other provision of this By-law and the general power of the Council to have regard to the well being of the Town and its residents in determining whether to issue a license, the Council shall be entitled to refuse and/or revoke a license where:
- a) The conduct of the applicant affords reasonable grounds for belief that he/she will not carry on his trade, calling, business or occupation in accordance with law and with integrity and honesty; or
 - b) There are reasonable grounds for belief that the carrying on of the trade, calling, business or occupation by the applicant will result in a breach of this By-law or any other law;
 - c) The applicant is a corporation and its conduct of the conduct of its officers, directors, employees and agents affords reasonable grounds for belief that its trade, calling, business or occupation will not be carried on in accordance with law and with integrity and honesty; or
 - d) There are reasonable grounds for belief that the premises, accommodation, equipment or facilities in respect of which the license is required do not comply with the provisions of this By-law or any other law; or
 - e) The conduct of the applicant or other circumstances afford reasonable grounds for belief that the carrying on by the applicant of the business in respect of which the license is sought would infringe the rights, or endanger the health or safety of other members of the public.

CHANGE OF STATUS

- 1.22 Where there is to be any change of the particulars relating to a person licensed under this By-law, which particulars are required to be filed with the Town on applying for a license under this By-law, such person shall report the change to the Town within seven (7) days of the change;
- 1.23 Where a group of persons licensed under this By-law form a partnership and there is to be a change in the composition of the partnership, the persons licensed hereunder in partnership shall obtain the approval of the Town to such change prior thereto, failing which, the license may be revoked, provided where there has been a transfer of a majority or controlling interest in the partnership since the license was granted, either by one transaction or a number thereof and whether any such prior transfer was with or without the approval of the Town, the license shall be revoked.
- 1.24 Where a person licensed under this By-law is a corporation and there is to be a change in the composition of the shareholders, such person shall obtain the approval of the Town to such change prior thereto, failing which, the license may be revoked, and where the transfer results in a new person or persons acquiring a controlling interest in the corporation since the license was granted, either by one transaction or a number thereof and whether any such prior transfer was with or without the approval of the Town, the license shall be revoked.

REGULATIONS

- 1.25 No Owner shall permit any person other than the licensed Operator to operate an adult entertainment parlour.
- 1.26 No Operator shall operate an adult entertainment parlour in a premises for which the Owner thereof has not obtained an Owner's license under this By-law.
- 1.27 No Operator shall operate an adult entertainment parlour other than the adult entertainment parlour endorsed on his license and at the location endorsed therein.
- 1.28 Every contract of service, contract for services or other document constituting or pertaining to the relationship between Owner and Operator of an adult entertainment parlour shall be in writing and shall be made available for inspection at any time by the Town's By-law enforcement officers of the Licensing Officer upon request, and shall be retained by the Owner or Operator for a period of six months after it's termination.
- 1.29 No Owner or Operator shall permit any person other than an Entertainer duly licensed pursuant to this By-law to provide services in an adult entertainment parlour.
- 1.30 No Entertainer or other person shall provide services in an adult entertainment parlour unless the Owner of the said adult entertainment parlour and the Operator, if any, is duly licensed as Owner or Operator respectively pursuant to this By-law.
- 1.31 No Owner or Operator, shall, in respect of any adult entertainment parlour owned or operated by him, knowingly permit any Entertainer while providing such services as an Entertainer, to touch, or to be touched by, or have physical contact with any other person in any manner whatsoever involving any part of that person's body.
- 1.32 No Entertainer shall, while providing services as an Entertainer, touch or have physical contact with any other person in any manner whatsoever involving any part of that person's body.
- 1.33 Every Owner, Operator or Entertainer who changes his address shall, within, two days after such change, attend before the Licensing Officer and notify the Licensing Officer of such change of address and if requested by the Licensing Officer, produce his license for the change to be entered thereon.
- 1.34 Every Owner and every Operator shall keep records and books of accounts of all business transacted in or by or in respect of the adult entertainment parlour showing information respecting each Entertainer which shall include:
 - a) the legal name of each Entertainer
 - b) the address of each Entertainer
 - c) the date of commencement of employment of each Entertainer
 - d) the amount of salary, commission or other remuneration paid to each Entertainer the date of termination of each Entertainerwhich records and book of accounts shall be maintained and retained for at least one year after the information required herein has been entered.

- 1.35 Every Owner and every Operator shall, in the operation of the adult entertainment parlour comply with, and ensure compliance with, the following regulations:
- a) The premises shall be provided with adequate light and ventilation;
 - b) The premises and all fixtures and equipment therein shall be regularly washed and kept in a sanitary condition;
 - c) The premises shall be equipped with an effective utility sink;
 - d) Adequate toilet and washroom accommodation shall be provided, and there shall be separate such rooms for males and females;
 - e) Washrooms shall be equipped with:
 - (i) an adequate supply of hot and cold water;
 - (ii) an adequate supply of liquid soap in a suitable container or dispenser;
 - (iii) hot air dryers or individual towels in a suitable container or dispenser;
 - (iv) a suitable receptacle for used towels and waste material;
 - (v) No washroom, toilet, sink or basin used for domestic purposes shall be used in connection with an adult entertainment parlour.
- 1.36 Every Owner and every Operator shall exhibit over the street door in the lower front window of the premises in respect to which such person's license is issued or in some other conspicuous place on the exterior of such premises satisfactory to the Licensing Officer a sign issued by the Licensing Officer bearing the words, "LICENSED ADULT ENTERTAINMENT PARLOUR NO. ...," (inserting after "No." the Owner's license number), and "Comments regarding this business may be made to the Town of Newmarket Licensing Office at 905-895-5193".
- 1.37 Every Owner and every Operator shall keep his license issued in respect of an adult entertainment parlour posted in a conspicuous place in the said premises, satisfactory to the Licensing Officer, at all times during the currency of the license.
- 1.38 Every Owner, every Operator and every Entertainer of an adult entertainment parlour in the Town of Newmarket and every Owner, every Operator and every Entertainer licensed under this By-law in attendance at an adult entertainment parlour in the Town whether engaged in his respective trade, calling, business or occupation at that time, shall upon a request made to him by any Peace Officer, By-law Enforcement Officer, Medical Officer of Health, of the Licensing Officer provide his name and residential address, and if he/she is licensed under this By-law in respect of any trade, calling, business or occupation relation to such adult entertainment parlours, he/she shall produce his said license.
- 1.39 No Owner or Operator shall permit any services to be given, performed, provided or received in any adult entertainment parlour in breach of any of the provisions contained in this By-law.
- 1.40 No Owner or Operator shall permit any person who appears to be intoxicated by alcohol or a drug to enter or remain in any adult entertainment parlour operated by him.

- 1.41 Either the Owner, where the Owner is a natural individual, or one of the Owners, where the Owner is a partnership, or an Operator licensed in respect of such Owner's adult entertainment parlour shall be in attendance at such Owner's adult entertainment parlour during all opening hours, and no Owner or Operator shall permit an adult entertainment parlour owned or operated by him to open for business, or remain open for business, or any Entertainer to enter or remain therein, or any services to be provided at such entertainment parlour unless this section is complied with, and for greater particularity, where an Owner is an artificial being, such Owner shall not permit an adult entertainment parlour owned or operated by him to open for business, or remain open for business, or any Entertainer to enter or remain therein, or any services to be provided at such entertainment parlour unless an Operator licensed in respect of such Owner's adult entertainment parlour is in attendance.
- 1.42 No Owner, Operator or Entertainer shall take, consume or have alcohol or drugs in his possession in an adult entertainment parlour, nor shall the use of alcohol or drugs by him be apparent while that adult entertainment parlour is under his charge or when he/she is providing services therein, as the case may be.
- 1.43 For the purposes of this By-law, the word "drugs" shall be deemed to exclude patent medicines and prescription drugs required for medicinal purposes.
- 1.44 Notwithstanding anything herein to the contrary, every Owner who operates his own adult entertainment parlour and every Operator shall provide and maintain at all times at the adult entertainment parlour operated by him a first-aid kit equipped in a manner satisfactory to the Medical Officer of Health for the Regional Municipality of York.
- 1.45 Every Owner, and every Operator shall, while engaged in his respective trade, calling, business or occupation in an adult entertainment parlour, be neat and clean in his person and civil and well behaved to members of the public with whom he/she is dealing.
- 1.46 No Owner, or Operator shall use or permit to be used any camera or other photographic or recording device in, upon or at an adult entertainment parlour by any person other than:
- a) a public health inspector acting under the direction of the Medical Officer of Health,
 - b) a By-law Enforcement officer, a Provincial Offences Officer of the Licensing Officer;
 - c) the Licensing Officer;
 - d) a Peace Officer, or;
 - e) the Medical Officer of Health

SIGNS AND ADVERTISEMENT

Advertisement

- 1.47 No person shall publish, display or circulate and posted, handbill, sign, card, novelty or other matter used to advertise or promote the business of an adult entertainment parlour or any shown or other performance, except to publish its name, address and the telephone number in a telephone book. Notwithstanding the generality of the foregoing, a person is permitted to publish an advertisement in a

newspaper with its primary general circulation intended for the City of Toronto.

- 1.48 Every Owner or Operator shall obliterate, withdraw, remove or destroy any such poster, handbill, card, novelty, notice, advertisement or other matter which may be published, displayed or circulated immediately upon becoming aware of same or upon being ordered to do so by the Licensing Officer, whichever shall first occur.

Signs

- 1.49 No person shall erect any sign advertising an adult entertainment parlour unless the sign conforms to the regulations of this and every other By-law of the Town of Newmarket. Notwithstanding the provisions of any other By-law of the Town of Newmarket, all signs advertising an adult entertainment parlour shall comply with the following regulations:
- 1.50 Notwithstanding the provisions of any other By-law, no sign may be erected advertising or promoting an adult entertainment parlour except on the exterior wall of the premises from which the adult entertainment parlour operates.
- 1.51 Not more than two (2) non-illuminated signs may be erected on the exterior walls of the premises.
- 1.52 The maximum size of any signs or signs erected on the exterior wall of the premises shall not exceed fifty (50) square feet in the aggregate and where only one sign is erected, the maximum area of such sign shall be fifty (50) square feet.
- 1.53 Any sign advertising an adult entertainment parlour shall not include any letters, markings, symbols, pictures or representations except the name of the adult entertainment parlour as recorded on the application for a license.
- 1.54 For the purposes of this By-law, a “sign” shall included any letters, markings, symbols, pictures, or representations on any building, surface, object, or vehicle whether movable or immovable.
- 1.55 Every Owner or Operator shall obliterate, withdraw, remove or destroy any sign which has been erected contrary to the provisions of this By-law immediately upon becoming aware of same or upon being ordered to do so by the Licensing Officer, whichever shall first occur.

CONSTRUCTION AND EQUIPMENT OF PREMISES

- 1.56 Within any premises used as an adult entertainment parlour, the Owner shall designate the single room which shall be the only room within which services may be provided and which room shall be open at all times to all persons attending the adult entertainment parlour during the business hours of the adult entertainment parlour.
- 1.57 No room, cubicle or other enclosure located within the premises used as an adult entertainment parlour, other than the room designated pursuant to Section 1.56 hereof, maybe used for the provision of services and it shall be the duty of every Owner and every Operator to ensure that this provision is complied with.

- 1.58 No Entertainer or other person shall provide any service in any room, cubicle or other enclosure other than in the room designated pursuant to Section 1.56 hereof.
- 1.59 No door to any room, cubicle or other enclosure located within the premises used as an adult entertainment parlour, save and except a room designated by the Owner and used by the Owner or Operator as an office and a room designated by the Owner and used only for storage, shall be equipped or constructed with a locking device of any kind, or with any other device or structure which could delay or hinder anyone from entering or obtaining access to such a room or cubicle and it shall be the duty of every Owner and every Operator to ensure that this provision is complied with.
- 1.60 During the hours of business of an adult entertainment parlour, it shall be the responsibility of the Owner and of the Operator to ensure that the door or doors of other principal means of access into the adult entertainment parlour by the public shall be kept unlocked and available so that anyone coming into the adult entertainment parlour from the street or other public place may enter therein without hindrance or delay.
- 1.61 Every Owner applying for a license under this By-law shall file with his application a floor plan of the premises to be used as an adult entertainment parlour upon which the Owner shall clearly designate the room which shall be used to provide services, the room which shall be used as an office by the Owner and Operator and the storage room, if any. In the event the Owner or the Operator wishes to amend the floor plan, he/she shall first file with the Licensing Officer a copy of the amended floor plan and shall not proceed to make such alterations without first obtaining the approval of the Licensing Officer, failing which the license of the Owner and the Operator shall be revoked.

AGE RESTRICTIONS

- 1.62 No person under the age of eighteen may be or act as an Owner or Operator of an adult entertainment parlour or provide any services whatsoever in an adult entertainment parlour.
- 1.63 No Owner shall permit any person under the age of eighteen to be or act as an Operator of an adult entertainment parlour or to provide any services in an adult entertainment parlour.
- 1.64 No one may provide services in an adult entertainment parlour to a person under the age of eighteen years.
- 1.65 No Owner or Operator shall permit any person under the age of eighteen to enter or remain in any adult entertainment parlour owned or operated by him.
- 1.66 This section shall not be deemed to prohibit any person from entering or remaining in any premises licensed as an adult entertainment parlour except when services are being provided in such premises.

HOURS OF OPERATION

- 1.67 No Owner or Operator shall, in respect of an adult entertainment parlour other than an adult entertainment parlour licensed under the *Liquor License Act*, open such adult entertainment parlour for business

or permit the same to be or to remain open for business or permit any services of any kind to be provided in the said adult entertainment parlour at any time between the hours of 11:59 o'clock in the afternoon (11:59 p.m.) of any day and 2:00 o'clock in the afternoon (2:00 p.m.) of the next day.

- 1.68 No Owner of Operator shall, in respect of an adult entertainment parlour licensed under the Liquor License Act or any other similar legislation, permit any services of any kind designed to appeal to erotic or sexual appetites or inclinations to be provided in the said adult entertainment parlour at any time except during such hours as are permitted for the service of liquor by a license issued under the *Liquor License Act* or any other similar legislation for the establishment provided that such adult entertainment services shall not be provided between 2:00 o'clock in the forenoon (2:00 a.m.) and the start of the hours of services of liquor during any day.
- 1.69 For the purposes of this section, so long as the time commonly observed in the Town is one hour in advance of standard time, the times mentioned in this section and in this Schedule shall be reckoned in accordance with the time so commonly observed and not standard time.

DEFINED AREA AND LIMITATION ON NUMBER

- 1.70 No person shall operate or permit to be operated an adult entertainment parlour with the geographic limits of the Town:
- a) On the following highway or highways:
 - Bathurst Street
 - Yonge Street (Highway 11)
 - Eagle Street
 - Davis Drive
 - Highway 9
 - Main Street South
 - Main Street North
 - Gorham Street
 - Prospect Street
 - Bayview Avenue
 - Leslie Street
 - Mulock Drive
 - b) within three hundred and five (305) meters of any of the highways referred to in (1.75);
 - c) within three hundred and five (305) meters of any residential zone;
 - d) within three hundred and five (305) meters of any school, church or public park or child day care centre in existence when the application for license is submitted to the Town;
 - e) within three hundred and five (305) meters of the Highway 4040 corridor;
 - f) within three hundred and five (305) meters of any other adult entertainment parlour;
 - g) which does not conform with any restricted area (zoning) By-law of the Town of Newmarket;
 - h) which does not have full municipal water and sanitary sewer services.
- 1.71 Every adult entertainment parlour shall be located in a single use building on a single lot or block which may be conveyed in compliance with the provisions of the *Planning Act R.S.O. 1990 c.P.13* and upon which no other buildings are located.

- 1.72 The number of Adult Entertainment Parlour Owner's Licenses, which may be granted by the Council in respect of an adult entertainment parlour within the Town shall be limited to two (2).

REVOCACTION OF LICENSE

- 1.73 Council may revoke or terminate any license issued under this By-law for any violation by an Owner or an Operator of any of the provision of this By-law or of By-law 1984-79, (a By-law to provide for the regulation of eating establishments) as amended, or for any breach of criminal statute committed on the premises or in any way, directly or indirectly, arising from the operation carried out on the premises, but before revoking or terminating any such license, the Operator or Owner shall be given at least seven (7) days notice, mailed or delivered to his last known address of the time and place where Council will be considering the matter and he/she shall be permitted either personally or by his representative to appear before Council to show cause why such license should not be revoked or terminated.
- 1.74 Notice of revocation of or termination of any license may be given by Council by letter signed by the Town Clerk and mailed by prepaid registered mail or delivered to the last known address of the Owner or Operator, as the case may be, and upon such notice being given, the license shall be revoked and terminated.

MISCELLANEOUS

- 1.75 The making of a false or intentionally misleading recital of fact, statement of representation in any agreement, statutory declaration or application form required by the By-law shall be deemed a violation of the provisions herein.
- 1.76 Every person shall comply with the provisions of this By-law applicable to him whether or not he/she is licensed under this By-law.
- 1.77 If a Court of competent jurisdiction should declare any Section or part of a section of this By-law to be invalid, such section or part of the section shall not be construed as having persuaded or influenced Council to enact the remainder of this By-law and it is hereby declared that the impugned section or part thereof shall be severable and distinct from the remainder of this By-law and the remainder of this By-law shall be valid and shall remain in full force and effect.
- 1.78 For greater certainty the provisions of By-law 1984-79, as amended, of the Town of Newmarket shall apply to adult entertainment parlours where applicable and it shall be the duty of every Owner and every Operator to ensure compliance with By-law 1984-79, as amended.
- 1.79 Every Owner and every Operator shall make available for inspection by the Licensing Officer, a Peace Officer, a Medical Officer of Health, a Provincial Offences Officer, or a By-law Enforcement Officer the original of any document or record referred to in this By-law.
- 1.80 Every Owner and every Operator of an adult entertainment parlour shall, at all times permit the entry by and the inspection of an adult entertainment parlour by a By-law Enforcement Officer, a Provincial Offences Officer, the Licensing Officer, a Medical Officer of Health or a Peace Officer.

- 1.81 No personnel shall obstruct or hinder the entry of the inspection of an adult entertainment parlour by a By-law Enforcement Officer, a Provincial Offences Officer, the Licensing Officer, a Medical Officer of Health or a Peace Officer.

OFFENCE AND PENALTY

- 1.82 Wherever in this By-law there is a duty imposed upon any person and such person fails to perform such duty, he/she is guilty of an offence under this By-law and upon conviction is liable to a fine of not less than three hundred (\$305.00 includes costs) dollar and not more than ten thousand (\$10,005.00 includes costs) dollars or to imprisonment for a term not exceeding one year, or to both.
- 1.83 Wherever in this By-law there is a prohibition stated and any person performs the act or aids and abets any person in the performance of the act so prohibited, he/she is guilty of an offence and upon conviction is liable to a fine of not less than three hundred (\$305.00 includes costs) dollars and not more than ten thousand (\$10,005.00 includes costs) dollars or to imprisonment for a term not exceeding one year, or to both.
- 1.84 Without limiting any other provisions of this By-law and in addition thereto, every person who otherwise contravenes the provisions of this By-law is guilty of an offence and upon conviction is liable to a fine of not less than three hundred (\$305.00 includes costs) dollars and not more than ten thousands (\$10,005.00 includes costs) dollars or to imprisonment for a term not exceeding one year, or to both.
- 1.85 Every director or officer of a corporation who concurs in any contravention by the corporation of any provision of this By-law is guilty of an offence and upon conviction is liable to a fine of not less than three hundred (\$305.00 includes costs) dollars and not more than ten thousands (\$10,005.00 includes costs) dollars or to imprisonment for a term not exceeding one year, or to both.

SCHEDULE 2

ADULT VIDEO STORES

TO REGULATE AND GOVERN THE SALE AND DISPLAY OF ADULT ENTERTAINMENT GOODS AND TO LICENSE, REGULATE AND GOVERN VIDEOTAPE STORES IN WHICH ADULT VIDEOTAPES AND PROVIDED AND TO LICENSE, REGULATE AND GOVERN ADULT VIDEOTAPE STORES.

DEFINITIONS

- 2.1 In this By-law – Schedule 2
- a) **“adult videotape”** means any videotape, the content of which is designed or held out as a designed, to appeal to erotic or sexual appetites or inclinations, through the pictorial, photographic or other graphic depiction of subject-matter

distinguished or characterized by the portrayal of one or more persons involved or engaging in specified sexual activities, or by an emphasis on the display of human specified body areas;

- b) In the absence of evidence to the contrary, a videotapes classified by the Ontario Film Review Board as “restricted” with the added information piece “adult sex film” shall be deemed to be an adult videotapes, while a videotape which has been otherwise classified by the Ontario Film Review Board, without such classification and information piece shall be deemed not be an adult videotape;
- c) **“adult videotape area”** means an identifiable part of any premises, which part is used for the provision of adult videotapes;
- d) **“adult videotape store”** means any premises:
 - i) used for the carrying on of the business of the provision of adult videotapes; or
 - ii) in which adult videotapes are provided in the pursuance of a business and to which premises entry by persons under the age of 18 years is prohibited, or in respect of which premises it is advertised or notice is given that such entry is prohibited; or
 - iii) in which adult videotapes are provided in the pursuance of a business in respect of which it is advertising devices on or in the premises, or otherwise, that the premises are an “adult video store”, an “adult videotape store” and “adult video rental store”.
- e) **“operator”** includes a proprietor, or any other person who alone or with others, managed, supervises, runs or controls a videotape store;
- f) **“owner”** means a person who alone or with others has a right to possess or occupy a videotape store or actually does possess or occupy a videotape store and includes a lessee of a videotape store or of premises upon which a videotape store is located;
- g) **“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 of membership, subscription, admission or any other manner;
- h) **“videotape”** means cinematographic film, videotape and any other medium from which may be produced visual imaged that may be viewed as moving pictures;
- i) **“videotape store”** means any premises or part thereof in which videotapes are provided in the pursuance of a business, and includes an adult videotape store.

- j) **“Town”** means the Corporation of the Town of Newmarket in the Regional Municipality of York.
- k) **“Town Clerk”** means the Clerk of the Town of Newmarket or his/her designate.

LICENSE REQUIREMENT

- 2.2 There shall be taken out by every operator of an adult videotape store, a license from the Town of Newmarket authorizing him/her to carry on such business in the Town for which license the person obtaining the same pay to the Town at or before the time of taking out such license, the fee fixed by this By-law, and no person shall, within the limits of the Town, carry on or engage in such business until he/she has procured such license so to do.
- 2.3 There shall be taken out by every operator of any videotape store in which the provision of adult videotapes is only incidental to the carrying on of the business of the provision of videotapes which are not adult videotapes, a license from the Town of Newmarket authorizing him/her to carry on such business in the Town for the license the person obtaining the same shall pay to the Town at or before the time of taking out which license, the fee fixed by this By-law, and no person shall, within the limits of the Town, carry on or engage in such business until he/she has procured such license so to do, and the regulations contained in this By-law relating to the display of adult videotapes and to the prohibition of admission to all or part of the premises by person under the age of 18 years, shall apply to all videotape stores.

ADMINISTRATION

- 2.4 The Town Clerk shall:
 - a) receive and process all applications for licenses and renewal of licenses required under this By-law;
 - b) administer the issuance of licenses in accordance with the provisions of this By-law;
 - c) maintain and keep records of all applications received and licenses issued;
 - d) generally perform administrative functions incidental and necessary to the due administration and enforcement of this By-law.

APPLICATIONS FOR LICENSES

- 2.5 Every person applying for a license under this By-law shall file with the Town Clerk a duly completed application in the form provided by the Town Clerk in which the applicant shall provide all information sought in such application form.
- 2.6 The applicant shall, at the time of the filing of the application form required under subsection 2.5, deliver to the Town Clerk the following:
 - a) cash, money order or certified cheque in the amount set out in Schedule 'A' of this By-law, which sum is hereby fixed as

license as the license fee for every license required under this By-law and for the renewal thereof;

- b) if the applicant is a corporation, a copy of the incorporating document and a copy of the last annual information return filed, and a list of the names and home addresses of the directors, shareholders and officers of the corporation;
 - c) if the applicant is a partnership, a list of the names and home address of the partners, and if a registered partnership, a copy of the registered declaration of partnership.
- 2.7 Upon receipt of an application under the By-law, the Town Clerk shall forward a copy of such application to York Regional Police, the Planning Department, the Building Department and any other department of the Town or other agency which may be affected for a report on whether the application complies with all municipal or other requirements.
- 2.8 If the report contains no recommendations adverse to the license being issued to the applicant, the Town Clerk may thereupon issue the license.
- 2.9 If a report adverse to the application is received by the Town Clerk notice of this fact and the reasons therefore are to be served upon the applicant at the address shown on the application form, and the applicant may refer the matter to the Council, or to a Committee established by the Council for the holding of hearings under this By-law.
- 2.10 The Town Clerk shall, in any notice served under subsection 2.9, include in such notice a statement that the applicant may require a hearing of the application by the Council, or to a Committee established by the Council, by serving a notice in writing to that effect upon the Town Clerk within 15 days of the date of the notice, and a statement that if no such notice is served by the applicant the application may not be granted and the applicant will not be entitled to any further notice in the proceedings.
- 2.11 Where the Town Clerk received notice from an applicant requiring a hearing in accordance with section 2.10. the Town Clerk shall forthwith refer the application to the Council or Committee as the case may be, for a hearing.
- 2.12 Where the Town Clerk does not receive notice from an applicant requiring a hearing in accordance with this section, the Town Clerk need not process the application further, and no further notice is required to be served upon the applicant.
- 2.13 Where an application has been referred to the Council or the Committee for a hearing under this section, and the applicant does not attend before the Council or Committee at the time and place of which notice has been served upon such applicant in accordance with this By-law, the Council or the Committee may hold a hearing in the absence of the applicant or may decide to take no further action with respect to the application, and no further notice is required to be served upon the applicant and the decision of the Council or Committee is final.
- 2.14 Where the Town Clerk has referred an application to the Council or a Committee for a hearing pursuant to section 2.11 of this By-law, the

Council or the Committee may, after hearing, or after an opportunity for a hearing has been given to the applicant:

- a) grant the application in whole or in part and direct that the license be issued subject to compliance with the By-law;
- b) grant the application subject to such condition as the Council or the Committee, as the case may be, considers just and equitable in attaining the purpose of this By-law, and as are accepted by the applicant, and direct that the license be issued subject to such conditions and in compliance with the By-law.
- c) refuse in whole or in part in grant the application upon grounds contained in this By-law or otherwise by law; or
- d) adjourn the application in accordance with this By-law, or make such other disposition as may be permitted under this By-law and is in accordance with law. The decision of the committee is final.

2.15 An applicant for a license who complies with the provisions of this By-law is, subject to the provisions of this By-law, entitled to be issued a license, except where;

- a) there are reasonable grounds for belief that any application or other document provided to the Town Clerk by or on behalf of the applicant contains a false statement or provides false information; or
- b) the past or present conduct of the applicant, or of any partner, in the case of an applicant which is a partnership, or of any director, shareholder or officer of the corporation, if the applicant is a corporation, affords reasonable ground for belief that the business in respect of which the applicant is made will not be carried on in accordance with the law and with integrity and honesty; or
- c) there are reasonable grounds for belief that the carrying on of the said business will result in a breach of this By-law or any other law, including any applicable zoning requirement; or
- d) the financial position of the applicant affords reasonable grounds to believe that the business will not be carried on in a financially responsible manner; or
- e) there are reasonable grounds for belief that the application does not meet all the requirements of this By-law, or in respect of which the issuing of a license in respect of the business is not permitted by this By-law; or
- f) there are reasonable grounds for belief that the building, premises or place in which the business is carried on or intended to be carried on does not comply with the provisions of this By-law, or with any other law, including any applicable building requirements or zoning By-law, or is dangerous or unsafe; or

- g) the conduct of the applicant or one or more of the person referred to in paragraph 2.15b of the subsection affords reasonable grounds for belief that the carrying on of the business in respect of which the license is sought would infringe the rights, or endanger the health or safety or on of more members of the public; or
- h) the fee payable in respect of the license applied for has not been paid.

REVOCATION, CANCELLATION, SUSPENSION

- 2.16 The Council may revoke, cancel or suspend any license issued under this By-law for breach of any of the provisions of this By-law, provided that no license shall be revoked, cancelled or suspended except after a hearing by the Council, or a Committee appointed by By-law for the holding of one or more hearings, or after an opportunity for such a hearing has been afforded to the licensee as set out in section 2.13 of this By-law.
- 2.17 The Town Clerk may, where he/she has reasonable grounds to believe that any one or more grounds exist upon which a license could be revoked or suspended, provide written notice to the licensee and to the Council of such fact, and provide notice to the licensee of a right to a hearing in accordance with this By-law and other applicable law.

ISSUANCE AND TERMS OF LICENSES

- 2.18 Every license issued under this By-law shall expire on December 31 of the year in which it is issued.
- 2.19 A license issued under this By-law is personal to the licensee, and cannot be transferred.
- 2.20 The rights granted by a license issued under this By-law apply only to the location for which the license is issued.
- 2.21 Where a license has been revoked, the licensee is not entitled to a refund of all or any part of the license fee.

NOTICE

- 2.22 Any notice required to be given under this By-law is sufficiently given if delivered personally or by telephone transmission of a facsimile or sent by registered or certified mail addressed to the person to whom delivery is required to be made according to the Town Clerk application or license records.
- 2.23 Where service is affected by registered mail or certified mail, it shall be deemed to be made on the seventh (7th) day after the date of mailing.
- 2.24 Where service is made by telephone transmission of a facsimile between 5:00 p.m. and midnight, it shall be deemed to have been made on the following day.

REGULATIONS APPLICABLE TO ADULT VIDEOTAPE STORES

- 2.25 Every license shall:

- a) prominently display the license at the premises licensed at all times and shall produce the license upon request by the Town Clerk any By-law enforcement officer and any police officer;
- b) keep the premises in a clean and sanitary condition;
- c) maintain on the premises, available for inspection by the Town Clerk any By-law Enforcement Officer or any Police Officer, during all business hours, a current list of all adult videotapes available on the premises;
- d) carry on business only in the name in which the license is issued, or such other business or trade name provided to the Town Clerk and shown on such license;
- e) advertise, promote and carry on such business only under the name in which the license is issued, or such other business or trade name provided to the Town Clerk and shown on such license.

2.26 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 such store;

2.27 No owner, operator or any other person shall work in an adult videotape store, or in that part of any videotape store in which adult videotapes are provided, unless such person is of the age of eighteen years or older.

SIGNS AND ADVERTISEMENT

Advertisement

- 2.28 No person shall publish, display or circulate any poster, handbill, sign, card, novelty or other matter used to advertise or promote the business of an adult videotape store, except to publish its name, address and telephone number in a telephone book.
- 2.29 Every owner or operator shall obliterate, withdrawn, remove or destroy any such poster, handbill, card, novelty, notice, advertisement or other matter which may be published, displayed or circulated immediately upon becoming aware of same or upon being ordered to do so by the Town Clerk whichever shall first occur.

Signs

- 2.30 Every operator shall post and keep posted at every entrance to any adult videotape store operated by such operated, 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.
- 2.31 No person shall erect any sign advertising an adult videotape store unless the sign conforms to the regulation of this and every other By-law of the Town of Newmarket. Notwithstanding the provisions of any other By-law of the Town of Newmarket, all signs advertising an adult videotape store shall comply with the following regulations:

- a) Notwithstanding the provisions of any other By-law, no sign may be erected advertising or promoting an adult videotape store except on the exterior wall of the premises from which the adult videotape store operates.
- b) Not more than two (2) non-illuminated signs may be erected on the exterior walls of the premises.
- c) The maximum size of any sign or signs erected on the exterior wall of the premises shall not exceed fifty (5) square feet in the aggregate and where only one sign is erected, the maximum area of such sign shall be fifty (50) square feet.
 - i) Any sign advertising an adult videotape store shall not include any letters markings, symbols, pictures or representations except the name of the adult videotape store as recorded on the application for a license and shall be restricted to the words “adults videos”, “adult videotapes” or “adult videotapes sales or rentals”.
 - ii) For the purposes of this By-law, a “sign” shall include any letters, markings, symbols, pictures, or representations on any building, surface, object, or vehicle whether moveable or immovable.

2.32 Every owner or operator shall obliterate, withdrawn, remove or destroy any sign which has been erected contrary to the provisions of this By-law immediately upon becoming aware of same or upon being ordered to do so by the Town Clerk whichever shall first occur.

REGULATIONS APPLICABLE TO ALL VIDEOTAPE STORES

- 2.33 Every owner and every operator of a videotape store whether or not he/she is required to be licenced under thus By-law, shall, in the carrying on of such business, comply with the regulations contained in this By-law relating to the provision of adult videotapes;
- 2.34 Every owner and operator referred to in subsection 2.27 shall ensure that every person working in such videotape store complies with all requirements of the By-law relating to the provision of adult videotapes and the prohibition of access to all or part of the premises to persons under the age of eighteen years, as required by this By-law.
- 2.35 Every person working in a videotape store shall comply with all requirements of this By-law relating to the provision of adult videotapes and the prohibition of access to all or part of the premises to persons under the age of eighteen years, as required by the By-law.
- 2.36 No owner or operator of a videotape store in which adult videotapes are provided, shall permit any person under the age if eighteen years to enter or remain in any part of such store where adult videotapes are provided, or within three metres of any adult videotape unless such adult videotape is located in an adult videotape area;
- 2.37 Every owner and operator of a videotape store in which any adult videotape is provided, shall affix, in a prominent location inside such store and at every entrance to any adult videotape area, a sign or signs sufficient to indicate clearly to persons in the store, that no person under the age of eighteen years is permitted to enter or remain in any adult videotape area in accordance with this By-law;

- 2.38 Every operator or a videotape store, including an adult videotape store, and every person working in such store, shall ensure that no person under the age of eighteen years is permitted to enter an adult videotape store, or any adult videotape area, in accordance with this By-law;
- 2.39 Every operator of a videotape store and every person working in such store shall ensure that no adult videotape, or container for an adult videotape shall be displayed in such a manner so as to be visible from outside the store;
- 2.40 Every operator of a videotape store and every person working in such store shall ensure that no adult videotape, or container for an adult videotape, shall be displayed in a videotape store that is not an adult videotape store, in a location where it can be seen by persons in the store, unless such adult videotape or container is in a separate location in such store to which persons under the age of eighteen years are not permitted to enter, and such adult videotape or container is displayed in a location where it cannot be seen from outside such area.
- 2.41 Any person who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction, is liable to a fine as provided for under the *Provincial Offences Act*.

SCHEDULE 4

Reserved for Future Use

SCHEDULE 7

BODY RUB PARLOURS

RESPECTING THE LICENSING, REGULATING AND INSPECTING OF BODY-RUB PARLOURS AND BODY-RUB ATTENDANTS.

DEFINITIONS

- 7.1 In this By-law – Schedule 7;
- a) **“attendant”** means a person who, in pursuance of a trade, business or occupation, provides body-rubs at a body-rub parlour;
 - b) **“body-rub”** includes the kneading, manipulating, rubbing, massaging, touching or stimulating by any means of a person’s body or part thereof, but does not include medical or therapeutic treatment given by a person otherwise duly qualified, licensed or registered to do so under the laws of the Province of Ontario;
 - c) **“body-rub parlour”** includes any premises or part thereof where a body-rub is performed, offered or solicited in pursuance of a trade, calling, business, or occupation, but does not include any premises or part thereof where the body-rubs performed are for the purpose of medical or therapeutic treatment and are performed or offered by persons otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario;

- d) **“complementary health care organization”** shall have the meanings assigned thereto in Appendix 7(a) to this By-law;
- e) **“Council”** means the Council of the Corporation of the Town of Newmarket;
- f) **“license”** means an authorization under this By-law to carry on the trade, calling, business or occupation specified therein;
- g) **“Licensing Officer”** means the Town Clerk or his/her designated appointed by the Town Clerk from time to time;
- h) **“Medical Officer of Health”** means the Medical Officer of Health for the Regional Municipality of York;
- i) **“Operator”** includes a person who, alone or with others, operates, manages supervises, runs or directs the trade, calling, business or occupation carried on at a body-rub parlous;
- j) **“Owner”** includes a person who, alone or with others, owns or controls the trade, calling, business or occupation carried on at a body-rub parlour or who directs the activities of an Operator and **“Owner”** includes a person who is the tenant or licensee in respect of premises which are utilized as a body-rub parlour;
- k) **“person”** includes a natural individual, and their heirs, executors, administrators or other legal representatives, a corporation, partnership or other form of business association or a receiver or mortgagee in possession;
- l) **“sign”** includes any sign as defined pursuant to Town By-laws as amended;
- m) **“to provide”** when used in relation to body-rubs includes offering to provide or causing or permitting the provision of a body-rub and **“provide”**, **“providing”** and **“provision”** have corresponding meanings;
- n) **“Town”** means the Corporation of The Town of Newmarket in the Regional Municipality of York.

GENERAL REGULATIONS

- 7.2 No person may be an Owner or an Operator of a body-rub parlour without making application for, obtaining and maintaining, pursuant to the terms of this By-law, a body-rub parlour license.
- 7.3 No person may be an attendant without making application for, obtaining and maintaining pursuant to the terms of this By-law, an attendant’s license.
- 7.4 No person may be an Owner or Operator of a body-rub parlour or to be an attendant or provide any body-rub in a body-rub parlour except in compliance with the following regulations:

- a) No person may provide any services designed to appeal to erotic or sexual appetites in a body-rub parlour except in accordance with the provisions of the Town's Adult Entertainment Parlour By-law 2002-151, Schedule 7 or successor legislation thereto;
- b) No person may provide body-rubs in a body-run parlour to any person under the age of eighteen years and no person under the age of eighteen years may be allowed to enter or remain in any part of a body-rub parlour;
- c) Each Owner or Operator shall ensure that there is posted in a prominent location at the entrance to the body-rub parlour a sign indicating that no person under the age of eighteen years may enter or remain in such premises;
- d) No Owner or Operator may permit any employee or person under contract to work at a body-rub parlour unless such person is at least 18 years of age and such person has been instructed with regard to the regulations of this By-law and complies with these regulations;
- e) No Owner or Operator may permit a body-rub parlour to be open for business unless the Owner or Operator is in attendance in person;
- f) With the exception of patent medicines and prescription drugs required for medicinal purposes, no person may take, consume or have alcohol or drugs in their possession in a body-rub parlour;
- g) No Owner or Operator may permit any person who appears to be intoxicated by alcohol or a drug to enter or remain in a body-rub parlour;
- h) No person may advertise or promote a body-rub parlour or the provision of body-rubs at a body-rub parlour except in accordance with the provisions of this By-law respecting "Signs and Advertisements";
- i) No Owner or Operator may permit a body-rub parlour to open or to remain open for business except in compliance with the provisions of this By-law respecting "Hours of Operation";
- j) No person may own or operate a body-rub parlour except in compliance with the provisions of this By-law respecting "Locational Restrictions and Limitations on Number";
- k) No person may own or operate a body-rub parlour except in compliance with the provisions of this By-law respecting "Design of Premises";
- l) Every Owner and Operator shall keep their license certificate issued in respect of a body-rub parlour posted in a conspicuous place in the said premises in a manner satisfactory to the Licensing Officer at all times during the currency of the license;

- m) No Owner or Operator may permit any attendant to provide body-rubs at a body-rub parlour unless such attendant is licensed pursuant to the provisions of this By-law and their license has not expired, been revoked or suspended;
- n) No attendant may provide body-rubs at a body-rub parlour unless there is in attendance in person at the premises a licensed body-rub parlour Owner or Operator and their license has not expired, been revoked or suspended;
- o) Every contract for services or other document pertaining to the relationship between an Owner or Operator and any attendant at a body-rub parlour shall be in writing and shall be made available to a Licensing Officer upon request for inspection at any time during business hours of the body-rub parlour and during all times when body-rubs are provided, and shall be retained by the Owner or Operator for a period of six months after the termination or completion of such contract;
- p) Every owner shall post and maintain, in a prominent location that is satisfactory to the Licensing Officer, a copy of all attendant licenses in relation to person providing body-rubs at the body-rub parlour;
- q) Every recipient of body-rubs in a body-rub parlour shall be clothes in a manner which ensures that the person's genitalia and breasts are covered at all times;
- r) Every attendant of body-rubs in a body-rub parlour shall be clothed in a manner which ensures that the person's genitalia and breasts are covered at all times;
- s) No Owner, or Operator may use or permit to be used any camera or other photographic or recording device at a body-rub parlour by any person. Notwithstanding the foregoing, a public health inspector acting under the direction of the Medical Officer of Health, the Licensing Officer, a Peace Officer or a By-law Enforcement Officer may use a camera or other photographic or recording device at a body-rub parlour during the course of an inspection or investigation thereof. In addition, an Owner or an Operator may maintain a photographic device in the entrance lobby of the premises for security purposes;
- t) Every Owner shall post and maintain in the lobby or entrance of the body-rub parlour, in a manner that is satisfactory to the Licensing Officer, a sign which provides as follows: "This premises is licensed as a body-rub parlour by the Town of Newmarket. The By-law regulating this premises makes it an offence for any person to provide services in a body-rub parlour that are designed to appeal to erotic or sexual appetites."

SIGNS AND ADVERTISEMENTS

- 7.5 No person may erect or maintain any sign advertising a body-rub parlour or the body-rubs providing from such premises except in accordance with Town By-laws. Notwithstanding the provisions of Town Sign By-law no person may erect or maintain any sign

advertising a body-rub parlour except in accordance with the following additional regulations:

7.6 No person may erect or maintain any of the following signs in respect of a body-rub parlour in respect of any body-rubs provided from such premises:

- awning sign
- projecting sign
- portable sign
- ground or pylon sign
- canopy sign
- inflating sign
- trailer sign
- sandwich board sign

7.7 No person may circulate, post, distribute or cause to be circulated, posted or distributed any posted, flyer, handbill or other form of printed sign on premises or locations other than the body-rub parlour, except to publish its name, address and telephone number in the telephone book.

7.8 Nothing within this By-law shall be deemed to constrain any person from erecting or maintaining any sign or advertising on any interior wall of a body-rub parlour, provided the content of such sign is not visible from the exterior of the body-rub parlour;

7.9 No person may erect or maintain any sign or advertising in respect of a body-rub parlour which includes any letters, markings, symbols, pictures or representation except the name of body-rub parlour as recorded on the application for license and any registered copyright logo or symbol, provided a copy of such logo or symbol is filed with the Licensing Officer as part of the licensing process;

7.10 Every Owner or Operator shall obliterate, withdraw, remove or destroy any sign which had been erected contrary to the provisions of this By-law immediately upon becoming aware of same or upon being ordered to do so by the Licensing Officer, whichever shall first occur.

DESIGN OF PREMISES

7.11 No person may be an Owner or Operator of a body-rub parlour except in accordance with the following regulations;

- a) The Owner or Operator shall provide the Licensing Officer with a floor plan showing the designated room or rooms for the provision of body-rubs and no person may provide body-rubs in any other room, cubicle, enclosure or partitioned area located within the body-rub parlour. In the event that the Owner or Operator wishes to amend the floor plan, he/she shall first file with the Licensing Officer a copy of the amended floor plan and shall not proceed to make such alterations without first obtaining the approval of the Licensing Officer;
- b) Save and except for one room designated by the Owner or Operator for use as an office and one room designated by the Owner or Operator as a storage room, every Owner or Operator shall ensure that no means of access to any room, cubicle, enclosure or partitioned area in a body-rub parlour is equipped or constructed with a locking device of any kind or with any other device or structure which could delay or hinder anyone from entering or obtaining access to such area;

- c) During the hours of operation of a body-rub parlour the Owner or Operator shall ensure that the principal means of access into the body-rub parlour shall be kept unlocked and available so that anyone coming into the body-rub parlour may enter therein without hindrance or delay;
- d) No premises or part thereof used as a body-rub parlour shall be used as a dwelling or for sleeping purposes or contain therein any furniture which is commonly used or which may be used for sleeping purposes;
- e) Every room designated for the provision of body-rubs pursuant to paragraph (a) hereof shall be equipped with a window to permit observation of the provision of body-rubs by third parties;
- f) Every body-rub parlour shall be provided with adequate ventilation and with lighting that is adequate to ensure visibility and that is uniformly distributed throughout the premises;
- g) Every body-rub parlour and all fixtures and equipment therein shall be regularly washed and kept in a sanitary condition;
- h) Every body-rub parlour shall be equipped with an effective utility sink;
- i) Adequate toilet and washroom accommodation shall be provided in accordance with the regulations set forth under the *Ontario Building Code Act* (as amended);
- j) Washrooms shall be equipped with:
 - (i) an adequate supply of hot and cold water;
 - (ii) an adequate supply of liquid soap in a suitable container or dispenser;
 - (iii) hot air dryers or individual towels in a suitable container or dispenser;
 - (iv) a suitable receptacle for used towels and waste material;
- k) In all shower-bathrooms, if any, and in all sauna-bath rooms, if any:
 - (i) the floors shall be disinfected at least once a week with a disinfecting solution approved by the Medical Officer of Health;
 - (ii) all surfaces and attached accessories of the bath or shower enclosed must be self-draining;
 - (iii) all showers must have removable cleanable drain covers;
 - (iv) floor surfaces both within and without the enclosures shall be of the non-slip type;
- b) Every Owner and Operator shall provide and maintain at all times at the body-rub parlour a first-aid kit equipped in a manner satisfactory to Medical Officer of Health;
- c) Every body-rub parlour shall be constructed in accordance with the *Ontario Building Code Act* (as amended) and every applicant for an Owner's license shall provide the Licensing

Officer with such drawing as may be required to assess compliance with this regard.

HOURS OF OPERATION

7.12 No Owner or Operator may permit any body-rub to be provided in a body-rub parlour and no attendant may provide any body-rub in a body-rub parlour except between the hours of 11:00 a.m. in the morning of any day and 11:59 p.m. in the evening of the same day.

LOCATIONAL RESTRICTIONS AND LIMITATION ON NUMBER

7.13 No person may own or operate a body-rub parlour:

- a) within five hundred (500) metres of any residential zone in existence when the application for license is submitted to the Town;
- b) on or within five hundred (500) metres of Bathurst Street, Yonge Street, Eagle Street, Davis Drive, Hwy 9, Main Street South, Main Street North, Gorham Street, Prospect Street, Bayview Avenue, Leslie Street, Mulock Drive;
- c) within five hundred (500) metres of any school, church or child day care centre in existence when the application for the license is submitted to the Town.
- d) within one (1) kilometre of any other body-rub parlour in existence at the time when the application is submitted to the Town, regardless of whether such other body-rub parlour is licensed or not;

7.14 The number of body-run parlours, which may be licensed within the Town of Newmarket, shall be limited to two (2).

7.15 In the event that there are in existence at the time of passage of the By-law more than three (3) body-rub parlours, licenses shall be available to all entities that are currently providing body-rubs and providing such entities qualify pursuant to the provisions of this By-law. Notwithstanding the fact that more than three (3) body-rub parlour licenses may be issued thereby, it remains the intent of this By-law that no more than two (2) body-rub parlours is appropriate and that the number of licensed body-rub parlours shall, over time decrease to accord with the permitted number.

7.16 No person may own or operate a body-rub parlour from any premises except upon such lands as are zoned to permit the use of a body-rub parlour pursuant to Town Zoning By-laws.

NATURE OF LICENSE

7.17 No person shall enjoy a vested right in the continuance of a license and the value of a license shall be the property of the Town and shall remain so irrespective of the issue, renewal or revocation thereof.

7.18 No person licensed to carry on any trade, calling, business or occupation pursuant to this By-law may advertise or promote or carry on such trade, calling, business or occupation under any name other than the name endorsed upon his license.

- 7.19 The licenses required by the By-law shall, be for a six-month period, to and including the 31st day of January and the 30th day of July from the date of issuance, unless they are sooner forfeited or revoked.
- 7.20 No license shall be transferred or assigned and if an Owner, Operator or attendant sells, leases or otherwise disposes of his interest in the trade, calling business or occupation carried on at a body-rub parlour, their license in respect of such body-rub parlour or activity shall, notwithstanding any other provision of this By-law, be revoked.
- 7.21 Every body-rub parlour license shall have endorsed thereon the location of a body-rub parlour and such endorsement shall be for one location only and such license shall be valid only for the location endorsed thereon.

APPLICATION, RENEWAL AND REVOCATION OF LICENSE

- 7.22 Every applicant shall appear in person before a Licensing Officer and shall complete such license application forms as may be provided from time to time by the Licensing Officer in accordance with the requirements of this By-law and shall provide all information requested thereon. In the case of a body-rub parlour owned by a partnership such appearance shall be made by one of the partners, provided the application shall be signed by all of the partners and in the case of a body-rub parlour owned by a corporation, such appearance shall be made by an officer of the corporation and not by an agent thereof.
- 7.23 Every applicant for a license, where such applicant is a natural individual, shall submit to having his/her photograph taken by the Licensing Officer. Where the applicant is a corporation, such photographs shall be taken of an officer of the corporation. Where the applicant is a partnership, such photograph shall be taken of one of the partners.
- 7.24 Every applicant for an attendant's license shall provide a letter of protective employment or engagement from the Owner or Operator of a licensed body-rub parlour.
- 7.25 Every applicant for an attendant's license shall provide the Licensing Officer with a Medical Certification from a qualified doctor dated within thirty (30) days of the date of the application, indicating that the applicant is free from communicable or transmissible diseases and shall submit to such tests in relation to communicable or transmissible diseases as the Medical Officer of Health may require.
- 7.26 At the time of submission of their application, every applicant shall pay to the Town the fee set forth in Schedule 'A' provided such fee shall not be reduced in the event that the period for which the license is granted is less than six months and which fee shall be non-refundable.
- 7.27 Receipt of the application and/or the license fee by the Town shall not represent approval of the application for the issuance of a license nor shall it obligate the Town to issue such license.
- 7.28 Without limiting the generality of any other provision in this By-law, persons associated in a partnership applying for a license under this By-law shall file with their application a statutory declaration, in writing, signed by all members of the partnership, which declaration shall state:
- a) the full name of every partner and the address of his/her ordinary residence;

- b) the name or names under which they carry on or intend to carry on business;
- c) that the persons therein named are the only members of the partnership; and
- d) the mailing address for the partnership.

7.29 If any member of a partnership applying for a license is a corporation, such corporation shall be deemed to be applying for an Owner's or Operator's license as appropriate in place and stead of the partnership.

7.30 Without limiting the generality of any other provision in this By-law, every corporation applying for a license shall file with the Licensing Officer, at the time of making its application, a copy of its articles of incorporation or other incorporating documents and shall file a statutory declaration, in writing signed by an officer of the corporation, which declaration shall state;

- a) the full name of every shareholder and the address of his/her ordinary residence;
- b) the name or names under which it carries on or intends to carry on business;
- c) that the persons therein named are the only shareholders of the corporation; and
- d) the mailing address for the corporation.

7.31 Every person applying for a body-rub parlour license shall file with the Licensing Officer documentation satisfactory to the Licensing Officer demonstrating the applicant's right to possess or occupy the premises and if any applicant is not the registered Owner of the property upon which the body-rub parlour is to be located, such person shall file with the Licensing Officer a copy of their lease, if any, and a copy of any other document constituting or affecting the legal relationship relating to the said lands or premises between said applicant and the registered Owner.

7.32 The Licensing Officer shall:

- a) receive and process all applications for licenses and renewal of licenses to be issued under this By-law;
- b) co-ordinate the enforcement of this By-law;
- c) generally perform all the administrative functions conferred upon him by this By-law;
- d) make or cause to be made a circulation respecting each application, which shall include circulation of the license application to the Medical Officer of Health and Municipal and Provincial Police Department for comments;
- e) make or cause to be made all investigations and inspections which he/she deems necessary to determine whether an

applicant meets the requirements of this By-law and all applicable laws;

- f) issue licenses to persons who meet the requirements of this By-law and suspend licenses pursuant to the requirements of this By-law;
- g) where a license has been issued pursuant to this By-law and otherwise remains in full force and effect, renew the licenses of persons who meet the requirements of this By-law;

7.33 Notwithstanding the foregoing section, upon review of a license application, including an application for renewal, the Licensing Officer shall prepare a report and seek Council's direction with respect to the issuance or renewal of a license where:

- a) the past or current conduct of the applicant or license holders affords reasonable grounds for belief that he/she is not carrying or not carry on the trade, calling, business or occupation in respect of the body-rub parlour in accordance with law and with integrity and honesty; or
- b) there are reasonable grounds for belief that the carrying on of the trade, calling, business or occupation in respect of the body-rub parlour by the applicant or license holder has or will result in a breach of this By-law or any other applicable law; or
- c) the applicant or license holder is a corporation or a partnership and its conduct or the conduct of its officers, directors, employees, agents or partners affords reasonable grounds for belief that its trade, calling, business or occupation in respect of the body-rub parlour has or will not be carried on in accordance with the law and with integrity and honesty; or
- d) there are reasonable grounds for belief that the premises, accommodations, equipment or facilities in respect of which the license is required do not comply with the provisions of this By-law or any other applicable law; or
- e) the conduct of the applicant or license holder or other related circumstance afford reasonable grounds for the belief that the carrying on by the applicant of the trade, calling, business or corporation in respect of the premises for which the license is sought would infringe the rights, or endanger the health or safety of other members of the public.

7.34 When an application for license is made in accordance with the provisions of this By-law and the applicant meets all the requirements of this By-law or where the Licensing Office has been so authorized by Council in response to a report in this regard, the Licensing Officer shall issue a license certificate which shall set out the expiry date of the license in accordance with this By-law and the applicant shall thereby be licensed.

7.35 The Licensing Officer may suspend a license where there is reason to believe that a breach of this By-law has occurred or for any of the reasons that would form the basis of a report to seek Council's direction with respect to the issuance or renewal of a license. Such suspension shall take effect upon service of written notice thereof to

the licensee and the license shall remain suspended for no more than fifteen days from the date of service of this notice. In order to continue this suspension beyond the fifteen-day period or to revoke the license, the Licensing Officer must prepare a report and receive Council's direction in this regard. here any license is suspended, it shall not be reinstated until the Licensing Officer is able to confirm that the conditions leading to the suspension have been remedied.

- 7.36 At any meeting of Council called in relation to a report to determine the issuance renewal, suspension or revocation of a license:
- a) the applicant will be accorded it's right pursuant to the *Statutory Powers Procedures Act* including the right to appear and speak to the matter;
 - b) where the applicant has been provided with notice of the meeting and does not attend, Council may proceed with the meeting in the absence of the applicant;
 - c) where Council concludes that grounds exist upon which a license may be refused, suspended or revoked, Council may in lieu thereof issue a license for any period up to a full license period, on probation, or without a term of probation, subject to such conditions as Council may impose and are in accordance with law;

7.37 Any license that was issued or renewed between January 1st and June 30th that has not been renewed as at June 30th in the year of its issuance or renewal shall expire on July 1st in the year of its issuance.

7.38 Any license that was issued or renewed after July 1st in a year that has not been renewed as at December 31st in the year of it's issuance or renewal shall expire on January 1st in the year following it's issuance or renewal.

CHANGE OF STATUS

7.39 Where there is any change in any of the particular relating to a person licensed under this By-law, which particulars are required to be filed with the Town on applying for a license under this By-law, such person shall report the change to the Licensing Officer within seven (7) days of the change.

7.40 Where there is to be a change in the composition or the controlling interest of a partnership licensed under this By-law, the persons licensed hereunder in partnership shall obtain the approval of the Licensing Officer to such change prior thereto.

7.41 Where there is to be change in the composition or the controlling interest of the shareholders of a corporation licensed under this By-law, the corporation shall obtain the approval of the Licensing Officer to such change prior. Where there has been any change in the controlling interest of the corporation by virtue of a number of transactions, the license may be suspended, despite the Licensing Officer's prior approval of any one or more such transactions.

OFFENCE, PENALTY AND ENFORCEMENT

7.42 Any person who contravenes that provisions of this By-law, including every person who fails to perform a duty imposed herein or who performs an act prohibited herein and every director or officer of a

corporation who concurs in such a contravention is guilty of an offence and, upon conviction pursuant to the provisions of the *Provincial Offences Act* (as amended), is liable to:

- a) a penalty in the case of persons, other than a corporation, not to exceed \$25,005.00 (includes costs) or imprisonment for a term not to exceed one year or both;
- b) a penalty in the case of a corporation, not to exceed \$50,005.00 (includes costs); and
- c) an order closing the body-rub parlour, which is the subject of the contravention, for a period not to exceed two years.

- 7.43 The making of a false or intentionally misleading recital of facts, statement or representation in any agreement, statutory declaration or application form required by this By-law shall be deemed to be a violation of the provisions of this By-law.
- 7.44 Every person shall comply with the provisions of this By-law applicable to him whether or not he/she is license under this By-law.
- 7.45 Every Owner, Operator and attendant shall, during the operating hours of the body-rub parlour and at all times when body-rubs are provided therein, make available for inspection by the Licensing Officer, a Peace Officer, a Medical Officer of Health, a Provincial Offences Officer, or a By-law Enforcement Officer the original of any document or record referred to in this By-law.
- 7.46 Every Owner and every Operator of a body-rub parlour shall, as all times during the hours of operation of the body-rub parlour and during all hours when body-rubs are being provided at the body-rub parlour, permit the entry by and the inspection of the body-rub parlour by a By-law Enforcement Officer, a Provincial Offences Officer, the Licensing Officer, a Medical Officer of Health or a Peace Officer.

MISCELLANEOUS

- 7.48 The provisions of this By-law will apply to all lands and premises with in the Town.
- 7.49 Should any section of this By-law be declared invalid by a court of competent jurisdiction, such section shall be construed, as being severed here from and the remainder of the By-law shall continue in full force and effect.
- 7.50 All Appendixes referred to in this By-law are deemed to be part of this By-law.
- 7.51 Wherever notice or materials are required to be provided to any person pursuant to this By-law, such notice shall be deemed effective two (2) days after mailing of the materials by registered mail to the last address of that person as indicated upon the license application or upon other material filed with the Town or to the last assessed business address for the person as indicated upon the Taxation Roll Records.
- 7.52 The provisions of this By-law are not applicable in relation to the following activities:

- a) medical or therapeutic treatment given by a person otherwise duly qualified, licensed or registered to do so under the laws of the Province of Ontario; and
- b) health care services provided by a complementary health care service provider in accordance with an under the conditions prescribed in the provisions of Appendix 7(a) to this By-law.

APPENDIX 7(a)

1. In this Appendix to Schedule 7,

- a) “adult entertainment service” means any service appealing to or designed to appeal to erotic or sexual appetites or inclinations, any other service involving sexual touching; any other service offered, provided or received with the purpose or effect of sexual arousal or stimulation; and any services directly or indirectly advertised or described or described as involving any of such kinds or services;
- b) “complementary health care organization” means an association, organization or institution demonstrated to be established for the purpose and with the continuing intent, of ensuring the safe and proper provision of one or more kinds of alternative health care services, through:
 - (i) the admission to membership of persons qualified to provide such service or services;
 - (ii) the promulgation and enforcement of a code of ethics respecting the provision of such service or services;
 - (iii) maintaining, providing and recognizing measurable standards for practices and procedures in the provision of such service or services;
 - (iv) the communication or information relating to such service or services; and
 - (v) involvement in ongoing research, development and education relating to the safe and proper provision of such service or services;
- c) “complementary health care services provider” means an individual providing health care services who:
 - (i) has demonstrated qualifications to provide the particular kind of health care services through successful completion of one or more formal courses of education and training in the provisions of such service offered by an organization or institution which has demonstrated qualifications to provide such courses, in accordance with this Schedule;
 - (ii) has demonstrated himself/herself to be a member in good standing of a complementary health care organization;
 - (iii) has demonstrated himself/herself to be fully insured under a policy of insurance in respect of negligence, malpractice and public liability, in the amount of at least \$1 million in respect of any one claim; and
 - (iv) has demonstrated acceptance and practice of the procedures, practices and ethics of the complementary health care organization of which the individual is a member;

- d) “formal course of education and training” means any such course involving in total at least 140 hours of teaching, demonstrating or supervised practice, offered or recognized by a complementary health care organization as qualifying the individual, in accordance with the procedures, practices and ethics of such organization, to provide safe and proper health care services of the kind which is the subject matter of the area of interest and jurisdiction of the organization and of the course.
2. Any exemption provided by section 3(a) of Appendix 7(a) of the By-law applies only in respect of services which:
- a) do not involve adult entertainment services and are not offered in conjunction with/or from the same premises where a non-exempt body-rub service is provided;
 - b) are health care services provided pursuant to the qualifications referred to in this Schedule and in accordance with the procedures, practices and ethics of the complementary health care organization of which the individual is a member; and
 - c) are made the subject of a permanent records describing the service provided to the recipient by name and accessible by him/her at any time.
3. For the purposes of this Appendix:
- a) demonstration of the academic qualifications of a complementary health care services provided shall be made by filing with the Licensing Officer a certificate or other proof of successful completion of the course in question;
 - b) demonstration of the qualifications of an organization or institution to provide a course leading to qualification in the provision of a kind of health care service, shall be made by filing with the Licensing Officer particulars, in writing, disclosing:
 - (i) documentation of instruments creating the organization;
 - (ii) the name of its principals and officers, members and employees;
 - (iii) every kind of health care services which is the subject matter or interest of the organization, and a full description of the nature of the service;
 - (iv) a short history summarizing the organization's activities and achievements to date;
 - (v) the qualifications of the organization to provide the course; and
 - (vi) a description of every course offered, of any degree, diploma, certificate or other status or qualification awarded for successful completion, and the kind of service or services which such status or qualification qualifies one to provide;
 - c) demonstration of insurance coverage shall be made by filing with the Licensing Officer a copy of the policy or other certified proof of the nature and amount of such insurance;
 - d) demonstration of the nature of a complementary health care organization shall be made by filing with the Licensing Officer particulars in writing providing disclosure of:

- (i) documentation of instruments creating the organization;
 - (ii) the names of its principals and officers, members and employees;
 - (iii) every kind of health care services which is the subject matter or interest of the organization, and a full description of the nature of the service;
 - (iv) a short history summarizing of the organization's activities and achievements to date;
 - (v) an outline of the procedures and practices pursued by the organization and its members;
 - (vi) a copy of the organization's code of ethics;
 - (vii) the nature of the health care service or services provided by the organization and its members, and of the qualifications required to provide every such service;
 - (viii) a list of criteria for membership in the organization, and a list of its members;
 - (ix) a list of course and qualifications recognized or provided by the organization; and
 - (x) information demonstrating the factors listed in paragraph 1(b) of Appendix 7 (a);
- e) demonstration of membership in an organization shall be made by filing a copy of a valid membership card or other valid proof of membership held by the complementary health care provided for the current year.
4. The filing of any record or document with the Licensing Officer referred to in this Schedule may be made by the complementary health care service provider or by the complementary health care organization in respect of it's members.
 5. Acceptance of filing of any document or record does not constitute approval or acceptance by or on behalf of the Town or its Licensing Officer of the truth or accuracy of any information contained therein.
 6. It shall be the joint responsibility of every complementary health care service provider and the complementary health care organization of which he/she is a member, to file with the Licensing Officer up-to-date information relating to the circumstances affecting any exemption in respect of which the record or information is relevant, any changes in such circumstances as they occur, and an undertaking upon each such filing that the information or record filed is accurate and that this Schedule will be strictly adhered to.
 7. Any document or record filed as demonstration of the information contained therein may be made by either a complementary health care service provider or a complementary health care organization, in which latter case, no member in respect of whom the information is relevant shall be required to make any such further filing, provided that at all times the organization maintains the information accurate and current.
 8. In the case of doubt as to whether or not any exemption provided in section 3(a) of Appendix 7(a) of the By-law applies, where the Licensing Officer is not able to resolve such doubt through communication with affected parties, the Licensing Officer may refer the matter to Council, which shall provide any party affected the opportunity to attend at a meeting with the Council to provide information in support of a claim to an exemption.

SCHEDULE 12

HAWKERS AND PEDLARS

DEFINITIONS

12.1 In this By-law – Schedule 12

- a) **“goods, wares and merchandise”** shall include any article, merchandise, service or privilege obtained for consideration or anything that has economic utility or want, or an intangible item (as a service or membership) that is a marketable commodity.
- b) **“Hawkers and Pedlars”** shall mean any person who goes from place to place or to a particular place with goods, wares or merchandise for sale or carry or expose samples, patterns or specimens of any goods, wares or merchandise that are to be delivered in the Town of Newmarket afterward and shall include any person or company who assembles groups of vendors to participate in a sale in a particular place, but shall not include any person who is hawking, peddling or selling goods, wares or merchandise:
 - i) to wholesale or retail dealers in similar goods, wares or merchandise;
 - ii) if the goods, wares or merchandise are grown, produced or manufactured in Ontario and are hawked, peddled or sold by the grower, producer or manufacturer or an agent or employee of them having written authority so to do, in the municipality in which the grower, producer or manufacturer resides;
 - iii) if the goods, wares or merchandise are grown or produced by a farmer resident in Ontario who offers for sale or sells only the produce of the farmer’s own farm;
 - iv) if the goods, ware or merchandise are hawked, peddled or sold by a person who pays business tax in the municipality, or by that person’s agent or employee;
 - v) if the goods, wares or merchandise are hawked, peddled or sold by an agent of the grower, producer or manufacturer, acting on behalf of a dealer who pays business tax in the municipality in respect of premises used for the sale of such goods, wares or merchandise, or;
 - vi) by persons who sell milk or cream or fluid milk products to the consumer or to any person for resale.
- c) **“Highway”** shall mean a common and public highway and includes a street and a bridge forming part of a Highway or on, over or across which a highway passes and includes both the travelled and untraveled portions of the roadway and all property between the property lines.

- d) **“Shopping Mall”** shall mean an enclosed complex of shops with associated internal covered passageways or concourses but not the individual shops of the complexes aforesaid.
- e) **“Show Sale”** shall mean an event organized by an individual or company and consisting of several participating vendors.
- f) **“Special Mall Sale”** shall mean an event or series of events at which a person who is a hawker or pedlar as defined by this By-law offers goods or services for sale at a shopping mall.
- g) **“Special Sale”** shall mean any event at which goods, wares or merchandise are offered for sale at a particular place other than a shopping mall for a specific period of time of not more than seven consecutive days conducted by a person who is a hawker or pedlar as defined by this By-law.
- h) **“Town Clerk”** means the Clerk of the Town of Newmarket or hi/her designate.
- i) **“Town”** means the Town of Newmarket in the Regional Municipality of York.

PART A

HAWKER AND PEDDLER LICENSE REQUIREMENTS

- 12.2 No hawker or pedlar shall go from place to place to sell or offer for sale any goods wares or merchandise to any person in the Town unless he/she has obtained a Class “A” license in accordance with requirements of this By-law.
- 12.3 No hawker or pedlar shall go to a particular place to sell or offer for sale any goods, wares or merchandise to any person in the Town as a special sale unless they have obtained a Class “B” license in accordance with the requirements of this By-law.
- 12.4 No hawker or pedlar shall go to a shopping mall to sell or offer for sale any goods, wares or merchandise to any person in the Town as a special mall sale, unless they have obtained a Special Mall Sale Class “C” or Class “D” or Class “E” License in accordance with the requirements of this By-law.
- 12.5 No person or company shall assemble a group of vendors to participate in a Show Sale in a particular place to offer for sale goods, wares or merchandise in the Town unless he/she has obtained a Show Sale Class “E” License in accordance with the requirements of this By-law and the vendors he/she has assembled to participate in the show have been listed on his application.
- 12.6 Notwithstanding sections 12.3 and 12.4 of this By-law, any person hawking or peddling goods, wares or merchandise at a particular place who is participating in an event for which a show sale license has been issued pursuant to section 12.5 herein, shall not be required to obtain individual licenses to hawk and peddle goods, wares or merchandise while participating in the event and during the period for which the show sale license was issued.

- 12.7 No person shall hire, engage or commission any other person to hawk or peddle goods, wares or merchandise to any person in the Town unless he/she has obtained a license as required by this By-law and the person he/she has hired, engaged or commissioned has obtained a license as required by this By-law.
- 12.8 Every person applying for a license as required by By-law shall file with the Town Clerk a completed application on the prescribed form and shall pay the required license fee as set out in Schedule 'A'.
- 12.9 Every person applying for a Class "B" license as required by this By-law who intends to sell goods, wares or merchandise from a particular location within the Town shall submit with his application a letter of permission with respect to the proposed use from the registered owner of the property or his authorized agent.
- 12.10 No person shall hawk or peddle goods, wares or merchandise at any of the following locations:
- a) within 25 feet of a driveway entrance as delineated by pavement parkings, driveway islands or driveway curbs or any combination thereof;
 - b) within 25 feet of an intersection as delineated by pavement parkings, driveway islands or curbs or any combination thereof;
 - c) any location which impairs or obstructs the movement of vehicular or pedestrian traffic or the visibility or warning devices, railways, traffic and municipal street signs.
- 12.11 Every person applying for a Class "A" license as required by this By-law shall submit with his application a letter of clearance from the York regional Police Force.
- 12.12 Every person applying for a license as required by this By-law who is an employee, agent or representative and hawking, peddling or selling goods, wares or merchandise on behalf of another person or corporation must submit a letter of authorization with their application fro that person or corporation.
- 12.13 Every person applying for a license as required by this By-law must state on the application a list of the goods, wares or merchandise which are to be hawked, peddled or sold.
- 12.14 Any Class "A" license issued under the provisions of this By-law shall be for the current year and shall expire on the 1st day of February of the year following the date of issue and the license fee shall not be prorated for any part of the year.
- 12.15 Any Class "B" license issued under the provisions of this By-law shall be valid only for the period stated on the license.
- 12.16 No license shall be issued to any person who is not of good moral character of the conduct of the applicant affords reasonable grounds for the belief that he/she will not carry on his trade, calling, business or operation in accordance with law and with integrity and honesty.

PART B

GENERAL PROVISIONS

- 12.17 No Hawker and Pedlar shall sell or offer for sale any goods, wares or merchandise on the highways or on vacant lots adjacent to them.
- 12.18 No Hawker or Pedlar who holds a Class “B” license shall sell or offer for sale any goods, wares or merchandise from any property unless the zoning By-laws permit the sale by retail of the particular goods, wares or merchandise and unless the location is an approved location listed on their license. No Hawker and Pedlar shall sell or offer for sale any goods, wares or merchandise from any private property without the written permission of the registered owner of the property of his authorized agent.
- 12.19 No Hawker and Pedlar who holds a Class “A” or Class “B” license shall sell or offer for sale any goods, wares or merchandise unless that person is wearing the proper photo identification supplied by the Town Clerk and is carrying their Hawkers and Pedlars License.
- 12.20 No Hawker or Pedlar who holds a Special Mall Sale license shall sell or offer for sale any goods, wares or merchandise unless the license is displayed in a prominent place at the temporary location.
- 12.21 All persons who have obtained a Show Sale License under this By-law shall ensure that all participating vendors display a copy of the Show Sale License at each individual location.
- 12.22 No Hawker and Pedlar shall sell or offer for sale any goods, wares or merchandise that is not listed on their license or from a location which is not listed on their license.
- 12.23 Any person who is a Hawker and Pedlar as required by this By-law shall at all times comply with the By-laws of the Town and any contravention of any By-laws may be grounds for the revocation of the licence by the Town.
- 12.24 Any person who is a Hawker and Pedlar as required by this By-law, shall, upon the request of any Peace Officer, By-law Enforcement Officer, Provincial Offences Officer, the Town Clerk, or any other person to whom they are offering good for sale, provide their license for inspection and provide in writing their name and address and also the name and address of their employer if applicable.
- 12.25 Any person who is a Hawker and Pedlar and is not required to obtain a license under the provisions of this By-law by virtue of the fact that they are the employee or agent of a person who pays business tax in the municipality or by virtue of the fact that they are an agent of the grower, producer or manufacturer, acting on behalf of a dealer who pays business tax in the municipality in respect of premises used for the sale of such goods, wares or merchandise shall exhibit his authority to sell the goods, wares or merchandise when required to do so by any municipality or police officer.
- 12.26 Any person who is directed by a Peace Officer or a By-law Enforcement Officer, Provincial Offences Officer of the Town Clerk to cease the sale of goods, wares or merchandise from a highway or a vacant lot adjacent to a highway shall do so immediately and shall remove said goods, wares or merchandise immediately.

PART C

ENFORCEMENT

- 12.27 A Hawker and Pedlars license may be refused, revoked or cancelled upon seven (7) days notice in writing by the Town if any of the provisions of this By-law are contravened or in the event that in the opinion of the Council of the Town such refusal, revocation, or cancellation may be in the public interest.
- 12.28 Any person who has his Hawkers and Pedlars license refused, revoked or cancelled shall upon written request be granted a hearing before the Committee of the Whole of Council to present their arguments as to why their license should be issued or reinstated. The decision of the Committee of the Whole in this regard shall be final.
- 12.29 Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine and/or penalty as provided for in the *Provincial Offences Act* goods, wares or merchandise for each offence and such penalty and/or fine shall be recoverable under the *Provincial Offences Act*.

SCHEDULE 15

NEWSPAPER BOXES

TO REGULATE NEWSPAPER BOXES.

DEFINITIONS

- 15.1 For the purposes of this By-law:
- a) **“newspaper box”** shall mean any structure or device for the purpose of the distribution of any newspaper, magazine, periodical or other publication;
 - b) **“residential property”** shall mean any property zoned RR1, RR2, RR3, R1, R2, R2A, R3, RM1, or RM2;
 - c) **“Town Clerk”** means the Clerk of the Town of Newmarket or his/her designate;
 - d) **“Town”** means the Town of Newmarket in the Regional Municipality of York.
- 15.2 No person shall place any newspaper box on any road allowance in the Town unless they have filed with the Town Clerk a certificate of insurance in the amount of \$2,000,000 naming the Town as additional insured, a completed application in a form prescribed by the Town Clerk disclosing the name, address facsimile number and phone number of the person or company which owns the newspaper box, a list of the locations where newspaper boxes are to be installed and the annual fee as outlined on Schedule ‘A’ to this By-law.
- 15.3 Unless otherwise provided for in this By-law, no person shall place a newspaper box on any road allowance in a manner such that it is not stable, in any location that is within 50 feet of any intersection and no person shall place any newspaper box so as to impair or obstruct the movement of vehicular or pedestrian traffic, or the visibility or warning devices, railway, traffic and municipal street signs.
- 15.4 Notwithstanding Section 15.2, a person may place a newspaper box in the Downtown Main Street District as designed on the map attached hereto as Appendix 15(a) to Schedule 15 provided it meets the following restrictions:

- e) the newspaper box shall be placed flush with the wall of the building facing the street and shall not project more than 24 inches from the wall onto the sidewalk;
 - f) the newspaper box shall be placed in a manner so that it does not obstruct the use of the sidewalk;
 - g) the newspaper box shall be placed no less than 10 feet distance from the intersection of a street, lane or driveway with another street, lane or driveway measured from the curb of the flanking street, or the delineation of the flanking lane or driveway;
 - h) the newspaper boxes shall not be placed adjacent to any property without the consent of the owner and the tenant(s).
- 15.5 No person shall place a newspaper box on any road allowance in a manner that it is attached or secured to any utility pole, sign, hydrant, appurtenance, or other facility owned or operated by the Town or any other commission, board, agency or corporation.
- 15.6 No person shall place a newspaper box on any road allowance adjacent to any residential property as defined in this By-law.
- 15.7 No person shall place a newspaper box within 50 feet of a public transit stop unless approved by the Town.
- 15.8 No person shall place or provide a newspaper box on any road allowance, which is not clean and painted as to its exterior.
- 15.9 Where a newspaper box has been placed upon a road allowance in contravention of this By-law the Town may remove the newspaper box and impound same provided that before impounding the newspaper box the Town shall give seven days notice in writing to the applicant, or to the owner of the newspaper box or publisher of the newspaper as disclosed by the contents of the newspaper therein, of the intention of the Town to remove the newspaper box.
- 15.10 Notwithstanding the provisions of Clause 15.8 of this By-law, where a newspaper box has been placed in a manner which contravenes the provisions of Section 15.2 officers or agents of the Town may remove the box immediately without notice, impound the newspaper box and the owner may retrieve same during normal office hours upon payment of the impound fee established in Schedule 'A' of this By-law.
- 15.11 Any person who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for under the *Provincial Offences Act*.

