

CITY OF NIAGARA FALLS

**LIVE ADULT BUSINESSES BY-LAW No. 2002 - 197 Amended
by By-laws No. 2003-190, 2009-179, 2010-01, 2014-41**

[office consolidation only]

To provide for the licensing, regulating, governing, classifying and inspecting of body-rub parlours and a certain class of adult entertainment parlours.

WHEREAS Part XVII.1 of the Municipal Act (the "Act") authorizes councils of local municipalities to pass by-laws for licensing, regulating and governing businesses carried on within the municipality, and provides a number of specific powers with respect thereto, which also apply to the exercise by the council of specific licensing powers under other provisions of the Act;

AND WHEREAS section 225 of the Act authorizes councils of all municipalities to pass by-laws for licensing, regulating, governing, classifying and inspecting adult entertainment parlours or any class or classes thereof and for revoking or suspending any such licence;

AND WHEREAS section 224 of the Act authorizes councils of local municipalities to pass by-laws for licensing, regulating, governing, and inspecting body-rub parlours, and for revoking or suspending any such licence;

AND WHEREAS subsections 224(3) and 225(3) of the Act authorize by-laws passed under those subsections to define areas of the municipality in which body-rub parlours and adult entertainment parlours respectively, or any class or classes thereof, may or may not operate and may limit the number of licences to be granted in respect of such parlours in any such area or areas in which they are permitted;

AND WHEREAS the Council deems it desirable to enact a by-law for the exercise of its powers outlined above with respect to adult entertainment parlours offering the live services of entertainers, and body-rub parlours;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF NIAGARA FALLS ENACTS AS FOLLOWS:

GENERAL PROVISIONS

INTERPRETATION

Definitions

1.

1. In this By-law:

- a. "adult business" means an adult entertainment parlour or a body-rub parlour;
- b. "adult entertainment parlour" means any premises or part thereof in which is provided, in pursuance of a business, services by an entertainer;
- c. "applicant" means a person applying for a licence under this By-law;
- d. "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 so to do under the laws of the Province of Ontario;
- e. "body-rub parlour" means any premises or part thereof where a body-rub is provided, offered or solicited in pursuance of a business;
- f. "body-rubber" means an individual person who, in pursuance of a business or calling, provides, offers or solicits body-rubs, or engages in a business involving the provision or receiving of body-rubs by such person;
- g. "body-rubber's licence" means a valid and subsisting licence issued under this By-law to a body-rubber, in respect of the provision of body-rubs at a body-rub parlour by such body-rubber;
- h. "business" includes a trade or occupation;

- i. "by-law enforcement officer" means a person appointed to enforce this By-law or the by-laws of the City generally;
- j. "City" means The Corporation of the City of Niagara Falls
- k. "Clerk" means the Clerk of the Corporation of the City of Niagara Falls, any person designated by the Council or the Clerk to exercise the duties of the Clerk under this By-law or, where an agreement exists between the City and The Regional Municipality of Niagara Police Services Board to provide for the administration of licence applications in respect of one or more classes of licences under this By-law, the Issuer of Licences for that Board;
- l. "committee" means a committee of the Council appointed to conduct one or more hearings under the provisions of this By-law;
- m. "Council" means the Council of The Corporation of the City of Niagara Falls and with respect to the holding of hearings, or any hearing, includes, as the context allows, a committee;
- n. "customer" includes any person seeking, soliciting, or receiving a body-rub or any other service at a body-rub parlour, or to whom a body-rub is provided or offered, or any person seeking or soliciting, or to whom is provided or offered, services at an adult entertainment parlour;
- o. "drugs" shall be deemed to exclude patent medicines and prescription drugs required for medicinal purposes;
- p. "entertainer" means an individual person who, in pursuance of a business or calling, performs, provides, offers or solicits services, or engages in a business involving the provision of services by such person, but does not include a licensed owner or licensed operator unless such person personally provides such services;
- q. "entertainer's licence" means a valid and subsisting licence issued under this By-law to an entertainer, in respect of the provision of services at an adult entertainment parlour by such entertainer;

- r. "he or she", "him or her" and "his or her" shall be deemed to include reference to corporations and partnerships, as the context allows, including "it" and "its", as the case may be;
- s. "licence" means an authorization under this By-law to carry on the business specified therein and the document providing evidence of such authorization, as the context may allow;
- t. "licensed" means licensed under this By-law;
- u. "licensee" means a person who holds a licence issued, valid and subsisting under the provisions of this By-law;
- v. "Medical Officer of Health" means the Medical Officer of Health for the Regional Municipality of Niagara and includes any employee acting on his or her behalf;
- w. "Municipality" means the geographical area in respect of which the City has jurisdiction;
- x. "operator" means an individual person, other than an owner, who, alone or with others, operates, supervises, runs or directs an adult business, on an ongoing basis or from time to time, or who exercises control over an adult business on behalf of the owner;
- y. "operator's licence" means a valid and subsisting licence, issued under this By-law to an operator as defined in this section;
- z. "owner" means a person who alone or with others has the right to possess or occupy an adult business or actually does possess or occupy an adult business, and includes a lessee of an adult business or premises upon which an adult business is located, and includes an owner/operator;
- aa. "owner/operator" means an owner who is an individual and operates his or her own adult business;
- bb. "owner's licence" means a valid and subsisting licence, issued under this By-law to an owner as defined in this section;
- cc. "parlour" means a body-rub parlour or an adult entertainment parlour;

- dd. "person" includes a corporation and a partnership, as the context allows;
- ee. "premises" includes a building or any part thereof, and any place;
- ff. "to provide" when used in relation to any body-rub or services includes to furnish, perform, or give such services or cause or permit the provision thereof and "providing" and "provision" have corresponding meanings;
- gg. "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;
- hh. "services designed to appeal to erotic or sexual appetites or inclinations" means:
 - i. services characterized by any person or persons involved or engaging in specified sexual activities or by an emphasis on the display of human specified body areas; or
 - 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, or in respect of which is advertised the availability of any form of entertainment held out to be, by reason of its sexual content, not suitable for minors;
- ii. "sign" means any advertising device or notice, including its structure and other component parts, which is used or is capable of being used to attract attention to a specific subject matter;
- jj. "specified body areas" means one or more of the following:
 - i. in the case of a female person, her nipples, and areolae; and
 - ii. in the case of all persons, the pubic, perineal, perianal areas, the genitals, anus, and the buttocks;

- kk. "specified sexual activities" means one or more of the following:
 actual or simulated sexual intercourse, masturbation, urination, defecation, ejaculation, sodomy, including bestiality, anal intercourse, oral sexual intercourse, physical stimulation of genital organs, and flagellation, bondage or torture in the context of a sexual relationship or activity;

Licence Requirement

2.

1. There shall be taken out by every one of the following persons a licence from the Council authorizing him or her to carry on such class of business in the City, for which licence the person obtaining the same shall pay to the Council at or before the time of taking out such licence, the fee fixed by this By-law:
 - a. every owner of a body-rub parlour;
 - b. every operator of a body-rub parlour;
 - c. every owner of an adult entertainment parlour;
 - d. every operator of an adult entertainment parlour.
2. There shall be taken out by every body-rubber and entertainer, a licence from the Council authorizing him or her to carry on such business in the City, for which licence the person obtaining the same shall pay to the Council at or before the time of taking out such licence, the fee fixed by this By-law.
3. No person shall, within the limits of the Municipality, carry on or engage in any of the businesses referred to in subsections (1) or (2) unless such person holds a valid and subsisting licence in good standing issued under this By-law authorizing him or her to do so.
4. Every owner/operator of an adult business:
 - a. is required to be licensed as both an owner and an operator pursuant to this By-law;
 - b. shall pay the fee in respect of each licence respectively;
and

- c. shall be subject to the requirements and other provisions of this By-law in respect of his or her status as both an owner and an operator, and shall comply with all of the requirements of this By-law applicable to each.
5. Every person operating any adult business shall be required to obtain a licence pursuant to this By-law, and any number of operators' licences may be issued in respect of any particular adult business.
6. No person other than an individual person may operate, or be licensed as an operator of, an adult business.
7. A separate operator's licence shall be taken out by each operator of an adult business.

Owners' Licences – Limitation

3.

1. The requirement of obtaining a licence under this By-law is in addition to, and not in substitution for, any other requirement to obtain a licence or other regulatory approval under any other federal, provincial or municipal regulation.
2. No licence shall be issued under this By-law in respect of any business or use of land carried on in breach of the City's Zoning By-law or any other law, nor shall any licence or the issuance of any licence under this By-law be deemed to authorize contravention of any such law.

Administration - Duties of the Clerk

4. The Clerk shall, subject to the provisions of this By-law:

- a. receive and process all applications for licences and renewal of licences to be issued under this By-law;
- b. co-ordinate the administration and enforcement of this By-law;
- c. perform all of the administrative functions conferred upon him or her by this By-law;
- d. make or cause to be made a circulation respecting each application, which may include circulation of the licence application to the Medical Officer of Health and the Niagara Regional Police Service;

- e. make such inquiries and inspections and obtain and review such information and documents relevant to the application, as the Clerk considers necessary for the proper processing of the application and to determine whether an applicant meets the requirements of this By-law and all other applicable laws;
- f. issue licences to persons who, in the opinion of the Clerk comply in full, and will comply in full, with the requirements of this By-law, and may suspend licences where authorized by this By-law;
- g. where a licence has been issued pursuant to this By-law and otherwise remains in full force and effect, renew the licences of persons who meet the requirements of this By-law; and
- h. perform all other duties and responsibilities and exercise all powers imposed or conferred upon him or her by this By-law.

Applications for Licences

5.

1. Every applicant for a licence to which this By-law relates, shall appear in person at the offices of the Clerk, complete the forms available in the Clerk's office and provide all information requested thereon, and shall furnish to the Clerk such information as the Council may direct generally or in respect of such application. In the case of premises 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 premises owned or operated by a corporation such appearance shall be made by an officer of the corporation, having authority so to do.
2. The applicant shall, at the time of the filing of the application form required under subsection (1), deliver to the Clerk the following:
 - a. cash, money order or certified cheque payable to the City in the amount of the licence fee required by this By-law in respect of the particular adult business, or for the renewal thereof;
 - b. if the applicant is a corporation, 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 copy of the partnership agreement, and a list of the names and home addresses of all of the partners;
- d. a Police certificate with respect to any record of convictions relating to the applicant and to the persons referred to in paragraph 19(2)(b) of this By-law.

Application Forms - Requirements

6. Every application form for a licence for an adult business shall include a requirement that the applicant provide, at a minimum, the following information:

- a. the name and address of the applicant;
- b. the address of the applicant and of the intended licensee to whom the City or its licensing section may send or deliver any notice or other document required or authorized by law;
- c. the municipal address of the building, premises or place in respect of which a licence is sought where the business licensed or required to be licensed is or is intended to be carried on;
- d. the name and address of the owner of any building, premises or place in which any such business is carried on or is intended to be carried on;
- e. any trade or business name or description used or to be used in relation to the business;
- f. the telephone number of such business;
- g. a record of all offences, other than offences relating to motor vehicles, under any by-law, provincial statute or federal statute in respect of which the applicant, any of the partners, if the applicant is a partnership, and any of the directors, shareholders and officers of a corporation, if the applicant is a corporation, has or have been convicted;
- h. proof satisfactory to the Clerk that the applicant, if an individual, is at least 18 years of age;
- i. written confirmation, satisfactory to the Clerk, in the case of an applicant for an owner's licence, that the applicant is the

owner of the parlour and business in respect of which the licence is sought.

Application Form for an Adult Entertainment Owner's Licence

7. Every applicant for an adult entertainment parlour owner's licence shall provide in such application the following:

- a. the name of any proposed operator, and an application by such person for an operator's licence;
- b. a precise description of the real property upon which the business is to be carried on, and where all services are to be provided, together with information as to exactly where on the property and what parts of the premises, are to be utilized for such purposes; working drawings of the physical premises with details and size of any stage, doors, walls, seating areas, full or partial partitions and screens;
- c. information as to whether or not all or any part of the premises in which the services would be offered are or are intended to be licensed under the Liquor Licence Act, or the subject matter of an application for such a licence, and a copy of any such licence and any such application;
- d. a copy of the lease, if any, and of any other document creating or affecting the legal relationship between the applicant and the registered owner of the property;
- e. the written consent of the registered owner of the property to the use of the property as an adult entertainment parlour on a form provided by the Clerk.

Application Form for a Body-Rub Parlour Owner's Licence

8. Every applicant for a body-rub parlour owner's licence shall provide in such application the following:

- a. the name of any proposed operator, and an application by such person for an operator's licence;
- b. a precise description of the real property upon which the business is to be carried on, and where all services are to be provided, together with information as to exactly where on the property and what parts of the premises, are to be utilized for such purposes; working drawings of the physical premises

with details and size of any stage, doors, walls, seating areas, full or partial partitions and screens;

- c. a copy of the lease, if any, and of any other document creating or affecting the legal relationship between the applicant and the registered owner of the property;
- d. the written consent of the registered owner of the property to the use of the property as a body-rub parlour on a form provided by the Clerk.

Applications for Renewal

9. The provisions of this By-law relating to an application for a licence shall apply, with necessary modifications, to an application for the renewal of a licence or to amend a licence or a condition of such licence, except that where the applicant notifies the Clerk in writing prior to the expiry of the term of the licence that the information on file with the Clerk has not changed, the applicant need not, unless so required by the Clerk, complete a new application form or amendment thereto in respect of an application for renewal, or provide a new record of offences.

Applications for a Licence by a Partnership

10.

1. Without limiting the generality of any other provision in this By-law, persons associated in any partnership applying for a licence 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 or 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;
 - d. the mailing address for the partnership;
 - e. the identity of every person having a beneficial interest, directly or indirectly in the premises or in the business to be carried on to which this By-law relates, of every person having a right to receive income, revenue or benefit of any kind arising out of the operation of such premises or business, and

of any person who in fact receives such income, revenue or benefit, and the terms upon which such interest or right is conferred; and

- f. the identity of all persons or entities having an interest, direct or indirect, any trust arrangement, or any financial or contractual or understood arrangement, with respect to the ownership or operation of the premises or the adult business or the control or management of either or both, and the terms upon which such interest or right is conferred.
2. If any member of a partnership applying for a licence is a corporation, such corporation shall be deemed to be a corporation applying for a licence and if such licence is issued to the partnership such corporation shall be deemed to be a corporation holding an owner's licence.

Applications for a Licence by a Corporation

11.

1. Without limiting the generality of any other provision in this By-law, every corporation applying for a licence shall file with the Clerk, at the time of making its application, copies of its articles of incorporation or other incorporating document, and shall file with the City 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 or 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;
 - d. the mailing address for the corporation;
 - e. the names of its officers, agents, directors and employees, and of the owner of the property on which the business is to be conducted;
 - f. the identity of every person having a beneficial or other interest, directly or indirectly in the premises or in the business to be carried on to which this By-law relates, of every person

having a right to receive income, revenue or benefit of any kind arising out of the operation of such premises or business, and of any person who in fact receives such income, revenue or benefit, and the terms upon which such interest or right is conferred; and

- g. the identity of all persons and entities having an interest, direct or indirect, any trust arrangement, or any financial or contractual or understood arrangement, with respect to the ownership or operation of the premises or the adult business or the control or management of same, and the terms upon which such interest or right is conferred.

2. Every corporation applying for a licence shall also file with the Clerk, at the time of the making of its application:

- a. a certified copy of its most recent filing with the Ministry of Consumer and Commercial Relations listing all directors and officers and the address of the head office of the corporation;
- b. a resolution of the directors of the corporation authorizing the application for a licence; and
- c. the name and address of every person having responsibility for the operation or management of the business of the applicant.

Applications by an Individual - Photograph Required

12. Every individual applicant for a licence as:

- a. a body-rubber;
- b. an entertainer;
- c. an owner of an adult business;
- d. an operator of an adult business; and
- e. every person applying for any licence on behalf of a corporation or partnership,

shall submit with the application:

- i. a passport-sized (minimum measurements 7.5 cm x 6.4 cm) facial photograph of such person, taken within the previous six months, which

shall be affixed to or accompany the application and be maintained in the files of the Clerk. A further photograph, may be required upon any renewal or any application for a new licence; and

- ii. proof of such person's date of birth, in a form satisfactory to the Clerk.

Applications for Body-Rubber or Entertainer Licences

13. Every applicant for a licence as a body-rubber or entertainer shall also submit with the application his or her social insurance number, documentation evidencing entitlement to work in Canada, and a letter of prospective employment or engagement from a licensed owner or operator.

Administration - Powers and Duties of Clerk

14.

1. The Clerk may, for the purpose of processing the application or reporting to the Council with respect thereto, require the applicant to provide such further information relevant to the licence application as the Clerk should see fit, and every applicant, officer, director or partner of any corporate or partnership applicant, respectively, shall provide such information, including the provision of one or more interviews with the Clerk, or a hearing before the Council, should the Clerk or Council decide to require further information in order to deal with the application.
2. Any hearing before the Council shall be governed by the applicable provisions of the *Statutory Powers Procedure Act*.
3. The Clerk may at any time seek directions from the Council with respect to the manner of processing any application for a licence or the obtaining of information in connection thereto, or may give notice to the applicant of his or her right to request a hearing by the Council or a Committee therein as to whether or not the application should be proceeded with, or whether it should be granted or refused, or whether conditions should be imposed upon any such licence which might be granted.
4. By the making of an application for a licence pursuant to this By-law, every applicant agrees that the Clerk may make such inquiries and seek and obtain such information or records as the Clerk should see fit as relevant to the processing of the application and whether or not such licence should be granted or issued, including requiring the applicant and one or more representatives of the applicant designated by the Clerk, to be interviewed by such Clerk.

5. By the making of an application for a licence pursuant to this By-law, every applicant also agrees that the City, the Clerk, the Medical Officer of Health, and any person or persons making inquiries on behalf of the City or at its request or by circulation relevant to the processing of the application, shall have the right at any time to inspect the premises for that purpose, and the applicant will co-operate in every way in ensuring that such inspection, and entry on the premises for that purpose, shall be facilitated and completed to the satisfaction of the Clerk.
6. The Clerk may, at any time, seek directions from the Council with respect to administrative matters affecting the processing of any licence application or imposing requirements of providing additional information in connection with such application.
7. If any shareholder of a corporate applicant or licensee is a corporation, such corporation shall be deemed to be a corporation applying for or holding a licence, as the case may be, and all of the information required by this By-law relating to every corporation having any interest in the adult entertainment parlour or the operation of its business, shall be disclosed, as required of a corporate applicant.

Processing of a Licence Application

15.

1. Without limiting the generality of any other provision of this By-law, the Clerk, upon receiving an application completed in accordance with the requirements of this By-law:
 - a. may submit a copy of the application to the Medical Officer of Health, to the City's Chief Zoning Official, and to the Niagara Regional Police Service, for comment;
 - b. may submit a copy of the application to any other government official or functionary for comment;
 - c. may make such other inquiries and obtain and review such other information and documents relevant to the application, as the Clerk considers necessary for the proper processing of the application;
 - d. shall carry out such investigation or verification relating to the application as he or she may deem necessary for the purposes of the administration of this By-law and shall,

subject to paragraph (e), if the investigation or any other information available to the Clerk discloses no reasonable grounds to believe that the application is not in compliance with the By-law, or that the applicant may not be entitled to the issuance of a licence on the grounds referred to in this By-law or by reason of any other provision of this By-law or other applicable law, issue the licence;

- e. if the investigation or any other information available to the Clerk disclose reasonable grounds to believe that the applicant may not be entitled to the issuance of a licence on grounds referred to in this By-law, or by reason of any other provision of this By-law or other applicable law, or, if for any reason, the Clerk believes that the application should be dealt with by the Council, the Clerk shall forthwith cause notice of this fact and the reasons therefor to be served upon the applicant at the address shown on the application form.
2. The Clerk shall, in any notice served upon an applicant under subsection 14(3) or clause (1)(e) of this section, include in such notice a statement that the applicant may require a hearing of the application by the Council or a committee, by serving a notice in writing to that effect upon the Clerk within 15 days of the service 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.
 3. Where the Clerk receives notice from an applicant requiring a hearing in accordance with subsection (2), the Clerk shall forthwith refer the application to the Council or committee as the case may be, for a hearing.
 4. Where an application has been referred to the Council or a committee, the Clerk shall prepare a report to the Council or committee summarizing the general nature of the application and relevant facts pertaining thereto, including any information relevant to terms which the Council might consider including as conditions of any licence which it might issue, but shall not include the text of any reports or other documents containing such allegations or information adverse to the applicant, but the nature of such allegations or documents may be referred to in the report.

5. Where the Clerk does not receive notice from an applicant requiring a hearing in accordance with subsection (2), the Clerk need not process the application further, and no further notice is required to be served upon the applicant.
6. The Council or the committee may, after a 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 licence be issued, subject to compliance with this By-law;
 - b. grant the application subject to such conditions as the Council, in accordance with this By-law, considers just and equitable in attaining the purposes of this By-law, and are accepted by the applicant, and direct that the licence be issued subject to such conditions and to compliance with this By-law;
 - c. in considering conditions to be imposed pursuant to paragraph (b), determine if all building inspections have been carried out, and whether satisfactory reports have been received from the Medical Officer of Health, the Fire Chief of the municipality, and the Building and Inspections Division of the City, if any are required;
 - d. refuse in whole or in part to grant the application upon grounds contained in this By-law or otherwise in accordance with the law; or
 - e. 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.
7. Where an application has been referred to the Council or a 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.

Procedure at Hearings by a Committee

1. The applicable provisions of the Statutory Powers Procedure Act shall apply to all hearings conducted by a committee.
2. Upon the conclusion of a hearing conducted by a committee under this By-law, the committee shall as soon as practicable make a written report to the Council containing its recommendations, if any, with respect to the application or matter in respect of which the hearing has been conducted.
3. After conducting a hearing or considering the report of the committee, the Council may thereupon in respect of such application or matter, make any decision permitted under this By-law in respect of the granting or refusal of a licence, the imposing of conditions on a licence, or the revocation or suspension of a licence, that it might have made had it conducted the hearing itself.

Temporary Licences for Body-Rubbers and Entertainers

17.

1. After receiving a completed application for a body-rubber's licence or an entertainer's licence, and where comments and information sought pursuant to subsection 15(1) have not been received within 15 days of the request for same, the Clerk may issue a temporary licence, valid for a period of up to 30 days, authorizing the carrying on of the business for which the licence is sought, subject to such conditions as the Clerk may see fit to impose pursuant to this By-law.
2. Where the Clerk has issued a temporary licence pursuant to subsection (1) which is otherwise valid and subsisting, and receives information providing grounds upon which the licence applied for could be refused or revoked, the Clerk may terminate the temporary licence, and proceed to process the application as otherwise required by this By-law.
3. Where the Clerk has not, by the end of the 30-day period referred to in subsection (1), received some or all of the comments and information sought under subsection 15(1), the Clerk may, subject to this By-law, endorse the temporary licence as a licence issued under this By-law, commencing at the expiry of the temporary licence, to expire on the date which the Clerk determines and endorses on the licence.
4. Where the Clerk has not terminated the temporary licence nor endorsed it pursuant to subsection (3), the temporary licence expires at the end of the 30-day period referred to in subsection (1).

Licence Fees – Requirement

18.

1. For a licence under this By-law, every applicant shall pay to the City the annual fee set forth in Schedule D, including a non-refundable administration fee in accordance with Schedule D. In the event that the licence is granted for a term of less than one year, the fee may be pro-rated on a quarterly basis.
2. Acceptance of an application or a licence fee by the City shall not be deemed approval of the application for the issuance of a licence nor shall it obligate the City to issue such licence.

Grounds of Refusal, Revocation or Suspension of a Licence

19. The Council may:

1. refuse to grant a licence; or
2. revoke or suspend a licence;

upon any one or more of the following grounds:

- a. there are reasonable grounds for belief that any application or other document provided to the Clerk by or on behalf of the applicant contains a false statement, false information or misrepresentation; omits material information; or is intentionally misleading;
- 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 grounds for belief that the business in respect of which the application is made will not be carried on in accordance with the law and with integrity and honesty;
- 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 requirements;
- d. the financial position or history of the applicant or any one or more of the persons referred to in paragraph (b) of this subsection affords reasonable grounds to believe that the

business will not be carried on in a financially responsible manner;

- e. there are reasonable grounds for belief that the application does not meet the requirements of this By-law, or that the business is carried on or intended to be carried on in an area of the City where such business is prohibited by law from being carried on, or in respect of which the issuing of a licence in respect of the business is not permitted by this By-law;
- 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 is dangerous or unsafe;
- g. the past or present conduct of the applicant or of any one or more of the persons referred to in paragraph (b) of this subsection affords reasonable grounds for belief that the carrying on of the business in respect of which the licence is sought would infringe the rights, or endanger the health or safety, of one or more members of the public;
- h. the fee payable in respect of the licence applied for has not been paid;
- i. where information provided to the City by or on behalf of the applicant or licensee, whether oral or in writing, is not accurate or has ceased to be accurate, and the applicant or licensee has not provided up-to-date accurate information to the City sufficient to allow the Council to conclude that the licence should be granted or maintained as valid and subsisting;
- j. the applicant does not accept or ensure compliance with any condition imposed under this By-law upon the business or upon the licensee, as a requirement of obtaining, continuing to hold or renewing a licence;
- k. there are reasonable grounds for belief that any of the grounds set out in this subsection exist with respect to any other licence issued or granted to or held by the licensee, or any person or persons related to the licensee described in

section 2, or in respect of any other business carried on in the municipality by the licensee, or such other person or persons;
or

- I. where the applicant or licensee has failed to comply with any provision of this By-law requiring notice to be provided by or on behalf of a licensee to the Clerk.

Licence - Conditions

20.

1. Despite any other provision of this By-law, the Council may grant a licence or allow a licence to continue upon such conditions as the Council may see fit to impose for the purpose of ensuring the proper and lawful carrying on of the business, or such other conditions, as are authorized by law.
2. It shall be deemed to be a condition of every licence that the licensee comply with and ensure compliance with the requirements of this By-law and of the Schedules hereto applying to the business licensed or to be licensed.

Conduct - Applicant

21. For the purposes of section 19, "conduct of the applicant" and "conduct of the licensee" include:

- a. where the applicant or licensee is a partnership, the conduct of one or more of its partners or former partners or an employee of the partnership;
- b. where the applicant or licensee is a corporation, the conduct of one or more of its current or former officers, shareholders, directors, employees or agents; and
- c. in the case of every applicant and licensee, the conduct of one or more employees, agents, independent contractors, or any other person currently or previously involved in, or to be involved in, the carrying on of the business or the provision of any services therein.

Evidence

22. In deciding whether to grant, refuse, revoke or suspend a licence, or allow a licence to continue subject to conditions, the Council may receive relevant evidence of and act upon, the fact that one or more persons have been convicted of an offence, but may also consider and act upon evidence of conduct, whether or not prohibited by

this By-law or any other law, or which could be the subject matter of a charge under this By-law or any other law, whether or not any charge or conviction may have resulted or may in the future result, from such conduct.

Hearings

23.

1. The Council or a committee may, upon receiving information, indicating that any of the grounds referred to in section 19 may exist with respect to any application or any licence granted or sought to be granted pursuant to this By-law, or the conduct of any person with respect thereto, hold a hearing to determine whether or not the licence should be granted or continued or should be suspended, revoked or have conditions imposed upon it, in accordance with applicable law.
2. The Council or committee shall hold a hearing such as that referred to in subsection (1) where, at the applicant's request, the Clerk has referred the application to the Council.
3. Where a licensee does not indicate a desire to have a matter heard before Council, the recommendation of the Clerk shall be considered final.

Revocation - Suspension - Hearing Requested

24. Subject to section 26, no licence shall be revoked or suspended under this By-law, except after a hearing by the Council or a committee, or after the licensee has been given the opportunity for such a hearing, in accordance with applicable law.

Probationary or Conditional Licences

25.

1. Where the Council or a committee concludes that grounds exist upon which a licence may be refused, suspended or revoked, the Council may in lieu thereof issue a licence for any period up to a full licence period on probation, or without a term of probation, subject to such conditions as the Council may impose and the applicant or licensee accepts, and are in accordance with law.
2. The Clerk shall, where he or she has reasonable grounds to believe that any one or more grounds exist upon which a licence could be refused, revoked or suspended, or render it appropriate that one or more conditions be imposed as a requirement of continuing to hold a licence, provide written notice to the applicant or licensee and to the Council of such fact, and provide written notice to the applicant or licensee of such fact and of

the right to a hearing in accordance with this By-law and other applicable law.

Suspension - Authority of Clerk - Conditions

26.

1. The Clerk may suspend a licence where there are reasonable grounds to believe that such is urgently required to prevent a breach of the By-law or to ensure compliance with the By-law.
2. A suspension under subsection (1) shall take effect upon service of written notice thereof to the licensee, or upon the delivery of written notice to the business premises of the licensee at the address shown on the City's records.
3. A suspension under subsection (1) shall remain in effect until the next meeting of the Council or the end of 15 days after its issuance, whichever last occurs.

Suspension - Report to Council - Recommendation

27. Following suspension of a licence under section 26, the Clerk shall prepare a written report to the Council, advising of the suspension and:
 - a. recommending that the Council or a committee hold a hearing to determine whether the suspension should continue, or be terminated, and whether the Council should give consideration as to whether or not the licence should be revoked or otherwise dealt with pursuant to this By-law;
 - b. recommending reinstatement of the licence on the basis that the conditions leading to the suspension have been remedied; or
 - c. recommending that no action be taken upon the termination of the suspension.

Licence - Privilege - Property of City

28.

1. Every licence is personal to the person to whom it was issued and cannot be transferred to any other person.
2. No person shall enjoy a vested right in the continuance or renewal of a licence and the value of a licence shall be the property of the City and shall remain so irrespective of the issue, renewal or revocation thereof.

3. When the holder of an owner's or operator's licence ceases to carry on the business in respect of which the licence was granted, for any reason other than that provided for in section 30, such person or his or her estate, in the case of the death of a licensee, shall notify the Clerk in writing forthwith, and, without limiting the generality of the foregoing, within 14 days in any event, and the licence shall be terminated in accordance with section 31 unless the Council decides otherwise after a hearing.
4. Despite subsection (3), the licensee shall not be deemed to be ceased to have carried on a business, by reason only of a temporary discontinuance of the carrying on of the business due to total or substantial physical destruction of the premises utilized for an adult business, provided that the continuance of the business cessation is beyond the control of the licensee, and that the licensee is proceeding diligently to re-commence operations at the earliest possible time.

Licence - Expiry - December 31 - Exceptions

29. The term of every licence shall commence upon the date that it is issued and, subject to section 31, expire on December 31st of that year, provided that each annual and other fee required by this By-law to be paid has been paid within the time limits prescribed, and provided that the licence has not been revoked or otherwise ceased to be valid and subsisting during such period.

Licence - Transfer - Prohibited

30.

1. No licence shall be transferred or assigned. If an owner sells, leases or otherwise disposes of his or her adult business or the premises or part thereof upon or in which an adult business is operated, to any person, or enters into an agreement for such purpose, he or she shall forthwith and, without limiting the generality of the foregoing, within 14 days in any event, notify the Clerk in writing of that fact.
2. A person who purchases, leases or otherwise acquires an adult business or the premises or part thereof upon or in which an adult business is operated, or enters into an agreement for such purpose, may apply for an owner's licence in respect of the property for which the previous licence was issued, within 90 days of receipt by the Clerk of notice under subsection (1), and such application shall be processed in accordance with the requirements of this By-law as an application in respect of an area in

respect of which, despite any other provision of this By-law or its Schedules, an adult business may operate.

Termination of Licences

31.

1. A licence issued under this By-law, and all authority and rights granted upon its issuance, shall terminate at the following applicable point of time, respectively:
 - a. at the time at which such licence is voluntarily surrendered by the licensee by written notice of such surrender provided to the Clerk;
 - b. upon the revocation of the licence;
 - c. upon the expiry date of such licence where such licence was valid and subsisting immediately prior to the time of such expiry, unless at the time of expiry, an application for renewal in the form required under this By-law has been filed with the Clerk;
 - d. 90 days after the expiry of the licence where an application for renewal is filed prior to expiry but no licence has been issued pursuant to such application;
 - e. 90 days after the Clerk receives a notice pursuant to subsection 30(1), unless within that time a licence has been issued to the purchaser;
 - f. 90 days of receipt by the Clerk of a notice under subsection 28(3), unless within that time a licence has been issued to the estate of the deceased or a purchaser from the estate;
 - g. where a landlord or mortgagee of a licensee, in the absence of a prior surrender of the licence by the licensee under paragraph (a), has exercised contractual rights to go into possession of the premises, 90 days following the taking of such possession, unless prior to the expiry of the 90-day period a new licence has been issued to the landlord or mortgagee in possession, or a purchaser of the business or premises from them, in accordance with section 30; or

- h. upon the granting of a licence in response to an application for renewal of the original licence, to a purchaser in accordance with the requirements of section 30, or to a landlord or mortgagee in possession under paragraph (g), unless the Council decides otherwise after a hearing.
- 2. Neither the sale of an adult business or adult business premises, nor the death of a licensee, nor the going into possession of premises by a landlord or mortgagee, shall be deemed to prevent the issuance of an owner's licence, provided that the location of the business continues to be in an area where such businesses are authorized to be carried on under this By-law, the adult business continues to be carried on at such location, and the parties act in accordance with the requirements of this By-law.

Business - Operation - Under Licensed Name

32. 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 by the Clerk upon the licence.

Location - Endorsed on Licence

33. Every owner's licence shall have endorsed by the Clerk thereon the location of the premises; such endorsement shall be for one location only; and such licence shall be valid only for the location endorsed thereon.

Licence - posted - conspicuous - on premises

34.

- 1. Every owner and operator shall keep his or her licence issued in respect of any class of adult business posted in a conspicuous place in the said premises, satisfactory to the Clerk, at all times during the currency of the licence.
- 2. No operator shall operate an adult business other than the adult business endorsed by the Clerk on his or her licence and at the location endorsed by the Clerk thereon.

Licensee - information provided - upon request

35. Every owner and operator of any class of adult business in the Municipality and every owner and operator licensed under this By-law in attendance at an adult business in the Municipality whether or not engaged in his or her respective trade, calling, business or occupation at that time, shall, upon a request made by any peace officer, by-law enforcement officer, Medical Officer of Health, or the Clerk provide his or her name and residential address, and if licensed under this By-law in respect of

any trade, calling, business or occupation relating to such adult business, produce the said licence.

Duty to Co-operate with Enforcement Officials

36.

1. Every owner, operator, entertainer and body-rubber shall, during the operating hours of any adult business, and at all times when services are offered, available or provided therein, make available for inspection by the Clerk, a peace officer, the 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.
2. Every owner and every operator of any adult business shall, at all times, whether or not during the hours of operation of the adult business, permit the entry by, and the inspection of all parts of the premises by any by-law enforcement officer, provincial offences officer, clerk, Medical Officer of Health or peace officer, and shall produce his or her licence issued in respect of the business to such officer upon demand therefor.
3. No person shall obstruct or hinder the entry or the inspection of any adult business or any part thereof by any by-law enforcement officer, provincial offences officer, clerk, Medical Officer of Health or peace officer.
4. No premises in which an adult business is located shall be constructed or equipped so as to hinder or prevent the enforcement of this By-law.

Revocation of Licence - Refund of Fees

37. Where a licence has been revoked, the licensee is entitled to a refund of a part of the license fee proportionate to the unexpired part of the term for which it was granted, on a quarterly basis.

Changes and Information

38.

1. Every licensee shall notify the Clerk in writing within five days after any change in any of the information provided under this By-law, providing full particulars with respect to such change.
2. Where a change has occurred in the name or business name of a licensee, the licensee shall attend within four days of the date of the change at the office of the Clerk, to have the licence and licence records amended accordingly.

3. Every licensed owner shall report in writing to the Clerk particulars of any proposed change in direct or indirect ownership of his or her parlour or business which is the subject of the licence, at least 30 days prior to such change taking effect, by filing an application for a licence in the name of the owner as such will exist after the change has been effected, and the provisions of this By-law applicable to applications for licences shall apply.
4. Without limiting the generality of subsection (3), if a change in the ownership will result in a change in actual or legal control of the parlour or business, respectively, every remaining owner or the prospective new owner, as the case may be, shall forthwith comply with the requirements of this By-law in respect of any person assuming ownership or control of the adult business or premises as if such person were applying for an owner's licence.
5. Upon receipt of the information required to be filed pursuant to subsections (3) and (4), the Clerk shall circulate and review notice of the change in ownership in accordance with this By-law, and shall, upon completion of that circulation and review, notify in writing every remaining owner, and the prospective new owner, as the case may be, of:
 - a. their being approved as licensed owners; or
 - b. that before such licensing status may be approved, a hearing must be held by the Council, or a committee of the Council, and the provisions with respect to notice of an application being referred to the Council shall apply.
6. Every licensed owner shall report in writing to the Clerk particulars of any proposed change in the location of the business which is the subject of a licence at least 60 days prior to such change taking effect, by filing an application for a licence in accordance with the provisions of this By-law, and the provisions of this By-law with respect to an application, and with respect to the location of such a business, apply in respect of consideration as to whether or not the proposed change in location may be effected under the current licence, or whether such licence will lapse and be terminated pursuant to section 31.

Partnership - Corporation - Approval Requirements

39. Where a partnership or corporation is licensed under this By-law and there has been or is intended or expected to be a change in the composition of the partnership or the shareholders of the corporation, the person licensed hereunder shall within five days advise the City of such change. Where the Council receives information of a

change in a partnership or corporation holding or applying for a licence, the Council may hold a hearing in accordance with this By-law and other applicable law to decide whether the licence should be granted, continued as valid and subsisting, with or without such conditions as the Council may see fit to impose, or in accordance with the law, suspended or revoked.

Corporation - Change in Controlling Interest - Approval

40. Where there is to be a change in the composition or the controlling interest of the shareholders of a corporation licensed under this By-law, the corporation shall provide prior notice of such change to the Clerk, who may, if the circumstances warrant, treat such notice as a new application for a licence. Where there has been any change in the controlling interest of the corporation by virtue of a number of transactions, the licence may be suspended, until an application for a new licence is processed.

Facts - Misrepresentation of - Deemed Violation

41. No person carrying on or engaged in any business or activity to which this By-law relates shall make a false or intentionally misleading recital of fact, statement or representation, or omission of a material fact or information, orally or in any agreement, statutory declaration or application form, or any other document, submitted or produced pursuant to this By-law, to the Council, a committee, the Clerk, a by-law enforcement officer, the Medical Officer of Health, a public health inspector or a peace officer, and the making of such a false or intentionally misleading recital of fact, statement, representation or omission constitutes an offence.

Compliance - Applicable Provisions - All Persons

42. Every person shall comply with the provisions of this By-law applicable to such person, whether or not such person is licensed or required to be licensed under this By-law or any law, or whether or not a licence issued to such person is valid and subsisting.

Schedules - Part of By-law

43. Schedules A, B, C and D form part of this By-law.

Notice - Delivery and Service

44.

1. Any notice, order or other document required or authorized to be given under this By-law is sufficiently given if delivered personally or sent by prepaid ordinary mail addressed to the person to whom delivery is required to be made at the last address for delivery appearing on the records of the Clerk.

2. Where service or delivery is effected by prepaid ordinary mail, it shall be deemed to be made on the third day after the date of mailing, unless the person on whom service is being made establishes that he or she did not, acting in good faith, through absence, accident, illness or other cause beyond his or her control, receive the notice, order or document until a later date.

Sign type - prohibited

45. Every sign advertising an adult business shall comply with the City's Sign By-law, and no such sign shall show or contain any depiction of a person's specified body areas, or of any specified sexual activities, as defined in Section 1 of this By-law.

Sign - not visible to outside - permitted

46. Nothing in this By-law shall be deemed to constrain any person from erecting or maintaining any sign or other advertising device on any interior wall of an adult business, provided the content of such sign is not visible from the exterior of the adult business.

Service - provided - in contravention - prohibited

47. No owner or operator shall permit any body-rub or other services to be given, performed, provided or received in any adult business in breach of any of the provisions of this By-law.

Intoxicated person - admittance - prohibited

48. 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 business owned or operated by such owner or operator.

Owner - operator - in attendance - business hours

49.

1. No owner or operator shall permit an adult business to be open for business unless the owner/operator, or another operator licensed as such pursuant to this By-law, is in attendance at all times.
2. Either the owner, where the owner is an individual person licensed as an owner/operator, or another operator licensed in respect of such owner's adult business, shall be in attendance at such owner's premises during all opening hours, and no owner or operator shall permit an adult business owned or operated by him or her to open for business, or remain open for business, or any body-rubs or other services be provided at such adult business unless this section is complied with, and for greater particularity, where an owner is a partnership or corporation, such owner shall not

permit an adult business owned or operated by him or her to open for business, or remain open for business, or any body-rubs or other services to be provided therein, unless an operator licensed in respect of such owner's adult business is in attendance.

Attire - cleanliness - behaviour - owner - operator

50. Every owner, operator, body-rubber and entertainer shall, while engaged in his or her respective trade, calling business or occupation in an adult business, be neat and clean in his or her person and civil and well-behaved to members of the public with whom he or she is dealing.

Signs prohibiting entry by persons under 18 years

51.

1. Every operator shall post and keep posted at every entrance to any adult business operated by such operator, and in a prominent location inside such premises, signs sufficient to indicate clearly to any person approaching or entering the premises, and to every person in the premises, that no person under the age of eighteen years is permitted to enter or remain in such premises or any part thereof.
2. No person may provide body-rubs or other services in an adult business to any person under the age of 18 years.
3. No person under the age of 18 years may enter, be allowed to enter, remain in or be allowed to remain in, any part of an adult business.

Regulations - supplied - instructions - to all employees

52. Every owner and operator shall, before permitting any person to provide body-rubs or other services at an adult business provide to such person a copy of the regulations in this By-law, and instruct such person with respect to each of the regulations.

Camera - recording device - prohibited - exception

53. No owner or operator may use or permit to be used any camera or other photographic or recording device at an adult business by any person, but this paragraph shall not prohibit:

- a. the use of any camera or other device used by a public authority for the enforcement of the law; or
- b. the maintenance of a camera in the entrance or exit area of the premises, or any other portion of the premises generally accessible to the public, for security purposes only,

provided that clear written notice of the existence of such cameras or devices is provided to all persons at their point of entry upon the premises.

Floor plan - amendment prior approval required

54. In the event that the owner or operator wishes to amend the floor plan of an adult business, he or she shall first file with the Clerk a copy of the amended floor plan and shall not proceed to make such alterations without first obtaining the approval of the Clerk, and any permit or other approval required by law.

Entrance - unlocked - during hours of operation

55. During the hours of operation of a parlour the owner or operator shall ensure that the principal means of access into the parlour shall be kept unlocked and available so that anyone coming into the parlour may enter therein without hindrance or delay.

Premise - use of dwelling - contained bed - prohibited

56. No premises or part thereof used as an adult business shall be used as a dwelling or for sleeping purposes or contain therein any bed or other furniture which is commonly used or which may be used for sleeping purposes.

Ventilation - lighting - adequate

57. Every adult business shall be provided with adequate ventilation, and with lighting that is adequate to ensure visibility and that is uniformly distributed throughout the premises.

Building - complying with Code - drawings provided

58. Every adult business shall be constructed in accordance with the Ontario Building Code and every applicant for an owner's licence shall provide the Clerk with such drawings as may be required to assess compliance in this regard.

Compliance with By-law required

59. Every owner and operator of any adult business shall comply and ensure compliance by every operator and all other persons employed in such adult business, with the requirements of this By-law, including its Schedules, with respect to the adult business.

Regulations

60. Every licensee shall:

1. display the licence prominently at the premises at all times and shall produce the licence upon request by the Clerk, any by-law enforcement officer and any police officer;
2. keep the premises in a clean and sanitary condition;

3. carry on business only in the name in which the licence is issued, or such other business or trade name provided to the Clerk and endorsed by the Clerk upon such licence; and
4. advertise, promote and carry on such business only under the name in which the licence is issued, or such other business or trade name provided to the Clerk and endorsed by the Clerk upon such licence.

Enforcement

61.

1. Every person who contravenes any provision of this By-law, including of any of its Schedules, and every director or officer of a corporation who concurs in such contravention by the corporation, is guilty of an offence and on conviction is liable to a fine, exclusive of costs, not exceeding \$25,000.00.
2. Where a corporation is convicted of an offence under this By-law, the maximum penalty, exclusive of costs, that may be imposed on the corporation is \$50,000.00, and not as provided in subsection (1).

Intention to Maintain Valid Provisions by Severance

62. The Council hereby declares and confirms its intent that should any provision or any part of any provision of this By-law be held by a court of competent jurisdiction to be invalid, or of no force and effect, it is the intent of the Council in enacting this By-law, that each and every other provision of this By-law, and every part of any provision, authorized by law, stand and be applied and enforced in accordance with its terms to the extent possible according to law.

Short Title

63. This By-law may be referred to as the "City of Niagara Falls Live Adult Businesses By-law".

Transition

64.

1. By-law No. 97-249, to regulate and provide for the licensing of adult entertainment parlours, is repealed.
2. The provisions of this By-law applicable to adult entertainment parlours shall be deemed to be substituted, by re-enactment, amendment and revision, for the relevant provisions of repealed By-law No. 97-249, immediately upon the repeal of the said By-law No. 97-249, so that there shall be a continuity of licensing jurisdiction over matters covered by both

by-laws, and all licences issued and in good standing under the former by-law shall continue in full force and effect and shall be governed by the applicable law.

- 3. By-law No. 86-240 "to define areas in the City of Niagara Falls in which Adult Entertainment Parlours may operate", is repealed.
- 4. By-law No. 99-164, to regulate and provide for the licensing of body-rub parlours, is repealed.
- 5. The provisions of this By-law applicable to body-rub parlours shall be deemed to be substituted, by re-enactment, amendment and revision, for the relevant provisions of repealed By-law No. 99-164, immediately upon the repeal of the said By-law No. 99-164, so that there shall be a continuity of licensing jurisdiction over matters covered by both by-laws, and all licences issued and in good standing under the former by-law shall continue in full force and effect and shall be governed by the applicable law.

Passed this 4th day of November, 2002.

.....

DEAN IORFIDA, CITY CLERK WAYNE THOMSON, MAYOR

First Reading: November 4, 2002

Second Reading: November 4, 2002

Third Reading: November 4, 2002

**SCHEDULE A TO BY-LAW NO. 2002- LOCATIONAL REQUIREMENTS
AND REGULATIONS WITH RESPECT TO ADULT ENTERTAINMENT
PARLOURS**

1. Except where otherwise provided in the General Provisions of this By-law or this Schedule, the definitions contained in the General Provisions apply to words used in this Schedule. Locational Requirements and Limitation on Numbers of Licences

2.
 1. In this Section:
 - a. "existing area" means each of the three areas defined by subsection (4) of this Section, in which an existing adult entertainment parlour was in operation at the time of the coming into effect of this By-law;
 - b. "existing adult entertainment parlour" means each of the three adult entertainment parlour businesses in existing areas, and in respect of which the owner was licensed as such and was in operation at the time of the coming into effect of this By-law;
 - c. "new area" means one of the areas defined by subsection (3) of this Section;
 - d. "new licence" means an adult entertainment parlour owner's licence made available for issuance in respect of a new area by reason of the cessation of business, or the expiry, termination or revocation of the adult entertainment parlour owner's licence, in respect of an existing adult entertainment parlour in an existing area.
 2. The total number of adult entertainment parlour owner's licences issued under this By-law and valid and subsisting at any one time shall be three, each of which may be issued only in respect of a new area or an existing area, as such area is defined in either subsection (3) or (4), respectively, as one in which one or more adult entertainment parlours are authorized to be licensed.
 3. Each of the areas shown hatched on Schedule C and Schedules C-A through to and including C-M is defined, subject to subsection (4) of this Section, and subject to the City's Zoning By-law, as an area in respect of

which one or more adult entertainment parlour owner's licences may be granted.

4. Subject to subsection (5) of this Section, each of the following existing areas, designated by reference to its municipal address in the Municipality, is defined as an area in which one existing adult entertainment parlour may continue to operate pursuant to a valid and subsisting adult entertainment parlour owner's licence issued under this By-law:
 1. 8860 Lundy's Lane;
 2. 8870 Lundy's Lane;
 3. 5951 Main Street.

5. Subject to sections 30 and 31 of the General Provisions of this By-law, should an adult entertainment parlour owner's licence in respect of an existing adult entertainment parlour expire, be terminated, surrendered or revoked, pursuant to this By-law, or should the property in respect of which such licence was issued, cease to be used for the carrying on of such adult entertainment parlour business, the designation of such area pursuant to subsection (4) is repealed, and a new licence will then become available for issuance in respect of the new areas, in accordance with subsection (3).

Operator - unlicensed - owner not to permit

3. No owner shall permit any person other than a licensed operator to operate an adult entertainment parlour.

Owner - unlicensed - operator not to operate premises

4. No operator shall operate an adult entertainment parlour in premises for which the owner thereof has not obtained an owner's licence under this By-law.

Requirement that an operator be present

5. It is the duty of the owner and every operator to ensure that at all times when the premises are open for business as an adult entertainment parlour, or when any adult entertainment or other services are provided in such premises, that there is an operator, which may include an owner operating his or her own adult entertainment parlour, in charge of the premises and the business at all times.

Duties of owners and operators to co-operate with enforcement officials

6. Every owner operating his or her own adult entertainment parlour, and every operator, shall facilitate enforcement of this By-law and co-operate with the Clerk, every by-law enforcement officer, the medical officer of health, any public health

inspector or peace officer, and permit any such official to view any or all of the premises at any time, for the purpose of administering and enforcing this By-law.

Hours of operation

7. No adult entertainment parlour licensed by the Alcohol and Gaming Commission of Ontario for the sale of alcohol shall be open for business, or any adult entertainment or other services, or the provision of any goods, except during the hours of operation permitted for the sale of alcohol pursuant to such licence.

Owner - operator - when deemed not in attendance

8. For the purposes of section 5, an owner, operator or other person shall be deemed not to be in attendance at an adult entertainment parlour where such person is not physically present in the part of the premises constituting the adult entertainment parlour, whether or not such person is present in another part of the premises.

Services

9. No body rubs or services of a body-rub parlour may be offered or provided in any premises licensed or used as an adult entertainment parlour, and no adult entertainment or services of an adult entertainment parlour shall be offered or provided in any body-rub parlour.

Entertainers must perform in licensed live adult entertainment parlours

10.

1. No entertainer shall perform, offer, solicit or provide services in the Municipality except in premises in respect of which the owner and at least one operator are duly licensed as the owner and operator of an adult entertainment parlour, respectively, under this By-law.
2. No owner or operator of an adult entertainment parlour shall permit an entertainer to offer services in any location other than the premises in respect of which each is licensed respectively as the owner and operator of an adult entertainment parlour.

Door - access - unlocked - available

11. During the hours of business of an adult entertainment parlour, it shall be the responsibility of the owner and of the operator, if any, to ensure that the door or doors or 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.

Owner - operator - entertainer - minimum age - 18

12. No person under the age of 18 may be or act as an owner or operator of an adult entertainment parlour, as an entertainer in an adult entertainment parlour or provide any services in an adult entertainment parlour.

Operator - entertainer - not under 18 - owner responsibility

13. No owner or operator shall permit any person under the age of 18 to be or act as an operator of an adult entertainment parlour, or as an entertainer in an adult entertainment parlour or provide any services in an adult entertainment parlour.

Patron - under 18 - services to - prohibited

14. No person shall provide services in an adult entertainment parlour to a person under the age of 18 years.

Patron - under 18 - entry - prohibited

15. No owner or operator shall permit any person under the age of 18 to enter or remain in any adult entertainment parlour owned or operated by him or her.

Owner - records of proof of age - provided on request

16. Every owner and every operator of an adult entertainment parlour, and every other person engaged in or carrying on any business for which a licence is required under section 225 of the Municipal Act, shall, before employing or permitting any individual to act or appear as an entertainer, require such individual to produce a certificate of proof of age relating to such individual, and shall record the name of the individual, the number and description of such certificate, and any age or date of birth, shown on such certificate, and maintain such record available for inspection by any enforcement officer.

Proof of age - carried at all times

17. Every entertainer shall, while in attendance at any adult entertainment parlour, carry his or her certificate of proof of age at all times or have it readily available, and shall comply with a request by a public health inspector acting under the direction of the Medical Officer of Health, a by-law enforcement officer, the Clerk, or a peace officer, to produce such certificate.

Proof of age - provided on request

18. Every owner and every operator of an adult entertainment parlour, and every other person required by this By-law to record information from a certificate of proof of age under this By-law, shall provide such information to any public health inspector acting under the direction of the Medical Officer of Health, any by-law enforcement officer, the Clerk, or a peace officer, upon request therefor.

Proof of age - legal name

19. For the purposes of this By-law, no individual shall present as evidence of her or his age any certificate or other document that was not lawfully issued to her or him, or that does not refer to her or him by her or his legal name, or that states his or her age, or date of birth, as being other than the individual's true age or date of birth.

Sign - posted - exterior - licence number - other

20. Every owner and operator shall exhibit over the street door or in the lower front window of the premises in respect to which such person's licence is issued or in some other conspicuous place on the exterior of such premises satisfactory to the Clerk, a sign issued by the Clerk bearing the words, "Licensed Adult Entertainment Parlour No.", (inserting after "No." the owner's licence number), and "Comments regarding this business may be made to the City Clerk at [telephone and facsimile numbers of the Clerk as shown on the licence]".

**SCHEDULE B TO BY-LAW NO. 2002- LOCATIONAL REQUIREMENTS
AND REGULATIONS WITH RESPECT TO BODY-RUB PARLOURS**

1. Except where otherwise provided in the General Provisions of this By-law or this Schedule, the definitions contained in the General Provisions apply to words used in this Schedule.

Locational Requirements and Limitation on Numbers of Licences

2.

1. In this Section:

- a. "existing area" means each of the three areas defined by subsection (4) of this Section, in which an existing body-rub parlour was in operation at the time of the coming into effect of this By-law;
- b. "existing body-rub parlour" means each of the three body-rub parlour businesses in existing areas, and in respect of which the owner was licensed as such and was in operation at the time of the coming into effect of this By-law;
- c. "new area" means one of the areas defined by subsection (3) of this Section;
- d. "new licence" means a body-rub parlour owner's licence made available for issuance in respect of a new area by reason of the cessation of business, or the expiry, termination or revocation of the body-rub parlour owner's licence, in respect of an existing body-rub parlour in an existing area.

2. The total number of body-rub parlour owner's licences issued under this By-law and valid and subsisting at any one time shall be four, each of which may be issued only in respect of a new area or an existing area, as such area is defined in either subsection (3) or (4), respectively, as one in which one or more body-rub parlours are authorized to be licensed.

3. Each of the areas shown hatched on Schedule C and Schedules C-A through to and including C-J is defined, subject to subsection (4) of this Section, and subject to the City's Zoning By-law, as an area in respect of which one or more body-rub parlour owner's licences may be granted.

4. Subject to subsection (5) of this Section, each of the following existing areas, designated by reference to its municipal address in the Municipality, is defined as an area in which one existing body-rub parlour may continue to operate pursuant to a valid and subsisting body-rub parlour owner's licence issued under this By-law:
 - a. 8700 Lundy's Lane;
 - b. 8720 Lundy's Lane; and
 - c. 8860 Lundy's Lane.

5. Subject to sections 30 and 31 of the General Provisions of this By-law, should a body-rub parlour owner's licence in respect of an existing body-rub parlour expire, be terminated, surrendered or revoked, pursuant to this By-law, or should the property in respect of which such licence was issued, cease to be used for the carrying on of such body-rub parlour business, the designation of such area pursuant to subsection (4) is repealed, and a new licence will then become available for issuance in respect of the new areas, in accordance with subsection (3).

Service - erotic - sexual – limitation

3.

1. No person shall provide, solicit or receive in a body-rub parlour any services designed to appeal to erotic or sexual appetites or inclinations, or any other adult entertainment service referred to in this By-law.

2. No adult entertainment parlour licence, as provided for in this By-law, shall be granted to a body-rub parlour, whether or not licensed as such by the City, and no body-rub parlour licence as provided for in this By-law shall be granted to an adult entertainment parlour whether or not licenced as such by the City.

Service - by licenced body-rubber - only

4. No owner or operator shall permit any person, except a person holding a body-rubber's licence, to perform any body-rub or other services at a body-rub parlour.

Licensed - owner - operator - on premises

5. No body-rubber may provide services at a body-rub parlour unless there is in attendance a person at the premises holding a body-rub parlour owner's licence or a body-rub parlour operator's licence.

Services

6.

1. No body-rubber shall perform, offer, solicit or provide body-rubs in the Municipality except in premises in respect of which the owner and at least one operator are duly licensed as the owner and operator of a body-rub parlour, respectively, under this By-law.
2. No owner or operator of a body-rub parlour shall permit a body-rubber to offer body-rubs in any location other than the premises in respect of which each is licensed respectively as the owner and operator of a body-rub parlour.

Body-rubber - customer- body areas covered

7. Every body-rubber, every customer, and every other person at a body-rub parlour, shall be clothed in a manner by which such person's specified body areas are fully covered by opaque material.

Alcohol - drugs - use - possession - prohibited

8. No owner, operator or body-rubber shall take, consume or have alcohol or drugs in his or her possession in a body-rub parlour, nor shall the use of alcohol or drugs by him or her be apparent while that body-rub parlour is under his or her charge or when he or she is providing services therein, as the case may be.

Sign - in lobby - content

9. Every owner shall post and maintain in the lobby or entrance of the body-rub parlour, in a manner that is satisfactory to the Clerk, a sign which provides as follows:

"These premises are licensed as a body-rub parlour by the City of Niagara Falls. The By-law regulating these premises makes it an offence for any person to provide services designed to appeal to erotic or sexual appetites or inclinations in a body-rub parlour."

Exemptions - medical - therapeutic - health care

10. The provisions of this By-law are not applicable in relation to 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.

DESIGN OF PREMISES**Floor plan - provided - rooms designated**

11. The owner or operator shall provide the Clerk 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, nor in a room or area designated as an office or storage room.

Locking device - on room - prohibited

12. Save and except for one room designated by the owner or operator for use solely as an office, and used only for that purpose, and one room designated by the owner or operator solely as a storage room, and used only for that purpose, 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, leaving, or obtaining access to such area.

Prohibition against entry by persons under 18 years

13.

1. No owner, operator or any person working in a body-rub parlour shall permit any person under the age of 18 years to enter or remain in such body-rub parlour.
2. No owner, operator or any other person shall work in a body-rub parlour unless such person is of the age of 18 years or older.
3. No person except a licensed body-rubber shall provide a body-rub, or any other services, in a body-rub parlour.

SCHEDULE D TO BY-LAW NO. 2002- 197 LICENCE FEE SCHEDULE

The following shall be the fees required to be paid in respect of each annual licensing period in respect of all or part of which any fee is required to be paid with respect to any licence application or licence pursuant to the provisions of this By-law:

LICENCE FEES

Class	Fee
Owner of a Body-Rub Parlour	\$ 2,500.00
Operator of a Body-Rub Parlour	\$ 400.00
Body-Rubber at a Body-Rub Parlour	\$ 250.00
Owner of an Adult Entertainment Parlour	\$ 3,750.00
Operator of an Adult Entertainment Parlour	\$ 1,200.00
Entertainer at an Adult Entertainment Parlour	\$ 250.00

NON-REFUNDABLE ADMINISTRATIVE FEES

Owners and Operators	\$ 100.00
Entertainers and Body-Rubbers	\$ 25.00

TRANSFER OF ADULT ENTERTAINMENT OWNER'S LICENCE

Arms length transfer	\$ 3750.00
Transfer to an existing Co-owner	\$ 1000.00
Or non-arms length transfer	