



BY-LAW 2007-100

A By-law to Amend by-law 2002-289, a By-law to Provide for the Regulating and Licensing of Places of Amusement – Pinball and Video Games Rooms

WHEREAS Sections, 9, 10, 11 and 151 of the *Municipal Act, 2001, S.O. 2001, c.25*, authorizes municipalities to licence, regulate and govern any business wholly or partly carried on within the municipality; and

WHEREAS By-law 2002-289, a By-law to provide for the Regulating and Licensing of Places of Amusement – Pinball and Video Games Rooms, was enacted by Council on December 10, 2002; and

WHEREAS a review of By-law 2002-289 was undertaken in respect of the requirements of the By-law relating to hours of operation, design of premises and creating classes of licenses, as a request of business owners; and

WHEREAS Council held a public meeting on January 16, 2007, to hear comments and concerns from the public regarding the By-law; and

WHEREAS Council deems it expedient to amend the By-law to address the business needs and uphold regulations protecting youth and preventing activities that may become a nuisance or are unlawful;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM ENACTS AS FOLLOWS;

1. That By-law 2002-289 as amended, be amended by deleting section 1 in its entirety and replacing it with the following:
 1. This By- law may be cited as the "Amusement Games By-law".
2. That By-law 2002-289 as amended, be amended by deleting therefrom all alphabetical references and arranging all definitions in correct alphabetical order.
3. That By-law 2002-289 as amended, be amended by adding to subsection 2(a) "a computer", immediately following the words "and shall include".
4. That By-law 2002-289 as amended, be amended by deleting subsection 2(g) in its entirety and replacing it with the following in correct alphabetical order:

"operator" means a person who, alone or with others, operates, manages, supervises, runs or directs the business of a place of amusement;
5. That By-law 2002-289 as amended, be amended by deleting subsection 2(f) in its entirety and replacing it with the following in correct alphabetical order:

"owner" means a person who, alone or with others, owns or controls the trade, calling, business or occupation carried on at a place of amusement 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 place of amusement;

6. That By-law 2002-289 as amended, be amended by deleting subsection 2(i) in its entirety and replacing it with the following in correct alphabetical order:

“person” includes an individual, firm, corporation, association, or partnership;
7. That section 2 of By-law 2002-289 as amended, be amended by adding the following definition in correct alphabetical order,

“Dwelling” means a single room or series of rooms of complementary use, operated under a single tenancy which functions as a housekeeping unit used or intended to be used as a domicile by one or more persons; containing cooking, eating, living, sleeping and sanitary facilities; and having a private entrance from outside the building or from a common hallway or stairway inside or outside the building.
8. That section 2 of By-law 2002-289 as amended, be amended by adding the following definitions in correct alphabetical order,

“Place of Amusement – Class A” means a place of amusement where more than 3 amusement machines are provided; and
“Place of Amusement – Class B” means a place of amusement where 3 or less amusement machines are provided.
9. That By-law 2002-289 as amended, be amended by deleting section 3 in its entirety and replacing it with the following:
 3. No person may be an owner or an operator of a Place of Amusement without making application for, obtaining and maintaining, pursuant to the terms of this By-law, a licence.
10. That By-law 2002-289 as amended, be amended by deleting section 4 in its entirety and replacing it with the following:
 4. Every applicant for a licence pursuant to this By-law shall file with the Licensing Officer the following:
 - (a) an application on the form approved by the Licensing Officer together with such other information as may be required to determine the compliance of the use, with all applicable by-laws and regulations;
 - (i) In the case of a Place of Amusement owned by a partnership such application shall be made by one of the partners, and in the case of a Place of Amusement owned by a corporation, such application shall be made by an officer of the corporation;
 - (b) a floor plan of the premises which shall show the location of all doors and windows and the proposed location of each Amusement Machine;

- (c) 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 Place of Amusement 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;
- (d) the fee set forth in By-law No. 2002-284 provided such fee shall not be reduced in the event that the period for which the license is granted is less than one year;
- (e) 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:
 - (i) the full name of every partner and the address of his ordinary residence;
 - (ii) the name or names under which they carry on or intend to carry on business;
 - (iii) that the persons therein named are the only members of the partnership; and
 - (iv) the mailing address for the partnership.
- (f) 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 instead of the partnership.
- (g) 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:
 - (i) the full name of every shareholder and the address of his ordinary residence;
 - (ii) the name or names under which it carries on or intends to carry on business;
 - (iii) that the persons therein named are the only shareholders of the corporation; and
 - (iv) the mailing address for the corporation.
- (h) 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;

- (i) Fifty percent of the fee for license is refundable in the event that an application is not accepted for licensing.
- 11. That By-law 2002-289 as amended, be amended by deleting section 5 in its entirety and replacing it with the following:
 - 5. 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 where he deems necessary, including but not limited to circulation of the license application to the Medical Officer of Health, Municipal and Provincial Police Departments and Markham Fire and Emergency Services for comments;
 - (e) make or cause to be made all investigations and inspections which he 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;
- 12. That By-law 2002-289 as amended, be amended by deleting section 6 in its entirety and replacing it with the following:
 - 6. 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 holder affords reasonable grounds for belief that he is not carrying or will not carry on the trade, calling, business or occupation in respect of the Place of Amusement 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 Place of Amusement 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 Place of Amusement 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 circumstances affords reasonable grounds for the belief that the carrying on by the applicant of the trade, calling, business or occupation 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.
- 13. That By-law 2002-289 as amended, be amended by deleting section 7 in its entirety and replacing it with the following:
 - 7. 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 Officer 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 any applicable conditions and the applicant shall thereby be licensed.
- 14. That By-law 2002-289 as amended, be amended by deleting section 8 in its entirety and replacing it with the following:
 - 8. 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 fourteen days from the date of service of this notice. In order to continue this suspension beyond the fourteen day period or to revoke the license, the Licensing Officer must prepare a report and receive Council's direction in this regard. Where 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.
- 15. That By-law 2002-289 as amended, be amended by deleting section 9 in its entirety and replacing it with the following:
 - 9. Where the Licensing Officer refuses to issue a licence, or recommends the revocation, non-renewal or suspension of a licence, or imposes conditions on a licence, the applicant may request a hearing before the Town of Markham Licensing Committee.
 - (a) At such a hearing, the applicant

- (i) shall be accorded its rights pursuant to the *Statutory Powers Procedure Act* and any applicable procedural rules, including the right to appear and speak to the matter; and
 - (ii) when he or she has been provided with notice of the meeting and does not attend, the Licensing Committee may proceed with the meeting in the absence of the applicant.
 - (b) The Licensing Committee may recommend to Council and Council may,
 - (i) refuse to grant a licence, revoke a licence or suspend a licence; or
 - (ii) impose special conditions as a requirement in order to obtain, continue to hold or renew a licence.
 - (c) Council shall exercise its power under section 9(b) of this By-law,
 - (i) where the applicant has not met the requirements of this By-law; or
 - (ii) upon the grounds that the conduct of any person, including the officers, directors, employees or agents of a corporation, affords reasonable cause to believe that the person will not carry on or engage in the business in accordance with the law or with honesty and integrity.
- 16. That By-law 2002-289 as amended, be amended by deleting section 10 in its entirety and replacing it with the following:
 - 10. Any license that has not been renewed as at December 31st in the year of its issuance or renewal shall expire on January 1st in the year immediately following its issuance or renewal.
 - (a) Notwithstanding section 10, the Licensing Officer may extend a licence where an application for a renewal of the licence has been made, a hearing by the Licensing Committee has been requested by the applicant and the final disposition of the application remains outstanding by December 31st of the year in which the renewal application was made.
- 17. That By-law 2002-289 as amended, be amended by deleting section 11 in its entirety and replacing it with the following:
 - 11. Each licence issued pursuant to this By-law shall be subject to the following:
 - (a) Each licence shall be granted for a specific number of Amusement Machines and no additional Amusement Machines shall be added to the premises after the licence has been issued, unless the applicant shall first submit an amended floor plan of the premises, and receive the approval of the Licensing Officer.

- (b) 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.
 - (c) No license shall be transferred or assigned and if an owner, operator sells, leases or otherwise disposes of his interest in the trade, calling business or occupation carried on at a Place of Amusement, their license in respect of such Place of Amusement shall, notwithstanding any other provision of this By-law, be revoked.
- 18. That By-law 2002-289 as amended, be amended by deleting section 12 in its entirety and replacing it with the following:
 - 12. No person may own or operate a Place of Amusement:
 - (a) in a vehicle of any kind, whether such vehicle is permanently parked in any location, or is capable of being moved;
 - (b) located on a lot where any form of dwelling is also located; and
 - (c) located closer than three hundred metres (300m) to any school, measured by the shortest distance between a school's property line and the premises.
- 19. That By-law 2002-289 as amended, be amended by deleting section 13 in its entirety and replacing it with the following:
 - 13. Every owner and operator of a Place of Amusement shall
 - (a) obtain a separate licence for each Place of Amusement that they own and operate;
 - (b) post the licence in a conspicuous place in the premises so licensed;
 - (c) post in a conspicuous place in the premises, a notice which indicates that disorderly conduct, loitering and gambling are not permitted;
 - (d) keep the premises in a clean and sanitary condition at all times;
 - (e) maintain sufficient space between rows of Amusement Machines as to permit unimpeded access by patrons at all times to any door or other exit;
 - (f) ensure that no Amusement Machine is located in such a manner as to impede access by patrons to any door or other exit;

- (g) report any change in any 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, to the Licensing Officer within seven (7) days of the change; and
 - (e) comply with the provisions of this By-law and all other laws.
- 20. That By-law 2002-289 as amended, be amended by deleting section 14 in its entirety and replacing it with the following:
 - 14. No owner or operator of a Place of Amusement shall:
 - (a) permit the business to remain open or permit the use of any amusement machine during any time other than between 9:00 a.m. and 12:00 midnight during any day;
 - (i) subsection 14(a) does not apply to a Place of Amusement Class B which is incidental to a business licensed pursuant to the Alcohol and Gaming Commission of Ontario;
 - (b) permit the business to remain open unless an operator of the business who is no less than 18 years of age remain on the premises at all times;
 - (c) permit persons younger than sixteen (16) years to use any Amusement Machine or to remain on any Place of Amusement, unless accompanied by a parent or guardian, except on Monday to Friday between the hours of 4:00 p.m. to 9:00 p.m., and on Saturday and Sunday between 9:00 a.m. and 9:00 p.m.;
 - (e) permit any gambling to take place on the premises;
 - (f) permit the sale or use of alcohol on the premises, except in a Place of Amusement Class B which is incidental to a business licensed pursuant to the Alcohol and Gaming Commission of Ontario; and
 - (g) carry on any trade, calling, business or occupation pursuant to this By-law advertise or promote or carry on such trade, calling, business or occupation under any name other than the name endorsed upon his license.
- 21. That By-law 2002-289 as amended, be amended by deleting section 15 in its entirety and replacing it with the following:
 - 15. 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* (as amended), is liable to;
 - (a) a penalty in the case of persons, other than a corporation, not to exceed \$100,000.00; in addition to

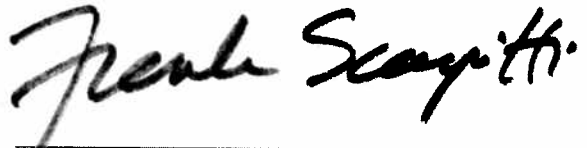
- (b) an order closing the Place of Amusement, which is the subject of the contravention, for a period not to exceed two years.
- 22. That By-law 2002-289 as amended, be amended by adding the following sections directly following section 15:
 - 16. The making of a false or intentionally misleading recital of fact, 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.
 - 17. Every person shall comply with the provisions of this By-law applicable to him whether or not he is licensed under this By-law.
 - 18. Every owner and operator shall, during the operating hours of the Place of Amusement and at all times when Amusement Machines are available for use, 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.
 - 19. Every owner and operator shall identify himself when requested to do so by the Licensing Officer, a peace officer, a Medical Officer of Health, a Provincial Offences Officer or a By-law Officer during an inspection.
 - 20. Every owner and every operator of a Place of Amusement shall, at all times during the hours of operation of the Place of Amusement and during all hours when Amusement Machines are available for use, permit the entry by and the inspection of the Place of Amusement by a By-law Enforcement Officer, a Provincial Offences Officer, the Licensing Officer, a Medical Officer of Health or a Peace Officer.
 - 21. No person shall obstruct or hinder the entry or the inspection of a Place of Amusement by a By-law Enforcement Officer, a Provincial Offences Officer, the Licensing Officer, a Medical Officer of Health or a Peace Officer.
 - 22. The provisions of this By-law shall apply to all lands and premises within the Town of Markham.
 - 23. 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.
 - 24. 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.

25. This By-law shall take effect and come into force on the date of its passing.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS
12TH DAY OF JUNE, 2007.



KIMBERLEY KITTERINGHAM
DEPUTY TOWN CLERK



FRANK SCARPITTI
MAYOR