



Report to: Committee of the Whole

Date of Meeting: May 9, 2006

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**SUBJECT:** Adult Entertainment Goods By-law  
**PREPARED BY:** Darlene Barker, Provincial Offences Officer Supervisor

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**RECOMMENDATION:**

That a by-law be enacted to amend By-law 2002-286, "A by-law respecting the licensing, regulating and inspecting of Adult Entertainment Parlours for the provision of goods" to:

- Redefine Adult Goods so that retail establishments whose primary business is the provision of all adult goods, including adult novelties, will be licensed and regulated;
- Provide a regulation to prohibit the display of adult goods, so as to be not visible from the exterior of the premises;
- Redefine Class B Adult Entertainment Parlours to provide a more proportionate measurement that distinguishes these businesses from Class A.
- Provide an exemption to locational requirements of a Class A Adult Entertainment Parlour – Goods specifically for the location of Cupid Boutique at 1 Masseyfield Gate for a period of up to five years

**PURPOSE:**

To expand the scope of businesses regulated by By-law 2002-286 to bring those businesses under similar regulations and locational restrictions, and to provide a site specific exemption to Cupid Boutique at 1 Masseyfield Gate from the locational requirements for a period of up to five years.

**BACKGROUND:**

A report to General Committee was presented at the meeting of April 25, 2006 of the same title of this report and recommended the following amendments to by-law 2002-286;

- Redefine Adult Goods so that retail establishments whose primary business is the provision of all adult goods, including adult novelties, will be licensed and regulated;
- Provide a regulation to prohibit the display of adult goods, so as to be not visible from the exterior of the premises;
- Redefine Class B Adult Entertainment Parlours to provide a more proportionate measurement that distinguishes these businesses from Class A.

During General Committee meeting on April 25, 2006, Ms. J. Gill, owner, Cupid Boutique, 1 Masseyfield Gate, Town of Markham, was in attendance to request an exemption from the proposed amendment to By-law 2002-286, *A By-law Respecting the Licensing, Regulating and Inspecting of Adult Entertainment Parlours for the Provision of Goods* which will include the licensing and regulation of establishments that sell adult novelty goods. She indicated that her business has been operating since February 1, 2006 which was prior to her receipt of notice that the sale of adult goods would be regulated by the Town.

Committee approved recommendation for the proposed by-law amendment and further directed staff to bring forward a report to the May 9, 2006 Committee of the Whole which would allow the existing Cupid Boutique business at 1 Masseyfield Gate to continue subject to following conditions:

- Entering into an agreement imposing special conditions for the licence
- The licence not being transferable
- No sale of videos at the location
- Items for sale and advertisement of items not visible from the exterior of the building
- Licencing exemption is for a five year period with no option for renewal
- An exception for distance separation requirements be included in the amended by-law for the business

#### **OPTIONS/ DISCUSSION:**

Schedule A of By-law 2002-286 currently provides for two site specific locations that are permitted to be licensed pursuant to the by-law, notwithstanding the locational criteria established, and are subject to conditions.

Currently, those locations and the status of the licenses for each are:

Location	Status
4981 Highway No. 7	Location not valid – ceased operating
5261 Highway No. 7	Currently Licensed – Adult Time Video

The by-law is proposed to be amended to delete the reference to 4981 Highway No. 7 as the business no longer operates; incorporate business name of exempted operators, and add specific conditions to licence for 1 Masseyfield Gate.

The following are the specific conditions for 1 Masseyfield Gate:

**1. Entering into an agreement**

Pursuant to Section 150(8) Council has the authority to pass a by-law to impose special conditions as a requirement of continuing to hold a licence, and to exempt any business or person from all or any part of the by-law. There is no requirement to enter into an agreement with either the property owner of 1 Masseyfield Gate or the business owner of Cupid Boutique. The exemption to locational requirements is specific to the business owner and name of the business and all requirements and specific conditions of the licence.

**2. Licence not transferable**

Section 13 of the by-law provides that no licence shall be transferred or assigned and if an operator sells, leases or otherwise disposes of his interest in the trade, calling business or occupation carried on at a Adult Entertainment Parlour (Goods) his licence in respect of such Adult Entertainment Parlour (Goods) or premises shall, notwithstanding any other provision of this By-law, terminate.

**3. No sale of videos**

The sale of adult videos at this location is prohibited as a condition of licence stated in Schedule A of the by-law.

**4. Items and advertisement of items not visible from the exterior of the building**

Pursuant to the existing by-law, section 6, no person shall advertise an Adult Entertainment Parlour Goods, by erecting a sign, circulate, distribute or post pamphlets or flyers, post a sign visible from the exterior of the premises, or advertise in any way by means of depicting specified human body areas, or portraying nudity or sexually poses or any content designed to appeal to sexual appetites.

**5. Five years with no option for renewal**

Five years is the term under which the exemption is granted in Schedule A of the by-law.

Staff discussed the proposed conditions with the Ms. Gill, operator of Cupid Boutique who advises she is not in agreement with the five year term. Ms. Gill, along with the propoerty owner, were notified of the May 9<sup>th</sup> meeting to consider this report.

**FINANCIAL TEMPLATE:**

Not applicable

**ENVIRONMENTAL CONSIDERATIONS:**

Not applicable

**ACCESSIBILITY CONSIDERATIONS:**

Not applicable

**ENGAGE 21<sup>ST</sup> CONSIDERATIONS:**

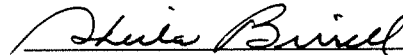
Not applicable

**BUSINESS UNITS CONSULTED AND AFFECTED:**

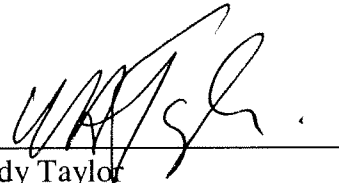
Legal Services has been consulted and concurs with this report.

**RECOMMENDED**

**BY:**



Sheila Birrell  
Town Clerk



Andy Taylor  
Commissioner, Corporate  
Services



## BY-LAW 2006-

A By-law to amend By-law 2002-286, a by-law respecting the licensing, regulating and inspecting of adult entertainment parlours for the provision of goods

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**WHEREAS** section 150 of the *Municipal Act, 2001*, S.O. 2001, c. 25 authorizes a municipal council to pass by-laws for licensing, regulating, governing, classifying and inspecting any business wholly or partly carried on within the municipality;

**AND WHEREAS** Section 151 of the *Municipal Act, 2001*, provides for additional authority to licence, regulate and govern adult entertainment establishments including defining the area in which adult entertainment establishments may locate within the municipality, regulating and prohibit advertising, and prohibiting any person engaged in an adult entertainment business for which a licence is required from permitting any person under the age of 18 years to enter or remain in the adult entertainment establishment or any part of it;

**AND WHEREAS** the Council of The Corporation of the Town of Markham deems it necessary, having regard, among other matters, to the health, safety, and consumer protection of those within its jurisdiction, to enact a by-law to regulate the persons engaged in the carrying on of a business of providing adult entertainment goods;

**AND WHEREAS** a public information meeting was held in Council Chambers of the Town of Markham to discuss the proposed amendments on February 21, 2006;

**AND WHEREAS** the General Committee of the Town of Markham considered the report of Sheila Birrell, Clerk, entitled "Adult Entertainment – Goods By-law", on Monday April 24, 2006;

**AND WHEREAS** the Council of the Town of Markham adopted the recommendation of the Finance and Administration Committee at its meeting on May 9, 2006;

**NOW THEREFORE** the Council of The Corporation of the Town of Markham **ENACTS AS FOLLOWS:**

1. That subsection 1(d) of By-law 2002-286, as amended, be deleted and replaced with the following:
  - 1(d) **"Class "B" Adult Entertainment Parlour (Goods)"** means an adult entertainment parlour (goods) in which the portion of floor area devoted to the display of goods to the public is less than 10% of the total area devoted to the display of all merchandise within the business premises.
2. That subsection 1(f) of By-law 2002-286, as amended, be deleted and replaced with the following:
  - 1(f) "goods" includes, but is not limited to, magazines, books, pictures, slides, films, videotapes or adult videotapes, phonographic records, pre-recorded magnetic tapes, compact discs, digital video discs, novelties, devices or tools, the container or contents of which are designed or held out as designed to appeal to erotic or sexual appetites or inclinations, through the pictorial, photographic or other graphic depiction, or display of contents, of subject matter distinguished or characterized by the portrayal of one or more persons involved

or engaging in specified sexual activities or by an emphasis on the display of specified human body areas;

3. That section 7 of By-law 2002-286, as amended, be amended by adding the following subsections thereto:
  - 7(5) All goods shall be displayed so as to not be visible from the exterior of the premises.
4. That Schedule A of By-law 2002-286, as amended, be deleted in its entirety and replaced with the following:
  1. The premises at each of the following municipal addresses shall be permitted to be operate, subject to all applicable law, as a Class "A" Adult Entertainment Parlour (Goods) as long as the premises are in lawful, actual, continual, uninterrupted and licensed use as a Class "A" Adult Entertainment Parlour (Goods) from May 9, 2006:
    - (a) the premises at 5261 Highway No. 7 operating as Adult Time Video; and
    - (b) the premises at 1 Masseyfield Gate, Unit 4, operating as Cupid Boutique by 2100976 Ontario Ltd.
  2. Despite subsection 1(b), the premises referred to therein may be used as a Class "A" Adult Entertainment Parlour (Goods) for a period of time not to exceed five (5) years from May 9, 2006, provided that no adult videos, digital video discs, or similar media for goods described as moving pictures are available for sale or rental.
  3. Should premises referred to in section 1 cease to be used for the purpose of a Class "A" Adult Entertainment Parlour (Goods), any licence issued under this By-law shall be revoked and no renewal or further licence shall be issued for those premises.
  4.
    - (a) Figure 2 is and shall form part of Schedule "A";
    - (b) Each of Area 1, 2 and 4 on Figure 2 are hereby designated as an area in which, subject to the provisions of this By-law, one licence for a Class "A" Adult Entertainment Parlour (Goods) may be issued.
    - (c) Area 3 on Figure 2 is hereby designated as an area in which, subject to the provisions of this By-law, more than one licence for a Class "A" Adult Entertainment Parlour (Goods) may be issued.
5. This By-law shall come into force and effect upon passage hereof.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS  
9<sup>th</sup> DAY OF May, 2005.

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SHEILA BIRRELL, TOWN CLERK

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DON COUSENS, MAYOR