

BY-LAW NO. 6470/33/97

BEING A BY-LAW of the City of Brandon for the purpose of regulating access to and sale of adult magazines.

WHEREAS *The Municipal Act*, R.S.M. 1996, c.M225 authorizes a council to pass by-laws to regulate or prohibit for municipal purposes matters respecting the protection and well-being of people;

AND WHEREAS the Council of The City of Brandon has deemed it necessary and expedient to regulate access to and sale of certain adult magazines in order to protect the well-being of persons under the age of 18;

NOW THEREFORE the Council of The City of Brandon, duly assembled, enacts as follows:

1. In this by-law:

- (a) “adult magazine” means any magazine designed to appeal to erotic or sexual appetites or inclinations, through the pictorial, photographic or other graphic depiction of subject-matter distinguished or characterized by the portrayal of one or more persons involved or engaging in specified sexual activities, or by an emphasis on the display of human specified body areas.**
- (b) “operator” means any person who provides, in any premises or part thereof, in pursuance of a trade, calling, business or occupation, adult magazines, or who operates any premises or part thereof in which such magazines are so provided.**
- (c) “provides”, when used in relation to any magazine, means to sell, offer to sell, or display for sale by retail or otherwise such magazine.**
- (d) “specified body areas” means any one or more of the following:**
 - (1) in the case of a female person, any portion of the nipple or areolae of the female breast; and**
 - (2) in the case of all persons, the anus, cleft of the buttocks, penis, vulva, genitals, genital hair.**
- (e) “specified sexual activities” means one or more of the following: actual or simulated sexual intercourse, masturbation, urination, defecation, ejaculation, sodomy, including bestiality, anal intercourse, and oral sexual intercourse, direct physical stimulation of unclothed genital organs, and flagellation or torture in the context of a sexual relationship or activity.**

2. Every operator who provides adult magazines in any premises or part thereof, or who operates such premises or part thereof, shall comply with the following regulations in respect of such premises or part thereof:

- (a) no adult magazine shall be displayed at a height of less than 1.5 metres above floor level, unless such magazine is in part of the premises to which the public is not permitted physical access or such magazine is behind a sales counter unexposed to view;**
- (b) all adult magazines offered for sale or displayed in such premises or part thereof shall be placed behind an opaque barrier of a size and nature which shall ensure that the cover of every such a magazine while being so displayed, except for the name thereof, may not be seen by any member of the public;**

- (c) no adult magazine shall be viewed by, offered for sale, sold, given, rented or exchanged to, persons who are not at least 18 years of age and signs shall be clearly posted stating such restrictions.
3. (a) Any premises or part thereof to which any person under the age of 18 years is not permitted to enter or remain shall not be subject to subsections 2(a) and (b).
- (b) Every operator who provides adult magazine and restricts access to the premises or part thereof to persons 18 years of age or older shall keep posted at every entrance to such premises or part thereof, and in a prominent location inside such premises or part thereof, signs sufficient to indicate clearly to any person approaching or entering the premises or part thereof that no person under the age of 18 years is permitted to enter or remain in such premises or part thereof.
- (c) Every operator who provides adult magazines and restricts access to persons 18 years of age or older shall ensure that no adult magazines are displayed in such a fashion as to be visible to any person outside of the premises, or part thereof.
4. (a) Any operator violating any of the provisions of this by-law shall be liable on summary conviction to a fine of not less than Fifty Dollars (\$50.00) for a first offence and not less than One Hundred Dollars (\$100.00) for a second or subsequent offence and not exceeding One Thousand Dollars (\$1,000) in either case, together with costs, or to imprisonment for a period not exceeding one month or to both such fine and imprisonment.
- (b) Where the contravention, refusal, neglect, omission or failure continues for more than one day, the person is guilty of a separate offence for each day that it continues.
5. This by-law shall come into force and take effect upon the passage thereof.

DONE AND PASSED by the Council of The City of Brandon duly assembled this 12th day of May A.D. 1997.

"R.N. Borotsik"
MAYOR

"W.I. Ford"
CITY CLERK

Read a first time this 21st day of April A.D. 1997.

Read a second time this 12th day of May A.D. 1997.

Read a third time this 12th day of May A.D. 1997