



OFFICE CONSOLIDATION

VIDEO STORE BY-LAW

BY-LAW NUMBER 5828/01

Passed by Council on June 18, 2001

Amendments:

None	date passed	section amended
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THE CORPORATION OF THE CITY OF PICKERING

BY-LAW NUMBER 5828/01

Being a by-law respecting the licensing, regulating and governing of adult videotape stores, and for regulating videotape stores in which adult videotapes are provided.

WHEREAS Part XVIII of the Municipal Act, R.S.O. 1990, c. M.45, as amended (the “Act”), provides for the licensing, regulating and governing of businesses by local municipalities; and

WHEREAS section 225 of the Act also specifically 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 “adult entertainment parlour” is defined in subsection 225(9) of the Act to mean any premises or part thereof in which is provided in pursuance of a trade, calling, business or occupation, goods or services appealing to or designed to appeal to erotic or sexual appetites or inclinations; and

WHEREAS “goods” are defined in subsection 225(9) of the Act to include books, magazines, pictures, slides, films, phonograph records, pre-recorded magnetic tape and other reading, viewing or listening matter; and

WHEREAS the Council of the Corporation of the City of Pickering (the “Council” of the “City”) has deemed it desirable to enact a By-law for the licensing, regulating and governing of adult videotape stores as a class of adult entertainment parlour pursuant to the provisions of the Act referred to above; and

WHEREAS subsection 225(3) of the Act provides that, despite subsection 257.2(4) of the Act, a by-law passed under section 225 of the Act may define the area or areas of the municipality in which adult entertainment parlours or any class or classes thereof may or may not operate and may limit the number of the licences to be granted in respect of adult entertainment parlours or any class or classes thereof in any such area or areas in which they are permitted; and

WHEREAS the Council deems it desirable to enact a by-law defining areas of the City in which, subject to all other applicable law, adult videotape stores may operate, and areas in which adult videotape stores may not operate, and limiting the number of licences to be granted in respect of adult videotape stores in the City;

NOW THEREFORE the Council of the Corporation of the City of Pickering ENACTS as follows:

DEFINITIONS

1. In this By-law:

- (a) (i) “adult videotape” means any videotape the content of which is designed or held out as 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;
- (ii) in the absence of evidence to the contrary, a videotape classified by the Ontario Film Review Board as “restricted”, with the added description “adult sex film”, shall be deemed to be an adult videotape;
- (b) “adult videotape area” means an identifiable part of any premises, which part is used for the provision of adult video tapes;
- (c) “adult videotape store” means any premises:
 - (i) subject to section 3, used for the carrying on of the business of the provision of exclusively adult videotapes; or
 - (ii) in which adult videotapes are provided in the pursuance of a business and to which premises entry by persons under the age of 18 years is prohibited, or in respect of which premises it is advertised or notice is given that such entry is prohibited; or
 - (iii) in which adult videotapes are provided in the pursuance of a business and in respect of which it is advertised, or notice is given either by signs or other advertising devices on or in the premises, or otherwise, that the premises are an “adult video store”, an “adult videotape store”, an “adult video rental store”, or which are otherwise described by words of like meaning;
- (d) “committee” means a committee of the Council appointed by by-law to conduct one or more, hearings under the provisions of this By-law;
- (e) “Council” means the Council of the Corporation of the City of Pickering;

- (f) "Manager" means the Manager of the By-law Enforcement Services Division or, in his or her absence, any person authorized to fulfill the responsibilities of the Manager;
- (g) "Licensing Section" means the Licensing Section of the By-law Enforcement Services Division of the City;
- (h) "operator" includes a proprietor, or any other person who alone or with others, manages, supervises, runs or controls a videotape store;
- (i) "owner" means a person who alone or with others has a right to possess or occupy a videotape store or actually does possess or occupy a videotape store, and includes a lessee of a videotape store or of premises upon which a videotape store is located;
- (j) "premises" includes a building or any part thereof, and any place;
- (k) "to provide" when used in relation to any videotape, means to sell, offer to sell or display for sale by retail, or to rent, offer to rent or display for rental, whether or not the cost, fee or other consideration passes at the time of such rental or sale, or is effected through the cost of membership, subscription, admission or any other manner;
- (l) "City" means the Corporation of the City of Pickering;
- (m) "specified body areas" means any one or more of the following:
 - (i) in the case of a female person, her areolae; and
 - (ii) in the case of all persons, the genitals and the anus;
- (n) "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;
- (o) "videotape" means cinematographic film, videotape and any other medium from which may be produced visual images that may be viewed as moving pictures;
- (p) "videotape store" means any premises or part thereof in which videotapes are provided in the pursuance of a business, and includes an adult videotape store.

LICENCE REQUIREMENT

2. There shall be taken out by every owner and every operator of an adult videotape store a licence from the Council authorizing him or her to carry on such business in the City, for which licence the person obtaining same shall pay to the Council, at or before the time of taking out such licence, the fee fixed by this By-law, and no person shall, within the limits of the City, carry on or engage in such business until he or she has procured such licence so to do.
3. The regulations contained in this By-law relating to the display of adult videotapes and to the prohibition of admission to all or part of premises by persons under the age of 18 years, shall apply to all videotape stores.

DEFINED AREAS AND LIMITATION ON NUMBERS OF LICENCES

4. (1) Subject to subsection (2), the area of the City defined in Schedule “B” to this By-law, which Schedule shall be deemed to be part of this By-law, is an area in which three adult videotape stores may operate and no adult videotape stores are permitted to operate in any other area or areas of the City.
- (2) No adult video store shall be permitted to operate within 250 metres of a school building.
- (3) No person shall operate an adult videotape store in the City except as permitted under this By-law and pursuant to a licence issued under this By-law.

ADMINISTRATION

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

APPLICATIONS FOR LICENCES

6. (1) Every person applying for a licence under this By-law shall file with the Licensing Section a duly completed application form provided by the Licensing Section, in which the applicant shall provide all information sought in such application form.
 - (2) The applicant shall, at the time of the filing of the application form required under subsection (1), deliver to the Licensing Section the following:
 - (a) cash, money order or certified cheque in the amount of the licence fee, fixed pursuant to Schedule “A” of this By-law, for every licence required under this By-law or for the renewal thereof;
 - (b) if the applicant is a corporation, a copy of the incorporating document and of the last annual information return filed, and a list of the names and home addresses of the directors, shareholders and officers of the corporation and of any corporation having an interest, direct or indirect, in the adult videotape store; and
 - (c) if the applicant is a partnership, a list of the names and home addresses of the partners, and if a registered partnership, a copy of the registered declaration of partnership.
7. Every application form shall include a requirement that the applicant provide at least the following information:
 - (a) the name and address of the applicant;

- (b) the address of the applicant and of the intended licensee, to which 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 each building, premises or place in respect of which a licence is sought and where a 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 to be carried on;
 - (e) any trade or business description 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, if the applicant is an individual, any of the partners, if the applicant is a partnership, or any of the directors, shareholders and officers of a corporation, if the applicant or any party having a direct or indirect interest in the business, is a corporation, has or have been convicted; and
 - (h) the measurements of the floor area in the premises in which videotapes are or are to be displayed or provided, and of the area, if such is smaller, used or to be used for the provision or display of adult videotapes.
8. (1) If the applicant is not an individual, the application form shall be completed and updated from time to time as this By-law requires, by an individual duly authorized by the applicant to execute such form on behalf of the applicant and binding upon it, and the individual completing such form shall sign the form, certifying the truth and completeness of the information provided therein.
- (2) 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 Licensing Section in writing that the information on file with the Licensing Section has not changed, the applicant shall not be required to complete a new application form or amendment thereto in respect of an application for renewal.
9. (1) Upon the receipt of an application form by the Licensing Section, the Manager 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, if the investigation or any other information available to the Manager 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, may issue the licence.
- (2) If the investigation or any other information available to the Manager discloses 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 other reason the Manager does not issue the licence applied for, the Manager 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, and refer the matter to the Council, or to a committee established by by-law of the Council for the holding of a hearing under this By-law.

- (3) The Manager shall, in any notice served under subsection (2), include in such notice a statement that the applicant may require a hearing of the application by the council or a committee of the Council, as the case may be, by serving a notice in writing to that effect upon the Manager within 15 days of the date of the notice, and a statement that if no such notice is served by the applicant the application may not be granted and the applicant will not be entitled to any further notice in the proceedings.
 - (4) Where the Manager receives notice from an applicant requiring a hearing in accordance with this section, the Manager shall forthwith refer the application to the Council or committee as the case may be, for a hearing.
 - (5) Where the Manager does not receive notice from an applicant requiring a hearing in accordance with this section, the Manager need not process the application further, and no further notice is required to be served upon the applicant.
 - (6) 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.
10. Where the Manager has referred an application to the Council or a committee for a hearing pursuant to section 9 of this By-law, 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 or the committee, as the case may be, in accordance with this By-law, considers just and equitable in attaining the purposes of this By-law, and direct that the licence be issued subject to such conditions and to compliance with this By-law;
 - (c) refuse in whole or in part to grant the application upon grounds contained in this By-law or otherwise by-law; or
 - (d) adjourn the application in accordance with this By-law, or make such other disposition as may be permitted under this By-law and is in accordance with law.
11. The following are grounds upon which the Council may refuse to grant any application for a licence, or suspend or revoke any licence under this By-law:
 - (a) there are reasonable grounds for belief that any application or other document provided to the Licencing Section by or on behalf of the applicant contains a false statement or provides false information; or
 - (b) the past or present conduct of the applicant, or of any partner, in the case of an applicant which is a partnership, or of any director, shareholder or officer of the corporation, if the applicant or a party having a direct or indirect interest in the business, 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; or

- (c) there are reasonable grounds for belief that the carrying on of the said business will result in a breach of this By-law or any other law, including any applicable zoning requirement; or
- (d) the financial position of the applicant affords reasonable grounds to believe that the business will not be carried on in a financially responsible manner; or
- (e) there are reasonable grounds for belief that the application does not meet all the requirements of this By-law, or that the business is carried on or intended to be carried on in an area of the City where such business is prohibited by this By-law from being carried on, or is one in respect of which the issuing of a licence in respect of the business is not permitted by this By-law; or
- (f) there are reasonable grounds for belief that the building, premises or place in which the business is carried on, or intended to be carried on does not comply with the provisions of this By-law or with any other law, including any applicable building requirements, or is dangerous or unsafe; or
- (g) the conduct of the applicant or of 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 or
- (h) the applicant is not prepared to comply, or does not comply or ensure compliance, with any condition imposed or intended to be imposed, under this By-law upon the business or upon the licensee, as a requirement of obtaining, continuing to hold or renewing a licence; or
- (i) the fee payable in respect of the licence applied for has not been paid.

HEARINGS

12. (1) The provisions of ss. 5 to 15, 17(1), 18 and 21 to 24 of the Statutory Powers Procedure Act, as amended, shall apply to all hearings conducted by Council or a committee under this By-law.
- (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 summarizing the evidence and arguments presented by the parties, the findings of fact made by the committee and the recommendations, if any, of the committee, with reasons therefor, on the merits of the application or matters in respect of which the hearing has been conducted.
- (3) After conducting, a hearing, or after considering, a 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.

REVOCATION, SUSPENSION, PROBATION

13. The Council may revoke or suspend any licence issued under this By-law, upon any of the grounds set out in section 11, provided that no licence shall be revoked or suspended except after a hearing by the Council, or a committee appointed by by-law for the holding of one or more hearings, or after an opportunity for such a hearing has been afforded to the licensee, in accordance with law.
14.
 - (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 are in accordance with law.
 - (2) The Manager may, 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 general or special conditions be imposed as a requirement of continuing to hold a licence, provide written notice to the licensee and to the Council of such fact, and provide notice to the licensee of a right to a hearing, in accordance with this By-law and other applicable law.

ISSUANCE AND TERMS OF LICENCES

15. Every licence issued under this By-law may be issued for any period up to one year, and shall expire on December 31 of the year in which it is issued.
16. A licence issued under this By-law is personal to the licensee, and cannot be transferred.
17. The rights granted by a licence issued under this By-law apply only to the location for which the licence is issued.
18. Where a completed application form for the renewal of a licence is not submitted to the Licensing Section before the expiry date, the applicant shall be required to submit a new application, together with the application fee.
19. Where a licence is revoked, the licensee is entitled to a refund of a part of the licence fee proportionate to the unexpired part of the term for which it was granted.

NOTICE

20.
 - (1) Any notice or other information required or authorized to be given under this By-law is sufficiently given if delivered personally or sent by registered 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 Manager.
 - (2) Where service is effected by registered 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 or order until a later date.

CHANGES IN INFORMATION

21. (1) Every licensee shall notify the Licensing Section in writing within four days after the event, of any change in any of the information contained in the application form.
- (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 Licensing Section, to have the licence and licence records amended accordingly.

REGULATIONS APPLICABLE TO ADULT VIDEOTAPE STORES

22. Every licensee shall:
 - (a) prominently display the licence at the premises licensed at all times and shall produce the licence upon request by the Manager, any by-law enforcement officer and any police officer;
 - (b) keep the premises in a clean and sanitary condition;
 - (c) maintain on the premises, during all business hours, available for inspection by the Manager, any By-law Enforcement Officer or any Police Officer, a current list of all adult videotapes provided on the premises;
 - (d) carry on business only in the name in which the licence is issued, or such other business or trade name provided to the Licensing Section and endorsed by it upon such licence; and
 - (e) 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 licensing section and endorsed by it upon such licence.
23. (1) No owner, operator or any person working in an adult videotape store or adult videotape area shall permit any person under the age of eighteen years to enter or remain in such store or area.
- (2) No owner, operator or any other person shall work in an adult videotape store or adult videotape area or in any part of any videotape store in which adult videotapes are provided, unless such person is of the age of eighteen years or older.
24. (1) Every operator shall post and keep posted at every entrance to any adult videotape store operated by such operator, and in a prominent location inside such store, signs sufficient to indicate clearly to any person approaching or entering the store, and to every person in the store, that no person under the age of eighteen years is permitted to enter or remain in such store or any part thereof.
- (2) Exterior signs and advertisements relating to adult videotape stores and to the provision of adult videotapes, shall be restricted to the words “adult videos”, “adult videotapes”, or “adult videotapes sales or rentals” and shall not include pictorial representation of specified body areas or specified sexual activities.

REGULATIONS APPLICABLE TO ALL VIDEOTAPE STORES

25. (1) Every owner and every operator of a videotape store, whether or not he or she is licensed or required to be licensed under this By-law, shall, in the carrying on of such business, comply with the regulations contained in this By-law relating to the provision of adult videotapes.
- (2) Every owner and operator referred to in subsection (1) shall ensure that every person working in such videotape store complies with all requirements of this By-law relating to the provision of adult videotapes and the prohibition of access to all or part of the premises to persons under the age of eighteen years, as required by this By-law.
- (3) Every person working in a videotape store shall comply with all requirements of this By-law relating to the provision of adult videotapes and the prohibition of access to all or part of the premises to persons under the age of eighteen years, as required by this By-law.
26. (1) No owner or operator of a videotape store in which adult videotapes are provided, shall permit any person under the age of eighteen years to enter or remain in any part of such store where adult videotapes are provided, or within three metres of any adult videotape unless such adult videotape is located in an adult videotape area;
- (2) Every owner and operator of a videotape store in which any adult videotape is provided, shall affix, in a prominent location inside such store and at every entrance to any adult videotape area, a sign or signs sufficient to indicate clearly to persons in the store, that no person under the age of eighteen years is permitted to enter or remain in any adult videotape area in accordance with this By-law.
- (3) Every operator of a videotape store, including an adult videotape store, and every person working in such store, shall ensure that no person under the age of eighteen permitted to enter an adult videotape store, or any adult videotape area, in accordance with this By-law.
- (4) Every operator of videotape store and every person working in such store shall ensure that no adult videotape, or container for an adult videotape shall be displayed in such a manner so as to be visible from outside the store.
- (5) Every operator of a videotape store and every person working in such store shall ensure that no adult videotape, or container for an adult videotape, shall be displayed in a videotape store that is not an adult videotape store, in a location where it can be seen by persons in the store, unless such adult videotape or container is in a separate location in such store to which persons under the age of eighteen years are not permitted to enter, and such adult videotape or container is displayed in a location where it cannot be seen from outside such area.

PENALTY

27. (1) Every person who contravenes any provision of this By-law, 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).

VALIDITY

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

SHORT TITLE

29. This by-law may be referred to as the Adult Videotape Licensing and Regulatory By-law.

EFFECTIVE DATE

30. This By-law comes into force and effect on the day of its enactment.
31. No adult videotape store shall be licensed under this By-law except in accordance with Schedule "B", and no such licence may be granted for any adult videotape store, except in respect of any part of premises lawfully used for the business of the provision of adult videotapes on the date of enactment of this By-law, and continued to be used for such purpose through the period up to the issuance of the licence.

REPEAL OF BY-LAW

32. By-law Number 5474/99 is hereby repealed.

By-law read a first, second and third time and finally passed this 18th day of June, 2001.

(signed) Wayne Arthurs _____
Wayne Arthurs, Mayor

(signed) Bruce Taylor _____
Bruce Taylor, Clerk

SCHEDULE "A" TO BY-LAW NUMBER 5828/01

Adult Videotape Stores:

First Licence or Renewal

Owner/Operator: \$1,500.00

Owner who does not operate: \$1,400.00

Operator other than Owner: \$ 100.00

For the term of any licence period expiring December 31st of any year.

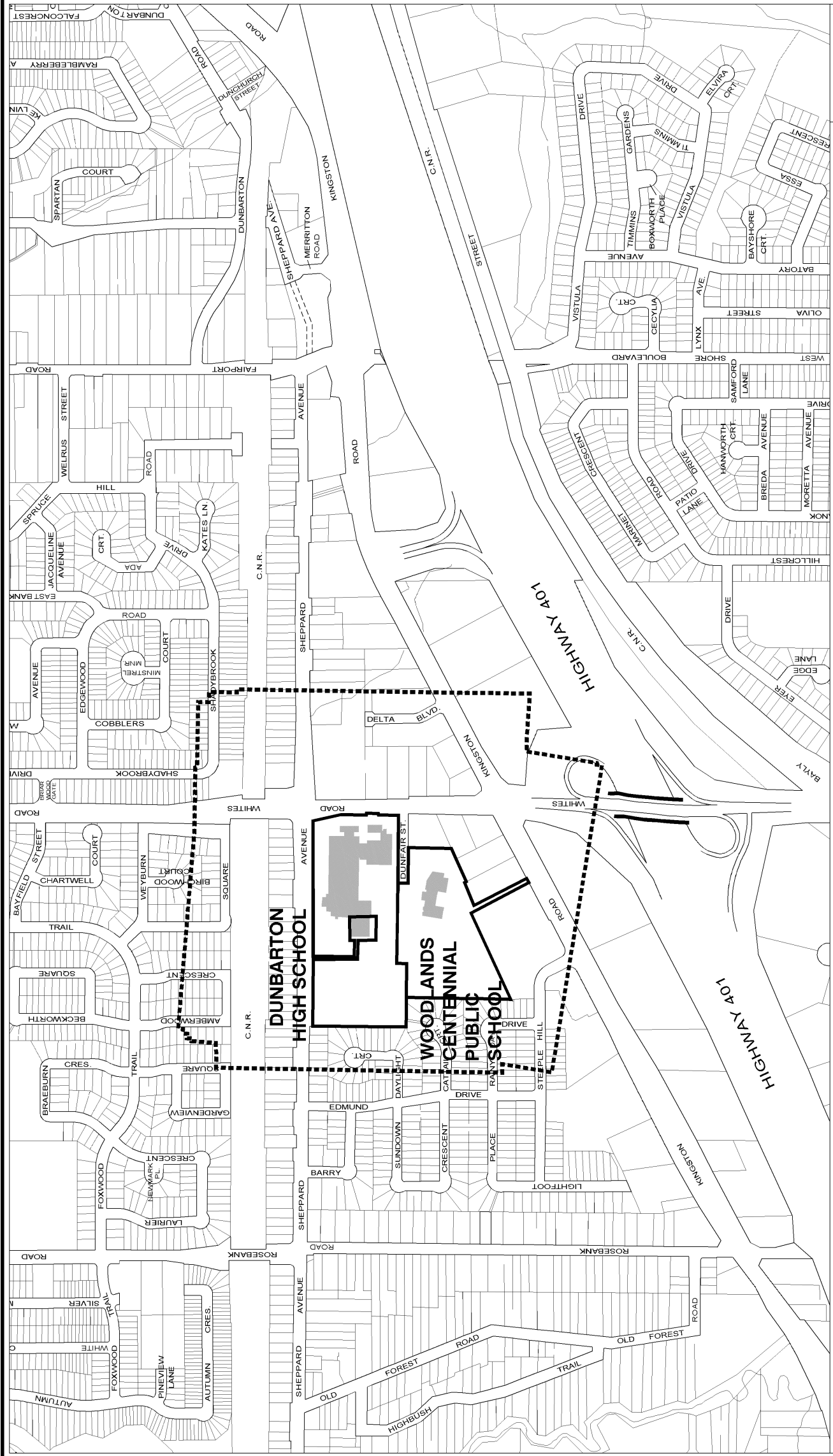


- PROHIBITED AREA
- ■ — PERMITTED AREAS (PROPERTIES CONTIGUOUS TO KINGSTON ROAD)

SCHEDULE 'B' TO BY-LAW 5828/01
PASSED THIS 18th
DAY OF June 2001

(signed) Wayne Arthurs
MAYOR

(signed) Bruce Taylor
CLERK



LEGEND



250 METRE BUFFER FROM THE EXISTING SCHOOL BUILDING



SCALE N.T.S.

DATE MAY 1, 2001