



# TOWN OF KITTERY, MAINE

200 Rogers Road, Kittery, ME 03904  
Telephone: (207) 475-1329 Fax: (207) 439-6806

December 11, 2017

Kittery Town Council  
Requested by Chairperson Kenneth Lemont  
Special Meeting Agenda  
5:00 p.m.

Council Chambers

1. CALL TO ORDER

2. INTRODUCTORY

3. PLEDGE OF ALLEGIANCE

4. ROLL CALL

5. Discussion

a. Discussion by members of the public (only pertaining to item #6 below and three minutes per person)

b. Response to public comment directed to a particular Councilor

c. Chairperson's response to public comments

6. NEW BUSINESS

(120117-1) The Kittery Town Council moves to hold a hearing to receive evidence and make a determination, on whether the current Viewing Booths License issued to Capital Video Corporation is to be suspended or revoked, pursuant to Chapter 5.9.2.3 of the Kittery Town Code, and/or a fine is to be imposed upon Capital Video Corporation pursuant to Chapter 5.9.6 of the Kittery Town Code, for violations of Chapter 5.9 of the Kittery Town Code.

7. ADJOURNMENT

Posted: 12/7/17



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## REPORT TO TOWN COUNCIL

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Meeting Date: November 27, 2017  
From: Kendra Amaral, Town Manager  
Subject: Violation of Title 5.9 License for Viewing Booth in Adult Entertainment Establishment  
Councilor Sponsor: Chairperson Kenneth Lemont

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### EXECUTIVE SUMMARY

On November 9, 2017 the Kittery Police Chief and Lieutenant visited the Amazing.Net business for the purpose of conducting an unannounced compliance visit.

Chief Soucy reported that he entered the store ahead of Lieutenant Desjardins, who remained in the parking lot for a short time. As the Chief entered the store, he went immediately to the private viewing area, where he observed three of the booths were occupied. One man left hurriedly from his booth as he was fastening his pants. Another man was observed engaging in Indecent Conduct by himself in his booth. The remaining booth was occupied by two men, who were observed engaging in Indecent Conduct together.

According to 5.9.3.3 Occupants, no more than one individual is allowed to occupy a viewing booth at any one time.

The Police Department has conducted a number of unannounced compliance visits at Amazing.Net in November. To date, only the November 9<sup>th</sup> compliance visit has resulted in identification of a violation of Title 5.9.

### FACTS BEARING ON THE EQUATION

5.9.3.3 Occupants - No more than one individual is allowed to occupy a viewing booth at any one time.

5.9.4 Responsibility of Operator for Compliance – Every act or omission by an employee of the establishment constituting or allowing a violation of 5.9 or failing to supervise the employee's conduct to assure compliance is deemed an act or omission of the operator.

5.9.2.3 Suspension or Revocation of License - The Town Council may, after notice to the licensee and hearing, suspend or revoke any viewing booth license issued under this chapter upon a finding that the licensee has violated any of the provisions of this chapter.

5.9.6 Violation Penalties - Any person, partnership, company, corporation, or other entity which is found to have violated this chapter is subject to punishment by a fine not exceeding two hundred dollars (\$200.00) for each such violation.

### **PROPOSED SOLUTION/RECOMMENDATION**

#### Violation of Title 5.9

- 1) The Town Council may direct the Town Manager to issue notice to the licensee of its intent to conduct a hearing into the matter, and schedule such hearing.
- 2) If the Council finds the licensee violated Title 5.9, the Town Council may issue a fine and/or suspend or revoke the viewing booth license.

#### Amendment of Title 5.9 – Indecent Conduct

It is recommended by Chief Soucy that consideration be given to potential changes to Title 5.9 to address conflict with state law regarding indecent conduct.

This could include eliminating “or for use of any devices or paraphernalia which is designed for or used in connection with specified sexual activities” in the Viewing Booth definition and other language amendments.



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## NOTICE OF HEARING

Pursuant to Kittery Town Code, Chapter 5. 9  
(LICENSES FOR VIEWING BOOTHS IN ADULT ENTERTAINMENT ESTABLISHMENTS)

TO: Capital Video Corporation  
44 Bedson Road  
Cranston, RI 02910

RE: Amazing . Net  
92 Route 236  
Kittery, ME 03904

You are hereby notified that the Kittery Town Council, Kittery, Maine, has scheduled a hearing to be held on Monday, December 11, 2017, at 5:00 P.M. in the Kittery Town Office Council Chambers located at 200 Rogers Road, Kittery, Maine 03904, for the purpose of hearing evidence and determining whether the current VIEWING BOOTHS LICENSE issued to Capital Video Corporation, 44 Bedson Road, Cranston, RI 02910 for eight (8) viewing booths at Amazing. Net, 92 Route 236 in the Town of Kittery, Maine 03904 is to be suspended or revoked pursuant to Chapter 5. 9. 2.3 of the Kittery Town Code and/or a fine is to be imposed pursuant to Chapter 5.9. 6 of the Kittery Town Code for violation of the provisions of Chapter 5. 9 of the Kittery Town Code.

PLEASE TAKE NOTICE that this hearing will occur at the time and place as above stated. Should you wish to present any testimony or evidence or have anyone authorized to speak on your behalf, such testimony or evidence will need to be presented at this hearing. You are urged to attend and govern your conduct accordingly .

Dated: November 30, 2017

  
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Maryann Place, Kittery Town Clerk

ATTESTED, A TRUE COPY (Town Seal)

## **Chapter 5.9 LICENSES FOR VIEWING BOOTHS IN ADULT ENTERTAINMENT ESTABLISHMENTS**

### **5.9.1 Definitions.**

Except as specifically defined in this section, the words and phrases used in this chapter carry their customary dictionary meanings unless otherwise clearly indicated by the text.

**Adult entertainment establishment** is defined as set forth in Section 16.2.2 of the Town Code.

**Common area** means any room, rooms, hallways, passageways, or other areas accessible to patrons and customers within the adult entertainment establishment.

**Operator** means any person, partnership, company, corporation or other entity operating, conducting or maintaining an adult entertainment establishment.

**Viewing booth** means and includes any booth, cubicle, room or stall within the premises of an adult entertainment establishment used to view or display any adult-oriented materials including but not limited to films, movies, photographs, books, magazines, slides, periodicals or other printed matter, DVDs, videocassettes or reproductions of any kind, or for the use of any devices or paraphernalia which are designed for or used in connection with specified sexual activities as defined in Section 16.2.2 of the Town Code.

### **5.9.2 Licensing required.**

No person operating an adult entertainment establishment may keep for public, customer or patron use or permit or allow the use of any viewing booth without first obtaining a license to do so from the Town Council as provided in this section.

#### **5.9.2.1 Licensing Procedure, Hearing, and Term.**

Applications for a license required by this chapter are to be made in writing to the Town Council on forms to be provided by the Town Clerk's office setting forth the name and address of the applicant, owner and operator, the name and address of the business, the number of viewing booths to be licensed, and any other information deemed necessary and relevant by the Town. Upon the filing of an application, the police chief and/or the fire chief and the Code Enforcement Officer are to inspect the premises for compliance with this chapter and any other applicable provisions of any Town or state statute, rule, regulation, or ordinance including the life safety and electrical codes and report their findings along with recommendations, if any, to the Town Council at the hearing to be held on the application. The Town Council must grant a license for a viewing booth(s) only upon finding, after a public hearing, that all provisions of this chapter are met. Licenses issued pursuant to this chapter are for a term of one year and may be renewed from year to year by the Council upon application and after public hearing.

#### **5.9.2.2 License Fee.**

The license must specify the number of viewing booths permitted. The annual license fee for each viewing booth is twenty dollars (\$20.00).

A TRUE COPY

ATTEST: Maryann Slane  
Town Clerk

**5.9.2.3 Suspension or Revocation of License.**

The Town Council may, after notice to the licensee and hearing, suspend or revoke any viewing booth license issued under this chapter upon a finding that the licensee has violated any of the provisions of this chapter.

**5.9.2.4. Notice of Decision.**

Any denial, suspension or revocation by the Town Council must be in writing setting forth its findings and conclusions and must include notification of the right to appeal. A decision is deemed to be made for purposes of appeal periods as of the date the written decision is dated and issued to the applicant. Proof of mailing to the applicant at the address appearing on the application or the latest address on file with the Town Clerk constitutes the date from which an appeal period commences.

**5.9.2.5 Appeals.**

Any aggrieved party may appeal from any final decision of the Town Council to the Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure.

**5.9.3 Physical Layout of Adult Entertainment Establishment.**

Any adult entertainment establishment having viewing booths available for customers, patrons or any other individuals must comply with the following requirements:

**5.9.3.1 Access.**

Viewing booths must be accessible to and from all common areas within the interior of the adult entertainment establishment. There must be no doors, drapes, curtains, or other closures separating any portion of the common area from any viewing booth.

**5.9.3.2 Construction.**

Every viewing booth must meet the following construction requirements:

A. Each viewing booth must be arranged so that it is separated from adjacent viewing booths by a solid wall with no view into any adjacent booth.

B. Each viewing booth must be so arranged that at least one side is totally open to an adjacent common lighted area so that there is an unobstructed, continuous, open view from the adjacent common area into the entire interior portion of the viewing booth. No viewing booth may have any door, drape, curtain, or any other closure over or covering any portion of the open side.

C. All walls must be solid and without any openings, extending from the floor to a height of not less than six feet and must be light-colored, nonabsorbent, smooth-textured and easily cleanable.

D. The floor of each viewing booth must be light-colored, nonabsorbent, smooth-textured and easily cleanable.

E. The adjacent common area to the viewing booth must be equipped with overhead lighting fixtures of sufficient intensity to illuminate all areas of the adjacent common area to the same

level of illumination as that maintained in the common areas of the premises where merchandise is displayed for sale or view.

**5.9.3.3 Occupants.**

No more than one individual is allowed to occupy a viewing booth at any one time.

**5.9.4 Responsibility of Operator for Compliance.**

Every act or omission by an employee of the adult entertainment establishment constituting or allowing a violation of the provisions of this chapter is deemed the act or omission of the operator if such act or omission occurs with the authorization, knowledge or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct to assure compliance with this chapter, and the operator may be punished for such act or omission in the same manner as if the operator committed the act or caused the omission resulting in a violation of this chapter.

**5.9.5 Inspection.**

All adult entertainment establishments located within the Town of Kittery providing viewing booths to its customers, patrons, and other individuals are to be open to inspection at all reasonable times by the police department and/or the Code Enforcement Officer, or such other persons as the Town Council may designate to monitor compliance with this chapter.

**5.9.6 Violation—Penalties.**

Any person, partnership, company, corporation, or other entity which is found to have violated this chapter is subject to punishment by a fine not exceeding two hundred dollars (\$200.00) for each such violation. Each day that each such violation of this chapter continues constitutes a separate offense, punishable by the imposition of an additional fine not to exceed five hundred dollars (\$500.00) for each such separate violation. Any enforcement actions will be brought in the name of the Town and all fines recovered inure to the benefit of the Town.

**5.9.7 Compliance for Presently Operating Viewing Booths.**

Any adult entertainment establishment lawfully operating viewing booths as part of its business enterprise as of the date of the adoption of this chapter is allowed to continue operation without a license as required in this chapter for a period of sixty (60) days from the effective date of this chapter. At the end of this sixty (60) day period, all viewing booths must be licensed under this chapter. Continued unlicensed operation constitutes a violation of this chapter.