

City of Springfield

In re: Hearing on Entertainment License (s))	
of Capital Video Corporation,)	Findings and Decision
d/b/a Amazing.net)	
)	

This Matter was heard on June 18, 2007 relative to complaints concerning a 2007 Entertainment License, issued Capital Video Corporation d/b/a Amazing.net (hereinafter "Capital Video" or "Licensee") for "viewing booths" where patrons of the store view adult video film clips on a screen after inserting payment of a fee into the viewing machine. The 2006 License expired on December 31, 2006 and the 2007 License, was issued pending the outcome of the hearing on the charges here. Attorney Michael Mulcahy of the Springfield Law Department, presented witnesses and documents from the Police Department as well as a neighborhood resident. Capital Video, by Attorney Thomas Lesser, Lesser Newman et al, 39 Main Street, Northampton, MA 01060, and Barry N. Covert, Esq., Lipsitz, Green, et al, 42 Delaware Ave, Suite 300, Buffalo, NY 14202-3857, presented witnesses and documents on its behalf.

After due consideration of the evidence elicited during the hearing, the following shall constitute the findings and decision on this Matter.

Findings

1. I find that issuance of the 2006 and 2007 licenses has lead to the creation of a nuisance and endangers the public health, safety or order by increasing the incidence of disruptive conduct in the area in which the Capital Video premises (hereinafter "Premises") are located.
2. Specifically, the undisputed facts in this matter show that the video booths on the Capital Video premises have been used for prostitution, assignation or lewdness, sexual assaults and are connected to drug activity and therefore, the video booths are deemed a nuisance and there are substantial grounds for denial or revocation of the 2007 license.
3. The 2005 Superior Court case of *Com. v. Can-Port Amusement Corp.*, 2005 WL 937312, involving a civil action in which the Commonwealth of Massachusetts sought (and was granted) a preliminary injunction to restrain the maintenance of a nuisance in an adult entertainment movie theatre, has provided guidance in this matter.
4. In the case of *Can-Port Amusement* testimony from Worcester Police officers described the observations made on various occasions while inside the adult entertainment venue known as the Paris Cinema of men engaging in various sexual acts.

5. In that case the Commonwealth maintained the defendants were keeping or *maintaining a nuisance* at the Paris Cinema because the defendants permitted it to be used by persons who are engaging in acts of "lewdness" as that term is used in G.L. c. 139, §4. Similar reasoning is applicable here in determining that the 2007 license of Capital Video should be revoked.
6. G.L. c. 139, sec. 4 provides that: "[e]very building, part of a building, tenement or place used for prostitution, assignation or lewdness, and every place within or upon which acts of prostitution, assignation or lewdness are held or occur, shall be deemed a nuisance."
7. As evidenced by the testimony and exhibits in this case, the increase in the incidence of disruptive conduct in the area in which the premises are located, based on the testimony and reports of the police officers as well as the testimony and reports of a neighborhood resident, indicates that the sale of drugs, prostitution in the area around the store, together with offensive, lewd activities occurring in the various "viewing booths", as well as patrons being assaulted while using the booths, create a nuisance that has caused a hindrance or obstruction in the exercise of the rights which are common to every person in the community, for example to safely walk the sidewalks of their own neighborhood, or to patronize the store selling adult oriented material without being assaulted.
8. Testimony outlined conditions inside the booths including many stains from seminal fluid, discarded dirty tissues, evidence of holes drilled between adjoining walls which, based on size, location and condition, as well as the testimony of police experienced in the investigation and prosecution of vice related crimes, were utilized for persons to have sexual activity between booths. The pictures of the holes indicated evidence of attempts to cover up the holes, without success. Testimony included evidence of activities that created foul odors which were persistently disturbing smells.
9. These incidents were described in testimony and reports as occurring on October 11, 2006, October 18, 2006, as well as incidents that occurred on December 20, 2006, January 16, 2007 and various other dates as represented at the hearing. See reports submitted including Exhibits 11, 18, 19, 20 and 21.
10. As indicated in the reports, on October 11, 2006 Detective Ayala and Michael A. Chapin were summoned to the Amazing.net store at 486 Bridge St. to assist Lt Rupert Daniels and his Street Crimes Unit officers. Lt. Rupert Daniels advised they had made arrest for Illegal Possession of Class B substance (crack cocaine) with intent to distribute and violation of a drug free school zone (Springfield Day Nursery). The party involved was standing in the doorway of Amazing.net. (Exhibits 11, 18, 19, 20 and 21)
11. Detective Chapin and Lt Rupert Daniels testified that police have found the area around Amazing.net notorious for open air drug sales and prostitution. See hearing exhibits 11 and 21. During this investigation police attention was drawn to the video

viewing booths located within Amazing.net when searching for the "look-out" for the drug transaction that had run into the store to hide in a booth. (Ex. 21)

12. The report of Captain Kevin Dudley as to observations on October 11, 2006 indicates that the officers assigned to the Street Crimes Unit observed three males and one female standing in and around the front entrance of Amazing.Net video. The female was recognized by the officers and was familiar to them as being a crack cocaine addict. She was observed extending money to another male who was leaning against the entrance wall. This male was later identified and arrested in front of Amazing.Net and charged with possession of a Class B Substance (Crack Cocaine) with intent to distribute and violation of a drug free school zone (Springfield Day Nursery). Another individual (identified as a lookout for the drug transaction) had warned the arrested subject and his customer of the police presence and then fled into the video store. The arrested subject also attempted to flee into the video store, but was apprehended. (Ex. 21) The report indicates that the officers assigned to the Street Crimes Unit "have observed this type of activity in and around the doorway of Amazing.Net Video on a daily basis." (Ex. 21)
13. Officer Chapin observed the 16 booths equipped with video monitors playing X-rated material. He observed a hole drilled in the wall between booth #9 and booth #10 large enough for a man's penis to fit through. The booths were dirty with paper towels, napkins and tissues strewn about on their floors. The booths reeked heavily of bodily fluids. (Ex. 11) Captain Dudley contacted the City's Health Department and request an inspection. An inspection was conducted on October 18, 2006 by Health Official Steven Stathis and Officer Martin Germaine.
14. They observed the 16 video booths located within the premises. Booths numbered 3, 4, 5, 9, 10, 15, and 16 had waist-high holes which led to adjacent video booths. Several of the booths had a strong odor of semen. In addition the walls, floors and video monitors were soiled with seminal fluid. Used paper towels were discarded on the floor in some booths. See hearing exhibits 6, 7, 8 and 21. The photos show that the holes were not newly drilled, but had been in existence for a long period of time, as evidenced by the fact that the pictures show a failed attempt to cover the holes on a prior occasion. See hearing exhibit 8.
15. Based on the information and facts gathered Captain Dudley recommended that the Entertainment License issued to Capital Video Corp., DBA Amazing.Net be revoked. (Ex. 21)
16. The President of Capital Video, Dennis Nichols, was notified of the conditions by a registered letter dated October 23, 2006, and received by Capital Video on October 30, 2006. (Exhibit 7). None of the observations or descriptions of the incidents were controverted by Capital Video.
17. On December 7 as well as December 13, 2006, the City of Springfield, by Attorney Michael Mulcahy, provided Capital Video Corporation notice of an entertainment license violation hearing. Exhibit 21.

18. The Notice dated December 7, 2006 scheduled a hearing which was rescheduled and a new notice issued.
19. The Notice dated December 13, 2006 resulted in a letter from Capital Video's Attorney requesting an adjournment until December 28, 2006, with an agreement that "all rights of the parties are preserved for the duration of any continuance". The letter claimed that "our client has undertaken various steps to address and correct the issues of which they have been made aware and are willing to cooperate regarding further corrective action and/or preventive measures." (Ex. 5) As such, the hearing was rescheduled to January 2, 2007.
20. Testimony and reports showed that the booths continued to be utilized for illegal purposes, including sexual assaults on patrons despite the police activity of a drug arrest in front of the premises on October 11, 2006, and the actions of persons involved with the drug activity fleeing into the store, (apparently to hide in the booths) and despite inspections by the health authorities documenting the deplorable conditions, despite a letter to the President of Capital Video, as well as a re-inspection on December 6, 2006 where the holes were again apparently covered up, and despite a letter from the licensee's attorney assuring the City that action was being taken.
21. Specifically, the Springfield Police Department conducted an undercover inspection of Amazing.net on December 20, 2006. Detectives from the Springfield Police Department's Narcotics Bureau and the Crime Prevention Bureau witnessed illegal activity in and around the Amazing.net premises. (Exhibit 10)
22. Detectives involved in this investigation reported receiving numerous complaints of open - air prostitution and lewd and lascivious behavior which occurs in and around the establishment. Complaints have been received through citizen's complaints, business owners, and officer's assigned to Community Policing in the Central District. (Exhibit 10)
23. On or about December 20, 2006, a Detective entered Amazing.net in an effort to launch an undercover investigation. He walked inside the establishment and upon entrance he detected a foul odor inside the store. The store, especially the viewing booths, had a foul odor which had existed during the police visit in October and was never addressed. See hearing exhibit 10. The officer was informed that videos were available in the booths. The booths accepted dollar bills. See hearing exhibit 10.
24. At about 6:55 P.M., on December 20, 2006, the Detective entered Amazing.net in an undercover capacity, and observed several males loitering in the common area and staring at customers who entered the viewing booths. He also observed that males entered together into the viewing booths. He entered and attempted to lock the door behind him, but the lock was inoperable. Shortly after entering the viewing booth, a white male later entered the booth and was touching his genital area and stated that he wanted to watch videos with the Detective. The Detective informed him he could have the booth and as

the detective was leaving the Detective was assaulted by the other patron who reached out and began touching the detective's groin area. *See* hearing exhibit 10.

25. At about 8:42 P.M., on December 20, 2006, the same undercover officer Detective was again sexually assaulted after entering a booth in an undercover capacity.
26. At about 9:50 P.M., on December 20, 2006, the Detective again entered Amazing.net an undercover capacity and was assaulted by another patron while in the booth, when the other patron began touching him in his groin and buttocks areas. *See* hearing exhibit 10.
27. The Detective entered the establishment on three separate occasions within a three hour period and observed and was the victim of the same pattern of events. During the times he entered the Amazing.net he never observed the employees enforce "No Loitering" rules which were posted around the viewing booths. *See* hearing exhibit 10. No efforts were made by management to prevent the assaults despite the fact that such assaults were foreseeable based on the conditions observed. None of the incidents were controverted by Capital Video.
28. The January 2, 2007 hearing was again continued until January 9, 2007 at the request of Capital Video's Attorneys on the condition that the viewing booths would not be in operation until the hearing. On January 4, 2007 Capital Video's Attorneys notified the City that it was making changes to the viewing booths in response to the conditions, and an additional continuance was requested, during which time Capital Video agreed to keep the viewing booths closed.
29. According to Capital Video, additional changes were instituted by January 12, 2007 with a Notice of the changes was sent to the City Solicitor on January 5, 2007. *See*, Exhibit 28. *See also*, Exhibits 12; 23; 24(1-4); 25; 26(A-B); and, 27(A-B). Capital Video claimed that the changes included:
 - (1) Two employees have been fired.
 - (2) A new manager has been installed.
 - (3) An additional surveillance camera installed in the booth area (there is already one operating camera) and the entire surveillance system will be upgraded.
 - (4) A parabolic mirror will be installed in the booth area to allow viewing into the video booth area from the front desk.
 - (5) The video booth doors will have an 18-inch opening at the bottom (to allow viewing into the booths).
 - (6) Three booths will be permanently closed and the back area containing those booths will be blocked off by a wall (a rough diagram can be provided).

- (7) Metal sheets shall be attached to "common" video booth walls.
- (8) Booth area lighting will be increased during store hours.
- (9) A surveillance camera will be installed to the front exterior of the store (this will allow the monitoring of activity outside of the store).
- (10) Two lights will be installed on the front exterior of the store (this will enhance monitoring).
- (11) At least two employees shall be working at any given time and one employee shall be responsible for monitoring the booth area and front exterior of the store.

30. Based on these representations, on or about January 9, 2007, the parties agreed that the license would issue pending a later hearing, and that the subsequent hearing would be considered a revocation hearing of the 2007 license issued under G.L. c. 140, §181. In an email, Capital Video agreed that they would abide by the changes they made as conditions of the License issued pending the outcome of the hearing.

31. Based on this agreement, the City of Springfield granted Capital Video Corporation, d/b/a Amazing.net, a conditional license for "videocassette recorders with monitor booths displaying adult content (13)," to be in effect from January 31, 2007 through December 31, 2007 and a Sunday license as well. Exhibits 3 and 4.

32. Treating the evidence from the reports and testimony by taking as proved all uncontroverted evidence, and by drawing reasonable inferences, the evidence shows disruptive conduct, that adversely affects public health, safety, or order is occurring. It is contrary to the interests of public health, safety, and order to conduct entertainment at an establishment that permits patrons to assault other patrons or allow (and to some extent encourages) illicit sexual activity. The fact that the assaults here occurred within or around the licensed booths indicate that, despite management claiming to have taken actions, any such procedures were inadequate to prevent such conduct from occurring during the use of the licensed booths and the lewd and lascivious conduct continued unabated.

33. While the incidents occurring during the existence of the 2006 license may be "moot" as to any consideration of the revocation hearing as to the 2006 license which has expired, they are appropriate for consideration in this case as to whether the 2007 license should be revoked as the standard for revocation is the same in considering whether a license should have been issued. Further, the handling of those incidents by Capital Video's management shows a pattern which is of continuing concern during the 2007 licensing year.

34. Specifically, despite the reported changes and the pending hearing, reports indicate that employees of Amazing.net worked in cooperation with a known prostitute to prevent the police from discovering the conditions and use of the viewing booths. On January 16, 2007 undercover officers from the Springfield Police Department entered the store, and overheard two employees of Amazing.net speaking with an individual they recognized as a known drug user and local prostitute. One of the Amazing.net employees standing behind the register told this known prostitute standing in front of the register: "The cops are not worried about what's going on in here because they don't know what's going on in here. The cops are more worried about you guys hanging around in front of the store and that's why you can't be hanging out in front of the store." (Exhibit 20-2)

35. A short time later, the known prostitute was heard telling the employees: "I told you guys something is going on here, you better close the doors", while pointing to the entrance of the video booths which were in an area posted with a sign: "Do Not Enter This Area Closed" and which were not licensed at that time. After one of the undercover officers left the store, a third Amazing.net employee pointed out the undercover officer who had just left the store to an employee and the prostitute, and was seen (and overheard) by another undercover officer pointing out the first undercover officer and telling the other employee and the known prostitute: "That guy is a cop, I know him he is a cop". (Exhibit 20-2)

36. Ms. Erica Walch a resident of Mattoon Street, a street which is located within a block of 486 Bridge Street, and the immediate past president of the Amoury-Quadrangle Civic Association ("AQCA") (whose office was directly across the street from the Premises) submitted letters (See hearing exhibits 18 and 19) and testified that she believes Amazing.net has a "strong negative impact on the neighborhood." See hearing exhibit 18. She describes Amazing.net as the "epicenter of loitering and prostitution..." *Id* "The prostitution brings drugs and drug dealers" *Id* and described how solicitation of customers by prostitutes occurred both inside and in front of the premises:

"Day and night, male and female prostitutes who are clearly under the influence of drugs position themselves directly outside of Amazing.net (on the premises' sidewalk) as well as across the Street from the store, next to a parking lot and alley where the prostitutes bring their customers. Prostitutes and their clientele have been discovered in *flagrante delicto* in the back yards of Mattoon Street residents. Decent law-abiding people do not feel comfortable walking around our neighborhood at any time of the day, because they are propositioned to by prostitutes or johns, and simply do not like having to make their way past groups of drug-addicted people behaving strangely and propositioning them." *Id*. "From eight o'clock in the morning until well after midnight every day of the week, the Apremont Triangle has at least one male prostitute loitering around the parking lot across the street on Pearl Street. Customers often enter the Amazing.net

store, and leave with a young man who did not enter with them. I know this because our AQCA office is directly across the street from the store, and I am able to watch the goings on when I am at the office. Men and women who live in our neighborhood...are frequently approached by men who slow down their cars and ask, 'Are you working?'" See hearing exhibit 19.

37. Ms. Walch testified the situation brings an appearance of "lawlessness" to the city. Her family are friends are bothered by the condition of her neighborhood and sometimes do not want to visit her home. She believes the current situation keeps people and businesses from locating to the area.
38. Capital Video claims the conditions as reported and testified to no longer exist and, while they do not deny the existence of the conditions as reported and testified to, they claim that *current conditions do not warrant any action beyond their improvements made as agreed*. Capital Video claims to sincerely care about conditions in and around the store and activities of the store's customers who use the booths. However, as previously noted, the testimony shows repeated and persistent evidence of illegal activity and complicity and reckless disregard of Capital Video's management over a long period of time which is sufficient to constitute a nuisance.
39. Moreover, viewing the evidence as a whole, there is absolutely no basis to credit any assertions or representations that Capital Video has, can or will permanently improve the conditions of its viewing booths and the open, repeated, pervasive and notoriously lewd and lascivious behavior associated with the booths.
40. The conditions discovered by the police on October 11, 2006 and described in the reports of the October 18, 2006 inspection showed longstanding, flagrant disregard by the licensee of these conditions. Thereafter, despite the police presence, notice of violations and a letter from Capital Video's lawyer on December 13, 2006 indicating they were "aware" of the conditions and were "correcting" them, one week later, on December 20, 2006, evidence that patrons using the video booths were being sexually assaulted showed the longstanding conditions continued to go on unabated. Although the holes may have been covered, the lewd and lascivious sexual activity continued unabated in the booths.
41. Undercover operations of the Springfield Police in January, after the improvements were supposedly in place, were stymied. (See Ex. 20-2) While store employees and patrons may have become cleverer at hiding the conditions which have plagued this neighborhood, I am persuaded that such conditions continue to exist. The fact that the number of CAD calls have decreased during a period of time in 2007 compared to a period of time in 2006 does not persuade me that the conditions are any better. The testimony of the conditions of the booths, the assaults in the booths, and the evidence of the Amazing.net employees working to foil undercover police operations are convincing on this point and indicate that Capital Video has failed or refuses to control the nuisance, and has been at all times relevant complicit in creating and maintaining a

nuisance and the testimony of the police officers and Ms. Walch are what I am crediting and relying on in reaching my conclusions and decision.

42. The testimony of Ms. Walch, and description of incidents in her letter, as well as her statements maintaining that the store has a reputation as the "epicenter" of loitering and prostitution in the area, and brings drug activity into the neighborhood, is supported by the police officers' testimony of their observations of drug activity, prostitution and lewd behavior.
43. The licensee has not controverted any of the incidents. Instead, the licensee suggests that the decrease in CAD reports and evidence of surveillance by a private investigator hired by Capital Video is evidence to draw an inference that the drug and prostitution activity around the store has stopped. Treating the evidence presented as to the various incidents as proved by the fact that they are all uncontroverted, I have drawn the inference, after weighing all of the evidence, that the testimony and reports presented by Ms. Walch and the officers is reliable to conclude that conditions continue to create a nuisance.
44. Capital Video's Attorneys tried to cross examine Ms. Walch as to whether she would call the police to report these incidents, seemingly to infer that the lack of police calls from Ms. Walch was sufficient to draw an inference of a decrease in disruptive activity, considering the decrease in the number of CAD reports and lack of activity observed by the private investigator. On the contrary, it was my impression from Ms. Walch's testimony that the lack of increased police calls was motivated by a sense of frustration on the part of Ms. Walch and likely others, that was analogous to shoveling sand against an ocean tide, rather than any perception that conditions had improved between January and June.
45. In contrast, the evidence of the report of the investigator hired by Capital Video is not reliable. Not only is such a report self serving, the time period of the surveillance was very limited in scope, and does not reveal any investigation or contact with any of the neighbors or surrounding business owners. The cooperation shown between Amazing.net employees and the known prostitute in the area further undercuts the credibility of such surveillance.
46. Together, the credible evidence shows conditions, directly associated with the viewing booths, which satisfies requirements of demonstrated conditions of disruptive conduct and harm to the public health, safety, or welfare required under the statute. Considering the incidents described, the recalcitrance exhibited in failing or refusing to control the problem, the evidence that these conditions have existed for a long period of time, evidence of complicity in attempting to hide the activity from the police and obstructing law enforcement in their duties, as well as the reputation evidence and descriptions by the officers and the neighborhood resident, the inference is warranted that the conditions of lewd and lascivious behavior to exist and in all probability are likely to continue unless the license is revoked. Only upon revocation of the license and the shutting down of the booths will the reputation, which makes this store the "epicenter",

change and only upon revocation will the patrons of the store, as well as neighborhood residents, be protected from the nuisance and health concerns associated with the private booths.

47. The viewing booths are not only contributing to the blight and disruption in this neighborhood, but also appear to be a persistent health hazard. The evidence indicates that the private viewing booths facilitate masturbation as well as physical sexual contact between patrons which rise to the level of lewd and lascivious behavior. Capital Video's Property and Construction manager, Mr. Anthony D. Nota, testified that patrons could not be prevented from masturbating within the booths. It could be that the nature of Capital Video's business is such that it is simply not possible to maintain healthy conditions over time in the face of its customers' desires.
48. The Construction Manager for Capital Video, testified that this is a problem encountered in other stores with booths of this nature.
49. The Construction Manager admitted that this is a recurring problem encountered at this and other locations despite efforts to cover the holes, and pointed out the markings left from previous attempts to cover the holes.
50. Even after the holes had been covered up, the booths were the source of three sexual assaults on an undercover police officer.
51. The licensee's Manager Nota, and current District Manager Brandon Wainwright acknowledged that the customers created the holes, but claimed they were unable to estimate when and how the holes were made. While I believe that customers created the holes, it is apparent the video booths were used for lewd sexual purposes over a lengthy period of time. The sexual assaults occurring after the holes were covered, show that covering the holes does not solve the problem.
52. Based on the evidence presented, this store caters to a group of people who are reckless about personal health and, by inference, the health of their sexual partners, and Capital Video's blind eye to this activity encourages promiscuity on its premises. Such conduct has been recognized in other Massachusetts case law as a cause of HIV infection.
53. In *Com. v. Can-Port Amusement Corp.*, 2005 WL 937312 the court discussed the issue in detail, and that court opinion is instructive here. The opinion states:

In the present case, far more is at stake than simply the enforcement of standards of morality or decency. The evidence before the court warrants a finding that patrons of the Paris Cinema are permitted by the owner and managers to engage in unprotected oral and anal intercourse on their premises. This type of behavior presents a grave threat to the health and welfare of the men in question and to society as a whole due to the virulence and ease of transmission of the human immunodeficiency virus (HIV), associated with acquired immune deficiency syndrome (AIDS) and other sexually transmitted

diseases (STDs). According to an October, 2003 "Fact Sheet" published by the National Institute of Allergy and Infectious Diseases of the United States National Institutes of Health,

"AIDS-acquired immunodeficiency syndrome-was first reported in the United States in 1981 and has since become a major worldwide epidemic. AIDS is caused by the human immunodeficiency virus (HIV). By killing or damaging cells of the body's immune system, HIV progressively destroys the body's ability to fight infections and certain cancers. People diagnosed with AIDS may get life-threatening diseases called opportunistic infections, which are caused by microbes such as viruses or bacteria that usually do not make healthy people sick. More than 830,000 cases of AIDS have been reported in the United States since 1981. As many as 950,000 Americans may be infected with HIV, one-quarter of whom are unaware of their infection. The epidemic is growing most rapidly among minority populations and is a leading killer of African-American males ages 25 to 44. According to the U.S. Centers for Disease Control and Prevention (CDC), AIDS affects nearly seven times more African Americans and three times more Hispanics than whites. HIV is spread most commonly by having unprotected sex with an infected partner. The virus can enter the body through the lining of the vagina, vulva, penis, rectum, or mouth during sex.

* * *

People with AIDS are particularly prone to developing various cancers, especially those caused by viruses such as Kaposi's sarcoma and cervical cancer, or cancers of the immune system known as lymphomas. These cancers are usually more aggressive and difficult to treat in people with AIDS. Signs of Kaposi's sarcoma in light-skinned people are round brown, reddish, or purple spots that develop in the skin or in the mouth. In dark-skinned people, the spots are more pigmented.

During the course of HIV infection, most people experience a gradual decline in the number of CD4 positive T cells; although some may have abrupt and dramatic drops in their CD4 positive T-cell counts. A person with CD4 positive T cells above 200 may experience some of the early symptoms of HIV disease. Others may have no symptoms even though their CD4 positive T-cell count is below 200.

Many people are so debilitated by the symptoms of AIDS that they cannot hold steady employment or do household chores. Other people with AIDS may experience phases of intense life-threatening illness followed by phases in which they function normally.

* * *

Because no vaccine for HIV is available, the only way to prevent infection by the virus is to avoid behaviors that put a person at risk of infection, such as

sharing needles and having unprotected sex. Many people infected with HIV have no symptoms. Therefore, there is no way of knowing with certainty whether a sexual partner is infected unless he or she has repeatedly tested negative for the virus and has not engaged in any risky behavior. People should either abstain from having sex or use male latex condoms or female polyurethane condoms, which may offer partial protection, during oral, anal, or vaginal sex. Only water-based lubricants should be used with male latex condoms.”

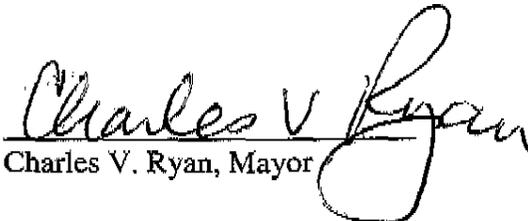
See <http://www.niaid.nih.gov/factsheets/hivinf.htm>. A variety of other harmful Sexually Transmitted Diseases also may easily be transmitted from one person to another as a result of unprotected sex. See <http://www.cdcnpin.org/scripts/std/std.asp> (Information on STD published by the Centers for Disease Control of the National Institutes of Health). According to a Special Focus Profile on “STDs in Men Who Have Sex With Men,” published by the Centers for Disease Control, which includes data gathered by the Fenway Community health organization in Boston, a primary care health clinic for gay men, there is an increasing incidence of STDs among men having sex with other men, and men who are infected with STDs have a greater likelihood of acquiring and transmitting HIV infection. See <http://www.cdc.gov/std/stats/default.htm>. (STD Surveillance 2003 “STDs in Men Who Have Sex With Men.”). See also *Bragdon v. Abbott*, 524 U.S. 624, 640 (1998), discussing Haverkos & Battjes, “Female-to-Male Transmission of HIV,” 268 JAMA 1855, 1856, tbl. (1992) (cumulative results of 16 studies indicated 25% risk of female-to-male transmission. Studies report a similar, if not more severe, risk of male-to-female transmission.”).

54. From size, location and height of the holes, the discarded paper tissues/towels, and stains depicted, the odors emanating from the booths over a period of several months and the attempts to cover the holes without success, it is apparent that customers used the holes with reckless disregard of conditions in plain view and smell of any human being. Further, from the evidence of drug sales and prostitution in the vicinity of the store, the cooperation between Amazing.net employees and a known prostitute, and the testimony of a neighborhood resident that this location is the “epicenter” of problems in the neighborhood, together with the likely health risks posed as to HIV infection, it is evident that revocation of the 2007 Entertainment License to operate the booths is the only remedy to bring about the ending of the open and notorious conditions which constitute lewd and lascivious behavior and nuisance.

After a hearing preceded by ten days written notice to the licensee, I find that conditions exist which would have justified denial of the original application for such license.

Decision

55. The 2007 Entertainment licenses granted to Capital Video Corp d/b/a Amazing.net, are hereby revoked, on the grounds that conditions exist which would have justified denial of the original application for such licenses.
56. The revocation of the 2007 licenses employs the least restrictive method to accomplish goals consistent with the demands of the statute. The bookstore and video sales are not governed by the Entertainment License. Moreover, the Entertainment License expires as a matter of law on December 31, 2007 and Capital Video may apply for a 2008 license.
57. In the present case, the revocation of the Entertainment License will not affect the store's business involving the sale of books, magazines, or videos, but is directed at unlawful conduct (i.e. illicit sexual activity) and not with activity protected under the First Amendment.
58. This order does not limit the authority of the Commonwealth of Massachusetts, or the City Police Department or Code Enforcement authorities from taking any other actions to enforce federal, state or local law in connection with the operation of Amazing.net.


Charles V. Ryan, Mayor

Date: