

No Standing News

Since we have no standing, we stand with those left standing

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Two Stories in The Naked City...

- New 33% Porn Rule Gives SOB's Keys to the City
- TIF Exposed by Walgreens Attorney – they want OUT of TIF

'Improved' Pro Porn Ordinance - a welcome mat for the SOB's

The proposed new ordinance to regulate pornography, strippers and a host of grubby sex enterprises in Rolla debuted at the city council meeting two weeks ago but even the council found so many faults with it that it's back on **Boss Petersen's** desk for a rewrite. The changes transparently lower existing standards to the benefit of merchants of lewd entertainment and hard-core pornography. Given Petersen's passionate advocacy for **Roy Williams** during his rezoning hearings, a fatally flawed ordinance was expected. Among the many flaws, three changes stick out like **Family Video's** two-story, lighted obelisk, (not so subtle symbolism is it?) a blazing beacon that will scream "Gitch-ur Porn Here" for miles around.

The Choice. The **United States Supreme Court** gives cities two choices in dealing with sexually oriented businesses. They give us choices because the secondary effects of these businesses - prostitution, drugs, violence, disease and community blight is well documented and nearly irreversible. **1.** The Supreme Court lets us choose the "cluster method" by putting all the 'Adult' sleaze in a red-light zone to isolate these businesses and the prostitution, drugs and crime they attract, and keep them away from most of the town, or **2.** We can choose the "dispersal method" and apply our existing 1500 ft. quarantine limit and strict regulations on how and where they may operate to keep them away from each other (clustering) and away from our schools, churches and homes. Either way their alleged right to "speech" (which they have only if they sell certain speech-type material) is adequately protected. The rest of the hard-core industry we don't have to tolerate at all – they have no rights to 'speech' or to invade our towns.

After the Supreme Court established the two choices, cities already infested with 'Adult' activity, like Grand Ave. in St. Louis, could only zone the worst areas as red-light districts and try to control the spread. 'Clustering,' or creating a red-light district, is difficult, dangerous and expensive for law enforcement to try to police and control. Most cities like Rolla, as yet relatively uninfected, use the 'dispersal' method with separation or quarantine limits to force them to locate as stand-alones where they and the deleterious activity they attract will stand out like sore thumbs. Bright lighting and high visibility to the police and public discourages (but

doesn't totally eliminate) isolated sex shops and sex bars from becoming hangouts for prostitutes, drug dealers and criminals. Years ago the city council chose the dispersal method and until now it worked, or would have if it had been enforced. This new ordinance, however, will create an ugly third choice - unregulated Merchants of Sleaze anywhere they choose – all of them immune from prosecution as long as they play the city's new percentage game.

How the '33% escape hatch' works. Petersen came up with this rule which makes it virtually unnecessary for anyone purveying pornographic materials, sex paraphernalia, strippers, gay and lesbian sex shows, pornographic viewing booths, bathhouses or similar business to apply for a Chapter 29 special license or comply with any of its controls and penalties. Under the 33% rule none of those activities qualify as "*sexually oriented businesses*" (SOB's) unless they have a "*substantial business purpose.*" Substantial business purpose this ordinance says is: "1) *thirty-three percent (33%) or more of the gross floor area is devoted to that purpose; or 2) thirty-three percent (33%) or more of the retail floor space is devoted to that purpose; or 3) thirty-three percent (33%) or more of the gross sales of the business are derived from that purpose.*" If only 31.999% of the gross sales, the retail floor or the whole building is used for "that purpose" they are entirely exempt! Like magic, the SOB's are technically not SOB's, they're just regular merchants with a fraction less than 33% of gross sales or space devoted to smut, sex toys and porn or bars with weekend sex shows. The idea that they get to choose which of the three options is to their advantage is outrageous. Under the first option and in certain kinds of leases that, for instance, include the unusable second floors of many Pine street buildings, 100% of their real retail space on the first floor can be filled with porn material and sexually explicit paraphernalia. The third choice, % of gross sales, is an unenforceable farce. The City of Rolla doesn't have the staff or the expertise to audit business records (or to know if they were looking at 'cooked' books) to see if gross sales exceed the percentage limit nor do they have the time and manpower to crawl around measuring buildings, retail displays and shelving every time a complaint is made. This entire provision is a hoax to lull the council into believing that the city is preventing an outbreak of sex shops and the related

illicit and immoral activities they attract, when actually it does just the opposite – it hands them the keys to the city.

Even at 1000 ft Family Video is still too close to the **Christian Science Church** to be legal so the 33% rule was added to protect Good Ole Roy. Under the % limit Roy doesn't even have to keep his dirty movies in a separate room. Such a sneaky ruse could only have come from a model ordinance written by the porn industry. No wonder Roy has already started construction. Butz has conceded that 33% may be too much and may reduce it to a mere 25%. By setting up a phony numbers issue to argue over they are diverting attention to the hole, instead of the donut. It doesn't matter if the percentage exempted from regulation is 33% or 3%, the effect will be that *porn can flood the town and will be exempt from all regulation*. The correct question is - why should there be any exceptions at all?

Creates a citywide 'Red Light District'. Petersen's 'improvements' give us the worst of both worlds. He proposes to let them get closer to each other and to children and family areas by reducing the 1500- foot separation limit to 1000 feet. But, by adding the new 33% escape hatch, merchants who stay under the percentage limit will be exempt from all regulation, *including the 1500 ft. or 1000 ft. separation limit from schools, churches and homes*. Thirty-two % here, thirty-two % there and soon the whole town becomes a red light district. Potentially, Pine Street could have 30 sexually explicit retailers and strip bars side by side and they would all be completely unregulated! Imagine a new renter of one of the big rental spaces like Big Lots or the old Wal-Mart building putting in "only" 32.9% or 24% of inventory in sexually explicit merchandise! We could wind up with more unlicensed, unregulated and uncontrolled pornography, sex shops and nude bars than St. Robert. Local businesses like **Helen's Gifts, Phelps County Bank or Rolla Books & Toys** could find the shop next door is carrying sexually explicit materials and there is nothing they can do about it. Many will jump on the opportunity. The converted **Uptown Theater** bar booked their first male nude show right after the council gave Family Video their rezoning. Only the stricter "no exceptions" standard in the old ordinance stopped them – temporarily.

Reduction of the 1500 ft. limit. If the council doesn't see through the 'some-porn-is-OK' rule, the proposed reduction of the 1500-foot limit to 1000-feet is irrelevant unless the merchant plans to exceed the 33% limit. However, this is the defense Petersen gave for weakening even this former protection. Petersen argued to the council that it was necessary to reduce the 1500 ft. quarantine between sleaze businesses and our churches, schools, day care, parks and residential areas to 1000 feet. This would put the SOB's 500 ft. closer to concentrations of children and families and each other. When several council members said they didn't like shortening the distance Petersen told them that at 1500 ft. that *"wouldn't leave very many locations available"* for the poor SOB's and repeatedly threatened the council that *"we will lose"* [a lawsuit] and that *"we can't use a restrictive licensing strategy."* **City Councilor John Beger** added that if the

SOB's were limited to the current 1500 ft. separation, *"those would not be attractive locations."* To listen to these Two John's you would think the council should set aside some prime real estate to make the SOB's feel really welcome. For some reason they are keeping council members in the dark about this fact: In 1986, the **United States Supreme Court** in City of Renton vs Playtime Theaters, Inc. upheld Renton's 1000 ft limit and established the "reasonable access" rule. Playtime Theatres argued that some of the land left to them was already occupied by existing businesses, that "practically none" of the undeveloped land was currently for sale or lease, (there were some things even Renton landlords wouldn't do) and in general there are no "commercially viable" adult theater sites within the 520 acres left open by the Renton ordinance. They claimed that the 520 acres was not truly "available" land, and therefore held that the Renton ordinance "would result in a substantial restriction" on their version of speech. But the Supreme Court didn't buy the excuse. They said:

"That respondents must fend for themselves in the real estate market, on an equal footing with other prospective purchasers and lessees, does not give rise to a First Amendment violation. And although we have cautioned against the enactment of zoning regulations that have "the effect of suppressing, or greatly restricting access to, lawful speech, we have never suggested that the First Amendment compels the Government to ensure that adult theaters, or any other kinds of speech-related businesses for that matter, will be able to obtain sites at bargain prices."

(emphasis

added)

Renton, Washington left only 520 acres, barely 5% of the commercially zoned land in their city, for adult business and the highest court in the land said that was quite enough "reasonable access" whether it was in locations the SOB's liked or not, whether it was available or not, and even if landlords refused to rent to them. The Renton quarantine limit was upheld and the legal standard holds to this day. We have the good fortune to have had a 1500 ft. separation limit for many years; both our historical 1500 ft. "community standard" and the U.S. Supreme Court opinion make our 1500 ft. limit practically bulletproof so there is no reason to reduce it to permit more sex shops and strip bars than were allowed in the past. ***Petersen and Beger are not telling the council they can safely keep the 1500 ft. limit without fear of a successful challenge.*** Why don't they want the council to know the truth? In the end it may not matter if the quarantine zone is 1500 ft. or 5 ft. If the SOB's are protected by the 33% loophole rule, they are free to set up shop right next door to any school, church, park or residential neighborhood because none of the Chapter 29 rules will apply to them.

Oversight Committee "deemed unnecessary." Petersen unilaterally threw out the provision in the old ordinance for a Committee for Decent Publications because, he said: *"I deem it as unnecessary...I'm not sure what their role would be."*

No one objected to Petersen's patronizing "*I deem it...*" attitude. **Councilman Matt Williams** protested that he thought a citizens committee appointed by the council might be a good thing in the event of lax enforcement (as we have had right under Petersen's nose) or at least would do no harm as an oversight group to help alert the city to violations. Petersen curtly dismissed Williams' opinion. "*Would such a committee make the ordinance less enforceable?*" Williams persisted. Petersen replied, "*It depends on their rules, and it basically could.*" What a lie! Within statutory limits, the council can write any committee's role and scope as narrowly or broadly as they wish - that is, they can if Boss Petersen will permit them to have a committee. Petersen used loaded words like "witch hunt" and "posse" to make Matt Williams' plea for a committee sound foolish. Is the sanitation committee a "posse"? Is P&Z a "witch hunt"? If having a city committee "basically could" make this ordinance less enforceable, as Petersen claims, then should the council get rid of the other city advisory committees? The legitimate oversight role of this and every other city committee is exactly what Petersen *will not permit* the council to saddle him with and it's exactly what he needs - control. Petersen doesn't want a city committee watching him sell licenses to

flesh merchants of his choice, or reporting his lack of enforcement, or the unenforceability of the Petersen Rules, to the council. Petersen made it clear that he will not tolerate his employer's interference.

City government's failure to activate this committee for decades is insufficient reason for not having one. Obviously we have needed watchdogs for some time as we learned in March when Petersen admitted he was unaware that raw sex magazines were being displayed within reach of any five-year old and unlicensed sex paraphernalia was being sold within blocks of his office. But in this one case we agree with Petersen's position. We don't want a city committee of controllable, handpicked political appointees either. It's much better to have hundreds of loose cannons out there, angry parents, voters, and Rolla shoppers, who now know that the Prayer Breakfasting politicians they trusted have been giving them nothing but lip service all these years about Rolla being a family-friendly community. It's much better for outraged citizens to make their complaints right in council meetings. Yes, it's much better for disgusted citizens to be free to demonstrate, picket and march on council meetings whenever the spirit moves them. Amen! Brother Petersen, keep those concerned parents out there where they can do some good.

Walgreens is coming, Walgreens is coming, ...maybe

The drug chain is ready to start construction in 30 days and could be open in less than a year, but they want OUT of the TIF district first! The deal is the city's to lose and overreaching by **TIF Czar John Petersen** may yet blow the deal. If Walgreens walks, **Lottie Callen** will lose a million plus land sale, the reward for a lifetime of hard work by the whole Callen family. The startling disclosure at the June 2, council meeting was that Walgreens doesn't want to have anything to do with Rolla's TIF. **Jeannie M. Greers**, attorney representing Walgreens' developers, requested that the 1.5 acres Walgreens have contracted to buy from Mrs. Callen be removed from the city's brand new TIF district. That means they *do* want the new tax benefits from their store to go where the voters intended instead of being seized by the city and spent for TIF Development. Greer explained that quite obviously the area *does not qualify* as 'blighted' under the state law and it also *does not qualify under the "but for" pretext*; if Walgreens already have a contract with Callen to purchase the 1.5 acres the city can't claim that "but for" the TIF designation the area will not be developed; it's obviously already being developed.

Greers urged the council to pass a resolution exempting the Callen property from the TIF. She was very emphatic that her law firm, Husch and Eppenberger, LLC (a St. Louis firm with 315 lawyers) and Walgreens have been involved in several TIF districts; they didn't like the experience and don't want to have anything to do with the expensive delays, costly litigation, and public resentment TIF's typically produce. Her announcement pretty well destroyed the fabrications Petersen and Butz have been feeding the council to get them to rubber-stamp the TIF

scheme. Now that they have heard from a real expert on the subject the council should think twice about the easy-money smoke Petersen has been blowing. Ms. Greers had been invited to discuss this new development behind closed doors but she saw no reason to violate the Sunshine law by discussing a public policy issue in secret. Ms. Greers also made it clear that Walgreens doesn't want or need any taxpayer subsidies from the city. How refreshing.

The council just selected (from a group of one in a closed meeting) as their sole TIF developer, a **Mr. Kaplan**, somebody from St. Louis who claims he can bring in a Home Dept and \$12-15 million in new development around the new drugstore -well, that's what he claims. With Walgreens as an anchor store the area will develop over the next 3-10 years with no help from TIF. That's always the secondary effect of any new "big box" retailer; it happens everywhere, even here in little ole Rolla. Greers and her clients, who are Walgreens developer for their projects, also do not want Mr. Kaplan designated as the Preferred TIF Developer if it gives him control over the 1.5 acres they plan to buy from Mrs. Callen. She pointed out that typically, if the TIF developers (Kaplan in this case) cannot get private property owners to agree on the sale price of their property, the threat of condemnation - whether real or implied - is used to force the sale. **Councilman J.D. Williams** loudly protested that they will never, never use their 900 lb. TIF Condemnation Gorilla but Williams won't be sitting in the living room if Kaplan makes a lowball offer and tells the owner to pay no attention to the Gorilla lurking in the corner. When push comes to shove and some small property owner is holding up their plans for getting multi-million dollar development, Kaplan and the TIF

Commission will come up with patriotic reasons for hammering anyone who “holds up progress for the good of...” we can already hear the violins playing.

Reportedly, the TIF Commission has only met once since they were appointed in February. If that’s true, who is dealing with all these TIF negotiations, deals, bids and plans that Petersen announces? Petersen said the council rejected Walgreens demand to be exempted from the 13-acre TIF zone, but he said that just three days after the council meeting. If the TIF Commission hasn’t met, when was that public policy decision made and who made it?

Why TIF should be dumped. Tax Increment Financing, the “Welfare for Developers” law, has never delivered what it promised except for a favored few. The council has an opportunity to make good on economic development promises without cost to the city and without incurring the enmity of school district and county voters for decades. They should at least exempt the 1.5 acres before it queers the Walgreens deal. Petersen plans to ‘TIF’ 13 acres and they only need 10 acres to make a TIF district.

Without TIF, the free enterprise system will work the way it’s supposed to; the way it always does when government doesn’t meddle. Here’s what will happen if city hall will just butt out: the \$12-\$15 million in new business development will develop naturally through private business initiative and

investment – the best and most stable kind of development. Businesses eager to locate next to Walgreens “big box” to take advantage of their traffic *will benefit*. They will pay a fair price for the competitive advantage so the displaced property owners *will benefit*. Local realtors who are now being cut out of the action by Kaplan and Petersen will make money selling the, now much more, valuable land at fair market price so they *will benefit* and it won’t be necessary to threaten anyone with heavy-handed government condemnation. The school district, the county and the disabled boards will get the taxes we voted to give them and they will each receive their *fair share* of the increased tax revenues for the next 23 years so they *will benefit*. Therein lies the rub – without TIF the City will *only* receive their fair share of the increased tax revenues. Without TIF they won’t be able to rob our other local taxing districts of the windfall in increased property taxes from the multi-million dollar development on that corner and the City won’t get 50% of everyone else’s new sales taxes for the next 23 years – the City wants an *unfair share* of everything. Petersen won’t like if the council dumps his TIF, but we haven’t renamed the town “Petersenville” yet. The ‘Biz-ness’ Mayor should put his Development Czar back in his cage along with the fondness they both have for government interference and let private enterprise do their thing – that’s the American way.

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