

TESTIMONY OF  
JEFFREY VICTOR  
ON BEHALF OF  
THE FREMONT STREET EXPERIENCE  
LIMITED LIABILITY COMPANY

BEFORE THE CITY OF LAS VEGAS  
CITY COUNCIL

BILL NO. 2006-64

November 15, 2006

My name is Jeff Victor and I am the President and General Manager of the Fremont Street Experience Limited Liability Company (The Company). I am here today on behalf of the Company, and each of its 10 members, speaking in support of proposed ordinance 2006-64.

As the council is aware, the Fremont Street Experience has been in operation since its creation in 1995. It was originally envisioned to be a truly unique, one-of-a-kind destination intended to attract millions of tourists every year and to help drive capital investment to the heart of downtown Las Vegas. Through the years between, the Fremont Street Experience has delivered on that intent. In fact, the LVCVA reported that the visitation to downtown in 2005 exceeded 17.7 million. To put that visitation number in perspective, according to the trade publication Amusement Business, the two best – attended amusement parks in the world in 2005 were Disney's Magic Kingdom in Orlando and Disneyland in Southern California. The publication reported that those two parks attracted 16.1 million and 14.5 million visitors respectfully during the year.

Attracting attendance numbers like that doesn't happen by accident. To do so requires enormous capital investment, exceptionally inventive entertainment offerings, ongoing management, constant promotion and the promise of delivering a clean, safe and enjoyable environment. In 1995 the city of Las Vegas delegated the authority to manage the Fremont Street Experience to the company that I now preside over. Today and every day for the past 11 years, our office has successfully managed the security, maintenance, cleanliness, promotion, advertising, live entertainment, lightshow programming, and special events that continue to define The Fremont Street Experience as one of the greatest tourist destinations available anywhere.

The ninth circuit's recent decision regarding solicitation threatens to change all of that.

It might not be widely understood that the Company generates a significant portion of its revenues through the Mall's leased retail operations, corporate sponsorships, sale of advertising space and through hosting private events. The dollars

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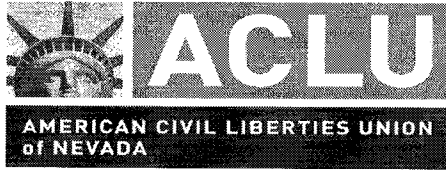
generated by those activities are in turn spent to create free entertainment offerings, to pay for the electric bills, and to pay for the labor and supplies necessary to manage the cleanliness, security, and maintenance of the Mall. These activities attract visitors who then spend money through the various points of commerce, thus creating jobs and tax revenues. This rather simple formula works very, very well. But key to that formula is the Company's ability to continue to manage the mall environment as it has done for the past 11 years.

Solicitation activities, left unbridled, are fundamentally incompatible with the character and function of the Mall. Corporate sponsors will not be associated with an environment where pan-handling is allowed to flourish. Advertisers will not pay to do so in an environment where others are allowed to do so for free. No event organizer will pay to hold a private function in an environment where their clients will be exposed to intrusions from uncontrolled solicitations. No retail cart will want to pay for a lease in an environment where others are allowed to solicit their wares at will.

Most significantly, the guest experience will be compromised. Make no mistake about it; The Fremont Street Experience is not a place through which people travel to get from point A to point B. It is a destination where millions of tourists gather each year to be entertained, shop and consume. In fact our office works quite hard to create experiences that encourage just that. When we douse the neon building lights and illuminate the biggest big screen on the planet, showing proprietary content only available at Fremont Street Experience, guests stop and engage in a six to eight minute theatrical experience. When we host live concert events, guests stop and engage in the event for long periods of time. They are a captive audience and as such are vulnerable to unwanted solicitors. Their only escape from the solicitation would be to exit the event.

Similarly, guests will be highly vulnerable as they shop. Stopped, engaged in a transaction, wallets in hand, purses open, shoppers will be likely and easy targets for solicitation. Diners at the many outdoor eateries will also be targets. Captive in their seats, engaged in their consumption, solicitors will take advantage the opportunity. Stop to get a soda from one of the mall's twenty-eight vending machines - easy pickings for solicitors. In this light, visitors to the Mall are just as vulnerable to solicitation as persons getting money from ATMs, waiting at bus stops, walking through parking garages, or entering or exiting businesses – the same types of places where solicitation is already banned. We ask that the same ban be implemented at the Fremont Street Experience so that the Mall can continue in its mission to preserve and grow the downtown business corridor.

I would also like to note that I reviewed the record submitted to the City Council that supported the original ordinances, and I must add that the same market forces and pressures that were facing downtown Las Vegas more than 10 years ago are still facing us all. If anything, competition has only increased since that time. The ordinance that is before you seeks to preserve the viability of the Fremont Street Experience as a world-class commercial and entertainment attraction.



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**Memorandum**

To: Las Vegas City Council Recommending Committee  
From: ACLU of Nevada  
Date: November 14, 2006  
Re: Proposed City Ordinance Bills 2006-63, 2006-64, and 2006-59.

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This memorandum sets forth the ACLU of Nevada's most significant current concerns regarding three proposed bills on today's Recommending Committee meeting agenda. The ACLU of Nevada is a statewide civil rights organization that advocates for government action and policy that is compatible with the state and federal constitutions. Although the ACLU has a history of successfully litigating against the City of Las Vegas, we participate in the legislative process in an attempt to prevent future lawsuits that would drain the resources of the City and its taxpayers. This is particularly true in the area of the First Amendment. As members of this Committee undoubtedly know, we have a decade-long history of winning First Amendment challenges against the City's existing solicitation ordinances, particularly on Fremont Street. Most recently, the Ninth Circuit has held that Fremont Street is a public forum, and that solicitation there is protected First Amendment activity (ACLU of Nevada v. Las Vegas, Case No. 05-15767 (9<sup>th</sup> Cir., October 20, 2006)).

As the two bills concerning solicitation have already been placed on the Las Vegas City Council's agenda for tomorrow, November 15, 2006, we hope that this meeting is not a mere formality. We hope instead that the City will be open to discussion of the proposed Bills, particularly Bill no. 2006-64, which we believe still incorporates the same provisions struck down by the Ninth Circuit.

**Bill 2006-63 (Re: Solicitation)**

We certainly have serious concerns about the proposed solicitation ordinance (Bill no. 2006-63). Those concerns are made all the more serious given the very short timeline that has been provided for public comment on this bill. We have been contacted by various community groups, particularly labor organizations, that are concerned and unsure about the scope of the new bill. For instance, if virtually every spot on Fremont Street is within ten feet of a doorway (where solicitation would be prohibited under this Bill), this Bill could effectively prevent all solicitation in that public forum, which has already been explicitly prohibited by the Ninth Circuit Court of Appeals. We join with those in the labor community and with other concerned individuals and organizations to

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request that the Council stay consideration of this Bill until the full extent of its reach can be investigated by those concerned about limitations on their free speech.

**Bill 2006-64 (Re: Fremont Street Experience)**

The proposed Bill pertaining to the Fremont Street Experience causes us significant dismay. This ordinance incorporates three of the **exact** prohibitions struck down by the ninth Circuit in ACLU of Nevada v. Las Vegas, Case No. 05-15767 (9<sup>th</sup> Cir., October 20, 2006); Proposed Bill No. 2006-64 at 11.68A.100 (B), (H), and (K). The proposed bill contains language that prohibits all “solicitation,” (Proposed LVMC 11.68A.100(K)), as well as the placement of any table, box, container, or other items for purposes of solicitation. (Proposed LVMC 11.68A.100(H)). As the Ninth Circuit recently stated:

“If this trend of privatization continues – and we have no reason to doubt that it will – citizens will find it increasingly difficult to exercise their First Amendment rights to free speech, as the fora where expressive activities are protected will dwindle.” ACLU of Nevada v. Las Vegas, at 17684.

The City of Las Vegas is currently enjoined by the Ninth Circuit from enforcing its prior anti-tabling and anti-solicitation ordinances on Fremont Street against any expressive activity. ACLU of Nevada v. Las Vegas, Case No. 05-15767, at 17683. This proposed ordinance incorporates the exact same language currently enjoined by the Ninth Circuit, and simply cannot be passed and enforced with its current language without being a direct challenge to the Ninth Circuit’s authority.

It should be noted that both the District Court and the Ninth Circuit contemplated the prior solicitation ordinance as including both immediate and future donations, so the inclusion of the word “immediately” in the definition of solicitation in proposed Bill no. 2006-63 is highly unlikely to change the legal issues underlying this case. See ACLU of Nevada v. Las Vegas, Case No. 05-15767, at 17678 (9<sup>th</sup> Cir., October 20, 2006). Additionally, catchall language in the proposed Bill to the effect that the ordinance “shall not be construed in derogation of the constitutional or statutory rights of any person” (proposed LVMC 11.68A.070) is plainly inadequate to address the recurrent flaws in this proposed ordinance. The federal courts have consistently reviewed the ‘plain language’ of legislation, and this ordinance would plainly prohibit all solicitation and its accoutrements, and would lead any ordinary person to believe that activities expressly permitted under the Ninth Circuit’s constitutional ruling are expressly prohibited by this new ordinance.

We strongly believe that a crucial part of the Oath taken by each City Council member and members of the City Attorney’s office is to respect the state and federal Constitutions, as well as Courts of law. We urge you not to recommend this Bill to the full Council as it now reads, for doing so would be a repudiation of the Ninth Circuit’s holding on this exact issue. We remain willing and eager to work with the City Council

and the City Attorney's office to amend this ordinance in a collegial manner, rather than through future costly and time-consuming litigation.