

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

1 **Bill No. 2006-63 – Adopts a new Chapter 10.44A of the Municipal Code, relating to**
2 **solicitation. Proposed by: Bradford R. Jerbic, City Attorney**

3 **Bill No. 2006-64 – Adopts a new Chapter 11.68A of the Municipal Code, relating to the**
4 **City’s Pedestrian Mall. Proposed by Bradford R. Jerbic, City Attorney**

5

6 APPEARANCE LIST:

7 LOIS TARKANIAN, Councilwoman

8 BRAD JERBIC, City Attorney

9 JEFF VICTOR, President and General Manager of the Fremont Street Experience

10 RICHARD WILLIAMS, representative, Carpenters Union, 501 North Lamb Boulevard

11 STEVEN ROSS, Councilman

12 LEE ROLLAND, Staff Attorney for the ACLU of Nevada

13 PAT RILEY, Attorney for the Fremont Street Experience

14 VAL STEED, Chief Deputy City Attorney

15

16 30 minutes

17 Typed by: Angela Crolli

18 Proofed by: Carmel Viado

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

19 **COUNCILWOMAN TARKANIAN**

20 Moving on to Agenda Item Number 7, Bill 2006 dash 63, adopts a new Chapter, 10-point, 4-4A
21 of the Municipal Code relating to solicitation, proposed by Brad Jerbic, City Attorney.

22

23 **BRAD JERBIC**

24 Councilwoman, members of the Recommending Committee, I'll be glad to handle this one and
25 the item that follows. As you're probably aware through briefings and certainly through the
26 newspaper articles, the Ninth Circuit Court of Appeals ruled a couple of weeks ago on the
27 Fremont Street Experience case wherein the ACLU and others have raised challenges to Las
28 Vegas Municipal Code 10-point, 4-4, which relates to solicitation and 10 point, or excuse me,
29 11-point, 6-8, which relates to regulations within the pedestrian mall. This first Bill that you're
30 considering now, 206, 2006 dash 63 addresses only solicitation. I know that others would have
31 comments that they'd like to make on it. I'd like to make a bit of a record here. We have made a
32 change to the definition of solicitation. I know the Circuit had problems with it. We have
33 changed it to remove some language and require that the kind of solicitation that we're talking
34 about now be a solicitation for something immediately. That word immediate may sound like a
35 small change, but it's a very significant change. Solicitation in the past encompassed a lot of
36 activity, including the solicitation for, maybe, business in the future; come to my show next week
37 and you get a discount. That could have been a solicitation; other things of that nature.
38 Right now solicitation, and let me read this for the record, means the act for solicitation,
39 including asking, begging, soliciting or pleading for the purpose of immediately obtaining

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

40 money, charity, business or patronage or gifts or items of value for oneself or for another person
41 or organization.

42 The second major change to this particular ordinance is a removal of a prohibition against
43 solicitation in the pedestrian mall. Turning your attention to Page 2, 10-point, 4-4A, point O-3-
44 O, used to have a Subsection F which prohibited solicitation in the pedestrian mall. That
45 prohibition against solicitation under the new definition is now contained in the next Bill that
46 you're gonna consider, but it is removed from the Bill that you're considering at this point in
47 time.

48 Another thing that we have done is, as you can see, this is 10-point 4-4A. It's a whole new
49 Chapter to the Las Vegas Municipal Code. We are not recommending at this point in time that
50 we override or modify 10-point 44. We still have some outstanding appellate issues and we don't
51 want to moot them out by erasing them or changing them or deleting that provision in the
52 Municipal Code. If this item rec, gets a do pass today from the Recommending Committee and is
53 passed by the Council tomorrow, it becomes law, we will not enforce 10-point 44, but we will
54 begin enforcement of 10-point 4-4A. With that, I'll be glad to answer any questions or let others
55 make any comments they wanna to make.

56

57 **COUNCILWOMAN TARKANIAN**

58 Yes, from the audience. Please state your name first.

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

59 **JEFF VICTOR**

60 Yes. Good afternoon. My name is Jeff Victor. I'm the President and General Manager of the
61 Fremont Street Experience, LLC. I'm here today on behalf of the company and each of its
62 members, speaking in support of proposed ordinance two thousand and six dash 64. As the
63 Council is aware, the Fremont Street Experience has been in operation since its creation in 1995.
64 It was originally envisioned to be a truly unique, one of a kind destination intended to attract
65 millions of tourists every year and help to drive capital investment to the heart of downtown Las
66 Vegas. Through the years between, the Fremont Street Experience has delivered on that intent. In
67 fact, the LVCVA reported that the visitation to downtown in two thousand and five exceeded 17
68 point seven million people. To put that visitation number in perspective, according to the trade
69 publication "Amusement Business", the two best attended amusement parks in the world in two
70 thousand and five, were Disneyland's Magic Kingdom in Orlando and Disneyland in Southern
71 California. The publication reported that these two parks attracted 16 point one million and 14
72 point five million visitors, respectfully, during the same year.

73 Attracting attendance numbers like that doesn't happen by accident. To do so requires enormous
74 capital investment, exceptionally inventive entertainment offerings, on-going management,
75 constant promotion and the promise of delivering a clean, safe and enjoyable environment.

76 In 1995 the City of Las Vegas delegated the authority to manage the Fremont Street Experience
77 to the company that I now preside over. Today and every day, for the past eleven years, our
78 office has successfully managed security, maintenance, cleanliness promotions, advertising, live
79 entertainment, light show programming and special events that continue to define the Fremont
80 Street Experience as one of the greatest tourist destinations available anywhere. The Ninth

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

81 Circuit's recent decision regarding solicitation threatens to change all of that. It might not be
82 widely understood that the company generates a significant portion of its revenues through the
83 mall is leased retail operations, corporate sponsorships, sale of advertising space, and through
84 hosting private events. The dollar – generated by those activities are in turn spent to create free
85 entertainment offerings, to pay for the electric bills and to pay for the labor and supplies
86 necessary to manage the cleanliness, security and maintenance of the mall. These activities
87 attract visitors who then spend the money through the various points of commerce, thus creating
88 jobs and tax revenues. This, rather, simple formula works very, very well. The key to that
89 formula is the company's ability to continue to manage the mall environment as it has done so for
90 the last eleven years.

91 Solicitation activities left on unbridled are fundamentally incompatible with the character and
92 function of the mall. Corporate sponsors will not be associated where, with – an environment
93 where panhandling is allowed to flourish. Advertisers will not pay to do so in an environment
94 where others are allowed to do so for free. No event organizer will pay to have a private function
95 in an environment where their clients would be exposed to intrusions from uncontrolled
96 solicitations. No retail cart will want to pay for a lease in an environment where others are
97 allowed to solicit their wares at will. Most significantly, I guess, the experience would be
98 compromised. Make no mistake about it, the Fremont Street Experience is not a place through
99 which people travel to get from point A to point B. It is a destination where millions of tourists
100 gather each and every year to be entertained, shop and consume. In fact, our office works very
101 hard to create experiences that encourage just that. When we douse the neon lights from the
102 buildings and illuminate the biggest screen on the planet, showing proprietary content only

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

103 available at the Fremont Street Experience, guests stop and engage in a six to eight-minute
104 theatrical experience. When we host live concert events, guests stop and engage in the event for a
105 very long periods of time. They are a captive audience and as such are vulnerable to unwanted
106 solicitors. Their only escape from the solicitation would be exit the event.

107 Similarly, guests will be highly vulnerable as they shop. Stopped, engaged in a transaction,
108 wallets in hand, purses open, shoppers would be likely an easy target for solicitation. Diners at
109 the many outdoor eateries would also be targets. Captive in their seats, engaged in their
110 consumption, solicitors would take advantage of the opportunity. Stopped to get a soda from one
111 of the mall's twenty-eight vending machines, you're easy picking for solicitors.

112 In this light, visitors to the mall are just as vulnerable to solicitation as those getting money from
113 ATMs, waiting at bus stops, walking through parking garages or entering or exiting businesses,
114 the same types of places where solicitation is already banned. We ask that the same ban be
115 implemented at the Fremont Street Experience so the mall can continue its mission to preserve
116 and grow the downtown business corridor.

117 I would also like to note that I have reviewed the records submitted to the City Council that
118 supported the original ordinances, and I must add that the same market forces the citizens and
119 pressures that were facing downtown more than 10 years ago, are still facing us all. If anything,
120 the competition has only increased since that time. The ordinance that's before you seeks to
121 preserve the viability of the Fremont Street Experience as a world class commercial and
122 entertainment attraction. Thank you.

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

123 **COUNCILWOMAN TARKANIAN**

124 Any other additional comments from the audience? Yes. Please, state your name first.

125

126 **RICHARD WILLIAMS**

127 Richard Williams, 501 North Lamb, representing the Carpenters Union of Nevada. I have three
128 copies of a letter here, if you'd like a couple of the copies. Have two other ones here. The Nevada
129 Carpenters Union is requesting that the hearing on Agenda Items Number 7 and 8 concerning the
130 solicitation issue on the Recommending Committee agenda dated November 14th, 2006, be
131 continued to a future date. The Carpenters Union does not feel that there is adequate time to
132 review the proposed ordinance. We come to this determination based on the fact that an adoption
133 vote is scheduled within 24 hours of today at the Las Vegas City Council meeting on November
134 15th, 2006. The Carpenters Union feels that the impact of such an ordinance needs to be
135 examined to determine if the rights of working people of Nevada are being infringed upon, with
136 regards to free speech and the right to demonstrate, excuse me, within the Fremont Street
137 Experience. We feel that working people in Nevada have a right to express their views within the
138 Fremont Street Experience. For those reasons, we are asking the Recommending Committee to
139 table these agenda items so that these concerns could be further addressed with adequate time
140 before being voted on at the November 15th, 2006, Las Vegas City Council meeting. Thank you
141 for your consideration.

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

142 **COUNCILWOMAN TARKANIAN**

143 I – want you to know that after I received this letter, I did discuss it with Brad Jerbic to see if that
144 could be done because I could understand your concern about the lack of time.

145

146 **RICHARD WILLIAMS**

147 Sure.

148

149 **COUNCILWOMAN TARKANIAN**

150 However, there is a problem, that this would die, at, if we don't move it on to the Council. And
151 Mr. Jerbic, could you explain that, as a legal person, please.

152

153 **BRAD JERBIC**

154 I'd be happy to, Councilwoman. What happened, the Circuit ruled a little over two weeks ago
155 and indicated in their decision that upon remand to the District Court these, they were to enjoin
156 with the City from enforcing the ordinances. That was a solicitation prohibition and the
157 pedestrian mall regulation. The, because we know its' coming, we feel that there's potential
158 liability for the City today in enforcing any of those ordinances. And so, upon receipt of the
159 Ninth Circuit's opinion, we suspended enforcement of both the solicitation ordinance, which, by
160 the way, applied City-wide, and the activity well outside the pedestrian mall and the pedestrian
161 mall ordinance. The, at the same time we did that, we recognized that that might let loose an
162 environment in the Fremont Street Experience that we meant to control with these ordinances the
163 first time around. The, as Mr. Victor just stated, the Fremont Street Experience funds itself

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

164 through the sales of advertising, through the sales of carts, through other commercial advertising
165 in the mall and they control that entire environment and the payoff for the taxpayer is that the
166 operation and maintenance is solely upon the shoulders of the Fremont Street Experience. The
167 taxpayer doesn't pay for one kilowatt of electricity or replacement for one light bulb or to clean
168 up one stick of gum on the ground.

169 Our concern was that without something to replace those ordinances, as soon as possible, that
170 that environment might suddenly become out of control, and might turn into a situation where, as
171 Mr. Victor noted, who would pay for a push cart if you can set one up for free? Who would stand
172 for a light show or for a concert if you are going to be solicited on the spot and scared out of the
173 mall or driven from the mall? The, so we put these ordinances together and I asked that they be
174 fast-tracked so that they'd eligible for adoption in a shortest time period as possible. What that
175 meant was some risk. It meant that we had to publish earlier than we would normally publish so
176 they'll be eligible as soon as possible date which is tomorrow. As a result of that decision, if they
177 are not adopted tomorrow, they'll die and we'd have to start the whole process over and will end
178 up in a position where the soonest you could consider probably these would be the middle of
179 December, maybe the end of December. And that, that's just the reality of the situation.

180 I – will state on the record, not that I'd expect this going to ally any concerns of union members
181 at this point in time, that the original ordinance regulating mall activity, under 11-point 6-8,
182 recognized that there are certain protections that unions have that exist under federal law above
183 and beyond that which the Constitution gives. The National Labor Relations Act, passed by
184 Congress many years ago, affords union members selected to do things on private property that
185 the average citizen couldn't do. In order words, gives you more protection under the Constitution.

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

186 You can go into break rooms and give people brochures to solicit membership in – a union. You
187 can stand outside the doorways of a private property to get people to become a member of the
188 union and you can protest as well on those properties as rights given above and beyond that was,
189 that are in the Constitution.

190 I can state that we are very much aware of those rights and how they've been defined in the case
191 law and nothing in those ordinances is meant to in any way chip away at those – additional rights
192 that union have under the National Labor Relations Act. So your rights to organize and protest
193 and to do other things that are protected well above and beyond the Constitution are still intact
194 and – in my opinion, not impacted by either of these ordinances. I'll put that on the record if
195 that's some consolation.

196 I will also offer, of the Carpenters Union and any other union member this as well, if there are
197 concerns that I have not addressed or we have not addressed from this short period of time, we'll
198 be happy to meet with anybody and – if a problem can be identified, we'll be happy to put these
199 back on the agenda. But I think the, given the fact that I don't think there's a risk to anybody
200 conducting union activity in the mall as a result of these ordinances, I think there is a tremendous
201 (inaudible) that the mall may become a very unregulated environment in a very short order if we
202 don't get something on the books very soon. I – would still recommend a do pass on this
203 ordinance at this time.

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

204 **COUNCILWOMAN TARKANIAN**

205 Do you have any more comments?

206

207 **RICHARD WILLIAMS**

208 I just had one question, just to clarify. If there was a labor dispute at a property, just, I don't want
209 to mention anybody by name, but just to say if there was a problem, you mentioned organizing
210 within the property. If we were to have a picket line on Fremont Street, outside the walls of the
211 property, would that, would this ordinance affect that in any way?

212

213 **BRAD JERBIC**

214 In our opinion, you could have done that under the old set of ordinances that were ruled on by
215 the Ninth Circuit. We never can regulate that activity and so you could have picketed under the
216 old ordinances, you could picket under the new ordinances.

217

218 **RICHARD WILLIAMS**

219 Okay. Thank you for clarifying that.

220

221 **COUNCILWOMAN TARKANIAN**

222 Is that, take care of your questions, then?

223

224 **RICHARD WILLIAMS**

225 Yes. Thank you.

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

226 **COUNCILWOMAN TARKANIAN**

227 Thank you very much. Is there anybody else that wishes to speak?

228

229 **BRAD JERBIC**

230 If I could, before Lee Rolland speaks, I, we've been making kind of a mixed record here on Item

231 Number 7 and Item Number 8. Could I ask, of the Recommending Committee's permission, that

232 you read Item Number 8 into the record at this time as well, that way we can discuss them both

233 and add the same record that pertains to both items.

234

235 **COUNCILMAN ROSS**

236 I think that's a good idea since it's closely related.

237

238 **COUNCILWOMAN TARKANIAN**

239 So reading Item Number 8, Bill 2-0-0-6 dash 6-4 adopts a new Chapter 11-point 6-8A of the

240 Municipal Code relating to the City's Pedestrian Mall, proposed by Brad Jerbic, City Attorney.

241 And we're doing these two together in comments made because of the close association of the

242 two items.

243

244 **LEE ROLLAND**

245 Thank you. I think that is very sensible and efficient. My name is Lee Rolland. I'm the Staff

246 Attorney, the ACLU of Nevada, again for the record. I – I'm glad that Mr. Jerbic explained the

247 expedited schedule, 'cause that was certainly one of our concerns here too. So, with that in mind,

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

248 obviously this is, we have a long history between the City and the ACLU on this issue. So, I
249 hope that I can say this frankly and honestly, which is that, we're here because we believe that's
250 still unconstitutional. We have an excellent track record; that's not by means of bragging. It's
251 simply to say that this is meaningful for us. I mean, if we really intended to go out and litigate,
252 we would do it. We don't see any value in that. We live here too. We would really prefer to have
253 a conversation about the ordinance and express our concerns. And because of the timeline, that's
254 obviously not possible here. So, I think, based on Mr. Jerbic's explanation, which is, certainly,
255 reasonable, nonetheless, we would say that, I would think that it would be better to have, I mean,
256 I don't think it would be anarchy, but to have a month of possible anarchy at the worst, in order
257 to create an ordinance that doesn't have the constitutional flaws that we believe this one still has.
258 I'm glad we did consolidate 7 and 8 because 7 includes the definition of solicitation which adds
259 the word immediately. It certainly does change things a bit. However, the Ninth Circuit has been
260 clear that in a public forum, which Fremont Street has been designated by the Ninth Circuit, that
261 when sales are included with protected expressive activity, such as a non-profit group selling T-
262 shirts or accepting donations; that is fully protected in a public forum. The name of that case is
263 Gaby v. Snay. I'm sorry that it is not in my memo. So, even though the word immediately may
264 change somewhat the way the Court looks at this, it's pretty clear under Ninth Circuit precedent
265 that the activities that are now expressively prohibited under Section 8, we don't think they're
266 going to be any more constitutional 'cause the Ninth Circuit case law makes pretty clear that that
267 is a dead-end. So, again, what we're looking at, it's the same three exact stipulations that were
268 struck down by the Ninth Circuit, with the addition of the word immediately. From our view of
269 the case law, that really doesn't change the analysis here because the Court has already looked

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

270 into that in San Francisco and said, if people are selling and it's expressive, they have the right to
271 do that in a public forum. Now, I can fully respect if people on the Council don't like that
272 opinion, but nonetheless, it is the law in this Circuit. It is how the Ninth Circuit has decided the
273 constitutionality of other issues; those are on the wharfs of San Francisco, which if anybody has
274 been there, it's a semi privatized environment that is intended as a tourist destination. There's no
275 indication that after having ruled that Fremont Street is a public forum, that it would be any
276 different in this situation.

277 Secondly, the specific section of the new ordinance, 64, adds section, I apologize, I believe it's
278 100K, oh, that, (inaudible) solicitation fine. This sections B and H are virtually, I -- believe,
279 completely unchanged, except for that in H it's says for purposes of solicitation. I'm assuming,
280 to give the benefit of the doubt, that that now includes the new definition as under K. But even
281 with that, as I said, they still have the problem. And I just wanna to note that the addition of a
282 paragraph in the law book says, you know, none of this is intended to abrogate the derogation of
283 the constitution statutory rights of any person. That's, that inadequate in federal law. The federal
284 courts look at what the plain meaning of the statute is. And right now, reading this statute, what's
285 clear is that solicitation is banned, setting up the table to solicit is banned, and while that may be
286 a laudable goal, it is clearly, exactly the activity that the Ninth Circuit just said you cannot
287 prohibit in its recent case.

288 So, I'm – mindful of the changes that have been made. I – certainly don't mean that any of this
289 has been done in bad faith, but nonetheless, we think this ordinance is just, still so close to the
290 other ordinance that it's literally kind of playing games with the Court. And to some degree, I
291 think the Ninth Circuit's decision deserves a little bit more reverence. And, as I said, we're here

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

292 in the spirit of collegiality. We would love to give our input, and if that seems as self-
293 aggrandizing, I apologize. It's clearly because we believe that we have a great track record on the
294 First Amendment and we would prefer to be having a conversation rather than doing an
295 expensive litigation yet again on this ordinance which I can assure you, if it passes in this current
296 form and someone is cited under it, we would certainly consider. And that's not a threat at all.
297 It's simply the truth. We still have the same concerns, and I'd be lying if I said otherwise. So in
298 the hopes of sparing some taxpayer dollars on an unnecessary lawsuit, we request the
299 opportunity to work with the City Attorney's Office. We're certainly willing to be reasonable and
300 see if there might be a middle ground that we can agree on that might, both, prevent a law suit
301 and ensure that Fremont Street is not the anarchy that you fear.

302 And while I understand the time press, I feel that during this case it may be a pennywise and a
303 pound foolish because you may have one month covered, but it certainly might mean another
304 eight-year litigation battle which I really don't think is in anybody's best interest. So, and again, I
305 – really mean those comments as positively as I can. We would love the opportunity to, you
306 know, speak about it before we end up in a legal battle. So that's certainly why I'm here. We, just
307 like the Carpenters Union and other unions that have contacted us, would really love the
308 opportunity to have more time to see if this can be worked out and see if a version can come
309 through that we can live with, that the City can live with. I think that will be in everyone's best
310 interest. And if the City isn't willing to do that, we certainly understand and thanks for the
311 opportunity.

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

312 **COUNCILWOMAN TARKANIAN**

313 All right. Thank you for your words of collegiality and I understand your strong commitment
314 and, of course, the, there is of strong commitment on keeping, what we have in the Fremont
315 Street Experience as it is now. I believe that the Councilman wanted to make some comments.

316

317 **COUNCILMAN ROSS**

318 Thank you, Councilwoman. I thank you very much for your presentation, as well as the
319 Carpenters and the Fremont Street Experience. In our role, in this position, and let me back up, in
320 your first respective roles and your positions with the ACLU, the Carpenters and the Fremont
321 Street Experience, this is what you're supposed to do here, if – you see something challenging
322 coming up. The Councilwoman and I and the Council in general, needs to look at the big picture.
323 The economic viability and sustainability in the Fremont Street Experience is a priority of ours,
324 without a doubt. Jobs are on the line, without a doubt, protecting workers' rights to picket or to
325 increase their members by organizing efforts; absolutely important as well. This is a fairly union
326 town, at the same time protecting the civil rights of individuals. So, we need to look and examine
327 the big picture. I think, in regards to Mr. Jerbic's explanation of the time-sensitive issue of trying
328 to get this through quickly, I – understand that and I, absolutely accept that because of the
329 priority of keeping the Fremont Street Experience economically viable.

330 I've gotta share a personal experience with you. I've been solicited on Fremont Street. These
331 laws that we create don't always have great effect. So, if someone is going to solicit you and ask
332 you for a buck or ask you for a beer, they're going to solicit you, regardless if it's legal or not.
333 But I understand where the ACLU is coming from, as well as the labor organizations. I'm very

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

334 in-tune with labor organizations and I haven't been contacted on this, which is surprising. If the
335 LVCAL felt that this was an issue, I'm sure my office would have been contacted. And I may
336 have a message upstairs, I'm not sure. But this is a priority of mine also. Councilwoman, as we
337 review this and think about this, I think it's in the best interest, and I will get legal counsel on
338 this, if we pursue this, Mr. Jerbic, can this not be amended, can we not, our legal teams, enter
339 into conversations with the ACLU in regards to their concerns and – the adjustments of? Is this
340 not a living document or a living law that gosh, darn it. This is what we got on the books now?
341 We need to bring this back at the end of December to see if we can adjust this.

342

343 **BRAD JERBIC**

344 Absolutely. To anticipate the request, I would, first of all extend to – Lee and to members of the
345 ACLU, if somebody wants to come to us at any point in time and look through this document
346 and say, we recommend this change and this change, we may not agree at the end of the day, but
347 we'll always have that dialogue.

348

349 **COUNCILMAN ROSS**

350 And that's okay, that's okay.

351

352 **BRAD JERBIC**

353 And any agreement they – one thing I can also point out though is that, as a big a body as the
354 ACLU is and as -- nationally visible as they are, when it comes to constitutional issues, in
355 particular First Amendment issues, I do have to point out the ACLU does not speak for every

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

356 citizen of this country. They speak for the ACLU and you could reach, technically, agreement
357 with the ACLU a language that protects the mall and does not step on the constitutional rights
358 they think are – affected here. And, which by the way, we disagree, but I need to put that on
359 record, the, you could have a federal agreement and still have a citizen out there say, you don't
360 speak for me, I don't like your ordinance. So, I don't know if there's any particular way that you
361 get bulletproof when you do an ordinance that does not face a number of restrictions when it
362 comes to the First Amendment conduct.

363

364 **COUNCILMAN ROSS**

365 Councilman (sic), if I may, I – think that's the great thing about the democratic process; not
366 everybody is gonna to be happy. But as long as we're sitting down on the table and talking about,
367 as long as we're protecting the rights of workers, as long as we're protecting the rights of the
368 individuals, and as long as we're protecting the rights of the businesses that we want to see be
369 successful, especially in the downtown corridor, you know, we're heading in the right direction. I
370 don't think my – moving forward with this it's gonna to affect labor issues, because I'm going to
371 be the first one to holler and scream about that. And I, I'm sure you can work close with the
372 ACLU in regards to other issues when it comes to the constitutional law. That's your department,
373 that's certainly isn't ours. But we need to be proactive, think outside the box and think about the
374 big picture here.

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

375 **COUNCILWOMAN TARKANIAN**

376 And I – think as, the things we discussed today pertaining to the union issues and from what I
377 was able to find out, it would not affect you adversely. And if you had any questions on that or
378 anybody in your organization, I'm sure you can come to Mr. Jerbic and, but from we've been
379 able to ascertain, it would not affect you adversely. I think both of us would feel very strongly
380 about that.

381

382 **RICHARD WILLIAMS**

383 Absolutely.

384

385 **COUNCILWOMAN TARKANIAN**

386 And the other thing is, is that, you know, there is a balance there with ACLU and – with others
387 and how they feel. And these are things we need to work out and perhaps be able to have a win-
388 win balance, if at all possible. Now, I realize that we may end where you would need to take us
389 to court again and your record is admirable in that; you have done well in taking us to court in
390 that particular area. But, this is not taxpayers' money, as I've been told. This is money that's
391 coming from the Fremont Experience that's paying for it. So, it's not that we're saying, okay,
392 let's just go on, let's chase and let the taxpayers, you know, give up money for this. This is not
393 the case. Every single penny of this, the expenses of ACLU, as well as the expenses that have
394 occurred otherwise, have been covered by the Fremont Experience. So, I did want to mention
395 that.

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

396 **BRAD JERBIC**

397 Let me clarify the record too. Mr. Henry, who's our Senior Litigation counsel, who isn't present,
398 and his litigation team, we are salaried employees of the City who will get the same salary
399 whether we're in court 24 hours a day or we're in our office 24 hours a day. So, the extent the
400 City is paying for our salaries, that – is an expense that the City is affording, but you're paying
401 that any way. With respect to everything else, you said, correct, Councilwoman, the cost of
402 outside lawyers have been a hundred percent borne by the Fremont Street Experience and any
403 costs associated with the ACLU winning have also been borne by the Fremont Street Experience.
404 I expect, that will continue to be the relationship.

405

406 **COUNCILWOMAN TARKANIAN**

407 Any other comments from the audience?

408

409 **BRAD JERBIC**

410 I just have a couple of technical things I need to say for the record. First of all, with respect to
411 Item Number 8, that's Bill Number 20-0-6 dash 64, from our end intend to submit a First
412 Amendment to that Bill. It's just a very small particle change, but I noticed it today, 11-point 6-
413 8A point O-1-O, in this (inaudible) predicate for why we passed and why Council passed the
414 original ordinances in the 1990s, and it says, Council finds that there's been a progressive
415 decline in economic growth and vitality in businesses located in the center of the Casino District.
416 And it goes to speak in the present tense.

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

417 I intend to submit new language tomorrow that will say, when the, this ordinance was originally
418 considered in, whenever it was considered, the Council found that there was a progressive
419 decline. So, I wanna – put more in a temporal context. The second paragraph says that the City
420 Council further finds that it's in the public interest to select a contract with a private operative
421 entity. Language will say something in the effect of, the Council found in 19 whatever, and
422 continues to find today that it's in our interest to contract with a private contracting entity. So,
423 those are changes that will be coming your way tomorrow and they're very small. They don't
424 affect materially any of the changes that we submitted today for the ordinances.

425 The second thing I would like to do at this point in time, is incorporate in the record all records
426 made with respect to 11-point 6-8 and M-point 4-4 that have been made either at the
427 Recommending Committee or the City Council meeting over the past several years, since these
428 ordinances were first introduced. We made a number of findings with respect to solicitation
429 within, near doorways, solicitation that's coercive, solicitation that is at a public transportation
430 facility. And the underlying facts this Council relied upon in passing those ordinances back then,
431 need to be incorporated in the record today so that when we eventually, if this certainly, if there
432 is litigation, that record exists for these ordinances as well. So, any record with respect to 11-
433 point 6-8 and M point 4-4 should also be incorporated into this record. With that, I don't have
434 any more comments.

435 Sitting next to me, I need to point out, is Pat Riley with Aron Lang, who is also counsel for the
436 Fremont Street Experience. He's been involved with the litigation. I don't know if Pat had
437 anything to add for the record. I wanted to introduce him and give him that opportunity.

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

438 **PAT RILEY**

439 No. I think at this point, other than to say that, with regard to the new ordinances that have been
440 presented before you, the intent has been to comply with the Ninth Circuit decision and to create
441 a very practical framework and still satisfy the concerns that the Ninth Circuit had. There's – no
442 bad faith here. There's no attempt to crush anybody's viewpoints or free speech rights but simply
443 to do what the Ninth Circuit has told us that we could do. And we believe that we've followed
444 that road map here. Thank you.

445

446 **COUNCILWOMAN TARKANIAN**

447 You're welcome. Any other comments from the audience? Councilman?

448

449 **COUNCILMAN ROSS**

450 Councilwoman, in regards to Mr. Jerbic's comments on Agenda 7 and 8, I would, as I make the
451 motion, Mr. Jerbic, let's include the as amended portions in this meeting and you'll be prepared
452 for, I believe, Mr. Steed, we can do that, as amended and incorporate Mr. Jerbic's comments on
453 Agenda Item Number 7 in regards to the history of these – laws. Is that correct?

454

455 **VAL STEED**

456 Yes. And what you're saying is that you would, with respect to Item Number 8, you would
457 recommend that the First Amendment be presented tomorrow –

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

458 **COUNCILMAN ROSS**

459 Yes.

460

461 **VAL STEED**

462 – with the changes to those two paragraphs that were indicated.

463

464 **COUNCILMAN ROSS**

465 Yes. That’s what I was, you know what I meant. Okay. With that, Councilwoman, I’m prepared

466 to make a motion.

467

468 **COUNCILWOMAN TARKANIAN**

469 Proceed.

470

471 **COUNCILMAN ROSS**

472 **On Agenda Item Number 7, Bill 2-0-0-6 dash 6-3, I would refer to Council with a Do Pass,**

473 **including Mr. Jerbic’s comments on the history of these laws that were associated with.**

474

475 **COUNCILWOMAN TARKANIAN**

476 All in favor?

477

478 **COUNCILMAN ROSS**

479 Aye.

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

480 **COUNCILWOMAN TARKANIAN**

481 Aye.

482

483 **COUNCILMAN ROSS**

484 And on Agenda Item –

485

486 **COUNCILWOMAN TARKANIAN**

487 Item passes.

488

489 **COUNCILMAN ROSS**

490 **On agenda Item Number 8, Bill Number 2-0-0-6 dash 6-4, I would also move to refer to**

491 **Council with a Do Pass with the First Amendment Mr. Jerbic will present to Council**

492 **tomorrow.** And as I make that motion, Councilwoman, it's – important, as we discuss it here at

493 the Recommending Committee, it's very important to get all the Council's input and their

494 thoughts.

495

496 **COUNCILWOMAN TARKANIAN**

497 Right.

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

498 **COUNCILMAN ROSS**

499 So, all of the parties who were here today, have an opportunity to – be at the Council meeting
500 tomorrow and voice their concerns and do the same thing in a public forum. And that’s my
501 motion.

502

503 **COUNCILWOMAN TARKANIAN**

504 That’s right. And also I urge to discuss with Mr. Jerbic any suggestions they have.

505

506 **VAL STEED**

507 And you’d like to incorporate the history of –

508

509 **COUNCILMAN ROSS**

510 Yes.

511

512 **VAL STEED**

513 11-point 68 original –

514

515 **COUNCILMAN ROSS**

516 Yes.

517

518 **VAL STEED**

519 – record for this.

**RECOMMENDING COMMITTEE MEETING OF
November 14, 2006**

**COMBINED VERBATIM TRANSCRIPT – ITEM 7 – BILL NO. 2006-63 AND ITEM 8 –
2006-64**

520 **COUNCILMAN ROSS**

521 Yes. Thank you for that. That's my motion, Councilwoman.

522

523 **COUNCILWOMAN TARKANIAN**

524 All in favor?

525

526 **COUNCILMAN ROSS**

527 Aye.

528

529 **COUNCILWOMAN TARKANIAN**

530 Aye. Motion passes.

531

532 **(END OF DISCUSSION)**

533 /ac;cv