City of Las Vegas

CITY COUNCIL AGENDA

COUNCIL CHAMBERS · 400 STEWART AVENUE · PHONE 229-6011
CITY OF LAS VEGAS INTERNET ADDRESS: www.lasvegasnevada.gov
COUNCIL MEMBERS: OSCAR B. GOODMAN, MAYOR (At-Large)
COUNCILMAN GARY REESE, MAYOR PRO TEM (Ward 3)
STEVE WOLFSON (Ward 2), LOIS TARKANIAN (Ward 1), STEVEN D. ROSS (Ward 6)
RICKI Y. BARLOW (Ward 5), STAVROS S. ANTHONY (Ward 4)

Facilities are provided throughout City Hall for convenience of persons with disabilities. For meetings held in the Council Chambers, sound equipment is available for persons with hearing impairments. If you need an accommodation to attend and participate in this meeting, please call the City Clerk's office at 229-6311 and advise of your need at least 48 hours in advance of the meeting. The City's TDD number is 386-9108.

August 18, 2010

Morning Session begins at 9:00 a.m.
Afternoon Session begins at 1:00 p.m.

ALL ITEMS ON THIS AGENDA ARE SCHEDULED FOR ACTION UNLESS SPECIFICALLY NOTED OTHERWISE.

THESE PROCEEDINGS ARE BEING VIDEO RECORDED AS WELL AS PRESENTED LIVE ON KCLV, CABLE CHANNEL 2, AND ARE CLOSED CAPTIONED FOR OUR HEARING IMPAIRED VIEWERS. THE COUNCIL MEETING, AS WELL AS ALL OTHER KCLV PROGRAMMING, CAN BE VIEWED ON THE INTERNET AT www.kclv.tv. THE PROCEEDINGS WILL BE REBROADCAST ON KCLV CHANNEL 2 AND THE WEB THE WEDNESDAY OF THE MEETING AT 8:00 PM, AND ALSO ON FRIDAY AT 4:00 AM, SATURDAY AT 7:00 PM, SUNDAY AT 7:00 AM AND THE FOLLOWING MONDAY AT 1:00 PM.

DUPLICATE AUDIO CD'S AND DUPLICATE AUDIO/VIDEO DVD'S MAY BE AVAILABLE AT A COST OF $5.00 EACH THROUGH THE CITY CLERK'S OFFICE.

NOTE: CELLULAR PHONES ARE TO BE TURNED OFF DURING THE COUNCIL MEETING.

CEREMONIAL MATTERS

1. CALL TO ORDER

2. ANNOUNCEMENT RE: COMPLIANCE WITH OPEN MEETING LAW

3. INVOCATION – REVEREND CYNDI DeLONG, RELIGIOUS SCIENCE

4. PLEDGE OF ALLEGIANCE

5. RECOGNITION OF THE EMPLOYEE OF THE MONTH

6. ACCEPTANCE OF SWIM LESSON DONATIONS FROM THE SOUTHERN NEVADA CHAPTER OF THE INTERNATIONAL CODE COUNCIL

7. RECOGNITION OF THE AMATEUR SOFTBALL ASSOCIATION'S NEVADA STATE CHAMPIONS

8. RECOGNITION OF THE LAS VEGAS HAWKS LITTLE LEAGUE TEAM

BUSINESS ITEMS - MORNING

9. Any items from the morning session that the Council, staff and/or the applicant wish to be stricken or held in abeyance to a future meeting may be brought forward and acted upon at this time

10. Approval of the Final Minutes by reference of the regular City Council meeting of July 21, 2010

CONSENT AGENDA

MATTERS LISTED ON THE CONSENT AGENDA ARE CONSIDERED TO BE ROUTINE AND HAVE BEEN RECOMMENDED FOR APPROVAL BY THE SUBMITTING DEPARTMENTS. ALL ITEMS ON THE CONSENT AGENDA MAY BE APPROVED IN A SINGLE MOTION. HOWEVER, IF A COUNCIL MEMBER SO REQUESTS, ANY CONSENT ITEM MAY BE MOVED TO THE DISCUSSION PORTION OF THE AGENDA AND OTHER ACTION, INCLUDING POSTPONEMENT OR DENIAL OF THE ITEM, MAY TAKE PLACE.

ADMINISTRATIVE - CONSENT

11. Approval of the First Amendment to the Memorandum of Understanding between the City of Las Vegas and the Commission for the Las Vegas Centennial and ratification of $500,000 in funds allocated by the Commission for the Las Vegas Centennial for exhibit fabrication and installation at the Las Vegas Museum of Organized Crime and Law Enforcement located at 300 Stewart Avenue (APN 139-34-501-007) - Ward 5 (Barlow)

ADMINISTRATIVE SERVICES - CONSENT

12. Approval of a subgrant award in the amount of $394,800 from the State Energy Program (SEP) under the American Recovery and Reinvestment Act (ARRA) to retrofit streetlights across the City of Las Vegas with energy efficient lighting - All Wards

FIELD OPERATIONS - CONSENT

13. Approval of a Lease Termination Agreement between the City of Las Vegas and 518 Garces Avenue LTD for the property located in the vicinity of Las Vegas Boulevard and Garces Avenue (APN 139-34-410-180) - Ward 3 (Reese)

FINANCE & BUSINESS SERVICES - ADMINISTRATION CONSENT

14. Approval of Service and Material Checks/Payroll Checks/Wire Transfers/Other Checks and Investments

15. Approval of a report by the City Treasurer of the July 27, 2010 sale of properties subject to the lien of a delinquent assessment in Special Improvement Districts 707, 808, 809, 607 and various other districts - Wards 2, 4, 5 and 6 (Wolfson, Anthony, Barlow and Ross)

FINANCE & BUSINESS SERVICES - BUSINESS SERVICES CONSENT

16. Approval of a Special Event Alcoholic Beverage License for Ronald McDonald House Charities of Greater Las Vegas, Location: Meet Las Vegas, 233 South 4th Street, Date: August 22, 2010, Type: Special Event Beer/Wine, Event: Wine Women & Shoes, Responsible Person in Charge: Janet Linder - Ward 3 (Reese)

17. Approval of an extension of a Temporary Beer/Wine/Cooler Off-sale License, Big Dollar Stores, LLC, dba Big Dollar Stores, 1725 South Rainbow Boulevard, Suite 1, Jeffrey Chauncey, Mmbr, 90% and Danny Velarde, Mmbr, 10% - Ward 1 (Tarkanian)

18. Approval of an extension of a Temporary Tavern License for a Change of Ownership, Change of Business Name, and Change of Location, From: Freeland, Inc., dba Kilroy's (Non-operational), To: Jackpot Joanies C R, LLC, dba Jackpot Joanies, 2202 West Charleston Boulevard, Suite 12, Ronald Winchell, Managing Mmbr, 100% - Ward 5 (Barlow)

19. Approval of an extension of a Temporary Restricted Gaming License, Jackpot Joanies C R, LLC, dba Jackpot Joanies, 2202 West Charleston Boulevard, Suite 12, Ronald Winchell, Managing Mmbr, 100% - Ward 5 (Barlow)

20. Approval of Change of Ownership, Change of Business Name, and Change of Location for a Package License, From: American Drug Stores, Inc., dba Sav On Drugs 9017, 160 South Rainbow Boulevard, To: Rampart & Lee, Inc., dba Lee's Liquor & Wine, 780 South Rampart Boulevard, Haeun Lee, Pres, Dir, 50% and Sunja Lee, Secy, Treas, 50% - Ward 2 (Wolfson)

21. Approval of a new Wine/Beer/Cordial/Liqueur Tasting License, Rampart & Lee, Inc., dba Lee's Liquor & Wine, 780

South Rampart Boulevard, Haeun Lee, Pres, Dir, 50% and Sunja Lee, Secy, Treas, 50% - Ward 2 (Wolfson)

22. Approval of a new Restricted Gaming License subject to confirmation of approval by the Nevada Gaming Commission, Nash's, Inc., dba H & H Discount Liquor, 1916 North Decatur Boulevard, Mae Gappy, Pres, Dir, Secy, Treas, 100% - Ward 5 (Barlow)

23. Approval of a new Burglar Alarm Service License, DD 2000, LLC, dba Alert 911 Now, 7165 Bermuda Road, Rex Verley, Mgr, 47.5%, Joseph Murphy, Mgr, 25%, and Ronald Hansen, Managing Mmbr, 27.5% - County

24. Approval of a Change of Location for a Martial Arts Instruction License subject to the provisions of the planning and fire codes, Reylson Gracie, Inc., dba Reylson Gracie Jiu Jitsu, From: 1928 Rock Springs Drive, To: 7350 West Cheyenne Avenue, Suite 102, Reylson Gracie, Pres, 100% - Ward 4 (Anthony)

25. Approval of an extension of a Temporary Class III-A Secondhand Dealer License, Advance Group, Inc., dba Rapid Cash, 1532 North Jones Boulevard, Doug Rippel, Secy, Treas, Dir, Chad Faulkner, Dir, and Speedy Cash Intermediate Holdings, Corp, Sole Shareholder, 100%, Douglas Rippel, Chadwick Faulkner, Michael McKnight, James Ackerman, Matt Miller, Friedman Fleischer & Lowe Capital Partners II, LP, FFL Executive Partners II, LP, and FFL Parallel Fund II, LP, Shareholders - Ward 5 (Barlow)

26. Approval of an extension of a Temporary Class III-A Secondhand Dealer License, Advance Group, Inc., dba Rapid Cash, 5067 East Owens Avenue, Doug Rippel, Secy, Treas, Dir, Chad Faulkner, Dir, and Speedy Cash Intermediate Holdings, Corp, Sole Shareholder, 100%, Douglas Rippel, Chadwick Faulkner, Michael McKnight, James Ackerman, Matt Miller, Friedman Fleischer & Lowe Capital Partners II, LP, FFL Executive Partners II, LP, and FFL Parallel Fund II, LP, Shareholders - Ward 3 (Reese)

27. Approval of an extension of a Temporary Class III-A Secondhand Dealer License, Advance Group, Inc., dba Rapid Cash, 7460 West Cheyenne Avenue, Suite 110, Doug Rippel, Secy, Treas, Dir, Chad Faulkner, Dir, and Speedy Cash Intermediate Holdings, Corp, Sole Shareholder, 100%, Douglas Rippel, Chadwick Faulkner, Michael McKnight, James Ackerman, Matt Miller, Friedman Fleischer & Lowe Capital Partners II, LP, FFL Executive Partners II, LP, and FFL Parallel Fund II, LP, Shareholders - Ward 4 (Anthony)

28. Approval of an extension of a Temporary Class I-A Secondhand Dealer License, Recycling Technologies, LLC, dba Re New Recycling, 3050 Sirius Avenue, Suite 101, David Wendell, Mgr, 100% - Ward 1 (Tarkanian)

29. Approval of a Change of Ownership, a Change of Business Name and a Change of Location for a Burglar Alarm Service License, From Tac Americas, Inc., dba Tac Americas, Inc., 5720 Arville Street, Suite 108, To: Schneider Electric Buildings Americas, Inc., dba Schneider Electric Buildings Americas, Inc., 6283 South Valley View Boulevard, Suite M, Daniel Tews, Secy, Treas; Jeffrey Drees, Pres; Chris Curtis, Dir; Shannon LeQuire, Secy; and Aurelie Richard, Dir - County

FINANCE & BUSINESS SERVICES - PURCHASING & CONTRACTS CONSENT

30. Approval of award of Modification No. 4 to Contract No. 060040-DK, Investment Management Services - Department of Finance and Business Services - Award recommended to: BNY MELLON, N.A. DBA BNY MELLON WEALTH MANAGEMENT ($215,000 - General Fund)

31. Approval of award of Modification No. 2 to Contract No. 070410-DK, Soil Transportation and Stockpile Management Services located at Symphony Park, bounded by Grand Central Parkway, Bonneville Avenue and the Union Pacific Railroad Rail Line - City Parkway V, Inc. - Award recommended to: LAS VEGAS PAVING CORPORATION ($790,000 - General Capital Projects Fund) - Ward 5 (Barlow)

32. Approval of award of Bid No. 09.1730.37-LED, Bonneville/Clark One-Way Couplet Phase 1, Bonneville Avenue and Clark Avenue between Main Street and Las Vegas Boulevard and the construction conflicts and contingency reserve set by Finance and Business Services - Department of Public Works - Award recommended to: TAND, INC. ($4,289,625.10 - Road and Flood Capital Projects Fund) - Ward 3 (Reese)

33. Approval of award of Bid No. 10.1730.11-TF, First Street Beautification - Boulder Avenue to Hoover Avenue (Lot 1), Hoover Avenue Beautification - Main Street to Casino Center Boulevard (Lot 2) and the construction conflicts and contingency reserve set by Finance and Business Services - Department of Public Works - Award recommended to: TAND, INC. ($1,495,595 - Parks and Leisure Activities Capital Projects Fund) - Ward 3 (Reese)

34. Approval of award of Design Services Agreement No. 110008-LD, Design Services for Jones & Valley View Corridor Improvements located on Jones Boulevard from US 95 to Sahara Avenue and on Valley View Boulevard from US 95 to Desert Inn Road - Department of Public Works - Award recommended to: JACOBS ENGINEERING GROUP, INC. ($1,520,580 - Road and Flood Capital Projects Fund) - Ward 1 (Tarkanian)

35. Approval of award of Amendment No. 1 to Agreement No. 100100-TF, Prime Design Services Agreement for Las Vegas Creek Lateral - Langtry Channel located from Washington Avenue to Bonanza Road between Decatur Boulevard and Valley View Boulevard - Department of Public Works - Award recommended to: VTN NEVADA ($60,330 - Road and Flood Capital Projects Fund) - Ward 5 (Barlow)

36. Approval of Contract No. 110013-JL, Legal Consulting Services for Symphony Park located at 100 South Grand Central Parkway - APNs 139-34-110-002 and 104 - City Parkway V, Inc. - Award recommended to: SANTORO, DRIGGS, WALCH, KEARNEY & THOMPSON, LTD (not-to-exceed $270,000 - City Parkway V Operating Fund) - Ward 5 (Barlow)

37. Approval of award of Contract No. 100171-PH, Darling Tennis Center Operator at the Amanda and Stacy Darling Memorial Tennis Center located at 7901 West Washington Avenue - Department of Leisure Services - Award recommended to: CJMS TENNIS MANAGEMENT COMPANY - Ward 4 (Anthony)

PLANNING & DEVELOPMENT - CONSENT

38. Approval of a Partnership Agreement between the City of Las Vegas and the Southern Nevada Regional Planning Coalition (SNRPC) to form a multi-jurisdictional consortium called the Las Vegas Metropolitan Area Consortium ("LVMAC") to prepare and submit an application for funds that will support the preparation of a Regional Plan for Sustainable Development

PUBLIC WORKS - CONSENT

39. Approval of an encroachment request from A.W. Ham, III Trust, owner (516 Fremont Street) - Ward 5 (Barlow)

40. Approval of Third Supplemental Interlocal Contract LAS22I08 between the City of Las Vegas and the Clark County Regional Flood Control District (CCRFCD) to extend the project completion date for the Las Vegas Wash - Decatur Boulevard from Elkhorn Road to Farm Road - Ward 6 (Ross)

41. Approval of First Supplemental Interlocal Contract LAS22K08 between the City of Las Vegas and the Clark County Regional Flood Control District (CCRFCD) to extend the completion date for the Las Vegas Wash - Grand Teton, Mountain Spa to Buffalo Drive - Ward 6 (Ross)

42. Approval of First Supplemental Interlocal Contract LAS22L08 between the City of Las Vegas and the Clark County Regional Flood Control District (CCRFCD) to extend the completion date for the Las Vegas Wash - Grand Teton, Buffalo Drive to Durango Drive - Ward 6 (Ross)

43. Approval of Third Supplemental Interlocal Contract LLD05A08 between the City of Las Vegas and the Clark County Regional Flood Control District (CCRFCD) to extend the project completion date for the Jones Boulevard - Alta to Borden Storm Drain Local Drainage Improvements - Ward 1 (Tarkanian)

44. Approval of Fourth Supplemental Interlocal Contract LLD12A04 between the City of Las Vegas and the Clark County Regional Flood Control District (CCRFCD) to extend the project completion date for the Local Drainage Improvements in Brush Street Storm Drain - Ward 1 (Tarkanian)

45. Approval of Supplemental Interlocal Contract 475e between the City of Las Vegas and the Regional Transportation Commission of Southern Nevada (RTC) to extend the project completion date to September 30, 2011 for roadway improvements on Martin L. King from Palomino Lane to Carey Avenue - Ward 5 (Barlow)

46. Approval of Interlocal Contract between the City of Las Vegas and the Clark County Regional Flood Control District (CCRFCD) for the Annual Maintenance Work Program for fiscal year 2010 - 2011 ($2,050,000 - CCRFCD) - All Wards

47. Approval of Supplemental Interlocal Contract 435k between the City of Las Vegas and the Regional Transportation Commission of Southern Nevada (RTC) to increase funding in the amount of $500,000 for the Martin L. King, Palomino Lane to Carey Avenue project - Ward 5 (Barlow)

48. Approval of Supplemental Interlocal Contract 514e between the City of Las Vegas and the Regional Transportation Commission of Southern Nevada (RTC) to extend the project completion date to September 30, 2011 for the Casino Center/3rd Street Realignment project between Coolidge Avenue and Charleston Boulevard - Ward 3 (Reese)

49. Approval of Supplemental Interlocal Contract 399c between the City of Las Vegas and the Regional Transportation Commission of Southern Nevada (RTC) to extend the project completion date to September 30, 2011 for roadway improvements for the Tenaya Way Overpass, Westcliff Drive to Washington Avenue project - Ward 1 (Tarkanian)

50. Approval of Supplemental Interlocal Contract 581c between the City of Las Vegas and the Regional Transportation Commission of Southern Nevada (RTC) to extend the project completion date to June 30, 2012 for the I-515/Owens Avenue Interchange Study - Ward 5 (Barlow)

51. Approval of Supplemental Interlocal Contract 472a between the City of Las Vegas and the Regional Transportation Commission of Southern Nevada (RTC) to extend the project completion date to December 30, 2012 for the City of Las Vegas' Fiscal Year 2005 Arterial Interconnect Conduit Program project - All Wards

52. Approval of Supplemental Interlocal Contract 435l between the City of Las Vegas and the Regional Transportation Commission of Southern Nevada (RTC) to increase funding in the amount of $1,000,000 for the Martin L. King, Palomino Lane to Carey Avenue project - Ward 5 (Barlow)

53. Approval of Interlocal Contract 642 between the City of Las Vegas, and the Regional Transportation Commission of Southern Nevada (RTC) to proceed with funding for engineering, right-of-way, construction, and construction management from Senate Bill 5 funds for project 033N-SB5, Jones Boulevard/Valley View Boulevard Couplet, US-95 to Desert Inn Road ($22,225,000 - RTC) - Ward 1 (Tarkanian)

54. Approval of Interlocal Contract 640 between the City of Las Vegas, and the Regional Transportation Commission of Southern Nevada (RTC) to proceed with funding for the design and right-of-way design for the Las Vegas Boulevard Widening - I-515 to Owens Avenue project ($1,600,000 - RTC) - Ward 5 (Barlow)

55. Approval of Interlocal Contract 638 between the City of Las Vegas, and the Regional Transportation Commission of Southern Nevada (RTC) to proceed with funding for improvements associated with the Fiscal Year 2011 Annual Restoration and Preservation Projects ($1,980,000 - RTC) - Ward 4 (Anthony)

56. Approval of Interlocal Contract 636 between the City of Las Vegas, and the Regional Transportation Commission of Southern Nevada (RTC) to proceed with funding for the design and right-of-way design for Main Street, US-95 to Owens Avenue project ($500,000 - RTC) - Ward 5 (Barlow)

57. Approval of Interlocal Contract 639 between the City of Las Vegas, and the Regional Transportation Commission of Southern Nevada (RTC) to proceed with funding for improvements associated with Centennial Parkway/Sky Pointe Drive Connections at US-95 project ($2,150,000 - RTC) - Ward 6 (Ross)

58. Approval of an Amendment No. 1 to a Highway Agreement No. PR060-09-063, a Cooperative (Local Public Agency) Agreement with the State of Nevada Department of Transportation (NDOT) to increase funding in the amount of $3,157,900 and extend the completion date to December 31, 2012 for the construction of intersection improvements on Charleston Boulevard (SR-159) at Lamb Boulevard ($3,157,900 - NDOT/Congestion Mitigation and Air Quality (CMAQ)) - Ward 3 (Reese)

59. Approval of Design Cost Agreement No 10-00759DCA between the City of Las Vegas and NV Energy for the design of power facilities associated with the Alta Substation to allow construction of a portion of the Bonanza Trail project located on the northeast corner of Valley View Boulevard and Alta Drive ($85,505 - Southern Nevada Public Land Management Act (SNPLMA)) - Ward 1 (Tarkanian)

60. Approval of First Supplemental Interlocal Contract LAS22O09 between the City of Las Vegas and the Clark County Regional Flood Control District (CCRFCD) to decrease construction funding in the amount of $4,050,000 and extend contract completion date to June 30, 2012 for the North and South Environmental Enhancement Areas at Floyd Lamb Park - Ward 6 (Ross)

RESOLUTIONS - CONSENT

61. R-55-2010 - Approval of a Resolution that directs the State Housing Division to reserve $37,401,358.71 in State Private Activity Bond Volume Cap for future affordable housing development projects within the City of Las Vegas - All Wards

DISCUSSION/ACTION ITEMS

ADMINISTRATIVE - DISCUSSION

62. Report and possible action on the creation of a foreclosure prevention website www.StopNVforeclosures.org which provides outreach resources to troubled borrowers in an effort to help avoid foreclosure - All Wards

63. Discussion and possible action on the recommendation from the Senior Citizens Advisory Board to rename the Downtown Senior Services Center, located at 302 South 9th Street, to the Mel C. Kalagian, Sr. Downtown Senior Services Center – Ward 3 (Reese)

64. Report and possible action regarding the status of the Clean Water Coalition - All Wards

ADMINISTRATIVE SERVICES - DISCUSSION

65. Discussion and possible action on the proposed legislative package that will be submitted to the Legislative Counsel Bureau on behalf of the City of Las Vegas for the 2011 Legislative Session - All Wards

CITY ATTORNEY - DISCUSSION

66. Discussion and possible action regarding complaint seeking disciplinary action against James Cooper d/b/a The Amazing Art Company, 3814 Meadows Lane, Las Vegas, Clark County, Nevada, for violations of the Las Vegas Municipal Code - Ward 1 (Tarkanian)

RESOLUTIONS - DISCUSSION

67. R-56-2010 - Discussion and possible action regarding a Resolution consenting to the undertakings of the City of Las Vegas Redevelopment Agency (RDA) in connection with the Commercial Visual Improvement Program (CVIP) Agreement between the RDA and Charleston Suites, LLC, (Owner) located at 401 East Charleston Boulevard (APN 139-34-410-138) to be in compliance with and in furtherance of the goals and objectives of the RDA - Ward 3 (Reese) [NOTE: This item is related to RDA Item 4 (RA-13-2010)]

BOARDS & COMMISSIONS - DISCUSSION

68. TRAFFIC & PARKING COMMISSION – Vernell McNeal, Term Expiration 5-18-2013 (resigned)

RECOMMENDING COMMITTEE REPORT - DISCUSSION

BILLS ELIGIBLE FOR ADOPTION AT THIS MEETING

69. Bill No. 2010-31 – Updates the regulations governing certain commercial, entertainment and solicitation activities within the Pedestrian Mall. Proposed by: Bradford R. Jerbic, City Attorney and Councilman Gary Reese

70. Bill No. 2010-32 – Levies Assessment for Special Improvement District No. 1513 - Via Olivero Avenue and Valadez Street (East of Cimarron Road). Sponsored by: Step Requirement

71. Bill No. 2010-33 – Adopts the most recent versions of the Local Government Records Program Manual and minimum records retention schedules for local governments in Nevada, and repeals LVMC 2.52.040 (relating to the minutes of City boards and commissions). Proposed by: Beverly K. Bridges, City Clerk

BILLS ELIGIBLE FOR ADOPTION AT A LATER MEETING

THERE IS NO PUBLIC COMMENT ON THESE ITEMS AND NO ACTION WILL BE TAKEN BY THE COUNCIL AT THIS MEETING, EXCEPT THOSE ITEMS WHICH MAY BE STRICKEN OR TABLED. PUBLIC TESTIMONY TAKES PLACE AT THE RECOMMENDING COMMITTEE MEETING HELD FOR THAT PURPOSE.

72. Bill No. 2010-34 – Revises the provisions regarding the on-site parking, storage and repair of vehicles in residential districts. (TXT-36330) Sponsored by: Councilman Steven D. Ross

73. Bill No. 2010-35 – Repeals certain outdoor advertising restrictions concerning hotels, motels, and other lodging establishments, and repeals similar restrictions concerning wedding chapels. Proposed by: Bradford R. Jerbic, City Attorney

74. Bill No. 2010-36 – Repeals the sunset provision regarding the prohibition of alcoholic beverages in City parks except pursuant to a permit or other written authorization. Sponsored by: Councilman Gary Reese and Councilwoman Lois Tarkanian

75. Bill No. 2010-37 – Amends the City's Administrative Code to adopt new fee tables applicable to permits, inspections and other services performed in connection with the City's technical codes, and to make other permit-related adjustments. Sponsored by: Councilman Gary Reese

NEW BILLS - DISCUSSION

THERE IS NO PUBLIC COMMENT ON THESE ITEMS. NEW BILLS ARE READ INTO THE RECORD AND REFERRED TO RECOMMENDING COMMITTEE FOR A SEPARATE HEARING TO RECEIVE PUBLIC TESTIMONY BEFORE ACTION BY THE COUNCIL AT A LATER MEETING. EXCEPTION: EMERGENCY BILLS OR THOSE ITEMS TO BE STRICKEN OR TABLED.

76. Bill No. 2010-38 – Establishes time limits within which a member of the City Council may request reconsideration of Council action to deny a zoning-related application. (TXT-35753) Sponsored by: Councilman Steven D. Ross

77. Bill No. 2010-39 – Amends the permit requirements pertaining to group use of City parks, establishes limitations on certain law enforcement activities in City parks, provides that a portion of James Gay Park (currently a children's park) will be made available for general use, and deletes obsolete provisions relating to park use. Proposed by: Bradford R. Jerbic, City Attorney

1:00 P.M. - AFTERNOON SESSION

BUSINESS ITEMS - AFTERNOON

78. Any items from the afternoon session that the Council, staff and /or the applicant wish to be stricken or held in abeyance to a future meeting may be brought forward and acted upon at this time

HEARINGS - DISCUSSION

79. ABEYANCE ITEM - Hearing and possible action regarding review of compliance with City Council's decision concerning Nuisance Notice and Order and to consider preliminary report of expenses to recover fees and penalties for inspections located at 409 Santa Fe Street. PROPERTY OWNER: MICHAEL E. PAVICH - Ward 1 (Tarkanian)

80. Public Hearing and possible action to consider a request for a waiver and/or reduction of fees and/or civil penalties for the property located at 1410 Pacific Avenue in the amount up to $45,854.08. PROPERTY OWNERS: KUSH DAVE - Ward 3 (Reese)

81. Public Hearing and possible action to consider a request for a waiver and/or reduction of fees and/or civil penalties for the property located at 225 W. Cleveland Avenue in the amount up to $106,000. PROPERTY OWNERS: OXFORD TECHNOLOGY INC. - Ward 3 (Reese)

82. Public Hearing and possible action to consider a request for a waiver and/or reduction of fees and/or civil penalties for the property located at 1640 L Street in the amount up to $54,250.21. PROPERTY OWNERS: BANK LASALLE NATIONAL ASSN TRS - Ward 5 (Barlow)

83. Public Hearing and possible action to consider a request for a waiver and/or reduction of fees and/or civil penalties for the property located at 893 Balzar Avenue in the amount up to $101,727.80. PROPERTY OWNERS: BANK U S NATIONAL ASSN TRS - Ward 5 (Barlow)

PLANNING & DEVELOPMENT

THE ITEMS LISTED BELOW, WHERE APPROPRIATE, HAVE BEEN REVIEWED BY THE VARIOUS CITY DEPARTMENTS RELATIVE TO REQUIREMENTS FOR STORM DRAINAGE AND FLOOD CONTROL, CONNECTION TO SANITARY SEWER, TRAFFIC CIRCULATION, AND BUILDING AND FIRE REGULATIONS. THEIR COMMENTS AND/OR RECOMMENDATIONS AND REQUIREMENTS HAVE BEEN INCORPORATED INTO THE ACTION.

PLANNING & DEVELOPMENT - DISCUSSION

84. EOT-38524 - RECONSIDERATION - EXTENSION OF TIME - SPECIAL USE PERMIT - APPLICANT/OWNER: HECTOR CAMACHO - Request for an Extension of Time of a previously approved Special Use Permit (SUP-27933) FOR A PROPOSED RESTAURANT WITH A SERVICE BAR WITH WAIVERS TO ALLOW A ZERO-FOOT DISTANCE SEPARATION FROM A CHILD CARE FACILITY AND TO ALLOW A 58-FOOT DISTANCE SEPARATION FROM A SCHOOL WHERE 400 FEET IS REQUIRED at 4561 East Bonanza Road (APN 140-32-101-016), C-1 (Limited Commercial) Zone, Ward 3 (Reese). Staff recommends APPROVAL.

85. EOT-38524 - REHEAR - EXTENSION OF TIME - SPECIAL USE PERMIT - APPLICANT/OWNER: HECTOR CAMACHO - Request for an Extension of Time of a previously approved Special Use Permit (SUP-27933) FOR A PROPOSED RESTAURANT WITH A SERVICE BAR WITH WAIVERS TO ALLOW A ZERO-FOOT DISTANCE SEPARATION FROM A CHILD CARE FACILITY AND TO ALLOW A 58-FOOT DISTANCE SEPARATION FROM A SCHOOL WHERE 400 FEET IS REQUIRED at 4561 East Bonanza Road (APN 140-32-101-016), C-1 (Limited Commercial) Zone, Ward 3 (Reese). Staff recommends APPROVAL.

86. VAR-37831 - ABEYANCE ITEM - VARIANCE - PUBLIC HEARING - APPLICANT/OWNER: SANDRA LIPPINCOTT - Request for a Variance TO ALLOW AN EXISTING 316 SQUARE-FOOT ACCESSORY STRUCTURE (CLASS II) WITH A ZERO-FOOT SIDE YARD SETBACK WHERE THREE FEET IS REQUIRED on 0.46 acres at 6791 Sierra Trail (APN 163-02-311-006), R-E (Residence Estates) Zone, Ward 1 (Tarkanian). Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL.

87. VAR-38114 - ABEYANCE ITEM - VARIANCE - PUBLIC HEARING - APPLICANT/OWNER: SEA BREEZE VILLAGE II, LLC - Request for a Variance TO ALLOW A NINE-FOOT TALL MENU BOARD WHERE SEVEN FEET IS THE MAXIMUM HEIGHT ALLOWED AND TO ALLOW AN INCIDENTAL SIGN (CLEARANCE ARM) THAT IS 13 FEET TALL, 27 SQUARE FEET IN AREA AND CONTAINS A LOGO MAKING UP 67 PERCENT OF THE SIGN AREA WHERE SEVEN FEET IN HEIGHT, 12 SQUARE FEET IN AREA AND 50 PERCENT LOGO COVERAGE ARE ALLOWED on 0.52 acres at the northeast corner of Buffalo Drive and Vegas Drive (APN 138-22-418-011), C-1 (Limited Commercial) Zone, Ward 1 (Tarkanian). Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL.

88. MSP-38116 - ABEYANCE ITEM - MASTER SIGN PLAN RELATED TO VAR-38114 - PUBLIC HEARING - APPLICANT/OWNER: SEA BREEZE VILLAGE II, LLC - Request for a Major Amendment to a previously approved Master Sign Plan (MSP-0006-02) on 13.41 acres at the northeast corner of Buffalo Drive and Vegas Drive (APN 138-22-418-007 through 011), C-1 (Limited Commercial) Zone, Ward 1 (Tarkanian). Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL.

89. VAR-38195 - ABEYANCE ITEM - VARIANCE - PUBLIC HEARING - APPLICANT: STEVEN KOZMARY, M.D. - OWNER: LA JOLLA PLAZA II, LLC - Request for a Variance TO ALLOW 26 PARKING SPACES WHERE 45 PARKING SPACES ARE REQUIRED at 2851 El Camino Avenue (APN 162-05-801-011), C-1 (Limited Commercial) Zone, Ward 1 (Tarkanian). Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL.

90. SUP-38194 - ABEYANCE ITEM - SPECIAL USE PERMIT RELATED TO VAR-38195 - PUBLIC HEARING - APPLICANT: STEVEN KOZMARY, M.D. - OWNER: LA JOLLA PLAZA II, LLC - Request for a Special Use Permit FOR A PROPOSED 473 SQUARE-FOOT MASSAGE ESTABLISHMENT WITH WAIVERS TO ALLOW A 60-FOOT DISTANCE SEPARATION FROM A RESIDENTIAL ZONE WHERE 400 FEET IS THE MINIMUM REQUIRED, A 362-FOOT DISTANCE SEPARATION FROM AN EXISTING MASSAGE ESTABLISHMENT WHERE 1,000 FEET IS THE MINIMUM REQUIRED AND FOR ACCESS TO THE SITE FROM A 60-FOOT RIGHT-OF-WAY WHERE AN 80-FOOT WIDE RIGHT-OF-WAY IS THE MINIMUM REQUIRED at 2851 El Camino Avenue (APN 162-05-801-011), C-1 (Limited Commercial) Zone, Ward 1 (Tarkanian). Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL.

91. SUP-36142 - ABEYANCE ITEM - SPECIAL USE PERMIT - PUBLIC HEARING - APPLICANT: VERIZON WIRELESS - OWNER: ARIES HOLDINGS, LLC - Appeal filed from the denial by the Planning Commission of a request for a Special Use Permit FOR A PROPOSED 70-FOOT TALL WIRELESS COMMUNICATION FACILITY, STEALTH DESIGN (MONOPALM) at 8430 West Lake Mead Boulevard (APN 138-20-611-006), C-1 (Limited Commercial) Zone, Ward 4 (Anthony). The Planning Commission (5-2 vote) recommends DENIAL. Staff recommends APPROVAL

92. SUP-38137 - ABEYANCE ITEM - SPECIAL USE PERMIT - PUBLIC HEARING - APPLICANT: FUTURA ENVIA, INC. - OWNER: THRIFTY PAYLESS, INC. - Request for a Special Use Permit FOR A FINANCIAL INSTITUTION, SPECIFIED WITH WAIVERS TO ALLOW A 60-FOOT DISTANCE SEPARATION FROM A RESIDENTIAL USE WHERE 200 FEET IS REQUIRED; AN 820-FOOT DISTANCE SEPARATION FROM A FINANCIAL INSTITUTION, SPECIFIED WHERE 1,000 FEET IS REQUIRED AND TO ALLOW 900 SQUARE FEET OF FLOOR AREA WHERE 1,500 SQUARE FEET IS REQUIRED at 3882 West Sahara Avenue (APN 162-06-813-005), C-1 (Limited Commercial) Zone, Ward 1 (Tarkanian). Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL.

93. SUP-38211 - ABEYANCE ITEM - SPECIAL USE PERMIT - PUBLIC HEARING - APPLICANT: WALGREEN CO. - OWNER: PPLAND, LP - Appeal filed from the denial by the Planning Commission of a request for a Special Use Permit FOR A 74 SQUARE-FOOT ACCESSORY PACKAGE LIQUOR OFF-SALE USE WITHIN AN EXISTING 14,820 SQUARE-FOOT RETAIL ESTABLISHMENT at 7755 North Durango Drive (APN 125-17-611-002), T-C (Town Center) Zone [SC-TC (Service Commercial - Town Center) Special Land Use Designation], Ward 6 (Ross). The Planning Commission (7-0 vote) recommends DENIAL. Staff recommends APPROVAL.

94. SDR-37946 - ABEYANCE ITEM - SITE DEVELOPMENT PLAN REVIEW - PUBLIC HEARING - APPLICANT: RESORT GAMING GROUP, LLC - OWNER: 220 NORTH 4TH STREET LV, LLC, ET AL - Request for a Site Development Plan Review FOR PROPOSED FACADE MODIFICATIONS AND THE ADDITION OF A SERVICE YARD, A PORTE COCHERE, A SURFACE PARKING LOT AND A 25-FOOT ADDITION ON THE ROOF OF AN EXISTING HOTEL/CASINO WITH WAIVERS OF DOWNTOWN CENTENNIAL PLAN STREETSCAPE, UTILITY AND PARKING LOT LANDSCAPING AND SCREENING REQUIREMENTS on 3.94 acres at 220 North 4th Street (APNs 139-34-501-009; 139-34-510-019 and 139-34-514-007 through 009), C-2 (General Commercial) Zone, Ward 5 (Barlow). The Planning Commission (6-1 vote) and Staff recommend APPROVAL.

SET DATE

95. SET DATE ON ANY APPEALS FILED OR REQUIRED PUBLIC HEARINGS FROM THE CITY PLANNING COMMISSION MEETINGS AND DANGEROUS BUILDING OR NUISANCE/LITTER ABATEMENTS

CITIZENS PARTICIPATION

96. CITIZENS PARTICIPATION: PUBLIC COMMENT DURING THIS PORTION OF THE AGENDA MUST BE LIMITED TO MATTERS WITHIN THE JURISDICTION OF THE CITY COUNCIL. NO SUBJECT MAY BE ACTED UPON BY THE CITY COUNCIL UNLESS THAT SUBJECT IS ON THE AGENDA AND IS SCHEDULED FOR ACTION. IF YOU WISH TO BE HEARD, COME TO THE PODIUM AND GIVE YOUR NAME FOR THE RECORD. THE AMOUNT OF DISCUSSION ON ANY SINGLE SUBJECT, AS WELL AS THE AMOUNT OF TIME ANY SINGLE SPEAKER IS ALLOWED, MAY BE LIMITED

COUNCIL MEMBER RECOGNITION

97. COUNCIL MEMBER RECOGNITION: COMMENTS MADE BY INDIVIDUAL CITY COUNCIL MEMBERS DURING THIS PORTION OF THE AGENDA WILL NOT BE ACTED UPON BY THE CITY COUNCIL UNLESS THAT SUBJECT IS ON THE AGENDA AND SCHEDULED FOR ACTION

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THIS MEETING HAS BEEN PROPERLY NOTICED AND POSTED AT THE FOLLOWING LOCATIONS:
City Clerk's Bulletin Board, City Hall Plaza, 2nd Floor Skybridge
Bulletin Board, City Hall Plaza, (next door to Metro Records)
Las Vegas Library, 833 Las Vegas Boulevard North
Clark County Government Center, 500 S. Grand Central Parkway
Grant Sawyer Building, 555 E. Washington Avenue

City of Las Vegas Agenda Item No.: **1.**

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF: AUGUST 18, 2010

SUBJECT:
CALL TO ORDER

City of Las Vegas

Agenda Item No.: **2.**

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF: AUGUST 18, 2010

SUBJECT:
ANNOUNCEMENT RE: COMPLIANCE WITH OPEN MEETING LAW

City of Las Vegas Agenda Item No.: **3.**

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF: AUGUST 18, 2010

SUBJECT:
INVOCATION – REVEREND CYNDI DeLONG, RELIGIOUS SCIENCE

City of Las Vegas Agenda Item No.: **4.**

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF: AUGUST 18, 2010

SUBJECT:
PLEDGE OF ALLEGIANCE

City of Las Vegas Agenda Item No.: **5.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: OFFICE OF COMMUNICATIONS
DIRECTOR: DAVID RIGGLEMAN

SUBJECT:
RECOGNITION OF THE EMPLOYEE OF THE MONTH

City of Las Vegas Agenda Item No.: **6.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: OFFICE OF COMMUNICATIONS
DIRECTOR: DAVID RIGGLEMAN

SUBJECT:

ACCEPTANCE OF SWIM LESSON DONATIONS FROM THE SOUTHERN NEVADA CHAPTER OF THE INTERNATIONAL CODE COUNCIL

City of Las Vegas Agenda Item No.: **7.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: OFFICE OF COMMUNICATIONS
DIRECTOR: DAVID RIGGLEMAN

SUBJECT:
RECOGNITION OF THE AMATEUR SOFTBALL ASSOCIATION'S NEVADA STATE CHAMPIONS

City of Las Vegas Agenda Item No.: **8.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: OFFICE OF COMMUNICATIONS
DIRECTOR: DAVID RIGGLEMAN

SUBJECT:
RECOGNITION OF THE LAS VEGAS HAWKS LITTLE LEAGUE TEAM

City of Las Vegas

Agenda Item No.: **9.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY CLERK
DIRECTOR: BEVERLY K. BRIDGES

☐ **Consent** ☒ **Discussion**

SUBJECT:
BUSINESS ITEMS:

Any items from the morning session that the Council, staff and/or the applicant wish to be stricken or held in abeyance to a future meeting may be brought forward and acted upon at this time

City of Las Vegas Agenda Item No.: **10.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY CLERK
DIRECTOR: BEVERLY K. BRIDGES ☐ **Consent** ☒ **Discussion**

SUBJECT:
BUSINESS ITEMS:

Approval of the Final Minutes by reference of the regular City Council meeting of July 21, 2010

City of Las Vegas Agenda Item No.: **11.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY MANAGER
DIRECTOR: ELIZABETH N. FRETWELL ☒ **Consent** ☐ **Discussion**

SUBJECT:
ADMINISTRATIVE:

Approval of the First Amendment to the Memorandum of Understanding between the City of Las Vegas and the Commission for the Las Vegas Centennial and ratification of $500,000 in funds allocated by the Commission for the Las Vegas Centennial for exhibit fabrication and installation at the Las Vegas Museum of Organized Crime and Law Enforcement located at 300 Stewart Avenue (APN 139-34-501-007) - Ward 5 (Barlow)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $500,000
Funding Source: License Plate Revenue
Dept./Division: Commission for Las Vegas Centennial

PURPOSE/BACKGROUND:
On June 16, 2010, the City Council and Commission for the Las Vegas Centennial (Commission) executed a Memorandum of Understanding (MOU) to accept a contribution of $300,000 for tenant improvements and hazardous material abatement at the Las Vegas Museum of Organized Crime and Law Enforcement (Mob Museum). On July 26, 2010, the Commission awarded an additional $500,000 to the City of Las Vegas for exhibit fabrication and installation at the Mob Museum. The First Amendment to the MOU will enable the City Council to accept the new contribution of $500,000 from the Commission. Per the operating agreement for the Commission of the Las Vegas Centennial, any funding over $100,000 must have council ratification.

RECOMMENDATION:
Approval of the amendment to the MOU and ratification of funds

BACKUP DOCUMENTATION:
First Amendment to the Memorandum of Understanding between the City of Las Vegas and the Commission for the Las Vegas Centennial

FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF LAS VEGAS AND THE COMMISSION FOR THE LAS VEGAS CENTENNIAL POST MODERN BUILDING

THIS FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING is made and entered into this ____ day of _____, 2010, by and between the COMMISSION FOR THE LAS VEGAS CENTENNIAL, a Nevada non-profit corporation ("Commission") and CITY OF LAS VEGAS ("City").

RECITALS

WHEREAS, the Commission and the City entered into an Memorandum of Understanding dated June 16, 2010 ("MOU") which provided Centennial Grant funds for the restoration, rehabilitation and fit-out of the POST Modern building, specifically infrastructure for museum tenant improvements and hazardous materials abatement, which will preserve a historical landmark in the city of Las Vegas; and

WHEREAS, the City desires to obtain additional Centennial Grant funds for exhibit fabrication and installation at the Las Vegas Museum of Organized Crime and Law Enforcement, also known as the Mob Museum("Museum"), which will be located in the POST Modern building; and

WHEREAS, at the request of the City, the Commission desires to provide the additional Centennial Grant funds in accordance with the terms of the MOU.

NOW, THEREFORE, in consideration of the foregoing, the parties agree to amend the MOU as follows:

1. Section 1.1 of the MOU shall be deleted and replaced with the following:

> **1.1 Grant of Funds.** Subject to the terms of this MOU, the Commission hereby agrees to provide to City a grant in the total amount of Eight Hundred Thousand Dollars ($800,000) (the "Centennial Grant") to be used as follows: (a.) Three Hundred Thousand Dollars ($300,000) for infrastructure museum tenant improvements and hazardous materials abatement at the POST Modern building; and (b.) Five Hundred Thousand Dollars ($500,000) for exhibit fabrication and installation of the Museum exhibits located in the POST Modern building (collectively, the "Improvements"). The Centennial Grant to be provided to the City may be used on any qualified costs in furtherance of the Improvements, including, but not limited to, costs for engineers, architects, consultants, studies and other related expenses for Improvements.

2. The first sentence of Section 1.6 shall be deleted and replaced with the following:

> **1.6 Funding.** The Commission shall provide the City with the Centennial Grant of Eight Hundred Thousand Dollars ($800,000) to be utilized by the City in the work of the Improvements.

The remaining portion of Section 1.6 as set forth in the MOU shall remain the same.

3. Except as hereinabove set forth, the MOU shall remain valid and in full force and effect.

COMMISSION FOR THE LAS VEGAS CENTENNIAL

By: _____
Oscar B. Goodman, President

ATTEST:

_____
Esther Carter, Secretary

APPROVED AS TO FORM:

J. Pinticello 8/4/10
Date

CITY OF LAS VEGAS

By: _____
Oscar B. Goodman, Mayor

ATTEST:

_____
Beverly K. Bridges, MMC, City Clerk

APPROVED AS TO FORM:

J. Pinticello 8/4/10
Date

City of Las Vegas Agenda Item No.: **12.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: ADMINISTRATIVE SERVICES
DIRECTOR: TED J. OLIVAS ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a subgrant award in the amount of $394,800 from the State Energy Program (SEP) under the American Recovery and Reinvestment Act (ARRA) to retrofit streetlights across the City of Las Vegas with energy efficient lighting - All Wards

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The American Recovery and Reinvestment Act of 2009 (ARRA) has provided numerous opportunities for cities across the country to invest in projects that promote sustainability by reducing greenhouse gas emissions, reducing energy costs and creating jobs. The City of Las Vegas has received an ARRA subgrant award through the State Energy Program (SEP) from the Nevada State Office of Energy. The SEP funds will be used for streetlight retrofits under the State of Nevada's Traffic Signals and Street Lighting energy efficiency project, which was approved by the Department of Energy. This project represents a small portion of the entire project that will retrofit streetlights across the City with energy efficient lighting and is also in line with meeting the goals of the City's Sustainable Energy Strategy (R-50-2008)

RECOMMENDATION:
Approval to accept subgrant award

BACKUP DOCUMENTATION:
Notice of Subgrant Award

Jim Gibbons
Governor

STATE OF NEVADA

Jim Groth, Director
755 North Roop Street, Suite 202
Carson City, NV 89701
(775) 687-1850
Fax: (775) 687-1869

OFFICE OF THE GOVERNOR
NEVADA STATE OFFICE OF ENERGY
NOTICE OF SUBGRANT AWARD

PROJECT NUMBER: **SEPARRA032910003**

TYPE OF ACTION: Initial Award

FUNDING SOURCE: State Energy Program American Recovery and Reinvestment Act (SEP ARRA)

SUBGRANTEE NAME AND ADDRESS:

City of Las Vegas
Department of Public Works
400 Stewart Ave
Las Vegas, NV 89101

AMOUNT OF THIS AWARD: $394,800

PROJECT PERIOD:
4/1/2010 – 1/31/2012

PROJECT NAME:Traffic Signals and Street Lights

PROJECT MANAGER/TELEPHONE:
Neil Rohleder/ 702-229-6015

EMAIL: nrohleder@lasvegasnevada.gov

FISCAL MANAGER/TELEPHONE:

EMAIL:

NSOE PROGRAM MANAGER:
Pete Konesky
775.687.1850 x7305

EMAIL: pkonesky@energy.nv.gov

NSOE FISCAL MANAGER:
Tina Burke
775.687.1850 x7303

EMAIL: tmburke@energy.nv.gov

BY ACCEPTING THESE FUNDS IT IS UNDERSTOOD THAT:

1. *EXPENDITURES ARE TO BE IN COMPLIANCE WITH THE APPROPRIATE STATE AND FEDERAL REGULATIONS*
2. *ALL APPLICABLE CERTIFICATIONS MUST BE ON FILE WITH THE NEVADA STATE OFFICE OF ENERGY BEFORE ANY FUNDS ARE RELEASED*
3. *THIS AWARD IS SUBJECT TO THE AVAILABILITY OF APPROPRIATED FUNDS*
4. *THE RECIPIENT OF THESE FUNDS AGREES TO THE ADDITIONAL REQUIREMENTS ATTACHED TO THIS NOTICE OF SUBGRANT AWARD, INCLUDING,*
    a. *FINANCIAL ASSURANCES*
    b. *PROGRAM ASSURANCES*
    c. *SUPPLEMENTAL TERMS AND CONDITIONS*
    d. *ALL OTHER PRIOR REQUIREMENTS*

NAME OF THE NEVADA STATE OFFICE OF ENERGY OFFICIAL: James Groth, Director

SIGNATURE: _____ *DATE:* _____

PRINTED NAME AND TITLE OF SUBGRANTEE OFFICIAL: _____

SIGNATURE: _____ *DATE:* _____

NEVADA STATE OFFICE OF ENERGY
FINANCIAL ASSURANCES

1. *A Financial Status Report (FSR) must be submitted to the Nevada State Office of Energy (NSOE) on a monthly basis, by the fifth of each month.*
2. *All project expenditures must be made within the limits of the specified category amounts as they appear in the grantee's approved (by NSOE) budget. Grantees must obtain prior written approval from the NSOE before transferring any amount from one budgeted category to another. Such requests to revise a budget must be submitted to the NSOE Project Manager assigned to the Grantee's project on an NSOE Grant Budget Form labeled "AMENDMENT" and must include a detailed explanation of why the revision is necessary.*
3. *A final FSR must be submitted within thirty (30) days following the end of the project period. This FSR must include reports of any amount remaining of the match (cost share) or in-kind expenses/expenditures committed to the grantee's project as noted on the Notice of Grant Award form.*
4. *Grantee hereby certifies that it will follow the procurement standards specified in Federal Title 10, CFR (Code of Federal Regulation), Part 600—Financial Assistance Rules. (Title 10 CFR, Part 600 can be found at http://www.access.gpo.gov/nara/cfr/waisidx_01/10cfr600_01.html)*
5. *All project expenditures are to be reasonable, allocable, and allowable as defined by OMB Circular A-87, A-21, or A-122, whichever applies to the grantee.*
6. *The grantee must maintain records that adequately identify grant funding receipts and project expenditures. These records will be made available by the grantee to NSOE or their designee upon request.*
7. *Grantees that are institutions of higher education, hospitals, or other non-profit organizations will comply with the audit requirements of OMB Circular A-133. The grantee will send NSOE a copy of the annual audit, which will include the Schedule of Federal Financial Assistance, Auditor's Findings/Recommendations, and agency responses within thirty (30) days of completion of the audit.*
8. *Requests for technical assistance, forms or copies of applicable regulations should be made to:*

Peter Konesky
Nevada State Office of Energy
755 North Roop Street, Suite202
Carson City, NV 89701
Telephone: (775) 687-1850
Email: pkonesky@energy.nv.gov

PRINTED NAME AND TITLE OF SUBGRANTEE OFFICIAL: _____

SIGNATURE: _____ *DATE:* _____

NEVADA STATE OFFICE OF ENERGY
PROGRAM ASSURANCES

1. *Grantee hereby agrees to submit to the Nevada State Office of Energy (NSOE) written or electronic monthly or quarterly (calendar quarter) project status reports of the progress of the grantee's project, including a report of any match (cost share) or in-kind expenditures by the grantee or any sub-grantee/contractor. Reports are due to the grantee's assigned project manager at NSOE within 20 days following the end of the month or quarter. See "ATTACHMENT A" for a listing of required content for the project status reports.*
2. *A final project narrative report that includes a brief summary of the project must be submitted to the grantee's assigned project manager at NSOE within sixty (60) days following the project period end date. Topics to include in the summary are a comparison of original project scope with actual project scope of the completed project, delays/problems encountered, success/publicity earned, lessons learned, schedule adherence, conclusions and recommendations relative to funding of future projects.*
3. *The "U.S. Department of Energy, Energy Efficiency and Conservation Block Grant, administered by the Nevada State Office of Energy" shall be given appropriate credit as the funding source in any publicity or reports (written or oral) concerning the grantee's project.*
4. *If any form of written (or electronic) or visual materials are produced that identify NSOE, those materials will be sent to the NSOE for review and comment prior to publication or dissemination.*
5. *The NSOE retains the right to terminate the grant for cause anytime before completion of the project period when the NSOE has determined that the grantee or any sub-grantee/contractor has failed to comply with the conditions of this agreement.*
6. *The Notice of Grant Award shall be construed and interpreted according to the laws of the State of Nevada.*
7. *The grantee hereby agrees that he will not assign, transfer or delegate any rights, obligations or duties under this Notice of Grant Award without prior written consent of the NSOE.*
8. *To the extent authorized by law, the grantee hereby agrees to indemnify and save and hold the State of Nevada and its agents and employees harmless from any and all claims, causes of action or liability arising from the acts or omissions of the grantee, the grantee's agent(s) or its employees under this agreement.*
9. *The grantee hereby certifies that it will not use the services of any individual or firm on the DOE debarred/suspended list, 10 CFR Part 600.235 Government-wide Debarment and Suspension (Non-Procurement).*
10. *The grantee hereby certifies that the grant funds will supplement, and not supplant funds otherwise available for this project under State or Federal law.*
11. *The grantee hereby certifies that it will comply with Title VII of the Civil Rights Act of 1964 (P.L. 88.352), the Americans with Disabilities Act, 42 U.S.C. 12101 et seq (1990), the Drug Free Workplace Act of 1988 (P.L. 100-690, Title V, Subtitle D) and all requirements imposed by or pursuant to those laws.*

PRINTED NAME AND TITLE OF SUBGRANTEE OFFICIAL: _____

SIGNATURE: _____ *DATE:* _____

NEVADA STATE OFFICE OF ENERGY
SPECIAL TERMS AND CONDITIONS

1. **RESOLUTION OF CONFLICTING CONDITIONS**
Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to a DOE Award Administrator for guidance.

2. **LIMITATIONS ON USE OF FUNDS**
By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, for gambling establishments, aquariums, zoos, golf courses or swimming pools.

3. **STATEMENT OF FEDERAL STEWARDSHIP**
DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

4. **SITE VISITS**
DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your sub-awardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

5. **REPORTING REQUIREMENTS**
Requirements. Failure to comply with reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

6. **PUBLICATIONS**
You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award. An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

> *Acknowledgment*: "This material is based upon work supported by the Department of Energy, National Nuclear Security Administration based on a grant awarded to the Nevada Office of Energy under Award Number DE-EE0000687."
>
> *Disclaimer*: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

7. **FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS**
You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

Initials: _____

8. **LOBBYING RESTRICTIONS**

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

9. **NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS**

Recipient is restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project. If Recipient moves forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of the final NEPA decision, Recipient is doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share. DOE has made a conditional NEPA determination for this award, and funding for certain activities or tasks under this award is contingent upon the final NEPA determination:

State of Nevada Emergency Vehicle Idle Reduction Project:
DOE has made a final NEPA Determination for this activity, which is categorically excluded from further NEPA review.

Natural Gas & Electricity Monitoring for State Owned Buildings:
DOE has made a final NEPA Determination for this activity, which is categorically excluded from further NEPA review.

PV Projects:
Prohibited actions include: Demolition, construction, removal, installation or disposal activities, until such time that Recipient provides a Waste Stream Management plan. Recipient shall ensure the safety and structural integrity of any repair, replacement, construction and/or alteration performed under this project.

Traffic and Street Lighting:
Prohibited actions include: Demolition, construction, removal, installation or disposal activities, until such time that Recipient provides a Waste Stream Management plan.

County Sub-Grants:
Prohibited actions include: Demolition, construction, removal, installation or disposal activities, until such time that Recipient provides a Waste Stream Management plan. Recipient shall ensure the safety and structural integrity of any repair, replacement, construction and/or alteration performed under this project.

City Sub-Grants:
Prohibited actions include: Demolition, construction, removal, installation or disposal activities, until such time that Recipient provides a Waste Stream Management plan. Recipient shall ensure the safety and structural integrity of any repair, replacement, construction and/or alteration performed under this project.

10. **HISTORIC PRESERVATION**

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: http://www.ncshpo.org/find/index.htm. THPO contact information is available at the following link: http://www.nathpo.org/map.html . Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

11. **WASTE STREAM**

Prior to the expenditure of Federal funds to dispose of sanitary or hazardous waste, the Recipient is required to provide documentation to the Project Officer demonstrating that it has prepared a disposal plan for sanitary or hazardous waste generated by the proposed activities. Sanitary or hazardous waste includes, but is not limited to, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, asbestos, etc.

Initials: _____

12. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the Recipient's facilities, or (ii) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of the Agreement.

13. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (May 2009)

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds -- the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement. Recipients must include these special terms and conditions in any sub- contract.

B. Segregation of Costs. Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds. None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records. With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized --

(1) to examine any records of the contractor or grantee, any of its subcontractors or sub-grantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subcontract, grant, or sub-grant; and

(2) to interview any officer or employee of the contractor, grantee, sub-grantee, or agency regarding such transactions.

E. Publication. An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data
"The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant."

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers. The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Initials: _____

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Non-enforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any pre-dispute arbitration agreement. No pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. False Claims Act. Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

H. Information in Support of Recovery Act Reporting. Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

14. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than five calendar days after each calendar quarter in which the Recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier sub-recipients must maintain current registrations in the Central Contractor Registration (*http://www.ccr.gov*) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (*http://www.dnb.com*) is one of the requirements for registration in the Central Contractor Registration.

15. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

Initials: _____

16. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) *Definitions.* As used in this award term and condition—

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.*

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States.

(2) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

17. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of $2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

18. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A–102 is available at *http://www.whitehouse.gov/omb/circulars/a102/a102.html.*

Initials: _____

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by OMB Circular A–133. OMB Circular A–133 is available at *http://www.whitehouse.gov/omb/circulars/a133/a133.html.* This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF–SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF–SAC.

(c) Recipients agree to separately identify to each sub-recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number (DE-EE0000687), CFDA number (81.128), and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to sub-recipients shall distinguish the sub-awards of incremental Recovery Act funds from regular sub-awards under the existing program.

19. DAVIS-BACON ACT REQUIREMENTS

Note: Where necessary to make the context of these articles applicable to this award, the term "Contractor" shall mean "Recipient" and the term "Sub-contractor" shall mean "Sub-recipient or Sub-contractor" per the following definitions.

Recipient means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Sub-recipient means the legal entity to which a sub-award is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

Davis-Bacon Act

(a) Definition.--"Site of the work"--

(1) Means--

(i) The primary site of the work. The physical place or places where the construction called for in the award will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is--

(A) Located in the United States; and

(B) Established specifically for the performance of the award or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided--

(i) They are dedicated exclusively, or nearly so, to performance of the award or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a award.

(b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the award was performed at that site and shall be incorporated without any adjustment in award price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the article entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the award shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

Initials: _____

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this article shall be paid to all workers performing work in the classification under this award from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the award for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

Rates of Wages - Prior Approval for Proceeding with Davis-Bacon Construction Activities

If the Recipient determines at any time that any construction, alteration, or repair activity as defined by 29 CFR 5.2(j) (http://cfr.vlex.com/vid/5-2-definitions-19681309) will be performed during the course of the project, the Recipient shall request approval from the Contracting Officer prior to commencing such work. If the Contracting Officer concurs with the Recipient's determination, the Recipient must receive Contracting Officer approval to proceed with such activity, and must comply with all applicable Davis-Bacon requirements, prior to commencing such work. A modification to the award which incorporates the appropriate Davis-Bacon wage rate determination(s) will constitute the Contracting Officer's approval to proceed. If the Contracting Officer does not concur with the Recipient's determination, the Contracting Officer will so notify the Recipient in writing.

PRINTED NAME AND TITLE OF SUBGRANTEE OFFICIAL: _____

SIGNATURE: _____ *DATE:* _____

ATTACHMENT A
Reporting Requirements (02/10)

A. Progress Report

The Progress Report must provide a concise narrative assessment of the status of work and include the following information:

1. Name of the recipient.
2. Project title and name of the project Manager.
3. Date of report and period covered by the report.
4. A discussion of what was accomplished during this reporting period, including major activities, significant results, major findings or conclusions, key outcomes or other achievements.
5. Cost Status. Show approved budget by budget period and actual costs incurred.
6. Schedule Status. List milestones, anticipated completion dates and actual completion dates.
7. Any changes in approach and reasons for change. *Remember significant changes to the scope require prior approval by the NSOE and DOE.
8. Actual or anticipated problems or delays and actions taken or planned to resolve them.

B Special Status Report

The recipient must report the following events by e-mail as soon as possible after they occur:

1. Developments that have a significant favorable impact on the project.
2. Problems, delays, or adverse conditions which materially impair the recipient's ability to meet the objectives of the award or which may require DOE to respond to questions relating to such events from the public. The recipient must report any of the following incidents and include the anticipated impact and remedial action to be taken to correct or resolve the problem/condition:
    a. Any single fatality or injuries requiring hospitalization of five or more individuals.
    b. Any significant environmental permit violation.
    c. Any verbal or written Notice of Violation of any Environmental, Safety, and Health statutes.
    d. Any incident which causes a significant process or hazard control system failure.
    e. Any event which is anticipated to cause a significant schedule slippage or cost increase.
    f. Any damage to Government-owned equipment in excess of $50,000.
    g. Any other incident that has the potential for high visibility in the media.

C. Financial Report

	Cumulative
Cash Receipt	$_____
Cash Disbursements	$_____
Remaining Cash on Hand (line a minus b)	$_____

ATTACHMENT B
Scope of Work

Install street lights/traffic signals in the following list in the City of Las Vegas

Location	Information	Estimated Cost
SR 596 from SR 589 to SR 599	Replace 396 250 W fixtures	$158,400
SR 159 from SR 612 to SR 595	Replace 591 250 W fixtures	$236,400
Total		$394,800

City of Las Vegas Agenda Item No.: **13.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FIELD OPERATIONS
DIRECTOR: LARRY HAUGSNESS ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Lease Termination Agreement between the City of Las Vegas and 518 Garces Avenue LTD for the property located in the vicinity of Las Vegas Boulevard and Garces Avenue (APN 139-34-410-180) - Ward 3 (Reese)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $26,100
Funding Source: General Fund/Rental of Land
Dept./Division: Field Operations/Real Estate

PURPOSE/BACKGROUND:
The City leases from 518 Graces Avenue LTD the property located in the vicinity of Las Vegas Boulevard and Garces Avenue and now desires to terminate the current Lease Agreement prior to its expiration date as well as to be relieved of the obligations in the Lease. The Lease shall terminate effective August 20, 2010 and the property shall be deemed surrendered back to the Landlord. As consideration to the termination, the City will pay to the Landlord a reduced rental amount of $26,100 within 30 days of approval and execution of this agreement.

RECOMMENDATION:
Staff recommends approval

BACKUP DOCUMENTATION:
Lease Termination Agreement

LEASE TERMINATION AGREEMENT

THIS LEASE TERMINATION AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____, 2010, by and between the City of Las Vegas, a municipal corporation in the State of Nevada ("Tenant") and 518 Garces Avenue LTD, a Nevada corporation ("Landlord"). Landlord and Tenant are individually or collectively referred herein as the "Party" or "Parties."

RECITALS

WHEREAS, Landlord and Tenant entered into that certain lease (the "Lease"), dated August 8, 2006, for that certain premises (the "Premises") described in the Lease as approximately 0.32 acres, known as Assessor's Parcel Number 139-34-410-180 and commonly known as 702 South Las Vegas Boulevard, Las Vegas, County of Clark, Nevada; and

WHEREAS, Tenant desires to terminate the Lease prior to its stated expiration date and be relieved of its obligations thereunder, and Landlord is willing to terminate the Lease on the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual terms and conditions herein contained, the Parties hereby agree as follows:

1. Termination of Lease. The Lease shall terminate effective as of August 20, 2010 (the "Termination Date"). The Premises shall be deemed surrendered to Landlord by Tenant on the Termination Date. Tenant shall deliver the Premises to Landlord in its existing "as is" condition as of the Termination Date. Tenant shall leave all existing improvements on the Premises; however, Tenant shall disconnect the electrical service to the lighting poles on the Premises. Tenant shall also remove all signs posted by Tenant on the Premises.

2. Termination Payment. As consideration for this Agreement, Tenant will pay Landlord, within 30 days of execution of this Agreement by the Parties, Twenty Six Thousand One Hundred Dollars and No Cents ($26,100.00) (the "Lease Termination Payment").

3. Mutual Releases. In consideration of Landlord releasing Tenant from the obligation in the Lease, Landlord and Tenant hereby release and forever discharge each other, and their respective partners, officers, directors, agents, trustees, beneficiaries, guarantors and employees, of and from any and all claims, acts, damages, demands, rights of action and causes of action which each Party ever had, now has, or in the future may have, against the other, arising from or in any way connected with the Lease. This release is intended as a full settlement and compromise of each, every, and all claims of every kind and nature.

Landlord and Tenant understand and agree that by execution of this Agreement, the other Party and its partners, officers, directors, agents, trustees, beneficiaries, guarantors and employees do not admit any liability of any nature whatsoever. This Agreement is made entirely as a compromise and for the purpose of terminating the Lease and settling and extinguishing the respective claims, acts, damages, demands, rights of action or causes of action of the Parties hereto.

4. Authority. Each Party represents to the other that it has full power and authority to execute this Agreement.

5. Brokers. The Parties represent and warrant to each other that they have not dealt with any broker, finder or like agent in connection with this Agreement and they agree to indemnify and hold each other, their agents and their officers, directors, shareholders, partners and employees harmless of and from any claim of, or liability to, any broker, finder, or like agent claiming a commission or fee by reason of having dealt with either of the parties in connection with the negotiation, execution or delivery of this Agreement, and all expenses related thereto, including, without limitation, attorneys' fees and disbursements.

6. No Offer. This Agreement shall not be binding until executed and delivered by the Tenant to Landlord to Tenant and upon the funds described herein. The delivery of the Lease Termination Payment within the 30 day period shall be deemed to be the acceptance by the Landlord of this agreement. If the funds have not been received by the required time, this Agreement shall terminate.

7. Whole Agreement. The mutual obligations of the Parties as provided herein are the sole consideration for this Agreement, and no representations, promises or inducements have been made by the Parties other than as appear in this Agreement. This Agreement shall not be amended or modified except in writing signed by both Parties.

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8. Miscellaneous. The warranties, representations, agreements, and obligations contained in this Agreement shall survive the execution and delivery of this Agreement and shall survive any and all performances in accordance with this Agreement. This Agreement may be executed in any number of counterparts which together shall constitute the Agreement. This Agreement shall inure to the benefit of, and be binding upon, the heirs, successors and assigns of the Parties. This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

CITY OF LAS VEGAS

Oscar B. Goodman, Mayor

ATTEST:

By _____
Beverly K. Bridges, MMC Date

APPROVED AS TO FORM:

By John S. Ridilla 8/5/10
Deputy City Attorney Date

518 GARCES AVENUE LTD

By: _____

Name: Raymond Pistilli

Title: President

City of Las Vegas Agenda Item No.: **14.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Service and Material Checks/Payroll Checks/Wire Transfers/Other Checks and Investments

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $76,865,036.39
Funding Source: All Funds
Dept./Division: Finance and Business Services

PURPOSE/BACKGROUND:
In compliance with the City's Municipal Code, Chapter 4.12, this is an informational item that provides the dollar amount of disbursements processed by the Finance and Business Services Department.

RECOMMENDATION:
None

BACKUP DOCUMENTATION:
Summary of Cash Expenditures for the period 07/16-07/31/10

City of Las Vegas

Summary of Cash Expenditures

For period of 7/16-7/31/10

Total Services & Materials Checks :	**$22,425,842.81**
Total Services & Materials EFT Payments :	**$2,340,851.29**
Total Wire Transfers:	**$45,515,846.47**
Total Payroll Checks:	**$6,582,495.82**
Grand Total:	**$76,865,036.39**

I hereby certify that I have reviewed the above amounts and approved them for payment as being in compliance with all applicable laws to the best of my knowledge and belief.

Mark R. Vincent
Chief Financial Officer

Beverly K. Bridges, MMC
City Clerk

On August 18, 2010, the City Council approved the above cash expenditures.

Oscar B. Goodman
Mayor

City of Las Vegas Agenda Item No.: **15.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a report by the City Treasurer of the July 27, 2010 sale of properties subject to the lien of a delinquent assessment in Special Improvement Districts 707, 808, 809, 607 and various other districts - Wards 2, 4, 5 and 6 (Wolfson, Anthony, Barlow and Ross)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
NRS 271.565 states that within 15 days after the completion of the sale of all property described in the assessment roll upon which a delinquent assessment or installment is unpaid, the municipal treasurer shall prepare a statement of his actions concerning the sale showing all the property sold by him, to whom sold, and the sums paid for each tract. Such report shall be presented to the governing body at its regular meeting next following the preparation of the statement.

RECOMMENDATION:
Report only, no action required.

BACKUP DOCUMENTATION:
Report of Sale Memorandum from Mark R. Vincent, Chief Financial Officer

City of Las Vegas

Memorandum

Finance and Business Services

To: Mayor Oscar B. Goodman
Mayor Pro Tem Gary Reese
Councilman Steve Wolfson
Councilwoman Lois Tarkanian
Councilman Steven D. Ross
Councilman Ricki Y. Barlow
Councilman Stavros S. Anthony

From: Mark R. Vincent, Chief Financial Officer – Finance and Business Services

Cc: Elizabeth N. Fretwell, City Manager
Orlando Sanchez, Deputy City Manager
James R. Nichols, Deputy City Manager
Scott D. Adams, Chief Urban Redevelopment Officer
Brad Jerbic, City Attorney
Beverly K. Bridges, City Clerk

Date: July 28, 2010
Re: Report of Sale on Delinquent Parcels in SID Districts 707, 808, 809, 607, and various districts

Nevada Revised Statute 271.565 requires the Municipal Treasurer to notify the City Council within 15 days after the completion of the sale of property of delinquent assessments. The Treasurer shall prepare a statement of his actions concerning the sale showing all the property sold by him, to whom sold, and the sums paid for each tract. Such report shall be presented to the governing body at its regular meeting next following the preparation of the statement.

On April 21, 2010, the City Council approved the delinquency list and foreclosure notices were mailed to delinquent property owners for Special Improvement Districts 707, 808, 809, 607, and various districts. On July 7, 2010 the first of three weekly publications of the Notice of Sale occurred. Of the 153 parcels publicized, 136 either paid their assessment current or paid it off in full prior to the July 27, 2010 sale; and certificates on 17 parcels were sold.

Pursuant to this statute and the resolution as adopted by the regular City Council, the following Report of Sale has been prepared.

Parcel #	Certificate Buyer	Address	Amount
137-25-419-067	EUGENE PURRY & ROSELINDA S PURRY	6297 AZTEC CROSSING CT, LAS VEGAS, NV 89142	$2,877.87
137-26-611-001	ROBERT VELA &/OR RMV ENTERPRISES LLC	9022 DALBERS ST, BELLFLOWER, CA 90706	$4,255.16
137-26-718-006	LORRAINE HERRINGTON OR MERLE BERMAN	2012 GRAY EAGLE WAY, LAS VEGAS, NV 89117	$2,716.62
137-26-812-056	MARC SEGAL OR SUZANNE SEGAL	7008 VIA BELLA LUNA AVE, LAS VEGAS, NV 89131	$2,433.76
137-36-113-034	BETTY LYLE	3916 FULTON PL, LAS VEGAS, NV 89107	$1,365.54
137-26-418-015	ROBERT C LEPOME	2040 MAY VALLEY WAY, HENDERSON, NV 89052	$13,745.27
137-26-420-011	REBEKAH ASKEW	2741 PECAN CT, PRINCETON, TX 75407	$8,717.87
137-34-612-088	EUGENE PURRY & ROSELINDA S PURRY	6297 AZTEC CROSSING CT, LAS VEGAS, NV 89142	$6,101.26

137-34-715-028	FRANCISCO OCEGVEDA	PO BOX 271236, LAS VEGAS, NV 89127	$5,028.83
137-34-717-050	SID PRICE & CHARLES PRICE	729 SHERWOOD ST, VALLEY STREAM, NY 11581	$6,491.13
137-35-116-001	BRENDA E WIBOWO	3616 ASHLING ST, LAS VEGAS, NV 89127	$6,222.18
137-35-116-053	ANTIONETTE ROMA REVOCABLE TRUST	4385 W MAULE AVE, LAS VEGAS, NV 89118	$6,222.18
137-35-619-007	VINCENT CIMINO & GERALD DUTSH PROFIT SHARING PLAN	8888 W OLYMPIC BLVD #202, BEVERLY HILLS, CA 90211	$5,645.79
126-13-616-102	YING PAN	2300 E SILVERADO RANCH BLVD UNIT 2168, LAS VEGAS, NV 89183	$9,991.17
126-24-212-069	RICHARD CUEM & DEBRICH LLC	3202 BROOKFIELD DR, LAS VEGAS, NV 89120	$7,531.99
126-24-512-016	LORRAINE HERRINGTON OR MERLE BERMAN	2012 GRAY EAGLE WAY, LAS VEGAS, NV 89117	$12,080.58
138-23-711-024	ROBERT B TUGAOEN OR MARY S AMBROSE	393 UPLAND BLVD, LAS VEGAS, NV 89107	$772.51

City of Las Vegas Agenda Item No.: **16.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Special Event Alcoholic Beverage License for Ronald McDonald House Charities of Greater Las Vegas, Location: Meet Las Vegas, 233 South 4th Street, Date: August 22, 2010, Type: Special Event Beer/Wine, Event: Wine Women & Shoes, Responsible Person in Charge: Janet Linder - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a Special Event Alcoholic Beverage License. Event time is 2:00 p.m. - 6:00 p.m. Estimated attendance is 300. Security provided by Triton Security.

RECOMMENDATION:
Recommend approval.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **17.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an extension of a Temporary Beer/Wine/Cooler Off-sale License, Big Dollar Stores, LLC, dba Big Dollar Stores, 1725 South Rainbow Boulevard, Suite 1, Jeffrey Chauncey, Mmbr, 90% and Danny Velarde, Mmbr, 10% - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of an extension of a Temporary Beer/Wine/Cooler Off-sale License.

RECOMMENDATION:
Recommend approval of an extension of the temporary license with the authority of the director or designee to issue a permanent license upon receipt of a favorable investigative report.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **18.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an extension of a Temporary Tavern License for a Change of Ownership, Change of Business Name, and Change of Location, From: Freeland, Inc., dba Kilroy's (Non-operational), To: Jackpot Joanies C R, LLC, dba Jackpot Joanies, 2202 West Charleston Boulevard, Suite 12, Ronald Winchell, Managing Mmbr, 100% - Ward 5 (Barlow)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of an extension of a Temporary Tavern License for a Change of Ownership, Change of Business Name, and Change of Location.

RECOMMENDATION:
Recommend approval of an extension of the temporary license with the authority of the director or designee to issue a permanent license upon receipt of a favorable investigative report.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **19.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an extension of a Temporary Restricted Gaming License, Jackpot Joanies C R, LLC, dba Jackpot Joanies, 2202 West Charleston Boulevard, Suite 12, Ronald Winchell, Managing Mmbr, 100% - Ward 5 (Barlow)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of an extension of a Temporary Restricted Gaming License for 15 slots.

RECOMMENDATION:
Recommend approval of an extension of the temporary license with the authority of the director or designee to issue a permanent license upon receipt of a favorable investigative report.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **20.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Change of Ownership, Change of Business Name, and Change of Location for a Package License, From: American Drug Stores, Inc., dba Sav On Drugs 9017, 160 South Rainbow Boulevard, To: Rampart & Lee, Inc., dba Lee's Liquor & Wine, 780 South Rampart Boulevard, Haeun Lee, Pres, Dir, 50% and Sunja Lee, Secy, Treas, 50% - Ward 2 (Wolfson)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of Change of Ownership, Change of Business Name, and Change of Location for a Package License.

RECOMMENDATION:
Recommend approval.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **21.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a new Wine/Beer/Cordial/Liqueur Tasting License, Rampart & Lee, Inc., dba Lee's Liquor & Wine, 780 South Rampart Boulevard, Haeun Lee, Pres, Dir, 50% and Sunja Lee, Secy, Treas, 50% - Ward 2 (Wolfson)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a new Wine/Beer/Cordial/Liqueur Tasting License.

RECOMMENDATION:
Recommend approval.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **22.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a new Restricted Gaming License subject to confirmation of approval by the Nevada Gaming Commission, Nash's, Inc., dba H & H Discount Liquor, 1916 North Decatur Boulevard, Mae Gappy, Pres, Dir, Secy, Treas, 100% - Ward 5 (Barlow)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a new Restricted Gaming License for 4 slots.

RECOMMENDATION:
Recommend approval subject to confirmation of approval by the Nevada Gaming Commission.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **23.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a new Burglar Alarm Service License, DD 2000, LLC, dba Alert 911 Now, 7165 Bermuda Road, Rex Verley, Mgr, 47.5%, Joseph Murphy, Mgr, 25%, and Ronald Hansen, Managing Mmbr, 27.5% - County

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a new Burglar Alarm Service License.

RECOMMENDATION:
Recommend approval.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **24.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Change of Location for a Martial Arts Instruction License subject to the provisions of the planning and fire codes, Reylson Gracie, Inc., dba Reylson Gracie Jiu Jitsu, From: 1928 Rock Springs Drive, To: 7350 West Cheyenne Avenue, Suite 102, Reylson Gracie, Pres, 100% - Ward 4 (Anthony)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a Change of Location for a Martial Arts Instruction License.

RECOMMENDATION:
Recommend approval subject to the provisions of the planning and fire codes.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **25.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an extension of a Temporary Class III-A Secondhand Dealer License, Advance Group, Inc., dba Rapid Cash, 1532 North Jones Boulevard, Doug Rippel, Secy, Treas, Dir, Chad Faulkner, Dir, and Speedy Cash Intermediate Holdings, Corp, Sole Shareholder, 100%, Douglas Rippel, Chadwick Faulkner, Michael McKnight, James Ackerman, Matt Miller, Friedman Fleischer & Lowe Capital Partners II, LP, FFL Executive Partners II, LP, and FFL Parallel Fund II, LP, Shareholders - Ward 5 (Barlow)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of an extension of a Temporary Class III-A Secondhand Dealer License.

RECOMMENDATION:
Recommend approval of an extension of the temporary license with the authority of the director or designee to issue a permanent license upon receipt of a favorable investigative report and subject to the following condition:

1. Limited to the purchase and sales of gold jewelry, watches, and coins.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **26.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an extension of a Temporary Class III-A Secondhand Dealer License, Advance Group, Inc., dba Rapid Cash, 5067 East Owens Avenue, Doug Rippel, Secy, Treas, Dir, Chad Faulkner, Dir, and Speedy Cash Intermediate Holdings, Corp, Sole Shareholder, 100%, Douglas Rippel, Chadwick Faulkner, Michael McKnight, James Ackerman, Matt Miller, Friedman Fleischer & Lowe Capital Partners II, LP, FFL Executive Partners II, LP, and FFL Parallel Fund II, LP, Shareholders - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of an extension of a Temporary Class III-A Secondhand Dealer License.

RECOMMENDATION:
Recommend approval of an extension of the temporary license with the authority of the director or designee to issue a permanent license upon receipt of a favorable investigative report and subject to the following condition:

1. Limited to the purchase and sales of gold jewelry, watches, and coins.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **27.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an extension of a Temporary Class III-A Secondhand Dealer License, Advance Group, Inc., dba Rapid Cash, 7460 West Cheyenne Avenue, Suite 110, Doug Rippel, Secy, Treas, Dir, Chad Faulkner, Dir, and Speedy Cash Intermediate Holdings, Corp, Sole Shareholder, 100%, Douglas Rippel, Chadwick Faulkner, Michael McKnight, James Ackerman, Matt Miller, Friedman Fleischer & Lowe Capital Partners II, LP, FFL Executive Partners II, LP, and FFL Parallel Fund II, LP, Shareholders - Ward 4 (Anthony)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of an extension of a Temporary Class III-A Secondhand Dealer License.

RECOMMENDATION:
Recommend approval of an extension of the temporary license with the authority of the director or designee to issue a permanent license upon receipt of a favorable investigative report and subject to the following condition:

1. Limited to the purchase and sales of gold jewelry, watches, and coins.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **28.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an extension of a Temporary Class I-A Secondhand Dealer License, Recycling Technologies, LLC, dba Re New Recycling, 3050 Sirius Avenue, Suite 101, David Wendell, Mgr, 100% - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of an extension of a Temporary Class I-A Secondhand Dealer License.

RECOMMENDATION:
Recommend approval of an extension of the temporary license with the authority of the director or designee to issue a permanent license upon receipt of a favorable investigative report and subject to the following condition:

1. Limited to buy and sell all paper products such as cardboard, paper, newsprint. Plastic products such as plastic bottles, PVC pipes, acrylics and plexiglass. Carpet and carpet padding. Glass bottles colored and clear. Non-ferrous metals such as aluminum scraps, brass, copper wires and scraps. Ferrous metals, such as old sheet, white goods refrigerators, washers, dryers, miscellaneous short irons and long irons, heavy and light.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **29.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Change of Ownership, a Change of Business Name and a Change of Location for a Burglar Alarm Service License, From Tac Americas, Inc., dba Tac Americas, Inc., 5720 Arville Street, Suite 108, To: Schneider Electric Buildings Americas, Inc., dba Schneider Electric Buildings Americas, Inc., 6283 South Valley View Boulevard, Suite M, Daniel Tews, Secy, Treas; Jeffrey Drees, Pres; Chris Curtis, Dir; Shannon LeQuire, Secy; and Aurelie Richard, Dir - County

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Approval of a Change of Ownership, a Change of Business Name and a Change of Location for a Burglar Alarm Service License.

RECOMMENDATION:
Recommend approval.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **30.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of award of Modification No. 4 to Contract No. 060040-DK, Investment Management Services - Department of Finance and Business Services - Award recommended to: BNY MELLON, N.A. DBA BNY MELLON WEALTH MANAGEMENT ($215,000 - General Fund)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $215,000
Funding Source: General Fund
Dept./Division: Finance and Business Services

PURPOSE/BACKGROUND:
This modification will increase the asset level under management, reduce fees and provide the City with the option to renew this contract for one additional two-year period beyond June 30, 2012. This item is exempt from the competitive bidding process pursuant to NRS 332.115.1(b), Professional Services.

PCC: C. White
POC: Douglass C. Fries - (888) 296-0490

RECOMMENDATION:
That City Council approve award of Modification No. 4 to Contract No. 060040-DK, Investment Management Services to BNY Mellon, N.A. dba Mellon Wealth Management in an annual amount not to exceed $215,000. Authority to execute the Modification is given to the Purchasing Manager per R-48-2006.

BACKUP DOCUMENTATION:
1. Modification No. 4 to Contract No. 060040-DK
2. Certificate - Disclosure of Ownership/Principals

CONTRACT MODIFICATION No. 4
INVESTMENT MANAGEMENT SERVICES

THIS MODIFICATION No. 4 is being entered into this _____ day of _____ 2010, by and between the CITY OF LAS VEGAS (hereinafter the "City"), a municipal corporation within the State of Nevada having its principal office at 400 Stewart Avenue, Las Vegas, Nevada 89101 and BNY MELLON, N.A. dba BNY Mellon Wealth Management (formerly Mellon Private Trust Company, National Association which was changed by Assignment) (hereinafter the "Company") having an office at 2200 Paseo Verde Parkway, Suite 200, Henderson, Nevada 89074.

The Contract between the City and the Company, dated September 21, 2005 with its Modification No. 1 dated May 24, 2006, Modification No. 2 dated November 20, 2006, Modification No. 3 dated November 19, 2009, is hereby further modified as follows:

1. **B-3 Prices.** Delete and replace.

   DELETE in its entirety.

   REPLACE WITH:

   B-3 Prices

   (a) The City will pay the Company for services performed at a fee rate of .096975% for $200 million par value managed. Fees are to be charged quarterly based on the most recent quarter-end market value. If the $200 million portfolio market value increases or decreases, then the actual fee amounts paid will vary according to the fee rate.

   (b) Escalation – Price Adjustment. This pricing will be firm through June 30, 2012. There may be a price adjustment for the remaining Contract option period, if exercised by the City. Only one written price adjustment request will be accepted from the Company per option period. Sixty (60) days prior to the end of the then current Contract term, the Company may present a written request for price adjustment for the City's consideration.

2. **B-4 Performance Period.** Delete and replace.

   DELETE in its entirety.

   REPLACE WITH:

B-4 Performance Period

The Contract performance period is from October 1, 2005 through June 30, 2012. The City may, at its sole option, extend performance period for an additional one (1) two-year period beyond June 30, 2012. The City shall provide written notice to the Company of such extension, and the Company may not assume an automatic renewal.

3. **E-5 Insurance.** Update insurance requirements.

DELETE E-5 Insurance in its entirety.

REPLACE WITH:

E-1 Insurance [CAO-1/12/09] R

(a) The Company shall procure and maintain, at its own expense, during the entire term of the Contract, the following coverage(s):

(i) Industrial/Workers' Compensation Insurance protecting the Company and the City from potential Company employee claims based upon job-related sickness, injury, or accident, during performance of this Contract, and must submit proof of such insurance on a certificate of insurance issued by an insurer qualified to underwrite workers' compensation insurance in the State of Nevada, in accordance with NRS 616A-616D, inclusive.

(ii) Commercial General Liability Insurance (bodily injury, property damage) with respect to the Company's agents assigned to the activities performed under this Contract in a policy limit of not less than $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate, for bodily injury (including death), personal injury and property damages. Such coverage shall be on an "occurrence" basis and not on a "claims made" basis, and be provided on either a Commercial General Liability or a Broad Form Comprehensive General Liability (including a Broad form CGL endorsement) insurance form. The form must be written on an ISO Form CG 00 01 10 01, or an equivalent form.

(iii) Professional Liability Insurance (Errors and Omissions coverage) $2 million limit written on a claims made basis.

(b) Company must provide required insurance documentation to Insurance Tracking Services (ITS) immediately upon notification of selection. Award is conditional upon verification by ITS that all insurance requirements have been met. All policy certificates and endorsements are required to be an agent authorized by that insurer and who is licensed by the State of Nevada. All required aggregate limits must be disclosed and amounts entered on the certificate(s) of insurance. The certificates must identify the Contract number and the Contract description. The Company shall maintain coverage for the duration of this Contract, and any renewal periods, if applicable. The Company shall annually provide the ITS with a certificate of insurance as evidence that all insurance requirements have been met. The Company and/or insurance carrier shall provide the City with a 30 day advance notice of policy modification, cancellation or erosion of insurance limits, sent by certified mail "return receipt requested".

Submit certificates of insurance to:

City of Las Vegas
C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 21919
Long Beach, CA 90801

Account Manager: Michael Palacios
Phone: (888) 435-2955 ext. 503 • Fax: 562-435-2999
Email: michael.palacios@instracking.com

A certified, true and exact copy of each of the project specific insurance policies (including renewal policies) required under this Section E-5 shall be provided to the City if so requested.

(c) The City, its officers and employees shall be named as additional insureds and such notation shall appear on the certificate of insurance furnished by the Company's insurance carrier. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. Each insurance carrier's rating as shown in the latest Best's Key Rating Guide shall be fully disclosed and entered on the required certificate of insurance. The City requires insurance carriers to maintain a Best's Key rating of A VII, or higher. The adequacy of the insurance supplied by the Company, including the rating and financial health of each insurance carrier providing coverage, is subject to the approval of the City.

(d) All deductibles and self-insurance retentions shall be fully disclosed in the certificate of insurance. No deductible or self-insured retention may exceed $10,000.00 without the prior written approval of the City.

(e) If the Company fails to carry the required insurance, the City may (i) order the Company to stop further performance hereunder, declare the Company in breach, pursuant to Paragraph E-4, terminate the Contract if the breach is not remedied and, if permitted, assess liquidated damages, or (ii) purchase replacement insurance and withhold the costs or premium payments made from the payments due to the Company or charge the replacement insurance costs back to the Company.

(f) Any subcontractor or subconsultant approved by the City shall be required to procure, maintain and submit proof of insurance to the City of the same insurance requirements as specified above, and as required in this paragraph.

(g) The Company is encouraged to purchase any additional insurance as it deems necessary.

(h) The Company is required to remedy all injuries to persons and damage or loss to any property of the City, caused in whole or in part by the Company, its subcontractors or anyone employed, directed or supervised by the Company.

(i) The policies required in E-5 (a) i-iii shall have a Waiver of Subrogation provision endorsement in favor of the City of Las Vegas.

4. **General**. If there is a conflict between the Contract, as modified by Modification No. 1, Modification No. 2, Modification No. 3, and this Modification, then the provisions of this Modification No. 4 shall take precedence. All other terms and conditions of the Contract remain unchanged.

The balance of this page intentionally left blank.

IN WITNESS WHEREOF, the parties hereto have caused this Modification No. 4 to be executed by their duly authorized representatives.

CITY OF LAS VEGAS

KATHLEEN C. RAINEY, Manager
Purchasing and Contracts

"City"

ATTEST:

BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Robert S. Sylvain 3-4-10

Robert S. Sylvain, Deputy City Attorney Date

BNY MELLON, N.A. dba BNY Mellon Wealth Management

ROBERT MARTIN, Regional President

"Company"

CERTIFICATE
DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

"City" means the City of Las Vegas.

"City Council" means the governing body of the City of Las Vegas.

"Contracting Entity," means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

"*Principal"* means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members; (e) trust – the trustee and beneficiaries.

2. Policy

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

3. Instructions

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

4. Incorporation

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

Block 1 **Contracting Entity**
Name: Bank of New York Mellon Corporation
Address: One Wall Street, New York, NY 10286
Telephone: 702-944-7130
EIN or DUNS: 25-0659306

Block 2 **Description**
Subject Matter of Contract/Agreement
Investment Management Services RFP #050599-DK

Block 3 **Type of Business**

☐ Individual ☐ Partnership ☐ Limited Liability Company ☐ Corporation ☐ Trust ☒ Other:
BNY Mellon, N.A. is a wholly owned subsidiary of The Bank of New York Mellon Corporation, a publically owned corporation that is trade on the New York Stock Exchange and a recent proxy statement for which is attached to this form

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

Block 4 Disclosure of Ownership and Principals
In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

The Contracting Entity shall continue the above list on a sheet of paper entitled "disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: ___.

Block 5 DISCLOSURE OF OWNERSHIP AND PRINCIPALS – ALTERNATE

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: BNY Mellon 2009 Proxy

Date of Attached Document: April 13, 2010 Number of Pages: 92

I certify under penalty of perjury, that all the information provided in this Certificate is current, complete and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity

Name

7/19/2010
Date

State of Nevada
County of Clark

Subscribed and sworn to before me this 19 day of July, 2010 by Robert A. Martin

Notary Public

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
ROBIN M. GRAY
Appt. No. 10-1729-1
My Appt. Expires March 25, 2014

City of Las Vegas Agenda Item No.: **31.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of award of Modification No. 2 to Contract No. 070410-DK, Soil Transportation and Stockpile Management Services located at Symphony Park, bounded by Grand Central Parkway, Bonneville Avenue and the Union Pacific Railroad Rail Line - City Parkway V, Inc. - Award recommended to: LAS VEGAS PAVING CORPORATION ($790,000 - General Capital Projects Fund) - Ward 5 (Barlow)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $790,000
Funding Source: General CPF
Dept./Division: City Parkway V, Inc.

PURPOSE/BACKGROUND:
On July 23, 2007 Contract No. 070410-DK (purchase order 248409) was awarded by the Purchasing Manager for soil transportation and stockpile management services in support of activities in Symphony Park in the amount of $351,250. Funding was augmented by Council by $400,000 on February 16, 2008 and $400,000 October 7, 2009. This modification will restate the contract for clarity, restructure certain cost elements for savings and add funding to support continuing development at Symphony Park.

PCC: P. Hoffman
POC: Dave Breault - (702) 251-5800

RECOMMENDATION:
That City Council approve Modification No. 1 to Contract No. 070410-DK, Soil Transportation and Stockpile Management Services to Las Vegas Paving Corporation in the amount of $790,000, bringing the total Contract amount to $1,941,250. Authority to execute the Modification is given to the President of City Parkway V, Inc.

BACKUP DOCUMENTATION:
Modification No. 1 to Contract No. 070410-DK

CONTRACT MODIFICATION No. 1

SOIL TRANSPORTATION AND STOCKPILE MANAGEMENT

THIS MODIFICATION No. 1 is being entered into this _____ day of _____, 2010, by and between the CITY OF LAS VEGAS. (hereinafter the "City"), a municipal corporation within the State of Nevada having its principal office at 400 Stewart Avenue, Las Vegas, Nevada 89101, and LAS VEGAS PAVING CORPORATION (hereinafter the "Company"), having its principal office at 4420 South Decatur Boulevard, Las Vegas, Nevada 89103.

RECITALS

WHEREAS, the parties hereto entered into the Soil Transportation and Stockpile Management contract dated July 23, 2007, and

WHEREAS, the parties hereto desire to further modify the Contract to exercise an annual renewal option and to incorporate Modifications into an Amended and Restated Contract set forth below, and

WHEREAS, with the execution of Modification No. 1 by the parties hereto, the Amended and Restated Contract set forth below will replace and supplant the Contract dated July 23, 2007,

NOW, THEREFORE, in consideration of the foregoing and other and good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that the Contract shall be amended and restated in its entirety to read as follows:

The Contract between the City and the Company dated July 23, 2007 is hereby modified as shown in the Amended and Restated Contract attached and dated the same as this modification:

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Modification No. 1 to be executed by their duly authorized representatives.

CITY OF LAS VEGAS

KATHLEEN C. RAINEY, Manager
Purchasing and Contracts

"City"

ATTEST:

BEVERLY K. BRIDGES, CMC
City Clerk

APPROVED AS TO FORM:

John S. Ridilla 8/2/10
Date

John S. Ridilla
Deputy City Attorney

LAS VEGAS PAVING CORPORATION

DAVID C. BREAULT, Environmental Manager

"Company"

CONTRACT FOR SOIL TRANSPORTATION AND STOCKPILE MANAGEMENT SERVICES FOR SYMPHONY PARK

THIS CONTRACT is being entered into this _____ day of _____, 2010 by and between the CITY OF LAS VEGAS (hereinafter the "City"), a municipal corporation within the State of Nevada having its principal office at 400 Stewart Avenue, Las Vegas, Nevada 89101, and LAS VEGAS PAVING CORPORATION (hereinafter the "Company") a domestic corporation having its principal office located at 4420 South Decatur Boulevard, Las Vegas, Nevada 89103.

SECTION A – Contract Form

The subject matter of this Contract is the management and transportation of contaminated soil stockpiles at Symphony Park.

SECTION B – Basic Terms

B-1 Definitions and Abbreviations

The following definitions apply to this Contract:

(i) *"ANSI"* means the American National Standards Institute

(ii) *"Award Date"* means the date that a Contract becomes effective. It is the date that is entered into the first paragraph of a Contract upon execution by an authorized representative of the City.

(iii) *"CEM"* means Certified Environmental Manager

(iv) *"CFR"* means the Code of Federal Regulations

(v) *"City"* means the City of Las Vegas.

(vi) *"City Council"* means the governing body of the City of Las Vegas.

(vii) *"Company"* means the individual, partnership, or corporation responsible for the performance of services under this Contract.

(viii) *"Company Representative"* means the individual authorized to act on behalf of the Company regarding routine matters arising under or relating to this Contract.

(ix) *"Contract"* means this document, consisting of Sections A through E, which is binding and effective only upon execution by the City and the Company.

(x) *"Deliverable"* means any report, software, hardware, data, documentation, or other tangible item that the Company is required to provide to the City under the terms of the Contract.

(xi) *"EPA"* means the Environmental Protection Agency (USA)

(xii) *"NDEP"* means the Nevada Division of Environmental Protection

(xiii) *"NDOT"* means the Nevada Department of Transportation

(xiv) *"Non-exclusive Contract"* means a Contract under which the City agrees to obtain some, but not necessarily all, of the City's requirements for a particular service.

(xv) *"NPDES"* means the National Pollutant Discharge Elimination System.

(xvi) *"NRS"* means Nevada Revised Statutes

(xvii) *"OSHA"* means Occupational Safety and Health Standards

(xviii) *"PCB"* means polychlorinated biphenyls

(xix) *"Project Manager"* means the City representative who is responsible for the coordination of Contract performance between the City and the Company.

(xx) *"RCRA"* means Resource Conservation and Recovery Act

(xxi) *"SVOC"* means semi-volatile organic compound

(xxii) *"SWMP"* means Final Soil and Groundwater Management Plan , March 21, 2007, Kleinfelder, Inc.

(xxiii) *"SWPPP"* means the Storm Water Pollution Prevention Plan

(xxiv) *"TPH"* means total petroleum hydrocarbon

(xxv) *"UPRR"* means Union Pacific Railroad

(xxvi) *"VOC"* means volatile organic compound

B-2 Contract Type

The Contract type is Firm Fixed Price. This is a Non-Exclusive Contract.

B-3 Prices/Costs

(a) The City will pay the Company for actual materials handled or days worked at the following unit prices:

Item No.	Description	UOM	Price
220.01	Prepare Containment Area	Square Yard	$1.04
220.03	Stockpile Management	Day	$748.95
220.04	Visqueen Cover	Square Yard	$.28
230.01	Contaminated Soil Transportation	Ton	$2.74
230.02	Hazardous Soil Transportation	Ton	$29.70
637.01a	Dust Control – Regular Time	Hour	$135.88
637.01b	Dust Control – Overtime	Hour	$157.62
637.02	Storm Water Pollution Prevention	Not to Exceed	$3,925.52

(b) Method of Measurement

The item "Prepare Containment Area" shall be measured on a square yard basis as measured by the inside perimeter of the containment berm. The item "Stockpile Management" shall be measured per calendar day per containment area and verified by the Project Manager. The item "Visqueen Cover" shall be measured per square yard as determined by the Project Manager per event as defined in Section C-3. Maintenance of the Visqueen cover during any period of inactivity will be incidental to the Visqueen cover item, and will not be measured or classified as a covering event. The item "Contaminated Soil Transportation" shall be measured per ton documented by weigh tickets for each load transported to the remediation facility. The item "Hazardous Soil Transportation" shall be measured per ton documented by weigh tickets for each load transported to the U.S. Ecology facility. The item "Dust Control" shall be measured per hour and verified by the Project Manager. The item "Storm Water Pollution Prevention" shall be a not to exceed expense reimbursement amount to be billed as needed.

The accepted quantity of Prepare Containment Area will be paid for at the contract unit price per square yard and shall include mobilization/demobilization of all equipment and all labor, equipment, and materials to prepare and maintain the integrity of the containment area during use, and removal of the containment area once its location is no longer required. No compensation will be made for any existing containment areas. Expansion of an existing containment area will be paid for at the unit rate for the net increase in area added to the containment area as determined by the Project Manager. The Company will be compensated for containment area relocation as if a new containment area is prepared.

The accepted quantity of Stockpile Management will be paid at the contract unit price per calendar day, shall consist of mobilization/demobilization of all equipment and all labor, equipment and materials to manage the soils in an existing containment area by adding or moving soils to existing stockpiles during excavation activities, and shall include a minimum of one front end loader and operator per containment area. If future work activities at Symphony Park require the concurrent use of multiple containment areas and each is managed by a separate loader and operator, this item will be measured per day per containment area. No additional compensation will be made for equipment stored on-site.

The accepted quantity of Visqueen Cover will be paid at the contract unit price per square yard and shall include all labor, tools, equipment and materials as specified herein and as required by the Project Manager.

The accepted quantity of Contaminated Soil Transportation will be paid for at the contract unit price per ton and shall include all mobilization/demobilization and labor, tools and equipment as specified herein and as required by the Project Manager to load designated material in haul trucks, transport, and offload the material at the Las Vegas Paving Soil Remediation Facility.

The accepted quantity of Hazardous Soil Transportation will be paid for at the contract unit price per ton and shall include all mobilization/demobilization and labor, tools, equipment and material to load, transport and unload material at the U.S. Ecology facility in Beatty, Nevada. Equipment decontamination is considered incidental to the transportation bid items and will not be compensated directly.

The accepted quantity of Dust Control – Regular Time will be paid at the contract unit price per hour and shall include mobilization/demobilization of all equipment and labor, a minimum of one water truck and operator, and water for dust control purposes during soil handling. On days with stockpiling or hauling activity, the Company shall maintain a water truck and operator at the containment area during working hours to apply water as needed to control dust.

The accepted quantity of Dust Control – Overtime will be paid at the contract unit price per hour and shall include mobilization/demobilization of all equipment and labor, a minimum of one water truck and operator, and water for dust control purposes during period of inactivity. On days with no stockpiling or hauling activity, the Company shall apply a minimum of 8,000 gallons of water to the containment area during two separate visits, at the beginning and end of each working day. This item may also be used, by mutual agreement of Project Manager and Company Representative, on an as-needed basis on weekend and holiday days or after business hours when high winds necessitate the application of water for dust control.

The accepted quantity of Storm Water Pollution Prevention will be paid as a reimbursement item. Charges must be authorized in advance by the Project Manager, and may include expenses encountered in implementing best management practices recommended in the SWPPP and other miscellaneous charges encountered by the Company in its efforts to prevent storm water pollution.

(c) Price Adjustments

The Company or the City may request price adjustments in writing. The City will determine if the price adjustment is justified. Only one price increase per year will be considered. Price adjustments shall be based on the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, Table A, Urban Consumers, Expenditure Category: Transportation. Price adjustments must be agreed upon in writing by the City and the Company, in accordance with Paragraph E-15, Modification/Amendment.

No unit price adjustments will be allowed for any measured over-run or under-run of the original bid quantity.

B-4 Invoices

(a) The Company shall submit an invoice to the City in accordance with the prices set forth in Paragraph B-3 (Prices/Costs) above. All invoices should identify the following items:

(i) the date of the invoice;
(ii) the Contract Item against which charges are made;
(iii) performance dates covered;
(iv) the associated purchase order number;
(v) field reports for each day billed.

Upon reconciliation of all errors, corrections, credits, and disputes, payment to the Company will be made in full within 30 calendar days. **Invoices received without a valid purchase order number will be returned unpaid.** The Company shall submit an original invoice to:

Department of Finance and Business Services
ATTN: Accounts Payable
City of Las Vegas
400 Stewart Ave.
Las Vegas, NV 89101 – 2986

(b) A representative of the Company shall sign and certify the invoice in the following manner: "I hereby certify, under penalty of perjury, that the above invoice is just and correct and that reimbursement for such expenses listed on this invoice has not been previously received from the City of Las Vegas nor any other source."

(c) The Company shall forward a copy of the original invoice to the City's Project Manager identified in Paragraph D-2 (Project Manager/Company Representative).

(d) The City may withhold from a payment, with timely notice and a detailed explanation, a sufficient amount to compensate for the failure by the Company to comply with Contract requirements or applicable laws or regulations.

B-5 Performance Period/Delivery Schedule

(a) The performance period commences from Award Date and continues through July 30, 2012. The Contract may be extended for one additional one-year period by mutual agreement of both parties in accordance with Paragraph E-14 Modification/Amendment. The City reserves the right to temporarily extend this Contract by up to 180 days from the expiration date, for any reason.

SECTION C – Scope of Services

C-1 General

(a) City Parkway V is developing the 61 acre site known as Symphony Park, located just west of downtown Las Vegas. The site is bounded on the north and west by Grand Central Parkway, on the east by the Union Pacific Railroad, and on the south by Bonneville Avenue. Newland Communities serves as the development consultant to City Parkway V, who is acting as the master developer. The Symphony Park vision is to develop a new skyline and destination for local residents with mutually supportive mixed uses, not dominated by one or two large uses. All of the infrastructure for the site will be developed by City Parkway V.

Over the past 70 years, during the course of normal operations, former UPRR operations on the site resulted in releases of petroleum products, various organic and inorganic solvents, and metals. Some of the lead and petroleum-impacted soil has been removed and replaced with clean fill material according to an agreement between NDEP and UPRR. Areas still remain that are impacted by either TPH compounds, VOCs, SVOCs, PCBs, or metals. Therefore, contaminated soil is anticipated to be encountered during excavation of the site. The SWMP has been developed by Kleinfelder and approved by NDEP for City Parkway V to manage the contaminated soils and groundwater properly to meet local, state and federal regulations.

Contaminated soils need to be disposed of properly according to the SWMP and all federal, state and local regulations. The soils will be classified by the onsite CEM. The contaminated soils will be classified into two categories: Contaminated Non-Hazardous and Contaminated Hazardous. The Contaminated Non-Hazardous soils will be thermally treated at the Las Vegas Paving Soils Remediation facility located at the southwest corner of Bucyrus Erie Street and Colton Avenue in Las Vegas. Contaminated Hazardous soils deemed hazardous under the RCRA and under the SWMP will be transported via an RCRA certified hauler to the U.S. Ecology landfill in Beatty, Nevada for treatment and disposal.

(b) Under direction of the Project Manager and the CEM, the Company shall provide services for preparation and maintenance of the contaminated soils stockpile area to comply with storm water and air quality regulations. The Company shall provide a front end loader with an operator to move the soil within the contaminated soils stockpile area during excavation activities, a water truck with an operator as needed, and transportation of the soils from the Symphony Park site to the appropriate soils remediation or disposal facility.

(c) The Company shall provide its own electric power, potable water, operations water and sanitary facilities at its own cost. The Company shall coordinate with the Project Manager and the CEM for stockpile management activities. The Company will be notified a minimum of 48 hours prior to excavation work on-site. Following notification of laboratory test results and authorization to haul, the Company will have a maximum of 48 hours to mobilize labor and equipment and begin hauling the designated soils to the appropriate remediation or disposal facility.

(d) Per the SWMP, the Company shall develop its own site-specific Health and Safety Plan based on the duties, site-specific hazards, and job hazards. The plan at a minimum should address the following: hazards commonly associated with the Company's work; health and safety training; medical surveillance program; hazard evaluation; air and personal monitoring; personal protective equipment; site control; decontamination; safe work practices; emergency procedures; and standard operating procedures. All employees and subcontractors, including waste handlers, waste haulers and emergency response subcontractors, who have the potential to be exposed to hazardous substances, health hazards or safety hazards, and their supervisors and management responsible for site work, must receive appropriate training in accordance with local, state and federal regulations, including but not limited to 29 CFR 1910.120 in the federal OSHA requirements. Contractors and subcontractors are responsible for the identification and implementation of the appropriate training of their employees. There may also be railway safety training requirements for work bordering UPRR tracks.

(e) The company shall be responsible for the preservation of archaeological and paleontological objects and any objects of antiquity encountered during the work. When such objects are encountered, the Company shall immediately cease operations and notify the Project Manager. Operations shall be rescheduled to avoid the section until removal of the artifacts or gathering of historical data by the appropriate authority has been accomplished.

(f) When the Company's work encroaches on any sidewalk, walkway or crosswalk area, the Company shall take special precautions to protect pedestrians' safety, including provisions to separate pedestrian traffic from the work area and from vehicular traffic. When pedestrian traffic is routed onto the roadway the Company shall use portable precast concrete barrier rails to separate pedestrian traffic as required. All portable precast concrete barrier rails shall be butted tight and pinned in accordance with the requirements of NDOT Standard Drawing R-8.7.1 entitled "Portable Precast Concrete Barrier Rail."

The Company shall cooperate with and given written notice to all emergency agencies, public entities, residents, homeowners, homeowner associations, businesses or schools that will be affected by any part of the work, particularly concerning temporary interruptions to vehicle access. Notice of the approximate schedule and explanation of work shall be distributed at least 7 days prior to commencement of the work. A second written notice, as well as verbal notice including door-to-door communication shall be made at least 24 hours prior to work to remind all affected parties. The Company shall notify by phone the following agencies: Metro Dispatch, Fire Department Dispatch, Ambulance Dispatch Center, Citizen's Area Transit, Clark County School District, Nevada Dept of Transportation, City of Las Vegas Public Works, City of Las Vegas Public Information Specialist, City of Las Vegas Traffic Engineering Division, United States Postal Service, and Republic Services. The City shall receive a copy of all notifications for acceptance.

(g) The Company shall provide for the drainage of storm water, and such water as may be applied or discharged on the site in the performance of the work. Drainage facilities shall be adequate to prevent damage to the work, the site and adjacent property. The Company shall prevent erosion of soil on the site and adjacent property resulting from its work. The Company shall initiate effective measures prior to the commencement of cleaning, grading, excavation or other activities that will disturb the natural protection of the soil. The Company shall be responsible for protecting and preserving public and private property from damage directly or indirectly caused by drainage or storm water runoff leaving the project, including downstream properties if damage is a result of the Company's actions in diverting or redirecting existing natural runoff patterns.

(h) Dust that originates from the Company's operations, either inside or outside the work site, shall be controlled at all times by the Company in accordance with federal, state and local laws, ordinances and regulations at the sole expense of the Company. The Company shall obtain all necessary permits on this subject.

(i) The Company shall be responsible for answering and resolving any conflicts that may arise between a homeowner or business owner and himself during the work.

C-2 Stockpile Management

To avoid the potential of cross contamination, soils shall be stockpiled separately based on their classification by the CEM into the following categories: clean, legally clean, contaminated non-hazardous and RCRA hazardous soils. It is unknown how much excavation will be required at the Symphony Park site, and thus the quantity of soil generated is unknown. The Company understands that multiple stockpile containment areas may be needed over the course of this project. The minimum containment area shall be 1,100 square yards and may extend to

10,000 square yards. Containment areas, once constructed, may be expanded so long as the integrity of the liner and berm is maintained to ensure that no water or contaminated soils escape the containment area.

C-3 Stockpile Materials

(a) Protective Liner

An impervious liner is required to prevent runoff from entering or exiting the containment area and impacting the surrounding soils. The liner shall consist of a minimum double layer of 6 mils viqueen with 12 inches of overlap at the seams. The seams shall be taped. A minimum of 6 inches of soil shall be used as a cover to prevent equipment tearing the liner.

(b) Visqueen Cover

At the direction of the Project Manager, the Company shall cover contaminated non-hazardous and RCRA hazardous soils with plastic visqueen sheeting, minimum 6 mils, when not being handled. This may include any time excavations by the on-site developers or hauling activities by the Company are not being performed. The cover shall be adequately anchored such that it is not damaged by wind and does not allow volatile organic compounds or soil to escape the barrier. The cover shall be maintained during any down time by the excavators, while awaiting orders to remove soil, or any time site activities are not active. If the cover is damaged or the anchoring is compromised, the Company shall correct the situation within 4 hours of notification. The cover is reusable as long as it remains in good condition.

C-4 Stockpile Operations

(a) Containment Areas

Containment areas shall be prepared with a perimeter berm a minimum of three feet high, but not too high to prevent loading of trucks parked outside the containment area. Berm materials shall consist of clean soil, pre-cast concrete separators (i.e. K rail or Jersey rail), or hay bales. The area must be cleared of all objects which could puncture the protective liner. The liner shall be laid flat in the containment area, overlapping the berm along the perimeter and anchored at the top of the berm. The containment area must be sufficiently constructed and maintained to prevent soils and water from exiting or entering the area. A single entrance point into the bermed area shall be constructed and sufficiently ramped so that the storage area can be entered by rubber-tired loading equipment, used by loaded haul trucks to dump into the bermed area, and used for loading material from the ramp into empty haul trucks. The entrance point also shall not allow storm water runoff into or out of the storage area. An example of a soil storage area is shown in the SWMP in Appendix B, Plate B-2.

Once a containment area is no longer required and the stockpiles have been removed, the containment area shall be removed. The Company shall properly dispose of the liner material and remove the berm materials. The ground surface shall be graded in a manner to restore the surface to its pre-containment area condition.

(b) Placement of Soils

All contaminated non-hazardous and RCRA hazardous soils shall be screened by the CEM, segregated and placed within the containment area by the Company. A rubber tired front end loader shall be required to move soil within the stockpile management area during excavation activities at the site. The Company shall document on-site activities through daily written reports submitted to and verified by the Project Manager.

(c) Dust Control

Any time the soils are uncovered and the stockpile area is being handled, the Company shall ensure that water is applied as often as needed to ensure there is no hazard of blowing soil from the containment area, and shall follow all dust control measures outlined in the Dust Control Permit or by the Project Manager.

Any time the soils are uncovered and the stockpile area is not being handled, the Company shall ensure that adequate water is applied twice per working day to ensure there is no hazard of blowing soil from the containment area, and shall follow all dust control measures outlined in the Dust Control Permit or by the Project Manager. Water shall be applied once in the morning and once in the afternoon of each working day. Additional water shall be applied as needed on high wind days. Additional water needs for high wind days shall be determined jointly by the Project Manager and Company Representative.

(d) Hazardous Material

Soil or water contaminated with any constituent that is regulated by the NDEP or the EPA above the RCRA Hazardous Waste threshold shall be defined as hazardous material.

The Company shall coordinate with the CEM to make periodic inspection of the project for potential hazardous materials. In addition, when potential hazardous material is encountered, the Company shall:

1) Immediately contact the CEM, Project Manager and NDEP.
2) Have the CEM inspect the potential hazardous material and, if required, inspect for the removal and disposal of the hazardous material.
3) If required by the Project Manager, remove and dispose of the hazardous material as directed by the CEM.

C-5 Transportation of Contaminated Soils

(a) Loading and hauling contaminated non-hazardous soil

The Company shall be responsible for loading contaminated non-hazardous soil from the containment area into haul trucks, and transporting to the Las Vegas Paving Soils Remediation facility at the southwest corner of Bucyrus Erie Street and Colton Avenue. All loads shall be documented with a weigh ticket and shall require transport under a non-hazardous waste manifest or bill of lading sheet as required by the remediation facility. The Project Manager will coordinate preparation of the manifest/bill of lading. The Company shall provide the Project Manager with two copies of each weigh ticket by the close of business Monday for all loads that were transported the week proceeding. Remediation services will be contracted directly by the City and the remediation facility; the Company is responsible for loading, transportation and unloading only.

(b) Loading and hauling RCRA hazardous soil

RCRA hazardous soils shall be transported by a licensed hazardous material transporter to the U.S. Ecology facility in Beatty, Nevada under hazardous waste manifests. The manifest must be prepared and processed in accordance with USEPA, NDEP and DOT regulations. The Project Manager will coordinate preparation of the manifest. In addition, a Land Disposal Restriction Certification/Notification may be required for the acceptance of the waste by the facility. The Company shall be responsible for loading the hazardous soil from the containment area into haul trucks, transporting to the facility, and unloading. The Company shall provide the Project Manager with two copies of a weigh ticket for each load by the close of business Monday for all loads that were transported for the week proceeding. Disposal services will be contracted directly by the City and the disposal facility; the Company is responsible for loading, transportation and unloading only.

C-6 Pollution Control

The Company shall prevent, control and abate water and air pollution at the project site, and shall minimize damage to the site, adjacent property, and streams or other bodies of water. This work shall consist of temporary pollution control measures specified in this Contract or as directed by the Project Manager.

Pollution Control work includes creating a Dust Control Mitigation Plan (DCMP), obtaining all necessary approvals for the DCMP, obtaining a Dust Control Permit for Construction Activities, payment of all fees associated with the project dust control, and all work necessary to comply with the DCMP and the requirements of Section 94 of the Clark County Department of Air Quality Regulations, most recently adopted. Any fines or penalties levied by the Clark County Department of Air Quality and Environmental Management due to violations of the project Dust Control Permit requirements are the sole responsibility of the Company and shall be paid by the Company.

The Company shall be aware of NDEP requirements for the control of storm water runoff during work on this project. The Company shall be responsible to obtain a permit from NDEP should the work activities disturb more than one acre at any given time. Company shall apply for, pay for and gain approval of the required permit from the local authority in a timely manner so as not to affect the project schedule. The Company shall comply with the requirements of the permit and shall bear all associated costs. Application forms are available at the local NDEP offices but must be properly submitted to the Carson City, Nevada offices of the State of Nevada Water Pollution Control Division.

If the City suffers damages, including but not limited to delays and fines as a result of the Company's failure to obtain a required permit or for non-compliance with the requirements of a permit, the Company shall reimburse the City for such damages, and the City may withhold amounts equal to the damages from the Company's payments. Failure of the Company to obtain required permits in a timely manner shall not be justification for project delays.

C-7 Submittals

The Company shall submit one copy of each of the following items to the Project Manager:

1	Name and 24 hour mobile telephone number of Superintendent, plus another contact person and telephone number.	Update as needed.
2	Name and title of Company Representative	To execute orders or directions of the Project Manager without delay, who can receive correspondence and instruction, as well as sign modifications.
3	Name and telephone number of Company's safety officer	To receive notification of any safety concerns or accidents.
4	Copy of Construction Water Permit	Permit from Las Vegas Valley Water District to use a hydrant as a water source. Due prior to beginning the work.
5	Copy of General NPDES Permit	If work activities will disturb one or more acres and flow will discharge into the Las Vegas Wash.
6	Copy of Clark County Dust Control Permit	Prior to beginning work requiring a dust control permit. Permit from Clark County Dept of Air Quality and Environmental Management.
7	Daily Heavy Equipment Record of Use	Furnish to Project Manager copies of Records of Use
8	Weigh Tickets for material hauled to/from site	Furnish to Project Manager copies of each weigh ticket
9	Hazardous Waste Manifest Form	Furnish to Project Manager before transporting to US Ecology facility in Beatty, NV.

SECTION D – Special Clauses

D-1 Legal Notice [CAO-7/24/08]

(a) All legal notices required pursuant to the terms and conditions of this Contract shall be in writing, unless an emergency situation dictates otherwise. Any notice required to be given under the terms of this Contract shall be deemed to have been given when:

(i) received by the party to whom it is directed by hand delivery or personal service, or
(ii) transmitted by facsimile with confirmation of transmission, or
(iii) sent by U.S. mail via certified mail-return receipt requested at the following addresses:

FOR THE CITY:
City of Las Vegas, City Hall, First Floor
Manager, Purchasing and Contracts
400 Stewart Avenue
Las Vegas, Nevada 89101-2986
Fax: (702) 384-9964

FOR THE COMPANY:
Las Vegas Paving Corporation
David C. Breault
4420 South Decatur Boulevard
Las Vegas, Nevada 89103
Fax: (702) 257-9436

(b) The parties shall provide written notification of any change in the information stated above.

(c) An original signed copy, via U. S. Mail, shall follow facsimile transmissions.

(d) For the purposes of this Contract, legal notice shall be required for all matters involving potential termination actions, litigation, indemnification, and unresolved disputes. This does not preclude legal notice for any other actions having a material impact on the Contract.

(e) Routine correspondence should be directed to the Project Manager or the Company Representative, as appropriate.

D-2 Project Manager/Company Representative [R]

(a) The City designates Scott Carter as the Project Manager for this Contract. The City will provide written notice to the Company should there be a subsequent Project Manager change. The Project Manager will be the Company's principal point of contact at the City regarding any matters relating to this Contract, will provide all general direction to the Company regarding Contract performance, and will provide guidance regarding the City's goals and policies. The Project Manager is not authorized to waive or modify any material scope of work changes, or terms of the Contract. The Project Manager shall not direct the Company's means, methods, techniques, sequences or procedures of work, or the safety precautions and program incident thereto, and will not be responsible for the Company's failure to perform the work in accordance with the Contract. The Project Manager will not be responsible for the acts or omissions of the Company, any subcontractor, any of their agents or employees, or any other persons at the site or otherwise performing any of the work.

(b) The Company designates David C. Breault as the Company Representative for this Contract. The Company will provide written notice to the City should there be a subsequent Company Representative change. The City has the right to assume that the Company Representative has full authority to act for the Company on all matters arising under or relating to this Contract.

D-3 Warranty – Services [R]

The Company warrants that the services shall be performed in full conformity with this Contract, with the professional skill and care that would be exercised by those who perform similar services in the commercial marketplace, and in accordance with accepted industry practice. In the event of a breach of this warranty or in the event of non-performance or failure of the Company to perform the services in accordance with this Contract, the Company shall, at no cost to the City, re-perform or perform the services so that the services conform to the warranty.

The Company warrants that it (i) is familiar with requirements of the Contract, (ii) has investigated the site and satisfied itself regarding the character of work and local conditions that may affect it or its performance, (iii) is satisfied that the work can be performed and completed as required in this Contract, (iv) accepts all risks directly or indirectly connected with the performance of the Contract, (v) has not been influenced by any statement or promise other than those contained in the Contract, (vi) is experienced and competent to perform the Contract, (vii) is familiar with all general and special laws, ordinances and regulations that may affect the work, its performance, or those persons employed therein, and (viii) is familiar with tax and labor regulations and with rates of pay that may affect the work. Warranty requirements shall exist in a direct extension from the manufacturer to the City as well as from the Company to the City.

D-4 Intellectual Property Rights [R]

All deliverables produced under this Contract, as well as all data, notes, and documentation collected by or on behalf of the City related to Contract services, are exclusively the property of the City.

D-5 Licenses/Registrations/Permits [R]

During the entire performance period of this Contract, the Company shall maintain all federal, state, and local licenses, certifications and registrations applicable to the work performed under this Contract, including maintaining an active City of Las Vegas business license. The Company shall determine, pay for and secure all necessary permits, inspections and utilities necessary for the proper execution and completion of Contract services including, as applicable, Pollution Control and Water District permits.

D-6 Order of Precedence [R]

Any paragraph or clause in this Contract which may be in conflict or inconsistent with any other paragraph or clause shall be void to the extent of such conflict or inconsistency, and the more stringent shall govern.

D-7 Responsibility for the Work, Materials and Security

Until completion of the project, the Company shall have the charge and care of the work and of the materials used therein. The Company shall at all times conduct all operations to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any property. The Company shall promptly take all reasonable,

necessary and adequate precautions against any conditions which involve a risk of loss, theft or damage to its property, the City's property, the work site, or utilities. The Company shall continuously inspect all its work, materials, equipment and facilities to discover any such conditions, and shall be solely responsible for such conditions. The Company shall rebuild, repair, restore and make good all injuries, losses, or damages to any portion of the work, site, utility operations, or adjacent property occasioned by any cause before completion of the work, and shall bear the expense thereof.

The Company shall cooperate with the City on all security matters, and shall promptly comply with any project security requirements established by the City. Such requirements shall not relieve the Company of its responsibility to maintain proper security for all its work, materials, equipment and facilities, nor shall they limit the Company's obligation to undertake all reasonable actions required to establish and maintain secure conditions.

The Company shall prepare and maintain accurate reports of incidents of loss, theft or vandalism, and shall furnish these reports to the City when requested. It is the Company's obligation to undertake all reasonable actions required to establish and maintain secure conditions.

The Company shall prepare and maintain accurate reports of incidents of loss, theft or vandalism, and shall furnish these reports to the City when requested.

D-8 Cleaning Up

The Company shall at all times keep the work area in a neat, clean and safe condition. Upon completion of any portion of services, Company shall promptly remove all its equipment, temporary structures and surplus materials not to be used at or near the same location during later stages of work. On completion of services and before final payment is made, the Company shall at its own expense dispose of all plant, buildings, rubbish, unused materials, and other equipment and materials belonging to it or used in the performance of the services, to the satisfaction of the City in accordance with all applicable federal, state and local laws, ordinances and codes. The Company shall leave the premises and work site in a neat, clean and safe condition. In the event the Company fails to comply with this clause, the City may accomplish the clean-up, and the cost for such may be withheld from any payments due the Company.

D-9 Supervision

The Company shall supervise and direct the services, using its best skill and attention. The Company shall be solely responsible for all means, methods, techniques, sequences and procedures, and for coordinating all portions of Contract services.

D-10 Safety and ADA Compliance

The Company shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with Contract services. The Company shall take all reasonable precautions for the safety of all its employees and all other persons who may be affected by Contract services. The Company's Safety Officer shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

(a) all employees engaged in the work and other persons who may be affected thereby;
(b) all work and all materials or equipment to be used therein, whether in storage or on the project site; and
(c) other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the work.

The Company shall erect, install, employ and maintain as required by the conditions and progress of the work all necessary safeguards. Company's safety duties shall continue until a "Notice of Completion" has been issued by the Project Manager. All work shall comply with the Americans with Disabilities Act (ADA) as amended to date.

D-11 Examination of Contract Documents and Site of Work

The Company represents that it has studied all surveys and investigative reports about potential conditions pertaining to the site of work, including the SWMP, and has performed such additional surveys and investigations as it deems necessary to complete the work at the Contract price. The Company shall not be relieved of any liability under the Contract for any loss sustained as a result of variances between conditions indicated and the

actual conditions encountered during the progress of the work. The Company is aware that high levels of petroleum hydrocarbons may be present in the area.

D-12 Working Hours and Days

Normal working hours for City employees is 7:00 am to 3:30 pm, Monday through Friday, except the following holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Nevada Day, Veteran's Day, Thanksgiving Day, day after Thanksgiving, and Christmas Day. The Project Manager may not approve any work completed during his absence.

The Company shall pay for the overtime of any City employee or contractor requested by the Company to perform inspection or testing, or who as a result of the Company's operation is required to perform inspections or testing beyond the normal working hours of the established working day listed above. Overtime rates shall be actual time and one half hourly wages of the employee affected.

The Company shall not be required to pay for overtime of City employees or contractors who, as a result of a request by the City, are required to perform inspections or testing beyond normal working hours.

D-13 Cooperation Between Companies

The City reserves the right at any time to contract and perform other or additional work on or near the work covered by this Contract. In this case, each contractor shall conduct his work so as not to interfere with or hinder the progress or completion of the work of other contractors. Contractors shall cooperate with each other as directed by the City. Each contractor shall assume all liability, financial or otherwise, in connection with his contract, and shall protect and save harmless the City from any and all damages or claims that may arise because of inconvenience, delay or loss experienced by the contractor because of the presence of other contractors. The Company shall arrange its work, equipment and materials so as not to interfere with the operations of other contractors. Company shall join its work with that of the others in an acceptable manner and in proper sequence. Company shall afford subcontractors and separate contractors reasonable opportunity for introduction and storage of their materials and equipment on site.

If any part of the Company's work depends on the work of the City or any other contractor, the Company shall, prior to proceeding with the work, promptly report to the Project Manager any apparent discrepancies or defects that render it unsuitable. Failure of the Company to report shall constitute an acceptance of the city's or other contractors' work as fit and proper to receive the Company's work, except as to defects that may subsequently become apparent in such others' work. Costs caused by defective or untimely work shall be borne by the responsible party, or by the Company if it did not give notice as required above. Should the Company wrongfully cause damage to the work or property of the City or other contractors on site, the Company shall promptly remedy such damage. The Company agrees to make no claim for damages due to correction of defective or untimely work or due to remedies of wrongful damage for which the Company is responsible. Should the Company wrongfully cause damage to the work or property of any separate contractor, the Company shall attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues or initiates an arbitration proceeding against the City on account of damage alleged to have been caused by the Company, the Company shall defend such proceedings at the Company's expense. If judgment or award against the City arises therefrom, the Company shall satisfy it and shall reimburse the City for all attorneys' fees and court or arbitration costs which the City has incurred.

SECTION E – General Clauses

E-1 Disputes [CAO-7/25/08]

(a) For each claim or dispute arising between the parties under this Contract, the parties shall attempt to resolve the matter through escalating levels of management. In the event the matter cannot be successfully resolved in this manner, the City is granted the right, regardless of which party is asserting the claim or dispute, to determine between arbitration or litigation as the forum in which the party desiring to proceed further shall file to resolve the claim or dispute. For any and all claims or disputes asserted by the Company, the Company shall notify the City of its intent to proceed further with the claim or dispute and, in response thereto, the City shall notify the Company as to its selected forum for resolution. For any and all claims or disputes asserted by the City, the City shall notify the Company in the notice of its intent to proceed with further resolution

whether it has selected arbitration or litigation as the forum to resolve the claim or dispute. In the event arbitration is the designated forum, such arbitration shall be binding on the parties.

(b) If arbitration is selected by the City as the forum for further resolution, the claim or dispute shall be filed with the Nevada Arbitration Association or the American Arbitration Association under its then current Commercial Arbitration Rules, Expedited Procedures, regardless of the amount of the claim or dispute.

(c) The laws of the State of Nevada shall govern this Contract, and the venue for purposes of such litigation or arbitration shall be in the City.

E-2 Notice of Delay [CAO-7/24/08]

(a) Should the timely performance of this Contract be jeopardized by the non-availability of City provided personnel, data, or equipment, the Company immediately shall notify the City in writing of the facts and circumstances that are contributing to such delay. Upon receipt of this notification, the City will advise the Company in writing of the action which will be taken to remedy the situation.

(b) The Company shall advise the City in writing of an impending failure to meet established milestones or delivery dates based on the Company's failure to perform. Notice shall be provided as soon as the Company is aware of the situation; however, such notice shall not relieve the Company from any existing obligations regarding performance or delivery.

E-3 Termination for Convenience [CAO-7/24/08]

The City shall have the right at any time to terminate further performance of this Contract, in whole or in part, for any reason whatsoever (including no reason). Such termination shall be effected by written notice from the City to the Company specifying the extent and effective date of the termination. On the effective date of the termination, the Company shall terminate all work and take all reasonable actions to mitigate expenses. The Company shall submit a written request for incurred costs for services performed through the date of termination, and shall provide any substantiating documentation requested by the City. In the event of such termination, the City agrees to pay the Company within 30 days after receipt of a correct, adequately documented written request. The City's sole liability under this Paragraph is for payment of costs for services requested by the City and actually performed by the Company.

E-4 Suspension for Convenience

The City may, without cause, order the Company in writing to suspend, delay or interrupt services, in whole or in part, for such period of time as the City may determine. The City will make an adjustment for any increase in the cost of performance of Contract services, including profit on the increased cost of performance, caused by such suspension, delay or interruption. No adjustment will be made to the extent that:

(i) Performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Company is responsible; or
(ii) An equitable adjustment is made or denied under another provision of this Contract.

E-5 Termination for Default [R]

(a) The City may, by written notice of default to the Company, terminate this Contract in whole or in part if the Company fails to:

(i) Perform the services under Section C, including, if applicable, delivering any required goods, or documentation within the time specified in this Contract or any extension;

(ii) Make progress, so as to endanger performance of this Contract;

(iii) Maintain insurance coverage as required under this Contract;
(iv) Provide sufficient workmen, materials or equipment to ensure the prompt completion of services within expected timeframes;
(v) Observe any laws, ordinances, rules or regulations pertaining to the services;
(vi) Maintain solvency, as evidenced by allowing a judgment to stand against it for a period of five days, being adjudged insolvent, bankrupt, or committing an act of bankruptcy or insolvency;
(vii) Perform any of the other provisions of this Contract; or
(viii) Remedy a material breach of any provision of this Contract within the time allowed for that remediation.

(b) The City's right to terminate this Contract under (a)(i) through (vii) above, may be exercised if the Company does not cure such failure within seven calendar days (or more if authorized by the City) after notice, specifying the failure, is provided pursuant to the Paragraph D-1 (Legal Notice) of this Contract.

(c) If the City terminates this Contract for default in whole or in part, it may acquire, under reasonable terms and in a manner the City considers appropriate, services or goods similar to those terminated, and the Company shall be liable to the City for any excess costs for those services or goods. However, the Company shall continue any work not terminated.

(d) The Company shall not be liable for any excess costs if the failure to perform the Contract arises from circumstances beyond the control and without the fault or negligence of the Company. These circumstances are limited to such causes as (1) acts of God or of the public enemy, (2) acts of governmental bodies, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) labor strikes, (8) freight embargoes, or (9) unusually severe weather. The time of performance of the Company's obligations under this Contract shall be extended by such period of enforced delay; provided, however, that such reasonably extended time period shall not exceed 60 days. If the foregoing circumstances result in a delay greater than 60 days, the City may terminate the affected portion of the Contract pursuant to the terms of Paragraph E-3 (Termination for Convenience).

(e) Either party may terminate this Contract, in whole or in part, if the other party becomes insolvent or bankrupt or makes an assignment for the benefit or creditors, or if a receiver or trustee in bankruptcy is appointed for the other party, or if any proceeding in bankruptcy, receivership, or liquidation is instituted against the other party and is not dismissed within 30 days following commencement thereof.

(f) The City retains the right to terminate for default immediately should the Company fail to maintain the required levels of insurance, fail to comply with applicable local, state, and Federal statutes governing performance of these services, or fail to comply with statutes involving health or safety.

(g) In the event that the City fails to perform any of its obligations required under this Contract, and the City does not remedy the failure after notice thereof is provided to the City by the Company pursuant to Paragraph D-1 (Legal Notice) above, the Company shall have the right to treat the failure as a claim or dispute subject to the resolution provisions of Section E-1 (Disputes) of this Contract. During the period of such resolution, the Company shall continue with its performance under the Contract.

E-6 Insurance: [R]

(a) The Company shall procure and maintain, at its own expense, during the entire term of the Contract, the following coverages:

(i) Industrial/Workers' Compensation Insurance protecting the Company and the City from potential Company employee claims based upon job-related sickness, injury, or accident, during performance of this Contract, and must submit proof of such insurance on a certificate of insurance issued by an insurer qualified to underwrite workers' compensation insurance in the State of Nevada, in accordance with NRS 616A-616D, inclusive..

(ii) Commercial General Liability Insurance (bodily injury, property damage) with respect to the Company's agents assigned to the activities performed under this Contract in a policy limit of not less than $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate, for bodily injury (including death), personal injury and property damages. Such coverage shall be on an "occurrence" basis and not on a "claims made" basis, and be provided on either a Commercial General Liability or a Broad Form Comprehensive General Liability (including a Broad form CGL endorsement) insurance form. The form must be written on an ISO Form CG 00 01 10 01, or an equivalent form.

(iii) Commercial Automobile Liability Insurance of limits not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage to include, but not be limited to, coverage against all insurance claims for injuries to persons or damages to property which may arise from services rendered by Company and any auto used in the performance of services under this Contract. The policy must insure all vehicles **owned** by the Company and include coverage for **hired** and **non-owned** vehicles.

(b) Company must provide required insurance documentation to Insurance Tracking Services (ITS) immediately upon notification of selection. Award is conditional upon verification by ITS that all insurance requirements have been met. All policy certificates and endorsements are required to be issued by an agent authorized by

that insurer and who is licensed by the State of Nevada. All required aggregate limits must be disclosed and amounts entered on the certificate(s) of insurance. The certificates must identify the Contract number and the Contract description. The Company shall maintain coverage for the duration of this Contract, and any renewal periods if applicable. The Company shall annually provide ITS with a certificate of insurance as evidence that all insurance requirements have been met. The Company or insurance carrier shall provide the City with 30 day advance notice of policy modification, cancellation or erosion of insurance limits, sent by certified mail "return receipt requested".

Submit certificates of insurance to:

City of Las Vegas
C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 21919
Long Beach, CA 90801

Account Manager: Michael Palacios
Phone: (888) 435-2955 ext. 503
Fax: 562-435-2999
Email: michael.palacios@instracking.com

A certified, true and exact copy of each of the project specific insurance policies (including renewal policies) required under this Section E-5 shall be provided to the City if so requested.

(c) The City, its officers and employees shall be named as additional insureds and such notation shall appear on the certificate of insurance furnished by the Company's insurance carrier. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. Each insurance carrier's rating as shown in the latest Best's Key Rating Guide shall be fully disclosed and entered on the required certificate of insurance. The City requires insurance carriers to maintain a Best's Key rating of A VII, or higher. The adequacy of the insurance supplied by the Company, including the rating and financial health of each insurance carrier providing coverage, is subject to the approval of the City.

(d) All deductibles and self-insurance retentions shall be fully disclosed in the certificate of insurance. No deductible or self-insured retention may exceed $10,000.00 without the prior written approval of the City.

(e) If the Company fails to carry the required insurance, the City may (i) order the Company to stop further performance hereunder, declare the Company in breach pursuant to Paragraph E-4 and terminate the Contract if the breach is not remedied, or (ii) purchase replacement insurance and withhold the costs or premium payments made from the payments due to the Company, or charge the replacement insurance costs back to the Company.

(f) Any subcontractor approved by the City shall be required to procure, maintain and submit proof of insurance to the City of the same insurance requirements specified above, and as required in this paragraph.

(g) The Company is encouraged to purchase any additional insurance it deems necessary.

(h) The Company is required to remedy all injuries to persons and damage or loss to any public or private property, vegetation, fences, signs, etc. caused in whole or in part by the Company, its subcontractors or anyone employed, directed or supervised by the Company.

(i) The policies required in E-5 (a) i-iii shall have a Waiver of Subrogation provision endorsement in favor of the City of Las Vegas.

E-7 Indemnification [CAO-7/24/08]

(a) In addition to the insurance requirements set forth in Paragraph E-5 (Insurance), the Company shall protect, indemnify and hold harmless the City, its officers, employees, agents, and consultants (collectively herein the "City") from any and all claims, liabilities, damages, losses, suits, actions, decrees, and judgments including attorney's fees, court costs or other expenses of any and every kind or character (collectively herein the "Liabilities") which may be recovered from or sought against the City as a result of, by reason of, or as a consequence of, any act or omission, negligent or otherwise, on the part of the Company, its officers, employees, or agents in the performance of the terms, conditions and covenants of this Contract, regardless of whether the Liabilities were caused in part by the City.

(b) If a third party claim against the City for negligent performance by the Company is within the limits of its liability insurance, and the insurance company has accepted the City's tender of defense, then the City will pay the Company what is due and owing to them within the payment method specified in this Contract. However, if the claim is greater than the coverage amount the City, for its protection, may retain any money due and owing the Company under this Contract until the claim has been resolved.

It is expressly agreed that the Company shall defend the City against the Liabilities and, in the event that the Company fails to do so, the City shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs, including attorney's fees and court costs, to the Company.

E-8 Assignment [CAO-7/24/08]

Neither party may assign their rights or delegate their duties under this Contract without the written consent of the other party. Such consent shall not be withheld unreasonably. Any assignment or delegation shall not relieve any party of its obligations under this Contract.

E-9 Waiver [CAO-7/24/08]

Waiver of any terms of this Contract shall not be valid unless it is in writing signed by each party. The failure of the City to enforce any of the provisions of this Contract, or to require performance of any of the provisions herein, shall not in any way be construed as a waiver of such provisions or to affect the validity of any part of this Contract, or to affect the right of the City to thereafter enforce each and every provision of this Contract. Waiver of any breach of this Contract shall not be held to be a waiver of any other or subsequent breach of this Contract.

E-10 Taxes/Compliance with Laws [R]

(a) The City is exempt from paying Sales and Use Taxes under the provisions of Nevada Revised Statutes 372.325(4), and Federal Excise Tax, under Registry Number 88-87-0003k. The Company shall pay all taxes, levies, duties and assessments of every nature and kind which may be applicable to any work under this Contract. The Company shall make any and all payroll deductions required by law. The Company agrees to indemnify and hold the City harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

(b) The Company, in the performance of the obligations of this Contract, shall comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Contract including, but not limited to, the Federal Occupational Health and Safety Act, the Immigration Reform and Control Act of 1986, and all state and federal laws prohibiting or relating to discrimination by reason of race, sex, age, religion or national origin.

E-11 Audit of Records [CAO-8/5/08]

(a) The Company agrees to maintain the financial books and records (including supporting documentation) pertaining to the performance of this Contract according to standard accounting principles and procedures. The books and records shall be maintained for a period of three (3) years after completion of this Contract, except that books and records which are the subject of an audit finding shall be retained for three (3) years after such finding has been resolved. If the Company goes out of business, the Company shall forward the books and records to the City to be retained by the City for the period of time required herein.

(b) The City, or its designated representative, shall have the right to inspect and audit (including the right to copy or transcribe) the books and records of the Company pertaining to performance of this Contract during normal business hours. City will provide prior written notice to Company of audit and inspection. If the books and records are not located in Clark County, Company agrees to deliver them to the City, or to an address designated by the City within Clark County. In lieu of such delivery, Company may elect to reimburse City for costs of travel (including transportation, lodging, meals and other related expenses) to inspect and audit the books and records at Company's office. If the books and records provided to City are incomplete, Company agrees to remedy the deficiency after written notice thereof from the City, and to reimburse the City for any additional costs associated therewith including, without limitation, having to revisit Company's office. Company's failure to remedy the deficiency shall constitute a material breach of this Contract. City shall be entitled to its costs and reasonable attorney fees in enforcing the provisions of this paragraph

(c) If at any time during the term of this Contract or at any time after the expiration or termination of the Contract, the City or the City's designated representative(s) find the dollar liability is less than payments made by the City to the Company, the Company agrees that the difference shall be either: (a) repaid immediately by the Company to the City or (b) at the City's option, credited against any future billings due the Company.

E-12 Independent Contractor [CAO-7/24/08]

In the performance of services under this Contract, the Company and any other person employed by it shall be deemed to be an independent contractor and not an agent or employee of the City. The Company shall be liable

for the actions of any person, organization or corporation with which it subcontracts to fulfill this Contract. The City shall hold the Company as the sole responsible party for the performance of this Contract. The Company shall maintain complete control over its employees and all of its subcontractors. Nothing contained in this contract or any subcontract awarded by the Company shall create a partnership, joint venture or agency with the City. Neither party shall have the right to obligate or bind the other party in any manner to any third party.

E-13 Severability [CAO-7/24/08]

The invalidity, illegality, or unenforceability of any provision of this Contract, or the occurrence of any event rendering any provision of this Contract void, shall in no way affect the validity or enforceability of any other provision of this Contract. Any void provision shall be deemed severed from this Contract, and the balance of this Contract shall be construed and enforced as if this Contract did not contain the particular provision held to be void. The parties further agree to amend this Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. This clause shall not prevent this entire Contract from being void should a provision which is of the essence of this Contract be determined void.

E-14 Conforming Services [CAO-7/24/08]

The services performed under this Contract shall conform in all respects with the requirements set forth in this Contract. The Company shall furnish the City with sufficient data and information needed to determine if the services performed conform to all the requirements of this Contract.

E-15 Modification/Amendment [CAO-7/24/08]

This Contract shall not be modified or amended except by the express written agreement of the parties, signed by a duly authorized representative for each party. Any other attempt to modify or amend this Contract shall be null and void, and may not be relied upon by either party.

E-16 Entire Agreement, Section and Paragraph Headings [CAO-7/24/08]

(a) This Contract represents the entire and integrated agreement between the City and the Company. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Contract.

(b) The section and paragraph headings appearing in this Contract are inserted for the purpose of convenience and ready reference. They do not purport to define, limit or extend the scope or intent of the language of the sections and paragraphs to which they pertain.

E-17 Conflict of Interest (City Officials) [CAO-7/24/08]

(a) An official of the City who is authorized on behalf of the City to negotiate, make, accept or approve, or take part in negotiating, making, accepting, or approving this Contract, payments under this Contract, or work under this Contract, shall not be directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of, or for the City, who is authorized on behalf of the City to exercise any legislative, executive, supervisory or other similar functions in connection with this Contract, shall become directly or indirectly interested personally in this Contract or in any part hereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to this Contract.

(b) Each party represents that it is unaware of any financial or economic interest of any public officer or employee of the City relating to this Contract. Notwithstanding any other provision of this Contract, if such interest becomes known the City may immediately terminate this Contract for default or convenience, based on the culpability of the parties.

E-18 Public Records [CAO-7/24/08]

The City is a public agency as defined by state law. As such, it is subject to the Nevada Public Records Law (Chapter 239 of the Nevada Revised Statutes). The City's Records are public records, which are subject to inspection and copying by any person (unless declared by law to be confidential). This Contract and all supporting documents are deemed to be public records.

E-19 Confidentiality – City Information [CAO-7/24/08]

(a) All information including, but not limited to, oral statements, computer files, databases, and other material or data supplied to the Company is confidential and privileged. The Company shall not disclose this information,

nor allow it to be disclosed, to any person or entity without the express prior written consent of the City. The Company shall have the right to use any such confidential information only for the purpose of providing services under this Contract, unless the express prior, written consent of the City is obtained. Upon request by the City the Company shall promptly return to the City all confidential information supplied by the City, together with all copies and extracts.

(b) The confidentiality requirements shall not apply where (i) the information is, at the time of disclosure by the City, then in the public domain; (ii) the information is known to the Company prior to obtaining the same from the City; (iii) the information is obtained by the Company from a third party who did not receive the same directly or indirectly from the City; or (iv) the information is subpoenaed by court order or other legal process. But in such event the Company shall notify the City and the City, in its sole discretion, may seek to quash the demand.

(c) The obligations of confidentiality shall survive the termination of this Contract.

E-20 Marketing Restrictions [CAO-7/24/08]

The Company may not publish or sell any information from or about this Contract without the prior written consent of the City. This restriction does not apply to the use of the City's name in a general list of customers, so long as the list does not represent an express or implied endorsement of the Company or its services.

E-21 Limitation of Funding [CAO-7/24/08]

The City reserves the right to reduce estimated or actual quantities in whatever amount necessary without prejudice or liability to the City if funding is not available, or if legal restrictions are placed on the expenditure of monies for the services required under this Contract.

E-22 Changes – Fixed-Price Services [CAO-7/24/08]

(a) The City may at any time, by written order make changes within the general scope of this Contract in any one or more of the following:

(i) Description of services to be performed.
(ii) Time of performance (i.e., hours of the day, days of the week, etc.).
(iii) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, the City shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract.

(c) The Company must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order; however, if the City decides that the facts justify, the City may receive and act upon a proposal submitted before final payment of the Contract.

(d) If the Company's proposal includes the cost of property made obsolete or excess by the change, the City shall have the right to prescribe the manner of disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under Paragraph E-1 (Disputes); however, nothing in this clause shall excuse the Company from proceeding with the Contract as changed.

The Company shall provide current, complete, and accurate documentation to the City in support of any request for equitable adjustment. Failure to provide adequate documentation within a reasonable time after a request from the City will be deemed a waiver of the Company's right to dispute the equitable adjustment proposed by the City, where such equitable adjustment has a reasonable basis at the time it is determined by the City.

E-23 Counterpart Signatures [CAO-9/24/08]

This Contract may be executed in counterparts. All such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and, upon receipt, will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized representatives.

CITY OF LAS VEGAS

KATHLEEN C. RAINEY, Manager
Purchasing and Contracts

"City"

ATTEST:

BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

John S. Ridilla 8/2/10
Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

LAS VEGAS PAVING CORPORATION

DAVID C. BREAULT, Environmental Manager

"Company"

City of Las Vegas Agenda Item No.: **32.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of award of Bid No. 09.1730.37-LED, Bonneville/Clark One-Way Couplet Phase 1, Bonneville Avenue and Clark Avenue between Main Street and Las Vegas Boulevard and the construction conflicts and contingency reserve set by Finance and Business Services - Department of Public Works - Award recommended to: TAND, INC. ($4,289,625.10 - Road and Flood Capital Projects Fund) - Ward 3 (Reese)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $4,289,625.10
Funding Source: Road and Flood CPF
Dept./Division: Public Works

PURPOSE/BACKGROUND:
This project consists of the conversion of Bonneville Avenue and Clark Avenue to one-way couplets between Main Street and Las Vegas Boulevard. These improvements include, but are not limited to, removal and replacement of existing curb and gutter, sidewalk, roadway, storm drain, street lights, electrical, fiber optic, landscaping and other related work. Also included are installation of traffic signals, traffic signage and striping, irrigation system, utility installation and other related work for a complete project. Funding for this project is being provided by the Regional Transportation Commission.

PCC: L.E. Davis
POC: Tracy Hoherz - (702) 889-4676

RECOMMENDATION:
That City Council approve award of Bid No. 09.1730.37-LED, Bonneville/Clark One-Way Couplet Phase I to Tand, Inc. in the amount of $4,289,625.10 and approve the construction conflicts and contingency reserve of $428,963. Authority to execute the Contract is given to the Purchasing Manager per R-48-2006.

BACKUP DOCUMENTATION:
Bid Abstract

BID ABSTRACT

09.1730.37-LED
BONNEVILLE/CLARK ON-WAY COUPLET PHASE 1

				Tand Inc.		Wells Cargo		Williams Brother Inc		Capriati Construction	
ITEM NO.	DESCRIPTION	U.O.M	QTY.	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
109.01	OWNER CAUSED DELAY ALLOWANCE	DAY	30	$500.00	$15,000.00	$500.00	$15,000.00	$500.00	$15,000.00	$500.00	$15,000.00
109.02	OWNER CAUSED DELAY ALLOWANCE IN ADDITION TO ALLOWANCE	DAY	30	$100.00	$3,000.00	$526.00	$15,780.00	$0.00	$0.00	$500.00	$15,000.00
200.01	MOBILIZATION AND DEMOBILIZATION	LS	1	$300,000.00	$300,000.00	$300,000.00	$300,000.00	$300,000.00	$300,000.00	$300,000.00	$300,000.00
201.01	CLEARING AND GRUBBING	LS	1	$35,000.00	$35,000.00	$1,325.00	$1,325.00	$19,674.00	$19,674.00	$4,890.00	$4,890.00
201.02	REMOVE EXISTING TREE	EA	48	$800.00	$38,400.00	$374.00	$17,952.00	$498.00	$23,904.00	$202.00	$9,696.00
202.01	REMOVE EXISTING CURB & GUTTER	LF	4,608	$3.00	$13,824.00	$1.75	$8,064.00	$8.00	$36,864.00	$2.33	$10,736.64
202.02	REMOVE ASPHALT CONCRETE MEDIAN WITH CURB	SF	2,790	$1.00	$2,790.00	$0.84	$2,343.60	$4.20	$11,718.00	$1.20	$3,348.00
202.03	REMOVE EXISTING SIDEWALK	SF	35,690	$1.00	$35,690.00	$0.70	$25,123.00	$2.30	$82,547.00	$1.20	$43,068.00
202.04	REMOVE EXISTING VALLEY GUTTER	SF	3,350	$3.00	$10,050.00	$1.25	$4,187.50	$5.50	$18,425.00	$2.65	$8,877.50
202.05	REMOVE EXISTING DROP INLET	EA	5	$1,000.00	$5,000.00	$450.00	$2,250.00	$2,143.00	$10,715.00	$965.00	$4,825.00
202.06	REMOVE AND SALVAGE EXISTING SIGN AND POST	EA	23	$50.00	$1,150.00	$43.00	$989.00	$36.00	$828.00	$26.00	$598.00
202.07	REMOVE AND SALVAGE EXISTING SIGN	EA	3	$50.00	$150.00	$16.30	$48.90	$46.00	$138.00	$20.80	$62.40
202.08	REMOVE AND RELOCATE EXISTING SIGN	EA	5	$150.00	$750.00	$140.00	$700.00	$129.00	$645.00	$78.00	$390.00
202.09	REMOVE AND SALVAGE EXISTING PARKING METER POST	EA	15	$100.00	$1,500.00	$32.00	$480.00	$207.00	$3,105.00	$105.50	$1,582.50
202.1	REMOVE AND SALVAGE POLE MOUNTED ELECTRICAL SERVICE	EA	1	$588.00	$588.00	$580.00	$580.00	$609.00	$609.00	$572.00	$572.00
202.11	REMOVE AND SALVAGE EXISTING STREET LIGHT POLE AND EQUIPMENT	EA	16	$717.00	$11,472.00	$700.00	$11,200.00	$1,016.00	$16,256.00	$696.80	$11,148.80
202.12	REMOVE EXISTING STREET LIGHT PULL BOX	EA	4	$107.00	$428.00	$105.00	$420.00	$134.00	$536.00	$104.00	$416.00
202.13	REMOVE EXISTING P30 PULL BOX	EA	4	$230.00	$920.00	$226.00	$904.00	$177.00	$708.00	$223.60	$894.40
202.14	REMOVE EXISTING T200 SPLICE VAULT	EA	1	$401.00	$401.00	$400.00	$400.00	$1,378.00	$1,378.00	$390.00	$390.00
202.15	REMOVE EXISTING OVERHEAD CONDUCTOR CABLES	LF	400	$2.14	$856.00	$2.10	$840.00	$2.50	$1,000.00	$2.08	$832.00
202.16	CONDUCTOR CABLES FROM ABANDONED CONDUIT	LF	2,040	$0.54	$1,101.60	**$0.50**	$1,020.00	$2.00	$4,080.00	$0.52	$1,060.80
202.17	REMOVE EXISTING K-71 MARKER POST	EA	13	$50.00	$650.00	**$21.00**	$273.00	$26.00	$338.00	$10.40	$135.20

				Tand Inc.		Wells Cargo		Williams Brother Inc		Capriati Construction	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
202.18	REMOVE EXISTING LANDSCAPING	SY	1,620	$2.00	$3,240.00	$3.70	$5,994.00	$10.09	$16,345.80	$9.05	$14,661.00
202.19	REMOVE EXISTING STORM DRAIN LATERAL	LF	80	$27.00	$2,160.00	$50.00	$4,000.00	$66.90	$5,352.00	$50.00	$4,000.00
202.2	CUT AND CAP EXISTING STORM DRAIN LATERAL	EA	2	$700.00	$1,400.00	$630.00	$1,260.00	$3,073.00	$6,146.00	$974.00	$1,948.00
202.21	REMOVE EXISTING BOLLARD AND FOUNDATION	EA	2	$50.00	$100.00	$75.00	$150.00	$419.00	$838.00	$168.00	$336.00
202.22	REMOVE EXISTING ROADWAY SECTION	SY	16,111	$8.00	$128,888.00	$10.65	$171,582.15	$2.61	$42,049.71	$10.25	$165,137.75
202.23	UTILITY TEST HOLE (POTHOLE)	EA	24	$600.00	$14,400.00	$665.00	$15,960.00	$687.00	$16,488.00	$215.00	$5,160.00
202.24	1" ROTOMILLING	SY	820	$5.00	$4,100.00	$2.00	$1,640.00	$7.47	$6,125.40	$7.65	$6,273.00
203.01	OVER-EXCAVATION AND BACKFILL	CY	450	$15.00	$6,750.00	$21.50	$9,675.00	$14.52	$6,534.00	$41.35	$18,607.50
203.02	8" SCARIFY EXISTING AND RE-COMPACT	SY	15,916	$0.75	$11,937.00	$0.46	$7,321.36	$1.03	$16,393.48	$1.70	$27,057.20
212.01	SITE PREPARATION	LS	1	$12,000.00	$12,000.00	$2,600.00	$2,600.00	$6,534.00	$6,534.00	$5,275.00	$5,275.00
212.02	LANDSCAPE MOUNDING	CY	40	$30.00	$1,200.00	$26.00	$1,040.00	$71.66	$2,866.40	$19.00	$760.00
212.03	ROCK MULCH - 2" -4" AT 6" DEPTH	SF	1,000	$1.30	$1,300.00	$2.50	$2,500.00	$1.16	$1,160.00	$1.15	$1,150.00
212.04	LANDSCAPE LIGHTING LED UP-LIGHTS	EA	52	$690.00	$35,880.00	$680.00	$35,360.00	$723.00	$37,596.00	$670.80	$34,881.60
212.05	LANDSCAPE LIGHTING ELECTRICAL	LS	1	$5,719.00	$5,719.00	$5,630.00	$5,630.00	$11,801.00	$11,801.00	$5,558.80	$5,558.80
212.06	36" BOX TREE	EA	49	$570.00	$27,930.00	$630.00	$30,870.00	$739.00	$36,211.00	$568.00	$27,832.00
212.07	PALM TREE	EA	17	$4,400.00	$74,800.00	$5,560.00	$94,520.00	$6,256.00	$106,352.00	$3,882.00	$65,994.00
212.08	5-GALLON SHRUB	EA	393	$24.00	$9,432.00	$21.00	$8,253.00	$24.00	$9,432.00	$20.70	$8,135.10
212.09	TREE GRATES	EA	49	$1,400.00	$68,600.00	$2,005.00	$98,245.00	$1,797.00	$88,053.00	$1,584.00	$77,616.00
212.1	PLANTING SOIL	LS	1	$5,000.00	$5,000.00	$1,580.00	$1,580.00	$2,018.00	$2,018.00	$316.50	$316.50
212.11	MAINTENANCE (12 MONTH PERIOD)	LS	1	$9,000.00	$9,000.00	$6,320.00	$6,320.00	$12,026.00	$12,026.00	$7,596.00	$7,596.00
212.12	LANDSCAPE BOULDERS	EA	68	$80.00	$5,440.00	$105.00	$7,140.00	$120.00	$8,160.00	$96.00	$6,528.00
212.13	DECOMPOSED GRANITE - 1/2" MINUS AT 2" DEPTH	SF	9,200	$0.50	$4,600.00	$0.36	$3,312.00	$0.51	$4,692.00	$0.46	$4,232.00
213.01	DRIP IRRIGATION SYSTEM	LS	1	$76,000.00	$76,000.00	$68,500.00	$68,500.00	$35,388.00	$35,388.00	$87,390.00	$87,390.00
271.01	BIAXIAL GEOGRID	SY	15,916	$6.00	$95,496.00	$5.50	$87,538.00	$5.11	$81,330.76	$7.30	$116,186.80
302.01	TYPE II AGGREGATE BASE	CY	5,630	$23.00	$129,490.00	$21.50	$121,045.00	$27.05	$152,291.50	$29.50	$166,085.00
402.01	PLANTMIX BITUMINOUS SURFACE (6" DEPTH)	SY	3,705	$26.00	$96,330.00	$20.30	$75,211.50	$23.88	$88,475.40	$26.23	$97,182.15
402.02	PLANTMIX BITUMINOUS SURFACE (7" DEPTH)	SY	11,440	$29.50	$337,480.00	$23.25	$265,980.00	$27.68	$316,659.20	$28.66	$327,870.40

				Tand Inc.		Wells Cargo		Williams Brother Inc		Capriati Construction	
ITEM NO.	DESCRIPTION	U.O.M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
402.03	AC DRIVEWAY PATCH (2.5" DEPTH)	SY	75	$9.00	$675.00	$9.30	$697.50	$9.20	$690.00	$11.23	$842.25
409.01	PORTLAND CEMENT CONCRETE PAVEMENT (10")	SY	780	$66.00	$51,480.00	$65.00	$50,700.00	$48.38	$37,736.40	$106.15	$82,797.00
409.02	CONCRETE BUS PAD	SY	133	$90.00	$11,970.00	$78.00	$10,374.00	$74.45	$9,901.85	$97.00	$12,901.00
412.01	CRACK AND SLURRY SEAL	SY	9,895	$2.50	$24,737.50	$2.80	$27,706.00	$2.09	$20,680.55	$2.30	$22,758.50
413.01	UTACS (1")	SY	15,966	$6.70	$106,972.20	$6.90	$110,165.40	$6.99	$111,602.34	$7.33	$117,030.78
603.01	18" REINFORCED CONCRETE PIPE CLASS III	LF	62	$58.00	$3,596.00	$150.00	$9,300.00	$69.42	$4,304.04	$178.00	$11,036.00
609.01	DROP INLET TYPE CM2 (5')	EA	2	$4,900.00	$9,800.00	$5,400.00	$10,800.00	$7,735.00	$15,470.00	$9,005.00	$18,010.00
609.02	DROP INLET TYPE CM2 (10')	EA	1	$7,880.00	$7,880.00	$7,600.00	$7,600.00	$9,449.00	$9,449.00	$10,660.00	$10,660.00
609.03	DROP INLET TYPE CM2 (15')	EA	2	$12,200.00	$24,400.00	$9,600.00	$19,200.00	$12,143.00	$24,286.00	$14,085.00	$28,170.00
609.04	ADJUST MANHOLE COLLAR AND RIM TO GRADE	EA	28	$450.00	$12,600.00	$682.00	$19,096.00	$687.00	$19,236.00	$385.00	$10,780.00
613.01	TYPE "L" CURB AND GUTTER	LF	4,816	$10.00	$48,160.00	$13.75	$66,220.00	$11.30	$54,420.80	$15.45	$74,407.20
613.02	TYPE "A" CURB	LF	835	$8.50	$7,097.50	$14.00	$11,690.00	$10.70	$8,934.50	$15.10	$12,608.50
613.03	MEDIAN TYPE "L" CURB AND GUTTER	LF	145	$10.00	$1,450.00	$14.00	$2,030.00	$32.30	$4,683.50	$16.90	$2,450.50
613.04	CONCRETE ALLEY / DRIVEWAY ENTRANCE	SF	5,575	$10.50	$58,537.50	$10.60	$59,095.00	$4.80	$26,760.00	$10.10	$56,307.50
613.05	CONCRETE SIDEWALK W/ SCORING PATTERN	SF	21,381	$4.50	$96,214.50	$5.30	$113,319.30	$4.50	$96,214.50	$5.40	$115,457.40
613.06	12"X12" DECORATIVE PAVERS	SF	12,760	$10.50	$133,980.00	$12.50	$159,500.00	$8.20	$104,632.00	$11.45	$146,102.00
613.07	CONCRETE SIDEWALK	SF	5,415	$4.00	$21,660.00	$4.70	$25,450.50	$4.10	$22,201.50	$4.45	$24,096.75
613.08	PCC MEDIAN ISLAND	SF	343	$4.00	$1,372.00	$8.40	$2,881.20	$4.50	$1,543.50	$12.65	$4,338.95
613.09	CONCRETE CROSS GUTTER (8')	SF	4,582	$10.00	$45,820.00	$9.50	$43,529.00	$5.70	$26,117.40	$11.85	$54,296.70
613.1	CONCRETE CROSS GUTTER (3')	SF	2,312	$8.50	$19,652.00	$9.40	$21,732.80	$4.50	$10,404.00	$12.40	$28,668.80
613.11	CASE I SIDEWALK RAMP	EA	4	$700.00	$2,800.00	$550.00	$2,200.00	$912.70	$3,650.80	$2,110.00	$8,440.00
613.12	MODIFIED CASE II SIDEWALK RAMP	EA	26	$1,000.00	$26,000.00	$530.00	$13,780.00	$527.20	$13,707.20	$2,090.00	$54,340.00
613.13	ADA YELLOW TACTILE DOME INDICATOR	SF	70	$45.00	$3,150.00	$16.00	$1,120.00	$101.80	$7,126.00	$31.50	$2,205.00
613.14	MULTI-BAY PARKING METER POST	EA	1	$150.00	$150.00	$600.00	$600.00	$2,573.00	$2,573.00	$2,000.00	$2,000.00
613.15	RESIDENTIAL DRIVEWAY	SF	185	$6.50	$1,202.50	$6.00	$1,110.00	$4.46	$825.10	$4.95	$915.75
622.01	CONSTRUCTION SURVEYING	LS	1	$12,000.00	$12,000.00	$46,000.00	$46,000.00	$16,904.00	$16,904.00	$20,800.00	$20,800.00
623.01	250 WATT STREETLIGHT ASSEMBLY AND FOUNDATION (CENTENNIAL STANDARD)	EA	16	$5,481.00	$87,696.00	$5,400.00	$86,400.00	$5,412.00	$86,592.00	$5,327.92	$85,246.72
623.02	CONDUCTORS, 1 #8 GROUND, AND PULL ROPE	LF	4,350	$9.63	$41,890.50	$9.50	$41,325.00	$15.40	$66,990.00	$9.36	$40,716.00
623.03	CONDUCTORS, 1 #8 GROUND, AND PULL ROPE	LF	135	$15.00	$2,025.00	$15.00	$2,025.00	$18.70	$2,524.50	$14.56	$1,965.60
623.04	2" STREETLIGHT CONDUIT - W/ 1 #8 GREEN TRACER WIRE AND PULL ROPE	LF	1,860	$9.63	$17,911.80	$9.50	$17,670.00	$12.10	$22,506.00	$9.36	$17,409.60

				Tand Inc.		Wells Cargo		Williams Brother Inc		Capriati Construction	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
623.05	No. 3-1/2 PULL BOX	EA	26	$268.00	$6,968.00	$270.00	$7,020.00	$458.00	$11,908.00	$260.00	$6,760.00
623.06	No. 5 Pull Box	EA	18	$353.00	$6,354.00	$350.00	$6,300.00	$664.00	$11,952.00	$343.20	$6,177.60
623.07	P30 PULL BOX	EA	14	$578.00	$8,092.00	$550.00	$7,700.00	$747.00	$10,458.00	$561.60	$7,862.40
623.08	T200 SPLICE VAULT	EA	6	$3,253.00	$19,518.00	$3,200.00	$19,200.00	$5,421.00	$32,526.00	$3,161.60	$18,969.60
623.09	REMOVE AND REPLACE EXISTING PULL BOX WITH NO. 5 PULL BOX	EA	5	$476.00	$2,380.00	$500.00	$2,500.00	$797.00	$3,985.00	$462.80	$2,314.00
623.1	REMOVE AND REPLACE EXISTING PULL BOX WITH P30 PULL BOX	EA	4	$706.00	$2,824.00	$700.00	$2,800.00	$880.00	$3,520.00	$686.40	$2,745.60
623.11	4" INTERCONNECT CONDUIT - W/ PULL ROPE	LF	3,085	$11.17	$34,459.45	$11.60	$35,786.00	$16.90	$52,136.50	$11.44	$35,292.40
623.12	3" INTERCONNECT CONDUIT - W/ PULL ROPE	LF	25	$11.00	$275.00	$10.50	$262.50	$14.50	$362.50	$10.40	$260.00
623.13	12 STRAND CDCA FO CABLE	LF	2,165	$12.00	$25,980.00	$11.80	$25,547.00	$4.70	$10,175.50	$11.65	$25,222.25
623.14	6 PAIR PE39 #22AWG CABLE	LF	3,110	$1.10	$3,421.00	$1.05	$3,265.50	$3.80	$11,818.00	$1.04	$3,234.40
623.15	72 STRAND SMFO CABLE	LF	11,120	$3.64	$40,476.80	$3.58	$39,809.60	$4.00	$44,480.00	$3.54	$39,364.80
623.16	36 STRAND SMFO CABLE	LF	3,280	$3.85	$12,628.00	$3.79	$12,431.20	$2.60	$8,528.00	$3.74	$12,267.20
623.17	BACKPULL EXISTING FIBER OPTIC CABLE OR CONDUCTORS	LF	550	$1.61	$885.50	$1.60	$880.00	$2.70	$1,485.00	$1.56	$858.00
623.18	INTERCONNECT FIBER SPLICE IN NEW SPLICE ENCLOSURE	EA	10	$3,274.00	$32,740.00	$3,220.00	$32,200.00	$3,970.00	$39,700.00	$3,182.40	$31,824.00
623.19	INTERCONNECT FIBER SPLICE IN EXISTING SPLICE ENCLOSURE	EA	5	$3,274.00	$16,370.00	$3,220.00	$16,100.00	$3,679.00	$18,395.00	$3,182.40	$15,912.00
623.2	ADJUST EXISTING UTILITY BOX TO FINISH GRADE	EA	10	$232.00	$2,320.00	$232.00	$2,320.00	$336.00	$3,360.00	$228.80	$2,288.00
623.21	TRAFFIC SIGNAL INSTALLATION (BONN / MAIN)	LS	1	$241,202.00	$241,202.00	$237,500.00	$237,500.00	$227,782.00	$227,782.00	$234,438.88	$234,438.88
623.22	TRAFFIC SIGNAL INSTALLATION (BONN / 1ST ST.)	LS	1	$141,092.00	$141,092.00	$139,000.00	$139,000.00	$221,930.00	$221,930.00	$137,136.48	$137,136.48
623.23	TRAFFIC SIGNAL INSTALLATION (BONN / RTC TERMINAL ACCESS)	LS	1	$133,416.00	$133,416.00	$131,400.00	$131,400.00	$147,280.00	$147,280.00	$129,677.60	$129,677.60
623.24	TRAFFIC SIGNAL INSTALLATION (BONN / CASINO CENTER)	LS	1	$26,654.00	$26,654.00	$26,300.00	$26,300.00	$6,318.00	$6,318.00	$25,906.40	$25,906.40
623.25	TRAFFIC SIGNAL INSTALLATION (BONN / 4TH ST.)	LS	1	$63,194.00	$63,194.00	$62,200.00	$62,200.00	$68,358.00	$68,358.00	$61,422.40	$61,422.40
623.26	TRAFFIC SIGNAL INSTALLATION (BONN / LAS VEGAS BLVD.)	LS	1	$185,209.00	$185,209.00	$182,000.00	$182,000.00	$188,127.00	$188,127.00	$180,016.72	$180,016.72

				Tand Inc.		Wells Cargo		Williams Brother Inc		Capriati Construction	
ITEM NO.	DESCRIPTION	U.O.M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
623.27	TRAFFIC SIGNAL INSTALLATION (CLARK / CASINO CENTER)	LS	1	$16,724.00	$16,724.00	$16,500.00	$16,500.00	$3,522.00	$3,522.00	$16,255.20	$16,255.20
623.28	TRAFFIC SIGNAL INSTALLATION (CLARK/3RD ST.)	LS	1	$151,020.00	$151,020.00	$148,700.00	$148,700.00	$162,058.00	$162,058.00	$146,785.60	$146,785.60
623.29	TRAFFIC SIGNAL INSTALLATION (BONN/3RD ST.)	LS	1	$141,478.00	$141,478.00	$139,500.00	$139,500.00	$142,398.00	$142,398.00	$137,510.88	$137,510.88
623.3	TRAFFIC SIGNAL INSTALLATION (CLARK / 4TH ST.)	LS	1	$51,515.00	$51,515.00	$50,700.00	$50,700.00	$11,709.00	$11,709.00	$50,070.80	$50,070.80
623.31	TRAFFIC SIGNAL INSTALLATION (CLARK / LAS VEGAS BLVD.)	LS	1	$61,707.00	$61,707.00	$60,700.00	$60,700.00	$58,794.00	$58,794.00	$59,976.80	$59,976.80
623.32	STREET LIGHT ASSEMBLY TO NEW FOUNDATION	EA	1	$2,782.00	$2,782.00	$2,700.00	$2,700.00	$2,326.00	$2,326.00	$2,704.00	$2,704.00
623.33	"CENTENNIAL STANDARD" POLE AND HARDWARE TO NEW FOUNDATION	EA	7	$2,541.00	$17,787.00	$2,500.00	$17,500.00	$2,326.00	$16,282.00	$2,470.00	$17,290.00
623.34	REMOVE EXISTING UPS CABINET	LS	1	$396.00	$396.00	$390.00	$390.00	$1,134.00	$1,134.00	$384.80	$384.80
623.35	6th STREET OVERHEAD SIGNAGE	LS	1	$20,228.00	$20,228.00	$19,900.00	$19,900.00	$24,703.00	$24,703.00	$19,661.20	$19,661.20
623.36	NEW SERVICE PEDESTAL	EA	1	$3,638.00	$3,638.00	$3,600.00	$3,600.00	$5,547.00	$5,547.00	$3,536.00	$3,536.00
624.01	TRAFFIC CONTROL AND MAINTENANCE	LS	1	$45,000.00	$45,000.00	$75,400.00	$75,400.00	$85,432.00	$85,432.00	$139,300.00	$139,300.00
625.01	CHANGEABLE MESSAGE BOARD	DAY	150	$50.00	$7,500.00	$80.00	$12,000.00	$39.00	$5,850.00	$67.60	$10,140.00
625.02	ARROW DISPLAYS	DAY	200	$15.00	$3,000.00	$30.00	$6,000.00	$11.00	$2,200.00	$23.40	$4,680.00
627.01	PERMANENT SIGN PANEL (GROUND MOUNTED)	EA	103	$210.00	$21,630.00	$250.00	$25,750.00	$216.00	$22,248.00	$228.80	$23,566.40
627.02	PERMANENT SIGN PANEL ON EXISTING POLE	EA	83	$95.00	$7,885.00	$110.00	$9,130.00	$98.96	$8,213.68	$130.00	$10,790.00
628.01	TURN ARROW SYMBOL (WHITE PAVEMENT MARKING FILM)	EA	82	$138.00	$11,316.00	$76.00	$6,232.00	$142.03	$11,646.46	$114.40	$9,380.80
628.02	ONLY SYMBOL (WHITE PAVEMENT MARKING FILM)	EA	34	$155.00	$5,270.00	$110.00	$3,740.00	$159.53	$5,424.02	$114.40	$3,889.60
628.03	BUS SYMBOL (WHITE PAVEMENT MARKING FILM)	EA	3	$165.00	$495.00	$160.00	$480.00	$169.89	$509.67	$234.00	$702.00
628.04	BIKE SYMBOL (WHITE PAVEMENT MARKING FILM)	EA	18	$125.00	$2,250.00	$62.00	$1,116.00	$128.66	$2,315.88	$41.60	$748.80
628.05	CROSS WALKS / STOP BARS (WHITE PAVEMENT MARKING FILM)	SF	9,980	$3.00	$29,940.00	$3.15	$31,437.00	$3.04	$30,339.20	$3.17	$31,636.60
628.06	TYPE 1 CENTERLINE (POLYUREA YELLOW PAINT)	LF	1,350	$1.20	$1,620.00	$1.05	$1,417.50	$1.24	$1,674.00	$1.51	$2,038.50
628.07	TYPE 4 LANE LINE (POLYUREA WHITE PAINT)	LF	5,440	$0.50	$2,720.00	$0.26	$1,414.40	$0.35	$1,904.00	$0.47	$2,556.80
628.08	4" PARKING LINE (POLYUREA WHITE PAINT)	LF	235	$1.00	$235.00	$7.00	$1,645.00	$1.03	$242.05	$0.78	$183.30
628.09	6" SHOULDER STRIPE (POLYUREA WHITE PAINT)	LF	225	$2.00	$450.00	$1.25	$281.25	$2.06	$463.50	$1.17	$263.25
628.1	DROP LANE LINE (POLYUREA WHITE PAINT)	LF	485	$2.00	$970.00	$1.15	$557.75	$2.06	$999.10	$0.26	$126.10
628.11	8" STORAGE LINE (POLYUREA WHITE PAINT)	LF	2,120	$1.20	$2,544.00	$1.05	$2,226.00	$1.20	$2,544.00	$1.56	$3,307.20
628.12	6" BIKE LANE LINE (POLYUREA WHITE PAINT)	LF	3,525	$0.75	$2,643.75	$0.80	$2,820.00	$0.77	$2,714.25	$1.17	$4,124.25
628.13	CAT TRACKS (POLYUREA WHITE PAINT)	LF	260	$1.00	$260.00	$1.35	$351.00	$1.03	$267.80	$0.26	$67.60
628.14	MEDIAN NOSE MARKINGS (ACRYLIC PAINT/REFLECTORS)	EA	5	$100.00	$500.00	$1.10	$5.50	$102.93	$514.65	$67.60	$338.00
628.15	SECTION (YELLOW PAVEMENT MARKING FILM)	SF	300	$3.50	$1,050.00	$4.40	$1,320.00	$3.35	$1,005.00	$3.17	$951.00

				Tand Inc		Wells Cargo		Williams Brother Inc		Capriati Construction	
ITEM NO.	DESCRIPTION	U.O.M	QTY.	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
628.16	K-71 SELF ERECTING MARKER POST	EA	4	$185.00	$740.00	$200.00	$800.00	$190.42	$761.68	$216.32	$865.28
629.01	ADJUST WATER VALVE VAULT TO FINISH GRADE	EA	23	$620.00	$14,260.00	$600.00	$13,800.00	$471.00	$10,833.00	$428.00	$9,844.00
629.02	ADJUST EXISTING BLOW OFF VALVE TO FINISH GRADE	EA	1	$750.00	$750.00	$1,600.00	$1,600.00	$539.00	$539.00	$390.00	$390.00
629.03	ADJUST EXISTING WATER METER/RPPA/DCDA TO FINISH GRADE	EA	5	$520.00	$2,600.00	$666.00	$3,330.00	$1,265.00	$6,325.00	$868.00	$4,340.00
629.04	ABANDON EXISTING SERVICE LATERAL	EA	6	$500.00	$3,000.00	$333.00	$1,998.00	$714.00	$4,284.00	$585.00	$3,510.00
629.05	WET TAP EXISTING WATERLINE AND CONNECT NEW 1" LATERAL	EA	8	$1,800.00	$14,400.00	$1,100.00	$8,800.00	$989.00	$7,912.00	$1,105.00	$8,840.00
629.06	RELOCATE EXISTING WATER METER/RPPA	EA	8	$1,750.00	$14,000.00	$2,250.00	$18,000.00	$1,274.00	$10,192.00	$1,688.00	$13,504.00
629.07	3/4" WATER METER AND 1" BACKFLOW PREVENTER (RPPA)	EA	4	$3,200.00	$12,800.00	$2,750.00	$11,000.00	$2,440.00	$9,760.00	$1,890.00	$7,560.00
629.08	1" WATER QUALITY PIPE (COPPER)	LF	184	$39.00	$7,176.00	$58.00	$10,672.00	$50.30	$9,255.20	$32.50	$5,980.00
629.09	1" WATER QUALITY PIPE (BRASS)	LF	53	$45.00	$2,385.00	$74.00	$3,922.00	$82.50	$4,372.50	$60.00	$3,180.00
629.1	RETROFIT EXISTING WATER METER WITH 1" BACKFLOW PREVENTER (RPPA)	EA	5	$2,650.00	$13,250.00	$1,350.00	$6,750.00	$1,683.40	$8,417.00	$1,650.00	$8,250.00
629.11	6" PVC C-900 PIPE	LF	13	$100.00	$1,300.00	$120.00	$1,560.00	$76.10	$989.30	$75.00	$975.00
629.12	24" PVC C-905 PIPE	LF	70	$155.00	$10,850.00	$210.00	$14,700.00	$136.70	$9,569.00	$143.00	$10,010.00
629.13	6" DUCTILE IRON PPE CL200	LF	47	$62.00	$2,914.00	$84.00	$3,948.00	$119.80	$5,630.60	$57.70	$2,711.90
629.14	8" DUCTILE IRON PIPE CL200	LF	168	$65.00	$10,920.00	$126.00	$21,168.00	$88.70	$14,901.60	$83.00	$13,944.00
629.15	8" X 45 DEGREE BEND	EA	6	$300.00	$1,800.00	$250.00	$1,500.00	$656.00	$3,936.00	$548.00	$3,288.00
629.16	8" PVC/DIP TRANSITION COUPLING	EA	1	$300.00	$300.00	$263.00	$263.00	$855.00	$855.00	$530.00	$530.00
629.17	RELOCATE EXISTING 8"X6" TEE AND LATERAL CONNECTION	EA	2	$450.00	$900.00	$300.00	$600.00	$1,602.00	$3,204.00	$1,315.00	$2,630.00
629.18	RELOCATE EXISTING 8"X6" CROSS AND CONNECTION	EA	1	$600.00	$600.00	$800.00	$800.00	$1,296.00	$1,296.00	$1,255.00	$1,255.00
629.19	RELOCATE EXISTING 6" GATE VALVE	EA	4	$300.00	$1,200.00	$300.00	$1,200.00	$1,734.00	$6,936.00	$1,435.00	$5,740.00
629.2	RELOCATE EXISTING FIRE HYDRANT	EA	2	$1,900.00	$3,800.00	$3,500.00	$7,000.00	$2,038.00	$4,076.00	$2,445.00	$4,890.00
629.21	RETROFIT EXISTING WATER METER WITH 1.5" BACKFLOW PREVENTER (RPPA)	EA	1	$3,150.00	$3,150.00	$2,500.00	$2,500.00	$2,503.00	$2,503.00	$2,115.00	$2,115.00
629.22	2" WATER QUALITY PIPE (COPPER)	LF	20	$42.00	$840.00	$130.00	$2,600.00	$57.50	$1,150.00	$82.00	$1,640.00
629.23	2" WATER QUALITY PIPE (BRASS)	LF	4	$40.00	$160.00	$136.00	$544.00	$102.80	$411.20	$119.00	$476.00
633.01	BLUE REFLECTIVE RAISED PAVEMENT MARKERS	EA	15	$3.00	$45.00	$10.00	$150.00	$63.00	$945.00	$5.20	$78.00
637.01	DUST CONTROL	LS	1	$12,000.00	$12,000.00	$16,500.00	$16,500.00	$19,543.00	$19,543.00	$176,000.00	$176,000.00
637.02	NPDES DISCHARGE PERMIT	LS	1	$2,000.00	$2,000.00	$1,600.00	$1,600.00	$7,719.00	$7,719.00	$2,050.00	$2,050.00

				Tand Inc.		Wells Cargo		Williams Brother Inc		Capriati Construction	
ITEM NO.	DESCRIPTION	U.O.M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
	Total Base Bid Amount				$4,289,625.10		$4,319,763.91		$4,394,333.97		$4,762,563.93
											Corrected Total
	Engineer's Estimate				$5,901,065.00						
	Responsive Bidder				YES						
	Responsible Bidder				YES						

BID ABSTRACT

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BONNEVILLE/CLAR

				Las Vegas Paving		Nev Cal Investors Inc. DBA Fast Trac Electric		Frehner Construction	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
109.01	OWNER CAUSED DELAY ALLOWANCE	DAY	30	$500.00	$15,000.00	$500.00	$15,000.00	$0.00	$0.00
109.02	OWNER CAUSED DELAY ALLOWANCE IN ADDITION TO ALLOWANCE	DAY	30	$0.01	$0.30	$250.00	$7,500.00	$0.00	$0.00
200.01	MOBILIZATION AND DEMOBILIZATION	LS	1	$300,000.00	$300,000.00	$300,000.00	$300,000.00	$0.00	$0.00
201.01	CLEARING AND GRUBBING	LS	1	$49,000.00	$49,000.00	$300,000.00	$300,000.00	$0.00	$0.00
201.02	REMOVE EXISTING TREE	EA	48	$885.00	$42,480.00	$300.00	$14,400.00	$0.00	$0.00
202.01	REMOVE EXISTING CURB & GUTTER	LF	4,608	$3.00	$13,824.00	$3.15	$14,515.20	$0.00	$0.00
202.02	REMOVE ASPHALT CONCRETE MEDIAN WITH CURB	SF	2,790	$0.85	$2,371.50	$1.50	$4,185.00	$0.00	$0.00
202.03	REMOVE EXISTING SIDEWALK	SF	35,890	$0.80	$28,712.00	$1.35	$48,451.50	$0.00	$0.00
202.04	REMOVE EXISTING VALLEY GUTTER	SF	3,350	$4.50	$15,075.00	$2.65	$8,877.50	$0.00	$0.00
202.05	REMOVE EXISTING DROP INLET	EA	5	$3,020.00	$15,100.00	$2,850.00	$14,250.00	$0.00	$0.00
202.06	REMOVE AND SALVAGE EXISTING SIGN AND POST	EA	23	$37.00	$851.00	$25.00	$575.00	$0.00	$0.00
202.07	REMOVE AND SALVAGE EXISTING SIGN	EA	3	$48.00	$144.00	$20.00	$60.00	$0.00	$0.00
202.08	REMOVE AND RELOCATE EXISTING SIGN	EA	5	$132.00	$660.00	$75.00	$375.00	$0.00	$0.00
202.09	REMOVE AND SALVAGE EXISTING PARKING METER POST	EA	15	$42.00	$630.00	$70.00	$1,050.00	$0.00	$0.00
202.1	REMOVE AND SALVAGE POLE MOUNTED ELECTRICAL SERVICE	EA	1	$567.00	$567.00	$250.00	$250.00	$0.00	$0.00
202.11	REMOVE AND SALVAGE EXISTING STREET LIGHT POLE AND EQUIPMENT	EA	16	$690.00	$11,040.00	$380.00	$6,080.00	$0.00	$0.00
202.12	REMOVE EXISTING STREET LIGHT PULL BOX	EA	4	$103.00	$412.00	$60.00	$240.00	$0.00	$0.00
202.13	REMOVE EXISTING P30 PULL BOX	EA	4	$222.00	$888.00	$62.00	$248.00	$0.00	$0.00
202.14	REMOVE EXISTING T200 SPLICE VAULT	EA	1	$386.00	$386.00	$630.00	$630.00	$0.00	$0.00
202.15	REMOVE EXISTING OVERHEAD CONDUCTOR CABLES	LF	400	$2.06	$824.00	$1.10	$440.00	$0.00	$0.00
202.16	CONDUCTOR CABLES FROM ABANDONED CONDUIT	LF	2,040	$0.52	$1,060.80	$0.30	$612.00	$0.00	$0.00
202.17	REMOVE EXISTING K-71 MARKER POST	EA	13	$26.00	$338.00	$10.00	$130.00	$0.00	$0.00

				Las Vegas Paving		Nev Cal Investors Inc. DBA Fast Trac Electric		Frehner Construction	
ITEM NO.	DESCRIPTION	U.O.M.	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
202.18	REMOVE EXISTING LANDSCAPING	SY	1,620	$15.40	$24,948.00	$3.00	$4,860.00	$0.00	$0.00
202.19	REMOVE EXISTING STORM DRAIN LATERAL	LF	80	$196.00	$15,680.00	$185.00	$14,800.00	$0.00	$0.00
202.2	CUT AND CAP EXISTING STORM DRAIN LATERAL	EA	2	$465.00	$930.00	$440.00	$880.00	$0.00	$0.00
202.21	REMOVE EXISTING BOLLARD AND FOUNDATION	EA	2	$329.00	$658.00	$150.00	$300.00	$0.00	$0.00
202.22	REMOVE EXISTING ROADWAY SECTION	SY	16,111	$20.25	$326,247.75	$12.10	$194,943.10	$0.00	$0.00
202.23	UTILITY TEST HOLE (POTHOLE)	EA	24	$356.00	$8,544.00	$700.00	$16,800.00	$0.00	$0.00
202.24	1" ROTOMILLING	SY	820	$7.00	$5,740.00	$7.25	$5,945.00	$0.00	$0.00
203.01	OVER-EXCAVATION AND BACKFILL	CY	450	$55.00	$24,750.00	$40.00	$18,000.00	$0.00	$0.00
203.02	8" SCARIFY EXISTING AND RE-COMPACT	SY	15,916	$2.55	$40,585.80	$1.25	$19,895.00	$0.00	$0.00
212.01	SITE PREPARATION	LS	1	$2,600.00	$2,600.00	$200,000.00	$200,000.00	$0.00	$0.00
212.02	LANDSCAPE MOUNDING	CY	40	$32.00	$1,280.00	$25.00	$1,000.00	$0.00	$0.00
212.03	ROCK MULCH - 2" -4" AT 6" DEPTH	SF	1,000	$1.27	$1,270.00	$1.50	$1,500.00	$0.00	$0.00
212.04	LANDSCAPE LIGHTING LED UP-LIGHTS	EA	52	$665.00	$34,580.00	$625.00	$32,500.00	$0.00	$0.00
212.05	LANDSCAPE LIGHTING ELECTRICAL	LS	1	$5,500.00	$5,500.00	$16,000.00	$16,000.00	$0.00	$0.00
212.06	36" BOX TREE	EA	49	$440.00	$21,560.00	$650.00	$31,850.00	$0.00	$0.00
212.07	PALM TREE	EA	17	$3,925.00	$66,725.00	$4,100.00	$69,700.00	$0.00	$0.00
212.08	5-GALLON SHRUB	EA	393	$22.00	$8,646.00	$22.00	$8,646.00	$0.00	$0.00
212.09	TREE GRATES	EA	49	$1,425.00	$69,825.00	$1,700.00	$83,300.00	$0.00	$0.00
212.1	PLANTING SOIL	LS	1	$2,020.00	$2,020.00	$330.00	$330.00	$0.00	$0.00
212.11	MAINTENANCE (12 MONTH PERIOD)	LS	1	$6,360.00	$6,360.00	$8,000.00	$8,000.00	$0.00	$0.00
212.12	LANDSCAPE BOULDERS	EA	68	$115.00	$7,820.00	$100.00	$6,800.00	$0.00	$0.00
212.13	DECOMPOSED GRANITE - 1/2" MINUS AT 2" DEPTH	SF	9,200	$0.34	$3,128.00	$0.50	$4,600.00	$0.00	$0.00
213.01	DRIP IRRIGATION SYSTEM	LS	1	$51,000.00	$51,000.00	$75,000.00	$75,000.00	$0.00	$0.00
271.01	BIAXIAL GEOGRID	SY	15,916	$6.90	$109,820.40	$4.60	$73,213.60	$0.00	$0.00
302.01	TYPE II AGGREGATE BASE	CY	5,630	$41.55	$233,926.50	$29.35	$165,240.50	$0.00	$0.00
402.01	PLANTMIX BITUMINOUS SURFACE (6" DEPTH)	SY	3,705	$24.75	$91,698.75	$23.20	$85,956.00	$0.00	$0.00
402.02	PLANTMIX BITUMINOUS SURFACE (7" DEPTH)	SY	11,440	$31.40	$359,216.00	$26.90	$307,736.00	$0.00	$0.00

				Las Vegas Paving		Nev Cal Investors Inc. DBA Fast Trac Electric		Frehner Construction	
ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
402.03	AC DRIVEWAY PATCH (2.5" DEPTH)	SY	75	$9.00	$675.00	$10.80	$810.00	$0.00	$0.00
409.01	PORTLAND CEMENT CONCRETE PAVEMENT (10")	SY	780	$77.25	$60,255.00	$49.86	$38,890.80	$0.00	$0.00
409.02	CONCRETE BUS PAD	SY	133	$70.50	$9,376.50	$58.50	$7,780.50	$0.00	$0.00
412.01	CRACK AND SLURRY SEAL	SY	9,895	$2.30	$22,758.50	$2.03	$20,086.85	$0.00	$0.00
413.01	UTACS (1")	SY	15,966	$6.50	$103,779.00	$6.58	$105,056.28	$0.00	$0.00
603.01	18" REINFORCED CONCRETE PIPE CLASS III	LF	62	$245.00	$15,190.00	$230.00	$14,260.00	$0.00	$0.00
609.01	DROP INLET TYPE CM2 (5')	EA	2	$8,600.00	$17,200.00	$4,069.00	$8,138.00	$0.00	$0.00
609.02	DROP INLET TYPE CM2 (10')	EA	1	$12,200.00	$12,200.00	$6,841.00	$6,841.00	$0.00	$0.00
609.03	DROP INLET TYPE CM2 (15')	EA	2	$14,850.00	$29,700.00	$9,313.00	$18,626.00	$0.00	$0.00
609.04	ADJUST MANHOLE COLLAR AND RIM TO GRADE	EA	28	$935.00	$26,180.00	$880.00	$24,640.00	$0.00	$0.00
613.01	TYPE "L" CURB AND GUTTER	LF	4,816	$15.45	$74,407.20	$12.17	$58,610.72	$0.00	$0.00
613.02	TYPE "A" CURB	LF	835	$12.00	$10,020.00	$15.95	$13,318.25	$0.00	$0.00
613.03	MEDIAN TYPE "L" CURB AND GUTTER	LF	145	$30.00	$4,350.00	$22.40	$3,248.00	$0.00	$0.00
613.04	CONCRETE ALLEY / DRIVEWAY ENTRANCE	SF	5,575	$11.00	$61,325.00	$10.20	$56,865.00	$0.00	$0.00
613.05	CONCRETE SIDEWALK W/ SCORING PATTERN	SF	21,381	$5.60	$119,733.60	$5.79	$123,795.99	$0.00	$0.00
613.06	12"X12" DECORATIVE PAVERS	SF	12,760	$13.50	$172,260.00	$6.97	$88,937.20	$0.00	$0.00
613.07	CONCRETE SIDEWALK	SF	5,415	$5.20	$28,158.00	$3.95	$21,389.25	$0.00	$0.00
613.08	PCC MEDIAN ISLAND	SF	343	$3.75	$1,286.25	$3.45	$1,183.35	$0.00	$0.00
613.09	CONCRETE CROSS GUTTER (6')	SF	4,582	$9.85	$45,132.70	$8.50	$38,947.00	$0.00	$0.00
613.1	CONCRETE CROSS GUTTER (3')	SF	2,312	$12.40	$28,668.80	$8.50	$19,652.00	$0.00	$0.00
613.11	CASE I SIDEWALK RAMP	EA	4	$940.00	$3,760.00	$435.00	$1,740.00	$0.00	$0.00
613.12	MODIFIED CASE II SIDEWALK RAMP	EA	26	$1,275.00	$33,150.00	$925.00	$24,050.00	$0.00	$0.00
613.13	ADA YELLOW TACTILE DOME INDICATOR	SF	70	$45.00	$3,150.00	$35.00	$2,450.00	$0.00	$0.00
613.14	MULTI-BAY PARKING METER POST	EA	1	$550.00	$550.00	$500.00	$500.00	$0.00	$0.00
613.15	RESIDENTIAL DRIVEWAY	SF	185	$9.00	$1,665.00	$4.25	$786.25	$0.00	$0.00
622.01	CONSTRUCTION SURVEYING	LS	1	$44,000.00	$44,000.00	$36,000.00	$36,000.00	$0.00	$0.00
623.01	250 WATT STREETLIGHT ASSEMBLY AND FOUNDATION (CENTENNIAL STANDARD)	EA	16	$5,277.00	$84,432.00	$5,200.00	$83,200.00	$0.00	$0.00
623.02	CONDUCTORS, 1 #8 GROUND, AND PULL ROPE	LF	4,350	$9.27	$40,324.50	$15.00	$65,250.00	$0.00	$0.00
623.03	CONDUCTORS, 1 #8 GROUND, AND PULL ROPE	LF	135	$14.42	$1,946.70	$17.50	$2,362.50	$0.00	$0.00
623.04	2" STREETLIGHT CONDUIT - W/ 1 #8 GREEN TRACER WIRE AND PULL ROPE	LF	1,860	$9.27	$17,242.20	$17.50	$32,550.00	$0.00	$0.00

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ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
623.05	No. 3-1/2 PULL BOX	EA	26	$258.00	$6,708.00	$175.00	$4,550.00	$0.00	$0.00
623.06	No. 5 Pull Box	EA	18	$340.00	$6,120.00	$255.00	$4,590.00	$0.00	$0.00
623.07	P30 PULL BOX	EA	14	$556.00	$7,784.00	$675.00	$9,450.00	$0.00	$0.00
623.08	T200 SPLICE VAULT	EA	6	$3,131.00	$18,786.00	$4,000.00	$24,000.00	$0.00	$0.00
623.09	REMOVE AND REPLACE EXISTING PULL BOX WITH NO. 5 PULL BOX	EA	5	$458.00	$2,290.00	$350.00	$1,750.00	$0.00	$0.00
623.1	REMOVE AND REPLACE EXISTING PULL BOX WITH P30 PULL BOX	EA	4	$680.00	$2,720.00	$750.00	$3,000.00	$0.00	$0.00
623.11	4" INTERCONNECT CONDUIT - W/ PULL ROPE	LF	3,085	$11.33	$34,953.05	$22.00	$67,870.00	$0.00	$0.00
623.12	3" INTERCONNECT CONDUIT - W/ PULL ROPE	LF	25	$10.30	$257.50	$22.00	$550.00	$0.00	$0.00
623.13	12 STRAND CDCA FO CABLE	LF	2,165	$11.54	$24,984.10	$4.00	$8,660.00	$0.00	$0.00
623.14	6 PAIR PE39 #22AWG CABLE	LF	3,110	$1.03	$3,203.30	$2.00	$6,220.00	$0.00	$0.00
623.15	72 STRAND SMFO CABLE	LF	11,120	$3.50	$38,920.00	$2.15	$23,908.00	$0.00	$0.00
623.16	36 STRAND SMFO CABLE	LF	3,280	$3.71	$12,168.80	$2.15	$7,052.00	$0.00	$0.00
623.17	BACKPULL EXISTING FIBER OPTIC CABLE OR CONDUCTORS	LF	550	$1.54	$847.00	$5.40	$2,970.00	$0.00	$0.00
623.18	INTERCONNECT FIBER SPLICE IN NEW SPLICE ENCLOSURE	EA	10	$3,152.00	$31,520.00	$3,080.00	$30,800.00	$0.00	$0.00
623.19	INTERCONNECT FIBER SPLICE IN EXISTING SPLICE ENCLOSURE	EA	5	$3,152.00	$15,760.00	$4,080.00	$20,400.00	$0.00	$0.00
623.2	ADJUST EXISTING UTILITY BOX TO FINISH GRADE	EA	10	$227.00	$2,270.00	$700.00	$7,000.00	$0.00	$0.00
623.21	TRAFFIC SIGNAL INSTALLATION (BONN / MAIN)	LS	1	$232,000.00	$232,000.00	$233,000.00	$233,000.00	$0.00	$0.00
623.22	TRAFFIC SIGNAL INSTALLATION (BONN / 1ST ST.)	LS	1	$136,000.00	$136,000.00	$171,000.00	$171,000.00	$0.00	$0.00
623.23	TRAFFIC SIGNAL INSTALLATION (BONN / RTC TERMINAL ACCESS)	LS	1	$128,500.00	$128,500.00	$272,000.00	$272,000.00	$0.00	$0.00
623.24	TRAFFIC SIGNAL INSTALLATION (BONN / CASINO CENTER)	LS	1	$25,500.00	$25,500.00	$19,000.00	$19,000.00	$0.00	$0.00
623.25	TRAFFIC SIGNAL INSTALLATION (BONN / 4TH ST.)	LS	1	$61,000.00	$61,000.00	$66,000.00	$66,000.00	$0.00	$0.00
623.26	TRAFFIC SIGNAL INSTALLATION (BONN / LAS VEGAS BLVD.)	LS	1	$178,500.00	$178,500.00	$173,000.00	$173,000.00	$0.00	$0.00

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ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
623.27	TRAFFIC SIGNAL INSTALLATION (CLARK / CASINO CENTER)	LS	1	$16,000.00	$16,000.00	$29,000.00	$29,000.00	$0.00	$0.00
623.28	TRAFFIC SIGNAL INSTALLATION (CLARK/3RD ST.)	LS	1	$145,500.00	$145,500.00	$145,000.00	$145,000.00	$0.00	$0.00
623.29	TRAFFIC SIGNAL INSTALLATION (BONN/3RD ST.)	LS	1	$136,000.00	$136,000.00	$134,000.00	$134,000.00	$0.00	$0.00
623.3	TRAFFIC SIGNAL INSTALLATION (CLARK / 4TH ST.)	LS	1	$49,500.00	$49,500.00	$54,000.00	$54,000.00	$0.00	$0.00
623.31	TRAFFIC SIGNAL INSTALLATION (CLARK / LAS VEGAS BLVD.)	LS	1	$59,500.00	$59,500.00	$55,000.00	$55,000.00	$0.00	$0.00
623.32	STREET LIGHT ASSEMBLY TO NEW FOUNDATION	EA	1	$2,700.00	$2,700.00	$2,100.00	$2,100.00	$0.00	$0.00
623.33	"CENTENNIAL STANDARD" POLE AND HARDWARE TO NEW FOUNDATION	EA	7	$2,450.00	$17,150.00	$2,000.00	$14,000.00	$0.00	$0.00
623.34	REMOVE EXISTING UPS CABINET	LS	1	$381.00	$381.00	$1,300.00	$1,300.00	$0.00	$0.00
623.35	6th STREET OVERHEAD SIGNAGE	LS	1	$19,500.00	$19,500.00	$11,000.00	$11,000.00	$0.00	$0.00
623.36	NEW SERVICE PEDESTAL	EA	1	$3,500.00	$3,500.00	$3,000.00	$3,000.00	$0.00	$0.00
624.01	TRAFFIC CONTROL AND MAINTENANCE	LS	1	$88,000.00	$88,000.00	$71,500.00	$71,500.00	$0.00	$0.00
625.01	CHANGEABLE MESSAGE BOARD	DAY	150	$40.00	$6,000.00	$75.00	$11,250.00	$0.00	$0.00
625.02	ARROW DISPLAYS	DAY	200	$11.00	$2,200.00	$28.00	$5,600.00	$0.00	$0.00
627.01	PERMANENT SIGN PANEL (GROUND MOUNTED)	EA	103	$222.00	$22,866.00	$220.00	$22,660.00	$0.00	$0.00
627.02	PERMANENT SIGN PANEL ON EXISTING POLE	EA	83	$100.00	$8,300.00	$125.00	$10,375.00	$0.00	$0.00
628.01	TURN ARROW SYMBOL (WHITE PAVEMENT MARKING FILM)	EA	82	$146.00	$11,972.00	$110.00	$9,020.00	$0.00	$0.00
628.02	ONLY SYMBOL (WHITE PAVEMENT MARKING FILM)	EA	34	$164.00	$5,576.00	$110.00	$3,740.00	$0.00	$0.00
628.03	BUS SYMBOL (WHITE PAVEMENT MARKING FILM)	EA	3	$175.00	$525.00	$225.00	$675.00	$0.00	$0.00
628.04	BIKE SYMBOL (WHITE PAVEMENT MARKING FILM)	EA	18	$132.00	$2,376.00	$40.00	$720.00	$0.00	$0.00
628.05	CROSS WALKS / STOP BARS (WHITE PAVEMENT MARKING FILM)	SF	9,980	$3.10	$30,938.00	$3.05	$30,439.00	$0.00	$0.00
628.06	TYPE 1 CENTERLINE (POLYUREA YELLOW PAINT)	LF	1,350	$1.25	$1,687.50	$1.45	$1,957.50	$0.00	$0.00
628.07	TYPE 4 LANE LINE (POLYUREA WHITE PAINT)	LF	5,440	$0.37	$2,012.80	$0.45	$2,448.00	$0.00	$0.00
628.08	4" PARKING LINE (POLYUREA WHITE PAINT)	LF	235	$1.06	$249.10	$0.75	$176.25	$0.00	$0.00
628.09	6" SHOULDER STRIPE (POLYUREA WHITE PAINT)	LF	225	$2.12	$477.00	$1.13	$254.25	$0.00	$0.00
628.1	DROP LANE LINE (POLYUREA WHITE PAINT)	LF	485	$2.12	$1,028.20	$0.25	$121.25	$0.00	$0.00
628.11	8" STORAGE LINE (POLYUREA WHITE PAINT)	LF	2,120	$1.27	$2,692.40	$1.50	$3,180.00	$0.00	$0.00
628.12	6" BIKE LANE LINE (POLYUREA WHITE PAINT)	LF	3,525	$0.80	$2,820.00	$1.13	$3,983.25	$0.00	$0.00
628.13	CAT TRACKS (POLYUREA WHITE PAINT)	LF	260	$1.06	$275.60	$0.25	$65.00	$0.00	$0.00
628.14	MEDIAN NOSE MARKINGS (ACRYLIC PAINT/REFLECTORS)	EA	5	$110.00	$550.00	$65.00	$325.00	$0.00	$0.00
628.15	SECTION (YELLOW PAVEMENT MARKING FILM)	SF	300	$3.45	$1,035.00	$3.05	$915.00	$0.00	$0.00

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ITEM NO.	DESCRIPTION	U O M	QTY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
628.16	K-71 SELF ERECTING MARKER POST	EA	4	$196.00	$784.00	$208.00	$832.00	$0.00	$0.00
629.01	ADJUST WATER VALVE VAULT TO FINISH GRADE	EA	23	$690.00	$15,870.00	$650.00	$14,950.00	$0.00	$0.00
629.02	ADJUST EXISTING BLOW OFF VALVE TO FINISH GRADE	EA	1	$780.00	$780.00	$735.00	$735.00	$0.00	$0.00
629.03	ADJUST EXISTING WATER METER/RPPA/DCDA TO FINISH GRADE	EA	5	$975.00	$4,875.00	$920.00	$4,600.00	$0.00	$0.00
629.04	ABANDON EXISTING SERVICE LATERAL	EA	6	$535.00	$3,210.00	$503.00	$3,018.00	$0.00	$0.00
629.05	WET TAP EXISTING WATERLINE AND CONNECT NEW 1" LATERAL	EA	8	$755.00	$6,040.00	$710.00	$5,680.00	$0.00	$0.00
629.06	RELOCATE EXISTING WATER METER/RPPA	EA	8	$1,285.00	$10,280.00	$1,210.00	$9,680.00	$0.00	$0.00
629.07	3/4" WATER METER AND 1" BACKFLOW PREVENTER (RPPA)	EA	4	$1,650.00	$6,600.00	$1,560.00	$6,240.00	$0.00	$0.00
629.08	1" WATER QUALITY PIPE (COPPER)	LF	184	$70.00	$12,880.00	$63.00	$11,592.00	$0.00	$0.00
629.09	1" WATER QUALITY PIPE (BRASS)	LF	53	$33.00	$1,749.00	$30.00	$1,590.00	$0.00	$0.00
629.1	RETROFIT EXISTING WATER METER WITH 1" BACKFLOW PREVENTER (RPPA)	EA	5	$1,495.00	$7,475.00	$1,410.00	$7,050.00	$0.00	$0.00
629.11	6" PVC C-900 PIPE	LF	13	$78.00	$1,014.00	$74.00	$962.00	$0.00	$0.00
629.12	24" PVC C-905 PIPE	LF	70	$245.00	$17,150.00	$230.00	$16,100.00	$0.00	$0.00
629.13	6" DUCTILE IRON PPE CL200	LF	47	$125.00	$5,875.00	$117.00	$5,499.00	$0.00	$0.00
629.14	8" DUCTILE IRON PIPE CL200	LF	168	$210.00	$35,280.00	$197.00	$33,096.00	$0.00	$0.00
629.15	8" X 45 DEGREE BEND	EA	6	$430.00	$2,580.00	$410.00	$2,460.00	$0.00	$0.00
629.16	8" PVC/DIP TRANSITION COUPLING	EA	1	$540.00	$540.00	$510.00	$510.00	$0.00	$0.00
629.17	RELOCATE EXISTING 8"X6" TEE AND LATERAL CONNECTION	EA	2	$1,140.00	$2,280.00	$1,080.00	$2,160.00	$0.00	$0.00
629.18	RELOCATE EXISTING 8"X6" CROSS AND CONNECTION	EA	1	$3,540.00	$3,540.00	$3,340.00	$3,340.00	$0.00	$0.00
629.19	RELOCATE EXISTING 6" GATE VALVE	EA	4	$930.00	$3,720.00	$880.00	$3,520.00	$0.00	$0.00
629.2	RELOCATE EXISTING FIRE HYDRANT	EA	2	$6,360.00	$12,720.00	$6,000.00	$12,000.00	$0.00	$0.00
629.21	RETROFIT EXISTING WATER METER WITH 1.5" BACKFLOW PREVENTER (RPPA)	EA	1	$1,850.00	$1,850.00	$1,750.00	$1,750.00	$0.00	$0.00
629.22	2" WATER QUALITY PIPE (COPPER)	LF	20	$80.00	$1,600.00	$76.00	$1,520.00	$0.00	$0.00
629.23	2" WATER QUALITY PIPE (BRASS)	LF	4	$61.00	$244.00	$58.00	$232.00	$0.00	$0.00
633.01	BLUE REFLECTIVE RAISED PAVEMENT MARKERS	EA	15	$6.00	$90.00	$5.00	$75.00	$0.00	$0.00
637.01	DUST CONTROL	LS	1	$18,500.00	$18,500.00	$15,000.00	$15,000.00	$0.00	$0.00
637.02	NPDES DISCHARGE PERMIT	LS	1	$2,100.00	$2,100.00	$3,100.00	$3,100.00	$0.00	$0.00
								$0.00	$0.00

ITEM NO.	DESCRIPTION	U O M	QTY	Las Vegas Paving		Nev Cal Investors Inc. DBA Fast Trac Electric		Frehner Construction	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
	Total Base Bid Amount				$4,889,028.10		**$5,057,494.84**	$0.00	$0.00
							Corrected Total		
	Engineer's Estimate								
	Responsive Bidder								
	Responsible Bidder								

TO: Cheri Edelman Please review and approve recommended award to

Tand Inc. in the amount of $4,289,625.10.

Lloyd Daws — Purchasing & Contracts Representative — 8/2/10 Date

Cheri Edel — Using Department Authorized Rep Signature — 8/2/10 Date

City of Las Vegas Agenda Item No.: **33.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of award of Bid No. 10.1730.11-TF, First Street Beautification - Boulder Avenue to Hoover Avenue (Lot 1), Hoover Avenue Beautification - Main Street to Casino Center Boulevard (Lot 2) and the construction conflicts and contingency reserve set by Finance and Business Services - Department of Public Works - Award recommended to: TAND, INC. ($1,495,595 - Parks and Leisure Activities Capital Projects Fund) - Ward 3 (Reese)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $1,495,595
Funding Source: Parks and Leisure Activities CPF
Dept./Division: Public Works

PURPOSE/BACKGROUND:
This project consists of the construction of streetscape improvements on First Street and Hoover Avenue to include pavers, sidewalk ramps, street lighting, utility adjustment, waterline relocation, landscaping and irrigation. Sixty percent of the funding for this project is being provided by funds from the Southern Nevada Public Land Management Act (SNPLMA) and the remainder is provided by 1% room tax.

PCC: T. Fernandez
POC: Tracy Hoherz - (702) 889-4676

RECOMMENDATION:
That City Council approve award of Bid No. 10.1730.11-TF, First Street Beautification - Boulder Avenue to Hoover Avenue (Lot 1), Hoover Avenue Beautification - Main Street to Casino Center Boulevard (Lot 2) to Tand, Inc. in the amount of $1,495,595 and approve the construction conflicts and contingency reserve of $149,559.50. Authority to execute the Contract is given to the Purchasing Manager per R-48-2006.

BACKUP DOCUMENTATION:
Bid Abstract

Bid Abstract

10.1730.11-TF First Street Beautification - Boulder Avenue to Hoover Avenue (Lot 1) and Hoover Avenue Beautification - Main Street to Casino Center Boulevard (Lot 2)

LOT 1 - FIRST STREET BEAUTIFICATION - BOULDER AVENUE TO HOOVER AVENUE

ITEM NO.	DESCRIPTION	U O M	QTY	TAND Inc.		WELLS CARGO, INC.		PEEK CONSTRUCTION COMPANY		FREHNER CONSTRUCTION COMPANY, INC.		LAS VEGAS PAVING CORPORATION	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
109.01	OWNER CAUSED DELAY ALLOWANCE	DAY	10	$250.00	$2,500.00	$250.00	$2,500.00	$250.00	$2,500.00	$250.00	$2,500.00	$250.00	$2,500.00
109.02	OWNER CAUSED DELAY AMOUNT IN ADDITION TO ALLOWANCE	DAY	10	$0.00	$0.00	$280.00	$2,800.00	250	$2,500.00	$315.00	$3,150.00	$250.00	$2,500.00
200.01	MOBILIZATION AND DEMOBILIZATION	LS	1	$70,000.00	$70,000.00	$70,000.00	$70,000.00	$70,000.00	$70,000.00	$70,000.00	$70,000.00	$70,000.00	$70,000.00
202.01	REMOVE SIDEWALK AND RAMPS	SF	9,625	$1.00	$9,625.00	$0.87	$8,373.75	$2.90	$27,912.50	$3.00	$28,875.00	$5.50	$52,937.50
202.02	REMOVE DRIVEWAY	SF	4,330	$2.00	$8,660.00	$1.20	$5,196.00	$3.15	$13,639.50	$3.85	$16,670.50	$5.80	$25,114.00
202.03	REMOVE CROSS GUTTER	SF	1,560	$2.50	$3,900.00	$1.35	$2,106.00	$5.00	$7,800.00	$4.30	$6,708.00	$8.20	$12,792.00
202.04	REMOVE CURB AND GUTTER	LF	1,540	$3.00	$4,620.00	$2.00	$3,080.00	$3.50	$5,390.00	$7.20	$11,088.00	$19.00	$29,260.00
202.05	REMOVE CHAIN LINK FENCE	LF	390	$4.00	$1,560.00	$6.70	$2,613.00	$4.00	$1,560.00	$4.10	$1,599.00	$4.30	$1,677.00
202.06	REMOVE BLOCK WALL	LF	73	$25.00	$1,825.00	$26.00	$1,898.00	$63.00	$4,599.00	$86.00	$6,278.00	$81.00	$5,913.00
202.07	REMOVE EXISTING LANDSCAPING	LS	1	$2,000.00	$2,000.00	$9,500.00	$9,500.00	$3,550.00	$3,550.00	$1,725.00	$1,725.00	$16,200.00	$16,200.00
202.08	REMOVE AND SALVAGE STREETLIGHT SYSTEM	EA	10	$800.00	$8,000.00	$400.00	$4,000.00	$840.00	$8,400.00	$365.00	$3,650.00	$390.00	$3,900.00
202.09	REMOVE AND SALVAGE STREETLIGHT ARM & FIXTURE	EA	3	$400.00	$1,200.00	$400.00	$1,200.00	$840.00	$2,520.00	$365.00	$1,095.00	$390.00	$1,170.00
202.1	REMOVE EXISTING SIGN & POST	EA	6	$50.00	$300.00	$11.00	$66.00	$11.00	$66.00	$10.15	$60.90	$10.80	$64.80
202.11	REMOVE CHAIN LINK GATE	EA	11	$65.00	$715.00	$220.00	$2,420.00	$285.00	$3,135.00	$66.00	$726.00	$70.20	$772.20
202.12	REMOVE EXISTING TREE	EA	2	$400.00	$800.00	$727.00	$1,454.00	$1,100.00	$2,200.00	$500.00	$1,000.00	$325.00	$650.00
202.13	REMOVE EXISTING CONCRETE PAD	SF	420	$1.00	$420.00	$2.40	$1,008.00	$8.25	$3,465.00	$5.85	$2,457.00	$9.40	$3,948.00
202.14	REMOVE EXISTING CONCRETE PAVING	SF	720	$1.50	$1,080.00	$3.05	$2,196.00	$8.25	$5,940.00	$2.90	$2,088.00	$9.50	$6,840.00
202.15	REMOVE AC PAVEMENT	SY	4,791	$7.00	$33,537.00	$2.15	$10,300.65	$5.00	$23,955.00	$6.35	$30,422.85	$11.40	$54,617.40
202.16	REMOVE AND REINSTALL CONCRETE SPHERE BOLLARD	EA	1	$800.00	$800.00	$640.00	$640.00	$2,050.00	$2,050.00	$800.00	$800.00	$1,200.00	$1,200.00
202.17	REMOVE PAVEMENT MARKINGS	SF	82	$1.00	$82.00	$1.10	$90.20	$1.25	$102.50	$1.00	$82.00	$1.10	$90.20
203.01	OVER-EXCAVATION AND BACKFILL	CY	80	$10.00	$800.00	$57.00	$4,560.00	$83.00	$6,640.00	$46.50	$3,720.00	$46.00	$3,680.00
212.01	5-FOOT TREE GRATE WITH FRAME	EA	33	$1,490.00	$49,170.00	$420.00	$13,860.00	$1,500.00	$49,500.00	$1,420.00	$46,860.00	$1,566.00	$51,678.00

ITEM NO.	DESCRIPTION	U O M	QTY	TAND Inc		WELLS CARGO, INC.		PEEK CONSTRUCTION COMPANY		FREHNER CONSTRUCTION COMPANY, INC.		LAS VEGAS PAVING CORPORATION	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
212.02	THORNLESS CHILEAN MESQUITE (MULTI) 36-INCH BOX TREE	EA	17	$565.00	$9,605.00	$664.00	$11,288.00	$900.00	$15,300.00	$715.00	$12,155.00	$650.00	$11,050.00
212.03	SONORAN EMERALD PALO VERDE (MULTI) 36-INCH BOX TREE	EA	16	$565.00	$9,040.00	$682.00	$10,912.00	$900.00	$14,400.00	$715.00	$11,440.00	$665.00	$10,640.00
212.04	DESERT AGAVE 5-GALLON SHRUB	EA	40	$30.00	$1,200.00	$36.50	$1,460.00	$30.00	$1,200.00	$32.50	$1,300.00	$35.50	$1,420.00
212.05	1/4-INCH MINUS "APACHE BROWN" DECOMPOSED GRANITE	CY	6	$131.00	$786.00	$78.60	$471.60	$75.00	$450.00	$50.00	$300.00	$77.00	$462.00
213.01	IRRIGATION SYSTEM	LS	1	$28,000.00	$28,000.00	$37,400.00	$37,400.00	$34,250.00	$34,250.00	$26,370.00	$26,370.00	$36,500.00	$36,500.00
271.01	BIAXIAL GEOGRID BASE REINFORCEMENT	SY	4,165	$3.50	$14,577.50	$1.25	$5,206.25	$4.00	$16,660.00	$6.30	$26,239.50	$6.05	$25,198.25
302.01	TYPE II AGGREGATE BASE	CY	1,386	$25.00	$34,650.00	$22.80	$31,600.80	$31.00	$42,966.00	$45.00	$62,370.00	$43.30	$60,013.80
402.01	2-INCH PLANTMIX BITUMINOUS SURFACE	SY	100	$20.00	$2,000.00	$28.20	$2,820.00	$28.50	$2,850.00	$1.00	$100.00	$21.00	$2,100.00
402.02	3.5-INCH PLANTMIX BITUMINOUS SURFACE	SY	4,177	$14.00	$58,478.00	$11.20	$46,782.40	$17.00	$71,009.00	$16.20	$67,667.40	$15.50	$64,743.50
570.01	CMU WALL (10-FEET HIGH)	LF	74	$150.00	$11,100.00	$333.00	$24,642.00	$225.00	$16,650.00	$230.00	$17,020.00	$410.00	$30,340.00
613.01	RETAINING CURB	LF	10	$80.00	$800.00	$69.70	$697.00	$110.00	$1,100.00	$120.00	$1,200.00	$34.25	$342.50
613.02	TYPE A CURB	LF	44	$15.00	$660.00	$16.20	$712.80	$30.50	$1,342.00	$22.80	$1,003.20	$20.00	$880.00
613.03	8-INCH TYPE A CURB	LF	188	$16.00	$3,008.00	$22.70	$4,267.60	$15.50	$2,914.00	$24.00	$4,512.00	$21.75	$4,089.00
613.04	TYPE L CURB AND GUTTER	LF	1,090	$12.00	$13,080.00	$18.55	$20,219.50	$12.00	$13,080.00	$16.70	$18,203.00	$32.30	$35,207.00
613.05	CONCRETE SIDEWALK	SF	11,800	$5.00	$59,000.00	$6.90	$81,420.00	$3.75	$44,250.00	$5.00	$59,000.00	$8.40	$99,120.00
613.06	CONCRETE COMMERCIAL DRIVEWAY	SF	6,962	$7.00	$48,734.00	$11.00	$76,582.00	$5.50	$38,291.00	$9.50	$66,139.00	$8.50	$59,177.00
613.07	12-INCH BY 12-INCH SIDEWALK PAVERS	SF	8,105	$8.50	$68,892.50	$16.50	$133,732.50	$9.00	$72,945.00	$13.30	$107,796.50	$9.75	$79,023.75
613.08	CONCRETE SIDEWALK RAMP CASE II WITH TRUNCATED DOMES	EA	10	$800.00	$8,000.00	$1,638.00	$16,380.00	$1,450.00	$14,500.00	$1,310.00	$13,100.00	$985.00	$9,850.00
613.09	CONCRETE CROSS GUTTER	SF	1,230	$10.00	$12,300.00	$11.00	$13,530.00	$12.00	$14,760.00	$11.20	$13,776.00	$11.00	$13,530.00
613.1	ADA CONCRETE RAMP	EA	5	$1,200.00	$6,000.00	$12,500.00	$62,500.00	$1,250.00	$6,250.00	$2,580.00	$12,900.00	$1,025.00	$5,125.00
616.01	6-FOOT HIGH CHAIN LINK FENCE	LF	113	$30.00	$3,390.00	$58.65	$6,627.45	$31.00	$3,503.00	$29.50	$3,333.50	$31.30	$3,536.90
616.02	6-FOOT HIGH DOUBLE SWING CHAIN LINK GATE (L=20 FEET)	EA	2	$1,400.00	$2,800.00	$1,745.00	$3,490.00	$1,450.00	$2,900.00	$1,350.00	$2,700.00	$1,436.00	$2,872.00
616.03	10-FOOT HIGH DECORATIVE WROUGHT IRON SLIDE GATE (L=25 FEET)	EA	1	$14,000.00	$14,000.00	$15,034.00	$15,034.00	$13,400.00	$13,400.00	$12,400.00	$12,400.00	$13,200.00	$13,200.00
616.04	10-FOOT HIGH NON-CLIMB DOUBLE SWING GATE (L=9.33 FEET)	EA	1	$12,000.00	$12,000.00	$6,132.00	$6,132.00	$11,000.00	$11,000.00	$10,200.00	$10,200.00	$10,865.00	$10,865.00
622.01	CONSTRUCTION SURVEYING	LS	1	$5,000.00	$5,000.00	$15,978.00	$15,978.00	$4,100.00	$4,100.00	$9,300.00	$9,300.00	$55,000.00	$55,000.00
623.01	200 AMP SERVICE PEDESTAL AND FOUNDATION (FOR STREETLIGHTS)	EA	1	$4,200.00	$4,200.00	$4,376.00	$4,376.00	$4,300.00	$4,300.00	$4,010.00	$4,010.00	$4,270.00	$4,270.00
623.02	250 WATT CENTENNIAL STREET LIGHT ASSEMBLY AND FOUNDATION	EA	3	$4,500.00	$13,500.00	$4,752.00	$14,256.00	$5,500.00	$16,500.00	$4,350.00	$13,050.00	$4,640.00	$13,920.00

ITEM NO.	DESCRIPTION	U O M	QTY	TAND Inc		WELLS CARGO, INC.		PEEK CONSTRUCTION COMPANY		FREHNER CONSTRUCTION COMPANY, INC.		LAS VEGAS PAVING CORPORATION	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
623.03	NO. 3-1/2 PULLBOX	EA	19	$250.00	$4,750.00	$238.00	$4,522.00	$420.00	$7,980.00	$218.00	$4,142.00	$232.00	$4,408.00
623.04	2-INCH STREETLIGHT CONDUIT WITH 2-#4 THW AND 1-#8 THW	LF	2,492	$8.00	$19,936.00	$8.50	$21,182.00	$12.50	$31,150.00	$7.80	$19,437.60	$8.30	$20,683.60
623.05	2-INCH STREETLIGHT CONDUIT WITH 4-#4 THW AND 2-#8 THW	LF	20	$12.00	$240.00	$12.20	$244.00	$13.25	$265.00	$11.15	$223.00	$11.90	$238.00
623.06	2-INCH STREETLIGHT CONDUIT WITH 1-#8 TRACER WIRE AND PULL ROPE	LF	198	$6.50	$1,287.00	$6.90	$1,366.20	$10.50	$2,079.00	$6.30	$1,247.40	$6.70	$1,326.60
623.07	100 WATT DOUBLE ARM STREET LIGHT ASSEMBLY AND FOUNDATION	EA	17	$5,900.00	$100,300.00	$6,346.00	$107,882.00	$7,300.00	$124,100.00	$5,810.00	$98,770.00	$6,200.00	$105,400.00
623.08	150 WATT DOUBLE ARM STREET LIGHT ASSEMBLY AND FOUNDATION	EA	2	$6,000.00	$12,000.00	$6,517.00	$13,034.00	$7,300.00	$14,600.00	$5,970.00	$11,940.00	$6,360.00	$12,720.00
623.09	NO. 5 PULLBOX	EA	2	$250.00	$500.00	$282.00	$564.00	$675.00	$1,350.00	$260.00	$520.00	$275.00	$550.00
623.1	3/4-INCH PVC CONDUIT WITH 3-#10 THW	LF	1,844	$6.00	$11,064.00	$5.50	$10,142.00	$10.00	$18,440.00	$5.05	$9,312.20	$5.50	$10,142.00
623.11	GFCI RECEPTACLE	EA	33	$75.00	$2,475.00	$72.00	$2,376.00	$85.50	$2,821.50	$66.00	$2,178.00	$70.00	$2,310.00
623.12	2-INCH PVC CONDUIT WITH 2-#3/0 THW AND 1-#3/0 THW	LF	30	$18.00	$540.00	$18.15	$544.50	$50.50	$1,515.00	$16.50	$495.00	$17.70	$531.00
623.13	1 1/4-INCH PVC CONDUIT WITH 1-#8 TRACER WIRE AND PULL ROPE	LF	88	$6.00	$528.00	$5.65	$497.20	$10.50	$924.00	$5.15	$453.20	$5.50	$484.00
623.14	1 1/4-INCH PVC CONDUIT WITH 2-#4 THW (RED, WHITE) AND 1-#8 THW (GREEN)	LF	851	$8.00	$6,808.00	$8.60	$7,318.60	$11.50	$9,786.50	$7.85	$6,680.35	$8.40	$7,148.40
623.15	1 1/4-INCH PVC CONDUIT WITH 3-#4 THW (BLACK, RED, WHITE) AND 1-#8 THW (GREEN)	LF	445	$9.00	$4,005.00	$9.70	$4,316.50	$11.50	$5,117.50	$8.85	$3,938.25	$9.40	$4,183.00
623.16	1 1/4-INCH PVC CONDUIT WITH 2-#4 THW (BLUE, WHITE) AND 1-#8 THW (GREEN)	LF	514	$8.00	$4,112.00	$8.60	$4,420.40	$13.25	$6,810.50	$7.85	$4,034.90	$8.40	$4,317.60
623.17	15 AMP BRANCH CIRCUIT CONNECTION AT BOULDER AVENUE (FOR IRRIGATION)	LS	1	$100.00	$100.00	$85.20	$85.20	$117.00	$117.00	$78.00	$78.00	$84.00	$84.00
624.01	TRAFFIC CONTROL AND MAINTENANCE	LS	1	$11,000.00	$11,000.00	$11,618.00	$11,618.00	$11,500.00	$11,500.00	$11,800.00	$11,800.00	$11,340.00	$11,340.00
625.01	PORTABLE CHANGEABLE MESSAGE SIGN	DAY	50	$50.00	$2,500.00	$33.20	$1,660.00	$32.00	$1,600.00	$30.00	$1,500.00	$33.00	$1,650.00
625.02	ARROW DISPLAY	DAY	75	$20.00	$1,500.00	$11.10	$832.50	$11.00	$825.00	$10.00	$750.00	$11.00	$825.00
627.01	PERMANENT SIGN (GROUND MOUNTED)	EA	14	$100.00	$1,400.00	$83.00	$1,162.00	$82.00	$1,148.00	$76.00	$1,064.00	$81.00	$1,134.00
628.01	TYPE II PAVEMENT MARKINGS (FOR CROSSWALK BARS, YIELD MARKINGS, AND STOP BARS)	SF	1,460	$3.50	$5,110.00	$4.05	$5,913.00	$4.00	$5,840.00	$3.70	$5,402.00	$3.95	$5,767.00
628.02	PAINT (YELLOW) FOR CURB LOADING ZONE DESIGNATION	LF	177	$0.65	$115.05	$0.22	$38.94	$0.25	$44.25	$0.20	$35.40	$0.30	$53.10

ITEM NO.	DESCRIPTION	U O M	QTY	TAND Inc UNIT PRICE	TAND Inc EXTENDED PRICE	WELLS CARGO, INC. UNIT PRICE	WELLS CARGO, INC. EXTENDED PRICE	PEEK CONSTRUCTION COMPANY UNIT PRICE	PEEK CONSTRUCTION COMPANY EXTENDED PRICE	FREHNER CONSTRUCTION COMPANY, INC. UNIT PRICE	FREHNER CONSTRUCTION COMPANY, INC. EXTENDED PRICE	LAS VEGAS PAVING CORPORATION UNIT PRICE	LAS VEGAS PAVING CORPORATION EXTENDED PRICE
628.03	PAINT (RED) FOR CURB "NO PARKING" FIRE LANE DESIGNATION	LF	573	$0.65	$372.45	$0.50	$286.50	$0.50	$286.50	$0.45	$257.85	$0.50	$286.50
628.04	ASPHALT PATTERN (MID-BLOCK STREETPRINT)	LS	1	$18,000.00	$18,000.00	$21,023.00	$21,023.00	$20,000.00	$20,000.00	$18,300.00	$18,300.00	$19,980.00	$19,980.00
629.01	8-INCH C-900 WATERLINE	LF	429	$60.00	$25,740.00	$52.80	$22,651.20	$103.00	$44,187.00	$190.00	$81,510.00	$225.00	$96,525.00
629.02	6-INCH C-900 WATERLINE	LF	22	$100.00	$2,200.00	$81.80	$1,799.60	$46.00	$1,012.00	$194.00	$4,268.00	$293.00	$6,446.00
629.03	4-INCH C-900 PVC	LF	22	$85.00	$1,870.00	$73.40	$1,614.80	$29.00	$638.00	$194.00	$4,268.00	$100.00	$2,200.00
629.04	1-INCH BRASS WATERLINE	LF	4	$75.00	$300.00	$119.00	$476.00	$33.00	$132.00	$35.50	$142.00	$83.00	$332.00
629.05	1-INCH COPPER WATERLINE	LF	23	$40.00	$920.00	$128.00	$2,944.00	$110.00	$2,530.00	$166.00	$3,818.00	$103.00	$2,369.00
629.06	1-INCH PVC WATERLINE	LF	15	$25.00	$375.00	$58.70	$880.50	$19.00	$285.00	$17.00	$255.00	$37.00	$555.00
629.07	3/4-INCH METER	EA	1	$500.00	$500.00	$656.50	$656.50	$608.00	$608.00	$1,140.00	$1,140.00	$500.00	$500.00
629.08	REMOVE FIRE HYDRANT	EA	2	$1,000.00	$2,000.00	$1,447.00	$2,894.00	$605.00	$1,210.00	$1,740.00	$3,480.00	$880.00	$1,760.00
629.09	FIRE HYDRANT (WITH VALVE)	EA	2	$3,600.00	$7,200.00	$3,782.00	$7,564.00	$3,200.00	$6,400.00	$4,660.00	$9,320.00	$6,400.00	$12,800.00
629.1	8-INCH GATE VALVE	EA	6	$1,500.00	$9,000.00	$1,420.00	$8,520.00	$1,500.00	$9,000.00	$2,000.00	$12,000.00	$2,400.00	$14,400.00
629.11	8-INCH CAP	EA	6	$500.00	$3,000.00	$1,112.00	$6,672.00	$560.00	$3,360.00	$1,580.00	$9,480.00	$810.00	$4,860.00
629.12	REMOVE AND RELOCATE 5/8" METER	EA	1	$1,000.00	$1,000.00	$3,607.00	$3,607.00	$825.00	$825.00	$568.00	$568.00	$1,700.00	$1,700.00
629.13	REMOVE AND REPLACE EXISTING METER BOX AND DCVA BOX	EA	4	$800.00	$3,200.00	$910.00	$3,640.00	$1,165.00	$4,660.00	$2,430.00	$9,720.00	$2,000.00	$8,000.00
637.01	DUST CONTROL	LS	1	$6,000.00	$6,000.00	$2,700.00	$2,700.00	$15,000.00	$15,000.00	$18,000.00	$18,000.00	$28,275.00	$28,275.00
637.02	NPDES DISCHARGE PERMIT	LS	1	$500.00	$500.00	$1,654.00	$1,654.00	$6,000.00	$6,000.00	$17,549.50	$17,549.50	$220.00	$220.00
699.01	STREET BENCH	EA	4	$2,000.00	$8,000.00	$1,660.00	$6,640.00	$1,900.00	$7,600.00	$1,550.00	$6,200.00	$1,730.00	$6,920.00
699.02	TRASH RECEPTACLE	EA	8	$1,600.00	$12,800.00	$1,272.50	$10,180.00	$1,120.00	$8,960.00	$1,120.00	$8,960.00	$1,515.00	$12,120.00
699.03	STEEL PLANTER	EA	20	$2,500.00	$50,000.00	$1,903.00	$38,060.00	$1,777.00	$35,540.00	$1,800.00	$36,000.00	$2,160.00	$43,200.00
					$989,642.50		$1,142,561.64		$1,144,541.25		$1,248,378.00		$1,458,723.60
					CORRECTED TOTAL		CORRECTED TOTAL						

ITEM NO.	DESCRIPTION	U O M	QTY	TAND Inc UNIT PRICE	TAND Inc EXTENDED PRICE	WELLS CARGO, INC. UNIT PRICE	WELLS CARGO, INC. EXTENDED PRICE	PEEK CONSTRUCTION COMPANY UNIT PRICE	PEEK CONSTRUCTION COMPANY EXTENDED PRICE	FREHNER CONSTRUCTION COMPANY, INC. UNIT PRICE	FREHNER CONSTRUCTION COMPANY, INC. EXTENDED PRICE	LAS VEGAS PAVING CORPORATION UNIT PRICE	LAS VEGAS PAVING CORPORATION EXTENDED PRICE
Lot II - HOOVER AVENUE BEAUTIFICATION - MAIN STREET TO CASINO CENTER BOULEVARD													
ITEM NO.	DESCRIPTION	U O M	QTY	TAND, INC. UNIT PRICE	TAND, INC. EXTENDED PRICE	WELLS CARGO, INC. UNIT PRICE	WELLS CARGO, INC. EXTENDED PRICE	PEEK CONSTRUCTION UNIT PRICE	PEEK CONSTRUCTION EXTENDED PRICE	FREHNER UNIT PRICE	FREHNER EXTENDED PRICE	LAS VEGAS PAVING UNIT PRICE	LAS VEGAS PAVING EXTENDED PRICE
109.01	OWNER CAUSED DELAY ALLOWANCE	DAY	10	$250.00	$2,500.00	$250.00	$2,500.00	$250.00	$2,500.00	$250.00	$2,500.00	$250.00	$2,500.00
109.02	OWNER CAUSED DELAY AMOUNT IN ADDITION TO ALLOWANCE	DAY	10	$0.00	$0.00	$280.00	$2,800.00	$250.00	$2,500.00	$315.00	$3,150.00	$250.00	$2,500.00
200.01	MOBILIZATION AND DEMOBILIZATION	LS	1	$35,000.00	$35,000.00	$35,000.00	$35,000.00	$35,000.00	$35,000.00	$35,000.00	$35,000.00	$35,000.00	$35,000.00
202.01	REMOVAL OF LANDSCAPING	LS	1	$2,000.00	$2,000.00	$3,792.00	$3,792.00	$3,500.00	$3,500.00	$2,561.86	$2,561.86	$6,525.00	$6,525.00
202.02	REMOVAL OF ASPHALT PAVEMENT	SY	1,900	$7.00	$13,300.00	$5.05	$9,595.00	$5.00	$9,500.00	$14.45	$27,455.00	$11.30	$21,470.00
202.03	REMOVAL OF CONCRETE SIDEWALK	SF	4,250	$1.00	$4,250.00	$0.75	$3,187.50	$3.00	$12,750.00	$2.50	$10,625.00	$5.55	$23,587.50
202.04	REMOVAL OF DRIVEWAY	SF	872	$2.00	$1,744.00	$1.15	$1,002.80	$3.00	$2,616.00	$3.85	$3,357.20	$8.40	$7,324.80
202.05	REMOVAL OF CROSS GUTTER	SF	561	$2.50	$1,402.50	$1.80	$1,009.80	$5.00	$2,805.00	$6.34	$3,556.74	$12.20	$6,844.20
202.06	REMOVAL OF ALLEY	SF	591	$2.00	$1,182.00	$2.25	$1,329.75	$5.00	$2,955.00	$3.80	$2,245.80	$12.00	$7,092.00
202.07	REMOVAL OF TYPE L CURB AND GUTTER	LF	1,054	$3.00	$3,162.00	$2.00	$2,108.00	$3.25	$3,425.50	$9.50	$10,013.00	$22.80	$24,031.20
202.08	REMOVAL OF BLOCK WALL	LF	10	$25.00	$250.00	$45.80	$458.00	$60.00	$600.00	$275.00	$2,750.00	$145.00	$1,450.00
202.09	REMOVAL OF CHAIN LINK FENCE	LF	80	$4.00	$320.00	$8.00	$640.00	$4.00	$320.00	$4.10	$328.00	$4.30	$344.00
202.1	REMOVAL AND SALVAGE OF STREET LIGHT	EA	6	$400.00	$2,400.00	$398.00	$2,388.00	$840.00	$5,040.00	$365.00	$2,190.00	$389.00	$2,334.00
202.11	REMOVAL AND SALVAGE OF SIGN	EA	7	$50.00	$350.00	$11.00	$77.00	$11.00	$77.00	$10.15	$71.05	$11.00	$77.00
202.12	REMOVAL OF TREE	EA	12	$400.00	$4,800.00	$278.00	$3,336.00	$1,100.00	$13,200.00	$255.00	$3,060.00	$325.00	$3,900.00
202.13	REMOVAL OF BOLLARD	EA	2	$100.00	$200.00	$79.00	$158.00	$1,100.00	$2,200.00	$153.00	$306.00	$400.00	$800.00
202.14	REMOVAL OF TREE STUMPS	LS	1	$2,000.00	$2,000.00	$1,795.00	$1,795.00	$800.00	$800.00	$2,550.00	$2,550.00	$4,860.00	$4,860.00
202.15	REMOVE AND RELOCATE MAIL BOX	EA	2	$400.00	$800.00	$316.00	$632.00	$750.00	$1,500.00	$155.00	$310.00	$850.00	$1,700.00
203.01	OVER-EXCAVATION AND BACKFILL	CY	60	$10.00	$600.00	$57.00	$3,420.00	$83.00	$4,980.00	$46.00	$2,760.00	$73.00	$4,380.00
212.01	4-FOOT TREE GRATE WITH FRAME	EA	27	$1,100.00	$29,700.00	$336.00	$9,072.00	$1,050.00	$28,350.00	$1,280.00	$34,560.00	$1,190.00	$32,130.00
212.02	5-FOOT TREE GRATE WITH FRAME	EA	2	$1,490.00	$2,980.00	$420.00	$840.00	$1,500.00	$3,000.00	$1,420.00	$2,840.00	$1,620.00	$3,240.00
212.03	THORNLESS CHILEAN MESQUITE (MULTI) 36-INCH BOX TREE	EA	1	$565.00	$565.00	$664.00	$664.00	$900.00	$900.00	$710.00	$710.00	$650.00	$650.00
212.04	SONORAN EMERALD PALO VERDE (MULTI) 36-INCH BOX TREE	EA	1	$565.00	$565.00	$686.00	$686.00	$900.00	$900.00	$710.00	$710.00	$670.00	$670.00
212.05	RAYWOOD ASH 36-INCH BOX TREE	EA	27	$565.00	$15,255.00	$636.00	$17,172.00	$900.00	$24,300.00	$710.00	$19,170.00	$620.00	$16,740.00
212.06	DESERT AGAVE 5-GALLON SHRUB	EA	30	$30.00	$900.00	$36.50	$1,095.00	$30.00	$900.00	$32.00	$960.00	$35.50	$1,065.00
212.07	1/4-INCH MINUS "APACHE BROWN" DECOMPOSED GRANITE	CY	10	$131.00	$1,310.00	$77.00	$770.00	$75.00	$750.00	$50.00	$500.00	$77.00	$770.00

ITEM NO.	DESCRIPTION	U O M	QTY	TAND Inc		WELLS CARGO, INC.		PEEK CONSTRUCTION COMPANY		FREHNER CONSTRUCTION COMPANY, INC.		LAS VEGAS PAVING CORPORATION	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
213.01	IRRIGATION SYSTEM	LS	1	$21,000.00	$21,000.00	$25,450.00	$25,450.00	$24,000.00	$24,000.00	$21,300.00	$21,300.00	$24,840.00	$24,840.00
271.01	BIAXIAL GEOGRID BASE REINFORCEMENT	SY	325	$3.50	$1,137.50	$17.00	$5,525.00	$4.00	$1,300.00	$6.30	$2,047.50	$11.80	$3,835.00
302.01	TYPE II AGGREGATE BASE	CY	240	$25.00	$6,000.00	$32.00	$7,680.00	$31.00	$7,440.00	$74.00	$17,760.00	$62.80	$15,072.00
402.01	2-INCH PLANTMIX BITUMINOUS SURFACE	SY	100	$38.00	$3,800.00	$20.25	$2,025.00	$29.00	$2,900.00	$37.50	$3,750.00	$29.50	$2,950.00
402.02	3.5-INCH PLANTMIX BITUMINOUS SURFACE	SY	285	$15.00	$4,275.00	$17.40	$4,959.00	$31.00	$8,835.00	$13.50	$3,847.50	$28.00	$7,980.00
402.03	4-INCH PLANTMIX BITUMINOUS SURFACE	SY	680	$20.00	$13,600.00	$14.20	$9,656.00	$20.00	$13,600.00	$33.50	$22,780.00	$18.50	$12,580.00
412.01	SLURRY SEAL	SY	2,380	$3.50	$8,330.00	$4.00	$9,520.00	$4.00	$9,520.00	$3.05	$7,259.00	$3.90	$9,282.00
613.01	TYPE L CURB AND GUTTER	LF	1,007	$12.00	$12,084.00	$18.55	$18,679.85	$12.00	$12,084.00	$17.70	$17,823.90	$27.50	$27,692.50
613.02	CONCRETE SIDEWALK	SF	9,473	$5.00	$47,365.00	$5.80	$54,943.40	$3.75	$35,523.75	$4.60	$43,575.80	$8.40	$79,573.20
613.03	CONCRETE COMMERCIAL DRIVEWAY	SF	1,527	$7.00	$10,689.00	$10.80	$16,491.60	$5.50	$8,398.50	$9.60	$14,659.20	$8.75	$13,361.25
613.04	CONCRETE DEPRESSED ALLEY DRIVEWAY	SF	1,019	$12.00	$12,228.00	$15.80	$16,100.20	$5.50	$5,604.50	$9.85	$10,037.15	$14.00	$14,266.00
613.05	12-INCH BY 12-INCH SIDEWALK PAVERS	SF	6,042	$8.50	$51,357.00	$16.55	$99,995.10	$8.50	$51,357.00	$13.15	$79,452.30	$9.75	$58,909.50
613.06	CONCRETE SIDEWALK RAMP CASE II WITH TRUNCATED DOMES	EA	6	$1,000.00	$6,000.00	$1,417.00	$8,502.00	$1,250.00	$7,500.00	$1,300.00	$7,800.00	$1,035.00	$6,210.00
613.07	CONCRETE CROSS GUTTER	SF	630	$10.00	$6,300.00	$11.00	$6,930.00	$12.00	$7,560.00	$10.55	$6,646.50	$10.50	$6,615.00
613.08	12-INCH CURB	LF	28	$18.00	$504.00	$24.65	$690.20	$46.00	$1,288.00	$25.00	$700.00	$24.00	$672.00
616.01	REMOVE AND RELOCATE WROUGHT IRON FENCING AND GATES	LS	1	$20,000.00	$20,000.00	$21,755.00	$21,755.00	$20,000.00	$20,000.00	$18,700.00	$18,700.00	$19,915.00	$19,915.00
622.01	CONSTRUCTION SURVEYING	LS	1	$7,000.00	$7,000.00	$9,250.00	$9,250.00	$3,300.00	$3,300.00	$6,610.00	$6,610.00	$35,500.00	$35,500.00
623.01	250 WATT CENTENNIAL STREET LIGHT ASSEMBLY AND FOUNDATION	EA	8	$4,500.00	$36,000.00	$4,658.00	$37,264.00	$5,500.00	$44,000.00	$4,270.00	$34,160.00	$4,550.00	$36,400.00
623.02	2 X 100 WATT DOUBLE ARM STREET LIGHT ASSEMBLY AND FOUNDATION	EA	1	$5,800.00	$5,800.00	$6,290.00	$6,290.00	$7,300.00	$7,300.00	$5,750.00	$5,750.00	$6,140.00	$6,140.00
623.03	100 & 150 WATT DOUBLE ARM STREET LIGHT ASSEMBLY AND FOUNDATION	EA	2	$5,800.00	$11,600.00	$6,251.00	$12,502.00	$7,300.00	$14,600.00	$5,725.00	$11,450.00	$275.00	$550.00
623.04	NO. 5 PULLBOX	EA	2	$225.00	$450.00	$282.00	$564.00	$670.00	$1,340.00	$258.00	$516.00	$6,100.00	$12,200.00
623.05	NO. 3-1/2 PULLBOX	EA	10	$275.00	$2,750.00	$227.00	$2,270.00	$420.00	$4,200.00	$207.00	$2,070.00	$220.00	$2,200.00
623.06	2-INCH STREETLIGHT CONDUIT WITH 2-#4 THW AND 1-#8 THW	LF	1,150	$8.00	$9,200.00	$8.10	$9,315.00	$12.00	$13,800.00	$7.40	$8,510.00	$7.90	$9,085.00
623.07	2-INCH STREETLIGHT CONDUIT WITH 1-#8 TRACER WIRE AND PULL ROPE	LF	500	$6.00	$3,000.00	$6.00	$3,000.00	$10.50	$5,250.00	$5.40	$2,700.00	$5.80	$2,900.00

ITEM NO.	DESCRIPTION	U O M	QTY	TAND Inc		WELLS CARGO, INC.		PEEK CONSTRUCTION COMPANY		FREHNER CONSTRUCTION COMPANY, INC.		LAS VEGAS PAVING CORPORATION	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
623.08	2-#4 THW STREET LIGHT CONDUCTORS	LF	135	$3.00	$405.00	$2.40	$324.00	$1.50	$202.50	$2.20	$297.00	$2.30	$310.50
623.09	3-INCH PVC CONDUIT WITH 1-#8 TRACER WIRE AND PULL ROPE	LF	125	$6.50	$812.50	$6.50	$812.50	$11.00	$1,375.00	$5.90	$737.50	$6.30	$787.50
623.1	1 1/4-INCH PVC CONDUIT WITH 1-#8 TRACER WIRE AND PULL ROPE	LF	500	$6.00	$3,000.00	$5.55	$2,775.00	$10.50	$5,250.00	$5.05	$2,525.00	$5.40	$2,700.00
623.11	3/4-INCH PVC CONDUIT WITH 3#10 THW	LF	80	$6.00	$480.00	$5.55	$444.00	$10.00	$800.00	$5.05	$404.00	$5.40	$432.00
623.12	GFCI RECEPTACLE	EA	2	$75.00	$150.00	$60.90	$121.80	$85.00	$170.00	$56.00	$112.00	$60.00	$120.00
623.13	REMOVE AND REPLACE STREET LIGHT BOX	EA	1	$400.00	$400.00	$332.00	$332.00	$420.00	$420.00	$305.00	$305.00	$325.00	$325.00
623.14	ADJUST ELECTRIC PULL BOX	EA	3	$150.00	$450.00	$155.00	$465.00	$865.00	$2,595.00	$140.00	$420.00	$150.00	$450.00
623.15	ADJUST ELECTRIC MANHOLE	EA	1	$600.00	$600.00	$564.00	$564.00	$1,730.00	$1,730.00	$515.00	$515.00	$550.00	$550.00
624.01	TRAFFIC CONTROL AND MAINTENANCE	LS	1	$11,000.00	$11,000.00	$11,619.00	$11,619.00	$11,500.00	$11,500.00	$10,650.00	$10,650.00	$11,340.00	$11,340.00
625.01	PORTABLE CHANGEABLE MESSAGE SIGN	DAY	30	$50.00	$1,500.00	$33.20	$996.00	$32.00	$960.00	$50.00	$1,500.00	$33.00	$990.00
625.02	ARROW DISPLAYS	DAY	75	$25.00	$1,875.00	$11.10	$832.50	$11.00	$825.00	$10.00	$750.00	$11.00	$825.00
627.01	PERMANENT SIGN (GROUND MOUNTED)	EA	11	$85.00	$935.00	$83.00	$913.00	$82.00	$902.00	$76.00	$836.00	$81.00	$891.00
627.02	PERMANENT SIGN (STREETLIGHT MOUNTED)	EA	2	$75.00	$150.00	$72.00	$144.00	$71.00	$142.00	$66.00	$132.00	$70.00	$140.00
628.01	TYPE II PAVEMENT MARKING FILM (CROSSWALKS AND STOP BARS)	SF	900	$4.00	$3,600.00	$4.05	$3,645.00	$4.00	$3,600.00	$3.70	$3,330.00	$4.00	$3,600.00
629.01	6-INCH WATER MAIN	LF	31	$100.00	$3,100.00	$61.10	$1,894.10	$44.00	$1,364.00	$161.00	$4,991.00	$220.00	$6,820.00
629.02	8-INCH WATER MAIN	LF	197	$70.00	$13,790.00	$59.00	$11,623.00	$93.00	$18,321.00	$259.00	$51,023.00	$193.00	$38,021.00
629.03	1-INCH COPPER WATERLINE	LF	20	$40.00	$800.00	$72.00	$1,440.00	$88.00	$1,760.00	$94.00	$1,880.00	$56.00	$1,120.00
629.04	FIRE HYDRANT RELOCATION	EA	1	$3,000.00	$3,000.00	$4,600.00	$4,600.00	$3,100.00	$3,100.00	$3,955.00	$3,955.00	$6,100.00	$6,100.00
629.05	ADJUST WATER METER BOX	EA	2	$600.00	$1,200.00	$717.00	$1,434.00	$840.00	$1,680.00	$568.00	$1,136.00	$385.00	$770.00
629.06	ADJUST WATER VALVE	EA	2	$600.00	$1,200.00	$717.00	$1,434.00	$840.00	$1,680.00	$805.00	$1,610.00	$600.00	$1,200.00
629.07	ADJUST DCVA	EA	2	$1,000.00	$2,000.00	$1,826.00	$3,652.00	$840.00	$1,680.00	$776.00	$1,552.00	$765.00	$1,530.00
637.01	DUST CONTROL	LS	1	$2,000.00	$2,000.00	$2,702.00	$2,702.00	$15,000.00	$15,000.00	$900.00	$900.00	$14,700.00	$14,700.00
637.02	NPDES DISCHARGE PERMIT	LS	1	$500.00	$500.00	$1,655.00	$1,655.00	$6,500.00	$6,500.00	$2,400.00	$2,400.00	$220.00	$220.00
699.01	PLANTER	EA	10	$2,500.00	$25,000.00	$1,937.00	$19,370.00	$1,900.00	$19,000.00	$1,800.00	$18,000.00	$2,160.00	$21,600.00
					$505,952.50		**$568,677.10**		$576,625.75		$634,105.00		$736,255.15
					CORRECTED TOTAL		**CORRECTED TOTAL**						
Total Base Bid Amount - Lot I and Lot II					**$1,495,595.00**		**$1,711,238.74**		$1,721,167.00		$1,882,483.00		$2,194,978.75
					CORRECTED TOTAL		**CORRECTED TOTAL**						

ITEM NO.	DESCRIPTION	U O M	QTY	TAND Inc UNIT PRICE	TAND Inc EXTENDED PRICE	WELLS CARGO, INC. UNIT PRICE	WELLS CARGO, INC. EXTENDED PRICE	PEEK CONSTRUCTION COMPANY UNIT PRICE	PEEK CONSTRUCTION COMPANY EXTENDED PRICE	FREHNER CONSTRUCTION COMPANY, INC. UNIT PRICE	FREHNER CONSTRUCTION COMPANY, INC. EXTENDED PRICE	LAS VEGAS PAVING CORPORATION UNIT PRICE	LAS VEGAS PAVING CORPORATION EXTENDED PRICE
	Engineer's Estimate			$2,383,253									
	Responsive Bidder			yes									
	Responsible Bidder			yes									

TO: Cheri Edelman Please review and approve recommended award to TAND IINC.

in the amount of $1,495,595.00

Purchasing & Contracts Representative — Date: 7-12-10

Using Department Authorized Rep Signature — Date: 7/29/10

City of Las Vegas Agenda Item No.: **34.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:

Approval of award of Design Services Agreement No. 110008-LD, Design Services for Jones & Valley View Corridor Improvements located on Jones Boulevard from US 95 to Sahara Avenue and on Valley View Boulevard from US 95 to Desert Inn Road - Department of Public Works - Award recommended to: JACOBS ENGINEERING GROUP, INC. ($1,520,580 - Road and Flood Capital Projects Fund) - Ward 1 (Tarkanian)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $1,520,580
Funding Source: Road and Flood CPF
Dept./Division: Public Works

PURPOSE/BACKGROUND:

The services covered by this agreement are for the design of outdoor improvements on Jones Boulevard and Valley View Boulevard including roadway and intersection widening, bus turnouts, restriping, signal modifications and other related design improvements. Funding for this project is being provided by the Regional Transportation Commission (RTC)

PCC: L.E. Davis
POC: Joseph Jensen, P.E. - (702) 938-5400

RECOMMENDATION:

That City Council approve award of Design Services Agreement No. 110008-LD, Design Services for Jones & Valley View Corridor Improvements to Jacobs Engineering Group, Inc. in the amount of $1,520,580. Authority to execute the Agreement is given to the Purchasing Manager per R-48-2006.

BACKUP DOCUMENTATION:

1. Design Services Agreement No. 110008-LD
2. Certificate - Disclosure of Ownership/Principals

PRIME DESIGN SERVICES AGREEMENT
FOR
JONES & VALLEY VIEW CORRIDOR IMPROVEMENTS

THIS AGREEMENT is made and entered into this _____ day of _____, _____, by and between the **CITY OF LAS VEGAS**, a municipal corporation within the State of Nevada (herein the "City") whose address is **400 Stewart Avenue, Las Vegas, Nevada 89101**, and fax number is **(702) 382-3232**, and **JACOBS ENGINEERING GROUP INC.**, (the "Consultant"), a **Corporation**, whose address is **7160 Bermuda Road, Suite 200**, **Las Vegas, NV, 89119**, and fax number is **(702) 938-5454**.

W I T N E S S E T H:

WHEREAS, the City intends to construct the **Jones &** Valley View Corridor Improvements (herein the "Project"); and

WHEREAS, the City desires to retain the Consultant who will be responsible for providing the professional services more fully described below and in the exhibits attached hereto; and

WHEREAS, the Consultant is properly licensed pursuant to NRS Chapter 623, 623A, or 625, whichever is legally required for the services to be provided within the State of Nevada, and if applicable to the Consultant's business organization, is in compliance with NRS 623.349 for architects, interior designers, and residential designers and NRS 623A.250 for landscape architects, which requires that control and no less than two-thirds ownership of the business organization or association be held by persons registered or licensed in the State of Nevada pursuant to NRS Chapters 623, 623A, or 625, and possesses the special knowledge, skills and expertise to perform the services hereinafter set forth within the time required under this Agreement.

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree to the following terms, conditions and covenants set forth in Sections One through Ten hereof:

SECTION ONE
CONSULTANT RESPONSIBILITIES

1.01 ***Description of Consultant's Services.*** For the compensation set forth in Section Seven, the Consultant hereby agrees to perform the basic services set forth in the Scope of Services, **Exhibit "A"** attached hereto and incorporated herein as a part of this Agreement and, if so requested, the additional services set forth in the Additional Compensation, **Exhibit "E"** attached hereto and incorporated herein as a part of this Agreement and to provide the submittals described in the Required Submittals **Exhibit "B,"** attached hereto.

1.02 ***Performance Standards.*** In performing the services set forth in this Agreement, the Consultant shall follow the practices consistent with the generally accepted standards in the profession of the services being provided to the City pursuant to this Agreement.

1.03 ***Document Review.*** The Consultant shall be responsible for reviewing each document prepared by the Consultant and its subconsultants including, without limitation, the plans, drawings and specifications for the purpose of ensuring that such documents are technically sound, in conformance with applicable federal, state and local laws and other regulations, and do not violate or infringe upon any patent rights.

1.04 ***Waiver.*** The City's approval of any documents or services furnished by the Consultant shall not in any way relieve the Consultant of responsibility for the professional and technical accuracy of its documents or services. The City's review, approval, acceptance or payment for any of the Consultant's services shall not be construed to operate as a waiver of any rights enjoyed by the City under this Agreement or of any cause of action arising out of the performance of this Agreement. The Consultant shall remain liable for any damages to the City caused by the Consultant's negligent act or omission committed in the performance of this Agreement.

1.05 ***Designation of Consultant's Representative.*** The Consultant's representative is the individual identified in the Key Personnel List, **Exhibit "F"** attached hereto (the "Consultant Representative") to act in that capacity, who shall be responsible for the services required under this Agreement. The services specified by this Agreement shall be performed by the personnel identified in the Key Personnel List provided that such associates and employees perform under the personal supervision of the Consultant Representative.

If any person or subconsultant who is expected to provide any of the services required under this Agreement is objectionable to the City for any reason, the Consultant shall, without additional compensation, replace such person or subconsultant with someone acceptable to the City.

If the Consultant's personnel are unable to complete their responsibilities for any reason under this Agreement, or the Consultant desires for any reason to substitute personnel assigned to the Project, the Consultant agrees to obtain the approval of the City for the substitution. The City shall not unreasonably deny approval unless the City adjudges the substitution not be in the interest of the City or the Project.

If the Consultant fails to make an acceptable replacement within thirty (30) days, the City may terminate this Agreement for default as provided in Section 10.03 of this Agreement.

1.06 ***Correspondence Review.*** The Consultant shall furnish the City Representative copies of each correspondence, if any, sent to any contractor involved with the Project, and to any regulatory agencies, for approval and review prior to mailing such correspondence.

1.07 ***Cooperation with the City.*** The Consultant agrees that its officers, associates, employees and subconsultants will cooperate with the City in providing the services under this Agreement and will be, with advance notice, available for consultation with the City at such reasonable times as to not conflict with the City's other responsibilities.

1.08 ***Responsibility for Construction Document Revisions.***

A. ***Applicability.*** The Consultant's responsibility described in this Section applies only if the Consultant is responsible for providing a construction cost estimate and preparing construction documents for the Project.

B. ***Responsibility for Revisions.*** The Consultant does not warrant or represent that the bids or proposed price received by the City to construct the Project will come within the Construction Cost Budget set forth in the Scope of Services or as may be otherwise agreed upon in writing by parties. If the bids or proposed price received by the City exceeds the Construction Cost Budget, the Consultant agrees to cooperate with the City in revising the requirements of the Project as required to lower the cost to within the Construction Cost Budget and to modify the construction documents without additional compensation. In order to meet the Construction Cost Budget, the Consultant may, with the approval of the City, segregate portions of the work as separate alternate bid items so that bids received by the City to construct the Project will come within the Construction Cost Budget.

"Construction Cost Budget" as used herein means the monetary limit established by the City for construction of the Project which limit includes the cost of the Contractor's labor, materials, equipment, expenses, overhead and profit, but excludes the Project's soft costs, cost of change orders and other cost impacts encountered after award of the construction contract.

SECTION TWO
CITY RESPONSIBILITIES

2.01 ***City Representative.*** The Director of Public Works or his authorized representative identified in the Key Personnel List is hereby designated as the City's representative (the "City Representative") with respect to this Agreement. The City Representative shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to the services of the Consultant. The City Representative is not authorized to change or waive any of the provisions set forth in Sections 1.01 through 10.24 of this Agreement.

2.02 ***Review of Consultant's Services and Documents.*** The services to be performed by the Consultant shall be subject to periodic review by the City Representative. To prevent an unreasonable delay in the Project, the City Representative will endeavor to examine and comment in writing on the documents furnished by the Consultant including, without limitation, the plans, drawings, specifications, test results, evaluations, and reports within twenty-one (21) days of receipt of such documents, unless the Contract provides for a different review time with respect to the document.

2.03 ***Access to Records.*** The City shall, without charge, furnish a copy to, or make available for examination or use by, the Consultant, as it may request, any documents and data which the City has available including, without limitation, reports, maps, plans, specifications, surveys, records, ordinances, codes, regulations, and other documents related to the services required under this Agreement. The City shall assist the Consultant in obtaining data and documents from public agencies and from private citizens and business firms whenever the City determines that such material is necessary for the completion of the services required by this Agreement.

2.04 ***Cooperation with Consultant.*** The City agrees that its officers and employees will cooperate with the Consultant in the performance of this Agreement and will be, with advance notice, available for consultation with the Consultant at such reasonable times as to not conflict with the Consultant's other responsibilities. The City shall provide access to the Consultant on to the Project site as may be required to perform the services under this Agreement.

SECTION THREE
CHANGES TO CONSULTANT'S SERVICES

3.01 ***Requested Changes.*** The City may at any time, by written order, make a change in the services to be performed by the Consultant under this Agreement.

3.02 ***Adjustment of Compensation.*** If the change requested by the City causes an increase or decrease in the cost or time required to perform any of the services required under this Agreement, an equitable adjustment shall be made in the compensation to be paid to the Consultant under Section Seven, or in the performance schedule under Section Eight, or both, and this Agreement shall be modified in writing accordingly. Each claim for adjustment under this Section must be asserted in writing within thirty (30) days from the date of receipt by the Consultant of written notification of the change, unless the City grants in writing an extension. Provided proper notice has been given to the City as required herein, the claim for an adjustment shall be handled pursuant to the provisions of 10.20B and 10.20C of this Agreement. The failure to provide notification of the claim within the time required herein shall constitute a waiver of the right to seek any equitable or legal adjustment in compensation with respect to that change.

SECTION FOUR
ADDITIONAL SERVICES OF CONSULTANT

4.01 ***Additional Services.*** The Consultant shall provide the additional services described in the Additional Compensation if, and only if, so requested in writing by the City. Payment for the additional services will be made to the Consultant in accordance with Section Seven of this Agreement.

4.02 ***Attendance at Meetings or Public Hearings.*** The Consultant shall notify the City in advance of any additional costs which may be incurred prior to attending any meetings or public hearings as may be necessary in connection with the services performed by the Consultant under this Agreement.

SECTION FIVE
SUBCONSULTANT AGREEMENT

5.01 ***Subconsultant Provisions.*** If, with the approval of the City as required pursuant to Section 10.07, the Consultant enters into an agreement with a subconsultant for the performance of any of its obligations under this Agreement, the Consultant agrees to include in each subconsultant agreement a provision that:

(i) the Consultant agrees to pay the subconsultant when paid by the City for that portion of the services provided to the City and that no liability arises on the part of the Consultant for payment of the subconsultant services until payment has been made by the City. If the City has paid the Consultant for the subconsultant services, the subconsultant's only recourse is against the Consultant and not against the City, either through the institution of legal or equitable action or the attachment of any lien,

(ii) the subconsultant shall have no more rights against the City than that of the Consultant,

(iii) the subconsultant agrees to be bound by the terms, conditions and obligation of this Agreement unless the City has approved any deviation, change or modification in writing, and

(iv) unless otherwise approved in writing by the City Representative, the subconsultant shall obtain and maintain professional liability insurance (Errors and Omissions coverage) in connection with the subconsultant services in an amount equal to that required of the Consultant in this Agreement.

SECTION SIX
TERM OF AGREEMENT

6.01 ***Term.*** This Agreement shall commence on the day it is approved by the City (which date shall be inserted in the introductory paragraph of this Agreement) and shall remain in force and effect until the Project is completed unless terminated earlier pursuant to Section 10.02 or 10.03 of this Agreement. Such termination shall not release either party from any of its continuing obligations under this Agreement.

6.02 ***Disputes.*** This Section shall not be construed to preclude the filing of any dispute arising out of the performance of this Agreement or in connection with the subject matter hereof, nor shall this Section be construed to change the date or the time on which a cause of action arising out of the performance of this Agreement or in connection with the subject matter hereof, would otherwise accrue under the statutes of limitation or doctrines of law.

SECTION SEVEN
COMPENSATION AND TERMS OF PAYMENT

7.01 ***Compensation: Basic Services.*** For the services to be performed by the Consultant under this Agreement and set forth in the Scope of Services, the City agrees to pay the Consultant the fee in the amount identified in the Fee Breakdown, **Exhibit "D"** attached hereto, pursuant to invoices submitted in accordance with Section 7.04 of this Agreement.

7.02 ***Compensation: Additional Services.*** For any services not set forth in the Scope of Services, the City shall pay to the Consultant either a lump sum fee, or an hourly fee based on the hourly labor rate schedule set forth in the Additional Compensation, whichever is agreed to by the parties, provided prior written approval for such services is given by the City Representative.

7.03 ***Compensation: Reimbursable Expenses.*** The Consultant agrees that all of its direct and indirect expenses are included in the fee for Basic Services and the agreed upon compensation for any Additional Services, except as may be specifically allowed for reimbursable expenses as part of the Additional Compensation.

7.04 ***Payment Invoicing.*** The Consultant may submit an invoice for payment for the services provided by the Consultant based on the manner or method of payment set forth in the Fee Breakdown. The City Representative will notify the Consultant of any problems regarding the invoice within fourteen (14) days from receipt thereof. If no response is received from the City Representative within the aforementioned period of time, the Consultant may expect payment within a period of (60) days from the date of receipt by the City. If payment has not been received within the sixty (60) days, the Consultant agrees to contact the City Representative to resolve the problem causing the delay. If resolution of the delay is not satisfactory to the Consultant, the Consultant may submit a claim pursuant to Section 10.20A of this Agreement.

7.05 ***Right to Off-Set.*** The City Representative may subtract or offset from any unpaid invoice from the Consultant any claims which the City may have for failure of the Consultant to comply with the terms, conditions or covenants of this Agreement, or any damages, costs and expenses caused by, resulting from, or arising out of the negligent act or omission of the Consultant in the performance of the services under this Agreement including, without limitation, any error or deficiency in the report or other documents prepared by the Consultant. The City Representative shall provide a written statement to the Consultant of the off-set which has been subtracted from any payment to the Consultant along with appropriate documentation and receipts, if any, and a description of the failure, error or deficiency attributed to the Consultant. If the Consultant disputes the right or amount of the off-set made by the City, the Consultant may file a claim pursuant to Section 10.20 of this Agreement.

7.06 ***Final Payment.*** Upon completion of the services required under this Agreement, and acceptance thereof by the City (which acceptance will not be unreasonably withheld), the Consultant will, within sixty (60) days of the City's acceptance, be paid the balance of any money due for such services.

SECTION EIGHT
PERFORMANCE SCHEDULE

8.01 ***Performance Schedule.*** The Consultant shall perform and complete the services required under this Agreement according to the schedule (the "Performance Schedule") set forth in the Schedule of Performance, **Exhibit "C"** attached hereto. If the performance of services is delayed or submittals are not delivered in the time period as outlined in the Performance Schedule, the Consultant shall notify the City Representative in writing of the reasons for the delay and include a plan which brings the Consultant's performance into compliance with the Performance Schedule.

SECTION NINE
AUDIT: ACCESS TO RECORDS

9.01 ***Records.*** The City shall have the right to audit the Consultant's books, records and other documents directly pertinent to the performance of this Agreement. The Consultant agrees to maintain books, records and other documents directly pertinent to performance of this Agreement in accordance with generally accepted accounting principles and practices. The Consultant shall also maintain the financial information and data used to prepare or support the invoices submitted to the City. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards, procedures and guidelines of the City, or its designated representative. The City, or its duly authorized

representatives, shall have access to such books, records, and documents for the purpose of inspection, audit and copying. The Consultant will provide proper facilities for such access and inspection.

9.02 ***Disclosure.*** The Consultant shall be afforded the opportunity for an audit entrance and exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report, and that the final audit report will include the written comments, if any, of the Consultant.

9.03 ***Period of Maintenance.*** The books, records and other documents under Sections 9.01 and 9.02 of this Agreement shall be maintained for three (3) years after the date of the final payment for the services under this Agreement. In addition, those records and other documents which relate to any arbitration, litigation or the settlement of any claim arising out of this Agreement, or to which an audit exception has been taken, shall be maintained and made available until three (3) years after the date that the arbitration, litigation or exception has been resolved.

9.04 ***Subcontract Provisions.*** The Consultant agrees to include Sections 9.01 through 9.03 of this Agreement in all its subcontracts directly related to performance of services specified in this Agreement which are in excess of $10,000.

SECTION TEN
MISCELLANEOUS PROVISIONS

10.01 ***Suspension.*** The City may suspend, without cause, the performance by the Consultant under this Agreement for such period of time as the City, in its sole discretion, may prescribe by providing written notice to the Consultant. The suspension shall be effective as of the date set forth in the written notice. With such suspension, the City agrees to pay to the Consultant the amount of compensation, based on percentage of completion of the Project, earned as of the effective date of suspension less all previous payments. The Consultant shall not provide any further services under this Agreement after the effective date of suspension until otherwise notified in writing by the City. In no event shall the City be liable to the Consultant for services in excess of the percentage of the Project completed at the time of suspension.

If, after notice to resume performance has been given by the City, the suspension was for a period in excess of ninety (90) days, which has resulted in an increase in the performance of the Agreement to the Consultant and:

(i) the Consultant was not a contributing cause for the suspension,
(ii) the Consultant has not received an equitable adjustment under another provision of this Agreement, and
(iii) the Consultant could not mitigate the increase in the performance cost,

then the Consultant's fee shall be reviewed by the City and, if justified, equitably adjusted to provide for any additional expenses resulting from the suspension.

10.02. ***Termination for Convenience.*** The City reserves the right to terminate this Agreement without cause or default on the part of the Consultant with ten (10) days' prior written notification to the Consultant served pursuant to Section 10.18 of this Agreement. In the event of termination, without cause or default, the City agrees to pay to the Consultant the reasonable value for the services performed as of the date that notification of termination is received by the Consultant. In no event shall the City be liable to the Consultant for services in excess of the percentage completed at the time of termination.

10.03 ***Termination for Cause or Other Resolution.***

A. ***Default.*** The occurrence of any of the following events shall constitute a default by the Consultant hereunder (herein "Event of Default"). If, during the term of this Agreement, the Consultant:

(i) defaults in the due observance and performance of any term, condition or covenant contained in this Agreement,

(ii) (a) voluntarily terminates operations or consent to the appointment of a receiver, trustee or liquidator of the Consultant for all or a substantial portion of its assets, (b) is adjudicated bankrupt or insolvent or files a voluntary petition in bankruptcy, or admits in writing to the inability to pay its debts as they become due, (c) make a general assignment for the benefit of creditors, (d) file a petition or answer seeking reorganization or an arrangement with creditors or take advantage of any insolvency law, or (e) if action shall be taken by the Consultant for the purpose of effecting any of the foregoing,

(iii) allows any warrant, execution or other writ to be issued or levied upon any property or assets of the Consultant which continues unvacated and in effect for a period of thirty (30) days, or

(iv) fails, in the judgment of the City, to provide the services hereunder properly and with proper dispatch in accordance with the time schedule set forth in this Agreement, and the default continues five (5) days after written notice is given to the Consultant pursuant to Section 10.18.

B. ***City's Rights.*** Upon the occurrence of an Event of Default, and without prejudice to any other right or remedy it may have at law or equity, the City may:

(i) terminate this Agreement, suspend payment of all pending invoices otherwise due to the Consultant hereunder, and finish this Agreement by such means as deemed appropriate by the City, reserving the right to deduct from any balance due Consultant the cost of completing this Agreement. In the event the cost of finishing the Consultant's performance of this Agreement exceeds the balance due the Consultant, the excess shall be paid by the Consultant to the City within five (5) days of invoicing by the City,

(ii) terminate this Agreement, and the obligations imposed hereunder, including the obligation of any further payment for the services of the Consultant except for the reasonable value for the services performed to the date of termination, or

(iii) Continue with performance by the Consultant and serve within a reasonable time after completion of the Agreement a request to arbitrate the Event of Default as a claim or dispute pursuant to the arbitration procedure set forth in Section 10.20.

In the event that the City elects to implement (i) above, the costs and expenses of completing this Agreement shall be computed and audited by the City's designated representative. The audit shall be conducted in accordance with generally accepted accounting principles and the cost thereof shall be paid by the Consultant.

10.04 ***Ownership of Documents.***

A. ***Architectural Works.*** To the extent that the Consultant's services involves the design of an architectural work as defined herein, the Consultant shall retain all common law and statutory rights of ownership, including copyrights, to the drawings and specifications prepared by the Consultant for this Project. The Consultant is deemed to be the author of the drawings and specifications as instruments of service to the City. Notwithstanding the foregoing, the Consultant hereby grants to the City the right to use (including the right of reproduction and use in the creation of new documents) the drawings and specifications for the purpose of completing the Project or for any subsequent maintenance, repair, renovation, remodeling or addition thereto. The rights granted herein to the City shall extend and include any new consultant which the City may retain for the aforementioned purposes. The Consultant hereby releases the City, and any new consultant retained by the City for the aforementioned purposes, from any and all claims in connection with the use or reproduction of the drawings and specifications. The Consultant agrees to execute such documents reasonably deemed necessary by the City to implement the rights granted to the City pursuant to this subsection including written permission to make changes or modifications to the plans. The Owner releases the Consultant and its Subconsultants from liability associated with the reuse of the documents.

B. ***Other Works.*** To the extent that the Consultant's services does not involve the design of an architectural work, the City shall have all common law and statutory rights of ownership, including copyrights, to the plans, drawings, specifications and other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies, excepting any proprietary forms, templates, and checklists specifically listed for City ownership exclusion elsewhere in this Agreement) (collectively herein the "Documents") prepared or assembled by the Consultant, or any of its subconsultants, for this Project. The Consultant hereby releases the City, and any new consultant retained by the City from any and all claims in connection with the use or reproduction of the Documents. The Consultant agrees to execute such documents reasonably deemed necessary by the City to implement the rights granted to the City pursuant to this subsection including written permission to make changes or modifications to the plans. The Consultant shall be entitled to retain a reproducible copy of the documents furnished to the City. The Owner releases the Consultant and its Subconsultants from liability associated with the reuse of the documents.

C. ***Definition of Architectural Work.*** For purposes of this Agreement, "architectural work" shall have the same definition as set forth in Architectural Works Copyright Protection Act of 1990, P. L. 101-650, Title VII, Section 70 et. seq.

D. ***Delivery of Documents.*** In the event of the completion, suspension or termination of this Agreement, the City shall have the right to require delivery of any and all of the plans, drawings, specifications, and all other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies), including the magnetic or electronic media of the aforementioned documents, not in the possession of the City.

E. ***Confidentiality.*** The plans, drawings, specifications and other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies) (including the magnetic or electronic media of the aforementioned documents) which are prepared or assembled by the Consultant, or its subconsultants, under this Agreement shall not be made available to any individual or organization

without the prior written consent of the City. Except for marketing pamphlets and submittals to clients, the Consultant shall not publish, submit for publication, or publicly display the Project without the written consent of the City. The obligations of confidentiality shall survive the termination of this Agreement.

F. ***Contractual Rights.*** Notwithstanding the provisions of 10.04 A above, the City is hereby licensed to use all design concepts developed by the Consultant and subconsultants under this Agreement, including the right to construct derivative works of the Project, and to use the design concepts for other projects of the City. The design concepts include, but are not limited to, the form, aesthetic appeal, site layout, the arrangement and composition of spaces and elements, the use of colors and materials, system designs, construction methods and interior design.

10.05 ***Insurance.*** The Consultant shall procure and maintain, at its own expense, during the entire term of the Agreement, the following insurances:

A. ***Worker's Compensation Insurance.*** This insurance shall protect the Consultant and the City from employee claims based on job-related sickness, disease, or accident.

B. ***Commercial General Liability Insurance.*** This insurance shall protect the Consultant, its agents and vehicles used to provide the services required under this Agreement from claims of personal injury (including death) and property damage. Such coverage shall be in a minimum amount of $1,000,000 combined single limit for the period of time covered by this Agreement. The Consultant's general liability insurance policies shall be endorsed to include the City as an additional insured.

C. ***Commercial Automobile Liability Insurance.*** This insurance shall protect the Consultant from claims of limits no less than $1,000,000 combined single limit per occurrence for bodily injury and property damage to include, but not be limited to, coverage against all insurance claims for injuries to persons or damages to property which may arise from services rendered by Company and any auto used to the performance of services under this Contract. The policy must insure all vehicles owned by the Company and include coverage for hired and non-owned vehicles. The Consultant's automobile liability insurance policies shall be endorsed to include the City as an additional insured.

D. ***Professional Liability Insurance (Errors and Omissions Coverage).*** This insurance shall protect the Consultant from claims arising out of performance of professional services caused by a negligent act, error, or omission for which the insured is legally liable. Such coverage shall be in a minimum amount of $1,000,000 for the period of time covered by this Agreement.

E. ***Cancellation or Modification of Coverage.*** The Consultant's Commercial General Liability and Professional Liability Insurance Policies shall automatically include or be endorsed to cover the Consultant's contractual liability to the City under this Agreement, and with respect to its Commercial General Liability Policy, to waive subrogation against the City, its officers, agents, servants and employees. The policies shall provide that the City will be given thirty (30) days' notice in writing of any cancellation of, or material change in, the policies.

F. ***Certificates and Endorsements.*** The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. All deductibles and self-insured retentions shall be fully disclosed in the Certificate of Insurance. No deductible or self-insured retention may exceed $25,000 without the written approval of the City. The Consultant shall deliver to the City's authorized designated representative named in **Exhibit "B"** (Required Submittals) certificates indicating that such insurance is in effect before any services are provided under this Agreement and renewal certificates not less than 30 days prior to the expiration date of any policy.

G. ***Period of Coverage.*** If the insurance coverage is underwritten on a "claims made" basis, the retroactive date shall be prior to or coincident with the date of this Agreement and the Certificate of Insurance shall state that coverage is "claims made" and the retroactive date. Upon availability, the Consultant shall maintain coverage for the duration of this Agreement and for two years following completion of this Agreement.

10.06 ***Indemnity.*** Notwithstanding any of the insurance requirements set forth in Section 10.05, and not in lieu thereof, the Consultant shall defend, indemnify and hold the City, its Mayor, Councilmen, officers, employees and agents (herein the "Indemnities"), harmless from any and all claims (including, without limitation, patent infringement and copyrights claims), damages, losses, expenses, suits, actions, decrees, judgments, arbitration awards or any other form of liability (including, without limitation, reasonable attorney fees and court costs) (collectively herein the "Claims") to the extent that such Claims are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Consultant, its employees, subcontractors, agents or anyone employed the Consultant's subcontractors or agents, in the performance of this Agreement.

As part of its obligation hereunder, the Consultant shall, at is own expense, defend the Indemnitees against the Claims brought against them, or any of them, which is caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Consultant, its employees, subcontractors or agents, for and against which the Consultant is obligated to indemnify the Indemnitees pursuant to this Section, unless the Indemnitees, or any of them elect to conduct their own defense which, in such case, shall not relieve the Consultant of its obligation of indemnification set forth herein. If the Consultant or the Consultant's insurer fails to defend the Indemnities as required herein, the Indemnitees shall

have the right, but not the obligation, to defend the same and, if the Consultant is adjudicated by the trier of fact to be liable, the Consultant agrees to pay the direct and incidental costs of such defense (including attorney fees and court costs) which is proportionate to the liability of the Consultant.

As used in this Section 10.06, "agents" means those persons who are directly involved in and acting on behalf of the City or the Consultant, as applicable, in furtherance of the contract or the public work to which the contract pertains.

10.07 ***Assignment.*** The City and the Consultant each bind itself and its partners, successors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement, except the Consultant shall not assign, sublet or transfer any obligation or benefit under this Agreement without the written consent of the City. Nothing contained herein shall be construed as creating any personal liability on the part of any officer or agent of the City.

10.08 ***Waiver.*** No consent or waiver, express or implied, by either party to this Agreement, or of any breach or default by the other in the performance of any obligations hereunder, shall be deemed or construed to be a consent or waiver of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act, or failure to act of the other party, or to declare that other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection, payment, or tentative approval or acceptance by the City or the failure of the City to perform any inspection hereunder, shall not constitute a final acceptance of the work or any part thereof and shall not release the Consultant of any of its obligations hereunder.

10.09 ***Consultant Warranties.*** The Consultant hereby represents and warrants that:

(i) it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to complete this Agreement; that it is experienced, competent, qualified and able to furnish the plant, tools, materials, supplies, equipment and labor which is used to perform the services contemplated by this Agreement, and that it is authorized to do business in the City of Las Vegas and the State of Nevada,

(ii) it holds a license, permit or other special license to perform the services included in this Agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license,

(iii) its computer hardware, software, and firmware will continue functioning without interruption, and will continue to accurately process date, time, and data necessary to the performance of this Agreement, and

(iv) it has, pursuant to the requirements of Resolution 79-99 adopted by the City Council on August 4, 1999, (effective October 1, 1999), as amended by resolution 105-99 (adopted by the City Council on November 17, 1999), disclosed on the form attached hereto as **Exhibit "G"** (Disclosure of Ownership/Principals) all of the principals, including partners, of the Consultant, as well as all persons and entities holding more than a one percent (1%) interest in the Consultant or any principals of the Consultant. If the Consultant, or its principals or partners, are required to provide disclosure under federal law (such as Securities and Exchange Commission or the Employee Retirement Income Act) and current copies of such federal disclosures are attached to **Exhibit "G,"** the requirements of this Section shall be deemed satisfied. During the term of this Agreement, the Consultant shall notify the City in writing of any material change in the above disclosure on **Exhibit "G"** within fifteen (15) days of such change.

10.10 ***Consultant's Employees.*** The Consultant shall be responsible for maintaining satisfactory standards of competency, conduct and integrity, of personnel assigned to the Project, and shall be responsible for taking such disciplinary action with respect to such personnel as may be necessary. In the event the Consultant fails to remove any employee from the work of this Agreement whom the City deems incompetent, careless or insubordinate, or whose continued employment on the work is deemed by the City to be contrary to the public interest, the City reserves the right to require such removal as a condition for the continuation of this Agreement.

10.11 ***Independent Contractor.*** It is hereby expressly agreed and understood that in the performance of the services required herein, the Consultant and any other person employed by him hereunder shall be deemed to be an independent contractor and not an agent or employee of the City.

10.12 ***Applicable Law.*** This Agreement shall be construed and interpreted in accordance with the laws of the State of Nevada.

10.13 ***Compliance with Laws.*** The Consultant shall in the performance of its obligations hereunder comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Agreement including, without limitation, the Federal Occupational Health and Safety Act and all state and federal laws prohibiting and/or related to discrimination by reason of race, sex, age, religion or national origin.

10.14 ***Severability.*** In the event that any provisions of this Agreement shall be held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain valid and binding on the parties hereto.

10.15 ***Confidentiality.*** The Consultant shall treat the information relating to the Project, which has been produced by the Consultant or provided by the City, as confidential and proprietary information of the City and shall not permit its release to other parties or make any public announcement or publicity release without the City's written authorization. The Consultant shall also require each subconsultant to comply with this requirement. The submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication relieving the Consultant of its confidentiality obligation imposed herein.

10.16 ***Site Inspection.*** The Consultant represents that it has visited the location of the Project and has satisfied itself as to the general condition thereof and that the Consultant's compensation as provided for in the Agreement is just and reasonable compensation for performance hereunder including reasonably foreseen and foreseeable risks, hazards and difficulties in connection therewith based on such above-ground observations.

10.17 ***Modification.*** All modification or amendments to this Agreement are null and void unless reduced in writing and signed by the parties hereto.

10.18 ***Notice.*** Any written notice required to be given under Sections 1.01 through 10.24 of this Agreement shall be deemed to have been given when the written notice is (i) received by the party to whom it is directed by personal service (ii) telephonically faxed to the telephone number set forth in the introductory paragraph to this Agreement, provided confirmation of the transmission is received by the sender, or (iii) deposited with the United States Postal Service, postage prepaid, addressed to the City Representative or the Consultant Representative, whomever is the proper recipient, and mailed to the address set forth in the introductory paragraph to this Agreement.

10.19 ***Prohibition Against Contingent Fees.*** The Consultant warrants that no person or entity has been employed or retained to solicit or secure this Agreement with the Agreement or understanding that a commission, percentage, brokerage or contingent fee would be paid to that person. For breach or violation of this provision, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the compensation to be paid to the Consultant, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

10.20 ***Claim or Dispute Resolution.***

A. ***Notice of Claim or Dispute.*** For each claim or dispute which the Consultant has against or with the City (except for any claim for an equitable adjustment under Section 3.02 which is subject to the 30-day limitation set forth therein), notice thereof must be submitted in writing to the City Representative within a reasonable time after the claim or dispute arises, but no later than thirty (30) days after final payment is made to the Consultant. The purpose of written notification is to place the City on notice so that proper measures can be taken to properly defend against the claim or dispute, and the failure to give such notice shall preclude the Consultant from subsequently arbitrating that particular claim or dispute pursuant to Section 10.20C of this Agreement, and the Consultant shall have no further recourse against the City. Pending a final decision on the claim or dispute under Sections 10.20B or 10.20C, the Consultant shall proceed diligently with the performance of this Agreement.

B. ***Resolution by Management.*** The City Representative and the Consultant Representative shall meet within a reasonable time after receipt of the written notice received pursuant to Section 10.20A in an attempt to resolve the claim or dispute to the mutual satisfaction of the parties. If the matter is not disposed of by mutual agreement between the City Representative and the Consultant Representative, the claim or dispute shall be decided by the Director of Public Works, whose decision shall be reduced to writing and mailed or otherwise furnished to the Consultant. The decision of the Director of Public Works shall be final and conclusive unless, within thirty (30) days after the date on which the Consultant receives its copy of such decision, the Consultant mails or otherwise furnishes to the Director of Public Works a written request to arbitrate the claim or dispute, in which event the parties shall proceed with the arbitration pursuant to provisions of Section 10.20B. The failure to make such request shall preclude the Consultant from proceeding any further on the claim or dispute, and the Consultant shall have no further recourse against the City.

C. ***Resolution by Arbitration.*** Upon receipt of the request to arbitrate authorized pursuant Section 10.03B or Section 10.20B, the City and the Consultant shall come to an agreement as to the appointment of an arbitrator for purposes of hearing the appeal. If the parties cannot reach an agreement, then each party shall select an arbitrator for purposes of the appeal, and the two shall select a third arbitrator within 20 days of

their appointment. If the selected arbitrators are unable to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association or the Nevada Arbitration Association, whichever is designated by the City. Each party shall be afforded an opportunity to be heard and to offer evidence in support of or against the appeal. The decision of the arbitrator, or arbitrators, as the case may be for the determination of the appeal, shall be final, conclusive and enforceable under the laws of the State of Nevada.

D. ***Right of Consolidation.*** Any arbitration arising out of or relating to this Agreement may include, by consolidation, joinder or in any other manner, any additional party or parties who are not a party to this Agreement if so requested by the City or the Consultant. Any consent to arbitration involving an additional party or parties shall not constitute consent to arbitrate any claim or dispute not described as a part of the original arbitration unless otherwise agreed to by the parties.

E. ***Right of Joinder.*** In the event the City is named as a party to any arbitration, or the City commences an arbitration against a party other than the Consultant, which arbitration is related to, or connected with, the construction of the Project or the performance of the Consultant's services hereunder (such as, without limitation, any arbitration between the City and the Contractor awarded the contract to construct the Project), the Consultant agrees and irrevocably consents to be joined as a party in the arbitration proceeding and to be bound by any decision resulting therefrom. The decision of the arbitrator or arbitrators, as the case may be, in the arbitration to which the Consultant has been joined as a party, shall be binding and enforceable against the parties thereto under the laws of the State of Nevada.

If the Consultant is named as an additional party by the City, the Consultant shall not be entitled to any additional compensation from the City as a result of preparing for, and participating in, the arbitration.

F. ***Discovery.*** In the event of arbitration, the parties agree that all means of discovery including, but not limited to, depositions and interrogatories, will be afforded to the parties involved in the arbitration, and the appointed arbitrator shall have all authority to impose sanctions against either party for failing to comply with the rules of discovery provided under the Nevada Rules of Civil Procedure.

G. ***Award Final.*** The award rendered by the arbitrator shall be final, and judgment may be entered upon its accordance with applicable law in any court having jurisdiction thereof.

H. ***Mediation.*** Subsequent to the commencement of any arbitration pursuant to Section 10.20C, and prior to any decision arising therefrom, the parties may endeavor with written mutual consent to settle disputes by mediation in accordance with the mediation rules of the mediation service agreed by the parties. The cost of the mediation shall be shared equally by the parties.

10.21 ***Attorney Fees.*** The prevailing party in any litigation or arbitration brought to enforce the provisions of this Agreement shall be entitled to reasonable attorney fees and court costs.

10.22 ***Calendar Day.*** All references in this Agreement to days are to calendar days unless otherwise indicated.

10.23 ***Exhibits.*** All exhibits referenced in this Agreement are hereby incorporated by this reference as a part of this Agreement. Any conflict between the provisions of this Agreement and the Exhibits incorporated herein shall be governed by the provisions of this Agreement.

10.24 ***Counterparts; Electronic Delivery.*** This Agreement may be executed in counterparts, all such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

10.25 ***Agreement Version.*** This document incorporates the standard provisions for the City's Professional Services Agreement updated as of April 8, 2008.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

ATTEST

Beverly K. Bridges, MMC, City Clerk Date

CITY OF LAS VEGAS

By_____
Kathleen C. Rainey, Manager, Purchasing & Contracts

APPROVED AS TO FORM

John S. Ridilla 8/2/10
Deputy City Attorney Date

CONSULTANT

By_____
Steve Paquette, Vice-President, Jacobs Engineering Group Inc.

LIST OF EXHIBITS

EXHIBIT " A " SCOPE OF SERVICES

EXHIBIT " B " REQUIRED SUBMITTALS

EXHIBIT " C " PERFORMANCE SCHEDULE

EXHIBIT " D " FEE BREAKDOWN

EXHIBIT " E " ADDITIONAL COMPENSATION

EXHIBIT " F " KEY PERSONNEL LIST

EXHIBIT " G " DISCLOSURE OF OWNERSHIP/PRINCIPALS

EXHIBIT "A"

SCOPE OF SERVICES

ARTICLE 100: GENERAL INFORMATION

100.1 Project Overview

100.1.1 Project Overview Description

The City of Las Vegas has contracted with the Consultant to provide the construction documents for two arterial roadways. The Consultant team will provide plans, specifications, and a construction cost estimate for a Construction Management at Risk (CMAR) project including two separate roadway segments for Valley View Boulevard and Jones Boulevard.

The Valley View Boulevard improvement will extend from ±700 feet south of Desert Inn Road to Bonanza Road. The intent is to provide an additional travel lane northbound on Valley View Boulevard throughout the project limits. The construction documents will include widening for intersection improvements, median reconstruction, driveway modifications, edge milling and overlay, storm drain lateral extensions, a drainage memorandum, traffic signal relocations and upgrades, bus pullouts, utility relocations, streetlight upgrades, ITS conduit and fiber optic cable, sewer rehabilitation, trails, landscaping, retaining and block wall design, and new signing and striping. Other work includes identification of right-of-way acquisition, easements, and Approval to Enter Property requirements.

The Jones Boulevard improvements will extend from 600 feet south of Sahara Avenue to US 95 SB Ramps-Upland Avenue and consist of; widening for right-turn lanes and bus turnouts at Sahara Avenue, Oakey Boulevard, Charleston Boulevard, Alta Drive and Elton Avenue; widening between Charleston Boulevard and Evergreen Avenue to provide three southbound through lanes; lengthening northbound left-turn lane at Oakey Drive; construct missing segments of sidewalk between Oakey Boulevard to Transverse Drive; pavement rehabilitation between Charleston Boulevard and US 95 SB Ramps-Upland Avenue; restriping to provide bike lanes between Alta Drive and US 95 SB Ramps-Upland Avenue. Additional improvements include storm drain lateral extension and drop inlet reconstruction, sidewalk ramp upgrades, streetlight upgrades, traffic signal modifications, ITS conduit and fiber optic cable, utility adjustments/relocations, and retaining/block walls. Other work includes identification of right-of-way, easements, and Authorization to Enter Property requirements and sanitary sewer condition assessment.

For both roadway segments traffic analyses will not be performed to determine storage requirements or signal phasing. The City will provide any signal phasing modifications required. No staging or traffic handling plans will be prepared. Also, no lighting analyses will be performed. Street lights relocated as part of roadway widening will be assumed to provide adequate illumination from their relocated positions.

100.2 Construction Cost Budget

100.2.1 Construction Cost Budget: **TBD**

100.3 Project Contact Information

100.3.1 The City Engineer or their authorized representative is hereby designated as the City's Representative with respect to this Agreement. The City's Representative shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to the services of the Consultant. All inquiries concerning the project should be directed to the City Engineer or his authorized representative and the Consultant should not contact internal units of the City unless directed to do so. This policy is effective throughout the life of the project.

100.3.2 The Consultant's Representative is hereby designated as the Consultant's Project Manager listed in Exhibit "F", who shall be responsible for the services required under this Agreement. All of the services specified by this Agreement shall be performed by the Consultant's Representative, or by the associates and employees identified in the Consultant's proposal provided that such associates and employees perform under the personal supervision of the Consultant's Representative. All employees identified in the Consultant's cost proposal shall be subject to approval by the City's Representative. Should the Consultant's Representative, or any associate or employee, be unable to complete his or her responsibility for any reason, the Consultant will replace the employee with a qualified person approved by the City. If the Consultant fails to make a required replacement within thirty (30) days, the City may terminate this Agreement for default.

100.4 Plan Control and Standards

100.4.1 All plans, designs, specifications and estimates shall conform to the City standard practices, which are based on the latest edition of the following documents:

100.4.1.1 Policy on Geometric Design of Highways and Streets (AASHTO)

100.4.1.2 Uniform Standard Specifications for Public Works' Construction, Off-Site Improvements, Clark County Area, Nevada

100.4.1.3 Uniform Standard Drawings for Public Works' Construction, Off-Site Improvements, Clark County Area, Nevada, Volume I and Volume II

100.4.1.4 Nevada Department of Transportation (NDOT) Standard Plans for Road and Bridge Construction and NDOT Standard Specifications for Road and Bridge Construction

100.4.1.5 Manual on Uniform Traffic Control Devices

100.4.1.6 Clark County Regional Flood Control District's Hydrologic Criteria and Drainage Design Manual

100.4.1.7 Las Vegas Valley Flood Control Master Plan Update (MPU), current edition

100.4.1.8 Central Neighborhood Flood Control Master Plan, Volume I & II, March 2005

100.4.1.9 Las Vegas Valley Water District (LVVWD) Rules and Regulations

100.4.1.10 Uniform Design and Construction Standards for Water Distribution Systems, Clark County, Nevada

100.4.1.11 Design and Construction Standards for Wastewater Collection Systems, Southern Nevada

100.4.1.12 Freeway and Arterial System of Transportation (FAST) standards

100.4.2 The design criteria for the following agencies will also be adhered to: City of Las Vegas Sanitary Sewer Planning, Traffic Engineering, and Flood Control; Clark County Regional Flood Control District ("CCRFCD"); Nevada Department of Transportation ("NDOT"); Las Vegas Valley Water District ("LVVWD"); and local utility providers.

100.5 Changes to Scope of Services

100.5.1 If increased scope or workload is encountered, the Consultant is to notify the City in writing and receive written confirmation to proceed prior to the performance of any work related to the increased scope or workload.

100.5.2 The City Engineer or their authorized representative may at any time, only be written order, make changes which may result in an increase or decrease in the services to be performed by the Consultant. If the changes requested by the City cause an increase or decrease in the cost or time required to perform any of the services required hereunder, an equitable adjustment shall be made in the compensation to be paid to the Consultant under Section Seven, or in the time of performance under Section Eight, or both, and this Agreement shall be modified in writing accordingly. Any claim for adjustment under this Section must be asserted in writing within thirty days from the date of receipt by the Consultant of written notification of the changes to the services to be provided by the Consultant unless the City grants in writing a further period of time. Failure to assert such claim within the time limit provided herein shall constitute a waiver of any right to seek any equitable adjustment in compensation with respect to that change.

100.6 Responsibilities of the Consultant

100.6.1 The Consultant shall provide a set of Plans and Special Provisions, for the project described in Section 100.1.1, that are whole and complete, technically accurate, biddable and constructable, meeting the City's reasonable needs and expectations. All design, re-design, coordination, permitting, quality control review, meeting attendance, bid phase assistance, travel, reproduction, computer use or similar items that could reasonably be anticipated which are not limited or excluded elsewhere in this contract or listed specially in additional services, shall be provided by the Consultant for the basic services fee agreed to herein whether they are specifically listed in this scope of services or not.

100.6.2 The Consultant agrees to include in all its subcontracts related to the Project, and require the same of all subconsultant contracts at all tiers, the provisions of this Agreement related to the City's and Consultant's rights (including copyright), ownership and uses of the concepts, designs, documents, intellectual property, and tangible property.

100.6.3 Where the Consultant specifies materials and equipment by brand names, provide three or more brand names with model numbers for each item specified. Where less than two suitable brand names/model numbers are commercially available state "or approved equal" and provide required documentation per NRS requirements to support single source selection.

100.6.4 Prior to each design submittal, check all documents for technical accuracy, compliance with applicable codes and ordinances, complete incorporation of all design review comments, and coordination within and between design disciplines. Each submittal shall be in

accordance with the appropriate submittal requirements listed herein. Incomplete submittals shall be rejected. All costs associated with the re-submittal shall be borne by the Consultant.

100.6.5 The Consultant shall without additional compensation correct or revise any error or deficiencies in the plans, drawings, specifications or other related documents prepared by the Consultant.

100.6.6 The Consultant shall be responsible for all coordination with its subconsultants. Each submittal to the City shall be organized by discipline and shall be thoroughly crosschecked to avoid conflicts between Consultant and subconsultant documents. Vague references to project requirements on other discipline's plans shall not be permitted. Where references to others' plans are necessary for direction, reference notes shall specifically state the drawing number or specification section, as appropriate. It shall be the Consultant's responsibility to advise each subconsultant of this requirement.

100.6.7 The professional services to be rendered by the Consultant under this Agreement shall be in conformance with applicable federal, state and local statutes, acts, rules, codes, ordinances, laws and regulations. These include but are not limited to the Americans with Disabilities Act (ADA) guidelines and requirements including conformance to any ADA provisions and guidelines that have been issued in "final form" regardless of their adoption by the Department of Justice, municipal ordinances, and any other applicable Federal, state and local acts, rules, laws or regulations.

100.6.8 All work, including but not limited to drawings, specifications, and calculations, shall be provided by the Consultant for each and every part of the Project. When complying with NRS 338.140 by listing multiple manufacturers in the specifications, the Consultant shall review options with the City and select the most available, standard, or economical manufacturer's model to fully engineer and include in the bid documents. Should the contractor propose one of the other manufacturers listed in the specifications after award, the cost of the other listed manufacturer's affect on the documents and the construction shall be borne by the contractor, except that the Consultant shall have the duty to cooperate with the contractor in reviewing the proposal for design compliance (including the contractor provided structural calculations) and providing revisions to the Consultant's documents as required to accommodate the proposed change. Such revisions to the Consultant's documents may be an Additional Service, which shall be approved in writing by the City prior to the Consultant making any revisions and charged to the contractor by change order.

100.6.9 The Consultant acknowledges the City's requirement to incorporate the City's "Instructions to Bidders", "General Conditions" and "Division One", incorporated herein by reference, into the Contract Documents prepared for bidding for the Project covered by this Agreement. The Consultant further agrees to perform in accordance with the obligations stated in these referenced documents and agrees to include this provision in all sub-consultant contracts. The Consultant acknowledges familiarity with the City's standard format, terms and conditions of these documents and that such document examples were made available to the Consultant upon request, prior to signing this Agreement.

100.6.10 The City's approval of any documents or services furnished by the Consultant shall not in any way relieve the Consultant of responsibility for the professional and technical accuracy of its documents or services. The City's review, approval, acceptance or payment for any of the Consultant's services shall not be construed to operate as a waiver of any rights enjoyed by the City under this Agreement or of any cause of action arising out of the performance of this Agreement. The Consultant shall remain liable in accordance with the terms of this Agreement and applicable law for the damages to the City caused by the Consultant's negligent act or omission committed in the performance of this Agreement.

100.6.11 Plan and Special Provision Production and Submission

100.6.11.1 All Drawings shall be prepared using AutoDesk's AutoCAD Release 2004 or newer release in accordance with industry accepted standards. Specifications shall be prepared in City standard format using the software program Microsoft Word 2000 or newer release. The use of any other software for plan or specifications production requires prior written approval from the City's Representative.

100.6.11.2 All drawing submittals, except the final submittal, submitted by the Consultant will be printed on white bond paper. The final construction drawings will be printed on 4 mil, double matte mylar. All full size reproducible copies will be on 24" x 36" sheets (with 22" x 34" border) and all half size reproducible copies shall be on 11"x17" sheets (representing true half size of the full size plans). Plans that do not meet these requirements will not be accepted.

100.6.11.3 Special Provision format will follow the City standard provided to the Consultant. Special Provisions shall be stamped and signed by the appropriate design professional. Special Provisions that do not meet these requirements will not be accepted.

100.6.11.4 Within five business days of the hard copy design submittal, for each design submittal, the Consultant will submit electronic files of the AutoCAD files, including drawings and data files, and an Adobe Portable Document Format (PDF) file, 11"x17" print size, for each plan

sheet submitted. In addition, the Consultant will submit electronic files of the Special Provisions in Microsoft Word format and one comprehensive Adobe PDF file, with appropriate formatting, of the entire set of Special Provisions. All electronic files shall be submitted on either a CD-ROM or a DVD disk that can be read by any industry standard hardware. If electronic files are not submitted within five business days of the hard copy design submittal, the City will consider the design submittal incomplete and may reject the submittal in its entirety. If rejected all costs for the resubmittal shall be borne by the Consultant.

100.6.11.5 Prior to any electronic submittal, the Consultant shall, using commercially available software with current virus definitions, certify that electronic submittals are free of electronic "viruses", "worms", "Trojan horses", and other programs or data stored on the host computer or the electronic submittal. Should the City choose to check incoming electronic submittals for such afflictions, utilizing commercially available software and at the first indication of such an affliction, the entire electronic submittal will be considered unacceptable and will be returned to the Consultant. The Consultant shall remove the unwanted programs or the unwanted programs or data and further verify the integrity of the electronic submittal. The Consultant shall bear the expense of correction, checking and re-submittal and shall not be released from submittal requirements.

100.6.12 Cost Estimates

100.6.12.1 The Consultant shall prepare and provide a detailed Construction Cost Estimate with each submittal. The cost estimate shall be prepared in City standard format using the software program Microsoft Excel 2000 or newer release. The Consultant will provide unit costs, quantities and other estimating parameters for each component or work, reflecting current market conditions and costs. The Consultant will reconcile each successive estimate to the one provided at the preceding submittal. The Consultant shall incorporate appropriate contingencies based on the completed level of design. If the cost estimate is not included in the design submittal, the City will consider the design submittal incomplete and may reject the submittal in its entirety. If rejected all costs for the resubmittal shall be borne by the Consultant.

100.6.13 Construction Change Orders

The City has a formal construction contract change order approval process. Proposed change orders are negotiated and reviewed by City Engineering and Construction Management staff (and the construction management consultant when one has been retained). Change orders are then reviewed for approval by the City Change Order Committee. Part of that approval process will be checking a box on the Change Oder Tracking Form indicating the reason for the change order based on information available to the committee at that time. If the change order appears to relate to a consultant design deficiency then either the Reason Code box "E&O Value" or "E&O No Value" will be checked. "E&O" value will be checked if it appears the apparent design deficiency results in added cost to the project but all, or a substantial part, of that cost would have been incurred in the original bid if the deficiency did not exist. "E&O No Value" will be checked if it appears that little or no cost to the project would have occurred if the deficiency did not exist. The City may use this data, as well as any other relevant data, in exercising its rights under this agreement to seek compensation for Consultant errors and omissions.

The City will make reasonable efforts to copy all approved change orders (with the tracking form included) and construction change directives to the consultant In order to provide the consultant an opportunity to prevent similar instances from occurring on future projects, to allow the consultant to review the potential for similar instances to occur during the progress of this project (and to work with City and Contractor to minimize the potential for future financial impacts when possible regardless of the reason code box checked) and to give advance notice to Consultant to prepare for potential financial impacts to the Consultant and/or for the Consultant to provide documentation to the City as whether the appropriate reason code box has been checked.

There may, at times, be a benefit for the consultant to review change orders or construction change directives prior to final negotiation and approval. This could provide the consultant with an opportunity, prior to finalization, to determine that a proposed change order or construction change directive may be excessively priced, not a legitimate change in the scope of the Contractor's work, outside of the Consultant's scope of work, detrimental to the Consultant's design, uncoordinated with the Construction Documents, potentially harmful to public safety, or a violation of codes, laws and regulations. Therefore the City will make reasonable efforts to notify the consultant of possible change orders or construction change directives prior to final negotiation and approval. And to, when appropriate, request the consultant to sign acknowledgement and concurrence on the final change order or construction change directive or to make formal revisions to the plans and/or specifications. However, given time constraints and the need to limit Contractor delay claims (that can often quickly exceed the cost of the change order), advance notice to the consultant is not always possible or practical. And, in fact, potential change order work, including force account work, is sometimes allowed to proceed prior to any change order being drafted or reason code applied by City.

100.6.14 The Consultant shall be responsible for performing all work necessary to complete the following schedule of work, more fully described in the following sections:

Upon written agreement with both parties an intermediate design submittal may be changed in definition of percentage complete without change to the basic service fee amounts (for example changing the 70% submittal to a 50% submittal). The written agreement would detail any resulting change in billing schedule. Should an additional submittal be requested by the City (for example adding a 50% submittal in addition to a 30% and a 90% submittal) this work would be paid for in accordance with Section 3.01, 3.02 and 7.02 of this Agreement.

100.6.14.1 Article 101 – Preliminary and General Items

100.6.14.2 Article 102 – 70% Design Phase

100.6.14.3 Article 103 – 90% Design Phase

100.6.14.4 Article 104 – 100% Design Phase

100.7 Responsibilities of the City

100.7.1 The City shall be responsible for the following:

100.7.1.1 Shall furnish a copy to, or make available for examination or use by, without a fee, the Consultant, any documents and data which the City has available including, reports, maps, plans, specifications, surveys, records, ordinances, codes, regulations, other documents related to the services required under this Agreement. The City shall assist the Consultant in obtaining data and documents from public agencies and from private citizens and business firms whenever the City determines that such material is necessary for the completion of the services required by this Agreement.

100.7.1.2 Access arrangements for the Consultant to enter upon City owned property as required to perform their services.

100.7.1.3 Acquire any property, authorizations to enter property, easements, or other project rights required to construct the Project

100.7.1.4 Provide and conduct bidding activities, including printing and distribution of bid and construction documents, except as specifically required to be provided by the Consultant in this Scope of Work

100.7.2 The City's Review Process

100.7.2.1 Upon receipt of any documents furnished by the Consultant, the City Representative shall conduct a preliminary review of such documents and determine whether the documents comply with the scope of the Project. After the preliminary review, if the City Representative determines that the documents are insufficient, inadequate, or incomplete, the City shall notify the Consultant and request documents which are professionally complete and appropriate for each service phase submitted. The decision by the City Representative in this matter shall be final.

100.7.2.2 If the City Representative determines, after requesting the Consultant to provide corrected and professionally complete Phase submittals, that the documents remain insufficient, inadequate, or incomplete, the City may: (i) declare the Consultant in default, or (ii) demand a letter of explanation from the Consultant as to the reason the furnished documents are insufficient, inadequate or incomplete. If the City elects the second option, the Consultant, at Consultant's own expense, shall furnish additional sets of all documents that are sufficient, adequate and complete in the discretion of the City Representative for review by the City. The Consultant, at Consultant's own expense, shall attend any meeting, whether formal or informal, including the City Council meeting when requested by City to explain the reason the Consultant presented inadequate, insufficient, or incomplete documents to the City, and the delay, if any, that such submittal and re-submittal may cause in completion of the Project.

100.7.2.3 The City's review period in the Project Schedule shall not begin until the City Representative determines that the documents presented by Consultant fully comply with the requirements. After the City Representative determines that the documents comply with such requirements, the City shall begin a review of the documents.

100.7.2.4 After the City reviews the documents, one or several set(s) of the documents shall be returned to the Consultant with comments and corrections noted thereon. The Consultant shall make the changes necessitated by the corrections or other comments into the documents, and return the correction set(s) with the corrected documents, together with written responses to the City's correction(s), comments(s), and change(s), which state the action taken and reason for such action for each item presented by the City.

ARTICLE 101: PRELIMINARY AND GENERAL ITEMS

101.1 Project Management

101.1.1 Project management will include work necessary for communication and completion of the project tasks on time and within budget. The Consultant's Project Manager or their primary duties will not be reassigned without the written consent of the City's Project Manager. The Consultant's staff will have the training and expertise necessary for the work tasks to which they are assigned.

101.1.2 The Consultant will provide invoices in the standard format provided by the City's Representative. Invoices will be accompanied by a cover letter explaining the general status of the project, including at a minimum the work completed to date, the anticipated remaining efforts and required schedule changes; progress report form; supporting data for direct expenses (when specified expenses are allowed per Exhibit D, herein); and an updated project status report reflecting Scope of Work activities identified by the City Representative.

101.1.3 On a weekly basis, or a time frame approved by the City's Representative, the Consultant's Project Manager will update the City Representative with regards to the status of the project schedule, budget and general status/progress. This task is in addition to Design Progress Meetings and may be performed in a phone, email or mailed correspondence as approved by the City Representative.

101.2 Kick-Off Meeting and Design Progress Meetings

101.2.1 Consultant shall prepare an agenda and schedule and attend a kick-off meeting with the City and other agencies as required within ten calendar days of the issuance of the Notice to Proceed. This meeting will be held to review the scope of work, discuss data and information provided by the City, review the project schedule (prepared by the Consultant using Microsoft Project or software approved by the City's Representative), introduce key personnel, establish lines of communications and clarify the City's and other government agency requirements for the Project, and identify any missing data and information necessary to proceed with the Project. Within five business days following the kick-off meeting, the Consultant will prepare and distribute draft meeting minutes to the City's Project Manager (an e-mail to the City's Representative of the draft minutes is acceptable). The Consultant shall prepare and distribute final meeting minutes to all attendees after the draft meeting minutes are approved by the City's Representative.

101.2.2 Deliverables: Project Kick-Off Meeting Agenda and copies for distribution at Kick-Off Meeting; Project Kick-Off Meeting Minutes.

101.2.3 Consultant shall attend approximately 20 progress/coordination meetings to be held with the City, other relevant agencies and utility companies. Design Progress meetings shall be conducted on a bi-weekly, or a time frame approved by the City's Representative, at the City's offices and will be attended by the Consultant's Project Manager, Project Engineer and other key personnel as determined to be necessary. Consultant shall prepare an agenda for each of the progress meetings. Within five business days following the progress/coordination meeting, Consultant shall prepare and distribute draft meeting minutes to the City's Project Manager (an email to the City's Representative of the draft minutes is acceptable). The Consultant shall prepare and distribute final meeting minutes to all meeting attendees after the draft meeting minutes are approved by the City's Representative.

101.2.4 Deliverables: Design Progress Meeting Agenda and copies for distribution at Design Progress Meetings; Design Progress Meeting Minutes.

101.3 Utility and Agency Coordination

101.3.1 Consultant shall coordinate with all utilities and agencies having facilities within the limits of or adjacent to the Project throughout the duration of the project, this includes attendance to all related meetings. The Consultant will contact the utility companies and other governmental agencies early in the project to obtain information relating to the location, size and type of facilities owned by that Utility. The Consultant shall perform utility potholes, identify potential utility conflicts and meet with the affected utilities to ensure timely resolutions for the utilities conflicts. Utility companies and agencies to be contacted by the Consultant shall include, but are not limited to, the following:

101.3.1.1 Clark County Regional Flood Control District ("CCRFCD")

101.3.1.2 Clark County Department of Public Works

101.3.1.3 City of Las Vegas departments, including but not limited to, Flood Control, Parks, Collection System Planning, Traffic Engineering, Field Operations, and Land Development

101.3.1.4 Las Vegas Valley Water District ("LVVWD") and Southern Nevada Water Authority ("SNWA")

101.3.1.5 Freeway and Arterial System of Transportation ("FAST")

101.3.1.6 Utility providers, including but not limited to, Nevada Power Company, Embarq, Cox Communications, Southwest Gas Corporation, AT&T Fiber Optic Cable

101.3.1.7 Nevada Department of Transportation ("NDOT") and

101.3.1.8 Other local and state agencies as required.

101.3.2 The Consultant shall prepare a utility conflict schedule and pothole plan to advise the City's Representative of any utility conflicts, coordinate utility requests for information, monitor status of proposed utility projects within the projects limits and meet as required with utility companies to resolve conflicts. For Valley View, the major utility conflicts include Nevada Energy power poles. For this design it is anticipated to coordinate the moving power poles. For Jones Boulevard, the major utility conflicts include NV Energy distribution poles on the northeast corner of Charleston Boulevard and northwest corner of Oakey Boulevard, and Southwest Gas appurtenances on the southeast corner of Charleston Boulevard.

101.3.2.1 Preparation of minor utility relocation plans, by the Consultant and coordination for incorporation of those prepared by the Utility Companies themselves, that were anticipated by the Consultant, or reasonably should have been, at the time of this agreement shall be considered incidental to this task and no other applicable design tasks.

101.3.2.2 Coordination with utilities, incorporation of utility plans, and preparation of designs by the Consultant in relation to new services, connections for City facilities (such as power service for street lights and traffic signals and water hookups for City irrigation lines) that were anticipated by the Consultant, or reasonably should have been, at the time of this agreement shall be considered incidental to this task and no other applicable design tasks.

101.3.2.3 Nothing in this section shall be construed as preventing this Exhibit "A" from specifically detailing the Consultant's scope for anticipated minor utility relocations and/or new service connections with individual tasks identified and associated man hours and costs shown in Exhibit "D" when warranted.

101.3.3 The Consultant shall coordinate with the City of Las Vegas' Land Development Services Section for current projects, encroachment agreements, covenants running with the land and any other mapping that may have an impact on the project.

101.3.4 The Consultant shall submit design plans for review from the various utility companies for the 70%, 90% and 100% Pre-Final submittals.

101.3.5 The Consultant shall submit design plans for review and obtain approval signatures from the various utility companies on final Mylar prints prior to submitting to the City of Las Vegas.

101.3.6 Consultant shall notify the City of any required utility, application, permit and review fees, which will be paid for by the City.

101.3.7 The City's Representative shall give approval of documents prior to being submitted to any regulatory agency for permit review and approval.

101.3.8 City Engineer's Office is NOT A REGULATORY AUTHORITY. The Consultant does hereby acknowledge, understand and agree that the City Engineer's Office, acting as the City's representative for purposes of the Project, does not have any control, authority or influence over the decisions or requirements of other departments of the City acting in a regulatory capacity including, but not limited to, the Building Department, Fire Department, and Planning Department of the City of Las Vegas. The City's representative acts in a capacity similar to that of a representative working for a private property owner which is to ensure that the City receives a quality product, delivered on schedule, for a fair price. Furthermore, the City Engineer's Office does not speak or act for any regulatory authority, nor does any regulatory authority speak or act for the City Engineer's Office. The Consultant agrees that its relationship with the regulatory authorities having jurisdiction over the Project is separate from its relationship with the City, and that the Consultant's interaction with each regulatory authority is to be conducted without assistance from the City.

101.3.9 Deliverables: Project Plans to be sent to the Utility Companies at each design level (30%, 70%, 90% and 100%); and final mylar's with impacted utilities approval signatures.

101.4 Project Permits

101.4.1 Consultant shall identify all permits needed for the Project. Consultant shall prepare all correspondences and permit applications for the regulating agencies and assist the City in obtaining required permits.

101.4.2 The following permits are anticipated for this project :
101.4.2.1 NDOT Encroachment Permit
101.4.2.2 Clark County Offsite Permit for Valley View Boulevard and Jones Boulevard south of Sahara Avenue (interlocal and encroachment permit)
101.4.2.3 NDEP Permit for Valley View Boulevard and Jones Boulevard including possible Dewatering Permit for Valley View Boulevard

101.4.3 During the design process, the Consultant shall provide a permit matrix which will determine the permits needed for the Project. A summary matrix of required permits shall be prepared by the Consultant and included in the Design Report. Any required permits not contemplated in this scope of work will be paid for separately under Additional Services upon separate authorization by the City.

101.4.4 Deliverables: Matrix of require permits; correspondence; preparation of permit applications.

ARTICLE 102: 70% DESIGN PHASE

102.1 Survey

102.1.1 For Jones Boulevard, conduct field survey to identify and locate existing improvements as necessary to supplement aerial topography. Collect field survey data along the storm drain facility alignment, including but not limited to existing edge of pavement, drop inlet locations, manhole lids and invert elevations, gutter flow line, top of curb, back of sidewalk elevations, water valves, visible surface utilities and pothole hubs. Field survey shall extend a minimum of 100 feet for minor street intersections and 150 feet for major street intersections beyond curb returns of adjacent street.

102.1.2 The Consultant will coordinate any required private property access with the City's Representative.

102.2 Right-of-Way

102.2.1 Consultant shall utilize the existing right-of-way information prepared during the Preliminary 25% Design. For all right-of-way, Consultant will prepare right-of-way drawings showing existing rights-of-way and easements and proposed rights-of-way and easements. For all right-of-way which must be acquired, Consultant shall prepare deeds and legal descriptions with property maps showing topographic areas, easements and vesting. Consultant shall coordinate with the City's Right-of-Way Section in the preparation of a right-of-way property schedule (all rights to be obtained or vacated, easements, rights of entry, construction easements as well as current status of the City's acquisitions) and regularly review and redline this schedule as to current status in coordination with the City's Right-of-Way Section. Where existing property is to be disturbed by construction, Consultant shall prepare 8 ½" X 11" exhibits to be sent to affected property owners showing the location of Authorization to Enter Property (AEP) and the nature of the construction.

Right-of-way requirements, easements and AEP, will be defined and ready for acquisition prior to the 70% stage of completion. For parcels that require additional right-of-way, the CONSULTANT shall prepare right-of-way documents, including necessary easements and AEP documents and submit to the City prior to the 70% submittal. Approximately 29 acquisitions are anticipated along Valley View Blvd. in addition to 48 AEP locations. Approximately 21 parcels require additional right-of-way or easements along Jones Boulevard and approximately 51 parcels require AEPs. Utility easements will be determined and set for relocations.

102.2.2 Based on the completed 25% design, the Consultant will identify any additional right-of-way, including permanent right of way, and easements and authorizations to enter property ("AEP") to be acquired. A summary of proposed right of way acquisition will be provided by the Consultant in Microsoft Excel 2000 format in the format provided by the City Representative. During the 70% design review, the City will work with the Consultant to finalize project right-of-way requirements.

102.2.3 70% Submittal. Consultant shall prepare 24" x 36" exhibits that shall show all needed right-of-way, easements, AEP's, etc. at the 70% design level. The Consultant shall provide legal descriptions as needed for all right-of-way easements, etc. that are required. The

Consultant shall update the right-of-way property schedule, outlined in 100.2.1, to create an acquisition status table showing parcel numbers, acquisition type, acquisition status, property owner and contact information.

102.2.4 90% Submittal. Consultant shall update the 24" x 36" exhibits to show the acquired right-of-way, easements and AEP's. The acquisition status table shall be updated and submitted to the City for review.

102.2.5 100% Submittal. Consultant shall update the 24" x 36" exhibits to show the acquired right-of-way, easements and AEP's. The acquisition status table shall be updated and submitted to the City for review. Consultant shall clearly identify, in the acquisition table, any right-of-way, easements or AEP's that have not been acquired and an explanation for not having acquired the right-of-way, easement or AEP.

102.2.6 Prior to Bid. Prior to bid the Consultant shall cross check the right-of-way map verses the acquisition table and provide a letter summarizing the result of the check and identifying any right-of-way, easements or AEP's not yet acquired.

102.2.7 Deliverables: 24" x 36" exhibits at the 70% Submittal as outlined in 102.2.3; Legal Descriptions; Acquisition Status Table; 24" x 36" exhibits at the 90% Submittal as outlined in 102.2.4; 24" x 36" exhibits at the 100% Submittal as outlined in 102.2.5; Summary Letter of Right-of-Way, Easements and AEP status.

102.3 Utility Potholing

102.3.1 Utility Potholing work for the Project shall include gathering horizontal and vertical location information (potholing) on subsurface utilities that may be in conflict with the Project improvements. A total of 30 (thirty) potholes are anticipated to be performed for this Project. This task shall include the refinement of the utility conflict information, identification of utility relocation by others and incorporate subsurface utility engineering into the Contract Drawings. Potholes will be surveyed for horizontal location and shown on the plans. Patching of potholes will meet City of Las Vegas and NDOT (if applicable) requirements, including hot patches, polymer bag mix or concrete plug. No cold patches will be utilized.

102.3.2 For utilities that are concrete encased, Consultant will require the pothole sub-consultant to perform two potholes: one to identify the top of the encasement and one to identify the bottom of the encasement. The two potholes will be performed on either side of the encasement to determine the width of the encasement.

102.3.3 Consultant shall provide full-time inspection during the pothole process to confirm that the sub-consultant has accurately located and correctly identified the utilities to be investigated.

102.4 Geotechnical Investigation - Consultant shall provide geotechnical services to include research, field investigation, material testing, and analysis to develop geotechnical recommendations for the design and reconstruction of the existing roadway. The Consultant shall provide a Geotechnical Report as detailed below, the drafts of this report will be submitted at the 70% Submittal:

102.4.1 It is anticipated that the geotechnical investigation reports may include, but is not limited to the following:

102.4.1.1 Perform a subsurface evaluation consisting of 23 (twenty-three) soil borings to depths of 5, 10, and 20 feet (215 linear feet total) below the bottom of the proposed roadway on Valley View Boulevard and 15 (fifteen) soil borings to depths of 5, 10, and 20 feet (120 linear feet total) below the bottom of the proposed roadway on Jones Boulevard.

102.4.1.2 Review pertinent background data, including in-house geotechnical data, readily available geotechnical reports, stereoscopic aerial photographs, published geologic maps, soils data, and literature.

102.4.1.3 Perform laboratory testing on samples.

102.4.1.4 Identify the corrosive characteristics of the soil.

102.4.1.5 Locate ground water elevations at each of the borings if the groundwater level is above the bottom of the boring;

102.4.1.6 Identify Caliche and cemented soil deposits depth and make recommendations for excavation methods.

102.4.1.7 Provide recommendation and definition for suitable and unsuitable materials.

102.4.1.8 Make recommendations for the treatment and/or removal of unsuitable bearing soils.

102.4.1.9 Make recommendations for trench safety during excavation.

102.4.1.10 Make recommendations for pavement section, excavation and backfill requirements for bedding, pipe zone, trench backfill, fill placement, suitability of existing soils for use as backfill materials and asphalt pavement.

102.4.1.11 Provide boring logs to include if any, existing pavement and base course thicknesses and subsurface materials compositions. Borings to be marked in the field and to be surveyed, field identified, and included in the plans.

102.4.1.12 Make recommendations for type of cement for concrete in contact with onsite soils, structural recommendations, and other conditions applicable to the Project.

102.4.1.13 Prepare a hydro-geological report in areas where shallow groundwater is discovered.

102.4.2 The Consultant shall prepare a written report presenting the findings, conclusions, and geotechnical recommendations for the design and construction of the proposed improvements, including recommendations regarding pavement section thickness based on AASHTO design criteria, structural bearing capacity, earthwork and backfill requirements.

102.4.3 It is understood that the City may make and distribute copies of reports and boring logs as necessary in connection with the Project without incurring obligation for additional compensation.

102.4.4 Deliverables: The Consultant shall provide three (3) bound copies of the draft and final geotechnical investigation reports to the City and two (2) copies to CCRFCD for review.

102.5 Drainage Memorandum

102.5.1 There is a Regional Flood Control Facility located on Valley View Boulevard from El Cortez Avenue to Oakey Boulevard. Consultant will prepare a Draft and Final Drainage Memorandum for the CLV and for coordination with the Regional Flood Control District. Consultant shall coordinate with PB who is designing the Oakey Storm Drain, Cahlan to Barnard project. The Valley View Boulevard Drainage Memorandum will contain hydraulic analysis of the underground system along with analysis of the drop inlets such that Valley View Boulevard maintains the dry lane requirements per the Clark County Regional Flood Control District Drainage Design Manual. The City will provide the developed hydrological information for this design.

102.5.2 For Jones Boulevard, the Consultant shall research and review previously approved drainage studies and improvement plans along the project corridor. In areas where additional roadway widening occurs, an onsite hydrologic and drop inlet hydraulic analysis will be performed to address the flow within the roadway and at drop inlet locations. Based on the results of the hydrologic and hydraulic analyses, upsizing of relocated drop inlets may be required based on revised flows. NDOT will require that increase in flows, changes to roadway velocities, depths and flow paths within in their right-of-way be addressed. The results of the analysis will be summarized in a memorandum in accordance with the City and NDOT requirements for the encroachment permit application. Clark County Regional Flood Control District facilities exist within Jones Boulevard and therefore concurrence from RFCD will be required. An offsite hydrologic analysis and hydraulic analysis of existing storm drain are not included.

102.5.3 Other drainage improvements on both Valley View Boulevard and Jones Boulevard will consist primarily of reconstructing inlets displaced as a result of roadway widening, together with extension of the existing lateral lines. For Valley View, a total of 35 storm-drain laterals and 75 driveways are anticipated to be reconstructed. For Jones, a total of 13 storm-drain laterals/inlets and 34 driveways are anticipated to be reconstructed.

102.5.4 Comments received on the Draft Drainage Memorandum will be addressed in writing and included in the Final Drainage Memorandum. Adjustments will be made to the associated design and analysis as necessary. Documentation of the changes made such as physical copies of plans, models, and calculations will be submitted with the Final Drainage Memorandum.

102.6 70% Design Phase Submittal

102.6.1 Draft Drainage Memorandum - The Consultant shall develop detailed hydraulic models for the conveyance facilities using HEC-RAS, WSPG or other appropriate computer programs. The hydraulic models will provide information on the hydraulic grade line, energy grade line, flow velocity and depth and other pertinent hydraulic parameters. The storm drain facilities and lateral pipes will be included in the hydraulic models. In addition, riprap rock and drop inlet sizing calculations will be performed. The dry-lane hydraulic analysis facility sizing and cost estimates will be prepared to determine RTC versus RFCD costs.

102.6.1.1 Deliverables: Submit three (3) copies of the Draft Drainage Memorandum to the City, Submit two (2) copies of the Draft Drainage Memorandum to CCRFCD.

102.6.2 70% Design Phase Plans – This submittal will include further refinement of the 25% Design Phase plans. Plans shall be identified with the level of design with Engineer's seal in accordance with NRS 625. The 70% plans shall include, but not limited to, the following:

102.6.2.1 City Standard Cover Sheet identifying Project Participants

102.6.2.2 Note sheet with plan index, vicinity map, benchmark, and basis of bearings

102.6.2.3 Notes Sheet with General Notes, LVVWD Notes, and City of Las Vegas Sewer, Traffic, Grading, Fire Department, Street Lighting, and Encroachment Permit Notes

102.6.2.4 Abbreviations and Symbols

102.6.2.5 Survey Control Plan identifying Project limits, horizontal control for centerline and rights-of-way, monumentation and sheet index

102.6.2.6 Horizontal control for centerline and rights-of-way monumentation plan
102.6.2.7 Recorded Record of Survey as part of Horizontal Control Plan (to be included in all submittals hereafter as well)
102.6.2.8 Sheet Index with key map
102.6.2.9 Typical Cross Section Sheets
102.6.2.10 Removal Plans
102.6.2.11 Roadway Plan and Profiles
102.6.2.12 Construction Details
102.6.2.13 Storm Drain Plan and Profiles (including lateral plan and profiles)
102.6.2.14 Storm Drain Details
102.6.2.15 Utility Plans
102.6.2.16 Traffic Striping and Signing Plans
102.6.2.17 Traffic Lighting Plans
102.6.2.18 Traffic Signal Plans
102.6.2.19 Structural Drawings
102.6.2.20 Special Details as required for the Project
102.6.2.21 School or Other Flashers
102.6.2.22 FAST Interconnect Plans
102.6.2.23 Traffic Control Plans
102.6.2.24 Landscape Plans
102.6.2.25 Design Exception Memorandum

102.6.2.26 Deliverables: Submit ten (10) bound copies and one (1) unbound copy of the half scale plans (11″ x 17″) and three (3) bound copies of full size plans (24″ x 36″) to the City: Submit copies of the half scale plans, to CCPW, CCRFCD, NDOT, SNWA, COX, LVVWD, NVE, RTC, SWG, Century Link, etc.; Submit copies of 70% Plans to utilities (size determined by each individual Utility Company) as necessary for review by the utility companies.

102.6.3 70% Design Phase Construction Cost Estimate - a Project cost estimate broken out by funding source, bid item, and plan sheet shall be prepared by the Consultant. The cost estimate breakdown by funding source may include, but is not limited to, the following:
102.6.3.1 RTC (may require further breakdown within this category, i.e. RTC-Q10, RTC-Arterial Restoration Fund, etc.)
102.6.3.2 SNPLMA
102.6.3.3 CLV Sanitation

102.6.3.4 Deliverables: Submit the 70% cost estimate by funding source to the City in both hard copy and electronic format (excel spreadsheet, pdf format will not be accepted).

102.6.4 70% Walk Through - At the direction of the City, Consultant shall schedule a walkthrough of the Project with City of Las Vegas personnel and other stakeholders (as determined by the City) during the 70% Design Phase period. The Consultant will note any changes or adjustments to the plans as needed to fit field conditions and incorporate these changes into the 90% submittal.

102.6.5 CMAR Coordination - Consultant shall coordinate with the selected CMAR contractor for an in-house design review with the City. CMAR coordination will consist of a meeting with the contractor in order to answer any questions and resolve any design issues. Any additional coordination or design changes associated with CMAR contractor input will be included in additional services.

ARTICLE 103: 90% DESIGN PHASE

103.1 90% Design Phase Submittal

103.1.1 Final Drainage Memorandum - Consultant shall compile all comments and written responses to comments along with all final design information, calculations and models and include in a standalone Final Drainage Memorandum to be used as a record for the basis of design for the project. The Final Drainage Memorandum shall include all information included in the PDR and Draft Final Design Report and all associated revisions made as applicable.

103.1.1.1 Deliverables: Submit three (3) copies of the Final Drainage Memorandum to the City, Submit two (2) copies of the Final Drainage Memorandum to CCRFCD.

103.1.2 90% Design Phase Plans – This submittal will include further refinement of the 70% plans (including any necessary structural details) to reflect 90% completion and response to comments. The 90% plans shall include all the utility conflicts and the resolutions. The 90% plans shall include project quantity tables broken down by individual plan sheet. The 90% plans shall include construction and right-of-way lines and all encroachments onto private property with proposed improvements. The owners name, property address and assessor parcel number shall be shown. Consultant shall prepare a map indicating the location and depth of proposed construction easements. The width of the encroachment shall be dimensioned and labeled on the map. Consultant shall provide 11" x 17" copies of the map in quantity equal to the number of parcels. The improvement plans shall be identified with the level of design with Engineer's seal in accordance with NRS 625.

103.1.2.1 Deliverables: Submit ten (10) bound copies and one (1) unbound copy of the half scale plans (11″ x 17″) and three (3) bound copies of full size plans (24″ x 36″) to the City: Submit copies of the half scale plans, to CCPW, CCRFCD, NDOT, SNWA, COX, LVVWD, NVE, RTC, SWG, Century Link, etc.; Submit copies of 70% Plans to utilities (size determined by each individual Utility Company) as necessary for review by the utility companies.

103.1.3 90% Design Phase Construction Cost Estimate - a Project cost estimate broken out by funding source, bid item, and plan sheet shall be prepared by the Consultant. The cost estimate breakdown by funding source may include, but is not limited to, the following:

103.1.3.1 RTC (may require further breakdown within this category, i.e. RTC-Q10, RTC-Arterial Restoration Fund, etc.)

103.1.3.2 SNPLMA

103.1.3.3 CLV Sanitation

103.1.3.4 Deliverables: Submit the 90% cost estimate by funding source to the City in both hard copy and electronic format (excel spreadsheet, pdf format will not be accepted).

103.1.4 90% Design Phase Special Provisions - The Project Special Provisions shall be submitted utilizing the City's standard boilerplate set of Special Provisions provided. The Project Special Provisions shall use the same format as the *Uniform Standard Specifications for Public Works' Construction Off-Site Improvements Clark County Area Nevada*. All items of construction shown on the 70% Project Plans shall be represented in the Special Provisions as bid items utilizing the corresponding related specification section's nomenclature. The applicable items shall be described for the method of "Measurement" and "Payment" subsection for each section.

103.1.4.1 Deliverables: Submit four (4) copies of the bound Special Provisions to the City plus an electronic copy of the original single word document.

103.1.5 90% Walk Through - At the direction of the City, Consultant shall schedule a walkthrough of the Project with City of Las Vegas personnel and other stakeholders (as determined by the City) during the 90% Design Phase period. An inventory of all items of work shown on the plans will be verified and compared to field conditions. The Consultant will note any changes or adjustments to the plans as needed to fit field conditions. The Consultant will note any changes or adjustments to the plans as needed to fit field conditions and incorporate these changes into the 100% Design Phase Submittal.

103.1.6 CMAR Coordination - Consultant shall coordinate with the selected CMAR contractor for an in-house design review with the City. CMAR coordination will consist of a meeting with the contractor in order to answer any questions and resolve any design issues. Any additional coordination or design changes associated with CMAR contractor input will be included in additional services.

103.1.7 The Consultant shall finalize all permit applications and submit all required permits to the appropriate agencies.

ARTICLE 104: 100% DESIGN PHASE

104.1 100% Design Phase Submittal

104.1.1 The 100% submittal shall include all the elements of Article 103 which shall be advanced to a completed level of design and shall incorporate comments from the 90% submittal. The 100% submittal will consist of two steps: (1) a **100% pre-final (bond) submittal** will be made for final comment by the City, CCPW, CCRFCD, NDOT, SNWA, COX, LVVWD, NVE, RTC, SWG, Century Link, etc.; and (2) the Consultant will incorporate all comments on the pre-final submittal into the **100% final (mylar) submittal**. Plan set mylars and copies sealed in accordance with NRS 625, sealed Special Provisions, including Bid Proposal and Construction Cost Estimate shall be submitted to the City. The Engineer's estimate broken out by bid item, plan sheet and funding source will be submitted as a Microsoft Excel Work Sheet electronic file. The Consultant shall coordinate with utility companies and obtain all utility signatures on the Cover Sheet and elsewhere in the plans as required. Consultant shall submit a pre-mylar bond set of the final plans before preparing mylars for this project.

104.1.1.1 Deliverables for the 100% Pre-Final (Bond) Submittal: Response to Comments; Submit ten (10) bound copies and one (1) unbound copy of the half scale plans (11"x17") and three (3) bound copies of full size plans (24" X 36") of the 100% Pre-Final (Bond) Submittal to the City; four (4) bound copies of the Special Provisions plus an electronic copy of the original single word document; 100% Pre-final Cost Estimate by funding source to the City; Submit 100% Pre-Final (Bond) Submittal Plans (size and number determined by each Utility Company submittal requirements) to the Utilities for review.

104.1.1.2 Deliverables for the 100% Final (mylar) Submittal: One set of 24" X 36" mylar plan sheets stamped and signed by a Nevada P.E. which includes the cover sheet containing all approval signatures; One set of original Special Provisions (unbound) stamped and signed by a Nevada P.E.; One copy of the Final Cost Estimate in the City's Bid Schedule Format; Submit copies of the half scale plans to CCPW, CCRFCD, NDOT, SNWA, COX, LVVWD, NVE, RTC, SWG, Century Link, etc.; One copy of the Final Plans shall be submitted to each of the Utility Companies; An electronic copy of the estimated construction schedule in Microsoft Project format will be submitted to the City; Electronic copies of both the plans (AutoCAD 2002 format) and Special Provisions (Microsoft Word format) shall be submitted to the City. The Engineer's estimate will be submitted as a Microsoft Excel Work Sheet electronic file.

104.1.1.3 CMAR Coordination - Consultant shall coordinate with the selected CMAR contractor for an in-house design review with the City. CMAR coordination will consist of a meeting with the contractor in order to answer any questions and resolve any design issues. Any additional coordination or design changes associated with CMAR contractor input will be included in additional services.

END OF EXHIBIT "A"

EXHIBIT "B"

REQUIRED SUBMITTALS

ARTICLE 200: GENERAL

200.1 When requested by the City electronic files shall accompany hard copies for all submittals referenced in this paragraph and unless otherwise directed by the City. All cost estimates shall be provided in Microsoft Excel format, all schedules in Microsoft Project format, all Special Provisions in Microsoft Word format, all Bid Schedules in Microsoft Excel format and all spreadsheets associated with additional service requests in Microsoft Excel format. Pdf submittals will not be accepted unless specifically requested by the City.

200.2 All submittal requirements are outlined in Exhibit A – Scope of Services. Consultant shall refer to deliverables or other submittal requirements outlined in Exhibit A.

200.3 Certificates of Insurance

The Consultant shall deliver to Insurance Tracking Services, Inc. (ITS), the City's authorized designated representative, a certificate of insurance with respect to each required policy to be provided by the Consultant under this Agreement. The required certificates must be signed by the authorized representative of the insurance company shown on the certificate with proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon.

Submit certificates of insurance to:

City of Las Vegas
C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 21919
Long Beach, CA 90801

Account Manager: Michael Palacios
Phone: (888) 435-2955 ext. 503 • Fax: 562-435-2999
Email: michael.palacios@instracking.com

A certified, true and exact copy of each of the project specific insurance policies (including renewal policies) shall be provided to the City upon request.

The Consultant shall promptly deliver to ITS a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than 30 days prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof.

END OF EXHIBIT "B"

EXHIBIT "C"

PERFORMANCE SCHEDULE

ARTICLE 300: NOTICE TO PROCEED

300.1 The start date for the Consultant's scope of services shall be, without any further notice requirement, the date of this Agreement signed by the parties. The Consultant shall perform the services required as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Scope of Service set forth in this Agreement and the compensation to the Consultant for said Scope of Services is based upon the Consultant and the City each performing its responsibilities in a timely manner.

300.2 *Performance Schedule.* The parties hereto have agreed to a general performance schedule (the "Performance Schedule") which is set forth herein. Subsequent to the execution of this Agreement, the Consultant shall furnish to the City's Representative for approval a more detailed schedule of performance (herein the "Detailed Performance Schedule").

300.3 *Revised Performance Schedule.* If the Consultant's performance is delayed or the sequence of tasks changed, the Consultant shall notify the City's Representative in writing of the reasons for the delay or the change. The Consultant shall then prepare a revised General and Detailed Performance Schedule for submission to and approval by the City's Representative.

ARTICLE 301: PERFORMANCE SCHEDULE

301.1 The maximum allowed time to complete each phase of the work is shown in the following table:

PHASE	CALENDAR DAYS TO COMPLETE	REMARKS
70% DESIGN PHASE	150	Right-of-Way set due on November 18, 2010.
90% DESIGN PHASE	75	
100% DESIGN PHASE	75	
TOTAL CALENDAR DAYS TO COMPLETE:		

ARTICLE 302: DESIGN AND PERMITTING SCHEDULE DELAYS

302.1 The Consultant declares that they are experienced and knowledgeable with all governmental, agency, and utility company design approval processes, procedures, applications, fees, design standards, reviews, required corrective actions, and time schedules required for the Project, and that the schedule set forth for the Scope of Services is reasonable and achievable within these design approval parameters.

302.2 Although it is acknowledged that neither the City nor the Consultant have full control over these design approval processes, the Consultant shall be held accountable for any impacts to the City resulting from their actions or lack of actions, including but not limited to their failure to make timely submittals, their failure to routinely follow-up on submittals, their failure to notify the City of anticipated delays and required design changes, and their failure to process and re-submit comments and corrections received in a timely manner.

ARTICLE 303: CONSTRUCTION SCHEDULE CHANGES

303.1 It is understood and agreed by the Consultant that, although the time required to construct the Project has yet to be estimated as of the date of this Agreement, the Consultant is knowledgeable and experienced in determining the estimated construction time required to construct public works projects including this specific project type, and further that the Consultant has an advisory role in helping the City establish the construction term to be included in the construction contract, and therefore has the ability to determine the Consultant's lump sum fee for the Construction Phase scope of services regardless of how long it takes to construct the Project and that the Consultant assumes all risks for changes in his costs to perform the scope of services agreed to in this Agreement due to the length of time it takes to construct the Project.

303.1.1 No adjustments shall be made to the Post Construction Phase fee due to extended schedules.

END OF EXHIBIT "C"

EXHIBIT "D"

FEE BREAKDOWN

ARTICLE 400: TOTAL COMPENSATION

400.1 The total compensation to be paid to the Consultant for performance of this Agreement including Basic Services, Additional Services, and Reimbursable Expenses shall not exceed **$1,520,580.00**. Increases to total compensation may only be authorized by written amendment to this Agreement. This total compensation amount is comprised of the parts described in this Exhibit "D" (Fee Breakdown).

ARTICLE 401: BASIC SERVICES PAYMENT BASED UPON COMPLETION OF TASKS

401.1 The City agrees to pay the fixed fee attributable to each task and, if applicable, each subtask, set forth in Exhibit "A" (Scope of Services) which is completed by the Consultant. The Consultant agrees to perform the services necessary to complete each task and, if applicable, each subtask, for the amount of the fixed fee set forth in this Exhibit "D" (Fee Breakdown). Payment shall be made for completed tasks pursuant to monthly invoices submitted in accordance with the Agreement. The fixed fee shall constitute the entire compensation to be paid to the Consultant regardless of the number of man-hours actually expended to complete the performance of the services set forth in Exhibit "A" (Scope of Services).

BASIC SERVICES		REMARKS
TOTAL NOT TO EXCEED COST	$1,020,580.00	

401.1 The following table(s) show the breakdown of the Total Not to Exceed Cost for Basic Services by Task.

401.2 The table(s) show the fixed cost for each task along with the estimated hours to be expended by various Consultant personnel over the course of the Project for each of the various tasks, and/or the dollar value of the estimated hours. Although this table represents the basis for how the Total Not to Exceed Cost for Basic Services was established, the personnel, hours, and dollar value of the hours shown are not a part of this Agreement and are not to be used as the basis for payment. The fee for each task is a fixed fee regardless of the number of man-hours expended to complete each task or the personnel used to perform the work.

401.3 The scope of work for each of the tasks may be adjusted by the City Representative over the course of the Project, including establishing new tasks or the deletion of listed tasks. The cost of these adjustments shall be calculated utilizing the rates agreed to in this Agreement to the extent they are applicable.

401.4 The City Representative shall have the authority to make such work scope adjustments to the line item tasks contained within Basic Services without processing this Agreement for an amendment to be approved and signed by City Council or their designee, if (1) the revisions are documented in writing signed by the Consultant and City prior to performance, (2) the Total Not to Exceed Cost for Basic Services is not exceeded, and (3) the change(s) are within the scope of the Project.

EXHIBIT D-1: BASIC SERVICES FEE BREAKDOWN

TASK	DESCRIPTION	Principal	Project Mgr.	Roadway/Traffic Engineer	Landscape Architect	Drainage Engineer	Civil Engineer	Structural Engineer	Senior Designer	CADD TECH	Coordinator	Proj. Controls	QC Engineer	Hours Subtotal	Direct Expenses	Lump Sum Task Amounts
		$200	$185	$125	$125	$125	$125	$195	$100	$70	$75	$75	$125			
101	PRELIMINARY AND GENERAL ITEMS															
101.1	Project Management	0	100	0	0	0	0	0	0	0	10	120	0	230	$0.00	$28,250.00
101.2	Kick-Off Meeting and Progress Meetings	4	40	0	0	0	40	0	0	0	0	0	0	84	$0.00	$13,200.00
101.3	Utility and Agency Coordination	4	40	20	20	12	20	0	8	0	20	0	0	144	$0.00	$19,500.00
101.4	Project Permits	0	4	0	0	0	20	0	0	0	0	0	0	24	$0.00	$3,240.00
	GC Wallace Preliminary and General Subtotal														$34,300.00	$34,300.00
101	Subtotal Hours	8	184	20	20	12	80	0	8	0	30	120	0	482		
101	Subtotal Fee	$1,600.00	$34,040.00	$2,500.00	$2,500.00	$1,500.00	$10,000.00	$0.00	$800.00	$0.00	$2,250.00	$9,000.00	$0.00		$34,300.00	$98,490.00
102	70% DESIGN PHASE															
102.2	Right-of-Way	0	0	0	0	0	0	0	20	60	0	0	10	90	$0.00	$7,450.00
102.3	Utility Potholing	0	0	0	0	0	0	0	0	0	0	0	0	0	$30,000.00	$30,000.00
102.4	Geotechnical Investigation	0	0	0	0	0	0	0	0	0	0	0	0	0	$65,000.00	$65,000.00
102.5	Drainage Memorandum	0	0	0	0	110	0	0	0	0	0	0	0	110	$0.00	$13,750.00
102.6	70% Design Phase Submittal															
102.6.1	Draft Drainage Memorandum	0	10	0	0	20	0	0	0	0	0	0	20	50	$0.00	$6,850.00
102.6.2	70% Design Phase Plans	1	40	20	20	20	480	10	640	520	0	0	80	1,831	$950.00	$188,400.00
102.6.3	70% Design Phase Construction Cost Estimate	1	20	0	0	0	40	0	0	0	0	0	10	71	$0.00	$10,150.00
102.6.4	70% Walk Through	0	6	6	0	0	6	0	0	0	0	0	0	18	$0.00	$2,610.00
102.6.5	CMAR Coordination	2	10	0	0	0	6	0	0	0	0	0	0	18	$0.00	$3,000.00
	GC Wallace 70% Design Subtotal														$230,568.00	$230,568.00
102	Subtotal Hours	4	86	26	20	150	532	10	660	580	0	0	120	2,188		
102	Subtotal Fee	$800.00	$15,910.00	$3,250.00	$2,500.00	$18,750.00	$66,500.00	$1,950.00	$66,000.00	$40,600.00	$0.00	$0.00	$15,000.00		$326,518.00	$557,778.00
103	90% DESIGN PHASE															
103.1	90% Design Phase Submittal															
103.1.1	Final Drainage Memorandum	0	4	0	0	20	0	0	0	0	0	0	0	24	$0.00	$3,240.00
103.1.2	90% Design Phase Plans	1	40	0	40	0	160	10	440	400	0	0	80	1,171	$950.00	$117,500.00
103.1.3	90% Design Phase Construction Cost Estimate	1	20	0	0	0	80	0	0	0	0	0	15	116	$0.00	$15,775.00
103.1.4	90% Design Phase Special Provisions	1	20	10	20	20	40	10	0	0	0	0	15	136	$0.00	$18,975.00
103.1.5	90% Walk Through	0	6	6	0	0	6	0	0	0	0	0	0	18	$0.00	$2,610.00
103.1.6	CMAR Coordination	2	10	0	0	0	6	0	0	0	0	0	0	18	$0.00	$3,000.00
103.1.7	Finalize Permit Applications	0	6	0	0	0	10	0	0	0	20	0	0	36	$0.00	$3,860.00
	GC Wallace 90% Design Subtotal														$78,812.00	$78,812.00
103	Subtotal Hours	5	106	16	60	40	302	20	440	400	20	0	110	1,519		
103	Subtotal Fee	$1,000.00	$19,610.00	$2,000.00	$7,500.00	$5,000.00	$37,750.00	$3,900.00	$44,000.00	$28,000.00	$1,500.00	$0.00	$13,750.00		$79,762.00	$243,772.00
104	100% DESIGN PHASE															
104.1	100% Design Phase Submittal															
104.1.1	100% Design Phase Plans	1	20	4	4	10	120	4	320	280	0	0	30	793	$0.00	$77,280.00
104.1.1.1	100% Pre-Final (Bond) Submittal	0	4	0	0	0	8	0	8	20	0	0	0	40	$0.00	$3,940.00
104.1.1.2	100% Final (Mylar) Submittal	0	0	0	0	0	8	0	8	20	0	0	0	36	$6,250.00	$9,450.00
104.1.1.3	CMAR Coordination	2	10	0	0	0	6	0	0	0	0	0	0	18	$0.00	$3,000.00
	GC Wallace 100% Design Subtotal														$26,870.00	$26,870.00
104	Subtotal Hours	3	34	4	4	10	142	4	336	320	0	0	30	887		
104	Subtotal Fee	$600.00	$6,290.00	$500.00	$500.00	$1,250.00	$17,750.00	$780.00	$33,600.00	$22,400.00	$0.00	$0.00	$3,750.00		$33,120.00	$120,540.00
	Total Basic Services Hours	20	410	66	104	212	1,056	34	1,444	1,300	50	120	260	5,076		
	Total Basic Services Fee	$4,000.00	$75,850.00	$8,250.00	$13,000.00	$26,500.00	$132,000.00	$6,630.00	$144,400.00	$91,000.00	$3,750.00	$9,000.00	$32,500.00		$473,700.00	$1,020,580.00

ARTICLE 402: ALLOWANCE FOR ADDITIONAL SERVICES

402.1 A Not-To-Exceed Allowance for Additional Services is hereby established as set forth below. The City Representative has authority to pre-authorize in writing Additional Services up to the Total Not-To-Exceed Cost. Services performed prior to receiving the required written authorization or in excess of the Total Not-To-Exceed Cost shall not be obligated for compensation.

402.2 Additional Services are services that are not set forth in Exhibit "A" (Scope of Services).

402.3 The Consultant shall be compensated for Additional Services in accordance with the Additional Services fees set forth in Exhibit "E" (Additional Compensation), or if no Additional Service fee has been established for the service, in accordance with the Consultant Hourly Rates established in Exhibit "E" (Additional Compensation). Additional Service compensation disputes shall be resolved in accordance with the claims and disputes provisions of this Agreement and shall not be cause for the Consultant to delay providing requested services. Payment shall be made for each completed Additional Service pursuant to invoices submitted in accordance with the Agreement.

402.4 Increases to this Total Not-To-Exceed Cost for Additional Services may only be authorized by written amendment to this Agreement.

ADDITIONAL SERVICES ALLOWANCE		ALLOWED SERVICES
TOTAL NOT-TO-EXCEED COST	$500,00.00	See list below.

402.4.1 Additional Services may include, but are not limited to, the following:
402.4.2 **Addenda** – As required by the City, the Consultant shall assist the City with the preparation of contract addenda during the bid process.
402.4.3 **Additional Design Services** – As required by the City, Consultant shall perform additional design services required for the Project.
402.4.4 **Additional Topographic Survey** – As required by the City, Consultant shall obtain additional field measurements to supplement the original topographic mapping as requested by the client.
402.4.5 **As-Builts** – As requested by the City, Consultant shall provide As-Builts.
402.4.6 **CMAR Coordination** – As required by the City, any special meetings not outlined in the Basic Services or design changes resulting from the correspondence with the CMAR contractor. This also includes quantity reconciliation with CMAR contractor.
402.4.7 **Construction Assistance** – As required by the City, Consultant shall attend progress meetings during construction of the Project as well as site visits, shop drawing review, response to RFIs, additional design and additional surveying required during the construction phase.
402.4.8 **Dam Safety Permit** – As required by the City, Consultant shall coordinate with the State Engineer's Office and update the existing dam safety permit, if one is required for the Project.
402.4.9 **Drainage Study** – As required by the City, Consultant shall prepare a Drainage Study for the Project.
402.4.10 **Facility Specific Environmental Assessment** – As required by the City, Consultant shall prepare a Facility Specific Environmental Assessment.
402.4.11 **Hydrogeologic Investigation** – As required by the City due to field conditions, the Consultant shall provide an investigation along a Hydrogeologic Report.
402.4.12 **Hydrology and Hydraulics** – As required by the City, Consultant shall provide additional hydrology and hydraulics.
402.4.13 **Master Plan Amendment** – As required by the City, Consultant shall revise and resubmit the Master Plan Amendment already performed by the City of Las Vegas.
402.4.14 **Public Meetings** – As required by the City, Consultant shall attend and participate in public meetings.
402.4.15 **Removal of Inflow/Infiltration Sources to Sanitary Sewer System** – As required by the City, Consultant shall provide design plans that redirect inflow/infiltration sources to the sanitary sewer to other authorized discharge systems.
402.4.16 **Right-of-Way** – As required by the City, Consultant shall obtain title report and legal descriptions, prepare exhibits and write legal descriptions in locations where additional right-of-way or easements are required for the Project.
402.4.17 **Sanitary Sewer Condition Assessment** – As required by the City, Consultant shall perform field investigation with closed-circuit TV inspection of sanitary sewer and perform condition assessment with rehabilitation recommendations.
402.4.18 **Section 404 Permit Application** – As required by the City, Consultant shall prepare the permit application and conduct environmental analysis in support of the Section 404 Permit.
402.4.19 **Sewer Design** – As required by the City, Consultant shall provide plan and profile design of new, reconstructed, or relocated sewer pipelines.
402.4.20 **Slope/Embankment Design** – As required by the City, Consultant shall provide additional design for treatment (soil cement, slope paving, etc.) to the detention basin embankments and slopes.
402.4.21 **Spillway/Energy Dissipater** – As required by the City, Consultant shall provide additional design for reconstruction of the Rainbow Detention Basin spillway and energy dissipater structure.
402.4.22 **Storm Drain Retrofit Design** – As required by the City, Consultant shall provide in-situ retrofit design of existing storm drain pipes.
402.4.23 **Structural** – As required by the City, Consultant shall provide additional structural design.

402.4.24 Structural Design – As required by design should the alternatives selection require a retaining walls, drainage structure or other structural design on the project.

402.4.25 Structural Engineering – The existing manholes and junction structures may need to be modified to provide access for the Contractor to rehabilitate the facilities. An allowance is provided to prepare the required structural modifications and/or new facilities to provide access.

402.4.26 Survey – As required by the design, Consultant shall obtain additional survey in critical areas of design to supplement the aerial mapping provided with the basic services. In addition, Consultant shall obtain additional survey for additional utility potholing.

402.4.27 Title Reports – As required by the City, Consultant shall prepare Title Reports as required for the Project.

402.4.28 Traffic Control Plans – As required by the City, Consultant shall provide additional design and drawings for traffic control throughout the project limits.

402.4.29 Utility Potholing – As required by the City, Consultant shall provide additional utility potholing, prepare pothole location map and obtain information for subsurface utilities.

402.4.30 Waterline Design – As required by the City, Consultant shall provide plan and profile design of new, reconstructed, or relocated water pipelines.

END OF EXHIBIT "D"

EXHIBIT "E"

ADDITIONAL COMPENSATION

ARTICLE 500: CONSULTANT HOURLY RATES

500.1 The following hourly rates are to be used as the basis for negotiation of added and reduced services. These hourly rates are valid for the duration of the Project and include salary costs, overhead, administration and profit. The overhead included in these rates covers all support personnel who normally work on non-specific project tasks including but not limited to receptionists, senior executives together with their assistants, financial accounting personnel, and facility, equipment, and IT maintenance personnel.

CLASSIFICATION	RATE	UNIT
Principal	$200	Per Hour
Project Manager	$185	Per Hour
Roadway/Traffic Engineer	$125	Per Hour
Landscape Architect	$125	Per Hour
Drainage Engineer	$125	Per Hour
Civil Engineer	$125	Per Hour
Structural Engineer	$195	Per Hour
Senior Designer	$100	Per Hour
CADD TECH	$70	Per Hour
Coordinator	$75	Per Hour
Project Controls	$75	Per Hour
QC Engineer	$125	Per Hour

ARTICLE 501: SUB-CONSULTANT HOURLY RATES

501.1 The following hourly rates are to be used as the basis for negotiation of added and reduced services. These hourly rates are valid for the duration of the Project and include salary costs, overhead, administration and profit. The overhead included in these rates covers all support personnel who normally work on non-specific project tasks including but not limited to receptionists, senior executives together with their assistants, financial accounting personnel, and facility, equipment, and IT maintenance personnel.

SUBCONSULTANT #1 GC Wallace	RATE	UNIT
Principal	$210	Per Hour
Associate	$195	Per Hour
Senior Engineer	$160	Per Hour
Supervising Designer/Engineer	$145	Per Hour
Engineering Intern/Designer	$115	Per Hour
CAD Technician	$75	Per Hour
Survey	$180	Per Hour
Support/Clerical	$47	Per Hour

SUBCONSULTANT #2 Ninyo & Moore	RATE	UNIT
Principal Engineer/Geologist/Environmental Scientist	$155	Per Hour
Senior Engineer/Geologist/Environmental Scientist	$140	Per Hour
Senior Project Engineer/Geologist/Environmental Scientist	$131	Per Hour
Project Engineer/Geologist/Environmental Scientist	$125	Per Hour
Senior Staff Engineer/Geologist/Environmental Scientist	$110	Per Hour
Staff Engineer/Geologist/Environmental Scientist	$105	Per Hour
GIS Analyst	$105	Per Hour
Field Operations Manager	$87	Per Hour
Supervisory Technician/Inspector	$85	Per Hour
Special Inspector	$85	Per Hour
Senior Inspector	$80	Per Hour
Senior Field/Laboratory/Environmental Technician	$70	Per Hour
Field/Laboratory Technician	$67	Per Hour
Technical Illustrator	$65	Per Hour
Geotechnical/Environmental/Laboratory Assisnant	$52	Per Hour
Data Processing	$50	Per Hour
Coring Machine (includes technician)	$145	Per Hour
Anchor Load Test Equipment	$75	Per Hour
Inclinometer Usage	$45	Per Hour
Level D Personal Protective Equiptment (per person)	$40	Per Hour
Rebar Locator	$40	Per Hour
Nuclear Density Gauge Usage	$20	Per Hour
Field Vehicle Usage	$19	Per Hour

SUBCONSULTANT #3 Aztec	RATE	UNIT
Unpaved Surface (depth 7 feet and under)	$425	Per Hole
Paved Surface (depth 7 feet and under)	$450	Per Hole
Concrete Surface (depth 7 feet and under)	$475	Per Hole
Pothole Truck and Crew	$250	Per Hour
Any Surface over 7' Depth	$25	Per Foot

ARTICLE 502: ADDITIONAL SERVICES RATES

502.1 The cost of the following potential future Additional Services have been negotiated as of the date of this Agreement.

ADDITIONAL SERVICE	SUBMITTALS	SCHEDULE IMPACT	FIXED FEE
Reference the following Exhibit E-1: Additional Services Fee Breakdown.			$0
			$0
			$0

502.2 These fees are valid for the duration of the Project and include salary costs, equipment, overhead, administration and profit. For Additional Services of sub-consultants, the City shall compensate the Consultant a multiple of **one and five hundredths (1.05)** times the amounts billed to the Consultant for such services, which multiple has been included in the Additional Services fees shown herein.

502.3 The Consultant agrees to provide services in connection with the Project which are in addition to those required by Exhibit "A" for Basic Services as Additional Services if so requested by the City in writing. Such requests may included, but are not limited to, and are not necessarily indicated by this statement as being Additional Services rather than Basic Services: (i) significant changes in the Project's size, quality, complexity, budget, or time schedule, (ii) changes required due to conflicting instructions previously given by the City, (iii) changes required by the enactment or amendment to codes, laws or regulations subsequent to the preparation of such documents, (iv) services concerning the replacement of that portion of the Project damaged by fire or other cause, and (v) services made necessary by the default or failure of the Contractor including major defects or deficiencies in the construction.

EXHIBIT E-1: ADDITIONAL SERVICES FEE BREAKDOWN

TASK	DESCRIPTION	Principal	Project Mgr.	Roadway/Traffic Engineer	Landscape Architect	Drainage Engineer	Civil Engineer	Structural Engineer	Senior Designer	CADD TECH	Coordinator	Project Controls	QC Engineer	HOURS SUBTOTAL	Direct Expenses	Lump Sum Task Amounts
		$200	$185	$125	$125	$125	$125	$195	$100	$70	$75	$75	$125			
	ADDITIONAL SERVICES															
	Additional Design Services	0	0	0	0	0	0	0	0	0	0	0	0	0	$190,000.00	$190,000.00
	Construction Phase Services	0	0	0	0	0	0	0	0	0	0	0	0	0	$75,000.00	$75,000.00
	Post Construction Services	0	0	0	0	0	0	0	0	0	0	0	0	0	$17,000.00	$17,000.00
	CMAR Coordination	0	0	0	0	0	0	0	0	0	0	0	0	0	$25,000.00	$25,000.00
	Sewer Inspection	0	0	0	0	0	0	0	0	0	0	0	0	0	$60,000.00	$60,000.00
	Hydrogeologic Investigation	0	0	0	0	0	0	0	0	0	0	0	0	0	$16,000.00	$16,000.00
	Public Meetings/Presentations	0	0	0	0	0	0	0	0	0	0	0	0	0	$17,000.00	$17,000.00
	Survey	0	0	0	0	0	0	0	0	0	0	0	0	0	$30,000.00	$30,000.00
	Utility Potholing	0	0	0	0	0	0	0	0	0	0	0	0	0	$70,000.00	$70,000.00
	Total Additional Services - Hours	0	0	0	0	0	0	0	0	0	0	0	0	0		
	Total Additional Services - Fee	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00		$500,000.00	$500,000.00

ARTICLE 503: REIMBURSABLE EXPENSES

503.1 The following Reimbursable Expenses are allowed:

REIMBURSABLE EXPENSE
None authorized or anticipated as of the date of this Agreement.

503.2 For Reimbursable Expenses of the Consultant, the City shall compensate the Consultant a multiple of **one and one tenth (1.10)** times the actual direct costs incurred by the Consultant. The multiplier includes all compensation for overhead and profit.

503.3 Reimbursable Expenses are limited to specific pre-authorized items or services purchased from third parties to this Agreement, dedicated to only this Project. Additions to the above allowed Reimbursable Expenses may only be granted as a written amendment to this Agreement.

END OF EXHIBIT "E"

EXHIBIT "F"

KEY PERSONNEL LIST

ARTICLE 600: CITY PERSONNEL

600.1 CITY REPRESENTATIVE: Rosa Cortez, P.E.

600.2 PROGRAM MANAGER: Jeremy Leavitt, P.E.

ARTICLE 601: CONSULTANT'S PROJECT STAFF

601.1 The following personnel will be assigned by the Consultant to work on the Project. Any changes require City approval.

601.1.1 CONSULTANT REPRESENTATIVE: Joseph Jensen, P.E.

601.1.2 PROJECT MANAGER: Joseph Jensen, P.E.

601.1.3 RESPONSIBLE IN CHARGE PERSON
List name of individual Engineer as licensed: Stephen Cupp, P.E.

601.1.4 IN CHARGE PERSON'S STATE OF NEVADA LICENSE NUMBER
List Engineer license number: NV17467

ARTICLE 602: CONSULTANT'S SUBCONSULTANTS

602.1 The following subconsultants will be contracted with and utilized by the Consultant to work on the Project. Any changes require City approval.

602.1.1 CIVIL ENGINEER: GC Wallace

602.1.2 GEOTECHNICAL ENGINEER: Ninyo & Moore

602.1.3 POTHOLING: Aztec

END OF EXHIBIT "F"

EXHIBIT "G"

CERTIFICATE

1. Definitions

"City" means the City of Las Vegas.

"City Council" means the governing body of the City of Las Vegas.

"Contracting Entity" means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

"Principal" means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members.

2. Policy

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

3. Instructions

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting Entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

4. Incorporation

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting Entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

Block 1 **Contracting Entity**
Name
Address
Telephone
EIN or DUNS

Block 2 **Description**
Subject Matter of Contract/Agreement:
RFP #:

Block 3 **Type of Business**			
☐ Individual	☐ Partnership	☐ Limited Liability Company	☐ Corporation

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

Block 4 Disclosure of Ownership and Principals

In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: _____

Block 5 Disclosure of Ownership and Principals - Alternate

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: _____

Date of Attached Document: _____ Number of Pages: _____

I certify, under penalty of perjury, that all the information provided in this Certificate is current, complete, and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity.

_____
Name

_____
Date

Subscribed and sworn to before me this _____ day of

_____, 20_____.

_____
Notary Public

EXHIBIT "G"

CERTIFICATE

1. Definitions

"City" means the City of Las Vegas.

"City Council" means the governing body of the City of Las Vegas.

"Contracting Entity" means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

"Principal" means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members.

2. Policy

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

3. Instructions

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting Entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

4. Incorporation

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting Entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

Block 1 Contracting Entity

Name	Jacobs Engineering Group Inc.
Address	7160 Bermuda Rd., Suite 200 Las Vegas, NV 89119
Telephone	702-938-5400
EIN or DUNS	FTID # 954081636

Block 2 Description

Jones / Valley View Roadway Rehabilitation:

RFP #:

Block 3 Type of Business

☐ Individual ☐ Partnership ☐ Limited Liability Company ■ Corporation

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

Block 4 **Disclosure of Ownership and Principals**

In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	See Attached		
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: 1

Block 5 **Disclosure of Ownership and Principals - Alternate**

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: _____

Date of Attached Document: _____ Number of Pages:

I certify, under penalty of perjury, that all the information provided in this Certificate is current, complete, and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity.

_____
Name

6/23/10
Date

Subscribed and sworn to before me this 23rd day of June, 2010.

Teri A. Cracraft
Notary Public

NOTARY PUBLIC
TERI A. CRACRAFT
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. JAN. 19, 2014
No: 97-4776-1

Disclosure of Principals – Continuation
Disclosing Party: Jacobs Engineering Group Inc.
Attachment A

Name	Title
Noel G. Watson	Chairman of the Board
J. R. Bronson	Director
R. C. Davidson, Jr.	Director
Linda Fayne Levinson	Director
E. V. Fritzky	Director
John P. Jumper	Director
John F. Coyne	Director
Craig L. Martin	Director
B. F. Montoya	Director
T. M. Niles	Director
Peter J. Robertson	Director
W. J. Birkhofer	Senior Vice President
Robert M. Clement	Group Vice President
H.T. McDuffie	Group Vice President
Michael J. Higgins	Group Vice President
A. Kremer	Senior Vice President
Robert Matha	Group Vice President
John McLachlan	Senior Vice President
Kevin J. McMahon	Group Vice President
Earl J. Mitchell	Group Vice President
C. E. Nagel	Group Vice President
Robert G. Norfleet	Senior Vice President
Phillip J. Stassi	Group Vice President
Patricia H. Summers	Senior Vice President
Allyn Byram Taylor	Group Vice President
James Dixon	Group Vice President
Mike J. Coyle	Group Vice President
Cora Carmody	Senior Vice President
Robert Duff	Group Vice President
Mike Autrey	Group Vice President
Dante Caravaggio	Senior Vice President
Robert Pragada	Group Vice President
Thomas Roy Hammond	Executive Vice President
George A. Kunberger	Executive Vice President
Greg J. Landry	Executive Vice President
William Clyde Markley III	Senior Vice President/General Counsel/Assistant Secretary
Craig L. Martin	President and Chief Executive Officer
John Warren Prosser Jr.	Executive Vice President/Chief Financial Officer
N. G. Thawerbhoy	Senior Vice President/Controller
Michael S. Udovic	Vice President/Secretary
Curtis A. Fisher	Assistant Secretary
Todd Haba	Assistant Secretary
Elizabeth A. Refinski	Assistant Secretary
Brian Scher	Assistant Secretary

City of Las Vegas Agenda Item No.: **35.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:

Approval of award of Amendment No. 1 to Agreement No. 100100-TF, Prime Design Services Agreement for Las Vegas Creek Lateral - Langtry Channel located from Washington Avenue to Bonanza Road between Decatur Boulevard and Valley View Boulevard - Department of Public Works - Award recommended to: VTN NEVADA ($60,330 - Road and Flood Capital Projects Fund) - Ward 5 (Barlow)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $60,330
Funding Source: Road and Flood CPF
Dept./Division: Public Works

PURPOSE/BACKGROUND:

On November 4, 2009 City Council approved award of Agreement No. 100100-TF for the final design of the Langtry Channel to repair major cracks within the channel. Amendment No. 1 provides for additional funding to complete the design. Funding for this project is being provided by the Regional Flood Control District.

PCC: T. Fernandez
POC: Jeff Griest - (702) 247-4020

RECOMMENDATION:

That City Council approve Amendment No. 1 to Agreement No. 100100-TF, Prime Design Services Agreement for Las Vegas Creek Lateral - Langtry Channel to VTN Nevada in the amount of $60,330, bringing the total Agreement amount to $411,730. Authority to execute the Amendment is given to the Purchasing Manager per R-48-2006.

BACKUP DOCUMENTATION:

1. Amendment No. 1 to Agreement No. 100100-TF
2. Certificate - Disclosure of Ownership/Principals

FIRST AMENDMENT

THIS FIRST AMENDMENT is made and entered into this _____ day of _____, _____, by and between the City of Las Vegas, a municipal corporation of the State of Nevada (herein the "City"), and VTN Nevada, a Corporation (herein the "Consultant").

WHEREAS, the City and the Consultant have entered into an Agreement dated November 4, 2009, (herein the "Agreement"), retaining the services of the Consultant for Design Services more fully described therein in connection with the improvements to be constructed at Las Vegas Creek Lateral - Langtry Channel and,

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree that the following changes shall be made to the Agreement:

1. Section 6.01 Term, delete and replace with: *Term.* This Agreement shall commence on the day it is approved by the City (which date shall be inserted in the introductory paragraph of this Agreement) and shall remain in force and effect from Award Date through June 30, 2011 with three one-year options to renew unless terminated earlier pursuant to Section 10.02 or 10.03 of this Agreement. Such termination shall not release either party from any of its continuing obligations under this Agreement

2. Exhibit "D" Fee Breakdown is hereby amended to increase the total compensation of the entire Agreement referenced herein by $60,330 ($35,330 for Basic Services plus $25,000 for Additional Services), from $351,400 to $411,730

3. All other provisions of the Agreement remain in force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed the day and year first above written.

CITY OF LAS VEGAS

By: _____
Kathleen C. Rainey, Manager
Purchasing and Contracts

CONSULTANT

By: _____
Ken Gilbreth, P.E.
VTN Nevada

ATTEST:

_____
Beverly K. Bridges, MMC Date
City Clerk

APPROVED AS TO FORM:

John S. Ridilla 8/2/10
Deputy City Attorney Date
John S. Ridilla
Deputy City Attorney

EXHIBIT "D"

FEE BREAKDOWN

ARTICLE 1: COMPENSATION AND TERMS OF PAYMENT

1.1 *General.* At the time of approval of this Agreement by the City Council, the City agrees to set aside Sixty Thousand, Three Hundred Thirty dollars ($60,330.00) as the total appropriation for the performance of this Agreement. In no event shall the total payments to the Consultant for the services (basic and additional services) provided under this Agreement exceed the aforementioned amount appropriated without prior approval of the City.

1.2 *Compensation: Basic Services (Lump Sum by Task).* The City agrees to pay the lump sum amount attributable to each task and, if applicable, each subtask, set forth in Exhibit "A" which is completed by the Consultant. The Consultant agrees to complete each task and, if applicable, each subtask, for the amount of the lump sum set forth in Exhibit "D" regardless of the number of manhours which must be expended to complete the performance of this Agreement. The total payments to the Consultant for the completion of these tasks shall not exceed Thirty Five Thousand, Three Hundred Thirty dollars ($35,330.00) without prior written approval from the City. Such payment is based upon the individual lump sum amounts that are identified in Exhibit "D".

1.3 *Compensation: Additional Services.* For the additional services set forth in Exhibit "E," the City shall pay to the Consultant either a lump sum or an hourly fee based upon the hourly rates set forth in Exhibit "E" attached hereto, whichever is approved in writing by the City's Representative. Such payment shall not exceed Twenty-Five Thousand dollars ($25,000.00) without the prior written approval of the City.

BASIC SERVICES FEE BREAKDOWN

TASK	DESCRIPTION	Project Manager	Team Leader	Staff Designer	Design Technician	Land Surveyor	Survey Crew	Admin/ Clerical	Hours Subtotal	Direct Expenses	Lump Sum Task Amounts
		$170	$145	$120	$110	$150	$210	$70			
600	**BID PHASE**										
600.1	Pre-Bid Conference	0	4	4	0	0	0	0	8	$0.00	$1,060.00
600.2	Bid Requests and Responses	0	20	0	20	0	0	20	60	$500.00	$7,000.00
600.3	Bid Opening	0	0	0	0	0	0	0	0	$0.00	$0.00
600	**Subtotal Hours**	**0**	**24**	**4**	**20**	**0**	**0**	**20**	**68**		
600	**Subtotal Fee**	**$0.00**	**$3,480.00**	**$480.00**	**$2,200.00**	**$0.00**	**$0.00**	**$1,400.00**		**$500.00**	**$8,060.00**
700	**CONSTRUCTION PHASE**										
700.1	Pre-Construction Meeting	0	4	4	0	0	0	8	16	$0.00	$1,620.00
700.2	Submittal Review	0	30	20	20	0	0	30	100	$5,000.00	$16,050.00
700.3	Construction Support Services	0	40	20	0	0	0	20	80	$0.00	$9,600.00
700	**Subtotal Hours**	**0**	**74**	**44**	**20**	**0**	**0**	**58**	**196**		
700	**Subtotal Fee**	**$0.00**	**$10,730.00**	**$5,280.00**	**$2,200.00**	**$0.00**	**$0.00**	**$4,060.00**		**$5,000.00**	**$27,270.00**
	Total Basic Services Hours	**0**	**98**	**48**	**40**	**0**	**0**	**78**	**264**		
	Total Basic Services Fee	**$0.00**	**$14,210.00**	**$5,760.00**	**$4,400.00**	**$0.00**	**$0.00**	**$5,460.00**		**$5,500.00**	**$35,330.00**

ADDITIONAL SERVICES FEE BREAKDOWN

DESCRIPTION	Project Manager	Team Leader	Staff Designer	Design Technician	Land Surveyor	Survey Crew	Admin/ Clerical	HOURS SUBTOTAL	Direct Expenses	Lump Sum Task Amounts
	$170	$145	$120	$110	$150	$210	$70			
ADDITIONAL SERVICES										
Additional Design Services	0	0	0	0	0	0	0	**0**		**$5,000.00**
Roadway Design	0	0	0	0	0	0	0	**0**		**$5,000.00**
Construction Support Services	0	0	0	0	0	0	0	**0**		**$10,000.00**
Utility Potholing	0	0	0	0	0	0	0	**0**		**$5,000.00**
Total Additional Services - Hours	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**		
Total Additional Services - Fee	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**			**$25,000.00**

CERTIFICATE
DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

"City" means the City of Las Vegas.

"City Council" means the governing body of the City of Las Vegas.

"Contracting Entity," means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

"*Principal"* means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members; (e) trust – the trustee and beneficiaries.

2. Policy

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Ls Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

3. Instructions

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

4. Incorporation

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

Block 1 Contracting Entity

Name: VTN Nevada

Address: 2727 S Rainbow Blvd
Las Vegas, NV 89146
Telephone: 702-247-4020

EIN or DUNS

Block 2 Description
Langtry Channel

RFP#

Block 3 **Type of Business**

☐ Individual ☐ Partnership ☐ Limited Liability Company ☒ Corporation ☐ Trust ☐ Other:

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

Block 4 Disclosure of Ownership and Principals
In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	Gene Krametbauer, PLS	2727 S Rainbow Blvd. Las Vegas, NV 89146	702-873-7550
2.	Ken Gilbreth, PE	2727 S Rainbow Blvd. Las Vegas, NV 89146	702-247-4020
3.	James Thomas, PE	2727 S Rainbow Blvd. Las Vegas, NV 89146	702-873-7550
4.	Michael Leeper	2727 S Rainbow Blvd. Las Vegas, NV 89146	702-247-4020
5.	Christopher Grubbs, PE	2727 S Rainbow Blvd. Las Vegas, NV 89146	702-873-7550
6.	Robert Hosea, PE	2727 S Rainbow Blvd. Las Vegas, NV 89146	702-873-7550
7.	Daniel Hood, PE	2727 S Rainbow Blvd. Las Vegas, NV 89146	702-873-7550
8.	Anthony Zicari, PLS	2727 S Rainbow Blvd. Las Vegas, NV 89146	702-873-7550

The Contracting Entity shall continue the above list on a sheet of paper entitled "disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: ___.

Block 5 DISCLOSURE OF OWNERSHIP AND PRINCIPALS – ALTERNATE

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: _____

Date of Attached Document: _____ Number of Pages: _____

I certify under penalty of perjury, that all the information provided in this Certificate is current, complete and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity

Name

10-5-09

Date

Subscribed and sworn to before me this 5th day of October, 2009

Notary Public

MARTHA S. RAMON
Notary Public State of Nevada
No. 03-82021-1
My appt. exp. May 9, 2011

City of Las Vegas Agenda Item No.: **36.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Contract No. 110013-JL, Legal Consulting Services for Symphony Park located at 100 South Grand Central Parkway - APNs 139-34-110-002 and 104 - City Parkway V, Inc. - Award recommended to: SANTORO, DRIGGS, WALCH, KEARNEY & THOMPSON, LTD (not-to-exceed $270,000 - City Parkway V Operating Fund) - Ward 5 (Barlow)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $270,000
Funding Source: City Parkway V Operating Fund
Dept./Division: City Parkway V, Inc.

PURPOSE/BACKGROUND:
City Parkway V has previously retained the legal services of Santoro, Driggs, Walch, Kearney &Thompson, LTD in regard to environmental issues on the former Union Pacific 61-acre parcel known as Symphony Park. This contract allows continuation of those services. This item is exempt from the competitive bidding process pursuant to NRS 332.115.1(b), Professional Services.

PCC: D. Dixon
POC: Gregory J. Walch - (702) 791-0308

RECOMMENDATION:
That City Council approve award of Contract No. 110013-JL, Legal Consulting Services for Symphony Park to Santoro, Driggs, Walch, Kearney & Thompson, LTD in the annual not-to-exceed amount of $270,000 from date of award through August 17, 2011 with five one-year options to renew. Authority to execute the Contract is given to the President of City Parkway V, Inc.

BACKUP DOCUMENTATION:
1. Contract No. 110013-JL
2. Certificate - Disclosure of Ownership/Principals

CONTRACT
Legal Consulting Services for Symphony Park

THIS CONTRACT is being entered into this _____ day of _____, 2010, by and between the CITY PARKWAY V, INC., (hereinafter"CP V") a non-profit corporation within the State of Nevada having its principal office at 400 Stewart Avenue, Las Vegas, Nevada 89101, and Santoro, Driggs, Walch, Kearney, Holly & Thompson (hereinafter the "Firm"), LTD, located at 400 South Fourth Street, Las Vegas, Nevada 89101.

SECTION A – Contract Form

The subject matter of this Contract is the performance of legal services in matters relating to City Parkway V, City Parkway IV A and other parties as outlined in Attachment A to this contract.

SECTION B – Basic Terms

B-1 Definitions

The following definitions apply to this Contract:

(a) *"Award Date"* means the date that a Contract becomes effective. It is the date that is entered into the first paragraph of a Contract upon execution by an authorized representative of CP V.

(b) *"City"* means the City of Las Vegas.

(c) *"City Council"* means the governing body of the City of Las Vegas.

(d) *"Contract"* means this document, consisting of Sections A through F, which is binding and effective only upon execution by CP V and the Firm.

(e) *"Firm"* means the individual, partnership, or corporation responsible for the performance of services under this Contract.

(f) *"Firm Representative"* means the individual authorized to act on behalf of the Firm regarding routine matters arising under or relating to this Contract.

(g) *"Non-exclusive Contract"* means a Contract under which CP V agrees to obtain some, but not necessarily all, of the City's requirements for a particular service.

(h) *"Not-To-Exceed Amount"* means the dollar expenditure limit placed on performance which will include all labor, reimbursable expenses, overhead and fee.

(i) *"Reimbursable Expenses"* means expenses associated with activities and duties required to provide services such reproduction, reports, telephone, facsimile and other materials approved by the Project Manager.

B-2 Contract Type

This Contract provides for legal counsel services. The contract type is Labor Hour with allowable payment for ancillary costs related to the labor incurred. This is a Non-exclusive Contract.

B-3 Contract Value

The amount of the Contract shall not exceed Two Hundred and Seventy Thousand Dollars ($270,000) per year.

B-4 Compensation

(a) The Company will be compensated in accordance with the fee schedule set forth in Paragraph B-4 (c), below.

(b) **Not-To-Exceed (NTE) Amount.** CP V will pay the Firm for services performed at fixed labor rates and for the payment of expenses limited to a NTE amount of Two Hundred and Seventy Thousand Dollars ($270,000) per year. The Firm shall provide written notification to CP V when it has reached 85 percent (85%) of the NTE amount. If the Firm believes the work cannot be completed within the NTE amount, it shall provide an

estimate by labor category of the additional budget needed. A modification to increase the NTE may be negotiated, or CP V may elect to terminate the contract. The Firm shall in no event exceed the NTE amount without prior written authorization.

(c) **Attorney Fees.** CP V will pay the Firm fixed hourly labor rates to be pro-rated for actual time incurred.

Name	Hourly Billing Rate
Gregory J. Walch	$400.00
Stacy Harrop	$275.00
Natasha Dalton	$150.00

Other attorneys may be utilized from time to time, and Labor rates remain in effect until August 16, 2010 at which time the Firm may submit a request for price adjustment to the City. Price adjustments are subject to negotiation. There may only be one price adjustment per subsequent twelve (12) month periods.

(d) **Reimbursable Expenses.** CP V will reimburse the Firm for Reimbursable Expenses incurred in the performance of services up to the NTE amount. The Firm will invoice such expenses at actual cost without an additional mark-up fee. No reimbursable cost in excess of Ten Thousand Dollars ($10,000) shall be incurred without prior approval of CP V. The Firm will not charge for Reimbursable Expenses consisting of travel or express deliveries to any Nevada location, or for long distance telephone calls within the United States.

B-5 Contract Term/Delivery Schedule

(a) The contract term is from date of award for a period of twelve (12) months. CP V reserves the right to exercise five (5) one-year options to extend the Contract period. CP V will provide a written notice of its intent to exercise an option to the Firm within thirty (30) days of the Contract expiration date. If the Contract is extended, the Firm will honor the current fixed price labor rates stated in B-3(4) unless otherwise modified through negotiation. The Firm is not obligated to incur expenses and CPV is not obligated to pay claims for these options unless CP V exercises them in writing. This last sentence is confusing. Perhaps change to: The Firm may not assume the Contract has been renewed absent written notification from CP V.

B-6 Payment/Invoices

Firm shall submit monthly invoices to CP V for the previous month's charges for services provided to CP V. All invoices should identify the following:

(i) Performance dates covered.
(ii) Date of the invoice.
(III) Associated purchase order number.
(iv) Percentage of the Not-to-Exceed amount expended; and
(v) Any reasonable supporting information requested by CP V.

ORIGINAL TO:
Department of Finance and Business Services
ATTN: Accounts Payable
City of Las Vegas
400 Stewart Ave.
Las Vegas, NV 89101 – 2986

WITH COPY TO:
Department of Business Development
ATTN: Scott Adams, Director
City Hall/2nd Floor
400 Stewart Ave.
Las Vegas, NV 89101

AND:
Department of Finance and Business Services
ATTN: Mark Vincent, Director
City of Las Vegas
400 Stewart Ave.
Las Vegas, NV 89101 – 2986

(c) A representative of the Firm shall review the invoice in a manner to reasonably cause the invoice to be just and correct and that reimbursement for such expenses listed on this invoice has not been previously received from CP V, The City, or any other source.

SECTION C – Statement of Work

C-1 General Scope of Services

(a) The Firm shall provide the services listed in the Engagement Letter, dated July 7, 2010, Attachment 1 attached hereto and incorporated as a part of this Agreement.

(b) CP V empowers the Firm to take such legal action as may be advisable in the judgment of the Firm in disputed matters, provided that the Firm will not effect a final compromise without the prior approval of CP V or its designated representative. The Firm has no authority to bind CP V to any agreement or payment to a third party under this Contract.

(c) Services provided by the Firm are limited to those contracted explicitly herein. Additional services may, however, be provided by the Firm under this Contract if so requested by CP V and mutually agreed to by both parties. Additional services will only be performed pursuant to a written contract modification, executed by both parties.

(d) The Firm will provide CP V with status reports as the City may reasonably request.

SECTION D – Special Clauses

D-1 Legal Notice [CAO-7/24/08]

(a) All legal notices required pursuant to the terms and conditions of this Contract shall be in writing, unless an emergency situation dictates otherwise. Any notice required to be given under the terms of this Contract shall be deemed to have been given when:

(i) received by the party to whom it is directed by hand delivery or personal service, or
(ii) transmitted by facsimile with confirmation of transmission, or
(iii) sent by U.S. mail via certified mail-return receipt requested at the following addresses:

FOR THE CITY:
City of Las Vegas
Manager, Purchasing and Contracts
City Hall, First Floor
400 Stewart Avenue
Las Vegas, Nevada 89101-2986
Fax: (702) 384-9964

FOR THE FIRM:
Gregory J. Walch
Santoro, Driggs, Walch, Kearney, Holley & Thompson
400 S. Fourth Street, Third Floor
Las Vegas NV 89101
Fax: (702) 791-1912

(b) The parties shall provide written notification of any change in the information stated above.

(c) An original signed copy, via U. S. Mail, shall follow facsimile transmissions.

(d) For purposes of this Contract, legal notice shall be required for all matters involving potential termination actions, litigation, indemnification and unresolved disputes. This does not preclude legal notice for any other actions having a material impact on the Contract.

(e) Routine correspondence should be directed to the Project Manager or the Firm Representative, as appropriate.

D-2 Personnel

The Firm's work on City Parkway V will be done primarily by attorneys in the Firm's municipal finance department located in its Las Vegas, Nevada offices. Gregory J. Walch, who is a licensed Nevada attorney and resident of Nevada, will be the principal lawyer involved in performing legal services for CP V pursuant to this Contract. In addition, the Firm may be assisted in performing these legal services by lawyers who are not licensed to practice law in Nevada. Generally, these lawyers assist in matters of federal law, but sometimes are consulted in attempting to resolve other questions, and these lawyers also sometimes assist the Firm in legal research and document drafting. In any event, the Firm's Nevada lawyers will be responsible for all legal services and legal work rendered to CP V pursuant to this contract, and all formal legal opinions will be rendered and executed by Nevada lawyers, Santoro, Driggs, Walch, Kearney, Holley & Thompson, LTD, which is the name under which the Firm's Nevada office does business.

D-3 Experts

The Firm may employ experts to assist with matters regarding work under this Contract. Advance authorization must be obtained by the Firm from CP V. Expert fees will be paid by CP V at cost.

D-4 Project Manager/Company Representative [CAO-7/24/08]

(a) CP V designates Scott Carter as the Project Manager for this Contract. CP V will provide written notice to the Firm should there be a subsequent Project Manager change. The Project Manager will be the Firm's principal point of contact at CP V regarding any matters relating to this Contract, will provide all general direction to the Firm regarding Contract performance, and will provide guidance regarding CP V's goals and policies. The Project Manager is not authorized to waive or modify any material scope of work changes or terms of the Contract.

(b) The Firm designates Gregory J. Walch as the Firm Representative for this Contract. The Firm will provide written notice to CP V should there be a subsequent Firm Representative change. CP V has the right to assume that the Firm Representative has full authority to act for the Firm on all matters arising under or relating to this Contract.

D-5 Warranty – Services [CAO-7/24/08]

The Firm warrants that services shall be performed in full conformity with this Contract, with the professional skill and care that would be exercised by those who perform similar services in the commercial marketplace, and in accordance with accepted industry practice. In the event of a breach of this warranty and/or in the event of non-performance and/or failure of the Firm to perform the services in accordance with this Contract, the Firm shall, at no cost to CP V, re-perform or perform the services so that the services conform to the warranty

D-6 Licenses/Registrations

During the entire performance period of this Contract, the Firm shall maintain all federal, state, and local licenses and registrations applicable to the work performed under this Contract.

D-7 Intellectual Property Rights [CAO-7/24/08]]

All deliverables produced under this Contract, as well as all data, notes, and documentation collected on behalf of CP V are exclusively the property of CP V.

D-8 Attorney/Client Relationship

In the performance of services under this Contract, City Parkway V will be the Firm's client and an attorney-client relationship will exist between City Parkway V and the Firm. The Firm represents CP V rather than City Council, individual Council elected officials or City officers and employees.

D-9 Exclusive Benefit of the Parties

This contract is not intended to create any rights, powers or interests in any third party, and this Contract is entered into for the exclusive benefit of CP V and the Firm.

D-10 Conflict of Interest - Firm

The Firm shall abide by and perform its duties in accordance with the ethics of the legal profession and all federal and state laws and regulations regulating the practice of law.

D-11 Order of Precedence [CAO-7/24/08]

In the event of a conflict between the specific language set forth in Sections B through E of this Contract and any Attachment or Exhibit, the specific language in Sections B through E shall prevail. Any exception to this order of precedence will be addressed through specific language elsewhere in Sections B through E.

SECTION E – General Clauses

E-1 Disputes [CAO-7/25/08]

(a) For each claim or dispute arising between the parties under this Contract, the parties shall attempt to resolve the matter through escalating levels of management. In the event the matter cannot be successfully resolved in this manner, CP V is granted the right, regardless of which party is asserting the claim or dispute, to determine between arbitration or litigation as the forum in which the party desiring to proceed further shall file to resolve the claim or dispute. For any and all claims or disputes asserted by the Firm, the Firm shall notify CP V of its intent to proceed further with the claim or dispute and, in response thereto, CP V shall notify the Firm as to its selected forum for resolution. For any and all claims or disputes asserted by CP V, CP V shall notify the Firm of its intent to proceed with further resolution and, in the same notice, whether it has selected arbitration or litigation as the forum to resolve the claim or dispute. In the event arbitration is the designated forum, such arbitration shall be binding on the parties.

(b) If arbitration is selected by CP V as the forum for further resolution, the claim or dispute shall be filed with the Nevada Arbitration Association or the American Arbitration Association under its then current Commercial Arbitration Rules, Expedited Procedures, regardless of the amount of the claim or dispute.

(c) The laws of the State of Nevada shall govern this Contract and the venue for purposes of such litigation or arbitration shall be in the City.

E-2 Notice of Delay [CAO-7/24/08]

(a) Should the timely performance of this Contract be jeopardized by the non-availability of CP V provided personnel, data, or equipment, the Firm immediately shall notify CP V in writing of the facts and circumstances that are contributing to such delay. Upon receipt of this notification, CP V will advise the Firm in writing of the action which will be taken to remedy the situation.

(b) The Firm shall advise CP V in writing of an impending failure to meet established milestones or delivery dates based on the Firm's failure to perform. Notice shall be provided as soon as the Firm is aware of the situation; however, such notice shall not relieve the Firm from any existing obligations regarding performance or delivery.

E-3 Termination for Convenience [CAO-7/24/08]

CP V shall have the right at any time to terminate further performance of this Contract, in whole or in part, for any reason whatsoever (including no reason). Such termination shall be effected by written notice from CP V to the Firm specifying the extent and effective date of the termination. On the effective date of the termination, the Firm shall terminate all work and take all reasonable actions to mitigate expenses. The Firm shall submit a written request for incurred costs for services performed through the date of termination, and shall provide any substantiating documentation requested by CP V. In the event of such termination, CP V agrees to pay the Firm within 30 days after receipt of a correct, adequately documented written request. CP V's sole liability under this Paragraph is for payment of the costs for the services requested by CP V and actually performed by the Firm.

E-4 Insurance R

The Firm shall procure, at its own expense, and maintain during the term of this Contract, Professional Liability Insurance (Errors and Omissions) in a policy limit of not less than $ 10,000,000, with $500,000 retention.

E-5 Assignment [CAO-7/24/08]

Neither party may assign their rights nor delegate their duties under this Contract without the written consent of the other party. Such consent shall not be withheld unreasonably. Any assignment or delegation shall not relieve any party of its obligations under this Contract.

E-6 Waiver [CAO-7/24/08]

Waiver of any of the terms of this Contract shall not be valid unless it is in writing signed by each party. The failure of CP V to enforce any of the provisions of this Contract, or to require performance of any of the provisions herein, shall not in any way be construed as a waiver of such provisions or to affect the validity of any part of this Contract, or to affect the right of CP V to thereafter enforce each and every provision of this Contract.

E-7 Audit of Records [CAO-8/5/08]

(a) The Firm agrees to maintain the financial books and records (including supporting documentation) pertaining to the performance of this Contract according to standard accounting principles and procedures. The books and records shall be maintained for a period of three (3) years after completion of this Contract, except that books and records which are the subject of an audit finding shall be retained for three (3) years after such finding has been resolved. If the Firm goes out of business, the Firm shall forward the books and records to CP V to be retained by CP V for the period of time required herein.

(b) CP V, or its designated representative(s), shall have the right to inspect and audit (including the right to copy and/or transcribe) the books and records of the Firm pertaining to the performance of this Contract during normal business hours. CP V will provide prior written notice to the Firm of the audit and inspection. If the books and records are not located within Clark County, the Firm agrees to deliver them to CP V, or to an address designated by CP V within Clark County. In lieu of such delivery, the Company may elect to reimburse CP V for the cost of travel (including transportation, lodging, meals and other related expenses) to inspect and audit the books and records at the Firm's office. If the books and records provided to CP V are incomplete, the Firm agrees to remedy the deficiency after written notice thereof from CP V, and to reimburse CP V for any additional costs associated therewith including, without limitation, having to revisit the Firm's office. The Firm's failure to remedy the deficiency shall constitute a material breach of this Agreement. CP V shall be entitled to its costs and reasonable attorney fees in enforcing the provisions of this Paragraph

(c) If, at any time during the term of this Contract, or at any time after the expiration or termination of the Contract, CP V or CP V's designated representative(s) find the dollar liability is less than payments made by CP V to the Firm, the Firm agrees that the difference shall be either: (a) repaid immediately by the Firm to CP V or (b) at CP V's option, credited against any future billings due the Firm.

E-8 Independent Contractor [CAO-7/24/08]

In the performance of services under this Contract, the Firm and any other person employed by it shall be deemed to be an independent contractor and not an agent or employee of CP V. The Firm shall be liable for the actions of any person, organization or corporations with which it subcontracts to fulfill this Contract. CP V shall hold the Firm as the sole responsible party for the performance of this Contract. The Firm shall maintain complete control over its employees and all of its subcontractors. Nothing contained in this contract or any subcontract awarded by the Company shall create a partnership, joint venture or agency with CP V. Neither party shall have the right to obligate or bind the other party in any manner to any third party.

E-9 Severability [CAO-7/24/08]

The invalidity, illegality, or unenforceability of any provision of this Contract or the occurrence of any event rendering any portion or provision of this Contract void shall in no way affect the validity or enforceability of any other portion or provision of this Contract. Any void provision shall be deemed severed from this Contract, and the balance of this Contract shall be construed and enforced as if this Contract did not contain the particular portion or provision held to be void. The parties further agree to amend this Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this clause shall not prevent this entire Contract from being void should a provision which is of the essence of this Contract be determined void.

E-10 Modification/Amendment [CAO-7/24/08]

This Contract shall not be modified or amended except by the express written agreement of the parties, signed by a duly authorized representative for each party. Any other attempt to modify or amend this Contract shall be null and void, and may not be relied upon by either party.

E-11 Conflict of Interest (City Officials) [CAO-7/24/08]

(a) An official of CP V, who is authorized in such capacity and on behalf of CP V to negotiate, make, accept or approve, or take part in negotiating, making, accepting, or approving this Contract, payments under this Contract, or work under this Contract, shall not be directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of, or for CP V, who is authorized in such capacity and on behalf of CP V to exercise any legislative, executive, supervisory or other similar functions in connection with this Contract, shall become directly or indirectly interested personally in this Contract or in any part hereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to this Contract.

(b) Each party represents that it is unaware of any financial or economic interest of any public officer or employee of CP V relating to this Contract. Notwithstanding any other provision of this Contract, if such interest becomes known, CP V may immediately terminate this Contract for convenience.

E-12 Public Records [CAO-7/24/08]

CP V is a public agency as defined by state law. As such, it is subject to the Nevada Public Records Law (Chapter 239 of the Nevada Revised Statutes). CP V's Records are public records, which are subject to inspection and copying by any person (unless declared by law to be confidential). This Contract and all supporting documents are deemed to be public records.

E-13 Confidentiality [CAO-7/24/08]

(a) All information, including but not limited to, oral statements, computer files, databases, and other material or data supplied to the Firm is confidential and privileged. The Firm shall not disclose this information, nor allow it to it be disclosed to any person or entity without the express prior written consent of CP V. The Firm shall have the right to use any such confidential information only for the purpose of providing the services under this Contract, unless the express prior, written consent of CP V is obtained. Upon request by CP V, The Firm shall promptly return to CP V all confidential information supplied by CP V, together with all copies and extracts.

(b) The confidentiality requirements shall not apply where (i) the information is, at the time of disclosure by CP V, then in the public domain; (ii) the information is known to the Firm prior to obtaining the same from CP V; (iii) the information is obtained by the Firm from a third party who did not receive the same directly or indirectly from CP V; or (iv) the information is subpoenaed by court order or other legal process, but in such event, the Firm shall notify CP V and CP V, in its sole discretion, may seek to quash such demand.

(c) The obligations of confidentiality shall survive the termination of this Contract.

E-14 Entire Agreement, Section and Paragraph Headings [CAO-7/24/08]

(a) This Contract represents the entire and integrated agreement between CP V and the Firm. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Contract.

(b) The section and paragraph headings appearing in this Contract are inserted for the purpose of convenience and ready reference. They do not purport to define, limit or extend the scope or intent of the language of the sections and paragraphs to which they pertain.

E-15 Limitation of Funding [CAO-7/24/08]

CP V reserves the right to reduce estimated or actual quantities, in whatever amount necessary, without prejudice or liability to CP V, if funding is not available or if legal restrictions are placed upon the expenditure of monies for the services required under this Contract.

E-16 Marketing Restrictions [CAO-7/24/08]

The Firm may not publish or sell any information from or about this Contract without the prior written consent of CP V. This restriction does not apply to the use of CP V's name in a general list of customers, so long as the list does not represent an express or implied endorsement of the Firm or its services

E-17 Indemnification R

(a) In addition to the insurance requirements set forth in Paragraph 6-5 (Insurance), the Firm shall protect, indemnify and hold harmless CP V, the City of Las Vegas, their officers, employess, agents, and consultants (collectively herein "CP V") from any and all claims, liabilities, damages, losses, suits, actions, decrees, and judgments, including attorney's fees, court costs or other expenses of any and every kind or character (collectively herein the "Liabilities") which may be recovered or sought against CP V, as a result of, by reason of, or as a consequence of, any act or omission, negligent or otherwise, on the part of the Firm, its officers, employs, or agents in the performance of the terms, conditions and covenants of the Contract, except where such Liabilities are caused by CP V or arise from any action or filing authorized by CP V in connection with the lawsuit as set forth in Exhibit A..

(b) If a third party claim against CP V for negligent performance by the Firm is within the limits of its liability insurance and the insurance company has accepted CP V's tender of defense, then CP V will pay the Firm what is due and owing to them, within the payment method specified in this Contract. However, if the claim is greater than the coverage amount, CP V, for its protection, may retain any money due and owing the Firm under this Contract until the claim has been resolved. In the event no money is due and owing, the surety, if required, of the Firm, may be held until all of the Liabilities have been settled and suitable evidence to that effect furnished to CP V.

(c) It is expressly agreed that the Firm shall defend CP V against the Liabilities and, in the event that the Firm fails to do so, CP V shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs, including attorney's fees and court costs, to the Firm.

E -18 Counterpart Signatures [CAO-9/24/08]

This Contract may be executed in counterparts. All such counterparts will constitute the same contract, and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter

SECTION F – List of Attachments/Exhibits

The following attachments are hereby incorporated into this contract:

Identifier	Title/Text Reference	Date	Pages
Attachment A	Engagement Letter	July 7, 2010	6
Attachment B	Certificate – Disclosure of Ownership/Principals [Paragraph E-16(c)]		4

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized representatives.

CITY PARKWAY V, INC.

ELIZABETH FRETWELL, President
"CP V"

ATTEST:

BEVERLY K. BRIDGES, CMC
City Clerk

APPROVED AS TO FORM:

8/9/10
Date

SANTORO, DRIGGS, WALCH,
KEARNEY,HOLLEY, & THOMPSON, LTD

GREGORY J. WALCH
"Firm"

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

400 SOUTH FOURTH STREET, THIRD FLOOR · LAS VEGAS, NEVADA 89101 · 702.791.0308 · FAX 702.791.1912
800 SOUTH MEADOWS PARKWAY - SUITE 800 - RENO - NEVADA · 89521 - (775) 851 8700 - FAX (775) 851 7681

From the desk of: Gregory J. Walch
e-mail: gwalch@nevadafirm.com

110013-JL
Legal Consulting Services for
Symphony Park
Attachment 1

July 7, 2010

Via email and U.S. Mail

Scott Carter
Redevelopment Officer
City of Las Vegas
Office of Business Development
400 Stewart Ave., 2nd Floor
Las Vegas, Nevada 89101

RE: Engagement of Santoro, Driggs, Walch, Kearney, Holley & Thompson (the "Firm")

Dear Mr. Carter:

This letter updates the Firm's previous engagement to perform services relating to Lot 5 at Symphony Park. In particular, the Firm will continue to advise the City of Las Vegas, the City's Office of Business Development, and the owners of Lot 5 regarding environmental matters, as well as to litigate the case styled CITY PARKWAY V, INC., a Nevada not-for-profit corporation; CITY PARKWAY IV A, INC., a Nevada not-for-profit corporation; OFFICE DISTRICT PARKING I, INC., a Nevada not-for-profit corporation, Plaintiffs, v. UNION PACIFIC RAILROAD COMPANY, a foreign corporation; DOE DEFENDANTS, I through 10 inclusive; and ROE CORPORATIONS, I through X, inclusive, Defendants, which is now in the Federal District Court for the State of Nevada and designated Case No. 2:09-cv-01299-PMP-GWF. We will perform and bill for services in accordance with the attached statement of Policies Relating to Professional Fees and Services ("Policies"). My current billing rate is $400 per hour and Stacy Harrop, who assists me in environmental matters, bills as a rate of $275 per hour. We use paralegals from time to time when in our opinion a task can be done just as effectively at a lesser cost than that which would be charged by attorneys. Our paralegal, Natasha Dalton, bills at a rate of $150 per hour.

Please indicate your consent to the terms of this Engagement Letter, together with the accompanying Policies, by executing the letter in the space provided below. We look forward to continuing our work on behalf of the City.

As always, if you have any questions, please feel free to call.

Sincerely,

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

Gregory J. Walch

CITY PARKWAY V, INC.

BETSY FRETWELL, President

ATTEST:

BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Date

Its:

GJW:gjw
Enclosure

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

Policies Relating to Professional Fees and Services

This statement of Policies Relating to Professional Fees and Services ("Policies") describes how Santoro, Driggs, Walch, Kearney, Holley & Thompson bills for legal services rendered and expenses incurred in connection with client matters. We believe that we can serve our clients better if they know about our billing policies at the beginning of our representation.

In order to help us determine the value of services that we render on behalf of our clients, our attorneys and paralegals maintain written records of the actual time they spend working for each client in 1/10 hour increments. Billed time includes all time spent on the case and encompasses activities such as conferences, telephone calls, pretrial discovery of data, trial preparation, drafting of documents, correspondence and pleadings, negotiations, legal research, court time, and travel time. Those rendering services are assigned an hourly rate based upon the type of work that they perform and their level of experience and skill. We periodically review our rates and make adjustments as necessary. Although our hourly rates are the most common component of our fees, they are not the only factor that we take into account in determining the value of our services. For example, consideration will be given to the type of services that we have been asked to perform, any special level of skill or expertise required, the size and scope of the matter, any special time constraints imposed, expedited matters, and the results of our efforts.

In addition to our fees for services, our clients are responsible for all out-of-pocket costs that we incur on their behalf. For example, charges for court reporting services, expenses associated with travel, long-distance telephone calls, computerized research services, courier services, fax and other forms of communication, and any other out-of-pocket expenses will be billed to the client. While we may sometimes advance our funds to cover out-of-pocket expenses incurred on behalf of a client, we reserve the right to pass any such expenses on to our clients for payment directly to the person who provided the services. We will make every effort to include the out-of-pocket disbursements that we make on our clients' behalf in their next monthly statement. However, some disbursements, such as telephone charges, are not immediately available to us and, as a result, may not appear on a statement until sometime after the charges were actually incurred.

Our statements for services rendered and costs incurred are sent to our clients on a monthly basis unless other arrangements have been made. All statements are due and payable upon receipt. Any statements not paid in full within thirty (30) days of the statement date will be assessed a late charge on the unpaid balance at the rate of one and one-half percent (1-1/2%) per month; late charges are due on the first day of each subsequent thirty-day period. Whether or not the client calls with an inquiry, any dispute as to the accuracy or validity of any billed charges, or requests for adjustment of any costs, expenses, or fees for legal services billed to the client, must be made in writing to our Firm Administrator within thirty (30) days of the date of the statement containing that cost, expense, or fee for legal services. If the client does not do so within thirty (30) days of a billing statement, the statement will be conclusively presumed to be correct. In other words, if the client does not contact us in writing within thirty (30) days of a billing statement, the client will have irrevocably agreed that the statement is accurate and correct. We

reserve the right to withdraw from representation in the matter if timely payment is not received. The client will pay any fees and costs that are incurred by us to collect fees, costs, or expenses from the client, including reasonable attorney's fees.

We also have the right at our discretion to withdraw from a client's case if the client misrepresents or fails to disclose material facts to us, fails to follow our advice, fails to cooperate in the preparation of the case, or in the event we determine it is not in our mutual interests to continue the representation. A client may discharge us at any time for any reason. The client will be responsible for any fees and costs incurred prior to our withdrawal or discharge, and time and costs expended to turn over the files and other information to the client or to substitute counsel.

We expect a client to be truthful in all communications to us and to keep us informed of developments as they occur during the pendency of the case. In addition, we expect to be accurately informed of a client's address, telephone number, and whereabouts at all times throughout the case. A client is also to provide us, at the beginning of our representation, all information regarding all of the client's insurance policies, whether the client believes them to be applicable or not. A client's failure to do so may result in the loss of important rights, and we will not be able to advise the client with respect to the possibility of insurance coverage without having this information at the outset of the representation.

The firm normally requires a refundable retainer fee before commencing work. At our discretion, this retainer will be credited against the time expended by us and against the costs incurred on the client's behalf. Alternatively, we may require, again at our discretion, a client to pay on a monthly basis for time expended by us on the client's representation and costs incurred on the client's behalf without using the retainer funds for that purpose, permitting us to maintain the retainer fee as security for future fee payments. In addition to any monthly replenishment of the initial retainer fee deposit, we may from time to time require additional deposits of retainer funds in anticipation of an evidentiary hearing, lengthy deposition, trial, or other large cost whenever we believe that the retainer deposit is insufficient to cover the expected co. , expenses, and fees for legal services likely to be incurred through the next billing cycle. A client's failure to deposit an additional requested retainer deposit by the specified date will be cause for us to withdraw from the representation. If the retainer is exhausted, we may require the client, at our discretion, to pay an additional retainer or provide other security for our fee. Any retainer deposit not used for costs, expenses, and fees for legal services will be refunded to the client at the conclusion of the representation. However, in the event we quote a "flat-fee" for services to be rendered to the client, no portion of that payment will be refunded, even if the accrued costs and fees are less than the amount of the quoted fee.

We are sometimes asked to estimate the legal fees and other costs that will be incurred in connection with a particular matter. While we are happy to do that when possible, but it should be understood that any such estimate necessarily incorporates a number of assumptions. There are almost always uncertainties involved in the handling of any legal matter, particularly when other parties are involved whose actions may significantly impact the work required to protect our client's interest. Accordingly, no such estimate is to be interpreted as a guarantee or maximum unless expressly so stated. The actual fees and costs may be more or less than any estimate, and the client will be charged on the basis described above without regard to that

estimate. The fees and costs incurred in connection with our representation of a client are not contingent upon the successful completion of any project.

We will, in our discretion, use associate counsel, legal assistants, or paralegals for work on a particular matter as we might deem appropriate. Such persons shall be billed at their regular billing rate. We will endeavor to apportion work to such persons so as to minimize costs and maximize effectiveness. Under certain circumstances, more than one member of our staff may work on a matter for the client simultaneously, in which case both members of our staff should be expected to bill for the time spent. An example would include a trial or contested evidentiary hearing during which, in our discretion, the full participation of more than one person is necessary to properly attend to the client's case. Another typical example is when an attorney may need another attorney or a paralegal present to keep track of the file, take notes, or otherwise assist at a hearing or trial.

If a court awards attorney's fees to our client (or to us on our client's behalf), and such sums are actually collected, they shall be applied against any outstanding charges on the client's bill. The client, however, remains responsible for payment of our services. A court order awarding attorney's fees from the opposing party does not relieve Client of the primary responsibility for paying our invoice for fees and advanced costs, or make any work done to collect the attorney's fees awarded any different from any other work performed by us. All attorney's fees awarded and actually collected that are not needed to pay the client's invoice from us (or replenish the retainer fee deposit) shall be paid to the client. Likewise, a court could order our client to pay fees or costs to the opposing party under certain circumstances.

It may become necessary in the preparation of the client's case for us to hire expert witnesses, consultants, or investigators. We will not hire such persons unless the client agrees to pay their fees and charges, but we will select which persons should be hired. The client's refusal to authorize hiring of such persons when we consider them necessary could greatly injure the client's case, and if the absence of such persons makes it impossible, in our discretion, to continue with the case, we may withdraw from the representation.

The client will grant us a lien on any and all claims or causes of action that are related to the subject of our representation. The attorney's lien will be for any sums due and owing to us at the conclusion of our services. The lien will attach to any recovery the client may obtain, whether by arbitration award, judgment, settlement, or otherwise. Any amounts received by us on the client's behalf may be used to pay the client's account.

We will retain possession of the client's file and all information therein until full payment of all costs, expenses, and fees for legal services, subject to turnover or destruction of the file as set forth below. After payment of all sums due and upon the client's request, we will deliver the client's file (other than our personal notes, briefs, and work product that we elect to retain) to the client, along with any of the client funds or property in our possession. If we are not instructed otherwise, the client's file will be kept in our office for a limited time after completion of the case and then sent to off-site storage, where it will be held for a period not to exceed seven years. Files are destroyed seven years after the closure of the case file without any further notice.

The client may discharge us at any time, although court rules might still require us to file a motion to withdraw. We may withdraw from our representation of any client at any time at our discretion. In either such circumstance, the client shall sign any documents necessary to permit us to withdraw. If the client shall desire to retain other counsel, then we shall be paid the amount then due and owing for work performed for the client.

Nothing in our statements to the client will be construed as a promise or guarantee about the outcome of the client's matter. We make no such promises or guarantees. Our comments about the outcome of the client's matter, if any, are expressions of opinion only. It is impossible to predict how long a case will take, how much it will cost, or what the resulting outcome may be. Similarly, we do not make any guarantees to the client about the expense of the client's case. It is quite typical that the costs, expenses, and fees for legal services incurred in the client's case will substantially exceed the initial retainer fee deposit.

The Firm's scope of work on any water related project for which we have been engaged (e.g., a water rights transaction, due diligence investigation, litigation, or other representation in administrative proceedings or court), does **NOT** include the preparation or filing of any extensions of time to protect your water rights unless specifically agreed to in writing by the firm in our engagement letter. When such an engagement is undertaken by the firm, any filing pursuant thereto is made on a one-time basis and the firm will not make subsequent filings (e.g., at the conclusion of any extended filing period) absent a separate engagement in writing to do so. Accordingly, it is up to you to be aware of and comply with the terms of your permits and certificates and to either make appropriate filings when necessary, or to separately engage us in writing to undertake the work. The Division of Water Resources website (http://water.nv.gov/) contains a Water Rights Database in which you may find various deadlines for Nevada water rights.

We encourage our clients to contact the attorneys responsible for their matters if they have questions about our billings, policies, or procedures.

ATTACHMENT 2
CERTIFICATE
DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

"City Council" means the governing body of the City of Las Vegas.

"Contracting Entity," means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

"CP V" means City Parkway V, Inc.

"*Principal*" means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability Firm – the managing member as well as all the other members; (e) trust – the trustee and beneficiaries.

2. Policy

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

3. Instructions

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

4. Incorporation

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

Block 1 Contracting Entity	**Block 2 Description**
Name Santoro Driggs Walch et al.	**Legal Services**
Address 400 South 4th St. 3rd Floor LV	
Telephone (702) 791-0308	
EIN or DUNS 880356668	**Contract No.**

Block 3	**Type of Business**
☐ Individual ☐ Partnership ☒ Limited Liability Firm ☐ Corporation ☐ Trust ☐ Other:	

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

Block 4 Disclosure of Ownership and Principals
In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	Gregory Walch/Member	400 S. 4th St., 3rd Flr., LV, NV 89101	(702) 791-0308
2.	Dennis Haney/Member	" "	" "
3.	Kenneth Woloson/Member	" "	" "
4.	Nicholas Santoro/Member	" "	" "
5.	Michael Kearney/Member	" "	" "
6.	J. Douglas Driggs, Jr./Member	" "	" "
7.	Richard Holley/Member	" "	" "
8.	Ronald Thompson/Member	" "	" "
9.	James Whitmire, III/Member	" "	" "
10.	Victoria Nelson/Member	" "	" "

The Contracting Entity shall continue the above list on a sheet of paper entitled "disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: 1.

Block 5 DISCLOSURE OF OWNERSHIP AND PRINCIPALS – ALTERNATE

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: _____

Date of Attached Document: _____ Number of Pages: _____

I certify under penalty of perjury, that all the information provided in this Certificate is current, complete and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity

_____
Name

8/10/10
Date

Subscribed and sworn to before me this 10th day of August, 2010.

N. Dalton
Notary Public

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
N. DALTON
Appt. No. 06-104159-1
My Appt. Expires March 27, 2014

Disclosure of Principals - Continuation

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
11.	Jeffrey Albregts/Member	400 S. 4th St., 3rd Flr., LV, NV 89101	(702) 791-0308
12.	Dean Bennett/Member	" "	" "
13.	Andrew Glendon/Member	" "	" "
14.	Oliver Pancheri/Member	" "	" "
15.	Brian Boschee/Member	" "	" "
16.	Bryce Earl/Member	" "	" "
17.	Ogonna Atamoh/Member	" "	" "

ATTACHMENT 2
CERTIFICATE
DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

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"Principal" means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability Firm – the managing member as well as all the other members; (e) trust – the trustee and beneficiaries.

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CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

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8/10/10
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N. Dalton
Notary Public

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
N. DALTON
Appt. No. 06-104159-1
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Disclosure of Principals - Continuation

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17.	Ogonna Atamoh/Member	" "	" "

City of Las Vegas Agenda Item No.: **37.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK R. VINCENT ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of award of Contract No. 100171-PH, Darling Tennis Center Operator at the Amanda and Stacy Darling Memorial Tennis Center located at 7901 West Washington Avenue - Department of Leisure Services - Award recommended to: CJMS TENNIS MANAGEMENT COMPANY - Ward 4 (Anthony)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
A competitive Request for Proposals process was conducted to solicit proposals from qualified offerors to operate and manage the Darling Tennis Center, which is located on BLM land subject to the Recreation and Public Purposes Act. The RFP evaluation team determined that CJMS Tennis Management Company submitted the proposal most advantageous to the City for all elements of the Center. This negotiated contract requires CJMS to pay utilities, routine maintenance and routine court resurfacing at the Center. The Center will operate at no cost to the City except for large maintenance events.

PCC: P. Hoffman
POC: Sandra Foley - (702) 635-0447

RECOMMENDATION:
That City Council approve the award of Contract No. 100171-PH, Darling Tennis Center Operator to CJMS Tennis Management Company. Authority to execute the Contract is given to the Purchasing Manager per R-48-2006.

BACKUP DOCUMENTATION:
1. Contract No. 100171-PH
2. Certificate - Disclosure of Ownership/Principals

CONTRACT FOR DARLING TENNIS CENTER OPERATION

THIS CONTRACT is being entered into this _____ day of _____, 2010, by and between the CITY OF LAS VEGAS (hereinafter the "City"), a municipal corporation within the State of Nevada having its principal office at 400 Stewart Avenue, Las Vegas, Nevada 89101, and CJMS TENNIS MANAGEMENT COMPANY (hereinafter the "Operator"), a limited liability company having its principal office located at 2773 Borthwick Avenue, Las Vegas, Nevada 89044.

RECITALS

WHEREAS the City leased land pursuant to BLM Lease No. N-63336 from the United States Department of the Interior, Bureau of Land Management ("BLM"), and this land is subject to the Recreation and Public Purposes Act 43, U.S.C. 869 et seq. (the "R&PP Act"); and

WHEREAS the R&PP Act contains conditions which, in essence, require the City to use the land for recreational and public purposes and not transfer operational control of the land to a third party; and

WHEREAS the City constructed the Amanda & Stacy Darling Memorial Tennis Center (the "Center") to meet the recreational needs of the growing Las Vegas community; and

WHEREAS the City is desirous of retaining a qualified organization to operate and manage the Center, and requested proposals from potential organizations to provide such services; and

WHEREAS the Operator submitted the most advantageous proposal; and

WHEREAS the City and the Operator desire to enter into this Contract for the operation and management of the Center;

NOW THEREFORE the City and the Operator agree as follows:

SECTION A – Purpose of Agreement

(a) The purpose of this Agreement is to provide for the operation, management, and maintenance of the Center by the Operator.

(b) The Operator will operate the Center, owned by BLM and leased by the City. The Center shall be managed, operated, and made available to the general public without discrimination as to age, race, creed, religion, sex, marital status, national origin, political affiliation, physical handicap or ancestry.

(c) The Operator shall act as the general clearing house, organizer, overseer, coordinator, and promoter of recreation, fitness, safety, and competitive programs offered in the Center. This Agreement defines the operating terms mutually agreed upon by both parties.

SECTION B – Basic Terms

B-1 Definitions

The following definitions apply to this Contract:

(a) *"Award Date"* means the date that a Contract becomes effective. It is the date that is entered into the first paragraph of a Contract upon execution by an authorized representative of the City.

(b) *"Center"* means the Darling Tennis Center, all facilities and land located within the area outlined in Exhibit 1 (Site Map).

(c) *"City"* means the City of Las Vegas.

(d) *"City Council"* means the governing body of the City of Las Vegas.

(e) *"Contract"* means this document, consisting of Sections A through F, which is binding and effective only upon execution by the City and the Operator.

(f) "*Endowment Fund"* refers to a financial account established by the City using funds donated by the Darling Foundation, pursuant to an agreement between the Darling Foundation and the City dated March 17, 2004. The Endowment Fund remains under the full control of the City.

(g) *"Deliverable"* means any report, data, documentation, or other tangible item that the Operator is required to provide to the City under the terms of this Contract.

(h) *"FF&E"* means Furniture, Fixtures and Equipment, or items not permanently attached to a structure or building. For example: sports/electronics equipment, desks, chairs, bookcases, file cabinets, waste receptacles, partitions, refrigerators, tables, credenzas, and furniture systems.

(i) *"Non-exclusive Contract"* means a Contract under which the City agrees to obtain some, but not necessarily all, of the City's requirements for a particular service.

(j) *"Operator"* means the individual, partnership, or corporation responsible for the performance of services under this Contract.

(k) *"Operator Furnished Equipment* or *OFE"* means furniture, fixtures, equipment and other items purchased by the Operator with their own funds.

(l) *"Operator Representative"* means the individual authorized to act on behalf of the Operator regarding routine matters arising under or relating to this Contract.

(m) "*Programs*" means organized activities, and classes that are offered to the public that offer recreational, social, and educational or other benefits to participants.

(n) "*Project Manager"* means the City representative who is responsible for the coordination of Contract performance between the City and the Operator.

B-2 Revenue and Budgets

(a) The goal of the City and the Operator is that the Center be operated at a financial break-even point, with revenue equaling or exceeding operating costs (including salaries and management fees). The Operator may engage in fund raising activities to supplement operating revenue, or it may supplement the operating budget through its own resources.

(b) Throughout the term of this Contract, all revenue generated from the Center shall be collected and retained by the Operator on behalf of the City. All revenue shall be collected, handled and deposited in accordance with Generally Accepted Accounting Principles ("GAAP"). The City reserves the right to review these procedures to ensure they comply with GAAP. The Operator shall keep, throughout the term of this Contract and any extensions thereof, all books and records customarily used in this type of operation in accordance with GAAP.

(c) The Operator shall propose operating budgets and projected revenue streams annually to the City. The Operator shall submit a proposed operating budget no later than March 1st of each year. The City will retain the right to approve or disapprove budgets. The City will have until March 31st to render disapproval of the proposed budget. Any failure of the City to respond may be considered by the Operator to be an approval of the budget as submitted. The Operator may request amendment to the budget by application to the City Director of Finance and Business Services.

(d) The City shall make available to the BLM, in accordance with the R&PP Act, copies of the annual profit and loss statements, as well as any incidental financial and operating statements reflecting all expenses and revenue associated with the Center.

B-3 Deposits and Draw Downs

(a) The Operator shall make daily deposits of all funds collected from the operation of the Center into a joint account established by the Operator and the City. The Operator shall be authorized to draw down funds that are available in the joint account for the payment of expenses related to the Center. In no event shall the Operator draw funds from the joint account which exceed the amount available. Each month, the City may review all bank statements and request supporting data from the Operator for any activity in the joint account. Each month, the City will receive a bank statement and an itemization of all activity in the joint account. The

City may request additional supporting data as it deems necessary in reviewing account activity. The City will have access to view account activity online, but not to make transactions.

(b) The Operator shall make monthly deposits of capital court resurfacing funds into a joint account established by the Operator and the City. The Operator shall be authorized to draw down funds that are available in the joint account for the payment of court resurfacing costs. Each month, the City may review all bank statements and request supporting data from the Operator for any activity in the joint account. Each month, the City will receive a bank statement and an itemization of all activity in the joint account. The City may request additional supporting data as it deems necessary in reviewing account activity. The City will have access to view account activity online, but not to make transactions.

B-4 Operating Reserve

(a) The Operator shall maintain an Operating Reserve during this Contract term in the principal sum of Ten Thousand Dollars ($10,000.00). The Operating Reserve shall guarantee performance of each term and condition of this Contract and, in the event of the Operator's breach of this Contract, the Operating Reserve shall be recoverable by the City for all damages resulting from failure of the Operator to well and faithfully perform and observe any and all provisions of this Contract.

(b) The Operating Reserve shall take the form of a deposit of cash in the amount of $10,000.00 in a restricted Certificate of Deposit drawn against the account of the Operator at such bank as the City shall approve, allowing for withdrawal only upon written consent of the City. All interest earned on such Certificate shall be the property of the Operator;

B-5 Deliverables

The Operator shall submit the below-listed Deliverables electronically to the Project Manager. Upon request by the Project Manager, the Operator shall provide any supporting documentation needed by the City to adequately evaluate the Deliverables.

(a) Security Plan – providing adequate security to ensure the safety of all Center patrons and staff, and the security of the Center. To be submitted no later than 60 calendar days after Contract Award.

(b) Safety Program – providing a plan to ensure safe and proper usage of the Center. To be submitted no later than 60 calendar days after Contract Award.

(c) Proposed Operating Budget – to be submitted no later than March 1st of each year, and to be based on the Program and Fee Schedule in place for that fiscal year.

(d) Independently reviewed Financial Statements – to be submitted no later than 60 calendar days after the end of each fiscal year.

(e) Operating Statement – showing at minimum maintenance events in excess of $1,000, itemized gross receipts, fundraising revenues, itemized expenses, profit and loss statement, bank statement, check register and bank reconciliation for the previous calendar month. To be submitted no later than 10 business days after the beginning of each new calendar month.

(f) Program Report – showing at minimum actual programs offered, attendance per program, cancellations, and consumer complaints received for the previous calendar quarter. To be submitted no later than 10 business days after the beginning of each new calendar quarter.

(g) Program Schedule – showing scheduling and use of the Center. To be submitted no later than 15 calendar days after Contract Award. Subsequent substantial revisions to the Program Schedule shall be submitted no later than thirty days prior to the effective date of the revised Program Schedule. If the City provides comments, the parties shall meet to make changes agreeable to both. If the City does not provide comments within fifteen working days, the Operator may consider the revised Program Schedule to be approved, and may implement it. Minor revisions falling within the general parameters of the existing Program Schedule may be made and communicated to the Project Manager within a reasonable timeframe.

(h) Fee Schedule – showing the reasonable charges to be imposed or collected for the use of the Center and its services. In accordance with R&PP, all fees or charges may not exceed fees or charges imposed by other comparable facilities. To be submitted no later than 15 calendar days after Contract Award. Subsequent revisions to the Fee Schedule shall be submitted no later than thirty days prior to the effective date of the

revised Fee Schedule. If the City should object to the revised Fee Schedule, the City shall provide the reasons for disapproval and shall provide the opportunity for the Operator to submit a revised Fee Schedule. If the City does not provide comments within fifteen working days, the Operator may consider the revised Fee Schedule to be approved, and may implement it.

(i) Personal Injury Report – providing all available details of any assertion of personal injury asserted by users, employees or contractors at the Center. To be submitted as soon as practically possible following the assertion of personal injury.

(j) Damage Report – providing all available details of any damage or vandalism in excess of $1,000.00 to the Center, or any damage that requires closure of the Center. To be submitted as soon as practically possible following discovery or report of damage.

B-6 Maintenance Responsibilities

(a) Operator Maintenance responsibilities shall include:
- (i) Maintenance of all restrooms (including stocking and refilling restroom consumables)
- (ii) Maintain in good working order all signs located within or on the exterior of the Center
- (iii) Maintain all equipment, including City-owned FF&E. All FF&E currently located at the Center will remain the property of the City, to be returned to the City in like condition at the end of the Contract term.
- (iv) Perform all landscaping maintenance duties necessary to maintain all grounds within the boundaries of the Center, as shown in Exhibit 1, in a clean and attractive manner.
- (v) Perform all housekeeping and janitorial duties necessary to maintain the entire facility in a clean, sanitary, orderly and presentable fashion, in general accordance with the City's technical specifications for janitorial services.
- (vi) Maintain the security system, fire alarm, fire extinguishers, and fire suppression system for the Center.
- (vii) Pay all costs associated with electric, building water, garbage disposal, telephone, data and transfer fees necessary to operate the Center.
- (viii) Maintain a complete electronic inventory of all City-owned property located at the Center. Ensure that inventory procured by the City or with City funds is accounted for as City property.
- (ix) Perform all maintenance and repairs at the Center under $10,000 per incident.
- (x) Report all maintenance and repairs at the Center in excess of $1,000 per incident. These maintenance and repairs in excess of $1,000 per incident will be referred to as "Large Maintenance Events"

(b) City Maintenance responsibilities shall include:
- (i) Reimburse the Operator for Large Maintenance Events in excess of $30,000 per year.
- (ii) Perform all unreasonable maintenance due to existing construction defects. Unreasonable maintenance is considered to be maintenance that would not be necessary were it not for the existence of a construction defect.
- (iii) Consider requests from the Operator for use of moneys existing in the Endowment Fund, for the performance of or reimbursement for Large Maintenance Events.
- (iv) Perform on-site inspections, at minimum quarterly, of maintenance and housekeeping at the Center, and provide an inspection report to the Operator within 15 working days after each inspection.
- (v) Maintain all parking areas and roadways to the Center.
- (vi) Maintain any City-owned Artwork located in the Center.
- (vii) Provide and pay for landscaping/irrigation water.

(c) Court Resurfacing:
- (i) The Operator shall establish a Court Resurfacing Fund in accordance with Section B-3. Money in this Fund shall only be used for routine resurfacing of courts at the Center, unless with the written permission of the City's Chief Financial Officer.
- (ii) The City will make an initial deposit of $25,335.00 into the Court Resurfacing Fund. This amount is intended to compensate the Operator for existing wear and tear on the court surfaces.
- (iii) The Operator shall establish a reasonable court resurfacing schedule, and shall make monthly contributions to the Resurfacing Fund in an amount sufficient to pay for all court resurfacing.
- (iv) Routine court resurfacing shall be the responsibility of the Operator.

B-7 Management Fee

The Operator shall be entitled to include in its Operating Budget a monthly Management Fee of $7,500.00 dollars, to cover the Operator's cost of providing corporate or headquarters support such as planning, staffing, quality assurance or general and administrative expenses that may not be easily or directly linked to the operation of the facility.

B-8 Performance Incentive Fee

The Operator shall be entitled to a Performance Incentive Fee, paid at the end of each fiscal year, of 100% of net revenue at the Center on an annual basis.

B-9 Agreement Term

The term of the Contract commences on Award Date and continues for five (5) calendar years. The Contract shall be renewable for three (3) additional five-year periods through mutual agreement of both parties in accordance with Paragraph E-15, Modification/Amendment.

SECTION C – Scope of Services

C-1 General

(a) The Operator shall manage, maintain and operate the Center in a professional, efficient and economic manner, consistent with good business practices. The Operator shall provide all personnel, expertise, equipment, supplies and other items necessary to operate the Center as an enterprise available for use by the general public.

(b) The Operator shall only engage in tennis-related business within the Center, as allowed herein.

(c) The Operator shall not install vending machines for the sale of food or beverages in the Center.

(d) The Operator shall be responsible for day-to-day operation of the Center in a manner that ensures the safe, attractive and pleasant use of the Center. No Hazardous Substance or Hazardous Waste shall be used, produced, transported, released or stored within the Center at any time. The Center shall be operational daily for all days and hours as agreed to with the Project Manager, unless during severe weather.

(e) The Operator shall provide professional, competent staffing, including Sandra Foley as General Manager. The General Manager may not be replaced without the City's prior approval. The Operator shall ensure the presence of a manager or supervisor during all hours of operation, and adequate full or part-time staff to operate the Center during all hours of operation. The Operator shall be responsible for maintaining satisfactory standards of employee competence, conduct, integrity and professional appearance.

(f) The Operator shall limit any representation regarding its connection with the Center to either: 1) "Operated by" or 2) "Managed by". Any identification by the Operator in either context requires the further specification that the Center is a "City of Las Vegas" park, tennis center, or center. No implication or suggestion that the Darling Tennis Center is an Operator-owned facility will be permitted.

(g) The Operator shall ensure that consumer complaints are handled expeditiously and courteously.

(h) The Operator shall make no facility alterations or additions to the Center without the prior consent of the City. For such action, the Operator shall first submit plans to the Project Manager for approval.

C-2 Programming

(a) The Operator shall develop, operate and manage programs determined to serve the community based on perceived need. The Operator shall analyze community needs and desires on a regular basis throughout the Contract term, and adjust programming accordingly.

(b) The Operator shall develop a Program Schedule in accordance with Section B-5 (g) of this Contract.

(c) The Operator shall offer tennis lessons to the general public, advance court reservations, and walk-on public usage of the courts daily during predetermined hours.

(d) The Operator shall market and manage professional tennis tournaments at the Center.

(e) The Operator will cooperate with the City to allow for joint use of the Center. The City may schedule special events at the Center, subject to Center availability, with 30 days advance notice. The City may schedule such events on up to 10 days per year.

C-3 Fees

(a) The Operator shall establish a Fee Schedule in accordance with Section B-5 (h) of this Contract. The current Fee Schedule, including prices charged for court fees, merchandise, equipment rental, lessons, and any other products or services offered, shall be visibly posted at the location where such fees are normally paid.

(b) No more than a "reasonable" charge may be imposed for the use of the Center or its services. This means that, in accordance with R&PP requirements, any and all fees or charges for use of the Center and its facilities or services may not exceed fees or charges imposed by other comparable facilities.

C-4 Marketing Activities

(a) The Operator shall be responsible for all marketing, promotional and fund raising activities. The Operator is authorized to use the City of Las Vegas logo and the Darling Tennis Center logo in the course of such activities, and for no other purposes. All uses of the City of Las Vegas logo and the Darling Tennis Center logo shall be in good taste, as determined by the Project Manager.

(b) The Operator and the Project Manager shall mutually agree on Center advertising campaigns, exterior and interior signage, brochures, newsletters, promotional publicity, and other marketing materials.

(c) The City will provide a current Center mailing list to the Operator at the time of award. At the expiration or termination of this Contract, the Operator will provide the City with its then-current mailing list of customers and interested parties.

C-5 Employees and Subcontractors

(a) The Operator shall secure, train and pay all personnel necessary for the successful operation of the Center. No employee, subcontractor or volunteer involved with the Center will have any contractual relationship with the City.

(b) Any and all claims arising under the Worker's Compensation Act of the State of Nevada, or similar act, on behalf of employees or other persons engaged in work related to the Center shall be the sole obligation of the Operator.

(c) The Operator shall provide equal employment opportunities, and follow all federal, state and local employment laws and regulations.

(d) The Operator shall conduct background checks and drug-testing of employees in accordance with the Operator's policies and procedures.

(e) The Operator shall utilize licensed and insured caterers or food vendors for any event requiring food service. The Operator shall coordinate with City of Las Vegas Business Licensing to ensure that all requirements are met before utilizing food vendors.

SECTION D – Special Clauses

D-1 Good Faith and Cooperation

The City and the Operator agree that it is in their mutual best interest and in the best interest of the public that the Center be operated and managed as herein agreed. To that end, the parties shall in all instances cooperate, act in good faith, act in compliance with all of the terms of this Contract, and shall deal fairly with each other.

D-2 Legal Notice [CAO-7/24/08]

(a) All legal notices required pursuant to the terms and conditions of this Contract shall be in writing, unless an emergency situation dictates otherwise. Any notice required to be given under the terms of this Contract shall be deemed to have been given when:

(i) received by the party to whom it is directed by hand delivery or personal service, or
(ii) transmitted by facsimile with confirmation of transmission, or
(iii) sent by U.S. mail via certified mail-return receipt requested at the following addresses:

FOR THE CITY:	City of Las Vegas Manager, Purchasing and Contracts City Hall, First Floor 400 Stewart Avenue Las Vegas, Nevada 89101-2986 Fax: (702) 384-9964
FOR THE OPERATOR:	CJMS Tennis Management Company Sandra Foley, Managing Member 2773 Borthwick Avenue Las Vegas, Nevada 89044

(b) The parties shall provide written notification of any change in the information stated above.

(c) An original signed copy, via U. S. Mail, shall follow facsimile transmissions.

(d) For the purposes of this Contract, legal notice shall be required for all matters involving potential termination actions, litigation, indemnification, and unresolved disputes. This does not preclude legal notice for any other actions having a material impact on the Contract.

(e) Routine correspondence should be directed to the Project Manager or the Operator Representative, as appropriate.

D-3 Project Manager/Operator Representative [CAO-7/24/08]

(a) The City designates Lonny Zimmerman as the Project Manager for this Contract. The City will provide written notice to the Operator should there be a subsequent Project Manager change. The Project Manager will be the Operator's principal point of contact at the City regarding any matters relating to this Contract, will provide all general direction to the Operator regarding Contract performance, and will provide guidance regarding the City's goals and policies. The Project Manager is not authorized to waive or modify any material scope of work changes or terms of the Contract.

(b) The Operator designates Sandra Foley as the Operator Representative for this Contract. The Operator will provide written notice to the City should there be a subsequent Operator Representative change. The Operator Representative will be the City's principal point of contact for the Operator regarding any matters relating to this Contract, will provide all general direction to the City regarding Contract performance, and will provide guidance regarding the Operator's goals and policies. The Operator Representative is not authorized to waive or modify any material scope of work changes or terms of the Contract.

(c) The City authorizes Pamela Hoffman as the Contracts Specialist for this Contract. The City will provide written notice to the Company should there be a Contracts Specialist change. The Contracts Specialist will resolve any low-level disputes regarding matters relating to the terms and conditions of this Contract.

D-4 City Obligations

The City shall:

(a) Provide and pay for sewer services to the Center.
(b) Provide and pay for landscaping water to the Center.
(c) Review all Deliverables and other submittals in a timely manner.
(d) Provide the Operator with updated City employee telephone directories as they become available.
(e) Continue normal inclusion of the Center in City advertising and marketing.
(f) Continue listing the Center in the Parks directory section of the City website.
(g) With the permission of the United States Tennis Association, assign the Regional Training Center contract currently held by the City to the Operator, and provide a current accounting of moneys received, turning over unspent moneys.
(h) Cooperate and communicate with the Operator in an orderly phased turn-over of the Center and its operations.

D-5 BLM Approval

This Contract is subordinate to the City's BLM lease on the land under the Center. Should the City's lease be canceled or fail to be renewed, this Contract will be terminated without prejudice and without penalty to the City. Should the City's lease be converted to a patent, this Contract will be subordinate to and governed by the terms of the patent.

This Contract is subject to BLM approval. Any changes required by the BLM will be added to the Contract by Modification in accordance with Section E-15, Modification/Amendment.

D-6 Holidays

The City recognizes the following holidays: Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Nevada Day, Veterans Day, Thanksgiving Day and Friday after, Christmas Day and New Year's Day. The Operator may close the Center only on the following holidays: Labor Day, Thanksgiving Day, Christmas Day, New Year's Day.

D-7 Computation of Time

In computing any period of time prescribed or allowing under this Contract, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last calendar day of the period so computed shall be included, unless it is a Saturday, Sunday or City holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or City holiday.

D-8 Subcontracting, Teaming and Partnering

The Operator may subcontract, team or partner with other individuals or organizations that would be given responsibility for certain minor functions within the Center. Any such subcontract or agreement shall be in the form of and subordinate to this Contract, and must be in full compliance with the R&PP Act. The City retains the right to direct the Operator to terminate any subcontracts should they be found not in compliance with this Contract, the R&PP Act, or any governing laws. The Operator shall be responsible and liable for the actions or inactions of its subcontractors or partners. Any assignment or subcontracting by the Operator of a major portion of its responsibilities under this Contract to another party shall require prior approval of the City.

D-9 Warranty – Services [CAO-7/24/08]

The Operator warrants that the services shall be performed in full conformity with this Contract, with the professional skill and care that would be exercised by those who perform similar services in the commercial marketplace, and in accordance with accepted industry practice. In the event of a breach of this warranty or in the event of non-performance or failure of the Operator to perform the services in accordance with this Contract, the Operator shall, at no cost to the City, re-perform or perform the services so that the services conform to the warranty.

D-10 Intellectual Property Rights [CAO-7/24/08]

All deliverables produced under this Contract, as well as all data, notes, and documentation collected on behalf of the City, are exclusively the property of the City.

D-11 Licenses/Registrations [CAO-7/24/08]

(a) During the entire performance period of this Contract, the Operator shall maintain all federal, state, and local licenses, certifications and registrations applicable to the work performed under this Contract, including maintaining an active City of Las Vegas business license.

(b) The Operator shall, at its own expense, secure any and all permits which may be required by the City, County or any other governmental entity for the Center, including the Clark County Health District. The City will provide reasonable assistance to the Operator in securing these permits when requested by the Operator.

D-12 Internet Domain Name

The parties agree that the domain name "darlingtenniscenter.net" should be the possession of whatever entity operates the Center. The City will transfer ownership of the domain name "darlingtenniscenter.net" to the Operator on Award Date. The Operator will be responsible for all renewals and other costs associated with ownership of the domain name for the remainder of the term of this Contract. On expiration of this Contract, or on

termination of the Contract by any party for any cause or convenience, the Operator shall transfer ownership of the domain name "darlingtenniscenter.net" back to the City, or to such other party as the City shall designate, effective on the date of expiration or termination of this Contract.

D-13 Order of Precedence [CAO-7/24/08]

In the event of a conflict between the specific language set forth in Sections B through E of this Contract and any Attachment or Exhibit set forth in Section F, the specific language in Sections B through E shall prevail. Any exception to this order of precedence will be addressed through specific language elsewhere in Sections B through E.

SECTION E – General Clauses

E-1 Disputes [R]

(a) For each claim or dispute arising between the parties under this Contract, the parties shall attempt to resolve the matter through escalating levels of management. In the event the matter cannot be successfully resolved in this manner, the City is granted the right, regardless of which party is asserting the claim or dispute, to determine between arbitration or litigation as the forum in which the party desiring to proceed further shall file to resolve the claim or dispute. For any and all claims or disputes asserted by the Operator, the Operator shall notify the City of its intent to proceed further with the claim or dispute and, in response thereto, the City shall notify the Operator as to its selected forum for resolution. For any and all claims or disputes asserted by the City, the City shall notify the Operator in the notice of its intent to proceed with further resolution whether it has selected arbitration or litigation as the forum to resolve the claim or dispute. In the event arbitration is the designated forum, such arbitration shall be binding on the parties.

(b) If arbitration is selected by the City as the forum for further resolution, the claim or dispute shall be filed with the Nevada Arbitration Association or the American Arbitration Association under its then current Commercial Arbitration Rules, Expedited Procedures, regardless of the amount of the claim or dispute.

(c) The City and the Operator shall mutually agree on the selection of an arbitrator or arbitration panel. If the parties cannot come to agreement on arbitrator selection, each party will select one arbitrator who together will select the final arbitrator or arbitration panel.

(d) The laws of the State of Nevada shall govern this Contract, and the venue for purposes of such litigation or arbitration shall be in the City.

E-2 Notice of Delay [CAO-7/24/08]

(a) Should the timely performance of this Contract be jeopardized by the non-availability of City provided personnel, data, or equipment, the Operator immediately shall notify the City in writing of the facts and circumstances that are contributing to such delay. Upon receipt of this notification, the City will advise the Operator in writing within five business days of the action which will be taken to remedy the situation.

(b) The Operator shall advise the City in writing of an impending failure to meet established milestones or delivery dates based on the Operator's failure to perform. Notice shall be provided as soon as the Operator is aware of the situation; however, such notice shall not relieve the Operator from any existing obligations regarding performance or delivery.

E-3 Termination for Convenience [R]

(a) The City shall have the option to terminate this Contract for convenience with a minimum of 30 days notice given in accordance with Section D-2, Legal Notice. On termination for convenience, the City will reimburse the Operator according to the following schedule:

(i) If termination is effective during the first 24 calendar months after Award Date, the City will reimburse the Operator for any initial investment which has not been recovered as of the effective date of termination, as evidenced by the Operator's audited financial statements. In addition, if the Center's revenues have been, for the three reported months immediately prior to the month the notice of termination is transmitted to the Operator, a minimum of 90% of its operating expenses (i.e., the

Center is nearly or completely cost-recovering), then the City will pay the Operator an opportunity fee equal to $50,000.

(j) If termination is effective after the first 24 calendar months after Award Date, and the Center's revenues have been, for the three reported months immediately prior to the month the notice of termination is transmitted to the Operator, a minimum of 90% of its operating expenses (i.e., the Center is nearly or completely cost-recovering), then the City will pay the Operator an opportunity fee equal to six months' worth of management fees and manager's salary as set in the then-current operating budget. If the Center is *not* cost-recovering as described above, the City shall reimburse the Operator for any initial investment which has not been recovered as of the effective date of termination, as evidenced by the Operator's audited financial statements, but shall not owe the Operator any opportunity fee.

(b) The Operator shall have the option to terminate this Contract for convenience, with a minimum of six months notice given in accordance with Section D-2, Legal Notice.

E-4 Termination for Default [CAO-11/9/09]

(a) The City may, by written notice of default to the Operator, terminate this Contract in whole or in part if the Operator fails to:

(i) Perform the services under Section C, including, if applicable, delivering any required goods, or documentation within the time specified in this Contract or any extension;

(ii) Make progress, so as to endanger performance of this Contract; or

(iii) Perform any of the other provisions of this Contract.

(b) The City's right to terminate this Contract under (a)(ii) and (a)(iii) above, may be exercised if the Operator does not cure such failure within ten calendar days (or more if authorized by the City) after notice, specifying the failure, is provided pursuant to the Paragraph D-2 (Legal Notice) of this Contract.

(c) If the City terminates this Contract for default in whole or in part, it may acquire, under reasonable terms and in a manner the City considers appropriate, services or goods similar to those terminated, and the Operator shall be liable to the City for any excess costs for those services or goods. However, the Operator shall continue any work not terminated.

(d) The Operator shall not be liable for any excess costs if the failure to perform the Contract arises from circumstances beyond the control and without the fault or negligence of the Operator. These circumstances are limited to such causes as (1) acts of God or of the public enemy, (2) acts of governmental bodies, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) labor strikes, (8) freight embargoes, or (9) unusually severe weather. The time of performance of the Operator's obligations under this Contract shall be extended by such period of enforced delay; provided, however, that such reasonably extended time period shall not exceed 60 days. If the foregoing circumstances result in a delay greater than 60 days, the City may terminate the affected portion of the Contract pursuant to the terms of Paragraph E-3 (Termination for Convenience).

(e) Either party may terminate this Contract, in whole or in part, if the other party becomes insolvent or bankrupt or makes an assignment for the benefit or creditors, or if a receiver or trustee in bankruptcy is appointed for the other party, or if any proceeding in bankruptcy, receivership, or liquidation is instituted against the other party and is not dismissed within 30 days following commencement thereof.

(f) The City retains the right to terminate for default immediately should the Operator fail to maintain the required levels of insurance, fail to comply with applicable local, state, and Federal statutes governing performance of these services, or fail to comply with statutes involving health or safety.

(g) In the event that the City fails to perform any of its obligations required under this Contract, and the City does not remedy the failure after notice thereof is provided to the City by the Operator pursuant to Paragraph D-2 (Legal Notice) above, the Operator shall have the right to treat the failure as a claim or dispute subject to the resolution provisions of Section E-1 (Disputes) of this Contract. During the period of such resolution, the Operator shall continue with its performance under the Contract.

E-5 Insurance and Bonds [R]

(a) The Operator shall procure and maintain, at its own expense, during the entire term of the Contract, the following coverage(s):

(i) Industrial/Workers' Compensation Insurance protecting the Operator and the City from potential Operator employee claims based upon job-related sickness, injury, or accident, during performance of this Contract, and must submit proof of such insurance on a certificate of insurance issued by an insurer qualified to underwrite workers' compensation insurance in the State of Nevada, in accordance with NRS 616A-616D, inclusive.

(ii) Commercial General Liability Insurance (bodily injury, property damage) with respect to the Operator's agents assigned to the activities performed under this Contract in a policy limit of not less than $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate, for bodily injury (including death), personal injury and property damages, premises and operations liability, contractual liability, owner's and contractors' protection, employer's liability, projects and completed operations coverage, and sexual abuse/molestation defense insurance coverage. Such coverage shall be on an "occurrence" basis and not on a "claims made" basis, and be provided on either a Commercial General Liability or a Broad Form Comprehensive General Liability (including a Broad form CGL endorsement) insurance form. The form must be written on an ISO Form CG 00 01 10 01, or an equivalent form. If the General Liability policy excludes sports liability, then separate sports liability insurance must be purchased in the same limits as described above.

(iii) Business interruption or rental loss insurance (or the functional equivalent) in an amount to cover not less than twelve months of the revenues attributed to the Center.

(iv) Commercial Automobile Liability Insurance of limits no less than $1,000,000 combined single limit per occurrence for bodily injury and property damage to include, but not be limited to, coverage against all insurance claims for injuries to persons or damages to property which may arise from services rendered by Operator and any auto used to the performance of services under this Contract. The policy must insure all vehicles **owned** by the Operator and include coverage for **hired** and **non-owned** vehicles. If the services requested do not require the use of vehicle to perform, Commercial Automobile Liability Insurance requirements, as described in (iii) above, do not apply.

(v) Any Employee Dishonesty Bond held by a company approved by the City, indemnifying the City against any dishonest acts of the Operator or any of its employees, officers or directors, individually or in collusion with others, which bond shall be in the amount of not less than Twenty Five Thousand Dollars $25,000) for all key financial officers or employees and Ten Thousand Dollars ($10,000) for all other employees.

(b) The Operator shall deliver certificate(s) of insurance in ACORD form, and endorsements indicating that such coverage required by this Contract is in effect to Insurance Tracking Services, Inc. (ITS), within **three days** after the Award Date of this Contract, or before work commences, whichever is earliest. All policy certificates and endorsements are required to be issued by an agent authorized by that insurer and licensed by the State of Nevada. All required aggregate limits must be disclosed and amounts entered on the certificate(s) of insurance. The certificates must identify the Contract number and the Contract description. The Operator shall maintain coverage for the duration of this Contract, and any renewal periods if applicable. The Operator shall annually provide the ITS with certificate(s) of insurance as evidence that all insurance requirements have been met. The Operator or insurance carrier shall provide the City with 30 day advance notice of policy modification, cancellation or erosion of insurance limits, sent by certified mail "return receipt requested".

Submit certificates of insurance to:

City of Las Vegas
C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 21919
Long Beach, CA 90801

Account Manager: Michael Palacios
Phone: (888) 435-2955 ext. 503
Fax: 562-435-2999
Email: michael.palacios@instracking.com

A certified, true and exact copy of each of the project specific insurance policies (including renewal policies) required under this Section E-5 shall be provided to the City if so requested.

(c) The City, its officers and employees shall be named as additional insureds and such notation shall appear on the certificate of insurance furnished by the Operator's insurance carrier. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of

Nevada. Each insurance carrier's rating as shown in the latest Best's Key Rating Guide shall be fully disclosed and entered on the required certificate of insurance. The City requires insurance carriers to maintain a Best's Key rating of A VII, or higher. The adequacy of the insurance supplied by the Operator, including the rating and financial health of each insurance carrier providing coverage, is subject to the approval of the City. Such approval shall not be unreasonably withheld.

(d) All deductibles and self-insurance retentions shall be fully disclosed in the certificate of insurance. No deductible or self-insured retention may exceed $10,000.00 without the prior written approval of the City.

(e) If the Operator fails to carry the required insurance, the City may (i) order the Operator to stop further performance hereunder, declare the Operator in breach, pursuant to Paragraph E-4 and terminate the Contract if the breach is not remedied, or (ii) purchase replacement insurance and withhold the costs or premium payments made from the payments due to the Operator, or charge the replacement insurance costs back to the Operator.

(f) The Operator is encouraged to purchase any additional insurance it deems necessary.

(g) The Operator is required to remedy all injuries to persons and damage or loss to any property of the City, caused in whole or in part by the Operator, its subcontractors or anyone employed, directed or supervised by the Operator.

(h) The policies required in E-5 (a) i, ii and iv shall have a Waiver of Subrogation provision endorsement in favor of the City of Las Vegas.

E-6 Indemnification [R]

(a) In addition to the insurance requirements set forth in Paragraph E-5 (Insurance), the Operator shall protect, indemnify and hold harmless the City, its officers, employees, agents, and consultants (collectively herein the "City") from any and all claims, liabilities, damages, losses, suits, actions, decrees, and judgments including attorney's fees, court costs or other expenses of any and every kind or character (collectively herein the "Liabilities") which may be recovered from or sought against the City as a result of, by reason of, or as a consequence of, any act or omission, negligent or otherwise, on the part of the Operator, its officers, employees, or agents in the performance of the terms, conditions and covenants of this Contract, unless the Liabilities were caused in whole or in part by the City.

(b) If a third party claim against the City for negligent performance by the Operator is within the limits of its liability insurance, and the insurance company has accepted the City's tender of defense, then the Operator may collect their management fees due and owing to them. However, if the claim is greater than the coverage amount the City, for its protection, may retain any money due and owing the Operator under this Contract until the claim has been resolved. In the event no money is due and owing, the surety, if required, of the Operator may be held until all of the Liabilities have been settled and suitable evidence to that effect furnished to the City.

(c) It is expressly agreed that the Operator shall defend the City against the Liabilities and, in the event that the Operator fails to do so, the City shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs, including attorney's fees and court costs, to the Operator.

(d) No member, official or employee of the City or BLM shall be personally liable to the Operator in the event of any default or breach by the City or BLM, or for any amount which may become due to the Operator, or on any obligations under the terms of this Contract.

E-7 Assignment [CAO-7/24/08]

Neither party may assign their rights nor delegate their duties under this Contract without the written consent of the other party. Such consent shall not be withheld unreasonably. Any assignment or delegation shall not relieve any party of its obligations under this Contract.

E-8 Waiver [CAO-7/24/08]

Waiver of any terms of this Contract shall not be valid unless it is in writing signed by each party. The failure of the City to enforce any of the provisions of this Contract, or to require performance of any of the provisions herein, shall not in any way be construed as a waiver of such provisions or to affect the validity of any part of this Contract, or to affect the right of the City to thereafter enforce each and every provision of this Contract. Waiver of any breach of this Contract shall not be held to be a waiver of any other or subsequent breach of this Contract.

E-9 Taxes/Compliance with Laws [R]

(a) The City is exempt from paying Sales and Use Taxes under the provisions of Nevada Revised Statutes 372.325(4), and Federal Excise Tax, under Registry Number 88-87-0003k. The Operator shall pay all taxes, levies, duties and assessments of every nature and kind which may be applicable to any work under this Contract. The Operator shall make any and all payroll deductions required by law. The Operator agrees to indemnify and hold the City harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

(b) The Operator, in the performance of the obligations of this Contract, shall comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Contract including, but not limited to, the Federal Occupational Health and Safety Act, and all state and federal laws prohibiting or relating to discrimination by reason of race, sex, age, religion or national origin.

(c) The Operator shall not subject the Center or any City-provided FF&E to lien, forfeiture or sale.

E-10 Audit of Records [R]

(a) The Operator agrees to maintain the financial books and records (including supporting documentation) pertaining to the performance of this Contract according to standard accounting principles and procedures. The books and records shall be maintained for a period of three (3) years after completion of this Contract, except that books and records which are the subject of an audit finding shall be retained for three (3) years after such finding has been resolved. If the Operator goes out of business, the Operator shall forward the books and records to the City to be retained by the City for the period of time required herein.

(b) The City, or its designated representative(s), shall have the right to inspect and audit (including the right to copy or transcribe) the books and records of the Operator pertaining to the performance of this Contract during normal business hours. The City will provide a minimum of one business day prior written notice to the Operator of the audit and inspection. If the books and records are not located within Clark County, the Operator agrees to deliver them to the City, or to an address designated by the City within Clark County. In lieu of such delivery, the Operator may elect to reimburse the City for the cost of travel (including transportation, lodging, meals and other related expenses) to inspect and audit the books and records at the Operator's office. If the books and records provided to the City are incomplete, the Operator agrees to remedy the deficiency after written notice thereof from the City, and to reimburse the City for any additional costs associated therewith including, without limitation, having to revisit the Operator's office. The Operator's failure to remedy the deficiency shall constitute a material breach of this Agreement. The City shall be entitled to its costs and reasonable attorney fees in enforcing the provisions of this Paragraph

(c) If at any time during the term of this Contract or at any time after the expiration or termination of the Contract, the City or the City's designated representative(s) find the dollar liability is less than payments made by the City to the Operator, the Operator agrees that the difference shall be either: (a) repaid immediately by the Operator to the City or (b) at the City's option, credited against any future billings due the Operator.

(d) The City shall include the Center and this Contract as part of the City's annual statement and audit. Such annual statement and audit will be prepared after the close of the City's fiscal year (June 30). The Operator shall provide all necessary information requested to assist the City prepare its annual statement and audit.

E-11 Independent Contractor [CAO-7/24/08]

In the performance of services under this Contract, the Operator and any other person employed by it shall be deemed to be an independent contractor and not an agent or employee of the City. The Operator shall be liable for the actions of any person, organization or corporation with which it subcontracts to fulfill this Contract. The City shall hold the Operator as the sole responsible party for the performance of this Contract. The Operator shall maintain complete control over its employees and all of its subcontractors. Nothing contained in this contract or any subcontract awarded by the Operator shall create a partnership, joint venture or agency with the City. Neither party shall have the right to obligate or bind the other party in any manner to any third party.

E-12 Tenancy

Nothing in this Contract shall be construed as creating a tenancy between the City and the Operator. The parties acknowledge that this Contract is not a lease. The City assumes no responsibility for sales taxes, repairs or

upkeep of the Center except as expressly detailed herein. Because the property is owned by the BLM and leased by the City, no property taxes apply.

E-13 Severability [CAO-7/24/08]

The invalidity, illegality, or unenforceability of any provision of this Contract, or the occurrence of any event rendering any portion or provision of this Contract void, shall in no way affect the validity or enforceability of any other portion or provision of this Contract. Any void provision shall be deemed severed from this Contract, and the balance of this Contract shall be construed and enforced as if this Contract did not contain the particular portion or provision held to be void. The parties further agree to amend this Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this clause shall not prevent this entire Contract from being void should a provision which is of the essence of this Contract be determined void.

E-14 Conforming Services [CAO-7/24/08]

The services performed under this Contract shall conform in all respects with the requirements set forth in this Contract. The Operator shall furnish the City with sufficient data and information needed to determine if the services performed conform to all the requirements of this Contract.

E-15 Modification/Amendment [CAO-7/24/08]

This Contract shall not be modified or amended except by the express written agreement of the parties, signed by a duly authorized representative for each party. Any other attempt to modify or amend this Contract shall be null and void, and may not be relied upon by either party.

E-16 Entire Agreement, Section and Paragraph Headings [CAO-7/24/08]

(a) This Contract represents the entire and integrated agreement between the City and the Operator. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Contract.

(b) The section and paragraph headings appearing in this Contract are inserted for the purpose of convenience and ready reference. They do not purport to define, limit or extend the scope or intent of the language of the sections and paragraphs to which they pertain.

E-17 Conflict of Interest (City Officials) [CAO-7/24/08]

(a) An official of the City who is authorized on behalf of the City to negotiate, make, accept or approve, or take part in negotiating, making, accepting, or approving this Contract, payments under this Contract, or work under this Contract, shall not be directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of, or for the City, who is authorized on behalf of the City to exercise any legislative, executive, supervisory or other similar functions in connection with this Contract, shall become directly or indirectly interested personally in this Contract or in any part hereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to this Contract.

(b) Each party represents that it is unaware of any financial or economic interest of any public officer or employee of the City relating to this Contract. Notwithstanding any other provision of this Contract, if such interest becomes known the City may immediately terminate this Contract for default or convenience, based on the culpability of the parties.

(c) The Operator represents and warrants that it has, in accordance with the current policy of the City, disclosed the ownership and principals of the Operator on Exhibit 3 (Certificate – Disclosure of Ownership/Principals), and that it has a continuing obligation to update this disclosure whenever there is a material change in the information contained therein.

E-18 Public Records [CAO-7/24/08]

The City is a public agency as defined by state law. As such, it is subject to the Nevada Public Records Law (Chapter 239 of the Nevada Revised Statutes). The City's Records are public records, which are subject to inspection and copying by any person (unless declared by law to be confidential). This Contract, all supporting documents, and proposals submitted under the original Request for Proposal are deemed to be public records.

E-19 Confidentiality – City Information [CAO-7/24/08]

(a) All information including, but not limited to, oral statements, computer files, databases, and other material or data supplied to the Operator is confidential and privileged. The Operator shall not disclose this information, nor allow it to be disclosed, to any person or entity without the express prior written consent of the City. The Operator shall have the right to use any such confidential information only for the purpose of providing services under this Contract, unless the express prior, written consent of the City is obtained. Upon request by the City the Operator shall promptly return to the City all confidential information supplied by the City, together with all copies and extracts.

(b) The confidentiality requirements shall not apply where (i) the information is, at the time of disclosure by the City, then in the public domain; (ii) the information is known to the Operator prior to obtaining the same from the City; (iii) the information is obtained by the Operator from a third party who did not receive the same directly or indirectly from the City; or (iv) the information is subpoenaed by court order or other legal process. But in such event the Operator shall notify the City and the City, in its sole discretion, may seek to quash the demand.

(c) The obligations of confidentiality shall survive the termination of this Contract.

E-20 Marketing Restrictions [CAO-7/24/08]

The Operator may not publish or sell any information from or about this Contract without the prior written consent of the City. This restriction does not apply to the use of the City's name in a general list of customers, so long as the list does not represent an express or implied endorsement of the Operator or its services.

E-21 Changes – Fixed-Price Services [R]

(a) The City may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope and details of this Contract.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, the City shall make an equitable adjustment to the Contract, and shall modify the Contract.

(c) The Operator must assert its right to an adjustment under this clause within 30 days from the date of receipt of the City's written order; however, if the City decides that the facts justify, the City may receive and act upon a proposal submitted before final payment of the Contract.

(d) If the Operator's proposal includes the cost of property made obsolete or excess by the change, the City shall have the right to prescribe the manner of disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under Paragraph E-1 (Disputes); however, nothing in this clause shall excuse the Operator from proceeding with the Contract as changed.

(f) The Operator shall provide current, complete, and accurate documentation to the City in support of any request for equitable adjustment. Failure to provide adequate documentation within a reasonable time after a request from the City will be deemed a waiver of the Operator's right to dispute the equitable adjustment proposed by the City, where such equitable adjustment has a reasonable basis at the time it is determined by the City.

E-22 Counterpart Signatures [CAO-9/24/08]

This Contract may be executed in counterparts. All such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and, upon receipt, will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

E-23 No Third-Party Beneficiary

The provisions of this Agreement are for the exclusive benefit of the City, the Operator and their successors and assigns, and are not for the benefit of any third person; nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person except for provisions expressly for the benefit of a mortgagee or lender of the Operator or its successors and assigns.

E-24 Contracts and Agreements

All equipment leases and financing agreements, and all contracts and agreements relating to the operation of the Contract Area entered during the Agreement term shall be entered by the Operator as the contracting party. The Operator shall not enter any contract or agreement relating to the operation or maintenance of the Contract Area which extends beyond the Term of this Agreement or which is not terminable on thirty (30) days notice in the event of termination under the terms of this Agreement.

E-25 Warranty against Payment of Consideration

The Operator warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Contract other than normal costs of conducting business and costs of professional services.

SECTION F – List of Attachments/Exhibits

The following attachments are hereby incorporated into this contract:

Identifier	Title/Text Reference	Pages
Exhibit 1	Site Map [Paragraph B-1(b)]	1
Exhibit 2	Certificate – Disclosure of Ownership/Principals [Paragraph E-17(c)]	2

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized representatives.

CITY OF LAS VEGAS

KATHLEEN C. RAINEY, Manager
Purchasing and Contracts

"City"

ATTEST:

BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

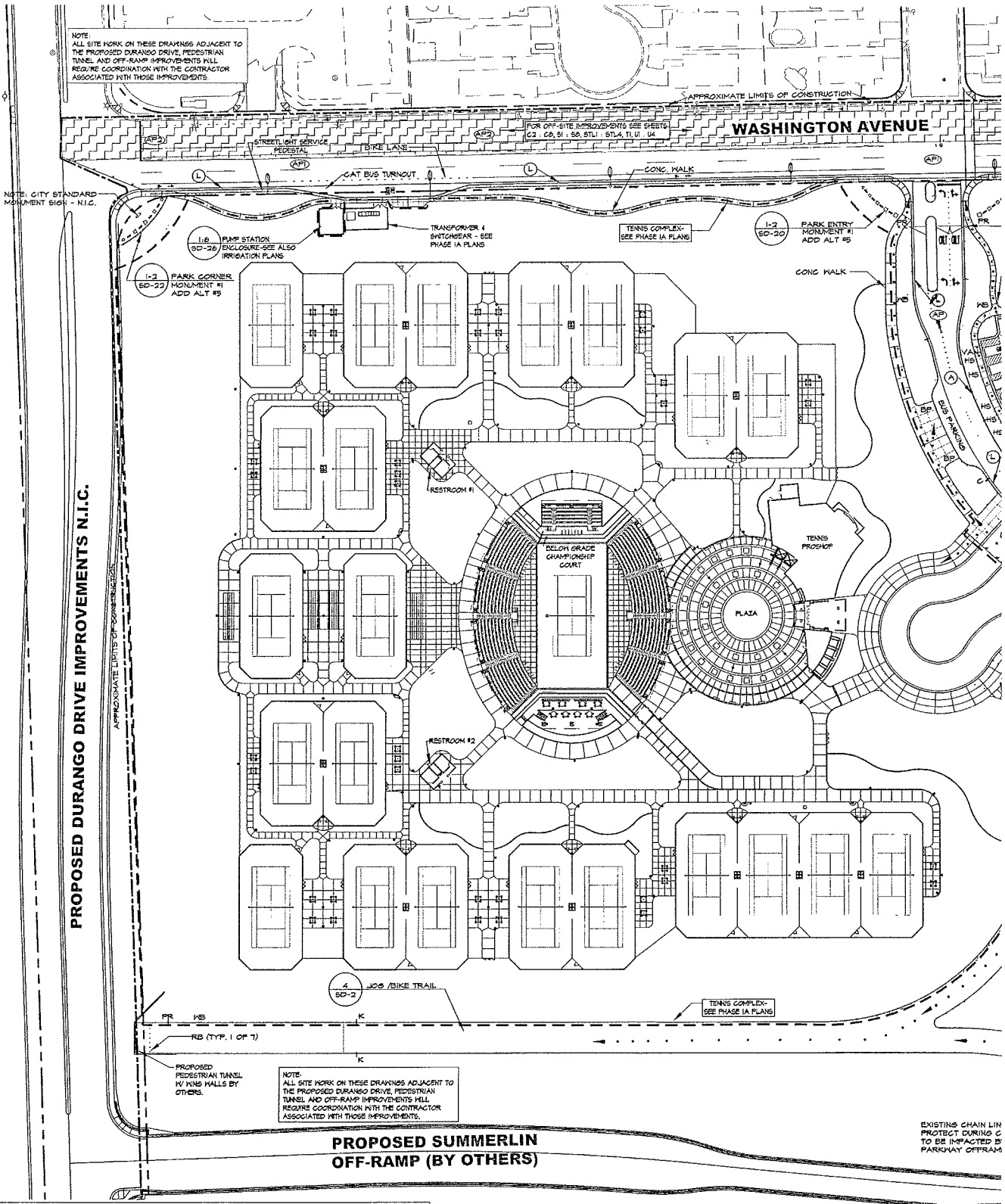
J. Pankiewicz 8/9/10
Deputy City Attorney Date

CJMS TENNIS MANAGEMENT COMPANY

SANDRA FOLEY, Managing Member

"Operator"

EXHIBT



PARKING ANALYSIS	REQUIRED	*PROVIDED
GROUP PICNIC AREA (150 PEOPLE @ 3 PEOPLE PER CAR)	75 SPACES	1148 SPACES
SOCCER FIELD (60 SPACES x 8 FIELDS)	550 SPACES	1148 SPACES
OPEN AREA (SEE NOTE 1)	1151 SPACES	1148 SPACES
**TENNIS COMPLEX	941 SPACES	1148 SPACES
TOTAL SPACES (SEE NOTE 2)	2584 SPACES	1148 SPACES
ADA SPACES	45 (4)	45 (4)

**CHAMPIONSHIP COURT- 2115 SPECTATORS
22 REGULAR COURTS - 250 SPECTATOR SEATING
TOTAL SPECTATORS- 2425 @ 3 PEOPLE/CAR = 808 SPACES
STAFF - 200 @ 1.5 PEOPLE/CAR = 133 SPACES
TOTAL - 941 PARKING SPACES

PARKING ANALYSIS CONTINUED
TYPICAL PARKING SPACE DIMENSION: 9' x 19'
ADA PARKING DIMENSION: 8' x 19' W/ 5' AISLES
ADA VAN PARKING DIMENSION: 8' x 19' W/ 9' AISLES
ADA SPACES SHALL NOT EXCEED A 2% CROSS SLOPE.

*NOTES:
PROGRAMMED FOR SHARED PARKING. FOR EVENT OVER 3000 PEOPLE, PARKS WILL NEED TO SHUTTLE PEOPLE. SHUTTLE TO BE HANDLED THROUGH SPECIAL USE PERMIT.

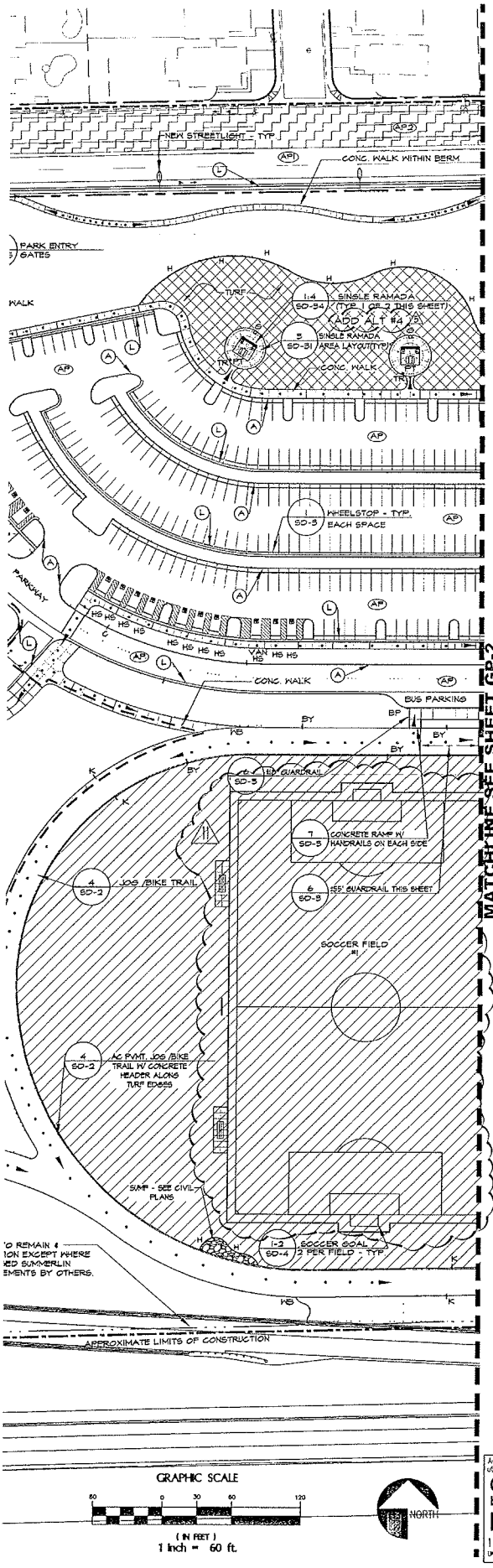
1. MULTI-USE OPEN AREA PROGRAMMED USE WILL VARY WITH EACH ACTIVITY. A SPECIAL USE PERMIT SHOULD SPECIFY DEMAND IF EXCEEDS AVAILABLE PARKING AND WILL REQUIRE PLAN FOR SHUTTLING PUBLIC TO PARK FROM IDENTIFIED REMOTE LOCATIONS TO MEET NEED

2. PROGRAMMING PARK USES/EVENTS/ACTIVITIES IS PLANNED BY PARKS DEPARTMENT TO UTILIZE SHARED USE PARKING POTENTIAL AND MEET ACTIVITY NEEDS

7598

ITE MAP

100171-PH
Darling Tennis Center Operator



LEGEND

NOTES:

1. SEE SHEETS CE-1 THRU CE-34 FOR SITE LAYOUT INFORMATION. SEE ALSO PROJECT SPECIFICATIONS AND UNIFORM STANDARD SPECIFICATIONS AND STANDARD DRAWINGS FOR PUBLIC WORKS CONSTRUCTION OFF-SITE IMPROVEMENTS, CLARK COUNTY AREA, NEVADA, WHICH ARE PART OF THESE DOCUMENTS.
2. CONTRACTOR SHALL PROVIDE ADA ACCESS RAMPS AT ALL WALK/PAVEMENT TERMINI, PER CLARK COUNTY STD. DRAWING #255
3. ALL SIGNAGE SHALL CONFORM TO DETAIL PLAN SHEETS, CLARK COUNTY, NEVADA REVISED STATUTES, MUTCD STANDARDS, AND CITY OF LAS VEGAS STANDARDS, FOR SIGN AND POST TYPE INSTALLATIONS. FINAL SIGN LOCATIONS SHALL BE APPROVED BY CONSTRUCTION PROJECT REP PRIOR TO INSTALLATION.
4. ALL CONCRETE WALKS & PAVEMENT SHALL CONFORM TO CLARK COUNTY STD. DWG 233 & 234 (SOME AREAS REQUIRE 6" THICK CONCRETE). SEE ALSO DETAILS 1 & 2, SHEET SD-24
5. EXPANSION JOINT (E.J.) IS DEFINED AS WITH FIBERBOARD AND CAULKED. MAX 30' L.F. O.C. AT CHANGES OF MATERIAL MASS AND WHERE ABUTING BUILDINGS, COLUMNS, ETC. CONTROL JOINT: 1/8" SCORED JOINT UNLESS OTHERWISE SHOWN ON THIS PLAN. CONTRACTOR SHALL COMPLY WITH SPECIFICATIONS SECTION 02715. IN ALL CASES, WHETHER OR NOT SHOWN IN THESE PLANS, CONTRACTOR SHALL DETERMINE LOCATIONS FOR CONTROL JOINTS. IN NO CASE SHALL THE DISTANCE BETWEEN JOINTS EXCEED 10' EXCEPT IN ISOLATED AREAS
6. FIRE: FIRE LANE SIGN - SEE NOTE 5 AND DETAIL 6 ON SHEET SN-5. PAINT CURBS RED IN TURN-AROUNDS, AT ISLANDS, AT DROP OFF ZONES, AND WHERE INDICATED ON CIVIL PLANS
7. EMPLOYEE PARKING AREA: CONTRACTOR SHALL SUBMIT A PLAN TO THE CONSTRUCTION PROJECT REP., IDENTIFYING THE LOCATION FOR EMPLOYEE PARKING DURING CONSTRUCTION
8. CONTRACTOR MAY USE POLICE SUBSTATION SITE IN PHASE IB AS STAGING FOR EQUIPMENT, MATERIALS AND LOCATION FOR FIELD OFFICE. SUBMIT A PLAN TO CONSTRUCTION PROJECT REPRESENTATIVE FOR REVIEW - SEE ALSO PROJECT MANUAL'S GENERAL/SPECIAL CONDITIONS.
9. CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATION OF ALL WORK IN THESE DOCUMENTS AND SPECIFICATIONS WITH ALL TRADES. EACH TRADE SHALL BE RESPONSIBLE TO FULLY REVIEW THE ENTIRE SET OF CONTRACT DOCUMENTS FOR POTENTIAL RELATED WORK NOT SPECIFICALLY SHOWN IN EACH TRADE'S SECTION. CONTRACTOR SHALL PROVIDE FULLY OPERATIONAL AND COMPLETE SYSTEMS - NO EXCEPTIONS.

KEY		
	INDICATES DETAIL # → INDICATES SHEET # →	X / XX-X
H	LANDSCAPE HEADER	5 SD-2
FH	CHAIN LINK FENCE WITH CONCRETE HEADER 6' H CHAIN LINK FENCE (ADD ALT #1)	4 SD-4
TS	TUBE STEEL FENCE (ADD ALT #1)	1 SD-35
CONC WALK	CONCRETE PAVEMENT SEE ALSO CIVIL SHEETS	1&2 SD-2
TP	TREE PIT	1 PL-35
DB	DRINKING FOUNTAIN W/ DOG BOWL (TOTAL OF 4-PHASE IB)	6 SD-19
DF	DRINKING FOUNTAIN (TOTAL OF 8-PHASE IB)	5 SD-19
RH	RESILIENT SURFACING HEADER @ TREE PIT	2B SD-12
	HANDICAP PARKING SPACE (TOTAL OF 45-PHASE IB)	2 SD-5
HS	HANDICAP SIGNAGE	1,7 SN-3
VAN	VAN HANDICAP SIGNAGE	3&6 SN-5
SIDE	SIDE LIFT SIGN ON HANDICAP SIGNAGE	5 SN-3
PT	PICNIC TABLE (TOTAL OF 81-PHASE IB)	2 SD-19
B	SITE BENCH (TOTAL OF 55-PHASE IB)	1 SD-19
GG	GROUP BBQ. GRILL (TOTAL OF 8-PHASE IB)	5A SD-19
G	SINGLE BBQ. GRILL (TOTAL OF 14-PHASE IB)	5B SD-19
TR	TRASH RECEPTACLE (TOTAL OF 81-PHASE IB)	4 SD-19
RB	REMOVABLE BOLLARDS (TOTAL OF 14-PHASE IB)	7 SD-19
DT	DOG TIE POST (TOTAL OF 6-PHASE IB)	8 SD-19
RS	RESILIENT SURFACING	4 SD-6
DM	DEDICATION PLAQUE CONCRETE MONUMENT (LOCATION TO BE DETERMINED IN FIELD BY CONST. PROJECT REPRESENTATIVES)	1.3 SN-1
PR	PARK RULES SIGN	1 SN-2
LZ	DROP OFF ZONE SIGN	4 SN-5
BP	BUS PARKING ONLY SIGN	10 SN-5
N	FIELD NUMBER SIGN MOUNTED ON FENCE	1 SN-4
M	MULTI-USE SIGN	5 SN-4
BY	BIKES YIELD TO PEDESTRIANS USE STD. MUTCD R9-6 SIGN	
K	TRAVEL PATH RESTRICTION USE STD. MUTCD R4-7 SIGN	
L	LOOK SIGN USE STD. MUTCD R15-8 SIGN	
C	PEDESTRIAN CROSSWALK SIGN USE STD. MUTCD W11-2 SIGN	
CW	CROSS AT CROSSWALKS ONLY SIGN USE STD. MUTCD R9-2 SIGN	
S	PICNIC SHELTER RESERVATION SIGN (MOUNT ON COLUMN)	2 SN-4
WB	DOG WASTE BAG DISPENSER W/ SIGN	4 SN-4
DP	DOG PARK GUIDELINES SIGN	1 SN-5
SD	SMALL DOG SIGN	5 SN-5
LD	LARGE DOG SIGN	2 SN-5
FL	MULTI-USE FLOOD CONTROL STRUCTURE WARNING SIGN	5 SN-4
	EXPANSION JOINT OR CONSTRUCTION JOINT - SEE NOTE 5	
	CONTROL JOINT - SEE NOTE 5	
A	NEW MODIFIED 'A TYPE' CURB SEE CIVIL SHT CE-1:CE-68, CD-1	
L	NEW 'L TYPE' CURB PER CL. CO STD DWG #216 - SEE CIVIL SHT CE-1:CE-68, CD-1	

- HYBRID BERMUDA SOD-SEE SPECS SECTION 02413
- FESCUE MIX SOD - SEE SPECS SECTION 02413
- 6" - 10" ROCK MULCH - SEE DETAIL 6, SHEET PL-55
- 3" - 6" ROCK MULCH - SEE DETAIL 6, SHEET PL-55
- 1/4" MINUS ROCK MULCH - SEE DETAIL 6, SHEET PL-55
- NEW ON-SITE BITUMINOUS ASPHALT PAVING- SEE SHEET CD-1
- NEW OFF-SITE BITUMINOUS ASPHALT PAVING- SEE SHEETS S1 : S8
- NEW OPEN GRADE IMPROVEMENTS ON EXISTING AC PVMT.- SEE SHEETS S1 : S8
- 6" CONCRETE SLAB SEE DETAIL 2 SHEET SD-2
- APPROXIMATE LIMIT OF CONSTRUCTION LINE
- ADA ACCESSIBLE ROUTE ROUTE SHALL BE A MAXIMUM OF 5% SLOPE IN THE DIRECTION OF TRAVEL AND A MAXIMUM OF 2% CROSS SLOPE - SEE GRADING PLANS

GRAPHIC SCALE
60 0 30 60 120
(IN FEET)
1 inch = 60 ft.

NORTH

Avoid cutting underground utility lines. It's costly
Call before you Dig
1-800-227-2600
UNDERGROUND SERVICE ALERT (U.S.A.)

Avoid overhead power line contact
Call before you OVERHEAD
1-702-227-2929
NEVADA POWER ENVIRONMENT & SAFETY SERVICES DEPARTMENT

NOTE TO CONTRACTOR:
STANTEC CONSULTING, INC. (STANTEC) HAS ENDEAVORED TO PROVIDE ACCURATE UTILITY INFORMATION BASED ON THE MOST CURRENT DATA AVAILABLE. THE CONTRACTOR SHALL FIELD VERIFY THE LOCATION OF UNDERGROUND UTILITIES SHOWN OR NOT SHOWN ON THESE PLANS WITH RESPECT TO LINE AND GRADE PRIOR TO CONSTRUCTION.

Use of the information contained in this instrument for other than the specific purpose for which it was intended and for other than the client for whom it was prepared is forbidden unless expressly permitted in writing in advance by Stantec Consulting, Inc. and Stantec Consulting, Inc. shall have no liability to any use of the information without their written consent.

CITY OF LAS VEGAS NEVADA

DEPARTMENT OF PUBLIC WORKS

REVISIONS	DESCRIPTION
1	RECORD DRAWINGS

CONSULTANT
Stantec
7251 W CHARLESTON BLVD
LAS VEGAS, NEVADA 89117
PHONE (702) 258-3115
FAX (702) 258-4956

WASHINGTON BUFFALO PARK - PHASE IB
WASHINGTON & BUFFALO, LAS VEGAS, NV

GENERAL PLAN

STAMP
RECORD DOCUMENTS ARE PREPARED FROM DATA AND INFORMATION SUPPLIED BY OTHERS. STANTEC CONSULTING, INCORPORATED, MAKES NO REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF REQUIRED DOCUMENTATION (STANTEC) CONSULTING, INCORPORATED, IS NOT RESPONSIBLE FOR ANY DECISIONS MADE BY OTHERS BASED ON THESE RECORD DOCUMENTS. BY VIRTUE OF THIS DISTRIBUTION, STANTEC CONSULTING, INCORPORATED, IS NOT RESPONSIBLE FOR ANY DECISIONS MADE BY OTHERS BASED ON THE COMPLETENESS OF THE INFORMATION PRESENTED. ANY CHANGES TO THE SUBSTANCE OF THE INFORMATION PRESENTED HEREIN SHALL RENDER THIS DOCUMENT NULL AND VOID. REFER TO ORIGINAL SIGNED AND SEALED VERSION OF THIS DOCUMENT FOR INFORMATION TO WHICH THIS STAMP APPLIES. STANTEC CONSULTING, INC. SHALL NOT BE RESPONSIBLE FOR ANY PROBLEMS, DISCREPANCIES OR RELATED COSTS THAT MAY ARISE OUT OF THE USE OF RECORD DOCUMENTS.

OWNER: CITY OF LAS VEGAS
DEPARTMENT OF PUBLIC WORKS
ARCHITECTURAL SERVICES
400 EAST STEWART AVENUE
LAS VEGAS, NEVADA 89101
PHONE (702) 229-6535
FAX (702) 382-5232
TDD (702) 386-9108

DRAWN	CLR
FILE	268GP-01.dwg
DATE	1/03
SCALE	1" = 60'-0"
JOB NO	03534108
DWG NO	650.16-18
	100% SUBMITTAL
SHT NO	GP-1

DRAWING AS INSTRUMENTS OF SERVICE ARE THE PROPERTY OF THE ARCHITECT AND SHALL NOT BE USED IN PART WITHOUT WRITTEN CONSENT. THE DRAWINGS AND SPECIFICATIONS RETURNED BY THE CLIENT MUST BE UTILIZED ONLY FOR CONSTRUCTING THE PROJECT FOR WHICH THEY WERE PREPARED AND NOT FOR THE CONSTRUCTION OF ANY OTHER PROJECT. © 03/30

CERTIFICATE - DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

"City" means the City of Las Vegas.

"City Council" means the governing body of the City of Las Vegas.

"Contracting Entity," means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

"Principal" means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members; (e) trust – the trustee and beneficiaries.

2. Policy

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

3. Instructions

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

4. Incorporation

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

Block 1 **Contracting Entity** CJMS Tennis Management, LLC	**Block 2** **Description**
Name	**Darling Tennis Center Operator**
Address	
Telephone	
EIN or DUNS	**Contract # 100171-PH**

Block 3 **Type of Business**

☐ Individual ☐ Partnership ☒ Limited Liability Company ☐ Corporation ☐ Trust ☐ Other:

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

Block 4 **Disclosure of Ownership and Principals**
In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	Sam Austin Querrey managing member	2777 Paradise Rd	(702) 280 843 2
2.	Mike Querrey managing member	Ste 903 LV 89109	
3.	Chris Querrey managing member		
4.	Sandra Foley managing member	2773 Borthwick Ave	(702) 635-0447
5.	Jeff Foley managing member	Henderson, NV 89044	
6.			
7.			
8.			
9.			
10.			

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Ownership/Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: _____

Block 5 **Disclosure of Ownership and Principals – Alternate**

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: _____

Date of Attached Document: _____ Number of Pages: _____

I certify under penalty of perjury, that all the information provided in this Certificate is current, complete and accurate.
I further certify that I am an individual authorized to contractually bind the above named Contracting Entity.

Andrea B. Daly
Name

08/09/2010
Date

Subscribed and sworn to before me this 9 day of August, 2010

Notary Public

LORENZ CABALU
NOTARY PUBLIC - STATE OF NEVADA
COUNTY OF CLARK
APPT. No. 09-10173-1
MY APPT. EXPIRES APRIL 29, 2013

All-purpose Acknowledgment

STATE OF Nevada , COUNTY OF Clark

On August 9, 2010 before me, the undersigned, a Notary Public in and for said State, personally appeared

Sandra Farey

○ personally known to me –OR– ☒ proved to me on the basis of satisfactory evidence/ to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature [signature]

Name (type or printed) Lorenz Cabalu

My commission expires: April 29, 2013

(Seal)

LORENZ CABALU
NOTARY PUBLIC - STATE OF NEVADA
COUNTY OF CLARK
APPT. No. 09-10173-1
MY APPT. EXPIRES APRIL 29, 2013

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Address	
Telephone	
EIN or DUNS	**Contract # 100171-PH**

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☐ Individual ☐ Partnership ☒ Limited Liability Company ☐ Corporation ☐ Trust ☐ Other:

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

Block 4 **Disclosure of Ownership and Principals**
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1.	Sam Austin Querrey managing member	2777 Paradise Rd	(702) 2808432
2.	Mike Querrey managing member	Ste 903 LV 89109	
3.	Chris Querrey managing member		
4.	Sandra Foley managing member	273 Borthwick Ave	(702) 6350447
5.	Jeff Foley managing member	Henderson, NV 89074	
6.			
7.			
8.			
9.			
10.			

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Date of Attached Document: _____ Number of Pages: _____

I certify under penalty of perjury, that all the information provided in this Certificate is current, complete and accurate.
I further certify that I am an individual authorized to contractually bind the above named Contracting Entity.

Sandra Foley
Name

08/09/2010
Date

Subscribed and sworn to before me this 9 day of August, 2010

Notary Public

LORENZ CABALU
NOTARY PUBLIC - STATE OF NEVADA
COUNTY OF CLARK
APPT. No. 09-10173-1
MY APPT. EXPIRES APRIL 29, 2013

All-purpose Acknowledgment

STATE OF Nevada , COUNTY OF Clark

On August 9, 2010 before me, the undersigned, a Notary Public in and for said State, personally appeared

Sandra Facey

○ personally known to me –OR– ☒ proved to me on the basis of satisfactory evidence/ to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature [signature]

Name (type or printed) Lorenz Cabalu

My commission expires: April 29, 2013

LORENZ CABALU
NOTARY PUBLIC - STATE OF NEVADA
(Seal) COUNTY OF CLARK
APPT. No. 09-10173-1
MY APPT. EXPIRES APRIL 29, 2013

City of Las Vegas Agenda Item No.: **38.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PLANNING AND DEVELOPMENT
DIRECTOR: M. MARGO WHEELER ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of a Partnership Agreement between the City of Las Vegas and the Southern Nevada Regional Planning Coalition (SNRPC) to form a multi-jurisdictional consortium called the Las Vegas Metropolitan Area Consortium ("LVMAC") to prepare and submit an application for funds that will support the preparation of a Regional Plan for Sustainable Development

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The Sustainable Communities Regional Planning Grant is being offered by the new Office of Sustainable Housing and Communities, established as a partnership between HUD, DOT, and EPA. The grant requires the application to be submitted by an established Consortium, which will consist of Clark County, City of Las Vegas, City of Henderson, City of North Las Vegas, City of Boulder City, RTC, and UNLV and/or Brookings Mountain West. Additional members may be added if the grant is awarded. A formal Partnership Agreement needs to be adopted by each of the participating boards/councils and must be included in the application package.

RECOMMENDATION:
APPROVAL

BACKUP DOCUMENTATION:
Partnership Agreement of the Las Vegas Metropolitan Area Consortium for the Sustainable Communities Regional Planning Grant Program

PARTNERSHIP AGREEMENT OF THE LAS VEGAS METROPOLITAN AREA CONSORTIUM FOR THE SUSTAINABLE COMMUNITIES REGIONAL PLANNING GRANT PROGRAM

THIS AGREEMENT, effective as of the 20th day of August, 2010, by and between the Southern Nevada Regional Planning Coalition (SNRPC), Clark County, the City of Las Vegas, the City of North Las Vegas, the City of Henderson, the City of Boulder City, the Regional Transportation Commission, the Conservation District of Southern Nevada, the Clark County School District, The Board of Regents of the Nevada System of Higher Education, on behalf of the University of Nevada, Las Vegas (UNLV) and Brookings Mountain West - UNLV, the parties to this Agreement.

WHEREAS, Congress approved the Consolidated Appropriations Act, 2010 (Public Law 111-117, approved December 16, 2009)("Appropriations Act");

WHEREAS, the Appropriations Act authorized a multi-agency Sustainable Communities Initiative between the U.S. Departments of Housing and Urban Development, Transportation and the Environmental Protection Agency to improve regional planning efforts that integrate housing and transportation decisions, and increase the capacity to improve land use and zoning; and

WHEREAS, HUD published a Notice of Funding Availability (NOFA) for HUD's fiscal year 2010 Sustainable Communities Regional Planning Grant Program which makes available up to $5 million for large metropolitan areas, like the Las Vegas Metropolitan Area, to help complete a Regional Plan for Sustainable Development ("RPSD"); and

WHEREAS, the NOFA requires the formation of a multi-jurisdictional consortium consisting of a county, cities, regional planning agencies and non-profit partners to develop the RPSD and to provide 20 percent in leveraged resources; and

WHEREAS, the parties to this Agreement desire to form a multi-jurisdictional consortium called the Las Vegas Metropolitan Area Consortium ("LVMAC") to prepare and submit an application for funds under NOFA that will support the preparation of a RPSD; and

WHEREAS, the comprehensive RPSD will serve as a guide for local, regional and state governmental policies and investments by integrating various plans that will address a wide variety of regional issues facing the Las Vegas Metropolitan Area, including without limitation issues relating to housing, economic development, transportation, energy, water and environmental quality.

NOW, THEREFORE, in consideration of the conditions, agreements, and promises of the parties hereto, the parties hereto mutually agree as follows:

1. **Definitions:**

   A. *Applicant*. The term "applicant" means a Consortium that makes application for funds under the NOFA published by HUD.

   B. *Appropriations Act.* The term "Appropriations Act" means the Consolidated Appropriations Act, 2010 (Public Law 111-117) approved by Congress on December 16, 2009.

   C. *Consortium.* The term "Consortium" means a grouping of governmental entities, regional planning agencies, nonprofit organizations, and allied public and private sector partners that seek to develop a Regional Plan for Sustainable Development.

   D. *HUD.* The abbreviation "HUD" means the U.S. Department of Housing and Urban Development.

   E. *Lead Applicant.* The term "Lead Applicant" means the member of a Consortium authorized to act in a representative capacity with HUD on behalf of all members of the Consortium and to assume fiscal and administrative responsibility for ensuring that the Consortium's program is carried out in compliance with all HUD and Program requirements.

   F. *LVMAC.* The abbreviation "LVMAC" means the Las Vegas Metropolitan Area Consortium, the Consortium created by this Partnership Agreement.

   G. *NOFA.* The abbreviation "NOFA" means the Notice of Funding Availability published by HUD for its Fiscal Year 2010 Sustainable Communities Regional Planning Grant Program.

   H. *Program.* The term "Program" means the Sustainable Communities Regional Planning Grant Program.

   I. *RPSD.* The abbreviation "RPSD" means the Regional Plan for Sustainable Development.

   J. *SNRPC*. The abbreviation "SNRPC" means the Southern Nevada Regional Planning Coalition.

2. **Las Vegas Metropolitan Area Consortium:** The parties hereby create a Consortium named Las Vegas Metropolitan Area Consortium (LVMAC). The parties further agree that, on their behalf, LVMAC will submit a single application to HUD for Sustainable Communities Planning Grant Program funding. In the event LVMAC is selected by HUD for a Sustainable Communities Planning Grant, LVMAC shall enter into a formal consortium agreement and thereafter cooperatively carry out the Program in the approved Application.

3. **Lead Applicant:** The parties hereby authorize the City of Henderson to be the Lead Applicant to act on behalf of all the members of LVMAC. As Lead Applicant, the City of Henderson shall prepare and submit an Application to HUD for a Sustainable Communities Planning Grant in an amount not to exceed $5 million, by the published deadline of August 23, 2010, and in the manner and form required by the NOFA. Each member of LVMAC agrees to assist the City of Henderson in preparing the Sustainable Communities Planning Grant Application. In the event LVMAC is selected for funding, the City of Henderson is hereby granted the authority to execute a cooperative agreement with HUD and shall assume fiscal and administrative responsibility for the grant on behalf of LVMAC in compliance with all HUD and Program requirements.

4. **Grant Application:** The parties agree that LVMAC shall submit an Application under "Grant Category 1: Regional Plans for Sustainable Development." If selected by HUD, funds from the grant would support the preparation of a RPSD. The comprehensive RPSD will serve as a guide for local, regional, and state governmental policies and investments that will integrate various existing or emergent plans. Funds will support stake-holder driven visioning and scenario planning exercises that are intended to address and harmonize critical land uses and investment decisions, such as those for the location and distribution of affordable housing, schools, and employment centers throughout the region; support cost-effective and sustainable transportation and water infrastructure investments; designate lands for conservation and ongoing agricultural use; and proactively consider risks from disasters and climate change, amongst other things. Pursuant to the NOFA, LVMAC will be expected to work with HUD to identify a set of locally appropriate performance metrics that are consistent with the performance measures developed by the Sustainability Partnership and the Livability Principles that are listed in the NOFA.

5. **Consortium Agreement:** If selected for funding by HUD, a formal consortium agreement will be executed no later than 120 days after the effective start date of the grant agreement. The consortium agreement must describe each LVMAC member's specific activities under the Program, including timetables for completion. The City of Henderson, as Lead Applicant, will enter into memorandums of understanding with each LVMAC member receiving funding from the grant, to ensure delivery of the required activities.

6. **Cost Sharing or Matching:** The parties acknowledge that the grant requires applicants to provide a minimum of 20 percent in leveraged resources, including cash, in-kind contributions, or a combination of these sources. If LVMAC is selected for funding, LVMAC must identify the required amount of leveraged resources (20 percent) at the time of signing the cooperative agreement. The parties agree to identify in-kind contributions to satisfy the leveraged resources requirement prior to the execution of the consortium agreement. In-kind contributions may be in the form of staff-time, donated materials or services, including the list of possible in-kind services described in Section VIII.C of the NOFA.

7. **Governance Structure:** The parties agree that LVMAC shall be governed by the SNRPC. A majority of the SNRPC shall constitute a quorum. All actions must be adopted by at least a majority of the members of the SNRPC present and constituting the quorum at any meeting. The affirmative vote of at least two-thirds of the members of the SNRPC shall be necessary to pass an action relating to a budgetary matter or a matter which involves an expenditure of public money, including grant funds; or a contract or other instrument that creates a binding legal obligation on a public entity. During the course of the preparation of the RPSD, each member shall be consulted on a regular basis and its recommendations taken into consideration. The final RPSD approved by the SNRPC shall be submitted to each member for consideration and ratification. Ratification of the final RPSD by three-fourths of the members shall constitute final approval of the RPSD.

8. **Additional Consortium Members:** Additional members may be added to LVMAC at any time during the term of this Agreement with the consent of the SNRPC. Notwithstanding, the addition of new members to LVMAC shall not modify the governance structure of LVMAC.

9. **General Terms and Conditions.**

   A. Term of Agreement: This Agreement shall expire 36 months after a consortium agreement is executed by HUD. Notwithstanding the above, this Agreement shall expire immediately in the event LVMAC is notified by HUD that LVMAC has not been selected for a 2010 Sustainable Communities Planning Grant.

   B. Termination of Agreement: Any party may opt-out of this Agreement with the consent of the SNRPC if opting out will not affect LVMAC's eligibility status under the NOFA. Otherwise, a party may only opt-out of this Agreement with the unanimous consent of the remaining parties.

   C. Amendments: This Agreement may be amended by approval of the governing bodies of each party.

   D. Effective Date: The effective date of this Agreement is August 20, 2010.

   E. Assignability. This Agreement may not be assigned by any party.

   F. Governing Law. This Agreement shall be governed by the laws of the State of Nevada.

   G. Professional Services: The SNRPC may employ professional services to carry out this Agreement or the Program.

H. Liability. No party shall be liable in damages, attorney fees, costs or monetary claim of any kind to any other party as a result of any claim or action arising out of this Agreement.

I. Dispute Resolution: Any dispute arising out of this Agreement shall be resolved through good faith negotiations of all parties. In the event a dispute cannot be resolved through good faith negotiation, the dispute shall be taken before the SNRPC for consideration and final resolution.

J. Entire Agreement: This Agreement represents the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral.

K. No Third Party Beneficiaries: This Agreement is entered into for the benefit of the public, not for the benefit of any private person, company, corporation, firm or other entity who is not a party to this Agreement.

L. Counterparts: This Agreement may be executed in any number of counterparts, and when so executed, each such counterpart shall be deemed to be an original hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Partnership Agreement of the Las Vegas Area Consortium for the Sustainable Communities Regional Planning Grant Program to be executed by their duly authorized representatives on the day and the year first above written.

LAS VEGAS

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

_____
Date

City of Las Vegas Agenda Item No.: **39.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an encroachment request from A.W. Ham, III Trust, owner (516 Fremont Street) - Ward 5 (Barlow)

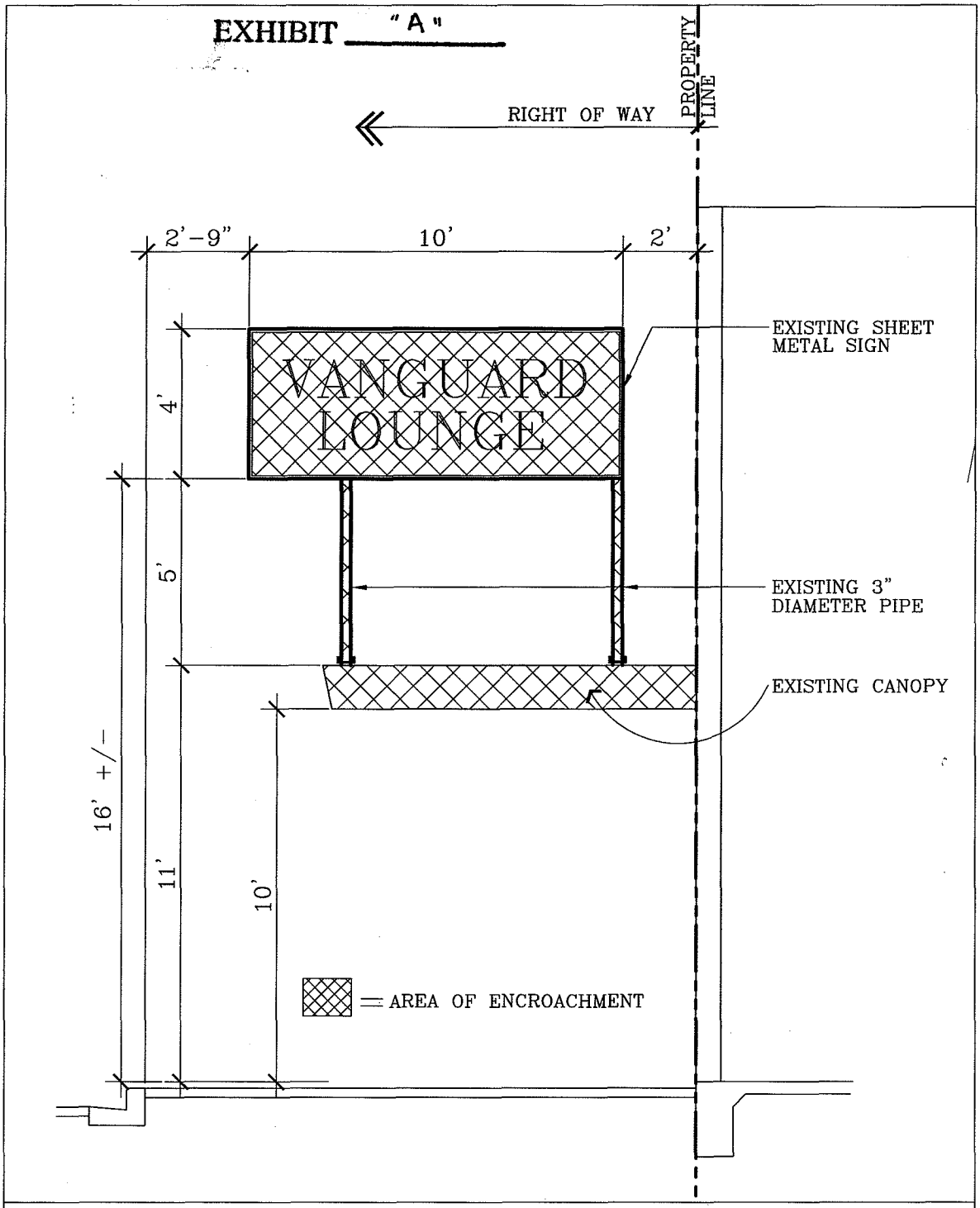
Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This request is for a canopy, signage and outdoor seating located on the south side of the building. The canopy is approximately 10 feet above the sidewalk and the sign is mounted on the canopy with 3 inch pipe approximately 5 feet above the canopy, and approximately 16 feet above the sidewalk. The canopy will protrude approximately 10 feet into public right of way and the sign will protrude approximately 12 feet into public right of way displaying the words "Vanguard Lounge". The outdoor seating, as described in the Las Vegas Downtown Centennial Plan will be used during business hours and brought indoors during non-business hours for storage. The outdoor seating will consist of furnishings placed in a designated area adjacent to the building approximately 6 feet 8 inches in the public right of way under the canopy.

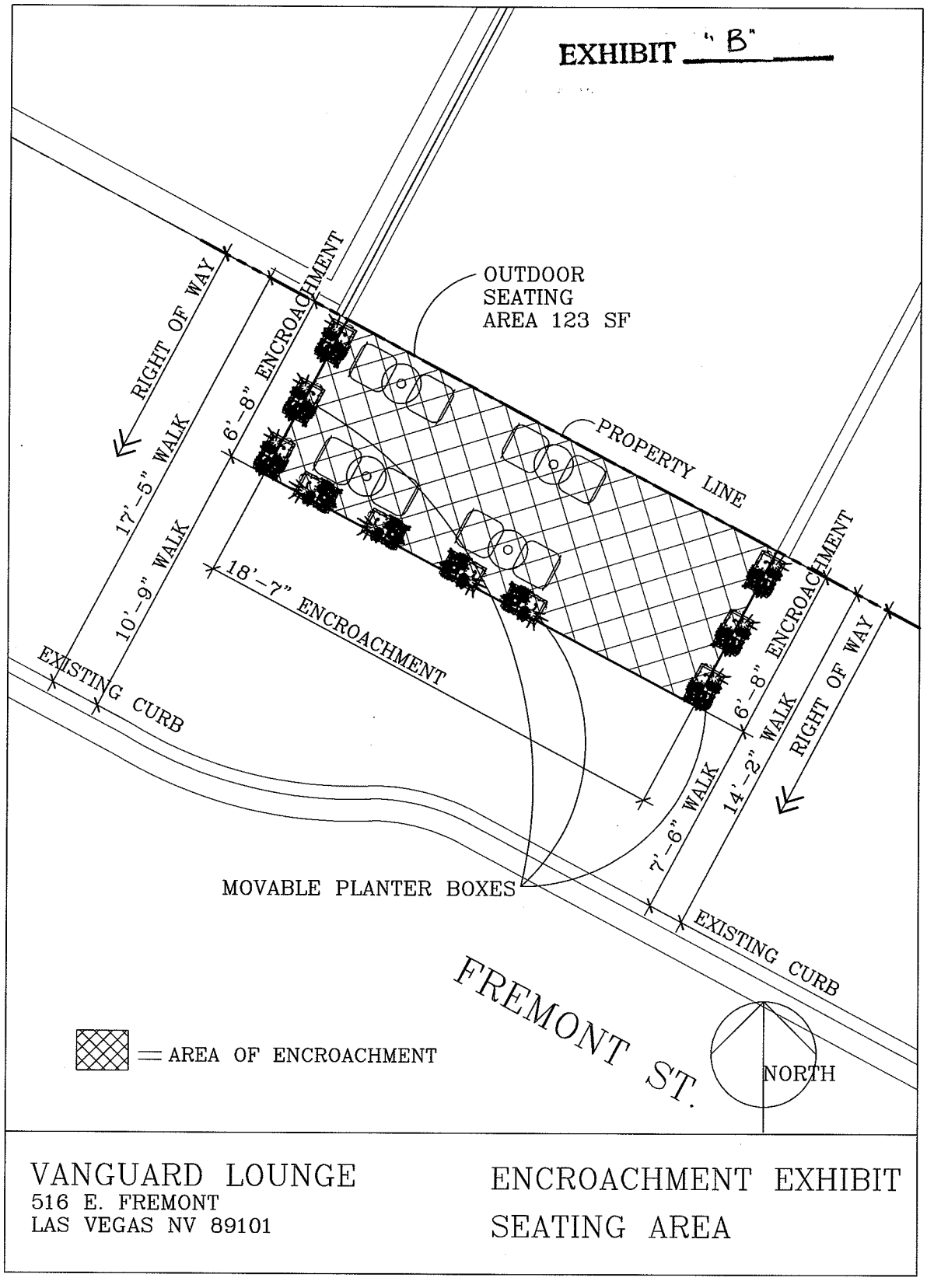
RECOMMENDATION:
Approval. If approved, the applicant will be required to sign an Encroachment Agreement that has conditions of maintenance, liability and removal.

BACKUP DOCUMENTATION:
1. Vanguard Lounge 516 E. Fremont Encroachment Exhibit “A”
2. Vanguard Lounge 516 E. Fremont Encroachment Exhibit “B”



VANGUARD LOUNGE
516 E. FREMONT
LAS VEGAS NV 89101

ENCROACHMENT EXHIBIT
CANOPY & SIGN



VANGUARD LOUNGE
516 E. FREMONT
LAS VEGAS NV 89101

ENCROACHMENT EXHIBIT
SEATING AREA

City of Las Vegas Agenda Item No.: **40.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Third Supplemental Interlocal Contract LAS22I08 between the City of Las Vegas and the Clark County Regional Flood Control District (CCRFCD) to extend the project completion date for the Las Vegas Wash - Decatur Boulevard from Elkhorn Road to Farm Road - Ward 6 (Ross)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division: PW/City Engineer

PURPOSE/BACKGROUND:
On July 10, 2008 the District entered into an Interlocal Contract with the City to provide funding for construction and construction management for the Las Vegas Wash - Decatur Boulevard (Elkhorn Road to Farm Road). On February 12, 2009, a First Supplemental Interlocal Contract was approved to decrease funding. On June 11, 2009, a Second Supplemental Interlocal Contract was approved to extend the date of completion. This Third Supplemental Interlocal Contract will extend the completion date to June 30, 2012. This extension is necessary to allow for the close out process.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Third Supplemental Interlocal Contract LAS22I08

THIRD SUPPLEMENTAL INTERLOCAL CONTRACT

LAS VEGAS WASH - DECATUR BOULEVARD (ELKHORN ROAD TO FARM ROAD)

THIS THIRD SUPPLEMENTAL INTERLOCAL CONTRACT made and entered into as of the 8th day of July, 2010 by and between the Clark County Regional Flood Control District, hereinafter referred to as "DISTRICT", and the City of Las Vegas hereinafter referred to as "CITY".

W I T N E S S E T H

WHEREAS, pursuant to Chapter 543 of the Nevada Revised Statutes, the DISTRICT may approve a project to design and construct flood control improvements; and

WHEREAS, the flood control improvements proposed herein are the same as those generally identified in the 2008 Master Plan Update as Facility Numbers LVDE 0000, 0003 and 0027 hereinafter referred to as PROJECT; and

WHEREAS, the PROJECT is identified and shown on the attached Exhibit "A"; and

WHEREAS, the PROJECT has been approved by the DISTRICT on its annual Ten Year Construction Program; and

WHEREAS, an Interlocal Contract was entered into between the CITY and the DISTRICT on July 10, 2008, First Supplemental on February 12, 2009, and a Second Supplemental on June 11, 2009; and

WHEREAS, the PROJECT has regional flood control significance and is located in the same hydrographic area as the Las Vegas Valley.

WHEREAS, the CITY wishes to extend the project completion date.

NOW, THEREFORE, in consideration of the covenants, conditions, contracts, and promises of the parties hereto, the DISTRICT and the CITY agree to the following:

SECTION III – GENERAL paragraph 15 shall be revised as follows:

15. The items covered in SECTION II - PROJECT COSTS must be completed to the satisfaction of the DISTRICT prior to June 30, 2012. The DISTRICT may, at any time thereafter, grant extensions or terminate this CONTRACT after thirty (30) days notice.

The remainder of the original Interlocal Contract dated July 10, 2008, First Supplemental Interlocal Contract dated February 12, 2009 and Second Supplemental Interlocal Contract dated June 11, 2009 shall remain unchanged.

IN WITNESS WHEREOF, the Parties have caused this Third Supplemental Interlocal Contract to be executed by their duly authorized representatives the day and year first above written.

Date of Council Action

_____

City of Las Vegas

By: _____
Oscar B. Goodman, Mayor

Attest

By: _____
Beverly K. Bridges, MMC
City Clerk

Approved as to form

By: John S. Ridilla 7/21/10
Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

Date of District Action

July 8, 2010

Regional Flood Control District

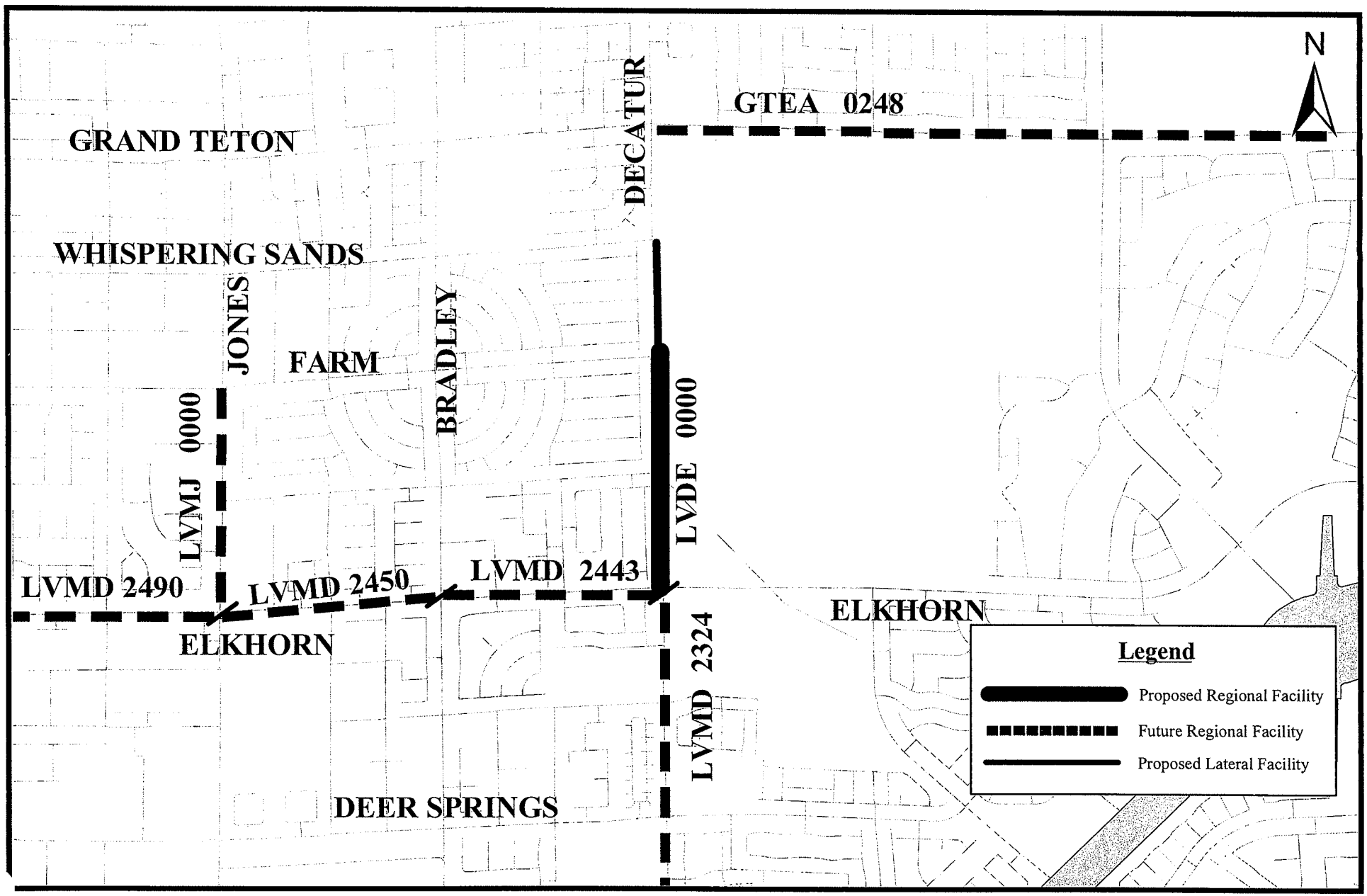
By: Lawrence L Brown III
Lawrence L. Brown, III
Chairman

Attest

By: Carolyn Frazier
Carolyn Frazier
Secretary to the Board

Approved as to Form

By: Chr Figgins July 8, 2010
Christopher Figgins Date
Chief Deputy District Attorney



JUNE 2008

EXHIBIT A
LAS VEGAS WASH-DECATUR, ELKHORN ROAD TO FARM ROAD (LAS22I08)

F:Depot/Engineering Planning/ Flood/ Arcview/ EXHIBIT A
LAS VEGAS WASH-DECATUR. ELKHORN TO FARM

LAS22I08

City of Las Vegas Agenda Item No.: **41.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of First Supplemental Interlocal Contract LAS22K08 between the City of Las Vegas and the Clark County Regional Flood Control District (CCRFCD) to extend the completion date for the Las Vegas Wash - Grand Teton, Mountain Spa to Buffalo Drive - Ward 6 (Ross)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division: PW/City Engineer

PURPOSE/BACKGROUND:
On August 14, 2008 District entered into an Interlocal Contract with the City to provide funding for the design for the Las Vegas Wash – Grand Teton, Mountain Spa to Buffalo Drive. This First Supplemental Interlocal Contract will extend the project completion date to June 30, 2015. This extension is necessary to allow for project completion. The Clark County Regional Flood Control District approved this contract at its July 8, 2010 Board meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
First Supplemental Interlocal Contract LAS22K08

FIRST SUPPLEMENTAL INTERLOCAL CONTRACT

LAS VEGAS WASH – GRAND TETON, MOUNTAIN SPA TO BUFFALO DRIVE

THIS FIRST SUPPLEMENTAL INTERLOCAL CONTRACT made and entered into as of the 8th day of July, 2010 by and between the Clark County Regional Flood Control District, hereinafter referred to as "DISTRICT", and the City of Las Vegas hereinafter referred to as "CITY".

W I T N E S S E T H

WHEREAS, pursuant to Chapter 543 of the Nevada Revised Statutes, the DISTRICT may approve a project to design and construct flood control improvements, and;

WHEREAS, the flood control improvements proposed herein are the same as those generally identified in the 2008 Master Plan as Structure Numbers LVMD 2632 and LVMD 2661, hereinafter referred to as "PROJECT"; and

WHEREAS, the PROJECT is identified and shown on the attached Exhibit "A"; and

WHEREAS, the PROJECT has been approved by the DISTRICT on its Ten Year Construction Program; and

WHEREAS, the PROJECT has regional flood control significance and is located in the same hydrographic area as the Las Vegas Valley.

WHEREAS, the CITY wishes to extend the project completion date.

NOW, THEREFORE, in consideration of the covenants, conditions, contracts, and promises of the parties hereto, the DISTRICT and the CITY agree to the following:

SECTION III – GENERAL paragraph 14 shall be revised to read as follows:

14. The items covered in SECTION II - PROJECT COSTS must be completed to the satisfaction of the DISTRICT prior to June 30, 2015. The DISTRICT may, at any time thereafter, grant extensions or terminate this CONTRACT after thirty (30) days notice.

///

///

IN WITNESS WHEREOF, the Parties have caused this First Supplemental Interlocal Contract to be executed by their duly authorized representatives the day and year first above written.

Date of Council Action

_____

City of Las Vegas

By: _____
Oscar B. Goodman, Mayor

Attest

By: _____
Beverly K. Bridges, MMC
City Clerk

Approved as to form

By: John S. Ridilla 7/21/10
Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

Date of District Action

July 8, 2010

Regional Flood Control District

By: Lawrence L Brown III
LAWRENCE L. BROWN, III,
Chairman

Attest

By: Carolyn Frazier
Carolyn Frazier
Secretary to the Board

Approved as to Form

By: July 8, 2010
Christopher Figgins Date
Chief Deputy District Attorney

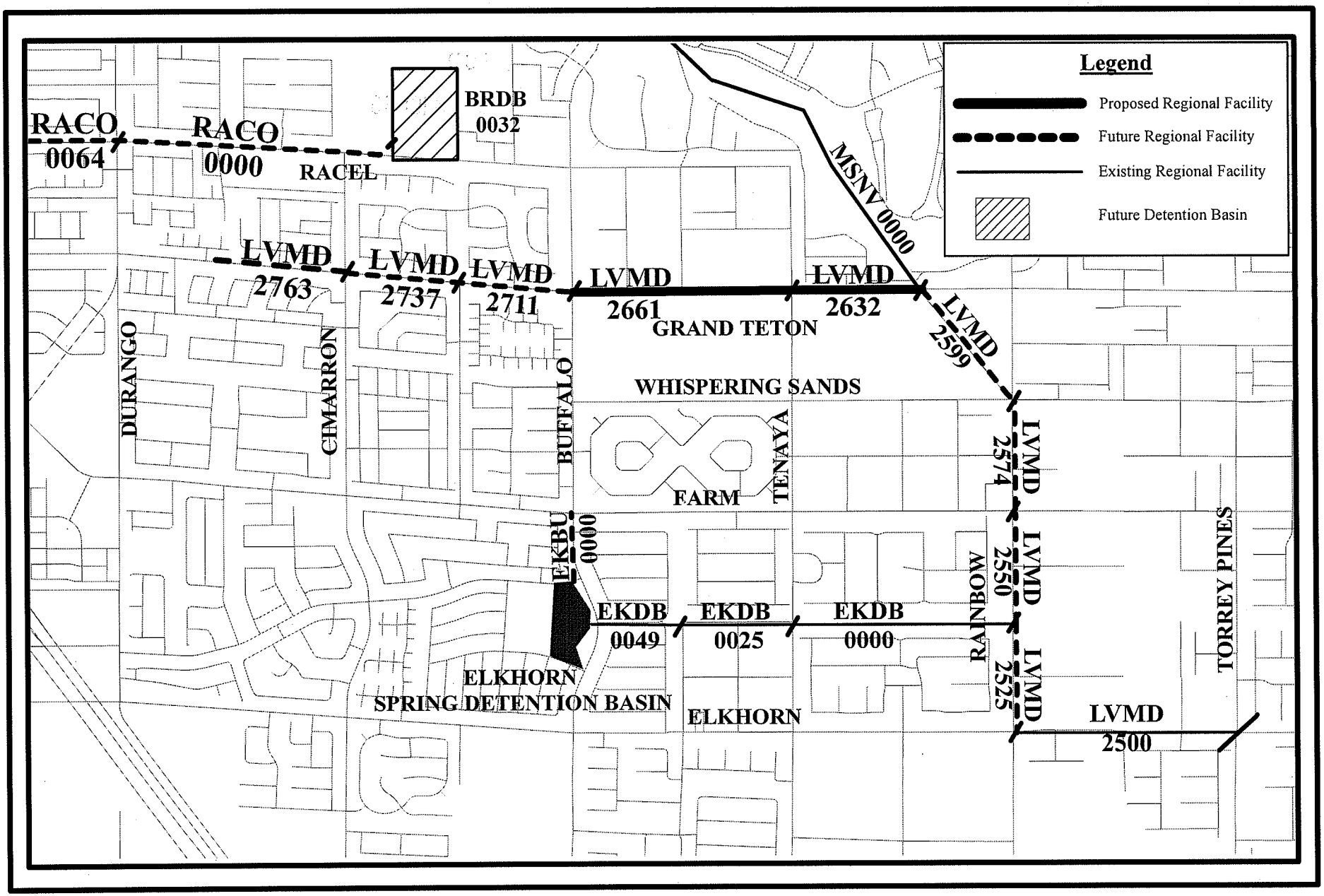


EXHIBIT A
LAS VEGAS WASH - GRAND TETON, MOUNTAIN SPA TO BUFFALO DRIVE (LAS22K08)

JULY 08

North

F:\#Depot\Engineering_Planning\Flood\ARCVIEW\CCRFCD\Las Vegas Wash - MOUNTAIN SPA TO BUFFALO(DESIGN)

LAS22K08

City of Las Vegas Agenda Item No.: **42.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of First Supplemental Interlocal Contract LAS22L08 between the City of Las Vegas and the Clark County Regional Flood Control District (CCRFCD) to extend the completion date for the Las Vegas Wash - Grand Teton, Buffalo Drive to Durango Drive - Ward 6 (Ross)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
On August 14, 2008 District entered into an Interlocal Contract with the City to provide funding for the design for the Las Vegas Wash - Grand Teton, Buffalo Drive to Durango Drive. This First Supplemental Interlocal Contract will extend the project completion date to June 30, 2015. This extension is necessary to allow for project completion. The Clark County Regional Flood Control District approved this contract at its July 8, 2010 Board meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
First Supplemental Interlocal Contract LAS22L08

FIRST SUPPLEMENTAL INTERLOCAL CONTRACT

LAS VEGAS WASH – GRAND TETON, BUFFALO DRIVE TO DURANGO DRIVE

THIS FIRST SUPPLEMENTAL INTERLOCAL CONTRACT made and entered into as of the 8th day of July, 2010 by and between the Clark County Regional Flood Control District, hereinafter referred to as "DISTRICT", and the City of Las Vegas hereinafter referred to as "CITY".

W I T N E S S E T H

WHEREAS, pursuant to Chapter 543 of the Nevada Revised Statutes, the DISTRICT may approve a project to design and construct flood control improvements, and;

WHEREAS, the flood control improvements proposed herein are the same as those generally identified in the 2008 Master Plan as Structure Numbers LVMD 2711, LVMD 2737, and LVMD 2763, hereinafter referred to as "PROJECT"; and

WHEREAS, the PROJECT is identified and shown on the attached Exhibit "A"; and

WHEREAS, the PROJECT has been approved by the DISTRICT on its Ten Year Construction Program; and

WHEREAS, the PROJECT has regional flood control significance and is located in the same hydrographic area as the Las Vegas Valley.

WHEREAS, the CITY wishes to extend the project completion date.

NOW, THEREFORE, in consideration of the covenants, conditions, contracts, and promises of the parties hereto, the DISTRICT and the CITY agree to the following:

SECTION III – GENERAL paragraph 14 shall be revised to read as follows:

14. The items covered in SECTION II - PROJECT COSTS must be completed to the satisfaction of the DISTRICT prior to June 30, 2015. The DISTRICT may, at any time thereafter, grant extensions or terminate this CONTRACT after thirty (30) days notice.

IN WITNESS WHEREOF, the Parties have caused this First Supplemental Interlocal Contract to be executed by their duly authorized representatives the day and year first above written.

Date of Council Action

_____

City of Las Vegas

By: _____
Oscar B. Goodman, Mayor

Attest

By: _____
Beverly K. Bridges, MMC
City Clerk

Approved as to form

By: John S. Ridilla 7/21/10
Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

Date of District Action

July 8, 2010

Regional Flood Control District

By: Lawrence L Brown III
LAWRENCE L. BROWN, III,
Chairman

Attest

By: Carolyn Frazier
Carolyn Frazier
Secretary to the Board

Approved as to Form

By: [signature] July 8, 2010
Christopher Figgins Date
Chief Deputy District Attorney

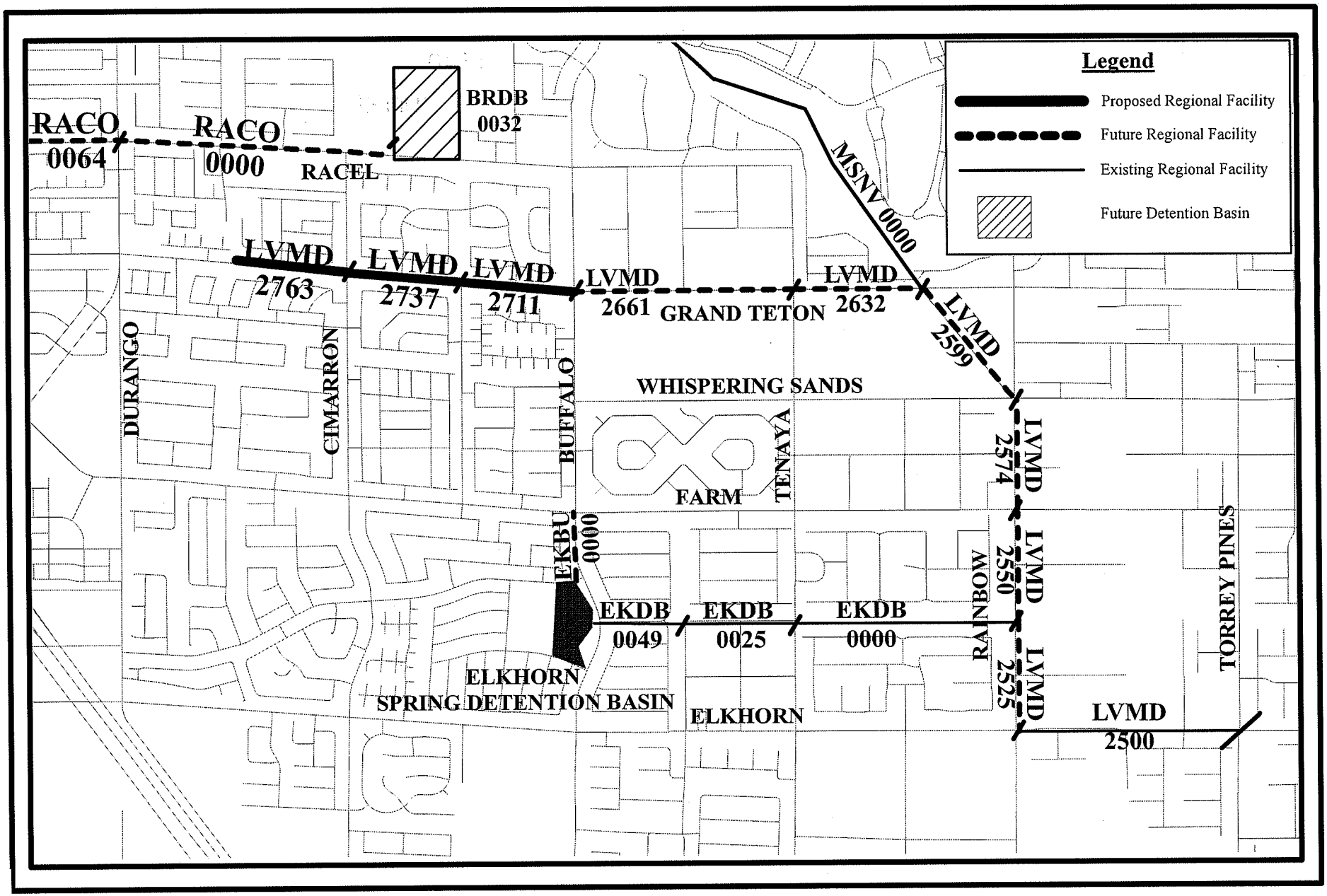


EXHIBIT A
LAS VEGAS WASH - GRAND TETON, BUFFALO DRIVE TO DURANGO DRIVE (LAS22L08)

JULY 08

F:\#Depot\Engineering_Planning\Flood\ARCVIEW\CCRFCD\Las Vegas Wash - BUFFALO TO DURANGO (DESIGN)

LAS22L08

City of Las Vegas Agenda Item No.: **43.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Third Supplemental Interlocal Contract LLD05A08 between the City of Las Vegas and the Clark County Regional Flood Control District (CCRFCD) to extend the project completion date for the Jones Boulevard - Alta to Borden Storm Drain Local Drainage Improvements - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
On July 10, 2008 the District entered into an Interlocal Contract with the City to provide funding for construction of the Jones Boulevard – Alta to Borden Storm Drain Local Drainage Improvements. On November 13, 2008, a First Supplemental Interlocal Contract was approved to increase the construction funding and extend the completion date. On May 21, 2009, a Second Supplemental Interlocal Contract was approved to decrease the construction funding and extend the completion date. This Third Supplemental Interlocal Contract will extend the completion date to June 30, 2011. This extension is necessary to allow for project close out. The Clark County Regional Flood Control District approved this contract at its July 8, 2010 Board meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Third Supplemental Interlocal Contract LLD05A08

THIRD SUPPLEMENTAL INTERLOCAL CONTRACT

FOR LOCAL DRAINAGE IMPROVEMENTS IN JONES BOULEVARD – ALTA TO BORDEN STORM DRAIN

THIS THIRD SUPPLEMENTAL INTERLOCAL CONTRACT made and entered into as of the 8th day of July, 2010 by and between the Clark County Regional Flood Control District, hereinafter referred to as "DISTRICT" and the CITY OF LAS VEGAS, hereinafter referred to as "CITY".

WITNESSETH

WHEREAS, pursuant to Chapter 543 of the Nevada Revised Statutes, the DISTRICT may approve a project to design and construct flood control improvements, and;

WHEREAS, the PROJECT is identified and shown on the attached Exhibit "A"; and

WHEREAS, the Interlocal Contract dated July 10, 2008, First Supplemental Interlocal Contract dated November 13, 2008, and Second Supplemental Interlocal Contract dated May 21, 2009 were entered into between the DISTRICT and the CITY; and

WHEREAS, the City wishes to extend the project completion date.

NOW, THEREFORE, in consideration of the covenants, conditions, contracts, and promises of the parties hereto, the DISTRICT and the CITY agree to the following:

SECTION III – GENERAL, paragraph 13 shall be revised to read as follows:

13. The items covered in SECTION II - PROJECT COSTS must be completed to the satisfaction of the DISTRICT prior to June 30, 2011. The DISTRICT may, at any time thereafter, grant extensions or terminate this Contract after thirty (30) days notice.

///

///

///

IN WITNESS WHEREOF, the Parties have caused this Third Supplemental Interlocal Contract to be executed by their duly authorized representatives the day and year first above written.

Date of Council Action

_____

City of Las Vegas

By: _____
Oscar B. Goodman
Mayor

Attest

By: _____
Beverly K. Bridges, MMC
City Clerk

Approved as to form

By: John S. Ridilla 7/21/10
Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

Date of District Action

July 8, 2010

Regional Flood Control District

By: Lawrence L Brown III
Lawrence L. Brown, III
Chairman

Attest

By: Carolyn Frazier
Carolyn Frazier
Secretary to the Board

Approved as to Form

By: July 8, 2010
Christopher Figgins Date
Chief Deputy District Attorney

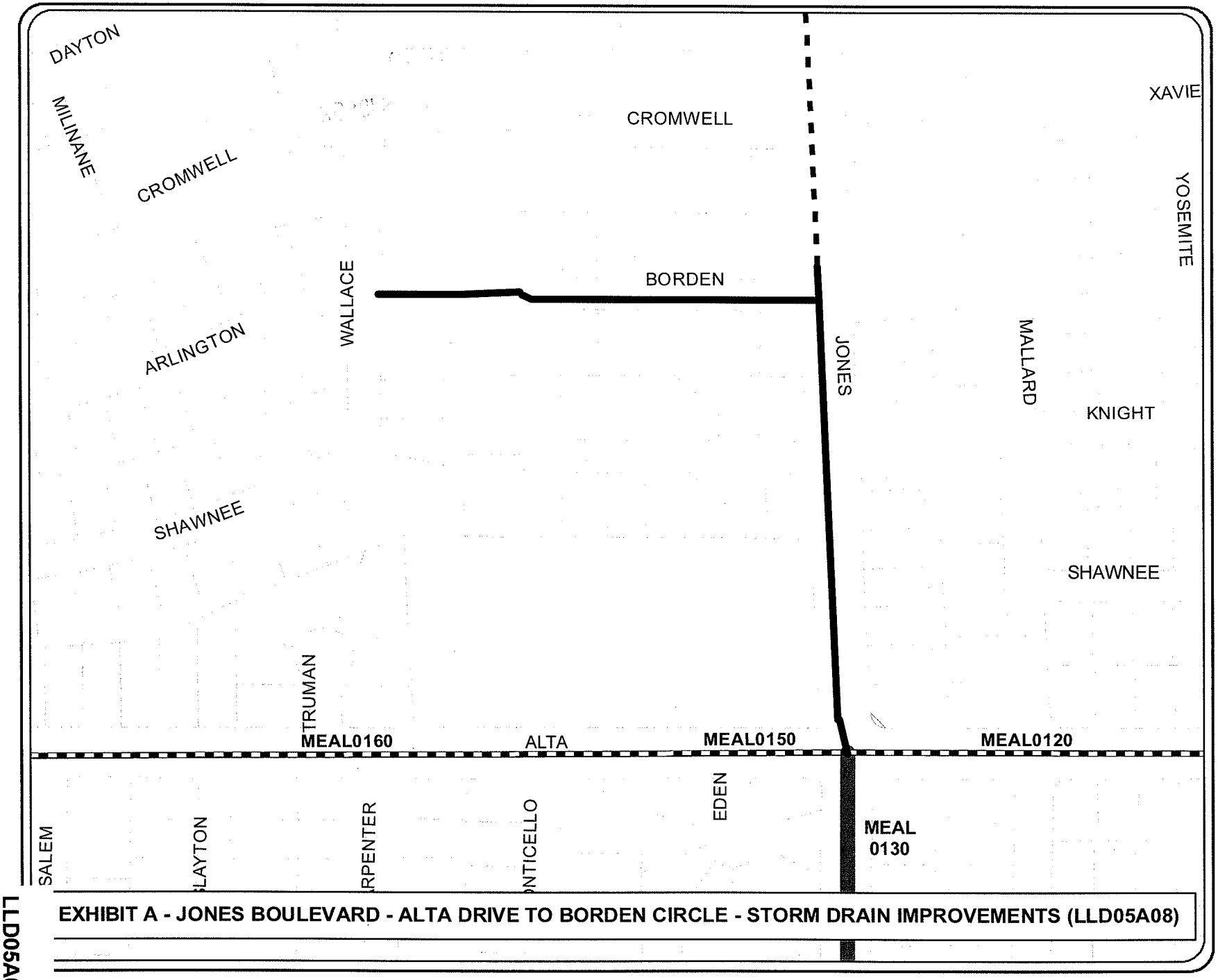


EXHIBIT A - JONES BOULEVARD - ALTA DRIVE TO BORDEN CIRCLE - STORM DRAIN IMPROVEMENTS (LLD05A08)

LLD05A08

DepotEngineering_Planning\Flood\DSRFCD\Local Participation Projects\Jones-Alta to Borden, 2008 Local Project

Due to continuous development activity this map is for reference only.

0 125 250
Feet

City of Las Vegas Agenda Item No.: **44.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Fourth Supplemental Interlocal Contract LLD12A04 between the City of Las Vegas and the Clark County Regional Flood Control District (CCRFCD) to extend the project completion date for the Local Drainage Improvements in Brush Street Storm Drain - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
On June 10, 2004, the Regional Flood Control District entered into an Interlocal Contract with the City of Las Vegas for the construction of Local Drainage Improvements for Brush Street Storm Drain. On July 13, 2006 the First Supplemental Interlocal Contract was approved to extend the date of completion. On May 15, 2008 the Second Supplemental Interlocal Contract was approved to increase construction funding and extend the date of completion. On May 21, 2009 the Third Supplemental Interlocal Contract was approved to increase construction funding and extend the project completion date. This Fourth Supplemental Interlocal Contract will extend the completion date to June 30, 2011. This extension is necessary to allow for project close out. The Clark County Regional Flood Control District approved this contract at its July 8, 2010 Board meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Fourth Supplemental Interlocal Contract LLD12A04

FOURTH SUPPLEMENTAL INTERLOCAL CONTRACT
LOCAL DRAINAGE IMPROVEMENTS IN
BRUSH STREET STORM DRAIN

THIS FOURTH SUPPLEMENTAL INTERLOCAL CONTRACT, made and entered into as of the 8th day of July, 2010 by and between the Clark County Regional Flood Control District, hereinafter referred to as "DISTRICT" and the City of Las Vegas, hereinafter referred to as "CITY".

WITNESSETH

WHEREAS, pursuant to Chapter 543 of the Nevada Revised Statutes, the DISTRICT may approve a project to design and construct flood control improvements; and

WHEREAS, the PROJECT is identified and shown on the attached Exhibit "A"; and

WHEREAS, an Interlocal Contract for the construction of the Local Drainage Improvements for the Brush Street Storm Drain was entered into between the DISTRICT and the CITY on June 10, 2004 and supplemented July 13, 2006, May 15, 2008 and May 21, 2009; and

WHEREAS, the CITY wishes to extend the date of completion.

NOW, THEREFORE, in consideration of the covenants, conditions, contracts, and promises of the parties hereto, the DISTRICT and the CITY agree to the following:

SECTION III – GENERAL, paragraph 13 shall be revised to read as follows:

13. The items covered in SECTION II - PROJECT COSTS must be completed to the satisfaction of the DISTRICT prior to June 30, 2011. The DISTRICT may, at any time thereafter, grant extensions or terminate this Contract after thirty (30) days notice.

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IN WITNESS WHEREOF, the Parties have caused this Fourth Supplemental Interlocal Contract to be executed by their duly authorized representatives the day and year first above written.

Date of Council Action

_____

City of Las Vegas

By: _____
Oscar B. Goodman, Mayor

Attest

By: _____
Beverly K. Bridges, MMC
City Clerk

Approved as to form

By: John S. Ridilla 7/21/10
Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

Date of District Action

July 8, 2010

Regional Flood Control District

By: Lawrence L Brown III
LAWRENCE L. BROWN, III,
Chairman

Attest

By: Carolyn Frazier
Carolyn Frazier
Secretary to the Board

Approved as to Form

By: C K Figgins July 8, 2010
Christopher Figgins Date
Chief Deputy District Attorney

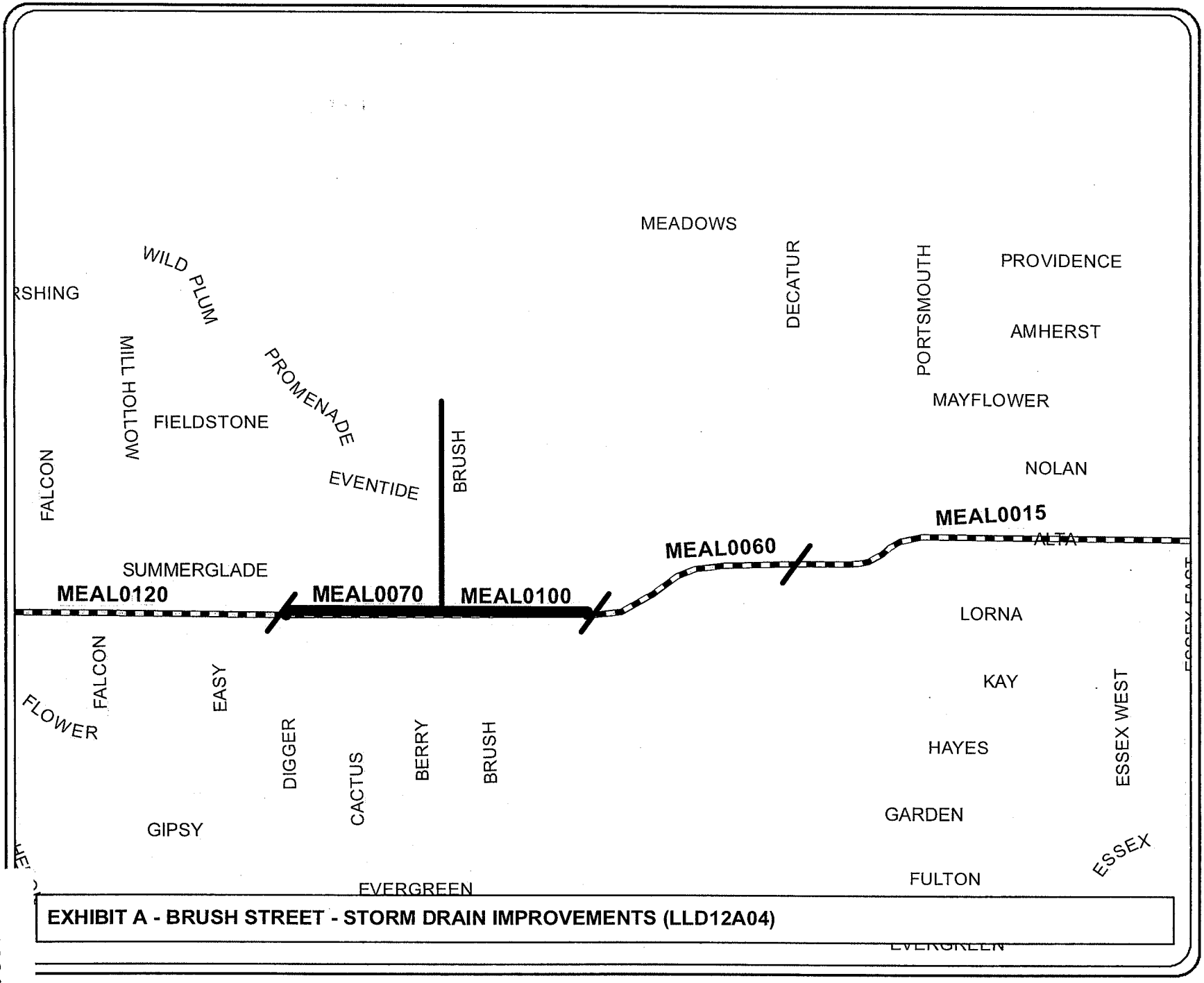

EXHIBIT A - BRUSH STREET - STORM DRAIN IMPROVEMENTS (LLD12A04)

LLD12A04

\\Depot\Engineering_Planning\Flood\ARCVIEW\Nominal Projects\Brush Street\Exhibit A - Brush Street Storm Drain 041609

Due to continuous development activity this map is for reference only.

0 290 580 Feet

City of Las Vegas Agenda Item No.: **45.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Supplemental Interlocal Contract 475e between the City of Las Vegas and the Regional Transportation Commission of Southern Nevada (RTC) to extend the project completion date to September 30, 2011 for roadway improvements on Martin L. King from Palomino Lane to Carey Avenue - Ward 5 (Barlow)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The City of Las Vegas entered into an Interlocal Contract with the Regional Transportation Commission (RTC) on June 10, 2004 and supplemental interlocal contracts on May 19, 2005, December 14, 2006 and November 13, 2008 for the design, right-of-way acquisition, and the construction of roadway improvements for the Martin L. King Boulevard, Palomino Lane to Carey Avenue. This Supplemental Interlocal Contract will extend the project completion date to September 30, 2011, additional time is required to complete and close out the project. The Regional Transportation Commission approved this contract at their June 10, 2010 Board meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Supplemental Interlocal Contract 475e

SUPPLEMENTAL INTERLOCAL CONTRACT NO. 5

MARTIN L. KING, PALOMINO LANE TO CAREY AVENUE

THIS SUPPLEMENTAL INTERLOCAL CONTRACT NO. 5, made and entered into this 10th day of June, 2010 by and between the CITY OF LAS VEGAS, a municipal corporation, hereinafter referred to as the "CITY" and the Regional Transportation Commission of Southern Nevada hereinafter referred to as "RTC".

WITNESSETH

WHEREAS, pursuant to Chapter 373 of the Nevada Revised Statutes, a Project to design, purchase right-of-way, perform construction inspection and construct roadway improvements for the Martin L. King Boulevard, Palomino Lane (north end of the Martin L. King/Industrial Connector) to Carey Avenue, which is wholly within the CITY, has been approved by the Regional Transportation Commission.

WHEREAS, the parties have executed an Interlocal Contract dated June 10, 2004 and supplemental interlocal contracts on May 19, 2005, December 14, 2006, November 13, 2008 and August 13, 2009 for the design, construction, and right-of-way of Martin L. King Boulevard, Palomino Lane to Carey Avenue; and

WHEREAS, the CITY desires to extend the project completion date.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements, and promises of the parties hereto, the RTC authorizes the CITY to proceed with the PROJECT as it is mutually understood and agrees as follows:

SECTION III – GENERAL paragraph 7 shall be revised to read as follows:

7. The project must be completed to the satisfaction of the RTC prior to September 30, 2011.

RTC may at any time thereafter grant time extensions or terminate this Contract and require all sums advanced to the CITY be reimbursed.

All other terms of the Interlocal Contract dated June 10, 2004 and supplemental interlocal contracts dated May 19, 2005, December 14, 2006, November 13, 2008 and August 13, 2009 shall remain unchanged.

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IN WITNESS WHEREOF, this SUPPLEMENTAL INTERLOCAL CONTRACT NO. 5 is effective as of the date first set forth above.

Date of Commission Action:

6/10/10

REGIONAL TRANSPORTATION COMMISSION

BY: Lawrence L Brown III

LAWRENCE L. BROWN III, Chairman

Attest:

Lisa Magnusson

LISA MAGNUSSON, Executive Assistant

Approved as to Form and Legality:

ZEV KAPLAN, General Counsel

Date of Council Action:

CITY OF LAS VEGAS

BY:

OSCAR B. GOODMAN, Mayor

Attest:

BEVERLY K. BRIDGES, MMC
City Clerk

Approved as to Form and Legality:

John S. Ridilla 6/29/10

Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

City of Las Vegas Agenda Item No.: **46.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Interlocal Contract between the City of Las Vegas and the Clark County Regional Flood Control District (CCRFCD) for the Annual Maintenance Work Program for fiscal year 2010 - 2011 ($2,050,000 - CCRFCD) - All Wards

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $2,050,000
Funding Source: CCRFCD
Dept./Division: PW/City Engineer

PURPOSE/BACKGROUND:
The fiscal year 2010-11 Maintenance Work Program has been developed to maintain Regional Flood Control Facilities within the City of Las Vegas. The basic maintenance to the facilities will be in accordance with performance standards set forth in the Clark County Regional Flood Control District's current Operations and Maintenance Manual. The Clark County Regional Flood Control District approved this contract on its June 10, 2010 Board meeting. Total costs for the project shall not exceed $2,050,000.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Interlocal Contract Annual Maintenance Work Program

INTERLOCAL CONTRACT
ANNUAL MAINTENANCE WORK PROGRAM

THIS CONTRACT, made and entered into this 10th day of June, 2010, by and between the CITY OF LAS VEGAS, a political subdivision of the State of Nevada, hereinafter referred to as "CITY", and the CLARK COUNTY REGIONAL FLOOD CONTROL DISTRICT, hereinafter referred to as "DISTRICT".

W I T N E S S E T H:

WHEREAS, pursuant to Chapter 543 of the Nevada Revised Statutes, the DISTRICT may approve and fund projects to maintain flood control improvements; and

WHEREAS, the CITY desires to maintain flood control improvements within the CITY in accordance with the maintenance program set forth herein, and hereinafter referred to as "Project"; and

WHEREAS, the facilities upon which maintenance will be done are facilities described in the DISTRICT'S Master Plan.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements, and promises of the parties hereto, the DISTRICT authorizes the Project as it is mutually understood and agreed as follows:

SECTION I - SCOPE OF PROJECT

This Interlocal Contract applies to the maintenance of flood control facilities, which are identified in the DISTRICT'S Master Plan facilities including updates and amendments subsequently approved. The basic maintenance to the facilities will be in accordance with performance standards set forth in the current DISTRICT *Operations and Maintenance Manual.*

The Project is more specifically described in Exhibit "A" which is attached hereto and by this reference incorporated herein.

SECTION II - PROJECT COSTS

The DISTRICT agrees to make payment for Project costs within the limits specified below:

1. The Project costs shall not exceed $2,050,000.

The amounts allocated to each individual facility within the Project must be specified in Exhibit "A". Any changes to said allocated amounts must be approved by the DISTRICT'S

Chief Engineer in accordance with Section 4.24 of the DISTRICT *Operations and Maintenance Manual.*

A written request must be made to the DISTRICT and a Supplemental Interlocal Contract approved to increase the amount noted above prior to payment of any additional funds.

2. The CITY and DISTRICT will comply with Section 4.12 of the *Operations and Maintenance Manual.* In accordance with said manual the CITY shall submit invoices together with a detailed summary report of the maintenance service performed. The CITY shall submit an invoice voucher in the manner prescribed by the DISTRICT. The vouchers shall include such information as is necessary for the DISTRICT to determine the nature of all expenditures. Each voucher will clearly indicate that it is for services rendered in performance under this contract. Each voucher will also be accompanied by a written certification from the CITY stating that it is for performance of maintenance activities under this contract and is composed of completed elements set forth in the annual work program.

All invoices must be submitted for payment to:

Clark County Regional Flood Control District
Accounts Payable
600 S. Grand Central Parkway, Suite 300
Las Vegas, Nevada 89106-4511

Payment shall be considered timely if made by the DISTRICT within 30 days. Pursuant to Section IV, Paragraph 8, the DISTRICT may, in its sole discretion, withhold payments to the CITY for services rendered if the CITY fails to satisfactorily comply with any term or condition of this contract and/or the DISTRICT *Operations and Maintenance Manual.*

SECTION III - PROJECT TIME

The CITY agrees to perform the Project to the satisfaction of the DISTRICT between July 1, 2010 and June 30, 2011. The DISTRICT may grant extensions or terminate this contract and require all sums advanced to the CITY to be repaid if the CITY fails to perform by said date.

SECTION IV - GENERAL

1. The CITY will complete the Project as set forth in Exhibit "A". The CITY staff personnel responsible for coordination of work under this contract are as listed below:

Jorge Cervantes, Director of Public Works

It is understood that staff named above will be responsible for work coordination throughout the period of this contract unless the DISTRICT is informed in writing of changes in these personnel assignments.

2. The CITY will comply with Local Purchasing Act, Chapter 332 and Public Works Projects, Chapter 338, of the Nevada Revised Statutes.

3. Applicable portions of the current editions of the *Operations and Maintenance Manual*, *Policies and Procedures Manual*, *Hydrologic Criteria and Drainage Design Manual*, and *Uniform Regulations for the Control of Drainage* adopted by the DISTRICT will apply unless specifically superseded by this CONTRACT.

4. It is the intent of the DISTRICT that scheduling of maintenance and repair of drainage and flood control facilities in general and Master Plan Facilities specifically be coordinated among member entities. Therefore, in those cases where Master Plan approved, and DISTRICT-funded projects have regional flood control significance impacting more than one member entity, the CITY will allow all impacted member entities an opportunity to review the maintenance schedule in order to coordinate maintenance efforts.

5. The Chief Engineer or designee of the DISTRICT shall be responsible for monitoring the performance of the CITY, approval for payment of billings and expenses submitted by the CITY and the acceptance of any report provided by the CITY. The CITY shall be responsible for monitoring performance of CITY staff or private contractors.

6. Accurate documentation of all work performed and payments made will be maintained by the CITY for a period of three (3) years in hard copy form after final project approval and payments. Following the three year period, the CITY shall keep records for permanent storage in original form, in microfilm/fiche media, or an electronic format.

7. The CITY shall provide right of access to its facilities to the DISTRICT or Chief Engineer at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

8. In the event the CITY fails to perform the maintenance according to the standards specified in this contract and in the DISTRICT *Operations and Maintenance Manual,* the DISTRICT may perform or cause to be performed the maintenance necessary to assure proper operation of the facility. Costs incurred by the DISTRICT shall be reimbursed by the CITY or be deducted from the amount authorized by this contract. The DISTRICT may not exercise this right without giving the CITY specific written notice of the maintenance required and allowing the CITY 60 days within which to perform said maintenance. The notice required by this provision must be sent to:

Jorge Cervantes
Director of Public Works
City of Las Vegas
400 East Stewart Avenue
Las Vegas, Nevada 89101

9. The records of the CITY and/or private contractors pertaining to the subject matter of this contract shall at all reasonable times be subject to inspection and audit by the DISTRICT or an Agent of the DISTRICT.

10. If any provision of this contract shall be deemed in conflict with any statute or rule of law, such provision shall be deemed modified to be in conformance with said statute or rule of law.

11. The CITY, its employees, and representative shall at all times comply with all applicable laws, ordinances, statutes, rules, and regulations in effect at the time work is performed.

12. The CITY hereby agrees to reimburse the DISTRICT if funds are received from other sources for maintenance and repair of drainage and flood control facilities paid for by the DISTRICT.

13. The DISTRICT will not be responsible for any fines and/or penalties caused by the actions or inactions of CITY employees, consultants, contractors, or agents.

14. Any costs found to be improperly allocated to the Project will be refunded by the CITY to the DISTRICT.

15. It is specifically understood and agreed to by and between the parties hereto that it is not intended by any of the provisions of any part of this contract to create in the public or any

member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this contract.

16. Up to the limits set forth in NRS Chapter 41, the CITY will indemnify and defend the DISTRICT against and from any and all claims and demands of whatsoever nature which arises out of allegations of negligence or misconduct of CITY officers, employees or agents, related to or under this Contract which results from injury to or death of any persons whomsoever, or against and from damage to or loss or destruction of property.

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IN WITNESS WHEREOF, the Parties have caused this Interlocal Contract to be executed by their duly authorized representatives the day and year first above written.

Date of Council Action

_____

City of Las Vegas

By: _____
Oscar B. Goodman, Mayor

Attest

By: _____
Beverly K. Bridges, MMC
City Clerk

Approved as to Form

By: John S. Ridilla 6/25/10
Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

Date of District Action

June 10, 2010

Regional Flood Control District

By: Lawrence L Brown III
Lawrence L. Brown, III,
Chairman

Attest

By: Carolyn Frazier
Carolyn Frazier
Secretary to the Board

Approved as to Form

By: Chris Figgins 6/10/10
Christopher Figgins Date
Chief Deputy District Attorney

CITY OF LAS VEGAS
MAINTENANCE WORK PLAN SUMMARY
FISCAL YEAR 2010-11

Master Plan Facility ID	MWP Facility Number	Facility Description	Cost
CACH, CABZ, CACN, LVBZ	LV51	Cedar Avenue Channel/Nellis System	$150,000.00
GONO, GOSO, GOOF, GOCR, GOLM, GOBU, GOBW, APDG, APOF, APP1, GOTE, GO02, GOLM, APNO, APSP, APBE, APSO, APMD, GOL2, GOL4, APFH, APAD, APCB, APD3, GOWC, GODU, GOLB	LV52	Gowan/Angel Park/Lone Mountain System	$350,000.00
LVLM, LVSR, LV15, LVOW, LVRA, LVPK	LV53	Lake Mead/Smoke Ranch/Washington System	$75,000.00
LVMD	LV54	Las Vegas Wash System	$1,162,000.00
LCME, MECH, MEAL, MEPA, MEOK	LV55	Meadows/Oakey System	$118,000.00
LCLT, WAPR, FWUP, LVWH, FW15, FWOK, FWWL, FWCH, FWSH, LCLO, WAGC, CHRA	LV56	Washington Avenue/Las Vegas Creek System	$45,000.00
RCHO, ANWE, RCHB, RCBC, EKDB, GOAN, CNGT, CNKC, EKHU, BCHU, TSDB, MSNV, LVMJ, LVDE, LVMD	LV57	US 95/Outer Beltway/Ann Road System	$150,000.00
		TOTAL	$ 2,050,000.00

Robert Welch — 3/26/2010

Exhibit A — Project Manager — Date

REGIONAL FLOOD CONTROL DISTRICT
MAINTENANCE WORK PROGRAM
ANNUAL BUDGET - FY 2010-11

MWP Facility #: LV51
Facility Name: Cedar Avenue Channel/Nellis System
MP Facility ID: CACH 0000 - 0148, CABZ 0000 - 0010, CACN 0000 - 0049, LVBZ 0166 - 0224

Entity: City of Las Vegas
Date Prepared: 3/26/2010

Force Account/ Contract	Activity	Work Plan Amount ($)	Amended Work Plan Amount ($)	Expended To Date ($)	Percent Complete	Scheduled Completion Date *
FA	5 Inspect Channels	$45,000.00				Jun-11
	10 Clean and Reshape Channels					
FA	15 Repair Lined Channel	$45,000.00				Jun-11
	20 Provide/Maintain Erosion Control					
	21 Provide/Maintain Dust Control					
	25 Clean & Inspect Detention/Debris Basins					
	30 Erosion Repair					
	35 Fence Repair					
	40 Vegetation Control - Chemical					
	45 Vegetation Control - Mechanical					
	50 Maintain Access Road					
	55 Clean & Inspect Inlet/Outlet Structures					
	60 Repair Inlet/Outlet Structures					
FA	65 Clean Storm Sewer Lines	$20,000.00				Jun-11
	70 Storm Sewer Repair					
	75 Clean/Flush Culverts & Bridges					
FA	80 Miscellaneous Work Activities	$20,000.00				Jun-11
FA	85 Engineering	$20,000.00				Jun-11
	TOTALS	$150,000.00	$0.00	$0.00	0.0%	

Delays or Problem Areas:

Work completed during prior Fiscal Year:

Routine maintenance work activities.

Work to be completed during current Fiscal Year:

Inspect and clean storm drain facilities (CABZ 0000 - 0010 and CACN 0000 - 0049). Perform a condition assessment. Routine maintenance work activities.

Consultant/Contractor: N/A

Project Manager: Robert Welch, P.E./Rosa Cortez, P.E. Phone Number: 229-6541

REGIONAL FLOOD CONTROL DISTRICT
MAINTENANCE WORK PROGRAM
ANNUAL BUDGET - FY 2010-11

MWP Facility #: LV52 Entity: City of Las Vegas

Facility Name: Gowan/Angel Pk/Lone Mtn System Date Prepared: 3/26/2010

MP Facility ID: GONO 0000 - 0225, GOSO 0000 - 0462, GODU 0000 - 0050, GOOF 0427 - 0775, GOCR 0180 - 0201, GOLB 0000 - 0030 GOLM 0000 - 0277, GOBU 0000 - 0085, GOBW 0000 - 0052, APDG 0000 - 0060, APOF 0000 - 0124, APP1 0000 - 0056, GOTE 0000, GO02 0000 - 0257, GOLM 0145 - 0150, APNO 0000 - 0015, APSP 0000 - 0183, APBE 0000 - 0122, APSO 0000, APSO 0020, APSO 0204, APSO 0254, APSO 0255, APSO 0345, APMD 0027, APMD 0132, APMD 0190 - 0258, GOL2 0000 - 0014, APD3 0000 - 0021, GOWC 0000, GOL4 0000 - 0026, APFH 0000 - 0061, APAD 0000 - 0225, APCB 0000 - 0080

Force Account/ Contract	Activity	Work Plan Amount ($)	Amended Work Plan Amount ($)	Expended To Date ($)	Percent Complete	Scheduled Completion Date *
FA	5 Inspect Channels	$65,000.00				Jun-11
FA	10 Clean and Reshape Channels	$20,000.00				Jun-11
FA	15 Repair Lined Channel	$20,000.00				Jun-11
FA	20 Provide/Maintain Erosion Control	$20,000.00				Jun-11
	21 Provide/Maintain Dust Control					
FA	25 Clean & Inspect Detention/Debris Basins	$65,000.00				Jun-11
FA	30 Erosion Repair	$20,000.00				Jun-11
	35 Fence Repair					
	40 Vegetation Control - Chemical					
FA	45 Vegetation Control - Mechanical	$20,000.00				Jun-11
	50 Maintain Access Road					
FA	55 Clean & Inspect Inlet/Outlet Structures	$20,000.00				Jun-11
	60 Repair Inlet/Outlet Structures					
FA	65 Clean Storm Sewer Lines	$20,000.00				Jun-11
FA	70 Storm Sewer Repair	$20,000.00				Jun-11
	75 Clean/Flush Culverts & Bridges					
FA	80 Miscellaneous Work Activities	$20,000.00				Jun-11
FA	85 Engineering	$40,000.00				Jun-11
	TOTALS	$350,000.00	$0.00	$0.00	0.0%	

Delays or Problem Areas:

Work completed during prior Fiscal Year:

Graffiti and trash removal within Gilmore Channel (GOLM 0150 - 0240). Performed condition assessment. Routine maintenance work activities.

Work to be completed during current Fiscal Year:

Graffiti and trash removal within the Gilmore Channel (GOLM 0150 - 0240). Perform a condition assessment. Clean and Inspect Detention Basins. Update Emergency Action Plans for detention basins. Routine maintenance work activities.

Consultant/Contractor: N/A

Project Manager: Robert Welch, P.E./Rosa Cortez, P.E. Phone Number: 229-6541

REGIONAL FLOOD CONTROL DISTRICT
MAINTENANCE WORK PROGRAM
ANNUAL BUDGET - FY 2010-11

MWP Facility #: LV53
Facility Name: Lake Mead/Smoke Ranch/Washington System
MP Facility ID: LVLM 0337 - 0525, LVSR 0312 - 0525, LV15 0284 - 0409, LVOW 0000 - 0146, LVRA 0000 - 0066, LVPK 0000 - 0130

Entity: City of Las Vegas
Date Prepared: 3/26/2010

Force Account/ Contract	Activity	Work Plan Amount ($)	Amended Work Plan Amount ($)	Expended To Date ($)	Percent Complete	Scheduled Completion Date *
FA	5 Inspect Channels	$35,000.00				Jun-11
	10 Clean and Reshape Channels					
	15 Repair Lined Channel					
	20 Provide/Maintain Erosion Control					
	21 Provide/Maintain Dust Control					
	25 Clean & Inspect Detention/Debris Basins					
	30 Erosion Repair					
	35 Fence Repair					
	40 Vegetation Control - Chemical					
	45 Vegetation Control - Mechanical					
	50 Maintain Access Road					
	55 Clean & Inspect Inlet/Outlet Structures					
	60 Repair Inlet/Outlet Structures					
FA	65 Clean Storm Sewer Lines	$10,000.00				Jun-11
FA	70 Storm Sewer Repair	$25,000.00				Jun-11
	75 Clean/Flush Culverts & Bridges					
FA	80 Miscellaneous Work Activities	$3,000.00				Jun-11
FA	85 Engineering	$2,000.00				Jun-11
	TOTALS	$75,000.00	$0.00	$0.00	0.0%	

Delays or Problem Areas:

Work completed during prior Fiscal Year:
Repaired Channel, fence and gate along Peak Drive System (LVPK 0000 - 0019). Routine maintenance work activities.

Work to be completed during current Fiscal Year:
Perform a condition assessment. Routine maintenance work activities.

Consultant/Contractor: N/A
Project Manager: Robert Welch, P.E./Rosa Cortez, P.E. Phone Number: 229-6541

REGIONAL FLOOD CONTROL DISTRICT
MAINTENANCE WORK PROGRAM
ANNUAL BUDGET - FY 2010-11

MWP Facility #: LV54
Facility Name: Las Vegas Wash System
MP Facility ID: LVMD 1069 - 1354

Entity: City of Las Vegas
Date Prepared: 3/26/2010

Force Account/ Contract	Activity	Work Plan Amount ($)	Amended Work Plan Amount ($)	Expended To Date ($)	Percent Complete	Scheduled Completion Date *
FA	5 Inspect Channels	$45,000.00				Jun-11
FA	10 Clean and Reshape Channels	$445,000.00				Jun-11
	15 Repair Lined Channel					
FA	20 Provide/Maintain Erosion Control	$495,000.00				Jun-11
	21 Provide/Maintain Dust Control					
	25 Clean & Inspect Detention/Debris Basins					
	30 Erosion Repair					
	35 Fence Repair					
	40 Vegetation Control - Chemical					
FA	45 Vegetation Control - Mechanical	$147,000.00				Jun-11
	50 Maintain Access Road					
	55 Clean & Inspect Inlet/Outlet Structures					
	60 Repair Inlet/Outlet Structures					
	65 Clean Storm Sewer Lines					
	70 Storm Sewer Repair					
	75 Clean/Flush Culverts & Bridges					
FA	80 Miscellaneous Work Activities	$15,000.00				Jun-11
FA	85 Engineering	$15,000.00				Jun-11
	TOTALS	$1,162,000.00	$0.00	$0.00	0.0%	

Delays or Problem Areas:

Work completed during prior Fiscal Year:
Installed Hydraulic Monitoring Station at the Lamb Boulevard Bridge (LVMD 1232). Routine maintenance work activities.

Work to be completed during current Fiscal Year:

Reshape the Las Vegas Wash between Washington Avenue and Charleston Boulevard (LVMD 1070 – 1178) to establish a baseline for sediment removal. Provide for vegetation control and erosion control along the Las Vegas Wash. Perform a condition assessment. Routine maintenance work activities.

Consultant/Contractor: N/A
Project Manager: Robert Welch, P.E./Rosa Cortez, P.E. Phone Number: 229-6541

REGIONAL FLOOD CONTROL DISTRICT
MAINTENANCE WORK PROGRAM
ANNUAL BUDGET - FY 2010-11

MWP Facility #: LV55 Entity: City of Las Vegas

Facility Name: Meadows/Oakey System Date Prepared: 3/26/2010

MP Facility ID: LCME 0000 - 0085, MECH 0059 - 0420, MEAL 0000 - 0258, MEPA 0000 - 0025, MEOK 0000 - 0048

Force Account/ Contract	Activity	Work Plan Amount ($)	Amended Work Plan Amount ($)	Expended To Date ($)	Percent Complete	Scheduled Completion Date *
FA	5 Inspect Channels	$30,000.00				Jun-11
	10 Clean and Reshape Channels					
	15 Repair Lined Channel					
	20 Provide/Maintain Erosion Control					
	21 Provide/Maintain Dust Control					
FA	25 Clean & Inspect Detention/Debris Basins	$20,000.00				Jun-11
FA	30 Erosion Repair	$15,000.00				Jun-11
	35 Fence Repair					
	40 Vegetation Control - Chemical					
	45 Vegetation Control - Mechanical					
	50 Maintain Access Road					
	55 Clean & Inspect Inlet/Outlet Structures					
	60 Repair Inlet/Outlet Structures					
FA	65 Clean Storm Sewer Lines	$13,000.00				Jun-11
FA	70 Storm Sewer Repair	$20,000.00				Jun-11
	75 Clean/Flush Culverts & Bridges					
FA	80 Miscellaneous Work Activities	$5,000.00				Jun-11
FA	85 Engineering	$15,000.00				Jun-11
	TOTALS	$118,000.00	$0.00	$0.00	0.0%	

Delays or Problem Areas:

Work completed during prior Fiscal Year:

Clean and Inspect Detention Basins. Routine maintenance work activities.

Work to be completed during current Fiscal Year:

Perform condition assessment. Update Emergency Action Plans for Detention Basins. Routine maintenance work activities.

Consultant/Contractor: N/A

Project Manager: Robert Welch, P.E./Rosa Cortez, P.E. Phone Number: 229-6541

REGIONAL FLOOD CONTROL DISTRICT
MAINTENANCE WORK PROGRAM
ANNUAL BUDGET - FY 2010-11

MWP Facility #: LV56
Facility Name: Washington Ave/Las Vegas Creek
MP Facility ID: LCLT 0000 - 0034, WAPR 0000 - 0132
FWUP 0000 - 0100, LVWH 0086 - 0484,
FW15 0000 - 0175, FWOK 0000 - 0060, FWWL 0000,
FWCH 0000 - 0060, FWSH 0000,
LCLO 0000 - 0054, WAGC 0000 - 0060, CHRA 0000 - 0014

Entity: City of Las Vegas
Date Prepared: 3/26/2010

Force Account/ Contract	Activity	Work Plan Amount ($)	Amended Work Plan Amount ($)	Expended To Date ($)	Percent Complete	Scheduled Completion Date *
FA	5 Inspect Channels	$25,000.00				Jun-11
	10 Clean and Reshape Channels					
	15 Repair Lined Channel					
	20 Provide/Maintain Erosion Control					
	21 Provide/Maintain Dust Control					
	25 Clean & Inspect Detention/Debris Basins					
	30 Erosion Repair					
	35 Fence Repair					
	40 Vegetation Control - Chemical					
	45 Vegetation Control - Mechanical					
	50 Maintain Access Road					
	55 Clean & Inspect Inlet/Outlet Structures					
	60 Repair Inlet/Outlet Structures					
	65 Clean Storm Sewer Lines					
	70 Storm Sewer Repair					
	75 Clean/Flush Culverts & Bridges					
FA	80 Miscellaneous Work Activities	$10,000.00				Jun-11
FA	85 Engineering	$10,000.00				Jun-11
	TOTALS	$45,000.00	$0.00	$0.00	0.0%	

Delays or Problem Areas:

Work completed during prior Fiscal Year:
Design of repair to damaged concrete within the Langtry Channel from Washington to Bonanza. Routine maintenance work activities.

Work to be completed during current Fiscal Year:
Repair damaged concrete within the Langtry Channel from Washington to Bonanza will be performed using CIP program. Perform a condition assessment. Routine maintenance work activities.

Consultant/Contractor: N/A
Project Manager: Robert Welch, P.E./Rosa Cortez, P.E. Phone Number: 229-6541

REGIONAL FLOOD CONTROL DISTRICT
MAINTENANCE WORK PROGRAM
ANNUAL BUDGET - FY 2010-11

MWP Facility #: LV57
Facility Name: US95/OuterBeltway/Ann Road System
MP Facility ID: RCHO 0000 - 0071, ANWE 0127 - 0385, RCHB 0000 - 0062, RCBC 0004, LVMD 2507, EKDB 0000 - 0070, GOAN 0000 - 0127, CNGT 0000 & 0118 - 0247, CNKC 0000 - 0024, EKHU 0000 - 0023, BCHU 0000 - 0054, TSDB 0000, MSNV 0000, LVMJ 0000, LVDE 0003 - 0027

Entity: City of Las Vegas
Date Prepared: 3/26/2010

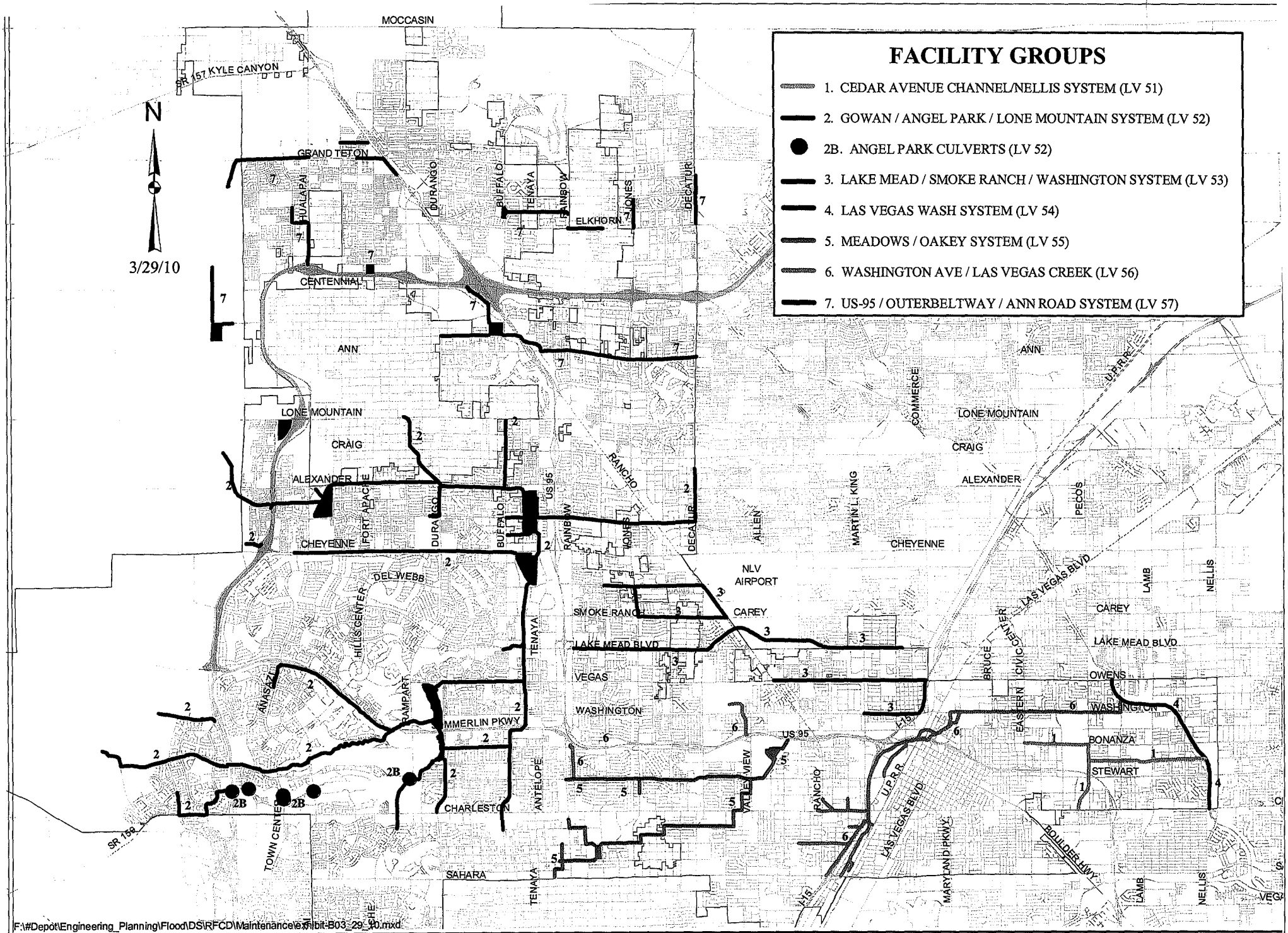
Force Account/ Contract	Activity	Work Plan Amount ($)	Amended Work Plan Amount ($)	Expended To Date ($)	Percent Complete	Scheduled Completion Date
FA	5 Inspect Channels	$40,000.00				Jun-11
	10 Clean and Reshape Channels					
	15 Repair Lined Channel					
	20 Provide/Maintain Erosion Control					
	21 Provide/Maintain Dust Control					
FA	25 Clean & Inspect Detention/Debris Basins	$25,000.00				Jun-11
	30 Erosion Repair					
	35 Fence Repair					
	40 Vegetation Control - Chemical					
	45 Vegetation Control - Mechanical					
	50 Maintain Access Road					
	55 Clean & Inspect Inlet/Outlet Structures					
	60 Repair Inlet/Outlet Structures					
	65 Clean Storm Sewer Lines					
FA	70 Storm Sewer Repair	$25,000.00				Jun-11
	75 Clean/Flush Culverts & Bridges					
FA	80 Miscellaneous Work Activities	$20,000.00				Jun-11
FA	85 Engineering	$40,000.00				Jun-11
	TOTALS	$150,000.00	$0.00	$0.00	0.0%	

Delays or Problem Areas:

Work completed during prior Fiscal Year:
Routine maintenance work activities.

Work to be completed during current Fiscal Year:
Retrofit existing Centennial Centre channel with ladders and signage (RCHB 0034). Perform a condition assessment. Update Emergency Action Plans for Detention Basins. Routine maintenance work activities.

Consultant/Contractor: N/A
Project Manager: Robert Welch, P.E./Rosa Cortez, P.E. Phone Number: 229-6541



OPERATION AND MAINTENANCE PROJECTS

EXHIBIT B

City of Las Vegas Agenda Item No.: **47.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Supplemental Interlocal Contract 435k between the City of Las Vegas and the Regional Transportation Commission of Southern Nevada (RTC) to increase funding in the amount of $500,000 for the Martin L. King, Palomino Lane to Carey Avenue project - Ward 5 (Barlow)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**

Amount: $500,000
Funding Source: RTC
Dept./Division: PW/City Engineer

PURPOSE/BACKGROUND:
The City of Las Vegas entered into an interlocal contract with the Regional Transportation Commission of Southern Nevada (RTC) on March 13, 2003 for roadway improvements for the Martin L. King Boulevard, Palomino Lane to Carey Avenue project. This Supplemental Interlocal Contract 435k will increase project funding in the amount of $500,000. The contract is being increased to align projected expenditures. Total cost of the project shall not exceed $12,990,000. The RTC approved this contract at their April 8, 2010 Board meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Supplemental Interlocal Contract 435k

SUPPLEMENTAL INTERLOCAL CONTRACT NO. 11

MARTIN L. KING, PALOMINO LANE TO CAREY AVENUE

THIS SUPPLEMENTAL INTERLOCAL CONTRACT NO. 11, made and entered into this 8th day of April, 2010 by and between the CITY OF LAS VEGAS, a municipal corporation, hereinafter referred to as the "CITY" and the Regional Transportation Commission of Southern Nevada hereinafter referred to as "RTC".

WITNESSETH

WHEREAS, the RTC approved an Interlocal Contract on March 13, 2003 and supplemental interlocal contracts on June 12, 2003, August 11, 2005, March 9, 2006, December 14, 2006, February 8, 2007, March 8, 2007, July 12, 2007, October 11, 2007, November 13, 2008 and June 11, 2009 for a project to design, purchase right-of-way, perform construction inspection and construct roadway improvements for Martin L. King Boulevard, Palomino Lane to Carey Avenue, being located wholly within the City; and

WHEREAS, the RTC previously granted "Authorization to Proceed" for construction, engineering, right-of-way acquisition, and right-of-way other; and,

WHEREAS, the CITY desires to increase funding for the Project.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements, and promises of the parties hereto, the RTC authorizes the CITY to proceed with the PROJECT as it is mutually understood and agrees as follows.

SECTION II- PROJECT COSTS shall be revised to read as follows:

The RTC agrees to provide funding for project costs according to Section 6.1 REIMBURSEMENT COSTS of the Policies and Procedures Manual of the RTC within the limits specified below:

1. The total cost for construction, engineering, right-of-way acquisition and right-of-way other shall not exceed $12,990,000.
2. The City will be granted a revised "Authorization to Proceed" with construction at a cost not to exceed $8,070,000, engineering at a cost not to exceed $4,350,000, right-of-way acquisition at a cost not to exceed $20,000 and right-of-way other at a cost not to exceed $550,000 at the time written Authorization to Proceed is received from the RTC. The "Authorization to Proceed" shall state a specific amount within the total estimated cost of the Project and, upon approval by the RTC, only that amount shall be encumbered and allocated.
3. A written request must be made to the RTC and a supplemental interlocal contract approved to allow exceptions to the adopted policies and procedures of the RTC or the amount noted above prior to payment of any additional funds.

All other terms of the interlocal contract dated March 13, 2003 and Supplemental Interlocal Contracts dated June 12, 2003, August 11, 2005, March 9, 2006, December 14, 2006, February 8, 2007, March 8, 2007, July 12, 2007, October 11, 2007, November 13, 2008 and June 11, 2009 shall remain unchanged.

IN WITNESS WHEREOF, this Supplemental Interlocal Contract No. 11 is effective as of the date first set forth above.

Date of Commission Action:

4/8/2010

REGIONAL TRANSPORTATION COMMISSION

BY: Lawrence L Brown III

LAWRENCE L. BROWN III, Chairman

Attest:

Lisa Magnusson

LISA MAGNUSSON, Executive Assistant

Approved as to Form and Legality:

ZEV KAPLAN, General Counsel

Date of Council Action:

CITY OF LAS VEGAS

BY: _____

OSCAR B. GOODMAN, Mayor

Attest:

BEVERLY K. BRIDGES, MMC
City Clerk

Approved as to Form and Legality:

John S. Ridilla 4/27/10

Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

City of Las Vegas Agenda Item No.: **48.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Supplemental Interlocal Contract 514e between the City of Las Vegas and the Regional Transportation Commission of Southern Nevada (RTC) to extend the project completion date to September 30, 2011 for the Casino Center/3rd Street Realignment project between Coolidge Avenue and Charleston Boulevard - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The City of Las Vegas entered into an Interlocal Contract with the Regional Transportation Commission of Southern Nevada (RTC) on August 11, 2005 for roadway improvements for the Casino Center/3rd Street realignment project. This Supplemental Interlocal Contract will extend the project completion date to September 30, 2011, additional time is required to complete and close out the project. The RTC approved this contract at their June 10, 2010 Board meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Supplemental Interlocal Contract 514e

SUPPLEMENTAL INTERLOCAL CONTRACT NO. 5
CASINO CENTER / 3RD STREET REALIGNMENT

THIS SUPPLEMENTAL INTERLOCAL CONTRACT NO. 5 made and entered into this 10th day of June, 2010 by and between the CITY OF LAS VEGAS, a municipal corporation, hereinafter referred to as the "CITY" and the Regional Transportation Commission of Southern Nevada hereinafter referred to as "RTC".

WITNESSETH

WHEREAS, RTC approved an Interlocal Contract on August 11, 2005 and supplemental interlocal contracts on May 17, 2007, September 13, 2007, April 9, 2009 and June 11, 2009 for a project to design, purchase right-of-way, perform construction inspection and construct roadway improvements for Casino Center / 3rd Street Realignment located wholly within the CITY, has been approved by the Regional Transportation Commission.

WHEREAS, the RTC previously granted "Authorization to Proceed" for construction, engineering, right-of-way acquisition and right-of-way other; and,

WHEREAS, the City desires to extend the Project completion date.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements, and promises of the parties hereto, the RTC authorizes the CITY to proceed with the PROJECT as it is mutually understood and agrees as follows

SECTION III – GENERAL paragraph 7 shall be revised to read as follows:

7. The project must be completed to the satisfaction of the RTC prior to September 30, 2011. The RTC may at any time thereafter grant time extensions or terminate this Contract and require all sums advanced to the CITY be reimbursed.

The remainder of the Interlocal Contract dated August 11, 2005, and supplemental interlocal contracts dated May 17, 2007, September 13, 2007, April 9, 2009 and June 11, 2009 shall remain unchanged.

IN WITNESS WHEREOF, this Supplemental Interlocal Contract No. 5 is effective as of the date first set forth above.

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Date of Commission Action:

6/10/10

REGIONAL TRANSPORTATION COMMISSION

BY: Lawrence L Brown III

LAWRENCE L. BROWN III, Chairman

Attest:

Lisa Magnusson

LISA MAGNUSSON, Executive Assistant

Approved as to Form and Legality:

ZEV KAPLAN, General Counsel

Date of Council Action:

CITY OF LAS VEGAS

BY:

OSCAR B. GOODMAN, Mayor

Attest:

BEVERLY K. BRIDGES, MMC
City Clerk

Approved as to Form and Legality:

John S. Ridilla 6/29/10

Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

City of Las Vegas Agenda Item No.: **49.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Supplemental Interlocal Contract 399c between the City of Las Vegas and the Regional Transportation Commission of Southern Nevada (RTC) to extend the project completion date to September 30, 2011 for roadway improvements for the Tenaya Way Overpass, Westcliff Drive to Washington Avenue project - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
On June 12, 2002, the City of Las Vegas entered into an Interlocal Contract with the Regional Transportation Commission to fund roadway improvements for the Tenaya Way Overpass, Westcliff Drive to Washington Avenue project. This Supplemental Interlocal Contract 399c will extend the project completion date to September 30, 2011, additional time is required to complete and close out the project. The Regional Transportation Commission approved this contract at their June 10, 2010 Board meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Supplemental Interlocal Contract 399c

SUPPLEMENTAL INTERLOCAL CONTRACT NO. 3

TENAYA WAY OVERPASS, WESTCLIFF DRIVE TO WASHINGTON AVENUE

THIS SUPPLEMENTAL INTERLOCAL CONTRACT NO. 3, made and entered into this 10th day of June, 2010 by and between the CITY OF LAS VEGAS, a municipal corporation, hereinafter referred to as the "CITY" and the Regional Transportation Commission of Southern Nevada hereinafter referred to as "RTC".

WITNESSETH

WHEREAS, pursuant to Chapter 373 of the Nevada Revised Statutes, a Project to design, purchase right-of-way, perform construction inspection and construct roadway improvements for Tenaya Way Overpass, Westcliff Drive to Washington Avenue located wholly within the CITY, has been approved by the Regional Transportation Commission.

WHEREAS, the parties have executed an Interlocal Contract dated June 13, 2002 and supplemental interlocal contracts dated May 18, 2006 and October 9, 2008 for the design and construction of Tenaya Way Overpass, Westcliff Drive to Washington Avenue;

WHEREAS, the CITY desires to extend the date of completion.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements, and promises of the parties hereto, the RTC authorizes the CITY to proceed with the PROJECT as it is mutually understood and agrees as follows.

SECTION III – GENERAL paragraph 7 shall be revised to read as follows:

7. The project must be completed to the satisfaction of the RTC prior to September 30, 2011. The RTC may at any time thereafter grant time extensions or terminate this Contract and require all sums advanced to the CITY be reimbursed.

The remainder of the Interlocal Contract dated June 13, 2002, and supplemental interlocal contracts dated May 18, 2006 and October 9, 2008 shall remain unchanged.

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Date of Commission Action:

6/10/10

REGIONAL TRANSPORTATION COMMISSION

BY: Lawrence L Brown III

LAWRENCE L. BROWN III, Chairman

Attest:

Lisa Magnusson

LISA MAGNUSSON, Executive Assistant

Approved as to Form and Legality:

ZEV KAPLAN, General Counsel

Date of Council Action:

CITY OF LAS VEGAS

BY:

OSCAR B. GOODMAN, Mayor

Attest:

BEVERLY K. BRIDGES, MMC
City Clerk

Approved as to Form and Legality:

John S. Ridilla 6/29/10

Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

City of Las Vegas Agenda Item No.: **50.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Supplemental Interlocal Contract 581c between the City of Las Vegas and the Regional Transportation Commission of Southern Nevada (RTC) to extend the project completion date to June 30, 2012 for the I-515/Owens Avenue Interchange Study - Ward 5 (Barlow)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The City of Las Vegas entered into an Interlocal Contract with the Regional Transportation Commission of Southern Nevada (RTC) on March 13, 2008 for the I-15/Owens Avenue Interchange Study. This Supplemental Interlocal Contract 581c will extend the project completion date to June 30, 2012. The Regional Transportation Commission approved this contract at their June 10, 2010 Board Meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Interlocal Contract 581c

SUPPLEMENT INTERLOCAL CONTRACT NO. 3
I-15/OWENS AVENUE INTERCHANGE STUDY

THIS SUPPLEMENTAL INTERLOCAL CONTRACT NO. 3, made and entered into this 10th day of June 2010 by and between the CITY OF LAS VEGAS, a municipal corporation, hereinafter referred to as the "CITY" and the Regional Transportation Commission of Southern Nevada hereinafter referred to as "RTC".

WITNESSETH

WHEREAS, RTC approved an Interlocal Contract on March 13, 2008 and supplemental interlocal contracts on June 11, 2009 and August 13, 2009 for a project a Project to perform a planning study for a future interchange on the I-15 at Owens Avenue and for eliminating the current Owens Avenue One-way couplet, which is located wholly within the CITY,

WHEREAS, the RTC previously granted "Authorization to Proceed" for engineering and,

WHEREAS, the CITY desires to extend the project completion date.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements, and promises of the parties hereto, it is mutually agreed to supplement the Interlocal Contract for the Project as follows:

SECTION III – GENERAL paragraph 7 shall be revised to read as follows:

7. The project must be completed to the satisfaction of the RTC prior to June 30, 2012.

RTC may at any time thereafter grant time extensions or terminate this Contract and require all sums advanced to the CITY be reimbursed.

The remainder of the Interlocal Contract dated March 13, 2008 and supplemental interlocal contracts dated June 11, 2009 and August 13, 2009 shall remain unchanged.

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IN WITNESS WHEREOF, this Supplemental Interlocal Contract No. 3 effective as of the date first set forth above.

Date of Commission Action:

6/10/10

REGIONAL TRANSPORTATION COMMISSION

BY: Lawrence L. Brown III

LAWRENCE L. BROWN III, Chairman

Attest:

Lisa Magnusson

LISA MAGNUSSON, Executive Assistant

Approved as to Form and Legality:

ZEV KAPLAN, General Counsel

Date of Council Action:

CITY OF LAS VEGAS

BY:

OSCAR B. GOODMAN, Mayor

Attest:

BEVERLY K. BRIDGES, MMC
City Clerk

Approved as to Form and Legality:

John S. Ridilla 6/29/10

Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

City of Las Vegas Agenda Item No.: **51.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Supplemental Interlocal Contract 472a between the City of Las Vegas and the Regional Transportation Commission of Southern Nevada (RTC) to extend the project completion date to December 30, 2012 for the City of Las Vegas' Fiscal Year 2005 Arterial Interconnect Conduit Program project - All Wards

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The Regional Transportation Commission entered into an Interlocal Contract with The City of Las Vegas on June 10, 2004 for improvements associated with the Fiscal Year 2005 Annual Restoration and Preservation Project. This Supplemental Interlocal Contract No. 1 will extend the project completion date to December 30, 2012. Additional time is required to complete and close out the project. The Regional Transportation Commission approved this contract at their June 10, 2010 Board Meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Supplemental Interlocal Contract 472a

SUPPLEMENTAL INTERLOCAL CONTRACT NO.1
Arterial ITS Interconnect Conduit Project
Fiscal Year 2005

THIS SUPPLEMENTAL INTERLOCAL CONTRACT NO. 1, made and entered into this 10th day of June, 2010 by and between the CITY OF LAS VEGAS, a municipal corporation, hereinafter referred to as the "CITY" and the Regional Transportation Commission of Southern Nevada, hereinafter referred to as the "RTC".

WITNESSETH

WHEREAS, pursuant to Chapter 373 of the Nevada Revised States, the Regional Transportation Commission may approve and fund projects to improve streets or highways; and

WHEREAS, the parties have executed an Interlocal Contract dated June 10, 2004 for the improvements associated with the 2005 Annual Restoration and Preservation Projects;

WHEREAS, the CITY desires to extend the project completion date.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements, and promises of the parties hereto, the RTC authorizes the CITY to proceed with the PROJECT as it is mutually understood and agrees as follows.

SECTION III – GENERAL paragraph 6 shall be revised as follows:

6. The improvements must be completed to the satisfaction of the Regional Transportation Commission of Southern Nevada prior to December 30, 2012. The RTC may at any time thereafter grant time extensions or terminate this Contract and require all sums advanced to the CITY be reimbursed.

The remainder of the Interlocal Contract dated June 10, 2004 shall remain unchanged.

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IN WITNESS WHEREOF, this INTERLOCAL CONTRACT is effective as of the date first set forth above.

Date of Commission Action:

6/10/10

REGIONAL TRANSPORTATION COMMISSION

BY: Lawrence L Brown III

LAWRENCE L. BROWN III, Chairman

Attest:

Lisa Magnusson

LISA MAGNUSSON, Executive Assistant

Approved as to Form and Legality:

ZEV KAPLAN, General Counsel

Date of Council Action:

CITY OF LAS VEGAS

BY:

OSCAR B. GOODMAN, Mayor

Attest:

BEVERLY K. BRIDGES, MMC
City Clerk

Approved as to Form and Legality:

John S. Ridilla 6/29/10

Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

City of Las Vegas Agenda Item No.: **52.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Supplemental Interlocal Contract 435l between the City of Las Vegas and the Regional Transportation Commission of Southern Nevada (RTC) to increase funding in the amount of $1,000,000 for the Martin L. King, Palomino Lane to Carey Avenue project - Ward 5 (Barlow)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $1,000,000
Funding Source: RTC
Dept./Division: PW/City Engineer

PURPOSE/BACKGROUND:
The City of Las Vegas entered into an interlocal contract with the Regional Transportation Commission of Southern Nevada (RTC) on March 13, 2003 for roadway improvements for the Martin L. King Boulevard, Palomino Lane to Carey Avenue project. This Supplemental Interlocal Contract will increase project funding in the amount of $1,000,000. The contract is being increased to align projected expenditures with project construction costs. Total cost of the project shall not exceed $13,990,000. The RTC approved this contract at their May 20, 2010 Board meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Supplemental Interlocal Contract 435l

SUPPLEMENTAL INTERLOCAL CONTRACT NO. 12

MARTIN L. KING, PALOMINO LANE TO CAREY AVENUE

THIS SUPPLEMENTAL INTERLOCAL CONTRACT NO. 12, made and entered into this 20th day of May, 2010 by and between the CITY OF LAS VEGAS, a municipal corporation, hereinafter referred to as the "CITY" and the Regional Transportation Commission of Southern Nevada hereinafter referred to as "RTC".

WITNESSETH

WHEREAS, the RTC approved an Interlocal Contract on March 13, 2003 and supplemental interlocal contracts on June 12, 2003, August 11, 2005, March 9, 2006, December 14, 2006, February 8, 2007, March 8, 2007, July 12, 2007, October 11, 2007, November 13, 2008, June 11, 2009 and April 8, 2010 for a project to design, purchase right-of-way, perform construction inspection and construct roadway improvements for Martin L. King Boulevard, Palomino Lane to Carey Avenue, being located wholly within the City; and

WHEREAS, the RTC previously granted "Authorization to Proceed" for construction, engineering, right-of-way acquisition, and right-of-way other; and,

WHEREAS, the CITY desires to increase funding for the Project and extend the project completion date.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements, and promises of the parties hereto, the RTC authorizes the CITY to proceed with the PROJECT as it is mutually understood and agrees as follows.

SECTION II- PROJECT COSTS shall be revised to read as follows:

The RTC agrees to provide funding for project costs according to Section 6.1 REIMBURSEMENT COSTS of the Policies and Procedures Manual of the RTC within the limits specified below:

1. The total cost for construction, engineering, right-of-way acquisition and right-of-way other shall not exceed $13,990,000.
2. The City will be granted a revised "Authorization to Proceed" with construction at a cost not to exceed $9,070,000, engineering at a cost not to exceed $4,350,000, right-of-way acquisition at a cost not to exceed $20,000 and right-of-way other at a cost not to exceed $550,000 at the time written Authorization to Proceed is received from the RTC. The "Authorization to Proceed" shall state a specific amount within the total estimated cost of the Project and, upon approval by the RTC, only that amount shall be encumbered and allocated.
3. A written request must be made to the RTC and a supplemental interlocal contract approved to allow exceptions to the adopted policies and procedures of the RTC or the amount noted above prior to payment of any additional funds.

SECTION III – GENERAL paragraph 7 shall be revised to read as follows:

7. The project must be completed to the satisfaction of the RTC prior to September 30, 2011.

RTC may at any time thereafter grant time extensions or terminate this Contract and require all sums advanced to the CITY be reimbursed.

All other terms of the interlocal contract dated March 13, 2003 and Supplemental Interlocal Contracts dated June 12, 2003, August 11, 2005, March 9, 2006, December 14, 2006, February 8, 2007, March 8, 2007, July 12, 2007, October 11, 2007, November 13, 2008, June 11, 2009 and April 8, 2010 shall remain unchanged.

IN WITNESS WHEREOF, this Supplemental Interlocal Contract No. 12 is effective as of the date first set forth above.

Date of Commission Action:

5/20/2010

REGIONAL TRANSPORTATION COMMISSION

BY: Lawrence L Brown III

LAWRENCE L. BROWN III, Chairman

Attest:

Lisa Magnusson

LISA MAGNUSSON, Executive Assistant

Approved as to Form and Legality:

Zev Kaplan

ZEV KAPLAN, General Counsel

Date of Council Action:

CITY OF LAS VEGAS

BY: _____

OSCAR B. GOODMAN, Mayor

Attest:

BEVERLY K. BRIDGES, MMC
City Clerk

Approved as to Form and Legality:

John S. Ridilla 6/1/10

Deputy City Attorney Date

City of Las Vegas Agenda Item No.: **53.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Interlocal Contract 642 between the City of Las Vegas, and the Regional Transportation Commission of Southern Nevada (RTC) to proceed with funding for engineering, right-of-way, construction, and construction management from Senate Bill 5 funds for project 033N-SB5, Jones Boulevard/Valley View Boulevard Couplet, US-95 to Desert Inn Road ($22,225,000 - RTC) - Ward 1 (Tarkanian)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $22,225,000
Funding Source: RTC
Dept./Division: PW/City Engineer

PURPOSE/BACKGROUND:
This Interlocal Contract 642 applies to improvements associated with engineering, right-of-way, construction, and construction management for project 033N-SB5, Jones Boulevard/Valley View Boulevard Couplet, US-95 to Desert Inn Road. Total cost of the contract shall not exceed $22,225,000. The Regional Transportation Commission of Southern Nevada approved this contract at their July 8, 2010 Board Meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Interlocal Contract 642

INTERLOCAL CONTRACT
JONES BOULEVARD / VALLEY VIEW BOULEVARD COUPLET-US-95 TO DESERT INN ROAD

THIS INTERLOCAL CONTRACT made and entered into this 8th day of July, 2010, by and between the CITY OF LAS VEGAS, a municipal corporation, hereinafter referred to as the "CITY" and the Regional Transportation Commission of Southern Nevada hereinafter referred to as "RTC".

WITNESSETH

WHEREAS, pursuant to Chapter 373 of the Nevada Revised Statutes, a project to design, purchase right-of-way, perform construction inspection and construct roadway improvements for Jones Boulevard / Valley View Boulevard Couplet - US-95 to Desert Inn Road, hereinafter referred to as the "PROJECT", has been approved by the Regional Transportation Commission of Southern Nevada; and

WHEREAS, the CITY desires to complete the PROJECT in accordance with the conditions set forth herein; and

WHEREAS, the CITY has completed a preliminary design for the PROJECT and has issued a Request For Statements Of Qualifications for a Construction Manager At Risk (CMAR) for the PROJECT pursuant to Chapter 383 of the Nevada Revised Statutes; and

WHEREAS, right-of-way for the PROJECT will be acquired and secured by the CITY on a timeline to accommodate the PROJECT schedule, or the design will be revised by the CITY as necessary to avoid additional right-of-way acquisition and/or schedule delays; and,

WHEREAS, the PROJECT is eligible for RTC funding.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements, and promises of the parties hereto, the RTC authorizes the CITY to proceed with the PROJECT as it is mutually agreed and understood, as follows:

SECTION I: SCOPE OF PROJECT

The PROJECT improvements will convert Valley View Boulevard and Jones Boulevard to a one-way preference couplet system that will allow for additional lanes in Valley View Boulevard and Jones Boulevard. The PROJECT includes pavement mill and overlay, pavement markings and signage, landscaped median islands, interconnect conduit with fiber optic cable, traffic signal upgrades, minor storm drain, and other related items.

SECTION II: PROJECT COSTS

The RTC agrees to provide from Senate Bill 5 (SB5) funds for PROJECT costs according to Section 6.1 REIMBURSEMENT COSTS of the Policies and Procedures Manual of the RTC within the limits specified below:

1. The total PROJECT cost for construction and engineering shall not exceed $22,225,000.

2. "Authorization to Proceed" will be granted for engineering, including design and construction management, in an amount not to exceed $6,350,000, and for construction, including the pre-construction and construction phase services of the Construction Manager at Risk, in an amount not to exceed $15,900,000, at the time written "Authorization to Proceed" is received from the RTC. The contract for the pre-construction services of the Construction Manager At Risk shall by executed by the CITY prior to 90 calendar days from the date of the signed Authorization to Proceed or the Authorization to Proceed will be automatically rescinded by the RTC and the funds will be re-appropriated to the next highest ranked project on the SB5 pending list. Additionally, the contract for the construction services of the Construction Manager At Risk (or, in the event that the CITY and the Construction Manager At Risk fail to agree on a firm fixed price for the PROJECT, the advertisement of the PROJECT for bids) shall be executed by the CITY prior to one calendar year from the date of the signed Authorization to Proceed or the Authorization to Proceed will be automatically rescinded by the RTC and the funds will be re-appropriated to the next highest ranked project on the SB5 pending list

3. A written request must be made to the RTC and an additional supplemental interlocal contract approved to allow exceptions to the adopted policies and procedures of the RTC or the amount noted above prior to payment of any additional funds.

SECTION III: GENERAL

1. The title sheet of both the plans and specifications shall show the RTC as the funding agency. If construction funds are provided by sources other than the RTC, the plans, contract documents, special provisions, and PROJECT signs shall also show the RTC as a funding agency.

2. Preliminary engineering, design and right-of-way engineering shall be performed by the CITY or by a consultant employed by the CITY.

3. The design, construction, right-of-way acquisition and contract administration of the PROJECT shall comply with the requirements as set forth in the current "Policies and Procedures" of the RTC.

4. The CITY's Department of Public Works has a policy, which effectively prohibits utility cuts through the pavement for a period of five years after the completion of a project.

5. Upon completion of the construction of the PROJECT, it shall be maintained by the CITY and no funding is provided by this Contract for such maintenance.

6. The PROJECT must be completed to the satisfaction of the RTC prior to June 30, 2015. The RTC may, at any time thereafter, grant time extensions or terminate this Contract and require all sums advanced to the CITY be repaid.

7. It is understood and agreed that the purpose of this Interlocal Contract is to fund the PROJECT as hereinabove set forth. It is further understood and agreed that the CITY is responsible for the design and construction of the PROJECT and will hold the other parties to this Interlocal Contract and the RTC harmless for any liability therefore except the funding provided by this Interlocal Contract.

8. Should the construction funds be provided by sources other than the RTC, the CITY will reimburse the RTC for a percentage of the preliminary engineering and design costs associated with other funding sources, as mutually agreed upon by the RTC and the CITY.

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IN WITNESS WHEREOF, this INTERLOCAL CONTRACT is effective as of the date first set forth above.

Date of Commission Action:

7/8/10

REGIONAL TRANSPORTATION COMMISSION

BY: Lawrence L. Brown III

LAWRENCE L. BROWN III, Chairman

Attest:

Lisa Magnusson

LISA MAGNUSSON, Executive Assistant

Approved as to Form and Legality:

Zev Kaplan

ZEV KAPLAN, General Counsel

Date of Council Action:

CITY OF LAS VEGAS

BY:

OSCAR B. GOODMAN, Mayor

Attest:

BEVERLY K. BRIDGES, MMC
City Clerk

Approved as to Form and Legality:

John S. Ridilla 7/21/10

Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

City of Las Vegas Agenda Item No.: **54.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Interlocal Contract 640 between the City of Las Vegas, and the Regional Transportation Commission of Southern Nevada (RTC) to proceed with funding for the design and right-of-way design for the Las Vegas Boulevard Widening - I-515 to Owens Avenue project ($1,600,000 - RTC) - Ward 5 (Barlow)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $1,600,000
Funding Source: RTC
Dept./Division: PW / City Engineer

PURPOSE/BACKGROUND:
This Interlocal Contract 640 applies to design of improvements associated with Las Vegas Boulevard Widening – I-515 to Owens Avenue. The basic improvements include roadway widening, sidewalks, L-curbs, full-width paving, improved street lighting, pavement markings, landscaping and signing, drainage facilities, and traffic signal systems as warranted. Total cost of the contract shall not exceed $1,600,000. The Regional Transportation Commission of Southern Nevada approved this contract at their June 10, 2010 Board meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Interlocal Contract 640

INTERLOCAL CONTRACT FOR LAS VEGAS BOULEVARD I-515 TO OWENS AVENUE

THIS INTERLOCAL CONTRACT made and entered into this 10th day of June, 2010, by and between the CITY OF LAS VEGAS, a municipal corporation, hereinafter referred to as the "CITY" and the Regional Transportation Commission of Southern Nevada hereinafter referred to as "RTC".

W I T N E S S E T H

WHEREAS, pursuant to Chapter 373 of the Nevada Revised Statutes, a Project to design, purchase right-of-way, perform construction inspection and construct roadway improvements for the Las Vegas Boulevard Widening - I-515 to Owens Avenue, located wholly within the CITY has been approved by the Regional Transportation Commission of Southern Nevada.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements, and promises of the parties hereto, the RTC authorizes the CITY to proceed with the Project as it is mutually agreed and understood, as follows:

SECTION I: SCOPE OF PROJECT

This Interlocal Contract applies to improvements associated with Las Vegas Boulevard Widening - I-515 to Owens Avenue. The basic improvements include roadway widening, sidewalks, L-curbs, full-width paving, improved street lighting, pavement markings, landscaping and signing, drainage facilities, and traffic signal systems as warranted.

SECTION II: PROJECT COSTS

The RTC agrees to provide from Senate Bill 5 (SB5) funds for project costs according to Section 6.1 REIMBURSEMENT COSTS of the Policies and Procedures Manual of the RTC within the limits specified below:

1. The total cost for engineering design, contract administration, surveying, inspection, testing, right-of-way acquisition, right-of-way other, utility relocation and construction shall not exceed $1,600,000.

2. "Authorization to Proceed" will be granted for engineering design in an amount not to exceed $1,500,000 and for right-of-way other in amount not to exceed $100,000 at the time written "Authorization to Proceed" is received from the RTC. The design contract for this project will be awarded prior to 60 days from the date of the signed Authorization to Proceed or the Authorization to Proceed will be automatically rescinded by the RTC and the funds will be re-appropriated to the next highest ranked project on the SB5 pending list.

3. Upon award of third-party design contract, the Interlocal Contract and Authorization to Proceed shall be reduced to the award amount and funding for in-house labor expenses in an amount not to exceed 10% of the design contract.

4. A supplemental interlocal contract and a separate request for an "Authorization to Proceed" will be required for right-of-way acquisition, construction and construction engineering.

5. A written request must be made to the RTC and an additional supplemental interlocal contract approved to allow exceptions to the adopted policies and procedures of the RTC or the amount noted above prior to payment of any additional funds.

SECTION III: GENERAL

1. The title sheet of both the plans and specifications shall show the RTC as the funding agency. If construction funds are provided by sources other than the RTC, the plans, contract documents, special provisions, and Project signs shall also show the RTC as a funding agency.

2. Preliminary engineering, design and right-of-way engineering shall be performed by the CITY or by a consultant employed by the CITY.

3. The design, construction, right-of-way acquisition and contract administration of the Project shall comply with the requirements as set forth in the current "Policies and Procedures" of the RTC.

4. The CITY's Department of Public Works has a policy, which effectively prohibits utility cuts through the pavement for a period of five years after the completion of a project.

5. Upon completion of the construction of the Project, it shall be maintained by the CITY and no funding is provided by this Contract for such maintenance.

6. The Project must be completed to the satisfaction of the RTC prior to June 30, 2015. The RTC may, at any time thereafter, grant time extensions or terminate this Contract and require all sums advanced to the CITY be repaid.

7. It is understood and agreed that the purpose of this Interlocal Contract is to fund the Project as hereinabove set forth. It is further understood and agreed that the CITY is responsible for the design and construction of the Project and will hold the other parties to this Interlocal Contract and the RTC harmless for any liability therefore except the funding provided by this Interlocal Contract.

8. Should the construction funds be provided by sources other than the RTC, the CITY will reimburse the RTC for a percentage of the preliminary engineering and design costs associated with other funding sources, as mutually agreed upon by the RTC and the CITY.

IN WITNESS WHEREOF, this INTERLOCAL CONTRACT is effective as of the date first set forth above.

Date of Commission Action:

6/10/10

REGIONAL TRANSPORTATION COMMISSION

BY: Lawrence L. Brown III

LAWRENCE L. BROWN III, Chairman

Attest:

Lisa Magnusson

LISA MAGNUSSON, Executive Assistant

Approved as to Form and Legality:

ZEV KAPLAN, General Counsel

Date of Council Action:

CITY OF LAS VEGAS

BY: _____

OSCAR B. GOODMAN, Mayor

Attest:

BEVERLY K. BRIDGES, MMC
City Clerk

Approved as to Form and Legality:

John S. Ridilla 6/29/10

Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

City of Las Vegas Agenda Item No.: **55.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Interlocal Contract 638 between the City of Las Vegas, and the Regional Transportation Commission of Southern Nevada (RTC) to proceed with funding for improvements associated with the Fiscal Year 2011 Annual Restoration and Preservation Projects ($1,980,000 - RTC) - Ward 4 (Anthony)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $1,980,000
Funding Source: RTC
Dept./Division: PW/City Engineer

PURPOSE/BACKGROUND:
This Interlocal Contract 638 applies to funding of improvements associated with the Fiscal Year 2011 Annual Restoration and Preservation projects. The projects include Cheyenne Avenue - Durango Drive to Hualapai Way and Fort Apache Road - Cheyenne Avenue to Alexander Road. The basic improvements consist of saw-tooth in-fill, crack sealing, concrete repairs, pavement and base failure reconstructions, pavement resurfacing, re-profiling and traffic striping as necessary. Where applicable, wheel chair ramps will be installed at curb returns and temporary asphalt sidewalk installed in accordance with the RTC policy on sidewalk installation. Total cost of the contract shall not exceed $1,980,000. The Regional Transportation Commission of Southern Nevada approved this contract at their June 10, 2010 Board Meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Interlocal Contract 638

INTERLOCAL CONTRACT
ARTERIAL RECONSTRUCTION PROJECTS
Fiscal Year 2011

THIS INTERLOCAL CONTRACT made and entered into this 10th day of June, 2010, by and between the CITY OF LAS VEGAS, a municipal corporation, hereinafter referred to as the "CITY" and the Regional Transportation Commission of Southern Nevada hereinafter referred to as "RTC".

W I T N E S S E T H

WHEREAS, pursuant to Chapter 373 of the Nevada Revised Statutes, the Regional Transportation Commission may approve and fund projects to improve streets or highways; and

WHEREAS, the CITY desires to improve streets and highways within the City in accordance with the improvements set forth herein, and hereinafter referred to as the "PROJECT"; and

WHEREAS, the design of the Project is 100% complete and all right-of-way has been acquired and secured; and,

WHEREAS, the facilities upon which improvements will be done are facilities eligible for RTC funding.

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NOW, THEREFORE, in consideration of the covenants, conditions, agreements, and promises of the parties hereto, the RTC authorizes the CITY to proceed with the Project as it is mutually agreed and understood, as follows:

SECTION I: SCOPE OF PROJECT

This Interlocal Contract applies to improvements associated with the Fiscal Year 2010 Annual Restoration and Preservation Projects. The basic improvements may include crack sealing, concrete repairs, pavement and base failure reconstructions, pavement resurfacing and re-profiling and traffic striping as necessary. Where applicable, wheel chair ramps will be installed at curb returns and temporary asphalt sidewalk installed in accordance with the RTC policy on sidewalk installation. Bike lanes and bike paths will be part of the striping of the finished roadway as long as the bike lane or path is part of the Bicycle and Pedestrian Element of the Regional Transportation Plan. The PROJECT is more specifically described in Exhibit "A" which is hereto and by this reference incorporated herein.

SECTION II: PROJECT COSTS

The RTC agrees to provide from Senate Bill 5 (SB5) funds for project costs according to Section 6.1 REIMBURSEMENT COSTS of the Policies and Procedures Manual of the RTC within the limits specified below:

1. The total project cost for construction and engineering shall not exceed $1,980,000.

2. "Authorization to Proceed" will be granted for construction in an amount not to exceed $1,880,000 and for engineering in an amount not to exceed $100,000, at the time written "Authorization to Proceed" is received from the RTC. The bid documents for this construction project will be advertised prior to 60 days from the date of the signed Authorization to Proceed or the Authorization to Proceed will be automatically rescinded by the RTC and the funds will be re-appropriated to the next highest ranked project on the SB5 pending list.

3. Upon award of bid, the Interlocal Contract and Authorization to Proceed amount shall be reduced to bid award and funding for contingency and construction management, each amount not to exceed 10% of the bid award amount.

4. A written request must be made to the RTC and an additional supplemental interlocal contract approved to allow exceptions to the adopted policies and procedures of the RTC or the amount noted above prior to payment of any additional funds.

SECTION III: GENERAL

1. The title sheet of both the plans and specifications shall show the RTC as the funding agency. If construction funds are provided by sources other than the RTC, the plans, contract documents, special provisions, and Project signs shall also show the RTC as a funding agency.

2. Preliminary engineering, design and right-of-way engineering shall be performed by the CITY or by a consultant employed by the CITY.

3. The design, construction, right-of-way acquisition and contract administration of the Project shall comply with the requirements as set forth in the current "Policies and Procedures" of the RTC.

4. The CITY's Department of Public Works has a policy, which effectively prohibits utility cuts through the pavement for a period of five years after the completion of a project.

5. Upon completion of the construction of the Project, it shall be maintained by the CITY and no funding is provided by this Contract for such maintenance.

6. The Project must be completed to the satisfaction of the RTC prior to June 30, 2015. The RTC may, at any time thereafter, grant time extensions or terminate this Contract and require all sums advanced to the CITY be repaid.

7. It is understood and agreed that the purpose of this Interlocal Contract is to fund the Project as hereinabove set forth. It is further understood and agreed that the CITY is responsible for the design and construction of the Project and will hold the other parties to this Interlocal Contract and the RTC harmless for any liability therefore except the funding provided by this Interlocal Contract.

8. Should the construction funds be provided by sources other than the RTC, the CITY will reimburse the RTC for a percentage of the preliminary engineering and design costs associated with other funding sources, as mutually agreed upon by the RTC and the CITY.

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IN WITNESS WHEREOF, this INTERLOCAL CONTRACT is effective as of the date first set forth above.

Date of Commission Action:

6/10/10

REGIONAL TRANSPORTATION COMMISSION

BY: Lawrence L Brown III

LAWRENCE L. BROWN III, Chairman

Attest:

Lisa Magnusson

LISA MAGNUSSON, Executive Assistant

Approved as to Form and Legality:

ZEV KAPLAN, General Counsel

Date of Council Action:

CITY OF LAS VEGAS

BY: _____

OSCAR B. GOODMAN, Mayor

Attest:

BEVERLY K. BRIDGES, MMC
City Clerk

Approved as to Form and Legality:

John S. Ridilla 6/29/10

Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

City of Las Vegas Agenda Item No.: **56.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Interlocal Contract 636 between the City of Las Vegas, and the Regional Transportation Commission of Southern Nevada (RTC) to proceed with funding for the design and right-of-way design for Main Street, US-95 to Owens Avenue project ($500,000 - RTC) - Ward 5 (Barlow)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $500,000
Funding Source: RTC
Dept./Division: PW/City Engineer

PURPOSE/BACKGROUND:
This Interlocal Contract 636 applies to the design of improvements associated with Main Street, US-95 to Owens Avenue project. The basic improvements include roadway widening, sidewalks, L-curbs, full-width paving, improved street lighting, pavement markings and signing, drainage facilities, and traffic signal systems as warranted. Total cost of the contract shall not exceed $500,000. The Regional Transportation Commission of Southern Nevada approved this contract at their June 10, 2010 Board meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Interlocal Contract 636

INTERLOCAL CONTRACT FOR MAIN STREET, US-95 TO OWENS AVENUE

THIS INTERLOCAL CONTRACT made and entered into this 10th day of June, 2010, by and between the CITY OF LAS VEGAS, a municipal corporation, hereinafter referred to as the "CITY" and the Regional Transportation Commission of Southern Nevada hereinafter referred to as "RTC".

W I T N E S S E T H

WHEREAS, pursuant to Chapter 373 of the Nevada Revised Statutes, a Project to design, purchase right-of-way, perform construction inspection and construct roadway improvements for the Main Street, US-95 to Owens Avenue, located wholly within the CITY has been approved by the Regional Transportation Commission of Southern Nevada.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements, and promises of the parties hereto, the RTC authorizes the CITY to proceed with the Project as it is mutually agreed and understood, as follows:

SECTION I: SCOPE OF PROJECT

This Interlocal Contract applies to improvements associated with Main Street, US-95 to Owens Avenue. The basic improvements include sidewalks, L-curbs, full-width paving, improved street lighting, pavement markings and signing, drainage facilities, and traffic signal systems as warranted.

SECTION II: PROJECT COSTS

The RTC agrees to provide from Senate Bill 5 (SB5) funds for project costs according to Section 6.1 REIMBURSEMENT COSTS of the Policies and Procedures Manual of the RTC within the limits specified below:

1. The total cost for engineering design, contract administration, surveying, inspection, testing, right-of-way engineering, right-of-way acquisition, utility relocation and construction shall not exceed $500,000.

2. "Authorization to Proceed" will be granted for engineering design in an amount not to exceed $490,000, for right-of-way other in an amount not to exceed $10,000 at the time written "Authorization to Proceed" is received from the RTC. The design contract for this project will be awarded prior to 60 days from the date of the signed Authorization to Proceed or the Authorization to Proceed will be automatically rescinded by the RTC and the funds will be re-appropriated to the next highest ranked project on the SB5 pending list.

3. Upon award of third-party design contract, the Interlocal Contract and Authorization to Proceed shall be reduced to the award amount and funding for in-house labor expenses in an amount not to exceed 10% of the design contract.

4. A supplemental interlocal contract and a separate request for an "Authorization to Proceed" will be required for right-of-way acquisition, construction and construction engineering.

5. A written request must be made to the RTC and an additional supplemental interlocal contract approved to allow exceptions to the adopted policies and procedures of the RTC or the amount noted above prior to payment of any additional funds.

SECTION III: GENERAL

1. The title sheet of both the plans and specifications shall show the RTC as the funding agency. If construction funds are provided by sources other than the RTC, the plans, contract documents, special provisions, and Project signs shall also show the RTC as a funding agency.

2. Preliminary engineering, design and right-of-way engineering shall be performed by the CITY or by a consultant employed by the CITY.

3. The design, construction, right-of-way acquisition and contract administration of the Project shall comply with the requirements as set forth in the current "Policies and Procedures" of the RTC.

4. The CITY's Department of Public Works has a policy, which effectively prohibits utility cuts through the pavement for a period of five years after the completion of a project.

5. Upon completion of the construction of the Project, it shall be maintained by the CITY and no funding is provided by this Contract for such maintenance.

6. The Project must be completed to the satisfaction of the RTC prior to June 30, 2015. The RTC may, at any time thereafter, grant time extensions or terminate this Contract and require all sums advanced to the CITY be repaid.

7. It is understood and agreed that the purpose of this Interlocal Contract is to fund the Project as hereinabove set forth. It is further understood and agreed that the CITY is responsible for the design and construction of the Project and will hold the other parties to this Interlocal Contract and the RTC harmless for any liability therefore except the funding provided by this Interlocal Contract.

8. Should the construction funds be provided by sources other than the RTC, the CITY will reimburse the RTC for a percentage of the preliminary engineering and design costs associated with other funding sources, as mutually agreed upon by the RTC and the CITY.

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IN WITNESS WHEREOF, this INTERLOCAL CONTRACT is effective as of the date first set forth above.

Date of Commission Action:

6/10/2010

REGIONAL TRANSPORTATION COMMISSION

BY: _____

LAWRENCE L. BROWN III, Chairman

Attest:

_____

LISA MAGNUSSON, Executive Assistant

Approved as to Form and Legality:

_____

ZEV KAPLAN, General Counsel

Date of Council Action:

_____

CITY OF LAS VEGAS

BY: _____

OSCAR B. GOODMAN, Mayor

Attest:

_____

BEVERLY K. BRIDGES, MMC
City Clerk

Approved as to Form and Legality:

_____ 6/29/10

Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

City of Las Vegas Agenda Item No.: **57.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Interlocal Contract 639 between the City of Las Vegas, and the Regional Transportation Commission of Southern Nevada (RTC) to proceed with funding for improvements associated with Centennial Parkway/Sky Pointe Drive Connections at US-95 project ($2,150,000 - RTC) - Ward 6 (Ross)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $2,150,000
Funding Source: RTC
Dept./Division: PW/City Engineer

PURPOSE/BACKGROUND:
This Interlocal Contract 639 applies to improvements associated with Centennial Parkway/Sky Pointe Drive Connections at US-95. The basic improvements include bridges, new roadways, sidewalks, L-curbs, full-width paving, improved street lighting, pavement markings and signing, drainage facilities, and traffic signal systems as warranted. Total cost of the contract shall not exceed $2,150.000. The Regional Transportation Commission of Southern Nevada approved this contract at their June 10, 2010 Board meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Interlocal Contract 639

INTERLOCAL CONTRACT FOR CENTENNIAL PARKWAY / SKY POINT DRIVE CONNECTIONS AT US-95

THIS INTERLOCAL CONTRACT made and entered into this 10th day of June, 2010, by and between the CITY OF LAS VEGAS, a municipal corporation, hereinafter referred to as the "CITY" and the Regional Transportation Commission of Southern Nevada hereinafter referred to as "RTC".

W I T N E S S E T H

WHEREAS, pursuant to Chapter 373 of the Nevada Revised Statutes, a Project to design, purchase right-of-way, perform construction inspection and construct roadway improvements for the Centennial Parkway / Sky Pointe Drive Connections at US-95, located wholly within the CITY has been approved by the Regional Transportation Commission of Southern Nevada.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements, and promises of the parties hereto, the RTC authorizes the CITY to proceed with the Project as it is mutually agreed and understood, as follows:

SECTION I: SCOPE OF PROJECT

This Interlocal Contract applies to improvements associated with Centennial Parkway / Sky Pointe Drive Connections at US-95. The basic improvements include bridges, new roadways, sidewalks, L-curbs, full-width paving, improved street lighting, pavement markings and signing, drainage facilities, and traffic signal systems as warranted.

SECTION II: PROJECT COSTS

The RTC agrees to provide from Senate Bill 5 (SB5) funds for project costs according to Section 6.1 REIMBURSEMENT COSTS of the Policies and Procedures Manual of the RTC within the limits specified below:

1. The total cost for engineering design, contract administration, surveying, inspection, testing, right-of-way engineering, right-of-way acquisition, utility relocation and construction shall not exceed $2,150,000.

2. "Authorization to Proceed" will be granted for engineering design in an amount not to exceed $2,100,000, and right-of-way other at an amount not to exceed $50,000 at the time written "Authorization to Proceed" is received from the RTC. The design contract for this project will be awarded prior to 60 days from the date of the signed Authorization to Proceed or the Authorization to Proceed will be automatically rescinded by the RTC and the funds will be re-appropriated to the next highest ranked project on the SB5 pending list.

3. Upon award of third-party design contract, the Interlocal Contract and Authorization to Proceed shall be reduced to the award amount and funding for in-house labor expenses in an amount not to exceed 10% of the design contract.

4. A supplemental interlocal contract and a separate request for an "Authorization to Proceed" will be required for right-of-way acquisition, construction and construction engineering.

5. A written request must be made to the RTC and an additional supplemental interlocal contract approved to allow exceptions to the adopted policies and procedures of the RTC or the amount noted above prior to payment of any additional funds.

SECTION III: GENERAL

1. The title sheet of both the plans and specifications shall show the RTC as the funding agency. If construction funds are provided by sources other than the RTC, the plans, contract documents, special provisions, and Project signs shall also show the RTC as a funding agency.

2. Preliminary engineering, design and right-of-way engineering shall be performed by the CITY or by a consultant employed by the CITY.

3. The design, construction, right-of-way acquisition and contract administration of the Project shall comply with the requirements as set forth in the current "Policies and Procedures" of the RTC.

4. The CITY's Department of Public Works has a policy, which effectively prohibits utility cuts through the pavement for a period of five years after the completion of a project.

5. Upon completion of the construction of the Project, it shall be maintained by the CITY and no funding is provided by this Contract for such maintenance.

6. The Project must be completed to the satisfaction of the RTC prior to June 30, 2015. The RTC may, at any time thereafter, grant time extensions or terminate this Contract and require all sums advanced to the CITY be repaid.

7. It is understood and agreed that the purpose of this Interlocal Contract is to fund the Project as hereinabove set forth. It is further understood and agreed that the CITY is responsible for the design and construction of the Project and will hold the other parties to this Interlocal Contract and the RTC harmless for any liability therefore except the funding provided by this Interlocal Contract.

8. Should the construction funds be provided by sources other than the RTC, the CITY will reimburse the RTC for a percentage of the preliminary engineering and design costs associated with other funding sources, as mutually agreed upon by the RTC and the CITY.

///

IN WITNESS WHEREOF, this INTERLOCAL CONTRACT is effective as of the date first set forth above.

Date of Commission Action:

6/10/10

REGIONAL TRANSPORTATION COMMISSION

BY: Lawrence L Brown III

LAWRENCE L. BROWN III, Chairman

Attest:

Lisa Magnusson

LISA MAGNUSSON, Executive Assistant

Approved as to Form and Legality:

Zev Kaplan

ZEV KAPLAN, General Counsel

Date of Council Action:

CITY OF LAS VEGAS

BY:

OSCAR B. GOODMAN, Mayor

Attest:

BEVERLY K. BRIDGES, MMC
City Clerk

Approved as to Form and Legality:

John S. Ridilla 6/29/10

Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

City of Las Vegas Agenda Item No.: **58.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of an Amendment No. 1 to a Highway Agreement No. PR060-09-063, a Cooperative (Local Public Agency) Agreement with the State of Nevada Department of Transportation (NDOT) to increase funding in the amount of $3,157,900 and extend the completion date to December 31, 2012 for the construction of intersection improvements on Charleston Boulevard (SR-159) at Lamb Boulevard ($3,157,900 - NDOT/Congestion Mitigation and Air Quality (CMAQ)) - Ward 3 (Reese)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $3,157,900
Funding Source: NDOT/CMAQ
Dept./Division: PW/City Engineer

PURPOSE/BACKGROUND:
On March 16, 2009, the City of Las Vegas entered into a Cooperative Agreement with the State of Nevada Department of Transportation (NDOT) in the amount of $2,000,000 (Federal Safety Funds) to fund the construction of intersection improvements on Charleston Boulevard (SR-159) at Lamb Boulevard. This amendment will increase the funding in the amount of $3,157,900 (CMAQ) and extend the completion date to December 31, 2012, as additional time is required to complete the project. Total amount of federal funding will not exceed $5,157,900.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Amendment No. 1 to Highway Agreement No. PR060-09-063

Amendment No 1 to
Highway Agreement No. PR060-09-063

This Amendment is made and entered into this _____ day of _____, _____, between the State of Nevada, Department of Transportation, hereinafter referred to as the DEPARTMENT, and City of Las Vegas, 400 Stewart Avenue, Las Vegas, NV 89101, hereinafter called the CITY.

WITNESSETH:

WHEREAS, on March 16, 2009 the parties entered into Agreement No. PR060-09-063 to delegate authority to the CITY to design, advertise, award, and manage construction of intersection improvements on Charleston Blvd. (SR-159) at Lamb Blvd.; and

WHEREAS, due to the CITY being approved for additional Congestion Mitigation and Air Quality Funding this amendment increases the amount of funding by Three Million Three Hundred Twenty-four Thousand One Hundred Five and No/100 Dollars ($3,324,105.00).

WHEREAS, the termination date is amended due to delays in the ROW acquisition of the PROJECT.

WHEREAS, the CITY is a sub-recipient of federal transportation funds, C.F.D.A. (Code of Federal Domestic Assistance) Number 20.205 will be used for reporting purposes.

WHEREAS, the parties hereto desire to make certain amendments to Agreement No. PR060-09-063.

NOW, THEREFORE, the parties agree as follows:

A. The termination date referenced in Article III, Paragraph 1, shall be changed from December 31, 2010 to December 31, 2012.

B. Article I, Paragraph 4, is amended by deleting it in its entirety and inserting in its place, To obligate Federal Safety funding for a maximum amount of Two Million and No/100 Dollars ($2,000,000.00) and Federal Congestion Mitigation and Air Quality Funding for a maximum amount of Three Million, One Hundred Fifty-seven Thousand Nine Hundred and No/100 Dollars ($3,157,900.00).

C. Article I, Paragraph 25, is amended by deleting it in its entirety and inserting in its place, To maintain the improvements constructed as part of the PROJECT within DEPARTMENT Right-of-way on Charleston Blvd. from back of curb to back of curb with the exception of the bus turnouts, however the responsibility of street sweeping, including the bus turnouts will remain with the DEPARTMENT. To transfer to the CITY maintenance responsibility including utility costs for the improvements consisting of landscaping, bus turnouts, sidewalk, signals and lighting constructed as part of the PROJECT within DEPARTMENT Right-of-way on Charleston Blvd. upon completion and final written acceptance of the PROJECT by the DEPARTMENT.

D. Article I, is amended by inserting Paragraph 26, The right-of-way acquired by the CITY on Charleston Blvd. from the existing right-of-way limits to the new back of sidewalk will be deeded to the DEPARTMENT upon completion of the PROJECT. The CITY will maintain ownership of all other right-of-way acquired on Lamb Blvd. and any right of way on Charleston Blvd. beyond the new back of sidewalk.

E. Article I, is amended by inserting Paragraph 27, To accept the right-of-way acquired by the CITY for the PROJECT on Charleston Blvd. from the back of sidewalk to back of sidewalk and any maintenance responsibility associated therewith and as spelled out in this agreement, which is acceptable to the DEPARMENT.

F. Article II, Paragraph 23, is amended by deleting it in its entirety and inserting in its place, To accept maintenance responsibilities including utility costs for the improvements consisting of asphalt pavement, landscaping, bus turnouts, sidewalk, signals and lighting constructed as part of the PROJECT on Lamb Blvd. including the improvements consisting of landscaping, bus turnouts, sidewalk, signals and lighting within DEPARTMENT Right-of-way on Charleston Blvd., upon completion and the DEPARTMENT's final written acceptance of the PROJECT.

G. Article II, is amended by inserting Paragraph 25, To prepare a deed for the review and approval by the DEPARTMENT for the transfer of Right-of-Way acquired by the CITY on Charleston Blvd.

H. Article III, Paragraph 5, is amended by deleting it in its entirety and inserting in its place, The TOTAL ESTIMATED PROJECT COSTS are Five Million Four Hundred Twenty-nine Thousand Three Hundred Sixty-eight and No/100 Dollars ($5,429,368.00), which includes: Five Million One Hundred Fifty-seven Thousand Nine Hundred and No/100 Dollars ($5,157,900.00), comprising Federal funding of ninety-five percent (95%) of the TOTAL ESTIMATED PROJECT COSTS; and a match of Two Hundred Seventy One Thousand Four Hundred Sixty-eight and No/100 Dollars ($271,468.00), comprising CITY match funding of five percent (5%) of TOTAL ESTIMATED PROJECT COSTS. The parties acknowledge and agree that the TOTAL ESTIMATED PROJECT COSTS set forth herein are estimates only and that in no event shall the DEPARTMENT or federal portion exceed the total obligated amount, as established in Article I Paragraph 4.

I. Article III, Paragraph 6, is amended by deleting it in its entirety and inserting in its place, The following is a summary of TOTAL ESTIMATED PROJECT COSTS and available funds:

TOTAL ESTIMATED PROJECT COSTS:

DEPARTMENT Preliminary Engineering Costs:	$ 4,000.00
DEPARTMENT Right-of-Way Costs:	$ 9,000.00
Right-of-Way Costs:	$ 1,000,000.00
DEPARTMENT Construction Engineering Costs:	$ 13,000.00
CITY Construction Engineering Costs:	$ 150,000.00
Construction Costs:	$ 4,262,368.00
TOTAL ESTIMATED PROJECT COSTS:	$ 5,429,368.00

AVAILABLE FUNDING SOURCES:

Federal Safety Funds:	$ 2,000,000.00
Federal CMAQ Funds:	$ 3,157,900.00
CITY Funds:	$ 271,468.00

TOTAL PROJECT FUNDING: $ 5,429,368.00

J. All of the other provisions of Agreement No. PR060-09-063, shall remain in full force and effect as if set forth herein.

IN WITNESS WHEREOF, the above named parties have hereunto set their hands and executed this Amendment the date first written above.

CITY OF LAS VEGAS

Oscar B. Goodman
Mayor

Attest:

Beverly K. Bridges
City Clerk

Approved as to Form:

John S. Ridilla
Deputy City Attorney

John S. Ridilla
Deputy City Attorney

State of Nevada, acting by and through its DEPARTMENT OF TRANSPORTATION

Director

Approved as to Legality & Form:

Deputy Attorney General

City of Las Vegas Agenda Item No.: **59.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of Design Cost Agreement No 10-00759DCA between the City of Las Vegas and NV Energy for the design of power facilities associated with the Alta Substation to allow construction of a portion of the Bonanza Trail project located on the northeast corner of Valley View Boulevard and Alta Drive ($85,505 - Southern Nevada Public Land Management Act (SNPLMA)) - Ward 1 (Tarkanian)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $85,505
Funding Source: SNPLMA
Dept./Division: Public Works/City Engineer

PURPOSE/BACKGROUND:
The City of Las Vegas is in the design phase for the last segment of the Bonanza Trail project that will be located along the east side of Valley View Boulevard between Alta Drive and US 95. The utility design work associated with this Design Cost Agreement will allow for relocation of the existing Alta Substation block wall and of existing overhead facilities.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
Design Cost Agreement

DESIGN COST AGREEMENT

This Design Cost Agreement ("**Agreement**") is entered into by and between Nevada Power Company, a Nevada corporation, d/b/a NV Energy ("**Utility**") and City of Las Vegas, a municipal corporation of the State of Nevada, on behalf of its Department of Public Works ("**Applicant**"). The Parties are referred to herein individually as a "**Party**," and collectively as the "**Parties**."

RECITALS

(A) Utility owns and operates electric transmission and distribution facilities and provides electric service to the public in accordance with a tariff filed with the Public Utilities Commission of Nevada ("**Commission**").

(B) Utility holds certain Property Rights, which among other things permit Utility to locate and operate the Alta Substation and certain communication facilities and electric line systems for the distribution and transmission of electricity.

(C) Applicant proposes to develop the property commonly known as 309 South Valley View Boulevard, Las Vegas, Nevada, 89107, and further described as APN 139-31-602-003 (the "**Property**"). Because all or a portion of the Development might conflict with the Facilities and Alta Substation located on the Property, Applicant has requested that Utility perform design, engineering and other work to determine whether Utility can modify Alta Substation and those Facilities. If Utility agrees to modify its Facilities and Alta Substation, Applicant must sign Utility's standard "Facilities Relocation Agreement" and perform obligations in accordance with that agreement.

(D) Utility has agreed that, in accordance with Rule 9, other applicable provisions in its Tariff Schedules, and this Agreement, it will perform engineering work, develop a design, prepare a detailed scope of work, prepare a cost estimate and perform other activities in connection with Applicant's request to modify the Facilities and Alta Substation.

(E) Applicant acknowledges that it must follow Utility's procedures for identifying and resolving conflicts between its Development and Utility's above-ground and underground electric transmission and distribution facilities and that Utility will only waive or approve a particular conflict through Utility's standard use agreement signed by the property owner(s) and Utility, duly notarized, and recorded.

In consideration of the above recitals, mutual covenants, terms and conditions contained in this Agreement, the Parties agree as follows:

DESIGN COST AGREEMENT

AGREEMENT

1. DEFINITIONS

In addition to other terms defined elsewhere in this Agreement, when the following terms appear, whether used in the singular or plural, they have the following meanings.

1.1 Apparatus: Electrical equipment requiring more than six (6) months to manufacture and deliver.

1.2 Contributions in Aid of Construction ("CIAC"): Costs including, but not limited to, those referred to in Rule 9, Sections A.3, A.5, A.6, A.9, and A.10.

1.3 Cost True-Up: The accounting process in which Utility compares actual Costs to the Estimated Cost.

1.4 Costs: Direct and indirect costs associated with this Agreement, including, but not limited to, those for permitting; satisfying condition(s) of a Permit(s); engineering; Apparatus; Apparatus acquisition, handling and storage; surveys; labor; contractors and subcontractors; potholing; soil exploration and testing; contract termination or Apparatus cancellation fees; administrative and general overheads such as "Allowance for Funds Used During Construction" (AFUDC); local, state and federal taxes and assessments; Tax Effect. Costs incurred by Utility in good faith before the Effective Date are included within this definition.

1.5 Development: Applicant's project commonly known as the Valley View at Alta Drive Trail Modification and generally located east of Valley View Boulevard and north of Alta Drive on the Property.

1.6 Effective Date: The date this Agreement is last signed below.

1.7 Facilities: Utility's existing communication and electric line systems for the distribution and transmission of electricity commonly known as the Alta-Westside 69 kV transmission line, associated appurtenances and the underbuilt 12 kV distribution facilities.

1.8 Force Majeure: An event or condition that is beyond the control of Utility, that occurs without the fault or negligence of Utility, and that renders Utility's performance impossible or impractical. Force Majeure may include orders of government agencies, war, riots, acts of terrorism, sabotage, civil insurrection, fires, floods, earthquakes, lightning, epidemics, weather, strikes, lock-outs, work stoppages or other labor difficulties (including a labor difficulty involving Utility's work force), and other events or conditions.

1.9 Improvement Plans: Applicant's grading, detail, utility, and traffic drawings.

1.10 Laws: Any federal, state, or local code, ordinance, rule, statute, enactment, regulation, or order. Any specific reference to a Law in this Agreement refers to the Law as amended from time to time unless otherwise specified.

1.11 Permit: Any applicable approval, permit, consent, waiver, exemption, variance, franchise, order, authorization, right, action, or license required from any federal, state, or local governmental authority, agency, court or other governmental body having jurisdiction over the matter in question which is necessary for the Parties to perform their obligations under this Agreement and under the applicable Laws. Any specific reference to a Permit in this Agreement refers to the Permit as amended from time to time unless otherwise specified.

1.12 Project Manager: The individual appointed by each Party to serve as the single point of contact for all issues relating to the Agreement.

1.13 Property Rights: Real property rights such as easements, rights of entry, subordination agreements, conveyances, deeds, transmission use agreements, distribution encroachment agreements, Permits, prescriptive rights, and rights-of-way.

1.14 Rule 9: Utility's Electric Service Rule No. 9, Electric Line Extensions. Rule 9 is part of the Tariff Schedules and, unless otherwise specified, is the version in effect as of the Effective Date. The applicable provisions of Rule 9 apply to this Agreement.

1.15 Tariff Schedules: The entire body of effective rates, charges, and rules, collectively, of the Utility as set forth in its rate schedules and rules for electric customers, as those rates, charges, and rules are amended from time to time. However, Rule 9 is the version in effect as of the Effective Date.

1.16 Tax Effect: The amount of any gross-up on Utility tax liability under Section 118 of the Internal Revenue Service Code for CIAC and Applicant's non-cash contributions that Applicant must pay in accordance with the Nevada Administrative Code (NAC) § 704.6532 and Rule 9. Any applicable Tax Effect will be payable and applied at the rate in effect in Rule 9 as of the Effective Date. However, if the Parties sign a "Facilities Relocation Agreement" and Applicant must pay Tax Effect, the applicable Tax Effect will be payable and applied at the rate effect in Rule 9 (as that rule is amended) as of the effective date of that subsequent contract.

2. PROJECT SCOPE

2.1 Utility's Scope of Work. Utility will, at Applicant's Cost, perform (or cause to be performed) the following:

(A) Develop engineering and detailed plans (the "**Design**") to modify all or a portion of the Facilities and Alta Substation on the Property ("**Design Project**").

(B) Perform engineering, survey, design work, right-of-way work, potholing, soil exploration and testing, and other work for the Design Project

(C) Prepare a detailed cost estimate to perform the Design Project.

(D) Submit the Design to the City of Las Vegas, Nevada for permitting.

(E) Draft and compile the Facilities Relocation Agreement.

(F) Research Property Rights and prepare Property Rights documents for the future relocated Facilities and modified Alta Substation.

(G) Procure the following Apparatus: one distribution steel pole.

2.2 Stop Work; Termination. If Applicant requests that Utility stop performing any portion of the work identified in Section 2.1 ("**Stop Work Request**") before Utility completes some or all of that work, Utility will (at Applicant's Cost) stop work within a reasonable time after receiving the Stop Work Request and take reasonable actions to minimize the Costs associated with the Stop Work Request. If Applicant does not provide Utility with a request to resume work within ten (10) business days of the date on the Stop Work Request, this Agreement will terminate. All requests made by Applicant under this Section must be in writing and sent to Utility in accordance with the "Notices" Section.

3. DESIGN DEVELOPMENT; ACCESS

3.1 Preparing the Design. Based on information provided by Applicant and in accordance with Utility's standards, Utility will prepare the Design. Applicant must confirm in writing that the Design does not conflict with its Development.

3.2 Access on Applicant's Property. Applicant must permit Utility access to, over, and across, any property owned or controlled by Applicant, as Utility deems necessary for the purposes of carrying out this Agreement.

3.3 Applicant's Obligation to Provide Information to Utility. Within ten (10) business days after Utility's written request, Applicant must provide information and documentation requested by Utility, such as information and documentation relating to the Development; the Improvement Plans; and, to the actual cost of Applicant's non-cash contributions to Utility pursuant to Rule 9, Section A.12.

3.4 No Obligation. This Agreement does not obligate either Party to sign the Facilities Relocation Agreement.

4. COST RESPONSIBILITY, PAYMENT AND SETTLEMENT

4.1 Responsibility for Costs. Applicant is responsible for all Costs.

4.2 Estimated Cost. The estimated Cost is $85,505.00 ("**Estimated Cost**"). Applicant must pay the Estimated Cost to Utility when Applicant delivers the signed Agreement to Utility. The actual Costs might be more or less than the Estimated Cost and it is possible that not all Costs are identified on Exhibit B; however, Applicant is required to pay the actual Costs. Utility is not obligated to perform or continue performing any work in connection with this Agreement until after Applicant delivers the signed Agreement to Utility and pays Utility the Estimated Cost.

4.3 Cost True-Up. No later than 60 days after Utility delivers the Design and after all Costs have been recorded, Utility will perform a Cost True-Up ("**Section 4.3 Cost**

True-Up"). Based on that Section 4.3 Cost True-Up, Utility will either send Applicant an invoice or return any overpayment to Applicant. However, if the Parties sign a "Facilities Relocation Agreement," Utility will perform a Cost True-Up by the deadline specified in that subsequent contract.

4.4 Invoicing. Utility may periodically invoice Applicant for its Costs under this Agreement. Applicant must pay all invoices, even if Utility sends Applicant an invoice after Utility performed a Section 4.3 Cost True-Up or a Section 5.3 Cost True-Up and even if Utility returned an overpayment to Applicant.

4.5 Payment of Invoices; Work Stoppage for Non-Payment. No later than thirty (30) days after receiving an invoice from Utility, Applicant must pay the invoice in full. If Utility does not receive timely payment, then Utility, in its discretion and without liability to Applicant, may stop some or all work. Any delay in payment might result in a delay in completing some or all Utility's scope of work identified in Section 2.

4.6 No Interest on Amounts Paid by Applicant. Utility will not pay Applicant any interest on the amount of any payment made in connection with this Agreement.

4.7 Interest on Amounts Due Utility. Any amount unpaid by Applicant and due under this Agreement will accrue interest at the then current per annum simple prime rate, as published in the Money Rates section of the Wall Street Journal, plus one percent (1%), from the original due date through the date of receipt of payment by Utility.

4.8 Right to Set Off.

(A) Utility's Right to Set Off Amounts Owing. Utility may set off any sum or obligation (whether or not arising under this Agreement) owed by Utility to Applicant against any sum or obligation (whether or not arising under this Agreement) owed by Applicant to Utility.

(B) Utility's Right to Withhold Additional Amount. Utility may also deduct the following from any sum or obligation (whether or not arising under this Agreement) owed by Utility to Applicant:

(1) The value of any claim against Utility that Applicant has failed to settle in accordance with an indemnity obligation;

(2) The amount to resolve all conflicts between the Development and Utility's distribution and transmission facilities located within or adjacent to the Development; and

(3) The amount to resolve all conflicts between the Development and Utility's Property Rights within or adjacent to the Development.

(C) Other Rights and Remedies. If Utility offsets any amount in accordance with this Section, Utility may still pursue all other rights and remedies it may have.

5. DEFAULT, TERM, AND OBLIGATIONS SURVIVING TERMINATION

5.1 Default.

(A) Procedure. If a Party ("**Defaulting Party**") fails to comply with the terms and conditions of this Agreement and the failure continues for 30 days after the Defaulting Party receives written notice of the particular failure from the other party ("**Non-Defaulting Party**"), then the Non-Defaulting Party is entitled to declare a default. The Non-Defaulting Party is entitled to all remedies authorized by law, with the exception that Utility's failure to achieve any scheduled date is not an event of default.

(B) Notice to Utility's Legal Department. In addition to sending Section 10 written notice to Utility's Project Manager, Applicant must also send a copy of that notice to Utility's Legal Department at the address specified in the "Notices" Section of this Agreement.

5.2 Term of Agreement. This Agreement is effective on the Effective Date. Unless termination occurs under Section 2.1, Section 5.1, Section 6.4 or otherwise, this Agreement terminates six months from the Effective Date.

5.3 True-Up of Costs. If the Agreement terminates, Utility has not performed a Section 4.3 Cost True-Up and the Parties are not going to sign a "Facilities Relocation Agreement," then no later than sixty (60) days after all Costs have been recorded Utility will perform a Cost True-Up ("**Section 5.3 Cost True-Up**"). Based on that Section 5.3 Cost True-Up, Utility will either send Applicant an invoice or return any overpayment to Applicant.

5.4 Obligations Surviving Default or Termination. Any default, expiration, or termination of this Agreement or excuse of performance for Force Majeure or otherwise does not release Applicant from any liability or obligation to Utility for:

(A) Paying all Costs, whether incurred before or after excuse of performance, default or termination, and paying all Costs that result from excuse of performance, termination or a Party's default.

(B) Resolving all conflicts between the Development and Utility's distribution and transmission facilities located within or adjacent to the Development, at Applicant's expense.

(C) Resolving all conflicts between the Development and Utility's Property Rights within and adjacent to the Development, at Applicant's expense.

The provisions of Section 4.3, Section 4.4, Section 4.5, Section 4.6, Section 4.7 and Section 5.3 continue to apply to Section 5.4.

6. FORCE MAJEURE (EXCUSABLE DELAY)

6.1 Notice of Force Majeure. If any delay due to Force Majeure occurs or is anticipated, Utility must promptly notify Applicant in writing of the delay within twenty (20) business days after Utility has actual knowledge that a Force Majeure event exists. This notice must include a description of the delay and the cause and estimated duration of the delay.

6.2 Duty to Mitigate Effects of Delay. Utility must exercise due diligence to shorten, avoid, and mitigate the effects of the delay.

6.3 Notice of Resumption of Performance. Utility must promptly notify Applicant in writing when the Force Majeure event has ended and when performance will resume.

6.4 Liability; Termination Option. Utility is not liable to Applicant for Costs incurred as a result of any delay or failure to perform as a result of Force Majeure. In the event of any delay due to Force Majeure, Utility may terminate the Agreement without liability upon 30-days prior written notice to Applicant.

7. PRECEDENCE

7.1 Utility's Tariff Schedules; Commission. This Agreement is made by the Parties pursuant to Utility's Tariff Schedules. Those Tariff Schedules apply to this Agreement, are binding on the Parties, and supersede any portion of this Agreement should a conflict arise. However, unless otherwise specified the applicable portions of Rule 1 and Rule 9 that relate to Section 4 of this Agreement are the versions of those rules that are in effect as of the Effective Date. Notwithstanding Section 11.4, this Agreement is, at all times, subject to such changes or modifications by the Commission as the Commission may from time to time direct in the exercise of its jurisdiction.

7.2 Integration. This Agreement represents the entire and integrated agreement between Utility and Applicant and supersede all prior and contemporaneous oral and written communications, representations, and agreements relating to the subject matter of the Agreement.

8. CONFIDENTIALITY

8.1 Exchanging Information. Utility might provide Applicant with information to be used in complying with the Agreement. Some or all of this information, including, but not limited to, oral information, documents, supplier information, files, drawings, and data, may be confidential.

8.2 Labeling Information Confidential. If Utility wants information to be treated as confidential, Utility must label the written information as "CONFIDENTIAL" ("**Confidential Information**").

8.3 Protection of Confidential Information.

(A) Applicant's Obligation to Keep Information Strictly Confidential and Not Disclose It. Applicant must keep the Confidential Information strictly confidential and in a secure location. Applicant must also keep any

discussion regarding Confidential Information strictly confidential. Applicant must not disclose any Confidential Information or a discussion regarding Confidential Information to any person or entity except as expressly provided in this Section 8 or as otherwise approved in writing in advance by Utility.

(B) Additional Protection of Information. If Utility has failed to label or advise Applicant that certain information requires protection, the restrictions and limitations in this Section 8 will also apply to the receipt of non-public information that Applicant should reasonably recognize as being confidential.

(C) Transmitting Information. If Applicant transmits any Confidential Information electronically or discusses the Confidential Information in an email, it must encrypt the email and all attachments to it and insert "[CONFIDENTIAL]" as the first word in the subject line of the email.

8.4 Return or Destruction of Confidential Information. Upon Utility's request, Applicant must promptly either return to Utility, or certify the destruction of, all Confidential Information that Applicant received, together with all copies, excerpts, notes and documents derived or generated from the Confidential Information.

8.5 Sharing Confidential Information. Applicant may disclose Confidential Information to and discuss Confidential Information with its affiliates, attorneys, consultants, contractors and subcontractors (collectively, "**Other Parties**"). provided, that the Other Party signs an agreement in a form acceptable to Utility in which the Other Party agrees to be bound by the terms of this "Confidentiality" Section and to submit to the jurisdiction of the District Court, Clark County, Nevada, or any Nevada court with jurisdiction in or over that matter, for purposes of enforcement of that agreement and this "Confidentiality" Section, and any ancillary proceedings regarding interpretation, enforcement or effect of those agreements.

8.6 Request for Confidential Information Through Legal Process. If Applicant becomes legally compelled (by deposition, interrogatory, request for documents, order, subpoena, civil investigative demand or similar process issued by a court of competent jurisdiction or by a government body) to disclose any Confidential Information, to disclose excerpts, notes or documents derived or generated from the Confidential Information, or to disclose discussions regarding the Confidential Information, Applicant must provide prompt written notice to Utility's legal department of any such requirement and seek a protective order preventing or limiting disclosure.

8.7 Rights and Limitations. Utility does not grant any right or license, by implication or otherwise, to Applicant as a result of Utility's disclosure or discussion of Confidential Information. Utility makes no representation or warranties regarding the accuracy or completeness of this information. Applicant expressly recognizes

that this information is provided "AS IS" and Utility makes NO WARRANTIES, EXPRESS OR IMPLIED STATUTORY OR OTHERWISE, WITH RESPECT TO THE CONFIDENTIAL INFORMATION AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES.

9. REPRESENTATIONS

9.1 Utility's Standing in Nevada. Utility represents that, as of the date of this Agreement, it is duly organized, validly existing and in good standing under the laws of the State of Nevada with the valid corporate power to enter into and perform all of its obligations under this Agreement.

9.2 Applicant's Standing in Nevada. Applicant represents that, as of the date of this Agreement, it (A) is duly organized, validly existing and in good standing under the laws of the State of Nevada, (B) is registered as a foreign corporation, if applicable, and (C) is licensed to do business in the State of Nevada, and (D) has valid corporate or governmental power to enter into and perform all of its obligations under this Agreement.

9.3 Authority. Each Party has taken all actions as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery of it, and the performance contemplated in it. The persons executing this Agreement state and acknowledge that they are authorized and empowered to do so on behalf of the Party so designated.

10. NOTICES

10.1 Method of Delivery. Each notice, consent, request, or other communication required or permitted under the Agreement must be in writing, delivered personally or sent by certified mail (postage prepaid, return receipt requested), by facsimile (with electronic confirmation of receipt), or by a recognized international courier, and addressed to the Party's Project Manager as identified in Exhibit A.

10.2 Receipt of Notice; Change of Information. Each notice, consent, request, or other communication is deemed to have been received by the Party to whom it was addressed (A) when delivered if delivered personally; (B) on the third business day after the date of mailing if mailed by certified mail; (C) on the first business day after the facsimile transmission if delivered by facsimile; or (D) on the date officially recorded as delivered according to the record of delivery if delivered by courier. Each Party may change its Project Manager or contact information for purposes of the Agreement by giving written notice to the other Party in the manner set forth above.

10.3 Reference to Agreement Number. Applicant must include a reference to Agreement number 10-00759DCA in any notice to Utility and when paying any invoice.

10.4 Notice to Utility's Legal Department. For all notices given by Applicant to Utility under Section 2.1 or Section 5, Applicant must also send a copy of the notice to:

NV Energy
Attn: Legal Department
6226 West Sahara Avenue, M/S 3A
Las Vegas, NV 89146
FAX: (702) 402-2069

11. MISCELLANEOUS PROVISIONS

11.1 Limitation of Damages. Notwithstanding anything to the contrary, Utility is not liable to Applicant for any consequential, indirect, exemplary or incidental damages, including, but not limited to, damages based upon delay, lost revenues or profits.

11.2 No Obligation to Provide Electric Service to Development. Utility does not have an obligation to provide electric service to Applicant's Development until after (A) Applicant resolves all conflicts between the Development and Utility's transmission and distribution facilities, at Applicant's Cost and to Utility's satisfaction, (B) Applicant resolves all conflicts between the Development and Utility's Property Rights, at Applicant's Cost and to Utility's satisfaction, (C) pays the Estimated Cost in accordance with Section 4, and (D) Applicant satisfies all of its other obligations under this Agreement. If Applicant requires electric service for its Development and Utility must modify its system in order to provide the requested electric service, Applicant must follow Utility's procedures and enter into a separate contract for that electric service.

11.3 No Waiver. The failure of either Party to enforce any of the provisions of the Agreement at any time, or to require performance by the other Party of any of the provisions of the Agreement at any time, will not be a waiver of any provisions, nor in any way affect the validity of the Agreement, or the right of any Party to enforce each and every provision.

11.4 Amendments. Any changes, modifications, or amendments to this Agreement are not enforceable unless consented to in writing by the Parties and executed with the same formality as this Agreement.

11.5 Counterparts. The Parties may execute this Agreement in counterparts. Each of these counterparts, when signed and delivered, is deemed an original and, taken together, constitutes one and the same instrument. A facsimile or email copy of a signature has the same legal effect as an originally-drawn signature.

11.6 Assignment. This Agreement is binding upon the successors and assigns of both Parties effective upon receipt of written consent of the non-assigning Party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement with written notice, but without the consent of the other Party, to any successor corporation in any merger. Applicant's

successor or assignee must agree in writing to assume all obligations and liabilities under this Agreement.

11.7 Choice of Law and Venue. This Agreement is governed by and will be construed in accordance with the laws of the State of Nevada, without giving effect to its choice or conflicts of laws provisions. All actions that are beyond the scope of the Commission's jurisdiction must be initiated in the courts of Clark County, Nevada or the federal district court with jurisdiction over Clark County, Nevada. Applicant agrees it will not initiate an action against Utility in any other jurisdiction.

11.8 Discretion. Reference in this Agreement to the "discretion" of a Party means the Party's sole and absolute discretion. This discretion is not subject to any external standard, including, but not limited to, any standard of custom, "good faith" or reasonableness.

11.9 No Third-Party Beneficiaries. Nothing expressed or implied in this Agreement is intended, or should be construed, to confer upon or give any person or entity not a party to this Agreement any third-party beneficiary rights, interests, or remedies under or by reason of any term, provision, condition, undertaking, warranty, representation, or agreement contained in this Agreement.

11.10 Remedies. All rights and remedies of the Parties provided for in this Agreement will be cumulative and in addition to, and not in lieu of, any other available remedies at law, in equity, or otherwise.

11.11 Headings; Exhibits; Cross References. The headings or section titles contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement, nor should they be used to aid in any manner in the construction of this Agreement. All exhibits attached to this Agreement are incorporated into the Agreement by reference. All references in this Agreement to Sections, Subsections, and Exhibits are to Sections, Subsections, and Exhibits of or to this Agreement, unless otherwise specified. And, unless the context otherwise requires, the singular includes the plural and the plural includes the singular and the neuter includes feminine and masculine.

11.12 Severability. If any portion or provision of the Agreement is invalid, illegal, or unenforceable, or any event occurs that renders any portion or provision of the Agreement void, the other portions or provisions of the Agreement will remain valid and enforceable. Any void portion or provision will be deemed severed from the Agreement, and the balance of the Agreement will be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The Parties further agree to amend the Agreement to replace any stricken portion or provision with a valid provision that comes as close as possible to the intent of the stricken portion or provision.

11.13 Performance of Acts on Business Days. Any reference in this Agreement to time of day refers to local time in Nevada. All references to days in this Agreement refer to calendar days, unless stated otherwise. Any reference in this Agreement

to a "business day" refers to a day that is not a Saturday, Sunday or legal holiday (or observed as a legal holiday) for Nevada state governmental offices under the Nevada Revised Statutes. If the final date for payment of any amount or performance of any act required by this Agreement falls on a Saturday, Sunday or legal holiday, that payment is required to be made or act is required to be performed on the next business day.

11.14 Independent Contractors. Each Party is not and will not be deemed to be, for any purpose, the agent, representative, contractor or employee of the other by reason of this Agreement.

NEVADA POWER COMPANY
d/b/a NV Energy

By: _____
Herb Goforth
Exec, Tech Services and Support

Date: _____

CITY OF LAS VEGAS

By: _____
Oscar B. Goodman
Mayor

Date: _____

ATTEST:

By: _____
Beverly K. Bridges, MMC
City Clerk

Date: _____

APPROVED as to form:

By: John S. Ridilla
John S. Ridilla
Deputy City Attorney

Date: 7/20/10

DESIGN COST AGREEMENT

Exhibit A
Agreement Contacts

Utility (Nevada Power Company d/b/a NV Energy)	
Address	6226 W. Sahara Ave. Las Vegas, NV 89146
Mailing Address	P.O. Box 98910, M/S 10A Las Vegas, NV 89151-0001
Project Manager	Scott Kaufmann
Telephone	(702) 402-2236
Cellular Telephone	(775) 830-1466
FAX	(702) 402-5489
Email	SKaufmann@nvenergy.com

Applicant (City of Las Vegas, Department of Public Works)	
Address	420 North Fourth St. Las Vegas, Nevada 89101
Project Manager	Jeremy P. Leavitt, P.E.
Telephone	(702) 229-6278
Cellular Telephone	(702) 376-7098
FAX	(702) 464-2586
Email	jeleavitt@lasvegasnevada.gov

DESIGN COST AGREEMENT

Exhibit B
Estimated Cost

Description		Amount
Distribution Design Work		
Feeder Design	$	6,168.00
Land Services	$	1,023.00
Distribution Apparatus		
Distribution Steel Pole	$	24,176.00
Subtotal	**$**	**31,367.00**
15% Contingency	$	4,705.00
Distribution Subtotal	**$**	**36,072.00**
Substation and Civil Design Work		
Substation Physical Design	$	1,796.00
Substation Electrical Design	$	1,796.00
Civil Design	$	27,259.00
Civil Permitting	$	10,499.00
Land Services	$	1,635.00
Subtotal	**$**	**42,985.00**
15% Contingency	$	6,448.00
Substation and Civil Design Subtotal	**$**	**49,433.00**
Estimated Cost	**$**	**85,505.00**

City of Las Vegas Agenda Item No.: **60.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PUBLIC WORKS
DIRECTOR: JORGE CERVANTES ☒ **Consent** ☐ **Discussion**

SUBJECT:
Approval of First Supplemental Interlocal Contract LAS22O09 between the City of Las Vegas and the Clark County Regional Flood Control District (CCRFCD) to decrease construction funding in the amount of $4,050,000 and extend contract completion date to June 30, 2012 for the North and South Environmental Enhancement Areas at Floyd Lamb Park - Ward 6 (Ross)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The North and South Environmental Enhancement Areas at Floyd Lamb State Park are described in the 2008 Master Plan Update and identified in the Regional Flood Control District's Ten-Year Construction Program. The improvements shall consist of two (2) environmental enhancement areas, along with associated drainage collection facilities to collect the storm water flows along Racel Street. The improvements shall be funded through Clark County Regional Flood Control District funds. The Clark County Regional Flood Control District approved the First Interlocal Contract to reduce construction funding in the amount of $4,050,000, contract shall not exceed $26,500,000. Funding is being reduced to realign projected expenditures. The First Interlocal Contract also extends the project completion date to June 30, 2012 to allow for project completion. The Clark County Regional Flood Control District approved this contract at its June 10, 2010 Board meeting.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
First Supplemental Interlocal Contract LAS22O09

FIRST SUPPLEMENTAL INTERLOCAL CONTRACT

NORTH & SOUTH ENVIRONMENTAL ENHANCEMENT AREAS – FLOYD LAMB PARK

THIS FIRST SUPPLEMENTAL INTERLOCAL CONTRACT made and entered into as of the 10th day of June, 2010 by and between the Clark County Regional Flood Control District, hereinafter referred to as "DISTRICT" and the CITY OF LAS VEGAS, hereinafter referred to as "CITY".

WITNESSETH

WHEREAS, pursuant to Chapter 543 of the Nevada Revised Statutes, the DISTRICT may approve a project to design and construct flood control improvements; and

WHEREAS, the flood control improvements proposed herein are the same as those generally is identified in the 2008 Master Plan Update, as facilities BRDB 0000, BRDB 0031, BRDB 0032, BRDB 0033, RACO 0000, RACO 0001, RACO 0064, TSDB 0002, TSDB 0011, TSDB 0010 and TSDB 0012 hereinafter referred to as "PROJECT"; and

WHEREAS, the PROJECT is identified and shown on the attached Exhibit "A"; and

WHEREAS, the PROJECT has been approved by the DISTRICT on its annual Ten Year Construction Program; and

WHEREAS, the PROJECT has regional flood control significance and is located in the same hydrographic area as the Las Vegas Valley.

WHEREAS, the CITY desires to decrease construction and construction engineering funding and extend the project completion date.

NOW, THEREFORE, in consideration of the covenants, conditions, contracts, and promises of the parties hereto, the DISTRICT and the CITY agree to the following:

SECTION II - PROJECT COSTS, shall be revised to read as follows:

The DISTRICT agrees to fund project costs within the limits specified below:

1. Construction Management at a cost not to exceed $3,000,000.

2. Construction at a cost not to exceed $23,500,000.

3. The total cost of the contract shall not exceed $26,500,000, which includes all of the items described in the paragraphs above.

4. A written request must be made to the DISTRICT and approved by the Board to reallocate funds between phases of the project. No other approval by the Lead Entity is required.

5. A written request must be made to the DISTRICT and a Supplemental Interlocal Contract approved by the Board to increase the total cost of the contract noted above prior to payment of any additional funds.

SECTION III – GENERAL, paragraph 15 shall be revised to read as follows:

15. The items covered in SECTION II - PROJECT COSTS must be completed to the satisfaction of the DISTRICT prior to June 30, 2012. The DISTRICT may, at any time thereafter, grant extensions or terminate this Contract after thirty (30) days notice.

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IN WITNESS WHEREOF, the Parties have caused this First Supplemental Interlocal Contract to be executed by their duly authorized representatives the day and year first above written.

Date of Council Action

_____

Date of District Action

June 10, 2010

City of Las Vegas

By: _____
Oscar B. Goodman, Mayor

Regional Flood Control District

By: Lawrence L Brown III
LAWRENCE L. BROWN, III,
Chairman

Attest

By: _____
Beverly K. Bridges, MMC
City Clerk

Attest

By: Carolyn Frazier
Carolyn Frazier
Secretary to the Board

Approved as to form

By: John S. Ridilla 6/25/10
Deputy City Attorney Date
John S. Ridilla
Deputy City Attorney

Approved as to Form

By: Chr Figgins 6/16/10
Christopher Figgins Date
Chief Deputy District Attorney

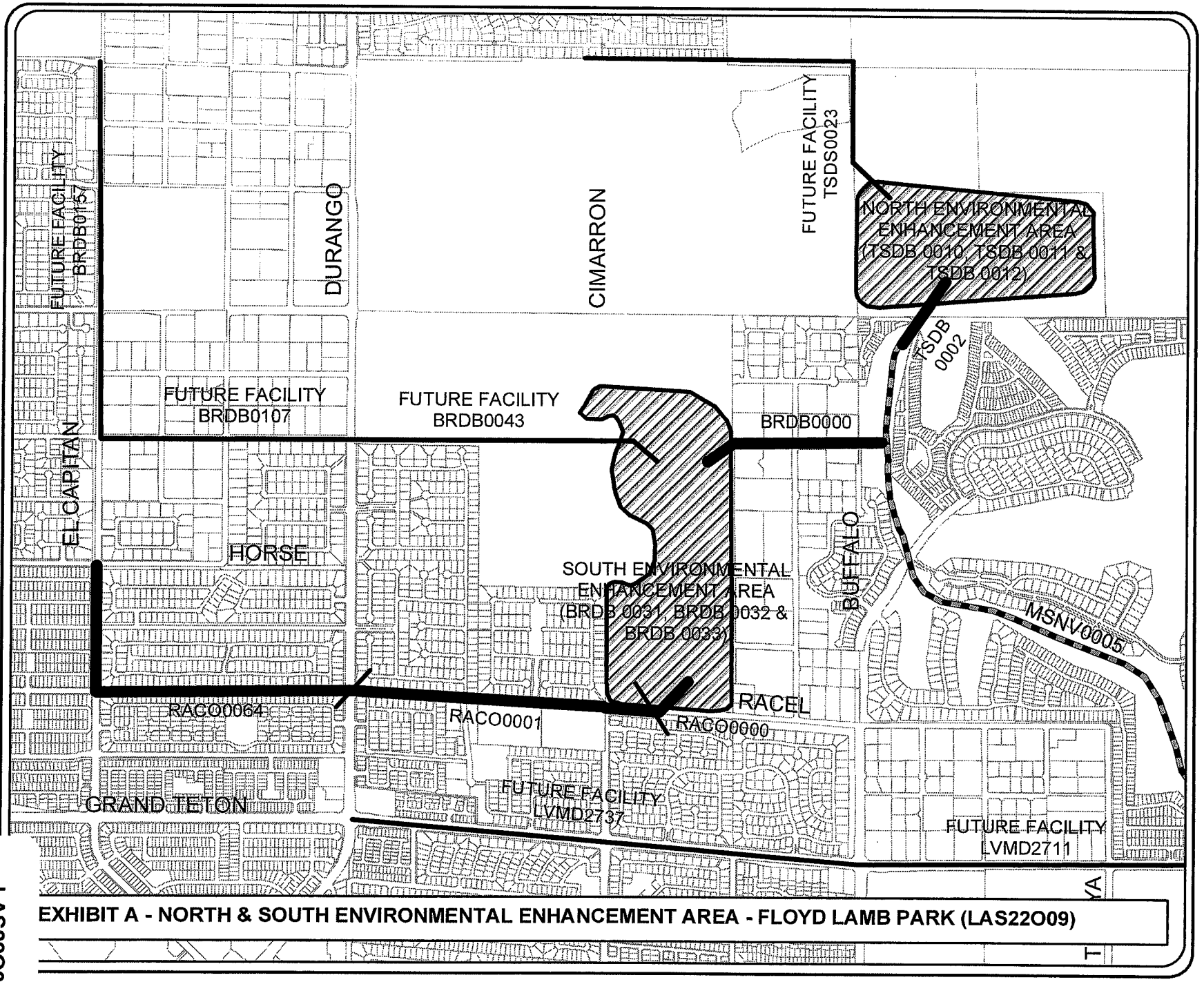


EXHIBIT A - NORTH & SOUTH ENVIRONMENTAL ENHANCEMENT AREA - FLOYD LAMB PARK (LAS22O09)

LAS22O09

...portEngineering_Planning\Flood\ARCVIEW\CCRFCD\Exhibit A - North & South Environmental Enhancement Area - Floyd Lamb Park (LAS22O09)

Due to continuous development activity this map is for reference only.

0 780 1,560 Feet

City of Las Vegas Agenda Item No.: **61.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: NEIGHBORHOOD SERVICES
DIRECTOR: STEPHEN K. HARSIN ☒ **Consent** ☐ **Discussion**

SUBJECT:
RESOLUTIONS:

R-55-2010 - Approval of a Resolution that directs the State Housing Division to reserve $37,401,358.71 in State Private Activity Bond Volume Cap for future affordable housing development projects within the City of Las Vegas - All Wards

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The City is reserving $37,401,358.71 of 2010 Private Activity Bonds Volume Cap allocation for future affordable housing development projects in the City of Las Vegas (future requests will be brought before City Council for action).

RECOMMENDATION:
Staff recommends that the City Council approve the Resolution and authorizes the Mayor to sign the agreements upon approval as to form by the City Attorney.

BACKUP DOCUMENTATION:
Resolution No. R-55-2010

RESOLUTION NO. R-_____

WHEREAS, pursuant to the provisions of Ch. 348A of Nevada Revised Statutes and Ch. 348A of the Nevada Administrative Code ("NAC"), the City of Las Vegas, Nevada (the "City"), believes it has been or will be allocated tax-exempt private activity bond volume cap for calendar year 2010 in the amount of $29,860,615.17 (the "2010 Volume Cap"); and

WHEREAS, the City, by the adoption of a Resolution on August 5, 2009 (the "2009 Resolution"), requested that $7,540,743.54 of the volume cap allocated to the City in the calendar year 2009 (the "Undesignated 2009 Volume Cap") be transferred to the Housing Division (the "Division") of the Department of Business and Industry (the "Department") of the State of Nevada (the "State") to be used for multifamily rental projects located in the City which are designated by the City in the future (however, to the extent that the Undesignated 2009 Volume Cap has not been so used by December 31, 2011, the City requests that the Division utilize it for any projects for which it can legally be used located in the City or elsewhere in the State of Nevada); and

WHEREAS the City desires to allocate the 2010 Volume Cap; and

WHEREAS the City desires to prevent the 2010 Volume Cap from reverting to the State with the adoption of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAS VEGAS, NEVADA:

Section 1. The City hereby transfers all of its 2010 Volume Cap (whether the amount is $29,860,615.17, or more or less than that figure) to the Director of the Department with a request that the Director transfer the 2010 Volume Cap to the Division, and hereby requests that the Division use the 2010 Volume Cap so transferred for future multifamily rental projects ("Projects") in the City designated by the City. The Division is authorized to determine whether the City Volume Cap used for a particular Project is derived from Undesignated 2009 Volume Cap or 2010 Volume Cap, in a manner consistent with the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder, to maximize use of private activity volume cap in the State that might otherwise expire. Further, the Division may exchange the City Volume Cap allocated in this

Resolution for other private activity volume cap in a like amount to optimize the use of private activity volume cap that might otherwise expire under federal law.

Section 2. If any of the volume cap described in Section 1 is allocated to a Project (or Projects) in the City, such allocation is subject to the condition that the Project sponsor executes an agreement in substantially the form attached hereto as Exhibit A.

Section 3. To the extent that the Undesignated 2009 Volume Cap has not been so used for Projects by December 31, 2011, the City requests that the Division utilize the Undesignated 2009 Volume Cap for any projects for which it can legally be used located in the City or elsewhere in the State of Nevada. To the extent that the 2010 Volume Cap has not been so used for Projects by December 31, 2012, the City requests that the Division utilize the 2010 Volume Cap for any projects for which it can legally be used located in the City or elsewhere in the State of Nevada.

Section 4. Pursuant to Section 348A.220 of NAC, the City hereby certifies that it has used $-0- of its allocation for calendar year 2010, and that it intends to use (by the transfers as herein provided) all of the 2010 Volume Cap.

Section 5. The Mayor and City Clerk are hereby authorized to execute and deliver on behalf of the City, an Agreement with the applicable sponsor of a Project approved by the Council in substantially the form attached hereto as Exhibit A.

Section 6. Pursuant to Ch. 348A of NRS, the Director of the Department may communicate regarding this Resolution with Leonard Dixon of the City by telephone at (702) 229-2120 or e-mail, at LDixon@LasVegasNevada.gov, or by mail at Leonard Dixon, Department of Neighborhood Services, City of Las Vegas, 400 Stewart, LasVegas, NV 89101. Mr. Dixon shall inform the Director in writing as soon as possible after the occurrence or non-occurrence of the terms and conditions specified in Section 2.

Section 7. Nothing in this Resolution obligates the City to issue bonds for any particular project or to grant approvals for a project or constitutes a representation that such bonds will be issued, that such projects will be approved, that any of the City Volume Cap other than the amounts outlined in Section 1 will be made available for any particular project.

Section 8. Allocation of the City Volume Cap to any Project does not guarantee that the Division will be able to market and/or sell these bonds. In the event that the bonds are not sold, the City is not responsible for reimbursing the Project sponsor for expenses incurred in the Project sponsor's preparation and submission of an application to the State or the City. Additionally, allocation of the City Volume Cap to any Project does not guarantee an award of federal funds by the City as each federal program has different application submission criteria.

Section 9. This Resolution may be amended or repealed at any time by the City at its sole discretion before bonds are issued for the use the City Volume Cap described herein. After such bonds are issued, this Resolution may not be amended or repealed in such a manner as to change the allocation of the City Volume Cap to the bonds which have been issued.

Section 10. This Resolution shall be effective upon its passage and approval.

PASSED, ADOPTED AND APPROVED this 18th day of August, 2010.

(SEAL)

Oscar B. Goodman, Mayor Date

Attest:

Beverly K. Bridges, MMC Date
City Clerk

Approved as to form:

Robert S. Sylvain 7-28-10
Robert S. Sylvain Date
Deputy City Attorney

EXHIBIT A

AGREEMENT

This Agreement is entered into on this ____ day of _____, _____ between the City of Las Vegas, Nevada (the City) and _____ (the Sponsor), of that certain affordable rental housing project known as the _____ (the Project):

RECITALS

WHEREAS, the Sponsor has submitted an application to the City for allocation of a part of the City's private activity bond volume cap (the "Volume Cap") in order for the Sponsor to finance the Project; and

WHEREAS, the City desires to allocate a portion of its Volume Cap to the Project; and

WHEREAS, in so allocating all or a portion of its Volume Cap, the City is relying on representations made by the Sponsor in its application to the City with respect to the nature of the Project and other matters.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND AGREEMENTS CONTAINED HEREIN, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. The City will, as provided in the resolution adopted by the City Council of the City (the "Resolution"), allocate a portion of the Volume Cap to the Project under the conditions and for the term provided in the Resolution. Such allocation of the Volume Cap is based on the representations contained in the Sponsor's application as to the nature of the Project and other matters stated in that application.

Section 2. The Sponsor agrees to provide incremental progress reports, at six-week intervals if the Project is a rehabilitation Project and at three-month intervals if the Project is a new construction project.

Section 3. The Sponsor agrees not to make any change in the Project or in any other of the items described in its application without obtaining consent of the Director of the Neighborhood Services Department of the City or his designee.

Section 4. This Agreement shall be effective on the date of its execution and remain in effect until the bonds which use the Volume Cap allocation described herein have been paid in full.

Section 5. This Agreement does not provide any City endorsement of the Project or any City representation as to the Project or the issuance of bonds for the Project, other than an allocation of the Volume Cap as provided in the Resolution. It is understood that the Volume Cap

will be transferred to the State of Nevada, and that the State of Nevada in its sole discretion will determine whether to finance the Project with the issuance of bonds. Other than the allocation of the Volume Cap mentioned above, this Agreement in no way binds the City to the Project, and prior to the issuance of bonds which use this Volume Cap, the City may, in its sole discretion, amend or repeal the Resolution; but after the issuance of bonds which provide for this Volume Cap, the City will not amend the Resolution in a manner which changes the allocation of Volume Cap to the bonds which have been issued.

Section 6. Allocation of City bonds to any project does not guarantee that the Nevada State Housing Division will be able to market and/or sell these bonds. In the event that the bonds are not sold, the City is not responsible for reimbursing applicant for expenses incurred in the application's preparation and submission to the State. Additionally, allocation of City bonds to any project does not guarantee an award of federal funds by the City as each federal program has different application submission criteria.

Section 7. In the event the Sponsor breaches this Agreement, the City may sue for specific performance hereof by the Sponsor, may pursue legal action against the Sponsor, may use whatever other remedies may be available to it at law or in equity or may pursue any combination thereof. The Sponsor agrees to pay any of the City's attorney fees incurred in enforcing the terms of this Agreement. If bonds have been issued which rely on the allocation of the Volume Cap made by the Resolution, a breach of this Agreement will not result in forfeiture of the Volume Cap which has been used for those bonds, but may, at the option of the City, result in forfeiture of any part of the Volume Cap described herein which has not been used by the issuance of bonds.

Section 8. No person is a third party beneficiary of this Agreement and nothing herein requires that the City enforce the provisions hereof; however, any failure to enforce or delay in enforcing the provisions hereof does not constitute a waiver of the City's right to enforce this Agreement. Any single or partial enforcement of any provision hereof does not preclude any other enforcement or the exercise of any other right, power or remedy the City may have.

Section 9. The persons signing this Agreement represent that they have the power to do so on behalf of the party for which they are signing.

Section 10. Disclosure of Principals: Pursuant to Resolution R-105-99 adopted by the Las Vegas City Council effective October 1, 1999, Sponsor warrants that it has disclosed, on the form attached hereto as Exhibit A, all principals, including partners or directors of Sponsor, as well as all persons and entities holding more than a one percent (1%) interest in Sponsor, or any principal of Sponsor. Throughout the term of the Agreement, Sponsor shall notify City in writing of any material change in the above disclosure within fifteen (15) days of any such change.

...

...

...

...

IN WITNESS WHEREOF, the City and the Sponsor have caused this Agreement to be signed as of the day and year mentioned above.

CITY OF LAS VEGAS, NEVADA

(SEAL)

By: _____
Mayor

_____
City Clerk

_____
Sponsor
By: _____

Approved as to form:

_____
Deputy City Attorney Date

EXHIBIT A
DISCLOSURES OF PRINCIPALS

Pursuant to Resolution 79-99 adopted by the City Council effective October 1, 1999, _____ warrants that it has disclosed, all principals, including partners of _____, as well as all persons and entities holding more than a 1% interest in _____, or any principal of _____. Throughout the term hereof, _____ shall notify City in writing of any material change in the above disclosure within 15 days of any such change.

All persons and entities holding more than 1% interest in _____ or any principal of _____ are the following:

FULL NAME	BUSINESS ADDRESS	BUSINESS PHONE
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Continue list until full and complete disclosure is made.

I certify under penalty of perjury, that the foregoing list is full and complete.

_____

By: _____
"Sponsor"

Subscribed and sworn to before me this

_____Day of _____, 20___

_____
Notary Public

City of Las Vegas Agenda Item No.: **62.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY MANAGER
DIRECTOR: ELIZABETH N. FRETWELL ☐ **Consent** ☒ **Discussion**

SUBJECT:
ADMINISTRATIVE:

Report and possible action on the creation of a foreclosure prevention website www.StopNVforeclosures.org, which provides outreach resources to troubled borrowers in an effort to help avoid foreclosure - All Wards

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
As part of the Foreclosure Prevention Partnership Program, the Department of Neighborhood Services partnered with Fannie Mae and collaborated with the Department of Information Technologies along with several local non-profit counseling agencies and HUD. Through this collaboration, a website has been created and launched to the community that provides outreach resources to troubled borrowers in an effort to help them avoid foreclosure. Fannie Mae provided the city of Las Vegas/Neighborhood Services a $75,000 grant to finance the website's development. The city of Las Vegas Foreclosure Prevention Partnership Program (FPPP) brings together government agencies, housing counseling agencies, lenders and non-profit organizations.

RECOMMENDATION:
Receive report and possible direction to staff.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **63.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY MANAGER
DIRECTOR: ELIZABETH N. FRETWELL ☐ **Consent** ☒ **Discussion**

SUBJECT:
ADMINISTRATIVE:

Discussion and possible action on the recommendation from the Senior Citizens Advisory Board to rename the Downtown Senior Services Center, located at 302 South 9th Street, to the Mel C. Kalagian, Sr. Downtown Senior Services Center – Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The City of Las Vegas acquired the property in 2002, and began rehabilitation of the building in 2003 with funding from the Community Development Block Grant Program, in the amount of $5,860,000, which was used to create a senior services center that preserved the historic integrity of the building and site. The Downtown Senior Services Center (DSSC) officially opened in April 2006 and is currently home to the Senior Law Project and the Jude 22 Senior Food Program.

The Kalagian family proposed renaming the facility, which was later recommended for approval by the Senior Citizens Advisory Board, to the Mel C. Kalagian, Sr. Downtown Senior Services Center. Staff is developing a cost estimate which will be paid by Mel Kalagian, Jr.

RECOMMENDATION:
Approval

BACKUP DOCUMENTATION:
1. Las Vegas Senior Citizens Advisory Board Recommendation
2. Request to the City Manager from the Kalagian Family
3. Picture of the Downtown Senior Services Center signage
4. Contract between the City of Las Vegas and Mel Kalagian, Jr. for the costs of sign modification

LAS VEGAS CITY COUNCIL

MAYOR
OSCAR B. GOODMAN

GARY REESE
(MAYOR PRO-TEM)
STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW
STAVROS S. ANTHONY

LAS VEGAS SENIOR CITIZENS ADVISORY BOARD

LANCE MORAN, CHAIR
BETTY EVANS, VICE CHAIR
PATTI BROWN
FRAN DREWREY
MICKEY L. MOORE
JEAN ZORN
MEL HENKIN
BOB GOLDSTEIN

July 29, 2010

Elizabeth N. Fretwell
City Manager
400 Stewart Avenue
Las Vegas, NV 89101

Dear Ms. Fretwell:

It is with great pleasure this letter is being submitted in support of the proposed renaming of the Downtown Senior Services Center in honor of Mel Kalagian, Sr. During our July meeting, the Senior Citizens Advisory Board voted for this agenda item after listening to an impassioned presentation from the Kalagian family.

We thank the family for bringing this issue to our attention. Mr. Kalagian, Sr. often attended our board meetings and contributed to our discussions. Our members admired the work he accomplished over the years, serving seniors of this community. The renaming of Downtown Senior Services Center in his honor would pay tribute to the hours spent helping hundreds of seniors who needed special assistance with a variety of issues.

We ask for your consideration on this request.

Sincerely,

Lance Moran
Chair
Las Vegas Senior Citizens Advisory Board

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.2330
FAX 702.382-3045
TTY 702.386.9108
www.lasvegasnevada.gov

ROHLFING & KALAGIAN, LLP

211 East Ocean Boulevard, Suite 420
Long Beach, CA 90802
TELEPHONE: (562)437-7006
FACSIMILE: (562)432-2935

WRITER'S E-MAIL: rk_stlaw@speakeasy.net

LAWRENCE D. ROHLFING
MARC V. KALAGIAN

DENISE BOURGEOIS HALEY
YOUNG CHO
BRIAN C. SHAPIRO, M.A.
LAURA LACKEY-KRANK
STEVEN G. ROSALES

RONALD L. SIEVERS, of counsel
BARBARA GEDANKE, retired

AFFILIATED OFFICES:

Law Offices of Lawrence D. Rohlfing
12631 East Imperial Highway, Suite C-115
Santa Fe Springs, CA 90670
TELEPHONE: (562) 868-5886
FACSIMILE: (562) 868-5491
E-MAIL rohlfing_office@speakeasy.net

PLEASE RESPOND TO
LONG BEACH

February 22, 2010

Elizabeth N. Fretwell
City Manager
City Hall
400 Stewart Avenue, 8th Floor
Las Vegas, NV 89101

Re: Mel C. Kalagian, Sr.

Dear Ms. Fretwell:

I write this letter to you on behalf of our family. We would like the City to consider honoring our father in what we consider to be the most meaningful and appropriate manner. We are requesting the City's consideration of naming a senior housing development or senior center in honor of our father/husband. As you may be aware, our father passed away on March 28, 2008. During his over 30 years of service to the City of Las Vegas, our father was a devoted advocate and a source of endless support for seniors. In many ways, it is difficult to put into words how our father tirelessly served his community and what this service meant to him and the people he served. However, it is our hope to give the City a complete portrait of what Mel Kalagian's service meant to the seniors of this community and what he so passionately believed in.

To put it simply, Mel Kalagian was a man who believed in service. This service minded dedication was aimed at assisting the seniors of Las Vegas with their myriad of unique needs. He went out of his way to give support to seniors, be it to help them move, serve them meals, drive them to appointments, represent them before various agencies, refer them to agencies, to address their specific problems, or simply talk to them to calm their nerves. Our father served under Mayors Ron Lurie, Jan Jones, and Oscar Goodman. While serving under these Mayors, he was an integral part of solving issues and addressing concerns that seniors brought to his attention. Any issues or concerns that were given to Mel Kalagian were left with the peace of mind that he was the person to remedy the situation. Whenever a senior would call City Hall with a question or concern, they were continuously referred to Mel. Our father was available to take a senior's call at anytime of the day, and would frequently take calls even at home. A question or concern was never ignored or considered as just an issue to address later. Mel handled each question or concern with empathy, care, and generosity of spirit.

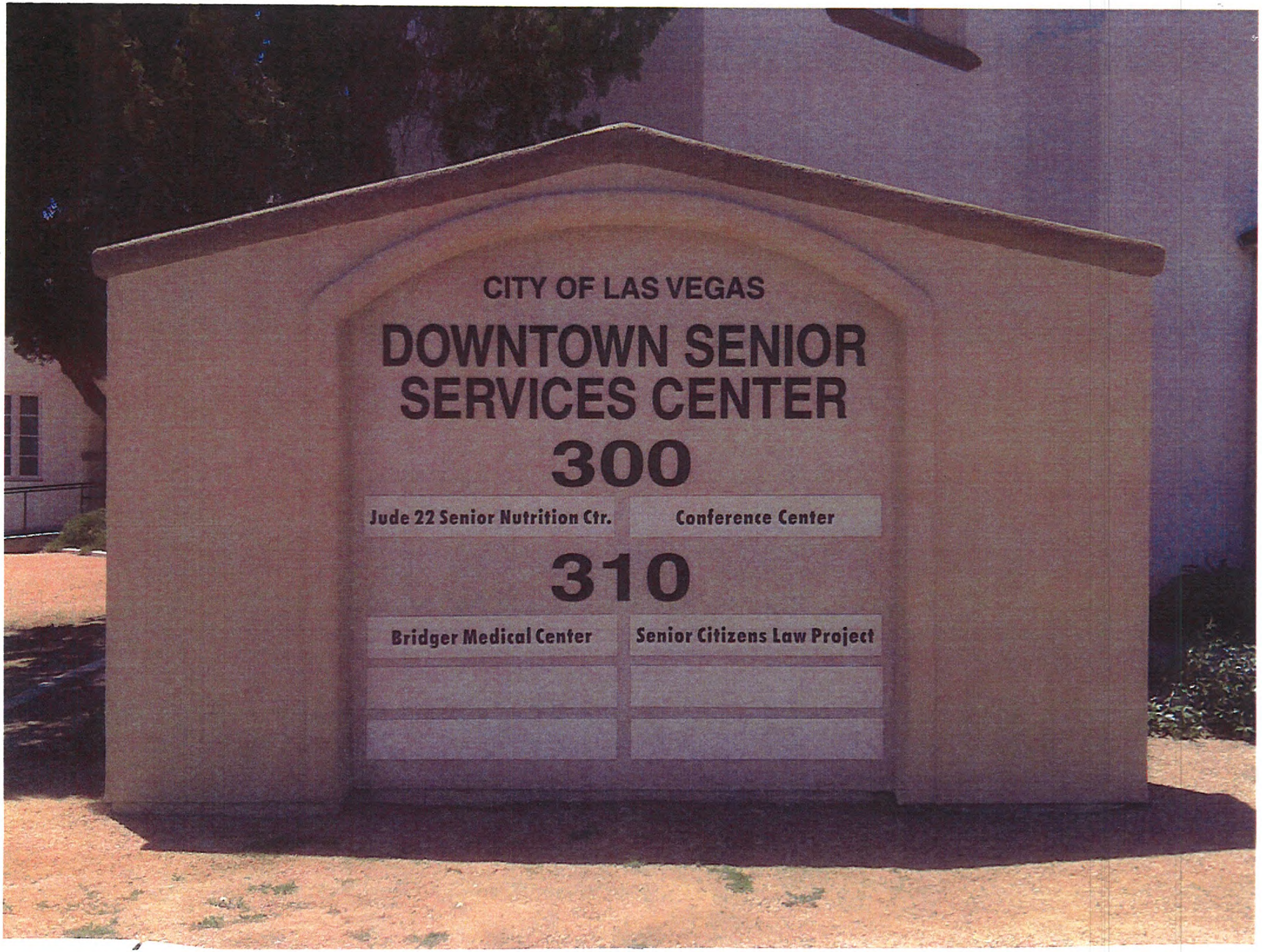
Many seniors felt that Mel was their committed ally who they could call upon to help resolve their concerns. His dedication to meeting the needs of the seniors in his community knew no limits. He was a true public servant. The community often recognized his unwavering dedication to the seniors of Las Vegas. Mel received many accolades for his service to the City of Las Vegas, including Employee of the Month and Citizen of the Month. We will forever remember our father as a man who willingly dedicated his time and energy to helping others. He was committed to helping this extraordinary group of people live their life with respect and dignity.

It is with the above-mentioned in mind, that we, as his family, feel that it would be befitting of his dedication and commitment to service and to honor his memory to name a senior housing project or senior center after him. We appreciate your consideration of this request.

Very truly yours,

Marc V. Kalagian
For the Kalagian Family

MVK:tnk
cc: Mayor Oscar Goodman
City Council


CITY OF LAS VEGAS
DOWNTOWN SENIOR SERVICES CENTER
300
Jude 22 Senior Nutrition Ctr.
Conference Center
310
Bridger Medical Center
Senior Citizens Law Project

CITY OF LAS VEGAS DOWNTOWN SERVICES CENTER DONATION AGREEMENT

This City of Las Vegas Downtown Services Center Donation Agreement (the "Agreement") is executed by and between the City of Las Vegas, a political subdivision of the State of Nevada (the "City"), and Mel Kalagian, Jr. on this 6 day of August, 2010.

RECITALS

A. Mel Kalagian's father, Mel Kalagian, Sr. ("Mr. Kalagian") was employed by the City for over thirty years, serving under Mayors Ron Lurie, Jan Jones and Oscar Goodman. Not only was Mr. Kalagian's work devoted to assisting the senior population of the City of Las Vegas, he spent his off hours supporting the senior population of the City.

B. This tireless senior advocate was laid to rest in 2008, and his family requested that the City honor his lifelong devotion to the City and its senior population by naming an appropriate municipal building in Mr. Kalagian's honor. Mel Kalagian, Jr. has indicated that he, on behalf of the Kalagian family, will donate the money necessary to erect a marquee sign upon a building of the City's choosing.

C. The Las Vegas Senior Citizen's Advisory Board heard this request at its July meeting, and unanimously voted to recommend that the City Council rename the City of Las Vegas Downtown Senior Services Center in Mr. Kalagian's honor.

D. Based upon Mr. Kalagian's devotion to his work and the senior community in Las Vegas, the City desires to honor this man by accepting the recommendation of the Senior Citizen's Advisory Board by renaming the Las Vegas Downtown Senior Services Center the "Mel C. Kalagian Sr. Downtown Senior Services Center."

NOW THEREFORE, based upon good and sufficient consideration as provided herein, both parties have mutually agreed as follows:

AGREEMENT

1. **Erection of Marquee Sign**. As soon as reasonably practical, the City shall contract with a sign company of the City's choosing to commence design and installation of a new marquee sign at the City of Las Vegas Downtown Services Center to read "Mel C. Kalagian, Sr. Downtown Senior Services Center." The location of this marquee sign shall be at the discretion of the City, but in a location that is visible from adjacent public right-of-way. The installation of this sign shall comply with all relevant provisions of NRS 338.

Mel Kalagian, Jr. acknowledges and understands that this particular structure will be named as indicated herein, and while the City plans to utilize this structure into the foreseeable future, Mel Kalagian, Jr. also understands that if this structure is demolished or destroyed by fire or other unforeseeable disaster, the City is not obligated to rename the new structure as indicated herein.

2. **Reimbursement of the City; Deposit**. Mel Kalagian, Jr. shall reimburse the City for the entire cost of design, materials and labor for the construction of the new marquee sign (the

"Work"). Prior to the commencement of installation of the new sign, Mel Kalagian, Jr. shall deliver a sum of money by check equal to the contract price of the Work to the City of Las Vegas.

Upon the conclusion of the sign installation, if the amount of money deposited does not completely reimburse the City for the amount paid to the sign company for the Work, Mel Kalagian, Jr. shall deliver a difference between the money deposited and the actual cost of the work within seven calendar days from the date that the City notifies Mel Kalagian, Jr. of a deficiency.

3. **Default; Termination.** If either party to this Agreement does not perform as obligated, the non-defaulting party must notify the party in default of such default in writing. If the defaulting party does not cure the default within seven calendar days from the post-marked date of the notice of default, the non-defaulting party may declare the defaulting party in breach and: 1) avail itself of any remedy available to it pursuant to Nevada law; and/or 2) terminate this Agreement in its entirety. If the City is required to terminate this Agreement after completion of the Work based upon a breach by Mel Kalagian, Jr., Mel Kalagian Jr. shall pay liquidated damages in the amount of two thousand dollars for the removal of the sign erected and restoration of the prior sign.

4. **Choice of Law; Venue.** This agreement shall be interpreted under the laws of the State of Nevada. Any litigation under this agreement shall be resolved in the trial courts of Clark County, State of Nevada.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above

MEL KALAGIAN, JR.

CITY OF LAS VEGAS

By: _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY BRIDGES, CMC, City Clerk

APPROVED AS TO FORM:

_____
JAMES B. LEWIS, DEPUTY CITY ATTORNEY

City of Las Vegas Agenda Item No.: **64.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY MANAGER
DIRECTOR: ELIZABETH N. FRETWELL ☐ **Consent** ☒ **Discussion**

SUBJECT:
ADMINISTRATIVE:

Report and possible action regarding the status of the Clean Water Coalition - All Wards

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The Clean Water Coalition (CWC) was established in 2002 under NRS 277 to administer and implement the System Conveyance and Operations Program (SCOP). Because of reduction in wastewater flows due to the slowdown of development, improvements in lake water quality, and changes in technology to treat wastewater, the SCOP project was suspended by the CWC Board at their February 23, 2010 meeting until 2012, at which time a determination would be made on the future of the system. Funding of this governing body is through Sewer User surcharge fees of $7 million annually from all member agencies, including the City of Las Vegas.

The future role of the CWC is now being examined to see if there is still a need for this governing body. It has been suggested that the member agencies provide an official position through their City Council or County Commission on the future of the CWC.

RECOMMENDATION:
Receive report and direct staff as appropriate on the Clean Water Coalition

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **65.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: ADMINISTRATIVE SERVICES
DIRECTOR: TED J. OLIVAS ☐ **Consent** ☒ **Discussion**

SUBJECT:
Discussion and possible action on the proposed legislative package that will be submitted to the Legislative Counsel Bureau on behalf of the City of Las Vegas for the 2011 Legislative Session - All Wards

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Pursuant to Nevada Revised Statutes 218D.205, the city council of a city whose population is 100,000 or more shall not request the preparation of more than three (3) legislative measures for a regular session.

RECOMMENDATION:
It is recommended that the City Council approve the proposed legislative package and direct the City Manager to submit the approved bill draft requests to the Legislative Counsel Bureau.

BACKUP DOCUMENTATION:
None

City of Las Vegas Agenda Item No.: **66.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☐ **Consent** ☒ **Discussion**

SUBJECT:
Discussion and possible action regarding complaint seeking disciplinary action against James Cooper d/b/a The Amazing Art Company, 3814 Meadows Lane, Las Vegas, Clark County, Nevada, for violations of the Las Vegas Municipal Code - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
James Cooper d/b/a The Amazing Art Company holds Retail Gallery License A48-00227-1-147116. On February 12, 2009, and June 17, 2010, James Cooper sold graffiti implements in the form of a 15mm silver paint marker and four cans of spray paint to underage decoys without the consent of the parent or guardian of such minors. As a result of these repeated offenses, it is alleged that James Cooper d/b/a The Amazing Art Company has operated in an illegal manner, contrary to law and in violation of LVMC 6.02.330, and 10.48.090.

RECOMMENDATION:
That the City Council issue the Complaint for Disciplinary Action and set a date and time certain for hearing no later than 60 days from the date of approval of the complaint.

BACKUP DOCUMENTATION:
Complaint for Disciplinary Action

BEFORE THE CITY COUNCIL

OF THE CITY OF LAS VEGAS, NEVADA

* * *

IN THE MATTER OF:

DEPARTMENT OF FINANCE AND BUSINESS SERVICES on behalf of the CITY OF LAS VEGAS, NEVADA,

Petitioner,

vs.

JAMES COOPER d/b/a THE AMAZING ART COMPANY,

Respondent.

COMPLAINT FOR DISCIPLINARY ACTION

The DEPARTMENT OF FINANCE AND BUSINESS SERVICES, on behalf of the CITY OF LAS VEGAS, NEVADA (Department), Petitioner, brings this Complaint for Disciplinary Action against JAMES COOPER d/b/a THE AMAZING ART COMPANY, 3814 Meadows Lane, Las Vegas, Clark County, Nevada, Respondent, and states:

Respondent JAMES COOPER d/b/a THE AMAZING ART COMPANY holds Retail Gallery License A48-00227-1-147116 and engages in the retail sales of art and art supplies.

SUMMARY OF ALLEGATIONS

Respondent JAMES COOPER d/b/a THE AMAZING ART COMPANY operates a retail gallery selling art and art supplies. The business has been operated in an unlawful manner by creating a public and chronic nuisance in violation of the Las Vegas Municipal Code by selling graffiti implements to minors without the consent of the parent or guardian of such minors.

SALE OF GRAFFITI IMPLEMENTS TO MINORS

On February 12, 2009, a 17-year-old decoy, utilized by the Las Vegas Metropolitan Police Department, entered the premises of Respondent JAMES COOPER d/b/a THE AMAZING ART COMPANY and approached JAMES COOPER (COOPER). The underage

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400 E. Stewart Ave., 9th Floor
Las Vegas, Nevada 89101
702-229-6629

decoy asked to purchase a 15mm silver paint marker. COOPER sold the underage decoy the silver paint marker without requesting identification or inquiring about the underage decoy's age. COOPER was cited for furnishing a graffiti implement to a minor in violation of LVMC 10.48.090. On January 25, 2010, COOPER entered a plea to the citation by submitting the matter on the record. COOPER received a suspended sentence of 180 days in jail and forfeited bail in the amount of $300.

On June 17, 2010, a 17-year-old decoy, utilized by the Las Vegas Metropolitan Police Department, entered the premises of Respondent JAMES COOPER d/b/a THE AMAZING ART COMPANY and approached COOPER. The underage decoy informed COOPER that his parents had taken away his paint and asked to purchase spray paint. COOPER asked the underage decoy if he was working with the police or was a junior cadet. COOPER sold the underage decoy four cans of spray paint for the sum of $32. COOPER also gave the underage decoy a number of custom spray paint tips free of charge.

SUBSTANTIVE LAW

LVMC 6.02.330 provides [Unlawful Business Activity]:

> A licensee may be subject to disciplinary action by the City Council for good cause, which may, without limitation, include the following:
>
> . . . .
>
> (G) The premises on which the business is conducted do not satisfy local, state or federal law or regulations which pertain to the activity which is actually engaged in;
>
> (H) The business activity constitutes, promotes, causes, allows, fosters, aids, or otherwise enables a private nuisance, public nuisance or chronic nuisance, or has been or is being conducted in an unlawful, illegal or impermissible manner, including but not limited to causing, allowing, promoting, fostering, aiding, enabling, exercising deliberate ignorance towards or failing to abate a private nuisance, public nuisance or chronic nuisance; or
>
> (I) The licensee, any of its principals, their employees or those acting on their behalf failed to cooperate with the Director's efforts to enforce the provisions of this Code.

. . . .

. . . .

LVMC 6.02.350 provides [Acts and Omissions]:

> A licensee under this Title shall be subject to disciplinary action not only for acts or omissions done by such licensee but also for acts and omissions done by the principals, managers, agents, representatives, servants or employees of such licensee.

LVMC 10.48.060(C) defines a "Graffiti implement" as:

> "Graffiti implement" means any broad tipped indelible marker or aerosol paint container or other item that may be used to propel or apply fluid that is not soluble in water.

LVMC 10.48.060(E) defines a "Responsible adult" as:

> "Responsible adult" means a parent or legal guardian of a minor.

LVMC 10.48.090 [Graffiti Implements - Prohibition Against Furnishing to Minors] provides:

> No person, other than a responsible adult, shall sell, exchange, give, loan, or in any way furnish a graffiti implement to any minor without the consent of the minor's responsible adult.

STANDARD OF EVIDENCE

LVMC 6.88.090 provides:

> (A) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted.
>
> (B) The respondent shall have the right to call and examine witnesses on his own behalf, cross-examine opposing witnesses, introduce exhibits and evidence relevant to the issues of the case, and offer rebuttal evidence.
>
> (C) The respondent may be called and examined by the City.
>
> (D) The Clerk shall have the power to issue subpoenas for witnesses to appear to give testimony.

PENALTY

LVMC 6.02.360 provides:

> Upon a showing of good cause and in the discretion of the City Council, disciplinary action against a holder may take the form of cancellation, revocation, refusal to renew, suspension,

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702-229-6629

imposition of conditions or restrictions or civil fine in an amount not to exceed one thousand dollars for each day that the violation which forms the subject matter of the complaint that recommends such disciplinary action is demonstrated to have been in existence, or any combination of such actions, as the particular situation may require. The Council may also impose against the licensee the actual costs incurred, and a reasonable amount for attorney's fees, resulting from the imposition of disciplinary action. The disciplinary actions available in this Section shall be in addition to, and not exclusive of, any other civil or criminal remedy which otherwise might be available.

ALLEGATIONS

COUNT ONE

It is alleged that between February 17, 2009, and the present, Respondent JAMES COOPER d/b/a THE AMAZING ART COMPANY operated a business which constituted a public, private and chronic nuisance and which has been conducted in an unlawful, illegal and impermissible manner, to wit: furnishing graffiti implements to minors without the consent of the parent or legal guardian of such minors in violation of LVMC 10.48.090.

WHEREFORE, the Petitioner respectfully requests the City Council to:

A. Approve the Complaint for Disciplinary Action and order a disciplinary hearing at which the Respondent shall appear and show cause why the license that is the subject of this Complaint should not be suspended or revoked, or other disciplinary action taken; or

B. Grant such other and further relief as the Council deems appropriate.

DATED this 4th day of August, 2010.

RESPECTFULLY SUBMITTED:

By: _____
MARK R. VINCENT, Director
Finance and Business Services

BRADFORD R. JERBIC
City Attorney

By: _____
PHILIP R. BYRNES
Deputy City Attorney
Nevada Bar No. 166
400 Stewart Avenue, Ninth Floor
Las Vegas, NV 89101
Attorneys for CITY OF LAS VEGAS

City of Las Vegas Agenda Item No.: **67.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: OFFICE OF BUSINESS DEVELOPMENT
DIRECTOR: BILL ARENT ☐ **Consent** ☒ **Discussion**

SUBJECT:
RESOLUTIONS:

R-56-2010 - Discussion and possible action regarding a Resolution consenting to the undertakings of the City of Las Vegas Redevelopment Agency (RDA) in connection with the Commercial Visual Improvement Program (CVIP) Agreement between the RDA and Charleston Suites, LLC, (Owner) located at 401 East Charleston Boulevard (APN 139-34-410-138) to be in compliance with and in furtherance of the goals and objectives of the RDA - Ward 3 (Reese) [NOTE: This item is related to RDA Item 4 (RA-13-2010)]

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This is a related item to discussion and possible action regarding assisting Charleston Suites, LLC, with the cost of improvements to the property located at 401 East Charleston Boulevard. Approval will adopt findings that the CVIP Agreement is in compliance with and in furtherance of the goals and objectives of the RDA and the Redevelopment Plan.

RECOMMENDATION:
Approval.

BACKUP DOCUMENTATION:
1. Resolution No. R-56-2010
2. Before and After Photos
3. Site Map

RESOLUTION NO._____

RESOLUTION CONSENTING TO CERTAIN UNDERTAKINGS OF THE CITY OF LAS VEGAS REDEVELOPMENT AGENCY IN CONNECTION WITH THE COMMERCIAL VIP AGREEMENT ("CVIP") BETWEEN THE CITY OF LAS VEGAS REDEVELOPMENT AGENCY ("AGENCY") AND CHARLESTON SUITES, LLC ("OWNER") FOR THE PROJECT CONCERNING THE DEVELOPMENT OF IMPROVEMENTS TO REAL PROPERTY DESCRIBED AS APN 139-34-410-138.

WHEREAS, the City of Las Vegas Redevelopment Agency (the "Agency") adopted on March 5, 1986, that plan of redevelopment entitled, to-wit: the Redevelopment Plan for the Downtown Las Vegas Redevelopment Area pursuant to Ordinance 3218, which Redevelopment Plan has been subsequently amended on February 3, 1988, by Ordinance 3339; April 11, 1992, by Ordinance 3637, on November 4, 1996, by Ordinance 4036, on December 17, 2003, by Ordinance 5652 and on May 17, 2006, by Ordinance 5830 (the "Redevelopment Plan"); and

WHEREAS, the Redevelopment Plan identifies and designates an area within the corporate boundaries of the City of Las Vegas (the "Redevelopment Area") as in need of redevelopment in order to eliminate the environmental deficiencies and blight existing therein; and

WHEREAS, the Agency approved on October 20, 2004 the form for the Commercial VIP Agreement, the Commercial VIP Affidavit, and the Commercial VIP Program Manual, in order to provide funding to owners of commercial properties located within the Redevelopment Area for the purpose of making improvements to the exterior of such commercial properties; and

WHEREAS, CHARLESTON SUITES, LLC (the "OWNER") the owner of real property and improvements located at 401 EAST CHARLESTON BOULEVARD, and which parcel is commonly known as APN 139-34-410-138 (the "Site"); and

WHEREAS, CHARLESTON SUITES, LLC (the "CVIP PARTICIPANT") is the owner of the real property located at 401 EAST CHARLESTON BOULEVARD and is undertaking certain exterior improvements to the property in accordance with the Commercial VIP Program;

WHEREAS, the City Council of the City of Las Vegas has considered the findings that the development of improvements to a building, facilities, structures or other improvements to be located at the Site are of benefit to the Redevelopment Area or the immediate neighborhood in which the Redevelopment Area is located; and

WHEREAS, the City Council of the City of Las Vegas has considered the findings that no other reasonable means of financing the building, facilities or structures or other improvements on the Site are available; and

WHEREAS, the City Council of the City of Las Vegas has considered the undertakings of the Agency in connection with the Commercial VIP Agreement (the "Agreement" and attached hereto as Exhibit A), which provides for the contribution of funds to CHARLESTON SUITES, LLC for making physical, visual improvements to the building located on the Site, all as more fully set forth in the Agreement.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the City Council of the City of Las Vegas hereby finds and determines that the development of building, facilities, structures or other improvements on the Site are of benefit to the Redevelopment Area or the immediate neighborhood in which the Redevelopment Area is located; and

RESOLVED FURTHER, that the City Council of the City of Las Vegas hereby finds and determines there are no reasonable means of financing those building, facilities, structural or other improvements on the Site; and

RESOLVED FURTHER, that the City Council of the City of Las Vegas hereby consents to the undertakings of the Agency in connection with the Agreement with the "Owner" for the Project concerning the development on the Site.

THE FOREGOING RESOLUTION was passed, adopted and approved this _____ day of _____, 2010.

CITY OF LAS VEGAS

By_____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
CITY CLERK

APPROVED AS TO FORM:

M. Nielsen 7-27-10
_____
Date

CITY OF LAS VEGAS REDEVELOPMENT AGENCY
COMMERCIAL VISUAL IMPROVEMENT AGREEMENT
AND GRANT OF FACADE EASEMENT

THIS COMMERCIAL VISUAL IMPROVEMENT AGREEMENT AND GRANT OF FAÇADE EASEMENT (the "Agreement") is entered into this _____ day of _____, 2010, by and between the CITY OF LAS VEGAS REDEVELOPMENT AGENCY, a public body in the State of Nevada (hereinafter referred to as the "Agency") and CHARLESTON SUITES, LLC ("Owner")

Recitals

WHEREAS, the City of Las Vegas Redevelopment Agency ("Agency") administers and funds and is funded by the Agency for the purposes of improving the physical appearance of, and encouraging reinvestment in existing commercial structures; and

WHEREAS, in furtherance of the Redevelopment Plan (the "Redevelopment Plan") for the City of Las Vegas Redevelopment Area (the "Redevelopment Area"), the Agency approved a Commercial Visual Improvement Program (the "Commercial VIP") for the purpose of assisting property owners and their tenants in the rehabilitation of their buildings in order to revitalize and promote the economic stability of the Redevelopment Area; and

WHEREAS, pursuant to the implementation of the Commercial VIP, the Agency wishes to acquire an easement in gross on and upon the exterior walls of buildings (the "Facade Easement"), and a maintenance agreement for the Façade Easement Area (the "Building Façade Maintenance Agreement") located on that certain property, as more particularly described in the "Legal Description of the Site", attached hereto as Attachment " 1 " and incorporated herein, subject to the Owner's agreement to rehabilitate and improve the exterior walls and faces of the buildings on the Property, as described hereafter, in accordance with this Agreement and the Commercial VIP Guidelines (the "CVIP Guidelines"), incorporated herein by reference. The Property is located within or is contiguous to the boundaries of the redevelopment area; and

WHEREAS, in consideration for the acquisition of the Façade Easement, the Agency shall reimburse the Owner for any Pre-approved Qualified Exterior Improvements to a maximum of $50,000 and the Owner has provided a 100% matching cash contribution to the Agency's participation to ensure that a Owner has a vested interest in the completion of its site improvements and to ensure a high leveraging of public resources and such improvements are significant in character, as determined by the Agency; and

WHEREAS, the Owner desires to participate in the Commercial VIP pursuant to the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreement contained herein, the AGENCY and OWNER do hereby agree as follows:

SECTION 1: SCOPE OF AGREEMENT. The purpose of this agreement is to effectuate the Redevelopment Plan by contributing funds to that certain property, as more particularly described in the "Legal Description of the Site," attached hereto as Attachment " 1 " and incorporated herein by reference (the "Property" or "Site"). Implementation of this Agreement will further the goals and objectives of the Redevelopment Plan. This Agreement is subject to the provisions of the Redevelopment Plan which the City Council of the City of Las Vegas adopted on March 5, 1986, by Ordinance No. 3218, as amended.

Said Redevelopment Plan, as it now exists and as it may be subsequently amended, is incorporated herein by reference and made a part hereof as though fully set forth herein.

SECTION 2: PARTIES TO THE AGREEMENT. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of Nevada (NRS 279.382, et seq.). The principal office of the Agency is located at 400 Stewart Avenue, Las Vegas, Nevada, 89101. "Agency", as used in this Agreement, includes the City of Las Vegas Redevelopment Agency and any assignee of or successor to its rights, powers and responsibilities. The Owner warrants it has a valid and binding fee simple interest in (as defined hereinafter), the Site. Such ownership is demonstrated by Attachment " 2 ", "Proof of Ownership or Leasehold Interest", which is attached hereto and is incorporated herein by reference. "Owner", as used in this Agreement, includes not only the Owner as identified in the opening paragraph of this Agreement, but also any assignee of, or successor to, its rights, powers and responsibilities. The Agency and the Owner individually may be referred to as "party" or collectively as "parties" hereinafter.

SECTION 3: GRANT OF FAÇADE EASEMENT AND MAINTENANCE AGREEMENT. The Owner agrees to grant and convey and the Agency agrees to acquire and accept conveyance of a nonexclusive easement in gross (the "Facade Easement") on and upon that certain area described in Exhibit A of Attachment " 2 ", attached hereto and incorporated herein (the "Facade Easement Area"), subject to the following conditions:

a. The purchase price for the Facade Easement shall be an amount up to one hundred percent (100%) of the façade improvements, with a not to exceed maximum of fifty thousand dollars (**$50,000.00**) for "Pre-approved Qualified Exterior Improvements". Pre-approved Qualified Exterior Improvements which shall be considered for reimbursement includes the following: painting, cleaning, tuck pointing, façade repair/replacement, window repair/replacement, doorways, lighting, new or substantially rehabilitated signage, window tinting, new or replacement awnings, permanent landscaping, parking lots, and rear access renovations. All Pre-approved Qualified Exterior Improvements must be seen from the public right-of-way. The final purchase price will be determined when the project improvements are completed and Owner have submitted paid invoices from contractor(s) to the Agency.

b. Owner shall have provided Agency with all the documents required for participation in the CVIP, as set forth in the CVIP Guidelines in a form acceptable to and approved by the Agency, including without limitation an executed Facade Easement Deed, in substantially the form attached hereto as Attachment " 3 " and a Building Façade Maintenance Agreement, in substantially the form attached hereto as Attachment " 4 ".

c. Agency shall pay Owner the Purchase Price within forty-five (45) days after submission of paid invoices by Owner for the Project improvements, as defined in Section 5, and inspection and approval of such Improvements, in accordance with the CVIP Guidelines.

d. The Agency shall cause the Facade Easement Deed and the Building Façade Maintenance Agreement to be recorded against the Property promptly after completion of the Project improvements and upon payment of the Purchase Price by the Agency to the Owner. The Facade Easement and the Building Façade Maintenance Agreement shall commence upon such recordation and shall terminate on the date five (5) years thereafter.

e. Owner hereby agrees to maintain the Property, including without limitation the Facade Easement Area and the Project improvements to be constructed thereon, in accordance with

the maintenance provisions set forth in the Building Façade Maintenance Agreement, Attachment " 4 " attached hereto. Owner agrees that all material future changes to the exterior surfacing of the building(s) on the Property, including the Facade Easement Area, shall be subject to the approval of the Agency, which approval shall not be unreasonably withheld. No painting or exterior surfacing which, in the opinion and judgment of Agency, are inharmonious with the general surroundings shall be used on the exterior of any buildings now or to be located on the Property. This covenant shall run with the land for a period of five (5) years from the date the Facade Easement Deed is recorded against the Property. Owner shall be in default of this Agreement if Owner breaches any of the obligations under this Section 3 or Attachment " 4 ".

f. The Agency shall not use or exercise any right granted by the Facade Easement or do anything in a manner that will damage or impair the Facade Easement Area or the structural integrity of the building.

SECTION 4: OWNER'S REPURCHASE OPTION. The Agency hereby grants the option to repurchase the Facade Easement (the "Option") from the Agency pursuant to the following terms and conditions:

a. Option Term. The term of the Option (the "Option Term" or "Option") shall commence upon recordation of the Facade Easement Deed and shall continue until the termination date of the Facade Easement. In order to exercise the Option, the Owner and/or Tenant must give sixty (60) days written notice to the Agency that it wishes to exercise the Option.

b. Repurchase Price. If the Owner exercises the Option, the Agency agrees to sell and the Owner agrees to repurchase the Facade Easement in an amount equal to the unamortized portion of the Purchase Price amortized on a straight-line basis over five (5) years. The Amortization Schedule is set out in Exhibit C of Attachment " 3 ", attached hereto and incorporated herein (the "Amortization Schedule").

c. Title, Escrow and Closing Costs. The Owner shall each all title, escrow and closing costs and fees associated with the repurchase of the Facade Easement. The Owner and/or Tenant shall execute such documents and take such actions as may be necessary to effectuate such repurchase.

d. The Owner's right to this Option and the terms and conditions of this Option shall be contained in the Facade Easement Deed to be recorded on the Property.

SECTION 5: IMPROVEMENTS TO THE SITE AND PROJECT BUDGET. The Owner shall make improvements to the Site, or to the buildings, fixtures or appurtenances thereon, according to the Scope of Work and Tentative Schedule of Improvements, which is attached hereto as Attachment " 5 " and by this reference is made a part hereof. The Scope of Work and Tentative Schedule of Improvements shall provide a line item budget, acceptable to the Agency, for all work to be performed. Within 60 days of execution of this Agreement by the Agency, Owner agrees to commence, or cause the commencement of, rehabilitation and improvement of the Site, including the Façade Easement Area, pursuant to the plans and other documents submitted by Owner and approved by Agency in accordance with the CVIP Guidelines. Owner shall complete the improvements within 120 days of commencement of work. Additional time may be given upon approval of the Agency, which approval shall not be unreasonably withheld. The improvements to the Site also shall be referred to as the "Project" or "Improvements" hereinafter. The Agency shall maintain a right of access to the Site, provided that the Agency gives the Owner a minimum of twenty-four (24) hours written, advance notice prior to entering the Site.

SECTION 6: CONTRACTOR SELECTION REQUIREMENTS. If the Project exceeds $10,000, then the Owner in compliance with NRS 279.478 must obtain three (3) or more competitive bids from properly licensed contractors. If the Owner is unable to obtain (3) or more competitive bids, the Owner shall provide the Agency, upon request, with documentation detailing when and which licensed contractor(s) were contacted.

SECTION 7: DESIGN REVIEW COMMITTEE. For reviewing the architectural and engineering design of the Project, the Agency has appointed a Design Review Committee comprised of one or more staff members from the following City of Las Vegas municipal departments: Office of Business Development; Planning and Development Department; Land Development, Public Works; Development Coordination, Public Works; and City of Las Vegas Department of Building & Safety. At its discretion, the Agency may solicit input from additional City staff depending on the individual needs of the Project. The Design Review Committee shall meet on an ad hoc basis. The Design Review Committee shall recommend approval or disapproval of the Project Scope of Work. If the Project is disapproved, the Agency shall retain the right to ask the Owner to make changes to the proposed Scope of Work.

SECTION 8: COMPLIANCE WITH APPLICABLE DEVELOPMENT STANDARDS. The Owner must comply with all development standards applicable to the Scope of Work, including but not limited to, the Zoning Code of the City of Las Vegas, the Building Code of the City of Las Vegas, and the Fire Code of the City of Las Vegas. Additional development standards may apply depending on the specific location of the Site.

SECTION 9: FAILURE TO COMPLETE WORK. If the contractor selected by the Owner fails to complete all of the work specified in the Scope of Work, then the Agency may pursue any and all legal and equitable remedies available under this Agreement, as more specifically described in Section 13 hereinafter.

SECTION 10: UNRELATED IMPROVEMENTS. Nothing herein is intended to limit, restrict or prohibit the Owner from undertaking any other work in or about the subject premises which is unrelated to Commercial VIP provided for in this Agreement.

SECTION 11: COMPLIANCE WITH THE REDEVELOPMENT PLAN AND EMPLOYMENT PLAN. The Agency finds that the Project as contemplated by this Agreement complies with the Commercial VIP Guidelines and therefore would be deemed a substantial benefit to the Redevelopment Area. The Agency finds that the Project, upon completion, would achieve one or more of the following:

1. Encourage new commercial development;
2. Create or retain jobs for nearby residents;
3. Increase local revenues from private revenue sources;
4. Increase levels of human activity in the Redevelopment Area;
5. Possess attributes that are unique, either as to type of use or level of quality and design;
6. Require for their construction, installation or operation the use of qualified and trained labor; or
7. Demonstrate greater social or financial benefits to the community that would a similar set of buildings, facilities, structures or other improvements not paid for by the Agency.

The Agency has also considered the opinions of persons who reside in the Redevelopment Area or the immediate vicinity of the Redevelopment Area. In addition, the Agency has compared the level of spending proposed by the Agency and the projections of future revenue made on the buildings, facilities, structures or other improvements.

The Owner has declared that no other reasonable means of financing are available to undertake the improvements to the Property because the return on investment is not reasonable and the improvements are being financed through cash on hand and/or debt financing through a private lender. Furthermore, the Owner would not undertake the full set of improvements contemplated in the Agreement through resources reasonably available to the Owner pursuant to the Participant Affidavit and Employment Plan, attached hereto as Attachment " 7 " and by this reference made a part hereof.

The Owner has also declared and provided the Agency with an Employment Plan, which is attached hereto as Attachment " 7 " and by this reference is made a part hereof. The Owner, for itself and its successors and assigns, represents that in the construction of improvements on the Site provided for in this Agreement, the Owner shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

SECTION 12: CONFLICTS OF INTEREST AND DISCLOSURE REQUIREMENTS. No member, official or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. The Owner warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. No member, official or employee of the Agency shall be personally liable to the Owner in the event of any default or breach by the Agency or for any amount which may become due to the Owner or on any obligations under the terms of this Agreement. Pursuant to Resolution RA-4-99 adopted by the governing board of the Agency effective October 1, 1999, Owner warrants that it has disclosed, on the Disclosure of Principals form attached hereto as Attachment " 6 " and incorporated herein by reference, all persons and entities holding more than 1% (one percent) interest in Owner or any principal member of Owner. Throughout the term hereof, Owner shall notify City in writing of any material change in the above disclosure within 15 (fifteen) days of any such change.

SECTION 13: DEFAULTS AND REMEDIES. Failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The nondefaulting party shall notify the defaulting party that a default exists and that the defaulting party must cure same within thirty (30) days of receipt of the notice of default. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the District Court, County of Clark State of Nevada, in any other appropriate court in that county, or in the Federal District Court in the appropriate district of Nevada. The nondefaulting party may also, at its option, cure the breach and sue in any court of proper jurisdiction to collect the reasonable costs incurred by virtue of curing or correcting the defaulting party's breach. Further, the nondefaulting party may file legal action to require the defaulting party to specifically perform the terms and conditions of this Agreement. Upon occurrence of an Event of Default by either the Owner or the Agency during the existence of this Agreement, the non-defaulting party, at its option, may institute an action for specific performance of the terms and obligations (including the payment of any monetary obligation) of this Agreement. During the existence of this Agreement and upon the occurrence of a Owner Event of Default, the Agency shall have the right to terminate, and this Agreement shall so terminate, the date that the written notice of termination is received by the Owner or such other date as may be specified in the written notice. In the event of termination of this Agreement by the Agency, the Owner agrees to return any and all Agency Funds heretofore paid to the Owner pursuant to the provisions of this Agreement within ten (10) calendar

days after the termination date. Failure to return any and all Agency Funds paid to the Owner shall entitle the Agency to sue the Owner for specific performance as provided in this Section and to pursue the Agency's remedies, legal and equitable, for such damages as permitted by law.

SECTION 14: SUBSEQUENT AGENCY APPROVALS. Any approvals of the Agency required and permitted by the terms of this Agreement may be given by the Executive Director of the Agency or such other person that the Agency designates in writing.

SECTION 15: TERM. The term of this Agreement shall end upon the completion of all duties and obligations to be performed by each of the parties hereto.

SECTION 16: SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalidated, it shall be deemed to be severed from this Agreement and the remaining provisions shall remain in full force and effect.

SECTION 17: GOVERNING LAW. The interpretation and enforcement of this Agreement shall be governed in all respects by the laws of the State of Nevada.

SECTION 18: NOTICES. Notices shall be in writing and shall be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or by express delivery service, freight prepaid, in each case by delivery to the Owner and the Agency at the addresses set forth in this Agreement or at such other address as a party may designate in writing. The date notice given shall be the date on which the notice is delivered, if notice is given by personal deliver, or five (5) calendar days after the date of deposit in the mail or with an express delivery service, if the notice is sent through the United States mail.

SECTION 19: CAPTIONS. The captions contained in this Agreement are for the convenience of the parties and shall not be construed so as to alter the meaning of the provisions of the Agreement.

SECTION 20: ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS. This Agreement is executed in two duplicate originals, each of which is deemed to be an original. This includes Attachment " 1 " through Attachment " 7 " inclusive, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency and the Owner and no waiver of one provision shall be construed as a waiver of that provision in the future or as a waiver of any other provision. All amendments hereto must be in writing and signed by the appropriate authorities of Agency and the Owner.

SECTION 21: TIME FOR AGENCY TO ACCEPT AGREEMENT. This Agreement has been approved on _____, 2010 by the City of Las Vegas Redevelopment Agency. The effective date of this Agreement shall be the date when this Agreement has been signed by the Agency ("Effective Date").

Date of Agency Approval:

_____,2010.

CITY OF LAS VEGAS REDEVELOPMENT AGENCY

By: _____
OSCAR B. GOODMAN, CHAIRMAN
"Agency"

APPROVED AS TO FORM:

M. McCrea 7-27-10

Counsel to the Agency Date

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
Secretary

OWNER – CHARLESTON SUITES, LLC

By: _____
STEPHEN G. SIEGEL
Its: Authorized Representative

LIST OF ATTACHMENTS

ATTACHMENT " 1 "	LEGAL DESCRIPTION OF THE PROPERTY
ATTACHMENT " 2 "	PROOF OF OWNERSHIP OR LEASEHOLD INTEREST
ATTACHMENT " 3 "	FORM OF FAÇADE EASEMENT DEED
ATTACHMENT " 4 "	FORM OF BUILDING FAÇADE MAINTENANCE AGREEMENT
ATTACHMENT " 5 "	SCOPE OF WORK AND TENTATIVE SCHEDULE OF IMPROVEMENTS
ATTACHMENT " 6 "	DISCLOSURE OF PRINCIPALS
ATTACHMENT " 7 "	PARTICIPANT AFFIDAVIT & EMPLOYMENT PLAN

ATTACHMENT 1

LEGAL DESCRIPTION OF THE PROPERTY

THE SOUTH FIFTEEN (15.00) FEET OF LOT FIFTEEN (15) AND ALL OF LOT SIXTEEN (16) IN BLOCK TWENTY-ONE AND ALL OF BLOCK TWENTY-TWO (22) OF SOUTH ADDITION TO THE CITY OF LAS VEGAS AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1, OF PLATS, PAGE 51, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA TOGETHER WITH THAT VACATED PORTION OF COOLIDGE STREET AS VACATED BY THAT CERTAIN ORDER RECORDED JUNE 11, 1946 IN BOOK 23 OF MISCELLANEOUS RECORDS, PAGE 361 THROUGH 362 AS DOCUMENT NO. 224917.

ALSO TOGETHER WITH THAT PORTION OF ALLEY AND COOLIDGE STREET AS VACATED BY THAT CERTAIN ORDER OF VACATION RECORDED AUGUST 23, 1995 IN BOOK 950823 AS DOCUMENT NO. 00732 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THOSE PORTIONS OF SAID LAND AS WERE CONVEYED TO THE CITY OF LAS VEGAS BY DEED RECORDED MARCH 26, 1946 IN BOOK 42 OF DEEDS, PAGES 188-189 AS DOCUMENT NO. 217908 AND BY DEED RECORDED JUNE 25, 1965 IN BOOK 637 AS DOCUMENT NO. 512552 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Attachment 2

Inst #: 201006180002701
Fees: $16.00 N/C Fee: $25.00
RPTT: $8670.00 Ex: #
06/18/2010 02:07:44 PM
Receipt #: 994641
Requestor:
NEVADA TITLE LAS VEGAS
Recorded By: KGP Pgs: 5
DEBBIE CONWAY
CLARK COUNTY RECORDER

A.P.N.: 139-34-410-138
R.P.T.T.: $8,670.00

Escrow #09-07-1807-KR

Mail tax bill to and when recorded mail to:
Charleston Suites, LLC
3900 Paradise Rd., Suite 101
Las Vegas, Nv 89169

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH, That **Gateway Las Vegas, LLC,,** for a valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to **Charleston Suites, LLC, a Nevada limited liability company,** all that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".

SUBJECT TO:

1. Taxes for the current fiscal year, not delinquent, including personal property taxes of any former owner, if any;
2. Restrictions, conditions, reservations, rights, rights of way and easements now of record, if any, or any that actually exist on the property.

TOGETHER WITH all singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

IN WITNESS WHEREOF, this instrument has been executed this 16 day of June, 20, 10

Gateway Las Vegas, LLC
By: Metroplex Development Group, LLC

By: Paul Murad, Manager

State of NEVADA }
} ss:
County of Clark }

This instrument was acknowledged before me on June 16, 2010

by Paul Murad as Manager of Metroplex Development Group LLC

Cecilia Diaz
NOTARY PUBLIC
My Commission Expires: 01/21/14

CECILIA DIAZ
NOTARY PUBLIC
CECILIA DIAZ
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. JAN. 21, 2014
No: 99-18424-1

NO. 99-18424-1
EXP. 1-21-14

EXHIBIT "A"

THE SOUTH FIFTEEN (15.00) FEET OF LOT FIFTEEN (15) AND ALL OF LOT SIXTEEN (16) IN BLOCK TWENTY-ONE AND ALL OF BLOCK TWENTY-TWO (22) OF SOUTH ADDITION TO THE CITY OF LAS VEGAS AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1, OF PLATS, PAGE 51, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA TOGETHER WITH THAT VACATED PORTION OF COOLIDGE STREET AS VACATED BY THAT CERTAIN ORDER RECORDED JUNE 11, 1946 IN BOOK 23 OF MISCELLANEOUS RECORDS, PAGE 361 THROUGH 362 AS DOCUMENT NO. 224917.

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EXCEPTING THEREFROM THOSE PORTIONS OF SAID LAND AS WERE CONVEYED TO THE CITY OF LAS VEGAS BY DEED RECORDED MARCH 26, 1946 IN BOOK 42 OF DEEDS, PAGES 188-189 AS DOCUMENT NO. 217908 AND BY DEED RECORDED JUNE 25, 1965 IN BOOK 637 AS DOCUMENT NO. 512552 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

State of Nevada
Declaration of Value Form

1. Assessor Parcel Number(s)
   a) 139-34-410-138
   b) _____
   c) _____
   d) _____

2. Type of Property:
   a. ☐ Vacant Land b. ☐ Sgl. Fam. Residence
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☒ Apt. Bldg. f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other _____

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page _____
Date of Recording: _____
Notes:

3 a. Total Value/Sales Price of Property: $1,700,000.00

b. Deed in Lieu of Foreclosure Only (value of property): _____

c. Transfer Tax Value: $1,700,000.00

d. Real Property Transfer Tax Due: $8,670.00

4. **If Exemption Claimed:**

a. Transfer Tax Exemption, per NRS 375.090, Section: _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. **Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.**

Signature: _____ Capacity: GRANTOR/SELLER

Signature: _____ Capacity: GRANTEE/BUYER

SELLER (GRANTOR) INFORMATION (REQUIRED)		BUYER (GRANTEE) INFORMATION (REQUIRED)	
Print Name:	Gateway Las Vegas, LLC	Print Name:	Charleston Suites, LLC, a Nevada limited liability company
Address:	P.O. Box 93033	Address:	3900 PARADISE RD
City:	Las Vegas	City:	#106 LV
State:	NV Zip: 89193-3033	State:	NV Zip: 89169

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: Nevada Title Company Esc. #: 09-07-1807-KR
Address: 2500 N Buffalo, Suite 150
City: Las Vegas State: NV Zip: 89128

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

Signed in Counterpart

State of Nevada
Declaration of Value Form

1. Assessor Parcel Number(s)
   a) 139-34-410-138
   b)
   c)
   d)

2. Type of Property:
   a. ☐ Vacant Land b. ☐ Sgl. Fam. Residence
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☒ Apt. Bldg. f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDER'S OPTIONAL USE ONLY
Book: Page
Date of Recording:
Notes:

3 a. Total Value/Sales Price of Property: $1,700,000.00

b. Deed in Lieu of Foreclosure Only (value of property):

c. Transfer Tax Value: $1,700,000.00

d. Real Property Transfer Tax Due: $8,670.00

4. **If Exemption Claimed:**

a. Transfer Tax Exemption, per NRS 375.090, Section:

b. Explain Reason for Exemption:

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. **Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.**

Signature: Capacity: GRANTOR/SELLER

Signature: Capacity: GRANTEE/BUYER

SELLER (GRANTOR) INFORMATION (REQUIRED)		BUYER (GRANTEE) INFORMATION (REQUIRED)	
Print Name:	Gateway Las Vegas, LLC	Print Name:	Charleston Suites, LLC, a Nevada limited liability company
Address:		Address:	3900 Paradise Rd. #109
City:		City:	Las Vegas
State:	Zip:	State:	Nevada Zip: 89169

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: Nevada Title Company Esc. #: 09-07-1807-KR

Address: 2500 N Buffalo, Suite 150

City: Las Vegas State: NV Zip: 89128

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

Signed in Counterpart

EXHIBIT A
of Attachment 2

DESCRIPTION OF THE FAÇADE EASEMENT AREA

Facade Easement Area: The area consisting of the building face of said building, which is set-back from the northern boundary of East Charleston Boulevard, the eastern boundary of South 4th Street. Including the area consisting of the building face is the northern and eastern boundaries of the property, as described in *"Attachment 1 – Legal Description of the Property"* and other public areas, including all exterior wall planes, window, doors, fascias, awnings, landscaping, parking area and other architectural projections.

The Façade Easement granted herein shall terminate five (5) years from the date of execution of the recordation of this Façade Easement Deed without further action upon the City of Las Vegas Redevelopment Agency.

ATTACHMENT 3

FORM OF FACADE EASEMENT DEED

APN: 139-34-410-138

RECORDING REQUESTED BY

CITY OF LAS VEGAS
REDEVELOPMENT AGENCY

AND WHEN RECORDED RETURN TO:

City of Las Vegas Redevelopment Agency
400 Stewart Avenue, 2nd Floor
Las Vegas, NV 89101
ATTN: Operations Officer

FACADE EASEMENT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, CHARLESTON SUTIES, LLC ("Grantor"), does hereby grant to the CITY OF LAS VEGAS REDEVELOPMENT AGENCY, a public body, corporate and politic ("Grantee"), a nonexclusive facade easement (the "Facade Easement") in gross on and upon a portion of the real property described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). The precise description of the area of the facade easement is described in Exhibit B attached hereto and incorporated hereby by reference (the "Facade Easement Area").

1. Grantee is responsible for carrying out the Redevelopment Plan for the City of Las Vegas Redevelopment Area (the "Redevelopment Area"). In furtherance of the Redevelopment Plan, Grantor and Grantee entered into a Commercial Visual Improvement Agreement and Grant of Facade Easement dated _____ (the "CVIP Agreement") which required the Grantor to improve the facades(s) of the building(s) on the Property in accordance with the CVIP Agreement and Grantee's Commercial Visual Improvement Guidelines.

2. Grantor shall maintain the Property and the Facade Easement Area in accordance with the Facade Easement Agreement, including without limitation, the provisions set forth in the Building Façade Maintenance Agreement, recorded against the Property by separate instrument. Grantor agrees that all material future changes to the exterior surface of the facades of the building that has been improved on the Property shall be subject to the approval of the Grantee, which approval shall not be unreasonably withheld. This covenant shall run with the land until five (5) years from the date this Facade Easement Deed is recorded against the Property.

3. Grantee may use the Facade Easement for the purpose of ensuring the repair and maintenance of the Facade Easement Area, including the Facade Improvements to be constructed thereon, in accordance with the Facade Easement Agreement.

4. The Facade Easement shall include ancillary rights of ingress and egress over any portion of the Property that is necessary in order to repair and maintain the Facade Improvements located on and within the Facade Easement Area.

5. Grantor covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, age, sexual preference, physical handicap or medical condition in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall Grantor or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

6. The Grantee shall not use or exercise any right granted by the Facade Easement or do anything in a manner that will damage or impair the Facade Easement Area or the structural integrity of the building.

7. In the event of a violation of this Agreement by Grantor, the Grantee may, following reasonable notice to Grantor and after allowing thirty (30) days to correct said violation, institute a suit to enjoin such violation and to require the restoration of the Facade Improvements to their prior condition. In the alternative, the Grantee may enter upon the Property, correct any such violation and hold the Grantor and, his or her heirs, successors and assigns, responsible for the costs thereof in accordance with the Facade Easement Agreement and Building Facade Maintenance Agreement.

8. The Facade Easement granted herein shall terminate on the date which is five (5) years from the date of recordation of this Facade Easement Deed.

9. Grantor shall have the option to repurchase the Facade Easement granted herein (the "Option") from the Grantee pursuant to the terms and conditions set forth hereunder.

a. Option Term. The term of the Option (the "Option Term") shall commence thirty (30) days after recordation of the Facade Easement Deed and shall continue until five (5) years from the date of the recordation of this Façade Easement Deed. In order to exercise the Option, the Grantor must give sixty (60) days written notice to the Grantee that it wishes to exercise the Option.

b. Repurchase Price. If the Grantor exercises the Option, the Grantee agrees to sell and the Grantor agrees to repurchase the Facade Easement in an amount equal

to the unamortized portion of the Purchase Price amortized on a straight-line basis over five (5) years. The Amortization Schedule is set out in Exhibit C, attached hereto and incorporated herein (the "Amortization Schedule").

c. Title, Escrow and Closing Costs. The Owner shall pay for all title, escrow and closing costs and fees associated with the repurchase of the Facade Easement. The Owner and Agency shall cooperate in good faith and execute such documents and take such actions as may be necessary to effectuate such repurchase.

10. The obligations and benefits imposed and granted in this Facade Easement Deed shall be binding on Grantor and all successor owners of the Property and inure to the benefit of the Grantee, its successors and assigns and are intended to run with the land.

11. The provisions of this Facade Easement Deed may be amended or terminated in full only by a written agreement between the Grantor and Grantee.

12. Nothing contained in this Facade Easement Deed shall be deemed to be a gift or dedication of any portion of Property to the general public or for the general public for any public purpose whatsoever, it being the intention of the parties to this Facade Easement Deed that the Facade Easement shall be strictly limited to and for the purposes expressed in this Facade Easement Deed.

13. This declaration shall be governed by and construed in accordance with the laws of the State of Nevada.

14. The Facade Easement granted herein shall be binding on and inure to the benefit of the successors and assigns of the parties and are intended to bind and burden the Property described in Exhibit A.

...

...

...

IN WITNESS WHEREOF, Grantor has executed this Facade Easement Deed as of this ____ day of _____, 2010 .

OWNER – CHARLESTON SUITES, LLC

By:_____
STEPHEN G. SIEGEL

Its: AUTHORIZED REPRESENTATIVE (Title)
"GRANTOR"

ACCEPTED AND AGREED TO:

CITY OF LAS VEGAS REDEVELOPMENT AGENCY

By:_____
OSCAR B. GOODMAN

Its: CHAIRMAN
"GRANTEE"

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM

_____
Counsel to the Agency Date

ACKNOWLEDGMENTS

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on the ____ day of _____, 2010 by STEPHEN G. SIEGEL as AUTHORIZED REPRESENTATIVE of CHARLESTON SUITES, LLC

_____
Notary Public in and for said County and State

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on the ____ day of _____, 2010 by OSCAR B. GOODMAN as Chairman of the City of Las Vegas Redevelopment Agency.

_____
Notary Public in and for said County and State

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

THE SOUTH FIFTEEN (15.00) FEET OF LOT FIFTEEN (15) AND ALL OF LOT SIXTEEN (16) IN BLOCK TWENTY-ONE AND ALL OF BLOCK TWENTY-TWO (22) OF SOUTH ADDITION TO THE CITY OF LAS VEGAS AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1, OF PLATS, PAGE 51, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA TOGETHER WITH THAT VACATED PORTION OF COOLIDGE STREET AS VACATED BY THAT CERTAIN ORDER RECORDED JUNE 11, 1946 IN BOOK 23 OF MISCELLANEOUS RECORDS, PAGE 361 THROUGH 362 AS DOCUMENT NO. 224917.

ALSO TOGETHER WITH THAT PORTION OF ALLEY AND COOLIDGE STREET AS VACATED BY THAT CERTAIN ORDER OF VACATION RECORDED AUGUST 23, 1995 IN BOOK 950823 AS DOCUMENT NO. 00732 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THOSE PORTIONS OF SAID LAND AS WERE CONVEYED TO THE CITY OF LAS VEGAS BY DEED RECORDED MARCH 26, 1946 IN BOOK 42 OF DEEDS, PAGES 188-189 AS DOCUMENT NO. 217908 AND BY DEED RECORDED JUNE 25, 1965 IN BOOK 637 AS DOCUMENT NO. 512552 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

EXHIBIT B

DESCRIPTION OF THE FACADE EASEMENT AREA

Facade Easement Area: The area consisting of the building face of said building, which is set-back from the northern boundary of East Charleston Boulevard, the eastern boundary of South 4th Street. Including the area consisting of the building face is the northern and eastern boundaries of the property, as described in *"Attachment 1 – Legal Description of the Property"* and other public areas, including all exterior wall planes, window, doors, fascias, awnings, landscaping, parking area and other architectural projections.

The Façade Easement granted herein shall terminate five (5) years from the date of execution of the recordation of this Façade Easement Deed without further action upon the City of Las Vegas Redevelopment Agency.

EXHIBIT C

FORM OF FAÇADE EASEMENT REPURCHASE PRICE AMORTIZATION SCHEDULE

1. Amount of Purchase Price: $50,000.00 (Maximum)

2. Repurchase Price based on unamortized portion of Purchase Price amortized on straight-line basis over five (5) years as follows:

Anytime during first year:	$50,000.00
Anytime during second year:	$40,000.00
Anytime during third year:	$30,000.00
Anytime during fourth year:	$20,000.00
Anytime during fifth year:	$10,000.00
After five full years from recordation of the Façade Easement Deed:	$0.00

ATTACHMENT 4

FORM OF BUILDING FAÇADE MAINTENANCE AGREEMENT

APN: 139-34-410-138

RECORDING REQUESTED BY

CITY OF LAS VEGAS
REDEVELOPMENT AGENCY

AND WHEN RECORDED RETURN TO:

City of Las Vegas Redevelopment Agency
400 Stewart Avenue, 2nd Floor
Las Vegas, NV 89101
ATTN: Operations Officer

BUILDING FACADE MAINTENANCE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 20___, between CHARLESTON SUITES, LLC, hereinafter referred to as "Owner" and the CITY of LAS VEGAS REDEVELOPMENT AGENCY, a public body, corporate and politic, hereinafter referred to as "Agency" with reference to the following facts:

WHEREAS, Owner is the owner of that real property ("the Property") in the City of Las Vegas, County of Clark, State of Nevada, legally described in Exhibit " A " attached hereto by this reference, commonly known as 401 EAST CHARLESTON BOULEVARD, Las Vegas, Nevada and currently designated as Assessor's Parcel No. 139-34-410-138; and

WHEREAS, the Property is located within the City of Las Vegas Redevelopment Area (the "Redevelopment Area"), and in furtherance of the Redevelopment Plan for the Redevelopment Area, the Agency approved a Commercial Visual Improvement Program (the "Commercial VIP") for the purpose of revitalization and elimination of blighting influences in the Redevelopment Area; and

WHEREAS, Owner has rehabilitated the facades of the Property facing the Facade Easement Area: The area consisting of the building face of said building, which is set-back from the northern boundary of East Charleston Boulevard, the eastern boundary of South 4th Street. Including the area consisting of the building face is the northern and eastern boundaries of the property, as described in *"Attachment 1 – Legal Description of the Property"* and other public areas, including all exterior wall planes, window, doors, fascias, awnings, landscaping, parking area and other architectural projections.

The Façade Easement granted herein shall terminate five (5) years from the date of execution of the recordation of this Façade Easement Deed without further action upon the City of Las Vegas Redevelopment Agency.

Agency purchased a Facade Easement for the Property (hereinafter "the Facade Easement") which ensures that the building facades on the Property will be preserved in a manner consistent with the Commercial Visual Improvement Agreement and Grant of Facade Easement dated _____ _____ (the "CVIP Agreement"); and

WHEREAS, by the terms of said Façade Easement, Owner is required to enter into an agreement for a period of five (5) years giving the Agency authority to lien the Property to ensure that the façade(s) covered by the Façade Easement, legally described in Exhibit " B " attached hereto (the "Façade Easement Area"), will be diligently maintained and that violations will be corrected promptly; and

WHEREAS, this agreement is entered into to ensure that the Property is maintained because both parties recognize that diligent maintenance is an integral part of preservation of the Property and one of the considerations for Agency's purchase of the Façade Easement;

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Purpose. The purpose of this agreement is to ensure diligent maintenance of the building facades on the Property facing public streets and/or alleys, the Façade Easement Area, in accordance with the plans approved by the City of Las Vegas Office of Redevelopment Agency and any other City of Las Vegas department that may have issued approvals and/or permits as of the date of this agreement, or as may be otherwise approved by City during the term of this agreement. Copies of the plans for the Façade Easement Area required to be maintained under this agreement and which are incorporated herein by this reference, are on file with the City of Redevelopment Agency, c/o Office of Business Development, 400 Stewart Avenue, Las Vegas, NV 89101.

2. Duty to Maintain Property. Owner covenants and agrees, for itself, its lessees, successors and assigns during the term of this agreement to diligently maintain and care for the Façade Easement Area in accordance with the plans approved by Agency. "Diligent maintenance" is persistent upkeep which employs the standard of care necessary to meet all requirements of applicable local ordinances and regulations and standards of workmanship in accordance with the generally accepted standards for maintenance observed by comparable uses located within the City of Las Vegas. In particular, Owner covenants that:

    a) All exterior building facades shall be maintained, repaired, or used in accordance with the City of Las Vegas Building Code and the plans approved by, any and all, appropriate City of Las Vegas department(s) as of the date of this agreement, or as may be otherwise approved by Agency during the term of this agreement.

    b) The exterior of the buildings and structures shall have effective weatherproofing and waterproofing, including non-deteriorated paint, uncracked or unbroken plaster, sound siding, sealing of doors and windows and adequate and approved roof covering.

c) All exterior doors, door hardware, handles, locksets and latchsets shall be in safe and operable condition, free of cracks, splits, holes, inadequate fastening and warpage.

d) All windows shall be secure, well sealed, unbroken, and with undamaged frames. No window bars, grills or grates of any kind shall be installed without the express approval of the City of Las Vegas Department of Building and Safety.

e) All exterior lighting, including but not limited to security, carport, stairway or balcony, and building lighting, must be operable at all times as required by the City of Las Vegas Building Code.

3. Agency's Right to Cure Owner's Default. Owner shall be in default of this agreement if Owner breaches any of the Owner's obligations under Paragraph 2 above, and the breach is not cured within thirty (30) days (or such longer period as may be specified in the Notice of Breach) after the Agency gives notice ("Notice of Breach") to the Owner of the failure to perform, which Notice of Breach shall specify in reasonable detail the conditions constituting the breach. The Agency's Executive Director ("Director") (or, if that position no longer exists, an Agency official with comparable duties) or the Director's designee may impose conditions on any extension of time to cure the breach, which conditions may include but are not limited to (i) requiring Owner to post a cash deposit or surety bond in the amount of the estimated cost of curing the breach or default, and (ii) requiring that Owner commence curing the breach or default by a specified date and thereafter diligently and in good faith continue to cure the breach until completion of the cure.

In the event of default, in addition to any other remedies available to Agency at law or in equity, Agency in its sole and absolute discretion may enter the Property and cure the default at Owner's cost at any time after giving not less than thirty (30) days' notice ("Notice of Default") to Owner, which Notice of Default shall state the Agency's intent to enter the Property and shall specify in reasonable detail the work or correction the Agency intends to perform.

4. Hold Harmless. Owner shall waive any and all claims for damage or loss as a result of Agency's entry onto the Property. Owner shall defend, indemnify and hold harmless Agency, its employees, officers, agents and contractors from and against any and all liability, loss, expense, including reasonable attorney's fees or claims for injury or damage caused by or as a result of the Agency, its employees, officers, agents or contractors entry onto the Property. Notwithstanding the foregoing, the above waiver and indemnity shall not apply with respect to any negligent acts or omissions or willful misconduct by the Agency, it's employees, officers, agents and/or contractors.

5. Agency's Cost of Cure. If Agency, acting through its own employees or through its contractors, enters the Property and cures the breach or default, Agency shall perform the work in a reasonably efficient, cost effective and competitively priced manner. The cost of curing the default shall be due and payable within ten (10) days after delivery of an invoice to Owner, and if paid at a later date shall bear interest at the rate of 10% per annum from the date of the invoice until Agency is reimbursed by Owner. Any warranties provided by

Agency's contractors shall be assigned to Owner upon Owner's payment in full of the amounts due hereunder.

6. Additional Remedies. The Agency, in addition to the collection procedure set forth above in paragraph 4, may make the cost incurred in maintaining the Property a lien upon the Property by recording a notice with the Clark County Recorder. The lien may also include any and all costs incurred in recording the lien. The notice shall state that the Agency has incurred maintenance costs under the terms of this agreement and shall state the amount, together with a statement that it is unpaid. Such lien shall be immediately released upon Owner's payment of said costs.

7. Notices. Notices required or permitted to be given under the terms of this agreement shall be served personally, or by certified mail, return receipt requested, or by overnight courier, addressed as follows:

AGENCY: CITY OF LAS VEGAS REDEVELOPMENT AGENCY
400 Stewart Avenue, 2nd Floor
Las Vegas, NV 89101
Attn: Operations Officer

OWNER: CHARLESTON SUITES, LLC
3900 Paradise Rd, Suite 101
Las Vegas, NV 89169
Attn: Stephen G. Siegel

and, in the event that Owner hereafter conveys Property, to each successive Owner as shown on the tax rolls for Clark County.

8. Property Owner. If Owner conveys, grants or transfers the Property or a portion thereof to another, such grantee or transferee shall be responsible for complying with the terms and conditions of this agreement as to the Property or as to that portion thereof so conveyed and Owner shall have no further obligation hereunder as to said Property or that portion thereof. If Owner leases the Property or any portion thereof to another, the lease shall provide for Owner's right of entry to perform Owner's obligations under this agreement. The lease also shall provide for Agency's right of entry to inspect the Property for compliance with this agreement and in the event of breach to perform required maintenance in accordance with the procedure set forth in Paragraph 3. Owner shall advise the Executive Director of the Agency in writing of any changes in address of Owner and of the names and addresses of any subsequent owners of the property or any portion thereof.

9. Miscellaneous Terms and Provisions.

a) If any provision of this agreement is adjudged invalid, the remaining provisions of it are not affected.

b) Notice to Agency or Owner shall be considered to have been given when sent in the manner and to the addresses stated in Paragraph 6 above.

c) This writing contains a full, final and exclusive statement of the agreement of the parties.

d) By executing this agreement Owner, on its behalf and on behalf of any successor in interest, authorizes and grants to Agency or to Agency's agent, permission with 48 hours advance notice to enter upon the Property subject to this agreement to perform inspections of the façade improvements or to perform any work authorized by this agreement in the event of breach by Owner of any covenant set forth in Paragraphs 2 above. However, the Agency shall coordinate the time of such inspections with the Owner in order to minimize the disruption of business or inconvenience to the Owner's customers.

10. Recordation: Covenant Running With the Land for Five Years. Upon recordation of the Façade Easement Deed and execution of this agreement by both parties, the Agency shall record this agreement with the Clark County Recorder's Office. Agency shall provide Owner a copy of the agreement showing the Recorder's stamp.

This agreement pertains to that area of the Property covered by the Façade Easement, and shall run with the land for a period of five (5) years from the date of recordation, including a period of time after the expiration of the Façade Easement. This agreement binds the successors in interest of each of the parties to it.

11. Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions of this agreement shall defeat or render invalid the lien or charge or any first mortgage or deed of trust made in good faith and for value encumbering the Property, but all of said covenants, conditions and restrictions shall be binding upon and effective against any successor to the Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to the Property.

12. Attorneys' Fees. If any party to this agreement resorts to a legal action to enforce any provision of this agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to any other relief to which it may be entitled. This provision applies to the entire agreement.

13. Estoppel Certificate. Upon written request by Owner or a subsequent owner, Agency shall promptly execute and deliver an estoppel certificate, in a form reasonably approved by the Agency, addressed as indicated in the request, stating that the property is in compliance with this agreement, or not, and stating the amount of any outstanding fees or charges.

. . .
. . .
. . .

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year set forth above.

By: _____ Date: _____
Name: STEPHEN G. SIEGEL
Title: AUTHORIZED REPRESENTATIVE FOR CHARLESTON SUITES, LLC

CITY OF LAS VEGAS REDEVELOPMENT AGENCY,
a public body, corporate and politic

By: _____ Date: _____
OSCAR B. GOODMAN
CHAIRMAN

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

_____
Counsel to the Agency Date

ACKNOWLEDGMENTS

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on the ____ day of _____, 2010 by STEPHEN G. SIEGEL as AUTHORIZED REPRESENTATIVE of CHARLESTON SUITES, LLC.

_____
Notary Public in and for said County and State

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on the ____ day of _____, 2010 by OSCAR B. GOODMAN as Chairman of the City of Las Vegas Redevelopment Agency.

_____
Notary Public in and for said County and State

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THE SOUTH FIFTEEN (15.00) FEET OF LOT FIFTEEN (15) AND ALL OF LOT SIXTEEN (16) IN BLOCK TWENTY-ONE AND ALL OF BLOCK TWENTY-TWO (22) OF SOUTH ADDITION TO THE CITY OF LAS VEGAS AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1, OF PLATS, PAGE 51, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA TOGETHER WITH THAT VACATED PORTION OF COOLIDGE STREET AS VACATED BY THAT CERTAIN ORDER RECORDED JUNE 11, 1946 IN BOOK 23 OF MISCELLANEOUS RECORDS, PAGE 361 THROUGH 362 AS DOCUMENT NO. 224917.

ALSO TOGETHER WITH THAT PORTION OF ALLEY AND COOLIDGE STREET AS VACATED BY THAT CERTAIN ORDER OF VACATION RECORDED AUGUST 23, 1995 IN BOOK 950823 AS DOCUMENT NO. 00732 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THOSE PORTIONS OF SAID LAND AS WERE CONVEYED TO THE CITY OF LAS VEGAS BY DEED RECORDED MARCH 26, 1946 IN BOOK 42 OF DEEDS, PAGES 188-189 AS DOCUMENT NO. 217908 AND BY DEED RECORDED JUNE 25, 1965 IN BOOK 637 AS DOCUMENT NO. 512552 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

EXHIBIT B

DESCRIPTION OF THE FACADE EASEMENT AREA

Facade Easement Area: The area consisting of the building face of said building, which is set-back from the northern boundary of East Charleston Boulevard, the eastern boundary of South 4th Street. Including the area consisting of the building face is the northern and eastern boundaries of the property, as described in *"Attachment 1 – Legal Description of the Property"* and other public areas, including all exterior wall planes, window, doors, fascias, awnings, landscaping, parking area and other architectural projections.

The Façade Easement granted herein shall terminate five (5) years from the date of execution of the recordation of this Façade Easement Deed without further action upon the City of Las Vegas Redevelopment Agency.

ATTACHMENT 5

SCOPE OF WORK AND TENTATIVE SCHEDULE OF IMPROVEMENTS

Work Item		Cost
Exterior Signage		**$65,875.00**
Exterior Asphalt		**$2,125.00**
Exterior Paint		**$35,000.00**
	Subtotal	**$103,000.00**
TOTAL ESTIMATED PROJECT COSTS		**$103,000.00**
Estimated CVIP Grant		$50,000.00
plus Contingency		$00.00
Maximum Reimbursement for CVIP Grant		**$50,000.00**

Note – Items in bold are "Pre-approved Qualified Exterior Improvements"

Schedule of Improvements

Work will begin 90 days after approval of Agreement and should be complete within 120-180 days, depending on contractor's work schedule/work load.

Please Print Legibly

VIP Disclosure of Ownership/Principals

Real Property - Page 1 of 2

VIP Contracting Entity Information

Name Charleston Suites, LLC

Mailing Address 3900 Paradise Rd. #101, Las Vegas, NV 89169

Business Phone 702-947-8330 ext. 1919

Tax ID or Social Security Number 27-2672203

Ownership Interest

Estate in Severalty X Tenancy in Common ____ Joint Tenancy ____

Disclosure of Ownership/Principals

In the space below, the Contracting Entity must disclose all persons or entities holding more than one percent ownership interest in the real property.

Full Name & Title	Business Address	Business Phone
SGS Holdings, LLC	3900 Paradise Rd. #101, Las Vegas, NV 89169	
Leonard Schrage	3550 Cahuenga Blvd. West, Los Angeles, CA 90068	
Stephen Bijah Mesbah	P.O. Box 56363, Sherman Oaks, CA 91413	
Josephson Family Trust	25208 El Dorado Meadows Rd., Hidden Hills, CA 91302	
Barry Borowitz	1243 Geneva St., Glendale, CA 91207	
Barry Ridel	5036 Vanalden Ave. Tarzana, CA 91356	
Bradley and Elena Fullmer	860 Haverford Ave., Pacific Palisades, CA 90272	
Steve and Marcy Mintz Trust	23744 Walnut Creek Court, Valencia, CA 91354	
Atul and Sheela Vasmali	20804 Campania Lane, Northridge, CA 91326	
Michael Messinger IRA	6400 Canoga Ave. #250 Woodland Hills, CA 91367	
Mark Parfill IRA	510 Marquette Ave. South, Minneapolis, MN 55402	
Ontario Development Ptns.	16530 Ventura Blvd. Encino, CA 91436	

Additional Ownership/Principals

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the *number of sheets*:____

VIP Disclosure of Ownership/Principals

Please Print Legibly

Alternative Disclosure of Ownership/Principal

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this certificate in lieu of providing the information set forth on the previous page. A description of such disclosure documents must be included below.

Name of Attached Document _____

Date of Attached Document _____

Number of Pages _____

Certification of Disclosure of Ownership/Principal - Real Property

I certify, under penalty of perjury, that all the information provided in this certificate is current, complete and accurate.

Signature _____

Date 7/21/2010

State of Nevada
County of Clark

This instrument was acknowledged before me on

July 21, 2010 (date) by

Stephen G. Siegel (name of person)

_____
Notary Public

S. COUCH
Notary Public State of Nevada
No. 04-88092-1
My appt. exp. Jan. 25, 2012

Please Print Legibly

VIP Disclosure of Ownership/Principals

Business - Page 1 of 2

VIP Contracting Entity Information

Name Charleston Suites, LLC

Mailing Address 3900 Paradise Rd. #101, Las Vegas, NV 89169

Business Phone 702-947-8330 ext. 1919

Tax ID or Social Security Number 27-2672203

Type of Business

Sole Proprietor_____ Partnership_____ Limited Liability Company X Corporation_____

Disclosure of Ownership/Principals

In the space below, the Contracting Entity must disclose all persons or entities holding more than one percent ownership interest in the business.

Full Name & Title	Business Address	Business Phone
SGS Holdings, LLC	3900 Paradise Rd. #101 Las Vegas NV 89169	
Leonard Schrage	3550 Cahuenga Blvd. West Los Angeles CA 90068	
Stephen Bjan Meebal	P.O. Box 56363 Sherman Oaks CA 91413	
Josephson Family Trust	25208 El Dorado Meadow Rd. Hidden Hills CA 91302	
Barry Borowitz	1243 Geneva St. Glendale, CA 91207	
Barry Ridel	5036 Vanalden ave. Tarzana CA 91356	
Bradley and Elena Fullmer	860 Haverford Ave. Pacific Palisades CA 90272	
Stewart and Margaret Trust	23744 Walnut Creek Court Valencia CA 91354	
Arteland Sheela Vanmaldo	20804 Campania Lane Northridge CA 91326	
Michael Measinger IRA	6400 Canoga ave. #350 Woodland Hills CA 91367	
Mark Pamfil IRA	510 Marquette ave. South Minneapolis MN 55402	
Ontario Development Partners	16530 Ventura Blvd Encino CA 91436	

Additional Ownership/Principals

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the *number of sheets*:_____

VIP Disclosure of Ownership/Principals

Please Print Legibly

Alternative Disclosure of Ownership/Principal

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this certificate in lieu of providing the information set forth on the previous page. A description of such disclosure documents must be included below.

Name of Attached Document _____

Date of Attached Document _____

Number of Pages _____

Certification of Disclosure of Ownership/Principal - Business

I certify, under penalty of perjury, that all the information provided in this certificate is current, complete, and accurate.

Signature _____

Date 7/21/2010

State of Nevada
County of Clark

This instrument was acknowledged before me on

July 21, 2010 (date) by

Stephen G. Siegel (name of person)

_____
Notary Public

S. COUCH
Notary Public State of Nevada
No. 04-88092-1
My appt. exp. Jan. 25, 2012

VIP Participant Affidavit and Employment Plan

Please Print Legibly

STATE OF NEVADA }
} ss:
COUNTY OF CLARK }

I, Stephen G. Siegel, being first duly sworn, depose and state under penalty of perjury as follows:

1. I am a corporate officer, managing member, or sole proprietor of the Clarkston Suites, LLC, a company duly organized in the State of Nevada as a LLC, (Corporation/LLC/Sole Proprietorship). The Participant is seeking the assistance of the city of Las Vegas Redevelopment Agency ("Agency") for making improvements to the property at 401 E. Clarkston Blvd. ("Site"), as more particularly described by the VIP agreement ("Agreement") being contemplated by the city of Las Vegas Redevelopment Agency at its public hearing to be held on _____.

2. I hereby warrant that I either own the site, or have a leasehold interest in the site for a minimum of five years subsequent to the effective date of this agreement.

   Assistance from the Agency will allow me to make improvements to the site which I could not otherwise do. This will result in substantial benefit to the Redevelopment Plan Area and the neighborhood adjacent to the Site because of one or more of the following reasons (check one or more):

   a. Encourage the creation of new business or other appropriate development; ☒
   b. Create jobs or other business opportunities for nearby residents; ☐
   c. Increase local revenues from desirable sources; ☒
   d. Increase levels of human activity in the redevelopment area or the immediate neighborhood in which the redevelopment area is located; ☒
   e. Possess attributes that are unique, either as to type of use or level of quality and design; ☐
   f. Require for their construction, installation or operation the use of qualified and trained labor; ☒ and
   g. Demonstrate greater social or financial benefits to the community than would a similar set of buildings, facilities, structures or other improvements not paid for by the agency. ☒

3. No other reasonable means of financing those buildings, facilities, structures or other improvements are available, because of one or more of the following reason(s) as checked by the Participant:

   a. An inducement for new businesses to locate or existing businesses to remain within the redevelopment area in which the business would ordinarily choose to locate outside the redevelopment area if the grant were not provided. Evidenced by a "but for" letter or statement from the business owner.; ☐ or
   b. There is a public objective and/or requirement that is more stringent and/or costly to undertake than a business would ordinarily embark upon. Evidenced by state or city ordinance. ☐ or
   c. There has been a lack of rehabilitation in the area and it is deemed unreasonable for the business to invest in improving the area unless the grant is provided. Evidenced by photographs of the immediate surrounding area displaying the slum and blight. ☒ or
   d. The exterior improvements to the property or business do not have a direct affect on revenues therefore making such an investment is not deemed acceptable by a customary financial institution. Evidenced by a denial letter from a financial institution. ☐ or

Please Print Legibly

VIP Participant Affidavit and Employment Plan

e. The visual improvement of the property or addition of the business to the area is so dramatic that it is a catalyst for economic development in the area. Evidenced by a positive economic impact analysis. ☐

Participant agrees to submit to the Agency its documentation which evidences that no reasonable means of financing are available to the Participant.

4. Participant hereby warrants the following:

a. The property on which the project is situated is free of all Mechanic's Liens at the time of application. SA (initial)

b. The applicant has no current bankruptcy proceedings, or past bankruptcy proceedings, whether corporate or personal, within the past five years. SA (initial)

c. The applicant has no past-due federal, state, county or city of Las Vegas tax bills at the time of application. SA (initial)

d. The applicant has no past-due bills or debts payable to the city of Las Vegas or the Redevelopment Agency. SA (initial)

5. Participant hereby acknowledges that existing opportunities for employment within the surrounding neighborhood of the redevelopment project are limited for neighborhood residents. Most residents must travel outside the neighborhood to find employment opportunities outside the redevelopment area, via public transportation or personal vehicles. Of the existing businesses within the neighborhood, many are family owned and have been in business for a long time. These existing businesses are not in an expansion mode and are not likely to employee neighborhood residents.

Furthermore, the project will help facilitate the continued expansion of employment opportunities by setting an example to other property/business owners to renovate their property/business and help create more employment opportunities through an expansion of business and renovation of vacant storefronts. The Project will allow neighborhood residents to apply for those positions (when available) for which they are qualified for as an employment opportunity. Appropriate measures will be taken to ensure that the neighborhood is aware of any job opportunities available from the business.

DATED this 21st day of July, 2010.

Charleston Suites, LLC
By: The Siegel Group Nevada, Inc. Its: manager

Authorized Signature: _____
Stephen Siegel President

SIGNED AND SWORN TO before me this 21st day of July, 2010, by Stephen G. Siegel

NOTARY PUBLIC

My Commission Expires:

S. COUCH
Notary Public State of Nevada
No. 04-88092-1
My appt. exp. Jan. 25, 2012

Attachment 7 cont.

THE SIEGEL GROUP
A DIVISION OF THE SIEGEL GROUP NEVADA, INC.
A COMMERCIAL REAL ESTATE & BUSINESS DEVELOPMENT COMPANY

July 19, 2010

City of Las Vegas Redevelopment Agency
400 Stewart Avenue, 2nd Floor
Las Vegas, NV 89101

Re: Visual Improvement Program
Charleston Suites, LLC
401 E. Charleston Blvd., Las Vegas, NV 89104

To Whom It May Concern:

As you are aware, the area surrounding the above-referenced property is in an older part of Las Vegas and is in desperate need of redevelopment. We would not have purchased in this location if we were unable to obtain a Grant through the VIP Program to assist us in the rehabilitation of the property and to give the neighborhood a new modern look.

We thank you for your time and consideration of our Application.

Sincerely,

Charleston Suites, LLC, a Nevada limited liability company
By: The Siegel Group Nevada, Inc., a Nevada corporation
Its: Manager

By: Stephen G. Siegel
Its: President

STATE OF: Nevada
COUNTY OF: Clark

On July 21, 2010, before me, S. Couch, a Notary Public in and for said County and State, personally appeared Stephen G. Siegel, as President of The Siegel Group Nevada, Inc., a Nevada corporation, as Manager of Charleston Suites, LLC, a Nevada limited liability company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of Nevada that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

NOTARY PUBLIC

S. COUCH
Notary Public State of Nevada
No. 04-88092-1
My appt. exp. Jan. 25, 2012

Charleston Suites
401 E. Charleston Blvd.

BEFORE



AFTER (representation)



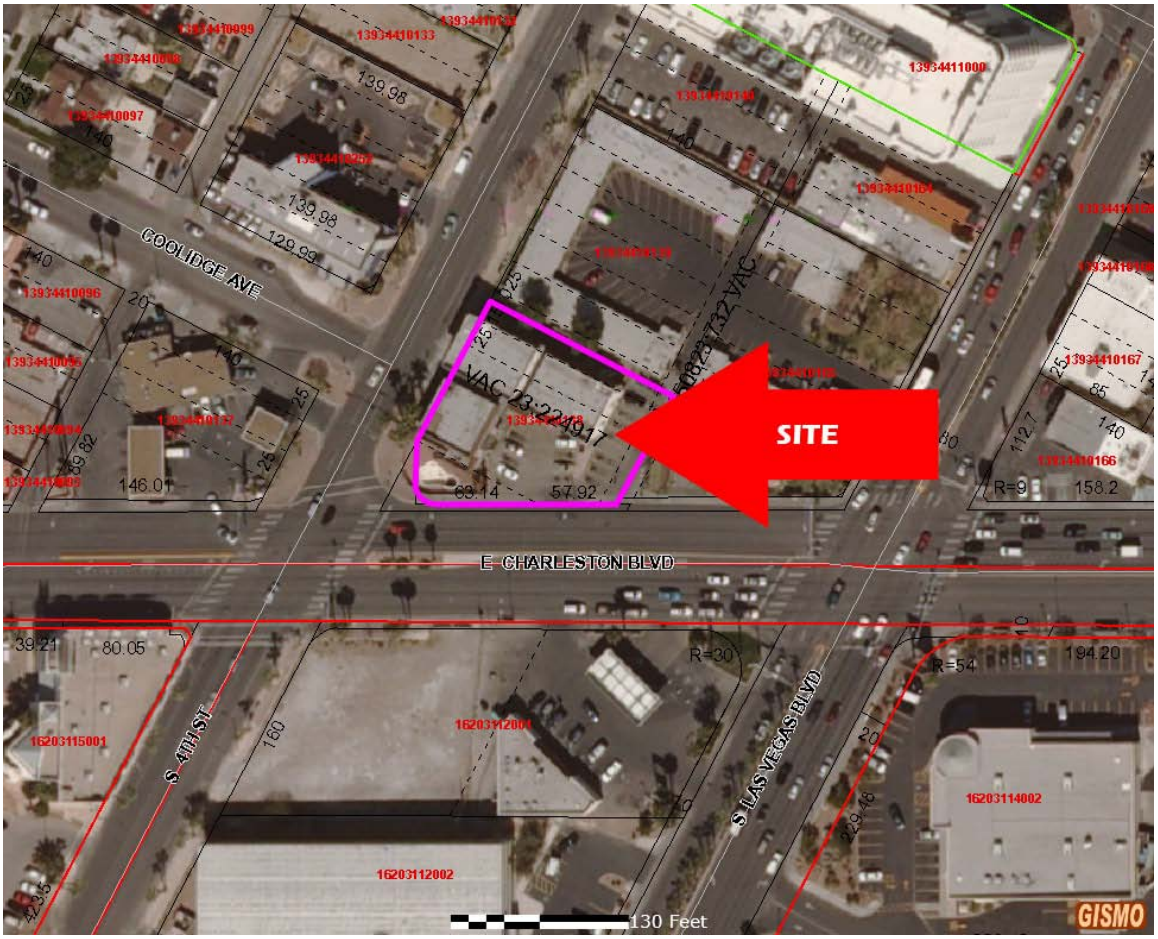
BEFORE



AFTER (representation)



Site Map – Charleston Suites
401 East Charleston Boulevard



City of Las Vegas Agenda Item No.: **68.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY CLERK
DIRECTOR: BEVERLY K. BRIDGES ☐ **Consent** ☒ **Discussion**

SUBJECT:
BOARDS & COMMISSIONS:

TRAFFIC & PARKING COMMISSION – Vernell McNeal, Term Expiration 5-18-2013 (resigned)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The members of this board are appointed by the Mayor and confirmed by the City Council such that one member shall reside in and represent each of the six Wards and one member shall represent the City as a whole. Terms are 4 years and no limit to the number of terms which may be served. Mr. McNeal was a resident and the representative for Ward 5. He submitted his resignation as a result of his move out of that Ward. There is no requirement to fill unexpired portions of terms, so a new member needs to be appointed to fill the Ward 5 seat.

RECOMMENDATION:
Procedure for this Board involves a recommendation by Councilman Barlow for a new Ward 5 resident for appointment by the Mayor and confirmation by the City Council.

BACKUP DOCUMENTATION:
1. Current Listing and Authority
2. Resignation Letter from Mr. McNeal

Traffic and Parking Commission

	Name		Appointment Date	Expiration Date	Recommended By:
1	**David Stephen Turner** Resident of Ward 2	**City-Wide Appointment**	6 /19/2002 **Reapp: 5/17/2006**	6/19/2014 **6/16/2010**	Mayor
2	**Bette Craik**	**Ward 1**	5 /15/2002 **Reapp: 4/19/2006**	5/15/2014 **4/21/2010**	Tarkanian
3	**Martin Esbin**	**Ward 2**	2 /21/1996 **Reapp: 2/16/2000**	2/21/2012 **2/4/2004** **1/16/2008**	Wolfson
4	**Robert Hoban**	**Ward 3**	12/20/1995 **Reapp: 1/5/2000**	12/20/2011 **12/3/2003** **11/21/2007**	Reese
5	**John J. Phillips**	**Ward 4**	1 /3 /2001 **Reapp: 9/15/2004**	10/18/2012 **10/1/2008**	Brown
6	**Vernell P. McNeal**	**Ward 5**	5 /18/2005 **Reapp: 5/6/2009**	5/18/2013	Barlow
7	**Ed Garcia**	**Ward 6**	3 /3 /2004 **Reapp: 2/6/2008**	3/3/2012	Ross

(The Sheriff, or his designee (Lt. Susan Leach, LVMPD, 400 Stewart Avenue, Traffic Section, Las Vegas, Nevada 89101-2984 (828-5853) and the Director of Public Works, or his designee, are also voting members.)

AUTHORITY: L.V.M.C. 2.48, Amended by Bill 2001-70, Ordinance 5346, adopted 8-1-2001. Resolution R-34-2002, adopted 6-5-2002, creates a Traffic Signal Capital Improvements Advisory Committee in conjunction with the City's Traffic Signal Capital Improvements Plan.

TERM: 4 years. No limit to number of terms. No requirement to fill unexpired portions of terms.

MEMBERS: 9 voting members - 7 members of the public, the Sheriff, & Public Works Director.
(Bill #89-72 adopted 1-3-90 increased from 3 to 5 the public members; Ordinance #5258 enacted 10/4/2000 increased the public membership to 7 to include the two new Wards). Seven public members appointed by the Mayor and confirmed by the City Council such that one member shall reside in and be representative of each of the six Council Wards with one member representing the City as a whole. Ex-Officio (non-voting) - Traffic Engineer, City Attorney, Fire Chief, Director of Planning & Development or their designees and other staff members that the City Manager may designate.

NOTES: MUST BE CITY OF LAS VEGAS RESIDENT, Ord. 3527.

NO CITY FINANCIAL DISCLOSURE REQUIREMENT per Bill 2001-70, Ordinance 5346, adopted 8-1-2001. (State Financial Disclosure no longer required due to passage of AB611 during 1999 Nevada State Legislature stipulating uncompensated Commissions no longer required to file State form.)

MEETINGS: Meets in accordance with a meeting schedule adopted as part of the Rules and Regulations pursuant to 2.48.050, City Hall Council Chambers (Ord 6049)

7-14-2010

I MUST, REGRETFULLY, RESIGN MY POSITION AS WARD 5 TRAFFIC AND PARKING COMMISSIONER. I NOW RESIDE IN WARD 3.

Vernell P. McNeal

VERNELL P. MCNEAL
221 S. BRUCE ST
LAS VEGAS, NV. 89106

MAILING ADDRESS
P.O. BOX 270342
LAS VEGAS, NV. 89127-4342

HOME: 702-474-1138
CELL: 702-439-2873

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City of Las Vegas Agenda Item No.: **69.**

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☐ **Consent** ☒ **Discussion**

SUBJECT:
RECOMMENDING COMMITTEE: BILL ELIGIBLE FOR ADOPTION AT THIS MEETING:

Bill No. 2010-31 – Updates the regulations governing certain commercial, entertainment and solicitation activities within the Pedestrian Mall. Proposed by: Bradford R. Jerbic, City Attorney and Councilman Gary Reese

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This bill will update the regulations governing certain commercial, entertainment and solicitation activities within the Pedestrian Mall. The bill is intended to address the results of litigation regarding the Pedestrian Mall, allowing for protected expression subject to reasonable "time, place and manner" regulations.

RECOMMENDATION:
ADOPTION as a First Amendment at 8/18/2010 City Council meeting pursuant to the 8/3/2010 Recommending Committee.

First Reading - 7/7/2010; First Publication - 8/6/2010

BACKUP DOCUMENTATION:
1. Bill No. 2010-31
2. Business Impact Statement
3. Letter and Copy of Santa Monica Municipal Code by Allen Lichtenstein
4. PowerPoint Presentation, DVD with PowerPoint, Videos and Photographs and Exhibits 1-9 by Staff
5.. Berger caselaw by Maggie McLetchie
6. Verbatim Transcript from 8/3/2010 Recommending Committee meeting

BILL NO. 2010-31

ORDINANCE NO. _____

AN ORDINANCE TO UPDATE THE REGULATIONS GOVERNING CERTAIN COMMERCIAL, ENTERTAINMENT AND SOLICITATION ACTIVITIES WITHIN THE PEDESTRIAN MALL, AND TO PROVIDE FOR OTHER RELATED MATTERS.

Proposed by:
Bradford R. Jerbic, City Attorney
Councilman Gary Reese

Summary: Updates the regulations governing certain commercial, entertainment and solicitation activities within the Pedestrian Mall.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Title 10, Chapter 44, Section 10, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

10.44.010: For purposes of this Chapter:

(A) "Solicitation" means the act of solicitation, including asking, begging, soliciting or pleading, for the purpose of [immediately] obtaining money, charity, business or patronage, or gifts of items of value for oneself or another person or organization.

(B) "Coercion" means to wilfully and knowingly:

(1) Approach or speak to a person in such a manner as would cause a reasonable person to believe that the person is being threatened with:

(a) Imminent bodily injury, or

(b) The commission of a criminal act upon the person or another person, or upon property in the person's immediate possession;

(2) Persist in a solicitation after the person solicited has given a negative response;

(3) Block, either individually or as part of a group of persons, the passage of a solicited person[;] , including by means of the use of physical objects; or

(4) Engage in conduct that would reasonably be construed as intended to compel or force a solicited person to accede to demands.

SECTION 2: Title 11, Chapter 68, Section 20, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

11.68.020: As used in this Chapter:

[(A)] "Celestial vault lightshow" is the display of computer-generated electronic images on the ceiling of the celestial vault constructed above Fremont Street and the various light and sound effect accompanying such images.

[(B)] "Display vehicles" are those vehicles brought into the Pedestrian Mall for purposes of display to the public, and not for the primary purpose of transporting persons or property.

[(C)] "Emergency vehicles" are those motorized devices in, upon or by which any person or property is or may be transported or drawn upon a street or sidewalk, including, without limitation, automobiles, motorcycles and mopeds.

[(D)] "Exterior building improvements" means the building facades, marquees, overhangs, recessed entries, adjoining mall area paving materials, signage and graphics, adjoining landscaping, building illumination and audible effects or devices.

"Free expression zones" means those areas within the Pedestrian Mall that have been specifically designated by the City of Las Vegas to be used for solicitation, leafleting and mall entertainment in accordance with LVMC 11.68.103. The boundaries of the free expression zones shall be as set forth in Exhibit A of this Ordinance (Ordinance No. ____), which ordinance is codified in this Chapter and Exhibit A of which is adopted herein by this reference.

"Leafleting" means the act of distributing to any passersby in a continuous or repetitive manner any printed, written or graphic materials.

[(E)] "Motorized vehicles" are those motorized devices in, upon or by which any person or property is or may be transported or drawn upon a street or sidewalk, including, without limitation, automobiles, motorcycles and mopeds.

[(F)] "Maintenance vehicles" are those vehicles owned or operated by the City of Las Vegas, as well as vehicles owned and operated by utilities and other vehicles requiring access onto the Pedestrian Mall for the purpose of the repair and maintenance of the Pedestrian Mall or facilities and structures contained therein.

"Mall advertising" includes all advertising within or in connection with the Pedestrian Mall including, without limitation, any means of marketing or promoting the Pedestrian Mall, special

events, or any other commercial activity, and the display of consumer goods, products, or services to the users of the Pedestrian Mall for the purpose of encouraging the sale and purchase thereof, including, without limitation, signs, pictures, or other displays.

"Mall entertainment" is the conduct on the part of any person intended to provide entertainment, recreation, relaxation or enjoyment to the users of the Pedestrian Mall.

"Mall vending" is the distribution, display or sale, or any combination thereof, of consumer goods or services (including food, drink or merchandise) from a pushcart, concession stand, kiosk or other similar structure designed for such purpose.

[(G)] "Management agreement" means that agreement executed between The Fremont Street Experience Limited Liability Company and the City of Las Vegas for the purpose of acquisition, construction, operation, management or maintenance of the Pedestrian Mall.

[(H)] "Parade" is a group of persons with or without animals or vehicles in a public procession or march and does not include a procession or march in connection with a special event or mall entertainment.

[(I)] "Pedestrian Mall Act" refers to NRS 268.810 through 268.823.

[(J)] "Special events" include festivals, sporting events, exhibitions, entertainment and similar activities which are not offered on a continuous basis, whether or not members of the public pay an admission or entrance fee to be spectators or participants.

[(K)] "Special permit vehicles" are those vehicles authorized by The Fremont Street Limited Experience Liability Company in accordance with Section 11.68.080 to enter upon the Pedestrian Mall.

[(L) "Mall advertising" includes all advertising within or in connection with the Pedestrian Mall including, without limitation, any means of marketing or promoting the Pedestrian Mall, special events, or any other commercial activity, and the display of consumer goods, products, or services to the users of the Pedestrian Mall for the purpose of encouraging the sale and purchase thereof, including, without limitation, signs, pictures, or other displays.

(M) "Mall entertainment" is the conduct on the part of any person intended to provide entertainment, recreation, relaxation and enjoyment to the users of the Pedestrian Mall.

(N) "Mall vending" is the distribution, display or sale, or any combination thereof, of consumer goods or services (including food, drink or merchandise) from a pushcart, concession stand, kiosk or other similar structure designed for such purpose.]

SECTION 3: Title 11, Chapter 68, Section 100, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

11.68.100: The following are prohibited within the Pedestrian Mall:

(A) Animals unless used in connection with a mall activity authorized by The Fremont Street Experience Limited Liability Company or used for the purpose of assisting the visually or aurally impaired;

(B) Mall vending, mall advertising, [mall entertainment] special events or other commercial activities unless conducted or authorized by The Fremont Street Experience Limited Liability Company[;] or permitted by LVMC 11.68.103;

(C) Parades;

(D) Unicycles, bicycles and other types of cycles, skateboards, roller skates, in-line skates and shopping carts except as authorized by The Fremont Street Experience Limited Liability Company in connection with special events and mall entertainment;

(E) Sleeping or camping;

(F) Littering;

(G) Sexually oriented businesses as described in Section 19.04.040; [of the Las Vegas Municipal Code;]

(H) Notwithstanding LVMC 11.68.103, [The] the placement of any table, rack, chair, box, cloth, stand, booth, container, structure or other object within the Pedestrian Mall, [for purposes of solicitation,] except:

(1) As [as] necessary for emergency purposes, or the maintenance or repair of the Pedestrian Mall; [, or as authorized]

(2) As authorized by The Fremont Street Experience Limited Liability Company for special events, mall advertising, mall entertainment or mall vending or other commercial and entertainment activities; or

(3) As permitted by LVMC 11.68.103.

(I) Glass and metal beverage containers including, but not limited to, bottles, jugs, drinking glasses, aluminum cans and steel cans, during the hours of ten a.m. to 11:59 p.m. on December 31st, and the hours of twelve a.m. to eight a.m. on January 1st of each year;

(J) Feeding birds; [and]

(K) Amplified sound which originates from within the Pedestrian Mall or from properties or businesses abutting the boundaries of the Pedestrian Mall, except where expressly approved by The Fremont Street Experience Limited Liability Company in conjunction with special events, mall entertainment or venue rental;

(L) The launching or throwing of projectiles or other objects into or through the air, except in connection with special events and mall entertainment conducted or authorized by The Fremont Street Experience Limited Liability Company;

(M) The twirling of hoops (such as hula hoops) around the human body or portions thereof, or the use of such hoops for recreation or entertainment, except in connection with special events and mall entertainment conducted or authorized by The Fremont Street Experience Limited Liability Company; and

[(K)] (N) Except as otherwise permitted by LVMC 11.68.103, [Solicitation, as defined in LVMC 10.44.010.] solicitation (as defined in LVMC 10.44.010), leafleting and mall entertainment.

SECTION 4: Title 11, Chapter 68, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended by adding thereto a new section, designated as Section 103, reading as follows:

11.68.103: (A) The following expressive conduct is permitted in any free expression zone:

(1) Solicitation, as defined in LVMC 10.44.010;

(2) Leafleting; and

(3) Mall entertainment.

(B) If any person or organization wishes to use a table in conjunction with activity described in Subsection (A), such table must be provided by The Fremont Street Experience Limited Liability Company. Tables will be provided on a first-come-first-serve basis and subject to available

space within the free expression zones.

SECTION 5: Title 11, Chapter 68, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended by adding thereto a new section, designated as Section 140, reading as follows:

11.68.140: By virtue of its standing and authority under LVMC 11.68.060 and 11.68.070, The Fremont Street Limited Liability Company may commence a civil action to enforce any of the provisions contained in LVMC 11.68.100. This remedy shall supplement, and exist in addition to, those contained in LVMC 11.68.130.

SECTION 6: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 7: Whenever in this ordinance any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in this ordinance the doing of any act is required or the failure to do any act is made or declared to be unlawful or an offense or a misdemeanor, the doing of such prohibited act or the failure to do any such required act shall constitute a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than $1,000.00 or by imprisonment for a term of not more than six months, or by any combination of such fine and imprisonment. Any day of any violation of this ordinance shall constitute a separate offense.

. . .

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. . .

SECTION 8: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Val Steed 6-28-10
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

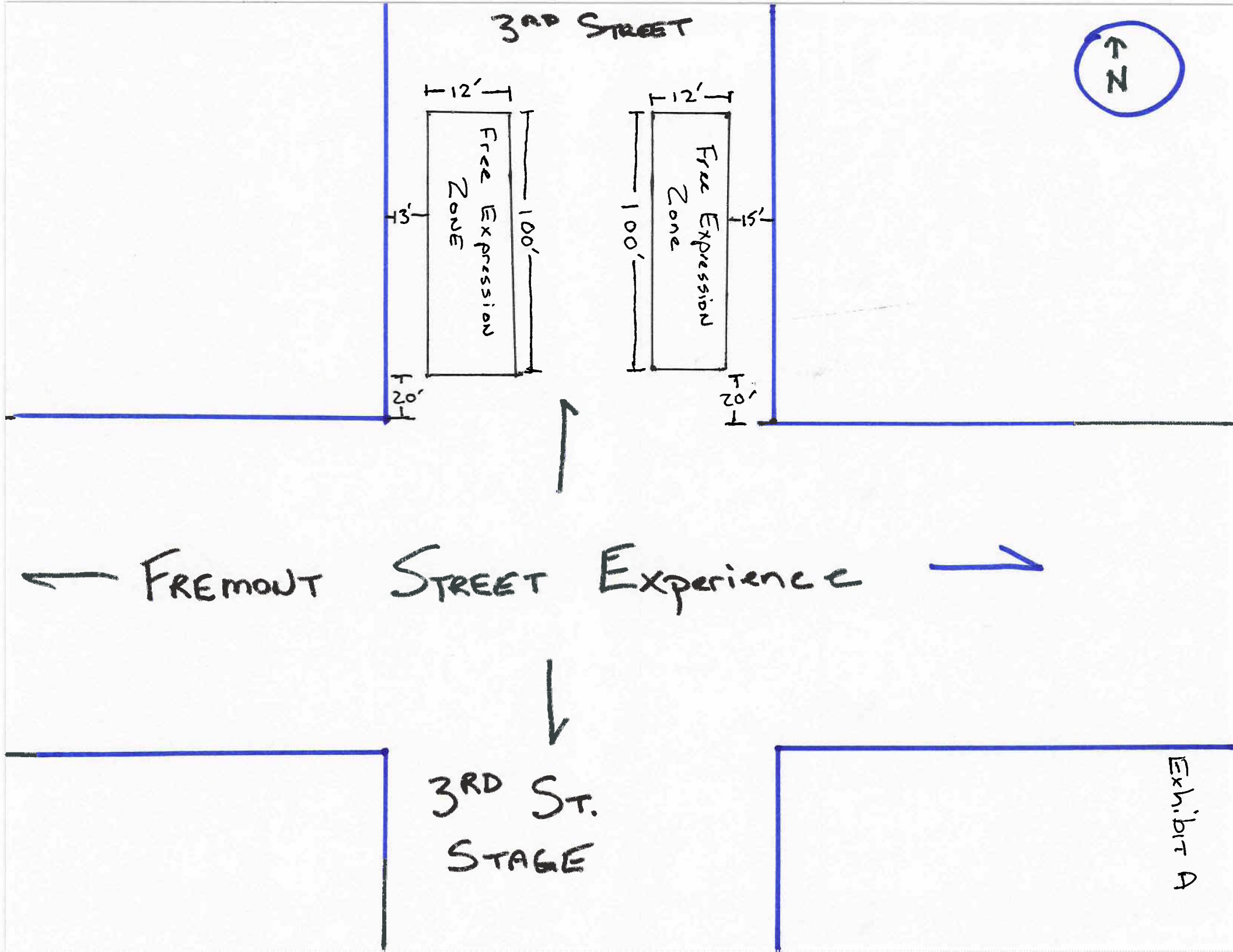
ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk


3RD STREET
N
12'
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Free Expression Zone
43'
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100'
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← FREMONT STREET Experience →
3RD ST.
STAGE
Exhibit A

BUSINESS IMPACT STATEMENT
BILL NO. 2010-31
(Updates the regulations governing certain commercial, entertainment and solicitation activities within the Pedestrian Mall)

This business impact statement was prepared pursuant to NRS 237.090 to address the impact of a proposed ordinance, Bill No. 2010-31, that would update the regulations governing certain commercial, entertainment and solicitation activities within the Pedestrian Mall.

1. The following constitutes a description of the number of the manner in which comment was solicited from affected businesses, a summary of their responses and an explanation of the manner in which other interested persons may obtain a copy of the summary.

Not applicable

2. The estimated economic effect of the proposed rule on businesses, including, without limitation, both adverse and beneficial effects, and both direct and indirect effects:

Adverse effects:

None identified

Beneficial effects:

The addition of more certainty and structure and enforceability in the ordinance provisions

Direct effects:

None identified

Indirect effects:

None identified

3. The following constitutes a description of the methods the local government considered to reduce the impact of the proposed rule on businesses and a statement regarding whether any, and if so which, of these methods were used:

Not applicable. The ordinance is intended to address the results of litigation regarding the Pedestrian Mall, allowing for protected expression subject to reasonable "time, place and manner" regulations.

4. The governing body estimates the annual cost to the local government for enforcement of the proposed rule is:

No additional cost

5. If the proposed rule provides for a new fee or increases an existing fee, the total annual amount expected to be collected is:

Not applicable

6. If the proposed rule provides for a new fee or increases an existing fee, the money generated by the new fee or increase in existing fee will be used by the local government to:

Not applicable

7. If the proposed rule includes provisions that duplicate or are more stringent than federal, state or local standards regulating the same activity, the following explains when such duplicative or more stringent provisions are necessary:

Not applicable

Date: June 28, 2010

ACLU
AMERICAN CIVIL LIBERTIES UNION of NEVADA

July 20, 2010

City of Las Vegas Recommending Committee
Attn: Councilman Ricki Barlow, Councilman Stavros Anthony
400 Stewart Avenue
Las Vegas, NV 89101

Re: Bill No. 2010-31, Regulation of Expression within the Pedestrian Mall

Dear Recommending Committee:

The ACLU of Nevada strongly opposes the passage of Bill No. 2010-31, which amends Titles 10 and 11 of the Municipal Code of the City of Las Vegas to restrict expressive activity on the Fremont Street Pedestrian Mall. We are extremely disturbed by this bill's provisions, which plainly violate mall-goers' First Amendment rights to free speech and assembly. Passage of Bill No. 2010-31 would not merely infringe upon the constitutional rights of the thousands of individuals who visit the Pedestrian Mall daily; indeed, it would all but guarantee another round of costly, time-consuming litigation for the City of Las Vegas. In these tight times, Las Vegas taxpayers deserve better than to have their elected officials drag their city into a protracted, quixotic legal battle.

The ACLU of Nevada has been litigating against similar laws for over a decade, and the courts have repeatedly held both that Fremont Street is a public forum and that similar attempts to curb speech do not pass constitutional muster. *See A.C.L.U. of Nevada v. City of Las Vegas*, 33 F.3d 1092, 1106 (9th Cir. 2003) ("The Fremont Street Experience is a traditional public forum: its public forum status was not destroyed by its transformation, and its current characteristics are those of a public forum."). Because the Fremont Street Experience is a public forum, "the government must bear an extraordinarily heavy burden to regulate speech" in it. *Id.* at 1098. This is a burden that Bill 2010-31 cannot hope to meet.

Just like the prior iterations of free speech restrictions, Bill 2010-31 violates the First Amendment. The proponents of Bill 2010-31 claim that it imposes "reasonable time, place and manner" restrictions on protected expression. *See* Business Impact Statement Bill No. 2010-31. It is true that, "[t]he government may place reasonable time, place and manner restricts on speech" in public fora. *A.C.L.U. of Nevada v. City of Las Vegas*, 466 F.3d 784, 792 (9th Cir. 2006). However, merely calling an ordinance a "reasonable time, place and manner" restriction does not make it so. To satisfy the First Amendment, such a restriction must "meet three criteria: (1) it must be content-neutral; (2) it must be narrowly tailored to serve a significant governmental interest; and (3) it must leave open ample alternative channels for communication of the information." *Berger v. City of Seattle*, 569 F.3d 1029, 1036 (9th Cir. 2009) (en banc).

Bill 2010-31 may be content-neutral on its face, as it indiscriminately bans all solicitation, leafleting and performance in the vast majority of the Fremont Street Experience. However, this only illustrates its fatal overbreadth, and why it cannot be sufficiently narrowly tailored to pass constitutional muster.

Submitted At Meeting
Date 7/20/10 Item 8

"To be narrowly tailored ... the restriction may not burden substantially more speech than necessary." *A.C.L.U. of Nevada*, 466 F.3d at 796, n.13. Just as previous iterations of free speech restrictions targeted "a substantial amount of constitutionally protected speech that is not the source of the 'evils' it purports to combat," Bill 2010-31 targets so much speech on so much of the Fremont Street Experience that it cannot be considered "narrowly tailored." *Id.* Given Bill 2010-31's broad proscription of expressive activities, it could be said that the only "evil" it purports to combat is speech itself.

Additionally, Bill 2010-31 does not leave ample alternative channels for communication. It merely adds two side-by-side 12 by 100 foot "free expression zones" to the Pedestrian Mall, while prohibiting solicitation, leafleting and mall entertainment everywhere else. Given that the Fremont Street Experience space frame encompasses "an area of nearly 200,000 square feet,"[1] Bill 2010-31 bans protected expression in over 98% of the Pedestrian Mall. In fact, speakers who utilize the "free expression zone" will only reach an audience who happens to congregate near one side of 3rd Street. This falls well short of leaving "ample alternative channels for communication," as "the speaker is not permitted to reach the intended audience." *Berger*, 569 F.3d at 1049.

Proponents of Bill 2010-31 might compare it favorably to a provision in the Santa Monica Municipal Code that places various "time, place, and manner" restrictions on street performers throughout the city. *Compare* Santa Monica Municipal Code Chapter 6.112.[2] However, Chapter 6.112 is far less restrictive of speech than Bill 2010-31. First, the Santa Monica ordinance is silent on restricting solicitation and leafleting, while Bill 2010-31 would almost completely ban those two protected forms of speech. Additionally, the Santa Monica ordinance sets ten foot perimeters around bus stops, street corners, and business entrances around which street performers may not perform. *See* Santa Monica Municipal Code Chapter 6.112.030(a). These restrictions are specifically related to the significant government interests in maintaining public safety and access to businesses. As mentioned above, the restrictions found in Bill 2010-31 are not narrowly tailored toward any such end; they simply force those who wish to engage in speech into a tiny, out-of-the-way space.

We are currently in mediation over free speech issues on Fremont Street, supervised by U.S. Magistrate Judge Leavitt. While we cannot discuss the confidential settlement, passing new and unconstitutional codes to govern Fremont Street would unquestionably lead to renewed litigation.

Make no mistake; the ACLU of Nevada will fight tooth and nail to protect the constitutional rights of everyone who visits the Fremont Street Experience. When the courts inevitably hold Bill 2010-31 unconstitutional, the City will be obligated to pay not only its own attorney's fees, but the potential plaintiffs' attorney's fees as well.

For all these reasons, we urge that you do not recommend the passage of Bill 2010-31.

Sincerely,

Allen Lichtenstein
General Counsel

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1 *See* A2Z Las Vegas, *Fremont Street Experience Brings Downtown Las Vegas Into Next Century*, http://www.a2zlasvegas.com/fse/fse01.html (last visited July 17, 2010).

2 Santa Monica Municipal Code Chapter 6.112 may also fail to pass constitutional muster. It, unlike the numerous attempts to restrict speech on Fremont Street, has never been tested in court.

6.112.020 Definitions.

For purposes of this Chapter, the following words or phrases shall have the following meanings:

(a) **Charge.** To require someone to pay a fee or to set, negotiate or establish a fee for a performance. Seeking voluntary contributions through passing around a hat, leaving open an instrument case or other receptacle, or soliciting donations after a performance is not a charge.

(b) **Handcrafts.** Objects made either by hand or with the help of devices used to shape or produce the objects through such methods as weaving, carving, stitching, sewing, lacing, and beading including, but not limited to, objects such as jewelry, pottery, silver work, leather goods, and trinkets. Handcrafts are not likely to communicate a message, idea, or concept to others, are often mass produced or produced with limited variation, and often have functional utility apart from any communicative value they might have. Handcrafts do not include visual art.

(c) **Performer.** An individual who performs in a public area, for the purpose of providing public entertainment.

(d) **Perform.** To engage in a performance including, but not limited to, the following activities: playing musical instruments, singing, dancing, acting, pantomiming, puppeteering, juggling, reciting, or creating visual art in its entirety. "Perform" shall not include: (1) the provision of personal services such as hair weaving or massage; (2) the application of substances to others' skin, including, but not limited to, paints, dyes, and inks; (3) the completion or other partial creation of visual art; (4) the creation of visual art which is mass produced or produced with limited variation or (5) the creation of handcrafts. This list of exclusions is not intended to be exhaustive.

(e) **Public Areas.** Sidewalks, parkways, playgrounds and all other public spaces located in the City.

(f) **The Pier.** The Santa Monica Pier, consisting of both the Newcomb Pier and the Municipal Pier, protruding from the Santa Monica State Beach at the southwesterly terminus of Colorado Avenue, and extending for approximately two thousand one hundred thirty-five feet into the Santa Monica Bay. The Pier is divided into three performance areas: the

Center Performance area, the Breezeway Performance area, and the General Performance area. The boundaries of each of these performance areas are delineated in Exhibit A to Resolution Number 9704 (CCS).

(g) **Sculpture.** A three dimensional work of art which is created through shaping solid material such as wood, stone, clay or metal by carving, modeling, or similar methods.

(h) **Third Street Promenade.** Third Street between the southeasterly line of Wilshire Boulevard and the northwesterly line of Arizona Avenue, and between the southeasterly line of Arizona Avenue and the northwesterly line of Santa Monica Boulevard and between the southeasterly line of Santa Monica Boulevard and the northwesterly line of Broadway.

(i) **Transit Mall.** The sidewalks on Santa Monica Boulevard and Broadway from the east side of Ocean Avenue to the west side of Fifth Street.

(j) **Visual Art.** Drawings and paintings, applied to paper, cardboard, canvas, or other similar medium

through the use of brush, pastel, crayon, pencil, or other similar object, and sculptures. (Added by Ord. No. 1888CCS § 1 (part), adopted 10/28/97; amended by Ord. No. 1949CCS § 4, adopted 7/20/99; Ord. No. 1959 CCS § 1, adopted 10/12/99; Ord. No. 1982CCS § 1, adopted 8/8/00; Ord. No. 2009CCS § 1, adopted 5/22/01; amended by Ord. No. 2028CCS § 1, adopted 11/13/01; Ord. No. 2047CCS § 1, adopted 7/9/02)

6.112.010 Purpose.

The City Council finds that the existence in the City of street performers provides a public amenity that enhances the character of the City and seeks to encourage such performances in a manner consistent with the overall public interest. The City Council also recognizes that street performers seek to and do draw crowds to their performance. This can create serious safety problems by impacting the ability of pedestrians to move safely on sidewalks and through cross walks and impeding the response time of safety personnel. It can also impact access to and egress from businesses. Cognizant that street performers are engaged in First Amendment activities, this chapter imposes reasonable time, place, and manner restrictions on street performers to the extent necessary to ensure the safety of performers, their audience, and the general public and to prevent unreasonable interference with residents' enjoyment of peace and quiet in their homes or the ability of businesses to operate and conduct their business. (Added by Ord. No. 1888CCS, § 1 (part), adopted 10/28/97)

6.112.050 Special regulations for Third Street Promenade and Transit Mall.

In addition to the requirements of Sections 6.112.030 and 6.112.040, no performer shall perform in the Third Street Promenade or the Transit Mall outside of an enclosed building in violation of the following requirements:

(a) Except as provided in subsection (q) of Section 6.112.030, no performer shall perform except during the following time periods:

(1) Nine a.m. to eleven p.m. daily.

(2) Eleven p.m. on Friday and Saturday to one-thirty a.m. of the following day.

(b) No performer shall perform within sixty feet of any special event authorized by the City unless the special event encompasses one or more City blocks in which case the performance shall be conducted according to any administrative guidelines which shall be adopted by the City.

(c) No performer shall:

(1) Perform on the Third Street Promenade in any specific location or within one hundred twenty feet of that location as measured in a north/south direction, for more than two hours in any six hour period. The time required to set up and to remove any instruments, props, equipment, or other items shall be considered part of the performance for purposes of this subdivision and subdivision (2) of this subsection (c).

(2) Perform on the Third Street Promenade on an even hour at the same location that he/she was performing on the preceding hour, or within one hundred twenty feet of that location as measured in a north/south direction.

(3) Perform on the Transit Mall in any specific location or within one hundred twenty feet of that location as measured in an east/west direction, for more than two hours in any six hour period. The time required to set up and to remove any instruments, props, equipment, or other items shall be considered part of the performance for purposes of this subdivision and subdivision (4) of this subsection (c).

(4) Perform on the Transit Mall on an even hour at the same location that he/she was performing on the preceding hour, or within one hundred twenty feet of that location as measured in an east/west direction.

(5) Perform within ten feet of a vendor operating pursuant to or under the authority of an approved license agreement or within forty feet of any other vendor or performance.

(6) Perform on the Transit Mall at a distance greater than five feet from the outer wall of any building or any permanent extension of the building such as a planter box.

(7) Perform on the Santa Monica Boulevard segment of the Transit Mall within twenty feet of the Third Street Promenade. (Added by Ord. No. 1888CCS § 1 (part), adopted 10/28/97; amended by Ord. No. 1949CCS § 7, adopted 7/20/99; Ord. No. 1959CCS § 3, adopted 10/12/99; Ord. No. 2009CCS § 2, adopted 5/22/01; amended by Ord. No. 2028CCS § 2, adopted 11/13/01; Ord. No. 2047CCS § 4, adopted 7/9/02; Ord. No. 2075CCS § 2, adopted 5-13-03)

6.112.040 Performance permit.

(a) To receive a performance permit, a person must complete and file with the City a performance permit application on a form approved by the City. The applicant must provide the following information:

(1) The applicant's name;

(2) The applicant's address;

(3) Proof of the identity of the applicant. This identification must contain a photograph of the applicant. Acceptable forms of identifications shall include, but not be limited to, a driver's license, student identification card, or passport;

(4) A detailed description of the nature of the act to be performed;

(5) A detailed description of any instrument(s) or prop(s) which will be used by the performer(s);

(6) A minor under the age of sixteen shall provide a copy of an entertainment work permit issued to the minor by the Department of Industrial Relations of the State of California and shall identify the responsible adult(s) who will be with the minor at all times that the minor is performing;

(b) The performance permit will be issued annually commencing on January 1st of each calendar year;

(c) Upon receipt of a written application for a performance permit, a performance permit shall be approved within three business days of the filing of a fully completed application, unless one of the following findings is made:

(1) The applicant has knowingly made a false, misleading, or fraudulent statement of fact to the City in the application process;

(2) The application does not contain the information required by this Chapter;

(3) The applicant has not satisfied the requirements of this Chapter.

(d) In addition to requiring compliance with all provisions of this Chapter, the City may condition the approval of a performance permit on the applicant's compliance with other provisions of the City's Municipal Code which are applicable to the performance.

(e) The City may revoke or suspend a performance permit upon the commission of the second violation either of this Chapter or of permit conditions within a six-month period. In any such case, the permit holder shall have the right to appeal from a decision of the City to revoke or suspend any permit in accordance with Chapter 6.16 of this Code. A performer's permit may be suspended for up to four months. If the performance permit of any performer is suspended, no new permit shall be issued during the period of suspension. Any revocation of a performer's permit shall be for six months unless the performer previously had a performance permit revoked and the new violations of this Chapter or permit conditions relate to public safety, in which case, the permit shall be revoked for twelve months. No new permit shall be issued during a revocation period. The City shall establish administrative guidelines to assist in the implementation of this Section.

(f) No application for a performance permit or the renewal thereof shall be accepted unless the application is accompanied by a payment of a nonrefundable annual fee in an amount to be set by resolution adopted by the City Council.

(g) The performance permit shall include a photograph of the performer, shall not be assignable or

transferable, and shall contain the permit number of the applicant and the year in which the permit expires. Each performer in a group shall obtain his/her own separate performance permit.

(h) A replacement performance permit may be obtained upon payment of a nonrefundable fee in an amount to be set by resolution adopted by the City Council.

(i) A performer shall clearly display his or her permit while performing, and shall allow inspection of the permit by any City police or fire official on request.

(j) The City Council may by resolution adjust the noise limitations established in this Chapter during public holidays.

(k) When an applicant requests a performance permit application, the City shall also give the applicant a document which summarizes the rules and regulations concerning street performances in the City. This document may be, but is not required to be, a copy of this Chapter. (Added by Ord. No. 1888CCS § 1 (part), adopted 10/28/97; amended by Ord. No. 1949CCS § 6, adopted 7/20/99; Ord. No. 2047CCS § 3, adopted 7/9/02; Ord. No. 2145CCS § 1, adopted 11/23/04)

6.112.030 Rules and regulations.

CodeAlert: This item has been affected by 2304. Please refer to the CodeAlert Ordinance List for the most current provisions.

(a) Subject also to Sections 6.112.050 and 6.112.060, no performer may perform:

(1) Within ten feet of any bus stop;

(2) Within ten feet of any street corner or a marked pedestrian crosswalk;

(3) Within ten feet of the outer edge of any entrance of any business, including, but not limited to, doors; vestibules; driveways; outdoor dining area entries; and emergency exits, during the hours that any business on the premises is open to the public or to persons having or conducting lawful business within those premises.

(b) No person may perform on the Third Street Promenade, the Pier, the Transit Mall, or any public sidewalk without first obtaining a performance permit issued by the City pursuant to Section 6.112.040.

(c) A performer and the performer's equipment may not block or obstruct the free and safe movement of pedestrians. If a sufficient crowd gathers to observe a performer such that the passage of the public through a public area is blocked or obstructed, a police officer or fire official may disperse that portion of the crowd that is blocking or obstructing the passage of the public. If a performer cannot conduct a performance in a location without blocking or obstructing the passage of the public, a police officer or fire official may cause the performer to leave the location or require that the performer relocate his/her equipment, but shall not prevent the performer from occupying another location in compliance with this Chapter.

(d) A performer who performs for a charge shall obtain a business license and be subject to all applicable provisions of Chapter 6.36. A performer who performs without charge shall not be required to obtain a vendor permit pursuant to Chapter 6.36 or a business license pursuant to Chapter 6.04.

(e) No performer shall construct, erect, or maintain any stage, platform, or similar structure for use during any performance unless the stage or platform:

(1) Is integral to the performance and the performance only takes place on the stage;

(2) Does not exceed four feet by four feet and one-quarter inch in height;

(3) Is removed from the public way when the performer is not performing;

(4) Has beveled edges.

(f) No performer shall use any knife, sword, torch, flame, axe, saw, or other object that can cause serious bodily injury to any person, or engage in any activity, including but not limited to, acrobatics, tumbling, or cycling, that can cause serious bodily injury to any person.

(g) No performer shall use any generator, wet cell battery with removable fill caps, or any other power source that poses a fire or public safety hazard. No performer shall connect or maintain an electrical cord to an adjacent building or to a City power source.

(h) No performer may litter his or her performance site.

(i) No performer shall utilize or prevent the public from utilizing any public benches, waste receptacles, or other street furniture during the performance.

(j) No minor under the age of sixteen can perform unless the minor is at all times accompanied by a responsible adult eighteen years of age or older, has obtained an entertainment work permit issued by the Department of Industrial Relations of the State of California and maintains the permit in his/her possession at the time of the performance.

(k) No performer shall place any object on a public sidewalk which causes less than a four-foot contiguous sidewalk width being kept clear for pedestrian passage.

(l) No performer shall perform with more instruments, props, equipment, merchandise, or other items than the performer can reasonably transport or remove at one time.

(m) No performer shall place his/her instruments, props, equipment, merchandise, or other items on a public sidewalk, public street, or public right-of-way for more than two hours without performing in accordance with the provisions of this Chapter.

(n) No performer shall leave his/her instruments, props, equipment, merchandise, or other items unattended.

(o) No performer shall perform in contravention of the allowable noise levels established by Chapter 4.12 and Chapter 6.116 of this Code.

(p) No performer shall block or obstruct a curb cut.

(q) The following formula establishes the special performance hours that apply during specified holidays on the Third Street Promenade, the Transit Mall, and the Pier:

(1) If the holiday follows a weekend and the next day is a workday, then the holiday shall be treated as if it were Sunday and the day preceding the holiday shall be treated as if it were Saturday.

(2) If the holiday precedes a weekend, then the holiday shall be treated as if it were Saturday and the preceding day shall be treated as if it were Friday.

(3) If the holiday occurs during midweek, and is surrounded by workdays, then the holiday shall be treated as if it were Sunday and the day preceding the holiday shall be treated as if it were Friday.

The following is a list of holidays which trigger the application of this subsection: New Year's Day, President's Day, Memorial Day, Independence Day, Columbus Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. The City Council may by resolution add to this list of holidays.

(r) No performer shall perform outside designated performance zones on the Third Street Promenade and the Pier, as established by resolution of the City Council. (Added by Ord. No. 1888CCS § 1 (part), adopted 10/28/97; amended by Ord. No. 1949CCS § 5, adopted 7/20/99; Ord. No. 1959CCS § 2, adopted 10/12/99; Ord. No. 2047CCS § 2, adopted 7/9/02; Ord. No. 2075CCS § 1, adopted 5-13-03)

6.116.060 Special regulations for vendors on the Third Street Promenade and Transit Mall.

No person authorized to vend pursuant to Sections 6.36.030(f) and 6.36.030(g), or any successor legislation, may on the Third Street Promenade or the Transit Mall:

(a) Vend on the Third Street Promenade in any specific location, or within one hundred twenty feet of that location as measured in a north/south direction, for more than a two-hour period in any six-hour period. The time required to set up and to remove equipment and material for vending shall be considered part of the time limit established by this subsection and subsection (b) of this Section;

(b) Vend on the Third Street Promenade on an even hour at the same location that he/she was vending on the preceding hour, or within one hundred twenty feet of that location as measured in a north/south direction;

(c) Vend on the Transit Mall in any specific location, or within one hundred twenty feet of that location as measured in an east/west direction, for more than a two-hour period in any six-hour period. The time required to set up and to remove equipment and material for vending shall be considered part of the time limit established by this subsection and subsection (d) of this Section;

(d) Vend on the Transit Mall on an even hour at the same location that he/she was vending on the preceding hour, or within one hundred twenty feet of that location as measured in an east/west direction;

(e) Vend within ten feet of a vendor operating pursuant to or under the authority of an approved license agreement or within forty feet of any other vendor or performer;

(f) Vend those items authorized by Section 6.36.030(g), or any successor legislation, unless that person is also performing pursuant to Chapter 6.112, the item vended is representative of the work being created during the performance, and no more than five such items are displayed at any one time. A performer/vendor may display these items from a table or cart, the performer/vendor's instrument case, or attached to an easel which is used as part of the performance. If a performer/vendor displays items from a table or cart, all other requirements specified in Section 6.116.010 shall apply except that the performer/vendor shall be limited to utilizing one table or cart of a size not larger than four feet in width by four feet in length by three feet in height.

(g) Vend on the Transit Mall at a distance greater than five feet from the outer wall of any building or any permanent extension of the building such as a planter box. (Added by Ord. No. 1949CCS § 12, adopted 7/20/99; amended by Ord. No. 1959CCS § 6, adopted 10/12/99; amended by Ord. No. 2028CCS § 7, adopted 11/13/02; Ord. No. 2047CCS § 9, adopted 7/9/02; Ord. No. 2075CCS § 7, adopted 5-13-03; Ord. No. 2145CCS § 6, adopted 11/23/04)

I. History of the Fremont Street Experience Project

Submitted At Meeting
Date 8/3/10
Item 3

- Conceived in the early 1990s as a way to draw more people to the ailing downtown gambling area.
- Fremont Street was closed permanently to vehicular traffic in 1994.
- Construction began in 1994 and the Fremont Street Experience (FSE) opened in 1995.
- The FSE is a cooperative venture, owned and operated by a group of downtown hotel/casino companies, with the ongoing involvement of the City of Las Vegas.

- The elements of the project were:
  - Fremont Street Experience canopy.
  - Removal of streets and sidewalks to be replaced by pedestrian mall.
  - Construction of parking garage at the Fremont Street Experience between 4th Street and Las Vegas Blvd.
  - Before the project, the sidewalks had always been open to speech.
  - The former Fremont Street had been reserved for vehicular traffic and not open to free speech.

A. Development Agreement

- October 1993-A four party Development Agreement to construct the FSE is executed between:
  - City of Las Vegas
  - City of Las Vegas Redevelopment Agency
  - Fremont Street Experience LLC
  - Fremont Street Experience Parking Garage LLC

- September 1995-Four party Development Agreement is amended and restated to reflect the final version of the Fremont Street Experience Project and parking garage.

- FSE LLC is responsible for operation and maintenance of the FSE including, but not limited to, operation and maintenance of the pedestrian mall and operation and maintenance of the canopy and light show.
- FSE Parking Garage LLC is responsible for repaying taxpayers for cost overruns in acquiring property for parking garage.
- FSE LLC derives all profits from commercial use of pedestrian mall to offset costs of operation and maintenance including, the leasing of retail space in the mall, special events and any other commercial use permitted by the development agreement.

How was the pedestrian mall funded?

- Room tax bond
- Tax increment bond
- Contribution from Fremont Street Experience LLC
- Six million dollar grant from LVCVA

Who owns the pedestrian mall?

- NRS 268.812(5) allowed the conversion of right of way to pedestrian mall without government losing its interest in controlling the underlying real property.

Is Fremont Street Experience funded using park money and is it a park?

- LVCVA is organized under NRS 244A.599(The County Fair and Recreation Boards).
- Unclear if LVCVA could fund a pedestrian mall under NRS 244A.599.
- NRS 268.816 (3) was amended in 1993 to make clear that a pedestrian mall is a recreational facility eligible for funding under NRS 244A.599.
- No park money was used to construct the Fremont Street Experience nor has FSE been a park.

B. Pedestrian Mall Ordinance

- October 1993-City adopts Ordinance 3747 establishing the FSE pedestrian mall, setting its boundaries, charges FSE LLC with managing and operating the mall. (LVMC 11.68)

C. Solicitation Ordinance

- January 1995-City adopts Ordinance 3862 creating new definitions of solicitation and coercion, limiting the places a person can solicit and prohibiting solicitation in the pedestrian mall. (LVMC 10.44)

Fremont Street Experience Today

- Currently a pedestrian mall and a major tourist attraction in Downtown Las Vegas.
- Occupies the westernmost five blocks of Fremont Street.
- Main attraction is a barrel vault canopy 90 ft. high and four blocks (app. 1,500 feet) in length.
- More than 12 million LED lamps illuminate the overhead canopy.
- Primary focus is to create an environment of entertainment, retail, and outdoor dining opportunities.
- FSE is also home to the Neon Museum which displays historic neon signs.

Conclusion

- FSE was conceived as a privately operated and managed public attraction.
- Revenue derived from the commercial operation of the mall would be used to operate the light show and maintain the mall.
- No tax payer money would ever be used to operate and maintain FSE.

II. History of Litigation

ACLU v. City of Las Vegas

U.S. District Court

Case No. 97-01419

1. ACLU filed first lawsuit in 1997.
   - ACLU alleged that the solicitation and pedestrian mall ordinances were unconstitutional by prohibiting solicitation, leafleting, unauthorized vending, and the unauthorized erection of tables and structures in the Mall.
   - Federal District Court upheld the solicitation ban and tabling restriction, but enjoined enforcement of the leafleting and vending restrictions. Each side appealed the decision, but the 9th Circuit dismissed these appeals.
   - April 2001- Federal District Court granted summary judgment for the City with regard to the solicitation and tabling ordinances and summary judgment for the ACLU with regard to their challenge to the leafleting and vending ordinances.

II. 2001-ACLU again challenges the constitutionality of provisions of the pedestrian mall ordinance relating to prohibitions involving free speech.

- Federal District Court of Nevada upholds most provisions of the ordinance. Federal District Court finds FSE is not a public forum.
- ACLU appeals to the 9th Circuit.

- 9th Circuit determined that the Pedestrian Mall should be classified as a traditional public forum for the purposes of a First Amendment analysis.
- Evaluating the ordinances under the more demanding standard applicable in a traditional public forum, the 9th Circuit upheld the injunction against the leafleting and vending ordinances and remanded the case to determine whether the solicitation ban and tabling restriction were narrowly tailored to serve significant government interest.
- The 9th Circuit recognized that all of the ordinances, including the vending restriction, were content-neutral time, place or manner restrictions.

- Back again in Federal District Court, the case re-analyzed the solicitation and tabling ordinances and upheld the solicitation ban as a valid content-neutral time, place and manner restriction, even as a public forum.
- Additionally, the Court granted summary judgment for the ACLU on its claim against the tabling ordinance.

- On appeal a third time, the 9th Circuit overturned the district court's ruling and invalidated prohibitions against solicitation, leafleting, tabling and vending in the pedestrian mall.

New Legislation

- To comply with the decision of the 9th Circuit, the City eliminated the ban on leafleting found at LVMC §11.68.100(1) and removed the exception for labor-related activities from the tabling restriction codified at LVMC §11.68.100(H).
- The City also adjusted the definition of solicitation.
- ACLU files a challenge to the new pedestrian mall ordinance.

- A Federal District Court judge grants summary judgment in March 2009.
- Result:
  - The definition of solicitation was declared unconstitutional.
  - The prohibitions against mall vending, advertising and entertainment were declared unconstitutional.
  - The prohibition against erection of tables and other structures was declared unconstitutional.
  - The prohibition against solicitation was declared unconstitutional.

III. Why are regulations necessary?

- No regulation means .. .
  - 1. No viable commercial opportunity can exist.
  - 2. Unregulated speech competes with primary purpose of pedestrian mall.
    - Light show
    - Stage shows
    - Special events
    - Retail kiosks
    - Outdoor cafes


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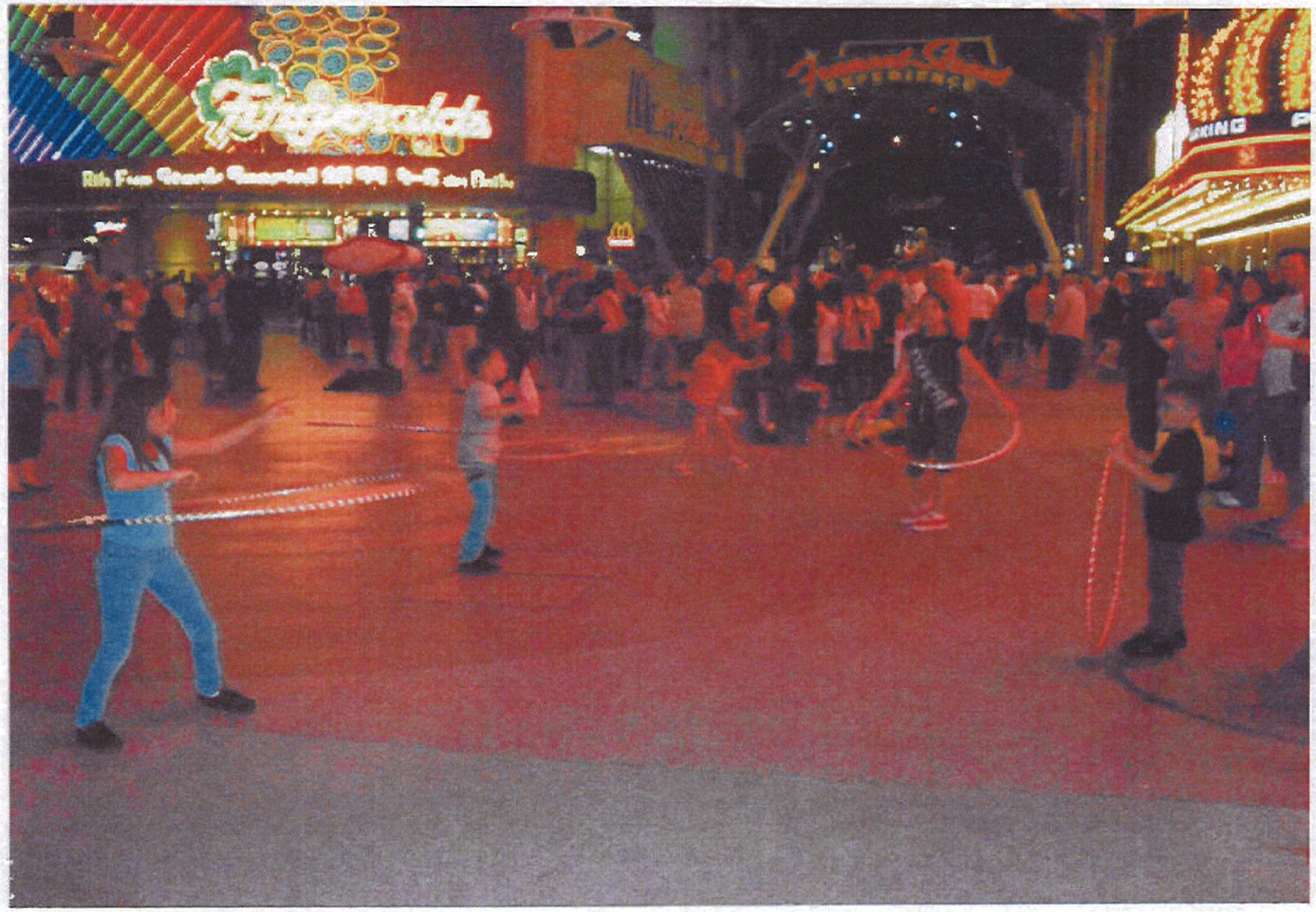
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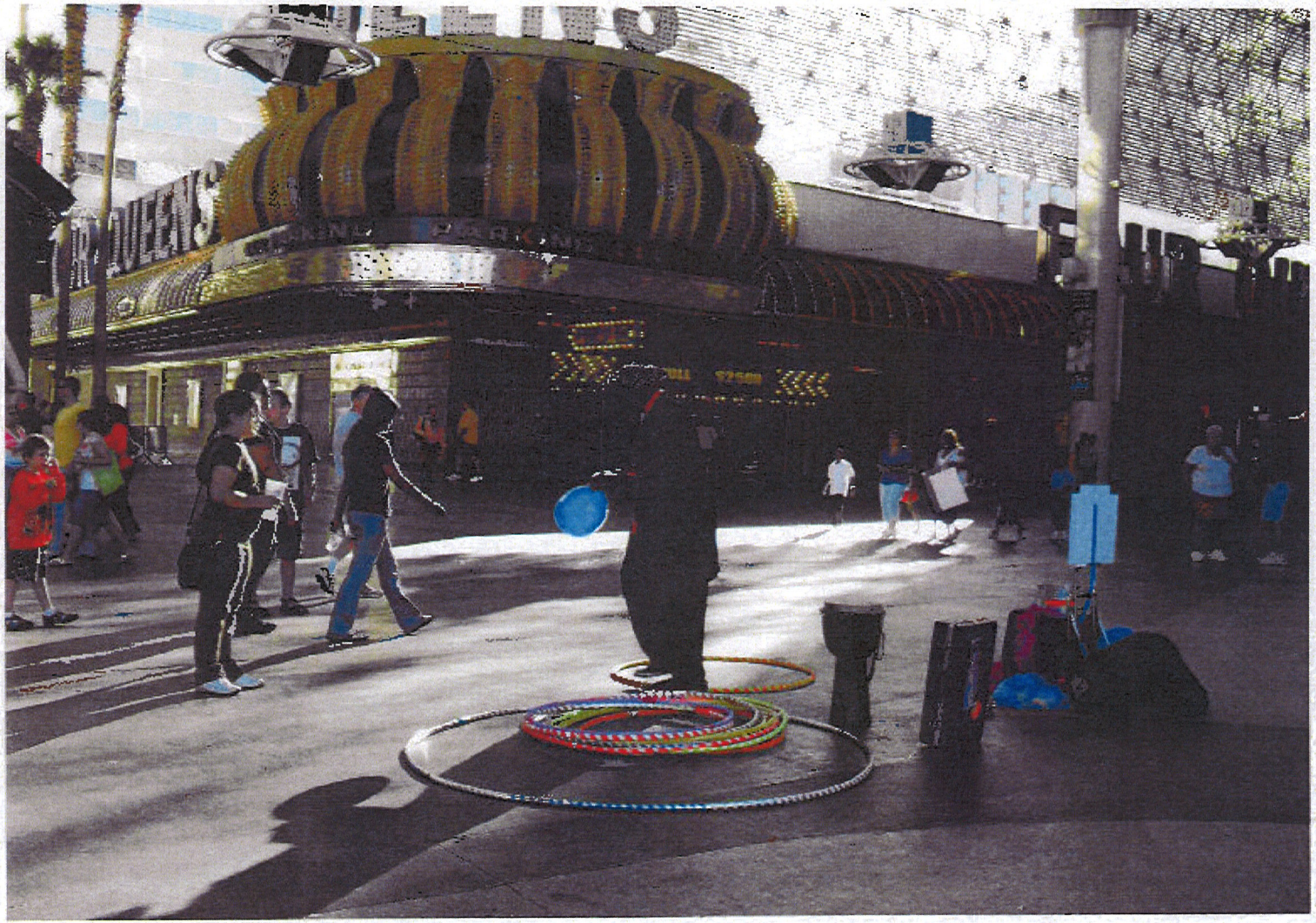


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CASINO











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Silver Create Dancer
Performing in section 2

REPORTING OFFICER'S SIGNATURE

Corporal D. Wade
PRINT NAME


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Kahina Lubbans - Vegas Showgirl (Highlights) ...
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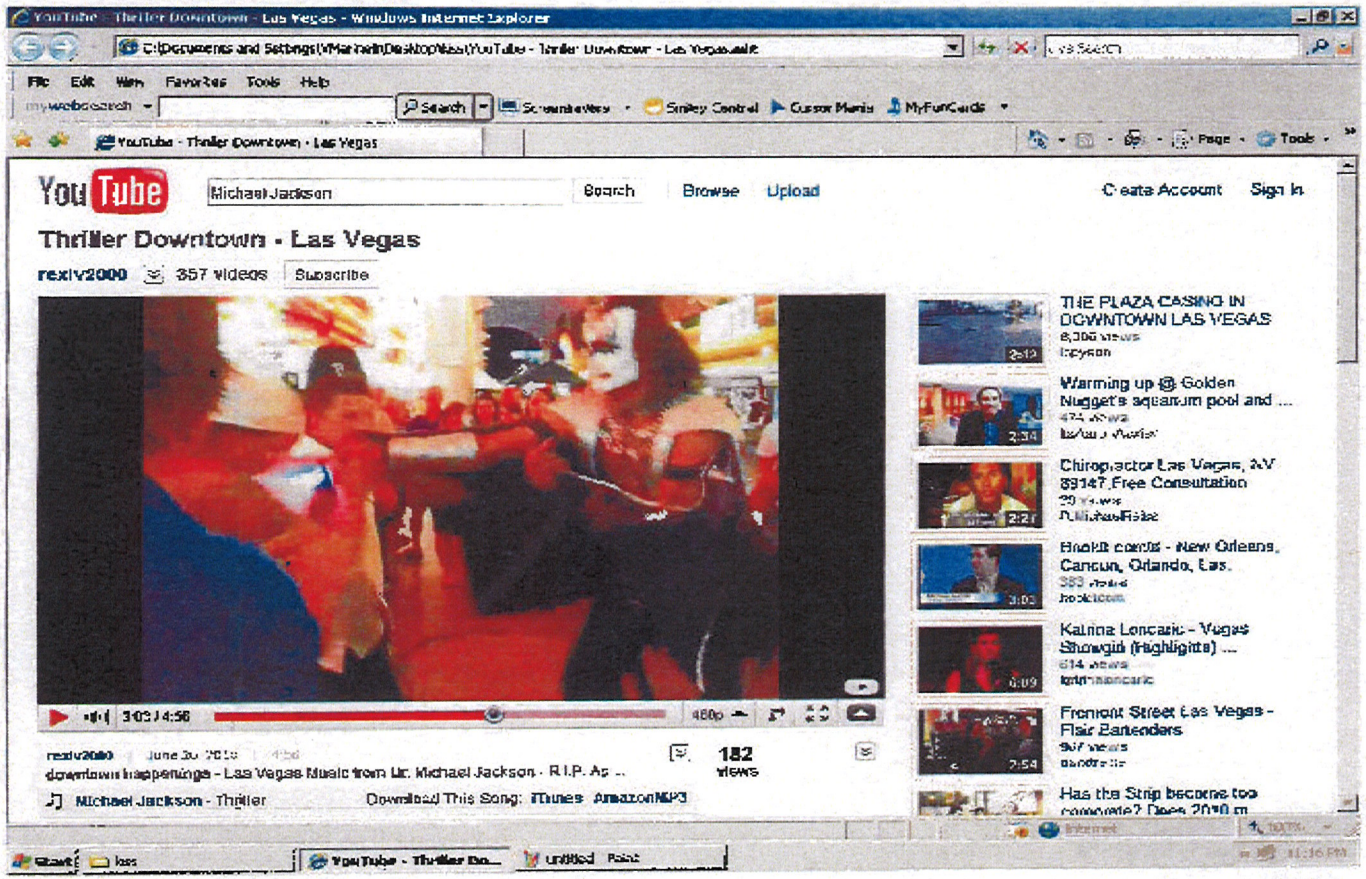
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Kalina Loncaric - Vegas Showgirl (highlights) ...
Fremont Street Las Vegas - Flair Bartenders
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IV. The New Ordinance

Bill No. 2010-31

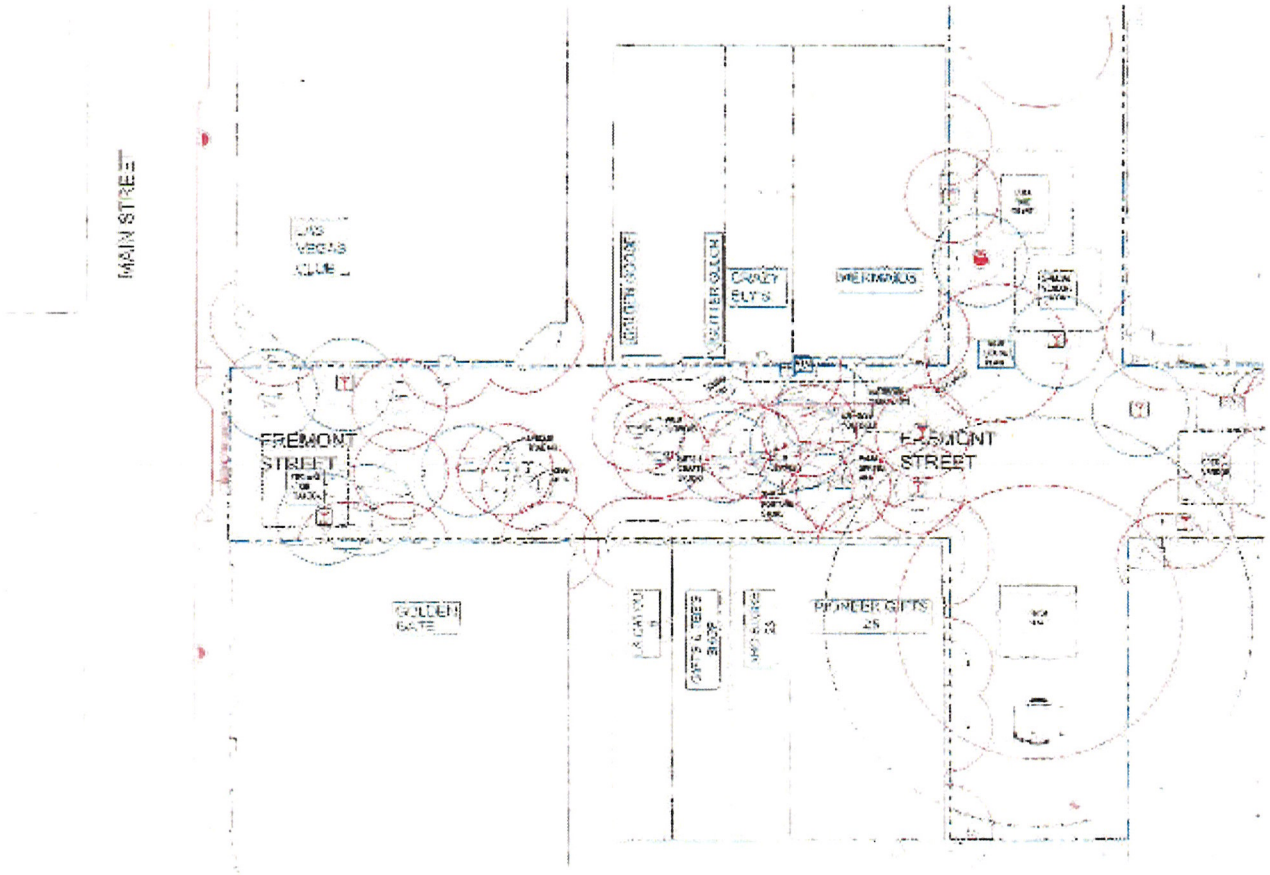
- Bill recognizes that the pedestrian mall is a traditional public forum subject to reasonable time, place and manner restrictions.
- Government must demonstrate a significant interest in such regulation.
- Restrictions must be narrowly tailored leaving alternatives available.

What can be prohibited as a matter of law

- Coercive solicitation-blocking, threatening, compelling or forcing
- Solicitation within 20 feet of an ATM or 10 feet of the entrance of a commercial building. LVMC 10.44.030 (see map)
- Solicitation in convention centers during trade shows (*Hampton International Comm. v. LVCVA*)
- Convention protesters *(Menotti v. City of Seattle)*
- Solicitors at public fairground (*Heffron v. Inter. Soc. For Krishna Consciousness*)
- Beach vendors *(One Word One Family Now v. City and County of Honolulu)*

SECTION 1

SCALE: 1" = 40'



SECTION 2

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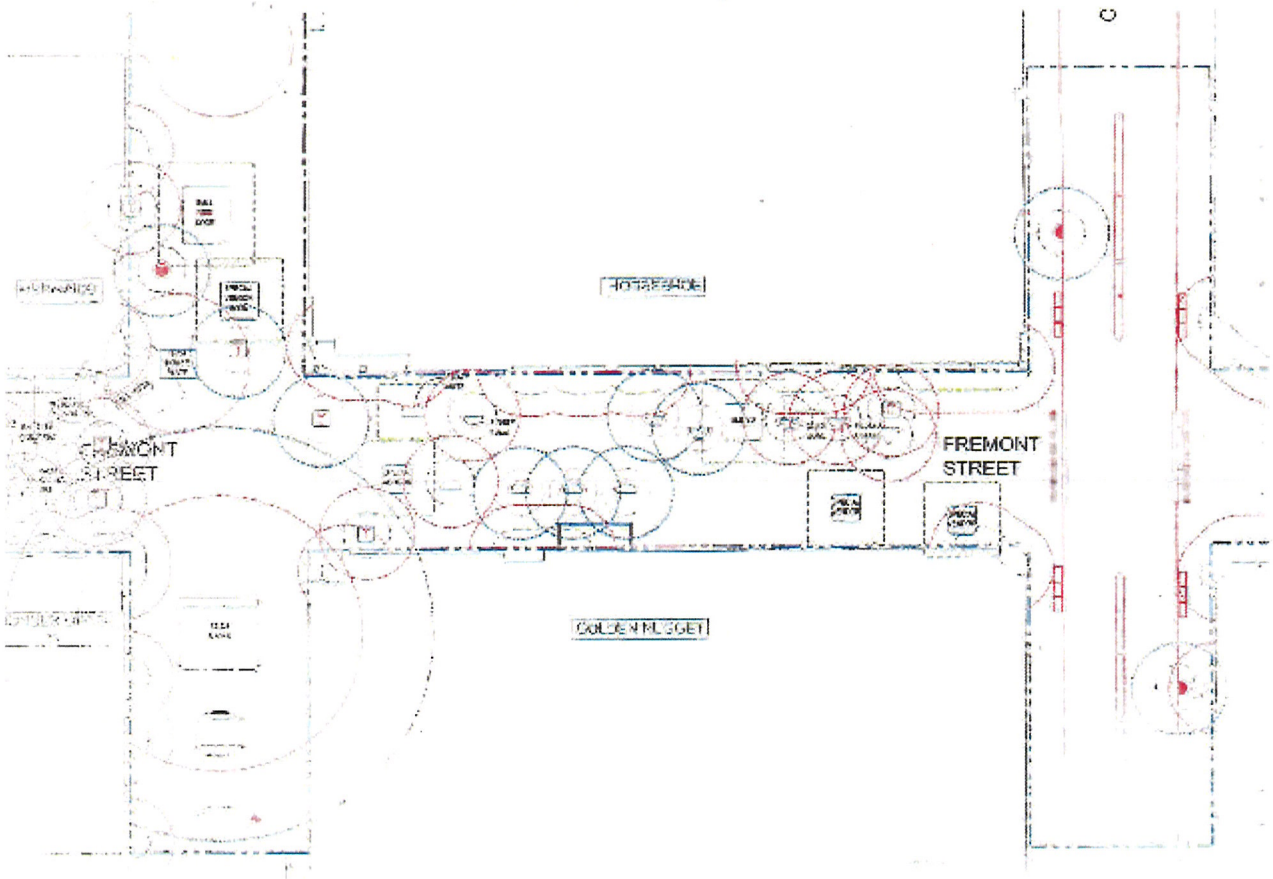

SECTION 3

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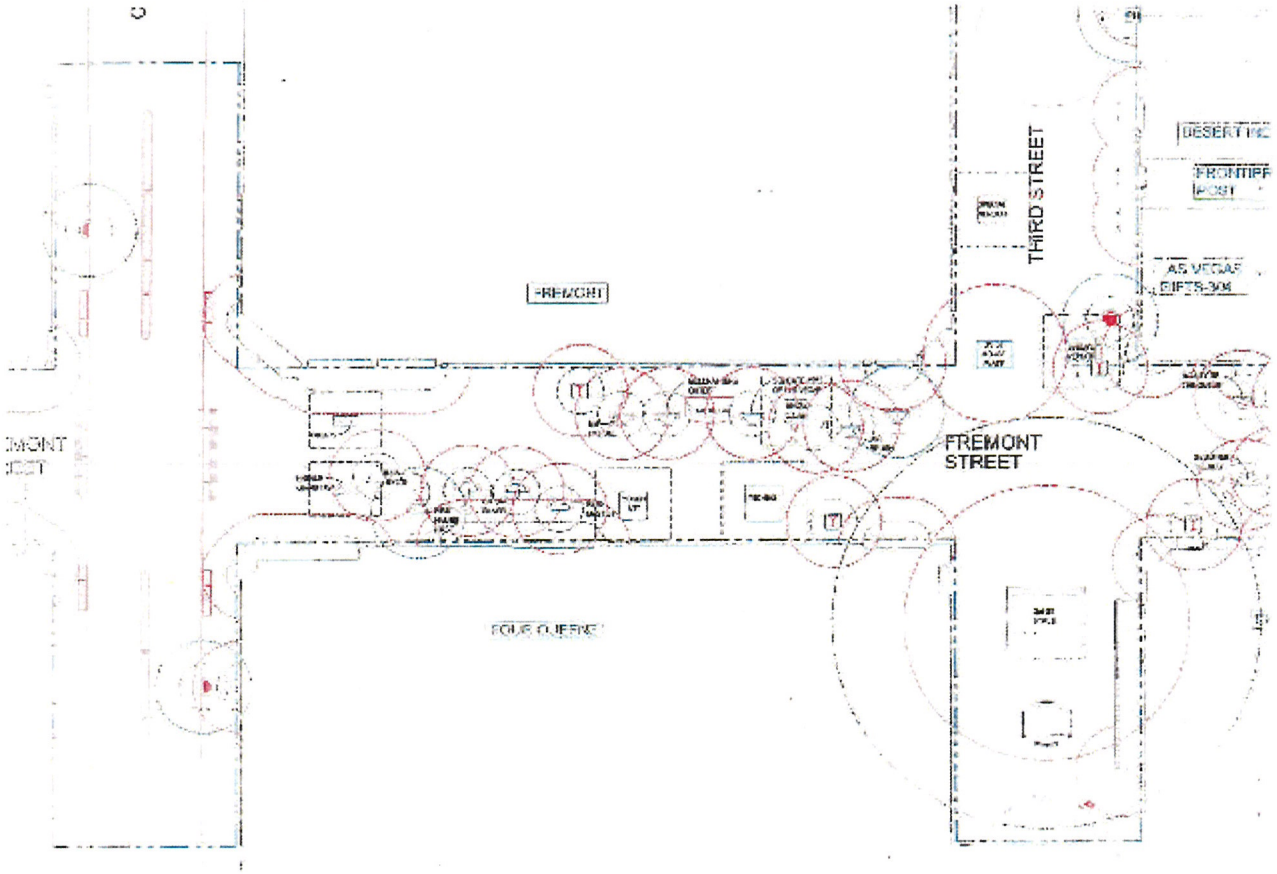

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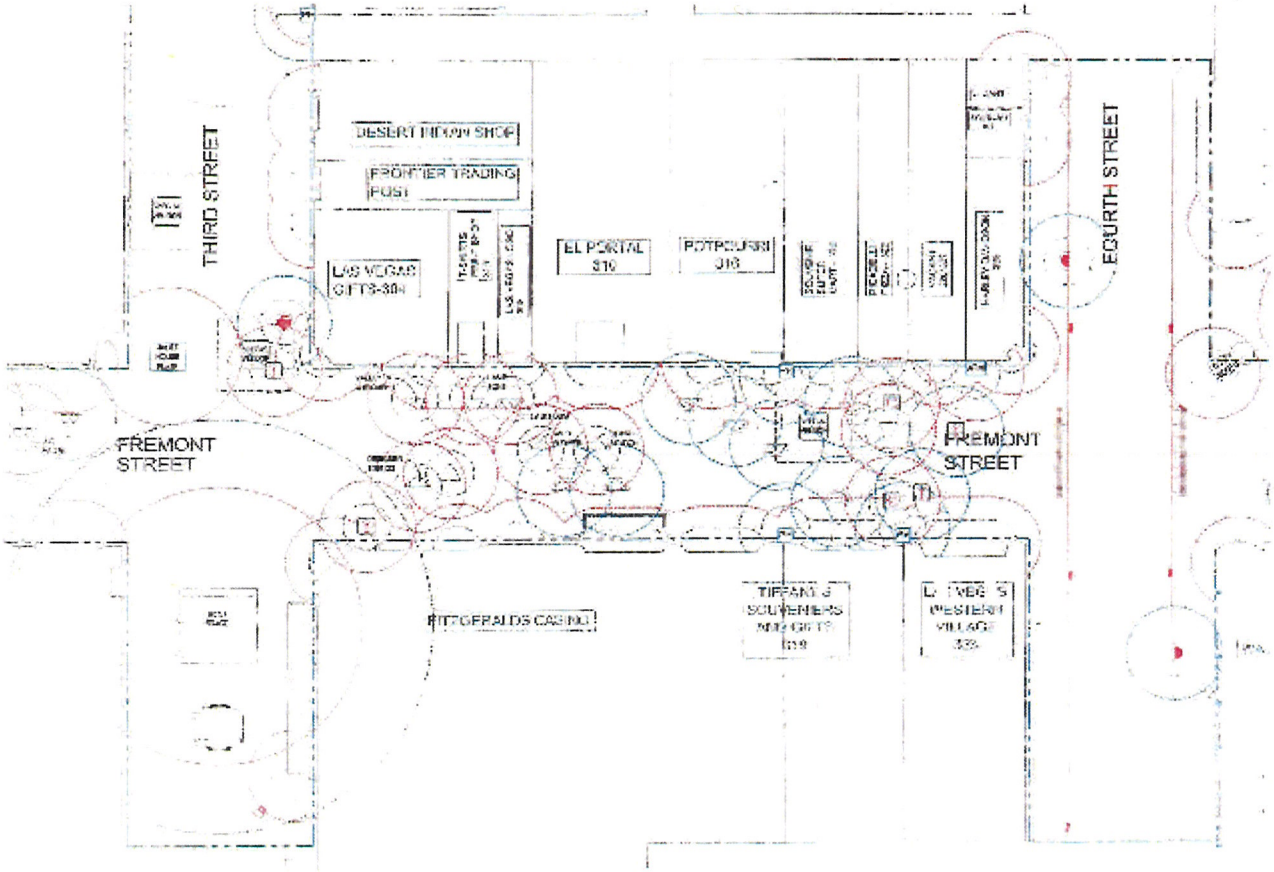

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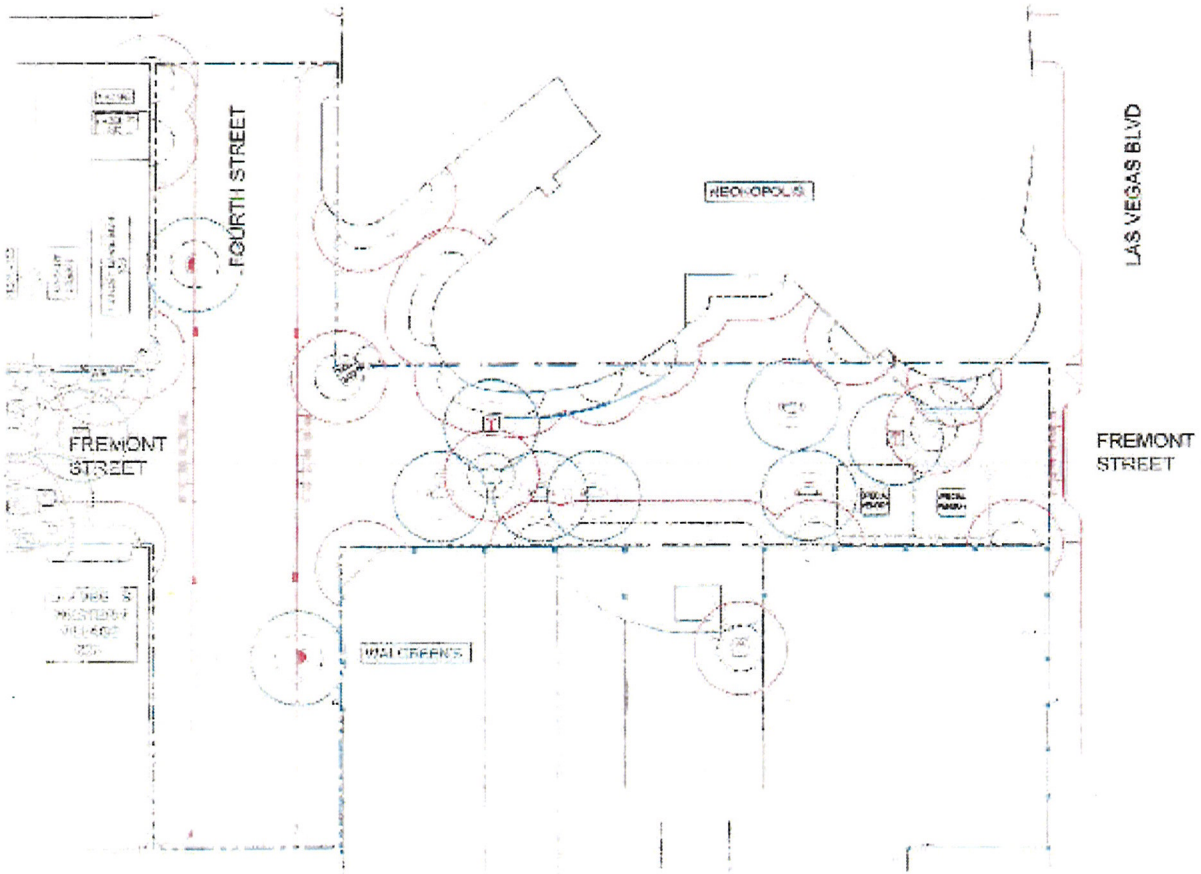

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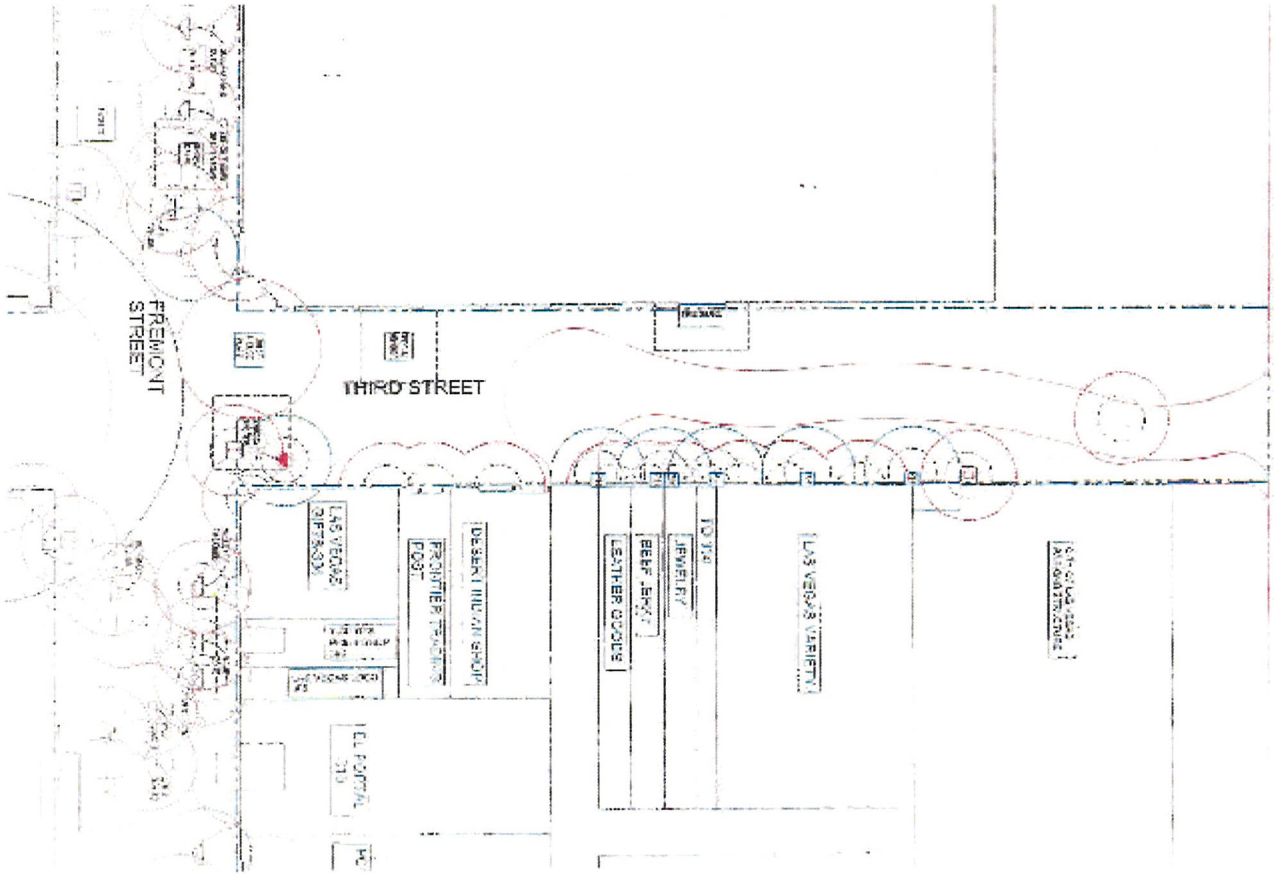

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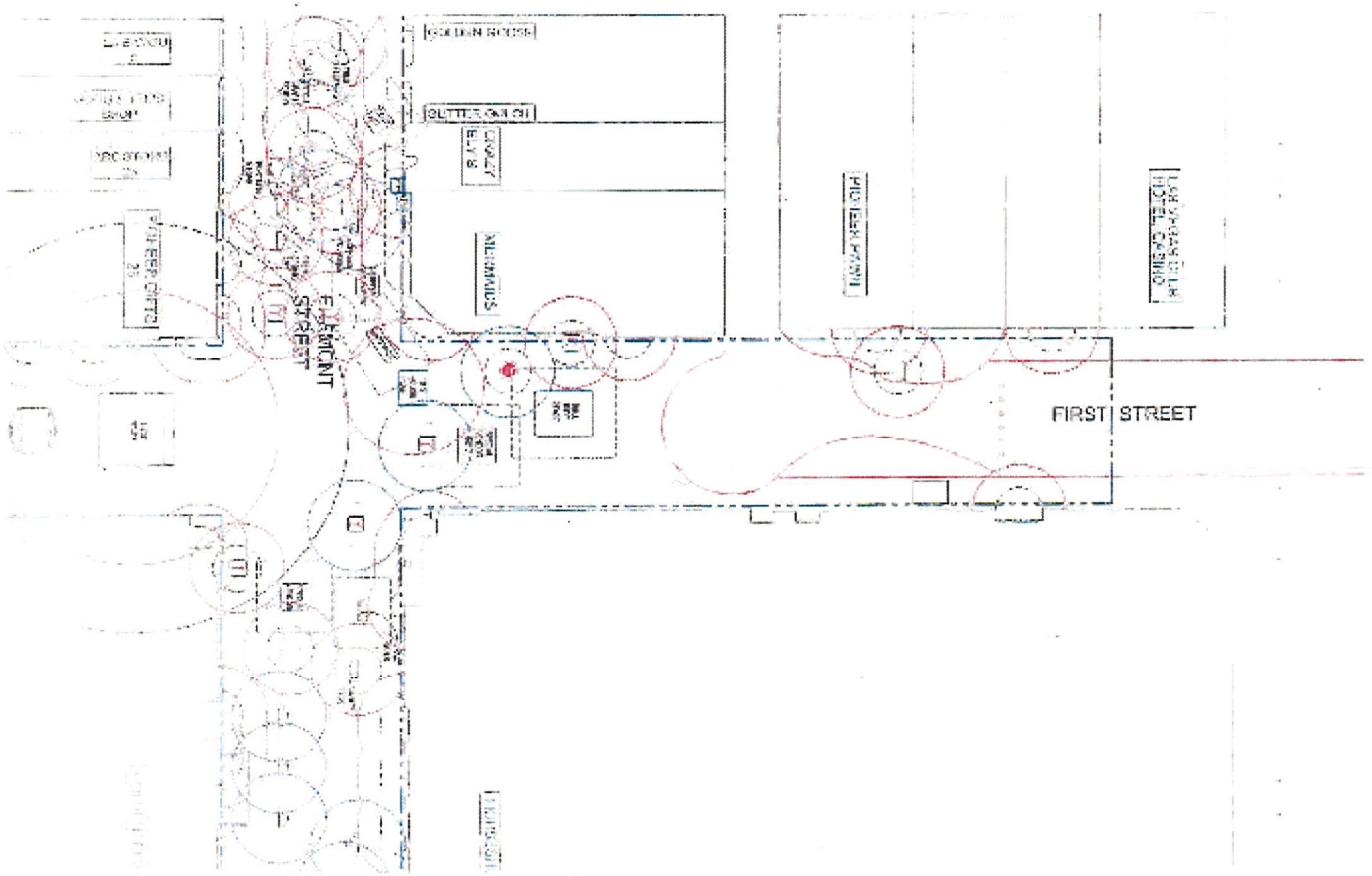
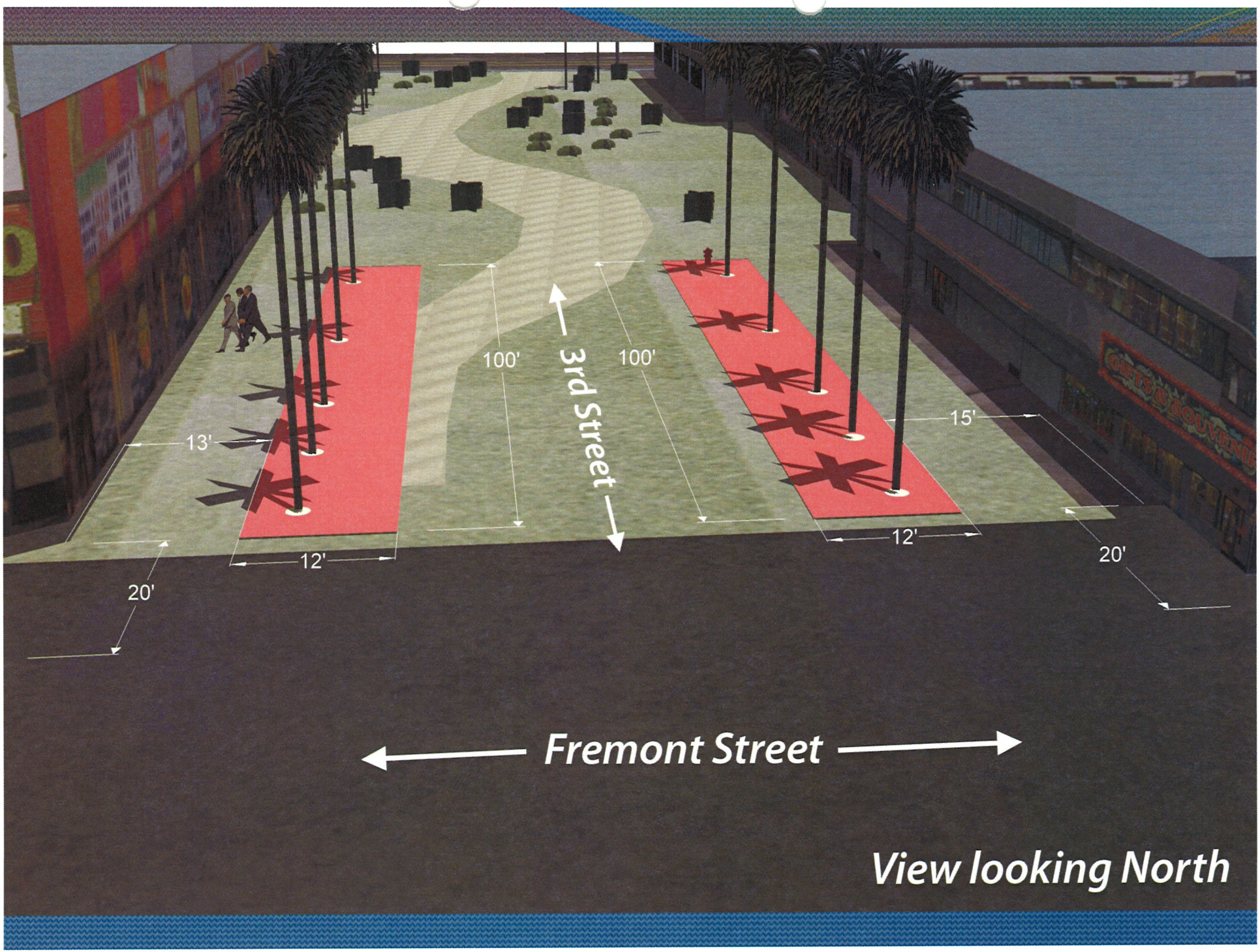


- Court decisions concerning the FSE have recognized:
  - Restrictions upon the act of solicitation are content neutral.
  - The City and FSE LLC have a significant interest in assuring safe, efficient, and orderly movement of pedestrians.
  - The City and FSE LLC have a significant interest in protecting the local merchant economy from unfair competition.
  - The City and FSE LLC have a significant interest in protecting visitors from solicitors in an environment where freedom of movement is restricted.
  - The City and FSE LLC have a significant interest in preventing the disruption of Mall entertainment and in disrupting visitors' enjoyment of the Mall experience.
  - The City and FSE LLC have a significant interest in protecting the aesthetic appearance of the Mall by eliminating visual blight caused by an unsightly vendor.

Free Expression Zones

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Fremont Street
View looking North


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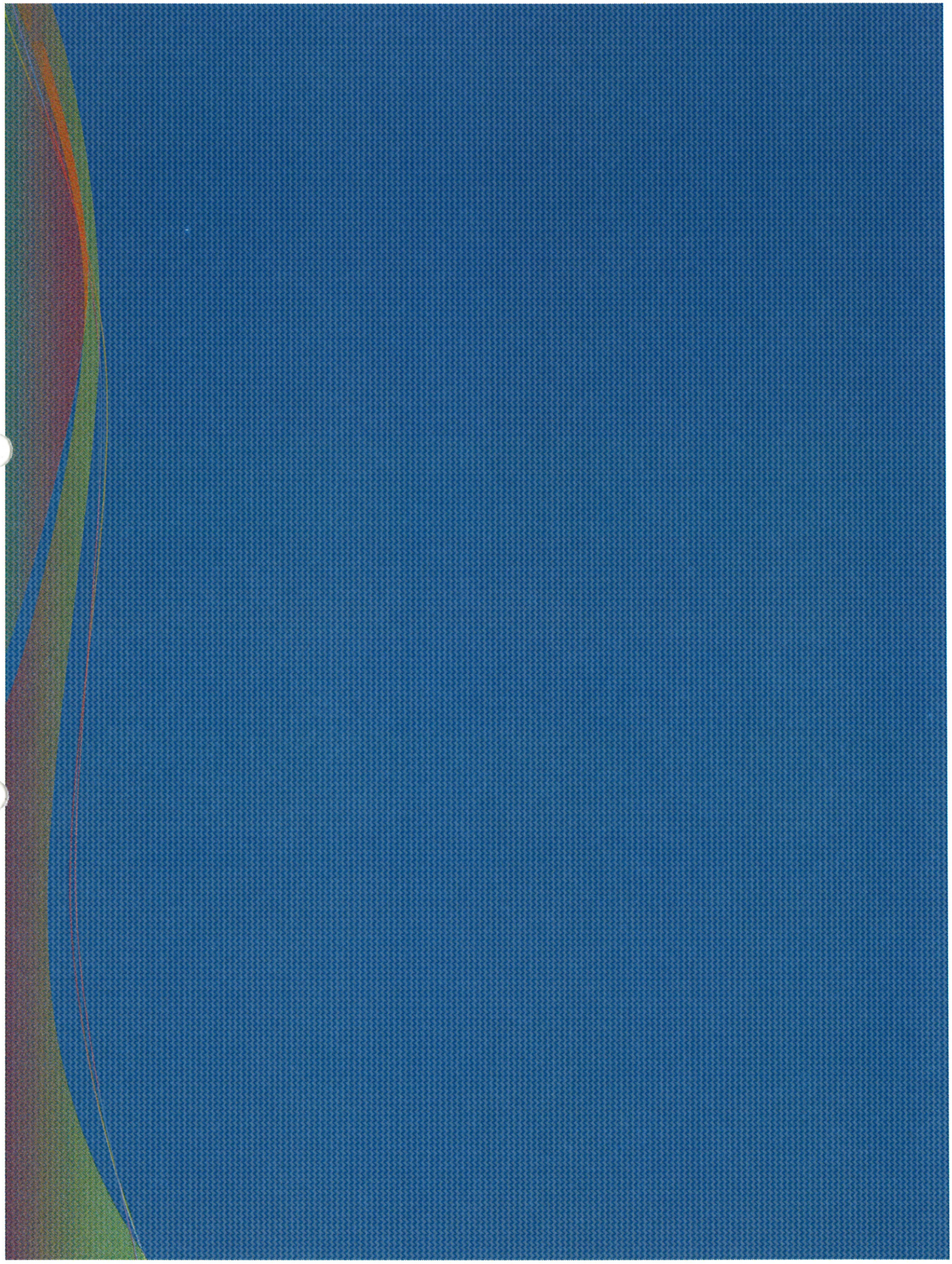
View looking South



CONCLUSION

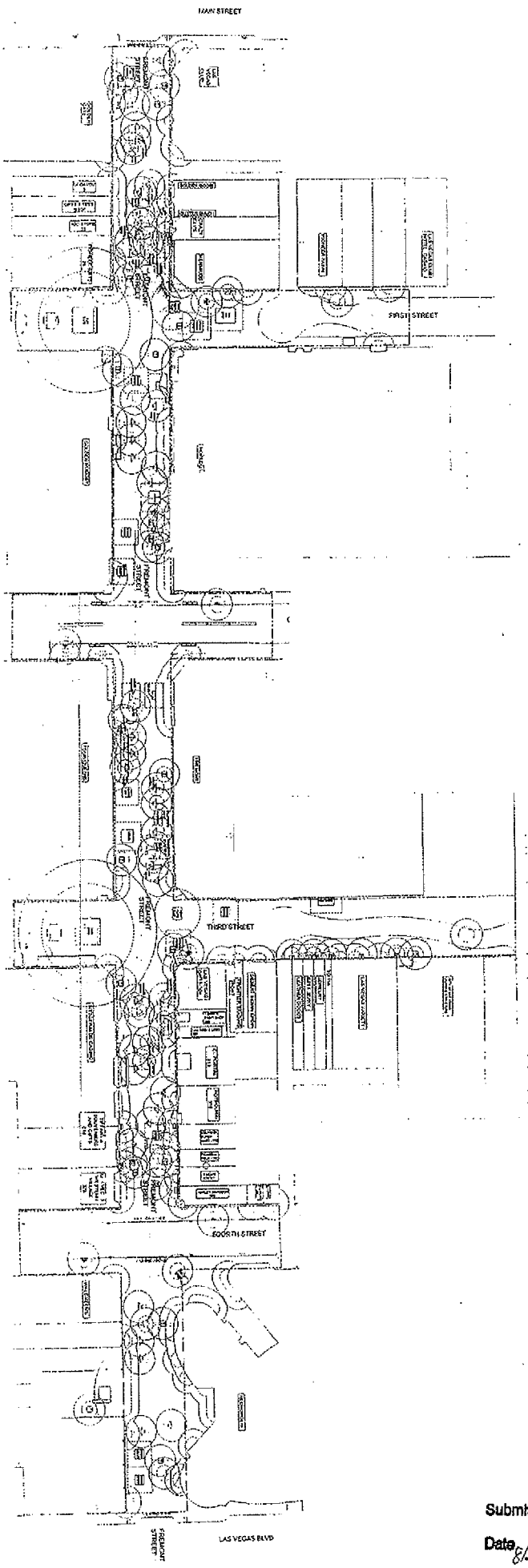


Recommending Committee Meeting of August 3, 2010

CD SUBMITTED AS BACKUP FOR ITEM 3 – FILED WITHIN MINUTE BINDER

Submitted At Meeting

Date 8/3/10 Item 3



Submitted At Meeting

Date 8/3/10 Item 3

Exhibit 1

Westlaw

913 F.Supp. 1402
(Cite as: 913 F.Supp. 1402)

C

United States District Court,
D. Nevada.

HAMPTON INTERNATIONAL COMMUNICATIONS, INC., Plaintiff,
v.
LAS VEGAS CONVENTION AND VISITORS AUTHORITY, Defendant.
No. CV-S-93-1110-HDM(RJJ).

Jan. 17, 1996.

Publisher brought suits seeking permanent injunction allowing it to distribute its "show dailies" on walkways leading to city's convention center, and actions were consolidated. On motion by convention and visitors authority for summary judgment, the District Court, McKibben, J., adopted report and recommendation of Johnston, United States Magistrate Judge, holding that: (1) tradeshow promoters, as lessees of convention center, were engaged in "state action" in prohibiting publisher's attempt to distribute its "show dailies"; but (2) walkway areas were not a public forum; (3) "show dailies" were not noncommercial speech; and (4) restrictions directly advanced substantial governmental interest.

Motion granted.

West Headnotes

[1] Federal Courts 170B ⚿13

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk12 Case or Controversy Requirement
170Bk13 k. Particular Cases or Questions, Justiciable Controversy. Most Cited Cases
Publisher's settlement with lessee of convention center mooted its case as to alleged interference by lessee which prevented publisher from distributing its materials at convention center.

[2] Constitutional Law 92 ⚿1494

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1494 k. Applicability to Governmental or Private Action; State Action. Most Cited Cases
(Formerly 92k90(1))
First Amendment guarantee of free speech guards against undue governmental encroachment and erects no shield against merely private conduct. U.S.C.A. Const.Amend. 1.

[3] Civil Rights 78 ⚿1324

78 Civil Rights
78III Federal Remedies in General
78k1323 Color of Law
78k1324 k. In General. Most Cited Cases
(Formerly 78k196.1)

Civil Rights 78 ⚿1326(4)

78 Civil Rights
78III Federal Remedies in General
78k1323 Color of Law
78k1326 Particular Cases and Contexts
78k1326(3) Private Persons or Corporations, in General
78k1326(4) k. In General. Most Cited Cases
(Formerly 78k196.1)
Section 1983 permits liability actions where party is injured by person who, under color of state law, deprives party of any right, privilege or immunity secured by the Constitution; that is, persons violating this statute must be engaged in activity deemed to be acts of the state and not just acts of private persons or entities. 42 U.S.C.A. § 1983.

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[4] Civil Rights 78 ⚿1343

78 Civil Rights
78III Federal Remedies in General
78k1342 Liability of Municipalities and Other Governmental Bodies
78k1343 k. In General. Most Cited Cases
(Formerly 78k206(1))
Municipal corporation is "person," subject to § 1983 actions. 42 U.S.C.A. § 1983.

[5] Civil Rights 78 ⚿1325

78 Civil Rights
78III Federal Remedies in General
78k1323 Color of Law
78k1325 k. State or Territorial Action, or Individual or Private Action, in General. Most Cited Cases
(Formerly 78k197)
In determining whether state action exists, as required to support § 1983 claim, ultimate issue is whether alleged infringement of federal rights is fairly attributable to state; claimed constitutional deprivation must result from exercise of right or privilege having its source in state authority, and party charged with the deprivation must be person who fairly may be said to be a state actor. 42 U.S.C.A. § 1983.

[6] Civil Rights 78 ⚿1326(1)

78 Civil Rights
78III Federal Remedies in General
78k1323 Color of Law
78k1326 Particular Cases and Contexts
78k1326(1) k. In General. Most Cited Cases
(Formerly 78k198(1))
Trade show promoters, as lessees of convention center, were engaged in "state action," within meaning of § 1983, in prohibiting publisher's attempts to distribute its "show dailies" in walkways leading to convention center; promoters leased convention center from city and promoters were effectuating government policy as set forth in their leases. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983.

[7] Constitutional Law 92 ⚿1507

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1507 k. Viewpoint or Idea Discrimination. Most Cited Cases
(Formerly 92k90(1))

Constitutional Law 92 ⚿1517

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1516 Content-Based Regulations or Restrictions
92k1517 k. In General. Most Cited Cases
(Formerly 92k90(1))
Generally, First Amendment prohibits governmental restrictions on expression due to ideas, subject matter, or content of that message. U.S.C.A. Const.Amend. 1.

[8] Constitutional Law 92 ⚿1512

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1512 k. In General. Most Cited Cases
(Formerly 92k90(3))
Government may impose upon speech and conduct associated with speech reasonable time, place and manner restrictions which are content neutral.

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U.S.C.A. Const.Amend. 1.

[9] Constitutional Law 92 ⚿1730

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1730 k. In General. Most Cited Cases
(Formerly 92k90(3))
Particular standard by which federal courts determine reasonableness of government restriction on speech is determined by forum wherein speech occurs. U.S.C.A. Const.Amend. 1.

[10] Constitutional Law 92 ⚿1739

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1736 Traditional Public Forum in General
92k1739 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
Governmental restrictions on speech in traditional public forum must be content neutral, narrowly tailored to serve compelling interests, and leave open alternative channels of communication. U.S.C.A. Const.Amend. 1.

[11] Constitutional Law 92 ⚿1735

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1732 Public Forum in General
92k1735 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
Constitution forbids state to enforce certain exclusions from forum generally open to the public even if it was not required to create the forum in the first place, and as long as state retains open character of the facility, it is bound by same standards that apply to traditional public forum. U.S.C.A. Const.Amend. 1.

[12] Constitutional Law 92 ⚿1751

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1748 Non-Public Forum in General
92k1751 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
Upon non-public forum consisting of public property which is not by tradition or designation a forum for public communication, state may, similar to other private property owners, reserve forum to its intended purposes and impose regulations that are viewpoint neutral and reasonably related to legitimate state interest. U.S.C.A. Const.Amend. 1.

[13] Constitutional Law 92 ⚿1760

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1760 k. Sidewalks. Most Cited Cases
(Formerly 92k90.1(4))
Ingress and egress walkways immediately adjacent to city's convention center were not a "public forum," for purposes of First Amendment analysis of handbilling restrictions; although walkway areas

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were open to the public at large and seemed, in all other physical regards, like a traditional public forum, walkways were created solely to manage heavy pedestrian traffic which generally accompanied large, privately-organized events for which convention center was built. U.S.C.A. Const.Amend. 1.

[14] Constitutional Law 92 ⚿1734

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1732 Public Forum in General
92k1734 k. Nature and Requisites. Most Cited Cases
(Formerly 92k90.1(4))
Government does not create public forum, for first-amendment purposes, whenever members of public are permitted freely to visit place owned or operated by the Government. U.S.C.A. Const.Amend. 1.

[15] Constitutional Law 92 ⚿1760

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1760 k. Sidewalks. Most Cited Cases
(Formerly 92k90.1(4))
Sidewalks which merely lead to entry of public, government-owned facility are not necessarily traditional public forum for First Amendment purposes. U.S.C.A. Const.Amend. 1.

[16] Constitutional Law 92 ⚿1730

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1730 k. In General. Most Cited Cases
(Formerly 92k90.1(4))
As general free speech principal, physical appearance alone does not dictate outcome of forum analysis; rather, it is combination of that appearance with consideration of property's fundamental purpose that controls. U.S.C.A. Const.Amend. 1.

[17] Constitutional Law 92 ⚿1537

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)2 Commercial Speech in General
92k1537 k. Difference in Protection Given to Other Speech. Most Cited Cases
(Formerly 92k90.2)
Even though commercial speech is usually afforded First Amendment protection equal to that of other forums of speech due to consumer's interest in free flow of commercial information, certain types of restrictions may be tolerated. U.S.C.A. Const.Amend. 1.

[18] Constitutional Law 92 ⚿1541

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)2 Commercial Speech in General
92k1541 k. Reasonableness; Relationship to Governmental Interest. Most Cited Cases
(Formerly 92k90.2)
In commercial speech cases, government regulation may be permitted if: speech concerns lawful activity and is not misleading; asserted governmental interest is substantial; regulation directly advances governmental interest asserted; and regulation is not more extensive than necessary to serve the in-

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terest. U.S.C.A. Const.Amend. 1.

[19] Constitutional Law 92 ⚿1640

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(E) Advertising and Signs
92XVIII(E)2 Advertising
92k1640 k. In General. Most Cited Cases
(Formerly 92k90.3)
Speech which contains advertisements, refers to specific product, or which is distributed with economic motivation evidences its commercial nature, for First Amendment purposes. U.S.C.A. Const.Amend. 1.

[20] Constitutional Law 92 ⚿1555

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)3 Particular Issues and Applications in General
92k1555 k. Matters of Public Concern. Most Cited Cases
(Formerly 92k90.2)

Constitutional Law 92 ⚿1640

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(E) Advertising and Signs
92XVIII(E)2 Advertising
92k1640 k. In General. Most Cited Cases
(Formerly 92k90.3, 92k90.2)
Communication can constitute commercial speech within meaning of First Amendment notwithstanding fact that it contains discussions of important issues; thus, advertising which links product to current debate is not thereby entitled to constitutional protection afforded noncommercial speech. U.S.C.A. Const.Amend. 1.

[21] Constitutional Law 92 ⚿1536

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)2 Commercial Speech in General
92k1536 k. What Is "Commercial Speech". Most Cited Cases
(Formerly 92k90.2)

Constitutional Law 92 ⚿1640

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(E) Advertising and Signs
92XVIII(E)2 Advertising
92k1640 k. In General. Most Cited Cases
(Formerly 92k90.3)

Constitutional Law 92 ⚿2079

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(U) Press in General
92k2079 k. Distribution of Materials in Public Places. Most Cited Cases
(Formerly 92k90.2)
"Show dailies" which publisher sought to distribute on grounds of convention center were not "noncommercial speech," for First Amendment purposes; publication contained mostly advertisements and editorials for products of advertisers, and publisher's desire to distribute it at tradeshows was motivated solely and undoubtedly by economic factors. U.S.C.A. Const.Amend. 1.

[22] Constitutional Law 92 ⚿1541

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and

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Press
92XVIII(A) In General
92XVIII(A)2 Commercial Speech in General
92k1541 k. Reasonableness; Relationship to Governmental Interest. Most Cited Cases
(Formerly 92k90.2)

Constitutional Law 92 ⚖2079

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(U) Press in General
92k2079 k. Distribution of Materials in Public Places. Most Cited Cases
(Formerly 92k90.2)
Prohibition against publisher's attempts to distribute its "show dailies" on walkways leading to city's convention center constituted valid regulation of commercial speech to protect city's substantial government interest in facilitating unencumbered entry and exit of visitors to the facility; moreover, regulation directly advanced governmental interest and regulation was no more extensive than necessary. U.S.C.A. Const.Amend. 1.

[23] Constitutional Law 92 ⚖1541

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)2 Commercial Speech in General
92k1541 k. Reasonableness; Relationship to Governmental Interest. Most Cited Cases
(Formerly 92k90.2)
When determining whether regulation on commercial speech is more extensive than necessary, "least-restrictive means" need not be used; rather, there must be only a reasonable fit between state's purpose and means chosen to achieve desired end. U.S.C.A. Const.Amend. 1.
***1405** Neil Beller, Las Vegas, NV, for plaintiff.

Luke Puschnig, Dickerson, Dickerson, Liberman & Consul, Las Vegas, NV, Paul E. Larsen, Lionel Sawyer & Collins, Las Vegas, NV, for defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

McKIBBEN, District Judge.

The court has considered the report and recommendation of the United States Magistrate Judge (# 136) filed on December 22, 1995, wherein the magistrate judge recommends that the court enter its order granting defendant's motion for summary judgment (# 115) in that the restriction on plaintiff's commercial speech does not violate the First Amendment and no genuine issue of material fact remain. No objections to the report and recommendation have been filed and the clerk of the court has been advised that objections will not be filed. The court has considered the pleadings and memoranda of the parties and other relevant matters of record and has made a review and determination in accordance with the requirements of 28 U.S.C. § 636 and applicable case law, and good cause appearing, the court hereby

ADOPTS AND ACCEPTS the report and recommendation of the United States Magistrate Judge. It is, therefore, ORDERED that defendant's motion for summary judgment (# 115) is granted and judgment shall be entered in favor of the Las Vegas Convention and Visitors Authority and against Hampton International Communications, Inc. The trial set for January 25, 1996 is vacated.

REPORT & RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

[December 22, 1995]

JOHNSTON, United States Magistrate Judge.

This matter was submitted to the undersigned Ma-

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gistrate Judge on Defendant Las Vegas Convention and Visitors Authority's Motion for Summary Judgment (# 115). The Court has reviewed the Motion for Summary Judgment (# 115), the Plaintiff's Opposition to the Defendant's Motion for Summary Judgment (# 116), and the Las Vegas Convention and Visitors Authority's Reply to Plaintiff's Opposition to Motion for Summary Judgment (# 118) and corresponding Supplements (# 121, # 129, # 130).

BACKGROUND

On or about October 18, 1993, the Las Vegas Convention and Visitors Authority ("LVCVA") leased the Las Vegas Convention Center to Interface Group-Nevada, Inc. ("Interface") for its annual "COMDEX" tradeshow. COMDEX promoters acquired a leasehold interest in the entire Convention Center facility, including the building, front entry, walkways leading to the Convention Center, and all parking lots in front of the facility. On or about November 8, 1993, the LVCVA leased the Las Vegas Convention Center to Electronic Industries Association ("CES") for its annual Consumer Electronics tradeshow. CES acquired a leasehold interest in essentially the identical areas of the Las Vegas Convention Center as the COMDEX promoters.

During these tradeshows, Plaintiff Hampton International Communications ("Hampton"), a for profit business which publishes various newspapers and commercial tabloids relevant to the computer industry, attempted to distribute its "show dailies" on the walkways leading to the Convention Center. ***1406** Tradeshow promoters prohibited Hampton's conduct since the distribution of commercial materials or "official dailies" [FN1] on Convention Center property was limited to designated areas and to only those organizations which had given consideration for the exclusive right to distribute commercial materials on the Las Vegas Convention Center grounds. Convention Center grounds include the ingress and egress walkways leading to the building where Plaintiff attempted to distribute its materials. No provision prohibits any person from distributing material on the municipal sidewalks which surround the Convention Center grounds.

> FN1. A convention "daily" is a profit-oriented publication which lists tradeshow events along with various paid commercial advertisements, articles, and editorials. Publishers of "official dailies" generally acquire such recognition, including the right to distribute its materials on convention premises, in exchange for a promotional fee.

On November 10, 1993, Hampton alleged a deprivation of its First Amendment right and sought a temporary restraining order and permanent injunction allowing it to distribute its commercial publication on Convention Center ingress and egress walkway areas during the COMDEX tradeshow. See, Compl. (# 1), Case No. CV-S-1110-LDG-(RLH). The injunctive request was denied. Less than two months later, on January 3, 1994, Hampton filed another Complaint for Injunctive Relief against LVCVA seeking to distribute its dailies at the CES tradeshow. Case No. CV-S-94-008-LDG-(RLH). Prior to the latter legal action, Hampton had contracted with CES to sublease a booth at the CES show in order to distribute its own materials on the Convention Center grounds. Tradeshow regulations, however, precluded Hampton both from distributing advertisements anywhere outside of its booth and from displaying or distributing its "dailies" on the Convention Center premises without the express permission of CES. Because Hampton believed such regulations were unduly restrictive, it filed the injunctive relief request before the CES tradeshow began. When the temporary restraining order was again denied, Hampton demanded a jury trial on the issue of damages. The district court subsequently consolidated the second case with the first. Order (# 22).

On November 24, 1993, Hampton filed its First Amended Complaint (# 14) alleging, *inter alia,* that (1) a prior Judgment by Consent entered into by

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LVCVA on June 30, 1993, permits a lessee to exclude only "protest or demonstration activities" from Civic Center premises and not other expressive activity, (2) Hampton was entitled to injunctive and declarative relief in that Defendant's restriction on the distribution of expressive material at the Las Vegas Convention Center violated its First and Fourteenth Amendment rights, and (3) Hampton incurred damages from Defendant's actions.

After nearly two years of pre-litigation maneuvering by the two private parties in this case, Hampton and Interface Group-Nevada, Inc. settled their dispute.[FN2] Pursuant to the Pretrial Order (# 124) and the Motion for Summary Judgment (# 115), the court must now determine whether any genuine issue of material fact exists requiring submission of the case against LVCVA to a jury.

> FN2. The controversy between Hampton and Interface became quite involved; however those matters were only peripheral to the pertinent First Amendment issues of this case. Specifically, on December 15, 1993, Interface filed its Answer and Counterclaim (# 19) against Hampton. In the counterclaim, Interface alleged, *inter alia,* that Hampton had used, without Interface's authority, the "COMDEX" service mark in soliciting advertisers for Hampton's show dailies, and on the front cover of its show dailies during the 1993 Fall COMDEX trade show. Consequently, Interface sought injunctive relief and damages for service mark infringement, unfair trade practices, and deceptive trade practices. Twice the Defendant disregarded Motions to Compel Discovery and twice the court imposed sanctions against it. See Orders (# 68) and (# 80). Then on June 28, 1995, a Stipulation and Order (# 117) was filed wherein the Complaint and Counterclaims between Hampton and Interface were dismissed.

DISCUSSION

I. STANDARD FOR MOTION FOR SUMMARY JUDGMENT

"Summary judgment may be granted when, viewing the evidence in the light most favorable to the nonmoving party, no genuine***1407** issues of fact remain and the movant is entitled to judgment as a matter of law." *Cleary v. News Corporation,* 30 F.3d 1255, 1259 (9th Cir.1994), citing Fed.R.Civ.P. 56; *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247, 106 S.Ct. 2505, 2509, 91 L.Ed.2d 202 (1986). A court must grant a summary judgment motion against "a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). Evidence is sufficient to establish an essential element of a party's case if that evidence "is such that a reasonable jury could return a verdict" for that party. *Hopkins v. Dow Corning Corporation,* 33 F.3d 1116, 1121 (9th Cir.1994) , citing *Liberty Lobby, Inc.,* 477 U.S. at 248, 106 S.Ct. at 2510. However, "the mere existence of *some* alleged factual dispute will not defeat an otherwise properly supported motion for summary judgment[.]" *Anderson,* 477 U.S. at 247-48, 106 S.Ct. at 2509-10. Any showing of fact made by a party will be examined through the prism of the substantive evidentiary standards that apply to the particular case. *Id.* at 254-55, 106 S.Ct. at 2513-14.

II. MOOTNESS

[1] A federal court may have jurisdiction to decide a dispute provided that a case or controversy exists as set forth in U.S. Constitution, art. III, § 2. Because Plaintiff has stipulated to a settlement with Interface, its case is moot as to the alleged interference by Interface which prevented Hampton from distributing its materials at the Convention Center. The LVCVA is the only remaining defendant against which Hampton seeks redress. Hampton maintains a damages claim pursuant to 42 U.S.C. §

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1983 for the deprivation by a state agent of rights constitutionally guaranteed by the First and Fourteenth Amendments. But for this alleged state action to deprive a constitutional right, Plaintiff's continuing request that this court determine whether the disputed walkways located on the Las Vegas Convention Center are public fora would constitute merely an advisory opinion and lie beyond the jurisdiction of a federal court.[FN3] Plaintiff's case is justiciable by a federal court, therefore, only if their civil rights damages claim legitimately involves unconstitutional state action against private conduct.

> FN3. Had Plaintiff not sought damages, Plaintiff likely could have still had his case heard and avoid mootness concerns since the case appears to be one "capable of repetition, yet evading review," where the challenged action is in its duration too short to be fully litigated prior to its cessation and a reasonable expectation exists that the Plaintiff would be subject to the same action again. *Weinstein v. Bradford,* 423 U.S. 147, 149, 96 S.Ct. 347, 349, 46 L.Ed.2d 350 (1975).

III. STATE ACTION

[2][3][4] The First Amendment guarantee of free speech guards against undue governmental encroachment and erects no shield against merely private conduct. *Shelley v. Kraemer,* 334 U.S. 1, 13, 68 S.Ct. 836, 842, 92 L.Ed. 1161 (1948). Hence, Section 1983 of 42 U.S.C. permits liability actions wherein a party is injured by a person, *who under color of state law,* deprives the party of any right, privilege, or immunity secured by the Constitution. That is, persons violating this statute must be engaged in activity deemed to be acts of the state and not just acts of private persons or entities. *Rendell-Baker v. Kohn,* 457 U.S. 830, 837, 102 S.Ct. 2764, 2769, 73 L.Ed.2d 418 (1982). Additionally, municipal corporations are "persons" subject to Section 1983 actions. *Monell v. Dep't Social Services of New York,* 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

[5][6] In determining whether state action exists in this context, the ultimate issue is whether the alleged infringement of federal rights is "fairly attributable to the State." *Rendell-Baker,* 457 U.S. at 838, 102 S.Ct. at 2769, citing *Lugar v. Edmondson Oil Co.,* 457 U.S. 922, 937, 102 S.Ct. 2744, 2754, 73 L.Ed.2d 482 (1982). The Supreme Court has adopted a two-part approach to this question of "fair attribution." First, the claimed constitutional deprivation must result from the exercise of a right or privilege having its source in state authority. Second, the party charged with the deprivation must be a person who fairly may be said to be a state ***1408** actor. *Lugar,* 457 U.S. at 937, 102 S.Ct. at 2754. In this case, where the authority of a private entity to act stems from a direct agreement with the state, the central inquiry focuses on the second factor of whether a party can be described "in all fairness" as a state actor.[FN4] *Id.; see also, Edmonson v. Leesville Concrete Co. Inc.,* 500 U.S. 614, 619, 111 S.Ct. 2077, 2082, 114 L.Ed.2d 660 (1991).

> FN4. The constitutional deprivation alleged by Plaintiff in this case is a direct result of Interface and CES exercising their leasehold agreement for exclusive use of the Las Vegas Convention Center as set forth and granted in the lease entered into by Interface and CES with the LVCVA.

Determining what may be fairly considered governmental action is generally a fact-bound inquiry. However, Supreme Court precedents serve as guideposts in the analysis.[FN5] To be sure, the Supreme Court rarely finds undertakings to be within the narrow category of functions exercised traditionally and exclusively by the government. *See generally, Jackson v. Metropolitan Edison Co.,* 419 U.S. 345, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974); *Flagg Brothers, Inc. v. Brooks,* 436 U.S. 149, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978). The Court has stated that "while many functions have been traditionally performed by governments, very few have

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been 'exclusively reserved to the State.' " *Flagg,* 436 U.S. at 158, 98 S.Ct. at 1734. At the same time, however, where a private party and its conduct are closely associated with the state, it may be fair to treat the private action as state conduct. *See, NCAA v. Tarkanian,* 488 U.S. 179, 109 S.Ct. 454, 102 L.Ed.2d 469 (1988).

> FN5. Several principles apply in a state action analysis: (1) a state normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State. *Blum v. Yaretsky,* 457 U.S. 991, 1003, 102 S.Ct. 2777, 2785, 73 L.Ed.2d 534 (1982); *Moose Lodge No. 107 v. Irvis,* 407 U.S. 163, 92 S.Ct. 1965, 32 L.Ed.2d 627 (1972) (the state compulsion test); (2) where a private group is serving a public function, federal courts must examine whether that function performed has been "traditionally the exclusive prerogative of the State." *Jackson v. Metropolitan Edison Co.,* 419 U.S. 345, 353, 95 S.Ct. 449, 455, 42 L.Ed.2d 477 (1974) (the public function test); and (3) a sufficiently close nexus between the state and the challenged action of the private party should exist so as to fairly treat the private conduct as state action. *Jackson v. Metropolitan Edison Co.,* 419 U.S. 345, 353, 95 S.Ct. 449, 455, 42 L.Ed.2d 477 (1974); *see also, Stypmann v. City of San Francisco,* 557 F.2d 1338, 1342 (9th Cir.1977); *NCAA v. Tarkanian,* 488 U.S. 179, 109 S.Ct. 454, 102 L.Ed.2d 469 (1988) (the nexus or joint action test).

The state action issue is pertinent to the instant case since no facts allege that LVCVA actually prohibited Hampton from distributing information. Rather, tradeshow promoters as lessees of the Convention Center implemented what was a perceived right to unconditionally prohibit unauthorized handbilling on leased Convention Center premises acquired under the leasehold agreement with the LVCVA. Neither party addressed this issue in its original brief. [FN6] Only in its Supplement (# 121) did Defendant raise the state action issue by noting a recent Fourth Circuit case which held that the private organizer of a municipal festival on city grounds did not constitute state action since the organization, management, and promotion of a community entertainment event is not a function traditionally and exclusively exercised by the government. *See, United Auto Workers v. Gaston Festivals, Inc.,* 43 F.3d 902 (4th Cir.1995).

> FN6. Both parties were directed by the Court to brief the state action issue subsequent to the hearing on Defendant's Motion for Summary Judgment. See Order (# 128).

The LVCVA argues that, similar to the actions by the plaintiff in *Gaston,* organizing a tradeshow event and exercising effective managerial control over a convention center do not fall within the domain of functions exercised traditionally and exclusively by the government.[FN7] However, the court finds that this case is more analogous to the state activity and reasoning undergirding the decision in *Evans v. Newton,* 382 U.S. 296, 86 S.Ct. 486, 15 L.Ed.2d 373 (1966) and similar cases in which a sufficiently close nexus exists***1409** between the state and the challenged action so as to fairly treat the private conduct as state action. *See, Jackson,* 419 U.S. at 351, 95 S.Ct. at 454; *NCAA v. Tarkanian,* 488 U.S. 179, 109 S.Ct. 454, 102 L.Ed.2d 469 (1988).

> FN7. Defendant also contends that the actual exclusion of Plaintiff's information from Convention Center premises cannot be fairly attributed to the State since it acted only as a lessor or "owner out of occupancy" and did not actually restrict speech through any means. Second Supplement (# 130).

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In *Newton,* the management activity carried on by private trustees over a municipal park was determined to be state action, not merely because the park traditionally served the public, but rather due to the state's entwined role in the management and control of the premises in question. Likewise, in the case at hand, a government entity retains ownership, maintenance, and daily control over the Convention Center.[FN8] In fact, the LVCVA's role as the traditional municipal authority over the premises is firmly established not only by corporeal conduct and control, but also by the Las Vegas Convention Center lease agreement to which tradeshow promoters must adhere.

> FN8. The LVCVA is a governmental agency founded by Clark County pursuant to N.R.S. 244A.597. Therefore, the Court considers this municipal entity an agent and actor for the government, and for purposes of a First Amendment analysis, its actions constitute state actions.

The lease agreement in this case is a distinguishing factor from those cases in which state action was not found because the State acted only as a lessor of its own property without enforcing restrictive policies or otherwise interfering with lessee activities.[FN9] According to the lease here, the lessee "shall not ... distribute or circulate or permit to be circulated or distributed, any advertising matter or program in or about the Las Vegas Convention Center public area." See Lease, attached to (# 33) as Exhibit 1, Paragraph 24. Although the Defendant did not actually prohibit the Plaintiff from handbilling on Convention Center premises, it was by the LVCVA's express authority as set forth in its lease and as proprietor of the Convention Center that tradeshow promoters acted. Interface and CES enforced the "no unauthorized handbilling" policy as required by the lease and with the authority granted by that lease. It is this close nexus between compelled government policy and the putative unconstitutional interference with speech that evidences state action. The policy of the LVCVA was so interdependent and indistinguishable from that of tradeshow promoters that it was, in effect, a joint participant with the tradeshow organizers in the effectuation of that policy. *See, Jackson,* 419 U.S. at 357-58, 95 S.Ct. at 457-58.

> FN9. Only where the State grants absolute autonomy to its lessees will its ownership of a facility be insufficient to constitute state action. *See, United Auto Workers v. Gaston Festivals, Inc.,* 43 F.3d 902 (4th Cir.1995); *Gannett Satellite Info. Network Inc. v. Berger,* 894 F.2d 61 (3rd Cir.1990); *NBC v. Communications Workers of America,* 860 F.2d 1022 (11th Cir.1988).

Because of this "symbiotic relationship" whereby the government advanced its policy through the acts of tradeshow promoters throughout its lease, and due to the fact that the government has remained so inexorably involved with the daily oversight and administration of the Las Vegas Convention Center, the tradeshow promoters' actions under their respective lease agreements with the LVCVA can in all fairness be described as state action. Consequently, any action taken by a private lessee of the Las Vegas Convention Center which comports to the LVCVA's lease agreement and which improperly deprives another of a constitutionally protected right constitutes state action for purposes of Section 1983 liability.

IV. FORUM DOCTRINE

[7][8][9][10] The constitutional standards which proscribe the amount of governmental restriction that can be placed on speech are well established. As a general rule, the First Amendment prohibits governmental restrictions on expression due to the ideas, subject matter, or content of that message. *See, e.g., Police Department of Chicago v. Mosley,* 408 U.S. 92, 95, 92 S.Ct. 2286, 2289, 33 L.Ed.2d 212 (1972). Government may impose upon speech and the conduct associated with speech, reasonable time, place, and manner restrictions which are con-

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tent-neutral. The particular standard by which federal courts determine the reasonableness of a governmental restriction is determined by the forum wherein the speech occurs. "At one end of the spectrum are streets and parks which ***1410** 'have immemorially been held in trust for the use of the public and ... have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' " *Perry Ed. Ass'n v. Perry Local Ed. Ass'n,* 460 U.S. 37, 45, 103 S.Ct. 948, 955, 74 L.Ed.2d 794 (1983) (quoting *Hague v. C.I.O.,* 307 U.S. 496, 515, 59 S.Ct. 954, 964, 83 L.Ed. 1423 (1939)). Governmental restrictions upon these locales must be content neutral, narrowly tailored to serve a compelling state interest, and leave open alternative channels of communication. *Id.*

[11] Continuing down the spectrum from the traditional public forum is the designated public forum, opened by the state for limited or unlimited use by the public as a place for expressive activity. "The Constitution forbids a State to enforce certain exclusions from a forum generally open to the public even if it was not required to create the forum in the first place," and as long as the State retains the open character of the facility, it is bound by the same standards that apply to a traditional public forum. *Perry Ed. Ass'n,* 460 U.S. at 45-46, 103 S.Ct. at 955-56.

[12] Finally, the non-public forum consists of public property which is not by tradition or designation a forum for public communication. *Id.* at 46, 103 S.Ct. at 955. This forum is governed by a different standard from the previous two. Upon this forum, similar to other private property owners, the State may reserve the forum to its intended purposes and impose regulations that are viewpoint neutral and reasonably related to a legitimate state interest. *Id.*

[13][14][15][16] The distinctions between a designated public forum and a non-public forum are at times fine and difficult to determine. Turning to the case at hand, the ingress-egress walkways in dispute appear to more closely resemble those public areas immemorially held in trust for the use of the public and for purposes of assembly and communicating thought. The walkway areas are open to the public at large and seem, in all other physical regards, like a traditional public forum. On the other hand, some aspects of the Las Vegas Convention Center, which was built for the primary purpose of attracting large conventions and increasing the economic activity of Las Vegas and Clark County, are non-public in nature. The Court notes that the government does not create a public forum "whenever members of the public are permitted freely to visit a place owned or operated by the Government." *Greer v. Spock,* 424 U.S. 828, 836, 96 S.Ct. 1211, 1216, 47 L.Ed.2d 505 (1976). Moreover, sidewalks which merely lead to the entry of a public, government-owned facility are not necessarily a traditional public forum. *Jacobsen v. U.S. Postal Service,* 993 F.2d 649 (9th Cir.1992, Amended April 30, 1993). As a general free speech principle, physical appearance alone does not dictate the outcome of a forum analysis; rather it is the combination of that appearance with considerations of the property's fundamental purpose that controls. *See, United States v. Kokinda,* 497 U.S. 720, 727, 110 S.Ct. 3115, 3120, 111 L.Ed.2d 571 (1990).

The ingress and egress walkways at issue here have the appearance and clear purpose to assist Convention Center patrons in traveling between the privately-leased Convention Center and public areas. They do not constitute a public thoroughfare. They were created solely to manage the heavy pedestrian traffic which generally accompanies large, privately-organized events for which the Convention Center was built. Accordingly, the ingress and egress walkways associated with the Las Vegas Convention Center are not the traditional public forum sidewalk referred to in *Perry Education Assoc. v. Perry Local Educators' Ass'n,* 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983). The Court recognizes that the entrance to a Convention Center may be more conducive to distributing speech than, for example, a post office or federal building. However, Plaintiff has not proffered sufficient facts

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to show that the walkway areas here are a public forum.[FN10] ***1411** Moreover, as will be shown, even if the area in dispute had been a limited-public or public forum, the speech restriction here was a valid regulation of commercial speech to protect a substantial government interest.

> FN10. Plaintiff mentions in its brief only five specific "disputed material facts" accompanied by an argument that its speech is not purely commercial and is entitled to protection since its handbilling is not "incompatible" with the walkways in question. *See,* Opposition to Motion for Summary Judgment (# 116). The facts proffered by Plaintiff are generally either non-disputed or non-material: The first two "disputed facts" deal with the exact composition of Plaintiff's show dailies and are irrelevant to this analysis. The third is a correct statement inasmuch as it states that the LVCVA requires permission to distribute materials from *leased* areas. Statement four alleges that Plaintiff's show dailies are given free and that another distributor once handbilled promotional materials from the walkways here. These facts are not disputed nor relevant. Finally, statement five asserts that Convention Center sidewalks are indistinguishable from public sidewalks. This conclusion is unsupported and encompassed in the court's legal analysis.

V. COMMERCIAL SPEECH

[17] Although the First Amendment guarantees freedom from government restrictions on all speech, there exists a sensible distinction between speech proposing a commercial transaction, which often arises in areas traditionally subject to government regulation, and other varieties of speech. *Ohralik v. Ohio State Bar Ass'n,* 436 U.S. 447, 455-56, 98 S.Ct. 1912, 1918-19, 56 L.Ed.2d 444 (1978). Accordingly, even though commercial speech is usually afforded First Amendment protection equal to that of other forms of speech due to the "consumer's interest in the free flow of commercial information," certain types of restriction may be tolerated. *Rubin v. Coors Brewing Co.,* 514 U.S. 476, ----, 115 S.Ct. 1585, 1589, 131 L.Ed.2d 532, 538 (1995) (quoting *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 765, 96 S.Ct. 1817, 1827, 48 L.Ed.2d 346 (1976)).

[18] In commercial speech cases, government regulation may be permitted depending on the outcome of the applicable four-part analysis: (1) the speech must concern lawful activity and not be misleading, (2) the asserted governmental interest must be substantial, (3) the regulation must directly advance the governmental interest asserted, and (4) the regulation must not be more extensive than is necessary to serve the interest. *Central Hudson Gas & Electric Corp. v. Public Serv. Comm'n of N.Y.,* 447 U.S. 557, 566, 100 S.Ct. 2343, 2351, 65 L.Ed.2d 341 (1980). State restrictions of commercial speech that do not comport with this test are unconstitutional.

[19][20] The foregoing analysis is applicable to government restrictions on speech which does nothing more than propose a commercial transaction. *Virginia State Board of Pharmacy,* 425 U.S. at 762, 96 S.Ct. at 1826. Speech which contains advertisements, refers to a specific product, or which is distributed with an economic motivation evidences its commercial nature. *See, Bolger v. Youngs Drug Products Corp.,* 463 U.S. 60, 66-67, 103 S.Ct. 2875, 2880-81, 77 L.Ed.2d 469 (1983). Importantly, communication can constitute commercial speech "notwithstanding the fact that [it] contain[s] discussions of important public issues." *Bolger,* 463 U.S. at 67, 103 S.Ct. at 2880 (quoting *Central Hudson Gas,* 447 U.S. at 563, 100 S.Ct. at 2350). Thus "advertising which 'links a product to a current public debate' is not thereby entitled to the constitutional protection afforded noncommercial speech." *Id.*

[21] In the case at hand, Plaintiff Hampton produced and sought to distribute on the grounds of the

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Las Vegas Convention Center a "show daily" containing mostly advertisements and editorials for products of advertisers. [FN11] Hampton's desire to distribute its publication at computer tradeshows is motivated exclusively and undoubtedly by economic factors. It was the prospect of commercial gain that motivated the concept, creation, development, and production of the material. Indeed, it is financial interests that undergird this very litigation. Hampton's arguments that its "show daily" was noncommercial speech is without merit.

> FN11. The daily is approximately 75 percent advertisements. Two-Thirds of the remaining 25 percent comprises editorial material supporting products or services or personnel of advertisers in the publication. Pretrial Order (# 124) at 3.

A. *Central Hudson Gas* Analysis

[22] The commercial speech analysis of the Plaintiff's materials is more definitively ***1412** demonstrates, regardless of the forum, that LVCVA's conduct comported with First Amendment guarantees of free speech. Because neither party contends that Plaintiff's speech is misleading, the first test of the *Central Hudson Gas* analysis need not be addressed. Thus Plaintiff's speech may be restricted, despite the forum in which it is disseminated, provided the LVCVA's interest is substantial and the regulation it imposes directly advances the government's interest in a way that is not overly restrictive.

1. Substantial Government Interest

The LVCVA has a substantial government interest in restricting commercial speech because the Las Vegas Convention Center is a commercial venture by Clark County and the City of Las Vegas for improving economic activity in southern Nevada. This convention-leasing enterprise generates economic development throughout southern Nevada. Accordingly, the government's desire to maintain this economic activity is a substantial one. *See, Lehman v. City Shaker Heights,* 418 U.S. 298, 303, 94 S.Ct. 2714, 2717, 41 L.Ed.2d 770 (1974) (a state agency engaged in a permitted commercial activity has a substantial interest entitled to deference).

Additionally, the government has a substantial public policy interest. The ingress-egress walkways were designed to facilitate the unencumbered entry and exit of visitors to the Las Vegas convention facility. The unregulated activity of innumerable commercial venturers vying for favorable locales from which to distribute their sundry commercial materials would unduly congest the walkways and not only interfere with the ability of tradeshow promoters to control its crowds, but also with the ability of attendees to freely enter and exit the very event they traveled to attend. The LVCVA has an substantial interest in avoiding this adverse situation.

2. Regulation Must Directly Advance that Interest

The government "has power to preserve the property under its control for the use to which it is lawfully dedicated." *Greer,* 424 U.S. at 836, 96 S.Ct. at 1216 (1976). Hampton seeks to publish commercial materials that would compete with the financial interests of the lessees the LVCVA desires to serve. Permitting competing commercial entities to distribute materials without acquiring consent from leasing tradeshow promoters would undermine the LVCVA's fundamental purpose to lure, facilitate, and ultimately, lease space to large business conventions and commercial events in the Las Vegas Convention Center. A convention center lessees' ability to control and sell the exclusive rights to access convention patrons is the quintessence of the tradeshow enterprise. The integrity of that ability attracts future tradeshow promoters, conventions, visitors, and indirectly generates significant economic activity within the area served by the LVCVA. By regulating the distribution of competing commercial materials, the LVCVA preserves the competitiveness of the Las Vegas Convention

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Center and directly advances its substantial economic interest. Additionally, the prohibition of unauthorized distributors from the ingress-egress walkway areas maintains that areas for its intended purpose of safe and convenient entrance and exit for convention center visitors. *See, Heffron v. Int'l Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 650-51, 101 S.Ct. 2559, 2565-66, 69 L.Ed.2d 298 (1981) (activities incompatible with the normal character and function of the government property may be regulated).

3. Regulation No More Extensive than Necessary

[23] When determining whether a regulation on commercial speech is more extensive than necessary, the "least-restrictive means" need not be used. Rather, there must only be a reasonable fit between the state's purpose and the means chosen to achieve the desired end. *Board of Trustees of State University of N.Y. v. Fox*, 492 U.S. 469, 109 S.Ct. 3028, 106 L.Ed.2d 388 (1989). LVCVA policy meets this burden. Hampton argues that Defendant's means are not reasonable because a previous June 30, 1993, judgment ***1413** by consent specifies the restrictions that Defendant is authorized to place upon speech. However, commercial speech was not at issue in that case. Here, where plaintiff's motivation to distribute materials is financial gain, a different standard applies. Accordingly, by prohibiting the unauthorized distribution of materials on leased convention center premises the LVCVA employs a reasonable means to preserve its substantial economic interest.

CONCLUSION

Because of the integral role the LVCVA plays in daily management and control of the Las Vegas Convention center and considering the nature of the LVCVA's lease whereby a policy of excluding non-authorized commercial activity is expressly maintained therein, state action exists for purposes of Section 1983 claims. However, the regulations imposed by the LVCVA as lessor of the Las Vegas Convention Center are reasonable since (1) the ingress-egress areas are non-public forums, and (2) the restrictions directly advance a substantial government interest. Specifically, the LVCVA may preserve the marketability of its tradeshow-industry enterprise and the significant economic development that venture generates by prohibiting commercial entities from distributing unauthorized materials on all Convention Center premises.

RECOMMENDATION

Based on the foregoing, and good cause appearing therefore,

IT IS THE RECOMMENDATION of the undersigned Magistrate Judge that Defendant's Motion for Summary Judgement (# 115) be GRANTED in that the restriction on Plaintiff's commercial speech does not violate the First Amendment and no genuine issue of material fact remain.

D.Nev.,1996.
Hampton Intern. Communications, Inc. v. Las Vegas Convention and Visitors Authority
913 F.Supp. 1402

END OF DOCUMENT

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Date of Printing: Jul 07, 2010

KEYCITE

C Hampton Intern. Communications, Inc. v. Las Vegas Convention and Visitors Authority, 913 F.Supp. 1402 (D.Nev. Jan 17, 1996) (NO. CV-S-93-1110-HDM RJJ)

Citing References

Positive Cases (U.S.A.)

★ Mentioned

1 Kraft v. Laney, 2005 WL 2042310, *19 (E.D.Cal. Aug 24, 2005) (NO. CIV S-04-0129 GGH) **HN: 4 (F.Supp.)**

C 2 Albrecht v. Metropolitan Pier and Exposition Authority, 338 F.Supp.2d 914, 924 (N.D.Ill. Oct 01, 2004) (NO. 03 C 6472)

Secondary Sources (U.S.A.)

3 Advertising & Comm. Speech: A First Amend. Guide s 14:37, Solicitation of Business or Funds (2008) **HN: 22 (F.Supp.)**

C 4 SIDEWALK DEMOCRACY: FREE SPEECH, PUBLIC SPACE AND THE CONSTITUTION, 8-MAY Nev. Law. 18, 20 (2000) **HN: 13 (F.Supp.)**

5 BRIEF FOR THE PETITIONER, 15 J. Marshall J. Computer & Info. L. 609, 631 (1997)

6 ADVERTISING AND COMMERCIAL SPEECH, 680 Practising Law Institute Patents, Copyrights, Trademarks, & Literary Property 199 (2001) **HN: 21 (F.Supp.)**

7 ADVERTISING AND COMMERCIAL SPEECH, 626 Practising Law Institute Patents, Copyrights, Trademarks, & Literary Property 31 (2000) **HN: 21 (F.Supp.)**

8 ADVERTISING AND COMMERCIAL SPEECH, 582 Practising Law Institute Patents, Copyrights, Trademarks, & Literary Property 715 (1999) **HN: 21 (F.Supp.)**

9 ADVERTISING AND COMMERCIAL SPEECH, 538 Practising Law Institute Patents, Copyrights, Trademarks, & Literary Property 59 (1998) **HN: 21 (F.Supp.)**

10 ADVERTISING AND COMMERCIAL SPEECH, 499 Practising Law Institute Patents, Copyrights, Trademarks, & Literary Property 655 (1997) **HN: 21 (F.Supp.)**

11 ADVERTISING AND COMMERCIAL SPEECH, 462 Practising Law Institute Patents, Copyrights, Trademarks, & Literary Property 371 (1996) **HN: 21 (F.Supp.)**

Court Documents

Appellate Court Documents (U.S.A.)

Appellate Briefs

12 NORTHERN INDIANA GUN & OUTDOOR SHOWS, INC., Appellant (Plaintiff Below), v.

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CITY OF SOUTH BEND, Stephen J. Luecke, as Mayor of the City of South Bend, Brian R. Hedman, Individually and as Executive Director of Century Center, and Karl King, as Chairman of the Civic Center Board of Managers, Appellees (Defendants Below)., 1996 WL 33415565, *33415565+ (Appellate Brief) (7th Cir. May 22, 1996) **Brief of Appellees** (NO. 98-1636) * * **HN: 6 (F.Supp.)**

13 George VILLEGAS, Bob Poelker, Marcelo Orta, and Don Derosiers, Plaintiffs and Appellants, v. CITY OF GILROY, Gilroy Garlic Festival Association, Inc., Defendants and Appellees., 2005 WL 3577727, *3577727+ (Appellate Brief) (9th Cir. Oct 03, 2005) **Brief Of Appellee Gilroy Garlic Festival Association, Inc.** (NO. 05-15725) * * * **HN: 6 (F.Supp.)**

14 George VILLEGAS, et al., Plaintiffs-Appellants, v. CITY OF GILROY, et al., Defendants-Appellees., 2005 WL 3128160, *3128160+ (Appellate Brief) (9th Cir. Aug 17, 2005) **Appellants' Opening Brief** (NO. 05-15725) " * * **HN: 6 (F.Supp.)**

15 SOC, INC., Richard Soranno, Hillsboro Enterprises, Inc., and the American Civil Liberties Union of Nevada, Appellants, v. COUNTY OF CLARK, State of Nevada, Las Vegas Metropolitan Police Department, Lorraine Hunt, Myrna Williams, Erin Kenny, Bruce Woodbury, Yvonne Atkinson Gates, Lance Malone, Mary Kincaid, Nevada Resort Association, Flamingo Hilton Corp., Mirage Casino-Hotel, Circus-Circus Enterprises, Inc., Las Vegas Convention and Visitors' Authority,, 1998 WL 34104147, *34104147+ (Appellate Brief) (9th Cir. Jan 29, 1998) **Joint Answering Brief of Appellees** (NO. 97-15912) " * * **HN: 22 (F.Supp.)**

16 S.O.C., INC.; Hillsboro Enterprises, Inc.; Hillsboro Enterprises, Ltd.; Appellants, v. The Mirage CASINO-HOTEL, a Nevada Corporation; and Treasure Island Corp., a Nevada Corporation, Respondents., 2000 WL 35587060, *35587060+ (Appellate Brief) (Nev. Aug 31, 2000) **Appellant Hillsboro's Reply Brief** (NO. 34563) * * **HN: 13 (F.Supp.)**

17 S.O.C., INC.; Hillsboro Enterprises, Inc.; Hillsboro Enterprises, Ltd.; Appellants, v. The Mirage CASINO-HOTEL, a Nevada Corporation; and Treasure Island Corp., a Nevada Corporation, Respondents., 2000 WL 35587056, *35587056+ (Appellate Brief) (Nev. May 03, 2000) **Amicus Curie Brief of the American Civil Liberties Union of Nevada** (NO. 34563) * * **HN: 13 (F.Supp.)**

Trial Court Documents (U.S.A.)

Trial Motions, Memoranda and Affidavits

18 FLORIDA ALLIANCE FOR RETIRED AMERICANS, et al., Plaintiffs, v. CITY OF FORT LAUDERDALE, et al., Defendants., 2005 WL 1501889, *1501889 (Trial Motion, Memorandum and Affidavit) (S.D.Fla. 2005) **Defendant. Broward County'S. Memorandum of Law Opposing Motion for Temporary Restraining Order or Preliminary Injunction** (NO. 05-60813-CIV-MOORE) * *

19 RGW COMMUNICATIONS, INC., d/b/a Watson Cable Company, Plaintiff, v. UNITED STATES OF AMERICA, DEPARTMENT OF THE AIR FORCE, et al., Defendants., 2001 WL 35677213, *35677213+ (Trial Motion, Memorandum and Affidavit) (M.D.Ga. Dec 24, 2001) **Defendants Hunt Building Corporation and WRAF Housing, LLC's Reply Brief in Support of Motion for Summary Judgment** (NO. 501-CV-302-4, DF) * *

20 Katherine ALBRECHT and Quentin Young, on behalf of themselves and all persons similarly

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situated, Plaintiffs, v. METROPOLITAN PIER AND EXPOSITION AUTHORITY, Defendant., 2004 WL 2174599, *2174599+ (Trial Motion, Memorandum and Affidavit) (N.D.Ill. Aug 30, 2004) **Plaintiffs' Response to Defendants' Motion to Dismiss** (NO. 03C6472) * *

21 Katherine ALBRECHT, plaintiff, v. METROPOLITAN PIER AND EXPOSITION AUTHORITY and Leticia Peralta Davis, in her official capacity as Ceo of the MPEA, defendants., 2003 WL 23799211, *23799211+ (Trial Motion, Memorandum and Affidavit) (N.D.Ill. Sep 15, 2003) **The Authority's Verified Memorandum in Opposition to Plaintiff's Motion for A Temporary Restraining Order** (NO. 03C6472) * *

22 Katherine ALBRECHT, plaintiff, v. METROPOLITAN PIER AND EXPOSITION AUTHORITY and Leticia Peralta Davis, in her official capacity as Ceo of the MPEA, defendants., 2003 WL 23799265, *23799265+ (Trial Motion, Memorandum and Affidavit) (N.D.Ill. Sep 15, 2003) **The Authority's Verified Memorandum in Opposition to Plaintiff's Motion for A Temporary Restraining Order** (NO. 03C6472) * *

23 William G. MAYJOR, Plaintiff, v. HARRAH'S LAS VEGAS, INC., Does I-X; and Roe Corporations I-X, inclusive, Defendants., 2002 WL 32975592, *32975592 (Trial Motion, Memorandum and Affidavit) (D.Nev. Jul 01, 2002) **Defendant's Motion to Dismiss Plaintiff's Violation of His Right to Freedom of Speech Cause of Action** (NO. CV-S-02-0859-KJD-LRL) * *

24 CHRISTIAN RIGHTS MINISTRIES, a Virginia non-profit corporation; and Steve Taylor, an individual, Plaintiffs, v. CITY OF CHESAPEAKE; South Norfolk Borough Civic League; Robert Clifton, in his official capacity as Director of Parks and Recreation; Donna Hill, individually and in her official capacity as Recreation Superintendent; Brenda Johnson, individually and in her capacity as a member of the South Norfolk Borough Civic League and Chairperson for, 2008 WL 7315890, *7315890 (Trial Motion, Memorandum and Affidavit) (E.D.Va. Jun 26, 2008) **Response to Rule 12(b)(6) Motions to Dismiss of Defendants South Norfolk Borough Civic League and Brenda Johnson** (NO. 208-CV-154) " * * **HN: 6 (F.Supp.)**

25 CHRISTIAN RIGHTS MINISTRIES, a Virginia non-profit corporation; and Steve Taylor, an individual, Plaintiffs, v. CITY OF CHESAPEAKE; Robert Clifton, in his official capacity as Director of Parks and Recreation; Donna Hill, individually and in her official capacity as Recreation Superintendent; Brenda Johnson, individually and in her official capacity as Chairperson for the Chesapeake Fourth of July Celebration, Defendants., 2008 WL 7315885, *7315885 (Trial Motion, Memorandum and Affidavit) (E.D.Va. May 12, 2008) **Reply Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction** (NO. 208-CV-154) " * * **HN: 6 (F.Supp.)**

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Minn. fairground

Supreme Court of the United States
Michael HEFFRON, Secretary and Manager of the Minnesota State Agricultural Society Board of Managers, et al., Petitioners,
v.
INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., et al.
No. 80-795.

Argued April 20, 1981.
Decided June 22, 1981.

Members of religious sect, one whose doctrines require its members to go out into public places to distribute or sell religious literature and to solicit donations, brought action for judgment declaring that enforcement against them of state fair rule, prohibiting sale or distribution on fair grounds of any merchandise including printed or written material except from fixed location, would violate First Amendment. The District Court, Ramsey County, J. Jerome Plunkett, J., granted summary judgment in favor of governing body of state fair, and religious sect appealed. The Minnesota Supreme Court, 299 N.W.2d 79, reversed and remanded. Certiorari was granted. The Supreme Court, Justice White, held that rule did not violate free exercise clause of First Amendment as applied to members of religious sect.

Reversed and remanded.

Justice Brennan, with whom Justice Marshall and Justice Stevens joined, filed an opinion concurring in part and dissenting in part.

Justice Blackmun, filed an opinion concurring in part and dissenting in part.

Opinion on remand, 311 N.W.2d 843.

West Headnotes

|1| Constitutional Law 92 ⚿1498

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1498 k. Absolute Nature of Right. Most Cited Cases
(Formerly 92k90(3))
The First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired. U.S.C.A.Const. Amend. 1.

|2| Constitutional Law 92 ⚿1517

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1516 Content-Based Regulations or Restrictions
92k1517 k. In General. Most Cited Cases
(Formerly 92k90(3))
A major criterion for a valid time, place, and manner restriction on First Amendment rights is that restriction may not be based upon either content or subject matter of speech. U.S.C.A.Const. Amend. 1.

|3| Agriculture 23 ⚿5

23 Agriculture
23k5 k. Agricultural Exhibitions and Fairs. Most Cited Cases
(Formerly 92k90.1(4))

Constitutional Law 92 ⚿1764

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events

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Submitted At Meeting
Date 8/3/10 Item 3 Exhibit 3

92XVIII(G)2 Government Property and Events

92k1764 k. Fairs, Festivals, Exhibitions, and Conventions. Most Cited Cases
(Formerly 92k90.1(4))

Constitutional Law 92 ⚿1879

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
92k1879 k. Charities or Religious Organizations. Most Cited Cases
(Formerly 92k90.1(4))

Minnesota state fair rule requiring that the sale and distribution of any merchandise, including printed or written material, be from a duly licensed location on fair grounds did not violate free exercise clause of First Amendment as applied to members of the Hari Krishna sect, although sect claimed that rule suppressed practice of religious ritual enjoining its members to go into public places to distribute or sell religious literature and to solicit donations, where rule was applied even-handedly, and state's interest in maintaining orderly movement of crowd at fair was sufficient to justify the requirement that at time, place, or manner of restriction must serve significant governmental interest. U.S.C.A.Const. Amend. 1.

****2560 *640 Syllabus*** FN*

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

A rule (Rule 6.05) of the Minnesota Agricultural Society (Society), a Minnesota public corporation that operates the annual state fair, provides that sale or distribution of any merchandise, including printed or written material, except from a duly licensed location on the fairgrounds shall be a misdemeanor. As Rule 6.05 is construed and applied by the Society, all persons, groups, or firms desiring to sell, exhibit, or distribute materials during the fair must do so only from fixed locations. However, the Rule does not prevent organizational representatives from walking about the fairgrounds and communicating the organization's views to fair patrons in face-to-face discussions. Space in the fairgrounds is rented in a nondiscriminatory fashion on a first-come, first-served basis, and Rule 6.05 applies alike to nonprofit, charitable, and commercial enterprises. Respondents, International Society for Krishna Consciousness, Inc. (ISKCON), an organization espousing the views of the Krishna religion, and the head of one of its temples, filed suit in a Minnesota state court against state officials, seeking declaratory and injunctive relief on the ground that Rule 6.05, on its face and as applied, violated their First Amendment rights. ISKCON asserted that the Rule suppressed the practice of Sankirtan, a religious ritual that enjoins its members to go into public places to distribute or sell religious literature and to solicit donations for the support of the Krishna religion. The trial court upheld the constitutionality of Rule 6.05, but the Minnesota Supreme Court reversed.

Held: Rule 6.05, requiring members of ISKCON who desire to practice Sankirtan at the state fair to confine their distribution, sales, and solicitation activities to a fixed location, is a permissible restriction on the place and manner of communicating the views of the Krishna religion. Pp. 2563-2568.

(a) Rule 6.05 is not based upon the content or subject matter of speech, since it applies evenhandedly to all persons or organizations, ***641** whether commercial or charitable, who wish to distribute and sell written materials or to solicit funds. Nor is the Rule-which involves a method of allocating space on a first-come, first-served basis-open to the kind of arbitrary application that is inherently inconsistent with a valid time, place, and manner regulation as having the potential for becoming a means of

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suppressing a particular point of view. Pp. 2564-2565.

(b) The State's interest in maintaining the orderly movement of the crowd at fair is sufficient to satisfy the requirement that a time, place, or manner restriction must serve a significant governmental interest. The significance of that interest must be assessed in light of the characteristic nature and function of the particular forum involved. Because the fairgrounds comprise a relatively small area where an enormous variety of goods, services, entertainment, and other matters of interest are exhibited to large crowds on a temporary basis, the State's interest in the orderly movement and control of such an assembly is a substantial consideration. Pp. 2565-2566.

**2561 (c) The justification for Rule 6.05 cannot be measured solely on the basis of the disorder that would result from granting members of ISKCON an exemption from the Rule. Inclusion of peripatetic solicitation as part of a church ritual does not entitle church members to solicitation rights in a public forum superior to those of members of other religious groups that raise money but do not purport to ritualize the process. And if Rule 6.05 is an invalid restriction on ISKCON's activities, it is no more valid with respect to other social, political, or charitable organizations seeking to distribute information, sell wares, or solicit funds at the fair. Pp. 2566-2567.

(d) Similarly, Rule 6.05 cannot be viewed as an unnecessary regulation on the ground that the State could avoid the threat to its interest posed by ISKCON by less restrictive means, such as penalizing disorder, limiting the number of solicitors, or imposing more narrowly drawn restrictions on the location and movement of ISKCON's representatives. Since the inquiry must involve all other organizations that would be entitled to distribute, sell, or solicit if the booth rule may not be enforced with respect to ISKCON, it is improbable that such alternative means would deal adequately with the problems posed by the large number of distributors and solicitors that would be present on the fairgrounds. P. 2567.

(e) Alternative forums for the expression of respondents' protected speech exist despite the effects of Rule 6.05. The Rule does not prevent ISKCON from practicing Sankirtan anywhere outside the fairgrounds, nor does it exclude ISKCON from the fairgrounds. Its members may mingle with the crowd and orally propagate their views, and ISKCON *642 may also arrange for a booth and distribute and sell literature and solicit funds from that location on the fairgrounds. Pp. 2567-2568.

299 N.W.2d 79, reversed and remanded.

Kent G. Harbison, St. Paul, Minn., for petitioners.

Laurence H. Tribe, Cambridge, Mass., for respondents.

JUSTICE WHITE delivered the opinion of the Court.

The question presented for review is whether a State, consistent with the First and Fourteenth Amendments, may require a religious organization desiring to distribute and sell religious literature and to solicit donations at a state fair to conduct those activities only at an assigned location within the fairgrounds even though application of the rule limits the religious practices of the organization.

*643 I

Each year, the Minnesota Agricultural Society (Society), a public corporation organized under the laws of Minnesota, see Minn.Stat. § 37.01 (1980), operates a State Fair on a 125-acre state-owned tract located in St. Paul, Minn.[FN1] The Fair is conducted for the purpose of "exhibiting ... the agricultural, stock-breeding, horticultural, mining, mechanical, industrial, and other products and resources of the state, including proper exhibits and expositions of the arts, human skills, and sciences." *Ibid.* The Fair is a major public event and attracts visitors

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from all over Minnesota as well as from other parts of the country. During the past five years, the average total attendance for the 12-day Fair has been 1,320,000 persons. The average daily attendance on weekdays has been 115,000 persons and on Saturdays and Sundays 160,000.

FN1. The facts are taken primarily from the parties' stipulation of facts filed with the Minnesota District Court on July 31, 1978, and reprinted in the joint appendix. App. A-30 through A-36.

The Society is authorized to make all "bylaws, ordinances, and rules, not inconsistent with law, which it may deem necessary or proper for the government of the fair grounds...." **2562 Minn.Stat. § 37.16 (1980). Under this authority, the Society promulgated Minnesota State Fair Rule 6.05 which provides in relevant part that

> "[s]ale or distribution of any merchandise, including printed or written material except under license issued [by] the Society and/or from a duly-licensed location shall be a misdemeanor."

As Rule 6.05 is construed and applied by the Society, "all persons, groups or firms which desire to sell, exhibit or distribute materials during the annual State Fair must do so only from fixed locations on the fairgrounds." FN2 Although the Rule does not prevent organizational representatives from walking about the fairgrounds and communicating the organization's*644 views with fair patrons in face-to-face discussions, FN3 it does require that any exhibitor conduct its sales, distribution, and fund solicitation operations from a booth rented from the Society. Space in the fairgrounds is rented to all comers in a nondiscriminatory fashion on a first-come, first-served basis with the rental charge based on the size and location of the booth. FN4 The Rule applies alike to nonprofit, charitable, and commercial enterprises. FN5

FN2. Stipulation of Fact # 16.

FN3. Fair officials did not "intend to restrict [respondents] from peaceably walking around the fairgrounds and discussing their political, religious or other views with Fair patrons." Affidavit of Michael Heffron, App. A-28. See also Tr. of Oral Arg. 5-7. The trial court expressly permitted such oral proselytizing, see *infra*, at 2563, and that part of the order was not challenged or appealed.

FN4. Over 1,400 exhibitors and concessionaires rented booth space during the 1977 and 1978 Fairs, with several hundred potential exhibitors denied rental space solely because of the limited amount of area available. The propriety of the fee is not an issue in the present case. Cf. *Cox v. New Hampshire*, 312 U.S. 569, 576-577, 61 S.Ct. 762, 766, 85 L.Ed. 1049 (1941).

FN5. The following represent some of the charitable, religious, and other noncommercial organizations that rented booth space at the 1978 Minnesota State Fair: Abortion Rights Council of Minnesota, American Association of Retired Persons, American Heart Association, American Party of Minnesota, Christian Business Men's Association, Church of Christ, D.F.L. State Central Committee, Faith Broadcasting Network, Inc., Independent Republicans of Minnesota, Minnesota Foster Parents Association, Twin Cities Baptist Messianic Witness, World Home Bible League, Christian Educational Service, Lutheran Colportage Service, Minnesota Citizens Concerned for Life, Save Our Unwanted Life, Inc., and United States-China Peoples Friendship Association.

One day prior to the opening of the 1977 Minnesota State Fair, respondents International Society for Krishna Consciousness, Inc. (ISKCON), an international religious society espousing the views of the

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Krishna religion, and Joseph Beca, head of the Minneapolis ISKCON temple, filed suit against numerous state officials seeking a declaration that Rule 6.05, both on its face and as applied, violated respondents' rights under the First Amendment, and seeking injunctive relief ***645** prohibiting enforcement of the Rule against ISKCON and its members. Specifically, ISKCON asserted that the Rule would suppress the practice of Sankirtan, one of its religious rituals, which enjoins its members to go into public places to distribute or sell religious literature and to solicit donations for the support of the Krishna religion.[FN6] The trial court entered temporary orders to govern the conduct of the parties during the 1977 Fair.[FN7] When ****2563** that event concluded and after a hearing, the trial court granted the state officials' motion for summary judgment, upholding the constitutionality of Rule 6.05. Relying on the reasoning in *International Society for Krishna Consciousness, Inc. v. Evans*, 440 F.Supp. 414 (SD Ohio 1977), the court found that the State's interest "in providing all fair goers and concessionaries with adequate and equal access to each other and in providing a minimum of ***646** congestion on the fairgrounds" was sufficient to sustain Rule 6.05's limitations as applied to respondents.[FN8] The court, however, provided that respondents were free to "[r]oam throughout those areas of the fairgrounds generally open to the public for the purpose of discussing with others their religious beliefs."

FN6. In performing Sankirtan, ISKCON members "often greet members of the public by giving them flowers or small American flags...." Stipulation of Fact # 11. For the purpose of this lawsuit, respondents did not assert any right to seek contributions in return for these "greeting gifts," nor did they seek to dance, chant, or engage in any other activities besides the distribution and sale of literature and the solicitation of donations. *Ibid.*

FN7. The trial court temporarily restrained the officials from "arresting, participating in the arrest of, excluding from the Fairgrounds, or preventing activities of [respondents], such as, espousing their religious beliefs, proselytizing others to those beliefs, distributing religious literature or soliciting donations for religious purposes in any portion of the Minnesota Fair Grounds generally open to the public during the 1977 Minnesota State Fair." The court enjoined respondents from "selling or inducing others to purchase, religious literature, items or artifacts, except at a space rented for that purpose on the grounds of the Minnesota Agricultural Society in compliance with the applicable regulations of said Society." Respondents took part in the 1977 Fair pursuant to the terms of the court order. The State submitted various affidavits stating that respondents violated the terms of the order by misrepresenting their cause in seeking solicitations, and by making similar fraudulent statements. These charges are disputed by respondents.

FN8. Given the great number of exhibitors at the State Fair, the trial court was of the view that "[s]ome form of time, place and manner restriction is clearly required if the free speech rights of each of these exhibitors are to be protected." Accordingly, the court ordered that respondents be prohibited from distributing materials such as books, flowers, flags, incense, or artifacts and from engaging in sales or solicitation for monetary donations throughout the fairgrounds except from a booth rented from the Society.

On appeal, the Minnesota Supreme Court reversed, holding that Rule 6.05, as applied to respondents, unconstitutionally restricted the Krishnas' religious practice of Sankirtan. 299 N.W.2d 79 (1980). The court rejected the Society's proffered justifications

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for the Rule as inadequate to warrant the restriction. Furthermore, the application of Rule 6.05 to ISKCON was not essential to the furtherance of the State's interests in that those interests could be served by means less restrictive of respondents' First Amendment rights. We granted the state officials' petition for writ of certiorari in light of the important constitutional issues presented and the conflicting results reached in similar cases in various lower courts.[FN9] 449 U.S. 1109, 101 S.Ct. 917, 66 L.Ed.2d 838.

FN9. Compare *International Society for Krishna Consciousness, Inc. v. Barber*, 506 F.Supp. 147 (NDNY, 1980), rev'd, 650 F.2d 430 (CA2 1981) (invalidating "booth" rule); *Edwards v. Maryland State Fair and Agricultural Society, Inc.*, 628 F.2d 282 (CA4 1980) (same); *International Society for Krishna Consciousness, Inc. v. Bowen*, 600 F.2d 667 (CA7) (same), cert. denied, 444 U.S. 963, 100 S.Ct. 448, 62 L.Ed.2d 375 (1979); *International Society for Krishna Consciousness, Inc. v. Colorado State Fair and Industrial Exposition Comm'n*, 199 Colo. 265, 610 P.2d 486 (Colo.1980) (same) with *Hynes v. Metropolitan Government of Nashville*, 478 F.Supp. 9 (MD Tenn.1979) (upholding "booth" rule); *International Society for Krishna Consciousness, Inc. v. Evans*, 440 F.Supp. 414 (SD Ohio 1977) (same). Related issues have been raised concerning religious groups' access to other types of public facilities. See *International Society for Krishna Consciousness of Atlanta v. Eaves*, 601 F.2d 809 (CA5 1979) (airports); *International Society for Krishna Consciousness, Inc. v. Rochford*, 585 F.2d 263 (CA7 1978) (same); *International Society for Krishna Consciousness, Inc. v. McAvey*, 450 F.Supp. 1265 (SDNY 1978) (World Trade Center); *International Society for Krishna Consciousness, Inc. v. Hays*, 438 F.Supp. 1077 (SD Fla.1977) (highway rest stops); *United States v. Boesewetter*, 463 F.Supp. 370 (DC 1978) (performing arts center).

***647 II**

The State does not dispute that the oral and written dissemination of the Krishnas' religious views and doctrines is protected by the First Amendment. See *Schneider v. State*, 308 U.S. 147, 160, 162-164, 60 S.Ct. 146, 150, 151-152, 84 L.Ed. 155 (1939); *Lovell v. City of Griffin*, 303 U.S. 444, 452, 58 S.Ct. 666, 669, 82 L.Ed. 949 (1938). Nor does it claim that this protection is lost because the written materials sought to be distributed are sold rather than given away or because contributions or gifts are solicited in the course of propagating the faith. Our cases indicate as much. *Murdock v. Pennsylvania*, 319 U.S. 105, 111, 63 S.Ct. 870, 874, 87 L.Ed. 1292 (1943); ****2564***Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980). See *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940).

[1] It is also common ground, however, that the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired. *Adderley v. Florida*, 385 U.S. 39, 47-48, 87 S.Ct. 242, 247, 17 L.Ed.2d 149 (1966); *Poulos v. New Hampshire*, 345 U.S. 395, 405, 73 S.Ct. 760, 766, 97 L.Ed. 1105 (1953); see *Cox v. Louisiana*, 379 U.S. 536, 554, 85 S.Ct. 453, 464, 13 L.Ed.2d 471 (1965). As the Minnesota Supreme Court recognized, the activities of ISKCON, like those of others protected by the First Amendment, are subject to reasonable time, place, and manner restrictions. *Grayned v. City of Rockford*, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972); ***Adderley v. Florida, supra;*** *Kovacs v. Cooper*, 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513 (1949); *Cox v. New Hampshire*, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941).[FN10] "We have often approved***648** restrictions of that kind provided that they are justified without reference to

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the content of the regulated speech, that they serve a significant governmental interest, and that in doing so they leave open ample alternative channels for communication of the information." *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771, 96 S.Ct. 1817, 1830, 48 L.Ed.2d 346 (1976); see also *Consolidated Edison Co. v. Public Service Comm'n*, 447 U.S. 530, 535, 100 S.Ct. 2326, 2331, 65 L.Ed.2d 319 (1980). The issue here, as it was below, is whether Rule 6.05 is a permissible restriction on the place and manner of communicating the views of the Krishna religion, more specifically, whether the Society may require the members of ISKCON who desire to practice Sankirtan at the State Fair to confine their distribution, sales, and solicitation activities to a fixed location.

FN10. In *Cox v. New Hampshire*, a religious group challenged a local ordinance forbidding street parades without a license. The Court held the requirement constitutional as a reasonable time, place, and manner regulation: "Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection." 312 U.S., at 574, 61 S.Ct., at 765. *Kovacs v. Cooper* upheld as applied to a sound truck a content-neutral and nondiscriminatory local ordinance against the emission of loud and raucous noises on the public streets. In *Adderley v. Florida*, no constitutional violation was discerned in applying a local trespass ordinance to persons demonstrating on the grounds of a city jail. We rejected the argument "that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please" and held that the "State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." 385 U.S., at 47-48, 87 S.Ct., at 247. *Grayned v. City of Rockford* sustained as a reasonable time, place, and manner regulation a local ordinance forbidding disturbing noises in the vicinity of a building in which a school is in session.

[2] A major criterion for a valid time, place and manner restriction is that the restriction "may not be based upon either the content or subject matter of speech." *Consolidated Edison Co. v. Public Service Comm'n, supra*, at 536, 100 S.Ct., at 2332. FN11 Rule 6.05 ***649** qualifies in this respect, since as the Supreme Court of Minnesota observed, the Rule applies evenhandedly to all who wish to distribute and sell written materials or to solicit funds. No person or organization, whether commercial or charitable, is permitted to engage in such activities except from a booth rented for those purposes.[FN12]

FN11. See *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771, 96 S.Ct. 1817, 1830, 48 L.Ed.2d 346 (1976); *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85, 93-94, 97 S.Ct. 1614, 1618-1619, 52 L.Ed.2d 155 (1977); *Police Department of Chicago v. Mosley*, 408 U.S. 92, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972); *Papish v. University of Minnesota Curators*, 410 U.S. 667, 670, 93 S.Ct. 1197, 1199, 35 L.Ed.2d 618 (1973).

FN12. Respondents do argue that because the Rule requires ISKCON to await expressions of interest from fair patrons before it may distribute, sell, or solicit funds, the regulation is not content-neutral in that it prefers listener-initiated exchanges to those originating with the speaker. The argument is interesting but has little force. This aspect of the Rule is inherent in the determination to confine exhibitors to fixed locations, it applies to all exhibitors

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alike, and it does not invalidate the Rule as a reasonable time, place, and manner regulation.

**2565 Nor does Rule 6.05 suffer from the more covert forms of discrimination that may result when arbitrary discretion is vested in some governmental authority. The method of allocating space is a straightforward first-come, first-served system. The Rule is not open to the kind of arbitrary application that this Court has condemned as inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view. See *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150-153, 89 S.Ct. 935, 938-940, 22 L.Ed.2d 162 (1969); *Cox v. Louisiana*, *supra*, at 555-558, 85 S.Ct., at 464-466; *Staub v. City of Baxley*, 355 U.S. 313, 321-325, 78 S.Ct. 277, 281-284, 2 L.Ed.2d 302 (1958); *Largent v. Texas*, 318 U.S. 418, 63 S.Ct. 667, 87 L.Ed. 873 (1943); *Cantwell v. Connecticut*, *supra*, at 304, 60 S.Ct., at 903; *Schneider v. State*, 308 U.S., at 164, 60 S.Ct., at 152; *Hague v. CIO*, 307 U.S. 496, 516, 59 S.Ct. 954, 964, 83 L.Ed. 1423 (1939).

A valid time, place, and manner regulation must also "serve a significant governmental interest." *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, *supra*, at 771, 96 S.Ct., at 1830. See *Grayned v. City of Rockford*, *supra*, at 108, 92 S.Ct., at 2298. Here, the principal justification asserted by the State in support of Rule 6.05 is the need to maintain the orderly movement of ***650** the crowd given the large number of exhibitors and persons attending the Fair.[FN13]

FN13. Petitioners assert two other state interests in support of the Rule. First, petitioners claim that the Rule forwards the State's valid interest in protecting its citizens from fraudulent solicitations, deceptive or false speech, and undue annoyance. See *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980); *Cantwell v. Connecticut*, 310 U.S. 296, 306-307, 60 S.Ct. 900, 904, 84 L.Ed. 1213 (1940). Petitioners also forward the State's interest in protecting the fairgoers from being harassed or otherwise bothered, on the grounds that they are a captive audience. In light of our holding that the Rule is justified solely in terms of the State's interest in managing the flow of the crowd, we do not reach whether these other two purposes are constitutionally sufficient to support the imposition of the Rule.

The fairgrounds comprise a relatively small area of 125 acres, the bulk of which is covered by permanent buildings, temporary structures, parking lots, and connecting thoroughfares. There were some 1,400 exhibitors and concessionaires renting space for the 1977 and 1978 Fairs, chiefly in permanent and temporary buildings. The Fair is designed to exhibit to the public an enormous variety of goods, services, entertainment, and other matters of interest. This is accomplished by confining individual exhibitors to fixed locations, with the public moving to and among the booths or other attractions, using streets and open spaces provided for that purpose. Because the Fair attracts large crowds, see *supra*, at 2561, it is apparent that the State's interest in the orderly movement and control of such an assembly of persons is a substantial consideration.

As a general matter, it is clear that a State's interest in protecting the "safety and convenience" of persons using a public forum is a valid governmental objective. See *Grayned v. City of Rockford*, 408 U.S., at 115, 92 S.Ct., at 2302; *Cox v. New Hampshire*, 312 U.S., at 574, 61 S.Ct., at 765. Furthermore, consideration of a forum's special attributes is relevant to the constitutionality of a regulation since the significance of the governmental ***651** interest must be assessed in light of the characteristic nature and function of the particular forum involved. See, *e. g.*, *Grayned v. City of Rockford*, *supra*, at 116-117, 92 S.Ct., at 2303; *Lehman v. City of Shaker Heights*, 418 U.S. 298, 302-303, 94

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S.Ct. 2714, 2716-2717, 41 L.Ed.2d 770 (1974). This observation bears particular import in the present case since respondents make a number of analogies between the fairgrounds and city **2566 streets which have "immemorially been held in trust for the use of the public and ... have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. CIO, supra,* at 515, 59 S.Ct., at 963. See *Kunz v. New York*, 340 U.S. 290, 293, 71 S.Ct. 312, 314, 95 L.Ed. 280 (1951). But it is clear that there are significant differences between a street and the fairgrounds. A street is continually open, often uncongested, and constitutes not only a necessary conduit in the daily affairs of a locality's citizens, but also a place where people may enjoy the open air or the company of friends and neighbors in a relaxed environment. The Minnesota Fair, as described above, is a temporary event attracting great numbers of visitors who come to the event for a short period to see and experience the host of exhibits and attractions at the Fair. The flow of the crowd and demands of safety are more pressing in the context of the Fair. As such, any comparisons to public streets are necessarily inexact.

The Minnesota Supreme Court recognized that the State's interest in the orderly movement of a large crowd and in avoiding congestion was substantial and that Rule 6.05 furthered that interest significantly.[FN14] Nevertheless, the Minnesota Supreme Court declared that the case did not turn on the "importance of the state's undeniable interest in preventing*652 the widespread disorder that would surely exist if no regulation such as Rule 6.05 were in effect" but upon the significance of the State's interest in avoiding whatever disorder would likely result from granting members of ISKCON an exemption from the Rule. 299 N.W.2d, at 83. Approaching the case in this way, the court concluded that although some disruption would occur from such an exemption, it was not of sufficient concern to warrant confining the Krishnas to a booth. The court also concluded that, in any event, the Rule was not essential to the furtherance of the State's interest in crowd control, which could adequately be served by less intrusive means.

> FN14. The court stated that the facts suggested "a situation in which the state's interest in maintaining order is substantial. We have no doubt that Rule 6.05's requirement that all vendors, exhibitors, and concessionaires perform their functions at fixed locations furthers that interest significantly." 299 N.W.2d, at 83.

As we see it, the Minnesota Supreme Court took too narrow a view of the State's interest in avoiding congestion and maintaining the orderly movement of fair patrons on the fairgrounds. The justification for the Rule should not be measured by the disorder that would result from granting an exemption solely to ISKCON. That organization and its ritual of Sankirtan have no special claim to First Amendment protection as compared to that of other religions who also distribute literature and solicit funds.[FN15] None of our cases suggest that the inclusion of peripatetic solicitation as part of a church ritual entitles church members to solicitation rights in a public forum superior to those of members of other religious groups that raise money but do not purport to ritualize the process. Nor for present purposes do religious organizations enjoy rights to communicate, distribute, and solicit on the fairgrounds superior to those of other organizations having social, political, or other ideological messages to *653 proselytize. These nonreligious organizations seeking support for their activities are entitled to rights equal to those of religious groups to enter a public forum and spread their views, whether by soliciting funds or by distributing literature.

> FN15. Respondents do not defend the limited approach of the Minnesota Supreme Court. They concede that whatever exemption they were entitled to under the First Amendment would apply to other organizations seeking similar rights to take part in certain protected activities in the public

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areas of the fairgrounds. See Brief for Respondents 8; Tr. of Oral Arg. 25-26.

If Rule 6.05 is an invalid restriction on the activities of ISKCON, it is no more valid with respect to the other social, political, or charitable organizations that have **2567 rented booths at the Fair and confined their distribution, sale, and fund solicitation to those locations. Nor would it be valid with respect to other organizations that did not rent booths, either because they were unavailable due to a lack of space or because they chose to avoid the expense involved, but that would in all probability appear in the fairgrounds to distribute, sell, and solicit if they could freely do so. The question would also inevitably arise as to what extent the First Amendment also gives commercial organizations a right to move among the crowd to distribute information about or to sell their wares as respondents claim they may do.

ISKCON desires to proselytize at the fair because it believes it can successfully communicate and raise funds. In its view, this can be done only by intercepting fair patrons as they move about, and if success is achieved, stopping them momentarily or for longer periods as money is given or exchanged for literature. This consequence would be multiplied many times over if Rule 6.05 could not be applied to confine such transactions by ISKCON and others to fixed locations. Indeed, the court below agreed that without Rule 6.05 there would be widespread disorder at the fairgrounds. The court also recognized that some disorder would inevitably result from exempting the Krishnas from the Rule. Obviously, there would be a much larger threat to the State's interest in crowd control if all other religious, nonreligious, and noncommercial organizations could likewise move freely about the fairgrounds distributing and selling literature and soliciting funds at will.

[3] *654 Given these considerations, we hold that the State's interest in confining distribution, selling, and fund solicitation activities to fixed locations is sufficient to satisfy the requirement that a place or manner restriction must serve a substantial state interest. By focusing on the incidental effect of providing an exemption from Rule 6.05 to ISKCON, the Minnesota Supreme Court did not take into account the fact that any such exemption cannot be meaningfully limited to ISKCON, and as applied to similarly situated groups would prevent the State from furthering its important concern with managing the flow of the crowd. In our view, the Society may apply its Rule and confine the type of transactions at issue to designated locations without violating the First Amendment.

For similar reasons, we cannot agree with the Minnesota Supreme Court that Rule 6.05 is an unnecessary regulation because the State could avoid the threat to its interest posed by ISKCON by less restrictive means, such as penalizing disorder or disruption, limiting the number of solicitors, or putting more narrowly drawn restrictions on the location and movement of ISKCON's representatives. As we have indicated, the inquiry must involve not only ISKCON, but also all other organizations that would be entitled to distribute, sell, or solicit if the booth rule may not be enforced with respect to ISKCON. Looked at in this way, it is quite improbable that the alternative means suggested by the Minnesota Supreme Court would deal adequately with the problems posed by the much larger number of distributors and solicitors that would be present on the fairgrounds if the judgment below were affirmed.

For Rule 6.05 to be valid as a place and manner restriction, it must also be sufficiently clear that alternative forums for the expression of respondents' protected speech exist despite the effects of the Rule. Rule 6.05 is not vulnerable on this ground. First, the Rule does not prevent ISKCON from *655 practicing Sankirtan anywhere outside the fairgrounds. More importantly, the Rule has not been shown to deny access within the forum in question. Here, the Rule does not exclude ISKCON from the fairgrounds, nor does it deny that organization the right to conduct any desired activity at

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some point within the forum. Its members may mingle with the crowd and orally propagate their views. The organization may also arrange for a booth and distribute and sell literature and solicit funds from that location on the fairgrounds itself. The Minnesota State Fair is a limited public forum in **2568 that it exists to provide a means for a great number of exhibitors temporarily to present their products or views, be they commercial, religious, or political, to a large number of people in an efficient fashion. Considering the limited functions of the Fair and the combined area within which it operates, we are unwilling to say that Rule 6.05 does not provide ISKCON and other organizations with an adequate means to sell and solicit on the fairgrounds. The First Amendment protects the right of every citizen to "reach the minds of willing listeners and to do so there must be opportunity to win their attention." *Kovacs v. Cooper*, 336 U.S. 77, 87, 69 S.Ct. 448, 453, 93 L.Ed. 513 (1949). Rule 6.05 does not unnecessarily limit that right within the fairgrounds.[FN16]

FN16. Given this understanding of the nature of the Fair, we reject respondents' claim that Rule 6.05 effects a total ban on protected First Amendment activities in the open areas of the fairgrounds. In effect, respondents seek to separate, for constitutional purposes, the open areas of the fairgrounds from that part of the fairgrounds where the booths are located. For the reasons stated in text, we believe respondents' characterization of the Rule is plainly incorrect. The booths are not secreted away in some nonaccessible location, but are located within the area of the fairgrounds where visitors are expected, and indeed encouraged, to pass. Since respondents are permitted to solicit funds and distribute and sell literature from within the fairgrounds, albeit from a fixed location, it is inaccurate to say that Rule 6.05 constitutes a ban on such protected activity in the relevant public forum. Accordingly, the only question is the Rule's validity as a time, place, and manner restriction.

***656** The judgment of the Supreme Court of Minnesota is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

So ordered.

Justice BRENNAN, with whom Justice MARSHALL and Justice STEVENS join, concurring in part and dissenting in part.

As the Court recognizes, the issue in this case is whether Minnesota State Fair Rule 6.05 constitutes a reasonable time, place, and manner restriction on respondents' exercise of protected First Amendment rights. See *Schad v. Mount Ephraim*, 452 U.S. 61, 74-76, 101 S.Ct. 2176, 2186, 68 L.Ed.2d 671; *Grayned v. City of Rockford*, 408 U.S. 104, 115-116, 92 S.Ct. 2294, 2302, 33 L.Ed.2d 222 (1972). In deciding this issue, the Court considers, *inter alia*, whether the regulation serves a significant governmental interest and whether that interest can be served by a less intrusive restriction. See *ante*, at 2565, 2567. The Court errs, however, in failing to apply its analysis separately to each of the protected First Amendment activities restricted by Rule 6.05. Thus, the Court fails to recognize that some of the State's restrictions may be reasonable while others may not.

Rule 6.05 restricts three types of protected First Amendment activity: distribution of literature, sale of literature, and solicitation of funds. See *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632, 633, 100 S.Ct. 826, 833, 834, 63 L.Ed.2d 73 (1980); *Murdock v. Pennsylvania*, 319 U.S. 105, 108, 63 S.Ct. 870, 872, 87 L.Ed. 1292 (1943); *Jamison v. Texas*, 318 U.S. 413, 416, 63 S.Ct. 669, 671, 87 L.Ed. 869 (1943); *Schneider v. State*, 308 U.S. 147, 160, 60 S.Ct. 146, 150, 84 L.Ed. 155 (1939); *Lovell v. Griffin*, 303 U.S. 444, 452, 58 S.Ct. 666, 669, 82 L.Ed. 949 (1938). No individual or group is permitted to engage in these activities at the Minnesota State Fair except from preassigned, rented booth locations. Violation of this Rule constitutes a misdemeanor, and violators are subject to arrest and

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expulsion from the fairgrounds.

The State advances three justifications for its booth Rule. The justification relied upon by the Court today is the State's ***657** interest in maintaining the orderly movement of the crowds at the fair. *Ante*, at 2565. The second justification, relied upon by the dissenting justices below, 299 N.W.2d 79, 87 (Minn.1980), is the State's interest in protecting its fairgoers from fraudulent, deceptive, and misleading solicitation practices. The third justification, based on the "captive audience" doctrine, is the State's interest in protecting its fairgoers from annoyance and harassment.

****2569** I quite agree with the Court that the State has a significant interest in maintaining crowd control on its fairgrounds. See *Grayned v. City of Rockford, supra*, 408 U.S., at 115-116, 92 S.Ct., at 2302-2303, *Cox v. New Hampshire*, 312 U.S. 569, 574, 61 S.Ct. 762, 765, 85 L.Ed. 1049 (1941). I also have no doubt that the State has a significant interest in protecting its fairgoers from fraudulent or deceptive solicitation practices. See *Schaumburg v. Citizens for a Better Environment, supra*, 444 U.S., at 636, 100 S.Ct., at 836; *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771-772, 96 S.Ct. 1817, 1830-1831, 48 L.Ed.2d 346 (1976). Indeed, because I believe on this record that this latter interest is substantially furthered by a Rule that restricts sales and solicitation activities to fixed booth locations, where the State will have the greatest opportunity to police and prevent possible deceptive practices, I would hold that Rule 6.05's restriction on those particular forms of First Amendment expression is justified as an antifraud measure. Accordingly, I join the judgment of the Court insofar as it upholds Rule 6.05's restriction on sales and solicitations. However, because I believe that the booth Rule is an overly intrusive means of achieving the State's interest in crowd control, and because I cannot accept the validity of the State's third asserted justification.[FN1] I dissent from the Court's approval of Rule 6.05's restriction on the distribution of literature.

FN1. Because fairgoers are fully capable of saying "no" to persons seeking their attention and then walking away, they are not members of a captive audience. They have no general right to be free from being approached. See *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 638-639, 100 S.Ct. 826, 837, 63 L.Ed.2d 73 (1980); *Martin v. Struthers*, 319 U.S. 141, 143-144, 63 S.Ct. 862, 863, 87 L.Ed. 1313 (1943).

***658** As our cases have long noted, once a governmental regulation is shown to impinge upon basic First Amendment rights, the burden falls on the government to show the validity of its asserted interest and the absence of less intrusive alternatives. See, *e. g., Schneider v. State, supra*. The challenged "regulation must be narrowly tailored to further the State's legitimate interest." *Grayned v. City of Rockford, supra*, 408 U.S., at 116-117, 92 S.Ct., at 2303. Minnesota's Rule 6.05 does not meet this test.

The Minnesota State Fair is an annual 12-day festival of people and ideas. Located on permanent fairgrounds comprising approximately 125 acres, the fair attracts an average of 115,000 visitors on weekdays and 160,000 on Saturdays and Sundays. Once the fairgoers pay their admission fees, they are permitted to roam the fairgrounds at will, visiting booths, meeting friends, or just milling about. Significantly, each and every fairgoer, whether political candidate, concerned citizen, or member of a religious group, is free to give speeches, engage in face-to-face advocacy, campaign, or proselytize. No restrictions are placed on any fairgoer's right to speak at any time, at any place, or to any person.[FN2] Thus, if on a given day 5,000 members of ISKCON came to the fair and paid their admission fees, all 5,000 would be permitted to wander throughout the fairgrounds, delivering speeches to ***659** whomever they wanted, about whatever they wanted. Moreover, because ****2570** this right does not rest on Sankirtan or any other religious principle,[FN3] it can be exercised by every political

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candidate, partisan advocate, and common citizen who has paid the price of admission. All share the identical ***660** right to move peripatetically and speak freely throughout the fairgrounds.

FN2. A state fair is truly a marketplace of ideas and a public forum for the communication of ideas and information. As one court has stated, a "fair is almost by definition a congeries of hawkers, vendors of wares and services, and purveyors of ideas, commercial, esthetic, and intellectual." *International Society for Krishna Consciousness v. State Fair of Texas*, 461 F.Supp. 719, 721 (ND Tex.1978). See also *International Society for Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 444, n.21 (CA2 1981). Despite the Court's suggestion to the contrary, *ante*, at 2565-2566, a fair is surely a "natural and proper plac[e] for the dissemination of information and opinion." *Schneider v. State*, 308 U.S. 147, 163, 60 S.Ct. 146, 151, 84 L.Ed. 155 (1939). In no way could I agree that respondents' desired " 'manner of expression is basically incompatible with the normal activity' " of the fair. See *Schad v. Mount Ephraim*, 452 U.S., at 75, 101 S.Ct., at 2186, quoting *Grayned v. City of Rockford*, 408 U.S. 104, 116, 92 S.Ct. 2294, 2303, 33 L.Ed.2d 222 (1972).

FN3. I am somewhat puzzled by the Court's treatment of the Sankirtan issue. Respondents' complaint, based on 42 U.S.C. § 1983, alleges that Rule 6.05, on its face and as applied, violates both the Free Exercise and the Free Speech Clauses. In their brief and in oral argument, however, respondents emphasize that they do not claim any special treatment because of Sankirtan, but are willing to rest their challenge wholly upon their general right to free speech, which they concede is identical to the right enjoyed by every other religious, political, or charitable group. Tr. of Oral Arg. 26; Brief for Respondents 19-20, 47-48. There is therefore no need for the Court to discuss Sankirtan.

Having chosen to discuss it, however, the Court does so in a manner that is seemingly inconsistent with prior case law. The parties have stipulated that members of ISKCON have a unique "duty to perform a religious ritual known as *Sankirtan*, which consists of going out into public places, to disseminate or sell religious literature and to solicit contributions to support the publishing, religious, and educational functions of Krishna Consciousness." App. A-32. The Court, however, disparages the significance of this ritual, stating without explanation or supporting authority:

"[ISKCON] and its ritual of Sankirtan have no special claim to First Amendment protection as compared to that of other religions who also distribute literature and solicit funds. None of our cases suggest that the inclusion of peripatetic solicitation as part of a church ritual entitles church members to solicitation rights in a public forum superior to those of members of other religious groups that raise money but do not purport to ritualize the process." *Ante*, at 2566 (footnote omitted).

Our cases are clear that governmental regulations which interfere with the exercise of specific religious beliefs or principles should be scrutinized with particular care. See, *e. g., Sherbert v. Verner*, 374 U.S. 398, 402-403, 83 S.Ct. 1790, 1793, 10 L.Ed.2d 965 (1963). As we stated in *Wisconsin v. Yoder*, 406 U.S. 205, 220, 92 S.Ct. 1526, 1535, 32 L.Ed.2d 15 (1972), "there are areas of

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> conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability." I read the Court as accepting these precedents, and merely holding that even if Sankirtan is "conduct protected by the Free Exercise Clause," it is entitled to no greater protection than other forms of expression protected by the First Amendment that are burdened to the same extent by Rule 6.05.

Because of Rule 6.05, however, as soon as a proselytizing member of ISKCON hands out a free copy of the Bhagavad-Gita to an interested listener, or a political candidate distributes his campaign brochure to a potential voter, he becomes subject to arrest and removal from the fairgrounds. This constitutes a significant restriction on First Amendment rights. By prohibiting distribution of literature outside the booths, the fair officials sharply limit the number of fairgoers to whom the proselytizers and candidates can communicate their messages. Only if a fairgoer affirmatively seeks out such information by approaching a booth does Rule 6.05 fully permit potential communicators to exercise their First Amendment rights.

In support of the crowd control justification,[FN4] petitioners contend that if fairgoers are permitted to distribute literature, large crowds will gather, blocking traffic lanes and causing safety problems. As counsel for petitioners asserted at oral argument:

> FN4. Other than the "captive audience" justification, see n.1, *supra,* the only interest seriously asserted by petitioners in support of the restriction on distribution of literature is the State's interest in crowd control. At oral argument, counsel for petitioners expressly declined to advance an antilittering objective, Tr. of Oral Arg. 16, and virtually conceded that the antifraud rationale would not apply unless the communicator sought to obtain money from the fairgoers. *Id.*, at 14-16, 17-19. See also Brief for Petitioners 24-29.

> "[I]t seems to me that if you had [distribution] activity going on with not just the Krishnas but 10 or 20 or 30 representatives from perhaps 30 to 60 or 70 groups, that inevitably is going to draw more attention and going to cause or create more or less moving pockets or moving congested crowds .... [I]f all of a sudden the crowd becomes aware of the fact that dozens of people are walking around passing out materials and they're going ****2571** to ***661** inevitably be attracted by that. Whereas, they wouldn't be if people were just talking." Tr. of Oral Arg. 18-19.
> See also Brief for Petitioners 31.

But petitioners have failed to provide any support for these assertions. They have made no showing that relaxation of the booth Rule would create additional disorder in a fair that is already characterized by the robust and unrestrained participation of hundreds of thousands of wandering fairgoers. See *International Society for Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 444, n.22 (CA2 1981). If fairgoers can make speeches, engage in face-to-face proselytizing, and buttonhole prospective supporters, they can surely distribute literature to members of their audience without significantly adding to the State's asserted crowd control problem. Cf. *Martin v. Struthers*, 319 U.S. 141, 151, 63 S.Ct. 862, 867, 87 L.Ed. 1313 (1943) (Murphy, J. concurring) (invalidating ordinance that banned house-to-house distribution of handbills but did not ban house-to-house proselytizing). The record is devoid of any evidence that the 125-acre fairgrounds could not accommodate peripatetic distributors of literature just as easily as it now accommodates peripatetic speechmakers and proselytizers.[FN5]

> FN5. Moreover, petitioners' expressed concerns are significantly undermined by three affidavits contained in the record which indicate that the State itself engages in the seemingly forbidden practice of leafletting.

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Thus, the affidavit of Thomas Kerr states:

> "2. On numerous occasions when I entered the [1977 Minnesota State Fair], *the individual taking tickets would give to me a flier* which stated that fairgoers might be approached by roving solicitors, that the fair neither licensed nor sanctioned them, and that complaints against them could be filed with the fair administration. On several occasions, *I also noted individuals who appeared to be state fair employees handing out similar fliers at information booths and concession areas.* On several occasions, *I also noticed that individuals, who appeared to be state fair employees, would begin to distribute similar fliers to fairgoers in areas where I or my fellow ISKCON members were proselytizing* or distributing literature." App. A-40 (emphasis added).
>
> See also Affidavit of Joseph Beca, *id.*, at A-38; Affidavit of David C. Ewert, *id.*, at A-43. It is hard to believe the State is seriously concerned about the effects of leafletting, when apparently it too engages in such activity at the State Fair.

***662** Relying on a general, speculative fear of disorder, the State of Minnesota has placed a significant restriction on respondents' ability to exercise core First Amendment rights. This restriction is not narrowly drawn to advance the State's interests, and for that reason is unconstitutional. "[U]ndifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 508, 89 S.Ct. 733, 737, 21 L.Ed.2d 731 (1969). If the State had a reasonable concern that distribution in certain parts of the fairgrounds-for example, entrances and exits-would cause disorder, it could have drafted its Rule to prohibit distribution of literature at those points. If the State felt it necessary to limit the number of persons distributing an organization's literature, it could, within reason, have done that as well. [FN6] It had no right, however, to ban all ****2572** distribution of literature outside the booths. [FN7] A State

> FN6. Respondents recognize that some limitations may constitutionally be imposed upon their right to distribute literature. Stipulation of Fact 23 states:
>
> "ISKCON, while unwilling to confine its religious activities to a booth, has indicated its willingness to submit to the regulation of its members in their circulation throughout the fairgrounds to proselytize, distribute and sell literature, and solicit contributions." *Id.*, at A-36.
>
> In addition, paragraph 11 of respondents' complaint states:
>
> "ISKCON's devotees have tried to allay any fears Defendants might have that their religious activity might be disruptive to normal Fair activities by offering to wear identifying name tags at all times, to limit the number of devotees at the State Fair Grounds, to approach only consenting patrons, to refrain from engaging Fair patrons in conversation near entrances or exits to buildings or exhibits or in areas where there are lines or queues, and to identify themselves to Fair officials, including police officials." *Id.*, at A-6.
>
> See also Tr. of Oral Arg. 30, 34-35.
>
> FN7. As the Minnesota Supreme Court concluded:
>
> "The state's interest can be adequately served by means less restrictive of First Amendment rights. Conduct that tends to create disorder on the fairgrounds may be specifically prohibited." 299 N.W.2d 79, 84 (1980).

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"may serve its legitimate interests, but it must do so by narrowly drawn regulations designed to serve those ***663** interests without unnecessarily interfering with First Amendment freedoms.... 'Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone....' " *Schaumburg v. Citizens for a Better Environment*, 444 U.S., at 637, 100 S.Ct. at 836, quoting *NAACP v. Button*, 371 U.S. 415, 438, 83 S.Ct. 328, 340, 9 L.Ed.2d 405 (1963).

Accord, *Grayned v. City of Rockford*, 408 U.S., at 116-117, 92 S.Ct., at 2303.

Because I believe that the State could have drafted a more narrowly drawn restriction on the right to distribute literature without undermining its interest in maintaining crowd control on the fairgrounds, I would affirm that part of the judgment below that strikes down Rule 6.05 as it applies to distribution of literature.

Justice BLACKMUN, concurring in part and dissenting in part.

For the reasons stated by Justice BRENNAN, I believe that Minnesota State Fair Rule 6.05 is unconstitutional as applied to the distribution of literature.[FN1] I also agree, however, that the Rule is *constitutional* as applied to the sale of literature and the solicitation of funds. I reach this latter conclusion by a different route than does Justice BRENNAN for I am not persuaded that, under the Court's precedents, the State's interest in protecting fairgoers from fraudulent solicitation ***664** or sales practices justifies Rule 6.05's restrictions of those activities.[FN2]

FN1. Like Justice BRENNAN, I would not reach the question whether respondents can claim an exemption from the operation of Rule 6.05 because of their adherence to the doctrine of Sankirtan.

FN2. It should be stressed that Rule 6.05 does not prevent respondents from wandering throughout the fairgrounds and directing interested donors or purchasers to their booth. See Brief for Petitioners 35-36. Thus, it is in fact only the exchange of money, rather than the solicitation *per se* of contributions or of purchases, that is limited to a booth. See 299 N.W.2d 79, 86 (Minn.1980) (opinion dissenting in part). Accordingly, I use the terms "solicitation" and "sales" to connote only the actual exchange of money, rather than the act of requesting that the fairgoer purchase literature or make a contribution at the booth.

In *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 636-637, 100 S.Ct. 826, 836-837, 63 L.Ed.2d 73 (1980), the Court stressed that a community's interest in preventing fraudulent solicitations must be met by narrowly drawn regulations that do not unnecessarily interfere with First Amendment freedoms. It there held that possibility of fraud in "door-to-door" or "on-street" solicitations could be countered "by measures less intrusive than a direct prohibition on solicitation," such as disclosure provisions and penal laws prohibiting fraudulent misrepresentations. *Id.*, at 637-638, 100 S.Ct., at 836-837. I see no reason why the same considerations are not applicable here. There is nothing in this record to suggest that it is more difficult to police fairgrounds for fraudulent solicitations than it is to police an entire community's streets; just as fraudulent solicitors may "melt into a crowd" at the fair, so also may door-to-door solicitors quickly move on after consummating several transactions in a particular neighborhood. Indeed, since respondents have offered to wear identifying tags, see App. A-6, and since the fairgrounds are an enclosed area, it is at least arguable that it is easier to police the fairgrounds than a community's streets.

Nonetheless, I believe that the State's substantial interest in maintaining crowd control and safety on the fairgrounds does justify Rule 6.05's restriction on solicitation and sales activities not conducted from a ****2573** booth. As the Court points out, *ante*, at 2566, "[t]he flow of the crowd and demands of

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***665** safety are more pressing in the context of the Fair" than in the context of a typical street. While I agree with Justice BRENNAN that the State's interest in order does not justify restrictions upon distribution of literature, I think that common-sense differences between literature distribution, on the one hand, and solicitation and sales, on the other, suggest that the latter activities present greater crowd control problems than the former. The distribution of literature does not require that the recipient stop in order to receive the message the speaker wishes to convey; instead, the recipient is free to read the message at a later time. For this reason, literature distribution may present even fewer crowd control problems than the oral proselytizing that the State already allows upon the fairgrounds. In contrast, as the dissent in the Minnesota Supreme Court observed, sales and the collection of solicited funds not only require the fairgoer to stop, but also "engender additional confusion ... because they involve acts of exchanging articles for money, fumbling for and dropping money, making change, etc." 299 N.W.2d 79, 87 (1980). Rules restricting the exchange of money to booths have been upheld in analogous contexts, see *e. g., International Society for Krishna Consciousness of Atlanta v. Eaves*, 601 F.2d 809, 828-829 (CA5 1979) (Atlanta airports), and for similar reasons I would uphold Rule 6.05 insofar as it applies to solicitation and sales.

U.S.Minn.,1981.
Heffron v. International Soc. for Krishna Consciousness, Inc.
452 U.S. 640, 101 S.Ct. 2559, 69 L.Ed.2d 298, 7 Media L. Rep. 1489

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76 F.3d 1009, 64 USLW 2531, 24 Media L. Rep. 1434, 96 Cal. Daily Op. Serv. 981, 96 Daily Journal D.A.R. 1623
(Cite as: 76 F.3d 1009)

United States Court of Appeals,
Ninth Circuit.

ONE WORLD ONE FAMILY NOW, a Hawaii non-profit corporation; James McDonough; Bhaktivedanta Mission, Ltd., a Hawaii non-profit corporation; Anton Voight, Plaintiffs-Appellants,

v.

CITY AND COUNTY OF HONOLULU; Frank F. Fasi, individually and in his capacity as Mayor of the City and County of Honolulu; Michael Nakamura, Chief of Police; Donna Woo, individually and in her capacity as Special Deputy Attorney General of the State of Hawaii; and John Does 1-10, Defendants-Appellees.

ONE WORLD ONE FAMILY NOW; James McDonough, an individual; Bhaktivedanta Mission, Ltd., a Hawaii non-profit corporation; Anton Voight, Plaintiffs-Appellees,

v.

CITY AND COUNTY OF HONOLULU; Frank F. Fasi, individually and in his capacity as Mayor of the City and County of Honolulu; Michael Nakamura, Chief of Police, Defendants-Appellants.

Nos. 94-16373, 94-16511.

Argued and Submitted May 2, 1995.
Decided Feb. 13, 1996.

Nonprofit organizations brought § 1983 action for declaratory and injunctive relief from ordinance which would prohibit sales of their message-bearing T-shirts on sidewalks. The United States District Court for the District of Hawai'i, Harold M. Fong, Chief Judge, denied preliminary injunction against enforcement in heart of commercial area, but granted it as to the rest of city. Both sides appealed. The Court of Appeals, Kozinski, Circuit Judge, held that: (1) plaintiffs' activities were protected under First Amendment; (2) ordinance was content-neutral; (3) ordinance was narrowly tailored to serve substantial interests; (4) other channels of communication were open to plaintiffs; (5) selling message-bearing T-shirts on sidewalk was not uniquely valuable mode of communication; and (6) preliminary injunction to prevent enforcement of ordinance in any area of city was not warranted.

Affirmed in part; reversed in part.

Pregerson, Circuit Judge, dissented and filed opinion.

West Headnotes

[1] Constitutional Law 92 ⚿1600

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(C) Trade or Business
92k1600 k. In General. Most Cited Cases
(Formerly 92k90.1(1))

Nonprofit groups' activities in selling T-shirts imprinted with various philosophical and inspirational messages were protected by First Amendment. U.S.C.A. Const.Amend. 1.

[2] Constitutional Law 92 ⚿1512

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1512 k. In General. Most Cited Cases
(Formerly 92k90(3))

Constitutional Law 92 ⚿1514

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General

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Submitted At Meeting
Date 8/3/10 Item 3 Exh. 6, 1 of 4

92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1514 k. Narrow Tailoring Requirement; Relationship to Governmental Interest. Most Cited Cases
(Formerly 92k90(3))

Constitutional Law 92 ⚿1515

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1515 k. Existence of Other Channels of Expression. Most Cited Cases
(Formerly 92k90(3))
Time, place, or manner restrictions on protected speech are valid if they are content-neutral, are narrowly tailored to serve significant governmental interest, and leave open ample alternative channels of communication. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law 92 ⚿1512

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1512 k. In General. Most Cited Cases
(Formerly 92k90(3))
Speech restriction is "content-neutral" if it is justified without reference to content of regulated speech. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law 92 ⚿1512

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1512 k. In General. Most Cited Cases
(Formerly 92k90(3))

Constitutional Law 92 ⚿1513

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1513 k. Governmental Disagreement with Message Conveyed. Most Cited Cases
(Formerly 92k90(3))
Regulation that serves purposes unrelated to content of expression is deemed neutral, even if it has incidental effect on some speakers or messages but not others; test is whether government has adopted restriction because of disagreement with message it conveys. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law 92 ⚿1760

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1760 k. Sidewalks. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿661(2)

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works

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268XI(A) Streets and Other Public Ways
268k660 Power to Control and Regulate
268k661 In General
268k661(2) k. Reasonableness and Validity of Regulations in General. Most Cited Cases
Challenged ordinance which banned sales of plaintiffs' message-bearing T-shirts was content neutral, since it imposed flat ban on sales of goods on sidewalks, with certain exemptions, without regard to content; ordinance was not designed to suppress certain ideas that government found distasteful nor was it applied to plaintiffs because of views they expressed. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law 92 ⚿1759

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1759 k. Streets and Highways. Most Cited Cases
(Formerly 92k90.1(4))

Constitutional Law 92 ⚿1760

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1760 k. Sidewalks. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿661(2)

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(A) Streets and Other Public Ways
268k660 Power to Control and Regulate
268k661 In General
268k661(2) k. Reasonableness and Validity of Regulations in General. Most Cited Cases
For purposes of challenge to ordinance banning sales of goods and services on streets and sidewalks, city had substantial interests in eliminating visual blight of vendor stands, assuring orderly movement of pedestrians on crowded sidewalks, and protecting local merchants from unfair competition. U.S.C.A. Const.Amend. 1.

[7] Constitutional Law 92 ⚿1509

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases
(Formerly 92k90(3))
Validity of time, place, or manner regulation depends on relation it bears to overall problem government seeks to correct, not on extent to which it furthers government's interests in individual case. U.S.C.A. Const.Amend. 1.

[8] Constitutional Law 92 ⚿1760

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1760 k. Sidewalks. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿661(2)

268 Municipal Corporations
268XI Use and Regulation of Public Places,

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Property, and Works
268XI(A) Streets and Other Public Ways
268k660 Power to Control and Regulate
268k661 In General
268k661(2) k. Reasonableness and Validity of Regulations in General. Most Cited

Municipal Corporations 268 ⚖692

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(A) Streets and Other Public Ways
268k691 Obstructions and Encroachments
268k692 k. Obstruction of Use. Most Cited Cases
Ordinance which prohibited sales of goods and services on sidewalks, including sale of plaintiffs' message-bearing T-shirts, was narrowly tailored to serve substantial interests of eliminating visual blight of vendor stands, assuring orderly movement of pedestrians on crowded sidewalks, and protecting local merchants from unfair competition; proliferation of sidewalk vendors could aggravate congestion on already crowded sidewalks and siphon off sales from local merchants. U.S.C.A. Const.Amend. 1.

[9] **Constitutional Law 92 ⚖1870**

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
92k1870 k. In General. Most Cited Cases
(Formerly 92k90.1(1.1))

Constitutional Law 92 ⚖1760

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1760 k. Sidewalks. Most Cited Cases
(Formerly 92k90.1(4))
Although city ordinance prohibited sidewalk sales of plaintiffs' message-bearing T-shirts, plaintiffs had alternative channels of communication to reach intended audience, such as handing out literature, proselytizing or soliciting donations; also, plaintiffs' volunteers could hand out free T-shirts to passers-by, could mingle with city's tourist throngs wearing T-shirts, and could sell T-shirts through local retail outlets or by opening their own stores. U.S.C.A. Const.Amend. 1.

[10] **Constitutional Law 92 ⚖1600**

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(C) Trade or Business
92k1600 k. In General. Most Cited Cases
(Formerly 92k90.1(1))

Constitutional Law 92 ⚖1760

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1760 k. Sidewalks. Most Cited Cases
(Formerly 92k90.1(4))
While wearing message-bearing T-shirt might be uniquely valuable mode of communication whose total ban could raise serious constitutional questions, same can't be said for selling such T-shirt on sidewalk; although selling T-shirts is unique form of expression in sense that serving message-bearing raviolis or preaching on street corners in Donald Duck voice would be unique, it does nothing to make message uniquely significant or effective. U.S.C.A. Const.Amend. 1.

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|11| Civil Rights 78 ⚖1457(7)

78 Civil Rights
78III Federal Remedies in General
78k1449 Injunction
78k1457 Preliminary Injunction
78k1457(7) k. Other Particular Cases and Contexts. Most Cited Cases
(Formerly 78k268)

Because ordinance banning sales of message-bearing T-shirts on sidewalk was not violation of First Amendment, preliminary injunction to prevent enforcement of ordinance for areas other than main part of downtown was not warranted; city was not obliged to prove validity of ordinance on block-by-block basis. U.S.C.A. Const.Amend. 1.

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Appeals from the United States District Court for the District of Hawaii; Harold M. Fong, Chief Judge, Presiding.

Before PREGERSON, KOZINSKI and HAWKINS, Circuit Judges.

***1011** KOZINSKI, Circuit Judge.

OPINION

An ordinance prohibits the sale of merchandise on city streets. We must determine whether it may be constitutionally applied to bar non-profit organizations from selling message-bearing T-shirts.

I

Plaintiffs One World One Family Now and Bhaktivedanta Mission are non-profit corporations operating in Hawaii. Both organizations sell T-shirts imprinted with various philosophical and inspirational messages, such as "Protect and Preserve the Truth, the Beauty & Harmony of our Native Cultures," Ex. 3, "TAKE IT EASY MEDITATE HANG LOOSE HAWAII," Ex. 4, and "WAIKIKI HAWAII HARINAM," Ex. 6.[FN1] Many of the T-shirts feature colorful depictions of Hawaii's scenic natural beauty, not unlike shirts sold in retail stores catering to tourists. Plaintiffs believe that selling T-shirts is a particularly effective way to communicate because those who buy and wear the T-shirts help spread the message.

> FN1. "Harinam" apparently means "chant the name of god" in Sanskrit. Appellee's Br. at 5.

Aiming for a wide audience, plaintiffs, along with a number of commercial T-shirt vendors, set up several display tables on the sidewalks of Kalakaua Avenue, one of the busiest commercial streets in Waikiki.[FN2] The City and County of Honolulu soon began to hear from visitors and local residents who complained that the T-shirt tables were an obstruction and an eyesore. Merchants with stores near the T-shirt tables also complained, citing a drop in their own sales of tourist-oriented merchandise, which they attributed to unfair competition from the sidewalk vendors.

> FN2. Waikiki is a relatively small, self-contained district within the city of Honolulu, comprising approximately 500 acres. Within it one can find, on any given day,

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> the highest concentration of tourists in the city. It also has a large residential population.

The city notified the sidewalk vendors (including plaintiffs) that they were violating Honolulu, Haw., Rev.Ordinances § 29-6.2(b)(7), which bans the sale of all "goods, wares, merchandise, foodstuffs, refreshments or other kinds of property or services ... upon the public streets, alleys, sidewalks, malls, parks, beaches and other public places in Waikiki." After police threatened them with citations for failure to comply, plaintiffs sued for declaratory and injunctive relief under 42 U.S.C. § 1983, claiming that section 29-6.2 violated their First Amendment rights, and moved for a preliminary injunction.

The district court held an evidentiary hearing. Finding that the city was regulating the time, place and manner of speech pursuant to legitimate and significant interests, it refused to enjoin enforcement of the ordinance as to Kalakaua and Kuhio Avenues-the heart of Waikiki's commercial area and the focus of the city's evidence. The district court granted a preliminary injunction against enforcement of the ordinance in the rest of Waikiki, holding that the city hadn't shown a sufficient interest in keeping plaintiffs from selling there, or that doing so would leave adequate alternative means of communication. Both sides appeal.

II

Because the focus of the litigation has been on Kalakaua and Kuhio Avenues, we deal first with the district court's decision not to enjoin enforcement of the ordinance there.

A

Before we decide which standard to use in evaluating the ordinance, we dispose of a preliminary matter: the application here of our decision in *Gaudiya Vaishnava Soc'y v. City and County of San Francisco,* 952 F.2d 1059 (9th Cir.1990), *cert. denied,* 504 U.S. 914, 112 S.Ct. 1951, 118 L.Ed.2d 555 (1992). Plaintiffs argue that, under *Gaudiya,* their selling is constitutionally protected expression. The city claims plaintiffs' activities aren't constitutionally protected at all.

***1012** In *Gaudiya,* we addressed two questions, one of first impression, the other not. The novel question was whether an ordinance prohibiting charitable organizations from selling message-bearing merchandise implicated the First Amendment. Rejecting San Francisco's contention that selling goods was unprotected conduct, we held that, when the sale of merchandise bearing political, religious, philosophical or ideological messages is "inextricably intertwined" with other forms of protected expression (like distributing literature and proselytizing), the First Amendment applies. *Id.* at 1064. The mundane question followed: Whether San Francisco's ordinance facially violated the First Amendment by giving the police chief unbridled discretion to grant or deny peddling permits for an activity protected by the First Amendment. Following a well-worn path, *see City of Lakewood v. Plain Dealer Publishing Co.,* 486 U.S. 750, 756-57, 108 S.Ct. 2138, 2143-44, 100 L.Ed.2d 771 (1988) (collecting cases), we held the ordinance facially invalid. 952 F.2d at 1065-66.

[1] Plaintiffs' activities closely resemble those in *Gaudiya* and the First Amendment therefore protects them. But there ends the similarity. In *Gaudiya,* the ordinance granted the police chief unbridled discretion to grant peddling permits and the plaintiffs there brought a facial challenge to this discretion. By contrast, Honolulu's ordinance is a flat ban; there are some exceptions, but no discretion to be exercised. Accordingly, on appeal, plaintiffs challenge section 29-6.2 only as applied to their activities. [FN3]

> FN3. Below, plaintiffs purported to bring a facial challenge, as well. We assume they don't appeal the district court's rejection of their facial challenge as they make no arguments to support such a challenge.

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B

[2] Having determined that plaintiffs' T-shirt sales fall within the ambit of the First Amendment, we must decide whether Honolulu's ordinance is valid as applied to them. We use the standard governing time, place and manner restrictions.[FN4] Such restrictions are valid if they (1) are content-neutral; (2) are narrowly tailored to serve a significant governmental interest; and (3) leave open ample alternative channels of communication. *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 2753, 105 L.Ed.2d 661 (1989).

> FN4. The city doesn't dispute that the sidewalks of Waikiki are a public forum, nor could it. *See, e.g., United States v. Grace,* 461 U.S. 171, 177, 103 S.Ct. 1702, 1706, 75 L.Ed.2d 736 (1983).

[3][4] **1.** A speech restriction is content-neutral if it is "justified without reference to the content of the regulated speech." *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 293, 104 S.Ct. 3065, 3068, 82 L.Ed.2d 221 (1984). "A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." *Ward,* 491 U.S. at 791, 109 S.Ct. at 2753. The test is whether the government has adopted the restriction "because of disagreement with the message it conveys." *Id.*

[5] The district court found that the ordinance furthers three legitimate governmental interests: (1) "maintaining the aesthetic attractiveness of Waikiki," (2) "promoting public safety and the orderly movement of pedestrians," and (3) "protecting the local merchant economy." E.R. at 31. None of these interests concerns the content of speech, and there's no evidence that "the ordinance was designed to suppress certain ideas that the City finds distasteful or that it has been applied to [the plaintiffs] because of the views that they express." *Members of the City Council of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 804, 104 S.Ct. 2118, 2128, 80 L.Ed.2d 772 (1984). The ordinance imposes a flat ban, one that is applied without regard to content. Accordingly, it is content-neutral. [FN5]

> FN5. Plaintiffs argue that the ordinance provides several exemptions that have the effect of discriminating on the basis of content. Its provisions do not apply to the "sale ... of newspapers of general circulation and to duly authorized concessions in public places." Honolulu, Haw., Rev.Ordinances § 29-6.2(b). The provision also exempts buttons and souvenir items sold in conjunction with a parade. *Id.* § 29-6.2(c). Because these exemptions don't enable the city to discriminate against ideas it disfavors, they don't render the ordinance content-based. *See Leathers v. Medlock,* 499 U.S. 439, 450, 111 S.Ct. 1438, 1445, 113 L.Ed.2d 494 (1991).

***1013** [6] **2.** Cities have a substantial interest in protecting the aesthetic appearance of their communities by "avoiding visual clutter." *Id.* at 806-07, 104 S.Ct. at 2129-30. As the district court found, Honolulu's interest in eliminating the visual blight caused by unsightly vendor stands easily qualifies under this standard. Likewise, cities have a substantial interest in assuring safe and convenient circulation on their streets. *See Cox v. Louisiana,* 379 U.S. 536, 554-55, 85 S.Ct. 453, 464, 13 L.Ed.2d 471 (1965). The district court found that Waikiki is the center of the state's tourism industry, receives as many as 60,000 visitors a day, and consequently has "a large concentration of vehicles and pedestrians which causes unique traffic problems." E.R. at 11. Judged in light of "the characteristic nature and function of the particular forum involved," *Heffron v. International Soc'y for Krishna Consciousness, Inc.,* 452 U.S. 640, 651, 101 S.Ct. 2559, 2565, 69 L.Ed.2d 298 (1981), the city's interest in maintaining the orderly movement of pedestrians on Waikiki's crowded sidewalks is also substantial. *See* Appendix.

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[7] Finally, Honolulu has demonstrated a substantial interest in protecting local merchants from unfair competition. *See Turner Broadcasting Sys., Inc. v. F.C.C.*, 512 U.S. 622, ---- - ----, 114 S.Ct. 2445, 2469-70, 129 L.Ed.2d 497 (1994). One legitimate preoccupation of local government is to attract and preserve business. Cities rely on a prosperous, stable merchant community for their tax base, as well as for the comfort and welfare of their citizens. Here, the district court found that "the tax-free and rent-free activities of the plaintiffs ... have had a significant affect [sic] on the economy of the abutting shop owners on Kalakaua and Kuhio Avenues whose taxes and rent contribute to the welfare and economy of this state." E.R. at 35. This kind of unfair competition threatens to erode tax revenues and undermine the strength of its commercial life.[FN6] As amici remind us, plaintiffs can offer "remarkably low prices" in part because they pay no rent and aren't subject to various municipal regulations. Given the district court's findings, we must take seriously the concern that "[n]o ordinary merchant, forced to pay rent in Waikiki and comply with other applicable laws, possibly could compete with those prices for any significant period of time." Br. Amici Curiae at 20.

> FN6. Plaintiffs contend that the city failed to offer any concrete evidence demonstrating that their T-shirt sales actually harmed local merchants. But "the validity of [a time, place or manner] regulation depends on the relation it bears to the overall problem the government seeks to correct, not on the extent to which it furthers the government's interests in an individual case." *Ward*, 491 U.S. at 801, 109 S.Ct. at 2759.

Given the evidence before it and the deference due the city council's determinations of necessity, *see Turner Broadcasting*, 512 U.S. at ---- - ----, 114 S.Ct. at 2470-71 (plurality opinion),[FN7] the district court didn't err in concluding that the city had actual, significant interests. *See id.* at ----, 114 S.Ct. at 2470 (plurality opinion) (requiring finding that "recited harms are real, not merely conjectural" to establish significant government interest); *cf. id.* at ---- - ----, 114 S.Ct. at 2472-73 (Blackmun, J., concurring). *Id.* at ---- - ----, 114 S.Ct. at 2473-75 (Stevens, J., concurring).[FN8]

> FN7. Although this portion of Justice Kennedy's opinion had only four votes, under *Marks v. United States*, 430 U.S. 188, 193, 97 S.Ct. 990, 993, 51 L.Ed.2d 260 (1977), it's the holding of the case, since it was the "position taken by those members who concurred in the judgment[ ] on the narrowest grounds." *See Turner Broadcasting*, 512 U.S. at ---- - ----, 114 S.Ct. at 2473-75 (Stevens, J., concurring) (advocating greater deference).
>
> FN8. The district court didn't clearly err in finding that the city showed insufficient evidence that sidewalk vending was actually "causing a proliferation of fraud and duress among tourists and residents." E.R. at 31. In any case, an ordinance that bans all sidewalk vending isn't narrowly tailored to eliminate fraud. *Cf. Martin v. City of Struthers*, 319 U.S. 141, 144-49, 63 S.Ct. 862, 863-66, 87 L.Ed. 1313 (1943) (ban on door-to-door handbilling not narrowly tailored to prevent crime and fraud).

[8] Honolulu's peddling ordinance is narrowly tailored to serve these interests because they "would be achieved less effectively absent the regulation." ***1014** *Ward*, 491 U.S. at 799, 109 S.Ct. at 2758 (internal quotation marks omitted). Without the ordinance, sidewalk vendors (commercial and charitable alike) would be free to peddle their wares on Kalakaua and Kuhio Avenues, undermining the city's efforts to provide a pleasant strolling and shopping area. *See* Appendix. A proliferation of sidewalk vendors could also aggravate the congestion on already crowded sidewalks and siphon off sales from local merchants. Because the peddling ordinance addresses these problems "without ... significantly restricting a substantial quantity of

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speech that does not create the same evils," *Ward,* 491 U.S. at 799 n. 7, 109 S.Ct. at 2758 n. 7, section 29-6.2(b)(7) is narrowly tailored.[FN9]

> FN9. The ordinance doesn't stop anyone from handing out T-shirts free of charge. This, plaintiffs argue, makes the ordinance invalid because handing out T-shirts causes the same harm to the city's interests as selling them. The city, however, was entitled to conclude that fewer sidewalk vendors would come to hand out merchandise for free. The ordinance is therefore a "valuable, but perhaps imperfect" means of addressing the targeted problem. *Clark,* 468 U.S. at 297, 104 S.Ct. at 3071; *cf. Vincent,* 466 U.S. at 811, 104 S.Ct. at 2132 ("Even if some visual blight remains, a partial, content-neutral ban may nevertheless enhance the City's appearance.").

Plaintiffs suggest less restrictive alternatives Honolulu could adopt to advance its interests, such as limiting the number of vendors, their hours of operation or the size and location of their stands. A reasonable time, place and manner regulation, however, need not be the "least restrictive or least intrusive" alternative. *Id.* at 798, 109 S.Ct. at 2757. "So long as the means chosen are not substantially broader than necessary to achieve the government's interest, ... the regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative." *Id.* at 800, 109 S.Ct. at 2758.

Honolulu's peddling ordinance isn't "substantially broader than necessary" to achieve its interests. The ordinance targets precisely the activity-sidewalk vending-causing the problems the city legitimately seeks to ameliorate, and it doesn't sweep in expressive activity that doesn't contribute to those problems. As in *Vincent,* the city "did no more than eliminate the exact source of the evil it sought to remedy." 466 U.S. at 808, 104 S.Ct. at 2130.

[9] **3.** Honolulu's peddling ordinance also leaves open ample alternative channels of communication. The ordinance forecloses one narrow form of expression-sidewalk sales of message-bearing merchandise-and leaves the plaintiffs free to disseminate and seek financial support for their views through "myriad and diverse" alternative channels, such as handing out literature, proselytizing or soliciting donations. *See ACORN v. City of Phoenix,* 798 F.2d 1260, 1271 (9th Cir.1986) (ordinance prohibiting charitable solicitation from people in cars leaves open ample alternative channels of communication). In addition, plaintiffs' volunteers may hand out free T-shirts to passers-by, *see* note 9 *supra,* or mingle with Waikiki's tourist throngs wearing T-shirts (thereby acting as human billboards). Plaintiffs may also sell T-shirts through local retail outlets or by opening their own stores, so long as they comply with the regulations generally applicable to merchants.

Plaintiffs argue we must nevertheless invalidate the peddling ordinance because it prevents them from reaching their intended audience. They rely heavily on *Bay Area Peace Navy v. United States,* 914 F.2d 1224 (9th Cir.1990), where we invalidated the Coast Guard's 75-yard security zone around the Aquatic Park Pier during annual Fleet Week activities on San Francisco Bay. We noted that the security zone effectively prevented the plaintiff from reaching its intended audience (military officers, local government officials and other dignitaries) because its protest messages couldn't reach observers on the pier over 75 yards away. *Id.* at 1229-30. We emphasized that other channels of communication-passing out pamphlets or holding demonstrations on land-were "not viable alternatives because the invited visitors, who are the Peace Navy's intended audience, are not accessible from those positions." *Id.* at 1229 (internal quotation marks omitted).

Bay Area Peace Navy is inapposite. Nothing prevents plaintiffs here from reaching their intended audience-the tourists ***1015** congregating in Waikiki. As noted, they have a number of alternat-

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ive means of disseminating their message, each of which allows them to communicate effectively with people on the sidewalks.

Finally, plaintiffs claim that the Supreme Court's recent decision in *City of Ladue v. Gilleo,* 512 U.S. 43, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994), casts doubt on the validity of the ordinance. In *Ladue,* the Court struck down a broad ban on the display of signs on private residential property. The opinion rested heavily on the view that the city's ordinance closed off a "unique and important" mode of expression for which there is "no practical substitute." *Id.* at ---- - ----, 114 S.Ct. at 2045-46. The Court explained that "[d]isplaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means." *Id.* at ----, 114 S.Ct. at 2046.

[10] Plaintiffs argue that selling message-bearing T-shirts is a unique mode of expression akin to displaying a sign in front of one's home. We are not persuaded. While *wearing* a message-bearing T-shirt might be a uniquely valuable mode of communication whose total ban could raise serious constitutional questions, *cf. Cohen v. California,* 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971), the same can't be said for *selling* such a T-shirt on the sidewalk. A message on one's person or home has a unique effect because it "provide[s] information about the identity of the 'speaker' [which is] an important component of many attempts to persuade." *Ladue,* 512 U.S. at ----, 114 S.Ct. at 2046. While selling T-shirts is a unique form of expression in the sense that serving message-bearing raviolis or preaching on street corners in a Donald Duck voice would be unique, it does nothing to make the message uniquely significant or effective. Various other traditional means of dissemination would get across exactly the same idea. Thus, we do not believe the sale of message-bearing T-shirts is so "uniquely valuable or important [a] mode of communication" as to be without effective substitute. *Vincent,* 466 U.S. at 812, 104 S.Ct. at 2132.

III

[11] Although the district court refused to enjoin enforcement of the ordinance on Kalakaua and Kuhio Avenues, it granted a preliminary injunction for the rest of Waikiki, finding that the city had proved its interest only as to these two streets. E.R. at 31-35. Neither party asked for this Solomonic solution and, on appeal, both correctly argue that the district court erred in differentiating between Waikiki's main and side streets. Cities need not prove up their interests on a block-by-block basis, particularly where the interests asserted are as basic and traditional as Honolulu's. *See, e.g., Metromedia, Inc. v. City of San Diego,* 453 U.S. 490, 507-08, 101 S.Ct. 2882, 2892, 69 L.Ed.2d 800 (1981). The evidence before the district court focused on Kalakaua Avenue because that's where most of the sidewalk vendors were operating. *See* Deposition of James McDonough at 37-38; Deposition of Anton Voight at 61-62. There was ample evidence, though, that the city's interests in open and attractive sidewalks and fair competition extended throughout Waikiki. *See, e.g.,* E.R. at 11-12 (district court's findings indicating Waikiki's history of special treatment in city ordinances); Defendant's Ex. 8 at 43-55 (1992 Waikiki Master Plan indicating plans to improve and beautify streets throughout Waikiki); R.T. at 168-69 (testimony that landowners wouldn't make crucial concessions to allow further implementation of Master Plan if widened and beautified sidewalks would be inhabited by sidewalk vendors). Indeed, these types of interests can be presumed to operate throughout a city, absent a strong showing to the contrary.

The district court also found that a ban throughout Waikiki didn't leave ample alternative channels for plaintiffs to communicate their messages. Citing *Clark* and *Gaudiya,* it reasoned that a "total ban on selling expressive T-shirts in a heavily trafficked section of town" was impermissible. E.R. at 32-33. Neither we nor the Supreme Court have said any such thing. Rather, we have held broad and narrow bans in even the most desirable locations to the

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same standard. The broader the ban, of course, the more *1016 difficult it is to prove that the remaining means of communication are adequate. Difficult, however, doesn't mean impossible. As discussed above, this ordinance meets the test.

Accordingly, plaintiffs showed no likelihood of success on the merits and the district court erred in granting their motion for a preliminary injunction, even in part. *See Senate of California v. Mosbacher,* 968 F.2d 974, 977-78 (9th Cir.1992).

* * *

Honolulu's peddling ordinance is content-neutral, narrowly tailored to serve substantial interests throughout Waikiki, and leaves ample alternative channels of communication. We therefore **AFFIRM** the partial denial of plaintiff's motion for a preliminary injunction on its enforcement on Kalakaua and Kuhio Avenues and **VACATE** the preliminary injunction on its enforcement in other areas of Waikiki.

AFFIRMED IN PART; REVERSED IN PART.

APPENDIX

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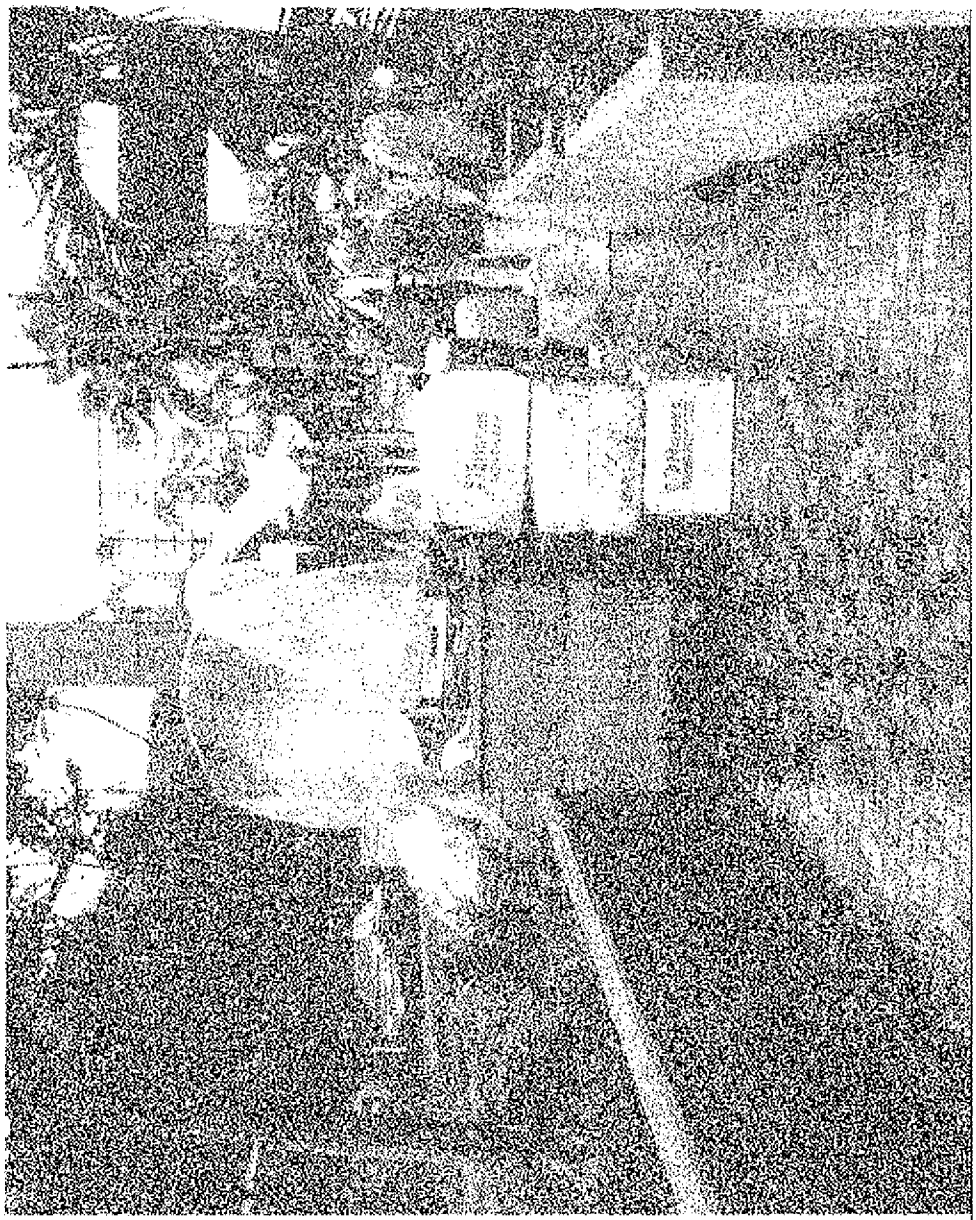

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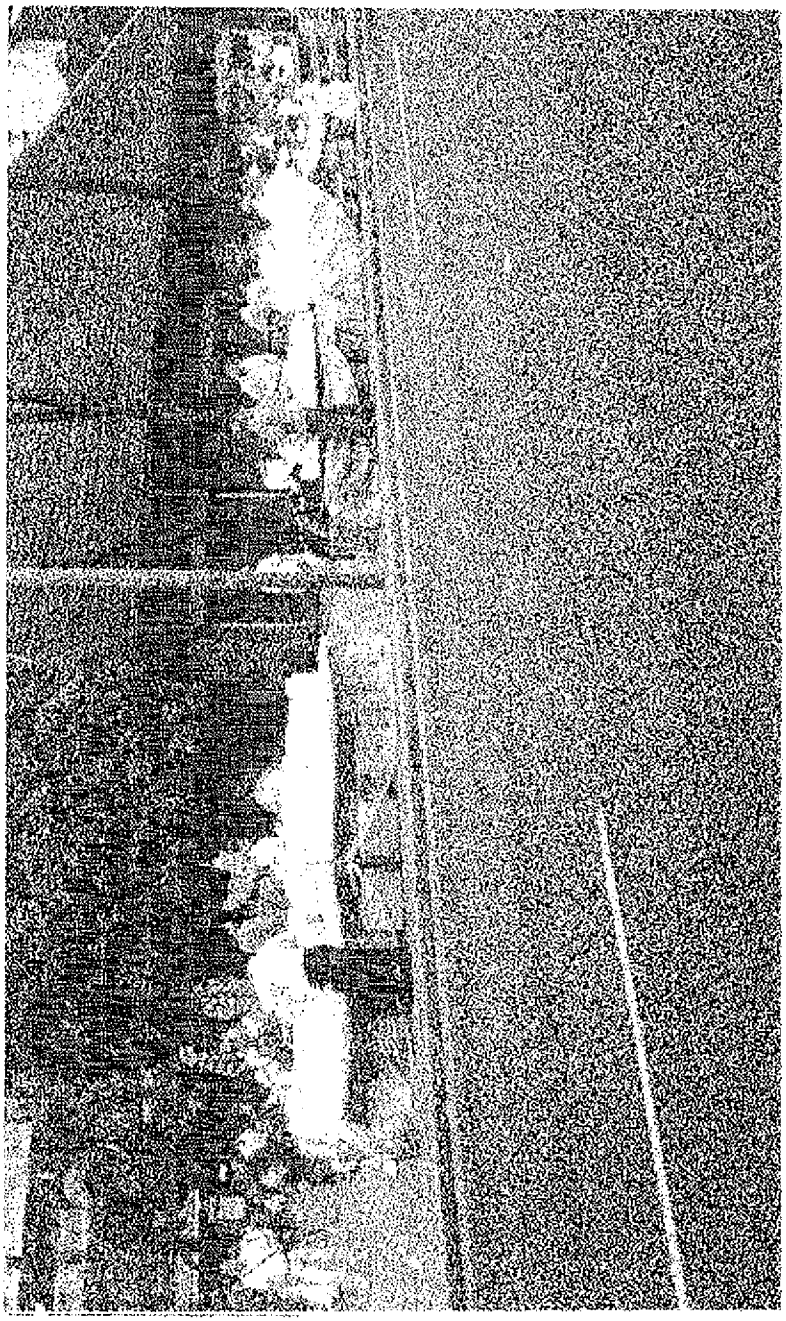

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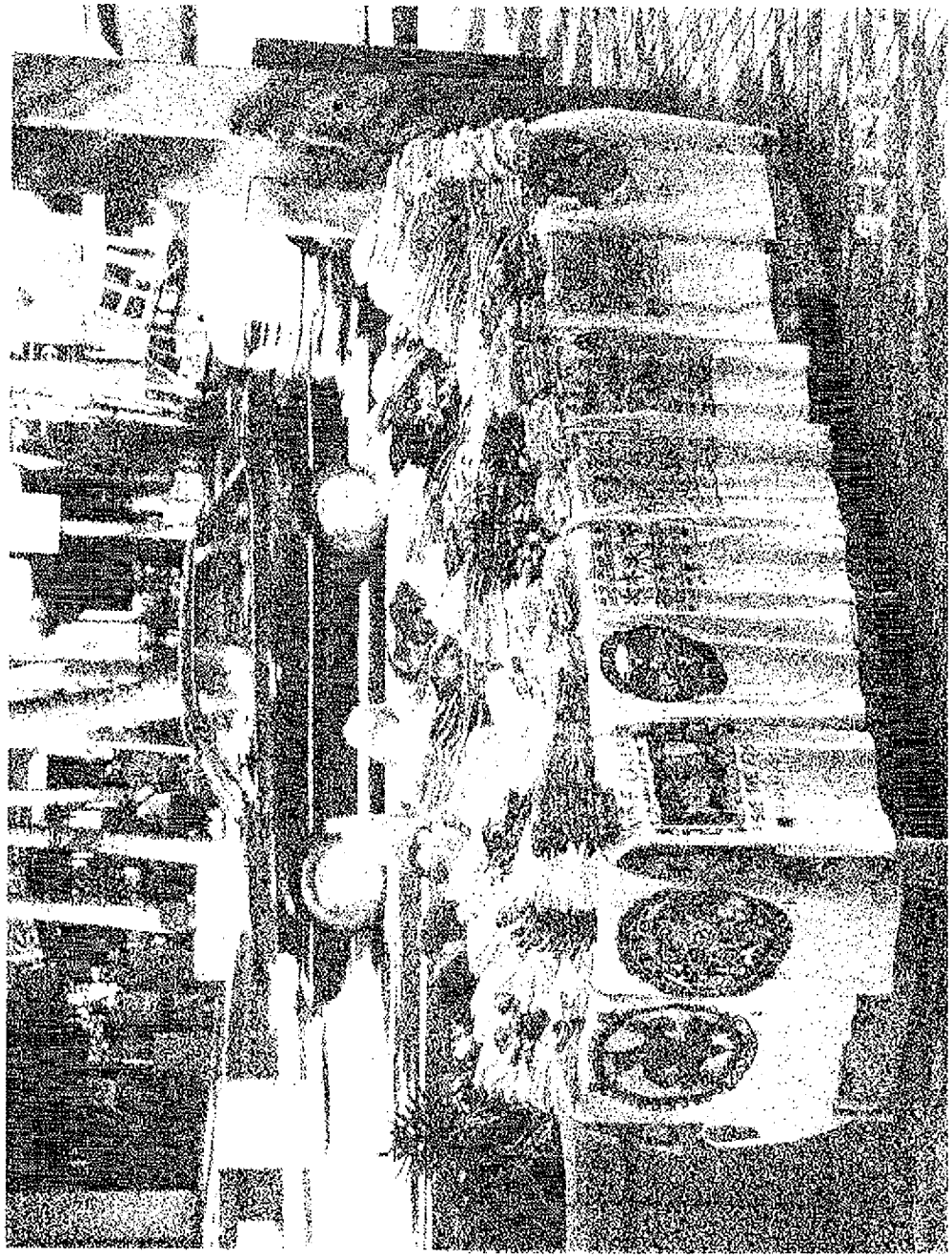

PREGERSON, Circuit Judge, dissenting:

Because I believe the First Amendment protects the right to speak freely in a public ***1020** forum, I dissent. Two aspects of the majority opinion are troublesome. First, the majority opinion diminishes the free speech right at stake here by narrowing the scope of our decision in *Gaudiya Vaishnava Society v. City of San Francisco,* 952 F.2d 1059 (9th Cir.1990), *cert. denied,* 504 U.S. 914, 112 S.Ct. 1951, 118 L.Ed.2d 555 (1992). Second, the majority's time, place, and manner analysis rubber-stamps Honolulu's ordinance restricting speech even though (a) the ordinance is not narrowly tailored to achieve Honolulu's civic goals, and (b) no equally effective alternative forum for the restricted speech exists. I address each concern in

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turn.

I

The majority recognizes that the plaintiffs' T-shirt sales fall within the protective ambit of the First Amendment. Nevertheless, the majority's analysis gives short shrift to our important discussion in *Gaudiya* concerning the substance of the right to speak in a public forum, which includes the right to sell message-bearing T-shirts.

In *Gaudiya,* we held that merchandise with messages affixed to the product, "when sold in conjunction with other activities in order to disseminate [an] organizations' message ... is fully protected speech." 952 F.2d at 1064-65. There, various nonprofit organizations challenged a San Francisco ordinance that prohibited selling, without a permit, T-shirts and other message-bearing merchandise at Fisherman's Wharf and Union Square. *Id.* at 1060-61. The messages conveyed-verbally or symbolically-the nonprofits' philosophies. *Id.* at 1060. The sale of message-bearing merchandise at high foot-traffic locations helped the nonprofits solicit donations, distribute literature, and educate the public about their causes. *Id.*

As in *Gaudiya,* the T-shirts at issue here bear messages that convey the religious and political philosophies of the plaintiff organizations. Some of the T-shirts read: "Meditate," "Clean and Safe Oceans for All," and "Protect and Preserve the Truth, the Beauty & Harmony of our Native Cultures." Just because the messages are printed along with pictures of flowers or fish does not diminish the religious or political quality of the speech. The messages on the merchandise in *Gaudiya* were also intermingled with aesthetic design, but we nevertheless found that the sale of the merchandise was "inextricably intertwined" with fully protected speech. *Gaudiya,* 952 F.2d at 1064 n. 5.

Also, as was true of the San Francisco nonprofits, the plaintiffs here distribute information about their philosophies in conjunction with selling message-bearing T-shirts. The ultimate purpose of these T-shirt transactions is the dissemination of passionately-held viewpoints. The people manning the T-shirt stands discuss their religious beliefs and philosophies with anyone who stops by.[FN1]

> FN1. The plainclothes officer who investigated the T-shirt stands testified that he had a "good" conversation with an "active" member of the Bhaktivedanta Mission, who shared his religious beliefs with the officer and read aloud parts of a handout on these beliefs. The officer also testified that three organizations, including One World One Family Now, distributed literature to him.

Contrary to the majority's view, *Gaudiya* controls the disposition of the case at hand. It is true that *Gaudiya* struck down San Francisco's permit requirement because of its lack of "rules that give guidance to the chief of police." *Gaudiya,* 952 F.2d at 1065. But we didn't strike down the permit requirement merely because it was police-administered. We were concerned with San Francisco's unbridled restriction of free speech in the absence of a rational set of operating procedures; and, we looked to whether the city had given its chief of police guiding rules for restricting speech. *Id.* at 1065-66.

Applying *Gaudiya* to this case is not difficult. Under *Gaudiya,* Honolulu could have easily avoided running afoul of the First Amendment by instituting guiding rules under which nonprofits could sell their message-bearing T-shirts. But Honolulu imposed a blanket ban on such sales. This ban amounts to an unlimited governmental restriction of speech in a public forum-in substance, the same kind of governmental action condemned in *Gaudiya.* As in *Gaudiya,* there is no need here for Honolulu's unbridled ban on First Amendment activities. *See* ***1021** *Gaudiya,* 952 F.2d at 1065. Yet the majority minimizes any substantive similarity between Honolulu's blanket ban and San Fran-

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cisco's unchecked permit scheme.

The majority opinion does not explain adequately its departure from *Gaudiya.* On the one hand, the majority acknowledges that plaintiff organizations have a "fully protected" speech right. But on the other hand, the majority fails to recognize Honolulu's duty to respect and preserve that right for it to be effective. In so doing, the majority's position only gives lip service not only to *Gaudiya,* but also to the Supreme Court's strong admonitions that message-bearing merchandise, when sold in conjunction with other First Amendment activities, is *fully protected* speech. *See Heffron v. International Soc'y for Krishna Consciousness,* 452 U.S. 640, 647, 101 S.Ct. 2559, 2563, 69 L.Ed.2d 298 (1981). *See also Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations,* 413 U.S. 376, 385, 93 S.Ct. 2553, 2558, 37 L.Ed.2d 669 (1973) (stating that newspaper's profit motive should not be the basis for regulation of First Amendment rights); *Village of Schaumburg v. Citizens for a Better Env't,* 444 U.S. 620, 632, 100 S.Ct. 826, 833, 63 L.Ed.2d 73 (1980) (holding that charitable appeals for funds in conjunction with other First Amendment activities are protected).

Underlying the majority opinion may be the notion that the nonprofits are using the First Amendment to protect a niche in the Waikiki T-shirt market. If this is so, then the matter should be remanded for further findings of fact. Without a more complete record, an unsupported suspicion that the T-shirt stands are a sham should not be the basis for circumventing the First Amendment.

II

The majority opinion's time, place, and manner discussion is thin. The majority summarily concludes that Honolulu's ordinance is content-neutral, is narrowly tailored to serve a significant governmental interest, and leaves ample alternative channels of communication. *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 2753, 105 L.Ed.2d 661 (1989). The last two conclusions are questionable.

A

To satisfy the narrowly tailored requirement, a regulation need not be the "least restrictive" means of serving the relevant government interest, but "if there are numerous and obvious less-burdensome alternatives to the restriction on ... speech, that is certainly a relevant consideration in determining whether the 'fit' between ends and means is reasonable." *City of Cincinnati v. Discovery Network, Inc.,* 507 U.S. 410, 413 n. 13, 113 S.Ct. 1505, 1510 n. 13, 123 L.Ed.2d 99 (1993). Indeed, as we concluded in *Project 80's, Inc. v. City of Pocatello,* 942 F.2d 635, 638 (9th Cir.1991), "restrictions which disregard far less restrictive and more precise means are not narrowly tailored."

Honolulu claims that it enacted the peddling ordinance to maintain the aesthetic attractiveness of Waikiki, promote public safety and orderly movement of pedestrians, protect the local merchant economy, and prevent the nonprofit vendors from pressuring or defrauding potential buyers. These are laudable civic goals. But obvious, less restrictive means for achieving these same aims are readily available, and the majority simply chooses to ignore them.

To control congestion and visual blight, Honolulu can easily prohibit the nonprofits from setting up their stands in the most congested areas, such as areas near street intersections. Honolulu can also limit the size or number of stands that nonprofits may operate on each block, or restrict sales during certain times of the day, such as during the morning and afternoon rush hours. To protect the local merchant economy, Honolulu can require the nonprofits to display prominent signs on each stand, which is what some nonprofits already do.[FN2] Signs would clearly identify each organization as a nonprofit. This would make it obvious to tourists and other passersby that they are not dealing with

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the traditional souvenir shop. *1022 Finally, to prevent fraud and duress, Honolulu can employ traditional legal methods, such as prosecuting those who actually commit such crimes. *See Martin v. Struthers,* 319 U.S. 141, 148, 63 S.Ct. 862, 865, 87 L.Ed. 1313 (1943) (invalidating ordinance which prohibited the distribution of handbills to residences because city can punish those who harass or defraud occupants); *cf. Schneider v. State,* 308 U.S. 147, 162, 60 S.Ct. 146, 151, 84 L.Ed. 155 (1939) (invalidating ordinance which prohibited passing out leaflets on city streets because obvious alternative methods such as punishing those who litter would effectively solve the littering problem).

> FN2. For example, One World One Family Now's T-shirt stands display a sign that reads "One World Family."

In sum, a cursory glance at the available options reveals numerous less-restrictive alternatives to an outright ban on the sale of message-bearing T-shirts by nonprofits on Waikiki. Because Honolulu disregards obvious, far less restrictive, and more precise methods of achieving the same ends, Honolulu's ordinance is not narrowly tailored. *See Discovery Network,* 507 U.S. at 417 n. 13, 113 S.Ct. at 1510 n. 13; *Project 80's,* 942 F.2d at 638.

B

The majority also claims that plaintiff organizations remain free to spread their message through other media or in other places. Yet such alternative modes of communication may nevertheless be constitutionally inadequate if the speaker's "ability to communicate effectively is threatened." *Bay Area Peace Navy,* 914 F.2d at 1229 (citations omitted). The Supreme Court has given us guidance on this point in *City of Ladue v. Gilleo,* 512 U.S. 43, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994).

In *Ladue,* private property owners challenged an ordinance that prohibited display of any signs on their property other than "For Sale" or "For Rent." The Court struck down the ordinance because the City of Ladue foreclosed a "unique" and "important" medium of expression-the display of a sign on one's property to express a point of view. *Id.* at ----, 114 S.Ct. at 2045. The Court rejected the city's argument that the regulation left open ample alternative channels of communication because it found that hand-held signs and other media were not an adequate substitute for posted signs:

> Residential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window sign may have no practical substitute.

Id. at ----, 114 S.Ct. at 2046.

Similarly, the T-shirt sales in this case constitute an effective and inexpensive medium of expression. When combined with oral proselytizing and literature distribution, selling message-bearing T-shirts is a particularly effective form of charitable solicitation. Indeed, a listener is more likely to expend funds to support a particular cause if he receives, in return, a T-shirt that communicates a message to him and that allows him to express *his* support for the cause by wearing it.

For the plaintiff organizations, Waikiki is a location uniquely suited to their mission. Waikiki is the social and economic center of not just the City of Honolulu, but also of the State of Hawaii. The nonprofits offered evidence that they selected Waikiki to sell their T-shirts because the area would allow them to share their philosophies with a large number of people who visit Hawaii from all over the world. Depriving plaintiffs of access to Waikiki separates them from a large and diverse audience.

The majority assumes the existence of other forums for plaintiffs' First Amendment activities. But we have held that an alternative is not adequate if the speaker is not permitted to reach the "intended audience." *Bay Area Peace Navy,* 914 F.2d at 1229. In *Bay Area Peace Navy,* we invalidated a Coast

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Guard regulation that prohibited protesters from demonstrating within a 75-yard radius of the pier during the annual "Fleet Week" celebration. We found that the 75-yard zone completely insulated the audience from the anti-war and anti-militarization views of the demonstrators. 914 F.2d at 1230. *See also Ladue,* 512 U.S. at ----, 114 S.Ct. at 2046 (alternatives to posting signs on residential property such as posting signs on commercial property are inadequate because residents may wish to reach neighbors); ***1023***Students Against Apartheid Coalition v. O'Neil,* 660 F.Supp. 333, 339-40 (W.D.Va.1987) (university regulation prohibiting shanties on lawn of building where Board of Visitors meets, impermissibly insulates the Board, the intended audience, from the protest), *aff'd,* 838 F.2d 735 (4th Cir.1988).

Here, the majority allows the City of Honolulu to exile plaintiff organizations from Waikiki. In so doing, it allows their removal from Waikiki's large and diverse audience and prevents them from spreading their message in an efficient and effective manner. Under *Bay Area Peace Navy,* Honolulu must afford plaintiffs an opportunity to reach their intended audience. This is especially true when, as discussed above in part A, there are reasonable alternative means to achieve legitimate government interests.

Accordingly, I dissent.

C.A.9 (Hawai'i),1996.
One World One Family Now v. City and County of Honolulu
76 F.3d 1009, 64 USLW 2531, 24 Media L. Rep. 1434, 96 Cal. Daily Op. Serv. 981, 96 Daily Journal D.A.R. 1623

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Westlaw

409 F.3d 1113, 05 Cal. Daily Op. Serv. 4630, 2005 Daily Journal D.A.R. 6366
(Cite as: 409 F.3d 1113)

H

United States Court of Appeals,
Ninth Circuit.
Victor MENOTTI; Thomas Sellman; Todd Stedl; Doug Skove, Plaintiffs-Appellants,
v.
CITY OF SEATTLE; Paul Schell, Former Mayor of the City of Seattle; Norman Stamper, Former Chief of Police of the City of Seattle; Sharon Stevens, a Seattle Police Detective; Ronald Smith, a Seattle Police Officer, Defendants-Appellees.
Kenneth Hankin; Jennifer Hudziec; Stephanie Lane; Denise Cooper; Nicole Pearson; on behalf of themselves and all others similarly situated; Plaintiffs-Appellants,
v.
City of Seattle; Paul Schell, Former Mayor of the City of Seattle; Norman Stamper, Former Chief of Police of the City of Seattle, Defendants-Appellees.
Nos. 02-35971, 02-36027.

Argued and Submitted Feb. 6, 2004.
Submission Vacated Feb. 17, 2004.
Resubmitted April 14, 2004.
Filed June 2, 2005.

Background: Arrestees brought class action, challenging constitutionality of city emergency order prohibiting access to portions of downtown during international trade conference, and individual claims for violations of constitutional rights. The United States District Court for the Western District of Washington, Barbara J. Rothstein, J., 2002 WL 32168077, granted summary judgment for city, and appeal was taken.

Holdings: The Court of Appeals, Gould, Circuit Judge, held that:
(1) order was facially valid time, place, and manner restriction;
(2) fact issue existed as to whether officers were acting pursuant to municipal policy when they implemented order in allegedly unconstitutional manner; and
(3) fact issue existed as to whether officer's warrantless seizure of protestor's sign was justified by exigent circumstances.

Affirmed in part, reversed in part, and remanded.

Paez, Circuit Judge, concurred in part, dissented in part, and filed opinion.

West Headnotes

[1] Municipal Corporations 268 ⚿594(2)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k594 Ordinances and Regulations in General
268k594(2) k. Form and Sufficiency in General. Most Cited Cases
Municipal ordinance is facially unconstitutional if (1) it is unconstitutional in every conceivable application because it is vague or impermissibly restricts protected activity or (2) it seeks to prohibit such broad range of protected conduct that it is unconstitutionally overbroad.

[2] Constitutional Law 92 ⚿1513

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1513 k. Governmental Disagreement with Message Conveyed. Most Cited Cases
(Formerly 92k90(3))
Principal inquiry in determining content neutrality, in speech cases generally and in time, place, or

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manner cases in particular, is whether government has adopted regulation of speech because of disagreement with message it conveys. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law 92 ⚿1730

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1730 k. In General. Most Cited Cases
(Formerly 92k90.1(4))
Fundamental principle behind content analysis of speech restriction is that government may not grant use of forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law 92 ⚿1517

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1516 Content-Based Regulations or Restrictions
92k1517 k. In General. Most Cited Cases
(Formerly 92k90(3))
Whether speech restriction is content neutral or content based is something that can be determined on face of it; if restriction describes speech by content then it is content based. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law 92 ⚿1758

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1758 k. Public Squares, Plazas, and Greens. Most Cited Cases
(Formerly 92k90.1(4))

Constitutional Law 92 ⚿1845

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(K) Protests and Demonstrations in General
92XVIII(K)1 In General
92k1845 k. In General. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿596

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k596 k. Public Peace and Order. Most Cited Cases
Emergency order prohibiting access to portions of city's downtown area during international trade conference was content neutral, for purpose of determining its facial constitutionality; order, though predominantly affecting anti-conference protestors, prohibited protests, in support of or against, any topic within restricted zone. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law 92 ⚿2487

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2485 Inquiry Into Legislative Judgment
92k2487 k. Motive. Most Cited

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(Formerly 92k70.3(2))
Court will not strike down otherwise constitutional statute on basis of alleged illicit legislative motive.

[7] Constitutional Law 92 ⚿1505

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1505 k. Narrow Tailoring. Most Cited Cases
(Formerly 92k90(3))
To be narrowly tailored, speech restriction need not be least restrictive means of furthering government's interests, but restriction may not burden substantially more speech than necessary to further such interests. U.S.C.A. Const.Amend. 1.

[8] Constitutional Law 92 ⚿1725

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)1 In General
92k1725 k. In General. Most Cited Cases
(Formerly 92k90.1(4))

Constitutional Law 92 ⚿1758

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1758 k. Public Squares, Plazas, and Greens. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿596

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k596 k. Public Peace and Order. Most Cited Cases
Emergency order prohibiting access to portions of city's downtown area during international trade conference was narrowly tailored to serve significant governmental interest in maintaining public order, for purpose of determining whether it was reasonable time, place, and manner restriction; zone covered only enough territory for delegates to move safely from their hotels to conference site, lasted only during conference, and was justified by difficulty of protecting delegates in environment in which small group of violent protestors were determined to cause chaos and to disrupt conference proceedings amidst tens of thousands of non-violent protestors. U.S.C.A. Const.Amend. 1.

[9] Constitutional Law 92 ⚿1509

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases
(Formerly 92k90(3))
Time, place, and manner restriction does not violate First Amendment simply because there is some imaginable alternative that might be less burdensome on speech. U.S.C.A. Const. Amend. 1.

[10] Constitutional Law 92 ⚿1498

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1498 k. Absolute Nature of Right. Most Cited Cases
(Formerly 92k90(3))

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First Amendment does not guarantee right to communicate one's views at all times and places or in any manner that may be desired. U.S.C.A. Const.Amend. 1.

[11] Constitutional Law 92 ⚿1509

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases
(Formerly 92k90(3))
Alternative mode of communication left available by speech restriction may be constitutionally inadequate if speaker's ability to communicate effectively is threatened. U.S.C.A. Const.Amend. 1.

[12] Constitutional Law 92 ⚿1845

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(K) Protests and Demonstrations in General
92XVIII(K)1 In General
92k1845 k. In General. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿596

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k596 k. Public Peace and Order. Most Cited Cases
Emergency order prohibiting access to portions of city's downtown area during international trade conference left ample alternative channels of communication, for purpose of determining whether it was reasonable time, place, and manner restriction; protestors were able to demonstrate and express their views immediately outside restricted zone, including positions directly across street from relevant sites. U.S.C.A. Const.Amend. 1.

[13] Constitutional Law 92 ⚿1490

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1490 k. In General. Most Cited Cases
(Formerly 92k90(1))
First Amendment does not require that individuals retain most effective means of communication, but only that individuals retain ability to communicate effectively. U.S.C.A. Const.Amend. 1.

[14] Constitutional Law 92 ⚿1510

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1510 k. Reasonableness. Most Cited Cases
(Formerly 92k90(3))
To comply with First Amendment, even a reasonable time, place, and manner restriction on speech must contain adequate standards to guide official's decision and render it subject to effective judicial review. U.S.C.A. Const.Amend. 1.

[15] Constitutional Law 92 ⚿1758

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and

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Events
92k1758 k. Public Squares, Plazas, and Greens. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿594(2)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k594 Ordinances and Regulations in General
268k594(2) k. Form and Sufficiency in General. Most Cited Cases
Emergency order prohibiting access to portions of city's downtown area during international trade conference was not facially overbroad restriction on speech, even though it gave officers discretion to permit persons with reasonable purpose to enter zone. U.S.C.A. Const.Amend. 1.

|16| Civil Rights 78 ⚿1351(1)

78 Civil Rights
78III Federal Remedies in General
78k1342 Liability of Municipalities and Other Governmental Bodies
78k1351 Governmental Ordinance, Policy, Practice, or Custom
78k1351(1) k. In General. Most Cited Cases
Section 1983 liability may attach to municipality only where municipality itself causes constitutional violation through execution of government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy. 42 U.S.C.A. § 1983.

|17| Civil Rights 78 ⚿1351(1)

78 Civil Rights
78III Federal Remedies in General
78k1342 Liability of Municipalities and Other Governmental Bodies
78k1351 Governmental Ordinance, Policy, Practice, or Custom
78k1351(1) k. In General. Most Cited Cases
Existence of municipal policy or custom may be established, for purpose of imposing § 1983 liability on city, by showing: (1) longstanding practice or custom which constitutes standard operating procedure; (2) that decision-making official was, as matter of state law, final policymaking authority whose edicts or acts may fairly be said to represent official policy in area of decision; or (3) that official with final policymaking authority either delegated that authority to, or ratified decision of, subordinate. 42 U.S.C.A. § 1983.

|18| Federal Civil Procedure 170A ⚿2491.5

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)2 Particular Cases
170Ak2491.5 k. Civil Rights Cases in General. Most Cited Cases
Issue of material fact as to whether police officers were acting pursuant to municipal policy when they allegedly implemented emergency order, prohibiting access to portions of city's downtown area during international trade conference, in manner that excluded only conference protestors precluded summary judgment on question of city's § 1983 liability. 42 U.S.C.A. § 1983.

|19| Civil Rights 78 ⚿1355

78 Civil Rights
78III Federal Remedies in General
78k1353 Liability of Public Officials
78k1355 k. Vicarious Liability and Respondeat Superior in General; Supervisory Liability in General. Most Cited Cases
Section 1983 liability is imposed against supervisory official in his individual capacity for his own culpable action or inaction in training, supervision, or control of his subordinates, for his acquiescence in constitutional deprivations of which complaint is made, or for conduct that showed reckless or cal-

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lous indifference to rights of others. 42 U.S.C.A. § 1983.

[20] Civil Rights 78 ⚖1358

78 Civil Rights
78III Federal Remedies in General
78k1353 Liability of Public Officials
78k1358 k. Criminal Law Enforcement; Prisons. Most Cited Cases
Mayor and police chief, responsible for facially constitutional emergency order, prohibiting access to portions of city's downtown area during international trade conference, could not be held personally liable under § 1983 for allegedly unconstitutional applications of order, absent evidence that they personally took part in alleged constitutional violations or caused constitutional violations through their individual actions. 42 U.S.C.A. § 1983.

[21] Arrest 35 ⚖63.4(2)

35 Arrest
35II On Criminal Charges
35k63 Officers and Assistants, Arrest Without Warrant
35k63.4 Probable or Reasonable Cause
35k63.4(2) k. What Constitutes Such Cause in General. Most Cited Cases
Test for probable cause to arrest is whether facts and circumstances within officer's knowledge are sufficient to warrant prudent person, or one of reasonable caution, to believe, in circumstances shown, that suspect has committed, is committing or is about to commit offense. U.S.C.A. Const.Amend. 4 .

[22] Federal Civil Procedure 170A ⚖2491.5

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)2 Particular Cases
170Ak2491.5 k. Civil Rights Cases in General. Most Cited Cases
Issue of material fact as to arrestee's behavior at time he was arrested for pedestrian interference and obstructing officer precluded summary judgment on his claim that police lacked probable cause to make arrest. U.S.C.A. Const.Amend. 4.

[23] Civil Rights 78 ⚖1351(4)

78 Civil Rights
78III Federal Remedies in General
78k1342 Liability of Municipalities and Other Governmental Bodies
78k1351 Governmental Ordinance, Policy, Practice, or Custom
78k1351(4) k. Criminal Law Enforcement; Prisons. Most Cited Cases
City could not be held liable, under § 1983, for unidentified police officer's allegedly unlawful search of protestor's bag and seizure of protestor's fliers, absent evidence of city policy or custom of committing such unlawful searches and seizures. 42 U.S.C.A. § 1983.

[24] Federal Courts 170B ⚖776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
District court's grant of qualified immunity from § 1983 liability is reviewed de novo. 42 U.S.C.A. § 1983.

[25] Arrest 35 ⚖71.1(8)

35 Arrest
35II On Criminal Charges
35k71.1 Search
35k71.1(8) k. Search Not Incident to Arrest; Time and Distance Factors. Most Cited Cases
Officer's warrantless seizure of protestor's sign could not be justified as incident to arrest, even if officer had probable cause to make arrest, where no arrest was made. U.S.C.A. Const.Amend. 4.

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[26] Federal Civil Procedure 170A ⚿2491.5

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)2 Particular Cases
170Ak2491.5 k. Civil Rights Cases in General. Most Cited Cases
Issue of material fact as to whether exigent circumstances justified officer's warrantless seizure of protestor's sign precluded summary judgment on protestor's Fourth Amendment claim. U.S.C.A. Const.Amend. 4.

[27] Arrest 35 ⚿63.4(1)

35 Arrest
35II On Criminal Charges
35k63 Officers and Assistants, Arrest Without Warrant
35k63.4 Probable or Reasonable Cause
35k63.4(1) k. Grounds for Warrantless Arrest in General. Most Cited Cases
There is no general exception to Fourth Amendment's warrant requirement for conduct that, absent special needs consistent with Supreme Court's precedents, is asserted to be "reasonable." U.S.C.A. Const.Amend. 4.

[28] Civil Rights 78 ⚿1376(6)

78 Civil Rights
78III Federal Remedies in General
78k1372 Privilege or Immunity; Good Faith and Probable Cause
78k1376 Government Agencies and Officers
78k1376(6) k. Sheriffs, Police, and Other Peace Officers. Most Cited Cases
Reasonable police officer would have understood that his warrantless seizure of protestor's sign without arrest and without exigency offended guarantees of Fourth Amendment, for purpose of determining officer's entitlement to qualified immunity from § 1983 liability. 42 U.S.C.A. § 1983.

[29] Constitutional Law 92 ⚿1845

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(K) Protests and Demonstrations in General
92XVIII(K)1 In General
92k1845 k. In General. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿189(1)

268 Municipal Corporations
268V Officers, Agents, and Employees
268V(B) Municipal Departments and Officers Thereof
268k179 Police
268k189 Rights, Duties, and Liabilities of Policemen
268k189(1) k. In General. Most Cited Cases
Police officer who seized protestor's sign did not violate protestor's First Amendment rights; only evidence was that sign was seized due to protestor's violation of emergency order, prohibiting protests in portions of city's downtown area during international trade conference, and not out of any opposition to protestor's political beliefs or desire to chill protestor's speech. U.S.C.A. Const.Amend. 1.

***1117** James E. Lobsenz, Carney Badley Spellman, P.S., and Aaron H. Caplan, American Civil Liberties Union of Washington, Seattle, WA, for appellants Victor Menotti, Thomas Sellman, Todd Stedl, and Doug Skove.

Steve W. Berman, Hagens Berman LLP, Seattle, WA, Arthur H. Bryant, Trial Lawyers for Public Justice, Oakland, CA, and Michael E. Withey, Stritmatter Kessler Whelan Withey Coluccio, Seattle, WA, for appellants Kenneth Hankin, Jennifer Hudziec, Stephanie Lane, Denise Cooper, and Nicole Pearson.

Ted Buck, Stafford Frey Cooper, P.C., Seattle, WA,

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for the appellees.

Appeal from the United States District Court for the Western District of Washington; Barbara J. Rothstein, District Judge, Presiding. D.C. Nos. CV-00-00372-BJR, CV-00-01672-BJR.

Before RONALD M. GOULD, RICHARD A. PAEZ, Circuit Judges, and ROSLYN O. SILVER, [FN*] District Judge.

FN* The Honorable Roslyn O. Silver, United States District Judge for the District of Arizona, sitting by designation.

Opinio by Judge GOULD; Partial Concurrence and Partial Dissent by Judge PAEZ.

OPINION

GOULD, Circuit Judge:

In this case we search for the proper balance between, on the one hand, the vibrant rights of free speech and assembly in an open society and, on the other hand, the needs of a city to maintain order and security. We consider the constitutionality of an emergency order prohibiting access to portions of downtown Seattle, Washington, during the 1999 World Trade Organization (WTO) conference. Appellants filed lawsuits in the United States District Court for the Western District of Washington seeking damages for the constitutional*1118 rights that were alleged to be violated by the emergency order. Four of the Appellants also filed individual claims in which they alleged that their constitutional rights were infringed by Seattle police officers in the course of the conference. We determine that the emergency order was a constitutional time, place, and manner restriction on speech on its face, and we affirm the judgment of the district court on that issue. But we also determine that there are genuine issues of material fact whether the emergency order was constitutional as applied to certain Appellants, and we reverse and remand for trial on that issue. As for the Appellants' individual claims, we affirm in part, reverse in part, and remand.

I

On October 2, 2000, Plaintiffs-Appellants Kenneth Hankin, Jennifer Hudziec, Stephanie Lane, Denise Cooper, and Nicole Pearson (the Hankin plaintiffs) [FN1] filed suit against the City of Seattle, then-Seattle Mayor Paul Schell, and then-Seattle Police Chief Norman Stamper in the United States District Court for the Western District of Washington, on behalf of a class defined as:

> All persons who were arrested by the City of Seattle and its police agents or its affiliated police agents on December 1 and 2, 1999, pursuant to the defendants' "no protest" policies and directives which were eventually embodied by the City of Seattle's Local Proclamation of Civil Emergency Order Number 3 (and subsequent revisions) and who were subsequently not convicted of any crime. Included in this class are all persons arrested pursuant to such policies both inside and outside the zone established by Order Number 3.

The Hankin plaintiffs sought damages, alleging that defendants violated their rights under the United States Constitution. The Hankin plaintiffs also requested declaratory relief stating that the emergency order violated the United States Constitution.

FN1. Robert Hickey, Carroll Jackson, and Emily Maloney were also named plaintiffs in the lawsuit, but they are not parties to this appeal.

On March 7, 2000, Victor Menotti, Thomas Sellman, Todd Stedl and Doug Skove (the Menotti plaintiffs) filed a lawsuit against the City of Seattle, Schell, Stamper, and Officer Michael Jennings and Detective Sharon Stevens of the Seattle Police De-

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partment.[FN2] The Menotti plaintiffs filed an amended complaint on January 9, 2002, adding Seattle Police Department Officer Ronald Smith as a defendant. The Menotti plaintiffs alleged that defendants violated their rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution and sought damages. Menotti and Sellman also alleged that defendants committed false arrest.

> FN2. Andrew Russell, Lauren Holloway, and Ronald Matyjas were also plaintiffs in the lawsuit, but they are not part of this appeal. Officer Jennings is also not part of this appeal.

The district court consolidated the two cases for the purpose of resolving legal issues common to all parties. On October 29, 2001, the district court granted the defendants' motion for partial summary judgment regarding the constitutionality of the emergency order, holding that as applied it was a constitutional time, place, and manner restriction on speech. The district court concluded that the emergency order: (1) was content neutral in that it did not exclude speech based on content or viewpoint, (2) was narrowly tailored because it "covered only enough territory for the WTO delegates and the President [of the United States] to move safely from ***1119** their hotels to the convention [center] and lasted only during the conference," (3) served a significant government interest of maintaining order in an emergency situation, and (4) provided ample alternatives for expression because protestors could demonstrate just outside the boundaries of the restricted zone.

The district court denied the plaintiffs' cross-motion for summary judgment on the constitutionality of the emergency order as applied. The district court also granted the City's motion for summary judgment on the Hankin plaintiffs' claims under 42 U.S.C. § 1983 alleging a failure to train or supervise officers, holding that the Hankin plaintiffs had not presented any evidence supporting this contention.

On January 8, 2002, the district court denied the Hankin plaintiffs' motion for class certification. On August 29, 2002, the district court granted summary judgment to all defendants as to the Hankin plaintiffs' remaining claims, based on the district court's ruling of the constitutionality of the emergency order. The district court entered final judgment as to the Hankin plaintiffs pursuant to Fed.R.Civ.P. 54(b) on November 5, 2002.

As for the lawsuit filed by the Menotti plaintiffs, the district court on November 1, 2001, denied the Menotti plaintiffs' motion for partial summary judgment based on the alleged federal constitutional violations. On January 14, 2002, the district court, based on its ruling that the emergency order was constitutional, granted the defendants' motion for summary judgment as to Sellman's claims. However, the district court denied the defendants' motion for summary judgment as to the claims of Skove and Stedl, finding that genuine issues of material fact existed as to the circumstances of their arrests.

On January 14, 2002, the district court also granted defendants' motion to dismiss the Menotti plaintiffs' claims against Schell and Stamper in their individual capacities, holding that the Menotti plaintiffs had not provided any evidence showing that Schell or Stamper were personally involved in the seizure or arrest of these plaintiffs.

On August 15, 2002, the district court granted Officer Smith's motion for summary judgment based on qualified immunity as to Skove's claims. The district court determined that Smith was entitled to qualified immunity on Skove's Fourth Amendment claim because Smith had acted reasonably, and further that Smith was entitled to qualified immunity on Skove's First Amendment claim because no constitutional violation had occurred. The district court denied Skove's cross-motion for summary judgment on the same claims.

Finally, on October 1, 2002, the district court granted summary judgment to the City on Menotti and

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Stedl's claims under 42 U.S.C. § 1983, holding that there was probable cause to arrest Menotti, and that Menotti and Stedl had submitted no evidence of a municipal policy or custom of illegally seizing or searching handbags. The district court entered final judgment as to the Menotti plaintiffs on October 1, 2002.

The Menotti plaintiffs filed a timely notice of appeal on October 23, 2002. The Hankin plaintiffs filed a timely notice of appeal on November 13, 2002. We have jurisdiction under 28 U.S.C. § 1291, and we affirm in part, reverse in part, and remand.

II

In reviewing de novo the district court's grant of summary judgment, where the facts are disputed we view the evidence in the light most favorable to the non-moving party. *United States v. City of Tacoma,* 332 F.3d 574, 578 (9th Cir.2003). We determine whether there are any genuine issues of material fact and whether the district court correctly applied the relevant ***1120** substantive law. We do not weigh the evidence or determine the truth of disputed material facts, but determine only whether there is a genuine issue for trial. *Balint v. Carson City,* 180 F.3d 1047, 1054 (9th Cir.1999) (en banc).

The WTO is an international group comprised of member nations that discuss trade issues and enter into trade agreements.[FN3] In January 1999, the White House announced that the City of Seattle, Washington (the City) had been selected as the location for the first WTO conference to be held in the United States. The conference was to take place from November 30, 1999 to December 3, 1999. Representatives from the 134 WTO-member nations,[FN4] including the President of the United States, were to convene in Seattle.

> FN3. The WTO was established on January 1, 1995, during the Uruguay Round negotiations held pursuant to the General Agreement on Tariffs and Trade. According to its web site, the WTO "is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. The goal is to help producers of goods and services, exporters, and importers conduct their business." What is the WTO?, *at* http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm (last visited Oct. 7, 2004). The WTO's objectives have generated a vigorous opposition by those who believe that the WTO "favor[s] trade expansion over all else." Lynda Gorov, *The Varied Foes of WTO Unite in Seattle Protests,* Boston Globe, Nov. 30, 1999, at A1.
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> FN4. As of the filing date of this Opinion, the WTO has 148 member nations.

Those who opposed the WTO's agenda and specific activities convened in Seattle well in advance of the opening of the conference, and protest activity began taking place. Three weeks before the opening of the conference, unknown individuals broke windows at a Gap clothing store in downtown Seattle and threw several "Molotov cocktails" [FN5] into the building, causing substantial damage. The "anarchist" [FN6] symbol was spray-painted onto the walls of the Gap store and on the adjoining sidewalk. Other protestors attempted to gain entry into downtown Seattle offices of timber and forest product companies. Protestors trespassed onto downtown Seattle's Old Navy store, and hung a huge protest banner on the face of the storefront. On November 26, 1999, the day after Thanksgiving, a group of fifty to sixty protestors entered a parade without permission to protest the WTO.

> FN5. A "Molotov cocktail" is an explosive device consisting of "a bottle, gasoline, and a rag." *United States v. Simmons,* 83 F.3d 686, 687 (4th Cir.1996).

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> FN6. "The anarchist movement represents a range of groups, from organized and primarily nonviolent groups like the Industrial Workers of the World to loosely knit and more extremist splinter groups...." Ruth Teichroeb, *Fringe Anarchists in Middle of Violent Demonstrations,* Seattle Post-Intelligencer, Dec. 1, 1999, at A15. The "anarchist" symbol consists of the letter "A" in a circle, and the symbol "is one of the most familiar symbols of anarchism and represents the slogan 'Anarchy Is Order.' " *Id.*

Protest activity began to intensify on November 29, 1999, one day ahead of the WTO conference. While most protestors were peaceful, others were violent. The level of violence cannot be considered de minimis and in some cases posed threats to persons. [FN7] Some protestors vandalized property by spray painting buildings and breaking windows. Others pounded on windows of downtown stores and threw ***1121** rocks at police officers. Police formed a security perimeter around the Niketown store in downtown Seattle because of protestors encouraging a crowd to take over the store. Damage to property and risks to individuals on this day were not insignificant, though limited in geographic area to a few blocks in the center of the City, and protestors dispersed late into the evening.[FN8]

> FN7. The dissent, while acknowledging that violence occurred, argues that our "account exaggerates its pervasiveness" because most protestors were peaceful. Dissent at 1160. We of course explicitly recognize that "most protestors were peaceful," but this does not negate the harsh reality and striking import of the widespread violence instigated by those protestors who were not peaceful. Moreover, the description of the WTO riots that follows is not just that of the majority. The whole world witnessed the rampant violence and chaos in the streets of Seattle at the outset of the WTO meeting. The dissent's account misapprehends reality by minimizing the violence and its import. Any fair and objective review of the record would lead to the conclusion that District Judge Barbara J. Rothstein's order granting summary judgment to the City correctly described an emergency situation marked by pervasive vandalism, theft, arson, and assault that overwhelmed law enforcement resources. These acts of violence are undisputed in the record before us. One may disagree on the legal implications of the violence under First Amendment doctrine, and doubtless we and the dissent do so disagree. But to minimize the violence and threat to the City, to visiting foreign dignitaries, and to Seattle's citizens, as our dissenting colleague does, is wrong.
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> FN8. Appellants have not alleged a negligence cause of action against the City for having advance notice of but failing to prevent the chaos that stemmed from the violence that marred the WTO conference. However, the pattern of protest propagating civil disorder and violence is relevant to understanding the City's interest in restoring and maintaining order to allow the WTO conference to proceed securely. Our dissenting colleague fails to give this interest adequate heed.

The WTO conference opened formally on November 30, 1999, and from law enforcement's perspective, things got worse. Police logs indicate that demonstrators gathered in the downtown area as early as 5:45 a.m. At least some among the protestors had violent intentions. On a videotape introduced as part of the record, a masked protestor says, "50,000 people that really care.... I'm hoping that we can come out here, and get crazy and fucking up shit ..., that every city in the world knows that it can't host the WTO conference and it better

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give control of the city back to the people or that city's going to be torn to pieces."

Those protestors who chose to use violence to disrupt the WTO's conference used an array of weapons, devices, and tactics to obstruct the conference. The disruption of normal city life was so extreme in some locations that it bordered on chaos. Police officers in contemporaneous reports said that they saw protestors carrying bottles filled with flammable liquids, locking down intersections by forming human chains from lightpost to lightpost, breaking windows at retail stores,[FN9] overrunning and looting small retail stores, and jumping on cars. By 8:00 a.m., protestors had cut off vehicular access to the Paramount Theater and the Washington State Convention & Trade Center, the primary meeting venues of the conference. After demonstrators were discovered inside meeting venues, police requested and received a "lock down" [FN10] of the Washington State Convention & Trade Center and the Sheraton Hotel, where many WTO delegates were staying.[FN11] Seattle Police Department, ***1122** *The Seattle Police Department After Action Report, World Trade Organization Ministerial Conference,* Apr. 4, 2000, at 36-39 [hereinafter " *WTO After Action Report*"].

> FN9. Niketown, the site of protest on the prior day, again attracted the attention of violent protestors. Officers received reports that Niketown was being ransacked by protestors, and the officers had to rescue employees through a rear alley door.
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> FN10. A "lock down" of these facilities meant that no persons could enter or exit.
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> FN11. The increased level of protection for delegates was necessary for their security. It also was even more important because WTO meeting venues had been designated the equivalents of foreign embassies, mandating heightened security protection.

Some protestors directed violence at law enforcement authorities: Among the violent, there were protestors who assaulted police officers with chemical irritants, and others who vandalized police cars. Some violent protestors threw metal spikes, cans, bottles, signs, empty gas canisters, and pieces of concrete at officers, who were forced to wear riot gear for protection. Other protestors deliberately disregarded police lines and attempted to break through in violent confrontations with police. According to a report of the Seattle City Council prepared after the WTO convention, "officers were put in perilous situations where, often cut off from communication, they were expected to endure physical assaults and taunts for long periods without food, rest, restrooms, or water." Seattle City Council, *Report of the WTO Accountability Review Committee,* Sept. 14, 2000, at 5 [hereinafter " *ARC Report* "]. Some officers were "violently barraged with ball bearings ('pachinko' balls), rocks and bottles,[and] squirted with urine." *Id.* at 10 & n. 14. One police officer on duty suffered a heart attack, and a helicopter evacuation was required because medical units could not break through the gathered crowd to provide medical assistance.

Some officers did not take the passive resistance approach in response to being targeted by violence, and mutual insecurity among police and protestors caused the situation to spiral out of control. In lieu of large-scale arrests, some officers responded with tear gas and similar non-lethal weapons like pepper gas, beanbag guns, and rubber bullets. *Id.* at 4. The gravity of the situation caused some officers to resort to measures characterized later by the City Council as "out of proportion to the threats faced," provoking further disturbance and resistance from violent protestors. [FN12] *Id.* at 4, 11.

> FN12. The dissent focuses on the Seattle Police Department for its response, finding significance in the City Council's remark that officers "likely intensified the situation." Dissent at 1161. The dissent's characterization is incorrect as a description of police conduct as a whole, and in any

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> event is irrelevant to the analysis of Order No. 3's constitutionality. The City Council's *ARC Report* acknowledges that "police officers on the front lines had no basis for confidence that the violence would stop with rocks and bottles," and the report "thankfully endorses the performance of those officers who underwent unnecessary hardship and were the victims of poor planning and leadership in the field." *ARC Report* at 4, 10. Moreover, whether Order No. 3 comports with the First Amendment does not turn on who is to blame for the intensity of the situation that the City faced. *See* discussion *infra* Part III. Whatever the complex of causes, the City was faced with riots and disorder beyond its control that threatened the safety of visiting foreign officials, prompting Order No. 3, and its permissibility must be assessed in light of the crisis facing the City when it was adopted. Finally, it is also likely that most of the time when police attempt to quiet a violent disturbance the situation is intensified, which is a collateral consequence of law enforcement's response to violent protest.

The general public was also at risk. Some violent protestors started fires in the streets and in large dumpsters, and then protestors prevented fire trucks from entering the area. A driver of a garbage truck was pulled from his vehicle and assaulted in the core downtown area. Once police were overwhelmed, some uses of non-lethal weapons, such as chemical irritants, failed to discern law-abiding demonstrators and bystanders from the law-breakers they were intended to disperse. Not only dignitaries from many nations ***1123** worldwide with interest in the WTO's trade conference, but also, regrettably, panic, confusion, and chaos were visiting Seattle.

Some protestors even directly interfered with WTO delegates in an effort to disrupt the progress of the conference. Some violent protestors held, pushed, or tackled WTO delegates to prevent their entry into conference venues. Some WTO delegates were forcibly prevented from leaving conference venues. Some violent protestors stopped one delegate's car and punctured its tires. Reflecting the extreme dangers to delegates, protestors, and the public, at least one WTO delegate drew a gun in response to the protestors' attempts to detain him, requiring immediate police intervention.

Some violent protestors were well-organized, and their actions were coordinated. Some protestors gathered intelligence about police operations during the protest by asking officers questions about law enforcement tactics. Other protestors listened in on squad briefings taking place on city streets. Still others used cellular telephones and "walkie-talkies" to coordinate protestors' activities.[FN13] By one account, Seattle's streets turned into "seeming war zones." *ARC Report* at 4. It is perplexing how our dissenting colleague can rely on the City Council's report, with its acknowledgment of the "war zone" atmosphere in Seattle, and still urge the violence was not pervasive; although the *ARC Report* suggests that violent protestors were less than one percent of the total protestors, this is not a small amount of violence given the activities in which the protestors engaged, and where there were tens of thousands of protestors.

> FN13. On the previous day, a protestor on a bicycle rode ahead of a group of protestors, communicating to the crowd via radio the locations of police officers.

Despite the gravity of these problems, not all protest was violent or disruptive. Much protest activity was ordered and reasonable. Several marches involving primarily peaceful protestors took place in the downtown area on November 30, 1999. These marches, comprised of concerned persons who were not violent and who were not breaking the law, caused the inflow of tens of thousands of persons into downtown Seattle. The largest protest of the day, a march organized by the AFL-

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CIO, was estimated by police to have involved 40,000 persons. Other protest marches involving significant numbers of persons included a march of about 1000 members of the Sierra Club, a march of 500 students from the University of Washington, and a march of 1000 protestors from the Tibetan Rights Association. These marches by non-violent protestors showed the substantial public sentiment opposing the WTO or its activities. Protests such as these are the positive fruits of an open society, and encourage us to scrutinize with care the constitutional issues raised by city and police responses to the breakdown of civic order and security caused by violent protestors seeking to disrupt the WTO conference.[FN14]

> FN14. The dissent's characterization of the decision to enact Order No. 3 as following the realization that the "crowd was simply larger than the police had anticipated" again ignores the violence and riot that threatened the WTO conference. It misapprehends the extent of disorder and insecurity caused by the large crowd: The police "were not going to be able to bring the situation under control without taking some sort of drastic action," and "the only recourse" they had was to "establish the police perimeter" to "provide security for the delegates." *See* Dissent at 1160.

As noted by the Seattle Police Department's *WTO After Action Report,* these largely peaceful demonstrations took place ***1124** amid the chaos and disruption caused by the violent protestors. The report also specified that the combination of heightened security measures required for WTO delegates and the large number of protestors rendered police unable effectively to make individual arrests of those protestors who were breaking the law. The report stated:

> This was a pattern that occurred throughout the conference and presented significant tactical challenges to police commanders. The protestors were establishing a fluid, dynamic method of operation that consisted of rapid deployment and the use of non-criminal protestors to buffer smaller pockets of protestors engaging in significant criminal acts.

WTO After Action Report at 35. One Seattle police captain's report noted that officers "heard and saw numerous incidents of property destruction, burglary, and looting; but we were unable to leave our lines to take enforcement actions."

At about 3:30 p.m. on November 30, 1999, then-Seattle Mayor Paul Schell declared a civil emergency in the City of Seattle, pursuant to Seattle Municipal Code Section 10.02. The Mayor also imposed a general curfew. The governor of the State of Washington then authorized the deployment of, and called out, the National Guard.[FN15]

> FN15. The dissent chastises the City for poor planning driven by political and cost considerations. Dissent at 1161. This condemnation does not control whether Order No. 3 comports with the First Amendment. Our analysis properly focuses on the City's chosen means to restore order once lost to violent protestors bent on preventing the WTO conference from proceeding. *See* discussion *infra* Part III.A.2.

President Clinton arrived at the Westin Hotel in downtown Seattle between 1:30 a.m. and 2:30 a.m. on December 1, 1999. A few hours after the President's arrival, when protest activity had temporarily subsided, Mayor Schell signed "Local Proclamation of Civil Emergency Order Number 3" (Order No. 3). Order No. 3 said, in pertinent part:

> WHEREAS, the Mayor declared a civil emergency exists in the City of Seattle ("the City") in the Proclamation Dated November 30, 1999; and
>
> WHEREAS, after the issuance of the Proclamation and despite the deployment of hundreds of law enforcement officers, the City continued to experience civil disturbances resulting in injury

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to persons and damage to property; and

WHEREAS, the level of city disturbances and danger to persons and property has been highest in those areas in which there are protests in the vicinity of World Trade Organization ("WTO") meetings; and

WHEREAS, the City understands its obligations to permit expressive activity pursuant to reasonable time, place and manner restrictions necessitated by the existing public safety concerns for WTO delegates, dignitaries, citizens, public safety employees and protestors; and

WHEREAS, the Chief of Police and other public safety officials have determined that the safety of WTO delegates, dignitaries, citizens, public safety employees and protestors cannot be preserved without reasonably limiting access to areas used by WTO personnel; and

WHEREAS, it is imminently necessary to use extraordinary measures to protect the public peace, safety and welfare; and

WHEREAS, the civil emergency necessitates the utilization of emergency powers granted to the Mayor pursuant to *1125 Seattle Municipal Code, Chapter 10.02 and [Wash. Rev.Code] Chapter 38.52. Therefore ....

A limited curfew is imposed in the portion of the City within the following boundaries: Starting on the corner of 4th Avenue and Lenora Street, then proceeding south on 4th Avenue to Seneca Street, then east on Seneca Street to the I-5 freeway, then north along the I-5 freeway to Boren Avenue, then north on Boren Avenue to Pine Street, then west on Pine Street to 6th Avenue, then north on 6th Avenue to Lenora Street, then west on Lenora Street to, and concluding at 4th Avenue and Lenora, as shown on the attached map.

The effect of Order No. 3 was that all persons, subject to limited exceptions, were prohibited from entering the portion of downtown Seattle described in the order. The exceptions to the prohibition on entering the restricted zone were granted for: (1) delegates and personnel authorized by the WTO to participate in official WTO functions; (2) employees and owners of businesses within the restricted area and other personnel necessary to the operation of those businesses; and (3) emergency and public safety personnel. [FN16] Violations of Order No. 3 were punishable by a fine of not more than $500 and/or imprisonment of not more than 180 days. At all times, the Washington State Convention & Trade Center and the Paramount Theater were within the restricted zone, as well as the major hotels where WTO delegates were staying (i.e., the Four Seasons Hotel, Cavanaughs, and the Sheraton Hotel). The restricted zone skirted these venues, and in substance provided a protective perimeter. [FN17]

FN16. In an amendment to Order No. 3 issued later that day, additional exemptions were granted for city staff and credentialed members of the press.

FN17. We attach as Appendix A a diagram of the boundaries of the restricted zone that was part of the record in this case.

In the early morning hours of December 1, 1999, Seattle Assistant Chief of Police Harv Ferguson issued an "Operations Order" to implement Order No. 3 and the restricted zone. The Operations Order told officers that "[v]ehicles and/or pedestrians ... are authorized access inside the [restricted zone] if they have a reasonable purpose for entering the perimeter. A reasonable purpose includes work, shopping at a specific location within the [restricted zone], or other like type reasonable activity." Thus, as it was interpreted, Order No. 3 excluded all persons except delegates and personnel authorized by the WTO for its official functions, employees and owners of businesses within the restricted area, their customers, other personnel necessary to the operation of those businesses, and emergency and public safety personnel. Initially, Order No. 3 had not explicitly permitted shoppers to enter, but it had

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allowed business owners and persons necessary to run their businesses to enter, which implicitly supported the interpretation of the Operations Order.

At a press conference on the morning of December 1, 1999, Assistant Seattle Police Chief Edward Joiner[FN18] explained the City's adoption of Order No. 3:

> FN18. Chief Stamper had delegated to Assistant Chief Joiner the task of planning the Seattle Police Department's response to the WTO conference.

> We're going to adopt a policy that's pretty much in line with what's done in other cities around the world when they have an event of this magnitude, and that is, to take the core area where the [WTO] conference is occurring ... and prohibit any demonstrations within that core area for the remainder of the week.

***1126** Seattle Police Captain James Pugel testified in deposition [FN19] that Assistant Chief Joiner had instructed him, in connection with the implementation of Order No. 3 and the Operations Order, "[n]o large protests. No people can come marching through [the restricted zone]. There will be no marches."

> FN19. The Menotti plaintiffs submitted Captain Pugel's deposition testimony in support of their motion for partial summary judgment and in opposition to the City's motion for partial summary judg- ment.

Chief Stamper testified in deposition[FN20] that the effect of the Operations Order was to exclude protestors from entering the restricted zone:

> FN20. The Menotti plaintiffs submitted Chief Stamper's deposition testimony in support of their motion for partial summary judgment and in opposition to the City's motion for partial summary judg- ment.

> From the officer's point of view, we have made it clear that we could not permit large groups to gather to block intersections and so forth, and from their point of view what they're thinking and what they believe is their direction is to make sure that nobody comes into that, into the so-called no-protest zone unless he or she is there to shop or has legitimate business purpose in the downtown area, so from their point of view it effectively meant anybody coming in to protest.

Order No. 3 and the accompanying Operations Order decreased violence and protest within the restricted zone. But it did not stop either violence or protest within the restricted zone. Inside the restricted zone, protestors gathered in open defiance of Order No. 3, and police made about 300 arrests. [FN21]

> FN21. Even outside the restricted zone, there were some problems of violence incidental to protest. Some violent protestors caused property damage, threw debris, blocked the street, and trapped people in their cars. Some protestors jumped onto an officer's patrol car and shook it by its light bar, while others laid in front of the car and prevented the officer from escaping. Some protestors took over the fuel pumps at a gas station and attempted to fill small bottles with gasoline.

President Clinton addressed the WTO conference on December 1, 1999, and departed the next morning. There was no violence immediately incident to his presentation. On December 2, 1999, Mayor Schell amended Order No. 3 by reducing the size of the restricted zone. As modified, the restricted zone was reduced to exclude the Westin Hotel because President Clinton had since departed.[FN22] Police logs indicate that protest violence decreased on December 2, 1999, and through the conclusion of the WTO conference on December 3, 1999. Order No. 3 expired at 7:00 a.m. on the morning of December 4, 1999.

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> FN22. We attach as Appendix B a diagram of the revised boundaries of the restricted zone that was part of the record in this case.

In opposition to the City's motion for summary judgment, plaintiff-appellant Kenneth Hankin submitted a declaration stating that he was arrested for violating Order No. 3 by trespassing inside the restricted zone with the purpose of protest. Hankin testified via declaration that, on the morning of December 1, 1999, he and others participated in a group protest that began in Denny Park, north of downtown Seattle and outside the restricted zone. As their group approached Westlake Park, a downtown shopping plaza and public square within the restricted zone, Seattle police surrounded them. The group responded by sitting on the ground. Hankin testified that, without warning, Seattle police arrested the group of protestors, and then turned to another portion of Westlake Park, where Hankin was standing. Hankin and others beside him were arrested.

***1127** Victor Menotti submitted his deposition testimony in support of his motion for partial summary judgment.[FN23] Menotti testified that he was a credentialed participant in the WTO conference and that, on December 1, 1999, he was standing on a sidewalk talking with a small group about a WTO conference meeting he had just attended. Without warning, police charged the group surrounding Menotti. Menotti ran, believing that police were trying to disperse the crowd, but stopped when he realized he was being pursued. Menotti was arrested for pedestrian interference and obstructing an officer; however, the charges against Menotti were dismissed before a probable cause hearing was held.

> FN23. We consider these depositions because they were part of the record when the district court granted summary judgment to the defendants on the Menotti plaintiffs' claims. Fed.R.Civ.P. 56(c) (stating that summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law").

Thomas Sellman also introduced his deposition testimony and that of Seattle Police Detective Sharon Stevens in support of his motion for partial summary judgment. Sellman testified that he was within the restricted zone on December 1, 1999, distributing leaflets containing a cartoon criticizing the WTO. Stevens testified that she and another officer witnessed Sellman distributing the flyers and asked Sellman what business he had in the zone. When Stevens ascertained that Sellman did not come within one of the exceptions to Order No. 3, Stevens ordered him to leave the restricted zone. When Sellman attempted to hand out another flyer, Stevens placed him under arrest for failing to disperse. Sellman spent two nights in jail and was released thereafter.

Todd Stedl presented deposition testimony in support of his motion for partial summary judgment. Stedl testified that, after hearing about Order No. 3 on December 1, 1999, he decided to enter the restricted zone and distribute leaflets containing the text of the First Amendment. While standing just outside the zone, Stedl tried to hand a leaflet to an officer, who reacted by grabbing the fliers and searching Stedl's bag. When Stedl complained that the officer could not seize his fliers or search his bag without a warrant, the officer told him to contact City Hall and to leave the restricted zone. Stedl asked for the officer's badge number, and the officer told Stedl to leave. The officer later approached Stedl again and told him to leave the area. Stedl told the officer that he thought he already was outside the zone. The officer replied that Stedl should get going. When Stedl asked how far, the officer told him fifteen blocks. Stedl testified that he was too intimidated to return to the zone to pass out

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more leaflets, and felt that if he had returned, he would be arrested. The officer was never identified.

Doug Skove introduced his deposition testimony and video evidence in support of his motion for partial summary judgment. Skove testified that, on December 2, 1999, he decided to go to Seattle after hearing about the restricted zone. He carried a sign that read on one side, "Is the WTO in control of Seattle too?" and on the other side "I have the right to protest non-violently." The video evidence shows that a police officer (later identified as Seattle Police Officer Ronald Smith) saw Skove carrying the sign as Skove walked into a crosswalk. Smith said to Skove, "Hey, what did the Mayor tell you? Other side of Fourth, other side of Seneca." [FN24] As ***1128** Skove finished crossing the street, Smith approached, grabbed Skove's sign and pulled it away from his hands. Skove turned to his right and continued walking across the street and away from Smith, while Smith shouted "Come here, hey pal!" Skove continued walking away. Smith said, "That's alright, that's okay," as Smith walked away, folded Skove's sign, and threw it away. After Skove had another encounter with police where a second sign was seized, Skove was warned he would be arrested if he continued protesting. Skove left the restricted zone.

FN24. This was an instruction from Smith to Skove to exit the confines of the restricted zone.

III

The Hankin and Menotti plaintiffs contend that Order No. 3 was an unconstitutional time, place, and manner restriction on its face, and the Menotti plaintiffs also contend that Order No. 3 unconstitutionally conferred unfettered police discretion for its implementation. The Hankin plaintiffs also contend that Order No. 3 was unconstitutional as applied to them because the City had adopted a policy of arresting only anti-WTO protestors within the restricted zone.[FN25]

FN25. "A facial challenge alleges that any enforcement of the ordinance creates an unacceptable risk of the suppression of ideas. An as-applied challenge alleges that the restriction on speech is unconstitutional as applied to the litigant's particular speech activity, even though the law may be capable of valid application to others." *Kuba v. 1-A Agric. Ass'n,* 387 F.3d 850, 856 (9th Cir.2004) (internal quotation marks and citation omitted).

A

[1] We first address the facial constitutionality of Order No. 3. We have held that "[a]n ordinance is facially unconstitutional if (1) it is unconstitutional in every conceivable application because it is vague or impermissibly restricts a protected activity or (2) it seeks to prohibit such a broad range of protected conduct that it is unconstitutionally overbroad." *Vlasak v. Superior Court,* 329 F.3d 683, 688 (9th Cir.2003) (internal quotation marks and citation omitted). The Supreme Court has held that "particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Broadrick v. Oklahoma,* 413 U.S. 601, 615, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973). The Hankin plaintiffs contend that Order No. 3 was facially unconstitutional because it was overbroad. In evaluating this overbreadth challenge, we determine whether Order No. 3's restrictions on speech were content neutral, were narrowly tailored to serve a significant governmental interest, and left open ample alternative means of communication. *Vlasak,* 329 F.3d at 689; *see also Frisby v. Schultz,* 487 U.S. 474, 481, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988).

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[2][3][4] We address first whether Order No. 3 was

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content neutral. "The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). The reason for this rule is to protect and preserve free and unfettered speech for the ultimate good of society. We have expressed this basic reason in varied ways, but it is unassailable that the "fundamental principle" behind content analysis is that "government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial ***1129** views." *City of Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 48-49, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986) (internal quotation marks and citation omitted). In assessing whether a restraint on speech is content neutral, we do not make a searching inquiry of hidden motive; rather, we look at the literal command of the restraint. Stated another way, we agree with Justice Kennedy's observation in *City of Los Angeles v. Alameda Books, Inc.,* that "whether a statute is content neutral or content based is something that can be determined on the face of it; if the statute describes speech by content then it is content based." 535 U.S. 425, 448, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002) (Kennedy, J., concurring). Our circuit has adopted this view. *Ctr. for Fair Pub. Policy v. Maricopa County,* 336 F.3d 1153, 1164 (9th Cir.2003).

[5] Applying these principles here, we see Order No. 3 as content neutral on its face. Even when we credit plaintiffs' evidence and give plaintiffs all reasonable inferences, the text of Order No. 3 is not in dispute, and it does not favor one content over another. The purpose of enacting Order No. 3 had everything to do with the need to restore and maintain civic order, and nothing to do with the content of Appellants' message. *See United States v. Griefen,* 200 F.3d 1256, 1260 (9th Cir.2000) ("[A] restriction on expressive activity is content-neutral if it is justified, i.e., based on a non-pretextual reason divorced from the content of the message attempted to be conveyed."). As a matter of law, Order No. 3 was not a regulation of speech content, but rather was "a regulation of the places where some speech may occur." *See Hill v. Colorado,* 530 U.S. 703, 719, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000). Under Order No. 3, persons could not protest-in support of or against-*any* topic within the restricted zone. *Id.* (holding that restrictions are not content based where they "apply equally to all demonstrators, regardless of viewpoint, and the statutory language makes no reference to the content of the speech") (internal quotation marks and citation omitted). The restricted zone established by Order No. 3 applied equally to persons of all viewpoints. That Order No. 3 predominantly affected protestors with anti-WTO views did not render it content based. *See Madsen v. Women's Health Ctr., Inc.,* 512 U.S. 753, 763, 114 S.Ct. 2516, 129 L.Ed.2d 593 (1994) ("[T]he fact that the injunction covered people with a particular viewpoint does not itself render the injunction content or viewpoint based.").

[6] Further, the City's evidence in testimony of Mayor Schell,[FN26] Police Chief Stamper,[FN27] and Assistant Chief Joiner[FN28] ***1130** was that the City did not implement Order No. 3 because of disagreement with the message of anti-WTO protestors. Instead, the motivating factor in the adoption of Order No. 3, as stated in its text, was the City's observation that "the level of civil disturbances and danger to persons and property ha[d] been highest in those areas in which there [were] protests in the vicinity of [WTO] meetings," and the need to ensure the safety of WTO delegates as well as downtown residents and workers. The plaintiffs did not submit evidence controverting the text of Order No. 3, which is not in dispute, or contradicting the purposes recited by the Mayor and police chief. [FN29]

> FN26. Schell testified in deposition that a "secure zone" was his "primary objective" in enacting Order No. 3, and that the ad-

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vice he received from his staff was that a "secure zone" was necessary in order to assure the safety of downtown residents and WTO delegates.

FN27. Stamper testified in deposition that a paramount goal was maintaining security and avoiding violence. He testified, "I also need to emphasize that we had a crucial intersection blocked completely denying access of emergency vehicles and denying access to the WTO venue itself.... [T]hose were formidable challenges bigger by far than anything, once again, that I had seen in the six years I had been here.... [O]ur concern is the violence could erupt on either side, that a delegate, for example, angered at being denied access could actually resort to violence, in this case, possibly armed violence."

FN28. Joiner testified in deposition that "the only recourse we had was to establish the [restricted zone] where we could provide security for the delegates and so forth." Joiner also testified that "[w]e would not have allowed [peaceful protesters] to stay [within the restricted zone] under the circumstances because we couldn't-we could not be assured that the demonstration would remain peaceful given the experience that we already had."

FN29. Appellants submitted the deposition testimony of Schell and Stamper in an attempt to establish that the City's purpose in adopting Order No. 3 was unlawful, in that the City implemented Order No. 3 with the purpose of eliminating protestors from the downtown area. But this evidence is consistent with the objective of Order No. 3 to eliminate all persons, with limited exceptions, from the downtown area. Even if plaintiffs could establish that the City had an illicit motive in adopting Order No. 3, that would not be dispositive. The Supreme Court has held unequivocally that it "will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." *United States v. O'Brien,* 391 U.S. 367, 383, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968).

Appellants contend that Order No. 3 was content based because it permitted exemptions for shoppers and downtown workers to enter the restricted zone. We reject this argument because these exemptions did not enable the City to discriminate against ideas it disfavored. *See One World One Family Now v. City and County of Honolulu,* 76 F.3d 1009, 1012 n. 5 (9th Cir.1996) ("Because these exemptions don't enable the city to discriminate against ideas it disfavors, they don't render the ordinance content-based."). The exemptions permitted shoppers and downtown workers to go about their business in the restricted zone and did not enable the City to discriminate against any persons on the basis of their views. Further, there is no evidence that those persons who were permitted to enter the restricted zone were part of the security problem that prompted the adoption of Order No. 3. *See Hill,* 530 U.S. at 723, 120 S.Ct. 2480 ("[A] statute that restricts certain categories of speech only lends itself to invidious use if there is a significant number of communications, raising the same problem that the statute was enacted to solve, that fall outside the statute's scope, while others fall inside.").

We hold that Order No. 3 was content neutral, and proceed to address the other factors necessary for a reasonable time, place, and manner restriction. [FN30]

FN30. We also hold that Order No. 3 was not "viewpoint-based" on its face. Viewpoint discrimination occurs "when the government prohibits speech by particular speakers, thereby suppressing a particular view about a subject." *Giebel v. Sylvester,* 244 F.3d 1182, 1188 (9th Cir.2001) (internal quotation marks and citation omitted). Here, Order No. 3's ban on

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> protests did not prohibit a particular viewpoint, and applied equally to persons who wished to protest about any topic. As in *Hill*, Order No. 3 "applie[d] equally to used car salesmen, animal rights activists, fundraisers, environmentalists, and missionaries." 530 U.S. at 723, 120 S.Ct. 2480 .

2

[7] We next assess whether Order No. 3 was narrowly tailored to serve a significant governmental interest. The Supreme Court has held that "[a] statute is narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." *Frisby*, 487 U.S. at 485, 108 S.Ct. 2495. To be narrowly tailored, a statute "need not be the least restrictive means of furthering [the government's] interests, but the restriction ***1131** may not burden substantially more speech than necessary to further the interests." *United States v. Baugh*, 187 F.3d 1037, 1043 (9th Cir.1999). However, "the First Amendment demands that municipalities provide 'tangible evidence' that speech-restrictive regulations are 'necessary' to advance the proffered interest in public safety." *Edwards v. City of Coeur d'Alene*, 262 F.3d 856, 863 (9th Cir.2001). The tailoring of the restraint must of course correspond to the purposes it serves. *Ward*, 491 U.S. at 799, 109 S.Ct. 2746 (holding that the narrowly tailored requirement is satisfied "so long as the [neutral] regulation promotes a substantial government interest that would be achieved less effectively absent the regulation") (quoting *United States v. Albertini*, 472 U.S. 675, 689, 105 S.Ct. 2897, 86 L.Ed.2d 536 (1985)).[FN31]

> FN31. While the City was not required to choose the least restrictive alternative, an assessment of alternatives can still bear on the reasonableness of the tailoring of Order No. 3 and whether it was "narrowly tailored" as required. We have said that "if there are numerous and obvious less-burdensome alternatives to the restriction on [protected] speech, that is certainly a relevant consideration in determining whether the 'fit' between ends and means is reasonable." *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 417 n. 13, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993) ; *Edwards*, 262 F.3d at 865.

[8] Applying the rule of *Ward* and its standard here, we return to the issue of whether Order No. 3 was narrowly tailored to serve a significant government interest. No one could seriously dispute that the government has a significant interest in maintaining public order; indeed this is a core duty that the government owes its citizens.[FN32] The Supreme Court has declared that "[i]t is a traditional exercise of the States' police powers to protect the health and safety of their citizens." *Hill*, 530 U.S. at 715, 120 S.Ct. 2480 (internal quotation marks and citation omitted); *see also Edwards*, 262 F.3d at 863; *One World One Family Now*, 76 F.3d at 1013. In the face of violent riot, the City had a duty to restore order and to ensure the safety of WTO delegates and the residents of Seattle.[FN33] The City also had an interest in seeing that the WTO delegates had the ***1132** opportunity to conduct their business at the chosen venue for the conference; a city that failed to achieve this interest would not soon have the chance to host another important international meeting.[FN34]

> FN32. The district court was not required to accept the conclusion of Appellants' declarant that the City's only interest was to "transport the delegates to the conference." That was not an accurate summary of the record before the district court. Nor in our analysis were we required to pretend as if the movement of delegates was the City's only interest in the face of riot. The record before the district court showed widespread violence and the breakdown of civic order. On the undisputed facts before the district court, the City's interest in main-

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taining peace and order is fairly presented. The dissent's attempt to reduce the City's interest to transporting delegates is wrong. Our analysis properly focuses on the City's interest when it enacted Order No. 3: restoring order and providing security to the core downtown area to protect the President, visiting world dignitaries, and the general public, and to allow the WTO conference to proceed.

FN33. The dissent argues that our account of the breakdown in public order "does not paint a clear picture of the situation confronting City officials" because the protestors had left the core downtown area and the violence had subsided when Order No. 3 was implemented. Dissent at 1160. But there is no logical connection between an assessment of the violence that occurred when WTO proceedings were ongoing and a temporary cessation of violence after WTO proceedings had concluded for the day. Even a fierce battle may experience a respite of calm, and the calm of an evening can precede a storm in the morning. The City was well aware that some protestors wanted to shut down the WTO conference by violent means and that the WTO conference was to resume the following day, and so there was a strong likelihood that more "organized violence of a serious nature [was] about to occur." *See Collins v. Jordan,* 110 F.3d at 1363, 1373 (1997).

In any event, the dissent's claim, based on a single "sweep of the streets" at 8:00 p.m., that the streets of Seattle were "calm and under control" during the evening of November 30, Dissent at 1160, ignores the undisputed evidence. By 9:00 p.m., officers were in danger of being assaulted and injured by some aggressive protestors who held the advantage of Capitol Hill's higher ground. Ongoing skirmishes continued until 3:30 a.m., with officers fending off "rocks, bottles, golf balls, and ... incendiary devices." *WTO After Action Report* at 42. Moreover, violent protestors had established a pattern of converging, protesting, and then dispersing only to reassemble later at another location. *Id.* at 35. Given the violent protestors' aim to shut down the WTO conference and their pattern of conduct, a realistic depiction of events in the record is that the violence had "temporarily subsided" during the evening of November 30, not that the violence had "ended," as the dissent maintains. Even crediting Appellants' evidence and giving all reasonable inferences to the Appellants, as we must under the summary judgment standard, the record does not permit a rational conclusion that the City should have thought the violence "ended."

FN34. This interest is embraced within the City's asserted interest in restoring order and maintaining security, which are necessary for public safety, effective commerce, and the vitality of the City.

The Appellants nonetheless contend that the safety net cast by the City was too broad, and that it restricted protest unduly in too large of an area, and thus wasn't narrowly tailored.[FN35] We turn to these contentions.

FN35. The Menotti plaintiffs and the Hankin plaintiffs argue that Order No. 3 was not narrowly tailored because the restricted zone was too large, and because the restricted zone banned protected forms of speech. In addition, the Hankin plaintiffs argue that the City should have "expend[ed] the effort necessary to ensure clear passage for the delegates to and from the [WTO conference] venues without infringing unnecessarily on protestors'

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rights."

Here, the City had a tough problem. Violent protestors were damaging the City and jeopardizing the progress of the WTO conference. Yet violent protestors were breaking the law amidst throngs of lawful protestors. In this setting, per evidence that is not materially in dispute, large numbers of non-violent protestors prevented police from curbing effectively the activities of the violent protestors. [FN36] Police reports said that "[t]he protestors were establishing a fluid, dynamic method of operation that consisted of rapid deployment and the use of non-criminal protestors to buffer smaller pockets of protestors engaging in significant criminal acts." *WTO After Action Report* at 35. The violent protestors damaged the City and disrupted the WTO conference, but they were able to elude capture due to the tens of thousands of non-violent protestors in the downtown area. The implementation of Order No. 3 was necessary to permit police to restore and then to maintain order and safety in downtown Seattle, for WTO conference delegates and the public, and to allow officers to execute their law enforcement duties by arresting those breaking the law.[FN37]

FN36. We are concerned here with the *effect* that the large number of peaceful protestors had on the ability of police to quell the significant criminal acts of the violent protestors. The impeding or "buffer" effect of peaceful protestors is undisputed on the record.

FN37. The Hankin plaintiffs contend that "[t]here was no attempt to preserve lawful protest and arrest only those who broke the law, just an attempt to ban all protest." But the record does not support that argument. The restricted zone created by Order No. 3 was implemented only after a full day of protests on November 30, 1999. Before the implementation of Order No. 3, protestors had been allowed in the downtown area, resulting in the City's police force being overwhelmed, as well as significant damage and disruption to the downtown area. If the Hankin plaintiffs contend that there was no attempt to preserve lawful protest on December 1, 1999, then that too is belied by the record. Protestors were allowed access to streets immediately adjacent to the delegates' hotels and conference sites. There was not a total bar to protest, and the scope of the restrictions must be tested under the legal standards identified above for time, place, and manner restrictions on speech.

***1133** Citing the Supreme Court's decision in *Madsen,* as well as our decisions in *Baugh* and *Bay Area Peace Navy v. United States,* 914 F.2d 1224 (9th Cir.1990), Appellants contend that there are cases invalidating restricted protest zones that were smaller in scope than the restricted zone implemented by Order No. 3. This argument misapprehends the case law and ignores the factual circumstances of this case. None of these cases establish a *per se* rule on the boundaries that a city may draw in creating a restricted zone during protest activities. Further, none of these cases dealt with the factual circumstances presented here: a small but dedicated group of violent protestors who inflicted disruption and destruction on city streets and threatened the safety of world leaders, while obscured and sheltered by about 50,000 peaceful protestors, all within a concentrated portion of a metropolitan downtown area. We decline Appellants' invitation to interpret the above cases as defining conclusively the appropriate scope of "narrow tailoring" in the context of establishing a buffer zone on protest activity.[FN38]

FN38. The Menotti plaintiffs also argue that Order No. 3 did not further a significant governmental interest because it permitted entry into the restricted zone of persons not engaged in protest. We disagree. There is no evidence that those permitted in the restricted zone were part of the problem addressed by Order No. 3. Persons

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> who lived, worked, or had other business in the restricted zone could go about their business without impeding the City's ability to maintain a secure environment in the restricted zone. Though Order No. 3 contained exemptions that allowed certain persons to enter the zone, it still furthered a significant governmental interest by excluding from the zone the protest activity that was a security threat to the downtown area.

Appellants' contention that the large size of the restricted zone rendered it constitutionally impermissible ignores significant considerations that confronted City officials. As seen from the diagram of the restricted zone, the various hotels and meeting venues of the WTO conference were spread out across several blocks of downtown Seattle. The size of the restricted zone cannot sensibly be evaluated without considering the size of the area in which delegates were housed and had to move freely in order to do the work of the WTO conference. To achieve the goal of providing secure protection for WTO delegates and ensuring safe transit for delegates between venues and hotels, the City crafted the restricted zone as being bounded by the outermost venues of the conference and the hotels where delegates were staying.[FN39] As the district court saw it, "the ***1134** [restricted] zone covered only enough territory for the WTO delegates and the President to move safely from their hotels to the [WTO] convention and lasted only during the conference." [FN40] We conclude the district court's analysis of this issue was sound and in accord with law.

> FN39. Appellants make much of a declaration submitted by a former law enforcement official, who contended that Seattle police should have used pedestrian tunnels and dedicated roadways to facilitate the movement of WTO delegates. Yet, these contentions do not address the fact that the tunnels in question did not connect all of the hotels and venues being used by WTO delegates. The suggestions in the declaration provide no practical way to stop the behavior of violent protestors in the downtown Seattle area on November 30, 1999. Moreover, Appellants' alternatives were not a feasible means for the City to balance its interest in hosting the WTO conference with reliable safety for delegates, and the demonstrators' interest in expressive activity. *See Kuba,* 387 F.3d at 862 n. 12 (recognizing that suggested alternatives that are "far less restrictive and more precise means of regulating the time, place, and manner of speech" is just the first step in a "narrow tailoring" analysis, and that a court must also consider "whether the alternatives both are feasible and allow substantially more speech"). Even crediting Appellants' declarations and giving all reasonable inferences to Appellants, we cannot say that the alternatives were a feasible means to respond to the prevalent violence that gravely threatened the security of the WTO conference and the peace and order of the City.
>
> FN40. That Order No. 3 protected a " *particular method* " of getting WTO delegates to the conference does not mean, as the dissent argues, that this is the only "interest Order No. 3 actually served." *See* Dissent at 1168 n. 7. As we have explained, Order No. 3 brought order and security to the core downtown area, providing safety for delegates and allowing the WTO conference to proceed as scheduled. *See* discussion *supra* at 1131-32.

We also reject Appellants' contention that the size of the restricted zone enforced by Order No. 3 was an overreaction that needlessly restricted the rights of peaceful protestors. In the context of a massive demonstration with tens of thousands of participants, once a pattern of chaotic violence had been

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established, it was unrealistic to expect police to be able to distinguish, minute by minute, those protestors with benign intentions and those with violent intentions. In this regard, the Supreme Court's decision in *Hill v. Colorado,* 530 U.S. 703, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000), has particular application. In *Hill,* the Court upheld a Colorado law that made it unlawful for any person within 100 feet of an abortion clinic knowingly to approach within eight feet of another person without that person's consent to provide materials or counseling. The Court reasoned:

> [T]he [restricted zone's] prophylactic aspect is justified by the great difficulty of protecting, say, a pregnant woman from physical harassment with legal rules that focus exclusively on the individual impact of each instance of behavior, demanding in each case an accurate characterization (as harassing or not harassing) of each individual movement within the 8-foot boundary. Such individualized characterization of each individual movement is often difficult to make accurately. A bright-line prophylactic rule may be the best way to provide protection, and, at the same time, by offering clear guidance and avoiding subjectivity, to protect speech itself.

Id. at 729, 120 S.Ct. 2480.

Here, the size of the restricted zone was justified by the difficulty of protecting world leaders in an environment in which a small group of violent protestors were determined to cause chaos and to disrupt the conference proceedings midst tens of thousands of non-violent protestors.[FN41] In different***1135** circumstances, it might be possible for law enforcement authorities, on an individualized basis, to distinguish between peaceful protestors and those with violent intentions. But in these circumstances, after the broad antagonism to the WTO had ripened into pervasive illegal and violent disruptive actions, it would not have been practical to require police, on a continuing basis, to make an accurate determination of each protestor as violent or not violent. Appellants also argue that police should have had more extensive staffing on the street so that they could permit protestors to enter anywhere and simply arrest and remove those who violated the law.[FN42] But we should hesitate to say that the law requires such a solution in an emergency situation like that here where law-breaking and law-abiding protestors were often indistinguishable, and where those abiding the law might have interfered indirectly with enforcement against violent protestors.

> FN41. The dissent is wrong to characterize the City's means as a "poor fit" with the City's interest based on the occurrence of violence outside the restricted zone. It is not required for our legal analysis that the City's measure to restore order where it was most needed had to maintain peace and security perfectly in all areas outside the restricted zone. The dissent's argument that Order No. 3 was not narrowly tailored because it "did not protect anyone outside of the perimeter," Dissent at 1171, ignores or minimizes the core interest addressed by Order No. 3: protecting the President and foreign dignitaries who came to Seattle to conduct the business of the WTO. The City needed to restore and maintain order in the core downtown area to achieve this interest, and Order No. 3 "targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." *Frisby,* 487 U.S. at 485, 108 S.Ct. 2495. We decline the dissent's suggestion that a city's means to achieve its significant interest of restoring and maintaining security can never be narrowly tailored absent a policy completely efficacious in eliminating violence. *See, e.g., Ward,* 491 U.S. at 800, 109 S.Ct. 2746 ("The validity of time, place, or manner regulations does not turn on a judge's agreement with the responsible decisionmaker concerning the most appropriate method for promoting significant government interests *or the degree to which those*

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interests should be promoted. ") (emphasis added); *see also City Council v. Taxpayers for Vincent,* 466 U.S. 789, 807-10, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984) (upholding a ban on posting signs on public streets to achieve the significant public interest of "avoiding visual clutter" even though posted signs only "add somewhat" to the city's visual clutter).

> Similarly, the dissent's argument that the restricted zone's size "allowed" violence to continue in areas outside the zone, Dissent at 1171, is unsupported by and contrary to the record, which places some officers and notes hundreds of arrests outside the zone. As the conference moved toward completion, and the situation calmed, police were able "to escort and monitor non-permitted demonstrations outside the perimeter in a manner consistent with permitted demonstrations." *WTO After Action Report* at 45. Moreover, the district court correctly found that the City reasonably concluded in Order No. 3 that "the level of city disturbances and danger to persons and property [was] highest in those areas in which there are protests in the vicinity of World Trade Organization ('WTO') meetings." Contrary to the dissent's assertion, the perimeter did more than protect WTO delegates; Order No. 3 brought safety and security to the downtown area, protecting businesses, their employees, and the City's citizens as well.

FN42. The Menotti plaintiffs acknowledged that "the primary response of a municipality to crime should be to arrest the criminals," but faulted the City for "fail[ing] to put enough officers on the streets on November 30th to accomplish this task." The Hankin plaintiffs also criticized the City's police department plan for law enforcement, arguing that "common police tactics and planning would have provided a much more secure downtown without sacrificing speech. For example, it is common police practice to establish lines of defense around certain buildings before protestors arrive, [and] to have squads specifically intended to pursue violent individuals within crowds."

Appellants contend that *Collins v. Jordan,* 110 F.3d 1363 (9th Cir.1996), controls the outcome of this case. We disagree. In *Collins,* the Mayor of San Francisco responded to sporadic violent protests by directing police officers to "cause the dispersal and prevent the continuation of any gatherings of people anywhere in the City and County of San Francisco whenever the peace officer on the scene has reason to believe that the gathering endangers or is likely to endanger persons or property." *Id.* at 1367. We affirmed the district court's denial of qualified immunity to the officers, because "it was clear at that time, as it is today, that the occurrence of limited violence and disorder on one day is not a justification for banning all demonstrations, peaceful and otherwise, on the immediately following day (or for an indefinite period thereafter)." [FN43] *Id.* at 1372. ***1136** However, we said in *Collins* that our holding was narrow:

> FN43. Appellants contend that, since there was a decrease in violence in the hours immediately prior to the imposition of Order No. 3, this statement means that here the City acted unlawfully in adopting Order No. 3. We disagree.
>
> > In *Collins,* we described the "limited violence and disorder" that had taken place as involving "a few injuries to people, none of them extensive or life-threatening. The principal incidents involved property damage and appear to have been confined to an area of about four blocks.... [M]ost of the city was free

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> from any form of unlawful conduct." 110 F.3d at 1372. Here, the violence that had taken place was substantially more severe, involving assaults on police and WTO delegates, fires, medical emergencies, evacuation of retail stores, and a general loss of civic order. Moreover, *Collins* invalidated an order that banned *all* demonstrations throughout the *whole* county. In Seattle, however, protestors could still demonstrate in all City areas outside the restricted zone.
>
> *Collins* does not hold that, when a city is confronted with violent, dangerous protests of the type in this case, it must wait for further violence to occur before taking measures to restore civic order. Despite the dissent's characterization of *Collins* as involving "a similar emergency order adopted under analogous circumstances," Dissent at 1169-70, we face a factually and legally distinguishable case, and the weight the dissent places on *Collins* again shows the dissent's minimization of the crisis in Seattle. *See also supra* note 34 (recognizing that, on the undisputed facts, the City had reason to believe and was entitled to believe that the violence attendant to the WTO conference had not ended prior to Order No. 3's enactment, but had just temporarily subsided and would resume contemporaneous with WTO proceedings).

We need not address the question of whether at some point-for example if there is widespread continuing violence that appears to be beyond the ability of the police to control-a time-limited ban on all demonstrations might be lawful. Similarly, we need not decide whether, and under what circumstances, specific, reliable information that organized violence of a serious nature is about to occur might justify a determination that a clear and present danger exists warranting the banning of a particular demonstration. *Id.* at 1373.

The scope of the violence that plagued Seattle on November 30, 1999, and the clear and present risks to world leaders attending the WTO conference, render *Collins* inapposite. In *Collins,* the violence that San Francisco faced before it restricted protest was much less severe than Seattle faced in this case. Further, San Francisco restricted speech throughout the whole county, [FN44] while Seattle merely restricted access within a well-defined security zone to facilitate a public event.[FN45]

> FN44. San Francisco County has a land area of 47 square miles. United States Census Bureau, *California Quick Facts, San Francisco County* (2000), *available at* ht- tp://quickfacts.census.gov/qfd/states/06/06075.html (last revised Feb. 1, 2005).
>
> FN45. The dissent argues that we have allowed the constitutional framework "to be shaped" by our "characterization of the level of violence." Dissent at 1169 n. 12. The dissent misunderstands our application of First Amendment doctrine, which assesses the means the City used in light of the ends the City needed to achieve. We have applied the correct legal framework established by the Supreme Court. *See, e.g., Ward,* 491 U.S. at 799, 109 S.Ct. 2746. Under this precedent, understanding the City's interest is essential to assessing whether Order No. 3 was narrowly tailored to achieve that interest. *See, e.g., id.* at 796-801, 109 S.Ct. 2746. *Collins* also recognized that a heightened city interest to end and prevent violence would require a different analysis:
>
> > Today, we decide only that the violence and disorder that occurred in San Francisco on April 30 falls far short of the

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> type of occurrence that could have led any reasonable official to believe that it would be constitutional to impose a city-wide ban on all demonstrations, and that the law to that effect was clearly established.
>
> 110 F.3d at 1373. In our view, *Collins* does not dictate a conclusion that Order No. 3 is facially unconstitutional because *Collins* addressed a significantly broader restriction on speech enacted in response to a significantly less dire situation.

***1137** Mass demonstrations involving tens of thousands of participants are an important form of political protest and have a great pedigree. Consider Martin Luther King, Jr.'s march on Washington, at which he delivered the "I Have a Dream" speech to a crowd of over 250,000 on the Washington Mall. When a crowd is generally peaceful, large protests do not necessarily create risks to public safety and security, even though the crowd must be managed by a city. But once multiple instances of violence erupt, with a breakdown in social order, a city must act vigorously, and more extensively, to restore order for all of its residents and visitors. Adding large numbers of police on the street might be the solution in some cases, but in other cases could lead to more intense violence. In light of the City's significant governmental interest in restoring and maintaining civic order to the core downtown area, Order No. 3 and the restricted zone it implemented were narrowly tailored. [FN46]

> FN46. The dissent views *Grossman v. City of Portland,* 33 F.3d 1200 (9th Cir.1994), as presenting a "similar problem." Dissent at 1170-71. The dissent's analogy to *Grossman* is off the mark, and reflects the dissent's pervasive misapprehension of the scope of violence and disorder presented in Seattle by the WTO protests. *Grossman* addressed the City of Portland's permitting scheme as applied to a "small, peaceful anti-nuclear protest, involving six to eight people," 33 F.3d at 1201-02, and is factually inapposite to this case which involved tens of thousands of protestors and hundreds of violent and lawbreaking ones.
>
> In addition to being factually inapposite, *Grossman's* reasoning is not persuasive in an analysis of whether Order No. 3 was a reasonable time, place, and manner restriction. Portland's permanent permitting scheme made it unlawful "for any person to conduct or participate in any organized entertainment, demonstration, or public gathering, or to make any address, in a park without ... written permission." *Id.* at 1204. Portland's stated interest was "protecting the safety and convenience of park users," and "maintaining normal quiet in the area adjacent to or near the park." *Id.* at 1205-06 & n. 11. We held this scheme facially invalid in part because the distinction between groups displaying messages and groups not displaying messages was "absolutely empty in terms of the ordinance's stated goals." *Id.* at 1206-07. But *Grossman* did not hold or suggest that such a distinction is necessarily empty in all cases. Here, the record supports the City's distinction: The violence and disorder visiting downtown Seattle during the four days of the WTO conference was incident to the presence of protestors, not emergency personnel, business employees, or shoppers. *Grossman* in no way controls, and is not persuasive on, the constitutionality of a city's necessary but temporary response to a breakdown of civic order in an emergency setting. *Grossman* did not involve such a breakdown in order and is of no help in assessing the City of Seattle's proper response to a crisis that threatened the safety of Seattle's visitors and citizens.

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While it is plausible that Order No. 3 was not the least restrictive means of achieving the City's goal, that is not what Supreme Court precedent requires. There is no question that the governmental interest here (security of the core downtown area) would have been achieved less effectively absent Order No. 3. Our role here is not to inject ourselves into the methods of policing, and we do not do so here. *Albertini,* 472 U.S. at 689, 105 S.Ct. 2897 (holding that the validity of a regulation "does not turn on a judge's agreement with the responsible decisionmaker concerning the most appropriate method for promoting significant government interests"). We conclude that Order No. 3 was narrowly tailored to achieve a significant governmental interest.[FN47]

> FN47. The dissent incorrectly refers to our assessment of the City's interest as "confused and inconsistent" because we list the following: "protecting the president and foreign dignitaries," "maintaining public order," "providing security to the core downtown area," and "seeing that the WTO delegates had the opportunity to conduct their business." *See* Dissent at 1167 n.6. A rational evaluation of our discussion of the City's interest, however, yields a common thread: restoring and maintaining order to the core downtown area so that the WTO conference could proceed safely and securely.
>
> Again, it is incorrect to urge that a city's means of restoring order is not narrowly tailored because the city has not fashioned a remedy aimed at completely eliminating disorder across the entire city. *See supra* note 42. For Order No. 3 to be narrowly tailored, Supreme Court precedent requires only that it target and eliminate "no more [as opposed to no less] than the exact source of the 'evil' it seeks to remedy." *Frisby,* 487 U.S. at 485, 108 S.Ct. 2495. The City was entitled to seek a remedy in its core area where WTO delegates resided and worked.

***1138 3**

[9][10][11] We must also assess whether Order No. 3 left ample alternative channels of communication. We have observed that "[t]he Supreme Court generally will not strike down a governmental action for failure to leave open ample alternative channels of communication unless the government enactment will foreclose an entire medium of public expression across the landscape of a particular community or setting." *Ctr. for Fair Pub. Policy,* 336 F.3d at 1170 (quoting *Colacurcio v. City of Kent,* 163 F.3d 545, 555 (9th Cir.1998)). A time, place, and manner restriction does not violate the First Amendment "simply because there is some imaginable alternative that might be less burdensome on speech." *Albertini,* 472 U.S. at 689, 105 S.Ct. 2897. "Of course, the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Bay Area Peace Navy,* 914 F.2d at 1229 (quoting *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.,* 452 U.S. 640, 647, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981)). However, an "alternative mode of communication may be constitutionally inadequate if the speaker's 'ability to communicate effectively is threatened.' " *Id.* (quoting *Taxpayers for Vincent,* 466 U.S. at 812, 104 S.Ct. 2118).

[12][13] The application of these principles presents a very difficult question. On the one hand, the restricted zone carved out a portion of the downtown area where protestors could not deliver their message directly to delegates. On the other hand, the protestors were able to demonstrate and express their views immediately outside the restricted zone, including areas directly across the street from the Washington State Convention & Trade Center and the Paramount Theater. The scope of the restriction on protest extended only to the bounds of the restricted zone, and did not apply generally to the City of Seattle. The protestors could reasonably expect their protest to be visible and audible to

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delegates, even if not as proximate as the protestors might have liked.[FN48]

> FN48. It cannot sensibly be argued that protesting outside the restricted zone was not a viable alternative on the mistaken theory that the delegates were not as accessible from that position. The Supreme Court has instructed that the First Amendment does not require that individuals retain the most effective means of communication, only that individuals retain the "ability to communicate effectively." *Taxpayers for Vincent,* 466 U.S. at 812, 104 S.Ct. 2118; *see also Hill,* 530 U.S. at 729, 120 S.Ct. 2480 (upholding a law that prohibited individuals from having a position that maximized accessibility to the target of their speech).

Given the protestors' ability to communicate directly across the street from most WTO venues, and given the violence that Order No. 3 was aimed at preventing, we think the better analysis favors the conclusion that Order No. 3 provided ample alternatives for communication. *See Hill,* 530 U.S. at 729, 120 S.Ct. 2480 ("Signs, pictures, and voice itself can cross an 8-foot gap with ease."). Appellants argue that they were prevented from communicating with WTO delegates at close range, but there is no authority suggesting that protestors have an absolute right to protest at any time and at any place, or in any ***1139** manner of their choosing. *Bl(a)ck Tea Soc'y v. City Of Boston,* 378 F.3d 8, 14 (1st Cir.2004) ("[A]lthough the opportunity to interact directly with the body of delegates by, say, moving among them and distributing literature, would doubtless have facilitated the demonstrators' ability to reach their intended audience, there is no constitutional requirement that demonstrators be granted that sort of particularized access.").[FN49]

> FN49. The district court also held that Order No. 3 provided ample alternative means for communication because protestors "had access to the media and to the public beyond the zone." The First Circuit recently expressed a similar view in resolving a challenge to a demonstration zone established by the City of Boston for the 2004 Democratic National Convention. *Bl(a)ck Tea Soc'y,* 378 F.3d at 14. The First Circuit held that the demonstration zone provided ample alternative channels for communication because "[a]t a high-profile event, such as the [Democratic National] Convention, messages expressed beyond the first-hand sight and sound of the delegates nonetheless have a propensity to reach the delegates through television, radio, the press, the internet, and other outlets." *Id.* Because we hold that there is no constitutional requirement that protestors be allowed to reach their designated audience in the precise manner of their choosing, we do not evaluate this alternative argument.

We do not minimize the value to society of facilitating protest communications. Justice Brandeis in *Whitney v. California* gave us a classic statement on the values of free speech:

> [The Founding Fathers] believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.

274 U.S. 357, 375, 47 S.Ct. 641, 71 L.Ed. 1095 (1927) (Brandeis, J., concurring), *overruled by Brandenburg v. Ohio,* 395 U.S. 444, 449, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969). Chief Justice Hughes reinforced these ideas a decade later in *De Jonge v. Oregon:*

> The greater the importance of safeguarding the

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> community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.

299 U.S. 353, 365, 57 S.Ct. 255, 81 L.Ed. 278 (1937). The Supreme Court over decades has never departed from this commitment to First Amendment values.[FN50]

> FN50. In *Texas v. Johnson,* 491 U.S. 397, 414, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989), Justice Brennan wrote for the Court, "[i]f there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. Punishing desecration of the flag dilutes the very freedom that makes this emblem so revered, and worth revering." Justice O'Connor has also remarked that "[t]he hallmark of the protection of free speech is to allow 'free trade in ideas'-even ideas that the overwhelming majority of people might find distasteful or discomforting." *Virginia v. Black,* 538 U.S. 343, 358, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003).

Perhaps it has not been said with more elegance than in these words of Justice ***1140** Brennan in the landmark decision of *New York Times Co. v. Sullivan*: "[D]ebate on public issues should be uninhibited, robust, and wide-open, and ... it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." 376 U.S. 254, 270, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964).[FN51] However, we do not think that even the most vital First Amendment expressions-and for purposes of our analysis we consider political protest adverse to WTO activities and internationalist philosophy to be political comment at the core of the First Amendment-can be said automatically to overcome the need of a city to maintain order and security for its residents and visitors, in the face of violence. *Burson v. Freeman,* 504 U.S. 191, 197, 112 S.Ct. 1846, 119 L.Ed.2d 5 (1992) ("At the same time, however, expressive activity, even in a quintessential public forum, may interfere with other important activities for which the property is used.... [T]he government may regulate the time, place, and manner of the expressive activity, so long as such restrictions are content neutral, are narrowly tailored to serve a significant governmental interest, and leave open ample alternatives for communication.").

> FN51. Though the singular importance of these First Amendment values could hardly be overstated, it also must be kept in mind that the First Amendment was held to be applicable against the States, and here a local government, through the Fourteenth Amendment's Due Process Clause. *De Jonge,* 299 U.S. at 364, 57 S.Ct. 255; *see also Palko v. Connecticut,* 302 U.S. 319, 325, 58 S.Ct. 149, 82 L.Ed. 288 (1937), (incorporating the First Amendment's protections into the Fourteenth Amendment's Due Process Clause on the view that the First Amendment's protections were "implicit in the concept of ordered liberty"), *overruled on other grounds by Benton v. Maryland,* 395 U.S. 784, 794, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969).

Accordingly, we apply the ample alternatives test with a practical recognition of the dire facts confronting the City in the early morning hours of December 1 during the WTO conference.[FN52] On the evening of the first day of the WTO conference, and shortly before President Clinton was scheduled to arrive, Seattle was tense, its streets were in disar-

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ray from a long day of violent protest, and there was a general disruption of civic order. The "ample alternatives" cannot be taken to mean that *each* protestor has the right to convey his or her message in the manner preferred by that protestor-that would be impossible where, as in this case, protestors numbered in the tens of thousands. The City was required to take action to protect President Clinton and the delegates throughout the three remaining ***1141** days of the conference. If the City had permitted chaos and violence to continue unabated, it would not merely lose its standing as a host city for international conferences, the City might also have sacrificed the safety of the delegates and of its residents. The permissible communications available to protestors under Order No. 3 were substantial, not perfunctory. These available communications, including protesting on the periphery of the restricted zone, were perhaps not ideal for protestors who wanted to present views in the face of delegates, [FN53] but neither did they wholly exclude protestors from the delegates' purview.

> FN52. The dissent challenges our practical recognition of the emergency confronting the City and our pragmatic application of the ample alternatives test as lacking affirmative precedential sanction. *See* Dissent at 1174. Our resolution of this issue is not contrary to established law and reflects the principle that there is no constitutional right to deliver a confrontational message of protest directly to an intended target. *See Hill,* 530 U.S. at 716-18, 120 S.Ct. 2480 ("[W]e have continued to maintain that 'no one has a right to press even "good" ideas on an unwilling recipient.... While the freedom to communicate is substantial, "the right of every person 'to be let alone' must be placed in the scales with the right of others to communicate." ' "); *see also Bl(a)ck Tea Soc'y,* 378 F.3d at 14 ("[A]lthough the opportunity to interact directly with the body of delegates by, say, moving among them and distributing literature, would doubtless have facilitated the demonstrators' ability to reach their intended audience, there is no constitutional requirement that demonstrators be granted that sort of particularized access.").
>
> The dissent's unsupported assertion that *Hill* is inapposite because WTO delegates were not "particularly vulnerable" and faced only "the unpleasantness or inconvenience of a large demonstration," *see* Dissent at 1167 n.6, understates the danger visiting delegates faced from violent protestors determined to derail the WTO conference.
>
> FN53. Some protestors may have preferred the restraints of Order No. 3 as an aid to their own safety, as well as that of delegates. However, for purposes of assessing the constitutionality of Order No. 3, on the dueling summary judgment motions, we may assume that protestors generally disfavored the restraint, and had views similar to those Appellants have asserted.

In the "ample alternatives" context, the Supreme Court has made clear that the First Amendment requires only that the government refrain from denying a "reasonable opportunity" for communication. *City of Renton,* 475 U.S. at 54, 106 S.Ct. 925 ("[T]he First Amendment requires only that Renton refrain from effectively denying respondents a reasonable opportunity to open and operate an adult theater within the city...."). We hold that, because Order No. 3 allowed protestors to demonstrate directly across the street from the Washington State Convention & Trade Center, the Paramount Theater, three out of four major hotels where WTO delegates were staying, and throughout the rest of downtown Seattle, Order No. 3 provided ample alternative channels of communication.[FN54] We recognize that our ***1142** decision takes into account a balance of the competing considerations of expression and order. But we do not think the Constitution requires otherwise.[FN55]

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FN54. The record is void of evidence supporting the dissent's argument that WTO delegates could see and hear protestors *only* within the 25-square block restricted zone. *See* Dissent at 1173. Reason and precedent belie this proposition. *See Hill,* 530 U.S. at 718, 120 S.Ct. 2480 (holding that protestors had ample alternatives to communicate their message even if they could not communicate with their intended audience where they preferred).

The dissent, most likely recognizing the lack of evidence to support its argument, argues that "neither does the record reflect that the delegates *could* see and hear protestors, or that the alternative means of communication available to the protestors were sufficient." Dissent at 1173 n. 16. But contrary to the dissent's assertion, the undisputed facts in the record show that per the terms of Order No. 3 protestors could communicate their views directly outside most of the hotels where delegates were staying. *See* apps. A & B (showing that Order No. 3's boundary bordered delegates' hotels); *WTO After Action Report* at 46 (recognizing that protestors demonstrated at the front door of the Westin Hotel). The ability to so communicate is shown by appendices A and B. It is not disputed that major venues for delegates, as identified on the appendices, included the Four Seasons Olympic, Cavanaughs, the Sheraton, and the Westin hotels. Of these, the Four Seasons Olympic, Cavanaughs, and the Westin were located on the border of the restricted zone. Thus, the appendices show without inference that Order No. 3 did not restrain protestors from making their views known on Fourth Avenue and on Sixth Avenue outside the restricted zone across the street from three of the four identified major venues for delegates situated in the restricted zone; only the Sheraton Hotel is not on the restricted zone's border. Consistent with Order No. 3 is the declaration of protestor Michael Gendler, submitted by the Appellants, which confirms that protest was allowed on the east side of Fourth Avenue. The appendices show that the east side of Fourth Avenue is adjacent to both Cavanaughs and the Four Seasons Olympic hotels. Order No. 3 on its face imposed no limitations on expressive activity outside the restricted zone. *See also WTO After Action Report* at 45 (noting a "group of about 1,000 people" that marched southbound on Fourth Avenue). We draw no inferences in favor of our factual statement; rather, the dissent ignores the undisputed facts that do not fit its legal theory.

Moreover, according to the undisputed declaration of Assistant Chief Clark Kimerer, there were "several downtown hotels not within the buffer zone housing WTO delegates which were excluded" because police believed they could "provide adequate security." It is also undisputed that thousands of protestors did not abandon their demonstrations, but continued them throughout the rest of the downtown area for the duration of the WTO conference. *Id.* at 43-46.

These alternative means of communication taken together are sufficient as a matter of law under Supreme Court precedent because they gave a reasonable opportunity for protestors to communicate. *See City of Renton,* 475 U.S. at 54, 106 S.Ct. 925.

FN55. We reject the City's alternative contention that Order No. 3 was a permissible exercise of municipal control under a the-

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ory of an "emergency exception." Citing to out-of-circuit cases, the City argues that Order No. 3 was valid because it was taken in good faith and there was a factual basis to decide that Order No. 3 was necessary to maintain order. *See Smith v. Avino,* 91 F.3d 105, 109-10 (11th Cir.1996), *abrogated on other grounds by Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998); *United States v. Chalk,* 441 F.2d 1277, 1280 (4th Cir.1971); *Moorhead v. Farrelly,* 723 F.Supp. 1109, 1112-14 (D.Vi.1989). These cases are distinguishable, and the standard that they voice does not permit a sufficiently nuanced review of the First Amendment rights at stake here. *Smith* and *Moorhead* involved natural disasters that provided little or no warning to municipalities. While *Chalk* involved civil unrest, it was the result of an unpredictable clash between police and high school students, in contrast with this case, which involved a world trade conference planned months in advance. Also, these courts employed the emergency analysis in specific and limited contexts different from that here, the contexts of natural disasters or of civil unrest confined in a smaller area, and in each case the government's tool was evening curfew. Our case involves political protest coupled with chaos and violence, followed by a restricted zone covering a large part of downtown Seattle, the core area including convention venues and delegates' hotels, with the restriction applicable, day and night, for the several remaining days of the conference. The legal analysis justifying nighttime curfew in the "emergency" cases is not controlling and does not permit adequate evaluation of the competing interests in the face of the crisis that was presented. *See also* Oren Gross, *Chaos and Rules: Should Responses to Crises Always Be Constitutional?,* 112 Yale L.J. 1011, 1027-42 (2003) (outlining several problems with doctrines of emergency powers). We decline to analyze Order No. 3 based on the "emergency" doctrine, though as we have explained above, the nature of the City's interest in security and safety has been germane to our analysis of the test for a reasonable time, place, and manner restriction.

We hold that Order No. 3 was a constitutional time, place, and manner restriction on speech on its face. [FN56] Because we ***1143** hold that Order No. 3 was a valid time, place, and manner restriction,[FN57] we need not reach Appellants' contention that Order No. 3 was a prior restraint. *Baugh,* 187 F.3d at 1042 ("[E]ven prior restraints may be imposed if they amount to reasonable time, place, and manner restrictions on speech."). [FN58]

FN56. At oral argument, the Hankin plaintiffs also contended that the City should have reevaluated and reduced or eliminated the restricted zone on December 2 or December 3, after the initial imposition of Order No. 3 on December 1 had decreased the violence taking place in Seattle. We do not consider this argument because it was not raised in the Hankin plaintiffs' opening brief. *Collins v. City of San Diego,* 841 F.2d 337, 339 (9th Cir.1988) ("It is well established in this Circuit that claims which are not addressed in the appellant's brief are deemed abandoned."). Even if we were to address this contention, the facts in this case justify the continued imposition of the restricted zone. Although Order No. 3 had the effect of decreasing violence in Seattle on December 1, there was undisputed evidence that violence continued outside the restricted zone on December 2 and December 3, including an incident where protestors surrounded the King County Jail (resulting in a lockdown of the jail). Given

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the events that had taken place on November 30 and the ongoing violence from December 1 to December 3, the City was justified in maintaining the restricted zone to preserve order and security in the downtown area until the WTO conference concluded. The restriction here lasted only four days. Were we faced with such a restriction on public access over weeks or months, a duty to reevaluate surely would arise at some point. But here, the initial evaluation on December 1, in light of the limited duration of the conference, is reasonably proximate to the duration of restraint.

FN57. We also note that the district court exercised supplemental jurisdiction over Appellants' claims under the Washington State Constitution, and dismissed those claims on summary judgment. Viewing these claims as a facial challenge, we note that Washington interprets its free speech clause in its Constitution in a manner parallel to the federal Constitution's First Amendment interpretation, except that Washington courts "diverge from the Supreme Court on the state interest element of the time, place, and manner test, as [the Washington courts] believe restrictions on speech can be imposed consistent with [the Washington Constitution's free speech clause] only upon showing a compelling state interest." *Collier v. City of Tacoma,* 121 Wash.2d 737, 854 P.2d 1046, 1051 (1993) (en banc). We hold that the City's interest in restoring and maintaining safety and security also was a "compelling state interest" within the meaning of Washington law, because "the purpose [is] a fundamental one and [Order No. 3] bear[s] a reasonable relation to the achievement of the purpose." *See id.* at 1054. Thus, we affirm the district court's summary judgment dismissal of Appellants' challenge to the validity of Order No. 3 under the Washington State Constitution.

FN58. The First Circuit recently rejected a similar argument in *Bl(a)ck Tea Soc'y,* 378 F.3d at 12.

B

[14] Appellants contend that Order No. 3 (and Assistant Chief Ferguson's Operations Order) improperly gave unfettered discretion to officers charged with enforcing the Order. The Supreme Court has required that "a time, place, and manner regulation contain adequate standards to guide the official's decision and render it subject to effective judicial review." *Thomas v. Chicago Park Dist.,* 534 U.S. 316, 323, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002). A regulation granting unfettered discretion to officials charged with administering that regulation is impermissible because it creates two dangers. First, such a regulation may "intimidate[ ] parties into censoring their own speech, even if the discretion and power are never actually abused." *City of Lakewood v. Plain Dealer Publ'g Co.,* 486 U.S. 750, 757, 108 S.Ct. 2138, 100 L.E d.2d 771 (1988); *see also Griefen,* 200 F.3d at 1262. Second, unfettered discretion may permit the administering officials "to roam essentially at will, dispensing or withholding permission to speak, assemble, picket, or parade according to their own opinions regarding the potential effect of the activity in question on the 'welfare,' 'decency,' or 'morals' of the community." *Shuttlesworth v. City of Birmingham,* 394 U.S. 147, 153, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969) ; *see also Griefen,* 200 F.3d at 1262.

We addressed this issue in *Griefen.* There, the Forest Service had issued a closure order excluding the public from coming within 150 feet of a portion of the Nez Perce National Forest that was closed for construction and repair. *Griefen,* 200 F.3d at 1258. The closure order had exempted persons with a permit authorizing entry, law enforcement officials, rescue workers, and employees of the construction

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company doing work in the restricted zone. *Id.* Appellants challenged the closure order contending, *inter alia,* that the Forest Service had too much discretion in administering the closure order. *Id.* at 1262. We rejected this contention, explaining that "[i]f a closure of a public forum is for a valid rather than a disguised impermissible purpose, the potential for self-imposed or government censorship ... does not exist." *Id.* We held:

> ***1144** In First Amendment terms, the fact that discretion to authorize entry to a closed area may be unfettered during construction is of no concern. The process of granting authority to enter a lawfully closed zone differs markedly from the process of licensing expressive activity. Such a process does not "engender identifiable risks to free expression...."

Id. at 1263 (quoting *City of Lakewood,* 486 U.S. at 757, 108 S.Ct. 2138).

[15] *Griefen* is instructive in evaluating how Order No. 3 was implemented through the Operations Order.[FN59] We have determined that, on its face, Order No. 3 was a lawful time, place, and manner restriction on speech.[FN60] Thus, portions of downtown Seattle covered by Order No. 3 were lawfully closed with limited exceptions for public safety officials, business owners, managers, or employees, and their customers.

> FN59. The dissent argues that *Griefen* is inapposite because "the area into which the plaintiffs sought entry to protest had temporarily lost its status of public forum." Dissent at 1175 n. 17. The dissent incorrectly reads *Griefen,* taking the sentence it relies upon out of context. In *Griefen* we said that "the immediate area of a construction zone is not an area that *has the attributes* of a public forum." 200 F.3d at 1261 (emphasis added). We also held in *Griefen* that "[w]hen expressive conduct occurs on *public grounds,* like a national forest, the government can impose reasonable time, place, and manner restrictions," *id.* at 1259-60 (emphasis added), and "[i]f a closure of a *public forum* is for a valid rather than a disguised purpose, the potential for self-imposed or government censorship ... does not exist." *Id.* at 1262 (emphasis added). Moreover, we had "no doubt" in *Griefen* that "a government entity may close areas of public forests under construction and repair," just as we had "no doubt" that a city "could temporarily close for good reasons ... a street engulfed in a riot or an unlawful assembly." *Id.* at 1263.
>
> The closure order we addressed in *Griefen* closed part of the Nez Perce National Forest, which doubtless is and was a public forum. In any event, in *Griefen* we analyzed not only the reasonable time, place, and manner issues, *id.* at 1259-62, but also the protestors' unbridled discretion challenge on the premise that the order closed a public forum. *Id.* at 1262-65. Similarly, our analysis in this case of the reasonable time, place, and manner issues raised by the Appellants proceeds on the premise that Order No. 3 closed a public forum. *See* discussion *supra* Part III.A. Likewise, our analysis of Appellants' unbridled discretion challenge proceeds on the premise that Order No. 3 resulted in "a closure of a public forum [ ] for a valid rather than a disguised purpose." *See Griefen,* 200 F.3d at 1259-60.

FN60. The dissent appeals to *Board of Airport Commissioners v. Jews for Jesus,* 482 U.S. 569, 573, 107 S.Ct. 2568, 96 L.Ed.2d 500 (1987), but that case is inapposite as it involved a speech restriction held to be facially unconstitutional under the First Amendment's overbreadth doctrine. Moreover, Order No. 3 did not receive a

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> "virtually open-ended interpretation," but rather contained express limits on whom officers could exclude from the restricted zone, such as WTO personnel, workers, and public safety officials.

That officers had discretion to permit persons with a reasonable purpose to enter the restricted zone does not render Order No. 3 constitutionally deficient.[FN61] Order No. 3 facially restrained officers from excluding certain persons specifically authorized to enter the restricted zone, and the Operations Order clarified the phrase "reasonable purpose" specifically to include***1145** "work, shopping at a specific location ..., or other like type reasonable activity." We have upheld a grant of official discretion to interpret what is "reasonable" in restricting speech to further a significant government interest. *See S. Oregon Barter Fair v. Jackson County,* 372 F.3d 1128, 1139-41 (9th Cir.2004) (rejecting an unfettered discretion argument where the statute gave a governing body power to "charge permit applicants a fee *reasonably* calculated to reimburse the county for its *reasonable* and *necessary* costs in receiving, processing and reviewing applications for permits to hold outdoor mass gatherings" (emphases added)). Should a pattern of abuse result from an official's exercise of discretion, the proper remedy is not to "insist [ ] upon a degree of rigidity that is found in few legal arrangements," but rather is to seek remedy through as-applied challenges. *Chicago Park Dist.,* 534 U.S. at 325, 122 S.Ct. 775; *S. Oregon Barter Fair,* 372 F.3d at 1139.

> FN61. The dissent intimates that any statute that gives an officer discretion to administer speech restrictions is unconstitutional because it provides "the *opportunity* for abuse." *See* Dissent at 1175. Our dissenting colleague overstates the reach of the First Amendment's unbridled discretion doctrine. A literal "opportunity for abuse" may be present whenever an armed officer of the law is given authority to enforce a speech restriction. We are concerned instead with whether Order No. 3's contained "adequate standards to guide the official's decision and render it subject to effective judicial review." *Chicago Park Dist.,* 534 U.S. at 323, 122 S.Ct. 775 (2002).

Persons intending to protest were limited in time, place, and manner of their speech, but were not intimidated into censoring their speech because all protest activity was prohibited for a valid purpose in the restricted zone and speech was not restrained immediately outside the restricted zone. Further, there was no danger on the face of Order No. 3 that officers enforcing the restricted zone could indiscriminately withhold permission to speak. Order No. 3 prohibited protest *on any topic* within the restricted zone. Order No. 3 and the supplemental Operations Order did not give officers administering the Orders discretion to allow persons with "favored" views inside the zone and to exclude those with "disfavored" views. Regardless of topic or viewpoint, protestors were prohibited from the restricted zone, as were others who did not fall within the limited exceptions.

Assistant Chief Joiner's Operation Order gave officers guidance (including specific examples) of which individuals were permitted into the restricted zone.[FN62] The Operations Order said, "[v]ehicles and/or pedestrians ... are authorized access inside the perimeter if they have a reasonable purpose for entering the perimeter. A reasonable purpose includes work, shopping at a specific location within the perimeter, or other like type reasonable activity." [FN63] As in *Chicago Park District,* ***1146** "[t]hese grounds [were] reasonably specific and objective, and [did] not leave the decision to the whim of the administrator." 534 U.S. at 324, 122 S.Ct. 775 (internal quotation marks and citation omitted); *see also S. Oregon Barter Fair,* 372 F.3d at 1132; *cf. Gaudiya Vaishnava Soc'y v. City and County of San Francisco,* 952 F.2d 1059, 1065-66 (9th Cir.1991) ("The ordinance [violates the First Amendment because it] provides no specific grounds for granting or denying permits: no explicit

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limits are placed on the Chief of Police's discretion."). We hold that Order No. 3 and the Operations Order did not provide unfettered discretion to officers who were administering the restricted zone.

FN62. The Menotti plaintiffs contended at oral argument that, under *Hague v. Committee for Indus. Org.*, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423 (1939), the fact that officers had any discretion to admit persons into the restricted zone rendered Order No. 3 and the Operations Order unconstitutional. We disagree. In *Hague,* the ordinance allowed a city official to deny a permit for a public meeting for any reason believed by the official to be "proper," provided that the denial was for the purpose of "preventing riots, disturbances, or disorderly assemblage." *Id.* at 502 n. 1, 59 S.Ct. 954; *see also Forsyth County v. Nationalist Movement,* 505 U.S. 123, 133, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992) (holding that a county's parade ordinance granted excessive discretion to a county administrator as to the proper amount to charge for a parade permit, where there were "no articulated standards either in the ordinance or in the county's established practice" and the city administrator was "not required to rely on any objective factors" to determine the proper fee). These cases do not constitutionally prohibit the grant of any discretion to city officials. Rather, the cases hold that city officials must be guided by objective factors and standards when making decisions pursuant to a city ordinance that restricts speech. Here, officers were instructed to grant entrance into the restricted zone to those persons who had a "reasonable purpose" (defined to include "work, shopping at a specific location within the perimeter, or other like type reasonable activity") to enter the zone. The Menotti plaintiffs' argument on this score is unpersuasive.

FN63. The dissent argues that the Operations Order allowed "officers to determine unilaterally what constitutes a 'reasonable purpose,' with no further elaboration on what might be considered 'other like type reasonable activity' " Dissent at 1176. The dissent's selective quotation ignores the guidance provided by the enumeration of specific activities that constituted a "reasonable purpose," such as working or shopping. That the Operations Order listed these commercial activities served to "guide the official's decision and render it subject to effective judicial review." *Chicago Park Dist.*, 534 U.S. at 323, 122 S.Ct. 775.

C

We next address the plaintiffs' contention that Order No. 3 was unconstitutional "as applied." "An as-applied challenge alleges that the restriction on speech is unconstitutional as applied to the litigant's particular speech activity, even though the law may be capable of valid application to others." *Kuba v. 1-A Agric. Ass'n,* 387 F.3d 850, 852, 856, slip op. 14635, 14645 (9th Cir.2004) (internal quotation marks omitted) (quoting *Foti v. City of Menlo Park,* 146 F.3d 629, 635 (9th Cir.1998)). [FN64] The district court concluded that Order No. 3 as applied to the Hankin plaintiffs was a valid time, place, and manner restriction. The Hankin plaintiffs contend that Order No. 3 was unconstitutional as applied to them because the City had adopted a policy of arresting only anti-WTO protestors within the restricted zone.

FN64. In *Kuba* we addressed a facial and as-applied challenge to a state association's policy that prohibited individuals from demonstrating at the association's rodeo and circus, except in designated "free expression zones." *Kuba,* 387 F.3d at 853-55. We held the policy facially unconstitutional because the association failed to prove

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> how a handful of demonstrators would cause congestion or a danger to safety, *see id.* at 859-60, and because the association's policy was not narrowly tailored when it penned demonstrators in "three small, fairly peripheral areas" and did not "sufficiently match" the interest of preventing congestion that could have been achieved with equal effectiveness but less speech-restrictive alternatives, *see id.* at 861-62. *Kuba* differs from the case before us because *Kuba* did not involve significant prior violence such as had marred Seattle. The corresponding governmental interest in *Kuba,* in preventing congestion with potential impact on safety, before the congestion occurred, was less than Seattle's interest in restoring order, after widespread violence, including vandalism and riot.

Hankin submitted a declaration in opposition to the City's motion for summary judgment in which he testified that, on December 1, 1999, he participated in a group march and protest at Westlake Park within the restricted zone. Hankin testified that police surrounded the group and arrested them without any warning, and without any determination as to whether those persons were within the exemptions to Order No. 3. Hankin testified that, immediately after arresting the large group of protestors Seattle police then turned to another portion of Westlake Park, where Hankin was standing, and arrested him and others beside him without determining whether these persons came within the exemptions to Order No. 3. Accepting Hankin's declaration testimony as true, as we must for the purposes of reviewing the district court's grant of ***1147** summary judgment to the City, Hankin's testimony is evidence that the arrest of this group of persons was a "discriminatory enforcement of a speech restriction amount[ing] to viewpoint discrimination in violation of the First Amendment." *Foti,* 146 F.3d at 635; *see also Police Dept. v. Mosley,* 408 U.S. 92, 95, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972) (invalidating, on Equal Protection grounds, a disorderly conduct ordinance which barred picketing within 150 feet of a school in session, but exempted peaceful picketing of any school involved in a labor dispute, because "the operative distinction is the message on a picket sign").

[16] The City may be held liable for such a violation only if the arresting officers' conduct was a product of City policy or custom. *Monell v. Dep't of Soc. Servs.,* 436 U.S. 658, 691-694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). As we have explained: "Liability may attach to a municipality only where the municipality itself causes the constitutional violation through 'execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy.' " *Ulrich v. City and County of San Francisco,* 308 F.3d 968, 984 (9th Cir.2002) (quoting *Monell,* 436 U.S. at 694, 98 S.Ct. 2018). A municipal "policy" exists when "a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Pembaur v. City of Cincinnati,* 475 U.S. 469, 483, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986) (plurality opinion); *Fairley v. Luman,* 281 F.3d 913, 918 (9th Cir.2002) (per curiam).

[17] There are three ways to show a policy or custom of a municipality: (1) by showing "a longstanding practice or custom which constitutes the 'standard operating procedure' of the local government entity;" (2) "by showing that the decision-making official was, as a matter of state law, a final policymaking authority whose edicts or acts may fairly be said to represent official policy in the area of decision;" or (3) "by showing that an official with final policymaking authority either delegated that authority to, or ratified the decision of, a subordinate." *Ulrich,* 308 F.3d at 984-85 (internal quotation marks and citations omitted). We have held that a municipal policy "may be inferred from widespread practices or evidence of repeated constitutional violations for which the errant municipal

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officers were not discharged or reprimanded." *Nadell v. Las Vegas Metro. Police Dept.*, 268 F.3d 924, 929 (9th Cir.2001) (internal quotation marks and citation omitted).

Although Schell (as then-Mayor of the City) was the City's chief policymaker at the time Order No. 3 was implemented, he testified in deposition that he had "relied on the [police] officers to carry out [Order No. 3] and make sure we had a secure zone for our-for the safety of our citizens and the safety of the delegates." Thus, Schell can be said to have "delegated that authority to ... a subordinate," in this case, Police Chief Stamper. *See Ulrich*, 308 F.3d at 985. Chief Stamper, in turn, delegated the responsibility of planning the City's response to the WTO protests to Assistant Chief Joiner. Joiner, in explaining the City's implementation of Order No. 3, said that: "We're going ... to take the core area where the [WTO] conference is occurring ... and prohibit any demonstrations within that core area for the remainder of the week."

In support of their contention that the City had adopted a policy of suppressing anti-WTO speech in applying Order No. 3, the Hankin plaintiffs submitted declarations[FN65] from persons stating that police refused to allow them to enter the restricted ***1148** zone, even though they came within one of the exceptions to Order No. 3, unless they removed anti-WTO buttons or stickers.[FN66] Martha Ehman testified in a declaration that on December 1, 1999, officers enforcing the restricted zone permitted her to enter after she said that she was going to work in the restricted zone. She testified that, after being permitted to enter, officers told her to stop and remove a piece of tape from her backpack that had the words "NO WTO" on it, and that officers told her she would be arrested if she did not comply. Ehman removed the tape and was allowed to proceed. Lauren Holloway testified in a declaration that, on December 1, 1999, officers enforcing the restricted zone forcibly removed anti-WTO stickers from her clothing on the basis that she was in the "No Protest Zone." Ronald Matyjas testified that, on December 1, 1999, while walking to his office located in the restricted zone, an officer told him that he could not wear the "No WTO" sign that he had affixed to his jacket, and that another officer tore off the sign without permission. Andrew Russell testified that, on December 1, 1999, he was refused entry into the restricted zone because he was wearing a button that said "No WTO," and only after removing the button was he was allowed into the restricted zone. Rita Herkal testified that, on December 1, 1999, officers forcibly removed anti-WTO stickers from her clothing, and that officers told her "You're not allowed to wear stickers."

> FN65. These declarations were submitted in support of the Menotti plaintiffs' motion for partial summary judgment, and in opposition to the City's motion for partial summary judgment.
>
> FN66. Former-Police Chief Stamper also testified via declaration that "the action of the officers [administering the restricted zone] when confronted with that WTO slash through it ... was, you know, take the symbol away, put it in your backpack, or whatever the solution was to that particular problem."

[18] The statements of Assistant Chief Joiner and the declarants, taken in the light most favorable to Appellants, create a genuine issue of material fact as to whether it was the policy of the City to apply Order No. 3 in a manner that excluded only anti-WTO protestors. Viewing the evidence in the light most favorable to the Hankin plaintiffs, such a policy may be inferred due to the "widespread practices or evidence of repeated constitutional violations" and the absence of evidence that police officers were discharged or reprimanded for making the discard of anti-WTO expressive materials an entry ticket to the restricted zone. *See Nadell*, 268 F.3d at 929 (internal quotation marks and citation omitted). We reverse the district court's grant of summary judgment to the City on the constitutionality of Order No. 3 as applied to the Hankin

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plaintiffs, and we remand this issue for trial. Because we so hold, we reverse the district court's order denying class certification and remand that issue to the district court for reconsideration. [FN67]

> FN67. As Order No. 3 was on its face a reasonable time, place, and manner restriction, it follows that all persons who did not enter or who were excluded from the restricted zone because of that order cannot assert a valid claim individually or as a class member. However, any persons who were excluded solely because of the content of their visible communications without regard to the exemptions within Order No. 3, or those such as employees and shoppers, who came within Order No. 3's exemptions, but who were allowed to enter the restricted zone only after removing visible communications, such as buttons or stickers, hostile to the WTO, may assert an as-applied First Amendment claim. Their ability to assert a claim against the City, as contrasted with a claim against the specific officers with whom they interacted, will depend on the factual determination whether their claim is based on a policy of the City of Seattle, an issue on which we have identified a genuine issue of material fact requiring trial. As to any such claimants, we express no opinion whether the requirements for class action certification may be satisfied, leaving that issue for initial consideration in the district court after any due and appropriate proceedings.

***1149** [19][20] However, we affirm the grant of summary judgment to individual defendants Schell and Stamper regarding the Hankin plaintiffs' claims against them. "Supervisory liability is imposed against a supervisory official in his individual capacity for his own culpable action or inaction in the training, supervision, or control of his subordinates, for his acquiescence in the constitutional deprivations of which the complaint is made, or for conduct that showed a reckless or callous indifference to the rights of others." *Larez v. City of Los Angeles,* 946 F.2d 630, 646 (9th Cir.1991) (internal punctuation, quotation marks, and citations omitted). Here, Appellants have presented no evidence, other than the adoption of Order No. 3 and the Operations Order, that either Schell or Stamper personally took part in the alleged constitutional violations or caused the constitutional violations through their individual actions. We have already held Order No. 3 to be facially constitutional, and without evidence that Schell and Stamper personally played a role in the alleged constitutional violations, either directly or by acquiescence or culpable indifference, there is no basis for liability against them in their individual capacities. The evidence presented by the plaintiffs was not sufficient to establish or create a genuine issue of material fact concerning the supervisory liability of Schell or Stamper.

IV

A

We turn to the individual claims of the Menotti plaintiffs. With regard to Menotti, the district court concluded that Seattle police had probable cause to believe Menotti had committed the crime of pedestrian interference[FN68] and obstructing a police officer.[FN69] The district court granted summary judgment on Menotti's Fourth Amendment claim and state law false arrest claim. The district court also granted summary judgment to the City on Menotti's First Amendment claim, holding that Menotti had failed to present evidence that the officers who arrested Menotti acted under a City policy. Menotti appeals the district court's grant of summary judgment to the City and denial of his motion for summary judgment on these issues.

> FN68. Seattle Municipal Code section 12A.12.015 prohibits pedestrian interference. A person commits pedestrian inter-

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> ference where the person, *inter alia,* "intentionally obstructs pedestrian or vehicular traffic." To "obstruct pedestrian or vehicular traffic" is defined as "to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact." Seattle Mun.Code § 12A.12.015.
>
> FN69. Seattle Municipal Code section 12A.16.010 prohibits obstructing a public officer. A person obstructs a peace officer where the person, *inter alia,* "[i]ntentionally and physically interferes with a public officer" or "[i]ntentionally hinders or delays a public officer by disobeying an order to stop given by such officer." Seattle Mun.Code § 12A.16.010.

[21] We first address whether the police had probable cause for Menotti's arrest. "The test for probable cause is whether facts and circumstances within the officers' knowledge are sufficient to warrant a prudent person, or one of reasonable caution, to believe, in the circumstances shown, that the suspect has committed, is committing or is about to commit an offense." *United States v. Puerta,* 982 F.2d 1297, 1300 (9th Cir.1992) (internal punctuation, quotation marks, and citation omitted). The question presented on Menotti's Fourth Amendment claim is whether a prudent person in the position of the ***1150** officers who arrested Menotti would have believed that Menotti was committing the offenses of pedestrian interference and obstructing an officer.

[22] Menotti submitted video evidence showing that just before his arrest Menotti addressed a small group while pedestrians unaffiliated with the group walked by unimpeded. This evidence is contradicted by the deposition testimony of Seattle Police Officer Christopher Myers, one of the officers who arrested Menotti, who testified that he saw Menotti "causing a group to block both vehicular and pedestrian traffic." We, of course, are not empowered to make factual determinations when faced with conflicting evidence. In this procedural context, where summary judgment was given to the City, we must credit the video evidence submitted by Menotti, and consider all evidence in the light most favorable to Menotti. Menotti's video evidence showed that neither he nor the group he addressed interfered at all with pedestrians, and a reasonable jury could find from this evidence, if the jury failed to credit Officer Myers's testimony, that the officers did not have probable cause to arrest Menotti. A genuine issue of material fact concerning whether pedestrians were impeded by Menotti exists, and requires trial for resolution. *See Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247-57, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

We also hold that a genuine issue of material fact exists as to whether police had probable cause to arrest Menotti for obstructing an officer. Menotti testified in deposition that when officers approached his group, the officers issued no directives or warnings, and that he ran because the officers wanted the group to disperse. Similarly, the video evidence submitted by Menotti does not show any obvious audible warnings by police immediately before Menotti's arrest. In contrast, Officer Myers testified in deposition that, when officers approached Menotti's group, they yelled "stop, police," and that Menotti started running immediately thereafter. Whatever may be decided by the trier of fact, at the summary judgment stage we must credit Menotti's testimony and conclude that a reasonable jury could determine that there was not probable cause to arrest Menotti for obstructing an officer. A genuine issue of material fact exists whether there was probable cause to arrest Menotti for obstructing an officer, and this issue also must be resolved by trial.

We hold that the district court erred by granting summary judgment for the City on Menotti's Fourth Amendment claim. We reverse the district court's grant of summary judgment dismissing Menotti's §

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1983 claim under the Fourth Amendment and his state law false arrest claim. We remand these claims to the district court for further proceedings.

We turn to Menotti's First Amendment claim. Menotti alleged in his complaint that the City violated his First Amendment rights when officers arrested him. The district court granted summary judgment to the City, reasoning that Menotti "failed to produce sufficiently probative evidence of any City policy or custom that caused a deprivation of his constitutional rights." Based on our ruling above that there is a genuine issue of material fact whether the City had a policy during the WTO conference of suppressing anti-WTO views of persons who might otherwise have qualified for entry into the restricted zone, we reverse the district court's judgment on this issue and remand it to the district court for trial.

B

Sellman was arrested for distributing leaflets within the restricted zone, and the viability of his claims depends entirely on the resolution of his constitutional challenge to Order No. 3. Sellman presented ***1151** no evidence that he was targeted for arrest because of his anti-WTO views. Rather, the undisputed testimony revealed that Sellman was arrested only after Detective Stevens ascertained that Sellman had violated Order No. 3 by being in the restricted zone when he did not come within one of its exceptions, and further that Sellman did not obey an order to disperse. We affirm the district court's grant of summary judgment in favor of defendants on Sellman's claims. [FN70]

> FN70. The parties dispute whether Sellman appeals the district court's grant of summary judgment to Officer Stevens, the officer who arrested Sellman. Sellman's only reference to Officer Stevens in his opening brief was a statement that "[s]ummary judgment should be entered in Sellman's favor, with remand to determine the damages caused by the City, Schell, Stamper, and Stevens." Because this contention was not supported by argument in Sellman's opening brief, we deem it waived. *Humble v. Boeing Co.*, 305 F.3d 1004, 1012 (9th Cir.2002) ("Issues raised in a brief but not supported by argument are deemed abandoned absent manifest injustice."); *see also* Fed. R.App. P. 28(a)(9)(A) (requiring that appellant's brief must contain "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies").

C

[23] Stedl testified in deposition that his bag was unlawfully searched and his fliers unlawfully seized by an unidentified officer. Stedl contended that the City was liable, based on 42 U.S.C. § 1983, for an unlawful search and seizure. The district court granted summary judgment for the City on Stedl's claim, holding that Stedl had not presented evidence of a City policy to commit unlawful seizures. As we have already explained, to prevail on a theory of municipal liability, Stedl must show that the unidentified officer acted pursuant to an official policy or custom of the City. *Monell*, 436 U.S. at 691-694, 98 S.Ct. 2018; *Ulrich*, 308 F.3d at 984.

There was no evidence of any City policy authorizing the search of backpacks or the seizure of fliers. Stedl argues that such a policy may be inferred from an alleged pattern of such practices by officers during the WTO conference, but he offered deposition testimony of only two persons, himself and one other protestor, who said that police had unlawfully searched their bags. Even viewing the evidence in the light most favorable to Stedl, he has not offered evidence proving the first method of satisfying *Monell's* policy requirement: there was not evidence of a "longstanding practice or custom which constitutes the 'standard operating procedure' of the local government entity." *Ulrich*, 308 F.3d at 984 (quoting *Jett v. Dallas Indep. Sch.*

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Dist., 491 U.S. 701, 737, 109 S.Ct. 2702, 105 L.Ed.2d 598 (1989)). Similarly, Stedl didn't show "that [the unidentified officer] was, as a matter of state law, a final policymaking authority whose edicts or acts may fairly be said to represent official policy in the area of decision." *Id.* at 985 (internal quotation marks omitted). Nor did Stedl's evidence establish that "an official with final policymaking authority either delegated that authority to, or ratified the decision of, a subordinate." *Id.* A showing of constitutional wrong by a single police officer may support a claim against that officer, but a claim against a municipality may proceed only with evidence that the officer acted under the municipality's policy or custom. Here, Stedl did not show that the unidentified officer acted under an official policy or custom of the City.

We affirm the district court's summary judgment in favor of the City on Stedl's claims.

D

Skove brought First Amendment and Fourth Amendment claims against Officer ***1152** Smith for Smith's seizure of Skove's sign.[FN71] The district court concluded that Smith was entitled to qualified immunity on Skove's Fourth Amendment claim because Smith had probable cause to believe that Skove had committed a crime (violating Order No. 3), and because the seizure involved exigent circumstances. The district court also granted summary judgment to Smith on Skove's First Amendment claim, holding that Smith's actions were a valid time, place, and manner restriction on speech. Skove appeals the district court's grant of summary judgment to Smith on both claims.

> FN71. In his complaint, Skove alleged that Order No. 3 was unconstitutional as applied to him, and that Officer Smith violated Skove's First Amendment and Fourth Amendment rights in seizing Skove's sign. Skove did not allege in his complaint that the City was liable under a theory of municipal liability for an alleged Fourth Amendment violation stemming from Smith's seizure of his protest sign.

[24] We review the district court's grant of qualified immunity de novo. *Elder v. Holloway*, 510 U.S. 510, 516, 114 S.Ct. 1019, 127 L.Ed.2d 344 (1994). Under *Saucier v. Katz*, 533 U.S. 194, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001), we take a two-step approach in determining whether Smith is entitled to qualified immunity. First, we determine whether Smith violated Skove's constitutional right. *Id.* at 200-01, 121 S.Ct. 2151. If we answer in the affirmative, we proceed to determine whether that right was "clearly established" such that "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* at 201-02, 121 S.Ct. 2151. If we determine at the first step that there was no constitutional violation, that ends the qualified immunity inquiry. *Id.*

We address Skove's Fourth Amendment claim and consider whether Smith violated Skove's constitutional rights by seizing Skove's sign. Under the Fourth Amendment, the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. The Supreme Court has held that "in the ordinary case, seizures of personal property are unreasonable within the meaning of the Fourth Amendment, without more, unless ... accomplished pursuant to a judicial warrant issued by a neutral and detached magistrate after finding probable cause." *Illinois v. McArthur*, 531 U.S. 326, 330, 121 S.Ct. 946, 148 L.Ed.2d 838 (2001) (internal quotation marks omitted). However, when faced with "special law enforcement needs," the Supreme Court "has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable."[FN72] *Id.*

> FN72. Exceptions to the warrant requirement, for example, include administrative searches, *Donovan v. Dewey*, 452 U.S. 594, 598, 101 S.Ct. 2534, 69 L.Ed.2d 262

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(1981), searches incident to arrest, *see United States v. Edwards,* 415 U.S. 800, 802-03, 94 S.Ct. 1234, 39 L.Ed.2d 771 (1974), automobile checkpoint searches, *see Mich. Dep't of State Police v. Sitz,* 496 U.S. 444, 455, 110 S.Ct. 2481, 110 L.Ed.2d 412 (1990), reasonable detention of suspects during the execution of a search warrant, *see Michigan v. Summers,* 452 U.S. 692, 702-05, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981), limited searches for weapons based on reasonable suspicion, *see Terry v. Ohio,* 392 U.S. 1, 27, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), and exigent circumstances, *see United States v. Place,* 462 U.S. 696, 701, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983). We have defined exigent circumstances to include "those circumstances that would cause a reasonable person to believe that entry ... was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts." *United States v. McConney,* 728 F.2d 1195, 1199 (9th Cir.1984) (en banc).

***1153** [25] Smith contends that his seizure of Skove's sign was lawful because Smith had probable cause to arrest Skove for being in the restricted zone and not within Order No. 3's exemptions. We agree that Smith had probable cause to arrest Skove because, by engaging in protest inside the restricted zone without evidence that he was exempt, Skove had violated Order No. 3. However, it is uncontested that Smith did not arrest Skove. Had Skove been arrested, ample precedent would permit a search or seizure "incident to arrest." *Knowles v. Iowa,* 525 U.S. 113, 116-17, 119 S.Ct. 484, 142 L.Ed.2d 492 (1998) (noting that the two historical rationales for the search incident to arrest exception are "(1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial"). We decline to extend the doctrine of "search incident to arrest" to give protection for a warrantless search or seizure when no arrest is made. It may be that Officer Smith declined to arrest Skove because Skove walked away and Officer Smith decided to maintain his post. Whatever Officer Smith's reason for not making the arrest, the seizure cannot be justified as incident to an arrest. Had an arrest been made, Smith could argue the sign was seized as evidence, *McArthur,* 531 U.S. at 331-32, 121 S.Ct. 946, but without an arrest, we do not see how Smith legitimately could be concerned about a need to preserve evidence of a crime from being destroyed.[FN73]

FN73. Smith argues that Skove voluntarily abandoned Skove's interest in the sign when he walked away from Smith after the seizure. This argument misses the point. The sign was seized before Skove walked away. The lawfulness of the seizure had to be shown based on evidence existing before or at the time of the seizure. Skove's departure after the sign's seizure is not material on this score.

There is some merit to the argument that where there is probable cause to arrest, evidence of the crime may be seized and the seizure considered valid even if the arrest is not completed. *See Roaden v. Kentucky,* 413 U.S. 496, 504, 93 S.Ct. 2796, 37 L.Ed.2d 757 (1974) (recognizing that "the probable cause for an arrest might justify the seizure of weapons, or other evidence or instruments of a crime, without a warrant"). A supporting reason would be that police in some settings might have to disregard competing duties to pursue and complete an arrest where, as here, a suspect walks away. Yet, we reject this position because, if police aims to arrest are so weak that they do not detain a suspect, then it seems incongruous to say that a seizure of evidence can be lawfully made without a warrant. We decline to extend the exception to warrant requirements for seizures incident to arrest to instances in which a police officer seizes evidence of a crime, but makes no arrest.

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[26] Viewing the evidence in the light most favorable to Skove, as we must in reviewing the district court's grant of summary judgment to Smith based on qualified immunity, when Smith encountered Skove there was no exigency requiring seizure of Skove's sign without a warrant. When the encounter took place on December 2, 1999, Seattle police had met with tens of thousands of non-violent and violent protestors who had inflicted severe damage on the downtown, which led to the City's promulgation of Order No. 3. The City's law enforcement resources (and officers themselves) had been taxed severely. But Smith faced a relatively calm situation at the point and time he encountered Skove on December 2. The City did not present evidence that Smith was dealing with violent protestors when he encountered Skove. By contrast, Smith's deposition testimony indicated that, just before ***1154** he saw Skove, Smith was talking with a fellow officer and "taking in the atmosphere." Viewing the evidence in the light most favorable to Skove, Smith when seizing Skove's sign was not then actively engaged in preventing others from entering the restricted zone, nor was he immediately engaged in combating violence. In fact, Skove submitted video evidence that, in the light most favorable to Skove, shows that others were not immediately present and the circumstances were not exigent when Smith confronted Skove and seized his sign.

[27] We also decline to establish a general exception to the Fourth Amendment's warrant requirement for conduct that, absent special needs consistent with the Supreme Court's precedents, is asserted to be "reasonable." It has long and consistently been the law that exceptions to the warrant requirement preceding searches and seizures are for defined categorical circumstances. *See McArthur*, 531 U.S. at 330-31, 121 S.Ct. 946 (listing examples of exceptions to the warrant requirement). Because an arrest was not made, and no established exception justifies the warrantless seizure on undisputed facts, we conclude that there is a genuine issue of material fact bearing on exigency and whether Smith's seizure of Skove's sign violated the Fourth Amendment's protection against unreasonable seizures.

We proceed to the second step of qualified immunity analysis, under which we must determine whether the right was clearly established. *Saucier*, 533 U.S. at 201, 121 S.Ct. 2151. We have held:

> Whether a right is "clearly established" for purposes of qualified immunity is an inquiry that must be undertaken in light of the specific context of the case, not as a broad general proposition. In other words, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right."

Graves v. City of Coeur D'Alene, 339 F.3d 828, 846 (9th Cir.2003) (quoting *Saucier*, 533 U.S. at 201-02, 121 S.Ct. 2151) (alteration in original).

[28] The question before us then becomes whether a reasonable officer in Smith's position would have understood that he could not lawfully seize Skove's sign absent an arrest of Skove or exigent circumstances. We have rejected the position that a seizure could be made based on probable cause to arrest, when the arrest was not completed. Moreover, viewing the evidence in the light most favorable to Skove, we cannot say that the circumstances were indisputably exigent at the time and place Officer Smith confronted Skove and seized his sign. Because the exceptions to the Fourth Amendment's warrant requirement have been categorically defined, and because "in the ordinary case, seizures of personal property are unreasonable within the meaning of the Fourth Amendment ... unless ... accomplished pursuant to a judicial warrant issued by a neutral and detached magistrate after finding probable cause," *McArthur*, 531 U.S. 326, 330-31, 121 S.Ct. 946, 148 L.Ed.2d 838 (internal quotation marks omitted), we hold that a reasonable officer in Smith's position would have understood that his warrantless seizure of Skove's sign without an arrest and without exigency offended the guarantees of the Fourth Amendment. We therefore reverse the

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district court's grant of qualified immunity to Smith on Skove's Fourth Amendment claim.[FN74]

> FN74. Skove contends that he is entitled not only to reversal of the summary judgment given Smith, but also to a grant of summary judgment establishing Smith's liability for the seizure of Skove's sign. On this requested summary relief for Skove, we view the evidence in the light most favorable to Smith, rather than as we have viewed it above most favorably to Skove. Smith testified by declaration that when he seized Skove's sign he intended to "detain Mr. Skove to determine whether he was authorized to be in the zone." Smith also said in his declaration that "[g]iven the nature and extent of the protests in the area and my assignment, I decided not to pursue Mr. Skove to detain him or arrest him for violating [Order No. 3] and ignoring my directives." Viewing the evidence in the light favorable to Smith, we conclude that there are genuine issues of material fact whether the circumstances at the time and place of the seizure showed sufficient exigency to justify warrantless seizure. *See, e.g., McConney,* 728 F.2d at 1199. The factual issue of exigency must be presented to a trier of fact.

***1155** [29] As for Skove's First Amendment claim against Smith, we determine that the district court properly granted summary judgment to Smith. To prevail on his First Amendment claim, Skove must provide evidence showing that Smith "deterred or chilled [Skove's] political speech and such deterrence was a substantial or motivating factor in [Smith's] conduct." *Sloman v. Tadlock,* 21 F.3d 1462, 1469 (9th Cir.1994). Smith testified in deposition that he approached Skove and seized Skove's sign because Skove was engaged in protest, an activity Smith knew to be prohibited by Order No. 3. Skove submitted no evidence to the district court to establish that Smith's actions were motivated by opposition to Skove's political beliefs or that Smith's actions were motivated by a desire to chill Skove's speech. Viewing the evidence in the light most favorable to Skove, we conclude that the district court properly granted summary judgment to Smith on Skove's First Amendment claim, and we affirm the district court on this issue.

E

We reverse the district court's grant of summary judgment to the City on Menotti's Fourth Amendment and false arrest claims and remand those claims for trial. We also reverse the district court's grant of qualified immunity to Officer Smith, and remand for trial the issue of Smith's liability for the seizure of Skove's sign. We affirm the district court's dismissal of all other claims asserted by Menotti, Sellman, Stedl, and Skove.

V

Justice Stewart once observed for the Supreme Court, in no uncertain terms, that "[t]he guarantees of the First Amendment have never meant that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please." *Greer v. Spock,* 424 U.S. 828, 836, 96 S.Ct. 1211, 47 L.Ed.2d 505 (1976) (quoting *Adderley v. Florida,* 385 U.S. 39, 47-48, 87 S.Ct. 242, 17 L.Ed.2d 149 (1966)).[FN75] When a city is charged with the critically important responsibility of hosting a convention of world leaders, a setting in which the eyes of the world are on the city and our country, and our nation's reputation is at stake as well, the city must have the power to maintain civic order in a responsible way that does not unduly interfere with the gathered convention or with civil liberties. In balancing desired freedom of expression and the need for civic order, to accommodate both of these essential values, a measure of discretion necessarily must be permitted to a city, on the scene with direct knowledge, to fashion remedies to restore order once

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lost. It may be that a violent subset of protestors who disrupt civic order will by their actions impair the scope and manner of how law-abiding protestors are able to present their views.

> FN75. Justice Stewart's quoted observation was made in the context of the Court's decision restricting protest on a military base. The same idea, however, animates the permissibility of reasonable time, place, and manner restrictions on protest in a public forum.

***1156** Given the breakdown of public order that confronted Seattle, we decline to hold unconstitutional the City's implementation of procedures necessary to restore safety and security to its residents and to the visiting world leaders. As occurred in this case, a city hosting an important meeting may be besieged with tens of thousands of persons, some with lawful intentions in the best tradition of civic protest, but others with violent and disruptive aims. When violent protestors substantially disrupt civic order, there must necessarily be consequences for all if a city is to satisfy its superordinate duty to provide safety and security. While respecting the liberty of protestors, a city must be permitted to act reasonably, within the bounds of the Constitution, to fulfill its responsibilities of providing physical security and the maintenance of order that is required for all of a city's residents and visitors.

We reject the facial challenges to Order No. 3, as well as the general challenge to police discretion implementing it under the Operations Order. In most respects, and particularly in regard to the permissibility of the City's adoption of Order No. 3 and its accompanying Operations Order, we affirm the judgment of the district court. However, as explained above, viewing the evidence in the light most favorable to Appellants, in some instances police conduct may have gone too far and infringed certain individual protestors' constitutional rights by making the content of their expressed views the test for their entry into the restricted zone. We reverse and remand to the district court the Hankin plaintiffs' as-applied challenge to Order No. 3, as well as the issue of class certification. We also reverse and remand to the district court identified issues regarding the arrest of Menotti and the seizure of Skove's personal property. On the record before us, we conclude that trial of disputed facts is necessary on the claims for which we reverse and remand.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

***1357**

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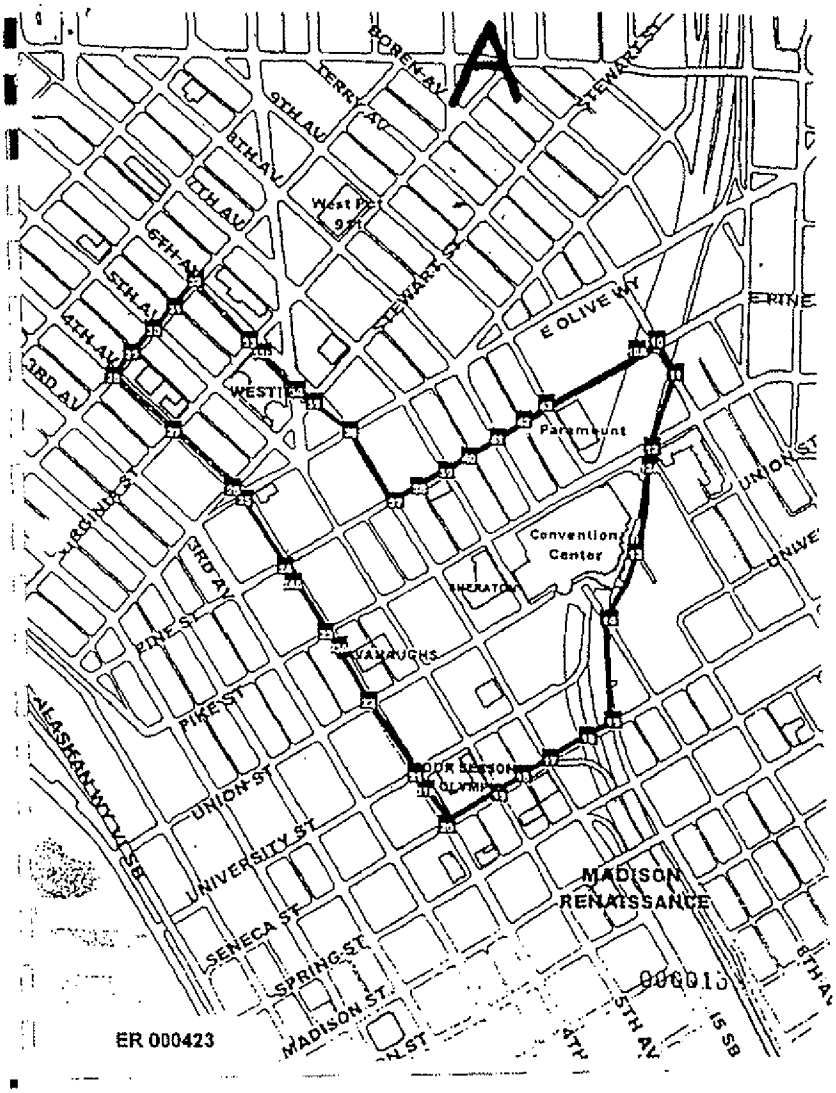

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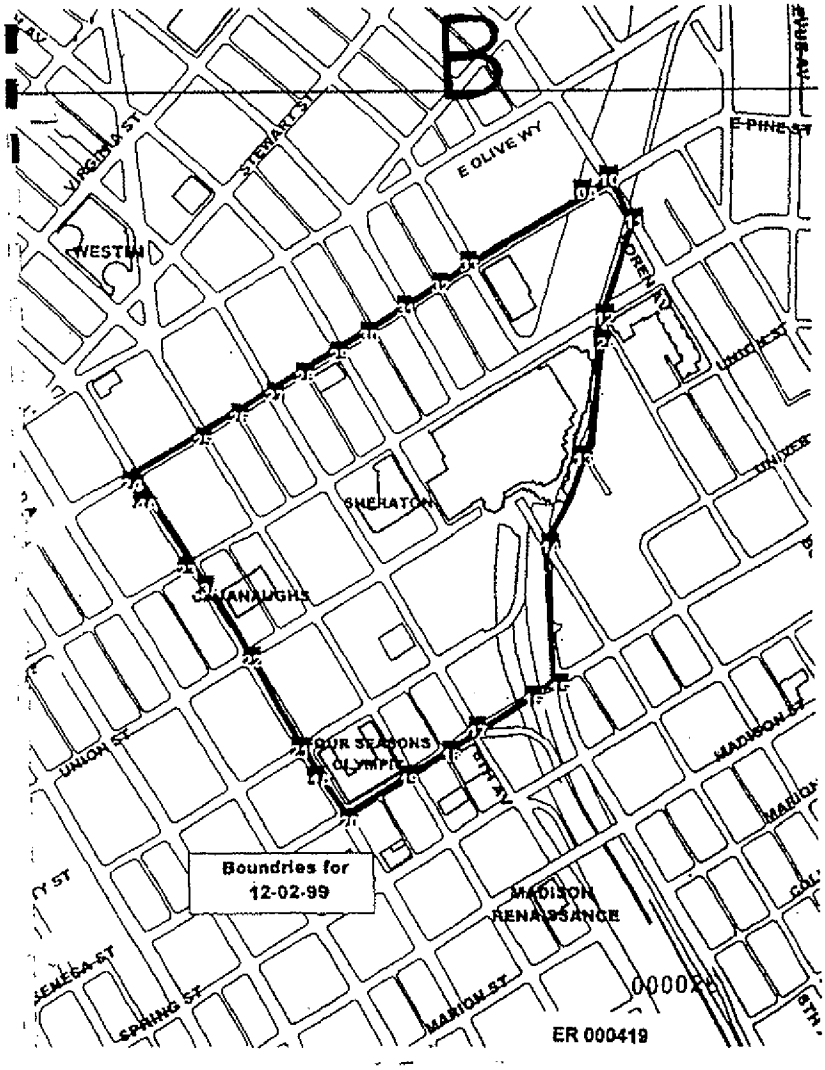

PAEZ, Circuit Judge, concurring and dissenting:

I concur in the majority's holding that Seattle's Civil Emergency Order Number 3 (Order No. 3) was content-neutral and served a significant government interest. I cannot agree, however, that Order No. 3 was narrowly tailored and left open ample alternative channels of communication. I also disagree with the majority's determination that Order No. 3 provided adequate guidance to the law enforcement officers who were assigned the task of maintaining the perimeter of the "No Protest Zone." [FN1] Accordingly, I respectfully dissent from *1159 Parts III.A.2-3 and III.B of the majority's opinion.

FN1. According to Assistant Seattle Police Chief Harvey Ferguson, "that was the term that was being used" until "word came out ... that was an inappropriate term" and the name was changed to "restricted zone." As I explain in Part I.B., below, the City's policy was to keep this area protest-free. City officials, police, and demonstrators all used the term "No Protest Zone" to refer to the area, and therefore I use that term throughout this dissenting opinion.

Assuming that Order No. 3 had been a valid time, place, and manner restriction on protected speech, I agree with the majority that the *Hankin* class action plaintiffs have raised material triable issues of fact

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regarding their claim that City officials enforced Order No. 3 to suppress the First Amendment speech of those individuals who sought to protest the World Trade Organization's policies. The *Hankin* class action plaintiffs should be permitted to proceed with their challenge to the Order as applied, and I therefore concur in Part III.C. of the majority opinion.[FN2]

> FN2. Because I would hold that Order No. 3 is constitutionally invalid, I would reverse the district court's adverse ruling as to Thomas Sellman and remand for further proceedings. I therefore dissent from Part IV.B. As I explain in more detail in Part III, *infra,* I concur in Parts IV.A and D of the majority opinion that Victor Menotti and Doug Skove have presented sufficient evidence to create material factual disputes for trial. I dissent, however from Part IV.C, affirming the summary judgment ruling against Todd Stedl.

The heart of my disagreement with the majority is its conclusion that Order No. 3 was narrowly tailored, that it left ample alternative avenues of expression and that, as implemented, it gave sufficient guidance to law enforcement officers to determine who could be admitted into the No Protest Zone. The majority concludes that the City's ban on all expressive activity in the 25 square blocks surrounding the WTO convention and hotels that housed WTO delegates passes our searching First Amendment review. I cannot agree, and in my view that conclusion is inconsistent with our long tradition of protecting free speech even when that protection may seem inconvenient.

The majority is correct that our inquiry into the content neutrality of Order No. 3 focuses only on the face of the Order itself. But in evaluating whether Order No. 3 is narrowly tailored and leaves open ample alternative avenues of expression, we look deeper than the text. Instead, "we must consider the [City]'s authoritative constructions of the ordinance, *including its own implementation* and interpretation of it." *Forsyth County v. Nationalist Movement,* 505 U.S. 123, 132, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992) (emphasis added). While the text of Order No. 3 may be content neutral, the City's policy was to apply the law selectively such that it was not narrowly tailored to serve its asserted non-speech-related interest of preserving safety and order. As the Seattle City Council put it, "while [Order No. 3] might have met legal scrutiny on paper, [it] resulted in actions that were explicitly intended to limit protest." Report of the WTO Accountability Review Committee, Seattle City Council, at 5 (Sept. 14, 2000) (hereinafter "ARC Report").

I. Facts

A.

The picture painted in the majority's version of the events surrounding the WTO convention in Seattle fails to capture the full story. I agree with the majority that the violent protestors created a dangerous, even chaotic situation in Seattle that warranted substantial responsive measures by the City to restore order. The City surely had a significant interest in taking remedial action. Even in light of the serious violence, however, the City's response-cordoning off a 25-square-block area of downtown Seattle to restrict all forms of protest-was not constitutionally justified.[FN3] The majority opinion omits ***1160** several crucial facts that undermine its portrayal of a city in crisis. First, contrary to the majority's assumption, Order No. 3 was not justified by "the dire facts confronting the City in the early morning hours of December 1 during the WTO conference." *Maj. op.* at 1140. As Assistant Seattle Police Chief Edward Joiner's deposition testimony made clear, the decision to declare a state of emergency and to impose the police perimeter around the downtown area was *not* made in direct response to the violence and vandalism. That decision instead followed the realization that many of

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the peaceful protestors from the large, well-organized labor march would not be leaving Seattle. The crowd was simply larger than the police had anticipated. Joiner testified that

> [a]s the march concluded and it became evident that a sizeable portion of the marchers were not going to leave the downtown area as we anticipated and it became clear that we were not going to be able to bring the situation under control without taking some sort of drastic action, I made the decision that the only-the only recourse we had was to establish the police perimeter where we could provide security for the delegates and so forth.
>
> Making the decision to impose the police perimeter, the City drew no distinction between peaceful protestors and those likely to cause violence-Joiner, for example, testified that during this process, the concept of peaceful and non-peaceful protestors "merged."

Second, although I do not suggest that the violence confronting the City was insignificant, the majority's account exaggerates its pervasiveness. The ARC Report, for example, noted that even according to the highest estimates, only "well under one percent" of the demonstrators in Seattle engaged in acts of vandalism or violence. ARC Report at 3. Mayor Paul Schell agreed that he had "expected the vast majority of the protestors to be peaceful, and, in fact, it turned out that the vast majority of protesters were peaceful." At a press conference at approximately 5:00 p.m. on November 30, Mayor Schell maintained that the protestors for the most part "were friendly-they were our sons and daughters, they were our neighbors, they were the people who we work with. And there's no reason to be afraid of them." The peaceful protestors even made efforts to prevent the violence by, for example, blocking vandals from access to store windows they attempted to break.

Further, the majority does not paint a clear picture of the situation confronting City officials at the time they adopted the Order. The violence of November 30 had ended before Order No. 3 was implemented. The nighttime curfew-not challenged here-had gone into effect and the streets of downtown Seattle were calm and under control. On Tuesday night, at roughly 8:00 pm, the police did a sweep of the streets and, according to Joiner's testimony, discovered that "[a]t that time all of the demonstrators had left. The situation was under control. It was quite peaceful."[FN4]

> FN3. The majority states that "[t]he whole world witnessed the rampant violence and chaos in the streets of Seattle at the outset of the WTO meeting." *Maj. op.* at 1120 n. 7. But as the Seattle City Council suggested, those images may not have accurately reflected the situation in Seattle, as peaceful political demonstrators "were drowned out by press coverage of disturbances." ARC Report at 4.

> FN4. The majority's warning that "[e]ven a fierce battle may experience a respite of calm, and the calm of an evening can precede a storm in the morning[,]" *maj. op.* at 1131 n. 33, is alarmism supported by neither the evidence nor the law. The fact that violence had ended and Seattle's streets were calm when the Mayor issued the Order is undisputed in the record. Nonetheless, the majority provides the City "reason to believe ... that the violence attendant to the WTO conference had not ended prior to Order No. 3's enactment, but had just temporarily subsided and would resume contemporaneous with WTO proceedings." *Id.* at 45 n. 44. At the summary judgment stage, however, we must view the evidence in the light most favorable to the nonmoving party. *Balint v. Carson City,* 180 F.3d 1047, 1054 (9th Cir.1999) (en banc). Only by viewing the evidence in the light most favorable to the *City* can the majority conclude that the violence had "temporarily subsided." With this improp-

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> er factual determination, the majority sidesteps binding circuit law, which holds that "the occurrence of limited violence and disorder on one day is not a justification for banning all demonstrations, peaceful and otherwise, on the immediately following day (or for an indefinite period thereafter)." *Collins v. Jordan*, 110 F.3d 1363, 1372 (9th Cir.1996).

***1161** As the violence on November 30 erupted, the police responded with force that, as the City Council's report concluded, likely intensified the situation. "As authorities lost control of the streets they resorted to methods that sometimes compromised the civil rights of citizens *and often provoked further disturbance.* " ARC Report at 3. The police response "was sometimes out of proportion to the threats faced" and included "seemingly gratuitous assaults on civilians." *Id.* at 4. Plaintiffs' expert Robert Klotz, the former Commander of the Special Operations and Traffic Division in the Washington, D.C. police force, concluded that "the state of emergency declared on November 30, 1999 was to a large extent an emergency of the City's own making." Klotz continued,

> Being seen and heard is why demonstrators come to the event, and if they feel they are barred from doing so, it will simply make the crowd angry and more dangerous. It also makes the police the object of dissatisfaction, rather than the original source of protest. It can also motivate some people to protest police activity who never wanted to be involved originally.

One consequence "was to bring sleepy residents out of their homes and mobilize them as 'resistors.' " ARC Report at 11.

City officials were apprised of the large number of protestors planning on coming to Seattle well in advance of the conference. Klotz stated in his declaration that "[t]he preconference estimates of the size of the crowds were generally consistent with the number of people who actually attended." At a police training on demonstration management and crowd control that Seattle Police Captain Jim Pugel attended in July 1999, officials "said on a scale of 1 to 10 the WTO rated about a high 8." Furthermore, the violence that occurred in the weeks leading up to the conference should have put the City on notice that they would need to plan well for the event. *See maj. op.* at 1120. According to Captain Pugel's own After Action Report, police officials were aware by at least November 28-if not earlier-that protest groups were "intent on facilitating between 500 and 1,500 'civil disobedience' arrests" on November 30. They also knew at that time that they had insufficient resources and "that we might not be able to sustain the arrest of so many persons." There should have been no surprises.

According to the ARC Report, however, "[p]lanning for the WTO was driven by political and cost considerations that undermined the city's ability to cope with the disorders that ensued." ARC Report at 8. The Report found that the "city government failed its citizens through careless and naive planning, poor communication of its plans and procedures, confused and indecisive police leadership, and imposition of civil emergency measures in questionable ways." *Id.* at 3. Klotz similarly concluded that the City "did not adequately plan or train for the WTO conference," focusing its attention on highly unlikely events rather than "events that were, according to the available intelligence, quite likely to occur (i.e., organized civil disobedience and some vandalism)."

***1162 B.**

The manner in which the City implemented Order No. 3 is also worthy of more searching inquiry than the majority affords. The plaintiffs submitted a great deal of evidence to undermine the City's claim that Order No. 3 was necessary to contain and prevent the violence of November 30. Notably, the Order allowed anyone who did not visibly display opposition to the WTO to enter the zone, without regard to dangerousness or likelihood of violence.

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While the police scoured for "No WTO" signs and buttons, there was no evidence that officers checked bags for crowbars, weapons, or bombs. Lauren Holloway, for example, stated in her declaration that the officers she encountered at the perimeter "did not search me for weapons or ask for ID. They were only interested in our signs and stickers, which they either confiscated or forced us to remove." Andrew Russell recounted a similar experience in his declaration. But this "selective or partial" No Protest Zone did not serve the City's safety and security interests, as Klotz explained:

> [I]t does not serve security goals to have a supposedly secure area where a very large number of inessential people are allowed to enter and roam at will. By giving a free pass to people who claimed to live, work, or even shop at locations within the zone, the City's orders allowed a very large number of people into this supposedly secure area.... Serious terrorists or other people bent on breaking the law will have no trouble taking off their anti-WTO stickers at the boundary and pursue their plans once inside the zone.

The plaintiffs also presented significant evidence that even as members of the general public were permitted entry, protestors were turned away from the No Protest Zone. Police Chief Norman Stamper testified that, under the Operations Order that implemented Order No. 3, "a reasonable purpose does not include coming into the area for protests, so I think the language itself gives rise to the claim that this had become a no-protest zone." At least as late as Friday, December 3, official documents referred to the area as the " 'No protest' zone." Seattle Police Officer Christopher Myers in his deposition testimony referred to it as "the protest zone. There was where protesters were allowed. There was where protesters weren't allowed." And testimony from several protestors reveals that police officers guarding the perimeter used the term "No Protest Zone" when speaking with the public.

Stamper clarified in his deposition that "[f]rom [the line officers'] point of view it effectively meant anybody coming in to protest" would be excluded from the zone. Joiner testified that City officials even considered the idea of allowing in peaceful demonstrators but rejected it, "because I think at that time it had been made very clear there were not going to be peaceful demonstrations within that area." If a person attempting to enter the zone did so, not for the purpose of shopping, but instead intended, individually, to peacefully protest, "she would not have been allowed in."

According to the City Council's report, "officers in the field were briefed with instructions that there would be no protests allowed." ARC Report at 15. Seattle Police Officer Ron Smith testified that, according to "the briefing [he] was given," protesting was not a legitimate reason to enter the zone. The State Patrol, one of the cooperating law enforcement agencies, made that policy explicit: its response plan for December 1 stated that "[o]nly people with legitimate business will be allowed to enter, (working in the area, live, etc.) [sic]. Obvious protesters, people *1163 without legitimate business, or people that refuse to give information will not be allowed in the area." In a televised public address, Joiner warned, "Anyone that goes into that area to protest will be arrested immediately."

Even those who should have been granted access to the zone according to the plain terms of the Order, such as people who lived or worked in the zone, were denied entry if they wore "No WTO" stickers or carried protest signs. Officer Smith testified that the policy as conveyed to him by the Mayor was that "[e]ven if you live there, you are not supposed to be protesting" because "the protest area is down south of Seneca and west the Fourth [sic]. That's what the Mayor said." The plaintiffs offered numerous examples of Seattle police enforcing just such a policy. Michael Louis Evanson, for example, stated in his declaration that while on his way to a tuxedo fitting on 4th Avenue, he was stopped by police officers who snatched his hat and ripped off a sticker that read: "WTO: If it doesn't work for working families, it doesn't work." An officer also reached

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under Evanson's poncho without permission, grabbed papers he was holding and would not return them. The papers were invitations to a party at the Methodist Church that had nothing to do with the protest.

Martha Ehman, an attorney who worked within the zone, declared that she passed through the perimeter by following the same route she normally took to walk to work every day. She saw three people in business suits pass through the perimeter without being stopped, but she was dressed casually and officers asked her where she was going. They let her pass when she told them where she worked, but as she walked away the officers yelled for her to stop when they noticed that the words "No WTO" were written in masking tape on her backpack. They asked her to remove it and she refused; they then informed her if she did not remove the tape she would be arrested. To avoid arrest, Ehman did as the officers instructed.

Ronald Matyjas also worked downtown, at his architect office just north of the Pike Place Market. He stated in his declaration that on December 1, he wore his typical work attire "with one difference: I had a[n 8.5 x 11"] sign attached to the back of my raincoat that said "No WTO." As he was walking to work, he attempted to pass through the perimeter but he was stopped by an officer who asked him why he was walking through the area. Matyjas replied that he was on his way to work. The officer told him he could not go downtown with that sign on his coat; another officer tore the sign off without Matyjas's permission. Matyjas noted that "[t]he other officers standing nearby did nothing to stop or correct the officers that confronted [him]."

Ehman, Matyjas, and Andrew Russell all stated in their declarations that once they took off their political signs, for the remainder of the week they were not stopped by police. They were *only* stopped for wearing political messages.

Michael W. Gendler, another Seattle attorney, was a partner at a law office located on the edge of the zone at Fourth Avenue and Pike Street. He declared that he and three of his employees left their office carrying three protest signs which read, respectively, "Downtown Workers Against the WTO," "Protect Free Speech!," and "Say No to WTO" with the words "No Sale" imposed over a picture of the globe. When they attempted to enter the zone, police stopped them and refused entry even after Gendler showed the officers his business card and address. Gendler cited Order No. 3 and told the officer that he had a right to enter because he was an "owner of a business within the ***1164** limited curfew area." The group was not allowed to enter. Gendler then got rid of his sign and the group walked one block further to another entrance, where Gendler (no longer displaying any anti-WTO messages) simply walked through the perimeter "without being stopped or questioned by any of the officers." His employees, however, still held their signs and they were stopped by officers who told them "they would not be allowed to proceed because they were attempting to enter a 'no protest zone.' " They again displayed their business cards and again were denied entry. "Both were informed that they could proceed without their signs, but not with them." They abandoned their signs and proceeded to enter the zone.

In many other cases, police officers simply made no attempt to determine whether or not an individual was authorized to enter the zone once they spotted any anti-WTO protest material. Andrew Russell, for example, was stopped by an officer as he attempted to enter the zone wearing a "No WTO" button. An officer told him that he could not wear his button inside the "No Protest Zone. He used that specific term." Russell was allowed to enter the zone and keep the button only after removing it from his clothes and putting the button away.

Liad Kantorowicz and her friend Lauren Holloway were stopped by the police at the perimeter. Kantorowicz held a sign and wore three stickers; two "No WTO" stickers and one sticker on her chest which read, "Attention Police Enforcement Officer,

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I refuse ... to speak to you. I demand to have my phone call. I demand to call a lawyer." The sticker also included phone numbers of lawyers. An officer noticed Kantorowicz's sign and asked to take it away. When she refused to give it to the officer, Kantorowicz recounted,

> he just grabbed the sign from me and took it, threw it over his shoulder. And I said, "Can I have my sign back? It's my property." Maybe at that point he said, "No. This is a no-protest zone."

An officer then grabbed Kantorowicz and removed the stickers from her clothing.

Holloway carried a sign that read, "It's Our Duty, It's Our Right, To Fight the Power." She also wore stickers with various WTO-related slogans. When she approached the perimeter, officers grabbed her sign, crumpled it up, and threw it away behind a line of police. They told her and Kantorowicz that they were in the "No Protest Zone" and that they would have to take off every anti-WTO sticker or they would be arrested. When an officer grabbed Holloway's arm, she told him she would remove the stickers herself "[t]o get him to leave me alone."

Sue Bastian, a schoolteacher who traveled to downtown Seattle for the WTO protests, recounted, "I was just a little old lady on my way to the Methodist church carrying these signs in a bag, and I was simply walking down the street on my way to the church." In a bag, she carried one sign that read "Free Trade is Slave Trade" and another that read "Global Cops for Global Corps." She was outside the police perimeter and she did not believe that she was within the zone established by Order No. 3. Nonetheless, she stated in her declaration that a police officer approached her and blocked her pas- sage,

> and then I was surrounded by four or five others. One of them-or somebody took my WTO sticker off my rain jacket. The sticker was underneath my backback. And one of the police took my signs away from me and looked at them and handed them to another policeman, who took them over onto the sidewalk and broke them.

The officers told her she was not allowed in the zone, refused to return her signs ***1165** and told her "if you don't be quiet and leave, I will have you arrested."

Rita Herkel had a similar experience on her way to the Methodist Church. At the northeast corner of Fourth and Spring, Herkel and her friends were waiting for the light to change so they could cross the street when three police officers approached them. Herkel and her friends were wearing lime green stickers approximately 3 x 5" that read "No to WTO." The officers said, "You're not allowed to wear stickers," and began tearing the stickers off of Herkel's clothes without permission. They searched her friend's backpack, also without permission, but did not say what they were looking for. While forcibly removing the stickers from another woman in the group, the officers tore her coat.

Harold Green, an attorney in Seattle, heard on television that a "no protest zone" had been established downtown. As he stated in his declaration, "[t]hat struck me as an unconstitutionally broad edict, so I determined to learn from personal experience what the scope of the edict was." He wrote the words "I PROTEST!" on the back of one of his business cards and, wearing a suit and tie, approached an officer at the perimeter and

> asked politely, "If I ask you a question, will I be subject to arrest?" He said that I would not. I then pulled my business card from my pocket, showed him the side which said "I PROTEST!," and asked him, "If I were to cross this line and display this card, would I be subject to arrest?"
>
> He immediately responded that I was subject to arrest at that moment. I then asked him, " Am I in a zone where what I am doing is illegal?," and he repeated that I would be arrested if I did not leave.

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> I was immediately confronted by two or three other riot police officers with visored helmets and long night sticks who began to shout repeatedly at me, "Go!", "Just Go!" ... As I did not want to be arrested, I put the card back in my pocket and walked back down (west) Spring Street.

Plaintiff Doug Skove similarly went downtown to protest after hearing a news broadcast describe the zone as a "no protest zone." He went inside the zone carrying a sign that said "I have the right to protest non-violently." Skove testified at his deposition that Officer Ron Smith grabbed the sign out of his hand without Skove's permission, saying "I'm going to take that" before any other communication between the two. Smith told him to come over but Skove instead walked away and was not pursued. This incident was captured on videotape.[FN5] Officer Smith never ascertained whether Skove was authorized by the Operations Order to be within the zone before tearing the sign away from him. Smith testified in deposition that he determined only that Skove "appeared not to belong there" because "[h]e was walking around with a sign." Skove then went to the corner of Fifth Avenue and Pike Street and took out a second sign, where another unidentified officer again took the sign from his hands without permission and without any prior verbal exchange.

> FN5. The videotape shows Smith approaching Skove and asking, "What did the Mayor tell you? Okay? Other side of Fourth, other side of Seneca, right?" Smith then ran toward Skove, who was crossing the street, and grabbed his sign out of his hands. As previously noted, however, on the City's motion for summary judgment, we take the evidence in the light most favorable to the plaintiffs and therefore credit Skove's recollection of the event. *Balint*, 180 F.3d at 1054.

Other people were stopped by the police while attempting to more actively protest ***1166** within the zone, confirming the City policy that protesting was not a "reasonable purpose" within the meaning of the Order. Thomas Sellman, a plaintiff in this appeal, heard on the news that Seattle had adopted a "no protest zone" where people could enter for any reason other than protest. He went downtown "basically to find out what was really meant and whether the broadcasters in some way had accurately described the intent of the Mayor and the City of Seattle." He walked down the sidewalk, within the zone, and distributed leaflets criticizing the WTO's ability to overrule endangered species laws. He was stopped by Detective S.D. Stevens, who determined that Sellman's activity was "obviously" not "legitimate business" within the scope of the Operations Order. Stevens told him he needed to go two blocks south in order to protest. Instead of leaving, Sellman handed one of his flyers to a WTO delegate as he walked by. Stevens then placed Sellman under arrest for failure to disperse.

Plaintiff Todd Stedl went to the zone to hand out copies of the First Amendment; if an officer stopped him he "planned on saying 'I'm not protesting; I'm educating.' " Stedl testified at his deposition that the officer who first stopped him at Fourth Avenue and Seneca Street reacted by saying, " 'not with this you're not,' and he grabbed the fliers that I was holding on to and then proceeded to dig into the bag where I had the remaining fliers.... As he reached into the cloth sack, I said, 'you need a search warrant to take those.' ... He said, I believe-he said something to the effect of, 'no, I don't.' " His remaining fliers were seized but Stedl was not arrested. When Stedl asked the officer for his badge number, he was told to "get going." He then left and continued to protest only outside of the zone. Stedl testified that "I was intimidated to the point that I felt that if I had returned to the no protest zone to hand out the First Amendment, that I would most likely get arrested, yeah, and that was not my intent ...."

After many months of investigation, the Seattle City Council concluded that "Seattle was not sufficiently mindful ... of the need to create an environment protecting the rights to speech and assembly."

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ARC Report at 5. The City's policies in implementing Order No. 3 targeted expressive activity but did not seek to distinguish between violent and non-violent protestors or to better-tailor the fit between Seattle's security problems and a legitimate solution.

II. Restrictions on Time, Place, and Manner of Speech

A. Narrow Tailoring

If a regulation restricting speech in a public forum is content neutral, our standard for determining whether it is narrowly tailored is more relaxed. *Perry Education Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983). The policy adopted "need not be the least restrictive or least intrusive means" available to survive this intermediate level of constitutional scrutiny. *Ward v. Rock Against Racism,* 491 U.S. 781, 798, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). But a government entity is not free to adopt any regulation that serves its interests more effectively than no regulation at all; a restriction may not burden "substantially more speech" than necessary to further the government interest at stake. *Id.* at 799, 109 S.Ct. 2746; *see also Kuba v. 1-A Agricultural Ass'n,* 387 F.3d 850, 861 (9th Cir.2004). "A statute is narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." *Frisby v. Schultz,* 487 U.S. 474, 485, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988); *see also Ward,* 491 U.S. at 799, 109 S.Ct. 2746 ("Government may not regulate expression in such a manner that a substantial portion of the ***1167** burden on speech does not serve to advance its goals."). This is so even if the rule is completely effective in eliminating the targeted evil. *Id.* at 799 n. 7, 109 S.Ct. 2746.

The 25 square blocks of downtown Seattle cordoned off by Order No. 3 were plainly a public forum; indeed, city streets are "quintessential public forums" which " 'have immemorially been held in trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' " *Perry Education Ass'n,* 460 U.S. at 45, 103 S.Ct. 948 (quoting *Hague v. CIO,* 307 U.S. 496, 515, 59 S.Ct. 954, 83 L.Ed. 1423 (1939)); *see also ACLU of Nevada v. City of Las Vegas,* 333 F.3d 1092, 1099 (9th Cir.2003). "No particularized inquiry into the precise nature of a specific street is necessary; all public streets are held in the public trust and are properly considered traditional public fora." *Frisby,* 487 U.S. at 481, 108 S.Ct. 2495.

Our inquiry into whether Order No. 3 was narrowly tailored should begin by analyzing the government's asserted interests in responding to the violence confronting Seattle on November 30. *See Kuba,* 387 F.3d at 858. Without doubt, a city has a significant interest in preserving the safety of its residents and visitors, and in preventing violence and vandalism on city streets.[FN6] *See, e.g., Perry v. Los Angeles Police Dep't,* 121 F.3d 1365, 1369 (9th Cir.1997) ("Government interests in promoting public safety and the orderly movement of pedestrians, and in protecting the local merchant economy are ... substantial."). A city cannot, however, use a concededly-legitimate interest in "security" to justify a rule drawn as broadly as it wishes. *See Bl(a)ck Tea Soc'y v. City of Boston,* 378 F.3d 8, 13 (1st Cir.2004) ("Security is not a talisman that the government may invoke to justify *any* burden on speech (no matter how oppressive)." (emphasis in original)). Here, Klotz's declaration suggests, "[t]he City's goal should have been to transport ***1168** the delegates to the conference, not necessarily to protect a particular method of getting them to the conference (walking individually, without any designated route)." Viewing the City's interest in this broader context,[FN7] it becomes clear that such a sweeping prohibition on speech as Order No. 3 imposed was not justified.[FN8]

FN6. The majority's assessment of the City's significant interests is confused and

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inconsistent, and changes subtly depending upon the argument the majority seeks to bolster. At times, the majority cites "the core interest" as protecting the president and foreign dignitaries. *See maj. op.* at 1134-35 n.41. But it also claims that the City's interest was in "maintaining public order," *id.* at 1131, "providing security to the core downtown area," *id.* at 1131 n. 32, and "seeing that the WTO delegates had the opportunity to conduct their business," *id.* at 1132.

In my view, the City had a significant interest in protecting the public safety. That broad interest required that the City protect the public (including President Clinton and foreign dignitaries) both inside and outside the No Protest Zone, and provide safe transport for delegates to and from the convention. Order No. 3 helped serve those interests, but it was a sledge-hammer solution where a more tailored response would have preserved First Amendment protections. Moreover, the City did not have a constitutionally significant interest in sheltering delegates from the unpleasantness or inconvenience of a large demonstration. The Order itself was justified by a need "to protect the public peace, safety, and welfare" and to preserve the safety of "delegates, dignitaries, citizens, public safety employees and protestors" alike.

The City now argues, relying on *Hill v. Colorado,* 530 U.S. 703, 718, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000), that it had a significant interest in protecting the delegates' "right to be left alone." In *Hill,* the Supreme Court upheld a law that prohibited any person from knowingly approaching within 8 feet of another person to protest, within designated areas near medical facilities. *Id.* But in *Kuba,* we clarified that *Hill* "did not 'protect a potential listener from hearing a particular message,' but only 'from the potential physical and emotional harm suffered when an unwelcome individual delivers a message by physically approaching an individual at close range.' " 387 F.3d at 861 n. 10 (quoting *Hill,* 530 U.S. at 718-19 n. 25, 120 S.Ct. 2480). As in *Kuba,* the audience here was not "particularly vulnerable," *id.,* and therefore did not need "to be left alone."

FN7. The majority mischaracterizes my assessment of the City's interest as one more narrow than the situation required. *Maj. op.* at 1131 n. 33. That is inaccurate. The City's significant interest in safely transporting delegates to the convention sites is certainly broader than the interest Order No. 3 actually served: "to protect a *particular method* of getting [delegates] to the conference...." The vast size of the zone was only crucial to that more narrow interest. *C.f. maj. op.* at 1134. The majority recognizes that the City had an interest in "ensuring safe transit for delegates between venues and hotels," *id.,* but offers no convincing rationale for rejecting the plaintiffs' less-restrictive alternatives.

FN8. The majority further maintains that "[t]he City also had an interest in seeing that the WTO delegates had the opportunity to conduct their business at the chosen venue for the conference; a city that failed to achieve this interest would not soon have the chance to host another important international meeting." *Maj. op.* at 1131. I am not convinced that a city's interest in hosting such an event is "significant" for purposes of this analysis. Because it is not asserted as an interest on appeal, we should not provide this justification for the

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City.

Like a hypothetical ban on handbilling, *see Ward,* 491 U.S. at 799 n. 7, 109 S.Ct. 2746, Seattle's ban on all protesting within a large area of downtown Seattle might have effectively quelled violence and improved safety. Nonetheless, because it "burden[ed] substantially more speech than [was] necessary to further the government's legitimate interests[,]" *Kuba,* 387 F.3d at 861, Order No. 3 was not narrowly tailored. The City's solution was a poor fit in several respects.

First, Order No. 3 was geographically larger than justified.[FN9] Protestors were banned from a 25-square-block area of downtown Seattle that purposely encompassed every place they could hope to communicate to delegates. [FN10] Mayor Schell testified in his deposition that he never scrutinized or questioned why the zone needed to be that large-simply, "the concept was to enclose all of the delegate hotels." But as Klotz pointed out, the size of the No Protest Zone actually impeded law enforcement anywhere other than the perimeter, since "[i]t takes more officers to secure a larger space than a smaller one." The majority cites no case in which a court has upheld a similarly-large prohibition; in fact, we have struck down restricted zones of much smaller scale.[FN11]

FN9. Order No. 3 also lasted longer than necessary. The City had the right to "act vigorously, and more extensively, to restore order," *maj. op.* at 1137, but as noted above, order *already* had been restored. *See supra* at 1160-61 & n. 4. The Mayor signed Order No. 3 in the early morning hours of December 1, long after both violence and protest activity had subsided. *See maj. op.* at 1124. Again, as we stated in *Collins,* 110 F.3d at 1372, "the occurrence of limited violence and disorder on one day is not a justification for banning all demonstrations, peaceful and otherwise, on the immediately following day (or for an indefinite period thereafter)."

FN10. The size of the No Protest Zone was reduced considerably on December 2. The new zone excluded the Westin Hotel after President Bill Clinton departed Seattle. *Maj. op.* at 1158, *see also* Appendix B.

FN11. *See, e.g., Bay Area Peace Navy v. United States,* 914 F.2d 1224, 1227 (9th Cir.1990) (holding that a 75-yard buffer zone surrounding naval ships in a parade, which the city claimed served its interest in safety and security, was too large and a 25-yard zone would serve that interest just as effectively); *United States v. Baugh,* 187 F.3d 1037, 1044 (9th Cir.1999) (holding that a 150 to 175-yard restriction on protestors from the entrance of a visitor center was too far); *Kuba,* 387 F.3d at 862 (holding that a policy "which relegates communication activity to three small, fairly peripheral areas" was too broad in relation to the government's interest).

***1169** Second, the Order banned *all* protesting without regard to the likelihood that it would lead to violence or disorder. Not only that, but any individual intent on causing harm could easily enter the zone simply by asserting that he or she fell within one of the Operations Order's exceptions. Order No. 3 banned peaceful expressive activity without regard to the City's stated safety-related goals. The majority concludes that it would have been too burdensome to require police to make case-by-case distinctions between "those protestors with benign intentions and those with violent intentions." *Maj. op.* at 1134 (citing *Hill,* 530 U.S. at 729, 120 S.Ct. 2480). This case is significantly different from *Hill:* the police established a perimeter around the No Protest Zone precisely so they could make case-by-case determinations as to who would be allowed in the restricted area. The majority would allow the police to search people they suspected of carrying stickers and handbills, but concludes that it "would not have been practical" for police to search for crowbars or spray paint. *Id.* at 1135. I see no basis

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for that conclusion.

In *Collins,* we evaluated a similar emergency order adopted under analogous circumstances.[FN12] After the verdict was announced in the first Rodney King beating trial, San Francisco found itself amidst a number of demonstrations-both peaceful and violent. 110 F.3d at 1367. Those demonstrations led to "a number of violent incidents," which caused property damage and minor injuries. *Id.* In response, then-Mayor Jordan declared a state of emergency and issued an order, approved by the Board of Supervisors, authorizing the police to disperse any gatherings "anywhere in the City and County of San Francisco whenever the peace officer on the scene has reason to believe that the gathering endangers or is likely to endanger persons or property." *Id.* The order was thus specifically targeted to bar only demonstrations that would likely lead to violence. We nonetheless held not only that the order was facially unconstitutional, but that the law was so clearly established than no reasonable officer could believe it would be constitutional. *Id.* at 1374.

> FN12. The majority is too quick to dismiss and marginalize *Collins.* By asserting that the violence confronting Seattle was worse than the violence San Francisco faced, the majority concludes that *Collins* is simply "inapposite." *Maj. op.* at 1136. But the majority's analysis of *Collins* focuses on the factors it finds favorable and ignores other important distinctions that ought to inform our judgment. For example, the majority characterizes San Francisco's emergency order as "significantly broader," *id.* at 1136 n. 45, dismissing the fact that the order was narrowly targeted to apply only to gatherings "likely to endanger persons or property." The circumstances in Seattle were clearly analogous to *Collins* and the majority is far too eager to sidestep binding circuit law.
>
> Moreover, the constitutional narrow tailoring analysis accounts for violence as part of the City's interest weighed against its tailored response. I decline to adopt the majority's approach that allows the legal framework to be shaped and distorted by its characterization of the level of violence.

In making that determination, we noted that "the proper response to potential and actual violence is for the government to ensure an adequate police presence and to arrest those who actually engage in such conduct, rather than to suppress legitimate First Amendment conduct as a prophylactic measure." *Id.* at 1372. Similarly, in *Baugh,* we noted that "[t]he Park Service, in lieu of restraining the expressive activity by refusing to issue the permit, should have issued the permit for the lawful expressive activity and then arrested the demonstrators if and when they trespassed." ***1170** 187 F.3d at 1044. The plaintiffs here argue that "police should have had more extensive staffing on the street so that they could permit protestors to enter anywhere and simply arrest and remove those who violated the law." *Maj. op.* at 1135. Yet in the face of our clear precedent, the majority asserts "we should hesitate to say that the law requires such a solution" where a city confronts actual lawbreakers. *Id.* at 1135. That hesitation is plainly contrary to our circuit's law.

Third, even those who were *exempt* under the plain terms of the Order were denied entry if they displayed any visible signs, stickers, or messages related to the WTO. The City's policy was clear: protesting was not a "legitimate purpose" for entering the No Protest Zone. This restriction cannot survive constitutional scrutiny. In *Virginia v. Hicks,* the state housing authority similarly attempted to ban "any person" from the streets of a public low-income housing development "when such person is not a resident, employee, or such person cannot demonstrate *a legitimate business or social purpose* for being on the premises." 539 U.S. 113, 116, 123 S.Ct. 2191, 156 L.Ed.2d 148 (2003) (emphasis in

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original). Again like here, the policy was enacted "in an effort to combat the rampant crime" that had infected the area. *Id.* at 115, 123 S.Ct. 2191. The Supreme Court upheld the policy under the First Amendment only after interpreting "legitimate business" to *include* expressive activity. *Id.* at 122, 123 S.Ct. 2191; *see also Hodgkins v. Peterson,* 355 F.3d 1048, 1059 (7th Cir.2004). Seattle's clear policy of excluding any form of protest from its definition of "legitimate purposes" disregards the primacy we afford such core political speech under the First Amendment.

We considered a similar problem in *Grossman v. City of Portland,* where we invalidated a law forbidding organized demonstrations in a public park without a permit.[FN13] 33 F.3d 1200, 1203 (9th Cir.1994). Like Seattle's interpretation of Order No. 3, whether an individual was subject to arrest under the statute depended entirely on whether that individual was displaying a message.

> FN13. Again, the majority dismisses *Grossman* by distinguishing the level of violence facing the City. But the legal framework is not altered by an assessment of the City's interest as more or less important; the extent of the City's interest is accounted for inherently within the narrow tailoring inquiry. *See supra* note 12. Although the facts in *Grossman* clearly differ in certain respects from the facts at issue here, that does not render its reasoning inapplicable to this context. Indeed, where the majority finds it useful to rely on cases involving minimal violence, the majority freely relies on such authority. *See, e.g., maj. op.* at 1134 (discussing *Hill,* 530 U.S. at 729, 120 S.Ct. 2480); *id.* at 1138-39 (citing *Bl(a)ck Tea Soc'y,* 378 F.3d at 14).

> Consider this: if [the plaintiff] and his companions had been standing in a group in the park after meeting unexpectedly, and had been discussing gardening, or the Portland Trailblazers, the [plaintiff] would not have been arrested. While the addition of signs-or T-shirts, or an "address"-would have occasioned the application of [the challenged ordinance], the distinctions are absolutely empty in terms of the ordinance's stated goals.
> *Id.* at 1207. Order No. 3 operated in exactly the same way, and we should not condone that affront to First Amendment protections.

The majority's conclusion to the contrary is plainly wrong. Finding *Grossman* "inapposite," the majority states that Seattle's "distinction between groups displaying messages and groups not displaying messages" was appropriate because protestors-and "not emergency personnel, ***1171** business employees, or shoppers"-caused the violence. *Maj. op.* at 1137 n. 46. The majority, however, overlooks two important points: First, a distinction between protestors and non-protestors was not at the heart of Order No. 3. The Order instead aimed to preserve the public safety by implementing a limited curfew, which would alleviate the disorder and chaos in the downtown area. *See id.* at 18-19 (quoting Order No. 3 pmbl). But the majority is also wrong as a factual matter. People within the zone (*including* employees and shoppers) who simply displayed messages were no more likely to cause violence than those without messages. *See id.* at 15 (describing an incident where a *delegate,* not a protestor, drew a gun against the crowd). Whether or not an individual wore a "No WTO" button should have had no bearing on her treatment by the police.

Fourth, the Order completely disregarded any interest in maintaining peace and security in areas *outside* the zone. While the Order may have served to protect delegates, it did not protect anyone outside of the perimeter. "[P]olice operations ... should convey a perception of even-handed commitment to protecting demonstrators as well as the larger public[;]" the City's response to the demonstrations in Seattle did not serve that goal. ARC Report at 4. The majority recognizes the poor fit between the City's asserted interests and the means it chose to respond to the violence:

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> Even outside the restricted zone, there were some problems of violence incidental to protest. Some violent protestors caused property damage, threw debris, blocked the street, and trapped people in their cars. Some protestors jumped onto an officer's patrol car and shook it by its light bar, while others laid in front of the car and prevented the officer from escaping. Some protestors took over the fuel pumps at a gas station and attempted to fill small bottles with gasoline.

Maj. op. at 1126 n. 21. The majority acknowledges that a Seattle police captain's report "noted that officers 'heard and saw numerous incidents of property destruction, burglary, and looting; but we were unable to leave our lines to take enforcement actions.' " *Id.* at 1124. The large perimeter created by Order No. 3 could only be maintained by a substantial police presence; its size thereby allowed the violence in areas outside the No Protest Zone to continue. The perimeter in fact served *only* the goal of protecting WTO delegates. It therefore violated *Ward's* requirement that "[t]he tailoring of the restraint must of course correspond to the purposes it serves." *Id.* at 1131 (citing *Ward,* 491 U.S. at 799, 109 S.Ct. 2746).

Finally, and fundamentally, Order No. 3 was not narrowly tailored to the City's interests because, as Klotz put it, "it was sought to pursue the wrong goal...." That is, the Order guaranteed that WTO delegates could walk safely from their hotels to the Convention Center on city sidewalks. But as noted above,[FN14] the City's significant interest was not so narrow; the City had less-restrictive alternatives available that would have served its interest in safety and security equally well. We have stated that "while the City need not employ the least restrictive alternative in promoting its interest in public safety, 'if there are numerous and obvious less-burdensome alternatives to the restriction on [protected] speech, that is certainly a relevant consideration in determining whether the "fit" between ends and means is reasonable.' " *Edwards v. City of Coeur d'Alene,* 262 F.3d 856, 865 (9th Cir.2001) (quoting *1172*City of Cincinnati v. Discovery Network, Inc.,* 507 U.S. 410, 418 n. 13, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993)) (alteration in original). Here, the plaintiffs suggested several.

FN14. *See supra* note 7.

The majority concludes that because Seattle's pedestrian "tunnels ... did not connect all of the hotels and venues being used by WTO delegates[,]" the plaintiffs' suggestions were not "feasible." *Maj. op.* at 1134 n. 39. Even assuming the pedestrian tunnels were an inadequate solution, the plaintiffs in fact suggested various other worthwhile alternatives. First and foremost, "the City should have developed a plan to ensure that delegates could get to the convention." As Assistant Police Chief Clark Kimerer explained in his declaration, the City was aware that "[a]n avowed and announced goal of some of the protestors was to shut down the WTO convention, i.e., prevent the delegates from reaching their venues[;]" therefore, transportation should have been an important part of the City's response. [FN15] Klotz suggested, for example, "planned bus and van service routes or controlled access routes" for the delegates; instead, "the only transportation option for delegates was to walk from their various hotels to [the] Convention Center through routes of their own choosing." Klotz suggested several concrete alternatives:

> FN15. Contrary to the majority's assertion, I do not "attempt to reduce the City's interest to transporting delegates...." *Maj. op.* at 1131 n. 32. The City's interest extended to protecting the public safety broadly. But as this discussion demonstrates, the measures employed by the City served a much narrower interest and thus were not narrowly tailored. This list of alternative measures simply demonstrates that fact.

A dedicated drive called Convention Way runs underneath the Convention Center from approximately Ninth and Pike to Seventh and Union. It is designed to accommodate tour busses and has

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> an easily protected indoor entrance to the facility.... Thus, one transportation method that should have been explored was sending buses from the hotels out to the Interstate, and into the Convention Center through this entrance. This route is indirect, but it avoids almost all protest points.
>
> Another transportation option that I did not see explored is the pedestrian tunnel that runs from the Rainier Square building ... and exiting only a few yards from a well protected off-street entrance to the Convention Center. Mayor Schell testified in his deposition that he used this route without incident on the afternoon of November 30.
>
> Further, the City could have used "flying squads," or mobile teams without responsibility for maintaining police lines, that could have pursued and arrested vandals and violent protestors. Although the City originally planned on pursuing this strategy, "[w]hen the day arrived, the flying squads were pulled off that duty to join the fixed police lines. As a result, the relatively small number of vandals could destroy property without threat of arrest." Lieutenant Neil Low, who was responsible for deploying flying squads, stated in his internal WTO After Action report that "[i]n concept, we were to work along with Lt. Joe Kessler's plain-clothes squad in locating and arresting hardcore protestors committing criminal acts. In actuality, we became involved in crowd control within one hour of being on the street, continuing with that for the remainder of the week."

"[T]he First Amendment demands that municipalities provide 'tangible evidence' that speech-restrictive regulations are 'necessary' to advance the proffered interest in public safety." *Edwards,* 262 F.3d at 863. As this list of alternative possibilities demonstrates, Order No. 3, as written, was not necessary to advance that interest, ***1173** nor did the City provide any tangible evidence of such a requirement. The Order was not narrowly tailored and the majority's contrary conclusion disregards these important considerations.

B. Ample Alternatives

Not only was Order No. 3 not narrowly tailored to serve the significant government interest in safety and security, it also failed to leave open ample alternative methods of communication. An entire medium of speech was foreclosed and the WTO protestors were silenced and relegated to the sidelines. "If an ordinance effectively prevents a speaker from reaching his intended audience, it fails to leave open ample alternative means of communication." *Id.* at 866 (citing *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.,* 452 U.S. 640, 654, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981)); *see also Bay Area Peace Navy,* 914 F.2d at 1229 ("An alternative is not ample if the speaker is not permitted to reach the 'intended audience.' "). Order No. 3 prevented protestors from entering the 25-square block area where WTO delegates could see and hear them. It confined all demonstrations to outside areas where the message the protestors sought to convey may never have reached the intended audience.[FN16]

> FN16. The majority points out that the record is "void of evidence" that protestors could not be seen or heard by delegates within the No Protest Zone. *Maj. op.* at 1141 n. 54. But neither does the record reflect that the delegates *could* see and hear protestors, or that the alternative means of communication available to the protestors were sufficient. Since it is unclear whether the message could be heard in any recognizable form, at a minimum the plaintiffs have established a genuine issue of material fact such that summary judgment is inappropriate. *Balint,* 180 F.3d at 1054. The majority states that "the undisputed facts in the record show that per the terms of Order No. 3 protestors could communicate their views directly outside most of the hotels where delegates were staying." *Maj. op.* at

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> 1141 n.54. I am at a loss to find *any* evidence in the record to support that statement; nothing in the record or in the majority opinion supports the conclusion that protestors could "communicate" anything to delegates within the No Protest Zone. The majority supports its factual assertion by drawing inferences in favor of the City. As previously noted, this is improper at the summary judgment stage. I am not prepared on this limited record to conclude as a matter of law that Order No. 3 left ample alternative avenues of expression.

In *Bay Area Peace Navy,* we found that a 75-yard security zone "rendered the [plaintiffs'] ... demonstration completely ineffective and that passing out pamphlets on land or demonstrating at the entrance to the pier are not viable alternatives because the invited visitors, who are the [plaintiffs'] intended audience, are not accessible from those positions." 914 F.2d at 1229 (quotation marks omitted). And in *Baugh,* we held that forcing demonstrators to an area 150 to 175 yards away from their intended audience "[did] not provide a reasonable alternative means for communication of [the plaintiffs'] views." 187 F.3d at 1044. Because the regulation at issue in *Baugh* was not tailored "narrowly to allow for lawful demonstrations," it did not leave open ample alternative means of communication. *Id.* Similarly, Order No. 3, which forced protestors to the sidelines and back entrances to the WTO conference venues, did not provide viable alternatives.

City officials all but conceded that the avenues of expression left open were insufficient to allow for meaningful communication. Before the conference began, Seattle police negotiated with organized protest groups to set up "established protest areas." As Assistant Chief Joiner testified,

> In establishing those sites we had tried to make sure that they were well located or that they met the needs of the protest ***1174** groups, that they were visible, that they could see whatever event that they were protesting. In other words, they would be located very close to them. And so we had tried to do everything we could to accommodate peaceful protests on the front side. Obviously that-those agreements broke down on Tuesday morning.

After the agreements broke down and the Mayor issued Order No. 3, Joiner explained that "we had to move people out of that area." In other words, the carefully-crafted protest areas, which would have allowed protestors to see the delegates and be seen by them, were eliminated. Instead, protestors were relegated to the inaccessible areas where no WTO delegates would be bothered by their presence.

Without citing any authority, the majority concludes that the ample alternatives test should be applied "with a practical recognition of the dire facts confronting the City...." *Maj. op.* at 1140. Nowhere in our case law, however, have we even suggested that courts should balance this factor against a city's asserted need to restrict speech. Rather, we require that ample alternative avenues of expression be available in order for a time, place, and manner restriction to withstand First Amendment scrutiny. There is no exception for exigency.

The City asks us to adopt the rule advocated by the Second Circuit in *Bl(a)ck Tea Society.* There, the court noted that demonstrators' messages at "a high-profile event"-the 2004 Democratic National Convention-may reach delegates even if speech is curtailed, "through television, radio, the press, the internet, and other outlets." 378 F.3d at 14. Because the majority concludes that the ample alternatives requirement was met in any event, it does not address this argument. *Maj. op.* at 1139 n. 49. The district court, however, relied on this argument to conclude that Order No. 3 did not foreclose reasonable alternative avenues of expression. The district court was mistaken and we should dispel any notion that media interest in an event can be a substitute for constitutionally-required alternative avenues of communication. As the Seventh Circuit stated in *Hodgkins,* "there is no internet connection, no telephone call, no television coverage that can compare

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to attending a political rally in person...." 355 F.3d at 1063. Public protests are at the heart of the First Amendment and are critical for incubating civic engagement and encouraging spirited debate.

We evoked this concern in *Grossman,* 33 F.3d at 1205 n. 8, and reiterated the particular importance of preserving parks as forums for public debate precisely because ordinary people lack reliable access to the media. The need to protect the average citizen's ability to be heard "is increasingly significant now, when the extremely rich have an enormous variety of privately-owned media through which to reach the public.... At present, more democratic means of communication-demonstrations in parks, bumper stickers, signs in the windows of homes-must be jealously protected." *Id.* The City would place the demonstrators at the mercy of the media industry. There is no way to guarantee that the message protestors seek to convey would be heard in any recognizable format. The First Amendment cannot allow a city to require that subjugation.

C. DISCRETION

Even a content-neutral time, place, and manner restriction will not survive First Amendment scrutiny if it allows for unduly broad discretion on the part of the official charged with enforcing the regulation. Thus, a regulation that restricts speech must "contain adequate standards to guide the official's decision and render it subject to effective judicial review." ***1175***Thomas v. Chicago Park District,* 534 U.S. 316, 323, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002). This rule applies even outside the traditional context of licensing schemes. For example, in *Board of Airport Commissioners v. Jews for Jesus,* the Supreme Court held unconstitutional a city ordinance that prohibited all "First Amendment Activities" at Los Angeles International Airport, even if the law were read to apply only to expressive activity that was not "airport-related." 482 U.S. 569, 575, 576, 107 S.Ct. 2568, 96 L.Ed.2d 500 (1987). The Court refused to validate a law that would

> give LAX officials alone the power to decide in the first instance whether a given activity is airport related. Such a law that confers on police a virtually unrestrained power to arrest and charge persons with a violation of the resolution is unconstitutional because the opportunity for abuse, especially where a statute has received a virtually open-ended interpretation, is self-evident.

Id. (quotation marks omitted).

The First Amendment forbids even the *opportunity* for abuse, not just policies that encourage preference for a favored view. *See City of Lakewood v. Plain Dealer Publ'g Co.,* 486 U.S. 750, 757, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988). If that opportunity is present, the regulation " 'creates an unacceptable risk of the suppression of ideas.' " *Kuba,* 387 F.3d at 856 (quoting *Foti v. City of Menlo Park,* 146 F.3d 629 (9th Cir.1998)). Order No. 3, however, clearly afforded officers the opportunity for abuse, and was therefore constitutionally infirm. [FN17] According to Mayor Schell's deposition testimony, the decision whether to arrest peaceful, lawful protestors within the zone "would depend on the judgment of the officers and people charged with the responsibility of carrying out that order."

> FN17. Relying on *United States v. Griefen,* 200 F.3d 1256, 1263 (9th Cir.2000), the majority concludes that, because Order No. 3 was a lawful time, place, and manner restriction, the discretion it afforded officers to allow or deny entry into the zone "does not render Order No. 3 constitutionally deficient." *Maj. op.* at 1144. *Griefen,* in which we upheld the closure of a construction site to all but essential personnel, is inapposite, as the area into which the plaintiffs sought entry to protest had temporarily lost its status of public forum as a result of the construction activity. 200 F.3d at 1261 ("The immediate area of a construction zone is not an area that has the attributes of a public forum, or even a limited public forum, where people are en-

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> titled to exercise their rights of free speech."). The 25-block area in Seattle cordoned off by Order No. 3, on the other hand, affected a quintessentially public forum-city streets and sidewalks-and therefore the Order is subject to a higher degree of scrutiny. *See supra* at 1166-67; *see also Collins,* 110 F.3d at 1371; *ACLU of Nevada,* 333 F.3d at 1098 ("The ability to restrict speech in public forums ... is 'sharply circumscribed.' ").

Chief Stamper acknowledged that Order No. 3 and the Operations Order interpreting it were "sufficiently vague that it made it difficult from a working cop's point of view to distinguish between who should and who should not be left out." Stamper himself "honestly [didn't] know the answer" whether peaceful protest was a "reasonable purpose" under the Order. And Officer Smith testified at his deposition that he and his fellow officers were never given "a laundry list of activities which would be deemed to be legitimate." Instead, he was told simply to apply "what a reasonable person would think legitimate business is." In sum, the plaintiffs presented evidence that individuals with disfavored views-namely, anyone wearing a "No WTO" sticker or button-were systematically excluded from the zone, whether or not the individual should have been allowed entry under an exception to the Order.[FN18] Furthermore, officers were permitted***1176** complete discretion to determine who was a "protestor" and what was a "reasonable purpose," and therefore who would be excluded. The majority's conclusion that "there was no danger on the face of Order No. 3 that officers enforcing the restricted zone could indiscriminately withhold permission to speak," *maj. op.* at 1145, is flatly contrary to the evidence.

FN18. *See supra* Part I.

The majority concludes that under *Chicago Park District,* the guidelines contained in the Operations Order were sufficiently "specific and objective, and [did] not leave the decision to the whim of the administrator." *Id.* at 1146 (quoting 534 U.S. at 324, 122 S.Ct. 775). But the discretion provided here is quite different-and clearly broader-than the ordinance upheld in *Chicago Park District.* That case involved a licensing scheme that allowed the district to deny a permit

> when the application is incomplete or contains a material falsehood or misrepresentation; when the applicant has damaged Park District property on prior occasions and has not paid for the damage; when a permit has been granted to an earlier applicant for the same time and place; when the intended use would present an unreasonable danger to the health or safety of park users or Park District employees; or when the applicant has violated the terms of a prior permit.

534 U.S. at 324, 122 S.Ct. 775. In light of these highly objective criteria, the Supreme Court held that the disqualifying grounds were "reasonably specific and objective" to defeat a claim of unbridled discretion. *Id.* The Court has never held that a regulation allowing officers to determine unilaterally what constitutes a "reasonable purpose," with no further elaboration on what might be considered "other like type reasonable activity," provides sufficient guidance.[FN19] Even if Order No. 3 were in fact a reasonable time, place, and manner restriction, it would nonetheless fail to satisfy the First Amendment's requirements foreclosing unbridled discretion in enforcement.[FN20]

> FN19. Relying on *S. Oregon Barter Fair v. Jackson County,* 372 F.3d 1128, 1139-41 (9th Cir.2004), the majority suggests that we have in fact found sufficient guidance in similarly-drafted statutes. *Maj. op.* at 1144-45. But clearly the determination of "a fee reasonably calculated to reimburse the county for its reasonable and necessary costs," *S. Oregon Barter Fair,* 372 F.3d at 1140, vests far less discretion in the enforcement officer than determining what constitutes "other like type reasonable activity." The majority's attempt to equate

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the two is not persuasive.

FN20. While noting the relevant facts, the majority concludes that they give rise only to a challenge to Order No. 3 as applied to particular plaintiffs. *See maj. op.* at 1144-46. The discretion conferred by Order No. 3, however, rendered it facially unconstitutional, *Chicago Park District,* 534 U.S. at 323, 122 S.Ct. 775, and incapable of any valid application. *Kuba,* 387 F.3d at 856. In *Chicago Park District,* the Court limited plaintiffs to an as-applied challenge only *after* determining that the challenged permitting scheme contained "adequate standards to guide the official's decision and render it subject to effective judicial review." 534 U.S. at 323, 122 S.Ct. 775. Because the standards provided police officers to guide enforcement of Order No. 3 were not "reasonably specific and objective," *id.* at 324, 122 S.Ct. 775, the majority incorrectly confines the plaintiffs to an as-applied challenge here. *Maj. op.* at 1148-49.

III.

As for Menotti, Stedl, and Skove's Fourth Amendment claims, I would reverse the district court's grant of summary judgment. I agree that Menotti has presented sufficient evidence to create a material factual dispute whether he impeded pedestrians and whether he obstructed an officer in the performance of his duties. Whether the police officers had probable cause to arrest Menotti turns on the resolution*1177 of these factual issues. *See, e.g., United States v. Valencia,* 24 F.3d 1106, 1108 (9th Cir.1994). I would also reverse the district court's summary judgment ruling against Stedl, because there is sufficient evidence in the record to create a genuine factual dispute whether the City had a policy of authorizing unlawful searches and seizures of those who sought to express any opposition to the WTO. *See Oklahoma City v. Tuttle,* 471 U.S. 808, 817, 105 S.Ct. 2427, 85 L.Ed.2d 791 (1985). Finally, I agree with the majority that Skove has alleged a violation of his Fourth Amendment rights and defendant Smith is not entitled to qualified immunity.

* * * * * *

Because Order No. 3 was not narrowly tailored, did not leave open ample alternative means of communication, and afforded individual officers unbridled discretion in its enforcement, it is facially unconstitutional. I would therefore reverse the district court's grant of summary judgment against all *Hankin* plaintiffs, *cf. maj. op.* at 1149 n. 67, and against Menotti, Sellman and Skove on their First Amendment claims. I would also reverse the district court's summary judgment against Menotti, Stedl, and Skove as to their Fourth Amendment claims.

C.A.9 (Wash.),2005.
Menotti v. City of Seattle
409 F.3d 1113, 05 Cal. Daily Op. Serv. 4630, 2005 Daily Journal D.A.R. 6366

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177 F.3d 954, 12 Fla. L. Weekly Fed. C 912
(Cite as: 177 F.3d 954)

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United States Court of Appeals,
Eleventh Circuit.
James Dale SMITH, personally and on behalf of all others similarly situated, Plaintiff-Appellant,
v.
CITY OF FORT LAUDERDALE, FLORIDA, Defendant-Appellee.
No. 98-4973.

June 2, 1999.

Class of homeless persons brought First Amendment action challenging regulation of City of Fort Lauderdale, Florida proscribing begging on five-mile strip of beach and two attendant sidewalks. The United States District Court for the Southern District of Florida, No. 93-6970-CV-NCR, Norman C. Roettger, Jr., J., entered summary judgment for City. Class appealed. The Court of Appeals, Hull, Circuit Judge, held that regulation was narrowly tailored to serve City's interest in providing safe, pleasant environment and eliminating nuisance activity on beach, and thus did not violate free speech guarantees.

Affirmed.

West Headnotes

[1] Constitutional Law 92 ⚿1761

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1761 k. Parks and Forests. Most Cited Cases
(Formerly 92k90.1(4))
Five-mile strip of beach and two attendant sidewalks in Fort Lauderdale, Florida was "public forum" for purposes of First Amendment challenge to regulation restricting begging. U.S.C.A. Const.Amend. 1.

[2] Constitutional Law 92 ⚿1880

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
92k1880 k. Begging or Panhandling. Most Cited Cases
(Formerly 92k90.1(1.1))
Like other charitable solicitation, begging is speech entitled to First Amendment protection. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law 92 ⚿1735

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1732 Public Forum in General
92k1735 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
Even in a public forum, the government may enforce regulations of the time, place, and manner of expression which: (1) are content-neutral; (2) are narrowly tailored to serve a significant government interest; and (3) leave open ample alternative channels of communication. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law 92 ⚿1880

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
92k1880 k. Begging or Panhandling. Most Cited Cases

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Date 8/3/10 Item 3
Exhibit 6

(Formerly 92k90.1(4))

Vagrancy 399 ⚿1

399 Vagrancy

399k1 k. Nature and Elements of Offenses. Most Cited Cases

Regulation proscribing begging on five-mile strip of beach and two attendant sidewalks in City of Fort Lauderdale, Florida was narrowly tailored to serve City's significant government interest in providing safe, pleasant environment and eliminating nuisance activity on beach, and thus did not violate free speech guarantees; City determined that begging in such area adversely impacted tourism, begging was allowed in other public fora throughout City, and proffered alternatives of proscribing only hostile or aggressive begging or confining begging to specific parts of beach did not demonstrate that regulation was substantially broader than necessary. U.S.C.A. Const.Amend. 1.

***955** Bruce S. Rogow, Beverly A. Pohl, American Civil Liberties Union, Ft. Lauderdale, FL, for Plaintiff-Appellant.

Lisa N. Hodapp, Ft. Lauderdale, FL, for Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Florida.

Before COX and HULL, Circuit Judges, and COHILL [FN*], Senior District Judge.

FN* Honorable Maurice B. Cohill, Senior U.S. District Judge for the Western District of Pennsylvania, sitting by designation.

HULL, Circuit Judge:

A Plaintiff-Appellant class of homeless people appeals the district court's decision granting summary judgment for the City of Fort Lauderdale on the class's First Amendment challenge to a City regulation proscribing begging on a certain five-mile strip of beach and two attendant sidewalks. We hold the challenged restrictions on speech are narrowly tailored to serve the City's legitimate interests and thus affirm.

The controversy in this case began when the City of Fort Lauderdale enacted Rules and Park Regulations for City Parks and Beaches, intended "to provide citizens with a safe environment in which recreational opportunity can be maximized." Pursuant to this purpose, the City included in its regulations Rule 7.5, which prescribes regulations "to eliminate nuisance activity on the beach and provide patrons with a pleasant environment in which to recreate." Rule 7.5(c) states, "Soliciting, begging or panhandling is prohibited." [FN1]

FN1. It is undisputed that "soliciting," "begging," and "panhandling" are interchangeable terms. We use the term "begging" to encompass all three.

Plaintiffs challenge Rule 7.5(c)'s application to a five-mile strip of beach, a new, one-and-a-half-mile promenade sidewalk between that beach and Highway A1A, and the commercial-area sidewalk on the opposite side of Highway A1A-hereinafter collectively called the "Fort Lauderdale Beach area." The parties stipulate as follows:

> The Fort Lauderdale Beach area is an essential part of the Fort Lauderdale tourism experience. Tourism is one of Florida's most important economic industries, and Fort Lauderdale is the premiere tourist location of Broward County. The Beach area is Fort Lauderdale's number one tourist attraction. Approximately four million tourists, many of whom are from foreign countries, visit the Fort Lauderdale area, and most of them at one time or another visit the Fort Lauderdale Beach area. City attendance records reflect that almost three million people visit the beach ***956** annually (August, 1993-July, 1994 estimated figures).
>
> The improvement of the Beach area was a high

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priority in the City's plan to expand the economic base of the community by attracting new investment. Creating an attractive infrastructure was designed to encourage quality development in the Beach area.

[1][2] As an initial matter, we note that Rule 7.5(c)'s limitations on begging in the Fort Lauderdale Beach area restrict speech in a public forum. Like other charitable solicitation, begging is speech entitled to First Amendment protection.[FN2] *See Loper v. New York City Police Dept.*, 999 F.2d 699, 704 (2d Cir.1993) (holding "begging is at least 'a form of speech' " because of the lack of material distinctions between begging and other forms of charitable solicitation); *see also Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980) (holding charitable organizations' solicitations for contributions are protected speech).

> FN2. The parties do not raise-and thus we do not address-the issue of whether begging is commercial speech entitled to a lower level of First Amendment protection.

Additionally, this Court's precedent conclusively establishes that the Fort Lauderdale Beach area covered by Rule 7.5(c)-consisting of beach and sidewalk spaces-is a public forum. *See One World Family Now v. City of Miami Beach*, 175 F.3d 1282 (11th Cir.1999) (holding an oceanfront strip of public sidewalk in the historic Art Deco district of Miami Beach to be a "quintessential public forum"); *International Caucus of Labor Committees v. City of Montgomery*, 111 F.3d 1548, 1550 (11th Cir.1997) (confirming the longstanding principle that "[a] sidewalk, although specifically constructed for pedestrian traffic, also constitutes a public forum"); *Naturist Society, Inc. v. Fillyaw*, 958 F.2d 1515, 1521-23 (11th Cir.1992) (holding John D. MacArthur Beach State Park to be a public forum).

[3][4] Nonetheless, Rule 7.5(c)'s restrictions on begging in the Fort Lauderdale Beach area[FN3] survive Plaintiffs' First Amendment challenge. Even in a public forum, the government may "enforce regulations of the time, place, and manner of expression which [1] are content-neutral, [2] are narrowly tailored to serve a significant government interest, and [3] leave open ample alternative channels of communication." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983); *see also One World Family Now*, 175 F.3d at 1287. Plaintiffs do not dispute that Rule 7.5(c) is content-neutral and leaves open ample alternative channels of communication. Plaintiffs also expressly concede that the City's interest in providing a safe, pleasant environment and eliminating nuisance activity on the beach is "a significant government interest." Plaintiffs argue only that Rule 7.5(c)'s begging restrictions are not narrowly tailored to serve that interest. We disagree.

> FN3. On appeal, Plaintiffs challenge Rule 7.5(c) only as applied to begging in the Fort Lauderdale Beach area.

Rule 7.5(c)'s restrictions on begging in the Fort Lauderdale Beach area are narrowly tailored to serve the City's interest in providing a safe, pleasant environment and eliminating nuisance activity on the beach. The City has made the discretionary determination that begging in this designated, limited beach area adversely impacts tourism. Without second-guessing that judgment, which lies well within the City's discretion, we cannot conclude that banning begging in this limited beach area burdens "substantially more speech than is necessary to further the government's legitimate interest." *One World Family Now*, 175 F.3d at 1287 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 789, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989)). Rule 7.5(c)'s suppression of begging in the ***957** Fort Lauderdale Beach area is materially mitigated by the allowance of begging in streets, on sidewalks, and in many other public fora throughout the City. *Cf. Loper*, 999 F.2d at 701 (assessing a statute applicable to any "public place" in the state of New York).

Moreover, Rule 7.5(c)'s restrictions on begging in

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the Fort Lauderdale Beach area are not rendered unconstitutional by the possible availability of less-speech-restrictive alternatives. Plaintiffs assert that the City's interest might be served by proscribing only hostile or aggressive begging or by confining begging to specific parts of the beach. But Rule 7.5(c) need not be the "least restrictive or least intrusive means" of serving the City's interest in order to qualify as "narrowly tailored." *Ward*, 491 U.S. at 788-89, 109 S.Ct. 2746. "So long as the means chosen are not substantially broader than necessary to achieve the government's interests ... the regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative." *Id.* at 799, 109 S.Ct. 2746. Plaintiffs' proffered alternatives fall far short of demonstrating that Rule 7.5(c)'s prohibition of begging in this Fort Lauderdale Beach area is "substantially broader than necessary."

Thus, Rule 7.5(c)'s restrictions on begging in the Fort Lauderdale Beach area do not run afoul of the First Amendment, and the district court's grant of summary judgment for the City is AFFIRMED.

C.A.11 (Fla.),1999.
Smith v. City of Fort Lauderdale, Fla.
177 F.3d 954, 12 Fla. L. Weekly Fed. C 912

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225 F.3d 899
(Cite as: 225 F.3d 899)

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United States Court of Appeals,
Seventh Circuit.
Jimmy GRESHAM, on his own behalf and on behalf of a class of those similarly situated, Plaintiff-Appellant,
v.
Bart PETERSON, in his official capacity as Mayor of the City of Indianapolis, Indiana, and the City of Indianapolis, Indiana, Defendants-Appellees.
No. 99-3770.

Argued March 30, 2000.
Decided Aug. 31, 2000.

Homeless person brought suit challenging ordinance that limited street begging in public places and prohibited entirely activities defined as "aggressive panhandling." The United States District Court for the Southern District of Indiana, S. Hugh Dillin, J., granted summary judgment for city, and plaintiff appealed. The Court of Appeals, Kanne, Circuit Judge, held that: (1) ordinance did not violate First Amendment, and (2) ordinance was not vague in defining aggressive panhandling.

Affirmed.

West Headnotes

[1] Federal Courts 170B ⚿776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
Court of Appeals reviews de novo question of whether state law violates Constitution.

[2] Constitutional Law 92 ⚿1512

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1512 k. In General. Most Cited Cases
(Formerly 92k90(3))

Constitutional Law 92 ⚿1514

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1514 k. Narrow Tailoring Requirement; Relationship to Governmental Interest. Most Cited Cases
(Formerly 92k90(3))

Constitutional Law 92 ⚿1515

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1515 k. Existence of Other Channels of Expression. Most Cited Cases
(Formerly 92k90(3))
Under First Amendment, governments may enforce regulations of time, place and manner of expression which are content neutral, are narrowly tailored to serve significant government interest, and leave open ample alternative channels of communication. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law 92 ⚿1512

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92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1511 Content-Neutral Regulations or Restrictions
92k1512 k. In General. Most Cited Cases
(Formerly 92k90(3))
Inquiry, under First Amendment, into whether regulation of speech is content neutral in context of time, place or manner restrictions turns on government's justification for regulation. U.S.C.A. Const.Amend. 1.

|4| Constitutional Law 92 ⚿1880

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
92k1880 k. Begging or Panhandling. Most Cited Cases
(Formerly 92k90.1(4), 92k90.1(1.1))

Vagrancy 399 ⚿1

399 Vagrancy
399k1 k. Nature and Elements of Offenses. Most Cited Cases
Panhandling ordinance that prohibited solicitation of cash at night and near public transportation vehicle or facility, parked or stopped vehicle, sidewalk cafe or bank did not violate First Amendment; ordinance was narrowly tailored to promote city's legitimate interest in safety and convenience of its citizens on public streets, and ordinance allowed many feasible alternatives to reach both daytime and nighttime downtown crowds. U.S.C.A. Const.Amend. 1.

|5| Constitutional Law 92 ⚿1505

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1505 k. Narrow Tailoring. Most Cited Cases
(Formerly 92k90(3))
Government regulation can be considered narrowly tailored, for First Amendment purposes, so long as regulation promotes substantial government interest that would be achieved less effectively absent the regulation; accordingly, regulation need not be perfect fit for government's needs, but cannot burden substantially more speech than necessary. U.S.C.A. Const.Amend. 1.

|6| Constitutional Law 92 ⚿1509

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases
(Formerly 92k90(3))
Time, place or manner restriction need not be least restrictive means of achieving government purpose, for First Amendment purposes, so long as it can be considered narrowly tailored to that purpose.

|7| Constitutional Law 92 ⚿1509

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases
(Formerly 92k90(3))
Adequate alternative channel of communication, for

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First Amendment purposes, does not have to be speaker's first or best choice, or one that provides same audience or impact for speech, but alternative must be more than merely theoretically available. U.S.C.A. Const.Amend. 1.

|8| Constitutional Law 92 ⚿1509

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases
(Formerly 92k90(3))

To be adequate alternative channel of communication, for First Amendment purposes, alternative cannot totally foreclose speaker's ability to reach one audience even if it allows speaker to reach other groups. U.S.C.A. Const.Amend. 1.

|9| Constitutional Law 92 ⚿4509(8)

92 Constitutional Law
92XXVII Due Process
92XXVII(H) Criminal Law
92XXVII(H)2 Nature and Elements of Crime
92k4502 Creation and Definition of Offense
92k4509 Particular Offenses
92k4509(8) k. Disorderly Conduct and Breach of the Peace. Most Cited Cases
(Formerly 92k258(3.1))

Vagrancy 399 ⚿1

399 Vagrancy
399k1 k. Nature and Elements of Offenses. Most Cited Cases

Ordinance prohibiting "aggressive panhandling" was not vague, in violation of due process, in defining aggressive panhandling as "[f]ollowing behind, ahead or alongside a person who walks away from the panhandler after being solicited," or "[u]sing profane or abusive language, either during the solicitation or following a refusal to make a donation, or making any statement, gesture, or other communication which would cause a reasonable person to be fearful or feel compelled"; reasonable interpretation by state court could render provisions constitutional. U.S.C.A. Const.Amend. 14.

|10| Statutes 361 ⚿47

361 Statutes
3611 Enactment, Requisites, and Validity in General
361k45 Validity and Sufficiency of Provisions
361k47 k. Certainty and Definiteness. Most Cited Cases

Void-for-vagueness doctrine forbids enforcement of law that contains terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application.

|11| Statutes 361 ⚿47

361 Statutes
3611 Enactment, Requisites, and Validity in General
361k45 Validity and Sufficiency of Provisions
361k47 k. Certainty and Definiteness. Most Cited Cases

Under void-for-vagueness doctrine, legislative enactments must articulate terms with reasonable degree of clarity to reduce risk of arbitrary enforcement and allow individuals to conform their behavior to requirements of law.

|12| Constitutional Law 92 ⚿4505

92 Constitutional Law
92XXVII Due Process
92XXVII(H) Criminal Law
92XXVII(H)2 Nature and Elements of Crime

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92k4502 Creation and Definition of Offense
92k4505 k. Certainty and Definiteness in General. Most Cited Cases
(Formerly 92k258(2))
Statute that vests virtually complete discretion in hands of police fails to provide minimal guidelines required for due process. U.S.C.A. Const.Amend. 14.

|13| Constitutional Law 92 ⚖1013

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k1006 Particular Issues and Applications
92k1013 k. Vagueness in General. Most Cited Cases
(Formerly 92k47)
In assessing constitutionality of allegedly vague state law or ordinance, federal court must consider any limiting construction that state court or enforcement agency has proffered.

|14| Federal Courts 170B ⚖386

170B Federal Courts
170BVI State Laws as Rules of Decision
170BVI(B) Decisions of State Courts as Authority
170Bk386 k. State Constitutions and Statutes, Validity and Construction. Most Cited Cases

Injunction 212 ⚖85(2)

212 Injunction
212II Subjects of Protection and Relief
212II(E) Public Officers and Entities
212k85 Enforcement of Statutes, Ordinances, or Other Regulations
212k85(2) k. On Ground of Invalidity. Most Cited Cases
Rule that federal courts should defer to state court interpretations of state laws also discourages federal courts from enjoining statutes that could be easily narrowed by state court to avoid constitutional problems.

|15| Constitutional Law 92 ⚖1013

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k1006 Particular Issues and Applications
92k1013 k. Vagueness in General. Most Cited Cases
(Formerly 92k48(4.1))
Court of Appeals will not hold vague statute unconstitutional if reasonable interpretation by state court could render it constitutional in some application.

|16| Statutes 361 ⚖47

361 Statutes
361I Enactment, Requisites, and Validity in General
361k45 Validity and Sufficiency of Provisions
361k47 k. Certainty and Definiteness. Most Cited Cases
Laws must contain reasonable degree of clarity so that people of common intelligence can understand their meaning; furthermore, because penalties for noncompliance are less severe, laws imposing civil rather than criminal penalties do not demand same high level of clarity.
***901** Kenneth J. Falk (Argued), Indiana Civil Liberties Union, Indianapolis, IN, for Plaintiff-Appellant.

Anthony Scott Chinn (Argued), Office of the Attorney General, Indianapolis, IN, Thomas E Satrom, Office of Corporation Counsel, Indianapolis, IN, for Defendants-Appellees.

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Before WOOD, Jr., EASTERBROOK and KANNE, Circuit Judges.

KANNE, Circuit Judge.

Jimmy Gresham challenges an Indianapolis ordinance that limits street begging in public places and prohibits entirely activities defined as "aggressive panhandling." Gresham believes that the ordinance infringes his First Amendment right to free speech and his Fourteenth Amendment right to due process. The city considers the ordinance a reasonable response to the public safety threat posed by panhandlers. The district court found that a state court could construe the ordinance in such a way to render it sufficiently clear and specific and granted the city summary judgment on Gresham's request for a permanent injunction. We affirm.

I. HISTORY

The parties have stipulated to the relevant facts, which for the purposes of reviewing a summary judgment motion, we accept as true. *See Cable v. Ivy Tech State College*, 200 F.3d 467, 476 (7th Cir.1999). In June 1999, the City of Indianapolis amended an ordinance regarding solicitation in public places. The ordinance, which became effective on July 6, 1999, reads as follows:

> (a) As used in this section, *panhandling* means any solicitation made in person upon any street, public place or park in the city, in which a person requests an immediate donation of money or other gratuity from another person, and includes but is not limited to seeking donations:
>
> (1) By vocal appeal or for music, singing, or other street performance; and,
>
> (2) Where the person being solicited receives an item of little or no monetary value in exchange for a donation, under circumstances where a reasonable person would understand that the transaction is in substance a donation. However, panhandling shall not include the act of passively standing or sitting nor performing music, singing or other street performance with a sign or other indication that a donation is being sought, without any vocal request other than in response to an inquiry by another person.
>
> (b) It shall be unlawful to engage in an act of panhandling on any day after sunset, or before sunrise.
>
> (c) It shall be unlawful to engage in an act of panhandling when either the panhandler or the person being solicited is located at any of the following locations; at a bus stop; in any public transportation vehicle or public transportation facility; in a vehicle which is parked or stopped on a public street or alley; in a sidewalk caf[e]; or within twenty (20) feet in any direction from an automatic teller machine or entrance to a bank.
>
> (d) It shall be unlawful to engage in an act of panhandling in an aggressive manner, including any of the following actions:
>
> (1) Touching the solicited person without the solicited person's consent.
>
> (2) Panhandling a person while such person is standing in line and waiting ***902** to be admitted to a commercial establishment;
>
> (3) Blocking the path of a person being solicited, or the entrance to any building or vehicle;
>
> (4) Following behind, ahead or alongside a person who walks away from the panhandler after being solicited;
>
> (5) Using profane or abusive language, either during the solicitation or following a refusal to make a donation, or making any statement, gesture, or other communication which would cause a reasonable person to be fearful or feel compelled; or,

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(6) Panhandling in a group of two (2) or more persons.

(e) Each act of panhandling prohibited by this section shall constitute a public nuisance and a separate violation of this Code. Each violation shall be punishable as provided in section 103-3 of the Code, and the court shall enjoin any such violator from committing further violations of this section.

City-County General Ordinance No. 78 (1999), Revised Code of Indianapolis and Marion County § 407-102. Section 103-3 provides that a person convicted of violating the ordinance will be fined not more than $2,500 for each violation. The ordinance does not provide for imprisonment of violators, except, of course, a past offender who violates the mandatory injunction provided in Paragraph (e) could be jailed for contempt.

Jimmy Gresham is a homeless person who lives in Indianapolis on Social Security disability benefits of $417 per month. He supplements this income by begging, using the money to buy food. He begs during both the daytime and nighttime in downtown Indianapolis. Because different people visit downtown at night than during the day, it is important to him that he be able to beg at night. Gresham approaches people on the street, tells them he is homeless and asks for money to buy food. Gresham has not been cited for panhandling under the new ordinance, but he fears being cited for panhandling at night or if an officer interprets his requests for money to be "aggressive" as defined by the law.

Gresham filed this class action shortly after the ordinance took effect, requesting injunctive and declaratory relief. Gresham moved for a preliminary injunction barring enforcement of the ordinance on the grounds that it was unconstitutionally vague and violated his right to free speech. The district court, after hearing oral argument, notified the parties that it would convert its order on the preliminary injunction into an order on the merits. The parties filed additional memoranda of law, but no additional evidence. On September 28, 1999, the court entered a final order denying the motion for preliminary injunction and dismissing the case.

In the order, the district court construed the list of six actions that constitute aggressive panhandling as exclusive, eliminating the danger that someone could be cited for other, unenumerated acts. The court further ruled that the proscription in Paragraph (d)(5) against actions that make a person "fearful or feel compelled" was not unconstitutionally vague because it could be interpreted to mean "fear for his safety or feel compelled to donate." The court held that because the ordinance was civil in nature and the actions prohibited under aggressive panhandling were not related to speech interests, no intent element was necessary. Finally, the court found the ordinance to be a valid content-neutral regulation under *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983).

II. ANALYSIS

[1] On appeal, Gresham raises two principal arguments. First, he contends that the provisions defining aggressive panhandling are vague because they fail to provide clear criteria to alert panhandlers and authorities of what constitutes a violation and because they fail to include an ***903** intent element. Second, he argues that the statute fails the test for content-neutral time, place and manner restrictions on protected speech. We review *de novo* the question of whether a state law violates the Constitution. *See Scariano v. Justices of Supreme Court of Ind.*, 38 F.3d 920, 924 (7th Cir.1994).

A. The First Amendment

Laws targeting street begging have been around for many years, but in the last twenty years, local communities have breathed new life into old laws or passed new ones. Cities, such as Indianapolis, have tried to narrowly draw the ordinances to target the most bothersome types of street solicitations and

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give police another tool in the effort to make public areas, particularly downtown areas, safe and inviting.

While the plaintiff here has focused the inquiry on the effects of the ordinance on the poor and homeless, the ordinance itself is not so limited. It applies with equal force to anyone who would solicit a charitable contribution, whether for a recognized charity, a religious group, a political candidate or organization, or for an individual. It would punish street people as well as Salvation Army bell ringers outside stores at Christmas, so long as the appeal involved a vocal request for an immediate donation.

The ordinance bans panhandling by beggars or charities citywide on any "street, public place or park" in three circumstances. First, it would prohibit any nighttime panhandling § 407-102(b). Second, it would prohibit at all times-day or night-panhandling in specified areas. § 407-102(c). Third, it would prohibit "aggressive panhandling" at all times. § 407-102(d)(1)-(6). The defendants emphatically point out that the ordinance allows a great deal of solicitation, including "passive" panhandling, which does not include a vocal appeal, street performances, legitimate sales transactions and requests for donations over the telephone or any other means that is not "in person" or does not involve an "immediate donation." Under the ordinance, one could lawfully hold up a sign that says "give me money" and sing "I am cold and starving," so long as one does not voice words to the effect of "give me money."

Several courts before us, as well as many commentators, have grappled with understanding panhandling laws in light of the First Amendment guarantee of free speech and the constitutional right to due process. *See, e.g., Smith v. City of Fort Lauderdale,* 177 F.3d 954 (11th Cir.1999); *Loper v. New York City Police Dep't,* 999 F.2d 699 (2d Cir.1993). To this point, the Supreme Court has not resolved directly the constitutional limitations on such laws as they apply to individual beggars, but has provided clear direction on how they apply to organized charities, not-for-profits and political groups. *See Riley v. National Fed'n of the Blind of North Carolina, Inc.*, 487 U.S. 781, 789, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988); *Secretary of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 959-60, 104 S.Ct. 2839, 81 L.Ed.2d 786 (1984); *Village of Schaumburg v. Citizens for a Better Environment,* 444 U.S. 620, 632, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980).

To the extent the Indianapolis ordinance could be enforced against organized charities, such as the United Way, Salvation Army or others, the Supreme Court's holding in *Schaumburg* would control resolution of the case. In *Schaumburg,* the Supreme Court considered a local prohibition on solicitation by charities that did not use a certain percentage of their contributions for charitable purposes. 444 U.S. at 623-24, 100 S.Ct. 826. As a threshold consideration, the Court determined that solicitations by organized charities were entitled to First Amendment protection. *Id.* at 632, 100 S.Ct. 826. The Court found that charities often engage in core First Amendment speech while soliciting donations, and that without such appeals for support, the flow of information on many social, economic, political and cultural topics***904** would cease. As such, the solicitations by organized charities were "within the protection of the First Amendment" although "subject to reasonable regulation." *Id.*

The Court placed charitable solicitations by organizations in a category of speech close to the heart of the First Amendment, and distinguished it from "purely commercial speech" which is "primarily concerned with providing information about the characteristics and costs of goods and services." *Id.* Commercial speech, on the other hand, has been placed lower in the First Amendment food chain, somewhere between political speech and pornography. It deserves protection, but authorities are more free to regulate commercial speech than core-value speech.

Other courts examining issues similar to those at

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hand did not distinguish between solicitation for organized charities and solicitation by individual beggars. The Eleventh Circuit held that "[l]ike other charitable solicitation, begging is speech entitled to First Amendment protection." *Smith*, 177 F.3d at 956 (citing *Schaumburg*, 444 U.S. at 632, 100 S.Ct. 826). The Second Circuit likewise held that for First Amendment purposes, the distinction between begging for a charity and begging for one's self is not significant. *Loper*, 999 F.2d at 704. "We see little difference between those who solicit for organized charities and those who solicit for themselves in regard to the message conveyed." *Id.* Both *Smith* and *Loper* held that limitations on panhandling must be analyzed under the same *Schaumburg* framework as limitations for charities. *Smith*, 177 F.3d at 956; *Loper*, 999 F.2d at 704.

Indeed, the Court's analysis in *Schaumburg* suggests little reason to distinguish between beggars and charities in terms of the First Amendment protection for their speech. Solicitation, the Court reasoned, "is characteristically intertwined with informative and perhaps persuasive speech" which the First Amendment protects. *Schaumburg*, 444 U.S. at 632, 100 S.Ct. 826. Because they are intimately connected, solicitation cannot be restricted without also risking the flow of information. Importantly, the *Schaumburg* Court expressly rejected the suggestion that the message and the solicitation could be considered severable. *Id.* at 628-32, 100 S.Ct. 826. The village had argued that the ordinance prohibited only the request for money and left the charity free to propagate its views, but the Court called this view of the First Amendment protection for solicitors "too limited." After extensively reviewing its own case law on the subject, the Court held that restrictions on a charity's request for money necessarily implicate restrictions on speech itself. *Id.* at 632, 100 S.Ct. 826.

Similarly, the Indianapolis ordinance protects the communication of ideas by solicitors and limits only the bare request for cash. Yet the two can be closely intertwined. Beggars at times may communicate important political or social messages in their appeals for money, explaining their conditions related to veteran status, homelessness, unemployment and disability, to name a few. Like the organized charities, their messages cannot always be easily separated from their need for money. While some communities might wish all solicitors, beggars and advocates of various causes be vanished from the streets, the First Amendment guarantees their right to be there, deliver their pitch and ask for support. *See Schaumburg*, 444 U.S. at 632, 100 S.Ct. 826 ("[C]haritable appeals for funds, on the street or door to door, involve a variety of speech interests ... that are within the protection of the First Amendment."). Neither the parties to this appeal nor any authorities found by this Court suggest we should distinguish between restrictions on organized charities and individuals for purposes of understanding the First Amendment guarantees. Therefore, assuming for the purposes of this appeal that some panhandler speech would be protected by the First Amendment, we find that *Schaumburg* ***905** provides the appropriate standard to analyze this claim.[FN1]

FN1. As an aside, we note that the Court in *Schaumburg* distinguished solicitation from commercial speech, which is "primarily concerned with providing information about the characteristics and costs of goods and services." 444 U.S. at 632, 100 S.Ct. 826. The Eleventh Circuit, noting that the parties did not raise the argument, declined to reach the issue of whether panhandling could be considered commercial speech and therefore subject to more regulation. *See Smith*, 177 F.3d at 956 n. 2. We too will follow that prudent approach and not decide an issue the parties declined to raise. *See generally* Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 Yale L.J. 1165, 1229 (1996) (discussing possibility of treating begging

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> as commercial speech). In any event, considering the Supreme Court's definition of commercial speech as outlined in *Schaumburg,* we doubt panhandling falls into this classification.

[2] After recognizing a First Amendment right to solicit money in public places, the *Schaumburg* Court held that a government may enact "reasonable regulations" so long as they reflect "due regard" for the constitutional interests at stake. 444 U.S. at 632, 100 S.Ct. 826. The parties assume that the proper analysis to determine whether the Indianapolis ordinance is one such reasonable regulation is that set out for "time, place and manner" restrictions in *Perry,* 460 U.S. at 45, 103 S.Ct. 948. Because the Indianapolis ordinance does not ban all panhandling, we agree that the law could be understood as a time, place or manner regulation. *See Cantwell v. Connecticut,* 310 U.S. 296, 304, 60 S.Ct. 900, 84 L.Ed. 1213 (1940). Under *Perry,* governments may "enforce regulations of the time, place and manner of expression which are content neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." 460 U.S. at 45, 103 S.Ct. 948. Other courts considering restrictions on solicitation also have applied the time, place, manner analysis from *Perry. See Smith,* 177 F.3d at 956; *ISKCON of Potomac, Inc. v. Kennedy,* 61 F.3d 949, 953 (D.C.Cir.1995); *Loper,* 999 F.2d at 704-05 .

[3] Colorable arguments could be made both for and against the idea that the Indianapolis ordinance is a content-neutral time, place or manner restriction. The Supreme Court has held that "[g]overnment regulation of expressive activity is content neutral so long as it is '*justified* without reference to the content of the regulated speech.' " *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989) (citation omitted). To help apply this somewhat circular definition, the Court instructed that the principal inquiry is "whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Id.* In *City of Cincinnati v. Discovery Network, Inc.,* 507 U.S. 410, 428-29, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993), the Court held that a ban on newsracks containing commercial handbills but not newspapers was content-based because "whether any particular newsrack falls within the ban is determined by the content of the publication resting inside that newsrack." Similarly here, whether a solicitor violates the ordinance depends on whether he asked for cash rather than for something else. On one side of the argument, the city ordinance does not prohibit all solicitation on city streets, only solicitations for immediate cash donations. One could, for instance, ask passers-by for their signatures, time, labor or anything else, other than money. Only by determining the specific content of a solicitor's speech could authorities determine whether they violated the ordinance, which would seem to be a content-based restriction. *See id.* at 429, 113 S.Ct. 1505; *Ward,* 491 U.S. at 791, 109 S.Ct. 2746. But as *Ward* and more recently *Hill v. Colorado,* 530 U.S. 703, ----, 120 S.Ct. 2480, 2491, 147 L.Ed.2d 597 (2000), emphasized, the inquiry into content neutrality in the context of time, place or manner restrictions turns on the government's***906** justification for the regulation. Because the parties here agree that the regulations are content neutral, we need not decide whether the Indianapolis ordinance can be justified without reference to the content of the regulated speech. Thus the Indianapolis ordinance should be upheld if it is narrowly tailored to achieve a significant governmental purpose and leaves open alternate channels of communication.

[4][5][6] The city has a legitimate interest in promoting the safety and convenience of its citizens on public streets. *See Madsen v. Women's Health Center,* 512 U.S. 753, 768, 114 S.Ct. 2516, 129 L.Ed.2d 593 (1994) (holding that the state "also has a strong interest in ensuring the public safety and order, in promoting the free flow of traffic on public streets and sidewalks ..."); *Heffron v. International Soc. for Krishna Consciousness, Inc.,* 452 U.S. 640, 650,

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101 S.Ct. 2559, 69 L.Ed.2d 298 (1981) (recognizing state interest in safety and convenience of citizens using public fora); *Cox v. New Hampshire*, 312 U.S. 569, 574, 61 S.Ct. 762, 85 L.Ed. 1049 (1941) (recognizing state interest in safety and convenience on public roads); *Ayres v. City of Chicago*, 125 F.3d 1010, 1015 (7th Cir.1997) ("There are unquestionable benefits from regulating peddling, First Amendment or otherwise, [including] the control of congestion."). The plaintiff concedes this much, but argues that a total nighttime ban on verbal requests for alms is substantially broader than necessary and therefore cannot be considered narrowly tailored. However, a government regulation can be considered narrowly tailored "so long as the ... regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *Ward*, 491 U.S. at 799, 109 S.Ct. 2746. This means the regulation need not be a perfect fit for the government's needs, but cannot burden substantially more speech than necessary. *Id.* at 800, 109 S.Ct. 2746. Furthermore, a time, place or manner restriction need not be the least restrictive means of achieving the government purpose, so long as it can be considered narrowly tailored to that purpose. *Id.* at 797, 109 S.Ct. 2746.

The city determined that vocal requests for money create a threatening environment or at least a nuisance for some citizens. Rather than ban all panhandling, however, the city chose to restrict it only in those circumstances where it is considered especially unwanted or bothersome-at night, around banks and sidewalk cafes, and so forth. These represent situations in which people most likely would feel a heightened sense of fear or alarm, or might wish especially to be left alone. By limiting the ordinance's restrictions to only those certain times and places where citizens naturally would feel most insecure in their surroundings, the city has effectively narrowed the application of the law to what is necessary to promote its legitimate interest.

[7][8] Finally, the plaintiff contends that the statute fails to provide ample alternative channels of communication. We disagree. An adequate alternative does not have to be the speaker's first or best choice, *see Heffron*, 452 U.S. at 647, 101 S.Ct. 2559, or one that provides the same audience or impact for the speech. *See Ward*, 491 U.S. at 802, 109 S.Ct. 2746; *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. 788, 809, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985) (holding that in context nonpublic forum, an ample alternative does not need to be the most efficient one for speaker's purposes). However, the Court has "shown special solicitude for forms of expression that are much less expensive than feasible alternatives," *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 812 n. 30, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984), and so an alternative must be more than merely theoretically available. It must be realistic as well. *See Linmark Assocs., Inc. v. Township of Willingboro*, 431 U.S. 85, 93, 97 S.Ct. 1614, 52 L.Ed.2d 155 (1977). Furthermore, an adequate alternative***907** cannot totally foreclose a speaker's ability to reach one audience even if it allows the speaker to reach other groups. *See Bery v. City of New York*, 97 F.3d 689, 698 (2d Cir.1996) (holding that total ban on sidewalk art does not leave open alternative means of communication because alternative display in galleries or museums would not reach the same audience.)

The Indianapolis ordinance allows many feasible alternatives to reach both the daytime and nighttime downtown Indianapolis crowds. Under the ordinance, panhandlers may ply their craft vocally or in any manner they deem fit (except for those involving conduct defined as aggressive) during all the daylight hours on all of the city's public streets. Gresham contends that soliciting at night is vital to his survival, a fact we do not dispute, but the ordinance leaves open many reasonable ways for him to reach the nighttime downtown crowd. He may solicit at night, so long as he does not vocally request money. He may hold up signs requesting money or engage in street performances, such as playing music, with an implicit appeal for support. Although

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perhaps not relevant to street beggars, the ordinance also permits telephone and door-to-door solicitation at night. Thus to the extent that "give me money" conveys an idea the expression of which is protected by the First Amendment, solicitors may express themselves vocally all day, and in writing, by telephone or by other non-vocal means all night. Furthermore, they may solicit in public places on all 396.4 square miles of the city, except those parts occupied by sidewalk cafes, banks, ATMs and bus stops. This is a far cry from the total citywide ban on panhandling overturned by the court in *Loper*, 999 F.2d at 705 ("[A] statute that totally prohibits begging in all public places cannot be considered 'narrowly tailored.' "), or the total ban on panhandling in a five-mile area of public beach upheld by the court in *Smith*, 177 F.3d at 956.

B. Vagueness

[9] Gresham next challenges certain provisions of the ordinance as unconstitutionally vague. Specifically, he contends that the definition of aggressive panhandling in sections (d)(4) and (d)(5) are not sufficiently clear to direct authorities on the enforcement of the law, nor to allow panhandlers such as Gresham to avoid violating the law. Section (d)(4) prohibits "[f]ollowing behind, ahead or alongside a person who walks away from the panhandler after being solicited." Gresham argues hypothetically that police could cite a person for inadvertently violating this section merely by walking in the same direction as the solicited person, without intending to engage in "aggressive panhandling." Also, section (d)(5) refers to making a person "fearful or feel compelled" without defining what the terms mean in relation to panhandling. A generalized guilt at economic inequality might make one "feel compelled" even by the meekest request for money.

[10][11][12] The void-for-vagueness doctrine forbids the enforcement of a law that contains "terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application." *Roberts v. United States Jaycees*, 468 U.S. 609, 629, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984) (quoting *Connally v. General Construction Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926)). Legislative enactments must articulate terms "with a reasonable degree of clarity" to reduce the risk of arbitrary enforcement and allow individuals to conform their behavior to the requirements of the law. *Id.* A statute that "vests virtually complete discretion in the hands of the police" fails to provide the minimal guidelines required for due process. *See Kolender v. Lawson*, 461 U.S. 352, 358, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983).

[13][14][15] In assessing the constitutionality of an allegedly vague state law or ordinance, "a federal court must, of course, ***908** consider any limiting construction that a state court or enforcement agency has proffered." *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n. 5, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982) ("*Hoffman Estates*"); *see also Roberts*, 468 U.S. at 630-31, 104 S.Ct. 3244; *Kolender*, 461 U.S. at 355 & n. 4, 103 S.Ct. 1855. In this case, the Indiana courts have not yet had an opportunity to interpret the terms of the Indianapolis ordinance, and so we have no authoritative judicial construction of its terms. *See generally, Brownsburg Area Patrons Affecting Change v. Baldwin*, 714 N.E.2d 135, 141 (Ind.1999) ("We have regularly said that courts have an overriding obligation to construe our statutes in such a way as to render them constitutional if reasonably possible.") (internal quotation and citations omitted). However, the rule that federal courts should defer to state court interpretations of state laws, *see City of Chicago v. Morales*, 527 U.S. 41, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999), also discourages federal courts from enjoining statutes that could be easily narrowed by a state court to avoid constitutional problems. *See Erznoznik v. City of Jacksonville*, 422 U.S. 205, 216, 95 S.Ct. 2268, 45 L.Ed.2d 125 (1975) ("[A] state statute should not be deemed facially invalid unless it is not readily subject to a narrowing construction by

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the state courts.") (citing *Dombrowski v. Pfister*, 380 U.S. 479, 497, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965)). Therefore, we will not hold a vague statute unconstitutional if a reasonable interpretation by a state court could render it constitutional in some application.

[16] Laws must contain a "reasonable degree of clarity" so that people of "common intelligence" can understand their meaning. *Roberts*, 468 U.S. at 629, 104 S.Ct. 3244. Furthermore, because the penalties for noncompliance are less severe, laws imposing civil rather than criminal penalties do not demand the same high level of clarity. *See Hoffman Estates*, 455 U.S. at 498-99, 102 S.Ct. 1186. Like the civil sanction at issue in *Hoffman Estates*, Gresham faces only a fine for noncompliance with the Indianapolis law. However, this lowered burden is mitigated by the fact that the Indianapolis ordinance potentially interferes with the right of free speech, suggesting that a "more stringent vagueness test should apply." *Id.* at 499, 102 S.Ct. 1186 (citing *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972) and *Grayned v. City of Rockford*, 408 U.S. 104, 109, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972)).

The challenged provisions in this case define what the City Council meant by the term "aggressive panhandling" and must be read in that context. The district court was rightly concerned that Paragraph (d) could be construed as offering an incomplete list of examples of prohibited behavior, leaving open the possibility that other unspecified actions might also be considered illegal, which would raise serious due process concerns. The district court suggested that the list might be exclusive rather than illustrative, a reasonable interpretation which, if adopted by the Indiana courts, would save it from a vagueness challenge.

Likewise, Paragraphs (d)(4) and (d)(5) are subject to reasonable interpretations that answer the vagueness challenge. A state court interpreting Paragraph (d)(4) may read it to prohibit "following" only in the context of a continued request for money such that the victim reasonably interprets the behavior as a threat. A continuing request for a donation coupled with "following" would be prohibited, but walking in the same direction as the solicited person would not be against the law if the walking were divorced from the request. Construed this way, the statute would prohibit the type of harassing behavior that governments routinely outlaw. *See, e.g.*, Ind.Code § 35-45-2-1 (prohibiting as intimidation a threat by words or action that forces a person to engage in conduct against their will); Ind.Code § 35-45-10-1 (prohibiting as stalking a "course of conduct***909** involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened."); *Johnson v. State*, 648 N.E.2d 666, 670 (Ind.Ct.App.1995) (upholding stalking statute against vagueness challenge). Numerous cases hold that governments may proscribe threats, extortion, blackmail and the like, "despite the fact that they criminalize utterances because of their expressive content." *United States v. Hayward*, 6 F.3d 1241, 1259 (7th Cir.1993) (Flaum, J., concurring); *see, e.g., Watts v. United States*, 394 U.S. 705, 707, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969) (upholding constitutionality of law against threatening life of the President); *United States v. Velasquez*, 772 F.2d 1348, 1357 (7th Cir.1985) (holding that threats of physical violence are not protected by First Amendment); *see also R.A.V. v. City of St. Paul*, 505 U.S. 377, 420, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992) (Stevens, J., concurring) (quoting Frederick Schauer, *Categories and the First Amendment: A Play in Three Acts*, 34 Vand. L.Rev. 265, 270 (1981)) ("Although the First Amendment broadly protects 'speech,' it does not protect the right to 'fix prices, breach contracts, make false warranties, place bets with bookies, threaten, [or] extort.' ").

Paragraph (d)(5) could be construed to prohibit "any statement, gesture, or other communication" that makes a reasonable person feel they face danger if they refuse to donate, that they are being compelled out of physical fear. The possibility that

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a polite request for a donation might be heard as a threatening demand by an unusually sensitive or timid person is eliminated by the "reasonable person" standard included in the ordinance. A statement that makes a reasonable person feel compelled to donate out of physical fear amounts to a prohibition on robbery or extortion, which of course would be constitutional. While it is not a certainty that the state courts would adopt constitutional interpretations of the panhandling provisions, they are entitled to the opportunity to do so, and we will not interfere with that right. The district court did not err in refusing to enjoin the ordinance based on the vagueness concerns.

III. CONCLUSION

For the foregoing reasons, we Affirm the district court's denial of a permanent injunction and dismissal of Gresham's complaint.

C.A.7 (Ind.),2000.
Gresham v. Peterson
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154 F.3d 972, 26 Media L. Rep. 2228, 98 Cal. Daily Op. Serv. 6719, 98 Cal. Daily Op. Serv. 9301
(Cite as: 154 F.3d 972)

▷

United States Court of Appeals,
Ninth Circuit.
CHILDREN OF THE ROSARY; Katherine A. Sabelko; Arizona Civil Liberties Union, Plaintiffs-Appellants,
v.
CITY OF PHOENIX; Richard C. Thomas, in his official capacity as Public Transit Director for the City of Phoenix; Neal Manske, in his official capacity as Deputy Director, Phoenix Transit Department, City of Phoenix; Transportation Displays, Inc. Defendants-Appellees,
and
ATC/Vancom Management Services, Inc., Defendant.
No. 97-16821.

Argued and Submitted March 12, 1998.
Decided Aug. 28, 1998.

Anti-abortion organization and civil rights organization sued city, alleging that city's standards for accepting advertising on municipal buses violated the First Amendment. The United States District Court for the District of Arizona, Stephen M. McNamee, J., denied organizations' application for a preliminary injunction, and they appealed. The Court of Appeals, Byron R. White, Associate Justice of the United States Supreme Court, Retired, sitting by designation, held that: (1) bus advertising panels were nonpublic fora; (2) city's ban on noncommercial advertising on municipal buses was reasonable in light of city's interests in maintaining neutrality and preventing a reduction in income earned from selling commercial advertising space; (3) city's advertising standard was not impermissible viewpoint discrimination; (4) advertisements submitted by plaintiff organizations were not changed to commercial advertisements by simply adding an offer to purchase a bumpersticker containing political or religious message; and (5) organizations failed to establish invalidity of city's advertising policy based on facial overbreadth, underinclusiveness, or vagueness.

Affirmed.

Noonan, Circuit Judge, filed dissenting opinion.

West Headnotes

[1] Injunction 212 ⚿138.1

212 Injunction
212IV Preliminary and Interlocutory Injunctions
212IV(A) Grounds and Proceedings to Procure
212IV(A)2 Grounds and Objections
212k138.1 k. In General. Most Cited Cases
To obtain preliminary injunction, movant must show likelihood of success on merits and possibility of irreparable injury or existence of serious questions going to the merits and balance of hardships tipping in movant's favor.

[2] Federal Courts 170B ⚿815

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)4 Discretion of Lower Court
170Bk814 Injunction
170Bk815 k. Preliminary Injunction; Temporary Restraining Order. Most Cited Cases
Court of Appeals reviews denial of preliminary injunction for abuse of discretion, and will find abuse of discretion where district court based its ruling on erroneous view of the law or on clearly erroneous assessment of the evidence.

[3] Constitutional Law 92 ⚿1761

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press

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Submitted At Meeting
Date 8/3/10 Item 3
Exh. b. #8

92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1761 k. Parks and Forests. Most Cited Cases
(Formerly 92k90.4(1))
For First Amendment purposes, "traditional public forum" is a place that has traditionally been available for public expression, such as a public park. U.S.C.A. Const.Amend. 1.

|4| Constitutional Law 92 ⚿1745

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1744 Designated Public Forum in General
92k1745 k. In General. Most Cited Cases
(Formerly 92k90.4(1))
For First Amendment purposes, "designated public forum" is a nontraditional forum that government has opened for expressive activity by part or all of the public; creation of designated public forum requires a decision intentionally opening a nontraditional forum for public discourse. U.S.C.A. Const.Amend. 1.

|5| Constitutional Law 92 ⚿1766

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1766 k. Transit Systems and Stations. Most Cited Cases
(Formerly 92k90.1(4))
City did not create "designated public forum" by opening up exterior panels on buses for advertising by the general public, but, rather, bus advertising panels were nonpublic fora for purposes of First Amendment analysis; city had consistently restricted political and religious advertising, and, although city did accept some noncommercial advertising under prior policy, such as public service announcements, only one percent of the advertisements displayed on the exterior of buses were noncommercial. U.S.C.A. Const.Amend. 1.

|6| Constitutional Law 92 ⚿1751

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1748 Non-Public Forum in General
92k1751 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
In nonpublic forum, government has the right to make distinctions in access on basis of subject matter and speaker identity, but must not make distinctions based on speaker's viewpoint; touchstone for evaluating these distinctions is whether they are reasonable in light of the purpose which the forum at issue serves. U.S.C.A. Const.Amend. 1.

|7| Constitutional Law 92 ⚿1754

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1754 k. Advertising in General. Most Cited Cases
(Formerly 92k90.1(4))
Governmental advertising standards applicable to nonpublic forum need only be reasonable for First Amendment purposes; they need not be the most reasonable or the only reasonable limitation. U.S.C.A. Const.Amend. 1.

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[8] Constitutional Law 92 ⚿1766

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1766 k. Transit Systems and Stations. Most Cited Cases
(Formerly 92k90.3)

Municipal Corporations 268 ⚿718

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k718 k. Means of Public Transportation and Communication. Most Cited Cases
City's ban on noncommercial advertising on municipal buses was reasonable, for First Amendment purposes, in light of city's interest in maintaining position of neutrality on political and religious issues, fear that buses and passengers could be subject to violence if advertising was not restricted, and interest in preventing reduction in income earned from selling advertising space to commercial advertisers. U.S.C.A. Const.Amend. 1.

[9] Constitutional Law 92 ⚿1766

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1766 k. Transit Systems and Stations. Most Cited Cases
(Formerly 92k90.3)

Municipal Corporations 268 ⚿718

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k718 k. Means of Public Transportation and Communication. Most Cited Cases
City's ban on noncommercial advertising on municipal buses was not impermissible viewpoint discrimination under First Amendment, since city did not use political or religious controversy as test for accepting advertising, but instead implemented neutral standard based on its desire to avoid jeopardizing revenue and the city's neutrality. U.S.C.A. Const.Amend. 1.

[10] Constitutional Law 92 ⚿1507

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1507 k. Viewpoint or Idea Discrimination. Most Cited Cases
(Formerly 92k90(3))
For First Amendment purposes, "viewpoint discrimination" is a form of content discrimination in which government targets not subject matter, but particular views taken by speakers on a subject. U.S.C.A. Const.Amend. 1.

[11] Constitutional Law 92 ⚿1751

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1748 Non-Public Forum in General
92k1751 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
First Amendment does not prohibit the government from imposing content-based exclusions in nonpublic forum, as long as such are reasonable, and motive is not dispositive when there is no indica-

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tion that government is implementing policy in a viewpoint discriminatory manner that reflects an intent to use policy to exclude disfavored perspectives on the issues. U.S.C.A. Const.Amend. 1.

[12] Constitutional Law 92 ⚿1766

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1766 k. Transit Systems and Stations. Most Cited Cases
(Formerly 92k90.3)

Municipal Corporations 268 ⚿718

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k718 k. Means of Public Transportation and Communication. Most Cited Cases
City's ban on noncommercial advertising on municipal buses was not shown to favor one side of a debate, in violation of First Amendment, based on fact that city's standard might permit an advertisement for a family planning clinic that offered abortion services while barring messages opposing abortion; city was merely requiring that an advertisement convey a commercial message. U.S.C.A. Const.Amend. 1.

[13] Constitutional Law 92 ⚿1766

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1766 k. Transit Systems and Stations. Most Cited Cases
(Formerly 92k90.3)

Municipal Corporations 268 ⚿718

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k718 k. Means of Public Transportation and Communication. Most Cited Cases
Advertisements submitted by anti-abortion organization and civil rights organization were "ideological communications," and essential issue-oriented nature of the advertisements could not be changed to commercial advertisements by simply adding an offer to purchase a bumpersticker containing political or religious message, and, thus, city's rejection of organization's advertisements, pursuant to city policy banning noncommercial advertising on municipal buses, was not unconstitutional viewpoint-based discrimination. U.S.C.A. Const.Amend. 1.

[14] Constitutional Law 92 ⚿1766

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1766 k. Transit Systems and Stations. Most Cited Cases
(Formerly 92k90.1(4))

Municipal Corporations 268 ⚿718

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k718 k. Means of Public Transportation and Communication. Most Cited Cases
When government was acting as proprietor in nonpublic forum, specifically, bus advertising panels,

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government could regulate that nonpublic forum by rejecting advertisement combining political and religious advertisements with a commercial offer. U.S.C.A. Const.Amend. 1.

|15| Constitutional Law 92 ⚿857

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)9 Freedom of Speech, Expression, and Press
92k857 k. Carriers. Most Cited Cases
(Formerly 92k42.3(1))
Religious and civil rights organizations could not mount valid facial overbreadth challenge to city policy banning noncommercial advertising on municipal buses, absent any claim of "a realistic danger" of compromising First Amendment rights of third parties. U.S.C.A. Const.Amend. 1.

|16| Constitutional Law 92 ⚿1766

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1766 k. Transit Systems and Stations. Most Cited Cases
(Formerly 92k90.3)

Municipal Corporations 268 ⚿718

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k718 k. Means of Public Transportation and Communication. Most Cited Cases
City policy banning noncommercial advertising on municipal buses was not shown to be unconstitutionally underinclusive, on ground that it did not ban commercial speech containing religious or political elements, where there was no showing that city's policy was giving an advantage to one side in a debate. U.S.C.A. Const.Amend. 1.

|17| Constitutional Law 92 ⚿1766

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1766 k. Transit Systems and Stations. Most Cited Cases
(Formerly 92k90.3)

Municipal Corporations 268 ⚿718

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k718 k. Means of Public Transportation and Communication. Most Cited Cases
Anti-abortion organization and civil rights organization failed to show that city policy banning noncommercial advertising on municipal buses was unconstitutionally vague, based on organizations' contention that city's standard presented a danger of discrimination against disfavored subjects in the guise of determining what is commercial speech; city could only reject an advertisement if it failed to propose a legitimate commercial transaction, a standard which would leave it with relatively little discretion in accepting or rejecting advertisements for display. U.S.C.A. Const.Amend. 1.

***974** Jay Alan Sekulow,The American Center for Law and Justice, Washington, DC; Benjamin W. Bull, The American Center for Law and Justice, Scottsdale, Arizona; James Weinstein, College of Law, Arizona State University, Tempe, Arizona; Nicholas S. Hentoff, Hentoff Law Offices, Phoenix, Arizona, for the plaintiffs-appellants.

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Donald O. Loeb, Campana, Vieh, Shore, Owens & Loeb, P.C., Scottsdale, Arizona, for the defendants-appellees.

Appeal from the United States District Court for the District of Arizona; Stephen M. McNamee, District Judge, Presiding. D.C. No. CV-97-0138-SMM.

Before: WHITE,[FN*] Associate Justice, (Ret.), NOONAN and THOMAS, Circuit Judges.

FN* The Honorable Byron R. White, Associate Justice of the United States Supreme Court, (Ret.), sitting by designation, pursuant to 28 U.S.C. § 294(a).

Opinion by Justice WHITE; Dissent by Judge NOONAN.

WHITE, Associate Justice (Ret.):

The issue presented in this appeal is whether there is a likelihood that limiting advertising on municipal buses to "speech which proposes a commercial transaction" violates the First Amendment. We hold that there is not a sufficient likelihood of a constitutional violation to justify the grant of a ***975** preliminary injunction and affirm the district court.

I

The city of Phoenix sells advertising space on the exterior panels of its buses for the purpose of raising revenue. Prior to November 1, 1996, the city's advertising standards prohibited advertising "support[ing] or oppos[ing] a candidate, issue or cause, or which advocates or opposes a religion, ... or belief." Pursuant to this standard, the city rejected an advertisement submitted by plaintiff-appellant Children of the Rosary (COR) in September 1995. The proposed advertisement stated:

"Before I formed you in the womb, I knew you"-God

Jeremiah 1:5

CHOOSE LIFE!

[COR Logo] Children of the Rosary

The COR logo is a fetus surrounded by a rosary, which is connected to a cross at the top. On October 10, 1995, COR sued the city and obtained an injunction preventing the city from enforcing the standard against COR and requiring the city to display the COR advertisement.

On November 1, 1996, new advertising standards took effect. The new standards limited the subject matter of bus advertising to "speech which proposes a commercial transaction." On November 15, 1996, the city advised COR that its advertisement would not be displayed because the advertisement did not propose a commercial transaction. In response, COR submitted a revised advertisement for display on the exterior bus panels. The revised advertisement stated:

"Before I formed you in the womb, I knew you"-God

Jeremiah 1:5

Purchase this message as a bumpersticker for your vehicle!

Contact [phone number]

[COR Logo] Children of the Rosary CHOOSE LIFE!

The city rejected COR's revised advertisement because, in the city's view, the primary purpose of the advertisement was not to propose a commercial transaction, but instead promote a non-commercial message.

Subsequently, plaintiff-appellant Arizona Civil Liberties Union (AzCLU) submitted its own advertisement for display on buses. Their advertisement stated:

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The ACLU Supports Free Speech for Everyone

To purchase this bumper sticker please call [phone number]

The city rejected this advertisement because it did not comply with the new advertising standard.

On January 23, 1997, appellants filed suit against the city under 42 U.S.C. § 1983 in the United States District Court for the District of Arizona alleging that the city's advertising standards violated the First Amendment.[FN1] On August 1, 1997, the district court denied appellants' application for a preliminary injunction. This appeal followed.

> FN1. In addition to the city of Phoenix, appellants sued Richard C. Thomas, the city's Public Transit Director, Neal Manske, Deputy Director of the transit department, ATC/Vancom Management Services, Inc., a corporation that manages the transit system under a contract with the city, and Transportation Displays, Inc., a corporation that administers the placement of advertising on city buses in compliance with city standards. For convenience, we refer to the defendants collectively as the "city."

II

[1] We have jurisdiction under 28 U.S.C. § 1292(a)(1). To obtain a preliminary injunction, a movant must show a likelihood of success on the merits and the possibility of irreparable injury or the existence of serious questions going to the merits and the balance of hardships tipping in the movant's favor. *See Foti v. City of Menlo Park*, 146 F.3d 629, 634 (9th Cir.1998).

[2] We review the denial of a preliminary injunction for abuse of discretion, and will find an abuse of discretion "where the district***976** court 'based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence.' " *Roe v. Anderson*, 134 F.3d 1400, 1402 (9th Cir.1998) (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990)); *see MAI Systems Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 516 (9th Cir.1993).

To prove a violation of 42 U.S.C. § 1983, appellants must establish that 1) the city acted under color of state law; and 2) the city deprived appellants of a right secured by the Constitution or laws of the United States. *See Fred Meyer, Inc. v. Casey*, 67 F.3d 1412, 1413 (9th Cir.1995).

III

There are three primary issues we must address in determining whether the district court applied the correct First Amendment framework. First, we must properly classify the advertising panels under the Supreme Court's "forum approach" for assessing the validity of restrictions on the use of government property. *See International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678, 112 S.Ct. 2701, 120 L.Ed.2d 541 (1992) (ISKCON). Second, once we determine the type of forum at issue, we ascertain the relevant level of scrutiny for this forum. Finally, we must determine whether the city improperly applied this standard in rejecting the advertisements submitted by appellants.

A

[3] The Supreme Court "has adopted a forum analysis as a means of determining when the Government's interest in limiting the use of its property to its intended purpose outweighs the interest of those wishing to use the property for other purposes." *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 800, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985). Forum analysis divides government property into three categories: public fora, designated public fora, and nonpublic fora. A traditional public forum is a place "that has traditionally been

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available for public expression," such as a public park. *ISKCON*, 505 U.S. at 678, 112 S.Ct. 2701. Neither party argues that a bus advertising panel is a traditional public forum. Instead, the parties debate whether the bus panel is a designated public forum or a nonpublic forum.

[4] A designated public forum is a nontraditional forum that the government has opened for expressive activity by part or all of the public. *See Perry Educ. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 46 & n. 7, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983). The creation of a designated public forum requires a decision "intentionally opening a nontraditional forum for public discourse." *Cornelius*, 473 U.S. at 802, 105 S.Ct. 3439; *see Arkansas Educational Television Comm'n v. Forbes*, 523 U.S. 666, ----, 118 S.Ct. 1633, 1641, 140 L.Ed.2d 875 (1998) (*AETC*). Hence, the Court has looked to the policy and practice of the government, the nature of the property and its compatibility with expressive activity, and whether the forum was designed and dedicated to expressive activities in determining if the government created a designated public forum. *See Cornelius*, 473 U.S. at 802-03, 105 S.Ct. 3439; *AETC*, 523 U.S. at ----, 118 S.Ct. at 1641.

In defining the relevant forum, the Court has "focused on the access sought by the speaker." *Cornelius*, 473 U.S. at 801, 105 S.Ct. 3439. In this case, we agree with the district court that the relevant forum at issue is the exterior advertising spaces on the city's buses.

[5] Appellants contend that the city created a designated public forum by opening up the exterior panels on buses for advertising by the general public. However, a review of the city's standards and practices indicates that the city has not opened a public forum. The city has consistently restricted political and religious advertising. *See* Excerpts of Record at 22 (affidavit of Public Transit Director). Although under its prior policy the city did accept some noncommercial advertising, such as public service announcements, only one percent of the advertisements displayed on the exterior of buses were noncommercial. *See* Excerpts of Record at 22 (affidavit of Public Transit Director).***977** The city submits that its current ban on noncommercial advertising supports a finding that the advertising panels are nonpublic fora.

The Supreme Court's decision in *Lehman v. Shaker Heights*, 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974), strongly supports our conclusion that the advertising panels are nonpublic fora. In *Lehman*, the Court upheld a ban on political advertising on public transit vehicles. The plurality opinion squarely rejected the argument that the advertising space on buses constituted a public forum protected by the First Amendment. *Id.* at 301-02, 94 S.Ct. 2714. The Court noted that the city was engaged in commerce and had "discretion to develop and make reasonable choices concerning the type of advertising" it would display. *Id.* at 303, 94 S.Ct. 2714. In our view, *Lehman* undermines appellants' claim that if a city has opened a property for communication, the property becomes a designated public forum. *See Perry*, 460 U.S. at 49 n. 9, 103 S.Ct. 948 (noting that *United States Postal Service v. Council of Greenburgh Civic Assns.*, 453 U.S. 114, 101 S.Ct. 2676, 69 L.Ed.2d 517 (1981), reaffirmed *Lehman's* rationale for rejecting the argument that because an instrumentality is used for communication of ideas, it becomes a public forum).

However, appellants suggest *Lehman* is not persuasive authority. They assert that *Lehman* only concerns advertising *inside* a bus because Justice Douglas, who supplied the fifth vote for upholding the ban, based his concurrence on the fact that commuters were a "captive audience" who would be forced to view a partisan political message. This interpretation of his concurrence is far from clear. In Justice Douglas's view, the right of commuters to be free from forced intrusions on their privacy "preclude[d]" the city from transforming its buses into "forums for the dissemination of ideas upon this captive audience." 418 U.S. at 307, 94 S.Ct. 2714. The reference to "captive audience" arguably suggests Justice Douglas was referencing com-

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muters inside a bus. However, read in context, his concern about forcing messages on a captive audience applies to observers on the street and commuters inside a bus. Justice Douglas wrote:

> I agree with Mr. Justice Brandeis who ... said that the visual message in streetcars is no different [from other forms of communication imposed on a captive audience], for "[a]dvertisements of this sort are constantly before the eyes of observers on the streets and in street cars to be seen without the exercise of choice or volition on their part. Other forms of advertising are ordinarily seen as a matter of choice on the part of the observer.... The radio can be turned off, but not so the billboard or street car placard."

418 U.S. at 307-08, 94 S.Ct. 2714 (quoting *Packer Corp. v. Utah*, 285 U.S. 105, 110, 52 S.Ct. 273, 76 L.Ed. 643 (1932)). We reject appellants' invitation to narrowly interpret *Lehman*.[FN2]

> FN2. Appellants also claim that the issue presented in *Lehman* was limited to advertising inside transit vehicles. However, their claim is contradicted by Justice Brennan's dissent, which stated that the petitioner was denied access to exterior and interior advertising space pursuant to the city's prohibition on political advertising, 418 U.S. at 320 n.12, 94 S.Ct. 2714.

Appellants also argue that we should not rely on *Lehman* because it was decided prior to the Supreme Court's adoption of its current approach to forum analysis in *Perry*. They claim that *Lehman* is inconsistent with subsequent Supreme Court decisions and provides little support for finding that the panels are nonpublic fora. We reject this argument. The Court relied upon and reaffirmed *Lehman's* rationale in *Perry* and subsequent cases, and there is no suggestion in the Court's jurisprudence that the advertising panels are properly classified as designated fora. *See, e.g., Perry*, 460 U.S. at 47, 103 S.Ct. 948 (relying on restriction upheld in *Lehman* to support the proposition that selective access does not transform government property into a public forum); *ISKCON*, 505 U.S. at 678, 112 S.Ct. 2701 (*Lehman* reflects forum-based analysis and supports proposition that lower level of scrutiny applies when government acts as a proprietor); *Cornelius*, 473 U.S. at 803-04, 806, 808-09, 105 S.Ct. 3439 (relying on *Lehman* to support, *inter alia*, propositions that "[n]ot every instrumentality used for communication ... is a ***978** traditional public forum or a public forum by designation," and that a speaker may be excluded from a nonpublic forum if he wishes to address a topic not within the purpose of the forum); *United States v. Kokinda*, 497 U.S. 720, 725-26, 110 S.Ct. 3115, 111 L.Ed.2d 571 (1990) (plurality opinion) (extensively quoting from *Lehman* and noting the lower level of scrutiny applied to the ban on political advertising); *id.* at 737, 110 S.Ct. 3115 (relying on *Lehman* as stating the Court's "usual test for reasonableness" in a nonpublic forum); *R.A.V. v. St. Paul*, 505 U.S. 377, 390 n. 6, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992) (*Lehman* supports conclusion that there is "room" for "reasonable and viewpoint-neutral content-based discrimination in nonpublic forums"); *see also Lebron v. National R.R. Passenger Corp.*, 69 F.3d 650, 657 n. 3 (2d Cir.1995), *cert. denied*, 517 U.S. 1188, 116 S.Ct. 1675, 134 L.Ed.2d 778 (1996) (rejecting the same argument presented by appellants in this case and noting that "the Supreme Court has repeatedly reaffirmed a broader reading of *Lehman*, often specifically citing to the plurality opinion").

Thus, *Lehman* provides sufficient authority for concluding that the bus advertising panels are nonpublic fora. Our conclusion is also consistent with the reasoning of other circuits. *See Planned Parenthood Ass'n/Chicago Area v. Chicago Transit Auth.*, 767 F.2d 1225 (7th Cir.1985); *New York Magazine v. Metropolitan Transportation Authority*, 136 F.3d 123 (2d Cir.1998); *see also Christ's Bride Ministries, Inc. v. Southeastern Pa. Transp. Auth.*, 148 F.3d 242 (3d Cir.1998). In *Planned Parenthood*, the Seventh Circuit concluded that advertising space on a bus system became a public forum where the

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transit authority permitted advertising on "a wide variety of commercial, public-service, public-issue, and political ads." 767 F.2d at 1232. The court distinguished *Lehman* because *Lehman* "upheld the blanket exclusion of an entire class of potentially controversial speech," while in *Planned Parenthood* the transit authority promulgated "no policy at all" with respect to the acceptance of advertising. 767 F.2d at 1233; *see Christ's Bride Ministries, Inc.*, 148 F.3d at 254-55, 256-57 (distinguishing *Lehman* where transit authority promulgated no policy governing removal of advertisements).

Similarly, in *New York Magazine,* the Second Circuit concluded that advertising space on the outside of buses was a public forum where the transit authority permitted "political and other noncommercial advertising generally." 136 F.3d at 130. The court found that the transit authority could not reject an advertisement based on a regulatory interest in upholding a law prohibiting the use of a person's name without their consent. *Id.* The court distinguished *Lehman* by arguing that

> disallowing political speech, and allowing commercial speech only, indicates that making money is the main goal. Allowing political speech, conversely, evidences a general intent to open a space for discourse, and a deliberate acceptance of the possibility of clashes of opinion and controversy that the Court in *Lehman* recognized as inconsistent with sound commercial practice.

Id.

This case is easily distinguished from the decisions of the Second and Seventh Circuits because the city of Phoenix consistently promulgates and enforces policies restricting advertising on its buses to commercial advertising. The city has not designated the advertising space on the exterior of its buses as a place for general discourse, and we therefore do not back away from our conclusion that the advertising space is a nonpublic forum.

B

[6][7] In a nonpublic forum, the government has the "right to make distinctions in access on the basis of subject matter and speaker identity," *Perry,* 460 U.S. at 49, 103 S.Ct. 948, but "must not [make distinctions] based on the speaker's viewpoint," *AETC,* 523 U.S. at ----, 118 S.Ct. at 1643. "The touchstone for evaluating these distinctions is whether they are reasonable in light of the purpose which the forum at issue serves." *Perry,* 460 U.S. at 49, 103 S.Ct. 948. The advertising standards "need only be reasonable; [they] need not be the most reasonable ***979** or the only reasonable limitation." *ISKCON,* 505 U.S. at 683, 112 S.Ct. 2701 (internal quotations omitted). In addition, "[w]here the government is acting as a proprietor ... its action will not be subjected to the heightened review to which its actions as a lawmaker may be subject." *ISKCON,* 505 U.S. at 678, 112 S.Ct. 2701 (citing *Lehman* and noting that the Court upheld the political advertisement ban "even though the city permitted other types of advertising" on the buses); *see Kokinda,* 497 U.S. at 726, 110 S.Ct. 3115 (action of government acting in proprietary capacity is valid "unless it is unreasonable, or, as was said in *Lehman,* 'arbitrary, capricious, or invidious.' ").

[8] The city sets forth four interests justifying the limitation on noncommercial speech: 1) maintaining a position of neutrality on political and religious issues; 2) a fear that buses and passengers could be subject to violence if advertising is not restricted; 3) preventing a reduction in income earned from selling advertising space because commercial advertisers would be dissuaded "from using the same forum commonly used by those wishing to communicate primarily political or religious messages;" and 4) a concern that allowing COR's advertisement would violate the Establishment Clause. *See* Answer ¶ 6.10. The district court concluded that each of the first three interests sufficiently supported the reasonableness of the revised standard. The court declined to address the Establishment Clause issue.

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We agree with the district court that any one of the three interests supports the reasonableness of the city's standard. The city's interests in protecting revenue and maintaining neutrality on political and religious issues are especially strong. The *Lehman* court recognized that:

> [r]evenue earned from long-term commercial advertising could be jeopardized by a requirement that short-term candidacy or issue-oriented advertisements be displayed on car cards. Users would be subjected to the blare of political propaganda. There could be lurking doubts about favoritism, and sticky administrative problems might arise in parceling out limited space to eager politicians. In these circumstances, the managerial decision to limit car card space to innocuous and less controversial commercial and service oriented advertising does not rise to the dignity of a First Amendment violation. Were we to hold to the contrary, display cases in public hospitals, libraries, office buildings, military compounds, and other public facilities would become Hyde Parks open to every would-be pamphleteer and politician. This the Constitution does not require.
>
> ....
>
> The city consciously has limited access to its transit system advertising space in order to minimize chances of abuse, the appearance of favoritism, and the risk of imposing upon a captive audience. These are reasonable legislative objectives advanced by the city in a proprietary capacity.

Lehman, 418 U.S. at 304, 94 S.Ct. 2714; *see Cornelius*, 473 U.S. at 809, 105 S.Ct. 3439 ("avoiding the appearance of political favoritism is a valid justification for limiting speech in a nonpublic forum"); *Lebron*, 69 F.3d at 658 (upholding reasonableness of policy rejecting displays favoring any political view).

Appellants recognize that the plurality in *Lehman* "stated that the exclusion of noncommercial speech was justified by the city's asserted interest" in protecting its advertising revenue. Appellants' Opening Brief at 33. However, they argue that *Lehman's* low level of scrutiny is no longer valid in light of subsequent Supreme Court decisions. As we discussed in concluding that the panels were nonpublic fora, there is little authority to support this argument. We conclude that the city's ban on noncommercial advertising is reasonable in light of the interests asserted by the city. [FN3]

> FN3. Appellants' argument that *Metromedia, Inc. v. San Diego*, 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981), prohibits favoring commercial speech over noncommercial speech in bus advertising is rebutted by *Metromedia*'s recognition that *Lehman* presented exactly that situation, and the Court's statement that it upheld the policy in *Lehman* Because it involved a factual situation different from the regulation of billboards. *Metromedia*, 453 U.S. at 514 n.19, 101 S.Ct. 2882 (plurality opinion).

***980** C

[9][10] The standard may still violate the First Amendment if it discriminates on the basis of viewpoint. *Cornelius*, 473 U.S. at 811, 105 S.Ct. 3439. We must determine whether the city's standard is a permissible subject matter restriction or impermissible viewpoint discrimination, a distinction that "is not a precise one." *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 831, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). Viewpoint discrimination is a form of content discrimination in which "the government targets not subject matter, but particular views taken by speakers on a subject." *Id.* at 829, 115 S.Ct. 2510; *see General Media Communications, Inc. v. Cohen*, 131 F.3d 273, 281 (2d Cir.1997), *cert. denied*, 524 U.S. 951, 118 S.Ct. 2367, 141 L.Ed.2d 736 (1998).

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[11] Appellants first argue that even though the standard may have the facial appearance of neutrality, the standard is unconstitutional because the intent of the policy is to exclude religious and political speech. But we are dealing here with a nonpublic forum. The First Amendment does not prohibit the government from imposing content-based exclusions, as long as such are reasonable, which is the case here. Two of the reasonable exclusions are political and religious speakers in order to maintain neutrality. It is argued, however, that "[a]lthough the new Policy has abandoned the previous policy's language, it has not abandoned its goal." Appellants' Opening Brief at 23. The city certainly intended to reject political and religious speakers. But motive is not dispositive when there is no indication that the city is implementing the standard in a viewpoint discriminatory manner that reflects an intent to use the policy to exclude disfavored perspectives on the issues.

The city's previous attempt at restricting access to the forum was struck down because it prohibited the expression of religious perspectives on issues while possibly permitting others to express their perspective. The city responded by enacting a general standard regulating access to the forum. The city's current standard does not use political or religious controversy as the test for accepting advertising, but instead implements a neutral standard based on its desire to avoid jeopardizing revenue and the city's neutrality. *See Lehman*, 418 U.S. at 304, 94 S.Ct. 2714 (limiting advertising to commercial advertising that is generally "innocuous and less controversial" does not violate the First Amendment); *Lebron*, 69 F.3d at 658-59.

Of course, a regulation that "is in reality a facade for viewpoint-based discrimination" is unconstitutional. *Cornelius*, 473 U.S. at 811, 105 S.Ct. 3439. But "[a] facade for viewpoint discrimination ... requires discrimination behind the facade." *Grossbaum v. Indianapolis Marion County Bldg. Auth.*, 100 F.3d 1287, 1298 (7th Cir.1996). In *Cornelius*, the Court was concerned that a government ban on "advocacy groups" in a charity drive concealed a bias against a viewpoint expressed by an excluded group. The government argued that the advocacy organization was excluded from a government charity campaign based in part on the government's interest in limiting participation to groups providing direct services to indigent persons. However, the Court remanded the case because there was evidence that other organizations who did not provide direct services to the poor participated in the campaign, thus raising the possibility that the organization was excluded because of its viewpoint.

We do not have similar evidence in this case. Although the city has continued to honor pre-existing contracts involving noncommercial advertisements to avoid breach of contract claims, including the display of a COR advertisement, the city has not accepted new noncommercial advertisements. The district court carefully reviewed the details of each contract and advertisement proffered by appellants as evidence of discrimination, and concluded that the standard was not a facade for viewpoint discrimination. We find no error in the district court's findings that the noncommercial contracts were effective prior to the adoption of the new standard and that advertisements accepted after the standard took effect were commercial in nature.

We also reject appellants' argument, based on *R.A.V. v. St. Paul*, 505 U.S. 377, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992), that the standard discriminates in practice against a viewpoint***981** because it favors one side in a debate on public issues. *R.A.V.* struck down a criminal law that, among other things, prohibited displays that used certain words that would arouse anger in others on the basis of race, color, creed, religion, or gender. However, the law permitted displays containing the same words if the display did not invoke race or other classifications. Here, appellants do not explain how the city's standard prohibits one side of a debate from employing certain language or methods to express its view, while permitting the other side to use the same methods. Or, as the Court put it in

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R.A.V., the city is not permitting "one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules." 505 U.S. at 392, 112 S.Ct. 2538. Moreover, as compared to the applicable level of scrutiny when the government acts as a proprietor, the level of scrutiny is higher when the government is using its sovereign power to impose criminal penalties to deprive citizens of their liberty for expressing certain views.

[12] Appellants claim that the standard might permit an advertisement for a family planning clinic that offers abortion services while barring messages opposing abortion, thus favoring one side of a debate. However, the city is merely requiring that an advertisement convey a commercial message. As in *Lehman*, the city is acting to prevent its advertising panels from becoming areas for the debate of political and religious issues with a resulting detrimental effect on the city's ability to attract long-term commercial advertising. "In these circumstances, the managerial decision to limit car card space to innocuous and less controversial commercial and service oriented advertising does not rise to the dignity of a First Amendment violation." *Lehman*, 418 U.S. at 304, 94 S.Ct. 2714.

D

[13] Appellants also bring an as applied challenge, claiming that the city's rejections of their revised advertisements were viewpoint-based. The district court rejected the challenge, finding that the advertisements were "ideological communications" and the essential issue-oriented nature of the advertisements could not be changed to commercial advertisements by simply adding an offer to purchase a bumpersticker containing a political or religious message. We agree with the district court.

As an initial matter, we note that if appellants' challenge is successful, the reasoning of *Lehman* is hollow because a political advertising restriction could easily be avoided by tacking on a commercial offer to purchase the political message. For example, any candidate for political office could convert his political advertisement into a commercial advertisement by simply offering the message as a bumpersticker. This would significantly undermine the government's ability to act as a proprietor and control access to a nonpublic forum, thereby forcing the government into "an all-or-nothing choice" where "it might not open the property at all." *AETC*, 523 U.S. at ----, 118 S.Ct. at 1642.

The Court addressed a similar attempt to transform speech in *Valentine v. Chrestensen*, 316 U.S. 52, 62 S.Ct. 920, 86 L.Ed. 1262 (1942). The petitioner in *Valentine* attempted to evade a restriction on commercial advertising by placing a protest against a city law on the back of a handbill containing a commercial advertisement. The Court rejected this attempt to convert a commercial advertisement into a public protest, concluding:

> that the affixing of the protest against official conduct to the advertising circular was with the intent, and for the purpose, of evading the prohibition of the ordinance. If that evasion were successful, every merchant who desires to broadcast advertising leaflets in the streets need only append a civic appeal, or a moral platitude, to achieve immunity from the law's command.

316 U.S. at 55, 62 S.Ct. 920. Although *Valentine's* holding that the First Amendment does not protect commercial advertising has not survived, *see Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 420-21, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993), the Court has continued to reject attempts to evade a regulation by appending a message aimed at transforming the speech.

***982** In *Board of Trustees of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 109 S.Ct. 3028, 106 L.Ed.2d 388 (1989), the Court rejected another attempt to transform speech by combining commercial and noncommercial elements. The prohibition at issue in *Fox* banned the operation of commercial enterprises on state university campuses. Students challenged the prohibition on First Amendment grounds

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because they were unable to host "Tupperware parties" to sell housewares. According to the students, the parties included presentations on "how to be financially responsible and how to run an efficient home." 492 U.S. at 474, 109 S.Ct. 3028. Thus, the students asserted, the commercial and noncommercial speech were "inextricably intertwined" and must therefore be classified as commercial speech. The Court stated that the "level of First Amendment scrutiny must depend upon the nature of the speech taken as a whole and the effect of [any] compelled statement thereon." 492 U.S. at 474, 109 S.Ct. 3028 (internal quotations omitted). The Court concluded that including the "home economics elements" did not convert the events into educational speech.

[14] The district court did not err in finding that the proposed advertisements were noncommercial and the city did not engage in impermissible viewpoint discrimination. The Court has recognized that "there are commonsense differences between speech that does no more than propose a commercial transaction and other varieties." *Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 n. 24, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976) (internal quotations omitted); *see Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 562, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980). In this case, the advertisements are not "expression[s] related solely to the economic interests of the speaker and its audience," *Central Hudson*, 447 U.S. at 561, 100 S.Ct. 2343, but instead seek to blur the distinction between types of speech by blending an "ideological communication," *Virginia Bd. of Pharmacy*, 425 U.S. at 779, 96 S.Ct. 1817 (Stewart, J., concurring), with an offer to purchase the message. When the government is acting as a proprietor in this nonpublic forum, the government may regulate this nonpublic forum by rejecting an advertisement combining political and religious advertisements with a commercial offer. The city did not apply the standard in a viewpoint discriminatory manner by rejecting appellants' advertisements promoting their views on public issues.

IV

[15] Appellants also argue with little elaboration that the standard is overbroad, underinclusive, and vague. Appellants claim that the standard is overbroad because its restrictions are greater than necessary to protect the city's interests. Appellants do not explain how the doctrine of overbreadth applies in this case. Indeed, they do not claim that the standard chills the speech of third parties or that others may not undertake to challenge the law. *See Board of Airport Comm'rs of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 574, 107 S.Ct. 2568, 96 L.Ed.2d 500 (1987). Appellants fail to argue that there is "a realistic danger" of compromising the First Amendment rights of third parties and we find no merit in their facial overbreadth challenge. *See Jews for Jesus*, 482 U.S. at 574, 107 S.Ct. 2568 (internal quotations omitted).

[16] We also reject appellants' assertion that the standard is underinclusive because it does not ban commercial speech containing religious or political elements. Appellants reliance on *City of Ladue v. Gilleo*, 512 U.S. 43, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994), to support their argument is misplaced. *City of Ladue* stated that a regulation may be underinclusive where it attempts to give one side of a debate an advantage or where the government seeks to control "the search for political truth." 512 U.S. at 51, 114 S.Ct. 2038 (internal quotations omitted). Appellants do not argue in their underinclusive challenge that the city is giving an advantage to one side in a debate, and we rejected this argument in discussing whether the standard discriminates on the basis of viewpoint.

[17] Finally, appellants argue that the standard is unconstitutionally vague in reliance on a concurring opinion in ***983***Metromedia*, 453 U.S. at 536-37, 101 S.Ct. 2882, and a citation to that statement in *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 423 n. 19, 113 S.Ct. 1505, 123 L.Ed.2d 99

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(1993). They claim that the standard presents a danger of discrimination against disfavored subjects in the guise of determining what is commercial speech. Their brief vagueness argument makes it difficult to determine if they claim that the standard is vague because it presents a danger of viewpoint discrimination, or is vague because it "contains no standard for guidance as to prohibited and allowable conduct." *Major Media of the Southeast, Inc. v. City of Raleigh*, 792 F.2d 1269, 1272 (4th Cir.1986). To the extent appellants claim the standard is unconstitutional because of the discretion granted to the city, we reject this argument based on our discussion in previous sections.

If appellants are simply asserting that we should hold the standard unconstitutional because it is difficult to determine whether the "speech proposes a commercial transaction," we would reject the argument. First, we note that there is no fine or other penalty in this case if a person incorrectly classifies their advertisement: The city simply rejects the advertisement. This claim is unlike the usual vagueness challenge involving a fine or other sanction that has the potential to chill conduct. *Cf. Jews for Jesus*, 482 U.S. at 576, 107 S.Ct. 2568 (unrestrained power to arrest). Second, we agree with the Fourth Circuit that the Supreme Court has provided sufficient guidance on the meaning of the standard. *See Major Media*, 792 F.2d at 1272. The city's standard goes beyond stating that commercial speech is allowed; the city enacted the Court's standard for identifying commercial speech.[FN4] "[T]he test for identifying commercial speech" is whether the advertisement "propose[s] a commercial transaction." *Fox*, 492 U.S. at 473-74, 109 S.Ct. 3028. The Fourth Circuit was not persuaded that the possible difficulty of applying the Court's guidance in a marginal situation was sufficient to declare a policy unconstitutionally vague:

> FN4. Cf. *Foti v. City of Menlo Park*, 146 F.3d 629, 638-39 (9th Cir. 1998) (striking down on vagueness grounds a portion of an ordinance banning signs displayed on vehicles only when the vehicle has been parked in a manner designed to attract attention). The statute in Foti was facially invalid because it required police officers to determine whether the driver intended to park the car for the purpose of displaying a sign and provided no standard to guide their discretion. *Id.* at 639 (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108-109, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972)). Here, by contrast, the city may only reject an advertisement if it fails to propose a legitimate commercial transaction, a standard which will leave it with relatively little discretion in accepting or rejecting advertisements for display.

> Although an occasional marginal case might arise raising the question of whether on the particular facts the definition of commercial speech would be correct, such an infrequent possibility should not in itself justify a generalized charge that the ordinance itself is vague, given the guidance afforded by court decisions in the area.

Major Media, 792 F.2d at 1272-73. We agree with the Fourth Circuit and reject appellants' vagueness challenge.

CONCLUSION

We AFFIRM the district court's denial of appellants' request for a preliminary injunction.

AFFIRMED.

NOONAN, Circuit Judge, dissenting.

That commercial speech can be distinguished from non-commercial speech, that the government as proprietor can limit a non-public forum to commercial speech so that the government makes money, and that the sides of buses in Phoenix are meant to be such a forum, are propositions I accept. They do not remedy discriminatory application of the ordinance by the City of Phoenix.

The ordinance restricts advertising to "speech

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which proposes a commercial transaction." At first blush, it looks as though the standard must be good because it incorporates a hint from a dictum of the Supreme Court: "[t]here are commonsense differences between speech that does 'no more than propose a commercial transaction,' ... and other varieties." ***984** *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 n. 24, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976) (citation omitted). Advertisements for employment that do not express an opinion on social policy are "classic examples of commercial speech." *Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations*, 413 U.S. 376, 385, 93 S.Ct. 2553, 37 L.Ed.2d 669 (1973). An advertisement that expresses opinion and seeks financial support for a political movement is not commercial. *New York Times Co. v. Sullivan*, 376 U.S. 254, 266, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). The distinction is tangible.

The distinction must be applied in the unique context of the medium of communication involved. Street car signs have been lumped with billboards as forming "a class by themselves." *Packer Corp. v. Utah*, 285 U.S. 105, 110, 52 S.Ct. 273, 76 L.Ed. 643 (1932) (Brandeis, J.); *see also Lehman v. City of Shaker Heights*, 418 U.S. 298, 307-08, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974) (Douglas, J., concurring, relying on Justice Brandeis's opinion in *Packer*). Experience, however, has shown each medium of communication to be unique. *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 501, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981). The medium here is the exterior panels of city buses. Such panels are large-not as big as big billboards but large enough so that figures on them are more than lifesize and the print on them shouts its message. Moving and grunting as they move, buses call attention to themselves. Stuck in traffic beside or behind a bus, the driver and passengers of a car cannot avoid taking in what confronts them. It is in their face. Similarly, pedestrians waiting for a light to turn cannot avert their eyes from what a waiting bus offers to view. The exterior panels are better than billboards in their ability to command consideration by those momentarily before them, and, unlike billboards, they move down central streets.

Not only is each medium of expression unique; the cultural context changes with the times. The context of a quarter of a century ago is not today's. We must apply precedents taking into account the context of contemporary culture. In this culture ideological conflicts exist in which the commercial side coincides with one of the two embattled positions. The commercial-non-commercial distinction should not be mechanically applied without attention to this distinct modern phenomenon.

As applied, the Phoenix ordinance bans a message that proposes a commercial transaction and, as an integral part of that proposal, identifies the product to be bought. What Children of the Rosary offers for sale is not something devised to evade the ordinance. As the record demonstrates, the bumpersticker was a good it sold prior to the ordinance's enactment. The American Civil Liberties Union offers a bumpersticker that, containing a message as to the ACLU's goals, effectively advertises the value of the ACLU as a participant in the community. A nonprofit organization may surely sell products incidental to its mission and thereby both promote its goals and help to support itself. It is hard to see why Phoenix rejected the ACLU ad-surely the message was uncontroversial-unless the city was trapped into maintaining a consistent position on bumperstickers. It may be, as the majority suggests, that the ordinance would be porous if the sale of bumperstickers is not barred; but that suggestion only shows the deficiency of the ordinance as applied and the difficulty of governmental restraint of speech.

It is something of an anomaly in First Amendment jurisprudence for more protection to be accorded commercial speech than is accorded noncommercial speech. As Justice White has observed, such a result "inverts" the normal rule. *Metromedia, Inc.*, 453 U.S. at 513, 101 S.Ct. 2882. If the inversion is permitted by precedent, it still must be done in a way

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that does not destroy the level playing field of politics or put the government's seal of approval on one of two sides of a political issue. Moneymaking is not government's primary business. It would be ironic if pursuit of profit permitted a unit of government to discriminate in the messages on government property.

Here, the message of a group acknowledging the sacredness of human life in the womb is rejected; Planned Parenthood could run an ad for an abortion clinic. The views clash; the city of Phoenix would give space to one and not the other. Analogously, if ***985** Arizona should come to permit physician-assisted suicide as does Oregon, Dr. Kevorkian could advertise his services on the sides of the buses of Phoenix, but the counter advice of advocates offering free counselling against this course would be forbidden. The examples from the great life issues in our present culture speak for themselves. The clash over the environment affords other examples. A power company could extol its product. The Sierra Club, objecting to more dams, would be denied the forum. The makers of a pesticide could celebrate their wares; champions of pesticide-free farms would be barred. A developer could tout the quality of his homes; defenders of green space in the suburbs would have to be silent on the buses. The pornographer could advertise his shop; the defenders of neighborhood decency would be denied a reply. In the America of 1998 to give the commercial advertiser space, without reference to the product being pushed, is for a city to take sides more than occasionally on issues of life and health and energy and the ecosystem.

The case is further complicated by the likelihood of commercial media using the buses to advertise their products. The record indicates that the city of Phoenix is ready to accept such advertisements. Commercial media advertising can be full of political or religious content. In this way a radio station in Phoenix, like a station in San Francisco, could advertise on the buses that it broadcasts Rush Limbaugh with a photo of the man accompanying the sales pitch. A Christian radio station could promote its product with a cross and a relevant message. A movie house could announce the return of *The Last Temptation of Christ* with an illustration of the Magdalen.

If the city of Phoenix is to be truly neutral on political and religious issues, it must go beyond the simplicity of "commercial" and be specific as to the content of commercial messages it will not accept. The city may, for instance, specify that the buses will not carry commercial messages on hot topics-e.g., abortion, cigars and cigarettes, environmental disputes, euthanasia, pornography, radio talk shows, and X-rated movies. The city will have to discriminate frankly as to content, as it permissibly may in this commercial context. Such content-based restrictions are permissible in such nonpublic fora. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 49, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983). What the city may not do is discriminate as to viewpoint, *Arkansas Educ. Television Comm'n v. Forbes,* 523 U.S. 666, ----, 118 S.Ct. 1633, 1643, 140 L.Ed.2d 875 (1998), as it did in this case where in the course of applying its ordinance it effectively rewrote it to permit only "primarily commercial" messages and thereby froze out even commercial advertising by nonprofit groups without significant business transactions to advertise.

Of the three rationales for the city's policy, the avoidance of violence against the buses seems to border on the absurd; nothing in the record substantiates the fear. The other two rationales-neutrality on contentious political and religious matters and the maintenance of standards attractive to business advertisers-would both be served by the kind of precision suggested here as essential to constitutionality. Neither rationale is served by a policy that allows the ideology of one side but not the other to be smuggled in.

The Phoenix ordinance, as applied, discriminates against the appellants' commercial speech and the Phoenix ordinance, as applied, fails to mark off a

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realm of ideology-free speech from a realm where ideologues with businesses to advertise can flourish. The preliminary injunction should have been granted.

C.A.9 (Ariz.),1998.
Children of the Rosary v. City of Phoenix
154 F.3d 972, 26 Media L. Rep. 2228, 98 Cal. Daily Op. Serv. 6719, 98 Cal. Daily Op. Serv. 9301

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69 F.3d 650, 64 USLW 2291
(Cite as: 69 F.3d 650)

▷

United States Court of Appeals,
Second Circuit.
Michael A. LEBRON, Plaintiff-Counter-Defendant-Appellee,
v.
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK), Defendant-Appellant,
and
Transportation Displays, Incorporated, Defendant-Counter-Claimant.
No. 1494, Docket 93-7127.

Argued April 27, 1993.
Decided Dec. 27, 1993.
Reversed and Remanded Feb. 21, 1995.
Reargued May 11, 1995.
Decided Oct. 30, 1995.

Artist sued National Railroad Passenger Corporation (Amtrak), after Amtrak rejected artist's lease of large billboard space because artist's proposed display was "political," for violation of artist's First Amendment rights. The United States District Court for the Southern District of New York, Pierre N. Leval, J., 811 F.Supp. 993, entered judgment for artist, and Amtrak appealed. The Court of Appeals for the Second Circuit, 12 F.3d 388, reversed upon finding that Amtrak was not government actor. The Supreme Court, 513 U.S 374, 115 S.Ct. 961, 130 L.Ed.2d 902, Justice Scalia, granted certiorari, and reversed upon finding that Amtrak was governmental actor. On remand, the Court of Appeals, Mahoney, Circuit Judge, held that: (1) display was not a public forum, or was a limited public forum; (2) policy prohibiting political speech on billboard was reasonable; (3) policy was not void for vagueness; (4) policy was not void for viewpoint bias; and (5) plaintiff lacked standing for facial challenge to Amtrak's policy.

Reversed and remanded with instructions.

Jon O. Newman, Chief Judge, dissented and filed opinion.

Amended on Denial of Rehearing 74 F.3d 371, 1995 WL 767138.

West Headnotes

[1] Constitutional Law 92 ⚿1735

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1732 Public Forum in General
92k1735 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
Regulation of speech on government property that has traditionally been available for public expression or that has been designated as public forum, whether of limited or unlimited character, is subject to highest scrutiny; such regulations survive only if they are narrowly drawn to achieve compelling state interest. U.S.C.A. Const.Amend. 1.

[2] Constitutional Law 92 ⚿1751

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1748 Non-Public Forum in General
92k1751 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
Limitations on expressive activity conducted on government property which has not traditionally been available for public expression or that has not been designated as public forum need only be reasonable, as long as regulation is not effort to sup-

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Exhibit 9

press speaker's activity due to disagreement with speaker's view. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law 92 ⇐1735

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1732 Public Forum in General
92k1735 k. Justification for Exclusion or Limitation. Most Cited Cases
(Formerly 92k90.1(4))
Reasonable, content-neutral time, place, or manner restrictions are permissible in public forum. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law 92 ⇐1754

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1754 k. Advertising in General. Most Cited Cases
(Formerly 92k90.1(4))
For purposes of determining whether public forum was involved with respect to artist's desire to place advertisement on large billboard on New York City's Pennsylvania Station, determination was limited to that unique display rather than all advertising space managed by same firm in New York City. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law 92 ⇐1734

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1732 Public Forum in General
92k1734 k. Nature and Requisites. Most Cited Cases
(Formerly 92k90.1(4))
Government does not create public forum by inaction or by permitting limited discourse, but only by intentionally opening nontraditional forum for public discourse; even when government opens forum for some speech, forum does not become public forum if government did not intend to open forum without limitation. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law 92 ⇐1754

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1754 k. Advertising in General. Most Cited Cases
(Formerly 92k90.1(4))
Large billboard on New York City's Pennsylvania Station was not a "public forum," or was a limited public forum for purely commercial speech, for purposes of determining whether limitations against political speech violated potential First Amendment rights of artist who leased it; display had never been open for anything other than commercial advertising. U.S.C.A. Const.Amend. 1.

[7] Constitutional Law 92 ⇐1752

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1752 k. Proprietary Function of Government. Most Cited Cases
(Formerly 92k90.1(1))
Where government is acting as proprietor, managing its internal operations, rather than acting as lawmaker with power to regulate or license, its ac-

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tion will not be subjected to heightened review to which its actions as lawmaker may be subject.

|8| Constitutional Law 92 ⚿1709

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(F) Politics and Elections
92k1709 k. Advertisements. Most Cited Cases
(Formerly 92k90.3)
Policy of National Railroad Passenger Corporation (Amtrak), as proprietor of large billboard on New York City's Pennsylvania Station, to prohibit display of political speech was reasonable; Amtrak's position, as government controlled and financed public facility, made it highly advisable to avoid criticism and embarrassments of allowing any display seeming to favor any political view. U.S.C.A. Const.Amend. 1.

|9| Constitutional Law 92 ⚿1710

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(F) Politics and Elections
92k1710 k. Signs. Most Cited Cases
(Formerly 92k90.3, 92k90.1(3))
Unwritten policy of National Railroad Passenger Corporation (Amtrak) to prohibit display of political speech on large billboard on New York City's Pennsylvania Station was not void for vagueness; Amtrak did not enjoy unbridled discretion nor could it have perpetrated illegitimate abuse of censorial power in rejecting advertisement because of its political content. U.S.C.A. Const.Amend. 1.

|10| Constitutional Law 92 ⚿1710

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(F) Politics and Elections
92k1710 k. Signs. Most Cited Cases
(Formerly 92k90.3)
Policy of National Railroad Passenger Corporation (Amtrak) which gave Amtrak discretion to refuse advertising for large billboard on New York City's Pennsylvania Station that "involve[s] political or other views which could result in dissension or involve [Amtrak] in dissension, complaints or controversy with its patrons or the public," was not void for viewpoint bias; statement was unartfully phrased justification for policy of prohibiting all political speech on that billboard, rather than test for discriminating against controversial political advertisements. U.S.C.A. Const.Amend. 1.

|11| Constitutional Law 92 ⚿667

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)1 In General
92k667 k. Third-Party Standing in General. Most Cited Cases
(Formerly 92k42(2))
Embedded in traditional rules governing constitutional adjudication is general principle that person to whom statute may constitutionally be applied will not be heard to challenge that statute on ground that it may conceivably be applied unconstitutionally to others, in other situations not before court.

|12| Federal Courts 170B ⚿612.1

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(D) Presentation and Reservation in Lower Court of Grounds of Review
170BVIII(D)1 Issues and Questions in Lower Court
170Bk612 Nature or Subject-Matter of Issues or Questions
170Bk612.1 k. In General. Most Cited Cases
Question of standing is not subject to waiver; appellate court is required to address issue even if courts below have not passed on it, and even if

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parties fail to raise issue.

|13| Federal Courts 170B ⚿30

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk29 Objections to Jurisdiction, Determination and Waiver
170Bk30 k. Power and Duty of Court. Most Cited Cases
Federal courts are under independent obligation to examine their own jurisdiction, and standing is perhaps most important of jurisdictional doctrines.

|14| Constitutional Law 92 ⚿855

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)9 Freedom of Speech, Expression, and Press
92k855 k. In General. Most Cited Cases
(Formerly 92k42.2(1))

Constitutional Law 92 ⚿859

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)9 Freedom of Speech, Expression, and Press
92k858 Criminal Law
92k859 k. In General. Most Cited Cases
(Formerly 92k42.2(1))
Under overbreadth doctrine, individual may bring First Amendment challenge against statute that threatens others not before court because it also threatens those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have law declared partially invalid. U.S.C.A. Const.Amend. 1.

|15| Constitutional Law 92 ⚿1164

92 Constitutional Law
92X First Amendment in General
92X(A) In General
92k1162 Overbreadth in General
92k1164 k. Substantial Impact, Necessity Of. Most Cited Cases
(Formerly 92k82(4))
Invalidation of statute on its face, under First Amendment overbreadth doctrine, is permitted only if overbreadth is substantial. U.S.C.A. Const.Amend. 1.

|16| Constitutional Law 92 ⚿857

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)9 Freedom of Speech, Expression, and Press
92k857 k. Carriers. Most Cited Cases
(Formerly 92k42.2(1))
Artist who was prohibited by policy of National Railroad Passenger Corporation (Amtrak) from displaying political advertisement on large billboard on New York City's Pennsylvania Station lacked standing to present First Amendment facial challenge to Amtrak's general policy under overbreadth doctrine. U.S.C.A. Const.Amend. 1.
***652** Kevin T. Baine, Washington, D.C. (Nicole K. Seligman, Steven M. Farina, Williams & Connolly, Washington, D.C., William G. Ballaine, Mark S. Landman, Siff Rosen P.C., New York City (of counsel), for Defendant-Appellant.

David D. Cole, Washington, D.C. (Center for Constitutional Rights, Washington, D.C., R. Bruce Rich , Gloria C. Phares, Robin E. Silverman, Bernadette M. McCann Ezring, Jonathan Bloom, Weil, Gotshal & Manges, New York City, of counsel), for Plaintiff-Counter-Defendant-Appellee.

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Before: NEWMAN, Chief Judge, and LUMBARD and MAHONEY, Circuit Judges.

MAHONEY, Circuit Judge:

On remand from the United States Supreme Court, *see Lebron v. National R.R. Passenger Corp.*, 513 U.S. 374, 115 S.Ct. 961, 130 L.Ed.2d 902 (1995) ("*Lebron III*"), this appeal of a judgment entered February 11, 1993 in the United States District Court for the Southern District of New York, Pierre N. Leval, then-*District Judge,*[FN*] again comes before us. The district court enjoined defendant-appellee National Railroad Passenger Corporation ("Amtrak") and defendant-counter-claimant Transportation Displays, Incorporated ("TDI") to display a political advertisement prepared by plaintiff-counter-defendant-appellee Michael A. Lebron on a large billboard known as the Spectacular in New York City's Pennsylvania Station ("Penn Station"), having determined that Amtrak's failure to do so violated the First Amendment. *See* ***653***Lebron v. National R.R. Passenger Corp. (AMTRAK)*, 811 F.Supp. 993 (S.D.N.Y.1993) ("*Lebron I*").

> FN* Judge Leval became a member of the Second Circuit Court of Appeals on November 8, 1993.

On appeal, after staying the injunction, we reversed the judgment of the district court, "conclud[ing] that Amtrak is not a governmental actor subject to the strictures of the First Amendment." *Lebron v. National R.R. Passenger Corp. (AMTRAK)*, 12 F.3d 388, 389 (2d Cir.1993) ("*Lebron II*"). The Supreme Court reversed and remanded, holding that Amtrak "is part of the Government for purposes of the First Amendment," *Lebron III*, 513 U.S. at ---- - ----, 115 S.Ct. at 974-75, but "express[ing] no opinion as to whether Amtrak's refusal to display Lebron's advertisement violated that Amendment." *Id.* at ----, 115 S.Ct. at 975.

Because we conclude that Amtrak's historical refusal to accept political advertisements such as Lebron's on the Spectacular is a reasonable use of that forum that is neutral as to viewpoint, and that Lebron lacks standing to assert a facial challenge to Amtrak's general policies concerning the acceptance of advertising for display at Pennsylvania Station, we again reverse the judgment of the district court.

Background

On November 30, 1992, Lebron, an artist who creates political billboard displays (frequently involving commentary on public issues), and TDI, which manages the leasing of advertising space for Amtrak, entered into a leasing agreement (the "Lease") under which Lebron would rent the Spectacular, "a curved back-lit display space approximately 103 feet wide by ten feet high ... [which] dominates the west wall of the rotunda on the upper level of Penn Station where thousands of passengers pass each day," for the months of January and February 1993. *Lebron II*, 12 F.3d at 389. Although Lebron did not specify the precise nature of his display, he did inform TDI that his work was generally political. *Id.* By the terms of the Lease, " '[a]ll advertising copy is subject to approval of TDI and [Amtrak] as to character, text, illustration, design and operation.... [I]f [Amtrak] should deem such advertising objectionable for any reason, TDI shall have the right to terminate the contract and discontinue the service without notice.' " *Id.* (quoting the Lease, alterations partially added).

Lebron then submitted his proposed advertisement (the "Display") to TDI. Lebron characterizes the Display as "an allegory about the destructive influence of a powerful, urban, materialistic and individualistic culture on rural, community based, family-oriented and religious cultures." The district court described the Display as follows:

> The work is a photomontage, accompanied by considerable text. Taking off on a widely circulated Coors beer advertisement which proclaims Coors to be the "Right Beer," Lebron's piece is

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> captioned "Is it the Right's Beer Now?" It includes photographic images of convivial drinkers of Coors beer, juxtaposed with a Nicaraguan village scene in which peasants are menaced by a can of Coors that hurtles towards them, leaving behind a tail of fire, as if it were a missile. The accompanying text, appearing on either end of the montage, criticizes the Coors family for its support of right-wing causes, particularly the contras in Nicaragua. Again taking off on Coors' advertising which uses the slogan of "Silver Bullet" for its beer cans, the text proclaims that Coors is "The Silver Bullet that aims The Far Right's political agenda at the heart of America."

Lebron I, 811 F.Supp. at 995.

When TDI saw the Display, it offered Lebron any of 500 alternative billboard sites that TDI had available in New York City (none of which were in Penn Station), but Lebron rejected this offer. Echoing the allegation in his complaint that the Spectacular is "a unique advertising location in the City of New York," Lebron stated in an affidavit that:

> The very size of the Spectacular allowed me to design and visualize this work with an effectiveness and clarity that would have been otherwise impossible to achieve. Its size and shape make it one of the largest advertising display spaces in New York City, and its prominent location in Pennsylvania Station means that it is visible to a large segment of the traveling public, providing an excellent opportunity ***654** to reach exactly the kind of audience I hope to engage with the subject matter of this piece. For all of these reasons, I consider the space an extraordinarily unique advertising location in New York City, and a unique challenge to my communicative skills as an artist that no gallery and few other public environments could provide.

Shortly thereafter, Amtrak rejected the Display, stating that its " 'policy is that it will not allow political advertising on the [S]pectacular advertising sign.' " *Lebron II*, 12 F.3d at 389 (quoting Amtrak rejection letter, alteration in *Lebron II*).

This policy, however, is not committed to writing, *Lebron I*, 811 F.Supp. at 1001, although the licensing agreement between Amtrak and TDI (which is addressed to all of Amtrak's advertising space) states that: " 'All advertising material, exhibit material, notices and advertisements, and their manner of presentation and design, shall be subject to approval by Amtrak, which may disapprove any such items at its own discretion.' " *Id.* at 1002 (quoting licensing agreement).[FN1] In addition, the licensing agreement provides that public service announcements may be accepted, at a reduced rate and when space is available, although they may be preempted by commercial advertising. *Id.* at 1003. Public service advertisements may be accepted only from " 'recognized, legitimate [tax exempt] not-for-profit organizations, corporations, National, State or Local government agencies and subdivisions, philanthropic or cultural organizations whose activities would be of interest or benefit to a majority of the area population,' " and must "adhere to 'good taste, decency and community standards.' " *Id.* (quoting licensing agreement, alterations in *Lebron I*).

> FN1. The licensing agreements between Amtrak's predecessor, the Pennsylvania Railroad Company ("PRC"), and TDI provided that the PRC could refuse any advertisement that it deemed " 'unlawful, immoral, improper or offensive to good taste ... or [to] involve *political* or other views which could result in dissension or [to] involve [PRC] in dissension, complaints or controversy with its patrons or the public.' " *Lebron I*, 811 F.Supp. at 1001-02 (quoting PRC-TDI licensing agreements) (alterations partially added, emphasis added). However, this language has been superseded by the language quoted in the text of this opinion.

In this regard, Amtrak has leased advertising space to various noncommercial groups, including:

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> the New York Department of the Environment, the New York Department of Commerce, a foundation for muscular dystrophy, and *Plain Truth* Magazine, a free magazine on political and social issues published by The Worldwide Church of God. In addition, testimony of the general counsel of TDI indicates that TDI regularly displays public service advertisements, including subjects such as the homeless, the environment, drunk driving, AIDS awareness, health issues, and race relations.

Id. at 1004. *The Plain Truth* is distributed at a four-sided, seven-foot kiosk that displays an advertisement for the magazine and is located in front of the Spectacular.

In addition, however, it is undisputed that in the twenty-six years of its existence, the Spectacular has never been used for any type of advertising other than commercial promotions. The only advertisements that have appeared on the Spectacular have promoted DuPont Company, Resorts International in Atlantic City, the Broadway play "Sophisticated Ladies," Fujitsu Computers, Nike athletic wear, and A & S Department Stores.[FN2] Moreover, as Lebron has acknowledged, Amtrak previews proposed advertisements for the Spectacular, while it views advertisements to be used at other locations only after they are exhibited.

> FN2. The stated twenty-six years of the Spectacular's existence, and the list of advertisers over that period, is premised upon the record presented on this appeal, which was completed over two years ago.

Lebron commenced this action alleging a violation of his First Amendment rights and breach of contract, and seeking equitable relief or, alternatively, damages. The district court granted a mandatory injunction requiring Amtrak and TDI to exhibit the Display on the Spectacular. *Lebron I*, 811 F.Supp. at 1005. After holding that Amtrak is a government actor subject to the First ***655** Amendment, *id.* at 995-1000, the court concluded that Amtrak's refusal to exhibit the Display violated that amendment. *Id.* at 1000-05. The court provided four bases for this determination: (1) Amtrak's policy of not accepting political advertisements is not clearly set forth, in that it is not reduced to writing, *id.* at 1001-02; (2) the policy is vague, in that it is difficult to draw the line between political, public interest, and commercial advertisements, as demonstrated by conflicting testimony by Amtrak's officials, *id.* at 1002-03; (3) the policy is not consistently applied, in that certain public service advertisements that Amtrak has accepted might be viewed as political, *id.* at 1003-04; and (4) the policy may be void as discriminating on the basis of viewpoint, in that Amtrak may inquire into whether a particular advertisement is offensive, *id.* at 1004-05.

As previously stated, we initially reversed on the ground that Amtrak is not subject to First Amendment constraints, and therefore did not consider the merits of Lebron's First Amendment claim. *Lebron II*, 12 F.3d at 392. We instructed the district court not to exercise supplemental jurisdiction over the remaining state law claim, but noted that Lebron would be free to pursue that claim in state court. *Id.* at 392-93. The Supreme Court reversed and remanded on the "government actor" issue, directing us to consider the merits of Lebron's First Amendment claim. *Lebron III*, 513 U.S. at ---- - ----, 115 S.Ct. at 974-75.

We requested supplemental letter briefs from the parties, and heard reargument on the First Amendment issues.

Discussion

[1][2][3] Because Lebron seeks access to government property, we begin with a review of the public forum doctrine.

> Under this approach, regulation of speech on government property that has traditionally been available for public expression is subject to the highest scrutiny. Such regulations survive only if

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> they are narrowly drawn to achieve a compelling state interest. *Perry [Educ. Ass'n v. Perry Local Educators' Ass'n]*, 460 U.S. [37,] 45, 103 S.Ct. [948,] 955 [74 L.Ed.2d 794] [(1983)]. The second category of public property is the designated public forum, whether of a limited or unlimited character-property that the state has opened for expressive activity by part or all of the public. *Ibid.* Regulation of such property is subject to the same limitations as that governing a traditional public forum. *Id.*, at 46, 103 S.Ct., at 955. Finally, there is all remaining public property. Limitations on expressive activity conducted on this last category of property must survive only a much more limited review. The challenged regulation need only be reasonable, as long as the regulation is not an effort to suppress the speaker's activity due to disagreement with the speaker's view. *Ibid.*

International Soc'y for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672, ----, 112 S.Ct. 2701, 2705-06, 120 L.Ed.2d 541 (1992). Reasonable, content-neutral time, place, or manner restrictions are permissible in a public forum. *See Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S.Ct. 2746, 2753-54, 105 L.Ed.2d 661 (1989).

"[I]n defining the forum [the Supreme Court has] focused on the *access sought by the speaker*.... In cases in which limited access is sought, [the Court's] cases have taken a more tailored approach to ascertaining the perimeters of a forum within the confines of the government property." *Cornelius v. NAACP Legal Defense and Educ. Fund, Inc.*, 473 U.S. 788, 801, 105 S.Ct. 3439, 3448, 87 L.Ed.2d 567 (1985) (emphasis added) (holding that federal fund-raising drive, not federal workplace generally, was relevant forum for analysis).

[4] Amtrak contends that our public forum inquiry must focus on the Spectacular alone, rather than all Penn Station advertising space. We agree. Because of its unique size, location, and visibility, Lebron sought access only to the Spectacular, and refused to accept any other advertising space in New York City managed by TDI. Although Lebron now contends that we should broaden our public forum inquiry to all Penn Station advertising space, it was he who determined that only the Spectacular would be acceptable for his display. *Cf.* ***656***Air Line Pilots Ass'n, Int'l v. Department of Aviation*, 45 F.3d 1144, 1151-52 (7th Cir.1995) (where speaker seeks access to diorama display cases in airport, public forum inquiry focuses on display cases rather than airport as a whole); *Hubbard Broadcasting, Inc. v. Metropolitan Sports Facilities Comm'n*, 797 F.2d 552, 555-56 (8th Cir.) (where speaker seeks access to advertising space in sports arena, public forum inquiry focuses on advertising space rather than entire arena), *cert. denied*, 479 U.S. 986, 107 S.Ct. 576, 93 L.Ed.2d 579 (1986).

[5] To determine the Spectacular's forum category, we must examine "the policy and practice of the government to ascertain whether it intended to designate a place not traditionally open to assembly and debate as a public forum." *Cornelius*, 473 U.S. at 802, 105 S.Ct. at 3449. We must bear in mind that "[t]he government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse." *Id.; see also Krishna*, 505 U.S. at ----, 112 S.Ct. at 2706 (quoting *Cornelius*, 473 U.S. at 802, 105 S.Ct. at 3449). Thus, even when the government opens a forum for some speech, the forum does not become a public forum if the government did not intend to open the forum without limitation. *See United States v. Kokinda*, 497 U.S. 720, 730, 110 S.Ct. 3115, 3121-22, 111 L.Ed.2d 571 (1990) (plurality opinion); *Perry Educ. Ass'n v. Perry Local Educators Ass'n*, 460 U.S. 37, 48, 103 S.Ct. 948, 956-57, 74 L.Ed.2d 794 (1983). When only some First Amendment access has been granted, the reasonableness test applies. *Kokinda*, 497 U.S. at 730, 110 S.Ct. at 3121-22 (plurality opinion); *Perry*, 460 U.S. at 49, 103 S.Ct. at 957.

Although Amtrak does not maintain a written policy with respect to the Spectacular, its practice is clear; it has never opened the Spectacular for any-

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thing except purely commercial advertising. *See Air Line Pilots Ass'n,* 45 F.3d at 1154 ("[A] court must examine the *actual* policy-as gleaned from the *consistent* practice with regard to various speakers-to determine whether a state intended to create a designated public forum".); *cf. AIDS Action Comm. v. Massachusetts Bay Transp. Auth.,* 42 F.3d 1, 10-12 (1st Cir.1994) (prohibiting advertisements concerning use of condoms pursuant to written policy prohibiting sexually explicit advertisements constituted "discrimination in the application of supposedly neutral standards" when other sexually explicit advertisements had been allowed).

[6] In light of Amtrak's undisputed practice with respect to the Spectacular, therefore, we conclude that the Spectacular is not a public forum; most likely, it is a non-public forum, or perhaps it is a limited public forum opened for purely commercial speech. *See Calash v. City of Bridgeport,* 788 F.2d 80, 83-84 (2d Cir.1986) (sports arena opened only to civic, charitable, and nonprofit groups either a nonpublic forum or a limited public forum not required to accommodate other members of general public).

Accordingly, Amtrak's policy of excluding noncommercial advertisements from the Spectacular will be upheld so long as the policy is "viewpoint-neutral and reasonable in relation to the forum's purpose." *Calash,* 788 F.2d at 84; *see also Cornelius,* 473 U.S. at 806, 105 S.Ct. at 3451 ("Control over access to a nonpublic forum can be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral.").

Lehman v. City of Shaker Heights, 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974), is particularly well addressed to this issue as presented in the instant case. In *Lehman,* the city imposed a ban on political advertisements in buses, but allowed other types of advertisements, including commercial and public service ads. A candidate for public office challenged this policy as a First Amendment violation, and the Court responded as follows:

> Here, we have no open spaces, no meeting hall, park, street corner, or other public thoroughfare. Instead, the city is engaged in commerce. It must provide rapid, convenient, pleasant, and inexpensive service to the commuters of Shaker Heights. The car card space, although incidental to the provision of public transportation,***657** is part of the commercial venture. In much the same way that a newspaper or periodical, or even a radio or television station, need not accept every proffer of advertising from the general public, a city transit system has discretion to develop and make reasonable choices concerning the type of advertising that may be displayed in its vehicles. In making these choices, this Court has held that a public utility "will be sustained in its protection of activities in public places when those activities do not interfere with the general public convenience, comfort and safety." *Public Utilities Comm'n v. Pollak,* 343 U.S. [451,] 464-65, [72 S.Ct. 813, 821-22, 96 L.Ed. 1068 [(1952)].
>
> Because state action exists, however, the policies and practices governing access to the transit system's advertising space must not be arbitrary, capricious, or invidious.... Revenue earned from long-term commercial advertising could be jeopardized by a requirement that short-term candidacy or issue-oriented advertisements be displayed on car cards. Users would be subjected to the blare of political propaganda. There could be lurking doubts about favoritism, and sticky administrative problems might arise in parceling out limited space to eager politicians. In these circumstances, the managerial decision to limit car card space to innocuous and less controversial commercial and service oriented advertising does not rise to the dignity of a First Amendment violation....
>
> No First Amendment forum is here to be found. The city consciously has limited access to its transit system advertising space in order to minimize chances of abuse, the appearance of favor-

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> itism, and the risk of imposing upon a captive audience. These are reasonable legislative objectives advanced by the city *in a proprietary capacity.* In these circumstances, there is no First or Fourteenth Amendment violation.

Lehman, 418 U.S. at 303-04, 94 S.Ct. at 2717-18 (plurality opinion) (emphasis added).[FN3]

> FN3. Lebron contends that because the only government interest in *Lehman* that garnered the support of a majority of the Court is protecting captive audiences, the case must be read as so limited. However, the Supreme Court has repeatedly reaffirmed a broader reading of *Lehman,* often specifically citing to the plurality opinion. *See, e.g., Krishna,* 505 U.S. at ----, 112 S.Ct. at 2705 ("[W]e have upheld a ban on political advertisements in city-operated transit vehicles") (citing *Lehman*); *Kokinda,* 497 U.S. at 726, 110 S.Ct. at 3119 (plurality opinion) ("In *Lehman,* the plurality concluded that the ban on political advertisements (combined with the allowance of other advertisements) was permissible under [the arbitrary and capricious] standard....") (followed by quotation from *Lehman,* 418 U.S. at 304, 94 S.Ct. at 2717-18) (plurality opinion); *Cornelius,* 473 U.S. at 806, 105 S.Ct. at 3451 ("[A] speaker may be excluded from a nonpublic forum if he wishes to address a topic not encompassed within the purpose of the forum....") (citing *Lehman*); *Perry,* 460 U.S. at 47, 103 S.Ct. at 956 ("[I]n [*Lehman*] (opinion of BLACKMUN, J.), a plurality of the Court concluded that a city transit system's rental of space in its vehicles for commercial advertising did not require it to accept partisan political advertising."); *see also Air Line Pilots Ass'n,* 45 F.3d at 1153 n. 3 (declining "to limit *Lehman*'s holding to situations involving captive audiences"); *Calash,* 788 F.2d at 84 (citing *Lehman* plurality opinion for proposition that "rental of space to commercial advertisers does not require City to accept political advertising on buses"). We therefore see no need to address Amtrak's argument that its policy could be justified on the basis of the captive audience doctrine.

[7] It is especially significant that, as in *Lehman,* Amtrak acts in this case in a proprietary capacity, rather than as a governmental regulator. As the Court stated in *Krishna:*

> Where the government is acting as a proprietor, managing its internal operations, rather than acting as lawmaker with the power to regulate or license, its action will not be subjected to the heightened review to which its actions as a lawmaker may be subject. *Kokinda, supra,* 497 U.S., at [725], 110 S.Ct., at [3119] (plurality opinion) (citing *Cafeteria & Restaurant Workers v. McElroy,* 367 U.S. 886, 896, 81 S.Ct. 1743, 1749, 6 L.Ed.2d 1230 (1961)). Thus, we have upheld a ban on political advertisements in city-operated transit vehicles, *Lehman v. City of Shaker Heights,* 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974), even though the city permitted other types of advertising on those vehicles. Similarly, we have permitted a school district***658** to limit access to an internal mail system used to communicate with teachers employed by the district. *Perry Education Assn. v. Perry Local Educators' Ass'n,* 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983).

505 U.S. at ----, 112 S.Ct. at 2705.

[8][9] Amtrak's decision, as a proprietor, to decline to enter the political arena, even indirectly, by displaying political advertisements is certainly reasonable. Amtrak's position as a government controlled and financed public facility, used daily by thousands of people, made it highly advisable to avoid the criticism and the embarrassments of allowing any display seeming to favor any political view. This was particularly so with respect to the Spec-

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tacular in view of its uniqueness and size. *Cf. Calash,* 788 F.2d at 84 (finding the city's decision to limit access to sports arena to civic, charitable, and non-profit groups, but not rock musicians, reasonable) (citing *Cornelius,* 473 U.S. at 809-11, 105 S.Ct. at 3452-54; *Perry,* 460 U.S. at 50-53, 103 S.Ct. at 958-59; and *Lehman,* 418 U.S. at 304, 94 S.Ct. at 2718 (plurality opinion)). Nor would a policy against "political" advertising on the Spectacular be void for vagueness in light of the Supreme Court's decision in *Lehman,* 418 U.S. at 303-04, 94 S.Ct. at 2717-18 (plurality opinion).

Lebron urges us to reach the same conclusion as the district court, arguing that Amtrak's policy is unwritten, inconsistently applied, and possibly viewpoint biased. We disagree.

The fact that a policy is not committed to writing does not of itself constitute a First Amendment violation. *Cf. City of Lakewood v. Plain Dealer Publishing Co.,* 486 U.S. 750, 770, 108 S.Ct. 2138, 2151, 100 L.Ed.2d 771 (1988) ("[T]he limits the city claims are implicit in its law must be made explicit by textual incorporation, binding judicial or administrative construction, or well-established practice."). *City of Lakewood* and the other cases cited by the district court stand for the propositions that "in the area of free expression a licensing statute placing unbridled discretion in the hands of a government official or agency constitutes a prior restraint and may result in censorship," *id.* at 757, 108 S.Ct. at 2144, and that "the absence of express standards makes it difficult to distinguish, 'as applied,' between a licensor's legitimate denial of a permit and its illegitimate abuse of censorial power." *Id.* at 758, 108 S.Ct. at 2144.

Neither of these concerns is implicated here. Amtrak's prior written agreements, together with the testimony of the Amtrak official responsible for approving advertisements on the Spectacular and Amtrak's historic practice of reserving the Spectacular for commercial advertisements, dispel the notion that Amtrak enjoyed "unbridled discretion" or could have perpetrated an "illegitimate abuse of censorial power" in rejecting an advertisement because of its political content. Furthermore, because the policy against political advertisements was limited in scope to the Spectacular, there is no evidence that Amtrak's policy has ever been applied inconsistently.

[10] The district court also intimated that Amtrak's policy might be void for viewpoint bias, depending upon which of the conflicting versions offered at trial represented Amtrak's true policy. Although the district court entered no findings of fact, its concern was primarily based upon statements appearing in Amtrak's 1967 and 1980 agreements with TDI, which gave Amtrak the discretion to refuse any advertising that "involve[s] political or other views which could result in dissension or involve [Amtrak] in dissension, complaints or controversy with its patrons or the public." 811 F.Supp. at 1001-02 (quoting TDI licensing agreements) (alterations partly added). Of course, if such a policy were used to screen out only controversial political advertisements-that is, political advertisements distasteful to the majority-it would be void for viewpoint bias. On the other hand, it seems more sensible to read the language as a justification, however inartfully phrased, for a categorical ban against political advertising, *see, e.g., Lehman,* 418 U.S. at 304, 94 S.Ct. at 2718 (characterizing commercial advertising as "innocuous and less controversial" than political advertising), rather ***659** than as a test for discriminating against certain types of political advertisements.[FN4]

> FN4. Lebron invokes *Lamb's Chapel v. Center Moriches Union Free School District,* 508 U.S. 384, 113 S.Ct. 2141, 124 L.Ed.2d 352 (1993), which invalidated a ban on the showing of religiously oriented films in public schools when secularly oriented films on the identical subjects were permitted, to argue that Amtrak's policy violates viewpoint neutrality. Lebron perceives viewpoint discrimination because "[u]nder Amtrak's policy, the Coors Brew-

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> ing Company could advertise and *encourage* purchase of its beer, but Lebron's critical treatment of the same subject matter, *discouraging* purchase of Coor's beer, was rejected because it expressed a 'political' point of view." The argument is plainly specious. The "subject matter" of the Display can hardly be described, with any remote sense of accuracy, as the merits or demerits of Coors Beer. As Lebron himself stated in an affidavit, "I do not seek to sell anything other than ideas with this advertisement."

[11] Because we have found that Amtrak's policy against political advertisements was limited in scope to the Spectacular, Lebron's attempt to attack Amtrak's policies regarding the acceptance of advertisements in Penn Station generally, rather than on the Spectacular, amounts, in substance, to a facial challenge to those policies as they might be applied to advertisements other than Lebron's and to locations not at issue. Ordinary rules of standing, of course, would bar Lebron from mounting such a challenge. As the Supreme Court has made clear: "Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court." *Broadrick v. Oklahoma,* 413 U.S. 601, 610, 93 S.Ct. 2908, 2915, 37 L.Ed.2d 830 (1973) (collecting cases).

[12][13] Further, "[t]he question of standing is not subject to waiver ...: 'we are required to address the issue even if the courts below have not passed on it, and even if the parties fail to raise the issue before us. The federal courts are under an independent obligation to examine their own jurisdiction, and standing "is perhaps the most important of [the jurisdictional] doctrines." ' " *United States v. Hays,* 515 U.S. 737, ----, 115 S.Ct. 2431, 2435, 132 L.Ed.2d 635 (1995) (quoting *FW/PBS, Inc. v. City of Dallas,* 493 U.S. 215, 230-31, 110 S.Ct. 596, 607, 107 L.Ed.2d 603 (1990) (quoting *Allen v. Wright,* 468 U.S. 737, 750, 104 S.Ct. 3315, 3324, 82 L.Ed.2d 556 (1984))) (alteration in *FW/PBS*).

Broadrick also recognized, however, that "the Court has altered its traditional rules of standing to permit-in the First Amendment area-'attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity.' " 413 U.S. at 612, 93 S.Ct. at 2916 (quoting *Dombrowski v. Pfister,* 380 U.S. 479, 486, 85 S.Ct. 1116, 1121, 14 L.Ed.2d 22 (1965)). *Broadrick* went on to emphasize that this overbreadth doctrine "has been employed by the Court sparingly and only as a last resort." 413 U.S. at 613, 93 S.Ct. at 2916; *see also Younger v. Harris,* 401 U.S. 37, 52, 91 S.Ct. 746, 754, 27 L.Ed.2d 669 (1971) ("Procedures for testing the constitutionality of a statute 'on its face' ... are fundamentally at odds with the function of the federal courts in our constitutional plan.").

[14][15] In our view, this case affords no occasion for application of the overbreadth doctrine, and Lebron accordingly lacks standing to assert a general challenge to Amtrak's advertising policies. The doctrine has only been applied to the conduct of the government in its role as a regulator, not as a proprietor. *See, e.g., City of Lakewood,* 486 U.S. at 759-62, 108 S.Ct. at 2145 (newspaper permitted to mount facial challenge to ordinance that granted municipal mayor uncircumscribed authority to allow or disallow distribution of newspapers via newsracks on public streets); *Board of Airport Comm'rs v. Jews for Jesus, Inc.,* 482 U.S. 569, 571, 574-77, 107 S.Ct. 2568, 2570, 2572-73, 96 L.Ed.2d 500 (1987) (allowing overbreadth challenge to ordinance that barred "First Amendment activities within the Central Terminal Area at Los Angeles International Airport"). It is invoked against a statute that " 'threatens others not before the court-those who desire*660 to engage in legally protected expression but who may refrain from doing so

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rather than risk prosecution or undertake to have the law declared partially invalid,' " *id.* at 574, 107 S.Ct. at 2572 (quoting *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 503, 105 S.Ct. 2794, 2802, 86 L.Ed.2d 394 (1985)), and invalidation of a statute on its face is permitted "only if the overbreadth is 'substantial.' " *Id.* (collecting cases).

[16] Such concerns simply are not implicated by Amtrak's role as the proprietor of Penn Station, essentially seeking to derive revenues from the sale of advertising while minimizing interference with or disruption of the station's commercial function. *See Lehman*, 418 U.S. at 303, 94 S.Ct. at 2717 (plurality opinion). Thus, Lebron lacks standing to present a facial challenge to Amtrak's general advertising policies in this litigation. This would be so even if Lebron had adduced a stronger showing of erosion of Amtrak's policy against political advertisements than the handful of assertedly borderline cases that was presented in this litigation. As Chief Judge Newman pointed out in *Lebron II*, "Amtrak's billboard space in Pennsylvania Station, even if used in the past for ads of a public service nature, has not become a forum for ads of such pointed political content as Lebron's attack on the makers of Coors Beer for promoting 'The Far Right's political agenda.' " 12 F.3d at 394 (Newman, C.J., dissenting).

Conclusion

We reverse the judgment of the district court and remand with the instruction that the district court dismiss Lebron's complaint. As previously noted, *see Lebron II*, 12 F.3d at 392-93, Lebron is free to pursue his state law claim in state court.

JON O. NEWMAN, Chief Judge, dissenting:
Because I believe that Amtrak, a governmental entity now authoritatively determined to be subject to First Amendment limitations, *see Lebron v. National R.R. Passenger Corp.*, 513 U.S. 374, 115 S.Ct. 961, 130 L.Ed.2d 902 (1995), has violated the First Amendment by its rejection of the political advertisement that Michael Lebron contracted to display on a billboard in Penn Station, I respectfully dissent.

The Court's dismissal of Lebron's lawsuit rests on two premises, both of which, in my view, are flawed. The first concerns the identification of the forum for purposes of applying public forum analysis. The second concerns the standard for determining whether a governmental actor's policy for rejecting advertisements violates First Amendment requirements.

1. *The relevant forum.* The premise of the Court's identification of the relevant forum is that, in advertising cases, a court should consider the particular billboard on which an applicant wishes to display a message. Proceeding from this premise, the Court narrows its inquiry to "the Spectacular," the large billboard high on the west wall of the rotunda of the upper level of Penn Station. No prior case has taken such a restricted view of the relevant forum, and I think it can be readily demonstrated that the Court's premise is incorrect.

The Supreme Court has instructed that the relevant forum is to be determined by "the access sought by the speaker." *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. 788, 801, 105 S.Ct. 3439, 3448, 87 L.Ed.2d 567 (1985). The meaning of that instruction is made clear by the facts of *Cornelius*. The plaintiff sought access to what the Court called "a particular means of communication," *id.*-the Combined Federal Campaign, a charity drive aimed at federal employees. The Court ruled that the charity campaign itself was the relevant forum, rather than the entirety of the federal workplace. The cases relied on by *Cornelius* further illuminate the Court's meaning. In *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983), the Court confined its inquiry to a school district's interschool mail system, rather than all parts of school property. *Cornelius* referred to the mail system as "a particular *means* of communication." 473 U.S. at 801, 105 S.Ct. at 3448 (emphasis added). In

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661Lehman v. City of Shaker Heights,* 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974), the Court confined its inquiry to advertising space on city-owned buses.

All of these cases focus on a means of communication, not the particular location where an advertiser prefers to display its ad. It is unimaginable that in *Cornelius* the Court would have permitted one political party to solicit funds through the Combined Federal Campaign at one side of the lobby of a federal building while denying another party the opportunity to solicit funds through the Campaign at the other side, or that in *Perry* the Court would have permitted one group to place a political message in the mail boxes of one school while denying another group a similar right at other schools, or that in *Lehman* the Court would have permitted political ads on one bus while prohibiting political ads on other buses.

The two cases relied on by the majority in the pending appeal, both interestingly and accurately cited with a signal meaning "compare," are also instructive. In *Air Line Pilots Assn. v. Dept. of Aviation,* 45 F.3d 1144 (7th Cir.1995), the Court focused on diorama display cases throughout an airport, rather than the entirety of the airport. The Court did not limit its analysis to one display case. In *Hubbard Broadcasting, Inc. v. Metropolitan Sports Facilities Commission,* 797 F.2d 552 (9th Cir.), *cert. denied,* 479 U.S. 986, 107 S.Ct. 576, 93 L.Ed.2d 579 (1986), the Court focused on all advertising space in a sports arena, rather than the entirety of the arena. The Court did not limit its analysis to one portion of the advertising space.

Nevertheless, the Court in the pending case limits its public forum analysis to the one billboard in Penn Station on which Lebron wishes to display his ad-the so-called "Spectacular." There is no question that this billboard is bigger than any other in Penn Station, more visible, and, if one can afford it, more desirable. But public forum analysis cannot be so particularized as to focus on one of several billboards on government property, no matter how preferable that one billboard's size and location may be to an advertiser. The reason can be readily demonstrated. As everyone who has ever walked through Penn Station knows, the Spectacular is high atop the west wall of the station's rotunda, and two small billboards are high atop the north and south walls of the same rotunda. If Amtrak had permitted the Democratic Party to place political ads on either of the two smaller billboards in the rotunda, can it be seriously argued that any court would limit its forum analysis to the one large billboard and permit Amtrak to deny the Republican Party the opportunity to place its political ad on the Spectacular, just because no political ad had previously been on that precise space?

The relevant forum must be at least advertising space in the rotunda of Penn Station-the means of communication to which Lebron sought access. Once the forum is defined to have at least this scope, Amtrak's violation of the First Amendment is evident because it has leased advertising space on a kiosk in the rotunda for *The Plain Truth,* a magazine the Court acknowledges is devoted to "political and social issues." It is clearly unconstitutional for Amtrak to permit its advertising space in the rotunda to be used to convey the message of *The Plain Truth* and deny space in the same rotunda to the message that Lebron believes conveys the plain truth about the brewers of Coors Beer.

2. *Amtrak's policy.* Even if the relevant forum is the one billboard space known as the Spectacular, the Court's second premise-that the scope and lawfulness of Amtrak's exercise of discretion regarding political ads may be ascertained solely from its past practice-is also unsound. The proper inquiry, the Supreme Court has instructed, focuses not solely on past practice but on "policy and practice," *Cornelius,* 473 U.S. at 802, 105 S.Ct. at 3449; *see Lehman,* 418 U.S. at 303, 94 S.Ct. at 2717 ("policies and practices"). If it were the case that the only evidence of Amtrak's approach to political ads was its past practice, an inquiry confined to that practice would be defensible. But the record in this case

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contains more evidence, and the District Court made findings based on that evidence that are not even arguably clearly erroneous.

First, the agreement between Amtrak and Transportation Displays Incorporated (TDI), the leasing agent for billboards in Penn Station,***662** states, "All advertising material, exhibit material, notices and advertisements, and their manner of presentation and design, shall be subject to approval by Amtrak, which may disapprove any such items at its own discretion." *Lebron v. National R.R. Passenger Corp.*, 811 F.Supp. 993, 1002 (S.D.N.Y.1993). It is difficult to imagine a more standardless statement of policy. Second, as the District Court found, neither the key Amtrak official responsible for supervising Amtrak's arrangements with TDI nor any of the executives of TDI knew of any prohibition on political advertising at any of Amtrak's facilities. *Id.* Third, other key Amtrak officials could not agree on what Amtrak's policy was. One testified that the policy prohibited only those advertisements that were both "political and divisive or objectionable," while another could not say what the policy meant. *Id.* Fourth, the guidelines of Amtrak's leasing agent, TDI, do not prohibit political advertisements but merely consider them commercial and therefore subject to full rate charge. *Id.* at 1003.

In view of this evidence, the District Court's findings that Amtrak's alleged policy against political ads was unwritten, unclear, and undisseminated provide ample basis for the Court's ultimate conclusion that the policy permitted the unfettered exercise of discretion and created the risk of abuse that the First Amendment prohibits. *See Lebron v. Washington Metropolitan Area Transit Authority*, 749 F.2d 893, 899 (D.C.Cir.1984).

Disregarding the evidence and the District Judge's findings, this Court ascertains Amtrak's policy solely by looking to the past practice of not yet contracting for a political ad on the Spectacular. But where a policy is unwritten, unclear, and undisseminated, the fact that it has not yet been used discriminatorily does not save it from invalidation under the First Amendment. The vice of conferring unfettered discretion on government officials to determine which messages may be conveyed is not avoided by their past pattern of not making a discriminatory decision. The vice inheres in the opportunity for discrimination, and the First Amendment requires that opportunity to be held to an acceptable minimum by a clear and well understood policy that appropriately limits the discretion of the officials who must administer it. *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1051, 111 S.Ct. 2720, 2732, 115 L.Ed.2d 888 (1991) (imprecise standards concerning permissible statements by lawyers); *Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 755-59, 108 S.Ct. 2138, 2143-45, 100 L.Ed.2d 771 (1988) (unfettered discretion to permit newspaper dispensing devices on governmental property). As the Supreme Court has observed,

> The prohibition against vague regulations of speech is based in part on the need to eliminate the impermissible risk of discriminatory enforcement.... The question is not whether discriminatory enforcement occurred here, and we assume it did not, but whether the Rule is so imprecise that discriminatory enforcement is a real possibility."

Gentile, 501 U.S. at 1051, 111 S.Ct. at 2732 (citations omitted). In some cases, it might be possible to infer the existence of a policy that passes constitutional muster from a record consisting solely of a pattern of past practice. But in the pending case such a policy cannot be inferred from past practice in the face of substantial evidence that has persuaded a District Judge to make findings that the alleged policy was not understood by the officials responsible for administering it.

Wholly apart from the absence of a clear, understandable, and understood policy, Lebron might be correct that, to the extent that the defendant's policy purports to bar political ads, it is a viewpoint-based discrimination that violates the First Amendment. *See Air Line Pilots Assn. v. Department of Aviation*, 45 F.3d 1144 (7th Cir.1995). As Lebron contends,

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the defendants are willing to display an ad urging the public to buy Coor's beer but are unwilling to display his ad urging the public not to do so. He makes a substantial argument that viewpoint-based discrimination is occurring when government allows an ad promoting the sale of a product, but purports to prohibit an ad opposing a product because of the views of its manufacturer. Presumably, Amtrak would allow an ad opposing the sale of Coor's beer because of its alcoholic content or for any reason unrelated ***663** to the views of its manufacturer. I need not decide whether to accept Lebron's argument since his other positions are well supported on this record.

In my view, the District Court's findings, fully supported by the evidence, entitled Lebron to prevail on his claim that Amtrak's refusal to permit display of his ad violated the First Amendment. At a minimum, he is entitled to a declaration that Amtrak has violated the First Amendment, damages (to the extent, if any, not precluded by *F.D.I.C. v. Meyer*, 510 U.S. 471, ---- - ----, 114 S.Ct. 996, 1004-06, 127 L.Ed.2d 308 (1994)), and equitable relief requiring promulgation and dissemination of a clear policy concerning political ads. Since the Court concludes that Amtrak has no liability at all, I need not consider the further issue of whether the equitable relief ought to include a requirement that Lebron's ad be displayed. My statement from the prior appeal, 12 F.3d at 394 (Newman, C.J., dissenting), quoted by the Court out of its context, was directed solely at the issue of the possible scope of relief, not the issue of liability on which the Court today rules.

I respectfully dissent.

C.A.2 (N.Y.),1995.
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569 F.3d 1029, 2009 Daily Journal D.A.R. 9302
(Cite as: 569 F.3d 1029)

United States Court of Appeals,
Ninth Circuit.
Michael James BERGER, a single man also known as Magic Mike, Plaintiff-Appellee,
v.
CITY OF SEATTLE; Virginia Anderson, Director of Seattle Center; Michael Anderson, Emergency Service Manager for Seattle Center; Ten Unknown Employees/Officers, of the Seattle Center and the City of Seattle, all in both their individual and official capacities, Defendants-Appellants.
No. 05-35752.

Argued and Submitted Sept. 23, 2008.
Filed June 24, 2009.

Background: Street performer brought action against city, alleging that rules concerning use of public park violated the First Amendment by restricting speech activity. The United States District Court for the Western District of Washington, James L. Robart, J., granted summary judgment in favor of performer. City appealed. The Court of Appeals, 512 F.3d 582, reversed and remanded.

Holdings: On rehearing en banc, the Court of Appeals, Marsha S. Berzon, Circuit Judge, held that:
(1) rule requiring performers to obtain permits before performing was not sufficiently narrowly tailored to meet standard for a valid time, place, and manner regulation of speech;
(2) genuine issue of material fact as to whether rule limiting performers to designated locations left open ample alternative channels for communication precluded summary judgment on claim that this rule violated First Amendment;
(3) rule allowing performers to passively, but not actively, solicit donations was content-based;
(4) rule governing solicitation was not the least restrictive means by which city could have discouraged aggressive solicitation;
(5) public park-goers were not a protectable captive audience; and
(6) even if city had a substantial interest in protecting certain park-goers from communications by others, rule prohibiting all speech activities within 30 feet of any captive audience was not narrowly tailored to meet that interest.

Affirmed in part and remanded in part.

Kozinski, Chief Judge, dissented and filed opinion in which Gould And Tallman, Circuit Judges, joined.

Gould, Circuit Judge, dissented and filed opinion in which Kozinski, Chief Judge, and Tallman, Circuit Judge, joined.

N.R. Smith, Circuit Judge, filed opinion concurring in part and dissenting in part in which Kozinski, Chief Judge, joined in part.

West Headnotes

[1] Constitutional Law 92 ⇐1038

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)4 Burden of Proof
92k1032 Particular Issues and Applications
92k1038 k. Freedom of Speech, Expression, and Press. Most Cited Cases
The government bears the burden of justifying the regulation of expressive activity in a public forum. U.S.C.A. Const.Amend. 1.

[2] Federal Courts 170B ⇐776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent

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170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
The Court of Appeals reviews a district court's legal determinations, including constitutional rulings, de novo.

[3] Federal Courts 170B ⇐776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
A district court's determinations on mixed questions of law and fact that implicate constitutional rights are reviewed de novo.

[4] Federal Courts 170B ⇐776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
Where key issues arise under the First Amendment, the Court of Appeals conducts an independent review of the facts. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law 92 ⇐1759

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1759 k. Streets and Highways. Most Cited Cases

Constitutional Law 92 ⇐1761

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1761 k. Parks and Forests. Most Cited Cases
The protections afforded by the First Amendment are nowhere stronger than in streets and parks, both categorized for First Amendment purposes as traditional public fora. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law 92 ⇐1737

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1736 Traditional Public Forum in General
92k1737 k. In General. Most Cited Cases
In traditional public fora, the government's right to limit expressive activity is sharply circumscribed. U.S.C.A. Const.Amend. 1.

[7] Constitutional Law 92 ⇐1761

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1761 k. Parks and Forests. Most Cited Cases
Despite the broad First Amendment protection accorded expressive activity in public parks, certain restrictions on speech in the public parks are valid; specifically, a municipality may issue reasonable regulations governing the time, place, or manner of speech. U.S.C.A. Const.Amend. 1.

[8] Constitutional Law 92 ⇐1509

92 Constitutional Law

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92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases

To pass muster under the First Amendment, a time, place, or manner restriction on speech must meet three criteria: (1) it must be content-neutral; (2) it must be narrowly tailored to serve a significant governmental interest; and (3) it must leave open ample alternative channels for communication of the information. U.S.C.A. Const.Amend. 1.

[9] Constitutional Law 92 ⚿1885

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(N) Entertainment
92k1885 k. In General. Most Cited Cases

Constitutional Law 92 ⚿1894

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(N) Entertainment
92k1893 Music
92k1894 k. In General. Most Cited Cases

Music and performance art are forms of expressive activity protected by the First Amendment. U.S.C.A. Const.Amend. 1.

[10] Constitutional Law 92 ⚿1592

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(B) Licenses and Permits in General
92k1592 k. Prior Restraints. Most Cited Cases

A permitting requirement is a prior restraint on speech and therefore bears a heavy presumption against its constitutionality. U.S.C.A. Const.Amend. 1.

[11] Constitutional Law 92 ⚿1887

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(N) Entertainment
92k1887 k. Use of Government Property or Facilities in General. Most Cited Cases

Municipal Corporations 268 ⚿721(3)

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k721 Parks and Public Squares and Places
268k721(3) k. Grants of Rights to Use Public Property. Most Cited Cases

Rule requiring street performers to obtain permits before performing in city's public park was not sufficiently narrowly tailored to meet standard for a valid time, place, and manner regulation of speech and, thus, violated First Amendment; rule did not promote city's asserted interests in protecting safety of park-goers by reducing territorial disputes because permitting requirements did not assign particular performers to specific times or locations, city's interests could have been achieved by less intrusive measures than requiring individual speakers to preregister with government, and rule was overly broad as it applied to large number of individuals who had no connection with asserted reasons for rule. U.S.C.A. Const.Amend. 1.

[12] Constitutional Law 92 ⚿1509

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General

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92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases
A "narrowly tailored" time, place, or manner restriction on speech is one that does not burden substantially more speech than is necessary to achieve a substantial government interest; it must target and eliminate no more than the exact source of the evil it seeks to remedy. U.S.C.A. Const.Amend. 1.

[13] Constitutional Law 92 ⚿1510

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1510 k. Reasonableness. Most Cited Cases
Although a restriction on the time, place, or manner of speech need not be the least restrictive or least intrusive means available to achieve the government's legitimate interests, the existence of obvious, less burdensome alternatives is a relevant consideration in determining whether the fit between ends and means is reasonable. U.S.C.A. Const.Amend. 1.

[14] Constitutional Law 92 ⚿1591

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(B) Licenses and Permits in General
92k1591 k. Discretion in General. Most Cited Cases
Rules that grant licensing officials undue discretion are invalid under the First Amendment. U.S.C.A. Const.Amend. 1.

[15] Constitutional Law 92 ⚿1504

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1504 k. Exercise of Police Power; Relationship to Governmental Interest or Public Welfare. Most Cited Cases
The government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals. U.S.C.A. Const.Amend. 1.

[16] Constitutional Law 92 ⚿1887

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(N) Entertainment
92k1887 k. Use of Government Property or Facilities in General. Most Cited Cases

Municipal Corporations 268 ⚿721(3)

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k721 Parks and Public Squares and Places
268k721(3) k. Grants of Rights to Use Public Property. Most Cited Cases
Even if definition of street performer in rule requiring street performers to obtain permits before performing in city's public park was limited to those performers who aimed to attract an audience, rule would be overly broad and vague and, thus, violate First Amendment's protection of freedom of speech; most performers would seek to attract a crowd, even if only composed of two or three people, and an officer attempting to enforce permitting requirement would have to decide whether the performer intended to attract a crowd, which could lead to discriminatory enforcement. U.S.C.A. Const.Amend. 1.

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[17] Constitutional Law 92 ⚿994

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k994 k. Avoidance of Constitutional Questions. Most Cited Cases

Constitutional Law 92 ⚿1014

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k1006 Particular Issues and Applications
92k1014 k. Overbreadth in General. Most Cited Cases
Statutes will be interpreted to avoid constitutional difficulties; thus, where an unconstitutionally broad statute is readily subject to a narrowing construction that would eliminate its constitutional deficiencies, the court accepts that construction.

[18] Federal Civil Procedure 170A ⚿2491.5

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)2 Particular Cases
170Ak2491.5 k. Civil Rights Cases in General. Most Cited Cases
Genuine issue of material fact as to whether rule limiting street performers to designated locations on public park grounds left open ample alternative channels for communication precluded summary judgment on performer's claim that rule violated right to freedom of speech under the First Amendment. U.S.C.A. Const.Amend. 1.

[19] Constitutional Law 92 ⚿1038

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)4 Burden of Proof
92k1032 Particular Issues and Applications
92k1038 k. Freedom of Speech, Expression, and Press. Most Cited Cases
As with other time, place, or manner restrictions on speech in a public forum, the government bears the burden of justifying a location restriction. U.S.C.A. Const.Amend. 1.

[20] Constitutional Law 92 ⚿1509

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1508 Time, Place, or Manner Restrictions
92k1509 k. In General. Most Cited Cases
An alternative channel for communication is not "ample," as required for a valid time, place, or manner restriction on speech, if the speaker is not permitted to reach the intended audience. U.S.C.A. Const.Amend. 1.

[21] Constitutional Law 92 ⚿1870

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
92k1870 k. In General. Most Cited Cases
Speech that solicits funds is protected by the First Amendment. U.S.C.A. Const.Amend. 1.

[22] Constitutional Law 92 ⚿1871

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and

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Press
92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
92k1871 k. Government Property, Use Of. Most Cited Cases
Rules that regulate solicitation in public fora are subject to the same standards as those that limit other forms of speech; in other words, solicitation regulations must be content-neutral, narrowly tailored, and leave open reasonable alternative channels for expression. U.S.C.A. Const.Amend. 1.

[23] Constitutional Law 92 ⚿1735

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1732 Public Forum in General
92k1735 k. Justification for Exclusion or Limitation. Most Cited Cases
If a regulation on speech in public fora is not content-neutral, the court applies strict scrutiny; under that standard, the regulation is valid only if it is the least restrictive means available to further a compelling government interest. U.S.C.A. Const.Amend. 1.

[24] Constitutional Law 92 ⚿1517

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1516 Content-Based Regulations or Restrictions
92k1517 k. In General. Most Cited Cases
A regulation on speech is "content-based" if either the underlying purpose of the regulation is to suppress particular ideas, or if the regulation, by its very terms, singles out particular content for differential treatment. U.S.C.A. Const.Amend. 1.

[25] Constitutional Law 92 ⚿1887

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(N) Entertainment
92k1887 k. Use of Government Property or Facilities in General. Most Cited Cases
Rule allowing street performers to passively, but not actively, solicit donations in city public park was "content-based" and, thus, subject to strict scrutiny for purposes of determining whether rule violated First Amendment's protection of freedom of speech; rule regulated speech rather than conduct because it allowed the conduct of exchanging money and regulated only the speech by specifying the permissible medium and manner of requesting money, and rule restricted performers from communicating a particular set of messages, such as that they would like people to give them money. U.S.C.A. Const.Amend. 1.

[26] Constitutional Law 92 ⚿1870

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
92k1870 k. In General. Most Cited Cases
Regulations that ban certain conduct associated with solicitation do not violate the prohibition on content-based regulation of speech. U.S.C.A. Const.Amend. 1.

[27] Constitutional Law 92 ⚿1517

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1516 Content-Based Regulations or Restrictions
92k1517 k. In General. Most Cited Cases

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That an officer must evaluate the content of a message to determine whether a regulation applies is evidence that the regulation on speech is content-based, although it is not dispositive. U.S.C.A. Const.Amend. 1.

[28] Constitutional Law 92 ⚿1887

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(N) Entertainment
92k1887 k. Use of Government Property or Facilities in General. Most Cited Cases

Municipal Corporations 268 ⚿721(2)

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k721 Parks and Public Squares and Places
268k721(2) k. Prevention of Improper Use or Obstruction. Most Cited Cases
Even if city had a compelling interest in reducing aggressive solicitation, content-based rule allowing street performers to passively, but not actively, solicit donations in city public park was not the least restrictive means by which city could have discouraged aggressive solicitation, and thus rule violated First Amendment's protection of freedom of speech; punishing offensive conduct after it occurred was a less restrictive way to protect audiences, and city could have enforced an appropriately worded prohibition on aggressive behavior or relied on nuisance and aggressive panhandling laws to control performers. U.S.C.A. Const.Amend. 1.

[29] Constitutional Law 92 ⚿1505

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1505 k. Narrow Tailoring. Most Cited Cases
A complete ban on speech can be narrowly tailored only if each activity within the proscription's scope is an appropriately targeted evil. U.S.C.A. Const.Amend. 1.

[30] Constitutional Law 92 ⚿1761

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1761 k. Parks and Forests. Most Cited Cases
Under fundamental principle of traditional public forum jurisprudence, use of parks for public discussion and gathering has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens and must not, in the guise of regulation, be abridged or denied. U.S.C.A. Const.Amend. 1.

[31] Constitutional Law 92 ⚿1562

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)3 Particular Issues and Applications in General
92k1562 k. "Fighting Words". Most Cited Cases
Fighting words are proscribable under the First Amendment. U.S.C.A. Const.Amend. 1.

[32] Constitutional Law 92 ⚿1761

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and

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Events
92k1761 k. Parks and Forests. Most Cited Cases
Public park-goers, in general, are not a protectable captive audience for First Amendment purposes. U.S.C.A. Const.Amend. 1.

[33] Constitutional Law 92 ⚿1502

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1502 k. Receipt of Information or Ideas; Listeners' Rights. Most Cited Cases
Only in narrow circumstances may the government restrain speech to protect captive audiences. U.S.C.A. Const.Amend. 1.

[34] Constitutional Law 92 ⚿1502

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1502 k. Receipt of Information or Ideas; Listeners' Rights. Most Cited Cases
The ability of government, consonant with the Constitution, to shut off discourse solely to protect others from hearing it is dependent upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner. U.S.C.A. Const.Amend. 1.

[35] Constitutional Law 92 ⚿1761

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events
92XVIII(G)2 Government Property and Events
92k1761 k. Parks and Forests. Most Cited Cases

Municipal Corporations 268 ⚿721(2)

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k721 Parks and Public Squares and Places
268k721(2) k. Prevention of Improper Use or Obstruction. Most Cited Cases
Even if city had a substantial interest in protecting certain park-goers from communications by others, rule prohibiting all speech activities within 30 feet of any captive audience in city's public park, but which did not apply to city employees or licensed concessionaires, was not narrowly tailored to meet that interest, and thus violated First Amendment's protection of freedom of speech; rule's preference for concessionaires and licensees created bias in favor of commercial speech over artistic and political speech, rule prohibited both welcome and unwelcome communications, and rule created system of unpredictable floating buffers and shifting free speech zones. U.S.C.A. Const.Amend. 1.

[36] Constitutional Law 92 ⚿1526

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1525 Prior Restraints
92k1526 k. In General. Most Cited Cases
Prior restraints on speech are the most serious and least tolerable infringement on First Amendment rights. U.S.C.A. Const.Amend. 1.

[37] Constitutional Law 92 ⚿1739

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(G) Property and Events

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The Seattle Center is a central venue for Seattle's civic, cultural, and social life. The Center's roughly 80-acre expanse of public space attracts over ten million visitors annually. It is home to Seattle's iconic Space Needle, and to museums, sports arenas, theaters, and a performance hall. The Center's grounds also include twenty-three acres of outdoor public park space.

In 2002, the Seattle Center's Director issued a revised set of regulations concerning the use of the Center, known as the Seattle Center Campus Rules ("Rules").[FN1] Among other matters, the Rules govern the use of the Center's outdoor spaces. Five of the Rules are relevant here: Rule F.1, which requires "street performers" to obtain a permit before performing at the Center and to wear a badge displaying that permit while performing; Rule F.2, which sets forth the terms and conditions for acquiring a "Street Performer Permit"; Rule F.3.a, which bars street performers from "actively solicit[ing] donations"; Rule F.5, which limits street performances to sixteen designated locations; and Rule G.4, which prohibits all Seattle Center visitors, other than Center employees and licensed concessionaires, from engaging in "speech activities" within thirty feet of a "captive audience." Rule C.5 defines a "captive audience" as "any person or group of persons: 1) waiting in line to obtain tickets or food or other goods or services, or to attend any Seattle Center event; 2) attending or being in an audience at any Seattle Center event; or 3) seated in any seating location where foods or beverages are consumed."

> FN1. The City has delegated its rulemaking authority over the Center to the Center's Director. *See* Wash. Mun.Code § 17.04.040.

About a year after the Rules were promulgated, Michael Berger, a balloon artist and Seattle street performer, filed the complaint that gives rise to this appeal. In his complaint, Berger alleged that the five rules just summarized violate the First Amendment both on their face and as applied to him. In 2005, the district court granted Berger summary judgment as to his facial challenges. Shortly thereafter, Berger and the City settled his as-applied challenges. The City now timely appeals the summary judgment.

II. General Principles

[2][3][4] We review a district court's legal determinations, including constitutional rulings, *de novo. See Berry v. Dep't of Soc. Servs,* 447 F.3d 642, 648 (9th Cir.2006). A district court's determinations on mixed questions of law and fact that implicate constitutional rights are also reviewed *de novo. See Cogswell v. City of Seattle,* 347 F.3d 809, 813 (9th Cir.2003). Where, as here, the key "issues aris[e] under the First Amendment," we also conduct an independent review of the facts. *See Rosenbaum v. City & County of S.F.,* 484 F.3d 1142, 1152 (9th Cir.2007).

[5][6] We begin our analysis with one bedrock principle: The protections afforded***1036** by the First Amendment [FN2] are nowhere stronger than in streets and parks, both categorized for First Amendment purposes as traditional public fora. *See Perry Educ. Ass'n,* 460 U.S. at 45, 103 S.Ct. 948; *Long Beach Area Peace Network v. City of Long Beach,* 522 F.3d 1010, 1021 (9th Cir.2008). In such fora, the government's right "to limit expressive activity [is] sharply circumscribed." *Perry Educ. Ass'n,* 460 U.S. at 45, 103 S.Ct. 948. Among traditional public fora, public parks such as the Seattle Center are especially important locales for communication among the citizenry, as they " 'have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' " *Grossman v. City of Portland,* 33 F.3d 1200, 1204-05 (9th Cir.1994) (quoting *Hague v. CIO,* 307 U.S. 496, 515, 59 S.Ct. 954, 83 L.Ed. 1423 (1939)). [FN3]

> FN2. The First Amendment states that "Congress shall make no law ... abridging

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the freedom of speech, ... or the right of people peaceably to assemble...." U.S. Const. amend. I; *see also Lovell v. City of Griffin,* 303 U.S. 444, 450, 58 S.Ct. 666, 82 L.Ed. 949 (1938) (holding that the First Amendment's prohibitions also apply to state and local government rule-makers).

FN3. Although the City argued at the district court that the Seattle Center was only a limited public forum and so subject to more stringent government regulation than a traditional public forum, *see Perry,* 460 U.S. at 45-46, 103 S.Ct. 948, it does not on appeal challenge the district court's determination that the "Seattle Center is a traditional public forum." The record supports this characterization, as Judge Smith ably demonstrates in his separate opinion.

[7][8] Despite the broad First Amendment protection accorded expressive activity in public parks, "certain restrictions on speech in the public parks are valid. Specifically, a municipality may issue reasonable regulations governing the time, place or manner of speech." *Grossman,* 33 F.3d at 1205; *see also Clark v. Cmty. for Creative Non-Violence,* 468 U.S. 288, 293, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984). To pass constitutional muster, a time, place, or manner restriction must meet three criteria: (1) it must be content-neutral; (2) it must be "narrowly tailored to serve a significant governmental interest"; and (3) it must "leave open ample alternative channels for communication of the information." *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989) (quoting *Clark,* 468 U.S. at 293, 104 S.Ct. 3065).

With these overarching principles in mind, we turn to an evaluation of each of the challenged rules.

III. Rules F.1 & F.2: The Permit & Badge Requirements

A. Overview

[9] Rule F.1 requires all "street performers" to obtain a permit from the Director prior to performing on the Center's grounds. A "street performer" is "a member of the general public who engages in any performing art or the playing of any musical instrument, singing or vocalizing, with or without musical accompaniment, and whose performance is not an official part of an event sponsored by the Seattle Center or by a Seattle Center licensee." [FN4] ***1037** Rule C.15. Notably, a "street performer" need not be seeking payment from his audience to be covered by the permit and other requirements, nor need he be a repeat performer at the Seattle Center. Permits are issued "upon [the] Director's satisfaction that the information set forth in the [performer's] application is true, the applicant has executed a statement stating that he or she will comply with applicable law and all provisions of the Seattle Center rules, and has paid the applicable application fee." Rule F.1. The permits are presumptively valid for one year, Rule F.2, and allow permit-holders to perform "at designated locations on the Seattle Center campus." Rule C.16. Rule F.1 also mandates that "[p]ermits, when issued, shall be evidenced by a badge that shall be worn or displayed by the performer in plain view at all times during a performance."

FN4. Music and performance art are forms of expressive activity protected by the First Amendment. *See Ward,* 491 U.S. at 790, 109 S.Ct. 2746; *Schad v. Borough of Mount Ephraim,* 452 U.S. 61, 65-66, 101 S.Ct. 2176, 68 L.Ed.2d 671 (1981) ("Entertainment, as well as political and ideological speech, is protected; motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works fall within the First Amendment guarantee.") (collecting cases).

The permitting requirement outlined in Rule F.1 is noteworthy for what it does not cover. It places no limitation, for example, on the number of street per-

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former permits that the Director may issue in a given year. Nor does the required permit assign particular performers to specific venues or performance times. Instead, "[p]erformance locations are available on a first come first served basis" and "may not be 'saved' or 'reserved.' " Rule F.4.

Rule F.2 sets forth the "terms and conditions" governing the permits, including the grounds for their revocation. Although the City represents that the Rules provide the Director with no discretion to deny a permit application, the language of Rule F.2 suggests otherwise. According to the Rule, the Director may deny or condition a permit "as appropriate to protect the health, safety and welfare of the public and/or the campus; to protect property; to avoid or limit interference with other uses or users of the campus; [and] to minimize disturbance of the surrounding neighborhood." The Director may also require the performer to obtain insurance, supply a security deposit, and/or post a bond. A permit may be revoked by the Director "for convenience," so long as the Director provides the performer with notice.

B. Constitutionality of Rules F.1 and F.2

1. Single-Speaker Registration Requirements

[10] A permitting requirement is a prior restraint on speech and therefore bears a " 'heavy presumption' " against its constitutionality. *See Forsyth County v. Nationalist Movement,* 505 U.S. 123, 130, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992) (quoting *Bantam Books, Inc. v. Sullivan,* 372 U.S. 58, 70, 83 S.Ct. 631, 9 L.Ed.2d 584 (1963)). As the Court explained in *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton,* 536 U.S. 150, 122 S.Ct. 2080, 153 L.Ed.2d 205 (2002),

> [i]t is offensive-not only to the values protected by the First Amendment, but to the very notion of a free society-that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so.

Id. at 165-66, 122 S.Ct. 2080; *see also id.* at 166, 122 S.Ct. 2080 ("Even if the issuance of permits by the mayor's office is a ministerial task that is performed promptly and at no cost to the applicant, a law requiring a permit to engage in such speech constitutes a dramatic departure from our national heritage and constitutional tradition.").

The presumptive invalidity and offensiveness of advance notice and permitting requirements stem from the significant burden that they place on free speech. "Both the procedural hurdle of filling out and submitting a written application, and the temporal hurdle of waiting for the ***1038** permit to be granted may discourage potential speakers." *Grossman,* 33 F.3d at 1206. Registration requirements also dissuade potential speakers by eliminating the possibility of anonymous speech. *See Watchtower Bible,* 536 U.S. at 166, 122 S.Ct. 2080; *see also McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 341-42, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995) ("[A speaker's] decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible."). And, critically, advance notification requirements eliminate "spontaneous speech." *See Watchtower Bible,* 536 U.S. at 167, 122 S.Ct. 2080; *see also Grossman,* 33 F.3d at 1206 (noting that "because of the delay caused by complying with the permitting procedures, '[i]mmediate speech can no longer respond to immediate issues.' ") (alteration in original) (quoting *NAACP. v. City of Richmond,* 743 F.2d 1346, 1355 (9th Cir.1984)); *see also Rosen v. Port of Portland,* 641 F.2d 1243, 1249 (9th Cir.1981).

As a result of the significant burden that registration requirements place on speakers, the Supreme Court has consistently struck down permitting systems that apply to individual speakers-as opposed to large groups-in the one context in which they have been put in place with some regularity: solicitation of private homes. *See Watchtower Bible,* 536

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U.S. at 166-67, 122 S.Ct. 2080; *Vill. of Schaumburg v. Citizens for a Better Env't,* 444 U.S. 620, 638-39, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980) (striking down a solicitation permit requirement); *Cantwell v. State of Conn.,* 310 U.S. 296, 301, 306-07, 60 S.Ct. 900, 84 L.Ed. 1213 (1940) (striking down a license requirement as applied to Jehovah's Witnesses "going singly from house to house" for the purpose of religious solicitation); *Schneider v. State of N.J.,* 308 U.S. 147, 163-64, 60 S.Ct. 146, 84 L.Ed. 155 (1939) (striking down a permitting scheme covering all forms of solicitation). The Court has recognized that the government interests asserted in these door-to-door solicitation cases-the prevention of crime and fraud, and the protection of residential privacy-are weighty. *See, e.g., Watchtower Bible,* 536 U.S. at 164-65, 122 S.Ct. 2080. Nonetheless, it has repeatedly concluded that single-speaker permitting requirements are not a constitutionally valid means of advancing those interests because, typically, (1) they sweep too broadly, *see, e.g., Vill. of Schaumburg,* 444 U.S. at 636-37, 100 S.Ct. 826 (invalidating registration requirement because, among other things, it applied to groups engaged in legitimate activities as well as those who were not); *Watchtower Bible,* 536 U.S. at 165-66, 122 S.Ct. 2080 (same), (2) they only marginally advance the government's asserted interests, *see, e.g., Watchtower Bible,* 536 U.S. at 168-69, 122 S.Ct. 2080 (noting that a permitting requirement is "unlikely ... [to] preclude criminals from knocking on doors and engaging in conversations [with homeowners]," and that "[t]he annoyance caused by an uninvited knock on the front door is the same whether or not the visitor is armed with a permit"), and (3) the government's interests can be achieved by less intrusive means, *see id.* at 168-69, 122 S.Ct. 2080 (noting that a homeowner's privacy interests can be adequately protected by "No Solicitation" signs); *see also Vill. of Schaumburg,* 444 U.S. at 637, 100 S.Ct. 826 (asserting that "[f]raudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly." (citing *Schneider,* 308 U.S. at 164, 60 S.Ct. 146)).[FN5]

FN5. Chief Judge Kozinski argues that this case and *Watchtower Bible* "have about as much in common as bananas and boomerangs." Kozinski Dissent at 1072. The comparison is colorful, but the Chief Judge's attempt to brush aside *Watchtower Bible* does not work, for a myriad of reasons. First, and contrary to the Chief Judge's contention, performance art, like door-to-door canvassing, has historically served an important role in the dissemination of ideas. *See* Gould Dissent at 1074 ("Speech in the form of music, drama, or performance has played a vital role in our society and deserves First Amendment protection. Some of our culture's most valued written works originated as spoken performances."). Second, the Seattle Center's permitting requirement, like the permitting requirement in Watchtower Bible, significantly inhibits spontaneous speech. This critical point, which the Chief Judge ignores, was an important aspect of the Supreme Court's holding in *Watchtower Bible.* Third, there is no reason to believe that street performers are less interested in maintaining their anonymity from the government than door-to-door canvassers or other purveyors of potentially unpopular ideas. *See Watchtower Bible,* 536 U.S. at 166, 122 S.Ct. 2080 ("The fact that circulators revealed their physical identities did not foreclose our consideration of the circulators' interest in maintaining their anonymity [in *Buckley v. American Constitutional Law Foundation, Inc.,* 525 U.S. 182, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999)]. In the Village, strangers to the resident certainly maintain their anonymity, and the ordinance may preclude such persons from canvassing for unpopular causes."). Fourth, as noted, the ordinance applies whether or not the street performer solicits funds, and the definition of "street performer" includes individuals who do not

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> solicit funds. Finally, like the permit regulation in *Watchtower Bible,* the permitting requirement in this case applies to individuals who communicate their message to groups as small as two or three others. In short, the principles set forth by the Supreme Court in *Watchtower Bible* apply with as much force in this context as they did in the context of door-to-door canvassers.

***1039** Although the Supreme Court has not addressed the validity of single-speaker permitting requirements for speech in a public forum, it stands to reason that such requirements would be at least as constitutionally suspect when applied to speech in a public park, where a speaker's First Amendment protections reach their zenith, than when applied to speech on a citizen's doorstep, where substantial privacy interests exist. *See Frisby v. Schultz,* 487 U.S. 474, 483-84, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988). It is therefore not surprising that we and almost every other circuit to have considered the issue have refused to uphold registration requirements that apply to individual speakers or small groups in a public forum. *See Santa Monica Food Not Bombs v. City of Santa Monica,* 450 F.3d 1022, 1039 (9th Cir.2006) ("As the cautionary language in our earlier opinions indicates, the significant governmental interest justifying the unusual step of requiring citizens to inform the government in advance of expressive activity has always been understood to arise only when large groups of people travel together on streets and sidewalks."); *see also Grossman,* 33 F.3d at 1206 (holding that the possibility that the ordinance at issue could reach "the actions of single protestors" rendered it unconstitutional); *Rosen,* 641 F.2d at 1247-48 (invalidating a one-day advance registration requirement because it applied to individuals and therefore "regulate[d] far more than mass conduct that necessarily interferes with the use of public facilities"); *Cox v. City of Charleston,* 416 F.3d 281, 285 (4th Cir.2005) ("[U]nflinching application" of a permitting requirement "to groups as small as two or three renders it constitutionally infirm."); *Douglas v. Brownell,* 88 F.3d 1511, 1524 (8th Cir.1996) ("[A]pplying the permit requirement to groups as small as ten persons compounds our conclusion that the parade permit ordinance is not narrowly tailored [to advance the government's interest in protecting the safety and convenience of users of public sidewalks and streets."); *American-Arab Anti-Discrimination Committee v. City of Dearborn,* 418 F.3d 600, 608 (6th Cir.2005) (striking down a permit requirement as "hopelessly overbroad" on the ground that ***1040** the requirement could conceivably apply to groups as small as "two or more persons").[FN6]

> FN6. The Second Circuit recently upheld a single-speaker permitting requirement in *Hobbs v. County of Westchester,* 397 F.3d 133, 150 (2d Cir.2005). But the regulation in *Hobbs,* as interpreted by the Second Circuit, required individuals who planned to perform on public property to obtain a permit only if they planned to use "props and/or equipment," so the permit requirement was triggered by conduct, not speech. *Id.* at 151. Also, the court did not directly consider the constitutionality of the permitting requirement. Rather, it evaluated the constitutionality of an Executive Order which prohibited the issuance of permits to individuals who had been previously convicted of a sex offense against a minor, and whose planned performance was designed to attract children. *Id.* at 152. In that narrow context, the court upheld the prohibition as a valid time, place, and manner restriction.

In this case, the Center's permitting requirement applies to individual speakers who wish to express themselves in a public forum.[FN7] The requirement is not limited to only those performers who seek to attract (or who do, in fact, attract) a crowd of a sufficiently large size.[FN8] As noted, neither we, the Supreme Court, nor most other circuit courts have

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ever upheld such a requirement. In addition, the interests the City asserts here-reducing territorial and other disputes involving street performers, and coordinating uses at a public park-are no more, and perhaps less, substantial than those cited by the local governments in the door-to-door solicitation cases. *See, e.g., Watchtower Bible,* 536 U.S. at 164-65, 122 S.Ct. 2080 (the government's asserted interests included the prevention of crime and fraud and the protection of residential privacy).

> FN7. Although street performers do, of course, hope to draw crowds, this goal is of little moment to our analysis. The individual protestors in *Rosen* and *Grossman* also undoubtedly hoped to attract crowds of people eager to learn their views. But we have emphasized that advance registration permits are only appropriate for larger crowds than any street performer at the Seattle Center is likely to draw at one time. *See Long Beach Area Peace Network v. City of Long Beach,* 522 F.3d 1010, 1033 (9th Cir.2008) ("Although it is a close question, we hold that a group of seventy-five people using a public open space in Long Beach is large enough to warrant an advance notice and permitting requirement."). As we note later, *see infra* pp. 1044-45, an otherwise valid, general permit requirement applicable to large groups could be applied to street performers, but only if the crowd attracted is in fact large enough to reach the minimum crowd size covered by that valid requirement.
>
> FN8. In his dissent, Chief Judge Kozinski concedes that "individual-to-individual and small group-to-small group interactions generally do not pose the sort of problems that time, place and manner rules are designed to deal with." Kozinski Dissent at 1072. The Seattle Center's permitting requirement implicates just such interactions. Under the current rules, Michael Berger must obtain a permit whether he wishes to perform his magic act for groups of two or three others or for groups of one hundred or more. And nothing in the record indicates that crowds-even crowds of fifty or seventy-five people-gather around street performers at the Seattle Center. In other words, the Seattle Center's permitting requirement impinges on the very individual-to-small group interactions that even the Chief Judge acknowledges are not problematic.

[11] In addition, as discussed in more detail below, the Center's permitting requirements have an impermissibly broad scope; do not meaningfully promote the City's asserted interests; and address interests that could be achieved through means far less intrusive than an individual speaker registration requirement. These considerations indicate that the regulation is not sufficiently narrowly tailored to meet the standard for a valid time, place, and manner regulation.

***1041 2. Narrow Tailoring**

[12][13] A narrowly tailored time, place, or manner restriction on speech is one that does not "burden substantially more speech than is necessary" to achieve a substantial government interest. *Ward,* 491 U.S. at 799, 109 S.Ct. 2746. It must "target[ ] and eliminate[ ] no more than the exact source of the 'evil' it seeks to remedy." *See Frisby,* 487 U.S. at 485, 108 S.Ct. 2495 (citation omitted). Moreover, although the chosen restriction "need not be the least restrictive or least intrusive means" available to achieve the government's legitimate interests, *Ward,* 491 U.S. at 798, 109 S.Ct. 2746, the existence of obvious, less burdensome alternatives is "a relevant consideration in determining whether the 'fit' between ends and means is reasonable," *City of Cincinnati v. Discovery Network, Inc.,* 507 U.S. 410, 417 n. 13, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993); *see also Santa Monica Food Not Bombs,* 450 F.3d at 1041.

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The Center's permitting requirement fails the narrow tailoring test for three reasons. First, the requirement only marginally, if at all, promotes the City's asserted interests, suggesting that the government's interests would not "be achieved less effectively absent the regulation." *See Ward,* 491 U.S. at 799, 109 S.Ct. 2746 (internal quotation marks and citations omitted). Second, less intrusive measures exist by which the City could achieve its alleged goals. Finally, the Center's permitting rule applies, on its face, to an extraordinarily broad group of individuals, the vast majority of whom are not responsible for the "evil" the City seeks to remedy. *See Frisby,* 487 U.S. at 485, 108 S.Ct. 2495.

1. The City asserts that the permitting requirement promotes its interest in protecting the safety and convenience of park-goers by reducing territorial disputes among performers, deterring harassment of audience members, and "clarifying and coordinating potentially competing uses." A "State's interest in protecting the 'safety and convenience' of persons using a public forum" is assuredly "a valid government objective." *Heffron v. Int'l Soc'y of Krishna Consciousness, Inc.,* 452 U.S. 640, 650, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981); *see also Thomas v. Chic.Park Dist.,* 534 U.S. 316, 323, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002) ("Regulations of the use of a public forum that ensure the safety and convenience of the people are not inconsistent with civil liberties ...." (internal quotation marks and citation omitted)); *Cox v. State of New Hampshire,* 312 U.S. 569, 574, 61 S.Ct. 762, 85 L.Ed. 1049 (1941). We have also held that, under appropriate circumstances, a permitting requirement governing the use of a public open space can further a legitimate interest in the regulation of competing uses of that space. *See Santa Monica Food Not Bombs,* 450 F.3d at 1042-43; *Long Beach Area Peace Network,* 522 F.3d at 1032-33.

The City's asserted reasons for enacting the permitting regulations are thus substantial governmental interests. Unlike the restrictions in the cases just cited, however, the Center's permitting requirements do not promote those interests in any significant way.

There is, for example, no reason two street performers with permits would be less likely to engage in a territorial dispute than two street performers without permits. After all, under the Rules, a permit does not entitle a performer either to a particular territory or to a particular time period within a given territory. While the delineation of performance areas may help reduce such disputes, a permitting requirement is not inherent in such a space allocation system.

[14] The Center's permitting requirement also bears no apparent connection to the City's stated interest in reducing hostile***1042** performer behavior. The City represents that the permits are freely issued, and that there is little, if any, screening process. [FN9] If so, then there is no reason why a performer with a permit is likely to be less hostile than one without a permit. In fact, several of the incident reports that the City introduced as evidence of obstreperous performer conduct describe events that occurred after the introduction of the permitting requirement.

> FN9. Although the City stated at oral argument that issuance of the permits is nondiscretionary, we note that Rule F.2, which lists the "terms and conditions" for obtaining and retaining a permit, indicates otherwise. For example, Rule F.2 vests the Director with the power to revoke a permit "for convenience," thereby seeming to provide the Director with some measure of discretion over which performers are entitled to perform at the Center.
>
> Rules that grant licensing officials undue discretion are not constitutional. *See Forsyth County,* 505 U.S. at 131, 112 S.Ct. 2395 ("[A] law subjecting the exercise of First Amendment freedoms to the prior restraint of a license must contain narrow, objective, and definite standards

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> to guide the licensing authority." (internal quotation marks and citations omitted)); *Thomas,* 534 U.S. at 323, 122 S.Ct. 775. Berger does not challenge the permitting requirement on undue discretion grounds, however. We therefore assume, without deciding, that Rule F.2 does not provide the Director with undue discretion over the permitting system.

Moreover, the permitting requirement, as currently designed, does not aid in coordinating multiple uses of the Center's grounds. As already noted, the Rules place no limit on the number of permits that may be issued and do not assign particular performers to specific times or locations. As a result, the Center has no idea when or where a street performer intends to perform over the course of a permit year or how long any given performance will last. Because the permitting requirement does not resolve such uncertainties, it cannot help the Center "clarify[ ] and coordinat[e] potentially competing uses" of the park.

We recognize that limiting street performers to designated locations does, by definition, improve the coordination of multiple uses of the Center. But again, the permitting requirement does not assign particular performers to one or more of these designated locations, and therefore adds nothing to the Center's coordination scheme.

The Chief Judge implies that our opinion is in conflict with cases such as *Cox v. New Hampshire,* 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941) and *Poulos v. New Hampshire,* 345 U.S. 395, 73 S.Ct. 760, 97 L.Ed. 1105 (1953) with regard to narrow tailoring to advance a significant governmental interest. Kozinski Dissent at 1068-69. That is simply not the case. In contrast to the Seattle Center's permitting requirement, the permitting schemes at issue in *Cox* and *Poulos* both required applicants to "specify the day and hour" that they planned to hold their parade or public meeting. *See Cox,* 312 U.S. at 571 & n. 1, 61 S.Ct. 762; *Poulos,* 345 U.S. at 398 n. 2, 73 S.Ct. 760. So the permits in *Cox* and *Poulos* did serve to further the government's interest in coordinating multiple uses of limited public space. The same cannot be said of the Seattle Center's permitting requirement, which is untethered to the time, place, length, or size of a planned performance. [FN10] In addition, ***1043** both cases preceded the development by the Supreme Court of specific time, place and manner standards, and so, although still good law, are not examples of the application of modern doctrine to discrete circumstances.

> FN10. Chief Judge Kozinski describes our effort to distinguish *Cox* and *Poulos* on this ground as "clumsy." Kozinski Dissent at 7805. In the Chief Judge's opinion, the fact that the City's permitting requirement allows the performer to "perform any time he wishes ... for as long as he wishes" indicates that it is a less restrictive restraint on speech than those in *Cox* and *Poulos.*
>
> The Chief Judge's argument misses our crucial point: it is the very fact that the permitting schemes in *Cox* and *Poulos* required applicants to specify the day and hour of their gathering that ensured that the restraints at issue did, in fact, promote the government's legitimate interest in coordinating multiple uses of a public space. In other words, the permitting requirement in *Cox* and *Poulos* accomplished more than the mere identification of potential speakers.
>
> In this case, the City simply cannot argue that its permitting requirement promotes any possible coordination of use purpose. The *only* purpose that the City's permitting requirement serves is to force potential speakers to identify themselves to the government. Standing alone, such an interest is decidedly not constitutional, *see Watchtower Bible,* 536 U.S. at 166, 122 S.Ct. 2080, and the Supreme Court has never held otherwise.

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Finally, the imperfect fit between the City's stated goals and the permit and badge requirements is evidenced by the Rules' significant underinclusiveness. Under the Rules, a group of as many as 99 people can gather without a permit to express their views, so long as they are not engaged in an artistic performance.[FN11] At the same time, an individual singing or dancing for a few friends would be required to register with the Director. This discrepancy makes little sense if, in fact, the City's primary motivation in passing the permit and badge requirements is to protect the safety and convenience of parkgoers.

> FN11. The Rules also require individuals or groups to obtain a license if they use electrical power outlets, tables, temporary stages, flammable liquids, or sound amplification equipment. Rule E. This aspect of the Rules has not been challenged.

2. The City, the Chief Judge, and Judge Smith all maintain that the permitting requirement nonetheless promotes the City's asserted interests simply because a performer's fear of losing his or her permit will deter that performer from engaging in aggressive conduct and other non-rule abiding behavior. *See* Kozinski Dissent at 1069; Smith Op. at 1086. Along these same lines, the City contends that, without the ability to revoke a performer's permit, it would have no means of punishing violations of the Rules. These criticisms disregard the bedrock First Amendment presumption against prior speech restraints, and therefore against substituting an advance permitting process for after-the-fact enforcement. And, even if the permitting requirement does deter and help to punish unwanted behavior, "there are easily available alternative modes of regulation," *Santa Monica Food Not Bombs,* 450 F.3d at 1041, that would have considerably less impact on speech than the single-speaker prospective registration system.

Rather than requiring all speakers to pre-register with the government as a prerequisite to engaging in communicative activity, the City could simply enforce its existing rules against those who actually exhibit unwanted behavior.[FN12] For example, after appropriate hearings, the City might be able to suspend a rulebreaker's right to perform on the Center's grounds, or issue a fine.[FN13] *Cf.* ***1044***Madsen v. Women's Health Ctr., Inc.,* 512 U.S. 753, 776, 114 S.Ct. 2516, 129 L.Ed.2d 593 (1994).[FN14] There is little reason to suspect that a performer would fear a suspension of her right to perform on the grounds or a significant fine any less than she would fear a suspension of her permit. The Supreme Court has consistently struck down prior restraints on speech where a state could achieve its purported goal of protecting its citizens from wrongful conduct by punishing only actual wrongdoers, rather than screening potential speakers. *See Riley v. Nat'l Fed'n of the Blind of N.C., Inc.,* 487 U.S. 781, 795, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988) (invalidating a restraint on charitable solicitation that purported to protect citizens from fraud and noting, "In striking down this portion of the Act, we do not suggest that States must sit idly by and allow their citizens to be defrauded. North Carolina has an antifraud law, and we presume that law enforcement officers are ready and able to enforce it."); *Vill. of Schaumburg,* 444 U.S. at 637, 100 S.Ct. 826 ("Fraudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly."); *Schneider,* 308 U.S. at 162, 60 S.Ct. 146 (striking down ban on pamphleteering that was aimed at the prevention of littering in part because "[t]here are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets.").

> FN12. *See* Rule F.7.a (prohibiting performers from "treat[ing] any person or animal in a manner that is aggressive, menacing, vulgar, profane or abusive").

> FN13. According to one city official, "Before a street performer's permit is suspended, Seattle Center: 1) gathers information about the alleged rule violation(s); 2) sends the street performer notice of the al-

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> leged violation(s) and gives the performer the opportunity to respond; and 3) makes a decision based upon the alleged incident and the performer's response, if any." The City does not explain why this system would not function just as well if the penalty was the suspension of the performer's future right to perform at the Center, rather than the suspension of his permit.
>
> FN14. The City states that, absent the ability to suspend a performer's license, it would have no other option but to completely ban a non-rule-abiding performer from the Center's grounds. This argument is unpersuasive, for two reasons. First, there is no reason why identifying a performer who has had his privilege to perform on the Center's grounds suspended would be more difficult than identifying a performer who has had his permit suspended. Both would require an enforcement officer to consult a database which contained identifying information. The essence of the inquiry is no different.
>
> Second, as a practical matter, the City does not appear to have had trouble identifying the limited number of street performers who regularly appear at the Center. The Appellee, "Magic Mike," is apparently quite well-known to the Center's security staff. In addition, its incident reports contain references to such distinctive characters as the hula-hooping magician and "the puppet guy."

In a related argument, Chief Judge Kozinski avers that the City's registration requirement promotes the City's interest in identifying rulebreakers and notifying them of alleged violations. *See* Kozinski Dissent at 1069-70 (stating that the permitting requirement serves the valid purpose of deterring unruly street performer behavior "by denying them the cover of anonymity, and [giving] the Seattle Center authorities a means of holding them accountable when they do misbehave"). This argument is unavailing, for three reasons. First, the requirement that potential speakers identify themselves to the government, and the concomitant loss of anonymity, is one of the primary *evils* the Supreme Court cited when it struck down the permitting requirement in *Watchtower Bible. See* 536 U.S. at 166-67, 122 S.Ct. 2080. The Center's permitting requirement does not require only non-rule abiding street performers to identify themselves to the government. It requires *all* performers to "first inform the government of [their] desire to speak" in a public forum, *see Watchtower,* 536 U.S. at 165-66, 122 S.Ct. 2080, and thereby forego their anonymity. The permitting rule's denial of anonymity to potential street performers, and the deterrent effect that such a denial has on some individuals' exercise of speech rights, weighs against the rule's constitutionality, not in its favor. *See Watchtower,* 536 U.S. at 166-67 & n. 14, 122 S.Ct. 2080.

Second, the City need not rely on a pre-registration scheme to determine the identity***1045** and addresses of problematic street performers. Seattle Center employees can, instead, ask the offending street performer to identify himself and provide an address, if necessary. This method is presumably the one employed by Seattle police officers when they enforce criminal statutes that prohibit such acts as disorderly conduct, *see* Seattle Mun.Code § 12A.12.010, and aggressive begging. *See* Seattle Mun.Code § 12A.12.015. Moreover, the Supreme Court has recently upheld so-called "stop and identify" statutes that require suspects to identify themselves to police officers. *See Hiibel v. Sixth Judicial Dist. Court of Nev.,* 542 U.S. 177, 124 S.Ct. 2451, 159 L.Ed.2d 292 (2004). In other words, the City has the authority to ask alleged rule violators to provide their identities. The registration system is therefore of only minimal additional usefulness, if any.

Third, as noted *supra* n. 14, the City does not appear to have had any practical difficulties uncovering the identities of the limited number of street

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performers who appear regularly at the Seattle Center.

The City's asserted interest in coordinating multiple uses of the Center could also be achieved as effectively without the permitting requirement. Although we do not uphold the Center's designation of sixteen performance locations on the present record, *see infra* Part IV, we also hold that the delineation of performance areas, particularly in the most sought-after locales, might pass constitutional muster on a more developed record. If so, a valid designated-location plan, in combination with the City's existing first-come-first-served rule, would achieve the same improvements in the coordination of multiple uses without a permitting system as it would with one. Conversely, if the designation of performance locations is not constitutionally valid, then the permitting scheme cannot be justified as enhancing the enforcement of an invalid designation.

In short, by relying on an expansive, prophylactic prior restraint, the City has "burden[ed] substantially more speech than is necessary to further [its] interests." *Ward,* 491 U.S. at 799, 109 S.Ct. 2746. The permitting system is entirely peripheral to the Center's need to enforce its Rules. Because the City's interests in punishing wrongful conduct could "be achieved [just as] ... effectively absent the [permitting] regulation," *id.,* that regulation is not narrowly tailored to promote those interests. *See also Discovery Network,* 507 U.S. at 417 n. 13, 113 S.Ct. 1505 (holding that the availability of less restrictive alternatives is a relevant consideration in a narrow tailoring analysis).

[15] 3. There is a third, particularly compelling reason why the Center's permitting requirement fails the narrow tailoring requirement: It applies to a large number of individuals who have no connection to the City's asserted reasons for the permitting requirement, thereby running afoul of the principle that the "[g]overnment may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals." *Ward,* 491 U.S. at 799, 109 S.Ct. 2746.

The permitting requirement is, according to the City, designed in part to reduce obstreperous conduct by street performers. Yet, by the City's own account, most street performers are not problematic.[FN15] So the permitting requirement burdens all performers to root out the occasional bad apple. By doing so, it fails to "target[ ] ***1046** and eliminate[ ] no more than the exact source of the 'evil' it seeks to remedy." *Frisby,* 487 U.S. at 485, 108 S.Ct. 2495 .

> FN15. The City reports that, in the year prior to the introduction of the revised Rules, 70% of the performer-related complaints it received were either generated by or were in reference to "Magic Mike" Berger.

Similarly, the permitting requirement applies to street performers who pose no realistic coordination or traffic flow concerns, as well as to those who might. It is hard to fathom how an individual performing for two or three others in a park as large as the Center would pose coordination or traffic flow problems for the City. *See Santa Monica Food Not Bombs,* 450 F.3d at 1038-39 (noting that the type of coordination problems that justify the imposition of advance notification and permitting requirements arise in a public forum only when large groups are involved); *Grossman,* 33 F.3d at 1206 (same); *Long Beach Area Peace Network,* 522 F.3d at 1032-33 (same); *City of Dearborn,* 418 F.3d at 608 ("The city of Dearborn's significant interest in crowd and traffic control, property maintenance, and protection of the public welfare is not advanced by the application of the Ordinance to small groups."). The City has not provided any evidence that street performers usually, or even sometimes, gather crowds of the size that might justify coordination-of-use permits-according to *Long Beach Area Peace Network,* 522 F.3d at 1033, seventy-five or more people. Once again, the permitting requirement here burdens substantially more speech than necessary to promote a legitimate government objective.

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The unconstitutional breadth of the permitting requirement is perhaps most apparent in the City's definition of "street performer," the group to whom the permitting rules apply. According to Rule C.15, a "Street Performer" is "a member of the general public who engages in any performing art or the playing of any musical instrument, singing or vocalizing, with or without musical accompaniment...." This definition is extraordinary in its sweep.[FN16] It includes not only the few problematic street performers who perform repeatedly and for pay, but also any individual who wishes to sing, dance, or play an instrument while on the Center's grounds. Protest songs, playing the guitar at a picnic, even whistling are swept up into this broad definition. An individual strumming on a guitar at a family picnic surely poses no problem to the safety and convenience of fellow park-goers. Yet, that person, like many others, would need to obtain a permit.

> FN16. Although inclusion of the term "vocalizing" could be read to apply the permitting requirement to any individual who wished to speak out loud while traversing the Seattle Center's grounds, we assume that the permitting rules apply only to those engaged in artistic expression.

[16] The City urges us to read the definition more narrowly than its text would suggest. It contends that the Rules apply only to those performances that are "aimed at attracting an audience," and so are not unconstitutionally broad.

[17] It is a "well-established principle that statutes will be interpreted to avoid constitutional difficulties." *Frisby,* 487 U.S. at 483, 108 S.Ct. 2495. Thus, where an unconstitutionally broad statute is "readily subject to a narrowing construction" that would eliminate its constitutional deficiencies, we accept that construction. *See id.* at 482, 108 S.Ct. 2495; *see also Ctr. for Bio-Ethical Reform, Inc., v. L.A. County Sheriff's Dep't,* 533 F.3d 780, 791-93 (9th Cir.2008) (construing an ambiguous statute narrowly to avoid First Amendment problems).

In this case, though, even if we were to hold that the published "street performer" definition is "readily subject" to the proposed narrowing construction, the revised ***1047** definition would be no less constitutionally infirm, for two reasons. First, most performers seek to "attract a crowd," even if that crowd turns out to be composed of only two or three people. The City's "narrower" rule is therefore only marginally less broad, if less broad at all, than the original.

In *Santa Monica Food Not Bombs,* we invalidated a rule that required any individual who advertised an event on the radio or television to obtain a permit, regardless of the number of people who attended the event. *See* 450 F.3d at 1043. We noted that the permit would have been narrowly tailored if it had applied to events that *actually* attracted a crowd of more than 150 people, even if the number of attendees was unknown before the event. *Id.* In other words, the City of Santa Monica was allowed to hold an organizer responsible for obtaining a permit if the event actually attracted a significant crowd, but not because the event *might conceivably* attract such a crowd. Similarly, here, the City could draft a rule for the Seattle Center that requires performances that attract an audience of a given size to obtain a permit, and enforce that rule for performances that actually attract that size audience. What it cannot do is require permits for all performances at the Center, regardless of the size of the crowd. [FN17]

> FN17. In support of their argument that the Center's permitting requirement is constitutional, Chief Judge Kozinski and Judge Gould cite *Thomas v. Chicago Park Dist.,* 534 U.S. 316, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002) for the proposition that the Supreme Court has previously "[upheld a] permitting requirement for large events in public parks." Gould Dissent at 1075-76; Kozinski Dissent at 1066-67, 1069. As noted, regulating "street performers" is not tantamount to regulating "large events."

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> More importantly, as we have twice noted, " *Thomas* considered only a challenge to the breadth of official discretion, not the other requirements of the time, place, and manner jurisprudence." *Santa Monica Food Not Bombs,* 450 F.3d at 1037 n. 15 (citing *Galvin v. Hay,* 374 F.3d 739, 747 n. 5 (9th Cir.2004) (internal alterations and quotations omitted)). Notably, the *Thomas* Court did not consider, because the issue was not raised, whether the Chicago Park District's fifty-person threshold was high enough to meet constitutional standards. Our caselaw indicates that it may be too low. *See Long Beach Area Peace Network,* 522 F.3d at 1033; *Santa Monica Food Not Bombs,* 450 F.3d at 1043. In any event, because *Thomas* addressed a specific type challenge that is not raised here, it is not useful in evaluating the constitutionality of the Center's permitting requirement.

Second, the City's proposed limitation would make an otherwise clear, though overbroad, regulation unconstitutionally vague. *See Foti v. City of Menlo Park,* 146 F.3d 629, 638-40 (9th Cir.1998). *Foti* invalidated a city ordinance that prohibited drivers from displaying signs on their parked vehicles if, and only if, those signs were designed to "attract the attention of the public." *Id.* at 638. We found this standard unconstitutionally vague, because it required those enforcing the ban to "decipher the driver's subjective intent" based on such factors as the driver's chosen parking space, the amount of traffic passing by the chosen parking spot, and the physical characteristics of the sign. *Id.* at 638-39. Our concern was that, "[w]ith this range of factors to consider, ... a police officer might resort to enforcing the ordinance only against ... [those] messages the officer or the public dislikes." *Id.* at 639.

The City's limiting construction mimics the language of the ordinance declared unconstitutionally vague in *Foti* and so fares no better than that ordinance. A Seattle police officer attempting to enforce the Center's permitting requirement would have to decide whether a performer intended "to attract a crowd." The officer ***1048** would presumably make such a determination based on factors such as the performer's chosen location, volume, flamboyance, and, worst of all, subject matter. As in *Foti,* this myriad of factors lends itself to discriminatory enforcement.

Moreover, a prospective performer would need to anticipate how an officer might interpret the performance. Even if the performer had no intent to "attract an audience," he or she would have to evaluate whether an officer might think so. This uncertainty is likely to have a chilling effect on speech. *See id.* at 638 ("A statute must be sufficiently clear so as to allow persons of 'ordinary intelligence a reasonable opportunity to know what is prohibited.' ") (quoting *Grayned v. City of Rockford,* 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972)).

In short, far from saving Rule C.15 and its associated Rules from constitutional ignominy, the City's proffered limiting construction makes matters worse.

3. Conclusion

Overall, like the invalid permitting scheme in *Grossman,* the City's regulations, "[r]ather than being narrowly tailored to protect speech, ... [are] tailored so as to preclude speech." *Grossman,* 33 F.3d at 1207. We therefore hold that Rules F.1 and F.2 are unconstitutional.[FN18] As currently drafted, the Center's permitting requirement does not meaningfully advance the City's asserted interests. Instead, it requires single individuals to inform the government of their intent to engage in expressive activity in a public forum, a requirement that neither we nor the Supreme Court has *ever* countenanced. In addition, its broad sweep prohibits much more speech than the "evil[s]" it seeks to remedy require, and the main objectives of the City's advance registration scheme could be achieved by far less intrusive means. For all these reasons, the Cen-

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ter's permitting requirement is not a reasonable time, place, or manner restriction.

> FN18. The Seattle Center's badge requirement is intimately connected to the permitting requirement. *See* Rule F.1 ("Permits, when issued, shall be evidenced by a badge that shall be worn or displayed by the performer in plain view at all times during a performance."). Because we hold the Center's permitting requirement unconstitutional and because no badges of the kind required can be issued without permits, we need not separately evaluate the constitutionality of the badge requirement.

IV. Rule F.5: The Performance Location Rule

A. Overview of the Rule

Rule F.5 limits street performers to sixteen "designated locations on the Seattle Center grounds," identified on a map that accompanies each Street Performer Permit. The map also indicates the "maximum number" of performers, typically no more than two, who may perform at each location simultaneously. If the Director determines that a given performance interferes with other users of the Center's grounds or "aggravates foot traffic congestion," the Rule permits the Director to "relocate performers" to other designated areas.

B. Constitutionality of Rule F.5

[18][19] The summary judgment record is insufficient to establish that the performance location rule is unconstitutional. As with other time, place, or manner restrictions on speech in a public forum, the government bears the burden of justifying a location restriction. *See Kuba v. 1-A Agric. Ass'n,* 387 F.3d 850, 858-63 (9th Cir.2004); *see also United States v. Playboy Entm't Group,* 529 U.S. 803, 816-17, 120 S.Ct. 1878, 146 L.Ed.2d 865 (2000); ***1049** *City of Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 50-52, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986). Viewing the available evidence in a light most favorable to the City, *see Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986), we conclude that a genuine issue of material fact exists as to whether the City met this burden, and that summary judgment for Berger was therefore not merited. *See Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 250, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

The City submitted evidence, which Berger does not dispute, that, before the introduction of the location restriction, it received weekly complaints from park tenants about street performers blocking entranceways and egresses. The City's evidence also indicates that street performers regularly engaged in disruptive and volatile territorial disputes. Viewing this uncontested evidence in a light most favorable to the City, we conclude that the City met its burden of establishing that a significant problem exists. *See Edenfield v. Fane,* 507 U.S. 761, 770-71, 113 S.Ct. 1792, 123 L.Ed.2d 543 (1993) ("[A] governmental body seeking to sustain a restriction ... must demonstrate that the harms it recites are real....").

Moreover, unlike the Center's permitting requirement, the location rule does promote the City's interest in reducing these problems. By delineating precise performance locations, the City can assure itself and park tenants that street performers are not blocking entrances, exits, and pathways. Similarly, well-defined performance areas, combined with the Center's first-come, first-served rule, reduce territorial disputes by eliminating uncertainty over the permissible boundaries of a given performance.

In addition, the performance location rule, unlike the permitting requirement, passive solicitation, and captive audience rules, is not overbroad on its face. *See Bd. of Airport Comm'rs of the City of L.A. v. Jews for Jesus, Inc.,* 482 U.S. 569, 574-75, 107 S.Ct. 2568, 96 L.Ed.2d 500 (1987) (striking down, on overbreadth grounds, a regulation that prohibited

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individuals from engaging in "any First Amendment activities" within an airport terminal). [FN19]

> FN19. The performance location rule is overbroad in the sense that it relies on a constitutionally infirm definition of "street performer." *See supra* Part III.B.2. If the City plans to defend the constitutionality of the performance location rule on remand, it must also provide a narrowing construction that comports with the principles discussed in Part III.B.2.

[20] The only issue, then, is whether the location restriction leaves open "ample alternative channels for communication." *Ward,* 491 U.S. at 791, 109 S.Ct. 2746. As we explained in *Long Beach Area Peace Network,* "an alternative is not ample if the speaker is not permitted to reach the intended audience." 522 F.3d at 1024.

On summary judgment, we are, of course, required to draw all reasonable inferences in favor of the non-moving party. *See Anderson,* 477 U.S. at 255, 106 S.Ct. 2505. In support of its argument that the sixteen designated locations provide adequate access to audiences, the City provides a single piece of evidence: a map of the Seattle Center that includes the chosen locations.[FN20] As the dissenters point out, the map shows that the designated ***1050** performance areas are near to several key Seattle Center attractions, including the Space Needle, the Key Arena, and the Experience Music Project. Many of the locations also appear to be directly adjacent to the Center's major pedestrian thoroughfares. The map therefore permits us to draw the reasonable inference that the chosen locations provide street performers with access to most parkgoers and therefore to their intended audience.

> FN20. The City asserts that the number and location of the performance areas were determined through a public process in which street performers participated. The City has yet, however, to introduce any of the details or specific results of this public process. Inquiry into such details would go a long way towards determining the adequacy of the chosen locales.

Berger challenges this inference, and in support of that challenge, introduces his own declaration. In that declaration, he asserts that "many [of the locations] are far off the walkways where it is very difficult to notice the performer." He also avers that "Other times the Center has trucks or equipment or construction blocking locations for weeks on end." Although these statements raise an inference that the chosen locations do not provide adequate access to a street performer's audience, they do not compel that conclusion as a matter of law. Nor does Berger supply additional evidence that would preclude us from drawing an inference in favor of the City.

Because we must draw all reasonable inferences in favor of the City, and because there is conflicting evidence concerning whether the sixteen dedicated locations provide adequate access to the intended audience, summary judgment for Berger on the issue of Rule F.5's constitutionality is not appropriate on the current record.

To be clear, we do not hold that Rule F.5 is constitutional. Berger's evidence, though sparing, is sufficient to support a reasonable inference that the designated locations do not provide access to his intended audience. Rather, we are simply ruling that, on the current summary judgment record, there are conflicting inferences to be drawn regarding material facts pertinent to the dispositive consideration, adequacy of access to the intended audience.

V. Rule F.3.a: The Passive Solicitation Rule

A. Overview of Rule

Rule F.3.a states: "No performer shall actively solicit donations, for example by live or recorded word of mouth, gesture, mechanical devices, or second parties." The Rule does allow performers "passively" to solicit donations by setting out a re-

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ceptacle that "may include a written sign that informs the public that such donations are sought."

B. Constitutionality of Rule F.3.a

[21][22][23] Speech that solicits funds is protected by the First Amendment. *See Vill. of Schaumburg,* 444 U.S. at 628-32, 100 S.Ct. 826; *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee,* 505 U.S. 672, 677, 112 S.Ct. 2701, 120 L.Ed.2d 541 (1992). Rules that regulate solicitation in public fora are therefore subject to the same standards as those that limit other forms of speech. *See Lee,* 505 U.S. at 703-04, 112 S.Ct. 2711 (Kennedy, J., concurring); *see also ACLU of Nev. v. City of Las Vegas (ACLU II),* 466 F.3d 784, 792 (9th Cir.2006); *ACORN v. City of Phoenix,* 798 F.2d 1260, 1267 (9th Cir.1986). In other words, solicitation regulations must be content-neutral, narrowly tailored, and leave open reasonable alternative channels for expression. *Id.* If a regulation is not content-neutral, we apply strict scrutiny. *See Playboy Entertainment Group,* 529 U.S. at 813, 120 S.Ct. 1878; *Perry Educ. Ass'n,* 460 U.S. at 45, 103 S.Ct. 948. Under that standard, the regulation is valid only if it is the least restrictive means available to further a compelling government interest. *Id.* We hold that the Center's active solicitation ban is a content-based regulation, and that it does not satisfy the exacting standard for a valid content-based regulation.

***1051 1. Content-based**

[24] A regulation is content-based if either the underlying purpose of the regulation is to suppress particular ideas, *see Ward,* 491 U.S. at 791, 109 S.Ct. 2746, or if the regulation, by its very terms, singles out particular content for differential treatment. *See Turner Broad. Sys., Inc. v. FCC,* 512 U.S. 622, 642-43, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994); *see also Discovery Network,* 507 U.S. at 429, 113 S.Ct. 1505.

[25] The City asserts, and we have no reason to doubt, that it passed its active solicitation ban in an effort to protect Center patrons from harassment. That is a legitimate, non-content-based purpose, and Rule F.3.a is therefore content-based only if it discriminates against speech on its face on the basis of content. It does.

[26] First, the City's suggestion to the contrary notwithstanding, Rule F.3.a *does* regulate speech, not conduct. As we explained at length in *ACLU II,* regulations that ban certain *conduct* associated with solicitation do not violate the prohibition on content-based regulation of speech. *See* 466 F.3d at 794-96. A ban on the actual hand-to-hand exchange of money, for example, is not content-based speech regulation. *See Lee,* 505 U.S. at 705, 112 S.Ct. 2701 (Kennedy, J., concurring) (stating that a ban on in-hand donations was not a content-based regulation of speech because it was "directed only at the physical exchange of money"); *see also ACLU II,* 466 F.3d at 795 (relying on Justice Kennedy's concurrence in *Lee*). But Rule F.3.a *allows* the conduct-exchange of money. It regulates only the speech, by specifying the medium and manner of requesting money-only in writing, and only passively.

Second, Rule F.3.a *is* content-based by its very terms. It specifically restricts street performers from communicating a particular set of messages-requests for donations, such as "I'd like you to give me some money if you enjoyed my performance." Performers are otherwise free to communicate whatever ideas they like, however they wish. As we stated with respect to a similar solicitation ban in *ACLU II,* while "this distinction [may be] innocuous or eminently reasonable, it is still a content-based distinction because it 'singles out certain speech for differential treatment based on the idea expressed.' " *See ACLU II,* 466 F.3d at 794 (quoting *Foti,* 146 F.3d at 636 n. 7).

In other words, although the Center's active solicitation rule regulates the "manner" in which street performers may express themselves, it does so based on the content of the performer's message. A performer at the Seattle Center need not rely on a

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sign, for example, to express his or her views on a political candidate; she can use her voice. To use another example, Rule F.3.a is no better than a regulation that forbids those addressing abortion issues, but not those protesting war, from giving speeches in a park, but allows abortion protestors and supporters to pass out leaflets about abortion. As these examples show, one can regulate the manner of speech on the basis of content, taking the regulation outside the time, place, and manner rubric, even though *some* manner of communication on the subject is allowed.[FN21]

> FN21. In dissent, Judge Gould confuses viewpoint-neutrality with content-neutrality. Gould Dissent at 1078 (noting that "there are no favored organizations or persons-no street performer advancing any cause can solicit funds from Seattle Center patrons in an active way"). The Center's passive solicitation rule is certainly viewpoint-neutral in that it affects all street performers regardless of their message. But, for the reasons discussed above, it is nonetheless content-based, as it singles out certain content for special treatment.

***1052** [27] Our conclusion that the active solicitation ban is content-based is supported-but not determined-by the fact that an officer seeking to enforce the active solicitation ban "must necessarily examine the content of the message that is conveyed." *Forsyth County,* 505 U.S. at 134, 112 S.Ct. 2395 (internal quotation marks and citations omitted); *see also ACLU II,* 466 F.3d at 796 n. 12. How else would an officer determine whether a performer's tip-of-the-cap was accompanied by a permissible "Thank you" or a prohibited "Please give?" [FN22]

> FN22. That an officer must evaluate the content of a message to determine whether a regulation applies is *evidence* that the regulation is content-based, although it is not dispositive. *See Forsyth County,* 505 U.S. at 134, 112 S.Ct. 2395. The "officer must read it" test is not always determinative of the issue of whether a regulation is facially content-based. *See Ctr. for Bio-Ethical Reform,* 533 F.3d at 789 n. 5 ("Whether an officer must read a message is persuasive evidence of an impermissible content-based purpose, but is not dispositive.").

In short, Rule F.3.a is a content-based limitation on speech. That it only restricts, rather than completely bans, particular content makes it no more content-neutral.[FN23]

> FN23. In *ACORN,* we held that a City of Phoenix ordinance prohibiting the solicitation of donations from people in vehicles stopped at red lights was content-neutral. 798 F.2d at 1267-68. We also noted approvingly that the ordinance did not enjoin individuals from otherwise distributing literature to or orally communicating with vehicle occupants. *Id.* at 1271. Read broadly, this holding would conflict with our current conclusion, as well as with our holding in *ACLU II. See ACLU II,* 466 F.3d at 794 (holding that a ban on solicitation, but not on other messages, was content-based).
>
> We do not interpret ACORN so broadly, however. We see no indication that the ordinance at issue forbade passing out handbills asking car drivers or passengers to contribute by mail to a charity or cause, as opposed to soliciting on-the-spot donations. That is, the ordinance at issue in *ACORN,* like that in *Lee,* prohibited only the immediate physical exchange of money. *See Lee,* 505 U.S. at 704-05, 112 S.Ct. 2701 (Kennedy, J., concurring). Such a regulation is not a content-based regulation of speech, and so does not run afoul of the content neutrality requirement.

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2. Strict scrutiny

As a content-based regulation, the ban on active solicitation is valid only if it serves a compelling government interest in the least restrictive manner possible. Rule F.3.a does neither, and so is not one of the "rare ... regulation[s] restricting speech because of its content" that is "permissible." *See Playboy Entertainment Group,* 529 U.S. at 818, 120 S.Ct. 1878.

As a general matter, it is unlikely the City's asserted interest in reducing obnoxious behavior by street performers could ever be considered compelling. *See S.O.C., Inc. v. County of Clark,* 152 F.3d 1136, 1146 (9th Cir.1998) (noting that, although the government "may have a substantial interest in preventing solicitors from harassing pedestrians on public streets and sidewalks[,] ... these substantial interests ... may not be compelling"). This stated interest pales in comparison to those interests the Supreme Court has found compelling in a First Amendment context. *See Burson v. Freeman,* 504 U.S. 191, 198-200, 112 S.Ct. 1846, 119 L.Ed.2d 5 (1992) (plurality opinion) (reducing voter intimidation and election fraud); *Eu v. S.F. County Democratic Cent. Comm.,* 489 U.S. 214, 232, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989) (protecting "the integrity of the electoral process"); *R.A.V. v. City of St. Paul,* 505 U.S. 377, 395, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992) (safeguarding "the basic human rights of members of groups that have historically been subjected to ***1053** discrimination"); *see also Alaskan Independence Party v. Alaska,* 545 F.3d 1173, 1180 (9th Cir.2008) (elimination of fraud and corruption in the state election process); *Cal. Pro-Life Council, Inc. v. Randolph,* 507 F.3d 1172, 1179 & n. 8 (9th Cir.2007) (disclosure of political information to the electorate).

[28][29] But even if reducing aggressive solicitation qualifies as a compelling interest, the Center's passive solicitation rule is far from the least restrictive means by which the City could discourage "pushy" or "overbearing" solicitation. Rule F.3.a bars *all* active solicitation. It reaches innocuous verbal requests for donations; it prohibits a performer from "gestur[ing]" towards the passive receptacle that the Rules permit the performer to display. Yet, "[a] complete ban can be narrowly tailored ... only if each activity within the proscription's scope is an appropriately targeted evil." *Frisby,* 487 U.S. at 485, 108 S.Ct. 2495. Rule F.3.a cannot possibly meet that standard.

If the City desires to curb aggressive solicitation, it could enforce an appropriately worded prohibition on aggressive behavior. If necessary, the City can also rely on constitutionally valid nuisance and aggressive panhandling laws to control street performers who will not take no for an answer when asking for money.

The Supreme Court in *Village of Schaumburg* observed that "[t]he [local government's] legitimate interest in preventing fraud can be better served by measures less intrusive than a direct prohibition on solicitation. Fraudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly." 444 U.S. at 637, 100 S.Ct. 826; *see also Riley,* 487 U.S. at 795, 108 S.Ct. 2667; *Schneider,* 308 U.S. at 164, 60 S.Ct. 146. Similarly, punishing offensive conduct *after* it has occurred is indubitably a less restrictive way to protect audiences from serious annoyances than banning all forms of active solicitation, whether problematic or not. The City's sweeping ban is simply not the least restrictive means of reducing overbearing street performer behavior. It therefore cannot stand.

VI. Rule G.4: The Captive Audience Rule

A. *Overview of the Rule*

Unlike the rules we have already discussed, Rule G.4 applies to all speakers, not just to street performers. It prohibits all "speech activities ... within thirty (30) feet of any captive audience." "Speech activities" include "both political speech and commercial speech[,]" but do not include "activi[ties] conducted by City employees or licensed conces-

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sionaires." Rule C.14. A "captive audience" is

> any person or group of persons: 1) waiting in line to obtain tickets or food or other goods or services, or to attend any Seattle Center event; 2) attending or being in an audience at any Seattle Center event; or 3) seated in any seating location where foods or beverages are consumed.

Rule C.5.

B. *Constitutionality of Captive Audience Rule*

[30] The Center's "captive audience" Rule is the most troublesome of the challenged regulations, striking at the very core of the precepts underlying the protection of speech in traditional public fora. The Rule's very purpose-according to the City-is to "protect" many of the individuals who have gathered at the Center, a public forum, from efforts by fellow citizens to communicate with them. That purpose is squarely at odds with the fundamental principle of our traditional public forum jurisprudence-namely, that use of parks for public discussion and gathering ***1054** "has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens" and "must not, in the guise of regulation, be abridged or denied." *See Hague,* 307 U.S. at 515-16, 59 S.Ct. 954. The seminal captive audience case, *Lehman v. City of Shaker Heights,* 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974), specifically abjured any such application of the captive audience concept, recognizing that a public street car is not a "First Amendment forum" like a "park," "where First Amendment values inalterably prevail." *Id.* at 302-04, 94 S.Ct. 2714.

[31] And, indeed, from "time out of mind," public parks have been central to our constitutional heritage of open discourse. *See Hague,* 307 U.S. at 515, 59 S.Ct. 954. They provide an essential outlet to those who, for economic or other reasons, would not otherwise be able to participate in that discourse. *See Grossman,* 33 F.3d at 1205 n. 8. Given the importance of these locales, we cannot countenance the view that individuals who choose to enter them, for whatever reason, are to be protected from speech and ideas those individuals find disagreeable, uncomfortable, or annoying. *See NAACP v. Claiborne Hardware Co.,* 458 U.S. 886, 910-11, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982).[FN24]

> FN24. "Fighting words" are, of course, proscribable under the First Amendment. *See Virginia v. Black,* 538 U.S. 343, 359, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003) (citing *Chaplinsky v. New Hampshire,* 315 U.S. 568, 572, 62 S.Ct. 766, 86 L.Ed. 1031 (1942)).

[32][33][34] The Supreme Court's "captive audience" jurisprudence fully supports our conclusion that public park-goers, in general, are not a protectable captive audience for constitutional purposes. "The plain, if at times disquieting, truth is that in our pluralistic society, constantly proliferating new and ingenious forms of expression, we are inescapably captive audiences for many purposes." *Erznoznik v. City of Jacksonville,* 422 U.S. 205, 210, 95 S.Ct. 2268, 45 L.Ed.2d 125 (1975) (internal quotation marks and citation omitted). Only in "narrow circumstances" may government restrain speech to protect such audiences. *Id.* at 210-11, 95 S.Ct. 2268. "The ability of government, consonant with the Constitution, to shut off discourse solely to protect others from hearing it is, in other words, dependent upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner." *Cohen v. California,* 403 U.S. 15, 21, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971).

Such substantial privacy interests include "the psychological [and] physical well-being of the [hospital] patient held 'captive' by medical circumstance." *Madsen v. Women's Health Ctr.,* 512 U.S. 753, 768-71, 114 S.Ct. 2516, 129 L.Ed.2d 593 (1994) (validating an injunction creating a 36-foot buffer zone around entrances of an abortion clinic in which picketing and demonstrating, among other activities, were barred); *see also Hill v. Colorado,*

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530 U.S. 703, 728-30, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000) (upholding an eight-foot regulatory buffer around clinic entrances due to the "unique concerns that surround health care facilities," where those using the facilities "are often in particularly vulnerable physical and emotional conditions"). They also encompass "the quiet enjoyment" of one's home. *Frisby,* 487 U.S. at 483, 108 S.Ct. 2495 (upholding a ban on "focused picketing taking place solely in front of a particular residence").

The unique privacy and self-determination interests involved in protecting medical facilities and residences simply do not exist for those waiting in line or having lunch outdoors in a public park. Indeed, we have already rejected such a comparison in *Kuba,* 387 F.3d at 861 n. 10, explaining that patrons of a "place of public ***1055** entertainment" were not a captive audience similar to the intended audiences in *Madsen* and its progeny, because they were obviously not "particularly vulnerable," as are the patients and doctors in such cases.

Moreover, even if Seattle Center officials could justify a prohibition on unwelcome speech, the current "captive audience" regulation would still be too broad because it prohibits *all* "speech activities," not just those that continue after the recipient of the speech has signaled a preference to be left alone. *See Jews for Jesus,* 482 U.S. at 574-75, 107 S.Ct. 2568 (holding that a regulation was constitutionally overbroad where it prohibited all "First Amendment activities" and noting that "no conceivable governmental interest would justify such an absolute prohibition of speech"); *see also Schenck v. Pro-Choice Network of Western New York,* 519 U.S. 357, 383-84, 117 S.Ct. 855, 137 L.Ed.2d 1 (1997) (holding that an injunction provision that required abortion protestors to move away from abortion clinic patients who asked to be left alone did not violate the First Amendment).

The implications of upholding the Seattle Center's "captive audience" regulation are startling. Doing so would permit the almost unlimited regulation of speech in a public park. After all, any visitor to a park, even one strolling through the park, is "captive" in a particular spot, in that the visitor might have reason to stay where she is rather than move to another location in the park or to a different park. There is no reason to suspect that a group of runners on a park track, parents watching their children in a playground, or an individual sitting in her favorite spot are any less "captive"-i.e., less interested in staying where they are rather than moving to a different location-than those who are waiting in line or eating while seated in a designated area.

In sum, we hold that public park-goers are not a "captive audience." [FN25] Any interest they may have in pursuing such activities as waiting in line, attending an event, or eating without communication by others is not a "substantial privacy interest."

> FN25. Although we hold that Center patrons are not a "captive audience" for First Amendment purposes when frequenting the Center's public open areas, we certainly do not mean to suggest that the City could not promulgate rules that prohibit and punish disruptive conduct during planned Center events or at indoor Center venues. As discussed below, such a rule would, of course, have to be much more narrowly tailored than the sweeping ban on speech that the City has adopted here.

[35] Moreover, even if the City's purported interest in protecting certain park-goers from communications by others were substantial-which it is not-Rule G.4 is not narrowly tailored to meet that interest. This is so for two reasons.

First, the rule's preference for concessionaires and licensees leads to the odd result that purely commercial speech, which receives more limited First Amendment protection than noncommercial speech, is allowed and encouraged, while artistic and political speech is not. This bias in favor of commercial speech is, on its own, cause for the rule's invalidation. *See Metromedia, Inc. v. City of San Diego,*

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453 U.S. 490, 513, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981) (plurality opinion); *see also G.K. Ltd. Travel v. City of Lake Oswego,* 436 F.3d 1064, 1081 (9th Cir.2006) (ordinance is invalid if it favors commercial speech over noncommercial speech); *Desert Outdoor Adver., Inc. v. City of Moreno Valley,* 103 F.3d 814, 819-20 (9th Cir.1996) (same).

Second, Rule G.4 is unconstitutionally broad. *See* ***1056***Bd. of Airport Comm'rs of City of L.A. v. Jews for Jesus, Inc.,* 482 U.S. 569, 574-75, 107 S.Ct. 2568, 96 L.Ed.2d 500 (1987). In *Jews for Jesus,* the Court invalidated, on overbreadth grounds, a regulation that prohibited individuals from engaging in any "First Amendment activities" within the Central Terminal of Los Angeles International Airport. *Id.* at 574, 107 S.Ct. 2568. In striking down the rule, the Court noted that "[t]he resolution does not merely regulate expressive activity in the Central Terminal Area that might create problems such as congestion or the disruption of the activities of those who use LAX[;] ... it prohibits even talking and reading, or the wearing of campaign buttons or symbolic clothing." *Id.* at 574-75, 107 S.Ct. 2568. "We think it obvious that such a [sweeping] ban cannot be justified ... because no conceivable governmental interest would justify such an absolute prohibition of speech." *Id.* at 575, 107 S.Ct. 2568.

The Center's "captive audience" rule-which prohibits all "speech activities ... within thirty (30) feet of a captive audience"-is similarly overbroad in its sweep. By its very terms, Rule G.4 prohibits both welcome and unwelcome communications, both verbal tirades and silent protests, both offensive language and the mildest remark. It would, for instance, forbid a political campaign representative from offering a handbill to a consenting park-goer in an entirely benign-even silent-manner. It would likewise prevent a concerned citizen from displaying a sign critical of the city government. Such passive and unthreatening acts certainly do not intrude on the privacy of park-goers in "an essentially intolerable manner," if they intrude at all. *See Cohen,* 403 U.S. at 21, 91 S.Ct. 1780. Thus, by flatly prohibiting all "speech activities," the Center's "captive audience" rule, like the regulation in *Jews for Jesus,* "does not merely regulate expressive activity in the [Center] that might create [the alleged] problems." 482 U.S. at 574, 107 S.Ct. 2568. No governmental interest-and certainly not an interest in protecting public park-goers from unwanted communications-could justify such a sweeping ban. *See id.*

Rule G.4 also creates precisely the type of "floating buffer zone [ ]" that the Court found unconstitutional in *Schenck v. Pro-Choice Network of Western New York,* 519 U.S. 357, 377-80, 117 S.Ct. 855, 137 L.Ed.2d 1 (1997). In *Schenck,* the Court considered an injunction which barred demonstrations within fifteen feet of any person or vehicle using an abortion clinic. *Id.* at 367, 117 S.Ct. 855. According to the court, the "floating" fifteen foot zones created by the injunction created an uncertain and over-broad system of restraints on speech. *Id.* at 377-80, 117 S.Ct. 855. As clinic patients moved, speech-restricted areas shifted across the landscape in an unpredictable and, in the Court's view, unacceptable manner. *Id.*

Rule G.4's thirty-foot buffer zone generates the same unpredictability problems here. As the end of a line shifts, or a picnic table is occupied, the Center's captive audience rule snaps on to bar speech within thirty feet of the line or the picnickers. This system of shifting "speech-free" zones is the sort of capricious restraint, likely to chill far more speech than the Seattle Center would be justified in regulating, that *Schenck* struck down. 519 U.S. at 377-80, 117 S.Ct. 855.

In sum, the City's "captive audience" rule not only fails to address a substantial government interest, it also burdens considerably more speech than necessary to achieve its purported goals. Rule G.4's flat ban on all speech activities encompasses a broad compendium of expressive activity, much of which is not disruptive or unduly invasive of the privacy interests of allegedly "captive" park-goers. In addition, the rule promulgates unconstitutionally vague

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"buffer" zones that are likely to ***1057** chill otherwise permissible speech. For all these reasons, the "captive audience" rule cannot stand.

VII. Response to the Dissenters

Although we have responded to specific points raised by the dissent throughout this opinion, we wish to address two broader concerns that we have with the various dissents.

First, in order to bolster their arguments, both Chief Judge Kozinski and Judge Gould mischaracterize both the nature of the Center's rules and our analysis of those rules. Chief Judge Kozinski, for example, repeatedly suggests that the rules apply only to those performers who solicit money. *See, e.g.,* Kozinski Dissent at 1063-64 (noting that the rules are intended to protect park-goers from "overly aggressive street performers bent on increasing their own visibility and income"); *id.* at 1067 ("[S]treet performers like Berger are not merely citizens who wish to use the park as a forum for public expression or religious worship on an occasional basis; they are operating a business and earning a living from these activities."); *id.* at 1068 ("The commercial aspects of the street performer trade, which my colleagues overlook, set up the dynamics that have given Seattle Center cause for concern."). That understanding of the rules is simply wrong. No such limitation appears in the Center's rules, nor has it been propounded by the City. Instead, the permitting requirement applies, on its face, to all "member[s] of the general public who engage[ ] in any performing art or the playing of any musical instrument, singing or vocalizing," Rule C.15. It does not distinguish between performers who seek funds and those who merely wish to entertain or to express an opinion through performance art. The City's "captive audience" rule goes even further. It applies to *all* park-goers, not just to street performers, and certainly *not* just to street performers who solicit funds. The City has not argued otherwise.

The dissenters also imply that the rules are limited to repeat performers, *see* Kozinski Dissent at 1067, 1068, and to preventing "unwelcome or harassing performances." *See* Gould Dissent at 1080. Once again, the scope of the rules at issue is not limited to these categories, nor has the City so interpreted them. The permitting requirement and passive solicitation rules apply to one-time performers and to Seattle Center regulars in equal measure. The sweeping "captive audience" rule applies to everyone (other than City employees and licensed concessionaires) at all times. In addition, none of the rules differentiate between benign, inoffensive conduct and aggressive, unwelcome acts. They simply deter or ban all relevant speech.

We do not discount the City's interest in protecting patrons of the Seattle Center from "browbeating" and other hostile conduct. The problem is that the City, rather than tailoring its rules to curtail problematic behavior, imposed sweeping bans on expressive activity and implemented a broad registration requirement. It is, in large part, the overbreadth of the rules, an overbreadth the dissenters do not appear to recognize, that renders them constitutionally infirm. *See Jews for Jesus,* 482 U.S. at 574-76, 107 S.Ct. 2568.

Chief Judge Kozinski also mischaracterizes, or perhaps misunderstands, key aspects of our opinion. For instance, he asserts that "it is a wholly different matter to derive some sort of rule that prohibits-or strongly discourages-regulation of speech by a single individual, regardless of the size of his expected audience or the disruption he may cause." Kozinski Dissent at 1072. The "rule" that we propose is precisely the opposite of what the Chief Judge suggests. One of the central deficiencies ***1058** of the Center's permitting requirement is that it does *not* consider the size of a street performer's expected audience or "the disruption he may cause." It applies to every member of the "general public" who wishes to perform, sing, or vocalize on the Center's grounds, irrespective of the size of their planned or actual audience. If, by contrast, the

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permitting requirement applied only to performers who intend to attract a crowd of a sufficiently large size (say 100 persons or more), the requirement might very well be constitutional. For this reason, Judge Kozinski's suggestion that our opinion would preclude a permit requirement for the famous civil rights leader who plans to hold a rally for half a million people at the Lincoln Memorial is absurd. Instead, the point is that the Center's permitting requirement is not limited to huge rallies-or even small, hundred person ones.

Moreover, our conclusion that the Constitution prohibits the government from implementing a registration system that governs speech in a public forum and applies to groups as small as a single individual performing without an audience is neither new nor idiosyncratic. This circuit has repeatedly affirmed the principle that an advance notification requirement applicable to speech in a public forum must be limited to larger groups. *See Long Beach Area Peace Network,* 522 F.3d at 1032-33; *Santa Monica Food Not Bombs,* 450 F.3d at 1039; *Grossman,* 33 F.3d at 1206; *City of Richmond,* 743 F.2d at 1355; *Rosen,* 641 F.2d at 1247-48. Several other circuits have reached this same conclusion. *See Cox v. City of Charleston,* 416 F.3d 281, 285 (4th Cir.2005); *American-Arab Anti-Discrimination Committee v. City of Dearborn,* 418 F.3d 600, 608 (6th Cir.2005); *Douglas v. Brownell,* 88 F.3d 1511, 1524 (8th Cir.1996). The dissenters ignore this long line of authority, concluding simply that a "rigid numerical rule will fail because it makes no account for the performance's effect on others." Kozinski Dissent at 1073. But, as we and several other appellate courts have noted, a numerical floor is necessary precisely *because* such a floor indicates that the government has properly tailored its permitting requirement to address the effect that a speaker will have on other users of a public space.

We also reiterate that the City is free to enforce its existing rules, including its criminal statutes and traffic ordinances, against individual offenders. We do not hold, as Chief Judge Kozinski's other, equally silly, examples appear to suggest, *see* Kozinski Dissent at 1072-73, that the First Amendment exempts all individual speakers from regulation. If Yo-Yo Ma or Mr. Nez decided unilaterally to obstruct vehicle traffic, the government can, of course, prevent him from doing so by enforcing its vehicular codes. Similarly, Seattle Center officials can, pursuant to its existing rules, remove a street performer who is blocking pedestrian traffic or harassing parkgoers. But a permitting requirement that applies to a group as small as a *single* person and which governs speech activity in a public park (*not* on a city street) is not necessary to promote the interests the City asserts in this case and is highly offensive to our constitutional values.

Which leads to our second-and overriding-general concern with the approach of the dissenters: the dissents ignore, or at least discount, bedrock principles of First Amendment jurisprudence. Among these is the proposition that public parks are an especially important and protected forum for speech, even as compared to public streets. *See Hague,* 307 U.S. at 515, 59 S.Ct. 954; *Grossman,* 33 F.3d at 1204-05. Chief Judge Kozinski describes the Seattle Center as a "cultural achievement," "an enterprise," a "multi-use facility," and the "crown jewel of [Seattle's] ***1059** civic enterprise." While accurate, these descriptions mask the Seattle Center's true identity: it is an 80-acre expanse of public land that includes twenty-three acres of outdoor, public park space. However unique the Seattle Center may be, it is, fundamentally, a public park. As such, regulations on speech within its boundaries warrant particularly close attention.

[36] The dissenters also disregard the fundamental premise that "a law requiring a permit to engage in [individual] speech constitutes a dramatic departure from our national heritage and constitutional tradition," *Watchtower Bible,* 536 U.S. at 166, 122 S.Ct. 2080, because "prior restraints on speech [like the City's permitting requirement] ... are the most serious and least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stu-*

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art, 427 U.S. 539, 559, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976). Such restraints bear a "heavy presumption" against their constitutionality. *Forsyth County,* 505 U.S. at 130, 112 S.Ct. 2395. Without acknowledging the constitutionally suspect nature of prior restraints, the dissenters would uphold the permitting requirement on the weakest of rationales-i.e., that the requirement helps the City identify and punish rule breakers. As already discussed at length, the City need not implement a broadly applicable prior restraint to achieve these objectives. Allowing such an "intolerable infringement on First Amendment rights" therefore simply cannot be countenanced.

VIII. Conclusion

First Amendment protections are robust, yet at the same time fragile and precious. Often, government restrictions on speech seem perfectly reasonable at first glance, and the encroachment on expression forgivable in pursuit of convenience or good manners. But seventy years of law beginning with *Hague v. CIO,* has laid down the basic principle that there are a few government-owned areas-of which public parks are the preeminent example-in which the values underlying the First Amendment favor communication among citizens over merely reasonable speech restrictions, and require instead that any regulation of speech be targeted at real problems, and carefully calibrated to solve those problems. In other words, while some-among them, the dissenters in this case-might prefer a "Truman Show" version of pristine placidity in our public parks, our First Amendment jurisprudence rests on a very different vision.

[37] The standards for valid regulation in traditional public fora are just moderately stringent, an intermediate level of scrutiny in the contemporary constitutional lingo. But the First Amendment interests advanced by the developed time, place, and manner jurisprudence does require that we apply that mid-level scrutiny with care, paying attention to the details of the regulation at issue, the state of the record, and the fit between the regulation and the governmental interest asserted. Having done so, we conclude that none of the challenged Rules qualify as reasonable time, place, or manner restrictions on the current record and that the district court's grant of summary judgment to Berger should be affirmed as to all but the location regulation, Rule F.5, and that the validity of Rule F.5 must be determined on remand, as the grant of summary judgment was improper.

AFFIRMED IN PART and REMANDED IN PART.

Chief Judge KOZINSKI, with whom Judges GOULD and TALLMAN join, dissenting:
Seattle Center is an astonishing cultural achievement. Just minutes from downtown on foot or by monorail, it is home to a ***1060** dizzying array of entertainment venues, sporting events, festivals, educational and community programs, restaurants, museums and, of course, the world-famous Space Needle. The Center's website documents the close co-operation between the city government and the scores of private, professional and community organizations that provide over 10,000 attractions and events there every year. Having had its start as the 1962 World's Fair, the Center campus has maintained and enhanced its vibrancy over the intervening decades. In a square a little smaller than 6 blocks on a side, the Center is home to a professional sports team, PBS broadcast station, opera, ballet, Shakespeare Company, science center, IMAX theater, Experience Music Project (look it up), Science Fiction Hall of Fame, amusement park and countless other attractions. The Center is open from 7 a.m. to midnight every day, and this past year hosted 12 million visitors-roughly the population of Pennsylvania.

Operating an enterprise of this magnitude and complexity requires a good deal of effort and commitment. It also calls for some basic rules, to ensure the safety and convenience of the tens of thousands of people who visit the Center on an average day, and to preserve the atmosphere of hospitality and

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neighborliness that is the Center's guiding spirit.

The rules pertaining to street performers, which my colleagues discard like so much wilted lettuce, were adopted in response to specific problems: repeated disputes among performers about location, performances in places that could not accommodate the crowds gathered to watch them, and rude and overbearing demeanor of some performers towards the public. The following is from a declaration submitted by the city, which we must accept as true for purposes of summary judgment:

> Before the performer permit rules went into effect, ... there were approximately 3 or 4 complaints by performers against other performers per week. If [plaintiff] Magic Mike was here, we could expect one or more from him and then one or more from whomever he was complaining about.... [T]here would be 1 complaint per week by a tenant of a facility in the Seattle Center ... [and] 1 complaint per month by a member of the public against a performer.... The general complaints by performers against other performers would be "that is my spot and he can't be there" and/or "that performer is doing what I am doing and they won't move." ... The general complaints by tenants against performers ... concerned too much noise or blocking access .... [C]omplaints by members of the public generally concerned pushy or overbearing performers .... Emergency Service would normally receive 1 or 2 complaints per week regarding a performer trapping a captive audience.

The Center also experienced other problems: "Unregulated street performing had led to situations in which street performers had set up in areas that could not accommodate the crowds the performances sometimes gather. Street performers also sometimes set up too close to one another, creating conflicts between performers."

Seattle Center authorities found that they had no effective way to deal with these persistent problems:

> Before the permit system, the only recourse that Emergency Services had was to speak to the parties involved and ask performers to get along. We would ask anyone with loud or blocking performances to move or quiet down. Overbearing performers were spoken to and asked to leave if they did not change how they were doing their act. These requests did not reduce the number of complaints involving performers.

***1061** The new rules had the desired effect, bringing peace and order to what had been a chaotic and disruptive process:

> After the performer permit rules went into effect, Emergency Service rarely received any complaints regarding performers. In general, the permit system is welcomed by everyone. They know there are designated spaces for all different types of performances and that there are rules that everyone must follow. It has eliminated confrontation between performers. There are plenty of spots and they are not in the way of one another.

The majority here manages to strike down almost all of these rules without bothering to give Seattle an opportunity to present evidence justifying them. To that end, my colleagues deploy a number of techniques well designed for this purpose:

1. The majority finds the solution adopted by Seattle Center to be both too broad, maj. at 1045-46, and too narrow, *id.* at 1037, 1043, and so concludes that there's an "imperfect fit" between the rules and the goals the city seeks to achieve. *Id.* at 1043. But the Supreme Court has made it quite clear that time, place and manner regulations need not be perfectly tailored, and that a government body has considerable discretion to fashion regulations as it thinks best: "The validity of such regulations does not turn on a judge's agreement with the responsible decisionmaker concerning the most appropriate method for promoting significant government interests." *United States v. Albertini,* 472 U.S. 675, 689, 105 S.Ct. 2897, 86 L.Ed.2d 536 (1985). Rather, a regulation is valid "so long as [it] promotes a substantial government interest that would

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be achieved less effectively absent the regulation." *Id.; Ward v. Rock Against Racism,* 491 U.S. 781, 799, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989).

Instead of settling for effective regulations, the majority demands perfection. But perfection is hard to find in rules written and applied by mortals. Once judges start looking for imperfections, that is pretty much the end of the story-and of the regulations. No rules written by man can withstand such persnickety scrutiny.

2. The majority also trots out the time-honored technique of declaring that the rules in question don't really solve the problems they're supposed to solve. Maj. at 1041-42. Which reminds me of the quip about economists greeting some item of news with the observation, "That may be so in practice, but is it true in theory?" My colleagues overlook evidence in the record that the rules have *actually* worked-the problems they were designed to solve went away as long as the rules were in effect. *See* p. 1060-61 *supra.*

We are reviewing a grant of summary judgment against the Center; we must view the evidence in the light most favorable to it, and affirm only if there are no disputed issues of material fact. *Lopez v. Smith,* 203 F.3d 1122, 1131 (9th Cir.2000) (en banc). Instead, the majority makes its own findings, such as: the rules "do not promote [Seattle Center's] interests in any significant way," maj. at 1041; "do[ ] not aid in coordinating multiple uses" of Seattle Center, maj. at 1042; and that most street performances pose "no realistic coordination or traffic flow concerns," maj. at 1046. Who needs trials when we can find facts on appeal?

3. My colleagues also come up with solutions of their own, which they claim would better solve the problems. *See, e.g.,* maj. at 1044-45, 1047. But the majority's proffered solutions suffer from the same defects it finds in those adopted by Seattle Center, containing such fudge-words as "unwanted behavior" and "most sought-***1062** after locales." Maj. at 1043, 1045. The majority also suggests that the rules are unnecessary because the Center could solve the problems by "enforc[ing] an appropriately worded prohibition on aggressive behavior." Maj. at 1053; *see also id.* at 1043. Does the majority really mean to say that the Center can't have clear rules about obtaining permits and not trapping captive audiences, but it *can* kick out any street performer it deems "aggressive"?

Fortunately for my colleagues, *their* proposed solutions don't need to pass constitutional muster; they can just toss them out as supposedly superior alternatives. But if the city were gullible enough to follow these suggestions, my colleagues would find reasons to strike down the new rules in the next round of litigation. This artifice can be repeated many times, to the delight of plaintiff and the general enrichment of the legal profession.

The majority plays a shell game when it confidently declares that "[t]he City's asserted interest in coordinating multiple uses of the Center could also be achieved as effectively without the permitting requirement." Maj. at 1045. How is the city to achieve these objectives, in the majority's view? Why, it's by use of the designated locations rule that the majority fails to uphold elsewhere in its opinion. And if I had ham, I could have some very nice ham and eggs, if I had eggs. Sophistries such as these are cold comfort to those who have the actual responsibility for operating an enterprise the size and complexity of Seattle Center.

4. The majority overstates the problems that the rules supposedly cause for the street performers, and minimizes the problems that the street performers caused for the Center and its patrons before the rules were instituted. For instance, the majority repeatedly describes the rules as "sweeping bans" on expressive activity. Maj. at 1053, 1056, 1057. In fact, no one is prevented from speaking; the rules merely regulate the time, place and manner of speech, and very lightly at that. Permits are issued on a non-discretionary, non-discriminatory basis, and the performers may conduct any performance they please, however often they want, at any time

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ite point: that the permit is unnecessary because the Center authorities know exactly who the street performers are. Maj. at 1044 n. 14. The majority can't have it both ways.

"[E]very reasonable construction must be resorted to, in order to save a [rule] from unconstitutionality." *United States v. Buckland,* 289 F.3d 558, 564 (9th Cir.2002) (quoting *Hooper v. California,* 155 U.S. 648, 657, 15 S.Ct. 207, 39 L.Ed. 297 (1895)); *see also Broadrick v. Oklahoma,* 413 U.S. 601, 613, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973) ("Facial overbreadth has not been invoked when a limiting construction has been or could be placed on the challenged[rule]."). My colleagues instead reject every reasonable construction that might get in the way of finding the rules unconstitutional.

* * *

"Public parks are often closely identified in the public mind with the government unit that owns the land. City parks-ranging from those in small towns, like ***1064** Pioneer Park in Pleasant Grove City, to those in major metropolises, like Central Park in New York City-commonly play an important role in defining the identity that a city projects to its own residents and to the outside world." *Summum,* 129 S.Ct. at 1133-34. Seattle has a legitimate-indeed a vital-interest in maintaining the character of the multi-use facility that is the crown jewel of its civic enterprise. If the majority here is right, then Seattle and other municipalities hoping to use their parks to promote civic virtue, neighborliness, hospitality and the peaceful enjoyment of the arts cannot possibly draft a set of rules that will protect visitors, concessionaires and other artists from overly aggressive street performers bent on increasing their own visibility and income by bullying those around them.

But the majority is not right. The rules adopted by Seattle Center are a measured and reasonable response to a real problem; none of them stifles speech in any meaningful way, and none is unconstitutional. There is little I can add to the excellent analysis in Judge Gould's opinion as to the specific rules struck down by the majority. Each of those rules is carefully tailored and narrowly drawn to deal with specific, identified problems that, in the judgment of those charged with operating Seattle Center, impaired the safety, convenience and enjoyment of visitors to the park. And, as Judge N.R. Smith explains, the performance-location rule is particularly wellsuited to the city's legitimate objectives, while the objections to the rule-as to which a trial will now be required-are nothing but the personal preferences of the man who made the rules necessary in the first place.

It is unfortunate that such rules should be needed, as they seem largely designed to legislate civility. But Mr. Berger has been less than civil in his dealings with other performers and the public. The record, for example, references complaints against Berger for catcalling at a parent who refused to allow her children to watch his performance, bringing a child to tears for giving what Berger considered an insufficient donation and threatening and calling obscenities at a Center patron. In maintaining a hospitable campus, the Center management is surely entitled to deter such behavior by individuals profiting off its patrons.

Almost seventy years ago, the Supreme Court in *Cox v. New Hampshire,* 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941), unanimously upheld a state statute that required an advance permit for anyone wishing to exhibit any "theatrical or dramatic representation" or to conduct any "parade or procession upon any public street or way, and [any] open-air public meeting upon any ground abutting thereon." *Id.* at 571, 61 S.Ct. 762. The Court's reasoning is as valid today as it was then:

> Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and con-

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> venience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend.

Id. at 574, 61 S.Ct. 762. So long as the licensing board exercised its authority in a viewpoint-neutral, even-handed, consistent way, and the fee charged was reasonable, *id.* at 576-77, 61 S.Ct. 762, the permit requirement was constitutional, *id.* at 576, 61 S.Ct. 762:

> If a municipality has authority to control the use of its public streets for parades or processions, as it undoubtedly has, it ***1065** cannot be denied authority to give consideration, without unfair discrimination, to time, place and manner in relation to the other proper uses of the streets. We find it impossible to say that the limited authority conferred by the licensing provisions of the statute in question as thus construed by the state court contravened any constitutional right.

Cox dealt with parades on public streets, but the Court reached the same result when an identically-worded city ordinance was applied to require a license to hold a religious meeting in a public park:

> The principles of the First Amendment are not to be treated as a promise that everyone with opinions or beliefs to express may gather around him at any public place and at any time a group for discussion or instruction. It is a *non sequitur* to say that First Amendment rights may not be regulated because they hold a preferred position in the hierarchy of the constitutional guarantees of the incidents of freedom. This Court has never so held and indeed has definitely indicated the contrary. It has indicated approval of reasonable nondiscriminatory regulation by governmental authority that preserves peace, order and tranquillity without deprivation of the First Amendment guarantees of free speech, press and the exercise of religion. When considering specifically the regulation of the use of public parks, this Court has taken the same position.

Poulos v. New Hampshire, 345 U.S. 395, 405-06, 73 S.Ct. 760, 97 L.Ed. 1105 (1953). *Poulos* included an admonition that my colleagues would do well to heed: "There is no basis for saying that freedom and order are not compatible. That would be a decision of desperation. Regulation and suppression are not the same, either in purpose or result, and courts of justice can tell the difference." *Id.* at 408, 73 S.Ct. 760.

Twelve years later, in the other *Cox* case, Justice Goldberg, writing for the Court, emphasized the continued validity of *Cox* and *Poulos* and the importance of rules in maintaining the very concept of civil liberties:

> The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy. The control of travel on the streets is a clear example of governmental responsibility to insure this necessary order. A restriction in that relation, designed to promote the public convenience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection.
>
> ....
>
> It is, of course, undisputed that appropriate, limited discretion, under properly drawn statutes or ordinances, concerning the time, place, duration, or manner of use of the streets for public assemblies may be vested in administrative officials, provided that such limited discretion is "exercised with 'uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination' ... [and with] a

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'systematic, consistent and just order of treatment, with reference to the convenience of public use of the highways....' " *Cox v. New Hampshire, supra,* at 576, 61 S.Ct. 762. *See Poulos v. New Hampshire, supra.*

***1066** *Cox v. Louisiana,* 379 U.S. 536, 554, 558, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965) (alterations in original).

Cox v. New Hampshire and *Poulos* have never been overruled, so far as I know; indeed, the Court has built on them. *See, e.g., Ward,* 491 U.S. 781, 109 S.Ct. 2746, 105 L.Ed.2d 661 (upholding New York's sound-amplification guideline in Central Park); *Heffron v. Int'l Soc'y of Krishna Consciousness, Inc.,* 452 U.S. 640, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981) (state's interest in maintaining the orderly movement of the crowd at annual state fair sufficient to support requirement that religious group confine its distribution, sales and solicitation activities to a fixed location); *Taxpayers for Vincent,* 466 U.S. 789, 104 S.Ct. 2118, 80 L.Ed.2d 772 ("municipalities have a weighty, essentially esthetic interest in proscribing intrusive and unpleasant formats for expression").

The majority turns up its nose at *Cox* and *Poulos,* on the ground that "both cases preceded the development by the Supreme Court of specific time, place and manner standards," maj. at 1042-43, but the Supreme Court recently relied on them in *Thomas v. Chicago Park District,* 534 U.S. 316, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002), where it (again unanimously) upheld a licensing requirement for any activity in a public park that exceeded 50 participants. In so doing, the Court reiterated the distinction between permits designed to censor and those designed to regulate competing uses in public areas:

"[T]he [permit] required is not the kind of prepublication license deemed a denial of liberty since the time of John Milton but a ministerial, police routine for adjusting the rights of citizens so that the opportunity for effective freedom of speech may be preserved." *Poulos v. New Hampshire.* Regulations of the use of a public forum that ensure the safety and convenience of the people are not "inconsistent with civil liberties but ... [are] one of the means of safe-guarding the good order upon which [civil liberties] ultimately depend." *Cox v. New Hampshire.*

Id. at 323, 122 S.Ct. 775 (citations omitted, alterations in original). The Court didn't ask why the city couldn't let all gatherings go forward, and then break up those that got out of hand. Rather, the Court accepted the city's estimate that a gathering of more than 50 people could cause problems and upheld the permit requirement.

Unlike the circuit opinions on which my colleagues rely, these Supreme Court cases-an unbroken line spanning more than six decades-are controlling authority, and we are bound to follow them. Applying these cases to the facts before us, I note that Seattle Center is the type of public gathering place that the Court dealt with in *Poulos, Ward, Heffron, Thomas* and *Summum.* The concerns that gave rise to the permit requirement and other regulations here are much the same as in those cases, and in *Cox v. New Hampshire* and *Vincent* as well. Despite the majority's obvious desire to reach the opposite conclusion, maj. at 1037, 1042 n. 9, we are bound to assume that the permit requirement has been administered in a neutral fashion and does not give Seattle Center authorities undue discretion, as Berger has never contended otherwise.

To me, this makes the case before us materially indistinguishable from these Supreme Court cases. The only significant differences cut sharply in favor of upholding the permit requirement. First, the rules here are considerably less restrictive. As the majority recognizes, "the permitting schemes at issue in *Cox* and *Poulos* both required applicants to 'specify the day and hour' that they planned to hold their parade or public meeting." Maj. at 1042. Here, a single permit entitles the ***1067** holder to perform at any time he wishes between 11:00 a.m. and 10:00 p.m., for as long as he wishes, in any of the

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designated locations, for an entire year. The majority somehow finds that this weighs *against* the Center, taking it as proof that the permits do not "further the government's interest in coordinating multiple uses of limited public space." *Id.* This is very strange reasoning. If the Center believes that it doesn't need a more restrictive permit to serve its ends, who are we to say that the restrictions are inadequate? The majority's clumsy effort to distinguish away the *Cox* line of cases stands the concept of narrow tailoring on its head.

The majority also criticizes the permit requirement because, unlike in *Thomas,* it's not limited to performances attracting a certain minimum audience. Maj. at 1046-47, 1057-58. But the majority overlooks *Poulos v. New Hampshire,* where the Court upheld a permit requirement for groups of any size wishing to hold an "open air public meeting" in a city park. 345 U.S. at 397 n. 2, 402-08, 73 S.Ct. 760; *see also Cox v. New Hampshire,* 312 U.S. at 571-72, 576, 61 S.Ct. 762. *Thomas,* in turn, relied on *Poulos* and *Cox*. 534 U.S. at 323, 122 S.Ct. 775.

The majority's distinction is nonsensical, in any event. When a permit is required for public meetings, as in *Thomas* and the other cases the majority relies on, the organizers can be expected to know, based on the degree of public interest, advertising and outreach, how large a group is likely to show up. The license the Center issues here is quite different: It is good for an entire year and entitles the bearer to perform hundreds or even thousands of times. The size of the crowd on any given day, at any particular hour, may be hard to predict, but it doesn't matter, as long as the Center reasonably believes that on *some* days, at *some* hours, a sufficiently large crowd may gather to impair the efficient operation of the Center.

It's ridiculous to suggest that performers may be required to obtain permits if the crowd that gathers to see them is of a certain size, but not if it is not. How is anyone to know in advance? Depending on the performer's popularity, the day of the week, the hour of the day and the availability of other attractions, a larger or smaller crowd may gather. What is the performer to do, if he doesn't have a permit? Must he count the crowd to make sure it doesn't exceed the limit and ask some to leave if he realizes there are too many? Should he stop the performance until the crowd disbands? When dealing with a performer who may give 20 or 30 performances a day, 20 or 25 days out of every month, using a numerical limit on the size of the audience, as the majority envisions, just doesn't make any sense; it is certainly not constitutionally required. The city can reasonably presume that when people engage in activities designed to gather a crowd, they will get a crowd often enough to render the activity the legitimate object of regulation.

The simple fact the majority overlooks is that street performers like Berger are not merely citizens who wish to use the park as a forum for public expression or religious worship on an occasional basis; they are operating a business and earning a living from these activities. They are repeat players-a continuing presence at the Center-taking advantage of the crowds generated by Seattle Center's organization and industry to promote their own economic well-being. To be sure, the business that these performers engage in does involve communicating with the public, and can be characterized as art or at least craft, so it deserves First Amendment protection. But there are many businesses whose object is communicating with the ***1068** public: theaters, cinemas, art galleries, record shops, night clubs, advertising agencies, investment advisors-the list is long and varied. No one has ever suggested that theaters, say, are exempt from fire laws, building codes, labor-relations regulations, taxes or the multitude of other non-content related laws that are applicable to any other business. The First Amendment simply doesn't sweep so far. *See, e.g., One World One Family Now v. City & County of Honolulu,* 76 F.3d 1009 (9th Cir.1996) (upholding a ban on sidewalk sale of message-bearing t-shirts).

Berger and other street performers are actors without a theater, circus performers without a tent.

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Not having a fixed facility, they perform in open spaces where people gather in the expectation that those who watch them will reward them. And this is not an idle hope: Rewarding street performers whose act one watches is a bit like tipping at hotels and restaurants-a social obligation that is not legally enforceable but many people feel bound to honor.

The commercial aspects of the street performer trade, which my colleagues overlook, set up the dynamics that have given Seattle Center cause for concern. A street performer's income depends on the crowd he is able to draw, so location is a very important issue-hence the strife about who gets to perform at the choicest spots. The economic incentive also can lead to aggressive solicitation of patrons, and rude remarks when patrons give what the performer believes is an insufficient donation. The economic incentive may lead street performers to find captive audiences-say, people standing in line-and start performing near them, hoping to guilt them into making a donation even if they have no particular interest in the performance.

Social conventions often create very strong obligations-such as when one leaves a sizable tip after receiving lousy table service to avoid an unpleasant reaction from the waiter-and people standing in line who have had the "benefit" of a street performance that they did not seek out or enjoy may feel pressured to cast down a dollar or two, just so others won't consider them to be moochers. The patrons may nevertheless feel put upon, and their Center experience may be tainted by having been buffaloed into this transaction.

The Supreme Court in *Summum* drew a distinction between traditional public speakers who, "no matter how long-winded, eventually come to the end of their remarks," 129 S.Ct. at 1137, and monuments in public parks, which "endure." *Id.* Because monuments are a permanent fixture of the facility, they "monopolize the use of the land on which they stand and interfere permanently with other uses of public space." *Id.* Street performers, like plaintiff here, fall somewhere in between these two extremes: They do go home at the end of the day (like occasional public speakers), but they come back the next day and the day after that, on a permanent or semipermanent basis. Each performance may attract a relatively small audience compared to a speech or a rally, but each performer will be constantly gathering crowds. A facility like Seattle Center can't accommodate an unlimited number of such performers; if there are too many at the same time, or at the same location, they begin to "interfere permanently with other uses of public space." *Id.* Cities therefore have a far greater interest in regulating the activities of permanent street performers than occasional political or religious speakers.

If, as the Supreme Court has held, municipalities have the authority to regulate eleemosynary and volunteer activities-even bible classes-in public spaces, to preserve the safety and convenience of individuals using the public facility, then ***1069** surely they have the authority to regulate street performers, who are operating small businesses within a complex that the city maintains and nurtures. My colleagues in the majority eschew this obvious conclusion by means of two arguments, neither particularly persuasive.

First, my colleagues take the view that the permit requirement is invalid because it serves no legitimate purpose, but they are mistaken, as Judge Smith persuasively demonstrates in his separate opinion. Smith at 1086. I note, to begin with, that when the Supreme Court *has* upheld permit requirements, it has not demanded a particularly rigorous, or any, justification for them, relying instead on the obvious and common-sense reasons to require a permit. In *Cox v. New Hampshire,* the court merely referred to "[t]he obvious advantage of requiring application for a permit" with no suggestion that this advantage had to be proven up to any degree of certainty. 312 US. at 576, 61 S.Ct. 762. In *Poulos* and *Thomas,* the Court made no reference whatsoever to the efficacy of the permit requirement. In all three cases, the Court's focus was on whether the permit was

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administered in a content-neutral, objective and non-discriminatory fashion and, having satisfied itself that it was, the Court did not consider efficacy to be an independent constitutional requirement. *See also Heffron,* 452 U.S. at 650-53, 101 S.Ct. 2559 (not questioning efficacy of requirement that religious group operate from a fixed location at state fair).

It's thus not clear that, when considering a licensing scheme for holding a public event such as a bible study, performance or parade in a place where there are competing or inconsistent uses, the licensing authority has to make a very convincing showing-or any showing at all-that the license serves the desired purpose. We can assume, as has the Supreme Court on more than one occasion, that the city wouldn't devote the time and resources to administering such a scheme unless it served to reconcile the various competing uses.

But if a purpose there need be, it is pretty obvious what it is here: To deter unruly behavior on the part of street performers by denying them the cover of anonymity, and to give Seattle Center authorities a means of holding them accountable when they do misbehave. To start with the obvious, requiring a street performer to obtain a permit gives Seattle Center authorities an address where they can write to him if issues arise; there is such a letter, dated October 3, 2003, in the record. Without such an address, how do the authorities proceed when they want to give the performer notice of an alleged violation? How do they notify him of their decision?

Requiring a street performer to have a license and display a badge, which can be suspended or revoked, also facilitates the imposition of discipline. If the performer is found guilty of a violation, the badge can be taken away for the duration of any suspension, or permanently, and security officers can then enforce the performance ban by stopping performances by anyone who does not display a badge. This eliminates the need to check records or settle disputes about whether or not a suspension is in effect.

Requiring a badge also makes it more likely that individuals aggrieved by the performer's misconduct will be willing and able to report it. The badge informs the public that the performer can be reported to Seattle Center if he misbehaves. Members of the public are far likelier to lodge a complaint against someone with an official badge than someone who appears to be an independent private party. The badge in this situation serves the same purpose as ***1070** badges and name-tags worn by law enforcement officers, supermarket clerks and hotel staff-it is a way of making misconduct less likely by significantly increasing the risk that it will be reported.

The requirement that the performer provide a name and display a badge also avoids confusion and misunderstandings. My colleagues in the majority may think it's perfectly OK to identify performers by such colloquial descriptions as "the hula-hooping magician" or "the puppet guy," maj. at 1044 n.14, but that's no way to run a monorail. What if the puppet guy is hit with a suspension and claims that the culprit was really the marionette guy, or that the hula-hooping magician was really the balloon-animal magician? The complainants in such cases may be tourists from another state, long gone from the scene before the dispute can be resolved. A badge with a name and picture avoids such misunderstandings and makes it far less likely that street performers will misbehave-which, of course, is the ultimate objective.

The Center could, as the majority suggests in places, call the police when street performers seriously misbehave, but it is hardly conducive to maintaining a pleasant atmosphere in the park to have the man in the clown suit hauled off in handcuffs. And how many people want to spend their vacation getting into a head-to-head confrontation with someone obnoxious, or tracking down security personnel and filling out police reports? Most people who are victims of inappropriate or rude behavior register their protest with their feet: They walk away from the place of the unpleasantness and don't come back. And they tell their friends and

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neighbors in Pittsburgh and Wilkes-Barre that this is not where they should spend their vacation dollars.

And, of course, much inappropriate behavior, like that plaintiff is accused of, *see* p. 1064 *supra,* falls far short of a criminal offense. I doubt that the Center can have someone arrested for calling a visitor a "M***** F*****"-as plaintiff is charged with doing. The majority's suggestion that police can demand identification and an address from misbehaving street performers, maj. at 1044-45, suffers from the same problem: Police can demand identification only when they have "reasonable suspicion to believe the suspect was involved in criminal activity," not when they believe that someone's been obnoxious and disruptive. *Hiibel v. Sixth Judicial Dist. Ct. of Nev.,* 542 U.S. 177, 184, 124 S.Ct. 2451, 159 L.Ed.2d 292 (2004). Police who tried to force Mr. Berger to identify himself when he throws one of his hissy fits would soon find themselves as defendants in a civil rights lawsuit.

And yet, Seattle Center "play[s] an important role in defining the identity that [the] city projects to its own residents and to the outside world." *Summum,* 129 S.Ct. at 1134. Misbehavior by performers who are a constant presence at the Center is a disaster in the making for an enterprise whose mission it is "to delight and inspire the human spirit in each person and bring us together as a rich and varied community." http:// www. seattlecenter. com/ information/ default. asp. It may be true that public parks need not reflect "a 'Truman Show' version of pristine placidity," maj. at 1059, but the First Amendment surely doesn't require that our parks resemble *The Aristocrats* either.

Operating a huge enterprise like Seattle Center, one that caters to the needs and wants of tens of thousands of visitors on an average day, is an enormously difficult and complex task. Maintaining the goodwill of the public and support of the community over the decades is at the heart of that success. When the people responsible for that enterprise tell us that a content-neutral,***1071** nondiscriminatory permitting requirement has been effective in solving a serious problem that has been eroding that goodwill, it takes considerable hubris for judges to say they know better.

The second theory under which the majority finds fault with the permit requirement is the supposed impermissibility of "single-speaker registration requirements." Maj. at 1037-40. This is a curious theory, because none of the cases on which my colleagues rely makes any reference to the number of speakers involved, and certainly none mentions the size of the group as being dispositive. All of the cases on which the majority relies were solicitation cases; one can assume that the group of speakers involved would have been small by the nature of the activity. But the theories under which the Court struck down the permit requirements in those cases were varied and had nothing to do with the size of the group.

In *Cantwell v. Connecticut,* 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940), for example, the Court struck down a state statute which forbade the solicitation of money for religious causes unless the solicitors obtained a certificate from a government official, who was required to determine that the cause in question was, indeed, religious. The Court struck down the requirement because the statute authorized a government official "to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment...." 310 U.S. at 305, 60 S.Ct. 900. The size of the soliciting group was not even mentioned; indeed, the Court made it clear that "general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose." *Id. Cantwell* undermines rather than supports the majority's theory.

This is true of each of the other cases the majority draws upon for its theory, including *Watchtower*

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Bible & Tract Society of N.Y., Inc. v. Village of Stratton, 536 U.S. 150, 122 S.Ct. 2080, 153 L.Ed.2d 205 (2002), on which the majority places the heaviest reliance. *Watchtower* was a case involving door-to-door canvassing by a religious group. In striking down a requirement that the canvassers first obtain a permit from the town authorities, the Court pointed to a number of factors, none of which had anything to do with the number of canvassers, among them "the historical importance of door-to-door canvassing and pamphleteering as vehicles for the dissemination of ideas," *id.* at 162, 122 S.Ct. 2080; that the canvassers were not engaged in the solicitation of funds, *id.* at 165, 122 S.Ct. 2080; the legitimate interest of some canvassers in anonymity, *id.* at 166, 122 S.Ct. 2080; that the advance permit requirement inhibits some spontaneous speech, *id.* at 167, 122 S.Ct. 2080; and that residents could ward off all canvassers by posting legally enforceable "no solicitation" signs, which petitioners promised to respect, *id.* at 168, 122 S.Ct. 2080. None of these factors is even remotely applicable to our case: Balloon animals and magic tricks don't feature the dissemination of ideas, street performers do solicit funds, sometimes quite aggressively, and there is no legally enforceable way for patrons to keep Berger from trying to lure their children to come watch him or prevent him from insulting them when they resist. Finally, despite the majority's repeated assertions otherwise, maj. at 1038 n. 5, 1043-44, street performers have little interest in anonymity. Hula-hooping magicians and puppeteers are hardly advocates for "unpopular causes," ***1072***Watchtower Bible,* 536 U.S. at 167, 122 S.Ct. 2080; they are entertainers, and gaining public recognition will only help their businesses. *Watchtower* and our case have about as much in common as bananas and boomerangs.

The most one can say about the cases that form the backbone of the majority's analysis is that the Court has been reluctant to approve restrictions on the rights of individuals and small groups to engage in discourse with other individuals and small groups-the kind of interactions that always arise in solicitation, canvassing or hand-billing cases. This is not really surprising, because individual-to-individual and small group-to-small group interactions generally do not pose the sort of problems that time, place and manner rules are designed to deal with. Moreover, they are very much like the interactions almost everyone has during the course of his daily life-striking up conversations with others on the street, in his neighborhood or in public places. It may thus be fair to infer a presumption against laws prohibiting such small-group interactions.

But it is a wholly different matter to derive some sort of rule that prohibits-or strongly discourages-regulation of speech by a single individual, regardless of the size of his expected audience or the disruption he may cause. Nothing in the Supreme Court's caselaw supports any such proposition, and there is much to refute it. Take the following examples, which strike me as so obvious that no case citation is necessary:

- A municipality prohibits people from falsely yelling fire in a crowded theater. Is there a constitutional exception for a single individual? I don't think so. Why? Because the effect of the single speaker on the crowd of people thrown into panic can be disastrous.

- A famous civil rights leader plans to hold a speech at the Lincoln Memorial; the speech is eagerly anticipated and half a million or more people are expected to attend. According to the majority's flawed theory, the city of Washington could not require the speaker to register in advance, or give the city notice that a large audience is expected. Indeed, any number of independent single speakers would be entitled to show up unannounced and give their speeches at the very same time and place. There's nothing in the Supreme Court's caselaw that remotely supports that proposition.

- Yo-Yo Ma is probably the greatest cellist of our time, and a free concert for the benefit of the people of Los Angeles would surely be greeted

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with enthusiasm. But if Mr. Ma wanted to set up his cello in the third lane of the West-bound Santa Monica Freeway adjacent to the Robertson exit, I have no doubt that the California Highway Patrol could engage in prior restraint by preventing him. That Yo-Yo Ma is a single artist of remarkable talent would have no effect whatsoever on that result.

• Mr. Nez, who lives in Pasadena, wants to hold a parade celebrating the Festival of Noses. And he wants to follow the route that is followed every year by another parade with a very similar name-starting north on Orange Grove Avenue near California, then turning east on Colorado for about 5 miles. Unfortunately for Mr. Nez, no one else shares his enthusiasm, so he decides to hold a one-man parade, carrying a giant paper mache replica of Jimmy Durante's head. Having read the majority's opinion, he believes that he needs no parade permit since he is, after all, a single performer. So, about 9 a.m. on January 2, he dons a ***1073** top hat and tails, holds high the effigy of The Schnozz and starts walking north on Orange Grove straddling the double yellow line. My guess is that the Pasadena police would pick him up and give him a jaywalking ticket (or worse) long before he got to Colorado. His First Amendment defense would get about as far as his parade.

I could go on, but these "silly" examples, maj. at 1058, are enough to put to rest the fatuous notion that single speakers are entitled to favorable treatment under the First Amendment. Rather, the decision always hinges on the interaction between the speaker and the activities affected by him or his speech. If you go to the desert, you can shout "fire" as loudly and as often as you wish. You can bring a thousand friends with you and all of you can shout "fire" day and night, in unison, in sequence or to the rhythm of Bolero. You can sing about cesium and recite poems about arson; you can arrange a parade celebrating fire, or noses or whatever you wish. So long as there's no one to be bothered, there's little the government can or should be able to do to stop you. But if you are in the city, if you are at a mall, if you are at a stadium where thousands of people are crowding onto moving escalators, then we can reasonably expect you to be much more circumspect about what you say and where you say it, because the effect on others may be disastrous.

Context is everything in First Amendment analysis and the majority's single-speaker rule fails because it doesn't take context into account. Even if, as the majority suggests in places, its single-speaker rule would only apply to speakers who attract audiences of less than 75 or less than 100, maj. at 1046, 1058, any such rigid numerical rule will fail because it makes no account for the performance's effect on others. The performances by Mr. Ma and Mr. Nez, for instance, would be seriously disruptive whether they gathered a large audience or no audience at all. In deciding whether Seattle Center can require advance registration of street performers, it matters not at all whether they involve a single performer, like plaintiff, two jugglers or twelve lords-a-leaping. What matters is that street performers are out for donations, and donations increase with the size of the crowd the performers attract. Thus, attracting crowds is not merely an unforeseen by-product of street performing, it is its sine qua non: A street performer who never gathers an audience would give up the pursuit very quickly.

Crowds, of course, are worrisome when dealing with large groups of people moving through a restricted area like Seattle Center and thus are a legitimate thing for the authorities to be concerned about. They can also legitimately be concerned about how performers interact with the crowds they attract, and the effect they have on the public goodwill which is, after all, the lifeblood of the Center's mission. The regulations the Center put into place to address this problem are sensible and measured. There is no evidence whatsoever that the rules have been applied in an oppressive or discriminatory manner, that they have been enforced against teen-

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agers strumming their guitars at family picnics, or against people whistling while they walk, or against political canvassers.

All of these are figments of the judicial imagination-a fertile imagination, to be sure, but woefully out of touch with the realities of running a complex enterprise which brings joy to millions of people a year. By focusing on the largely imaginary First Amendment injuries which might be suffered by largely imaginary people, my colleagues impair the First Amendment rights of the millions of actual people who come to Seattle Center to see, to hear, to learn, to enjoy, without being ***1074** subjected to the stress of dealing with overly-aggressive street performers who shout obscenities and send young children off crying. There are times when the best thing judges can do is to butt out; this is surely one of them.

GOULD, Circuit Judge, with whom Chief Judge KOZINSKI and Judge TALLMAN join, dissenting:
I dissent from the majority's invalidation of the permit and badge requirements, for the reasons stated by my colleague Chief Judge Kozinski in his dissent. The permit scheme is a reasonable response to the City of Seattle's need for order to maintain the efficacy and desirability of Seattle Center for its citizenry and visitors. I write separately to explain my disagreement with the majority's conclusions relating to the Seattle Center Rules regarding required performance locations, the allowing of only passive solicitation, and the preclusion of speech activities including performances within thirty feet of captive audiences engaging in other events at Seattle Center. These Rules are reasonable time, place, and manner restrictions on speech because they are content-neutral restrictions that are narrowly tailored and leave open ample alternative means of communication. I conclude that separate attention to each of these restraints is warranted.

In Section I, I first comment on the substantial value of street performance, while acknowledging the City's superordinate need to regulate it in the interest of order. In Section II, I explain why the performance location rule is a reasonable time, place, and manner restriction that should be upheld and why Berger's evidence stating otherwise is insufficient to preclude summary judgment in favor of the City. In Section III, I explain why the passive solicitation rule is also a reasonable restraint on the manner of solicitation and should be upheld. In Section IV, I explain why Seattle's rule protecting captive audiences should also be upheld in light of the special multi-purpose nature of Seattle Center.

By invalidating the City of Seattle's reasonable time, place, and manner restraints on solicitation and performances to captive audiences, and by generating a fictitious fact issue on performance location, the majority utterly fails to give due weight to the valid interests of the City of Seattle in protecting a smoothly running Seattle Center. These include the City's interests in "traffic control" when competing street performers want to use the same place for their expression, and the regulation of street performers who communicate at Seattle Center in circumstances that may interfere with the Center's other activities. *See* Thomas I. Emerson, *Toward a General Theory of the First Amendment,* 72 YALE L.J. 877, 946-47 (1963) (stating that by regulating "traffic control" a government can "maintain orderly expression and thereby promote freedom of expression"). The majority's holding impairs the value of Seattle Center to Seattle's residents, to visitors from worldwide locations, and to the organizations that make Seattle Center their home. Its holding is not needed to protect the free and full exchange of ideas that helps to keep our society vital. Therefore, I respectfully dissent, and elaborate my views.

I

The value of the speech from street performers impacted by the City's permit scheme is significant, but Rules F.1 and F.2 are nonetheless constitutional because of the need of the City to maintain order at this gem of a civic attraction. The City's interests are well articulated by Chief Judge Kozinski, but I

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will expand on the speech value of the street performances: Speech in the form of music, drama, ***1075** or performance has played a vital role in our society and deserves First Amendment protection. Some of our culture's most valued written works originated as spoken performances. For example, what we know now as Homer's *Iliad* and *Odyssey* likely were originally preserved through verbal performances. *See* Mark W. Edward, *Homer and the Oral Tradition,* 18/1 ORAL TRADITION 65 (2003) ("By now the facts about the nature of the oral features ... in Homer are well known and (on the whole) not controversial."); *see generally* Bruce Louden, THE ILIAD: STRUCTURE, MYTH and MEANING (Johns Hopkins University Press 1996). Music likewise has helped to develop our Western civilization. *See, e.g.,* Paul Henry Lang, MUSIC IN WESTERN CIVILIZATION XIX (W.W. Norton & Co.1997) ("Every civilization is a synthesis of man's conquest of life. Art is the ultimate symbol of this conquest, the utmost unity man can achieve."). Even if our society today does not always hold street performers in the highest of esteem, these performers continue the tradition of transmitting culture, as done by the traveling minstrels, talebearers, and acting troupes that have helped to develop what we consider our Western culture. It would be easy to underestimate the value provided by these performers, or the accompanying need for First Amendment protection, if we only looked at a single performer and especially if we had little affinity for that person's performance. However, that such performances are possible in the aggregate bestows value on a society.

The City's permit system and related regulatory restraints may require some individuals wishing to express themselves through spontaneous performance to wait until they have gained a permit and channeled their performance into a permitted location. It is true that the Supreme Court, while reviewing a restraint on private solicitation, has criticized a permit requirement in part because "a significant amount of spontaneous speech" was "effectively banned" by that requirement. *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton,* 536 U.S. 150, 167, 122 S.Ct. 2080, 153 L.Ed.2d 205 (2002). It might also be conceded that delaying speech takes some toll on the speaker. *See* Vincent Blasi, *Toward a Theory of Prior Restraint: The Central Linkage,* 66 MINN. L. REV. 11, 82 (1981) ("[E]ven short delays take from speakers the power to determine precisely when to disseminate their communications. When government possesses the power to delay communications that it cannot suppress, speakers cannot be said truly to control, in the sense required for autonomy, their own communicative endeavors."). Nonetheless, the Supreme Court has upheld permit requirements that seek to regulate traffic control and maintain order. *See Thomas v. Chi. Park Dist.,* 534 U.S. 316, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002) (upholding permit requirement for large events in public parks); *Cox v. New Hampshire,* 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941) (upholding permit requirement for parades on public streets). Every permit requirement deters some spontaneous speech. That the Supreme Court has routinely allowed permit schemes outside of the solicitation and small-group interaction contexts shows that a harm to spontaneous speech is not enough to render a permit requirement unconstitutional. Wandering musicians, poets, actors, or other street performers who come to Seattle and wish to perform a protest song or reading or drama can be required to delay their speech until they comply with the reasonable rules that the City of Seattle has established for public performance in its important Seattle Center venue.

The value to society of informal speech presented through performance of music, poetry, and drama is great. It can keep ***1076** us alert and open to societal criticisms of practices that require change. At the same time, for the reasons well stated by Chief Judge Kozinski, the need for and value of a permitting system regulating such speakers is superordinate in this context because of the unique nature of Seattle Center. Indeed, the speakers themselves benefit from the maintenance of an orderly system

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that deters interference with their performances and disputes over desirable performing locations. It would be nice to think that all of the important interests of the City of Seattle can be accommodated by reasonable time, place, and manner restrictions, but it is a reckless gamble to so conclude and I cannot say that the City should not rationally be able to protect itself, and its citizens and visitors, through the permit process. Unless and until the Supreme Court stands opposed to such permitting for such a unique venue, I conclude that a permit process should be within the City's arsenal of tools for managing order at Seattle Center.

II

I next address the performance location rule, Seattle Center Rule F.5, which I view as a reasonable time, place, and manner restraint on which the majority's analysis goes astray. As the Supreme Court declared in *Ward v. Rock Against Racism,* the government may impose reasonable time, place, and manner restrictions on speech. These restrictions must be "justified without reference to the content of the regulated speech." They must be "narrowly tailored to serve a significant governmental interest." And they must "leave open ample alternative channels for communication." *Ward,* 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). For the performance location rule, the key issues arising under this formulation of doctrine are whether the restraint permits sufficient alternate means of communication, and whether it is narrowly tailored to meet its ends without gratuitously impeding speech.

Rule F.5 is constitutional. If it were to decide otherwise, the majority would impose an improvident burden on cities seeking to regulate speech locations in the future. It would go far to read "place" out of the general accommodation for reasonable time, place, and manner restrictions. What we should be asking ourselves here are fundamental questions about how Rule F.5 affects speech. It is, in my view, a paradigm restraint on location. It funnels performance speech into sixteen locations near the most popular Seattle Center attractions, where the performers will be readily visible but should not impair Seattle Center's ability to welcome guests, both resident and tourist, who want to sample its attractions. The performance location rule does not in any way say what performers can or cannot say or do, it merely ensures they will present their speech in locations that do not unduly impede the commerce of the City. Thus alternative means of communication are ample and secured. At the same time, I conclude the restraint is sufficiently and narrowly tailored. It does not gratuitously impede any speech, it just channels it to a convenient place to accommodate both the speaker's interest and the interests of Seattle Center patrons. What is wrong with this? Nothing, under any balanced First Amendment analysis.

The City has established that without the performance location rule there would be a likelihood of conflict and chaos that will interfere with Seattle Center's important functions. The undisputed evidence in the record shows that before the location restrictions were imposed street performers often set up in close proximity to one another, leading to territorial disputes and altercations. Street performers also ***1077** set up in locations that could not accommodate the gathering audience or that blocked pedestrian access. The City received weekly complaints about pedestrian access problems. This evidence satisfies our First Amendment requirement "that municipalities provide tangible evidence that speech-restrictive regulations are necessary to advance the proffered interest in public safety." *Menotti v. City of Seattle,* 409 F.3d 1113, 1131 (9th Cir.2005) (quotation omitted). The performance location rule would help eliminate confrontations between street performers over location and would ensure that pedestrian walkways remain clear.[FN1] *Cf. Cox v. Louisiana,* 379 U.S. 536, 554-55, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965) (stating that "[g]overnmental authorities have the duty and responsibility to keep their streets open and available for movement" and that "[a] restriction in that relation, designed to promote the public convenience in

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the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection"). Accordingly, the Rule meets the Supreme Court's narrow tailoring requirement that a "regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *Ward,* 491 U.S. at 799, 109 S.Ct. 2746 (quoting *United States v. Albertini,* 472 U.S. 675, 689, 105 S.Ct. 2897, 86 L.Ed.2d 536 (1985)). [FN2]

FN1. Thus the performance location rule serves both of the traffic control interests identified by Professor Emerson. Emerson identifies two cases in which the government has a legitimate interest in traffic control. One situation occurs "where two or more groups desire to hold a parade, demonstration or meeting in the same place," and the other "becomes necessary in situations where a group wishes to engage in some form of communication at a place which will interfere with the normal flow of traffic or the activities of other persons engaged in other affairs." *See* Emerson, 72 YALE L.J. at 947.

FN2. In its attempt to avoid summary judgment favoring the City on this Rule, the majority adopts a counterintuitive conception of what realistically is meant by the term "street performer." As the majority sees it, this term would include Gene Kelly Singing in the Rain or any person who whistled while they worked or whistled while they walked. I agree with Chief Judge Kozinski that there is no realistic danger the City will interpret its definition so broadly and that the City's limiting construction cures any perceived danger. The record generated in the process of adopting the Rules shows what the City was aiming at, which certainly wasn't an impromptu version of Singing in the Rain or the casual whistler. The language used by the City in Rule F.5 does not reasonably contemplate such a broad definition, and so the majority's argument about an overbroad and thus constitutionally invalid definition of "street performer" should not be credited.

Contrary to the majority's view that there are unresolved fact issues on this matter, the City has shown that the performance location rule provides ample alternative channels for communication. All that is needed to satisfy the "ample alternatives" test is "that the government refrain from denying a reasonable opportunity for communication." *Menotti,* 409 F.3d at 1141 (quotation omitted). The City has met its burden. The record includes a map of the performance locations, which shows that the locations are adjacent to major pedestrian thoroughfares and are situated near all of the most popular Seattle Center attractions, including the Space Needle, KeyArena, Pacific Science Center, and the Experience Music Project. In response, Berger makes two unsupported statements that some locations are far from walkways or are occasionally blocked by equipment. Berger does not identify the specific locations to which he objects, and he does not directly dispute the authenticity of the City's map. "A summary judgment motion cannot be defeated by ***1078** relying solely on conclusory allegations unsupported by factual data," *Taylor v. List,* 880 F.2d 1040, 1045 (9th Cir.1989), but that is precisely all that Berger provides. The majority nonetheless recites that Berger's conclusory evidence is sufficient to defeat summary judgment and even creates a reasonable inference of unconstitutionality. Its conclusion is inconsistent with our summary judgment standard as it has been explained by the United States Supreme Court and elaborated in our precedent. *See Lujan v. Nat'l Wildlife Fed'n,* 497 U.S. 871, 880, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990) (stating that although Fed.R.Civ.P. 56(e) allows a party to defeat summary judgment through affidavits that establish a genuine factual issue, "[t]he object of this provision is not to replace con-

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clusory allegations of the complaint or answer with conclusory allegations of an affidavit.").

Rule F.5 allows for ample alternative channels of communication even if we accept Berger's factual allegations as true. I agree with the portion of Judge N.R. Smith's analysis that explains why under our precedent and that of the Supreme Court, Berger's conclusory allegations do not create any material fact dispute that would preclude summary judgment in favor of the City. The City presented uncontested evidence that even at peak times fewer than half of the designated performance locations are in use. Therefore, even if some of the locations are undesirable, Berger has provided no evidence that the location restrictions preclude the entire medium of street performance or deny street performers a "reasonable opportunity for communication." *Menotti,* 409 F.3d at 1141 (quotation omitted); *see also Colacurcio v. City of Kent,* 163 F.3d 545, 555 (9th Cir.1998) ("The Supreme Court generally will not strike down a governmental action for failure to leave open ample alternative channels of communication unless the government enactment will foreclose an entire medium of public expression across the landscape of a particular community or setting."). I conclude that the City is entitled to a summary judgment upholding the performance location rule. The majority's remand for factual determination on alternative channels of communications is unnecessary and incorrect.

III

I next address the passive solicitation rule. Rule F.3.a provides that no street performer "shall actively solicit donations, for example by live or recorded word of mouth, gesture, mechanical devices, or second parties." The Rule does permit passive solicitation by allowing performers to provide a receptacle for donations and display "a written sign that informs the public that such donations are sought." By misconstruing the passive solicitation rule as being "content-based," the majority again misapplies the general rule permitting reasonable, time, place, and manner restrictions, this time reading "manner" out of the permitted restraints.

The ban on active solicitation is neutral in content. Applying the Supreme Court's "principal inquiry in determining content neutrality," I conclude that the City did not adopt its passive solicitation rule "because of disagreement with the message [soliciting speech] conveys." *Ward,* 491 U.S. at 791, 109 S.Ct. 2746. The Rule does not depend on the content of the solicitation, there are no favored organizations or persons-no street performer advancing any cause can solicit funds from Seattle Center patrons in an active way, none can demand money verbally. Street performers cannot implore people to give them money, but they can post a passive sign alerting their listeners that they would appreciate a contribution, and providing a proper receptacle. In sum, there is no evidence that the City disagrees with the views of Seattle Center street performers, ***1079** nor is the City stifling messages of solicitation completely. If this is not a reasonable manner restriction, then probably nothing is.

The majority argues that the passive solicitation rule is based on content because it restricts a particular set of messages, namely requests for donations. But under this analysis any regulation of solicitation would be a content-based restraint because such a rule would have to differentiate words that solicit from ordinary speech. The majority's analysis places it in tension, if not explicit conflict, with United States Supreme Court authority, which has held that solicitation restrictions may be content-neutral restraints. *See United States v. Kokinda,* 497 U.S. 720, 736, 110 S.Ct. 3115, 111 L.Ed.2d 571 (1990) (plurality opinion) (upholding ban on in-person solicitations and calling "the inherent nature of solicitation itself, a content-neutral ground"); *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.,* 452 U.S. 640, 648-49, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981) (stating that restriction on solicitation locations in public fairgrounds is content-neutral because it "applies evenhandedly to all who wish to ... solicit funds"). Under the majority's ana-

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lysis, however, the *Kokinda* and *Heffron* restrictions would be content-based restraints because they would, as the majority states, restrict individuals "from communicating a particular set of messages-requests for donations." The majority's analysis eliminating any possibility of a reasonable restraint on manner of solicitation is difficult to reconcile with Supreme Court precedent that has upheld such restrictions.

Our decision in *ACORN v. City of Phoenix,* 798 F.2d 1260 (9th Cir.1986), also supports a holding that the passive solicitation rule is content-neutral. In *ACORN* we said that an ordinance prohibiting solicitation of vehicle occupants is content-neutral because it "does not single out any group or the content of any speech. The ordinance applies even-handedly to every organization or individual, regardless of viewpoint, which would desire to solicit contributions, business, or employment from the occupants of vehicles traveling on Phoenix streets." *Id.* at 1267 (citing *Heffron,* 452 U.S. at 648-49, 101 S.Ct. 2559). The majority distinguishes *ACORN* because it sees no indication that the ordinance in *ACORN* forbade asking drivers or passengers to contribute by mail, as opposed to contributing on the spot. However, the majority cites no language in *ACORN* indicating that the ordinance at issue prohibited only the immediate physical exchange of money. The text of the ordinance states only that a person may not "solicit, or attempt to solicit, employment, business or contributions from the occupants of any vehicle." *Id.* at 1262.

The majority's reasoning for deciding that the City's passive solicitation rule is content-specific would have required a different result in *ACORN* because the ordinance in that case restricts people from "communicating a particular set of messages-requests for donations," while allowing the same individuals to approach stopped drivers and communicate other ideas. The majority does not claim to overrule *ACORN,* and thus in my view *ACORN* compels us to hold the City's passive solicitation rule content-neutral because it also applies even-handedly to anyone who solicits by certain meth- ods.

Rule F.3.a is constitutional because it is content-neutral, is narrowly tailored, and allows for ample alternative channels of communication. To hold otherwise, as does the majority, is in substance to say there cannot be a reasonable regulation of manner of solicitation, and in my view that position cannot be correct.

***1080 IV**

Finally, I address Rule G.4, the captive audience rule. I conclude that a close case is presented on this rule but that it should nonetheless be upheld because of the special nature of Seattle Center. The Supreme Court has stated that the government may "shield the public from some kinds of speech on the ground that they are more offensive than others" when a "degree of captivity makes it impractical for the unwilling viewer or auditor to avoid exposure." *Erznoznik v. City of Jacksonville,* 422 U.S. 205, 209, 95 S.Ct. 2268, 45 L.Ed.2d 125 (1975). We have overturned rules restricting speech near captive audiences when we have determined that the audience in question was not captive at all. *See Kuba v. 1-A Agric. Ass'n,* 387 F.3d 850, 861 n. 10 (9th Cir.2004).[FN3] But until now we have never held that a captive audience could never exist in a public park. The majority's blanket rule will preclude courts from addressing an audience's possible captive state on a fact-specific basis. Moreover, the majority's approach is singularly inappropriate when we consider the unique nature of Seattle Center, containing many outstanding venues for entertainment, theater, ballet, sports, and dining.

> FN3. In *Kuba* we did not, as the majority suggests, hold that all patrons of a place of public entertainment could not be a captive audience unless they were particularly vulnerable. Instead, we emphasized that the highly mobile individuals in *Kuba* were not "constricted" to a particular location

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> while they walked towards a concert venue. *Kuba,* 387 F.3d at 861 n. 10. Visitors to Seattle Center must keep their place in line in order to gain entry to limited-access buildings or events.

Seattle Center is an unusual public complex that contains many captive audiences who are observing or awaiting the major events that are presented at McCaw Hall, KeyArena, or the Bagley-Wright Theater, waiting in line for rides at the Fun Forest Amusement Park, or simply attending other Center attractions, including the popular Center House restaurant venues. Seattle Center also hosts special events such as Bite of Seattle, which in theory may be impacted if the majority treatment of the Rules at issue here is sustained. The very viability of Seattle Center, the ability of Seattle residents and tourists to take advantage of the unique opportunities showcased there, in my view is placed in danger if the City is not permitted fairly and effectively to regulate the conduct of all those who may interfere with Seattle Center events. The fair regulation of street performer speech does not entirely cancel the speech out, but rather subjects it to a regime that can coexist with Seattle Center's other activities in a way that does not unduly damage its commerce and value to the City.

The majority is correct that Seattle Center is a public forum, and this categorization affects our choice of precedents to apply. But there are important differences between Seattle Center and the typical open-air public park. Seattle Center is a unique urban center defined not solely by trees and open fields but also by museums, theaters, concert halls, amusement rides, and other special attractions for the City and its visitors. Visitors pay considerable sums to see these attractions, and they must often wait in line before attending. Unlike in a traditional public park, these patrons, should they be confronted by unwelcome or harassing performances, cannot just walk away to the next available shade tree. Rather, to avoid the nuisance these patrons must give up their place in line, potentially forfeiting their ability to enjoy the Seattle Center event they paid to attend. The City has a significant governmental interest in ensuring that these patrons have an enjoyable experience, so ***1081** that Seattle Center and the City as a whole may continue to be a desirable and commercially profitable destination. See *Thomas,* 534 U.S. at 323, 122 S.Ct. 775 ("Regulations of the use of a public forum that ensure the safety and convenience of the people are not 'inconsistent with civil liberties but ... [are] one of the means of safeguarding the good order upon which [civil liberties] ultimately depend." (quoting *Cox v. New Hampshire,* 312 U.S. at 574, 61 S.Ct. 762)).

The captive audience rule applies to "speech activities" rather than to only street performers. The majority imagines that the City will enforce the captive audience rule against those who make "the mildest remark." But, as Chief Judge Kozinski aptly explains in his dissent, there is no indication that the City has or ever will enforce this Rule in such a draconian manner. *See Washington State Grange v. Washington State Republican Party,* 552 U.S. 442, 128 S.Ct. 1184, 1190, 170 L.Ed.2d 151 (2008) ("In determining whether a law is facially invalid, we must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases."). The majority relies on *Board of Airport Commissioners of the City of Los Angeles v. Jews for Jesus, Inc.,* 482 U.S. 569, 574-75, 107 S.Ct. 2568, 96 L.Ed.2d 500 (1987), to say that overbroad regulations are unconstitutional. But there the Supreme Court invalidated the ordinance after concluding that there was no feasible limiting construction. *Id.* at 575-76, 107 S.Ct. 2568. However, the majority has engaged in no such analysis of the captive audience rule, and therefore its overbreadth analysis is incomplete. *See Broadrick v. Oklahoma,* 413 U.S. 601, 613, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973) ("Facial overbreadth has not been invoked when a limiting construction has been or could be placed on the challenged [rule].").[FN4]

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FN4. The majority claims that any bias in favor of commercial over noncommercial speech is by itself cause to invalidate a regulation. However, the majority's precedential support is limited to regulations on signs or billboards. *E.g., G.K. Ltd. Travel v. City of Lake Oswego,* 436 F.3d 1064, 1081 (9th Cir.2006) ("[A]n ordinance is invalid if it imposes greater restrictions on noncommercial than on commercial billboards or regulates noncommercial billboards based on their content." (quotation omitted)). The majority's analysis on this point proceeds from the fact that although the captive audience rule applies to "both political speech and commercial speech," it does not apply to "licensed concessionaires," such as food and drink vendors. Licensed concessionaires, however, are subject to a myriad of other restrictions not applicable to noncommercial speakers. Moreover, Seattle Center patrons waiting in line might welcome an opportunity to purchase food or drink.

It is unrealistic and unwise to expect patrons paying to visit an attraction to give up their right to access the attraction when confronted with unwelcome behavior. Before instituting the captive audience rule, the city received weekly complaints about street performers harassing individuals in a captive audience. The captive audience rule is a reasonable method of achieving the City's legitimate interest in the safety and convenience of Seattle Center patrons. It leaves open alternative channels of communication-in a designated location for street performers and anywhere away from a captive audience for everyone else. By contrast, the majority's incorrect analysis echoes its earlier errors by reading "place" and "manner" out of the general rule that allows reasonable time, place, and manner restrictions. I would hold that the captive audience rule is a reasonable restriction on speech.

V

Accordingly, I would reverse the district court's rejection of the permit and badge ***1082** requirements for the reasons aptly stated by Chief Judge Kozinski in his dissent, and also would reverse the district court's decisions declaring unconstitutional Rule F.5, Rule F.3.a, and Rule G.4, respectively governing performance locations, passive solicitation, and captive audiences. The latter three Rules are reasonable time, place, and manner restrictions that allow for ample alternative channels of communication. They are justified by the City's legitimate interest in protecting the safety and desirability of Seattle Center as a major tourist draw and a wholesome venue for Seattle's citizens, and if the Rules are followed they do not pose a significant threat to the exchange of speech and ideas. Although I recognize a significant value to speech in street performance, the majority's elimination of the City's permit scheme and the other regulatory rules adds only a negligible marginal speech value, and this at the cost of public order. The stakes for the City of Seattle in maintaining order at Seattle Center are high, because this is a prerequisite to the full enjoyment of Seattle Center by Seattle's residents and visitors who together make up the millions of annual users of Seattle Center. I respectfully dissent from the majority's invalidation of the permit requirement and Rules governing passive solicitation and presentation near captive audiences, and from the majority's remand on the Rule governing location of performance.

N.R. SMITH, Circuit Judge, concurring in part and dissenting in part, with whom Chief Judge KOZINSKI joins in Parts III and IV, with the exception of the first and last paragraphs of Part IV:

Because our precedent forces me to treat the Seattle Center as a traditional public forum, I agree that the City of Seattle's permitting requirements and ban on active solicitation for street performers at the Seattle Center are facially unconstitutional. I also agree with the majority's invalidation of the City's captive audience rule. However, the City's performance location rule is constitutionally valid. There-

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fore, I join Parts I, II, III, V, and VI of the majority opinion.

I write separately, because (1) the characterization of the Seattle Center as a public forum is essential to this decision; (2) although the permitting scheme is not narrowly tailored, it relates to and meaningfully promotes the City's legitimate interests; (3) the City has met its burden to show that the performance location rule is a constitutionally reasonable time, place, and manner restriction; and (4) while the City's active solicitation rule is not content-neutral, the majority's analysis seems to hold that any restriction on solicitation is necessarily content-based.

I

We are constrained to view the City's rules regulating speech in the Seattle Center through the lens of the Supreme Court's forum analysis. *See Greer v. Spock,* 424 U.S. 828, 836, 96 S.Ct. 1211, 47 L.Ed.2d 505 (1976) (adopting a forum analysis as a means of determining whether the government's interest in limiting use of its property outweighs the interest of others wishing to use the property for other purposes). Our conclusion as to the nature of the forum in which the regulations apply not only informs our analysis but largely shapes the outcome, "because the extent to which the Government may limit [speech] depends on whether the forum is public or nonpublic." *Cornelius v. NAACP Legal Def. & Educ. Fund,* 473 U.S. 788, 797, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985). Therefore, the disposition of this case hinges almost entirely on whether we characterize the Seattle Center as a traditional public forum.

The majority states, without much analysis, that the record supports characterizing***1083** the Seattle Center as a traditional public forum. I agree. However, given the significance of the majority's holding and the fact that the majority strikes down most of the City's challenged rules as facially unconstitutional, we should not fail to fully consider the nature of the forum at the Seattle Center.

There is no contention that the Seattle Center is a nonpublic forum.[FN1] The record plainly shows that the Center is publicly owned, free and open to the public, and available as a forum for public communication. Yet a determination of the precise type of public forum is still necessary to guide our analysis.

> FN1. A nonpublic forum is a place that does not, by tradition or designation, serve as a forum for public communication; thus, content-based restrictions in nonpublic fora need only be "reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 46, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983).

If, as the City argued before the district court, the Seattle Center is a "limited public forum," our review is somewhat lenient. A limited public forum is considered "a type of nonpublic forum that the government has intentionally opened to certain groups or to certain topics." *Cogswell v. City of Seattle,* 347 F.3d 809, 814 (9th Cir.2003) (citations and internal quotation marks omitted). Under this analysis, the City's regulations would be upheld "as long as (1) the restriction does not discriminate according to the viewpoint of the speaker, and (2) the restriction is reasonable." *Id.* at 814 (citations omitted). Nothing in the record indicates that the City has limited the use of the Seattle Center to certain groups or dedicated it solely to the discussion of certain subjects. Further, the record suggests that the Seattle Center has historically been a public forum. Therefore, the Center is not a limited public forum.

If the Seattle Center is a traditional public forum, "the government may not prohibit all communicative activity" and, to enforce any content-based exclusion, the state "must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." *See*

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Perry Educ. Ass'n, 460 U.S. at 45, 103 S.Ct. 948 (citing *Carey v. Brown,* 447 U.S. 455, 461, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980)). Reasonable time, place, and manner restrictions can be imposed if they are "content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Id.* (citations omitted).[FN2] Quintessential public fora include "streets and parks which 'have immemorially been held in trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' " *Id.* (quoting *Hague v. CIO,* 307 U.S. 496, 515, 59 S.Ct. 954, 83 L.Ed. 1423 (1939)).

> FN2. If the Seattle Center were a "designated public forum," our analysis would be the same, because the Center continues to be open to the public. Public property, that is not traditionally a public forum, may nonetheless be "opened for use by the public as a place for expressive activity." *Perry Educ. Ass'n,* 460 U.S. at 45, 103 S.Ct. 948. In such a "designated public forum," while the state is "not required to indefinitely retain the open character of the [forum], as long as it does, it is bound by the same standards as apply in a traditional public forum." *Id.* at 46, 103 S.Ct. 948. A designated public forum includes "a place or channel of communication for use by the public at large for assembly and speech, for use by certain speakers, or for the discussion of certain subjects." *Id.* (citing *Cornelius,* 473 U.S. at 802, 105 S.Ct. 3439).

To determine whether a venue is a traditional public forum, courts have considered a number of factors, including (1) the compatibility***1084** of the dedicated uses of the forum with expressive activity; (2) whether a speaker has a reasonable expectation that their speech will be protected in the forum; (3) the historic use of the forum; (4) the current use of the forum; (5) whether the public has had free access to the forum; (6) whether the forum is a public thoroughfare; (7) the value of the area as an expressive locale; (8) the government's interest in commercial revenues; (9) any purpose for which the land may have been dedicated and the consistency of that use with free speech. *See ACLU of Nevada v. City of Las Vegas (ACLU I)*, 333 F.3d 1092, 1100 & n. 7 (9th Cir.2003) (citations omitted) (collecting cases describing factors that courts have applied to determine the nature of the forum).

Our case law emphasizes three factors in determining the nature of the forum: "1) the actual use and purposes of the property, particularly status as a public thoroughfare and availability of free public access to the area ...; 2) the area's physical characteristics, including its location and the existence of clear boundaries delimiting the area ...; and 3) traditional or historic use of both the property in question and other similar properties...." *Id.* at 1100-01 (citations omitted).

A reasonable application of these factors to the facts in this record confirms the majority's characterization of the Seattle Center as a traditional public forum. The record shows that the Center is free and open to the public. It is a gathering place for cultural and political rallies. It hosts formal events, including concerts, plays, ballets, athletic events, and other cultural activities. It is a forum for countless informal gatherings every day as thousands of people frequent the Center to "congregate on the sidewalks and parks that are open to the public." With more than ten million visitors a year, the current use and purpose of the facility is unavoidably public. The Center's own literature characterize the Seattle Center as "one of the nation's most extraordinary urban parks and entertainment centers .... a social and cultural gathering place for people around the world .... [a] host to remarkable arts, cultural, educational and community programs and international festivals .... [and] a gathering place and public space open to everyone [and] reflective of the Northwest's diversity and alive with innova-

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tion...."

The Center's physical characteristics and location also support the conclusion that the Center is a traditional public forum. It is publicly owned and centrally located in the heart of Seattle. Of the eighty-seven acres, twenty-three are open spaces and plazas with numerous walkways and access points to the downtown area and surrounding neighborhoods.

Further, the traditional and historic uses of the land also supports its designation as a traditional public forum. When the land was dedicated to the City over one hundred years ago, it was dedicated for "the use of the public forever." Nearly fifty years ago, the Seattle Center was home to the 1962 World's Fair, and it has continued to welcome the public ever since.

I also note that, given the express purpose of the Seattle Center, the forum is also clearly compatible with expressive activity. Based on the Center's mission and history as a gathering place for cultural, social, political, and artistic expression, patrons of the Center could reasonably expect that their speech would be protected. The Center is also clearly a pedestrian thoroughfare for the ten million people who visit the center each year, and the Center has obvious value as an expressive locale. While the City no doubt has an interest in commercial revenues, the City's interests and the stated purposes of the ***1085** Center are not inconsistent with free speech.

I acknowledge that the Seattle Center is not the average public park. It is a dynamic and complex evolution of public space, ripe with modern innovation and offering the public a wealth of educational, social, cultural, and commercial opportunity. The City's challenge is to balance the competing uses and manage the Center in a way that fosters mutual enjoyment of these multiple uses. This is no small task. Yet, regardless of the novel attributes of Seattle's "most extraordinary urban park," the Seattle Center remains a traditional public forum and the City's regulation of speech "is subject to the highest scrutiny." *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee (Lee),* 505 U.S. 672, 678, 112 S.Ct. 2701 (1992).

II

The City's permitting scheme is not a valid time, place, or manner regulation, because it "burden[s] substantially more speech than is necessary to further the government's legitimate interests." *Ward v. Rock Against Racism,* 491 U.S. 781, 799, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). The City's goal is to promote the safety and convenience of the public by regulating the conduct and location of those who (1) regularly attract crowds when performing in the Seattle Center and (2) who are overly aggressive, abusive, or harassing when soliciting donations from those who pass by. The City's interest is both significant and legitimate. Yet, the broad brush of the permit requirement, on its face, sweeps within its prohibition not only the problematic aggressive behavior of regular street performers, but also any spontaneous or informal artistic expression by anyone. "Government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals." *Id.* at 799-800, 109 S.Ct. 2746 (citing *Frisby v. Schultz,* 487 U.S. 474, 485, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988)). For those wishing to comply with the law, the prior restraint of the permit requirement would inevitably result in delays, deterring and effectively banning a significant amount of protected expression. *See Grossman v. City of Portland,* 33 F.3d 1200, 1206 (9th Cir.1994) (the delay caused by complying with a permitting procedure prevents immediate response to immediate issues and can deter or even preclude immediate responses to late-breaking events) (citations omitted). Because the rule would burden all artistic expression and reach substantially more individuals than the few problem street performers, it is not narrowly tailored. *See Frisby,* 487 U.S. at 485, 108 S.Ct. 2495.

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Additionally, while a permitting scheme might be justified for large groups, there is nothing to suggest that the City's interest is sufficient to justify the prior restraint of a single-performer in this public forum. *See Grossman,* 33 F.3d at 1206 (permit requirement was unconstitutional where it could apply to "the actions of single protestors"); *Rosen v. Port of Portland,* 641 F.2d 1243, 1247-48 (9th Cir.1981) (same). Because (1) prior restraints are disfavored and (2) this prior restraint is targeted at individual speakers, the permit requirement must be found unconstitutional, if the state could achieve its purported goals in a less restrictive manner. Even if the permit requirement were more efficient in preventing the evils associated with the street performers, punishment of actual wrongdoers could achieve the City's interests without burdening all forms of artistic expression with the prior restraint. *See, e.g., Riley v. Nat'l Fed'n of the Blind of N.C., Inc.,* 487 U.S. 781, 795, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988) (enforcement of antifraud laws sufficient to protect citizens from possible fraud resulting from fundraising solicitations). As the majority illustrates, there are also alternative ***1086** means of coordinating multiple uses of the Seattle Center, such as reasonable time and place restrictions, without requiring permits for all artistic expression.

With regard to the permitting scheme, I disagree with the majority's characterization that the permitting requirements do not promote the government's interests "in any meaningful way." The majority states that "[t]here is ... no reason two street performers with permits would be less likely to engage in a territorial dispute than two street performers without permits." The majority also states that the permit requirement "bears no apparent connection to the City's stated interest in reducing hostile performer behavior .... [because] there is no reason why a performer with a permit is likely to be less hostile than one without a permit." This analysis fails to view the permit requirement in the context of the entire permitting scheme. Contrary to the majority's reasoning, the permitting system advances the City's interest, because performers (who violate the Seattle Center rules) risk temporarily losing their permit and, thus, their ability to perform. If a performer engages in a territorial dispute (ostensibly because he does not abide by the first come, first serve rules regarding the designated performance locations), he might also lose his permit. Likewise, a performer who engages in hostile behavior towards other performers or patrons likewise risks losing his permit. The potential to lose the right to perform is a substantial, common sense deterrence to the undesirable conduct the City seeks to regulate.

Further, I disagree with the majority that the permitting requirements do not aid in coordinating multiple uses of the Seattle Center. While the permit system does not limit the total number of permits, nor assign particular performers to specific locations at specific times, it does provide an orderly means for allocating and prioritizing the use of performance locations among competing uses. That is, permitted performers have priority to use the performance locations over non-permitted performers. Further, the permitting scheme allocates the use of particular spaces among permittees on a first come, first served basis. A permitted street performer is protected if he abides by the rules, and he stands to temporarily lose his permit (and right to perform) if he does not. While there may be other schemes that might better clarify or coordinate the use of the Seattle Center for street performances, the majority's conclusion that the permit rule does not promote or have any connection to the City's interest ignores the punitive and deterrent elements of the permitting scheme. Although I agree that the permitting scheme is not narrowly tailored nor is the City's interest significant enough to justify such a prior restraint on individual speakers, the scheme otherwise relates to and would meaningfully advance the City's interest.

III

I dissent with regard to the City's performance loca-

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tion rule. Drawing all reasonable inferences in favor of the City, *see Anderson,* 477 U.S. at 255, 106 S.Ct. 2505, I agree that the City has met its burden with unrebutted evidence that demonstrates a significant, legitimate interest, which "would be achieved less effectively absent the regulation." *See Ward,* 491 U.S. at 799, 109 S.Ct. 2746 (citation omitted). With regard to whether the rule allows for ample alternative channels for communication, I disagree with the majority, which concludes that Berger's declaration presents "conflicting evidence concerning whether the sixteen dedicated locations provide adequate access to the intended audience." Majority Op. at 1050.

In imposing time, place and manner restrictions, the government must only "refrain***1087** from denying a ' *reasonable* opportunity' for communication." *Menotti v. City of Seattle,* 409 F.3d 1113, 1141 (9th Cir.2005) (emphasis added) (citing *City of Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 54, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986)). The Supreme Court has instructed that reasonable time, place, and manner restrictions need not preserve the most effective means of communication; rather, such restrictions must only guarantee that individuals retain the "ability to communicate effectively." *Id.* at 1138 n. 48 (citing *City Council of City of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 812, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984); *Hill v. Colorado,* 530 U.S. 703, 729, 120 S.Ct. 2480, 147 L.Ed.2d 597, (2000) (upholding a law that prohibited individuals from having a position that maximized accessibility to the target of their speech)).

In *Menotti,* we held that a city order prohibiting protest demonstrations in certain areas during a World Trade Organization ("WTO") meeting left open ample alternative channels of communication. *See id.* at 1138-43. The city order effectively prevented protestors from delivering their message directly to WTO delegates in the facilities where the WTO meetings were held. *Id.* at 1138. Instead, protestors were relegated to areas directly across the street from the meeting location, as well as throughout the rest of downtown Seattle. *Id.* In concluding that the city order provided ample alternative means of communication, we noted that "[t]he Supreme Court generally will not strike down a governmental action for failure to leave open ample alternative channels of communication unless the government enactment will foreclose an entire medium of public expression across the landscape of a particular community or setting." *Id.* at 1138 (citations omitted). "A time, place, and manner restriction does not violate the First Amendment 'simply because there is some imaginable alternative that might be less burdensome on speech.' " *Id.* (citing *United States v. Albertini,* 472 U.S. 675, 689, 105 S.Ct. 2897, 86 L.Ed.2d 536 (1985)). Further, we recognized that "the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Id.* (citations omitted). "The 'ample alternatives' cannot be taken to mean that each protestor has the right to convey his or her message in the manner preferred by that protestor." *Id.* at 1140. The order afforded protestors a reasonable opportunity to communicate, because "[t]he protestors could reasonably expect their protest to be visible and audible to delegates, even if not as proximate as the protestors might have liked." *Id.* at 1138.

Berger's declaration asserts only that "many[of the locations] are far off the walkways where it is very difficult to notice the performer." [FN3] Giving Berger's assertion the benefit of very generous inferences, we might conclude that some of the City's designated performance locations are less favorable to Berger, because he would not be as close to his audience as he would like. However, the First Amendment does not guarantee Berger the right to convey his message in the most effective manner, in the manner he prefers, or as close to his audience as he might like. *See id.* at 1138-40.

> FN3. The majority also cites Berger's assertion that construction equipment at the Seattle Center temporarily blocked access

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> to certain of the designated performance locations. This assertion is inapposite to the facial validity of the performance location rule. Further, even if construction impeded the use some performance locations for "weeks on end," such a temporary condition cannot be relevant to determining whether the rule provides reasonable opportunity to communicate.

Further, Berger's conclusory expression of opinion does not create any material ***1088** dispute of fact that would foreclose summary judgment in favor of the City. For instance, Burger's declaration does not dispute the location of the designated performance areas as portrayed by the City's evidence. Berger's declaration also does nothing to negate the other facts evident from the record. For instance, the record confirms that the location rule does not exclude performers from the Seattle Center, but limits access to sixteen locations within the forum. The record also shows that some ten million people visit the Space Needle, Key Arena, Pacific Science Center, and the Experience Music Project each year. The map showing the performance locations places the street performers in areas that are plainly accessible to the corridors of traffic and very near places where the public would naturally congregate as they visit the City's famous attractions. The record shows that the performance locations were selected as a result of a public process in which the street performers themselves provided significant input. These sixteen locations provide more than reasonable opportunity to communicate to the five to eight performers who typically perform on the Seattle Center grounds at peak times. Further, if the performance locations prove inadequate for a particular performance, a performer can request special approval for an alternate performance location.

Based on Berger's assertion that "many" of the locations are "far off the walkways," the majority concludes, that "there are conflicting inferences to be drawn regarding material facts pertinent to the dispositive consideration, adequacy of access to the intended audience." Majority Op. 1050. By inference, the majority suggests that the location rule must guarantee a level of access that meets the speaker's subjective expectation, something that our cases have not previously required. In answering whether Berger and other street performers have an objectively reasonable opportunity to communicate, the record shows that the performance locations are all (1) within the Seattle Center, (2) adjacent to pedestrian walkways, and (3) near the Center's most popular attractions. On this basis, the street performers can reasonably expect that their performances will be "visible and audible to [their intended audiences], even if not as proximate as [they] might have liked." *See Menotti,* 409 F.3d at 1138. Berger's assertion is, at most, an expression of his subjective view that the designated locations prevent the most effective form of communication. It does not create conflicting evidence as to whether the performance locations objectively provide "reasonable opportunity for communication." *Id.* at 1141. Therefore, I would hold that the record is sufficiently developed, and the City has met its burden to show that street performers have ample, reasonable alternatives for communication.

IV

I join in the majority's conclusion that the active solicitation ban is unconstitutional as presently written. Yet, I am concerned that the majority opinion could be read to hold that any restriction on solicitation is necessarily content-based and therefore subject to strict scrutiny.

I agree that solicitation falls within the protection of the First Amendment. *See Vill. of Schaumburg v. Citizens for a Better Env't,* 444 U.S. 620, 628-32, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980).[FN4] Contrary to ***1089** the majority's assertion, however, First Amendment jurisprudence generally treats regulation of solicitation as content-neutral. The Supreme Court has characterized "the inherent nature of solicitation itself, a content-neutral ground." *United States v. Kokinda,* 497 U.S. 720, 736, 110 S.Ct.

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3115, 111 L.Ed.2d 571 (1990). Likewise, in *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 648-49, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981), the Court found a regulation limiting solicitation in a public fairground to certain locations to be content-neutral, because it applied to all who sought to solicit funds.

> FN4. I note that *charitable* solicitation has been held to receive the full protections of the First Amendment. "[C]haritable solicitations 'involve a variety of speech interests ... that are within the protection of the First Amendment,' and therefore have not been dealt with as 'purely commercial speech.' " *Riley*, 487 U.S. at 788, 108 S.Ct. 2667 (quoting *Schaumburg*, 444 U.S. at 632, 100 S.Ct. 826). *Non-charitable* solicitation may not be entitled to the same measure of protection as charitable solicitation. *See id.* at 796, 108 S.Ct. 2667. If such solicitation is motivated purely by profit and follows a provision of goods or services, it may be more akin to commercial speech, and not fully protected expression. There has been no argument that the solicitation rule in this case regulates only commercial speech. And it is clear that the regulation applies to both charitable and non-charitable solicitation by street performers. Therefore, the majority correctly applies the test for fully protected expression. Nonetheless, it seems likely that the street performers targeted by the City's regulations perform with an expectation of receiving remuneration. Although the record is not clear, I suspect that most of the street performers are in the business of entertainment and provide entertainment services and accept "contributions" and "donations" as a source of personal income. For them, their craft is their ware and their solicitation is inevitably commercial in nature.

Our own case law confirms that solicitation regulations can be content-neutral. *See ACORN v. City of Phoenix*, 798 F.2d 1260 (9th Cir.1986). In *ACORN*, the solicitation ordinance in question prohibited solicitation of vehicles while they were stopped in traffic. *Id.* at 1267-68. The ordinance provided: "No person shall stand on a street or highway and solicit, or attempt to solicit, employment, business or contributions from the occupants of any vehicle." *Id.* at 1262 (quoting Phoenix City Ordinance § 36-101.01). The ordinance did not ban solicitation of contributions altogether, but only regulated the location and permissible targets for such activity. *Id.* at 1267. The ordinance also permitted other forms of communication (e.g. oral advocacy and distribution of literature). *Id.* We concluded that the ordinance was content-neutral, because it did "not single out any group or the content of any speech." *Id.* We further explained that the ordinance was not passed to suppress any particular viewpoint but "was adopted to promote the city's interest in 'public peace, health and safety.' " *Id.* at 1267-68.

The majority relies on our decision in *ACLU of Nevada v. City of Las Vegas* (*ACLU II*), 466 F.3d 784 (9th Cir.2006), for the proposition that a regulation banning conduct associated with solicitation is content-neutral, while a regulation regulating the speech associated with solicitation is not. In *ACLU II*, we considered whether an ordinance banning solicitation at certain Las Vegas locations was content-neutral. The ordinance prohibited any solicitation, defined as " 'to ask, beg, solicit or plead, whether orally, or in a written or printed manner, for the purpose of obtaining money, charity, business or patronage, or gifts or items of value for oneself or another person or organization.' " *ACLU II*, 466 F.3d at 788 (quoting Las Vegas Municipal Code § 10.44.010(A)). The ordinance was interpreted to prohibit the distribution of handbills or leaflets that solicit money or donations, regardless of whether they involved a request for immediate or future donations. *Id.*

The three-judge panel concluded that the ordinance was not content-neutral because, "in order to en-

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force the regulation, ***1090** an official 'must necessarily examine the content of the message that is conveyed.' " *Id.* at 794 (quoting *Forsyth County, Ga. v. Nationalist Movement,* 505 U.S. 123, 134, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992)). In other words, because law enforcement would have to read the content of the message conveyed to determine whether it fell within the ban, the ordinance was content-based. *See id.* at 794 & 796. The three-judge panel distinguished *ACORN* and prior Supreme Court cases, which had previously held solicitation regulations to be content-neutral, by characterizing those cases as involving regulations of the "act of solicitation" and not "words of solicitation." *Id.* In essence, the panel held that solicitation regulations can be content-neutral only if they regulate "an element of conduct interwoven with otherwise expressive solicitation." *Id.* at 795 (quoting *Lee,* 505 U.S. at 705, 112 S.Ct. 2701 (Kennedy, J., concurring)). But, if the regulation restricts only the speech associated with the solicitation, it is content-based and therefore violates the First Amendment unless it survives strict scrutiny. *See id.*

The distinction, made in *ACLU II* between an "act of solicitation" and "words of solicitation," would not make any difference under the majority's content-neutrality analysis. Based on *ACLU II,* the majority distinguishes the outcome in *ACORN,* reasoning that the regulation there prohibited only an act of solicitation: the immediate physical exchange of money.[FN5] Therefore, under the majority's reasoning, a ban on in-hand solicitation involving the physical exchange of money would be content-neutral. But applying the logic of *ACLU II* to the facts of *ACORN,* the distinction fails to reconcile the different outcomes.

> FN5. While the majority interprets the ordinance at issue in *ACORN* as prohibiting "only the immediate physical exchange of money," I disagree. I read the ordinance as clearly applying to any solicitation of or "attempt to solicit employment, business or contributions" regardless of whether money was physically exchanged. *See ACORN,* 798 F.2d at 1262.

As a practical matter, there can be no act of solicitation without words of solicitation. That is, all solicitation involves expressive speech or conduct. A solicitation is nothing more than a request in which the solicitor communicates, in some fashion, his desire that the person solicited do something, such as give money, join an organization, transact business, etc. [FN6] If there is no such expression, it cannot be said that any act of solicitation has occurred. Therefore, whether the regulation restricts conduct or speech, the applicability of the regulation depends on an evaluation of the content of the speech associated with the conduct.

> FN6. A common dictionary defines "solicit" as "to approach with a request or a plea (as in selling or begging) ... to endeavor to obtain by asking or pleading...." Webster's Third New International Dictionary 2169 (1993).

For example, to determine whether an exchange of money is the result of a solicitation or a voluntary gesture of gratitude between old friends, there must necessarily be an evaluation of both conduct (the in-hand exchange of money) and the expressive communication associated with it. What did the recipient of the money communicate that led to the exchange? If he asked for money, then the regulation applies. If he merely expressed gratitude for his old friend and the donor volunteered the money, the regulation does not apply. Under the majority's reasoning, no regulation that applies to an "act of solicitation" can ever be content-neutral, because conduct only becomes an act of solicitation when it is associated with words of solicitation. And to find words of solicitation, there must necessarily be some evaluation***1091** of the content of the communication associated with the conduct.

Under the majority's reasoning, the ordinance in *ACORN* should have been held to be content-based, because to determine its applicability, law enforce-

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ment was required to evaluate the content of communications to determine whether individuals standing alongside stopped vehicles were asking the occupants for money, as opposed to simply communicating their views on political issues. Therefore, either *ACORN* or *ACLU II* was wrongly decided. Given the broad treatment of general solicitation regulations as content-neutral, I suggest the latter. In my view, *ACLU II* took the term "content-based" to its literal extreme and employed a hyper-technical analysis that effectively precludes any reasonable time, place, or manner restrictions on solicitation. Consequently, I find the majority's reliance on *ACLU II* to be misplaced.

The mere fact that a regulation requires an evaluation of the content of a communication is not determinative as to whether the regulation, on its face, is an impermissible content-based regulation. *See Ctr. for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff Dept.*, 533 F.3d 780, 789 n. 5 (9th Cir.2008). Any regulation of solicitation necessarily requires an evaluation of the communication to determine whether it falls within the regulation. But such an evaluation is not necessarily dependent on the substantive content of the message. It turns, instead, on the general character or form of the communication or the type or class of speech involved.

In Hill v. Colorado, 530 U.S. 703, 722, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000), the Supreme Court upheld a Colorado statute banning any leafletting, displaying of signs, engaging in oral protest, education, or counseling within eight feet of any person within a radius of one-hundred feet of a health care facility.[FN7] The Court considered whether such a proscription was content-neutral, because enforcement of the statute required an examination of the oral statements made by a person suspected of violating the statute. *Id.* at 720, 120 S.Ct. 2480. In holding the statute to be content-neutral, the Court noted:

> FN7. In *Hill*, the challenged statute provided, "No person shall knowingly approach another person within eight feet of such person, unless such other person consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door to a health care facility...." *Hill*, 530 U.S. at 708, 120 S.Ct. 2480 (citing Colo.Rev.Stat. § 18-9-122).

> It is common in the law to examine the content of a communication to determine the speaker's purpose. Whether a particular statement constitutes a threat, blackmail, an agreement to fix prices, a copyright violation, a public offering of securities, or an offer to sell goods often depends on the precise content of the statement. We have never held, or suggested, that it is improper to look at the content of an oral or written statement in order to determine whether a rule of law applies to a course of conduct.
>
> *Hill*, 530 U.S. at 721, 120 S.Ct. 2480. The Court reasoned that even if a "cursory examination" were required to determine whether the statute applied, such an examination would not be problematic. *See id.* at 721-22, 120 S.Ct. 2480.

First Amendment case law demonstrates that we afford varying degrees of protection to different *types* of speech. Political speech, for example, is at the core of First Amendment protection and any restrictions placed upon it must weather an exacting, strict scrutiny. *See, e.g.*, ***1092***McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995) (citing *Roth v. United States*, 354 U.S. 476, 484, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957)); *ACLU of Nevada v. Heller*, 378 F.3d 979, 988 (9th Cir.2004). In contrast, purely commercial speech has been afforded a more "limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values." *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456, 98 S.Ct. 1912 (1978). Presumably, a regulation that applies only to commercial speech re-

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quires an evaluation of the content of the speech to determine the character or type of speech (whether it is commercial). Yet, this type of evaluation has not generally been held to be content-based and does not trigger strict scrutiny review. In the same way, an evaluation of a particular communication to determine whether it is a solicitation is not based on the substantive content of the message or the viewpoint of the speaker. It is, instead, a cursory evaluation to determine the general character or form of the speech itself. This evaluation of form does not make the regulation content-based.

Further, in the abstract, a simple solicitation of funds does not necessarily involve the exposition of any ideas. As the Supreme Court has stated, charitable solicitation falls within the greater protection of the First Amendment, because it "is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues." *Schaumburg,* 444 U.S. at 632, 100 S.Ct. 826. "[C]haritable appeals for funds ... involve a variety of speech interests-communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes-that are within the protection of the First Amendment." *Id.* Consequently, the substantive content of a solicitation triggering constitutional protection is not the mere request for funds, but the viewpoints, ideas and persuasive speech that are intertwined and communicated with the solicitation. A regulation that asks only whether the communication is a solicitation of any kind does not require an evaluation of any substantive content. Therefore, the type of evaluation required by a typical solicitation regulation (i.e. whether the communication is a solicitation) is not the type of content-based evaluation that the First Amendment disfavors.

In my view, a solicitation regulation is content-neutral if (1) the underlying purpose of the regulation is not to suppress a particular viewpoint or any substantive idea; [FN8] (2) the regulation, on its face, does not single out particular substantive content for differential treatment; [FN9] and (3) the regulation does not single out a particular group.[FN10] In other words, if a solicitation rule applies even-handedly to anyone who solicits, it is content-neutral. *See Heffron,* 452 U.S. at 648-49, 101 S.Ct. 2559.

> FN8. *See Ward,* 491 U.S. at 791, 109 S.Ct. 2746 (stating that the government's purpose in adopting the regulation is the primary consideration).
>
> FN9. *See Foti v. City of Menlo Park,* 146 F.3d 629, 636 n. 7 (9th Cir.1998).
>
> FN10. *See ACORN,* 798 F.2d at 1267 (a restriction on solicitation that "does not single out any group or the content of any speech" is content-neutral).

However, I join the majority in invalidating the City's active solicitation ban, because this particular regulation does more than generally ban solicitation or regulate only the manner of solicitation. It singles out a particular group that is defined, in part, by the medium through which they express themselves and the substantive message they convey. It also requires more than a technical evaluation ***1093** of the general character of the communication. To enforce the ban, an official must first determine whether the communication was a solicitation (which would be a permissible content-neutral evaluation). The official must then determine whether the solicitation was active or passive (also a content-neutral evaluation). If the speech is an active solicitation, then the rule requires the official to (1) determine who made the solicitation and whether that person is a street performer, and (2) evaluate whether the active solicitation was made in connection with the street performer's artistic expression or performance (as opposed to soliciting funds for some other cause). As written, the rule targets only those involved in artistic expression. In my view, it improperly focuses on who is doing the soliciting and for what purpose they are soliciting, converting the rule into an impermissible content-

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based regulation.

C.A.9 (Wash.),2009.
Berger v. City of Seattle
569 F.3d 1029, 2009 Daily Journal D.A.R. 9302

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RECOMMENDING COMMITTEE MEETING OF
August 3, 2010

VERBATIM TRANSCRIPT – ITEM 3 – BILL NO. 2010-31

UPDATES THE REGULATIONS GOVERNING CERTAIN COMMERCIAL, ENTERTAINMENT AND SOLICITATION ACTIVITIES WITHIN THE PEDESTRIAN MALL. PROPOSED BY: BRADFORD R. JERBIC AND COUNCILMAN GARY REESE

APPEARANCE LIST:

RICKI Y. BARLOW, Councilman

BRAD JERBIC, City Attorney

STAVROS S. ANTHONY, Councilman

BEVERLY K. BRIDGES, City Clerk

BETSY COMELLA, City Attorney's Office

UNIDENTIFIED MALE

VAL STEED, Chief Deputy City Attorney

JIM NICHOLS, Deputy City Manager

JEFF VICTOR, President, Fremont Street Experience, LLC

GABRIELA PORTILLO-BRENNER, Deputy City Clerk

MAGGIE McLETCHIE, Staff Attorney, American Civil Liberties Union of Nevada

(9:04 - 11:52)

2 hours 46 minutes

Typed by: Gabriela Portillo-Brenner/Vicky Skilbred

Proofed by: Angela Crolli

COUNCILMAN BARLOW

Now we'll move to Abeyance Item, Bill No. 2010-31, which ups, updates the regulation (sic) governing certain commercial, entertainment and solicitation activities within a pedestrian mall. Proposed by Bradford R. Jerbic, City Attorney, and Councilman Gary Reese.

Brad, like to hear from you.

BRAD JERBIC

Thank you, members of the Committee, Councilman Barlow, Councilman Anthony, Brad Jerbic from the City – Attorney's Office. I've prepared a PowerPoint that will help walk you through several things this morning that will explain four things. The first part is dedicated to the history of the Fremont Street Experience, and I think it's necessary to understand how we got where we're at. The next portion is devoted to the history of the litigation. The next portion is devoted to the reason for regulations in the Pedestrian Mall. And the last portion is devoted to Bill No. 2010-31, being the ordinance that's before you that proposes to impose these regulations.

With that, let me start with the history of the Fremont Street Experience. The Fremont Street Experience was conceived in the early 1990's as a way to draw people to the ailing dent, ailing downtown gambling area. The, a number of proposals were heard before the Fremont Street Experience project was the project that was decided upon. There was a project called Las Venice (inaudible) that was a dug out on the street and (inaudible) and boats. There was (sic) other projects that involved building a replica of the structure, a (sic) enterprise that would have elevator ramps going down to the hotel/casinos. Ultimately, the Fremont Street Experience, designed by the (inaudible) Corporation was selected as the project.

The street was permanently closed and, to vehicular traffic in 1994, and the structure began that year, and the Fremont Street Experience opened a year later, in 1995. It's a cooperative venture, owned, operated by a group of downtown hotel companies, with ongoing involvement by the City of Las Vegas, and I'll get into that in a moment. If you have any questions, by the way, as I go through this, please feel free to stop me and ask.

The original Fremont Street Experience, as conceived, was the Fremont Street Experience Canopy, which then did not have lights under it; it had sky floats under it. These were floats that zipped up and down a line and up and down the street, and were based in the parking garage, where they were operated and maintained. It – always included the removal of the streets and sidewalks, to be replaced by a pedestrian mall. The construction of the parking garage and the Fremont Street Experience was also contemplated between Fourth and Las Vegas Boulevard.

I just wanna point out that before the project, the sidewalks had always been opened to speech, but that the former street itself had only been used for vehicular traffic. In order to make this deal happen, the original four-party agreement was drafted in October of 1993, included four entities: the City of Las Vegas, the City of Las Vegas Redevelopment Agency, the Fremont Street Experience Limited Liability Company and the Fremont Street Experience Parking Garage, Limited Liability Company. So, this is, when I refer to the four-party agreement, these are the four parties that are involved. And, let me just state, the Fremont Street Experience Limited Liability Company has the same members as the Fremont Street Experience Parking Garage Limited Liability Company. One is in charge of the garage; the other in charge of the Experience and the operation and management of the Experience.

COUNCILMAN ANTHONY

It's like that today?

BRAD JERBIC

That's correct.

COUNCILMAN ANTHONY

Okay.

BRAD JERBIC

That's still to this day, same management (inaudible). There may be some slight tweaking of the individual members of the LLC, so, as you're aware a number of the hotel/casinos sold, some members may have dropped in or dropped out. I think they added members as opposed to lost members, but, nevertheless, that's essentially the same group that's existed since 1993.

In September of 1995, the four-party agreement was amended and restated to reflect the final version of the Fremont Street Experience and the parking garage. So, things happened in those few years. One, the project evolved, from just a pedestrian mall with its (inaudible), the sky parade to the Pedestrian Mall with a light show, there was no longer a need to house the parade in the parking garage, so it became just a parking garage.

A number of things, though, came up during the course of the construction that needed to be addressed. One was, the parking garage sat on a site that was largely controlled by the City, but a number of parcels had to be condemned and acquired by the City. We estimated the amount of money that would be necessary, to acquire those parcels, about $6.4 million, knowing it could

well go over 6.4. The question became: What would happen if it did? So, the amended agreement also memorialized the fact that the Fremont Street Experience Parking Garage, LLC, would pick up the cost and any overage, overruns on the acquisition cost of the – land for the parking garage. So, memorialize the final project, the light show, memorialize who's responsible for the acquisition of the property overruns.

Again, Fremont Street is responsible now for the operation and maintenance of the Fremont Street Experience, including, but not limited to, the operation and maintenance of the Pedestrian Mall, and operation and maintenance of the canopy light show. When I say canopy and light show, until a few years ago, that canopy wasn't LED; it was light bulbs, and every light bulb needed changing from time to time, and the electricity cost was enormous. The Fremont Street Experience, LLC, was responsible for operation and maintenance of that canopy, and the canopy as it exists today, with the LED's, responsible for the electric bill, responsible for programming the computers that generate the show, responsible for maintenance of the mall, for the watering of the trees, for cleaning up every stick of gum that somebody spits out on the mall. All operation and maintenance, it's a hundred percent Fremont Street Experience, LLC.

The Fremont Street Experience Parking Garage is responsible for repaying taxpayers, the cost overruns and acquiring the property for the parking garage, that comes out of the net retail proceeds from the retail on the first floor of the parking garage, which today consists of Walgreens, Hennessey's and Mickey Finn's. That net retail proceeds comes to the City of Las Vegas until we get paid back all the overage cost. So, we have a direct financial interest in the success of the parking garage itself. The Fremont Street Experience, LLC, derives all of the profits from gross revenues of the Pedestrian Mall, to offset the cost of operations and maintenance, including the leasing of retail space in the mall, special events and any other

commercial use permitted by the development agreement. Which means that all the things I just discussed that Fremont Street pays for, electricity, light show, the maintenance of the canopy, the computer programming, and alike. They fund out of pocket that portion which isn't raised by retail profits from the mall. That is largely the sale of the kiosks, the rental of the kiosks of the mall. That is any left over money from – the net retail, after (inaudible). That is any other money they raise from special events, like closing the street for New Year's Eve, and things like that.

How was the Pedestrian Mall funded? This is also important to understand. There were four main sources of revenue that built the Fremont Street Experience. The first was a room-tax bond. The hotels on Fremont Street agreed to have imposed on them an additional two percent tax on rooms. And those hotels just a block or two off of Fremont, agreed to a one percent additional tax on rooms. That allowed accountants, and alike, to look at a revenue stream that that would produce, and they could estimate what kind of bond you could issue, based on that revenue stream. That generated a bond of approximately $20 million; it was in the 18, 22 million dollar range. But it – generated a bond worth, at that much, a twenty-year bond. Again, the payment of that bond falls on the taxpayers, unless the room tax is sufficient. So, success of the rooms, room revenue is critical paying back that bond issue. The tax increment bond is funded by the tax increment generated by the Redevelopment Agency. Which, back then, wasn't terribly much, so we maximized the bond to get every ounce of tax increment financing we could out of it. And was, again, an 18 to 20 million dollar bond. That bond is – pretty good today, because tax increment of the Redevelopment area has gone up instead of down. So, if you have any questions, I'd be glad to address them. But that's how the tax increment bond works.

There was a contribution from the Fremont Street Experience; that is, the member entities of the LLC contributed money to, one, when the change was made, to upgrade from floats to a light

show, there were additional costs involved. That was all absorbed by the Fremont Street Experience. In addition, they were in for another 10 to 15 million dollars of their own money to make the project work. And the final thing, and this becomes important because of just the bad publicity and – misconceptions that occurred as a result of it. There was a six million dollar grant from the Las Vegas Convention and Visitors Authority. This was a one-time grant. For the first six years of the project, LVCVA gave a million dollars a year. That's long expired. For the six years of the project, beginning in '95, $6 million a year, where it was given to the project, a million dollars a year.

Who owns the Pedestrian Mall? Before the Pedestrian Mall was constructed, as I said, it was sidewalk and street. Street is called right-of-way. Streets are things that are owned by the City for a particular purpose. In this case, right-of-way, vehicular traffic. We cannot sell streets; we cannot sell sidewalks. The method that cities get rid of those things is called vacation. So, when you see on the afternoon agenda of the City Council to vacate a street, or vacate a sidewalk, or a portion thereof, that's how we give things back. It says, we don't need them anymore. And by operation of the law, the underlying interest reverts back to the adjoining property owner.

So, Councilman Anthony, if you and I have a house across the street from each other, and there's a street down the middle of it, and it's decided that the street is no longer needed, and it's vacated, I will now own everything from the front of my property line to the center line of the street. And you will on your side as well. That's how it works when you vacate your interest in something. Again, we could not sell the street to the Fremont Street Experience, we could not give it to the Fremont Street Experience; we could only vacate it or try and convert it.

Here's the problem. Unlike most places in the City of Las Vegas, where you own the dirt under your house, and it would go to the center onto the road, if we vacated the street, the hotels

downtown are not built on parcels they own. For the most part, every hotel downtown is built on leased parcels, and some case (sic) multiple-lease parcels. And, I think at the time we did this project, there were 95 sub-parcels. I could be off on that number, but it was right in that area. And, as a result, if the street were vacated, the ownership interest would not go to the hotels from the centerline; it would go to the lease holders that had the property that they leased the property from, to the centerline. Which would mean you would have to assemble about, you know, 80, 90 people that have no interest in running hotel/casinos, but just leasing their property to try and make the Fremont Street Experience Pedestrian Mall happen. And that, practically, was absolutely impossible. So, vacating the street was not an option.

But what we ended up with was whether or not we could actually build a pedestrian mall on the former street. And we worried that if we used it for something other than vehicular traffic, it would be a de facto vacation, which would mean it would revert back anyway, 'cause you treated it like it wasn't a street anymore. And because you weren't using it as a street, it ended up in the hands of the leaseholders that leased the property of the casinos.

We went to the Nevada Legislature, and we had the law changed. NRS 268.812, Subsection 5, now allows the City of Las Vegas to convert right-of-way into pedestrian mall without losing the ownership or the control of the property (inaudible). So, the answer to the question: who owns the Pedestrian Mall, is, the City of Las Vegas owns the dirt under the Mall and the surface of the Mall, but the improvements to the top of the Mall, the canopy and everything, were built and paid for by the Fremont Street Experience.

Another myth that has existed over the years off and on, is that the Fremont Street Experience was funded using park money, or in some way is a park, or works like a park. Let me destroy this myth once and for all. The Las Vegas Convention and Visitors Authority is allowed to exist

under Nevada Law 244(A).599. If you look at that section of Nevada Law, you will see it doesn't say convention and visitors authorities. It says County fair and recreation boards. The Las Vegas Convention and Visitors Authority is a fancy name they picked for a County fair and recreation board. That's what they were organized under. And County fair and recreation boards have the authority to do certain things, and fund certain things. And there's a list in NRS 244(A) alludes things they can fund –

END RELATED DISCUSSION – RESUMED RELATED DISCUSSION

BRAD JERBIC

I'm sorry. For the record, we had a glitch in the recording. We're back on the record, and, so, I'm gonna just repeat the last few sentences of this slide. Next (inaudible) Fremont Street Experience funded using park money or is it a park? There was a misstatement made years ago that led to this myth, that the Fremont Street Experience is either a park or was funded with park money, and I would like to destroy that myth today once and for all.

First, it's important to understand that the six million dollar grant that came from the Las Vegas Convention and Visitors Authority was a one-time grant, but it's, so it's important to understand how they're able to make that grant, under what authority do they have to make a six million dollar grant to the Fremont Street Experience. The LVCVA –

COUNCILMAN ANTHONY

Brad –

BEVERLY BRIDGES

What?

BRAD JERBIC

– is created and organized under NRS 244(A).599, which doesn't say anything about convention and visitors authorities. What it does is it gives counties the authority to form county fair and recreation boards. So, the LVCVA is really a county fair and recreation board, and county fair and recreation boards have their own restrictions and their own limitations as to what they can do. There's a list in the Nevada Revised Statutes that says, if you have one of these boards, you can fund certain things. One of them is recreational facilities. One of them is fair grounds. One of them is parks, and there's a whole laundry list.

We were concerned whether or not the LVCVA, as the County Fair and Recreation Board, could fund a pedestrian mall under the Nevada Revised Statutes. To make it abundantly clear that it was perfectly permissible for them to fund it, we asked that the Nevada Revised Statutes be changed. So, NRS 268.816, Subsection 3, was amended in 1993 to make it clear that a pedestrian mall is a recreational facility, not a park, a recreational facility eligible for funding under NRS 244(A).599. No park money was ever used to construct the Fremont Street Experience, nor has Fremont Street Experience ever been a park.

After the four-party agreements were executed, that said who's gonna manage the Experience, how the Experience is gonna be built, what the Experience is gonna be, what the sources of funding are, who's gonna be responsible for the over, overruns and con, and property acquisition, was also important to enact a couple of ordinance, ordinances to deal with conduct and the Mall itself. In 1993, the City adopted the very first ordinance regarding the Pedestrian Mall, the first

Pedestrian Mall ordinance, which established the Fremont Street Experience Pedestrian Mall, set its initial boundaries, set what the perimeters of the Mall were, and charged the FSE, LLC, with managing and operating the Pedestrian Mall. It also prohibited a number of things in the Mall. It prohibited parades, bicycles, unicycles, skateboarding; things of that nature. It also prohibited solicitation. At the same time this ordinance was adopted, or I should say within three months of it, the City enacted – a new solicitation ordinance to reflect – new laws across the country with respect to having to regulate solicitation.

So, in January of 1995, the City adopts Ordinance No. 3862, creating new definitions of solicitation and coercion, and limiting the places a person can solicit, and prohibiting solicitation within the Pedestrian Mall.

Let me stop there for a moment. There's a definition in this section of the law as to what solicitation is. Then there's complete prohibition City-wide, not just within the Fremont Street Experience, that prohibits coercive or aggressive solicitation. That has never been disturbed, the coercive solicitation hasn't. The courts have had problems, as we'll discuss in a moment, with the definition of solicitation itself and whether or not it's content neutral and – countered all the qualities that the Ninth Circuit wanted to see. But coercive solicitation, generally speaking, across the country, cities that have banned coercive or aggressive solicitation have been upheld over and over again.

The other thing in this ordinance that has been upheld over and over again across the country are bans on places people can solicit. A number of cities have adopted an ordinance that prohibits solicitation within 20 feet of an automatic teller machine. Those have been upheld, because you're a captive audience at an automatic teller machine. The money's coming out, or the person asking for money is standing right there. Within 10 or 20 feet of the entrance to a business, the

City picked 10 feet, but there are cities that have gone even more than 10 feet, from the entrance to a business, cannot solicit. Upheld over and over again.

Anywhere within a public transportation facility or upon a public transportation device, like a bus or a commuter train. Again, captive audience. That's been upheld over and over again across the line. Anywhere in a public parking garage. We looked at those laws and those cities, adopted their history and put those laws on our books. And we added one more thing, and we thought we made a record that would sustain it. We added a complete ban on solicitation within the Pedestrian Mall.

Let's talk about the Fremont Street Experience, as it exists today, and we'll get to the litigation in a moment. Currently, the Pedestrian Mall is a major tourist attraction in the downtown area. It occupies the western most five blocks of Fremont Street. I can stop right here and add that, it has been added to since it was originally conceived. There were cul-de-sac bulbs on First Street and Third Street on both ends. The Fremont Street Experience has been expanded from Third Street. Now it goes all the way to Ogden, and First Street went all the way to the street immediately to the south. Those cul-de-sac bulbs, (inaudible) went past those.

The main attraction is the canopy itself. More than 12 million dollar, or 12 million LED lamps illuminate the overhead canopy. The primary focus, create an environment of entertainment, retail and outdoor dining opportunities. It's also home to the Neon Museum, which places historic signs, which is another addition to the Mall since it was built. The other thing that's happened since the Mall was built is you've seen a Starbucks outside the Golden Nugget, so there's outdoor dining there at that location, down the block that is the form, formerly known as the Neonopolis block, there are outdoor dining experiences there at Hennessey's, Mickey Finn's

and at the former Jillian's location. You also see kiosks up and down the street, which we're gonna talk about in a moment as well.

That's pretty much the Fremont Street Experience as it is today. The same four-party agreement is in place. It's been amended several times, same financial relationship.

The conclusion is this: Was it originally conceived as a privately operated and managed public attraction, although built on publicly-owned land? That's how it was conceived. The revenue derived from the commercial operation alone would be used to operate the light show and maintain the Pedestrian Mall, and no taxpayer money would ever be used to operate and maintain the Fremont Street Experience. Our money was the upfront money on the bond issues, which still haven't been paid. The downstream benefit was we'd never put another dime into maintaining Fremont Street or the Experience again.

Litigation, inevitable. ACLU versus City of Las Vegas, Case No. 9701419, began in 1997. The first lawsuit filed by the ACLU alleged that the solicitation and Pedestrian Mall ordinances were unconstitutional because they prevented solicitation, leafleting, unauthorized vending and the unauthorized erection of tables and structures in the Mall.

Let me stop for a moment. I'm using the word leafleting today. As it appeared in the original ordinance, it didn't say leafleting. It said the handing out of materials to passerbys (sic), or words to that effect. When I use the word leafleting, I'm referring to that language. So, I don't want somebody to correct me later in the record and saying that that was an inappropriate use of the term. I'm aware that I'm substituting the word leafleting for it. That's exactly what handing out papers to passerbys (sic) is. It's leafleting, not handbilling (sic).

The Federal District Court upheld the solicitation banning and tabling banning. That's the local Federal District Court here in Las Vegas. But it enjoined the enforcement of the leafleting and

vending restrictions. Each side appealed the decision that the Ninth Circuit dismiss these appeals. Let's stop there for a moment to say that in the original ordinance, the City carved out an exception for labor activities. We felt that while the constitution gave you x-amount of protection, the National Labor Relations Act gave unions even more protection. And we felt that in the original ordinance, we recognized that additional protection, that the National Labor Relations Act gave unions to handbill, picket, or things of that nature, and we made an exception for them. The local District Court did not like that exception, felt that it we couldn't legally do that, to add in, to – opt out of that. So, they ruled in favor of the ACLU in that issue, and on the tabling, and favored with the City on the other issue.

The Federal District Court granted a summary judgment for the City in 2001, but with regard to solicitation and tabling ordinances, granted a summary to the ACLU with regard to (inaudible) leafleting and vending ordinances. The ACLU challenged the constitutionality of the provisions of the Pedestrian Mall relating to prohibitions involving free speech. The Federal District Court of Nevada upholds most of the provision of the ordinance, pretty much like a summary judgment motions back and forth, but now we're into the merits of the case. A summary judgment is when a court says there are no issues of material fact. We don't need to have a hearing, and based on what is in the record right now, I'm able to make a decision as to who's right or who's wrong. Everybody tried to appeal that to the Ninth Circuit. They didn't want to hear the appeals from the summary judgment. They wanted the final ruling from the court. So, the court in 2001 upholds the, most of the provisions of the ordinance, but, most importantly, made a finding that the Fremont Street Experience was not a public forum. That finding was later gonna be overturned by the Ninth Circuit. I'll get into that in a moment. But when you make a finding that an area is not recreational public forum, all you need is a rational relationship between what you're trying

to accomplish and – what your goal is and what the problem is. It's a very lull standard. A very different standing than what I'm about to get into in a moment. Then we felt that under that standard, the City of Las Vegas met the test, for the most part, in the original ordinance. Didn't meet the test, when it came to tabling and this labor exemption that we had carved out. The ACLU then appealed that decision to the Ninth Circuit Court of Appeals.

The Ninth Circuit, in that appeal, determined that the Pedestrian Mall should be classified as a traditional public forum for the purposes of First Amendment Analysis. Evaluating the ordinances under the more demanding standard in a traditional forum, the Ninth Circuit upheld the injunction against leafleting and vending and remanded the case. So, the ACLU on the two issues that we appealed on, was upheld by the court. On the two issues they appealed us on, we were overruled by the court, and sent back to the District Court, who said, District Court, you got it wrong. It's a traditional public forum, you have to apply the more demanding task to see if these restrictions still pass constitutional muster.

The Ninth Circuit recognized that all the ordinance is, at that time anyway, including the vending restriction, were content neutral time, place and manner restrictions. Back again in District Court. The Court reanalyzes the solicitation and tabling ordinances, and then held the solicitation banned as a valid content neutral time, place and manner restriction, even under the more strict public forum analysis. Under that analysis, you have to have a substantial interest, as a government, in the regulations. You have to leave alternative channels for communication open when you use these time, place and manner restrictions. And they felt, at least the local District Court felt that we had. Additionally, the Court granted certain judgment for the ACLU in its claim on the table. Again, this labor stuff is still in there. They won on that and on the tabling portion.

Back again. Third time in the Ninth Circuit Court of Appeals, and this time the Ninth Circuit overturned everything that the City of Las Vegas had done and validated all the prohibitions in the Pedestrian Mall ordinance against solicitation, leafleting, tabling and vending in the Pedestrian Mall. With the ordinance pretty much gutted and out the window, the City adopted new legislation. The City felt, at the time, that we were complying, and we still feel that we complied with the Ninth Circuit decision. The City eliminated the ban on leafleting found in the Municipal Code at Section 11.68.100, Subsection 1, and removed the exception for labor related activities. The section I mentioned that we carved out for labor. We removed that from the Code. The City also adjusted the definition of solicitation. We felt to comply with the language of the Ninth Circuit Decision and the ACLU filed the challenge for the new Pedestrian Mall ordinance. Back again in Federal District Court locally. The Federal District Judge granted a summary judgment in March 2009. The result was the definition of solicitation was declared unconstitutional. Even though it had been adjusted, the new judge felt that there were still some problems. The prohibitions against Mall vending, advertising and entertainment were declared unconstitutional. The prohibition against erection of tables and other structures was declared unconstitutional. And the prohibition against solicitation was declared unconstitutional. So, both the definition of solicitation and the prohibition against soliciting in the Mall, both unconstitutional.

That's where we're at today. Since then, there have been some discussions as to what the judge's order means. There have been some agreements as to how the Fremont Street Experience security will enforce the law, or in the Pedestrian Mall, given the judge's decision in 2009, I can tell you, as counsel for the City, there's nothing in the judge's order that says the City can't adopt new ordinances. That's what we're here to discuss today.

Before we get to the new ordinance, discuss why our regulation is necessary in the Pedestrian Mall. No regulation means there'll be no viable commercial opportunity in the Mall for the commercial activity that's out there, specifically, the rental of kiosks and other stakes in the Pedestrian Mall. As I mentioned before, as originally conceived, the Pedestrian Mall was a commercial entertainment complex. The Fremont Street Experience, LLC, has the ability, and (inaudible) control of the Mall, operate the Mall and maintain the Mall. They have the opportunity to rent portions of the Mall and use portions of the Mall for the commercial benefit of the Fremont Street Experience, which has a collateral benefit to the City of Las Vegas. That commercial revenue derived from those kiosks and the sale from those kiosks on Fremont Street, and from any other retail sales, from the closing of Fremont Street on New Year's Eve, to the New Year's Eve party, and any other event that they charge money for, to the money they pay for bands to attract more people downtown that fill more rooms and help pay the room tax bonds. We benefit collaterally from the retail that exists on Fremont Street. And those commercial opportunities are severely disruptive as a result of new regulation, and I'll get into the case for that in a moment.

Unregulated speech also competes with the primary purpose of the Mall. This wasn't built to be a soapbox. This was built to be a place where people could come and enjoy the light show at night, which runs about every hour, after the sun sets. The stage shows, there are two stages on First Street and Third Street where they have live performances on a regular basis. For special events, there are car rallies down there. I went to an antique car show down there a couple of months ago. When NASCAR's here, they do events related to it. There are probably a plethora of special events, including New Year's Eve, that Mr. Victor, the President of the Fremont Street Experience is in charge of staging, and he'll talk about that in a moment. The retail kiosks and

outdoor cafés that I mentioned earlier, those are all disrupted and hampered without regulation of the Mall, and we'll see how in a moment.

Let me go to the first video. Now, before we play this, Betsy (inaudible), I'm sorry, Comella, is my legal assistant who is going to run the video here, and I'll show you (inaudible). I wanna state a couple of things before we go to these. These are snippets of larger videos, and anybody who wants to see the full videos can have access to them at any time. If the ACLU wants copies, I'd be glad to provide you copies of everything. These are the relevant portions I wanted you to see so you know what's going on in the Mall. One of the things I wanna qualify before playing these videos, many of these have got content that is of a religious nature. In other words, this is an anti-abortion protest. There'll be a – pro-Jesus protest, for want of a better term. I'm not playing these for the content of the video. It doesn't matter what these people in these videos are talking about. So, when we see the content, I don't want you to consider the content. I want you to consider several things I'm about to point out. The amount of space they take up. The type of mechanism they use to deliver their message; in other words, amplification systems. The type of structures they bring with them to the Mall. And the amount of pedestrian traffic that they interfere with in the Mall. And what happens to the flow of pedestrian traffic, to the use of the retail kiosks, and the traditional use of the Mall while these activities are underway.

Betsy, will you play the first video, please. This occurred earlier (inaudible) 2009, or last summer 2009. You'll see the distraction. This is a loud speaker in the middle of the structure. These are metal structures, metal pipes bolted together with foam board in-between. You can see they're 20, 30 feet long, all bolted together, and probably 8 to 10 feet deep. They were in front of all of the businesses, including Third Street and Fourth Street, on the north side of the street, and adjoining the kiosks. Again, using the loud speaker system. This is the gentleman on the loud

speaker. You can see the people around the signs are watching the people associated with putting up the signs. You don't see tourist traffic. You don't see people walking by. You can see them walking on the outskirts of it.

Let's go to the next video. (Inaudible) sorry. I gotta do this. Oh, you got it. This is the next video. These are the kiosks around the same display you just saw with the audio system. Play the video. You'll look at these kiosks, and you'll love this, there is not a pedestrian or a tourist around any of them. In fact you won't even see the vendors themselves around their own kiosks. While this activity is taking place in the Mall, the kiosks adjoining the activity were essentially vacant and almost abandoned, with the merchandise just sitting there. Mr. Victor, who was present for most of this, who saw the videos, will also authenticate them and verify what I've put on the record.

Next video. Mall entertainment. You know, I guess, entertainment is in the eyes of the beholder, and there will be some argument that some of this entertainment is protected by the First Amendment Speech or (inaudible) some such thing. We beg to differ, and I would like to provide you a couple of examples of the type of entertainment that has been occurring unfettered in the Fremont Street Experience Pedestrian Mall. This is Mr. Animation. Play the video, please. You can see Mr. Animation sets up in the Mall. He's in the intersection. This looks like, this is Third Street. A circle of people around him, many, many people, nobody's walking through the middle of the wall now because of the crowd that he's attracted. Mr. Animation is out there for purely commercial purposes. At the end of the video, you're gonna see him step off the stage. Individual to the right has got a handful of cash. Mr. Animation is gonna grab a large, black bag and he's gonna walk around with this black bag while people put money. Unfortunately, the video that we played for you today has been cut a little short. It continues on for another couple

minutes, and the full video will be entered into the record. You'll see they're also selling his DVD's.

Again, this is not activity that was authorized by the Fremont Street Experience, neither programmed by the Fremont Street Experience. It's kind of an ad hoc thing that happens downtown.

Next video. Well, that looked a lot, let me go back. Let me see if I can do this. I'll try again. This, again, is another group that came downtown. Just ad hoc, set up tables, amplification systems, microphones, set up a choir. And don't pay any attention to the content; pay attention to the conduct. The conduct, again, taking up an enormous portion of the Pedestrian Mall, around the kiosks, and the like, as seen, a few people watching from the outskirts. No tourists, no activity going on within the area that this group has taken for themselves for their expressive conduct. Again, look at the size of the tables and the fact that they have the amplicated (sic). And, again, outdoor café tables, completely abandoned, nobody standing there.

COUNCILMAN BARLOW

Brad.

BRAD JERBIC

Um, hum.

COUNCILMAN BARLOW

I just noticed something in this video. If you could just go back. Can you rewind that a little bit? Or you, it goes back to the beginning?

BETSY COMELLA

Replay?

COUNCILMAN BARLOW

Yeah, replay. If – you notice the gentleman in the left-hand corner, in just a moment, he's –, look like, yeah, about right there, looks like he's handing something out. Hold on. It's right after this. As a tourist was passing by. It's coming up. Here it comes. Right there. The gentleman in the yellow shirt.

BRAD JERBIC

Yeah.

COUNCILMAN BARLOW

Right there.

BRAD JERBIC

I don't know who he's associated with or what he's doing. But we'll talk about hand billing and leafleting in a moment. That is not the activity, oddly enough, I want you to – take away from this. I want you to remain with the size. There's an enormous amount of space that they occupy, and the inconsistency of this activity with the kind of activity this Mall was designed to promote, which is commercial, entertainment activity.

UNIDENTIFIED MALE

Commercial.

BRAD JERBIC

Is this the next one?

BETSY COMELLA

No.

BRAD JERBIC

There it is. Again, now we're going to see what happens at night. Another group. Play the video. I want you to notice, this looks like a portaphone (sic), it looks like a megaphone, he's got it hanging around his shoulder. This is at night. You can see the lights are out. The light show is about to begin, or shortly, has just ended. He's out with the megaphone, walking around the Mall. Again, here's another individual. I don't know what kind of expressive conduct he's entering into here, but he is apparently having some very lively conversation with the tourists at the side. You can see when the lights go dark and the show begins, the amplification system doesn't stop, neither does the activity. This is completely inconsistent with the whole purpose of having a light show and sound show that goes with the light show.

Next video. This is another group of individuals that were downtown for gay pride about a year ago. Go ahead and play this. What you're gonna see, this is 4th Street. Fourth Street is one of the two areas, as you're aware, that vehicular traffic crosses the Pedestrian Mall. Their expressive activity attracts a crowd that you'll see (inaudible) step forward, but as the camera goes down,

you're going to see that this expressive activity has essentially created a plug on the 4th Street and the Fremont Street Experience, to the point where people are standing in the street can't get into the Pedestrian Mall. In a moment, you're gonna see, as the video pans to the right, you're gonna see the gates that close the street for the parade are still open. The street is still open to vehicular traffic. And, as a result of the conduct that you're seeing out here, forget the content, you're looking for conduct, of individuals standing in the middle of a travel street. They, (inaudible). Once, again, at night, another individual. Literally, it appears, play it, Betsy, literally, it appears, standing on his (inaudible) on his soapbox in the middle of the 1st Street intersection, at night, again, an amplification system. What are the people doing? Nobody is going through this intersection or coming anywhere near this guy. Again, activity completely inconsistent with the Pedestrian Mall.

The next video. Oops, I'm sorry. That was me.

BETSY COMELLA

Sorry.

BRAD JERBIC

This is Mr., we call him Robot Man, but he is another freelance performer that shows up ad hoc on Fremont Street, sets up in various locations. We've got individuals complain to us that this is a public area open to this kind of expressive activity, and he even made the argument that this is First Amendment protected expressive activity. Let's see what Mr. Robot Man has to say about that. Tourists were taking this video account. We'll see some pictures in a moment. Again, amplification systems to the right. He's being videotaped. He's telling them you can't film me;

you can't film me. Get out of here. The, this is an individual that a lot of people might think is associated with the Fremont Street Experience. They might think he's a freelance performer, regardless of what they think. This is a guy who, supposedly, is there entertaining, jumps off his platform, tells them not to videotape and then scares them away. This again, completely inconsistent with the reasons this Pedestrian Mall was created and the kind of conduct for freelance performers that is not conducive to commercial entertainment activity within the Mall.

Next video. Back again at night on Fremont Street. (Inaudible). You'll notice, once again, individual with this particular group (inaudible) tourists, signs that you'll see when we pan back in this video and the next one, pretty much line this particular intersection, which is a thoroughfare for pedestrian traffic. You'll see people staying away from this entire area while they're there. Again, at night, with a megaphone, walking around. Again, pay no attention to the content; pay attention to the conduct.

One more. It's getting a little redundant now. I'll do one more for you on this one. Again, created for a light show, sound show, retail experiences, and here's somebody with an amplification system, not just speaking speech. We'll talk about that separately later. The amplification system and the conduct is what I want you to see.

Okay. That's the end of the videos. There is one more video that we were unable to have transformed into the PowerPoint. In, is a video that you'll see pictures of in a moment. When I get to the pictures, I'll describe the video for you. Again, it involves entertainers on Fremont Street.

Let's go to a couple of things that are in this ordinance. The new ordinance, which we are going to talk about in a minutes, has got a prohibition against three things outright anywhere in the Mall, amplification systems, prohibition against throwing things in the Mall, as throwing or

objects over into the Mall, and a complete prohibition against hula hoops, which I've been asked why hula hoops. This is why. These are just pictures. An individual showed up with an entrepreneurial spirit thinking that he would rent oversized hula hoops to individuals to use in the Pedestrian Mall. As you can see, this is a four foot, five foot (inaudible) hula hoop that you would probably have as kid that you might have used. These are rather large hula hoops. The size that shouldn't be seen, as I said, in the Pedestrian Mall. The next several slides all show how big these things are, how much space they take up. Again, we're not looking at expressive speech; we're looking at the conduct itself and the consequences on the primary use of the Mall. Here's a picture of another entertainer in the Mall. I don't know what his name is, but, as you can see, this fellow sets up orange traffic cones. Huge circle in the Pedestrian Mall. Blocks it out for himself. (Inaudible) performance. Has right next to him a bucket for money. So this is not, he's trying to – raise some funds here. And this is the collection that he has with him, and the bucket, as you can see, in the upper left-hand corner of his (inaudible). This is Mr. Robot Man again. I wanted to show this (inaudible) in the original video, but (inaudible), it's a bucket with the dollar sign on. He's doing this for cash. Once again, Mr. Robot Man at a different location. Once again, a slightly different location, his bucket and his amplification system.

This is the video that we couldn't, unfortunately, get (inaudible) up, but I will introduce it into the record before the Council meeting. You can find it on YouTube, if you go to thriller downtown-Las Vegas. It's, a couple of guys dressed up as members of the rock band Kiss. The Fremont Street Experience runs a number of like and sound (inaudible). One of them is a tribute to the rock band Queen. One of them is a tribute to the rock bank Kiss. So two entrepreneurial fellows decided they would dress up as members of the rock bank Kiss with pretty good makeup and costumes, come downtown and see if they could get their pictures taken with tourists for

$20. When tourists were asked, I don't know who paid and who didn't, this particular individual did not –

COUNCILMAN BARLOW

Brad?

BRAD JERBIC

Um, hum.

COUNCILMAN BARLOW

Couldn't we go online and pull that up from online?

BRAD JERBIC

You might be able to. It's a, it's about a five-minute video, if you wanna watch the entire thing. I can describe it for you, and I can later on play you a small portion at the Council meeting. I downloaded it last night myself and was able to convert it again. We have two of the three copies provided on Fremont Street that just didn't play. But if you really wanna see it –

VAL STEED

We're blocked today.

BEVERLY K. BRIDGES

YouTube is blocked.

BRAD JERBIC

YouTube is blocked. There's your answer. We have no access to anything. We have no access to anything (inaudible). So –, I can't even (inaudible)

COUNCILMAN BARLOW

(Inaudible)

COUNCILMAN ANTHONY

(Inaudible)

BRAD JERBIC

Yeah, you can get it on your iPhone, but you can't get it on the City's computer. What you're about to see is just a couple of snippets. These individuals dressed as members of the rock band Kiss, and I'm gonna speculate something here. This is not by accident. This is my speculation. With a – show devoted to Kiss, two people dressing up like Kiss, I would bet that there is a lot of confusion amongst tourists as to whether or not these individuals are entertainment provided consistent with the light show by Fremont Street Experience or entrepreneurs. We don't know, we didn't know the answer one way or the other. But I wanna show you what happens. They come down. The individual in the red shirt appears to be associated with them. This is one of the members. This is another member of the – two guys dressed up as Kiss, and he's arguing with a tourist in a white T-shirt. You can't see the handwriting. What you can see is that somehow, during this altercation, and we don't have good sound on it or anything, so he set this to Michael Jackson's Thriller, which is why the video has its name. But what we see is the member of the

rock band Kiss appears to have in his hand a handheld device, which appears to be a Taser. He's carrying it throughout portions of the video, and then, at some point in time, he puts it right into the chest of the tourist and he hits the button. You can see the light blue spark coming from his hand into the chest of the tourist. When the video concludes, you can hear somebody saying, get out of here, or words to that effect, and, oh, he owes $20. Mr. Victor will testify to this event in a moment, when he gets to a portion of the presentation. But, I think, there's a feeling that these individuals charging people money for photographs, and this individual didn't pay. Got into some kind of altercation and that resulted in him being Tasered.

Again, this is the kind of unregulated activity that's completely inconsistent with the Pedestrian Mall, with its function, its primary purpose and the commercial entertainment complex we tried to create.

The new ordinance. What, that brings us to the ordinance before you today at Recommending. Bill No. 2010-31, recognizes that the Pedestrian Mall is a traditional public forum, subject to reasonable time, place and manner restrictions. The government must demonstrate a significant interest in said regulation, and the restrictions must be narrowly tailored, leaving alternatives to speech available. We're aware of the standard. I have no doubt that as, the end of this you're gonna hear contrary reasons to what that standard is and isn't and whether or not we meet that standard with this particular ordinance. But, I'm here to make the case for why we do.

Right now, I wanna point out something I said earlier in the presentation. There are a number of things the City can do, right now, that wouldn't require any laws. They're not going to be enough to regulate the Mall. But they could be done right now, and I doubt there would be any successful litigation against the City. We can prohibit sol, coercive solicitation, that's blocking, threatening, (inaudible) or forcing someone (inaudible). We could do that right now City-wide,

including Fremont Street. We can prohibit solicitation within 20 feet of an ATM or 10 feet of the entrance of a commercial building. That's in the law right now. All of those building owners on Fremont Street, and alike, we can right now prohibit it within 10 feet.

Solicitation in convention centers; there's a local case, the Las Vegas Convention and Visitors Authority were able to keep people that were hand billers and leafleters (sic), and alike, off the space of the Convention and Visitors Authority during shows that were going out there. The ones like Comdex and CES and things like that. The court said, that's being used for another purpose. They can be regulated and put in another place during those events.

Convention protestors, the World Trade Organization in Seattle, Washington, many years ago, they cited the City of Seattle to separate the protestors from where the delegates were in the convention. The Ninth Circuit Court of Appeals said, sure, they have, it's content neutral, they can be in a separate place. And that was upheld. I'm not gonna introduce that case into the record.

So (inaudible) public fairgrounds. In Minneapolis, individuals showed up from the Society for Christian Consciousness; they were not allowed to go anywhere in the fairground and speak their First Amendment Speech, although it was a traditional public forum. They were restricted to a particular area. The content of their speech wasn't regulated at all. It was just a time, place and manner restriction the court found constitutional.

And beach vendors in Waikiki Beach. For a five-mile section of Waikiki Beach, there's a restriction to the type of express activity there can occur on or near beachfront.

So these are things, and there are other cases as well that talk about what could be prohibited right now as a matter of law as it exists in the Ninth Circuit (inaudible).

With that, let me show you what it means with respect to the Pedestrian Mall. I'm gonna show you a number of slides up here. We're gonna start with Main Street. This is Main to 1st, 1st to Casino, Casino to 3rd, 3rd to 4th, 4th to Las Vegas Boulevard. The 3rd Street spur, that we're gonna talk about in a moment, it's a location for the free expression zones. This is North 3rd Street,' north of the Pedestrian Mall, and this is North 1st Street of the Pedestrian Mall. These are all, this is the entire Mall, as currently defined in the Pedestrian Mall Ordinance. What you have in front of you is a piece of paper that looks like this that has it all put together. In front of you, is a colored version of the document I have in front of you. I've given a copy to the Clerk, and I'd like it marked as an exhibit and (inaudible) here.

This particular map represents, and Mr. Victor will testify to it, represents the Pedestrian Mall with the Kiosks and the building entrances, although I think it lacks, in some portions, the outdoor cafes. So let's just talk about the map itself, as it exists. We believe, and we'll make the case for it at the Council meeting as well, that when we enacted the ordinance that banned solicitation within 10 feet of a building entrance, although we could have gone bigger, as some cities have, within 20 feet of an ATM, we didn't look at the ban near kiosks, 'cause we didn't have kiosks. At the time they weren't really an issue. If we were to look at such a prohibition, you would have to ask yourself: is a kiosk more like an ATM or more like a building entrance? Well, we submit that the record be substantial that it's more like an ATM. And why? When you walk into a building, you're walking into a business – entrance. You probably have money, you're probably gonna go shopping, and that's why the law says, you could prohibit solicitors from being within 10 feet of you when you walk through a building entrance, because they know you're likely to be a person that can give them something, and you're more a captive audience at that choke point.

At an ATM it's 20 feet, 'cause you're (sic) no longer, potentially, have money in your pocket; you got it coming out of a machine. Your card is right there; you're a very captive audience. So the distance is bigger at ATM's. The same exists at a kiosk. You're not going into a business; that is a business. The cash drawer is right there. Your cash or credit card are (sic) coming right out. You are the same kind of captive audience you are at an ATM. So, I think there's a compelling case, in fact, an overwhelming case that the distance separation we set for kiosks, to keep solicitors away, be 20 feet, not 10 feet.

But let's look at the math. At the kiosks, you have an inner circle, that's a 10-foot circle, you've got a 20-foot circle. With a case made for a 20-foot diameter around the kiosks, you can see, looking at your handout map, that the circles overlap, substantially, throughout the Pedestrian Mall. An argument could be made, right now, that with no change in the law, just with those distance separations, you could prohibit solicitation activity at anytime, anywhere within those circles. What that leaves you is the space in-between, where you see no circles for pedestrian traffic and other activity. We look at this as a possible alternative to a new ordinance. We call it the Swiss cheese map, for obvious reasons. If you were to enact an ordin, or just leave the ordinance alone, not enact anything. Just use the existing law, coercive solicitation, solicitation within 20 feet of a kiosk, 20 feet of an ATM, 10 feet of a building entrance. I wanna say existing law, we would add kiosk, so make the case for the 20 feet. If you were to do that, you would end up with something that looks like this, which would be absolutely unenforceable.

Why would it be unenforceable? One, nobody knows where 19 feet ends and 21 feet begins. You would have to, literally, on the pavement, around every kiosk, every time you move them, draw a circle so everybody knew where you could be and where you couldn't. And the kiosks are from time to time rearranged.

The other thing that you would have is a temporal problem. Individuals who complain about activity within these areas would have to pretty much catch them and prove it, because let's face it, by the time the cop gets there, proving it, and the exact place that they were, it's gonna be almost impossible. So enforcement of this kind of model is – almost impossible, and, as a result, in considering it, we felt it didn't work.

We also looked at the spaces in-between, and Mr. Victor will testify to this as well, and said, could you have free expressions zones in-between those circles? And the answer was no, because of the amount of pedestrian traffic. Those are areas, I mean, that Mall, as you've seen at night, is packed. And when there's (sic) special events it's even more packed. And, as a result, it was felt, the need to keep the pedestrian flow moving, and to keep access to the retail going, it didn't work in this portion of the Mall.

Let me talk about what the court decision, rendered by Judge Ezra of the last go around meant. Judge Ezra said a number of things. Ultimately –, all the regulations that the City had in place on the Mall were thrown out. But before they were thrown out, Judge Ezra acknowledged a number of things the Ninth Circuit had found, and that he had found. And I'm putting them all together on one nice slide. Court decisions concerning the Fremont Street Experience have recognized that the ACLU and any person challenging the ordinance has to challenge: 1) that restrictions upon the act of solicitation, content neutral, that the City and the Fremont Street Experience have a significant interest in ensuring safe, efficient and orderly movement of pedestrians in the Pedestrian Mall. That's a given. We don't have to argue that. Of course, we know that. The City and the Fremont Street Experience have a significant interest in protecting the local merchant economy from an unfair competition. What kind of unfair competition? What happens when you put up a free table with T-shirts, very much like the T-shirts that are being sold by a person at a

kiosk who's paying $5,000 a month or more to rent a kiosk? That's, obviously, not fair competition, and Mr. Victor's gonna talk about the effect of that kind of activity on kiosk owners.

Another given is that the City and the Fremont Street Experience have a significant interest in protecting visitors from solicitors in an environment where freedom of movement is restricted. The City and the Fremont Street Experience have a significant interest in preventing the destruction of mall entertainment, and the destruction of visitors enjoying the Mall Experience. And, finally, the City and the Fremont Street Experience have a significant interest in protecting the aesthetic appearance of the Mall by eliminating visual blight caused by an unsightly vendor. Those facts, I think, have been established by the videos and the pictures, and they will be enhanced by testimony from Mr. Victor in a moment.

But let's talk about what we came down with. The City, as I said, added three things to the list of things prohibited in the Mall, anywhere in the Mall, in addition to unicycles, parades, bicycles, skateboarding, and the like, we added amplified sound for reasons, I think, I've already made clear in the record that I made. Throwing things in the Mall, which I don't think anybody has any argument with that's not any kind of expressive activity protected by the constitution. Shouldn't have probably been there in the first place when we enacted the ordinance, and hula hoops, which we made the case for, which I don't think is expressive activity either protected by the constitution.

What did we prohibit Mall-wise that's only allowed in free expression zones? Three things in the ordinance: solicitation, as defined in the Municipal Code, leafleting and Mall entertainment. Before I go any further, I'm gonna tell you that when we drafted the ordinance, we had a lot of evidence. Mr. Victor, he provided a lot of evidence. Reports that I've read provided a lot of

evidence. I am gonna tell you as of right now, in my opinion, that evidence does not arise to a level that I think would support limiting leafleting only to free expression zones. And, so, today, we will ask that this, if it does pass out of Recommending, passed out as amended, so that only solicitation and mall entertainment are limited to free expression zones. We are not, at this point in time, gonna include leafleting. If in the future, the activity in the Mall rises to a level that I feel we can make a case here at the Recommending Committee, before the City Council and before a court of law, we may bring it back. So, I reserve the right to do that. But, today, I will tell you, in all candor, I don't think the law, the evidence rises to that level. I think it does with respect to solicitation and mall entertainment.

COUNCILMAN ANTHONY

Mr. Chair, can I ask a question?

COUNCILMAN BARLOW

Yes.

COUNCILMAN ANTHONY

What's the definition of leafleting?

BRAD JERBIC

Handing out material by hand.

COUNCILMAN ANTHONY

So –

BRAD JERBIC

It can be cards, pamphlets, literature –

COUNCILMAN ANTHONY

Holding a sign?

BRAD JERBIC

Holding a sign is not leafleting. (Inaudible) holding a sign is completely (inaudible)

COUNCILMAN ANTHONY

So it's just standing – there, walking around?

BRAD JERBIC

Right. You don't even have to have –

COUNCILMAN ANTHONY

You don't (inaudible) –

BRAD JERBIC

Standing still or walking around, handing out material.

COUNCILMAN ANTHONY

Handing out material.

BRAD JERBIC

Basically, to passersby, not – a stationary zone, that's never been included. A box that has literature in it, that's not leafleting. An individual handing things out.

COUNCILMAN ANTHONY

So, the – one video where somebody is there with a sign and they're yelling something, what's, what is, where does –

BRAD JERBIC

That is nothing. That has never been prohibited since the ordinance was enacted.

COUNCILMAN ANTHONY

So, where does – that fit into soliciting leafleting and entertainment?

BRAD JERBIC

It doesn't.

COUNCILMAN ANTHONY

So, that would be allowed?

BRAD JERBIC

That's allowed.

COUNCILMAN ANTHONY

Okay –

BRAD JERBIC

But we will take a look at –

COUNCILMAN ANTHONY

Under – (inaudible)

BRAD JERBIC

– structures, and we'll look at things like that, but I think, because we need to go back at some point in time, 'cause this ordinance isn't gonna fix everything. But one of the things we need to go back and take a look at as well are (sic) structures in the Mall. Now, I don't think under any circumstances it's a sign of the type that you saw going to be a structure that would be prohibited. A small sign, what I was seeing there is two foot, four foot by four foot sign, something like that. At some point in time, we'll get to what you saw, like the anti-abortion poster, which was a large metal structure.

COUNCILMAN ANTHONY

Right.

BRAD JERBIC

And that's completely different and what we need to is, and we will come back in the future and look at this, is the structures. Unsafe structures all over the (inaudible). But we have one definition in the Building Code. We have another definition of it here. We actually need a specific definition, I think, in the Pedestrian Mall, to – address structures in that. But what I wanted you to see with the solicited conduct was the megaphone, the speaking, the – free expression coupled with the signs, literally, shoulder to shoulder blocking pedestrian traffic. Any single one, might be hard to argue it blocks anything, depending on what the person's doing.

COUNCILMAN ANTHONY

Right.

BRAD JERBIC

Conceivably it could; conceivably, it couldn't. Several people shoulder to shoulder, standing in front of an intersection, I don't think there's any argument at all, blocking traffic.

COUNCILMAN ANTHONY

But the – two guys standing there with a sign, will they, that would not be prohibited activity (inaudible) –

BRAD JERBIC

No. Unless they're asking for something, that is not prohibited.

COUNCILMAN ANTHONY

Okay.

BRAD JERBIC

Free expressions. What did we look at? I just explained that we looked at the Mall itself. Let's talk about the park where the canopy exists. The canopy exists between Main Street and 4th Street of the north and south of the former Fremont Street. We look at that area, and, as you can see by the Swiss cheese map, there are very few opportunities for free expressive activity in that area, because of, one, the kiosks; two, the light show draws people to the entire center of the Mall during the evening presentations. And the stages on 1st Street and 3rd Street also draw huge crowds. The other thing (inaudible). The other thing Mr. Victor will testify to is that the whole Mall, in spite of the kiosks, is used for a lot of special events, particularly car shows and things like that, where vehicles are parked in all of those free spaces and other things are moved around to help accommodate the pedestrians. But it's always a challenge when programming the Mall for a special event, allowing the retail kiosks to be viable and allow pedestrians to move back and forth. So, that was looked at, and decided that that was not viable, as a place for these types of zones.

We looked at 1st Street. First Street is vacated on the south side of the Golden Nugget and Pioneer Club, so that's privately owned now. That's no longer Pedestrian Mall. The south side, including the north side, which is not vacated, is where the new 1st Street stage is. That stage itself precludes its use as a free expressive area.

We looked at Casino Center, which is a thoroughfare still open to pedestrian traffic, or vehicular traffic, and that's not a place for (inaudible). We looked at 4th Street, also opened to vehicular

traffic. And we looked at the area far to the east. That's the area between 4th Street and Las Vegas Boulevard. Technically, it's part of the Pedestrian Mall. It was not looked at as a viable alternative, because, one, I think, a good argument could be made by anybody challenging the ordinance that you took people completely away from the canopy part of the Fremont Street Experience, put them in another area that's kind of (inaudible), but, two, the ki, the restaurants in that area are more plentiful than any other place in the Fremont Street Experience. There are outdoor cafes at Hennessey's, Mickey Finn's and at the former Jillian's. There may be more in the future. Those are places where you can (inaudible) solicitation, (inaudible) with tables and the like, but that doesn't really matter. If you're a tourist, you're having a nice lunch or a dinner outside, or a local as well, you're not gonna leave money as a tip for anyone, or want to pull cash out if soliciting activity is occurring next to your dining table. So, we didn't look at that as a viable area (inaudible).

What we looked at was 3rd Street, and 3rd Street is also problematic. Third Street, all the way to Ogden, is part of the Pedestrian Mall. And, while a lot of people may look at it and say, you know, it's the old 3rd Street, 3rd Street is a very viable venue for Fremont Street Experience. They consider it prime real estate. That real estate is used for car shows. It's used for setting up vending opportunities. I think they have (inaudible) stages there. It is very active and used as part of the Fremont Street Experience as a whole. It's also the place where the neon signs exist and part of the expanded Neon Sign Museum. And, most importantly, and a concern I'm sure to this Council, is the fact that that is the connector between the Fremont Street Experience and the Mob Museum and the new CIM project that used to be called the Lady Luck. You go by the Lady Luck, today, you'll see windows open in both towers. There's active construction going on. That is a project that's expected to be completed and opened in the near future. And there is a fear that

if you create a gauntlet of solicitation and other activity on 3rd Street, you're going to hurt the commercial viability of that project, and you're going to prevent individuals wanting to move back and forth in the new Mob Museum and the Fremont Street Experience.

So it wasn't likely that we look at 3rd Street; it also has problems. But not the problems that I identified as existing on the Fremont Street Experience, or Fremont Street itself and the – area by Neonopolis.

What we did was identify two initial zones, based on the amount of expressive activity seen in the Mall in the last couple of years. Two zones have been identified. There is a new map that looks very much like the slide you're looking at now, that is gonna replace Exhibit 1 or Exhibit A (sic) in your backup material. This is produced by our Planning Department. This is a digital depiction of the free expressive zones that we propose in this ordinance. They are approximately 20 feet back from the shade line of the Fremont Street Experience canopy. That still allows pedestrians to move in front. The areas are 12 feet wide on each side, on the west and east side of 3rd Street, and they are a hundred feet long. So, two, 1200-foot areas, 2400 square feet would be reserved for expressive activity involving solicitation and mall entertainment. This activity would be completely unregulated and subject to first come, first serve, completely content neutral. We don't care what you do out there with respect to solicitation of all activity, provided, (inaudible) solicitation (inaudible) prohibited (inaudible) solicitation, you can do whatever you want. Council?

COUNCILMAN BARLOW

Brad, you continue to mention the fact that the content of those individuals performing within this proposed area on 3rd and Fremont, and you mention on several occasions that these individuals will not be regulated, who patrols or regulate (sic) the Mall?

BRAD JERBIC

Let me say this, the Mall, right now, is in the City. The Metropolitan Police Department has a force down there, from time to time, patrolling the Mall. The Fremont Street Experience has its own private security down there, and those are the two entities that are responsible for securing the Mall right now. I can tell you, my guess is that Mr. Victor will shake his head yes or no about (inaudible) percentages, probably Fremont Street Experience private security that is patrolling the Mall right now and handling those kinds of issues.

COUNCILMAN BARLOW

Okay. So, within the 12- by 100-foot radius area in which is being proposed to this Recommending Board today, who's going to regulate or enforce that the entertainers remain within that geographic location?

BRAD JERBIC

That would be the responsibility of the Fremont Street Experience security and the Las Vegas Metropolitan Police Department.

Let me explain what this is and what this isn't. We're only saying two types of conduct: solicitation and mall entertainment are limited to these two areas. Nothing else. Mall

entertainment and solicitation. We're not gonna tell you what kind of entertainment. We're not gonna tell you what kind of solicitation. We have no interest in the conduct, or excuse me the content of your solicitation. We have no interest in the content of your mall entertainment. Not gonna do it with loud speakers, 'cause that's gonna be prohibited, Mall-wide. There's (sic) no exceptions. You're not gonna get to go in these zones and turn on an amplifier. That's still inconsistent with the Mall, right next to the light and sound show, will drown it out and compete with it, and it's not consistent. But what we will allow is any kind of solicitation activity and any kind of mall entertainment, first come first serve in those areas.

I want to state, for the record, that Mr. Rebel is here on behalf of the Fremont Hotel. Believe me, it was no easy task explaining to individual entities downtown that we're gonna have free expression zones, and they're gonna be somewhere. And these have to be, at least one of them, has to be right next to the Fremont Hotel. These areas were selected because, based on the size of –, the numbers (inaudible) at the same time they solicit would fill (inaudible) one of these areas right now, and Mr. Victor will testify to that. So, we made it even larger. So, we did and will accommodate any individual who wants to come.

But these are not necessarily carved in stone. This is the first cut. If these turn out to be in the wrong place and inconsistent, we reserve the right to come back and move them, in the future. We will always provide them, but we will reserve the right to come back and move them. We'll reserve the right to come back and expand them. If it turns out there are more people interested in protected conduct or mall entertainment, which I don't think is protected conduct, but if there are people interested in protected conduct and there's not enough room for them here, we will come back with a recommendation to expand the free expression area.

But we believe that these not only are, one, let's talk about time, place and manner. There's no time restriction. This is any time I want. There's no manner restriction. We're not putting any regulation on how you do it, or what to say you say or what the content is. There's just a place restriction. That's all we're doing, is a place restriction.

The other thing we're looking at is: are there alternative means to express your act, your First Amendment Speech of solicitive (sic) speech? Well, one, you're (inaudible) the entire target audience of the Pedestrian Mall from this area. But, second, look at the Pedestrian Mall. This is a footprint, five blocks long, along what used to be Fremont Street. The entire perimeter of the Pedestrian Mall is publicly-owned sidewalk, which has never been regulated and completely open to First Amendment Speech or expressive speech. Anybody who comes in that Mall, you can get 'em on the sidewalk outside the Mall and solicit them all you want. We're only talking within the Pedestrian Mall. So, you can reach the target audience anywhere around the perimeter of the Mall as you enter. And once in, you can reach them from 3rd Street.

Again, another picture of the expression zone. At the back of this, you can see this is looking from north to south, with the 3rd Street stage visually depicted in the graphic. And this is the area as it looks today. I wanna say, right now, before anybody jumps me. This particular photograph shows a really large newspaper vending machine in this area. That's gonna be carved out. That's gonna be removed. This area is gonna be completely cleared, except little palm trees. There won't be anything obstructing it, and it's gonna be painted either with a line around the perimeter or shaded in the middle so everybody knows exactly where the area is and where the lines are, much like the area we painted downtown at the courthouse for wedding chapel solicitors. That has worked perfectly since we put it into effect. It's going to be painted or marked clearly on the ground, signage identifying it, and there'll be one (inaudible).

Tables will be allowed in this area, but not your table. You want a table, they will be provided on a first-come, first-serve basis, free of charge, and virtually immediately by the Fremont Street Experience. That's to control the type of structure people are bringing in to the Mall. People – bringing in dangerous things, flimsy tables, things that – wouldn't withstand wind or tourists hitting it, or something like that. But we'll provide all the tables you want for free, any time within these free expression zones. So tabling is back, solicitation is back, and mall entertainment is back in these two areas.

Councilman?

COUCILMAN BARLOW

Brad, I've been to other communities, many communities around the country, and those cities seem to require entertainment for individuals, permits in order for them to go out and entertain; have we considered that?

BRAD JERBIC

Yes. Let me – tell you about the one I looked at the most. The Mayor asked me to look at another one; I haven't finished looking into that.

Let's talk about a couple of places where they built (inaudible). If you've ever been to Waikiki Beach, you'll see people not exactly on the beach, but off to the side, and most particularly at night. You'll have some guy with a parrot. You'll have a – parrot sitting on your shoulder, take a picture for 20 bucks. Other people doing other kinds of activities. I don't know how they regulate that or how they (inaudible). The one I'm familiar with that is a bit analogous to the Fremont Street Experience is the 3rd Street Promenade in Santa Monica, California –

COUNCILMAN BARLOW

Santa Monica.

BRAD JERBIC

Now, the difference, and I've been asked this about Fremont, why don't we do what they do? What they do is they pick and license entertainers, because they feel, and maybe appropriately so, that entertainment in the 3rd Street Promenade in Santa Monica is conducive to tourists coming downtown and creates part of the ambiance of the pedestrian mall in Santa Monica. So, when you come down, you're not just there to walk up and down the Promenade and visit the restaurants and the shops. You're there for the entertainment as well. It's kind of catchy and kind of fun. And because they look at it that way, they license the people that do entertainment down there, and they kinda pick and choose a little bit, but they also have applications that people fill out, and the like, and they (inaudible) the spaces that they use.

The difference between Santa Monica's Promenade and Fremont Street Experience is that Fremont Street Experience picked its entertainment from the day this project was conceived. This wasn't built to just be one big mall where you walk up and down between a bunch of casinos. If that were the case, you could pretty much have left the whole situation alone and let people walk up and down the sidewalks. This was conceived as a project that not only provided a pedestrian mall experience and retail experience to pay for all of it, but provided its own entertainment. The entertainment being stage shows. So, when the Beach Boys come here, it's playing on the 3rd Street stage. That's because Mr. Victor and his clients pick that kind of entertainment and they program it. When you see the light shows overhead at night, they decided that's the entertainment we want. They decided they didn't want to go with the occasional

entertainer block by block by block. You didn't, if that's what they would have wanted, or the City wanted, you didn't have to build a canopy for that, and they don't have a canopy in Santa Monica. It's just a big, wide, open mall.

So, like I say, I think it's really just a programming choice and a policy choice that was made many, many years ago. And that choice was, the primary purpose was an organized, pretty much, predictable on the spot sound and light show. People knew when it started, when it ended, so they could be out there on the street and watch it. Stage shows that we promoted in advance, occurring during seasons of the year, at different times. Kiosks. But you can see Fremont Street, right now, Fremont Street, right now, could have entertainers that they pick in that Mall. And from time to time, they do, not just on the stage, but it's their mall, under the operation of the management agreement, controlling the program –

COUNCILMAN BARLOW

Mayor – Goodman, not. Brad –

BRAD JERBIC

They have decided to not allow this freelance, freeform activity.

COUNCILMAN BARLOW

Very good point, which basically takes me back to my initial question, or comment in relation to Santa Monica versus Fremont Street Experience. If Santa Monica can regulate and license their acts, then what would prohibit someone from going out into – the area of Santa Monica and just setting up? Because, to me, it's a – question of – legality, of freedom of speech again.

BRAD JERBIC

Well, let me – go out on a limb here and say that, I think, even the courts have recognized that an unregulated, completely, anybody, anywhere, kind of situation, even the 3rd Street Promenade, doesn't work. They have the same rights to pedestrian flow, and to a – hassle-free environment, so-to-speak, as we do. And – I'm gonna say (inaudible), you know, more or less, act upon act upon act, where you have to run a gauntlet of people before you can get where you wanna get, with one person playing this instrument, another playing the other, drowning each other throughout. This doesn't work, as a practical matter, regardless of what kind of speech you're talking about.

But, again, I would –, you know, I think there's a lot of debate as to whether or not this activity that you're looking at, when it comes to entertainment, is protected activity by the First Amendment. I mean, some of it could be. Some isn't. Some is in-between. But that's what people go to law school for, is to kind of argue where the shades of grey are. But, you know, a lot of this stuff is just a hundred percent commercial, just a hundred percent commercial. And probably, can be completely, you know, regulated, prohibited or whatever under any ordinance. Some of it may have a First Amendment component to it. But we're not gonna pick and choose which does and which doesn't. We're going to say entertainment, that's where you go. That's where you can perform (inaudible).

We think it's content neutral. We think it's reasonable time, place and manner. We think it leaves open all viable alternatives for individuals to reach that same audience, to pick their say and speech, content, (inaudible), anyone they wanna talk to.

COUNCILMAN BARLOW

Okay.

BRAD JERBIC

That concludes my presentation as to the new ordinance, the history, the legislation, and leaf regulation. I would, with your permission, ask Mr. Victor to come to the microphone right now.

JIM NICHOLS

Right here.

JEFF VICTOR

Down here?

BRAD JERBIC

Actually, anyone you want, Jim. You wanna sit next to me, I'll move.

COUNCILMAN BARLOW

Are you going to swear him in under oath –

BRAD JERBIC

You have that map marked as Exhibit A or 1 or?

GABRIELA PORTILLO-BRENNER

I do, as Exhibit 1.

BRAD JERBIC

Exhibit 1; okay. So, we're gonna refer to the map of the Fremont Street Experience. Can you just state your name and, for the record, and tell us where you work.

JEFF VICTOR

My name is Jeff Victor; I'm the president of the Fremont Street Experience.

BRAD JERBIC

And as president of the Fremont Street Experience, Mr. Victor, what are your duties and responsibilities?

JEFF VICTOR

We operate the Fremont Street Experience, LLC, which is the common area between businesses that line Fremont Street, from Main Street down to Las Vegas Boulevard. We also operate the parking garage that's located between 4th Street and Las Vegas Boulevard. We have about 300 employees, I'm sorry, 100 employees in the company, which are made up of a mix of security guards, cleanliness folks, entertainment and special events operators, and technicians, marketing, finance, public relations.

BRAD JERBIC

Very good. How long have you been the president of Fremont Street Experience, LLC?

JEFF VICTOR

A little over four years.

BRAD JERBIC

And, were you president of the LLC before the ruling by the Federal District Court Judge in 2009 that struck down the ordinances regulating the Mall?

JEFF VICTOR

Yes.

BRAD JERBIC

And you've obviously been president after those ordinances were struck down, correct?

JEFF VICTOR

Correct.

BRAD JERBIC

Have you noticed the difference in the type of activity in the Pedestrian Mall after the court decision in 2009 striking down the Pedestrian Mall Ordinance?

JEFF VICTOR

Absolutely.

BRAD JERBIC

What kind of differences have you noticed?

JEFF VICTOR

In particular, the amount of individuals that come down to solicit for tips by providing, what I guess they would consider, entertainment experiences in the Mall, has exploded from the day that the – decision was made until now.

BRAD JERBIC

And have you – had complaints from individuals, let's start with tourists or visitors to the Mall, regarding conduct in the Mall by individuals involved in commercial entertainment.

JEFF VICTOR

Numerous complaints from guests, but the complaints haven't been limited to the guests, but, clearly, the guests are not comfortable, in large part, with the activity out on the Mall.

BRAD JERBIC

Did you have an opportunity to sit here during the presentation that I gave regarding pictures and videos of the Fremont Street Experience during the latter 2009 and early 2010?

JEFF VICTOR

Yes.

BRAD JERBIC

Did my representation on the record accurately reflect the content of those videos and the conduct that was displayed in the videos?

JEFF VICTOR

Yes.

BRAD JERBIC

The, did you, are you aware of the incident involving individuals dressed as members of the rock band Kiss on the Fremont Street Experience?

JEFF VICTOR

Yes. I was not there that evening, but I am aware of it. Our se, if you see the video, you'll see that one of our security guard (sic) actually leaves his post from, he has a fixed post during the light show, at the intersection of Casino Center, he's wearing a yellow vest, and you'll see him leave his post to come and deal with the distraction and disruption, and he actually filled out a statement. And I have seen the full video that was provided, by the way, by a guest who had just filmed that and put it up on YouTube.

BRAD JERBIC

Are you aware of the results of the investigation conducted by the Fremont Street Experience into that incident?

JEFF VICTOR

Only to the extent that the customer decided not to file a complaint, and – left.

BRAD JERBIC

Did you become aware of what happened even though he didn't file a complaint?

JEFF VICTOR

Again, I –, my best source and knowledge is through the video that you find on (inaudible) on YouTube, and then what our security guard witnessed at the event and trying to just deal with the aftermath of it.

BRAD JERBIC

Very good. The, you're also familiar with other street entertainers, Mr. Animation, Robot Man, and the like, in the Pedestrian Mall?

JEFF VICTOR

Yes.

BRAD JERBIC

Are there other street entertainers that appear in the Pedestrian Mall aside from the ones whose examples we've played before the Recommending Committee today?

JEFF VICTOR

Oh, dozens. Yeah. Things like the person that sells balloon animals, the showgirls that walk up and down the Mall taking photos. There are statue characters. You name it, we've – got it.

BRAD JERBIC

Have you also become aware of other expressive activity, and it's the type you saw in the videos and in the pictures that included the anti-abortion protest, the – rally at the gay rights parade, and the pro-religious people that were speaking on Fremont Street?

JEFF VICTOR

Yeah. We do have folks coming out to either exploit their private businesses, or send a – message. There – are pretty regular set ups up and down the Mall for purposes of commercial activity.

BRAD JERBIC

Have both the individuals not involved in entertainment and individuals involved in entertainment actually used amplification systems to broadcast their message?

JEFF VICTOR

Yeah. Absolutely. We saw a lot of it in the video, and we have it on a regular basis, whether it's connected to a car battery or it's battery-operated, we have amplified sound on a regular basis.

BRAD JERBIC

Does that activity, in your opinion, is it consistent with the programming of the Pedestrian Mall by the Fremont Street Experience of both the light, stage and sound shows?

JEFF VICTOR

No. I mean, the sound system in Fremont Street Experience is quite extraordinary. It was engineered with a great deal of concern for the smooth flow of sound from one end to the other, and a total of 550,000 watts of sound blowing through over 200 speakers, with very clear separation of distance. We have the ability to zone those speakers out, so that we can control individual experiences, either from the stages or between the stages, and do that on a regular basis. But when somebody brings their own amplified sound and drops it in the midst of that, clearly, it's a –, creates inaudible (inaudible) muddiness or confused experience to what we're trying to create.

When you're talking about the – stages themselves or, like we had a street entertainer that's been out there for ten years under our – guidance, his name is Carl Ferris. We escort Carl out there and set him up with a Fremont Street Experience truck and sound system. We provide him, the zone for him, both audibly and – in the sky, on the canopy above with his image. When somebody that also plays saxophone just appears and wants to stand next to Carl while he's performing, you know, the Fremont Street Experience approved performance, it's – absolutely

disrupted. Somebody comes down and sets up an amplifier so they can do something, whether it's saxophone or otherwise, absolutely a disruption.

BRAD JERBIC

The individual that you program, though, you pick the exact place, time and manner in which he entertains individuals and he's limited to that particular –

JEFF VICTOR

Absolutely.

BRAD JERBIC

And it's not open to other individuals? You said if others come down while he's doing anything, it competes with him, drowns him out or –

JEFF VICTOR

Absolutely.

BRAD JERBIC

The, with respect to the individuals who use amplification systems, have you observed the effect of those amplification systems on the tourist traffic that moves up and down the Pedestrian Mall?

JEFF VICTOR

Yes. It's intimidating. You know, some people, I assume, believe that this is something that we've sanctioned, like Carl, and some people are – weary that it's somebody we've not sanctioned, and it's intimidating, and for some folks scary.

BRAD JERBIC

People tend to shy away and move away from those individuals that have amplification systems?

JEFF VICTOR

Sure.

BRAD JERBIC

And, in the process of moving away, does it create fewer places in the Pedestrian Mall for pedestrians to move back and forth?

JEFF VICTOR

Yeah. It alters the flow of traffic.

BRAD JERBIC

The, sometimes completely impede the flow of traffic in the Pedestrian Mall?

JEFF VICTOR

Yes.

BRAD JERBIC

Has it on occasion completely plugged the traffic, stopped traffic in the Pedestrian Mall?

JEFF VICTOR

Especially around intersections and (inaudible), yes.

BRAD JERBIC

Let me call your attention to Exhibit 1, which is the map that you have in front of you and the (inaudible) version (inaudible), have you had occasion to look at that map prior to appearing at this Recommending Committee today?

JEFF VICTOR

Yes, I have.

BRAD JERBIC

And are you familiar, is that an accurate depiction of the Pedestrian Mall, roughly, as it appears both in physical description, that is the perimeter, and the location of kiosks through the Pedestrian Mall?

JEFF VICTOR

Yeah. Largely, I – see a few changes like the Golden Nugget's expansion down here on – 1st Street isn't represented. There may be a, it's hard to tell 'cause there're so many overlapping circles. There may be a change in the – outdoor dining experiences. And, clearly, the locations of the kiosks change on a regular basis. By and large, this is the Fremont Street Experience.

BRAD JERBIC

How many kiosks do you have in the Fremont Street Experience?

JEFF VICTOR

Thirty-eight.

BRAD JERBIC

Do the individuals who have those kiosks have an arrangement, financial arrangement with the Fremont Street Experience?

JEFF VICTOR

Yes. They have – a contract that they signed and pay lease amounts for on a monthly basis.

BRAD JERBIC

Do those lease amounts vary from kiosk to kiosk?

JEFF VICTOR

They do.

BRAD JERBIC

Can you give us the range that people pay to lease the kiosks on Fremont Street?

JEFF VICTOR

Roughly, 2,000 to $5,000 a month.

BRAD JERBIC

Two thousand to five thousand a month? And are there individuals who pay more?

JEFF VICTOR

Yes.

BRAD JERBIC

To cover their kiosks that way you get a percentage of the gross receipts as part of the kiosk rental?

JEFF VICTOR

Those would be the ones that would exceed the – higher (inaudible).

BRAD JERBIC

Got you. And those individuals signed that agreement knowing that they will have an opportunity to commercially vend, whatever their product is they have, on that particular kiosks?

JEFF VICTOR

That's correct.

BRAD JERBIC

And do you get involved in selecting the type of commercial product that individuals vend from their kiosks?

JEFF VICTOR

Absolutely.

BRAD JERBIC

So you wouldn't allow someone to vend something that you consider inappropriate in the Fremont Street Experience?

JEFF VICTOR

Absolutely not.

BRAD JERBIC

So, you also don't want individuals in the kiosks to sort of compete with each other, so you wouldn't, for example, have 38 people selling jewelry, or 38 people all selling paintings or statues?

JEFF VICTOR

That's right. We work hard to reduce the redundancy.

BRAD JERBIC

So you have a lack of redundancy for commercial opportunity. And the individuals who pay for those kiosk, do they sign those leases for a period of time, a term?

JEFF VICTOR

They do.

BRAD JERBIC

What's a typical term?

JEFF VICTOR

They're, usually, really month-to-month. Most of our vendors have been there for years.

BRAD JERBIC

Have you had occasion to work personally with the kiosk vendors regarding complaints regarding activity within the Fremont Street Experience, that they feel is either repeating or inconsistent with the retail commercial use of the Mall?

JEFF VICTOR

Yeah. Almost without exception, all of the retailers have come to both our retail director, and then myself to complain about how disruptive this has been both to the Experience and the customer trying to shop and ultimately to their ability to conduct sales.

BRAD JERBIC

Did you hear my representation earlier that kiosks are places where individuals actually pull their money out in a public area and they have a financial transaction with the kiosk operator?

JEFF VICTOR

Yes.

BRAD JERBIC

Is that accurate?

JEFF VICTOR

Yeah. You're completely exposed 'in the middle of the street. Sure.

BRAD JERBIC

In your opinion, is a kiosk more like an ATM or more like an entryway to a business with respect to the amount of space you need to provide between a kiosk vendor and a – solicitor?

JEFF VICTOR

I'd say, given the proximity of the cash drawer, it'd be more like the keyboard on a (sic) ATM.

BRAD JERBIC

Have you had individuals express to you a desire to not pay rent or get reduced rent as a result from competition from unregulated activity in the Pedestrian Mall?

JEFF VICTOR

Yes.

BRAD JERBIC

What have they told you?

JEFF VICTOR

They feel as though their sales have been dramatically affected, some kiosks more than others, depending on the type of product that they sell. But they have very much expressed that, you know, we're responsible for maintaining the Mall, and that we've not done so, that they think we're responsible for adjusting their rent.

BRAD JERBIC

(Inaudible) decline as a result of individuals pointing out kiosks or retail opportunities in the Mall or the Fremont Street Experience being able to operate and maintain the Pedestrian Mall under the existing contract with the City of Las Vegas and the Redevelopment Agency?

JEFF VICTOR

We have several sources of funds. The retail kiosk is a significant portion of what we do. If that were to decline, significantly, it would, in fact, impact our ability to maintain the Mall, in terms of the cleanliness to secure the Mall, patrol the Mall, and then, of course, it would impact our ability to invite guests down to marketing, PR activities, and then once we got 'em here, it would impact our ability to entertain and keep them here and help – ensure that they come back for another visit.

BRAD JERBIC

Did you work with the City of Las Vegas in the last year to look at the possible creation of free expression zones within the Fremont Street Experience?

JEFF VICTOR

Yeah.

BRAD JERBIC

Did you have an opportunity prior to that to look at things like the map that's marked as Exhibit 1?

JEFF VICTOR

Yes.

BRAD JERBIC

The, turning your attention to that map for a moment, do you see the circles on that map that I have represented the outer most circle being 20 feet, the inner most being 10 feet?

JEFF VICTOR

Yes.

BRAD JERBIC

Those are circles around retail kiosks; is that correct?

JEFF VICTOR

Yes. It appears.

BRAD JERBIC

Do you also see other semi-circles or lines around entryways to buildings, for example, Fitzgerald's, Fremont, and the like? Do you see those lines?

JEFF VICTOR

Yes –.

BRAD JERBIC

Those all represent areas that are currently under existing solicitation law? Areas that are prohibited for solicitation?

JEFF VICTOR

Yes.

BRAD JERBIC

Or would be if we had, if we looked at the kiosk situation?

JEFF VICTOR

Right.

BRAD JERBIC

The areas in-between those circles, what are those dead areas used for, those blank areas used for?

JEFF VICTOR

That would be where the people go.

BRAD JERBIC

If individuals were to set up solicitation stations in that area, would you have a smooth flow of pedestrian traffic?

JEFF VICTOR

You know, as you can see, there's, Fremont Street is not very wide. It's only 80 feet wide, and, so there's a fair amount of obstacles throughout the Mall anyway. The legs to the canopies, the canopy itself, aren't shown here, and some other structural things, including electrical junction boxes and stuff are not shown. Anything that we do to add clutter to the Mall, it's – problematic in terms of moving guests around.

BRAD JERBIC

Well let me cut to the chase, if we, if there were first (sic) expression zones created in those blank areas in-between those circles, would that, in your opinion, impede pedestrian traffic in the Pedestrian Mall?

JEFF VICTOR

Yes.

BRAD JERBIC

Was there a time when there was a discussion about setting up free expression zones around the poles themselves on the Pedestrian Mall?

JEFF VICTOR

Yes.

BRAD JERBIC

Were models constructed to see if that worked?

JEFF VICTOR

Yes.

BRAD JERBIC

Were you present when those were demonstrated and looked at?

JEFF VICTOR

Yes.

BRAD JERBIC

In your opinion, did they work?

JEFF VICTOR

I don't think they provided the ample amount of – room for the folks that are gonna come, wanna come down and take advantage of these things. I didn't think they were ideal locations for the – entertainers themselves, and they fell largely within the circles shown here on page; no, they didn't work.

BRAD JERBIC

Is this a, is this an attempt to actually build a round table around the round poles that support the canopy itself?

JEFF VICTOR

Yeah. We – mocked up a model.

BRAD JERBIC

And did that have an impact on pedestrian traffic, as well as the other problems you identified?

JEFF VICTOR

Yes.

BRAD JERBIC

And as a result, was that thrown out, I guess, as an option for free expression zones?

JEFF VICTOR

Yeah. We tried to find a more viable option.

BRAD JERBIC

Did you also look at other areas within the Fremont Street Experience, including 1st Street, and the area around the old Neonopolis shopping area?

JEFF VICTOR

Yes. We did.

BRAD JERBIC

Were there viable areas on 1st Street?

JEFF VICTOR

No. Very limited, because most of that is behind the stage. The park on 1st Street south is privately owned by the folks that own the Pioneer Building. The space over by Neonopolis would be ideal for us, and I'm sure that that offers a kind of exposure to the audience that the entertainers would decide.

BRAD JERBIC

Are there also more outdoor cafes in the Neonopolis area, that is the block between 4th Street and Las Vegas Boulevard in the Fremont Street Experience?

JEFF VICTOR

Yeah. That's actually the largest concentration of outdoor cafes, down in that area.

BRAD JERBIC

And, without revealing any names, are there potentially more restaurants about to go into that area?

JEFF VICTOR

I've got a couple that are looking at a space that we operate. I don't know what's happening on the Neonopolis side.

BRAD JERBIC

Okay. But, without revealing any names, you are looking at more restaurant activity –

JEFF VICTOR

Yes.

BRAD JERBIC

– in that particular area? Would that includes (sic) outdoor dining opportunities?

JEFF VICTOR

Yes.

BRAD JERBIC

And, as a result of that, that area was also rejected because you didn't feel it was close enough to the audience that was being affected by the restriction and the outdoor dining being affected by this at all?

JEFF VICTOR

That's right.

BRAD JERBIC

Did you have an opportunity to look at 3rd Street as an alternative for this type of activity?

JEFF VICTOR

Yes.

BRAD JERBIC

And when you looked at 3rd Street, what were the issues posed by locating free expression zones there?

JEFF VICTOR

Well, you know, 3rd Street is an extremely valuable area for – us. That is an area that we use regularly for special events, in particular. It's also, when we do concerts, where the crowd backs into. But, in terms of special events, it's, as you can see by the – rest of the circles on the – page,

that is our special event space. And, so the – concern with giving up any of that is that we've hurt our ability to do special events.

BRAD JERBIC

Did you have occasion to talk to individuals who're responsible for the operation and management of Fremont Hotel to see how they felt?

JEFF VICTOR

Yes, I did.

BRAD JERBIC

And how did they feel about having free expression zones located next to their property?

JEFF VICTOR

Not thrilled, by any means. Understanding, as we are, of the – situation, but not – thrilled that it would be there.

BRAD JERBIC

Did you have occasion to talk to the Mayor of the City of Las Vegas regarding the possible impact of the free expression zones on 3rd Street and the new Mob Museum?

JEFF VICTOR

Yes, I did.

BRAD JERBIC

And was that problematic?

JEFF VICTOR

Yeah, he's, you know, this is the gateway to what would be the Mob Museum and – CIM Group's investment in the Lady Luck, and it's not considered unimportant that we would be altering that, the use of that space.

BRAD JERBIC

You do understand that if the Council, with the Recommended Committee, forwards this ordinance and the Council approves it, that you will lose 2400 square feet of area on 3rd Street?

JEFF VICTOR

I'm aware.

BRAD JERBIC

Are you able to, in spite of the challenges, program around that?

JEFF VICTOR

I believe so.

BRAD JERBIC

Good. Do you, did you participate with the City in looking at any or all other means of providing alternative space for solicitation and mall (inaudible)?

JEFF VICTOR

Yes.

BRAD JERBIC

And was this the final analysis the (inaudible) thought that it would be a reasonable alternative to the entire Mall?

JEFF VICTOR

Yes.

BRAD JERBIC

I would also ask you, are you familiar with the area outside the Pedestrian Mall, that is the actual perimeter of the Mall, that is the area outside of Fremont Street that goes around the entire perimeter of the map you see as Exhibit 1?

JEFF VICTOR

Oh, sure.

BRAD JERBIC

Is that area all open public sidewalk?

JEFF VICTOR

Yeah.

BRAD JERBIC

That's all area where individuals can stand and solicit or speak any kind of speech they want?

JEFF VICTOR

Yes.

BRAD JERBIC

And I qualify it by saying exactly those kinds of speech that are otherwise prohibited by law with regards to speech, or other speech that has always been held to be illegal, strictly, (inaudible) fighting (inaudible) and things like that.

Mr. Victor, just in general, would you describe the Mall as more orderly or less orderly after the last decision of the (inaudible) judge?

JEFF VICTOR

Far less orderly.

BRAD JERBIC

I don't think I have any further questions for Mr. Victor.

COUNCILMAN BARLOW

Okay.

BRAD JERBIC

The Council has any? You have anything you need to add?

COUNCILMAN BARLOW

You – have questions for Mr. Victor?

COUNCILMAN ANTHONY

Well, for both.

COUNCILMAN BARLOW

Mr. Victor, if you wouldn't mind remaining – in your seat. Council has questions for both Brad and yourself –

BRAD JERBIC

If I could (inaudible), and I'll just leave it up to you, I wanna put into the record a case Hampton International Communications vs. the Las Vegas Convention and Visitors Authority. It's the case I told you of the local ruling that allowed the restriction of individuals during shows put on at the

Las Vegas Convention Center, saying (inaudible) owns property and certain parts of the property and the sidewalks, soliciting or leafleting during the convention.

I want to put on the record a copy of Efron vs. International Society for Krishna Consciousness. That's the Minneapolis Fairground case I told you about, where individuals who were soliciting (inaudible) literature (inaudible) fairground.

I wanna put on the record One World One Family Now vs. City of Honolulu, which is a case that limited expressive activity along Honolulu.

I wanna put on the record a copy of Menotti vs. City of Seattle, which is a case that restricted the people of the World Trade Organization protests to certain areas in (inaudible) wanted to be.

I wanna put on the record two cases involving court decisions that looked at alternative channels of communication that must be left open when you restrict speech. That is Smith vs. City of Fort Lauderdale and Ghesham vs. Peterson (inaudible).

And I'd also put on the record two cases that discuss speech and conduct and expressive activity that interferes with revenue, since that is something we can also consider in regulating. Those cases are Children of the Roses vs. City of Phoenix and Lebron vs. National Railroad Passenger Corporation (Amtrak). Those I'm going to file with the Clerk.

I would also at this time would like to make part of the record the entire record of the City Council meeting, the Recommending Committees that were held involving the 1993 Pedestrian Mall Ordinance, all revisions to that ordinance, the 1995 Solicitation Ordinance, and all record that has been created with respect to the Pedestrian Mall and the regulations of the Pedestrian Mall to this time.

With that being said on the record, I have nothing more to add. I'd be glad to answer any questions of the Recommending Committee.

COUNCILMAN BARLOW

Thank you. And, for the record, Mr. Brad, Mr. Jerbic has submitted all of those case files to the Clerk. At this time, I'll open up for discussion. Councilman.

COUNCILMAN ANTHONY

All right. Brad, on – Page 5, on Line 22, it talks about the following expressive conduct that's permitted in a free exercise (sic) zone. So, if I heard you correctly, leafleting you're gonna take out?

BRAD JERBIC

That's correct. It'll be our recommendation that at the end of this Recommending Committee, when you vote to pass or don't pass the bill, you do it as amended, and the amendment would be to strike Line 24, it says, two, leafleting and – so the new version of this ordinance would read: the following expressive conduct is permitted to any free expression zone. 1) solicitation is defined in LVMC 10.44.010, and 2) mall entertainment. And that's it.

COUNCILMAN ANTHONY

Okay. So, on Page – 2, on Line 18, where it defines leafleting, are you – taking that out?

BRAD JERBIC

No. We're going to continue to have the definition in.

COUNCILMAN ANTHONY

Okay.

BRAD JERBIC

We're not gonna restrict those.

COUNCILMAN ANTHONY

Okay. So, the, so when somebody reads this ordinance, they will see that what the definition of leafleting is, but there – won't be any mention of whether it's allowed or, just say, it, there won't be any mention (inaudible) –

BRAD JERBIC

That's correct.

COUNCILMAN ANTHONY

– but it will be defined, so if somebody wants to leaflet on Fremont Street Experience, they can do it?

BRAD JERBIC

That's correct.

COUNCILMAN ANTHONY

And, as, from what you're telling me, this definition is sufficient so if any – citizen reads that, they'll know exactly what leafleting is? The police will know what it is? Security will know what it is? So there won't be any conflict when somebody reads this? And do you agree with that, Jeff? When you read that line, is that –

JEFF VICTOR

I'm sorry, I don't have it in front of me. Let me look for it.

COUNCILMAN ANTHONY

I – just wanna be real clear that people know what they can do in the leafleting area.

JEFF VICTOR

I guess, I would have questions about what leafleting means, anything with a piece of paper, or if it means it's an ad or a coupon or (inaudible). I have my own questions.

COUNCILMAN ANTHONY

Well, if Jeff can't define it, then –

BRAD JERBIC

I will work with Jeff on it and security, because I can tell you that after this ordinance, if it passes, there will be a considerable amount of education (inaudible), with respect to the Fremont Street Experience, security and with Metro. That particular sentence, to me, and (inaudible)

passing out of anything, written, printed or graphic, so it can be a picture. It can be something printed on a card. It can be something handwritten. But that's what it is.

COUNCILMAN ANTHONY

Okay. But somebody – standing on the Fremont Street Experience with a big sign, a huge sign, is that permissible under leafleting?

BRAD JERBIC

It's not leafleting and it's permissible. That, that's something that we call just carrying a sign, for want of a better way to put it. It's not solicitous activity. What you just described, merely holding a sign –, is not solicitation activity. It's not leafleting.

COUNCILMAN ANTHONY

So, it'd be allowed?

BRAD JERBIC

Right.

COUNCILMAN ANTHONY

So, I could stand –

BRAD JERBIC

I mean, there might be other things that prevent it. I mean, a sign with a big metal spike and it's dangerous, or it's a weapon or something like that, that may be something different.

COUNCILMAN ANTHONY

But, under this ordinance, if I stand there with a big sign, save the whales, save the whales, that would permitted activity?

BRAD JERBIC

Permitted with one caveat. Blocking or impeding and obstructing traffic is prohibited City-wide, including in the Mall.

COUNCILMAN ANTHONY

Okay.

BRAD JERBIC

But, if you're just standing there and you're not impeding anybody, you're fine.

COUNCILMAN ANTHONY

Okay. So –, leafleting, what you're talking about, is actually handing out material?

BRAD JERBIC

Right.

COUNCILMAN ANTHONY

Okay. All right. But, if you could just take another stab at that with Jeff, just to make sure that if somebody grieves that, they know exactly what is permitted activity under leafleting.

BRAD JERBIC

(Inaudible)

COUNCILMAN ANTHONY

Okay. Now, under, okay, under solicitation and mall entertainment, so those two are going to be prohibited, except in the free zone areas. Now, soliciting and mall entertainment could be a – commercial enterprise or it could not be a commercial enterprise, correct?

BRAD JERBIC

Correct.

COUNCILMAN ANTHONY

I mean, you could stand out there and entertain and not ask for money, you just wanna entertain people, and you're not, you don't have anything out there asking for money, throw coins, and you're the same as soliciting, correct?

So, Jeff, how much – soliciting and mall entertainment occurs on Fremont Street Experience where there's no commer, no currency attached to it? See – what I'm asking there?

JEFF VICTOR

Zero. Everybody out there is conducting business.

COUNCILMAN ANTHONY

Zero. So, nobody goes out there to – sing and dance and not ask for money at the same time.

JEFF VICTOR

No.

BRAD JERBIC

Let me – ask this. I know there was an article in the paper, and I don't know the answer, but I wanna make sure that we do not (inaudible) the record that – later on (inaudible), should it get approved. Was there a time when there was somebody out on the Pedestrian Mall tap dancing that security stopped, and were they asking for money?

JEFF VICTOR

I don't know whether they were asking for money or not, to be honest with you.

BRAD JERBIC

To answer your question, there may be times when somebody just went out there, because they either wanted to express something or, to be blunt, wanted to pull a stunt just to see how the Experience would react. Some people got out there and literally tested the boundaries of the prohibitions, or lack thereof, to see what would happen. And I don't have a doubt in my mind

that some that are out there, and probably most that are out there aren't even aware of the litigation or the case law that's been submitted. They're just going out there to (inaudible). But, I can also tell you that there are others that have gone out there that have been, for want of a better term, doing things just to see if they can generate a reaction from security or from Metro to see where the boundaries of enforcement are. I don't have a doubt. Some of those people are put up by organized, organizations that are interested in litigation. I don't have a doubt that some of those people are out there because they themselves may be interested in litigation. Some may just be ordinary citizens that are just curious as to how much freedom they enjoy in that Pedestrian Mall.

I don't know the percentages of them either. But I do know that some of them out there are doing it for free just to see what happens.

JEFF VICTOR

Councilman, my answer was too absolute. I apologize. I mean, the vast majority, almost without exception, folks are coming down there to – conduct commerce. And, so, may there be some examples out there, I don't know whether they're out there doing something with other intentions, perhaps, but, by far, the vast majority are out there to conduct commerce.

COUNCILMAN ANTHONY

The – reason I ask is, I mean, you , Jeff testified that, you know, he, it's his responsibility, or the Fremont Street's (sic) responsibility to have organized commercial enterprises, so they have kiosks and people pay a certain amount, and that's all organized, and, thought –, well planned out. So, if – somebody goes down there and sets up their own commercial enterprise, such as

standing there dressed in silver, asking for money, could – that be banned as a commercial enterprise from Fremont Street Experience, because they have the authority to organize that? That – in and of itself, could that be completely prohibited anywhere on Fremont Street?

BRAD JERBIC

We, we've always though so, under the original ordinance, that, certainly, the authority on the original Pedestrian Mall Ordinance that was given to Fremont Street (sic), as well as the development agreement. The development agreement charged that, with operation and maintenance of the Mall. And, remember, when we go back in time to day one, we thought, as did the local District Court Judge who agreed with us that one time, that it was – not a traditional public forum. It was complete authority to regulate all activity. So, as it's been whittled away by various court decisions, we have the final decision, which threw virtually everything out, we have a contract, which charges Fremont Street (sic) with total regulation and total control and total management. And a set of laws disappearing that. A set of laws that says, you really can't go that far, 'cause it is a traditional public forum, and, as a result, you're limited to the type of restrictions that you can impose.

I would agree with you, Councilman, that purely commercial speech is completely controllable, even under First Amendment Law by the Fremont Street Experience.

COUNCILMAN ANTHONY

It is?

BRAD JERBIC

Purely commercial speech. But not when it comes to –

COUNCILMAN ANTHONY

So why would you –

BRAD JERBIC

– (inaudible) are – commercial –

COUNCILMAN ANTHONY

– set up –

BRAD JERBIC

But there's some – First Amendment limits to that. There's (sic) various kinds of commercial speech that the courts have chipped out little exceptions for. But, by and large, commercial conduct, setting up a kiosk of your own, just to make money, hypothetically, would be completely prohibited by the Fremont Street Experience.

Here's where we get into problems –

COUNCILMAN ANTHONY

So, why would you set up a free zone for that then?

BRAD JERBIC

Where we get into problems, there are, one, we want that commercial space in the Mall to be prime commercial space reserved for Fremont Street to make money on and enhance the pedestrian and tourist experience. That's the reason for it. But there are times when, if this were all black and white, this would be so easy. But we have, like I explained it to somebody the other day, what if you went out in the Mall and you set up a table and you started selling white Hanes T-shirts, just white T-shirts. Purely commercial. No content. No speech. No nothing. I think that could be completely prohibited. But now I stamp a message on it. I stamp, you know, I'm for Jesus, or screw the government, or vote for John Edwards, or whatever you might wanna put on this, now you might have a message that is looked at in addition to your plain white T-shirt. And, because you have a hybrid, courts begin to look at this a little bit different. And they begin to look at that kind of speech. It may be not just commercial, but having a free speech component as well.

Entertainment. Anyone talk (sic) about entertainment, individuals who – express through stripping, courts have said, and they have a First Amendment component. There may be some communicative speech going on there. You get tipped for it, paid for it.

There are lots of things that we look at today that just aren't as black and white as you would think. You might think that if you sell any kind of product, that's always commercial speech. (Inaudible) the product. What if you sell crucifixes?

COUNCILMAN ANTHONY

Okay. So, –

BRAD JERBIC

Or you sell rosaries?

COUNCILMAN ANTHONY

– what I'm hearing you saying is there is a possibility that you could ban commercial-type speech, but, I guess, what I'm hearing you saying, is, on a safe side –

BRAD JERBIC

Um, hum –

COUNCILMAN ANTHONY

– instead of banning it, is to move it to a free –

BRAD JERBIC

Right.

COUNCILMAN ANTHONY

– zone?

BRAD JERBIC

If you're asking for money, that's what we're looking at here. If you're asking for anything of value for yourself or your business, and let me read the definition of solicitation, as it's rewritten. The word immediately has been taken out of that. Solicitation means the act of solicitation,

including asking, begging, soliciting or pleading for the purposes of taking money, charity, business or patronage, or gifts, or items of value for oneself, another person or organization. That, we are saying is in the free expression zone only, mall entertainment, whether it's protected by the First Amendment or not, then the – free expression zone only. That's it. Those are the two restrictions.

COUNCILMAN ANTHONY

Whether you're asking for money or you're not asking for money?

BRAD JERBIC

Right. In the Mall (inaudible), whether you're asking or not, you're in there.

COUNCILMAN ANTHONY

You're in the free –

BRAD JERBIC

That's correct.

COUNCILMAN ANTHONY

But, what I'm hearing you saying is if you're just a commercial, if you're entertaining for money, if you wanted to ban that completely, you're –, kind of, it's not completely clear whether you could do that or not?

BRAD JERBIC

Let me see if I understand the question. If you are an entertainer just asking for money?

COUNCILMAN ANTHONY

Yeah. If you're –

BRAD JERBIC

Theoretically, I think you can ban all of that. If you are literally an entertainer, let's say, you're Wayne Newton. You wanna put on a show on Fremont Street Experience, you wanna charge tickets for it, I think that could probably be banned.

COUNCILMAN ANTHONY

Okay. But, with this ordinance, it would not be banned, it would just be moved to the free zone area?

BRAD JERBIC

The problem, like I say, is getting into which speech is allowed and which isn't. Now, you're gonna hear, I know you're gonna hear from the ACLU, and you may hear from others, that may say very well or completely disagree with me that all this entertainment is all expressive, and it's all allowed, and it's all part of speech. And I think that, as you look at the case law on this stuff, it really evolves over time. You know, as we sat here writing these first round of ordinances, we looked at every word with respect and with a desire to comply, that was written by the Ninth Circuit and we still have a disagreement among the courts.

So, when it comes to entertainment, again, I really think the better way to look at this is that, on paper, Fremont Street (sic) has the ability to regulate it, limit it, and you pick only their own, and they get to pick and choose the entertainment. In reality, the courts could very well say a lot of this is protected speech.

COUNCILMAN ANTHONY

Okay.

BRAD JERBIC

And that's why rather than argue whether it is or it isn't, whether it's real entertainment or commercial entertainment, or this or that, (inaudible) call it entertainment and put it in a zone.

COUNCILMAN ANTHONY

Okay. That answers my question. Thank you.

COUNCILMAN BARLOW

Is that it, Councilman?

COUNCILMAN ANTHONY

Yeah.

COUNCILMAN BARLOW

Okay. Mr. Jerbic, solicitation, the definition that you provided, would there be an issue if, in fact, one of the entertainers would be out on the Mall entertaining, and have a bucket in front of them; however, they did not ask anyone for any currency?

BRAD JERBIC

Yeah. They may say, I'm not an entertainer; I'm a solicitor, and that's all I solicit and that's protected. And that's how you get around it, you say, your solicitation is protected speech, but we're not gonna separate that anymore. We're saying entertainment, we don't care if you got a bucket or not, we don't care if you're soliciting or not, 'cause soliciting and mall entertainment are two categories that are gonna be in the free expression zone. We're not gonna get involved in making that decision anymore, whether you're looking for money or not, whether it's commercial or solicitation –

COUNCILMAN BARLOW

I – understand that, but my – pointed question is, is it solicitation, if in fact, an entertainer, whether be in the zone or out of the zone, if an entertainer had a bucket in front of them, and they did not ask any of the stand, those who are standing by, observing them or being entertained, is that considered solicitation?

BRAD JERBIC

Yeah. The, I don't know the answer to that. And I think that's why the Court (sic) Circuit is saying, too, you don't wanna go there. Courts really frown on laws and activity that requires any

judgment by a human being at all, 'cause human beings can pick and choose. You may walk down, as a security guard, and see a bucket, somebody tap dancing in front it. Well, it's clear, to me, he's begging, pleading for money by the act of tap dancing. Somebody else could walk by and say, he didn't utter a single word. He's just tap dancing. There just happens to be a bucket there. You know, courts look at that and say, boy, you know, I don't like that, because you get to pick and choose who is, you know, soliciting and who isn't.

I have a card in my hand, we actually had the circuit look at this and say, we don't like this written solicitation stuff, 'cause you have to read it to determine whether or not it's solicitation. They don't like the fact that somebody has to make a judgment call on that. How the heck else do you know, unless you read it? The courts don't like that, and I respect that. I don't have to agree with it, but I respect it, and we'll follow it.

When you talk about some of these areas, you're really getting into those kinds of discussions. That's why one could stand here in front of you and say, this is all protected speech, 'cause solicitation is protected. Expressive speech is protected. It doesn't have to be words. It could be conduct. And, so, that it is protected. And, so, you can have now, depending on what you're talking about, my answer is only as good as the very specific example you give me. Wayne Newton going out in the middle of the Mall selling show tickets for, you know, whatever he would do on the Strip, I think I'd have a pretty good argument that's purely commercial and you're probably (inaudible). Somebody else gets out there and starts tap dancing with a bucket in front of it (sic) with a dollar sign and doesn't utter a word, they may have a better argument that I'm soliciting as opposed to entertaining. It's just my method of driving you to my bucket.

Or, I put a religious shirt on now, or a, I'm a devil worshiper and I want money from those folks, or I'm part of the Arian Brotherhood, whatever you are, you're wearing a message and putting a bucket in front of you, whether or not uttering a word.

COUNCILMAN BARLOW

Mr. Victor –

BRAD JERBIC

You know, again, people start to move all over the scale when you talk about this conduct.

COUNCILMAN BARLOW

I'm with you. I understand, Brad.

Mr. Victor, are there any of your vendors hired by a Fremont Street Experience or any of the properties that exist under the canopy that solicits or distribute any type of literature, leaflets?

JEFF VICTOR

Some of the entertainers that – we hire that will also accept tips; yes, that's true. Do they distribute flyers or paraphernalia? I think some of the casinos will have timeshare operators in their doorways that may or may not distribute papers and stuff. I, I'm not coming up with a concrete example of any of our vendors on Fremont Street to name doing that.

COUNCILMAN BARLOW

Okay. What about the other properties? Do the – other properties, the casinos, or the like, distribute flyers or go out and solicit beyond just the timeshares?

JEFF VICTOR

Oh, I think all the businesses up and down Fremont Street will be happy to do that, if that's allowed.

COUNCILMAN BARLOW

But, to your knowledge, do you know whether or not they do it today?

JEFF VICTOR

Oh, sure. In the last year, the flood gates have opened. And, remember, not all of the businesses up and down Fremont Street are limited properties, and, even within those limited properties, there are third party entities. Our ability to control those kinds of activities has been quite confused and diminished over the last year.

COUNCILMAN BARLOW

Okay. I have no further questions at this time. Thank you, Mr. Victor. Thank you, Mr. Jerbic.

BRAD JERBIC

(Inaudible)

COUNCILMAN BARLOW

If there is anyone here wishing to speak on this item, we would ask that you please come forward, state your name for the record.

MAGGIE McLETCHIE

Where would you like me to sit?

Thank you for letting me speak. My name's Maggie McLetchie. I'm the staff attorney of the ACLU of Nevada. A few preliminary things: I'd like to be sure that the copies of the things that were put into the record are made available to the public.

BRAD JERBIC

Absolutely, as is, by the way, the PowerPoint, so you're welcome to the entire PowerPoint and the videos as well.

MAGGIE McLETCHIE

Thank you very much, Mr. Jerbic.

Another concern I had, which touches on the Open Meeting Law issue, is the fact that the version of the ordinance that you have in front of you today, it was made available to the public beforehand before it was slightly changed, and I'd also, and I'm not sure that necessarily you can act on something that hasn't been made available. That's a preliminary concern.

More importantly, I was concerned, when Mr. Jerbic was speaking, that, he said that some of the issues about the full meaning of solicitation and how that's gonna be applied when it isn't solicitation, may be worked out later. Under law, the – due process requirements that (inaudible)

may be ambiguous requires that members of the public, people who may be penalized under the law, are able to understand it. And if Mr. Jerbic and Mr. Victor, today, were not hearing the meaning of the law, certain, and –, yourself, Councilman, I'd actually put forth that it might not be possible for members of the public, to when the law, might be an ordinance might be enacted, for them to understand it. So, those are just some preliminary concerns, about the materials before us today.

I also wanted to point out a few things on the testimony. A lot of it was based on hearsay. I realize Mr. Victor later corrected himself, but it's also not possible to testify to a negative, say something never happens. And I can actually tell you, it's also, again, hearsay, of course, but I can tell you that I'm aware of people going down to Fremont Street, including the ACLU, engaging in activity that is by no means commercial, and that is unquestionably protected by the First Amendment.

I'm just gonna get into what the history of the litigation, and the history of Fremont Street, that Mr. Jerbic set forth. I don't really contest very much, but there are a few things that I would set forth. At the beginning, a few myths that I think may be (inaudible) by some of the things we've heard today.

First of all, I disagree with the underlying idea that you can't comply with the constitution and make money. There are many places in the United States where we have vibrant commercial areas, vibrant downtown areas, where first, where they don't have these kinds of laws that prohibit First Amendment activity and businesses flourish. And it's part of the fact of living in a vibrant area. In my opinion, a lot of the reasons that people like coming to Fremont Street and like coming to this area of town, as opposed to other areas of town, we see growing off the Fremont Street Experience area, we see growing businesses like a new coffee shop, a new arts

center. And I think a lot of the types of people that like coming to Fremont Street like coming here, because it is more like an urban area, which include a traditionally urban area, which includes having free speech activities that are common right now.

In any case, arguing that speech is undesirable and interferes with commercial interests, does not justify unconstitutional restrictions. I'm gonna walk through, a little bit later, about why I think the restrictions are unconstitutional, but, in any case, I just wanna make clear that just because, even if it were true it interferes with commercial interests, that does not justify unconstitutional restrictions.

Another point is that Mr. Jerbic and the Council and the law and Fremont Street Experience, Limited Liability Corporation (sic), security guards can't decide is and isn't legitimate First Amendment protected activity. You – both had some interesting important questions, I thought, about things like, well, if you have a jar of tips, is that commercial? If you're dressed up and you're trying to get people to give money to take a picture, is that First Amendment or is that or isn't that protected? And, actually, the Ninth Circuit, I think, is, obviously, providing authority on this point, and they have made clear that that kind of activity is protected. And it's actually irrelevant, they said, whether it's, it's both protected to go after tips, to ask for tips and to passively seek them.

And, we've – heard a lot of things about, well, there's the balloon artist, things like that, who, I'm sorry, hula hoops and things like that, those are – clearly not protected. Someone dressing up in silver and portraying a statue, that's not protected. That's not true. The Ninth Circuit in striking down and actually much more permissive and protective. Street performers scheme in the City of Seattle, the lead plaintiff was a balloon artist. So a lot of the kinds of activities that I think, today, we may be assuming are on the gray area, are not in the gray area. When the Ninth

Circuit says that an activity is protected under the constitution, it is protected under the constitution.

Along with the, related to – my last point, that just because we may not like what's going on down there, we may not like all the kind of speech that we see, we may disagree with it, that we have to figure out how to regulate it, how we're gonna solve the problem. The Ninth Circuit in the Berger decision that I – mentioned said the following: First Amendment protections are robust, yet at the same time fragile and precious. Often, government restrictions on speech seem perfectly reasonable at first glance and the encroachment on expression forgivable in pursuit of convenience or good manners, but 70 years of law, beginning with Hague vs. CIO has laid the basic principle that there a few government-owned areas of which public parks are the pre-eminent example in which values underline the First Amendment, favor communication among citizens over merely reasonable speech restrictions. And require and said that any regulation of speech be targeted at real problems and carefully calibrated to solve those problems. In other words, while some among them, the dissenters in this case might prefer a Truman Show version of pristine placidity in our public parks, our First Amendment jurisprudence rests on a very different vision.

COUNCILMAN BARLOW

May I just stop you there?

MAGGIE McLETCHIE

Sure.

COUNCILMAN BARLOW

Well, number one, it seems like you're – trying to rush through it. You don't have to rush –

MAGGIE McLETCHIE

Okay.

COUNCILMAN BARLOW

You can take your time.

MAGGIE McLETCHIE

We –, we've just been here so long.

COUNCILMAN BARLOW

I know.

MAGGIE McLETCHIE

I'm just sitting around waiting to go eat lunch. But thank you for that.

COUNCILMAN BARLOW

But we wanna make sure that you get everything that you need on the record, as well.

MAGGIE McLETCHIE

Thank you very much. I also appreciate that also.

COUNCILMAN BARLOW

So you don't have to, you know, feel as though you're being pressured, you're not. So you can take your time.

MAGGIE McLETCHIE

I'm also from the East Coast, so I talk really fast.

COUNCILMAN BARLOW

Okay. All right. I just wanted to let you know that. And, secondly, wanted to stop you for a moment just to ask a question in regards to the case study you just read in regards to public parks, and I know that Mr. Jerbic defined whether or not the Fremont Street Experience was a public park, was it a recreational venue, facility, so I – wanna ask a question in regards to the relevancy of –, one, Mr. Jerbic, is in fact Fremont Street Experience, according to case law, a public park, a recreational facility or entertainment venue. And, in relation to, McLutchie?

MAGGIE McLETCHIE

McLetchie.

COUNCILMAN BARLOW

Mcletchie. Ms. Mcletchie case study stating that she's referencing public park, so I wanna be able to see, if in fact, are they one in the same? Or, if in fact, they're separate?

BRAD JERBIC

It's actually none of the above. It's a traditional public forum, according to the courts. The case law is that all streets and sidewalks are traditional public forum. And the argument that was advanced by the ACLU in the first round of litigation was that you did not successfully take this area that was a street and sidewalk and convert it into a private non-public forum.

COUNCILMAN BARLOW

Okay. But give me – the short version. Is –

BRAD JERBIC

Right. Now parts of public forums –

COUNCILMAN BARLOW

– what is Fremont Street Experience considered?

BRAD JERBIC

It's – considered a public forum for purposes of what kinds of First Amendment activity are allowed and what kinds of restrictions and what test will be applied to those restrictions. That's what's considered by the courts. The word park, street, sidewalk, is irrelevant when it comes to the – big term. The big term is traditional public forum, which kicks in motion a test that says you have to have a substantial governmental interest in any regulation. It says that you have to leave alternative means of communication open if you do those regulations. And those regulations are limited to reasonable time and place and manner restrictions.

COUNCILMAN BARLOW

Okay. And you're not –

MAGGIE McLETCHIE

If –

COUNCILMAN BARLOW

I – just want to hear –

BRAD JERBIC

I think we're probably on the same page (inaudible)

COUNCILMAN BARLOW

– Ms. McLetchie, respond to that.

MAGGIE McLETCHIE

We're on the same page (inaudible) public forum and –

COUNCILMAN BARLOW

Okay.

MAGGIE McLETCHIE

– while this talks about public parks, the point is that they're both public forums.

COUNCILMAN BARLOW

Okay.

MAGGIE McLETCHIE

So they, the legal analysis for Berger is exactly, directly applicable here.

COUNCILMAN BARLOW

Okay.

MAGGIE McLETCHIE

When you're talking about places like public parks and places like Fremont Street, when the Ninth Circuit declared that Fremont was indeed a public forum, as we had urged, what they said is it's – the kind of area that is at the – heart of the kind of public area where the public exchange of information is protected at the highest level of degree of protection by the courts. The –

COUNCILMAN BARLOW

Okay.

MAGGIE McLETCHIE

It is a public forum, just like what was at issue in Berger.

COUNCILMAN BARLOW

Thank you.

MAGGIE McLETCHIE

So let me go on again. I don't think we disagree on the basic parameters of whether it's a public forum or what the law is, but I do want to reiterate, we heard a lot about the history of the – Fremont Street Experience and the Liability Company, the history of the development of the Fremont Street area, and a lot about the case law. And it is a very unique area. I don't want to be dismissive of the fact that it is, this is a different and unique area.

However, the fact that it's unique, doesn't change the constitutional analysis. As – Mr. Jerbic and I have agreed, it is in fact a public forum. We also agree obviously that – the government can enact reasonable time, place and manner restrictions, despite the fact that it is a public forum. However, there are certain limitations on that.

First of all, it has to be content neutral. And where you are allowing certain kinds of speech, Fremont Street Experience Limited Liability Company endorsed performances, and then regulating other kinds of performances to a very small area, our view, believe this is not content neutral. When something is not content neutral, it is – presumed unconstitutional and a very high test applies.

In addition to being content neutral, there are other requirements. It also has to be narrowly tailored to serve significant government interests and it may not burden more speech than necessary. This is almost a total ban. The actual area that's – left, that's carved out, is so small that it almost operates like a total ban. And so it is not narrowly tailored to serve a significant governmental interest.

In addition, we've heard a lot today about certain kinds of speech that we're concerned about. But this would reach a whole slock (sic) of activity. The total ban, for example, on solicitation

would stop me from handing out my membership materials on Fremont Street, unless I was in this very small area.

In addition, the third requirement is that when you're enacting time, place and manner restrictions, they have to leave open ample alternative channels and you have to be able to reach your audience. This just doesn't pass the muster. I read to you a quote from the Berger case, the Berger case I will provide, I can send this to you, Mr. Jerbic and to yourselves, after – today along with a – memo detailing some of the issues that have come up today –

COUNCILMAN BARLOW

And – as you mentioned these cases –

MAGGIE McLETCHIE

Mm-hmm.

COUNCILMAN BARLOW

– will you be submitting those to the Clerk, or are you just mentioning them on the record?

MAGGIE McLETCHIE

I'm just mentioning them. I can certainly – well, this has got my notes on it. I'm just mentioning them today. I will submit them. I will write, I will send you guys copies of these later, so that –

COUNCILMAN BARLOW

Okay. Please make sure you – send them to the –

MAGGIE McLETCHIE

To the Clerk as well. Sure.

COUNCILMAN BARLOW

– Clerk as well, so we can have that on the record.

MAGGIE McLETCHIE

I'm happy to do that.

COUNCILMAN BARLOW

Okay.

MAGGIE McLETCHIE

Thank you very much. In any case, the restrictions that Berger, they both required permits and they also relegated – street performers. It was about street performers, which I don't think is a big, one of the big concerns here. They relegated them to certain kinds of area and tried to control who would perform, where, when, to try to control some of the concerns. And it was struck down as unconstitutional. It didn't pass constitutional muster and it is far, it was far more permissive than what we're looking at today. I – heard, I listened with – interest to the argument, that this would be permissible because there are kiosks there, and you ban the

solicitation in certain areas of the kiosks. I don't think that's correct. I don't think that by putting up kiosks all over the public forum can you in essence justify a near total ban on speech. Another – myth that I should have pointed out, I wanted to discuss earlier, is that these laws are necessarily needed, to solve some of the problems. A lot of the problems we saw today on the – videos are things that we wouldn't necessarily object to people addressing in a constitutional manner, and there may actually be laws on the books.

For example, if that big huge, I forget which – group it was that was using it, but the big – structure that was there? If you're actually obstructing traffic, under County code, it's totally illegal. It's, that is not something we object to. If you're actually obstructing traffic, that is something that is not permissible. We don't need to pass a huge ban on activities on the Fremont Street Experience area just to prevent that kind of problem.

We've heard examples from Mr. Jerbic about assault. Again, there's (sic) obviously assault laws on the books that we can go after if someone is truly being, is – truly assaulting somebody. In terms of aggressive solicitations, we've never sued about aggressive solicitation. And we don't – object to aggressive solicitation laws. And so, if somebody won't let you pass, if someone's engaging in that kind of activity, we certainly do, at the ACLU, do not object to those laws being enforced and those kinds of activities. While the speech can't – be banned and can't be, and it's very difficult to regulate the speech under the law, you certainly can go after someone for aggressively soliciting.

I – mentioned, I also mentioned the obstruction of traffic. We've dealt with this issue on the Strip. You can't, for example, you asked me some questions about signs and we litigated a case and eventually settled it, regarding street creatures on the – Las Vegas Strip. And they tr – they did have a law on the books that said signs couldn't be a certain size, and you couldn't be in

certain areas. And in the end, we came to an agreement where we just figured out a way to ban actual obstructing. So there wasn't, there was, there's not a sign limit per se, but you cannot obstruct traffic on the Strip. And the same would be possible on Fremont Street.

A few – follow up points. I wasn't here last time. Mr. Lichtenstein was here and he would have been here today but he's at the – County dealing with a work card issue. But the Santa Monica ordinance I understand that this law, that these proposed ordinances were based in part on the Santa Monica ordinances. Those ordinances are nothing like what we have before us today. Like the Berger case, they're much more – permissive. For example, they limit street performers to be within certain, within – a certain distance of bus – stops, but the – vast majority of the area of the Promenade and the – Pier area are actually open to free expression. In addition, the permitting scheme and the other restrictions at issue in Santa Monica, they haven't been reviewed by the courts. What has been reviewed by the courts, what is binding law and a – binding interpretation of the constitution that the City of Las Vegas needs to consider is the Berger case. Because that's what the, when the, that's, I think the most direct case on point, save the Fremont Street cases that we've litigated, it's the most direct case on point.

Last time, we, they discussed I think some examples about airports where brought up. There were a few other examples today, I think, about maybe a state – fair. Those areas are not public forum. So the kinds of – deference to speech that courts give are not given in those kind of context. Airports are not a public forum, so it's – much easier to regulate speech there obviously.

The final point I want to bring up is attorneys' fees. I'm here before you today, obviously Mr. Jerbic and I have some disagreements about how the constitutionality of this law and I understand that he's your attorney. But we've been before the City Council before, on all of

these issues. And we always try to come and testify and talk about issues before you litigate them. In the past we've said that – ordinances were unconstitutional, they've been passed anyway. Then we've gone to court and then we've won. And then you've, new ordinances have been proposed. We said, hey, guys, we think they're unconstitutional, we're willing to work with you, but we don't think they're going to – withstand constitutional scrutiny. The City Council passes them anyway, we go to court, eventually we win and here we are again.

This case, in some iteration, has been litigated for a decade and a half. Over $250,000 of attorneys' fees have (sic) been paid out to the ACLU. I understand that there's an argument that, hey, Fremont Street Experience Limited Liability Company is paying those, the ACLU isn't paying those, so it doesn't really matter. It does matter. Because if we can afford to just throw away money on – legal costs and attorney fees, then you should be charging them more on the lease.

But more importantly, it's a waste of judicial resources and, of course, the City Council shouldn't be doing things that violate the constitution. The, I – believe you've taken an oath to uphold the Constitution of the United States and when something's unconstitutional, it shouldn't go onto the books just for us to litigate it, go to court, win, get attorneys' fees and then come back here. I mean, we, we've been around this block so many times that I really, really urge you to hold off on recommending this for action – I think that we, you know, we're always willing to sit down with Mr. Jerbic and talk and try to figure out if there's other ways we can – come to an agreement with all these concerns. In addition, we are, and we are actually in settlement negotiations right now with a United State Magistrate Judge, who just contacted the parties, I think yesterday or the day before, to try to figure out when we can meet again. And we're negotiating in good faith there. We were actually pretty blindsided that this even came up,

because Fremont Street Experience Limited Liability Company, the ACLU and the City are all party to those negotiations. I actually can't discuss the contours of what we're talking about there, because it's protected, but those are ongoing. And a – judge's already expended significant time in trying to work – this out between the parties and so I'm, I just don't think that this is the right time for the City Council to just go and do its own thing over constitutional objections by the ACLU. Again, $250,000 of attorneys' fees, you know, I – enjoy coming here today and testifying in front of you, and I also enjoy litigating. The only people who's interested in, is in actually passing these unconstitutional laws, on some level, is the ACLU, because we can go to court, win and get attorneys' fees. But rather than talk about this for another 15 years or another – 30 years or another hundred years, I think the best thing for us to do is to actually come together and try to resolve people's concerns in a way that comports with the Constitution. I understand that Fremont Street, the Fremont Street Experience area is a unique area. I understand that there are concerns about some things that go on – down there. But the First Amendment applies and we need to figure out a way to comply with the Constitution when we're – trying to take care of things down there.

Unless you have any questions, that's all I have.

COUNCILMAN BARLOW

Councilman?

COUNCILMAN ANTHONY

I have a question.

MAGGIE McLETCHIE

Sure.

COUNCILMAN ANTHONY

So – from your standpoint, it would be constitutional for, let's say four people to go down to Fremont Street Experience, set up a drum – set, guitars and start playing and have a bucket and people throw money in it? That would be, as far as you're concerned, that's a First Amendment right for somebody to do that?

MAGGIE McLETCHIE

As far as I'm concerned, and more importantly, as far as the Ninth – Circuit is concerned.

COUNCILMAN ANTHONY

So you're – saying the Ninth Circuit Court of Appeals has ruled that that is permissible activity?

MAGGIE McLETCHIE

They have ruled that street performers are protected under the First Amendment and that both passive and active requests for tips are also protected. They – and I'm happy to share this – I'll be sure to send this around, but yes, that is my position, that is the position of the Ninth Circuit. So, street performers are protected.

COUNCILMAN ANTHONY

But there's – also the – stipulation that there's time, place and manner restrictions that could be put into place; correct?

MAGGIE McLETCHIE

That is correct.

COUNCILMAN ANTHONY

That is correct. So – putting them in a free speech zone –

MAGGIE McLETCHIE

Mm-hum.

COUNCILMAN ANTHONY

– as a, that – would be a place – restriction, could be constitutional?

MAGGIE McLETCHIE

It could be.

COUNCILMAN ANTHONY

Could be.

MAGGIE McLETCHIE

If it were content neutral, which it isn't, because some performers are allowed to go perform on a stage. And whenever you're picking between kinds of speech, it's necessarily not content neutral. And so because you're allowing some – people to perform there and not others, arguably it's not even content neutral. So, it's unconstitutional out of the gate.

Second of all, you have to look at whether or not it's narrowly tailored and whether or not it leaves ample alternatives to, for people to express themselves. And I – my argument is that that area is so small, it, with respect to the Fremont Street area at large, that it wouldn't pass muster. In the – law at issue in – Seattle, in the Berger case that I keep talking about, there were kind of areas all throughout, on the actual (inaudible). They weren't off to one – relegated small area off to the side. And even that didn't pass constitutional muster. And so, yeah, (inaudible) I do not believe that that passes muster because I think it's too small an area and I don't think it passes the constitutional test.

COUNCILMAN ANTHONY

Thank you.

COUNCILMAN BARLOW

So, just to piggy back off of the Councilman just shared, if the area were larger, then would it, what do you think the Ninth Circuit position would be if the area were larger?

MAGGIE McLETCHIE

Well, if the area were larger, arguably then the alternative channels to communication problem may be, that – part of the test may be easier to pass. However, arguably it'd still be, it wouldn't be constitutional. It'd be subject to strict scrutiny, because it's not content neutral, because you're allowing to, you're allowing some speech and disallowing other speech. And so where you're going to have this reasonable time, place and manner restriction always have to be content neutral. If they're not content neutral, they're not okay. No matter how big or small the area is.

COUNCILMAN BARLOW

Okay. Well, thank you, –

MAGGIE McLETCHIE

Thank you.

COUNCILMAN BARLOW

Ms. Mcletchie.

MAGGIE McLETCHIE

Thank you very much. Very good that time.

COUNCILMAN BARLOW

All right. Is there anyone else here, willing to speak, on this item? If so, please come forward and state your name for the record? Mr. Jerbic?

BRAD JERBIC

(Inaudible), I'd just like to, for want of a better word, have a final word. I – don't want to say that I disagree with a lot of things that were represented by the ACLU (inaudible) regarding the Mall entertainment. You know, you gotta read these cases, you gotta read the circumstances where the conduct occurred, you gotta read the type of conduct that occurred. There may very well be a lot of conduct, as I said earlier, that because there's a cross over in solicitations or some kind of expressive activity that's given protection. When I look at Robot man up here, he jumps off his pedestal and chases tourists away, for taking his video. When you look at the Kiss guys, Tasering somebody who disagrees with him over a $20 tip. I think we're gonna have some serious disagreement over what's protected there and what isn't.

But I think that doesn't really matter. It doesn't really matter if we don't have the (inaudible). That's the beauty of this ordinance. We don't have the (inaudible), where you cross the line between protected entertainment and unprotected entertainment. Where you cross the line between protected solicitation and arguably, you know, solicitation that might be limited in some (inaudible) zone. It's all lumped into one category. We're just going to presume for a moment, just presume for a moment, that there may be is some protection associated with some or all of the Mall entertainment. We're treating it all like, putting it all in the First, all in the free expression zone. Whether it has a solicitation component or not. The solicitation – goes in the free expression zone.

As far as the size of the zone, there's no evidence that they're too small. If anything I think they may be bigger than necessary. But the fact of it is, I put it on the record, this is a little bit fluid. If it turns out that these zones aren't big enough, for whatever reason, don't provide an alternate

means of – reaching, or (inaudible) communication, you know, we'll look at them and they'll be expanded. You know, we're gonna monitor this and we're gonna watch it.

But I also want to say one thing about the First Amendment and the Constitution. You know I went to law school a long time ago. And what the law said the First Amendment to the Constitution was then is different what the law says, and First Amendment says now. It's the same First Amendment. Hasn't changed one bit in 230 years. Of course, interpretation of it has changed. You know, for the first 200 years of this country, you had more (inaudible) for purposes of solicitation prohibited around the country. Solicitation and begging or panhandling (inaudible), it was pretty amazing. (Inaudible) changed our mind, or looked at in a different way and the field of law began to evolve. And it's not really evolved at the Supreme Court level; it's evolved at the Circuit level. You find some circuits, you, an ordinance like this completely different than maybe the Second Circuit or the Seventh Circuit or another Circuit.

And I don't think there's anybody who can wrap themselves in the American flag and say this is the First Amendment, it's carved in stone and this is what it means. Because most of this is developed as a result of these kinds of ordinances and this kind of litigation. And I don't think of all those people who have been upheld, that the ACLU was insecure when they lost. And I think of all those cities that lost, I don't think they were insecure when they thought they were taking their best shot at reading the law and what it said at that moment in time. That's just the reality of this kind of litigation. And when you talk about winning some and losing some, the taxpayers haven't paid a dime for the attorneys' fees. The ACLU is correct; the Fremont Street has picked it up. The taxpayers have picked up the cost of my salary for this presentation, Mr. Steed's salary for drafting these ordinances and the like. But that's been the cost to us and that's gonna continue to be the relationship as we get into probably the next round of litigation.

But when you talk about where to draw the line? You know, we could say, hey, we won at the District Court level, ACLU, in 1997. You throw in the towel. They say, oh no, we're gonna appeal. We won, now you throw in the towel. They go back to District Court, we win, you throw in the towel. We go back up there and you throw in – where does this end? That's a silly argument. It's a silly argument for why you shouldn't litigate or not. Why you shouldn't promulgate an ordinance or not.

You know, you have the responsibility that organizations that challenge ordinances don't have. You have a responsibility to govern. You have the responsibility to look at the big picture. And there's tension between these things and there always will be. It's just the nature of our country and the laws. But what I'm asking you today is to look at this ordinance from that perspective and ask yourself is your responsibility as the governing body of the City of Las Vegas, is this, is there a problem? If you don't think there is, toss this out now and tell me. If you think there is a problem, then ask yourself is this the right measured solution to that problem. And if you think it is, I ask that you pass it out with a do pass with the following amendments.

One, Mr. Steed slipped me a note, because he's a clever fellow who reads when I don't, Line 18, Page 5 also has a reference to leafleting that needs to be stricken. Line 24, Page 5 says leafleting and, needs to be stricken and the word and needs to be added to Line 23. That will make it clear that leafleting is not restricted to these free expression zones. And, finally, –

COUNCILMAN ANTHONY

(Inaudible)

COUNCILMAN BARLOW

Eighteen and 24.

BRAD JERBIC

I'm sorry. Line 18, Page 5 –

COUNCILMAN ANTHONY

Absolutely. Thank you.

BRAD JERBIC

– that word leafleting, just cross that word out and then on 24, take out that whole Line 24 and add that word and after Line 23. The, Mr. Steed has also suggested and, with your permission, I don't have the exact language, we would like to include some language in the ordinance that makes it clear that leafleting is permitted in the Pedestrian Mall. Not just remove the prohibition, but add an express permissive section. And with that proposed First Amendment, I'd ask you to consider it as pass or do pass at this point.

COUNCILMAN BARLOW

Okay. Is there anyone else here wishing to speak on this item? Seeing none. Councilman, open for discussion.

COUNCILMAN ANTHONY

Good presentation. Lot more informed now. Thanks for coming down to give your –

MAGGIE McLETCHIE

Thank you.

COUNCILMAN ANTHONY

– side. I – did have, when I was walking in here, I did have a problem with the leafleting portion, because that, to me that is, I mean, it – is a public forum down there. So, for somebody to have the ability to exercise their First Amendment right, to go down to Fremont Street to pass out a save the whale leaflet, I think that's – appropriate under the First Amendment. They should be doing that. So I'm glad you're – taking that out. I'm also glad to hear that you're actually going to put it in there as permissive activity. I'd – still like you to just make sure that the – definition of leafleting is – very clear to anybody who reads it.

BRAD JERBIC

Again, Councilman, another alternative is we can just take out that definition altogether, since it's somewhat irrelevant now. I mean, there's two ways to go. Just take out the definition of leafleting and don't define the conduct and, as a matter of law, it's permissive. Or define it and take it out of the exceptions right now and put a little sentence in saying this is leafleting, here's how it's defined and this is perfectly allowable. Either way.

COUNCILMAN ANTHONY

It seems to me – it should be defined. Because I, I mean, how are the police gonna know somebody's leafleting or not. You know, 'cause ultimately somebody's, it's gonna have to be

enforced. So, I think that needs to be really defined so that when the cop or security shows up, that person's leafleting, that's okay, leave them alone. Does that make sense?

BRAD JERBIC

Yeah.

COUNCILMAN ANTHONY

Okay. So, I'm glad to hear that, but what's – different is the – soliciting and mall entertainment, to me, is not so much speech as it's – commercial activity. I mean, that's really what, what's happening down there. People are going down to Fremont Street and they're soliciting, and entertaining to make a buck. I mean, that's – what's happening. And if you don't regulate that, there's gonna be mass chaos down there. I mean, anybody's gonna be able to do it and I think the Fremont Street Experience and the City of Las Vegas has a responsibility to decide who's gonna set up a commercial enterprise down there and who doesn't set up a commercial enterprise. So, –

BRAD JERBIC

Let me – stop you there, Councilman. Because we need to make the record real clear on this. I respect what you're saying and I think that there is a certain, certainly a case to be made that, you know, any, a lot of people who solicit aren't doing it always for charity or something. It doesn't matter, under the Constitution whether it's for charity –

COUNCILMAN ANTHONY

Okay.

BRAD JERBIC

– or themselves.

COUNCILMAN ANTHONY

That's a good point.

BRAD JERBIC

It's just protected. And so I would urge you rather than make a record that we're looking at commercial speech that we just think needs to be regulated, we need to look at the – conduct itself and its affect on the Mall. And take it from that point of view. Does it interfere with pedestrian traffic? Does it interfere with the commercial/economic nature? Does it interfere with the aesthetics? Does it interfere with all those things the Circuit said we can? And if you feel it does that, in spite of its being constitutionally protected, then I think we need to look at whether or not this is reasonable time, place and manner.

COUNCILMAN ANTHONY

Okay. Well, I do think it – causes problems down on Fremont Street Experience and I – think this is a, it seems to me this is a good compromise. You're not completely banning that activity. You're allowing it to go into one particular area and if somebody on Fremont Street wants to go over there and listen to them and participate in their entertaining and their soliciting, they're very

free to do that. But I – think if you don't – regulate that activity, you're, I mean, you can't have chaos down on – people go down to Fremont Street for a particular experience and you can't have mass chaos down there and I think this helps.

BRAD JERBIC

And I want to say that – I think we need to define the term chaos too. It's chaos in the terms of literally shooing people away from businesses and the commercial opportunity, if it's chaos in the sense that they block pedestrian traffic, they detract from the aesthetics of the Mall; if that's, if all that is what you intend by the definition of the word chaos, then I – think that's appropriate. And it's just a matter of we don't like it or we find it distasteful. That's not something governments get to consider.

COUNCILMAN ANTHONY

That's correct.

COUNCILMAN BARLOW

Councilman, do you have a motion?

COUNCILMAN ANTHONY

My **motion will be to forward this to the entire City Council** –

COUNCILMAN BARLOW

As amended?

COUNCILMAN ANTHONY

As amended.

COUNCILMAN BARLOW

Okay. All in favor.

COUNCILMAN ANTHONY

Aye.

COUNCILMAN BARLOW

Aye. **(Motion carried unanimously.)**

VAL STEED

That's with a – do pass recommendation?

COUNCILMAN ANTHONY

Yes.

VAL STEED

Okay.

COUNCILMAN BARLOW

That is **with a do pass recommendation**.

VAL STEED

Thank you.

BRAD JERBIC

And thank you for the extraordinary amount of time you allowed us to build the record.

COUNCILMAN BARLOW

Okay. Thank you.

END OF DISCUSSION)

/gpb/vs;ac

City of Las Vegas Agenda Item No.: **70.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☐ **Consent** ☒ **Discussion**

SUBJECT:
RECOMMENDING COMMITTEE: BILL ELIGIBLE FOR ADOPTION AT THIS MEETING:

Bill No. 2010-32 – Levies Assessment for Special Improvement District No. 1513 - Via Olivero Avenue and Valadez Street (East of Cimarron Road). Sponsored by: Step Requirement

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $218,356.75
Funding Source: Capital Projects Fund - Special Assessments
Dept./Division: Public Works/SID

PURPOSE/BACKGROUND:
Installation of 33-foot pavement section, curb and gutter, sidewalks, and driveway approaches.

RECOMMENDATION:
ADOPTION at 8/18/2010 City Council meeting pursuant to the 8/3/2010 Recommending Committee.

First Reading – 7/21/2010; First Publication – 8/6/2010

BACKUP DOCUMENTATION:
Bill No. 2010-32

BILL NO. 2010-32

ORDINANCE NO. _____

AN ORDINANCE CONCERNING CITY OF LAS VEGAS, NEVADA, SPECIAL IMPROVEMENT DISTRICT NO. 1513 – VIA OLIVERO AVENUE AND VALADEZ STREET (EAST OF CIMARRON ROAD); PROVIDING FOR THE PAYMENT OF THE COSTS AND EXPENSES OF SAID IMPROVEMENTS; ASSESSING A PORTION OF THE COST OF SAID IMPROVEMENTS AGAINST THE ASSESSABLE LOTS, TRACTS, AND PARCELS OF LAND BENEFITED BY SAID IMPROVEMENTS; RATIFYING, APPROVING AND CONFIRMING ALL ACTION PREVIOUSLY TAKEN; PRESCRIBING DETAILS IN CONNECTION THEREWITH.

Summary: Levy Ordinance

WHEREAS, the City Council of the City of Las Vegas (hereinafter the "City Council" and "City", respectively) in the County of Clark and State of Nevada, has heretofore, pursuant to the requisite preliminary proceedings, created Las Vegas, Nevada, Special Improvement District No. 1513 – Via Olivero Avenue And Valadez Street (East Of Cimarron Road) (hereinafter the "District"), for the purpose of acquiring and improving local improvements (hereinafter the "Project") and has provided that a portion of the entire cost and expense of the Project shall be paid by special assessments, according to benefits, levied against the benefited lots, tracts and parcels of land in the District; and

WHEREAS, the District has been properly created by an ordinance heretofore adopted under the provisions of the Nevada Revised Statutes ("NRS") Chapter 271; and

WHEREAS, the City Council has heretofore determined that a portion of the cost and expense of the Project is to be paid by special assessments levied against the benefited lots, tracts and parcels of land in the District which the City Council has determined will receive special benefits (and corresponding market value increases) from the improvements of the Project; and

WHEREAS, in accordance with NRS 271.360, the City Council has heretofore determined, and does hereby declare, that the net cost of all improvements in the District (including all necessary incidentals which either have been or will be incurred in connection with the District) is $227,512.75, of which, $9,156.00 is available from other sources and of which $218,356.75 is to be assessed upon the benefited lots, tracts and parcels of land in the District which the City Council has determined will receive special benefits (and corresponding market value increases) from the improvements of the Project; and

WHEREAS, the City Council, by resolution heretofore adopted and directed the City Engineer of the City (hereinafter the "City Engineer") to make out a final assessment roll; and

WHEREAS, after a determination of the portion of the costs of such work to be paid by the property specially benefited, the City Council, together with the City Engineer (with the assistance of the City Engineer Division) made out a final assessment roll containing, among other things, the names and addresses of the last known owners of the property to be assessed, a description of each lot, tract, or parcel of land to be assessed, and the amount of the assessment thereon. The City Engineer has reported the final assessment roll to the City Council and the City Engineer has filed the final assessment roll with the City Clerk; and

WHEREAS, the City Council thereupon fixed a time and place, to wit: Wednesday, July 7, 2010, at 1:00 p.m., at the Las Vegas City Council Chambers, 400 Stewart Avenue, in Las Vegas, Nevada, when all complaints, protests and objections to the final assessment roll, to the amount of the assessments, and to the regularity of the proceedings in making such assessments, by the owners of the property specially benefited by, and proposed to be assessed for, the improvements in the District, by any person interested, and by any parties aggrieved by such assessments, would be heard and considered by the City Council; and

WHEREAS, the City Engineer (with the assistance of City Engineer Division) has, in accordance with the provisions of law relating thereto, given the requisite legal notice by both mail and publication that complaints, protests and objections to assessments for improvements in the District should be filed with the City Clerk, and that the City Council would hear and consider any and all complaints, protests or objections on Wednesday, July 7, 2010, at 1:00 p.m., at the Las Vegas City Council Chambers, 400 Stewart Avenue, in Las Vegas, Nevada; and

WHEREAS, the City Council caused the final assessment roll ("Tabulation of Parcels") to be filed in the records of the office of the City Clerk on June 2, 2010. The City Clerk, by publication and by mail, gave the requisite notice of the time and place of such hearing, of the filing of the final assessment roll in her office, of the date of filing the same, and of the right of any such person to object specifically in writing and of the waiver of any objection in the absence of such objection; and

WHEREAS, at the time and place so designated, the City Council met to hear and determine all objections filed or made orally by any interested party; and

WHEREAS, all complaints, protests and objections, both written and oral, were found to be without sufficient merit and overruled, except as provided in the District No. 1513 Assessment Protest Resolution; and

WHEREAS, by the District No. 1513 Assessment Protest Resolution, the City Council modified, corrected and revised the final assessment roll and modified, corrected, revised and confirmed the final assessment roll to be in final form; and

WHEREAS, the assessments do not exceed the benefits to the property assessed nor that portion of the total cost of the Project payable from assessments as heretofore determined; and

WHEREAS, it is incumbent upon the City Council to provide when said assessments shall become due and penalties payable after any delinquency; and

WHEREAS, the City Council has determined, and does hereby determine, that the City shall pay the costs of the Project, in part, with funds derived from the levy of assessments, and the City will pay one-half or more of the costs of the Project with monies derived from other than the levy of special assessment, and that the exception provided by NRS 271.306(2) (a) does exist with respect to the Project; and

WHEREAS, the owners of certain property to be located within the proposed District have requested the City to include as part of the improvements to be constructed within the District, for such property, water and/or sewer improvements and such owners have executed an affidavit of waiver and consent (hereinafter the "Affidavit"), consenting to the construction of such improvements and the assessment of the cost of such improvements on such property.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES ORDAIN AS FOLLOWS:

Section 1. This Ordinance shall be known as, and may be cited by, the short title "District No. 1513 Levy Ordinance" (hereinafter the "Ordinance").

Section 2. The City Council has heretofore determined, and does hereby declare, that each and every complaint, protest and objection made in connection with the District is without sufficient merit and the same be, and the same hereby is, overruled, and finally passed on by the City Council, except as provided in the District No. 1513 Assessment Protest Resolution.

Section 3. All actions, proceedings, matters and things heretofore taken, had and done by the City and the officers thereof (not inconsistent with the provisions of this Ordinance) concerning Special Improvement District No. 1513 – Via Olivero Avenue And Valadez Street (East Of Cimarron Road), including, but not limited to, the creation of the District, the acquisition of the Project, the amount of the construction contract, the levy of assessments for those purposes, the determination that the tracts in the District will receive special benefits and market value increases, and the validation and confirmation of the final assessment roll and the assessments therein, be, and the same hereby is, ratified, approved and confirmed.

Section 4. For the purpose of paying a portion of the costs and expenses of the Project, the amounts and assessments shown in the final assessment roll (as so filed, modified and confirmed) are hereby levied and assessed against the lots, tracts and parcels of land in the District (being all those specially benefited by said improvements) and described in the final assessment roll for the District, as filed in the office of the City Clerk on June 2, 2010, and as modified and confirmed by the District No. 1513 Assessment Protest Resolution duly adopted by the City Council on July 21, 2010.

Section 5. The assessments shall be due and payable at the office of the City Treasurer within 30 days after this Ordinance becomes effective, without interest and without demand, provided that all or any part of such assessments may, at the election of the owner, be paid in installments, with interest, as hereinafter provided. Failure to pay the whole assessment within said period of 30 days shall be conclusively considered and held an election on the part of all persons interested, whether under disability or otherwise, to pay in installments, the amount of the assessment then unpaid. In case of such election to pay in installments, the unpaid assessments shall be payable in forty (40) substantially equal semiannual installments of principal and interest until paid in full, with interest in all cases on the unpaid and deferred installments of principal from the effective date of this Ordinance, at a rate or rates which shall not exceed by more than one percent (1%) the highest rate of interest on the assessment bonds issued for the District, both principal and interest on such assessments being payable semiannually at the office of the City Treasurer on April 1 and October 1 in each year, commencing on April 1, 2011. After the effective date of this Ordinance and before assessment bonds are issued (or if bonds are not issued), the City Director of Finance and Business Services shall fix the rate of interest on the unpaid and deferred

installments of assessments. If assessment bonds are sold the rate will not exceed by more than one percent (1%) the highest rate of interest on the assessment bonds for the district. The effective interest rate on the assessment bonds of the District will not exceed the statutory maximum rate, i.e., will not exceed by more than three percent (3%) the "Index of Twenty Bonds", which is most recently published before the bids for such bonds are received, or at the time a negotiated offer for the sale of such bonds is accepted. If assessment bonds are not issued, such rate will not exceed 9%. Failure to pay any installment, whether of principal or interest, when due, shall cause the whole amount of the unpaid principal to become due and payable immediately, at the option of the City. The exercise of said option to be indicated by the commencement of foreclosure proceedings by the City. The whole amount of the unpaid principal and accrued interest shall, after such delinquency, whether or not said option is exercised, bear penalty interest at the rate of two percent (2%) (or at any higher rate authorized by statute, or any lower rate, which may be zero percent, for such period as determined by the City Treasurer) per month (not prorated for any portion of the month) on the unpaid balance of the assessment and accrued interest, until the day of sale or until paid. At any time prior to the date of the sale, the owner may pay the amount of all delinquent installments originally becoming due on or before the date of said payment, with interest thereon, and all penalties accrued, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been suffered. The owner of any property assessed and not in default as to any installment or payment may at any time (at the option of such owner); pay the whole or any semiannual installment of the unpaid principal with interest accruing thereon to the next interest payment date. If such prepayment takes place after September 21, 2010, but before the rate of interest on deferred installments of assessments is fixed by the City Director of Finance and Business Services such interest accruing thereon to the next interest payment date shall be calculated at seven and 40/100 percent (7.40%) per annum (i.e., the presumed rate of interest on the assessment bonds for the District plus one percent).

Pursuant to NRS 271.357 and NRS 271.360, any assessment against property for which an application for Hardship Determination has been approved by the City Council shall be postponed, but the owner shall make payments of interest on the unpaid balance of previous and current assessments at the same rate and terms as are established for other assessments in the manner provided. The assessment

shall remain postponed until the earlier of the following occurrences: (a) the property is sold or transferred to a person other than one to whom a Hardship Determination has been granted; (b) the term of the bonds expire; (c) the property owner's application for renewal of the Hardship Determination is disapproved; (d) the property owner fails to pay interest on the unpaid balance of assessments in a timely manner; or (e) the property owner pays all previous and current assessments. The owner shall also be subject to the lien as provided in Section 6 hereof.

Section 6. The amounts assessed shall be a lien upon the owner's lots, tracts and parcels of land from the effective date of this Ordinance (i.e. August 22, 2010) until paid. The lien shall be co-equal with the latest lien thereon to secure the payment of general taxes and prior and superior to all other liens, claims, encumbrances and titles (other than the liens of assessments and general taxes). The sale of any such lot, tract or parcel of land for general or other taxes shall not relieve such lot, tract or parcel of land from such assessment or the lien therefor. Such amounts shall continue to be a lien upon the lots, tracts and parcels of land assessed until paid in full (including all principal and the interest thereon, and any penalties and collection costs).

Section 7. Should any lot, tract or parcel of land within the District be divided after the effective date of this Ordinance and before the collection of all the assessment installments, or if any property in the District makes a request to do so, the City Treasurer may apportion, combine or reapportion the uncollected amounts upon the several parts of land so divided or combined in accordance with the provisions of NRS 271.425. The report of such an apportionment, combination or reapportionment, when approved, shall be conclusive on all the parties, and all assessments thereafter made upon the tracts shall thereafter be according to the subdivision. The report, when approved, shall be recorded in the office of the County Recorder of Clark County, Nevada, together with a statement that the current payment status of any of the assessments may be obtained from the City Treasurer. Neither the failure to record the report, nor any defect in the report as recorded, shall affect the validity of the assessments, the lien for the payment thereof or the priority of that lien.

Section 8. In case any lot, tract or parcel of land so assessed is delinquent in the payment of the assessment or any installment of principal or interest, the City Council shall forthwith cause the owner of such delinquent property, if known, to be immediately notified in writing of such delinquency, by first-

class mail, postage prepaid, addressed to the addressee's last known address. If such delinquency is not paid within 10 days after such notice was given by deposit in the United States mail, then said assessment shall be enforced by the City Treasurer and other officers of the City, as provided in NRS 271.545 to NRS 271.630. Nothing herein shall be construed as preventing the City, at the direction of the governing body, from collecting any assessment by suit in the name of the governing body. The final assessment roll and the certified copy of this Ordinance shall be prima facie evidence of the regularity of the proceedings in making the assessment and of the right to recover judgment therefor. If a foreclosure is not promptly filed and prosecuted, then any bondholder may file and prosecute said foreclosure action in the name of the City. Any bondholder may also proceed against the City to protect and enforce the rights of the bondholders under this Ordinance by suit, action or special proceedings in equity or at law, either for the appointment of a receiver or for the specific performance of any provision contained herein or in an award of execution of any power herein granted for the enforcement of any proper, legal or equitable remedy as such bondholder or bondholders may deem most effective to protect and enforce the rights aforesaid. All such proceedings, at law or in equity, shall be instituted, had and maintained for the equal benefit of all owners of the bonds then outstanding. The failure of the bondholders to foreclose such delinquent assessments or to proceed against the City shall not relieve the City or any of its officers, agents or employees of any liability for its failure to foreclose such delinquent assessments.

Section 9. The City Clerk is hereby directed to deliver to the City Treasurer a copy of the final assessment roll containing a description of the lots, tracts and parcels of land being assessed, with the amount of the assessment levied upon each and the name and address of the owner or owners against whom the assessment was made. The final assessment roll is to be recorded in the office of the County Recorder together with the statement that the current payment status of any assessment may be obtained from the City Treasurer. The City Treasurer is additionally directed to collect the several sums so assessed as a tax upon the several tracts to which they were assessed.

Section 10. In accordance with NRS 271.405(7) the City Clerk shall give notice by publication in the Las Vegas Review-Journal, a newspaper of general circulation in the City, and such notice to be published at least once a week, for three consecutive publications, by three weekly insertions, the first such publication to be at least 15 days prior to the end of the 30-day period stating that said assessments

have been levied and are due and payable. The notice shall further state that payment must be made in full prior to the end of the 30 day period to avoid paying interest on the assessment. It shall not be necessary that the notice be published on the same day of the week, but not less than 14 days shall intervene between the first publication and the last publication. Service by publication shall be verified by the affidavit of the publisher and filed with the City Clerk of the City. In accordance with NRS 271.390(2), the City Clerk or Deputy City Clerk shall also give written notice of the levying of the assessments by mailing a copy of such notice, postage prepaid, at least 20 days prior to the end of said 30-day period, to the owner or owners of all property upon which the assessment was levied at his or her last known address or addresses. Proof of such mailing shall be made by the affidavit of the City Clerk or Deputy City Clerk and such proof shall be filed with the City Clerk. Failure to mail any such notice or notices shall not invalidate any assessment or any other proceedings concerning the District. Proof of the publication and proof of the mailing shall be maintained in the permanent records of the office of the City Clerk until all special assessments and special assessment bonds issued (if such special assessment bonds are hereafter issued) shall have been paid in full, both principal and interest, or until any claim is barred by an appropriate statute of limitations. The City Council hereby determines that the manner of giving notice herein provided by publication and by mail is reasonably calculated to inform the parties of the proceedings concerning the District and the levy of assessments which may directly and adversely affect their legally protected interests.

Section 11. The notice provided for in NRS 271.390(2) and NRS 271.405(7) and in Section 10 of this Ordinance shall be in substantially the following form:

(Form of Notice)

NOTICE TO PROPERTY OWNERS OF THE LEVY OF ASSESSMENTS FOR IMPROVEMENTS IN CITY OF LAS VEGAS, NEVADA SPECIAL IMPROVEMENT DISTRICT NO. 1513 – VIA OLIVERO AVENUE AND VALADEZ STREET (EAST OF CIMARRON ROAD)

NOTICE IS HEREBY GIVEN to the owners of all property upon which an assessment has been levied, and other interested persons, that District No. 1513 Levy Ordinance (hereinafter the "Levy Ordinance") was duly passed, adopted, signed and approved on August 18, 2010. The Levy Ordinance levied and assessed a portion of the cost and expense of such improvements against the lots, tracts and parcels of land specially benefited by the local improvements in what is commonly designated as "City of Las Vegas, Nevada, Special Improvement District No. 1513 – Via Olivero Avenue And Valadez Street (East Of Cimarron Road)," (said lots, tracts and parcels of land being more specifically described in the final assessment roll designated in the ordinance).

Assessments are due and payable at the office of the City Treasurer, in Las Vegas, Nevada, on or before September 21, 2010, being 30 days after the effective date of the Levy Ordinance, without interest and without demand, provided that all, or any part of such assessments may, at the election of the owner, be paid in installments, with interest as hereinafter provided. Failure to pay the whole assessment within the 30-day period will be conclusively considered and held an election on the part of all persons interested, whether under disability or otherwise, to pay the unpaid assessment in installments. In case of such election to pay in installments, the unpaid assessments will be payable in forty (40) substantially equal semi-annual installments of principal and interest until paid in full, with interest in all cases on the unpaid and deferred installments of principal from August 22, 2010, (i.e., the effective date of the Levy Ordinance) both principal and interest being payable semi-annually at the office of the City Treasurer, Las Vegas, Nevada, on April 1 and October 1 in each year, commencing on April 1, 2011. After the effective date of the Levy Ordinance and before assessment bonds are issued (or if bonds are not issued), the City Director of Finance and Business Services shall fix the rate of interest on the unpaid and deferred installments of assessments. If assessment bonds are sold, the rate will not exceed by more than one percent (1%) the highest rate of interest on the assessment bonds issued for the District. The effective interest rate on the assessment bonds of the District will not exceed the statutory maximum rate, i.e., will

not exceed by more than three percent (3%) the "Index of Twenty Bonds", which is most recently published before the bids for such bonds are received, or at the time a negotiated offer for the sale of such bonds is accepted. If assessment bonds are not issued, such rate shall not exceed 9%. Failure to pay any assessment installment, whether principal or interest, when due will cause the whole of the unpaid principal of such assessment to become due and payable immediately at the City's option, and the whole amount of the unpaid principal and accrued interest will, after such delinquency, whether or not the City's option is exercised, bear penalty interest at the rate of two percent (2%) (or at any higher rate authorized by statute, or any lower rate, which may be zero percent, for such period as determined by the City Treasurer) per month (not prorated for any portion of the month) on the unpaid balance of the assessment and accrued interest, until the day of sale or until paid. At any time prior to the date of the sale, the owner may pay the amount of all delinquent installments originally becoming due on or before the date of payment, with the interest thereon and all penalties accrued, and will thereupon be restored the right, thereafter, to pay in installments in the same manner as if default had not been suffered. The owner of any property not in default as to any assessment installment or payment may, at any time, pay the whole or any semi-annual installment of the unpaid principal with interest accruing thereon to the next interest payment date . If such prepayment takes place after September 21, 2010, but before the rate of interest on deferred installments of assessments is fixed by the City Director of Finance and Business Services, such interest accruing thereon to the next interest payment date shall be calculated at seven and 40/100 percent (7.40%) per annum (i.e., the presumed rate of interest on the assessment bonds for the District plus one percent).

Pursuant to NRS 271.357 and NRS 271.360, any assessment against property for which an application for Hardship Determination has been approved by the City Council shall be postponed, but the owner shall make payments of interest on the unpaid balance of previous and current assessments at the same rate and terms as are established for other assessments in the manner provided. The assessment shall remain postponed until the earlier of the following occurrences: (a) the property is sold or transferred to a person other than one to whom a Hardship Determination has been granted; (b) the term of the bonds expires; (c) the property owner's application for renewal of a Hardship Determination is disapproved; (d) the property owner fails to pay interest on the unpaid balance of assessments in a

timely manner; or (e) the property owner pays all previous and current assessments. The owner shall also be subject to the lien as provided in Section 6 hereof.

Pursuant to NRS 271.395, within 15 days after the effective date of the Levy Ordinance, any person who has filed a complaint, protest or objection in writing, pursuant to NRS 271.380, shall have the right to commence an action or suit in any court of competent jurisdiction to correct or set aside such determination. Thereafter, all actions or suits attacking the regularity, validity and correctness of the proceedings, of the final assessment roll, of each assessment contained therein, of the amount of special benefits and market value increases, and of the amount thereof levied on each tract, including, without limiting the generality of the foregoing, the defense of confiscation shall be perpetually barred.

The amounts assessed as aforesaid constitute a lien upon said lots, tracts and parcels of land from August 22, 2010 (i.e., the effective date of the Levy Ordinance), which lien shall be co-equal with the latest lien thereon to secure the payment of general taxes and prior and superior to all other liens, claims, encumbrances and titles (other than the liens of assessments and general taxes). The sale of any such lot, tract or parcel of land for general taxes shall not relieve such lot, tract or parcel of land from such assessment or the lien therefor.

Dated this August 18, 2010.

BEVERLY K. BRIDGES, MMC
City Clerk

(End of Form of Notice)

Section 12. The officers of the City be, and they hereby are, authorized and directed to take all action necessary and appropriate to effectuate the provisions of this Ordinance, including without limiting the generality of the foregoing, the preparation of all necessary documents, legal proceedings, the recording of the final assessment roll, and other items necessary or desirable for the completion of the levying of the assessments of the District and the issuance of the bonds therefor.

Section 13. All ordinances or resolutions, or parts thereof, in conflict with the provisions of this Ordinance, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

Section 14. That in accordance with Section 2.110 of the City Charter, this Ordinance when first proposed is to be read by title to the City Council, immediately after which an adequate number of copies of the proposed Ordinance are to be deposited with the office of the City Clerk for public examination and distribution upon request; thereafter, the City Clerk is authorized and directed to give notice of the deposit together with the title of the Ordinance by publication at least once in the Las Vegas Review-Journal, i.e., a newspaper published and having general circulation in the City, at least ten (10) days before the adoption of the Ordinance, i.e., at least ten (10) days before August 18, 2010, such publication to be in substantially the following form:

(FORM OF PUBLICATION OF NOTICE OF DEPOSIT OF AN ORDINANCE)

ORDINANCE NO. _____

AN ORDINANCE CONCERNING CITY OF LAS VEGAS, NEVADA, SPECIAL IMPROVEMENT DISTRICT NO. 1513 – VIA OLIVERO AVENUE AND VALADEZ STREET (EAST OF CIMARRON ROAD); PROVIDING FOR THE PAYMENT OF THE COSTS AND EXPENSES OF SAID IMPROVEMENTS; ASSESSING A PORTION OF THE COST OF SAID IMPROVEMENTS AGAINST THE ASSESSABLE LOTS, TRACTS, AND PARCELS OF LAND BENEFITED BY SAID IMPROVEMENTS; RATIFYING, APPROVING AND CONFIRMING ALL ACTION PREVIOUSLY TAKEN; PRESCRIBING DETAILS IN CONNECTION THEREWITH.

PUBLIC NOTICE IS HEREBY GIVEN that an adequate number of typewritten copies of the above-entitled proposed Ordinance were filed with and are available for public inspection and distribution at the office of the City Clerk of the City of Las Vegas, 400 Stewart Avenue, Las Vegas, Nevada, and that such ordinance was proposed on the 21st day of July, 2010, and will be considered for adoption at the regular meeting of the City Council of the City of Las Vegas on the 18th day of August, 2010.

/s/ Beverly K. Bridges
City Clerk

(End of Form)

Section 15. That this Ordinance shall be in effect on the day after its publication, as hereinafter provided. After this Ordinance is signed by the Mayor and attested and sealed by the City Clerk, this Ordinance shall be published by title only, together with the names of the City Council voting for or against its passage, and with a statement that typewritten copies of said Ordinance are available for inspection by all interested parties at the office of the City Clerk, such publication to be made in the Las Vegas Review-Journal, a newspaper published and having general circulation in the City, at least once, pursuant to Section 2.110 of the Charter and all laws thereunto enabling, such publication is to be in substantially the following form:

(Form for Publication After Final Adoption of Ordinance)

ORDINANCE NO. _____

AN ORDINANCE CONCERNING CITY OF LAS VEGAS, NEVADA, SPECIAL IMPROVEMENT DISTRICT NO. 1513 – VIA OLIVERO AVENUE AND VALADEZ STREET (EAST OF CIMARRON ROAD); PROVIDING FOR THE PAYMENT OF THE COSTS AND EXPENSES OF SAID IMPROVEMENTS; ASSESSING A PORTION OF THE COST OF SAID IMPROVEMENTS AGAINST THE ASSESSABLE LOTS, TRACTS, AND PARCELS OF LAND BENEFITED BY SAID IMPROVEMENTS; RATIFYING, APPROVING AND CONFIRMING ALL ACTION PREVIOUSLY TAKEN; PRESCRIBING DETAILS IN CONNECTION THEREWITH.

PUBLIC NOTICE IS HEREBY GIVEN that the above Ordinance was proposed on July 21, 2010, and was passed at a regular meeting held on August 18, 2010, by the following vote of the City Council of the City of Las Vegas, Nevada:

Those Voting Aye:	Oscar B. Goodman Gary Reese Steve Wolfson Lois Tarkanian Steven D. Ross Ricki Y. Barlow Stavros S. Anthony
Those Voting Nay:	_____ _____
Those Absent:	_____ _____

This Ordinance shall be in full force and effect from and after August 22, 2010, i.e., the day after its publication by title only.

IN WITNESS WHEREOF, the City Council of the City of Las Vegas, Nevada, has caused this Ordinance to be published by title only.

This _____ day of _____, 2010.

/s/ OSCAR B. GOODMAN
Mayor
City of Las Vegas, Nevada

(SEAL)

Attest:
/s/ BEVERLY K. BRIDGES
City Clerk

Section 16. That if any section, paragraph, clause or other provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or other provision shall not affect any of the remaining provisions of this Ordinance.

Introduced July 21, 2010, PASSED, ADOPTED AND APPROVED August 18, 2010.

OSCAR B. GOODMAN, Mayor

Attest:

BEVERLY K. BRIDGES, MMC
City Clerk

Approved as to Form:

7/1/10 Val Steed for Bryan Scott
Date Assistant City Attorney

STATE OF NEVADA)
)
COUNTY OF CLARK) SS
)
CITY OF LAS VEGAS)

I, Beverly K. Bridges, MMC, the duly chosen, qualified City Clerk of the City of Las Vegas (hereinafter the "City"), in the State of Nevada, do hereby certify:

1. The foregoing pages constitute a true, correct, complete and compared copy of an ordinance which was introduced at the meeting of the City Council on July 21, 2010, and finally adopted and approved on August 18, 2010.

2. The following members of the City Council were present at the July 21, 2010, Council meeting:

Mayor:	Oscar B. Goodman
Councilmembers:	Gary Reese
	Steve Wolfson
	Lois Tarkanian
	Steven D. Ross
	Ricki Y. Barlow
	Stavros S. Anthony

3. The foregoing Ordinance was first proposed and read by title to the City Council on July 21, 2010, and referred to a committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said Ordinance on August 18, 2010, which was a regular meeting of said City Council; that at said regular meeting, the proposed Ordinance was again read by title to the City Council and adopted. The following members of the City Council were present at the August 18, 2010, meeting and voted upon the adoption of the Ordinance as follows:

Those Voting Aye:	Oscar B. Goodman
	Gary Reese
	Steve Wolfson
	Lois Tarkanian
	Steven D. Ross
	Ricki Y. Barlow
	Stavros S. Anthony
Those Voting Nay:	_____
	_____
Those Absent:	_____
	_____

4. The original of the Ordinance has been approved and authenticated by the signatures of the Mayor of the City and myself, as Clerk of the City, and sealed with the seal of the City, and has been recorded in the journal of the City Council kept for that purpose in my office, which record has been duly signed by such officers and properly sealed.

5. All members of the City Council were given due and proper notice of the meetings held on July 21, 2010, and August 18, 2010. Pursuant to § 241.020, Nevada Revised Statues, written notice of the meetings was given no later than 9:00 a.m. on the third working day before the meetings, including in the notice the time, place, location, and agenda of the meeting:

(a) By posting a copy of the notice by 9:00 a.m. at least three (3) working days before the meetings at the principal office of the City Council, or if there is no principal office, at the building in which the meeting is to be held, and at least three (3) other separate, prominent places within the jurisdiction of the City Council, to wit:

(i) City Clerk's Bulletin Board
City Hall Plaza
2nd Floor Skybridge
Las Vegas, Nevada

(ii) Bulletin Board
City Hall Plaza (next door to Metro Records)
Las Vegas, Nevada

(iii) Las Vegas Library
833 Las Vegas Boulevard North
Las Vegas, Nevada

(iv) Clark County Government Center
500 South Grand Central Parkway
Las Vegas, Nevada

(v) Grant Sawyer Building
555 E. Washington Avenue
Las Vegas, Nevada

(vi) The City of Las Vegas website

; and

(b) By mailing a copy of the notice by 9:00 a.m. no later than three (3) working days before the meetings to each person, if any, who has requested notice of the meetings of the City Council in the same manner in which notice is required to be mailed to a member of the City Council.

6. A copy of such notice so given of the meeting of the City Council on July 21, 2010, is attached to this certificate as Exhibit A and a copy of the notice so given of the meeting of the City Council on August 18, 2010, is attached to this certificate as Exhibit B.

7. Upon request, the governing body provides, at no charge, at least one copy of the agenda for its public meetings, any proposed ordinance or regulation which will be discussed at the public meeting, and any other supporting materials provided to the members of the governing body for an item on the agenda, except for certain confidential materials and materials pertaining to the closed meetings, as provided by law.

IN WITNESS WHEREOF, I have hereunto set my hand on this August 18, 2010.

BEVERLY K. BRIDGES, MMC
City Clerk

(SEAL)

EXHIBIT A

(Attach Copy of Notice of July 21, 2010 Meeting)

EXHIBIT B

(Attach Copy of Notice of August 18, 2010 Meeting)

City of Las Vegas Agenda Item No.: **71.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☐ **Consent** ☒ **Discussion**

SUBJECT:
RECOMMENDING COMMITTEE: BILL ELIGIBLE FOR ADOPTION AT THIS MEETING:

Bill No. 2010-33 – Adopts the most recent versions of the Local Government Records Program Manual and minimum records retention schedules for local governments in Nevada, and repeals LVMC 2.52.040 (relating to the minutes of City boards and commissions). Proposed by: Beverly K. Bridges, City Clerk

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This bill will adopt the most recent versions of the Local Government Records Program Manual and minimum records retention schedules for local governments in Nevada. It will also repeal an obsolete Municipal Code provision relating to the minutes of City boards and commissions, which are governed by State law.

RECOMMENDATION:
ADOPTION at 8/18/2010 City Council meeting pursuant to the 8/3/2010 Recommending Committee.

First Reading - 7/21/2010; First Publication - 8/6/2010

BACKUP DOCUMENTATION:
1. Bill No. 2010-33
2. Business Impact Statement

BILL NO. 2010-33

ORDINANCE NO. _____

AN ORDINANCE RELATING TO RECORDS; ADOPTING THE MOST RECENT VERSIONS OF THE LOCAL GOVERNMENT RECORDS PROGRAM MANUAL AND MINIMUM RECORDS RETENTION SCHEDULES FOR LOCAL GOVERNMENTS IN NEVADA; REPEALING SECTION 2.52.040 OF THE MUNICIPAL CODE (RELATING TO THE MINUTES OF CITY BOARDS AND COMMISSIONS); AND PROVIDING FOR OTHER RELATED MATTERS.

Proposed by: Beverly K. Bridges, City Clerk

Summary: Adopts the most recent versions of the Local Government Records Program Manual and minimum records retention schedules for local governments in Nevada, and repeals LVMC 2.52.040 (relating to the minutes of City boards and commissions).

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Title 2, Chapter 60, Section 70, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

2.60.070: (A) A record may be disposed of only in accordance with the records retention schedule that has been approved for records of that type.

(B) The following documents are hereby adopted by the City:

(1) "Nevada Local Government Records Program Manual," as adopted by the Nevada State Library and Archives Division on June 26, 2007**[**;**]**, and subsequently amended on February 9, 2010; and

(2) "Local Government Records Retention Schedules," as adopted by the Nevada State Library and Archives Division on June 26, 2007, and as subsequently amended on August 28, 2008**[**.**]**, and February 9, 2010.

➥The respective retention periods that are established in those documents shall be the minimum periods for which the records of the City, other than judicial records and other documents of the Municipal Court, must be retained.

(C) The City may establish periods of retention longer than those designated by the State for any particular class of record. Further, the City may establish retention schedules for any record not addressed by the State's schedules. Any schedule proposed to be established pursuant to

this Subsection (C) shall be submitted to the Records Management Committee for its approval and, after such schedule has received the approval of the Records Management Committee, the City Clerk shall submit the same to the City Council for its approval. Such approval shall be accomplished by ordinance.

(D) The disposition of judicial records and other documents of the Municipal Court shall be governed by a records retention schedule that is approved by the Judges of the Municipal Court by a court rule that is adopted in accordance with the rules of the Nevada Supreme Court. Such schedule shall become effective upon its approval by a majority of the Judges of the Municipal Court and shall establish a system of records management for Municipal Court to be implemented by the Court Administrator.

SECTION 2: Title 2, Chapter 52, Section 40, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby repealed in its entirety.

SECTION 3: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

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SECTION 4: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Val Steed 7-7-10
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

BUSINESS IMPACT STATEMENT
BILL NO. 2010-33
Adopts the most recent versions of the Local Government Records Program Manual and minimum records retention schedules for local governments in Nevada, and repeals LVMC 2.52.040 (relating to the minutes of City boards and commissions)

This business impact statement was prepared pursuant to NRS 237.090 to address the impact of a proposed ordinance, Bill No. 2010-33, that would adopt the most recent versions of the Local Government Records Program Manual and minimum records retention schedules for local governments in Nevada, and repeal LVMC 2.52.040 (relating to the minutes of City boards and commissions)

1. The following constitutes a description of the number of the manner in which comment was solicited from affected businesses, a summary of their responses and an explanation of the manner in which other interested persons may obtain a copy of the summary.

Not applicable

2. The estimated economic effect of the proposed rule on businesses, including, without limitation, both adverse and beneficial effects, and both direct and indirect effects:

Adverse effects:

None

Beneficial effects:

None

Direct effects:

None

Indirect effects:

None

3. The following constitutes a description of the methods the local government considered to reduce the impact of the proposed rule on businesses and a statement regarding whether any, and if so which, of these methods were used:

Not applicable

4. The governing body estimates the annual cost to the local government for enforcement of the proposed rule is:

No additional cost

5. If the proposed rule provides for a new fee or increases an existing fee, the total annual amount expected to be collected is:

Not applicable

6. If the proposed rule provides for a new fee or increases an existing fee, the money generated by the new fee or increase in existing fee will be used by the local government to:

Not applicable

7. If the proposed rule includes provisions that duplicate or are more stringent that federal, state or local standards regulating the same activity, the following explains when such duplicative or more stringent provisions are necessary:

Not applicable

Date: July 7, 2010

City of Las Vegas Agenda Item No.: **72.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☐ **Consent** ☒ **Discussion**

SUBJECT:
RECOMMENDING COMMITTEE: BILL ELIGIBLE FOR ADOPTION AT A LATER MEETING:

Bill No. 2010-34 – Revises the provisions regarding the on-site parking, storage and repair of vehicles in residential districts. (TXT-36330) Sponsored by: Councilman Steven D. Ross

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This bill will revise provisions regarding the on-site parking, storage and repair of vehicles in residential districts. The majority of the revisions are clarifying in nature, designed to make compliance and enforcement easier. The bill does propose to allow decomposed granite as an alternative parking surface under certain conditions. It also includes stricter limitations on the storage and repair of inoperable vehicles.

RECOMMENDATION:
This bill should be submitted to a Recommending Committee for review, hearing and recommendation to the City Council for final action.

BACKUP DOCUMENTATION:
Bill No. 2010-34

BILL NO. 2010-34

ORDINANCE NO. _____

AN ORDINANCE TO UPDATE THE PROVISIONS REGARDING THE ON-SITE PARKING, STORAGE AND REPAIR OF VEHICLES IN RESIDENTIAL DISTRICTS, AND TO PROVIDE FOR OTHER RELATED MATTERS.

Sponsored by: Councilman Steven D. Ross

Summary: Revises the provisions regarding the on-site parking, storage and repair of vehicles in residential districts.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Table 2 of the Land Use Tables adopted in Title 19, Chapter 4, Section 10, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended by amending the Conditional Use Regulations for the use "Vehicle Parking, Storage or Repair in Residential Zoning Districts," as found in the "Auto and Marine Related" element of Table 2, to read as follows:

Conditional Use Regulations:

1. Except as otherwise provided in Regulations 2 to [13,] 14, inclusive, motor vehicles, including passenger cars, trucks and motorcycles which are not designed or used for racing or for purposes other than transportation, may be parked, stored or repaired on any property in a residential district, provided the same is accessory and incidental to the use of the property for residential purposes and does not constitute a nuisance, health or fire hazard offense under the provisions of this Code and do not have a detrimental effect on the neighborhood. Unless stored or parked within a completely enclosed building, [The] the motor vehicles shall be stored[:] or parked:

   [a. Within a completely enclosed structure;

   b. In the front yard, either on an approved driveway, or on a surface of concrete or asphaltic paving that is adjacent and parallel to an approved driveway and that extends the full length and width of the vehicle; or

   c. In the side yard, either obscured by a 6 foot[-]high fence to adequately screen the vehicles from view, stored on an approved driveway, or stored on a surface of concrete

or asphaltic paving that is adjacent and parallel to an approved driveway and that extends the full length of the vehicle; provided, however, that the vehicle storage complies with the other provisions set out in Regulations 1 to 13, inclusive.]

a. In the front yard, either:

i. On an approved driveway;

ii. On a surface of pavers or other blocks of uniform appearance that are at least two inches in thickness;

iii. On a surface of decomposed granite no less than two inches thick, defined with borders; or

iv. On concrete or asphaltic paving that extends the full length and width of the vehicle; or

b. In the side yard, either:

i. Obscured by a 6 foot high fence to permanently screen the vehicles from view;

ii. On an approved driveway;

iii. On a surface of pavers or other blocks of uniform appearance that are at least two inches in thickness;

iv. On a surface of decomposed granite no less than two inches thick, defined with borders; or

v. On concrete or asphaltic paving that extends the full length and width of the vehicle;

provided, however, that the vehicle storage or parking complies with the other provisions set out in Regulations 1 to 14, inclusive.

2. Except as otherwise provided in Regulation 10 below, on a single family residential lot:

a. No more than 3 operable vehicles may be stored, or one vehicle per 1250 square feet of lot area, whichever allows the greater number of vehicles;

b. No more than 50 percent of the front yard area may be used for the storage or parking of vehicles; and

c. No more than [6 vehicles, whether operable or inoperable] one inoperable vehicle may

be stored at one time.

d. No stored vehicles may be utilized for storing items of personal property, and the area under each vehicle must be kept free of debris and vegetation.

3. [In any residential district,] Unless stored or parked within a completely enclosed building, a recreational vehicle or trailer, or combination thereof, may be stored or parked only as follows:

[a. Within an enclosed structure;

b. In a rear yard, if stored on a surface of concrete or asphaltic paving, gravel or chat which extends the full length and width of the stored item;

c. In a front yard, provided that:

i. The side and rear yards are not reasonably accessible for storage purposes. A corner lot shall be deemed to have reasonable access, and the existence of a fence or block wall, by itself, shall not be deemed to prevent reasonable access to the side or rear yards; or

ii. The recreational vehicle or trailer, or combination thereof, is stored entirely in the yard area with no portion of the unit located closer than one foot from an adjacent public street or sidewalk; and

iii. The recreational vehicle or trailer, or combination thereof, is stored on a surface of concrete or asphaltic paving that is adjacent and parallel to an approved driveway and that extends the full length and width of the stored item.

d. In a side yard, if the recreational vehicle or trailer, or combination thereof, does not extend closer to the street than the front of the main building on the property, and if it is stored on a surface of concrete or asphaltic paving that is adjacent and parallel to an approved driveway and that extends the full length of the stored item.]

a. In a rear yard, either:

i. On a surface of pavers or other blocks of uniform appearance that are at least two inches in thickness;

iii. On a surface of decomposed granite no less than two inches thick, defined with

borders; or

iv. On concrete or asphaltic paving, gravel or chat that extends the full length and width of the vehicle, trailer or combination;

b. In a side yard, either:

i. Permanently screened from view from the public street by a 6 foot wall, with a 5 foot gate;

ii. On a surface of pavers or other blocks of uniform appearance that are at least two inches in thickness;

iii. On a surface of decomposed granite no less than two inches thick, defined with borders; or

iv. On concrete or asphaltic paving that extends the full length and width of the vehicle;

c. If it is not connected to any electrical or sewer service for more than 24 consecutive hours;

d. If it is not used for dwelling purposes;

e. If it is not used for the storage of goods, materials or equipment, other than those items considered to be part of the recreational vehicle and are related to the immediate use and enjoyment thereof; and

f. Its use is in full compliance with applicable provisions of the Fire Code and other technical codes.

[4. Any vehicle being repaired, stored or parked for more than 4 hours on property in a residential district shall have a manufacturers rated carrying capacity not to exceed one ton, and any vehicle being repaired must be owned by a permanent resident at the location where the repair takes place, except as provided in Regulation 9 below.]

4. Except as provided in Regulation 9 below:

a. No vehicle may be repaired, stored or parked for more than 4 consecutive hours if its manufacturer's rated carrying capacity exceeds one ton.

b. No vehicle may be repaired unless it is owned by a permanent resident at the location

where the repair takes place.

c. On a parcel within a single-family residential district, not more than one passenger vehicle with commercial advertising displayed thereon may be stored or parked.

5. Except as otherwise provided in Regulation 10 below:

a. Any vehicle that is [located in a residential district and is] in mechanically inoperable condition shall be stored or repaired in a garage, shed or other enclosure; in a driveway; or in a rear yard that is enclosed by a 6 foot[-]high fence to [adequately] permanently screen the vehicle from view; provided, however, that if the abutting property is undeveloped, the fencing shall not be required until the adjacent property is developed.

b. [In a residential district, no] No repair outside of an enclosure may occur later than 9:00 p.m. or earlier than 7:00 a.m.

6. Except as otherwise provided in Regulation 10 below:

a. [In a residential district, no] No more than one vehicle that is in a mechanically inoperable condition shall be stored or repaired at any time outside of a fully enclosed building on the premises, and there shall be no repair of vehicles or storage of mechanically inoperable vehicles in the side yards.

b. A vehicle shall not be stored in a mechanically inoperable condition [in a residential district] for more than [90] 60 days.

c. No repair may be performed on any motor vehicle, including a recreational vehicle, within the front yard, including any driveway area, unless the repair is a "normal, reasonable and customary repair" as defined in Regulation 14 below.

d. No more than four vehicles may be repaired on the same parcel within any 12-month period.

7. There shall be no storage of junked vehicles, or parts thereof. [, in any residential district.] Only serviceable parts for owned vehicles may be stored on the premises. Such storage shall not be permitted in the front or side yards but shall be permitted in the rear yard only if such storage is either fully enclosed by a 6 foot[-]high fence to [adequately] permanently screen the

parts from view, or in a fully enclosed building; provided, however, that if the abutting property is undeveloped, the fence or enclosed building shall not be required until the adjacent property is developed. No more than 200 square feet of space shall be used for the storage of serviceable parts.

8. [On any lot within a residential district, the] The following are prohibited, except in connection with an approved construction yard or except as necessary to perform grading or construction work on the premises pursuant to a development permit:

   a. The repair or storage of any vehicle whose primary function is other than the transportation of passengers, including but not limited to forklifts, backhoes, tractors, tow trucks and similar types of machinery, construction or industrial equipment; or

   b. Unless for the sole purpose of loading or unloading passengers or goods, [The parking, for more than 4 hours,] the parking or standing of any vehicle whose primary function is other than the transportation of passengers, including but not limited to forklifts, backhoes, tractors, tow trucks and similar types of machinery, construction or industrial equipment.

9. Nothing in Regulations 1 to [13,] 14, inclusive, shall be construed to permit the operation of a business as defined in Title 6. There shall be no repair, restoration or modification of non-owned vehicles for money or barter. [on residential property.] However, nothing in Regulations 1 to [13,] 14, inclusive, prohibits the temporary emergency repair of owned or non-owned vehicles which have become mechanically inoperable while on the property or in the street.

10. On any [residential] lot owned by a member of a duly-recognized organization of automobile collectors or restorers, the owner may exceed the limitations on vehicle storage and repair set forth in Regulations 2, 5(a) and 6 above with respect to the restoration, refurbishing or rebuilding of his or her own classic or antique vehicle if any such vehicle is covered with a fitted full-vehicle pullover cover when it is not being worked on[.], the vehicle's tires are inflated, and the area under the vehicle is kept free of debris and vegetation.

11. In order to facilitate vehicle inspection and enforcement under Regulations 1 to [13,] 14,

inclusive, any person responsible for or engaged in the parking, storage, repair, restoration or modification of any vehicle shall, upon request, provide to any authorized enforcement officer:

a. Evidence regarding the operability of the vehicle, as well as the ownership of the vehicle, such as current registration, title, bill of sale or other documentation[;] from an authority responsible for motor vehicle regulation;

b. As applicable to the exception set forth in Regulation 10, evidence [sufficient to indicate] regarding the person's membership in a duly-recognized organization of automobile collectors or restorers; and

c. As applicable to the exception set forth in Regulation 10, evidence [sufficient to indicate that] regarding the extent to which the vehicle or vehicles in question are actually and currently in the process of being restored, refurbished or rebuilt.

12. No vehicle may be parked or stored in a driveway unless:

a. All tires or wheels that support the vehicle are in contact with the driveway; or

b. Where any such tire or wheel is not in contact with the driveway, the vehicle at that location is resting on a jack stand or wheel ramp that is designed and manufactured for the purpose of temporarily supporting a vehicle.

[12.] 13. The provisions of Regulations 1 to [13,] 14, inclusive, shall apply to any person in control or lawful possession of any real property, [within a residential district,] including an owner, tenant, occupant, lessee or otherwise.

[13.] 14. For purposes of [Regulations 1 and 3, an "approved driveway"] these Regulations:

a. "Approved driveway" means a driveway that complies with all applicable curb cut requirements that have been established by the City.

b. "Mechanically inoperable," with respect to a motor vehicle, means that the vehicle is inoperative, cannot be moved under its own power, or cannot be operated lawfully on a public street or highway because one or more component parts necessary for such movement or lawful operation are lacking or have been damaged or deteriorated so as to become inoperative. Such component parts include without limitation the engine, transmission, wheels, tires, doors, windshield and windows.

c. "Normal, reasonable and customary repairs," with respect to a motor vehicle, means incidental repairs or service, including changing flat tires; repairing or servicing the electrical or ignition system; replacing hoses; cleaning or replacing filters; installing minor accessories; and adding or replacing lubricants, coolants, refrigerants, or hydraulics system fluids.

SECTION 2: For purposes of Section 2.100(3) of the City Charter, LVMC 19.04.010 is deemed to be a subchapter rather than a section.

SECTION 3: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 4: Whenever in this ordinance any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in this ordinance the doing of any act is required or the failure to do any act is made or declared to be unlawful or an offense or a misdemeanor, the doing of such prohibited act or the failure to do any such required act shall constitute a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than $1,000.00 or by imprisonment for a term of not more than six months, or by any combination of such fine and imprisonment. Any day of any violation of this ordinance shall constitute a separate offense.

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SECTION 5: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Val Steed 7-21-10
_____
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

City of Las Vegas Agenda Item No.: **73.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☐ **Consent** ☒ **Discussion**

SUBJECT:

RECOMMENDING COMMITTEE: BILL ELIGIBLE FOR ADOPTION AT A LATER MEETING:

Bill No. 2010-35 – Repeals certain outdoor advertising restrictions concerning hotels, motels, and other lodging establishments, and repeals similar restrictions concerning wedding chapels. Proposed by: Bradford R. Jerbic, City Attorney

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:

This bill will repeal certain outdoor advertising restrictions concerning hotels, motels, and other lodging establishments, as well as similar restrictions concerning wedding chapels. These provisions have not been regularly enforced by the City for many years and it has been determined that they would not be enforceable under applicable case law.

RECOMMENDATION:

This bill should be submitted to a Recommending Committee for review, hearing and recommendation to the City Council for final action.

BACKUP DOCUMENTATION:

1. Bill No. 2010-35
2. Business Impact Statement

BILL NO. 2010-35

ORDINANCE NO. _____

AN ORDINANCE RELATING TO BUSINESS LICENSING REGULATIONS; REPEALING CERTAIN OUTDOOR ADVERTISING RESTRICTIONS CONCERNING HOTELS, MOTELS, AND OTHER LODGING ESTABLISHMENTS; REPEALING SIMILAR RESTRICTIONS CONCERNING WEDDING CHAPELS; AND PROVIDING FOR OTHER RELATED MATTERS.

Proposed by: Bradford R. Jerbic, City Attorney

Summary: Repeals certain outdoor advertising restrictions concerning hotels, motels, and other lodging establishments, and repeals similar restrictions concerning wedding chapels.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Title 6, Chapter 46, Sections 110 and 120, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, are hereby repealed in their entirety.

SECTION 2: Title 6, Chapter 84, Sections 30 and 40, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, are hereby repealed in their entirety.

SECTION 3: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

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SECTION 4: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Val Steed 7-21-10
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

BUSINESS IMPACT STATEMENT
BILL NO. 2010-35
(Repeals certain outdoor advertising restrictions concerning hotels, motels, and other lodging establishments, and repeals similar restrictions concerning wedding chapels)

This business impact statement was prepared pursuant to NRS 237.090 to address the impact of a proposed ordinance, Bill No. 2010-35, that would repeal certain outdoor advertising restrictions concerning hotels, motels, and other lodging establishments, and also repeal similar restrictions concerning wedding chapels.

1. The following constitutes a description of the number of the manner in which comment was solicited from affected businesses, a summary of their responses and an explanation of the manner in which other interested persons may obtain a copy of the summary.

Not applicable

2. The estimated economic effect of the proposed rule on businesses, including, without limitation, both adverse and beneficial effects, and both direct and indirect effects:

Adverse effects:

None

Beneficial effects:

Eliminate the possibility of enforcement action against these types of businesses

Direct effects:

Eliminate the possibility of enforcement action against these types of businesses

Indirect effects:

Eliminate the possibility of enforcement action against these types of businesses

3. The following constitutes a description of the methods the local government considered to reduce the impact of the proposed rule on businesses and a statement regarding whether any, and if so which, of these methods were used:

Not applicable

4. The governing body estimates the annual cost to the local government for enforcement of the proposed rule is:

No additional cost

5. If the proposed rule provides for a new fee or increases an existing fee, the total annual amount expected to be collected is:

Not applicable

6. If the proposed rule provides for a new fee or increases an existing fee, the money generated by the new fee or increase in existing fee will be used by the local government to:

Not applicable

7. If the proposed rule includes provisions that duplicate or are more stringent that federal, state or local standards regulating the same activity, the following explains when such duplicative or more stringent provisions are necessary:

Not applicable

Date: July 21, 2010

City of Las Vegas Agenda Item No.: **74.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☐ **Consent** ☒ **Discussion**

SUBJECT:
RECOMMENDING COMMITTEE: BILL ELIGIBLE FOR ADOPTION AT A LATER MEETING:

Bill No. 2010-36 – Repeals the sunset provision regarding the prohibition of alcoholic beverages in City parks except pursuant to a permit or other written authorization. Sponsored by: Councilman Gary Reese and Councilwoman Lois Tarkanian

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Last June the City Council adopted Ordinance No. 6043, which, among other things, prohibits alcoholic beverages in City parks except pursuant to a permit or other written authorization. The Council included a sunset clause regarding that provision, under which the provision would expire on October 1, 2010, unless otherwise provided by ordinance. Based on the City's experience regarding the provision, it is proposed to remove the sunset clause and continue the general prohibition of alcoholic beverages except pursuant to a permit or other written authorization.

RECOMMENDATION:
This bill should be submitted to a Recommending Committee for review, hearing and recommendation to the City Council for final action.

BACKUP DOCUMENTATION:
1. Bill No. 2010-36
2. Business Impact Statement

BILL NO. 2010-36

ORDINANCE NO. _____

AN ORDINANCE RELATING TO THE PROHIBITION OF ALCOHOLIC BEVERAGES IN CITY PARKS EXCEPT PURSUANT TO A PERMIT OR OTHER WRITTEN AUTHORIZATION; REPEALING THE PROSPECTIVE EXPIRATION OF THAT PROHIBITION; AND PROVIDING FOR OTHER RELATED MATTERS.

Sponsored by:
Councilman Gary Reese
Councilwoman Lois Tarkanian

Summary: Repeals the sunset provision regarding the prohibition of alcoholic beverages in City parks except pursuant to a permit or other written authorization.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

WHEREAS, on June 17, 2009, the City Council adopted Ordinance No. 6043, which, among other things, prohibits alcoholic beverages in City parks except pursuant to a permit or other written authorization; and

WHEREAS, the prohibition of alcoholic beverages in City parks except pursuant to a permit or other written authorization (the "general prohibition") is found in Section 1 of Ordinance No. 6043; and

WHEREAS, Section 4 of Ordinance No. 6043 provides for a prospective expiration (or sunset provision) regarding the general prohibition, as follows:

SECTION 4: Section 1 of this Ordinance shall expire by limitation on October 1, 2010, unless otherwise extended.

and

WHEREAS, based upon the City's experience in implementing Ordinance No. 6043, the City Council desires to remove the prospective expiration (sunset provision), thereby leaving the general prohibition in effect until further Council action, if any, is taken.

NOW, THEREFORE, BASED UPON THE FOREGOING, THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Section 4 of Ordinance No. 6043 is hereby repealed.

SECTION 2: If any section, subsection, subdivision, paragraph, sentence, clause or

phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 3: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Val Steed 7-4-10
_____
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

BUSINESS IMPACT STATEMENT
BILL NO. 2010-36
(Repeals the sunset provision regarding the prohibition of alcoholic beverages in City parks except pursuant to a permit or other written authorization)

This business impact statement was prepared pursuant to NRS 237.090 to address the impact of a proposed ordinance, Bill No. 2010-36, that would repeal the sunset provision regarding the prohibition of alcoholic beverages in City parks except pursuant to a permit or other written authorization.

1. The following constitutes a description of the number of the manner in which comment was solicited from affected businesses, a summary of their responses and an explanation of the manner in which other interested persons may obtain a copy of the summary.

Not applicable

2. The estimated economic effect of the proposed rule on businesses, including, without limitation, both adverse and beneficial effects, and both direct and indirect effects:

Adverse effects:

None

Beneficial effects:

None

Direct effects:

None

Indirect effects:

None

3. The following constitutes a description of the methods the local government considered to reduce the impact of the proposed rule on businesses and a statement regarding whether any, and if so which, of these methods were used:

Not applicable

4. The governing body estimates the annual cost to the local government for enforcement of the proposed rule is:

No additional cost

5. If the proposed rule provides for a new fee or increases an existing fee, the total annual amount expected to be collected is:

Not applicable

6. If the proposed rule provides for a new fee or increases an existing fee, the money generated by the new fee or increase in existing fee will be used by the local government to:

Not applicable

7. If the proposed rule includes provisions that duplicate or are more stringent that federal, state or local standards regulating the same activity, the following explains when such duplicative or more stringent provisions are necessary:

Not applicable

Date: July 21, 2010

City of Las Vegas Agenda Item No.: **75.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☐ **Consent** ☒ **Discussion**

SUBJECT:
RECOMMENDING COMMITTEE: BILL ELIGIBLE FOR ADOPTION AT A LATER MEETING:

Bill No. 2010-37 – Amends the City's Administrative Code to adopt new fee tables applicable to permits, inspections and other services performed in connection with the City's technical codes, and to make other permit-related adjustments. Sponsored by: Councilman Gary Reese

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This bill will amend the City's Administrative Code to adopt new fee tables applicable to permits, inspections and other services performed in connection with the City's technical codes. The new tables are based on the cost of providing services rather than on the estimated value of construction. The tables include built-in adjustments for 2012 and 2013, unless it is determined that increases are not needed. The bill also requires a general contractor to obtain all permits and pay all related fees in the case of projects involving the work of more than one trade.

RECOMMENDATION:
This bill should be submitted to a Recommending Committee for review, hearing and recommendation to the City Council for final action.

BACKUP DOCUMENTATION:
1. Bill No. 2010-37
2. Fee Tables
3. Business Impact Statement

BILL NO. 2010-37

ORDINANCE NO. _____

AN ORDINANCE RELATING TO THE CITY'S ADMINISTRATIVE CODE; AMENDING THE SUPPLEMENTAL DOCUMENT TO THAT CODE TO ADOPT NEW FEE TABLES APPLICABLE TO PERMITS, INSPECTIONS AND OTHER SERVICES PERFORMED IN CONNECTION WITH THE CITY'S TECHNICAL CODES, AND TO MAKE OTHER PERMIT-RELATED ADJUSTMENTS; AND PROVIDING FOR OTHER RELATED MATTERS.

Sponsored by: Councilman Gary Reese

Summary: Amends the City's Administrative Code to adopt new fee tables applicable to permits, inspections and other services performed in connection with the City's technical codes, and to make other permit-related adjustments.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The document entitled "A Supplemental Document Amending the Uniform Administrative Code, 1997 Edition," which was adopted by Ordinance No. 5884, is hereby amended as set forth in Sections 2 to 6, inclusive, of this Ordinance.

SECTION 2: Section 6 of the Supplemental Document referred to in Section 1 is hereby repealed and a new Section 6 is adopted in lieu thereof, reading as follows:

Section 6: Section 301 is hereby amended by deleting Subsection 301.1 and substituting therefor a new Subsection 301.1 and a new Subsection 301.1.1, reading as follows:

301.1 Permits Required. Except as specified in Subsection 301.1.1 of this Section or in Section 26 of this Supplemental Document, no building, structure, building service equipment or onsite improvement regulated by this Code or any of the technical codes shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted, or demolished unless a separate, appropriate permit for each building, structure, building service equipment or onsite improvement has first been obtained from the Building Official. If work is commenced before a necessary and appropriate permit for the work has been

obtained, the Building Official is authorized to charge an additional fee in the amount of the building permit fee (i.e., a double fee).

301.1.1 Licensing and Contractor Requirements. No building permits shall be issued for building work which is required to be performed by a licensed contractor under NRS Chapter 624 unless the applicant is appropriately licensed by the State of Nevada and is licensed to do business within the City. Whenever two or more trades (building, plumbing, mechanical, or electrical) are to perform work on a project, a general contractor must be retained for the project, unless this requirement is waived by the Building Official. Where the preceding sentence requires that a general contractor be retained, the general contractor shall be responsible for acquiring the permits for all the trades to be involved in the work, and shall be responsible for paying all fees associated with the work in accordance with Table Nos. 3-A, 3-B and 3-C. A general contractor to whom a permit is issued shall be responsible for all work authorized for the project and shall post at the job site a list of all subcontractors doing work on the job with their names, their State subcontractor's license numbers and classifications and their City business license numbers. Mechanical, electrical and plumbing subcontractors shall register with the Department when all permits have been taken out by the general contractor. The general contractor and subcontractors must meet all applicable qualifications and requirements described in the technical codes.

NOTE: Additional licensing requirements concerning plumbing work are contained in Sections 23 to 30, inclusive, of this Supplemental Document. Additional licensing requirements concerning mechanical work are contained in Sections 31 to 34, inclusive, of this Supplemental Document.

SECTION 3: Sections 12, 13 and 14 of the Supplemental Document referred to in Section 1 are hereby repealed and new Sections 12, 13 and 14 are adopted in lieu thereof, reading as follows:

Section 12: Section 304 is hereby amended by deleting Subsection 304.1, 304.2, and 304.3, and substituting therefor new Subsections 304.1, 304.2, and 304.3, including their constituent parts, reading as follows:

304.1 General Provisions.

304.1.1 Fees–Generally. Fees shall be assessed in accordance with the provisions of this Section and the fee tables adopted in connection with this Supplemental Document, as amended by the City Council from time to time. Political subdivisions which by law are exempt from the payment of building permit fees are not exempt from:

1. The plan check fees described in this Section 304;

2. Sewer connection fees; or

3. Any other development-related fee, except to the extent provided by law.

304.1.2 Fee-Related Definitions. For purposes of this Section 304:

1. "New construction" refers to new construction, remodels and additions relating to the occupancies that are listed in Table No. 3-A, as adopted in connection with this Supplemental Document.

2. "Included examination time," with respect to a project and the fees chargeable in relation thereto, means the amount of time (measured in hours) that the Building Official has estimated as necessary to complete the required review of plans by Building and Safety staff for compliance with applicable codes relating to the issuance of a building permit (plan check). The plan check fees that have been set with respect to any particular type of project are deemed to entitle the developer/contractor/owner of that particular project to a level of effort and service from the Building and Safety Department which reflects the "included examination time." The estimated hours of plan check time are represented in the base

plan check fee (calculated as the product of that number of hours and the applicable hourly rate).

3. "Extraordinary examination time," with respect to a project and the fees chargeable in relation thereto, means the time necessary to conduct plan check that is in excess of the "included examination time" for that project.

4. "Included inspection time," with respect to a project and the fees chargeable in relation thereto, means the amount of time (measured in hours) that the Building Official has estimated as necessary to complete the required inspections of the on-site construction work for completion of the project to a final certificate of occupancy or completion. The fees that have been set with respect to any particular type of permit are deemed to entitle the developer/contractor/owner of that particular project to a level of effort and service from the Building and Safety Department which reflects the "included inspection time." The estimated hours of building inspection time are represented in the base fee (calculated as the product of that number of hours and the applicable hourly rate).

5. "Extraordinary inspection time," with respect to a project and the fees chargeable in relation thereto, means the time necessary to inspect a project that is in excess of the "included inspection time" for that project.

304.2 Plan Check Fees.

304.2.1 New Construction. For new construction, as defined in Subsection 304.1, the base plan check fee for each type of permit shall be the applicable base plan check fee as set forth in Table No. 3-A under the heading "Effective July 1, 2010," determined with reference to the occupancy and the size basis thresholds

listed therein. Such base fees, which are subject to adjustment in accordance with Sections 304.2.2 and 304.9, include plans examination to the extent represented in the "included examination time" that has been established by the Building and Safety Department for that project. Additional examination time (referred to as "extraordinary examination time") will be charged in accordance with Table No. 3-E.

304.2.2 Size-Based Adjustment to Base Plan Check Fee. For new construction, as defined in Subsection 304.1, the applicable base plan check fee, determined with reference to the occupancy and the size basis thresholds listed therein, shall be increased, in accordance with Table No. 3-B, by the amount that corresponds to the number of square feet by which the construction exceeds the amount of the applicable threshold base plan check fee, taking into account the applicable construction type listed in the various table columns.

304.2.3 Other Construction. For construction <u>other than</u> new construction, as defined in Subsection 304.1, the plan check fee for each type of permit shall be as set forth in Table No. 3-E under the heading "Effective July 1, 2010". Those fees, which are subject to adjustment in accordance with Section 304.9, include plans examination to the extent represented in the "included examination time" that has been established by the Building and Safety Department for that project. Additional examination time (referred to as "extraordinary examination time") will be charged in accordance with Table No. 3-E.

304.3 Permit and Inspection Fees

304.3.1 New Construction. For new construction, as defined in Subsection 304.1, the base fee for each type of permit and the associated inspections shall be the applicable base fee as set forth in Table No. 3-A under the heading "Effective July 1, 2010," determined with reference to the occupancy and the size basis thresholds listed therein. Such base fees, which are subject to adjustment in

accordance with Sections 304.3.2 and 304.9, include:

1. **The fees for the associated mechanical, plumbing and electrical work;**
2. **Associated structural reviews; and**
3. **Inspections to the extent represented in the "included inspection time" that has been established by the Building and Safety Department for that project.**

Additional inspection time (referred to as "extraordinary inspection time") will be charged in accordance with Table No. 3-E.

304.3.2 Size-Based Adjustment to Base Fee. For new construction, as defined in Subsection 304.1, the applicable base fee, determined with reference to the occupancy and the size basis thresholds listed therein, shall be increased, in accordance with Table No. 3-C, by the amount that corresponds to the number of square feet by which the construction exceeds the amount of the applicable threshold base fee, taking into account the applicable construction type listed in the various table columns.

304.3.3 Other Construction. For construction <u>other than</u> new construction, as defined in Subsection 304.1, the fee for each type of permit and the associated inspections shall be as set forth in Table No. 3-E. Those fees, which are subject to adjustment in accordance with Section 304.9, do not include necessary structural reviews, which shall be chargeable under Section 304.7, but do include:

1. **The fees for the associated mechanical, plumbing and electrical work; and**
2. **Inspections to the extent represented in the "included inspection time" that has been established by the Building and Safety Department for that project.**

Additional inspection time (referred to as "extraordinary inspection time") will

be charged in accordance with Table No. 3-E.

304.3.4 Mechanical/Plumbing/Electrical Work Only. For work that is limited to mechanical, plumbing, or electrical, the fee for each type of permit and the associated inspections shall be as set forth in Table No. 3-D. Those fees, which are subject to adjustment in accordance with Section 304.9, do not include necessary structural reviews, which shall be chargeable under Section 304.7, but do include inspections to the extent represented in the "included inspection time" that has been established by the Building and Safety Department for that project. Additional inspection time (referred to as "extraordinary inspection time") will be charged in accordance with Table No. 3-E.

Section 13: Section 304 is hereby amended by adding to Subsection 304.6 thereof a new paragraph, reading as follows:

304.6 Nonrefundable Fees. Except with respect to fees erroneously collected, the following fees will not be refunded:

1. Administrative issuance fees.
2. Zoning requirement review fees collected on behalf of the Planning and Development Department.

Section 14: Section 304 is hereby amended by adding thereto four new subsections, designated as Subsections 304.7, 304.8, 304.9 and 304.10, reading respectively as follows:

304.7 Miscellaneous and Other Fees. The following fees are chargeable to the extent not included elsewhere under applicable fee tables:

1. Administrative issuance fees, which are chargeable under Table Nos. 3-D and 3-E and apply to every permit, in addition to any other charge.
2. Hourly fees for extraordinary examination time and extraordinary

inspection time as described in this Section 304 and as set forth in Table No. 3-E.

3. All other fees set forth in Table Nos. 3-E and 3-F.

304.8 Interpretation of Fee Tables. In connection with certain items of work or construction (or combinations of such items), it may be necessary to consult more than one fee table in order to determine the amounts of all applicable fees. The determination of which fee table or fee tables apply in any particular case shall be within the discretion of the Building Official or his designee.

304.9 Fee Increases. Unless otherwise determined by future action of the City Council pursuant to Section 304.10:

1. All fees set forth in Table Nos. 3-A, 3-D and 3-E under the columns "Effective July 1, 2010" shall be increased on July 1, 2012, and on July 1, 2013, respectively, as set forth under the corresponding columns in those Tables; and

2. On those dates, there shall be corresponding percentage-based increases in the amounts set forth in Tables 3-B, 3-C and 3-F.

304.10 Fee Review. Before July 1, 2012, the Building Official shall review the current fiscal performance of the City of Las Vegas Building and Safety Enterprise Fund to determine the need for the fee increases described in Section 304.9. If the Building Official determines that the fee increases are not needed, an appropriate agenda item to remove the increases shall be presented to the City Council for action to do so.

SECTION 4: Section 22 of the Supplemental Document referred to in Section 1 is hereby repealed and a new Section 22 is adopted in lieu thereof, reading as follows:

Section 22: Table Nos. 3-A, 3-B, 3-C, and 3-D, previously adopted by Ordinance No. 5884, are hereby deleted in their entirety, and new Table Nos. 3-A to 3-F, inclusive, which are attached hereto and incorporated by this reference, are

adopted in lieu thereof.

SECTION 5: Section 30 of the Supplemental Document referred to in Section 1 is hereby repealed and a new Section 30 is adopted in lieu thereof, reading as follows:

Section 30: Fees. Fees related to plumbing permits and plumbing work shall be as set forth in Table Nos. 3-A to 3-F, inclusive.

SECTION 6: Section 34 of the Supplemental Document referred to in Section 1 is hereby repealed and a new Section 34 is adopted in lieu thereof, reading as follows:

Section 34: Fees. Fees related to mechanical permits and mechanical work shall be as set forth in Table Nos. 3-A to 3-F, inclusive.

SECTION 7: The Department of Building and Safety is authorized to republish the attached fee tables to remove any reference to the word "draft" and to file the final tables with the City Clerk.

SECTION 8: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

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SECTION 9: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Val Steed 7-21-10
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

City of Las Vegas
2010 BUILDING USER FEES
Building & Safety Department

Table No. 3-A FEE SCHEDULE - NEW CONSTRUCTION

Fee Service Information				*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees
			1,000	$ 333	$ 855	$ 382	$ 983	$ 421	$ 1,082
			4,000	$ 829	$ 2,039	$ 953	$ 2,345	$ 1,048	$ 2,579
1	A-1	Assembly Group: Theaters (Plays) - Complete	10,000	$ 1,765	$ 4,274	$ 2,030	$ 4,915	$ 2,233	$ 5,406
			20,000	$ 3,328	$ 7,996	$ 3,827	$ 9,196	$ 4,209	$ 10,115
			50,000	$ 7,879	$ 17,634	$ 8,509	$ 19,045	$ 8,509	$ 19,045
			1,000	$ 281	$ 743	$ 323	$ 854	$ 356	$ 939
			4,000	$ 705	$ 1,605	$ 811	$ 1,846	$ 892	$ 2,031
2	A-1	Assembly Group: Theaters - Shell	10,000	$ 1,454	$ 3,246	$ 1,672	$ 3,733	$ 1,839	$ 4,107
			20,000	$ 2,703	$ 5,986	$ 3,108	$ 6,884	$ 3,419	$ 7,572
			50,000	$ 5,934	$ 13,592	$ 5,934	$ 13,592	$ 5,934	$ 13,592
			250	$ 50	$ 180	$ 58	$ 207	$ 63	$ 228
			1,000	$ 99	$ 296	$ 114	$ 341	$ 125	$ 375
3	A-1	Assembly Group: Theaters - TI	2,500	$ 199	$ 536	$ 229	$ 617	$ 251	$ 678
			5,000	$ 321	$ 829	$ 369	$ 953	$ 406	$ 1,048
			12,500	$ 578	$ 1,439	$ 664	$ 1,655	$ 731	$ 1,820
			2,000	$ 531	$ 1,330	$ 611	$ 1,530	$ 672	$ 1,682
			8,000	$ 1,514	$ 3,673	$ 1,741	$ 4,223	$ 1,915	$ 4,646
4	A-2	Assembly Group: Casino / Banquet Hall - Complete	20,000	$ 3,479	$ 8,356	$ 4,001	$ 9,610	$ 4,401	$ 10,571
			40,000	$ 6,753	$ 16,165	$ 7,765	$ 18,590	$ 8,542	$ 20,449
			100,000	$ 10,344	$ 34,387	$ 10,344	$ 34,387	$ 10,344	$ 34,387
			2,000	$ 558	$ 1,174	$ 642	$ 1,350	$ 706	$ 1,485
			8,000	$ 1,403	$ 3,048	$ 1,613	$ 3,505	$ 1,775	$ 3,855
5	A-2	Assembly Group: Casino / Banquet Hall - Shell	20,000	$ 2,598	$ 6,251	$ 2,988	$ 7,189	$ 3,286	$ 7,908
			40,000	$ 5,007	$ 11,999	$ 5,115	$ 12,257	$ 5,115	$ 12,257
			100,000	$ 7,129	$ 19,832	$ 7,129	$ 19,832	$ 7,129	$ 19,832
			500	$ 71	$ 230	$ 82	$ 265	$ 90	$ 291
			2,000	$ 176	$ 483	$ 203	$ 555	$ 223	$ 610
6	A-2	Assembly Group: Casino / Banquet Hall - TI	5,000	$ 401	$ 1,031	$ 461	$ 1,185	$ 507	$ 1,304
			10,000	$ 626	$ 1,566	$ 719	$ 1,801	$ 791	$ 1,981
			25,000	$ 1,197	$ 2,931	$ 1,377	$ 3,371	$ 1,514	$ 3,708
			1,000	$ 446	$ 1,137	$ 512	$ 1,308	$ 564	$ 1,438
			4,000	$ 1,140	$ 2,793	$ 1,311	$ 3,212	$ 1,442	$ 3,533
7	A-2	Assembly Group: Nightclub / Restaurant - Complete	10,000	$ 2,068	$ 4,994	$ 2,378	$ 5,743	$ 2,615	$ 6,317
			20,000	$ 3,931	$ 8,684	$ 4,521	$ 9,986	$ 4,973	$ 10,985
			50,000	$ 7,467	$ 18,217	$ 7,467	$ 18,217	$ 7,467	$ 18,217
			1,000	$ 365	$ 939	$ 420	$ 1,080	$ 462	$ 1,188
			4,000	$ 801	$ 1,973	$ 921	$ 2,268	$ 1,014	$ 2,495
8	A-2	Assembly Group: Nightclub / Restaurant - Shell	10,000	$ 1,695	$ 4,104	$ 1,949	$ 4,719	$ 2,144	$ 5,191
			20,000	$ 3,186	$ 7,659	$ 3,664	$ 8,808	$ 3,894	$ 9,360
			50,000	$ 6,557	$ 12,169	$ 6,557	$ 12,169	$ 6,557	$ 12,169

City of Las Vegas
2010 BUILDING USER FEES
Building & Safety Department

Table No. 3-A FEE SCHEDULE - NEW CONSTRUCTION

Fee Service Information				*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees
			500	$ 78	$ 248	$ 89	$ 285	$ 98	$ 313
			2,000	$ 233	$ 630	$ 267	$ 725	$ 294	$ 797
9	A-2	Assembly Group: Nightclub / Restaurant - TI	5,000	$ 435	$ 1,112	$ 500	$ 1,278	$ 550	$ 1,406
			10,000	$ 674	$ 1,682	$ 775	$ 1,934	$ 852	$ 2,127
			25,000	$ 1,319	$ 3,218	$ 1,516	$ 3,700	$ 1,668	$ 4,070
			500	$ 231	$ 614	$ 266	$ 706	$ 293	$ 776
			2,000	$ 693	$ 1,727	$ 797	$ 1,985	$ 877	$ 2,184
10	B	Restaurant (<50 occ.) - Complete	5,000	$ 1,136	$ 2,773	$ 1,307	$ 3,188	$ 1,437	$ 3,507
			10,000	$ 2,068	$ 4,994	$ 2,378	$ 5,743	$ 2,615	$ 6,317
			25,000	$ 4,196	$ 10,727	$ 4,615	$ 11,800	$ 4,615	$ 11,800
			500	$ 223	$ 536	$ 256	$ 617	$ 282	$ 678
			2,000	$ 504	$ 1,264	$ 579	$ 1,453	$ 637	$ 1,599
11	B	Restaurant (<50 occ.) - Shell	5,000	$ 950	$ 2,328	$ 1,093	$ 2,677	$ 1,202	$ 2,944
			10,000	$ 1,695	$ 3,775	$ 1,949	$ 4,342	$ 2,144	$ 4,776
			25,000	$ 2,768	$ 7,551	$ 2,768	$ 7,551	$ 2,768	$ 7,551
			250	$ 63	$ 227	$ 72	$ 260	$ 80	$ 287
			1,000	$ 137	$ 401	$ 157	$ 461	$ 173	$ 507
12	B	Restaurant (<50 occ.) - TI	2,500	$ 272	$ 723	$ 312	$ 831	$ 343	$ 915
			5,000	$ 435	$ 1,112	$ 500	$ 1,278	$ 550	$ 1,406
			12,500	$ 783	$ 1,943	$ 900	$ 2,234	$ 990	$ 2,457
	B	Offices, etc. - Complete	500	$ 199	$ 536	$ 229	$ 617	$ 251	$ 678
	"	"	2,000	$ 567	$ 1,422	$ 652	$ 1,636	$ 717	$ 1,799
15	"	"	5,000	$ 960	$ 2,350	$ 1,104	$ 2,703	$ 1,214	$ 2,973
	"	"	10,000	$ 1,715	$ 4,153	$ 1,972	$ 4,775	$ 2,169	$ 5,253
	"	"	25,000	$ 2,613	$ 8,793	$ 2,743	$ 9,233	$ 2,743	$ 9,233
			500	$ 170	$ 430	$ 196	$ 495	$ 215	$ 544
			2,000	$ 496	$ 1,253	$ 570	$ 1,441	$ 627	$ 1,585
18	B	Offices, etc. - Shell	5,000	$ 809	$ 1,990	$ 930	$ 2,289	$ 1,023	$ 2,517
			10,000	$ 1,413	$ 3,433	$ 1,624	$ 3,947	$ 1,787	$ 4,342
			25,000	$ 1,987	$ 7,136	$ 2,027	$ 7,278	$ 2,027	$ 7,278
			200	$ 60	$ 216	$ 69	$ 248	$ 76	$ 273
			800	$ 99	$ 309	$ 114	$ 355	$ 125	$ 391
19	B	Offices, etc. - TI	2,000	$ 195	$ 540	$ 224	$ 621	$ 247	$ 683
			4,000	$ 320	$ 834	$ 367	$ 959	$ 404	$ 1,055
			10,000	$ 584	$ 1,467	$ 671	$ 1,687	$ 738	$ 1,856
			1,000	$ 416	$ 1,061	$ 478	$ 1,220	$ 526	$ 1,342
			4,000	$ 1,064	$ 2,607	$ 1,224	$ 2,998	$ 1,346	$ 3,298
20	B	Medical Offices - Complete	10,000	$ 2,068	$ 4,994	$ 2,378	$ 5,743	$ 2,615	$ 6,317
			20,000	$ 3,334	$ 8,910	$ 3,834	$ 10,247	$ 4,217	$ 11,271
			50,000	$ 4,190	$ 18,217	$ 4,190	$ 18,217	$ 4,190	$ 18,217

City of Las Vegas
2010 BUILDING USER FEES
Building & Safety Department

Table No. 3-A FEE SCHEDULE - NEW CONSTRUCTION

Fee Service Information				*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees
			1,000	$ 365	$ 839	$ 420	$ 965	$ 462	$ 1,061
			4,000	$ 799	$ 1,968	$ 919	$ 2,263	$ 1,010	$ 2,489
21	B	Medical Offices - Shell	10,000	$ 1,437	$ 4,104	$ 1,653	$ 4,719	$ 1,818	$ 5,191
			20,000	$ 1,886	$ 7,046	$ 2,169	$ 8,103	$ 2,278	$ 8,508
			50,000	$ 2,329	$ 13,342	$ 2,329	$ 13,342	$ 2,329	$ 13,342
			250	$ 63	$ 227	$ 72	$ 260	$ 80	$ 287
			1,000	$ 137	$ 401	$ 157	$ 461	$ 173	$ 507
22	B	Medical Offices - TI	2,500	$ 272	$ 723	$ 312	$ 831	$ 343	$ 915
			5,000	$ 438	$ 1,119	$ 504	$ 1,287	$ 554	$ 1,416
			12,500	$ 789	$ 1,956	$ 907	$ 2,249	$ 998	$ 2,474
			5,000	$ 1,078	$ 2,640	$ 1,240	$ 3,036	$ 1,364	$ 3,340
			20,000	$ 3,234	$ 7,152	$ 3,719	$ 8,225	$ 4,091	$ 9,047
23	B	Offices - Highrise (>4 stories) - Complete	50,000	$ 6,843	$ 18,605	$ 7,870	$ 21,396	$ 8,027	$ 21,824
			100,000	$ 13,382	$ 32,553	$ 13,382	$ 32,553	$ 13,382	$ 32,553
			250,000	$ 17,356	$ 48,682	$ 17,356	$ 48,682	$ 17,356	$ 48,682
			5,000	$ 766	$ 1,838	$ 881	$ 2,113	$ 969	$ 2,325
			20,000	$ 2,479	$ 5,821	$ 2,851	$ 6,694	$ 3,136	$ 7,364
24	B	Offices - Highrise (>4 stories) - Shell	50,000	$ 5,461	$ 13,794	$ 5,734	$ 14,484	$ 5,734	$ 14,484
			100,000	$ 10,545	$ 21,666	$ 10,545	$ 21,666	$ 10,545	$ 21,666
			250,000	$ 13,903	$ 31,436	$ 13,903	$ 31,436	$ 13,903	$ 31,436
			500	$ 64	$ 215	$ 73	$ 247	$ 81	$ 272
			2,000	$ 163	$ 450	$ 187	$ 518	$ 206	$ 569
25	B	Offices - Highrise (>4 stories) - TI	5,000	$ 308	$ 798	$ 354	$ 917	$ 389	$ 1,009
			10,000	$ 486	$ 1,223	$ 559	$ 1,406	$ 615	$ 1,546
			25,000	$ 909	$ 2,231	$ 1,045	$ 2,566	$ 1,150	$ 2,823
			5,000	$ 883	$ 1,416	$ 972	$ 1,557	$ 972	$ 1,557
			20,000	$ 1,445	$ 2,372	$ 1,445	$ 2,372	$ 1,445	$ 2,372
26	HRF	Highrise: All Types (>4 stories) - Foundation	50,000	$ 2,421	$ 3,552	$ 2,421	$ 3,552	$ 2,421	$ 3,552
			100,000	$ 5,514	$ 5,103	$ 5,514	$ 5,103	$ 5,514	$ 5,103
			250,000	$ 7,293	$ 7,488	$ 7,293	$ 7,488	$ 7,293	$ 7,488
			5,000	$ 988	$ 2,223	$ 1,136	$ 2,556	$ 1,249	$ 2,812
			20,000	$ 3,330	$ 5,507	$ 3,730	$ 6,167	$ 3,730	$ 6,167
27	HRS	Highrise: All Types (>4 stories) - Superstructure	50,000	$ 6,993	$ 8,442	$ 6,993	$ 8,442	$ 6,993	$ 8,442
			100,000	$ 12,540	$ 12,102	$ 12,540	$ 12,102	$ 12,540	$ 12,102
			250,000	$ 16,025	$ 17,995	$ 16,025	$ 17,995	$ 16,025	$ 17,995
			500	$ 77	$ 215	$ 88	$ 247	$ 97	$ 272
			2,000	$ 195	$ 540	$ 224	$ 621	$ 247	$ 683
28	HRTI	Highrise: All Types (>4 stories) - TI	5,000	$ 369	$ 957	$ 424	$ 1,101	$ 467	$ 1,211
			10,000	$ 584	$ 1,467	$ 671	$ 1,687	$ 738	$ 1,856
			25,000	$ 1,091	$ 2,678	$ 1,254	$ 3,079	$ 1,379	$ 3,387

City of Las Vegas
2010 BUILDING USER FEES
Building & Safety Department

Table No. 3-A FEE SCHEDULE - NEW CONSTRUCTION

Fee Service Information				*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees
			2,000	$ 620	$ 1,551	$ 712	$ 1,784	$ 784	$ 1,962
			8,000	$ 1,628	$ 3,952	$ 1,872	$ 4,545	$ 2,060	$ 5,000
29	A-3	Assembly Group: Halls - Complete	20,000	$ 3,328	$ 7,996	$ 3,827	$ 9,196	$ 4,209	$ 10,115
			40,000	$ 6,450	$ 15,445	$ 7,418	$ 17,762	$ 8,159	$ 19,538
			100,000	$ 9,619	$ 30,835	$ 9,619	$ 30,835	$ 9,619	$ 30,835
			2,000	$ 511	$ 1,149	$ 588	$ 1,321	$ 646	$ 1,453
			8,000	$ 1,204	$ 2,698	$ 1,384	$ 3,103	$ 1,523	$ 3,413
30	A-3	Assembly Group: Halls - Shell	20,000	$ 2,421	$ 5,986	$ 2,785	$ 6,884	$ 3,063	$ 7,572
			40,000	$ 4,494	$ 11,467	$ 4,943	$ 12,613	$ 4,943	$ 12,613
			100,000	$ 5,790	$ 19,174	$ 5,790	$ 19,174	$ 5,790	$ 19,174
			200	$ 50	$ 180	$ 58	$ 207	$ 63	$ 228
			800	$ 85	$ 266	$ 98	$ 306	$ 108	$ 337
31	A-3	Assembly Group: Halls - TI	2,000	$ 170	$ 468	$ 196	$ 538	$ 215	$ 591
			4,000	$ 330	$ 864	$ 380	$ 994	$ 417	$ 1,093
			10,000	$ 602	$ 1,509	$ 692	$ 1,735	$ 761	$ 1,909
			2,000	$ 315	$ 815	$ 362	$ 937	$ 398	$ 1,031
			8,000	$ 789	$ 1,943	$ 907	$ 2,234	$ 998	$ 2,457
32	A-3	Assembly Group: Exhibition - Complete	20,000	$ 1,665	$ 4,033	$ 1,915	$ 4,637	$ 2,106	$ 5,101
			40,000	$ 3,126	$ 7,515	$ 3,595	$ 8,642	$ 3,955	$ 9,506
			100,000	$ 7,509	$ 17,966	$ 8,635	$ 20,661	$ 9,499	$ 22,727
			2,000	$ 271	$ 710	$ 312	$ 817	$ 343	$ 898
			8,000	$ 673	$ 1,668	$ 773	$ 1,918	$ 851	$ 2,109
33	A-3	Assembly Group: Exhibition - Shell	20,000	$ 1,373	$ 3,335	$ 1,578	$ 3,835	$ 1,736	$ 4,219
			40,000	$ 2,541	$ 6,124	$ 2,922	$ 7,042	$ 3,215	$ 7,747
			100,000	$ 6,048	$ 14,484	$ 6,955	$ 16,656	$ 7,650	$ 18,322
			200	$ 27	$ 118	$ 31	$ 135	$ 34	$ 149
			800	$ 69	$ 200	$ 79	$ 230	$ 87	$ 253
34	A-3	Assembly Group: Exhibition - TI	2,000	$ 99	$ 296	$ 114	$ 341	$ 125	$ 375
			4,000	$ 195	$ 540	$ 224	$ 621	$ 247	$ 683
			10,000	$ 369	$ 957	$ 424	$ 1,101	$ 467	$ 1,211
			2,000	$ 584	$ 1,467	$ 671	$ 1,687	$ 738	$ 1,856
			8,000	$ 1,599	$ 3,888	$ 1,839	$ 4,471	$ 2,023	$ 4,918
35	A-3	Assembly Group: Recreation - Complete	20,000	$ 3,025	$ 7,276	$ 3,479	$ 8,368	$ 3,827	$ 9,204
			40,000	$ 5,846	$ 14,003	$ 6,723	$ 16,103	$ 7,396	$ 17,713
			100,000	$ 8,356	$ 34,184	$ 9,465	$ 38,720	$ 9,465	$ 38,720
			2,000	$ 423	$ 1,070	$ 486	$ 1,231	$ 534	$ 1,354
			8,000	$ 1,109	$ 2,706	$ 1,275	$ 3,112	$ 1,403	$ 3,423
36	A-3	Assembly Group: Recreation - Shell	20,000	$ 2,461	$ 5,931	$ 2,830	$ 6,821	$ 3,113	$ 7,503
			40,000	$ 4,604	$ 11,311	$ 5,295	$ 13,008	$ 5,824	$ 14,309
			100,000	$ 5,974	$ 21,996	$ 6,571	$ 24,196	$ 6,571	$ 24,196

City of Las Vegas
2010 BUILDING USER FEES
Building & Safety Department

Table No. 3-A FEE SCHEDULE - NEW CONSTRUCTION

Fee Service Information				*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees
			200	$ 60	$ 180	$ 69	$ 207	$ 76	$ 228
			800	$ 99	$ 258	$ 114	$ 296	$ 125	$ 326
37	A-3	Assembly Group: Recreation - TI	2,000	$ 188	$ 521	$ 216	$ 599	$ 237	$ 658
			4,000	$ 306	$ 806	$ 352	$ 926	$ 387	$ 1,019
			10,000	$ 566	$ 1,424	$ 650	$ 1,637	$ 715	$ 1,801
			1,000	$ 401	$ 859	$ 461	$ 988	$ 507	$ 1,086
			4,000	$ 1,007	$ 2,061	$ 1,157	$ 2,370	$ 1,273	$ 2,607
38	E	Educational Building - Complete	10,000	$ 1,791	$ 4,334	$ 2,060	$ 4,984	$ 2,266	$ 5,482
			20,000	$ 3,378	$ 8,116	$ 3,884	$ 9,334	$ 4,273	$ 10,267
			50,000	$ 5,664	$ 19,468	$ 6,513	$ 22,388	$ 6,513	$ 22,388
			1,000	$ 345	$ 749	$ 397	$ 861	$ 436	$ 947
			4,000	$ 855	$ 1,761	$ 983	$ 2,025	$ 1,082	$ 2,228
39	E	Educational Building - Shell	10,000	$ 1,649	$ 3,576	$ 1,897	$ 4,113	$ 2,086	$ 4,524
			20,000	$ 2,743	$ 6,603	$ 3,154	$ 7,593	$ 3,469	$ 8,352
			50,000	$ 3,616	$ 15,685	$ 3,897	$ 16,902	$ 3,897	$ 16,902
			250	$ 60	$ 216	$ 69	$ 248	$ 76	$ 273
			1,000	$ 119	$ 356	$ 136	$ 409	$ 150	$ 450
40	E	Educational Building - TI	2,500	$ 239	$ 644	$ 274	$ 740	$ 302	$ 814
			5,000	$ 392	$ 1,007	$ 450	$ 1,157	$ 495	$ 1,273
			12,500	$ 698	$ 1,739	$ 802	$ 1,999	$ 882	$ 2,199
			1,000	$ 218	$ 579	$ 250	$ 666	$ 275	$ 732
			4,000	$ 546	$ 1,368	$ 628	$ 1,573	$ 691	$ 1,730
41	F	Factory / Industrial Building - Complete	10,000	$ 1,060	$ 2,591	$ 1,219	$ 2,980	$ 1,341	$ 3,278
			20,000	$ 1,916	$ 4,634	$ 2,204	$ 5,329	$ 2,424	$ 5,862
			50,000	$ 4,486	$ 10,759	$ 5,159	$ 12,373	$ 5,675	$ 13,610
			1,000	$ 190	$ 516	$ 219	$ 594	$ 240	$ 653
			4,000	$ 479	$ 1,204	$ 551	$ 1,384	$ 606	$ 1,523
42	F	Factory / Industrial Building - Shell	10,000	$ 889	$ 2,183	$ 1,022	$ 2,510	$ 1,124	$ 2,761
			20,000	$ 1,574	$ 3,815	$ 1,810	$ 4,387	$ 1,991	$ 4,826
			50,000	$ 3,571	$ 8,716	$ 4,107	$ 10,024	$ 4,518	$ 11,026
			250	$ 35	$ 156	$ 40	$ 179	$ 44	$ 197
			1,000	$ 86	$ 276	$ 98	$ 317	$ 108	$ 349
43	F	Factory / Industrial Building - TI	2,500	$ 144	$ 420	$ 166	$ 483	$ 182	$ 531
			5,000	$ 246	$ 660	$ 283	$ 759	$ 311	$ 835
			12,500	$ 540	$ 1,170	$ 621	$ 1,346	$ 683	$ 1,480
			500	$ 153	$ 440	$ 176	$ 505	$ 194	$ 556
			2,000	$ 422	$ 1,083	$ 485	$ 1,245	$ 533	$ 1,370
44	H	Hazardous H- Complete	5,000	$ 759	$ 1,571	$ 873	$ 1,807	$ 960	$ 1,988
			10,000	$ 1,272	$ 2,591	$ 1,463	$ 2,980	$ 1,609	$ 3,278
			25,000	$ 2,814	$ 5,654	$ 3,236	$ 6,502	$ 3,560	$ 7,152

City of Las Vegas
2010 BUILDING USER FEES
Building & Safety Department

Table No. 3-A FEE SCHEDULE - NEW CONSTRUCTION

Fee Service Information				*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees
			500	$ 132	$ 324	$ 152	$ 372	$ 167	$ 410
			2,000	$ 366	$ 790	$ 421	$ 909	$ 463	$ 999
45	H	Hazardous H- Shell	5,000	$ 656	$ 1,368	$ 754	$ 1,573	$ 829	$ 1,730
			10,000	$ 1,067	$ 2,183	$ 1,226	$ 2,510	$ 1,349	$ 2,761
			25,000	$ 2,300	$ 4,634	$ 2,644	$ 5,329	$ 2,909	$ 5,862
			100	$ 17	$ 95	$ 19	$ 109	$ 21	$ 120
			400	$ 60	$ 180	$ 69	$ 207	$ 76	$ 228
46	H	Hazardous H- T I	1,000	$ 86	$ 230	$ 98	$ 265	$ 108	$ 291
			2,000	$ 129	$ 318	$ 148	$ 365	$ 163	$ 402
			5,000	$ 246	$ 550	$ 283	$ 633	$ 311	$ 696
	R-3	Single-Family (custom or model)	1,000	$ 269	$ 703	$ 309	$ 808	$ 340	$ 889
	"	"	2,500	$ 494	$ 1,241	$ 568	$ 1,427	$ 625	$ 1,570
49	"	"	5,000	$ 1,010	$ 2,471	$ 1,162	$ 2,842	$ 1,278	$ 3,126
	"	"	7,000	$ 1,333	$ 3,240	$ 1,532	$ 3,726	$ 1,686	$ 4,099
	"	"	10,000	$ 1,816	$ 4,393	$ 2,089	$ 5,051	$ 2,298	$ 5,557
			500	$ -	$ 450	$ -	$ 450	$ -	$ 450
			1,250	$ -	$ 695	$ -	$ 695	$ -	$ 695
52	R-3	Single-Family - Production / Repeat	2,500	$ -	$ 1,082	$ -	$ 1,082	$ -	$ 1,082
			3,500	$ -	$ 1,401	$ -	$ 1,401	$ -	$ 1,401
			5,000	$ -	$ 1,730	$ -	$ 1,730	$ -	$ 1,730
			400	$ 160	$ -	$ 160	$ -	$ 160	$ -
			1,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
53	R-3	Prefabricated / Manufactured Dwelling - Complete (Fees based on actual time @ staff houly rates)	2,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
			2,800	$ 160	$ -	$ 160	$ -	$ 160	$ -
			4,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
			200	$ 80	$ 258	$ 92	$ 296	$ 101	$ 326
			500	$ 151	$ 430	$ 174	$ 494	$ 191	$ 544
54	R-3	Single-Family Residential - Addition	1,000	$ 246	$ 657	$ 283	$ 755	$ 312	$ 831
			1,400	$ 314	$ 819	$ 361	$ 942	$ 397	$ 1,036
			2,000	$ 402	$ 1,028	$ 462	$ 1,182	$ 508	$ 1,300
			200	$ 30	$ 147	$ 35	$ 169	$ 38	$ 186
			500	$ 63	$ 227	$ 72	$ 260	$ 80	$ 287
55	R-3	Single-Family Resid. - Remodel with MPE's	1,000	$ 86	$ 276	$ 98	$ 317	$ 108	$ 349
			1,400	$ 102	$ 320	$ 117	$ 367	$ 129	$ 404
			2,000	$ 132	$ 389	$ 152	$ 447	$ 167	$ 491
			200	$ 30	$ 122	$ 35	$ 140	$ 38	$ 154
			500	$ 63	$ 173	$ 72	$ 198	$ 80	$ 218
56	R-3	Single-Family Resid. - Remodel without MPE's	1,000	$ 86	$ 206	$ 98	$ 236	$ 108	$ 260
			1,400	$ 102	$ 233	$ 117	$ 267	$ 129	$ 294
			2,000	$ 132	$ 278	$ 152	$ 319	$ 167	$ 351

City of Las Vegas
2010 BUILDING USER FEES
Building & Safety Department

Table No. 3-A FEE SCHEDULE - NEW CONSTRUCTION

Fee Service Information				*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees
			3,000	$ 816	$ 1,684	$ 938	$ 1,936	$ 1,032	$ 2,130
			7,500	$ 1,562	$ 3,389	$ 1,797	$ 3,897	$ 1,976	$ 4,287
57	R-1	Hotel: Low/Midrise (up to 3 stories) - Complete	15,000	$ 2,895	$ 6,225	$ 3,329	$ 7,159	$ 3,662	$ 7,875
			21,000	$ 3,536	$ 8,494	$ 4,067	$ 9,768	$ 4,473	$ 10,745
			30,000	$ 4,965	$ 11,901	$ 5,710	$ 13,686	$ 6,281	$ 15,055
			1,500	$ 657	$ 1,460	$ 755	$ 1,679	$ 831	$ 1,847
			6,000	$ 1,138	$ 2,820	$ 1,308	$ 3,243	$ 1,439	$ 3,567
58	R-1	Hotel: Low/Midrise (up to 3 stories) - Shell	15,000	$ 1,603	$ 5,090	$ 1,843	$ 5,854	$ 2,027	$ 6,439
			30,000	$ 2,297	$ 6,910	$ 2,642	$ 7,947	$ 2,906	$ 8,741
			75,000	$ 2,857	$ 10,787	$ 3,285	$ 12,405	$ 3,614	$ 13,646
			250	$ 63	$ 227	$ 72	$ 260	$ 80	$ 287
			1,000	$ 129	$ 381	$ 148	$ 438	$ 163	$ 482
59	R-1	Hotel: Low/Midrise (up to 3 stories) - TI / Remodel	2,500	$ 246	$ 660	$ 283	$ 759	$ 311	$ 835
			5,000	$ 399	$ 1,026	$ 459	$ 1,180	$ 505	$ 1,298
			12,500	$ 714	$ 1,776	$ 821	$ 2,042	$ 903	$ 2,247
			5,000	$ 1,203	$ 2,454	$ 1,383	$ 2,822	$ 1,522	$ 3,104
			20,000	$ 3,797	$ 9,127	$ 4,366	$ 10,496	$ 4,803	$ 11,545
60	R-1	Hotel: Highrise (4+ stories) - Complete	50,000	$ 6,533	$ 19,535	$ 7,513	$ 22,465	$ 8,264	$ 24,712
			100,000	$ 11,094	$ 38,514	$ 12,203	$ 42,365	$ 12,203	$ 42,365
			250,000	$ 14,401	$ 64,909	$ 14,401	$ 64,909	$ 14,401	$ 64,909
			5,000	$ 1,010	$ 2,068	$ 1,161	$ 2,378	$ 1,277	$ 2,615
			20,000	$ 2,753	$ 6,628	$ 3,165	$ 7,622	$ 3,482	$ 8,384
61	R-1	Hotel: Highrise (4+ stories) - Shell	50,000	$ 4,628	$ 15,739	$ 5,322	$ 18,100	$ 5,455	$ 18,552
			100,000	$ 8,697	$ 24,739	$ 9,566	$ 27,213	$ 9,566	$ 27,213
			250,000	$ 11,279	$ 40,991	$ 11,279	$ 40,991	$ 11,279	$ 40,991
			500	$ 86	$ 276	$ 98	$ 317	$ 108	$ 349
			2,000	$ 207	$ 572	$ 238	$ 657	$ 262	$ 723
62	R-1	Hotel: Highrise (4+ stories) - TI / Remodel	5,000	$ 399	$ 1,026	$ 459	$ 1,180	$ 505	$ 1,298
			10,000	$ 620	$ 1,551	$ 712	$ 1,784	$ 784	$ 1,962
			25,000	$ 1,182	$ 2,892	$ 1,359	$ 3,326	$ 1,495	$ 3,658
			750	$ 288	$ 635	$ 331	$ 730	$ 364	$ 803
			3,000	$ 726	$ 1,806	$ 835	$ 2,077	$ 918	$ 2,285
63	R-2	Apartment / Condo: Low/Midrise (up to 3 stories) - Complete	7,500	$ 1,448	$ 3,528	$ 1,665	$ 4,057	$ 1,831	$ 4,463
			15,000	$ 2,648	$ 6,389	$ 3,045	$ 7,347	$ 3,349	$ 8,081
			37,500	$ 4,169	$ 9,992	$ 4,794	$ 11,491	$ 5,274	$ 12,640
			750	$ 252	$ 677	$ 290	$ 778	$ 319	$ 856
			3,000	$ 632	$ 1,583	$ 726	$ 1,820	$ 799	$ 2,002
64	R-2	Apartment / Condo: Low/Midrise (up to 3 stories) - Shell	7,500	$ 1,126	$ 2,754	$ 1,294	$ 3,167	$ 1,424	$ 3,484
			15,000	$ 1,806	$ 4,370	$ 2,077	$ 5,026	$ 2,285	$ 5,528
			37,500	$ 3,232	$ 10,099	$ 3,717	$ 11,614	$ 3,754	$ 11,730

City of Las Vegas
2010 BUILDING USER FEES
Building & Safety Department

Table No. 3-A FEE SCHEDULE - NEW CONSTRUCTION

Fee Service Information				Effective July 1, 2010		Effective July 1, 2012		Effective July 1, 2013	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees
			200	$ 110	$ 243	$ 126	$ 279	$ 139	$ 307
			800	$ 306	$ 546	$ 352	$ 628	$ 387	$ 691
65	R-2	Apartment / Condo: Low/Midrise (up to 3 stories) - TI / Remodel	2,000	$ 566	$ 945	$ 650	$ 1,087	$ 715	$ 1,195
			4,000	$ 885	$ 1,437	$ 1,018	$ 1,653	$ 1,120	$ 1,818
			10,000	$ 1,723	$ 2,722	$ 1,982	$ 3,130	$ 2,180	$ 3,443
			200	$ 102	$ 312	$ 118	$ 359	$ 129	$ 395
			800	$ 286	$ 752	$ 328	$ 865	$ 361	$ 951
66	R-2	Apartment / Condo: Low/Midrise (up to 3 stories) - Addition	2,000	$ 528	$ 1,329	$ 607	$ 1,528	$ 668	$ 1,681
			4,000	$ 738	$ 1,823	$ 848	$ 2,096	$ 933	$ 2,305
			10,000	$ 1,539	$ 3,733	$ 1,770	$ 4,292	$ 1,947	$ 4,722
			5,000	$ 874	$ 2,146	$ 1,005	$ 2,468	$ 1,105	$ 2,715
			20,000	$ 2,884	$ 6,939	$ 3,316	$ 7,980	$ 3,648	$ 8,778
67	R-2	Apartment / Condo: Highrise (4+ stories) - Complete	50,000	$ 7,233	$ 18,502	$ 8,317	$ 21,278	$ 9,149	$ 23,406
			100,000	$ 11,856	$ 32,485	$ 13,634	$ 37,358	$ 14,998	$ 41,094
			250,000	$ 15,091	$ 80,390	$ 16,721	$ 89,072	$ 16,721	$ 89,072
			5,000	$ 888	$ 2,193	$ 1,021	$ 2,522	$ 1,123	$ 2,774
			20,000	$ 2,817	$ 6,792	$ 3,240	$ 7,811	$ 3,564	$ 8,592
68	R-2	Apartment / Condo: Highrise (4+ stories) - Shell	50,000	$ 5,116	$ 13,325	$ 5,883	$ 15,324	$ 6,471	$ 16,856
			100,000	$ 9,084	$ 26,100	$ 10,447	$ 30,015	$ 11,492	$ 33,017
			250,000	$ 11,659	$ 64,418	$ 12,125	$ 66,994	$ 12,125	$ 66,994
			500	$ 77	$ 215	$ 88	$ 247	$ 97	$ 272
			2,000	$ 188	$ 521	$ 216	$ 599	$ 237	$ 658
69	R-2	Apartment / Condo: Highrise (4+ stories) - TI / Remodel	5,000	$ 356	$ 923	$ 409	$ 1,061	$ 450	$ 1,167
			10,000	$ 566	$ 1,424	$ 650	$ 1,637	$ 715	$ 1,801
			25,000	$ 1,046	$ 2,143	$ 1,202	$ 2,464	$ 1,323	$ 2,710
			500	$ 219	$ 581	$ 251	$ 668	$ 276	$ 735
			2,000	$ 544	$ 1,356	$ 626	$ 1,559	$ 688	$ 1,715
70	I-1	Residential Care - Complete	5,000	$ 1,080	$ 2,634	$ 1,242	$ 3,029	$ 1,366	$ 3,331
			10,000	$ 1,972	$ 4,761	$ 2,268	$ 5,475	$ 2,268	$ 5,475
			25,000	$ 2,789	$ 9,690	$ 2,789	$ 9,690	$ 2,789	$ 9,690
			500	$ 189	$ 506	$ 217	$ 582	$ 239	$ 640
			2,000	$ 475	$ 1,189	$ 546	$ 1,367	$ 601	$ 1,504
71	I-1	Residential Care - Shell	5,000	$ 902	$ 2,207	$ 1,037	$ 2,538	$ 1,141	$ 2,792
			10,000	$ 1,616	$ 3,909	$ 1,777	$ 4,300	$ 1,777	$ 4,300
			25,000	$ 2,254	$ 6,428	$ 2,254	$ 6,428	$ 2,254	$ 6,428
			100	$ 35	$ 156	$ 40	$ 179	$ 44	$ 197
			400	$ 86	$ 276	$ 98	$ 317	$ 108	$ 349
72	I-1	Residential Care - TI	1,000	$ 144	$ 420	$ 166	$ 483	$ 182	$ 531
			2,000	$ 246	$ 660	$ 283	$ 759	$ 311	$ 835
			5,000	$ 458	$ 1,166	$ 526	$ 1,340	$ 579	$ 1,474

City of Las Vegas
2010 BUILDING USER FEES
Building & Safety Department

Table No. 3-A FEE SCHEDULE - NEW CONSTRUCTION

Fee Service Information				*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees
			2,000	$ 832	$ 2,054	$ 956	$ 2,362	$ 1,052	$ 2,598
			8,000	$ 2,530	$ 6,374	$ 2,909	$ 7,330	$ 3,200	$ 8,063
73	I-2	Hospitals / Nursing Homes - Complete	20,000	$ 3,938	$ 13,403	$ 4,529	$ 15,413	$ 4,982	$ 16,954
			40,000	$ 6,942	$ 26,256	$ 7,983	$ 30,195	$ 8,781	$ 33,214
			100,000	$ 8,907	$ 64,815	$ 8,907	$ 64,815	$ 8,907	$ 64,815
			2,000	$ 765	$ 1,899	$ 880	$ 2,184	$ 968	$ 2,402
			8,000	$ 1,930	$ 4,664	$ 2,220	$ 5,363	$ 2,441	$ 5,900
74	I-2	Hospitals / Nursing Homes - Shell	20,000	$ 3,071	$ 10,833	$ 3,532	$ 12,457	$ 3,885	$ 13,703
			40,000	$ 5,367	$ 19,425	$ 6,172	$ 22,338	$ 6,789	$ 24,572
			100,000	$ 6,965	$ 45,726	$ 7,104	$ 46,640	$ 7,104	$ 46,640
			200	$ 69	$ 240	$ 79	$ 276	$ 87	$ 304
			800	$ 162	$ 461	$ 186	$ 530	$ 205	$ 583
75	I-2	Hospitals / Nursing Homes - TI	2,000	$ 306	$ 806	$ 352	$ 926	$ 387	$ 1,019
			4,000	$ 495	$ 1,253	$ 569	$ 1,440	$ 626	$ 1,584
			10,000	$ 891	$ 2,201	$ 1,025	$ 2,531	$ 1,127	$ 2,784
			500	$ 252	$ 677	$ 290	$ 778	$ 319	$ 856
			2,000	$ 521	$ 1,305	$ 599	$ 1,501	$ 659	$ 1,651
76	I-2	Child Care (24-hr, >5 kids <2.5 yrs) - Complete	5,000	$ 998	$ 2,443	$ 1,147	$ 2,809	$ 1,262	$ 3,090
			10,000	$ 1,791	$ 4,334	$ 2,060	$ 4,984	$ 2,266	$ 5,482
			25,000	$ 2,469	$ 9,209	$ 2,840	$ 10,591	$ 2,982	$ 11,120
			500	$ 176	$ 483	$ 203	$ 555	$ 223	$ 610
			2,000	$ 459	$ 1,156	$ 528	$ 1,330	$ 580	$ 1,463
77	I-2	Child Care (24-hr, >5 kids <2.5 yrs) - Shell	5,000	$ 839	$ 2,061	$ 965	$ 2,370	$ 1,061	$ 2,607
			10,000	$ 1,473	$ 3,576	$ 1,693	$ 4,113	$ 1,863	$ 4,524
			25,000	$ 2,030	$ 7,467	$ 2,233	$ 8,214	$ 2,300	$ 8,460
			100	$ 30	$ 146	$ 35	$ 167	$ 38	$ 184
			400	$ 77	$ 258	$ 88	$ 297	$ 97	$ 326
78	I-2	Child Care (24-hr, >5 kids <2.5 yrs) - TI	1,000	$ 129	$ 381	$ 148	$ 438	$ 163	$ 482
			2,000	$ 212	$ 579	$ 243	$ 666	$ 268	$ 732
			5,000	$ 401	$ 1,031	$ 461	$ 1,185	$ 507	$ 1,304
			2,000	$ 1,110	$ 2,269	$ 1,277	$ 2,609	$ 1,404	$ 2,870
			8,000	$ 1,986	$ 7,419	$ 2,284	$ 8,532	$ 2,512	$ 9,385
79	I-3	Detention Facilities - Complete	20,000	$ 3,022	$ 17,726	$ 3,476	$ 20,385	$ 3,823	$ 22,424
			40,000	$ 5,845	$ 32,113	$ 6,721	$ 36,929	$ 6,721	$ 36,929
			100,000	$ 7,534	$ 57,395	$ 7,534	$ 57,395	$ 7,534	$ 57,395
			2,000	$ 781	$ 1,924	$ 898	$ 2,212	$ 988	$ 2,434
			8,000	$ 1,487	$ 6,051	$ 1,710	$ 6,959	$ 1,881	$ 7,655
80	I-3	Detention Facilities - Shell	20,000	$ 2,339	$ 14,293	$ 2,690	$ 16,436	$ 2,959	$ 18,080
			40,000	$ 4,692	$ 28,034	$ 4,880	$ 29,155	$ 4,880	$ 29,155
			100,000	$ 6,036	$ 41,002	$ 6,036	$ 41,002	$ 6,036	$ 41,002

City of Las Vegas
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Table No. 3-A FEE SCHEDULE - NEW CONSTRUCTION

Fee Service Information				*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees
			200	$ 77	$ 258	$ 88	$ 297	$ 97	$ 326
			800	$ 195	$ 540	$ 224	$ 621	$ 247	$ 683
81	I-3	Detention Facilities - TI	2,000	$ 378	$ 978	$ 435	$ 1,125	$ 478	$ 1,237
			4,000	$ 593	$ 1,490	$ 681	$ 1,713	$ 750	$ 1,884
			10,000	$ 1,110	$ 2,723	$ 1,277	$ 3,131	$ 1,404	$ 3,444
			250	$ 120	$ 350	$ 138	$ 403	$ 152	$ 443
			1,000	$ 334	$ 859	$ 384	$ 988	$ 422	$ 1,086
82	I-4	Day Care Facility - Complete	2,500	$ 603	$ 1,498	$ 693	$ 1,722	$ 762	$ 1,894
			5,000	$ 998	$ 2,443	$ 1,147	$ 2,809	$ 1,262	$ 3,090
			12,500	$ 2,189	$ 5,283	$ 2,517	$ 6,075	$ 2,769	$ 6,682
			250	$ 120	$ 318	$ 138	$ 365	$ 152	$ 402
			1,000	$ 288	$ 749	$ 331	$ 861	$ 364	$ 947
83	I-4	Day Care Facility - Shell	2,500	$ 521	$ 1,305	$ 599	$ 1,501	$ 659	$ 1,651
			5,000	$ 839	$ 2,061	$ 965	$ 2,370	$ 1,061	$ 2,607
			12,500	$ 1,791	$ 3,987	$ 2,060	$ 4,585	$ 2,184	$ 4,860
			100	$ 30	$ 121	$ 35	$ 139	$ 38	$ 153
			400	$ 77	$ 253	$ 88	$ 290	$ 97	$ 319
84	I-4	Day Care Facility - TI	1,000	$ 129	$ 381	$ 148	$ 438	$ 163	$ 482
			2,000	$ 212	$ 579	$ 243	$ 666	$ 268	$ 732
			5,000	$ 401	$ 1,031	$ 461	$ 1,185	$ 507	$ 1,304
			500	$ 111	$ 332	$ 127	$ 382	$ 140	$ 420
			2,000	$ 308	$ 806	$ 354	$ 927	$ 390	$ 1,020
85	S-1	Storage (Combustable - not S-2) - Complete	5,000	$ 567	$ 1,422	$ 652	$ 1,636	$ 717	$ 1,799
			10,000	$ 906	$ 2,229	$ 1,042	$ 2,563	$ 1,146	$ 2,819
			25,000	$ 1,921	$ 4,651	$ 2,209	$ 5,348	$ 2,430	$ 5,883
			500	$ 85	$ 266	$ 98	$ 306	$ 108	$ 337
			2,000	$ 238	$ 631	$ 273	$ 726	$ 300	$ 799
86	S-1	Storage (Combustable - not S-2) - Shell	5,000	$ 443	$ 1,119	$ 509	$ 1,287	$ 560	$ 1,415
			10,000	$ 688	$ 1,701	$ 791	$ 1,956	$ 870	$ 2,152
			25,000	$ 1,413	$ 3,433	$ 1,624	$ 3,947	$ 1,787	$ 4,342
			100	$ 14	$ 108	$ 16	$ 124	$ 17	$ 137
			400	$ 39	$ 168	$ 45	$ 193	$ 49	$ 213
87	S-1	Storage (Combustable - not S-2) - TI	1,000	$ 69	$ 240	$ 79	$ 276	$ 87	$ 304
			2,000	$ 99	$ 309	$ 114	$ 355	$ 125	$ 391
			5,000	$ 188	$ 521	$ 216	$ 599	$ 237	$ 658
			5,000	$ 821	$ 2,021	$ 944	$ 2,324	$ 1,039	$ 2,557
			20,000	$ 1,881	$ 4,891	$ 1,881	$ 4,891	$ 1,881	$ 4,891
88	S-1	Repair Garage / Service Station - Complete	50,000	$ 2,958	$ 7,571	$ 2,958	$ 7,571	$ 2,958	$ 7,571
			100,000	$ 5,721	$ 10,792	$ 5,721	$ 10,792	$ 5,721	$ 10,792
			250,000	$ 7,454	$ 16,011	$ 7,454	$ 16,011	$ 7,454	$ 16,011

City of Las Vegas
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Building & Safety Department

Table No. 3-A FEE SCHEDULE - NEW CONSTRUCTION

Fee Service Information				*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees
			500	$ 647	$ 1,589	$ 712	$ 1,748	$ 712	$ 1,748
			2,000	$ 837	$ 3,070	$ 837	$ 3,070	$ 837	$ 3,070
89	S-1	Repair Garage / Service Station - Shell	5,000	$ 1,152	$ 4,928	$ 1,152	$ 4,928	$ 1,152	$ 4,928
			10,000	$ 1,693	$ 6,939	$ 1,693	$ 6,939	$ 1,693	$ 6,939
			25,000	$ 2,175	$ 10,456	$ 2,175	$ 10,456	$ 2,175	$ 10,456
			100	$ 23	$ 129	$ 26	$ 148	$ 28	$ 163
			400	$ 63	$ 227	$ 72	$ 260	$ 80	$ 287
90	S-1	Repair Garage / Service Station - TI	1,000	$ 102	$ 320	$ 117	$ 367	$ 129	$ 404
			2,000	$ 168	$ 479	$ 193	$ 550	$ 213	$ 605
			5,000	$ 336	$ 878	$ 386	$ 1,009	$ 425	$ 1,110
			500	$ 119	$ 356	$ 136	$ 409	$ 150	$ 450
			2,000	$ 330	$ 864	$ 380	$ 994	$ 417	$ 1,093
91	S-2	Storage (Non-Combustable - not S-1) - Complete	5,000	$ 608	$ 1,524	$ 699	$ 1,753	$ 768	$ 1,928
			10,000	$ 971	$ 2,388	$ 1,116	$ 2,746	$ 1,228	$ 3,021
			25,000	$ 2,058	$ 4,983	$ 2,367	$ 5,730	$ 2,603	$ 6,303
			500	$ 85	$ 245	$ 98	$ 282	$ 108	$ 310
			2,000	$ 238	$ 581	$ 273	$ 668	$ 300	$ 735
92	S-2	Storage (Non-Combustable - not S-1) - Shell	5,000	$ 443	$ 1,029	$ 509	$ 1,184	$ 560	$ 1,302
			10,000	$ 688	$ 1,565	$ 791	$ 1,800	$ 870	$ 1,980
			25,000	$ 1,413	$ 3,158	$ 1,624	$ 3,632	$ 1,787	$ 3,995
			100	$ 14	$ 108	$ 16	$ 124	$ 17	$ 137
			400	$ 39	$ 168	$ 45	$ 193	$ 49	$ 213
93	S-2	Storage (Non-Combustable - not S-1) - TI	1,000	$ 69	$ 240	$ 79	$ 276	$ 87	$ 304
			2,000	$ 99	$ 309	$ 114	$ 355	$ 125	$ 391
			5,000	$ 188	$ 521	$ 216	$ 599	$ 237	$ 658
			3,000	$ 452	$ 1,148	$ 520	$ 1,320	$ 572	$ 1,452
			12,000	$ 1,050	$ 2,569	$ 1,208	$ 2,954	$ 1,328	$ 3,249
94	S-2	Parking Garage - Complete	30,000	$ 2,320	$ 5,594	$ 2,668	$ 6,433	$ 2,935	$ 7,076
			60,000	$ 4,435	$ 10,640	$ 5,100	$ 12,236	$ 5,610	$ 13,460
			150,000	$ 8,281	$ 20,620	$ 8,281	$ 20,620	$ 8,281	$ 20,620
			200	$ 41	$ 138	$ 47	$ 159	$ 51	$ 175
			800	$ 93	$ 219	$ 107	$ 252	$ 118	$ 277
95	U	Utility Structure (without MPE's)	2,000	$ 168	$ 335	$ 193	$ 385	$ 213	$ 423
			4,000	$ 285	$ 515	$ 328	$ 592	$ 361	$ 651
			10,000	$ 537	$ 902	$ 618	$ 1,037	$ 679	$ 1,140
			200	$ 41	$ 171	$ 47	$ 197	$ 51	$ 216
			800	$ 93	$ 297	$ 107	$ 342	$ 118	$ 376
96	U	Utility Structure (with MPE's)	2,000	$ 168	$ 479	$ 193	$ 550	$ 213	$ 605
			4,000	$ 285	$ 758	$ 328	$ 871	$ 361	$ 958
			10,000	$ 537	$ 1,356	$ 618	$ 1,559	$ 679	$ 1,715

City of Las Vegas
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Building & Safety Department

Table No. 3-A FEE SCHEDULE - NEW CONSTRUCTION

Fee Service Information				*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees
			1,000	$ 300	$ 792	$ 345	$ 911	$ 380	$ 1,002
			4,000	$ 753	$ 1,869	$ 866	$ 2,149	$ 953	$ 2,364
97	M	Mercantile / Store - Complete	10,000	$ 1,413	$ 3,441	$ 1,624	$ 3,957	$ 1,787	$ 4,353
			20,000	$ 2,598	$ 6,265	$ 2,988	$ 7,205	$ 3,287	$ 7,925
			50,000	$ 5,494	$ 13,161	$ 6,318	$ 15,135	$ 6,950	$ 16,649
			1,000	$ 261	$ 695	$ 300	$ 799	$ 330	$ 879
			4,000	$ 610	$ 1,525	$ 702	$ 1,753	$ 772	$ 1,929
98	M	Mercantile / Store - Shell	10,000	$ 1,176	$ 2,877	$ 1,352	$ 3,309	$ 1,488	$ 3,639
			20,000	$ 1,896	$ 4,585	$ 2,181	$ 5,273	$ 2,399	$ 5,800
			50,000	$ 3,796	$ 9,789	$ 4,366	$ 11,257	$ 4,540	$ 11,707
			100	$ 20	$ 122	$ 22	$ 140	$ 25	$ 154
			400	$ 63	$ 227	$ 72	$ 260	$ 80	$ 287
99	M	Mercantile / Store - TI	1,000	$ 93	$ 297	$ 107	$ 342	$ 118	$ 376
			2,000	$ 144	$ 420	$ 166	$ 483	$ 182	$ 531
			5,000	$ 285	$ 758	$ 328	$ 871	$ 361	$ 958
			5,000	$ 837	$ 1,728	$ 963	$ 1,987	$ 1,059	$ 2,185
			20,000	$ 2,612	$ 5,253	$ 3,003	$ 6,040	$ 3,304	$ 6,644
100	M	Mercantile / Store: Highrise - Complete	50,000	$ 5,750	$ 12,305	$ 6,612	$ 14,151	$ 7,273	$ 15,566
			100,000	$ 11,267	$ 24,050	$ 12,957	$ 27,658	$ 14,253	$ 30,423
			250,000	$ 16,098	$ 59,301	$ 18,513	$ 68,196	$ 20,364	$ 75,016
			5,000	$ 600	$ 1,494	$ 690	$ 1,718	$ 759	$ 1,890
			20,000	$ 1,781	$ 4,309	$ 2,048	$ 4,955	$ 2,253	$ 5,451
101	M	Mercantile / Store: Highrise - Shell	50,000	$ 4,146	$ 9,950	$ 4,768	$ 11,443	$ 5,245	$ 12,587
			100,000	$ 8,088	$ 19,349	$ 9,301	$ 22,251	$ 10,231	$ 24,476
			250,000	$ 13,382	$ 43,745	$ 15,389	$ 50,307	$ 16,620	$ 54,331
			200	$ 29	$ 130	$ 33	$ 150	$ 36	$ 164
			800	$ 71	$ 230	$ 82	$ 265	$ 90	$ 291
102	M	Mercantile / Store: Highrise - TI (tier 1)	2,000	$ 120	$ 350	$ 138	$ 403	$ 152	$ 443
			4,000	$ 210	$ 564	$ 242	$ 648	$ 266	$ 713
			10,000	$ 383	$ 975	$ 440	$ 1,121	$ 484	$ 1,233
			5,000	$ 1,152	$ 1,539	$ 1,325	$ 1,770	$ 1,457	$ 1,947
			20,000	$ 2,865	$ 5,026	$ 3,295	$ 5,780	$ 3,624	$ 6,358
103	A-4	Arena	50,000	$ 4,904	$ 12,001	$ 5,640	$ 13,801	$ 6,204	$ 15,182
			100,000	$ 11,273	$ 23,626	$ 12,964	$ 27,170	$ 14,260	$ 29,887
			250,000	$ 14,890	$ 58,501	$ 17,124	$ 67,276	$ 18,836	$ 74,004
			5,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
			20,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
104	A-5	Amusement Park Structure: Deposit (Fees based on actual time	50,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
		@ staff houly rates)	100,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
			250,000	$ 160	$ -	$ 160	$ -	$ 160	$ -

City of Las Vegas
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Table No. 3-A FEE SCHEDULE - NEW CONSTRUCTION

Fee Service Information				*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees
			10,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
			40,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
105	A-5	Stadium: Deposit (Fees based on actual time @ staff houly rates)	100,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
			200,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
			500,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
			200	$ 160	$ -	$ 160	$ -	$ 160	$ -
			800	$ 160	$ -	$ 160	$ -	$ 160	$ -
106	CSR	Commercial TI - Structural Review Add-on (Fees based on actual time @ staff houly rates)	2,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
			4,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
			10,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
			200	$ 160	$ -	$ 160	$ -	$ 160	$ -
			500	$ 160	$ -	$ 160	$ -	$ 160	$ -
107	RSR	Residential Remodel / Addition - Structural Review Add-on (Fees based on actual time @ staff houly rates)	1,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
			1,400	$ 160	$ -	$ 160	$ -	$ 160	$ -
			2,000	$ 160	$ -	$ 160	$ -	$ 160	$ -
			10,000	$ 383	$ 975	$ 440	$ 1,121	$ 484	$ 1,233
			40,000	$ 990	$ 2,424	$ 1,139	$ 2,787	$ 1,252	$ 3,066
108	M	Mercantile / Store: Highrise - TI (tier 2)	100,000	$ 2,169	$ 5,234	$ 2,494	$ 6,019	$ 2,743	$ 6,621
			200,000	$ 3,264	$ 9,918	$ 3,753	$ 11,405	$ 4,128	$ 12,546
			500,000	$ 4,011	$ 23,973	$ 4,613	$ 27,568	$ 5,074	$ 30,325
			5,000	$ 238	$ 631	$ 273	$ 726	$ 300	$ 799
			20,000	$ 598	$ 1,486	$ 687	$ 1,709	$ 756	$ 1,880
109	M	Mercantile / Store: Non-Highrise - TI (tier 2)	50,000	$ 1,186	$ 2,891	$ 1,364	$ 3,325	$ 1,501	$ 3,657
			100,000	$ 2,169	$ 5,234	$ 2,494	$ 6,019	$ 2,743	$ 6,621
			250,000	$ 2,928	$ 12,260	$ 3,368	$ 14,099	$ 3,704	$ 15,509
			-	$ -	$ -				
			-	$ -	$ -				
110	-	0	-	$ -	$ -				
			-	$ -	$ -				
			-	$ -	$ -				

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-B PLAN CHECK VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:											
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor: 1.00		*Relative Effort Factor:* 1.14		*Relative Effort Factor:* 1.30		*Relative Effort Factor:* 1.36		*Relative Effort Factor:* 1.46	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			1,000		$ 333	$ 333	$ 0.165	$ 379	$ 0.189	$ 432	$ 0.215	$ 452	$ 0.225	$ 485	$ 0.242
			4,000		$ 829	$ 829	$ 0.156	$ 945	$ 0.178	$ 1,077	$ 0.203	$ 1,127	$ 0.212	$ 1,210	$ 0.228
1	A-1	Assembly Group: Theaters (Plays) - Complete	10,000	A	$ 1,765	$ 1,765	$ 0.156	$ 2,012	$ 0.178	$ 2,295	$ 0.203	$ 2,400	$ 0.213	$ 2,577	$ 0.228
			20,000		$ 3,328	$ 3,328	$ 0.152	$ 3,793	$ 0.173	$ 4,326	$ 0.197	$ 4,525	$ 0.206	$ 4,858	$ 0.221
			50,000		$ 7,879	$ 7,879	$ 0.158	$ 8,982	$ 0.180	$ 10,242	$ 0.205	$ 10,715	$ 0.214	$ 11,503	$ 0.230
			1,000		$ 281	$ 281	$ 0.141	$ 321	$ 0.161	$ 366	$ 0.184	$ 383	$ 0.192	$ 411	$ 0.206
			4,000		$ 705	$ 705	$ 0.125	$ 804	$ 0.142	$ 917	$ 0.162	$ 959	$ 0.170	$ 1,029	$ 0.182
2	A-1	Assembly Group: Theaters - Shell	10,000	A	$ 1,454	$ 1,454	$ 0.125	$ 1,657	$ 0.142	$ 1,890	$ 0.162	$ 1,977	$ 0.170	$ 2,122	$ 0.182
			20,000		$ 2,703	$ 2,703	$ 0.108	$ 3,081	$ 0.123	$ 3,513	$ 0.140	$ 3,675	$ 0.146	$ 3,946	$ 0.157
			50,000		$ 5,934	$ 5,934	$ 0.119	$ 6,765	$ 0.135	$ 7,714	$ 0.154	$ 8,070	$ 0.161	$ 8,664	$ 0.173
			250		$ 50	$ 50	$ 0.065	$ 57	$ 0.074	$ 65	$ 0.085	$ 68	$ 0.088	$ 73	$ 0.095
			1,000		$ 99	$ 99	$ 0.067	$ 113	$ 0.076	$ 128	$ 0.087	$ 134	$ 0.091	$ 144	$ 0.097
3	A-1	Assembly Group: Theaters - TI	2,500	A	$ 199	$ 199	$ 0.049	$ 227	$ 0.056	$ 258	$ 0.064	$ 270	$ 0.067	$ 290	$ 0.072
			5,000		$ 321	$ 321	$ 0.034	$ 366	$ 0.039	$ 418	$ 0.044	$ 437	$ 0.046	$ 469	$ 0.050
			12,500		$ 578	$ 578	$ 0.046	$ 658	$ 0.053	$ 751	$ 0.060	$ 785	$ 0.063	$ 843	$ 0.067
			2,000		$ 531	$ 531	$ 0.164	$ 606	$ 0.187	$ 691	$ 0.213	$ 723	$ 0.223	$ 776	$ 0.239
			8,000		$ 1,514	$ 1,514	$ 0.164	$ 1,726	$ 0.187	$ 1,968	$ 0.213	$ 2,059	$ 0.223	$ 2,210	$ 0.239
4	A-2	Assembly Group: Casino / Banquet Hall - Complete	20,000	A	$ 3,479	$ 3,479	$ 0.164	$ 3,966	$ 0.187	$ 4,522	$ 0.213	$ 4,731	$ 0.223	$ 5,079	$ 0.239
			40,000		$ 6,753	$ 6,753	$ 0.060	$ 7,698	$ 0.068	$ 8,778	$ 0.078	$ 9,183	$ 0.081	$ 9,859	$ 0.087
			100,000		$ 10,344	$ 10,344	$ 0.103	$ 11,792	$ 0.118	$ 13,447	$ 0.134	$ 14,067	$ 0.141	$ 15,102	$ 0.151
			2,000		$ 558	$ 558	$ 0.141	$ 636	$ 0.161	$ 725	$ 0.183	$ 759	$ 0.191	$ 815	$ 0.206
			8,000		$ 1,403	$ 1,403	$ 0.100	$ 1,599	$ 0.114	$ 1,824	$ 0.129	$ 1,908	$ 0.135	$ 2,048	$ 0.145
5	A-2	Assembly Group: Casino / Banquet Hall - Shell	20,000	A	$ 2,598	$ 2,598	$ 0.120	$ 2,962	$ 0.137	$ 3,377	$ 0.157	$ 3,533	$ 0.164	$ 3,793	$ 0.176
			40,000		$ 5,007	$ 5,007	$ 0.035	$ 5,708	$ 0.040	$ 6,509	$ 0.046	$ 6,810	$ 0.048	$ 7,310	$ 0.052
			100,000		$ 7,129	$ 7,129	$ 0.071	$ 8,128	$ 0.081	$ 9,268	$ 0.093	$ 9,696	$ 0.097	$ 10,409	$ 0.104
			500		$ 71	$ 71	$ 0.070	$ 81	$ 0.080	$ 93	$ 0.091	$ 97	$ 0.095	$ 104	$ 0.102
			2,000		$ 176	$ 176	$ 0.075	$ 201	$ 0.085	$ 229	$ 0.097	$ 240	$ 0.102	$ 257	$ 0.109
6	A-2	Assembly Group: Casino / Banquet Hall - TI	5,000	A	$ 401	$ 401	$ 0.045	$ 457	$ 0.051	$ 521	$ 0.059	$ 545	$ 0.061	$ 585	$ 0.066
			10,000		$ 626	$ 626	$ 0.038	$ 713	$ 0.043	$ 813	$ 0.050	$ 851	$ 0.052	$ 913	$ 0.056
			25,000		$ 1,197	$ 1,197	$ 0.048	$ 1,365	$ 0.055	$ 1,556	$ 0.062	$ 1,628	$ 0.065	$ 1,748	$ 0.070
			1,000		$ 446	$ 446	$ 0.232	$ 508	$ 0.264	$ 579	$ 0.301	$ 606	$ 0.315	$ 650	$ 0.338
			4,000		$ 1,140	$ 1,140	$ 0.155	$ 1,300	$ 0.176	$ 1,482	$ 0.201	$ 1,550	$ 0.210	$ 1,664	$ 0.226
7	A-2	Assembly Group: Nightclub / Restaurant - Complete	10,000	A	$ 2,068	$ 2,068	$ 0.186	$ 2,357	$ 0.212	$ 2,688	$ 0.242	$ 2,812	$ 0.253	$ 3,019	$ 0.272
			20,000		$ 3,931	$ 3,931	$ 0.118	$ 4,482	$ 0.134	$ 5,111	$ 0.153	$ 5,347	$ 0.160	$ 5,740	$ 0.172
			50,000		$ 7,467	$ 7,467	$ 0.149	$ 8,512	$ 0.170	$ 9,707	$ 0.194	$ 10,155	$ 0.203	$ 10,901	$ 0.218
			1,000		$ 365	$ 365	$ 0.145	$ 417	$ 0.166	$ 475	$ 0.189	$ 497	$ 0.198	$ 533	$ 0.212
			4,000		$ 801	$ 801	$ 0.149	$ 913	$ 0.170	$ 1,042	$ 0.194	$ 1,090	$ 0.203	$ 1,170	$ 0.217
8	A-2	Assembly Group: Nightclub / Restaurant - Shell	10,000	A	$ 1,695	$ 1,695	$ 0.149	$ 1,932	$ 0.170	$ 2,204	$ 0.194	$ 2,305	$ 0.203	$ 2,475	$ 0.218
			20,000		$ 3,186	$ 3,186	$ 0.112	$ 3,632	$ 0.128	$ 4,142	$ 0.146	$ 4,333	$ 0.153	$ 4,652	$ 0.164
			50,000		$ 6,557	$ 6,557	$ 0.131	$ 7,475	$ 0.149	$ 8,524	$ 0.170	$ 8,917	$ 0.178	$ 9,573	$ 0.191

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-B PLAN CHECK VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:									
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*	
						1.00		*1.14*		*1.30*		*1.36*		*1.46*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			500		$ 78	$ 78	$ 0.103	$ 88	$ 0.118	$ 101	$ 0.134	$ 105	$ 0.141	$ 113	$ 0.151
			2,000		$ 233	$ 233	$ 0.068	$ 265	$ 0.077	$ 302	$ 0.088	$ 316	$ 0.092	$ 339	$ 0.099
9	A-2	Assembly Group: Nightclub / Restaurant - TI	5,000	A	$ 435	$ 435	$ 0.048	$ 496	$ 0.054	$ 566	$ 0.062	$ 592	$ 0.065	$ 635	$ 0.070
			10,000		$ 674	$ 674	$ 0.043	$ 768	$ 0.049	$ 876	$ 0.056	$ 916	$ 0.058	$ 983	$ 0.063
			25,000		$ 1,319	$ 1,319	$ 0.053	$ 1,503	$ 0.060	$ 1,714	$ 0.069	$ 1,793	$ 0.072	$ 1,925	$ 0.077
			500		$ 231	$ 231	$ 0.308	$ 264	$ 0.351	$ 301	$ 0.400	$ 315	$ 0.419	$ 338	$ 0.449
			2,000		$ 693	$ 693	$ 0.148	$ 790	$ 0.168	$ 901	$ 0.192	$ 942	$ 0.201	$ 1,012	$ 0.216
10	B	Restaurant (<50 occ.) - Complete	5,000	A	$ 1,136	$ 1,136	$ 0.186	$ 1,295	$ 0.212	$ 1,477	$ 0.242	$ 1,545	$ 0.253	$ 1,659	$ 0.272
			10,000		$ 2,068	$ 2,068	$ 0.142	$ 2,357	$ 0.162	$ 2,688	$ 0.184	$ 2,812	$ 0.193	$ 3,019	$ 0.207
			25,000		$ 4,196	$ 4,196	$ 0.168	$ 4,783	$ 0.191	$ 5,455	$ 0.218	$ 5,706	$ 0.228	$ 6,126	$ 0.245
			500		$ 223	$ 223	$ 0.187	$ 254	$ 0.214	$ 289	$ 0.244	$ 303	$ 0.255	$ 325	$ 0.274
			2,000		$ 504	$ 504	$ 0.149	$ 574	$ 0.170	$ 655	$ 0.193	$ 685	$ 0.202	$ 735	$ 0.217
11	B	Restaurant (<50 occ.) - Shell	5,000	A	$ 950	$ 950	$ 0.149	$ 1,083	$ 0.170	$ 1,235	$ 0.194	$ 1,292	$ 0.203	$ 1,387	$ 0.218
			10,000		$ 1,695	$ 1,695	$ 0.072	$ 1,932	$ 0.082	$ 2,204	$ 0.093	$ 2,305	$ 0.097	$ 2,475	$ 0.104
			25,000		$ 2,768	$ 2,768	$ 0.111	$ 3,155	$ 0.126	$ 3,596	$ 0.144	$ 3,764	$ 0.151	$ 4,041	$ 0.162
			250		$ 63	$ 63	$ 0.098	$ 72	$ 0.112	$ 82	$ 0.127	$ 86	$ 0.133	$ 92	$ 0.143
			1,000		$ 137	$ 137	$ 0.090	$ 156	$ 0.103	$ 177	$ 0.117	$ 186	$ 0.122	$ 199	$ 0.131
12	B	Restaurant (<50 occ.) - TI	2,500	A	$ 272	$ 272	$ 0.065	$ 310	$ 0.075	$ 353	$ 0.085	$ 369	$ 0.089	$ 396	$ 0.095
			5,000		$ 435	$ 435	$ 0.046	$ 496	$ 0.053	$ 566	$ 0.060	$ 592	$ 0.063	$ 635	$ 0.068
			12,500		$ 783	$ 783	$ 0.063	$ 893	$ 0.071	$ 1,018	$ 0.081	$ 1,065	$ 0.085	$ 1,143	$ 0.091
	B	Offices, etc. - Complete	500		$ 199	$ 199	$ 0.246	$ 227	$ 0.280	$ 258	$ 0.319	$ 270	$ 0.334	$ 290	$ 0.358
	"	"	2,000		$ 567	$ 567	$ 0.131	$ 646	$ 0.149	$ 737	$ 0.170	$ 771	$ 0.178	$ 828	$ 0.191
15	"	"	5,000	A	$ 960	$ 960	$ 0.151	$ 1,094	$ 0.172	$ 1,248	$ 0.196	$ 1,306	$ 0.205	$ 1,402	$ 0.220
	"	"	10,000		$ 1,715	$ 1,715	$ 0.060	$ 1,955	$ 0.068	$ 2,230	$ 0.078	$ 2,332	$ 0.081	$ 2,504	$ 0.087
	"	"	25,000		$ 2,613	$ 2,613	$ 0.105	$ 2,978	$ 0.119	$ 3,396	$ 0.136	$ 3,553	$ 0.142	$ 3,814	$ 0.153
			500		$ 170	$ 170	$ 0.217	$ 194	$ 0.247	$ 221	$ 0.282	$ 231	$ 0.295	$ 248	$ 0.317
			2,000		$ 496	$ 496	$ 0.104	$ 565	$ 0.119	$ 644	$ 0.136	$ 674	$ 0.142	$ 724	$ 0.152
18	B	Offices, etc. - Shell	5,000	A	$ 809	$ 809	$ 0.121	$ 922	$ 0.138	$ 1,051	$ 0.157	$ 1,100	$ 0.164	$ 1,181	$ 0.176
			10,000		$ 1,413	$ 1,413	$ 0.038	$ 1,610	$ 0.044	$ 1,836	$ 0.050	$ 1,921	$ 0.052	$ 2,062	$ 0.056
			25,000		$ 1,987	$ 1,987	$ 0.079	$ 2,266	$ 0.091	$ 2,584	$ 0.103	$ 2,703	$ 0.108	$ 2,902	$ 0.116
			200		$ 60	$ 60	$ 0.065	$ 68	$ 0.074	$ 78	$ 0.085	$ 82	$ 0.088	$ 88	$ 0.095
			800		$ 99	$ 99	$ 0.080	$ 113	$ 0.091	$ 129	$ 0.104	$ 135	$ 0.109	$ 145	$ 0.117
19	B	Offices, etc. - TI	2,000	A	$ 195	$ 195	$ 0.062	$ 222	$ 0.071	$ 254	$ 0.081	$ 265	$ 0.085	$ 285	$ 0.091
			4,000		$ 320	$ 320	$ 0.044	$ 364	$ 0.050	$ 415	$ 0.057	$ 435	$ 0.060	$ 466	$ 0.064
			10,000		$ 584	$ 584	$ 0.058	$ 665	$ 0.067	$ 759	$ 0.076	$ 794	$ 0.079	$ 852	$ 0.085
			1,000		$ 416	$ 416	$ 0.216	$ 474	$ 0.246	$ 541	$ 0.281	$ 565	$ 0.294	$ 607	$ 0.315
			4,000		$ 1,064	$ 1,064	$ 0.167	$ 1,213	$ 0.191	$ 1,383	$ 0.217	$ 1,447	$ 0.227	$ 1,553	$ 0.244
20	B	Medical Offices - Complete	10,000	A	$ 2,068	$ 2,068	$ 0.127	$ 2,357	$ 0.144	$ 2,688	$ 0.165	$ 2,812	$ 0.172	$ 3,019	$ 0.185
			20,000		$ 3,334	$ 3,334	$ 0.029	$ 3,800	$ 0.033	$ 4,334	$ 0.037	$ 4,534	$ 0.039	$ 4,867	$ 0.042
			50,000		$ 4,190	$ 4,190	$ 0.084	$ 4,777	$ 0.096	$ 5,448	$ 0.109	$ 5,699	$ 0.114	$ 6,118	$ 0.122

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-B PLAN CHECK VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:									
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*	
						1.00		*1.14*		*1.30*		*1.36*		*1.46*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			1,000		$ 365	$ 365	$ 0.144	$ 417	$ 0.165	$ 475	$ 0.188	$ 497	$ 0.196	$ 533	$ 0.211
			4,000		$ 799	$ 799	$ 0.106	$ 911	$ 0.121	$ 1,038	$ 0.138	$ 1,086	$ 0.145	$ 1,166	$ 0.155
21	B	Medical Offices - Shell	10,000	A	$ 1,437	$ 1,437	$ 0.045	$ 1,639	$ 0.051	$ 1,869	$ 0.058	$ 1,955	$ 0.061	$ 2,099	$ 0.066
			20,000		$ 1,886	$ 1,886	$ 0.015	$ 2,150	$ 0.017	$ 2,452	$ 0.019	$ 2,565	$ 0.020	$ 2,754	$ 0.022
			50,000		$ 2,329	$ 2,329	$ 0.047	$ 2,655	$ 0.053	$ 3,027	$ 0.061	$ 3,167	$ 0.063	$ 3,400	$ 0.068
			250		$ 63	$ 63	$ 0.098	$ 72	$ 0.112	$ 82	$ 0.127	$ 86	$ 0.133	$ 92	$ 0.143
			1,000		$ 137	$ 137	$ 0.090	$ 156	$ 0.103	$ 177	$ 0.117	$ 186	$ 0.122	$ 199	$ 0.131
22	B	Medical Offices - TI	2,500	A	$ 272	$ 272	$ 0.067	$ 310	$ 0.076	$ 353	$ 0.087	$ 369	$ 0.091	$ 396	$ 0.097
			5,000		$ 438	$ 438	$ 0.047	$ 499	$ 0.053	$ 569	$ 0.061	$ 596	$ 0.064	$ 639	$ 0.068
			12,500		$ 789	$ 789	$ 0.063	$ 899	$ 0.072	$ 1,026	$ 0.082	$ 1,073	$ 0.086	$ 1,152	$ 0.092
			5,000		$ 1,078	$ 1,078	$ 0.144	$ 1,229	$ 0.164	$ 1,401	$ 0.187	$ 1,466	$ 0.195	$ 1,574	$ 0.210
			20,000		$ 3,234	$ 3,234	$ 0.120	$ 3,686	$ 0.137	$ 4,204	$ 0.156	$ 4,398	$ 0.164	$ 4,721	$ 0.176
23	B	Offices - Highrise (>4 stories) - Complete	50,000	A	$ 6,843	$ 6,843	$ 0.131	$ 7,801	$ 0.149	$ 8,896	$ 0.170	$ 9,307	$ 0.178	$ 9,991	$ 0.191
			100,000		$ 13,382	$ 13,382	$ 0.026	$ 15,255	$ 0.030	$ 17,397	$ 0.034	$ 18,199	$ 0.036	$ 19,538	$ 0.039
			250,000		$ 17,356	$ 17,356	$ 0.069	$ 19,786	$ 0.079	$ 22,563	$ 0.090	$ 23,604	$ 0.094	$ 25,340	$ 0.101
			5,000		$ 766	$ 766	$ 0.114	$ 873	$ 0.130	$ 996	$ 0.148	$ 1,042	$ 0.155	$ 1,118	$ 0.167
			20,000		$ 2,479	$ 2,479	$ 0.099	$ 2,826	$ 0.113	$ 3,223	$ 0.129	$ 3,372	$ 0.135	$ 3,620	$ 0.145
24	B	Offices - Highrise (>4 stories) - Shell	50,000	A	$ 5,461	$ 5,461	$ 0.102	$ 6,225	$ 0.116	$ 7,099	$ 0.132	$ 7,427	$ 0.138	$ 7,973	$ 0.148
			100,000		$ 10,545	$ 10,545	$ 0.022	$ 12,021	$ 0.026	$ 13,708	$ 0.029	$ 14,341	$ 0.030	$ 15,395	$ 0.033
			250,000		$ 13,903	$ 13,903	$ 0.056	$ 15,849	$ 0.063	$ 18,074	$ 0.072	$ 18,908	$ 0.076	$ 20,298	$ 0.081
			500		$ 64	$ 64	$ 0.066	$ 73	$ 0.075	$ 83	$ 0.086	$ 87	$ 0.090	$ 93	$ 0.096
			2,000		$ 163	$ 163	$ 0.048	$ 185	$ 0.055	$ 211	$ 0.063	$ 221	$ 0.066	$ 237	$ 0.071
25	B	Offices - Highrise (>4 stories) - TI	5,000	A	$ 308	$ 308	$ 0.036	$ 351	$ 0.041	$ 400	$ 0.046	$ 418	$ 0.049	$ 449	$ 0.052
			10,000		$ 486	$ 486	$ 0.028	$ 554	$ 0.032	$ 632	$ 0.037	$ 661	$ 0.038	$ 710	$ 0.041
			25,000		$ 909	$ 909	$ 0.036	$ 1,036	$ 0.041	$ 1,181	$ 0.047	$ 1,236	$ 0.049	$ 1,327	$ 0.053
			5,000		$ 883	$ 883	$ 0.037	$ 1,007	$ 0.043	$ 1,148	$ 0.049	$ 1,201	$ 0.051	$ 1,289	$ 0.055
			20,000		$ 1,445	$ 1,445	$ 0.033	$ 1,648	$ 0.037	$ 1,879	$ 0.042	$ 1,966	$ 0.044	$ 2,110	$ 0.047
26	HRF	Highrise: All Types (>4 stories) - Foundation	50,000	A	$ 2,421	$ 2,421	$ 0.062	$ 2,760	$ 0.071	$ 3,147	$ 0.080	$ 3,293	$ 0.084	$ 3,535	$ 0.090
			100,000		$ 5,514	$ 5,514	$ 0.012	$ 6,286	$ 0.014	$ 7,168	$ 0.015	$ 7,499	$ 0.016	$ 8,050	$ 0.017
			250,000		$ 7,293	$ 7,293	$ 0.029	$ 8,314	$ 0.033	$ 9,481	$ 0.038	$ 9,919	$ 0.040	$ 10,646	$ 0.043
			5,000		$ 988	$ 988	$ 0.156	$ 1,126	$ 0.178	$ 1,284	$ 0.203	$ 1,343	$ 0.212	$ 1,442	$ 0.228
			20,000		$ 3,330	$ 3,330	$ 0.122	$ 3,796	$ 0.139	$ 4,329	$ 0.159	$ 4,529	$ 0.166	$ 4,862	$ 0.178
27	HRS	Highrise: All Types (>4 stories) - Superstructure	50,000	A	$ 6,993	$ 6,993	$ 0.111	$ 7,973	$ 0.126	$ 9,091	$ 0.144	$ 9,511	$ 0.151	$ 10,210	$ 0.162
			100,000		$ 12,540	$ 12,540	$ 0.023	$ 14,296	$ 0.026	$ 16,302	$ 0.030	$ 17,055	$ 0.032	$ 18,309	$ 0.034
			250,000		$ 16,025	$ 16,025	$ 0.064	$ 18,269	$ 0.073	$ 20,833	$ 0.083	$ 21,794	$ 0.087	$ 23,397	$ 0.094
			500		$ 77	$ 77	$ 0.079	$ 87	$ 0.090	$ 99	$ 0.103	$ 104	$ 0.107	$ 112	$ 0.115
			2,000		$ 195	$ 195	$ 0.058	$ 222	$ 0.066	$ 254	$ 0.075	$ 265	$ 0.079	$ 285	$ 0.085
28	HRTI	Highrise: All Types (>4 stories) - TI	5,000	A	$ 369	$ 369	$ 0.043	$ 421	$ 0.049	$ 480	$ 0.056	$ 502	$ 0.058	$ 539	$ 0.063
			10,000		$ 584	$ 584	$ 0.034	$ 665	$ 0.039	$ 759	$ 0.044	$ 794	$ 0.046	$ 852	$ 0.049
			25,000		$ 1,091	$ 1,091	$ 0.044	$ 1,243	$ 0.050	$ 1,418	$ 0.057	$ 1,483	$ 0.059	$ 1,592	$ 0.064

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-B PLAN CHECK VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT:*											
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B			
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*			
						1.00		*1.14*		*1.30*		*1.36*		*1.46*			
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF		
			2,000		$ 620	$ 620	$ 0.168	$ 706	$ 0.192	$ 805	$ 0.219	$ 843	$ 0.229	$ 904	$ 0.245		
			8,000		$ 1,628	$ 1,628	$ 0.142	$ 1,856	$ 0.161	$ 2,117	$ 0.184	$ 2,214	$ 0.193	$ 2,377	$ 0.207		
29	A-3	Assembly Group: Halls - Complete	20,000	A	$ 3,328	$ 3,328	$ 0.156	$ 3,793	$ 0.178	$ 4,326	$ 0.203	$ 4,525	$ 0.212	$ 4,858	$ 0.228		
			40,000		$ 6,450	$ 6,450	$ 0.053	$ 7,353	$ 0.060	$ 8,385	$ 0.069	$ 8,772	$ 0.072	$ 9,417	$ 0.077		
			100,000		$ 9,619	$ 9,619	$ 0.096	$ 10,965	$ 0.110	$ 12,504	$ 0.125	$ 13,081	$ 0.131	$ 14,043	$ 0.140		
			2,000		$ 511	$ 511	$ 0.115	$ 583	$ 0.132	$ 664	$ 0.150	$ 695	$ 0.157	$ 746	$ 0.169		
			8,000		$ 1,204	$ 1,204	$ 0.101	$ 1,372	$ 0.116	$ 1,565	$ 0.132	$ 1,637	$ 0.138	$ 1,757	$ 0.148		
30	A-3	Assembly Group: Halls - Shell	20,000	A	$ 2,421	$ 2,421	$ 0.104	$ 2,760	$ 0.118	$ 3,148	$ 0.135	$ 3,293	$ 0.141	$ 3,535	$ 0.151		
			40,000		$ 4,494	$ 4,494	$ 0.022	$ 5,123	$ 0.025	$ 5,842	$ 0.028	$ 6,112	$ 0.029	$ 6,561	$ 0.032		
			100,000		$ 5,790	$ 5,790	$ 0.058	$ 6,601	$ 0.066	$ 7,527	$ 0.075	$ 7,874	$ 0.079	$ 8,453	$ 0.085		
			200		$ 50	$ 50	$ 0.058	$ 57	$ 0.067	$ 65	$ 0.076	$ 68	$ 0.079	$ 73	$ 0.085		
			800		$ 85	$ 85	$ 0.071	$ 97	$ 0.081	$ 111	$ 0.092	$ 116	$ 0.096	$ 124	$ 0.103		
31	A-3	Assembly Group: Halls - TI	2,000	A	$ 170	$ 170	$ 0.080	$ 194	$ 0.091	$ 221	$ 0.104	$ 231	$ 0.109	$ 248	$ 0.117		
			4,000		$ 330	$ 330	$ 0.045	$ 376	$ 0.052	$ 429	$ 0.059	$ 449	$ 0.062	$ 482	$ 0.066		
			10,000		$ 602	$ 602	$ 0.060	$ 686	$ 0.069	$ 782	$ 0.078	$ 818	$ 0.082	$ 878	$ 0.088		
			2,000		$ 315	$ 315	$ 0.079	$ 359	$ 0.090	$ 410	$ 0.103	$ 428	$ 0.107	$ 460	$ 0.115		
			8,000		$ 789	$ 789	$ 0.073	$ 899	$ 0.083	$ 1,025	$ 0.095	$ 1,073	$ 0.099	$ 1,152	$ 0.107		
32	A-3	Assembly Group: Exhibition - Complete	20,000	A	$ 1,665	$ 1,665	$ 0.073	$ 1,898	$ 0.083	$ 2,165	$ 0.095	$ 2,264	$ 0.099	$ 2,431	$ 0.107		
			40,000		$ 3,126	$ 3,126	$ 0.073	$ 3,564	$ 0.083	$ 4,064	$ 0.095	$ 4,252	$ 0.099	$ 4,564	$ 0.107		
			100,000		$ 7,509	$ 7,509	$ 0.075	$ 8,560	$ 0.086	$ 9,761	$ 0.098	$ 10,212	$ 0.102	$ 10,963	$ 0.110		
			2,000		$ 271	$ 271	$ 0.067	$ 309	$ 0.076	$ 353	$ 0.087	$ 369	$ 0.091	$ 396	$ 0.098		
			8,000		$ 673	$ 673	$ 0.058	$ 767	$ 0.067	$ 874	$ 0.076	$ 915	$ 0.079	$ 982	$ 0.085		
33	A-3	Assembly Group: Exhibition - Shell	20,000	A	$ 1,373	$ 1,373	$ 0.058	$ 1,565	$ 0.067	$ 1,784	$ 0.076	$ 1,867	$ 0.079	$ 2,004	$ 0.085		
			40,000		$ 2,541	$ 2,541	$ 0.058	$ 2,897	$ 0.067	$ 3,304	$ 0.076	$ 3,456	$ 0.079	$ 3,710	$ 0.085		
			100,000		$ 6,048	$ 6,048	$ 0.060	$ 6,894	$ 0.069	$ 7,862	$ 0.079	$ 8,225	$ 0.082	$ 8,829	$ 0.088		
			200		$ 27	$ 27	$ 0.070	$ 31	$ 0.080	$ 35	$ 0.091	$ 37	$ 0.095	$ 39	$ 0.102		
			800		$ 69	$ 69	$ 0.025	$ 79	$ 0.028	$ 90	$ 0.032	$ 94	$ 0.034	$ 101	$ 0.036		
34	A-3	Assembly Group: Exhibition - TI	2,000	A	$ 99	$ 99	$ 0.048	$ 113	$ 0.055	$ 128	$ 0.063	$ 134	$ 0.065	$ 144	$ 0.070		
			4,000		$ 195	$ 195	$ 0.029	$ 222	$ 0.033	$ 254	$ 0.038	$ 265	$ 0.039	$ 285	$ 0.042		
			10,000		$ 369	$ 369	$ 0.037	$ 421	$ 0.042	$ 480	$ 0.048	$ 502	$ 0.050	$ 539	$ 0.054		
			2,000		$ 584	$ 584	$ 0.169	$ 665	$ 0.193	$ 759	$ 0.220	$ 794	$ 0.230	$ 852	$ 0.247		
			8,000		$ 1,599	$ 1,599	$ 0.119	$ 1,823	$ 0.135	$ 2,079	$ 0.154	$ 2,175	$ 0.162	$ 2,335	$ 0.173		
35	A-3	Assembly Group: Recreation - Complete	20,000	A	$ 3,025	$ 3,025	$ 0.141	$ 3,449	$ 0.161	$ 3,933	$ 0.183	$ 4,114	$ 0.192	$ 4,417	$ 0.206		
			40,000		$ 5,846	$ 5,846	$ 0.042	$ 6,665	$ 0.048	$ 7,600	$ 0.054	$ 7,951	$ 0.057	$ 8,536	$ 0.061		
			100,000		$ 8,356	$ 8,356	$ 0.084	$ 9,526	$ 0.095	$ 10,863	$ 0.109	$ 11,365	$ 0.114	$ 12,200	$ 0.122		
			2,000		$ 423	$ 423	$ 0.114	$ 482	$ 0.130	$ 549	$ 0.149	$ 575	$ 0.156	$ 617	$ 0.167		
			8,000		$ 1,109	$ 1,109	$ 0.113	$ 1,264	$ 0.128	$ 1,441	$ 0.147	$ 1,508	$ 0.153	$ 1,619	$ 0.165		
36	A-3	Assembly Group: Recreation - Shell	20,000	A	$ 2,461	$ 2,461	$ 0.107	$ 2,806	$ 0.122	$ 3,200	$ 0.139	$ 3,347	$ 0.146	$ 3,593	$ 0.156		
			40,000		$ 4,604	$ 4,604	$ 0.023	$ 5,249	$ 0.026	$ 5,986	$ 0.030	$ 6,262	$ 0.031	$ 6,722	$ 0.033		
			100,000		$ 5,974	$ 5,974	$ 0.060	$ 6,810	$ 0.068	$ 7,766	$ 0.078	$ 8,124	$ 0.081	$ 8,721	$ 0.087		

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-B PLAN CHECK VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:											
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B			
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*			
						1.00		*1.14*		*1.30*		*1.36*		*1.46*			
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF		
			200		$ 60	$ 60	$ 0.065	$ 68	$ 0.074	$ 78	$ 0.085	$ 82	$ 0.088	$ 88	$ 0.095		
			800		$ 99	$ 99	$ 0.074	$ 113	$ 0.084	$ 129	$ 0.096	$ 135	$ 0.100	$ 145	$ 0.108		
37	A-3	Assembly Group: Recreation - TI	2,000	A	$ 188	$ 188	$ 0.059	$ 214	$ 0.068	$ 244	$ 0.077	$ 255	$ 0.081	$ 274	$ 0.087		
			4,000		$ 306	$ 306	$ 0.043	$ 349	$ 0.049	$ 398	$ 0.056	$ 416	$ 0.059	$ 447	$ 0.063		
			10,000		$ 566	$ 566	$ 0.057	$ 645	$ 0.064	$ 735	$ 0.074	$ 769	$ 0.077	$ 826	$ 0.083		
			1,000		$ 401	$ 401	$ 0.202	$ 457	$ 0.230	$ 521	$ 0.263	$ 545	$ 0.275	$ 585	$ 0.295		
			4,000		$ 1,007	$ 1,007	$ 0.131	$ 1,147	$ 0.149	$ 1,308	$ 0.170	$ 1,369	$ 0.178	$ 1,469	$ 0.191		
38	E	Educational Building - Complete	10,000	A	$ 1,791	$ 1,791	$ 0.159	$ 2,042	$ 0.181	$ 2,329	$ 0.206	$ 2,436	$ 0.216	$ 2,615	$ 0.232		
			20,000		$ 3,378	$ 3,378	$ 0.076	$ 3,850	$ 0.087	$ 4,391	$ 0.099	$ 4,593	$ 0.104	$ 4,931	$ 0.111		
			50,000		$ 5,664	$ 5,664	$ 0.113	$ 6,457	$ 0.129	$ 7,363	$ 0.147	$ 7,703	$ 0.154	$ 8,269	$ 0.165		
			1,000		$ 345	$ 345	$ 0.170	$ 393	$ 0.194	$ 449	$ 0.221	$ 469	$ 0.231	$ 504	$ 0.248		
			4,000		$ 855	$ 855	$ 0.132	$ 975	$ 0.151	$ 1,112	$ 0.172	$ 1,163	$ 0.180	$ 1,248	$ 0.193		
39	E	Educational Building - Shell	10,000	A	$ 1,649	$ 1,649	$ 0.109	$ 1,880	$ 0.125	$ 2,144	$ 0.142	$ 2,243	$ 0.149	$ 2,408	$ 0.160		
			20,000		$ 2,743	$ 2,743	$ 0.029	$ 3,126	$ 0.033	$ 3,565	$ 0.038	$ 3,730	$ 0.040	$ 4,004	$ 0.043		
			50,000		$ 3,616	$ 3,616	$ 0.072	$ 4,123	$ 0.082	$ 4,701	$ 0.094	$ 4,918	$ 0.098	$ 5,280	$ 0.106		
			250		$ 60	$ 60	$ 0.078	$ 68	$ 0.089	$ 78	$ 0.101	$ 82	$ 0.106	$ 88	$ 0.114		
			1,000		$ 119	$ 119	$ 0.080	$ 135	$ 0.091	$ 154	$ 0.104	$ 161	$ 0.109	$ 173	$ 0.117		
40	E	Educational Building - TI	2,500	A	$ 239	$ 239	$ 0.061	$ 272	$ 0.070	$ 310	$ 0.080	$ 324	$ 0.083	$ 348	$ 0.089		
			5,000		$ 392	$ 392	$ 0.041	$ 446	$ 0.047	$ 509	$ 0.053	$ 532	$ 0.055	$ 572	$ 0.060		
			12,500		$ 698	$ 698	$ 0.055	$ 795	$ 0.064	$ 907	$ 0.073	$ 949	$ 0.076	$ 1,018	$ 0.081		
			1,000		$ 218	$ 218	$ 0.110	$ 248	$ 0.125	$ 283	$ 0.142	$ 296	$ 0.149	$ 318	$ 0.160		
			4,000		$ 546	$ 546	$ 0.086	$ 623	$ 0.098	$ 710	$ 0.111	$ 743	$ 0.116	$ 798	$ 0.125		
41	F	Factory / Industrial Building - Complete	10,000	A	$ 1,060	$ 1,060	$ 0.086	$ 1,208	$ 0.098	$ 1,378	$ 0.111	$ 1,442	$ 0.116	$ 1,548	$ 0.125		
			20,000		$ 1,916	$ 1,916	$ 0.086	$ 2,185	$ 0.098	$ 2,491	$ 0.111	$ 2,606	$ 0.117	$ 2,798	$ 0.125		
			50,000		$ 4,486	$ 4,486	$ 0.090	$ 5,114	$ 0.102	$ 5,832	$ 0.117	$ 6,101	$ 0.122	$ 6,550	$ 0.131		
			1,000		$ 190	$ 190	$ 0.096	$ 217	$ 0.110	$ 247	$ 0.125	$ 258	$ 0.131	$ 277	$ 0.141		
			4,000		$ 479	$ 479	$ 0.068	$ 546	$ 0.078	$ 622	$ 0.089	$ 651	$ 0.093	$ 699	$ 0.100		
42	F	Factory / Industrial Building - Shell	10,000	A	$ 889	$ 889	$ 0.069	$ 1,013	$ 0.078	$ 1,155	$ 0.089	$ 1,209	$ 0.093	$ 1,298	$ 0.100		
			20,000		$ 1,574	$ 1,574	$ 0.067	$ 1,794	$ 0.076	$ 2,046	$ 0.087	$ 2,140	$ 0.091	$ 2,298	$ 0.097		
			50,000		$ 3,571	$ 3,571	$ 0.071	$ 4,072	$ 0.081	$ 4,643	$ 0.093	$ 4,857	$ 0.097	$ 5,214	$ 0.104		
			250		$ 35	$ 35	$ 0.068	$ 39	$ 0.078	$ 45	$ 0.088	$ 47	$ 0.092	$ 50	$ 0.099		
			1,000		$ 86	$ 86	$ 0.039	$ 97	$ 0.044	$ 111	$ 0.051	$ 116	$ 0.053	$ 125	$ 0.057		
43	F	Factory / Industrial Building - TI	2,500	A	$ 144	$ 144	$ 0.041	$ 164	$ 0.047	$ 187	$ 0.053	$ 196	$ 0.055	$ 210	$ 0.060		
			5,000		$ 246	$ 246	$ 0.039	$ 280	$ 0.045	$ 320	$ 0.051	$ 335	$ 0.053	$ 359	$ 0.057		
			12,500		$ 540	$ 540	$ 0.043	$ 616	$ 0.049	$ 702	$ 0.056	$ 734	$ 0.059	$ 788	$ 0.063		
			500		$ 153	$ 153	$ 0.179	$ 174	$ 0.204	$ 199	$ 0.233	$ 208	$ 0.243	$ 223	$ 0.261		
			2,000		$ 422	$ 422	$ 0.113	$ 481	$ 0.128	$ 548	$ 0.146	$ 573	$ 0.153	$ 615	$ 0.164		
44	H	Hazardous H- Complete	5,000	A	$ 759	$ 759	$ 0.103	$ 865	$ 0.117	$ 987	$ 0.133	$ 1,032	$ 0.140	$ 1,108	$ 0.150		
			10,000		$ 1,272	$ 1,272	$ 0.103	$ 1,450	$ 0.117	$ 1,654	$ 0.134	$ 1,730	$ 0.140	$ 1,857	$ 0.150		
			25,000		$ 2,814	$ 2,814	$ 0.113	$ 3,208	$ 0.128	$ 3,658	$ 0.146	$ 3,827	$ 0.153	$ 4,108	$ 0.164		

City of Las Vegas
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Building & Safety Department

Table No. 3-B PLAN CHECK VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:											
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*	
						1.00		*1.14*		*1.30*		*1.36*		*1.46*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			500		$ 132	$ 132	$ 0.156	$ 150	$ 0.178	$ 172	$ 0.203	$ 180	$ 0.212	$ 193	$ 0.228
			2,000		$ 366	$ 366	$ 0.097	$ 417	$ 0.110	$ 476	$ 0.125	$ 498	$ 0.131	$ 534	$ 0.141
45	H	Hazardous H- Shell	5,000	A	$ 656	$ 656	$ 0.082	$ 747	$ 0.094	$ 852	$ 0.107	$ 891	$ 0.112	$ 957	$ 0.120
			10,000		$ 1,067	$ 1,067	$ 0.082	$ 1,216	$ 0.094	$ 1,386	$ 0.107	$ 1,450	$ 0.112	$ 1,557	$ 0.120
			25,000		$ 2,300	$ 2,300	$ 0.092	$ 2,621	$ 0.105	$ 2,989	$ 0.120	$ 3,127	$ 0.125	$ 3,357	$ 0.134
			100		$ 17	$ 17	$ 0.145	$ 19	$ 0.165	$ 21	$ 0.189	$ 22	$ 0.197	$ 24	$ 0.212
			400		$ 60	$ 60	$ 0.043	$ 68	$ 0.048	$ 78	$ 0.055	$ 82	$ 0.058	$ 88	$ 0.062
46	H	Hazardous H- T I	1,000	A	$ 86	$ 86	$ 0.044	$ 97	$ 0.050	$ 111	$ 0.057	$ 116	$ 0.059	$ 125	$ 0.064
			2,000		$ 129	$ 129	$ 0.039	$ 147	$ 0.044	$ 168	$ 0.051	$ 175	$ 0.053	$ 188	$ 0.057
			5,000		$ 246	$ 246	$ 0.049	$ 280	$ 0.056	$ 320	$ 0.064	$ 335	$ 0.067	$ 359	$ 0.072
	R-3	Single-Family (custom or model)	1,000		$ 269	$ 269	$ 0.150	$ 306	$ 0.171	$ 349	$ 0.195	$ 366	$ 0.204	$ 392	$ 0.219
	"	"	2,500		$ 494	$ 494	$ 0.207	$ 563	$ 0.235	$ 642	$ 0.268	$ 672	$ 0.281	$ 721	$ 0.301
49	"	"	5,000	A	$ 1,010	$ 1,010	$ 0.161	$ 1,151	$ 0.184	$ 1,313	$ 0.210	$ 1,374	$ 0.219	$ 1,475	$ 0.235
	"	"	7,000		$ 1,333	$ 1,333	$ 0.161	$ 1,519	$ 0.184	$ 1,732	$ 0.210	$ 1,812	$ 0.219	$ 1,945	$ 0.235
	"	"	10,000		$ 1,816	$ 1,816	$ 0.182	$ 2,071	$ 0.207	$ 2,361	$ 0.236	$ 2,470	$ 0.247	$ 2,652	$ 0.265
			500		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			1,250		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
52	R-3	Single-Family - Production / Repeat	2,500	A	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			3,500		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			5,000		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			400		$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
			1,000		$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
53	R-3	Prefabricated / Manufactured Dwelling - Complete	2,000	A	$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
			2,800		$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
			4,000		$ 160	$ 160	$ 0.040	$ 182	$ 0.046	$ 208	$ 0.052	$ 218	$ 0.054	$ 234	$ 0.058
			200		$ 80	$ 80	$ 0.238	$ 91	$ 0.271	$ 104	$ 0.309	$ 109	$ 0.324	$ 117	$ 0.347
			500		$ 151	$ 151	$ 0.190	$ 172	$ 0.217	$ 197	$ 0.248	$ 206	$ 0.259	$ 221	$ 0.278
54	R-3	Single-Family Residential - Addition	1,000	A	$ 246	$ 246	$ 0.168	$ 281	$ 0.192	$ 320	$ 0.218	$ 335	$ 0.228	$ 360	$ 0.245
			1,400		$ 314	$ 314	$ 0.147	$ 358	$ 0.168	$ 408	$ 0.191	$ 426	$ 0.200	$ 458	$ 0.215
			2,000		$ 402	$ 402	$ 0.201	$ 458	$ 0.229	$ 522	$ 0.261	$ 546	$ 0.273	$ 587	$ 0.293
			200		$ 30	$ 30	$ 0.110	$ 34	$ 0.125	$ 39	$ 0.143	$ 41	$ 0.150	$ 44	$ 0.161
			500		$ 63	$ 63	$ 0.045	$ 72	$ 0.051	$ 82	$ 0.059	$ 86	$ 0.061	$ 92	$ 0.066
55	R-3	Single-Family Resid. - Remodel with MPE's	1,000	A	$ 86	$ 86	$ 0.041	$ 97	$ 0.047	$ 111	$ 0.054	$ 116	$ 0.056	$ 125	$ 0.060
			1,400		$ 102	$ 102	$ 0.050	$ 116	$ 0.057	$ 133	$ 0.065	$ 139	$ 0.068	$ 149	$ 0.073
			2,000		$ 132	$ 132	$ 0.066	$ 150	$ 0.075	$ 172	$ 0.086	$ 180	$ 0.090	$ 193	$ 0.096
			200		$ 30	$ 30	$ 0.110	$ 34	$ 0.125	$ 39	$ 0.143	$ 41	$ 0.150	$ 44	$ 0.161
			500		$ 63	$ 63	$ 0.045	$ 72	$ 0.051	$ 82	$ 0.059	$ 86	$ 0.061	$ 92	$ 0.066
56	R-3	Single-Family Resid. - Remodel without MPE's	1,000	A	$ 86	$ 86	$ 0.041	$ 97	$ 0.047	$ 111	$ 0.054	$ 116	$ 0.056	$ 125	$ 0.060
			1,400		$ 102	$ 102	$ 0.050	$ 116	$ 0.057	$ 133	$ 0.065	$ 139	$ 0.068	$ 149	$ 0.073
			2,000		$ 132	$ 132	$ 0.066	$ 150	$ 0.075	$ 172	$ 0.086	$ 180	$ 0.090	$ 193	$ 0.096

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-B PLAN CHECK VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:											
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor: 1.00		*Relative Effort Factor:* 1.14		*Relative Effort Factor:* 1.30		*Relative Effort Factor:* 1.36		*Relative Effort Factor:* 1.46	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			3,000		$ 816	$ 816	$ 0.166	$ 930	$ 0.189	$ 1,061	$ 0.216	$ 1,110	$ 0.226	$ 1,191	$ 0.242
			7,500		$ 1,562	$ 1,562	$ 0.178	$ 1,781	$ 0.203	$ 2,031	$ 0.231	$ 2,125	$ 0.242	$ 2,281	$ 0.259
57	R-1	Hotel: Low/Midrise (up to 3 stories) - Complete	15,000	A	$ 2,895	$ 2,895	$ 0.107	$ 3,301	$ 0.122	$ 3,764	$ 0.139	$ 3,937	$ 0.145	$ 4,227	$ 0.156
			21,000		$ 3,536	$ 3,536	$ 0.159	$ 4,031	$ 0.181	$ 4,597	$ 0.206	$ 4,809	$ 0.216	$ 5,163	$ 0.232
			30,000		$ 4,965	$ 4,965	$ 0.166	$ 5,660	$ 0.189	$ 6,455	$ 0.215	$ 6,752	$ 0.225	$ 7,249	$ 0.242
			1,500		$ 657	$ 657	$ 0.107	$ 749	$ 0.122	$ 854	$ 0.139	$ 893	$ 0.145	$ 959	$ 0.156
			6,000		$ 1,138	$ 1,138	$ 0.052	$ 1,297	$ 0.059	$ 1,479	$ 0.067	$ 1,547	$ 0.070	$ 1,661	$ 0.075
58	R-1	Hotel: Low/Midrise (up to 3 stories) - Shell	15,000	A	$ 1,603	$ 1,603	$ 0.046	$ 1,827	$ 0.053	$ 2,083	$ 0.060	$ 2,180	$ 0.063	$ 2,340	$ 0.068
			30,000		$ 2,297	$ 2,297	$ 0.012	$ 2,619	$ 0.014	$ 2,986	$ 0.015	$ 3,124	$ 0.017	$ 3,354	$ 0.018
			75,000		$ 2,857	$ 2,857	$ 0.038	$ 3,257	$ 0.043	$ 3,714	$ 0.050	$ 3,885	$ 0.052	$ 4,171	$ 0.056
			250		$ 63	$ 63	$ 0.088	$ 72	$ 0.100	$ 82	$ 0.114	$ 86	$ 0.120	$ 92	$ 0.128
			1,000		$ 129	$ 129	$ 0.078	$ 147	$ 0.089	$ 168	$ 0.101	$ 175	$ 0.106	$ 188	$ 0.114
59	R-1	Hotel: Low/Midrise (up to 3 stories) - TI / Remodel	2,500	A	$ 246	$ 246	$ 0.061	$ 280	$ 0.070	$ 320	$ 0.080	$ 335	$ 0.083	$ 359	$ 0.089
			5,000		$ 399	$ 399	$ 0.042	$ 455	$ 0.048	$ 519	$ 0.055	$ 543	$ 0.057	$ 583	$ 0.061
			12,500		$ 714	$ 714	$ 0.057	$ 814	$ 0.065	$ 928	$ 0.074	$ 971	$ 0.078	$ 1,042	$ 0.083
			5,000		$ 1,203	$ 1,203	$ 0.173	$ 1,371	$ 0.197	$ 1,564	$ 0.225	$ 1,636	$ 0.235	$ 1,756	$ 0.252
			20,000		$ 3,797	$ 3,797	$ 0.091	$ 4,328	$ 0.104	$ 4,936	$ 0.119	$ 5,164	$ 0.124	$ 5,543	$ 0.133
60	R-1	Hotel: Highrise (4+ stories) - Complete	50,000	A	$ 6,533	$ 6,533	$ 0.091	$ 7,448	$ 0.104	$ 8,493	$ 0.119	$ 8,885	$ 0.124	$ 9,538	$ 0.133
			100,000		$ 11,094	$ 11,094	$ 0.022	$ 12,647	$ 0.025	$ 14,422	$ 0.029	$ 15,088	$ 0.030	$ 16,197	$ 0.032
			250,000		$ 14,401	$ 14,401	$ 0.058	$ 16,417	$ 0.066	$ 18,721	$ 0.075	$ 19,585	$ 0.078	$ 21,025	$ 0.084
			5,000		$ 1,010	$ 1,010	$ 0.116	$ 1,151	$ 0.132	$ 1,312	$ 0.151	$ 1,373	$ 0.158	$ 1,474	$ 0.170
			20,000		$ 2,753	$ 2,753	$ 0.063	$ 3,138	$ 0.071	$ 3,578	$ 0.081	$ 3,743	$ 0.085	$ 4,019	$ 0.091
61	R-1	Hotel: Highrise (4+ stories) - Shell	50,000	A	$ 4,628	$ 4,628	$ 0.081	$ 5,276	$ 0.093	$ 6,016	$ 0.106	$ 6,294	$ 0.111	$ 6,757	$ 0.119
			100,000		$ 8,697	$ 8,697	$ 0.017	$ 9,914	$ 0.020	$ 11,305	$ 0.022	$ 11,827	$ 0.023	$ 12,697	$ 0.025
			250,000		$ 11,279	$ 11,279	$ 0.045	$ 12,859	$ 0.051	$ 14,663	$ 0.059	$ 15,340	$ 0.061	$ 16,468	$ 0.066
			500		$ 86	$ 86	$ 0.081	$ 97	$ 0.092	$ 111	$ 0.105	$ 116	$ 0.110	$ 125	$ 0.118
			2,000		$ 207	$ 207	$ 0.064	$ 236	$ 0.073	$ 269	$ 0.083	$ 282	$ 0.087	$ 302	$ 0.093
62	R-1	Hotel: Highrise (4+ stories) - TI / Remodel	5,000	A	$ 399	$ 399	$ 0.044	$ 455	$ 0.050	$ 519	$ 0.057	$ 543	$ 0.060	$ 583	$ 0.064
			10,000		$ 620	$ 620	$ 0.038	$ 706	$ 0.043	$ 805	$ 0.049	$ 843	$ 0.051	$ 904	$ 0.055
			25,000		$ 1,182	$ 1,182	$ 0.047	$ 1,347	$ 0.054	$ 1,537	$ 0.061	$ 1,608	$ 0.064	$ 1,726	$ 0.069
			750		$ 288	$ 288	$ 0.195	$ 328	$ 0.222	$ 374	$ 0.253	$ 392	$ 0.265	$ 420	$ 0.284
			3,000		$ 726	$ 726	$ 0.160	$ 828	$ 0.183	$ 944	$ 0.208	$ 987	$ 0.218	$ 1,060	$ 0.234
63	R-2	Apartment / Condo: Low/Midrise (up to 3 stories) - Complete	7,500	A	$ 1,448	$ 1,448	$ 0.160	$ 1,650	$ 0.182	$ 1,882	$ 0.208	$ 1,969	$ 0.218	$ 2,113	$ 0.234
			15,000		$ 2,648	$ 2,648	$ 0.068	$ 3,018	$ 0.077	$ 3,442	$ 0.088	$ 3,601	$ 0.092	$ 3,865	$ 0.099
			37,500		$ 4,169	$ 4,169	$ 0.111	$ 4,753	$ 0.127	$ 5,420	$ 0.145	$ 5,670	$ 0.151	$ 6,087	$ 0.162
			750		$ 252	$ 252	$ 0.169	$ 287	$ 0.192	$ 328	$ 0.219	$ 343	$ 0.229	$ 368	$ 0.246
			3,000		$ 632	$ 632	$ 0.110	$ 720	$ 0.125	$ 821	$ 0.143	$ 859	$ 0.149	$ 922	$ 0.160
64	R-2	Apartment / Condo: Low/Midrise (up to 3 stories) - Shell	7,500	A	$ 1,126	$ 1,126	$ 0.091	$ 1,283	$ 0.103	$ 1,463	$ 0.118	$ 1,531	$ 0.123	$ 1,643	$ 0.132
			15,000		$ 1,806	$ 1,806	$ 0.063	$ 2,059	$ 0.072	$ 2,348	$ 0.082	$ 2,457	$ 0.086	$ 2,637	$ 0.093
			37,500		$ 3,232	$ 3,232	$ 0.086	$ 3,685	$ 0.098	$ 4,202	$ 0.112	$ 4,396	$ 0.117	$ 4,719	$ 0.126

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-B PLAN CHECK VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:											
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*	
						1.00		*1.14*		*1.30*		*1.36*		*1.46*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			200		$ 110	$ 110	$ 0.328	$ 125	$ 0.373	$ 142	$ 0.426	$ 149	$ 0.445	$ 160	$ 0.478
			800		$ 306	$ 306	$ 0.216	$ 349	$ 0.247	$ 398	$ 0.281	$ 416	$ 0.294	$ 447	$ 0.316
65	R-2	Apartment / Condo: Low/Midrise (up to 3 stories) - TI / Remodel	2,000	A	$ 566	$ 566	$ 0.160	$ 645	$ 0.182	$ 735	$ 0.208	$ 769	$ 0.217	$ 826	$ 0.233
			4,000		$ 885	$ 885	$ 0.140	$ 1,009	$ 0.159	$ 1,151	$ 0.182	$ 1,204	$ 0.190	$ 1,292	$ 0.204
			10,000		$ 1,723	$ 1,723	$ 0.172	$ 1,965	$ 0.196	$ 2,240	$ 0.224	$ 2,344	$ 0.234	$ 2,516	$ 0.252
			200		$ 102	$ 102	$ 0.306	$ 117	$ 0.348	$ 133	$ 0.397	$ 139	$ 0.416	$ 149	$ 0.446
			800		$ 286	$ 286	$ 0.202	$ 326	$ 0.230	$ 371	$ 0.262	$ 388	$ 0.274	$ 417	$ 0.295
66	R-2	Apartment / Condo: Low/Midrise (up to 3 stories) - Addition	2,000	A	$ 528	$ 528	$ 0.105	$ 602	$ 0.120	$ 686	$ 0.136	$ 718	$ 0.143	$ 771	$ 0.153
			4,000		$ 738	$ 738	$ 0.134	$ 841	$ 0.152	$ 959	$ 0.174	$ 1,003	$ 0.182	$ 1,077	$ 0.195
			10,000		$ 1,539	$ 1,539	$ 0.154	$ 1,754	$ 0.175	$ 2,000	$ 0.200	$ 2,093	$ 0.209	$ 2,247	$ 0.225
			5,000		$ 874	$ 874	$ 0.134	$ 996	$ 0.153	$ 1,136	$ 0.174	$ 1,188	$ 0.182	$ 1,276	$ 0.196
			20,000		$ 2,884	$ 2,884	$ 0.145	$ 3,287	$ 0.165	$ 3,749	$ 0.188	$ 3,922	$ 0.197	$ 4,210	$ 0.212
67	R-2	Apartment / Condo: Highrise (4+ stories) - Complete	50,000	A	$ 7,233	$ 7,233	$ 0.092	$ 8,245	$ 0.105	$ 9,402	$ 0.120	$ 9,836	$ 0.126	$ 10,559	$ 0.135
			100,000		$ 11,856	$ 11,856	$ 0.022	$ 13,516	$ 0.025	$ 15,413	$ 0.028	$ 16,124	$ 0.029	$ 17,310	$ 0.031
			250,000		$ 15,091	$ 15,091	$ 0.060	$ 17,204	$ 0.069	$ 19,618	$ 0.078	$ 20,524	$ 0.082	$ 22,033	$ 0.088
			5,000		$ 888	$ 888	$ 0.129	$ 1,012	$ 0.147	$ 1,154	$ 0.167	$ 1,208	$ 0.175	$ 1,296	$ 0.188
			20,000		$ 2,817	$ 2,817	$ 0.077	$ 3,211	$ 0.087	$ 3,662	$ 0.100	$ 3,831	$ 0.104	$ 4,113	$ 0.112
68	R-2	Apartment / Condo: Highrise (4+ stories) - Shell	50,000	A	$ 5,116	$ 5,116	$ 0.079	$ 5,832	$ 0.090	$ 6,650	$ 0.103	$ 6,957	$ 0.108	$ 7,469	$ 0.116
			100,000		$ 9,084	$ 9,084	$ 0.017	$ 10,356	$ 0.020	$ 11,810	$ 0.022	$ 12,355	$ 0.023	$ 13,263	$ 0.025
			250,000		$ 11,659	$ 11,659	$ 0.047	$ 13,291	$ 0.053	$ 15,156	$ 0.061	$ 15,856	$ 0.063	$ 17,022	$ 0.068
			500		$ 77	$ 77	$ 0.074	$ 87	$ 0.084	$ 99	$ 0.096	$ 104	$ 0.101	$ 112	$ 0.108
			2,000		$ 188	$ 188	$ 0.056	$ 214	$ 0.064	$ 244	$ 0.073	$ 255	$ 0.076	$ 274	$ 0.082
69	R-2	Apartment / Condo: Highrise (4+ stories) - TI / Remodel	5,000	A	$ 356	$ 356	$ 0.042	$ 405	$ 0.048	$ 462	$ 0.055	$ 483	$ 0.057	$ 519	$ 0.061
			10,000		$ 566	$ 566	$ 0.032	$ 645	$ 0.036	$ 735	$ 0.042	$ 769	$ 0.044	$ 826	$ 0.047
			25,000		$ 1,046	$ 1,046	$ 0.042	$ 1,192	$ 0.048	$ 1,359	$ 0.054	$ 1,422	$ 0.057	$ 1,526	$ 0.061
			500		$ 219	$ 219	$ 0.217	$ 249	$ 0.247	$ 284	$ 0.282	$ 297	$ 0.295	$ 319	$ 0.317
			2,000		$ 544	$ 544	$ 0.179	$ 620	$ 0.204	$ 707	$ 0.232	$ 740	$ 0.243	$ 794	$ 0.261
70	I-1	Residential Care - Complete	5,000	A	$ 1,080	$ 1,080	$ 0.178	$ 1,231	$ 0.203	$ 1,404	$ 0.232	$ 1,469	$ 0.243	$ 1,577	$ 0.261
			10,000		$ 1,972	$ 1,972	$ 0.054	$ 2,248	$ 0.062	$ 2,564	$ 0.071	$ 2,682	$ 0.074	$ 2,879	$ 0.079
			25,000		$ 2,789	$ 2,789	$ 0.112	$ 3,179	$ 0.127	$ 3,626	$ 0.145	$ 3,793	$ 0.152	$ 4,072	$ 0.163
			500		$ 189	$ 189	$ 0.191	$ 215	$ 0.218	$ 245	$ 0.248	$ 256	$ 0.260	$ 275	$ 0.279
			2,000		$ 475	$ 475	$ 0.142	$ 541	$ 0.162	$ 617	$ 0.185	$ 646	$ 0.193	$ 693	$ 0.208
71	I-1	Residential Care - Shell	5,000	A	$ 902	$ 902	$ 0.143	$ 1,028	$ 0.163	$ 1,172	$ 0.186	$ 1,226	$ 0.194	$ 1,316	$ 0.209
			10,000		$ 1,616	$ 1,616	$ 0.043	$ 1,842	$ 0.048	$ 2,100	$ 0.055	$ 2,197	$ 0.058	$ 2,359	$ 0.062
			25,000		$ 2,254	$ 2,254	$ 0.090	$ 2,569	$ 0.103	$ 2,930	$ 0.117	$ 3,065	$ 0.123	$ 3,290	$ 0.132
			100		$ 35	$ 35	$ 0.170	$ 39	$ 0.194	$ 45	$ 0.221	$ 47	$ 0.231	$ 50	$ 0.248
			400		$ 86	$ 86	$ 0.098	$ 97	$ 0.111	$ 111	$ 0.127	$ 116	$ 0.133	$ 125	$ 0.142
72	I-1	Residential Care - TI	1,000	A	$ 144	$ 144	$ 0.102	$ 164	$ 0.116	$ 187	$ 0.133	$ 196	$ 0.139	$ 210	$ 0.149
			2,000		$ 246	$ 246	$ 0.071	$ 280	$ 0.080	$ 320	$ 0.092	$ 335	$ 0.096	$ 359	$ 0.103
			5,000		$ 458	$ 458	$ 0.092	$ 522	$ 0.104	$ 595	$ 0.119	$ 622	$ 0.124	$ 668	$ 0.134

City of Las Vegas
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Building & Safety Department

Table No. 3-B PLAN CHECK VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:											
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*	
						1.00		*1.14*		*1.30*		*1.36*		*1.46*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			2,000		$ 832	$ 832	$ 0.283	$ 948	$ 0.323	$ 1,081	$ 0.368	$ 1,131	$ 0.385	$ 1,214	$ 0.413
			8,000		$ 2,530	$ 2,530	$ 0.117	$ 2,884	$ 0.134	$ 3,289	$ 0.153	$ 3,441	$ 0.160	$ 3,694	$ 0.171
73	I-2	Hospitals / Nursing Homes - Complete	20,000	A	$ 3,938	$ 3,938	$ 0.150	$ 4,489	$ 0.171	$ 5,119	$ 0.195	$ 5,356	$ 0.204	$ 5,749	$ 0.219
			40,000		$ 6,942	$ 6,942	$ 0.033	$ 7,914	$ 0.037	$ 9,024	$ 0.043	$ 9,441	$ 0.045	$ 10,135	$ 0.048
			100,000		$ 8,907	$ 8,907	$ 0.089	$ 10,154	$ 0.102	$ 11,579	$ 0.116	$ 12,113	$ 0.121	$ 13,004	$ 0.130
			2,000		$ 765	$ 765	$ 0.194	$ 872	$ 0.221	$ 995	$ 0.252	$ 1,040	$ 0.264	$ 1,117	$ 0.283
			8,000		$ 1,930	$ 1,930	$ 0.095	$ 2,200	$ 0.108	$ 2,509	$ 0.124	$ 2,625	$ 0.129	$ 2,818	$ 0.139
74	I-2	Hospitals / Nursing Homes - Shell	20,000	A	$ 3,071	$ 3,071	$ 0.115	$ 3,501	$ 0.131	$ 3,992	$ 0.149	$ 4,177	$ 0.156	$ 4,484	$ 0.168
			40,000		$ 5,367	$ 5,367	$ 0.027	$ 6,119	$ 0.030	$ 6,977	$ 0.035	$ 7,299	$ 0.036	$ 7,836	$ 0.039
			100,000		$ 6,965	$ 6,965	$ 0.070	$ 7,940	$ 0.079	$ 9,054	$ 0.091	$ 9,472	$ 0.095	$ 10,169	$ 0.102
			200		$ 69	$ 69	$ 0.155	$ 79	$ 0.177	$ 90	$ 0.202	$ 94	$ 0.211	$ 101	$ 0.226
			800		$ 162	$ 162	$ 0.120	$ 185	$ 0.137	$ 211	$ 0.156	$ 220	$ 0.163	$ 237	$ 0.175
75	I-2	Hospitals / Nursing Homes - TI	2,000	A	$ 306	$ 306	$ 0.095	$ 349	$ 0.108	$ 398	$ 0.123	$ 416	$ 0.129	$ 447	$ 0.138
			4,000		$ 495	$ 495	$ 0.066	$ 564	$ 0.075	$ 644	$ 0.086	$ 673	$ 0.090	$ 723	$ 0.096
			10,000		$ 891	$ 891	$ 0.089	$ 1,016	$ 0.102	$ 1,158	$ 0.116	$ 1,212	$ 0.121	$ 1,301	$ 0.130
			500		$ 252	$ 252	$ 0.180	$ 287	$ 0.205	$ 328	$ 0.233	$ 343	$ 0.244	$ 368	$ 0.262
			2,000		$ 521	$ 521	$ 0.159	$ 594	$ 0.181	$ 678	$ 0.206	$ 709	$ 0.216	$ 761	$ 0.232
76	I-2	Child Care (24-hr, >5 kids <2.5 yrs) - Complete	5,000	A	$ 998	$ 998	$ 0.159	$ 1,137	$ 0.181	$ 1,297	$ 0.206	$ 1,357	$ 0.216	$ 1,456	$ 0.232
			10,000		$ 1,791	$ 1,791	$ 0.045	$ 2,042	$ 0.052	$ 2,329	$ 0.059	$ 2,436	$ 0.061	$ 2,615	$ 0.066
			25,000		$ 2,469	$ 2,469	$ 0.099	$ 2,815	$ 0.113	$ 3,210	$ 0.128	$ 3,358	$ 0.134	$ 3,605	$ 0.144
			500		$ 176	$ 176	$ 0.188	$ 201	$ 0.215	$ 229	$ 0.245	$ 240	$ 0.256	$ 257	$ 0.275
			2,000		$ 459	$ 459	$ 0.127	$ 523	$ 0.144	$ 596	$ 0.165	$ 624	$ 0.172	$ 670	$ 0.185
77	I-2	Child Care (24-hr, >5 kids <2.5 yrs) - Shell	5,000	A	$ 839	$ 839	$ 0.127	$ 956	$ 0.144	$ 1,090	$ 0.165	$ 1,141	$ 0.172	$ 1,225	$ 0.185
			10,000		$ 1,473	$ 1,473	$ 0.037	$ 1,679	$ 0.042	$ 1,914	$ 0.048	$ 2,003	$ 0.051	$ 2,150	$ 0.054
			25,000		$ 2,030	$ 2,030	$ 0.081	$ 2,314	$ 0.093	$ 2,639	$ 0.106	$ 2,761	$ 0.110	$ 2,964	$ 0.119
			100		$ 30	$ 30	$ 0.155	$ 34	$ 0.177	$ 39	$ 0.202	$ 41	$ 0.211	$ 44	$ 0.226
			400		$ 77	$ 77	$ 0.088	$ 87	$ 0.100	$ 99	$ 0.114	$ 104	$ 0.119	$ 112	$ 0.128
78	I-2	Child Care (24-hr, >5 kids <2.5 yrs) - TI	1,000	A	$ 129	$ 129	$ 0.083	$ 147	$ 0.094	$ 168	$ 0.107	$ 175	$ 0.112	$ 188	$ 0.120
			2,000		$ 212	$ 212	$ 0.063	$ 241	$ 0.072	$ 275	$ 0.082	$ 288	$ 0.086	$ 309	$ 0.092
			5,000		$ 401	$ 401	$ 0.080	$ 457	$ 0.091	$ 521	$ 0.104	$ 545	$ 0.109	$ 585	$ 0.117
			2,000		$ 1,110	$ 1,110	$ 0.146	$ 1,265	$ 0.166	$ 1,443	$ 0.190	$ 1,510	$ 0.199	$ 1,621	$ 0.213
			8,000		$ 1,986	$ 1,986	$ 0.086	$ 2,264	$ 0.098	$ 2,582	$ 0.112	$ 2,701	$ 0.117	$ 2,899	$ 0.126
79	I-3	Detention Facilities - Complete	20,000	A	$ 3,022	$ 3,022	$ 0.141	$ 3,445	$ 0.161	$ 3,929	$ 0.183	$ 4,110	$ 0.192	$ 4,412	$ 0.206
			40,000		$ 5,845	$ 5,845	$ 0.028	$ 6,663	$ 0.032	$ 7,598	$ 0.037	$ 7,949	$ 0.038	$ 8,533	$ 0.041
			100,000		$ 7,534	$ 7,534	$ 0.075	$ 8,589	$ 0.086	$ 9,795	$ 0.098	$ 10,247	$ 0.102	$ 11,000	$ 0.110
			2,000		$ 781	$ 781	$ 0.118	$ 891	$ 0.134	$ 1,016	$ 0.153	$ 1,063	$ 0.160	$ 1,141	$ 0.172
			8,000		$ 1,487	$ 1,487	$ 0.071	$ 1,695	$ 0.081	$ 1,933	$ 0.092	$ 2,022	$ 0.097	$ 2,171	$ 0.104
80	I-3	Detention Facilities - Shell	20,000	A	$ 2,339	$ 2,339	$ 0.118	$ 2,667	$ 0.134	$ 3,041	$ 0.153	$ 3,181	$ 0.160	$ 3,415	$ 0.172
			40,000		$ 4,692	$ 4,692	$ 0.022	$ 5,349	$ 0.026	$ 6,100	$ 0.029	$ 6,381	$ 0.030	$ 6,850	$ 0.033
			100,000		$ 6,036	$ 6,036	$ 0.060	$ 6,881	$ 0.069	$ 7,847	$ 0.078	$ 8,209	$ 0.082	$ 8,812	$ 0.088

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-B PLAN CHECK VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:											
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*	
						1.00		*1.14*		*1.30*		*1.36*		*1.46*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			200		$ 77	$ 77	$ 0.198	$ 87	$ 0.225	$ 99	$ 0.257	$ 104	$ 0.269	$ 112	$ 0.288
			800		$ 195	$ 195	$ 0.153	$ 222	$ 0.174	$ 254	$ 0.198	$ 265	$ 0.207	$ 285	$ 0.223
81	I-3	Detention Facilities - TI	2,000	A	$ 378	$ 378	$ 0.107	$ 431	$ 0.122	$ 491	$ 0.139	$ 514	$ 0.146	$ 552	$ 0.157
			4,000		$ 593	$ 593	$ 0.086	$ 675	$ 0.098	$ 770	$ 0.112	$ 806	$ 0.117	$ 865	$ 0.126
			10,000		$ 1,110	$ 1,110	$ 0.111	$ 1,265	$ 0.127	$ 1,443	$ 0.144	$ 1,510	$ 0.151	$ 1,621	$ 0.162
			250		$ 120	$ 120	$ 0.285	$ 137	$ 0.325	$ 156	$ 0.371	$ 163	$ 0.388	$ 175	$ 0.416
			1,000		$ 334	$ 334	$ 0.179	$ 380	$ 0.204	$ 434	$ 0.233	$ 454	$ 0.244	$ 487	$ 0.262
82	I-4	Day Care Facility - Complete	2,500	A	$ 603	$ 603	$ 0.158	$ 687	$ 0.180	$ 783	$ 0.205	$ 819	$ 0.215	$ 880	$ 0.231
			5,000		$ 998	$ 998	$ 0.159	$ 1,137	$ 0.181	$ 1,297	$ 0.206	$ 1,357	$ 0.216	$ 1,456	$ 0.232
			12,500		$ 2,189	$ 2,189	$ 0.175	$ 2,495	$ 0.200	$ 2,845	$ 0.228	$ 2,977	$ 0.238	$ 3,196	$ 0.256
			250		$ 120	$ 120	$ 0.223	$ 137	$ 0.254	$ 157	$ 0.290	$ 164	$ 0.303	$ 176	$ 0.325
			1,000		$ 288	$ 288	$ 0.156	$ 328	$ 0.178	$ 374	$ 0.203	$ 391	$ 0.212	$ 420	$ 0.228
83	I-4	Day Care Facility - Shell	2,500	A	$ 521	$ 521	$ 0.127	$ 594	$ 0.145	$ 678	$ 0.165	$ 709	$ 0.173	$ 761	$ 0.185
			5,000		$ 839	$ 839	$ 0.127	$ 956	$ 0.145	$ 1,090	$ 0.165	$ 1,141	$ 0.173	$ 1,225	$ 0.185
			12,500		$ 1,791	$ 1,791	$ 0.143	$ 2,042	$ 0.163	$ 2,329	$ 0.186	$ 2,436	$ 0.195	$ 2,615	$ 0.209
			100		$ 30	$ 30	$ 0.155	$ 34	$ 0.177	$ 39	$ 0.202	$ 41	$ 0.211	$ 44	$ 0.226
			400		$ 77	$ 77	$ 0.088	$ 87	$ 0.100	$ 99	$ 0.114	$ 104	$ 0.119	$ 112	$ 0.128
84	I-4	Day Care Facility - TI	1,000	A	$ 129	$ 129	$ 0.083	$ 147	$ 0.094	$ 168	$ 0.107	$ 175	$ 0.112	$ 188	$ 0.120
			2,000		$ 212	$ 212	$ 0.063	$ 241	$ 0.072	$ 275	$ 0.082	$ 288	$ 0.086	$ 309	$ 0.092
			5,000		$ 401	$ 401	$ 0.080	$ 457	$ 0.091	$ 521	$ 0.104	$ 545	$ 0.109	$ 585	$ 0.117
			500		$ 111	$ 111	$ 0.132	$ 126	$ 0.150	$ 144	$ 0.171	$ 150	$ 0.179	$ 161	$ 0.192
			2,000		$ 308	$ 308	$ 0.086	$ 351	$ 0.098	$ 400	$ 0.112	$ 419	$ 0.117	$ 450	$ 0.126
85	S-1	Storage (Combustable - not S-2) - Complete	5,000	A	$ 567	$ 567	$ 0.068	$ 646	$ 0.077	$ 737	$ 0.088	$ 771	$ 0.092	$ 828	$ 0.099
			10,000		$ 906	$ 906	$ 0.068	$ 1,033	$ 0.077	$ 1,178	$ 0.088	$ 1,232	$ 0.092	$ 1,322	$ 0.099
			25,000		$ 1,921	$ 1,921	$ 0.077	$ 2,190	$ 0.088	$ 2,497	$ 0.100	$ 2,612	$ 0.104	$ 2,804	$ 0.112
			500		$ 85	$ 85	$ 0.102	$ 97	$ 0.116	$ 111	$ 0.132	$ 116	$ 0.138	$ 124	$ 0.148
			2,000		$ 238	$ 238	$ 0.068	$ 271	$ 0.078	$ 309	$ 0.089	$ 323	$ 0.093	$ 347	$ 0.100
86	S-1	Storage (Combustable - not S-2) - Shell	5,000	A	$ 443	$ 443	$ 0.049	$ 504	$ 0.056	$ 575	$ 0.064	$ 602	$ 0.067	$ 646	$ 0.072
			10,000		$ 688	$ 688	$ 0.048	$ 784	$ 0.055	$ 894	$ 0.063	$ 935	$ 0.066	$ 1,004	$ 0.071
			25,000		$ 1,413	$ 1,413	$ 0.057	$ 1,610	$ 0.064	$ 1,836	$ 0.073	$ 1,921	$ 0.077	$ 2,062	$ 0.082
			100		$ 14	$ 14	$ 0.085	$ 15	$ 0.097	$ 18	$ 0.111	$ 18	$ 0.116	$ 20	$ 0.124
			400		$ 39	$ 39	$ 0.050	$ 44	$ 0.057	$ 51	$ 0.065	$ 53	$ 0.068	$ 57	$ 0.073
87	S-1	Storage (Combustable - not S-2) - TI	1,000	A	$ 69	$ 69	$ 0.030	$ 79	$ 0.034	$ 90	$ 0.039	$ 94	$ 0.041	$ 101	$ 0.044
			2,000		$ 99	$ 99	$ 0.030	$ 113	$ 0.034	$ 129	$ 0.038	$ 135	$ 0.040	$ 145	$ 0.043
			5,000		$ 188	$ 188	$ 0.038	$ 214	$ 0.043	$ 244	$ 0.049	$ 255	$ 0.051	$ 274	$ 0.055
			5,000		$ 621	$ 621	$ 0.071	$ 936	$ 0.081	$ 1,068	$ 0.092	$ 1,117	$ 0.096	$ 1,199	$ 0.103
			20,000		$ 1,881	$ 1,881	$ 0.036	$ 2,145	$ 0.041	$ 2,446	$ 0.047	$ 2,559	$ 0.049	$ 2,747	$ 0.052
88	S-1	Repair Garage / Service Station - Complete	50,000	A	$ 2,958	$ 2,958	$ 0.055	$ 3,372	$ 0.063	$ 3,845	$ 0.072	$ 4,023	$ 0.075	$ 4,319	$ 0.081
			100,000		$ 5,721	$ 5,721	$ 0.012	$ 6,522	$ 0.013	$ 7,437	$ 0.015	$ 7,781	$ 0.016	$ 8,353	$ 0.017
			250,000		$ 7,454	$ 7,454	$ 0.030	$ 8,498	$ 0.034	$ 9,690	$ 0.039	$ 10,138	$ 0.041	$ 10,883	$ 0.044

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-B PLAN CHECK VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:											
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B			
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*			
						1.00		*1.14*		*1.30*		*1.36*		*1.46*			
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF		
			500		$ 647	$ 647	$ 0.126	$ 738	$ 0.144	$ 841	$ 0.164	$ 880	$ 0.172	$ 945	$ 0.184		
			2,000		$ 837	$ 837	$ 0.105	$ 954	$ 0.120	$ 1,088	$ 0.137	$ 1,138	$ 0.143	$ 1,221	$ 0.153		
89	S-1	Repair Garage / Service Station - Shell	5,000	A	$ 1,152	$ 1,152	$ 0.108	$ 1,313	$ 0.123	$ 1,497	$ 0.141	$ 1,566	$ 0.147	$ 1,681	$ 0.158		
			10,000		$ 1,693	$ 1,693	$ 0.032	$ 1,930	$ 0.037	$ 2,201	$ 0.042	$ 2,303	$ 0.044	$ 2,472	$ 0.047		
			25,000		$ 2,175	$ 2,175	$ 0.087	$ 2,479	$ 0.099	$ 2,827	$ 0.113	$ 2,958	$ 0.118	$ 3,175	$ 0.127		
			100		$ 23	$ 23	$ 0.135	$ 26	$ 0.154	$ 29	$ 0.176	$ 31	$ 0.184	$ 33	$ 0.197		
			400		$ 63	$ 63	$ 0.065	$ 72	$ 0.074	$ 82	$ 0.085	$ 86	$ 0.088	$ 92	$ 0.095		
90	S-1	Repair Garage / Service Station - TI	1,000	A	$ 102	$ 102	$ 0.066	$ 116	$ 0.075	$ 133	$ 0.086	$ 139	$ 0.090	$ 149	$ 0.096		
			2,000		$ 168	$ 168	$ 0.056	$ 192	$ 0.064	$ 218	$ 0.073	$ 228	$ 0.076	$ 245	$ 0.082		
			5,000		$ 336	$ 336	$ 0.067	$ 383	$ 0.077	$ 437	$ 0.087	$ 457	$ 0.091	$ 491	$ 0.098		
			500		$ 119	$ 119	$ 0.141	$ 135	$ 0.161	$ 154	$ 0.183	$ 161	$ 0.192	$ 173	$ 0.206		
			2,000		$ 330	$ 330	$ 0.093	$ 376	$ 0.105	$ 429	$ 0.120	$ 449	$ 0.126	$ 482	$ 0.135		
91	S-2	Storage (Non-Combustable - not S-1) - Complete	5,000	A	$ 608	$ 608	$ 0.073	$ 693	$ 0.083	$ 790	$ 0.094	$ 826	$ 0.099	$ 887	$ 0.106		
			10,000		$ 971	$ 971	$ 0.073	$ 1,106	$ 0.083	$ 1,262	$ 0.094	$ 1,320	$ 0.099	$ 1,417	$ 0.106		
			25,000		$ 2,058	$ 2,058	$ 0.082	$ 2,346	$ 0.094	$ 2,675	$ 0.107	$ 2,799	$ 0.112	$ 3,005	$ 0.120		
			500		$ 85	$ 85	$ 0.102	$ 97	$ 0.116	$ 111	$ 0.132	$ 116	$ 0.138	$ 124	$ 0.148		
			2,000		$ 238	$ 238	$ 0.068	$ 271	$ 0.078	$ 309	$ 0.089	$ 323	$ 0.093	$ 347	$ 0.100		
92	S-2	Storage (Non-Combustable - not S-1) - Shell	5,000	A	$ 443	$ 443	$ 0.049	$ 504	$ 0.056	$ 575	$ 0.064	$ 602	$ 0.067	$ 646	$ 0.072		
			10,000		$ 688	$ 688	$ 0.048	$ 784	$ 0.055	$ 894	$ 0.063	$ 935	$ 0.066	$ 1,004	$ 0.071		
			25,000		$ 1,413	$ 1,413	$ 0.057	$ 1,610	$ 0.064	$ 1,836	$ 0.073	$ 1,921	$ 0.077	$ 2,062	$ 0.082		
			100		$ 14	$ 14	$ 0.085	$ 15	$ 0.097	$ 18	$ 0.111	$ 18	$ 0.116	$ 20	$ 0.124		
			400		$ 39	$ 39	$ 0.050	$ 44	$ 0.057	$ 51	$ 0.065	$ 53	$ 0.068	$ 57	$ 0.073		
93	S-2	Storage (Non-Combustable - not S-1) - TI	1,000	A	$ 69	$ 69	$ 0.030	$ 79	$ 0.034	$ 90	$ 0.039	$ 94	$ 0.041	$ 101	$ 0.044		
			2,000		$ 99	$ 99	$ 0.030	$ 113	$ 0.034	$ 129	$ 0.038	$ 135	$ 0.040	$ 145	$ 0.043		
			5,000		$ 188	$ 188	$ 0.038	$ 214	$ 0.043	$ 244	$ 0.049	$ 255	$ 0.051	$ 274	$ 0.055		
			3,000		$ 452	$ 452	$ 0.066	$ 516	$ 0.076	$ 588	$ 0.086	$ 615	$ 0.090	$ 660	$ 0.097		
			12,000		$ 1,050	$ 1,050	$ 0.071	$ 1,197	$ 0.080	$ 1,365	$ 0.092	$ 1,428	$ 0.096	$ 1,533	$ 0.103		
94	S-2	Parking Garage - Complete	30,000	A	$ 2,320	$ 2,320	$ 0.071	$ 2,645	$ 0.080	$ 3,016	$ 0.092	$ 3,155	$ 0.096	$ 3,387	$ 0.103		
			60,000		$ 4,435	$ 4,435	$ 0.043	$ 5,056	$ 0.049	$ 5,766	$ 0.056	$ 6,032	$ 0.058	$ 6,475	$ 0.062		
			150,000		$ 8,281	$ 8,281	$ 0.055	$ 9,440	$ 0.063	$ 10,765	$ 0.072	$ 11,262	$ 0.075	$ 12,090	$ 0.081		
			200		$ 41	$ 41	$ 0.088	$ 46	$ 0.100	$ 53	$ 0.114	$ 55	$ 0.119	$ 59	$ 0.128		
			800		$ 93	$ 93	$ 0.063	$ 106	$ 0.071	$ 121	$ 0.081	$ 126	$ 0.085	$ 136	$ 0.091		
95	U	Utility Structure (without MPE's)	2,000	A	$ 168	$ 168	$ 0.059	$ 192	$ 0.067	$ 218	$ 0.076	$ 228	$ 0.080	$ 245	$ 0.085		
			4,000		$ 285	$ 285	$ 0.042	$ 325	$ 0.048	$ 371	$ 0.055	$ 388	$ 0.057	$ 416	$ 0.061		
			10,000		$ 537	$ 537	$ 0.054	$ 612	$ 0.061	$ 698	$ 0.070	$ 730	$ 0.073	$ 784	$ 0.078		
			200		$ 41	$ 41	$ 0.088	$ 46	$ 0.100	$ 53	$ 0.114	$ 55	$ 0.119	$ 59	$ 0.128		
			800		$ 93	$ 93	$ 0.063	$ 106	$ 0.071	$ 121	$ 0.081	$ 126	$ 0.085	$ 136	$ 0.091		
96	U	Utility Structure (with MPE's)	2,000	A	$ 168	$ 168	$ 0.059	$ 192	$ 0.067	$ 218	$ 0.076	$ 228	$ 0.080	$ 245	$ 0.085		
			4,000		$ 285	$ 285	$ 0.042	$ 325	$ 0.048	$ 371	$ 0.055	$ 388	$ 0.057	$ 416	$ 0.061		
			10,000		$ 537	$ 537	$ 0.054	$ 612	$ 0.061	$ 698	$ 0.070	$ 730	$ 0.073	$ 784	$ 0.078		

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-B PLAN CHECK VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT:*											
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*	
						1.00		*1.14*		*1.30*		*1.36*		*1.46*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			1,000		$ 300	$ 300	$ 0.151	$ 342	$ 0.172	$ 390	$ 0.196	$ 408	$ 0.205	$ 438	$ 0.220
			4,000		$ 753	$ 753	$ 0.110	$ 858	$ 0.125	$ 979	$ 0.143	$ 1,024	$ 0.150	$ 1,099	$ 0.161
97	M	Mercantile / Store - Complete	10,000	A	$ 1,413	$ 1,413	$ 0.119	$ 1,610	$ 0.135	$ 1,836	$ 0.154	$ 1,921	$ 0.161	$ 2,062	$ 0.173
			20,000		$ 2,598	$ 2,598	$ 0.097	$ 2,962	$ 0.110	$ 3,378	$ 0.125	$ 3,534	$ 0.131	$ 3,794	$ 0.141
			50,000		$ 5,494	$ 5,494	$ 0.110	$ 6,263	$ 0.125	$ 7,142	$ 0.143	$ 7,472	$ 0.149	$ 8,021	$ 0.160
			1,000		$ 261	$ 261	$ 0.116	$ 298	$ 0.133	$ 339	$ 0.151	$ 355	$ 0.158	$ 381	$ 0.170
			4,000		$ 610	$ 610	$ 0.094	$ 696	$ 0.107	$ 794	$ 0.123	$ 830	$ 0.128	$ 891	$ 0.138
98	M	Mercantile / Store - Shell	10,000	A	$ 1,176	$ 1,176	$ 0.072	$ 1,341	$ 0.082	$ 1,529	$ 0.094	$ 1,599	$ 0.098	$ 1,717	$ 0.105
			20,000		$ 1,896	$ 1,896	$ 0.063	$ 2,162	$ 0.072	$ 2,465	$ 0.082	$ 2,579	$ 0.086	$ 2,769	$ 0.092
			50,000		$ 3,796	$ 3,796	$ 0.076	$ 4,328	$ 0.087	$ 4,935	$ 0.099	$ 5,163	$ 0.103	$ 5,543	$ 0.111
			100		$ 20	$ 20	$ 0.145	$ 22	$ 0.165	$ 25	$ 0.189	$ 27	$ 0.197	$ 28	$ 0.212
			400		$ 63	$ 63	$ 0.050	$ 72	$ 0.057	$ 82	$ 0.065	$ 86	$ 0.068	$ 92	$ 0.073
99	M	Mercantile / Store - TI	1,000	A	$ 93	$ 93	$ 0.051	$ 106	$ 0.058	$ 121	$ 0.066	$ 126	$ 0.069	$ 136	$ 0.074
			2,000		$ 144	$ 144	$ 0.047	$ 164	$ 0.054	$ 187	$ 0.061	$ 196	$ 0.064	$ 210	$ 0.069
			5,000		$ 285	$ 285	$ 0.057	$ 325	$ 0.065	$ 371	$ 0.074	$ 388	$ 0.078	$ 416	$ 0.083
			5,000		$ 837	$ 837	$ 0.118	$ 954	$ 0.135	$ 1,088	$ 0.154	$ 1,138	$ 0.161	$ 1,222	$ 0.173
			20,000		$ 2,612	$ 2,612	$ 0.105	$ 2,977	$ 0.119	$ 3,395	$ 0.136	$ 3,552	$ 0.142	$ 3,813	$ 0.153
100	M	Mercantile / Store: High se - Complete	50,000	A	$ 5,750	$ 5,750	$ 0.110	$ 6,555	$ 0.126	$ 7,475	$ 0.143	$ 7,820	$ 0.150	$ 8,395	$ 0.161
			100,000		$ 11,267	$ 11,267	$ 0.032	$ 12,845	$ 0.037	$ 14,647	$ 0.042	$ 15,323	$ 0.044	$ 16,450	$ 0.047
			250,000		$ 16,098	$ 16,098	$ 0.064	$ 18,352	$ 0.073	$ 20,927	$ 0.084	$ 21,893	$ 0.088	$ 23,503	$ 0.094
			5,000		$ 600	$ 600	$ 0.079	$ 684	$ 0.090	$ 780	$ 0.102	$ 816	$ 0.107	$ 876	$ 0.115
			20,000		$ 1,781	$ 1,781	$ 0.079	$ 2,031	$ 0.090	$ 2,316	$ 0.102	$ 2,423	$ 0.107	$ 2,601	$ 0.115
101	M	Mercantile / Store: Highrise - Shell	50,000	A	$ 4,146	$ 4,146	$ 0.079	$ 4,727	$ 0.090	$ 5,390	$ 0.102	$ 5,639	$ 0.107	$ 6,054	$ 0.115
			100,000		$ 8,088	$ 8,088	$ 0.035	$ 9,220	$ 0.040	$ 10,514	$ 0.046	$ 10,999	$ 0.048	$ 11,808	$ 0.052
			250,000		$ 13,382	$ 13,382	$ 0.054	$ 15,256	$ 0.061	$ 17,397	$ 0.070	$ 18,200	$ 0.073	$ 19,538	$ 0.078
			200		$ 29	$ 29	$ 0.071	$ 33	$ 0.081	$ 37	$ 0.092	$ 39	$ 0.096	$ 42	$ 0.103
			800		$ 71	$ 71	$ 0.041	$ 81	$ 0.046	$ 93	$ 0.053	$ 97	$ 0.055	$ 104	$ 0.059
102	M	Mercantile / Store: Highrise - TI	2,000	A	$ 120	$ 120	$ 0.045	$ 137	$ 0.051	$ 156	$ 0.059	$ 163	$ 0.061	$ 175	$ 0.066
			4,000		$ 210	$ 210	$ 0.029	$ 239	$ 0.033	$ 273	$ 0.037	$ 286	$ 0.039	$ 307	$ 0.042
			10,000		$ 383	$ 383	$ 0.038	$ 436	$ 0.044	$ 497	$ 0.050	$ 520	$ 0.052	$ 558	$ 0.056
			5,000		$ 1,152	$ 1,152	$ 0.114	$ 1,313	$ 0.130	$ 1,498	$ 0.148	$ 1,567	$ 0.155	$ 1,682	$ 0.167
			20,000		$ 2,865	$ 2,865	$ 0.068	$ 3,266	$ 0.077	$ 3,724	$ 0.088	$ 3,896	$ 0.092	$ 4,183	$ 0.099
103	A-4	Arena	50,000	A	$ 4,904	$ 4,904	$ 0.127	$ 5,591	$ 0.145	$ 6,376	$ 0.166	$ 6,670	$ 0.173	$ 7,160	$ 0.186
			100,000		$ 11,273	$ 11,273	$ 0.024	$ 12,851	$ 0.027	$ 14,655	$ 0.031	$ 15,331	$ 0.033	$ 16,458	$ 0.035
			250,000		$ 14,890	$ 14,890	$ 0.060	$ 16,975	$ 0.068	$ 19,357	$ 0.077	$ 20,251	$ 0.081	$ 21,740	$ 0.087
			5,000		$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
			20,000		$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
104	A-5	Amusement Park Structure: Deposit (Fees based on actual time @	50,000	A	$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
			100,000		$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
			250,000		$ 160	$ 160	$ 0.001	$ 182	$ 0.001	$ 208	$ 0.001	$ 218	$ 0.001	$ 234	$ 0.001

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-B PLAN CHECK VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:									
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*	
						1.00		*1.14*		*1.30*		*1.36*		*1.46*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			10,000		$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
			40,000		$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
105	A-5	Stadium: Deposit (Fees based on actual time @ staff houly rates)	100,000	A	$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
			200,000		$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
			500,000		$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
			200		$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
			800		$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
106	CSR	Commercial TI - Structural Review Add-on	2,000	A	$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
			4,000		$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
			10,000		$ 160	$ 160	$ 0.016	$ 182	$ 0.018	$ 208	$ 0.021	$ 218	$ 0.022	$ 234	$ 0.023
			200		$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
			500		$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
107	RSR	Residential Remodel / Addition - Structural Review Add-on	1,000	A	$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
			1,400		$ 160	$ 160	$ -	$ 182	$ -	$ 208	$ -	$ 218	$ -	$ 234	$ -
			2,000		$ 160	$ 160	$ 0.080	$ 182	$ 0.091	$ 208	$ 0.104	$ 218	$ 0.109	$ 234	$ 0.117
			10,000		$ 383	$ 383	$ 0.020	$ 436	$ 0.023	$ 497	$ 0.026	$ 520	$ 0.028	$ 558	$ 0.030
			40,000		$ 990	$ 990	$ 0.020	$ 1,129	$ 0.022	$ 1,287	$ 0.026	$ 1,346	$ 0.027	$ 1,445	$ 0.029
108	M	Mercantile / Store: Highrise - TI (tier 2)	100,000	A	$ 2,169	$ 2,169	$ 0.011	$ 2,472	$ 0.012	$ 2,819	$ 0.014	$ 2,950	$ 0.015	$ 3,166	$ 0.016
			200,000		$ 3,264	$ 3,264	$ 0.003	$ 3,720	$ 0.003	$ 4,243	$ 0.003	$ 4,438	$ 0.003	$ 4,765	$ 0.004
			500,000		$ 4,023	$ 4,023	$ 0.008	$ 4,586	$ 0.009	$ 5,229	$ 0.010	$ 5,471	$ 0.011	$ 5,873	$ 0.012
			5,000		$ 238	$ 238	$ 0.024	$ 271	$ 0.027	$ 309	$ 0.031	$ 323	$ 0.033	$ 347	$ 0.035
			20,000		$ 598	$ 598	$ 0.020	$ 681	$ 0.022	$ 777	$ 0.026	$ 813	$ 0.027	$ 872	$ 0.029
109	M	Mercantile / Store: Non-Highrise - TI (tier 2)	50,000	A	$ 1,186	$ 1,186	$ 0.020	$ 1,352	$ 0.022	$ 1,542	$ 0.026	$ 1,613	$ 0.027	$ 1,732	$ 0.029
			100,000		$ 2,169	$ 2,169	$ 0.005	$ 2,472	$ 0.006	$ 2,819	$ 0.007	$ 2,950	$ 0.007	$ 3,166	$ 0.007
			250,000		$ 2,928	$ 2,928	$ 0.012	$ 3,338	$ 0.013	$ 3,807	$ 0.015	$ 3,982	$ 0.016	$ 4,275	$ 0.017
			-		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			-		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
110	-	0	-	-	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			-		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			-		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-C PERMIT/INSPECTION VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:									
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*	
						1.00		*1.14*		*1.30*		*1.36*		*1.46*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			1,000		$ 855	$ 855	$ 0.395	$ 975	$ 0.450	$ 1,112	$ 0.513	$ 1,163	$ 0.537	$ 1,248	$ 0.576
			4,000		$ 2,039	$ 2,039	$ 0.373	$ 2,324	$ 0.425	$ 2,650	$ 0.484	$ 2,773	$ 0.507	$ 2,977	$ 0.544
1	A-1	Assembly Group: Theaters (Plays) - Complete	10,000	A	$ 4,274	$ 4,274	$ 0.372	$ 4,872	$ 0.424	$ 5,556	$ 0.484	$ 5,812	$ 0.506	$ 6,240	$ 0.543
			20,000		$ 7,996	$ 7,996	$ 0.321	$ 9,116	$ 0.366	$ 10,395	$ 0.418	$ 10,875	$ 0.437	$ 11,675	$ 0.469
			50,000		$ 17,634	$ 17,634	$ 0.353	$ 20,103	$ 0.402	$ 22,924	$ 0.458	$ 23,982	$ 0.480	$ 25,746	$ 0.515
			1,000		$ 743	$ 743	$ 0.288	$ 846	$ 0.328	$ 965	$ 0.374	$ 1,010	$ 0.391	$ 1,084	$ 0.420
			4,000		$ 1,605	$ 1,605	$ 0.274	$ 1,830	$ 0.312	$ 2,087	$ 0.356	$ 2,183	$ 0.372	$ 2,344	$ 0.399
2	A-1	Assembly Group: Theaters - Shell	10,000	A	$ 3,246	$ 3,246	$ 0.274	$ 3,701	$ 0.312	$ 4,220	$ 0.356	$ 4,415	$ 0.373	$ 4,740	$ 0.400
			20,000		$ 5,986	$ 5,986	$ 0.254	$ 6,824	$ 0.289	$ 7,781	$ 0.330	$ 8,141	$ 0.345	$ 8,739	$ 0.370
			50,000		$ 13,592	$ 13,592	$ 0.272	$ 15,494	$ 0.310	$ 17,669	$ 0.353	$ 18,485	$ 0.370	$ 19,844	$ 0.397
			250		$ 180	$ 180	$ 0.155	$ 205	$ 0.177	$ 234	$ 0.202	$ 245	$ 0.211	$ 263	$ 0.226
			1,000		$ 296	$ 296	$ 0.160	$ 338	$ 0.182	$ 385	$ 0.208	$ 403	$ 0.218	$ 433	$ 0.234
3	A-1	Assembly Group: Theaters - TI	2,500	A	$ 536	$ 536	$ 0.117	$ 611	$ 0.133	$ 697	$ 0.152	$ 729	$ 0.159	$ 783	$ 0.171
			5,000		$ 829	$ 829	$ 0.081	$ 945	$ 0.093	$ 1,077	$ 0.106	$ 1,127	$ 0.111	$ 1,210	$ 0.119
			12,500		$ 1,439	$ 1,439	$ 0.115	$ 1,640	$ 0.131	$ 1,870	$ 0.150	$ 1,957	$ 0.157	$ 2,101	$ 0.168
			2,000		$ 1,330	$ 1,330	$ 0.390	$ 1,516	$ 0.445	$ 1,729	$ 0.508	$ 1,809	$ 0.531	$ 1,942	$ 0.570
			8,000		$ 3,673	$ 3,673	$ 0.390	$ 4,187	$ 0.445	$ 4,774	$ 0.507	$ 4,995	$ 0.531	$ 5,362	$ 0.570
4	A-2	Assembly Group: Casino / Banquet Hall - Complete	20,000	A	$ 8,356	$ 8,356	$ 0.390	$ 9,526	$ 0.445	$ 10,863	$ 0.508	$ 11,365	$ 0.531	$ 12,200	$ 0.570
			40,000		$ 16,165	$ 16,165	$ 0.304	$ 18,428	$ 0.346	$ 21,015	$ 0.395	$ 21,984	$ 0.413	$ 23,601	$ 0.443
			100,000		$ 34,387	$ 34,387	$ 0.344	$ 39,201	$ 0.392	$ 44,703	$ 0.447	$ 46,766	$ 0.468	$ 50,205	$ 0.502
			2,000		$ 1,174	$ 1,174	$ 0.312	$ 1,338	$ 0.356	$ 1,526	$ 0.406	$ 1,596	$ 0.425	$ 1,714	$ 0.456
			8,000		$ 3,048	$ 3,048	$ 0.267	$ 3,474	$ 0.304	$ 3,962	$ 0.347	$ 4,145	$ 0.363	$ 4,449	$ 0.390
5	A-2	Assembly Group: Casino / Banquet Hall - Shell	20,000	A	$ 6,251	$ 6,251	$ 0.287	$ 7,127	$ 0.328	$ 8,127	$ 0.374	$ 8,502	$ 0.391	$ 9,127	$ 0.420
			40,000		$ 11,999	$ 11,999	$ 0.131	$ 13,679	$ 0.149	$ 15,599	$ 0.170	$ 16,319	$ 0.178	$ 17,519	$ 0.191
			100,000		$ 19,832	$ 19,832	$ 0.198	$ 22,608	$ 0.226	$ 25,781	$ 0.258	$ 26,971	$ 0.270	$ 28,954	$ 0.290
			500		$ 230	$ 230	$ 0.168	$ 262	$ 0.192	$ 299	$ 0.219	$ 313	$ 0.229	$ 336	$ 0.245
			2,000		$ 483	$ 483	$ 0.183	$ 550	$ 0.208	$ 627	$ 0.237	$ 656	$ 0.248	$ 704	$ 0.267
6	A-2	Assembly Group: Casino / Banquet Hall - TI	5,000	A	$ 1,031	$ 1,031	$ 0.107	$ 1,175	$ 0.122	$ 1,340	$ 0.139	$ 1,401	$ 0.146	$ 1,505	$ 0.156
			10,000		$ 1,566	$ 1,566	$ 0.091	$ 1,785	$ 0.104	$ 2,036	$ 0.118	$ 2,130	$ 0.124	$ 2,286	$ 0.133
			25,000		$ 2,931	$ 2,931	$ 0.117	$ 3,341	$ 0.134	$ 3,810	$ 0.152	$ 3,986	$ 0.159	$ 4,279	$ 0.171
			1,000		$ 1,137	$ 1,137	$ 0.552	$ 1,296	$ 0.629	$ 1,478	$ 0.718	$ 1,546	$ 0.751	$ 1,660	$ 0.806
			4,000		$ 2,793	$ 2,793	$ 0.367	$ 3,184	$ 0.418	$ 3,631	$ 0.477	$ 3,798	$ 0.499	$ 4,078	$ 0.536
7	A-2	Assembly Group: Nightclub / Restaurant - Complete	10,000	A	$ 4,994	$ 4,994	$ 0.369	$ 5,693	$ 0.421	$ 6,492	$ 0.480	$ 6,792	$ 0.502	$ 7,291	$ 0.539
			20,000		$ 8,684	$ 8,684	$ 0.318	$ 9,899	$ 0.362	$ 11,289	$ 0.413	$ 11,810	$ 0.432	$ 12,678	$ 0.464
			50,000		$ 18,217	$ 18,217	$ 0.364	$ 20,767	$ 0.415	$ 23,682	$ 0.474	$ 24,775	$ 0.496	$ 26,597	$ 0.532
			1,000		$ 939	$ 939	$ 0.344	$ 1,071	$ 0.393	$ 1,221	$ 0.448	$ 1,278	$ 0.468	$ 1,372	$ 0.503
			4,000		$ 1,973	$ 1,973	$ 0.355	$ 2,249	$ 0.405	$ 2,564	$ 0.462	$ 2,683	$ 0.483	$ 2,880	$ 0.519
8	A-2	Assembly Group: Nightclub / Restaurant - Shell	10,000	A	$ 4,104	$ 4,104	$ 0.356	$ 4,678	$ 0.405	$ 5,335	$ 0.462	$ 5,581	$ 0.483	$ 5,991	$ 0.519
			20,000		$ 7,659	$ 7,659	$ 0.150	$ 8,731	$ 0.171	$ 9,956	$ 0.195	$ 10,416	$ 0.204	$ 11,182	$ 0.219
			50,000		$ 12,169	$ 12,169	$ 0.243	$ 13,872	$ 0.277	$ 15,819	$ 0.316	$ 16,549	$ 0.331	$ 17,766	$ 0.355

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-C PERMIT/INSPECTION VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:									
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*	
						1.00		*1.14*		*1.30*		*1.36*		*1.46*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			500		$ 248	$ 248	$ 0.255	$ 282	$ 0.291	$ 322	$ 0.332	$ 337	$ 0.347	$ 361	$ 0.372
			2,000		$ 630	$ 630	$ 0.161	$ 718	$ 0.183	$ 819	$ 0.209	$ 857	$ 0.218	$ 920	$ 0.234
9	A-2	Assembly Group: Nightclub / Restaurant - TI	5,000	A	$ 1,112	$ 1,112	$ 0.114	$ 1,267	$ 0.130	$ 1,445	$ 0.148	$ 1,512	$ 0.155	$ 1,623	$ 0.166
			10,000		$ 1,682	$ 1,682	$ 0.102	$ 1,917	$ 0.117	$ 2,186	$ 0.133	$ 2,287	$ 0.139	$ 2,455	$ 0.150
			25,000		$ 3,218	$ 3,218	$ 0.129	$ 3,668	$ 0.147	$ 4,183	$ 0.167	$ 4,376	$ 0.175	$ 4,698	$ 0.188
			500		$ 614	$ 614	$ 0.742	$ 700	$ 0.846	$ 798	$ 0.964	$ 835	$ 1.009	$ 896	$ 1.083
			2,000		$ 1,727	$ 1,727	$ 0.349	$ 1,968	$ 0.397	$ 2,244	$ 0.453	$ 2,348	$ 0.474	$ 2,521	$ 0.509
10	B	Restaurant (<50 occ.) - Complete	5,000	A	$ 2,773	$ 2,773	$ 0.444	$ 3,161	$ 0.506	$ 3,604	$ 0.578	$ 3,771	$ 0.604	$ 4,048	$ 0.649
			10,000		$ 4,994	$ 4,994	$ 0.382	$ 5,693	$ 0.436	$ 6,492	$ 0.497	$ 6,792	$ 0.520	$ 7,291	$ 0.558
			25,000		$ 10,727	$ 10,727	$ 0.429	$ 12,229	$ 0.489	$ 13,945	$ 0.558	$ 14,589	$ 0.584	$ 15,662	$ 0.626
			500		$ 536	$ 536	$ 0.485	$ 611	$ 0.553	$ 697	$ 0.631	$ 729	$ 0.660	$ 783	$ 0.708
			2,000		$ 1,264	$ 1,264	$ 0.355	$ 1,441	$ 0.404	$ 1,643	$ 0.461	$ 1,719	$ 0.482	$ 1,845	$ 0.518
11	B	Restaurant (<50 occ.) - Shell	5,000	A	$ 2,328	$ 2,328	$ 0.290	$ 2,653	$ 0.330	$ 3,026	$ 0.376	$ 3,165	$ 0.394	$ 3,398	$ 0.423
			10,000		$ 3,775	$ 3,775	$ 0.252	$ 4,304	$ 0.287	$ 4,908	$ 0.327	$ 5,135	$ 0.342	$ 5,512	$ 0.367
			25,000		$ 7,551	$ 7,551	$ 0.302	$ 8,608	$ 0.344	$ 9,816	$ 0.393	$ 10,269	$ 0.411	$ 11,024	$ 0.441
			250		$ 227	$ 227	$ 0.232	$ 258	$ 0.264	$ 294	$ 0.302	$ 308	$ 0.316	$ 331	$ 0.339
			1,000		$ 401	$ 401	$ 0.215	$ 457	$ 0.245	$ 521	$ 0.280	$ 545	$ 0.292	$ 585	$ 0.314
12	B	Restaurant (<50 occ.) - TI	2,500	A	$ 723	$ 723	$ 0.155	$ 824	$ 0.177	$ 940	$ 0.202	$ 983	$ 0.211	$ 1,056	$ 0.227
			5,000		$ 1,112	$ 1,112	$ 0.111	$ 1,267	$ 0.126	$ 1,445	$ 0.144	$ 1,512	$ 0.151	$ 1,623	$ 0.162
			12,500		$ 1,943	$ 1,943	$ 0.155	$ 2,214	$ 0.177	$ 2,525	$ 0.202	$ 2,642	$ 0.211	$ 2,836	$ 0.227
	B	Offices, etc. - Complete	500		$ 536	$ 536	$ 0.591	$ 611	$ 0.673	$ 697	$ 0.768	$ 729	$ 0.803	$ 783	$ 0.863
	"	"	2,000		$ 1,422	$ 1,422	$ 0.309	$ 1,622	$ 0.352	$ 1,849	$ 0.402	$ 1,934	$ 0.421	$ 2,077	$ 0.451
15	"	"	5,000	A	$ 2,350	$ 2,350	$ 0.361	$ 2,679	$ 0.411	$ 3,055	$ 0.469	$ 3,196	$ 0.490	$ 3,431	$ 0.526
	"	"	10,000		$ 4,153	$ 4,153	$ 0.309	$ 4,734	$ 0.353	$ 5,398	$ 0.402	$ 5,647	$ 0.421	$ 6,063	$ 0.452
	"	"	25,000		$ 8,793	$ 8,793	$ 0.352	$ 10,024	$ 0.401	$ 11,431	$ 0.457	$ 11,958	$ 0.478	$ 12,838	$ 0.514
			500		$ 430	$ 430	$ 0.549	$ 490	$ 0.625	$ 559	$ 0.713	$ 585	$ 0.746	$ 628	$ 0.801
			2,000		$ 1,253	$ 1,253	$ 0.246	$ 1,428	$ 0.280	$ 1,629	$ 0.319	$ 1,704	$ 0.334	$ 1,829	$ 0.359
18	B	Offices, etc. - Shell	5,000	A	$ 1,990	$ 1,990	$ 0.289	$ 2,269	$ 0.329	$ 2,587	$ 0.375	$ 2,706	$ 0.392	$ 2,905	$ 0.421
			10,000		$ 3,433	$ 3,433	$ 0.247	$ 3,913	$ 0.281	$ 4,462	$ 0.321	$ 4,668	$ 0.336	$ 5,011	$ 0.360
			25,000		$ 7,136	$ 7,136	$ 0.285	$ 8,135	$ 0.325	$ 9,276	$ 0.371	$ 9,705	$ 0.388	$ 10,418	$ 0.417
			200		$ 216	$ 216	$ 0.155	$ 246	$ 0.177	$ 281	$ 0.202	$ 294	$ 0.211	$ 315	$ 0.226
			800		$ 309	$ 309	$ 0.193	$ 352	$ 0.219	$ 402	$ 0.250	$ 420	$ 0.262	$ 451	$ 0.281
19	B	Offices, etc. - TI	2,000	A	$ 540	$ 540	$ 0.147	$ 616	$ 0.168	$ 702	$ 0.191	$ 734	$ 0.200	$ 788	$ 0.215
			4,000		$ 834	$ 834	$ 0.106	$ 951	$ 0.120	$ 1,084	$ 0.137	$ 1,134	$ 0.143	$ 1,218	$ 0.154
			10,000		$ 1,467	$ 1,467	$ 0.147	$ 1,672	$ 0.167	$ 1,907	$ 0.191	$ 1,995	$ 0.200	$ 2,142	$ 0.214
			1,000		$ 1,061	$ 1,061	$ 0.515	$ 1,210	$ 0.587	$ 1,380	$ 0.670	$ 1,443	$ 0.701	$ 1,549	$ 0.752
			4,000		$ 2,607	$ 2,607	$ 0.398	$ 2,972	$ 0.454	$ 3,389	$ 0.517	$ 3,545	$ 0.541	$ 3,806	$ 0.581
20	B	Medical Offices - Complete	10,000	A	$ 4,994	$ 4,994	$ 0.392	$ 5,693	$ 0.446	$ 6,492	$ 0.509	$ 6,792	$ 0.533	$ 7,291	$ 0.572
			20,000		$ 8,910	$ 8,910	$ 0.310	$ 10,158	$ 0.354	$ 11,583	$ 0.403	$ 12,118	$ 0.422	$ 13,009	$ 0.453
			50,000		$ 18,217	$ 18,217	$ 0.364	$ 20,767	$ 0.415	$ 23,682	$ 0.474	$ 24,775	$ 0.496	$ 26,597	$ 0.532

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-C PERMIT/INSPECTION VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:											
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor: 1.00		*Relative Effort Factor:* 1.14		*Relative Effort Factor:* 1.30		*Relative Effort Factor:* 1.36		*Relative Effort Factor:* 1.46	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			1,000		$ 839	$ 839	$ 0.376	$ 956	$ 0.429	$ 1,090	$ 0.489	$ 1,141	$ 0.512	$ 1,225	$ 0.549
			4,000		$ 1,968	$ 1,968	$ 0.356	$ 2,243	$ 0.406	$ 2,558	$ 0.463	$ 2,676	$ 0.484	$ 2,873	$ 0.520
21	B	Medical Offices - Shell	10,000	A	$ 4,104	$ 4,104	$ 0.294	$ 4,678	$ 0.335	$ 5,335	$ 0.382	$ 5,581	$ 0.400	$ 5,991	$ 0.430
			20,000		$ 7,046	$ 7,046	$ 0.210	$ 8,032	$ 0.239	$ 9,160	$ 0.273	$ 9,583	$ 0.285	$ 10,287	$ 0.306
			50,000		$ 13,342	$ 13,342	$ 0.267	$ 15,209	$ 0.304	$ 17,344	$ 0.347	$ 18,144	$ 0.363	$ 19,479	$ 0.390
			250		$ 227	$ 227	$ 0.232	$ 258	$ 0.264	$ 294	$ 0.302	$ 308	$ 0.316	$ 331	$ 0.339
			1,000		$ 401	$ 401	$ 0.215	$ 457	$ 0.245	$ 521	$ 0.280	$ 545	$ 0.292	$ 585	$ 0.314
22	B	Medical Offices - TI	2,500	A	$ 723	$ 723	$ 0.158	$ 824	$ 0.181	$ 940	$ 0.206	$ 983	$ 0.215	$ 1,056	$ 0.231
			5,000		$ 1,119	$ 1,119	$ 0.112	$ 1,276	$ 0.127	$ 1,455	$ 0.145	$ 1,522	$ 0.152	$ 1,634	$ 0.163
			12,500		$ 1,956	$ 1,956	$ 0.156	$ 2,230	$ 0.178	$ 2,543	$ 0.203	$ 2,660	$ 0.213	$ 2,856	$ 0.228
			5,000		$ 2,640	$ 2,640	$ 0.301	$ 3,010	$ 0.343	$ 3,433	$ 0.391	$ 3,591	$ 0.409	$ 3,855	$ 0.439
			20,000		$ 7,152	$ 7,152	$ 0.382	$ 8,153	$ 0.435	$ 9,297	$ 0.496	$ 9,727	$ 0.519	$ 10,442	$ 0.557
23	B	Offices - Highrise (>4 stories) - Complete	50,000	A	$ 18,605	$ 18,605	$ 0.279	$ 21,210	$ 0.318	$ 24,187	$ 0.363	$ 25,303	$ 0.379	$ 27,163	$ 0.407
			100,000		$ 32,553	$ 32,553	$ 0.108	$ 37,110	$ 0.123	$ 42,319	$ 0.140	$ 44,272	$ 0.146	$ 47,527	$ 0.157
			250,000		$ 48,682	$ 48,682	$ 0.195	$ 55,497	$ 0.222	$ 63,286	$ 0.253	$ 66,207	$ 0.265	$ 71,075	$ 0.284
			5,000		$ 1,838	$ 1,838	$ 0.266	$ 2,095	$ 0.303	$ 2,389	$ 0.345	$ 2,499	$ 0.361	$ 2,683	$ 0.388
			20,000		$ 5,821	$ 5,821	$ 0.266	$ 6,636	$ 0.303	$ 7,568	$ 0.345	$ 7,917	$ 0.361	$ 8,499	$ 0.388
24	B	Offices - Highrise (>4 stories) - Shell	50,000	A	$ 13,794	$ 13,794	$ 0.157	$ 15,725	$ 0.179	$ 17,933	$ 0.205	$ 18,760	$ 0.214	$ 20,140	$ 0.230
			100,000		$ 21,666	$ 21,666	$ 0.065	$ 24,699	$ 0.074	$ 28,166	$ 0.085	$ 29,466	$ 0.089	$ 31,632	$ 0.095
			250,000		$ 31,436	$ 31,436	$ 0.126	$ 35,837	$ 0.143	$ 40,866	$ 0.163	$ 42,752	$ 0.171	$ 45,896	$ 0.184
			500		$ 215	$ 215	$ 0.157	$ 245	$ 0.179	$ 280	$ 0.204	$ 292	$ 0.213	$ 314	$ 0.229
			2,000		$ 450	$ 450	$ 0.116	$ 513	$ 0.132	$ 585	$ 0.151	$ 612	$ 0.158	$ 657	$ 0.169
25	B	Offices - Highrise (>4 stories) - TI	5,000	A	$ 798	$ 798	$ 0.085	$ 909	$ 0.097	$ 1,037	$ 0.111	$ 1,085	$ 0.116	$ 1,164	$ 0.124
			10,000		$ 1,223	$ 1,223	$ 0.067	$ 1,394	$ 0.077	$ 1,589	$ 0.087	$ 1,663	$ 0.091	$ 1,785	$ 0.098
			25,000		$ 2,231	$ 2,231	$ 0.089	$ 2,544	$ 0.102	$ 2,901	$ 0.116	$ 3,035	$ 0.121	$ 3,258	$ 0.130
			5,000		$ 1,416	$ 1,416	$ 0.064	$ 1,614	$ 0.073	$ 1,840	$ 0.083	$ 1,925	$ 0.087	$ 2,067	$ 0.093
			20,000		$ 2,372	$ 2,372	$ 0.039	$ 2,705	$ 0.045	$ 3,084	$ 0.051	$ 3,226	$ 0.053	$ 3,464	$ 0.057
26	HRF	Highrise: All Types (>4 stories) - Foundation	50,000	A	$ 3,552	$ 3,552	$ 0.031	$ 4,050	$ 0.035	$ 4,618	$ 0.040	$ 4,831	$ 0.042	$ 5,186	$ 0.045
			100,000		$ 5,103	$ 5,103	$ 0.016	$ 5,818	$ 0.018	$ 6,634	$ 0.021	$ 6,940	$ 0.022	$ 7,451	$ 0.023
			250,000		$ 7,488	$ 7,488	$ 0.030	$ 8,537	$ 0.034	$ 9,735	$ 0.039	$ 10,184	$ 0.041	$ 10,933	$ 0.044
			5,000		$ 2,223	$ 2,223	$ 0.219	$ 2,534	$ 0.250	$ 2,890	$ 0.285	$ 3,023	$ 0.298	$ 3,246	$ 0.320
			20,000		$ 5,507	$ 5,507	$ 0.098	$ 6,278	$ 0.112	$ 7,159	$ 0.127	$ 7,489	$ 0.133	$ 8,040	$ 0.143
27	HRS	Highrise: All Types (>4 stories) - Superstructure	50,000	A	$ 8,442	$ 8,442	$ 0.073	$ 9,624	$ 0.083	$ 10,975	$ 0.095	$ 11,481	$ 0.100	$ 12,325	$ 0.107
			100,000		$ 12,102	$ 12,102	$ 0.039	$ 13,796	$ 0.045	$ 15,732	$ 0.051	$ 16,458	$ 0.053	$ 17,668	$ 0.057
			250,000		$ 17,995	$ 17,995	$ 0.072	$ 20,514	$ 0.082	$ 23,393	$ 0.094	$ 24,473	$ 0.098	$ 26,272	$ 0.105
			500		$ 215	$ 215	$ 0.217	$ 245	$ 0.247	$ 280	$ 0.282	$ 292	$ 0.295	$ 314	$ 0.316
			2,000		$ 540	$ 540	$ 0.139	$ 616	$ 0.158	$ 702	$ 0.181	$ 734	$ 0.189	$ 788	$ 0.203
28	HRTI	Highrise: All Types (>4 stories) - TI	5,000	A	$ 957	$ 957	$ 0.102	$ 1,091	$ 0.116	$ 1,244	$ 0.133	$ 1,302	$ 0.139	$ 1,397	$ 0.149
			10,000		$ 1,467	$ 1,467	$ 0.081	$ 1,672	$ 0.092	$ 1,907	$ 0.105	$ 1,995	$ 0.110	$ 2,142	$ 0.118
			25,000		$ 2,678	$ 2,678	$ 0.107	$ 3,052	$ 0.122	$ 3,481	$ 0.139	$ 3,641	$ 0.146	$ 3,909	$ 0.156

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-C PERMIT/INSPECTION VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:									
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor: 1.00		*Relative Effort Factor:* 1.14		*Relative Effort Factor:* 1.30		*Relative Effort Factor:* 1.36		*Relative Effort Factor:* 1.46	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			2,000		$ 1,551	$ 1,551	$ 0.400	$ 1,768	$ 0.456	$ 2,016	$ 0.520	$ 2,109	$ 0.544	$ 2,264	$ 0.584
			8,000		$ 3,952	$ 3,952	$ 0.337	$ 4,506	$ 0.384	$ 5,138	$ 0.438	$ 5,375	$ 0.458	$ 5,770	$ 0.492
29	A-3	Assembly Group: Halls - Complete	20,000	A	$ 7,996	$ 7,996	$ 0.372	$ 9,116	$ 0.425	$ 10,395	$ 0.484	$ 10,875	$ 0.507	$ 11,675	$ 0.544
			40,000		$ 15,445	$ 15,445	$ 0.256	$ 17,607	$ 0.292	$ 20,079	$ 0.333	$ 21,005	$ 0.349	$ 22,550	$ 0.374
			100,000		$ 30,835	$ 30,835	$ 0.308	$ 35,151	$ 0.352	$ 40,085	$ 0.401	$ 41,935	$ 0.419	$ 45,019	$ 0.450
			2,000		$ 1,149	$ 1,149	$ 0.258	$ 1,310	$ 0.294	$ 1,493	$ 0.336	$ 1,562	$ 0.351	$ 1,677	$ 0.377
			8,000		$ 2,698	$ 2,698	$ 0.274	$ 3,076	$ 0.312	$ 3,507	$ 0.356	$ 3,669	$ 0.373	$ 3,939	$ 0.400
30	A-3	Assembly Group: Halls - Shell	20,000	A	$ 5,986	$ 5,986	$ 0.274	$ 6,824	$ 0.312	$ 7,781	$ 0.356	$ 8,141	$ 0.373	$ 8,739	$ 0.400
			40,000		$ 11,467	$ 11,467	$ 0.128	$ 13,072	$ 0.146	$ 14,907	$ 0.167	$ 15,595	$ 0.175	$ 16,741	$ 0.188
			100,000		$ 19,174	$ 19,174	$ 0.192	$ 21,858	$ 0.219	$ 24,926	$ 0.249	$ 26,077	$ 0.261	$ 27,994	$ 0.280
			200		$ 180	$ 180	$ 0.144	$ 205	$ 0.164	$ 234	$ 0.187	$ 245	$ 0.196	$ 263	$ 0.210
			800		$ 266	$ 266	$ 0.168	$ 304	$ 0.191	$ 346	$ 0.218	$ 362	$ 0.228	$ 389	$ 0.245
31	A-3	Assembly Group: Halls - TI	2,000	A	$ 468	$ 468	$ 0.198	$ 533	$ 0.226	$ 608	$ 0.258	$ 636	$ 0.270	$ 683	$ 0.289
			4,000		$ 864	$ 864	$ 0.108	$ 985	$ 0.123	$ 1,123	$ 0.140	$ 1,175	$ 0.146	$ 1,261	$ 0.157
			10,000		$ 1,509	$ 1,509	$ 0.151	$ 1,720	$ 0.172	$ 1,962	$ 0.196	$ 2,052	$ 0.205	$ 2,203	$ 0.220
			2,000		$ 815	$ 815	$ 0.188	$ 929	$ 0.214	$ 1,060	$ 0.244	$ 1,108	$ 0.256	$ 1,190	$ 0.274
			8,000		$ 1,943	$ 1,943	$ 0.174	$ 2,214	$ 0.199	$ 2,525	$ 0.226	$ 2,642	$ 0.237	$ 2,836	$ 0.254
32	A-3	Assembly Group: Exhibition - Complete	20,000	A	$ 4,033	$ 4,033	$ 0.174	$ 4,597	$ 0.199	$ 5,242	$ 0.226	$ 5,484	$ 0.237	$ 5,887	$ 0.254
			40,000		$ 7,515	$ 7,515	$ 0.174	$ 8,567	$ 0.199	$ 9,770	$ 0.226	$ 10,220	$ 0.237	$ 10,972	$ 0.254
			100,000		$ 17,966	$ 17,966	$ 0.180	$ 20,482	$ 0.205	$ 23,356	$ 0.234	$ 24,434	$ 0.244	$ 26,231	$ 0.262
			2,000		$ 710	$ 710	$ 0.160	$ 809	$ 0.182	$ 923	$ 0.207	$ 966	$ 0.217	$ 1,037	$ 0.233
			8,000		$ 1,668	$ 1,668	$ 0.139	$ 1,901	$ 0.158	$ 2,168	$ 0.181	$ 2,268	$ 0.189	$ 2,435	$ 0.203
33	A-3	Assembly Group: Exhibition - Shell	20,000	A	$ 3,335	$ 3,335	$ 0.139	$ 3,802	$ 0.159	$ 4,336	$ 0.181	$ 4,536	$ 0.190	$ 4,869	$ 0.204
			40,000		$ 6,124	$ 6,124	$ 0.139	$ 6,981	$ 0.159	$ 7,961	$ 0.181	$ 8,328	$ 0.189	$ 8,941	$ 0.203
			100,000		$ 14,484	$ 14,484	$ 0.145	$ 16,511	$ 0.165	$ 18,829	$ 0.188	$ 19,698	$ 0.197	$ 21,146	$ 0.211
			200		$ 118	$ 118	$ 0.135	$ 134	$ 0.157	$ 153	$ 0.179	$ 160	$ 0.187	$ 172	$ 0.201
			800		$ 200	$ 200	$ 0.080	$ 228	$ 0.091	$ 260	$ 0.104	$ 272	$ 0.109	$ 292	$ 0.117
34	A-3	Assembly Group: Exhibition - TI	2,000	A	$ 296	$ 296	$ 0.122	$ 338	$ 0.139	$ 385	$ 0.158	$ 403	$ 0.166	$ 433	$ 0.178
			4,000		$ 540	$ 540	$ 0.070	$ 616	$ 0.079	$ 702	$ 0.090	$ 734	$ 0.095	$ 788	$ 0.101
			10,000		$ 957	$ 957	$ 0.096	$ 1,091	$ 0.109	$ 1,244	$ 0.124	$ 1,302	$ 0.130	$ 1,397	$ 0.140
			2,000		$ 1,467	$ 1,467	$ 0.404	$ 1,672	$ 0.460	$ 1,907	$ 0.525	$ 1,995	$ 0.549	$ 2,142	$ 0.589
			8,000		$ 3,888	$ 3,888	$ 0.282	$ 4,432	$ 0.322	$ 5,054	$ 0.367	$ 5,288	$ 0.384	$ 5,676	$ 0.412
35	A-3	Assembly Group: Recreation - Complete	20,000	A	$ 7,276	$ 7,276	$ 0.336	$ 8,295	$ 0.383	$ 9,459	$ 0.437	$ 9,896	$ 0.457	$ 10,623	$ 0.491
			40,000		$ 14,003	$ 14,003	$ 0.336	$ 15,963	$ 0.383	$ 18,203	$ 0.437	$ 19,043	$ 0.457	$ 20,444	$ 0.491
			100,000		$ 34,184	$ 34,184	$ 0.342	$ 38,969	$ 0.390	$ 44,439	$ 0.444	$ 46,490	$ 0.465	$ 49,908	$ 0.499
			2,000		$ 1,070	$ 1,070	$ 0.273	$ 1,220	$ 0.311	$ 1,391	$ 0.355	$ 1,455	$ 0.371	$ 1,562	$ 0.398
			8,000		$ 2,706	$ 2,706	$ 0.269	$ 3,085	$ 0.306	$ 3,518	$ 0.349	$ 3,681	$ 0.366	$ 3,951	$ 0.392
36	A-3	Assembly Group: Recreation - Shell	20,000	A	$ 5,931	$ 5,931	$ 0.269	$ 6,762	$ 0.307	$ 7,711	$ 0.350	$ 8,067	$ 0.366	$ 8,660	$ 0.393
			40,000		$ 11,311	$ 11,311	$ 0.178	$ 12,895	$ 0.203	$ 14,705	$ 0.232	$ 15,383	$ 0.242	$ 16,514	$ 0.260
			100,000		$ 21,996	$ 21,996	$ 0.220	$ 25,075	$ 0.251	$ 28,595	$ 0.286	$ 29,915	$ 0.299	$ 32,114	$ 0.321

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-C PERMIT/INSPECTION VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:									
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*	
						1.00		*1.14*		*1.30*		*1.36*		*1.46*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			200		$ 130	$ 180	$ 0.129	$ 205	$ 0.147	$ 234	$ 0.168	$ 245	$ 0.176	$ 263	$ 0.189
			800		$ 258	$ 258	$ 0.219	$ 294	$ 0.250	$ 335	$ 0.285	$ 350	$ 0.298	$ 376	$ 0.320
37	A-3	Assembly Group: Recreation - TI	2,000	A	$ 521	$ 521	$ 0.143	$ 593	$ 0.162	$ 677	$ 0.185	$ 708	$ 0.194	$ 760	$ 0.208
			4,000		$ 806	$ 806	$ 0.103	$ 918	$ 0.117	$ 1,047	$ 0.134	$ 1,095	$ 0.140	$ 1,176	$ 0.150
			10,000		$ 1,424	$ 1,424	$ 0.142	$ 1,623	$ 0.162	$ 1,851	$ 0.185	$ 1,936	$ 0.194	$ 2,078	$ 0.208
			1,000		$ 859	$ 859	$ 0.401	$ 979	$ 0.457	$ 1,116	$ 0.521	$ 1,168	$ 0.545	$ 1,254	$ 0.585
			4,000		$ 2,061	$ 2,061	$ 0.379	$ 2,350	$ 0.432	$ 2,680	$ 0.492	$ 2,803	$ 0.515	$ 3,009	$ 0.553
38	E	Educational Building - Complete	10,000	A	$ 4,334	$ 4,334	$ 0.378	$ 4,940	$ 0.431	$ 5,634	$ 0.492	$ 5,894	$ 0.514	$ 6,327	$ 0.552
			20,000		$ 8,116	$ 8,116	$ 0.378	$ 9,253	$ 0.431	$ 10,551	$ 0.492	$ 11,038	$ 0.515	$ 11,850	$ 0.552
			50,000		$ 19,468	$ 19,468	$ 0.389	$ 22,193	$ 0.444	$ 25,308	$ 0.506	$ 26,476	$ 0.530	$ 28,423	$ 0.568
			1,000		$ 749	$ 749	$ 0.338	$ 854	$ 0.385	$ 973	$ 0.439	$ 1,018	$ 0.459	$ 1,093	$ 0.493
			4,000		$ 1,761	$ 1,761	$ 0.303	$ 2,008	$ 0.345	$ 2,290	$ 0.393	$ 2,395	$ 0.411	$ 2,571	$ 0.442
39	E	Educational Building - Shell	10,000	A	$ 3,576	$ 3,576	$ 0.303	$ 4,077	$ 0.345	$ 4,649	$ 0.393	$ 4,864	$ 0.412	$ 5,221	$ 0.442
			20,000		$ 6,603	$ 6,603	$ 0.303	$ 7,527	$ 0.345	$ 8,583	$ 0.394	$ 8,979	$ 0.412	$ 9,640	$ 0.442
			50,000		$ 15,685	$ 15,685	$ 0.314	$ 17,881	$ 0.358	$ 20,391	$ 0.408	$ 21,332	$ 0.427	$ 22,900	$ 0.458
			250		$ 216	$ 216	$ 0.186	$ 246	$ 0.212	$ 281	$ 0.242	$ 294	$ 0.253	$ 315	$ 0.272
			1,000		$ 356	$ 356	$ 0.192	$ 405	$ 0.219	$ 462	$ 0.250	$ 483	$ 0.261	$ 519	$ 0.280
40	E	Educational Building - TI	2,500	A	$ 644	$ 644	$ 0.145	$ 734	$ 0.166	$ 837	$ 0.189	$ 875	$ 0.197	$ 940	$ 0.212
			5,000		$ 1,007	$ 1,007	$ 0.098	$ 1,147	$ 0.111	$ 1,308	$ 0.127	$ 1,369	$ 0.133	$ 1,469	$ 0.142
			12,500		$ 1,739	$ 1,739	$ 0.139	$ 1,982	$ 0.159	$ 2,260	$ 0.181	$ 2,364	$ 0.189	$ 2,538	$ 0.203
			1,000		$ 579	$ 579	$ 0.263	$ 660	$ 0.300	$ 752	$ 0.342	$ 787	$ 0.358	$ 845	$ 0.384
			4,000		$ 1,368	$ 1,368	$ 0.204	$ 1,559	$ 0.233	$ 1,778	$ 0.265	$ 1,860	$ 0.277	$ 1,997	$ 0.298
41	F	Factory / Industrial Building - Complete	10,000	A	$ 2,591	$ 2,591	$ 0.204	$ 2,954	$ 0.233	$ 3,369	$ 0.266	$ 3,524	$ 0.278	$ 3,783	$ 0.298
			20,000		$ 4,634	$ 4,634	$ 0.204	$ 5,282	$ 0.233	$ 6,024	$ 0.265	$ 6,302	$ 0.278	$ 6,765	$ 0.298
			50,000		$ 10,759	$ 10,759	$ 0.215	$ 12,265	$ 0.245	$ 13,986	$ 0.280	$ 14,632	$ 0.293	$ 15,708	$ 0.314
			1,000		$ 516	$ 516	$ 0.229	$ 589	$ 0.261	$ 671	$ 0.298	$ 702	$ 0.312	$ 754	$ 0.335
			4,000		$ 1,204	$ 1,204	$ 0.163	$ 1,372	$ 0.186	$ 1,565	$ 0.212	$ 1,637	$ 0.222	$ 1,757	$ 0.238
42	F	Factory / Industrial Building - Shell	10,000	A	$ 2,183	$ 2,183	$ 0.163	$ 2,488	$ 0.186	$ 2,837	$ 0.212	$ 2,968	$ 0.222	$ 3,186	$ 0.238
			20,000		$ 3,815	$ 3,815	$ 0.163	$ 4,349	$ 0.186	$ 4,960	$ 0.212	$ 5,188	$ 0.222	$ 5,570	$ 0.239
			50,000		$ 8,716	$ 8,716	$ 0.174	$ 9,937	$ 0.199	$ 11,331	$ 0.227	$ 11,854	$ 0.237	$ 12,725	$ 0.255
			250		$ 156	$ 156	$ 0.160	$ 178	$ 0.182	$ 203	$ 0.208	$ 212	$ 0.218	$ 228	$ 0.234
			1,000		$ 276	$ 276	$ 0.096	$ 315	$ 0.109	$ 359	$ 0.125	$ 375	$ 0.131	$ 403	$ 0.140
43	F	Factory / Industrial Building - TI	2,500	A	$ 420	$ 420	$ 0.096	$ 479	$ 0.109	$ 546	$ 0.125	$ 571	$ 0.131	$ 613	$ 0.140
			5,000		$ 660	$ 660	$ 0.068	$ 752	$ 0.078	$ 858	$ 0.088	$ 898	$ 0.092	$ 964	$ 0.099
			12,500		$ 1,170	$ 1,170	$ 0.094	$ 1,334	$ 0.107	$ 1,521	$ 0.122	$ 1,591	$ 0.127	$ 1,708	$ 0.137
			500		$ 440	$ 440	$ 0.429	$ 501	$ 0.489	$ 571	$ 0.558	$ 598	$ 0.583	$ 642	$ 0.626
			2,000		$ 1,083	$ 1,083	$ 0.163	$ 1,235	$ 0.186	$ 1,408	$ 0.212	$ 1,473	$ 0.221	$ 1,581	$ 0.238
44	H	Hazardous H- Complete	5,000	A	$ 1,571	$ 1,571	$ 0.204	$ 1,791	$ 0.233	$ 2,043	$ 0.265	$ 2,137	$ 0.277	$ 2,294	$ 0.298
			10,000		$ 2,591	$ 2,591	$ 0.204	$ 2,954	$ 0.233	$ 3,369	$ 0.265	$ 3,524	$ 0.278	$ 3,783	$ 0.298
			25,000		$ 5,654	$ 5,654	$ 0.226	$ 6,445	$ 0.258	$ 7,350	$ 0.294	$ 7,689	$ 0.308	$ 8,254	$ 0.330

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-C PERMIT/INSPECTION VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:									
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*	
						1.00		*1.14*		*1.30*		*1.36*		*1.46*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			500		$ 324	$ 324	$ 0.311	$ 369	$ 0.354	$ 421	$ 0.404	$ 440	$ 0.423	$ 473	$ 0.454
			2,000		$ 790	$ 790	$ 0.193	$ 901	$ 0.219	$ 1,027	$ 0.250	$ 1,074	$ 0.262	$ 1,153	$ 0.281
45	H	Hazardous H- Shell	5,000	A	$ 1,368	$ 1,368	$ 0.163	$ 1,559	$ 0.186	$ 1,778	$ 0.212	$ 1,860	$ 0.222	$ 1,997	$ 0.238
			10,000		$ 2,183	$ 2,183	$ 0.163	$ 2,488	$ 0.186	$ 2,837	$ 0.212	$ 2,968	$ 0.222	$ 3,186	$ 0.239
			25,000		$ 4,634	$ 4,634	$ 0.185	$ 5,282	$ 0.211	$ 6,024	$ 0.241	$ 6,302	$ 0.252	$ 6,765	$ 0.271
			100		$ 95	$ 95	$ 0.283	$ 108	$ 0.323	$ 124	$ 0.368	$ 129	$ 0.385	$ 139	$ 0.414
			400		$ 180	$ 180	$ 0.083	$ 205	$ 0.095	$ 234	$ 0.108	$ 245	$ 0.113	$ 263	$ 0.122
46	H	Hazardous H- T I	1,000	A	$ 230	$ 230	$ 0.088	$ 262	$ 0.100	$ 299	$ 0.114	$ 313	$ 0.119	$ 336	$ 0.128
			2,000		$ 318	$ 318	$ 0.078	$ 362	$ 0.088	$ 413	$ 0.101	$ 432	$ 0.105	$ 464	$ 0.113
			5,000		$ 550	$ 550	$ 0.110	$ 627	$ 0.125	$ 715	$ 0.143	$ 748	$ 0.150	$ 803	$ 0.161
	R-3	Single-Family (custom or model)	1,000		$ 703	$ 703	$ 0.359	$ 801	$ 0.409	$ 913	$ 0.467	$ 955	$ 0.488	$ 1,026	$ 0.524
	"	"	2,500		$ 1,241	$ 1,241	$ 0.492	$ 1,415	$ 0.561	$ 1,614	$ 0.640	$ 1,688	$ 0.669	$ 1,812	$ 0.718
49	"	"	5,000	A	$ 2,471	$ 2,471	$ 0.384	$ 2,817	$ 0.438	$ 3,213	$ 0.500	$ 3,361	$ 0.523	$ 3,608	$ 0.561
	"	"	7,000		$ 3,240	$ 3,240	$ 0.384	$ 3,694	$ 0.438	$ 4,212	$ 0.499	$ 4,406	$ 0.522	$ 4,730	$ 0.561
	"	"	10,000		$ 4,393	$ 4,393	$ 0.439	$ 5,007	$ 0.501	$ 5,710	$ 0.571	$ 5,974	$ 0.597	$ 6,413	$ 0.641
			500		$ 450	$ 450	$ 0.327	$ 513	$ 0.373	$ 585	$ 0.425	$ 612	$ 0.444	$ 657	$ 0.477
			1,250		$ 695	$ 695	$ 0.310	$ 792	$ 0.353	$ 904	$ 0.403	$ 945	$ 0.421	$ 1,015	$ 0.452
52	R-3	Single-Family - Production / Repeat	2,500	A	$ 1,082	$ 1,082	$ 0.319	$ 1,234	$ 0.363	$ 1,407	$ 0.414	$ 1,472	$ 0.433	$ 1,580	$ 0.465
			3,500		$ 1,401	$ 1,401	$ 0.219	$ 1,597	$ 0.250	$ 1,821	$ 0.285	$ 1,905	$ 0.298	$ 2,045	$ 0.320
			5,000		$ 1,730	$ 1,730	$ 0.346	$ 1,972	$ 0.394	$ 2,249	$ 0.450	$ 2,353	$ 0.471	$ 2,526	$ 0.505
			400		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			1,000		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
53	R-3	Prefabricated / Manufactured Dwelling - Complete	2,000	A	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			2,800		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			4,000		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			200		$ 258	$ 258	$ 0.574	$ 294	$ 0.654	$ 335	$ 0.746	$ 350	$ 0.781	$ 376	$ 0.838
			500		$ 430	$ 430	$ 0.454	$ 490	$ 0.517	$ 559	$ 0.590	$ 585	$ 0.617	$ 628	$ 0.662
54	R-3	Single-Family Residential - Addition	1,000	A	$ 657	$ 657	$ 0.406	$ 749	$ 0.463	$ 854	$ 0.528	$ 893	$ 0.552	$ 959	$ 0.593
			1,400		$ 819	$ 819	$ 0.348	$ 934	$ 0.396	$ 1,065	$ 0.452	$ 1,114	$ 0.473	$ 1,196	$ 0.508
			2,000		$ 1,028	$ 1,028	$ 0.514	$ 1,171	$ 0.586	$ 1,336	$ 0.668	$ 1,398	$ 0.699	$ 1,500	$ 0.750
			200		$ 147	$ 147	$ 0.265	$ 168	$ 0.302	$ 191	$ 0.345	$ 200	$ 0.360	$ 215	$ 0.387
			500		$ 227	$ 227	$ 0.099	$ 258	$ 0.113	$ 294	$ 0.129	$ 308	$ 0.135	$ 331	$ 0.145
55	R-3	Single-Family Resid. - Remodel with MPE's	1,000	A	$ 276	$ 276	$ 0.109	$ 315	$ 0.124	$ 359	$ 0.141	$ 375	$ 0.148	$ 403	$ 0.159
			1,400		$ 320	$ 320	$ 0.115	$ 364	$ 0.131	$ 415	$ 0.150	$ 435	$ 0.156	$ 466	$ 0.168
			2,000		$ 389	$ 389	$ 0.194	$ 443	$ 0.221	$ 505	$ 0.253	$ 528	$ 0.264	$ 567	$ 0.284
			200		$ 122	$ 122	$ 0.170	$ 139	$ 0.194	$ 158	$ 0.221	$ 165	$ 0.231	$ 177	$ 0.248
			500		$ 173	$ 173	$ 0.066	$ 197	$ 0.075	$ 224	$ 0.086	$ 235	$ 0.090	$ 252	$ 0.096
56	R-3	Single-Family Resid. - Remodel without MPE's	1,000	A	$ 206	$ 206	$ 0.068	$ 234	$ 0.077	$ 267	$ 0.088	$ 279	$ 0.092	$ 300	$ 0.099
			1,400		$ 233	$ 233	$ 0.075	$ 265	$ 0.086	$ 302	$ 0.098	$ 316	$ 0.102	$ 339	$ 0.110
			2,000		$ 278	$ 278	$ 0.139	$ 316	$ 0.158	$ 361	$ 0.180	$ 377	$ 0.189	$ 405	$ 0.203

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-C PERMIT/INSPECTION VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:											
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B			
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*			
						1.00		*1.14*		*1.30*		*1.36*		*1.46*			
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF		
			3,000		$ 1,684	$ 1,684	$ 0.379	$ 1,919	$ 0.432	$ 2,189	$ 0.493	$ 2,290	$ 0.515	$ 2,458	$ 0.553		
			7,500		$ 3,389	$ 3,389	$ 0.378	$ 3,863	$ 0.431	$ 4,405	$ 0.492	$ 4,609	$ 0.514	$ 4,948	$ 0.552		
57	R-1	Hotel: Low/Midrise (up to 3 stories) - Complete	15,000	A	$ 6,225	$ 6,225	$ 0.378	$ 7,097	$ 0.431	$ 8,093	$ 0.492	$ 8,466	$ 0.514	$ 9,089	$ 0.552		
			21,000		$ 8,494	$ 8,494	$ 0.379	$ 9,683	$ 0.432	$ 11,042	$ 0.492	$ 11,552	$ 0.515	$ 12,401	$ 0.553		
			30,000		$ 11,901	$ 11,901	$ 0.397	$ 13,567	$ 0.452	$ 15,472	$ 0.516	$ 16,186	$ 0.540	$ 17,376	$ 0.579		
			1,500		$ 1,460	$ 1,460	$ 0.302	$ 1,664	$ 0.345	$ 1,898	$ 0.393	$ 1,986	$ 0.411	$ 2,132	$ 0.441		
			6,000		$ 2,820	$ 2,820	$ 0.252	$ 3,215	$ 0.288	$ 3,666	$ 0.328	$ 3,835	$ 0.343	$ 4,117	$ 0.368		
58	R-1	Hotel: Low/Midrise (up to 3 stories) - Shell	15,000	A	$ 5,090	$ 5,090	$ 0.121	$ 5,803	$ 0.138	$ 6,617	$ 0.158	$ 6,922	$ 0.165	$ 7,431	$ 0.177		
			30,000		$ 6,910	$ 6,910	$ 0.086	$ 7,877	$ 0.098	$ 8,983	$ 0.112	$ 9,398	$ 0.117	$ 10,089	$ 0.126		
			75,000		$ 10,787	$ 10,787	$ 0.144	$ 12,297	$ 0.164	$ 14,023	$ 0.187	$ 14,670	$ 0.196	$ 15,749	$ 0.210		
			250		$ 227	$ 227	$ 0.206	$ 258	$ 0.235	$ 294	$ 0.268	$ 308	$ 0.280	$ 331	$ 0.301		
			1,000		$ 381	$ 381	$ 0.186	$ 434	$ 0.212	$ 495	$ 0.242	$ 518	$ 0.253	$ 556	$ 0.272		
59	R-1	Hotel: Low/Midrise (up to 3 stories) - TI / Remodel	2,500	A	$ 660	$ 660	$ 0.146	$ 752	$ 0.167	$ 858	$ 0.190	$ 898	$ 0.199	$ 964	$ 0.214		
			5,000		$ 1,026	$ 1,026	$ 0.100	$ 1,170	$ 0.114	$ 1,334	$ 0.130	$ 1,395	$ 0.136	$ 1,498	$ 0.146		
			12,500		$ 1,776	$ 1,776	$ 0.142	$ 2,025	$ 0.162	$ 2,309	$ 0.185	$ 2,415	$ 0.193	$ 2,593	$ 0.207		
			5,000		$ 2,454	$ 2,454	$ 0.445	$ 2,797	$ 0.507	$ 3,190	$ 0.578	$ 3,337	$ 0.605	$ 3,582	$ 0.649		
			20,000		$ 9,127	$ 9,127	$ 0.347	$ 10,404	$ 0.396	$ 11,865	$ 0.451	$ 12,412	$ 0.472	$ 13,325	$ 0.507		
60	R-1	Hotel: Highrise (4+ stories) - Complete	50,000	A	$ 19,535	$ 19,535	$ 0.380	$ 22,270	$ 0.433	$ 25,396	$ 0.493	$ 26,568	$ 0.516	$ 28,521	$ 0.554		
			100,000		$ 38,514	$ 38,514	$ 0.176	$ 43,906	$ 0.201	$ 50,068	$ 0.229	$ 52,379	$ 0.239	$ 56,230	$ 0.257		
			250,000		$ 64,909	$ 64,909	$ 0.260	$ 73,996	$ 0.296	$ 84,381	$ 0.338	$ 88,276	$ 0.353	$ 94,766	$ 0.379		
			5,000		$ 2,068	$ 2,068	$ 0.304	$ 2,357	$ 0.347	$ 2,688	$ 0.395	$ 2,812	$ 0.413	$ 3,019	$ 0.444		
			20,000		$ 6,628	$ 6,628	$ 0.304	$ 7,555	$ 0.346	$ 8,616	$ 0.395	$ 9,013	$ 0.413	$ 9,676	$ 0.443		
61	R-1	Hotel: Highrise (4+ stories) - Shell	50,000	A	$ 15,739	$ 15,739	$ 0.180	$ 17,942	$ 0.205	$ 20,460	$ 0.234	$ 21,405	$ 0.245	$ 22,979	$ 0.263		
			100,000		$ 24,739	$ 24,739	$ 0.108	$ 28,202	$ 0.124	$ 32,161	$ 0.141	$ 33,645	$ 0.147	$ 36,119	$ 0.158		
			250,000		$ 40,991	$ 40,991	$ 0.164	$ 46,729	$ 0.187	$ 53,288	$ 0.213	$ 55,747	$ 0.223	$ 59,846	$ 0.239		
			500		$ 276	$ 276	$ 0.197	$ 315	$ 0.225	$ 359	$ 0.256	$ 375	$ 0.268	$ 403	$ 0.288		
			2,000		$ 572	$ 572	$ 0.152	$ 652	$ 0.173	$ 743	$ 0.197	$ 777	$ 0.206	$ 834	$ 0.221		
62	R-1	Hotel: Highrise (4+ stories) - TI / Remodel	5,000	A	$ 1,026	$ 1,026	$ 0.105	$ 1,170	$ 0.120	$ 1,334	$ 0.137	$ 1,395	$ 0.143	$ 1,498	$ 0.153		
			10,000		$ 1,551	$ 1,551	$ 0.089	$ 1,768	$ 0.102	$ 2,016	$ 0.116	$ 2,109	$ 0.122	$ 2,264	$ 0.131		
			25,000		$ 2,892	$ 2,892	$ 0.116	$ 3,297	$ 0.132	$ 3,760	$ 0.150	$ 3,933	$ 0.157	$ 4,222	$ 0.169		
			750		$ 635	$ 635	$ 0.520	$ 724	$ 0.593	$ 826	$ 0.677	$ 864	$ 0.708	$ 927	$ 0.760		
			3,000		$ 1,806	$ 1,806	$ 0.383	$ 2,059	$ 0.436	$ 2,348	$ 0.497	$ 2,456	$ 0.520	$ 2,637	$ 0.559		
63	R-2	Apartment / Condo: Low/Midrise (up to 3 stories) - Complete	7,500	A	$ 3,528	$ 3,528	$ 0.381	$ 4,022	$ 0.435	$ 4,586	$ 0.496	$ 4,798	$ 0.519	$ 5,151	$ 0.557		
			15,000		$ 6,389	$ 6,389	$ 0.160	$ 7,283	$ 0.183	$ 8,305	$ 0.208	$ 8,688	$ 0.218	$ 9,327	$ 0.234		
			37,500		$ 9,992	$ 9,992	$ 0.266	$ 11,391	$ 0.304	$ 12,990	$ 0.346	$ 13,589	$ 0.362	$ 14,588	$ 0.389		
			750		$ 677	$ 677	$ 0.403	$ 771	$ 0.459	$ 879	$ 0.523	$ 920	$ 0.548	$ 988	$ 0.588		
			3,000		$ 1,583	$ 1,583	$ 0.260	$ 1,804	$ 0.297	$ 2,057	$ 0.338	$ 2,152	$ 0.354	$ 2,310	$ 0.380		
64	R-2	Apartment / Condo: Low/Midrise (up to 3 stories) - Shell	7,500	A	$ 2,754	$ 2,754	$ 0.215	$ 3,139	$ 0.246	$ 3,580	$ 0.280	$ 3,745	$ 0.293	$ 4,021	$ 0.315		
			15,000		$ 4,370	$ 4,370	$ 0.255	$ 4,982	$ 0.290	$ 5,681	$ 0.331	$ 5,943	$ 0.346	$ 6,380	$ 0.372		
			37,500		$ 10,099	$ 10,099	$ 0.269	$ 11,513	$ 0.307	$ 13,128	$ 0.350	$ 13,734	$ 0.366	$ 14,744	$ 0.393		

City of Las Vegas
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Table No. 3-C PERMIT/INSPECTION VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:											
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B			
						Relative Effort Factor: 1.00		*Relative Effort Factor:* 1.14		*Relative Effort Factor:* 1.30		*Relative Effort Factor:* 1.35		*Relative Effort Factor:* 1.46			
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF		
			200		$ 243	$ 243	$ 0.505	$ 277	$ 0.576	$ 316	$ 0.657	$ 330	$ 0.687	$ 355	$ 0.737		
			800		$ 546	$ 546	$ 0.333	$ 622	$ 0.379	$ 710	$ 0.432	$ 743	$ 0.452	$ 797	$ 0.485		
65	R-2	Apartment / Condo: Low/Midrise (up to 3 stories) - TI / Remodel	2,000	A	$ 945	$ 945	$ 0.246	$ 1,077	$ 0.280	$ 1,229	$ 0.320	$ 1,285	$ 0.335	$ 1,380	$ 0.359		
			4,000		$ 1,437	$ 1,437	$ 0.214	$ 1,638	$ 0.244	$ 1,868	$ 0.278	$ 1,954	$ 0.291	$ 2,098	$ 0.313		
			10,000		$ 2,722	$ 2,722	$ 0.272	$ 3,103	$ 0.310	$ 3,538	$ 0.354	$ 3,701	$ 0.370	$ 3,974	$ 0.397		
			200		$ 312	$ 312	$ 0.733	$ 356	$ 0.835	$ 406	$ 0.952	$ 425	$ 0.996	$ 456	$ 1.070		
			800		$ 752	$ 752	$ 0.481	$ 857	$ 0.548	$ 977	$ 0.625	$ 1,022	$ 0.654	$ 1,098	$ 0.702		
66	R-2	Apartment / Condo: Low/Midrise (up to 3 stories) - Addition	2,000	A	$ 1,329	$ 1,329	$ 0.247	$ 1,515	$ 0.282	$ 1,727	$ 0.321	$ 1,807	$ 0.336	$ 1,940	$ 0.361		
			4,000		$ 1,823	$ 1,823	$ 0.318	$ 2,078	$ 0.363	$ 2,369	$ 0.414	$ 2,479	$ 0.433	$ 2,661	$ 0.465		
			10,000		$ 3,733	$ 3,733	$ 0.373	$ 4,255	$ 0.426	$ 4,852	$ 0.485	$ 5,076	$ 0.508	$ 5,449	$ 0.543		
			5,000		$ 2,145	$ 2,146	$ 0.320	$ 2,447	$ 0.364	$ 2,790	$ 0.415	$ 2,919	$ 0.435	$ 3,134	$ 0.466		
			20,000		$ 6,939	$ 6,939	$ 0.385	$ 7,910	$ 0.439	$ 9,020	$ 0.501	$ 9,437	$ 0.524	$ 10,131	$ 0.563		
67	R-2	Apartment / Condo: Highrise (4+ stories) - Complete	50,000	A	$ 18,502	$ 18,502	$ 0.280	$ 21,093	$ 0.319	$ 24,053	$ 0.364	$ 25,163	$ 0.380	$ 27,014	$ 0.408		
			100,000		$ 32,485	$ 32,485	$ 0.319	$ 37,033	$ 0.364	$ 42,231	$ 0.415	$ 44,180	$ 0.434	$ 47,428	$ 0.466		
			250,000		$ 80,390	$ 80,390	$ 0.322	$ 91,645	$ 0.367	$ 104,507	$ 0.418	$ 109,330	$ 0.437	$ 117,369	$ 0.469		
			5,000		$ 2,193	$ 2,193	$ 0.307	$ 2,500	$ 0.350	$ 2,851	$ 0.399	$ 2,982	$ 0.417	$ 3,202	$ 0.448		
			20,000		$ 6,792	$ 6,792	$ 0.218	$ 7,743	$ 0.248	$ 8,830	$ 0.283	$ 9,237	$ 0.296	$ 9,916	$ 0.318		
68	R-2	Apartment / Condo: Highrise (4+ sto es) - Shell	50,000	A	$ 13,325	$ 13,325	$ 0.256	$ 15,191	$ 0.291	$ 17,323	$ 0.332	$ 18,122	$ 0.347	$ 19,455	$ 0.373		
			100,000		$ 26,100	$ 26,100	$ 0.255	$ 29,754	$ 0.291	$ 33,930	$ 0.332	$ 35,496	$ 0.347	$ 38,106	$ 0.373		
			250,000		$ 64,418	$ 64,418	$ 0.258	$ 73,436	$ 0.294	$ 83,743	$ 0.335	$ 87,608	$ 0.350	$ 94,050	$ 0.376		
			500		$ 215	$ 215	$ 0.204	$ 245	$ 0.232	$ 280	$ 0.265	$ 292	$ 0.277	$ 314	$ 0.297		
			2,000		$ 521	$ 521	$ 0.134	$ 593	$ 0.153	$ 677	$ 0.174	$ 708	$ 0.182	$ 760	$ 0.196		
69	R-2	Apartment / Condo: Highrise (4+ stories) - TI / Remodel	5,000	A	$ 923	$ 923	$ 0.100	$ 1,052	$ 0.114	$ 1,199	$ 0.130	$ 1,255	$ 0.136	$ 1,347	$ 0.146		
			10,000		$ 1,424	$ 1,424	$ 0.048	$ 1,623	$ 0.055	$ 1,851	$ 0.062	$ 1,936	$ 0.065	$ 2,078	$ 0.070		
			25,000		$ 2,143	$ 2,143	$ 0.086	$ 2,442	$ 0.098	$ 2,785	$ 0.111	$ 2,914	$ 0.117	$ 3,128	$ 0.125		
			500		$ 581	$ 581	$ 0.517	$ 662	$ 0.589	$ 755	$ 0.672	$ 790	$ 0.703	$ 848	$ 0.754		
			2,000		$ 1,356	$ 1,356	$ 0.426	$ 1,546	$ 0.486	$ 1,763	$ 0.554	$ 1,844	$ 0.579	$ 1,980	$ 0.622		
70	I-1	Residential Care - Complete	5,000	A	$ 2,634	$ 2,634	$ 0.426	$ 3,002	$ 0.485	$ 3,424	$ 0.553	$ 3,582	$ 0.579	$ 3,845	$ 0.621		
			10,000		$ 4,761	$ 4,761	$ 0.329	$ 5,428	$ 0.375	$ 6,189	$ 0.427	$ 6,475	$ 0.447	$ 6,951	$ 0.480		
			25,000		$ 9,690	$ 9,690	$ 0.388	$ 11,047	$ 0.442	$ 12,597	$ 0.504	$ 13,178	$ 0.527	$ 14,147	$ 0.566		
			500		$ 506	$ 506	$ 0.455	$ 577	$ 0.519	$ 658	$ 0.592	$ 688	$ 0.619	$ 739	$ 0.665		
			2,000		$ 1,189	$ 1,189	$ 0.339	$ 1,356	$ 0.387	$ 1,546	$ 0.441	$ 1,617	$ 0.461	$ 1,736	$ 0.495		
71	I-1	Residential Care - Shell	5,000	A	$ 2,207	$ 2,207	$ 0.340	$ 2,516	$ 0.388	$ 2,869	$ 0.443	$ 3,001	$ 0.463	$ 3,222	$ 0.497		
			10,000		$ 3,909	$ 3,909	$ 0.168	$ 4,456	$ 0.191	$ 5,082	$ 0.218	$ 5,316	$ 0.228	$ 5,707	$ 0.245		
			25,000		$ 6,428	$ 6,428	$ 0.257	$ 7,328	$ 0.293	$ 8,356	$ 0.334	$ 8,742	$ 0.350	$ 9,385	$ 0.375		
			100		$ 156	$ 156	$ 0.400	$ 178	$ 0.456	$ 203	$ 0.520	$ 212	$ 0.544	$ 228	$ 0.584		
			400		$ 276	$ 276	$ 0.240	$ 315	$ 0.274	$ 359	$ 0.312	$ 375	$ 0.326	$ 403	$ 0.350		
72	I-1	Residential Care - TI	1,000	A	$ 420	$ 420	$ 0.240	$ 479	$ 0.274	$ 546	$ 0.312	$ 571	$ 0.326	$ 613	$ 0.350		
			2,000		$ 660	$ 660	$ 0.169	$ 752	$ 0.192	$ 858	$ 0.219	$ 898	$ 0.229	$ 964	$ 0.246		
			5,000		$ 1,166	$ 1,166	$ 0.233	$ 1,329	$ 0.266	$ 1,515	$ 0.303	$ 1,585	$ 0.317	$ 1,702	$ 0.340		

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-C PERMIT/INSPECTION VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:									
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*	
						1.00		*1.14*		*1.30*		*1.36*		*1.46*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			2,000		$ 2,054	$ 2,054	$ 0.720	$ 2,341	$ 0.821	$ 2,670	$ 0.936	$ 2,793	$ 0.979	$ 2,999	$ 1.051
			8,000		$ 6,374	$ 6,374	$ 0.586	$ 7,267	$ 0.668	$ 8,286	$ 0.761	$ 8,669	$ 0.797	$ 9,306	$ 0.855
73	I-2	Hospitals / Nursing Homes - Complete	20,000	A	$ 13,403	$ 13,403	$ 0.643	$ 15,279	$ 0.733	$ 17,423	$ 0.835	$ 18,227	$ 0.874	$ 19,568	$ 0.938
			40,000		$ 26,256	$ 26,256	$ 0.640	$ 29,932	$ 0.733	$ 34,133	$ 0.835	$ 35,709	$ 0.874	$ 38,334	$ 0.938
			100,000		$ 64,815	$ 64,815	$ 0.648	$ 73,889	$ 0.739	$ 84,260	$ 0.843	$ 88,148	$ 0.881	$ 94,630	$ 0.946
			2,000		$ 1,899	$ 1,899	$ 0.461	$ 2,165	$ 0.525	$ 2,469	$ 0.599	$ 2,583	$ 0.627	$ 2,773	$ 0.673
			8,000		$ 4,664	$ 4,664	$ 0.514	$ 5,317	$ 0.586	$ 6,063	$ 0.668	$ 6,343	$ 0.699	$ 6,809	$ 0.751
74	I-2	Hospitals / Nursing Homes - Shell	20,000	A	$ 10,833	$ 10,833	$ 0.430	$ 12,349	$ 0.490	$ 14,082	$ 0.558	$ 14,732	$ 0.584	$ 15,815	$ 0.627
			40,000		$ 19,425	$ 19,425	$ 0.438	$ 22,144	$ 0.500	$ 25,252	$ 0.570	$ 26,418	$ 0.596	$ 28,360	$ 0.640
			100,000		$ 45,726	$ 45,726	$ 0.457	$ 52,128	$ 0.521	$ 59,444	$ 0.594	$ 62,187	$ 0.622	$ 66,760	$ 0.668
			200		$ 240	$ 240	$ 0.368	$ 274	$ 0.419	$ 312	$ 0.478	$ 326	$ 0.500	$ 350	$ 0.537
			800		$ 461	$ 461	$ 0.288	$ 525	$ 0.328	$ 599	$ 0.374	$ 626	$ 0.391	$ 672	$ 0.420
75	I-2	Hospitals / Nursing Homes - TI	2,000	A	$ 806	$ 806	$ 0.224	$ 918	$ 0.255	$ 1,047	$ 0.291	$ 1,095	$ 0.304	$ 1,176	$ 0.326
			4,000		$ 1,253	$ 1,253	$ 0.158	$ 1,428	$ 0.180	$ 1,628	$ 0.205	$ 1,703	$ 0.215	$ 1,829	$ 0.231
			10,000		$ 2,201	$ 2,201	$ 0.220	$ 2,509	$ 0.251	$ 2,861	$ 0.286	$ 2,993	$ 0.299	$ 3,213	$ 0.321
			500		$ 677	$ 677	$ 0.419	$ 771	$ 0.478	$ 879	$ 0.545	$ 920	$ 0.570	$ 988	$ 0.612
			2,000		$ 1,305	$ 1,305	$ 0.379	$ 1,488	$ 0.432	$ 1,697	$ 0.493	$ 1,775	$ 0.516	$ 1,905	$ 0.554
76	I-2	Child Care (24-hr, >5 kids <2.5 yrs) - Complete	5,000	A	$ 2,443	$ 2,443	$ 0.378	$ 2,784	$ 0.431	$ 3,175	$ 0.492	$ 3,322	$ 0.514	$ 3,566	$ 0.552
			10,000		$ 4,334	$ 4,334	$ 0.325	$ 4,940	$ 0.371	$ 5,634	$ 0.423	$ 5,894	$ 0.442	$ 6,327	$ 0.475
			25,000		$ 9,209	$ 9,209	$ 0.368	$ 10,498	$ 0.420	$ 11,972	$ 0.479	$ 12,525	$ 0.501	$ 13,445	$ 0.538
			500		$ 483	$ 482.50	$ 0.449	$ 550	$ 0.512	$ 627	$ 0.584	$ 656	$ 0.611	$ 704	$ 0.656
			2,000		$ 1,156	$ 1,156	$ 0.302	$ 1,318	$ 0.344	$ 1,503	$ 0.392	$ 1,573	$ 0.410	$ 1,688	$ 0.440
77	I-2	Child Care (24-hr, >5 kids <2.5 yrs) - Shell	5,000	A	$ 2,061	$ 2,061	$ 0.303	$ 2,350	$ 0.345	$ 2,680	$ 0.394	$ 2,803	$ 0.412	$ 3,009	$ 0.442
			10,000		$ 3,576	$ 3,576	$ 0.259	$ 4,077	$ 0.296	$ 4,649	$ 0.337	$ 4,864	$ 0.353	$ 5,221	$ 0.379
			25,000		$ 7,467	$ 7,467	$ 0.299	$ 8,512	$ 0.340	$ 9,707	$ 0.388	$ 10,155	$ 0.406	$ 10,902	$ 0.436
			100		$ 145	$ 145.50	$ 0.375	$ 166	$ 0.428	$ 189	$ 0.488	$ 198	$ 0.510	$ 212	$ 0.548
			400		$ 258	$ 258	$ 0.205	$ 294	$ 0.234	$ 335	$ 0.267	$ 351	$ 0.279	$ 377	$ 0.299
78	I-2	Child Care (24-hr, >5 kids <2.5 yrs) - TI	1,000	A	$ 381	$ 381	$ 0.198	$ 434	$ 0.226	$ 495	$ 0.257	$ 518	$ 0.269	$ 556	$ 0.289
			2,000		$ 579	$ 579	$ 0.151	$ 660	$ 0.172	$ 753	$ 0.196	$ 787	$ 0.205	$ 845	$ 0.220
			5,000		$ 1,031	$ 1,031	$ 0.206	$ 1,175	$ 0.235	$ 1,340	$ 0.268	$ 1,401	$ 0.280	$ 1,505	$ 0.301
			2,000		$ 2,269	$ 2,268.75	$ 0.858	$ 2,586	$ 0.979	$ 2,949	$ 1.116	$ 3,086	$ 1.167	$ 3,312	$ 1.253
			8,000		$ 7,419	$ 7,419	$ 0.859	$ 8,457	$ 0.979	$ 9,644	$ 1.117	$ 10,090	$ 1.168	$ 10,831	$ 1.254
79	I-3	Detention Facilities - Complete	20,000	A	$ 17,726	$ 17,726	$ 0.719	$ 20,208	$ 0.820	$ 23,044	$ 0.935	$ 24,108	$ 0.978	$ 25,880	$ 1.050
			40,000		$ 32,113	$ 32,113	$ 0.421	$ 36,608	$ 0.480	$ 41,746	$ 0.548	$ 43,673	$ 0.573	$ 46,884	$ 0.615
			100,000		$ 57,395	$ 57,395	$ 0.574	$ 65,430	$ 0.654	$ 74,613	$ 0.746	$ 78,057	$ 0.781	$ 83,796	$ 0.838
			2,000		$ 1,924	$ 1,923.75	$ 0.688	$ 2,193	$ 0.784	$ 2,501	$ 0.894	$ 2,616	$ 0.936	$ 2,809	$ 1.004
			8,000		$ 6,051	$ 6,051	$ 0.687	$ 6,898	$ 0.783	$ 7,867	$ 0.893	$ 8,230	$ 0.934	$ 8,835	$ 1.003
80	I-3	Detention Facilities - Shell	20,000	A	$ 14,293	$ 14,293	$ 0.687	$ 16,293	$ 0.783	$ 18,580	$ 0.893	$ 19,438	$ 0.934	$ 20,867	$ 1.003
			40,000		$ 28,034	$ 28,034	$ 0.216	$ 31,958	$ 0.246	$ 36,444	$ 0.281	$ 38,126	$ 0.294	$ 40,929	$ 0.316
			100,000		$ 41,002	$ 41,002	$ 0.410	$ 46,742	$ 0.467	$ 53,302	$ 0.533	$ 55,763	$ 0.558	$ 59,863	$ 0.599

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-C PERMIT/INSPECTION VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:											
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B			
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*			
						1.00		*1.14*		*1.30*		*1.36*		*1.46*			
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF		
			200		$ 258	$ 258.00	$ 0.470	$ 294	$ 0.536	$ 335	$ 0.611	$ 351	$ 0.639	$ 377	$ 0.686		
			800		$ 540	$ 540	$ 0.365	$ 616	$ 0.416	$ 702	$ 0.475	$ 734	$ 0.496	$ 788	$ 0.533		
81	I-3	Detention Facilities - TI	2,000	A	$ 978	$ 978	$ 0.256	$ 1,115	$ 0.292	$ 1,271	$ 0.332	$ 1,330	$ 0.348	$ 1,428	$ 0.373		
			4,000		$ 1,490	$ 1,490	$ 0.206	$ 1,698	$ 0.234	$ 1,936	$ 0.267	$ 2,026	$ 0.279	$ 2,175	$ 0.300		
			10,000		$ 2,723	$ 2,723	$ 0.272	$ 3,104	$ 0.310	$ 3,539	$ 0.354	$ 3,703	$ 0.370	$ 3,975	$ 0.397		
			250		$ 350	$ 350.00	$ 0.678	$ 399	$ 0.773	$ 455	$ 0.882	$ 476	$ 0.923	$ 511	$ 0.990		
			1,000		$ 859	$ 859	$ 0.426	$ 979	$ 0.485	$ 1,116	$ 0.554	$ 1,168	$ 0.579	$ 1,254	$ 0.622		
82	I-4	Day Care Facility - Complete	2,500	A	$ 1,498	$ 1,498	$ 0.378	$ 1,707	$ 0.431	$ 1,947	$ 0.491	$ 2,037	$ 0.514	$ 2,186	$ 0.552		
			5,000		$ 2,443	$ 2,443	$ 0.379	$ 2,784	$ 0.432	$ 3,175	$ 0.492	$ 3,322	$ 0.515	$ 3,566	$ 0.553		
			12,500		$ 5,283	$ 5,283	$ 0.423	$ 6,022	$ 0.482	$ 6,867	$ 0.549	$ 7,184	$ 0.575	$ 7,712	$ 0.617		
			250		$ 318	$ 317.50	$ 0.575	$ 362	$ 0.656	$ 413	$ 0.748	$ 432	$ 0.782	$ 464	$ 0.840		
			1,000		$ 749	$ 749	$ 0.371	$ 854	$ 0.423	$ 973	$ 0.482	$ 1,018	$ 0.504	$ 1,093	$ 0.541		
83	I-4	Day Care Facility - Shell	2,500	A	$ 1,305	$ 1,305	$ 0.303	$ 1,488	$ 0.345	$ 1,697	$ 0.393	$ 1,775	$ 0.411	$ 1,905	$ 0.442		
			5,000		$ 2,061	$ 2,061	$ 0.257	$ 2,350	$ 0.293	$ 2,680	$ 0.334	$ 2,803	$ 0.349	$ 3,009	$ 0.375		
			12,500		$ 3,987	$ 3,987	$ 0.319	$ 4,545	$ 0.364	$ 5,183	$ 0.415	$ 5,422	$ 0.434	$ 5,821	$ 0.466		
			100		$ 121	$ 121.25	$ 0.438	$ 138	$ 0.499	$ 158	$ 0.569	$ 165	$ 0.595	$ 177	$ 0.639		
			400		$ 253	$ 253	$ 0.214	$ 288	$ 0.244	$ 328	$ 0.278	$ 343	$ 0.291	$ 369	$ 0.313		
84	I-4	Day Care Facility - TI	1,000	A	$ 381	$ 381	$ 0.198	$ 434	$ 0.226	$ 495	$ 0.257	$ 518	$ 0.269	$ 556	$ 0.289		
			2,000		$ 579	$ 579	$ 0.151	$ 660	$ 0.172	$ 753	$ 0.196	$ 787	$ 0.205	$ 845	$ 0.220		
			5,000		$ 1,031	$ 1,031	$ 0.206	$ 1,175	$ 0.235	$ 1,340	$ 0.268	$ 1,401	$ 0.280	$ 1,505	$ 0.301		
			500		$ 332	$ 331.80	$ 0.316	$ 378	$ 0.361	$ 431	$ 0.411	$ 451	$ 0.430	$ 484	$ 0.462		
			2,000		$ 806	$ 806	$ 0.205	$ 919	$ 0.234	$ 1,048	$ 0.267	$ 1,097	$ 0.279	$ 1,177	$ 0.300		
85	S-1	Storage (Combustable - not S-2) - Complete	5,000	A	$ 1,422	$ 1,422	$ 0.161	$ 1,622	$ 0.184	$ 1,849	$ 0.210	$ 1,934	$ 0.219	$ 2,077	$ 0.235		
			10,000		$ 2,229	$ 2,229	$ 0.161	$ 2,541	$ 0.184	$ 2,897	$ 0.210	$ 3,031	$ 0.220	$ 3,254	$ 0.236		
			25,000		$ 4,651	$ 4,651	$ 0.186	$ 5,302	$ 0.212	$ 6,046	$ 0.242	$ 6,325	$ 0.253	$ 6,790	$ 0.272		
			500		$ 266	$ 266.25	$ 0.243	$ 304	$ 0.277	$ 346	$ 0.316	$ 362	$ 0.331	$ 389	$ 0.355		
			2,000		$ 631	$ 631	$ 0.163	$ 720	$ 0.185	$ 821	$ 0.211	$ 859	$ 0.221	$ 922	$ 0.237		
86	S-1	Storage (Combustable - not S-2) - Shell	5,000	A	$ 1,119	$ 1,119	$ 0.117	$ 1,275	$ 0.133	$ 1,454	$ 0.151	$ 1,522	$ 0.158	$ 1,633	$ 0.170		
			10,000		$ 1,701	$ 1,701	$ 0.115	$ 1,939	$ 0.132	$ 2,212	$ 0.150	$ 2,314	$ 0.157	$ 2,484	$ 0.169		
			25,000		$ 3,433	$ 3,433	$ 0.137	$ 3,913	$ 0.157	$ 4,462	$ 0.178	$ 4,668	$ 0.187	$ 5,011	$ 0.200		
			100		$ 108	$ 108.00	$ 0.200	$ 123	$ 0.228	$ 140	$ 0.260	$ 147	$ 0.272	$ 158	$ 0.292		
			400		$ 168	$ 168	$ 0.120	$ 192	$ 0.137	$ 218	$ 0.156	$ 228	$ 0.163	$ 245	$ 0.175		
87	S-1	Storage (Combustable - not S-2) - TI	1,000	A	$ 240	$ 240	$ 0.069	$ 274	$ 0.079	$ 312	$ 0.090	$ 326	$ 0.094	$ 350	$ 0.101		
			2,000		$ 309	$ 309	$ 0.071	$ 352	$ 0.080	$ 402	$ 0.092	$ 420	$ 0.096	$ 451	$ 0.103		
			5,000		$ 521	$ 521	$ 0.104	$ 593	$ 0.119	$ 677	$ 0.135	$ 708	$ 0.142	$ 760	$ 0.152		
			5,000		$ 2,021	$ 2,021.25	$ 0.191	$ 2,304	$ 0.218	$ 2,628	$ 0.249	$ 2,749	$ 0.260	$ 2,951	$ 0.279		
			20,000		$ 4,891	$ 4,891	$ 0.089	$ 5,575	$ 0.102	$ 6,358	$ 0.116	$ 6,651	$ 0.122	$ 7,140	$ 0.130		
88	S-1	Repair Garage / Service Station - Complete	50,000	A	$ 7,571	$ 7,571	$ 0.064	$ 8,631	$ 0.073	$ 9,842	$ 0.084	$ 10,296	$ 0.088	$ 11,053	$ 0.094		
			100,000		$ 10,792	$ 10,792	$ 0.035	$ 12,303	$ 0.040	$ 14,030	$ 0.045	$ 14,678	$ 0.047	$ 15,757	$ 0.051		
			250,000		$ 16,011	$ 16,011	$ 0.064	$ 18,253	$ 0.073	$ 20,814	$ 0.083	$ 21,775	$ 0.087	$ 23,376	$ 0.094		

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-C PERMIT/INSPECTION VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:											
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B			
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*			
						1.00		*1.14*		*1.30*		*1.36*		*1.46*			
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF		
			500		$ 1,589	$ 1,588.30	$ 0.987	$ 1,812	$ 1.125	$ 2,066	$ 1.283	$ 2,161	$ 1.342	$ 2,320	$ 1.441		
			2,000		$ 3,070	$ 3,070	$ 0.619	$ 3,499	$ 0.706	$ 3,991	$ 0.805	$ 4,175	$ 0.842	$ 4,482	$ 0.904		
89	S-1	Repair Garage / Service Station - Shell	5,000	A	$ 4,928	$ 4,928	$ 0.402	$ 5,618	$ 0.459	$ 6,406	$ 0.523	$ 6,702	$ 0.547	$ 7,195	$ 0.587		
			10,000		$ 6,939	$ 6,939	$ 0.234	$ 7,910	$ 0.267	$ 9,021	$ 0.305	$ 9,437	$ 0.319	$ 10,131	$ 0.342		
			25,000		$ 10,456	$ 10,456	$ 0.418	$ 11,920	$ 0.477	$ 13,593	$ 0.544	$ 14,220	$ 0.569	$ 15,266	$ 0.611		
			100		$ 129	$ 129.00	$ 0.325	$ 147	$ 0.371	$ 168	$ 0.423	$ 175	$ 0.442	$ 188	$ 0.475		
			400		$ 227	$ 227	$ 0.155	$ 258	$ 0.177	$ 294	$ 0.202	$ 308	$ 0.211	$ 331	$ 0.226		
90	S-1	Repair Garage / Service Station - TI	1,000	A	$ 320	$ 320	$ 0.159	$ 364	$ 0.181	$ 415	$ 0.207	$ 435	$ 0.216	$ 466	$ 0.232		
			2,000		$ 479	$ 479	$ 0.133	$ 545	$ 0.152	$ 622	$ 0.173	$ 651	$ 0.181	$ 699	$ 0.194		
			5,000		$ 878	$ 878	$ 0.175	$ 1,000	$ 0.200	$ 1,141	$ 0.228	$ 1,193	$ 0.239	$ 1,281	$ 0.256		
			500		$ 356	$ 355.50	$ 0.339	$ 405	$ 0.386	$ 462	$ 0.441	$ 483	$ 0.461	$ 519	$ 0.495		
			2,000		$ 864	$ 864	$ 0.220	$ 985	$ 0.251	$ 1,123	$ 0.286	$ 1,175	$ 0.299	$ 1,261	$ 0.321		
91	S-2	Storage (Non-Combustable - not S-1) - Complete	5,000	A	$ 1,524	$ 1,524	$ 0.173	$ 1,737	$ 0.197	$ 1,981	$ 0.225	$ 2,073	$ 0.235	$ 2,225	$ 0.252		
			10,000		$ 2,388	$ 2,388	$ 0.173	$ 2,722	$ 0.197	$ 3,104	$ 0.225	$ 3,248	$ 0.235	$ 3,486	$ 0.253		
			25,000		$ 4,983	$ 4,983	$ 0.199	$ 5,681	$ 0.227	$ 6,478	$ 0.259	$ 6,777	$ 0.271	$ 7,275	$ 0.291		
			500		$ 245	$ 244.95	$ 0.224	$ 279	$ 0.255	$ 318	$ 0.291	$ 333	$ 0.304	$ 358	$ 0.327		
			2,000		$ 581	$ 581	$ 0.150	$ 662	$ 0.170	$ 755	$ 0.194	$ 790	$ 0.203	$ 848	$ 0.218		
92	S-2	Storage (Non-Combustable - not S-1) - Shell	5,000	A	$ 1,029	$ 1,029	$ 0.107	$ 1,173	$ 0.122	$ 1,338	$ 0.139	$ 1,400	$ 0.146	$ 1,503	$ 0.156		
			10,000		$ 1,565	$ 1,565	$ 0.106	$ 1,784	$ 0.121	$ 2,035	$ 0.138	$ 2,129	$ 0.144	$ 2,285	$ 0.155		
			25,000		$ 3,158	$ 3,158	$ 0.126	$ 3,600	$ 0.144	$ 4,105	$ 0.164	$ 4,295	$ 0.172	$ 4,611	$ 0.184		
			100		$ 108	$ 108.00	$ 0.200	$ 123	$ 0.228	$ 140	$ 0.260	$ 147	$ 0.272	$ 158	$ 0.292		
			400		$ 168	$ 168	$ 0.120	$ 192	$ 0.137	$ 218	$ 0.156	$ 228	$ 0.163	$ 245	$ 0.175		
93	S-2	Storage (Non-Combustable - not S-1) - TI	1,000	A	$ 240	$ 240	$ 0.069	$ 274	$ 0.079	$ 312	$ 0.090	$ 326	$ 0.094	$ 350	$ 0.101		
			2,000		$ 309	$ 309	$ 0.071	$ 352	$ 0.080	$ 402	$ 0.092	$ 420	$ 0.096	$ 451	$ 0.103		
			5,000		$ 521	$ 521	$ 0.104	$ 593	$ 0.119	$ 677	$ 0.135	$ 708	$ 0.142	$ 760	$ 0.152		
			3,000		$ 1,148	$ 1,148.00	$ 0.158	$ 1,309	$ 0.180	$ 1,492	$ 0.205	$ 1,561	$ 0.215	$ 1,676	$ 0.230		
			12,000		$ 2,569	$ 2,569	$ 0.168	$ 2,928	$ 0.192	$ 3,339	$ 0.218	$ 3,494	$ 0.229	$ 3,750	$ 0.245		
94	S-2	Parking Garage - Complete	30,000	A	$ 5,594	$ 5,594	$ 0.168	$ 6,377	$ 0.192	$ 7,272	$ 0.219	$ 7,608	$ 0.229	$ 8,167	$ 0.246		
			60,000		$ 10,640	$ 10,640	$ 0.111	$ 12,130	$ 0.126	$ 13,832	$ 0.144	$ 14,470	$ 0.151	$ 15,534	$ 0.162		
			150,000		$ 20,620	$ 20,620	$ 0.137	$ 23,507	$ 0.157	$ 26,806	$ 0.179	$ 28,043	$ 0.187	$ 30,105	$ 0.201		
			200		$ 138	$ 138.00	$ 0.135	$ 157	$ 0.154	$ 179	$ 0.176	$ 188	$ 0.184	$ 201	$ 0.197		
			800		$ 219	$ 219	$ 0.096	$ 250	$ 0.110	$ 285	$ 0.125	$ 298	$ 0.131	$ 320	$ 0.141		
95	U	Utility Structure (without MPE's)	2,000	A	$ 335	$ 335	$ 0.090	$ 381	$ 0.103	$ 435	$ 0.117	$ 455	$ 0.122	$ 488	$ 0.131		
			4,000		$ 515	$ 515	$ 0.065	$ 587	$ 0.074	$ 669	$ 0.084	$ 700	$ 0.088	$ 751	$ 0.094		
			10,000		$ 902	$ 902	$ 0.090	$ 1,028	$ 0.103	$ 1,172	$ 0.117	$ 1,226	$ 0.123	$ 1,316	$ 0.132		
			200		$ 171	$ 171.00	$ 0.210	$ 195	$ 0.239	$ 222	$ 0.273	$ 233	$ 0.286	$ 250	$ 0.307		
			800		$ 297	$ 297	$ 0.131	$ 339	$ 0.172	$ 386	$ 0.197	$ 404	$ 0.206	$ 434	$ 0.221		
96	U	Utility Structure (with MPE's)	2,000	A	$ 479	$ 479	$ 0.140	$ 545	$ 0.159	$ 622	$ 0.181	$ 651	$ 0.190	$ 699	$ 0.204		
			4,000		$ 758	$ 758	$ 0.100	$ 864	$ 0.114	$ 985	$ 0.130	$ 1,030	$ 0.136	$ 1,106	$ 0.146		
			10,000		$ 1,356	$ 1,356	$ 0.136	$ 1,546	$ 0.155	$ 1,763	$ 0.176	$ 1,844	$ 0.184	$ 1,980	$ 0.198		

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-C PERMIT/INSPECTION VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:									
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor: 1.00		*Relative Effort Factor:* 1.14		*Relative Effort Factor:* 1.30		*Relative Effort Factor:* 1.36		*Relative Effort Factor:* 1.46	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			1,000		$ 792	$ 792.00	$ 0.359	$ 903	$ 0.409	$ 1,030	$ 0.467	$ 1,077	$ 0.488	$ 1,156	$ 0.524
			4,000		$ 1,869	$ 1,869	$ 0.262	$ 2,131	$ 0.299	$ 2,430	$ 0.341	$ 2,542	$ 0.356	$ 2,729	$ 0.383
97	M	Mercantile / Store - Complete	10,000	A	$ 3,441	$ 3,441	$ 0.282	$ 3,923	$ 0.322	$ 4,474	$ 0.367	$ 4,680	$ 0.384	$ 5,024	$ 0.412
			20,000		$ 6,265	$ 6,265	$ 0.230	$ 7,142	$ 0.262	$ 8,145	$ 0.299	$ 8,520	$ 0.313	$ 9,147	$ 0.336
			50,000		$ 13,161	$ 13,161	$ 0.263	$ 15,004	$ 0.300	$ 17,110	$ 0.342	$ 17,899	$ 0.358	$ 19,215	$ 0.384
			1,000		$ 695	$ 694.50	$ 0.277	$ 792	$ 0.315	$ 903	$ 0.360	$ 945	$ 0.376	$ 1,014	$ 0.404
			4,000		$ 1,525	$ 1,525	$ 0.225	$ 1,738	$ 0.257	$ 1,982	$ 0.293	$ 2,073	$ 0.307	$ 2,226	$ 0.329
98	M	Mercantile / Store - Shell	10,000	A	$ 2,877	$ 2,877	$ 0.171	$ 3,280	$ 0.195	$ 3,740	$ 0.222	$ 3,913	$ 0.232	$ 4,200	$ 0.249
			20,000		$ 4,585	$ 4,585	$ 0.173	$ 5,227	$ 0.198	$ 5,961	$ 0.225	$ 6,236	$ 0.236	$ 6,694	$ 0.253
			50,000		$ 9,789	$ 9,789	$ 0.196	$ 11,159	$ 0.223	$ 12,725	$ 0.255	$ 13,313	$ 0.266	$ 14,292	$ 0.286
			100		$ 122	$ 121.50	$ 0.350	$ 139	$ 0.399	$ 158	$ 0.455	$ 165	$ 0.476	$ 177	$ 0.511
			400		$ 227	$ 227	$ 0.118	$ 258	$ 0.134	$ 294	$ 0.153	$ 308	$ 0.160	$ 331	$ 0.172
99	M	Mercantile / Store - TI	1,000	A	$ 297	$ 297	$ 0.123	$ 339	$ 0.140	$ 386	$ 0.160	$ 404	$ 0.167	$ 434	$ 0.180
			2,000		$ 420	$ 420	$ 0.113	$ 479	$ 0.128	$ 546	$ 0.146	$ 571	$ 0.153	$ 613	$ 0.164
			5,000		$ 758	$ 758	$ 0.152	$ 864	$ 0.173	$ 985	$ 0.197	$ 1,030	$ 0.206	$ 1,106	$ 0.221
			5,000		$ 1,728	$ 1,727.50	$ 0.235	$ 1,969	$ 0.268	$ 2,246	$ 0.306	$ 2,349	$ 0.320	$ 2,522	$ 0.343
			20,000		$ 5,253	$ 5,253	$ 0.235	$ 5,988	$ 0.268	$ 6,828	$ 0.306	$ 7,143	$ 0.320	$ 7,669	$ 0.343
100	M	Mercantile / Store: Highrise - Complete	50,000	A	$ 12,305	$ 12,305	$ 0.235	$ 14,028	$ 0.268	$ 15,997	$ 0.305	$ 16,735	$ 0.319	$ 17,965	$ 0.343
			100,000		$ 24,050	$ 24,050	$ 0.235	$ 27,417	$ 0.268	$ 31,265	$ 0.306	$ 32,708	$ 0.320	$ 35,113	$ 0.343
			250,000		$ 59,301	$ 59,301	$ 0.237	$ 67,603	$ 0.270	$ 77,092	$ 0.308	$ 80,650	$ 0.323	$ 86,560	$ 0.346
			5,000		$ 1,494	$ 1,493.75	$ 0.188	$ 1,703	$ 0.214	$ 1,942	$ 0.244	$ 2,032	$ 0.255	$ 2,181	$ 0.274
			20,000		$ 4,309	$ 4,309	$ 0.188	$ 4,912	$ 0.214	$ 5,601	$ 0.244	$ 5,860	$ 0.256	$ 6,291	$ 0.275
101	M	Mercantile / Store: Highrise - Shell	50,000	A	$ 9,950	$ 9,950	$ 0.188	$ 11,343	$ 0.214	$ 12,935	$ 0.244	$ 13,532	$ 0.256	$ 14,527	$ 0.274
			100,000		$ 19,349	$ 19,349	$ 0.163	$ 22,058	$ 0.185	$ 25,153	$ 0.211	$ 26,314	$ 0.221	$ 28,249	$ 0.237
			250,000		$ 43,745	$ 43,745	$ 0.175	$ 49,869	$ 0.199	$ 56,868	$ 0.227	$ 59,493	$ 0.238	$ 63,867	$ 0.255
			200		$ 130	$ 130.00	$ 0.167	$ 148	$ 0.190	$ 169	$ 0.217	$ 177	$ 0.227	$ 190	$ 0.243
			800		$ 230	$ 230	$ 0.100	$ 262	$ 0.114	$ 299	$ 0.130	$ 313	$ 0.136	$ 336	$ 0.146
102	M	Mercantile / Store: Highrise - TI	2,000	A	$ 350	$ 350	$ 0.107	$ 399	$ 0.122	$ 455	$ 0.139	$ 476	$ 0.145	$ 511	$ 0.156
			4,000		$ 564	$ 564	$ 0.069	$ 643	$ 0.078	$ 733	$ 0.089	$ 767	$ 0.093	$ 823	$ 0.100
			10,000		$ 975	$ 975	$ 0.098	$ 1,112	$ 0.111	$ 1,268	$ 0.127	$ 1,326	$ 0.133	$ 1,424	$ 0.142
			5,000		$ 1,539	$ 1,538.75	$ 0.233	$ 1,754	$ 0.265	$ 2,000	$ 0.302	$ 2,093	$ 0.316	$ 2,247	$ 0.339
			20,000		$ 5,026	$ 5,026	$ 0.233	$ 5,730	$ 0.265	$ 6,534	$ 0.302	$ 6,836	$ 0.316	$ 7,338	$ 0.339
103	A-4	Arena	50,000	A	$ 12,001	$ 12,001	$ 0.233	$ 13,681	$ 0.265	$ 15,602	$ 0.302	$ 16,322	$ 0.316	$ 17,522	$ 0.339
			100,000		$ 23,626	$ 23,626	$ 0.233	$ 26,934	$ 0.265	$ 30,714	$ 0.302	$ 32,132	$ 0.316	$ 34,494	$ 0.339
			250,000		$ 58,501	$ 58,501	$ 0.234	$ 66,691	$ 0.267	$ 76,052	$ 0.304	$ 79,562	$ 0.318	$ 85,412	$ 0.342
			5,000		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			20,000		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
104	A-5	Amusement Park Structure: Deposit (Fees based on actual time @	50,000	A	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			100,000		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			250,000		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-C PERMIT/INSPECTION VARIABLE FEE SCHEDULE FOR NEW CONSTRUCTION

						CONSTRUCTION TYPE & *RATIO OF REQUIRED EFFORT*:									
						Group A: V-A / V-B		Group B: III-A / III-B		Group C: IV		Group D: II-A / II-B		Group E: I-A / I-B	
						Relative Effort Factor:		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*		*Relative Effort Factor:*	
						1.00		*1.14*		*1.30*		*1.36*		*1.46*	
Fee #	ICC (UBC) Use Type	Occupancy	Size Basis (square feet)	Type of Construction Category	Base Recommended Fee	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF	Base Cost	Each Additional SF
			10,000		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			40,000		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
105	A-5	Stadium: Deposit (Fees based on actual time @ staff houly rates)	100,000	A	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			200,000		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			500,000		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			200		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			800		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
106	CSR	Commercial TI - Structural Review Add-on	2,000	A	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			4,000		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			10,000		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			200		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			500		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
107	RSR	Residential Remodel / Addition - Structural Review Add-on	1,000	A	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			1,400		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			2,000		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			10,000		$ 975	$ 975.00	$ 0.048	$ 1,112	$ 0.055	$ 1,268	$ 0.063	$ 1,326	$ 0.066	$ 1,424	$ 0.071
			40,000		$ 2,424	$ 2,424	$ 0.047	$ 2,763	$ 0.053	$ 3,151	$ 0.061	$ 3,296	$ 0.064	$ 3,539	$ 0.068
108	M	Mercantile / Store: Highrise - TI (tier 2)	100,000	A	$ 5,234	$ 5,234	$ 0.047	$ 5,966	$ 0.053	$ 6,804	$ 0.061	$ 7,118	$ 0.064	$ 7,641	$ 0.068
			200,000		$ 9,918	$ 9,918	$ 0.047	$ 11,306	$ 0.053	$ 12,893	$ 0.061	$ 13,488	$ 0.064	$ 14,480	$ 0.068
			500,000		$ 23,973	$ 23,973	$ 0.048	$ 27,329	$ 0.055	$ 31,164	$ 0.062	$ 32,603	$ 0.065	$ 35,000	$ 0.070
			5,000		$ 631	$ 631.25	$ 0.057	$ 720	$ 0.065	$ 821	$ 0.074	$ 859	$ 0.078	$ 922	$ 0.083
			20,000		$ 1,486	$ 1,486	$ 0.047	$ 1,694	$ 0.053	$ 1,932	$ 0.061	$ 2,021	$ 0.064	$ 2,170	$ 0.068
109	M	Mercantile / Store: Non-Highrise - TI (tier 2)	50,000	A	$ 2,891	$ 2,891	$ 0.047	$ 3,296	$ 0.053	$ 3,759	$ 0.061	$ 3,932	$ 0.064	$ 4,221	$ 0.068
			100,000		$ 5,234	$ 5,234	$ 0.047	$ 5,966	$ 0.053	$ 6,804	$ 0.061	$ 7,118	$ 0.064	$ 7,641	$ 0.068
			250,000		$ 12,260	$ 12,260	$ 0.049	$ 13,976	$ 0.056	$ 15,938	$ 0.064	$ 16,674	$ 0.067	$ 17,900	$ 0.072
			-		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			-		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
110	-	0	-	-	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			-		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
			-		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-D - MPE FEES (Mechanical, Plumbing & Electrical stand alone Permits)

	Fee Service Information	*Effective July 1, 2010*	*Effective July 1, 2012*	*Effective July 1, 2013*
Fee #	Fee Title	Inspection/Permit Fees	Inspection/Permit Fees	Inspection/Permit Fees
1	**ADMINISTRATIVE (BASE) FEES**			
2	Permit Issuance and Administration * (applies to all permits and is in addition to the Permit/Inspection fees)	$ 53	$ 54	$ 54
3	Travel and Documentation (per permit)	$ 99	$ 99	$ 99
4	Each additional trip	$ 83	$ 83	$ 83
5	Plan Collation fee	$ 100	$ 100	$ 100
6	{unused}			
7	{unused}			
8	{unused}			
9	{unused}			
10	**MECHANICAL PERMIT FEES (Plan Check charged per hourly rates)**			
11	FAU less than 100,000 Btu/h	$ 100	$ 115	$ 127
12	FAU greater than 100,000 Btu/h	$ 100	$ 115	$ 127
13	Floor furnace (including vent)	$ 100	$ 115	$ 127
14	Suspended, wall, or floor-mounted heaters	$ 100	$ 115	$ 127
15	Appliance vents not included in an appliance permit	$ 100	$ 100	$ 100
16	Addition to each heating appliance, refrigeration unit, cooling unit, absorption unit, or each heating, cooling, absorption, or evaporative cooling system.	$ 100	$ 100	$ 100
17	Boiler or compressor, up to 3HP / Absorption system up to 100,000 Btu/h.	$ 150	$ 173	$ 190
18	Boiler or compressor, from 3HP to 15 HP / Absorption system from 100,000 Btu/h to 500,000 Btu/h.	$ 150	$ 173	$ 190
19	Boiler or compressor, from 15 HP to 30 HP / Absorption system from 500,000 Btu/h to 1,000,000 Btu/h.	$ 150	$ 173	$ 190
20	Boiler or compressor, from 30 HP to 50 HP, / absorption system from 1,000,000 Btu/h to 1,750,000	$ 175	$ 201	$ 221
21	Boiler or compressor, over 50 HP / Absorption system over 1,750,000 Btu/h.	$ 200	$ 230	$ 253
22	Air-handling unit, including attached ducts.	$ 245	$ 245	$ 245
23	Air-handling unit over 10,000 CFM	$ 298	$ 318	$ 318
24	Evaporative cooler	$ 100	$ 115	$ 127
25	Ventilation fan connected to a single duct	$ 100	$ 115	$ 127
26	Ventilation system (not a portion of heating or a/c system)	$ 100	$ 115	$ 127
27	Hood and duct system.	$ 100	$ 115	$ 127
28	Incinerator, residential	$ 50	$ 58	$ 63
29	Commercial or Industrial-type incinerator	$ 100	$ 115	$ 127
30	Misc. appliances or equipment.	$ 50	$ 58	$ 63
31	Misc. repair	$ 18	$ 20	$ 22
32	HVAC Exact change out	$ 29	$ 33	$ 36
33	HVAC minor repair	$ 53	$ 53	$ 53
34	Stand Alone Mechanical Plan Check (hourly rate)	$ 160	$ 160	$ 160
35	Other Mechanical Inspections (per hour)	$ 160	$ 160	$ 160
36	Walk in Cooler installation	$ 27	$ 27	$ 27
37	**PLUMBING / GAS PERMIT FEES (Plan Check charged per hourly rates)**			
38	Plumbing fixtures, including piping (each 10 fixtures)	$ 50	$ 58	$ 63

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-D - MPE FEES (Mechanical, Plumbing & Electrical stand alone Permits)

Fee Service Information		*Effective July 1, 2010*	*Effective July 1, 2012*	*Effective July 1, 2013*
Fee #	**Fee Title**	**Inspection/Permit Fees**	**Inspection/Permit Fees**	**Inspection/Permit Fees**
39	Building sewer install / repair / replacement (per 100 lf)	$ 75	$ 86	$ 95
40	Rainwater systems (per drain)	$ 18	$ 20	$ 22
41	Water Piping Replacement (each 2,500 sf) (Kitec & repipes)	$ 275	$ 316	$ 348
42	Gas Piping - 1-4 outlets	$ 75	$ 86	$ 95
43	Gas Piping - each additional 4 outlets	$ 29	$ 33	$ 36
44	Water Heater	$ 18	$ 20	$ 22
45	Industrial waste pretreatment interceptor	$ 76	$ 87	$ 96
46	Water softener equipment, including piping (each)	$ 18	$ 20	$ 22
47	Repair or alteration of drainage or vent piping, each fixture	$ 50	$ 58	$ 63
48	Backflow devices - each unit	$ 100	$ 115	$ 127
49	Atmospheric-type vacuum breakers: 1-5 units	$ 100	$ 115	$ 127
50	Atmospheric-type vacuum breakers: each additional 5 units	$ 100	$ 115	$ 127
51	Solar installations	$ 216	$ 249	$ 274
52	Med Gas (Does not apply to Dental Offices for compressed air & vacuum line only)	$ 266	$ 306	$ 337
53	Sewer Connection Fee	$ 45	$ 47	$ 47
54	Gas line repair or tag	$ 18	$ 20	$ 22
55	Stand Alone Plumbing Plan Check (hourly rate)	$ 160	$ 160	$ 160
56	Other Plumbing and Gas Inspections (per hour)	$ 160	$ 160	$ 160
57	Misc. repair	$ 33	$ 37	$ 41
58	**ELECTRICAL PERMIT FEES (Plan Check charged per hourly rates)**			
59	Special Events:	$ 100	$ 115	$ 127
60	Electric generator and electrically-driven rides	$ 100	$ 115	$ 127
61	Mechanically-driven rides/ attractions with electrical lighting	$ 100	$ 115	$ 127
62	Each system of area and booth lighting	$ 100	$ 115	$ 127
63	Receptacle, Switch, and Lighting Outlets:			
64	First 10	$ 100	$ 115	$ 127
65	Each Additional 10	$ 35	$ 40	$ 40
66	Pole or platform-mounted lighting fixtures (each 5)	$ 50	$ 58	$ 63
67	Theatrical-type lighting fixtures or assemblies (each)	$ 100	$ 115	$ 127
68	Residential Fixed Appliances (each 5)	$ 50	$ 58	$ 63
69	Nonresidential Fixed Appliances (each 2)	$ 100	$ 115	$ 127
70	Solar installations	$ 250	$ 250	$ 250
71	Meter tags	$ 50	$ 58	$ 63
72	Low voltage	$ 64	$ 64	$ 64
73	Misc. repair	$ 18	$ 20	$ 22
74	**Power Apparatus:**			
75	Motors, generators, transformers, rectifiers, synchronous converters, capacitors, industrial heating, air conditioners and heat pumps, cooking or baking equipment, and other apparatus:			
76	Rating in horsepower (HP - motors) or kilovolt-amperes (KVA - transformers):			
77	Up to and including 1 (each 3)	$ 150	$ 162	$ 162
78	Over 1 and not over 10 (each 3)	$ 190	$ 200	$ 200

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-D - MPE FEES (Mechanical, Plumbing & Electrical stand alone Permits)

	Fee Service Information		*Effective July 1, 2010*	*Effective July 1, 2012*	*Effective July 1, 2013*
Fee #	Fee Title		Inspection/Permit Fees	Inspection/Permit Fees	Inspection/Permit Fees
79	Over 10 and not over 50 (each 3)		$ 200	$ 230	$ 242
80	Over 50 and not over 100 (each 3)		$ 300	$ 345	$ 352
81	Over 100 (each)		$ 450	$ 518	$ 543
82	Roof mounted photovoltaic system - 3 power apparatus		$ 300	$ 345	$ 380
83	Ground mounted photovoltaic system - 3 apparatus		$ 200	$ 230	$ 253
84	Note: These fees include all switches, circuit breakers, contactors, thermostats, relays, and other directly related control equipment.				
85	Busways:				
86	-				
87	(An additional fee will be required for lighting fixtures, motors, and other appliances that are connected to trolley and plug-in-type busways. No fee is required for portable tools.)				
88	Signs, Outline Lighting, and Marquees:		$ 100	$ 100	$ 100
89	Signs, Outline Lighting, or Marquees supplied from one branch circuit (each)		$ 150	$ 173	$ 190
90	Additional branch circuits within the same sign, outline lighting system, or marquee (each)		$ 100	$ 115	$ 127
91	-				
92	-				
93	**Services:**				
94	Services of 600 volts or less and not over 200 amperes in rating (each)		$ 100	$ 115	$ 127
95	Services of 600 volts or less and over 200 amperes to 1000 amperes in rating (each)		$ 150	$ 173	$ 190
96	Services over 600 volts or over 1000 amperes in rating (each)		$ 200	$ 230	$ 253
97	Service Change		$ 150	$ 173	$ 190
98	Miscellaneous Apparatus, Conduits, and Conductors		$ 150	$ 173	$ 190
99	Electrical apparatus, conduits, and conductors for which a permit is required, but for which no fee is herein set forth		$ 150	$ 173	$ 190
100	Temporary Power Service		$ 50	$ 50	$ 50
101	Temporary Power Service with Subpanel		$ 50	$ 58	$ 63
102	Temporary power pole.		$ 50	$ 50	$ 50
103	Sub poles (each)		$ 30	$ 30	$ 30
104	Exact Panel change out		$ 30	$ 30	$ 30
105	Minor Electrical		$ 50	$ 58	$ 63
106	Meter pedestal		$ 25	$ 29	$ 30
107	Stand Alone Electrical Plan Check (hourly rate)		$ 160	$ 160	$ 160
108	Other Electrical Inspections (per hour)		$ 160	$ 160	$ 160
109	Parking Lot Lighting		$ 100	$ 115	$ 127

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-E OTHER CONSTRUCTION FEES - MISCELLANEOUS ITEMS

Fee Service Information		*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	**Fee Title**	**Plan Check Fees**	**Inspection/Permit Fees**	**Plan Check Fees**	**Inspection/Permit Fees**	**Plan Check Fees**	**Inspection/Permit Fees**
	*Permit Issuance and Administration * (see MPE Fee chart - the Permit Issuance and Administration Fee applies to all permits and is in addition to the Permit/Inspection fees)*						
1	Administrative Appeal (B.O. Hearing Committee) Total Cost per Appeal	$ 125	$ -	$ 144	$ -	$ 158	$ -
2	Amusement Ride Initial Application (Structural Reviews are additional costs at the per hour rates)	$ 172	$ -	$ 172	$ -	$ 172	$ -
3	Amusement Ride Annual Re-Certification (Structural Reviews are additional costs at the per hour rates)	$ 80	$ -	$ 80	$ -	$ 80	$ -
4	Board of Appeals - Filing / Processing	$ 20	$ -	$ 20	$ -	$ 20	$ -
5	Board of Appeals - Appeal Hearing (Actual Time @ staff billable hourly rates)	$ -	$ -	$ -	$ -	$ -	$ -
6	Canopy - Motor Vehicle Fueling Stations (each canopy)	$ 161	$ 131	$ 185	$ 150	$ 203	$ 150
7	Canopy - Other (first 300 sf)	$ 161	$ 131	$ 185	$ 150	$ 203	$ 150
8	each additional 300 sf	$ 32	$ 131	$ 37	$ 150	$ 41	$ 150
9	Carport - pre-fab (Residential)	$ 93	$ 50	$ 107	$ 57	$ 118	$ 57
10	Carport - Custom and Commercial (first 300 sf)	$ 113	$ 76	$ 129	$ 88	$ 142	$ 88
11	each additional 300 sf	$ 15	$ 61	$ 18	$ 70	$ 20	$ 70
12	Cellular / Mobile Phone Tower	$ 251	$ 409	$ 289	$ 470	$ 318	$ 517
13	Non-Work Certificate of Occupancy	$ 71	$ 63	$ 82	$ 72	$ 90	$ 72
14	Change of Address	$ 69	$ -	$ 69	$ -	$ 69	$ -
15	Change of Contractor	$ 65	$ -	$ 75	$ -	$ 82	$ -
16	Investigation - Change of Occupancy	$ 100	$ 100	$ 115	$ 115	$ 127	$ 126
17	Construction Trailer	$ 55	$ 165	$ 63	$ 190	$ 70	$ 208
18	Conversion to Real Property (mobile home)	$ 63	$ 35	$ 72	$ 40	$ 79	$ 44
19	Clean Water Coalition - Staff Administration and Processing	$ -	$ -	$ -	$ -	$ -	$ -
20	Deck / Balcony - first 300 sf	$ 120	$ 89	$ 138	$ 102	$ 152	$ 112
21	Each additional 100 sf	$ 15	$ 40	$ 15	$ 40	$ 15	$ 40
22	Deck / Balcony - Engineered - first 300 sf	$ 120	$ 89	$ 138	$ 102	$ 152	$ 112
23	Each additional 100 sf	$ 15	$ 41	$ 18	$ 47	$ 20	$ 52
24	DCP Tortoise Fees - Staff Administration and Processing	$ 63	$ -	$ 72	$ -	$ 79	$ -
25	Demolition	$ 63	$ 78	$ 72	$ 89	$ 72	$ 89
26	Deferred Submittal (additional fees for plan review time not included)	$ 225	$ -	$ 225	$ -	$ 225	$ -
27	**Disaster Repair:**						
28	Fire	$ 101	$ 551	$ 116	$ 634	$ 127	$ 697
29	Water	$ 100	$ 405	$ 116	$ 466	$ 121	$ 489
30	Vehicle	$ 87	$ 195	$ 100	$ 224	$ 110	$ 247
31	Other	$ 87	$ 188	$ 100	$ 216	$ 110	$ 237
32	Entry Gates (AVI)	$ 184	$ 59	$ 212	$ 68	$ 233	$ 74
33	Express Admin for Express Plan Check [no cost analysis]	$ 500	$ -	$ 500	$ -	$ 500	$ -
34	Express Plan Check - Per Hour [no cost analysis]	$ 600	$ -	$ 600	$ -	$ 600	$ -
35	Express Inspection	$ -	$ 125	$ -	$ 144	$ -	$ 158
36	**Fence or Wall (wood, chain link, wrought iron):**						

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-E OTHER CONSTRUCTION FEES - MISCELLANEOUS ITEMS

Fee Service Information		*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	**Fee Title**	**Plan Check Fees**	**Inspection/Permit Fees**	**Plan Check Fees**	**Inspection/Permit Fees**	**Plan Check Fees**	**Inspection/Permit Fees**
	*Permit Issuance and Administration * (see MPE Fee chart - the Permit Issuance and Administration Fee applies to all permits and is in addition to the Permit/Inspection fees)*						
37	up to 6 feet in height, 1st 100 l.f.	$ 59	$ 91	$ 68	$ 105	$ 74	$ 105
38	Each additional 100 lf	$ 49	$ 56	$ 49	$ 56	$ 49	$ 56
39	> 6 feet in height, 1st 100 l.f.	$ 58	$ 91	$ 66	$ 105	$ 73	$ 105
40	Each additional 100 lf	$ 49	$ 56	$ 49	$ 56	$ 49	$ 56
41	**Retaining Fence:**						
42	Keystone	$ 80	$ 186	$ 80	$ 186	$ 80	$ 186
43	Up to 12', first 100 lf	$ 78	$ 144	$ 89	$ 166	$ 98	$ 166
44	Greater than 12', first 100 lf	$ 83	$ 126	$ 95	$ 145	$ 104	$ 145
45	Each additional 100 lf	$ 74	$ 118	$ 74	$ 118	$ 74	$ 118
46	**Freestanding Wall:**						
47	Up to 12', first 100 lf	$ 71	$ 131	$ 82	$ 150	$ 90	$ 165
48	Greater than 12', first 100 lf	$ 78	$ 144	$ 89	$ 166	$ 98	$ 182
49	Each additional 100 lf	$ 80	$ 96	$ 80	$ 96	$ 80	$ 96
50	Fireplace - Masonry	$ 150	$ 330	$ 173	$ 380	$ 190	$ 417
51	Fireplace - Manufactured	$ 150	$ 165	$ 173	$ 190	$ 190	$ 209
52	Flag pole (greater than 6 feet in height)	$ 26	$ 41	$ 30	$ 47	$ 33	$ 52
53	Foundation (other then high-rise)	$ 326	$ 160	$ 326	$ 160	$ 326	$ 160
54	Fast track plumbing tags (no inspection)	$ 50	$ -	$ 50	$ -	$ 50	$ -
55	Fire Permit Admin Processing	$ 50	$ -	$ 50	$ -	$ 50	$ -
56	Garage - Private (first 1000 sf)	$ 156	$ 240	$ 180	$ 276	$ 198	$ 304
57	each additional 500 sf	$ 83	$ 119	$ 83	$ 119	$ 83	$ 119
58	**Grading (Cut and Fill):**						
59	Site Investigation	$ -	$ 125	$ -	$ 125	$ -	$ 125
60	Grading Plan Review (hourly rates when stand alone review is required)	$ -	$ -	$ -	$ -	$ -	$ -
61	Clear and Grub	$ 76	$ 38	$ 87	$ 43	$ 96	$ 47
62	Grading Plan Copy and Retention	$ -	$ -	$ -	$ -	$ -	$ -
63	50-100 CY	$ 67	$ 36	$ 77	$ 41	$ 85	$ 46
64	101 - 500 CY	$ 67	$ 46	$ 77	$ 52	$ 85	$ 58
65	501 - 1,000 CY	$ 67	$ 55	$ 77	$ 63	$ 85	$ 70
66	Each Add'l 100 CY or portion thereof (plus base fee)	$ 10	$ 15	$ 12	$ 17	$ 13	$ 19
67	10,000 CY (minimum)	$ 67	$ 100	$ 67	$ 100	$ 67	$ 100
68	Each Add'l 1,000 CY or portion thereof (plus base fee)	$ 10	$ 15	$ 12	$ 17	$ 13	$ 19
69	100,000 CY (minimum)	$ 67	$ 100	$ 67	$ 100	$ 67	$ 100
70	Each Add'l 10,000 CY or portion thereof (plus base fee)	$ 10	$ 15	$ 12	$ 17	$ 13	$ 19
71	**Erosion Control Permit:**						
72	< 1 acre	$ 3	$ 15	$ 3	$ 15	$ 3	$ 15
73	1 acre or more (per month)	$ -	$ 5	$ -	$ 6	$ -	$ 6
74	Agriculture	$ -	$ -	$ -	$ -	$ -	$ -
75	Storm Drain (>6" pipe diam) - first 100 lf	$ 97	$ -	$ 97	$ -	$ 97	$ -

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-E OTHER CONSTRUCTION FEES - MISCELLANEOUS ITEMS

Fee Service Information		*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	**Fee Title**	**Plan Check Fees**	**Inspection/Permit Fees**	**Plan Check Fees**	**Inspection/Permit Fees**	**Plan Check Fees**	**Inspection/Permit Fees**
	*Permit Issuance and Administration * (see MPE Fee chart - the Permit Issuance and Administration Fee applies to all permits and is in addition to the Permit/Inspection fees)*						
76	each additional 100 lf	$ 23	$ -	$ 23	$ -	$ 23	$ -
77	Stock Pile	$ 83	$ -	$ 83	$ -	$ 83	$ -
78	Drainage structure/manhole	$ 75	$ 165	$ 86	$ 190	$ 95	$ 209
79	Grandstand Seating / Bleachers - Fixed (up to 3 tiers or up to 300 lf of seating)	$ 150	$ 165	$ 173	$ 190	$ 190	$ 209
80	each additional 3 tiers or 300 lf of seating	$ 15	$ 40	$ 15	$ 40	$ 15	$ 40
81	Overtime Express (after regular working hours)		$ 188	$ -	$ 216	$ -	$ 238
82	Grandstand Seating / Bleachers - Non-Fixed / Moveable / Foldable (up to 3 tiers or up to 300 lf of seating)	$ 150	$ 165	$ 173	$ 190	$ 190	$ 209
83	each additional 3 tiers or 300 lf of seating	$ 15	$ 40	$ 15	$ 40	$ 15	$ 40
84	Special Inspection (SI) fees	$ -	$ 250	$ -	$ 288	$ -	$ 316
85	Investigation Inspection	$ -	$ 250	$ -	$ 288	$ -	$ 316
86	Misc. Repair / Interior Upgrades	$ 100	$ 150	$ 115	$ 173	$ 118	$ 178
87	Misc. Repair / Exterior Upgrades	$ 100	$ 150	$ 105	$ 158	$ 105	$ 158
88	Callout Inspections (Add-on Fee for Overtime) [Contract Minumum]	$ -	$ 330	$ -	$ 330	$ -	$ 330
89	Moved / Relocated Building (within 25 miles of county offices)	$ 94	$ 281	$ 108	$ 323	$ 119	$ 356
90	Each additional 10 miles (or portion thereof)	$ 58	$ -	$ 58	$ -	$ 58	$ -
91	On-sites - hardscapes and improvements	$ 169	$ 99	$ 169	$ 99	$ 169	$ 99
92	On-sites - water sewer	$ 169	$ 186	$ 169	$ 186	$ 169	$ 186
93	**Patio Cover (includes ICC Products) (attached and detached):**						
94	Lattice first 500 s.f.	$ 63	$ 76	$ 72	$ 88	$ 79	$ 96
95	Solid cover first 500 s.f.	$ 63	$ 76	$ 72	$ 88	$ 79	$ 96
96	Each additional 500 sf	$ -	$ 67	$ -	$ 67	$ -	$ 67
97	Engineered design (not ICC products - additional fee)	$ 153	$ 165	$ 176	$ 190	$ 194	$ 209
98	Footings	$ 56	$ 18	$ 64	$ 20	$ 71	$ 22
99	**Patio Enclosure:**						
100	Wood frame up to 1,000 s.f.	$ 109	$ 165	$ 125	$ 190	$ 138	$ 209
101	each additional 1,000 s.f.	$ 18	$ 165	$ 21	$ 190	$ 23	$ 209
102	Other frame (ICC products) up to 1,000 s.f.	$ 105	$ 89	$ 121	$ 102	$ 133	$ 112
103	additional 1,000 s.f.	$ 18	$ 89	$ 21	$ 102	$ 23	$ 112
104	Engineered design (not ICC products) up to 1,000 s.f.	$ 94	$ 126	$ 108	$ 145	$ 119	$ 160
105	additional 1,000 s.f.	$ 14	$ 126	$ 16	$ 145	$ 17	$ 160
106	Enclosure walls under existing roof first 1,000 s.f. of enclosed area	$ 235	$ 266	$ 270	$ 306	$ 297	$ 337
107	each additional 1,000 s.f. of enclosed area	$ 29	$ 266	$ 33	$ 306	$ 37	$ 337
108	Footings	$ 63	$ 18	$ 72	$ 20	$ 79	$ 22
109	OTC Express Reviews - Per Hour [no cost analysis]	$ 200	$ -	$ 200	$ -	$ 200	$ -
110	**Re-roofing - Residential:**						
111	First 10 squares or 1,000 sf	$ 63	$ 50	$ 72	$ 58	$ 79	$ 63
112	Each additional 10 squares	$ 16	$ 25	$ 16	$ 25	$ 16	$ 25
113	Roof Structure Replacement / Upgrade	$ 75	$ 80	$ 86	$ 92	$ 95	$ 101

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-E OTHER CONSTRUCTION FEES - MISCELLANEOUS ITEMS

Fee Service Information		*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	Fee Title	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees
	*Permit Issuance and Administration * (see MPE Fee chart - the Permit Issuance and Administration Fee applies to all permits and is in addition to the Permit/Inspection fees)*						
114	**Re-roofing - Commercial:**						
115	First 20 squares or 2,000 sf	$ 74	$ 81	$ 85	$ 93	$ 85	$ 93
116	Each additional 10 squares	$ 26	$ 27	$ 26	$ 27	$ 26	$ 27
117	Roof Structure Replacement / Upgrade	$ 115	$ 81	$ 132	$ 93	$ 145	$ 103
118	Sewer Connection - Staff Administration and Processing	$ 67	$ -	$ 67	$ -	$ 67	$ -
119	Overtime (OT) Plans Exam Requested - Per Hour (Add-on Fee for Overtime) [Contract Minumum]	$ 230	$ -	$ 240	$ -	$ 240	$ -
120	Shade Structures (first 300 sf)	$ 120	$ 89	$ 138	$ 102	$ 152	$ 112
121	each additional 300 sf	$ 106	$ 40	$ 106	$ 40	$ 106	$ 40
122	Shed (under 200 sf: over 200 sf = U occupancy))	$ 63	$ 53	$ 72	$ 60	$ 79	$ 66
123	**Signs:**						
124	Pole	$ 70	$ 76	$ 80	$ 88	$ 88	$ 96
125	Monument	$ 76	$ 21	$ 88	$ 24	$ 96	$ 27
126	Wall / Roof	$ 70	$ 120	$ 70	$ 120	$ 70	$ 120
127	Free-standing outdoor advertising (billboard)	$ 83	$ 33	$ 96	$ 37	$ 106	$ 41
128	Political signs	$ 19	$ -	$ 19	$ -	$ 19	$ -
129	Sales Office Conversions (e.g., model homes)	$ 60	$ 67	$ 60	$ 67	$ 60	$ 67
130	Stable (first 1000 sf)	$ 164	$ 169	$ 177	$ 182	$ 177	$ 182
131	each additional 500 sf	$ -	$ 80	$ -	$ 80	$ -	$ 80
132	Storage Racks (>5'9') - First 500 lf	$ 156	$ 125	$ 180	$ 144	$ 198	$ 158
133	each additional 500 lf	$ 15	$ 80	$ 15	$ 80	$ 15	$ 80
134	Misc. Structure (BBQ, Smoker, Sauna) (>5')	$ 88	$ 39	$ 101	$ 45	$ 111	$ 49
135	**Swimming Pool / Spa :**						
136	Vinyl-lined / fiberglass	$ 145	$ 176	$ 167	$ 203	$ 183	$ 223
137	Gunite (up to 800 s.f.)	$ 185	$ 318	$ 185	$ 318	$ 185	$ 318
138	each additional 800 s.f.	$ 29	$ 121	$ 29	$ 121	$ 29	$ 121
139	Commercial pool (up to 800 sf)	$ 514	$ 965	$ 591	$ 1,110	$ 650	$ 1,221
140	each additional 800 s.f.	$ 63	$ 293	$ 63	$ 293	$ 63	$ 293
141	Excavation Only	$ 3	$ -	$ 36	$ -	$ 40	$ -
142	Fountains / Water Features	$ 120	$ 124	$ 138	$ 142	$ 152	$ 157
143	Subterranean Pool Equipment Structure	$ 268	$ 796	$ 268	$ 796	$ 268	$ 796
144	Tanks (per tank)	$ 41	$ -	$ 41	$ -	$ 41	$ -
145	Propane	$ 63	$ 18	$ 72	$ 20	$ 79	$ 22
146	Tower (0-30 feet)	$ 120	$ 160	$ 120	$ 160	$ 120	$ 160
147	Tower (over 30 feet)	$ 120	$ 316	$ 120	$ 316	$ 120	$ 316
148	**Trellis:**						
149	First 500 sf	$ 108	$ 81	$ 124	$ 93	$ 136	$ 103
150	each additional 500 sf	$ 14	$ 79	$ 14	$ 79	$ 14	$ 79
151	Engineered design (additional fee)	$ 250	$ -	$ 250	$ -	$ 250	$ -

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-E OTHER CONSTRUCTION FEES - MISCELLANEOUS ITEMS

Fee Service Information		*Effective July 1, 2010*		*Effective July 1, 2012*		*Effective July 1, 2013*	
Fee #	Fee Title	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees	Plan Check Fees	Inspection/Permit Fees
	*Permit Issuance and Administration * (see MPE Fee chart - the Permit Issuance and Administration Fee applies to all permits and is in addition to the Permit/Inspection fees)*						
152	Alternate Methods and Materials (Actual Time @ staff billable hourly rates)	$ -	$ -	$ -	$ -	$ -	$ -
153	Trash Enclosures	$ 23	$ 82	$ 23	$ 82	$ 23	$ 82
154	Revisions to permitted projects (additional fees for plan review time not included)	$ 94		$ 108	$ -	$ 119	$ -
155	Inspection Re-fees	$ -	$ 100	$ -	$ 115	$ -	$ 127
156	Kiosk (e.g., DVD rentals), including electrical	$ 50	$ 100	$ 57	$ 115	$ 63	$ 127
157	Product Approval (Actual Time @ Staff Hourly Rates) (hourly rate)	$ 550	$ -	$ 550	$ -	$ 550	$ -
158	**HOURLY RATES:**						
	Services Beyond Standard Fee (per the Director - Actual Time @ Staff Hourly Rates) (hourly rate)		$ -		$ -		$ -
159	Extraordinary Examination - Supplemental Plan Check Fee (first 1/2 hour)	$ 94	$ -	$ 108	$ -	$ 108	$ -
160	Extraordinary Examination - Each Additional 1/2 hour (or portion thereof)	$ 47	$ -	$ 54	$ -	$ 59	$ -
161	Extraordinary Examination - Structural Plans Examiner (per hour)	$ 160	$ -	$ 160	$ -	$ 160	$ -
162	Extraordinary Inspection -Supplemental Inspection Fee (first 1/2 hour)	$ -	$ 94	$ -	$ 108	$ -	$ 108
163	Extraordinary Inspection - Each Additional 1/2 hour (or portion thereof)	$ -	$ 80	$ -	$ 80	$ -	$ 80
164	**Fees Relating to a Contractor's Requested Assignment of Personnel to a Project:**						
165	Permit Technicians (Sr / II's) (per hour)	$ 136	$ -	$ 136	$ -	$ 136	$ -
166	Investigations - Sewer (per hour)	$ -	$ 78	$ -	$ 89	$ -	$ 98
172	Investigations - Non-Sewer (per hour)	$ -	$ 125	$ -	$ 144	$ -	$ 158
173	Plans Examiner or Supervisor (per hour)	$ 160	$ -	$ 160	$ -	$ 160	$ -
174	Building Inspector (per hour)	$ -	$ 160	$ -	$ 160	$ -	$ 160
175	Inspection Supervisor (per hour)	$ -	$ 160	$ -	$ 160	$ -	$ 160
176	Special Inspection Auditor (per hour)	$ -	$ 160	$ -	$ 160	$ -	$ 160
177							
	TOTALS:						

City of Las Vegas
2010 BUILDING USER FEES

Building & Safety Department

Table No. 3-F ADMINISTRATIVE and INVESTIGATIVE FEES

Relating to Special Inspection Agencies, Special Inspectors and Steel Fabricators

Approved SI Agency	Special Inspector	Approved Steel Fabricator
Performance of Special Inspection activities on a site without an approved permit. $400.00 ea occurrence	Performance of Special Inspection activities on a site without an appropriate permit. $100.00 ea occurrence	Failure to perform necessary inspection activities. $250.00 ea occurrence
Performance of Special Inspection activities by an unapproved person. $400.00 ea occurrence	Performance of Special Inspection activities when not approved for inspection items. $100.00 ea occurrence	Failure to document inspection activities. $250.00 ea occurrence
Failure of agency to perform necessary Special Inspection activities. $250.00 ea occurrence		
Failure of agency to document Special Inspection activities $250.00 ea occurrence		

BUSINESS IMPACT STATEMENT
BILL NO. 2010-37
(Amends the City's Administrative Code to adopt new fee tables applicable to permits, inspections and other services performed in connection with the City's technical codes, and to make other permit-related adjustments)

This business impact statement was prepared pursuant to NRS 237.090 to address the impact of a proposed ordinance, Bill No. 2010-37, that will amend the City's Administrative Code to adopt new fee tables applicable to permits, inspections and other services performed in connection with the City's technical codes, and to make other permit-related adjustments. Elements of the amendment include:

–Fees that are based on the cost of services provided rather than the estimated value of construction.
–Built-in adjustments in 2012 and 2013, unless the increases are not needed.
–In the case of projects involving the work of more than one trade, a requirement for the general contractor to obtain all permits and pay all related fees.

1. The following constitutes a description of the manner in which comment was solicited from affected businesses, a summary of their responses and an explanation of the manner in which other interested persons may obtain a copy of the summary.

A notice regarding the proposed changes, including an invitation to respond, was published on three consecutive days in the Las Vegas Review-Journal. In addition, a copy of the notice was provided to the Southern Nevada Home Builders Association and to the local chapters of the Associated General Contractors, American Institute of Architects (AIA), and National Association of Industrial and Office Properties (NAIOP). Written responses, including objections, were received from the local chapters of the AIA and NAIOP. A letter of no objection was received from the Structural Engineers Association of Southern Nevada.

Among the concerns raised by the local chapter of AIA were the following:

–That the fee structure's concepts of "included" examination and inspection time and "extraordinary" examination and construction time do not encourage accountability, competence or efficiency on the part of the City.
–That the fee structure should be valuation-based rather than size-based.
–That the fee structure should be more consistent and predictable, and less reliant on City interpretation and judgment.

Among the concerns raised by the local chapter of NAIOP were the following:

–That the fee table classifications should be more closely matched to International Building Code provisions,
–That the ordinance should contain clarifications regarding how fees are to be assessed for broadly based renovations, phased, and/or prototypical projects.
–That the fee tables should not differentiate between shell buildings with potentially different occupancies.
–That the ordinance should include provisions allowing an applicant to challenge the

classification of plans check and inspection fees.
–That fee increases should be accompanied by commensurate increases in service.

2. The estimated economic effect of the proposed rule on businesses, including, without limitation, both adverse and beneficial effects, and both direct and indirect effects:

Adverse effects:

–Increased costs of doing business and a less predictable process and result in fee determination

Beneficial effects:

–Enable the Department of Building and Safety to maintain service levels relating to plans review, inspections and related functions

Direct effects:

See adverse and beneficial effects above

Indirect effects:

None identified

3. The following constitutes a description of the methods the local government considered to reduce the impact of the proposed rule on businesses and a statement regarding whether any, and if so which, of these methods were used:

The Department of Building and Safety is actively considering ways to rework certain fee table categories during the ordinance process to reduce business impact

4. The estimate of the annual cost to the local government for enforcement of the proposed rule is:

No additional cost

5. If the proposed rule provides for a new fee or increases an existing fee, the total annual amount expected to be collected is:

Approximately $7,786,815, representing a 25% increase over existing budgeted revenue levels for FY11.

6. If the proposed rule provides for a new fee or increases an existing fee, the money generated by the new fee or increase in existing fee will be used by the local government to:

Assist the Department of Building and Safety in maintaining service levels relating to plans review, inspections and related functions.

7. If the proposed rule includes provisions that duplicate or are more stringent than federal, state or local standards regulating the same activity, the following explains why such duplicative or more stringent provisions are necessary:

Not applicable

Date: July 22, 2010

City of Las Vegas Agenda Item No.: **76.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☐ **Consent** ☒ **Discussion**

SUBJECT:
NEW BILL:

Bill No. 2010-38 – Establishes time limits within which a member of the City Council may request reconsideration of Council action to deny a zoning-related application. (TXT-35753)
Sponsored by: Councilman Steven D. Ross

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This bill will establish time limits within which a member of the City Council may request reconsideration of Council action to deny a zoning-related application. The Planning and Development Department desires to have such time limits established by ordinance rather than having potential reconsiderations decided on a case-by-case basis. Under this bill, a Council request to reconsider must be made at the same meeting at which the denial occurs or within 14 days thereafter.

RECOMMENDATION:
This bill should be submitted to a Recommending Committee for review, hearing and recommendation to the City Council for final action.

BACKUP DOCUMENTATION:
Bill No. 2010-38

BILL NO. 2010-38

ORDINANCE NO. _____

AN ORDINANCE TO ESTABLISH TIME LIMITS WITHIN WHICH A MEMBER OF THE CITY COUNCIL MAY REQUEST RECONSIDERATION OF COUNCIL ACTION TO DENY A ZONING-RELATED APPLICATION, AND TO PROVIDE FOR OTHER RELATED MATTERS.

Sponsored by: Councilman Steven D. Ross

Summary: Establishes time limits within which a member of the City Council may request reconsideration of Council action to deny a zoning-related application.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Title 19, Chapter 18, Section 10, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended by adding thereto a new subsection, designated as Subsection (I), reading as follows:

(I) Reconsideration of Council Action to Deny an Application

(1) Action by the City Council to deny an application, where such action is "final action" under the provisions of this Chapter, shall be deemed final action for purposes of judicial review, subject to the provisions of Paragraph (2) below. However, for purposes other than judicial review, City Council action taken pursuant to this Paragraph (1) or Paragraph (2) below shall be subject to the provisions of Paragraphs (3) through (5) below.

(2) Any member of the City Council who voted with the majority regarding an application referred to in Paragraph (1) above may, at the same meeting at which the action was taken, request that the item be reconsidered at that meeting.

(3) During the period of fourteen calendar days following action taken pursuant to Paragraphs (1) or (2) above to deny an application, any member of the City Council who voted with the majority regarding the application may file with the City Clerk a written request for the item to be rescinded and reconsidered. If such a request is made (and subject to the provisions of Paragraph (4) below), an appropriate item to rescind the previous vote shall be put on the next available Council agenda, and a follow-up item to reconsider the vote may be put on that same agenda or the next available agenda.

(4) No agenda item to rescind or to reconsider an item under this Subsection (I) shall be considered unless:

(a) Consideration of the item is in compliance with the requirements of NRS Chapter 241; and

(b) Notice of consideration of the item has been provided to property owners (and published) to the same extent as when the item was heard previously.

(5) The provisions of this Subsection (I) shall apply notwithstanding any other provision of this Chapter, and notwithstanding any custom or procedural rule that governs or has governed action by the City Council.

SECTION 2: For purposes of Section 2.100(3) of the City Charter, LVMC 19.18.010 is deemed to be a subchapter rather than a section.

SECTION 3: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

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SECTION 4: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Val Steed 8-4-10
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

City of Las Vegas Agenda Item No.: **77.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC ☐ **Consent** ☒ **Discussion**

SUBJECT:
NEW BILL:

Bill No. 2010-39 – Amends the permit requirements pertaining to group use of City parks, establishes limitations on certain law enforcement activities in City parks, provides that a portion of James Gay Park (currently a children's park) will be made available for general use, and deletes obsolete provisions relating to park use. Proposed by: Bradford R. Jerbic, City Attorney

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
This bill is proposed as a means of implementing a settlement agreement in the case currently pending before the Ninth Circuit Court of Appeals, entitled Sacco v. City of Las Vegas (Case No 07-17394). In accordance with the terms of the settlement, the bill will amend the permit requirements pertaining to group use of City parks, establish limitations on certain law enforcement activities in City parks, and provide that a portion of James Gay Park (currently a children's park) will be made available for general use. In addition, the bill will delete obsolete provisions regarding feeding activities in City parks.

RECOMMENDATION:
This bill should be submitted to a Recommending Committee for review, hearing and recommendation to the City Council for final action.

BACKUP DOCUMENTATION:
1. Bill No. 2010-39
2. Business Impact Statement

BILL NO. 2010-39

ORDINANCE NO. _____

AN ORDINANCE RELATING TO CITY PARKS; AMENDING THE PERMIT REQUIREMENTS PERTAINING TO GROUP USE; ESTABLISHING LIMITATIONS ON CERTAIN LAW ENFORCEMENT ACTIVITIES IN CITY PARKS; PROVIDING THAT A PORTION OF JAMES GAY PARK (CURRENTLY A CHILDREN'S PARK) WILL BE MADE AVAILABLE FOR GENERAL USE; DELETING OBSOLETE PROVISIONS; AND PROVIDING FOR OTHER RELATED MATTERS.

Proposed by: Bradford R. Jerbic, City Attorney

Summary: Amends the permit requirements pertaining to group use of City parks, establishes limitations on certain law enforcement activities in City parks, provides that a portion of James Gay Park (currently a children's park) will be made available for general use, and deletes obsolete provisions.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Title 13, Chapter 36, Section 10, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

13.36.010: The Director of the Department of [Parks and Leisure Activities] Leisure Services shall exercise such powers and perform such duties as may be specified by the City Council or the City Manager. As used in this Chapter, the term "Department" refers to the Department of Leisure Services, and the term "Director" refers to the Director of that Department or the Director's designee.

SECTION 2: Title 13, Chapter 36, Section 80, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

13.36.080: (A) Any person who desires to use any park or recreational facility of the City for [a group of twenty-five individuals or more, or any person who desires to conduct some event in which it could reasonably be assumed that twenty-five or more persons might gather at a park or recreational facility of the City to participate in or witness such event,] any demonstration, festival, fair, concert or any other organized assemblage of seventy-five or more participants shall first apply and obtain a permit from the Director. For purposes of this Subsection (A), "participant" means any individual who, along with others, is gathered for a common purpose under the direction, control or invitation of a person or group of people.

(B) This Section does not apply to any event which is sponsored by the Department.

SECTION 3: Title 13, Chapter 36, Section 90, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

13.36.090: The Director may deny or condition the issuance of any permit which is applied for pursuant to Section 13.36.090 in order to:

(A) Protect the use and enjoyment of the park or facility for other members of the public;

(B) Protect the health and safety of all persons who visit the park or facility;

(C) Ensure that there is adequate parking and sanitary facilities to accommodate all persons who use the park or facility;

(D) Protect the grounds, equipment, vegetation, buildings, fences and other amenities of the park or facility from damage, overuse or destruction;

(E) Provide that the park or facility and the surrounding area is kept clean and free from debris;

(F) Ensure that the group use does not disturb [or annoy] persons who occupy land which is nearby such park or facility.

SECTION 4: (A) The deputy marshals of the City may not, without due process of law, remove a person from, or require a person to leave, a public park under the authority of any statute or ordinance relating to trespassing.

(B) The City, including its deputy marshals, may ban a person from a public park only when there is evidence of unlawful activity, and may do so only pursuant to:

(1) A lawful arrest or criminal citation and subsequent court order; or

(2) An ordinance providing for an administrative appeal hearing and the availability of subsequent judicial review.

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SECTION 5: (A) The following portion of James Gay Park, generally located at the southeast corner of "B" Street and Harrison Avenue, shall be set aside for use by adults, whether or not they are accompanying children:

That portion of James Gay Park located south of Harrison Avenue and north of the easterly extension of the centerline of West Van Buren Avenue.

(B) The City shall erect a fence between the portion of James Gay Park described in Subsection (A) of this Section and the remaining portion of the park, which will continue to operate under LVMC Chapter 13.36 as a children's park. The City shall also install an entry gate in the fence along Harrison Avenue to provide access to the portion described in Subsection (A).

SECTION 6: Title 13, Chapter 36, Section 55, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

13.36.055: (A) The following are prohibited within any City park:

(1) Fireworks, firearms or weapons of any kind;

(2) Fires, except in barbecue facilities;

(3) The hitting of golf balls;

(4) The use of metal detectors, except for surface finds; and

(5) The unauthorized sale of goods or services. [; and

(6) The providing of food or meals to the indigent for free or for a nominal fee. For purposes of this Paragraph, an indigent person is a person whom a reasonable ordinary person would believe to be entitled to apply for or receive assistance under NRS Chapter 428.]

(B) Pursuant to Subsection (B) of Section 13.36.050, a copy or summary of the regulations listed in Subsection (A) of this Section shall be posted at each City park.

SECTION 7: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections,

subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 8: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OS CAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Val Steed 8-4-10
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

BUSINESS IMPACT STATEMENT
BILL NO. 2010-39
(Amends the permit requirements pertaining to group use of City parks, establishes limitations on certain law enforcement activities in City parks, provides that a portion of James Gay Park (currently a children's park) will be made available for general use, and deletes obsolete park-related provisions)

This business impact statement was prepared pursuant to NRS 237.090 to address the impact of a proposed ordinance, Bill No. 2010-39, that would amend the permit requirements pertaining to group use of City parks, establish limitations on certain law enforcement activities in City parks, provide that a portion of James Gay Park (currently a children's park) will be made available for general use, and delete obsolete provisions.

1. The following constitutes a description of the number of the manner in which comment was solicited from affected businesses, a summary of their responses and an explanation of the manner in which other interested persons may obtain a copy of the summary.

Not applicable

2. The estimated economic effect of the proposed rule on businesses, including, without limitation, both adverse and beneficial effects, and both direct and indirect effects:

Adverse effects:

None identified

Beneficial effects:

None identified

Direct effects:

None identified

Indirect effects:

None identified

3. The following constitutes a description of the methods the local government considered to reduce the impact of the proposed rule on businesses and a statement regarding whether any, and if so which, of these methods were used:

Not applicable

4. The governing body estimates the annual cost to the local government for enforcement of the proposed rule is:

No additional cost

5. If the proposed rule provides for a new fee or increases an existing fee, the total annual amount expected to be collected is:

Not applicable

6. If the proposed rule provides for a new fee or increases an existing fee, the money generated by the new fee or increase in existing fee will be used by the local government to:

Not applicable

7. If the proposed rule includes provisions that duplicate or are more stringent that federal, state or local standards regulating the same activity, the following explains when such duplicative or more stringent provisions are necessary:

Not applicable

Date: August 4, 2010

City of Las Vegas Agenda Item No.: **78.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: CITY CLERK
DIRECTOR: BEVERLY K. BRIDGES ☐ **Consent** ☒ **Discussion**

SUBJECT:

Any items from the afternoon session that the Council, staff and /or the applicant wish to be stricken or held in abeyance to a future meeting may be brought forward and acted upon at this time

City of Las Vegas Agenda Item No.: **79.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: NEIGHBORHOOD SERVICES
DIRECTOR: STEPHEN K. HARSIN ☐ **Consent** ☒ **Discussion**

SUBJECT:
ABEYANCE ITEM - Hearing and possible action regarding review of compliance with City Council's decision concerning Nuisance Notice and Order and to consider preliminary report of expenses to recover fees and penalties for inspections located at 409 Santa Fe Street.
PROPERTY OWNER: MICHAEL E. PAVICH - Ward 1 (Tarkanian)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
The subject property was determined to be a public nuisance as defined in Las Vegas Municipal Code, Title 9, dealing with nuisance. A Nuisance Notice and Order to Comply was mailed to the property owner to correct the public nuisance as defined in Las Vegas Municipal Code, Title 9.04.010 (10) Classic Vehicles; 9.04.010 (11) Vehicle Inspection/Enforcement; 9.12.030 Stored Materials. A copy of the notice was also posted on the property.

RECOMMENDATION:
Review compliance with City Council's decision concerning Nuisance Notice and Order and to consider report of expenses to recover fees and penalties for inspections.

BACKUP DOCUMENTATION:
1. Agenda Memo
2. Location Maps
3. Nuisance Notice and Order to Comply
4. Spreadsheet of Charges Accrued
5. Review Hearing Notification Letters

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: August 18, 2010
DEPARTMENT: Neighborhood Services
ITEM DESCRIPTION: ABEYANCE ITEM - Hearing and possible action regarding review of compliance with City Council's decision concerning Nuisance Notice and Order and to consider preliminary report of expenses to recover fees and penalties for inspections located at 409 Santa Fe Street. PROPERTY OWNER: MICHAEL E. PAVICH - Ward 1 (Tarkanian)

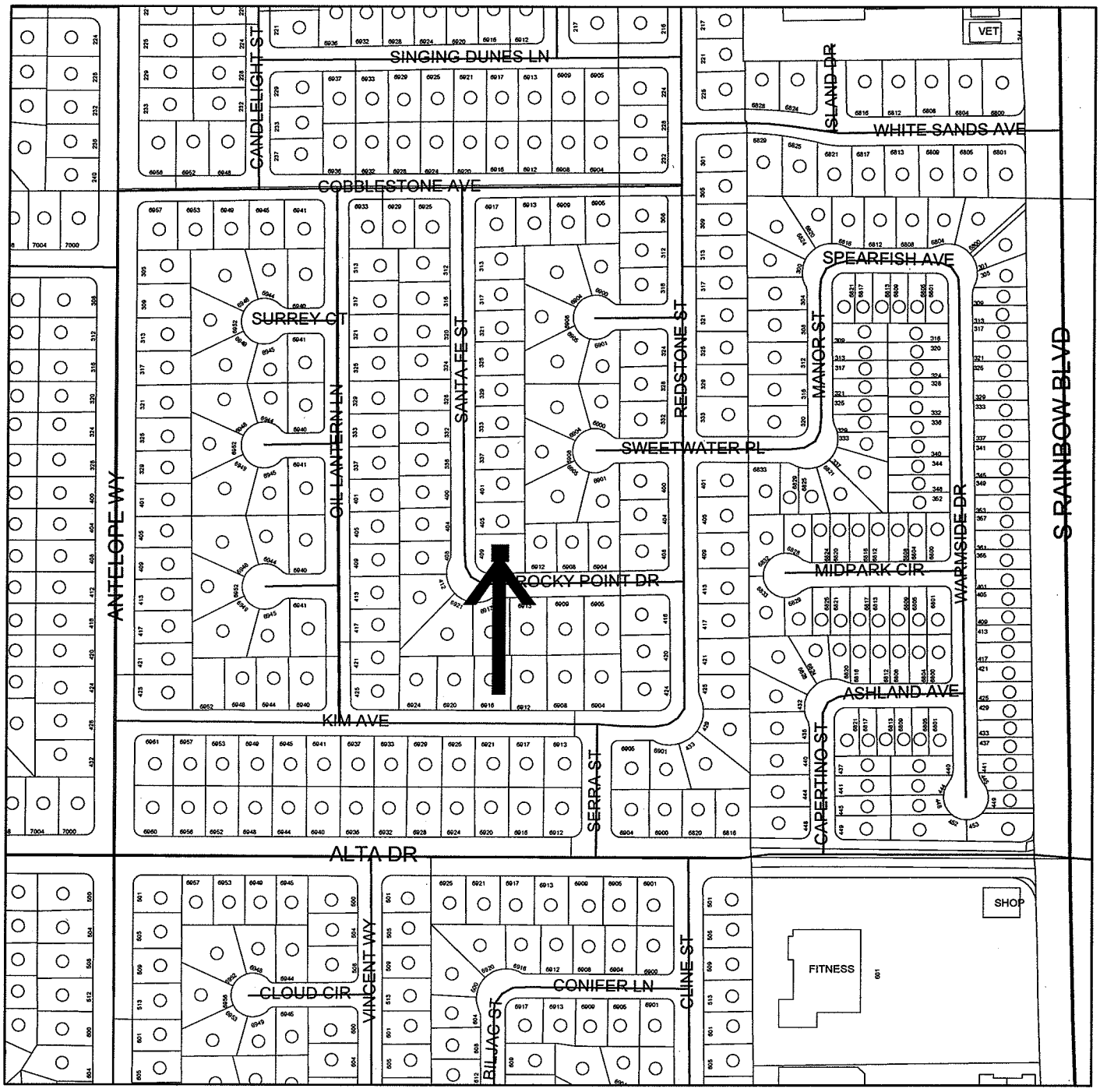
The subject property was deemed to be a public nuisance as defined in Las Vegas Municipal Code, Title 9, dealing with nuisance.

A Nuisance Notice and Order to Comply was sent to the property owner by regular and certified mail requesting they correct the public nuisance as defined in Las Vegas Municipal Code, Title 9.04.010 (10) Classic Vehicles; 9.04.010 (11) Vehicle Inspection/Enforcement; 9.12.030 Stored Materials. A copy of the notice was also posted on the property.

Today's hearing is to consider the appeal of the Nuisance Notice and Order to Comply filed by George E. Graziadei, Esquire of Graziadei & Cantor, Ltd. on behalf of Michael E. Pavich, owner and responsible party.

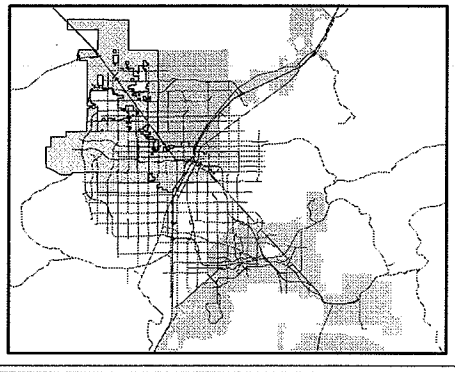
409 SANTA FE STREET
CROSS STREETS - ALTA//RAINBOW

City of Las Vegas Vicinity Map



N

0 170 340 680 Feet

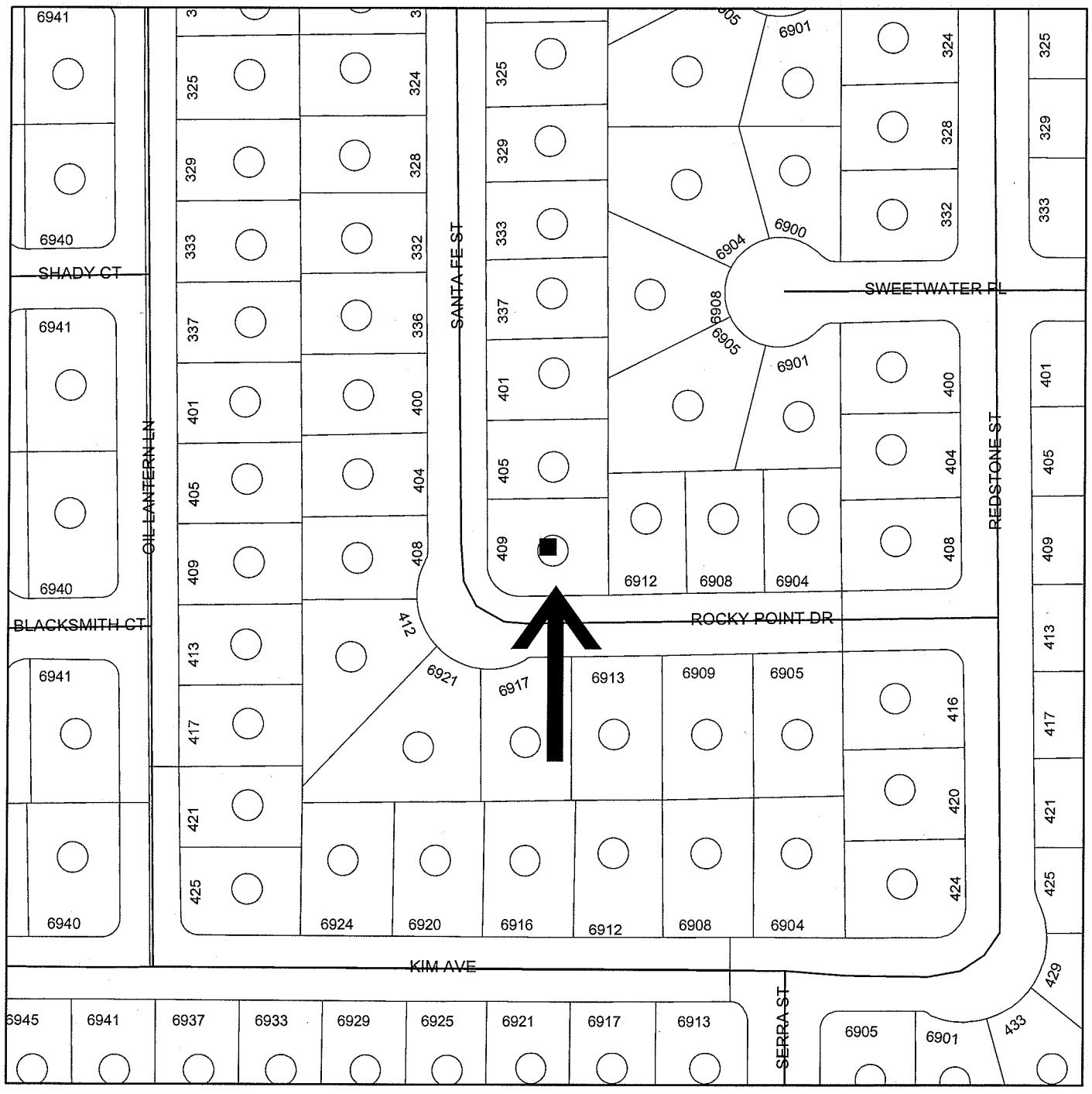


GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity this map is for reference only.
Geographic Information System
Planning & Development Dept.
702-229-6301

PLANNING & DEVELOPMENT

409 SANTA FE STREET
CROSS STREETS - ALTA//RAINBOW

City of Las Vegas Vicinity Map



GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity this map is for reference only.
Geographic Information System
Planning & Development Dept.
702-229-6301

PLANNING & DEVELOPMENT

Inst #: 201001120002501
Fees: $16.00
N/C Fee: $0.00
01/12/2010 12:32:28 PM
Receipt #: 191775
Requestor:
LAS VEGAS CITY
Recorded By: BGN Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

3

NEIGHBORHOOD SERVICES DEPARTMENT
DIRECTOR
STEPHEN K. HARSIN, AICP

NOTICE AND ORDER

APN: 138-34-613-022

January 8, 2010

Case #56923
Certified/Regular Mail
Return Receipt Requested

Michael E. Pavich
409 Santa Fe Street
Las Vegas, NV 89145-5327

AMENDED NUISANCE NOTICE AND ORDER TO COMPLY

You are hereby notified as owner(s) of the property located at **409 Santa Fe Street, Las Vegas, NV, Parcel 138-34-613-022**, that you are in violation of **Las Vegas Municipal Code, Title 9, dealing with nuisances.**

Per 9.04.010(10) – Classic Vehicles: Owner is required to show proof ownership of vehicles stored on property and proof of restoration. Contact Officer McCoy at 229-5184 for an appointment.

Per 9.04.010(11) Vehicle Insp/Enf: Owner must show proof of ownership of all stored vehicles, show proof of restoration once vehicles qualify as a "classic" vehicle, place a fitted car cover over the vehicles when not actively working on vehicles and store according to code.

Per 9.12.030 – Stored Materials: Remove cooling unit, red fabric chairs and any other items stored in public view.

LAS VEGAS CITY COUNCIL
MAYOR OSCAR B. GOODMAN
MAYOR PRO TEM GARY REESE • STEVE WOLFSON • LOIS TARKANIAN
STEVEN D. ROSS • RICKI Y. BARLOW • STAVROS S. ANTHONY
CITY MANAGER ELIZABETH N. FRETWELL

Return to: CITY OF LAS VEGAS • 400 STEWART AVENUE • LAS VEGAS, NEVADA 89101
VOICE 702.229.2330 • FAX 702.382.3901 • TTY 702.386.9108 • www.lasvegasnevada.gov

<u>Per 16.04.040 – Conformance Require</u>: Remove or obtain all required permits and inspections for shed and shade/patio cover located in North side yard.

<u>Per 9.04.010(1) – Res Veh Storage:</u> Remove vehicles stored on South side (Rocky Point) of property. Vehicles are not stored according to City code (c).

Upon correction of this violation(s), the responsible party; being resident, tenant, owner, or manager, licensee or other person having control over a structure or parcel of land, must maintain the property in compliance or face possible fees, fines, and any such enforcement as permitted by this code.

Responsible party must provide contact information to this department. Contact area code enforcement officer #25 Eric McCoy at 229-5184, to supply your current phone number, email address, fax number, or additional mailing address.

LVMC 9.04.020 authorizes the City of Las Vegas to assess and collect a re-inspection fee of $120.00 if the violation(s) are not brought into compliance by the re-inspection date on this notice. An additional fee of $180.00 per hour, one-hour minimum (not to be pro-rated), will be charged for each additional inspection after the initial re-inspection. In addition, LVMC 9.04.020 and 9.040.040 authorizes the city to assess a civil penalty concurrently with the re-inspection fees assessed. On the 2nd re-inspection a $180 re- inspection fee + a $150.00 civil penalty will be assessed; on the 3rd re-inspection a $180 re-inspection fee + a $300.00 civil penalty will be assessed; on the 4th re-inspection and any future re-inspections will be assessed a $180 re-inspection fee + a $500.00 civil penalty. Additionally, every person who causes or maintains a public nuisance, or who willfully omits or refuses to perform any legal duty relating to the abatement of such nuisance (1) shall be guilty of a misdemeanor; (2) shall be liable civilly to the City and, upon such findings shall be responsible to pay civil penalties of not more than five hundred ($500.00) dollars per day, or for commercial properties; civil penalties of not more than one thousand ($1000.00) per day, for each day that any nuisance remained unabated after the date specified for abatement in the notice of violation. The $500.00 or $1000 daily civil penalty will be determined at the discretion of the city council. Any and all unpaid fees are subject to collection and/or liens.

You are hereby ordered to correct the nuisance by the eleventh day after the day of mailing, servicing or posting of the Notice and Order by hand. If you do not correct the violation within that time, the City may issue a misdemeanor citation for violation for each and every day the violation exists, with a penalty of up to Five Hundred ($500.00) Dollars or fine of up to six (6) months in jail or both for each violation, or the City may direct a licensed contractor to remove the nuisance described below, or both. Be advised, the contractor will

collect all debris at this location and will not separate those items, which you may consider useful or valuable. If you wish to salvage any items, please have them removed.

As the property owner(s), you will be responsible for all costs incurred to correct this condition. A 15% percent administrative fee shall be added to the costs of the contract price.

If you disagree with the assessment of Neighborhood Response, then within ten (10) days after service of the notice of violation, the owner or responsible party may appeal to the City Council. Such appeal shall be in writing and shall be filed with the City Clerk. Within fifteen days after the appeal has been filed, the appellant shall be given written notice of the procedure and time frame for the hearing of the appeal.

The appeal shall be heard by the City council or by the Council's designee, with a right of final appeal to the Council. The decision of the City Council or the Council's designee, in cases where a designee hears an appeal and no further appeal is taken, shall be final and conclusive. An owner or responsible party failing to appeal as provided in this Section shall be deemed to have waived any and all objections to the existence of a public nuisance and the abatement of such nuisance. Failure to appeal will constitute a waiver of all rights to an administrative hearing and determination of the matter.

It is recommended that you contact the Department of Neighborhood Services, Neighborhood Response Division, by telephoning (702) 229-6615 concerning your intentions with regard to the referenced property at your earliest convenience.

Sincerely,



Devin Smith, Manager
Neighborhood Response Division
Department of Neighborhood Services

cc: Attorney G. Graziadei

Spreadsheet of charges accrued since September 4, 2007
409 Santa Fe Street – WARD 1, Tarkanian

Inspections	Date	Status	Fees	Late Fee	Civil Penalties per failed inspection	Accruing Total
1st inspection	08-21-07	Initial Assessment	No charge			
2nd inspection	09/04/07	Failed	$120	$12		$132
3rd inspection	09/26/07	Failed	$180	$18	$150	$480
4th inspection	10/03/07	Failed	$180	$18	$300	$978
5th inspection	10/10/07	Failed	$180	$18	$500	$1,676
6th inspection	10/17/07	Failed	$180	$18	$500	$2,374
7th inspection	10/31/07	Partial Pass	No charge			
8th inspection	11/08/07	Failed	$180	$18	$500	$3,072
9th inspection	11/15/07	Failed	$180	$18	$500	$3,770
10th inspection	11/29/07	Failed	$180	$18	$500	$4,468
11th inspection	03/05/08	Partial Pass	No charge			
12th inspection	07/21/08	Failed	$180	$18	$500	$5,166
13th inspection	12/16/08	Failed	$180	$18	$500	$5,864
14th inspection	12/30/08	Failed	$180	$18	$500	$6,562
15th inspection	01/13/09	Failed	$180	$18	$500	$7,260
16th inspection	01/29/09	Failed	$180	$18	$500	$7,958
17th inspection	02/12/09	Failed	$180	$18	$500	$8,656
18th inspection	02/26/09	Failed	$180	$18	$500	$9,354
19th inspection	04/01/09	Failed	$180	$18	$500	$10,052
20th inspection	05/12/09	Failed	$180	$18	$500	$10,750
21st inspection	05/27/09	Partial Pass	No charge			
22nd inspection	06/17/09	Partial Pass	No charge			
23rd inspection	07/23/09	Failed	$180	$18	$500	$11,448
24th inspection	07/16/09	Failed	$180	$18	$500	$12,146
25th inspection	08/03/09	Failed	$180	$18	$500	$12,844
26th inspection	09/01/09	Failed	$180	$18	$500	$13,542
27th inspection	09/15/09	Failed	$180	$18	$500	$14,240
28th inspection	10/01/09	Failed	$180	$18	$500	$14,938
29th inspection	11/17/09	Failed	$180	$18	$500	$15,636
30th inspection	12/01/09	Failed	$180	$18	$500	$16,334
31st inspection	12/28/10	Partial Pass	No charge			
32nd inspection	01/08/10	Partial Pass	No charge			
33rd inspection	01/15/10	Hold	No charge			
34th inspection	02/02/10	Hold	No charge			
35th inspection	03/02/10	Hold	No charge			
36th inspection	03/30/10	Hold	No charge			
37th inspection	04/05/10	Hold	No charge			
38th inspection	05/10/10	Failed	$180	$18	$500	$17,032
39th inspection	06/16/10	Failed	$180	$18	$500	$17,730
40th inspection	06/29/10	Failed	$180	$18	$500	$18,428
Sub-total			***$4,980***	***$498***	***$12,950***	***$18,428***
Payments (Inspection Fees)			***$0***	***$0***		***$0***
Payments (Civil Penalties)					***$0***	***$0***
Passed Inspection	Open					
TOTAL			***$4,980***	***$498***	***$12,950***	***$18,428***

LAS VEGAS CITY COUNCIL

MAYOR
OSCAR B. GOODMAN

GARY REESE, WARD 3
(MAYOR PRO-TEM)
STEVE WOLFSON, WARD 2
LOIS TARKANIAN, WARD 1
STEVEN D. ROSS, WARD 6
RICKI Y. BARLOW, WARD 5
STAVROS S. ANTHONY, WARD 4

CITY MANAGER
ELIZABETH N. FRETWELL

NEIGHBORHOOD
SERVICES DEPARTMENT

DIRECTOR
STEPHEN K. HARSIN, AICP

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.2330
FAX 702.382.3901
TTY 702 386.3045
www.lasvegasnevada.gov

August 4, 2010

Case #56923
Certified/Regular Mail
Return Receipt Requested

Michael E. Pavich
409 Santa Fe Street
Las Vegas, NV 89145-5327

RE: Notice of Abeyance - 409 Santa Fe Street

Dear Property Owner:

At the City Council meeting held on July 21, 2010, Agenda Item #71 was held in abeyance and is now scheduled to be heard on **August 18, 2010** at 1:00 p.m. This will be a hearing and possible action regarding review of compliance with City Council's decision concerning Nuisance Notice and Oder and to consider preliminary report of expenses to recover fees and penalties for inspections at 409 Santa Fe Street.

If you have any questions concerning this procedure, please contact the Neighborhood Response Division located in the Department of Neighborhood Services, by telephoning (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Department of Neighborhood Services

DSS:ld

cc: Graziadei & Cantor, Ltd.

LAS VEGAS CITY COUNCIL

MAYOR
OSCAR B. GOODMAN

GARY REESE, WARD 3
(MAYOR PRO-TEM)
STEVE WOLFSON, WARD 2
LOIS TARKANIAN, WARD 1
STEVEN D. ROSS, WARD 6
RICKI Y. BARLOW, WARD 5
STAVROS S. ANTHONY, WARD 4

CITY MANAGER
ELIZABETH N. FRETWELL

NEIGHBORHOOD
SERVICES DEPARTMENT

DIRECTOR
STEPHEN K. HARSIN, AICP

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.2330
FAX 702.382.3901
TTY 702 386.3045
www.lasvegasnevada.gov

July 8, 2010

Case #56923
Certified/Regular Mail
Return Receipt Requested

Michael E. Pavich
409 Santa Fe Street
Las Vegas, NV 89145-5327

RE: 409 Santa Fe Street

Dear Property Owner:

At the City Council meeting held on April 7, 2010, Agenda Item #64 was approved for a review hearing. The hearing will be scheduled to be heard on **July 21, 2010** at 1:00 p.m. This will be a review regarding compliance with City Council's decision concerning Nuisance Notice and Oder and to consider preliminary report of expenses to recover fees and penalties for inspections at 409 Santa Fe Street.

If you have any questions concerning this procedure, please contact the Neighborhood Response Division located in the Department of Neighborhood Services, by telephoning (702) 229-6615.

Sincerely,

Devin S. Smith, Manager
Neighborhood Response Division
Department of Neighborhood Services

DSS:ld

City of Las Vegas Agenda Item No.: **80.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: NEIGHBORHOOD SERVICES
DIRECTOR: STEPHEN K. HARSIN ☐ **Consent** ☒ **Discussion**

SUBJECT:
Public Hearing and possible action to consider a request for a waiver and/or reduction of fees and/or civil penalties for the property located at 1410 Pacific Avenue in the amount up to $45,854.08. PROPERTY OWNERS: KUSH DAVE - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Today's hearing is a request from Joanne Lu, Agent for Kelly Williams Realty on behalf of Kush Dave, owner to consider a request for a waiver and/or reduction of fees imposed on the parcel at the City Council meeting November 18, 2009. The case was generated on March 19, 2009. There was one abatement conducted on this property on September 11, 2009. The lien was recorded at Clark County recorder's office on November 24, 2009. Neighborhood Services received a Request for Waiver and/or Reduction of Civil Penalties Applications dated March 25, 2010 on behalf of the owner, Kush Dave, requesting the civil penalties be waived.

RECOMMENDATION:
No Recommendation.

BACKUP DOCUMENTATION:
1. Agenda Memo
2. Request for Waiver and Reduction Application
3. Location Maps
4. Spreadsheet of Charges Accrued
5. Notice of Public Hearing

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: AUGUST 18, 2010
DEPARTMENT: Neighborhood Services
ITEM DESCRIPTION: Public Hearing and possible action to consider a request for a waiver and/or reduction of fees and/or civil penalties for the property located at 1410 Pacific Avenue in the amount up to $45,854.08. PROPERTY OWNERS: KUSH DAVE - Ward 3 (Reese)

Today's hearing is a request from Joanne Lu, Agent for Kelly Williams Realty on behalf of Kush Dave, owner to consider a request for a waiver and/or reduction of fees imposed on the parcel at the City Council meeting November 18, 2009. The case was generated on March 19, 2009. There was one abatement conducted on this property on September 11, 2009. The lien was recorded at Clark County recorder's office on November 24, 2009. Neighborhood Services received a Request for Waiver and/or Reduction of Civil Penalties Applications dated March 25, 2010 on behalf of the owner, Kush Dave, requesting the civil penalties be waived.

Fees associated with the one abatement and inspections including interest total $3,304.08 (minus the $42,550 in daily civil penalties assessed). To date, no payments have been made. Total owed on the case with civil penalties is $45,854.08 (w/interest).

Request for a Waiver and/or Reduction of Civil Penalties
Application

SUBMIT APPLICATION TO:
City of Las Vegas / Neighborhood Services Department
Attn: Stephen Harsin, Director
400 Stewart Avenue - 2nd Floor
Las Vegas, NV 89101-2986
Voice: 702-229-2317 -- Fax: 702-229-1033

Please type and/or print
Submit only one signed original

Date of Application: 3/25/2010

Location and/or address of subject property:

Nearest major intersection: _____

Street Address: 1410 Pacific St

Parcel Number: 162-01-210-136

Applicant's Address/Contact Information:
Name: Joanne Lu or Daniel Alspach / Joanne Lu / Daniel Alspach
(please check the following the applies)
☐ Owner ☑ Purchaser ☒ Agent ☐ Other *(explain)* _____
Street Address/PO Box: 2857 Paradise Rd #2604
City: Las Vegas State: NV Zip Code: 89109
Phone No: 702-686-8396 E-mail: jjelobster888.com Fax No: 946-5005

Property Owner's Address/Contact Information: (if different from applicant):
Name: Kush Dave
Street Address/PO Box: 2857 Paradise Rd #2604
City: Las Vegas State: NV Zip Code: 89109
Phone No: 408-577-7365 E-mail: _____ Fax No: 946-5005

Amount of City of Las Vegas Lien on the Property: $ 45811.80

Amount requested to be considered for waiving and/or reduced? $ 42550

Signature of Applicant: Joanne Lu Date: 6/4/10

Signature of Owner: Kush Dave Date: 6/4/10

For Office Use Only:
Council Ward: 3 ; Case/File Number: 75789 ; Council Action date of Lien: 11/18/09

Describe why the applicant is requesting a waiver/reduction:
(You may attach additional sheets if needed.)

The current property owner was not the primary and legal owner when the penalties were assessed and subsequently acquired the property without full disclosure by the Title Company and enters into an agreement with the City of Las Vegas to ensure improvements are made within a timely manner.

investor has taken legal possession of a property through a bankruptcy or foreclosure and is demonstrating a good faith effort by mitigating the property within 60 days of knowing that violations exist and enters into an agreement with the City of Las Vegas to ensure improvements are made within a timely manner;

A new owner plans to rehabilitate the blighted property to a standard that is comparable to or exceeds the conditions of surrounding properties within the neighborhood and has entered into an agreement with the City of Las Vegas to ensure improvements are made within specified period of time;

Describe the existing condition/situation of the subject property:
(You may attach additional sheets if needed.)

See home inspection report attached

Describe the immediate plans for the property, including any planned improvements: *(You may attach additional sheets if needed.)*

I am in the process of correcting all the deficiencies shown in the home inspection report,

And bringing the home up to neighborhood standards

(3-1)

RECORDING REQUESTED BY

Kush Dave
2857 Paradise Road #2604
Las Vegas, NV 89109

MAIL TAX STATEMENTS TO:

Kush Dave
2857 Paradise Road #2604
Las Vegas, NV 89109

Inst #: 201003230003161
Fees: $15.00 N/C Fee: $0.00
RPTT: $186.15 Ex: #
03/23/2010 02:04:38 PM
Receipt #: 281639
Requestor:
KUSH DAVE
Recorded By: GILKS Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

Space above this line for recorder's use

Trustee Sale No. 09-511323 Title Order No. 090672463-NV-GSI

TRUSTEE'S DEED UPON SALE

APN # 162-01-210-136
The undersigned grantor(s) declare(s):

1) The grantee herein was not the foreclosing beneficiary.
2) The amount of the unpaid debt together with cost was $192,642.03
3) The amount paid by the grantee at the trustee sale was $36,100.00
4) The document transfer tax is $ 186.15
5) Said property is in the city of Las Vegas.

Aztec Foreclosure Corporation (whereas so designated in the Deed of Trust herein under more particularly described or as duly appointed Trustee), does hereby GRANT and CONVEY, but without covenant or warranty, express or implied, to: Kush Dave (herein called Grantee), all right, title and interest in and to that certain property situated in the County of Clark, State of Nevada, and described as follows:

LOT TWENTY FOUR (24) IN BLOCK 6 OF EASTWOOD TRACK# 1 AMEND, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 3, OF PLATS, PAGE 80, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

RECITALS:

This conveyance is made pursuant to the powers conferred upon Trustee by that certain Deed of Trust **Recorded on September 27, 2007, in Instrument No. 20070927-0003882 of official records in the Office of the Recorder of CLARK County, Nevada** and executed by: **Irene Weldin, an unmarried woman, as Trustor**, under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust and pursuant to the Notice of Default and Election to Sell under the Deed of Trust described above. Trustee having complied with all applicable statutory requirements of the State of Nevada and performed all duties required by the Deed of Trust.

T.S. #: 09-511323
TITLE ORDER #: 090672463-NV-GSI

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the Office of the Recorder of said County, and such default still existed at the time of sale.

Trustee, in compliance with said Notice of Trustee's Sale and in exercise of its powers under said Deed of Trust, sold the herein described property at public auction on **March 10, 2010** Grantee, being the highest bidder at said sale, became the purchaser of said property for the amount bid being **$36,100.00** in lawful money of the United States, or by credit bid if the Grantee was the beneficiary of said Deed of Trust at the time of sale Trustee's Sale.

Date: March 17, 2010

Elaine Malone
Assistant Secretary & Assistant Vice President

STATE OF ARIZONA }
} ss
COUNTY OF MARICOPA }

On March 17, 2010 before me, Cyrese A. Santistevan, a Notary Public in and for said county, personally appeared Elaine Malone, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature

CYRESE A SANTISTEVAN
Notary Public - Arizona
Maricopa County
My Commission Expires
January 02, 2011

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)
   a. 162-01-210-136
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other _____

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page: _____
Date of Recording: _____
Notes: _____

3. a. Total Value/Sales Price of Property $ 36,100.00
   b. Deed in Lieu of Foreclosure Only (value of property) (_____)
   c. Transfer Tax Value: $ 36,100.00
   d. Real Property Transfer Tax Due $ 186.15
4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section _____
   b. Explain Reason for Exemption: _____
5. Partial Interest: Percentage being transferred: _____%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [signature] Capacity Asst Sec/Asst VP

Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Aztec Foreclosure Corporation	Print Name: Kush Dave
Address: 3300 N. Central Avenue #2200	Address: 2857 Paradise Road #2604
City: Phoenix	City: Las Vegas
State: AZ Zip: 85012	State: NV Zip: 89109

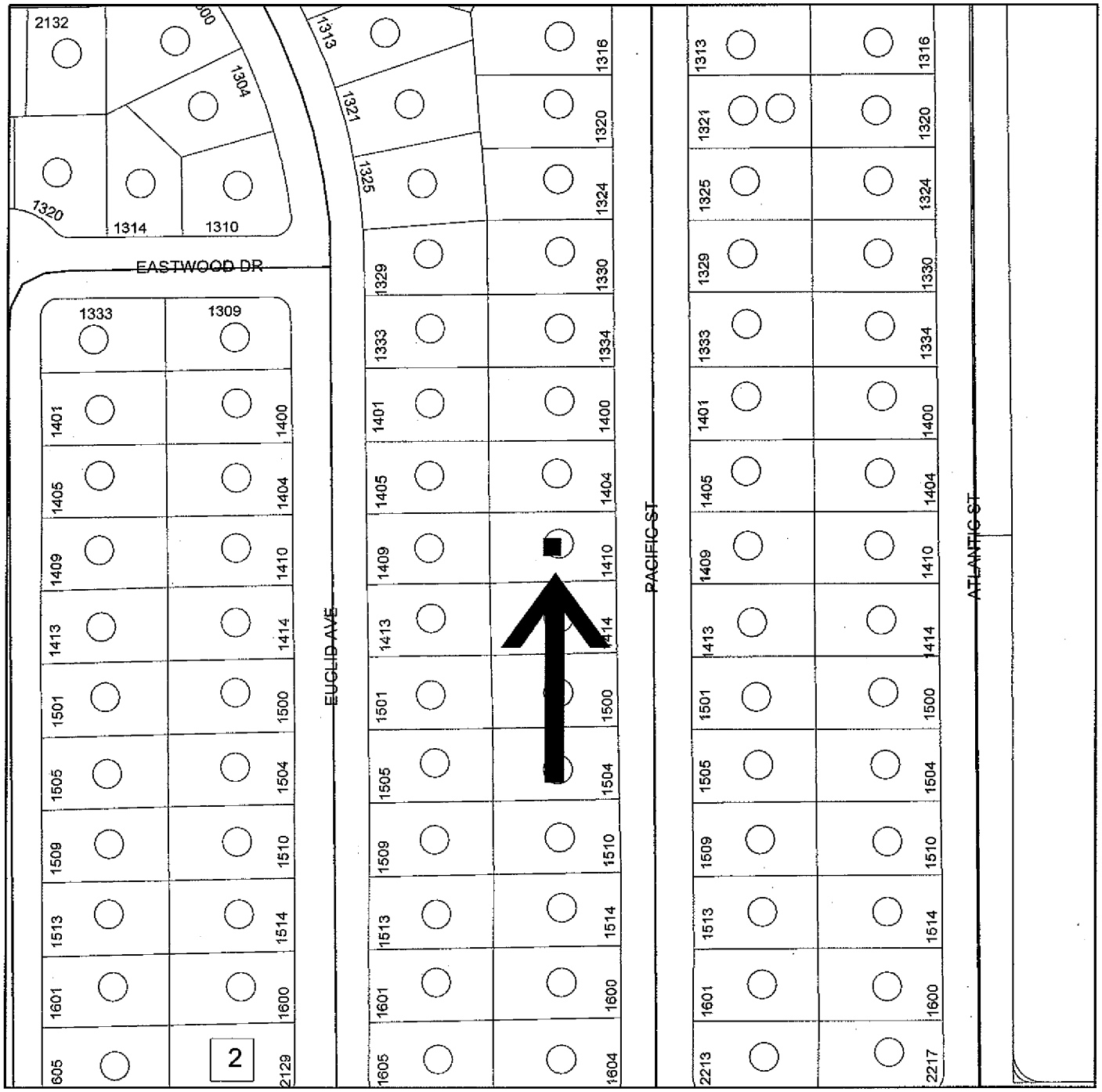
COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: _____ Escrow #: _____
Address: _____
City: _____ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

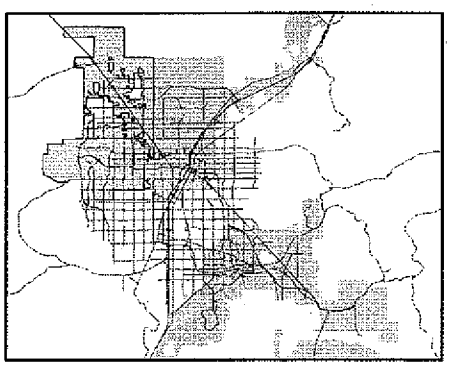
1410 PACIFIC STREET
CROSS STREETS EASTERN///OAKEY

City of Las Vegas Vicinity Map



N

0 65 130 260 Feet

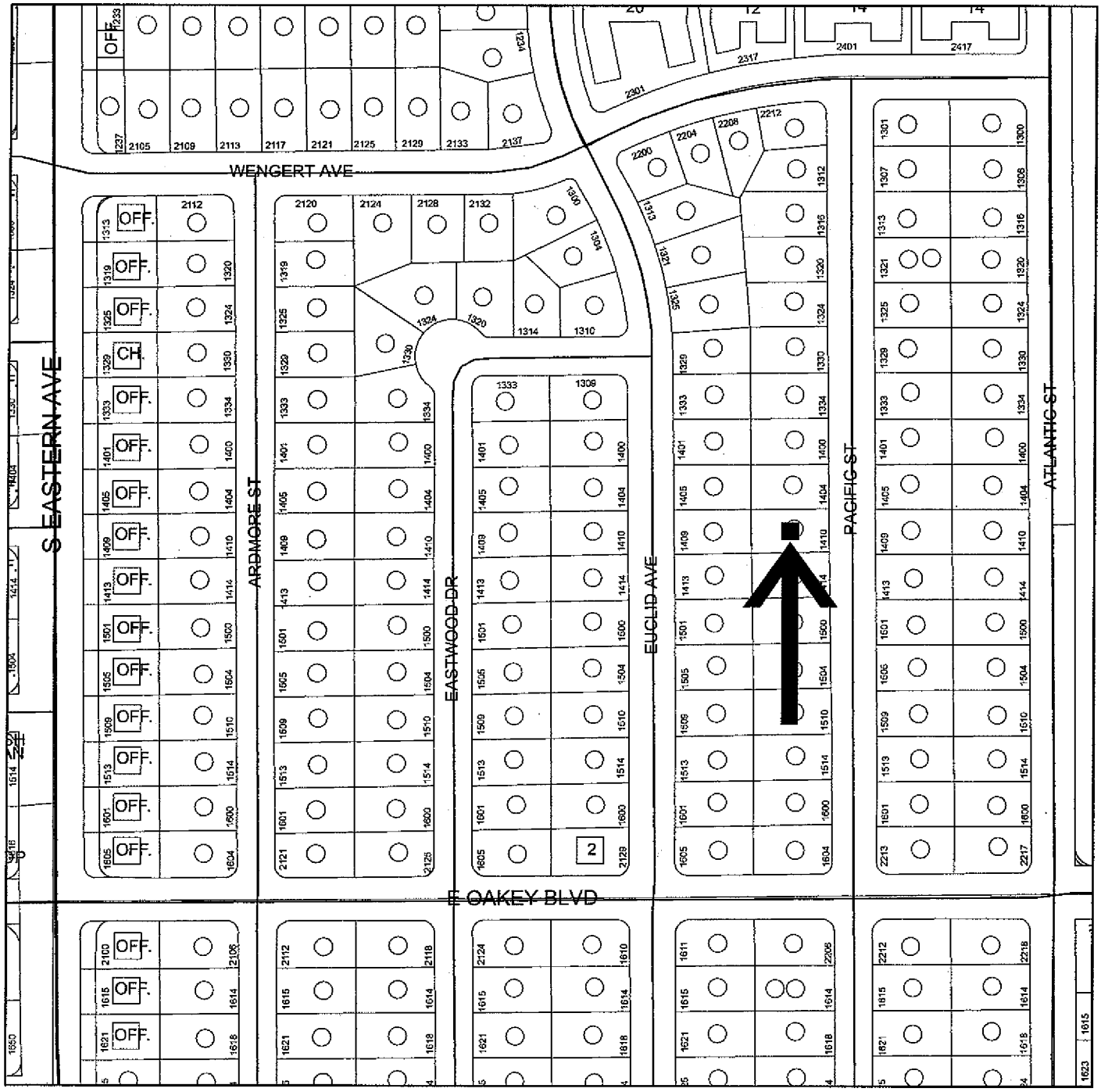


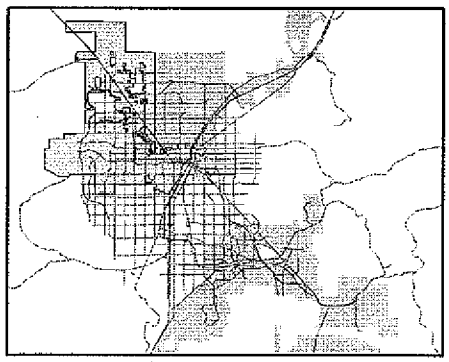
GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity this map is for reference only.
Geographic Information System
Planning & Development Dept.
702-229-6301

PLANNING & DEVELOPMENT

1410 PACIFIC STREET
CROSS STREETS EASTERN///OAKEY

City of Las Vegas Vicinity Map





GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity this map is for reference only.
Geographic Information System
Planning & Development Dept.
702-229-6301

PLANNING & DEVELOPMENT

Financial Overview:

Total Amount Assessed:	$45,811.80
Amounts Paid:	-$0.00
Total Balance owed:	$45,854.08
Amount Requested to be waived:	$42,550.00

FINANCIAL BREAKDOWN:

ABATEMENT FEES		
Subcontractor Expenses:	$772.00	
Admin Fees (15%):	$115.80	
Boarded Building Certificate Fee:	$0.00	
Inspection Fees:	$840.00	
Late Fees:	$ 84.00	
Penalties per failed inspection:	$ 1,450.00	
Sub-total	$3,261.80	
Interest accrued	$42.28	Calculated by Finance and Business Services
Sub-total	$3,304.08	Staff recommends that none of the abatement fees be waived
Daily Civil Penalties:	$42,550.00	
GRAND TOTAL related to this case	$45,854.08	
Payments	-$0.00	
BALANCE DUE (w/ daily civil penalties)	**$45,854.08**	
Remaining Abatement Fees Due	$3,304.08	
Remaining Daily Civil Penalties Due	$42,550.00	

Waiver Option:

Daily Civil Penalties	**$42,550.00**

NOTICE OF PUBLIC HEARING

AUGUST 18, 2010

Pursuant to Las Vegas Municipal Code for the Abatement of Dangerous Buildings/Nuisance Code and/or Housing Code, NOTICE IS HEREBY GIVEN THAT ON **WEDNESDAY, AUGUST 18, 2010,** at the hour of **1:00 P.M.** in the City Council Chambers, 400 Stewart Avenue, Las Vegas, Nevada, the City Council will consider the REPORT OF EXPENSES submitted by the Director of Neighborhood Services for:

> Waiver and/or reduction of abatement costs, daily civil penalties and accrued interest for the violations on the property located at **1410 Pacific Street – Case #75789**. The Director of Neighborhood Services certifies that abatement costs, daily civil penalties and accrued interest in the total sum of **$45,854.08**were imposed. Owner of record: **KUSH DAVE – WARD 3 (REESE)**

If the City Council is satisfied with the report, it may release the lien of assessment recorded against the property. Any person affected by the proposed charge may file a written protest with the City Clerk any time prior to the hearing. Each protest must contain a description of the property and the grounds for the protest.

BEVERLY K. BRIDGES
CITY CLERK

City of Las Vegas Agenda Item No.: **81.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: NEIGHBORHOOD SERVICES
DIRECTOR: STEPHEN K. HARSIN ☐ **Consent** ☒ **Discussion**

SUBJECT:
Public Hearing and possible action to consider a request for a waiver and/or reduction of fees and/or civil penalties for the property located at 225 W. Cleveland Avenue in the amount up to $106,000. PROPERTY OWNERS: OXFORD TECHNOLOGY INC. - Ward 3 (Reese)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Today's hearing is a request from Bruce Stoker, Manager for Frias Real Estate on behalf of Oxford Technology Inc., owner to consider a request for a waiver and/or reduction of fees imposed on the parcel at the City Council meeting on November 19, 2008.. The case was generated on January 18, 2006. There was an abatement conducted on this property on September 17, 2008. The lien was recorded at Clark County recorder's office on December 8, 2008. Neighborhood Services received a Request for Waiver and/or Reduction of Civil Penalties Applications dated on April 27, 2010 on behalf of the owner, Oxford Technology, Inc. requesting the civil penalties be waived.

RECOMMENDATION:
No Recommendation.

BACKUP DOCUMENTATION:
1. Agenda Memo
2. Request for Waiver and Reduction Application
3. Location Maps
4. Notice of Public Hearing

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: AUGUST 18, 2010
DEPARTMENT: Neighborhood Services
ITEM DESCRIPTION: Public Hearing and possible action to consider a request for a waiver and/or reduction of fees and/or civil penalties for the property located at 225 W. Cleveland Avenue in the amount up to $106,000. PROPERTY OWNERS: OXFORD TECHNOLOGY INC. - Ward 3 (Reese)

Today's hearing is a request from Bruce Stoker, Manager for Frias Real Estate on behalf of Oxford Technology Inc., owner to consider a request for a waiver and/or reduction of fees imposed on the parcel at the City Council meeting on November 19, 2008.. The case was generated on January 18, 2006. There was an abatement conducted on this property on September 17, 2008. The lien was recorded at Clark County recorder's office on December 8, 2008. Neighborhood Services received a Request for Waiver and/or Reduction of Civil Penalties Applications dated on April 27, 2010 on behalf of the owner, Oxford Technology, Inc. requesting the civil penalties be waived.

Fees associated with the Clark County tax bill assessment related to abatement fees is $5,088.25 (minus the $100,000 in daily civil penalties assessed). To date, no payments have been made. Total owed on the case is $105,088.25.

#85

Request for a Waiver and/or Reduction of Civil Penalties

Application

SUBMIT APPLICATION TO:
City of Las Vegas / Neighborhood Services Department
Attn: Stephen Harsin, Director
400 Stewart Avenue – 2nd Floor
Las Vegas, NV 89101-2986
Voice: 702-229-2317 – Fax: 702-229-1033

Please type and/or print
Submit only one signed original

Date of Application: April 27, 2010

Location and/or address of subject property:

Nearest major intersection: Sahara / Las Vegas Blvd

Street Address: 225 W. Cleveland Avenue

Parcel Number: 162-04-813-034

Applicant's Address/Contact Information:

Name: Bruce Stoker
(please check the following that applies)

Owner Purchaser Agent X Other (explain) Employee

Street Address/PO Box: 5010 S. Valley View Blvd

City: Las Vegas State: NV Zip Code: 89118

Phone No.: 702-798-3400 ext. 2328 E-mail: bstoker@friaslasvegas.com Fax No.: 702-798-3466

Property Owner's Address/Contact Information: (if different from applicant):

Name: Oxford Technology, Inc.

Street Address/PO Box: 5010 S. Valley View Blvd

City: Las Vegas State: NV Zip Code: 89118

Phone No.: 702-798-3400 ext. 2328 E-mail: bstoker@friaslasvegas.com Fax No.: 702-798-3466

Amount of City of Las Vegas Lien on the Property: $104,886.15

Amount requested to be considered for waiving and/or reduced: $103,448.65

Signature of Applicant: _____ Date: 5/12/2010

Signature of Owner: _____ Date: 5/12/2010

For Office Use Only:

Council Ward: 3 Case/File Number: 35682 Council Action Date of Lien: 11/19/08

Describe why the applicant is requesting a waiver/reduction:

Waiver Criteria 1.1

The violation resulting in the abatement was due to previous property owners. Oxford Technology purchased this parcel through another company, Charette Corp., at public auction on 10/15/2009. The property was then transferred to Oxford through a Quit Claim Deed on 12/16/2009.

Describe the existing condition/situation of the subject property:

Waiver Criteria 2.1

Once this transfer was complete, requests for bids were sent out to raze the building and clean up the property. Asbestos was discovered, and Oxford Technology had this abated prior to the demolition. The property is now free of hazardous materials and structures.

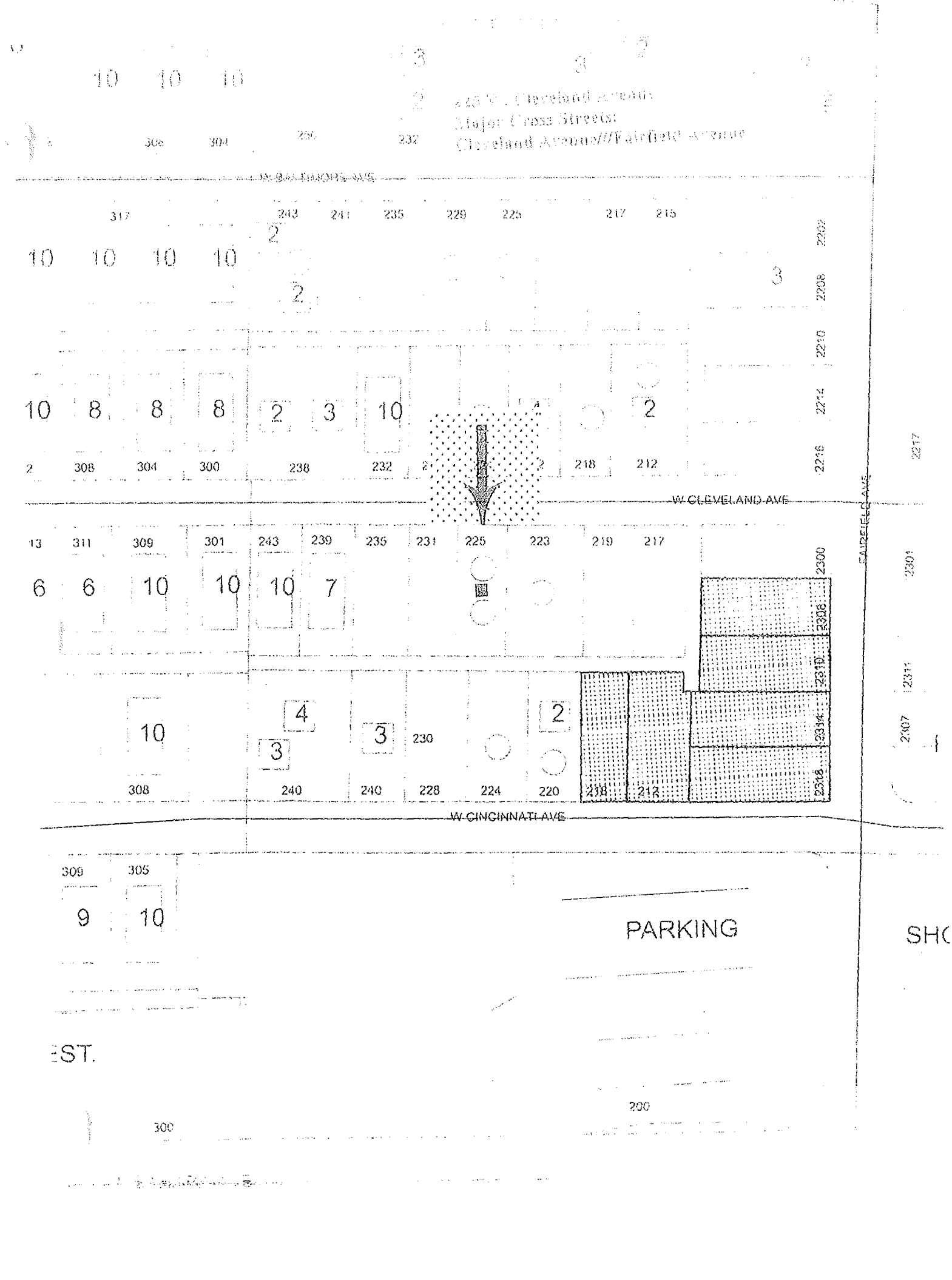
Describe the immediate plans for the property, including any planned improvements:

Waiver Criteria 4.1

Oxford Technology owns several surrounding parcels, and with each acquisition, demolition is completed as necessary to avoid dangerous or harmful places where trespassers could be injured. Two recent examples of demolition include 223 Cleveland Ave and 2217 Fairfield Ave (corner of Cleveland), which was a four story dilapidated apartment building. The properties are then fenced and signs posted to keep out. There are no immediate development plans, but Oxford Technology has expended significant resources in trying to clean up this area of run down structures.

Attachments;

Chain of Transfer of Ownership Documents
Asbestos Abatement Certificate
Demolition Authorization
Map
Photos


W CLEVELAND AVE
W CINCINNATI AVE
FAIRFIELD AVE
PARKING
EST.



225 W. Cleveland Avenue
Major Cross Streets:
Cleveland Avenue///Fairfield Avenue
W ST LOU
W BOSTON AVE
W BALTIMORE AVE
W CLEVELAND AVE
W CINCINNATI AVE
W SAHARA AVE
E SAHARA AVE
S LAS VEGAS BLVD
INDUSTRIAL RD
TAM DR
NORTHBRIDGE LN
SOUTHBRIDGE LN
STRATOSPHERE PARKING GARAGE
CHESTER STUPAK CIVIC CENTER
CHESTER STUPAK PARK
AZTEC CASINO & MOTEL
AZTEC MOTEL ROOMS
NON-PROFIT
STORAGE
MOTEL
PARKING
SHOP
SHOPS
LIQUOR
OFFICES
SHOPS & OFFICES
BAR
REST

NOTICE OF PUBLIC HEARING

AUGUST 18, 2010

Pursuant to Las Vegas Municipal Code for the Abatement of Dangerous Buildings/Nuisance Code and/or Housing Code, NOTICE IS HEREBY GIVEN THAT ON **WEDNESDAY, AUGUST 18, 2010,** at the hour of **1:00 P.M.** in the City Council Chambers, 400 Stewart Avenue, Las Vegas, Nevada, the City Council will consider the REPORT OF EXPENSES submitted by the Director of Neighborhood Services for:

> Waiver and/or reduction of abatement costs, daily civil penalties and accrued interest for the violations on the property located at **225 W. Cleveland Avenue – Case #35632**. The Director of Neighborhood Services certifies that abatement costs, daily civil penalties and accrued interest in the total sum of **$106,000** were imposed. Owner of record: **OXFORD TECHNOLOGY INC. – WARD 3 (REESE)**

If the City Council is satisfied with the report, it may release the lien of assessment recorded against the property. Any person affected by the proposed charge may file a written protest with the City Clerk any time prior to the hearing. Each protest must contain a description of the property and the grounds for the protest.

BEVERLY K. BRIDGES
CITY CLERK

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

8/18/2010 Case #35632
Mr. Bruce Stoker
Frias Real Estate Division
c/o Oxford Technology, Inc.
5010 South Valley View Boulevard
Las Vegas, NV 89118

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☑ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery 8-5-10

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7007 3020 0003 1596 5800

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

City of Las Vegas Agenda Item No.: **82.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: NEIGHBORHOOD SERVICES
DIRECTOR: STEPHEN K. HARSIN ☐ **Consent** ☒ **Discussion**

SUBJECT:
Public Hearing and possible action to consider a request for a waiver and/or reduction of fees and/or civil penalties for the property located at 1640 L Street in the amount up to $54,250.21. PROPERTY OWNERS: BANK LASALLE NATIONAL ASSN TRS - Ward 5 (Barlow)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Today's hearing is a request from Michael Brooks, Attorney for Bank LaSalle National Assn Trs, to consider a request for a waiver and/or reduction of fees imposed on the parcel at the City Council meeting on April 15, 2009. The case was generated on May 16, 2008. There was one abatement conducted on this property on October 24, 2008. The liens were recorded at Clark County recorder's office on April 23, 2009. Neighborhood Services received a Request for Waiver and/or Reduction of Civil Penalties Applications dated April 6, 2010 on behalf of the owner, Bank LaSalle National Assn Trs, requesting the civil penalties be waived.

RECOMMENDATION:
No Recommendation.

BACKUP DOCUMENTATION:
1. Agenda Memo
2. Request for Waiver and Reduction Application
3. Location Maps
4. Spreadsheet of Charges Accrued
5. Notice of Public Hearing

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: AUGUST 18, 2010
DEPARTMENT: Neighborhood Services
ITEM DESCRIPTION: Public Hearing and possible action to consider a request for a waiver and/or reduction of fees and/or civil penalties for the property located at 1640 L Street in the amount up to $54,250.21. PROPERTY OWNERS: BANK LASALLE NATIONAL ASSN TRS - Ward 5 (Barlow)

Today's hearing is a request from Michael Brooks, Attorney for Bank LaSalle National Assn Trs, to consider a request for a waiver and/or reduction of fees imposed on the parcel at the City Council meeting on April 15, 2009. The case was generated on May 16, 2008. There was one abatement conducted on this property on October 24, 2008. The liens were recorded at Clark County recorder's office on April 23, 2009. Neighborhood Services received a Request for Waiver and/or Reduction of Civil Penalties Applications dated April 6, 2010 on behalf of the owner, Bank LaSalle National Assn Trs, requesting the civil penalties be waived.

Fees associated with the one abatements and inspections including interest total $2,200.21 (minus the $52,050 in daily civil penalties assessed). To date, no payments have been made. Total owed on the case with civil penalties $54,250.21

Request for a Waiver and/or Reduction of Civil Penalties
Application

SUBMIT APPLICATION TO:
City of Las Vegas / Neighborhood Services Department
Attn: Stephen Harsin, Director
400 Stewart Avenue - 2nd Floor
Las Vegas, NV 89101-2986
Voice: 702-229-2317 -- Fax: 702-229-1033

Please type and/or print
Submit only one signed original

Date of Application: 4/6/10

Location and/or address of subject property:

Nearest major intersection: Martin Luther King Blvd & Owens Ave.

Street Address: 1640 L Street, Las Vegas, NV 89106

Parcel Number: 139-21-811-004

Applicant's Address/Contact Information:
Name: Michael R. Brooks
(please check the following the applies)
☐ Owner ☐ Purchaser ☒ Agent ☒ Other *(explain)* Attorney
Street Address/PO Box: 300 S. 4th Street
City: Las Vegas State: NV Zip Code: 89101
Phone No: 702-851-1191 E-mail: mbrooks@brooksbauer.com Fax No: 702-851-1198

Property Owner's Address/Contact Information: (if different from applicant):
Name: La Salle Bank National Association TRS
Street Address/PO Box: c/o Litton Loan Servicing, 4828 Loop Central Dr. # 600
City: Houston State: TX Zip Code: 77081-2212
Phone No: _____ E-mail: _____ Fax No: _____

Amount of City of Las Vegas Lien on the Property: $ 54,175.25

Amount requested to be considered for waiving and/or reduced? $ 52,000.00

Signature of Applicant: _____ Date: _____

Signature of Owner: _____ Date: _____

For Office Use Only:
Council Ward: _____; Case/File Number: 65688; Council Action date of Lien: 4-15-09
#58

Describe why the applicant is requesting a waiver/reduction:

LaSalle Bank would like to fix the property and market it for sale, but the cost of the fines make such an action infeasible for practical purposes. The fine on the property in this case is over $50,000.00. The property itself is currently worth approximately $12,000.00

There are several factors that justify the reconsideration of the fine in this matter.

First, the foreclosure sale in this matter took place on April 23, 2008. LaSalle Bank credit bid the outstanding balance on the loan of $116,100.00 (again, the property is worth about $12,000.00). LaSalle Bank immediately retained the services of a real estate broker to market the property. At some point, after the foreclosure, there was a fire on the property. As a result of the fire, the fire department was forced to remove the security bars from the windows to battle the blaze.

Secondly, our broker was advised of many of the problems regarding the property and recommended the extraordinary procedure of boarding up of the property to prevent access by transients and others. As I am sure you are aware, the boarding up of the Property frustrates attempts by LaSalle Bank and their brokers to sell assets from their portfolio. Not the least of their concerns is the impact that a boarded up house has on the neighborhood, surrounding property values, and the City of Las Vegas. As a result, all other alternatives are reviewed before choosing to board up a home. Nevertheless, LaSalle Bank agreed to the boarding up strategy and left it to their broker to do it properly.

Third, the boarding up was in fact completed in late-July 2008 -- approximately 3 months after the foreclosure sale. The City is aware that this is a quick turn around time for this type of action by the new owner of the property. Unlike some lenders who acquire real property, LaSalle Bank had diligently pursued its avenues in resolving the issues on this house which had existed. However, we have come to learn that the boarding up was not up to Code according to the inspectors (Lynn Nihipali). (The broker that ordered the boarding up has been replaced for other reasons.) As a result, on October 24, 2008, the City sent out its agents to board up the property to Code. Based on the above events it was determined that the City should impose the maximum daily fine of $500 from July 12, 2008 to October 24, 2008.

I would like to make the following points: First, unlike most post-foreclosure situations, LaSalle Bank did not let this property sit and deteriorate. Rather, La Salle Bank acquired a troubled asset that was intentionally damaged by someone else. Secondly, LaSalle Bank was pro-active in its attempts to remediate the problem by instructing its agent to proceed with the boarding up of the property even if poor judgment was used by its agent in the contractor it hired. This has been confirmed by Lynn Nihipali. The only really prejudicial delay in this matter was the failed handling of the fine notices by agents to LaSalle Bank.

In light of the foregoing, I am hopeful that we can set a time to appear before the City Council to resolve these issues.

Describe the existing condition/situation of the subject property:

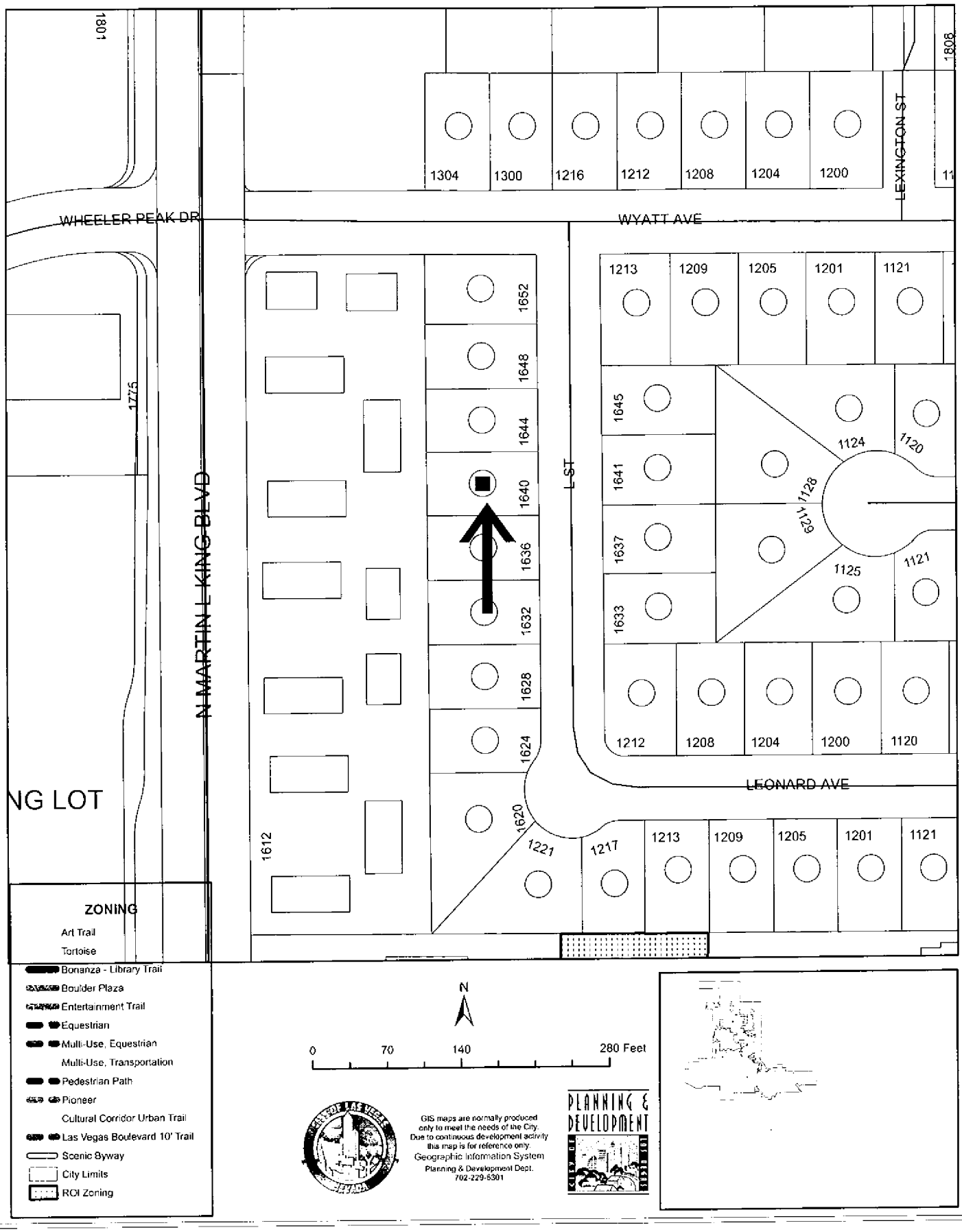
The property is currently boarded up and secured according to Las Vegas Municipal Code for "Vacant or Abandoned Dangerous Building." The costs, fees, and daily civil penalties that are due the City of Las Vegas Neighborhood Services Department total $54,175.25. In addition to decreasing property value because of the general economic downturn affecting property values throughout the Las Vegas area, this property has suffered greater reduction in value due to fire damage, which was the cause of the property needing to be secured and boarded.

Describe the immediate plans for the property, including any planned improvements:

The immediate plans for the property are to make improvements to the property in order to list the property for sale. The fines currently being assessed by the City of Las Vegas Neighborhood Services Department make this property unmarketable.

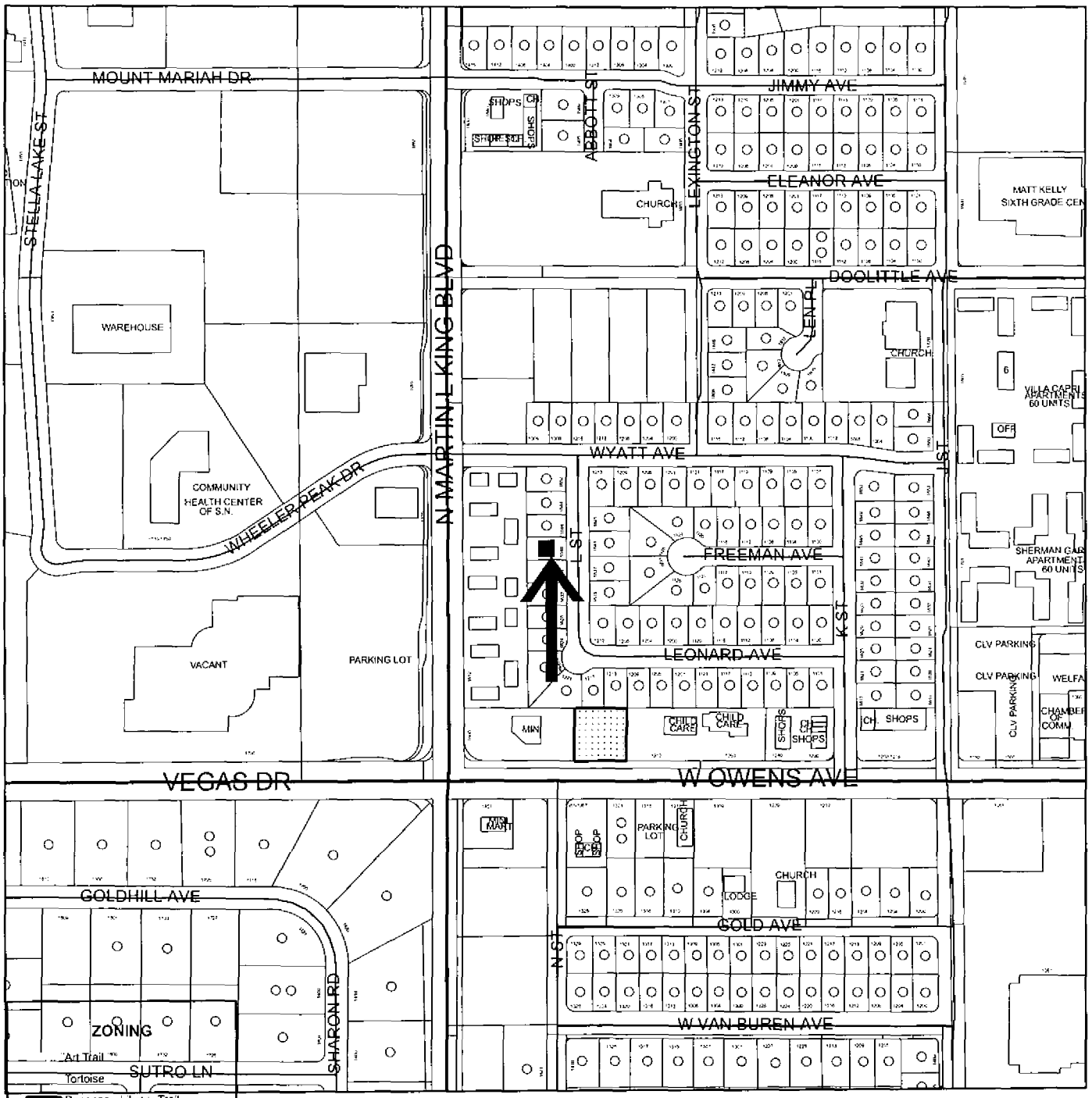
1640 L Street
Major Cross Streets:
Martin L King///Owens

City of Las Vegas Vicinity Map



1640 L Street
Major Cross Streets:
Martin L King///Owens

City of Las Vegas Vicinity Map



GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity this map is for reference only.
Geographic Information System
Planning & Development Dept.
702-229-6301

PLANNING & DEVELOPMENT

Financial Overview:

Total Amount Assessed:	$54,175.25	Council date: April 15, 2009
Amounts Paid:	-$0.00	
Total Balance owed:	$54,250.21	
Amount Requested to be waived:	$52,000.00	

FINANCIAL BREAKDOWN:

ABATEMENT FEES		
Subcontractor Expenses:	$715.00	
Admin Fees (15%):	$107.25	
Boarded Building Certificate Fee:	$325.00	
Inspection Fees:	$480.00	
Late Fees:	$ 48.00	
Penalties per failed inspection:	$450.00	
Sub-total	$2,125.25	
Interest Accrued	$74.96	Calculated by Finance and Business Services
Daily Civil Penalties:	$52,050.00	
GRAND TOTAL related to this case	$54,250.21	
Payments	-$0.00	
BALANCE DUE (w/ daily civil penalties)	**$54,250.21**	
Remaining Abatement Fees (including interest) Due	$2,200.21	Staff recommends that none of the abatement fees be waived
Remaining Daily Civil Penalties Due	$52,050.00	

Waiver Option:
Daily Civil Penalties **$52,050.00**

NOTICE OF PUBLIC HEARING

AUGUST 18, 2010

Pursuant to Las Vegas Municipal Code for the Abatement of Dangerous Buildings/Nuisance Code and/or Housing Code, NOTICE IS HEREBY GIVEN THAT ON **WEDNESDAY, AUGUST 18, 2010,** at the hour of **1:00 P.M.** in the City Council Chambers, 400 Stewart Avenue, Las Vegas, Nevada, the City Council will consider the REPORT OF EXPENSES submitted by the Director of Neighborhood Services for:

> Waiver and/or reduction of abatement costs, daily civil penalties and accrued interest for the violations on the property located at **1640 L Street – Case #65688**. The Director of Neighborhood Services certifies that abatement costs, daily civil penalties and accrued interest in the total sum of **$54,250.21** were imposed. Owner of record: **BANK LASALLE NATIONAL ASSN TRS – WARD 5 (BARLOW)**

If the City Council is satisfied with the report, it may release the lien of assessment recorded against the property. Any person affected by the proposed charge may file a written protest with the City Clerk any time prior to the hearing. Each protest must contain a description of the property and the grounds for the protest.

BEVERLY K. BRIDGES
CITY CLERK

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

8/18/2010 Case #65688
LaSalle Bank National Association TRS
c/o Litton Loan Servicing
4828 Loop Central Drive, #600
Houston, TX 77081-2212

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Francis Blackshear ☐ Agent ☐ Addressee

B. Received by (Printed Name) RECEIVED CITY CLERK C. Date of Delivery AUG 06 2010

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No
2010 AUG -9 A 10:59

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7007 3020 0003 1596 5794

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

8/18/2010 Case #65688

Mr. Michael Brooks, Attorney
300 S. 4th Street
Las Vegas, NV 89101
#815

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Deny Nelle ☑ Agent ☐ Addressee

B. Received by (Printed Name) RECEIVED Deny CITY CLERK C. Date of Delivery 8-5-10

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No
2010 AUG -9 A 10:58

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7007 3020 0003 1596 5787

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

City of Las Vegas Agenda Item No.: **83.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: NEIGHBORHOOD SERVICES
DIRECTOR: STEPHEN K. HARSIN ☐ **Consent** ☒ **Discussion**

SUBJECT:
Public Hearing and possible action to consider a request for a waiver and/or reduction of fees and/or civil penalties for the property located at 893 Balzar Avenue in the amount up to $101,727.80. PROPERTY OWNERS: BANK U S NATIONAL ASSN TRS - Ward 5 (Barlow)

Fiscal Impact

☒ **No Impact** ☐ **Augmentation Required**
☐ **Budget Funds Available**
Amount:
Funding Source:
Dept./Division:

PURPOSE/BACKGROUND:
Today's hearing is a request from Krista Nielson, Esq. for Bank U S National Assn Trs, owner to consider a request for a waiver and/or reduction of fees imposed on the parcel at the City Council meeting on November 19, 2008. The case was generated on February 2, 2008. There was one abatement conducted on this property on September 9, 2008. The liens were recorded at Clark County recorder's office on December 8, 2008. Neighborhood Services received a Request for Waiver and/or Reduction of Civil Penalties Applications dated May 6, 2010 and June 3, 2010 on behalf of the owner, Bank U S National Assn Trs, requesting the civil penalties be waived.

RECOMMENDATION:
No Recommendation.

BACKUP DOCUMENTATION:
1. Agenda Memo
2. Request for Waiver and Reduction Application
3. Location Maps
4. Spreadsheet of Charges Accrued
5. Notice of Public Hearing

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: AUGUST 18, 2010
DEPARTMENT: Neighborhood Services
ITEM DESCRIPTION: Public Hearing and possible action to consider a request for a waiver and/or reduction of fees and/or civil penalties for the property located at 893 Balzar Avenue in the amount up to $101,727.80. PROPERTY OWNERS: BANK U S NATIONAL ASSN TRS - Ward 5 (Barlow)

Today's hearing is a request from Krista Nielson, Esq. for Bank U S National Assn Trs, owner to consider a request for a waiver and/or reduction of fees imposed on the parcel at the City Council meeting on November 19, 2008. The case was generated on February 2, 2008. There was one abatement conducted on this property on September 9, 2008. The liens were recorded at Clark County recorder's office on December 8, 2008. Neighborhood Services received a Request for Waiver and/or Reduction of Civil Penalties Applications dated May 6, 2010 and June 3, 2010 on behalf of the owner, Bank U S National Assn Trs, requesting the civil penalties be waived

Fees associated with the one abatement and inspections including interest total $3,677.80 (minus the $98,050 in daily civil penalties assessed). To date, no payments have been made. Total owed on the case with civil penalties is $101,727.80

Request for a Waiver and/or Reduction of Civil Penalties
Application

SUBMIT APPLICATION TO:
City of Las Vegas / Neighborhood Services Department
Attn: Stephen Harsin, Director
400 Stewart Avenue - 2nd Floor
Las Vegas, NV 89101-2986
Voice: 702-229-2317 — Fax: 702-229-1033

Please type and/or print
Submit only one signed original

Date of Application: 6/3/10

Location and/or address of subject property:

Nearest major intersection: W. Lake Mead Blvd. & Revere St.

Street Address: 893 Balzac Ave, Las Vegas

Parcel Number: 139-21-610-020

Applicant's Address/Contact Information:
Name: DAN VERNAVA
(please check the following the applies)
☐ Owner ☐ Purchaser ☒ Agent ☐ Other *(explain)*
Street Address/PO Box: 375. N. Stephanie #4
City: HEND. State: NV Zip Code: 89014
Phone No: 702-940-2121 E-mail: C2IRELEST8@Ad.com Fax No: 702-940-2102

Property Owner's Address/Contact Information: (if different from applicant):
Name: Bank of America for US Bank Nat'l Association
Street Address/PO Box: 2505 W. Chandler Blvd.
City: Chandler State: Az Zip Code: 85224
Phone No: 480-384-2591 E-mail: deborah.lea.richards@bankofamerica.com Fax No: n/a

Amount of City of Las Vegas Lien on the Property: $ 101,593.62

Amount requested to be considered for waiving and/or reduced? $ 98,050.00

Signature of Applicant: [signature] Date: 6-3-10

Signature of Owner: [signature] McClure Date: 6-3-10
Asst. VP, Bank of America

For Office Use Only
Council Ward: Case/File Number: Council Action Date of Lien:

Describe why the applicant is requesting a waiver/reduction:
(You may attach additional sheets if needed.)

- We acquired ownership through foreclosure sale on 1/13/09.
- Date of violations appear to be prior to our foreclosure sale date, per City Council Meeting Minutes dated 1/19/2008; See attached.
- W.A. Construction LLC was hired by City prior to foreclosure date. After no corrective action was taken by former owner.
- We believe, based on information in the Minutes, that one factor influencing the City Council at the time, was the property's value in 9/2008 was $180,000. Our current market data shows fair market value to be $16,900, over 90% less!

Describe the existing condition/situation of the subject property:
(You may attach additional sheets if needed.)

Property has boarded-up windows & doors, no bathrooms. The condition of the structure is poor, the value is in the land. We are unable to sell this property at fair market value of $16,900. with a lien payoff over $182,000.

Describe the immediate plans for the property, including any planned improvements: *(You may attach additional sheets if needed.)*

We would like to market and sell this property to someone interested in accepting the property AS-IS. We had one buyer already under contract until we discovered that we didn't have clear title to property and were unable to close. We've received approx. 12 offers and our Realtor routinely receives inquiries from interested parties. It is likely & highly probable that we could sell this property if the lien was reduced to $6,400. We believe that this resolution be beneficial to Las Vegas, us as the sellers, the neighborhood & your community at large. Thank you for your time and consideration.

Century 21® FAX

MoneyWorld

To:	From:	Fax # 229-1033
CHERYL	DAN VERNAVA The Vernava Team	Date: Number of Pages: _____

Remarks:

PLEASE SUBMIT OUR APPLICATION.

CALL ME IF YOU HAVE ANY QUESTIONS.

CELL 702-376-7770

OFF. 702-940-2121



A Fax From

The Vernava Team

Office: 702-940-2121
Cell Phone: 702-376-7770
Fax: 702-940-2102
The Vernava Team

#90

Request for a Waiver and/or Reduction of Civil Penalties
Application

SUBMIT APPLICATION TO:
City of Las Vegas / Neighborhood Services Department
Attn: Stephen Harsin, Director
400 Stewart Avenue - 2nd Floor
Las Vegas, NV 89101-2986
Voice: 702-229-2317 -- Fax: 702-229-1033

Please type and/or print
Submit only one signed original

Date of Application: 5/6/10

Location and/or address of subject property:

Nearest major intersection: _____

Street Address: 893 Balzar Avenue

Parcel Number: 139-21-610-020

Applicant's Address/Contact Information:
Name: Krista Nielson Esq. - Miles, Bauer, Bergstrom & Winters, LLP
(please check the following the applies)
☐ Owner ☐ Purchaser ☐ Agent ☒ Other *(explain)* Attorney for US Bank (Owner)
Street Address/PO Box: 2200 Paseo Verde Parkway, Suite 250
City: Henderson State: Nevada Zip Code: 89052
Phone No: 942-0471 E-mail: Knielson@milesbauer.com Fax No: 369-4955

Property Owner's Address/Contact Information: **(if different from applicant):**
Name: _____
Street Address/PO Box: _____
City: _____ State: _____ Zip Code: _____
Phone No: _____ E-mail: _____ Fax No: _____

Amount of City of Las Vegas Lien on the Property: $ 101,714.03

Amount requested to be considered for waiving and/or reduced? $ All Civil Penalties

Signature of Applicant: _____ Date: 5/6/10

Signature of Owner: _____ Date: _____

For Office Use Only:
Council Ward: 6 ; Case/File Number: 62009 ; Council Action date of Lien: 11/19/08

Describe why the applicant is requesting a waiver/reduction:
(You may attach additional sheets if needed.)

The property was purchased in a recent Foreclosure Sale and the penalties accrued prior to purchase and possession by the current owner. Accordingly, as all outstanding issues are addressed, it is onerous to require a Subsequent purchaser, who is not responsible for the conditions causing the fines, to pay over $100,000 in fines.

Describe the existing condition/situation of the subject property:
(You may attach additional sheets if needed.)

Acceptable.

Describe the immediate plans for the property, including any planned improvements: *(You may attach additional sheets if needed.)*

DOUGLAS E. MILES *
Also Admitted in Nevada and Illinois
RICHARD J. BAUER, JR.*
JEREMY T. BERGSTROM
Also Admitted in Arizona
FRED TIMOTHY WINTERS*
KEENAN E. McCLENAHAN*
MARK T. DOMEYER*
Also Admitted in District of Columbia & Virginia
TAMI S. CROSBY*
L. BRYANT JAQUEZ *
DANIEL L. CARTER *
GINA M. CORENA
WAYNE A. RASH *
ROCK K. JUNG
VY T. PHAM *
KRISTA J. NIELSON
MARK S. BRAUN
Also Admitted in Iowa & Missouri
HADI R. SEYED-ALI *
ROSEMARY NGUYEN *
JORY C. GARABEDIAN

MILES, BAUER, BERGSTROM & WINTERS, LLP
ATTORNEYS AT LAW SINCE 1985

2200 Paseo Verde Parkway, Suite 250
Henderson, NV 89052
Phone: (702) 369-5960
Fax: (702) 369-4955

* CALIFORNIA OFFICE
1231 E. DYER ROAD
SUITE 100
SANTA ANA, CA 92705
PHONE (714) 481-9100
FACSIMILE (714) 481-9141

May 6, 2010

City of Las Vegas
Neighborhood Services Department
Attn: Stephen Harsin, Director
400 Stewart Avenue – 2nd Floor
Las Vegas, Nevada 89101-2986

SENT VIA FIRST CLASS

RE: Request for a Waiver and/or Reduction of Civil Penalties
Application for Parcel Number: 139-21-610-020
Street Address: 893 Balzar Avenue
MBBW Number 10-L0262

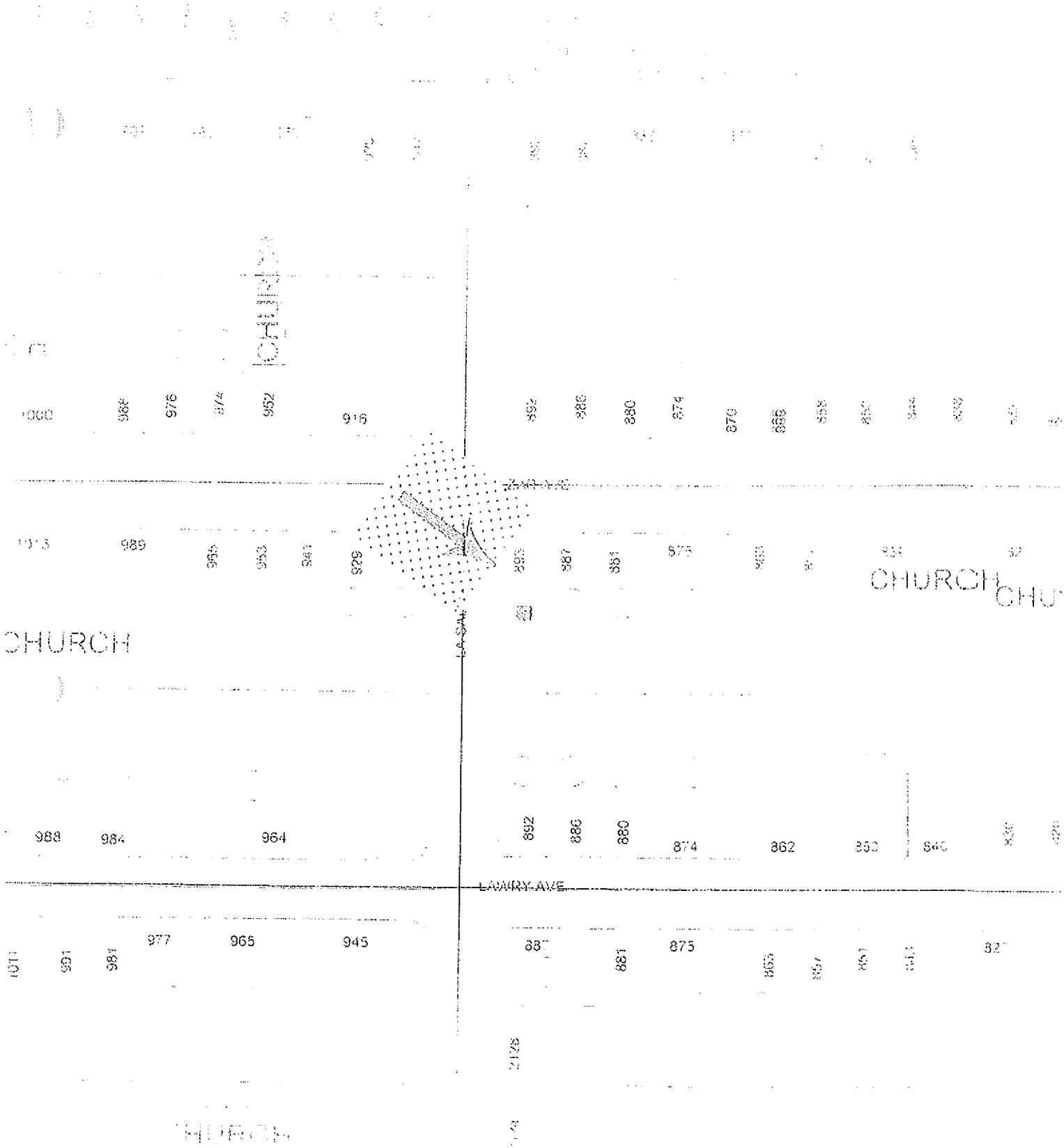
Dear Mr. Harsin:

Enclosed please find an **Application for Request for a Waiver and/or Reduction of Civil Penalties** filed on behalf of parcel number 139-21-610-020. If you have any questions or concerns regarding this matter please do not hesitate to contact our office.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

Ms. Ida Coleman
Civil Litigation Paralegal


CHURCH
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LA SAL
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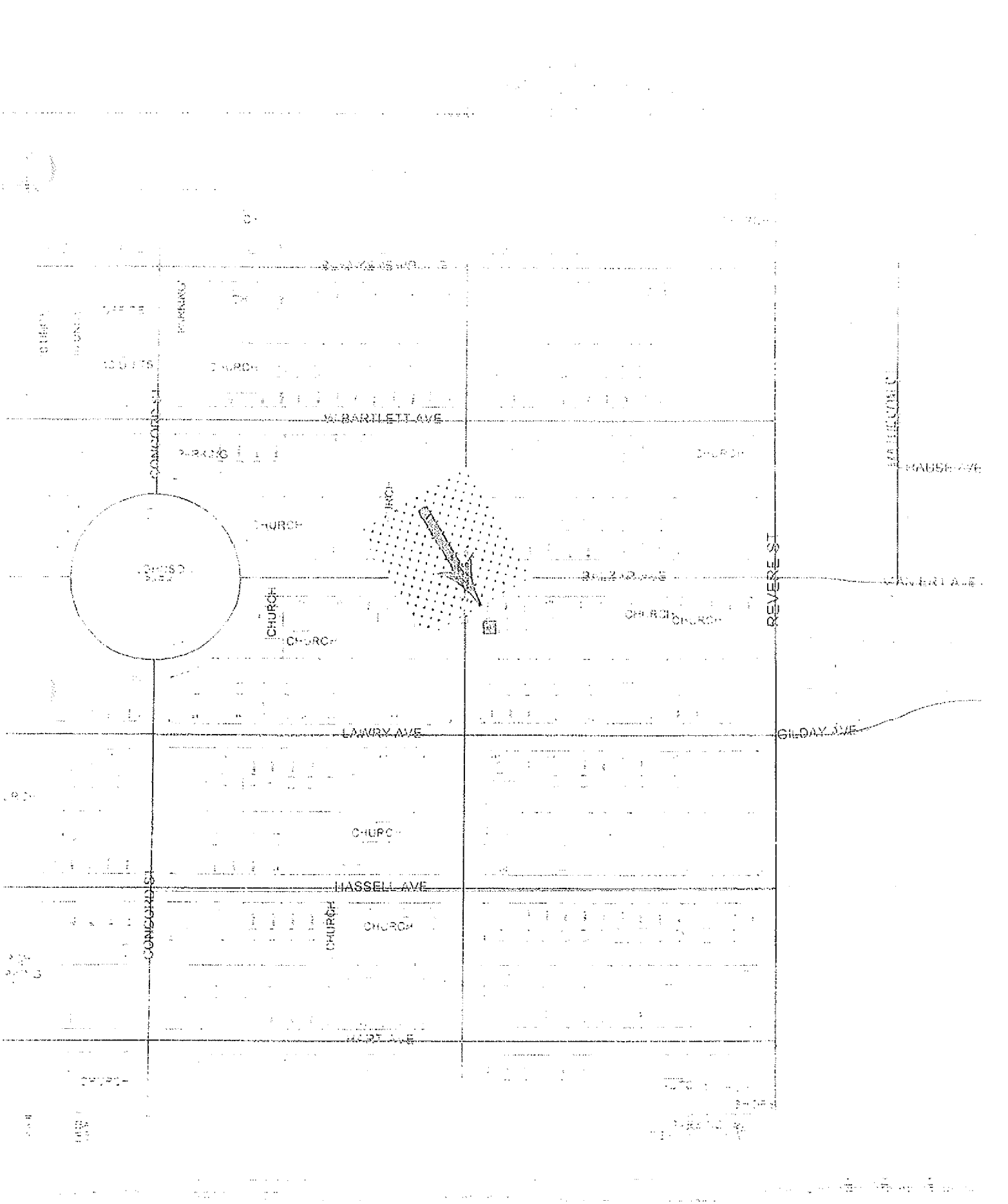

W. BARTLETT AVE
CONCORD ST
CHURCH
REVERE ST
LAWRY AVE
GILDAY AVE
HASSELL AVE
CHURCH

Consideration of waiving fees and/or penalties

Staff Report

Property Address: 893 Balzar Ave
Las Vegas, Nevada 89106 (Ward 5)

CASE: #62009

Financial Overview:

Total Amount Assessed:	$101,479.35
Amounts Paid:	-$
Total Balance owed:	$101,727.80
Amount Requested to be waived:	$98,050.00

FINANCIAL BREAKDOWN:

ABATEMENT FEES		
Subcontractor Expenses:	$1,849.00	
Admin Fees (15%):	$277.35	
Boarded Building Certificate Fee:	$325.00	
Inspection Fees:	$480.00	
Late Fees:	$ 48.00	
Penalties per failed inspection:	$450.00	
Sub-total	$3,429.35	Staff recommends that none of the abatement fees be waived
Daily Civil Penalties:	$98,050.00	
Interest accrued	$248.45	Calculated by Finance and Business Services
GRAND TOTAL related to this case	$101,727.80	
Payments	-$0	Two separate payments in November 2008 & December 2008
BALANCE DUE (w/ daily civil penalties)	**$101,727.80**	
Remaining Abatement Fees (including interest) Due	$3677.80	
Remaining Daily Civil Penalties Due	$98,050.00	

Waiver Option:
Daily Civil Penalties **$101,727.80**

NOTICE OF PUBLIC HEARING

AUGUST 18, 2010

Pursuant to Las Vegas Municipal Code for the Abatement of Dangerous Buildings/Nuisance Code and/or Housing Code, NOTICE IS HEREBY GIVEN THAT ON **WEDNESDAY, AUGUST 18, 2010,** at the hour of **1:00 P.M.** in the City Council Chambers, 400 Stewart Avenue, Las Vegas, Nevada, the City Council will consider the REPORT OF EXPENSES submitted by the Director of Neighborhood Services for:

> Waiver and/or reduction of abatement costs, daily civil penalties and accrued interest for the violations on the property located at **893 Balzar Avenue – Case #62009**. The Director of Neighborhood Services certifies that abatement costs, daily civil penalties and accrued interest in the total sum of **$101,727.80** were imposed. Owner of record: **BANK US NATIONAL ASS TRS – WARD 5 (BARLOW)**

If the City Council is satisfied with the report, it may release the lien of assessment recorded against the property. Any person affected by the proposed charge may file a written protest with the City Clerk any time prior to the hearing. Each protest must contain a description of the property and the grounds for the protest.

BEVERLY K. BRIDGES
CITY CLERK

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

8/18/2010 Case # 62009

Bank of America for US Bank National Association
2505 W. Chandler Boulevard
Chandler, AZ 85224

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Gonzalez C. Date of Delivery 8-6-10

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7007 3020 0003 1596 5824

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

8/18/2010 Case #62009
Ms. Krista Nielson, Esq.
Miles, Bauer, Bergstrom & Winters, LLP
2200 Paseo Verde Parkway, Suite 250
Henderson, NV 89052

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) CITY CLERK C. Date of Delivery 8/9/10

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No
2010 AUG -9 A 10:59

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7007 3020 0003 1596 5817

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

City of Las Vegas Agenda Item No.: **84.**

AGENDA SUMMARY PAGE - PLANNING & DEVELOPMENT

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PLANNING & DEVELOPMENT
DIRECTOR: M. MARGO WHEELER ☐ **Consent** ☒ **Discussion**

SUBJECT:

EOT-38524 – RECONSIDERATION - EXTENSION OF TIME - SPECIAL USE PERMIT - APPLICANT/OWNER: HECTOR CAMACHO - Request for an Extension of Time of a previously approved Special Use Permit (SUP-27933) FOR A PROPOSED RESTAURANT WITH A SERVICE BAR WITH WAIVERS TO ALLOW A ZERO-FOOT DISTANCE SEPARATION FROM A CHILD CARE FACILITY AND TO ALLOW A 58-FOOT DISTANCE SEPARATION FROM A SCHOOL WHERE 400 FEET IS REQUIRED at 4561 East Bonanza Road (APN 140-32-101-016), C-1 (Limited Commercial) Zone, Ward 3 (Reese). Staff recommends APPROVAL.

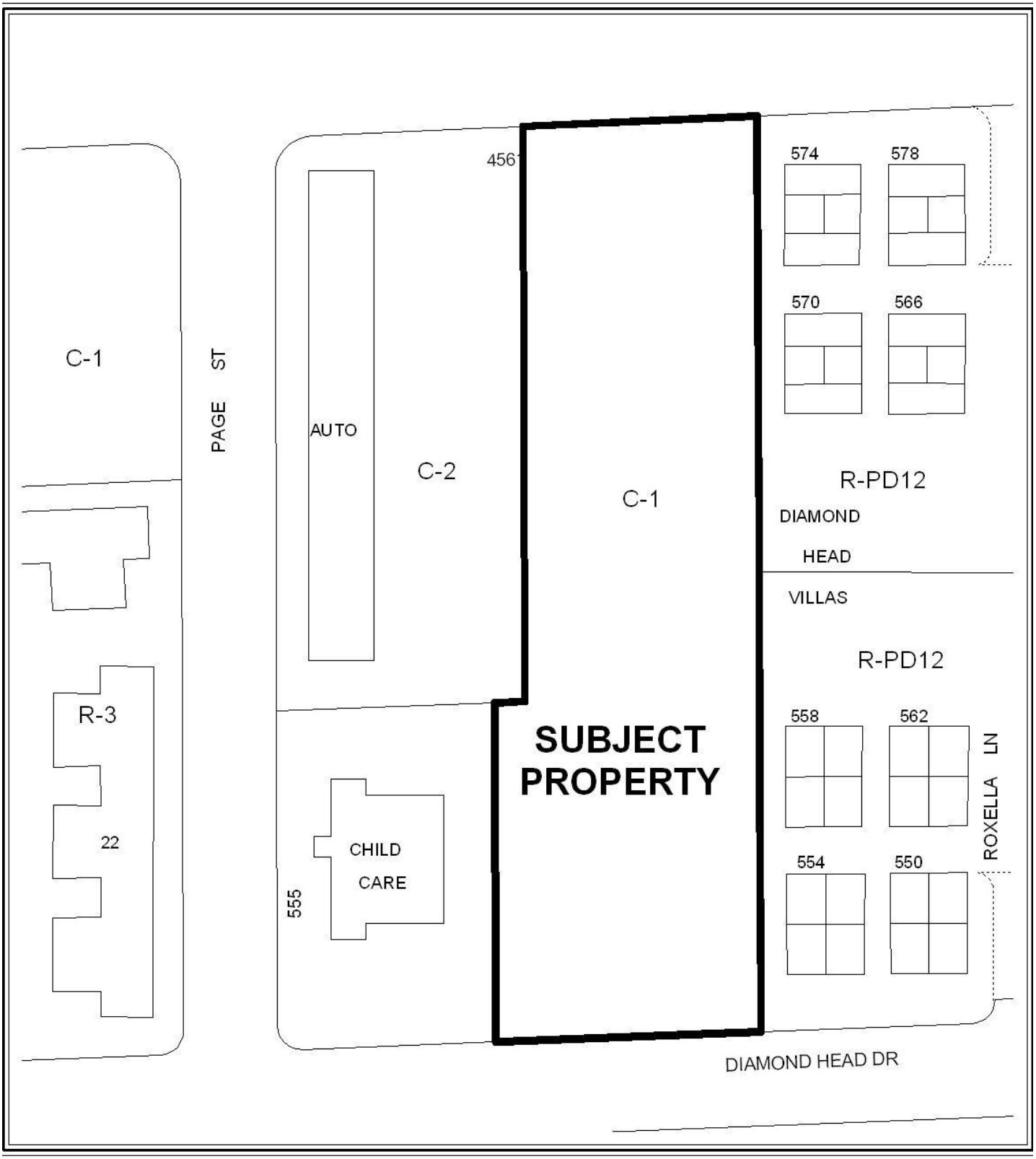
PROTESTS RECEIVED BEFORE:		**APPROVALS RECEIVED BEFORE:**	
Planning Commission Mtg.	**0**	**Planning Commission Mtg.**	**0**
City Council Meeting	**0**	**City Council Meeting**	**1**

RECOMMENDATION:

Staff recommends APPROVAL, subject to conditions:

BACKUP DOCUMENTATION:

1. Location and Aerial Maps
2. Conditions and Staff Report
3. Supporting Documentation
4. City Council Approval Letter for SUP-27933
5. Justification Letter
6. Letter by Juanita Clark



0 50 100 Feet

CASE: **EOT-38524**

ZONING OF SUBJECT PROPERTY:

C-2 (GENERAL COMMERCIAL) AND C-1 (Limited Commercial)

N



0 50 100 Feet

CASE: **EOT-38524**

ZONING OF SUBJECT PROPERTY:

C-2 (GENERAL COMMERCIAL) AND C-1 (Limited Commercial)

N

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: AUGUST 18, 2010
DEPARTMENT: PLANNING AND DEVELOPMENT
ITEM DESCRIPTION: APPLICANT/OWNER: HECTOR CAMACHO

** STAFF RECOMMENDATION(S) **

CASE NUMBER	*RECOMMENDATION*	*REQUIRED FOR APPROVAL*
EOT-38524	Staff recommends APPROVAL, subject to conditions:	None

** CONDITIONS **

EOT-38524 CONDITIONS

Planning and Development

1. This Special Use Permit (SUP-27933) shall expire on July 16, 2012 unless another Extension of Time is approved by the City Council.

2. Conformance to the conditions of approval of Special Use Permit (SUP-27933) and all other site related actions as required by the Planning and Development Department and Department of Public Works.

DS

** STAFF REPORT **

PROJECT DESCRIPTION

The subject site is currently undeveloped land with a previously approved Special Use Permit (SUP-27933) for a proposed Restaurant with Service Bar and waivers to allow a zero-foot distance separation from a child care facility and 58-foot distance separation from a school where 400 feet is required at 4561 East Bonanza Road. No building permits or business licenses have been issued for the proposed restaurant. There has been a change in land use in the surrounding area for a Fire Station to the west of the subject site. The applicant is requesting a five-year Extension of Time due to the current economic condition: staff does not have an objection to the Extension of Time, but recommends a two-year time limit. If the Extension of Time is denied, the Special Use Permit (SUP-27933) will expire.

BACKGROUND INFORMATION

Related Relevant City Actions by P&D, Fire, Bldg., etc	
01/21/04	The City Council approved a request to amend a portion of the Southeast Sector Plan of the General Plan (GPA-2966) from SC (Service Commercial) to GC (General Commercial) on 3.41 acres adjacent to the southeast corner of Bonanza Road and Page Street. The Planning Commission recommended denial on 11/20/03.
	The City Council approved a related request for Rezoning (ZON-2967) from R-E (Residence Estates) under Resolution of Intent to O (Office) and C-1 (Limited Commercial) to C-2 (General Commercial).
	The City Council approved a related request for a Special Use Permit (SUP-3223) for an Auto Repair Garage, Major.
	The City Council approved a related request for a Site Development Plan Review (SDR-3224) for an Auto Repair Garage, Major and a proposed Self-Service Car Wash and a waiver of the perimeter and parking lot landscaping requirements.
11/19/04	The Planning and Development Department approved a request for a Reversionary Map (FMP-5529) for Diamondhead Townhomes on property located on the southeast corner of Bonanza Road and Page Street. The map was recorded on 01/19/05.
03/19/08	The City Council approved a request for a Variance (VAR-25220) to allow 201 parking spaces where 250 are required on 3.41 acres at the southeast corner of Page Street and Bonanza Road. The Planning Commission recommended denial on 02/14/08.

Related Relevant City Actions by P&D, Fire, Bldg., etc	
03/19/08	The City Council approved a related request for a Site Development Plan Review (SDR-25148) to add a proposed 20,400 square-foot General Retail development to an existing 16,250 square-foot Auto Repair Garage, Major with waivers of perimeter landscape buffers to allow a five-foot buffer along a portion of the south property line where 15 feet is required and a five-foot buffer along a portion of the east property line where eight feet is required. The Site Development Plan Review expired on 03/19/10.
10/22/08	The Planning and Development Department approved a request for a technical review of a Parcel Map (PMP-27923) for 4.32 acres located at 4561 East Bonanza Road. The map was recorded on 06/09/09; file 116, page 81 record book 20060609.
07/16/08	The City Council approved a request for a Special Use Permit (SUP-27933) for a proposed Restaurant with a Service Bar with waivers to allow a zero-foot distance separation from a child care facility and to allow a 58-foot distance separation from a school where 400 feet is required at 4561 East Bonanza Road. The Planning Commission recommended denial on 06/12/08.
04/23/09	The Planning Commission recommended denial for a request for a Special Use Permit (SUP-33611) for a proposed Motor Vehicle Sales (Used) Establishment at 4561 East Bonanza Road.
07/21/10	The City Council voted to hold this item in abeyance to the August 4, 2010 City Council meeting at the request of Council.
08/04/10	The City Council voted to deny the request.

Related Building Permits/Business Licenses	
07/25/06	A business license (G02-00753) was issued for an Auto Repair Garage, Minor at 4561 East Bonanza Road, Ste 150. The license is still active.
10/10/06	A business license (G03-02372) was issued for an Auto Repair Garage, Major at 4561 east Bonanza Road, Ste 120. The license is still active.
10/04/07	A business license (A39-00431) was issued for Auto Parts sales at 4561 East Bonanza Road, Ste 160. The license is still active.
06/11/10	A business license (R05-00693) was issued for a Taco Trailer/Take Out at 4561 East Bonanza Road. The license is still active.

Pre-Application Meeting
A pre-application meeting was not required nor was one held.

Neighborhood Meeting
A neighborhood meeting was not required nor was one held.

Field Check	
06/23/10	Staff conducted a field inspection of the subject site with the following observations: • The parcel is undeveloped land surrounded by chain-link fencing with sections of the fencing falling down, completely down, and/or missing a section at the south portion of a back parking lot area. • Bags full of trash, debris, and broken glass are scattered over the parcel with dead trees limbs set outside the fencing. • There is a car for sale at the northern end of the parcel at the entrance to the parking lot adjacent Bonanza Road. • A trash dumpster is placed outside the fenced area near Bonanza Road with graffiti on it. • A second yellow trash dumpster located in the parking lot directly in front of the parcel appeared filled to capacity with no lid.

Details of Application Request	
Site Area	
Gross Acres	1.32

Surrounding Property	***Existing Land Use Per Title 19.04***	***Planned or Special Land Use Designation***	***Existing Zoning District***
Subject Property	Auto Repair Garage, Minor and Major	GC (General Commercial)	C-2 (General Commercial)
North	Single Family Residences	ML (Medium-Low Density Residential)	R-CL (Single Family Compact-Lot)
South	Child Care Facility	SC (Service Commercial)	R-E (Residence Estates)
East	Undeveloped Land	GC (General Commercial)	C-1 (Limited Commercial)
West	Apartments	M (Medium Density Residential)	R-3 (Medium Density Residential)
	Undeveloped Land-Proposed Fire Station	SC (Service Commercial)	C-1 (Limited Commercial)

Master Plan Areas	*Yes*	*No*	*Compliance*
Master Plan Area		X	N/A
Special Purpose and Overlay Districts	***Yes***	***No***	***Compliance***
Special Purpose and Overlay Districts		X	N/A
Trails		X	N/A
Rural Preservation Overlay District		X	N/A
Las Vegas Redevelopment Plan Area		X	N/A
Development Impact Notification Assessment		X	N/A
Project of Regional Significance		X	N/A

ANALYSIS

This is the first request for an Extension of Time of a previously approved Special Use Permit (SUP-27933) for a proposed Restaurant with Service Bar with waivers to allow a zero-foot distance separation from a child care facility and 58-foot distance separation from a school where 400 feet is required at 4561 East Bonanza Road. In addition to the above Special Use Permit, the applicant had received approval to add a 20,400 square foot General Retail Development to an existing 16,250 square-foot Auto Repair Garage, but the entitlement expired on 03/19/10. No building permits or business licenses have been issued for the proposed restaurant. Staff conducted a field check of the site and found the chain link fencing in need of repair, bags of trash scattered over the lot, broken glass, dead tree branches piled by the fence, a trash dumpster set outside the fencing with graffiti on it and a vehicle for sale parked at the north end near Bonanza Road.

FINDINGS

The Special Use Permit (SUP-27933) has not met Title 19.18.060 requirements to exercise the entitlement as a business license has not been issued for the proposed use. A report has been sent to Code Enforcement requesting correction of property maintenance violations. There has been a change in land use in the surrounding area for a Fire Station to the west of the subject site. The applicant is requesting an Extension of Time due to the current economic conditions in Las Vegas. Staff is recommending approval of this request with a two-year time limit. Conformance to the conditions of approval of the Special Use Permit (SUP-27933) shall be required.

NOTICES MAILED N/A

APPROVALS 0

PROTESTS 0

DS

PLANNING & DEVELOPMENT DEPARTMENT

STATEMENT OF FINANCIAL INTEREST

Case Number: EOT-38524 APN: 140-32-101-017

Name of Property Owner: HECTOR CAMACHO

Name of Applicant: SAME

Name of Representative: SAME

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ Yes ☒ No

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____ _____

APN: _____

Signature of Property Owner: _____

Print Name: HECTOR CAMACHO

Subscribed and sworn before me

This 11th day of June, 2010

_____

Notary Public in and for said County and State

State of Nevada
County of Clark

JEANNIE M. BECKNELL
Notary Public State of Nevada
No. 99-23658-1
My appt. exp. Apr. 10, 2011

RECEIVED
JUN 11 2010

PLANNING & DEVELOPMENT

PLANNING & DEVELOPMENT DEPARTMENT

APPLICATION / PETITION FORM

Application/Petition For: EOT

Project Address (Location) 4561 E BONANZA

Project Name CAMACHO PLAZA **Proposed Use** ?

Assessor's Parcel #(s) 140 ~~32~~ 049 32 101 017 **Ward #** 3

General Plan: existing _____ proposed _____ **Zoning:** existing C1 proposed _____

Commercial Square Footage _____ **Floor Area Ratio** _____

Gross Acres _____ **Lots/Units** _____ **Density** _____

Additional Information _____

PROPERTY OWNER HECTOR CAMACHO **Contact** HECTOR

Address 1501 S MARYLAND PK **Phone:** 460175 **Fax:** _____

City LV **State** NV **Zip** 89104

E-mail Address _____

APPLICANT HECTOR CAMACHO **Contact** HECTOR

Address 1501 S MARYLAND PK **Phone:** 460175 **Fax:** _____

City LV **State** NV **Zip** 89104

E-mail Address _____

REPRESENTATIVE HECTOR **Contact** 460175

Address 1501 S MARYLAND PK **Phone:** _____ **Fax:** _____

City LV **State** NV **Zip** 89104

E-mail Address _____

Property Owner Signature* _____

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name Hector Camacho

Subscribed and sworn before me

This 11th day of June, 2010.

Jeannie M Becknell

Notary Public in and for said County and State State of Nevada County of Clark

JEANNIE M. BECKNELL
Notary Public State of Nevada
No. 99-23658-1
My appt. exp. Apr. 10, 2011

FOR DEPARTMENT USE ONLY

Case #	EOT-38524
Meeting Date:	7/21/10
Total Fee:	300 00
Date Received:*	6/11/10
Received By:	MRex

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JUN 11 2010
PLANNING

*The application will not be deemed complete until the submitted materials have been reviewed by the Planning and Development Department for consistency with applicable sections of the Zoning Ordinance.

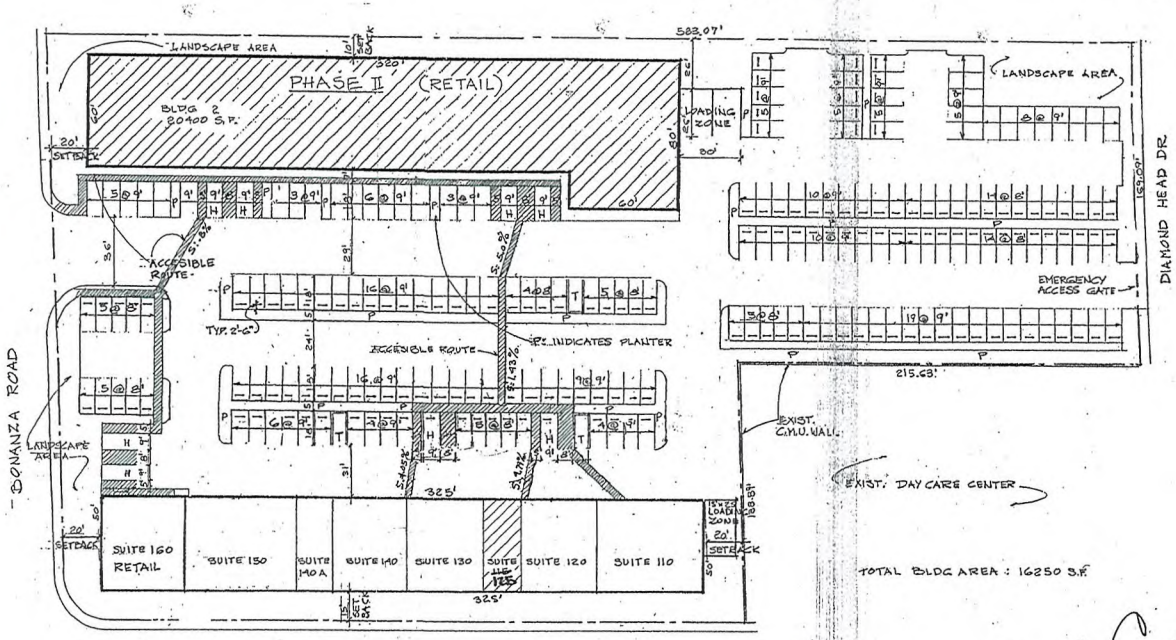
Revised 10/27/08

f:\depot\Application Packet\Application Form.pdf

PLANS FOR FIRE HYDRANTS, FIRE EXTINGUISHING SYSTEMS, FIRE ALARM SYSTEMS, MEDICAL GAS SYSTEMS, ON-SITE FIRE, WATER, AND FUEL TANKS MUST BE APPROVED BY FIRE DEPARTMENT BEFORE INSTALLATION.

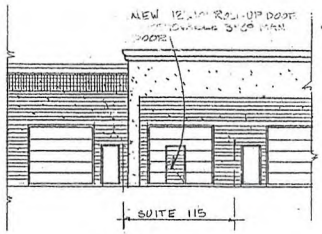
AUTOMATIC FIRE SPRINKLER SYSTEM REQUIRED.

REVIEWED

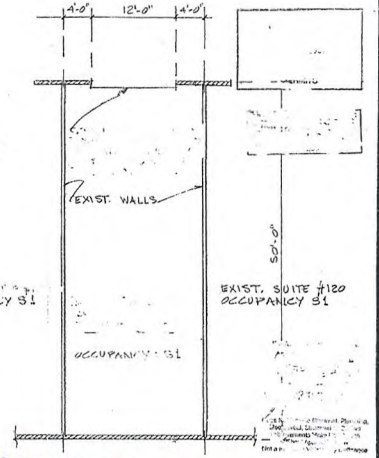


PLOT PLAN
1" = 30'

C-of-C ONLY



PARTIAL ELEVATION
1" = 10'



FLOOR PLAN
1/8" = 1'-0"

CODE ANALYSIS

1....OCCUPANCY CLASIFICATION: M.- S 1. (No amounts will be over allowable amounts per Table 307.7)

2....CONSTRUCTION TYPE: V B

3....FIRE SPRINKLERS: Yes.

4....HEIGHT: Actual: 23', Allowable: 55'.

5....STORIES: Actual: 1. Allowable: 2.

PHASE 1

Building 1:
6....AREA- ACTUAL: 16250 S.F. ALLOWABLE: 9000 S.F.x 3 due to Sprinklers: 27000 S.F.

7....OCCUPANT LOAD:16250S.F.—100= 162.5.

8....Two exits required. 22 exits provided.

9....Table 602: Fire resistance based on location.

Distance:				
South wall: 20'.	Required:	0 Hr.	Provided:	0 Hr.
North wall: 70'.	"	0 Hr.	"	0 Hr.
East wall: 74'.	"	0 Hr.	"	0 Hr.
West wall: 45'.	"	0 Hr.	"	0 Hr.

PHASE 2

Building 2:
6....AREA- ACTUAL: 20400 S.F. ALLOWABLE: 9000 S.F.x 3 due to Sprinklers: 27000 S.F.

7....OCCUPANT LOAD: 20400 S.F.—100= 204

8....Two exits required: 14 exits provided.

9....Table 602: Fire resistance based on location.

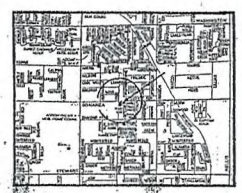
Distance:				
South wall: 235'.	Required:	0 Hr.	Provided:	0 Hr.
North wall: 70'.	"	0 Hr.	"	0 Hr.
East wall: 10'.	"	0 Hr.	"	0 Hr.
West wall: 96'.	"	0 Hr.	"	0 Hr.

10....FIRE RESISTIVE CONSTRUCTION REQUIREMENTS: None.

11....SPECIAL INSPECTIONS REQUIRED: The Structural Engineer recommends PERIODICAL INSPECTIONS for Full Grout Masonry.

12....1997 UNIFORM ADMINISTRATIVE CODE W/ ORD.# 5637.
2003 INTERNATIONAL BUILDING CODE W/ ORD. # 5636.
2000 UNIFORM MECHANICAL CODE W/ ORD. #5528.
2000 UNIFORM PLUMBING CODE W/ ORD. # 5626.
2002 NATIONAL ELECTRICAL CODE W/ ORD. # 5527.
2003 UNIFORM FIRE CODE (NFPA 1) W/ ORD. # 5667.

1998 ICC/ANSI A117-1.



LEGAL DESCRIPTION:

BEING A PORTION OF THE NE/4 AT THE NW/4 OF SECTION 32, TOWNSHIP 20 S, RANGE 62 E AS RECORDED AT THE CLARK COUNTY, NV, RECORDER'S OFFICE.

A.P.N.: 140-32-114-045

RECEIVED
MAR 04 2009

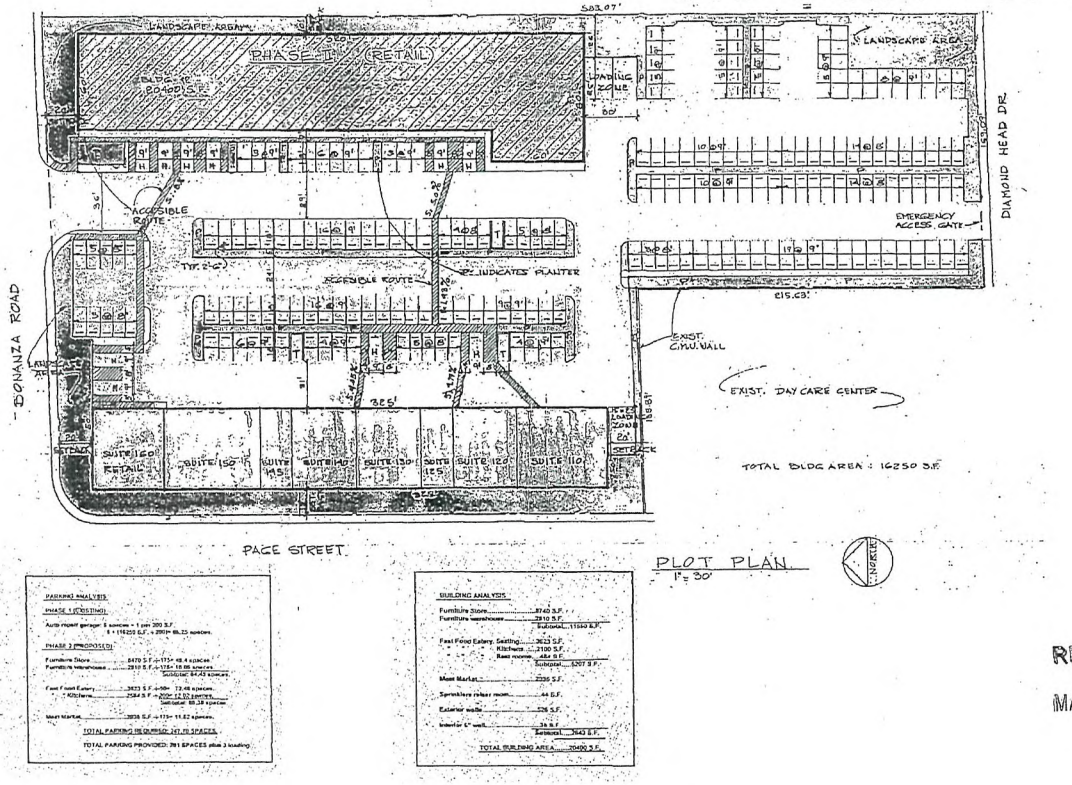
APPROVED
BY
CURRENT PLANNING DIVISION
CITY OF LAS VEGAS

RECEIVED
JUN 11 2010

SUP-33611
04/23/09 PC

EOT-38524

SUP-33611 (S) Stamped 3-4-09; PC 4-23-09 Denied



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MAR 04 2009

RECEIVED
JUN 11 2010
EOT-38524

LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

LARRY BROWN
STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW

DOUGLAS A. SELBY
CITY MANAGER



CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.6011
TDD 702.386.9108
www.lasvegasnevada.gov

August 6, 2008

Mr. Hector Camacho
1501 South Maryland Parkway
Las Vegas, Nevada 89104

RE: SUP-27933 – SPECIAL USE PERMIT
CITY COUNCIL MEETING OF JULY 16, 2008

Dear Mr. Camacho:

The City Council at a regular meeting held July 16, 2008 considered the Appeal filed from the denial by the Planning Commission of a request for a Special Use Permit FOR A PROPOSED RESTAURANT WITH A SERVICE BAR WITH WAIVERS TO ALLOW A ZERO-FOOT DISTANCE SEPARATION FROM A CHILD CARE FACILITY AND TO ALLOW A 58-FOOT DISTANCE SEPARATION FROM A SCHOOL WHERE 400 FEET IS REQUIRED at 4561 East Bonanza Road (APN 140-32-101-013), C-1 (Limited Commercial) Zone.

The City Council APPROVED the Appeal, thereby approving the Special Use Permit. The Notice of Final Action was filed with the Las Vegas City Clerk on July 17, 2008. This approval is subject to:

Added Conditions

A. The hours of operation of the alcohol sale shall be limited to 4:00 p.m. to 12:00 a.m. daily.

B. A property management company shall remain on site at all times and the telephone number of the contact person shall be made available to the City Council Office at all times.

C. There shall be a three-month review after issuance of the business license at a public hearing of the City Council and the applicant shall pay for the public hearing review.

Planning & Development

1. Conformance to all minimum requirements under LVMC Title 19.04.010 for Restaurant with Service Bar use, including parking requirements.

2. Conformance to the conditions for Site Development Plan Review (SDR-25148) and Variance (VAR-25220) if approved.

EOT-38524

3. This approval shall be void two years from the date of final approval, unless a building permit has been issued for the principal building on the site. An Extension of Time may be filed for consideration by the City of Las Vegas.

4. Approval of this Special Use Permit does not constitute approval of a liquor license.

5. An address must be assigned for the Restaurant with Service Bar use at the time of building permits.

6. This business shall operate in conformance to Chapter 6.50 of the City of Las Vegas Municipal Code.

7. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

Sincerely,

Angela Crolli
Senior Deputy City Clerk for
Beverly K. Bridges, CMC, City Clerk

M. Margo Wheeler, AICP
Director
Planning and Development Department

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JUN 11 2010
EOT-38524

HECTOR CAMACHO
1501 S. MARYLAND PKWY
LAS VEGAS, NEVADA 89104
(702)460-1775

May 10, 2010

Attn: CITY OF LAS VEGAS, NEVADA

Re: JUSTIFICATION LETTER
SUP-27933-SPECIAL USE PERMIT
CITY COUNCIL MEETING OF JULY 16, 2008

I am formally requesting an extension of Five Years for my Special Use Permit due to the current economic situation. The reason for my request is because the economy should rebound with in that five year extension.

Respectfully,

HECTOR CAMACHO

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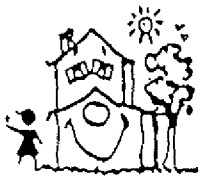
JUN 11 2010
EOT-38524



CHARLESTON NEIGHBORHOOD PRESERVATION

"Doing things today that will improve tomorrow"

Phone/Fax: 702-877-2438

TO: Mayor GOODMAN, Mayor Pro-Tem REESE, Councilpersons WOLFSON, TARKANIAN, ROSS, BARLOW, ANTHONY!
FROM: CNP
DATE: FOR July 21, 2010
RE: Selected CLV July 21, 2010 Agenda items

#34—request to Councilpersons Tarkanian and or Wolfson to pull from CONSENT for discussion/response to faxed questionS.

#42—request to ANY Councilperson or Group of to pull from CONSENT for discussion/response to faxed questionS.

#47—request to Councilman Barlow to pull from CONSENT for response to faxed questioN.

#54—Looks to us as though there are too many people with too much time on their hands and even money? Whoever is checking on this RTC must take another look/study on decreasing numbers and checking reality! Please vote NO on this incompetent plan to force an experiment to see whether insurance costs/ injuries, will balance with fuel upon government employees at taxpayer expense.

Regional Transportation Commission must get bus benches for these constituents forced to Sit on Rocks, Curbs, Market baskets, Dirt piles, Leaning on poles, or Standing in cold, heat, dust, rain—what an insult to hear about newer, larger buses with the torture imposed on increased ridership at increased ticket prices to pay for them--elsewhere! {Vegas Dr. to Charleston & Buffalo to Decatur is what we have in mind—but that's not all.}

We have other reality, practical suggestions.

#57—Vote NO on Bill 2010-22 because no satisfactory agreement with neighbors was reached!
Our question regards an unnumbered question on an unnumbered page, between p.14 and p.16 of Daniel Lauber's report to Clark County, NV which is to be filled out by an applicant for one of these group homes. There is a box to be checked "if neither State of Nevada nor Clark County requires a license or certification to operate the proposed community residence."
Are there any such operations in Las Vegas today that will need to have this box checked, provided that this bill passes?
If yes, would they need to fill out this application and have that box checked OR because this bill was not in effect when they applied, would they not be required to fill this page out and have this box checked?
If we don't know, will a check be made and action taken?

#74—EOT-38422—YES, please.

#76—EOT-38524—a mandatory 25 yr extension-YES please.

#92—SDR-37940-a drive through is higher risk for the attendant.

#95—SUP-38194—NO, please to ALL THREE waivers. These are not waivers to a frivolity, these are real people, real living conditions, and a real right-of-way—for a Massage Establishment. Quality of life in this neighborhood will be lessened and current standards will be further lowered if distance to residential is altered

Submitted at City Council
Date 7/21/10 Item 54
Juanita Clark

BOARD & ADVISORY MEMBERS
Dennis Ardine-Vicki Arnold-Dick Bratton-Erna Clark-Juanita Clark-Miriam Een- Danielle Hanslip-Rose Honrath-June Ingram-Rick Johnson-Jolanta Krol-Rod &Betty Larsen- Geno &Pearl Lonardo-Flo Montalvo-Dorothy Orr-Jim Seward-Pamela Stancliffe-Tim Volz-Marcus Gobel-Ginger Norton-Denise Reitz-Layne Rushforth-Jeanine Sweany-Julia Whaun-Jean Withers-Others

CHARLESTON NEIGHBORHOOD
PRESERVATION

"Doing things today that will improve tomorrow"

Phone/Fax: 702-877-2438

to 340 ft., an existing massage is within 638 ft., and the right of way is only 60ft. What kind of reputation would we strengthen?

#98—SUP-38137—NO, please to ALL THREE waivers. Will we break the constituent's trust, if the prize is big "enough"? This clever Financial Institution requests being 140 ft too close to Residential, 180 ft. too close to Another financial institution, AND be 600 sq ft. smaller in area than the required 1,500 sq. ft..

June Ingram
C N P President

June Ingram, PRESIDENT and BOARD
Charleston Neighborhood Preservation

BOARD & ADVISORY MEMBERS
Dennis Ardine-Vicki Arnold-Dick Bratton-Erna Clark-Juanita Clark-Miriam Een- Danielle Hanslip-Rose Honrath-June Ingram-Rick Johnson-Jolanta Krol-Rod &Betty Larsen- Geno &Pearl Lonardo-Flo Montalvo-Dorothy Orr-Jim Seward-Pamela Stancliffe-Tim Volz-Marcus Gobel-Ginger Norton-Denise Reitz-Layne Rushforth-Jeanine Sweany-Julia Whaan-Jean Withers-Others

City of Las Vegas Agenda Item No.: **85.**

AGENDA SUMMARY PAGE - PLANNING & DEVELOPMENT

CITY COUNCIL MEETING OF: AUGUST 18, 2010

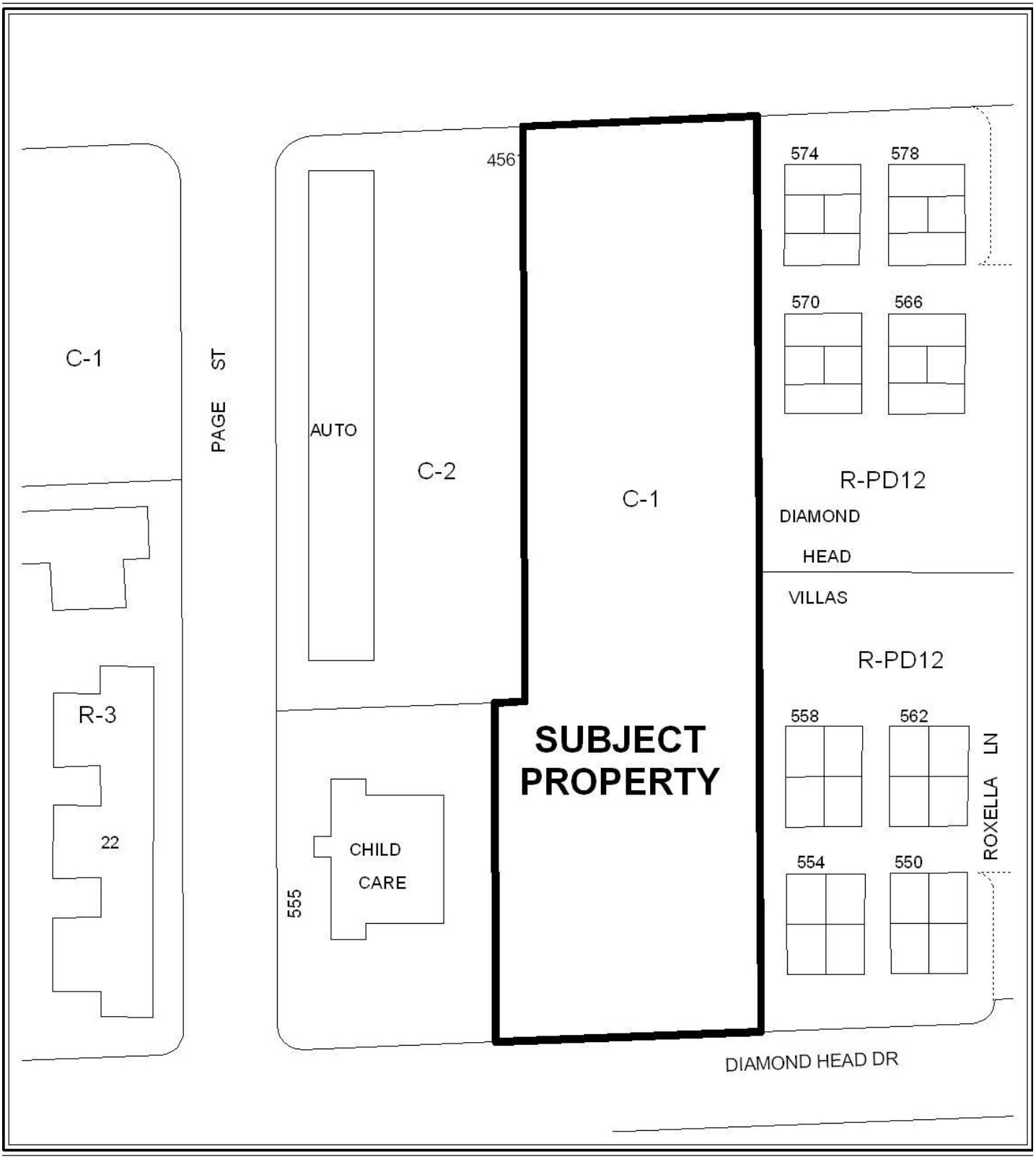
DEPARTMENT: PLANNING & DEVELOPMENT
DIRECTOR: M. MARGO WHEELER ☐ **Consent** ☒ **Discussion**

SUBJECT:
EOT-38524 – REHEAR - EXTENSION OF TIME - SPECIAL USE PERMIT - APPLICANT/OWNER: HECTOR CAMACHO - Request for an Extension of Time of a previously approved Special Use Permit (SUP-27933) FOR A PROPOSED RESTAURANT WITH A SERVICE BAR WITH WAIVERS TO ALLOW A ZERO-FOOT DISTANCE SEPARATION FROM A CHILD CARE FACILITY AND TO ALLOW A 58-FOOT DISTANCE SEPARATION FROM A SCHOOL WHERE 400 FEET IS REQUIRED at 4561 East Bonanza Road (APN 140-32-101-016), C-1 (Limited Commercial) Zone, Ward 3 (Reese). Staff recommends APPROVAL.

PROTESTS RECEIVED BEFORE:		**APPROVALS RECEIVED BEFORE:**	
Planning Commission Mtg.	**0**	**Planning Commission Mtg.**	**0**
City Council Meeting	**0**	**City Council Meeting**	**1**

RECOMMENDATION:
Staff recommends APPROVAL, subject to conditions:

BACKUP DOCUMENTATION:
1. Location and Aerial Maps
2. Conditions and Staff Report
3. Supporting Documentation
4. City Council Approval Letter for SUP-27933
5. Justification Letter
6. Letter by Juanita Clark



0 50 100 Feet

CASE: **EOT-38524**

ZONING OF SUBJECT PROPERTY:

C-2 (GENERAL COMMERCIAL) AND C-1 (Limited Commercial)

N



0 50 100 Feet

CASE: **EOT-38524**

ZONING OF SUBJECT PROPERTY:

C-2 (GENERAL COMMERCIAL) AND C-1 (Limited Commercial)

N

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: AUGUST 18, 2010
DEPARTMENT: PLANNING AND DEVELOPMENT
ITEM DESCRIPTION: APPLICANT/OWNER: HECTOR CAMACHO

** STAFF RECOMMENDATION(S) **

CASE NUMBER	*RECOMMENDATION*	*REQUIRED FOR APPROVAL*
EOT-38524	Staff recommends APPROVAL, subject to conditions:	None

** CONDITIONS **

EOT-38524 CONDITIONS

Planning and Development

1. This Special Use Permit (SUP-27933) shall expire on July 16, 2012 unless another Extension of Time is approved by the City Council.

2. Conformance to the conditions of approval of Special Use Permit (SUP-27933) and all other site related actions as required by the Planning and Development Department and Department of Public Works.

DS

** STAFF REPORT **

PROJECT DESCRIPTION

The subject site is currently undeveloped land with a previously approved Special Use Permit (SUP-27933) for a proposed Restaurant with Service Bar and waivers to allow a zero-foot distance separation from a child care facility and 58-foot distance separation from a school where 400 feet is required at 4561 East Bonanza Road. No building permits or business licenses have been issued for the proposed restaurant. There has been a change in land use in the surrounding area for a Fire Station to the west of the subject site. The applicant is requesting a five-year Extension of Time due to the current economic condition: staff does not have an objection to the Extension of Time, but recommends a two-year time limit. If the Extension of Time is denied, the Special Use Permit (SUP-27933) will expire.

BACKGROUND INFORMATION

Related Relevant City Actions by P&D, Fire, Bldg., etc	
01/21/04	The City Council approved a request to amend a portion of the Southeast Sector Plan of the General Plan (GPA-2966) from SC (Service Commercial) to GC (General Commercial) on 3.41 acres adjacent to the southeast corner of Bonanza Road and Page Street. The Planning Commission recommended denial on 11/20/03.
	The City Council approved a related request for Rezoning (ZON-2967) from R-E (Residence Estates) under Resolution of Intent to O (Office) and C-1 (Limited Commercial) to C-2 (General Commercial).
	The City Council approved a related request for a Special Use Permit (SUP-3223) for an Auto Repair Garage, Major.
	The City Council approved a related request for a Site Development Plan Review (SDR-3224) for an Auto Repair Garage, Major and a proposed Self-Service Car Wash and a waiver of the perimeter and parking lot landscaping requirements.
11/19/04	The Planning and Development Department approved a request for a Reversionary Map (FMP-5529) for Diamondhead Townhomes on property located on the southeast corner of Bonanza Road and Page Street. The map was recorded on 01/19/05.
03/19/08	The City Council approved a request for a Variance (VAR-25220) to allow 201 parking spaces where 250 are required on 3.41 acres at the southeast corner of Page Street and Bonanza Road. The Planning Commission recommended denial on 02/14/08.

Related Relevant City Actions by P&D, Fire, Bldg., etc	
03/19/08	The City Council approved a related request for a Site Development Plan Review (SDR-25148) to add a proposed 20,400 square-foot General Retail development to an existing 16,250 square-foot Auto Repair Garage, Major with waivers of perimeter landscape buffers to allow a five-foot buffer along a portion of the south property line where 15 feet is required and a five-foot buffer along a portion of the east property line where eight feet is required. The Site Development Plan Review expired on 03/19/10.
10/22/08	The Planning and Development Department approved a request for a technical review of a Parcel Map (PMP-27923) for 4.32 acres located at 4561 East Bonanza Road. The map was recorded on 06/09/09; file 116, page 81 record book 20060609.
07/16/08	The City Council approved a request for a Special Use Permit (SUP-27933) for a proposed Restaurant with a Service Bar with waivers to allow a zero-foot distance separation from a child care facility and to allow a 58-foot distance separation from a school where 400 feet is required at 4561 East Bonanza Road. The Planning Commission recommended denial on 06/12/08.
04/23/09	The Planning Commission recommended denial for a request for a Special Use Permit (SUP-33611) for a proposed Motor Vehicle Sales (Used) Establishment at 4561 East Bonanza Road.
07/21/10	The City Council voted to hold this item in abeyance to the August 4, 2010 City Council meeting at the request of Council.
08/04/10	The City Council voted to deny this item.

Related Building Permits/Business Licenses	
07/25/06	A business license (G02-00753) was issued for an Auto Repair Garage, Minor at 4561 East Bonanza Road, Ste 150. The license is still active.
10/10/06	A business license (G03-02372) was issued for an Auto Repair Garage, Major at 4561 east Bonanza Road, Ste 120. The license is still active.
10/04/07	A business license (A39-00431) was issued for Auto Parts sales at 4561 East Bonanza Road, Ste 160. The license is still active.
06/11/10	A business license (R05-00693) was issued for a Taco Trailer/Take Out at 4561 East Bonanza Road. The license is still active.

Pre-Application Meeting
A pre-application meeting was not required nor was one held.

Neighborhood Meeting
A neighborhood meeting was not required nor was one held.

DS

Field Check	
06/23/10	Staff conducted a field inspection of the subject site with the following observations: • The parcel is undeveloped land surrounded by chain-link fencing with sections of the fencing falling down, completely down, and/or missing a section at the south portion of a back parking lot area. • Bags full of trash, debris, and broken glass are scattered over the parcel with dead trees limbs set outside the fencing. • There is a car for sale at the northern end of the parcel at the entrance to the parking lot adjacent Bonanza Road. • A trash dumpster is placed outside the fenced area near Bonanza Road with graffiti on it. • A second yellow trash dumpster located in the parking lot directly in front of the parcel appeared filled to capacity with no lid.

Details of Application Request	
Site Area	
Gross Acres	1.32

Surrounding Property	***Existing Land Use Per Title 19.04***	***Planned or Special Land Use Designation***	***Existing Zoning District***
Subject Property	Auto Repair Garage, Minor and Major	GC (General Commercial)	C-2 (General Commercial)
North	Single Family Residences	ML (Medium-Low Density Residential)	R-CL (Single Family Compact-Lot)
South	Child Care Facility	SC (Service Commercial)	R-E (Residence Estates)
East	Undeveloped Land	GC (General Commercial)	C-1 (Limited Commercial)
West	Apartments	M (Medium Density Residential)	R-3 (Medium Density Residential)
	Undeveloped Land-Proposed Fire Station	SC (Service Commercial)	C-1 (Limited Commercial)

Master Plan Areas	*Yes*	*No*	*Compliance*
Master Plan Area		X	N/A
Special Purpose and Overlay Districts	***Yes***	***No***	***Compliance***
Special Purpose and Overlay Districts		X	N/A
Trails		X	N/A
Rural Preservation Overlay District		X	N/A
Las Vegas Redevelopment Plan Area		X	N/A
Development Impact Notification Assessment		X	N/A
Project of Regional Significance		X	N/A

ANALYSIS

This is the first request for an Extension of Time of a previously approved Special Use Permit (SUP-27933) for a proposed Restaurant with Service Bar with waivers to allow a zero-foot distance separation from a child care facility and 58-foot distance separation from a school where 400 feet is required at 4561 East Bonanza Road. In addition to the above Special Use Permit, the applicant had received approval to add a 20,400 square foot General Retail Development to an existing 16,250 square-foot Auto Repair Garage, but the entitlement expired on 03/19/10. No building permits or business licenses have been issued for the proposed restaurant. Staff conducted a field check of the site and found the chain link fencing in need of repair, bags of trash scattered over the lot, broken glass, dead tree branches piled by the fence, a trash dumpster set outside the fencing with graffiti on it and a vehicle for sale parked at the north end near Bonanza Road.

FINDINGS

The Special Use Permit (SUP-27933) has not met Title 19.18.060 requirements to exercise the entitlement as a business license has not been issued for the proposed use. A report has been sent to Code Enforcement requesting correction of property maintenance violations. There has been a change in land use in the surrounding area for a Fire Station to the west of the subject site. The applicant is requesting an Extension of Time due to the current economic conditions in Las Vegas. Staff is recommending approval of this request with a two-year time limit. Conformance to the conditions of approval of the Special Use Permit (SUP-27933) shall be required.

NOTICES MAILED N/A

APPROVALS 0

DS

PROTESTS 0

DS

PLANNING & DEVELOPMENT DEPARTMENT

STATEMENT OF FINANCIAL INTEREST

Case Number: EOT-38524 APN: 140-32-101-017

Name of Property Owner: HECTOR CAMACHO

Name of Applicant: SAME

Name of Representative: SAME

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ Yes ☒ No

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____ _____

APN: _____

Signature of Property Owner: _____

Print Name: HECTOR CAMACHO

Subscribed and sworn before me

This 11th day of June, 2010

_____

Notary Public in and for said County and State

State of Nevada
County of Clark

JEANNIE M. BECKNELL
Notary Public State of Nevada
No. 99-23658-1
My appt. exp. Apr. 10, 2011

RECEIVED
JUN 11 2010

PLANNING & DEVELOPMENT

PLANNING & DEVELOPMENT DEPARTMENT

APPLICATION / PETITION FORM

Application/Petition For: EOT

Project Address (Location) 4561 E BONANZA

Project Name CAMACHO PLAZA **Proposed Use** ?

Assessor's Parcel #(s) 140 ~~32~~ 049 32 101 017 **Ward #** 3

General Plan: existing _____ proposed _____ **Zoning:** existing C1 proposed _____

Commercial Square Footage _____ **Floor Area Ratio** _____

Gross Acres _____ **Lots/Units** _____ **Density** _____

Additional Information _____

PROPERTY OWNER HECTOR CAMACHO **Contact** HECTOR

Address 1501 S MARYLAND PK **Phone:** 460175 **Fax:** _____

City LV **State** NV **Zip** 89104

E-mail Address _____

APPLICANT HECTOR CAMACHO **Contact** HECTOR

Address 1501 S MARYLAND PK **Phone:** 460175 **Fax:** _____

City LV **State** NV **Zip** 89104

E-mail Address _____

REPRESENTATIVE HECTOR **Contact** 460175

Address 1501 S MARYLAND PK **Phone:** _____ **Fax:** _____

City LV **State** NV **Zip** 89104

E-mail Address _____

Property Owner Signature* _____

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name Hector Camacho

Subscribed and sworn before me

This 11th day of June, 2010.

Jeannie M Becknell

Notary Public in and for said County and State State of Nevada County of Clark

JEANNIE M. BECKNELL
Notary Public State of Nevada
No. 99-23658-1
My appt. exp. Apr. 10, 2011

FOR DEPARTMENT USE ONLY

Case #	EOT-38524
Meeting Date:	7/21/10
Total Fee:	300 00
Date Received:*	6/11/10
Received By:	MRex

RECEIVED
JUN 11 2010
PLANNING

*The application will not be deemed complete until the submitted materials have been reviewed by the Planning and Development Department for consistency with applicable sections of the Zoning Ordinance.

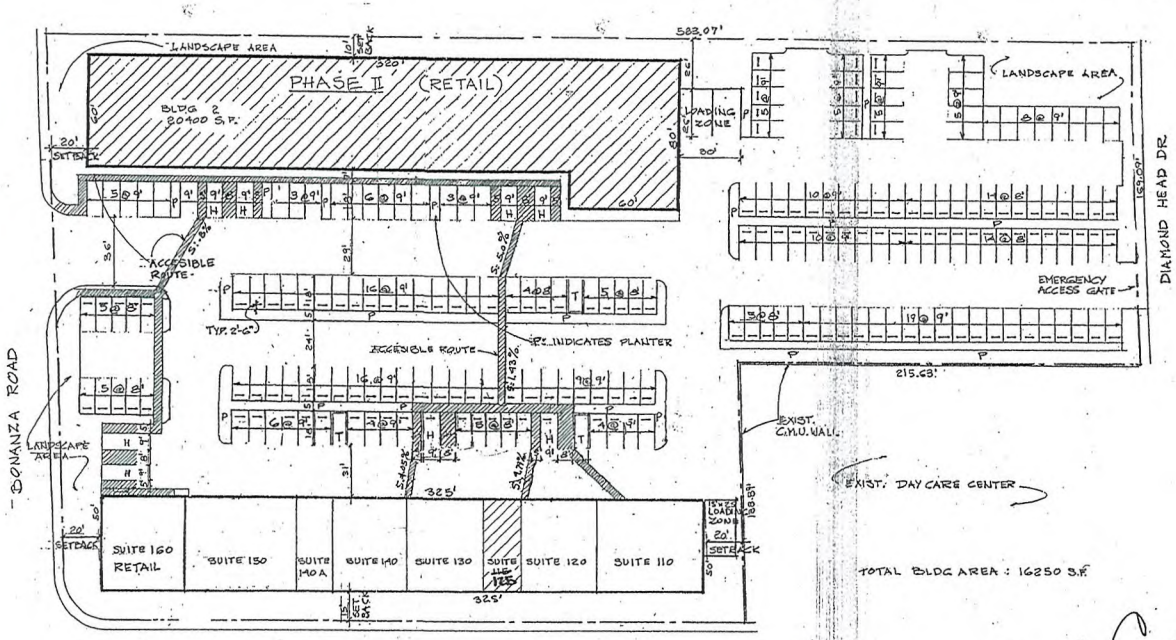
Revised 10/27/08

f:\depot\Application Packet\Application Form.pdf

PLANS FOR FIRE HYDRANTS, FIRE EXTINGUISHING SYSTEMS, FIRE ALARM SYSTEMS, MEDICAL GAS SYSTEMS, ON-SITE FIRE, WATER, AND FUEL TANKS MUST BE APPROVED BY FIRE DEPARTMENT BEFORE INSTALLATION.

AUTOMATIC FIRE SPRINKLER SYSTEM REQUIRED.

REVIEWED



TOTAL BLDG AREA : 16250 S.F.

PLOT PLAN
1" = 30'

NORTH

C-of-C ONLY

CODE ANALYSIS

1....OCCUPANCY CLASIFICATION: M.- S 1. (No amounts will be over allowable amounts per Table 307.7)

2....CONSTRUCTION TYPE: V B

3....FIRE SPRINKLERS: Yes.

4....HEIGHT: Actual: 23', Allowable: 55'.

5....STORIES: Actual: 1. Allowable: 2.

PHASE 1

Building I:
6....AREA- ACTUAL: 16250 S.F. ALLOWABLE: 9000 S.F.x 3 due to Sprinklers: 27000 S.F.

7....OCCUPANT LOAD:16250S.F.—100= 162.5.

8....Two exits required. 22 exits provided.

9....Table 602: Fire resistance based on location.

Distance:				
South wall: 20'.	Required:	0 Hr.	Provided:	0 Hr.
North wall: 70'.	"	0 Hr.	"	0 Hr.
East wall: 74'.	"	0 Hr.	"	0 Hr.
West wall: 45'.	"	0 Hr.	"	0 Hr.

PHASE 2

Building 2:
6....AREA- ACTUAL: 20400 S.F. ALLOWABLE: 9000 S.F.x 3 due to Sprinklers: 27000 S.F.

7....OCCUPANT LOAD: 20400 S.F.—100= 204

8....Two exits required: 14 exits provided.

9....Table 602: Fire resistance based on location.

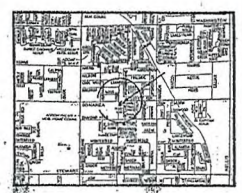
Distance:				
South wall: 235'.	Required:	0 Hr.	Provided:	0 Hr.
North wall: 70'.	"	0 Hr.	"	0 Hr.
East wall: 10'.	"	0 Hr.	"	0 Hr.
West wall: 96'.	"	0 Hr.	"	0 Hr.

10....FIRE RESISTIVE CONSTRUCTION REQUIREMENTS: None.

11....SPECIAL INSPECTIONS REQUIRED: The Structural Engineer recommends PERIODICAL INSPECTIONS for Full Grout Masonry.

12....1997 UNIFORM ADMINISTRATIVE CODE W/ ORD.# 5637.
2003 INTERNATIONAL BUILDING CODE W/ ORD. # 5636.
2000 UNIFORM MECHANICAL CODE W/ ORD. #5528.
2000 UNIFORM PLUMBING CODE W/ ORD. # 5626.
2002 NATIONAL ELECTRICAL CODE W/ ORD. # 5527.
2003 UNIFORM FIRE CODE (NFPA 1) W/ ORD. # 5667.

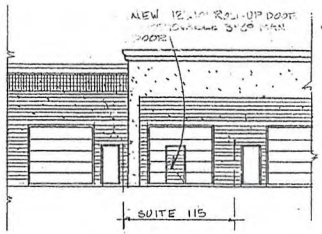
1998 ICC/ANSI A117-1.



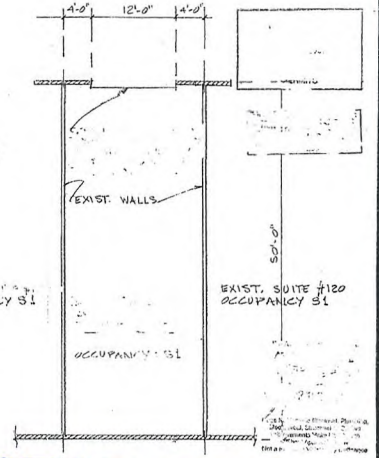
LEGAL DESCRIPTION:

BEING A PORTION OF THE NE/4 AT THE NW/4 OF SECTION 32, TOWNSHIP 20 S, RANGE 62 E AS RECORDED AT THE CLARK COUNTY, NV, RECORDER'S OFFICE.

A.P.N.: 140-32-114-045



PARTIAL ELEVATION
1" = 10'



FLOOR PLAN
1/8" = 1'-0"

RECEIVED
MAR 04 2009

APPROVED
BY
CURRENT PLANNING DIVISION
CITY OF LAS VEGAS

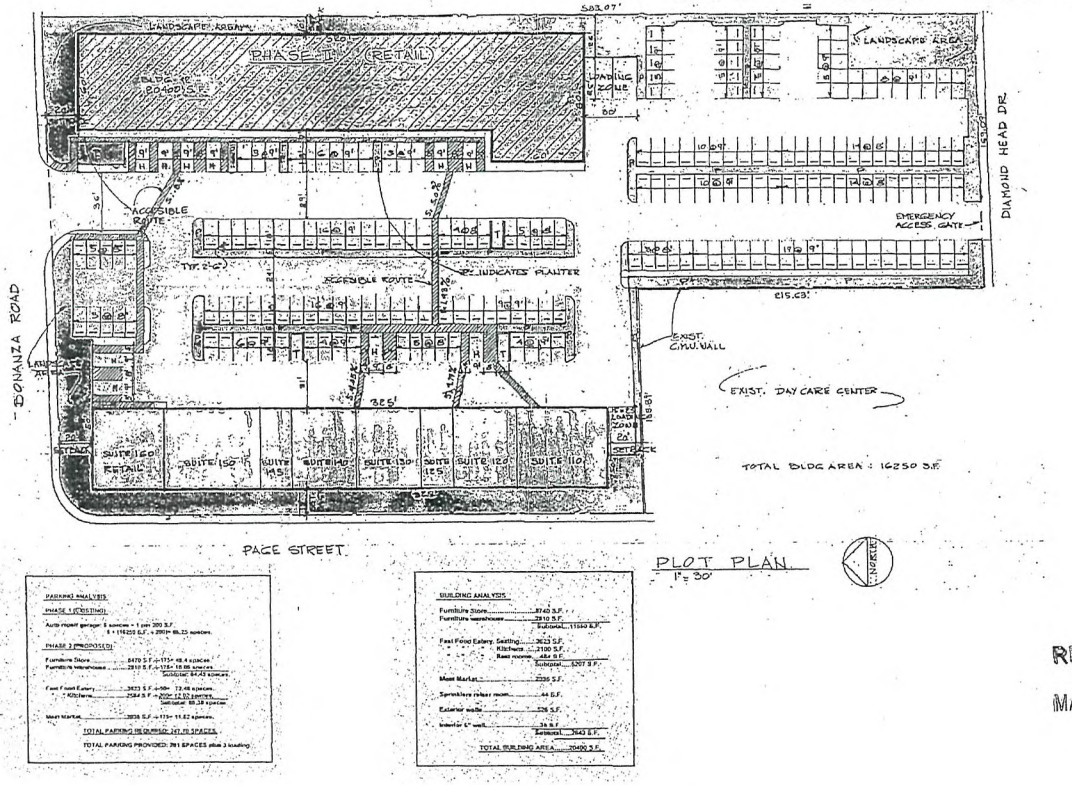
RECEIVED
JUN 11 2010

SUP-33611
04/23/09 PC

Sup-33611 (5+E) Stamped 3-4-09 ; pc 4-23-09 Denied

EOT-38524

SUP-33611 (S) Stamped 3-4-09; PC 4-23-09 Denied



RECEIVED
MAR 04 2009

RECEIVED
JUN 11 2010
EOT-38524

LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

LARRY BROWN
STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW

DOUGLAS A. SELBY
CITY MANAGER



CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.6011
TDD 702.386.9108
www.lasvegasnevada.gov

August 6, 2008

Mr. Hector Camacho
1501 South Maryland Parkway
Las Vegas, Nevada 89104

RE: SUP-27933 – SPECIAL USE PERMIT
CITY COUNCIL MEETING OF JULY 16, 2008

Dear Mr. Camacho:

The City Council at a regular meeting held July 16, 2008 considered the Appeal filed from the denial by the Planning Commission of a request for a Special Use Permit FOR A PROPOSED RESTAURANT WITH A SERVICE BAR WITH WAIVERS TO ALLOW A ZERO-FOOT DISTANCE SEPARATION FROM A CHILD CARE FACILITY AND TO ALLOW A 58-FOOT DISTANCE SEPARATION FROM A SCHOOL WHERE 400 FEET IS REQUIRED at 4561 East Bonanza Road (APN 140-32-101-013), C-1 (Limited Commercial) Zone.

The City Council APPROVED the Appeal, thereby approving the Special Use Permit. The Notice of Final Action was filed with the Las Vegas City Clerk on July 17, 2008. This approval is subject to:

Added Conditions

A. The hours of operation of the alcohol sale shall be limited to 4:00 p.m. to 12:00 a.m. daily.

B. A property management company shall remain on site at all times and the telephone number of the contact person shall be made available to the City Council Office at all times.

C. There shall be a three-month review after issuance of the business license at a public hearing of the City Council and the applicant shall pay for the public hearing review.

Planning & Development

1. Conformance to all minimum requirements under LVMC Title 19.04.010 for Restaurant with Service Bar use, including parking requirements.

2. Conformance to the conditions for Site Development Plan Review (SDR-25148) and Variance (VAR-25220) if approved.

EOT-38524

3. This approval shall be void two years from the date of final approval, unless a building permit has been issued for the principal building on the site. An Extension of Time may be filed for consideration by the City of Las Vegas.

4. Approval of this Special Use Permit does not constitute approval of a liquor license.

5. An address must be assigned for the Restaurant with Service Bar use at the time of building permits.

6. This business shall operate in conformance to Chapter 6.50 of the City of Las Vegas Municipal Code.

7. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

Sincerely,

Angela Crolli
Senior Deputy City Clerk for
Beverly K. Bridges, CMC, City Clerk

M. Margo Wheeler, AICP
Director
Planning and Development Department

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JUN 11 2010
EOT-38524

HECTOR CAMACHO
1501 S. MARYLAND PKWY
LAS VEGAS, NEVADA 89104
(702)460-1775

May 10, 2010

Attn: CITY OF LAS VEGAS, NEVADA

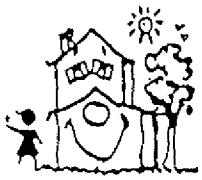
Re: JUSTIFICATION LETTER
SUP-27933-SPECIAL USE PERMIT
CITY COUNCIL MEETING OF JULY 16, 2008

I am formally requesting an extension of Five Years for my Special Use Permit due to the current economic situation. The reason for my request is because the economy should rebound with in that five year extension.

Respectfully,

HECTOR CAMACHO

RECEIVED
JUN 11 2010
EOT-38524



CHARLESTON NEIGHBORHOOD PRESERVATION

"Doing things today that will improve tomorrow"

Phone/Fax: 702-877-2438

TO: Mayor GOODMAN, Mayor Pro-Tem REESE, Councilpersons WOLFSON, TARKANIAN, ROSS, BARLOW, ANTHONY!
FROM: CNP
DATE: FOR July 21, 2010
RE: Selected CLV July 21, 2010 Agenda items

#34—request to Councilpersons Tarkanian and or Wolfson to pull from CONSENT for discussion/response to faxed questionS.

#42—request to ANY Councilperson or Group of to pull from CONSENT for discussion/response to faxed questionS.

#47—request to Councilman Barlow to pull from CONSENT for response to faxed questioN.

#54—Looks to us as though there are too many people with too much time on their hands and even money? Whoever is checking on this RTC must take another look/study on decreasing numbers and checking reality! Please vote NO on this incompetent plan to force an experiment to see whether insurance costs/ injuries, will balance with fuel upon government employees at taxpayer expense.

Regional Transportation Commission must get bus benches for these constituents forced to Sit on Rocks, Curbs, Market baskets, Dirt piles, Leaning on poles, or Standing in cold, heat, dust, rain—what an insult to hear about newer, larger buses with the torture imposed on increased ridership at increased ticket prices to pay for them--elsewhere! {Vegas Dr. to Charleston & Buffalo to Decatur is what we have in mind—but that's not all.}

We have other reality, practical suggestions.

#57—Vote NO on Bill 2010-22 because no satisfactory agreement with neighbors was reached!
Our question regards an unnumbered question on an unnumbered page, between p.14 and p.16 of Daniel Lauber's report to Clark County, NV which is to be filled out by an applicant for one of these group homes. There is a box to be checked "if neither State of Nevada nor Clark County requires a license or certification to operate the proposed community residence."
Are there any such operations in Las Vegas today that will need to have this box checked, provided that this bill passes?
If yes, would they need to fill out this application and have that box checked OR because this bill was not in effect when they applied, would they not be required to fill this page out and have this box checked?
If we don't know, will a check be made and action taken?

#74—EOT-38422—YES, please.

#76—EOT-38524—a mandatory 25 yr extension-YES please.

#92—SDR-37940-a drive through is higher risk for the attendant.

#95—SUP-38194—NO, please to ALL THREE waivers. These are not waivers to a frivolity, these are real people, real living conditions, and a real right-of-way—for a Massage Establishment. Quality of life in this neighborhood will be lessened and current standards will be further lowered if distance to residential is altered

Submitted at City Council
Date 7/21/10 Item 54
Juanita Clark

BOARD & ADVISORY MEMBERS
Dennis Ardine-Vicki Arnold-Dick Bratton-Erna Clark-Juanita Clark-Miriam Een- Danielle Hanslip-Rose Honrath-June Ingram-Rick Johnson-Jolanta Krol-Rod &Betty Larsen- Geno &Pearl Lonardo-Flo Montalvo-Dorothy Orr-Jim Seward-Pamela Stancliffe-Tim Volz-Marcus Gobel-Ginger Norton-Denise Reitz-Layne Rushforth-Jeanine Sweany-Julia Whaun-Jean Withers-Others

CHARLESTON NEIGHBORHOOD
PRESERVATION

"Doing things today that will improve tomorrow"

Phone/Fax: 702-877-2438

to 340 ft., an existing massage is within 638 ft., and the right of way is only 60ft. What kind of reputation would we strengthen?

#98—SUP-38137—NO, please to ALL THREE waivers. Will we break the constituent's trust, if the prize is big "enough"? This clever Financial Institution requests being 140 ft too close to Residential, 180 ft. too close to Another financial institution, AND be 600 sq ft. smaller in area than the required 1,500 sq. ft..

June Ingram
C N P President

June Ingram, PRESIDENT and BOARD
Charleston Neighborhood Preservation

BOARD & ADVISORY MEMBERS
Dennis Ardine-Vicki Arnold-Dick Bratton-Erna Clark-Juanita Clark-Miriam Een- Danielle Hanslip-Rose Honrath-June Ingram-Rick Johnson-Jolanta Krol-Rod &Betty Larsen- Geno &Pearl Lonardo-Flo Montalvo-Dorothy Orr-Jim Seward-Pamela Stancliffe-Tim Volz-Marcus Gobel-Ginger Norton-Denise Reitz-Layne Rushforth-Jeanine Sweany-Julia Whaan-Jean Withers-Others

City of Las Vegas Agenda Item No.: **86.**

AGENDA SUMMARY PAGE - PLANNING & DEVELOPMENT

CITY COUNCIL MEETING OF: AUGUST 18, 2010

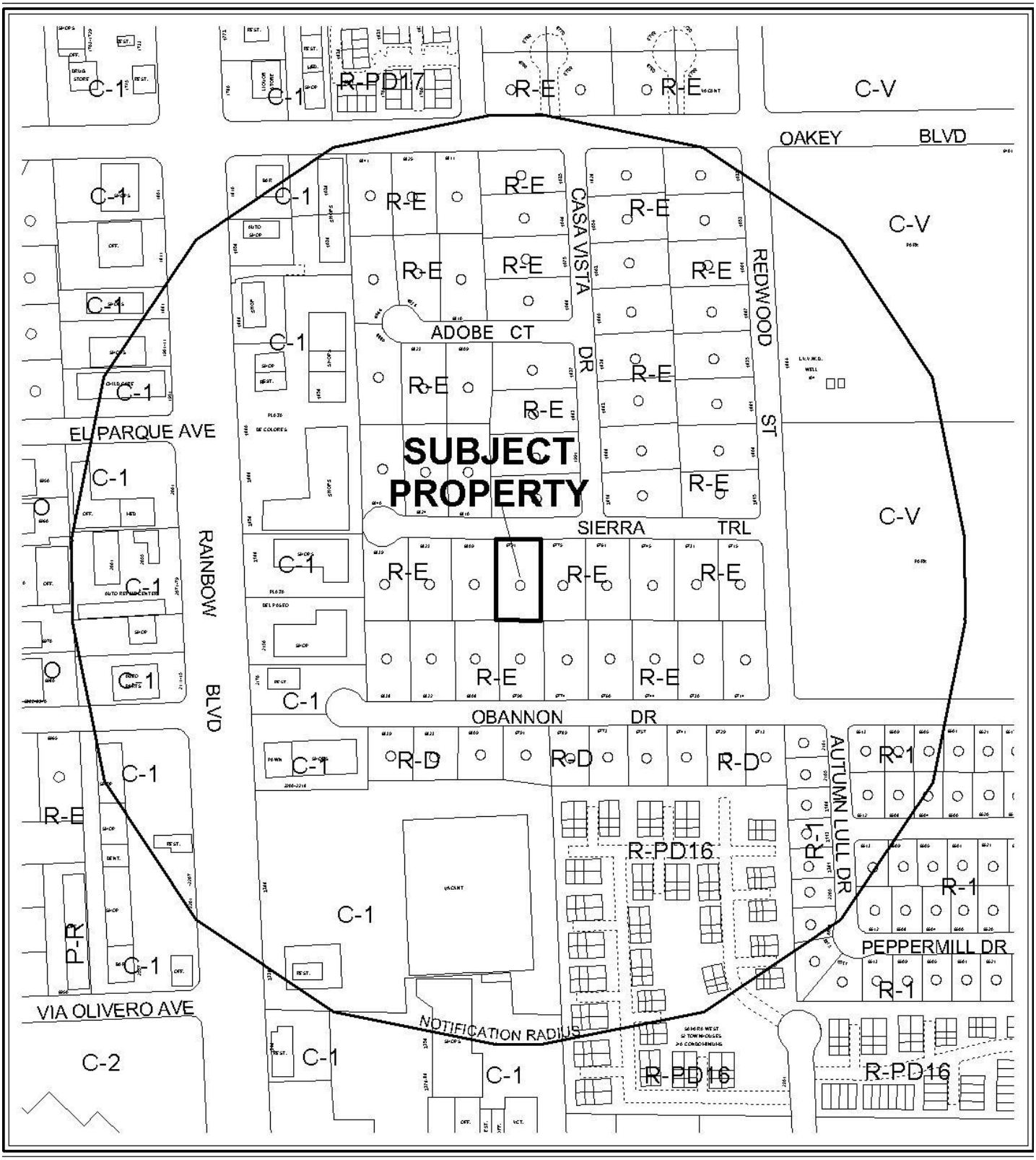
DEPARTMENT: PLANNING & DEVELOPMENT
DIRECTOR: M. MARGO WHEELER ☐ **Consent** ☒ **Discussion**

SUBJECT:
VAR-37831 – ABEYANCE ITEM - VARIANCE - PUBLIC HEARING - APPLICANT/OWNER: SANDRA LIPPINCOTT - Request for a Variance TO ALLOW AN EXISTING 316 SQUARE-FOOT ACCESSORY STRUCTURE (CLASS II) WITH A ZERO-FOOT SIDE YARD SETBACK WHERE THREE FEET IS REQUIRED on 0.46 acres at 6791 Sierra Trail (APN 163-02-311-006), R-E (Residence Estates) Zone, Ward 1 (Tarkanian). Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL.

PROTESTS RECEIVED BEFORE:		**APPROVALS RECEIVED BEFORE:**	
Planning Commission Mtg.	**5**	**Planning Commission Mtg.**	**4**
City Council Meeting	**4**	**City Council Meeting**	**1**

RECOMMENDATION:
Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL, subject to conditions:

BACKUP DOCUMENTATION:
1. Location and Aerial Maps
2. Conditions and Staff Report
3. Supporting Documentation
4. Photos
5. Justification Letter
6. Protest/Support Postcards
7. Backup referenced from the May 27, 2010 Planning Commission Meeting Item VAR-37831



0 300 600 Feet

CASE: **VAR-37831**

RADIUS: 1000 FT

ZONING OF SUBJECT PROPERTY: R-E (RESIDENCE ESTATES)

N



0 300 600 Feet

CASE: **VAR-37831**

RADIUS: 1000 FT

ZONING OF SUBJECT PROPERTY: R-E (RESIDENCE ESTATES)

N

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: AUGUST 18, 2010
DEPARTMENT: PLANNING AND DEVELOPMENT
ITEM DESCRIPTION: APPLICANT/OWNER: SANDRA LIPPINCOTT

THIS ITEM WAS HELD IN ABEYANCE FROM THE JULY 7, 2010 CITY COUNCIL MEETING AT THE REQUEST OF COUNCIL

**** STAFF RECOMMENDATION(S) ****

CASE NUMBER	*RECOMMENDATION*	*REQUIRED FOR APPROVAL*
VAR-37831	Staff recommends DENIAL, if approved subject to conditions:	

**** CONDITIONS ****

VAR-37831 CONDITIONS

Planning and Development

1. This approval shall be void two years from the date of final approval, unless a building permit has been issued for the proposed structure. An Extension of Time may be filed for consideration by the City of Las Vegas.

2. All necessary building permits shall be obtained and final inspections shall be completed in compliance with Title 19 and all codes as required by the Building and Safety Department within 60 days of final approval.

3. These Conditions of Approval shall be affixed to the cover sheet of the plan set submitted for building permit.

4. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

RG

Staff Report Page One
August 18, 2010 – City Council Meeting

** STAFF REPORT **

PROJECT DESCRIPTION

This is a request for a Variance to allow an existing 316 square-foot Accessory Structure (Class II) with a zero-foot side yard setback where three feet is required at 6791 Sierra Trail. The accessory structure was built without a permit. As a result, a self-imposed hardship was created by building the Accessory Structure (Class II) that does not meet code requirements for building setback along the east property line. Therefore, staff recommends denial. If denied, the accessory structure will have to be relocated in order to meet the requirements of Title 19 standards prior to obtaining the necessary building permits.

BACKGROUND INFORMATION

Related Relevant City Actions by P&D, Fire, Bldg., etc	
03/28/86	The City Council approved the request for Annexation (A-0009-85) of land containing approximately one thousand four hundred seventy acres, generally located south of Charleston Boulevard, between Torrey Pines Drive and Fort Apache Road. The Planning Commission and staff recommended approval of the request.
08/31/09	A Code Enforcement case (#81402) was processed for an outbuilding in violation of the side property line setback requirements. The building is zero feet from the property line. The case is currently open.
05/27/10	The Planning Commission (7-0 vote) recommended APPROVAL (PC Agenda Item #31/rg).
07/07/10	The City Council requested that this item be held in abeyance to the August 18, 2010 City Council meeting.

Most Recent Change of Ownership	
04/15/77	A deed was recorded for a change in ownership.

Related Building Permits/Business Licenses	
09/20/76	A building permit (B76-7048) was issued by Clark County for a Single Family Residence at 6791 Sierra Trail.
01/08/96	A building permit (#96000488) was issued for a reroof at 6791 Sierra Trail. The project was completed on 02/05/96.

Pre-Application Meeting	
03/29/10	A pre-application meeting was held with the applicant where elements of submitting for Variance for an Accessory Structure (Class II) to allow a zero-foot side yard setback were discussed. The topics included: • The submittal of application materials, meeting dates, and deadlines were discussed at the pre-application meeting. • A one hour fire rating wall and eaves are required when a structure is less than 5 feet from the property line, per the Building and Safety Department representative.

Neighborhood Meeting
A neighborhood meeting is not required, nor was one held.

Field Check	
04/22/10	Staff conducted a site visit and noted a well maintained single family residential lot.

Details of Application Request	
Site Area	
Net Acres	0.47

Surrounding Property	***Existing Land Use Per Title 19.04***	***Planned or Special Land Use Designation***	***Existing Zoning District***
Subject Property	Single Family Residence	R (Rural Density Residential)	R-E (Residence Estates)
North	Single Family Residence	R (Rural Density Residential)	R-E (Residence Estates)
South	Single Family Residence	R (Rural Density Residential)	R-E (Residence Estates)
East	Single Family Residence	R (Rural Density Residential)	R-E (Residence Estates)
West	Single Family Residence	R (Rural Density Residential)	R-E (Residence Estates)

Master Plan Areas	*Yes*	*No*	*Compliance*
Master Plan Area		X	N/A
Special Purpose and Overlay Districts	***Yes***	***No***	***Compliance***
Special Purpose and Overlay Districts		X	N/A
Trails		X	N/A
Rural Preservation Overlay District	X		Y
Las Vegas Redevelopment Plan Area		X	N/A
Development Impact Notification Assessment		X	N/A
Project of Regional Significance		X	N/A

DEVELOPMENT STANDARDS

Per Title 19.08.040, the following development standards apply:

Standard	*Required/Allowed*	*Provided*	*Compliance*
Min. Lot Size	20,000 SF	20,360 SF	Y
Min. Lot Width	100 Feet	105 Feet	Y
Min. Setbacks (Accessory Structure)			
• Front	Not Allowed	N/A	N/A
• Side (W)	3 Feet	93 Feet	Y
• Side (E)	3 Feet	0 Feet	N
• Rear	3 Feet	16 Feet	Y
Min. Distance Between Buildings	10 Feet	58 Feet	Y

ANALYSIS

The property is within the Rural Preservation Overlay District of the Title 19.06 Special Purpose and Overlay District. This site meets the requirement and existing accessory structure will not increase the density. Lot coverage does not apply in the R-E (Residence Estates) district.

The Accessory Structure (Class II) was constructed on the site without a building permit, and is the subject of an open Code Enforcement case (#81402). The accessory structure has a setback along the east property line of zero feet. Per Title 19.08.040 (B)(1)(d)(i): "Detached accessory structures (excluding patio covers) in the rear yard area must be located a minimum distance of three feet from the side and rear property lines." The structure is fixed to the ground and cannot be moved without the reconstruction of the structure in order to meet setback requirements. Staff recommends denial of this request because no evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by building the Accessory Structure (Class II) that does not meet code requirements for building setback along the east property line. Reconstruction of the Accessory Structure (Class II) at the proper setback would allow conformance to the Title 19 requirements.

FINDINGS (VAR-37831)

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature."

Additionally, Title 19.18.070(L) states:

> "Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution."

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by building the Accessory Structure (Class II) that does not meet code requirements for building setback along the east property line. Reconstruction of the Accessory Structure (Class II) at the proper setback would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site's physical characteristics, it is concluded that the applicant's hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

PLANNING COMMISSION ACTION
There was one neighbor in opposition at the Planning Commission hearing. A petition was submitted.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 6

NOTICES MAILED 109 (By City Clerk)

APPROVALS 5

PROTESTS 9

PLANNING & DEVELOPMENT

PLANNING & DEVELOPMENT DEPARTMENT

STATEMENT OF FINANCIAL INTEREST

Case Number: **VAR-37831** APN: 163-02-311-006

Name of Property Owner: Sandra Lippincott

Name of Applicant: Same

Name of Representative: Brent and Patricia Conrad

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ **Yes** ☒ **No**

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____ _____

APN: _____

Signature of Property Owner: Sandra Lippincott

Print Name: Sandra Lippincott

Subscribed and sworn before me

This 26 day of March, 20 10

Notary Public in and for said County and State

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
KEVIN J. MACKEY
Appt. No. 05-97015-1
My Appt. Expires April 28, 2013

PLANNING & DEVELOPMENT

PLANNING & DEVELOPMENT DEPARTMENT

APPLICATION / PETITION FORM

Application/Petition For: Sandra Lippincott

Project Address (Location) 6791 Sierra Trail L.V., NV.

Project Name Shed **Proposed Use** Storage

Assessor's Parcel #(s) 163-02-311-006 **Ward #** 1

General Plan: existing X proposed _____ **Zoning:** existing _____ proposed _____

Commercial Square Footage N/A **Floor Area Ratio** _____

Gross Acres _____ **Lots/Units** _____ **Density** _____

Additional Information _____

PROPERTY OWNER Sandra Lippincott **Contact** _____

Address 6791 Sierra Trail **Phone:** 873-4369 **Fax:** _____

City Las Vegas **State** NV. **Zip** 89146

E-mail Address _____

APPLICANT same as above **Contact** _____

Address _____ **Phone:** _____ **Fax:** _____

City _____ **State** _____ **Zip** _____

E-mail Address _____

REPRESENTATIVE Brent + Patricia Conrad **Contact** 379-3060 / 400-3261

Address 5336 Elkhorn Road **Phone:** 645-0969 **Fax:** 656-3556

City LAS Vegas **State** NV **Zip** 89131

E-mail Address wbc12@cox.net

Property Owner Signature* Sandra Lippincott

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name SANDRA LIPPINCOTT

Subscribed and sworn before me

This 26 day of March, 20 10.

Notary Public in and for said County and State

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
KEVIN J. MACKEY
Appt. No. 05-97015-1
My Appt. Expires April 28, 2013

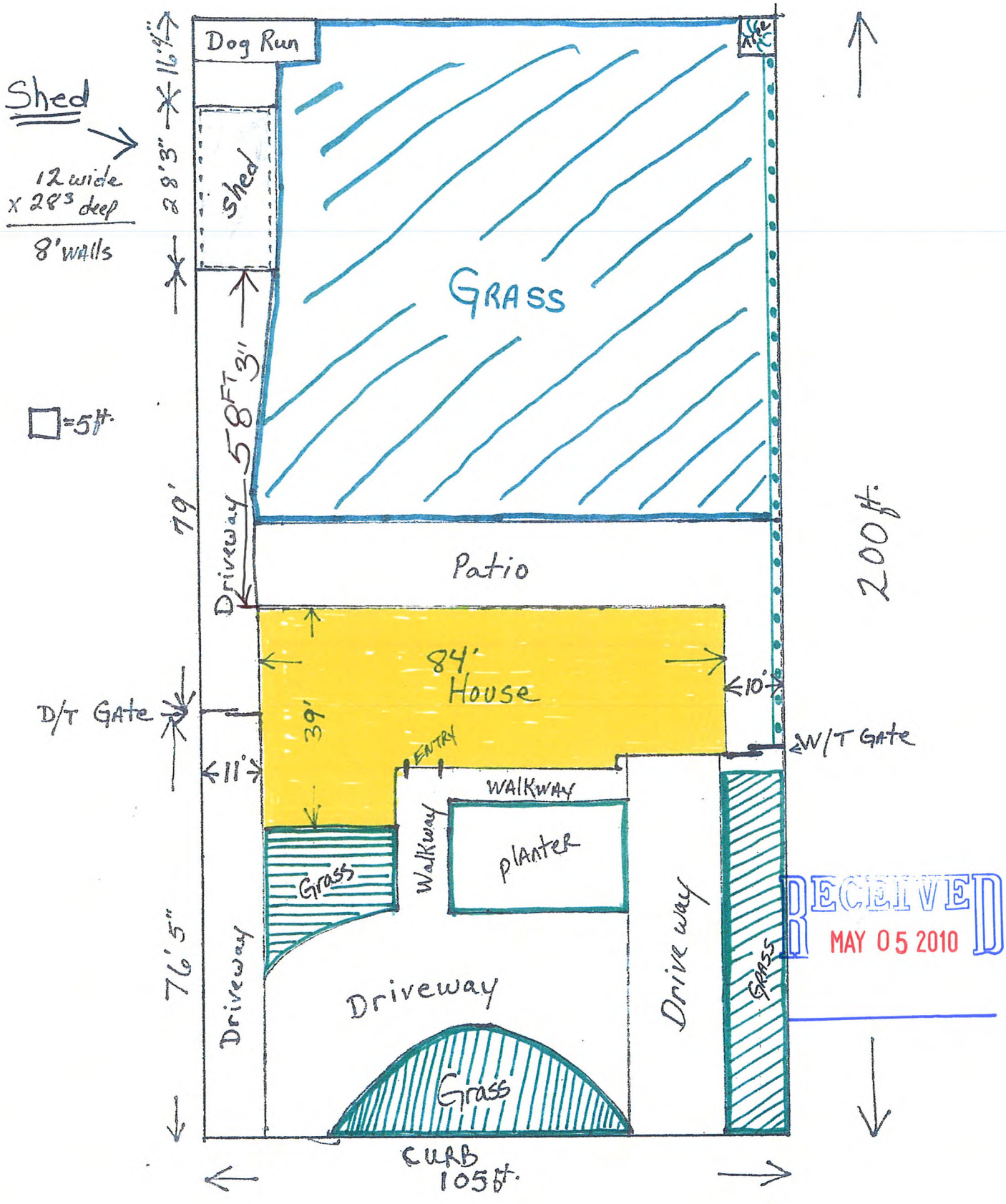
FOR DEPARTMENT USE ONLY

Case #	VAR-37831
Meeting Date*	05/27/10
Total Fee:	$830.00
Date Received:*	04/01/10
Received By:	

*The application will not be deemed complete until the submitted materials have been reviewed by the Planning and Development Department for consistency with applicable sections of the Zoning Ordinance.

Revised 10/27/08

f:\depot\Application Packet\Application Form.pdf



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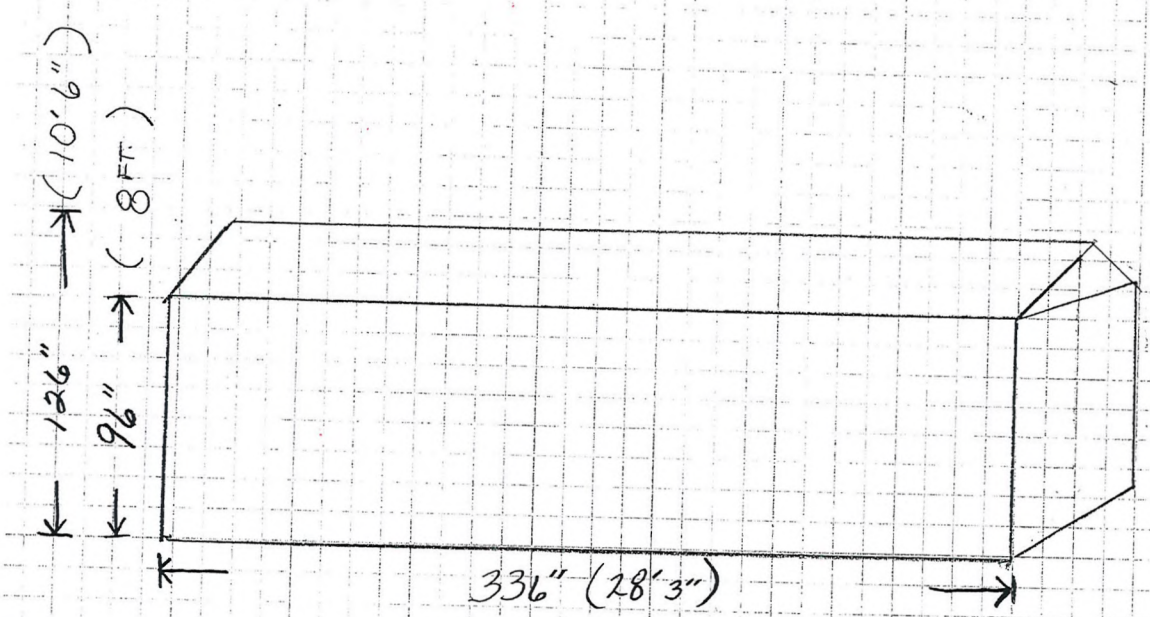
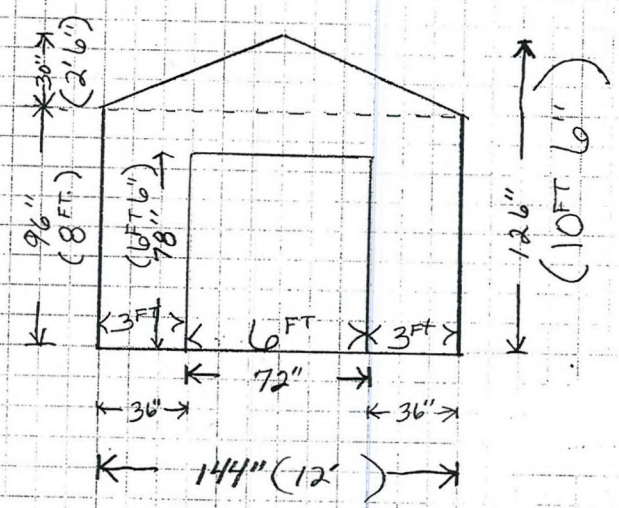
MAY 05 2010

VAR-37831
REVISED

Shed @ rear of property

Stucco sided
Grey tile roof





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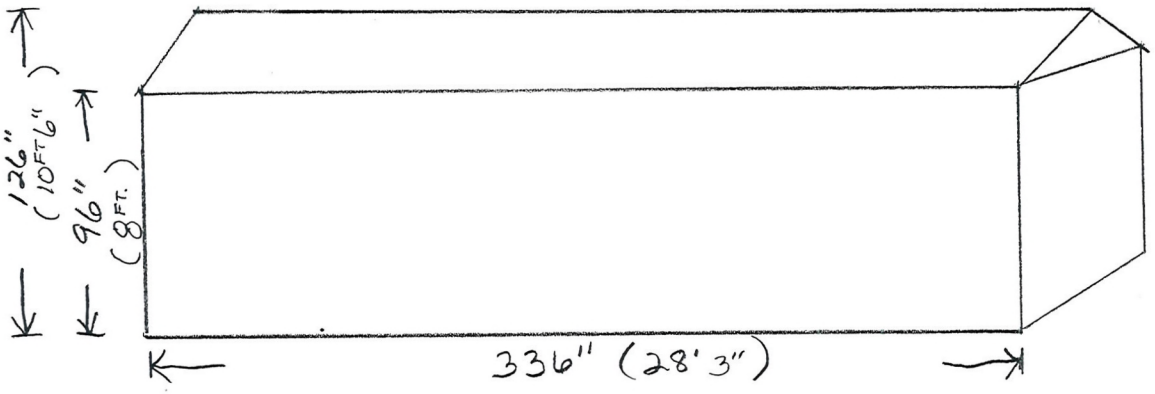
VAR-37831
REVISED

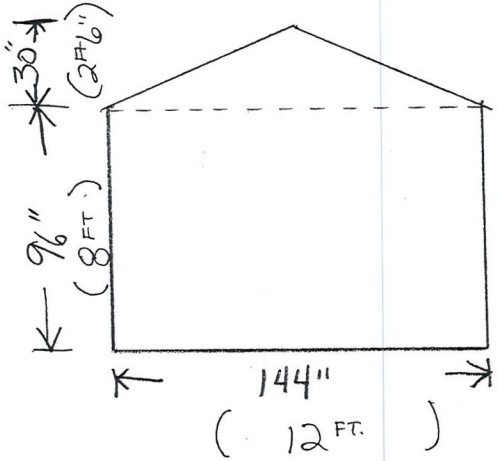
Stucco Sided
Tile Roof

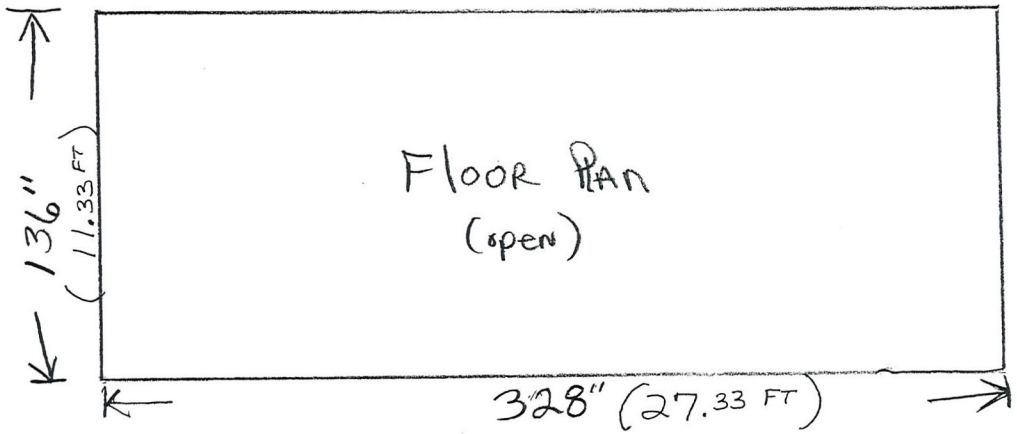
Shed @ Rear of property

EAST Side



South side





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MAY 05 2010

VAR-37831
REVISED









RECEIVED
APR 09 2010

VAR-37831









RECEIVED
09 2010

VAR-37831



VAR-37831 - APPLICANT/OWNER: SANDRA LIPPINCOTT
6791 SIERRA TRAIL

04/22/10



VAR-37831 - APPLICANT/OWNER: SANDRA LIPPINCOTT
6791 SIERRA TRAIL

04/22/10

March 31, 2010

RE: 6791 Sierra Trail
Las Vegas, NV

To City of Las Vegas,

While I am representing my mother Sandra Lippincott, in regards to the existing storage facility located on her property, we have learned that a variance is needed to keep this building in compliance with the City of Las Vegas. The building has been located in the southeast corner of her property since 1979. My father had the shed built back when the parcel was located in the County, but has since been annexed into the City. We have searched for a copy of the original permit to no avail, and due to the fact that he passed away in 2005, have little doubt that we will find it. I understand that a neighbor has filed a complaint regarding this matter, but knowing he has lived next door for 19 years with no mention of disapproval, cannot understand why at this time his has made a complaint. We are trying to correct this matter by requesting a variance. The shed has been improved since originally built, by adding stucco finish and a tile roof to match the new roof and siding of the main home structure. We did find the copy of the permit issued by the City of Las Vegas when my father had the home reroofed in 1996, therefore showing he was the type of person to do things by correct standards.

We feel that asking my mother to have the shed moved to a different location on the property would cause her further financial hardship, as she has not the income to do so. Any suggestions regarding this matter would greatly be appreciated.

Thank you for your help,

Patricia L Conrad

Patricia Conrad

702-400-3261

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APR 01 2010
VAR-37831

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

Return Service Requested
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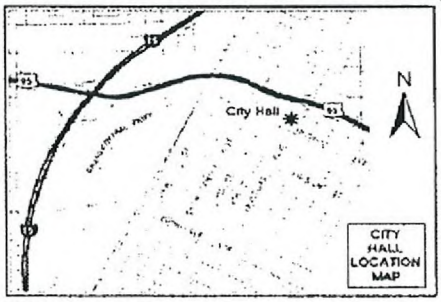

If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Office Of The City Clerk at the address listed above or fax this side of this card to (702) 382-4803. If you would like to contact your Council Representative, please call (702) 229-6405.

☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-37831
City Council Meeting of 7/7/2010

RECEIVED
CITY CLERK
2010 JUN 30 A 10:54

LANDSBERGER BRIAN J & DONG M
6775 SIERRA TRL
LAS VEGAS NV 89146-2907

APN#16302310029

We oppose the requested code variance, VAR-37831.

The request for variance was made without any documented compelling reasons why the code could not be followed. To our knowledge, the petitioner did not submit any documentation that complying with the code would impose any hardship or unreasonable difficulty. In fact, we have documentation showing that a local business could easily move the building at a reasonable price to comply with setback code.

The petitioner has provided no documentation that removal of the building would have any substantial effect on their use and enjoyment of the property.

The request for a variance is premature since, if granted, the building may still require major rectification making the variance unnecessary. The building was constructed without a permit, and the foundation does not comply with code. Remedying the foundation will require removing the building from the slab. In that case the foundation and building can be placed with proper setback at no additional cost.

Among all neighborhood properties, our property is the most negatively affected by the variance. Our west property line is the east property line of 6791 Sierra Trail and the accessory structure is directly on 28 ft of that line. We maintain that the large building is an illegal infringement on our use and enjoyment of our property. We maintain the code has a legitimate purpose is appropriate in this case and should be upheld.

Brian J Landsberger 30 June 2010
Brian & Landsberger

Submitted after final agenda
Date 6/30/10 Item 94

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES
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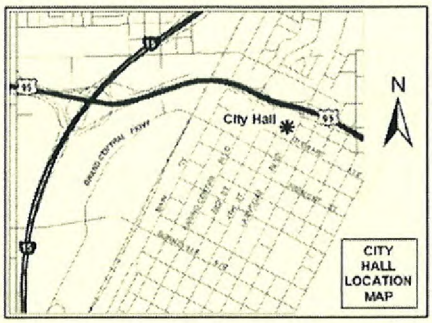

I adamantly oppose this request for a variance.
Ronald E. Werth 6/26/2010

If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Office Of The City Clerk at the address listed above or fax this side of this card to (702) 382-4803. If you would like to contact your Council Representative, please call (702) 229-6405.

☐ I SUPPORT this Request ☑ I OPPOSE this Request

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VAR-37831
City Council Meeting of 7/7/2010

WERTH RONALD E & ANITA F
6715 SIERRA TRL
LAS VEGAS NV 89146-2907

APN#16302310033

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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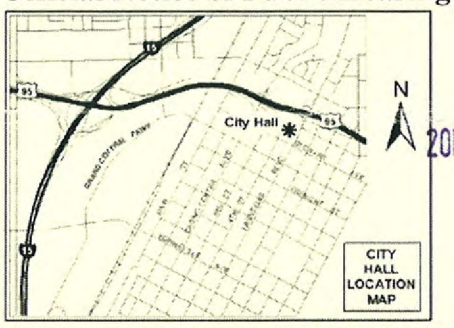

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-37831
City Council Meeting of 7/7/2010

– Why make the laws if they aren't enforced?!?

JOHNSON FAMILY TRUST
JOHNSON GARY A & MARY JANE TRS
P O BOX 80063
LAS VEGAS NV 89180-0063

APN#16302310009

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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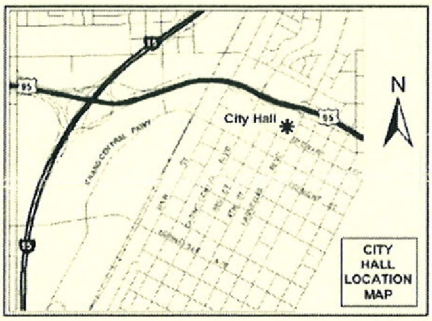

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-37831
City Council Meeting of 7/7/2010

this community has always had a required set-back - please keep this in place.

Janet Abney

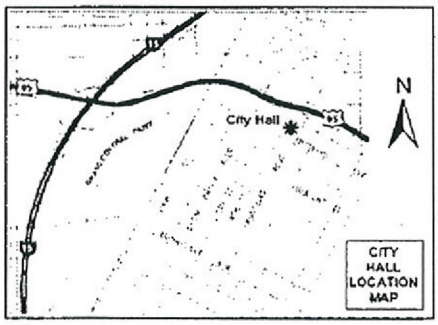
RECEIVED
CITY CLERK
2010 JUN 29 A 11:34

ABNEY JANET T LIVING TRUST
ABNEY JANET T TRS
6823 ADOBE CT
LAS VEGAS NV 89146-2920

APN#16302310012

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

Return Service Requested
Official Notice of Public Hearing



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☒ I SUPPORT this Request ☐ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-37831
City Council Meeting of 7/7/2010

RECEIVED
CITY CLERK
2010 JUN 29 P 4:39

SHAW DANNY E & KAREN L
1961 REDWOOD ST
LAS VEGAS NV 89146-2912

APN#16302310023

NOTE: THE FOLLOWING DOCUMENTATION WAS SUBMITTED FOR THE RECORD BEFORE OR AT THE PLANNING COMMISSION HEARING ON THIS ITEM WHICH IS NOW APPEARING BEFORE THE CITY COUNCIL

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

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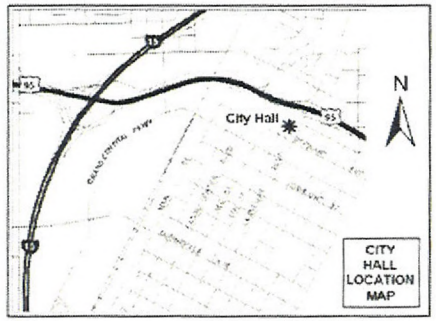
Official Notice of Public Hearing



If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Planning & Development Department at the address listed above or fax this side of this card to (702) 385-7268. If you would like to contact your Council Representative, please call (702) 229-6405.

☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-37831

Planning Commission Meeting of 5/27/2010

RECEIVED
MAY 24 2010

Case: VAR-37831

16302310009
JOHNSON FAMILY TRUST
P O BOX 80063
LAS VEGAS NV 89180-0063

CANCEL ALSO

Submitted after final agenda
Date
Item 31P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

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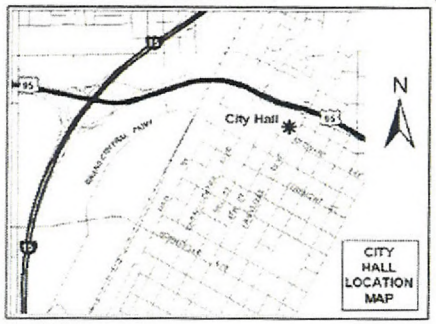
Official Notice of Public Hearing



If we let these variances go thru - we will have no control over keeping our neighborhood as required by the set-backs.

If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Planning & Development Department at the address listed above or fax this side of this card to (702) 385-7268. If you would like to contact your Council Representative, please call (702) 229-6405.

LOTS ARE LARGE ENOUGH to accomodate the required set backs.

☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-37831

Planning Commission Meeting of 5/27/2010

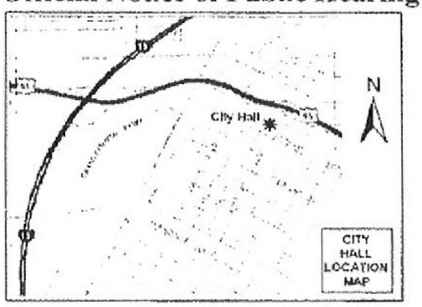
Case: VAR-37831
16302310012
ABNEY JANET T LIVING TRUST
6823 ADOBE CT
LAS VEGAS NV 89146-2920

RECEIVED
MAY 25 2010

Submitted after final agenda
Date
Item 31P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

Return Service Requested
Official Notice of Public Hearing



If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Planning & Development Department at the address listed above or fax this side of this card to (702) 385-7268. If you would like to contact your Council Representative, please call (702) 229-6405.

☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-37831

Planning Commission Meeting of 5/27/2010

Case VAR-37831
16302310029
LANDSBERGER BRIAN J & DONG M
6775 SIERRA TRL
LAS VEGAS NV 89146-2907

We oppose the requested code variance, VAR-37831.

Among all neighborhood properties, our property is the most negatively affected by the variance. Our west property line is the east property line of 6791 Sierra Trail and the accessory structure is directly on 28 ft of that line.

The structure in its current location is detrimental to the appearance of our backyard.

The structure in its current location likely lowers the resale value of our property.

We request that the code be enforced, and that within a reasonable time, the structure be either removed, moved or rebuilt so as to comply with all current codes.

Brian J Landsberger Dong M Landsberger 20 May 2010

RECEIVED
MAY 20 2010

Submitted after final agenda
Date Item 31 P

Neighborhood Signature Request
Re: Sandra Lippincott
6791 Sierra Trail Las Vegas, NV

Support

The following signatures represent neighbors whom have found no disturbance regarding the shed located in the rear yard of Mrs. Lippincott's residence. The shed in question does not impose, disrupt or disturb, in any way, the neighbors who have signed below.

Name	*Date*
Diego Montes	11-17-09
2011 CASAVISTA DR.	702-221-7623.
TERESita CHilotta	702-368-4205
6809 SIERRA TRail	11-17-09
6790 O'Bannon Tori Gallagher Patrick Gallagher	11-17-09

Submitted at Planning Commission

Date 5/5/2010 Item 31

252-4243 David Swallows

Nick Foskaris

339-3837 DANA

2780 El Camino 960-0546

after 2pm

City of Las Vegas Agenda Item No.: **87.**

AGENDA SUMMARY PAGE - PLANNING & DEVELOPMENT
CITY COUNCIL MEETING OF: AUGUST 18, 2010

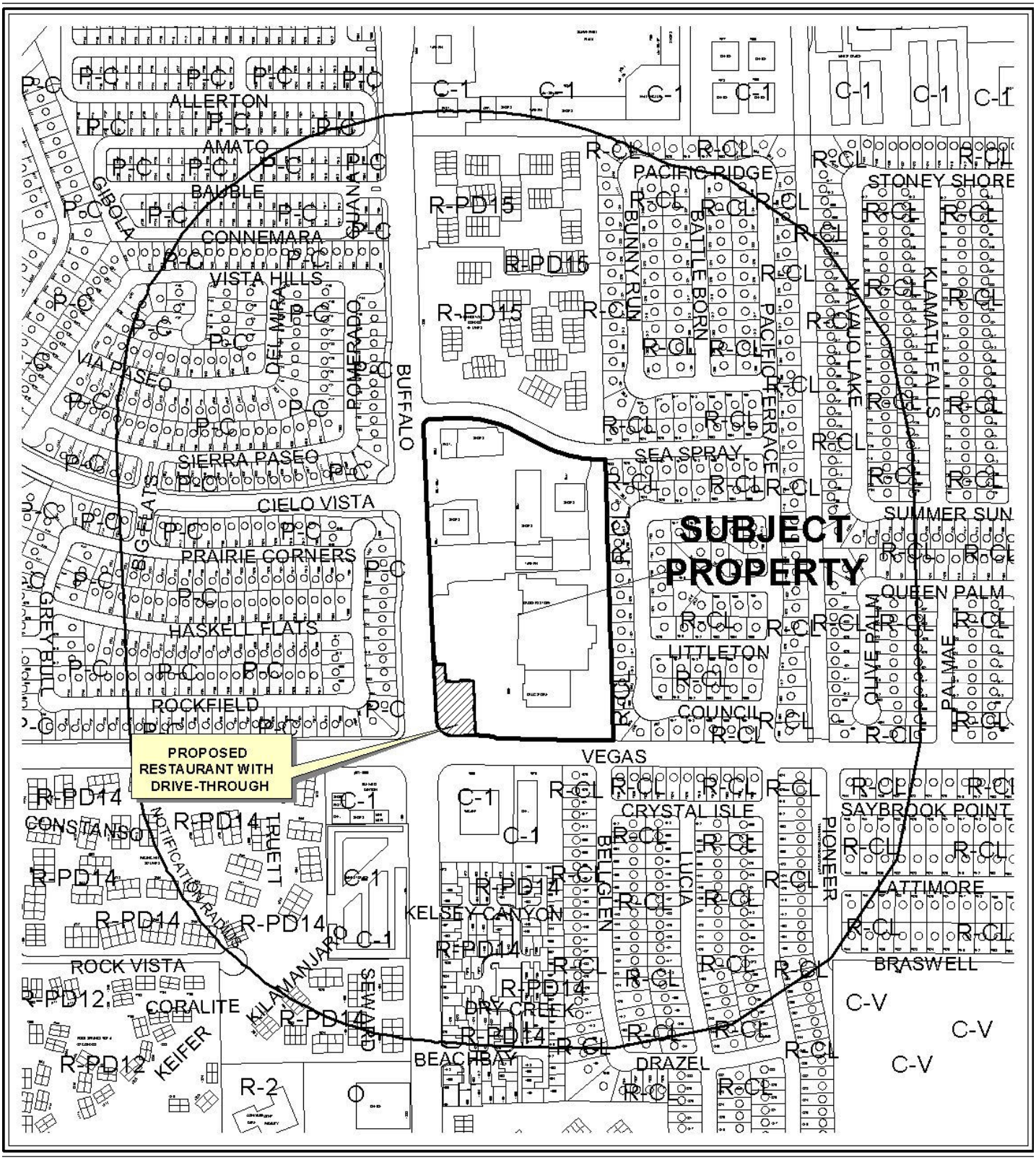
DEPARTMENT: PLANNING & DEVELOPMENT
DIRECTOR: M. MARGO WHEELER ☐ **Consent** ☒ **Discussion**

SUBJECT:
VAR-38114 – ABEYANCE ITEM - VARIANCE - PUBLIC HEARING - APPLICANT/OWNER: SEA BREEZE VILLAGE II, LLC - Request for a Variance TO ALLOW A NINE-FOOT TALL MENU BOARD WHERE SEVEN FEET IS THE MAXIMUM HEIGHT ALLOWED AND TO ALLOW AN INCIDENTAL SIGN (CLEARANCE ARM) THAT IS 13 FEET TALL, 27 SQUARE FEET IN AREA AND CONTAINS A LOGO MAKING UP 67 PERCENT OF THE SIGN AREA WHERE SEVEN FEET IN HEIGHT, 12 SQUARE FEET IN AREA AND 50 PERCENT LOGO COVERAGE ARE ALLOWED on 0.52 acres at the northeast corner of Buffalo Drive and Vegas Drive (APN 138-22-418-011), C-1 (Limited Commercial) Zone, Ward 1 (Tarkanian). Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL.

PROTESTS RECEIVED BEFORE:		**APPROVALS RECEIVED BEFORE:**	
Planning Commission Mtg.	**14**	**Planning Commission Mtg.**	**2**
City Council Meeting	**17**	**City Council Meeting**	**5**

RECOMMENDATION:
Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL, subject to conditions:

BACKUP DOCUMENTATION:
1. Location and Aerial Maps - VAR-38114 and MSP-38116
2. Conditions and Staff Report - VAR-38114 and MSP-38116
3. Abeyance Letter Request Submitted by National Sign and Marketing Company – VAR-38114 and MSP-38116
4. Supporting Documentation
5. Photos - VAR-38114 and MSP-38116
6. Justification Letter
7. Protest/Support Postcards for VAR-38114 and MSP-38116
8. Abeyance request letter for VAR-38114 and MSP-38116 by National Sign & Marketing Corporation
9. Backup referenced from the June 24, 2010 Planning Commission Meeting Items VAR-38114 and MSP-38116



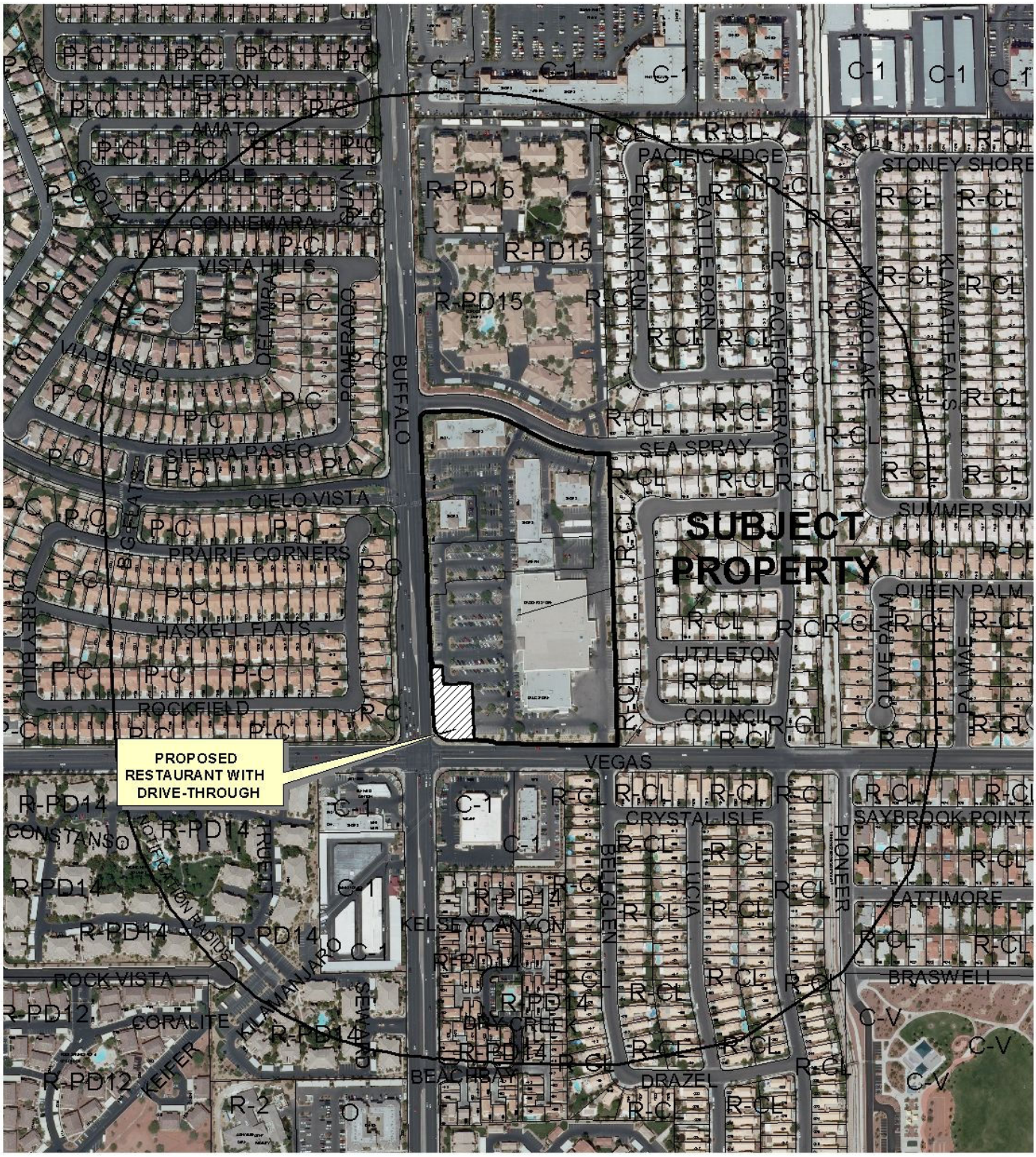
CASE: **VAR-38114 AND MSP-38116**

RADIUS: 1000 FT

0 300 600 Feet

ZONING OF SUBJECT PROPERTY: C-1 (LIMITED COMMERCIAL)

N



CASE: **VAR-38114 AND MSP-38116**

RADIUS: 1000 FT

0 300 600 Feet

ZONING OF SUBJECT PROPERTY: C-1 (LIMITED COMMERCIAL)

N

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: AUGUST 18, 2010
DEPARTMENT: PLANNING AND DEVELOPMENT
ITEM DESCRIPTION: APPLICANT/OWNER: SEA BREEZE VILLAGE II, LLC

THIS ITEM WAS HELD IN ABEYANCE FROM THE JULY 21, 2010 CITY COUNCIL MEETING AT THE REQUEST OF THE COUNCIL

**** STAFF RECOMMENDATION(S) ****

CASE NUMBER	*RECOMMENDATION*	*REQUIRED FOR APPROVAL*
VAR-38114	Staff recommends DENIAL, if approved subject to conditions:	
MSP-38116	Staff recommends DENIAL, if approved subject to conditions:	VAR-38114

**** CONDITIONS ****

VAR-38114 CONDITIONS

Planning and Development

1. Approval of and conformance to the Conditions of Approval for Master Sign Plan (MSP-38116) shall be required.

2. This approval shall be void two years from the date of final approval, unless a certificate of occupancy has been issued or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.

3. Prior to occupancy, all necessary building permits shall be obtained and final inspections shall be completed in compliance with Title 19 and all codes as required by the Building and Safety Department.

4. These Conditions of Approval shall be affixed to the cover sheet of the plan set submitted for building permit.

5. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

MSP-38116 CONDITIONS

Planning and Development

1. Conformance to the conditions of approval for Master Sign Plans MSP-0006-02 and MSP-2619, except as amended herein.

2. Conformance to the sign elevations and documentation as submitted in conjunction with this request, date stamped 04/27/10, except as amended by conditions herein.

3. All signage shall have proper permits obtained through the Building and Safety Department.

4. Any future amendments to the approved signage within the Master Sign Plan in conformance with Title 19 standards may be reviewed and approved administratively by the Planning and Development Department.

Public Works

5. The proposed signs shall not be located within the public right-of–way or interfere with Site Visibility Restriction Zones. The proposed ground mounted bases shall not be located within existing or proposed public sewer or drainage easements.

** STAFF REPORT **

PROJECT DESCRIPTION

A shopping center is located on the subject site, which is located at the northeast corner of Buffalo Drive and Vegas Drive. An approved restaurant with drive-through is currently under construction at the southwest corner of this shopping center. This request would amend the previously approved Master Sign Plan (MSP-0006-02) for the shopping center to permit signage for the restaurant with drive-through. Eleven outdoor signs are proposed, including a monument sign along Buffalo Drive, four wall signs, two standard directional signs, a clearance arm directional sign to restrict the height of vehicles passing through the drive-through, a menu board, order confirmation pedestal and an LED border around the upper portion of the building façade. Signage is in compliance with Title 19.14 sign standards with the exception of the menu board, which exceeds the allowed height for menu board signs, and the clearance arm, which exceeds the allowed height, area and logo coverage for directional signs. As there is no hardship associated with the physical characteristics of the site that would warrant the requested deviations from Title 19, staff recommends denial of the Variance and the amendment to the existing Master Sign Plan. If denied, the existing Master Sign Plan would remain and approval of a new amendment would be necessary to allow signage on the restaurant with drive-through and its surrounding property.

ISSUES

- Approval of a Variance to allow a height of nine feet for the menu board where seven feet is the maximum height allowed and to allow a directional incidental sign that is 13 feet tall, 27 square feet in area and contains a logo making up 67 percent of the sign area where seven feet in height, 12 square feet in area and 50 percent logo coverage are allowed is required for approval of the master sign plan amendment.
- The subject property is located within 200 feet of single family residences; therefore, Title 19.14.070 residential protection standards apply.
- If the menu board and clearance arm signage were to be reduced to meet the standards of Title 19.14, staff would recommend approval of the Master Sign Plan.

BACKGROUND INFORMATION

Related Relevant City Actions by P&D, Fire, Bldg., etc	
11/07/90	The City Council approved a Rezoning (Z-0097-90) from N-U (Non-Urban) to R-CL (Single Family Compact-Lot), R-PD15 (Residential Planned Development – 15 Units per Acre) and C-1 (Limited Commercial) on property located on the east side of Buffalo Drive between Vegas Drive and Lake Mead Boulevard. The Planning Commission recommended approval; staff recommended denial.
03/09/98	The City Council approved a Site Development Plan Review [Z-0097-90(5)] for a proposed 142,352 square-foot Retail Center and a Special Use Permit (U-0138-97) to allow Packaged Liquor sales in conjunction with a proposed 17,157 square-foot General Retail Store on property located on the northeast corner of Vegas Drive and Buffalo Drive. The Planning Commission and staff recommended approval.
03/23/98	The City Council approved a Special Use Permit (U-0012-98) for the sale of Packaged Liquor for off-premise consumption in conjunction with a proposed 61,860 square-foot Grocery Store located at the northeast corner of Vegas Drive and Buffalo Drive. The Planning Commission and staff recommended approval.
06/14/99	The City Council accepted the withdrawal without prejudice of a Special Use Permit (U-0053-99) to allow gasoline sales, an Automotive Repair Garage, Minor with a Waiver to allow service bays facing the public right-of-way, and a car wash in conjunction with a proposed Convenience Store and a Special Use Permit (U-0054-99) for the Off-Premise Sale of Beer and Wine in conjunction with a proposed 3,200 square-foot convenience Store on property located on the southeast corner of Buffalo Drive and Sea Spray Avenue. The Planning Commission and staff had recommended denial.
05/30/00	The Planning and Development Department administratively approved a Site Development Plan Review [Z-0097-90(6)] for a proposed Garden Supply/Plant Nursery in conjunction with a proposed Grocery Store on the northeast corner of the intersection of Buffalo Drive and Vegas Drive.
07/05/00	The City Council approved a request for a Reinstatement and Extension of Time [U-0012-98(2)] of an approved Special Use Permit for the Off-Premise sale of package liquor in conjunction with a proposed Grocery Store on the northeast corner of the intersection of Buffalo Drive and Vegas Drive. The Planning Commission and staff recommended approval of this request.
06/06/01	The Planning and Development Department administratively approved a Site Development Plan Review [Z-0097-90(7)] to modify the approved retail commercial center by reducing the square footage from 142,352 square feet to 130,643 square feet.

08/15/01	The City Council approved a Site Development Plan Review [Z-0097-90(8)] for a proposed Fueling Station and a Special Use Permit (U-0094-01) for a Service Station in conjunction with a proposed Fueling Station on the northeast corner of Vegas Drive and Buffalo Drive. The Planning Commission and staff recommended approval of these requests.
10/16/02	The City Council approved a Master Sign Plan (MSP-0006-02) for the development. The Planning Commission and staff recommended approval.
01/22/03	The City Council approved a Variance (V-0054-02) to allow 652 parking spaces where 729 parking spaces are required on property located adjacent to the northeast corner of Buffalo Drive and Vegas Drive. The Planning Commission recommended approval of this request; staff recommended denial.
09/17/03	The City Council approved a request for a Major Amendment (MSP-2619) of an approved Master Sign Plan (MSP-0006-02) for an existing retail/office complex at the northeast corner of Buffalo Drive and Vegas Drive. The amendment allowed one additional 20-foot freestanding sign along the Buffalo Drive frontage. The Planning Commission and staff recommended approval.
01/21/04	The City Council approved a Required Review (RQR-3543) of an approved Variance (V-0054-02) to allow 652 parking spaces where 729 spaces are required on property located adjacent to the northeast corner of Buffalo Drive and Vegas Drive. Staff recommended approval of this request.
02/08/07	The Planning Commission approved a request for a Site Development Plan Review (SDR-15357) for a 5,000 square-foot bank on the northeast corner of Vegas Drive and Buffalo Drive. Staff recommended denial of this request.
04/23/09	The Planning Commission approved a request for a Site Development Plan Review (SDR-33756) for a 2,783 square-foot restaurant with drive-through at the northeast corner of Buffalo Drive and Vegas Drive. Staff recommended approval.
06/24/10	The Planning Commission (7-0 vote) recommended APPROVAL of companion items VAR-38114 and MSP-38116 concurrently (PC Agenda Items 25-26/ss).

Most Recent Change of Ownership	
07/05/06	A deed was recorded for a change in ownership.

Related Building Permits/Business Licenses	
01/05/10	A building permit (141471) was issued for a restaurant at 7598 Vegas Drive. A final inspection has not yet been completed.
01/05/10	A building permit (141472) was issued for on-site improvements at 7598 Vegas Drive. A final inspection has not yet been completed.
01/05/10	A building permit (141473) was issued for a trash enclosure at 7598 Vegas Drive. A final inspection has not yet been completed.

02/10/10	A building permit (156412) was issued for three 35 square-foot wall signs, one 72 square-foot wall sign; one menu board sign and two incidental directional signs at 7598 Vegas Drive. A final inspection has not yet been completed.
03/19/10	A building permit application (159038) for a 30-foot tall freestanding sign was submitted to the Building and Safety Department for review. The Planning and Development Department denied its review, requiring prior approval of an amendment to the existing master sign plan for the shopping center.

Pre-Application Meeting	
03/26/10	A pre-application meeting was conducted, where the following topics were discussed: • A variance will be required to allow the proposed height and logo coverage of the clearance arm. It was later determined that the proposed height of the menu board also exceeded code allowances and a variance would be required. • An amended Master Sign Plan for the shopping center would be required for all proposed signage for the restaurant with drive-through. • A permit has already been issued for the wall signs, two of the directional signs and the menu board; however, the final inspection cannot be approved until a variance and amended master sign plan are approved.

Neighborhood Meeting
A neighborhood meeting is not required, nor was one held.

Field Check	
05/20/10	A field inspection was conducted, where the following items were noted: • The restaurant building appeared to be completed and the wall signage was attached to the building, including the "Star Logo"; • The menu board and order confirmation kiosk were installed; • No clearance arm was located in the drive-through lane; • The parking and drive-through areas had not been completed.

Details of Application Request	
Site Area	
Net Acres	0.52 of a total 13.41 acres

Surrounding Property	*Existing Land Use Per Title 19.04*	*Planned or Special Land Use Designation*	*Existing Zoning District*
Subject Property	Shopping Center (Restaurant with Drive Through)	SC (Service Commercial)	C-1 (Limited Commercial)
North	Shopping Center	SC (Service Commercial)	C-1 (Limited Commercial)
South	Grocery Store	SC (Service Commercial)	C-1 (Limited Commercial)
East	Shopping Center	SC (Service Commercial)	C-1 (Limited Commercial)
West	Single Family Dwelling, Detached	SF3 (Single Family Residential – 10 Units per Acre) Summerlin North Designation	P-C (Planned Community)

Master Plan Areas	*Yes*	*No*	*Compliance*
Master Plan Area		X	N/A
Special Purpose and Overlay Districts	***Yes***	***No***	***Compliance***
Special Purpose and Overlay Districts			
A-O (Airport Overlay) District (200 Feet)	X		Y
Trails		X	N/A
Rural Preservation Overlay District		X	N/A
Las Vegas Redevelopment Plan Area		X	N/A
Development Impact Notification Assessment		X	N/A
Project of Regional Significance		X	N/A

DEVELOPMENT STANDARDS

Pursuant to Title 19.14, the following standards apply:

Menu Board	**Allowed**	**Provided**	**Compliance**
Maximum Number	Two signs per drive-through lane if visible from ROW	One menu board 1 total	Y
Maximum Area	60 SF freestanding	40 SF freestanding	Y
Maximum Height	7 feet	8.26 feet (18% deviation)	N
Minimum Setback	5 feet	50 feet	Y
Illumination	External/Internal	Internal	Y
Other	Only the word “Menu”	Does not face ROW	Y

	to be legible from ROW		

Incidental Signs (Non-directional)	**Allowed**	**Provided**	**Compliance**
Maximum Number	No limit	One order confirmation pedestal	Y
Maximum Area	No limit	7.26 SF	Y
Maximum Height	5 feet	4.58 feet	Y
Minimum Setback	5 feet	56 feet	Y
Illumination	External/Internal	Internal	Y
Other	Up to 25% of sign area may contain logo	Less than 25%	Y
Incidental Signs (Directional)	**Allowed**	**Provided**	**Compliance**
Maximum Number	Two signs per driveway or access 4 total	One sign per driveway; one drive-through clearance arm 3 total	Y
Maximum Area per sign	12 SF	27 SF (125% deviation)	N
Maximum Height per sign	7 feet	12.5 feet (79% deviation)	N
Minimum Setback	5 feet	29 feet	Y
Illumination	Internal only	Internal	Y
Other	Up to 50% of sign area may contain logo	67% (34% deviation)	N
Monument Signs	**Allowed**	**Provided**	**Compliance**
Maximum Number	1/200 feet street frontage 1 total	One sign along Buffalo Dr. street frontage 1 total	Y
Maximum Area	75 SF/sign	16 SF	Y
Maximum Height	10 feet	7 feet	Y
Minimum Setback	5 feet	5 feet	Y
Illumination	Direct External/Internal	Internal	Y
Wall Signs	**Allowed**	**Provided**	**Compliance**
Maximum Number	Limited by area of elevation	1 sign per elevation 4 total	Y
Tube decoration	Limited by area of elevation	277 linear feet	Y
Maximum Area	20% of building elevation	Less than 20%	Y
Maximum Projection	4 Feet	8 Inches	Y
Illumination	Internal/External only	Internal	Y

ANALYSIS

The original Master Sign Plan (MSP-0006-02) for the shopping center was required in 2002 as a result of zoning standards requiring Master Sign Plans for non-residential development projects exceeding 2.5 acres. This amendment adds standards for signage for a new restaurant with drive-through at the southwest corner of the overall development. This restaurant was approved by Site Development Plan Review SDR-33756 and is currently under construction.

The proposed monument sign, wall signs on each building elevation, order confirmation board and the directional signs located at the entrance and exit to the drive-through lane are in compliance with Title 19.14 signage standards. A 277-foot narrow LED-lighted tube is proposed along the façades of the building near the roofline that meets the residential protection standards for illuminated signs in Title 19.14.070.

Two of the proposed signs are not in conformance with Title 19.14. The submitted plans indicate that the proposed menu board is to be approximately nine feet tall where seven feet is the maximum height allowed, a 29 percent deviation. The height measurement includes the supporting structure. At the entrance to the drive-through lane, a directional sign indicating the drive-through and restricting height clearance is proposed that exceeds height, area and logo coverage standards for directional incidental signs. The logo consists of the name and graphic of the restaurant. The proposed sign represents a 79 percent deviation in the height, a 125 percent deviation in area and a 34 percent deviation in the sign area that the logo may be allowed to cover.

Because these signs are not in conformance with Title 19 signage requirements and could be designed to meet these standards, staff recommends denial of the variance to allow the deviations and the accompanying amendment to the existing master sign plan for the shopping center that would add these signs for the restaurant. If the signs are brought into conformance with Title 19, staff would recommend approval of these items. Any future amendments to the approved signage within the Master Sign Plan in conformance with Title 19 standards may be reviewed and approved administratively by the Planning and Development Department.

FINDINGS (VAR-38114)

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature."

Additionally, Title 19.18.070(L) states:

> "Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution."

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by designing a menu board and an incidental sign that do not meet height, area and logo coverage standards of Title 19. Removal of the incidental sign and redesign of the menu board would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site's physical characteristics, it is concluded that the applicant's hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 15

NOTICES MAILED 1,232 (By City Clerk)

APPROVALS 7

PROTESTS 31

National Sign
& MARKETING CORPORATION

Angela Crolli
Deputy City Clerk II
City of Las Vegas
400 Stewart Ave.
Las Vegas, NV 89101

Re: MSP-38116 and VAR-38114

To Whom It May Concern:

We would like to request a continuance of the abeyance for the above mentioned Master Sign Program and Variance. The city council meeting is currently scheduled for August 18, 2010 and we would like to have it continued to the September 15, 2010 meeting date. We are requesting this because we need to hold a neighborhood meeting, per the city councils request, and do not have enough time to do so and prepare for the August 18th city council meeting. Please let us know at your earliest convenience of the status of this request so that we may plan accordingly. Please call if you have any questions or concerns.

Sincerely,

Robyn Bentley

Robyn Bentley
Permitting Department
National Sign & Marketing Corp.
13580 5th St.
Chino, CA 91710
(909) 591-4742
robynb@nsmc.com

PLANNING & DEVELOPMENT DEPARTMENT

STATEMENT OF FINANCIAL INTEREST

Case Number. **VAR-38114** APN: 138-22-418-011

Name of Property Owner: SEA BREEZE VILLAGE II, LLC.

Name of Applicant: Visual Information Systems Co.

Name of Representative: Ed Blend

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ Yes ☒ No

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____

APN: _____

Signature of Property Owner: _____

Print Name: HASKEL INY

Subscribed and sworn before me

This 9 day of March, 20 10

Trina M Perales

Notary Public in and for said County and State

TRINA M. PERALES
Notary Public-State of Nevada
APPT. NO. 09-8929-1
My App. Expires December 12, 2012

PLANNING & DEVELOPMENT

PLANNING & DEVELOPMENT DEPARTMENT

APPLICATION / PETITION FORM

Application/Petition For: VARIANCE

Project Address (Location) 7598 Vegas Dr.

Project Name Carl's Jr. **Proposed Use**

Assessor's Parcel #(s) 138-22-418-011 **Ward #** 4

General Plan: existing X proposed **Zoning:** existing X proposed

Commercial Square Footage **Floor Area Ratio**

Gross Acres .52 **Lots/Units** 1 **Density**

Additional Information INCIDENTAL SIGNAGE TALLER THAN 5' AND LOGO GREATER THAN 25% OF SIGN AREA - CARL'S JR. CLEARANCE ARM

PROPERTY OWNER SEA BREEZE VILLAGE II, LLC **Contact** JENNIFER ROBERTS

Address 1770 N BUFFALO #101 **Phone:** 702.253.5151 **Fax:** 702.430.5307

City LAS VEGAS **State** NV **Zip** 89128

E-mail Address jr@greatac.com

APPLICANT Visual Information Systems Co. **Contact** Ed Blend

Address 13580 5th St. **Phone:** 909-591-4742 **Fax:**

City Chino **State** CA **Zip** 91710

E-mail Address

REPRESENTATIVE Ed Blend **Contact**

Address 13580 5th St. **Phone:** 909-287-7373 **Fax:**

City Chino **State** CA **Zip** 91710

E-mail Address eblend@nsmc.com

Property Owner Signature* _____

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name HASKEL INY

Subscribed and sworn before me

This 9 day of March, 20 10.

Trina M. Perales

Notary Public in and for said County and State

TRINA M. PERALES
Notary Public-State of Nevada
APPT. NO. 09-8929-1
My App. Expires December 12, 2012

FOR DEPARTMENT USE ONLY

Case #	VAR-38114
Meeting Date:	6/24/2010
Total Fee:	830.00
Date Received:*	4/27/2010
Received By:	MREX

*The application will not be deemed complete until the submitted materials have been reviewed by the Planning and Development Department for consistency with applicable sections of the Zoning Ordinance.

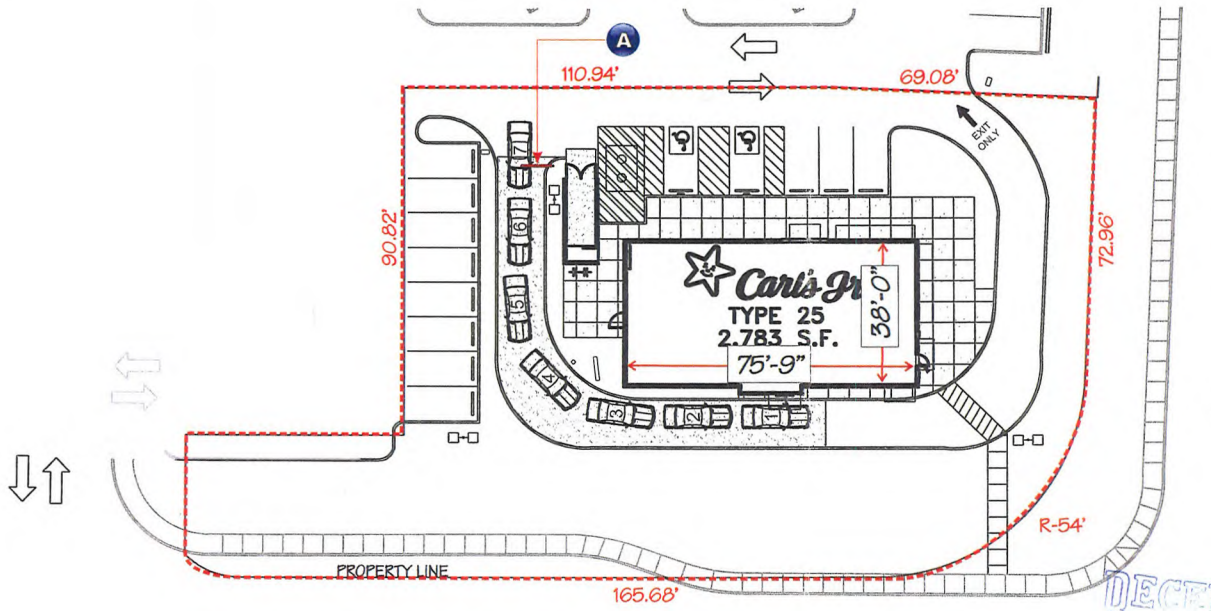
Revised 10/27/08

f:\depot\Application Packet\Application Form.pdf

Scope of Work

APN 138-22-418-011

A DRIVE-THRU CLEARANCE ARM



BUFFALO DR

VEGAS DR



VICINITY MAP

RECEIVED
APR 27 2010

NOTE:
ALL NEW SIGNAGE TO CONNECT TO CLIENT PROVIDED ELECTRICAL CIRCUITS

LOGO ARTWORK	SALESMAN TO PROVIDE ACTUAL COLOR INFORMATION PRIOR TO FABRICATION
YES ☐ NO ☑ WINDOWS READY VECTOR LINE DIGITAL ARTWORK OR B&W CAMERA READY ARTWORK WILL BE REQUIRED PRIOR TO FABRICATION	YES ☐ NO ☐

FIELD SURVEY REQUIRED FOR: (2)

YES	NO	
☑	☐	COLOR MATCHING PURPOSES TO EXISTING BUILDING(S)/SIGNAGE etc.
☑	☐	MATCHING STONE, BRICK or OTHER BUILDING MATERIALS TO EXISTING
☑	☐	DETERMINE ACTUAL DIMENSIONS OF EXISTING SIGNAGE FOR REFACE BEFORE FABRICATION
☐	☐	

SIGNAGE LOCATIONS:	CUSTOMER APPROVAL:	MISCELLANEOUS:
HAS CUSTOMER APPROVED SIGN LOCATION(S) FOR INSTALLATION? YES ☑ NO ☐	DRAWINGS YES ☑ NO ☐	DEPOSIT REQUIRED YES ☐ NO ☐
	COLORS YES ☑ NO ☐	SIGNED CONTRACT YES ☐ NO ☐
	TEXT YES ☑ NO ☐	ORDER LED UNIT YES ☐ NO ☐

CARL'S JR. - Las Vegas, CA. - Site Plan

SCALE: 1/32"=1'

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National Sign
& MARKETING CORPORATION
DBA Visual Information Systems Co.
13580 5th St. Chino, CA 91710
Tel 909.591.4742 Fax 909.591.9792
e-mail: sales@nsmc.com
NV Lic# 0071619 - Exp. 8/31/10
Class: C-6 Limit: $950,000.00

Project: Carl's Jr.
Address: 7598 Vegas Dr., Las Vegas, NV
Phone: _____ **Account Mgr.** S. Rosenbloom
Designer: S. Duffy **Scale:** Noted **Date:** 02/16/2010

Client Approval:
Date: _____

APPROVED & RELEASED FOR CONSTRUCTION
Salesman Date

Revisions:
05/17/10 SD: Add measurements and address to plot plan
VAR-38114
06/24/10 PC

Drawing Number
24245
R1

VISCO ELECTRONIC SIGNS

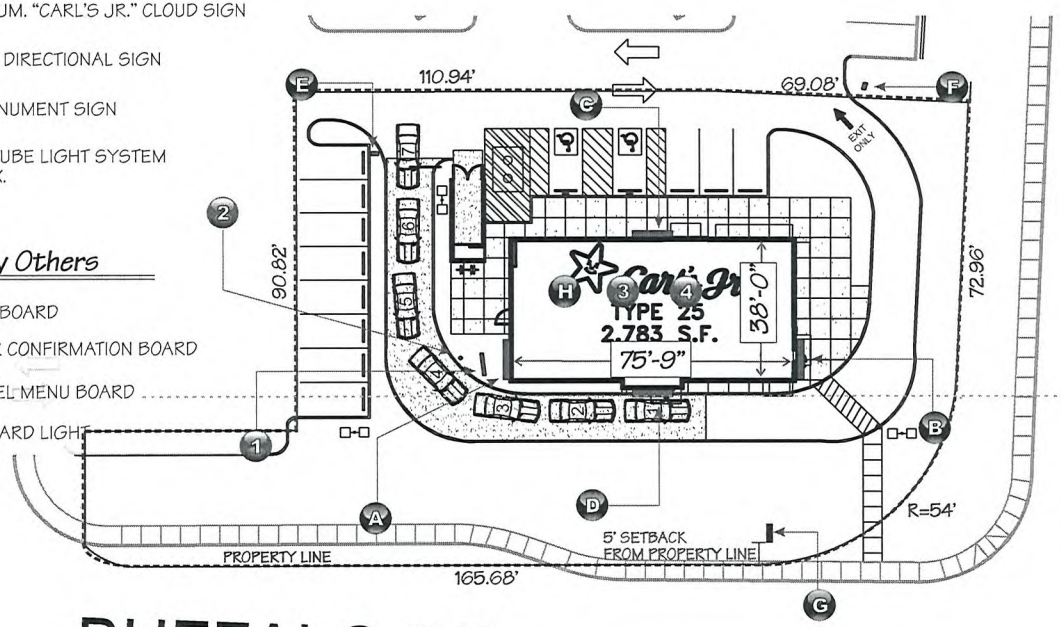
Scope of Work

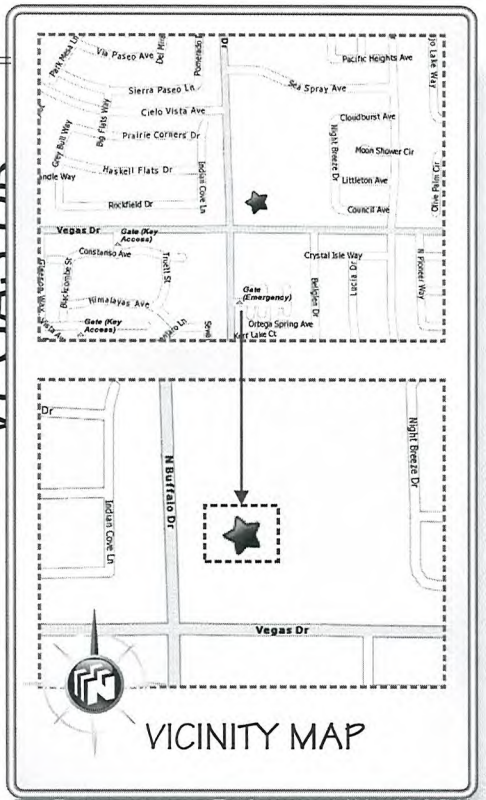
- A B C — 42" EMBOSSED ILLUM. "CARL'S JR." CLOUD SIGN
- D — 60" EMBOSSED ILLUM. "CARL'S JR." CLOUD SIGN
- E F — NEW D/F ILLUM. DIRECTIONAL SIGN
- G — NEW D/F ILLUM. MONUMENT SIGN
- H — NEW LED BORDER TUBE LIGHT SYSTEM 277' LIN. FT. APPROX.

Install Only

Manufacturing By Others

1. DRIVE-THRU MENU BOARD
2. DRIVE-THRU ORDER CONFIRMATION BOARD (Footing Only)
3. INTERIOR 10/11 PANEL MENU BOARD
4. INTERIOR MENU BOARD LIGHT BOX COMBO PANEL





VICINITY MAP

NOTE: ALL NEW SIGNAGE TO CONNECT TO CLIENT PROVIDED ELECTRICAL CIRCUITS

LOGO ARTWORK

YES NO ☐☑ WINDOWS READY VECTOR LINE DIGITAL ARTWORK OR RAW CAMERA READY ARTWORK WILL BE REQUIRED PRIOR TO FABRICATION

SALESMAN TO PROVIDE ACTUAL COLOR INFORMATION PRIOR TO FABRICATION

YES NO ☐☐

FIELD SURVEY REQUIRED FOR:

YES NO
- ☐☑ COLOR MATCHING PURPOSES TO EXISTING BUILDING(S)/SIGNAGE etc.
- ☐☑ MATCHING STONE, BRICK or OTHER BUILDING MATERIALS TO EXISTING
- ☐☑ DETERMINE ACTUAL DIMENSIONS OF EXISTING SIGNAGE FOR REFACE BEFORE FABRICATION
- ☐☐ 12

SIGNAGE LOCATIONS:	CUSTOMER APPROVAL:	MISCELLANEOUS:
HAS CUSTOMER APPROVED SIGN LOCATION(S) FOR INSTALLATION? YES ☑ NO ☐	DRAWINGS YES ☑ NO ☐	DEPOSIT REQUIRED YES ☐ NO ☐
	COLORS YES ☑ NO ☐	SIGNED CONTRACT YES ☐ NO ☐
	TEXT YES ☑ NO ☐	ORDER LED UNIT YES ☐ NO ☐

CARL'S JR. - Las Vegas, CA. - Site Plan

SCALE: 1/32"=1'

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Client Approval: _____ Date: _____

APPROVED & RELEASED FOR CONSTRUCTION _____ Salesman Date

Revisions:

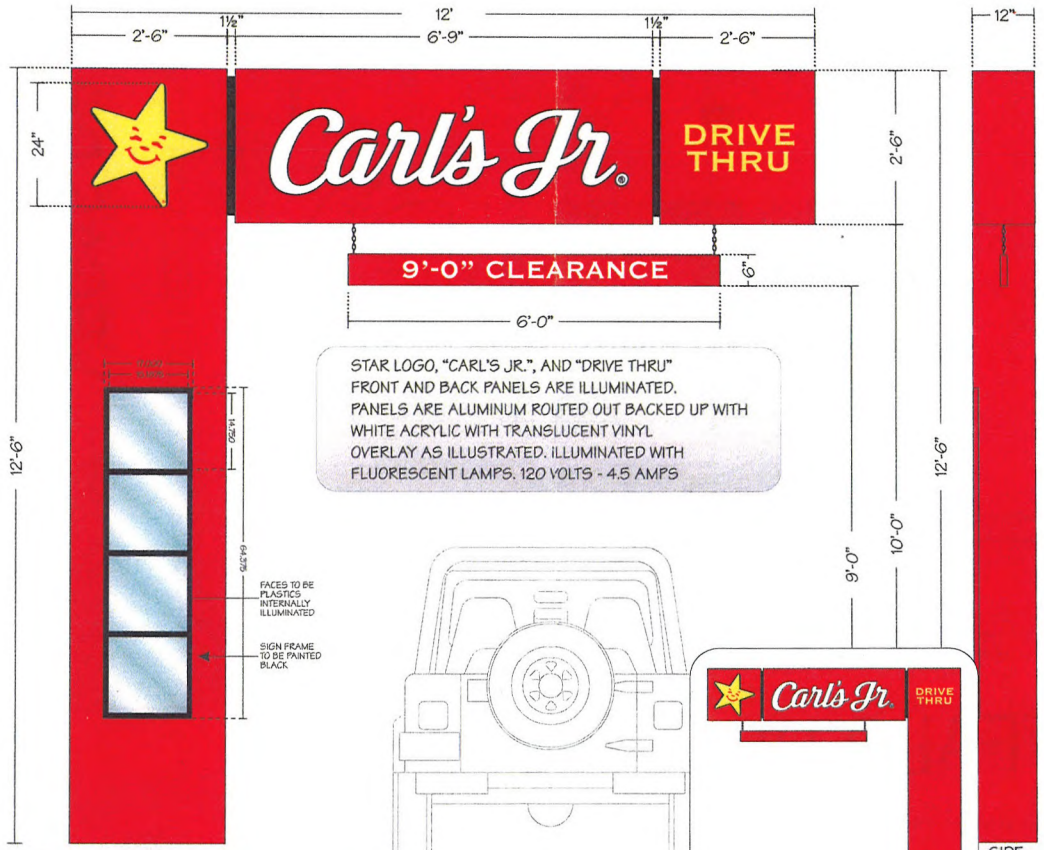
Drawing Number 24359

VISCO ELECTRONIC SIGNS

RECEIVED APR 27 2010

VAR-38114
MSP-38116

SEE ENGINEERING FOR FOOTING DETAILS



A DRIVE-THRU CLEARANCE ARM

RECEIVED
APR 27 2010

CARL'S JR. - Drive Thru Clearance Arm

SCALE: ½" = 1'

VAR-38114
06/24/10 PC

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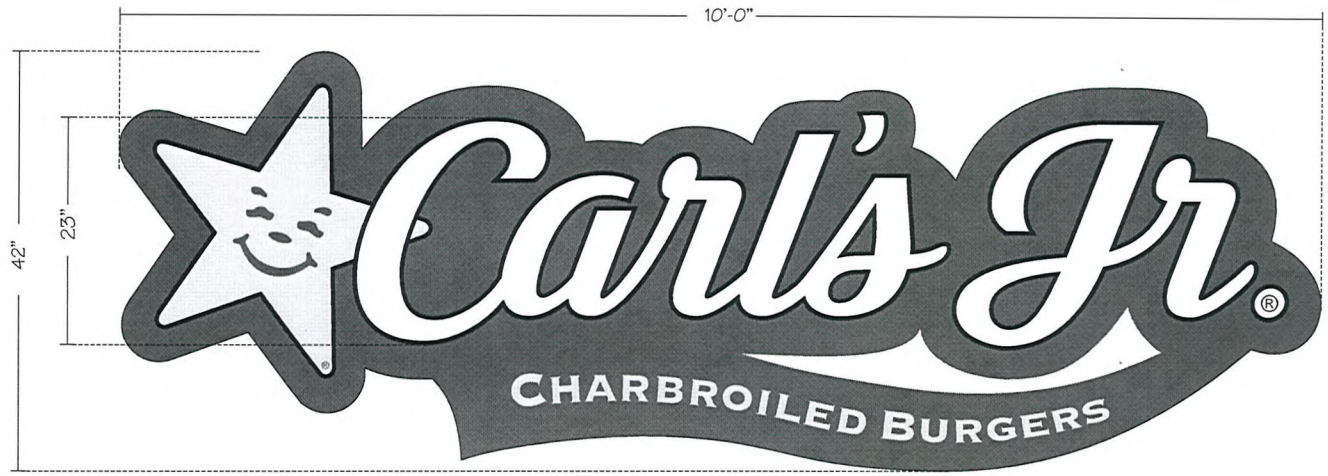
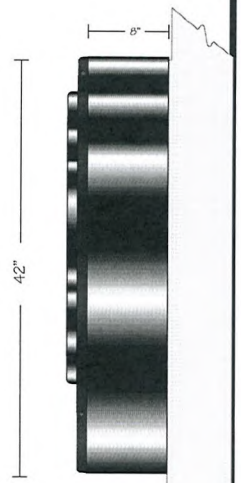
ELECTRONIC SIGNS





END VIEW

A B C 42" EMBOSSED ILLUM. "CARL'S JR." CLOUD SIGN

35 Ø

Cloud Sign Specifications:

BODY:
S/F CUSTOM FABRICATED ALUMINUM CABINET CONSTRUCTED OF .040 WITH .063 ALUMINUM BACKS.

FACES:
CLEAR EMBOSSED PAN FORMED FACES WITH 1-1/2" RETURNS AND BACK SPRAYED PAINTED DECORATION. COLORS TO MATCH CORPORATE APPROVED COLORS.

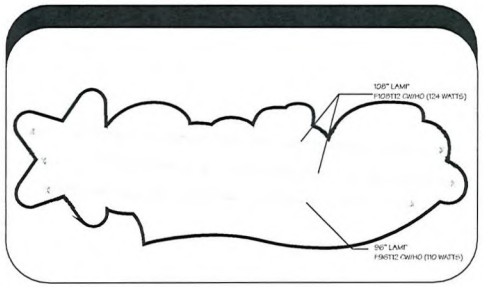
RETURNS:
PAINTED BLACK.

ILLUMINATION:
INTERNAL, H.O. FLUORESCENT LAMPS. 120 VOLTS - 1.5 AMPS

SWITCH:
U.L. APPROVED TOGGLE SWITCH.

ALL WIRING & COMPONENTS TO MEET U.L. STANDARDS

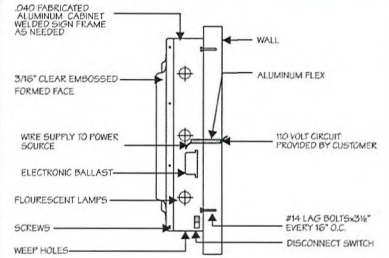
BLACK
RED VINYL 3M-3630-73
YELLOW VINYL 3M-3630-015



PERSPECTIVE VIEW



ILLUMINATED CLOUD SIGN



CABINET SECTION DETAIL (TYP.)

42" EMBOSSED ILLUM. CARL'S JR. CLOUD SIGN

SCALE: 1" = 1'-0"

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Salesman Date

Revisions:

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24359

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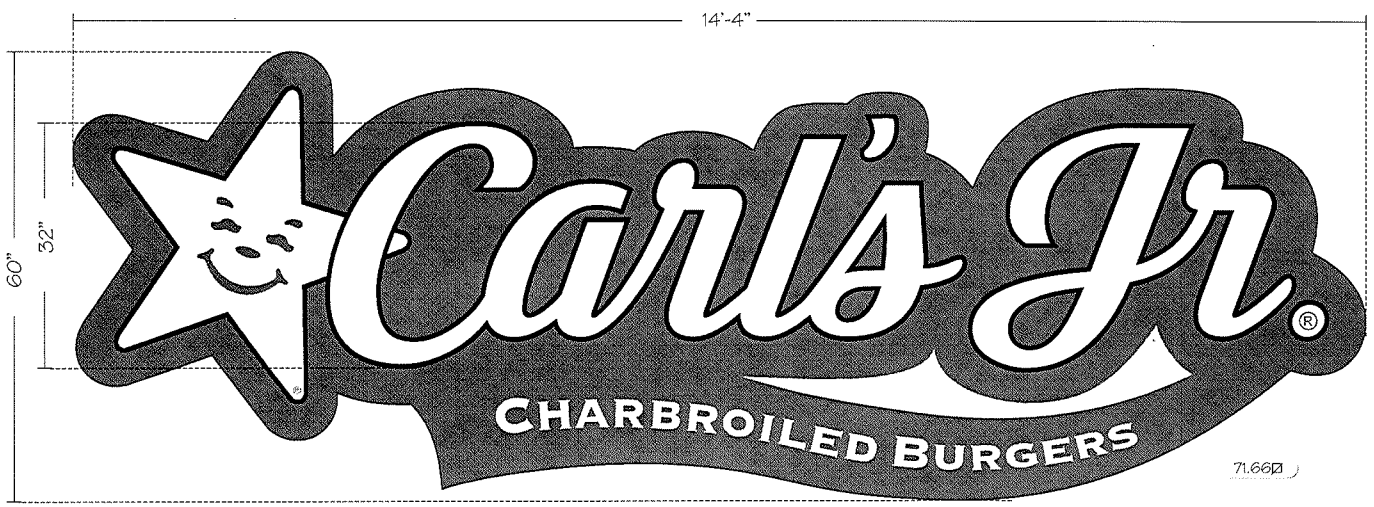
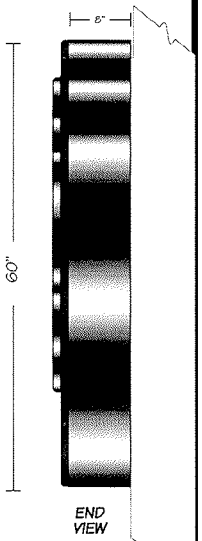




(D) 60" EMBOSSED ILLUM. "CARL'S JR." CLOUD SIGN

Cloud Sign Specifications:

BODY:
S/F CUSTOM FABRICATED ALUMINUM CABINET CONSTRUCTED OF .040 WITH .063 ALUMINUM BACKS.

FACES:
CLEAR EMBOSSED PAN FORMED FACES WITH 1-1/2" RETURNS AND BACK SPRAYED PAINTED DECORATION. COLORS TO MATCH CORPORATE APPROVED COLORS.

RETURNS:
PAINTED BLACK.

ILLUMINATION:
INTERNAL, H.O. FLUORESCENT LAMPS. 120 VOLTS - 4.5 AMPS

SWITCH:
U.L. APPROVED TOGGLE SWITCH.

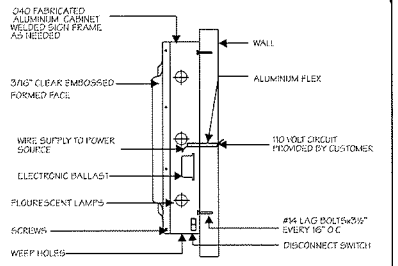
ALL WIRING & COMPONENTS TO MEET U.L. STANDARDS

BLACK
RED VINYL 3M-3630-73
YELLOW VINYL 3M-3630-015

PERSPECTIVE VIEW



ILLUMINATED CLOUD SIGN



CABINET SECTION DETAIL (TYP.)

60" EMBOSSED ILLUM. CARL'S JR. CLOUD SIGN

SCALE: ¾" = 1'-0"

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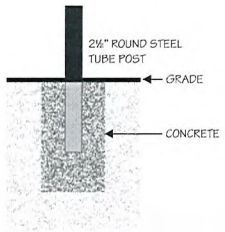
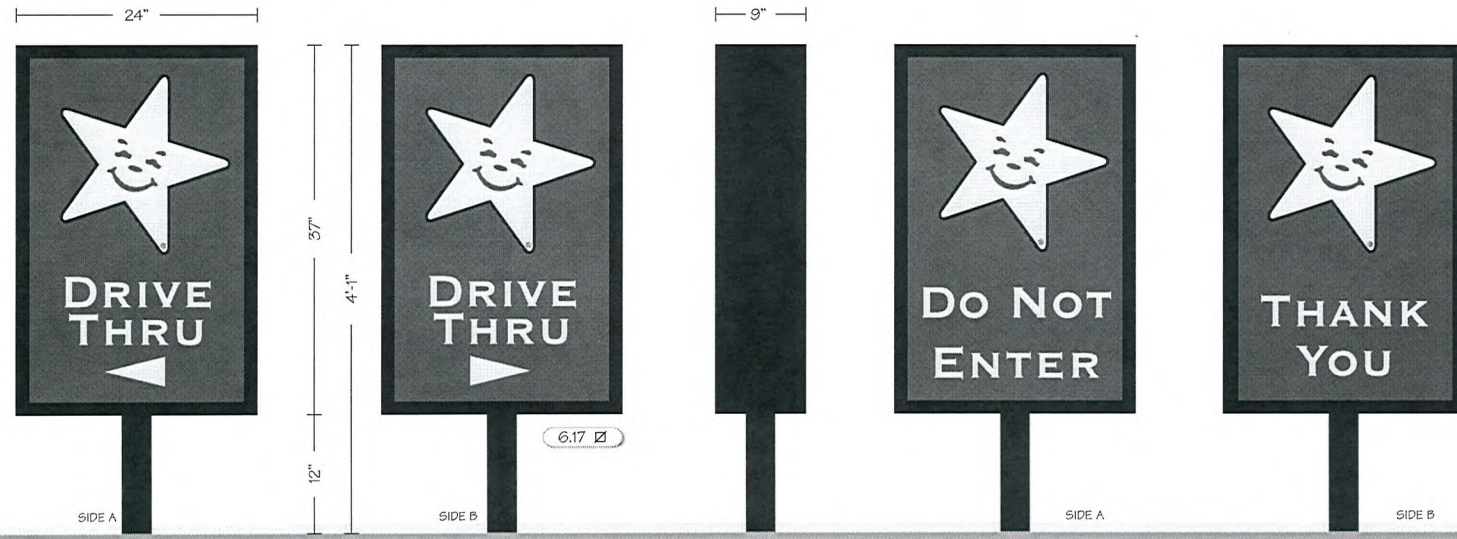
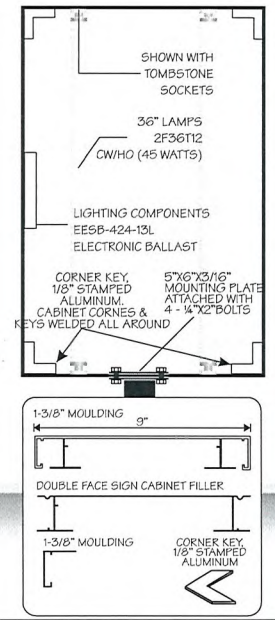


Specifications:

CABINETS:	FABRICATED ALUMINUM 9" DEEP, WITH 1½" RETAINERS AND RETURNS PAINTED BLACK.
FACES:	WHITE PLEX/LEXAN WITH FIRST SURFACE APPLIED CUT/REVERSE CUT TRANSLUCENT VINYL GRAPHICS AS ILLUSTRATED.
POST:	2½" ROUND STEEL TUBE POST PAINTED BLACK.
ILLUMINATION:	INTERNAL T12 CW/HO FLOURESCENT LAMPS. 120 VOLTS - 1.5 AMPS
SWITCH:	TAMPER RESISTANT SWITCH: UL APPROVED 15A-120/277V 'LEVITON' #1101-2L WITH KEYED WATERPROOF COVER.

ALL COMPONENTS TO BE U.L. APPROVED





(E) NEW D/F ILLUM. DIRECTIONAL SIGN

END VIEW

(F) NEW D/F ILLUM. DIRECTIONAL SIGN

SEE ENGINEERING FOR FOOTING DETAILS

CARL'S JR. - D/F ILLUMINATED DIRECTIONAL SIGNS

SCALE: 1" = 1'-0"

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Address: 7598 Vegas Dr., Las Vegas, NV
Phone: _____ **Account Mgr.** S. Rosenbloom
Designer: S. Duffy **Scale:** Noted **Date:** 04/20/2010

Client Approval:

Date: _____

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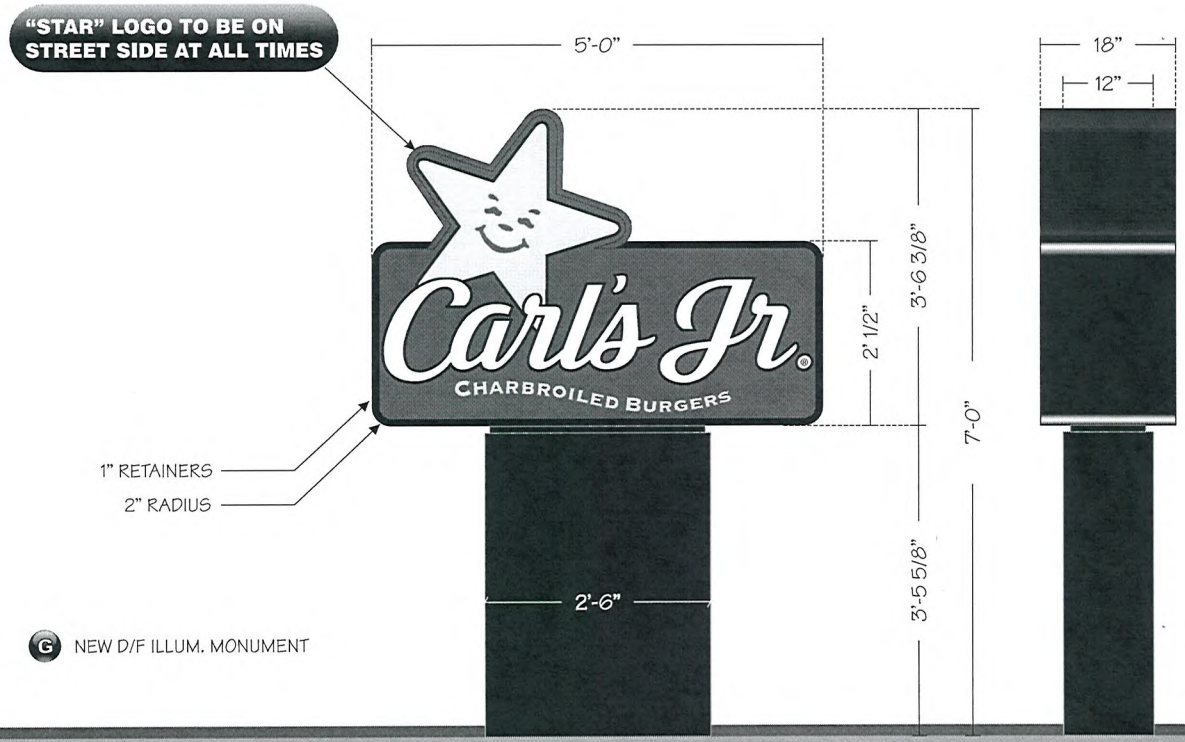
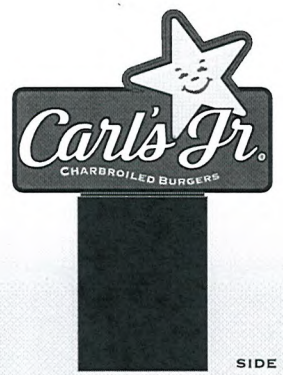


Specifications:

CABINET:	FABRICATED ALUMINUM, 18" DEEP WITH 1" WIDE RETAINERS. "CARL'S JR." CABINET TO BE PAINTED BLACK, PAINT "STAR" CABINET FRAZEE "CHERRY RED" #6355.
FACES:	WHITE LEXAN WITH FIRST SURFACE APPLIED CUT/REVERSE CUT TRANSLUCENT VINYL GRAPHICS AS ILLUSTRATED.
POLE COVER:	FABRICATED ALUMINUM, 12" DEEP WITH TEX-COTE FINISH, PAINTED BLACK FLAT FINISH.
ILLUMINATION:	INTERNAL H.O. FLUORESCENT LAMPS.
SWITCH:	TAMPER RESISTANT SWITCH: UL APPROVED 15A-120/277V 'LEVITON' #1101-2L WITH KEYED WATERPROOF COVER.

ALL WIRING & COMPONENTS TO MEET U.L. STANDARDS



NEW D/F ILLUMINATED MONUMENT SIGN

SCALE: 3/4" = 1'-0"

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ELECTRONIC SIGNS

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APR 27 2010

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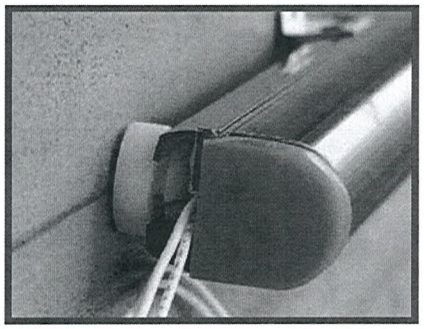
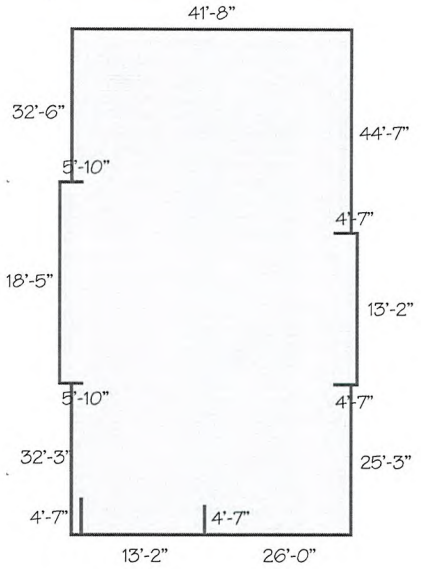
MSP-38116

Specifications:

INSTALL "LED BORDER SYSTEM" RED LED BORDER 3" FROM BOTTOM OF COPING AND TRIM AS SHOWN ON INDIVIDUAL ELEVATION PACKAGES.





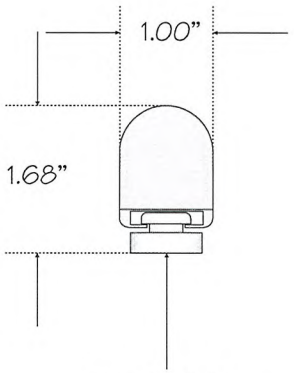


(H) NEW LED BORDER SYSTEM
277' LIN. FT. APPROX.

Sloan Components Used - UL #E215393
701189-10H-10' RED LED STRIPE
701189-8H-8' RED LED STRIPE
701189-6H-6' RED LED STRIPE
701189-4H-4' RED LED STRIPE
701189-2H-2' RED LED STRIPE
701189-1H-1' RED LED STRIPE
700940-300 WATT TRANSFORMERS
701158-120-10' HOOK-UP WIRE

- BRIGHT, WIDE VIEWING-ANGLE LEDS OFFER INTENSE, UNIFORM GLOW
- HIGH IMPACT, UV STABLE, HYDROCARBON INSENSITIVE, NON-FADING POLYMER TUBES
- 24 VOLT DC POWER SUPPLY POWERS UP TO 3 LEGS OF 30' (9 METERS) EACH, OR 90' (27.4 METERS) TOTAL
- CAN BE CUT-TO-FIT IN THE FIELD AND FACTORY BENT TO AN 8" RADIUS
- CONVENIENT LOCK-TIGHT, WATERPROOF CONNECTORS BETWEEN TUBES
- OPERATING TEMPERATURE: -40°C TO +85°C
- CONFORMS TO UL 48 STANDARDS
- MOUNTING BUTTONS FASTENED TO WALLS:
  W/ #12 TEK SCREWS IF INTO PLYWOOD
  W/ 1/4" X 1-1/2" METAL ANCHORS IF INTO CONCRETE

120 VOLTS - 16 AMPS



Mounting Button

LED BORDER SYSTEM

SCALE: NTS

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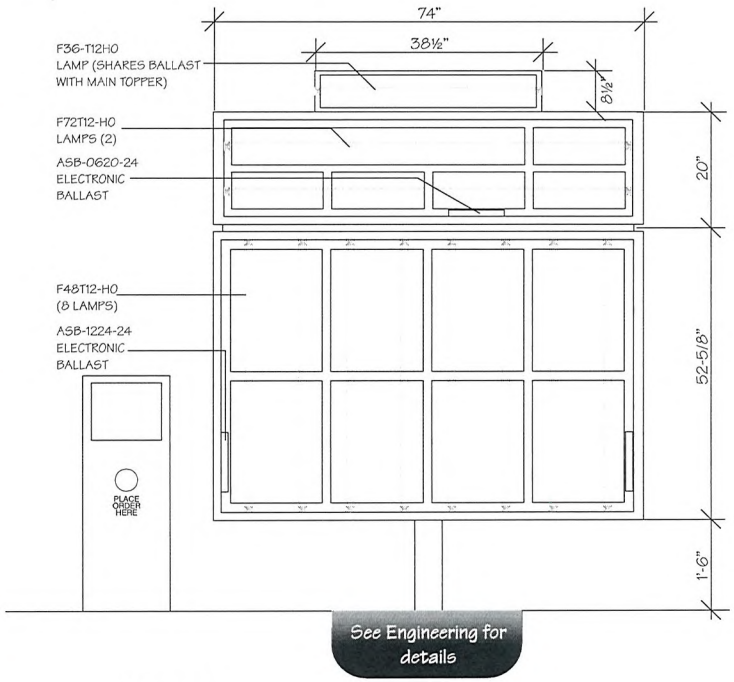
MSP-38116

Install Only

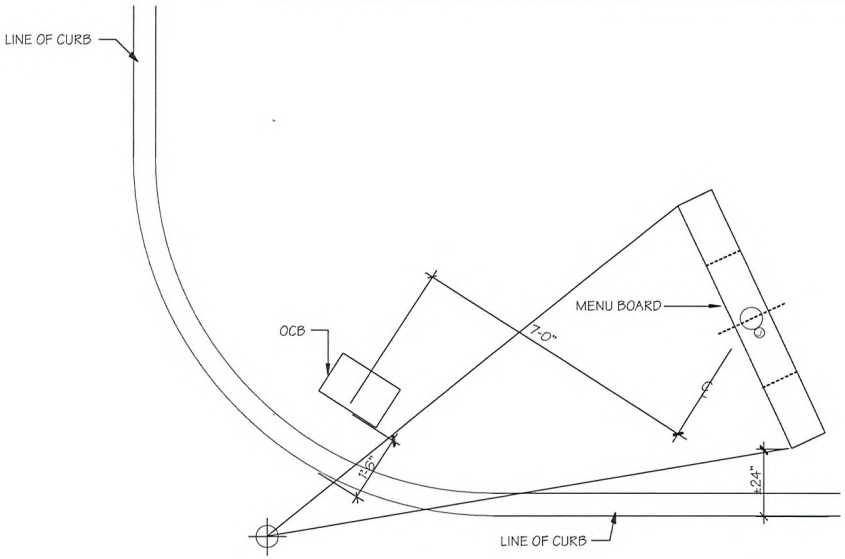
NOTE: ALL WORK TO COMPLY WITH 2005 SNEA & NEVADA ELECTRICAL CODE (NEC)

1 DRIVE-THRU MENU BOARD



ELEVATION

NOTE:
SEE SIZE OF EMBEDMENT SEPARATE SHEET.



MENU BOARD LAYOUT AT DRIVE THRU

SCALE: NTS

MENU BOARD SPECIFICATIONS

SINGLE FACED ILLUMINATED DRIVE-THRU MENU BOARD CABINET IS OF EXTRUDED ALUMINUM CONSTRUCTION WASHED AND PRIMED WITH ETCHING PRIMER AND PAINTED BLACK.

DOORS ARE TEMPERED GLASS PANELS WITH EXTRUDED ALUMINUM FRAMES MOUNTED ON PIANO HINGES. ALL DOORS TO LOCK WITH A UNIVERSAL KEY.

COPY PANELS ARE WHITE 1/8" ACRYLIC WITH PLASTIC "H" TRACK FOR 20 SLATS.

TRANSLITE PANELS ARE WHITE 1/8" ACRYLIC WITH 1/8" CLEAR OVERLAY.

ELECTRICAL SPECIFICATIONS

ONE (1) 20 AMP BREAKER. TOTAL OF 7 AMPS IN SIGN, 120 VOLT.

EXTERIOR MENU BOARD

SCALE: NTS

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National Sign
& MARKETING CORPORATION
DBA Visual Information Systems Co.
13580 5th St., Chino, CA 91710
Tel 909.591.4742 Fax 909.591.9792
e-mail: sales@nsmc.com
NV Lic# 0071619 - Exp. 8/31/10
Class: C-6 Limit: $950,000.00

Project: Carl's Jr.
Address: 7598 Vegas Dr., Las Vegas, NV
Phone: _____ **Account Mgr.** S. Rosenbloom
Designer: S. Duffy **Scale:** Noted **Date:** 04/20/2010

Client Approval:
Date: _____

APPROVED & RELEASED FOR CONSTRUCTION
Salesman Date

Revisions:

Drawing Number
24359

VISCO ELECTRONIC SIGNS

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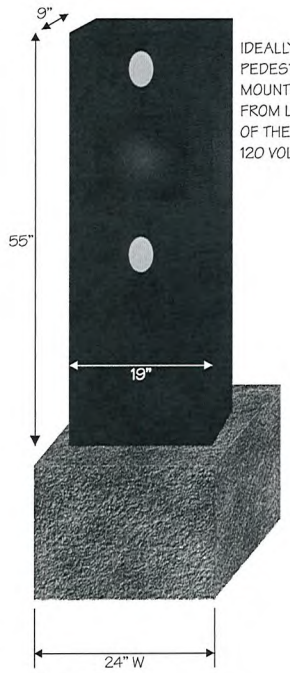
APR 27 2010

VAR-38114
MSP-38116

Install Only

FOOTING TO BE DONE BY NSMC



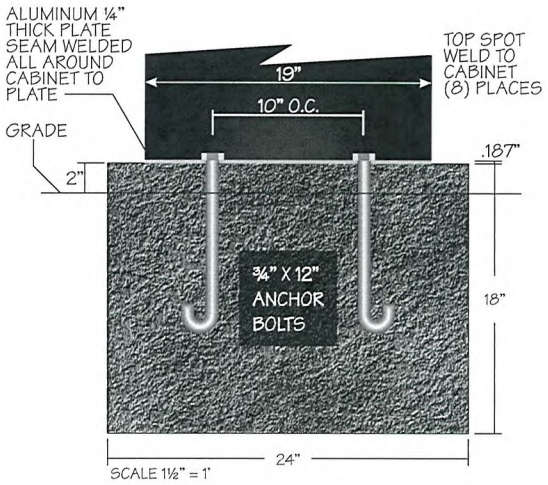
IDEALLY THE PEDESTAL WOULD BE MOUNTED 6" TO 12" FROM LEFT SIDE OF THE MENU BOARD 120 VOLTS - 2 AMPS

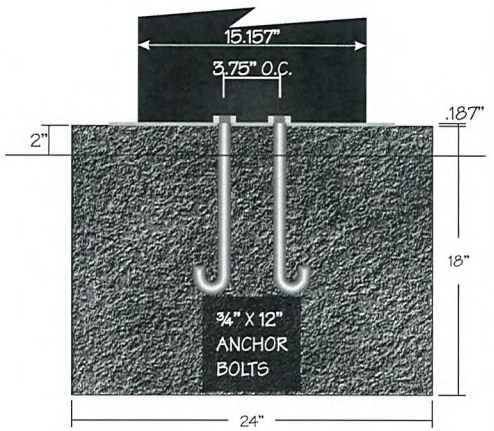
SCALE ¾" = 1'

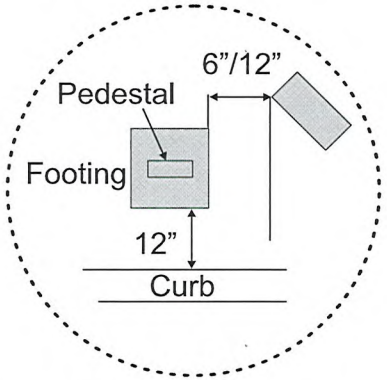
2 ORDER CONFIRMATION BOARD (FOOTING ONLY)

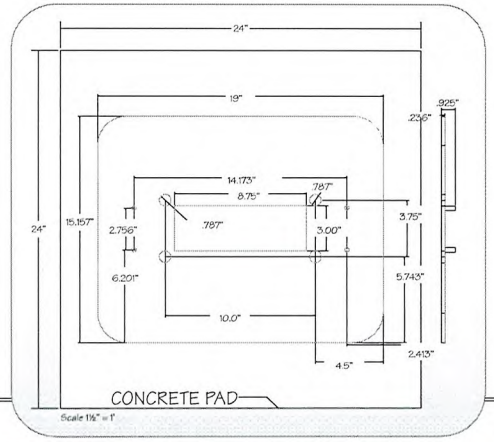
ORDER CONFIRMATION BOARD BUILT BY:
HyperActive Technologies
8 Foster Plaza, 4th Floor
730 Holliday Drive
Pittsburgh, PA 15220
Phone: 412.322.3060 Fax: 412.322.3121

SEE ENGINEERING FOR FOOTING DETAILS









ORDER CONFIRMATION BOARD

SCALE: NTS

NOTE: ALL WORK TO COMPLY WITH 2005 SNEA & NEVADA ELECTRICAL CODE (NEC)

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Phone: _____ **Account Mgr.** S. Rosenbloom
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Client Approval:
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3 INTERIOR MENU BOARD

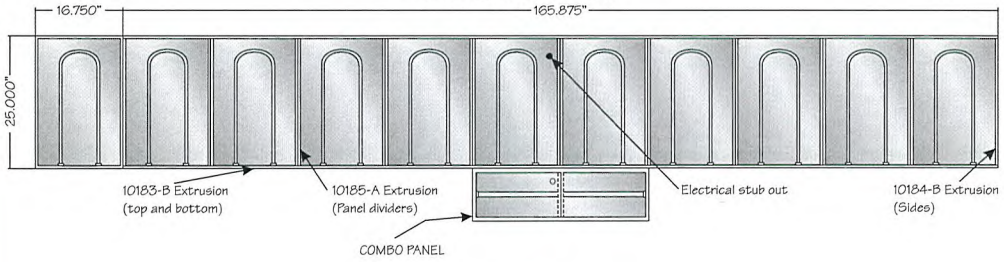
11 PANELS

MENU BOARD BUILT BY:
SIGN RESOURCE
P.O. BOX 549 - MAXWOOD, CA 90270
800-423-4283
323-771-2098
FAX 323-560-7143
WWW.SIGNSOURCE.NET

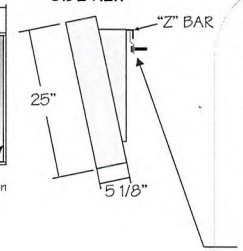
ALL MANUFACTURING BY OTHERS

INSTALL ONLY

PANEL MENU BOARD



SIDE VIEW



Construction:

- All aluminum extrusion construction, .0900 thick 6063-T5 alloy.
- All exposed surfaces of cabinets have a 5 step paint process including sanding, chemical degreasing, etching primer, polyurethane undercoat and polyurethane paint.
- All cabinets are manufactured to UL specifications and bear their label.

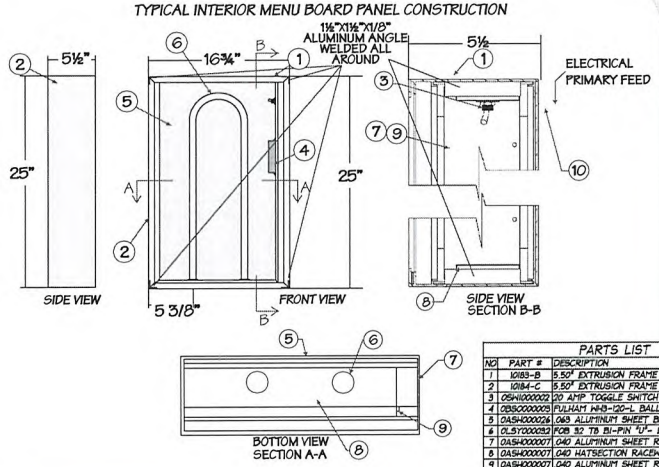
Installation:

10' 'Z' (supplied) is mounted to wall. Brackets mounted to rear of cabinet hang menu from 'Z' bar.
#14 Lag Bolts x3" Penetration every 16" O.C. (If dry wall & wood studs)
¼"X3" Toggle Bolts every 16" O. C. (If tile wall).

Electrical:

- 120 volts, 60 Hz
- 2.37 amps
- Hardware electrical connection by GC
- Replacement lamps: F80 32 T8/741
- Replacement ballasts: Advance REL-4P32-SC
- Provide separate circuit for all signs

TYPICAL INTERIOR MENU BOARD PANEL CONSTRUCTION





PARTS LIST			
NO	PART #	DESCRIPTION	QTY
1	10183-B	5.50" EXTRUSION FRAME TOP & BOTTOM	2
2	10184-C	5.50" EXTRUSION FRAME FOR SIDE	2
3	OSH1000002	20 AMP TOGGLE SWITCH	1
4	OBSC000003	FULHAM WH3-120-L BALLAST	1
5	OASH000026	.063 ALUMINUM SHEET BACKING	1
6	OLSY000032	FOB 32 T8 BI-PIN "U"- LAMP	1
7	OASH000007	.040 ALUMINUM SHEET RACEWAY	AR
8	OASH000007	.040 HATSECTION RACEWAY COVER	1
9	OASH000007	.040 ALUMINUM SHEET RACEWAY COVER	AR
10	OEBN000013	5/8" BLACK SNAP BUSHING	1
11	DGAMTBKT	2 1/2" x 24 3/4" BRACKET	1

Voltage	Circuits	Current	Drawn By	Date
120 AC	[1] ONE	.55 AMPS	JM	12/20/04

Description	Checked By
25" X 16 3/4" 1 PANEL MENUBOARD	~

Sign Size	Design Load	Client	Page
2.90 SQ FT	30 PSF	CARL'S Jr.	1 OF 1

INTERIOR MENU BOARD

SCALE: NTS

NOTE: ALL WORK TO COMPLY WITH 2005 SNEA & NEVADA ELECTRICAL CODE (NEC)

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Tel 909.591.4742 Fax 909.591.9792
e-mail: sales@nsmc.com
NV Lic# 0071619 - Exp. 8/31/10
Class: C-6 Limit: $950,000.00

Project: Carl's Jr.
Address: 7598 Vegas Dr., Las Vegas, NV
Phone: _____ **Account Mgr.** S. Rosenbloom
Designer: S. Duffy **Scale:** Noted **Date:** 04/20/2010

Client Approval: _____ Date: _____

APPROVED & RELEASED FOR CONSTRUCTION
Salesman Date

Revisions:

Drawing Number 24359

VISCO ELECTRONIC SIGNS

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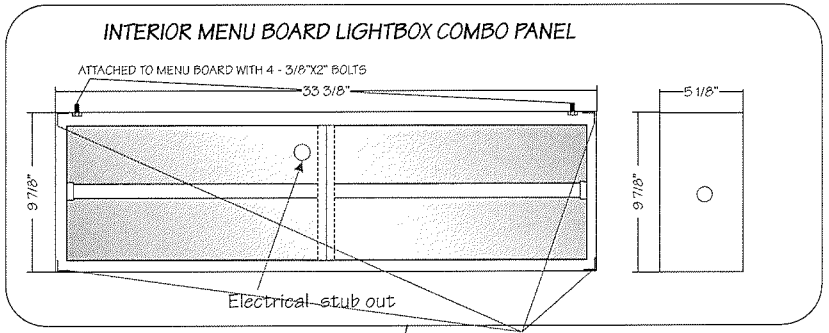
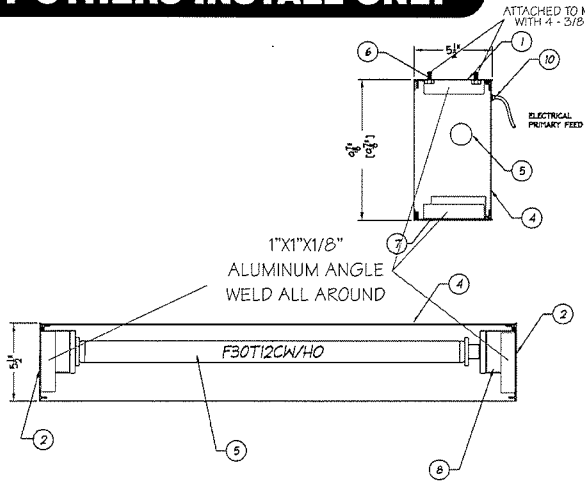
4 INTERIOR MENU BOARD LIGHT BOX COMBO PANEL





PARTS LIST			
NO	PART #	DESCRIPTION	QTY
1	10183-B	5.50" EXTRUSION FRAME TOP & BOTTOM	1
2	10184-C	2.50" EXTRUSION FRAME FOR SIDE	1
3	OBSC000009	WORK HORSE 3 MODEL	1
4	GASH000026	.063 ALUMINUM SHEET BACKING	1
5	GLCH000008	F30 T12 CW/HO FLUORECENT LAMP	1
6	GASH000007	.040 ALUMINUM SHEET RACEWAY	AR
7	DEXT000020	ALUMINUM ANGLE 1"x1 1/2"x.188"	1
8	GASH000007	.040 HATSECTION RACEWAY COVER	1
9	GASH000071	.040 ALUMINUM SHEET RACEWAY COVER	AR
10	OEBN000029	5/8" BLACK SNAP BUSHING	1
11	10185-A	VERTICAL DIVIDER INT.	1

Voltage: 120 AC	Circuits: (1) ONE	Current: AMP	Drawn By: JM	Date: 12-16-04
Description: 8 1/2" X 33 3/8" COMBO INTERIOR LIGHTBOX MENUBOARD				Checked By: ~
Sign Size: 2.29 SQ FT	Design Load: 30 PSF	Client: CARL'S Jr.		Page: 1 OF 1
Part Number: CKE008	Drawing No.: CKE008			Rev.: A

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Construction:
- All aluminum extrusion construction, .0900 thick 6063-T5 alloy.
- All exposed surfaces of cabinets have a 5 step paint process including sanding, chemical degreasing, etching primer, polyurethane undercoat and polyurethane paint.
- All cabinets are manufactured to UL specifications and bear their label.

Installation:
- This cabinet bolts to the bottom of the Carl's 10/11 panel interior menu, item #00036080. Using ¼"x1-½" bolts into nutserts pre-mounted at bottom of 10/11 menu board by manufacturer.

Electrical:
- 120 volts, 60 hz
- .40 amps
- Hardware electrical connection by GC
- Replacement lamps: F25T12/CW/30
- Replacement ballasts: LC-25/340-H2 (1 each)
- Replacement starter: FS-25
- Provide separate circuit for all signs

MENU BOARD BUILT BY:
SIGN RESOURCE
P.O. BOX 549 - MAXWOOD, CA 90270
800-423-4285
323-771-2099
FAX 323-560-7143
WWW.SIGNSOURCE.NET

INTERIOR MENU BOARD LIGHTBOX COMBO PANEL

SCALE: NTS

NOTE: ALL WORK TO COMPLY WITH 2005 SNEA & NEVADA ELECTRICAL CODE (NEC)

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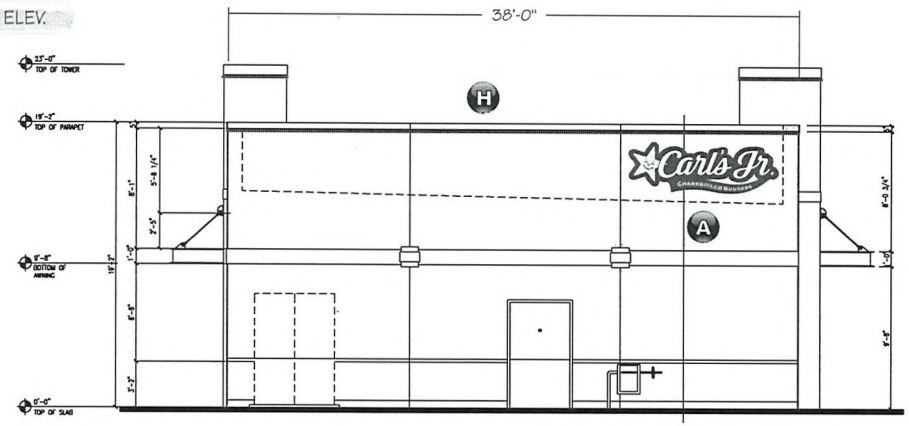
VAR-38114
MSP-38116

PROPOSED ELEV.



A 42" EMBOSSED ILLUM. "CARL'S JR." CLOUD SIGN

H NEW LED BORDER TUBE LIGHT SYSTEM
52'-1" LIN. FT. APPROX.

North Elevation

SCALE: 1/8"=1'

PROPOSED ELEV.



B 42" EMBOSSED ILLUM. "CARL'S JR." CLOUD SIGN

H NEW LED BORDER TUBE LIGHT SYSTEM
49'-7" LIN. FT. APPROX.

South Elevation

SCALE: 1/8"=1'

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Tel 909.591.4742 Fax 909.591.9792
e-mail: sales@nsmc.com
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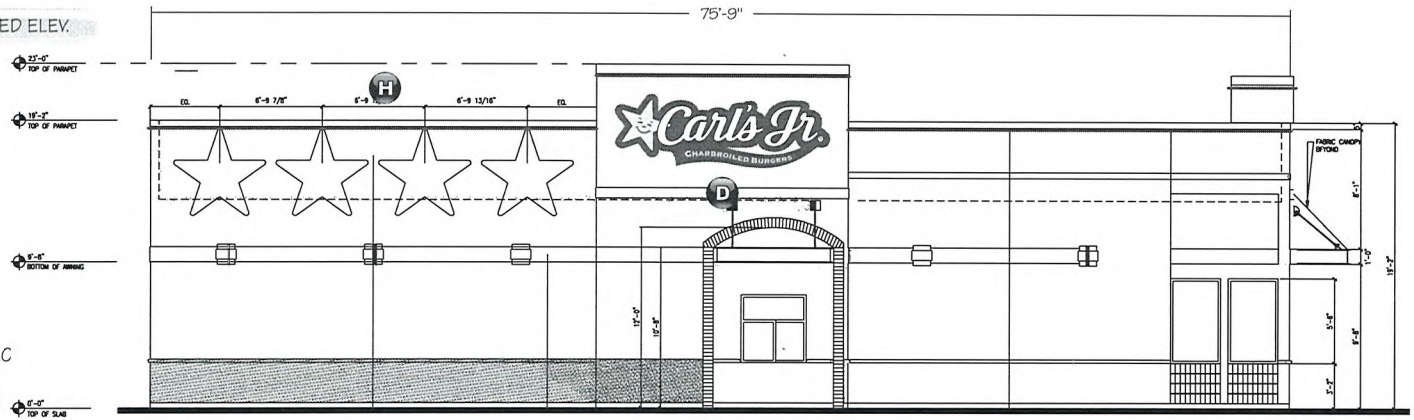


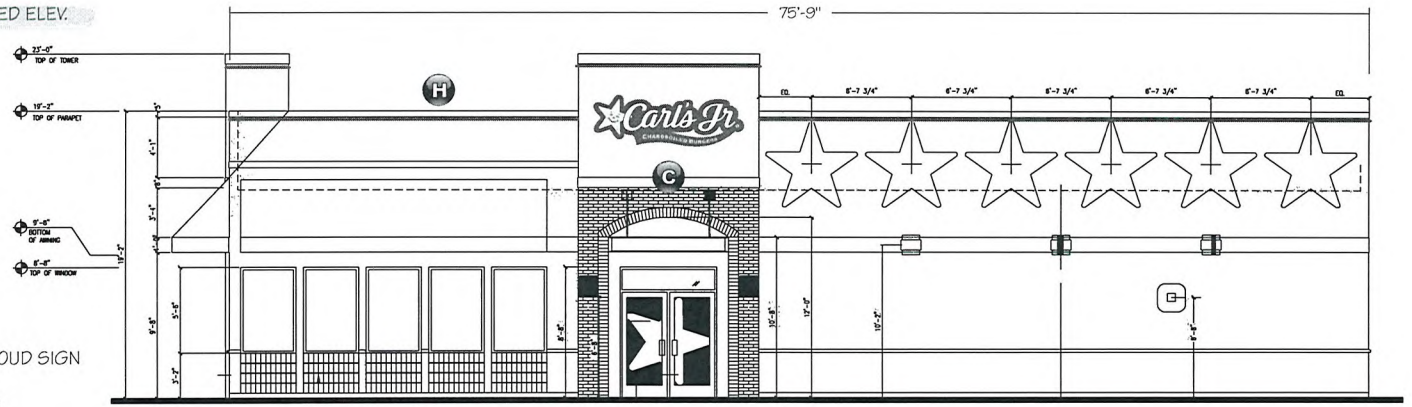
D 60" EMBOSSED ILLUM. "CARL'S JR." CLC

H NEW LED BORDER TUBE LIGHT SYSTEM 87'-9" LIN. FT. APPROX.

West Elevation

SCALE: 1/8"=1'

PROPOSED ELEV.



C 42" EMBOSSED ILLUM. "CARL'S JR." CLOUD SIGN

H NEW LED BORDER TUBE LIGHT SYSTEM 87'-7" LIN. FT. APPROX.

East Elevation

SCALE: 1/8"=1'

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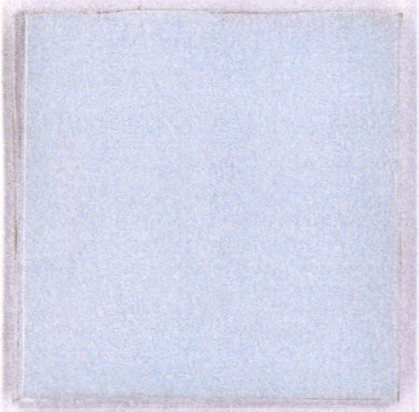


3/16" White Lexan

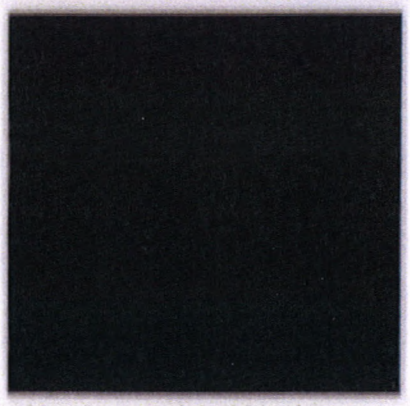


Cloud Sign Face

High Performance White Vinyl



Pre-coated aluminum returns



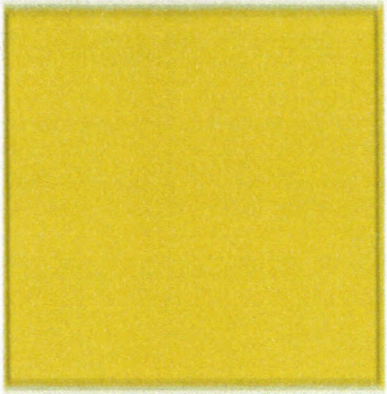
Aluminum painted black



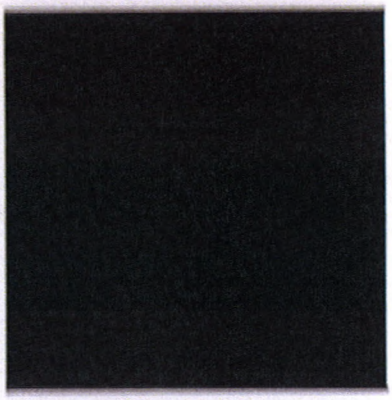
Aluminum painted cherry red



3M-3630-73 Red
Translucent Vinyl



3M-3630-15 Yellow
Translucent Vinyl



3M-180C-12 High Performance
Black Vinyl

Carl's Jr.
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NORTHEAST CORNER OF BUFFALO DRIVE AND VEGAS DRIVE

05/20/10



VAR-38114 & MSP-38116 – APPLICANT/OWNER: SEA BREEZE VILLAGE II, LLC
NORTHEAST CORNER OF BUFFALO DRIVE AND VEGAS DRIVE

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NORTHEAST CORNER OF BUFFALO DRIVE AND VEGAS DRIVE

05/20/10

VISCO Visual Information Systems Company
ELECTRONIC SIGNS
CL #442769

National Sign & MARKETING CORPORATION
a division of Visual Information Systems Company
CL #745030

April 26, 2010

City Of Las Vegas
Development Services Center
731 South Fourth Street
Las Vegas, NV 89101

Justification Letter for Variance
For: Carl's Jr. Clearance Arm, 7598 Vegas Drive.

To Whom It May Concern:

Please see the attached submittal of a variance for a Drive Thru Clearance Arm for the Carl's Jr. Restaurant at 7598 Vegas Drive. This is an incidental sign which is seven feet six inches greater in height than the five feet allowed by code and has a logo and sign copy area greater than the 25% of the sign area allowed by code. This clearance bar has been designed to facilitate safer & faster ingress and egress through the drive thru lane. It accomplishes this by combining a height detector that is easier to see by the motoring public, with a menu of the more popular items that the restaurant offers. This combination helps citizens make quicker decisions regarding their patronage of the establishment. In addition, the clearance bar better identifies the drive thru in this busy shopping center, helping traffic flow more smoothly and safely. Therefore, we feel that the application is justified.

Should you have any questions, please feel free to contact me at your convenience.

Respectfully,

Ed Blend

Ed Blend
National Sign & Marketing Corporation
DBA: Visual Information Systems Company
13580 5th St.
Chino, CA 91710

Tel:909-287-7373
Cell: 760-912-5224
Email: eblend@nsmc.com

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CITY CLERK

2010 JUL 12 P 12:39

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES
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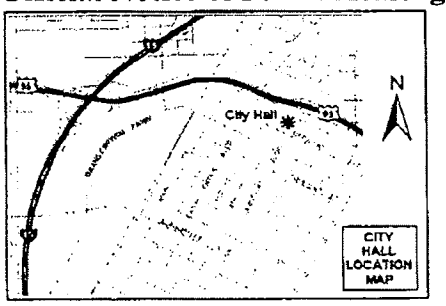
Return Service Requested
Official Notice of Public Hearing



If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Office Of The City Clerk at the address listed above or fax this side of this card to (702) 382-4803. If you would like to contact your Council Representative, please call (702) 229-6405.

☐ I SUPPORT this Request

☒ I OPPOSE this Request WE OPPOSE THIS REQUEST AGAIN!

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

ORESKOVICH MATTHEW D
JORDAN JOY M
1740 PACIFIC TERRACE DR
LAS VEGAS NV 89128-3278

APN#13822417013

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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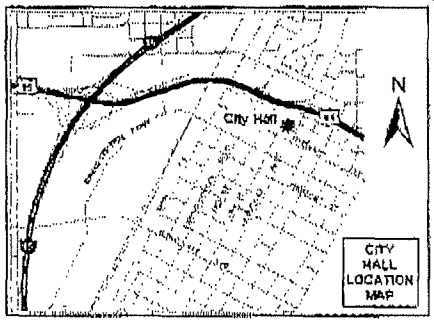
Official Notice of Public Hearing



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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

MORRIS TRACY S & BRIAN A
7521 COUNCIL AVE
LAS VEGAS NV 89128-3253

APN#13822416041

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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UNITED STATES POSTAGE PITNEY BOWES
02 1M $ 00.41⁴
0004079216 JUL 08 2010
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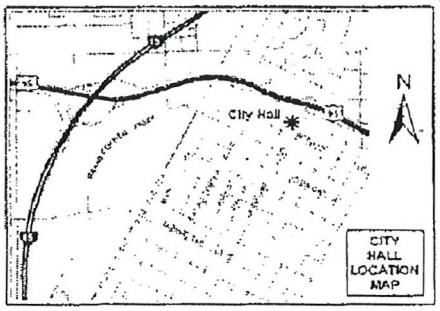

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

KAWAMURA FAMILY LIVING TRUST
KAWAMURA HIDEO & JANE F TRS
9221 CROCUS AVE
FOUNTAIN VALLEY CA 92708-1449

APN#13822313006

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CITY CLERK
2010 JUL 12 A 8:00

p.1
7023635217
Jul 12 10 09:08a Gia
07/12/2010 MON 08:10 [TX/RX NO 8062] 001

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2010 JUL 12 P 12:39

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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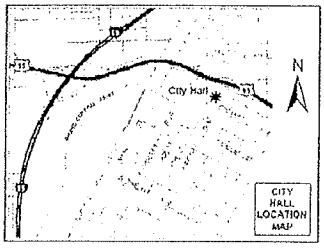

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

IF THIS IS ALLOWED, THE NEXT STORE WILL HAVE A BIGGER SIZE!!! THIS HAS TO STOP AND VISIBILITY WILL BE A PROBLEM BECAUSE THIS IS BUSY TRAFFIC INTERSECTION.

ISAAC GREGORIO C& COLLEEN E
1524 PACIFIC TERRACE DR
LAS VEGAS NV 89128-0502

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

APN#13827111020

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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JUL 08 2010
MAILED FROM ZIP CODE 89101

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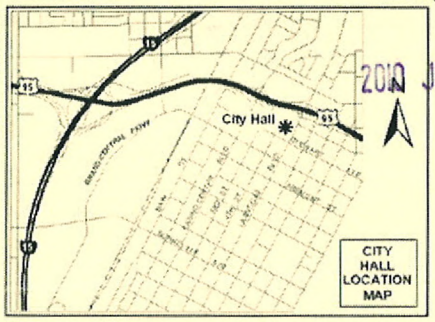
2010 JUL 14 A 11:35

Official Notice of Public Hearing



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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

DEFRATES JAMES A & ERIN N
7620 VISTA HILLS DR
LAS VEGAS NV 89128-2795

APN#13821713001

Submitted after final agenda

Date 7/14/10 Item 96 & 97

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

MERANTO JUDITH
7700 CONNEMARA AVE
LAS VEGAS NV 89128-2641

APN#13821716089

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

1ANCHESTER PETER & SUSAN FAM
LANCHESTER SUSAN M TRS
1613 NIGHT BREEZE DR
LAS VEGAS NV 89128-3255

APN#13822416036

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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JUL 08 2010
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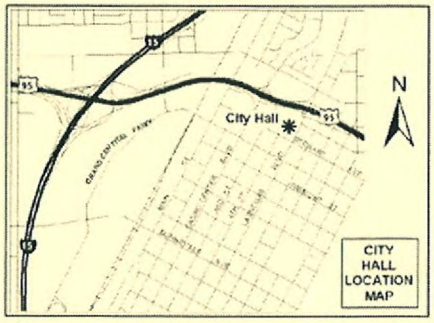
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

COCHRAN BARBARA ELLEN &
1830 N BUFFALO DR #2017
LAS VEGAS NV 89128-2781

APN#13822314090

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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2010 JUL 14 A 11:35

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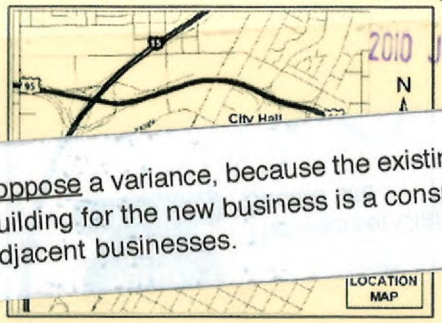

I oppose a variance, because the existing regulations are sufficient to advertise this location. The entire building for the new business is a conspicuous advertisement, and no one has trouble seeing it....nor the adjacent businesses.

If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Office Of The City Clerk at the address listed above or fax this side of this card to (702) 382-4803. If you would like to contact your Council Representative, please call (702) 229-6405.

☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

Bruce Weber Tee

WEBER BRUCE E & KATHERINE REV
2817 BILLY CASPER DR
LAS VEGAS NV 89134-7848

APN#13828513110

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES
02 1M 0004279218 $ 00.41⁴ JUL 08 2010
MAILED FROM ZIP CODE 89101

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2010 JUL 14 A 11:35

Return Service Requested
Official Notice of Public Hearing



Why must we always try to uglify our city?

If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Office Of The City Clerk at the address listed above or fax this side of this card to (702) 382-4803. If you would like to contact your Council Representative, please call (702) 229-6405.

☐ I SUPPORT this Request ☒ I OPPOSE this Request

PACKER LINDA
1404 SEWARD ST #101
LAS VEGAS NV 89128-8068

Please use available blank space on card for your comments.

Please plant some nice Palm Trees & Flowers!!!!

APN#13828513232

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

Application Information

VAR-38114 - APPLICANT/OWNER: SEA BREEZE VILLAGE II, LLC - Request for a Variance TO ALLOW A NINE-FOOT TALL MENU BOARD WHERE SEVEN FEET IS THE MAXIMUM HEIGHT ALLOWED AND TO ALLOW AN INCIDENTAL SIGN (CLEARANCE ARM) THAT IS 13 FEET TALL, 27 SQUARE FEET IN AREA AND CONTAINS A LOGO MAKING UP 67 PERCENT OF THE SIGN AREA WHERE SEVEN FEET IN HEIGHT, 12 SQUARE FEET IN AREA AND 50 PERCENT LOGO COVERAGE ARE ALLOWED on 0.52 acres at the northeast corner of Buffalo Drive and Vegas Drive (APN 138-22-418-011), C-1 (Limited Commercial) Zone, Ward 1 (Tarkanian).

MSP-38116 - APPLICANT/OWNER: SEA BREEZE VILLAGE II, LLC - Request for a Major Amendment to a previously approved Master Sign Plan (MSP-0006-02) on 13.41 acres at the northeast corner of Buffalo Drive and Vegas Drive (APN 138-22-418-007 through 011), C-1 (Limited Commercial) Zone, Ward 1 (Tarkanian).

Application Location



The proposed project may not pertain to the entire highlighted project site.

Public Hearing Information

Meeting: City Council
Date: *July 21, 2010*
Time: 1:00 P.M.
Location: City Council Chambers
400 Stewart Avenue
Las Vegas, Nevada

Any and all interested persons may appear and be heard at said meeting, or may, prior thereto, file written objections thereto or approvals thereof with the City Clerk, 1st Floor, City Hall, 400 Stewart Avenue, Las Vegas, Nevada, 89101. For further information, including the full staff report, please call (702) 229-6311 (TDD 386-9108) or go to http://www.lasvegasnevada.gov.

Working

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2010 JUL 15 P 1:01

Weds

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

Return Service Requested

Official Notice of Public Hearing

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116

City Council Meeting of 7/21/2010

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FIRST CLASS

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PITNEY BOWES

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CALDERONE ANTHONY & ANNA
1505 BLACKCOMBE ST #201
LAS VEGAS NV 89128-8020

APN#13828513014

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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0004279218 JUL 08 2010
MAILED FROM ZIP CODE 89101

Return Service Requested
Official Notice of Public Hearing

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CITY CLERK
2010 JUL 16 P 1:25



The applicant has applied at least three times that I am aware for variances. When they decided to build they should have been aware of the zoning. This Variance Should Be Denied. Why have zoning regulations if people continue to ignore the regulations and apply for variances. Step up and say No. We don't need any more large signs around this intersection.

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments. None of the variance from this applicant should have been approved.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

LLOYD DARREL B & DOREEN F
1830 N BUFFALO DR #2006
LAS VEGAS NV 89128-2780

APN#13822314076

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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Official Notice of Public Hearing

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2010 JUL 16 P 1:25



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

DIMICK RANDY SCOTT & BILLI JO
1830 N BUFFALO DR #2085
LAS VEGAS NV 89128-2645

APN#13822315060

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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02 1M $ 00.41⁴
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MAILED FROM ZIP CODE 89101

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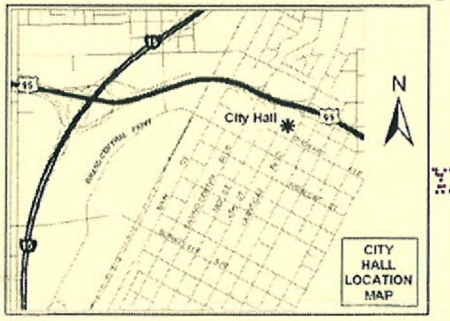
Official Notice of Public Hearing



XX. LAS VEGAS NV 890 07-09-10

2010 JUL 16 P 1:25

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

PRESTEGARD STEPHEN
N3100 W SILVER LAKE DR
WAUPACA WI 54981-9551

APN#13822314014

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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UNITED STATES POSTAGE PITNEY BOWES
02 1M $ 00.41⁴
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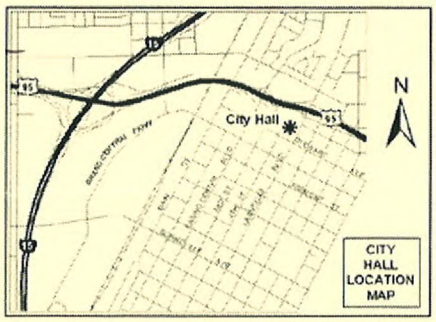

2010 JUL 16 P 1:25

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

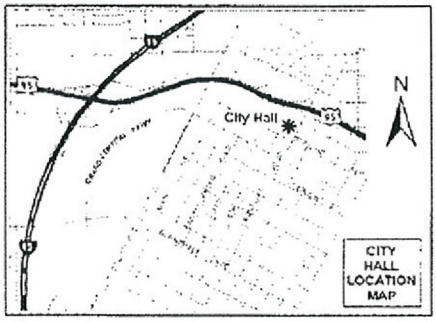
VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

HANDELSMAN YEHUDA & NAVA DINA
3934 ROCK HAMPTON DR
TARZANA CA 91356-5718

APN#13822315087

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

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CITY CLERK
2010 JUL 16 P 3:20

HOUSTON LIVING TRUST
HOUSTON JOHN A & MARJORIE T TRS
778 ROCKWOOD DR
SAN JOSE CA 95129-2325

APN#13822416090

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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2010 JUL 19 A 11:20

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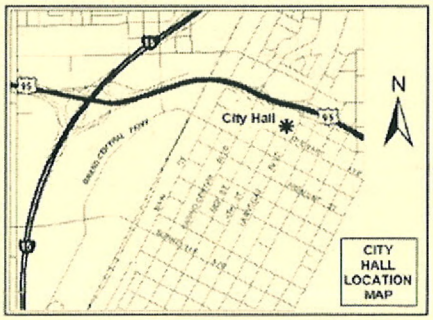
Official Notice of Public Hearing



YX LAS VEGAS NV 890 07-09-10

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

BROOKS STUART J & CARMEN A
10566 COLEBROOK ST
SUNLAND CA 91040-1402

APN#13821716086

Submitted after meeting
Date 7/19/10 Item 96+97.

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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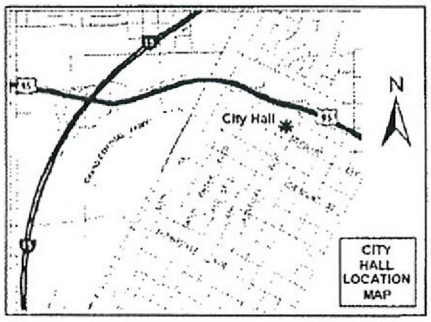

IX LAS VEGAS NV 890 07-09-10

Please DO NOT Allow this variance - there is no logical reason to do so!

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

SMASAL MARK S
SHEFFIELD PATRICIA A
P O BOX 1430
ST GEORGE UT 84771-1430

APN#13821819030

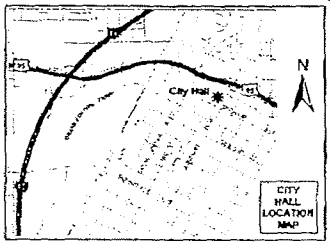
RECEIVED
CITY CLERK
2010 JUL 20 P 2:13

001

07/12/2010 MON 06:55 [TX/RX NO 8059] 001

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

Return Service Requested
Official Notice of Public Hearing



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☒ I SUPPORT this Request ☐ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

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MAILED FROM ZIP CODE 89101

MANZANO RAUL & GRACIELA REV TR
MANZANO RAUL & GRACIELA TRS
14318 SAN ARDO DR
LA MIRADA CA 90638-4312

APN#13827116002

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CITY CLERK
2010 JUL 12 A 8:00

ENCLOSED

07/12/2010 07:54 FAX

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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2010 JUL 14 A 11:35

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PITNEY BOWES
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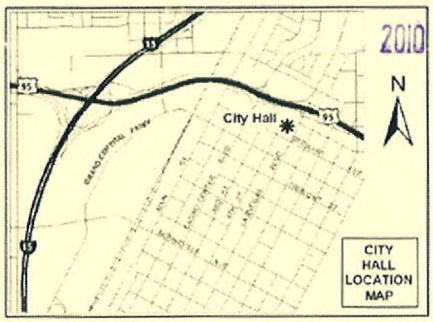

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☒ I SUPPORT this Request ☐ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

AUSTIN DAVID A & JEANETTE B
1404 BELLGLEN DR
LAS VEGAS NV 89128-0531

APN#13827116018

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

PRESORTED FIRST CLASS

UNITED STATES POSTAGE
PITNEY BOWES
02 1M $ 00.41⁴
0004279218 JUL 08 2010
MAILED FROM ZIP CODE 89101

2010 JUL 14 A 10:49
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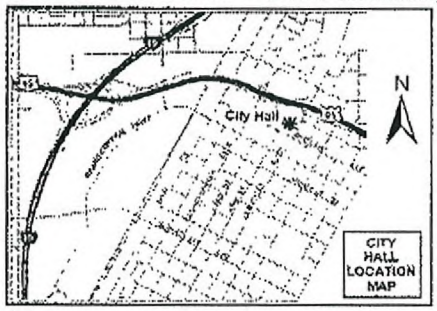
CITY CLERK

Return Service Requested
Official Notice of Public Hearing



If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Office Of The City Clerk at the address listed above or fax this side of this card to (702) 382-4803. If you would like to contact your Council Representative, please call (702) 229-6405.

☒ I SUPPORT this Request ☐ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

DOMINGUEZ ERIC L & AMALIA E
3592 COVENTRY GARDENS DR
LAS VEGAS NV 89135-2894

APN#13821821013

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES

02 1M $ 00.41⁴
0004279218 JUL 08 2010
MAILED FROM ZIPCODE 89101

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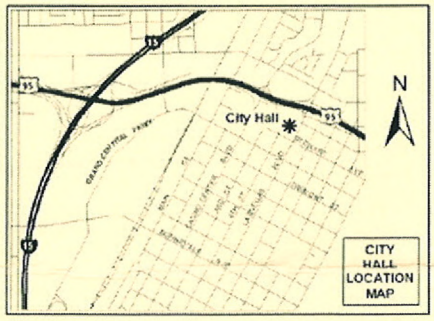
Official Notice of Public Hearing



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[√] I SUPPORT this Request [ ] I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
City Council Meeting of 7/21/2010

RECEIVED
2010 JUL 16 P 1:25
CITY CLERK

KASHANI ALI & SUSAN
5082 BAYONNE CIR
IRVINE CA 92604-3105

APN#13828513093

National Sign
& MARKETING CORPORATION

RECEIVED
CITY CLERK
2010 AUG -5 A 8:00

Angela Crolli
Deputy City Clerk II
City of Las Vegas
400 Stewart Ave.
Las Vegas, NV 89101

Re: MSP-38116 and VAR-38114

To Whom It May Concern:

We would like to request a continuance of the abeyance for the above mentioned Master Sign Program and Variance. The city council meeting is currently scheduled for August 18, 2010 and we would like to have it continued to the September 15, 2010 meeting date. We are requesting this because we need to hold a neighborhood meeting, per the city councils request, and do not have enough time to do so and prepare for the August 18th city council meeting. Please let us know at your earliest convenience of the status of this request so that we may plan accordingly. Please call if you have any questions or concerns.

Sincerely,

Robyn Bentley

Robyn Bentley
Permitting Department
National Sign & Marketing Corp.
13580 5th St.
Chino, CA 91710
(909) 591-4742
robynb@nsmc.com

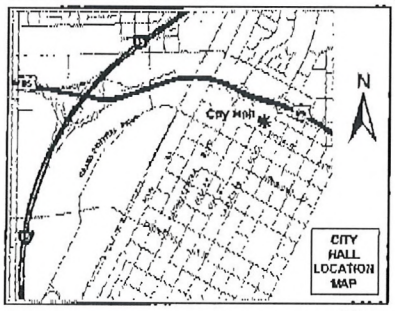
NOTE: THE FOLLOWING DOCUMENTATION WAS SUBMITTED FOR THE RECORD BEFORE OR AT THE PLANNING COMMISSION HEARING ON THIS ITEM WHICH IS NOW APPEARING BEFORE THE CITY COUNCIL

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

UNITED STATES POSTAGE
02 1M $ 00.41⁴
0004279218 JUN 11 2010
MAILED FROM ZIPCODE 89101

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
Planning Commission Meeting of 6/24/2010

It will be an ugly and dangerous distraction to drivers!

Case: VAR-38114
13821818002
DISAVINO ANDREW
7720 SIERRA PASEO LN
LAS VEGAS NV 89128-2754

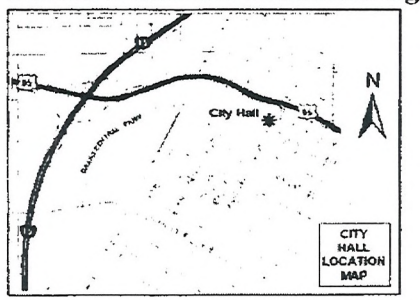
RECEIVED
JUN 15 2010

25-26 P

From:Triple Five Group of Companies 702 430 5810 06/14/2010 08:25 #429 P.001/001

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

Return Service Requested
Official Notice of Public Hearing



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VAR-38114 & MSP-38116
Planning Commission Meeting of 6/24/2010

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0004279218 JUN 11 2010
MAILED FROM ZIP CODE 89101

Case: VAR-38114

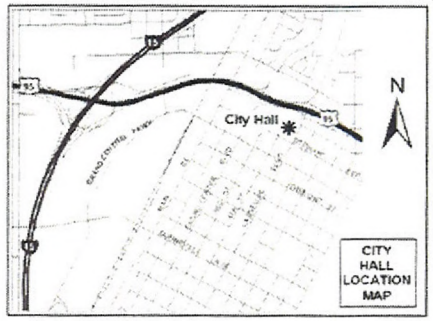
13822417013
ORESKOVICH MATTHEW D
1740 PACIFIC TERRACE DR
LAS VEGAS NV 89128-3278

RECEIVED
JUN 14 2010

25-26 P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

Return Service Requested
Official Notice of Public Hearing



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VAR-38114 & MSP-38116

Planning Commission Meeting of 6/24/2010

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MAILED FROM ZIP CODE 89101

RECEIVED
JUN 18 2010

Case: VAR-38114
13821814040
WALKER PHILLIP E & LORENE F
1613 INDIAN COVE LN
LAS VEGAS NV 89128-7313

DAVDS11 89128

Submitted after final agenda
Date 6/18/10 Item 25-24 P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES
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0004279218 JUN11 2010
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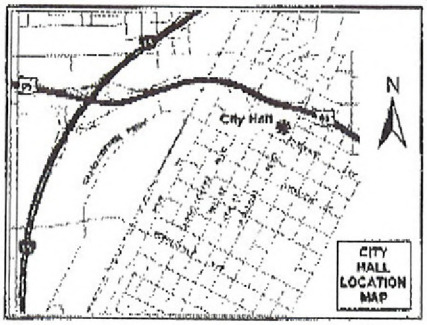
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
Planning Commission Meeting of 6/24/2010

Case: VAR-38114
13822416041
MORRIS TRACY S & BRIAN A
7521 COUNCIL AVE
LAS VEGAS NV 89128-3253

RECEIVED
JUN 18 2010

Submitted after final agenda
Date Item 25-26 P

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Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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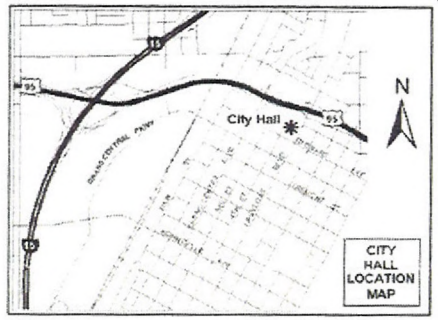

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

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VAR-38114 & MSP-38116
Planning Commission Meeting of 6/24/2010

RECEIVED
10 JUN 21 PM 4:15
PLANNING AND DEVELOPMENT

Case: VAR-38114
13822315060
DIMICK RANDY SCOTT & BILLI JO
1830 N BUFFALO DR #2085
LAS VEGAS NV 89128-2645

Submitted after final agenda
Date
Item 25-26 P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

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0004279218 JUN 11 2010
MAILED FROM ZIP CODE 89101

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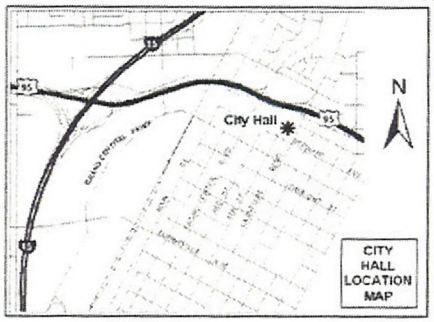
Official Notice of Public Hearing



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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
Planning Commission Meeting of 6/24/2010

RECEIVED
10 JUN 21 PM 4:16
PLANNING & DEVELOPMENT

Case: VAR-38114
13821715031
ALMENDRAL DENNIS M & EVELYN P
155 VALLEY VIEW WY
S SAN FRANCISCO CA 94080-5553

9408083553 C017

Submitted after final agenda
Date
Item 25-26 P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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0004279218
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JUN 11 2010
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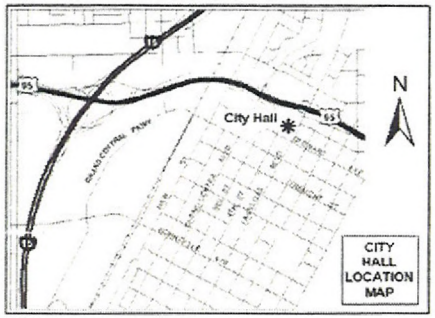
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
Planning Commission Meeting of 6/24/2010

RECEIVED
10 JUN 21 PM 1:
PLANNING & DEVELOPMENT

Case: VAR-38114
13822416036
1ANCHESTER PETER & SUSAN FAM TR
1613 NIGHTBREEZE DR
LAS VEGAS NV 89128-3255

Submitted after final agenda
Date
Item 25-26 P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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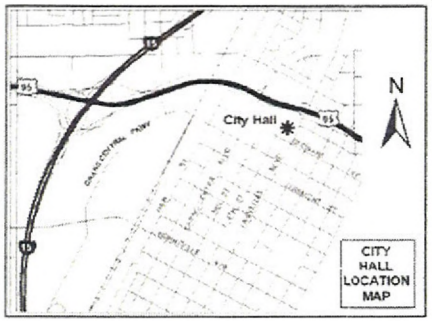
UNITED STATES POSTAGE
PITNEY BOWES
02 1M
0004279218
$ 00.41⁴
JUN 11 2010
MAILED FROM ZIP CODE 89101

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request

☑ I OPPOSE this Request

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VAR-38114 & MSP-38116
Planning Commission Meeting of 6/24/2010

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JUN 18 2010

Case: VAR-38114
13828513257
KIM MAGDALENA OKJA
7624 PACIFIC HILLS AVE #201
LAS VEGAS NV 89128-8059

Submitted after final agenda
Date
Item 25-26
P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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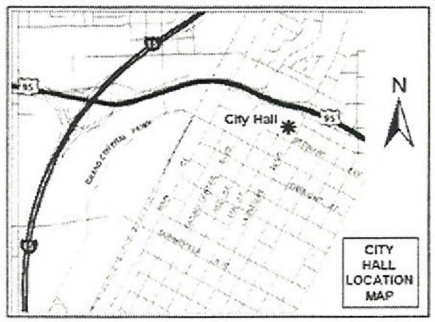
0004279218 JUN 11 2010
MAILED FROM ZIP CODE 89101

RECEIVED
JUN 18 2010

Return Service Requested
Official Notice of Public Hearing



I absolutely ~~oppose the~~ construction of such an ugly sign. ~~It~~ I want to make my community look nice.

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Case: VAR-38114

13828513232
PACKER LINDA
1404 SEWARD ST #101
LAS VEGAS NV 89128-8068

☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

This atrocious signage needs to be prohibited. Where do people get such bad ideas?

VAR-38114 & MSP-38116
Planning Commission Meeting of 6/24/2010

DAVOF11 89128

Item 25-26 P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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0004279218
$ 00.41⁴
JUN 11 2010
MAILED FROM ZIP CODE 89101

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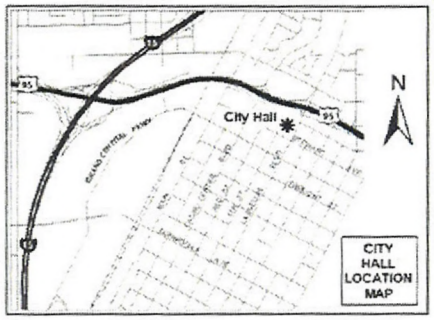
Official Notice of Public Hearing



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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
Planning Commission Meeting of 6/24/2010

Case: VAR-38114

13821813025
POLICH VELMA C
7608 PRAIRIE CORNERS DR
LAS VEGAS NV 89128-7315

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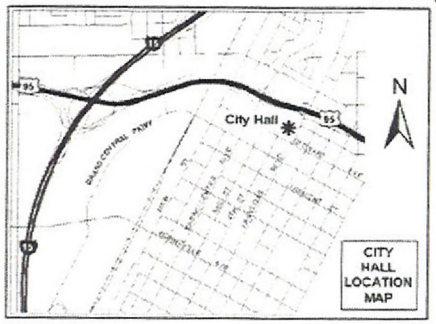
JUN 17 2010

Submitted after final agenda
Date
Item 06-24 P

JACKIE PERENCHIO

1620 INDIAN COVE LANE • LAS VEGAS, NV 89128

Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116

Planning Commission Meeting of 6/24/2010

There is enough distraction on 3 corners. There are many wrecks here on this intersection.

RECEIVED
JUN 17 2010

Submitted after final agenda
Date
Item 25-24
P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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UNITED STATES POSTAGE
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0004279218 JUN 11 2010
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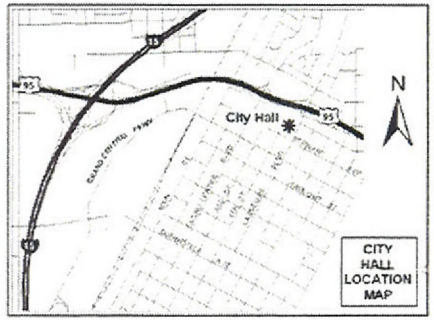

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
Planning Commission Meeting of 6/24/2010

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JUN 17 2010

Case: VAR-38114
13822314090
COCHRAN BARBARA ELLEN & STEVEN M
1830 N BUFFALO DR #2017
LAS VEGAS NV 89128-2781

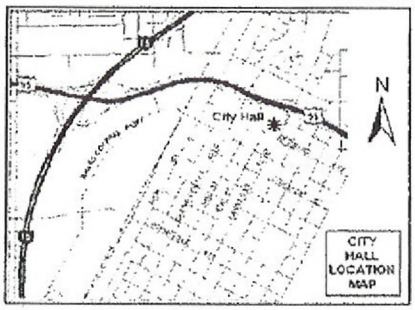
Submitted after final agenda
Date
Item 25-26
P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

$ 00.41

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
Planning Commission Meeting of 6/24/2010

Case: VAR-38114
13822313006
KAWAMURA FAMILY LIVING TRUST
9221 CROCUS AVE
FOUNTAIN VALLEY CA 92708-1449

RECEIVED
JUN 17 2010

Submitted after final agenda
Date Item 25-26 P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

UNITED STATES POSTAGE
PITNEY BOWES
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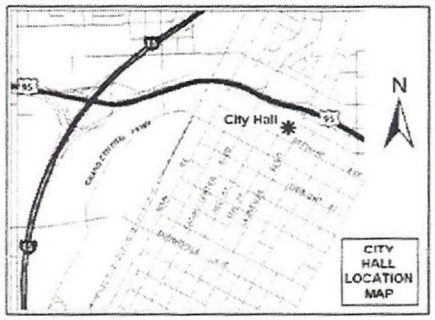
Return Service Requested
Official Notice of Public Hearing



Oppose any more or larger signs at this intersection

RECEIVED
JUN 16 2010

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☐ I SUPPORT this Request

☑ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116

Planning Commission Meeting of 6/24/2010

Case: VAR-38114
13822314076
LLOYD DARREL B & DOREEN F
1830 N BUFFALO DR #1006
LAS VEGAS NV 89128-2780

DAVOS11 89128

Submitted after final agenda
Date
Item 25-26 p

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

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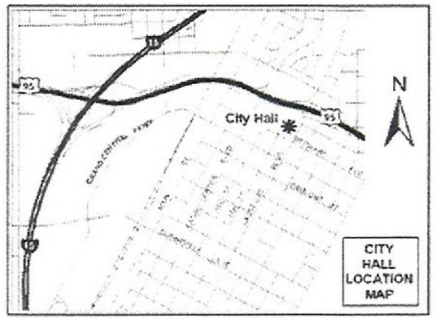

RECEIVED
JUN 18 2010

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☒ I SUPPORT this Request ☐ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116

Planning Commission Meeting of 6/24/2010

Case: VAR-38114

13827116018
AUSTIN DAVID A & JEANETTE B
1404 BELLGLEN DR
LAS VEGAS NV 89128-0531

Submitted after final agenda
Date
Item 25-A

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES
02 1M $ 00.41⁴
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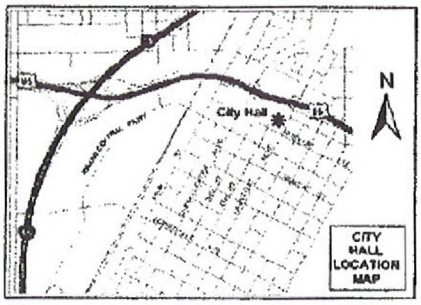
Official Notice of Public Hearing



If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Planning & Development Department at the address listed above or fax this side of this card to (702) 385-7268. If you would like to contact your Council Representative, please call (702) 229-6405.

☒ I SUPPORT this Request ☐ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38114 & MSP-38116
Planning Commission Meeting of 6/24/2010

Case: VAR-38114

13822315081
MCCANN FAMILY TRUST
5440 W SAHARA AVE #102
LAS VEGAS NV 89146-0369

RECEIVED
JUN 17 2010

Submitted after final agenda
Date Item 25-26 A

City of Las Vegas Agenda Item No.: **88.**

AGENDA SUMMARY PAGE - PLANNING & DEVELOPMENT

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PLANNING & DEVELOPMENT
DIRECTOR: M. MARGO WHEELER ☐ **Consent** ☒ **Discussion**

SUBJECT:
MSP-38116 – ABEYANCE ITEM - MASTER SIGN PLAN RELATED TO VAR-38114 - PUBLIC HEARING - APPLICANT/OWNER: SEA BREEZE VILLAGE II, LLC - Request for a Major Amendment to a previously approved Master Sign Plan (MSP-0006-02) on 13.41 acres at the northeast corner of Buffalo Drive and Vegas Drive (APN 138-22-418-007 through 011), C-1 (Limited Commercial) Zone, Ward 1 (Tarkanian). Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL.

PROTESTS RECEIVED BEFORE:		**APPROVALS RECEIVED BEFORE:**	
Planning Commission Mtg.	**14**	**Planning Commission Mtg.**	**2**
City Council Meeting	**17**	**City Council Meeting**	**5**

RECOMMENDATION:
Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL, subject to conditions:

BACKUP DOCUMENTATION:
1. Consolidated Backup
2. Supporting Documentation
3. Justification Letter

Consistent with the City's sustainability efforts to reduce paper use, backup documentation pertaining to related items will appear as backup under the first item. This item includes such consolidated backup documentation. Please refer to the first related application in the subject line of the Agenda Summary Page.

PLANNING & DEVELOPMENT DEPARTMENT

STATEMENT OF FINANCIAL INTEREST

Case Number: **MSP-38116** APN: 138-22-418-011

Name of Property Owner: SEA BREEZE VILLAGE II, LLC

Name of Applicant: Visual Information Systems Co.

Name of Representative: Ed Blend

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ Yes ☒ No

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____ _____

APN: _____

Signature of Property Owner: _____

Print Name: HASKEL INY

Subscribed and sworn before me

This 9 day of March, 20 10

Trina M. Perales

Notary Public in and for said County and State

TRINA M. PERALES
Notary Public-State of Nevada
APPT. NO. 09-8929-1
My App. Expires December 12, 2012

PLANNING & DEVELOPMENT

PLANNING & DEVELOPMENT DEPARTMENT

APPLICATION / PETITION FORM

Application/Petition For: AMEND MSP-2619

Project Address (Location) 7598 Vegas Dr.

Project Name Carl's Jr. **Proposed Use**

Assessor's Parcel #(s) 138-22-418-011 **Ward #** 4

General Plan: existing X proposed **Zoning:** existing X proposed

Commercial Square Footage **Floor Area Ratio**

Gross Acres .52 **Lots/Units** 1 **Density**

Additional Information AMEND THE SEABREEZE VILLAGE MSP TO INCLUDE INCIDENTAL SIGNAGE FOR CARL'S JR. RESTAURANT

PROPERTY OWNER SEA BREEZE VILLAGE II, LLC **Contact** JENNIFER ROBERTS

Address 770 N. BUFFALO #101 **Phone:** 702.255556 **Fax:** 702.430.5307

City LAS VEGAS **State** NV **Zip** 89128

E-mail Address jr@greatac.com

APPLICANT Visual Information Systems Co. **Contact** Ed Blend

Address 13580 5th St. **Phone:** 909-591-4742 **Fax:**

City Chino **State** CA **Zip** 91710

E-mail Address

REPRESENTATIVE Ed Blend **Contact**

Address 13580 5th St. **Phone:** 909-287-7373 **Fax:**

City Chino **State** CA **Zip** 91710

E-mail Address eblend@nsmc.com

Property Owner Signature* [signature]

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name Haskel Irby

Subscribed and sworn before me

This 9 day of March, 20 10.

Trina M. Perales

Notary Public in and for said County and State

TRINA M. PERALES
Notary Public-State of Nevada
APPT. NO. 09-8929-1
My App. Expires December 12, 2012

FOR DEPARTMENT USE ONLY

Case #	MSP-3816
Meeting Date:	6/24/2010
Total Fee:	330.00
Date Received:*	4/27/2010
Received By:	MREX

*The application will not be deemed complete until the submitted materials have been reviewed by the Planning and Development Department for consistency with applicable sections of the Zoning Ordinance.

Revised 10/27/08

VISCO Visual Information Systems Company
ELECTRONIC SIGNS
CL #442769

National Sign & MARKETING CORPORATION
CL #745030
a division of Visual Information Systems Company

April 26, 2010

City Of Las Vegas
Development Services Center
731 South Fourth Street
Las Vegas, NV 89101

Justification Letter for MSP 2619 Amendment
For: Carl's Jr. Restaurant Signage, 7598 Vegas Drive

To Whom It May Concern:

This is a submittal to amend the Master Sign Program (MSP-2619) to add the signage for the new Carl's Jr restaurant which has been built at 7598 Vegas Drive. The signs have been designed and placed to meet all city sign codes and requirements as far as height, separation from existing signs and be within the square footage allowed for this building. Our proposal includes the necessary design elements for Carl's Jr. to succeed while still maintaining an organized presentation and "classic diner" appearance. All other signs in the center are to remain the same as filed under the original sign program. Therefore, we feel that the application is justified.

Should you have any questions, please feel free to contact me at your convenience.

Respectfully,

Ed Blend
National Sign & Marketing Corporation
DBA: Visual Information Systems Company
13580 5th St.
Chino, CA 91710

Tel:909-287-7373
Cell: 760-912-5224
Email: eblend@nsmc.com

RECEIVED
APR 27 2010

VAR-38114
MSP-38116

City of Las Vegas Agenda Item No.: **89.**

AGENDA SUMMARY PAGE - PLANNING & DEVELOPMENT

CITY COUNCIL MEETING OF: AUGUST 18, 2010

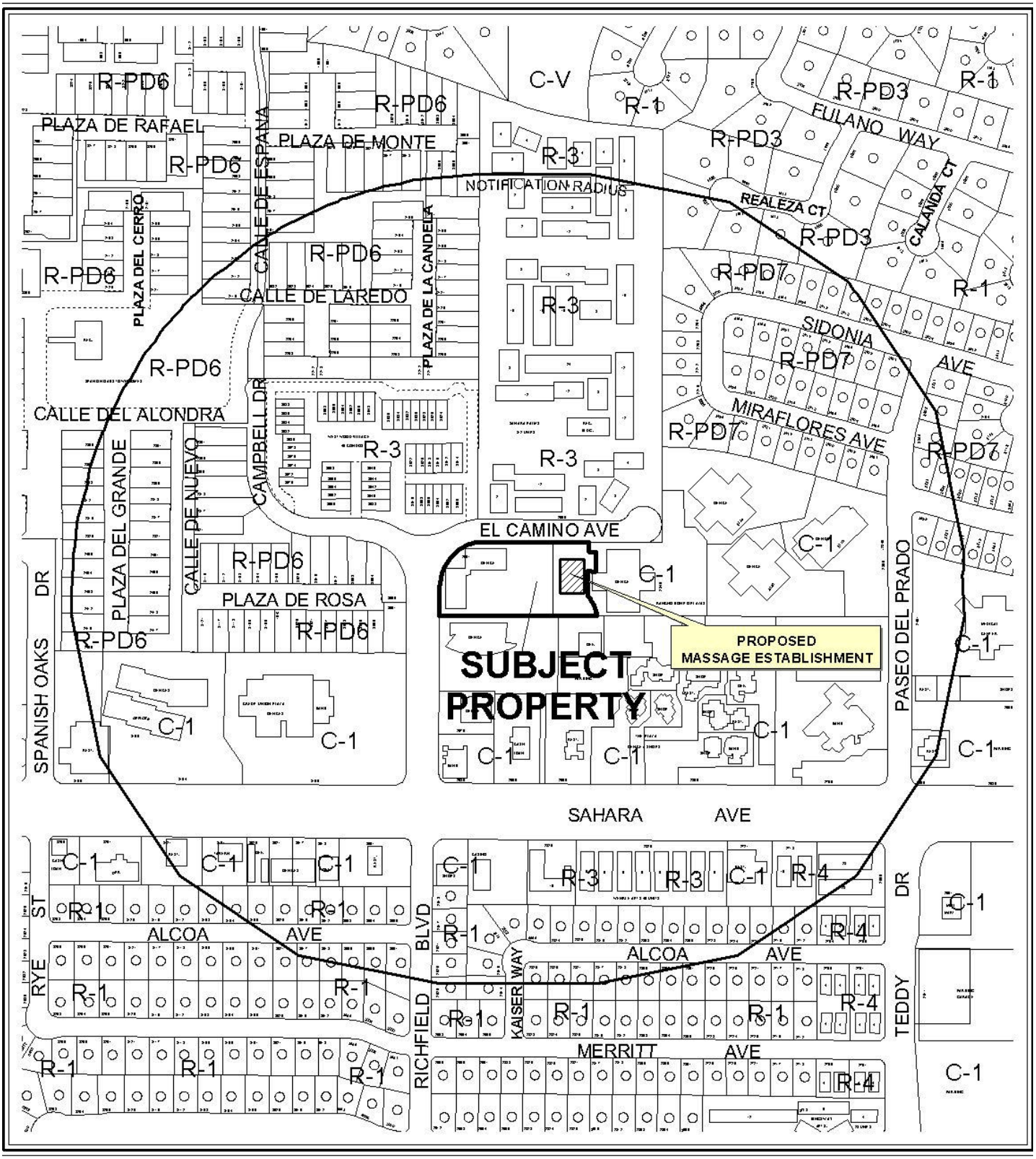
DEPARTMENT: PLANNING & DEVELOPMENT
DIRECTOR: M. MARGO WHEELER ☐ **Consent** ☒ **Discussion**

SUBJECT:
VAR-38195 – ABEYANCE ITEM - VARIANCE - PUBLIC HEARING - APPLICANT: STEVEN KOZMARY, M.D. - OWNER: LA JOLLA PLAZA II, LLC - Request for a Variance TO ALLOW 26 PARKING SPACES WHERE 45 PARKING SPACES ARE REQUIRED at 2851 El Camino Avenue (APN 162-05-801-011), C-1 (Limited Commercial) Zone, Ward 1 (Tarkanian). Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL.

PROTESTS RECEIVED BEFORE:		**APPROVALS RECEIVED BEFORE:**	
Planning Commission Mtg.	**13**	**Planning Commission Mtg.**	**1**
City Council Meeting	**17**	**City Council Meeting**	**0**

RECOMMENDATION:
Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL, subject to conditions:

BACKUP DOCUMENTATION:
1. Location, Aerial and Special Maps – VAR-38195 and SUP-38194
2. Conditions and Staff Report – VAR-38195 and SUP-38194
3. Supporting Documentation
4. Photos – VAR-38195 and SUP-381294
5. Justification Letter – VAR-38195 and SUP-38194
6. Protest Postcards for VAR-38195 and SUP-38194
7. Backup referenced from the June 24, 2010 Planning Commission Meeting for VAR-38195 and SUP-38194



0 300 600 Feet

CASE: **VAR-38195 AND SUP-38194**

RADIUS: 1000 FT

ZONING OF SUBJECT PROPERTY: C-1 (LIMITED COMMERCIAL)

N



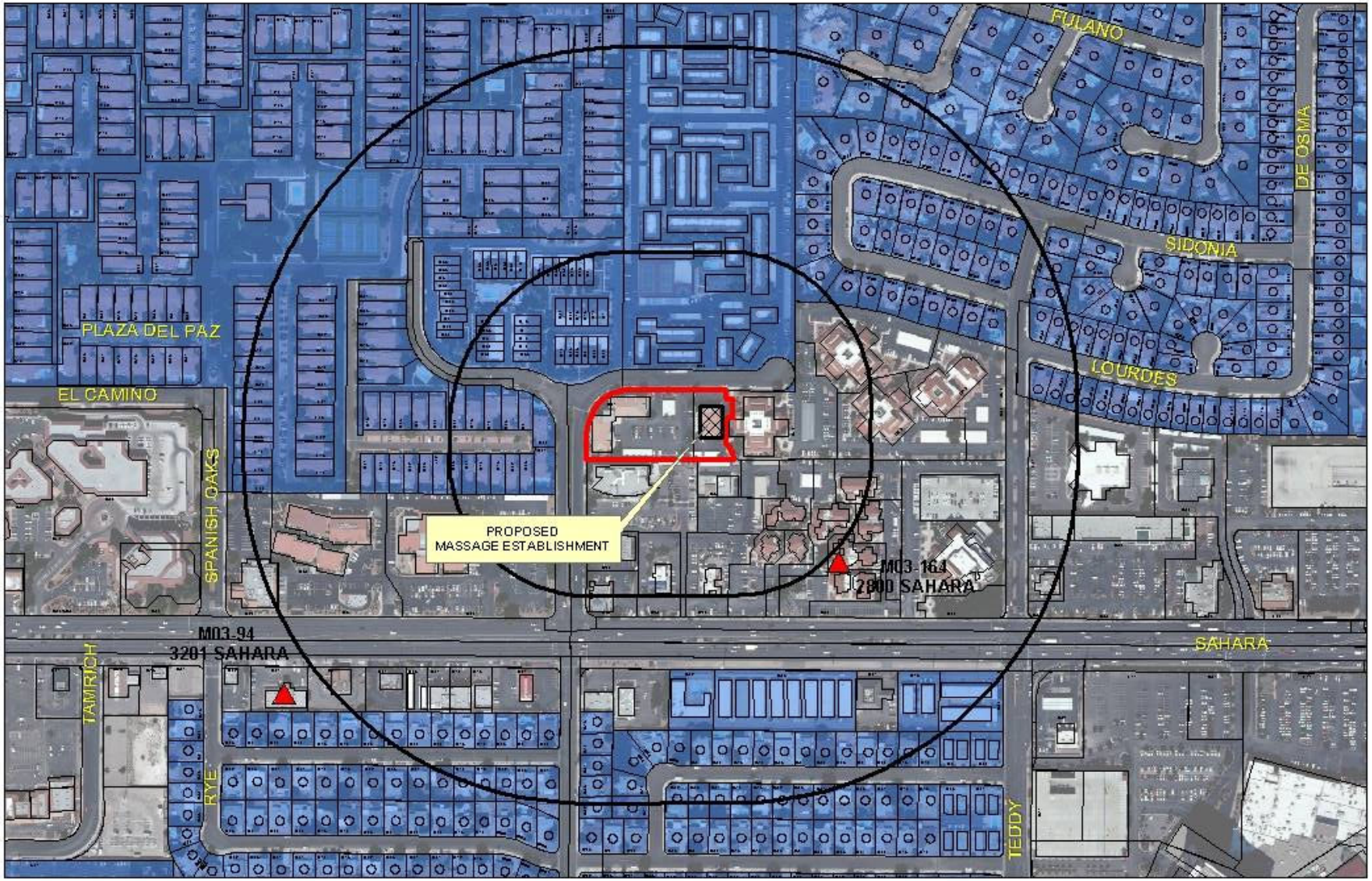
0 300 600 Feet

CASE: **VAR-38195 AND SUP-38194**

RADIUS: 1000 FT

ZONING OF SUBJECT PROPERTY: C-1 (LIMITED COMMERCIAL)

N



VAR-38195 AND SUP-38194

Business Licenses

- Massage Establishment
- Child Care/ Children Facility

Protected Landuses

- RELIGIOUS
- CITY PARKS
- SCHOOLS

- Subject Property
- Residential Property
- 400' & 1000' Buffer

0 245 490 980 Feet

N

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: AUGUST 18, 2010
DEPARTMENT: PLANNING AND DEVELOPMENT
ITEM DESCRIPTION: APPLICANT: STEVEN KOZMARY, M.D. - OWNER: LA JOLLA PLAZA II, LLC

THIS ITEM WAS HELD IN ABEYANCE FROM THE JULY 21, 2010 CITY COUNCIL MEETING AT THE REQEUST OF THE COUNCIL

**** STAFF RECOMMENDATION(S) ****

CASE NUMBER	*RECOMMENDATION*	*REQUIRED FOR APPROVAL*
VAR-38195	Staff recommends DENIAL, if approved subject to conditions:	
SUP-38194	Staff recommends DENIAL, if approved subject to conditions:	VAR-38195

**** CONDITIONS ****

VAR-38195 CONDITIONS

Planning and Development

1. Striping shall be painted within six months and maintained thereafter.

2. Approval of and conformance to the conditions for Special Use Permit (SUP-38194) if approved.

3. This approval shall be void two years from the date of final approval, unless a business license has been issued to conduct the activity. An Extension of Time may be filed for consideration by the City of Las Vegas.

4. These Conditions of Approval shall be affixed to the cover sheet of the plan set submitted for building permit.

5. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

SUP-38194 CONDITIONS

Planning and Development

1. Conformance to all Minimum Requirements under LVMC Title 19.04.010 for a Massage Establishment use.

2. Approval of and conformance to the Conditions of Approval for Variance (VAR-38195) shall be required.

3. This approval shall be void two years from the date of final approval, unless a business license has been issued to conduct the activity. An Extension of Time may be filed for consideration by the City of Las Vegas.

4. These Conditions of Approval shall be affixed to the cover sheet of the plan set submitted for building permit.

5. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

** STAFF REPORT **

PROJECT DESCRIPTION

This is a request for a Special Use Permit for a Massage Establishment within an existing 8,001 square-foot building at 2851 El Camino Avenue. The existing building has current business licenses for a Clinic, Medical Office, and Accessory Massage. The applicant is proposing to utilize three massage rooms with a total area of 473 square feet, which exceeds the maximum floor area of 150 square feet that is allowed for the Accessory Massage use; therefore, a Special Use Permit is required for a Massage Establishment use. The applicant is requesting Waivers of the minimum distance separation requirements, as well as a Variance for parking. The subject location is not suitable for the intensity of the proposed use, due to the proximity of the subject site to residential property to the north combined with the parking Variance request; therefore, staff recommends denial. If denied, the use would not be permitted at the subject location.

ISSUES

- Approval of a companion Variance (VAR-38195) to allow 26 parking spaces where 45 parking spaces are required is necessary for this request to be approved.
- A Waiver is required to allow a 60-foot distance separation from a residentially zoned property where 400 feet is the minimum distance required.
- A Waiver is required to allow a 362-foot distance separation from another Massage Establishment where 1,000 feet is the minimum distance required.
- A Waiver is required to allow access to the site from a 60-foot right-of-way where an 80-foot right-of-way or larger is required.

BACKGROUND INFORMATION

Related Relevant City Actions by P&D, Fire, Bldg., etc	
06/26/63	The Board of City Commissioners approved a request to Rezone (Z-0108-63) property fronting Sahara Avenue, running from Rancho Drive to Richfield Boulevard. Planning Commission and staff recommended approval.
06/24/10	The Planning Commission (7-0 vote) recommended APPROVAL of companion items VAR-38195 and SUP-38194 concurrently (PC agenda Items 23-24/gk).

Most Recent Change of Ownership	
05/06/98	A deed was recorded for a change in ownership.

Related Building Permits/Business Licenses	
11/19/96	A building permit (96022950) was issued for a new shell building at 2851 El Camino Avenue. The permit was finaled on 04/30/98.
04/08/97	A building permit (97006973) was issued for plumbing work in a new shell building at 2851 El Camino Avenue. The permit was finaled on 03/11/98.
06/16/97	A building permit (97012184) was issued for block walls at 2851 El Camino Avenue. The permit was finaled on 04/30/98.
12/16/97	A building permit (97024951) was issued for a tenant improvement at 2851 El Camino Avenue, suite #200. The permit was finaled on 05/14/98.
04/01/98	A building permit (98006737) was issued to extend the length of a masonry wall at 2851 El Camino Avenue. The permit was finaled on 04/16/98.
06/12/98	A building permit (98012432) was issued for a tenant improvement at 2851 El Camino Avenue, suite #101. The permit expired on 06/19/99.
06/12/98	A building permit (98012433) was issued for a tenant improvement at 2851 El Camino Avenue, suite #102. The permit expired on 05/15/99.
06/12/98	A building permit (98012434) was issued for a tenant improvement at 2851 El Camino Avenue, suite #103. The permit expired on 05/15/99.
12/22/98	A building permit (98024934) was issued for a Non-Work Certificate of Occupancy at 2851 El Camino Avenue, Suite #101. The permit was finaled on 01/04/99.
04/06/99	A business license (Q07-00391) was issued for a medical firm at 2851 El Camino Avenue, Suite #101. The license is still active.
11/21/00	A building permit (21248) was issued for a tenant improvement and certificate of occupancy at 2851 El Camino Avenue, suite #101. The permit was finaled on 03/07/01.
08/13/07	A business license (C14-00527) was issued for a Clinic use at 2851 El Camino Avenue, Suite #200. The license is still active.
10/25/07	A building permit (7002980) was issued for a wall sign at 2851 El Camino Avenue. The permit expired on 06/07/08.
05/14/09	A business license (M12-01761) was issued for a Massage Therapist at 2851 El Camino Avenue, Suite #200. The license is still active.
11/04/09	A business license (M11-00023) was issued for a Massage, Accessory use at 2851 El Camino Avenue, Suite #200. The license is still active.
11/13/09	A business license (M12-01825) was issued for a Massage Therapist at 2851 El Camino Avenue. Suite #200. The license is still active.

Pre-Application Meeting	
04/29/10	The following items were discussed at the pre-application meeting: • A Massage Establishment requires a Special Use Permit in the C-1 (Limited Commercial) zoning district. The submittal requirements for a Special Use Permit were discussed. • The subject site is only 60 feet away from existing residential uses where 400 feet is the minimum distance required. Also, the use is only 362 feet away from another Massage Establishment where 1,000 feet is the minimum distance required. Waivers must be requested. • The site is accessed from El Camino Avenue, designated as a 60-Foot Right-of-way. A Massage Establishment must be accessed by an 80-Foot right-of-way or larger. A Waiver must be requested. • The subject parcel has a cross access agreement with the adjacent property to the west, but does not have a parking agreement. Please provide a parking agreement or submit a parking analysis. • A parking Variance will be required if no parking agreement can be obtained. The submittal requirements for a Variance were discussed.

Neighborhood Meeting
A neighborhood meeting is not required, nor was one held.

Field Check	
05/20/10	A field check was completed on the indicated date. Staff observed a well maintained commercial development.

Details of Application Request	
Site Area	
Net Acres	0.48

Surrounding Property	***Existing Land Use Per Title 19.04***	***Planned or Special Land Use Designation***	***Existing Zoning District***
Subject Property	Clinic	SC (Service Commercial)	C-1 (Limited Commercial)
North	Condominiums	M (Medium Density Residential)	R-3 (Medium Density Residential)
South	Office, Other than Listed	SC (Service Commercial)	C-1 (Limited Commercial)

East	Office, Other than Listed	SC (Service Commercial)	C-1 (Limited Commercial)
West	Office, Other than Listed	SC (Service Commercial)	C-1 (Limited Commercial)

Master Plan Areas	***Yes***	***No***	***Compliance***
Master Plan Area		X	N/A
Special Purpose and Overlay Districts	***Yes***	***No***	***Compliance***
Special Purpose and Overlay Districts			
A-O (Airport Overlay) District – 200 Feet	X		Y
Trails		X	N/A
Rural Preservation Overlay District		X	N/A
Las Vegas Redevelopment Plan Area		X	N/A
Development Impact Notification Assessment		X	N/A
Project of Regional Significance		X	N/A

DEVELOPMENT STANDARDS

Pursuant to Title 19.10, the following parking standards apply:

Parking Requirement							
	Gross Floor Area or Number of Units	***Required***			***Provided***		***Compliance***
			Parking		*Parking*		
Use		***Parking Ratio***	Regular	Handi-capped	Regular	Handi-capped	
Massage Establishment	3 rooms	2 spaces for each massage room	6				
Clinic	3,524 SF	1:200 up to 2,000 SF, then 1:250	17				
Office, Medical	4,004 SF	1:200 up to 2,000 SF, then 1:175	22				
TOTAL SPACES REQUIRED			45		26		N
TOTAL (With Handicapped)			43	2	24	2	N
Percent Deviation			42%				

GK

Waivers		
Requirement	***Request***	***Staff Recommendation***
A 1000-foot distance separation from another Massage Establishment.	362 Feet	Denial
A 400-foot distance separation from a residentially zoned property.	60 Feet	Denial
The use must be located on a secondary thoroughfare or larger	60-foot right-of-way	Denial

ANALYSIS

The subject site contains an existing 8,001 square-foot clinic and medical office with an active business license for Accessory Massage, which allows up to 150 square feet of floor area to be dedicated to the use. The applicant is proposing to utilize three rooms with a total floor area of 473 square feet for the massage use, which requires the approval of this Special Use Permit. The proposed use will be conducted in conjunction with the medical office and clinic, with hours of operation from 8:00 a.m. to 6:00 p.m.

As part of this request, Waivers are required to allow a 362-foot distance separation from another Massage Establishment where 1,000 feet is required and a 60-foot distance separation from a residentially zoned property where 400 feet is required. An additional Waiver is required to allow access to the site by a 60-foot right-of-way where an 80-foot secondary collector or larger is required.

An additional request has been made by the applicant for a parking variance (VAR-38195). The Variance request is to allow 26 parking spaces where 45 spaces are required. Staff recommends denial of the waiver and variance requests, as the proposed use cannot be conducted in a manner that is compatible with the surrounding uses, most notably the residentially zoned properties to the north of the subject site. The applicant has provided no evidence of a unique or extraordinary circumstance that would substantiate the Variance request; staff is therefore recommending denial of this request.

FINDINGS (VAR-38195)

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;

3. Relieve a hardship which is solely personal, self-created or financial in nature."

Additionally, Title 19.18.070(L) states:

> "Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution."

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by introducing a use on the site that requires additional parking spaces without providing additional spaces for that use. In view of the absence of any hardships imposed by the site's physical characteristics, it is concluded that the applicant's hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

FINDINGS (SUP-38194)

In order to approve a Special Use Permit application, per Title 19.18.060 the Planning Commission and City Council must affirm the following:

1. **The proposed land use can be conducted in a manner that is harmonious and compatible with existing surrounding land uses, and with future surrounding land uses as projected by the General Plan.**

   The applicant has requested Waivers of the minimum distance separation requirements to allow a 60-foot distance separation from any residentially zoned parcel where 400 feet is required, a 362-foot distance separation from another massage establishment where 1,000 feet is required and a waiver to allow access to the site from a 60-foot right-of-way where an 80-foot right-of-way or larger is required. The use is not appropriate within the subject site due to the close proximity to residential uses. The use is not compatible and harmonious with existing surrounding land uses, and with future surrounding land uses as projected by the General Plan.

2. **The subject site is physically suitable for the type and intensity of land use proposed.**

   The subject site is not physically suitable for the type and intensity of the use, as it will be located in close proximity to residential uses. Additionally, the applicant is seeking

approval of a parking variance. The site cannot accommodate the additional required parking as a result of the added Massage Establishment use to the site.

3. **Street or highway facilities providing access to the property are or will be adequate in size to meet the requirements of the proposed use.**

   Site ingress and egress will be from El Camino Avenue, a 60-foot Local Street, which does not meet the minimum Special Use Permit requirement for access from a Secondary Thoroughfare or larger.

4. **Approval of the Special Use Permit at the site in question will not be inconsistent with or compromise the public health, safety, and welfare or the overall objectives of the General Plan.**

   Approval of this Special Use Permit will not compromise public health, safety, or welfare or the overall objectives of the General Plan, as the proposed Massage Establishment use will be subject to regular inspections.

5. **The use meets all of the applicable conditions per Title 19.04.**

   The proposed use fails to meet Minimum Special Use Requirements as listed in Title 19.04 for a Massage Establishment use, as evidenced by the requested Waivers.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 23

NOTICES MAILED 269 (By City Clerk)

APPROVALS 1

PROTESTS 30

GK

PLANNING & DEVELOPMENT DEPARTMENT

STATEMENT OF FINANCIAL INTEREST

Case Number: VAR-38195 APN: 162-05-801-011

Name of Property Owner: La Jolla Plaza II LLC

Name of Applicant: Steven Kozmary

Name of Representative: _____

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ **Yes** ☒ **No**

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____ _____

APN: _____

Signature of Property Owner: _____

Print Name: Steven Kozmary

Subscribed and sworn before me

This 30th day of April, 2010

_____

Notary Public in and for said County and State

T.J. THERIAULT
Notary Public, State of Nevada
Appointment No. 04-90093-1
My Appt. Expires Dec 1, 2012

PLANNING & DEVELOPMENT

PLANNING & DEVELOPMENT DEPARTMENT

APPLICATION / PETITION FORM

Application/Petition For: Parking Variance

Project Address (Location) 2851 El Camino Avenue #200, Las Vegas NV 89102

Project Name Kozmary Center for Pain Management **Proposed Use** Massage - Medical

Assessor's Parcel #(s) 162-05-801-011 **Ward #** _____

General Plan: existing S-C proposed _____ **Zoning:** existing C-1 proposed N/A

Commercial Square Footage 8,860 **Floor Area Ratio** _____

Gross Acres 0.47 **Lots/Units** 1 **Density** _____

Additional Information _____

PROPERTY OWNER La Jolla Plaza II LLC **Contact** Steven Kozmary

Address 2851 El Camino Avenue **Phone:** (702) 567-4810 **Fax:** (702) 380-3212

City Las Vegas **State** NV **Zip** 89102

E-mail Address md@kozmary.com

APPLICANT Steven Kozmary MD **Contact** Steven Kozmary

Address 2851 El Camino Avenue **Phone:** (702) 567-4810 **Fax:** (702) 380-3212

City Las Vegas **State** NV **Zip** 89102

E-mail Address md@kozmary.com

REPRESENTATIVE _____ **Contact** _____

Address _____ **Phone:** _____ **Fax:** _____

City _____ **State** NV **Zip** _____

E-mail Address _____

Property Owner Signature* _____

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name Steven Kozmary

Subscribed and sworn before me

This 30th day of April, 20 10.

_____

Notary Public in and for said County and State

T.J. THERIAULT
Notary Public, State of Nevada
Appointment No. 04-90093-1
My Appt. Expires Dec 1, 2012

Revised 10/27/08

FOR DEPARTMENT USE ONLY

Case #	VAR-38195
Meeting Date:	6/24/010
Total Fee:	$1830.00
Date Received:*	5/5/10
Received By:	M ROX

*The application will not be deemed complete until the submitted materials have been reviewed by the Planning and Development Department for consistency with applicable sections of the Zoning Ordinance.

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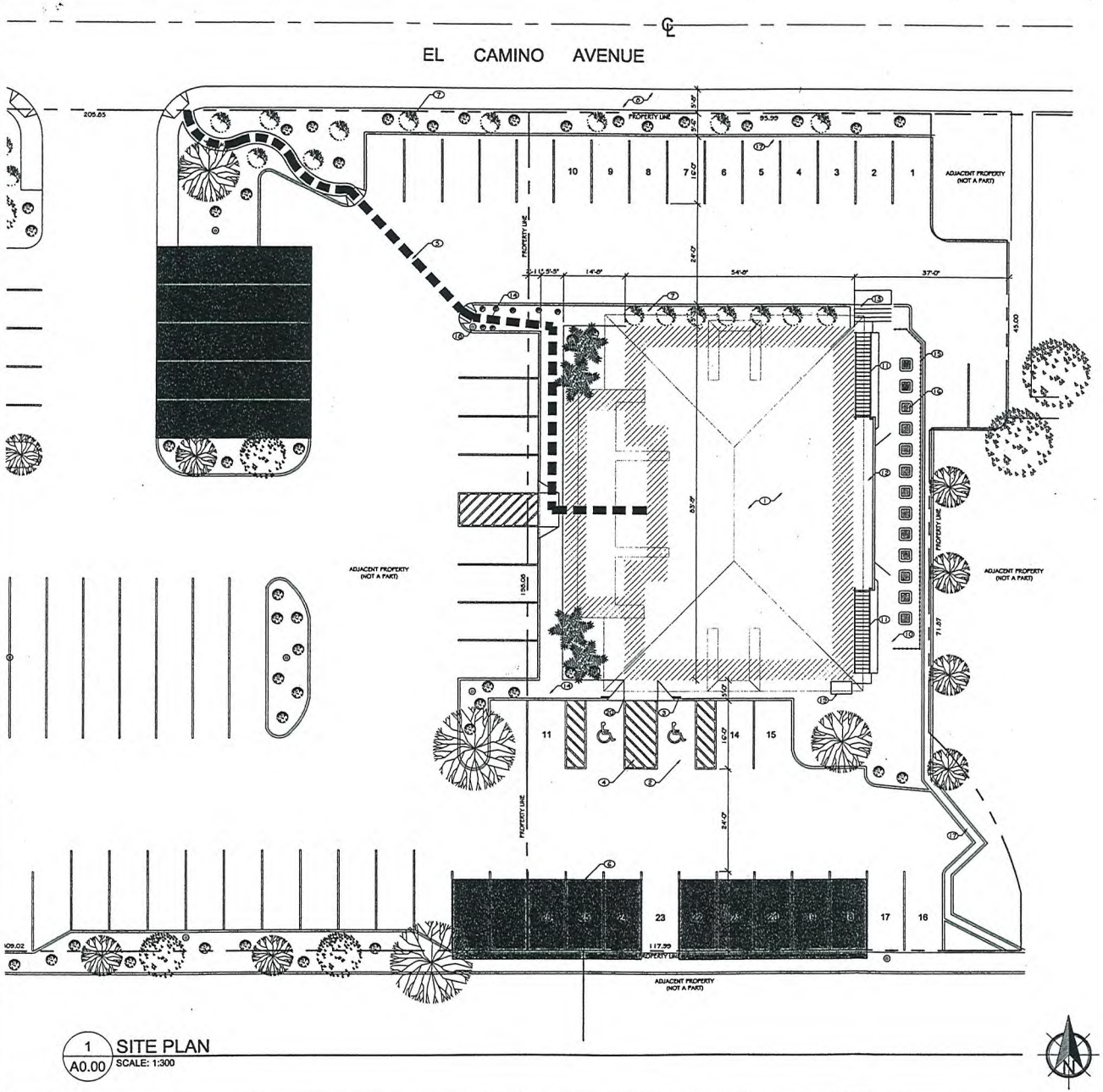
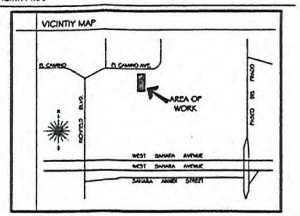
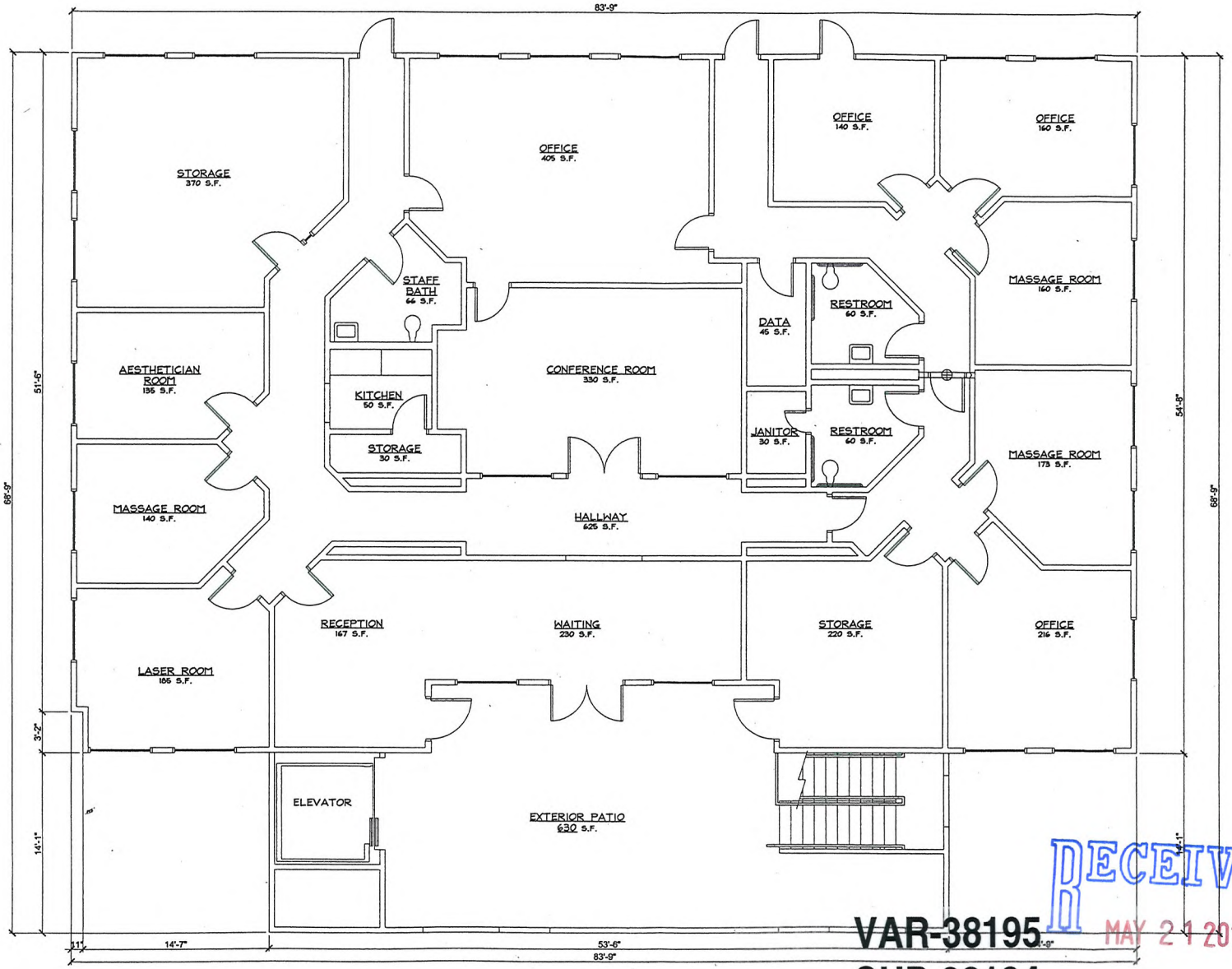


1 A0.00 SITE PLAN
SCALE: 1:300

VICINITY MAP


VICINITY MAP
N CAMINO
N CAMINO AVE.
AREA OF WORK
WEST SAHARA AVENUE
SAHARA AVENUE
SAHARA AVENUE



1 A1.01 SECOND FLOOR PLAN
SCALE: 1/8" = 1'-0"

VAR-38195
SUP-38194
REVISED

RECEIVED
MAY 21 2010

DESIGNER:

STREAMLINE CONCEPT
Streamline Concepts
Design Solutions
8011 Maple Park Street
Las Vegas, NV 89131
PHN: 702-416-0795
FAX: 702-522-0652
EMAIL: info@slcdod.com

PREPRARED FOR:

Kozmary Center for Pain Management
Experience • Compassion • Results

PROJECT:
KOZMARY CENTER FOR PAIN MANAGEMENT
2851 EL CAMINO AVENUE SUITE 101
LAS VEGAS, NEVADA 89102
PHONE: 702-380-3210

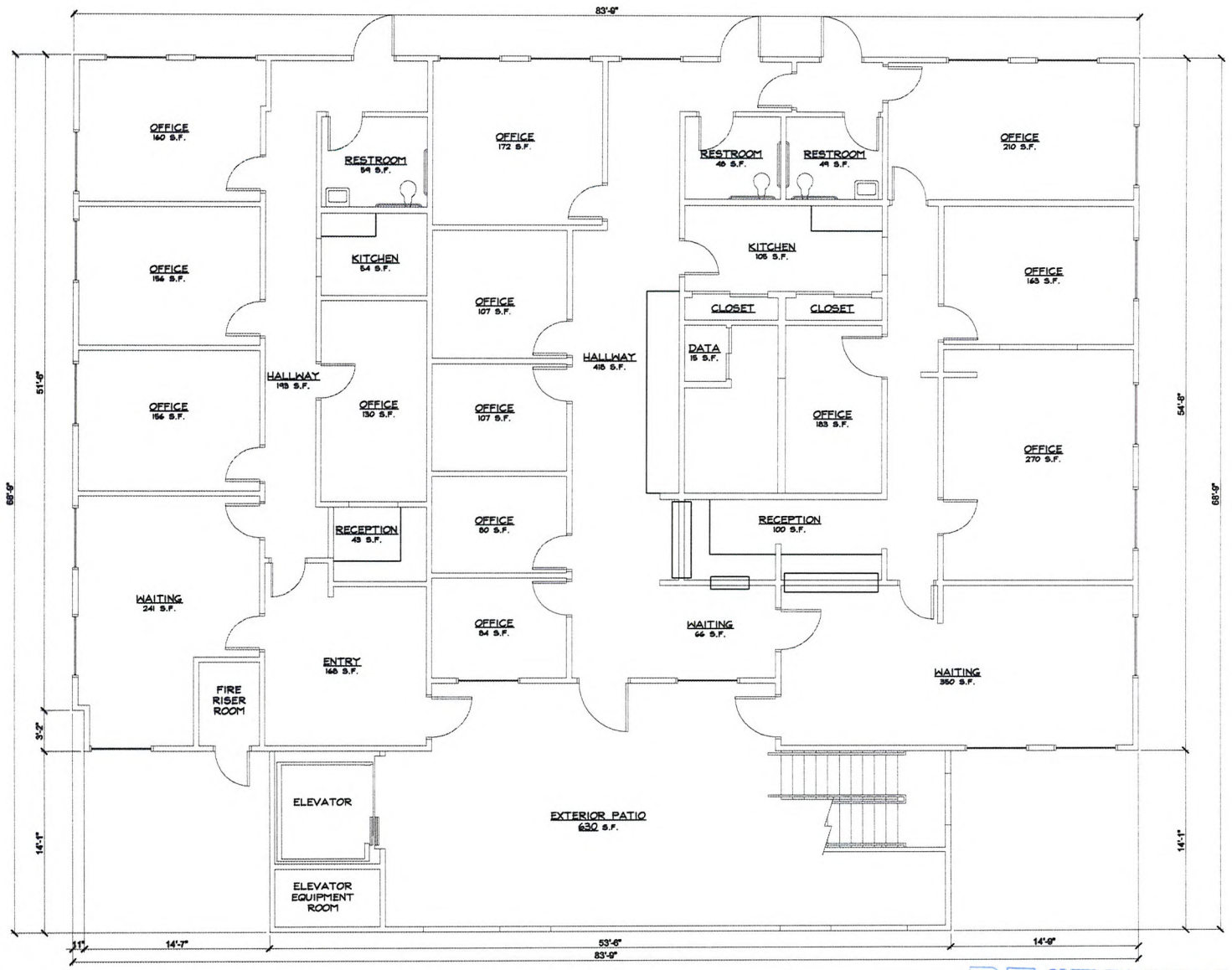
SHEET TITLE:
SECOND FLOOR PLAN

DELTA	REVISION	DATE

SHEET INFORMATION:

PROJECT NUMBER:	10-004
DRAWN BY:	DYLAN YORKE
LAST MODIFIED:	MARCH 16, 2010
SCALE:	1/8" = 1'-0"

SHEET NUMBER:
A1.01



1 / A1.00 FIRST FLOOR PLAN
SCALE: 1/8" = 1'-0"

DESIGNER:

Streamline Concepts
Design Solutions
8011 Maple Park Street
Las Vegas, NV 89131
PHN: 702-416-0748
FAX: 702-522-0462
EMAIL: info@slcad.com

PREPRARED FOR:

Kozmary Center for Pain Management
Experience • Compassion • Results

PROJECT:
KOZMARY CENTER FOR PAIN MANAGEMENT
2851 EL CAMINO AVENUE SUITE 101
LAS VEGAS, NEVADA 89102
PHONE:702-380-3210

SHEET TITLE:
FIRST FLOOR PLAN

DELTA	REVISION	DATE

SHEET INFORMATION:

PROJECT NUMBER:	10-004
DRAWN BY:	DYLAN YORKE
LAST MODIFIED:	MARCH 16, 2010
SCALE:	1/8" = 1'-0"

SHEET NUMBER:
A1.00

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MAY 05
VAR-38195
SUP-38194



VAR-38195 & SUP-38194 – APPLICANT: STEVE KOZMARY, M.D. – OWNER: LAJOLLA PLAZA II, LLC
2851 EL CAMINO AVENUE

05/20/10



VAR-38195 & SUP-38194 – APPLICANT: STEVE KOZMARY, M.D. – OWNER: LAJOLLA PLAZA II, LLC
2851 EL CAMINO AVENUE

05/20/10

Kozmary Center for Pain Management

Experience • Compassion • Results

Steven V. Kozmary, MD-
Board-Certified: American Board of Anesthesiology, Subspecialty Certification in Pain Management, American Academy of Pain Management

Compassionate, leading-edge care:
- Advanced diagnosis & treatment for spinal injuries
- Back & neck pain
- Hip, knee & shoulder pain
- Disc injuries
- Sports injuries
- Work-related injuries
- Cancer pain
- Headaches & migraines
- Diabetes-related pain
- Chronic pain
- Painful neuropathies
- Postsurgical pain
- Multiple sclerosis-related pain
- Arthritis & rheumatoid arthritis
- Age-related disorders
- Personal injury/motor vehicle accident
- Fibromyalgia

Advanced treatments & technology:
- Diagnostic & therapeutic spinal injection therapy
- Radiofrequency nerve lesioning
- Spinal infusion pumps
- TENS therapy
- Trigger-point injections
- Epidural injections
- Spinal cord stimulators

The convenience you deserve:
- Thorough, unhurried evaluations
- Flexible appointments
- Caring, helpful staff
- Timely progress reports to referring physicians
- Most insurances accepted

Las Vegas:2851 El Camino Ave.
Suite 101
Las Vegas, NV 89102

Henderson: Del Webb Building
10001 S. Eastern Avenue
Suite 208
Henderson, NV 89052

866.536.6401
702.380.3210
Fax: 702.380.3212
Visit www.Kozmary.com

March 22, 2010

Planning and Development Department
City of Las Vegas

RE: APN 162-05-801-011

To Whom It May Concern:

We are applying for a massage therapy license to enable us to use multiple rooms for massage therapy. Hours of operation are Monday thru Friday 8:00am to 6:00pm. The use of massage therapy is limited to our medical patients. There is no outside advertising for massage therapy and there is no signage on the building regarding massage therapy. In fact, the only signage relates to Kozmary Center. The patients for massage therapy are all patients of the Kozmary Center for Pain Management and the massage therapy is used on a medical basis to reduce muscle spasm and promote healing of painful areas as part of a medical regimen prescribed by Dr. Kozmary. Typically patients are seen for their monthly or bimonthly appointments and at the same visit are seen for massage therapy. Because of this arrangement, I do not believe that the parking is an issue with the current spaces that we have allotted for our patients at the 2851 El Camino Avenue location.

For any questions you may have regarding this matter, please feel free to contact me.

Sincerely,

STEVEN V. KOZMARY, M.D.
Director, Kozmary Center for Pain Management

SVK/ljh
job #: 0115-3222010
DOT: 03/23/10

VAR-38195
SUP-38194
REVISED

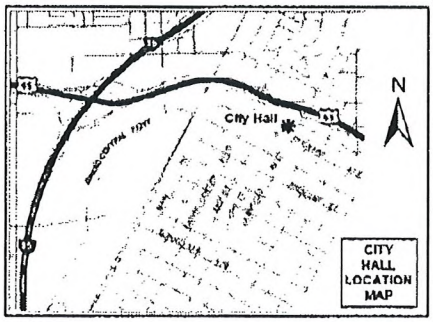
RECEIVED
MAY 21 2010

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES
02 1M $ 00.41⁴
0004279218 JUL 08 2010
MAILED FROM ZIP CODE 89101

Return Service Requested
Official Notice of Public Hearing



BECAUSE HE IS AN M.D. IS he RECEIVING SPECIAL TREATMENT? HE JUST WANTS 4 ZONING CHANGES - GIVE ME A BREAK! IT'S TOO CLOSE TO RESIDENCES AND ONE MASSAGE "ESTABLISHMENT" IS ENOUGH

If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Office Of The City Clerk at the address listed above or fax this side of this card to (702) 382-4803. If you would like to contact your Council Representative, please call (702) 229-6405.

☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
City Council Meeting of 7/21/2010

CUMMINGS FAMILY TRUST
CUMMINGS PETER & KAREN M TRS
3025 PLAZA DE ROSA
LAS VEGAS NV 89102-4048

APN#16205416025

RECEIVED
CITY CLERK
2010 JUL -9 P 12:34

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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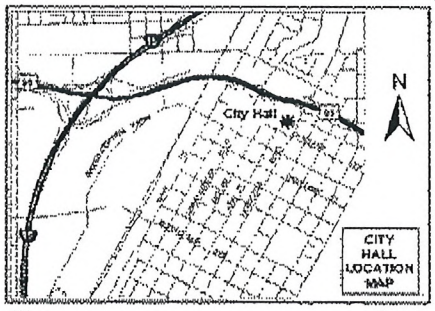
02 1M $ 00.41⁴
0004279218 JUL 08 2010
MAILED FROM ZIP CODE 89101

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
City Council Meeting of 7/21/2010

LEA JAMES B & JOY J
11001 PINE KNOLLS CT
LAS VEGAS NV 89144-1652

APN#16208111009

RECEIVED
CITY CLERK
2010 JUL 12 A 8:00

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

Return Service Requested
Official Notice of Public Hearing

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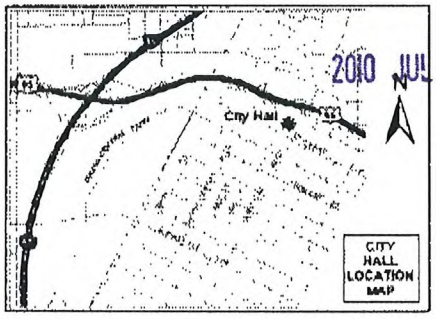
CITY CLERK
2010 JUL -9 P 2:35



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VAR-38195 & SUP-38194
City Council Meeting of 7/21/2010

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0004279218 JUL 08 2010
MAILED FROM ZIPCODE 89101

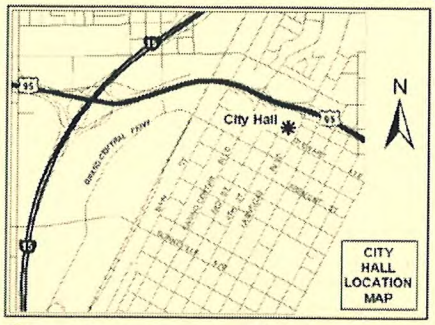
We already sent in opposing your suggestion - we don't need another place that attracts a bad element around our kids - are you out of your minds?

PEARSON ROBERT & KATHLEEN
2725 MIRAFLORES AVE
LAS VEGAS NV 89102-4260

APN#16205812007

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
City Council Meeting of 7/21/2010

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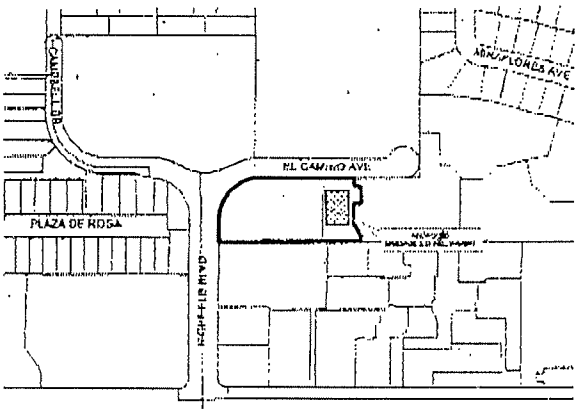
RECEIVED
CITY CLERK
2010 JUL 12 P 1:17

FLIPPIN ALFRED B FAMILY TRUST
3645 MOUNTCREST DR
LAS VEGAS NV 89121-4917

APN#16205415022

VAR-38195 - APPLICANT: STEVEN KOZMARY, M.D. - OWNER: LA JOLLA PLAZA II, LLC - Request for a Variance TO ALLOW 26 PARKING SPACES WHERE 45 PARKING SPACES ARE REQUIRED at 2851 El Camino Avenue (APN 162-05-801-011), C-1 (Limited Commercial) Zone, Ward 1 (Tarkanian).

SUP-38194 - APPLICANT: STEVEN KOZMARY, M.D. - OWNER: LA JOLLA PLAZA II, LLC - Request for a Special Use Permit FOR A PROPOSED 473 SQUARE-FOOT MASSAGE ESTABLISHMENT WITH WAIVERS TO ALLOW A 60-FOOT DISTANCE SEPARATION FROM A RESIDENTIAL ZONE WHERE 400 FEET IS THE MINIMUM REQUIRED, A 362-FOOT DISTANCE SEPARATION FROM AN EXISTING MASSAGE ESTABLISHMENT WHERE 1,000 FEET IS THE MINIMUM REQUIRED AND FOR ACCESS TO THE SITE FROM A 60-FOOT RIGHT-OF-WAY WHERE AN 80-FOOT WIDE RIGHT-OF-WAY IS THE MINIMUM REQUIRED at 2851 El Camino Avenue (APN 162-05-801-011), C-1 (Limited Commercial) Zone, Ward 1 (Tarkanian).



The proposed project may not pertain to the entire highlighted project site.

Public Hearing Information

Meeting:	City Council
Date:	***July 21, 2010***
Time:	1:00 P.M.
Location:	City Council Chambers 400 Stewart Avenue Las Vegas, Nevada

Any and all interested persons may appear and be heard at said meeting, or may, prior thereto, file written objections thereto or approvals thereof with the City Clerk, 1st Floor, City Hall, 400 Stewart Avenue, Las Vegas, Nevada, 89101. For further information, including the full staff report, please call (702) 229-6311 (TDD 386-9108) or go to http://www.lasvegasnevada.gov.

Too much congestion, blocks driveways, and allows parking in adjacent property. Many in- and- out travelers, potential for accidents and conflicts

BAILES FAMILY TRUST ETAL
BAILES LEONARD B & GEORGINA TRS
%BAILES & ASSOC
11911 SAN VICENTE BLVD #325
LOS ANGELES CA 90049-6611

APN#1620580101O

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CITY CLERK
2010 JUL 12 P 12:39

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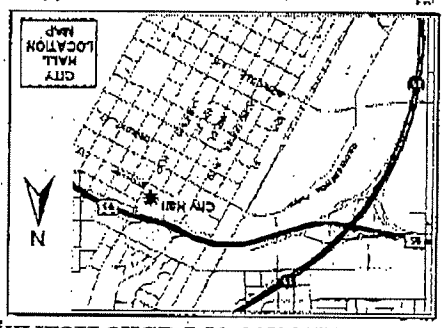
Official Notice of Public Hearing

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101



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☐ I SUPPORT this Request
☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
City Council Meeting of 7/21/2010

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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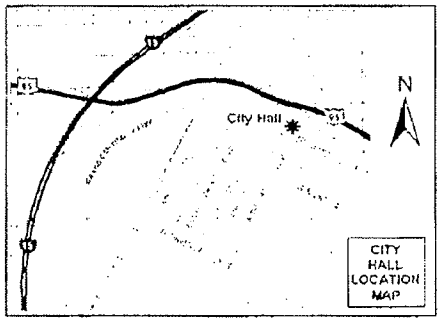
Official Notice of Public Hearing



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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
City Council Meeting of 7/21/2010

RECEIVED
CITY CLERK
2010 JUL -9 P 2:35

JENKINS E & S 1990 LIV TR AGMT
3010 EL CAMINO AVE
LAS VEGAS NV 89102-4056

APN#16205415021

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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2010 JUL 12 A 11:13

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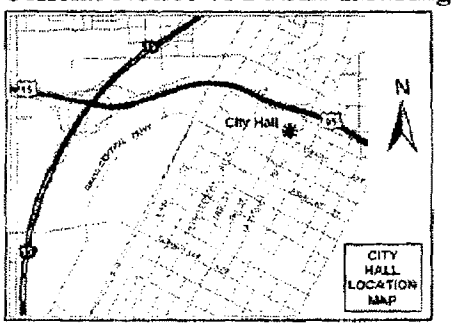
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-37949
City Council Meeting of 7/21/2010

YILMAZ ISMAIL
5309 WASHOE LN
LAS VEGAS NV 89107-1761

APN#13921612058

FROM :TIMON S. GREENE FAX NO. :7028715924 Jul. 12 2010 12:25PM P1

07/12/2010 MON 12:17 [TX/RX NO 8068] 001

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CITY CLERK

2010 JUL 12 P 3:05

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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FIRST CLASS

UNITED STATES POSTAGE
PITNEY BOWES
02 1M $ 00.41[4]
0004279218 JUL 08 2010
MAILED FROM ZIPCODE 89101

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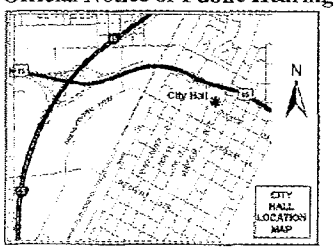
Official Notice of Public Hearing



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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194

City Council Meeting of 7/21/2010

GREENE TIMON S
3022 EL CAMINO AVE #27
LAS VEGAS NV 89102-4056

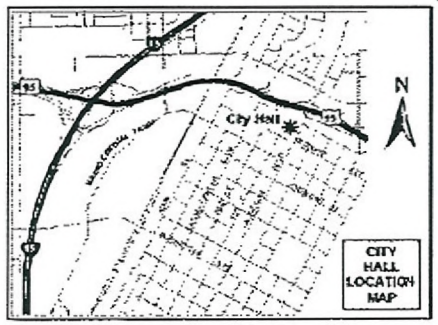
APN#16205415027

ENCLOSE

07/14/2010 06:51 7022218574 TYRE PAGE 01/01

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
City Council Meeting of 7/21/2010

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CITY CLERK
2010 JUL 14 A 10:48

TYRE R & C LIVING TRUST
TYRE ROBERT D & CARYN K TRS
2777 PARADISE RD #3502
LAS VEGAS NV 89109-0403

APN#16205317017

Submitted after final agenda
Date 7/14/10 Item 96-98

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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MAILED FROM ZIP CODE 89101

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2010 JUL 14 A 11:30

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
City Council Meeting of 7/21/2010

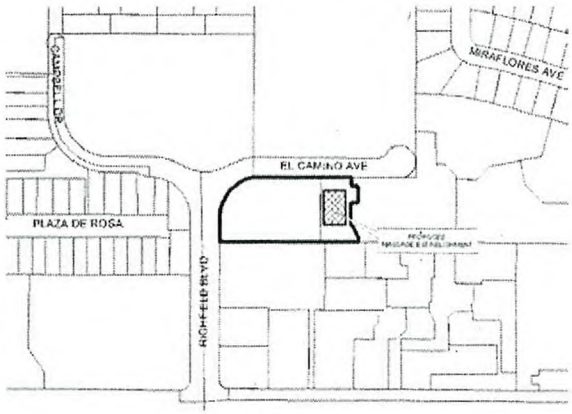
BAILES FAMILY TRUST ETAL
BAILES LEONARD B & GEORGINA TRS
%BAILES & ASSOC
11911 SAN VICENTE BLVD #325
LOS ANGELES CA 90049-6611
APN#16205801010

Application Information

VAR-38195 - APPLICANT: STEVEN KOZMARY, M.D. - OWNER: LA JOLLA PLAZA II, LLC - Request for a Variance TO ALLOW 26 PARKING SPACES WHERE 45 PARKING SPACES ARE REQUIRED at 2851 El Camino Avenue (APN 162-05-801-011), C-1 (Limited Commercial) Zone, Ward 1 (Tarkanian).

SUP-38194 - APPLICANT: STEVEN KOZMARY, M.D. - OWNER: LA JOLLA PLAZA II, LLC - Request for a Special Use Permit FOR A PROPOSED 473 SQUARE-FOOT MASSAGE ESTABLISHMENT WITH WAIVERS TO ALLOW A 60-FOOT DISTANCE SEPARATION FROM A RESIDENTIAL ZONE WHERE 400 FEET IS THE MINIMUM REQUIRED, A 362-FOOT DISTANCE SEPARATION FROM AN EXISTING MASSAGE ESTABLISHMENT WHERE 1,000 FEET IS THE MINIMUM REQUIRED AND FOR ACCESS TO THE SITE FROM A 60-FOOT RIGHT-OF-WAY WHERE AN 80-FOOT WIDE RIGHT-OF-WAY IS THE MINIMUM REQUIRED at 2851 El Camino Avenue (APN 162-05-801-011), C-1 (Limited Commercial) Zone, Ward 1 (Tarkanian).

Application Location



The proposed project may not pertain to the entire highlighted project site.

Public Hearing Information

Meeting:	City Council
Date:	***July 21, 2010***
Time:	1:00 P.M.
Location:	City Council Chambers 400 Stewart Avenue Las Vegas, Nevada

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Too much congestion, blocks driveways, and allowes parking in adjacent property. Many in and out travelers, potential for accidents and conflicts

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES
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0004279218 JUL 08 2010
MAILED FROM ZIP CODE 89101

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
City Council Meeting of 7/21/2010

This too close to a bus stop for children & the increased traffic would endanger the kids crossing the street.
B Masnack

RECEIVED CITY CLERK 2010 JUL 15 A 11:01

SCOTT EDWIN E 1996 REVOCABLE TR
%B MASNACK
9553 E LYNWOOD CIR
MESA AZ 85207-2508

FOR: 3036 El Camino Av L.V. 89102

APN#16205415045

ENDORSE ABOVE

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES
02 1M $ 00.41⁴
0004279218 JUL 08 2010
MAILED FROM ZIP CODE 89101

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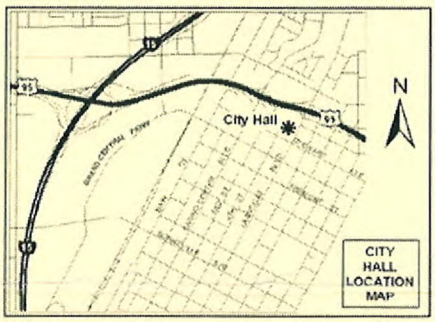
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
City Council Meeting of 7/21/2010

MASSAGE Parlors in Vegas — Could mean more than MASSAGES!

This Variance is to big - it's not just a few feet if hundreds & close to A School bus stop! No way. Right on top of residential! Too many office AVAilabilities on S Ahara. B Masnack
↑ traffic on very Small Street

RECEIVED CITY CLERK 2010 JUL 15 A 11:01

SCOTT EDWIN E REVOCABLE TRUST
%B MASNACK
9553 E LYNWOOD CIR
MESA AZ 85207-2508

FOR: 3024 El Camino Av L.V. 89102

APN#16205415039

ENDORSE ABOVE

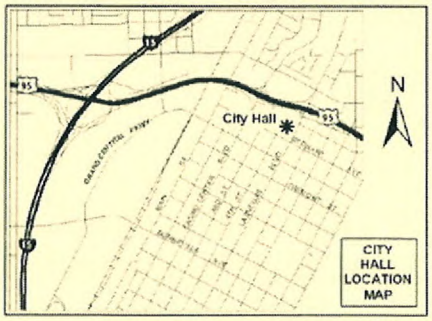
City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

PRESORTED FIRST CLASS

UNITED STATES POSTAGE
PITNEY BOWES
02 1M $ 00.41⁴
0004279218 JUL 08 2010
MAILED FROM ZIP CODE 89101

RECEIVED
CITY CLERK
2010 JUL 14 A 11:30

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
City Council Meeting of 7/21/2010

BURNS JUDITH T TRUST
BURNS JUDITH T TRS
2804 ALCOA AVE
LAS VEGAS NV 89102-6023

APN#16208511013

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

PRESORTED FIRST CLASS

UNITED STATES POSTAGE
PITNEY BOWES
02 1M $ 00.41⁴
0004279218 JUL 08 2010
MAILED FROM ZIP CODE 89101

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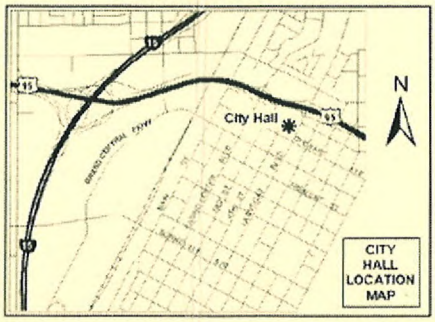

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
City Council Meeting of 7/21/2010

With a Massage at 2600 Sahara #115, and at 3200 Sahara we do not need another. Thx.

MARTIN LILLIAN KATHERINE
2801 ALCOA AVE
LAS VEGAS NV 89102-6025

APN#16208511029

RECEIVED
CITY CLERK
2010 JUL 6 P 1:24

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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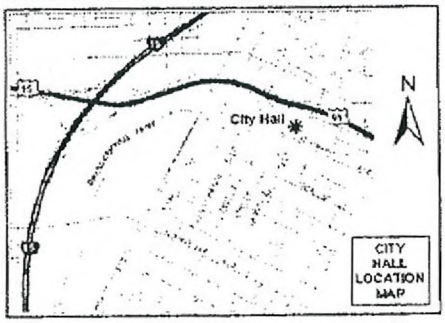
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
City Council Meeting of 7/21/2010

Please don't let this happen in our neighborhood.

RECEIVED
CITY CLERK
2010 JUL 19 P 12:07

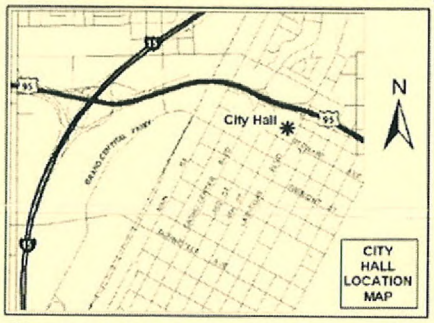
MORAN HELEN REVOCABLE LIVING TR
MORAN HELEN TRS
2824 ALCOA AVE
LAS VEGAS NV 89102-6023

APN#16208511008

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

PRESORTED FIRST CLASS
UNITED STATES POSTAGE
PITNEY BOWES
02 1M $ 00.41⁴
0004279218 JUL 08 2010
MAILED FROM ZIPCODE 89101

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
City Council Meeting of 7/21/2010

RECEIVED
CITY CLERK
2010 JUL 19 A 11:21

GARDNER WILLIAM & MICHAELETTA
3021 PLAZA DE ROSA
LAS VEGAS NV 89102-4048

APN#16205416024

Submitted after meeting
Date 7/19/10 Item 94+95

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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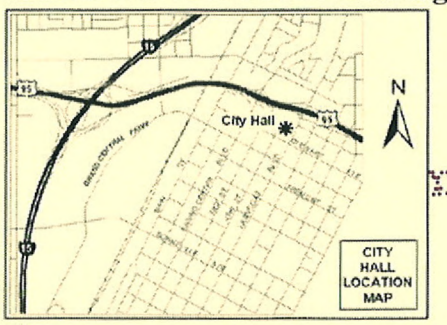
UNITED STATES POSTAGE
PITNEY BOWES
02 1M
0004279218
$ 00.41⁴
JUL 08 2010
MAILED FROM ZIP CODE 89101

Return Service Requested
Official Notice of Public Hearing



XX LAS VEGAS NV 890 07-08-10

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
City Council Meeting of 7/21/2010

RECEIVED
2010 JUL 20 P 1:08
CITY CLERK

ROSS & ROSS L L C
2488 OLD CASH RD
CHERAW SC 29520-5789

APN#16208104008

NOTE: THE FOLLOWING DOCUMENTATION WAS SUBMITTED FOR THE RECORD BEFORE OR AT THE PLANNING COMMISSION HEARING ON THIS ITEM WHICH IS NOW APPEARING BEFORE THE CITY COUNCIL

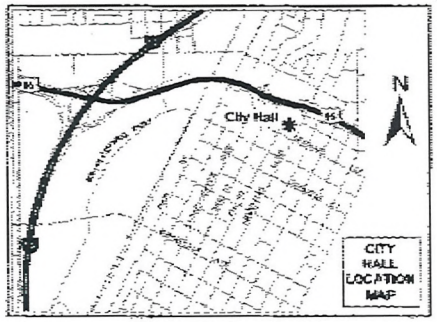
FROM :TIMON S. GREENE FAX NO. :7028715924 Jun. 14 2010 01:47PM P1

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES
02 1M $ 00.41⁴
0004279218 JUN 11 2010
MAILED FROM ZIPCODE 89101

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
Planning Commission Meeting of 6/24/2010

Case: VAR-38195
16205415027
GREENE TIMON S
3022 EL CAMINO AVE #27
LAS VEGAS NV 89102-4055

RECEIVED
JUN 14 2010

P 6/24

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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02 1M $ 00.41⁴
0004279218 JUN 11 2010
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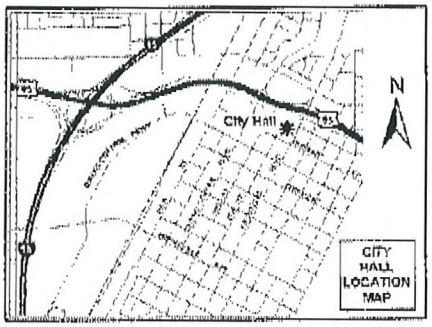
Official Notice of Public Hearing



We do Not Need another massage parlour in this area.

If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Planning & Development Department at the address listed above or fax this side of this card to (702) 385-7268. If you would like to contact your Council Representative, please call (702) 229-6405.

☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194

Planning Commission Meeting of 6/24/2010

Case: VAR-38195
16208511034
CLINE RACHAEL A LIVING TRUST
3308 CALLE DEL TORRE
LAS VEGAS NV 89102-3906

RECEIVED
JUN 14 2010

23-24 P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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02 1M $ 00.41⁴
0004279218 JUN 11 2010
MAILED FROM ZIPCODE 89101

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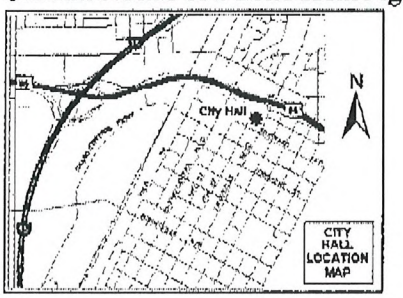

We have policies & regulations for a reason. Good reasons might support a variance. I see no justifiable reason to reduce the distance between a "massage" business and residential or to reduce parking.

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194

Planning Commission Meeting of 6/24/2010

Case: VAR-38195

16205310017
TYRE R & C LIVING TRUST
2777 PARADISE RD #3502
LAS VEGAS NV 89109-0403

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JUN

23-24
P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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0004279218 JUN 11 2010
MAILED FROM ZIP CODE 89101

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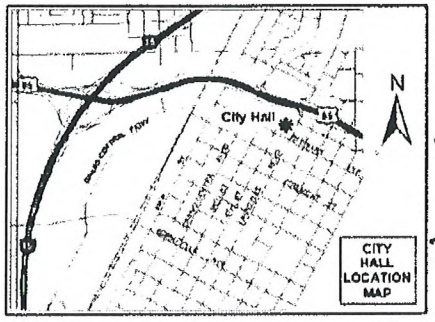

I OPPOSE! WHO DOE THIS "DOCTOR" THINK HE IS! IT'S TOO CLOSE TO RESIDENCE TOO CLOSE TO ANOTHER "MASSAGE PARLOR" AND THE RIGHT OF-WAY IS TOO NARROW. IS THERE ANYTHING ELSE HE WOULD LIKE? YOU NEED TO TELL THIS JERK "NO"!!

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
Planning Commission Meeting of 6/24/2010

Case VAR-38195
16205416025
CUMMINGS FAMILY TRUST
3025 PLAZA DE ROSA
LAS VEGAS NV 89102-4048

RECEIVED
JUN 15 2010

23-24 P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

NO NO

PRESORTED FIRST CLASS

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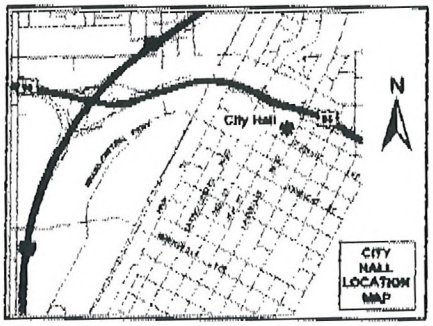
02 1M $ 00.41⁴
0004279218 JUN 11 2010
MAILED FROM ZIP CODE 89101

Return Service Requested
Official Notice of Public Hearing

NO



NO

NO

Are you nuts?
NO!

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NO NO!!

☐ I SUPPORT this Request ☒ I OPPOSE this Request NO NO!!

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
Planning Commission Meeting of 6/24/2010

NO, NO, NO, NO NO

Case: VAR-38195
16205812007
PEARSON ROBERT & KATHLEEN
2725 MIRAFLORES AVE
LAS VEGAS NV 89102-4260

RECEIVED
JUN 14 2010

23-24P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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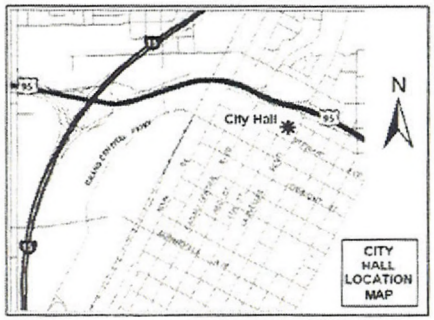
Official Notice of Public Hearing



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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

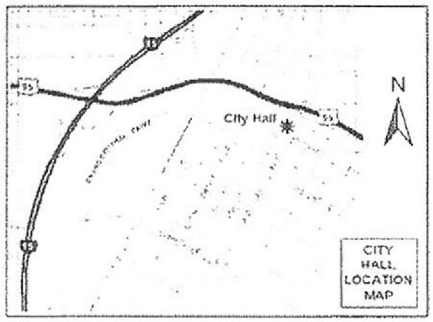
VAR-38195 & SUP-38194
Planning Commission Meeting of 6/24/2010

Case: VAR-38195
16208511013
BURNS JUDITH T TRUST
2804 ALCOA AVE
LAS VEGAS NV 89102-6023

Submitted after final agenda
Date 6/24/10 Item 23 24 P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
Planning Commission Meeting of 6/24/2010

Case: VAR-38195
16208510002
GEVORKIAN GRIGOR & AGHAVNI
8609 LAKERIDGE CIR
LAS VEGAS NV 89117-5828

RECEIVED
JUN 24 2010

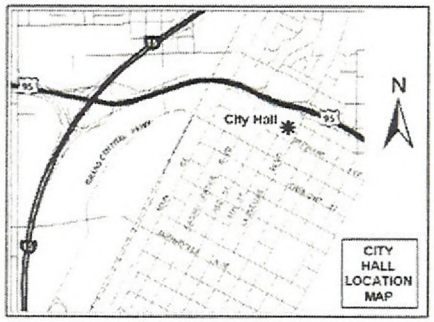
Submitted after final agenda
Date Item 23-24 P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES
02 1M $ 00.41⁴
0004279218 JUN 11 2010
MAILED FROM ZIPCODE 89101

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
Planning Commission Meeting of 6/24/2010

Leonard Bailes
310-445-4300

I own the adjacent bldg @ 2901 El Camino, and if the variance is allowed the congestion in and out of parking lot that is in conjunction with my parking would greatly increase. He will have people than 26, therefore creating congestion and since there is no barrier I will be forced to tow cars of his patients. He needs more parking to accomodate patients.

Case: VAR-38195
16205801010
BAILES FAMILY TRUST ETAL
%BAILES & ASSOC
11911 SAN VICENTE BLVD #325
LOS ANGELES CA 90049-6611

RECEIVED JUN 17 2010

Submitted after final agenda
Date
Item 23-24

PAGE 01/01
TECHNOBAKE
7326560899
06/18/2010 09:24

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

(PRESORTED FIRST CLASS)

UNITED STATES POSTAGE
PITNEY BOWES
02 1M $ 00.41[4]
0004279218 JUN 11 2010
MAILED FROM ZIP CODE 89101

Return Service Requested
Official Notice of Public Hearing



XX LAS VEGAS NV 890 06-12-10

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194

Planning Commission Meeting of 6/24/2010

Case: VAR-38195
16205413007
FEINER ELIANE
224 SAYRE DR
PRINCETON NJ 08540-5852

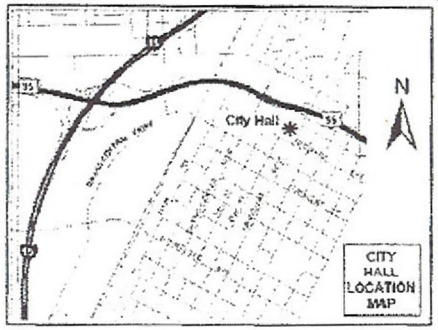
Submitted after final agenda
Date
Item 23-24P

RECEIVED
JUN 18 2010

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

Return Service Requested

Official Notice of Public Hearing



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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194

Planning Commission Meeting of 6/24/2010

Case: VAR-38195

16205415035
BARTON H KEITH
3054 EL CAMINO AVE
LAS VEGAS NV 89102-4037

Submitted after final agenda
Date
Item 23-24

RECEIVED
JUN 17 2010

Jun 16 10 05:01p

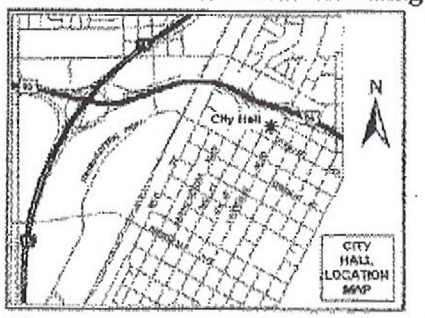
City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES
02 1M $ 00.41⁴
0004279218 JUN11 2010
MAILED FROM ZIPCODE 89101

Return Service Requested

Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194

Planning Commission Meeting of 6/24/2010

Case: VAR-38195

16208111009
LEA JAMES B & JOY J
11001 PINE KNOLLS CT
LAS VEGAS NV 89144-1652

RECEIVED
JUN 21 2010

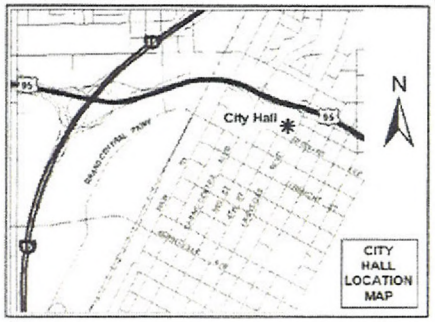
Submitted after final agenda
Date Item 23-24 P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

UNITED STATES POSTAGE
PITNEY BOWES
02 1M
0004279218
$ 00.41⁴
JUN 11 2010
MAILED FROM ZIP CODE 89101

Return Service Requested
Official Notice of Public Hearing



LAS VEGAS NV 890 06-12-10

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194

Planning Commission Meeting of 6/24/2010

RECEIVED
10 JUN 21 PM 4:16
PLANNING AND DEVELOPMENT

Case: VAR-38195

16208104008
ROSS & ROSS L L C
2488 OLD CASH RD
CHERAW SC 29520-5729

Submitted after final agenda
Date
Item 23-24 P



CHARLESTON NEIGHBORHOOD PRESERVATION

"Doing things today that will improve tomorrow"

Phone/Fax: 702-877-2438

DATE: June 21, 2010
TO: CLV PLANNING COMMISSIONERS!
FROM: Charleston Neighborhood Preservation
RE: Selected items from June 24, 2010 CLV Planning Commission Agenda

We understand that all LV Planning Commission actions may set a precedent for any and all actions within our City of Las Vegas, Nevada boundaries, therefore imposing a direct impact upon ALL wards.

#24. SUP-38194 related to VAR-38 – We ask that NO be the vote on this SUP because of the THREE waivers:
1) the 340 ft. distance from a residential zone where residents are assured of a 400 ft. distance,
2) the 638 ft. variance from code in the distance required from an existing massage establishment, AND
3) the 20 ft. variance requested from the required distance of 80 ft from access to the site!
We know these measurements were not arbitrarily established for the protection of residents as well as the business person and ask that we respect them.

#28. SUP-38137 – NO is the vote we request for this business in this location because of the permanent effect such waivers have throughout the city. Does money override code and ordinances? Can a homebuyer trust such?
1)The 140 ft. waiver in separation distance from residential use is good governing?
2)the 180 ft. waiver from a Financial Institution surely is a detriment to the established business, AND
3) the 600 ft variance in the required square feet of floor area will forever, within our city boundaries, encourage even smaller, 'hole in the wall' Financial Institutions.

With both #24 and #28, the door is open for 4 plus waivers which certainly is lowering the standards of the "WORLD CLASS" image mentioned as a quality for our city.

Appreciating your challenging position,

June Ingram, President and BOARD

June
C N P

RECEIVED
10 JUN 22 AM 8:22
PLANNING AND DEVELOPMENT

Submitted after final agenda
Date Item 24

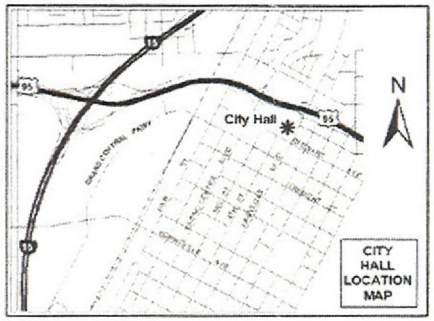
BOARD & ADVISORY MEMBERS
Dennis Ardine-Vicki Arnold-Dick Bratton-Erna Clark-Juanita Clark-Miriam Een- Danielle Hanslip-Rose Honrath-June Ingram-Rick Johnson-Jolanta Krol-Rod &Betty Larsen- Geno &Pearl Lonardo-Flo Montalvo-Dorothy Orr-Jim Seward-Pamela Stancliffe-Tim Volz-Marcus Gobel-Ginger Norton-Denise Reitz-Layne Rushforth-Jeanine Sweany-Julia Whaun-Jean Withers-Others

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

UNITED STATES POSTAGE
PITNEY BOWES
02 1M
0004279218
$ 00.41⁴
JUN 11 2010
MAILED FROM ZIP CODE 89101

Return Service Requested
Official Notice of Public Hearing



If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Planning & Development Department at the address listed above or fax this side of this card to (702) 385-7268. If you would like to contact your Council Representative, please call (702) 229-6405.

[X] I SUPPORT this Request

[ ] I OPPOSE this Request

Please use available blank space on card for your comments.

VAR-38195 & SUP-38194
Planning Commission Meeting of 6/24/2010

RECEIVED
10 JUN 21 PM 4:13
PLANNING AND DEVELOPMENT

Case: VAR-38195

16205416001
FAUST SUZANNE
2301 CALLE DE NUEVO
LAS VEGAS NV 89102-4039

Submitted after final agenda
Date
Item 13-24
A

City of Las Vegas Agenda Item No.: **90.**

AGENDA SUMMARY PAGE - PLANNING & DEVELOPMENT

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PLANNING & DEVELOPMENT
DIRECTOR: M. MARGO WHEELER ☐ **Consent** ☒ **Discussion**

SUBJECT:

SUP-38194 – ABEYANCE ITEM - SPECIAL USE PERMIT RELATED TO VAR-38195 - PUBLIC HEARING - APPLICANT: STEVEN KOZMARY, M.D. - OWNER: LA JOLLA PLAZA II, LLC - Request for a Special Use Permit FOR A PROPOSED 473 SQUARE-FOOT MASSAGE ESTABLISHMENT WITH WAIVERS TO ALLOW A 60-FOOT DISTANCE SEPARATION FROM A RESIDENTIAL ZONE WHERE 400 FEET IS THE MINIMUM REQUIRED, A 362-FOOT DISTANCE SEPARATION FROM AN EXISTING MASSAGE ESTABLISHMENT WHERE 1,000 FEET IS THE MINIMUM REQUIRED AND FOR ACCESS TO THE SITE FROM A 60-FOOT RIGHT-OF-WAY WHERE AN 80-FOOT WIDE RIGHT-OF-WAY IS THE MINIMUM REQUIRED at 2851 El Camino Avenue (APN 162-05-801-011), C-1 (Limited Commercial) Zone, Ward 1 (Tarkanian). Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL.

PROTESTS RECEIVED BEFORE:		**APPROVALS RECEIVED BEFORE:**	
Planning Commission Mtg.	**13**	**Planning Commission Mtg.**	**1**
City Council Meeting	**18**	**City Council Meeting**	**0**

RECOMMENDATION:

Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL, subject to conditions:

BACKUP DOCUMENTATION:

1. Consolidated Backup
2. Supporting Documentation
3. Submitted at the July 21, 2010 City Council Meeting – Letter by Juanita Clark

Consistent with the City's sustainability efforts to reduce paper use, backup documentation pertaining to related items will appear as backup under the first item. This item includes such consolidated backup documentation. Please refer to the first related application in the subject line of the Agenda Summary Page.

PLANNING & DEVELOPMENT DEPARTMENT

STATEMENT OF FINANCIAL INTEREST

Case Number: SUP-38194 APN: 162-05-801-011

Name of Property Owner: La Jolla Plaza II LLC

Name of Applicant: Steven Kozmary

Name of Representative: _____

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ **Yes** ☒ **No**

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____ _____

APN: _____

Signature of Property Owner: _____

Print Name: STEVEN KOZMARY

Subscribed and sworn before me

This 30th day of April, 2010

_____

Notary Public in and for said County and State

T.J. THERIAULT
Notary Public, State of Nevada
Appointment No. 04-90093-1
My Appt. Expires Dec 1, 2012

Revised 11-14-06

f:\depot\Application Packet\Statement of Financial Interest.pdf

RECEIVED
MAY 05 2010

PLANNING & DEVELOPMENT

PLANNING & DEVELOPMENT DEPARTMENT

APPLICATION / PETITION FORM

Application/Petition For: Special Use Permit - Massage Establishment

Project Address (Location) 2851 El Camino Avenue #200, Las Vegas NV 89102

Project Name Kozmary Center for Pain Management **Proposed Use** Massage - Medical

Assessor's Parcel #(s) 162-05-801-011 **Ward #** _____

General Plan: existing S-C proposed _____ **Zoning:** existing C-1 proposed N/A

Commercial Square Footage 8,860 **Floor Area Ratio** _____

Gross Acres 0.47 **Lots/Units** 1 **Density** _____

Additional Information _____

PROPERTY OWNER La Jolla Plaza II LLC **Contact** Steven Kozmary

Address 2851 El Camino Avenue **Phone:** (702) 567-4810 **Fax:** (702) 380-3212

City Las Vegas **State** NV **Zip** 89102

E-mail Address md@kozmary.com

APPLICANT Steven Kozmary MD **Contact** Steven Kozmary

Address 2851 El Camino Avenue **Phone:** (702) 567-4810 **Fax:** (702) 380-3212

City Las Vegas **State** NV **Zip** 89102

E-mail Address md@kozmary.com

REPRESENTATIVE _____ **Contact** _____

Address _____ **Phone:** _____ **Fax:** _____

City _____ **State** NV **Zip** _____

E-mail Address _____

Property Owner Signature* _____

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name Steven Kozmary

Subscribed and sworn before me

This 30th day of April, 20 10.

_____

Notary Public in and for said County and State

T.J. THERIAULT
Notary Public, State of Nevada
Appointment No. 04-90093-1
My Appt. Expires Dec 1, 2012

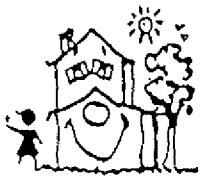
FOR DEPARTMENT USE ONLY

Case #	SUP-38194
Meeting Date:	6/24/10
Total Fee:	1030.00
Date Received:*	5/5/10
Received By:	MREX

*The application will not be deemed complete until the submitted materials have been reviewed by the Planning and Development Department for consistency with applicable sections of the Zoning Ordinance.

Revised 10/27/08

f:\depot\Application Packet\Application Form.pdf



CHARLESTON NEIGHBORHOOD PRESERVATION

"Doing things today that will improve tomorrow"

Phone/Fax: 702-877-2438

TO: Mayor GOODMAN, Mayor Pro-Tem REESE, Councilpersons WOLFSON, TARKANIAN, ROSS, BARLOW, ANTHONY!
FROM: CNP
DATE: FOR July 21, 2010
RE: Selected CLV July 21, 2010 Agenda items

#34—request to Councilpersons Tarkanian and or Wolfson to pull from CONSENT for discussion/response to faxed questionS.

#42—request to ANY Councilperson or Group of to pull from CONSENT for discussion/response to faxed questionS.

#47—request to Councilman Barlow to pull from CONSENT for response to faxed questioN.

#54—Looks to us as though there are too many people with too much time on their hands and even money? Whoever is checking on this RTC must take another look/study on decreasing numbers and checking reality! Please vote NO on this incompetent plan to force an experiment to see whether insurance costs/ injuries, will balance with fuel upon government employees at taxpayer expense.

Regional Transportation Commission must get bus benches for these constituents forced to Sit on Rocks, Curbs, Market baskets, Dirt piles, Leaning on poles, or Standing in cold, heat, dust, rain—what an insult to hear about newer, larger buses with the torture imposed on increased ridership at increased ticket prices to pay for them--elsewhere! {Vegas Dr. to Charleston & Buffalo to Decatur is what we have in mind—but that's not all.}

We have other reality, practical suggestions.

#57—Vote NO on Bill 2010-22 because no satisfactory agreement with neighbors was reached!
Our question regards an unnumbered question on an unnumbered page, between p.14 and p.16 of Daniel Lauber's report to Clark County, NV which is to be filled out by an applicant for one of these group homes. There is a box to be checked "if neither State of Nevada nor Clark County requires a license or certification to operate the proposed community residence."
Are there any such operations in Las Vegas today that will need to have this box checked, provided that this bill passes?
If yes, would they need to fill out this application and have that box checked OR because this bill was not in effect when they applied, would they not be required to fill this page out and have this box checked?
If we don't know, will a check be made and action taken?

#74—EOT-38422—YES, please.

#76—EOT-38524—a mandatory 25 yr extension-YES please.

#92—SDR-37940-a drive through is higher risk for the attendant.

#95—SUP-38194—NO, please to ALL THREE waivers. These are not waivers to a frivolity, these are real people, real living conditions, and a real right-of-way—for a Massage Establishment. Quality of life in this neighborhood will be lessened and current standards will be further lowered if distance to residential is altered

Submitted at City Council
Date 7/21/10 Item 54
Juanita Clark

BOARD & ADVISORY MEMBERS
Dennis Ardine-Vicki Arnold-Dick Bratton-Erna Clark-Juanita Clark-Miriam Een- Danielle Hanslip-Rose Honrath-June Ingram-Rick Johnson-Jolanta Krol-Rod &Betty Larsen- Geno &Pearl Lonardo-Flo Montalvo-Dorothy Orr-Jim Seward-Pamela Stancliffe-Tim Volz-Marcus Gobel-Ginger Norton-Denise Reitz-Layne Rushforth-Jeanine Sweany-Julia Whaun-Jean Withers-Others

CHARLESTON NEIGHBORHOOD
PRESERVATION

"Doing things today that will improve tomorrow"

Phone/Fax: 702-877-2438

to 340 ft., an existing massage is within 638 ft., and the right of way is only 60ft. What kind of reputation would we strengthen?

#98—SUP-38137—NO, please to ALL THREE waivers. Will we break the constituent's trust, if the prize is big "enough"? This clever Financial Institution requests being 140 ft too close to Residential, 180 ft. too close to Another financial institution, AND be 600 sq ft. smaller in area than the required 1,500 sq. ft..

June Ingram
C N P President

June Ingram, PRESIDENT and BOARD
Charleston Neighborhood Preservation

BOARD & ADVISORY MEMBERS
Dennis Ardine-Vicki Arnold-Dick Bratton-Erna Clark-Juanita Clark-Miriam Een- Danielle Hanslip-Rose Honrath-June Ingram-Rick Johnson-Jolanta Krol-Rod &Betty Larsen- Geno &Pearl Lonardo-Flo Montalvo-Dorothy Orr-Jim Seward-Pamela Stancliffe-Tim Volz-Marcus Gobel-Ginger Norton-Denise Reitz-Layne Rushforth-Jeanine Sweany-Julia Whaan-Jean Withers-Others

City of Las Vegas Agenda Item No.: **91.**

AGENDA SUMMARY PAGE - PLANNING & DEVELOPMENT
CITY COUNCIL MEETING OF: AUGUST 18, 2010

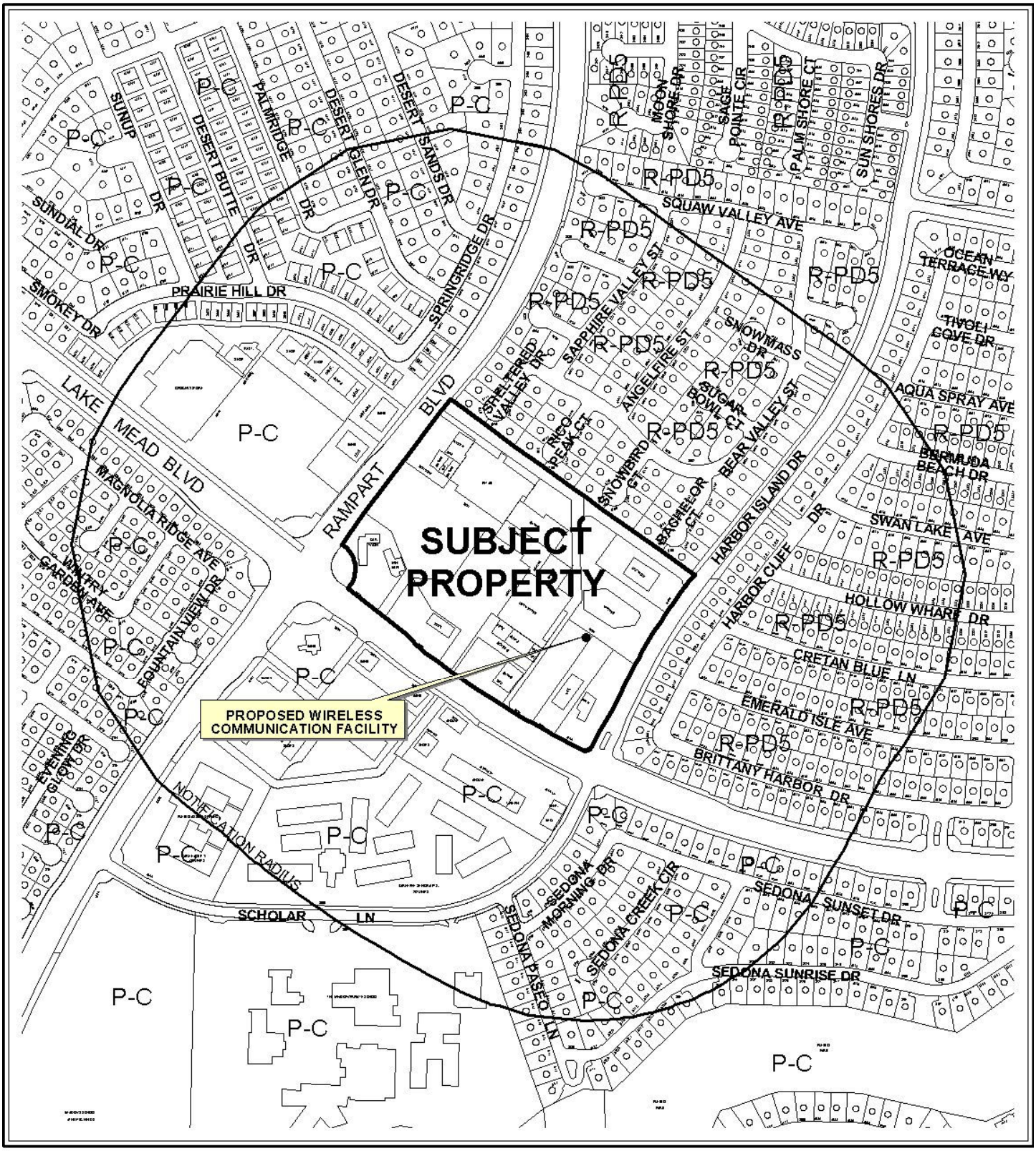
DEPARTMENT: PLANNING & DEVELOPMENT
DIRECTOR: M. MARGO WHEELER ☐ **Consent** ☒ **Discussion**

SUBJECT:
SUP-36142 - ABEYANCE ITEM - SPECIAL USE PERMIT - PUBLIC HEARING - APPLICANT: VERIZON WIRELESS - OWNER: ARIES HOLDINGS, LLC – Appeal filed from the denial by the Planning Commission of a request for a Special Use Permit FOR A PROPOSED 70-FOOT TALL WIRELESS COMMUNICATION FACILITY, STEALTH DESIGN (MONOPALM) at 8430 West Lake Mead Boulevard (APN 138-20-611-006), C-1 (Limited Commercial) Zone, Ward 4 (Anthony). The Planning Commission (5-2 vote) recommends DENIAL. Staff recommends APPROVAL.

PROTESTS RECEIVED BEFORE:		**APPROVALS RECEIVED BEFORE:**	
Planning Commission Mtg.	**47**	**Planning Commission Mtg.**	**3**
City Council Meeting	**64**	**City Council Meeting**	**3**

RECOMMENDATION:
The Planning Commission (5-2 vote) recommends DENIAL. Staff recommends APPROVAL, subject to conditions:

BACKUP DOCUMENTATION:
1. Location, Aerial and Special Maps
2. Conditions and Staff Report
3. Supporting Documentation
4. Photos
5. Justification Letter
6. Appeal memo filed by WFI on behalf of Verizon Wireless
7. Protest Postcards/Petition
8. Abeyance request letter by WFI, representing Verizon Wireless
9. Backup referenced from the November 5, 2009 Planning Commission Meeting Item #47



0 500 1000 Feet

CASE: **SUP-36142**

RADIUS: 1000 FT

ZONING OF SUBJECT PROPERTY: C-1 (LIMITED COMMERCIAL)

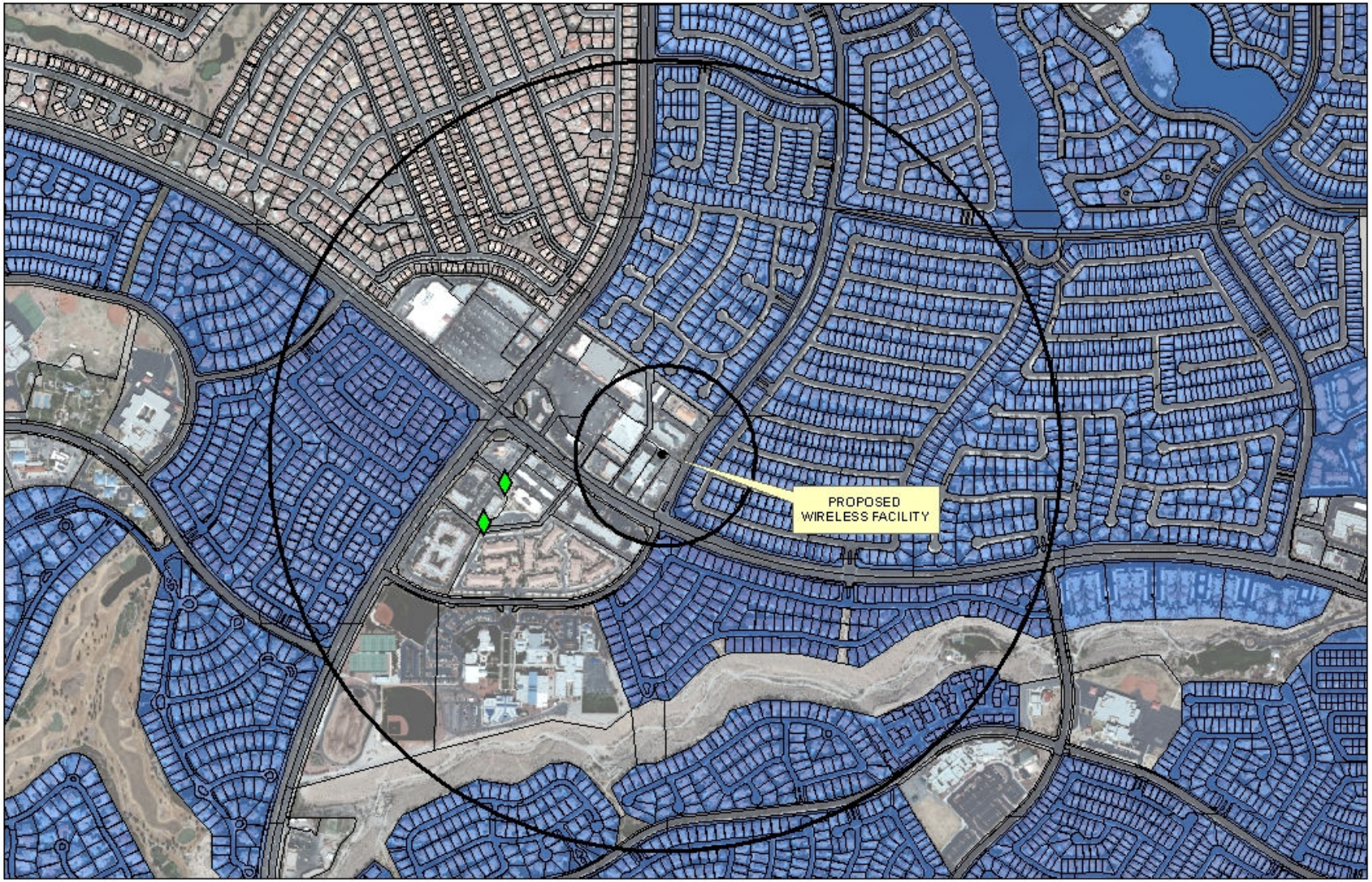
N



CASE: **SUP-36142**

RADIUS: 1000 FT

ZONING OF SUBJECT PROPERTY: C-1 (LIMITED COMMERCIAL)



SUP-36142

Cell Tower Locations

Non-Stealth

Stealth

Subject Cell Tower

Residential Property

600ft &
1/2 mile Buffer

N

0 600 1,200 2,400 Feet

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING OF: AUGUST 18, 2010
DEPARTMENT: PLANNING AND DEVELOPMENT
ITEM DESCRIPTION: SUP-36142 - APPLICANT: VERIZON WIRELESS - OWNER: ARIES HOLDINGS, LLC

THIS ITEM WAS HELD IN ABEYANCE FROM THE MARCH 3, 2010 CITY COUNCIL MEETING AT THE REQUEST OF THE APPLICANT

** CONDITIONS **

The Planning Commission (5-2/ke, bg vote) and staff recommend DENIAL, if approved subject to conditions:

Planning and Development

1. Conformance to all Minimum Requirements under LVMC Title 19.04.010 for a Wireless Communication Facility, Stealth Design use.

2. This approval shall be void two years from the date of final approval, unless a final inspection has been approved for the Wireless Communication Facility. An Extension of Time may be filed for consideration by the City of Las Vegas.

3. The Wireless Communication Facility and its associated equipment and shall be properly maintained and kept free of graffiti at all times. Failure to perform the required maintenance may result in fines and/or removal of the communications cupola and its associated equipment and facility.

4. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

Public Works

5. The proposed wireless communications facility shall not be located within the public right of–way or interfere with Site Visibility Restriction Zones. The proposed ground mounted base shall not be located within existing or proposed public sewer or drainage easements.

SUP-36142 - Staff Report Page One
August 18, 2010 - City Council Meeting

** STAFF REPORT **

PROJECT DESCRIPTION

This is a request for a Special Use Permit for a 70-foot tall Wireless Communication Facility, Stealth Design (Monopalm) at 8430 West Lake Mead Boulevard. The proposed Wireless Communication Facility will be located in the rear of the subject site. The proposed use can be conducted in a manner that is harmonious and compatible with the existing and future surrounding land uses; therefore, staff recommends approval of this request. If the application is denied, the proposed Wireless Communications facility will have to be redesigned or relocated to comply with Title 19.

ISSUES

- The proposed Wireless Communication Facility, Stealth Design (Monopalm) complies with all Title 19.04 Minimum Special Use Requirements for the proposed use

BACKGROUND INFORMATION

Related Relevant City Actions by P&D, Fire, Bldg., etc. and Property Sales	
06/10/87	The City Council approved a request for an Annexation (A-0020-86) of approximately 5,637 acres, generally located on the south side of Cheyenne Avenue, west of Buffalo Drive. The Planning Commission recommended approval of the request.
03/01/89	The City Council approved a request for a Rezoning (Z-0003-89) from N-U (Non-Urban) to R-PD5 (Residential Planned Development – 5 Unit Per Acre) and C-1 (Limited Commercial) for a proposed retail stores, offices, hotel, single-family and multi-family residential uses on property located north of Lake Mead Boulevard between Rampart Boulevard and Buffalo Drive. The Planning Commission recommended approval of the request.
01/25/94	The Board of Zoning and Adjustment approved a request for a Special Use Permit (U-0284-93) to allow a Minor Automotive Service and Repair Facility at 8430 West Lake Mead Boulevard. The approval was appealed by South Shores HOA after consideration of the appeal, the City Council denied the Special Use Permit on 07/06/94.
01/12/98	The City Council Tabled a request for a Special Use Permit (U-0119-97) for a Liquor Establishment (Off-Premise Consumption) on property located on the north side of Lake Mead Boulevard, approximately 850 feet east of Rampart Boulevard. The Planning Commission recommended approval of the request.
09/15/04	The City Council approved a request for a Site Development Plan Review (SDR-4654) for a 8,400 square-foot Office / Retail building and a Waiver from the six-foot foundation landscaping requirement located adjacent to the north side of Lake Mead Boulevard approximately 270 feet west of Harbor Island Drive. The Planning Commission recommended approval of the request.

01/18/06	The City Council approved a request for a Site Development Plan Review (SDR-10097) for a proposed 13,551 square-foot Office building and Waivers of building placement standards; parking lot, perimeter, and foundation landscaping standards; and to allow a 4.5-foot side yard setback where 10 feet is the minimum setback required at 8430 West Lake Mead Boulevard. The Planning Commission recommended approval of the request.
10/02/06	A Code Enforcement case (#46773) was processed for large trailer obstructing the view of west bound traffic. Code Enforcement closed the case on 10/04/06.
09/16/09	The Planning and Development Department denied a request for a Minor Site Development Plan Review (SDR-35452) to remove four (4) antennas currently located on a monument sign and relocate them to a new 70-foot tall Wireless Communication Facility, Stealth Design (Monopalm) located at 8430 West Lake Mead Boulevard.
11/05/09	The Planning Commission voted 5-2/ke, bg to recommend DENIAL (PC Agenda Item #47/jb).
Related Building Permits/Business Licenses	
09/21/06	A building permit (#6006000) was issued for a office building Certificate of Completion at 8430 West Lake Mead Boulevard. This permit was completed on 09/12/07.
	A building permit (#6005999) was issued for On-site Improvements at 8430 West Lake Mead Boulevard. This permit was expired on 03/24/07.
	A building permit (#6006002) was issued for a Trash Enclosure at 8430 West Lake Mead Boulevard. This permit was completed on 08/09/07.
10/04/06	A building permit (#6006255) was issued for water / sewer at 8430 West Lake Mead Boulevard. This permit received a final inspection on 03/13/07.
06/21/07	A building permit (#7002030) was issued for a Sign at 8430 West Lake Mead Boulevard. This permit was expired on 12/22/07.
01/29/08	A building permit (#7002030) was issued for a Wall Sign at 8430 West Lake Mead Boulevard. This permit was expired on 08/02/08.
Pre-Application Meeting	
09/11/09	A pre-application meeting with the applicant was held where elements of submitting a Special Use Permit for a Wireless Communication Facility, Stealth Design were discussed. Topics included: • Title 19 Zoning Code requirements • Application Materials and Documents • Meeting Dates and Deadlines

Neighborhood Meeting
A Neighborhood Meeting is not required for this application, nor was one conducted.

Field Check	
10/01/09	A field check was conducted by staff. A well maintained retail development was observed.

Details of Application Request	
Site Area	
Gross Acres	0.99 Acres

Surrounding Property	Existing Land Use	Planned Land Use	Existing Zoning
Subject Property	Commercial Development	SC (Service Commercial)	C-1 (Limited Commercial)
North	Commercial Development	SC (Service Commercial)	C-1 (Limited Commercial)
South	Commercial Development	VC (Village Center)	P-C (Planned Community)
East	Commercial Development	SC (Service Commercial)	C-1 (Limited Commercial)
West	Commercial Development	SC (Service Commercial)	C-1 (Limited Commercial)

Special Districts/Zones	*Yes*	*No*	*Compliance*
Special Area Plan		X	N/A
Special Districts/Zones	***Yes***	***No***	***Compliance***
Special Purpose and Overlay Districts		X	N/A
Trails		X	N/A
Rural Preservation Overlay District		X	N/A
Development Impact Notification Assessment		X	N/A
Project of Regional Significance		X	N/A

DEVELOPMENT STANDARDS

Pursuant to Title 19.10, the following parking standards apply:

Parking Requirement							
	Gross Floor Area or Number of Units	***Required***			***Provided***		***Compliance***
			Parking		*Parking*		
Use		***Parking Ratio***	Regular	Handi-capped	Regular	Handi-capped	
Office, Other than Listed	11,182 SF	1:300	38	-	48	2	Y
Dental Office	2,366 SF	1:200 < 2,000 SF, plus 1:175 > 2,000 SF	12				
Subtotal	13,548 SF		48	2	48	2	
TOTAL	13,548 SF		50		50		

ANALYSIS

This is a request for a Special Use Permit for a 70-foot, Wireless Communication Facility, Stealth Design (Monopalm) in the rear of the subject site. The proposed location of the Wireless Communication Facility will eliminate a parking space and parking lot island located in the northeast corner of the subject property, reducing the available on-site parking to the minimum 50 parking spaces requirement. The applicant has also proposed to remove four communication antennas currently located within a monument sign at 8420 West Lake Mead Boulevard, and re-locate them to the new 70-foot Wireless Communication Facility (Monopalm). In addition, the applicant is proposing to add five (5) antennas to the proposed facility, bringing the total number of antennas on the new structure to nine (9); three sectors with three antennas each. The proposed design will allow for the existing communication antennas to be moved from their current exposed location to a more concealed design, reducing their profile. The proposed location of the Wireless Communication Facility, Stealth Design (Monopalm) is compatible with the surrounding commercial and single-family residential uses. The proposed use can be conducted in a manner that is harmonious and compatible with the existing and future surrounding land uses; therefore, staff recommends approval of this request.

FINDINGS

The following findings must be made for a Special Use Permit:

1. **"The proposed land use can be conducted in a manner that is harmonious and compatible with existing surrounding land uses, and with future surrounding land uses as projected by the General Plan."**

   The proposed land use can be conducted in a manner that is harmonious and compatible with existing and future surrounding land uses, as projected by the General Plan.

2. **"The subject site is physically suitable for the type and intensity of land use proposed."**

   The subject site is physically suitable for the type and intensity of the land use proposed.

3. **"Street or highway facilities providing access to the property are or will be adequate in size to meet the requirements of the proposed use."**

   Site access is provided from Lake Mead Boulevard, a 100-foot Primary Arterial as designated in the Master Plan of Streets and Highways. This street provides adequate access to and from the subject property.

4. **"Approval of the Special Use Permit at the site in question will not be inconsistent with or compromise the public health, safety, and welfare or the overall objectives of the General Plan."**

   Approval of this special use permit will not compromise public health, safety, or welfare as the proposed Wireless Communication Facility, Stealth Design use will be subject to regular inspections.

5. **The use meets all of the applicable conditions per Title 19.04.**

   The proposed Wireless Communication Facility, Stealth Design use complies with the conditions per Title 19.04.

PLANNING COMMISSION ACTION

There were two speakers in opposition of this project at the Planning Commission Meeting.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 13

NOTICES MAILED 596 (By City Clerk)

APPROVALS 6

PROTESTS 111

PLANNING & DEVELOPMENT DEPARTMENT

STATEMENT OF FINANCIAL INTEREST

Case Number: **SUP-36142** APN: 138-20-611-006

Name of Property Owner: Aries Holdings, LLC

Name of Applicant: Verizon Wireless

Name of Representative: WFI- Melissa Gibson

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ **Yes** ☒ **No**

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____ _____

APN: _____

Signature of Property Owner: _____

Print Name: ANDRE MICHAELIAN

Subscribed and sworn before me

This 17th day of September, 2009

Lisa Ann Chadwell

Notary Public in and for said County and State Clark County, Nevada

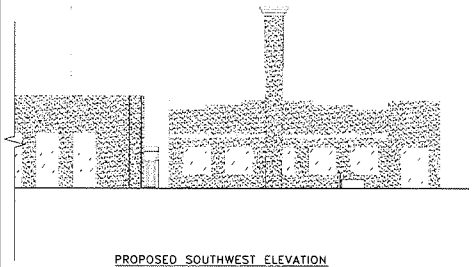
LISA ANNE CHADWELL
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 09-03-2012
Certificate No: 08-8080-1

verizonwireless

LSV RAMPART

8420 & 8430 W. LAKE MEAD BLVD.
ASSESSOR'S PARCEL NO. # 138-20-611-006 & 138-20-611-007

LAS VEGAS, NEVADA 89128
CLARK COUNTY



PROPOSED SOUTHWEST ELEVATION
SCALE: N.T.S.

70'-0" MONOPALM
ANTENNA RELOCATION

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SHEET INDEX

SHT	TITLE	REV
T1	TITLE SHEET	0
SP1	SPECIFICATION & PHOTO SHEET	0
SV1	AS-BUILT SURVEY	A
SV2	AS-BUILT SURVEY	A
Z1	SITE PLAN	0
Z2	VERIZON WIRELESS SITE PLANS	0
Z3	ELEVATIONS	0
Z4	CUT SHEETS	0

PROJECT INDEX:

APPLICANT:
VERIZON WIRELESS
475 ROCK QUARRY WAY
NORTH LAS VEGAS, NV 89032

CONTACT: JIM JOHNSON
PHONE: 702-638-5320

ENGINEERS/DESIGNERS:
TOWERCOM TECHNOLOGIES LLC
767 NORTH STAR RD.
STAR, ID 83669

CONTACT: JASON DICKMAN, PE,SE
PHONE: 208-286-0266

SURVEYOR:
PIONEER SURVEYS
808 SOUTH 7TH STREET
LAS VEGAS, NEVADA 89101

CONTACT: ROBERT HARRISON
PHONE: 702-212-4016

ZONING/SITE AQ:
WFI INC.
7030 SMOKE RANCH RD
LAS VEGAS, NV 89128

CONTACT: MELISSA GIBSON
SITE ACQUISITION SPECIALIST
PHONE: 702-202-3596
FAX: 702-586-3685
CELL: 702-338-2299

GENERAL PROJECT NOTES:

1. PRIOR TO SUBMITTING A BID, THE CONTRACTOR SHALL FAMILIARIZE HIMSELF/HERSELF WITH THE SCOPE OF WORK AND ALL CONDITIONS AFFECTING THE NEW PROJECT.
2. CONTRACTOR SHALL VERIFY ALL FIELD CONDITIONS AND DIMENSIONS OF THE JOB SITE AND CONFIRM THAT WORK AS INDICATED ON THESE CONSTRUCTION DOCUMENTS CAN BE ACCOMPLISHED AS SHOWN PRIOR TO COMMENCEMENT OF ANY WORK.
3. ALL FIELD MODIFICATIONS BEFORE, DURING, OR AFTER CONSTRUCTION SHALL BE APPROVED IN WRITING BY A VERIZON WIRELESS REPRESENTATIVE.
4. INSTALL ALL EQUIPMENT AND MATERIALS PER THE MANUFACTURER'S RECOMMENDATIONS, UNLESS INDICATED OTHERWISE.
5. NOTIFY VERIZON WIRELESS, IN WRITING, OF ANY MAJOR DISCREPANCIES REGARDING THE CONTRACT DOCUMENTS, EXISTING CONDITIONS, AND DESIGN INTENT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING CLARIFICATIONS FROM A VERIZON WIRELESS REPRESENTATIVE AND ADJUSTING THE BID ACCORDINGLY.
6. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR ALL CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES, AND PROCEDURES OF THE WORK UNDER THE CONTRACT.
7. CONTRACTOR SHALL PROTECT ALL EXISTING IMPROVEMENTS AND FINISHES THAT ARE TO REMAIN. CONTRACTOR SHALL REPAIR ANY DAMAGE THAT MAY OCCUR DURING THE CONSTRUCTION TO THE SATISFACTION OF A VERIZON WIRELESS REPRESENTATIVE.
8. THE CONTRACTOR IS RESPONSIBLE FOR RED-LINING THE CONSTRUCTION PLANS TO ILLUSTRATE THE AS BUILT CONDITION OF THE SITE FOLLOWING THE FINAL INSPECTION BY VERIZON WIRELESS. THE CONTRACTOR SHALL PROVIDE VERIZON WIRELESS WITH ONE COPY OF ALL RED-LINED DRAWINGS.
9. VERIFY ALL FINAL EQUIPMENT WITH A VERIZON WIRELESS REPRESENTATIVE. ALL EQUIPMENT LAYOUT, SPECS, PERFORMANCE INSTALLATION AND THEIR FINAL LOCATION ARE TO BE APPROVED BY VERIZON WIRELESS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATING HIS/HER WORK WITH THE WORK AND CLEARANCES REQUIRED BY OTHERS RELATED TO SAID INSTALLATIONS.

BUILDING CODE ANALYSIS (2006 INTERNATIONAL BUILDING CODE):

PROPERTY OWNER:	ARIES HOLDING LLC 413 CANYON GREENS DR LAS VEGAS, NV 89144	E & P PARTNERSHIP 8420 W. LAKE MEAD BLVD LAS VEGAS, NV 89128
ASSESSOR'S PARCEL NO:	138-20-611-006	138-20-611-007
JURISDICTION:	CITY OF LAS VEGAS (PHONE #: (702) 229-5447), DEVELOPMENT SERVICES CENTER 731 SOUTH FOURTH STREET LAS VEGAS, NV 89101	CITY OF LAS VEGAS (PHONE # (702) 229-5447), DEVELOPMENT SERVICES CENTER 731 SOUTH FOURTH STREET LAS VEGAS, NV 89101
OCCUPANCY CLASSIFICATION:	U - UTILITY & MISC (UNOCCUPIED)	
TYPE OF CONSTRUCTION:	TYPE V-A	

ITEM:	REQUIRED/ALLOWED:	PROVIDED:	COMPLIANCE:
FIRE SPRINKLERS:	NO	NO	YES
FIRE ALARM:	NO	YES, ALARMED BACK TO MARKEY SWITCH FACILITY	YES
BUILDING HEIGHT:	UP TO 50'	N/A	YES
BUILDING STORIES:	2	N/A	YES
BUILDING AREA:	UP TO 9,000 SQ FT	N/A	YES
OCCUPANT LOAD:	N/A	N/A	YES
NUMBER OF EXITS:	1	N/A	YES
FIRE RESISTANCE OF EXTERIOR WALLS:	1 HOUR	N/A	YES
FIRE RESISTANCE RATING OF BUILDING ELEMENTS:	1 HOUR	N/A	YES
PROTECTION OF OPENINGS:	N/A	N/A	YES
NON-SEPARATED OR SEPARATED USES	N/A	N/A	YES
ROOF COVERING MATERIAL:	CLASS B	N/A	YES
PLUMBING FIXTURES:	NONE	N/A	YES
SPECIAL INSPECTIONS:	N/A	N/A	YES

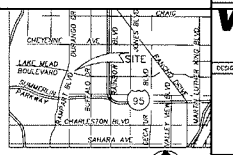
FCC COMPLIANCE:
RADIATION FROM THIS FACILITY WILL NOT INTERFERE WITH OPERATION OF OTHER COMMUNICATION DEVICES.

ADA COMPLIANCE:
THIS FACILITY IS UNMANNED AND NOT FOR HUMAN HABITATION. LANDINGS AND EXITS SHALL COMPLY WITH ALL APPLICABLE BUILDING CODES.

ABBREVIATED LEGAL DESCRIPTION:
BEING A PORTION OF LOT 1 AS SHOWN IN BOOK 57, PAGE 19 OF PLATS IN THE CLARK COUNTY, NEVADA RECORDER'S OFFICE, CLARK COUNTY, NEVADA

PROJECT DESCRIPTION:
THIS PROJECT CONSISTS OF THE INSTALLATION OF ONE (1) PROPOSED 70'-0" MONOPALM, AND THE RELOCATION OF THE EXISTING PANEL ANTENNAS FROM EXISTING SIGN.

DRIVING DIRECTIONS:
START: MCCARRAN INTERNATIONAL AIRPORT, NV; DEPART FROM MCCARRAN INTERNATIONAL AIRPORT, NV 0.4 MI; TAKE RAMP LEFT TOWARD ALL TERMINALS / PARKING 0.2 MI; KEEP LEFT TOWARD S SWENSON ST 0.4 MI; BEAR LEFT ONTO S SWENSON ST 0.6 MI; TURN LEFT ONTO SR-593 / E TROPICANA AVE 1.9 MI; TAKE RAMP RIGHT AND FOLLOW SIGNS FOR I-15 NORTH 5.0 MI; AT EXIT 42A, TAKE RAMP RIGHT FOR US-95 / LAS VEGAS EXPY NORTH TOWARD RENO 6.8 MI; AT EXIT 82B, TAKE RAMP RIGHT FOR W LAKE MEAD BLVD TOWARD LAKE MEAD WEST 2.3 MI; ARRIVE AT 8420 W LAKE MEAD BLVD THE LAST INTERSECTION IS SCHOLAR LN IF YOU REACH N RAMPART BLVD, YOU'VE GONE TOO FAR.



VICINITY MAP
SCALE: N.T.S.
NORTH

verizonwireless
475 ROCK QUARRY WAY
NORTH LAS VEGAS, NV 89032

TowerCom TECHNOLOGIES
ALBUQUERQUE, NEW MEXICO / STAR, IDAHO / EL PASO, TEXAS / LAS VEGAS, NEVADA
TEL: 208-286-0266

PROJECT NAME:
LSV RAMPART
70'-0" MONOPALM
ANTENNA RELOCATION

PROJECT ADDRESS:
8420 & 8430 W. LAKE MEAD BLVD.
LAS VEGAS, NEVADA 89128
CLARK COUNTY

SHEET TITLE:
TITLE SHEET

REV	DESCRIPTION	DATE	BY	CHK
0	APPROVED FOR LEASING/ZONING	07/27/09	DWV	WLR

SAVE DATE: 8/4/2009 11:34 AM
SHEET NUMBER: T1

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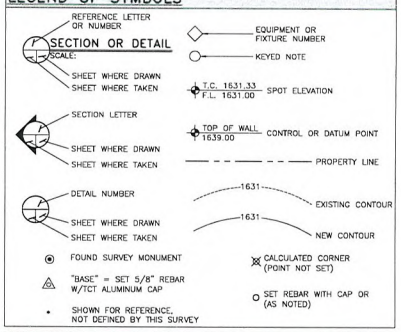
11/05/09 PC

LEGEND OF SYMBOLS



SYMBOLS USED AS ABBREVIATIONS:

∠ L	ANGLE	⊥	PERPENDICULAR
℄	CENTERLINE	ø	ROUND/DIAMETER
[c	CHANNEL	□	SQUARE
d	PENNY	~	APPROXIMATELY

IBC 2006 STRUCTURAL DESIGN CRITERIA:

1. ALL LOADS DERIVED FROM REQUIREMENTS OF INTERNATIONAL BUILDING CODE 2006 (IBC 2006) AND MINIMUM DESIGN LOADS FOR BUILDINGS AND OTHER STRUCTURES (ASCE 7)
2. ROOF LIVE LOADS: SECTION 1607.11.2 APPLIES
   $L_r = 20R_1R_2$
   $R_1 = 1.0$ ($A_t \leq 200FT^2$)
   $R_2 = 1.0$ ($F \geq 4$)
3. WIND LOADS: SECTION 1609 AND ASCE 7 SECTION 6.4.1 APPLIES
   EXP C, $V_{3S} = 90MPH$
   TOPO CLASS I, BUILDING CLASS II
   HEIGHT & EXPOSURE COEF. = 1.0
   IMPORTANCE FACTOR = 1.0
4. SEISMIC LOADS: SECTION 1613.5.6.2 AND ASCE 7 SECTION 9.5.4 APPLIES
   "SIMPLIFIED ANALYSIS PROCEDURE"
   ASCE 7 SECTION 9.5.2.5.1 SATISFIED.

   SEISMIC USE GROUP I, SITE CLASS D

   $V = \frac{1.2S_{DS}W}{R}$

   F_A = SITE COEF. = 1.4
   S_1 = SPECTRAL ACCELERATION = 0.5
   $S_{MS} = F_A S_1 = 0.70$
   $S_{DS} = (2/3)\ S_{MS} = 0.467$

GENERAL PROJECT NOTES:

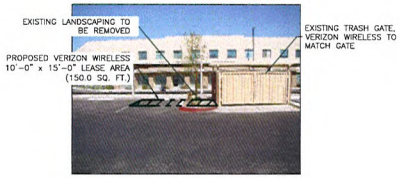
1. CONTRACTOR IS RESPONSIBLE FOR ERECTING TEMPORARY BARRICADES AND/OR FENCING TO PROTECT THE SAFETY OF THE PUBLIC DURING CONSTRUCTION. THE CONTRACTOR SHALL REMOVE ALL TEMPORARY BARRIERS AND REPAIR ALL DAMAGE TO PROPERTY ON THE SITE CAUSED BY THIS CONSTRUCTION. THE COST OF REPAIR IS THE CONTRACTORS RESPONSIBILITY
2. ALL WORK SHALL BE IN ACCORDANCE WITH APPLICABLE LOCAL, STATE, AND FEDERAL REQUIREMENTS.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFICATION OF ALL MEASUREMENTS AT THE SITE PRIOR TO ORDERING ANY MATERIALS OR CONDUCTING ANY WORK.
4. EXCESS SOIL, MATERIAL AND DEBRIS CAUSED BY THIS CONSTRUCTION SHALL BY REMOVED FROM THE SITE AND DISPOSED OF IN A LEGAL MANNER.
5. CONTRACTOR SHALL MAKE ADJUSTMENTS TO GRADING ELEVATIONS AS NECESSARY TO INSURE A SITE FREE OF DRAINAGE PROBLEMS.
6. CONTRACTOR SHALL COORDINATE A CONSTRUCTION LAYDOWN AREA WITH THE PROPERTY OWNER. CONSTRUCTION LAYDOWN AREA SHALL BE FENCED IN WITH TEMPORARY (45 DAY) CONSTRUCTION FENCE, 6' HIGH CHAIN LINK FABRIC. THE TEMPORARY FENCE SHALL BE REMOVED AT THE END OF CONSTRUCTION AND THE LAYDOWN AREA RESTORED TO ITS ORIGINAL CONDITION.
7. SURVEY INFORMATION SHOWN WAS CREATED FROM RECORD INFORMATION AND DOES NOT CONSTITUTE A LEGAL BOUNDARY SURVEY.



VIEW OF PROPOSED CABLE TRAY & CONDUIT ROUTE
(LOOKING NORTHEAST)



VIEW OF PROPOSED CONDUIT ROUTE
(LOOKING NORTHEAST)



VIEW OF PROPOSED VZW LEASE AREA
(LOOKING NORTHEAST)



VIEW OF EXISTING VZW EQUIPMENT VAULT
(LOOKING NORTHEAST)

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DESIGNED FOR:
verizonwireless
475 ROCK QUARRY WAY
NORTH LAS VEGAS, NV 89032

DESIGNED BY:
TowerCom TECHNOLOGIES
ALBUQUERQUE, NEW MEXICO / STAR, IDAHO / EL PASO, TEXAS / LAS VEGAS, NEVADA
Tel: 208-286-0266

PROJECT NAME:
LSV RAMPART
70'-0" MONOPALM
ANTENNA RELOCATION

PROJECT ADDRESS:
8420 & 8430 W. LAKE MEAD BLVD.
LAS VEGAS, NEVADA 89128
CLARK COUNTY

SHEET TITLE:
SPECIFICATION & PHOTO SHEET

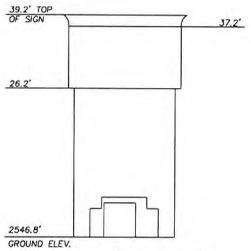
REV	DESCRIPTION	DATE	BY	CHK
0	APPROVED FOR LEASING/ZONING	07/27/09	DWV	WLR

SAVE DATE: 8/4/2009 11:34 AM
SHEET NUMBER: SP1



GRAPHIC SCALE





EXISTING SIGN ELEVATION

SCALE: 1" = 10'

NOTES/LEGAL

1. A TOPOGRAPHICAL & BOUNDARY SURVEY WAS PERFORMED ON APRIL 14, 2009.

2. NO PRELIMINARY TITLE REPORT, ABSTRACT OF TITLE, TITLE COMMITMENT, OR RESULTS OF TITLE SEARCHES WERE PROVIDED TO THE SURVEYOR. THIS SURVEY IS BASED ON RECORD INFORMATION SURROUNDING SUBJECT PARCEL. OTHER DOCUMENTS MAY EXIST THAT WOULD AFFECT THIS PARCEL. PIONEER SURVEYS ASSUMES NO RESPONSIBILITY OR LIABILITY FOR UNDISCLOSED MATTERS.

3. THIS "AS BUILT SURVEY" IS BASED ON AN ACTUAL FIELD SURVEY PERFORMED BY ME OR UNDER MY DIRECTION. IT CORRECTLY DEPICTS EXISTING, READILY VISIBLE IMPROVEMENTS AND ABOVE GROUND UTILITIES AND THE BOUNDARY OF THE PARENT PARCEL WAS VERIFIED FROM FIELD AND RECORD INFORMATION. THIS "AS BUILT SURVEY" IS NOT A BOUNDARY SURVEY OF THE PARENT PARCEL AND THIS SURVEY WAS DEVELOPED TO SUPPORT THE COMMUNICATIONS FACILITY NAMED HEREON.

4. EXISTING LEASE AREA IS UNDEFINED.

LEGAL

BEING A PORTION OF LOT 1 AS SHOWN IN BOOK 51, PAGE 19 OF PLATS IN THE CLARK COUNTY, NEVADA RECORDER'S OFFICE, CLARK COUNTY, NEVADA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LANDS AS DESCRIBED IN A GRANT, BARGAIN, AND SALE DEED RECORDED MARCH 18, 2005 AS DOCUMENT No. 20050318, INSTRUMENT No. 03297 OF OFFICIAL RECORDS ON FILE IN THE CLARK COUNTY, NEVADA RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

IN ADDITION THOSE LANDS AS DESCRIBED IN A GRANT, BARGAIN, AND SALE DEED RECORDED MARCH 9, 1995 AS DOCUMENT No. 950309, INSTRUMENT No. 00380 OF OFFICIAL RECORDS ON FILE IN THE CLARK COUNTY, NEVADA RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

LEGEND

STREET CENTERLINE	
PROPERTY LINE	
ADJOINING PROPERTY LINE	
EXISTING CURB LINE	
EXISTING RIGHT-OF-WAY	
WALL	
BUILDING	
EDGE OF ASPHALT	
RIGHT-OF-WAY	R.O.W.
EXISTING (ABBREVIATION)	(E)
FOUND MONUMENT AS INDICATED	
BOLLARD	
FIRE RISER	
AREA LIGHT	
LANDSCAPE TREE	

BENCHMARK

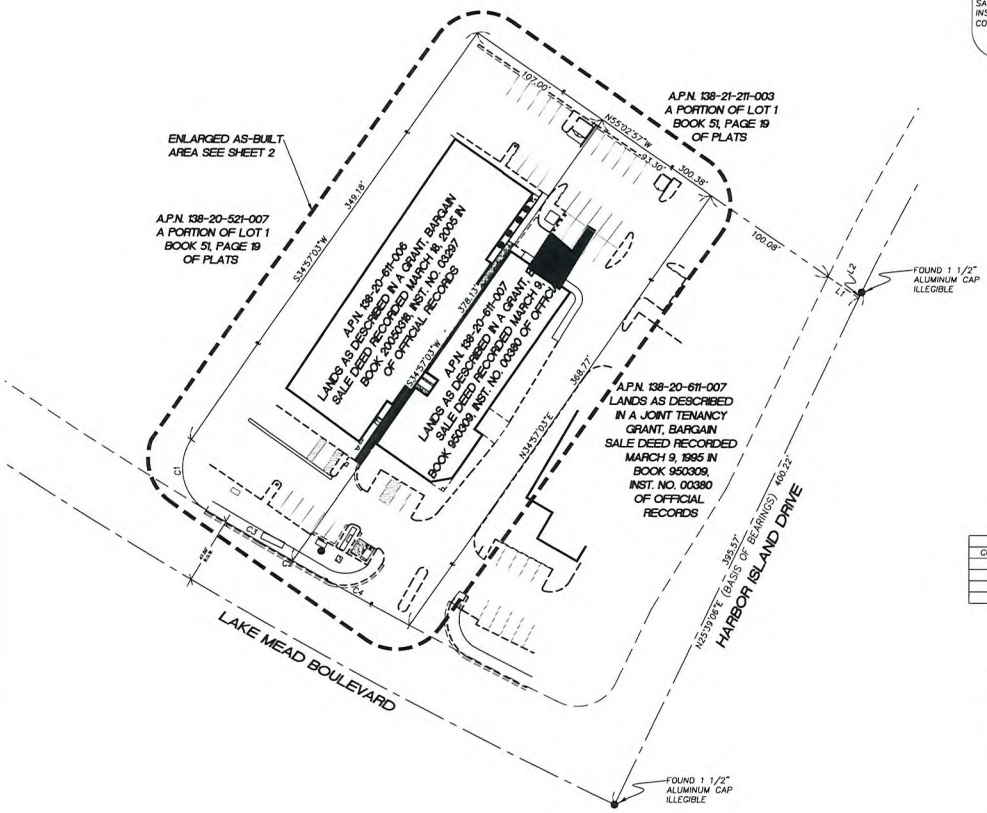
CITY OF LAS VEGAS VERTICAL CONTROL No. OLV0020NE6

BEING A RIVET AND PLATE IN TOP OF CURB AT NORTHWEST CORNER OF LAKE MEAD BOULEVARD AND RAMPART BOULEVARD.

ELEVATION – 779.6882 (METERS) / 2558.03 (U.S. SURVEY FEET)
NORTH AMERICAN VERTICAL DATUM OF 1988

BASIS OF BEARINGS

NORTH 25°39'06" EAST, BEING THE CENTERLINE (TANGENT PORTION) OF HARBOR ISLAND DRIVE LYING NORTHERLY OF LAKE MEAD BOULEVARD AS SHOWN ON THE FINAL MAP OF "SOUTH SHORES CENTER" PLAT BOOK 51, PAGE 19 OF OFFICIAL RECORDS ON FILE IN THE CLARK COUNTY, NEVADA RECORDER'S OFFICE.



SITE SURVEY

SCALE: 1" = 40'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N55°02'57"W	26.35'
L2	N25°39'06"E	4.65'

CURVE TABLE				
CURVE	DELTA	RADIUS	LENGTH	TANGENT
C1	9°55'11"	34.50	56.55'	36.94
C2	2°31'59"	3712.50	164.13'	82.08
C3	1°05'09"	3712.50	70.35'	35.18
C4	1°26'50"	3712.50	93.77'	46.89

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VICINITY MAP

NOT TO SCALE

PIONEER SURVEYS
808 SOUTH 7TH STREET
LAS VEGAS, NEVADA 89101
TEL: (702) 212-4016 FAX: (702) 212-4013

TowerCom Technologies, LLC
4520 Montgomery Blvd. NE
Suite 5
Albuquerque, NM 87109

ISSUED FOR: SURVEY
CURRENT ISSUE DATE: 04/16/09
SCALE: 1" = 40'
JOB NO.: 326LSVRMPART
DWG: 326LSVRAMPRTSRV.DWG
DRAWN BY: NSH / REH

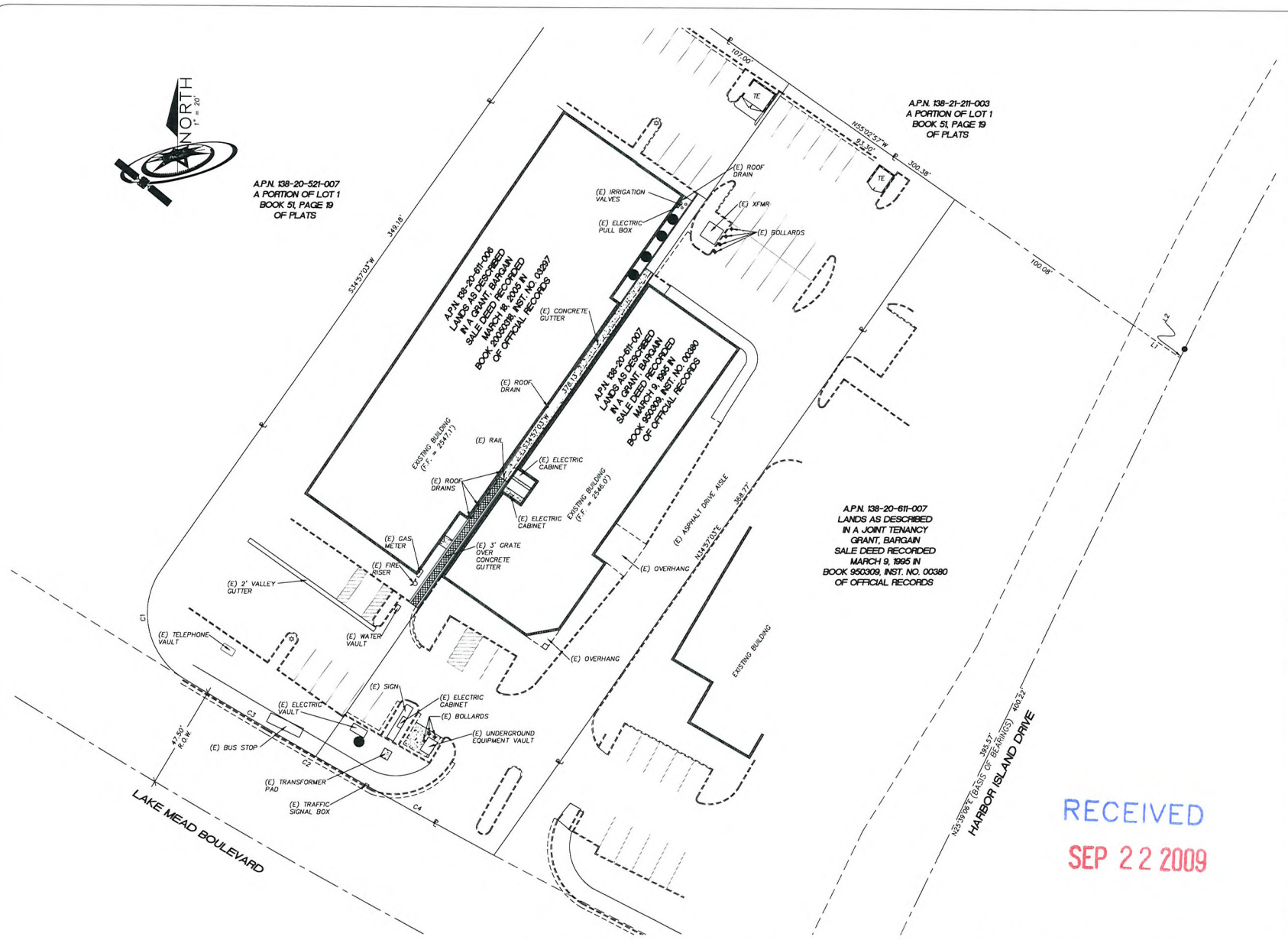
REV. #	DESCRIPTION	DATE

AS-BUILT SURVEY
VERIZON WIRELESS SITE
"LSV RAMPART"
A.P.N. 138-20-611-007
8420 W. LAKE MEAD BLVD
LAS VEGAS, NV 89128

SHEET TITLE: AS-BUILT SURVEY

SHEET NUMBER: SV-1

SHEET 1 OF 2



ENLARGED AS-BUILT AREA
SCALE: 1" = 20'

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PIONEER SURVEYS
808 SOUTH 7TH STREET
LAS VEGAS, NEVADA 89101
TEL: (702) 212-4016 FAX: (702) 212-4013

TowerCom Technologies, LLC
4520 Montgomery Blvd. NE
Suite 1
Albuquerque, NM 87109

ISSUED FOR: SURVEY
CURRENT ISSUE DATE: 04/16/09

SCALE:	1" = 20'
JOB NO.:	326LSV/RMPRT
DWG:	326LSVRMPRTSRV.DWG
DRAWN BY:	NBH /TEH

REV. #	DESCRIPTION	DATE

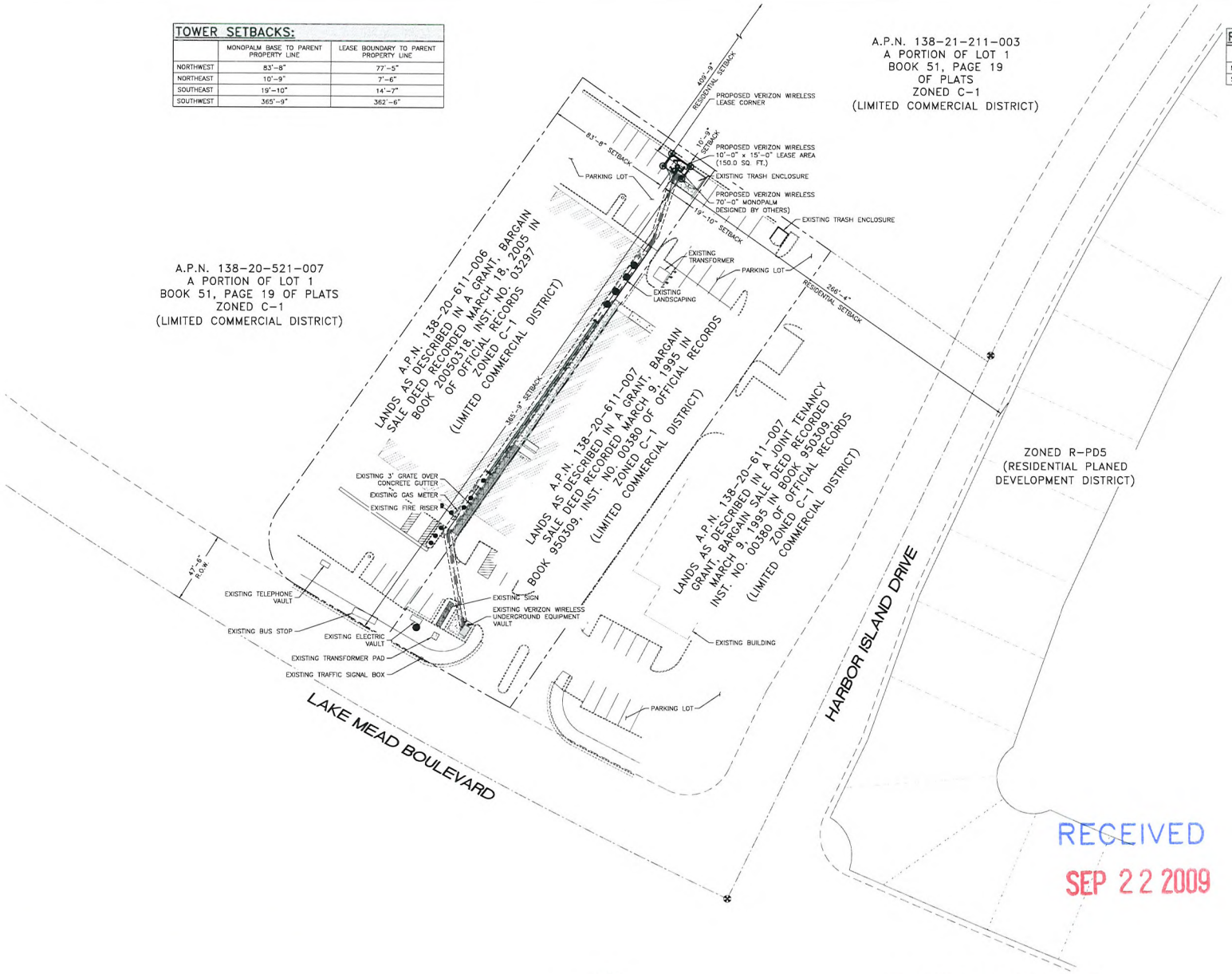
AS-BUILT SURVEY
VERIZON WIRELESS SITE
"LSV RAMPART"
A.P.N. 138-20-611-007
8420 W. LAKE MEAD BLVD
LAS VEGAS, NV 89128

SHEET TITLE: AS-BUILT SURVEY

SHEET NUMBER: SV-2
SHEET 2 OF 2

TOWER SETBACKS:		
	MONOPALM BASE TO PARENT PROPERTY LINE	LEASE BOUNDARY TO PARENT PROPERTY LINE
NORTHWEST	83'-8"	77'-5"
NORTHEAST	10'-9"	7'-6"
SOUTHEAST	19'-10"	14'-7"
SOUTHWEST	365'-9"	362'-6"

RESIDENTIAL SETBACKS:	
BEARING	MONOPALM BASE TO RESIDENTIAL PROPERTY LINE
NORTHEAST	409'-9"
SOUTHEAST	266'-4"



SITE PLAN
SCALE: 1" = 30'
NORTH

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LAS VEGAS, NEVADA 89128
CLARK COUNTY

SHEET TITLE:
SITE PLAN

REV	DESCRIPTION	DATE	BY	CHK
0	APPROVED FOR LEASING/ZONING	07/27/09	DWV	WLR

SAVE DATE: 8/4/2009 11:34 AM
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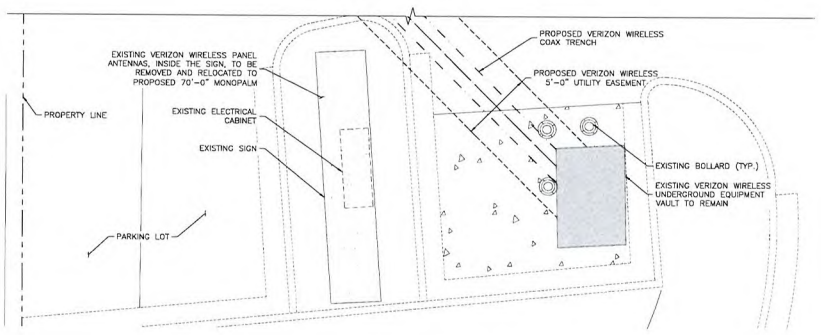
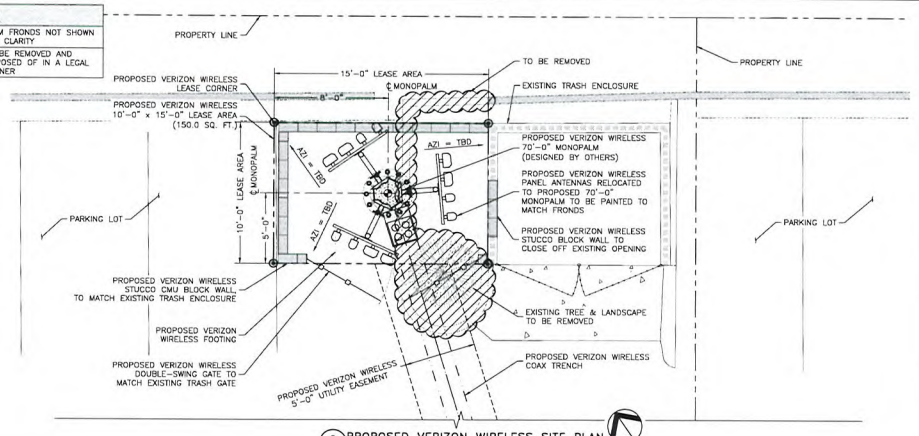


1 Z2/Z2 EXISTING VERIZON WIRELESS SITE PLAN
SCALE: 1/4" = 1'-0"

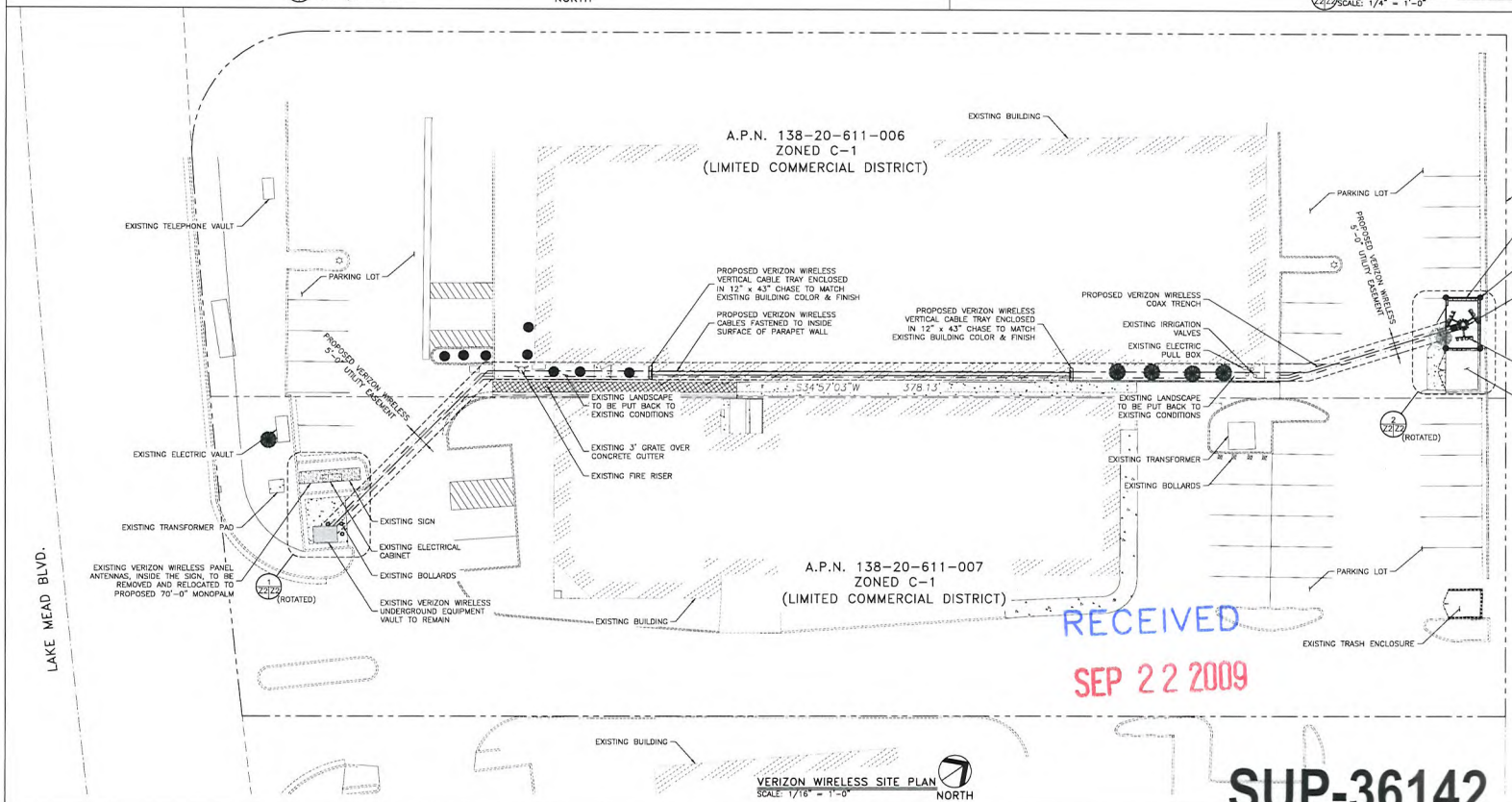
NORTH

NOTE:	
1	PALM FRONDS NOT SHOWN FOR CLARITY
	TO BE REMOVED AND DISPOSED OF IN A LEGAL MANNER



2 Z2/Z2 PROPOSED VERIZON WIRELESS SITE PLAN
SCALE: 1/4" = 1'-0"

NORTH



VERIZON WIRELESS SITE PLAN
SCALE: 1/16" = 1'-0"

NORTH

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70'-0" MONOPALM
ANTENNA RELOCATION

PROJECT ADDRESS:
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LAS VEGAS, NEVADA 89128
CLARK COUNTY

SHEET TITLE:
VERIZON WIRELESS SITE PLANS

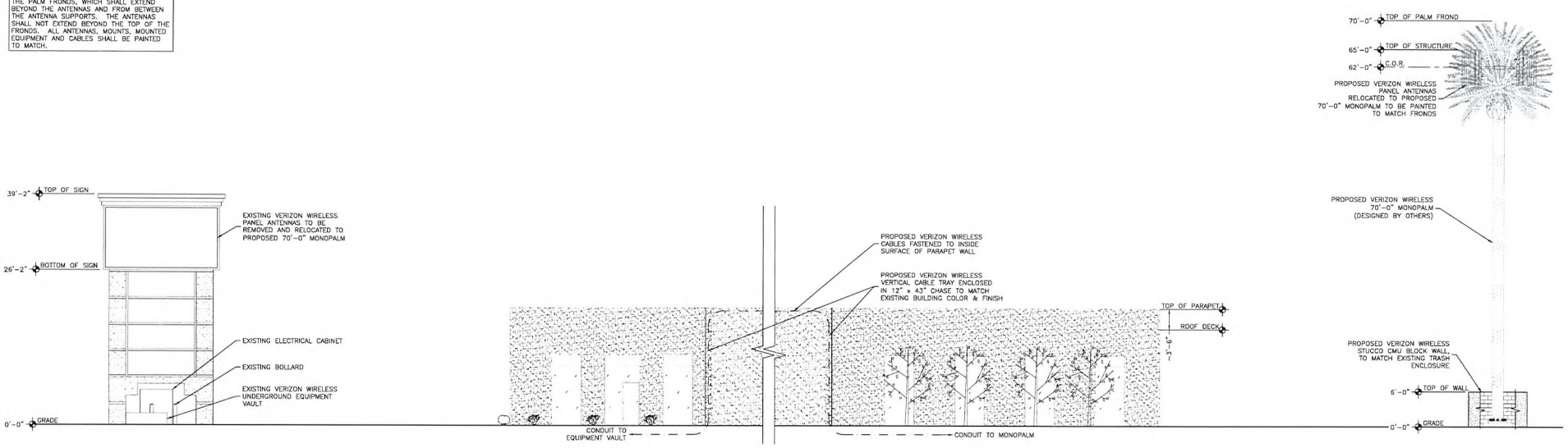
REV	DESCRIPTION	DATE	BY	CHK
0	APPROVED FOR LEASING/ZONING	07/27/09	DWV	WLR

SAVE DATE: 8/4/2009 11:34 AM
SHEET NUMBER: Z2

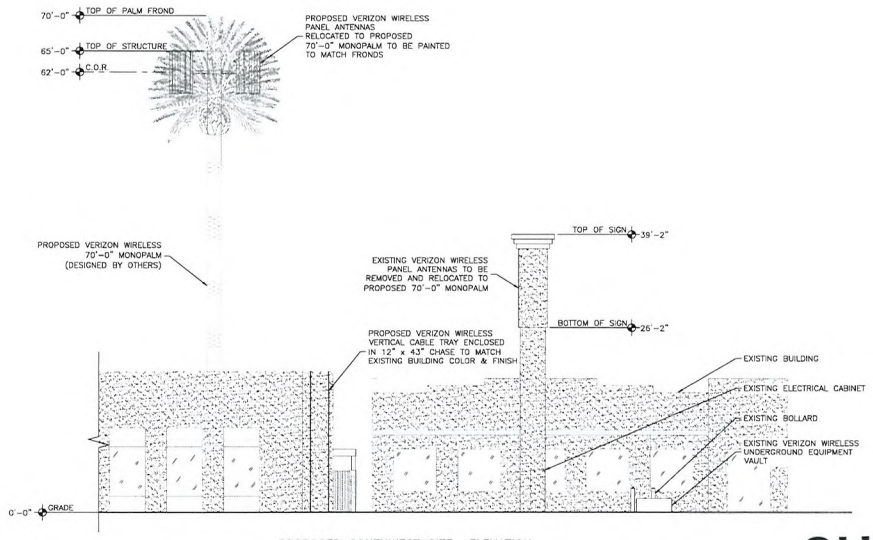
SUP-36142
11/05/09 PC

VISUAL NOTE:

THE ANTENNAS ARE TO BE CONCEALED BY THE PALM FRONDS, WHICH SHALL EXTEND BEYOND THE ANTENNAS AND FROM BETWEEN THE ANTENNA SUPPORTS. THE ANTENNAS SHALL NOT EXTEND BEYOND THE TOP OF THE FRONDS. ALL ANTENNAS, MOUNTS, MOUNTED EQUIPMENT AND CABLES SHALL BE PAINTED TO MATCH.



PROPOSED SOUTHEAST SITE ELEVATION
SCALE: 1/8" = 1'-0"



PROPOSED SOUTHWEST SITE ELEVATION
SCALE: 1/8" = 1'-0"

APPROVED FOR LEASING/ZONING

RECEIVED
SEP 22 2009

SUP-36142
11/05/09 PC

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DESIGNED FOR:
verizonwireless
475 ROCK QUARRY WAY
NORTH LAS VEGAS, NV 89032

DESIGNED BY:
TowerCom TECHNOLOGIES
ALBUQUERQUE, NEW MEXICO / STAR, IDAHO / EL PASO, TEXAS / LAS VEGAS, NEVADA
Tel: 208-286-0266

PROJECT NAME:
LSV RAMPART
70'-0" MONOPALM
ANTENNA RELOCATION

PROJECT ADDRESS:
8420 & 8430 W. LAKE MEAD BLVD.
LAS VEGAS, NEVADA 89128
CLARK COUNTY

SHEET TITLE:
ELEVATIONS

REV	DESCRIPTION	DATE	BY	CHK
0	APPROVED FOR LEASING/ZONING	07/27/09	DWV	WLR

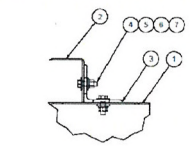
SAVE DATE: 8/4/2009 11:34 AM
SHEET NUMBER: Z3

Parts List

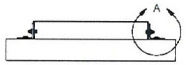
ITEM	QTY	PART NUMBER	DESCRIPTION
1	3	CS5004	PVC ROOF SLEEPER, 8 RUN
2	1	CS5021 01	8 RUN COAX BRIDGE COVER
3	6	CS5020 02	CLIP ANGLE
4	12	GB03125	3/8" X 1 1/4" GALV BOLT
5	12	GN03	3/8" GALV NUT
6	12	GL03	3/8" GALV LOCK WASHER
7	24	GF03	3/8" GALV FLAT WASHER

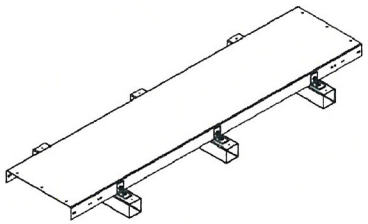
REVISIONS

REV	BY	DATE	DESCRIPTION



DETAIL A





COMPANY CONFIDENTIAL

ROOFTOP COAX BRIDGE KIT, 8 RUN

SPECIALTY MANUFACTURING L.L.C.
5601 SAN FRANCISCO RD NE
ALBUQUERQUE, NM 87109
505.623.1632

CS5021

WLJ		02-12-04	A
EF		02-23-04	
1 OF 1		NO SCALE	111

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DESIGNED FOR:

verizonwireless
475 ROCK QUARRY WAY
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DESIGNED BY:

TowerCom TECHNOLOGIES
ALBUQUERQUE, NEW MEXICO / STAR, IDAHO / EL PASO, TEXAS / LAS VEGAS NEVADA
Tel: 208-286-0266

PROJECT NAME:

LSV RAMPART
70'-0" MONOPALM
ANTENNA RELOCATION

PROJECT ADDRESS:

8420 & 8430 W. LAKE MEAD BLVD.
LAS VEGAS, NEVADA 89128
CLARK COUNTY

SHEET TITLE:

CUT SHEETS

REV	DESCRIPTION	DATE	BY	CHK
0	APPROVED FOR LEASING/ZONING	07/27/09	DWV	WLR

SAVE DATE: 8/4/2009 11:34 AM

SHEET NUMBER: Z4

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SUP-36142
11/05/09 PC

February 24, 2009

Photosimulation of view of the equipment area looking east from the parking lot.

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This photosimulation is based upon information provided by the project applicant. Questions or comments? call 1-877-799-3210 or visit www.photosim.com

Previsualists

February 24, 2009

Photosimulation of view looking northwest from the nearest point along Harbor Island Drive.

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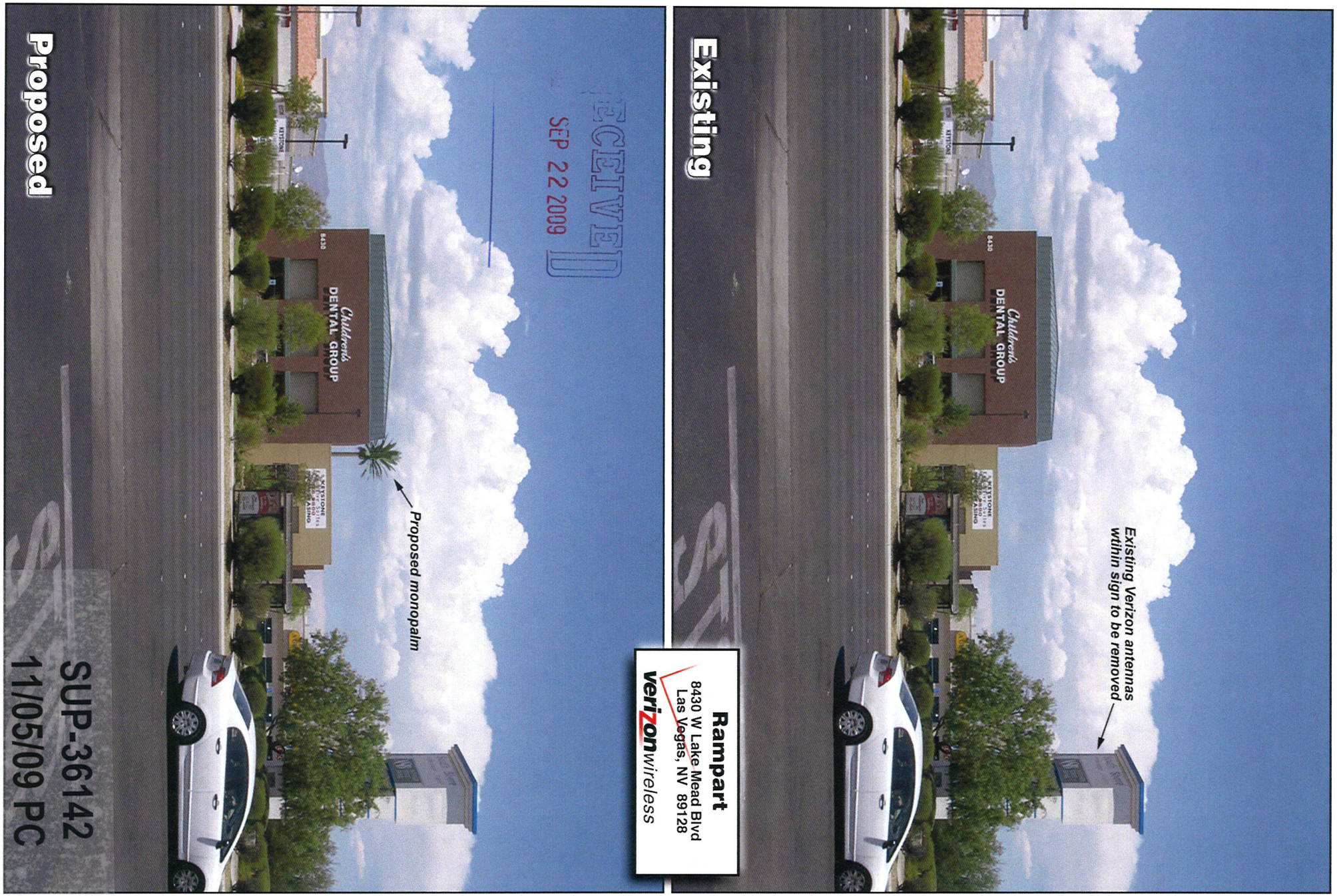
Previsualists

July 30, 2009

Photosimulation of view looking northeast from directly across W Lake Mead Blvd.



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SUP-36142 - APPLICANT: VERIZON WIRELESS - OWNER: ARIES HOLDINGS, LLC
8430 WEST LAKE MEAD BOULEVARD
NOVEMBER 5, 2009 PLANNING COMMISSION

10/01/09



SUP-36142 - APPLICANT: VERIZON WIRELESS - OWNER: ARIES HOLDINGS, LLC
8430 WEST LAKE MEAD BOULEVARD
NOVEMBER 5, 2009 PLANNING COMMISSION

10/01/09

August 22, 2009

Mr. Greg Kapovich
City of Las Vegas
Planning & Development
731 Fourth Street
Las Vegas, NV 89101

RE: Verizon "LSV Rampart" Existing Wireless Facility Modification and Proposed new stealth communications tower- Special Use Permit Application
8430 W. Lake Mead Blvd. APN 138-20-611-006

Dear Mr. Kapovich,

On behalf of Verizon Wireless, I respectfully submit the attached application. This project is located on APN 138-20-611-006, a C-1 parcel in use as an office building and dental office. The project also affects an existing wireless site on the adjacent C-1 parcel 138-20-611-007.

Verizon Wireless is proposing to remove the four wireless communication antennas currently located within the monument sign at 8420 W. Lake Mead Blvd. and relocate them to a new seventy foot monopalm. The new tower location is proposed in the rear of the property at 8430 W. Lake Mead Blvd. Verizon is also proposing to add five antennas to the new tower. The total number of antennas on the new tower will be nine; three sectors with three antennas each.

The ground space needed for the tower will utilize one parking space and a small, six foot wide landscape buffer between the parking space and an existing trash enclosure. A block wall enclosing the tower will be stuccoed and painted to match the adjacent trash enclosure including a matching access gate. The over all height of the structure will be 70 feet which includes the artificial palm fronds. The tower will be 266 feet to the west of the nearest residential parcels, across Harbor Island Dr., exceeding the 210 foot minimum setback requirement.

Verizon's radio equipment will remain in the existing underground equipment vault on the adjacent property at the foot of the sign. The required new conduit route from the equipment vault to the proposed tower will run underground from the vault to the 8430 building then up the wall, encased in a chase which will be built to look like part of the wall, painted and stuccoed to match, over the roof, down the back side of the building in another chase, then underground to the tower. All existing landscaping disturbed by the run will be returned to existing conditions after construction.

The proposed stealth tower meets the City of Las Vegas Wireless communication tower requirements per Title 19.04.040 regarding required stealthing and residential setbacks for new towers. Verizon has gone through the South Shores Community Association for its review of the proposed tower; the Association's approval is attached to this application. This new tower, stealth design, is compatible with the area given that there are three wireless facilities belonging to other carriers to the southeast of the subject property, in another commercial development.

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This project will provide increased antenna height and with the change to a monopalm will double the existing coverage allow Verizon to get a third sector to provide coverage to an area that currently has no coverage. This wireless site provides coverage for South Shores residents and the surrounding businesses and offices. It also provides for those traveling around the Lake Mead Blvd. and Rampart Blvd. areas toward both Summerlin and Sun City. The project will also bring updated technology to subscribers allowing faster data and expanded user services in addition to the improved and extended coverage.

If there are any questions regarding this application please contact me at (702) 338-2299 or via email at melissa.gibson@wfinet.com.

Sincerely,

Melissa Gibson

Melissa Gibson
Site Acquisition Specialist
WFI, representing Verizon Wireless

SUP-36142
11/05/09 PC

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2009 NOV 12 P 1:37

November 12, 2009

City of Las Vegas
City Clerk
400 Stewart Ave.
First Floor
Las Vegas, NV 89101

RE: Verizon Wireless SUP 36142
8430 W. Lake Mead Blvd. APN 138-20-611-006
Wireless Communication Facility

Verizon Wireless, applicant for Special Use Permit 36142, wishes to appeal the Planning Commission's decision of November 5.

Additionally, Verizon would like to request an abeyance of this SUP and to be heard at the City Council meeting on December 16th. This abeyance is requested for additional time to meet with Councilman Anthony and for Verizon to review any possible options in design of the communications site.

Sincerely,

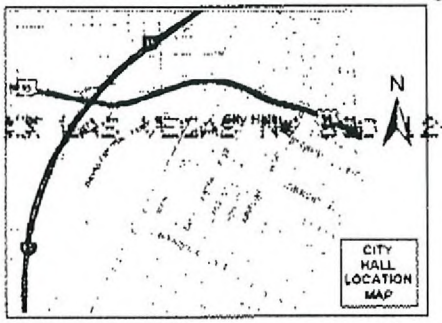
Melissa Gibson

Melissa Gibson
Site Acquisition Specialist
WFI, representing Verizon Wireless
7030 Smoke ranch Rd.
Las Vegas, NV 89128
(702) 338-2299
melissa.gibson@wfinet.com

cc Planning & Development via email

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

Return Service Requested
Official Notice of Public Hearing



If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Office Of The City Clerk at the address listed above or fax this side of this card to (702) 382-4803. If you would like to contact your Council Representative, please call (702) 229-6405.

☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
City Council Meeting of 12/16/2009

PRESORTED FIRST CLASS

UNITED STATES POSTAGE $ 00.41⁴ MAILED FROM ZIPCODE

2009 DEC -9 A 8:04

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WARNER MICHAEL & DINA M
3069 N OAK CIR
BOOMFIELD CO 80020-1054

APN#13820520011

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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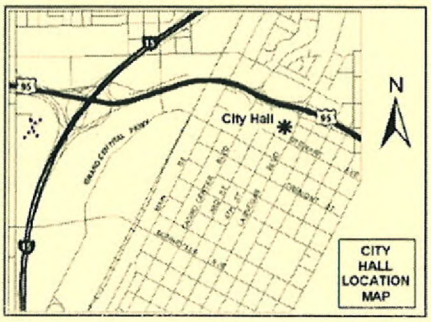
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

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SUP-36142
City Council Meeting of 12/16/2009

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2009 DEC 11 A 10:58

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KOONCE JAMES B & SHANNON E
2205 HARBOR CLIFF DR
LAS VEGAS NV 89128-7419

APN#13821118062

Submitted after final agenda

Date 12/11/09 Item #81

JAVDS11 89128

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

☑001

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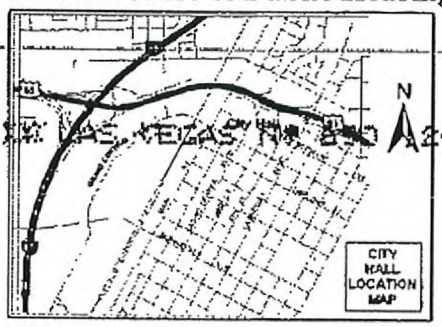

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
City Council Meeting of 12/16/2009

MILLER WILLIAM J & JUDITH A
4875 S MONACO ST #603
DENVER CO 80237-3479

APN#13820517032

METRO APPLIANCE SERVICE

JAVDS11 80237

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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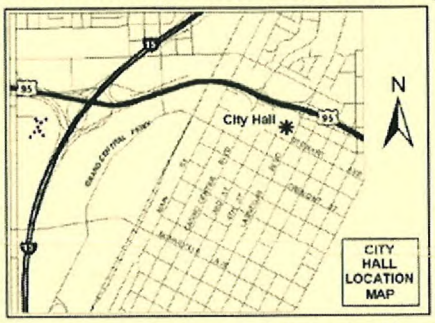

A 70' Tower would be disproportionate To The 2/3 story Bldgs Surrounding. Further, a Monopole Tower is an Architectural Eyesore, And would detract from The Surrounding Bldg VALues.

If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Office Of The City Clerk at the address listed above or fax this side of this card to (702) 382-4803. If you would like to contact your Council Representative, please call (702) 229-6405.

☐ I SUPPORT this Request ☒ I OPPOSE this Request

2009 DEC 11 A 10:59

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SUP-36142
City Council Meeting of 12/16/2009

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NOOSE FAMILY TRUST
NOOSE TERRENCE L & JOANNE TRS
1929 SEDONA PASEO LN
LAS VEGAS NV 89128-8289

APN#13820711003

Submitted after final agenda
Date 12/11/09 Item #81

JAVDS11 89128

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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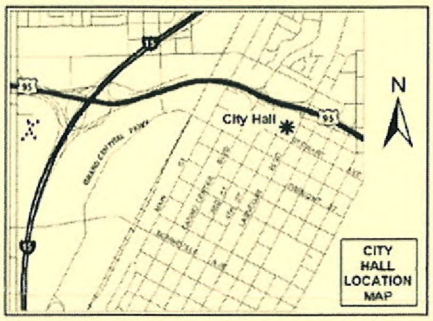

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

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City Council Meeting of 12/16/2009

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KENNEDY STEPHEN & PATRICIA
8233 SEDONA SUNSET DR
LAS VEGAS NV 89128-7965

APN#13821210062

JAVDS11 89128

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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LAS VEGAS NV 890 12-05-09

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

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SUP-36142
City Council Meeting of 12/16/2009

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2009 DEC 10 A 11:30
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MECH GREGORY A & KAREN R
2605 VERMONT AVE
JOPLIN MO 64804-2958

APN#13821212001

JAVDS11 64804

Application Information

SUP-36142 - APPLICANT: VERIZON WIRELESS - OWNER: ARIES HOLDINGS, LLC - Appeal from the Denial by the Planning Commission of a request for a Special Use Permit FOR A PROPOSED 70-FOOT TALL WIRELESS COMMUNICATION FACILITY, STEALTH DESIGN (MONOPALM) at 8430 West Lake Mead Boulevard (APN 138-20-611-006), C-1 (Limited Commercial) Zone, Ward 4 (Anthony)

MY HUSBAND - JEFF RAITHEL - AND I OPPOSE THIS REQUEST. WE BELIEVE THE TOWER WILL OBSCURE OUR VIEW OF THE MOUNTAINS; AND, BEAUTIFUL "OLD GLORY" AT TERRIBLES. THANK YOU!

YVONNE IANEZ KARIM

Application Location



The proposed project may not pertain to the entire highlighted project site.

Public Hearing Information

Meeting:	City Council
Date:	***December 16, 2009***
Time:	1:00 P.M.
Location:	City Council Chambers 400 Stewart Avenue Las Vegas, Nevada

Any and all interested persons may appear and be heard at said meeting, or may, prior thereto, file written objections thereto or approvals thereof with the City Clerk, 1st Floor, City Hall, 400 Stewart Avenue, Las Vegas, Nevada, 89101. For further information, including the full staff report, please call (702) 229-6311 (TDD 386-9108) or go to http://www.lasvegasnevada.gov.

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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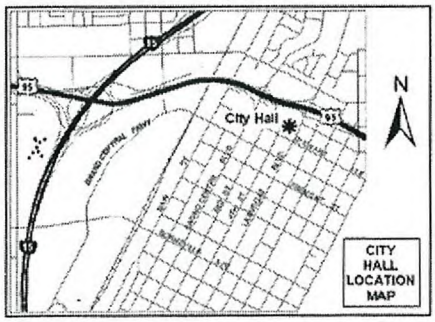

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

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SUP-36142
City Council Meeting of 12/16/2009

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KARIM YVONNE
2225 HARBOR CLIFF DR
LAS VEGAS NV 89128-7419

APN#13821118067

JAVDS11 A9128

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Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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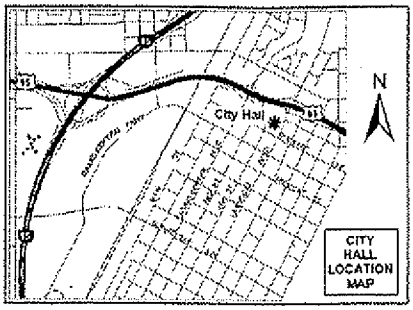

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

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SUP-36142
City Council Meeting of 12/16/2009

FERRE A VICTOR & J LOUISE
8617 PRAIRIE HILL DR
LAS VEGAS NV 89134-8415

APN#13820516007

JAVOS11 89134

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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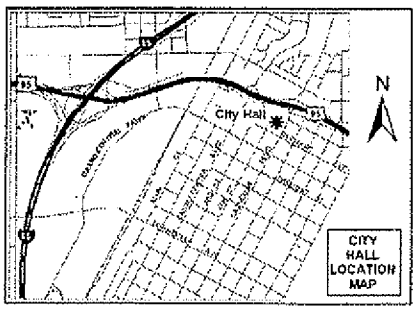

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
City Council Meeting of 12/16/2009

MILKO PAUL & YVONNE L REV LIV TR
MILKO PAUL & YVONNE LAURA TRS
2125 FOUNTAIN VIEW DR
LAS VEGAS NV 89134-0318

APN#13820610025

JAVOS11 89134

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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UNITED STATES POSTAGE PITNEY BOWES
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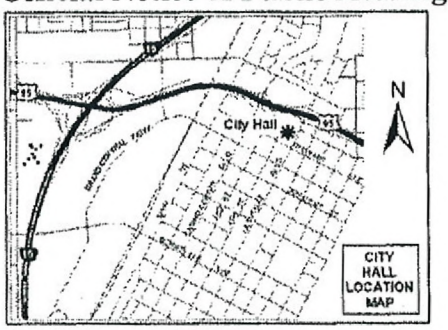
Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
City Council Meeting of 12/16/2009

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CITY CLERK
2009 DEC 14 P 3:20

BROWN TERI E
8220 EMERALD ISLE
LAS VEGAS NV 89128-7475

APN#13821216020

JAVDS11 89128

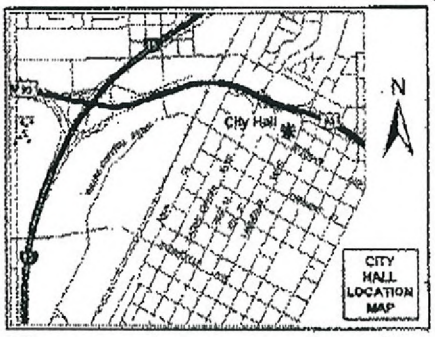
Submitted after final agenda
Date 12/14/09 Item #81

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES
02 1M $ 00.41⁴
0004279218 DEC 04 2009
MAILED FROM ZIP CODE 89101

Return Service Requested
Official Notice of Public Hearing



If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Office Of The City Clerk at the address listed above or fax this side of this card to (702) 382-4803. If you would like to contact your Council Representative, please call (702) 229-6405.

☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
City Council Meeting of 12/16/2009

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CITY CLERK
2009 DEC 15 A 11:50

FRETTY DAVID & TAMARA
2201 ANGELFIRE ST
LAS VEGAS NV 89128-7611

APN#13821117009

JAVOSII 89128

Submitted after final agenda
Date 12/15/09 Item #81

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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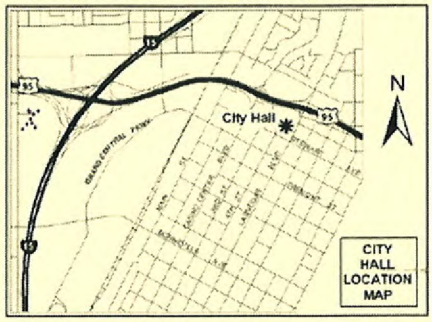
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☑ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
City Council Meeting of 12/16/2009

PRESORTED FIRST CLASS
UNITED STATES POSTAGE PITNEY BOWES
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2009 DEC 16 P 3:39
RECEIVED CITY CLERK

SPECIAL FRANK G & PATRICIA A
2100 RICO PEAK CT
LAS VEGAS NV 89128-7634

APN#13820518005

JAVOS11 89128

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

Return Service Requested
Official Notice of Public Hearing



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SUP-36142
City Council Meeting of 12/16/2009

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MAILED FROM ZIP CODE 89101

When I sit on my patio I would have to look at the Tower.

2009 DEC 16 P 3:39
RECEIVED CITY CLERK

RICKEY KENNETH LEE & ANNA LEA TR
RICKEY ANNA LEA TRS
8425 SQUAW VALLEY AVE
LAS VEGAS NV 89128-7619

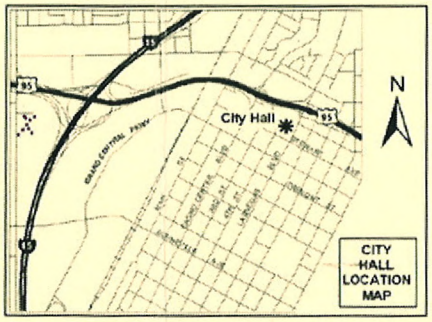
APN#13821110003

Submitted after final agenda
Date 12/14/09 Item #81

JAVOS11 89128

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☑ I OPPOSE this Request

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SUP-36142
City Council Meeting of 12/16/2009

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MAILED FROM ZIPCODE 89101

RECEIVED
2009 DEC 16 P 3:19
CITY CLERK

HORDEN ELINOR J SEP PPTY TR
HORDEN ELINOR J TRS
8345 SNOWMASS DR
LAS VEGAS NV 89128-7601

APN#13821113022

JAVOS11 89128

Submitted after final agenda
Date 12/16/09 Item #81

702- 256-
Oct 13 09 09:05a GIUSTINA

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

PRESORTED FIRST CLASS

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2009 DEC 10 P 3:54
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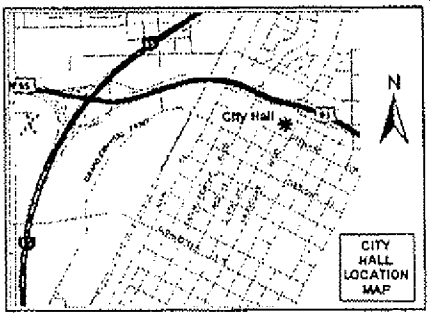
Return Service Requested
Official Notice of Public Hearing



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☒ I SUPPORT this Request ☐ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
City Council Meeting of 12/16/2009

GIUSTINA HOWARD & SANDRA FAM TR
GIUSTINA HOWARD L & SANDRA L TRS
8317 AQUA SPRAY AVE
LAS VEGAS NV 89128-7434

APN#13821114059

JAV0511 A5126

Submitted after final agenda
Date 12/10/09 Item #81

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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MAILED FROM ZIP CODE 89101

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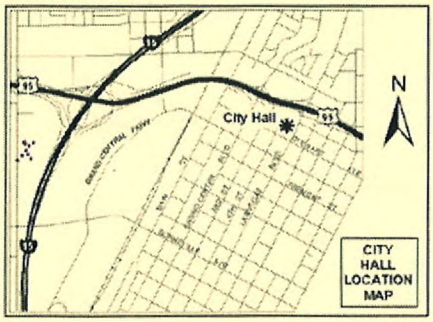

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☒ I SUPPORT this Request ☐ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
City Council Meeting of 12/16/2009

2009 DEC 16 P 3:37
RECEIVED
CITY CLERK

FRIEDLANDER BRUCE G
FRIEDLANDER FAMILY TRUST
21810 SCANNEL AVE
TORRANCE CA 90503-6247

APN#13821215017

JAV0511 90503

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES
02 1M $ 00.41⁴
0004279218 DEC 04 2009
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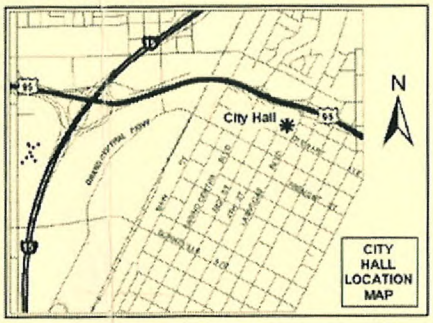

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☒ I SUPPORT this Request ☐ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
City Council Meeting of 12/16/2009

2009 DEC 16 P 4:38
RECEIVED
CITY CLERK

CARLSON ROBERT A & DOLORES B
8312 SWAN LAKE AVE
LAS VEGAS NV 89128-7414

APN#13821118037

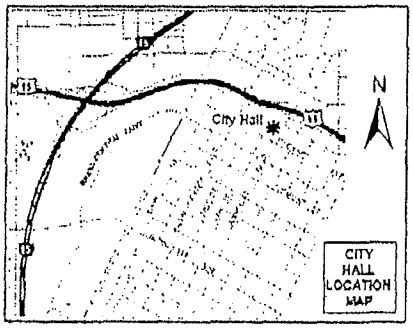
Submitted after final agenda

Date 12/16/09 Item #81

JAV0511 89128

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

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SUP-36142

City Council Meeting of 12/16/2009

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CITY CLERK
2009 DEC -7 A 8:15

ROESNER KENT W & YOLANDA LIV TR
2105 RICO PEAK
LAS VEGAS NV 89128-7634

APN#13820518003

Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES
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0004279218 DEC 04 200
MAILED FROM ZIP CODE 8910

2009 DEC -7 A 10:18

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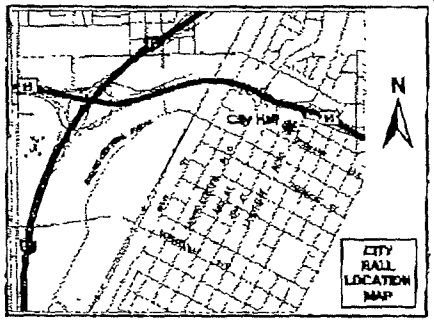

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142

City Council Meeting of 12/16/2009

YERUSHALMI PROPERTIES L L C
2400 WESTERN AVE
LAS VEGAS NV 89102-4816

APN#13820611005

JAV0511 89102

The Jewelers Western
12/07/2009 10:15 FAX 382 3307

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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UNITED STATES POSTAGE PITNEY BOWES
02 1M $ 00.41⁴
0004279216 DEC 04 2009
MAILED FROM ZIPCODE 89101

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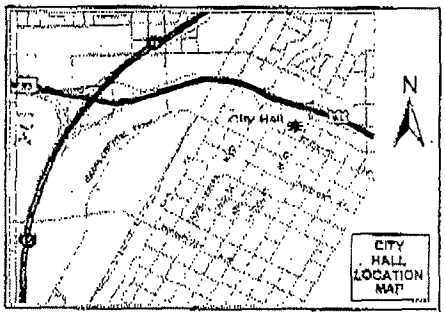

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☐ I SUPPORT this Request ☑ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
City Council Meeting of 12/16/2009

09 DEC -7 P 12:05
RECEIVED
CITY CLERK

SIMS L DOUGLAS & DEBRA K
2005 HARBOR CLIFF DR
LAS VEGAS NV 89128-7461

APN#13821215058

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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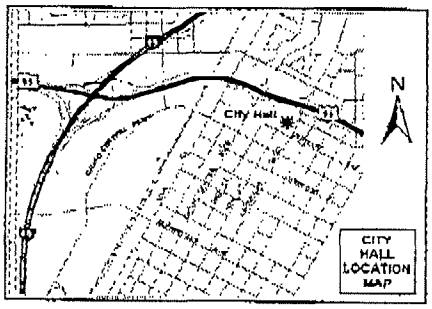
UNITED STATES POSTAGE PITNEY BOWES
02 1M $ 00.41⁴
0004279218 DEC 04 2009
MAILED FROM ZIP CODE 89101

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
City Council Meeting of 12/16/2009

2009 DEC -7 P 12:23
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CITY CLERK

SEGGEV FAMILY TRUST
SEGGEV JORAM S & VARDA TRS
2108 RICO PEAK CT
LAS VEGAS NV 89128-7634

APN#13820518007

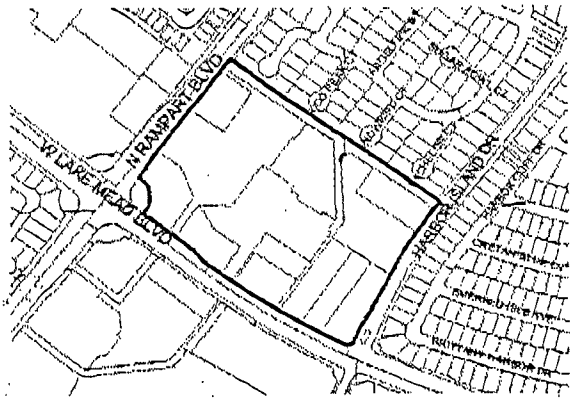
JAN051 89128

Application Information

SUP-36142 - APPLICANT: VERIZON WIRELESS - OWNER: ARIES HOLDINGS, LLC - Appeal from the Denial by the Planning Commission of a request for a Special Use Permit FOR A PROPOSED 70-FOOT TALL WIRELESS COMMUNICATION FACILITY, STEALTH DESIGN (MONOPALM) at 8430 West Lake Mead Boulevard (APN 138-20-611-006), C-1 (Limited Commercial) Zone, Ward 4 (Anthony)

NO WAY! IF APPROVED I WILL ORGANIZE MY NEIGHBORS TO SUE IN ORDER TO BLOCK THIS PROPOSAL.

Application Location



The proposed project may not pertain to the entire highlighted project site.

Public Hearing Information

Meeting:	City Council
Date:	***December 16, 2009***
Time:	1:00 P.M.
Location:	City Council Chambers 400 Stewart Avenue Las Vegas, Nevada

Any and all interested persons may appear and be heard at said meeting, or may, prior thereto, file written objections thereto or approvals thereof with the City Clerk, 1st Floor, City Hall, 400 Stewart Avenue, Las Vegas, Nevada, 89101. For further information, including the full staff report, please call (702) 229-6311 (TDD 386-9108) or go to http://www.lasvegasnevada.gov.

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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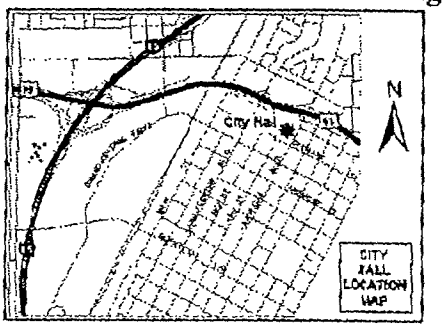

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
City Council Meeting of 12/16/2009

SHMUELEVICH ZVI & LINA
2229 HARBOR CLIFF DR
LAS VEGAS NV 89128-7419

APN#13821114001

PAGE 01/01

Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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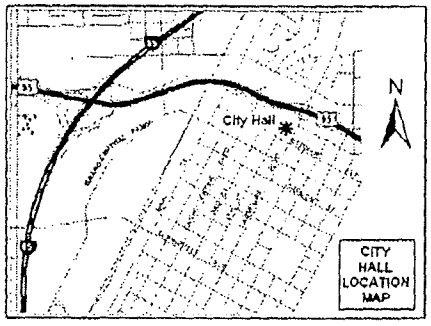

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CITY CLERK

2009 DEC -8 A 8:39

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142

City Council Meeting of 12/16/2009

TOM FAMILY TRUST
TOM TYRUS DICK TRS
2216 ANGELFIRE ST
LAS VEGAS NV 89128-7610

APN#13821117014

JAV0511 89128

7029911913 Velvet Marketing

Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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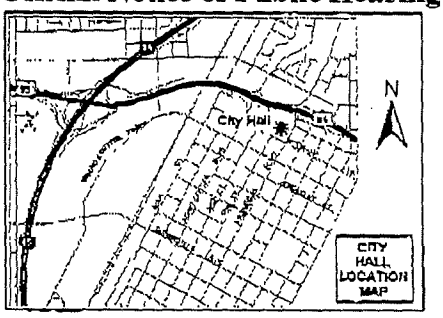

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142

City Council Meeting of 12/16/2009

OMOHUNDRO TIPTON T & C L FAM TR
OMOHUNDRO TIPTON & CHARLOTTE
2113 SNOWBIRD CT
LAS VEGAS NV 89128-7622

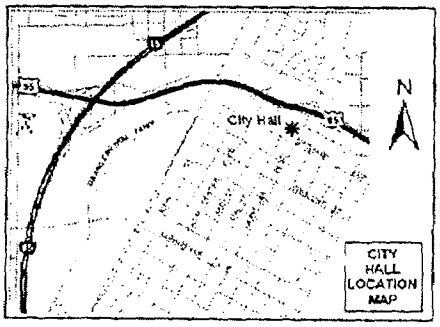
APN#13821117039

JAVDS11 89128

12/08/2009 TUE 08:42 [TX/RX NO 6903] 001

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
City Council Meeting of 12/16/2009

2009 DEC -8 A 10:11
CITY CLERK

PANSEK DOROTHY REVOCABLE
P O BOX 34060
LAS VEGAS NV 89133-4060

APN#13820513017

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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UNITED STATES POSTAGE
PITNEY BOWES
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DEC 04 2009
MAILED FROM ZIP CODE 89101

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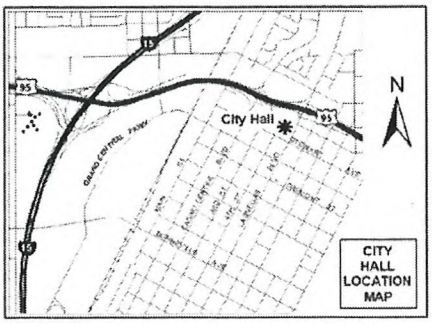

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
City Council Meeting of 12/16/2009

2009 DEC -8 A 10:54
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CITY CLERK

BROWNSON-GILBERT LIVING TRUST
BROWNSON ANDREW JOSEPH TRS
%C GILBERT
8712 MAGNOLIA RIDGE AVE
LAS VEGAS NV 89134-0334
APN#13820520010

JAVOS11 89134

Application Information

SUP-36142 - APPLICANT: VERIZON WIRELESS - OWNER: ARIES HOLDINGS, LLC - Appeal from the Denial by the Planning Commission of a request for a Special Use Permit FOR A PROPOSED 70-FOOT TALL WIRELESS COMMUNICATION FACILITY, STEALTH DESIGN (MONOPALM) at 8430 West Lake Mead Boulevard (APN 138-20-611-006), C-1 (Limited Commercial) Zone, Ward 4 (Anthony)

My husband and I oppose this request.

2 votes - opposed

Application Location



The proposed project may not pertain to the entire highlighted project site.

Public Hearing Information

Meeting:	City Council
Date:	***December 16, 2009***
Time:	1:00 P.M.
Location:	City Council Chambers 400 Stewart Avenue Las Vegas, Nevada

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City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES
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0004279218 DEC 04 2009
MAILED FROM ZIP CODE 89101

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2009 DEC -8 A 10:55

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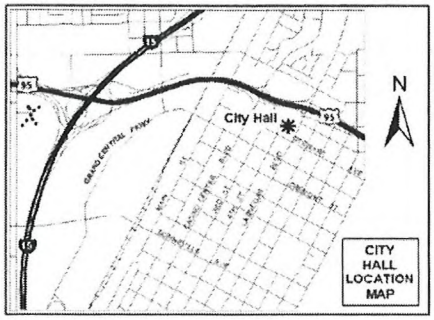

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☐ I SUPPORT this Request ☑ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
City Council Meeting of 12/16/2009

LLOYD VANN MILLER & ANNABELLE R
8437 DUTCH HILL CT
LAS VEGAS NV 89128-7624

APN#13820513002

JAV0511 89128

Application Information

SUP-36142 - APPLICANT: VERIZON WIRELESS - OWNER: ARIES HOLDINGS, LLC - Appeal from the Denial by the Planning Commission of a request for a Special Use Permit FOR A PROPOSED 70-FOOT TALL WIRELESS COMMUNICATION FACILITY, STEALTH DESIGN (MONOPALM) at 8430 West Lake Mead Boulevard (APN 138-20-611-006), C-1 (Limited Commercial) Zone, Ward 4 (Anthony)

Property TAX is high in this area - the last thing we want would be a 70 ft tower to this fine area - go further South on Rampart to set it up!

Application Location



The proposed project may not pertain to the entire highlighted project site.

Public Hearing Information

Meeting:	City Council
Date:	***December 16, 2009***
Time:	1:00 P.M.
Location:	City Council Chambers 400 Stewart Avenue Las Vegas, Nevada

Any and all interested persons may appear and be heard at said meeting, or may, prior thereto, file written objections thereto or approvals thereof with the City Clerk, 1st Floor, City Hall, 400 Stewart Avenue, Las Vegas, Nevada, 89101. For further information, including the full staff report, please call (702) 229-6311 (TDD 386-9108) or go to http://www.lasvegasnevada.gov.

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2009 DEC -7 A 8:16

TO: Councilman Anthony

FAX#: 702-382-4803

FROM: Kent Roesner

PH# / E-Mail: 702-204-0857 / Trekker22@juno.com

SUBJECT: Signature Lists Opposing SUP-36142 & Additional Information

Councilman Anthony, please review for subject. Hopefully I can get on your schedule for further discussion.

Thank You For Your Assistance!

Kent Roesner

Total Pages: 15

OPPOSITION TO SUP-36142, PERMIT FOR WIRELESS COMMUNICATION FACILTY AT 8430 WEST LAKE BVD.

NAME	ADDRESS	SIGNATURE
IMRE FODOR	2109 RICO PEAK CT	[signature]
DAWN CHEN	2109 RICO PEAK CT.	[signature]
Kent Roesner	2105 Rico Peak Ct	K. Roesner
Alice B. Morgan	2101 Rico peak ct	Alice B. Morgan
Frank G. Arent	2100 RICO PEAK CT	[signature]
Vanessa Arent	2112 Rico Peak Ct LV NV	[signature]
DAN Cuddy	2116 RICO PEAK CT	[signature]
Kelly [illegible]	2101 SNOW BIRD CT	[signature]
Varda Segger	2108 Rico Peak ct	Varda Segger
Joram Segger	2108 Rico Peak Ct	[signature]
Zaida Torremeva	2113 Rico Peak Ct.	[signature]
Dorothy Pansch	8441 Sheltered Valley Dr	Dorothy Pansch
Veronica Higuera	8436 Sheltered Valley Dr	Veronica Higuera
Shirley Bailey	8424 Apple Hill Ct. 89128	Shirley Bailey
Joby Bauer	2204 Sapphire Valley 89128	[signature]
David Fretty	2201 Angelfire St. 89128	[signature]
John Delbruegge	[illegible]	
	2100 Snow Bird Court	
Kimesha Sanders	2116 BACHELOR CT.	Kim SANDERS
Tyeisha Sanders	2116 Bachelor Ct	Tyeisha Sanders

OPPOSITION TO SUP-36142, PERMIT FOR WIRELESS COMMUNICATION FACILTY AT 8430 WEST LAKE BVD.

NAME	ADDRESS	SIGNATURE
Lisa Cummings	8412 Squaw Valley Ave	
Jeff Cummings	8412 Squaw Valley Ave	
Tamara Fields	2201 Angelfire St	
Hank Osterhoudt	2205 " "	
Lesley Osterhoudt	2205 Angelfire St	
Mike Rowden	2301 Angelfire St	
Mary Kay Lein	2313 Angelfire St.	
Richard Rogers	2317 Angelfire St	
Heather Durant	8400 Squaw Valley Ave	
Lee Evans	8356 W. Squaw Valley Ave	
Ron Hall	8352 Squaw Valley	
Colleen Carpenter	8348 Squaw Valley Ave	
Jeffrey Brannon	8336 Squaw Valley Ave	

OPPOSITION TO SUP-36142, PERMIT FOR WIRELESS COMMUNICATION FACILTY AT 8430 WEST LAKE BVD.

NAME	ADDRESS	SIGNATURE
AL LICKLEN	2224 ANGELFIRE ST	
HELEN PALEWICZ	2308 Angelfire St.	Helen R. Palewicz
SHARI Young	2320 ANGELFIRE ST.	Shari Young
Aaron Reaux	2324 Angelfire St. LV, NV 89128	
JAMES HARPER	8337 SNOW VALLEY AVE LV NV 89128	
[illegible]	8375 Snow Valley Ave	
WAYNE HARPER	2307 BEAR VALLEY ST.	
DANA COBER	9332 LOST PINES CT.	
John Lubert	8324 Lost Pines CT	

OPPOSITION TO SUP-36142, PERMIT FOR WIRELESS COMMUNICATION FACILTY AT 8430 WEST LAKE BVD.

NAME	ADDRESS	SIGNATURE
Adarian Crawford	2116 Bachelor Ct	[illegible]
Madreia Crawford	6744 Biltmore Garden LVNV 89149	Madreia Crawford
Virginia M BABEE	2112 BACHELOR COURT	Virginia M Babee
Cleo D. Allen	2101 Bachelor Ct	Cleo D. Allen
Judi Caceros	2109 Bachelor ct.	Judi Caceros
Wm Craig	2113 Bachelor	[illegible]

SUP-36412 recommendation should be NO

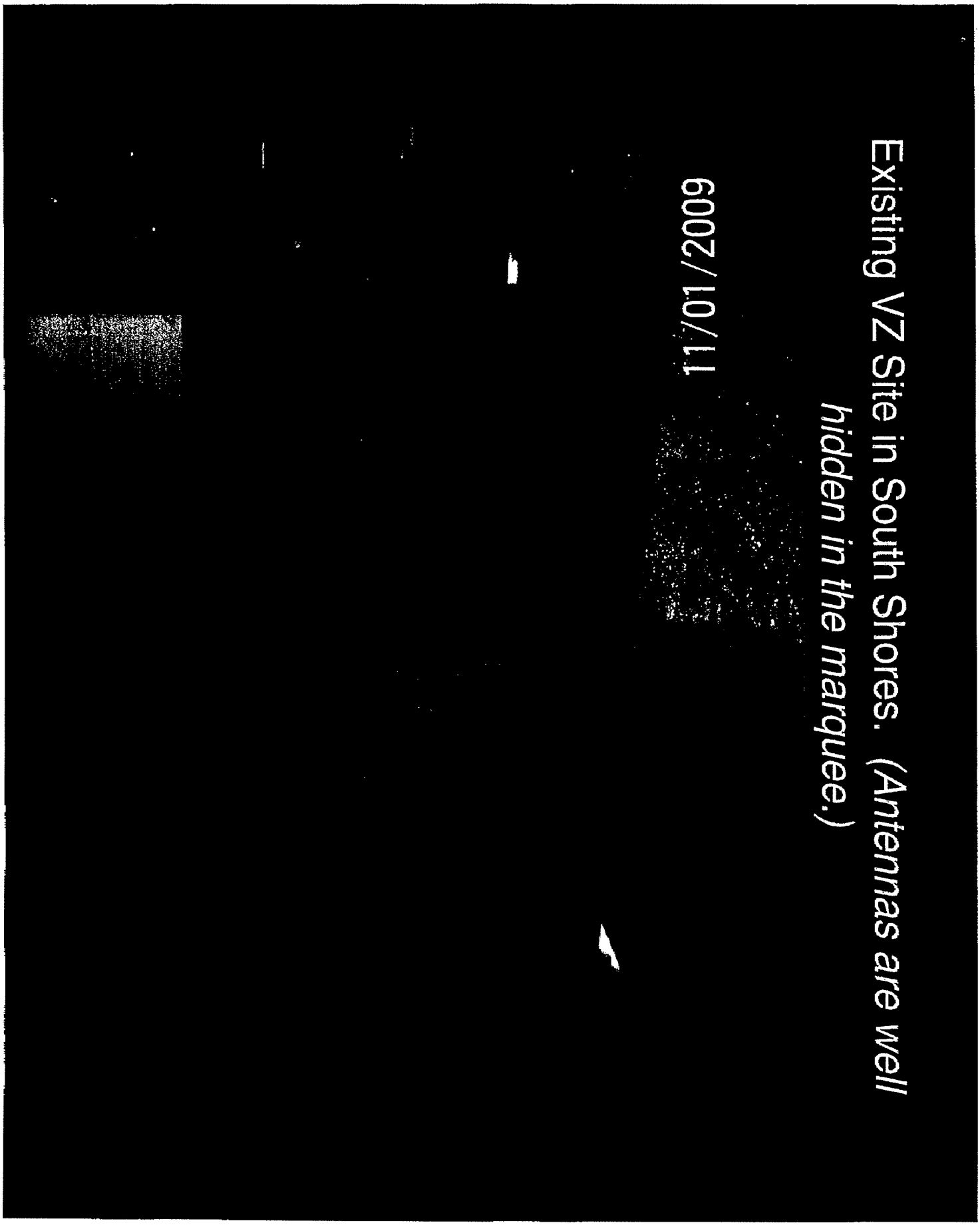
- 1. This SUP **negatively affects the value** of our properties by violating existing zoning regulations and degrading the appearance of the South Shores and Desert Shores communities.
- 2. SUPs **need to preserve the appearance** of our community and assist in maintaining our property values. **This one does neither.**
- 3. There are already many existing cell sites – **including one from the applicant!**
- **4. All towers raise safety concerns.**

This request is not in keeping with the character of the community.

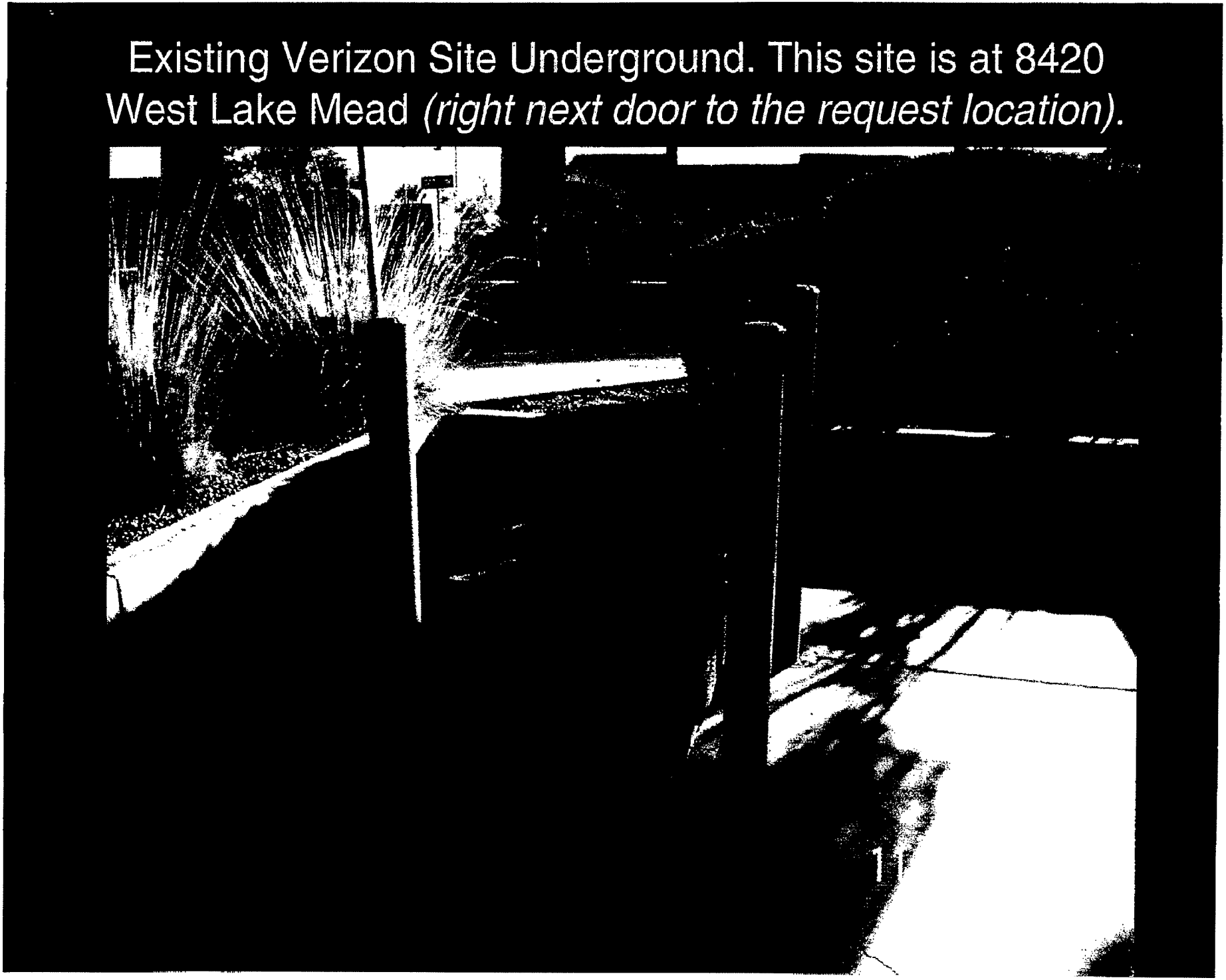
- In practice, zoning is used to prevent new development from interfering with existing residents or businesses and to preserve the "character" of a community.

- The Planning and Development Department...offers advice about development that will enhance the quality of life of the citizens of Las Vegas.

Dec 06 09 06:21a Yogi 702-233-8825 p.7
12/06/2009 SUN 06:18 [TX/RX NO 6873] 007

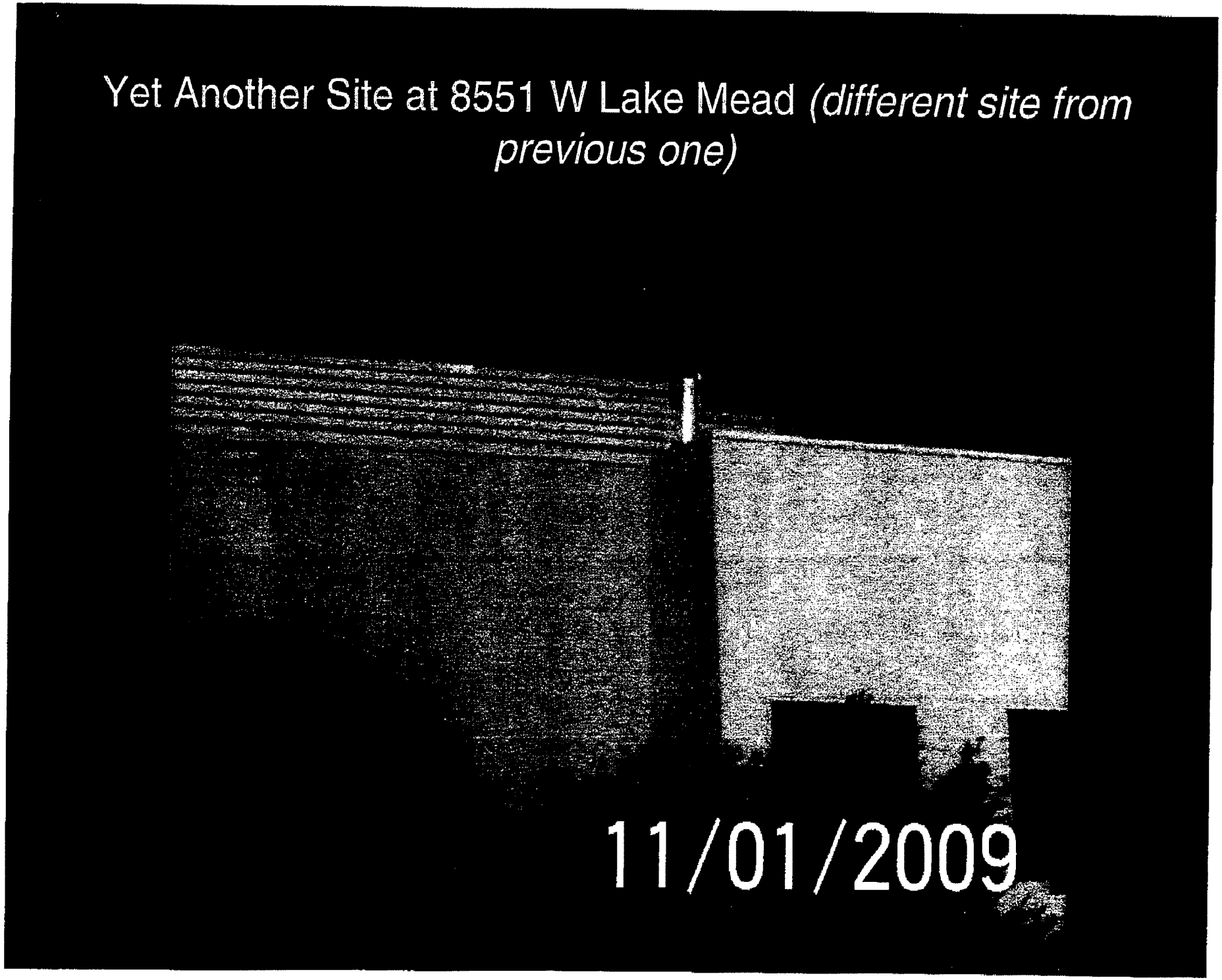

Existing VZ Site in South Shores. (Antennas are well hidden in the marquee.)
11/01/2009

Existing Verizon Site Underground. This site is at 8420 West Lake Mead *(right next door to the request location).*



More Cell Sites near South Shores (on building)
11/01/2009

Yet Another Site at 8551 W Lake Mead *(different site from previous one)*



Existing Cell Site near South Shores.

11/01/2009

Another Cell Site near South Shores

11/01/2009

Another site at 8551 W Lake Mead
11/01/2009

Cell Site in Desert Shores

WFI

7030 Smoke Ranch Road Las Vegas, NV 89128 | Phone 702.202.3596 | Fax 702.586.3685 | wfinet.com

August 10, 2010

City of Las Vegas
City Clerk
400 Stewart Ave.
First Floor
Las Vegas, NV 89101

VIA FAX: 382-4803

RE: Verizon Wireless SUP 36142- Request for Abeyance
8430 W. Lake Mead Blvd. APN 138-20-611-006
Wireless Communication Facility

Verizon Wireless, applicant for Special Use Permit 36142, wishes to hold SUP 36142 in abeyance until the October 20, 2010 City Council meeting.

This abeyance is requested for additional time to explore additional designs for the project.

Sincerely,

Melissa Gibson

Melissa Gibson
Site Acquisition Specialist
WFI, representing Verizon Wireless
7030 Smoke Ranch Rd.
Las Vegas, NV 89128
(702) 338-2299
melissa.gibson@wfinet.com

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Go farther

NOTE: THE FOLLOWING DOCUMENTATION WAS SUBMITTED FOR THE RECORD BEFORE OR AT THE PLANNING COMMISSION HEARING ON THIS ITEM WHICH IS NOW APPEARING BEFORE THE CITY COUNCIL

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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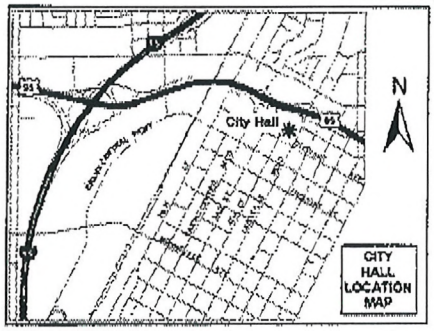

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
Planning Commission Meeting of 11/5/2009

Case: SUP-36142
13820610026
HAYNES MICHAEL T
2117 FOUNTAIN VIEW DR
LAS VEGAS NV 89134-0318

HAYDS11 89134

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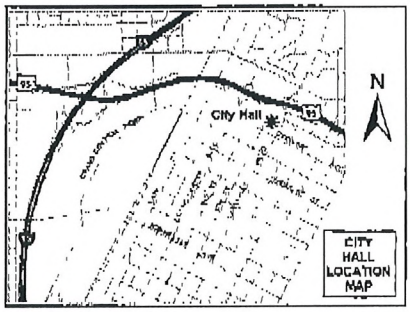

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SUP-36142
Planning Commission Meeting of 11/5/2009

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Case: SUP-36142
13821117039
OMOHUNDRO TIPTON T & C L FAM TR
2113 SNOWBIRD CT
LAS VEGAS NV 89128-7622

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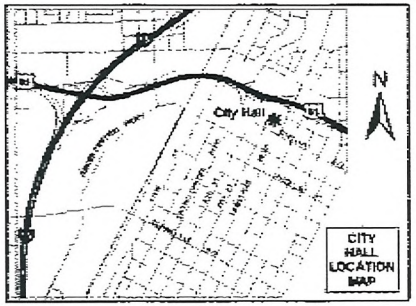

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142

Planning Commission Meeting of 11/5/2009

We oppose this proposal vehemently It should be erected at a place where no houses are near by.

Case: SUP-36142

13820518007
SEGGEV FAMILY TRUST
2108 RICO PEAK CT
LAS VEGAS NV 89128-7634

HAVOS11 89128

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OPPOSITION TO SUP-36142, PERMIT FOR WIRELESS COMMUNICATION FACILTY AT 8430 WEST LAKE BVD.

	NAME	ADDRESS	SIGNATURE
	IMRE FODOR	SEE POSTCARD 2109 RICO PEAK CT	[signature]
	DAWN CHEN	SEE POSTCARD 2109 RICO PEAK CT.	[signature]
1.	Kent Roesner	2105 Rico Peak Ct	K. Roesner
2.	Alice B. Morgan	2101 Rico peak ct	Alice B. Morgan
	Frank G. Arent	SEE POSTCARD 2100 RICO PEAK CT	[signature]
3.	Vanessa Arent	2112 Rico Peak Ct. LV NV	[signature]
4.	DAN CUDDY	2116 RICO PEAK CT	[signature]
5.	Kelly Hatter	2101 SNOW BIRD CT	[signature]
	Varda Segger	SEE POSTCARD 2108 Rico Peak ct	Varda Segger
	Joram Segger	2108 Rico Peak Ct	[signature]
6.	Zaida Torremara	2113 Rico Peak CT.	[signature]
7.	Dorothy Pansek	8441 SHELTERED Valley Dr	Dorothy Pansek
8.	VERONICA HIGUERA	8436 SHELTERED VALLEY DR.	Veronica Higuera
9.	SHIRLEY BAILEY	8424 APPLEHILL CT. 89128	Shirley Bailey
10.	Joby BAUGH	2204 Sapphire Valley 89128	[signature]
11.	David Fretty	2201 Angelfire St. 89128	[signature]
12.	John Delbruegge	John Delbruegge 2100 Snow Bird Court	
13.	Kimesha Sanders	2116 BACHELOR CT.	Kim SANDERS
	Tyeisha Sanders	2116 Bachelor Ct	Tyeisha Sanders

Submitted after final agenda

Date 11/02/09 Item 47P

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OPPOSITION TO SUP-36142, PERMIT FOR WIRELESS COMMUNICATION FACILTY AT 8430 WEST LAKE BVD.

	NAME	ADDRESS	SIGNATURE
	Adavian Crawford	2116 Bachelor Ct	
14.	Madrea Crawford	6744 Big Horse Garden Las Vegas NV 89149	Madrea Crawford
	Virginia M BABBEE	SEE POSTCARD 2112 BACHELOR COURT	Virginia M Babbee
15.	Cleo O. Allen	2101 Bachelor Ct	Cleo O. Allen
16.	Judi Caceros	2109 Bachelor ct.	Judi Caceros
17.	Wm Gray	2113 Bachelor	

17

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Date 11/02/09 Item 17P

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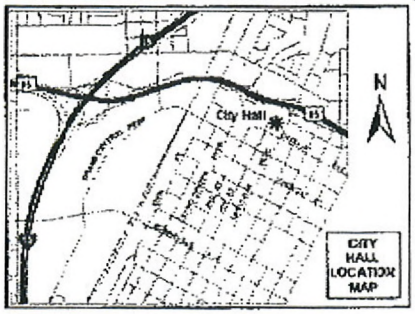

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

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SUP-36142
Planning Commission Meeting of 11/5/2009

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Case: SUP-36142

13820518003
SOEHNGEN BRIAN _
2104 RICO PEAK CT
LAS VEGAS NV 89128-7634

Submitted after final agenda

Date 11/04/09 Item 47P

Application Information

SUP-36142 - SPECIAL USE PERMIT - PUBLIC HEARING - APPLICANT: VERIZON WIRELESS - OWNER: ARIES HOLDINGS, LLC - Request for a Special Use Permit FOR A PROPOSED 70-FOOT TALL WIRELESS COMMUNICATION FACILITY, STEALTH DESIGN (MONOPALM) at 8430 West Lake Mead Boulevard (APN 138-20-611-006), C-1 (Limited Commercial) Zone, Ward 4 (Anthony)

Please don't allow this. It is too clos to our neighborhood and they are not nice to look at.

Application Location



The proposed project may not pertain to the entire highlighted project site.

Public Hearing Information

Meeting:	Planning Commission
Date:	***November 05, 2009***
Time:	6:00 P.M.
Location:	City Council Chambers 400 Stewart Avenue Las Vegas, Nevada

Any and all interested persons may appear before the City Planning Commission either in person or by representative and object to or express approval of this request; or may, prior to this meeting, file a written objection thereto or approval thereof with the Planning and Development Department, Development Services Center, 731 South Fourth Street, Las Vegas, Nevada 89101. Final Action on General Plan Amendments and Rezonings will be determined by the City Council. Other public hearing items may be deemed Final Action by the Planning Commission or forwarded to the City Council. The date of the City Council meeting, if applicable, will be announced at the Planning Commission meeting after the discussion of the item. For further information, including the full staff report, please call (702) 229-6301 (TDD 386-9108) or go to http://www.lasvegasnevada.gov.

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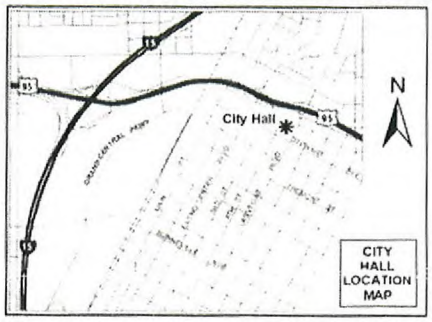

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SUP-36142
Planning Commission Meeting of 11/5/2009

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Case: SUP-36142
13820513004
LEE LARRY & JACQUEITA M
8428 APPLE HILL CT
LAS VEGAS NV 89128-7635

Submitted after final agenda
Date 10/29/09 Item 47P

HAYDEN 89128

City of Las Vegas
Planning & Development Department
Development Services Center
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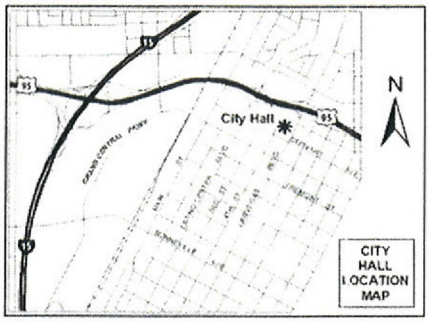

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☐ I SUPPORT this Request

☑ I OPPOSE this Request

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SUP-36142
Planning Commission Meeting of 11/5/2009

Case: SUP-36142
13821112004
GIBSON SHARON K
2324 SAPPHIRE VALLEY ST
LAS VEGAS NV 89128-7614

HAVDS11 89128

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Date 10/29/09 Item 47P

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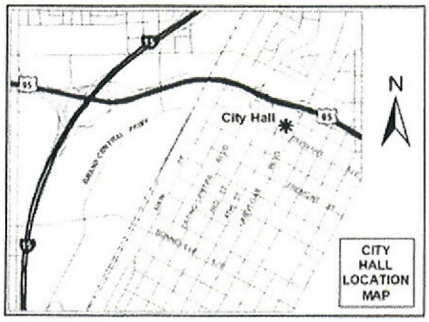

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142

Planning Commission Meeting of 11/5/2009

this entire block is the worst thing on Lake Mead. - First the Alley, then the bank, school, dentist; large medical bldg, jewelry, smoothie, strip stores, etc. When I purchased my home we were promised small bldgs. etc.

Case: SUP-36142

13821117034
MCFARLAND THERESA
2104 SNOWBIRD CT
LAS VEGAS NV 89128-7622

Big Lots
Burger King
Gas Station

HAVDS11 89128

Submitted after final agenda

Date 11/02/09 Item 47P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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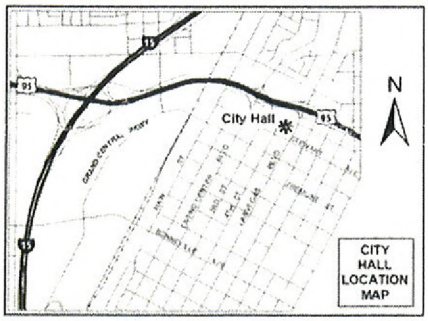

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
Planning Commission Meeting of 11/5/2009

Case: SUP-36142
13821112006
ROBERTS RICHARD W & MARIANNE G
2317 ANGELFIRE ST
LAS VEGAS NV 89128-7613

HAVOS11 89128

Submitted after final agenda
Date 11/02/09 Item 47P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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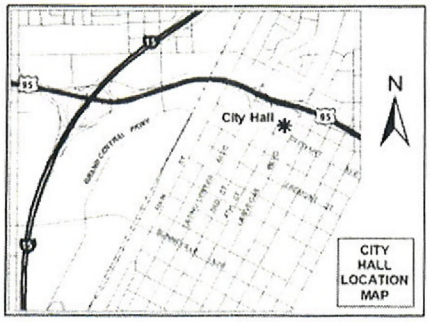

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
Planning Commission Meeting of 11/5/2009

Case: SUP-36142
13821118035
SANDERS FAMILY TRUST
8320 SWAN LAKE AVE
LAS VEGAS NV 89128-7414

HAVOS11 89128

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Date 11/02/09 Item 47P

City of Las Vegas
Planning & Development Department
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Las Vegas, Nevada 89101-2986

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
Planning Commission Meeting of 11/5/2009

Case: SUP-36142
13820518002
FODOR IMRE
2109 RICO PEAK CT
LAS VEGAS NV 89128-7634

MAY051 A5158

Submitted after final agenda

Date 11/02/09 Item 47P

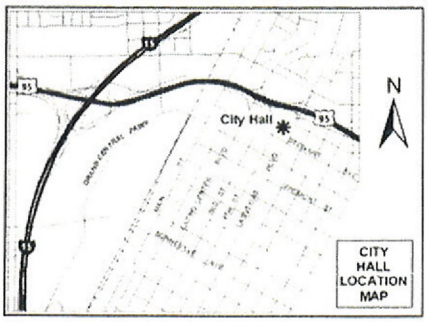
City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

UNITED STATES POSTAGE
PITNEY BOWES
02 1M
0004279218
$ 00.41⁴
OCT 23 2009
MAILED FROM ZIP CODE 89101

RECEIVED
NOV 02 2009

Return Service Requested
Official Notice of Public Hearing



If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Planning & Development Department at the address listed above or fax this side of this card to (702) 385-7268. If you would like to contact your Council Representative, please call (702) 229-6405.

☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
Planning Commission Meeting of 11/5/2009

Case: SUP-36142
13820711003
NOOSE FAMILY TRUST
1929 SEDONA PASEO LN
LAS VEGAS NV 89128-8289

HAVDS11 89128

Submitted after final agenda

Date 11/02/09 Item 47P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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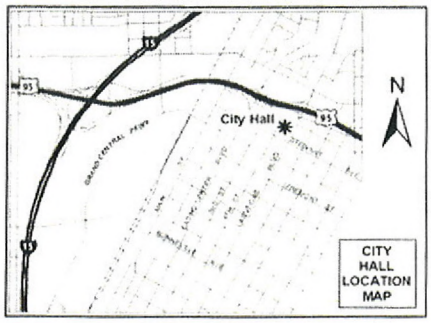

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☐ I SUPPORT this Request ☑ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
Planning Commission Meeting of 11/5/2009

RECEIVED
OCT 29 2009

Case: SUP-36142
13820518005
SPECIAL FRANK G & PATRICIA A
2100 RICO PEAK CT
LAS VEGAS NV 89128-7634

HAVD811 89128

Submitted after final agenda
Date 10/29/09 Item 47 P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

UNITED STATES POSTAGE PITNEY BOWES
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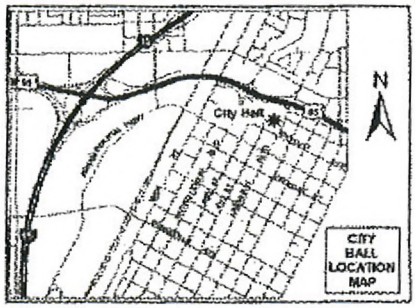
Return Service Requested
Official Notice of Public Hearing



RECEIVED
OCT 29 2009

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
Planning Commission Meeting of 11/5/2009

Case: SUP-36142
13821117024
BARBEE R W & V M LIVING TRUST
2112 BACHELOR CT
LAS VEGAS NV 89128-7620

HAVDEC1 89128

Submitted after final agenda
Date 10/29/09 Item 47P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

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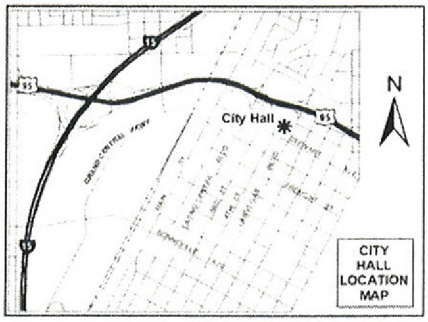
Official Notice of Public Hearing



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☒ I SUPPORT this Request ☐ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
Planning Commission Meeting of 11/5/2009

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OCT 29 2009

Case: SUP-36142
13821118037
CARLSON ROBERT A & DOLORES B
8312 SWAN LAKE AVE
LAS VEGAS NV 89128-7414

HAVDS11 89128

Submitted after final agenda
Date 10/29/09 Item 47A

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

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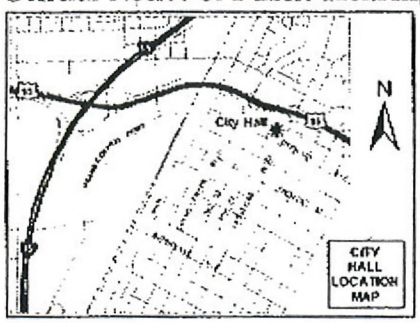

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☒ I SUPPORT this Request ☐ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142
Planning Commission Meeting of 11/5/2009

RECEIVED
OCT 29 2009

Case: SUP-36142
13821113027
BOYLE CAROLYN MOORE LIVING TRUST
2301 BEAR VALLEY
LAS VEGAS NV 89128-7605

HAUOS11 89128

Submitted after final agenda
Date 10/29/09 Item 47A

PAGE

CHILDRENS DENTAL GRP

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

PRESORTED FIRST CLASS

UNITED STATES POSTAGE
02 1M $ 00.41
0004279218 OCT 23 2009
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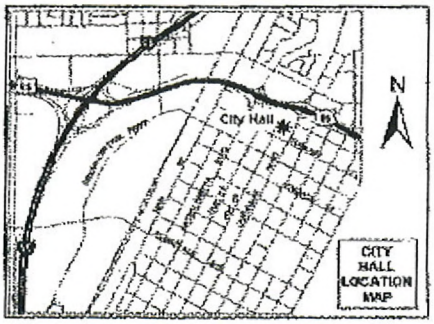
Official Notice of Public Hearing



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☑ I SUPPORT this Request ☐ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-36142

Planning Commission Meeting of 11/5/2009

RECEIVED
NOV 02 2009

Case: SUP-36142

13820611006
ARIES HOLDINGS L L C
413 CANYON GREENS DR
LAS VEGAS NV 89144-0829

22209104

HAVDS11 89144

Submitted after final agenda

Date 11/02/09 Item 47A

City of Las Vegas Agenda Item No.: **92.**

AGENDA SUMMARY PAGE - PLANNING & DEVELOPMENT

CITY COUNCIL MEETING OF: AUGUST 18, 2010

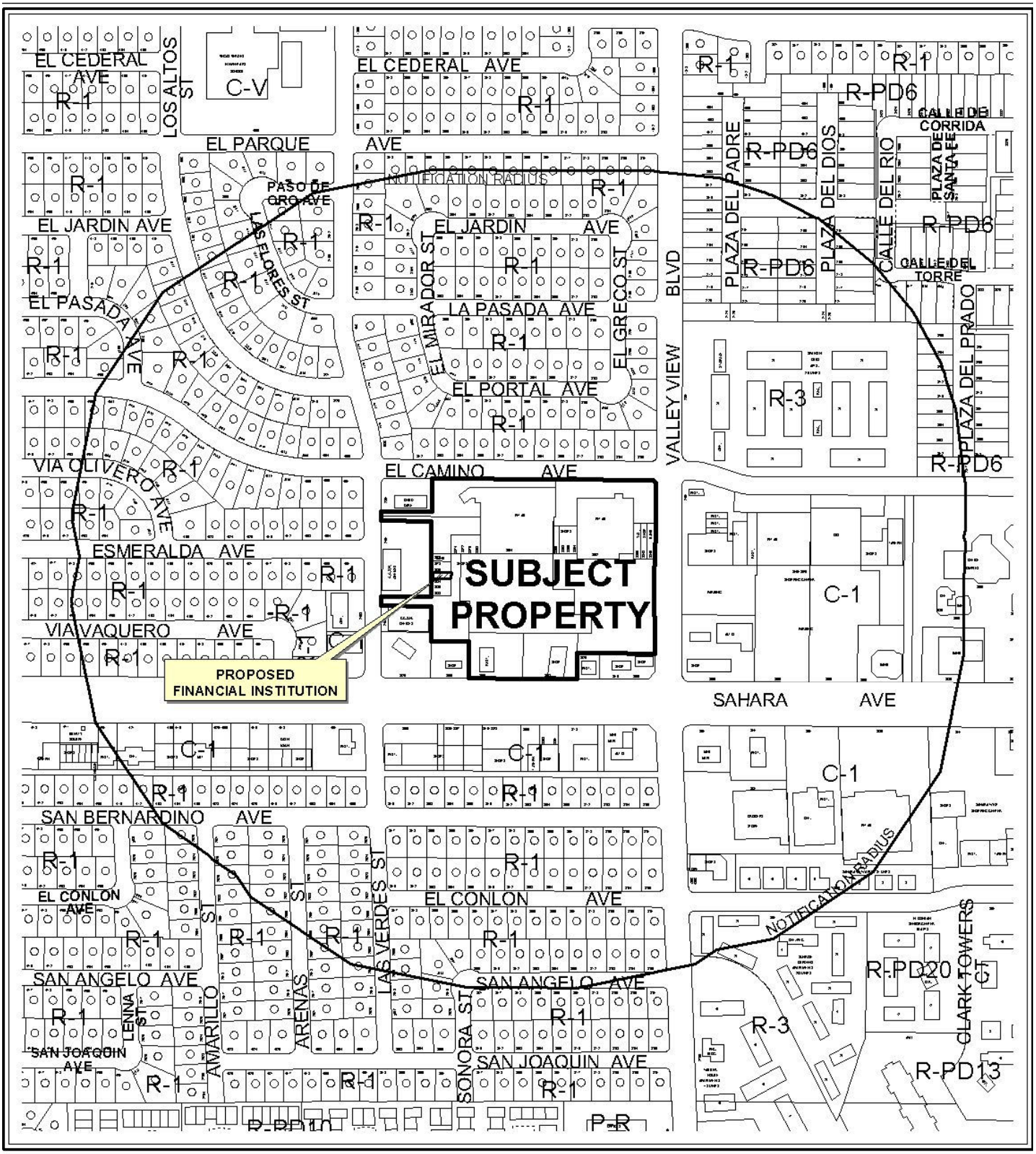
DEPARTMENT: PLANNING & DEVELOPMENT
DIRECTOR: M. MARGO WHEELER ☐ **Consent** ☒ **Discussion**

SUBJECT:
SUP-38137 – ABEYANCE ITEM - SPECIAL USE PERMIT - PUBLIC HEARING - APPLICANT: FUTURA ENVIA, INC. - OWNER: THRIFTY PAYLESS, INC. - Request for a Special Use Permit FOR A FINANCIAL INSTITUTION, SPECIFIED WITH WAIVERS TO ALLOW A 60-FOOT DISTANCE SEPARATION FROM A RESIDENTIAL USE WHERE 200 FEET IS REQUIRED; AN 820-FOOT DISTANCE SEPARATION FROM A FINANCIAL INSTITUTION, SPECIFIED WHERE 1,000 FEET IS REQUIRED AND TO ALLOW 900 SQUARE FEET OF FLOOR AREA WHERE 1,500 SQUARE FEET IS REQUIRED at 3882 West Sahara Avenue (APN 162-06-813-005), C-1 (Limited Commercial) Zone, Ward 1 (Tarkanian). Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL.

PROTESTS RECEIVED BEFORE:		**APPROVALS RECEIVED BEFORE:**	
Planning Commission Mtg.	**8**	**Planning Commission Mtg.**	**1**
City Council Meeting	**4**	**City Council Meeting**	**1**

RECOMMENDATION:
Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL, subject to conditions:

BACKUP DOCUMENTATION:
1. Location, Aerial and Special Maps
2. Conditions and Staff Report
3. Supporting Documentation
4. Photos
5. Justification Letter
6. Protest Postcard
7. Backup referenced from the June 24, 2010 Planning Commission Meeting for SUP-38137



0 400 800 Feet

CASE: **SUP-38137**

RADIUS: 1000 FT

ZONING OF SUBJECT PROPERTY: C-1 (LIMITED COMMERCIAL)

N



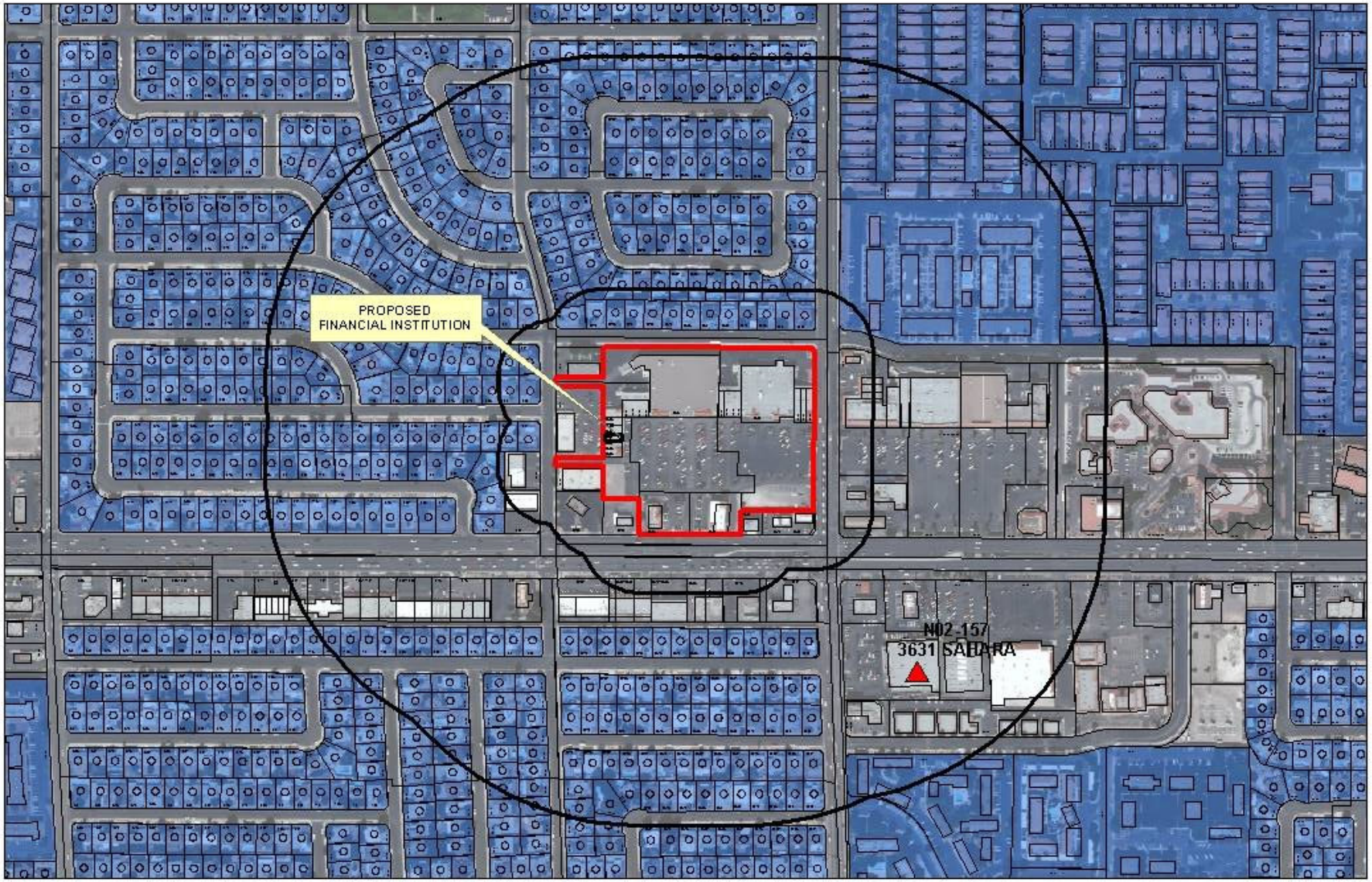
0 400 800 Feet

CASE: **SUP-38137**

RADIUS: 1000 FT

ZONING OF SUBJECT PROPERTY: C-1 (LIMITED COMMERCIAL)

N



SUP-38137

Financial Business Locations

- Financial Institution, Specified
- Pawnshops
- Automobile Title Loan

- Subject Property
- Residential Property
- 200ft & 1000ft Buffer

0 256 550 1,100 Feet

N

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: AUGUST 18, 2010
DEPARTMENT: PLANNING AND DEVELOPMENT
ITEM DESCRIPTION: APPLICANT: FUTURA, INC. - OWNER: THRIFTY PAYLESS, INC.

THIS ITEM WAS HELD IN ABEYANCE FROM THE JULY 21, 2010 CITY COUNCIL MEETING AT THE REQUEST OF COUNCIL

**** STAFF RECOMMENDATION(S) ****

CASE NUMBER	*RECOMMENDATION*	*REQUIRED FOR APPROVAL*
SUP-38137	Staff recommends DENIAL, if approved subject to conditions:	

**** CONDITIONS ****

SUP-38137 CONDITIONS

Planning and Development

1. The use shall be limited to check cashing. There shall be no loans.

2. Conformance to all Minimum Requirements under LVMC Title 19.04.010 for a Financial Institution, Specified use.

3. This approval shall be void two years from the date of final approval, unless a business license has been issued to conduct the activity. An Extension of Time may be filed for consideration by the City of Las Vegas.

4. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

RG

Staff Report Page One
August 18, 2010 - City Council Meeting

** STAFF REPORT **

PROJECT DESCRIPTION

This is a request for a Special Use Permit to allow a Financial Institution, Specified within an existing Wire Service located at 3882 West Sahara Avenue. There are requests for waivers to allow a 60-foot distance separation from a residential use where 200 feet is required, an 820-foot distance separation from another Financial Institution, Specified where 1,000 feet is required and to allow 900 square feet for the dedicated use where 1,500 square feet minimum floor area is required. Staff is recommending denial of this application because the proposed use cannot be conducted in a manner that is harmonious and compatible with existing surrounding land uses, as is evidenced by the requested waivers of distance separation and minimum floor area requirements. If this request is denied, the Financial Institution, Specified cannot be permitted on this site.

ISSUES

- A waiver is required to allow the proposed use to be located within 60 feet of a residential zoned use where 200 feet required.
- A waiver is required to allow the proposed use to be located within 820 feet of another Financial Institution, Specified where 1,000 feet is required.
- A waiver is required to allow 900 square feet for the use where 1,500 square feet is the minimum floor area required.

BACKGROUND INFORMATION

Related Relevant City Actions by P&D, Fire, Bldg., etc	
12/18/91	The City Council approved the request for reclassification of property (Z-0101-91) located at 3830 West Sahara Avenue, from C-C (Neighborhood Commercial Center), to C-1 (Limited Commercial). The Planning Commission and staff recommended approval of this request.
10/14/93	The Planning Commission approved a Plot Plan Review [Z-0101-91(1)] regarding the proposed reconfiguration of a portion of an existing retail shopping center on property located on the northwest corner of Sahara Avenue and Valley View Boulevard. Staff recommended approval of this request.
07/21/10	The City Council voted to hold this item in abeyance to the August 18, 2010 City Council meeting at the request of the applicant.

Most Recent Change of Ownership

02/27/96	A deed was recorded for a change in ownership.

Related Building Permits/Business Licenses	
07/02/92	A building permit (#92151376) was issued for a new shell building at 3876 West Sahara Avenue. The project was completed on 04/20/93.
04/15/05	A business license (W10-00076) was issued for a Wire Service at 3882 West Sahara Avenue. This license has moved to this location on 08/25/06.
10/19/06	A building permit (#06006547) was issued for a Non-Work Certificate of Occupancy at 3882 West Sahara Avenue. The project was completed on 11/06/06.

Pre-Application Meeting	
02/23/10	A pre-application meeting with applicant was held where elements of submitting a Special Use Permit for a Financial Institution, Specified were discussed. The topics included: • The submittal of application materials, meeting dates, and deadlines were discussed. • The justification letter needs to be revised indicating the correct jurisdiction from Clark County to City of Las Vegas and Zoning Ordinance from Title 30 to Title 19. • The hours of operation needs to be indicated on the justification letter indicating that the use will not extend beyond the hours of 8:00 a.m. to 11:00 p.m. Otherwise, a waiver is required to extend the required hours of operation requirements. • A waiver is required to allow 900 square feet for the use where 1,500 square feet is the minimum floor area required. • A waiver is required to allow the proposed use to be located within 60 feet of a residential zoned use where 200 feet required. • A waiver is required to allow the proposed use to be located within 820 feet of another Financial Institution, Specified where 1,000 feet is required. • The parking requirement for Financial Institution, Specified is one space for each 250 square feet of Gross Floor Area.

Neighborhood Meeting
A neighborhood meeting was not required, nor was one held.

Field Check	
05/20/10	Staff conducted a field check and noted the hours of operation is posted at the storefront window are from 9:00 a.m. to 8:00 p.m. The posted hours of operation meets the minimum Special Use Permit requirements for the proposed use.

Details of Application Request	
Site Area	
Net Acres	1.32

Surrounding Property	***Existing Land Use Per Title 19.04***	***Planned or Special Land Use Designation***	***Existing Zoning District***
Subject Property	Commercial Center	SC (Service Commercial)	C-1 (Limited Commercial)
North	Single Family Residence	SC (Service Commercial)	C-1 (Limited Commercial)
South	Commercial Center	SC (Service Commercial)	C-1 (Limited Commercial)
East	Shopping Center	SC (Service Commercial)	C-1 (Limited Commercial)
West	Office	SC (Service Commercial)	C-1 (Limited Commercial)

Master Plan Areas	***Yes***	***No***	***Compliance***
Master Plan Area		X	N/A
Special Purpose and Overlay Districts	***Yes***	***No***	***Compliance***
Special Purpose and Overlay Districts			
A-O (Airport Overlay) District	X		Y
Trails		X	N/A
Rural Preservation Overlay District		X	N/A
Las Vegas Redevelopment Plan Area		X	N/A
Development Impact Notification Assessment		X	N/A
Project of Regional Significance		X	N/A

DEVELOPMENT STANDARDS

Pursuant to Title 19.10, the following parking standards apply:

Parking Requirement							
	Gross Floor Area or Number of Units	***Required***			***Provided***		***Compliance***
			Parking		*Parking*		
Use		***Parking Ratio***	Regular	Handi-capped	Regular	Handi-capped	
Shopping Center	105,864 SF	1/250	424		420		
TOTAL SPACES REQUIRED			424		420		
TOTAL (With Handicapped)			415	9	410	10	N

Waivers		
Requirement	***Request***	***Staff Recommendation***
1,500 square feet minimum of the building or portion thereof that is dedicated for the use.	900 square feet is the existing area of the suite.	Denial
200 feet from residential zoned use.	60 feet.	Denial
1,000 feet from any other Financial Institution, Specified.	820 feet.	Denial

ANALYSIS

The proposed Financial Institution, Specified will allow a business that provides check cashing services such as a principal service deferred, a paycheck advance service, and any business primarily providing cash loans, installment loans or cash advances. The proposed use will be located within a 105,864 square-foot Shopping Center and the parking requirement is one space per 250 square feet of gross floor area; therefore, 424 parking spaces are required. Currently, the provided parking for the Shopping Center is 420 spaces and it is a parking-impaired development, pursuant to Title 19.10.010. The proposed use will not increase the area of the suite or result in a change of use that requires an increase in the number of required parking spaces.

The minimum Special Use Permit requirements for the proposed Financial Institution, Specified use are a 200-foot distance separation from residential use, a 1,000-foot distance separation from any other Financial Institutions, Specified and a 1,500 square-foot minimum floor area for of the use. The applicant has requested waivers to allow a 60-foot distance separation from a residential use, an 820-foot distance separation from another Financial Institution, Specified and to allow 900 square feet of floor area for the proposed use. Staff is recommending denial of this application because the proposed use cannot be conducted in a manner that is compatible with the surrounding land uses, as is evidenced by the requested waivers of distance separation and minimum floor area requirements.

FINDINGS (SUP-38137)

In order to approve a Special Use Permit application, per Title 19.18.060 the Planning Commission and City Council must affirm the following:

1. **The proposed land use can be conducted in a manner that is harmonious and compatible with existing surrounding land uses, and with future surrounding land uses as projected by the General Plan.**

The proposed use cannot be conducted in a manner that is harmonious and compatible with the uses in the existing site and with the commercial uses on adjacent properties due to the waivers of the distance separation from residentially zoned property and from another Financial Institution, Specified.

2. The subject site is physically suitable for the type and intensity of land use proposed.

The subject site is not physically suitable for the type and intensity of the proposed use. The suite where the proposed Financial Institution, Specified to be located is only 900 square feet. The minimum Special Use Permit requirement for the building or portion thereof that is dedicated to the use shall have a minimum size of 1,500 square feet.

3. Street or highway facilities providing access to the property are or will be adequate in size to meet the requirements of the proposed use.

Site access is provided from Sahara Avenue, a 100-foot Primary Arterial and Valley View Boulevard, an 80-foot Secondary Collector as designated in the Master Plan of Streets and Highways. These streets are of sufficient size to accommodate the needs of the proposed Financial Institution, Specified use.

4. Approval of the Special Use Permit at the site in question will not be inconsistent with or compromise the public health, safety, and welfare or the overall objectives of the General Plan.

Approval of the proposed Special Use Permit will not compromise the public health, safety and general welfare, as the use will be subject to regular inspections for business licensing.

5. The use meets all of the applicable conditions per Title 19.04.

The use does not meet all of the applicable conditions per Title 19.04, due to the request of waivers of distance separation for the proposed Financial Institution, Specified to allow the use within 60 feet of residentially zoned property, 820 feet from another Financial Institution, Specified and to allow 900 square feet minimum for the proposed use, where 1,500 square feet minimum is required.

PLANNING COMMISSION ACTION

The Planning Commission added condition #1 to which the applicant agreed.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 27

NOTICES MAILED 431 (By City Clerk)

APPROVALS 2

PROTESTS 12

PLANNING & DEVELOPMENT DEPARTMENT

STATEMENT OF FINANCIAL INTEREST

Case Number: SUP-38137 APN: 162-06813005

Name of Property Owner: Thrifty Payless, INC.

Name of Applicant: FUTURA, INC.

Name of Representative: _____

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ Yes ☒ No

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____ _____

APN: _____

Signature of Property Owner: By: _____

Print Name: J. Lawrence Gelman
Vice President

Subscribed and sworn before me

This 14th day of April, 2010

_____

Notary Public in and for said County and State

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Melissa H. Twardzik, Notary Public
East Pennsboro Twp., Cumberland County
My Commission Expires July 14, 2010
Member, Pennsylvania Association of Notaries

RECEIVED
APR 28 2010

PLANNING & DEVELOPMENT

PLANNING & DEVELOPMENT DEPARTMENT

APPLICATION / PETITION FORM

Application/Petition For: FUTURA, INC

Project Address (Location) 3882 WEST SAHARA AVE

Project Name FUTURA ENVIA **Proposed Use** CHECK CASHING

Assessor's Parcel #(s) 162-06813005 **Ward #** _____

General Plan: existing _____ proposed _____ **Zoning:** existing _____ proposed _____

Commercial Square Footage _____ **Floor Area Ratio** _____

Gross Acres _____ **Lots/Units** _____ **Density** _____

Additional Information _____

PROPERTY OWNER THRIFTY PAYLESS, INC. **Contact** I. LAWRENCE GELMAN

Address P. O. Box 3165 **Phone:** 717-975-5717 **Fax:** 717-975-5952

City HARRISBURG **State** PA **Zip** 17105

E-mail Address _____

APPLICANT FUTURA ENVIA **Contact** MRS. ROSAURA OIRTEGA

Address 3882 WEST SAHARA AVE **Phone:** (971) 235-4884 **Fax:** (503) 693-4600

City LAS VEGAS **State** NV **Zip** 89102

E-mail Address rortega@futuraenvia.com

REPRESENTATIVE _____ **Contact** _____

Address _____ **Phone:** _____ **Fax:** _____

City _____ **State** _____ **Zip** _____

E-mail Address _____

Property Owner Signature* By: _____

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name I. Lawrence Gelman
Vice President

Subscribed and sworn before me

This 14th day of April, 20 10.

_____

Notary Public in and for said County and State

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Melissa H. Twardzik, Notary Public
East Pennsboro Twp., Cumberland County
My Commission Expires July 14, 2010
Member, Pennsylvania Association of Notaries

FOR DEPARTMENT USE ONLY

Case #	SUP-38137
Meeting Date:	6/24/10
Total Fee:	1030.00
Date Received:*	4/28
Received By:	MREX

*The application will not be deemed complete until the submitted materials have been reviewed by the Planning and Development Department for consistency with applicable sections of the Zoning Ordinance.

Revised 10/27/08

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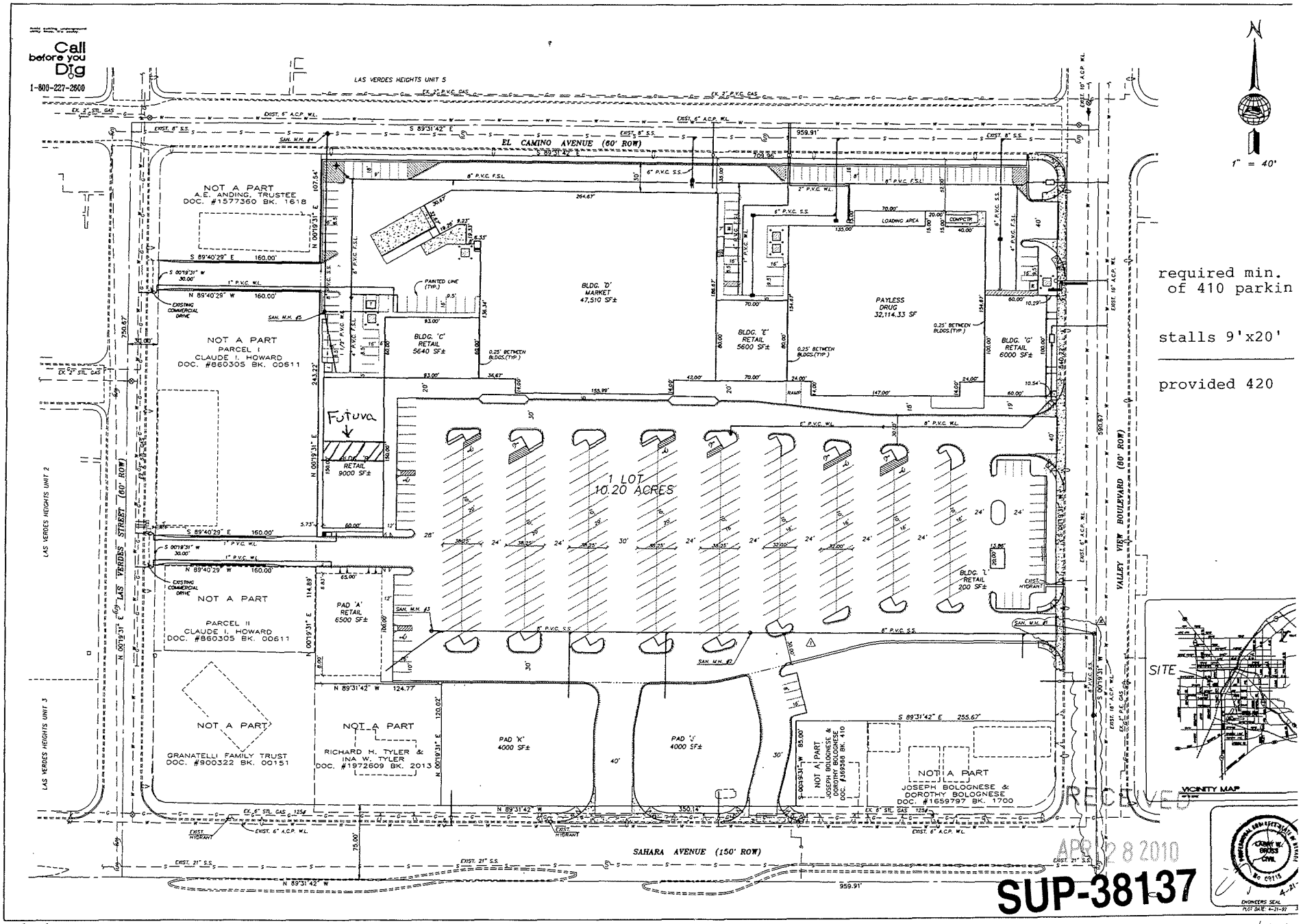


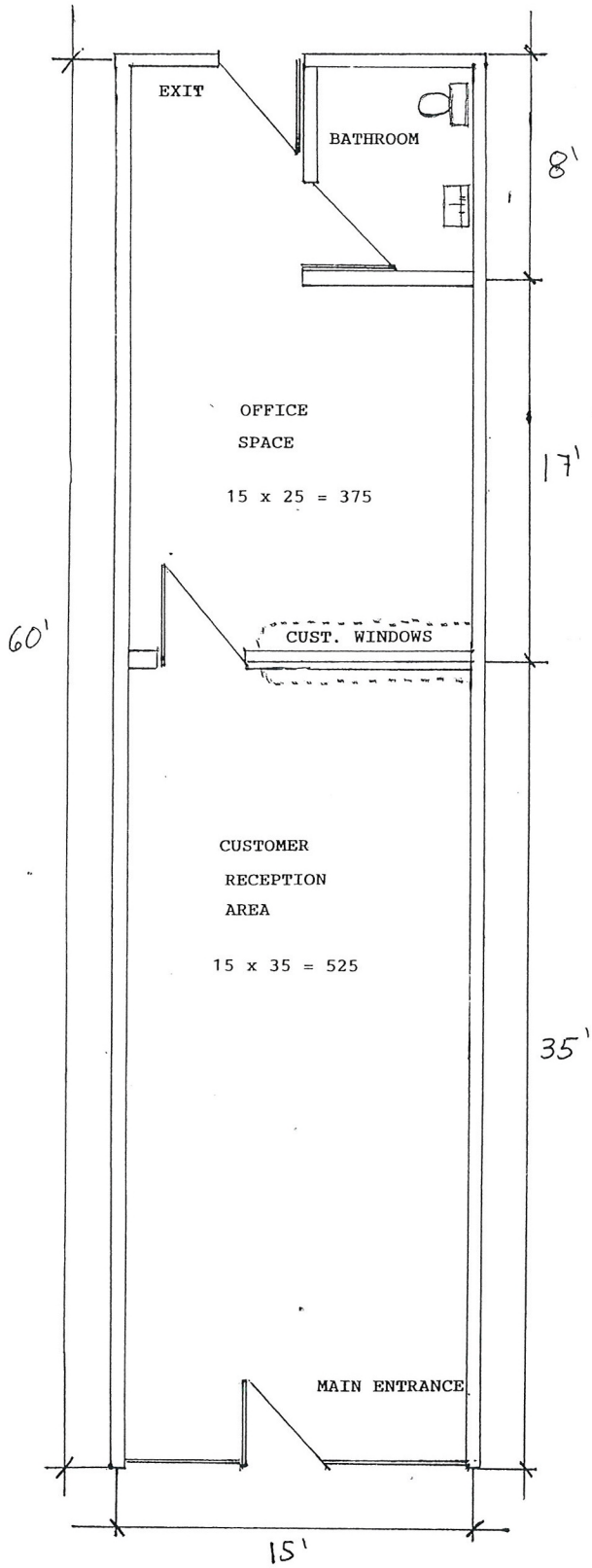
required min. of 410 parkin

stalls 9'x20'

provided 420

23337

4-2-10



FUTURA ENVIA

3882 W. SAHARA AVE.

LAS VEGAS, NV 89102

RECEIVED

APR 28 2010

SUP-38137



SUP-38137 – APPLICANT: FUTURA ENVIA, INC. - OWNER: THRIFTY PAYLESS, INC.
3882 WEST SAHARA AVENUE

05/20/10



SUP-38137 – APPLICANT: FUTURA ENVIA, INC. - OWNER: THRIFTY PAYLESS, INC.
3882 WEST SAHARA AVENUE

05/20/10

Futura, Inc.
331 S.E. 10th Ave.
Hillsboro, OR 97123
tel: 1-888-744-1616
503-693-1616
fax: 1-877-977-4600
503-693-4600

FUTURA

April 6, 2010

JUSTIFICATION LETTER

City of Las Vegas
Case Planning
Planning & Development Department
731 S 4th St.
Las Vegas, NV 89101

RE: Branch Location – **Futura Envia**
3882 W. Sahara
Las Vegas, NV 89102

Dear Planning Commission:

As President of Futura Envia, with Corporate Office located at 331 SE 10th Ave., Hillsboro, Oregon 97123, I am writing this JUSTIFICATION LETTER, to express our business reasons for the application of this **Special Use Permit for Check Cashing** at the above mentioned property. **Futura is currently licensed by the Department of Financial Institutions as a Money Transmitter, and Check Casher** and is licensed by the City of Reno and Sparks as an Authorized Check Casher. Futura is also an Authorized Delegate of Money Gram, for which we offer through them the sale of money orders and bill payment services. Our customers constantly walk into our business with their payroll checks expecting to cash and use the funds to pay bills, purchase money orders to pay for their rent and even wire money to their families abroad.

Our current **neighbors "Food 4 Less"**, constantly send their customers to our office to try to cash their payroll checks in order to purchase produce. Since this is not possible, customers have to go elsewhere for their shopping, affecting all businesses in this shopping area. We strongly believe that being able to provide this check cashing service to our customers will help us create a more stable and profitable environment for all the businesses in this shopping area because it will help us maintain our local customers. Our company is dedicated to providing the best service to our customers and plans to cash **only payroll checks** (no third party, personal or out of state checks).

RECEIVED
MAY 19 2010

Su dinero en buenas manos...

SUP-38137
REVISED

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

382-4803

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0004279218 JUL 08 2010
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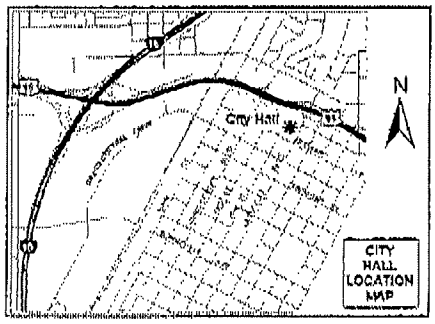

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38137

City Council Meeting of 7/21/2010

FOYT ELIZABETH ANN
2216 PLAZA DEL PRADO
LAS VEGAS NV 89102-3914

APN#16205412006

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CITY CLERK
2010 JUL 12 P 12:40

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Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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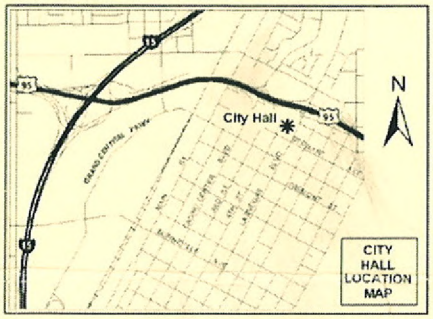

XX LAS VEGAS NV 890 07-09-10

2010 JUL 15 A 11:01

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CITY CLERK

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

Tragic if you allow an outlet for substandard loans within 60 feet of a residence. Do we really need another pay day loan outlet — no!

SUP-38137
City Council Meeting of 7/21/2010

MITCHELL LOUIS A & NORMA B
3434 WILD BUCK RUN
TEMPLE TX 76502-5488

APN#16205411003

Submitted after final agenda

Date 7/15/10 Item 98

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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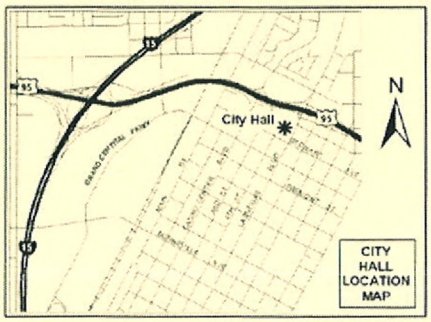

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38137
City Council Meeting of 7/21/2010

RECEIVED
2010 JUL 19 A 11:21
CITY CLERK

BADILLO-CORDOBA CELESTINO E
3805 EL JARDIN AVE
LAS VEGAS NV 89102-3891

APN#16206712055

Submitted after meeting
Date 7/19/10 Item 98

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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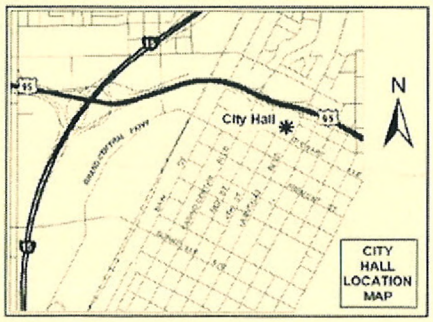

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☒ I OPPOSE this Request

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SUP-38137

City Council Meeting of 7/21/2010

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2010 JUL 20 P 1:08

RECEIVED
CITY CLERK

MCMANUS JAMIE
2113 PLAZA DEL DIOS
LAS VEGAS NV 89102-8985

APN#16205314052

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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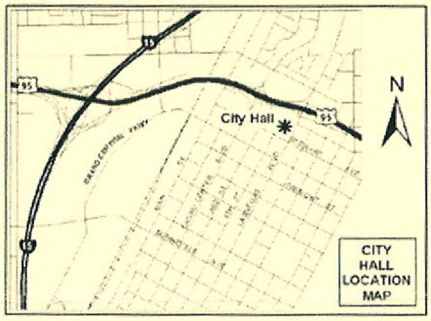

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☒ I SUPPORT this Request ☐ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38137
City Council Meeting of 7/21/2010

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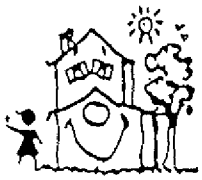
CITY CLERK
2010 JUL 16 P 1:22

CASTRICONE FAMILY TRUST
CASTRICONE RICHARD & GLORIA TRS
4017 EL CAMINO AVE
LAS VEGAS NV 89102-3601

APN#16206810106



CHARLESTON NEIGHBORHOOD PRESERVATION

"Doing things today that will improve tomorrow"

Phone/Fax: 702-877-2438

TO: Mayor GOODMAN, Mayor Pro-Tem REESE, Councilpersons WOLFSON, TARKANIAN, ROSS, BARLOW, ANTHONY!
FROM: CNP
DATE: FOR July 21, 2010
RE: Selected CLV July 21, 2010 Agenda items

#34—request to Councilpersons Tarkanian and or Wolfson to pull from CONSENT for discussion/response to faxed questionS.

#42—request to ANY Councilperson or Group of to pull from CONSENT for discussion/response to faxed questionS.

#47—request to Councilman Barlow to pull from CONSENT for response to faxed questioN.

#54—Looks to us as though there are too many people with too much time on their hands and even money? Whoever is checking on this RTC must take another look/study on decreasing numbers and checking reality! Please vote NO on this incompetent plan to force an experiment to see whether insurance costs/ injuries, will balance with fuel upon government employees at taxpayer expense.

Regional Transportation Commission must get bus benches for these constituents forced to Sit on Rocks, Curbs, Market baskets, Dirt piles, Leaning on poles, or Standing in cold, heat, dust, rain—what an insult to hear about newer, larger buses with the torture imposed on increased ridership at increased ticket prices to pay for them--elsewhere! {Vegas Dr. to Charleston & Buffalo to Decatur is what we have in mind—but that's not all.}

We have other reality, practical suggestions.

#57—Vote NO on Bill 2010-22 because no satisfactory agreement with neighbors was reached!
Our question regards an unnumbered question on an unnumbered page, between p.14 and p.16 of Daniel Lauber's report to Clark County, NV which is to be filled out by an applicant for one of these group homes. There is a box to be checked "if neither State of Nevada nor Clark County requires a license or certification to operate the proposed community residence."
Are there any such operations in Las Vegas today that will need to have this box checked, provided that this bill passes?
If yes, would they need to fill out this application and have that box checked OR because this bill was not in effect when they applied, would they not be required to fill this page out and have this box checked?
If we don't know, will a check be made and action taken?

#74—EOT-38422—YES, please.

#76—EOT-38524—a mandatory 25 yr extension-YES please.

#92—SDR-37940-a drive through is higher risk for the attendant.

#95—SUP-38194—NO, please to ALL THREE waivers. These are not waivers to a frivolity, these are real people, real living conditions, and a real right-of-way—for a Massage Establishment. Quality of life in this neighborhood will be lessened and current standards will be further lowered if distance to residential is altered

Submitted at City Council
Date 7/21/10 Item 54
Juanita Clark

BOARD & ADVISORY MEMBERS
Dennis Ardine-Vicki Arnold-Dick Bratton-Erna Clark-Juanita Clark-Miriam Een- Danielle Hanslip-Rose Honrath-June Ingram-Rick Johnson-Jolanta Krol-Rod &Betty Larsen- Geno &Pearl Lonardo-Flo Montalvo-Dorothy Orr-Jim Seward-Pamela Stancliffe-Tim Volz-Marcus Gobel-Ginger Norton-Denise Reitz-Layne Rushforth-Jeanine Sweany-Julia Whaun-Jean Withers-Others

CHARLESTON NEIGHBORHOOD
PRESERVATION

"Doing things today that will improve tomorrow"

Phone/Fax: 702-877-2438

to 340 ft., an existing massage is within 638 ft., and the right of way is only 60ft. What kind of reputation would we strengthen?

#98—SUP-38137—NO, please to ALL THREE waivers. Will we break the constituent's trust, if the prize is big "enough"? This clever Financial Institution requests being 140 ft too close to Residential, 180 ft. too close to Another financial institution, AND be 600 sq ft. smaller in area than the required 1,500 sq. ft..

June Ingram
C N P President

June Ingram, PRESIDENT and BOARD
Charleston Neighborhood Preservation

BOARD & ADVISORY MEMBERS
Dennis Ardine-Vicki Arnold-Dick Bratton-Erna Clark-Juanita Clark-Miriam Een- Danielle Hanslip-Rose Honrath-June Ingram-Rick Johnson-Jolanta Krol-Rod &Betty Larsen- Geno &Pearl Lonardo-Flo Montalvo-Dorothy Orr-Jim Seward-Pamela Stancliffe-Tim Volz-Marcus Gobel-Ginger Norton-Denise Reitz-Layne Rushforth-Jeanine Sweany-Julia Whaan-Jean Withers-Others

NOTE: THE FOLLOWING DOCUMENTATION WAS SUBMITTED FOR THE RECORD BEFORE OR AT THE PLANNING COMMISSION HEARING ON THIS ITEM WHICH IS NOW APPEARING BEFORE THE CITY COUNCIL

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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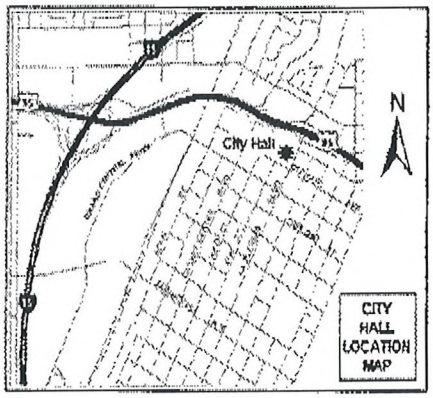

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38137
Planning Commission Meeting of 6/24/2010

Case: SUP-38137
16206810001
DOWNS DOROTHY C
2221 LOS ALTOS ST
LAS VEGAS NV 89102-3775

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28P

City of Las Vegas
Planning & Development Department
Development Services Center
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Las Vegas, Nevada 89101-2986

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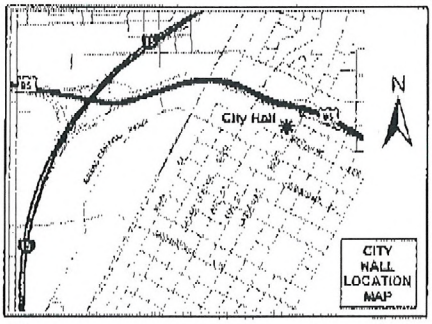

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SUP-38137

Planning Commission Meeting of 6/24/2010

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JUN 14 2010

385-7268

Case: SUP-38137

16205412006
FOYT ELIZABETH ANN
2216 PLAZA DEL PRADO
LAS VEGAS NV 89102-3914

28P

06/13/2010 22:09 7022581933 ELIZABETH EOY PAGE 01/01

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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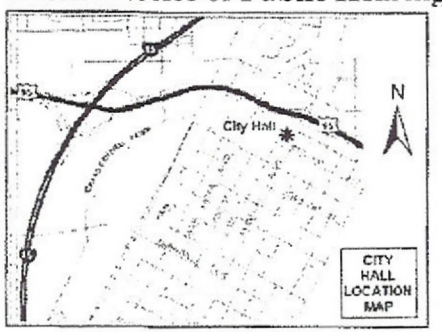

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☐ I SUPPORT this Request

☑ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38137

Planning Commission Meeting of 6/24/2010

Case: SUP-38137

16207514033
OLIVERIO BIAGIO & JOSEPHINE
32 TIMBER RIDGWAY
CALGARY AB T3R 1B9
CANADA 00000-0000

RECEIVED
JUN 23 2010

Submitted after final agenda
Date 6/23/10 Item 28

23 Jun 10 08:54a

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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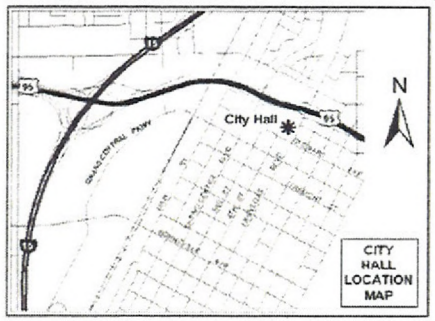

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

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SUP-38137

Planning Commission Meeting of 6/24/2010

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10 JUN 21 PM 4:16
PLANNING & DEVELOPMENT

Case: SUP-38137

16206711106
DELGADO JOSE G & MARTHA N
3709 EL PARQUE AVE
LAS VEGAS NV 89102-3806

Submitted after final agenda
Date
Item 28

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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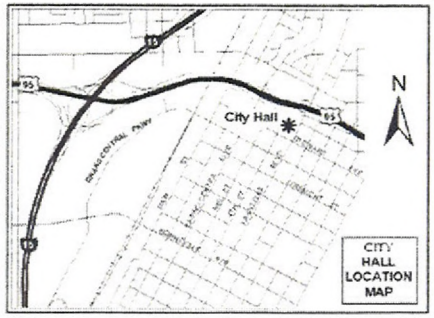

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SUP-38137

Planning Commission Meeting of 6/24/2010

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XX LAS VEGAS NV 890 06-12-10

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JUN 18 2010

Case: SUP-38137
16205411003
MITCHELL LOUIS A & NORMA B
3434 WILD BUCK RUN
TEMPLE TX 76502-5488

DAVDS11 76502

Submitted after final agenda
Date
Item 28

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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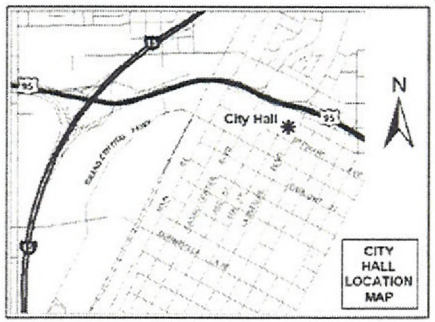

Maybe "A FINANCIAL INST." WILL END UP WORSE THAN WHAT'S THERE NOW. NO

RECEIVED
JUN 17 2010

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Please use available blank space on card for your comments.

SUP-38137
Planning Commission Meeting of 6/24/2010

Case: SUP-38137
16206810011
SAYCICH JOHN M & LILLIAN FAM TR
2116 LOS ALTOS ST
LAS VEGAS NV 89102-3772

Submitted after final agenda
Date
Item 28P

CHARLESTON NEIGHBORHOOD
PRESERVATION

"Doing things today that will improve tomorrow"

Phone/Fax: 702-877-2438

DATE: June 21, 2010
TO: CLV PLANNING COMMISSIONERS!
FROM: Charleston Neighborhood Preservation
RE: Selected items from June 24, 2010 CLV Planning Commission Agenda

We understand that all LV Planning Commission actions may set a precedent for any and all actions within our City of Las Vegas, Nevada boundaries, therefore imposing a direct impact upon ALL wards.

#24. SUP-38194 related to VAR-38 – We ask that NO be the vote on this SUP because of the THREE waivers:
1) the 340 ft. distance from a residential zone where residents are assured of a 400 ft. distance,
2) the 638 ft. variance from code in the distance required from an existing massage establishment, AND
3) the 20 ft. variance requested from the required distance of 80 ft from access to the site!
We know these measurements were not arbitrarily established for the protection of residents as well as the business person and ask that we respect them.

#28. SUP-38137 – NO is the vote we request for this business in this location because of the permanent effect such waivers have throughout the city. Does money override code and ordinances? Can a homebuyer trust such?
1)The 140 ft. waiver in separation distance from residential use is good governing?
2)the 180 ft. waiver from a Financial Institution surely is a detriment to the established business, AND
3) the 600 ft variance in the required square feet of floor area will forever, within our city boundaries, encourage even smaller, 'hole in the wall' Financial Institutions.

With both #24 and #28, the door is open for 4 plus waivers which certainly is lowering the standards of the "WORLD CLASS" image mentioned as a quality for our city.

Appreciating your challenging position,

June Ingram, President and BOARD

June
C N P

RECEIVED
10 JUN 22 AM 8:22
PLANNING AND DEVELOPMENT

Submitted after final agenda
Date Item 28

BOARD & ADVISORY MEMBERS
Dennis Ardine-Vicki Arnold-Dick Bratton-Erna Clark-Juanita Clark-Miriam Een- Danielle Hanslip-Rose Honrath-June Ingram-Rick Johnson-Jolanta Krol-Rod &Betty Larsen- Geno &Pearl Lonardo-Flo Montalvo-Dorothy Orr-Jim Seward-Pamela Stancliffe-Tim Volz-Marcus Gobel-Ginger Norton-Denise Reitz-Layne Rushforth-Jeanine Sweany-Julia Whaun-Jean Withers-Others

City of Las Vegas
Planning & Development Department
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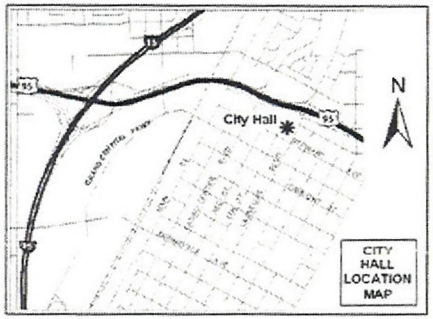

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☒ I SUPPORT this Request ☐ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38137
Planning Commission Meeting of 6/24/2010

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JUN 17 2010

Case: SUP-38137

16205410005
LYONS EILEEN J
2120 PLAZA DEL DIOS
LAS VEGAS NV 89102-3973

Submitted after final agenda
Date
Item 28 A

City of Las Vegas Agenda Item No.: **93.**

AGENDA SUMMARY PAGE - PLANNING & DEVELOPMENT
CITY COUNCIL MEETING OF: AUGUST 18, 2010

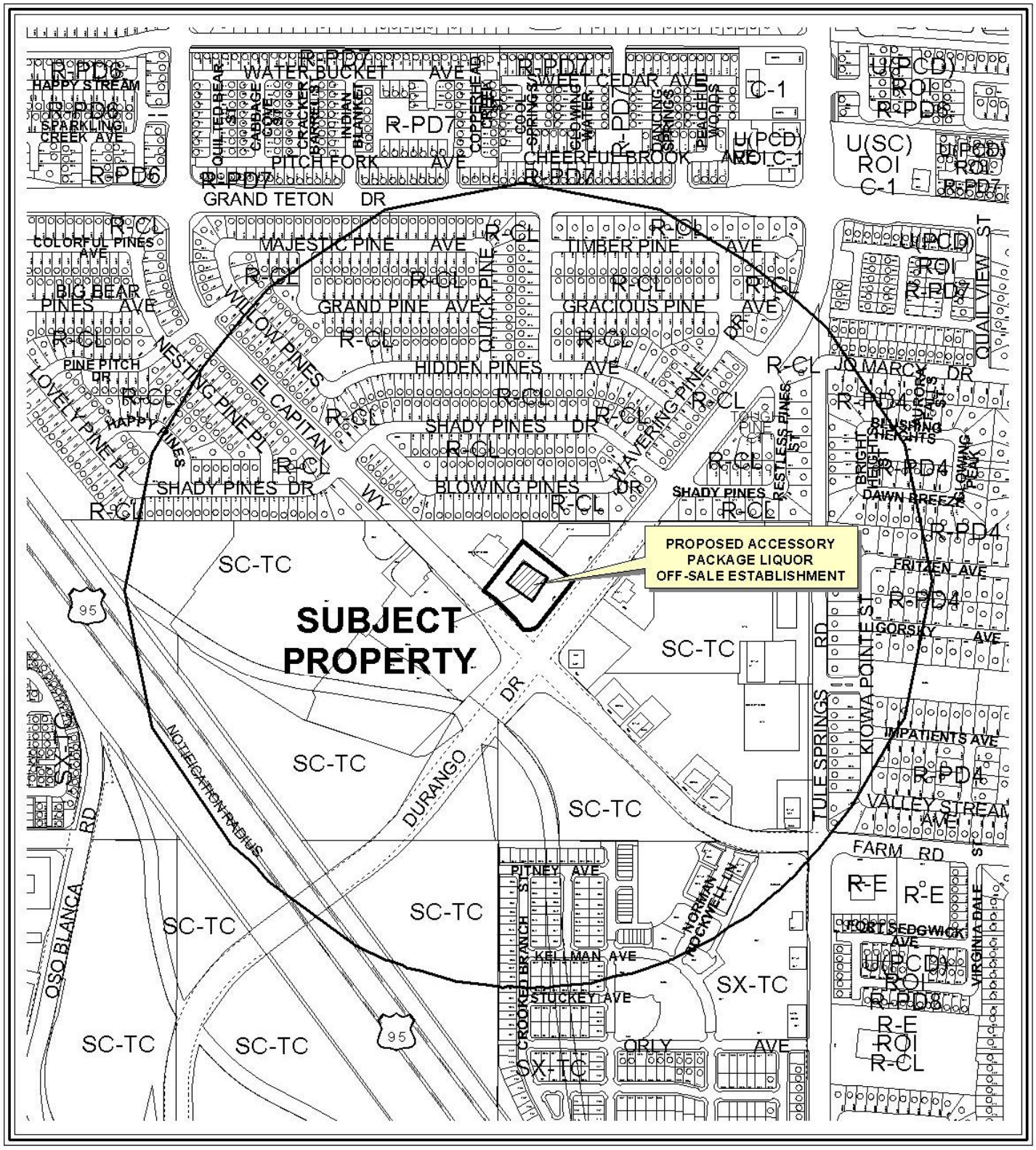
DEPARTMENT: PLANNING & DEVELOPMENT
DIRECTOR: M. MARGO WHEELER ☐ **Consent** ☒ **Discussion**

SUBJECT:
SUP-38211 – ABEYANCE ITEM - SPECIAL USE PERMIT - PUBLIC HEARING - APPLICANT: WALGREEN CO. - OWNER: PPLAND, LP - Appeal filed from the denial by the Planning Commission of a request for a Special Use Permit FOR A 74 SQUARE-FOOT ACCESSORY PACKAGE LIQUOR OFF-SALE USE WITHIN AN EXISTING 14,820 SQUARE-FOOT RETAIL ESTABLISHMENT at 7755 North Durango Drive (APN 125-17-611-002), T-C (Town Center) Zone [SC-TC (Service Commercial - Town Center) Special Land Use Designation], Ward 6 (Ross). The Planning Commission (7-0 vote) recommends DENIAL. Staff recommends APPROVAL.

PROTESTS RECEIVED BEFORE:		**APPROVALS RECEIVED BEFORE:**	
Planning Commission Mtg.	**3**	**Planning Commission Mtg.**	**1**
City Council Meeting	**6**	**City Council Meeting**	**1**

RECOMMENDATION:
The Planning Commission (7-0 vote) recommends DENIAL. Staff recommends APPROVAL, subject to conditions:

BACKUP DOCUMENTATION:
1. Location, Aerial and Special Maps
2. Conditions and Staff Report
3. Supporting Documentation
4. Photos
5. Justification Letter
6. Appeal Letter Submitted by Jennifer Roberts (Lionel Sawyer & Collins)
7. Protest/Support Postcards
8. Backup referenced from the June 24, 2010 Planning Commission Meeting for SUP-38211



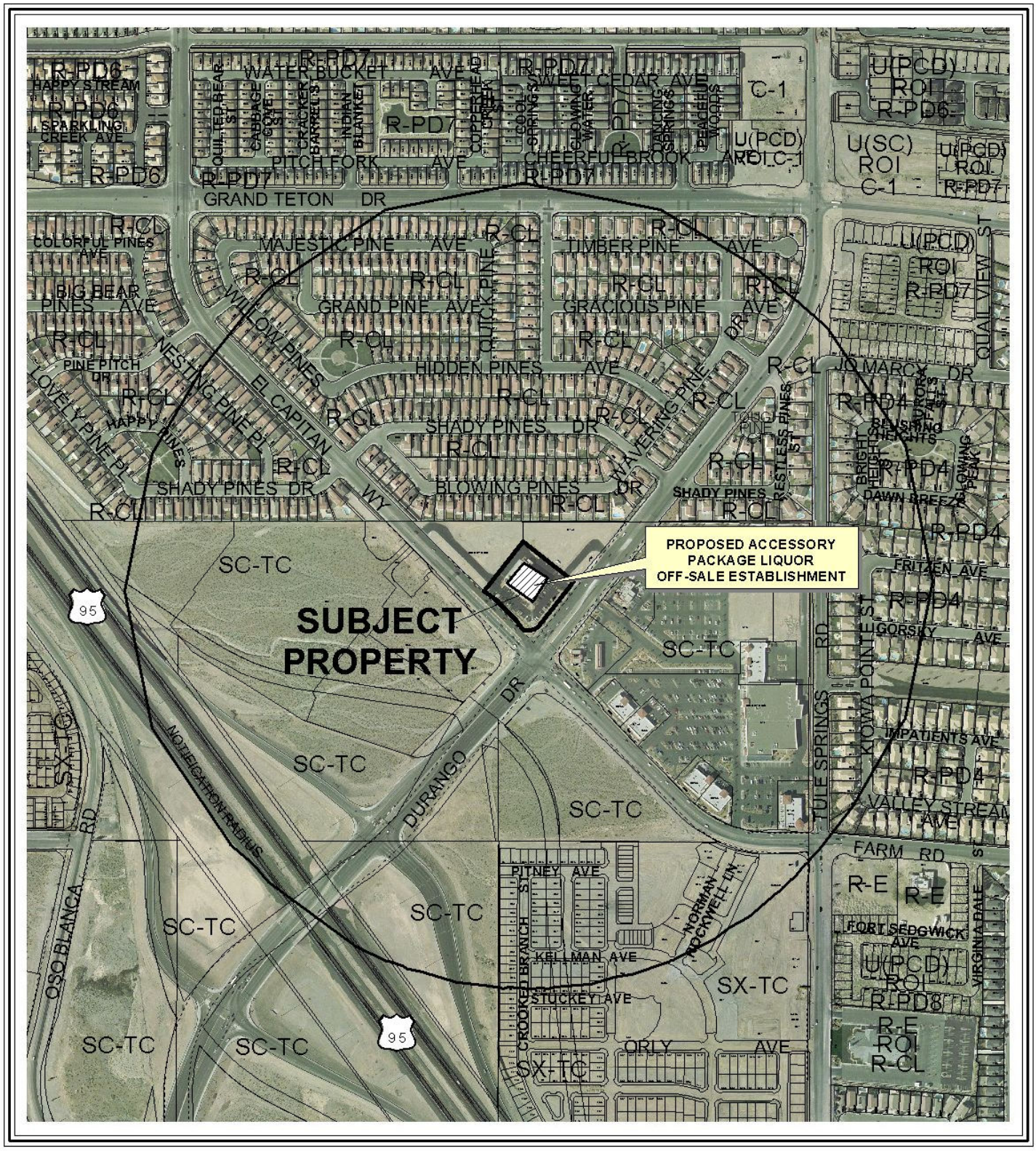
0 400 800 Feet

CASE: **SUP-38211**

RADIUS: 1500 FT

ZONING OF SUBJECT PROPERTY:

T-C (TOWN CENTER) ZONE [SC-TC (SERVICE COMMERCIAL - TOWN CENTER) SPECIAL LAND USE DESIGNATION]



0 400 800 Feet

CASE: **SUP-38211**

RADIUS: 1500 FT

ZONING OF SUBJECT PROPERTY:

T-C (TOWN CENTER) ZONE [SC-TC (SERVICE COMMERCIAL - TOWN CENTER) SPECIAL LAND USE DESIGNATION]

N



SUP-38211

Business Licenses

- Child Care/ Children Facility
- Beer/Wine/Cooler On Sale
- Beer/Wine/Cooler Off Sales
- Beer/Wine/Cooler On-Off Sale
- Package Liquor Sales
- Supper Club/ Restaurant Service Bar
- Tavern
- RELIGIOUS
- CITY PARKS
- SCHOOLS
- Subject Property
- 400 foot buffer

N

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: AUGUST 18, 2010
DEPARTMENT: PLANNING AND DEVELOPMENT
ITEM DESCRIPTION: APPLICANT: WALGREEN CO. - OWNER: PPLAND, LP

THIS ITEM WAS HELD IN ABEYANCE FROM THE JULY 21, 2010 CITY COUNCIL MEETING AT THE REQUEST OF THE APPLICANT

**** STAFF RECOMMENDATION(S) ****

CASE NUMBER	*RECOMMENDATION*	*REQUIRED FOR APPROVAL*
SUP-38211	Staff recommends APPROVAL, subject to conditions:	N/A

**** CONDITIONS ****

SUP-38211 CONDITIONS

Planning and Development

1. Conformance to all Minimum Requirements under LVMC Title 19.04.010 for a Retail Establishment with Accessory Package Liquor Off-Sale use.

2. Conformance to the approved conditions for Rezoning (Z-0076-98) and Site Development Plan Review (SDR-3191).

3. This approval shall be void two years from the date of final approval, unless a business license has been issued to conduct the activity. An Extension of Time may be filed for consideration by the City of Las Vegas.

4. Approval of this Special Use Permit does not constitute approval of a liquor license.

5. This business shall operate in conformance to Chapter 6.50 of the City of Las Vegas Municipal Code.

6. All beer and wine coolers shall remain in their original manufacturer's configuration of four- or six-packs.

7. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

** STAFF REPORT **

PROJECT DESCRIPTION

This is a request for a Special Use Permit for a 74 square-foot Retail Establishment with Accessory Package Liquor Off-Sale use within an existing 14,820 square-foot Retail Establishment at 7755 North Durango Drive. The proposed use will not require additional parking beyond that which is required for the principal use on the site. No more than 10 percent of the retail floor space is devoted to alcoholic beverage sales. This site location is well suited for this use, since it is located within a large shopping center. Staff recommends approval, since the Retail Establishment with Accessory Package Liquor Off-Sale use meets all minimum Special Use Permit requirements. If this request is denied, the existing retail establishment would remain.

BACKGROUND INFORMATION

Related Relevant City Actions by P&D, Fire, Bldg., etc	
12/07/98	The City Council approved the Rezoning (Z-0076-98) to the T-C (Town Center) district on 1,468 acres, including this parcel. The Planning Commission and staff recommended approval.
11/07/01	The City Council approved the Town Center Development Standards (TCDS) Manual through Bill No. 2001-100. The TCDS details the uses permitted within Town Center and the development standards that will accomplish the vision of Town Center.
01/07/04	The City Council approved Site Development Plan Review (SDR-3191) and a Waiver of Town Center Build-to-Line standard for 29,120 square feet of retail space on five pad sites. Planning Commission and Staff recommended denial on 12/04/03.
01/22/04	The Planning Commission approved a Tentative Map (TMP-3272) for a two-lot commercial subdivision on 4.91 acres. Staff recommended approval.
12/03/04	Planning Staff administratively approved a Minor Amendment to an approved Site Development Plan Review (SDR-3191) to allow minor changes of building footprints and to allow 29,315 square feet of retail space on four pad sites.
03/21/05	The Planning and Development Department administratively approved a minor amendment to an approved Site Development Plan Review (SDR-3191) to allow minor changes of building footprints and to allow 28,315 square feet of retail space on three pad sites.
05/04/04	The Centennial Hills Architectural Review Committee approved a request for a Master Sign Plan (CHARC-0014-04) at 7785 North Durango Drive.

11/06/07	The Centennial Hills Architectural Review Committee approved a request for a Major Modification to an approved Master Sign Plan (CHARC-0014-04) at 7785 North Durango Drive.
06/24/10	The Planning Commission (7-0 vote) recommends DENIAL (PC Agenda Item #12/jg).
07/21/10	The City Council voted to hold this item in abeyance to the August 18, 2010 City Council meeting at the request of the applicant.

Most Recent Change of Ownership	
04/11/200	A deed was recorded for a change in ownership.

Related Building Permits/Business Licenses	
06/09/04	A building permit (4014747) was issued for a Certificate of Occupancy for a 14,820 square-foot retail building at 7755 North Durango Drive. The permit was finaled on 02/25/05.
06/09/04	A building permit (4014746) was issued for on-site-hardscape. The permit was never finaled.
07/07/07	A building permit (4017017) was issued for on-site sewer, water and fire. The permit was finaled 07/21/04.
07/15/04	A building permit (4017733) was issued for Electrical Retail Store for a Certificate of Occupancy for a 14,820 square-foot retail building at 7755 North Durango Drive. The permit was finaled on 02/03/05.
10/15/04	A building permit (4020603) was issued for wall signs. The permit was finaled 02/25/05
03/09/05	A business license (C05-02366) was issued for a Tobacco Dealer Retail at 7755 North Durango Drive. The license is still active.
03/09/05	A business license (D11-00211) was issued for a Drug Store at 7755 North Durango Drive. The license is still active.
07/18/08	A business license (Q04-00087) was issued for a Pharmacy at 7755 North Durango Drive. The license is still active.

Pre-Application Meeting	
04/13/10	A pre-application meeting with the applicant was held where elements of submitting a Special Use Permit for a Retail Establishment with Accessory Package Liquor Off-Sale were discussed. The topics included: • The submittal of application materials, meeting dates, and deadlines were discussed. • Need to indicate retail floor space devoted for the sale of alcoholic beverages. • The proposed use is not within 400 feet of any church, synagogue, school, child care facility licensed for more than 12 children, or City Park.

Neighborhood Meeting
A neighborhood meeting was not required, nor was one held.

Field Check	
05/20/10	A field inspection was conducted by staff. The subject property was noted as a well maintained commercial center.

Details of Application Request	
Site Area	
Net Acres	1.66

Surrounding Property	***Existing Land Use Per Title 19.04***	***Planned or Special Land Use Designation***	***Existing Zoning District***
Subject Property	General Retail Store	SC-TC (Service Commercial- Town Center)	T-C (Town Center)
North	Single-Family Residential	PCD (Planned Community Development)	R-CL (Single Family – Compact Lot)
South	Undeveloped	GC-TC (General Use Commercial)	T-C (Town Center)
East	Shopping Center	SC-TC (Service Commercial- Town Center)	T-C (Town Center)
West	Shopping Center	SC-TC (Service Commercial- Town Center)	T-C (Town Center)

Master Plan Areas	***Yes***	***No***	***Compliance***
Master Plan Area			
Town Center Master Plan	X		Y
Special Purpose and Overlay Districts	***Yes***	***No***	***Compliance***
Special Purpose and Overlay Districts			
T-C (Town Center) District	X		Y
Trails	X		Y
Rural Preservation Overlay District		X	N/A
Las Vegas Redevelopment Plan Area		X	N/A
Development Impact Notification Assessment		X	N/A
Project of Regional Significance		X	N/A

JG

DEVELOPMENT STANDARDS

As approved by SDR-3191, the following parking standards apply:

Parking Requirement							
	Gross Floor Area or Number of Units	***Required***			***Provided***		***Compliance***
			Parking		*Parking*		
Use		***Parking Ratio***	Regular	Handi-capped	Regular	Handi-capped	
General Retail Store, Other Than Listed (3,500 SF or More)	14,820 SF	1:250 SF	60		66		Y
TOTAL SPACES REQUIRED			60		66		Y
TOTAL (With Handicapped)			57	3	63	3	Y

ANALYSIS

This is a request for a Special Use Permit for a 74 square-foot Retail Establishment with Accessory Package Liquor Off-Sale use within an existing 14,820 square-foot Retail Establishment at 7755 North Durango Drive. This site location does not have any churches, schools, child care facilities or city parks within the required 400-foot distance separation radius. No additional parking beyond that which is required for the principal use on the site is required as a result of the addition of this use.

The sale of alcoholic beverages is ancillary to the retail use, and 74 square feet of the retail floor space is devoted to the display or merchandising of alcoholic beverages. The proposed use meets minimum requirements of Title 19.04; staff therefore recommends approval of this request.

FINDINGS (SUP-38211)

In order to approve a Special Use Permit application, per Title 19.18.060 the Planning Commission and City Council must affirm the following:

1. **The proposed land use can be conducted in a manner that is harmonious and compatible with existing surrounding land uses, and with future surrounding land uses as projected by the General Plan.**

   The proposed Retail Establishment with Accessory Package Liquor Off-Sale use will be located within the existing Retail Establishment and it is an accessory use. The proposed use can be conducted in a manner that is harmonious and compatible with the uses in the existing site and with the commercial uses on adjacent properties.

2. The subject site is physically suitable for the type and intensity of land use proposed.

The subject site is physically suitable for the type and intensity of the proposed use. There is no additional parking requirement for a Retail Establishment with Accessory Package Liquor Off-Sale use other than that which is required for the principal use on site.

3. Street or highway facilities providing access to the property are or will be adequate in size to meet the requirements of the proposed use.

Site access is provided from El Capitan Way, an 80-foot Town Center Arterial and Durango Drive, a 120-foot Town Center Parkway Arterial as designated by the Town Center Street Classifications in the Town Center Development Standards Manual. These streets are of sufficient size to accommodate the needs of the proposed Accessory Package Liquor Off-Sale use.

4. Approval of the Special Use Permit at the site in question will not be inconsistent with or compromise the public health, safety, and welfare or the overall objectives of the General Plan.

Approval of the proposed Special Use Permit will not compromise the public health, safety and general welfare, as the use will be subject to regular inspections for business licensing.

5. The use meets all of the applicable conditions per Title 19.04.

The proposed use will be located within an existing Retail Establishment and complies with the minimum Special Use Permit requirements. The use will devote 74 square feet of the floor space within the existing Retail Establishment for the sale of alcoholic beverages.

PLANNING COMMISSION ACTION

The Planning Commission considered adding the condition: There shall be an administrative review one year after issuance of license for liquor use.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 33

NOTICES MAILED 538 (By City Clerk)

APPROVALS 2

PROTESTS 9

JG

PLANNING & DEVELOPMENT DEPARTMENT

STATEMENT OF FINANCIAL INTEREST

Case Number: SUP-38211 APN: 125-17-611-002

Name of Property Owner: PP LAND LP.

Name of Applicant: Walgreen Co.

Name of Representative: Lionel Sawyer & Collins

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ Yes ☒ No

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____ _____

APN: _____

Signature of Property Owner: _____

Print Name: PP LAND LP PICHAT POJANASOMBOON GP.

Subscribed and sworn before me

This 14th day of DECEMBER, 20 09

_____

Notary Public in and for said County and State

CAROLINA H. NIEVERA
NOTARY PUBLIC - STATE OF NEVADA
COUNTY OF CLARK
APPT. No. 09-1C397-1
MY APPT. EXPIRES FEB. 18, 2013

MAY 06 2010

PLANNING & DEVELOPMENT

PLANNING & DEVELOPMENT DEPARTMENT

APPLICATION / PETITION FORM

Application/Petition For: SUP: Retail Establishment with Accessory Package Liquor Off-Sale

Project Address (Location) 7755 North Durango Drive

Project Name Walgreens **Proposed Use** Drug Store (existing)

Assessor's Parcel #(s) 125-17-611-002 **Ward #** 6

General Plan: existing XX proposed ____ **Zoning:** existing T-C (SC) proposed ____

Commercial Square Footage ____ **Floor Area Ratio** ____

Gross Acres ____ **Lots/Units** ____ **Density** ____

Additional Information ____

PROPERTY OWNER PP Land LP **Contact** P Pojanasomboon, GP

Address 9000 Emerald Way **Phone:** (702) 233-4699 **Fax:** ____

City Las Vegas **State** NV **Zip** 89117

E-mail Address ____

APPLICANT Walgreen Co. **Contact** Rebecca Lidskin, Attorney

Address 104 Wilmot Road, M.S. #1420 **Phone:** (847) 315-4651 **Fax:** (847) 315-4825

City Deerfield **State** Illinois **Zip** 60015

E-mail Address Rebecca.Lidskin@walgreens.com

REPRESENTATIVE Lionel Sawyer & Collins **Contact** Jennifer Roberts

Address 300 South Fourth Street #1700 **Phone:** (702) 383-8948 **Fax:** (702) 671-2490

City Las Vegas **State** Nevada **Zip** 89101

E-mail Address jroberts@lionelsawyer.com

Property Owner Signature* ____

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name PPLAND LP, PICHAT POJANASOMBOONGP

Subscribed and sworn before me

This 14th day of DECEMBER, 20 09.

____

Notary Public in and for said County and State

CAROLINA H. NIEVERA
NOTARY PUBLIC - STATE OF NEVADA
COUNTY OF CLARK
APPT. No. 09-1C397-1
MY APPT. EXPIRES FEB. 18, 2013

Revised 10/27/08

FOR DEPARTMENT USE ONLY

Case #	SUP-38211
Meeting Date:	6/24/10
Total Fee:	1280
Date Received:*	5/6/10
Received By:	MREX

*The application will not be deemed complete until the submitted materials have been reviewed by the Planning and Development Department for consistency with applicable sections of the Zoning Ordinance.

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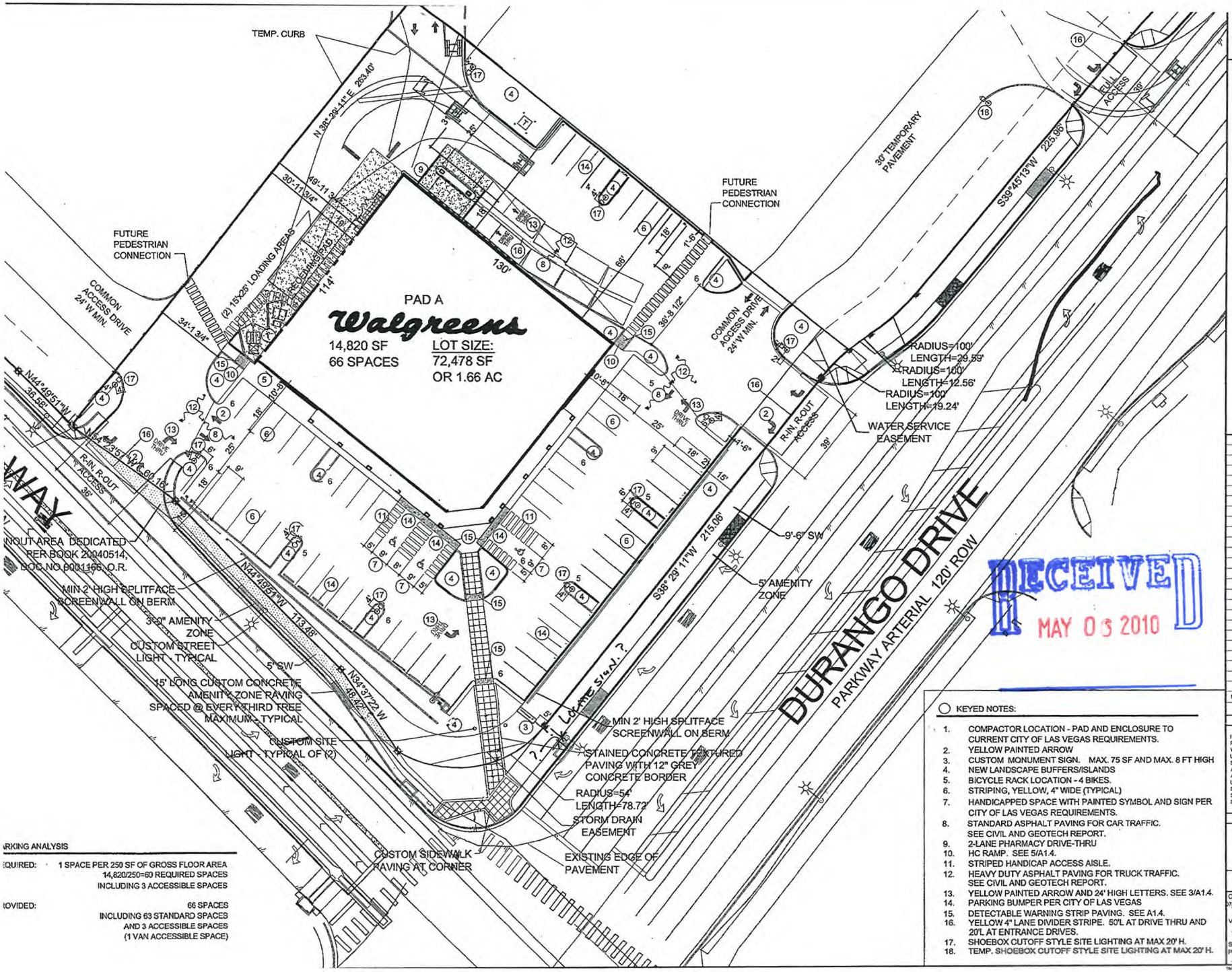


RKING ANALYSIS

QUIRED: 1 SPACE PER 250 SF OF GROSS FLOOR AREA
14,820/250=60 REQUIRED SPACES
INCLUDING 3 ACCESSIBLE SPACES

OVIDED: 66 SPACES
INCLUDING 63 STANDARD SPACES
AND 3 ACCESSIBLE SPACES
(1 VAN ACCESSIBLE SPACE)

KEYED NOTES:

1. COMPACTOR LOCATION - PAD AND ENCLOSURE TO CURRENT CITY OF LAS VEGAS REQUIREMENTS.
2. YELLOW PAINTED ARROW
3. CUSTOM MONUMENT SIGN. MAX. 75 SF AND MAX. 8 FT HIGH
4. NEW LANDSCAPE BUFFERS/ISLANDS
5. BICYCLE RACK LOCATION - 4 BIKES.
6. STRIPING, YELLOW, 4" WIDE (TYPICAL)
7. HANDICAPPED SPACE WITH PAINTED SYMBOL AND SIGN PER CITY OF LAS VEGAS REQUIREMENTS.
8. STANDARD ASPHALT PAVING FOR CAR TRAFFIC. SEE CIVIL AND GEOTECH REPORT.
9. 2-LANE PHARMACY DRIVE-THRU
10. HC RAMP. SEE 5/A1.4.
11. STRIPED HANDICAP ACCESS AISLE.
12. HEAVY DUTY ASPHALT PAVING FOR TRUCK TRAFFIC. SEE CIVIL AND GEOTECH REPORT.
13. YELLOW PAINTED ARROW AND 24' HIGH LETTERS. SEE 3/A1.4.
14. PARKING BUMPER PER CITY OF LAS VEGAS
15. DETECTABLE WARNING STRIP PAVING. SEE A1.4.
16. YELLOW 4" LANE DIVIDER STRIPE. 50'L AT DRIVE THRU AND 20'L AT ENTRANCE DRIVES.
17. SHOEBOX CUTOFF STYLE SITE LIGHTING AT MAX 20' H.
18. TEMP. SHOEBOX CUTOFF STYLE SITE LIGHTING AT MAX 20' H.

RECEIVED
MAY 03 2010

Walgreens
FACILITIES PLANNING, DESIGN, & ENGINEERING
106 WILMOT ROAD
DEERFIELD, IL 60015-4616

NO.	DATE	BY	DESCRIPTION	CC

REVISIONS

CERTIFICATION AND SEAL

I HEREBY CERTIFY THAT THIS PLAN AND SPECIFICATION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED ARCHITECT OR ENGINEER UNDER THE LAWS OF THE STATE OF XXXXXXXX AS SIGNIFIED BY MY HAND AND SEAL.

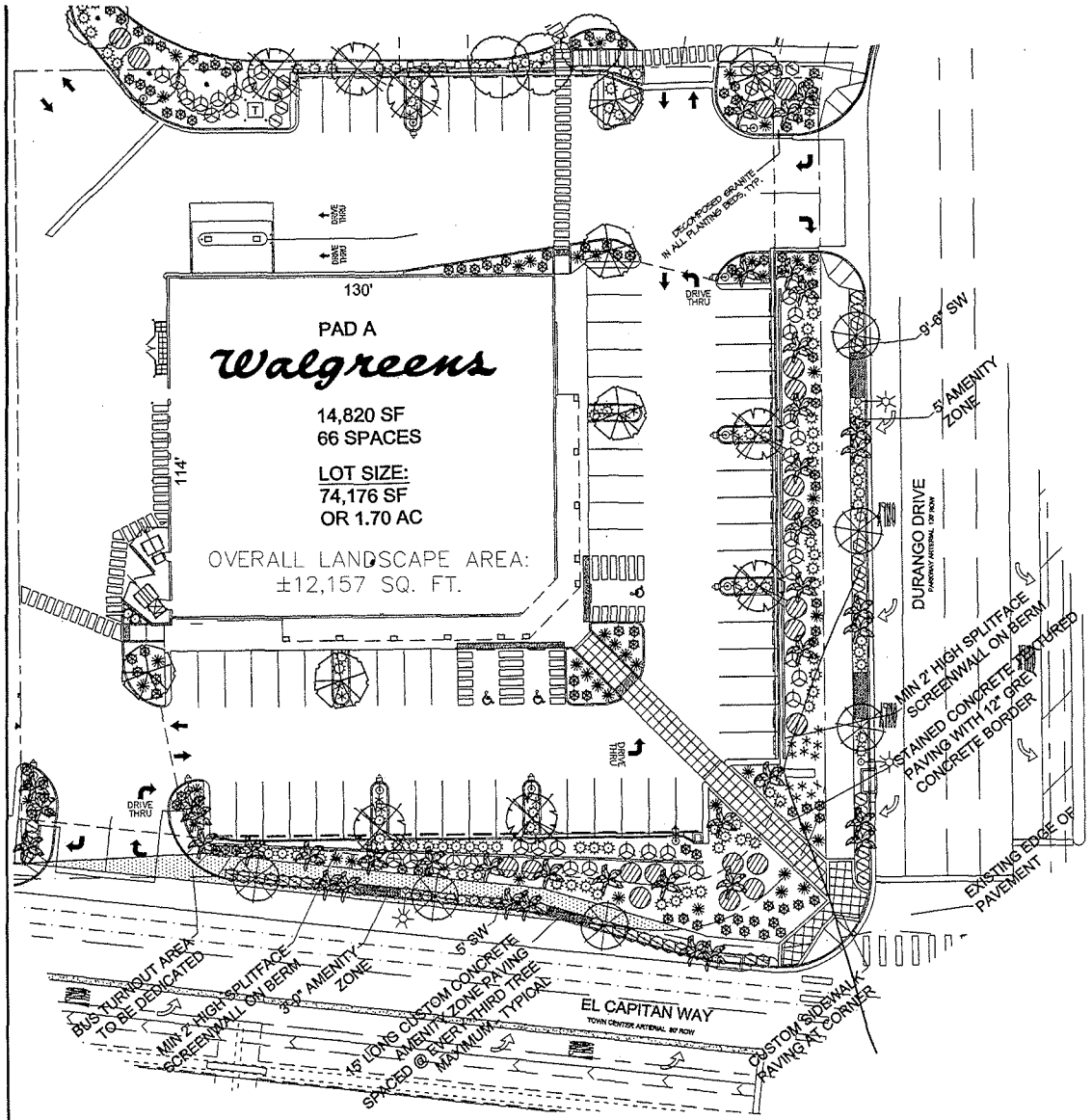
STORE NUMBER 07864

PROJECT NAME
WALGREENS STORE
7755 NORTH DURANGO DRIVE
LAS VEGAS, NV

DRAWING TITLE
SITE PLAN - BEER & WINE

CADD PLOT:	SCALE: 1/20 =1'-0"	DRAWING NO.
07864-A01-BW-16NOV09	DRAWN BY: B. HESTER	A0.1
VOID PLOT:	DATE: 11/16/09	
SUPERSEDES PLAN DATED:	REVIEWED BY:	OF DWGS.

SUP-38211



SYMBOL	BOTANICAL NAME	COMMON NAME	QTY.	SIZE	REMARKS
	TREES (APPROXIMATE MATURE SIZE (DIAMETER))				
	CATALPA TASHKENTENSIS 'PINK DAWN'	20/20 PINK CATALPA	6	24" BOX	SINGLE TRUNK
	FRAXINUS VELUTINA 'RIO GRANDE'	30/25 RIO GRANDE ASH	7	24" BOX	
	ROBINIA AMBIGUA 'PURPLE ROBE'	30/20 PURPLE ROBE LOCUST	6	24" BOX	
	ACACIA STENOPHYLLA	30/20 SHOESTRING ACACIA	6	24" BOX	
	PALM TREES				
	WASHINGTONIA ROBUSTA	40/10 MEXICAN FAN PALM	41	MINIMUM 25' BTH	SKINNED
	SHRUBS				
	SENNA OLIGOPHYLLA	5/5 OUTBACK CASSIA	57	5 GAL	
	EREMOPHILA MACULATA VALENTINE	5/5 VALENTINE BUSH	41	5 GAL	
	GROUNDCOVERS				
	HYPOFORM PARVIFOLIUM	2/6 PROSTRATE HYPOFORM	20	1 GAL	
	DALEA CAPITATA 'SIERRA GOLD'	1/5 GOLDEN DALEA	106	1 GAL	
	LANTANA SPECIES 'RSH GOLD'	1/2 RSH GOLD LANTANA	44	5 GAL	
	ACCENTS				
	DASYLIRION WHEELERI	3/4 DESERT SPOON	42	5 GAL	
*	AGAVE SCHIDIGERA DURANGO DELIGHT	2/2 DURANGO DELIGHT AGAVE	25	5 GAL	

GENERAL NOTES:

1. CONTRACTOR IS RESPONSIBLE TO VERIFY ALL PLANT QUANTITIES. THE PLANT SCHEDULE IS INTENDED AS A REFERENCE ONLY.
2. LANDSCAPE ARCHITECT IS TO APPROVE ALL PLANT MATERIAL PRIOR TO INSTALLATION WITH PRIOR NOTICE OF 48 HOURS.
3. PLANT MATERIAL IS TO HAVE IDENTIFICATION TAGS ON 10% OF THE TOTAL QUANTITY OF EACH SPECIES, SHOWING GENUS, SPECIES, VARIETY, ETC.
4. CONTRACTOR TO PROVIDE MATCHING SIZES AND FORMS OF LIKE SHRUB SPECIES AS SHOWN ON DRAWINGS.
5. DECOMPOSED GRANITE, 1/2" MINUS, COLOR: "MOJAVE GOLD", 2" DEPTH TYPICAL IN ALL PLANTING BEDS. DECOMPOSED GRANITE SHALL CONTAIN 60% AGGREGATE AND 40% FINES. CONTRACTOR TO RECEIVE VERIFICATION FROM ROCK SUPPLIER AND PRESENT VERIFICATION TO THE OWNER PRIOR TO ANY CONSTRUCTION.

   WHOLESALE DEALER:
   KALAMAZOO MATERIALS, INC.
   2251 SOUTH FORT APACHE ROAD, SUITE 207H
   LAS VEGAS, NV 89117
   TELEPHONE: 246-4193
6. ALL PALM HEIGHTS ARE BROWN TRUNK HEIGHTS, ALL PALMS SHALL HAVE STRAIGHT TRUNKS WITH NO CURVES. ALL FAN PALMS SHALL BE SKINNED WITHIN 5 FEET OF THE LAST FROND.

LANDSCAPE AREA

GROSS LOT SIZE= 74,176 SF
LANDSCAPE AREA= 12,157 SF
PERCENTAGE OF LOT LANDSCAPED= 16.4%

MAY 05 2010

DEERFIELD, IL 60015-4616

NO.	DATE	BY	DESCRIPTION

REVISIONS

CERTIFICATION AND SEAL

I HEREBY CERTIFY THAT THIS PLAN AND SPECIFICATION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED ARCHITECT OR ENGINEER UNDER THE LAWS OF THE STATE OF XXXXXXXX AS SIGNIFIED BY MY HAND AND SEAL.

STORE NUMBER 07864

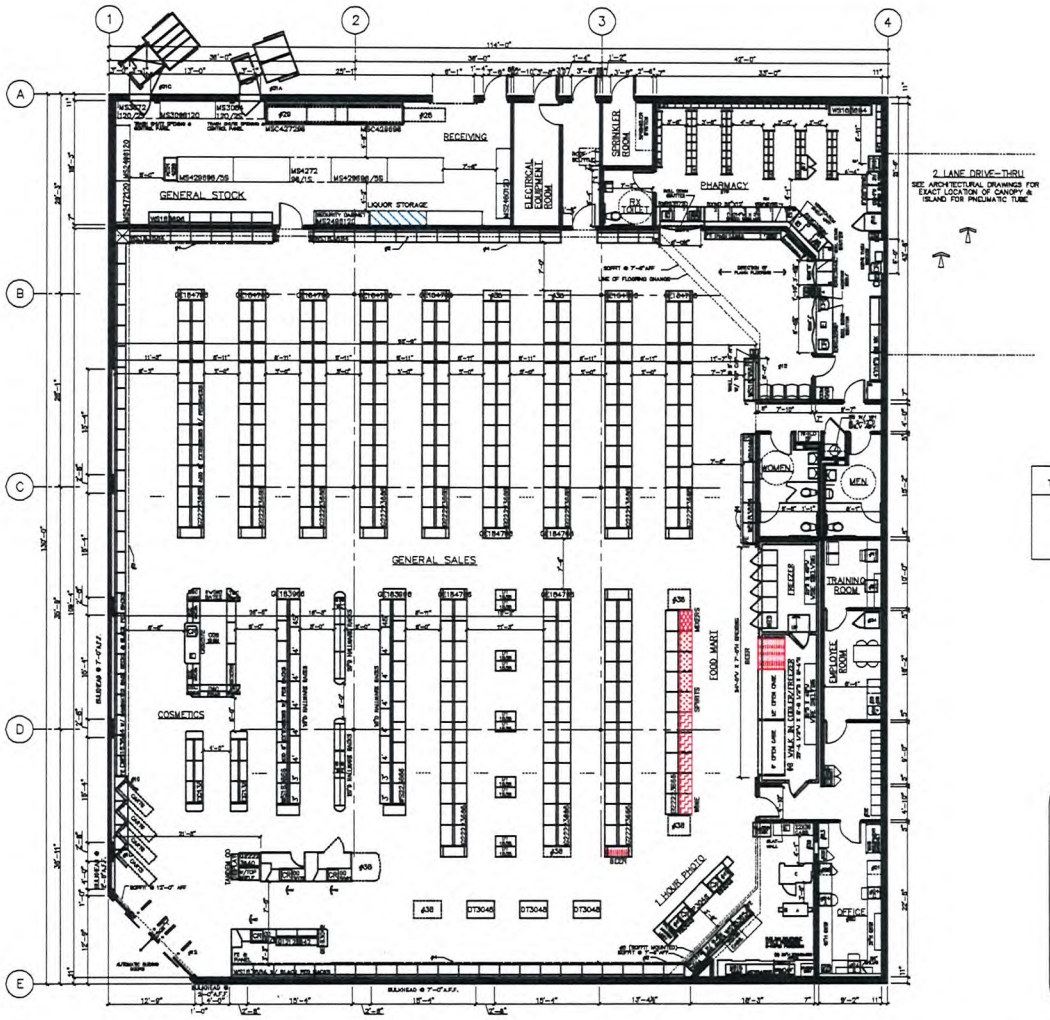
PROJECT NAME
WALGREENS STORE
7755 NORTH DURANGO DRIVE
LAS VEGAS, NV

DRAWING TITLE
LANDSCAPE PLAN - BEER & WINE

CADD PLOT: 07864-LA01-BW-16NOV09
VOID PLOT:
SUPERSEDES PLAN DATED:
SCALE: 1/20 =1'-0"
DRAWN BY: B. HESTER
DATE: 11/16/09
REVIEWED BY:
DRAWING
LA
OF

TM MOHLER 11/16/2009 10:53 AM G:_ARCHITECTURE\WORK AND WIP\07864-LA01-BW-16NOV09

SUP-38211



LIQUOR LICENSE LEGEND
BEER SALES
WINE SALES
SPIRIT SALES
MIXER SALES
LIQUOR STORAGE

OCCUPANCY LOAD
TOTAL OCCUPANCY: 442
TOTAL LIQUOR SQUARE FEET
TOTAL LIQUOR SALES: 73.2 SQ. FT.
TOTAL SALES: 9625 SQ. FT.
% SALES FLOOR DEVOTED TO LIQUOR = 7.6%



KEY PLAN
NOT TO SCALE

FOR REFERENCE ONLY; SEE CONTRACT DOCUMENTS FOR DETAILED SITE PLAN

INTERIOR HANGING SIGNS

GEN'ERAL SALES AREA:
ALL AISLE AND AISLE MARKERS @ 10'-6" TO BOTTOM OF SIGN UNLESS OTHERWISE NOTED.
SIGN "L" LIQUOR / THANK YOU
SIGN "T" STORE HOURS SIGN
SIGN "BC" GREETING CARD SIGN
SIGN "J" DOWNTOWN CHILDHOOD CANCER
SIGN "CA" CALIFORNIA ACCESSIBILITY SIGN. (9'-6" TO BOTTOM OF SIGN.)

PHARMACY DEPARTMENT:
REFER TO FIXTURE PLAN FOR REQUIRED SIGNS
SIGN "J" PICK UP PRESCRIPTIONS
SIGN "K" DROP OFF PRESCRIPTIONS
SIGN "O" CONSULTATION WINDOW
SIGN "TK" T. & S.

ATTACH SIGNS TO UNDERSIDE OF CASED OPENINGS. REFER TO FIXTURE PLAN FOR SIGN LOCATION. PROVIDE (2) HOLLOW WALL ANCHORS PER SIGN. SCREW THREADED EYEBOLT INTO ANCHOR, HANG SIGNS FROM EYEBOLTS WITH "S" HOOKS.

GENERAL NOTES

GENERAL SALES AREA:
1. PLEASE PRODUCE PROPER A.D.A. CLEARANCES ON BOTH SIDES OF ALL DOORS
2. MIRROR ON REAR WALL
3. COSMETIC CORNICE
4. SALES AREA CORNICE (FIXTURE MOUNTED)
5. PHOTO CORNICE (FIXTURE MTD UNLESS NOTED)
6. CARPET TILES & DESIGN LINES FURNISHED AND INSTALLED BY WALGREENS (WHERE SHOWN)
7. MASTER-BILT ROADMAN REFRIGERATION (PROVIDE 3" AIR SPACE BETWEEN COOLERS AND FREEZERS)
   OPEN FRONT, MEDIUM TEMP. COOLERS (ADD 7" AT EACH END, FOR END PANELS)
   A. ___ VO-96: 8'-0"W X 40"D
   B. ___ VO-48: 4'-0"W X 40"D
   C. ___ MO(SH, RH, -PNT) RM SPACH-IN FRPP7RR (ADD 3" AT EACH END FOR END PANELS)
   D. ___ SELF-CONTAINED, 16'-1" 3 PW X 36 3/4"D
8. MASTER-BILT WALK-IN COOLER: PROVIDE ___ FOOR COOLMASTER DOORS
   36 3/4" X 79" EACH AND
   9 #102PR FRICOMASTER DOORS
   36 3/4" X 79" EACH BY ANTHONY
   A. ___ DOOR(S) FOR 2ND DOOR PROVIDE
      (7) ___ D 2CH-FLOW GRAVITY SHELVES; UPPER (5) W/"H SLIDES AND LOWER (2) WITH ROLLERS COMPLETE WITH J-PRISMTIS
   B. ___ "DOOR(S) FOR 1ST DOOR PROVIDE
      (7) 28" D ANTHONY WIRE SHELVES AND (4) 84" TOWERS
   C. ___ DOOR(S): ___ D ROLLER CONVEYOR AT FLOOR LEVEL
   D. 5 DOORS): FOR EACH DOOR PROVIDE
      (6) 27"D ANTHONY SHELVES
   E. ___ DOOR(S): FOR EACH DOOR PROVIDE
      (2) 27" D ANTHONY SHELVES AND (4) 34"D MONTANA DROP ENCLOSS
   F. ___ DOOR(S): ___ D DOUBLE DECK ROLLER CONVEYOR
9. ICE DUCT BY VENDOR
10. DART RAILING W. 10' DISPLAY SHELF ABOVE
11. PROVIDE A 6'H GLACE VAVL BASE AT ALL CHECKOUTS
12. FI TESTRONICS ARTICI F SURVEILLANCE SYSTEM

PHARMACY DEPARTMENT:
13. PATIENT SEATING AREA: (4) SEATS
14. PHLVISLE #10 SHELVING UNITS, BACK CLLLS ARE 8'-6" ALL
15. COMPUTER TERMINAL
   15A INTERCOM PLUS TERMINAL
   15B: TRAINING TERMINAL (IN TRAINING ROOM)
16. RX SAFE AND CABINET
17. CRX CABINET
18. RX REFRIGERATOR
19. PROVIDE A CARPETED FLOOR WITH A RUBBER RUNNER, RX UNDER COUNTER INSERTS:
   #1 - RX 2 DRAWER VAL INSERT
   #2 - RX 2 DRAWER FILE INSERT
   #3 - RX OPEN INSERT
   #4 - RX DUNBULLATOR COUNTER UNIT
   #5 - RX PEWTER INSERT
   #6 - RX 3 DRAWER FILE INSERT
   #7 - RX OPEN INSERT WITH CPU SHELF
   #8 - RX WILL CALL CABINET
   #9 - RX 2 DRAWER CABINET W/ BAG SHELF
   #10 - RX 10 DRAWER FILE CABINET

OFFICE:
20. PROVIDE TILED FLOOR & VINYL WALL COVERING
21. UNDER COUNTER SHELF UNIT
22. PRINTER
23. LATERAL FILE
24. OFFICE COMPUTERS
   24A: P.O.S. TERMINAL
   24B: ASHED TERMINAL
   24C: OFFICE P.C.
25. TILL LOCKER
26. SAFE
27. TV & VCR (IN TRAINING ROOM)

STOCKROOM:
28. 1,000 FLEX CONVEYOR
29. 24HAVY CONVEYOR
30. POWER ROLLER CONVEYOR
31. SEE ARCHITECTURAL DRAWINGS FOR EXACT LOCATION OF COMPACTORS & COMPACTOR TOTE ENCLOSURES
   31A: TRASH COMPACTOR
   31B: BALER
   31C: CARDBOARD COMPACTOR

EMPLOYEE ROOM:
32. EMPLOYEE LOCKERS: (3) COAT LOCKERS W/ PERFORATED DOORS, (6) 6 TIER BOX LOCKERS & (2) 2 TIER BOX LOCKERS W/ SAFETY VIEW DOORS
33. 4'-0"W X 2'D EMPLOYEE COUNTER W/ (1) CABINET
34. EMPLOYEE ROOM REFRIGERATOR (PROVIDE 30" CLEARANCE NEXT TO COUNTER)
35. JAN-LAVEL ROOM SINK (IN COUNTER)
36. 6'-0" MIRROR CENTERED ON WALL ABOVE COUNTER

MISCELLANEOUS:
37. ELECTRICAL OUTLET FOR FUTURE USE
38. VENDOR RACKER: REMOVE BASE DOOR & SHOCK CORD AND PANEL TO ROMANY
39. PROVIDE OPENINGS FOR OVERHEAD DUCTS (SEE INTERIOR ELEVATION FOR LOCATION)
40. NEWSPAPER RACK BY VENDOR
41. PICTURE CARE PLUS TERMINAL

GENERAL SALES	NEW	SALES	STOCK	SERVICE	TOTAL EXISTG	TOTAL NEW
	EXISTG					
FOOD MART	NEW	700				700
	EXISTG					
RX	NEW	840				840
	EXISTG					
RX WAITG	NEW	204				204
	EXISTG					
1 - OUR PHOTO	NEW	436				436
	EXISTG					
LIQUOR	NEW					
	EXISTG					
BSMT	NEW					
	EXISTG					
2ND FLOOR	NEW					
	EXISTG					
TOTAL NEW		11,804	1746	1270		14,820
TOTAL EXISTG						

TOTAL AREA: *FIRST* FLOOR 14,820 SQ.FT.
TOTAL AREA: OTHER LEVELS 0 SQ.FT.
GROSS AREA INCLUDING ALL DEPARTMENTS & ALL LEVELS: 14,820 SQ.FT.
RX SHELVING LINEAL FEET: 117 SQ.FT.

FIXTURE MANUFACTURER

KECHLER MYKA ■ MADSY HUMANA □ LOZIER LOCEM □

NO.	DATE	BY	DESCRIPTION	CONST

REVISIONS

CERTIFICATION AND SEAL

I HEREBY CERTIFY THAT THIS PLAN AND SPECIFICATION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED ARCHITECT OR ENGINEER UNDER THE LAWS OF THE STATE OF NEVADA OR DESIGNED BY MY HAND AND SEAL.

STORE NUMBER 07864

PROJECT NAME
WALGREENS STORE
(NEC) DURANGO & FARM
LAS VEGAS, NV

DRAWING TITLE
FIXTURE FLOOR PLAN

CADD PLOT: P07864-2106
VOID PLOT: P07864-2109
SUPERSEDES PLAN DATED: 11/06/03
SCALE: 1/8"=1'-0"
DRAWN BY: ALBUB
DATE: 03/24/04
REVIEWED BY:
DRAWING NO. D1
OF DWGS.

*A.D.A. DOOR CLEARANCES	EXECUTIVE APPROVAL		DATE
	SENIOR VICE PRESIDENT FACILITIES DEVELOPMENT		
	SENIOR VICE PRESIDENT STORE OPERATIONS	PROTOTYPE	
	VICE PRESIDENT STORE OPERATIONS		
*ACCESSIBLE REQUIREMENTS MAY VARY WITH LOCAL JURISDICTIONS	REVIEWED BY:	G. SCRIMALI 04.01.03 / C. SCHUPLER 04.01.03	

FIXTURE LEGEND

12 GONDOLA (DA SIDE)	1878 D.	36 W.	66" H.	ALL OTHER FIXTURES ARE TYPICALLY CALLED OUT DEPTH BY WIDTH, EXAMPLE:		
09 GONDOLA S/D	16 D.	36 W.	66" H.	DT DISPLAY TABLE	30 D.	48 W.
WB WALL SHLVG	15 D.	36 W.	84" H.			

*DOES NOT INCLUDE STANDARDS, WOOD BACKS OR FINISHED END PANELS

04-20-04
UPDATE PLANS TO MATCH OUTSIDE ARCHITECTURE & ADD SIGNAGE AT BACK WALL. UPDATE DIMENSIONS AND ADJUST RECEIVING WALL DIMENSION PER OUTSIDE AND I'TTOT.

03-24-04
UPDATE ONE HOUR PHOTO TO SHOW FULLING COUNTER. ADD 4 STALL CARTWALL AT FRONT ENTRANCE. ADD PLUSH VAL W/ "DO PTS." A'D MS-469191 IN STOCKROOM.

11-24-2003
UPDATE PHARMACY TO LATEST PROTOTYPE AND ADD RX "OUET. ADJUST B"DOROOM, SPRINKLER RMPS, PIET CORRIDOR, AND ROOF BOUT F"TO ACCOMODATE RX "OUET.

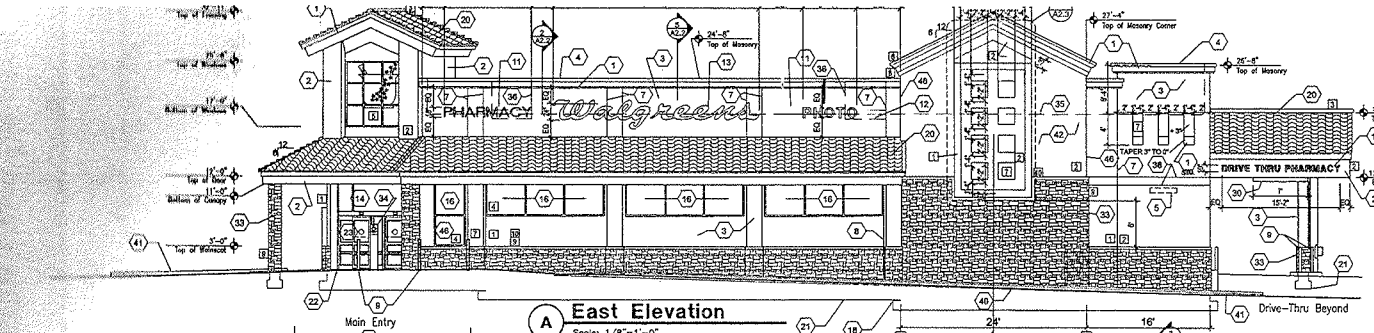
10-29-2003
UPDATE ENTRANCE WALL T IONESS "C 1/2" FOR FINISH AND ETTOT.

09-29-2003
UPDATE E"ORE "O 11/14/30 PROTOTYPE FOR PROJECT AND ETOT.

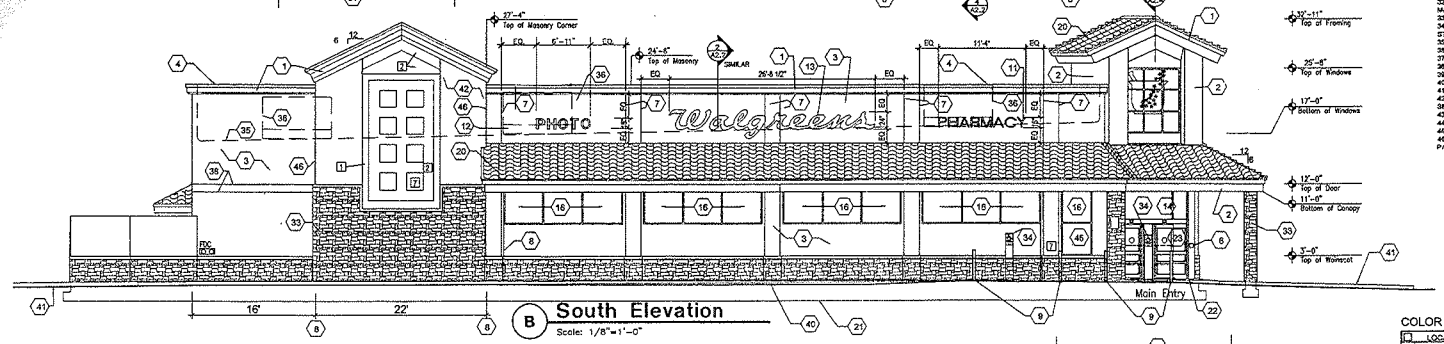
PROTOTYPE L114130 (08-21-2003)

MAY 06 2010

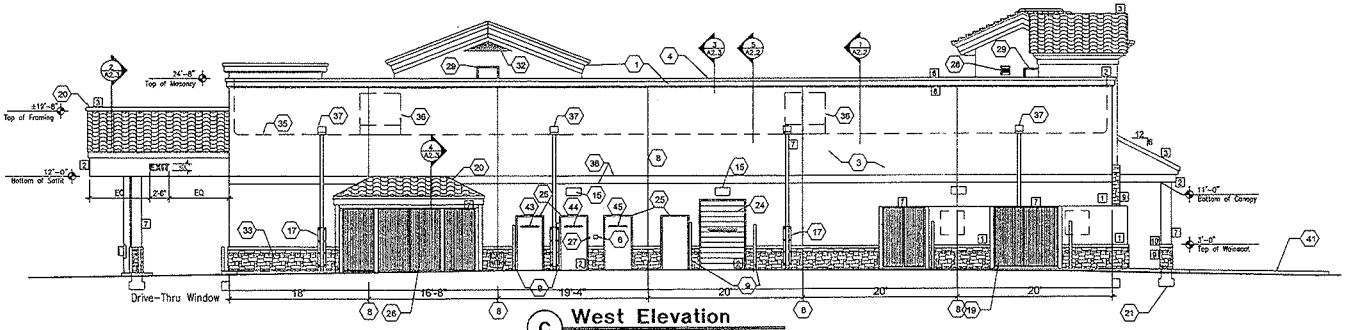
SUP-38211



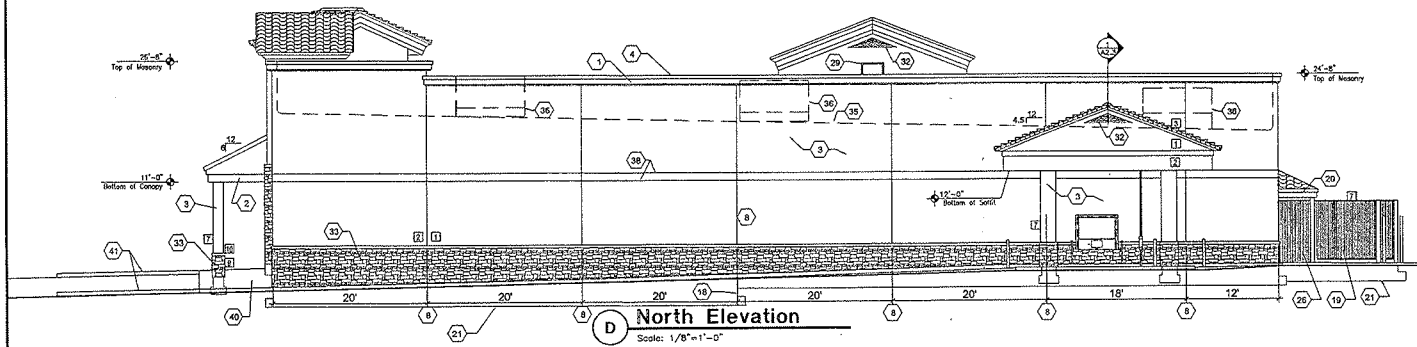
A East Elevation
Scale: 1/8"=1'-0"



B South Elevation
Scale: 1/8"=1'-0"



C West Elevation
Scale: 1/8"=1'-0"



D North Elevation
Scale: 1/8"=1'-0"

1. EIFS FINISH OVER FOAM CORNICE. MED. SAND FINISH. SEE 3/A2.3.
2. TWO-COAT STUCCO SYSTEM W/ ELASTOMERIC FINISH ON 20 GA LATH AND ASPHALT IMPREGNATED PAPER OVER 5/8" SHEATHING ON WOOD STUDS.
3. TWO COAT STUCCO SYSTEM WITH FIBERED BARCOAT AND ELASTOMERIC FINISH COAT OVER CMU.
4. PREFINISHED SHEET METAL COPING, GUTTERS AND DOWNSPOUT. COLOR TO MATCH UNA-CLAD "ALMOND". SEE 3/A2.3.
5. BUILDING ADDRESS NUMBERS PER CITY OF LAS VEGAS F.D. REQUIREMENTS.
6. APPROVED KEY BOX PER CITY OF LAS VEGAS F.D. MOUNT BOTTOM 4'-0" AFF.
7. CONTROL JOINT. KEENE RC116-3 OR EQ. ALIGN TO COLUMNS BELOW.
8. ALIGNED MASONRY + STUCCO (KEENE MD116-3 OR EQ.) EXPANSION JOINTS. SEE STRUCTURAL.
9. STEEL PIPE BOLLARDS. SEE DETAIL 6/A1.4.
10. RECEIVING AREA CONCRETE SLAB.
11. TENANT INDIVIDUAL LETTER INTERNALLY ILLUMINATED SIGN. SEE ELECTRICAL AND A5.2.
12. ALIGN BOTTOM OF SIGN WITH BOTTOM OF "W" OF WALGREENS SCRIPT SIGN. SEE DETAIL A5.2.
13. WALGREENS SCRIPT SIGN. SEE DETAIL A5.2.
14. AUTOMATIC SLIDING DOOR W/ FULL BREAK-AWAY PANELS (CBO REPORT #1986, FILING CAT.: EXITS (500)). SEE DETAIL 4/A2.2.
15. LIGHT FIXTURE. SEE ELECTRICAL. TYPICAL MOUNTING HEIGHT BOTTOM 10' A.F.F.
16. CLEAR ANODIZED STOREFRONT SYSTEM WITH 1" INSULATING GLAZING. SEE SPECIFICATIONS.
17. 1/8" THICK BENT STEEL PLATE ITO PROTECT DOWNSPOUT BOLTED TO MASONRY. CONT. AROUND BULLNOSE. FINISH TO MATCH DOWNSPOUT. SEE DETAIL 5/A1.3.
18. STEP FOOTING. SEE STRUCTURAL.
19. COMPACTOR ENCLOSURE. SEE SHEET A1.4.
20. CONCRETE ROOF TILE ON (2) LAYERS 30# FELT. NAIL ALL TILES. SEE SHEET A2.3.
21. LINE OF FOUNDATION.
22. LINE OF FINISH FLOOR.
23. TEMPERED GLAZING. SEE DETAIL 6/A4.3.
24. STEEL ROLLING DOOR. PAINT.
25. HOLLOW METAL DOOR AND FRAME PAINT.
26. TOTE STORAGE ENCLOSURE. SEE SHEET A1.4.
27. DOOR BELL AT 48" AFF. SEE ELECTRICAL.
28. 12" X 18" WALL VENT WITH INSECT SCREEN. PAINT TO MATCH STUCCO.
29. ACCESS DOOR "R". SEE A4.3. FLUSH AND WEATHERPROOF SEAL TO WALL.
30. CLEARANCE BAR.
31. RAISE PAVING TO SIDEWALK LEVEL AT ACCESSIBLE PARKING. SEE CIVIL.
32. TRIANGULAR WEATHERPROOF GABLE VENT. 72"L W/ INTERIOR INSECT SCREEN. MATCH ROOF PITCH AND ACCENT COLOR #7.
33. CULTURED CONCRETE "LEDGESTONE" BY CULTURED STONE, OR EQUAL.
34. POST MOUNTED ACCESSIBLE PARKING SIGN PER CITY OF LAS VEGAS STANDARDS. SEE DETAIL 4/A1.4.
35. LINE OF ROOF BEYOND.
36. CONCEALED ROOFTOP MECHANICAL UNIT.
37. PREFINISHED COLLECTOR HEAD AND DOWNSPOUT. COLOR #6.
38. CORNER STUCCO EXPANSION JOINT. KEENE #20 OR EQ.
39. CLEAR ANODIZED STOREFRONT SYSTEM WITH 1/4" CLEAR PLATE GLAZING.
40. CONCRETE SIDEWALK. MAX SLOPES 2 % AND MAX SIDESLOPES 2 %. SEE CIVIL.
41. CONCRETE CURB AND PLANTER. SEE CIVIL AND LANDSCAPING.
42. TWO-COAT STUCCO SYSTEM W/ ELASTOMERIC FINISH ON 8" CMU BUMP-OUT. SEE STRUCTURAL.
43. DOOR SIGN. 1" HIGH WHITE HELV. MED. LETTERS: "SPRINKLER RISER ROOM"
44. DOOR SIGN. 1" HIGH WHITE HELV. MED. LETTERS: "EXIT-KEEP CLEAR"
45. DOOR SIGN. 1" HIGH WHITE HELV. MED. LETTERS: "ELECTRICAL ROOM"
46. CLEAR ANODIZED STOREFRONT SYSTEM WITH 1" INSULATED GLAZING. OUTER PANE TO BE LAMINATED SAFETY GLASS.

COLOR CHART

	LOCATION	COLOR
1	PRIMARY STUCCO	BM 951 LIGHT TAN
2	ACCENT STUCCO	BM 1032 MEDIUM TAN
3	ROOF	MONIER MISSION "S" STYLE "PINTO BLEND" 1MSSS 0689
4	GLASS	1" INSUL. TINTED, LOW E GLASS W/ CLEAR ANODIZED FRAMES
5	GLASS	1/4" CLEAR
6	PARAPET CAP	UNA CLAD "ALMOND"
7	ACCENT COLOR	SW 2001 "ROCKY COAST"
8	CORNICE	BM 1032
9	WAINSCOT BLOCK	CULTURED STONE - LEDGESTONE "MOJAVE # PR614".
10	WAINSCOT CAP	CULTURED STONE WATERTABLE BLOCK-"MOJAVE"

MAY 06 2010

Walgreens
FACILITIES PLANNING, DESIGN, & ENGINEERING
106 WILMOT ROAD
DEERFIELD, IL 60015-4616

NO.	DATE	BY	DESCRIPTION	CONFIR

REVISIONS

CERTIFICATION AND SEAL

I HEREBY CERTIFY THAT THIS PLAN AND SPECIFICATION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED ARCHITECT OR ENGINEER UNDER THE LAWS OF THE STATE OF NEVADA AS SIGNIFIED BY MY HAND AND SEAL.

STORE NUMBER 07864

PROJECT NAME
WALGREENS STORE
7755 NORTH DURANGO
LAS VEGAS, NV

DRAWING TITLE
EXTERIOR ELEVATION - BEER & WINE

CADD PLOT: 07864-A21-BW-16NOV09	SCALE: 1/8"=1'-0"	DRAWING NO.
VOID PLOT:	DRAWN BY: B. HESTER	A2.1
SUPERSEDES PLAN DATED:	DATE: 11/16/09	
	REVIEWED BY:	OF [illegible]

TM MONDAY, 11/16/2009 10:53 AM P:\...

SUP-38211



SUP-38211 – APPLICANT: WALGREEN CO. - OWNER: PPLAND, LP
7755 NORTH DURANGO DRIVE

05/20/10



SUP-38211 – APPLICANT: WALGREEN CO. - OWNER: PPLAND, LP
7755 NORTH DURANGO DRIVE

05/20/10

LIONEL SAWYER & COLLINS

ATTORNEYS AT LAW
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300 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
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March 9, 2010

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(1923-1987)
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*ADMITTED IN CA ONLY

WRITER'S DIRECT DIAL NUMBER:
(702)-383-8946
jroberts@lionelsawyer.com

VIA FACSIMILE & HAND DELIVERY

Planning and Development Department
City of Las Vegas
Development Services Center
731 South Fourth Street
Las Vegas, Nevada 89101

RECEIVED
MAY 06 2010

RE: ***Application for Special Use Permit***

To Whom It May Concern:

I am writing on behalf of Walgreen Co. in support of the application for a special use permit to allow for the addition of accessory "off-sale" packaged beer, wine, and liquor at the premises of Walgreens at 7789 North Durango Drive. The location is currently operating and licensed as a drug store.

This location is zoned T-C (SC), Town Center/Service Commercial. The proposed sale of packaged liquor will not adversely affect nearby properties, as the business is centered on two thoroughfares, Durango Drive and El Capitan/Farm. The located is surrounded by other commercial uses and vacant land. The addition of packaged alcoholic beverages would constitute a very minor portion of Walgreens' overall business at this location. As the site is zoned for commercial use, the sale of alcoholic beverages is appropriate. The site also currently complies with all other requirements pursuant to the City of Las Vegas Municipal Code.

With this special use permit, Walgreens will remain competitive with similar businesses by offering patrons the option to purchase packaged beer, wine, or liquor for consumption off-premises. Since this use is commonly found at similar drug and retail grocery stores in Las Vegas, there would be no variable impact on other

SUP-38211

businesses by allowing Walgreens to sell alcohol for the convenience of its customers at this location.

Furthermore, Walgreen Co. is a well-established national company with shares traded on the New York Stock Exchange. The company has over 60 stores in southern Nevada that maintain a low impact on neighboring properties. Walgreens will continue to maintain its high-level standard of operations, and the design, hours of operation, traffic generation, lighting, and noise at this location will remain unchanged with the issuance of a special use permit to allow for accessory packaged beer, wine, and liquor sales.

As Walgreens is currently operating and the addition of packaged beer, wine, and liquor for sale is compatible with the surrounding area, we respectfully request a special use permit to allow for the addition of accessory "off-sale" packaged beer, wine, and liquor sales.

Please call me if you have any questions or need additional information.

Sincerely,

Jennifer Roberts

cc: Ms. Rebecca Lidskin

RECEIVED
MAY 06 2010

SUP-38211

RENO OFFICE: 1100 BANK OF AMERICA PLAZA, 50 WEST LIBERTY STREET • RENO, NEVADA 89501 • (775) 788-8666 • FAX (775) 788-8682
CARSON CITY OFFICE: 410 SOUTH CARSON STREET • CARSON CITY, NEVADA 89701 • (775) 841-2115 • FAX (775) 841-2119
WASHINGTON, DC OFFICE: 101 CONSTITUTION AVENUE NW, SUITE 800 • WASHINGTON, DC 20001 • (202) 742-4264 • FAX (202) 742-4265

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jroberts@lionelsawyer.com

June 25, 2010

VIA FACSIMILE & U.S. MAIL

Attn: City Clerk
City of Las Vegas
City Hall
400 Stewart Avenue
Las Vegas, Nevada 89101

2010 JUN 25 P 1:38
RECEIVED
CITY CLERK

RE: ***Application for Special Use Permit - SUP-38211***

To Whom It May Concern:

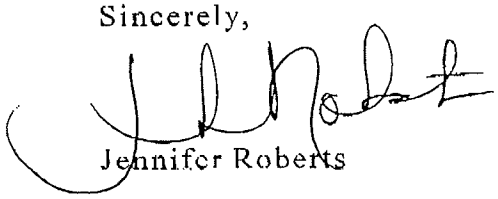
I am writing on behalf of Walgreen Co. to appeal the denial of the City of Las Vegas Planning Commission of SUP-38211 from June 24, 2010. The application was made for a Special Use Permit to allow the addition of accessory "off-sale" packaged beer, wine, and liquor at Walgreens on 7755 North Durango (APN #125-17-611-002). The Planning and Development Staff favorably recommended approval of the item. The neighbors were given sufficient notice of the application and opportunity to oppose the item at the Planning Commission hearing. However, there were no persons who appeared at the meeting to voice any concerns.

Also, the location meets all separation requirements to schools, churches, and daycare facilities. The Walgreens site is zoned for commercial use and is located along the major thoroughfare of Durango Drive within a smaller commercial complex. Moreover, there is a large commercial complex across Durango Drive. The site is adequately buffered from residential areas by commercial properties and public rights-of-way. Accordingly, the addition of alcohol would be compatible with the area.

Please let me know if you have any questions or require additional information.

Attn: City Clerk
June 25, 2010
Page 2

Sincerely,



Jennifer Roberts

cc: Ms. Rebecca Lidskin

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City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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UNITED STATES POSTAGE PITNEY BOWES
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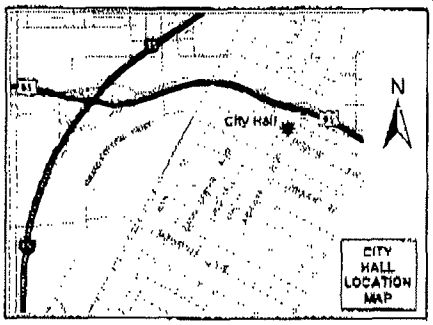
Return Service Requested
Official Notice of Public Hearing



If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Office Of The City Clerk at the address listed above or fax this side of this card to (702) 382-4803. If you would like to contact your Council Representative, please call (702) 229-6405.

☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38211
City Council Meeting of 7/21/2010

JONES FREDERICK S & SHIRLEY Y
7705 KIOWA POINTE ST
LAS VEGAS NV 89131-4615

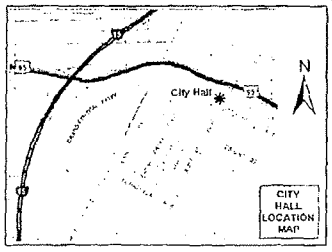
APN#12516210002

RECEIVED
CITY CLERK
2010 JUL 13 A 11:34

RECEIVED
CITY CLERK
2010 JUL 12 P 12:26

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

Return Service Requested
Official Notice of Public Hearing



If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Office Of The City Clerk at the address listed above or fax this side of this card to (702) 382-4803. If you would like to contact your Council Representative, please call (702) 229-6405.

☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38211
City Council Meeting of 7/21/2010

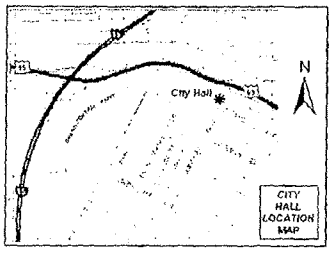
KNORR DAVID G & PATRICIA A
266 S CENTER ST
ORANGE CA 92866-2075

APN#12517525007

Jul 12 10 11:52a Dave and Pa 714)744-8466 p.2

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38211
City Council Meeting of 7/21/2010

RECEIVED
CITY CLERK

2010 JUL 12 P 12:26

KNORR DAVID G & PATRICIA
266 S CENTER ST
ORANGE CA 92866-2075

APN#12517512003

Jul 12 10 11:52a Dave and Pa 7141744-8466 p.1

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2010 JUL 12 A 8:00

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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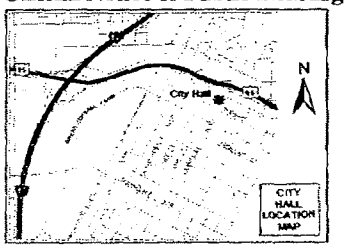

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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38211

City Council Meeting of 7/21/2010

WILSON WILLIAM M & JENNIFER K
8540 GRACIOUS PINE AVE
LAS VEGAS NV 89143-4610

APN#12517510004

ENDOSE BINS

07/10/2010 SAT 19:37 [TX/RX NO 8056] 001

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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0004279218 JUL 08 2010
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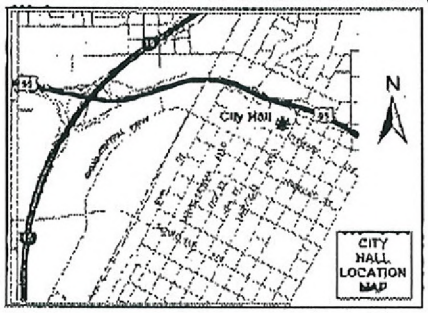
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☑ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38211
City Council Meeting of 7/21/2010

MCBURNEY THERESA L
3 VISTA REAL DR
ROLLING HILLS ESTATES CA
90274-4227

APN#12517526018

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2010 JUL 14 A 10:49

Submitted after final agenda

Date 7/14/10 Item 99

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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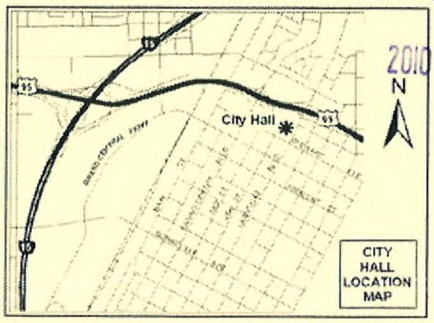

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☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38211
City Council Meeting of 7/21/2010

QUINN JERRY C & DIANA L
8716 GRAND PINE AVE
LAS VEGAS NV 89143-1356

APN#12517518009

Application Information

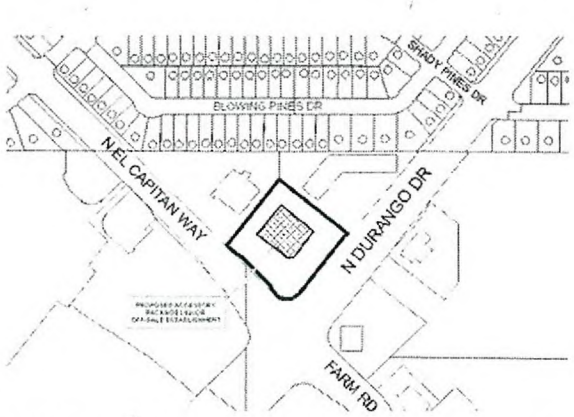
SUP-38211 - APPLICANT: WALGREEN CO. - OWNER: PPLAND, LP – Appeal from the Denial by the Planning Commission of a Request for a Special Use Permit FOR A 74 SQUARE-FOOT ACCESSORY PACKAGE LIQUOR OFF-SALE USE WITHIN AN EXISTING 14,820 SQUARE-FOOT RETAIL ESTABLISHMENT at 7755 North Durango Drive (APN 125-17-611-002), T-C (Town Center) Zone [SC-TC (Service Commercial - Town Center) Special Land Use Designation], Ward 6 (Ross).

We oppose!

Liquor drinking destroys many families. Walgreen Drug stores should want to help save families — not destroy them.

Sincerely,
Ms. Quinn

Application Location



The proposed project may not pertain to the entire highlighted project site.

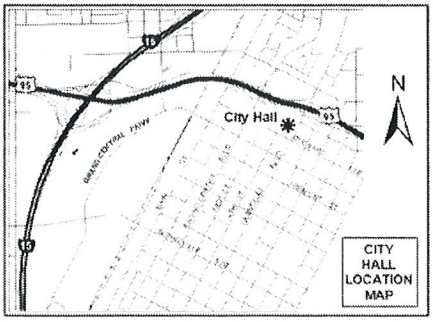
Public Hearing Information

Meeting:	City Council
Date:	***July 21, 2010***
Time:	1:00 P.M.
Location:	City Council Chambers 400 Stewart Avenue Las Vegas, Nevada

Any and all interested persons may appear and be heard at said meeting, or may, prior thereto, file written objections thereto or approvals thereof with the City Clerk, 1st Floor, City Hall, 400 Stewart Avenue, Las Vegas, Nevada, 89101. For further information, including the full staff report, please call (702) 229-6311 (TDD 386-9108) or go to http://www.lasvegasnevada.gov.

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☑ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38211
City Council Meeting of 7/21/2010

100720 08 23 V6B 3A0 083
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JUL 08 2010
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www.postescanada.ca

2010 JUL 26 A 11:20
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CITY CLERK

LAIRD STEPHEN W
MULLER MICHAEL K
4684 SADDLEHORN CIR
LANGLEY BC V22 227
CANADA

APN#12517527011

0029983400

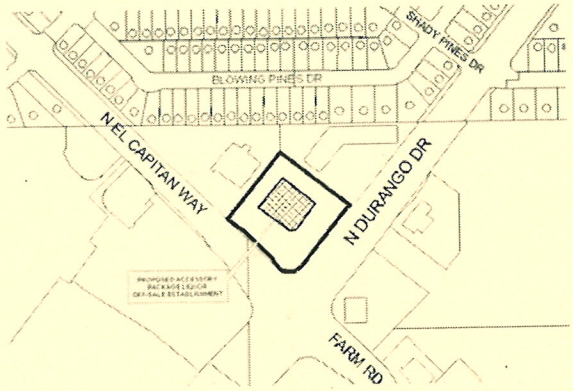
Application Information

SUP-38211 - APPLICANT: WALGREEN CO. - OWNER: PPLAND, LP – Appeal from the Denial by the Planning Commission of a Request for a Special Use Permit FOR A 74 SQUARE-FOOT ACCESSORY PACKAGE LIQUOR OFF-SALE USE WITHIN AN EXISTING 14,820 SQUARE-FOOT RETAIL ESTABLISHMENT at 7755 North Durango Drive (APN 125-17-611-002), T-C (Town Center) Zone [SC-TC (Service Commercial - Town Center) Special Land Use Designation], Ward 6 (Ross).

We oppose the request because we don't think that a liquor permit will have a positive impact on the neighbourhood

Steve Laird + Mike Muller

Application Location



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Public Hearing Information

Meeting:	City Council
Date:	***July 21, 2010***
Time:	1:00 P.M.
Location:	City Council Chambers 400 Stewart Avenue Las Vegas, Nevada

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JUL 12 2010

City of Las Vegas
Office Of The City Clerk
400 Stewart Avenue
Las Vegas, Nevada 89101

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2010 JUL 14 A 11:30

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☒ I SUPPORT this Request ☐ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38211
City Council Meeting of 7/21/2010

SECHREST SUSAN
P O BOX 34266
LAS VEGAS NV 89133-4266

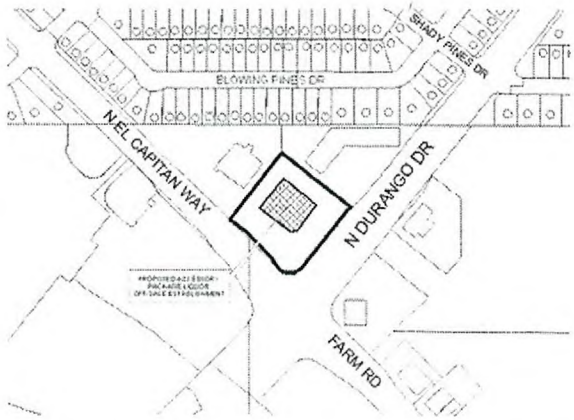
APN#12517523008

Application Information

SUP-38211 - APPLICANT: WALGREEN CO. - OWNER: PPLAND, LP – Appeal from the Denial by the Planning Commission of a Request for a Special Use Permit FOR A 74 SQUARE-FOOT ACCESSORY PACKAGE LIQUOR OFF-SALE USE WITHIN AN EXISTING 14,820 SQUARE-FOOT RETAIL ESTABLISHMENT at 7755 North Durango Drive (APN 125-17-611-002), T-C (Town Center) Zone [SC-TC (Service Commercial - Town Center) Special Land Use Designation], Ward 6 (Ross).

Walgreen Co. should be permitted to open an accessory package liquor off-sale used within their existing facility at 7755 North Durango Drive. Why the discrimination against Walgreen's? Less than 1 block from Walgreen's store Fresh & Easy and Albertson's both sell liquor, so why punish Walgreen Co.??

Application Location



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Public Hearing Information

Meeting:	City Council
Date:	***July 21, 2010***
Time:	1:00 P.M.
Location:	City Council Chambers 400 Stewart Avenue Las Vegas, Nevada

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I can't attend 21 July 2010 meeting.

Susan Sechrest

NOTE: THE FOLLOWING DOCUMENTATION WAS SUBMITTED FOR THE RECORD BEFORE OR AT THE PLANNING COMMISSION HEARING ON THIS ITEM WHICH IS NOW APPEARING BEFORE THE CITY COUNCIL

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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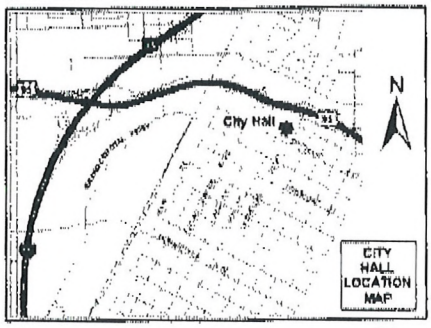
Official Notice of Public Hearing



If you wish to file your protest or support on this request, check the appropriate box below and return this card in an envelope with postage to the Planning & Development Department at the address listed above or fax this side of this card to (702) 385-7268. If you would like to contact your Council Representative, please call (702) 229-6405.

☐ I SUPPORT this Request ☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38211

Planning Commission Meeting of 6/24/2010

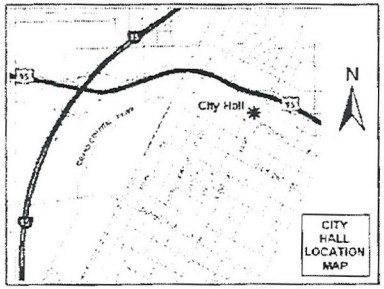
Case: SUP-38211
12516210002
JONES FREDERICK S & SHIRLEY Y
7705 KIOWA POINTE ST
LAS VEGAS NV 89131-4615

RECEIVED
JUN 16 2010

12P

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

Return Service Requested
Official Notice of Public Hearing



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[X] I SUPPORT this Request [ ] I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38211

Planning Commission Meeting of 6/24/2010

Case: SUP-38211

12517512003
KNORR DAVID G & PATRICIA
266 S CENTER ST
ORANGE CA 92866-2075

RECEIVED
JUN 14 2010

12A

Jun 14 10 02:20p Dave and Pa 7147448466 p.1

CITY OF LAS VEGAS

ONE MOTION / ONE VOTE

Planning and Development Department
Case Planning Division
731 South Fourth Street
Las Vegas, Nevada 89101
(702) 229-6301 Phone (702) 385-7268 Fax

SUBJECT: *SUP-38211 - APPLICANT: WALGREEN CO. - OWNER: PPLAND, LP*

The above item has been placed on the One Motion/One Vote portion of the Planning Commission Agenda for the ***JUNE 24, 2010*** Planning Commission meeting. All of these items will be placed at the beginning of the agenda. The Chairman of the Planning Commission will open them at the same time.

Enclosed please find the proposed conditions of approval. If you agree to these conditions, please sign this form and fax it to ***Carman Burney at (702) 385-7268***. If there is no one present at the Planning Commission meeting who wants to discuss this item, you will not be called to the podium to discuss the case. However, you must be present in case any Planning Commissioner or member of the public wants to discuss the item. If you have any questions, please contact my office at (702) 229-6301.

Please sign and date that you have read and agree to the conditions and return to our office by 5:00PM *JUNE 23, 2010.*

Signature — Date: 6/22/10.

Rebecca Lidskin
Please Print Name

Walgreen Co.
Company Name

RECEIVED
JUN 22 2010

Sincerely,

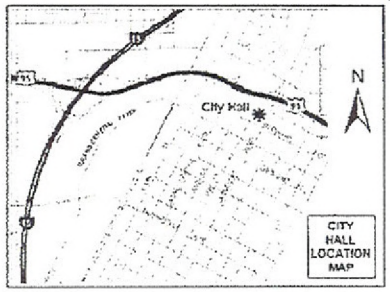
Steve Gebeke
Planning Supervisor
Case Planning Division

Submitted after final agenda
Date 6/22/10 Item 12

2c

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

Return Service Requested
Official Notice of Public Hearing



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☐ I SUPPORT this Request ☒ I OPPOSE this Request

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SUP-38211
Planning Commission Meeting of 6/24/2010

Case: SUP-38211
12517611003
7785 NORTH DURANGO L L C
314 GRAND ST
NEW YORK NY 10002-4502

RECEIVED
JUN 18 2010

Submitted after final agenda
Date 6/18/10
Item 12R

City of Las Vegas
Planning & Development Department
Development Services Center
731 S. Fourth Street
Las Vegas, Nevada 89101-2986

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0004279218 JUN 11 2010
MAILED FROM ZIP CODE 89101

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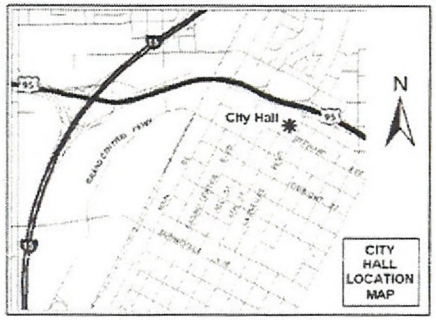
Official Notice of Public Hearing



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☐ I SUPPORT this Request

☒ I OPPOSE this Request

Please use available blank space on card for your comments.

SUP-38211

Planning Commission Meeting of 6/24/2010

RECEIVED
JUN 16 2010

Case: SUP-38211

12517518009
QUINN JERRY C & DIANA L
8716 GRAND PINE AVE
LAS VEGAS NV 89143-1356

Submitted after final agenda
Date
Item 12P

City of Las Vegas Agenda Item No.: **94.**

AGENDA SUMMARY PAGE - PLANNING & DEVELOPMENT

CITY COUNCIL MEETING OF: AUGUST 18, 2010

DEPARTMENT: PLANNING & DEVELOPMENT
DIRECTOR: M. MARGO WHEELER ☐ **Consent** ☒ **Discussion**

SUBJECT:

SDR-37946 – ABEYANCE ITEM - SITE DEVELOPMENT PLAN REVIEW - PUBLIC HEARING - APPLICANT: RESORT GAMING GROUP, LLC - OWNER: 220 NORTH 4TH STREET LV, LLC, ET AL - Request for a Site Development Plan Review FOR PROPOSED FACADE MODIFICATIONS AND THE ADDITION OF A SERVICE YARD, A PORTE COCHERE, A SURFACE PARKING LOT AND A 25-FOOT ADDITION ON THE ROOF OF AN EXISTING HOTEL/CASINO WITH WAIVERS OF DOWNTOWN CENTENNIAL PLAN STREETSCAPE, UTILITY AND PARKING LOT LANDSCAPING AND SCREENING REQUIREMENTS on 3.94 acres at 220 North 4th Street (APNs 139-34-501-009; 139-34-510-019 and 139-34-514-007 through 009), C-2 (General Commercial) Zone, Ward 5 (Barlow). The Planning Commission (6-0-1 vote) and Staff recommend APPROVAL.

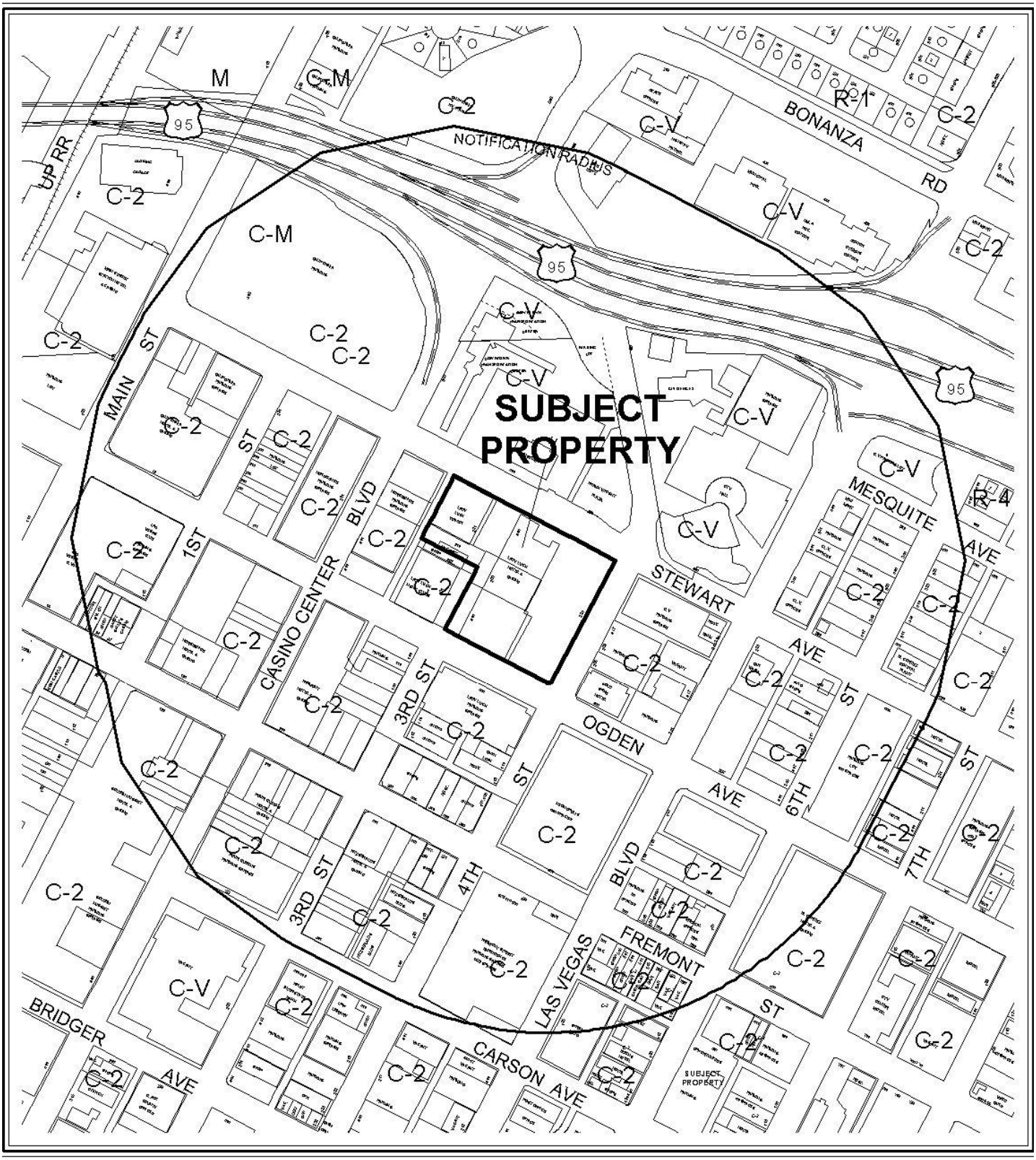
PROTESTS RECEIVED BEFORE:		**APPROVALS RECEIVED BEFORE:**	
Planning Commission Mtg.	**0**	**Planning Commission Mtg.**	**0**
City Council Meeting	**0**	**City Council Meeting**	**0**

RECOMMENDATION:

The Planning Commission (6-0-1 vote) and Staff recommend APPROVAL, subject to conditions:

BACKUP DOCUMENTATION:

1. Location and Aerial Maps
2. Conditions and Staff Report
3. Supporting Documentation
4. Photos
5. Justification Letter
6. Backup referenced from the June 24, 2010 Planning Commission Meeting for SDR-37946



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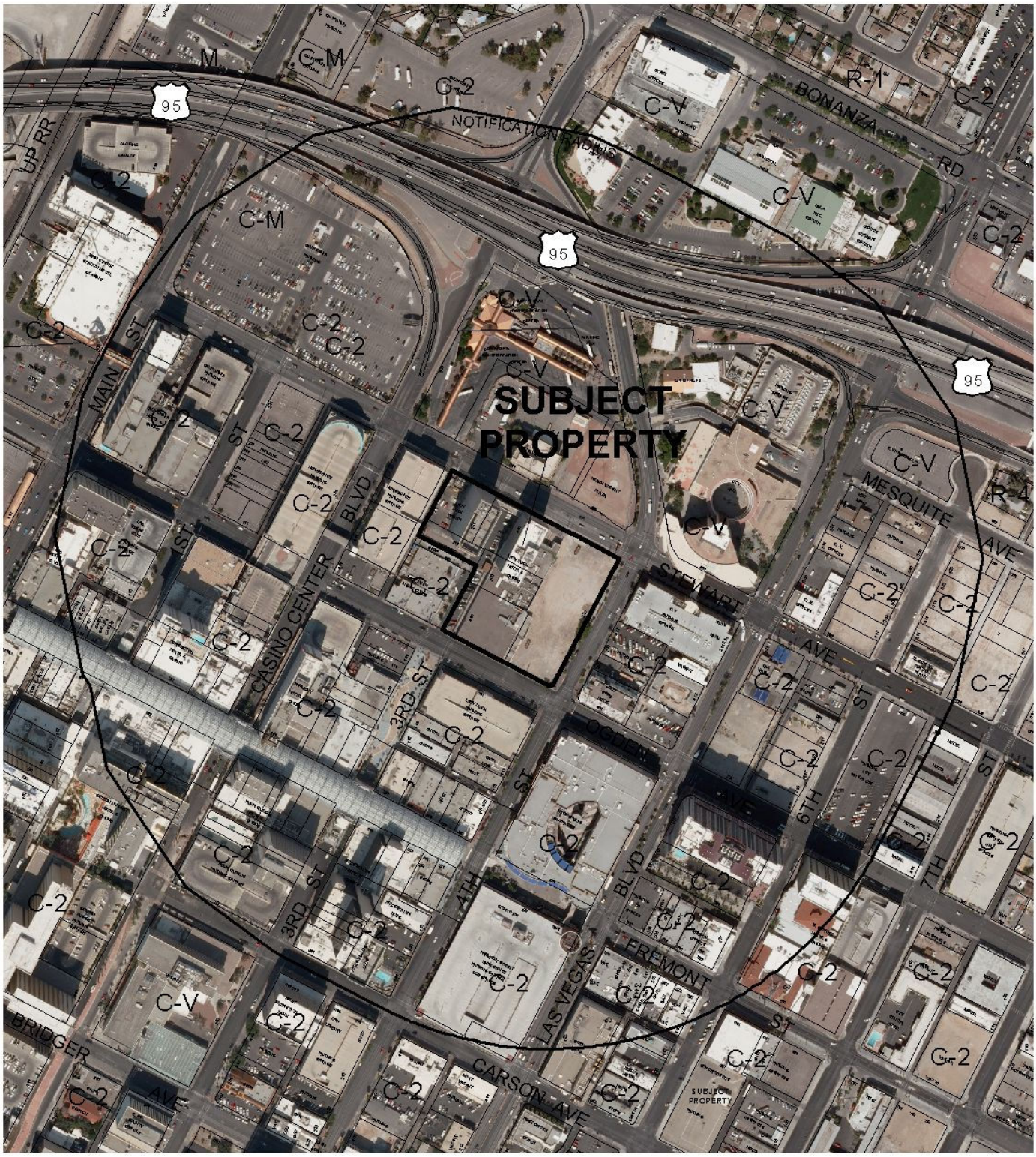
CASE: **SDR-37946**

RADIUS: 1000 FT

ZONING OF SUBJECT PROPERTY: C-2 (GENERAL COMMERCIAL)

N



0 400 800 Feet

CASE: **SDR-37946**

RADIUS: 1000 FT

ZONING OF SUBJECT PROPERTY: C-2 (GENERAL COMMERCIAL)

N

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: AUGUST 18, 2010
DEPARTMENT: PLANNING AND DEVELOPMENT
ITEM DESCRIPTION: APPLICANT: RESORT GAMING GROUP, LLC - OWNER: 220 NORTH 4TH STREET LV, LLC, ET AL

THIS ITEM WAS HELD IN ABEYANCE FROM THE AUGUST 4, 2010 CITY COUNCIL MEETING AT THE REQUEST OF THE APPLICANT

**** STAFF RECOMMENDATION(S) ****

CASE NUMBER	*RECOMMENDATION*	*REQUIRED FOR APPROVAL*
SDR-37946	Staff recommends APPROVAL, subject to conditions:	

**** CONDITIONS ****

SDR-37946 CONDITIONS

Planning and Development

1. APN 139-34-510-014, also known as 215 N. 3rd Street, is not a part of this application.

2. This Site Development Plan Review (SDR-37946) does not modify the previously approved Site Development Plan Review (SDR-4835) with regard to travel lanes and on-street parking for the vacated 3rd Street. An application to modify SDR-4835, with signatures from all affected property owners, or full compliance with all plans and conditions of approval of Site Development Plan Review (SDR-4835) and Vacation (VAC-3926), as implemented by civil plan review #107V4327 approved on 03/31/05, shall be required prior to issuance of any building permits associated with SDR-37946.

3. This approval shall be void two years from the date of final approval, unless a building permit has been issued for the principal building on the site. An Extension of Time may be filed for consideration by the City of Las Vegas.

4. All development shall be in conformance with the site plan and landscape plan, date stamped 06/22/10 and building elevations, date stamped **07/30/10**, except as amended by conditions herein.

5. Prior to approval of a final inspection, the proposed alterations to the Third Street pedestrian bridge to reduce the parapet and soffit materials to a minimum and to replace the existing materials with a clear glazing system shall be completed in conformance with the building elevations date stamped 04/13/10.

6. A Waiver from Downtown Centennial Plan Section VII.B.1.e is hereby approved, to allow utilities to remain above ground where required to be underground along Stewart Avenue.

7. A Waiver from Downtown Centennial Plan Section VII.B.3.d is hereby approved, to allow block wall screening adjacent to the service yard where ornamental iron screening is required.

8. A Waiver from Downtown Centennial Plan Section VII.B.4.a is hereby approved, to allow a zero-foot amenity zone where a five-foot amenity zone is required along portions of Stewart Avenue between 3rd Street and east to the parking lot entrance.

9. A Waiver from Downtown Centennial Plan Section VII.B.4.c is hereby approved, to allow no additional trees along Stewart Avenue.

10. Prior to occupancy, the required number of handicap parking spaces shall be provided, in the existing parking structure, in the proposed parking lot, or a combination of structure and lot, in conformance with Title 19.10 requirements.

11. Prior to occupancy, all necessary building permits shall be obtained and final inspections shall be completed in compliance with Title 19 and all codes as required by the Building and Safety Department.

12. These Conditions of Approval shall be affixed to the cover sheet of the plan set submitted for building permit.

13. A technical landscape plan, signed and sealed by a Registered Architect, Landscape Architect, Residential Designer or Civil Engineer, must be submitted prior to or at the same time application is made for a building permit. A permanent underground sprinkler system is required, and shall be permanently maintained in a satisfactory manner. The landscape plan shall be revised to include irrigation specifications.

14. Pre-planting and post-planting landscape inspections are required to ensure the appropriate plant material, location, size of planters, and landscape plans are being utilized. The Planning and Development Department must be contacted to schedule an inspection prior to the start of the landscape installation and after the landscape installation is completed. A certificate of occupancy will not be issued or the final inspection will not be approved until the landscape inspections have been completed.

15. All proposed signage shall be subject to approval by the Downtown Design Review Committee prior to issuance of sign permits.

16. Reflective glazing at the pedestrian level is prohibited. Glazing above the pedestrian level shall be limited to a maximum reflectance rating of 22% (as defined by the National Institute of Standards and Technology).

17. All mechanical equipment, air conditioners and trash areas shall be fully screened in views from the abutting streets.

18. All utility boxes exceeding 27 cubic feet in size shall meet the standards of LVMC Title 19.12.040.

19. Parking lot lighting standards shall be no more than 30 feet in height and shall utilize downward-directed lights with full cut-off luminaries. Lighting on the exterior of buildings shall be shielded and shall be downward-directed. Non-residential property lighting shall be directed away from residential property or screened, and shall not create fugitive lighting on adjacent properties.

20. A fully operational fire protection system, including fire apparatus roads, fire hydrants and water supply, shall be installed and shall be functioning prior to construction of any combustible structures.

21. A Comprehensive Construction Staging Plan shall be submitted to the Planning and Development Department for review and approval prior to the issuance of any building permits. The Construction Staging Plan shall include the following information: Design and location of construction trailer(s); design and location of construction fencing; all proposed temporary construction signage; location of materials staging area; and the location and design of parking for all construction workers.

22. All City Code requirements and design standards of all City Departments must be satisfied, except as modified herein.

Public Works

23. Provide a copy of a recorded joint access and parking agreement between this site and Assessor's Parcel #139-34-510-014 [Ace Loan Company, 215 N. Third Street] within the Third Street alignment prior to the issuance of any permits for this site.

24. Coordinate with the Building and Safety Department to determine if existing lot lines are in conflict with existing or the new proposed structures. If it is determined that a mapping or other lot consolidation is required, coordinate with the City Surveyor to determine the most appropriate lot consolidation method.

25. Dedicate a 10 foot radius on the southwest corner of Stewart Avenue and 4th Street prior to the issuance of any permits.

26. A Petition of Vacation to vacate the existing public sewer easement, such as VAC-27995, shall record prior to the issuance of any permits for improvements abutting or overlying the sewer easement.

27. Remove all substandard public street improvements and unused driveway cuts adjacent to this site and replace with new improvements meeting Downtown Centennial Plan Standards modified as necessary to accommodate existing physical obstructions and as amended by conditions herein per the approved Site Plan concurrent with development of this site. All existing paving damaged or removed by this development shall be restored at its original location and to its original width concurrent with the development of this site.

28. Prior to the approval of Construction drawings for this site, sign a Covenant Running with Land agreement for the possible future undergrounding of all existing overhead utility lines adjacent to this site not placed underground per requirements of the Downtown Centennial Plan. The Covenant agreement must be recorded with the County Recorder and a copy of the recorded document must be provided to the City prior to the issuance of building permits for this site.

29. Unless otherwise allowed by the City Engineer, construct sidewalk, where such does not exist, on at least one side of all access drives connecting this site to the adjacent public streets concurrent with development of this site. The connecting sidewalk shall extend from the sidewalk on the public street to the first intersection of the on-site roadway network and shall be terminated on-site with a handicap ramp.

30. Contact the City Engineer's Office (Lorrie Dunford) at 229-6272 to coordinate the development of this project with the Stewart Avenue Phase II project and any other public improvement projects adjacent to this site. Comply with the recommendations of the City Engineer.

31. Landscape and maintain all unimproved rights-of-way, if any, on 4th Street, Ogden Avenue and Stewart Avenue adjacent to this site. All landscaping and private improvements installed with this project shall be situated and maintained so as to not create sight visibility obstructions for vehicular traffic at all development access drives and abutting street intersections.

32. Submit an Encroachment Agreement for all landscaping and private improvements, if any, located in the Ogden Avenue, Stewart Avenue and (where applicable) 4th Street public rights-of-way adjacent to this site prior to issuance of permits for this site.

33. Coordinate all driveway geometrics with the Traffic Engineer to determine final allowable widths and depths prior to the submittal of construction drawings or issuance of permits whichever occurs first.

34. A Drainage Plan and Technical Drainage Study must be submitted to and approved by the Department of Public Works prior to the issuance of any building or grading permits, submittal of any construction drawings or the submittal of a Map subdividing this site, whichever may occur first. Provide and improve all drainageways recommended in the approved drainage plan/study. The developer of this site shall be responsible to construct such neighborhood or local drainage facility improvements as are recommended by the City of Las Vegas Neighborhood Drainage Studies and approved Drainage Plan/Study concurrent with development of this site. Alternatively, meet with the Flood Control Section of the Department of Public Works to determine an acceptable alternative, if any, to the Drainage Plan and Technical Drainage Study.

** STAFF REPORT **

PROJECT DESCRIPTION

This project request is for modifications to an existing hotel and casino located at the southwest corner of Stewart Avenue and Fourth Street. Façade improvements to the existing buildings are proposed along Stewart Avenue, Ogden Avenue, Fourth Street and the interior of the property. Along Fourth Street, a new access into the property and new surface parking area containing 54 spaces are proposed, along with a new porte cochere and building entrance. A new central plant that will contain the majority of the hotel's mechanical equipment will also be located along Fourth Street. Along Stewart Avenue, the existing loading dock is proposed to be rebuilt and reconfigured with screening. The existing pedestrian bridge across Third Street is proposed to be modified to replace the existing glass with transparent glass and to reduce the bulk of the structure. The existing mechanical building adjacent to the west side of the west tower will be demolished to allow for a one-way entry into the property. Along Ogden Avenue, a new pool and deck is proposed to be added to the roof of the existing eastern building, as well as a 25-foot tall building extension that is intended to include meeting rooms. The casino will not be expanded.

The overall project is subject to the standards of the Downtown Centennial Plan. The applicant has requested several Waivers; however, these Waiver requests are minor in nature and will be mitigated by the public improvements currently underway along Stewart Avenue, leaving the project in substantial compliance with the standards of the Downtown Centennial Plan. Therefore, staff is recommending approval. If denied, the existing hotel and casino would remain and a new Site Development Plan Review would be required for future development of the site.

ISSUES

- A deceleration lane is proposed along the west side of Fourth Street into the site to eliminate disruption of traffic flow. A portion of the existing sidewalk and amenity zone would be used for the deceleration lane.
- As a result of the proposed site modifications, 54 parking spaces are proposed to be added; however, the number of hotel rooms is proposed to be reduced by 162, thereby reducing the overall parking demand. Title 19 parking requirements are not automatically applied in the Downtown Centennial Plan area.
- The existing service yard area is proposed to be expanded to permit large service vehicles to enter and exit the site without obstructing Stewart Avenue. A 20-foot driveway is proposed that will allow for easier egress from the service yard.

- Waivers of Downtown Centennial Plan streetscape, utility, parking lot landscaping and screening requirements are required for approval of the project as proposed; these have been requested by the applicant. Staff can support these requests, as the requested Waivers are minor in nature and will be mitigated by the public improvements currently underway along Stewart Avenue.

BACKGROUND INFORMATION

Related Relevant City Actions by P&D, Fire, Bldg., etc	
12/26/62	The Board of City Commissioners approved Ordinance #1014, which adopted an official Zoning Map reaffirming the C-2 (General Commercial) Zone on the subject property.
01/09/79	The Board of Zoning Adjustment approved a Variance (V-0112-78) to allow a proposed illuminated sign over the public right-of-way that will project to within one foot (1') of the curb where a three-foot (3') setback is required on property located at 206 North Third Street. Staff recommended approval.
11/19/80	The Board of City Commissioners approved an Aesthetic Review (AR-0008-80) for a proposed 21-story, 360-unit tower to be located on the east side of Third Street between Stewart Avenue and Ogden Avenue. The Planning Commission and staff recommended approval.
12/04/85	The City Council approved an Aesthetic Review (AR-0008-80) for Phase I of a proposed expansion to an existing hotel and casino, including a proposed 21-story, 360-unit tower to be located on the east side of Third Street between Stewart Avenue and Ogden Avenue. The Planning Commission and staff recommended approval.
09/14/98	The City Council approved a Petition (VAC-0030-98) to Vacate Third Street between Stewart Avenue and Ogden Avenue. The Planning Commission and staff recommended approval. The approval expired 09/14/02 after three Extensions of Time [VAC-0030-98(1), (2) and (3)] were administratively approved by the Department of Planning and Development.
01/05/00	The City Council approved a Site Development Plan Review (SD-0030-99) for a proposed pedestrian mall on Third Street between Stewart Avenue and Ogden Avenue. The Planning Commission and staff recommended approval.
12/06/01	The Planning Commission approved a Site Development Plan Review (SD-0071-01) for a proposed 14,765 square-foot banquet hall at 206 North Third Street. This review included the removal of the temporary tent and trailer structures. Staff recommended approval. A condition of that approval required a separate submittal for a Site Development Plan Review for general site improvements, including a proposed pedestrian mall in the portion of Third Street to be vacated prior to recordation of the Order of Vacation.
02/20/02	The City Council approved a Special Use Permit (U-0158-01) to allow the conversion of a resort hotel into a timeshare development. The Planning Commission and staff recommended approval.
07/21/10	The City Council voted to hold this item in abeyance to the August 4, 2010 City Council meeting at the request of the applicant.

Related Relevant City Actions by P&D, Fire, Bldg., etc	
05/05/04	The City Council approved a Petition (VAC-3926) to Vacate Third Street between Ogden Avenue and Stewart Avenue. The Planning Commission and staff recommended approval. The Order of Vacation was recorded on 11/19/04.
08/26/04	The Planning Commission approved a Site Development Plan Review (SDR-4835) for a proposed valet parking operation within the right-of-way area of Third Street proposed to be vacated. Staff recommended approval. A condition of approval required a City Council review in one year. No review has yet been considered by the City Council.
09/15/04	The City Council approved a Special Use Permit (SUP-4739) for a proposed 10,000 square-foot tavern and a Waiver of the 1,500-foot distance separation requirement from another tavern on property located at 201 North Third Street. The Planning Commission and staff recommended approval.
09/15/04	The City Council approved a Special Use Permit (SUP-4741) for a proposed 5,500 square-foot tavern and a Waiver of the 1,500-foot distance separation requirement from another tavern on property located at 207 North Third Street. The Planning Commission and staff recommended approval.
09/15/04	The City Council approved a Special Use Permit (SUP-4742) for a proposed 6,000 square-foot tavern and a Waiver of the 1,500-foot distance separation requirement from another tavern on property located at 207-A North Third Street. The Planning Commission and staff recommended approval.
09/15/04	The City Council approved a Special Use Permit (SUP-4743) for a proposed 4,050 square-foot tavern and a Waiver of the 1,500-foot distance separation requirement from another tavern on property located at 207-A North Third Street. The Planning Commission and staff recommended approval.
08/25/05	The Planning Commission approved a Tentative Map (TMP-8072) for a one-lot commercial subdivision on the subject property. Staff recommended approval.
10/06/05	The Downtown Design Review Committee approved an amendment (ARC-9395) to an existing Master Sign Plan for nightclub establishments at 201 and 217 North Third Street.
02/09/06	The Planning Commission approved a Tentative Map (TMP-11015) for a 262-unit Hotel/Condominium subdivision on Floors 6 through 25 of an existing Hotel/Casino complex at 221 North Third Street. Staff recommended approval.
02/13/06	Two Reversionary Final Maps (FMP-8941 and FMP-8943) of a portion of Clark's Las Vegas Townsite, totaling 0.93 acres, were recorded in the Office of the Clark County Recorder. A portion of the subject site is included within this area.

Related Relevant City Actions by P&D, Fire, Bldg., etc	
02/15/06	The City Council approved a Special Use Permit (SUP-10491) and Site Development Plan Review (SDR-10490) for a proposed 8,700 square-foot expansion of an existing Non-Restricted Gaming Facility with Waivers of Downtown Centennial Plan Streetscape requirements, required parking structure setback along Fourth Street, and building frontage requirement along Ogden Avenue on 3.12 acres at 206 North Third Street and 220 North Fourth Street. The Planning Commission and staff recommended approval. The Special Use Permit and Site Development Plan Review approvals expired 02/15/08.
05/08/06	A Final Map (FMP-9824) of the Lady Luck for a one-lot commercial subdivision containing 3.07 acres was recorded in the Office of the Clark County Recorder. A portion of the subject site includes this subdivision.
09/21/06	The Planning Commission voted to table requests for a Special Use Permit (SUP-15382) for a proposed expansion of an existing Non-Restricted Gaming Facility and a Site Development Plan Review (SDR-15380) for a proposed 16,000 square foot expansion of an existing non-restricted gaming facility with Waivers of the Downtown Centennial Plan standards related to sidewalk width and reflective glass. Staff recommended approval.
04/02/08	The City Council approved an Extension of Time (EOT-26872) of a previously approved Site Development Plan Review (SDR-10490) for a proposed 8,700 square-foot expansion of an existing Hotel/Casino with a Waiver of Streetscape Requirements, required parking structure setback along Fourth Street, and building frontage requirement along Ogden Avenue on 3.12 acres at 206 North Third Street and 220 North Fourth Street. Staff recommended approval. The approval expired 02/15/10.
04/02/08	The City Council approved an Extension of Time (EOT-26873) of a previously approved Special Use Permit (SUP-10491) for a proposed 8,700 square-foot expansion of an existing Non-Restricted Gaming Facility at 206 North Third Street and 220 North Fourth Street. Staff recommended approval. The approval expired 02/15/10.
07/16/08	The City Council approved a Petition to Vacate (VAC-27995) a Public Sewer Easement generally located at the northwest corner of Ogden Avenue and Fourth Street. The Planning Commission and staff recommended approval.
08/14/09	The Planning and Development Department administratively approved an Extension of Time (EOT-35237) of a previously approved Petition of Vacation (VAC-27995) to vacate a Public Sewer Easement generally located at the northwest corner of Ogden Avenue and Fourth Street. The approval will expire 07/16/10.

Related Relevant City Actions by P&D, Fire, Bldg., etc	
05/27/10	The Planning Commission held this request (SDR-37946) in abeyance to the 06/24/10 Planning Commission meeting to allow the applicant to meet with an adjacent property owner.
06/24/10	The Planning Commission (6-0-1 vote/rt) recommended APPROVAL.

Most Recent Change of Ownership	
05/08/06	A deed was recorded for a change in ownership on APN 139-34-514-007.
10/08/07	A deed was recorded for a change in ownership on APN 139-34-514-008 and 009 and 139-34-501-009 and 010.
04/16/08	A deed was recorded for a change in ownership on APN 139-34-510-019.

Related Building Permits/Business Licenses	
Pre-1991	A business license (L16-00098) was issued for a tavern at 206 North Third Street. The license is still active.
08/04/98	Business licenses (C30-00984 and G08-00039) were issued for a race and sports book at 206 North Third Street. The licenses were marked out of business on 12/14/07.
09/04/03	A business license (G08-00056) was issued for non-restricted gaming at 206 North Third Street. The license is still active.
09/09/06	A business license (M18-03714) was issued for a promoter at 206 North Third Street. The license is still active.
02/07/07	A business license (A01-01253) was issued for an administrative office at 206 North Third Street. The license is still active.
02/13/07	A business license (M18-03870) was issued for a gaming research consultant at 206 North Third Street. The license was marked out of business on 12/17/07.
06/29/07	A business license (Q01-00470) was issued for a real estate business at 206 North Third Street. The license is still active.
03/12/09	A business license (M18-04657) was issued for a casino owners association at 206 North Third Street. The license is still active.

Pre-Application Meeting	
03/29/10	A pre-application meeting was held with the applicant to discuss the issues related to the project and to prepare the applicant for submittal of a Site Development Plan Review application. The following topics were discussed: • Traffic Engineering assisted the applicant in designing an entry into the property that preserves most of the streetscaping and sidewalk and queues approaching traffic out of the right-of-way; • Applicant proposes to add meeting space, but also will be removing floor area elsewhere, resulting in net change of near zero and minimal change in parking requirements; • Downtown Centennial Plan Threshhold (Type II) requirements will apply to the project; • Signage will be subject to DDRC review. A waiver may be needed; • Fire safety issues are being addressed separately with Fire and Rescue; • Applications and Statements of Financial Interest will be required from all owners, with documents linking signees to property ownership; • Encroachment agreement will be required for façade popouts along Stewart Avenue and landscaping in right-of-way; • Waivers of streetscaping, utilities (undergrounding) and parking lot screening (wrought iron fencing) will be required. Amenities in right-of-way already exist on 4th Street.

Neighborhood Meeting
A neighborhood meeting is not required, nor was one held.

Field Check	
04/22/10	A field check of the subject site revealed the following: • The portion of the site along Fourth Street is vacant, with the exception of two construction trailers, construction equipment, portable facilities, parked vehicles and two refuse dumpsters; • The vacant area is enclosed by screened chain link fencing; • The hotel is not operational at this time; • Fourth Street contains seven sets of palm trees within the amenity zone, Ogden contains one pair of palm trees, and Stewart contains three existing shade trees in the sidewalk; • Power poles are located in the sidewalk along Stewart Avenue

Details of Application Request	
Site Area	
Net Acres	3.94

Surrounding Property	***Existing Land Use Per Title 19.04***	***Planned or Special Land Use Designation***	***Existing Zoning District***
Subject Property	Hotel, Gaming Establishment, Non-Restricted	C (Commercial)	C-2 (General Commercial)
North	Museum (Public)	PF (Public Facilities)	C-V (Civic)
South	Parking Garage	C (Commercial)	C-2 (General Commercial)
East	Hotel, Gaming Establishment, Non-Restricted, Tavern	C (Commercial)	C-2 (General Commercial)
	Government Facility Parking Garage	PF (Public Facilities)	C-2 (General Commercial)
West	Taverns, Parking Garage	C (Commercial)	C-2 (General Commercial)

Master Plan Areas	***Yes***	***No***	***Compliance***
Master Plan Area			
Downtown Centennial Plan (Downtown Gateway District)	X		N
Special Purpose and Overlay Districts	***Yes***	***No***	***Compliance***
Special Purpose and Overlay Districts			
Downtown Centennial Plan Overlay District	X		N
A-O (Airport Overlay) District (200 Feet)	X		Y
Downtown Casino Overlay District	X		Y
Live/Work Overlay District	X		Y
Trails		X	N/A
Las Vegas Redevelopment Plan Area	X		Y

DEVELOPMENT STANDARDS

Pursuant to Title 19.06.060 and the Downtown Centennial Plan (Downtown Gateway District), the following development standards apply to the subject proposal:

Standard	*Required/Allowed*	*Provided*	*Compliance*
Min. Lot Size	N/A	3,500 SF	N/A
Min. Lot Width	N/A	25 Feet	N/A
Min. Setbacks:			
• Front (Fourth Street)	70% of the first story façade shall align along the front property line	0%	Y*
• Side (Ogden Avenue)	Not required	0 Feet	Y
• Corner (Stewart Avenue)	70% of the first story façade shall align along the corner side property line	16%	Y*
• Rear	Not required	53 Feet	Y
Max. Lot Coverage	N/A	39%	N/A
Max. Building Height	N/A	237 Feet	N/A
Trash Enclosure	Screened, Gated, w/ a Roof or Trellis	Screened	By condition
Mech. Equipment	Screened	Screened	Y

*The building was constructed to setbacks established at the time of original approval. The proposed improvements to the buildings do not affect the existing setbacks, and therefore compliance with the current standards is not required.

Pursuant to the Downtown Centennial Plan (Downtown Gateway District), the following landscape standards apply to the subject proposal:

Landscaping and Open Space Standards				
Standards	*Required*		*Provided*	*Compliance*
	Ratio	*Trees*		
Parking Area Trees	1 Tree/6 uncovered spaces in islands and/or lot perimeter	9 Trees	9 Trees	Y
Min. Landscaped Surface Area	10 SF/surface parking space provided	540 SF	4,054 SF	Y
Turf Limitations	Max. 25% of total landscaped area		None	Y

Pursuant to the Downtown Centennial Plan (Downtown Gateway District), the following streetscape standards apply:

Streetscape Standards	*Required*	*Provided*	*Compliance*
Minimum Sidewalk width	10 feet	4th St. - 10 feet Ogden Ave. - 5 feet Stewart Ave. - 10 feet	N
Amenity zone (Ogden Ave., Fourth St., Stewart Ave.)	5 feet	4th St. - 5 feet Ogden Ave. – 5 feet Stewart Ave. - 0 feet	N
Right-of-way improvements	Light fixtures, streetlights, benches, trash receptacles, grates	Grates, light fixtures, streetlights, receptacles	Y
East-West Streets (Ogden Ave. and Stewart Ave.)	36" box shade trees at 15-20' intervals (min. 19 trees)	Stewart Ave. - 3 shade trees (existing) Ogden Ave. – 8 shade trees (proposed) and 2 palm tree (existing)	N
North-South Streets (4th St.)	25' date palms or similar at 30' intervals (min. 6 trees)	Existing fan palms at 20' intervals (14 trees)	Y

Parking Requirement - Downtown							
	Gross Floor Area or Number of Units	*Base Parking Requirement*			*Provided*		*Compliance*
			Parking		*Parking*		
Use		*Parking Ratio*	Regular	Handi-capped	Regular	Handi-capped	
Hotel	634 rooms	1 space per guest room	634		499		Y
TOTAL SPACES REQUIRED			634		499		Y
TOTAL (With Handicapped)			621	13	488	11	N

Projects located within the Las Vegas Downtown Centennial Plan area are not subject to the automatic application of parking requirements. However, the above table should be used to illustrate the requirements of an analogous project in another location in the City. The analysis should take a number of factors into consideration when discussing parking availability, including pedestrian access, nearby parking structures, on-street parking, etc.

Waivers		
Requirement	***Request***	***Staff Recommendation***
DTCP VII.B.1.e Utilities – Underground utilities required	Utilities along Stewart Ave. to remain above ground	Approval
DTCP VII.B.3.d Parking Screening – Ornamental screening required where parking lots face public streets	Block wall screening adjacent to the service yard	Approval
DTCP VII.B.3.g Parking Lot Development Standards – Min. one shade tree/6 spaces in islands and/or perimeter of parking lot (min. 9 trees)	9 Trees	Waiver is no longer required
DTCP VII.B.4.a Right-of-Way Improvements – 10' sidewalk, 5' amenity zone	Zero-foot amenity zone along a portion of Stewart Ave., adjacent to the service yard; five-foot sidewalk along Ogden Ave., adjacent to the existing building	Approval
DTCP VII.B.4.c East-West Streets – 36" box trees at 15-20' intervals along Stewart Ave. and Ogden Ave.	No additional trees along Stewart Ave.	Approval

ANALYSIS

The entire project is subject to Downtown Centennial Plan standards. Pursuant to Section VIII.A of the Plan, the expansion of the buildings qualifies as a Threshold Category II project, requiring undergrounding of utilities and provision of streetscape improvements. Waivers of Downtown Centennial Plan streetscape, utility, parking lot landscaping and screening requirements were requested; however, revised plans were submitted on 06/09/10 which will minimize the requested waivers.

The most visible changes to the property from public rights-of-way will be along Fourth Street. A deceleration lane is proposed along the west side of Fourth Street providing a left-only turn into the site, in order to eliminate disruption of traffic flow. A portion of the existing sidewalk and amenity zone would be used for the deceleration lane. The east elevation of the east tower will be improved to incorporate façade modifications, a new building entrance and a porte cochere. The building footprint is not proposed to be altered; rather, the new building will extend 25 feet from the roof of the casino and will match the façade improvements on the east side of the east tower. Proposed streetscape along Fourth Street is in compliance with Downtown Centennial Plan standards.

Along Stewart Avenue, the proposed 20-foot driveway access from the service yard area will allow egress for vehicles turning around within the site. An eight-foot tall decorative block wall will be provided around the perimeter of the service yard area. Although this wall does not meet the Downtown Centennial Plan ornamental wrought iron screen fence requirement, it is an acceptable alternative, as the proposed wall will provide better visual and audible screening of the service yard activities from the public right-of-way. Stewart Avenue is undergoing a current capital project improvement that will allow for the future undergrounding of utilities and provide streetscaping adjacent to the site in conformance to the Downtown Centennial Plan where possible. As a result, waivers to allow existing overhead utilities to remain and for streetscape along Stewart Avenue, with the exception of the segment from 4th Street east to the parking lot driveway, can be supported. The proposed façade improvements on the north elevation of the existing west tower will encroach 10 inches into the Stewart Avenue right-of-way, and improvements to the façade of the north elevation of the existing east tower will encroach six inches into Stewart Avenue. These encroachments are addressed as a Public Works condition, in which an encroachment agreement for maintenance will be necessary.

Other revisions to the site and landscape plans include the following:

- Nine 36-inch box street trees have been provided in the amenity zone along Ogden Avenue, with a 10-foot sidewalk provided from 4th Street to the existing building.
- Nine parking lot trees are provided, meeting the requirement of the Downtown Centennial Plan. A waiver is no longer necessary for this item.
- A five-foot amenity zone and a 10-foot sidewalk are provided along Stewart Avenue from 4th Street to the parking lot driveway, in conformance with the Downtown Centennial Plan.
- A decorative wrought iron fence meeting the requirement of the Downtown Centennial Plan is provided along 4th Street and Ogden Avenue.
- Additional trees are provided along the vacated 3rd Street corridor

These revisions bring the proposed site into compliance with the design standards of the Downtown Centennial Plan to the extent that existing conditions allow.

The site is underparked by Title 19 standards; when applied, those standards require a minimum of 634 spaces, and 499 spaces are provided in the existing parking garage and the new surface parking lot. However, the Downtown Centennial Plan takes into account offsite parking, lot size limitations, alternate modes of transportation and a substantial residential element in the area, and Title 19 does not automatically apply Title 19.04 parking requirements for projects within the Downtown Centennial Plan area. As the table below shows, the number of required spaces will decrease due to removal of existing rooms, while the number of spaces provided will increase. This reduces the percentage of underparked spaces on the site from 44% to 21%.

	Existing	Proposed	Change
Number of Rooms/Required Parking Spaces	796	634	-162
Parking Spaces Provided	445	499	+54
Spaces Underparked	351	135	-216

The number of handicap accessible spaces does not meet Title 19.10 requirements. A condition of approval will require the provision of handicap spaces to meet Title 19.10.

All proposed signage will require review and approval by the Downtown Design Review Committee prior to the issuance of sign permits. A portion of the site is located within the Downtown Casino Overlay District, which is governed by Title 19.06. The site is not included in the Special Signage Area; however, the south 80 feet of the site is subject to the standards of the Special Signage Area by virtue of its inclusion within a 125-foot buffer of the Special Signage Area boundary.

The project site lies within the 200-foot height limitation imposed by the Airport Overlay District. Although the existing west tower has a height of 237 feet, no new construction above 200 feet is proposed. The proposed addition to the roof of the hotel and casino is well within the height limitation of the Airport Overlay District. The project will not have any impact on the Live/Work District, in which this site is located.

Staff recommends approval of the Site Development Plan Review, as the requested Waivers are minor in nature and will be mitigated by the public improvements currently underway along Stewart Avenue, and the project substantially complies with Downtown Centennial Plan standards, which will make the site compatible with recent development east of Fourth Street.

FINDINGS (SDR-37946)

In order to approve a Site Development Plan application, per Title 19.18.050 the Planning Commission and/or City Council must affirm the following:

1. **The proposed development is compatible with adjacent development and development in the area;**

   The proposed development is compatible with surrounding commercial properties zoned C-2 (General Commercial) and the C-V (Civic) zoned area to the north containing public buildings. Proposed changes to the exterior of the existing hotel and casino will not affect the building footprint.

2. The proposed development is consistent with the General Plan, this Title, the Design Standards Manual, the Landscape, Wall and Buffer Standards, and other duly-adopted city plans, policies and standards;

The proposed expansion is in substantial compliance with Downtown Centennial Plan streetscape, utility, parking lot landscaping and screening requirements. The existing land uses are consistent with the General Plan for this site.

3. Site access and circulation do not negatively impact adjacent roadways or neighborhood traffic;

Access to the site currently exists from Stewart Avenue, an 80-foot Secondary Collector as designated by the Master Plan of Streets and Highways, Ogden Avenue, also a Secondary Collector, and Third Street, a private street within the hotel complex. A new access is proposed from Fourth Street into the property that will reduce disruption of traffic flow on Fourth Street and will lead traffic to either a surface parking area or to through lanes to Ogden Avenue. Two new driveways will provide one way access from the south side of Stewart Avenue: one will provided access to the proposed surface parking area and the other to the existing west tower. Service vehicles may still enter and exit the site from Stewart Avenue, with an additional driveway provided. The proposed expansion of the existing service yard will allow better circulation for large trucks on the property.

4. Building and landscape materials are appropriate for the area and for the City;

Building materials are appropriate for this area. The type of landscape materials are acceptable but are lacking in quantity, especially along Stewart Avenue, Ogden Avenue and the surface parking area.

5. Building elevations, design characteristics and other architectural and aesthetic features are not unsightly, undesirable, or obnoxious in appearance; create an orderly and aesthetically pleasing environment; and are harmonious and compatible with development in the area;

The façade improvements will create a more modern look for the existing hotel and are compatible with other developments in the Downtown Centennial Plan area. The design incorporates awnings at building entrances and variations in color and relief.

6. Appropriate measures are taken to secure and protect the public health, safety and general welfare.

Proposed development on the site will be subject to permit review and inspection, thereby constituting appropriate measures to protect the public health, safety and general welfare.

PLANNING COMMISSION ACTION

The Planning Commission added conditions 1, 2 and 24 and amended condition #4 as shown.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 19

NOTICES MAILED 112 (By City Clerk)

APPROVALS 0

PROTESTS 0

PLANNING & DEVELOPMENT DEPARTMENT

STATEMENT OF FINANCIAL INTEREST

Case Number: **SDR-37946** APN: 139-34-514-008

Name of Property Owner: 221 North 3rd Street LV, LLC

Name of Applicant: Resort Gaming Group, LLC

Name of Representative: _____

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ **Yes** ☒ **No**

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____ _____

APN: _____

Signature of Property Owner: _____ NP

Print Name: Nicholas V. Morosoff
Secretary of Property Owner

Subscribed and sworn before me

This _____ day of _____, 20____

_____ "Refer to attached for Notary"

Notary Public in and for said County and State

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Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this

12th (Date) day of April (Month), 2010 (Year), by

(1) Nicholas V. Morosoff (Name of Signer),

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (✓)

(and

(2) _____ (Name of Signer),

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature Denise del Rey (Signature of Notary Public)

DENISE DEL REY
Commission # 1843679
Notary Public - California
Los Angeles County
My Comm. Expires Apr 9, 2013

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OPTIONAL

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PLANNING & DEVELOPMENT DEPARTMENT

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Case Number: SDR-37946 APN: 139-34-501-009 & 010

Name of Property Owner: 201 North 3rd Street LV, LLC

Name of Applicant: Resort Gaming Group, LLC

Name of Representative: _____

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PLANNING & DEVELOPMENT DEPARTMENT

STATEMENT OF FINANCIAL INTEREST

Case Number: **SDR-37946** APN: 139-34-514-007

Name of Property Owner: CIM/LL Las Vegas, LLC

Name of Applicant: Resort Gaming Group, LLC

Name of Representative: _____

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ **Yes** ☒ **No**

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____

APN: _____

Signature of Property Owner: _____ NLF

Print Name: Nicholas V. Morosoff
Secretary of Property Owner

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PLANNING & DEVELOPMENT DEPARTMENT

APPLICATION / PETITION FORM

Application/Petition For: Site Development Review

Project Address (Location) 206 N. 3rd Street

Project Name Lady Luck **Proposed Use** Hotel/Casino/Retail

Assessor's Parcel #(s) 139-34-514-007 **Ward #** 5

General Plan: existing yes proposed ____ **Zoning:** existing yes proposed ____

Commercial Square Footage 501,531 SF **Floor Area Ratio** 2.92

Gross Acres 3.12 **Lots/Units** N/A **Density** N/A

Additional Information ____

PROPERTY OWNER CIM/LL Las Vegas, LLC **Contact** Jeff Rosen

Address 6922 Hollywood Blvd. 9th Floor **Phone:** (323) 860-4900 **Fax:** (323) 860-4901

City Los Angeles **State** CA **Zip** 90028

E-mail Address jrosen@cimgroup.com

APPLICANT Resort Gaming Group, LLC **Contact** Todd Kessler

Address 206 N. 3rd St **Phone:** (702) 953-4320 **Fax:** (702) 477-0045

City Las Vegas **State** NV **Zip** 89101

E-mail Address todd@rgglv.com

REPRESENTATIVE ____ **Contact** ____

Address ____ **Phone:** ____ **Fax:** ____

City ____ **State** ____ **Zip** ____

E-mail Address ____

Property Owner Signature* ____

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name Nicholas V. Manoloff

Secretary of Property Owner

Subscribed and sworn before me

This ____ day of ____, 20 ____.

____

Notary Public in and for said County and State

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Case #	SDR-37946
Meeting Date:	05/27/10
Total Fee:	$1030.00
Date Received:*	04/13/10
Received By:	

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Signature Denise del Rey
Signature of Notary Public

DENISE DEL REY
Commission # 1843679
Notary Public - California
Los Angeles County
My Comm. Expires Apr 9, 2013

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PLANNING & DEVELOPMENT DEPARTMENT

APPLICATION / PETITION FORM

Application/Petition For: Site Development Review

Project Address (Location) 206 N. 3rd Street

Project Name Lady Luck **Proposed Use** Hotel/Casino/Retail

Assessor's Parcel #(s) 139-34-501-009 & 010 **Ward #** 5

General Plan: existing yes proposed ____ **Zoning:** existing yes proposed ____

Commercial Square Footage 501,531 SF **Floor Area Ratio** 2.92

Gross Acres 3.12 **Lots/Units** N/A **Density** N/A

Additional Information ____

PROPERTY OWNER 201 North 3rd Street LV, LLC **Contact** Jeff Rosen

Address 6922 Hollywood Blvd 9th Floor **Phone:** (323) 860-4900 **Fax:** (323) 860-4901

City Los Angeles **State** CA **Zip** 90028

E-mail Address jrosen@cimgroup.com

APPLICANT Resort Gaming Group, LLC **Contact** Todd Kessler

Address 206 N. 3rd St **Phone:** (702) 953-4320 **Fax:** (702) 477-0045

City Las Vegas **State** NV **Zip** 89101

E-mail Address todd@rgglv.com

REPRESENTATIVE ____ **Contact** ____

Address ____ **Phone:** ____ **Fax:** ____

City ____ **State** ____ **Zip** ____

E-mail Address ____

Property Owner Signature* ____ NCC

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name Nicholas V. Horncroft Secretary of Property Owner

Subscribed and sworn before me

This ____ day of ____, 20 ____.

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Notary Public in and for said County and State

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Case #	SDR-37946
Meeting Date:	05/27/10
Total Fee:	$ 1030.00
Date Received:*	04/13/10
Received By:	D. Vale

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Signature Denise del Rey
Signature of Notary Public

DENISE DEL REY
Commission # 1843679
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PROPERTY OWNER 220 North 4th Street LV, LLC **Contact** Jeff Rosen

Address 6922 Hollywood Blvd 9th Floor **Phone:** (323) 860-4900 **Fax:** (323) 860-4901

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E-mail Address jrosen@cimgroup.com

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City Las Vegas **State** NV **Zip** 89101

E-mail Address todd@rgglv.com

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City ____ **State** ____ **Zip** ____

E-mail Address ____

Property Owner Signature* ____

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Case #	SDR-37946
Meeting Date:	05/27/10
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Los Angeles County
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E-mail Address jrosen@cimgroup.com

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City Las Vegas **State** NV **Zip** 89101

E-mail Address todd@rgglv.com

REPRESENTATIVE ____ **Contact** ____

Address ____ **Phone:** ____ **Fax:** ____

City ____ **State** ____ **Zip** ____

E-mail Address ____

Property Owner Signature* ____ MKF

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Print Name Nicholas V. Horosoff, Secretary of Property Owner

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Signature of Notary Public

DENISE DEL REY
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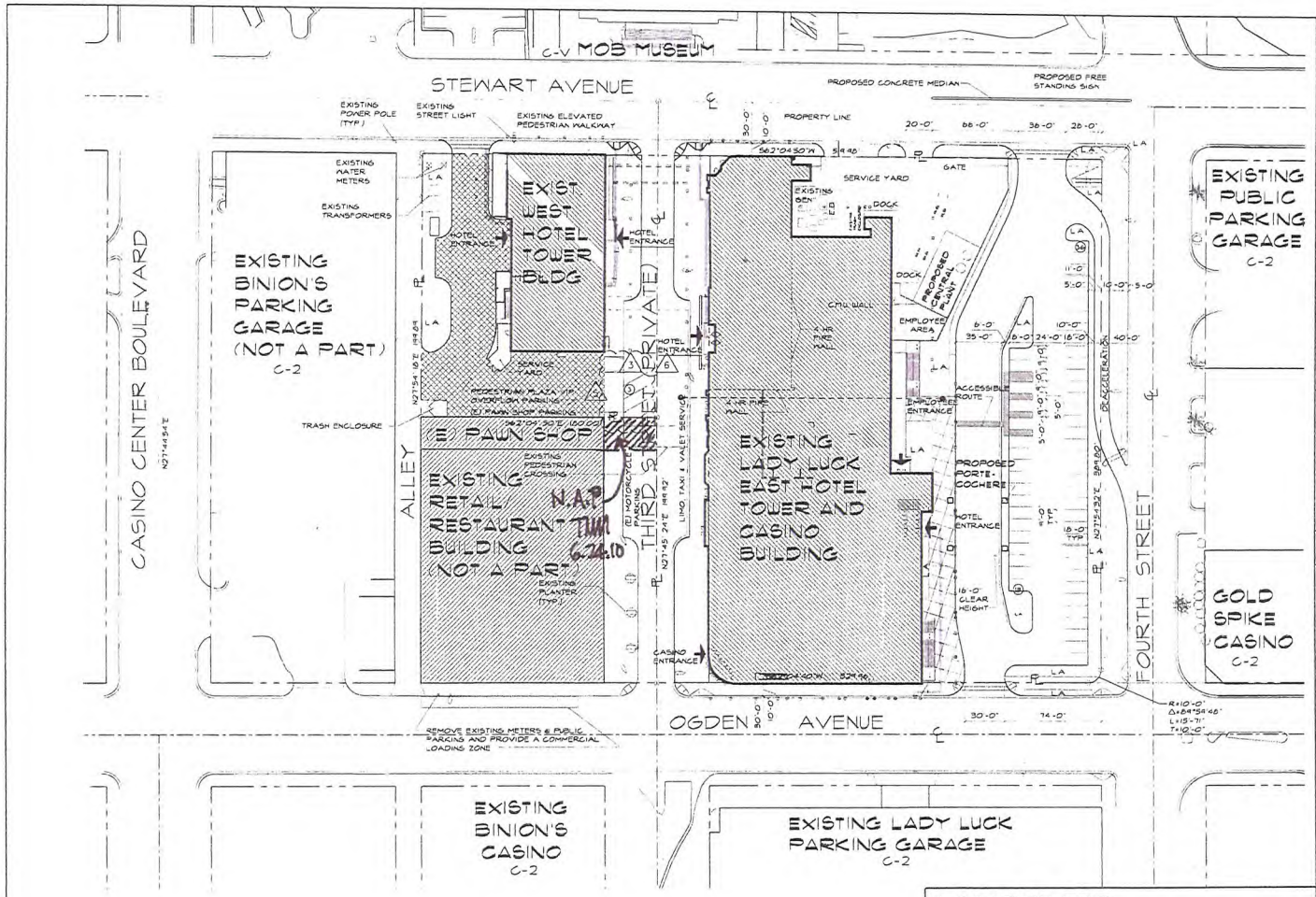


PROJECT DATA

ASSESSORS PARCEL NUMBER(S)	139-34-514-003 139-34-514-005 139-34-514-007 139-34-510-013 139-34-501-005
ACTION REFERENCE NUMBER(S)	
GOVERNING JURISDICTION	CITY OF LAS VEGAS
DEVELOPMENT CODE	TITLE 19
EXISTING LAND USE ZONE	GENERAL COMMERCIAL DISTRICT (C-2)
ZONING OVERLAY DISTRICT(S)	N/A
LAND USE PLAN	DOWNTOWN CENTENNIAL GATEWAY DISTRICT
SITE AREA	3.94 ACRES/ 171,888 SQ FT

BUILDING AREA
EXISTING EAST TOWER AREA

BASEMENT	8,744 SQ FT
1ST FLOOR	55,004 SQ FT
2ND FLOOR	18,451 SQ FT
3RD FLOOR	42,125 SQ FT
4TH THROUGH 17 TH FLOOR (11,672 SQ FT X 13)	143,936 SQ FT
EXISTING EAST TOWER TOTAL AREA	260,860 SQ FT
EXISTING PEDESTRIAN BRIDGE AREA	1,120 SQ FT

BUILDING AREA
EXISTING WEST TOWER AREA

BASEMENT	9,847 SQ FT
1ST FLOOR	11,202 SQ FT
2ND FLOOR	18,456 SQ FT
3RD FLOOR	8,454 SQ FT
4TH THROUGH 25TH FLOOR (9,454 SQ. FT. X 21)	198,534 SQ FT
EXISTING WEST TOWER TOTAL AREA	739,533 SQ. FT
TOTAL BUILDING AREA	981,513 SQ. FT
FLOOR AREA RATIO	2.92

EAST TOWER

BUILDING HEIGHT	168'-0"
NUMBER OF STORIES	17 W/ BASEMENT

WEST TOWER

BUILDING HEIGHT	237'-0"
NUMBER OF STORIES	25 W/ BASEMENT

PARKING ANALYSIS

PARKING RECOMMENDED (1 PER GUEST ROOM (634 X 1)) (1)	634 SPACES
EXISTING PARKING GARAGE (3)	449 SPACES
PROPOSED SURFACE PARKING	56 SPACES
ACCESSIBLE PARKING PROVIDED (INCLUDING ONE VAN & TWO ACCESSIBLE)	
TOTAL PARKING PROVIDED	501 SPACES

CONCEPTUAL ARCHITECTURAL SITE PLAN

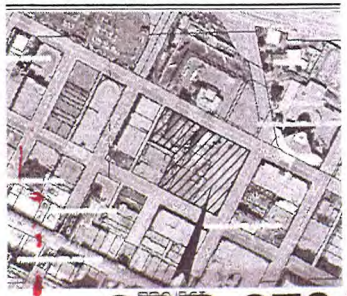
1" = 40'-0"

NORTH

LEGEND

CONTINUOUS ACCESSIBLE ROUTE 5% MAX. RUNNING SLOPE 2% MAX CROSS SLOPE W/ 1/2" MAX CHANGE IN ELEVATIONS

LOCATION MAP



VICINITY MAP



Submitted after final agenda

Date Item 21

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project title:
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206 N. 3RD ST. LAS VEGAS, NEVADA 89101

PRELIMINARY
NOT FOR CONSTRUCTION
5-11-2010

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CONCEPTUAL ARCHITECTURAL SITE PLAN
LAND USE SUBMITTAL

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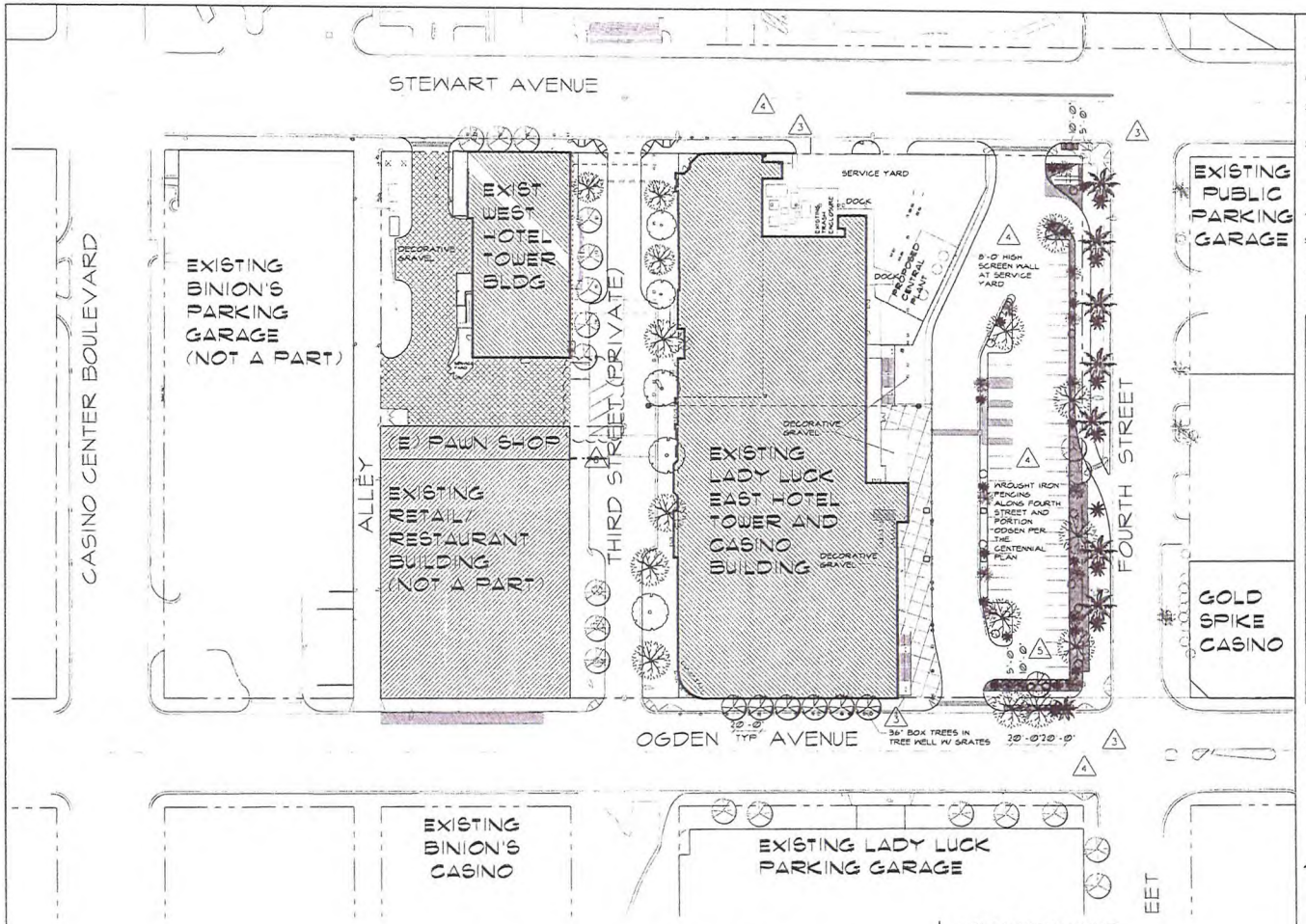
drawn by: KKC/MS/MT
checked by: RGG
project no: 09-1508
revisions:
5-4-2010
5-12-2010
6-8-2010
6-10-2010
6-16-2010

sheet no: AS1.01

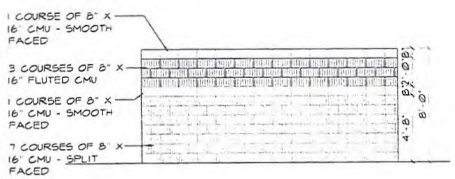
01 sheets



CONCEPTUAL LANDSCAPE PLAN

1" = 40'-0"

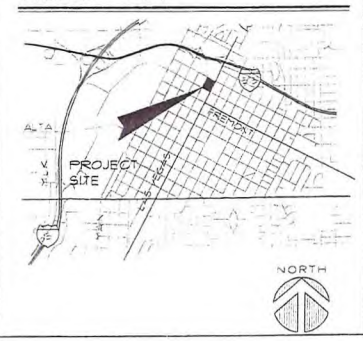
NORTH



PROPOSED SCREEN WALL

SCALE 1/4"=1'-0"

VICINITY MAP



MISCELLANEOUS NOTES

1. ALL EXPOSED SOILS TO RECEIVE 2" THICK LAYER OF DECORATIVE GRAVEL OR DECOMPOSED GRANITE
2. ANY TREE WITHIN 5' OF A SIDEWALK / PAVED SURFACE AND/OR WALL SHALL BE PLANTED WITH A ROOT SHIELD DESIGNED TO DIRECT ROOT GROWTH DOWNWARD
3. DECOMPOSED GRANITE COLOR PALAMINO CORAL 1/2" SCREENED — DECORATIVE GRAVEL COLOR RED SANDSTONE 3/4" 3/4"
   DECOMPOSED GRANITE SOURCE VISTA ROCK LAS VEGAS NEVADA — DECORATIVE GRAVEL SOURCE STAR NURSERY LAS VEGAS, NEVADA
4. ALL LANDSCAPE AREAS TO RECEIVED COMPLETE AUTOMATIC PERMANENT UNDERGROUND DRIP IRRIGATION SYSTEM
5. TREE GRATES OR DECOMPOSED GRANITE IN TREE WELLS ARE ACCEPTABLE. TREE GRATES SHALL COMPLY WITH THE CITY OF LAS VEGAS CENTENNIAL PLAN DESIGN GUIDELINES

PROPOSED LANDSCAPE LEGEND

TREES SYM.	SIZE	QU	BOTANICAL NAME	COMMON NAME
	36" BOX	5	CERATONIA SILIQUA	CAROB TREE
	36" BOX	5	QUERCUS VIRGINANA	SOUTHERN LIVE OAK TREE

SHRUBS	SIZE		BOTANICAL NAME	COMMON NAME
	5 GAL	15	LEUCOPHYLLUM FRUTESCENS	TEXAS RANGER
	5 GAL	15	RAPHIOLEPIS INDICA	INDIAN HAWTHORN
	5 GAL.	15	ROSMARINUS OFFICINALIS 'PROSTRATUS'	DWARF ROSEMARY

EXISTING LANDSCAPE LEGEND

EXISTING OAK TREE TO REMAIN

EXISTING MEXICAN FAN PALMS TO REMAIN

ANALYSIS

TOTAL LANDSCAPE BUFFER AREA = 4,054 SQ FT

DENOTES BUFFER AREA

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206 N. 3rd ST. LAS VEGAS, NEVADA 89101

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CONCEPTUAL LANDSCAPE PLAN
LAND USE SUBMITTAL

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checked by: RCG
project no: 09-150
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2. 5-12-2010
3. 6-8-2010
4. 6-9-2010
5. 6-10-2010
6. 6-16-2010

sheet no: AL1.01 2

of sheets

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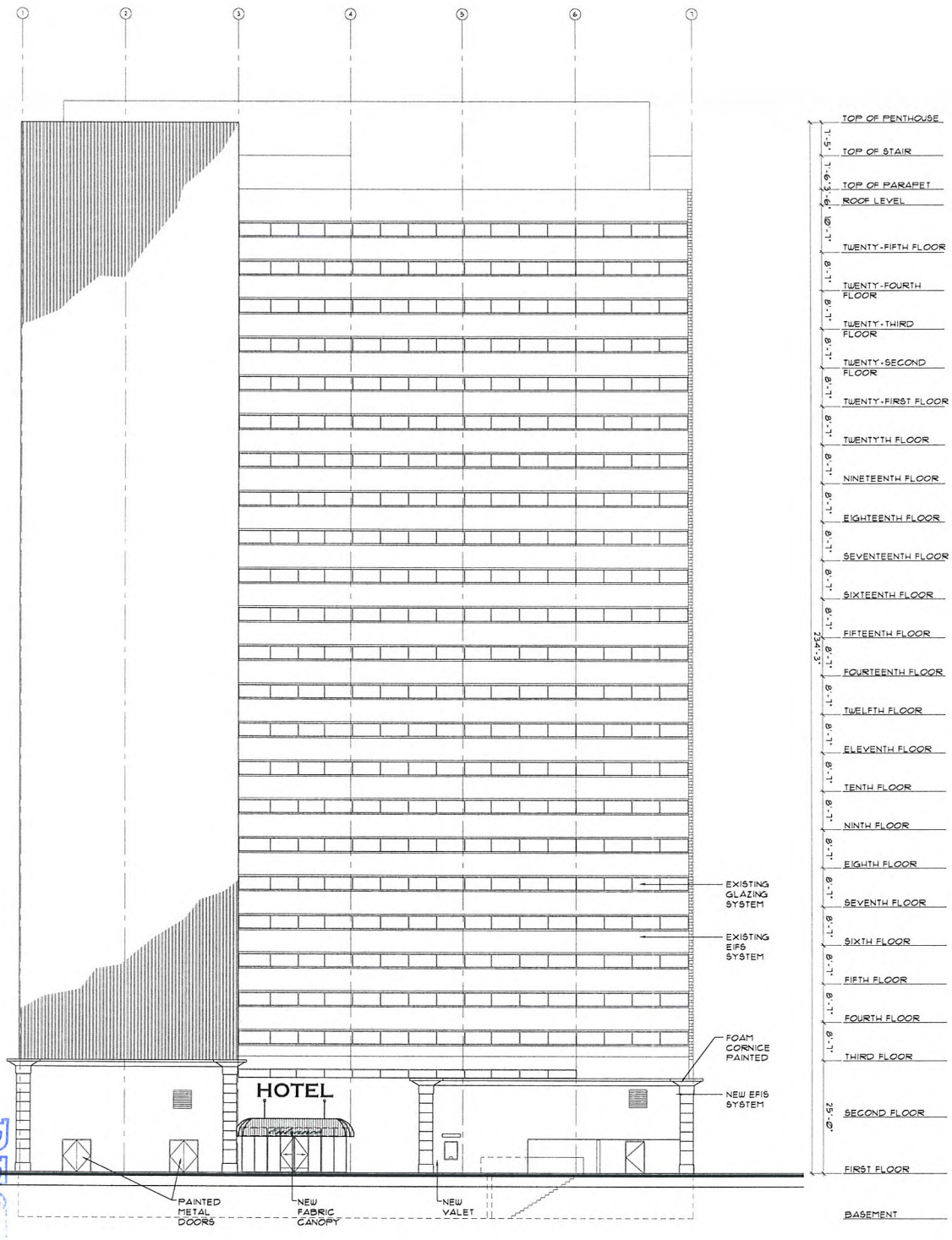

1 A6.02 WEST ELEVATION
SCALE: 3/32"=1'-0"

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sheet no. A6.02
sheets
of
revisions
project no.
checked by
drawn by
issue dates

sheet title
WEST TOWER - WEST
EXTERIOR ELEVATIONS
LAND USE SUBMITTAL

PRELIMINARY
NOT FOR CONSTRUCTION
4-9-2010

project title
Lady Luck
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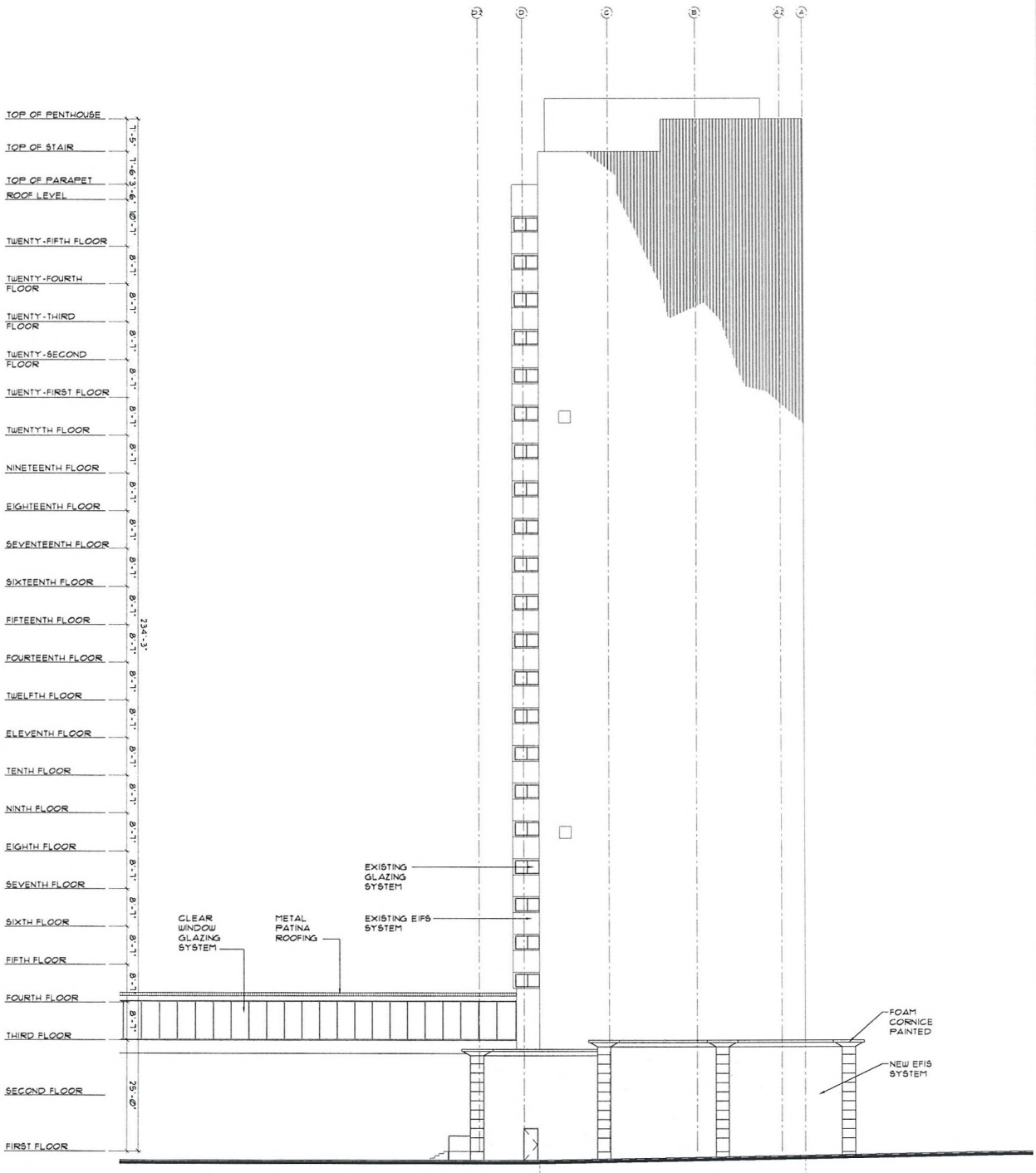

1 A6.03 NORTH ELEVATION

SCALE: 3/32"=1'-0"

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sheet no. A6.03

revisions

project no. 0902

drawn by / checked by / KGC/RS/PT/JAC

scale: as noted

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4-8-2010

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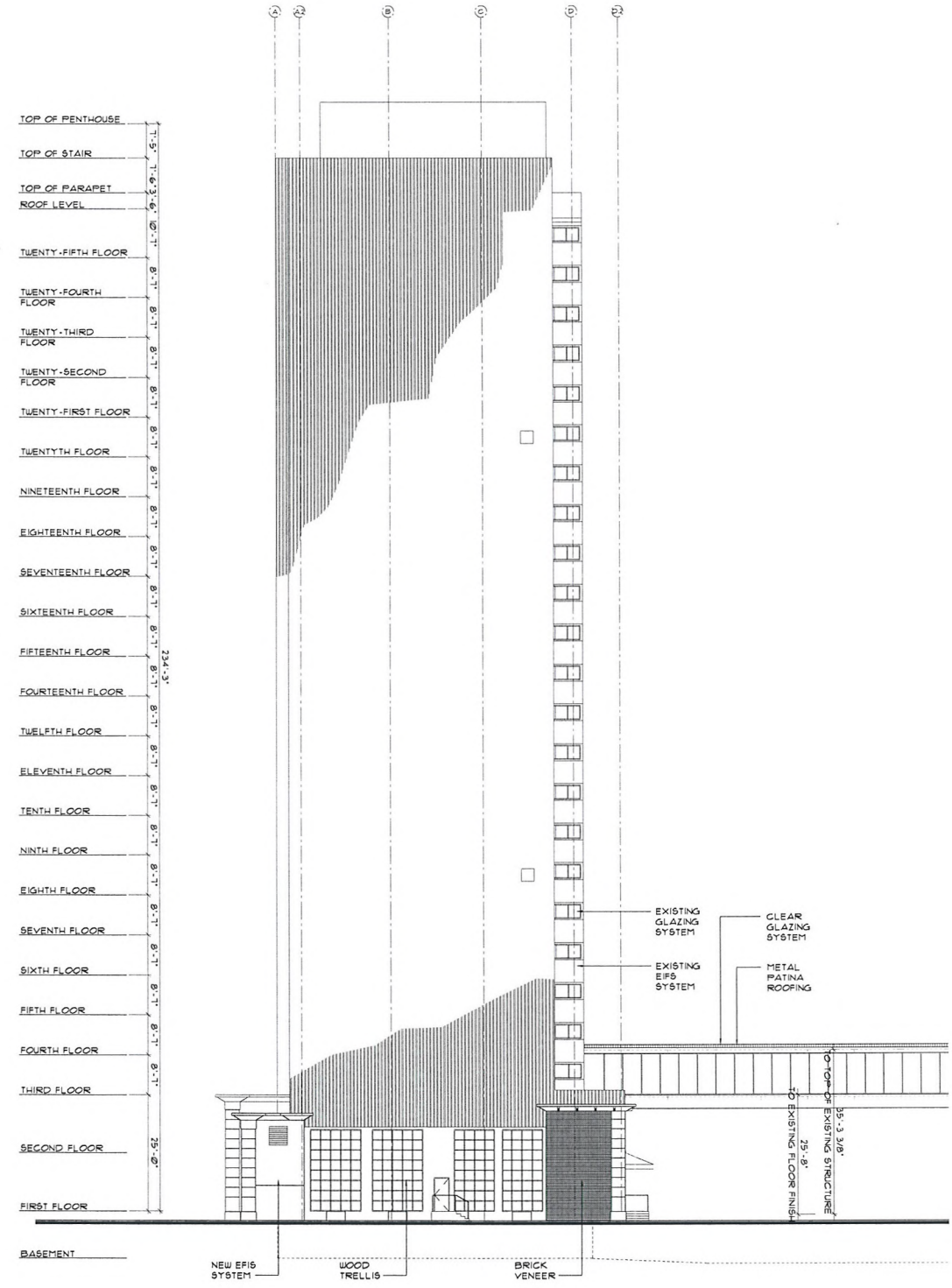
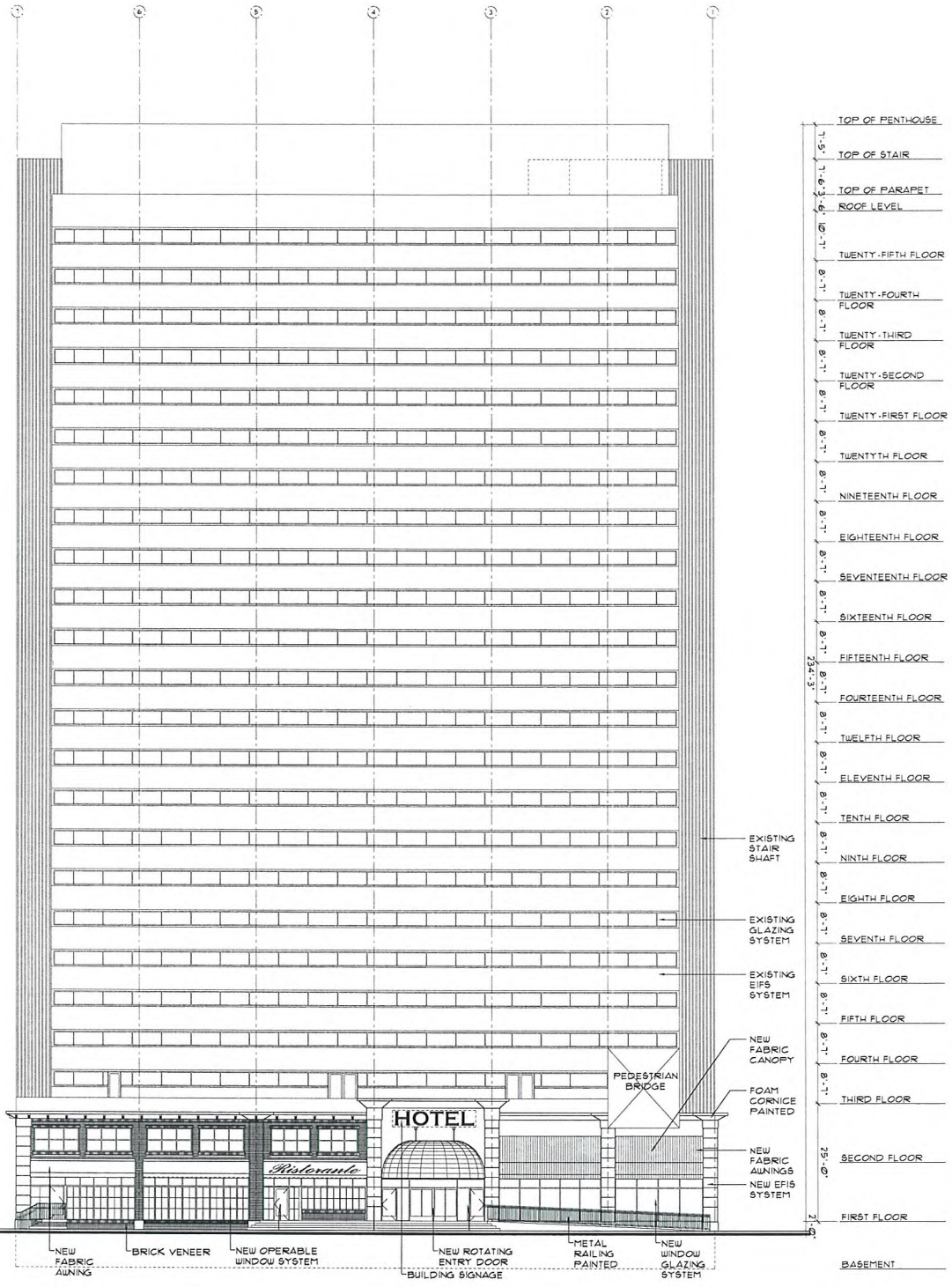

A
A2
B
C
D
E2
TOP OF PENTHOUSE
TOP OF STAIR
TOP OF PARAPET
ROOF LEVEL
TWENTY-FIFTH FLOOR
TWENTY-FOURTH FLOOR
TWENTY-THIRD FLOOR
TWENTY-SECOND FLOOR
TWENTY-FIRST FLOOR
TWENTYTH FLOOR
NINETEENTH FLOOR
EIGHTEENTH FLOOR
SEVENTEENTH FLOOR
SIXTEENTH FLOOR
FIFTEENTH FLOOR
FOURTEENTH FLOOR
TWELFTH FLOOR
ELEVENTH FLOOR
TENTH FLOOR
NINTH FLOOR
EIGHTH FLOOR
SEVENTH FLOOR
SIXTH FLOOR
FIFTH FLOOR
FOURTH FLOOR
THIRD FLOOR
SECOND FLOOR
FIRST FLOOR
BASEMENT
T-3"
T-6"
3'-6"
0'-1"
8'-1"
8'-1"
8



1 A6.01 EAST ELEVATION

SCALE: 3/32"=1'-0"

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sheet no. A6.01 sheets

issue dates:
- 8.2009
- revisions:
- project no. 0906
- REG.
- checked by: KDG/JPB/PTJAC
- drawn by: KDG/JPB/PTJAC

sheet title: WEST TOWER- EAST EXTERIOR ELEVATION LAND USE SUBMITTAL

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4-8-2010

project title: Lady Luck
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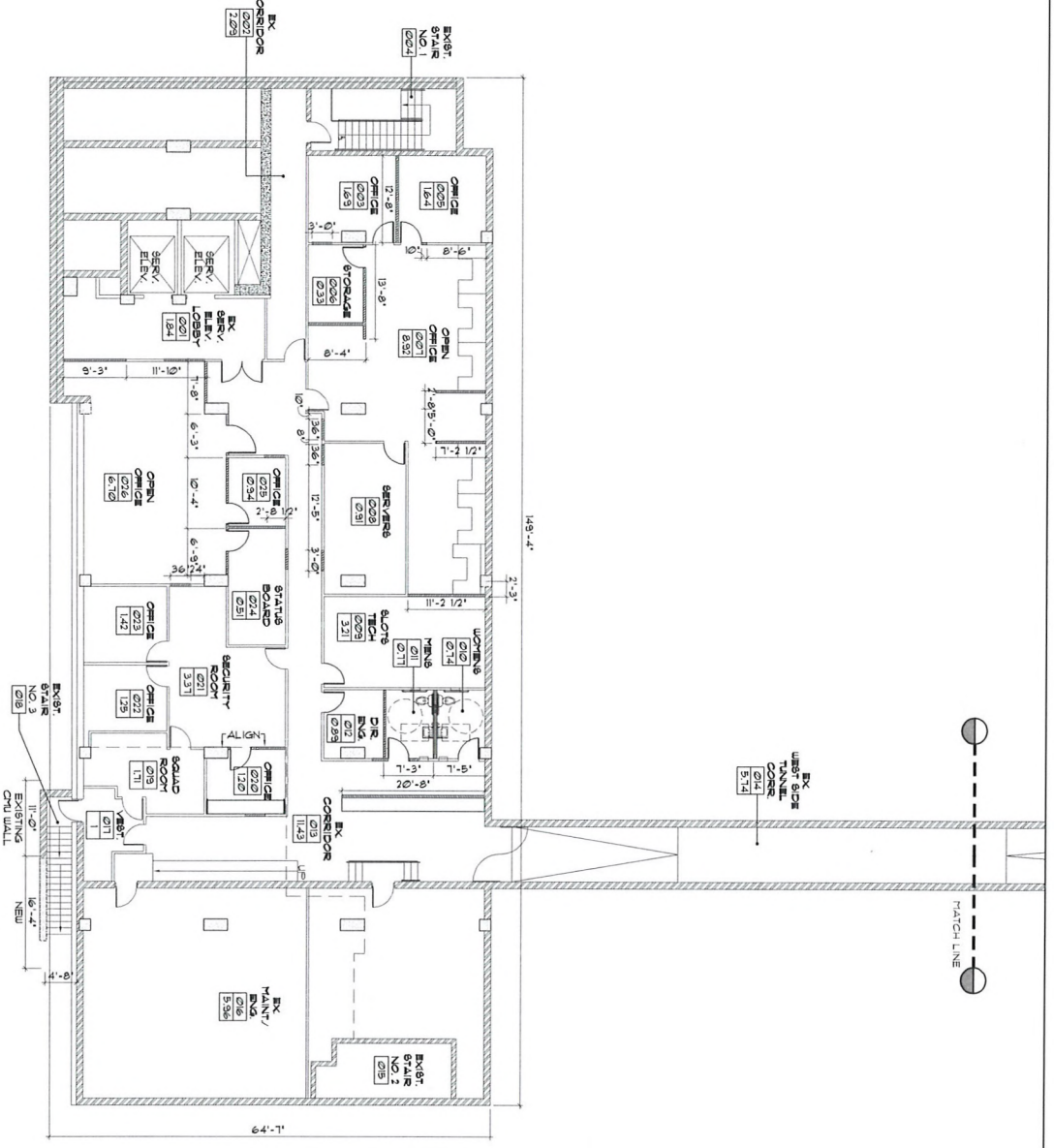

A1.00 WEST TOWER BASEMENT FLOOR PLAN

SCALE: 1/8"=1'-0"

NORTH

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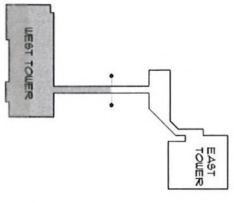
KEY PLAN



NORTH

SCALE: N.T.S.

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checked by: RGG
project no.: 09-150
revisions:
issue date:

sheet title: WEST TOWER BASEMENT FLOOR PLAN LAND USE SUBMITTAL

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4-9-2010

project title: Lady Luck RENOVATION / EXPANSION
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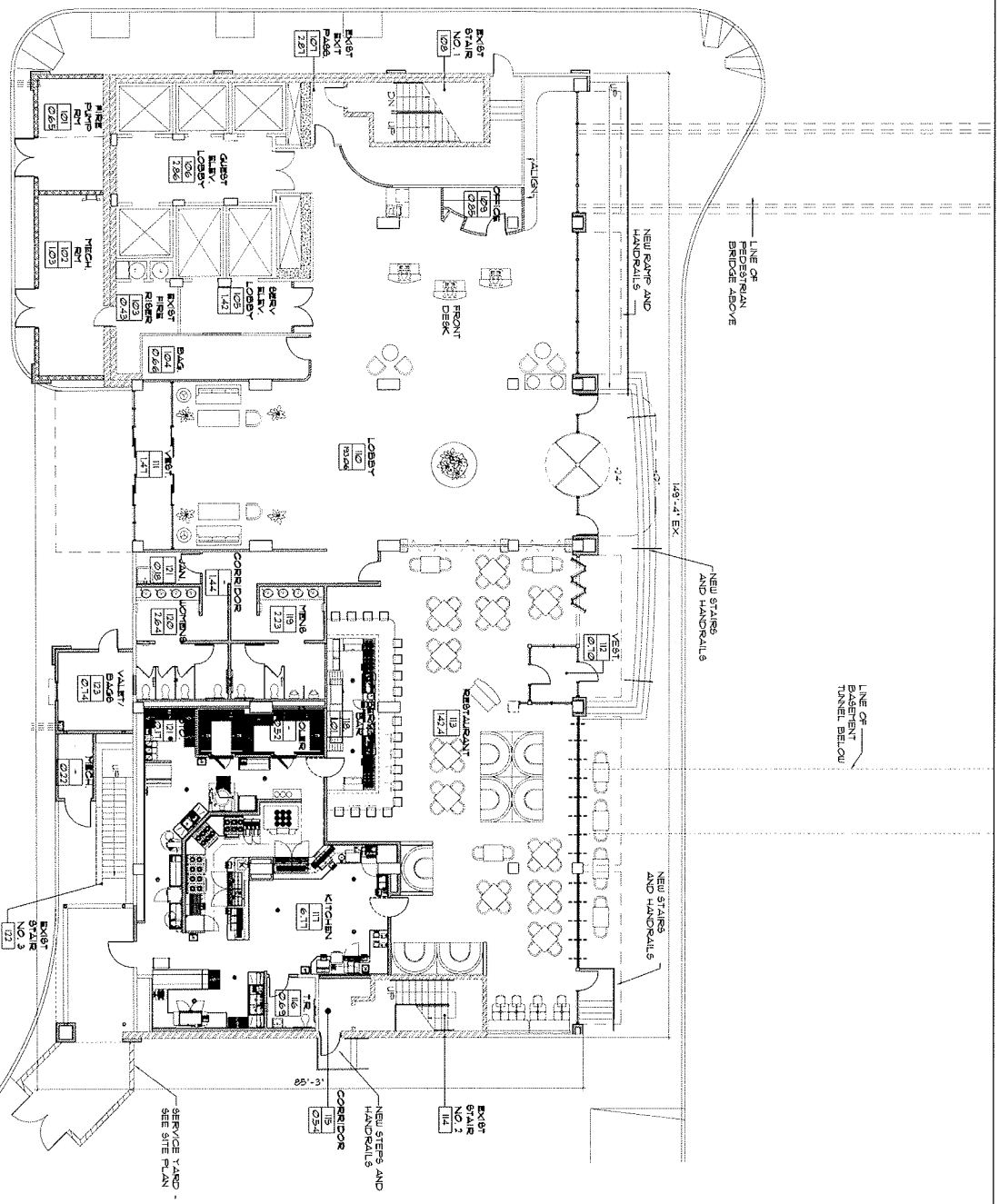

A1.01 WEST TOWER 1ST FLOOR PLAN

SCALE: 1/8"=1'-0"

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project no. 09-150

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checked by • RDG

issue status •

sheet title •
WEST TOWER
1ST FLOOR
LAND USE SUBMITTAL

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4-9-2010

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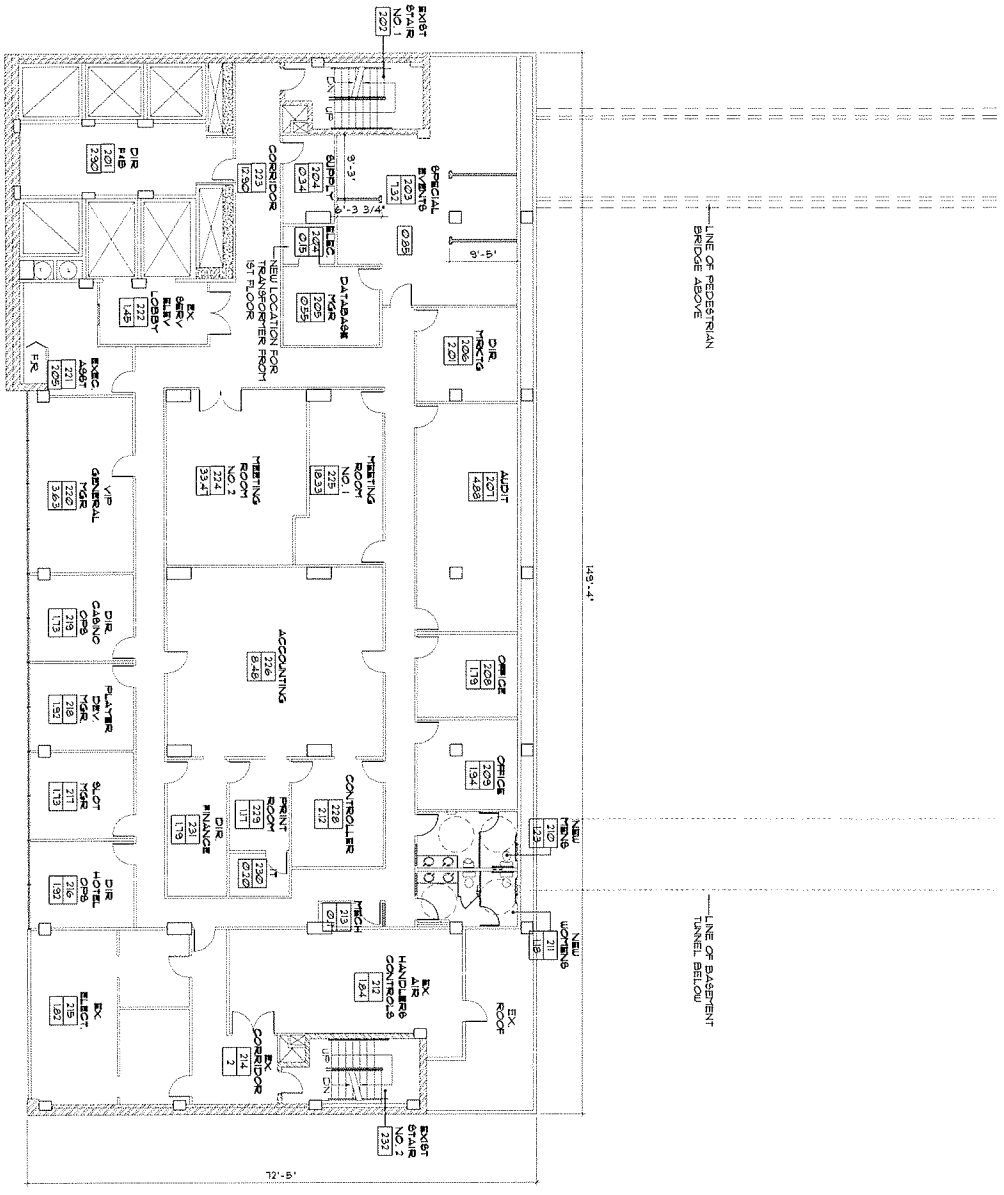

A1.02 WEST TOWER 2ND FLOOR PLAN
SCALE: 1/8"=1'-0"

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reviewed by:
project no. 09-150
revision:
scale:
sheet no. A1.02
of sheets

sheet title:
WEST TOWER
2ND FLOOR PLAN
LAND USE SUBMITTAL

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NOT FOR CONSTRUCTION
4-9-2010

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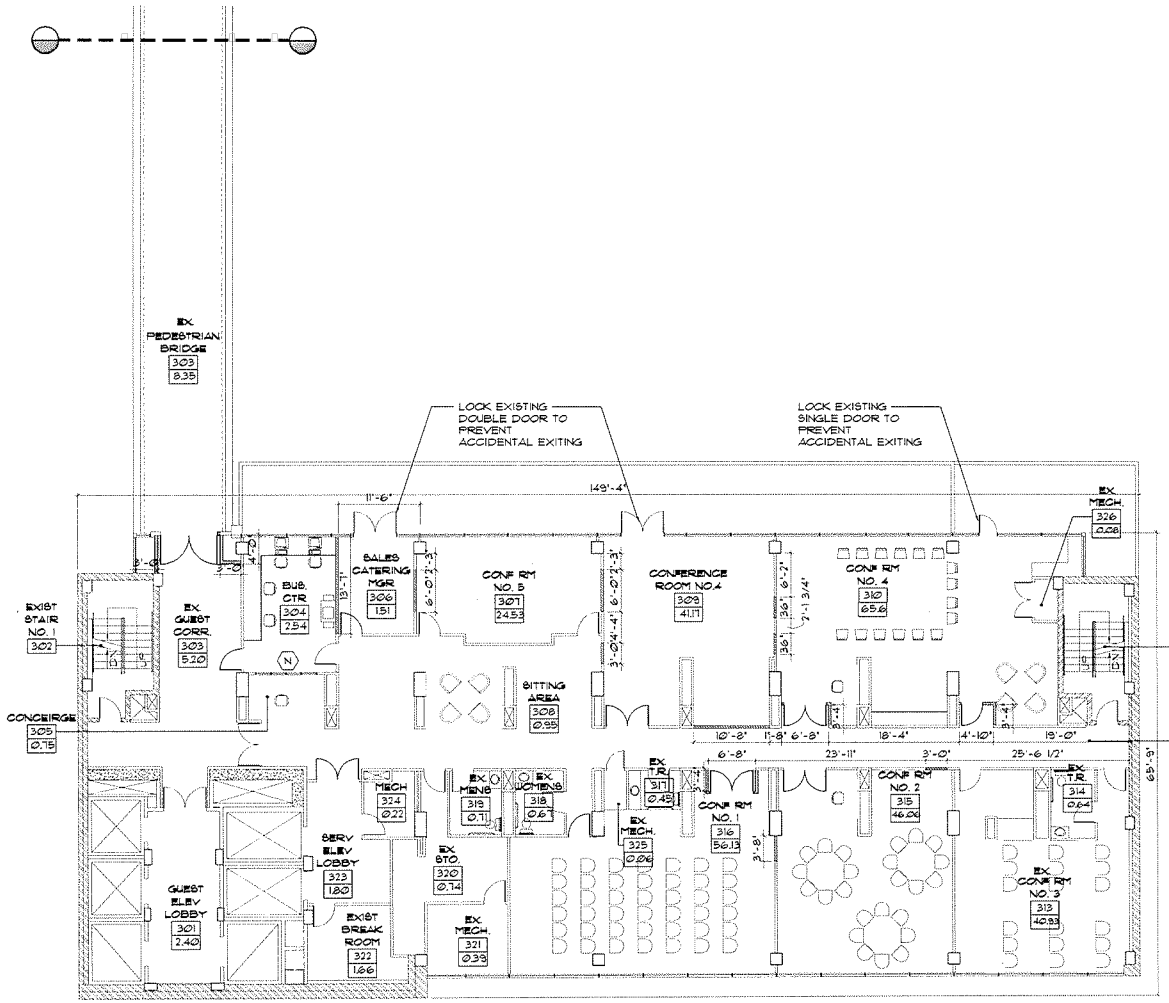

A1.03 WEST TOWER 3RD FLOOR PLAN

SCALE: 1/8"=1'-0"

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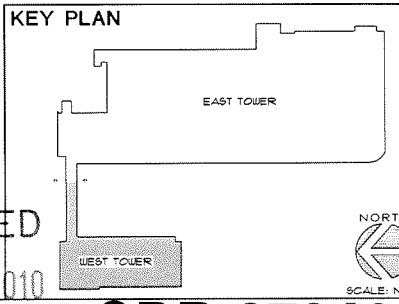
KEY PLAN



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SCALE: N.T.S.

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project title: Lady Luck RENOVATION / EXPANSION 206 N. 3RD ST, LAS VEGAS, NEVADA (89101)

PRELIMINARY NOT FOR CONSTRUCTION 4-9-2010

sheet title: WEST TOWER 3RD FLOOR PLAN LAND USE SUBMITTAL

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checked by: RCG

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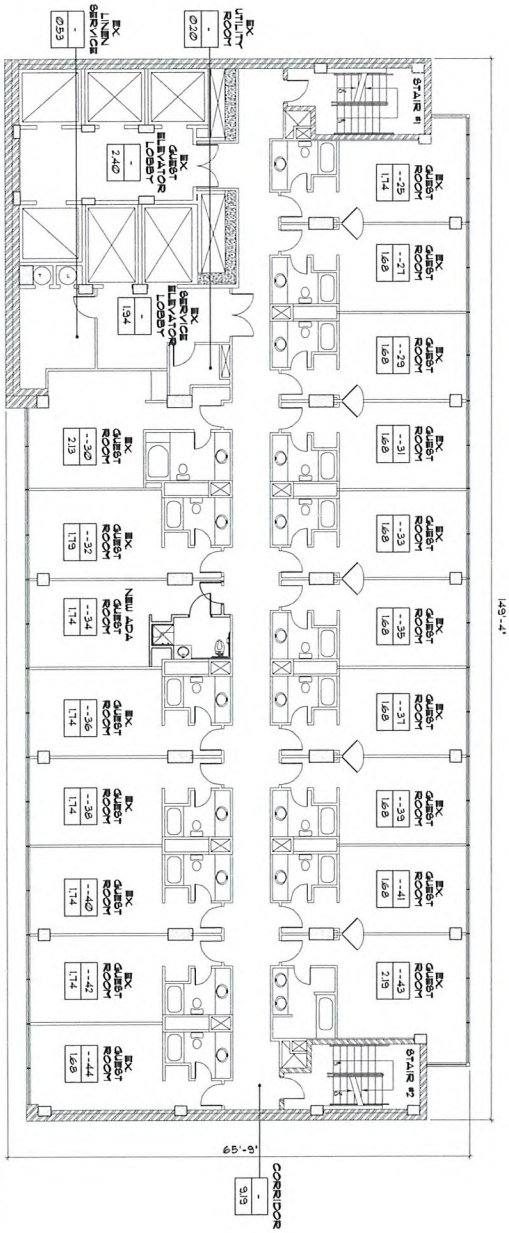
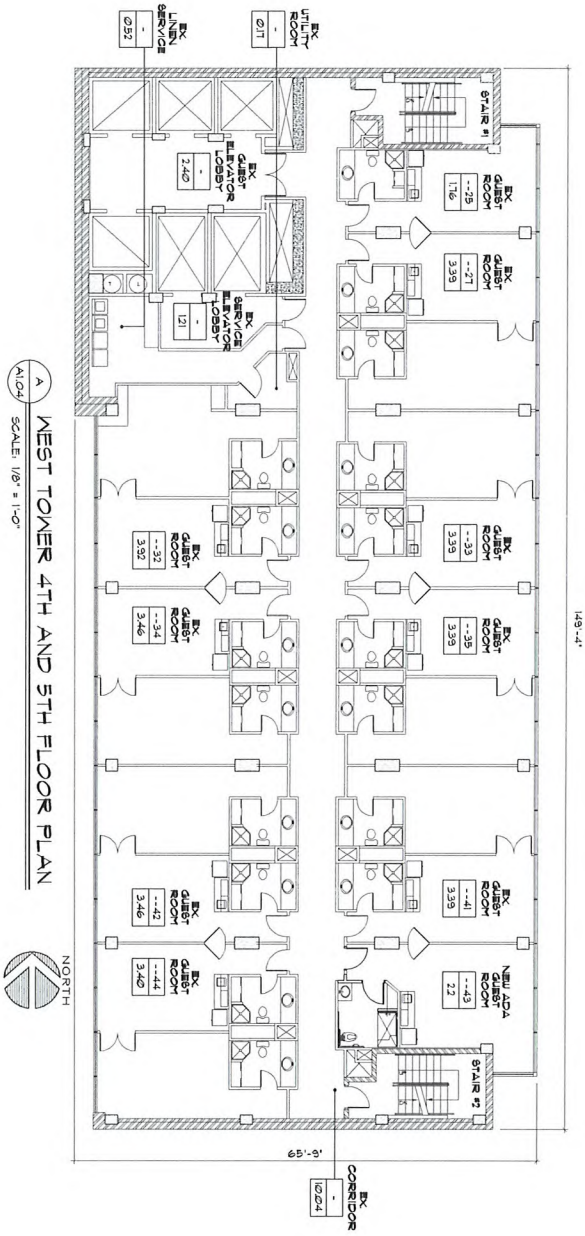


B A1.04 WEST TOWER 6TH THRU 24TH FLOOR PLAN

SCALE: 1/8" = 1'-0"

NORTH



A A1.04 WEST TOWER 4TH AND 5TH FLOOR PLAN

SCALE: 1/8" = 1'-0"

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drawn by: ADC/MB/MT/MK
checked by: RCG
project no.: 09-150
revisions:
issue status:

sheet title: WEST TOWER- 4TH, 5TH AND 6TH THRU 24TH FLOOR PLANS LAND USE SUBMITTAL

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4-9-2010

project title: Lady Luck RENOVATION / EXPANSION
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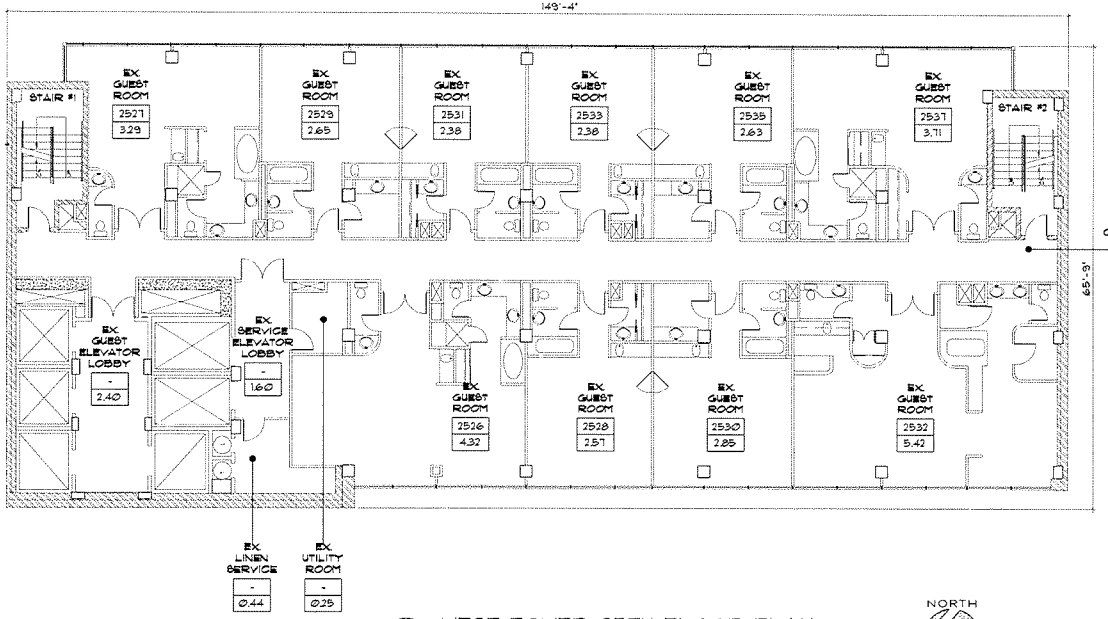

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A1.05
WEST TOWER 25TH FLOOR PLAN
SCALE: 1/8" = 1'-0"

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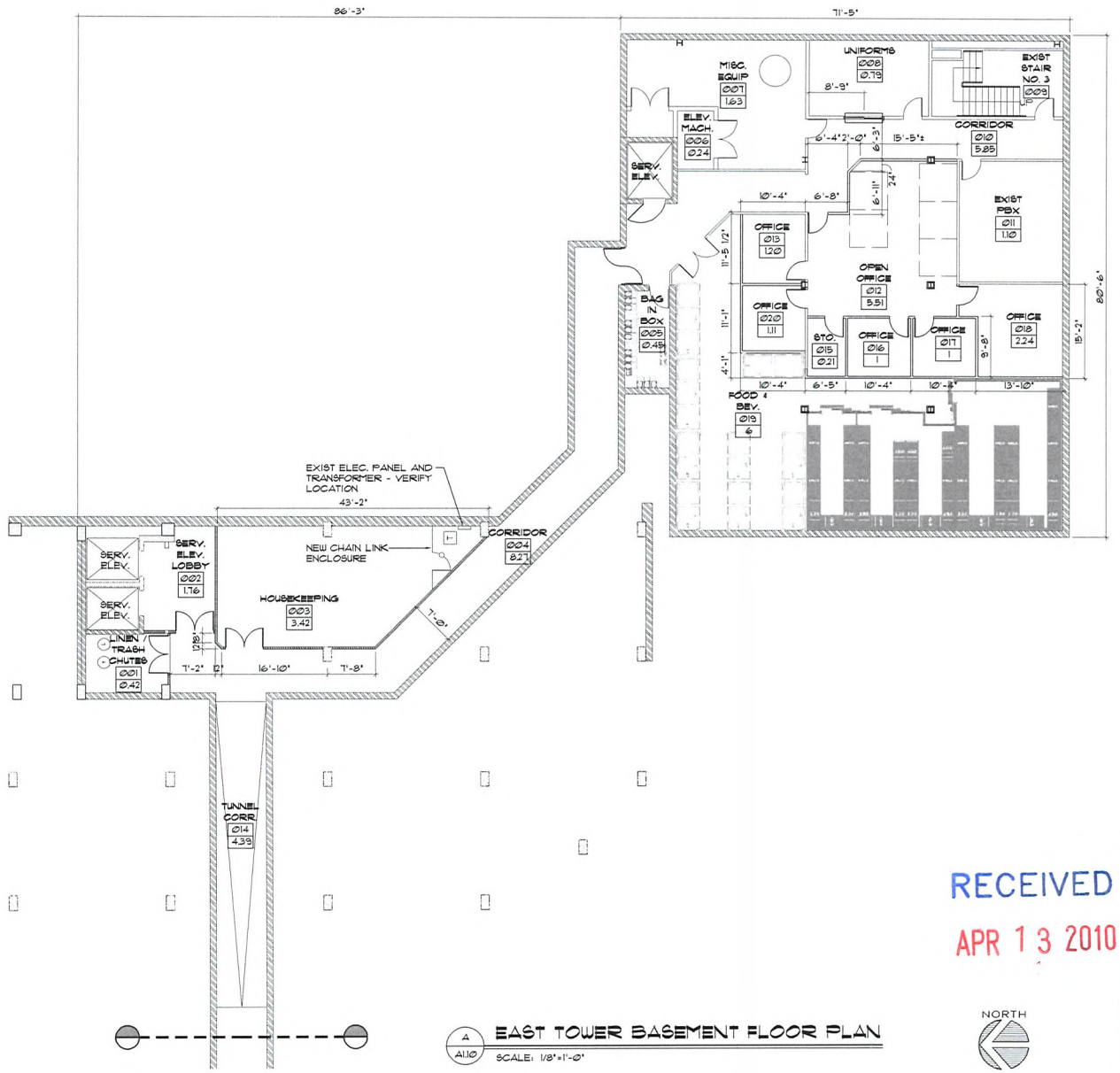
4-9-2010

sheet title:
WEST TOWER
25TH FLOOR PLAN
LAND USE SUBMITTAL

issue dates:
drawn by:
KKG/MS/PT/AK
checked by:
RCG
project no.:
09-150
revisions:

sheet no.
A1.05
of sheets



A / A1.10 EAST TOWER BASEMENT FLOOR PLAN
SCALE: 1/8"=1'-0"

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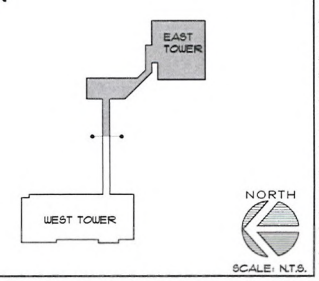
KEY PLAN



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project title:
Lady Luck
RENOVATION / EXPANSION
206 N. 3RD ST. LAS VEGAS, NEVADA 89101

PRELIMINARY
NOT FOR CONSTRUCTION
4-9-2010

sheet title:
EAST TOWER
BASEMENT FLOOR PLAN
LAND USE SUBMITTAL

issue dates:
drawn by: KKG/MB/PT/AK
checked by: RCG
project no.: 09-150
revisions:
sheet no. A1.10
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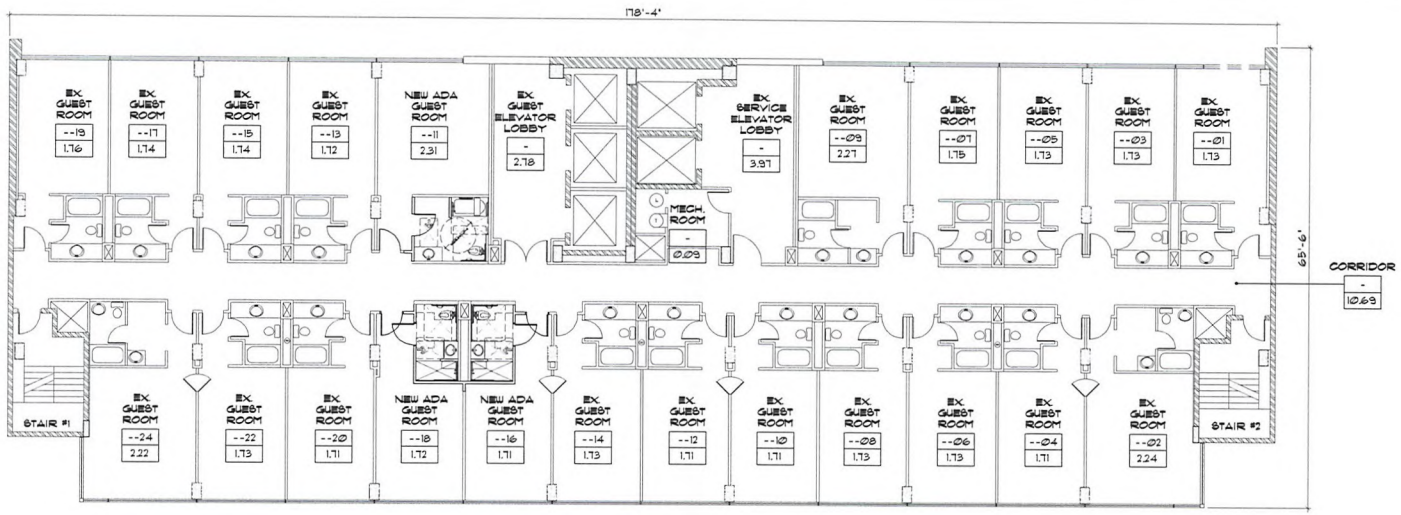
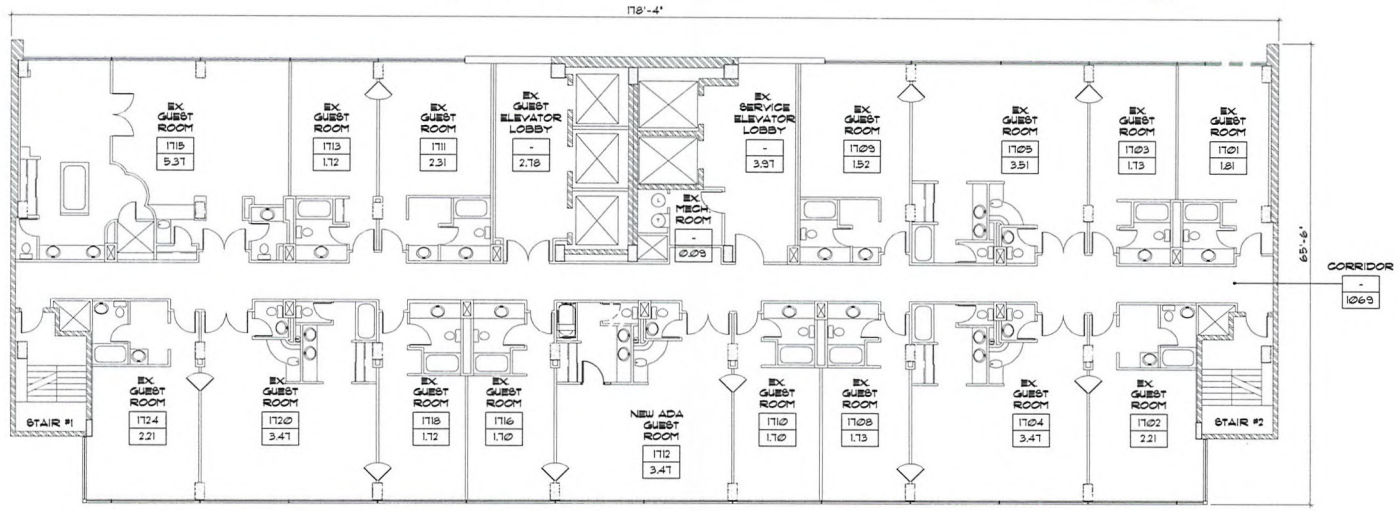


A / A1.14 EAST TOWER 4TH THRU 16TH AND 17TH FLOOR PLAN

SCALE: 1/8" = 1-0"

NORTH



B / A1.14 EAST TOWER 17TH FLOOR PLAN

SCALE: 1/8" = 1-0"

NORTH

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PRELIMINARY
NOT FOR CONSTRUCTION
4-9-2010

sheet title:
EAST TOWER-4TH THRU 16TH AND 17TH FLOOR PLANS
LAND USE SUBMITTAL

issue dates:
drawn by: KKG/MB/PT/AK
checked by: RCG
project no.: 09-150
revisions:

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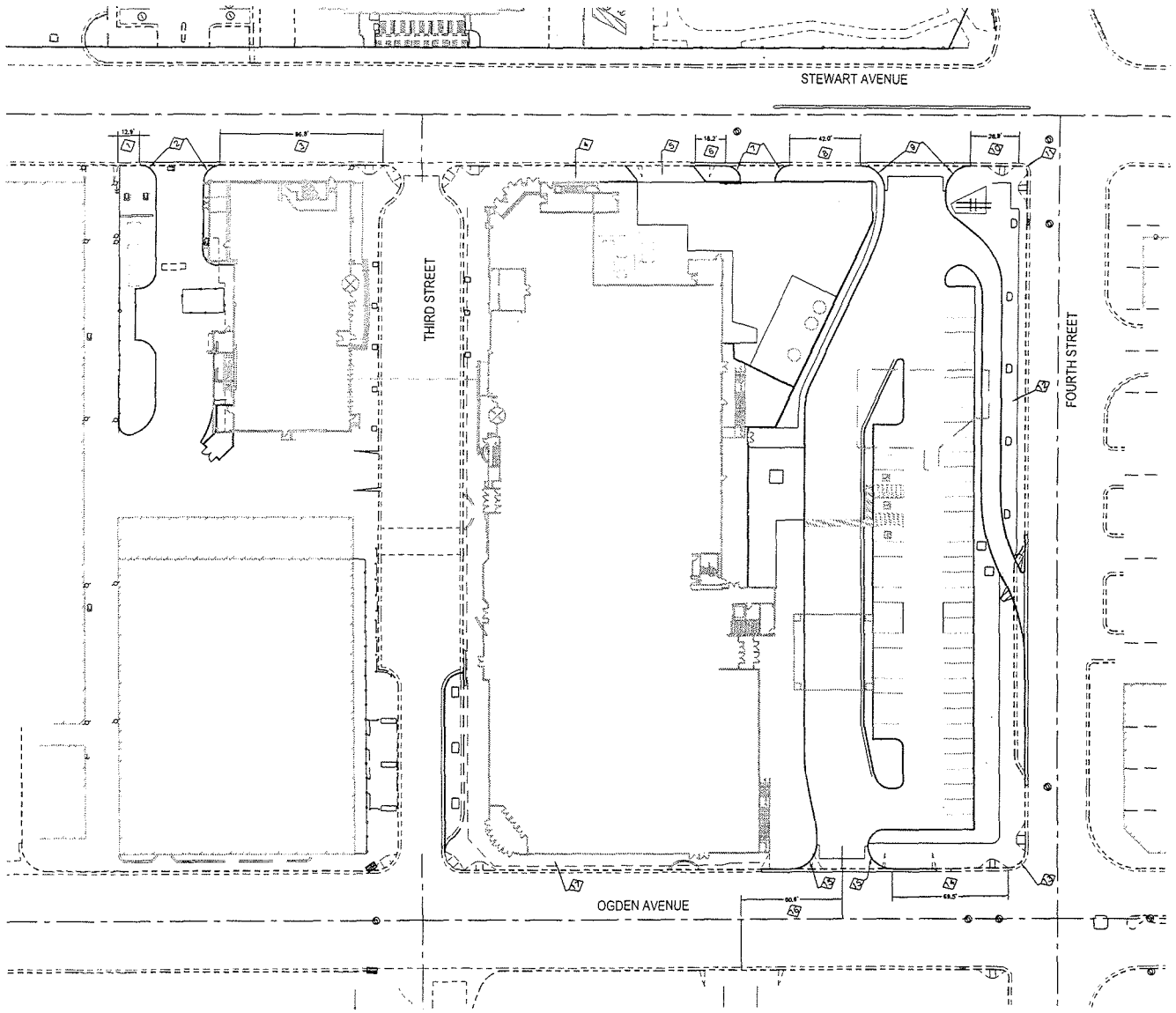

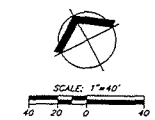

WAIVER NOTES:

1. WAIVER FOR MINIMUM DISTANCE FROM ALLEY TO DRIVEWAY. CURRENTLY PROPOSED 12.9'.
2. WAIVER FOR MINIMUM CURB RETURN RADIUS AT DRIVEWAY. CCAUSD #222A REQUIRES 15' MIN.-EGRESS AND 25' MIN.-INGRESS. CURRENTLY PROPOSED 8.5' FOR BOTH EGRESS AND INGRESS.
3. WAIVER FOR MINIMUM DISTANCE FROM DRIVEWAY TO STREET INTERSECTION. CCAUSD #222A REQUIRES 150' MINIMUM. CURRENTLY PROPOSED 86.8'.
4. WAIVER FOR SIDEWALK WIDTH. LAS VEGAS DOWNTOWN CENTENNIAL PLAN REQUIRES 10' WIDE SIDEWALK WITH 5' WIDE LANDSCAPE/AMENITY AREA ADJACENT TO ROW. CURRENTLY EXISTING 9.4' TOTAL WIDTH.
5. WAIVER FOR CURB RETURN DRIVEWAY PER CCAUSD #222A. CURRENTLY PROPOSED 42' ANGULAR CUT DRIVEWAY FOR LOADING AREA.
6. WAIVER FOR MINIMUM DISTANCE FROM DRIVEWAY TO DRIVEWAY. CURRENTLY PROPOSED 18.2'.
7. WAIVER FOR MINIMUM CURB RETURN RADIUS AT DRIVEWAY. CCAUSD #222A REQUIRES 15' MIN.-EGRESS AND 25' MIN.-INGRESS. CURRENTLY PROPOSED 8.5' FOR BOTH EGRESS AND INGRESS FOR LOADING AREA.
8. WAIVER FOR MINIMUM DISTANCE FROM DRIVEWAY TO DRIVEWAY. CURRENTLY PROPOSED 42'.
9. WAIVER FOR MINIMUM CURB RETURN RADIUS AT DRIVEWAY. CCAUSD #222A REQUIRES 15' MIN.-EGRESS AND 25' MIN.-INGRESS. CURRENTLY PROPOSED 14.5' FOR BOTH EGRESS AND INGRESS.
10. WAIVER FOR MINIMUM DISTANCE FROM DRIVEWAY TO STREET INTERSECTION. CCAUSD #222A REQUIRES 150' MINIMUM. CURRENTLY PROPOSED 28.9'.
11. WAIVER FOR STREET INTERSECTION CURB RETURN PER THE LAS VEGAS DOWNTOWN CENTENNIAL PLAN.
12. WAIVER FOR SIDEWALK WIDTH. LAS VEGAS DOWNTOWN CENTENNIAL PLAN REQUIRES 10' WIDE SIDEWALK WITH 5' WIDE LANDSCAPE/AMENITY AREA ADJACENT TO ROW. CURRENTLY PROPOSED 14' TOTAL WIDTH.
13. WAIVER FOR STREET INTERSECTION CURB RETURN PER THE LAS VEGAS DOWNTOWN CENTENNIAL PLAN.
14. WAIVER FOR MINIMUM DISTANCE FROM DRIVEWAY TO STREET INTERSECTION. CCAUSD #222A REQUIRES 190' MINIMUM. CURRENTLY PROPOSED 69.5'.
15. WAIVER FOR MINIMUM CURB RETURN RADIUS AT DRIVEWAY. CCAUSD #222A REQUIRES 15' MIN.-EGRESS AND 25' MIN.-INGRESS. CURRENTLY PROPOSED 14.5' FOR BOTH EGRESS AND INGRESS.
16. WAIVER FOR 150' MINIMUM DISTANCE FROM CENTERLINE OF OPPOSING DRIVEWAYS. CURRENTLY PROPOSED 60.6'.
17. WAIVER FOR SIDEWALK WIDTH. LAS VEGAS DOWNTOWN CENTENNIAL PLAN REQUIRES 10' WIDE SIDEWALK WITH 5' WIDE LANDSCAPE/AMENITY AREA ADJACENT TO ROW. CURRENTLY EXISTING 9.2' TOTAL WIDTH.

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WAIVER EXHIBIT
LADY LUCK RENOVATION
CIM / RESORT GAMING
CITY OF LAS VEGAS

#	DATE	DESCRIPTION	BY

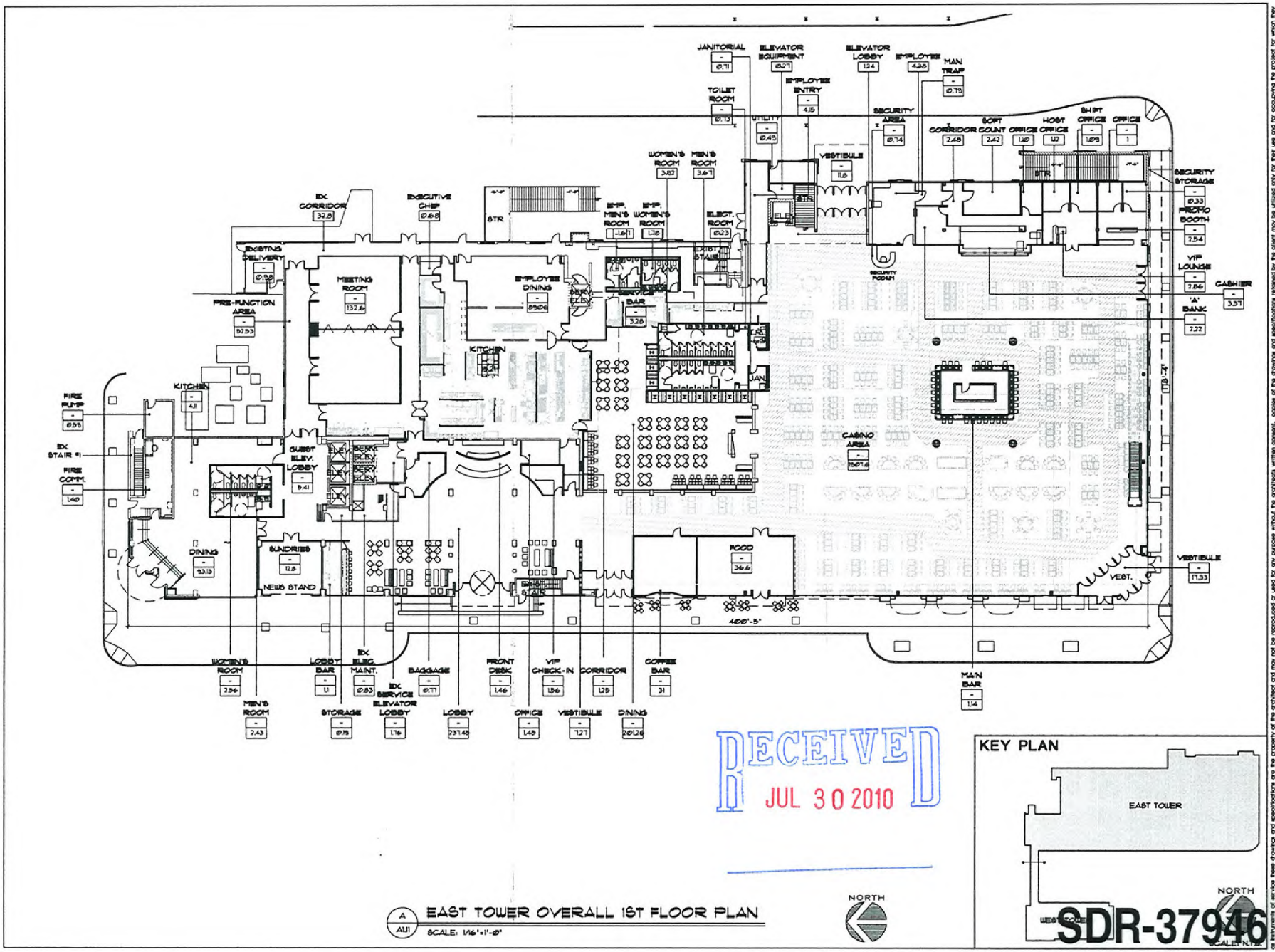
DATE	03-23-2010
DRAWN	RAS
DESIGNED	RAS
CHECKED	DAL
PROJECT #	310934900

SHEET TITLE
WAIVER EX.

SHEET NUMBER
EX-2

LAND USE #

SDR-37946



A / A1.11 EAST TOWER OVERALL 1ST FLOOR PLAN

SCALE: 1/16"=1'-0"

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KEY PLAN

SCALE: N.T.S.

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206 N. 3RD ST. LAS VEGAS, NEVADA 89101

PRELIMINARY
NOT FOR CONSTRUCTION
6-11-2010

sheet title:
EAST TOWER
OVERALL 1ST FLOOR PLAN
LAND USE SUBMITTAL

issue dates:
drawn by: KKG/MS/PT
checked by: RCG
project no.: 05-150
revisions:
sheet no. A1.11
of sheets

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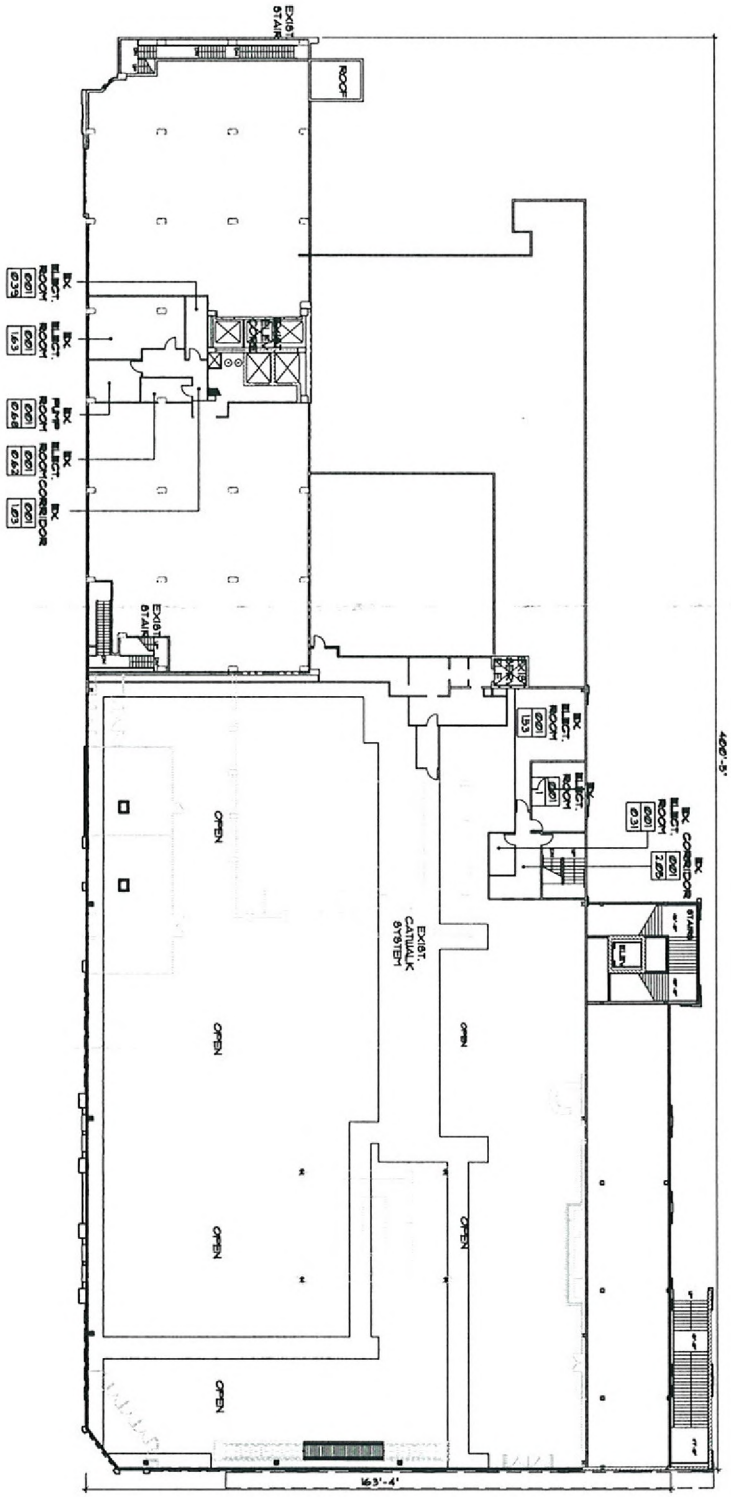

A/A12 EAST TOWER OVERALL 2ND FLOOR PLAN

SCALE: 1/16"=1'-0"

NORTH

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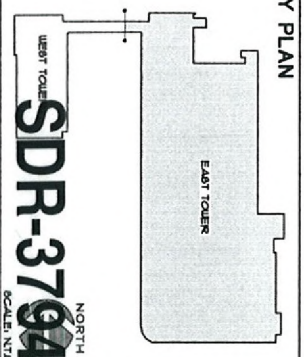
JUL 30 2010

KEY PLAN



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sheet no. A1.12

sheet title: EAST TOWER OVERALL 2ND FLOOR PLAN LAND USE SUBMITTAL

PRELIMINARY NOT FOR CONSTRUCTION 8-11-2010

project title: Lady Luck RENOVATION / EXPANSION 206 N. 3RD ST. LAS VEGAS, NEVADA 89101

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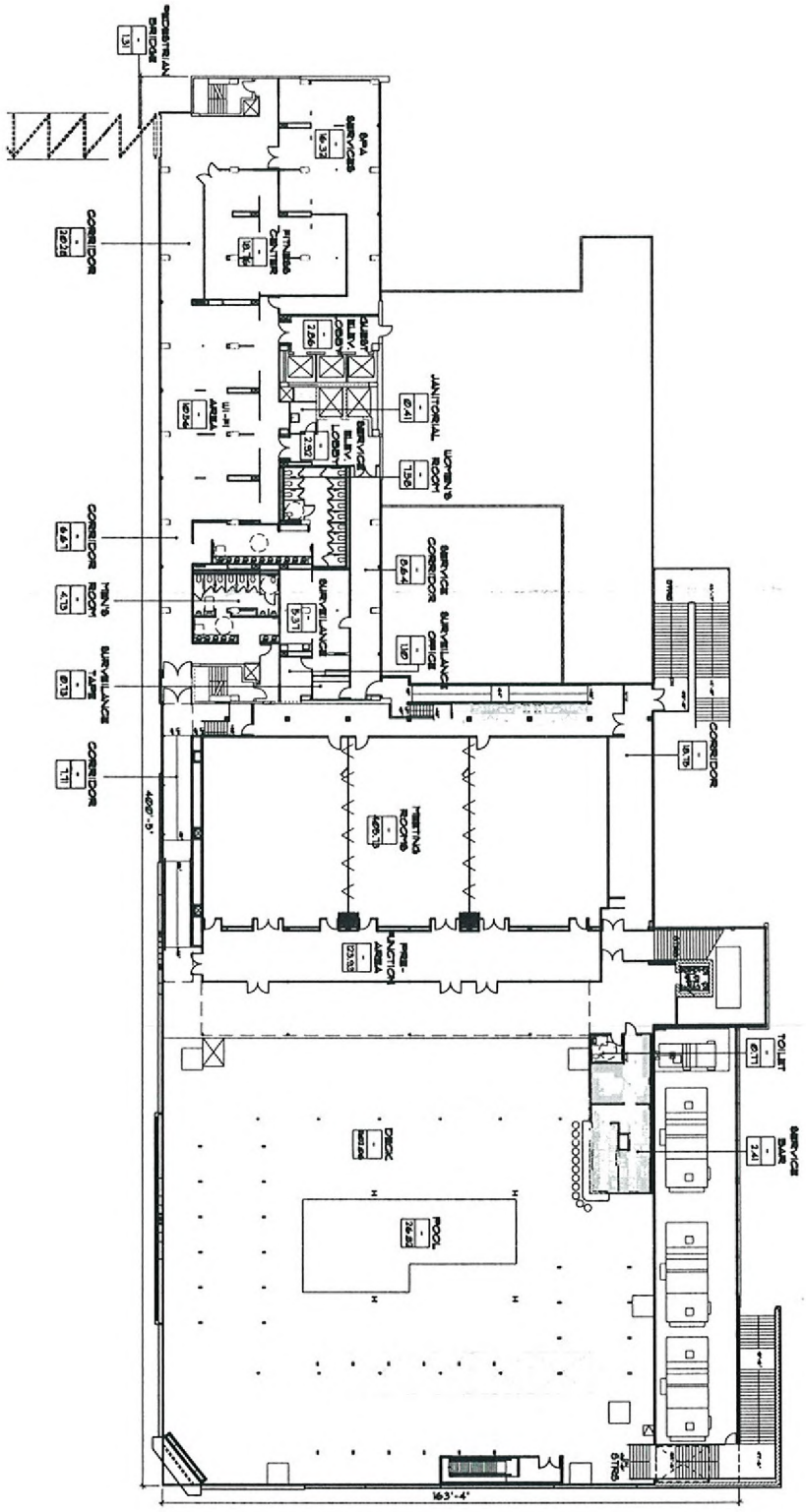

A113 EAST TOWER OVERALL 3RD FLOOR PLAN

SCALE: 1/16"=1'-0"

NORTH

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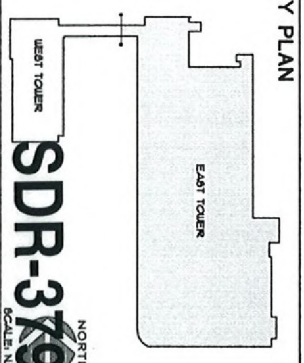
JUL 30 2010

KEY PLAN



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sheet no. A1.13

issue dates:

drawn by: RC/JT

checked by: RCS

project no.: 09-150

scale: As Shown

sheet title:
EAST TOWER
OVERALL 3RD FLOOR PLAN
LAND USE SUBMITTAL

PRELIMINARY
NOT FOR CONSTRUCTION
6-11-2010

project title:
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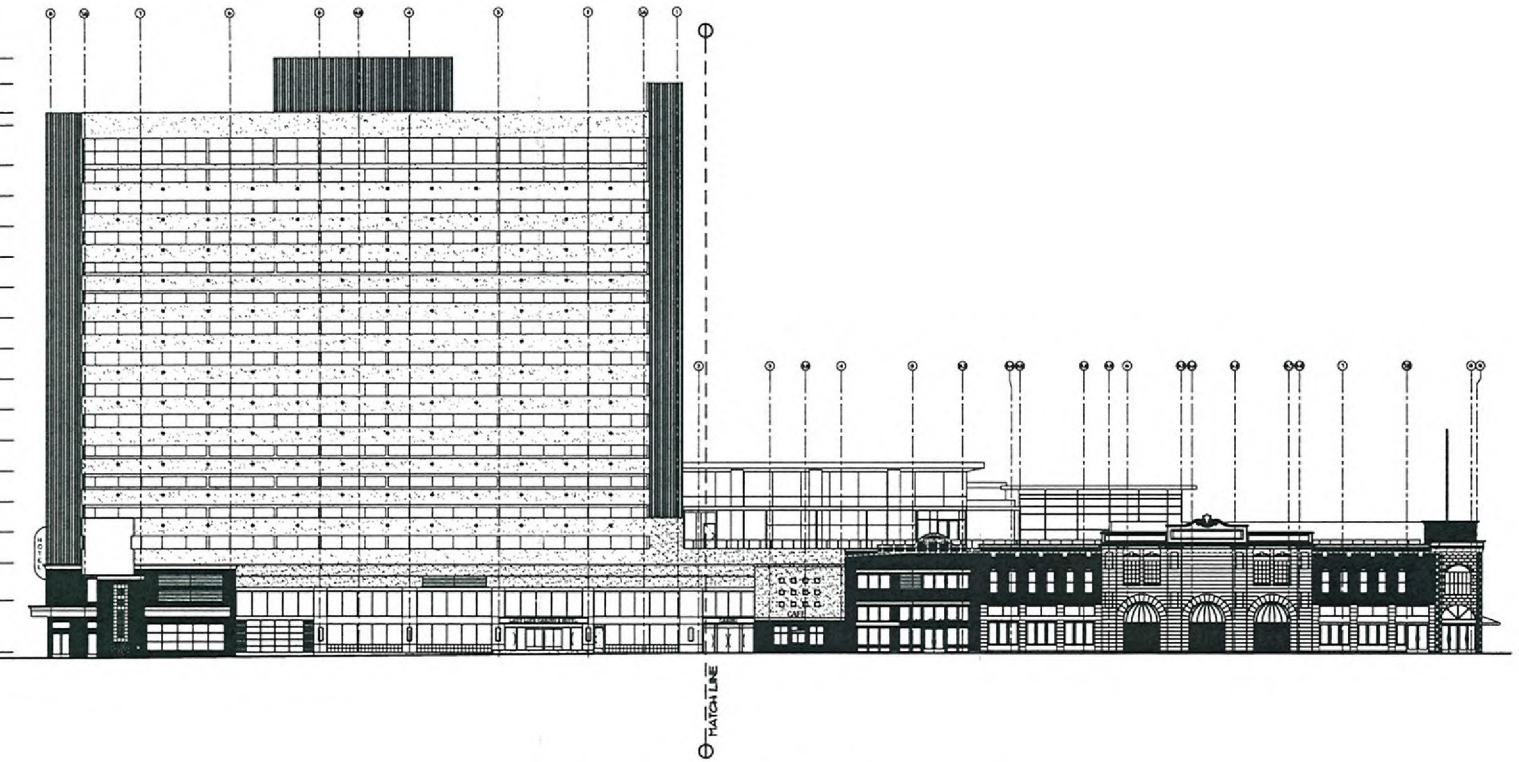

A / A6.11 EAST TOWER OVERALL WEST ELEVATION

SCALE: 1/16"=1'-0"

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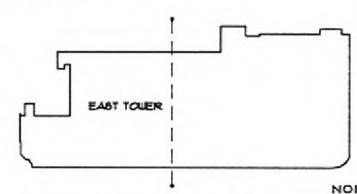
JUL 30 2010

KEY PLAN



NORTH

SCALE: N.T.S.

SDR-37946

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project title:
Lady Luck
RENOVATION / EXPANSION
206 N. 3RD ST. LAS VEGAS, NEVADA 89101

PRELIMINARY
NOT FOR CONSTRUCTION
5-11-2010

sheet title:
EAST TOWER - WEST
EXTERIOR ELEVATION
LAND USE SUBMITTAL

issue dates:

drawn by: KKS/MS/PT
checked by: RCG
project no.: 09-150
revisions: 8/2/2010

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A6.11
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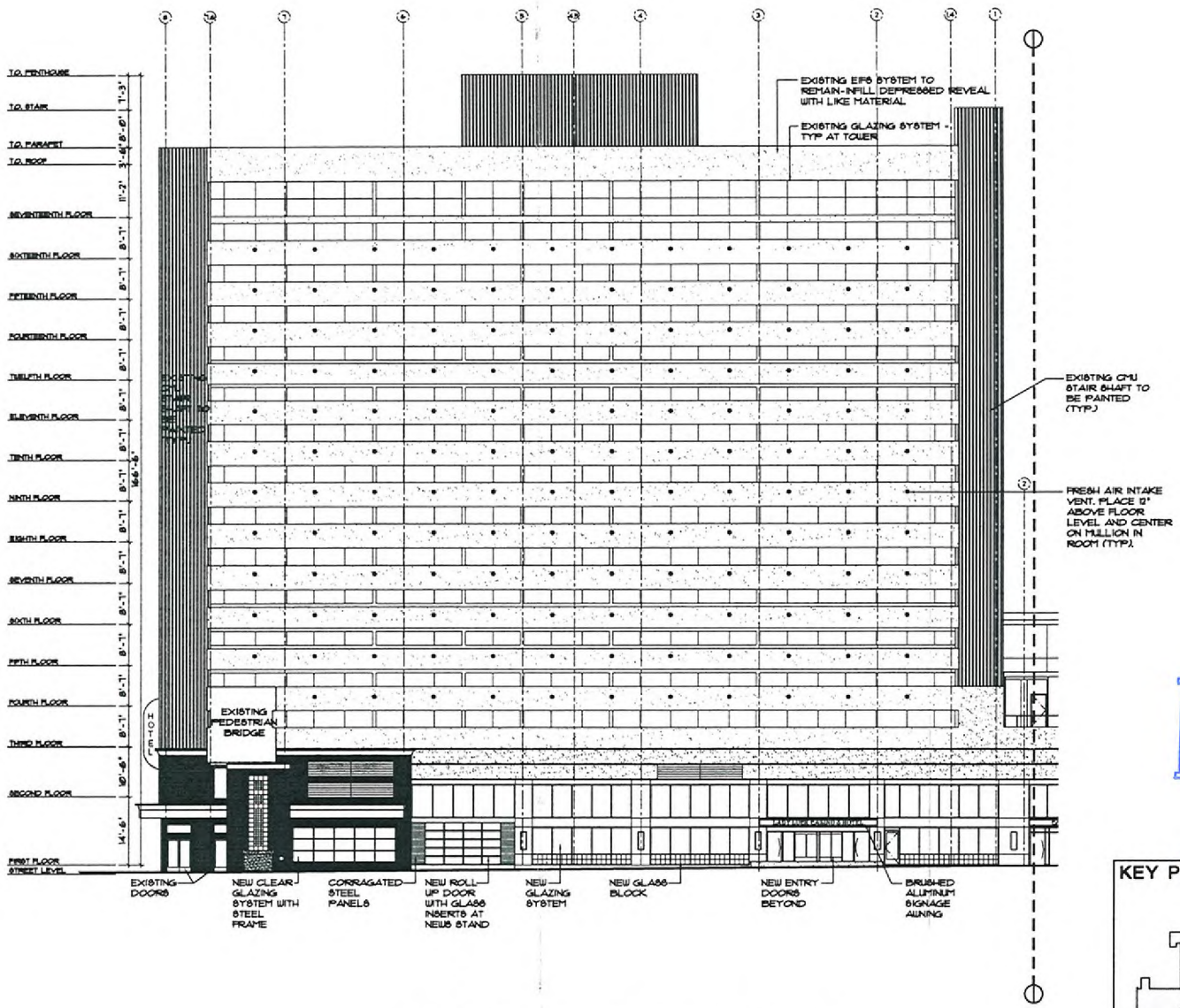

1 / A6.11 EAST TOWER WEST ELEVATION - AREA 'A'

SCALE: 3/32"=1'-0"

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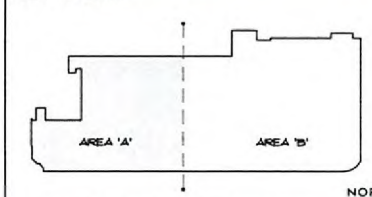
JUL 30 2010

KEY PLAN



SCALE: N.T.S.

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project title:
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RENOVATION / EXPANSION
206 N. 3RD ST, LAS VEGAS, NEVADA 89101

PRELIMINARY
NOT FOR CONSTRUCTION
8-11-2010

sheet title:
EAST TOWER - WEST EXTERIOR ELEVATION - AREA 'A' (LUS)

issue dates:
drawn by: KKG/MB/PT
checked by: RCG
project no.: 09-150
revisions:
sheet no. A6.11.1
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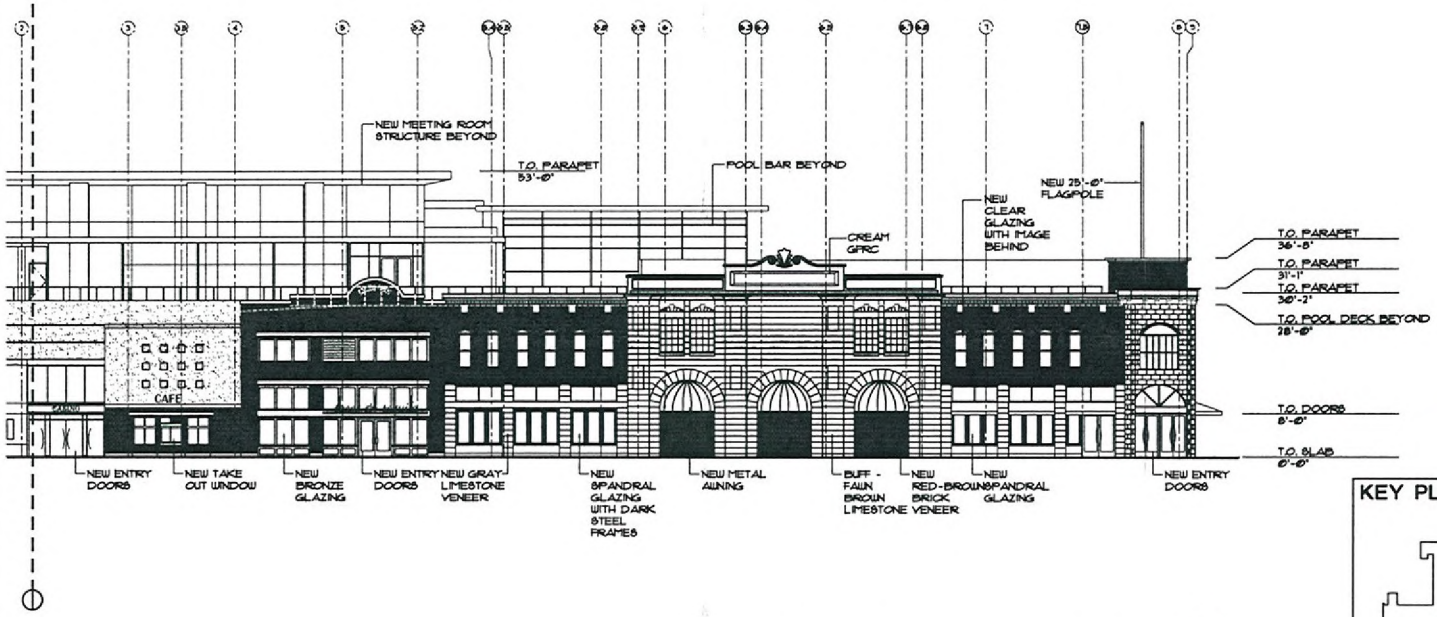

1 A6.11.2 EAST TOWER WEST ELEVATION - AREA 'B'

SCALE: 3/32"=1'-0"

NORTH

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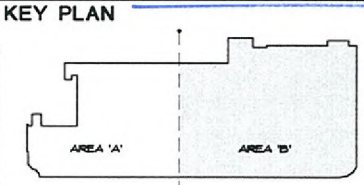
KEY PLAN



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project title: Lady Luck RENOVATION / EXPANSION
206 N. 3RD ST. LAS VEGAS, NEVADA 89101

PRELIMINARY
NOT FOR CONSTRUCTION
5-11-2010

sheet title: EAST TOWER - WEST EXTERIOR ELEVATION - AREA 'B' (LUS)

issue dates:
drawn by: KCG/MS/PT
checked by: RCG
project no.: 09-150
revisions: 8/2/2010

sheet no. A6.11.2

of sheets

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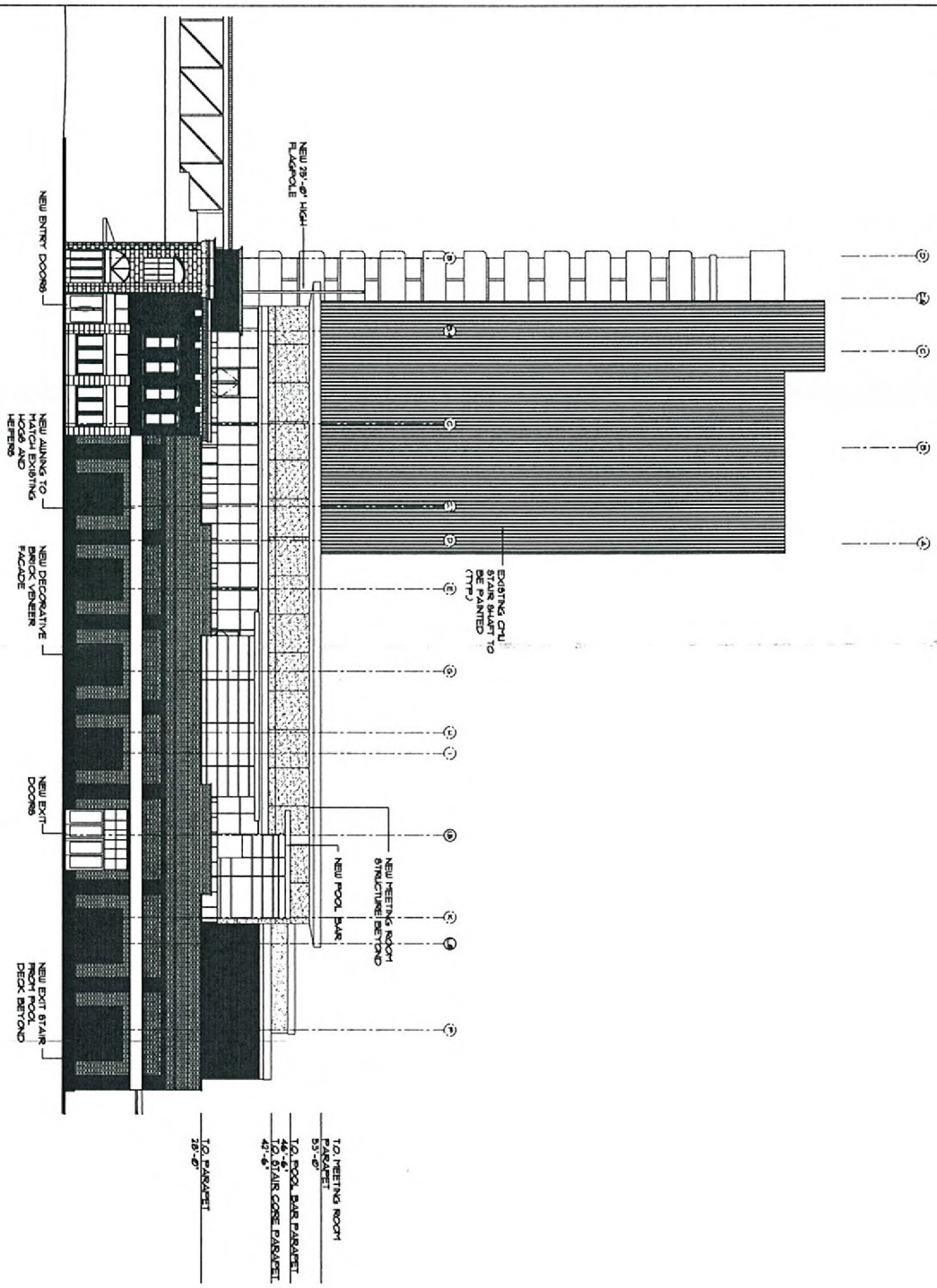

1 / A6.12 EAST TOWER SOUTH ELEVATION

SCALE: 3/32"=1'-0"

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sheet no. A6.12 of sheets

drawn by: RCS
checked by: RCS
project no.: 09-150
version: Addendum

was done: is done

sheet title: EAST TOWER - SOUTH EXTERIOR ELEVATION LAND USE SUBMITTAL

PRELIMINARY
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6-11-2010

project title: Lady Luck RENOVATION / EXPANSION
206 N. 3RD ST. LAS VEGAS, NEVADA 89101

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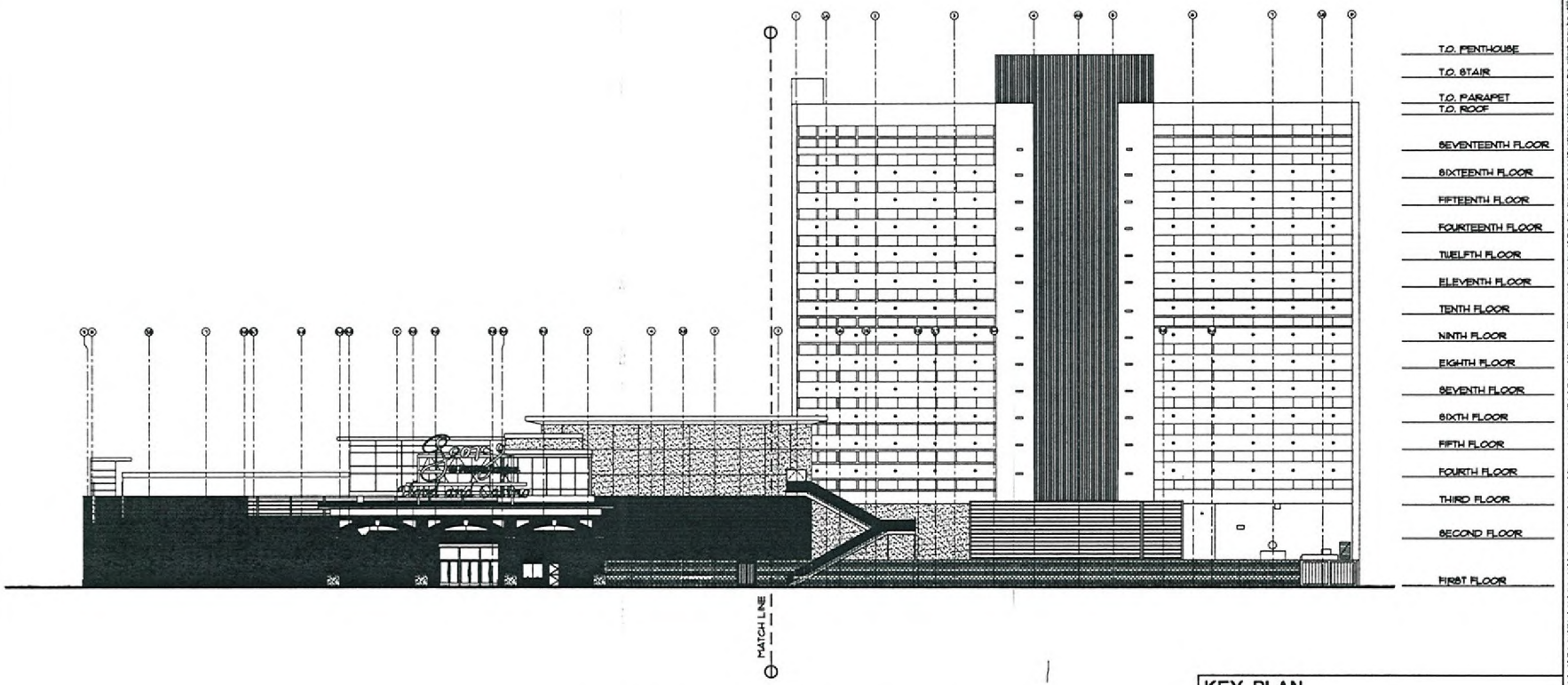
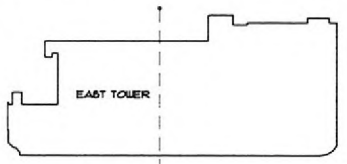


A6.13 EAST TOWER OVERALL EAST ELEVATION

SCALE: 1/16"=1'-0"

KEY PLAN



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EAST TOWER - OVERALL
EAST EXT. ELEVATIONS
LAND USE SUBMITTAL

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checked by: RCG
project no.: 09-150
revisions:
sheet no. A6.13
of sheets

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P:\09-150 George\LUS\SDR submittal\City Council submittal\Arch\East Tower-A613.dwg plotted: 7/30/2010 11:48 AM by: Drew

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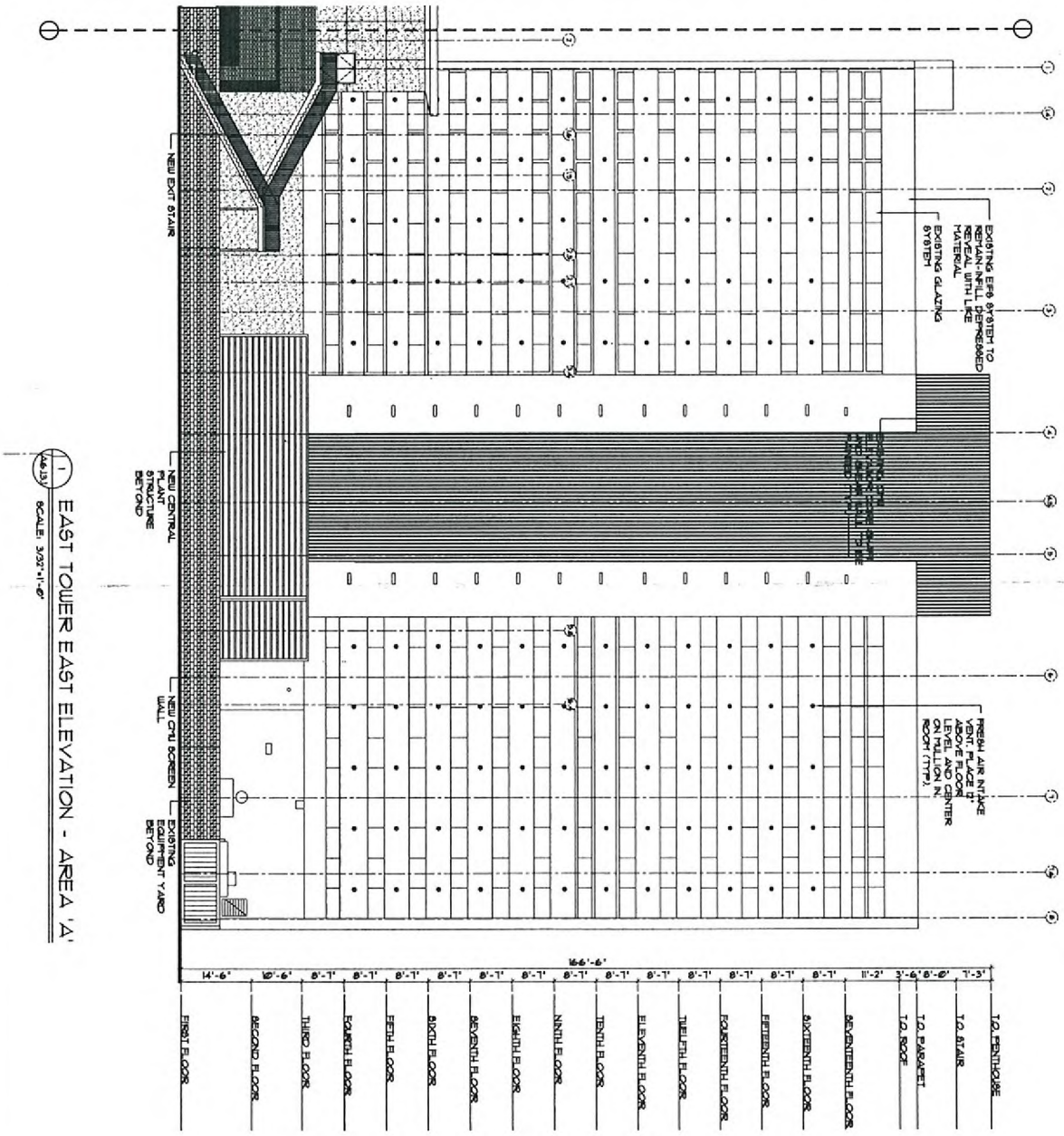
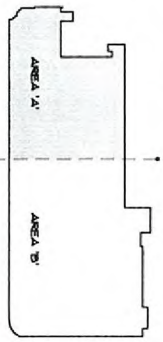


1 A6.13 EAST TOWER EAST ELEVATION - AREA 'A'
SCALE: 3/32"=1'-0"

KEY PLAN



SDR-37946
SCALE: N.T.S.

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sheet no. A6.13.1 of sheets

issue dates: drawn by: checked by: project no. 150 drawing no. 1 of 1 revisions

sheet title: EAST TOWER - EAST EXTERIOR ELEVATION - AREA 'A' (LUS)

PRELIMINARY
NOT FOR CONSTRUCTION
5-11-2010

project title: Lady Luck
RENOVATION / EXPANSION
206 N. 3RD ST. LAS VEGAS, NEVADA 89101

pacific design concepts, llc
3005 w. horizon ridge parkway, suite 200
henderson, nevada 89052
(702) 454-5842 fax (702) 454-7842

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F 415.997.5234
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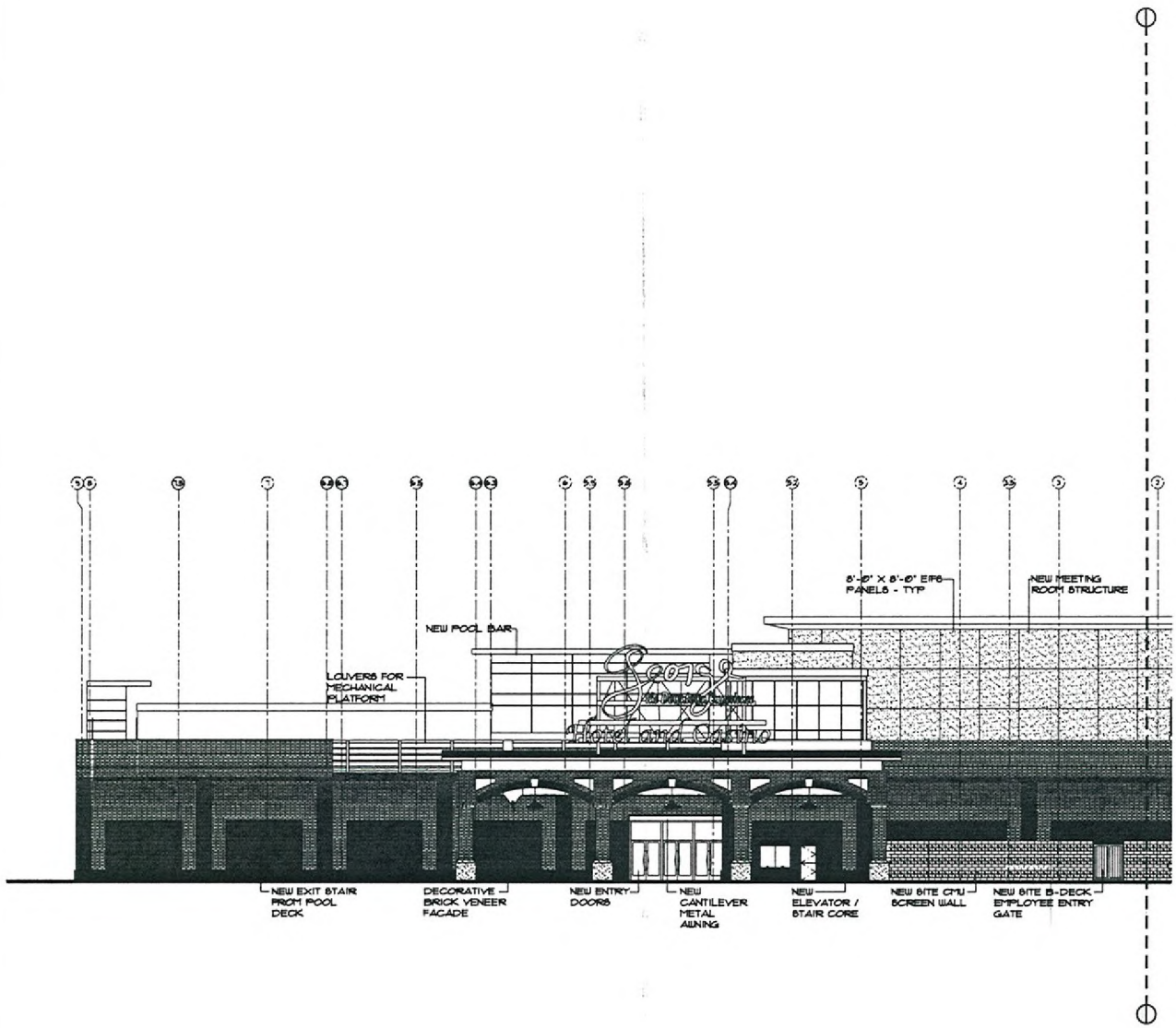
Sausalito, California 94965
www.hfainternational.com



1 A6.13.2 EAST TOWER EAST ELEVATION - AREA 'B'

SCALE: 3/32"=1'-0"

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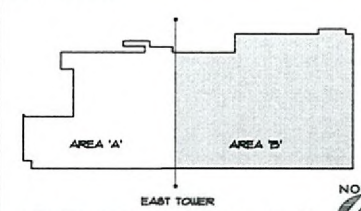
JUL 30 2010

KEY PLAN



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project title:
Lady Luck
RENOVATION / EXPANSION
206 N. 3RD ST. LAS VEGAS, NEVADA 89101

PRELIMINARY
NOT FOR CONSTRUCTION
8-11-2010

sheet title:
EAST TOWER - EAST EXTERIOR ELEVATION - AREA 'B' (LUS)

issue dates:
drawn by: KKG/MS/PT
checked by: RCG
project no.: 09-150
revisions: 8/2/2010

sheet no.
A6.13.2
of sheets

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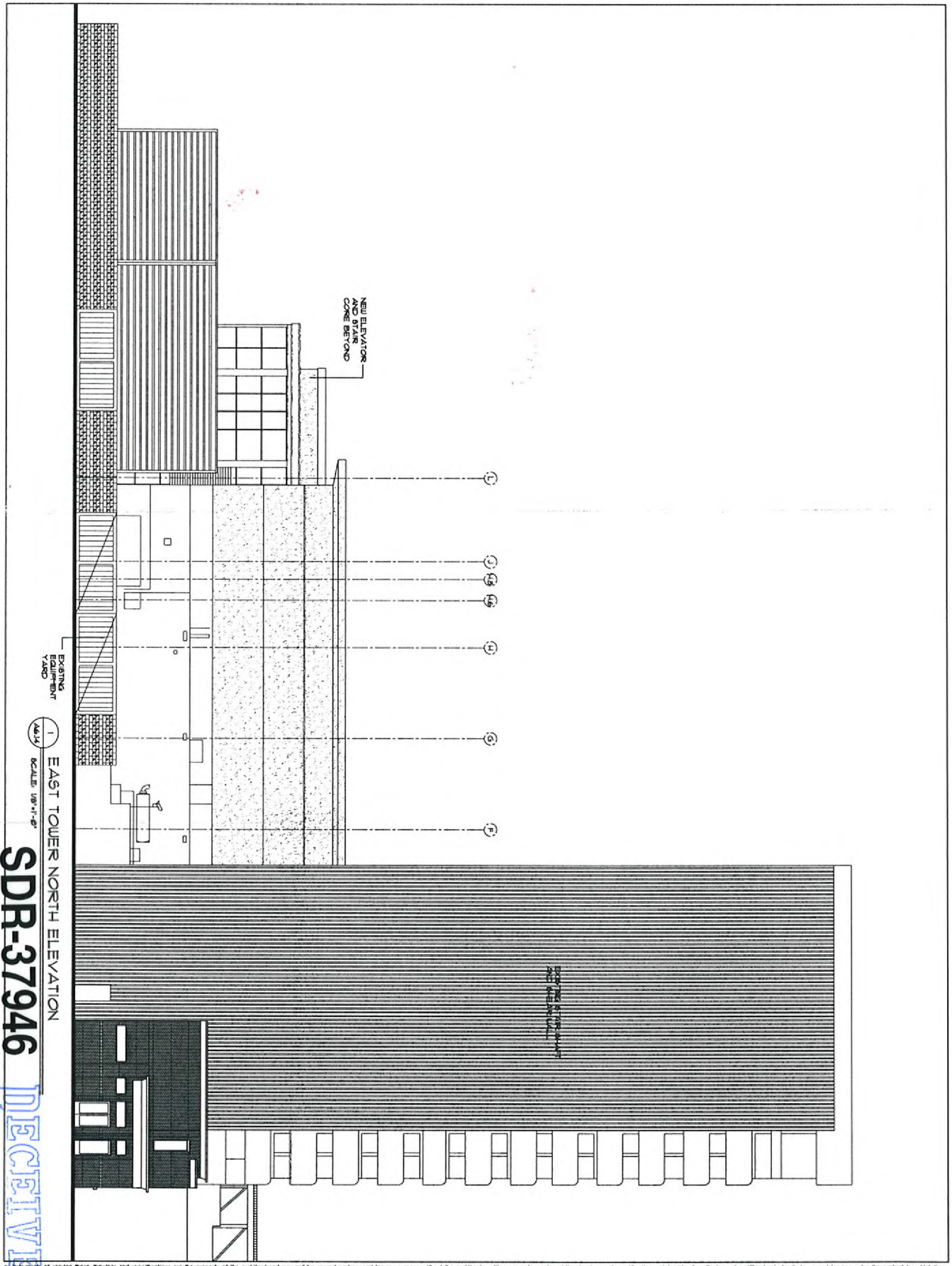

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sheet no. A6.14

sheet title: EAST TOWER - NORTH EXTERIOR ELEVATION LAND USE SUBMITTAL

PRELIMINARY
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6-11-2010

project title: Lady Luck RENOVATION / EXPANSION
206 N. 3RD ST. LAS VEGAS, NEVADA 89101

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Sausalito, California 94965
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EFIS

Window Glazing

Canopy

Brick Veneer

Stone Veneer

Limestone

Window Glazing

Hardware

Metal Patina

Awning

Pavers

Tile

Tile

Glass Block

Metal Fascia

Awning

Travertine

Wood

Tile

Galvanized

Signage

Signage

Brick

Marble

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Lady Luck Exterior Color & Materials

BRESLIN BUILDERS

pacificdesignconcepts PDC architecture & planning

HFAI HFA International



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220 NORTH 4TH STREET

04/22/10



SDR-37946 - APPLICANT: RESORT GAMING GROUP, LLC - OWNER: 220 NORTH 4TH STREET LV, LLC, ET AL
220 NORTH 4TH STREET

04/22/10



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220 NORTH 4TH STREET

04/22/10



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220 NORTH 4TH STREET

04/22/10



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220 NORTH 4TH STREET

04/22/10



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04/22/10



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220 NORTH 4TH STREET

04/22/10



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220 NORTH 4TH STREET

04/22/10



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220 NORTH 4TH STREET

04/22/10



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220 NORTH 4TH STREET

04/22/10



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04/22/10



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BRESLIN BUILDERS

DESIGN/BUILD GENERAL CONTRACTOR

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CITY CLERK

2010 AUG -4 A 11:18

July 30, 2010

City of Las Vegas
Planning & Development
731 South Fourth Street
Las Vegas, Nevada 89101

Re: Lady Luck – Revised Land-use Package Submittals

To Whom It May Concern:

As major projects progress and develop like the Lady Luck Casino and Hotel project, there are times when changes are required. As this project has progressed through additional planning and development stages, ownership has made the decision to make a change to the exterior casino elevations. This will allow for a better fit with the previously developed look and feel of 3rd Street venues including Hogs and Heifers, Triple George Grill, Sidebar, and Celebrity.

The enclosed changes reflect this progression on the east side of 3rd Street and the casino elevations have been updated to blend better with their neighbors. The update changes the materials being used on the casino area of the project, including less EIFS and stucco and more brick veneering. The overall feel of the project invokes the idea of a conversion of an old downtown warehouse type building into a casino use with required changes to what would have been and existing building to make a new casino work. These changes will allow this to be a great addition to the existing 3rd Street development that Resort Gaming Group has been developing for the past five or six years.

No additional square footage has been added to the project, nor have any of the proposed uses changed from the previous submittal. In addition to the exterior casino area elevation changes, we have revised the porte cochere on the east side of the casino to a longer more function use and have reduced the lease space venues on the 3rd Street side of the casino by one allowing for more casino area within the existing square footage. The west tower area (west side of 3rd Street) remains the same as previously submitted. The tower finishes remain as previously documented. The site/landscape plans have not been modified either. We continue to agree with the Conditions of Approval agreed to with Staff and the Planning Commission.

We are excited for this project to be approved and start construction and provide a great experience for those that visit the property and downtown Las Vegas.

Respectfully,

BRESLIN BUILDERS

Todd McBrayer, LEED AP
Director of Design

SDR-37946
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Visit our web page at: www.BreslinBuilders.com
5525 Polaris Avenue, Suite B · Las Vegas, Nevada 89118 · Lic. No. 18169 · 702/798-3977 · Fax 702/798-3908

RESORT
GAMING GROUP

April 13, 2010

Flynn Fagg
City of Las Vegas
Planning & Development
731 S. Fourth Street
Las Vegas, Nevada 89101

Re: **JUSTIFICATION LETTER**
SDR Application re APN's 139-34-510-019, 139-34-514-007 & 008 & 009, 139-34-501-009 &010

Dear Mr. Fagg:

Please accept this as our official justification letter for the SDR encompassing the expansion and remodel of the Lady Luck Hotel & Casino located at 3rd Street & Ogden. The Applications are FOR A SDR FOR A PROPOSED RENOVATION OF AN EXISTING NON-RESTRICTED GAMING FACILITY HOTEL/CASINO WITH A WAIVER OF THE DOWNTOWN CENTENNIAL PLAN STREETSCAPE REQUIREMENTS; WAIVER OF THE PARKING SCREENING STANDARD; AND A WAIVER OF THE BUILD-TO-REQUIREMENT ALONG OGDEN AVENUE AND ALONG 4TH STREET on 3.12 acres at 206 North 3rd Street and 220 North 4th Street zoned C-2 (General Commercial).

The proposed renovation will further enhance the revitalization of Downtown by making it a destination that attracts tourists and locals as well as assist in the success of the Mob Museum. This expansion will not change the history and culture that has been well established in Downtown, but will rather create more energy and help enhance the attractiveness of the Downtown Renaissance. We believe our waivers and the proposed expansion and renovation are 'in-line' with the vision of the Centennial Plan and will further help change the face of downtown and spark the Renaissance that is currently stalled. Our renovation will be a crucial part of Downtown Las Vegas and will further enhance the beautification and revitalization of Downtown.

The following is a summary of the highlights of the renovation we will undertake:

1. Adding approximately 8,533 SF of meeting space and 17,250 SF of pool/deck space on the roof of the existing casino on the corner of Ogden and 3rd St.

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206 N. 3RD STREET • LAS VEGAS, NV 89101
702.579.4890 (PH) • 702.312.3239 (FAX)
resortgaminggroup.com

2. We have demolished the 112 rooms that existed along 4th St which resulted in a reduction of approximately 41,000 SF and we will be removing 50 rooms in the 2 towers from its original construction and replacing it with a spa, a fitness room, bathrooms, public corridors and office space.
3. Renovating the remaining 634 rooms, casino and new retail to a much higher standard than previously existed.
4. Adding a new central plant.
5. Redesigning the existing loading dock along Stewart Ave so that trucks will no longer be required to back in from Stewart and now have a built in turn around.
6. Stripping the existing bridge between the east and west towers down to its structural elements. This includes trimming the parapet and soffit to minimal dimensions and changing the glass to a clear system so that it can be see through.
7. Adding a controlled surface parking lot with 54 spaces along 4th St., a porte-cochere along 4th St, a drop off/valet zone behind the west tower, per city request – changing the direction of the alley between 3rd St. and Casino Center and a request that the parking meters along Ogden b/w 3rd St. be returned to a Commercial Loading Zone during the day. This is all done in an attempt to alleviate some of the anticipated downtown traffic burdens given the impact of our re-opening. From a parking perspective, we have added 54 parking spaces while reducing the existing room base by 162 rooms.

As part of this justification letter, we would like to formally request three waivers to the Downtown Centennial Plan ("DCP"). They are as follows:

1. Downtown Gateway District Streetscape Design Standards, Sections A, B & C.

   We are requesting a waiver to the East/West and North/South street tree requirements as well as the requirement for a 5 foot amenity zone portion of the sidewalk along the north side of Ogden Avenue, the east side of 4th St. and the south side of Stewart Ave. Our request is based on the fact that the pre-existing conditions on Ogden and Stewart do not allow for expansion of the sidewalks or tree requirements due to fact that existing conditions conflict with trees/tree pits/tree canopies. Along 4th St. we are seeking a waiver of the tree distance requirements due to the fact that the existing tree distances are more than 30 feet and are not the species identified in the DCP. Please note that the overall renovation, in its entirety, provides the pedestrian environment required and spirit of the DCP

   Additionally, there are other numerous minor civil waivers based on the new site plan that are identified and noted on the attached Civil Waiver Exhibit. Please note we have included a full size copy with our submittal.

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2. Downtown Gateway District Site Planning Standards, Sections A, E and G.

   We are requesting 2 minor encroachments along the south side of Stewart. A 10 inch encroachment on a small portion of the existing building between 3rd St and the alley to the west and a 6 inch encroachment on a small portion of the existing building between 4th St. and 3rd St. Our request will help the building frontage along Stewart Ave. conform to the architectural style/elements on 3rd St. Additionally, this will enhance the view for pedestrians who will be exiting and entering the Mob Museum.

   We are also requesting a waiver to the undergrounding of utilities/power lines based on the existing conditions that exist along Stewart Ave. and other property lines.

3. Downtown Gateway District Parking and Related Standards, Section D.

   We are requesting a waiver of the Parking Screening requirement along 4th St. due to its architectural non-conformity with our overall design as well as the fact that we will be installing landscaping along the buffer zone. Please note that the square footage of the landscape area of the surface parking lot along the street frontage at Ogden, 4th, and up to Stewart is 4,054 SF (Ogden along 4th to the turn in).

If you have any questions and/or concerns, please do not hesitate to contact me.

Sincerely,

Todd Kessler

Todd Kessler

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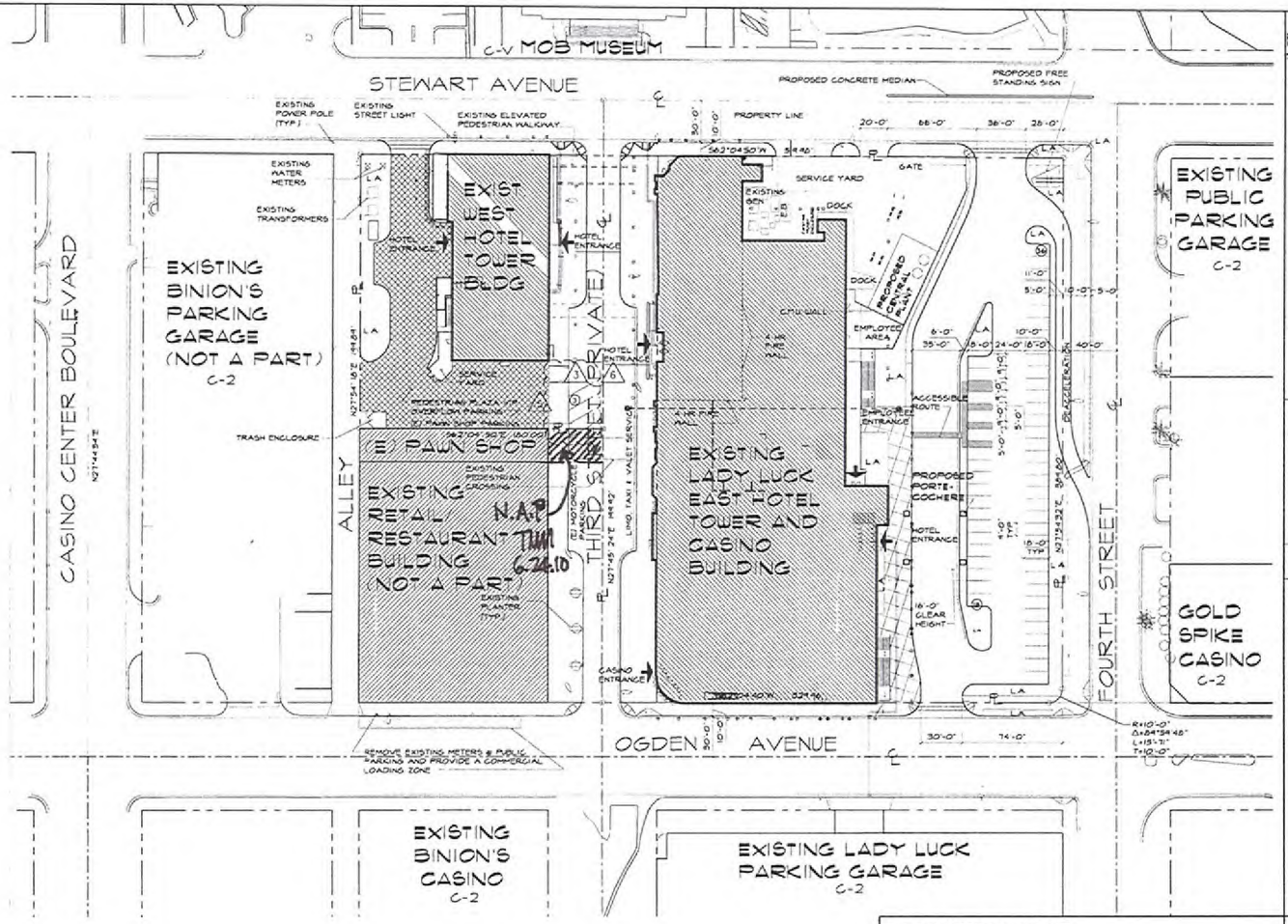
NOTE: THE FOLLOWING DOCUMENTATION WAS SUBMITTED FOR THE RECORD BEFORE OR AT THE PLANNING COMMISSION HEARING ON THIS ITEM WHICH IS NOW APPEARING BEFORE THE CITY COUNCIL



CONCEPTUAL ARCHITECTURAL SITE PLAN

1" = 40'-0"

NORTH

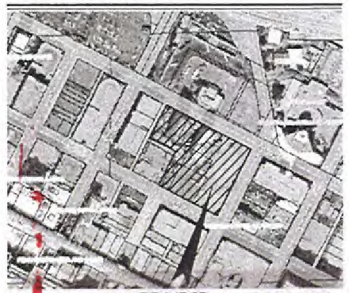
LEGEND

CONTINUOUS ACCESSIBLE ROUTE 5% MAX. RUNNING SLOPE 2% MAX CROSS SLOPE W/ 1/2" MAX CHANGE IN ELEVATIONS

PROJECT DATA

ASSESSORS PARCEL NUMBER(S)	139-34-514-005 139-34-514-006 139-34-514-007 139-34-510-015 139-34-501-005
ACTION REFERENCE NUMBER(S)	
GOVERNING JURISDICTION	CITY OF LAS VEGAS
DEVELOPMENT CODE	TITLE 19
EXISTING LAND USE ZONE	GENERAL COMMERCIAL DISTRICT (C-2)
ZONING OVERLAY DISTRICT(S)	N/A
LAND USE PLAN	DOWNTOWN CENTENNIAL GATEWAY DISTRICT
SITE AREA	3.94 ACRES/ (1), 888 SQ. FT.
BUILDING AREA: EXISTING EAST TOWER AREA:	
BASEMENT	8, 744 SQ. FT.
1ST FLOOR	55, 6084 SQ. FT.
2ND FLOOR	48, 451 SQ. FT.
3RD FLOOR	42, 725 SQ. FT.
4TH THROUGH 17 TH FLOOR (11, 8172 SQ. FT. X 13) =	143, 936 SQ. FT.
EXISTING EAST TOWER TOTAL AREA	248, 868 SQ. FT.
EXISTING PEDESTRIAN BRIDGE AREA	1, 128 SQ. FT.
BUILDING AREA: EXISTING WEST TOWER AREA:	
BASEMENT	9, 847 SQ. FT.
1ST FLOOR	11, 282 SQ. FT.
2ND FLOOR	16, 486 SQ. FT.
3RD FLOOR	9, 454 SQ. FT.
4TH THROUGH 25TH FLOOR (19, 494 SQ. FT. X 21) =	138, 534 SQ. FT.
EXISTING WEST TOWER TOTAL AREA	339, 533 SQ. FT.
TOTAL BUILDING AREA	590, 529 SQ. FT.
FLOOR AREA RATIO	2.92
EAST TOWER: BUILDING HEIGHT	166'-0"
NUMBER OF STORIES	17 W/ BASEMENT
WEST TOWER: BUILDING HEIGHT	237'-10"
NUMBER OF STORIES	25 W/ BASEMENT
PARKING ANALYSIS: PARKING RECOMMENDED: 1 PER GUEST ROOM (634 X 1) =	1 634 SPACES
EXISTING PARKING GARAGE	3 445 SPACES
PROPOSED SURFACE PARKING	56 SPACES
ACCESSIBLE PARKING PROVIDED (INCLUDING ONE VAN + TWO ACCESSIBLE)	
TOTAL PARKING PROVIDED	501 SPACES

LOCATION MAP



VICINITY MAP



Submitted after final agenda

Date 6/24/10 Item 21

Submitted after final agenda

Date Item 21

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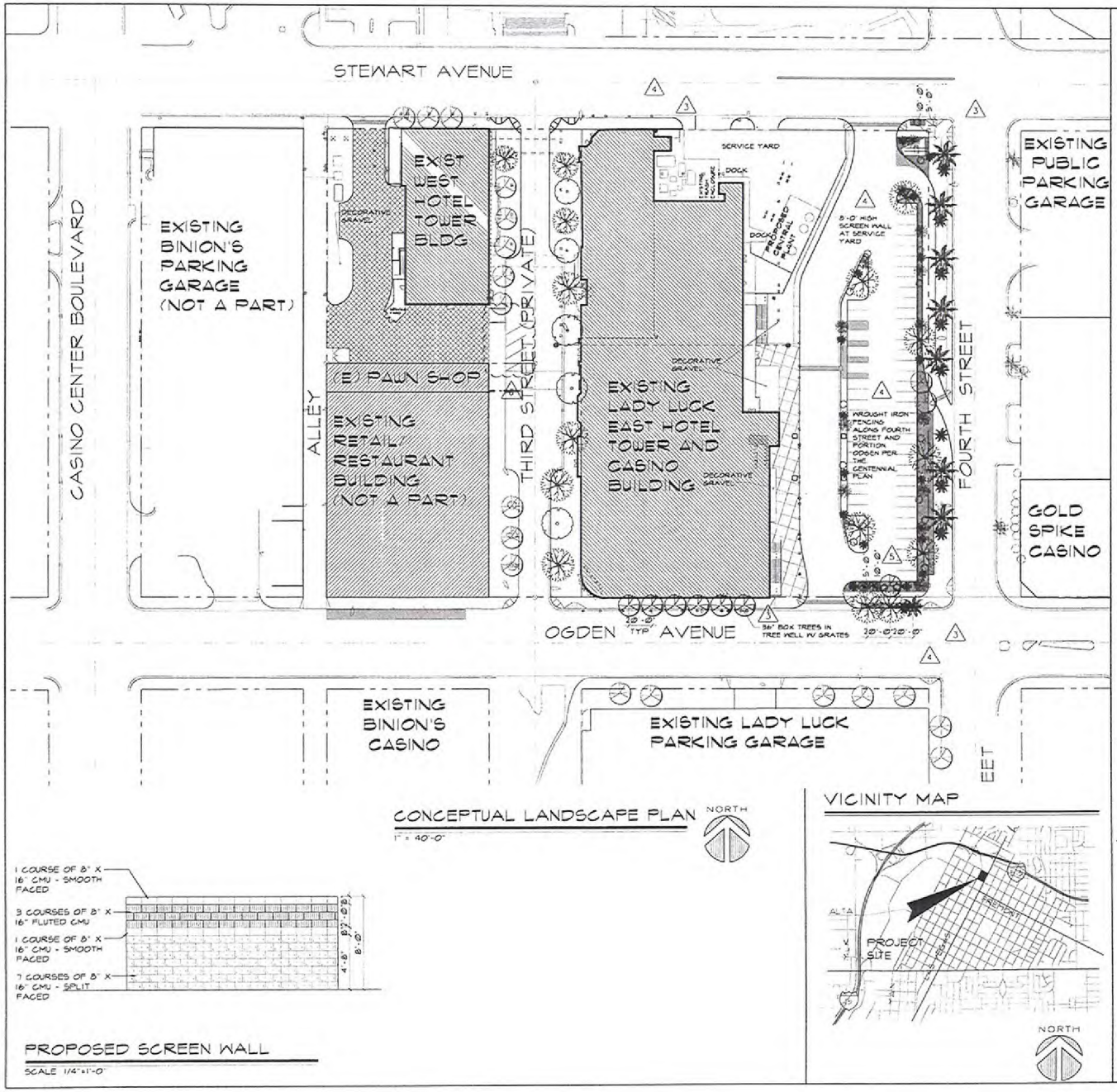
project title: Lady Luck RENOVATION / EXPANSION
206 N. 3RD ST. LAS VEGAS, NEVADA 89101

PRELIMINARY NOT FOR CONSTRUCTION 5-11-2010

sheet title: CONCEPTUAL ARCHITECTURAL SITE PLAN LAND USE SUBMITTAL

issue dates:
5-4-2010
5-11-2010
6-8-2010
6-10-2010
6-16-2010

sheet no: AS1.01



CONCEPTUAL LANDSCAPE PLAN

1" = 40'-0"

NORTH

PROPOSED SCREEN WALL

SCALE 1/4"=1'-0"

VICINITY MAP

MISCELLANEOUS NOTES

1. ALL EXPOSED SOILS TO RECEIVE 3" THICK LAYER OF DECORATIVE GRAVEL OR DECOMPOSED GRANITE
2. ANY TREE WITHIN 5' OF A SIDEWALK / PAVED SURFACE AND/OR WALL SHALL BE PLANTED WITH A ROOT SHIELD DESIGNED TO DIRECT ROOT GROWTH DOWNWARD
3. DECOMPOSED GRANITE COLOR: PALAMINO CORAL 1/2" SCREENED
   DECOMPOSED GRANITE SOURCE: VISTA ROCK LAS VEGAS, NEVADA
   DECORATIVE GRAVEL COLOR: RED SANDSTONE 3/4" 3/4"
   DECORATIVE GRAVEL SOURCE: STAR NURSERY LAS VEGAS, NEVADA
4. ALL LANDSCAPE AREAS TO RECEIVED COMPLETE AUTOMATIC PERMANENT UNDERGROUND DRIP IRRIGATION SYSTEM
5. TREE GRATES OR DECOMPOSED GRANITE IN TREE WELLS ARE ACCEPTABLE. TREE GRATES SHALL COMPLY WITH THE CITY OF LAS VEGAS CENTENNIAL PLAN DESIGN GUIDELINES

PROPOSED LANDSCAPE LEGEND

TREES SYM	SIZE	QU	BOTANICAL NAME	COMMON NAME
	36" BOX	5	CERATONIA SILIQUA	CAROB TREE
	36" BOX	5	QUERCUS VIRGINANA	SOUTHERN LIVE OAK TREE
SHRUBS	**SIZE**		**BOTANICAL NAME**	**COMMON NAME**
	5 GAL.	15	LEUCOPHYLLUM FRUTESCENS	TEXAS RANGER
	5 GAL.	15	RAPHIOLEPIS INDICA	INDIAN HAWTHORN
	5 GAL.	15	ROSMARINUS OFFICINALIS 'PROSTRATUS'	DWARF ROSEMARY

EXISTING LANDSCAPE LEGEND

EXISTING OAK TREE TO REMAIN

EXISTING MEXICAN FAN PALMS TO REMAIN

ANALYSIS

TOTAL LANDSCAPE BUFFER AREA = 4,054 SQ FT

DENOTES BUFFER AREA

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JUN 22 2010

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pacific design concepts, llc
3700 W. Hacienda Avenue, Suite 260
Las Vegas, Nevada 89118
(702) 914-0642 fax (702) 914-0643

project title:
Lady Luck
RENOVATION / EXPANSION
206 N. 3rd St. LAS VEGAS, NEVADA 89101

PRELIMINARY
NOT FOR CONSTRUCTION
5-11-2010

sheet title:
CONCEPTUAL LANDSCAPE PLAN
LAND USE SUBMITTAL

issue dates:

drawn by: KG/JMS/MT
checked by: RGG
project no: 09-108
revisions:
5-4-2010
5-12-2010
6-8-2010
6-9-2010
6-10-2010
6-16-2010

sheet no.
AL1.01
of sheets

City of Las Vegas Agenda Item No.: **95.**

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF: AUGUST 18, 2010

SUBJECT:
SET DATE ON ANY APPEALS FILED OR REQUIRED PUBLIC HEARINGS FROM THE CITY PLANNING COMMISSION MEETINGS AND DANGEROUS BUILDING OR NUISANCE/LITTER ABATEMENTS

City of Las Vegas Agenda Item No.: **96.**

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF: AUGUST 18, 2010

SUBJECT:
CITIZENS PARTICIPATION: PUBLIC COMMENT DURING THIS PORTION OF THE AGENDA MUST BE LIMITED TO MATTERS WITHIN THE JURISDICTION OF THE CITY COUNCIL. NO SUBJECT MAY BE ACTED UPON BY THE CITY COUNCIL UNLESS THAT SUBJECT IS ON THE AGENDA AND IS SCHEDULED FOR ACTION. IF YOU WISH TO BE HEARD, COME TO THE PODIUM AND GIVE YOUR NAME FOR THE RECORD. THE AMOUNT OF DISCUSSION ON ANY SINGLE SUBJECT, AS WELL AS THE AMOUNT OF TIME ANY SINGLE SPEAKER IS ALLOWED, MAY BE LIMITED

City of Las Vegas Agenda Item No.: **97.**

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF: AUGUST 18, 2010

SUBJECT:
COUNCIL MEMBER RECOGNITION: COMMENTS MADE BY INDIVIDUAL CITY COUNCIL MEMBERS DURING THIS PORTION OF THE AGENDA WILL NOT BE ACTED UPON BY THE CITY COUNCIL UNLESS THAT SUBJECT IS ON THE AGENDA AND SCHEDULED FOR ACTION