

**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:

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BRAD JERBIC, City Attorney

STAVROS S. ANTHONY, Councilman

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(9:04 - 11:52)

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COUNCILMAN BARLOW

Now well 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 Attorneys Office. Ive 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 its necessary to understand how we got where were 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 thats 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 1990s 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.

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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. Its a cooperative venture, owned, operated by a group of downtown hotel companies, with ongoing involvement by the City of Las Vegas, and Ill 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.

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COUNCILMAN ANTHONY

Its like that today?

BRAD JERBIC

Thats correct.

COUNCILMAN ANTHONY

Okay.

BRAD JERBIC

Thats still to this day, same management (inaudible). There may be some slight tweaking of the individual members of the LLC, so, as youre 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, thats essentially the same group thats 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

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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 whos 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 wasnt 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 LEDs, 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, its 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, Hennesseys and Mickey Finns. 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

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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 Years 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

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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 own your side as well. That's how it works when you vacate your interest in something. Again,

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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.

Heres 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 wasnt a street anymore. And because you werent 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,

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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

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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

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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

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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 its content is 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

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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 Hennesseys, Mickey Finns and at the former Jillians location.

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You also see kiosks up and down the street, which were gonna talk about in a moment as well.

Thats pretty much the Fremont Street Experience as it is today. The same four-party agreement is in place. Its 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? Thats 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 havent been paid. The downstream benefit was wed 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. Im using the word leafleting today. As it appeared in the original ordinance, it didnt say leafleting. It said the handing out of materials to passerbys (sic), or words to that effect. When I use the word leafleting, Im referring to that language. So, I dont want somebody to correct me later in the record and saying that that was an inappropriate use of the term. Im aware that Im substituting the word leafleting for it. Thats exactly what handing out papers to passerbys (sic) is. Its leafleting, not handbilling (sic).

The Federal District Court upheld the solicitation banning and tabling banning. Thats the local Federal District Court here in Las Vegas. But it enjoined the enforcement of the leafleting and

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vending restrictions. Each side appealed the decision that the Ninth Circuit dismiss these appeals. Lets 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 couldnt 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 were into the merits of the case. A summary judgment is when a court says there are no issues of material fact. We dont need to have a hearing, and based on what is in the record right now, Im able to make a decision as to whos right or whos wrong. Everybody tried to appeal that to the Ninth Circuit. They didnt 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. Ill get into that in a moment. But when you make a finding that an area is not recreational

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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 low standard. A very different standard 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,

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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 were at today. Since then, there have been some discussions as to what the judges 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 judges decision in 2009, I can tell you, as

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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 NASCARs here, they do events related to it. There are probably a plethora of special events,

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including New Years Eve, that Mr. Victor, the President of the Fremont Street Experience is in charge of staging, and hell 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 well see how in a moment.

Let me go to the first video. Now, before we play this, Betsy (inaudible), Im sorry, Comella, is my legal assistant who is going to run the video here, and Ill 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, Id be glad to provide you copies of everything. These are the relevant portions I wanted you to see so you know whats 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. Therell be a pro-Jesus protest, for want of a better term. Im not playing these for the content of the video. It doesnt matter what these people in these videos are talking about. So, when we see the content, I dont want you to consider the content. I want you to consider several things Im 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. Youll 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 theyre 20,

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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 dont see tourist traffic. You dont see people walking by. You can see them walking on the outskirts of it.

Lets 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. Youll look at these kiosks, and youll love this, there is not a pedestrian or a tourist around any of them. In fact you wont 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 Ive 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. Hes in the intersection. This looks like, this is Third Street. A circle of people around him, many, many people, nobodys walking through the middle of the wall now because of the crowd that hes attracted. Mr. Animation is out there for purely commercial purposes. At the end of the video, youre gonna see him step off the stage. Individual to

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the right has got a handful of cash. Mr. Animation is gonna grab a large, black bag and hes 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. Youll see theyre also selling his DVDs.

Again, this is not activity that was authorized by the Fremont Street Experience, neither programmed by the Fremont Street Experience. Its 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. Ill try again. This, again, is another group that came downtown. Just ad hoc, set up tables, amplification systems, microphones, set up a choir. And dont 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.

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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, hes , look like, yeah, about right there, looks like hes handing something out. Hold on. Its right after this. As a tourist was passing by. Its coming up. Here it comes. Right there. The gentleman in the yellow shirt.

BRAD JERBIC

Yeah.

COUNCILMAN BARLOW

Right there.

BRAD JERBIC

I dont know who hes associated with or what hes doing. But well 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. Theres an enormous amount of space that they occupy, and the

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inconsistency of this activity with the kind of activity this Mall was designed to promote, which is commercial, entertainment activity.

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UNIDENTIFIED MALE

Commercial.

BRAD JERBIC

Is this the next one?

BETSY COMELLA

No.

BRAD JERBIC

There it is. Again, now were 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, hes 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. Hes out with the megaphone, walking around the Mall. Again, heres another individual. I dont know what kind of expressive conduct hes 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 doesnt 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 youre gonna see, this is 4th Street. Fourth Street is one of the two areas, as youre aware, that vehicular traffic crosses the Pedestrian Mall. Their expressive

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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

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systems to the right. Hes being videotaped. Hes telling them you cant film me; you cant 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 hes 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). Youll notice, once again, individual with this particular group (inaudible) tourists, signs that youll 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. Youll see people staying away from this entire area while theyre there. Again, at night, with a megaphone, walking around. Again, pay no attention to the content; pay attention to the conduct.

One more. Its getting a little redundant now. Ill do one more for you on this one. Again, created for a light show, sound show, retail experiences, and heres somebody with an amplification system, not just speaking speech. Well talk about that separately later. The amplification system and the conduct is what I want you to see.

Okay. Thats 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 youll see pictures of in a moment. When I get to the pictures, Ill describe the video for you. Again, it involves entertainers on Fremont Street. Lets 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,

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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 were not looking at expressive speech; we were 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 band Kiss. So two entrepreneurial fellows decided they

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would dress up as members of the rock band 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 want to 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 want to see it

VAL STEED

Were blocked today.

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BEVERLY K. BRIDGES

YouTube is blocked.

BRAD JERBIC

YouTube is blocked. Theres your answer. We have no access to anything. We have no access to anything (inaudible). So , I cant even (inaudible)

COUNCILMAN BARLOW

(Inaudible)

COUNCILMAN ANTHONY

(Inaudible)

BRAD JERBIC

Yeah, you can get it on your iPhone, but you cant get it on the Citys computer. What youre about to see is just a couple of snippets. These individuals dressed as members of the rock band Kiss, and Im 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 dont know, we didnt 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 hes arguing with a tourist in a white T-

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shirt. You cant see the handwriting. What you can see is that somehow, during this altercation, and we dont have good sound on it or anything, so he set this to Michael Jacksons 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. Hes 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, theres a feeling that these individuals charging people money for photographs, and this individual didnt pay. Got into some kind of altercation and that resulted in him being Tasered.

Again, this is the kind of unregulated activity thats 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. Were aware of the standard. I have no doubt that as, the end of this youre gonna hear contrary reasons to what that standard is and isnt and whether or not we meet that standard with this particular ordinance. But, Im here to make the case for why we do.

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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 wouldnt require any laws. Theyre 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, thats 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. Thats 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; theres 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, thats 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, its content neutral, they can be in a separate place. And that was upheld. Im 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 wasnt regulated at all. It was just a time, place and manner restriction the court found constitutional.

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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

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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 ATMs. 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

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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

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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.

Thats a given. We dont 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 whos paying \$5,000 a month or more to rent a kiosk? Thats, obviously, not fair competition, and Mr. Victors 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 lets 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, Ive already made clear in the record that I made. Throwing things in the Mall, which I dont think anybody has any argument with thats not any kind of expressive activity protected by the constitution. Shouldnt have probably been there in the first place when we enacted the ordinance, and hula hoops, which

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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

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Whats the definition of leafleting?

BRAD JERBIC

Handing out material by hand.

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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 its just standing there, walking around?

BRAD JERBIC

Right. You dont even have to have

COUNCILMAN ANTHONY

You dont (inaudible)

BRAD JERBIC

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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

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So, that would be allowed?

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BRAD JERBIC

Thats allowed.

COUNCILMAN ANTHONY

Okay

BRAD JERBIC

But we will take a look at

COUNCILMAN ANTHONY

Under (inaudible)

BRAD JERBIC

structures, and well look at things like that, but I think, because we need to go back at some point in time, cause this ordinance isnt 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 dont think under any circumstances its 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, well get to what you saw, like the anti-abortion poster, which was a large metal structure.

COUNCILMAN ANTHONY

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Right.

BRAD JERBIC

And thats 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 persons doing.

COUNCILMAN ANTHONY

Right.

BRAD JERBIC

Conceivably it could; conceivably, it couldnt. Several people shoulder to shoulder, standing in front of an intersection, I dont think theres 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

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No. Unless theyre asking for something, that is not prohibited.

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COUNCILMAN ANTHONY

Okay.

BRAD JERBIC

Free expressions. What did we look at? I just explained that we looked at the Mall itself. Lets 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 its 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 thats privately owned now. Thats 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 thats not a place for (inaudible). We looked at 4th Street, also opened to vehicular

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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 Hennesseys, Mickey Finns and at the former Jillians. 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

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gauntlet of solicitation and other activity on 3rd Street, youre going to hurt the commercial viability of that project, and youre going to prevent individuals wanting to move back and forth in the new Mob Museum and the Fremont Street Experience.

So it wasnt 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 youre 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 dont 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?

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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, whos 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.

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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

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interested in protected conduct and theres 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, lets talk about time, place and manner. Theres no time restriction. This is any time I want. Theres no manner restriction. Were not putting any regulation on how you do it, or what to say you say or what the content is. Theres just a place restriction.

Thats all were doing, is a place restriction.

The other thing were looking at is: are there alternative means to express your act, your First Amendment Speech of solicitive (sic) speech? Well, one, youre (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. Were 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. Thats gonna be carved out. Thats gonna be removed. This area is gonna be completely cleared, except little palm trees. There wont be anything obstructing it, and its 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

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area we painted downtown at the courthouse for wedding chapel solicitors. That has worked perfectly since we put it into effect. Its going to be painted or marked clearly on the ground, signage identifying it, and therell 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. Thats to control the type of structure people are bringing in to the Mall. People bringing in dangerous things, flimsy tables, things that wouldnt withstand wind or tourists hitting it, or something like that. But well 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, Ive 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 havent finished looking into that.

Lets talk about a couple of places where they built (inaudible). If youve ever been to Waikiki Beach, youll see people not exactly on the beach, but off to the side, and most particularly at night.

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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

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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, its playing on the 3rd Street stage. Thats 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 thats the entertainment we want. They decided they didnt want to go with the occasional entertainer block by block by block. You didnt, if thats what they would have wanted, or the City wanted, you didnt have to build a canopy for that, and they dont have a canopy in Santa Monica. Its just a big, wide, open mall. So, like I say, I think its 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 its 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.

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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, its 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, doesnt work. They have the same rights to pedestrian flow, and to a hassle-free environment, so-to-speak, as we do. And Im 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 doesnt work, as a practical matter, regardless of what kind of speech youre talking about.

But, again, I would , you know, I think theres a lot of debate as to whether or not this activity that youre looking at, when it comes to entertainment, is protected activity by the First Amendment. I mean, some of it could be. Some isnt. Some is in-between. But thats 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 were not gonna pick and choose which does and which doesnt. Were going to say entertainment, thats where you go. Thats where you can perform (inaudible).

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We think its content neutral. We think its 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.

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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, Ill 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?

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GABRIELA PORTILLO-BRENNER

I do, as Exhibit 1.

BRAD JERBIC

Exhibit 1; okay. So, were 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; Im 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 thats located between 4th Street and Las Vegas Boulevard. We have about 300 employees, Im 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.

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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 youve 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?

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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, lets 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 havent 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?

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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, youll 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, hes wearing a yellow vest, and youll 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.

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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 didnt 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, youre also familiar with other street entertainers, Mr. Animation, Robot Man, and the like, in the Pedestrian Mall?

JEFF VICTOR

Yes.

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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?

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JEFF VICTOR

Yeah. Absolutely. We saw a lot of it in the video, and we have it on a regular basis, whether its connected to a car battery or its 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, its a , creates inaudible (inaudible) muddiness or confused experience to what were trying to create. When youre talking about the stages themselves or, like we had a street entertainer thats 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 hes performing, you know, the Fremont Street Experience approved performance, its absolutely disrupted. Somebody comes

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down and sets up an amplifier so they can do something, whether its 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 hes limited to that particular

JEFF VICTOR

Absolutely.

BRAD JERBIC

And its not open to other individuals? You said if others come down while hes 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?

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JEFF VICTOR

Yes. Its intimidating. You know, some people, I assume, believe that this is something that weve sanctioned, like Carl, and some people are weary that its somebody weve not sanctioned, and its 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

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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 Nuggets expansion down here on 1st Street isnt represented. There may be a, its hard to tell cause therere so many overlapping circles. There

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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?

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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

Thats correct.

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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 wouldnt allow someone to vend something that you consider inappropriate in the Fremont Street Experience?

JEFF VICTOR

Absolutely not.

BRAD JERBIC

So, you also dont want individuals in the kiosks to sort of compete with each other, so you wouldnt, for example, have 38 people selling jewelry, or 38 people all selling paintings or statues?

JEFF VICTOR

Thats right. We work hard to reduce the redundancy.

BRAD JERBIC

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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

Whats a typical term?

JEFF VICTOR

Theyre, 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

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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.

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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?

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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, were responsible for maintaining the Mall, and that we've not done so, that they think were 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?

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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.

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BRAD JERBIC

Do you also see other semi-circles or lines around entryways to buildings, for example, Fitzgeralds, 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?

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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, theres, Fremont Street is not very wide. Its only 80 feet wide, and, so theres a fair amount of obstacles throughout the Mall anyway. The legs to the canopies, the canopy itself, arent 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, its 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.

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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?

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JEFF VICTOR

I dont 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 didnt think they were ideal locations for the entertainers themselves, and they fell largely within the circles shown here on page; no, they didnt 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?

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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 Im 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?

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JEFF VICTOR

Yeah. Thats 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

Ive got a couple that are looking at a space that we operate. I dont know whats 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.

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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

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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

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Yes, I did.

BRAD JERBIC

And was that problematic?

JEFF VICTOR

Yeah, hes, you know, this is the gateway to what would be the Mob Museum and CIM Groups investment in the Lady Luck, and its 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

Im aware.

BRAD JERBIC

Are you able to, in spite of the challenges, program around that?

JEFF VICTOR

I believe so.

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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.

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BRAD JERBIC

Is that area all open public sidewalk?

JEFF VICTOR

Yeah.

BRAD JERBIC

Thats 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.

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BRAD JERBIC

I dont 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 wouldnt mind remaining in your seat. Council has questions for both Brad and yourself

BRAD JERBIC

If I could (inaudible), and Ill 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. Its the case I

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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.

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With that being said on the record, I have nothing more to add. Id 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, Ill open up for discussion. Councilman.

COUNCILMAN ANTHONY

All right. Brad, on Page 5, on Line 22, it talks about the following expressive conduct thats permitted in a free exercise (sic) zone. So, if I heard you correctly, leafleting youre gonna take out?

BRAD JERBIC

Thats correct. Itll be our recommendation that at the end of this Recommending Committee, when you vote to pass or dont 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 thats it.

COUNCILMAN ANTHONY

Okay. So, on Page 2, on Line 18, where it defines leafleting, are you taking that out?

BRAD JERBIC

No. Were going to continue to have the definition in.

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COUNCILMAN ANTHONY

Okay.

BRAD JERBIC

Were 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 wont be any mention of whether its allowed or, just say, it, there wont be any mention (inaudible)

BRAD JERBIC

Thats correct.

COUNCILMAN ANTHONY

but it will be defined, so if somebody wants to leaflet on Fremont Street Experience, they can do it?

BRAD JERBIC

Thats correct.

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COUNCILMAN ANTHONY

And, as, from what youre telling me, this definition is sufficient so if any citizen reads that, theyll know exactly what leafleting is? The police will know what it is? Security will know what it is? So there wont be any conflict when somebody reads this? And do you agree with that, Jeff? When you read that line, is that

JEFF VICTOR

Im sorry, I dont 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 its an ad or a coupon or (inaudible). I have my own questions.

COUNCILMAN ANTHONY

Well, if Jeff cant 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

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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 thats 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

Its not leafleting and its permissible. That, thats something that we call just carrying a sign, for want of a better way to put it. Its not solicitous activity. What you just described, merely holding a sign , is not solicitation activity. Its not leafleting.

COUNCILMAN ANTHONY

So, itd be allowed?

BRAD JERBIC

Right.

COUNCILMAN ANTHONY

So, I could stand

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BRAD JERBIC

I mean, there might be other things that prevent it. I mean, a sign with a big metal spike and its dangerous, or its 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 youre just standing there and youre not impeding anybody, youre fine.

COUNCILMAN ANTHONY

Okay. So , leafleting, what youre talking about, is actually handing out material?

BRAD JERBIC

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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 youre not, you dont have anything out there asking for money, throw coins, and youre the same as soliciting, correct?

So, Jeff, how much soliciting and mall entertainment occurs on Fremont Street Experience where theres no commer, no currency attached to it? See what Im asking there?

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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

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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 Streets (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

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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 thought 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?

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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 theres some First Amendment limits to that. Theres (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.

Heres where we get into problems

COUNCILMAN ANTHONY

So, why would you set up a free zone for that then?

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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,

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BRAD JERBIC

Or you sell rosaries?

COUNCILMAN ANTHONY

what Im hearing you saying is there is a possibility that you could ban commercial-type speech,
but, I guess, what Im 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 youre asking for money, thats what were looking at here. If youre asking for anything of value
for yourself or your business, and let me read the definition of solicitation, as its rewritten. The

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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 its protected by the First Amendment or not, then the free expression zone only. Thats it. Those are the two restrictions.

COUNCILMAN ANTHONY

Whether youre asking for money or youre not asking for money?

BRAD JERBIC

Right. In the Mall (inaudible), whether youre asking or not, youre in there.

COUNCILMAN ANTHONY

Youre in the free

BRAD JERBIC

Thats correct.

COUNCILMAN ANTHONY

But, what Im hearing you saying is if youre just a commercial, if youre entertaining for money, if you wanted to ban that completely, youre , kind of, its not completely clear whether you could do that or not?

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BRAD JERBIC

Let me see if I understand the question. If you are an entertainer just asking for money?

COUNCILMAN ANTHONY

Yeah. If youre

BRAD JERBIC

Theoretically, I think you can ban all of that. If you are literally an entertainer, lets say, youre 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 isnt. Now, youre gonna hear, I know youre 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 its all allowed, and its 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

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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 thats why rather than argue whether it is or it isnt, whether its 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.

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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, Im not an entertainer; Im a solicitor, and thats all I solicit and thats protected. And thats how you get around it, you say, your solicitation is protected speech, but were not gonna separate that anymore. Were saying entertainment, we dont care if you got a bucket or not, we dont care if youre soliciting or not, cause soliciting and mall entertainment are two categories that are gonna be in the free expression zone. Were not gonna get involved in making that decision anymore, whether youre looking for money or not, whether its 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 dont know the answer to that. And I think thats why the Court (sic) Circuit is saying, too, you dont wanna go there. Courts really frown on laws and activity that requires any judgment

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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, its clear, to me, hes begging, pleading for money by the act of tap dancing. Somebody else could walk by and say, he didnt utter a single word. Hes just tap dancing. There just happens to be a bucket there. You know, courts look at that and say, boy, you know, I dont like that, because you get to pick and choose who is, you know, soliciting and who isnt.

I have a card in my hand, we actually had the circuit look at this and say, we dont like this written solicitation stuff, cause you have to read it to determine whether or not its solicitation. They dont 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 dont like that, and I respect that. I dont have to agree with it, but I respect it, and well follow it.

When you talk about some of these areas, youre really getting into those kinds of discussions. Thats 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 doesnt have to be words. It could be conduct. And, so, that it is protected. And, so, you can have now, depending on what youre 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 Id have a pretty good argument thats purely commercial and youre probably (inaudible). Somebody else gets out there and starts tap dancing with a bucket in front of it (sic) with a dollar sign and doesnt utter a word, they may have a better argument that Im soliciting as opposed to entertaining. Its just my method of driving you to my bucket.

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Or, I put a religious shirt on now, or a, Im a devil worshiper and I want money from those folks, or Im part of the Arian Brotherhood, whatever you are, youre 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

Im 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, thats 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, Im not coming up with a concrete example of any of our vendors on Fremont Street to name doing that.

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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 thats 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)

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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 McLETCHE

Where would you like me to sit?

Thank you for letting me speak. My names Maggie McLetchie. Im the staff attorney of the ACLU of Nevada. A few preliminary things: Id 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 youre welcome to the entire PowerPoint and the videos as well.

MAGGIE McLETCHE

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 Id also, and Im not sure that necessarily you can act on something that hasnt been made available. Thats 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 thats gonna be applied when it isnt

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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 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 its also not possible to testify to a negative, say something never happens. And I can actually tell you, its also, again, hearsay, of course, but I can tell you that Im 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.

Im just gonna get into what the history of the litigation, and the history of Fremont Street, that Mr. Jerbic set forth. I dont 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 weve heard today. First of all, I disagree with the underlying idea that you cant 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 dont have these kinds of laws that prohibit First Amendment activity and businesses flourish. And its 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

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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. Im 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 cant decide is and isnt 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 youre dressed up and youre trying to get people to give money to take a picture, is that First Amendment or is that or isnt 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 its actually irrelevant, they said, whether its, its both protected to go after tips, to ask for tips and to passively seek them. And, weve heard a lot of things about, well, theres the balloon artist, things like that, who, Im sorry, hula hoops and things like that, those are clearly not protected. Someone dressing up in silver and portraying a statue, thats not protected. Thats 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

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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 are 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 McLETCHE

Sure.

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COUNCILMAN BARLOW

Well, number one, it seems like youre trying to rush through it. You dont have to rush

MAGGIE McLEITCHIE

Okay.

COUNCILMAN BARLOW

You can take your time.

MAGGIE McLEITCHIE

We , weve just been here so long.

COUNCILMAN BARLOW

I know.

MAGGIE McLEITCHIE

Im 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 McLEITCHIE

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Thank you very much. I also appreciate that also.

COUNCILMAN BARLOW

So you dont have to, you know, feel as though youre being pressured, youre not. So you can take your time.

MAGGIE McLETCHE

Im 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 McLETCHE

McLetchie.

COUNCILMAN BARLOW

Mcletchie. Ms. Mcletchie case study stating that shes referencing public park, so I wanna be able to see, if in fact, are they one in the same? Or, if in fact, theyre separate?

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BRAD JERBIC

Its actually none of the above. Its 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

Its 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. Thats whats 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

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limited to reasonable time and place and manner restrictions.

COUNCILMAN BARLOW

Okay. And youre not

MAGGIE McLETCHE

If

COUNCILMAN BARLOW

I just want to hear

BRAD JERBIC

I think were probably on the same page (inaudible)

COUNCILMAN BARLOW

Ms. McLetchie, respond to that.

MAGGIE McLETCHE

Were on the same page (inaudible) public forum and

COUNCILMAN BARLOW

Okay.

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MAGGIE McLEITCHIE

while this talks about public parks, the point is that they're both public forums.

COUNCILMAN BARLOW

Okay.

MAGGIE McLEITCHIE

So they, the legal analysis for Berger is exactly, directly applicable here.

COUNCILMAN BARLOW

Okay.

MAGGIE McLEITCHIE

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 McLEITCHIE

It is a public forum, just like what was at issue in Berger.

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COUNCILMAN BARLOW

Thank you.

MAGGIE McLETCHE

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

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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 were 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 McLEITCHIE

Mm-hmm.

COUNCILMAN BARLOW

will you be submitting those to the Clerk, or are you just mentioning them on the record?

MAGGIE McLEITCHIE

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Im just mentioning them. I can certainly well, this has got my notes on it. Im just mentioning them today. I will submit them. I will write, I will send you guys copies of these later, so that

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COUNCILMAN BARLOW

Okay. Please make sure you send them to the

MAGGIE McLEITCHIE

To the Clerk as well. Sure.

COUNCILMAN BARLOW

Clerk as well, so we can have that on the record.

MAGGIE McLEITCHIE

Im happy to do that.

COUNCILMAN BARLOW

Okay.

MAGGIE McLEITCHIE

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 dont 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 didnt pass constitutional muster and it is far, it was far more permissive than what were looking at today. I heard, I listened with interest to the argument,

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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

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eventually settled it, regarding street creatures on the Las Vegas Strip. And they tried 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 were 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.

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The final point I want to bring up is attorneys fees. Im here before you today, obviously Mr. Jerbic and I have some disagreements about how the constitutionality of this law and I understand that hes your attorney. But weve 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 weve said that ordinances were unconstitutional, theyve been passed anyway. Then weve gone to court and then weve won. And then youve, new ordinances have been proposed. We said, hey, guys, we think theyre unconstitutional, were willing to work with you, but we dont think theyre 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 theres an argument that, hey, Fremont Street Experience Limited Liability Company is paying those, the ACLU isnt paying those, so it doesnt 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, its a waste of judicial resources and, of course, the City Council shouldnt be doing things that violate the constitution. The, I believe youve taken an oath to uphold the Constitution of the United States and when somethings unconstitutional, it shouldnt 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, weve 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, were always willing to sit down with Mr. Jerbic and talk and try to figure out if theres other ways we can come to an agreement with

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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 were 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 cant discuss the contours of what were talking about there, because its protected, but those are ongoing. And a judges already expended significant time in trying to work this out between the parties and so Im, I just dont 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 whos 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 peoples 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 were trying to take care of things down there.

Unless you have any questions, thats all I have.

COUNCILMAN BARLOW

Councilman?

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VERBATIM TRANSCRIPT ITEM 3 BILL NO. 2010-31

COUNCILMAN ANTHONY

I have a question.

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MAGGIE McLEITCHIE

Sure.

COUNCILMAN ANTHONY

So from your standpoint, it would be constitutional for, lets 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 youre concerned, thats a First Amendment right for somebody to do that?

MAGGIE McLEITCHIE

As far as Im concerned, and more importantly, as far as the Ninth Circuit is concerned.

COUNCILMAN ANTHONY

So youre saying the Ninth Circuit Court of Appeals has ruled that that is permissible activity?

MAGGIE McLEITCHIE

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 Im happy to share this Ill 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.

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But theres also the stipulation that theres time, place and manner restrictions that could be put into place; correct?

MAGGIE McLEITCHIE

That is correct.

COUNCILMAN ANTHONY

That is correct. So putting them in a free speech zone

MAGGIE McLEITCHIE

Mm-hum.

COUNCILMAN ANTHONY

as a, that would be a place restriction, could be constitutional?

MAGGIE McLEITCHIE

It could be.

COUNCILMAN ANTHONY

Could be.

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MAGGIE McLETCHE

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?

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MAGGIE McLEITCHIE

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 McLEITCHIE

Thank you.

COUNCILMAN BARLOW

Ms. Mcleitchie.

MAGGIE McLEITCHIE

Thank you very much. Very good that time.

COUNCILMAN BARLOW

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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), Id just like to, for want of a better word, have a final word. I dont 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 theres a cross over in solicitations or some kind of expressive activity thats 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, Taser-ing somebody who disagrees with him over a \$20 tip. I think were gonna have some serious disagreement over whats protected there and what isnt.

But I think that doesnt really matter. It doesnt really matter if we dont have the (inaudible). Thats the beauty of this ordinance. We dont 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. Its all lumped into one category. Were 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. Were 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.

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As far as the size of the zone, theres no evidence that theyre 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 arent big enough, for whatever reason, dont provide an alternate means of reaching, or (inaudible) communication, you know, well look at them and theyll be expanded. You know, were gonna monitor this and were 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. Its the same First Amendment. Hasnt 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 its not really evolved at the Supreme Court level; its 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 dont think theres anybody who can wrap themselves in the American flag and say this is the First Amendment, its 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 dont 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 dont 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. Thats just the reality of this kind of litigation. And when you talk about winning some and losing some, the taxpayers

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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. Steeds 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,

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(Inaudible)

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COUNCILMAN BARLOW

Eighteen and 24.

BRAD JERBIC

Im 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 dont 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, Id 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

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Good presentation. Lot more informed now. Thanks for coming down to give your

MAGGIE McLETCHE

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 thats appropriate under the First Amendment. They should be doing that. So Im glad youre taking that out. Im also glad to hear that youre actually going to put it in there as permissive activity. Id 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 its somewhat irrelevant now. I mean, theres two ways to go. Just take out the definition of leafleting and dont define the conduct and, as a matter of law, its permissive. Or define it and take it out of the exceptions right now and put a little sentence in saying this is leafleting, heres how its defined and this is perfectly allowable. Either way.

COUNCILMAN ANTHONY

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It seems to me it should be defined. Because I, I mean, how are the police gonna know somebodys leafleting or not. You know, cause ultimately somebodys, its gonna have to be enforced. So, I think that needs to be really defined so that when the cop or security shows up, that persons leafleting, thats okay, leave them alone. Does that make sense?

BRAD JERBIC

Yeah.

COUNCILMAN ANTHONY

Okay. So, Im glad to hear that, but whats different is the soliciting and mall entertainment, to me, is not so much speech as its commercial activity. I mean, thats really what, whats happening down there. People are going down to Fremont Street and theyre soliciting, and entertaining to make a buck. I mean, thats whats happening. And if you dont regulate that, theres gonna be mass chaos down there. I mean, anybodys gonna be able to do it and I think the Fremont Street Experience and the City of Las Vegas has a responsibility to decide whos gonna set up a commercial enterprise down there and who doesnt 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 youre 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 arent doing it always for charity or something. It doesnt matter, under the Constitution whether its for charity

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COUNCILMAN ANTHONY

Okay.

BRAD JERBIC

or themselves.

COUNCILMAN ANTHONY

Thats a good point.

BRAD JERBIC

Its just protected. And so I would urge you rather than make a record that were 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. Youre not completely banning that activity.

Youre allowing it to go into one particular area and if somebody on Fremont Street wants to go

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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

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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

Thats with a do pass recommendation?

COUNCILMAN ANTHONY

Yes.

VAL STEED

Okay.

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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