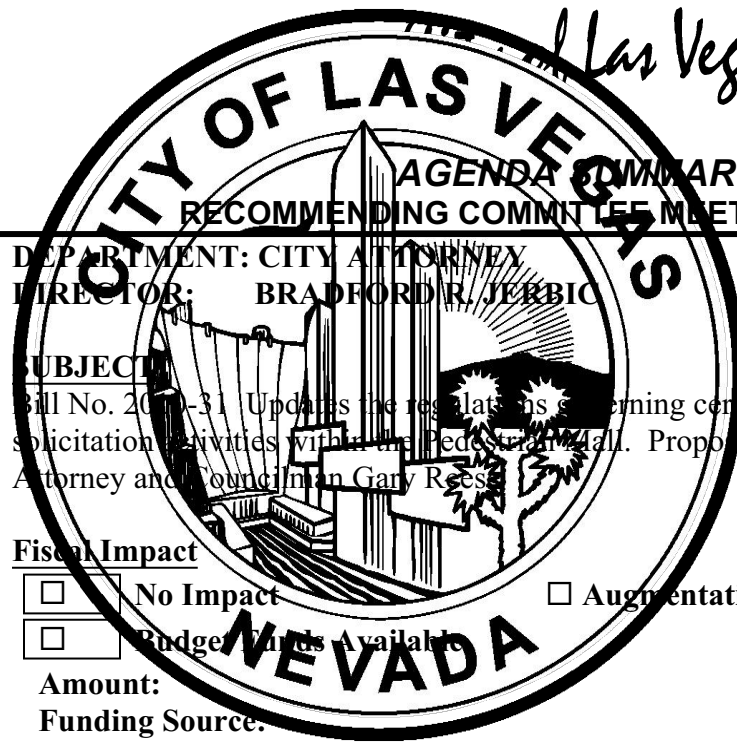




AGENDA SUMMARY PAGE
RECOMMENDING COMMITTEE MEETING OF: JULY 20, 2010

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC

☐ Consent ☒ Discussion

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

Fiscal Impact

☐ No Impact ☐ Augmentation Required
☐ Budget Funds Available

Amount:

Funding Source:

Dept./Division:

PURPOSE/BACKGROUND:

This bill will update the regulations governing certain commercial, entertainment and solicitation activities within the Pedestrian Mall. The bill is intended to address the results of litigation regarding the Pedestrian Mall, allowing for protected expression subject to reasonable time, place and manner regulations.

RECOMMENDATION:

This bill should be submitted to a Recommending Committee for review, hearing and recommendation to the City Council for final action.

BACKUP DOCUMENTATION:

1. Bill No. 2010-31
2. Business Impact Statement
3. Submitted at Meeting Letter and Copy of Santa Monica Municipal Code by Allen Lichtenstein

Motion made by STAVROS S. ANTHONY to Hold in abeyance to 8/3/2010

Passed For: 2; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

RICKI Y. BARLOW, STAVROS S. ANTHONY; (Against-None); (Abstain-None); (Did Not Vote-None); (Excused-None)

Minutes:

COUNCILMAN BARLOW declared the Public Hearing open.

ALLEN LICHTENSTEIN, American Civil Liberties Union of Nevada (ALCU), stated that he would be happy to comment when the item comes back before the Recommending Committee meeting. COUNCILMAN BARLOW responded that he wanted to provide the public an opportunity to speak prior to the Committee taking action.

CITY COUNCIL MEETING OF: July 20, 2010

MR. LICHTENSTEIN submitted written comments outlining the ACLU's opposition to Bill 2010-31. The ACLU has been litigating against the City and the Fremont Street Experience against similar laws since 1997. The courts have already ruled on a ban on advertising and restriction on leafleting. The ACLU is in the process, under the guidance of JUDGE LEAVITT, pursuant to a court case, in negotiating with the City Attorney's Office to come up with guidelines that would fit within the Ninth Circuit Court and Federal District Court regarding constitutional parameters and reasonable regulations. The City would have to understand that those rules need to be adhered to and the proposed ordinance does not do that.

MR. LICHTENSTEIN stated the City can either agree with the ACLU and other stakeholders or go back to court. Federal District Court JUDGE DAVID EZRA ruled against the City and said he did not want to hear about the same issues. If necessary, the ACLU is prepared to fight the same battle.

MR. LICHTENSTEIN explained for COUNCILMAN BARLOW that the regulations proposed in this bill are the same as those adopted in 1997 that were overridden by the courts. Over the years the federal district court and court of appeals have said the City cannot ban leafleting in certain areas. United States District Court Judge EZRA said that is a first amendment protected activity.

He has been working with JAMES [REDACTED] from the City Attorney's Office and the lawyers from the Limited Liability Company. He would not speak about it because it would require going through the other attorneys involved. He opined that progress has been made.

JEFF VICTOR, President of the Fremont Street Experience, LLC, confirmed that JUDGE EZRA said he is tired to see this issue in court and asked that the Fremont Street Experience and the ACLU find a middle ground. He differed on MR. LICHTENSTEIN'S opinion on the progress made. He found zero movement on behalf of the ACLU, who has no interest in finding a middle ground. The public should be tired of being harassed on the street by people conducting commercial activities in what is clearly a tourist recreation area. The Fremont Street Experience is proposing a time, place and manner argument that has been in use in numerous districts similar to the Fremont Street Experience. It is a way of regulating these types of activities to take place. He hopes the Council will support and understand its true nature. There is a big difference between free speech and commercial activity. In either case, whether they be airports or pedestrian malls, time, place and manner arguments are successful and have worked for the betterment of both the person trying to engage in the activity and the public that is surrounded by them.

MR. VICTOR explained for COUNCILMAN BARLOW that the Third Street Promenade in the San Diego area is a good example where the time, place and manner has worked for the betterment of the public and those individuals who seek entertain on the street. The street is laid out differently than Fremont Street. Commercial activity happens on the sidewalks of the pedestrian mall. In the center, which is an abandoned street, street entertainers are allowed to perform but are regulated by a time, specific place, manner, and acts have to rotate every couple of hours. This is also being done in the San Francisco airport where there are free speech zones

CITY COUNCIL MEETING OF: July 20, 2010

beyond a counter where they are not allowed to step in front or harass the flow of traffic. If CITY ATTORNEY BRAD JERBIC were present, the Committee would hear in detail places throughout the United States who have found great success.

COUNCILMAN ANTHONY was hoping for a discussion on this item but understood CITY ATTORNEY'S JERBIC could not be present. He asked that the representatives who spoke return for the 8/3/2010 Recommending Committee meeting because he would like to hear from them after CITY ATTORNEY JERBIC'S presentation.

MR. LITCHENSTEIN submitted a copy of the Santa Monica Municipal Code for comparison.

See Item 3 for related discussion.

COUNCILMAN BARLOW declared the Public Hearing closed.

