

**RECOMMENDING COMMITTEE MEETING OF
August 3, 2010**

VERBATIM TRANSCRIPT – ITEM 3 – BILL NO. 2010-31

**UPDATES THE REGULATIONS GOVERNING CERTAIN COMMERCIAL,
ENTERTAINMENT AND SOLICITATION ACTIVITIES WITHIN THE PEDESTRIAN
MALL. PROPOSED BY: BRADFORD R. JERBIC AND COUNCILMAN GARY REESE**

APPEARANCE LIST:

RICKI Y. BARLOW, Councilman

BRAD JERBIC, City Attorney

STAVROS S. ANTHONY, Councilman

BEVERLY K. BRIDGES, City Clerk

BETSY COMELLA, City Attorney's Office

UNIDENTIFIED MALE

VAL STEED, Chief Deputy City Attorney

JIM NICHOLS, Deputy City Manager

JEFF VICTOR, President, Fremont Street Experience, LLC

GABRIELA PORTILLO-BRENNER, Deputy City Clerk

MAGGIE McLEITCHIE, Staff Attorney, American Civil Liberties Union of Nevada

(9:04 - 11:52)

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22 **COUNCILMAN BARLOW**

23 Now we'll move to Abeyance Item, Bill No. 2010-31, which ups, updates the regulation (sic)
24 governing certain commercial, entertainment and solicitation activities within a pedestrian mall.

25 Proposed by Bradford R. Jerbic, City Attorney, and Councilman Gary Reese.

26 Brad, like to hear from you.

27

28 **BRAD JERBIC**

29 Thank you, members of the Committee, Councilman Barlow, Councilman Anthony, Brad Jerbic
30 from the City – Attorney's Office. I've prepared a PowerPoint that will help walk you through
31 several things this morning that will explain four things. The first part is dedicated to the history
32 of the Fremont Street Experience, and I think it's necessary to understand how we got where
33 we're at. The next portion is devoted to the history of the litigation. The next portion is devoted
34 to the reason for regulations in the Pedestrian Mall. And the last portion is devoted to Bill No.
35 2010-31, being the ordinance that's before you that proposes to impose these regulations.

36 With that, let me start with the history of the Fremont Street Experience. The Fremont Street
37 Experience was conceived in the early 1990's as a way to draw people to the ailing dent, ailing
38 downtown gambling area. The, a number of proposals were heard before the Fremont Street
39 Experience project was the project that was decided upon. There was a project called Las Venice
40 (inaudible) that was a dug out on the street and (inaudible) and boats. There was (sic) other
41 projects that involved building a replica of the structure, a (sic) enterprise that would have
42 elevator ramps going down to the hotel/casinos. Ultimately, the Fremont Street Experience,
43 designed by the (inaudible) Corporation was selected as the project.

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44 The street was permanently closed and, to vehicular traffic in 1994, and the structure began that
45 year, and the Fremont Street Experience opened a year later, in 1995. It's a cooperative venture,
46 owned, operated by a group of downtown hotel companies, with ongoing involvement by the
47 City of Las Vegas, and I'll get into that in a moment. If you have any questions, by the way, as I
48 go through this, please feel free to stop me and ask.

49 The original Fremont Street Experience, as conceived, was the Fremont Street Experience
50 Canopy, which then did not have lights under it; it had sky floats under it. These were floats that
51 zipped up and down a line and up and down the street, and were based in the parking garage,
52 where they were operated and maintained. It – always included the removal of the streets and
53 sidewalks, to be replaced by a pedestrian mall. The construction of the parking garage and the
54 Fremont Street Experience was also contemplated between Fourth and Las Vegas Boulevard.

55 I just wanna point out that before the project, the sidewalks had always been opened to speech,
56 but that the former street itself had only been used for vehicular traffic. In order to make this deal
57 happen, the original four-party agreement was drafted in October of 1993, included four entities:
58 the City of Las Vegas, the City of Las Vegas Redevelopment Agency, the Fremont Street
59 Experience Limited Liability Company and the Fremont Street Experience Parking Garage,
60 Limited Liability Company. So, this is, when I refer to the four-party agreement, these are the
61 four parties that are involved. And, let me just state, the Fremont Street Experience Limited
62 Liability Company has the same members as the Fremont Street Experience Parking Garage
63 Limited Liability Company. One is in charge of the garage; the other in charge of the Experience
64 and the operation and management of the Experience.

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65 **COUNCILMAN ANTHONY**

66 It's like that today?

67

68 **BRAD JERBIC**

69 That's correct.

70

71 **COUNCILMAN ANTHONY**

72 Okay.

73

74 **BRAD JERBIC**

75 That's still to this day, same management (inaudible). There may be some slight tweaking of the
76 individual members of the LLC, so, as you're aware a number of the hotel/casinos sold, some
77 members may have dropped in or dropped out. I think they added members as opposed to lost
78 members, but, nevertheless, that's essentially the same group that's existed since 1993.

79 In September of 1995, the four-party agreement was amended and restated to reflect the final
80 version of the Fremont Street Experience and the parking garage. So, things happened in those
81 few years. One, the project evolved, from just a pedestrian mall with its (inaudible), the sky
82 parade to the Pedestrian Mall with a light show, there was no longer a need to house the parade
83 in the parking garage, so it became just a parking garage.

84 A number of things, though, came up during the course of the construction that needed to be
85 addressed. One was, the parking garage sat on a site that was largely controlled by the City, but a
86 number of parcels had to be condemned and acquired by the City. We estimated the amount of
87 money that would be necessary, to acquire those parcels, about \$6.4 million, knowing it could

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88 well go over 6.4. The question became: What would happen if it did? So, the amended
89 agreement also memorialized the fact that the Fremont Street Experience Parking Garage, LLC,
90 would pick up the cost and any overage, overruns on the acquisition cost of the – land for the
91 parking garage. So, memorialize the final project, the light show, memorialize who's responsible
92 for the acquisition of the property overruns.

93 Again, Fremont Street is responsible now for the operation and maintenance of the Fremont
94 Street Experience, including, but not limited to, the operation and maintenance of the Pedestrian
95 Mall, and operation and maintenance of the canopy light show. When I say canopy and light
96 show, until a few years ago, that canopy wasn't LED; it was light bulbs, and every light bulb
97 needed changing from time to time, and the electricity cost was enormous. The Fremont Street
98 Experience, LLC, was responsible for operation and maintenance of that canopy, and the canopy
99 as it exists today, with the LED's, responsible for the electric bill, responsible for programming
100 the computers that generate the show, responsible for maintenance of the mall, for the watering
101 of the trees, for cleaning up every stick of gum that somebody spits out on the mall. All operation
102 and maintenance, it's a hundred percent Fremont Street Experience, LLC.

103 The Fremont Street Experience Parking Garage is responsible for repaying taxpayers, the cost
104 overruns and acquiring the property for the parking garage, that comes out of the net retail
105 proceeds from the retail on the first floor of the parking garage, which today consists of
106 Walgreens, Hennessey's and Mickey Finn's. That net retail proceeds comes to the City of Las
107 Vegas until we get paid back all the overage cost. So, we have a direct financial interest in the
108 success of the parking garage itself. The Fremont Street Experience, LLC, derives all of the
109 profits from gross revenues of the Pedestrian Mall, to offset the cost of operations and
110 maintenance, including the leasing of retail space in the mall, special events and any other

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111 commercial use permitted by the development agreement. Which means that all the things I just
112 discussed that Fremont Street pays for, electricity, light show, the maintenance of the canopy, the
113 computer programming, and alike. They fund out of pocket that portion which isn't raised by
114 retail profits from the mall. That is largely the sale of the kiosks, the rental of the kiosks of the
115 mall. That is any left over money from – the net retail, after (inaudible). That is any other money
116 they raise from special events, like closing the street for New Year's Eve, and things like that.

117 How was the Pedestrian Mall funded? This is also important to understand. There were four
118 main sources of revenue that built the Fremont Street Experience. The first was a room-tax bond.
119 The hotels on Fremont Street agreed to have imposed on them an additional two percent tax on
120 rooms. And those hotels just a block or two off of Fremont, agreed to a one percent additional
121 tax on rooms. That allowed accountants, and alike, to look at a revenue stream that that would
122 produce, and they could estimate what kind of bond you could issue, based on that revenue
123 stream. That generated a bond of approximately \$20 million; it was in the 18, 22 million dollar
124 range. But it – generated a bond worth, at that much, a twenty-year bond. Again, the payment of
125 that bond falls on the taxpayers, unless the room tax is sufficient. So, success of the rooms, room
126 revenue is critical paying back that bond issue. The tax increment bond is funded by the tax
127 increment generated by the Redevelopment Agency. Which, back then, wasn't terribly much, so
128 we maximized the bond to get every ounce of tax increment financing we could out of it. And
129 was, again, an 18 to 20 million dollar bond. That bond is – pretty good today, because tax
130 increment of the Redevelopment area has gone up instead of down. So, if you have any
131 questions, I'd be glad to address them. But that's how the tax increment bond works.

132 There was a contribution from the Fremont Street Experience; that is, the member entities of the
133 LLC contributed money to, one, when the change was made, to upgrade from floats to a light

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134 show, there were additional costs involved. That was all absorbed by the Fremont Street
135 Experience. In addition, they were in for another 10 to 15 million dollars of their own money to
136 make the project work. And the final thing, and this becomes important because of just the bad
137 publicity and – misconceptions that occurred as a result of it. There was a six million dollar grant
138 from the Las Vegas Convention and Visitors Authority. This was a one-time grant. For the first
139 six years of the project, LVCVA gave a million dollars a year. That's long expired. For the six
140 years of the project, beginning in '95, \$6 million a year, where it was given to the project, a
141 million dollars a year.

142 Who owns the Pedestrian Mall? Before the Pedestrian Mall was constructed, as I said, it was
143 sidewalk and street. Street is called right-of-way. Streets are things that are owned by the City for
144 a particular purpose. In this case, right-of-way, vehicular traffic. We cannot sell streets; we
145 cannot sell sidewalks. The method that cities get rid of those things is called vacation. So, when
146 you see on the afternoon agenda of the City Council to vacate a street, or vacate a sidewalk, or a
147 portion thereof, that's how we give things back. It says, we don't need them anymore. And by
148 operation of the law, the underlying interest reverts back to the adjoining property owner.

149 So, Councilman Anthony, if you and I have a house across the street from each other, and there's
150 a street down the middle of it, and it's decided that the street is no longer needed, and it's
151 vacated, I will now own everything from the front of my property line to the center line of the
152 street. And you will on your side as well. That's how it works when you vacate your interest in
153 something. Again, we could not sell the street to the Fremont Street Experience, we could not
154 give it to the Fremont Street Experience; we could only vacate it or try and convert it.

155 Here's the problem. Unlike most places in the City of Las Vegas, where you own the dirt under
156 your house, and it would go to the center onto the road, if we vacated the street, the hotels
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157 downtown are not built on parcels they own. For the most part, every hotel downtown is built on
158 leased parcels, and some case (sic) multiple-lease parcels. And, I think at the time we did this
159 project, there were 95 sub-parcels. I could be off on that number, but it was right in that area.
160 And, as a result, if the street were vacated, the ownership interest would not go to the hotels from
161 the centerline; it would go to the lease holders that had the property that they leased the property
162 from, to the centerline. Which would mean you would have to assemble about, you know, 80, 90
163 people that have no interest in running hotel/casinos, but just leasing their property to try and
164 make the Fremont Street Experience Pedestrian Mall happen. And that, practically, was
165 absolutely impossible. So, vacating the street was not an option.

166 But what we ended up with was whether or not we could actually build a pedestrian mall on the
167 former street. And we worried that if we used it for something other than vehicular traffic, it
168 would be a de facto vacation, which would mean it would revert back anyway, 'cause you treated
169 it like it wasn't a street anymore. And because you weren't using it as a street, it ended up in the
170 hands of the leaseholders that leased the property of the casinos.

171 We went to the Nevada Legislature, and we had the law changed. NRS 268.812, Subsection 5,
172 now allows the City of Las Vegas to convert right-of-way into pedestrian mall without losing the
173 ownership or the control of the property (inaudible). So, the answer to the question: who owns
174 the Pedestrian Mall, is, the City of Las Vegas owns the dirt under the Mall and the surface of the
175 Mall, but the improvements to the top of the Mall, the canopy and everything, were built and
176 paid for by the Fremont Street Experience.

177 Another myth that has existed over the years off and on, is that the Fremont Street Experience
178 was funded using park money, or in some way is a park, or works like a park. Let me destroy this
179 myth once and for all. The Las Vegas Convention and Visitors Authority is allowed to exist
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180 under Nevada Law 244(A).599. If you look at that section of Nevada Law, you will see it doesn't
181 say convention and visitors authorities. It says County fair and recreation boards. The Las Vegas
182 Convention and Visitors Authority is a fancy name they picked for a County fair and recreation
183 board. That's what they were organized under. And County fair and recreation boards have the
184 authority to do certain things, and fund certain things. And there's a list in NRS 244(A) alludes
185 things they can fund –

186

187 **END RELATED DISCUSSION – RESUMED RELATED DISCUSSION**

188

189 **BRAD JERBIC**

190 I'm sorry. For the record, we had a glitch in the recording. We're back on the record, and, so,
191 I'm gonna just repeat the last few sentences of this slide. Next (inaudible) Fremont Street
192 Experience funded using park money or is it a park? There was a misstatement made years ago
193 that led to this myth, that the Fremont Street Experience is either a park or was funded with park
194 money, and I would like to destroy that myth today once and for all.

195 First, it's important to understand that the six million dollar grant that came from the Las Vegas
196 Convention and Visitors Authority was a one-time grant, but it's, so it's important to understand
197 how they're able to make that grant, under what authority do they have to make a six million
198 dollar grant to the Fremont Street Experience. The LVCVA –

199

200 **COUNCILMAN ANTHONY**

201 Brad –

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202 **BEVERLY BRIDGES**

203 What?

204

205 **BRAD JERBIC**

206 – is created and organized under NRS 244(A).599, which doesn't say anything about convention
207 and visitors authorities. What it does is it gives counties the authority to form county fair and
208 recreation boards. So, the LVCVA is really a county fair and recreation board, and county fair
209 and recreation boards have their own restrictions and their own limitations as to what they can
210 do. There's a list in the Nevada Revised Statutes that says, if you have one of these boards, you
211 can fund certain things. One of them is recreational facilities. One of them is fair grounds. One of
212 them is parks, and there's a whole laundry list.

213 We were concerned whether or not the LVCVA, as the County Fair and Recreation Board, could
214 fund a pedestrian mall under the Nevada Revised Statutes. To make it abundantly clear that it
215 was perfectly permissible for them to fund it, we asked that the Nevada Revised Statutes be
216 changed. So, NRS 268.816, Subsection 3, was amended in 1993 to make it clear that a pedestrian
217 mall is a recreational facility, not a park, a recreational facility eligible for funding under NRS
218 244(A).599. No park money was ever used to construct the Fremont Street Experience, nor has
219 Fremont Street Experience ever been a park.

220 After the four-party agreements were executed, that said who's gonna manage the Experience,
221 how the Experience is gonna be built, what the Experience is gonna be, what the sources of
222 funding are, who's gonna be responsible for the over, overruns and con, and property acquisition,
223 was also important to enact a couple of ordinance, ordinances to deal with conduct and the Mall
224 itself. In 1993, the City adopted the very first ordinance regarding the Pedestrian Mall, the first
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Pedestrian Mall ordinance, which established the Fremont Street Experience Pedestrian Mall, set its initial boundaries, set what the perimeters of the Mall were, and charged the FSE, LLC, with managing and operating the Pedestrian Mall. It also prohibited a number of things in the Mall. It prohibited parades, bicycles, unicycles, skateboarding; things of that nature. It also prohibited solicitation. At the same time this ordinance was adopted, or I should say within three months of it, the City enacted – a new solicitation ordinance to reflect – new laws across the country with respect to having to regulate solicitation.

So, in January of 1995, the City adopts Ordinance No. 3862, creating new definitions of solicitation and coercion, and limiting the places a person can solicit, and prohibiting solicitation within the Pedestrian Mall.

Let me stop there for a moment. There's a definition in this section of the law as to what solicitation is. Then there's complete prohibition City-wide, not just within the Fremont Street Experience, that prohibits coercive or aggressive solicitation. That has never been disturbed, the coercive solicitation hasn't. The courts have had problems, as we'll discuss in a moment, with the definition of solicitation itself and whether or not it's content neutral and – countered all the qualities that the Ninth Circuit wanted to see. But coercive solicitation, generally speaking, across the country, cities that have banned coercive or aggressive solicitation have been upheld over and over again.

The other thing in this ordinance that has been upheld over and over again across the country are bans on places people can solicit. A number of cities have adopted an ordinance that prohibits solicitation within 20 feet of an automatic teller machine. Those have been upheld, because you're a captive audience at an automatic teller machine. The money's coming out, or the person asking for money is standing right there. Within 10 or 20 feet of the entrance to a business, the

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248 City picked 10 feet, but there are cities that have gone even more than 10 feet, from the entrance
249 to a business, cannot solicit. Upheld over and over again.

250 Anywhere within a public transportation facility or upon a public transportation device, like a
251 bus or a commuter train. Again, captive audience. That's been upheld over and over again across
252 the line. Anywhere in a public parking garage. We looked at those laws and those cities, adopted
253 their history and put those laws on our books. And we added one more thing, and we thought we
254 made a record that would sustain it. We added a complete ban on solicitation within the
255 Pedestrian Mall.

256 Let's talk about the Fremont Street Experience, as it exists today, and we'll get to the litigation in
257 a moment. Currently, the Pedestrian Mall is a major tourist attraction in the downtown area. It
258 occupies the western most five blocks of Fremont Street. I can stop right here and add that, it has
259 been added to since it was originally conceived. There were cul-de-sac bulbs on First Street and
260 Third Street on both ends. The Fremont Street Experience has been expanded from Third Street.
261 Now it goes all the way to Ogden, and First Street went all the way to the street immediately to
262 the south. Those cul-de-sac bulbs, (inaudible) went past those.

263 The main attraction is the canopy itself. More than 12 million dollar, or 12 million LED lamps
264 illuminate the overhead canopy. The primary focus, create an environment of entertainment,
265 retail and outdoor dining opportunities. It's also home to the Neon Museum, which places
266 historic signs, which is another addition to the Mall since it was built. The other thing that's
267 happened since the Mall was built is you've seen a Starbucks outside the Golden Nugget, so
268 there's outdoor dining there at that location, down the block that is the form, formerly known as
269 the Neonopolis block, there are outdoor dining experiences there at Hennessey's, Mickey Finn's

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270 and at the former Jillian's location. You also see kiosks up and down the street, which we're
271 gonna talk about in a moment as well.

272 That's pretty much the Fremont Street Experience as it is today. The same four-party agreement
273 is in place. It's been amended several times, same financial relationship.

274 The conclusion is this: Was it originally conceived as a privately operated and managed public
275 attraction, although built on publicly-owned land? That's how it was conceived. The revenue
276 derived from the commercial operation alone would be used to operate the light show and
277 maintain the Pedestrian Mall, and no taxpayer money would ever be used to operate and
278 maintain the Fremont Street Experience. Our money was the upfront money on the bond issues,
279 which still haven't been paid. The downstream benefit was we'd never put another dime into
280 maintaining Fremont Street or the Experience again.

281 Litigation, inevitable. ACLU versus City of Las Vegas, Case No. 9701419, began in 1997. The
282 first lawsuit filed by the ACLU alleged that the solicitation and Pedestrian Mall ordinances were
283 unconstitutional because they prevented solicitation, leafleting, unauthorized vending and the
284 unauthorized erection of tables and structures in the Mall.

285 Let me stop for a moment. I'm using the word leafleting today. As it appeared in the original
286 ordinance, it didn't say leafleting. It said the handing out of materials to passerbys (sic), or words
287 to that effect. When I use the word leafleting, I'm referring to that language. So, I don't want
288 somebody to correct me later in the record and saying that that was an inappropriate use of the
289 term. I'm aware that I'm substituting the word leafleting for it. That's exactly what handing out
290 papers to passerbys (sic) is. It's leafleting, not handbilling (sic).

291 The Federal District Court upheld the solicitation banning and tabling banning. That's the local
292 Federal District Court here in Las Vegas. But it enjoined the enforcement of the leafleting and
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293 vending restrictions. Each side appealed the decision that the Ninth Circuit dismiss these appeals.

294 Let's stop there for a moment to say that in the original ordinance, the City carved out an

295 exception for labor activities. We felt that while the constitution gave you x-amount of

296 protection, the National Labor Relations Act gave unions even more protection. And we felt that

297 in the original ordinance, we recognized that additional protection, that the National Labor

298 Relations Act gave unions to handbill, picket, or things of that nature, and we made an exception

299 for them. The local District Court did not like that exception, felt that it we couldn't legally do

300 that, to add in, to – opt out of that. So, they ruled in favor of the ACLU in that issue, and on the

301 tabling, and favored with the City on the other issue.

302 The Federal District Court granted a summary judgment for the City in 2001, but with regard to

303 solicitation and tabling ordinances, granted a summary to the ACLU with regard to (inaudible)

304 leafleting and vending ordinances. The ACLU challenged the constitutionality of the provisions

305 of the Pedestrian Mall relating to prohibitions involving free speech. The Federal District Court

306 of Nevada upholds most of the provision of the ordinance, pretty much like a summary judgment

307 motions back and forth, but now we're into the merits of the case. A summary judgment is when

308 a court says there are no issues of material fact. We don't need to have a hearing, and based on

309 what is in the record right now, I'm able to make a decision as to who's right or who's wrong.

310 Everybody tried to appeal that to the Ninth Circuit. They didn't want to hear the appeals from the

311 summary judgment. They wanted the final ruling from the court. So, the court in 2001 upholds

312 the, most of the provisions of the ordinance, but, most importantly, made a finding that the

313 Fremont Street Experience was not a public forum. That finding was later gonna be overturned

314 by the Ninth Circuit. I'll get into that in a moment. But when you make a finding that an area is

315 not recreational public forum, all you need is a rational relationship between what you're trying

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316 to accomplish and – what your goal is and what the problem is. It's a very lull standard. A very
317 different standing than what I'm about to get into in a moment. Then we felt that under that
318 standard, the City of Las Vegas met the test, for the most part, in the original ordinance. Didn't
319 meet the test, when it came to tabling and this labor exemption that we had carved out. The
320 ACLU then appealed that decision to the Ninth Circuit Court of Appeals.

321 The Ninth Circuit, in that appeal, determined that the Pedestrian Mall should be classified as a
322 traditional public forum for the purposes of First Amendment Analysis. Evaluating the
323 ordinances under the more demanding standard in a traditional forum, the Ninth Circuit upheld
324 the injunction against leafleting and vending and remanded the case. So, the ACLU on the two
325 issues that we appealed on, was upheld by the court. On the two issues they appealed us on, we
326 were overruled by the court, and sent back to the District Court, who said, District Court, you got
327 it wrong. It's a traditional public forum, you have to apply the more demanding task to see if
328 these restrictions still pass constitutional muster.

329 The Ninth Circuit recognized that all the ordinance is, at that time anyway, including the vending
330 restriction, were content neutral time, place and manner restrictions. Back again in District
331 Court. The Court reanalyzes the solicitation and tabling ordinances, and then held the solicitation
332 banned as a valid content neutral time, place and manner restriction, even under the more strict
333 public forum analysis. Under that analysis, you have to have a substantial interest, as a
334 government, in the regulations. You have to leave alternative channels for communication open
335 when you use these time, place and manner restrictions. And they felt, at least the local District
336 Court felt that we had. Additionally, the Court granted certain judgment for the ACLU in its
337 claim on the table. Again, this labor stuff is still in there. They won on that and on the tabling
338 portion.

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339 Back again. Third time in the Ninth Circuit Court of Appeals, and this time the Ninth Circuit
340 overturned everything that the City of Las Vegas had done and validated all the prohibitions in
341 the Pedestrian Mall ordinance against solicitation, leafleting, tabling and vending in the
342 Pedestrian Mall. With the ordinance pretty much gutted and out the window, the City adopted
343 new legislation. The City felt, at the time, that we were complying, and we still feel that we
344 complied with the Ninth Circuit decision. The City eliminated the ban on leafleting found in the
345 Municipal Code at Section 11.68.100, Subsection 1, and removed the exception for labor related
346 activities. The section I mentioned that we carved out for labor. We removed that from the Code.
347 The City also adjusted the definition of solicitation. We felt to comply with the language of the
348 Ninth Circuit Decision and the ACLU filed the challenge for the new Pedestrian Mall ordinance.
349 Back again in Federal District Court locally. The Federal District Judge granted a summary
350 judgment in March 2009. The result was the definition of solicitation was declared
351 unconstitutional. Even though it had been adjusted, the new judge felt that there were still some
352 problems. The prohibitions against Mall vending, advertising and entertainment were declared
353 unconstitutional. The prohibition against erection of tables and other structures was declared
354 unconstitutional. And the prohibition against solicitation was declared unconstitutional. So, both
355 the definition of solicitation and the prohibition against soliciting in the Mall, both
356 unconstitutional.

357 That's where we're at today. Since then, there have been some discussions as to what the judge's
358 order means. There have been some agreements as to how the Fremont Street Experience
359 security will enforce the law, or in the Pedestrian Mall, given the judge's decision in 2009, I can
360 tell you, as counsel for the City, there's nothing in the judge's order that says the City can't adopt
361 new ordinances. That's what we're here to discuss today.

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362 Before we get to the new ordinance, discuss why our regulation is necessary in the Pedestrian
363 Mall. No regulation means there'll be no viable commercial opportunity in the Mall for the
364 commercial activity that's out there, specifically, the rental of kiosks and other stakes in the
365 Pedestrian Mall. As I mentioned before, as originally conceived, the Pedestrian Mall was a
366 commercial entertainment complex. The Fremont Street Experience, LLC, has the ability, and
367 (inaudible) control of the Mall, operate the Mall and maintain the Mall. They have the
368 opportunity to rent portions of the Mall and use portions of the Mall for the commercial benefit
369 of the Fremont Street Experience, which has a collateral benefit to the City of Las Vegas. That
370 commercial revenue derived from those kiosks and the sale from those kiosks on Fremont Street,
371 and from any other retail sales, from the closing of Fremont Street on New Year's Eve, to the
372 New Year's Eve party, and any other event that they charge money for, to the money they pay
373 for bands to attract more people downtown that fill more rooms and help pay the room tax bonds.
374 We benefit collaterally from the retail that exists on Fremont Street. And those commercial
375 opportunities are severely disruptive as a result of new regulation, and I'll get into the case for
376 that in a moment.

377 Unregulated speech also competes with the primary purpose of the Mall. This wasn't built to be
378 a soapbox. This was built to be a place where people could come and enjoy the light show at
379 night, which runs about every hour, after the sun sets. The stage shows, there are two stages on
380 First Street and Third Street where they have live performances on a regular basis. For special
381 events, there are car rallies down there. I went to an antique car show down there a couple of
382 months ago. When NASCAR's here, they do events related to it. There are probably a plethora
383 of special events, including New Year's Eve, that Mr. Victor, the President of the Fremont Street
384 Experience is in charge of staging, and he'll talk about that in a moment. The retail kiosks and

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385 outdoor cafés that I mentioned earlier, those are all disrupted and hampered without regulation of
386 the Mall, and we'll see how in a moment.

387 Let me go to the first video. Now, before we play this, Betsy (inaudible), I'm sorry, Comella, is
388 my legal assistant who is going to run the video here, and I'll show you (inaudible). I wanna state
389 a couple of things before we go to these. These are snippets of larger videos, and anybody who
390 wants to see the full videos can have access to them at any time. If the ACLU wants copies, I'd
391 be glad to provide you copies of everything. These are the relevant portions I wanted you to see
392 so you know what's going on in the Mall. One of the things I wanna qualify before playing these
393 videos, many of these have got content that is of a religious nature. In other words, this is an anti-
394 abortion protest. There'll be a – pro-Jesus protest, for want of a better term. I'm not playing these
395 for the content of the video. It doesn't matter what these people in these videos are talking about.
396 So, when we see the content, I don't want you to consider the content. I want you to consider
397 several things I'm about to point out. The amount of space they take up. The type of mechanism
398 they use to deliver their message; in other words, amplification systems. The type of structures
399 they bring with them to the Mall. And the amount of pedestrian traffic that they interfere with in
400 the Mall. And what happens to the flow of pedestrian traffic, to the use of the retail kiosks, and
401 the traditional use of the Mall while these activities are underway.

402 Betsy, will you play the first video, please. This occurred earlier (inaudible) 2009, or last
403 summer 2009. You'll see the distraction. This is a loud speaker in the middle of the structure.
404 These are metal structures, metal pipes bolted together with foam board in-between. You can see
405 they're 20, 30 feet long, all bolted together, and probably 8 to 10 feet deep. They were in front of
406 all of the businesses, including Third Street and Fourth Street, on the north side of the street, and
407 adjoining the kiosks. Again, using the loud speaker system. This is the gentleman on the loud
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408 speaker. You can see the people around the signs are watching the people associated with putting
409 up the signs. You don't see tourist traffic. You don't see people walking by. You can see them
410 walking on the outskirts of it.

411 Let's go to the next video. (Inaudible) sorry. I gotta do this. Oh, you got it. This is the next video.
412 These are the kiosks around the same display you just saw with the audio system. Play the video.
413 You'll look at these kiosks, and you'll love this, there is not a pedestrian or a tourist around any
414 of them. In fact you won't even see the vendors themselves around their own kiosks. While this
415 activity is taking place in the Mall, the kiosks adjoining the activity were essentially vacant and
416 almost abandoned, with the merchandise just sitting there. Mr. Victor, who was present for most
417 of this, who saw the videos, will also authenticate them and verify what I've put on the record.

418 Next video. Mall entertainment. You know, I guess, entertainment is in the eyes of the beholder,
419 and there will be some argument that some of this entertainment is protected by the First
420 Amendment Speech or (inaudible) some such thing. We beg to differ, and I would like to provide
421 you a couple of examples of the type of entertainment that has been occurring unfettered in the
422 Fremont Street Experience Pedestrian Mall. This is Mr. Animation. Play the video, please. You
423 can see Mr. Animation sets up in the Mall. He's in the intersection. This looks like, this is Third
424 Street. A circle of people around him, many, many people, nobody's walking through the middle
425 of the wall now because of the crowd that he's attracted. Mr. Animation is out there for purely
426 commercial purposes. At the end of the video, you're gonna see him step off the stage.
427 Individual to the right has got a handful of cash. Mr. Animation is gonna grab a large, black bag
428 and he's gonna walk around with this black bag while people put money. Unfortunately, the
429 video that we played for you today has been cut a little short. It continues on for another couple

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430 minutes, and the full video will be entered into the record. You'll see they're also selling his
431 DVD's.

432 Again, this is not activity that was authorized by the Fremont Street Experience, neither
433 programmed by the Fremont Street Experience. It's kind of an ad hoc thing that happens
434 downtown.

435 Next video. Well, that looked a lot, let me go back. Let me see if I can do this. I'll try again.
436 This, again, is another group that came downtown. Just ad hoc, set up tables, amplification
437 systems, microphones, set up a choir. And don't pay any attention to the content; pay attention to
438 the conduct. The conduct, again, taking up an enormous portion of the Pedestrian Mall, around
439 the kiosks, and the like, as seen, a few people watching from the outskirts. No tourists, no
440 activity going on within the area that this group has taken for themselves for their expressive
441 conduct. Again, look at the size of the tables and the fact that they have the amplicated (sic).
442 And, again, outdoor café tables, completely abandoned, nobody standing there.

443

444 **COUNCILMAN BARLOW**

445 Brad.

446

447 **BRAD JERBIC**

448 Um, hum.

449

450 **COUNCILMAN BARLOW**

451 I just noticed something in this video. If you could just go back. Can you rewind that a little bit?
452 Or you, it goes back to the beginning?

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453 **BETSY COMELLA**

454 Replay?

455

456 **COUNCILMAN BARLOW**

457 Yeah, replay. If – you notice the gentleman in the left-hand corner, in just a moment, he’s –, look

458 like, yeah, about right there, looks like he’s handing something out. Hold on. It’s right after this.

459 As a tourist was passing by. It’s coming up. Here it comes. Right there. The gentleman in the

460 yellow shirt.

461

462 **BRAD JERBIC**

463 Yeah.

464

465 **COUNCILMAN BARLOW**

466 Right there.

467

468 **BRAD JERBIC**

469 I don’t know who he’s associated with or what he’s doing. But we’ll talk about hand billing and

470 leafleting in a moment. That is not the activity, oddly enough, I want you to – take away from

471 this. I want you to remain with the size. There’s an enormous amount of space that they occupy,

472 and the inconsistency of this activity with the kind of activity this Mall was designed to promote,

473 which is commercial, entertainment activity.

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474 **UNIDENTIFIED MALE**

475 Commercial.

476

477 **BRAD JERBIC**

478 Is this the next one?

479

480 **BETSY COMELLA**

481 No.

482

483 **BRAD JERBIC**

484 There it is. Again, now we're going to see what happens at night. Another group. Play the video.

485 I want you to notice, this looks like a portaphone (sic), it looks like a megaphone, he's got it

486 hanging around his shoulder. This is at night. You can see the lights are out. The light show is

487 about to begin, or shortly, has just ended. He's out with the megaphone, walking around the

488 Mall. Again, here's another individual. I don't know what kind of expressive conduct he's

489 entering into here, but he is apparently having some very lively conversation with the tourists at

490 the side. You can see when the lights go dark and the show begins, the amplification system

491 doesn't stop, neither does the activity. This is completely inconsistent with the whole purpose of

492 having a light show and sound show that goes with the light show.

493 Next video. This is another group of individuals that were downtown for gay pride about a year

494 ago. Go ahead and play this. What you're gonna see, this is 4th Street. Fourth Street is one of the

495 two areas, as you're aware, that vehicular traffic crosses the Pedestrian Mall. Their expressive

496 activity attracts a crowd that you'll see (inaudible) step forward, but as the camera goes down,

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497 you're going to see that this expressive activity has essentially created a plug on the 4th Street
498 and the Fremont Street Experience, to the point where people are standing in the street can't get
499 into the Pedestrian Mall. In a moment, you're gonna see, as the video pans to the right, you're
500 gonna see the gates that close the street for the parade are still open. The street is still open to
501 vehicular traffic. And, as a result of the conduct that you're seeing out here, forget the content,
502 you're looking for conduct, of individuals standing in the middle of a travel street. They,
503 (inaudible). Once, again, at night, another individual. Literally, it appears, play it, Betsy, literally,
504 it appears, standing on his (inaudible) on his soapbox in the middle of the 1st Street intersection,
505 at night, again, an amplification system. What are the people doing? Nobody is going through
506 this intersection or coming anywhere near this guy. Again, activity completely inconsistent with
507 the Pedestrian Mall.

508 The next video. Oops, I'm sorry. That was me.

509

510 **BETSY COMELLA**

511 Sorry.

512

513 **BRAD JERBIC**

514 This is Mr., we call him Robot Man, but he is another freelance performer that shows up ad hoc
515 on Fremont Street, sets up in various locations. We've got individuals complain to us that this is
516 a public area open to this kind of expressive activity, and he even made the argument that this is
517 First Amendment protected expressive activity. Let's see what Mr. Robot Man has to say about
518 that. Tourists were taking this video account. We'll see some pictures in a moment. Again,
519 amplification systems to the right. He's being videotaped. He's telling them you can't film me;

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520 you can't film me. Get out of here. The, this is an individual that a lot of people might think is
521 associated with the Fremont Street Experience. They might think he's a freelance performer,
522 regardless of what they think. This is a guy who, supposedly, is there entertaining, jumps off his
523 platform, tells them not to videotape and then scares them away. This again, completely
524 inconsistent with the reasons this Pedestrian Mall was created and the kind of conduct for
525 freelance performers that is not conducive to commercial entertainment activity within the Mall.

526 Next video. Back again at night on Fremont Street. (Inaudible). You'll notice, once again,
527 individual with this particular group (inaudible) tourists, signs that you'll see when we pan back
528 in this video and the next one, pretty much line this particular intersection, which is a
529 thoroughfare for pedestrian traffic. You'll see people staying away from this entire area while
530 they're there. Again, at night, with a megaphone, walking around. Again, pay no attention to the
531 content; pay attention to the conduct.

532 One more. It's getting a little redundant now. I'll do one more for you on this one. Again, created
533 for a light show, sound show, retail experiences, and here's somebody with an amplification
534 system, not just speaking speech. We'll talk about that separately later. The amplification system
535 and the conduct is what I want you to see.

536 Okay. That's the end of the videos. There is one more video that we were unable to have
537 transformed into the PowerPoint. In, is a video that you'll see pictures of in a moment. When I
538 get to the pictures, I'll describe the video for you. Again, it involves entertainers on Fremont
539 Street.

540 Let's go to a couple of things that are in this ordinance. The new ordinance, which we are going
541 to talk about in a minutes, has got a prohibition against three things outright anywhere in the
542 Mall, amplification systems, prohibition against throwing things in the Mall, as throwing or
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543 objects over into the Mall, and a complete prohibition against hula hoops, which I've been asked
544 why hula hoops. This is why. These are just pictures. An individual showed up with an
545 entrepreneurial spirit thinking that he would rent oversized hula hoops to individuals to use in the
546 Pedestrian Mall. As you can see, this is a four foot, five foot (inaudible) hula hoop that you
547 would probably have as kid that you might have used. These are rather large hula hoops. The
548 size that shouldn't be seen, as I said, in the Pedestrian Mall. The next several slides all show how
549 big these things are, how much space they take up. Again, we're not looking at expressive
550 speech; we're looking at the conduct itself and the consequences on the primary use of the Mall.
551 Here's a picture of another entertainer in the Mall. I don't know what his name is, but, as you can
552 see, this fellow sets up orange traffic cones. Huge circle in the Pedestrian Mall. Blocks it out for
553 himself. (Inaudible) performance. Has right next to him a bucket for money. So this is not, he's
554 trying to – raise some funds here. And this is the collection that he has with him, and the bucket,
555 as you can see, in the upper left-hand corner of his (inaudible). This is Mr. Robot Man again. I
556 wanted to show this (inaudible) in the original video, but (inaudible), it's a bucket with the dollar
557 sign on. He's doing this for cash. Once again, Mr. Robot Man at a different location. Once
558 again, a slightly different location, his bucket and his amplification system.

559 This is the video that we couldn't, unfortunately, get (inaudible) up, but I will introduce it into
560 the record before the Council meeting. You can find it on YouTube, if you go to thriller
561 downtown-Las Vegas. It's, a couple of guys dressed up as members of the rock band Kiss. The
562 Fremont Street Experience runs a number of like and sound (inaudible). One of them is a tribute
563 to the rock band Queen. One of them is a tribute to the rock bank Kiss. So two entrepreneurial
564 fellows decided they would dress up as members of the rock bank Kiss with pretty good makeup
565 and costumes, come downtown and see if they could get their pictures taken with tourists for

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566 \$20. When tourists were asked, I don't know who paid and who didn't, this particular individual

567 did not –

568

569 **COUNCILMAN BARLOW**

570 Brad?

571

572 **BRAD JERBIC**

573 Um, hum.

574

575 **COUNCILMAN BARLOW**

576 Couldn't we go online and pull that up from online?

577

578 **BRAD JERBIC**

579 You might be able to. It's a, it's about a five-minute video, if you wanna watch the entire thing. I

580 can describe it for you, and I can later on play you a small portion at the Council meeting. I

581 downloaded it last night myself and was able to convert it again. We have two of the three copies

582 provided on Fremont Street that just didn't play. But if you really wanna see it –

583

584 **VAL STEED**

585 We're blocked today.

586

587 **BEVERLY K. BRIDGES**

588 YouTube is blocked.

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589 **BRAD JERBIC**

590 YouTube is blocked. There's your answer. We have no access to anything. We have no access to
591 anything (inaudible). So –, I can't even (inaudible)

592

593 **COUNCILMAN BARLOW**

594 (Inaudible)

595

596 **COUNCILMAN ANTHONY**

597 (Inaudible)

598

599 **BRAD JERBIC**

600 Yeah, you can get it on your iPhone, but you can't get it on the City's computer. What you're
601 about to see is just a couple of snippets. These individuals dressed as members of the rock band
602 Kiss, and I'm gonna speculate something here. This is not by accident. This is my speculation.
603 With a – show devoted to Kiss, two people dressing up like Kiss, I would bet that there is a lot of
604 confusion amongst tourists as to whether or not these individuals are entertainment provided
605 consistent with the light show by Fremont Street Experience or entrepreneurs. We don't know,
606 we didn't know the answer one way or the other. But I wanna show you what happens. They
607 come down. The individual in the red shirt appears to be associated with them. This is one of the
608 members. This is another member of the – two guys dressed up as Kiss, and he's arguing with a
609 tourist in a white T-shirt. You can't see the handwriting. What you can see is that somehow,
610 during this altercation, and we don't have good sound on it or anything, so he set this to Michael
611 Jackson's Thriller, which is why the video has its name. But what we see is the member of the

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612 rock band Kiss appears to have in his hand a handheld device, which appears to be a Taser. He's
613 carrying it throughout portions of the video, and then, at some point in time, he puts it right into
614 the chest of the tourist and he hits the button. You can see the light blue spark coming from his
615 hand into the chest of the tourist. When the video concludes, you can hear somebody saying, get
616 out of here, or words to that effect, and, oh, he owes \$20. Mr. Victor will testify to this event in a
617 moment, when he gets to a portion of the presentation. But, I think, there's a feeling that these
618 individuals charging people money for photographs, and this individual didn't pay. Got into
619 some kind of altercation and that resulted in him being Tasered.

620 Again, this is the kind of unregulated activity that's completely inconsistent with the Pedestrian
621 Mall, with its function, its primary purpose and the commercial entertainment complex we tried
622 to create.

623 The new ordinance. What, that brings us to the ordinance before you today at Recommending.
624 Bill No. 2010-31, recognizes that the Pedestrian Mall is a traditional public forum, subject to
625 reasonable time, place and manner restrictions. The government must demonstrate a significant
626 interest in said regulation, and the restrictions must be narrowly tailored, leaving alternatives to
627 speech available. We're aware of the standard. I have no doubt that as, the end of this you're
628 gonna hear contrary reasons to what that standard is and isn't and whether or not we meet that
629 standard with this particular ordinance. But, I'm here to make the case for why we do.

630 Right now, I wanna point out something I said earlier in the presentation. There are a number of
631 things the City can do, right now, that wouldn't require any laws. They're not going to be enough
632 to regulate the Mall. But they could be done right now, and I doubt there would be any
633 successful litigation against the City. We can prohibit sol, coercive solicitation, that's blocking,
634 threatening, (inaudible) or forcing someone (inaudible). We could do that right now City-wide,

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635 including Fremont Street. We can prohibit solicitation within 20 feet of an ATM or 10 feet of the
636 entrance of a commercial building. That's in the law right now. All of those building owners on
637 Fremont Street, and alike, we can right now prohibit it within 10 feet.

638 Solicitation in convention centers; there's a local case, the Las Vegas Convention and Visitors
639 Authority were able to keep people that were hand billers and leafleters (sic), and alike, off the
640 space of the Convention and Visitors Authority during shows that were going out there. The ones
641 like Comdex and CES and things like that. The court said, that's being used for another purpose.
642 They can be regulated and put in another place during those events.

643 Convention protestors, the World Trade Organization in Seattle, Washington, many years ago,
644 they cited the City of Seattle to separate the protestors from where the delegates were in the
645 convention. The Ninth Circuit Court of Appeals said, sure, they have, it's content neutral, they
646 can be in a separate place. And that was upheld. I'm not gonna introduce that case into the
647 record.

648 So (inaudible) public fairgrounds. In Minneapolis, individuals showed up from the Society for
649 Christian Consciousness; they were not allowed to go anywhere in the fairground and speak their
650 First Amendment Speech, although it was a traditional public forum. They were restricted to a
651 particular area. The content of their speech wasn't regulated at all. It was just a time, place and
652 manner restriction the court found constitutional.

653 And beach vendors in Waikiki Beach. For a five-mile section of Waikiki Beach, there's a
654 restriction to the type of express activity there can occur on or near beachfront.

655 So these are things, and there are other cases as well that talk about what could be prohibited
656 right now as a matter of law as it exists in the Ninth Circuit (inaudible).

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657 With that, let me show you what it means with respect to the Pedestrian Mall. I'm gonna show
658 you a number of slides up here. We're gonna start with Main Street. This is Main to 1st, 1st to
659 Casino, Casino to 3rd, 3rd to 4th, 4th to Las Vegas Boulevard. The 3rd Street spur, that we're
660 gonna talk about in a moment, it's a location for the free expression zones. This is North 3rd
661 Street, north of the Pedestrian Mall, and this is North 1st Street of the Pedestrian Mall. These are
662 all, this is the entire Mall, as currently defined in the Pedestrian Mall Ordinance. What you have
663 in front of you is a piece of paper that looks like this that has it all put together. In front of you, is
664 a colored version of the document I have in front of you. I've given a copy to the Clerk, and I'd
665 like it marked as an exhibit and (inaudible) here.

666 This particular map represents, and Mr. Victor will testify to it, represents the Pedestrian Mall
667 with the Kiosks and the building entrances, although I think it lacks, in some portions, the
668 outdoor cafes. So let's just talk about the map itself, as it exists. We believe, and we'll make the
669 case for it at the Council meeting as well, that when we enacted the ordinance that banned
670 solicitation within 10 feet of a building entrance, although we could have gone bigger, as some
671 cities have, within 20 feet of an ATM, we didn't look at the ban near kiosks, 'cause we didn't
672 have kiosks. At the time they weren't really an issue. If we were to look at such a prohibition,
673 you would have to ask yourself: is a kiosk more like an ATM or more like a building entrance?
674 Well, we submit that the record be substantial that it's more like an ATM. And why? When you
675 walk into a building, you're walking into a business – entrance. You probably have money,
676 you're probably gonna go shopping, and that's why the law says, you could prohibit solicitors
677 from being within 10 feet of you when you walk through a building entrance, because they know
678 you're likely to be a person that can give them something, and you're more a captive audience at
679 that choke point.

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680 At an ATM it's 20 feet, 'cause you're (sic) no longer, potentially, have money in your pocket;
681 you got it coming out of a machine. Your card is right there; you're a very captive audience. So
682 the distance is bigger at ATM's. The same exists at a kiosk. You're not going into a business;
683 that is a business. The cash drawer is right there. Your cash or credit card are (sic) coming right
684 out. You are the same kind of captive audience you are at an ATM. So, I think there's a
685 compelling case, in fact, an overwhelming case that the distance separation we set for kiosks, to
686 keep solicitors away, be 20 feet, not 10 feet.

687 But let's look at the math. At the kiosks, you have an inner circle, that's a 10-foot circle, you've
688 got a 20-foot circle. With a case made for a 20-foot diameter around the kiosks, you can see,
689 looking at your handout map, that the circles overlap, substantially, throughout the Pedestrian
690 Mall. An argument could be made, right now, that with no change in the law, just with those
691 distance separations, you could prohibit solicitation activity at anytime, anywhere within those
692 circles. What that leaves you is the space in-between, where you see no circles for pedestrian
693 traffic and other activity. We look at this as a possible alternative to a new ordinance. We call it
694 the Swiss cheese map, for obvious reasons. If you were to enact an ordin, or just leave the
695 ordinance alone, not enact anything. Just use the existing law, coercive solicitation, solicitation
696 within 20 feet of a kiosk, 20 feet of an ATM, 10 feet of a building entrance. I wanna say existing
697 law, we would add kiosk, so make the case for the 20 feet. If you were to do that, you would end
698 up with something that looks like this, which would be absolutely unenforceable.

699 Why would it be unenforceable? One, nobody knows where 19 feet ends and 21 feet begins. You
700 would have to, literally, on the pavement, around every kiosk, every time you move them, draw a
701 circle so everybody knew where you could be and where you couldn't. And the kiosks are from
702 time to time rearranged.

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703 The other thing that you would have is a temporal problem. Individuals who complain about
704 activity within these areas would have to pretty much catch them and prove it, because let's face
705 it, by the time the cop gets there, proving it, and the exact place that they were, it's gonna be
706 almost impossible. So enforcement of this kind of model is – almost impossible, and, as a result,
707 in considering it, we felt it didn't work.

708 We also looked at the spaces in-between, and Mr. Victor will testify to this as well, and said,
709 could you have free expressions zones in-between those circles? And the answer was no, because
710 of the amount of pedestrian traffic. Those are areas, I mean, that Mall, as you've seen at night, is
711 packed. And when there's (sic) special events it's even more packed. And, as a result, it was felt,
712 the need to keep the pedestrian flow moving, and to keep access to the retail going, it didn't work
713 in this portion of the Mall.

714 Let me talk about what the court decision, rendered by Judge Ezra of the last go around meant.
715 Judge Ezra said a number of things. Ultimately –, all the regulations that the City had in place on
716 the Mall were thrown out. But before they were thrown out, Judge Ezra acknowledged a number
717 of things the Ninth Circuit had found, and that he had found. And I'm putting them all together
718 on one nice slide. Court decisions concerning the Fremont Street Experience have recognized
719 that the ACLU and any person challenging the ordinance has to challenge: 1) that restrictions
720 upon the act of solicitation, content neutral, that the City and the Fremont Street Experience have
721 a significant interest in ensuring safe, efficient and orderly movement of pedestrians in the
722 Pedestrian Mall. That's a given. We don't have to argue that. Of course, we know that. The City
723 and the Fremont Street Experience have a significant interest in protecting the local merchant
724 economy from an unfair competition. What kind of unfair competition? What happens when you
725 put up a free table with T-shirts, very much like the T-shirts that are being sold by a person at a

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726 kiosk who's paying \$5,000 a month or more to rent a kiosk? That's, obviously, not fair
727 competition, and Mr. Victor's gonna talk about the effect of that kind of activity on kiosk
728 owners.

729 Another given is that the City and the Fremont Street Experience have a significant interest in
730 protecting visitors from solicitors in an environment where freedom of movement is restricted.

731 The City and the Fremont Street Experience have a significant interest in preventing the
732 destruction of mall entertainment, and the destruction of visitors enjoying the Mall Experience.

733 And, finally, the City and the Fremont Street Experience have a significant interest in protecting
734 the aesthetic appearance of the Mall by eliminating visual blight caused by an unsightly vendor.

735 Those facts, I think, have been established by the videos and the pictures, and they will be
736 enhanced by testimony from Mr. Victor in a moment.

737 But let's talk about what we came down with. The City, as I said, added three things to the list of
738 things prohibited in the Mall, anywhere in the Mall, in addition to unicycles, parades, bicycles,
739 skateboarding, and the like, we added amplified sound for reasons, I think, I've already made
740 clear in the record that I made. Throwing things in the Mall, which I don't think anybody has any
741 argument with that's not any kind of expressive activity protected by the constitution. Shouldn't
742 have probably been there in the first place when we enacted the ordinance, and hula hoops,
743 which we made the case for, which I don't think is expressive activity either protected by the
744 constitution.

745 What did we prohibit Mall-wise that's only allowed in free expression zones? Three things in the
746 ordinance: solicitation, as defined in the Municipal Code, leafleting and Mall entertainment.

747 Before I go any further, I'm gonna tell you that when we drafted the ordinance, we had a lot of
748 evidence. Mr. Victor, he provided a lot of evidence. Reports that I've read provided a lot of
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749 evidence. I am gonna tell you as of right now, in my opinion, that evidence does not arise to a
750 level that I think would support limiting leafleting only to free expression zones. And, so, today,
751 we will ask that this, if it does pass out of Recommending, passed out as amended, so that only
752 solicitation and mall entertainment are limited to free expression zones. We are not, at this point
753 in time, gonna include leafleting. If in the future, the activity in the Mall rises to a level that I feel
754 we can make a case here at the Recommending Committee, before the City Council and before a
755 court of law, we may bring it back. So, I reserve the right to do that. But, today, I will tell you, in
756 all candor, I don't think the law, the evidence rises to that level. I think it does with respect to
757 solicitation and mall entertainment.

758

759 **COUNCILMAN ANTHONY**

760 Mr. Chair, can I ask a question?

761

762 **COUNCILMAN BARLOW**

763 Yes.

764

765 **COUNCILMAN ANTHONY**

766 What's the definition of leafleting?

767

768 **BRAD JERBIC**

769 Handing out material by hand.

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770 **COUNCILMAN ANTHONY**

771 So –

772

773 **BRAD JERBIC**

774 It can be cards, pamphlets, literature –

775

776 **COUNCILMAN ANTHONY**

777 Holding a sign?

778

779 **BRAD JERBIC**

780 Holding a sign is not leafleting. (Inaudible) holding a sign is completely (inaudible)

781

782 **COUNCILMAN ANTHONY**

783 So it's just standing – there, walking around?

784

785 **BRAD JERBIC**

786 Right. You don't even have to have –

787

788 **COUNCILMAN ANTHONY**

789 You don't (inaudible) –

790

791 **BRAD JERBIC**

792 Standing still or walking around, handing out material.

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793 **COUNCILMAN ANTHONY**

794 Handing out material.

795

796 **BRAD JERBIC**

797 Basically, to passersby, not – a stationary zone, that's never been included. A box that has

798 literature in it, that's not leafleting. An individual handing things out.

799

800 **COUNCILMAN ANTHONY**

801 So, the – one video where somebody is there with a sign and they're yelling something, what's,

802 what is, where does –

803

804 **BRAD JERBIC**

805 That is nothing. That has never been prohibited since the ordinance was enacted.

806

807 **COUNCILMAN ANTHONY**

808 So, where does – that fit into soliciting leafleting and entertainment?

809

810 **BRAD JERBIC**

811 It doesn't.

812

813 **COUNCILMAN ANTHONY**

814 So, that would be allowed?

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815 **BRAD JERBIC**

816 That's allowed.

817

818 **COUNCILMAN ANTHONY**

819 Okay –

820

821 **BRAD JERBIC**

822 But we will take a look at –

823

824 **COUNCILMAN ANTHONY**

825 Under – (inaudible)

826

827 **BRAD JERBIC**

828 – structures, and we'll look at things like that, but I think, because we need to go back at some
829 point in time, 'cause this ordinance isn't gonna fix everything. But one of the things we need to
830 go back and take a look at as well are (sic) structures in the Mall. Now, I don't think under any
831 circumstances it's a sign of the type that you saw going to be a structure that would be
832 prohibited. A small sign, what I was seeing there is two foot, four foot by four foot sign,
833 something like that. At some point in time, we'll get to what you saw, like the anti-abortion
834 poster, which was a large metal structure.

835

836 **COUNCILMAN ANTHONY**

837 Right.

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838 **BRAD JERBIC**

839 And that's completely different and what we need to is, and we will come back in the future and
840 look at this, is the structures. Unsafe structures all over the (inaudible). But we have one
841 definition in the Building Code. We have another definition of it here. We actually need a
842 specific definition, I think, in the Pedestrian Mall, to – address structures in that. But what I
843 wanted you to see with the solicited conduct was the megaphone, the speaking, the – free
844 expression coupled with the signs, literally, shoulder to shoulder blocking pedestrian traffic. Any
845 single one, might be hard to argue it blocks anything, depending on what the person's doing.

846

847 **COUNCILMAN ANTHONY**

848 Right.

849

850 **BRAD JERBIC**

851 Conceivably it could; conceivably, it couldn't. Several people shoulder to shoulder, standing in
852 front of an intersection, I don't think there's any argument at all, blocking traffic.

853

854 **COUNCILMAN ANTHONY**

855 But the – two guys standing there with a sign, will they, that would not be prohibited activity
856 (inaudible) –

857

858 **BRAD JERBIC**

859 No. Unless they're asking for something, that is not prohibited.

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860 **COUNCILMAN ANTHONY**

861 Okay.

862

863 **BRAD JERBIC**

864 Free expressions. What did we look at? I just explained that we looked at the Mall itself. Let's
865 talk about the park where the canopy exists. The canopy exists between Main Street and 4th
866 Street of the north and south of the former Fremont Street. We look at that area, and, as you can
867 see by the Swiss cheese map, there are very few opportunities for free expressive activity in that
868 area, because of, one, the kiosks; two, the light show draws people to the entire center of the
869 Mall during the evening presentations. And the stages on 1st Street and 3rd Street also draw huge
870 crowds. The other thing (inaudible). The other thing Mr. Victor will testify to is that the whole
871 Mall, in spite of the kiosks, is used for a lot of special events, particularly car shows and things
872 like that, where vehicles are parked in all of those free spaces and other things are moved around
873 to help accommodate the pedestrians. But it's always a challenge when programming the Mall
874 for a special event, allowing the retail kiosks to be viable and allow pedestrians to move back
875 and forth. So, that was looked at, and decided that that was not viable, as a place for these types
876 of zones.

877 We looked at 1st Street. First Street is vacated on the south side of the Golden Nugget and
878 Pioneer Club, so that's privately owned now. That's no longer Pedestrian Mall. The south side,
879 including the north side, which is not vacated, is where the new 1st Street stage is. That stage
880 itself precludes its use as a free expressive area.

881 We looked at Casino Center, which is a thoroughfare still open to pedestrian traffic, or vehicular
882 traffic, and that's not a place for (inaudible). We looked at 4th Street, also opened to vehicular
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883 traffic. And we looked at the area far to the east. That's the area between 4th Street and Las
884 Vegas Boulevard. Technically, it's part of the Pedestrian Mall. It was not looked at as a viable
885 alternative, because, one, I think, a good argument could be made by anybody challenging the
886 ordinance that you took people completely away from the canopy part of the Fremont Street
887 Experience, put them in another area that's kind of (inaudible), but, two, the ki, the restaurants in
888 that area are more plentiful than any other place in the Fremont Street Experience. There are
889 outdoor cafes at Hennessey's, Mickey Finn's and at the former Jillian's. There may be more in
890 the future. Those are places where you can (inaudible) solicitation, (inaudible) with tables and
891 the like, but that doesn't really matter. If you're a tourist, you're having a nice lunch or a dinner
892 outside, or a local as well, you're not gonna leave money as a tip for anyone, or want to pull cash
893 out if soliciting activity is occurring next to your dining table. So, we didn't look at that as a
894 viable area (inaudible).

895 What we looked at was 3rd Street, and 3rd Street is also problematic. Third Street, all the way to
896 Ogden, is part of the Pedestrian Mall. And, while a lot of people may look at it and say, you
897 know, it's the old 3rd Street, 3rd Street is a very viable venue for Fremont Street Experience.
898 They consider it prime real estate. That real estate is used for car shows. It's used for setting up
899 vending opportunities. I think they have (inaudible) stages there. It is very active and used as part
900 of the Fremont Street Experience as a whole. It's also the place where the neon signs exist and
901 part of the expanded Neon Sign Museum. And, most importantly, and a concern I'm sure to this
902 Council, is the fact that that is the connector between the Fremont Street Experience and the Mob
903 Museum and the new CIM project that used to be called the Lady Luck. You go by the Lady
904 Luck, today, you'll see windows open in both towers. There's active construction going on. That
905 is a project that's expected to be completed and opened in the near future. And there is a fear that

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906 if you create a gauntlet of solicitation and other activity on 3rd Street, you're going to hurt the
907 commercial viability of that project, and you're going to prevent individuals wanting to move
908 back and forth in the new Mob Museum and the Fremont Street Experience.

909 So it wasn't likely that we look at 3rd Street; it also has problems. But not the problems that I
910 identified as existing on the Fremont Street Experience, or Fremont Street itself and the – area by
911 Neonopolis.

912 What we did was identify two initial zones, based on the amount of expressive activity seen in
913 the Mall in the last couple of years. Two zones have been identified. There is a new map that
914 looks very much like the slide you're looking at now, that is gonna replace Exhibit 1 or Exhibit
915 A (sic) in your backup material. This is produced by our Planning Department. This is a digital
916 depiction of the free expressive zones that we propose in this ordinance. They are approximately
917 20 feet back from the shade line of the Fremont Street Experience canopy. That still allows
918 pedestrians to move in front. The areas are 12 feet wide on each side, on the west and east side of
919 3rd Street, and they are a hundred feet long. So, two, 1200-foot areas, 2400 square feet would be
920 reserved for expressive activity involving solicitation and mall entertainment. This activity
921 would be completely unregulated and subject to first come, first serve, completely content
922 neutral. We don't care what you do out there with respect to solicitation of all activity, provided,
923 (inaudible) solicitation (inaudible) prohibited (inaudible) solicitation, you can do whatever you
924 want. Council?

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925 **COUNCILMAN BARLOW**

926 Brad, you continue to mention the fact that the content of those individuals performing within
927 this proposed area on 3rd and Fremont, and you mention on several occasions that these
928 individuals will not be regulated, who patrols or regulate (sic) the Mall?

929

930 **BRAD JERBIC**

931 Let me say this, the Mall, right now, is in the City. The Metropolitan Police Department has a
932 force down there, from time to time, patrolling the Mall. The Fremont Street Experience has its
933 own private security down there, and those are the two entities that are responsible for securing
934 the Mall right now. I can tell you, my guess is that Mr. Victor will shake his head yes or no about
935 (inaudible) percentages, probably Fremont Street Experience private security that is patrolling
936 the Mall right now and handling those kinds of issues.

937

938 **COUNCILMAN BARLOW**

939 Okay. So, within the 12- by 100-foot radius area in which is being proposed to this
940 Recommending Board today, who's going to regulate or enforce that the entertainers remain
941 within that geographic location?

942

943 **BRAD JERBIC**

944 That would be the responsibility of the Fremont Street Experience security and the Las Vegas
945 Metropolitan Police Department.

946 Let me explain what this is and what this isn't. We're only saying two types of conduct:
947 solicitation and mall entertainment are limited to these two areas. Nothing else. Mall
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948 entertainment and solicitation. We're not gonna tell you what kind of entertainment. We're not
949 gonna tell you what kind of solicitation. We have no interest in the conduct, or excuse me the
950 content of your solicitation. We have no interest in the content of your mall entertainment. Not
951 gonna do it with loud speakers, 'cause that's gonna be prohibited, Mall-wide. There's (sic) no
952 exceptions. You're not gonna get to go in these zones and turn on an amplifier. That's still
953 inconsistent with the Mall, right next to the light and sound show, will drown it out and compete
954 with it, and it's not consistent. But what we will allow is any kind of solicitation activity and any
955 kind of mall entertainment, first come first serve in those areas.

956 I want to state, for the record, that Mr. Rebel is here on behalf of the Fremont Hotel. Believe me,
957 it was no easy task explaining to individual entities downtown that we're gonna have free
958 expression zones, and they're gonna be somewhere. And these have to be, at least one of them,
959 has to be right next to the Fremont Hotel. These areas were selected because, based on the size of
960 –, the numbers (inaudible) at the same time they solicit would fill (inaudible) one of these areas
961 right now, and Mr. Victor will testify to that. So, we made it even larger. So, we did and will
962 accommodate any individual who wants to come.

963 But these are not necessarily carved in stone. This is the first cut. If these turn out to be in the
964 wrong place and inconsistent, we reserve the right to come back and move them, in the future.
965 We will always provide them, but we will reserve the right to come back and move them. We'll
966 reserve the right to come back and expand them. If it turns out there are more people interested
967 in protected conduct or mall entertainment, which I don't think is protected conduct, but if there
968 are people interested in protected conduct and there's not enough room for them here, we will
969 come back with a recommendation to expand the free expression area.

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970 But we believe that these not only are, one, let's talk about time, place and manner. There's no
971 time restriction. This is any time I want. There's no manner restriction. We're not putting any
972 regulation on how you do it, or what to say you say or what the content is. There's just a place
973 restriction. That's all we're doing, is a place restriction.

974 The other thing we're looking at is: are there alternative means to express your act, your First
975 Amendment Speech of solicitive (sic) speech? Well, one, you're (inaudible) the entire target
976 audience of the Pedestrian Mall from this area. But, second, look at the Pedestrian Mall. This is a
977 footprint, five blocks long, along what used to be Fremont Street. The entire perimeter of the
978 Pedestrian Mall is publicly-owned sidewalk, which has never been regulated and completely
979 open to First Amendment Speech or expressive speech. Anybody who comes in that Mall, you
980 can get 'em on the sidewalk outside the Mall and solicit them all you want. We're only talking
981 within the Pedestrian Mall. So, you can reach the target audience anywhere around the perimeter
982 of the Mall as you enter. And once in, you can reach them from 3rd Street.

983 Again, another picture of the expression zone. At the back of this, you can see this is looking
984 from north to south, with the 3rd Street stage visually depicted in the graphic. And this is the area
985 as it looks today. I wanna say, right now, before anybody jumps me. This particular photograph
986 shows a really large newspaper vending machine in this area. That's gonna be carved out. That's
987 gonna be removed. This area is gonna be completely cleared, except little palm trees. There
988 won't be anything obstructing it, and it's gonna be painted either with a line around the perimeter
989 or shaded in the middle so everybody knows exactly where the area is and where the lines are,
990 much like the area we painted downtown at the courthouse for wedding chapel solicitors. That
991 has worked perfectly since we put it into effect. It's going to be painted or marked clearly on the
992 ground, signage identifying it, and there'll be one (inaudible).

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993 Tables will be allowed in this area, but not your table. You want a table, they will be provided on
994 a first-come, first-serve basis, free of charge, and virtually immediately by the Fremont Street
995 Experience. That's to control the type of structure people are bringing in to the Mall. People –
996 bringing in dangerous things, flimsy tables, things that – wouldn't withstand wind or tourists
997 hitting it, or something like that. But we'll provide all the tables you want for free, any time
998 within these free expression zones. So tabling is back, solicitation is back, and mall
999 entertainment is back in these two areas.

1000 Councilman?

1001

1002 **COUCILMAN BARLOW**

1003 Brad, I've been to other communities, many communities around the country, and those cities
1004 seem to require entertainment for individuals, permits in order for them to go out and entertain;
1005 have we considered that?

1006

1007 **BRAD JERBIC**

1008 Yes. Let me – tell you about the one I looked at the most. The Mayor asked me to look at another
1009 one; I haven't finished looking into that.

1010 Let's talk about a couple of places where they built (inaudible). If you've ever been to Waikiki
1011 Beach, you'll see people not exactly on the beach, but off to the side, and most particularly at
1012 night. You'll have some guy with a parrot. You'll have a – parrot sitting on your shoulder, take a
1013 picture for 20 bucks. Other people doing other kinds of activities. I don't know how they regulate
1014 that or how they (inaudible). The one I'm familiar with that is a bit analogous to the Fremont
1015 Street Experience is the 3rd Street Promenade in Santa Monica, California –

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1016 **COUNCILMAN BARLOW**

1017 Santa Monica.

1018

1019 **BRAD JERBIC**

1020 Now, the difference, and I've been asked this about Fremont, why don't we do what they do?

1021 What they do is they pick and license entertainers, because they feel, and maybe appropriately

1022 so, that entertainment in the 3rd Street Promenade in Santa Monica is conducive to tourists

1023 coming downtown and creates part of the ambiance of the pedestrian mall in Santa Monica. So,

1024 when you come down, you're not just there to walk up and down the Promenade and visit the

1025 restaurants and the shops. You're there for the entertainment as well. It's kind of catchy and kind

1026 of fun. And because they look at it that way, they license the people that do entertainment down

1027 there, and they kinda pick and choose a little bit, but they also have applications that people fill

1028 out, and the like, and they (inaudible) the spaces that they use.

1029 The difference between Santa Monica's Promenade and Fremont Street Experience is that

1030 Fremont Street Experience picked its entertainment from the day this project was conceived.

1031 This wasn't built to just be one big mall where you walk up and down between a bunch of

1032 casinos. If that were the case, you could pretty much have left the whole situation alone and let

1033 people walk up and down the sidewalks. This was conceived as a project that not only provided a

1034 pedestrian mall experience and retail experience to pay for all of it, but provided its own

1035 entertainment. The entertainment being stage shows. So, when the Beach Boys come here, it's

1036 playing on the 3rd Street stage. That's because Mr. Victor and his clients pick that kind of

1037 entertainment and they program it. When you see the light shows overhead at night, they decided

1038 that's the entertainment we want. They decided they didn't want to go with the occasional

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1039 entertainer block by block by block. You didn't, if that's what they would have wanted, or the
1040 City wanted, you didn't have to build a canopy for that, and they don't have a canopy in Santa
1041 Monica. It's just a big, wide, open mall.
1042 So, like I say, I think it's really just a programming choice and a policy choice that was made
1043 many, many years ago. And that choice was, the primary purpose was an organized, pretty much,
1044 predictable on the spot sound and light show. People knew when it started, when it ended, so
1045 they could be out there on the street and watch it. Stage shows that we promoted in advance,
1046 occurring during seasons of the year, at different times. Kiosks. But you can see Fremont Street,
1047 right now, Fremont Street, right now, could have entertainers that they pick in that Mall. And
1048 from time to time, they do, not just on the stage, but it's their mall, under the operation of the
1049 management agreement, controlling the program –

1050

1051 **COUNCILMAN BARLOW**

1052 Mayor – Goodman, not. Brad –

1053

1054 **BRAD JERBIC**

1055 They have decided to not allow this freelance, freeform activity.

1056

1057 **COUNCILMAN BARLOW**

1058 Very good point, which basically takes me back to my initial question, or comment in relation to
1059 Santa Monica versus Fremont Street Experience. If Santa Monica can regulate and license their
1060 acts, then what would prohibit someone from going out into – the area of Santa Monica and just
1061 setting up? Because, to me, it's a – question of – legality, of freedom of speech again.

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1062 **BRAD JERBIC**

1063 Well, let me – go out on a limb here and say that, I think, even the courts have recognized that an
1064 unregulated, completely, anybody, anywhere, kind of situation, even the 3rd Street Promenade,
1065 doesn't work. They have the same rights to pedestrian flow, and to a – hassle-free environment,
1066 so-to-speak, as we do. And – I'm gonna say (inaudible), you know, more or less, act upon act
1067 upon act, where you have to run a gauntlet of people before you can get where you wanna get,
1068 with one person playing this instrument, another playing the other, drowning each other
1069 throughout. This doesn't work, as a practical matter, regardless of what kind of speech you're
1070 talking about.

1071 But, again, I would –, you know, I think there's a lot of debate as to whether or not this activity
1072 that you're looking at, when it comes to entertainment, is protected activity by the First
1073 Amendment. I mean, some of it could be. Some isn't. Some is in-between. But that's what
1074 people go to law school for, is to kind of argue where the shades of grey are. But, you know, a
1075 lot of this stuff is just a hundred percent commercial, just a hundred percent commercial. And
1076 probably, can be completely, you know, regulated, prohibited or whatever under any ordinance.
1077 Some of it may have a First Amendment component to it. But we're not gonna pick and choose
1078 which does and which doesn't. We're going to say entertainment, that's where you go. That's
1079 where you can perform (inaudible).

1080 We think it's content neutral. We think it's reasonable time, place and manner. We think it
1081 leaves open all viable alternatives for individuals to reach that same audience, to pick their say
1082 and speech, content, (inaudible), anyone they wanna talk to.

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1083 **COUNCILMAN BARLOW**

1084 Okay.

1085

1086 **BRAD JERBIC**

1087 That concludes my presentation as to the new ordinance, the history, the legislation, and leaf

1088 regulation. I would, with your permission, ask Mr. Victor to come to the microphone right now.

1089

1090 **JIM NICHOLS**

1091 Right here.

1092

1093 **JEFF VICTOR**

1094 Down here?

1095

1096 **BRAD JERBIC**

1097 Actually, anyone you want, Jim. You wanna sit next to me, I'll move.

1098

1099 **COUNCILMAN BARLOW**

1100 Are you going to swear him in under oath –

1101

1102 **BRAD JERBIC**

1103 You have that map marked as Exhibit A or 1 or?

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1104 **GABRIELA PORTILLO-BRENNER**

1105 I do, as Exhibit 1.

1106

1107 **BRAD JERBIC**

1108 Exhibit 1; okay. So, we're gonna refer to the map of the Fremont Street Experience. Can you just

1109 state your name and, for the record, and tell us where you work.

1110

1111 **JEFF VICTOR**

1112 My name is Jeff Victor; I'm the president of the Fremont Street Experience.

1113

1114 **BRAD JERBIC**

1115 And as president of the Fremont Street Experience, Mr. Victor, what are your duties and

1116 responsibilities?

1117

1118 **JEFF VICTOR**

1119 We operate the Fremont Street Experience, LLC, which is the common area between businesses

1120 that line Fremont Street, from Main Street down to Las Vegas Boulevard. We also operate the

1121 parking garage that's located between 4th Street and Las Vegas Boulevard. We have about 300

1122 employees, I'm sorry, 100 employees in the company, which are made up of a mix of security

1123 guards, cleanliness folks, entertainment and special events operators, and technicians, marketing,

1124 finance, public relations.

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1125 **BRAD JERBIC**

1126 Very good. How long have you been the president of Fremont Street Experience, LLC?

1127

1128 **JEFF VICTOR**

1129 A little over four years.

1130

1131 **BRAD JERBIC**

1132 And, were you president of the LLC before the ruling by the Federal District Court Judge in
1133 2009 that struck down the ordinances regulating the Mall?

1134

1135 **JEFF VICTOR**

1136 Yes.

1137

1138 **BRAD JERBIC**

1139 And you've obviously been president after those ordinances were struck down, correct?

1140

1141 **JEFF VICTOR**

1142 Correct.

1143

1144 **BRAD JERBIC**

1145 Have you noticed the difference in the type of activity in the Pedestrian Mall after the court
1146 decision in 2009 striking down the Pedestrian Mall Ordinance?

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1147 **JEFF VICTOR**

1148 Absolutely.

1149

1150 **BRAD JERBIC**

1151 What kind of differences have you noticed?

1152

1153 **JEFF VICTOR**

1154 In particular, the amount of individuals that come down to solicit for tips by providing, what I
1155 guess they would consider, entertainment experiences in the Mall, has exploded from the day
1156 that the – decision was made until now.

1157

1158 **BRAD JERBIC**

1159 And have you – had complaints from individuals, let's start with tourists or visitors to the Mall,
1160 regarding conduct in the Mall by individuals involved in commercial entertainment.

1161

1162 **JEFF VICTOR**

1163 Numerous complaints from guests, but the complaints haven't been limited to the guests, but,
1164 clearly, the guests are not comfortable, in large part, with the activity out on the Mall.

1165

1166 **BRAD JERBIC**

1167 Did you have an opportunity to sit here during the presentation that I gave regarding pictures and
1168 videos of the Fremont Street Experience during the latter 2009 and early 2010?

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1169 **JEFF VICTOR**

1170 Yes.

1171

1172 **BRAD JERBIC**

1173 Did my representation on the record accurately reflect the content of those videos and the

1174 conduct that was displayed in the videos?

1175

1176 **JEFF VICTOR**

1177 Yes.

1178

1179 **BRAD JERBIC**

1180 The, did you, are you aware of the incident involving individuals dressed as members of the rock

1181 band Kiss on the Fremont Street Experience?

1182

1183 **JEFF VICTOR**

1184 Yes. I was not there that evening, but I am aware of it. Our se, if you see the video, you'll see

1185 that one of our security guard (sic) actually leaves his post from, he has a fixed post during the

1186 light show, at the intersection of Casino Center, he's wearing a yellow vest, and you'll see him

1187 leave his post to come and deal with the distraction and disruption, and he actually filled out a

1188 statement. And I have seen the full video that was provided, by the way, by a guest who had just

1189 filmed that and put it up on YouTube.

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1190 **BRAD JERBIC**

1191 Are you aware of the results of the investigation conducted by the Fremont Street Experience
1192 into that incident?

1193

1194 **JEFF VICTOR**

1195 Only to the extent that the customer decided not to file a complaint, and – left.

1196

1197 **BRAD JERBIC**

1198 Did you become aware of what happened even though he didn't file a complaint?

1199

1200 **JEFF VICTOR**

1201 Again, I –, my best source and knowledge is through the video that you find on (inaudible) on
1202 YouTube, and then what our security guard witnessed at the event and trying to just deal with the
1203 aftermath of it.

1204

1205 **BRAD JERBIC**

1206 Very good. The, you're also familiar with other street entertainers, Mr. Animation, Robot Man,
1207 and the like, in the Pedestrian Mall?

1208

1209 **JEFF VICTOR**

1210 Yes.

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1211 **BRAD JERBIC**

1212 Are there other street entertainers that appear in the Pedestrian Mall aside from the ones whose
1213 examples we've played before the Recommending Committee today?

1214

1215 **JEFF VICTOR**

1216 Oh, dozens. Yeah. Things like the person that sells balloon animals, the showgirls that walk up
1217 and down the Mall taking photos. There are statue characters. You name it, we've – got it.

1218

1219 **BRAD JERBIC**

1220 Have you also become aware of other expressive activity, and it's the type you saw in the videos
1221 and in the pictures that included the anti-abortion protest, the – rally at the gay rights parade, and
1222 the pro-religious people that were speaking on Fremont Street?

1223

1224 **JEFF VICTOR**

1225 Yeah. We do have folks coming out to either exploit their private businesses, or send a –
1226 message. There – are pretty regular set ups up and down the Mall for purposes of commercial
1227 activity.

1228

1229 **BRAD JERBIC**

1230 Have both the individuals not involved in entertainment and individuals involved in
1231 entertainment actually used amplification systems to broadcast their message?

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1232 **JEFF VICTOR**

1233 Yeah. Absolutely. We saw a lot of it in the video, and we have it on a regular basis, whether it's
1234 connected to a car battery or it's battery-operated, we have amplified sound on a regular basis.

1235

1236 **BRAD JERBIC**

1237 Does that activity, in your opinion, is it consistent with the programming of the Pedestrian Mall
1238 by the Fremont Street Experience of both the light, stage and sound shows?

1239

1240 **JEFF VICTOR**

1241 No. I mean, the sound system in Fremont Street Experience is quite extraordinary. It was
1242 engineered with a great deal of concern for the smooth flow of sound from one end to the other,
1243 and a total of 550,000 watts of sound blowing through over 200 speakers, with very clear
1244 separation of distance. We have the ability to zone those speakers out, so that we can control
1245 individual experiences, either from the stages or between the stages, and do that on a regular
1246 basis. But when somebody brings their own amplified sound and drops it in the midst of that,
1247 clearly, it's a –, creates inaudible (inaudible) muddiness or confused experience to what we're
1248 trying to create.

1249 When you're talking about the – stages themselves or, like we had a street entertainer that's been
1250 out there for ten years under our – guidance, his name is Carl Ferris. We escort Carl out there
1251 and set him up with a Fremont Street Experience truck and sound system. We provide him, the
1252 zone for him, both audibly and – in the sky, on the canopy above with his image. When
1253 somebody that also plays saxophone just appears and wants to stand next to Carl while he's
1254 performing, you know, the Fremont Street Experience approved performance, it's – absolutely

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1255 disrupted. Somebody comes down and sets up an amplifier so they can do something, whether
1256 it's saxophone or otherwise, absolutely a disruption.

1257

1258 **BRAD JERBIC**

1259 The individual that you program, though, you pick the exact place, time and manner in which he
1260 entertains individuals and he's limited to that particular –

1261

1262 **JEFF VICTOR**

1263 Absolutely.

1264

1265 **BRAD JERBIC**

1266 And it's not open to other individuals? You said if others come down while he's doing anything,
1267 it competes with him, drowns him out or –

1268

1269 **JEFF VICTOR**

1270 Absolutely.

1271

1272 **BRAD JERBIC**

1273 The, with respect to the individuals who use amplification systems, have you observed the effect
1274 of those amplification systems on the tourist traffic that moves up and down the Pedestrian Mall?

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1275 **JEFF VICTOR**

1276 Yes. It's intimidating. You know, some people, I assume, believe that this is something that
1277 we've sanctioned, like Carl, and some people are – weary that it's somebody we've not
1278 sanctioned, and it's intimidating, and for some folks scary.

1279

1280 **BRAD JERBIC**

1281 People tend to shy away and move away from those individuals that have amplification systems?

1282

1283 **JEFF VICTOR**

1284 Sure.

1285

1286 **BRAD JERBIC**

1287 And, in the process of moving away, does it create fewer places in the Pedestrian Mall for
1288 pedestrians to move back and forth?

1289

1290 **JEFF VICTOR**

1291 Yeah. It alters the flow of traffic.

1292

1293 **BRAD JERBIC**

1294 The, sometimes completely impede the flow of traffic in the Pedestrian Mall?

1295

1296 **JEFF VICTOR**

1297 Yes.

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1298 **BRAD JERBIC**

1299 Has it on occasion completely plugged the traffic, stopped traffic in the Pedestrian Mall?

1300

1301 **JEFF VICTOR**

1302 Especially around intersections and (inaudible), yes.

1303

1304 **BRAD JERBIC**

1305 Let me call your attention to Exhibit 1, which is the map that you have in front of you and the

1306 (inaudible) version (inaudible), have you had occasion to look at that map prior to appearing at

1307 this Recommending Committee today?

1308 **JEFF VICTOR**

1309 Yes, I have.

1310

1311 **BRAD JERBIC**

1312 And are you familiar, is that an accurate depiction of the Pedestrian Mall, roughly, as it appears

1313 both in physical description, that is the perimeter, and the location of kiosks through the

1314 Pedestrian Mall?

1315

1316 **JEFF VICTOR**

1317 Yeah. Largely, I – see a few changes like the Golden Nugget’s expansion down here on – 1st

1318 Street isn’t represented. There may be a, it’s hard to tell ‘cause there’re so many overlapping

1319 circles. There may be a change in the – outdoor dining experiences. And, clearly, the locations of

1320 the kiosks change on a regular basis. By and large, this is the Fremont Street Experience.

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1321 **BRAD JERBIC**

1322 How many kiosks do you have in the Fremont Street Experience?

1323

1324 **JEFF VICTOR**

1325 Thirty-eight.

1326

1327 **BRAD JERBIC**

1328 Do the individuals who have those kiosks have an arrangement, financial arrangement with the

1329 Fremont Street Experience?

1330 **JEFF VICTOR**

1331 Yes. They have – a contract that they signed and pay lease amounts for on a monthly basis.

1332

1333 **BRAD JERBIC**

1334 Do those lease amounts vary from kiosk to kiosk?

1335

1336 **JEFF VICTOR**

1337 They do.

1338

1339 **BRAD JERBIC**

1340 Can you give us the range that people pay to lease the kiosks on Fremont Street?

1341

1342 **JEFF VICTOR**

1343 Roughly, 2,000 to \$5,000 a month.

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1344 **BRAD JERBIC**

1345 Two thousand to five thousand a month? And are there individuals who pay more?

1346

1347 **JEFF VICTOR**

1348 Yes.

1349

1350 **BRAD JERBIC**

1351 To cover their kiosks that way you get a percentage of the gross receipts as part of the kiosk
1352 rental?

1353

1354 **JEFF VICTOR**

1355 Those would be the ones that would exceed the – higher (inaudible).

1356

1357 **BRAD JERBIC**

1358 Got you. And those individuals signed that agreement knowing that they will have an
1359 opportunity to commercially vend, whatever their product is they have, on that particular kiosks?

1360

1361 **JEFF VICTOR**

1362 That's correct.

1363

1364 **BRAD JERBIC**

1365 And do you get involved in selecting the type of commercial product that individuals vend from
1366 their kiosks?

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1367 **JEFF VICTOR**

1368 Absolutely.

1369 **BRAD JERBIC**

1370 So you wouldn't allow someone to vend something that you consider inappropriate in the

1371 Fremont Street Experience?

1372

1373 **JEFF VICTOR**

1374 Absolutely not.

1375

1376 **BRAD JERBIC**

1377 So, you also don't want individuals in the kiosks to sort of compete with each other, so you

1378 wouldn't, for example, have 38 people selling jewelry, or 38 people all selling paintings or

1379 statues?

1380

1381 **JEFF VICTOR**

1382 That's right. We work hard to reduce the redundancy.

1383

1384 **BRAD JERBIC**

1385 So you have a lack of redundancy for commercial opportunity. And the individuals who pay for

1386 those kiosk, do they sign those leases for a period of time, a term?

1387

1388 **JEFF VICTOR**

1389 They do.

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1390 **BRAD JERBIC**

1391 What's a typical term?

1392

1393 **JEFF VICTOR**

1394 They're, usually, really month-to-month. Most of our vendors have been there for years.

1395

1396 **BRAD JERBIC**

1397 Have you had occasion to work personally with the kiosk vendors regarding complaints

1398 regarding activity within the Fremont Street Experience, that they feel is either repeating or

1399 inconsistent with the retail commercial use of the Mall?

1400

1401 **JEFF VICTOR**

1402 Yeah. Almost without exception, all of the retailers have come to both our retail director, and

1403 then myself to complain about how disruptive this has been both to the Experience and the

1404 customer trying to shop and ultimately to their ability to conduct sales.

1405

1406 **BRAD JERBIC**

1407 Did you hear my representation earlier that kiosks are places where individuals actually pull their

1408 money out in a public area and they have a financial transaction with the kiosk operator?

1409

1410 **JEFF VICTOR**

1411 Yes.

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1412 **BRAD JERBIC**

1413 Is that accurate?

1414

1415 **JEFF VICTOR**

1416 Yeah. You're completely exposed 'in the middle of the street. Sure.

1417

1418 **BRAD JERBIC**

1419 In your opinion, is a kiosk more like an ATM or more like an entryway to a business with respect
1420 to the amount of space you need to provide between a kiosk vendor and a – solicitor?

1421

1422 **JEFF VICTOR**

1423 I'd say, given the proximity of the cash drawer, it'd be more like the keyboard on a (sic) ATM.

1424

1425 **BRAD JERBIC**

1426 Have you had individuals express to you a desire to not pay rent or get reduced rent as a result
1427 from competition from unregulated activity in the Pedestrian Mall?

1428

1429 **JEFF VICTOR**

1430 Yes.

1431

1432 **BRAD JERBIC**

1433 What have they told you?

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1434 **JEFF VICTOR**

1435 They feel as though their sales have been dramatically affected, some kiosks more than others,
1436 depending on the type of product that they sell. But they have very much expressed that, you
1437 know, we're responsible for maintaining the Mall, and that we've not done so, that they think
1438 we're responsible for adjusting their rent.

1439

1440 **BRAD JERBIC**

1441 (Inaudible) decline as a result of individuals pointing out kiosks or retail opportunities in the
1442 Mall or the Fremont Street Experience being able to operate and maintain the Pedestrian Mall
1443 under the existing contract with the City of Las Vegas and the Redevelopment Agency?

1444

1445 **JEFF VICTOR**

1446 We have several sources of funds. The retail kiosk is a significant portion of what we do. If that
1447 were to decline, significantly, it would, in fact, impact our ability to maintain the Mall, in terms
1448 of the cleanliness to secure the Mall, patrol the Mall, and then, of course, it would impact our
1449 ability to invite guests down to marketing, PR activities, and then once we got 'em here, it would
1450 impact our ability to entertain and keep them here and help – ensure that they come back for
1451 another visit.

1452

1453 **BRAD JERBIC**

1454 Did you work with the City of Las Vegas in the last year to look at the possible creation of free
1455 expression zones within the Fremont Street Experience?

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1456 **JEFF VICTOR**

1457 Yeah.

1458

1459 **BRAD JERBIC**

1460 Did you have an opportunity prior to that to look at things like the map that's marked as Exhibit

1461 1?

1462

1463 **JEFF VICTOR**

1464 Yes.

1465

1466 **BRAD JERBIC**

1467 The, turning your attention to that map for a moment, do you see the circles on that map that I

1468 have represented the outer most circle being 20 feet, the inner most being 10 feet?

1469

1470 **JEFF VICTOR**

1471 Yes.

1472

1473 **BRAD JERBIC**

1474 Those are circles around retail kiosks; is that correct?

1475

1476 **JEFF VICTOR**

1477 Yes. It appears.

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1478 **BRAD JERBIC**

1479 Do you also see other semi-circles or lines around entryways to buildings, for example,
1480 Fitzgerald's, Fremont, and the like? Do you see those lines?

1481

1482 **JEFF VICTOR**

1483 Yes –.

1484

1485 **BRAD JERBIC**

1486 Those all represent areas that are currently under existing solicitation law? Areas that are
1487 prohibited for solicitation?

1488

1489 **JEFF VICTOR**

1490 Yes.

1491

1492 **BRAD JERBIC**

1493 Or would be if we had, if we looked at the kiosk situation?

1494

1495 **JEFF VICTOR**

1496 Right.

1497

1498 **BRAD JERBIC**

1499 The areas in-between those circles, what are those dead areas used for, those blank areas used
1500 for?

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1501 **JEFF VICTOR**

1502 That would be where the people go.

1503

1504 **BRAD JERBIC**

1505 If individuals were to set up solicitation stations in that area, would you have a smooth flow of

1506 pedestrian traffic?

1507 **JEFF VICTOR**

1508 You know, as you can see, there's, Fremont Street is not very wide. It's only 80 feet wide, and,

1509 so there's a fair amount of obstacles throughout the Mall anyway. The legs to the canopies, the

1510 canopy itself, aren't shown here, and some other structural things, including electrical junction

1511 boxes and stuff are not shown. Anything that we do to add clutter to the Mall, it's – problematic

1512 in terms of moving guests around.

1513

1514 **BRAD JERBIC**

1515 Well let me cut to the chase, if we, if there were first (sic) expression zones created in those

1516 blank areas in-between those circles, would that, in your opinion, impede pedestrian traffic in the

1517 Pedestrian Mall?

1518

1519 **JEFF VICTOR**

1520 Yes.

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1521 **BRAD JERBIC**

1522 Was there a time when there was a discussion about setting up free expression zones around the
1523 poles themselves on the Pedestrian Mall?

1524

1525 **JEFF VICTOR**

1526 Yes.

1527

1528 **BRAD JERBIC**

1529 Were models constructed to see if that worked?

1530

1531 **JEFF VICTOR**

1532 Yes.

1533

1534 **BRAD JERBIC**

1535 Were you present when those were demonstrated and looked at?

1536

1537 **JEFF VICTOR**

1538 Yes.

1539

1540 **BRAD JERBIC**

1541 In your opinion, did they work?

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1542 **JEFF VICTOR**

1543 I don't think they provided the ample amount of – room for the folks that are gonna come, wanna
1544 come down and take advantage of these things. I didn't think they were ideal locations for the –
1545 entertainers themselves, and they fell largely within the circles shown here on page; no, they
1546 didn't work.

1547

1548 **BRAD JERBIC**

1549 Is this a, is this an attempt to actually build a round table around the round poles that support the
1550 canopy itself?

1551

1552 **JEFF VICTOR**

1553 Yeah. We – mocked up a model.

1554

1555 **BRAD JERBIC**

1556 And did that have an impact on pedestrian traffic, as well as the other problems you identified?

1557

1558 **JEFF VICTOR**

1559 Yes.

1560

1561 **BRAD JERBIC**

1562 And as a result, was that thrown out, I guess, as an option for free expression zones?

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1563 **JEFF VICTOR**

1564 Yeah. We tried to find a more viable option.

1565

1566 **BRAD JERBIC**

1567 Did you also look at other areas within the Fremont Street Experience, including 1st Street, and

1568 the area around the old Neonopolis shopping area?

1569

1570 **JEFF VICTOR**

1571 Yes. We did.

1572

1573 **BRAD JERBIC**

1574 Were there viable areas on 1st Street?

1575

1576 **JEFF VICTOR**

1577 No. Very limited, because most of that is behind the stage. The park on 1st Street south is

1578 privately owned by the folks that own the Pioneer Building. The space over by Neonopolis

1579 would be ideal for us, and I'm sure that that offers a kind of exposure to the audience that the

1580 entertainers would decide.

1581

1582 **BRAD JERBIC**

1583 Are there also more outdoor cafes in the Neonopolis area, that is the block between 4th Street

1584 and Las Vegas Boulevard in the Fremont Street Experience?

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1585 **JEFF VICTOR**

1586 Yeah. That’s actually the largest concentration of outdoor cafes, down in that area.

1587

1588 **BRAD JERBIC**

1589 And, without revealing any names, are there potentially more restaurants about to go into that

1590 area?

1591

1592 **JEFF VICTOR**

1593 I’ve got a couple that are looking at a space that we operate. I don’t know what’s happening on

1594 the Neonopolis side.

1595

1596 **BRAD JERBIC**

1597 Okay. But, without revealing any names, you are looking at more restaurant activity –

1598

1599 **JEFF VICTOR**

1600 Yes.

1601

1602 **BRAD JERBIC**

1603 – in that particular area? Would that includes (sic) outdoor dining opportunities?

1604

1605 **JEFF VICTOR**

1606 Yes.

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1607 **BRAD JERBIC**

1608 And, as a result of that, that area was also rejected because you didn't feel it was close enough to
1609 the audience that was being affected by the restriction and the outdoor dining being affected by
1610 this at all?

1611

1612 **JEFF VICTOR**

1613 That's right.

1614

1615 **BRAD JERBIC**

1616 Did you have an opportunity to look at 3rd Street as an alternative for this type of activity?

1617

1618 **JEFF VICTOR**

1619 Yes.

1620

1621 **BRAD JERBIC**

1622 And when you looked at 3rd Street, what were the issues posed by locating free expression zones
1623 there?

1624

1625 **JEFF VICTOR**

1626 Well, you know, 3rd Street is an extremely valuable area for – us. That is an area that we use
1627 regularly for special events, in particular. It's also, when we do concerts, where the crowd backs
1628 into. But, in terms of special events, it's, as you can see by the – rest of the circles on the – page,

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1629 that is our special event space. And, so the – concern with giving up any of that is that we’ve hurt
1630 our ability to do special events.

1631

1632 **BRAD JERBIC**

1633 Did you have occasion to talk to individuals who’re responsible for the operation and
1634 management of Fremont Hotel to see how they felt?

1635

1636 **JEFF VICTOR**

1637 Yes, I did.

1638

1639 **BRAD JERBIC**

1640 And how did they feel about having free expression zones located next to their property?

1641

1642 **JEFF VICTOR**

1643 Not thrilled, by any means. Understanding, as we are, of the – situation, but not – thrilled that it
1644 would be there.

1645

1646 **BRAD JERBIC**

1647 Did you have occasion to talk to the Mayor of the City of Las Vegas regarding the possible
1648 impact of the free expression zones on 3rd Street and the new Mob Museum?

1649

1650 **JEFF VICTOR**

1651 Yes, I did.

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1652 **BRAD JERBIC**

1653 And was that problematic?

1654

1655 **JEFF VICTOR**

1656 Yeah, he's, you know, this is the gateway to what would be the Mob Museum and – CIM

1657 Group's investment in the Lady Luck, and it's not considered unimportant that we would be

1658 altering that, the use of that space.

1659

1660 **BRAD JERBIC**

1661 You do understand that if the Council, with the Recommended Committee, forwards this

1662 ordinance and the Council approves it, that you will lose 2400 square feet of area on 3rd Street?

1663

1664 **JEFF VICTOR**

1665 I'm aware.

1666

1667 **BRAD JERBIC**

1668 Are you able to, in spite of the challenges, program around that?

1669

1670 **JEFF VICTOR**

1671 I believe so.

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1672 **BRAD JERBIC**

1673 Good. Do you, did you participate with the City in looking at any or all other means of providing
1674 alternative space for solicitation and mall (inaudible)?

1675

1676 **JEFF VICTOR**

1677 Yes.

1678

1679 **BRAD JERBIC**

1680 And was this the final analysis the (inaudible) thought that it would be a reasonable alternative to
1681 the entire Mall?

1682

1683 **JEFF VICTOR**

1684 Yes.

1685

1686 **BRAD JERBIC**

1687 I would also ask you, are you familiar with the area outside the Pedestrian Mall, that is the actual
1688 perimeter of the Mall, that is the area outside of Fremont Street that goes around the entire
1689 perimeter of the map you see as Exhibit 1?

1690

1691 **JEFF VICTOR**

1692 Oh, sure.

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1693 **BRAD JERBIC**

1694 Is that area all open public sidewalk?

1695

1696 **JEFF VICTOR**

1697 Yeah.

1698

1699 **BRAD JERBIC**

1700 That's all area where individuals can stand and solicit or speak any kind of speech they want?

1701

1702 **JEFF VICTOR**

1703 Yes.

1704

1705 **BRAD JERBIC**

1706 And I qualify it by saying exactly those kinds of speech that are otherwise prohibited by law with

1707 regards to speech, or other speech that has always been held to be illegal, strictly, (inaudible)

1708 fighting (inaudible) and things like that.

1709 Mr. Victor, just in general, would you describe the Mall as more orderly or less orderly after the

1710 last decision of the (inaudible) judge?

1711

1712 **JEFF VICTOR**

1713 Far less orderly.

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1714 **BRAD JERBIC**

1715 I don't think I have any further questions for Mr. Victor.

1716

1717 **COUNCILMAN BARLOW**

1718 Okay.

1719

1720 **BRAD JERBIC**

1721 The Council has any? You have anything you need to add?

1722

1723 **COUNCILMAN BARLOW**

1724 You – have questions for Mr. Victor?

1725

1726 **COUNCILMAN ANTHONY**

1727 Well, for both.

1728

1729 **COUNCILMAN BARLOW**

1730 Mr. Victor, if you wouldn't mind remaining – in your seat. Council has questions for both Brad

1731 and yourself –

1732

1733 **BRAD JERBIC**

1734 If I could (inaudible), and I'll just leave it up to you, I wanna put into the record a case Hampton

1735 International Communications vs. the Las Vegas Convention and Visitors Authority. It's the case

1736 I told you of the local ruling that allowed the restriction of individuals during shows put on at the
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1737 Las Vegas Convention Center, saying (inaudible) owns property and certain parts of the property
1738 and the sidewalks, soliciting or leafleting during the convention.

1739 I want to put on the record a copy of Efron vs. International Society for Krishna Consciousness.
1740 That's the Minneapolis Fairground case I told you about, where individuals who were soliciting
1741 (inaudible) literature (inaudible) fairground.

1742 I wanna put on the record One World One Family Now vs. City of Honolulu, which is a case that
1743 limited expressive activity along Honolulu.

1744 I wanna put on the record a copy of Menotti vs. City of Seattle, which is a case that restricted the
1745 people of the World Trade Organization protests to certain areas in (inaudible) wanted to be.

1746 I wanna put on the record two cases involving court decisions that looked at alternative channels
1747 of communication that must be left open when you restrict speech. That is Smith vs. City of Fort
1748 Lauderdale and Ghesham vs. Peterson (inaudible).

1749 And I'd also put on the record two cases that discuss speech and conduct and expressive activity
1750 that interferes with revenue, since that is something we can also consider in regulating. Those
1751 cases are Children of the Roses vs. City of Phoenix and Lebron vs. National Railroad Passenger
1752 Corporation (Amtrak). Those I'm going to file with the Clerk.

1753 I would also at this time would like to make part of the record the entire record of the City
1754 Council meeting, the Recommending Committees that were held involving the 1993 Pedestrian
1755 Mall Ordinance, all revisions to that ordinance, the 1995 Solicitation Ordinance, and all record
1756 that has been created with respect to the Pedestrian Mall and the regulations of the Pedestrian
1757 Mall to this time.

1758 With that being said on the record, I have nothing more to add. I'd be glad to answer any
1759 questions of the Recommending Committee.

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1760 **COUNCILMAN BARLOW**

1761 Thank you. And, for the record, Mr. Brad, Mr. Jerbic has submitted all of those case files to the
1762 Clerk. At this time, I'll open up for discussion. Councilman.

1763

1764 **COUNCILMAN ANTHONY**

1765 All right. Brad, on – Page 5, on Line 22, it talks about the following expressive conduct that's
1766 permitted in a free exercise (sic) zone. So, if I heard you correctly, leafleting you're gonna take
1767 out?

1768

1769 **BRAD JERBIC**

1770 That's correct. It'll be our recommendation that at the end of this Recommending Committee,
1771 when you vote to pass or don't pass the bill, you do it as amended, and the amendment would be
1772 to strike Line 24, it says, two, leafleting and – so the new version of this ordinance would read:
1773 the following expressive conduct is permitted to any free expression zone. 1) solicitation is
1774 defined in LVMC 10.44.010, and 2) mall entertainment. And that's it.

1775

1776 **COUNCILMAN ANTHONY**

1777 Okay. So, on Page – 2, on Line 18, where it defines leafleting, are you – taking that out?

1778

1779 **BRAD JERBIC**

1780 No. We're going to continue to have the definition in.

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1781 **COUNCILMAN ANTHONY**

1782 Okay.

1783

1784 **BRAD JERBIC**

1785 We're not gonna restrict those.

1786

1787 **COUNCILMAN ANTHONY**

1788 Okay. So, the, so when somebody reads this ordinance, they will see that what the definition of

1789 leafleting is, but there – won't be any mention of whether it's allowed or, just say, it, there won't

1790 be any mention (inaudible) –

1791

1792 **BRAD JERBIC**

1793 That's correct.

1794

1795 **COUNCILMAN ANTHONY**

1796 – but it will be defined, so if somebody wants to leaflet on Fremont Street Experience, they can

1797 do it?

1798

1799 **BRAD JERBIC**

1800 That's correct.

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1801 **COUNCILMAN ANTHONY**

1802 And, as, from what you're telling me, this definition is sufficient so if any – citizen reads that,
1803 they'll know exactly what leafleting is? The police will know what it is? Security will know what
1804 it is? So there won't be any conflict when somebody reads this? And do you agree with that,
1805 Jeff? When you read that line, is that –

1806

1807 **JEFF VICTOR**

1808 I'm sorry, I don't have it in front of me. Let me look for it.

1809

1810 **COUNCILMAN ANTHONY**

1811 I – just wanna be real clear that people know what they can do in the leafleting area.

1812

1813 **JEFF VICTOR**

1814 I guess, I would have questions about what leafleting means, anything with a piece of paper, or if
1815 it means it's an ad or a coupon or (inaudible). I have my own questions.

1816

1817 **COUNCILMAN ANTHONY**

1818 Well, if Jeff can't define it, then –

1819

1820 **BRAD JERBIC**

1821 I will work with Jeff on it and security, because I can tell you that after this ordinance, if it
1822 passes, there will be a considerable amount of education (inaudible), with respect to the Fremont
1823 Street Experience, security and with Metro. That particular sentence, to me, and (inaudible)

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1824 passing out of anything, written, printed or graphic, so it can be a picture. It can be something
1825 printed on a card. It can be something handwritten. But that's what it is.

1826

1827 **COUNCILMAN ANTHONY**

1828 Okay. But somebody – standing on the Fremont Street Experience with a big sign, a huge sign, is
1829 that permissible under leafleting?

1830

1831 **BRAD JERBIC**

1832 It's not leafleting and it's permissible. That, that's something that we call just carrying a sign, for
1833 want of a better way to put it. It's not solicitous activity. What you just described, merely holding
1834 a sign –, is not solicitation activity. It's not leafleting.

1835

1836 **COUNCILMAN ANTHONY**

1837 So, it'd be allowed?

1838

1839 **BRAD JERBIC**

1840 Right.

1841

1842 **COUNCILMAN ANTHONY**

1843 So, I could stand –

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1844 **BRAD JERBIC**

1845 I mean, there might be other things that prevent it. I mean, a sign with a big metal spike and it's
1846 dangerous, or it's a weapon or something like that, that may be something different.

1847

1848 **COUNCILMAN ANTHONY**

1849 But, under this ordinance, if I stand there with a big sign, save the whales, save the whales, that
1850 would permitted activity?

1851

1852 **BRAD JERBIC**

1853 Permitted with one caveat. Blocking or impeding and obstructing traffic is prohibited City-wide,
1854 including in the Mall.

1855

1856 **COUNCILMAN ANTHONY**

1857 Okay.

1858

1859 **BRAD JERBIC**

1860 But, if you're just standing there and you're not impeding anybody, you're fine.

1861

1862 **COUNCILMAN ANTHONY**

1863 Okay. So –, leafleting, what you're talking about, is actually handing out material?

1864

1865 **BRAD JERBIC**

1866 Right.

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1867 **COUNCILMAN ANTHONY**

1868 Okay. All right. But, if you could just take another stab at that with Jeff, just to make sure that if
1869 somebody grieves that, they know exactly what is permitted activity under leafleting.

1870

1871 **BRAD JERBIC**

1872 (Inaudible)

1873

1874 **COUNCILMAN ANTHONY**

1875 Okay. Now, under, okay, under solicitation and mall entertainment, so those two are going to be
1876 prohibited, except in the free zone areas. Now, soliciting and mall entertainment could be a –
1877 commercial enterprise or it could not be a commercial enterprise, correct?

1878

1879 **BRAD JERBIC**

1880 Correct.

1881

1882 **COUNCILMAN ANTHONY**

1883 I mean, you could stand out there and entertain and not ask for money, you just wanna entertain
1884 people, and you're not, you don't have anything out there asking for money, throw coins, and
1885 you're the same as soliciting, correct?

1886 So, Jeff, how much – soliciting and mall entertainment occurs on Fremont Street Experience
1887 where there's no commer, no currency attached to it? See – what I'm asking there?

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1888 **JEFF VICTOR**

1889 Zero. Everybody out there is conducting business.

1890

1891 **COUNCILMAN ANTHONY**

1892 Zero. So, nobody goes out there to – sing and dance and not ask for money at the same time.

1893

1894 **JEFF VICTOR**

1895 No.

1896

1897 **BRAD JERBIC**

1898 Let me – ask this. I know there was an article in the paper, and I don't know the answer, but I
1899 wanna make sure that we do not (inaudible) the record that – later on (inaudible), should it get
1900 approved. Was there a time when there was somebody out on the Pedestrian Mall tap dancing
1901 that security stopped, and were they asking for money?

1902

1903 **JEFF VICTOR**

1904 I don't know whether they were asking for money or not, to be honest with you.

1905

1906 **BRAD JERBIC**

1907 To answer your question, there may be times when somebody just went out there, because they
1908 either wanted to express something or, to be blunt, wanted to pull a stunt just to see how the
1909 Experience would react. Some people got out there and literally tested the boundaries of the
1910 prohibitions, or lack thereof, to see what would happen. And I don't have a doubt in my mind
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1911 that some that are out there, and probably most that are out there aren't even aware of the
1912 litigation or the case law that's been submitted. They're just going out there to (inaudible). But, I
1913 can also tell you that there are others that have gone out there that have been, for want of a better
1914 term, doing things just to see if they can generate a reaction from security or from Metro to see
1915 where the boundaries of enforcement are. I don't have a doubt. Some of those people are put up
1916 by organized, organizations that are interested in litigation. I don't have a doubt that some of
1917 those people are out there because they themselves may be interested in litigation. Some may just
1918 be ordinary citizens that are just curious as to how much freedom they enjoy in that Pedestrian
1919 Mall.

1920 I don't know the percentages of them either. But I do know that some of them out there are doing
1921 it for free just to see what happens.

1922

1923 **JEFF VICTOR**

1924 Councilman, my answer was too absolute. I apologize. I mean, the vast majority, almost without
1925 exception, folks are coming down there to – conduct commerce. And, so, may there be some
1926 examples out there, I don't know whether they're out there doing something with other
1927 intentions, perhaps, but, by far, the vast majority are out there to conduct commerce.

1928

1929 **COUNCILMAN ANTHONY**

1930 The – reason I ask is, I mean, you , Jeff testified that, you know, he, it's his responsibility, or the
1931 Fremont Street's (sic) responsibility to have organized commercial enterprises, so they have
1932 kiosks and people pay a certain amount, and that's all organized, and, thought –, well planned
1933 out. So, if – somebody goes down there and sets up their own commercial enterprise, such as
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1934 standing there dressed in silver, asking for money, could – that be banned as a commercial
1935 enterprise from Fremont Street Experience, because they have the authority to organize that?
1936 That – in and of itself, could that be completely prohibited anywhere on Fremont Street?

1937

1938 **BRAD JERBIC**

1939 We, we've always though so, under the original ordinance, that, certainly, the authority on the
1940 original Pedestrian Mall Ordinance that was given to Fremont Street (sic), as well as the
1941 development agreement. The development agreement charged that, with operation and
1942 maintenance of the Mall. And, remember, when we go back in time to day one, we thought, as
1943 did the local District Court Judge who agreed with us that one time, that it was – not a traditional
1944 public forum. It was complete authority to regulate all activity. So, as it's been whittled away by
1945 various court decisions, we have the final decision, which threw virtually everything out, we
1946 have a contract, which charges Fremont Street (sic) with total regulation and total control and
1947 total management. And a set of laws disappearing that. A set of laws that says, you really can't
1948 go that far, 'cause it is a traditional public forum, and, as a result, you're limited to the type of
1949 restrictions that you can impose.

1950 I would agree with you, Councilman, that purely commercial speech is completely controllable,
1951 even under First Amendment Law by the Fremont Street Experience.

1952

1953 **COUNCILMAN ANTHONY**

1954 It is?

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1955 **BRAD JERBIC**

1956 Purely commercial speech. But not when it comes to –

1957

1958 **COUNCILMAN ANTHONY**

1959 So why would you –

1960

1961 **BRAD JERBIC**

1962 – (inaudible) are – commercial –

1963

1964 **COUNCILMAN ANTHONY**

1965 – set up –

1966

1967 **BRAD JERBIC**

1968 But there's some – First Amendment limits to that. There's (sic) various kinds of commercial

1969 speech that the courts have chipped out little exceptions for. But, by and large, commercial

1970 conduct, setting up a kiosk of your own, just to make money, hypothetically, would be

1971 completely prohibited by the Fremont Street Experience.

1972 Here's where we get into problems –

1973

1974 **COUNCILMAN ANTHONY**

1975 So, why would you set up a free zone for that then?

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1976 **BRAD JERBIC**

1977 Where we get into problems, there are, one, we want that commercial space in the Mall to be
1978 prime commercial space reserved for Fremont Street to make money on and enhance the
1979 pedestrian and tourist experience. That's the reason for it. But there are times when, if this were
1980 all black and white, this would be so easy. But we have, like I explained it to somebody the other
1981 day, what if you went out in the Mall and you set up a table and you started selling white Hanes
1982 T-shirts, just white T-shirts. Purely commercial. No content. No speech. No nothing. I think that
1983 could be completely prohibited. But now I stamp a message on it. I stamp, you know, I'm for
1984 Jesus, or screw the government, or vote for John Edwards, or whatever you might wanna put on
1985 this, now you might have a message that is looked at in addition to your plain white T-shirt. And,
1986 because you have a hybrid, courts begin to look at this a little bit different. And they begin to
1987 look at that kind of speech. It may be not just commercial, but having a free speech component
1988 as well.

1989 Entertainment. Anyone talk (sic) about entertainment, individuals who – express through
1990 stripping, courts have said, and they have a First Amendment component. There may be some
1991 communicative speech going on there. You get tipped for it, paid for it.

1992 There are lots of things that we look at today that just aren't as black and white as you would
1993 think. You might think that if you sell any kind of product, that's always commercial speech.
1994 (Inaudible) the product. What if you sell crucifixes?

1995

1996 **COUNCILMAN ANTHONY**

1997 Okay. So, –

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1998 **BRAD JERBIC**

1999 Or you sell rosaries?

2000

2001 **COUNCILMAN ANTHONY**

2002 – what I’m hearing you saying is there is a possibility that you could ban commercial-type

2003 speech, but, I guess, what I’m hearing you saying, is, on a safe side –

2004

2005 **BRAD JERBIC**

2006 Um, hum –

2007

2008 **COUNCILMAN ANTHONY**

2009 – instead of banning it, is to move it to a free –

2010

2011 **BRAD JERBIC**

2012 Right.

2013

2014 **COUNCILMAN ANTHONY**

2015 – zone?

2016

2017 **BRAD JERBIC**

2018 If you’re asking for money, that’s what we’re looking at here. If you’re asking for anything of

2019 value for yourself or your business, and let me read the definition of solicitation, as it’s rewritten.

2020 The word immediately has been taken out of that. Solicitation means the act of solicitation,
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2021 including asking, begging, soliciting or pleading for the purposes of taking money, charity,
2022 business or patronage, or gifts, or items of value for oneself, another person or organization.
2023 That, we are saying is in the free expression zone only, mall entertainment, whether it's protected
2024 by the First Amendment or not, then the – free expression zone only. That's it. Those are the two
2025 restrictions.

2026

2027 **COUNCILMAN ANTHONY**

2028 Whether you're asking for money or you're not asking for money?

2029

2030 **BRAD JERBIC**

2031 Right. In the Mall (inaudible), whether you're asking or not, you're in there.

2032

2033 **COUNCILMAN ANTHONY**

2034 You're in the free –

2035

2036 **BRAD JERBIC**

2037 That's correct.

2038

2039 **COUNCILMAN ANTHONY**

2040 But, what I'm hearing you saying is if you're just a commercial, if you're entertaining for
2041 money, if you wanted to ban that completely, you're –, kind of, it's not completely clear whether
2042 you could do that or not?

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2043 **BRAD JERBIC**

2044 Let me see if I understand the question. If you are an entertainer just asking for money?

2045

2046 **COUNCILMAN ANTHONY**

2047 Yeah. If you're –

2048

2049 **BRAD JERBIC**

2050 Theoretically, I think you can ban all of that. If you are literally an entertainer, let's say, you're

2051 Wayne Newton. You wanna put on a show on Fremont Street Experience, you wanna charge

2052 tickets for it, I think that could probably be banned.

2053

2054 **COUNCILMAN ANTHONY**

2055 Okay. But, with this ordinance, it would not be banned, it would just be moved to the free zone

2056 area?

2057

2058 **BRAD JERBIC**

2059 The problem, like I say, is getting into which speech is allowed and which isn't. Now, you're

2060 gonna hear, I know you're gonna hear from the ACLU, and you may hear from others, that may

2061 say very well or completely disagree with me that all this entertainment is all expressive, and it's

2062 all allowed, and it's all part of speech. And I think that, as you look at the case law on this stuff,

2063 it really evolves over time. You know, as we sat here writing these first round of ordinances, we

2064 looked at every word with respect and with a desire to comply, that was written by the Ninth

2065 Circuit and we still have a disagreement among the courts.

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2066 So, when it comes to entertainment, again, I really think the better way to look at this is that, on
2067 paper, Fremont Street (sic) has the ability to regulate it, limit it, and you pick only their own, and
2068 they get to pick and choose the entertainment. In reality, the courts could very well say a lot of
2069 this is protected speech.

2070

2071 **COUNCILMAN ANTHONY**

2072 Okay.

2073

2074 **BRAD JERBIC**

2075 And that's why rather than argue whether it is or it isn't, whether it's real entertainment or
2076 commercial entertainment, or this or that, (inaudible) call it entertainment and put it in a zone.

2077

2078 **COUNCILMAN ANTHONY**

2079 Okay. That answers my question. Thank you.

2080

2081 **COUNCILMAN BARLOW**

2082 Is that it, Councilman?

2083

2084 **COUNCILMAN ANTHONY**

2085 Yeah.

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2086 **COUNCILMAN BARLOW**

2087 Okay. Mr. Jerbic, solicitation, the definition that you provided, would there be an issue if, in fact,
2088 one of the entertainers would be out on the Mall entertaining, and have a bucket in front of them;
2089 however, they did not ask anyone for any currency?

2090

2091 **BRAD JERBIC**

2092 Yeah. They may say, I'm not an entertainer; I'm a solicitor, and that's all I solicit and that's
2093 protected. And that's how you get around it, you say, your solicitation is protected speech, but
2094 we're not gonna separate that anymore. We're saying entertainment, we don't care if you got a
2095 bucket or not, we don't care if you're soliciting or not, 'cause soliciting and mall entertainment
2096 are two categories that are gonna be in the free expression zone. We're not gonna get involved in
2097 making that decision anymore, whether you're looking for money or not, whether it's
2098 commercial or solicitation –

2099

2100 **COUNCILMAN BARLOW**

2101 I – understand that, but my – pointed question is, is it solicitation, if in fact, an entertainer,
2102 whether be in the zone or out of the zone, if an entertainer had a bucket in front of them, and they
2103 did not ask any of the stand, those who are standing by, observing them or being entertained, is
2104 that considered solicitation?

2105

2106 **BRAD JERBIC**

2107 Yeah. The, I don't know the answer to that. And I think that's why the Court (sic) Circuit is
2108 saying, too, you don't wanna go there. Courts really frown on laws and activity that requires any
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2109 judgment by a human being at all, 'cause human beings can pick and choose. You may walk
2110 down, as a security guard, and see a bucket, somebody tap dancing in front it. Well, it's clear, to
2111 me, he's begging, pleading for money by the act of tap dancing. Somebody else could walk by
2112 and say, he didn't utter a single word. He's just tap dancing. There just happens to be a bucket
2113 there. You know, courts look at that and say, boy, you know, I don't like that, because you get to
2114 pick and choose who is, you know, soliciting and who isn't.

2115 I have a card in my hand, we actually had the circuit look at this and say, we don't like this
2116 written solicitation stuff, 'cause you have to read it to determine whether or not it's solicitation.
2117 They don't like the fact that somebody has to make a judgment call on that. How the heck else
2118 do you know, unless you read it? The courts don't like that, and I respect that. I don't have to
2119 agree with it, but I respect it, and we'll follow it.

2120 When you talk about some of these areas, you're really getting into those kinds of discussions.
2121 That's why one could stand here in front of you and say, this is all protected speech, 'cause
2122 solicitation is protected. Expressive speech is protected. It doesn't have to be words. It could be
2123 conduct. And, so, that it is protected. And, so, you can have now, depending on what you're
2124 talking about, my answer is only as good as the very specific example you give me. Wayne
2125 Newton going out in the middle of the Mall selling show tickets for, you know, whatever he
2126 would do on the Strip, I think I'd have a pretty good argument that's purely commercial and
2127 you're probably (inaudible). Somebody else gets out there and starts tap dancing with a bucket in
2128 front of it (sic) with a dollar sign and doesn't utter a word, they may have a better argument that
2129 I'm soliciting as opposed to entertaining. It's just my method of driving you to my bucket.

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2130 Or, I put a religious shirt on now, or a, I'm a devil worshiper and I want money from those folks,
2131 or I'm part of the Arian Brotherhood, whatever you are, you're wearing a message and putting a
2132 bucket in front of you, whether or not uttering a word.

2133

2134 **COUNCILMAN BARLOW**

2135 Mr. Victor –

2136

2137 **BRAD JERBIC**

2138 You know, again, people start to move all over the scale when you talk about this conduct.

2139

2140 **COUNCILMAN BARLOW**

2141 I'm with you. I understand, Brad.

2142 Mr. Victor, are there any of your vendors hired by a Fremont Street Experience or any of the
2143 properties that exist under the canopy that solicits or distribute any type of literature, leaflets?

2144

2145 **JEFF VICTOR**

2146 Some of the entertainers that – we hire that will also accept tips; yes, that's true. Do they
2147 distribute flyers or paraphernalia? I think some of the casinos will have timeshare operators in
2148 their doorways that may or may not distribute papers and stuff. I, I'm not coming up with a
2149 concrete example of any of our vendors on Fremont Street to name doing that.

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2150 **COUNCILMAN BARLOW**

2151 Okay. What about the other properties? Do the – other properties, the casinos, or the like,
2152 distribute flyers or go out and solicit beyond just the timeshares?

2153

2154 **JEFF VICTOR**

2155 Oh, I think all the businesses up and down Fremont Street will be happy to do that, if that's
2156 allowed.

2157

2158 **COUNCILMAN BARLOW**

2159 But, to your knowledge, do you know whether or not they do it today?

2160

2161 **JEFF VICTOR**

2162 Oh, sure. In the last year, the flood gates have opened. And, remember, not all of the businesses
2163 up and down Fremont Street are limited properties, and, even within those limited properties,
2164 there are third party entities. Our ability to control those kinds of activities has been quite
2165 confused and diminished over the last year.

2166

2167 **COUNCILMAN BARLOW**

2168 Okay. I have no further questions at this time. Thank you, Mr. Victor. Thank you, Mr. Jerbic.

2169

2170 **BRAD JERBIC**

2171 (Inaudible)

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2172 **COUNCILMAN BARLOW**

2173 If there is anyone here wishing to speak on this item, we would ask that you please come
2174 forward, state your name for the record.

2175

2176 **MAGGIE McLEITCHIE**

2177 Where would you like me to sit?

2178 Thank you for letting me speak. My name's Maggie McLetchie. I'm the staff attorney of the
2179 ACLU of Nevada. A few preliminary things: I'd like to be sure that the copies of the things that
2180 were put into the record are made available to the public.

2181

2182 **BRAD JERBIC**

2183 Absolutely, as is, by the way, the PowerPoint, so you're welcome to the entire PowerPoint and
2184 the videos as well.

2185

2186 **MAGGIE McLEITCHIE**

2187 Thank you very much, Mr. Jerbic.

2188 Another concern I had, which touches on the Open Meeting Law issue, is the fact that the
2189 version of the ordinance that you have in front of you today, it was made available to the public
2190 beforehand before it was slightly changed, and I'd also, and I'm not sure that necessarily you can
2191 act on something that hasn't been made available. That's a preliminary concern.

2192 More importantly, I was concerned, when Mr. Jerbic was speaking, that, he said that some of the
2193 issues about the full meaning of solicitation and how that's gonna be applied when it isn't
2194 solicitation, may be worked out later. Under law, the – due process requirements that (inaudible)
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2195 may be ambiguous requires that members of the public, people who may be penalized under the
2196 law, are able to understand it. And if Mr. Jerbic and Mr. Victor, today, were not hearing the
2197 meaning of the law, certain, and –, yourself, Councilman, I'd actually put forth that it might not
2198 be possible for members of the public, to when the law, might be an ordinance might be enacted,
2199 for them to understand it. So, those are just some preliminary concerns, about the materials
2200 before us today.

2201 I also wanted to point out a few things on the testimony. A lot of it was based on hearsay. I
2202 realize Mr. Victor later corrected himself, but it's also not possible to testify to a negative, say
2203 something never happens. And I can actually tell you, it's also, again, hearsay, of course, but I
2204 can tell you that I'm aware of people going down to Fremont Street, including the ACLU,
2205 engaging in activity that is by no means commercial, and that is unquestionably protected by the
2206 First Amendment.

2207 I'm just gonna get into what the history of the litigation, and the history of Fremont Street, that
2208 Mr. Jerbic set forth. I don't really contest very much, but there are a few things that I would set
2209 forth. At the beginning, a few myths that I think may be (inaudible) by some of the things we've
2210 heard today.

2211 First of all, I disagree with the underlying idea that you can't comply with the constitution and
2212 make money. There are many places in the United States where we have vibrant commercial
2213 areas, vibrant downtown areas, where first, where they don't have these kinds of laws that
2214 prohibit First Amendment activity and businesses flourish. And it's part of the fact of living in a
2215 vibrant area. In my opinion, a lot of the reasons that people like coming to Fremont Street and
2216 like coming to this area of town, as opposed to other areas of town, we see growing off the
2217 Fremont Street Experience area, we see growing businesses like a new coffee shop, a new arts
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2218 center. And I think a lot of the types of people that like coming to Fremont Street like coming
2219 here, because it is more like an urban area, which include a traditionally urban area, which
2220 includes having free speech activities that are common right now.

2221 In any case, arguing that speech is undesirable and interferes with commercial interests, does not
2222 justify unconstitutional restrictions. I'm gonna walk through, a little bit later, about why I think
2223 the restrictions are unconstitutional, but, in any case, I just wanna make clear that just because,
2224 even if it were true it interferes with commercial interests, that does not justify unconstitutional
2225 restrictions.

2226 Another point is that Mr. Jerbic and the Council and the law and Fremont Street Experience,
2227 Limited Liability Corporation (sic), security guards can't decide is and isn't legitimate First
2228 Amendment protected activity. You – both had some interesting important questions, I thought,
2229 about things like, well, if you have a jar of tips, is that commercial? If you're dressed up and
2230 you're trying to get people to give money to take a picture, is that First Amendment or is that or
2231 isn't that protected? And, actually, the Ninth Circuit, I think, is, obviously, providing authority
2232 on this point, and they have made clear that that kind of activity is protected. And it's actually
2233 irrelevant, they said, whether it's, it's both protected to go after tips, to ask for tips and to
2234 passively seek them.

2235 And, we've – heard a lot of things about, well, there's the balloon artist, things like that, who,
2236 I'm sorry, hula hoops and things like that, those are – clearly not protected. Someone dressing up
2237 in silver and portraying a statue, that's not protected. That's not true. The Ninth Circuit in
2238 striking down and actually much more permissive and protective. Street performers scheme in
2239 the City of Seattle, the lead plaintiff was a balloon artist. So a lot of the kinds of activities that I
2240 think, today, we may be assuming are on the gray area, are not in the gray area. When the Ninth
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2241 Circuit says that an activity is protected under the constitution, it is protected under the
2242 constitution.

2243 Along with the, related to – my last point, that just because we may not like what’s going on
2244 down there, we may not like all the kind of speech that we see, we may disagree with it, that we
2245 have to figure out how to regulate it, how we’re gonna solve the problem. The Ninth Circuit in
2246 the Berger decision that I – mentioned said the following: First Amendment protections are
2247 robust, yet at the same time fragile and precious. Often, government restrictions on speech seem
2248 perfectly reasonable at first glance and the encroachment on expression forgivable in pursuit of
2249 convenience or good manners, but 70 years of law, beginning with Hague vs. CIO has laid the
2250 basic principle that there a few government-owned areas of which public parks are the pre-
2251 eminent example in which values underline the First Amendment, favor communication among
2252 citizens over merely reasonable speech restrictions. And require and said that any regulation of
2253 speech be targeted at real problems and carefully calibrated to solve those problems. In other
2254 words, while some among them, the dissenters in this case might prefer a Truman Show version
2255 of pristine placidity in our public parks, our First Amendment jurisprudence rests on a very
2256 different vision.

2257

2258 **COUNCILMAN BARLOW**

2259 May I just stop you there?

2260

2261 **MAGGIE McLECHIE**

2262 Sure.

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2263 **COUNCILMAN BARLOW**

2264 Well, number one, it seems like you're – trying to rush through it. You don't have to rush –

2265

2266 **MAGGIE McLEITCHIE**

2267 Okay.

2268

2269 **COUNCILMAN BARLOW**

2270 You can take your time.

2271

2272 **MAGGIE McLEITCHIE**

2273 We –, we've just been here so long.

2274

2275 **COUNCILMAN BARLOW**

2276 I know.

2277

2278 **MAGGIE McLEITCHIE**

2279 I'm just sitting around waiting to go eat lunch. But thank you for that.

2280

2281 **COUNCILMAN BARLOW**

2282 But we wanna make sure that you get everything that you need on the record, as well.

2283

2284 **MAGGIE McLEITCHIE**

2285 Thank you very much. I also appreciate that also.

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2286 **COUNCILMAN BARLOW**

2287 So you don't have to, you know, feel as though you're being pressured, you're not. So you can
2288 take your time.

2289

2290 **MAGGIE McLEITCHIE**

2291 I'm also from the East Coast, so I talk really fast.

2292

2293 **COUNCILMAN BARLOW**

2294 Okay. All right. I just wanted to let you know that. And, secondly, wanted to stop you for a
2295 moment just to ask a question in regards to the case study you just read in regards to public
2296 parks, and I know that Mr. Jerbic defined whether or not the Fremont Street Experience was a
2297 public park, was it a recreational venue, facility, so I – wanna ask a question in regards to the
2298 relevancy of –, one, Mr. Jerbic, is in fact Fremont Street Experience, according to case law, a
2299 public park, a recreational facility or entertainment venue. And, in relation to, McLutchie?

2300

2301 **MAGGIE McLEITCHIE**

2302 McLetchie.

2303

2304 **COUNCILMAN BARLOW**

2305 McLetchie. Ms. McLetchie case study stating that she's referencing public park, so I wanna be
2306 able to see, if in fact, are they one in the same? Or, if in fact, they're separate?

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2307 **BRAD JERBIC**

2308 It's actually none of the above. It's a traditional public forum, according to the courts. The case
2309 law is that all streets and sidewalks are traditional public forum. And the argument that was
2310 advanced by the ACLU in the first round of litigation was that you did not successfully take this
2311 area that was a street and sidewalk and convert it into a private non-public forum.

2312

2313 **COUNCILMAN BARLOW**

2314 Okay. But give me – the short version. Is –

2315

2316 **BRAD JERBIC**

2317 Right. Now parts of public forums –

2318

2319 **COUNCILMAN BARLOW**

2320 – what is Fremont Street Experience considered?

2321

2322 **BRAD JERBIC**

2323 It's – considered a public forum for purposes of what kinds of First Amendment activity are
2324 allowed and what kinds of restrictions and what test will be applied to those restrictions. That's
2325 what's considered by the courts. The word park, street, sidewalk, is irrelevant when it comes to
2326 the – big term. The big term is traditional public forum, which kicks in motion a test that says
2327 you have to have a substantial governmental interest in any regulation. It says that you have to
2328 leave alternative means of communication open if you do those regulations. And those
2329 regulations are limited to reasonable time and place and manner restrictions.

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2330 **COUNCILMAN BARLOW**

2331 Okay. And you're not –

2332

2333 **MAGGIE McLETCHE**

2334 If –

2335

2336 **COUNCILMAN BARLOW**

2337 I – just want to hear –

2338

2339 **BRAD JERBIC**

2340 I think we're probably on the same page (inaudible)

2341

2342 **COUNCILMAN BARLOW**

2343 – Ms. McLetchie, respond to that.

2344

2345 **MAGGIE McLETCHE**

2346 We're on the same page (inaudible) public forum and –

2347

2348 **COUNCILMAN BARLOW**

2349 Okay.

2350

2351 **MAGGIE McLETCHE**

2352 – while this talks about public parks, the point is that they're both public forums.

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2353 **COUNCILMAN BARLOW**

2354 Okay.

2355

2356 **MAGGIE McLEITCHIE**

2357 So they, the legal analysis for Berger is exactly, directly applicable here.

2358

2359 **COUNCILMAN BARLOW**

2360 Okay.

2361

2362 **MAGGIE McLEITCHIE**

2363 When you're talking about places like public parks and places like Fremont Street, when the

2364 Ninth Circuit declared that Fremont was indeed a public forum, as we had urged, what they said

2365 is it's – the kind of area that is at the – heart of the kind of public area where the public exchange

2366 of information is protected at the highest level of degree of protection by the courts. The –

2367

2368 **COUNCILMAN BARLOW**

2369 Okay.

2370

2371 **MAGGIE McLEITCHIE**

2372 It is a public forum, just like what was at issue in Berger.

2373

2374 **COUNCILMAN BARLOW**

2375 Thank you.

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2376 **MAGGIE McLETCHE**

2377 So let me go on again. I don't think we disagree on the basic parameters of whether it's a public
2378 forum or what the law is, but I do want to reiterate, we heard a lot about the history of the –
2379 Fremont Street Experience and the Liability Company, the history of the development of the
2380 Fremont Street area, and a lot about the case law. And it is a very unique area. I don't want to
2381 be dismissive of the fact that it is, this is a different and unique area.

2382 However, the fact that it's unique, doesn't change the constitutional analysis. As – Mr. Jerbic
2383 and I have agreed, it is in fact a public forum. We also agree obviously that – the government
2384 can enact reasonable time, place and manner restrictions, despite the fact that it is a public forum.
2385 However, there are certain limitations on that.

2386 First of all, it has to be content neutral. And where you are allowing certain kinds of speech,
2387 Fremont Street Experience Limited Liability Company endorsed performances, and then
2388 regulating other kinds of performances to a very small area, our view, believe this is not content
2389 neutral. When something is not content neutral, it is – presumed unconstitutional and a very high
2390 test applies.

2391 In addition to being content neutral, there are other requirements. It also has to be narrowly
2392 tailored to serve significant government interests and it may not burden more speech than
2393 necessary. This is almost a total ban. The actual area that's – left, that's carved out, is so small
2394 that it almost operates like a total ban. And so it is not narrowly tailored to serve a significant
2395 governmental interest.

2396 In addition, we've heard a lot today about certain kinds of speech that we're concerned about.
2397 But this would reach a whole slock (sic) of activity. The total ban, for example, on solicitation

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2398 would stop me from handing out my membership materials on Fremont Street, unless I was in
2399 this very small area.

2400 In addition, the third requirement is that when you're enacting time, place and manner
2401 restrictions, they have to leave open ample alternative channels and you have to be able to reach
2402 your audience. This just doesn't pass the muster. I read to you a quote from the Berger case, the
2403 Berger case I will provide, I can send this to you, Mr. Jerbic and to yourselves, after – today
2404 along with a – memo detailing some of the issues that have come up today –

2405

2406 **COUNCILMAN BARLOW**

2407 And – as you mentioned these cases –

2408

2409 **MAGGIE McLEITCHIE**

2410 Mm-hmm.

2411

2412 **COUNCILMAN BARLOW**

2413 – will you be submitting those to the Clerk, or are you just mentioning them on the record?

2414

2415 **MAGGIE McLEITCHIE**

2416 I'm just mentioning them. I can certainly – well, this has got my notes on it. I'm just
2417 mentioning them today. I will submit them. I will write, I will send you guys copies of these
2418 later, so that –

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2419 **COUNCILMAN BARLOW**

2420 Okay. Please make sure you – send them to the –

2421

2422 **MAGGIE McLEITCHIE**

2423 To the Clerk as well. Sure.

2424

2425 **COUNCILMAN BARLOW**

2426 – Clerk as well, so we can have that on the record.

2427

2428 **MAGGIE McLEITCHIE**

2429 I'm happy to do that.

2430

2431 **COUNCILMAN BARLOW**

2432 Okay.

2433

2434 **MAGGIE McLEITCHIE**

2435 Thank you very much. In any case, the restrictions that Berger, they both required permits and

2436 they also relegated – street performers. It was about street performers, which I don't think is a

2437 big, one of the big concerns here. They relegated them to certain kinds of area and tried to

2438 control who would perform, where, when, to try to control some of the concerns. And it was

2439 struck down as unconstitutional. It didn't pass constitutional muster and it is far, it was far more

2440 permissive than what we're looking at today. I – heard, I listened with – interest to the

2441 argument, that this would be permissible because there are kiosks there, and you ban the

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2442 solicitation in certain areas of the kiosks. I don't think that's correct. I don't think that by
2443 putting up kiosks all over the public forum can you in essence justify a near total ban on speech.
2444 Another – myth that I should have pointed out, I wanted to discuss earlier, is that these laws are
2445 necessarily needed, to solve some of the problems. A lot of the problems we saw today on the –
2446 videos are things that we wouldn't necessarily object to people addressing in a constitutional
2447 manner, and there may actually be laws on the books.

2448 For example, if that big huge, I forget which – group it was that was using it, but the big –
2449 structure that was there? If you're actually obstructing traffic, under County code, it's totally
2450 illegal. It's, that is not something we object to. If you're actually obstructing traffic, that is
2451 something that is not permissible. We don't need to pass a huge ban on activities on the Fremont
2452 Street Experience area just to prevent that kind of problem.

2453 We've heard examples from Mr. Jerbic about assault. Again, there's (sic) obviously assault laws
2454 on the books that we can go after if someone is truly being, is – truly assaulting somebody. In
2455 terms of aggressive solicitations, we've never sued about aggressive solicitation. And we don't –
2456 object to aggressive solicitation laws. And so, if somebody won't let you pass, if someone's
2457 engaging in that kind of activity, we certainly do, at the ACLU, do not object to those laws being
2458 enforced and those kinds of activities. While the speech can't – be banned and can't be, and it's
2459 very difficult to regulate the speech under the law, you certainly can go after someone for
2460 aggressively soliciting.

2461 I – mentioned, I also mentioned the obstruction of traffic. We've dealt with this issue on the
2462 Strip. You can't, for example, you asked me some questions about signs and we litigated a case
2463 and eventually settled it, regarding street creatures on the – Las Vegas Strip. And they tr – they
2464 did have a law on the books that said signs couldn't be a certain size, and you couldn't be in

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2465 certain areas. And in the end, we came to an agreement where we just figured out a way to ban
2466 actual obstructing. So there wasn't, there was, there's not a sign limit per se, but you cannot
2467 obstruct traffic on the Strip. And the same would be possible on Fremont Street.

2468 A few – follow up points. I wasn't here last time. Mr. Lichtenstein was here and he would have
2469 been here today but he's at the – County dealing with a work card issue. But the Santa Monica
2470 ordinance I understand that this law, that these proposed ordinances were based in part on the
2471 Santa Monica ordinances. Those ordinances are nothing like what we have before us today.
2472 Like the Berger case, they're much more – permissive. For example, they limit street performers
2473 to be within certain, within – a certain distance of bus – stops, but the – vast majority of the area
2474 of the Promenade and the – Pier area are actually open to free expression. In addition, the
2475 permitting scheme and the other restrictions at issue in Santa Monica, they haven't been
2476 reviewed by the courts. What has been reviewed by the courts, what is binding law and a –
2477 binding interpretation of the constitution that the City of Las Vegas needs to consider is the
2478 Berger case. Because that's what the, when the, that's, I think the most direct case on point, save
2479 the Fremont Street cases that we've litigated, it's the most direct case on point.

2480 Last time, we, they discussed I think some examples about airports where brought up. There
2481 were a few other examples today, I think, about maybe a state – fair. Those areas are not public
2482 forum. So the kinds of – deference to speech that courts give are not given in those kind of
2483 context. Airports are not a public forum, so it's – much easier to regulate speech there
2484 obviously.

2485 The final point I want to bring up is attorneys' fees. I'm here before you today, obviously Mr.
2486 Jerbic and I have some disagreements about how the constitutionality of this law and I
2487 understand that he's your attorney. But we've been before the City Council before, on all of

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2488 these issues. And we always try to come and testify and talk about issues before you litigate
2489 them. In the past we've said that – ordinances were unconstitutional, they've been passed
2490 anyway. Then we've gone to court and then we've won. And then you've, new ordinances have
2491 been proposed. We said, hey, guys, we think they're unconstitutional, we're willing to work
2492 with you, but we don't think they're going to – withstand constitutional scrutiny. The City
2493 Council passes them anyway, we go to court, eventually we win and here we are again.
2494 This case, in some iteration, has been litigated for a decade and a half. Over \$250,000 of
2495 attorneys' fees have (sic) been paid out to the ACLU. I understand that there's an argument that,
2496 hey, Fremont Street Experience Limited Liability Company is paying those, the ACLU isn't
2497 paying those, so it doesn't really matter. It does matter. Because if we can afford to just throw
2498 away money on – legal costs and attorney fees, then you should be charging them more on the
2499 lease.

2500 But more importantly, it's a waste of judicial resources and, of course, the City Council
2501 shouldn't be doing things that violate the constitution. The, I – believe you've taken an oath to
2502 uphold the Constitution of the United States and when something's unconstitutional, it shouldn't
2503 go onto the books just for us to litigate it, go to court, win, get attorneys' fees and then come
2504 back here. I mean, we, we've been around this block so many times that I really, really urge you
2505 to hold off on recommending this for action – I think that we, you know, we're always willing to
2506 sit down with Mr. Jerbic and talk and try to figure out if there's other ways we can – come to an
2507 agreement with all these concerns. In addition, we are, and we are actually in settlement
2508 negotiations right now with a United State Magistrate Judge, who just contacted the parties, I
2509 think yesterday or the day before, to try to figure out when we can meet again. And we're
2510 negotiating in good faith there. We were actually pretty blindsided that this even came up,

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2511 because Fremont Street Experience Limited Liability Company, the ACLU and the City are all
2512 party to those negotiations. I actually can't discuss the contours of what we're talking about
2513 there, because it's protected, but those are ongoing. And a – judge's already expended
2514 significant time in trying to work – this out between the parties and so I'm, I just don't think that
2515 this is the right time for the City Council to just go and do its own thing over constitutional
2516 objections by the ACLU. Again, \$250,000 of attorneys' fees, you know, I – enjoy coming here
2517 today and testifying in front of you, and I also enjoy litigating. The only people who's interested
2518 in, is in actually passing these unconstitutional laws, on some level, is the ACLU, because we
2519 can go to court, win and get attorneys' fees. But rather than talk about this for another 15 years
2520 or another – 30 years or another hundred years, I think the best thing for us to do is to actually
2521 come together and try to resolve people's concerns in a way that comports with the Constitution.
2522 I understand that Fremont Street, the Fremont Street Experience area is a unique area. I
2523 understand that there are concerns about some things that go on – down there. But the First
2524 Amendment applies and we need to figure out a way to comply with the Constitution when we're
2525 – trying to take care of things down there.
2526 Unless you have any questions, that's all I have.

2527

2528 **COUNCILMAN BARLOW**

2529 Councilman?

2530

2531 **COUNCILMAN ANTHONY**

2532 I have a question.

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2533 **MAGGIE McLEITCHIE**

2534 Sure.

2535

2536 **COUNCILMAN ANTHONY**

2537 So – from your standpoint, it would be constitutional for, let’s say four people to go down to

2538 Fremont Street Experience, set up a drum – set, guitars and start playing and have a bucket and

2539 people throw money in it? That would be, as far as you’re concerned, that’s a First Amendment

2540 right for somebody to do that?

2541

2542 **MAGGIE McLEITCHIE**

2543 As far as I’m concerned, and more importantly, as far as the Ninth – Circuit is concerned.

2544

2545 **COUNCILMAN ANTHONY**

2546 So you’re – saying the Ninth Circuit Court of Appeals has ruled that that is permissible activity?

2547

2548 **MAGGIE McLEITCHIE**

2549 They have ruled that street performers are protected under the First Amendment and that both

2550 passive and active requests for tips are also protected. They – and I’m happy to share this – I’ll

2551 be sure to send this around, but yes, that is my position, that is the position of the Ninth Circuit.

2552 So, street performers are protected.

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2553 **COUNCILMAN ANTHONY**

2554 But there's – also the – stipulation that there's time, place and manner restrictions that could be
2555 put into place; correct?

2556

2557 **MAGGIE McLEITCHIE**

2558 That is correct.

2559

2560 **COUNCILMAN ANTHONY**

2561 That is correct. So – putting them in a free speech zone –

2562

2563 **MAGGIE McLEITCHIE**

2564 Mm-hum.

2565

2566 **COUNCILMAN ANTHONY**

2567 – as a, that – would be a place – restriction, could be constitutional?

2568

2569 **MAGGIE McLEITCHIE**

2570 It could be.

2571

2572 **COUNCILMAN ANTHONY**

2573 Could be.

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2574 **MAGGIE McLETCHE**

2575 If it were content neutral, which it isn't, because some performers are allowed to go perform on a
2576 stage. And whenever you're picking between kinds of speech, it's necessarily not content
2577 neutral. And so because you're allowing some – people to perform there and not others,
2578 arguably it's not even content neutral. So, it's unconstitutional out of the gate.
2579 Second of all, you have to look at whether or not it's narrowly tailored and whether or not it
2580 leaves ample alternatives to, for people to express themselves. And I – my argument is that that
2581 area is so small, it, with respect to the Fremont Street area at large, that it wouldn't pass muster.
2582 In the – law at issue in – Seattle, in the Berger case that I keep talking about, there were kind of
2583 areas all throughout, on the actual (inaudible). They weren't off to one – relegated small area off
2584 to the side. And even that didn't pass constitutional muster. And so, yeah, (inaudible) I do not
2585 believe that that passes muster because I think it's too small an area and I don't think it passes
2586 the constitutional test.

2587

2588 **COUNCILMAN ANTHONY**

2589 Thank you.

2590

2591 **COUNCILMAN BARLOW**

2592 So, just to piggy back off of the Councilman just shared, if the area were larger, then would it,
2593 what do you think the Ninth Circuit position would be if the area were larger?

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2594 **MAGGIE McLEITCHIE**

2595 Well, if the area were larger, arguably then the alternative channels to communication problem
2596 may be, that – part of the test may be easier to pass. However, arguably it'd still be, it wouldn't
2597 be constitutional. It'd be subject to strict scrutiny, because it's not content neutral, because
2598 you're allowing to, you're allowing some speech and disallowing other speech. And so where
2599 you're going to have this reasonable time, place and manner restriction always have to be content
2600 neutral. If they're not content neutral, they're not okay. No matter how big or small the area is.

2601

2602 **COUNCILMAN BARLOW**

2603 Okay. Well, thank you, –

2604

2605 **MAGGIE McLEITCHIE**

2606 Thank you.

2607

2608 **COUNCILMAN BARLOW**

2609 Ms. Mcleitchie.

2610

2611 **MAGGIE McLEITCHIE**

2612 Thank you very much. Very good that time.

2613

2614 **COUNCILMAN BARLOW**

2615 All right. Is there anyone else here, willing to speak, on this item? If so, please come forward
2616 and state your name for the record? Mr. Jerbic?

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2617 **BRAD JERBIC**

2618 (Inaudible), I'd just like to, for want of a better word, have a final word. I – don't want to say
2619 that I disagree with a lot of things that were represented by the ACLU (inaudible) regarding the
2620 Mall entertainment. You know, you gotta read these cases, you gotta read the circumstances
2621 where the conduct occurred, you gotta read the type of conduct that occurred. There may very
2622 well be a lot of conduct, as I said earlier, that because there's a cross over in solicitations or some
2623 kind of expressive activity that's given protection. When I look at Robot man up here, he jumps
2624 off his pedestal and chases tourists away, for taking his video. When you look at the Kiss guys,
2625 Tasing somebody who disagrees with him over a \$20 tip. I think we're gonna have some
2626 serious disagreement over what's protected there and what isn't.
2627 But I think that doesn't really matter. It doesn't really matter if we don't have the (inaudible).
2628 That's the beauty of this ordinance. We don't have the (inaudible), where you cross the line
2629 between protected entertainment and unprotected entertainment. Where you cross the line
2630 between protected solicitation and arguably, you know, solicitation that might be limited in some
2631 (inaudible) zone. It's all lumped into one category. We're just going to presume for a moment,
2632 just presume for a moment, that there may be is some protection associated with some or all of
2633 the Mall entertainment. We're treating it all like, putting it all in the First, all in the free
2634 expression zone. Whether it has a solicitation component or not. The solicitation – goes in the
2635 free expression zone.
2636 As far as the size of the zone, there's no evidence that they're too small. If anything I think they
2637 may be bigger than necessary. But the fact of it is, I put it on the record, this is a little bit fluid.
2638 If it turns out that these zones aren't big enough, for whatever reason, don't provide an alternate

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2639 means of – reaching, or (inaudible) communication, you know, we’ll look at them and they’ll be
2640 expanded. You know, we’re gonna monitor this and we’re gonna watch it.

2641 But I also want to say one thing about the First Amendment and the Constitution. You know I
2642 went to law school a long time ago. And what the law said the First Amendment to the
2643 Constitution was then is different what the law says, and First Amendment says now. It’s the
2644 same First Amendment. Hasn’t changed one bit in 230 years. Of course, interpretation of it has
2645 changed. You know, for the first 200 years of this country, you had more (inaudible) for
2646 purposes of solicitation prohibited around the country. Solicitation and begging or panhandling
2647 (inaudible), it was pretty amazing. (Inaudible) changed our mind, or looked at in a different way
2648 and the field of law began to evolve. And it’s not really evolved at the Supreme Court level; it’s
2649 evolved at the Circuit level. You find some circuits, you, an ordinance like this completely
2650 different than maybe the Second Circuit or the Seventh Circuit or another Circuit.

2651 And I don’t think there’s anybody who can wrap themselves in the American flag and say this is
2652 the First Amendment, it’s carved in stone and this is what it means. Because most of this is
2653 developed as a result of these kinds of ordinances and this kind of litigation. And I don’t think of
2654 all those people who have been upheld, that the ACLU was insecure when they lost. And I think
2655 of all those cities that lost, I don’t think they were insecure when they thought they were taking
2656 their best shot at reading the law and what it said at that moment in time. That’s just the reality
2657 of this kind of litigation. And when you talk about winning some and losing some, the taxpayers
2658 haven’t paid a dime for the attorneys’ fees. The ACLU is correct; the Fremont Street has picked
2659 it up. The taxpayers have picked up the cost of my salary for this presentation, Mr. Steed’s
2660 salary for drafting these ordinances and the like. But that’s been the cost to us and that’s gonna
2661 continue to be the relationship as we get into probably the next round of litigation.

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2662 But when you talk about where to draw the line? You know, we could say, hey, we won at the
2663 District Court level, ACLU, in 1997. You throw in the towel. They say, oh no, we're gonna
2664 appeal. We won, now you throw in the towel. They go back to District Court, we win, you
2665 throw in the towel. We go back up there and you throw in – where does this end? That's a silly
2666 argument. It's a silly argument for why you shouldn't litigate or not. Why you shouldn't
2667 promulgate an ordinance or not.

2668 You know, you have the responsibility that organizations that challenge ordinances don't have.
2669 You have a responsibility to govern. You have the responsibility to look at the big picture. And
2670 there's tension between these things and there always will be. It's just the nature of our country
2671 and the laws. But what I'm asking you today is to look at this ordinance from that perspective
2672 and ask yourself is your responsibility as the governing body of the City of Las Vegas, is this, is
2673 there a problem? If you don't think there is, toss this out now and tell me. If you think there is a
2674 problem, then ask yourself is this the right measured solution to that problem. And if you think it
2675 is, I ask that you pass it out with a do pass with the following amendments.

2676 One, Mr. Steed slipped me a note, because he's a clever fellow who reads when I don't, Line 18,
2677 Page 5 also has a reference to leafleting that needs to be stricken. Line 24, Page 5 says leafleting
2678 and, needs to be stricken and the word and needs to be added to Line 23. That will make it clear
2679 that leafleting is not restricted to these free expression zones. And, finally, –

2680

2681 **COUNCILMAN ANTHONY**

2682 (Inaudible)

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2683 **COUNCILMAN BARLOW**

2684 Eighteen and 24.

2685

2686 **BRAD JERBIC**

2687 I'm sorry. Line 18, Page 5 –

2688

2689 **COUNCILMAN ANTHONY**

2690 Absolutely. Thank you.

2691

2692 **BRAD JERBIC**

2693 – that word leafleting, just cross that word out and then on 24, take out that whole Line 24 and

2694 add that word and after Line 23. The, Mr. Steed has also suggested and, with your permission, I

2695 don't have the exact language, we would like to include some language in the ordinance that

2696 makes it clear that leafleting is permitted in the Pedestrian Mall. Not just remove the prohibition,

2697 but add an express permissive section. And with that proposed First Amendment, I'd ask you to

2698 consider it as pass or do pass at this point.

2699

2700 **COUNCILMAN BARLOW**

2701 Okay. Is there anyone else here wishing to speak on this item? Seeing none. Councilman, open

2702 for discussion.

2703

2704 **COUNCILMAN ANTHONY**

2705 Good presentation. Lot more informed now. Thanks for coming down to give your –

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2706 **MAGGIE McLETCHE**

2707 Thank you.

2708

2709 **COUNCILMAN ANTHONY**

2710 – side. I – did have, when I was walking in here, I did have a problem with the leafleting
2711 portion, because that, to me that is, I mean, it – is a public forum down there. So, for somebody
2712 to have the ability to exercise their First Amendment right, to go down to Fremont Street to pass
2713 out a save the whale leaflet, I think that's – appropriate under the First Amendment. They
2714 should be doing that. So I'm glad you're – taking that out. I'm also glad to hear that you're
2715 actually going to put it in there as permissive activity. I'd – still like you to just make sure that
2716 the – definition of leafleting is – very clear to anybody who reads it.

2717

2718 **BRAD JERBIC**

2719 Again, Councilman, another alternative is we can just take out that definition altogether, since
2720 it's somewhat irrelevant now. I mean, there's two ways to go. Just take out the definition of
2721 leafleting and don't define the conduct and, as a matter of law, it's permissive. Or define it and
2722 take it out of the exceptions right now and put a little sentence in saying this is leafleting, here's
2723 how it's defined and this is perfectly allowable. Either way.

2724

2725 **COUNCILMAN ANTHONY**

2726 It seems to me – it should be defined. Because I, I mean, how are the police gonna know
2727 somebody's leafleting or not. You know, 'cause ultimately somebody's, it's gonna have to be

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2728 enforced. So, I think that needs to be really defined so that when the cop or security shows up,
2729 that person's leafleting, that's okay, leave them alone. Does that make sense?

2730

2731 **BRAD JERBIC**

2732 Yeah.

2733

2734 **COUNCILMAN ANTHONY**

2735 Okay. So, I'm glad to hear that, but what's – different is the – soliciting and mall entertainment,
2736 to me, is not so much speech as it's – commercial activity. I mean, that's really what, what's
2737 happening down there. People are going down to Fremont Street and they're soliciting, and
2738 entertaining to make a buck. I mean, that's – what's happening. And if you don't regulate that,
2739 there's gonna be mass chaos down there. I mean, anybody's gonna be able to do it and I think
2740 the Fremont Street Experience and the City of Las Vegas has a responsibility to decide who's
2741 gonna set up a commercial enterprise down there and who doesn't set up a commercial
2742 enterprise. So, –

2743

2744 **BRAD JERBIC**

2745 Let me – stop you there, Councilman. Because we need to make the record real clear on this. I
2746 respect what you're saying and I think that there is a certain, certainly a case to be made that, you
2747 know, any, a lot of people who solicit aren't doing it always for charity or something. It doesn't
2748 matter, under the Constitution whether it's for charity –

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2749 **COUNCILMAN ANTHONY**

2750 Okay.

2751

2752 **BRAD JERBIC**

2753 – or themselves.

2754

2755 **COUNCILMAN ANTHONY**

2756 That's a good point.

2757

2758 **BRAD JERBIC**

2759 It's just protected. And so I would urge you rather than make a record that we're looking at

2760 commercial speech that we just think needs to be regulated, we need to look at the – conduct

2761 itself and its affect on the Mall. And take it from that point of view. Does it interfere with

2762 pedestrian traffic? Does it interfere with the commercial/economic nature? Does it interfere

2763 with the aesthetics? Does it interfere with all those things the Circuit said we can? And if you

2764 feel it does that, in spite of its being constitutionally protected, then I think we need to look at

2765 whether or not this is reasonable time, place and manner.

2766

2767 **COUNCILMAN ANTHONY**

2768 Okay. Well, I do think it – causes problems down on Fremont Street Experience and I – think

2769 this is a, it seems to me this is a good compromise. You're not completely banning that activity.

2770 You're allowing it to go into one particular area and if somebody on Fremont Street wants to go

2771 over there and listen to them and participate in their entertaining and their soliciting, they're very
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2772 free to do that. But I – think if you don't – regulate that activity, you're, I mean, you can't have
2773 chaos down on – people go down to Fremont Street for a particular experience and you can't
2774 have mass chaos down there and I think this helps.

2775

2776 **BRAD JERBIC**

2777 And I want to say that – I think we need to define the term chaos too. It's chaos in the terms of
2778 literally shooing people away from businesses and the commercial opportunity, if it's chaos in
2779 the sense that they block pedestrian traffic, they detract from the aesthetics of the Mall; if that's,
2780 if all that is what you intend by the definition of the word chaos, then I – think that's appropriate.
2781 And it's just a matter of we don't like it or we find it distasteful. That's not something
2782 governments get to consider.

2783

2784 **COUNCILMAN ANTHONY**

2785 That's correct.

2786

2787 **COUNCILMAN BARLOW**

2788 Councilman, do you have a motion?

2789

2790 **COUNCILMAN ANTHONY**

2791 My motion will be to forward this to the entire City Council –

2792

2793 **COUNCILMAN BARLOW**

2794 As amended?

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2795 **COUNCILMAN ANTHONY**

2796 **As amended.**

2797

2798 **COUNCILMAN BARLOW**

2799 Okay. All in favor.

2800

2801 **COUNCILMAN ANTHONY**

2802 Aye.

2803

2804 **COUNCILMAN BARLOW**

2805 Aye. **(Motion carried unanimously.)**

2806

2807 **VAL STEED**

2808 That's with a – do pass recommendation?

2809

2810 **COUNCILMAN ANTHONY**

2811 Yes.

2812

2813 **VAL STEED**

2814 Okay.

2815

2816 **COUNCILMAN BARLOW**

2817 That is **with a do pass recommendation.**

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2820

2821 BRAD JERBIC

2822 And thank you for the extraordinary amount of time you allowed us to build the record.

2823

2824 COUNCILMAN BARLOW

2825 Okay. Thank you.

2826

2827 **END OF DISCUSSION)**

2828 /gpb/vs;ac