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BILL NO. 2011-2

ORDINANCE NO. _____

AN ORDINANCE TO UPDATE THE REGULATIONS GOVERNING CERTAIN COMMERCIAL, ENTERTAINMENT AND SOLICITATION ACTIVITIES WITHIN THE PEDESTRIAN MALL, AND TO PROVIDE FOR OTHER RELATED MATTERS.

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

Summary: Updates the regulations governing certain commercial, entertainment and solicitation activities within the Pedestrian Mall.

WHEREAS, pursuant to litigation, a federal court has determined that the City's Pedestrian Mall is to be treated as a traditional public forum for purposes of First Amendment freedom of expression; and

WHEREAS, in response to that litigation, the City Council desires to amend various provisions of the Las Vegas Municipal Code (LVMC) that pertain to the Pedestrian Mall and its operation by the Fremont Street Experience Limited Liability Company (FSELLC); and

WHEREAS, federal court decisions concerning the Pedestrian Mall have recognized that the City and FSELLC have a significant interest in:

- Assuring safe, efficient, and orderly movement of pedestrians;
- Protecting the local merchant economy from unfair competition;
- Protecting visitors from solicitors in an environment where freedom of movement is restricted;
- Preventing the disruption of Pedestrian Mall entertainment and in disrupting visitors' enjoyment of the Pedestrian Mall experience;
- Protecting the aesthetic appearance of the Pedestrian Mall by eliminating visual blight caused by unsightly vendors;

and

WHEREAS, taking into account federal court rulings and associated findings, the City Council desires by means of this Ordinance to amend LVMC provisions pertaining to the Pedestrian Mall to address certain types of activity within the Pedestrian Mall, including commercial and expressive activity; and

WHEREAS, the principal issues to be addressed by this Ordinance include the

1 regulation of commercial activity and the establishment of “time, place and manner” restrictions on
2 expressive activity within the Pedestrian Mall.

3 NOW THEREFORE, BASED UPON THE FOREGOING, THE CITY COUNCIL OF
4 THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

5 SECTION 1: Title 10, Chapter 44, Section 10, of the Municipal Code of the City of
6 Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

7 **10.44.010:** For purposes of this Chapter:

8 (A) “Solicitation” means the act of solicitation, including asking, begging, soliciting
9 or pleading, for the purpose of [immediately] obtaining money, charity, business or patronage, or gifts
10 of items of value for oneself or another person or organization.

11 (B) “Coercion” means to wilfully and knowingly:

12 (1) [Approach or speak to a person in such a manner as would cause a
13 reasonable person to believe] Act in a manner that would give a reasonable person the belief that the
14 person is being threatened with:

15 (a) Imminent bodily injury, or

16 (b) The commission of a [criminal act upon the person or another
17 person, or upon property in the person’s immediate possession;] crime;

18 (2) Persist in a solicitation after the person solicited has [given a negative
19 response;] refused a solicitation and indicated a desire to be left alone; or

20 (3) [Block, either individually or as part of a group of persons, the passage
21 of a solicited person; or

22 (4) Engage [in conduct] a solicited person in a manner that would
23 reasonably be construed as intended to compel or force [a solicited] the person to accede to demands.

24 SECTION 2: Title 11, Chapter 68, Section 20, of the Municipal Code of the City of
25 Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

26 **11.68.020:** As used in this Chapter:

27 [(A)] “Celestial vault lightshow” is the display of computer-generated electronic images on
28 the ceiling of the celestial vault constructed above Fremont Street and the various light and sound

1 effect accompanying such images.

2 “Commercial photography, filming or videotaping” means photography, filming or
3 videotaping for commercial purposes and does not include photography, filming or videotaping
4 engaged in for personal use or for news reporting purposes.

5 [(B)] “Display vehicles” are those vehicles brought into the Pedestrian Mall for purposes of
6 display to the public, and not for the primary purpose of transporting persons or property.

7 [(C)] “Emergency vehicles” are those motorized devices in, upon or by which any person
8 or property is or may be transported or drawn upon a street or sidewalk, including, without limitation,
9 automobiles, motorcycles and mopeds.

10 [(D)] “Exterior building improvements” means the building facades, marquees, overhangs,
11 recessed entries, adjoining mall area paving materials, signage and graphics, adjoining landscaping,
12 building illumination and audible effects or devices.

13 “Leafleting” means the act of distributing to any passersby in a continuous or repetitive
14 manner any printed, written or graphic materials, whether commercial or noncommercial in content.

15 [(E)] “Motorized vehicles” are those motorized devices in, upon or by which any person or
16 property is or may be transported or drawn upon a street or sidewalk, including, without limitation,
17 automobiles, motorcycles and mopeds.

18 [(F)] “Maintenance vehicles” are those vehicles owned or operated by the City of Las Vegas,
19 as well as vehicles owned and operated by utilities and other vehicles requiring access onto the
20 Pedestrian Mall for the purpose of the repair and maintenance of the Pedestrian Mall or facilities and
21 structures contained therein.

22 “Mall vending” is the distribution, display or sale, or any combination thereof, of
23 consumer goods or services (including food, drink or merchandise) from a pushcart, concession stand,
24 kiosk or other similar structure designed for such purpose.

25 “Message-bearing merchandise” means products bearing a message that is:

26 (A) A permanent part of the product to which it is affixed and is readable
27 or recognizable from a reasonable distance;

28 (B) Inextricably intertwined with the purpose and activities of the distributor

1 of the product or the person or entity whom the distributor represents; and

2 (C) A conspicuous political, religious, philosophical or ideological message
3 having intellectual content that is informative of the purpose of the distributor or the person or entity
4 whom the distributor represents.

5 [(G)] “Management agreement” means that agreement executed between The Fremont Street
6 Experience Limited Liability Company and the City of Las Vegas for the purpose of acquisition,
7 construction, operation, management or maintenance of the Pedestrian Mall.

8 [(H)] “Parade” is a group of persons with or without animals or vehicles in a public
9 procession or march and does not include a procession or march in connection with a special event
10 or mall entertainment.

11 [(I)] “Pedestrian Mall Act” refers to NRS 268.810 through 268.823.

12 [(J)] “Special events” include festivals, sporting events, exhibitions, entertainment and
13 similar activities which are not offered on a continuous basis, whether or not members of the public
14 pay an admission or entrance fee to be spectators or participants.

15 [(K)] “Special permit vehicles” are those vehicles authorized by The Fremont Street Limited
16 Experience Liability Company in accordance with Section 11.68.080 to enter upon the Pedestrian
17 Mall.

18 “Street performer” or “busker” means a member of the general public who engages in
19 any performing art or the playing of any musical instrument, singing or vocalizing, with or without
20 musical accompaniment, and whose performance is not an official part of an event provided by or on
21 behalf of The Fremont Street Limited Liability Company. The term “street performer” includes a
22 “busker”.

23 [(L)] “Mall advertising” includes all advertising within or in connection with the Pedestrian
24 Mall including, without limitation, any means of marketing or promoting the Pedestrian Mall, special
25 events, or any other commercial activity, and the display of consumer goods, products, or services to
26 the users of the Pedestrian Mall for the purpose of encouraging the sale and purchase thereof,
27 including, without limitation, signs, pictures, or other displays.

28 (M) “Mall entertainment” is the conduct on the part of any person intended to provide

1 entertainment, recreation, relaxation and enjoyment to the users of the Pedestrian Mall.

2 (N) "Mall vending" is the distribution, display or sale, or any combination thereof, of
3 consumer goods or services (including food, drink or merchandise) from a pushcart, concession stand,
4 kiosk or other similar structure designed for such purpose.]

5 SECTION 3: Title 11, Chapter 68, Section 50, of the Municipal Code of the City of
6 Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

7 **11.68.050:** Notwithstanding the prohibition contained in Section 11.68.030, vehicular traffic
8 traveling along Casino Center Boulevard and Fourth Street shall be permitted to cross the Pedestrian
9 Mall as those [street] streets intersect with Fremont Street except during the celestial vault lightshow,
10 in which case such street may be closed to through traffic and as otherwise approved in accordance
11 with Section [11.68.130.] 11.68.120.

12 SECTION 4: Title 11, Chapter 68, Section 100, of the Municipal Code of the City of
13 Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

14 **11.68.100:** [The following are prohibited within the Pedestrian Mall:

15 (A) Animals unless used in connection with a mall activity authorized by The
16 Fremont Street Experience Limited Liability Company or used for the purpose of assisting the visually
17 or aurally impaired;

18 (B) Mall vending, mall advertising, mall entertainment special events or other
19 commercial activities unless conducted or authorized by The Fremont Street Experience Limited
20 Liability Company;

21 (C) Parades;

22 (D) Unicycles, bicycles and other types of cycles, skateboards, roller skates, in-line
23 skates and shopping carts except as authorized by The Fremont Street Experience Limited Liability
24 Company in connection with special events and mall entertainment;

25 (E) Sleeping or camping;

26 (F) Littering;

27 (G) Sexually oriented businesses as described in Section 19.04.040 of the Las Vegas
28 Municipal Code;

1 (H) The placement of any table, rack, chair, box, cloth, stand, booth, container,
2 structure or other object within the Pedestrian Mall for purposes of solicitation, except as necessary
3 for emergency purposes, or the maintenance or repair of the Pedestrian Mall, or as authorized by The
4 Fremont Street Experience Limited Liability Company for special events, mall advertising, mall
5 entertainment or mall vending or other commercial and entertainment activities;

6 (I) Glass and metal beverage containers including, but not limited to, bottles, jugs,
7 drinking glasses, aluminum cans and steel cans, during the hours of ten a.m. to 11:59 p.m. on
8 December 31st, and the hours of twelve a.m. to eight a.m. on January 1st of each year;

9 (J) Feeding birds; and

10 (K) Solicitation, as defined in LVMC 10.44.010.]

11 (A) The following are prohibited within the Pedestrian Mall:

12 (1) Parades;

13 (2) Sleeping or camping;

14 (3) Littering;

15 (4) Sexually oriented businesses as described in Section 19.04.040;

16 (5) Glass and metal beverage containers including, but not limited to,
17 bottles, jugs, drinking glasses, aluminum cans and steel cans, during the hours of ten a.m. to 11:59
18 p.m. on December 31st, and the hours of twelve a.m. to eight a.m. on January 1st of each year;

19 (6) Feeding birds; and

20 (7) Solicitation by coercion, as defined in Section 10.44.010.

21 (B) The following are prohibited within the Pedestrian Mall, except under the
22 conditions stated:

23 (1) Animals, unless used in connection with a mall activity authorized by
24 The Fremont Street Experience Limited Liability Company or used for the purpose of assisting the
25 visually or aurally impaired;

26 (2) Mall vending, special events or other commercial activities, unless such
27 activities are conducted by or on behalf of The Fremont Street Experience Limited Liability Company;

28 (3) The use of unicycles, bicycles and other types of cycles, skateboards,

1 roller skates, in-line skates, hula hoops larger than four feet in diameter, and shopping carts, except
2 as authorized by The Fremont Street Experience Limited Liability Company in connection with special
3 events and mall entertainment;

4 (4) The placement of any table, rack, chair, box, cloth, stand, booth,
5 container, structure or other object within the Pedestrian Mall, except:

6 (i) As conducted by or on behalf of The Fremont Street Experience
7 Limited Liability Company; or

8 (ii) As specifically permitted under Sections 11.68.105 and
9 11.68.107;

10 (5) Amplified sound which originates from within the Pedestrian Mall or
11 from properties or businesses abutting the boundaries of the Pedestrian Mall, except where conducted
12 by or on behalf of The Fremont Street Experience Limited Liability Company or as permitted under
13 Section 11.68.107;

14 (6) The launching or throwing of projectiles or other objects into or through
15 the air, except in connection with events that are conducted by or on behalf of The Fremont Street
16 Experience Limited Liability Company or are permitted pursuant to Section 11.68.107;

17 (7) Entertainment and related services for which a fee is charged, either
18 before or after the entertainment and related services are performed, except in connection with events
19 that are conducted by or on behalf of The Fremont Street Experience Limited Liability Company;

20 (8) The distribution of food, beverage or tobacco items, except in
21 connection with events that are conducted by or on behalf of The Fremont Street Experience Limited
22 Liability Company; or

23 (9) Commercial photography, filming or videotaping, except in connection
24 with events that are conducted by or on behalf of The Fremont Street Experience Limited Liability
25 Company.

26 SECTION 5: Title 11, Chapter 68, of the Municipal Code of the City of Las Vegas,
27 Nevada, 1983 Edition, is hereby amended by adding thereto three new sections, designated
28 respectively as Sections 103, 105 and 107, reading as follows:

1 **11.68.103:** (A) Solicitation, as defined in LVMC 10.44.010(A), is prohibited within the
2 Pedestrian Mall at the following locations:

- 3 (1) Within twenty feet of any building entrance or ATM;
- 4 (2) Within ten feet of any retail kiosk or cart, but subject to the provisions
5 of Subsection (B) of this Section;
- 6 (3) Within twenty feet of any fire lane or crosswalk; and
- 7 (4) At any location that will interfere with pedestrian traffic in violation of
8 LVMC 10.47.020.

9 (B) The distance limitation set forth in Paragraph (2) of Subsection (A) shall not
10 apply if and to the extent that The Fremont Street Limited Liability Company, at any given time, has
11 established or permitted more than fifty retail kiosks or carts within the Pedestrian Mall.

12 **11.68.105:** (A) Expressive activity, including demonstrations, speeches, interviewing for
13 political purposes, leafleting and distribution of commercial or noncommercial literature, and the sale
14 or distribution of message-bearing merchandise is allowed within the Pedestrian Mall without the
15 requirement of a permit, but is subject to the conditions and limitations set forth in this Section.

16 (B) No structure or display may be erected or placed within the Pedestrian Mall in
17 connection with expressive activity described in this Section, except that a person or organization
18 engaging in such activity may place and use, in furtherance of that activity, one table, not to exceed
19 three feet by three feet in size, at a location that complies with the provisions of Subsections (C) and
20 (D) of this Section.

21 (C) Tables authorized under Subsection (B) of this Section may not be located as
22 follows:

- 23 (1) Within twenty feet of any building entrance or ATM;
- 24 (2) Within ten feet of any retail kiosk or cart, but subject to the provisions
25 of Subsection (G) of this Section;
- 26 (3) Within twenty feet of any fire lane or crosswalk; or
- 27 (4) At any location that will significantly interfere with pedestrian traffic.

28 (D) By reason of the limitations set forth in Subsection (C) of this Section, table

1 space is limited and is available on a first-come-first-serve basis. Locations available for tables may
2 be depicted on a map adopted as part of this Ordinance or adopted subsequently by formal action of
3 the City Council, but no such map may be more restrictive as to table locations than the provisions
4 of Subsection (C) of this Section.

5 (E) Coolers, storage boxes and similar items that are not in furtherance of
6 expressive activity may not be stored on the ground in connection with expressive activity described
7 in Subsection (A) of this Section; provided, however, that this prohibition does not apply to incidental
8 personal items such as purses or coats, or to backpacks whose capacity does not exceed two cubic feet.

9 (F) In the case of a demonstration, The Fremont Street Limited Liability Company
10 may direct that the demonstration be moved to one or more locations within the Pedestrian Mall so
11 as not to interfere with pedestrian traffic, fire lanes, crosswalk traffic, retail kiosks, special events,
12 concerts or other previously scheduled mall activities, but only upon a determination that the
13 demonstration cannot possibly be conducted in a manner that does not so interfere. Any such
14 redirection shall be to a location that is closest to, most approximates, and reaches the same audience
15 as, the original location.

16 (G) The distance limitation set forth in Paragraph (2) of Subsection (C) shall not
17 apply if and to the extent that The Fremont Street Limited Liability Company, at any given time, has
18 established or permitted more than fifty retail kiosks or carts within the Pedestrian Mall.

19 (H) Nothing in this Section authorizes conduct prohibited by other provisions of
20 this Chapter or other ordinances and laws of general applicability, including without limitation
21 prohibitions relating to solicitation by coercion and the obstruction of rights-of-way.

22 **11.68.107:** (A) Street performers may perform within the Pedestrian Mall, but only in
23 accordance with the provisions of this Section.

24 (B) It is unlawful for a street performer to charge a fee for a performance within the
25 Pedestrian Mall. For purposes of this Chapter, the charging of a fee for entertainment or for a
26 performance includes the act of requiring a person to pay for the entertainment or performance,
27 whether in advance or after the fact, but does not include the act of soliciting or requesting tips or
28 donations, the act of making available a receptacle for tips or donations, or the act of receiving tips

1 or donations.

2 (C) A street performer who does not charge a fee for a performance as described
3 in Subsection (B) may perform within the Pedestrian Mall, but only in accordance with the following
4 conditions and limitations:

5 (1) Such street performers shall not have the right to “reserved” spaces and
6 may not interfere in any way with performances provided by or on behalf of The Fremont Street
7 Limited Liability Company.

8 (2) Such street performers may not perform:

9 (i) Within twenty feet of any building entrance or ATM;

10 (ii) Within ten feet of any retail kiosk or cart, but subject to the
11 provisions of Paragraph (5) of this Subsection (C);

12 (iii) Within twenty feet of any fire lane or crosswalk;

13 (iv) Within any area of the Pedestrian Mall that is closed to the
14 public (such as on a closed stage provided by The Fremont Street Limited Liability Company); or

15 (v) At any location that will significantly interfere with pedestrian
16 traffic.

17 (3) Such street performers may not place objects on the ground unless the
18 objects are placed within a two foot radius of the performer; do not interfere with pedestrian traffic
19 or cause a potential risk to passersby; and are integral to the performance (e.g., a hat or container to
20 accept donations). However, the prohibition contained in the preceding sentence does not apply to
21 incidental personal items such as purses or coats, or to backpacks whose capacity does not exceed two
22 cubic feet.

23 (4) Such street performers may use items or engage in actions otherwise
24 prohibited by LVMC 11.68.100(B)(6), but only if such items or activities are integral to the
25 performance and do not interfere with pedestrian traffic or cause a potential risk to passersby.

26 (5) Such street performers may use amplified sound in connection with their
27 performance, but such amplified sound:

28 (i) Must be an integral part of the performance;

1 (ii) May not exceed a sound level of seventy decibels at a distance
2 of fifty feet or more from the source of the amplified sound;

3 (iii) Is not permitted during any actual performance or operation of
4 the celestial vault lightshow, or during any special event when the Pedestrian Mall is closed to the
5 general public except upon payment of an admission charge; and

6 (iv) Is not permitted during any concert that is provided by or on
7 behalf of The Fremont Street Limited Liability Company unless each source of the amplified sound
8 is at least two hundred feet from the stage on which the concert takes place.

9 (6) The distance limitation set forth in Subparagraph (ii) of Paragraph (2)
10 of this Subsection (C) shall not apply if and to the extent that The Fremont Street Limited Liability
11 Company, at any given time, has established or permitted more than fifty retail kiosks or carts within
12 the Pedestrian Mall.

13 (D) Nothing in this Section authorizes conduct prohibited by other provisions of
14 this Chapter or other ordinances and laws of general applicability, including without limitation
15 prohibitions relating to solicitation by coercion and the obstruction of rights-of-way.

16 SECTION 6: Title 11, Chapter 68, Section 20, of the Municipal Code of the City of
17 Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

18 **11.68.130:** Any person violating the provisions of Sections 11.68.030, 11.68.080, and 11.68.100
19 to 11.68.107, inclusive, shall be guilty of a misdemeanor.

20 SECTION 7: Title 11, Chapter 68, of the Municipal Code of the City of Las Vegas,
21 Nevada, 1983 Edition, is hereby amended by adding thereto a new section, designated as Section 140,
22 reading as follows:

23 **11.68.140:** By virtue of its standing and authority under LVMC 11.68.060 and 11.68.070, The
24 Fremont Street Limited Liability Company may commence a civil action to enjoin any violation of
25 the provisions contained in LVMC 11.68.100 to 11.68.107, inclusive. This remedy shall supplement,
26 and exist in addition to, those contained in LVMC 11.68.130.

27 SECTION 8: If any section, subsection, subdivision, paragraph, sentence, clause or
28 phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or

1 ineffective by any court of competent jurisdiction, such decision shall not affect the validity or
2 effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the
3 City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision,
4 paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections,
5 subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional,
6 invalid or ineffective.

7 SECTION 9: Whenever in this ordinance any act is prohibited or is made or declared
8 to be unlawful or an offense or a misdemeanor, or whenever in this ordinance the doing of any act is
9 required or the failure to do any act is made or declared to be unlawful or an offense or a
10 misdemeanor, the doing of such prohibited act or the failure to do any such required act shall
11 constitute a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than
12 \$1,000.00 or by imprisonment for a term of not more than six months, or by any combination of such
13 fine and imprisonment. Any day of any violation of this ordinance shall constitute a separate offense.

14 SECTION 10: All ordinances or parts of ordinances or sections, subsections, phrases,
15 sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada,
16 1983 Edition, in conflict herewith are hereby repealed.

17 PASSED, ADOPTED and APPROVED this ____ day of _____, 2011.

18 APPROVED:

19
20 By _____
21 OSCAR B. GOODMAN, Mayor

22 ATTEST:

23 _____
24 BEVERLY K. BRIDGES, MMC
City Clerk

25 APPROVED AS TO FORM:

26 Val Steed 12-21-10
27 Date
28

1 The above and foregoing ordinance was first proposed and read by title to the City Council on the
2 _____ day of _____, 2011, and referred to the following committee composed of
3 _____ and _____ for recommendation;
4 thereafter the said committee reported favorably on said ordinance on the _____ day of
5 _____, 2011, which was a _____ meeting of said Council; that at said
6 _____ meeting, the proposed ordinance was read by title to the City Council
7 as first introduced and adopted by the following vote:

8 VOTING "AYE": _____
9 VOTING "NAY": _____
10 ABSENT: _____

11
12 APPROVED:

13
14 By _____
OSCAR B. GOODMAN, Mayor

15 ATTEST:
16 _____
17 BEVERLY K. BRIDGES, MMC
City Clerk

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