

1 **BILL NO. 2018-40**

2 **ORDINANCE NO. _____**

3 AN ORDINANCE TO AMEND LVMC 13.32.020 REGARDING OBSTRUCTIONS ON PUBLIC
4 RIGHTS-OF-WAY TO INCLUDE ADDITIONAL MEANS BY WHICH OBSTRUCTIONS MAY BE
5 PERMITTED AND TO CLARIFY THAT THE TERM "OBSTRUCTION" INCLUDES CERTAIN
6 CONVEYANCES MADE AVAILABLE FOR USE COMMERCIALY, AND TO PROVIDE FOR
7 OTHER RELATED MATTERS.

8 Proposed by: Bradford R. Jerbic, City Attorney

9 Summary: Amends LVMC 13.32.020 regarding
10 obstructions on public rights-of-way to include
11 additional means by which obstructions may be
12 permitted and to clarify that the term "obstruction"
13 includes certain conveyances made available for
14 use commercially.

15 THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS
16 FOLLOWS:

17 **13.32.020:** (A) Except as otherwise provided in this Section or another provision of this Code, it is
18 unlawful for any person to erect, place or maintain any obstruction, or to cause or permit any obstruction to
19 encroach within, upon, or over any public right-of-way, including any public street, public sidewalk, or public
20 alley. Each day any unauthorized obstruction is allowed to remain after ten days' notice to remove the
21 obstruction shall constitute a separate offense. Such notice may be provided by:

22 (1) Any officer of the Las Vegas Metropolitan Police Department;

23 (2) Any officer or employee of the Department of Building and Safety or the
24 Department of Public Works; or

25 (3) Any other officer or employee of the City who has been specifically
26 authorized to enforce this Section.

(B) An obstruction otherwise prohibited by Subsection (A) may be permitted by means
of an encroachment agreement approved by the City in accordance with this Section. The agreement must be
in a form prepared by, or otherwise acceptable, to the City. Approval by the City of an encroachment
agreement:

(1) Is entirely within the City's discretion;

1 (2) Is contingent upon a determination by the Director of Public Works (or
2 designee) that the obstruction or encroachment can be accomplished without negatively impacting traffic,
3 public safety, pedestrian safety, or the use of and access to utility facilities; and

4 (3) May be denied based on plans for future improvements to the affected right-
5 of-way, street, sidewalk or alley.

6 (C) An encroachment agreement under this Section:

7 (1) May include conditions reasonably calculated to mitigate any impact,
8 including without limitation a time limit, provisions regarding ongoing maintenance, and appropriate
9 remedial measures; and

10 (2) May be required to be recorded against property that is benefitted by the
11 agreement.

12 (D) Except as otherwise provided in Subsections (E) and (F), the approval authority for
13 an encroachment agreement under this Section shall be the Director of Building and Safety (or designee).

14 Typical items qualifying under this Subsection (D) include:

- 15 (1) Encroachments related to a Site Development Plan Review under Title 19;
16 (2) Encroachments for monitoring wells;
17 (3) Encroachments necessary for compliance with a building-related code; and
18 (4) Other minor encroachments related to signage, outdoor dining, landscaping,
19 fencing, and similar minor intrusions into public right-of-way.

20 (E) The approval authority for the following items shall be the City Council:

21 (1) Encroachments which, in the judgment of the Director of Building and
22 Safety (or designee), are of a significant nature, character or size so as to warrant consideration by the City
23 Council; and

24 (2) Encroachments concerning which a member of the City Council, prior to
25 administrative approval of an agreement pursuant to Subsection (D), has requested that the encroachment be
26 considered by the City Council.

1 (F) In the case of encroachment agreements to be forwarded to the City Council for
2 consideration pursuant to Subsection (E), the Director of Building and Safety (or designee) shall schedule
3 the encroachment agreement for Council consideration at the next regular meeting of the City Council that
4 is reasonably available.

5 (G) If the Director of Building and Safety (or designee) denies administrative approval
6 of an encroachment agreement pursuant to Subsection (D), the person seeking encroachment approval may
7 appeal the decision to the City Council within ten days after the denial decision is made. The appeal shall be
8 in writing, shall be filed with the Director or designee, and shall state the factual basis for the appeal. The
9 Director or designee shall schedule the matter for consideration by the City Council within thirty days
10 following receipt of the appeal. The decision by the City Council shall be final.

11 (H) Encroachment agreements approved administratively pursuant to Subsection (D)
12 shall be signed by the Director of Building and Safety (or designee). Agreements approved by the City
13 Council shall be signed by the Mayor.

14 (I) Nothing in this Section shall apply to obstructions or improvements installed[:] or
15 made available:

16 (1) By or on behalf of the City[:], or pursuant to a franchise or formal regulatory
17 action by the City; or

18 (2) By another governmental agency acting in accordance with an interlocal or
19 cooperative agreement with the City, if the Director of Building and Safety determines that the provisions of
20 that agreement are an adequate substitute for the requirements of this Section.

21 (J) [For purposes of this Section:

22 (1) "Encroachment agreement" includes any agreement, however named, that
23 by its terms authorizes an encroachment or obstruction.

24 (2) "Obstruction" means a structure, installation, amenity or improvement of
25 any kind.] For purposes of this Section, "obstruction" means a structure, installation, amenity or
26 improvement of any kind. The term also includes a bicycle, scooter or similar means of conveyance that is

1 made available for consumer use as part of a commercial enterprise. For purposes of this Section, as well as
2 other provisions of this Title and the Municipal Code, “encroachment agreement” includes any document or
3 agreement, however named, that by its terms authorizes an encroachment within or obstruction upon a public
4 right-of-way. Any such document or agreement may be called an encroachment agreement, encroachment
5 permit, occupancy agreement, occupancy permit, license agreement, or similar term, whether or not in each
6 case preceded by the term “right-of-way,” and designed in each case to correspond to the rights being granted.

7 Unless otherwise provided in the document or agreement:

8 (1) The rights granted by, and limitations described in, the document or
9 agreement are intended as, and shall be deemed to be, an exercise of the City’s Charter authority and
10 responsibility to regulate the use of public rights-of-way, prevent the unlawful use thereof, and minimize the
11 extent to which they are encumbered by encroachments or obstructions.

12 (2) The rights granted by, and limitations described in, the document or
13 agreement are not intended, and shall not be deemed to be, an exercise of the City’s authority to convey an
14 interest in land or to authorize any use of a public right-of-way that interferes with, or is inconsistent with,
15 the principal purposes and intended use of that right-of-way.

16 (3) Any document identified as a license agreement or granting a license does
17 not constitute a real property license as recognized at common law and shall be deemed to grant only those
18 rights specified in the document.

19 (4) The document or agreement does not constitute or substitute for any
20 building or construction-related permit that is otherwise required by or under the Municipal Code.

21 (K) The Director of Building and Safety (or designee) is authorized to create and
22 disseminate such materials and publications as deemed necessary or appropriate in order to reduce confusion
23 among the public and City staff regarding the relationship and roles of encroachment agreements under this
24 Section and construction-related permits governed by other provisions of this Code.

25 SECTION 2: If any section, subsection, subdivision, paragraph, sentence, clause or phrase
26 in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by

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

6 SECTION 3: Whenever in this ordinance any act is prohibited or is made or declared to
7 be unlawful or an offense or a misdemeanor, or whenever in this ordinance the doing of any act is required
8 or the failure to do any act is made or declared to be unlawful or an offense or a misdemeanor, the doing of
9 such prohibited act or the failure to do any such required act shall constitute a misdemeanor and upon
10 conviction thereof, shall be punished by a fine of not more than \$1,000.00 or by imprisonment for a term of
11 not more than six months, or by any combination of such fine and imprisonment. Any day of any violation
12 of this ordinance shall constitute a separate offense.

13 SECTION 4: All ordinances or parts of ordinances or sections, subsections, phrases,
14 sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983
15 Edition, in conflict herewith are hereby repealed.

16 PASSED, ADOPTED and APPROVED this ____ day of _____, 2018.

17 APPROVED:

18
19 By _____
CAROLYN G. GOODMAN, Mayor

20 ATTEST:

21 _____
22 LUANN D. HOLMES, MMC
City Clerk

23 APPROVED AS TO FORM:

24 Val Steed 8-6-18
25 Val Steed, Date
Deputy City Attorney

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1 The above and foregoing ordinance was first proposed and read by title to the City Council on the ____ day
2 of _____, 2018, and referred to a committee for recommendation, the committee being
3 composed of the following members _____;
4 thereafter the said committee reported favorably on said ordinance on the ____ day of
5 _____, 2018, which was a _____ meeting of said Council; that at said
6 _____ meeting, the proposed ordinance was read by title to the City Council as first
7 introduced and adopted by the following vote:

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

11 APPROVED:

12
13 By _____
CAROLYN G. GOODMAN, Mayor

14 ATTEST:
15 _____
16 LUANN D. HOLMES, MMC
City Clerk

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