
Civil liberties and the regulation of public space: the case of sidewalks in Las Vegas

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Abstract. Conflicts over the nature of and rights associated with public space have a long history and have prompted numerous regulatory responses. Perhaps nowhere in the USA has the regulation of public space been as far-reaching as in Las Vegas, Nevada, where the financial stakes associated with sidewalks are enormous. This study examines how local officials mediate among varied and competing uses of the sidewalk. In defining the function of the sidewalks narrowly, and passively deferring questions of civil liberties, local officials have effectively controlled almost all aspects of public behavior. In recent years, cities have invested in major commercial revitalization projects. Evidence from this case study suggests that, if successful, these developments will engender more extensive regulation of public life and the further curtailment of the freedoms traditionally guaranteed to citizen activity in public places.

1 Introduction

“The paradox at the heart of...the marketing of Las Vegas as the place where anything goes, where you can come and let your hair down and be just totally wild and crazy when in fact there is this effective effort at totally controlling what goes on in the environment.” Nevada American Civil Liberties Union (interview)

Sidewalks serve multiple functions. They facilitate pedestrian circulation; they are public spaces in which other vital aspects of city life transpire; they serve as places of commerce, as sites of political resistance and democratic action, and as spaces for other forms of social interaction. These varied sidewalk uses do not coexist without conflict, however. Consequently, one of the functions of municipalities is to mediate among competing users and uses of the sidewalks and, in so doing, to regulate public life.

Conflicts over the nature and rights associated with public space have a long history, most visibly linked to the early struggles of the ‘wobblies’—members of the Industrial Workers of the World. In the early 1900s the wobblies used the streets to organize poor workers, prompting western cities to adopt local ordinances banning street meetings (Mitchell, 2003a). In recent years, these conflicts have become increasingly commonplace, particularly in commercial and residential neighborhoods in the process of revitalization (National Law Center on Homelessness and Poverty, 1994). Seeking to improve their cities’ image and to attract economic development, local lawmakers have regulated the use of public space. Recent US case studies of these efforts include campaigns to ban camping in Santa Ana, California (Takahashi, 1998); struggles over the use of People’s Park, a community-controlled political space in Berkeley, California (Mitchell, 2003a); restrictions on demonstrators (Kohn, 2004; Mitchell, 2003b; 2005), and efforts, such as those in Salt Lake City, Utah, to gain public access to private malls and plazas (Kohn, 2004).

Perhaps nowhere in the USA have the conflicts over the regulation of public space been as far-reaching as in Las Vegas, Nevada, where the financial stakes associated with the sidewalks are enormous. Located in Clark County, Las Vegas is the gaming capital of the USA, long associated with concentrated wealth, decadence, and sin. Each year 38 million tourists visit Clark County, spending over \$32.8 billion, much of it in hotels and restaurants on the Las Vegas Strip, the portion of Las Vegas Boulevard where fourteen of the nation's fifteen largest hotels are located (Clark County, no date). In earlier days, Las Vegas was oriented around the automobile (Reichl, 2005): visitors largely drove into town and spent their vacations within their resort destinations of choice. In the 1990s the development of new, increasingly elaborate, megaresorts altered Las Vegas street life, and since that time the sidewalks along Las Vegas Boulevard have teemed with tourists, serving as the glue that holds the street together and enables visitors to experience many of the areas' attractions fully.

The rapid increase in pedestrian activity along Las Vegas Boulevard provides an opportunity to examine how public officials mediate among varied sidewalk uses. Given Clark County's financial dependence on the gaming industry, local lawmakers, with the urging of resort owners, have adopted a range of regulatory strategies intended to create a wholesome image of Las Vegas and, therefore, broaden its appeal to potential tourists. The county has prohibited prostitution, begging, and activities associated with public homelessness; it has restricted the placement of newsracks and handbilling; it has adopted stringent parade requirements; and it has allowed novel architectural and urban design features. It has also actively encouraged the privatization of sidewalks along the Strip, allowing casino owners to argue that private sidewalks cannot be used as public forums for union protest or unwanted commercial activities.

Such regulations are not new, but the extensive labyrinth of regulations applied to this 5-mile geographic area along Las Vegas Boulevard may be unparalleled. The case of Las Vegas shows the strong relationship between the financial stakes associated with the sidewalks and the growing breadth and extent of their regulation. Combined, these regulatory approaches have, as some argue, engaged in what one of our interviewees called an "effective effort at totally controlling what goes on"—an approach that stands in stark contrast to the free-wheeling image upon which Las Vegas was built. But this trend is not unique. To attract visitors, most major cities are engaging in efforts to create vibrant commercial districts such as that exemplified by the Las Vegas Strip. If successful, the evidence from Las Vegas suggests that cities will increasingly regulate public interactions and, in so doing, sharply curtail the freedoms traditionally guaranteed to citizen activity in public places.

2 Sidewalks and the regulation of public space

Streets and sidewalks are the quintessential public space. In addition to their transportation functions, sidewalks have been places of commerce, politics, and social activity. On these narrow strips of land, families have earned their livelihoods and made homes; union workers have protested unfair labor practices and working conditions; public speakers have advocated for new political regimes; and social norms have been established and transgressed. Streets and sidewalks have been, as Jacobs (1961) described them, a city's "main public place" and "its most vital organs". Despite the importance of sidewalks to public life, cities have largely ignored them—perhaps, as Blomley (2004) argues, because nonprivate ownership of land seems both ambiguous and confusing compared with the simplicity of private or individual ownership. However, in neighborhoods intended for or in the process of revitalization, skirmishes over public space and, in particular, the rights associated with access to sidewalks, have been fierce. In these neighborhoods, and in the name of urban renewal, lawmakers

have implemented a variety of strategies to sanitize the sidewalks, stifling any uses that potentially conflict with the city's urban renewal objectives.

Once the concrete is poured, city officials tend to take their sidewalks for granted. This might explain why, in most cities, no single agency or task force regulates sidewalks. Instead, they are governed by numerous and diverse offices—such as city planning, public works, consumer affairs, engineering, transit, redevelopment, the district attorney, and the police. A pedestrian-oriented advocacy organization, Transportation Alternatives, assembled a list of sixteen different agencies involved in sidewalk regulation in New York City. Under this fragmented regulatory regime, numerous sidewalk issues simply have been neglected.

When city officials do get involved in sidewalk regulation, they often selectively ignore certain sidewalk behavior and uses, particularly in low-income neighborhoods or on other undesirable plots of land such as under or adjacent to freeways. In these marginal spaces, residents have established community gardens and skateboard parks, the homeless have constructed makeshift homes, and vendors sell their wares (Garnet, 2005; McNamara, 2003). Ignoring or selectively enforcing these infractions may be part of cities' overall strategy to contain disorderly behavior by geographically concentrating certain individuals (such as prostitutes or the homeless) or certain behaviors (prostitution or squatting) in selected areas of the city such as red-light districts or skid rows (Ellickson, 1996; Garnet, 2005).

In neighborhoods undergoing redevelopment, efforts to create aesthetically appealing, safe, and pedestrian-friendly environments have frequently clashed with other sidewalk uses such as political protests, handbilling, loitering, or panhandling (Mitchell, 2003a; Takahashi, 1998). In recent years, scholars have written most frequently about antihomeless campaigns, but struggles also have emerged around issues such as street vending, protests outside abortion clinics, and other political activities (Duneier, 1999; Ellickson, 1996; Feffer, 2004; Feldman, 2004; Kohn, 2004; Lee and Farrell, 2003; Mitchell, 2003a; 2005; Takahashi, 1998).

One of the functions of municipal governments is to mediate among various users and uses of the sidewalks. As Epstein (1994) writes:

“The streets and sidewalks of any city are part of a commons; they are not private property. The standard problem of the commons is to decide how its use should be allocated among many citizens” (page 2164).

Lawmakers and city planners have experimented with a variety of strategies to govern sidewalks; these can be grouped into four distinct approaches—regulation, zoning, urban design, and privatization.

One way in which city officials have regulated sidewalks is through ordinances which criminalize certain uses of public space. For example, some city officials have attempted to prohibit sidewalk activities such as panhandling or camping as part of broader efforts to relocate the homeless out of their jurisdictions. Efforts such as these to regulate basic constitutional rights of speech or assembly have been supported by claims that these regulations facilitate the marketplace of ideas by suppressing behavior or conduct that interferes with other legitimate uses of the sidewalks (Mitchell, 2003a). However, the courts have frequently disagreed with these arguments, subsequently overturning many of these ordinances because they either were constitutionally vague or were overly broad (Takahashi, 1998). To address these legal objections, more recently cities have prohibited certain types of sidewalk behaviors but only in specific neighborhoods or at particular times of the day (Mitchell, 2003a). In other words, they have adopted more geographically or temporally limited restrictions—largely to deter potential litigation. For example, after the courts overturned two attempts to enact citywide anticamping ordinances in Santa Ana, California, the city narrowed the

geographic focus of its proposed local ordinance to the public space surrounding the Civic Center area; in 1995, the California Supreme Court upheld this revised ordinance (Takahashi, 1998). Geographic restrictions were also used during the 2000 and 2004 Democratic Conventions to contain protestors through the use of designated protest zones located away from the convention sites. Temporal restrictions are also widespread. For example, numerous cities have instituted juvenile curfews—ostensibly to reduce youth crime and victimization: as of 1995, more than 146 of the largest 200 US cities had adopted some type of curfew (Collins and Kearns, 2001). Although these have resulted in a very contentious body of litigation, many of these local ordinances have been endorsed by the courts provided that they regulate time, place, and manner, but not the content of public and political speech.

Cities have used other regulatory strategies—such as land-use zoning and urban design—to aggressively deter unwanted public behaviors. Zoning typically is used to segregate land use by residential, commercial, and industrial areas, which has many practical benefits such as separating neighborhood residents from noxious industrial facilities or other uses. In many urban areas, city officials have utilized land-use zoning to segregate particular social and racial groups. To protect the character of their neighborhoods, suburban cities have limited nonresidential uses or types of housing, restricted the number of occupants, or placed requirements for minimum lot sizes, building setbacks, or floor areas (Ritzdorf, 1996; Silver 1996). In so doing, they have excluded nonwhite and low-income families—hence the term ‘exclusionary zoning’.

Much of the legal and political debate surrounding exclusionary zoning has been focused on discrimination and residential segregation; in response, the courts have considered municipalities’ constitutional obligation to provide a fair share of affordable housing (Ritzdorf, 1996). Zoning also has implications for the use of public space: excluded from affluent suburban areas, low-income families tend to concentrate in older central cities which then become the primary location for many of the public behaviors associated with poverty, such as rough sleeping, loitering, panhandling, and street vending. Saddled with more than their share of low-income residents, central cities oftentimes do not have the tax base to provide the basic services needed by these population groups, forcing many of these families to rely on the streets for survival.

In recent years, some cities have adopted zoning ordinances to disperse problematic public land uses by extending zoning laws to govern the acceptable uses of public spaces. This approach uses zoning as the means to regulate some of the problems that zoning itself created. This approach was suggested theoretically by Ellickson (1996) and has since been adopted by a number of cities. For example, Portland, Oregon, and Cincinnati, Ohio, recently established ‘drug-exclusion zones’, banning from the public space within these zones all persons who have been arrested for drug offenses (Garnett, 2005).

At a more site-specific level, cities have used urban design to control public behavior. Popular among urban planners are attempts to revitalize urban areas through urban design that promotes diverse, vibrant, pedestrian-friendly, communities. Yet ‘diversity’ does not extend to all users of public space, and cities have often designed public spaces to encourage some behavior—such as outdoor dining—while limiting others. For example, cities have installed benches with raised steel dividers or railings with metal edging, making them uncomfortable for sleeping or sitting (Ellickson, 1996). Other cities have designed public spaces with antiskateboarding features built into the landscape, such as large obstacles or the insertion of cement or metal caps on retaining walls and hand rails (Howell, 2005).

More recently, privatization has been yet another social control strategy. Financial constraints have prompted many cities and counties to actively encourage privatization, transferring the costs of providing and maintaining public space to the private sector

(Turner, 2002). Places that have historically been sites of public interaction, such as downtown plazas and shopping districts, are now increasingly privately provided in the form of private plazas, shopping malls, streets, and sidewalks (Kowinski, 1985; Loukaitou-Sideris and Banerjee, 1998). When the public is invited onto private property, the courts must weigh the private property rights of businesses with the free-speech and assembly rights of citizens. With a few exceptions, the courts have sided with the interests of private property owners. Public activities in ‘traditional public forums’, where regulation of speech would be subject to the strictest legal scrutiny, now take place on private property where the courts largely have asserted the rights of property owners to control what can and cannot occur (Mitchell, 2003a).

Using this repertoire of strategies, local governments mediate among conflicting sidewalk uses. They often adopt passive roles, failing to plan for civil liberties and then deferring to the courts when conflicts arise. When they act, local officials control the use of public space by actively encouraging some activities while prohibiting others, using the ‘protection of unimpeded pedestrian circulation’ and ‘consumer comfort’ as justifications to suppress political and other ad hoc sidewalk uses.

3 The Las Vegas case study

Perhaps nowhere in the USA have the conflicts over the regulation of public space been as widespread as in Las Vegas, where the financial stakes associated with the sidewalks are enormous. Gaming dominates the local economy and is geographically concentrated within a resort district along one major thoroughfare—Las Vegas Boulevard. The principal objective of both the public and private sectors has been to encourage tourism and unobstructed entry into gaming establishments.

To explore the public sector’s regulation and control of sidewalks along the Las Vegas Strip, we drew upon the newspaper coverage of sidewalk controversies, the Clark County Municipal Code (CCC),⁽¹⁾ and the development-process documentation—which includes land-use documents, tapes of Clark County hearings, and official sidewalk agreements. In addition, in the spring of 2002, we conducted fifteen semistructured interviews with twenty of the principal individuals involved in Las Vegas sidewalk issues (listed in the appendix). We asked each respondent a broad set of questions regarding sidewalk regulations, the differential roles of the state and county government with respect to the regulation of sidewalks, legal issues related to free speech and private property rights, and the privatization of sidewalks in front of the Venetian Resort-Hotel-Casino.

To develop our potential list of interviewees, we identified the main parties involved in the sidewalk disputes from newspaper articles, planning documents, and secondary sources. We expanded this list by means of a snowball approach, asking each interviewee to list individuals they believed to have important insights on this issue. This method allowed us to expand our list of potential interviewees and to confirm that our interview schedule included the major figures associated with Las Vegas sidewalk issues. The interviews were held on the condition that we would not disclose the names of respondents; however, in the appendix we report the names of the agencies or organizations for which the respondents work or which they otherwise represent.

4 Regulating public life in Las Vegas

Gaming, sex, and drink remain essential aspects of the Las Vegas experience (Hensen, 1999; Moehring, 2000), creating the façade of a wild, ‘anything-goes’ city—an image that appeals to millions of visitors seeking a diversion from their everyday lives.

⁽¹⁾ <http://www.ordlink.com/codes/clarknv/index.htm>

However, since the late 1980s, Las Vegas has attempted to refashion itself into a family resort and convention destination in an effort to lure an ever-increasing number of visitors. The new Las Vegas would be the place to gamble, to attend conventions, *and* to vacation with your children. To ensure an undisrupted experience for all visitors—families and conventioners included—local lawmakers and casino owners have collaborated to control public behavior, thereby minimizing visitors' contact with what might be considered undesirable elements. Today, the free-wheeling atmosphere of the early Las Vegas years, at least with respect to public behavior, has been replaced by a highly regulated and controlled environment.

Similar to other cities, the regulatory environment in Las Vegas is fragmented, and numerous offices and a variety of regulations, standards, and enforcement procedures govern their provision and use. Responsibility for sidewalks in Las Vegas is complicated further by jurisdictional issues. Las Vegas Boulevard is a state highway and is maintained by the Nevada State Department of Transportation (NDOT). As it passes through unincorporated Clark County, Las Vegas Boulevard is under the county's jurisdiction and is governed by a seven-member Board of County Commissioners. With respect to the sidewalks, Clark County officials have publicly defined their interests quite narrowly, focusing primarily on sidewalk maintenance and facilitating pedestrian use and safety, particularly in the resort district—the portion of Las Vegas Boulevard extending between Sahara Avenue and Tropicana Avenue (see figure 1).

Under the guise of pedestrian safety and circulation, Clark County has pursued four complementary regulatory strategies which together control almost all aspects of public behavior along the Las Vegas Strip. These include the design and development process; the prohibition of obstructive sidewalk uses; the regulation of unwanted activities that cannot be prohibited outright; and the privatization of sidewalks. In combination, these mechanisms prioritize pedestrian circulation, particularly for

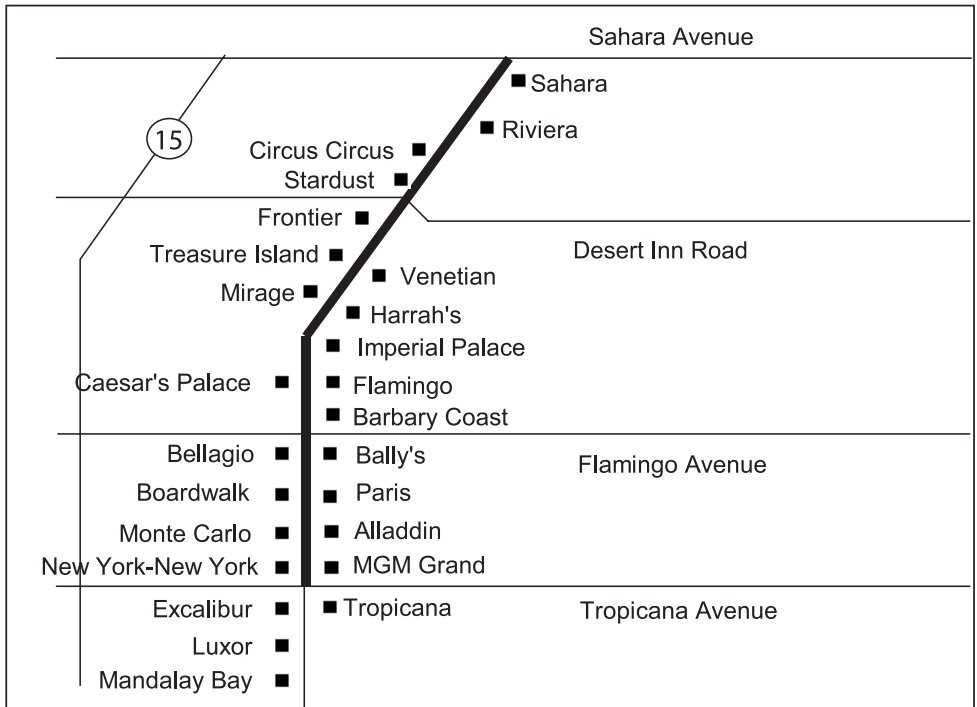


Figure 1. Las Vegas Strip (resort district in bold)—Las Vegas Boulevard.

Table 1. Las Vegas Boulevard: sidewalks-control strategies.

Strategy	Regulation	Code/ordinance
<i>Overriding use—improvement of pedestrian environment</i>		
Purpose of obstructive-use regulations	The code states that, in recognition of the need for improvement of the pedestrian environment and the need for accessible public sidewalks, it is necessary to enact obstructive-use regulations.	16.11.010 [Ord. 1617 § 1 (part), 1994]
No-obstruction zones	The establishment of a district that sets forth those portions of the public sidewalks where obstructive uses are prohibited.	16.11.050
<i>Prohibitions</i>		
Obstructive uses	No obstructive uses on public sidewalks in resort district at locations designated by a white stripe.	16.11.050 [Ord. 1617 § 1 (part), 1994]
Begging	It is unlawful to accost or approach another person in any public place or in any place open to the public for the purpose of begging or soliciting alms.	12.32.020
Prostitution	It is unlawful to accost or approach another person in any public place or in any place open to the public for the purpose of soliciting an act of prostitution.	12.32.020
Sitting/sleeping	It is unlawful to lie or sleep on any street, sidewalk, alley, or in any vacant lot or public ground.	12.32.020, 16.11.020 (Ord. 423 § 1, 1974; Ord. 408 § 1, 1973)
Structures	No person shall erect, place, or maintain any building, booth, structure, table, chair or other object upon any public sidewalk unless such use is a permitted obstructive use.	16.11.060 [Ord. 1617 § 1 (part), 1994]
<i>Restrictions—time, place, and manner</i>		
Newsracks	Self-standing newsracks shall be located at the locations along the public right-of-way as shown on the map adopted by the board of county commissions. A group of newsracks cannot exceed six in number, and must be a minimum of six hundred feet from the next group.	16.08.052
Parades	No permit shall be granted to use Las Vegas Boulevard South between Sahara Avenue and Tropicana Avenue except on Saturdays, Sundays, and legal holidays between the hours of 6:00 a.m. and 11:00 a.m.	6.84.060
	No persons can form a cordon or line of persons across the public sidewalk.	16.11.020
	No persons can carry banners or signs which protrude beyond the person's front or rear or which exceed the person's body width, upon the public sidewalk.	16.11.020
	Permittees shall pay a fee for any additional costs incurred by the Metropolitan Police Department and for the cost of cleanup (political organizations are exempt). See "Structures" above.	6.84.070
<i>Privatization</i>		
Other unwanted activities	No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.	5th Amendment, US Constitution

patrons of the resorts, and exclude or minimize the effects of undesirable behavior such as panhandling, vending, homelessness, handbilling, and political protests. These strategies and the corresponding regulatory mechanisms are summarized in table 1.

4.1 These streets are made for walking ... into the casinos

The large resorts and casinos generate billions of dollars each year. Tourism and, specifically, gaming is the dominant industry and Clark County has a strong interest in ensuring its economic profitability (American Civil Liberties Union—ACLU—interview; independent interview). As street life became an increasingly important component of visitors' experiences, the county supported the industry by giving the casino-resort owners leeway to design their property frontages as major attractions intended to draw crowds and to lure visitors inside (county interview; Gottdiener et al, 1999). The county also adopted regulations to limit unwanted or 'obstructive' sidewalk uses, giving tourists unimpeded access to the casinos.

The 1989 opening of the Mirage ushered in a new era of development along Las Vegas Boulevard (Gottdiener et al, 1999; Moehring, 2000). On the Las Vegas Strip, large and elaborate resorts replaced older hotels and casinos. Some of the largest in the world, these megaresorts were designed to attract patrons based on an all-inclusive experience—not solely the gaming of previous decades. The casino-resorts became home to first-rate shows, celebrity chefs and expensive restaurants, elaborate pools and spas, and creative architecture. Street spectacles have become a trademark feature of many of the casinos along the Strip. At the Mirage Hotel and Casino, every 15 minutes from dusk to midnight, tourists can watch volcanoes erupt, sending smoke and fire 100 feet into the air. Down the block, the Bellagio Hotel and Casino has choreographed fountains in what hotel public relations personnel call a 'breathtaking union of water, music, and light'. At the Treasure Island Hotel and Casino spectators can view a pyrotechnic battle between a pirate ship and a British frigate, experience billowing smoke, ear-deafening explosions, and watch a ship sink, all while standing on planked sidewalks. And at the Venetian Resort-Hotel-Casino tourists are transported to Venice, Italy, where they can stroll beside canals and take leisurely rides on gondolas. Sidewalks are props in this pedestrian street culture as the resorts have extended their themes from their interiors to their frontages, and onto the sidewalks. At the Mirage and the Bellagio Hotels and Casinos, the sidewalks serve simply as the observation deck from which to view the attractions. The sidewalks in front of Treasure Island and the Venetian, however, are part of the themed experience: the wood planks and the Italian stones and fountains transform pedestrians from observers into actors in an invented space and time.

Good sidewalk design is essential for hotels without such elaborate frontages, to direct pedestrians better into the casinos. For example, although not particularly elaborate, the sidewalk in front of Harrah's Las Vegas routes pedestrians away from Las Vegas Boulevard and guides them to the doorstep of the casino where they can view outdoor entertainment and be plied with drinks. In this case, pedestrians must make an effort *not* to enter the casino. Also, with increased pedestrian activity, casino owners have taken a greater interest in streetscape beautification: some of the hotels have entered into agreements with the NDOT to redesign and landscape their sidewalks (NDOT sidewalk agreements).

Recognizing the growing importance of these architectural features, Clark County officials simplified the development process, and made it easier for casino owners to implement the unorthodox. When casino-resort owners first began to develop megaresorts, they had to request multiple code variances to construct their elaborate attractions. In the early 1990s Clark County replaced its development

code with more flexible standards—doing away with the time-consuming process of approving individual variances (county interview; CCC Title 30).

The novel hotel architecture and street spectacles altered the character of the resort district, transforming it from a boulevard where automobiles dominated to one crowded with pedestrians. In 1990 pedestrian traffic counts along the Strip totaled “over two thousand pedestrians per hour during peak periods on average days”; pedestrian traffic was even higher during vacation periods and holiday weekends (CCC 16.08.005). The increase in pedestrian activity placed sidewalks on the city’s agenda. In 1994, to facilitate walking, Clark County enacted an “Obstructive Uses of Public Sidewalks” ordinance (Ordinance 1617) to minimize “uses of the public sidewalks which create undue obstruction, hindrance, blockage, hampering, and interference” (CCC 16.11.010). The no-obstruction zones were designated by a white stripe, and signs were posted every quarter of a mile. In these areas, the county prohibited numerous uses, including: placing tables, booths, equipment, or goods on the sidewalk; forming lines of people across the sidewalk; carrying signs that protrude beyond a person’s body or exceed its width; or sleeping on the sidewalk (CCC 16.11.020).⁽²⁾ Not only were these regulations intended to relieve sidewalk congestion and improve public safety (CCC 16.11.010), but they were also intended to ensure that pedestrians’ experience was not marred by potentially disruptive uses (CCC 16.12.010), such as political activity requiring the use of signs or tables.

Many hotel developers and owners have argued that these urban design features contribute to the Boulevard’s lively atmosphere. One proponent explained:

“The volcano’s a good thing. If you stop traffic because you create wonderments that bring people to this town you’re doing good... I’m gonna try to make Las Vegas as exciting as I can... I intend to break my neck to do it and if people are so fascinated and transfixed by all this that they can’t stand it, they’ve got to stop and look, then I will have been successful” [as transcribed by counsel in “Response to Plaintiff’s Motion for Preliminary Injunction” for District Court Case No. A340053, *The Mirage Casino-Hotel v. International Missing Childrens Bulletin, Inc.* (Nev. 8th Jud. Dist., Dec. 22, 1995)].

Civil rights advocates, however, are concerned that county officials are selectively endorsing activities which promote the resorts’ interests over ‘less desirable’ uses under the guise of facilitating pedestrian traffic and ensuring pedestrian safety. Clark County’s ban on ‘obstructive uses’ of the sidewalk, for example, has left the county open to charges that “if they are really concerned with traffic on the sidewalks and obstruction that one of the things they could do is not allow these big tourist attractions right on the sidewalks” (ACLU interview).

4.2 Mean and clean

In addition to the Obstructive Uses ordinance, Clark County has enacted other ordinances to regulate undesirable behavior such as prostitution, begging, sitting or sleeping, and other ‘undesirable’ uses. These ordinances have furthered the perception that the county cares less about unimpeded travel than about limiting with whom visitors come into contact. One of the first ‘unwanted’ sidewalk activities prohibited in Clark County was prostitution. Prostitution has a long history in Nevada, a state in which gambling and sex have been inextricably linked. In the early years, street prostitution was common, legal, and an essential element of the free-wheeling, ‘anything goes’ culture that has made Las Vegas a unique and popular

⁽²⁾ Obstructive uses do not include some labor actions, such as conduct that is “arguably protected” by the National Labor Relations Act until or unless such conduct is determined to be unprotected pursuant to a decision of the National Labor Relations Board (CCC 16.11.020).

destination (Gottdiener et al, 1999; Rothman, 2002). Prostitution was outlawed in Clark County in 1955 as part of early efforts to forge a new progressive image for Las Vegas (Moehring, 2000).⁽³⁾ As a consequence, “sleazy sidewalk hookers” are less present on a more sanitized Las Vegas Strip (Gottdiener et al, 1999, page 79). Nonetheless, sex remains one of Las Vegas’s principal allures, perhaps second only to gambling (ACLU interview; Gottdiener et al, 1999; Hensen, 1999). To capture the family and convention markets, the county and the resorts have attempted to move commercial sex off the sidewalks but not out of the area. It has found a new home in clubs off the Strip and within hotels and casinos in the form of gentlemen’s clubs, escort services, and topless revues (ACLU interview; Hensen, 1999).

Clark County has attempted to rid the sidewalks of other unsightly activities such as those associated with public homelessness. As Gottdiener et al (1999, page 214) write, “The city’s main concern has been to keep wandering street people away from the view of tourists enjoying the neon glitz of Glitter Gulch.” In the early 1970s Clark County made it unlawful to lie or sleep on any street, sidewalk, alley or in any vacant lot or public ground (CCC 12.32.020). In 1994 the prohibition against sleeping or sitting on sidewalks was linked to the issue of pedestrian flow and was included as part of the definition of obstructive sidewalk uses (CCC 16.11.020). Clark County has also banned panhandling (CCC 12.32.020).

In addition, the county has aggressively targeted commercial vending. While some of the vendors sell souvenirs or food and beverages, most of them—at least along the Strip—distribute advertisements for adult entertainment (hotel-representative interviews; ACLU interviews; independent interviews). The hotels and casino owners are concerned that some visitors, particularly those with families, will be deterred from returning to Las Vegas if they and their families are inundated with unwanted adult-oriented materials (hotel representative interviews). As one visitor observed:

“Seems to me when I last visited this fair city, I had hawkers peddling printed smut to me in front of my wife and children” (Little, 2002).

Responding to this concern, in 1997 Clark County attempted to ban all commercial canvassing in the resort area (CCC 16.12).⁽⁴⁾ In our interviews, government officials were candid about their widespread interest in reducing sex-related leafleting. One county official argued that

“smut peddlers... have very little constituency. Most people, other than the smut peddlers themselves and maybe a very small group of people to whom the distribution is targeted, all the rest of the people say you know, there’s really no reason for this” (county interview).

The ACLU and two private companies offering erotic dance services challenged the commercial-canvassing ordinance on the grounds that the ordinance violated the hand-billers’ First Amendment rights. Because the ordinance prohibited *all* types of leafleting, the Ninth Circuit Court of Appeals in 1998 ruled that the ordinance was overbroad since it

⁽³⁾ NRS 244.345 prohibits prostitution in counties with populations of 400,000 or more. In these counties, “the license board shall not grant any license to a petitioner for the purpose of operating a house of ill fame or repute or any other business employing any person for the purpose of prostitution.”

⁽⁴⁾ According to CCC 16.12.020(5), off-premises canvassing is defined as “(a) distributing, handing out, or offering on public sidewalks, handbills, leaflets, brochures, pamphlets or other printed or written literature, materials, or information, which advertise or promote services or goods for sale, lease, or rent or which otherwise propose one or more commercial transactions and which specifically refer to products or services for sale, lease, or rent and which are distributed for commercial gain; or (b) soliciting on public sidewalks, pedestrians to purchase, lease, or rent services or goods or otherwise propose one or more commercial transactions.” For the purposes of the ordinance, Clark County defines the ‘resort area’ as the portion of Las Vegas Boulevard beginning at Circus Circus and ending at Four Seasons Drive near Mandalay Bay.

would curtail both political and commercial speech (*S.O.C., Inc. v. County of Clark* 1998, 9th Circuit). In April 1999 Clark County modified the ordinance, reducing the size of the geographic area in which the commercial ban would be in effect and rephrasing the language (independent interview; Packer, 1999b). The District Court ruled this new ordinance unconstitutional; the Court of Appeals refused Clark County's appeal; and in 2002 the Federal District Court issued an injunction prohibiting enforcement of the ordinance (ACLU, 2002).

4.3 Shape up or ship out

When activities could not be prohibited outright, such as in the case of speech and assembly, Clark County instituted time, place, and manner restrictions to control when and how these activities occurred. In some cases these regulations have been so onerous that they inhibit activities without explicitly prohibiting them. In other instances, by controlling how and when activities take place, the regulations minimize the negative effects on pedestrian circulation and ensure that the public use of the sidewalk does not impede access to commercial properties. Clark County was successful in its early attempts to ban protected activities since "the ACLU was not around and active fighting that at the time and they pushed a lot of these things through" (ACLU interview), but the ACLU has since challenged many ordinances that violate street users' constitutional rights.⁽⁵⁾

The First Amendment of the US Constitution guarantees the freedom of speech and assembly, but not all places and types are equally protected. Rather than being substantive, constitutional rights are procedural, and their parameters are defined through the resolution of the conflicts that surround them (Clark, 1990; Haggerty, 1993; Mitchell, 2003a). Through litigation and free-speech conflicts, the courts have defined and redefined the boundaries of expressive rights and appropriate behaviors in public space (Mitchell, 2003a), and the relationship between private property and public access, particularly for labor union organizing (Clark, 1990), but also in conjunction with street gangs (Boga, 1993), begging (Haggerty, 1993; Mitchell, 2003a), and conflicts between merchants and street preachers (Flynn, 1995).

For First Amendment purposes, public property falls into one of three categories: traditional public forums, designated public forums, and nonpublic forums.⁽⁶⁾ Sidewalks and streets along with parks have been held as traditional public forums, the 'quintessential' public spaces. Characteristic of traditional public forums, sidewalks have a long history of being dedicated to assembly and debate. Governments may impose reasonable 'time, place, and manner' restrictions on First Amendment activity, but these must serve a legitimate state purpose, be content neutral, and leave open ample channels of communication (Chemerinsky, 2002; Haggerty, 1993; *S.O.C., Inc. v. County of Clark* 1998).

Operating within this gray area of the constitutional law, Clark County has established a number of time, place, and manner restrictions regulating the distribution and location of newsracks and the execution of parades (including public protests). Newsracks are protected by the First Amendment, but can be regulated so long as the regulation is content neutral.⁽⁷⁾ In 1990 Clark County enacted an ordinance to regulate

⁽⁵⁾ See *S.O.C. Inc. v. County of Clark* 1998.

⁽⁶⁾ Designated public forms are places explicitly opened by the state for public discourse. Nonpublic forums are government properties that are not covered by the first two categories and include places such as military installations, federal workplaces, and others that are not appropriate for unrestrained communication (Haggerty, 1993; O'Neill, 1999; *SOC., Inc. v. County of Clark* 1998).

⁽⁷⁾ For example, in the case of *City of Lakewood v Plain Dealer Publishing Co.*, 486 US 750, 769–70 (1988), an ordinance granting the mayor absolute discretion in granting applications for annual permits to place newsracks on public property was found unconstitutional since it ran the risk of prior content-based censorship (Barlow, 1989).

the number and location of newsracks (CCC 16.08).⁽⁸⁾ According to Mike Foley, Deputy District Attorney, “the newsrack ordinance was originally crafted to avoid long strings of racks, sometimes 100 feet long, from interfering with pedestrians and creating a safety hazard” (Sebelius, 2002a). The regulation was intended “to preserve or enhance the aesthetic quality of the gaming resort district, to foster sightliness and to promote the public health, welfare and safety of pedestrians while providing convenient access to publications” (CCC 16.08).

Parade regulations have been used to regulate political activity—union protests and other political demonstrations—that the county cannot ban outright. For political or social protest parades, organizers are required to obtain permits 72 hours prior to the event (CCC 6.84), and the rallies must end when the permit expires (Waddell and Alfonso, 1994). Pursuant to the obstructive-uses ordinances, participants are prohibited from carrying signs that protrude beyond their bodies or from placing a podium, table, or any structure on the sidewalk (CCC 16.11.020); and, in the resort district, the ordinance restricts the hours in which parades can take place. Describing some of these regulations, a representative from the Metropolitan Police stated:

“With the Culinary, they would set up their rally in such a way that they kept an opening for pedestrian traffic to go through. If it is going to be a larger type rally, they would actually apply for and obtain a special use permit for a lane closure on Las Vegas Boulevard which they would either use or allow pedestrian traffic to use.”

The parade requirements establish the rules with which organizers of parades and political protests must comply. When asked whether these requirements restrict the organizing of the Culinary Workers Union, a respondent from the union thought that they did *not* since union leaders had over the years, learned to work effectively with the Metropolitan Police in planning their events. This may be a best-case example since the labor union is one of the more powerful organizations in Las Vegas. It has a large and powerful membership base and its leaders have extensive experience of organizing pickets and rallies. Moreover, the union’s principal public activity—picketing—is not included in these restrictions since it is protected by the National Labor Relations Act. Although the parade restrictions may not affect the activities of larger organizations such as the Culinary Workers, they are more likely to limit the activities of smaller and, perhaps, less powerful or experienced grassroots lobbying groups.

4.4 Sidewalk giveaway

The NDOT and Clark County have encouraged the privatization of sidewalks along the Strip. Privatization has enabled the state to shift the responsibility for the design, maintenance, liability, and costs of sidewalks to private property owners. Many of the interviewed stakeholders also asserted that privatization allows the casinos greater control over the use of the sidewalks: in other words, along with private property rights comes greater aesthetic control, the ability to ban certain commercial activities, and the legal standing to prohibit union organizing. Although the state’s authority to regulate some uses and behavior on private sidewalks remains unresolved, it is clear that the county has less legal authority to require private property owners to allow certain activities than they have with respect to public sidewalks. Thus, by promoting privatization, Clark County has passively deferred many of the issues related to public access to the courts.

⁽⁸⁾ This ordinance was recently amended, specifying that the public rights of way include only those spaces owned or maintained by a city, county, state, or other government.

The increased traffic associated with the development of megaresorts along Las Vegas Boulevard necessitated the widening of the state highway and the encroachment of the highway onto publicly owned sidewalks (Venetian land use case file; county representative interviews). To mitigate the impact of the new developments, the developers dedicated additional property to widen the road. The resort owners, however, retained the fee to the sidewalks and, on occasion, the roadway itself. Rather than insist that the owners dedicate these sidewalks to the public, Clark County allowed—and even encouraged—their private retention (NDOT interview; county-representative interviews).

According to the NDOT, the agency with jurisdiction over Las Vegas Boulevard, the private maintenance of sidewalks is advantageous because it results in better sidewalks, improved landscaping, less liability, and allows NDOT to concentrate on providing roads rather than sidewalks (NDOT Sidewalk Agreements; NDOT interview). The complicated property holdings of Clark County and NDOT have made privatization more desirable to the county since, according to a county representative, “the dedication of additional pieces of right-of-way would really contribute to the complexity. [Privatization] has provided the best mechanism for us to accomplish our goal of simplifying from an administrative standpoint what we do while providing adequate access for pedestrians and vehicles” (county representative interview). From the casino-resorts perspective, privatization is beneficial because it allows them both to “develop that land so that it’s more in keeping with the design and theme of the hotel” (hotel representative interview) and control unwanted uses. For most hotel owners, the ‘unwanted uses’ specifically refer to commercial handbilling and vending, but for others, they include any uses that interfere with their business, including First Amendment activities (hotel representative interviews).

The Mirage Hotel-Casino was the first resort with a privately owned sidewalk. After the Mirage was developed, planning officials and county commissioners saw the potential benefits of private sidewalks to control advertising (independent interview). In a 1991 hearing, at which representatives from the MGM Grand explained that they would prefer to maintain private ownership of the sidewalks “to avoid the problem of newsracks”, Clark County commissioners supported this proposition (8/21/91 BCC hearing). In subsequent years, other casino-resorts requested private sidewalks. At the Treasure Island hearing, two commissioners stated outright that privately owned sidewalks allow private property owners to better control unwanted activities than can the county (as transcribed in “Response to Plaintiff’s Motion for Preliminary Injunction” for District Court Case No. A340053, *The Mirage Casino-Hotel v. International Missing Childrens Bulletin Inc.* 1995).

Clark County attempted to prohibit commercial handbilling outright throughout the resort district, but the Ninth Circuit Court determined that Clark County’s initial ordinance was overbroad (Friess, 1998) and the federal court, US District Judge Lloyd George, struck down a revised, and more narrowly drawn, ordinance (Geer, 1999). In contrast, the Nevada Supreme Court has held that private property owners *can* ban commercial activity on their properties, including both handbillers distributing adult-oriented literature and vendors selling t-shirts or dispensing child-safety cards (*S.O.C., Inc. v. The Mirage Casino Hotel* 2001, 117 Nev. Adv. Op. No. 36).

By relinquishing the sidewalks to the casino owners, Clark County forfeited their influence over the public’s access to private sidewalks and left this issue to the private sector and the courts. Although county officials were interested, first and foremost, in placing limits on commercial advertising, their abdication of responsibility for the sidewalks resulted in two major attempts to regulate the public’s use of sidewalks for

political activities. The first controversy was at the MGM Grand Hotel and Casino; more recently, a second controversy occurred at the Venetian Resort-Hotel-Casino.⁽⁹⁾

The first fight over political activity and sidewalks erupted at the MGM Grand during a labor dispute. When the MGM Grand opened in 1989, the Culinary Workers Union organized a large rally protesting the hotel management's decision to open the hotel without a neutrality agreement with the union. A neutrality agreement would have simplified the union organizing process by acknowledging the rights of the union to organize workers without interference from management and recognizing the union as the collective-bargaining representative upon the receipt of authorization cards from a majority of employees, circumventing a secret-ballot election.

The hotel management attempted to prevent this rally, arguing that they owned the sidewalks and, therefore, could control access to them (ACLU interview; Davis, 1994). The Culinary Workers Union responded with a "take back the sidewalks rally", protesting the private sidewalk restrictions themselves (Davis, 1994). At the rally, the MGM security guards informed the protestors that they were trespassing, at which time they were taken to a nearby hotel, cited, and then released (Green, 1994a). Union members continued to handbill in front of the hotel and, soon after the initial rally, Clark County legal staff advised the Metropolitan Police Department to stop assisting citizen arrests until a federal judge ruled on the private sidewalk issue (Green, 1994b). According to the chief deputy district attorney, they did not "want the county to be liable for unlawfully transporting and incarcerating people who are arrested by MGM security" (Green, 1994b). Because the MGM management settled with the union, the sidewalk issue was dropped and remained unresolved.

In 1999 Venetian Resort-Hotel-Casino executives attempted to use the private status of the sidewalks to prevent union activity. As in the MGM case, Sheldon Adelson, the chairman of the Venetian's board, refused to sign a neutrality agreement with the Culinary Workers Union. However, in this case, throughout the development process, the Venetian hotel executives were outspokenly antiunion. While Clark County commissioners did not want a repeat of the MGM situation (2/18/97 BCC hearing), once again they did not insist that the Venetian executives dedicate the sidewalk as a public right of way. In describing these proceedings, one Las Vegas reporter criticized the County because "while the county in 1997 insisted that The Venetian dedicate the property as a public right of way, the hotel eventually struck a deal with the state that didn't require any concessions, and the County rubber-stamped the arrangement" (Sebelius, 2002b).

At the public hearing, Clark County commissioners requested assurance that the language in the county's agreement with the Venetian would protect First Amendment activity (2/18/97 BCC hearing; 3/4/97 BCC hearing). The county used stronger language in the Venetian agreement than they had previously (3/4/97 BCC hearing), and included a provision that ensured accordance with state and federal law (Packer, 1999a). The Culinary Workers Union agreed to the language (Culinary Workers Union interview; 3/4/97 BCC hearing). The agreement with the NDOT, however, is ambiguous. While it requires that the Venetian provide a sidewalk with a public access easement, it also includes a provision stating that the Venetian maintains their private property rights (8 January 1999 NDOT/Venetian sidewalk agreement).

The ensuing sidewalk conflict between the Venetian and the Culinary Workers Union rests on this ambiguity. In February 1999, prior to the resort opening, Clark

⁽⁹⁾ Other hotels, however, have been supportive of the Culinary Workers Union. During the 6½-year strike at the Frontier Hotel-Casino, the owners of the Circus Circus Hotel-Resort-Casino provided daily meals to the strikers for more than five years (Mosle, 1998).

County issued a permit for a labor demonstration on a temporary walkway along the Venetian's frontage. At the rally, on 1 March 1999, Venetian executives demanded that the Metropolitan Police arrest protestors for trespassing on private property. The district attorney determined that the sidewalks were public for the purpose of political activity and, consequently, the police refused to arrest the protestors.

The Venetian emphasized that the sidewalks were part of the resort experience. Bill Weidner, president of the Venetian's parent company, contrasted the sidewalk attraction with union activity: "We're trying to improve the ambiance of Las Vegas Boulevard, and what do they do? Whistles, signs and chants. And they say we're anti-Las Vegas" (Strow, 1999). In response to the inaction by the Metropolitan Police, the Venetian filed suit in federal court against Clark County, the Clark County District Attorney, and the Las Vegas Metropolitan Police Department, seeking a declaratory judgment that the newly constructed private sidewalk was not a 'public forum'. The district court granted summary judgment in favor of Clark County and the interveners, the unions, and the ACLU, a decision that was subsequently upheld by the Ninth Circuit Court.⁽¹⁰⁾ The Venetian appealed this decision to the US Supreme Court and, on 4 March 2002 the US Supreme Court denied cert, upholding the Ninth Circuit decision.

From the initial hearings on the Venetian development, county counsel stated that he did not know how the courts would interpret the law as it related to public access to the sidewalks (3/4/97 BCC hearing). Clark County commissioners, however, believed that they had adequate assurance that the public would have access to the sidewalks and approved the development agreement allowing the Venetian to build and maintain a sidewalk on private property. Their initial position on First Amendment activity notwithstanding, County officials refused to take a public stand on the controversy (Packer, 1999a). In fact, a county commissioner later said that "the county's primary concern is to make sure protestors are not blocking sidewalks. Whether people can be legally tossed off private property is up to attorneys and Metro police" (Packer, 1999b). When asked about the laws regarding private sidewalks, an NDOT representative stated that he "didn't know. ... There are two constitutional rights that come into effect: First Amendment rights and landowners' rights to private property" (Packer, 1999b).

Although thus far the courts have held that private sidewalks are available for First Amendment activity, many casino-resort owners do not agree with this determination. They frequently assert that the issue remains unresolved since the US Supreme Court did not have the benefit of an ideal case on which to test these principles. As one hotel representative explained:

If someone is demonstrating on our property, and they are using their First Amendment rights, or their rights that are granted under the National Labor Relations Act, we will go out and we will read them the trespass notice because we still maintain it is our private property and we are exerting private property control over that. However, we also use restraint in requesting that the police make arrests because we're cognizant that the DA's office, in light of the Ninth Circuit opinion and ..., in my mind, still somewhat of an open question concerning private

⁽¹⁰⁾ This type of sidewalk is differentiated from sidewalks that are incidental to particular uses and have no function other than serving the particular use. *United States v. Kokinda* [497 US (1990): 720, 727–28] distinguished between a walkway leading from a parking area to the front door of the post office and a "thoroughfare" sidewalk running parallel to the street, finding a sidewalk incidental to the post office a nonpublic forum. *Chicago ACORN v. Metropolitan Pier Exhibition Authority* [150 F.3d (7th Cir., 1998): 695, 702] held that a pier was not a right-of-way and that the sidewalks on the pier, which only lead to the pier, are not "through-routes".

property rights and demonstration, will not readily come to the aid or, excuse me, the request of the landowner” (hotel-representative interview).

Although the Culinary Union has successfully challenged the private sidewalk restrictions, not all organizations have the political clout and financial resources of this labor union. Hotels owners are more likely to succeed in restricting the activities of less powerful organizations and constituencies (Kalil, 2002). The ACLU still gets “called out repeatedly when some group, be it the homeless advocates, be it student anti-war protestors, whatever, are being harassed and being threatened by this hotel or that hotel who still claim that they are their sidewalks and no one has a right to be there unless they want them to be there” (ACLU interview). Even the Venetian Resort-Hotel-Casino has a short memory, as one representative from the ACLU found:

“Even the Venetian itself, when I confronted them last summer with a group of religious homeless advocates, claimed they had never heard of the Venetian case” (ACLU interview).

With the Supreme Court’s refusal to revisit the Ninth Circuit Court’s decision regarding the Venetian Resort-Hotel-Casino, the sidewalks in front of the Venetian have been designated a public forum upon which the union and other political organizations have the right to stage protests. There is widespread disagreement among local stakeholders over the implications of this decision. Respondents from the ACLU argue that the Venetian decision conclusively decided that private sidewalks are public forums. A respondent from the Culinary Workers Union was more cautious, expressing concern about the applicability of the decision to other hotel properties, and suggested that the conflict might not be resolved since the MGM and Venetian “decisions are not actually binding on any other hotels so any hotel that decides to can take us on and re-litigate that whole issue” (Culinary Workers Union interview). They may choose not to do so, however, since the decision would likely “follow its previous precedent since we’re talking about the same sidewalk along the same street” (Culinary Workers Union interview). In contrast, many of the respondents representing the interests of the casinos believe that the Ninth Circuit ruling is not the last word on the issue of free speech on private sidewalks and, as mentioned previously, that the US Supreme Court is waiting for a better case on which to decide the issue (county-representative interviews).

Another unresolved issue relates to commercial speech and, in particular, whether publishers have a right to place newsracks on private sidewalks. The casino owners and county officials argue that publishers do not have this right since the property is private and readers have ample opportunity to obtain these materials elsewhere (county-representative interviews). According to the ACLU, this indicates the inconsistency of Clark County officials:

“In the Venetian case they said ‘Gosh, we don’t know, it’s all very confusing’. Now we’re involved in a fight over newsracks and their claim is, ‘It’s all private property and we can’t regulate what goes on private property. That’s between you, the people who want to put newsracks out there and the casinos.’ So they’ve now taken three positions which are on their face inconsistent and two of the cases diametrically opposed to one another. In other words in the newsrack controversy they’re saying private property, we can’t regulate what goes on there, in the handbilling case they said we can regulate what goes on there any time we want” (ACLU interview).

5 Civil liberties and the public sector

Clark County and the NDOT officials played a passive role with respect to civil rights on Las Vegas sidewalks. They defined sidewalk functions narrowly and, by so doing, regulated almost all activities on the Las Vegas strip to protect the financial interests of the gaming industry. Many cities around the globe have placed their economic futures on their own versions of Las Vegas Boulevard—the creation of bustling, mixed-use, and retail districts that house local residents, attract visitors from around the region, and draw tourists. The evidence from this case study suggests that concomitant with the success of these developments will be an increase in the regulation of public space and further restrictions on civil liberties.

Clark County officials have justified their regulatory approach by focusing on the need to improve the pedestrian environment and to have unimpeded access on public sidewalks. This official position has been used to rationalize the county's obstructive-uses ordinance; the narrow focus on the nexus between development and the effects of this development on increased pedestrian traffic (county representative interviews); and, finally, the willingness to privatize the sidewalks while demanding no more than an easement to provide a pedestrian thoroughfare.

Under the guise of these very narrowly drawn interests—pedestrian safety and circulation—the county has pursued a broad set of regulatory strategies. On the Las Vegas Strip, the county has regulated the placement of tables, equipment, or goods; the carrying of signs; sidewalk sleeping; sitting; begging, marching, and prostitution. In other words, Clark County either has banned outright or restricted homelessness, vending, prostitution, panhandling, newsracks, protests, parades, and other potentially 'obstructive' uses. At the same time, it has relinquished substantial control over the sidewalks to resort owners who continue to pursue additional restrictions.

As for the public use of this sidewalk for activities other than walking, County administrators and attorneys have largely been silent, arguing that these issues are best left to the courts (county-representative interviews). The county's response has been condemned by many local commentators, who argue that the county has been dishonest in its principal motivation—that of protecting the interests of gaming at the expense of all other users. For example, representatives from the ACLU remain unconvinced that the county's main objective is pedestrian circulation. They argue that if this were the case, the county would be actively discouraging attractions that cause sidewalk congestion; even the Ninth Circuit Court

“pointed out that if [the county is] really concerned with traffic on the sidewalks and obstruction, that one of the things they could do is not allow these big tourist attractions right on the sidewalks (ACLU interview).

This example indicates both the hypocrisy of the county's position as well as their underlying objective in advancing the interests of the casinos.

It should come as no surprise that county officials would enact policies in support of the gaming industry, the county's bread and butter. The county's revenues are inextricably linked to the productivity of a handful of large gaming establishments agglomerated within the five-mile resort district. As a consequence, the economic stakes associated with the success of these firms are tremendous. The ACLU went so far as to describe Las Vegas as a company town.

“This town is as close to an old fashioned company town as you are likely to find anywhere in the United States. It does not surprise me that the government would not in any kind of meaningful aggressive way fight for anyone's First Amendment rights on the sidewalk for fear of offending the very same economic interests that help put them in office and keep them in office” (ACLU interview).

Similarly, when asked about the role of the district attorney's office, a representative from the Culinary Workers Union responded that the county acted as it did:

"Because they didn't want to get on the bad side of the casinos. It's politics. And so, what they did was they negotiated something that both sides could find some textual support for their position in."

Clark County officials have largely pursued policies which, as Mitchell (2005) argues, protect the rights of people to be left alone—not in the privacy of their own homes or on private property, but in public space—with the assumption that such public interactions detract from the Las Vegas experience and gaming revenues.

This relationship between revitalization and the regulation of public space does not bode well for civil liberties. Numerous cities are actively pursuing revitalization through geographically targeted developments, many of them focused on downtown and waterfront areas. The case study of public sidewalks in Las Vegas suggests a positive relationship between the concentration of economic activity and the extent to which local governments regulate public space. As the financial stakes rise, so too do the number and scope of the regulations used to control public behaviour.

It is the success of these developments, however, that attracts the behaviour that cities increasingly regulate. Panhandlers, vendors, union and political protesters, and street performers are not successful unless they have an audience. And, while many visitors do not want to be bothered by panhandlers or street vendors, many others are drawn to these areas precisely because of their vibrant street life. In a recent effort to regulate street performers on Kalakaua Avenue in Waikiki (HI), a manager of one of the adjacent businesses stated that performers add to the flavour of Waikiki and that tourists like them; a tourist herself commented that the "street performers offer a slice of life that's different from what's available in her hometown" (Dingeman, 2005).

Ultimately, Clark County avoided the difficult issues associated with the regulation of public space—how best to mediate among competing uses. How do we balance the rights of political protesters with those of street performers? How do we weigh the rights of the homeless with those of the adjacent business interests? In abdicating their responsibilities, local officials ceded control over public space to private interests and, in so doing, have continued the attack on civil liberties and, as Davis (1992) writes, "the destruction of any truly democratic space" (page 155).

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Appendix

Table A1. Interviews.

Interview number	Interviewee	Date ^a	Approximate length (hours)	Form
1	Culinary Workers Union	12 April; 21 May	½	in person
2	District Attorney	12 April	¼	telephone
3	Hotel representative	11 April	¾	in person
4	Clark County	5 March	1	in person
5	Clark County	5 March	1	in person
6	Hotel representative	8 August	½	telephone
7	Independent	5 March	2	in person
8	Metropolitan Police Department	4 March	¾	in person
9	Clark County	5 March	1	in person
10	Nevada Department of Transportation	9 May	½	telephone
11	Clark County	5 March	1	in person
12	Hotel representative	6 May	¾	telephone
13	American Civil Liberties Union	4 March	2	in person
14	Culinary Workers Union	9 August	½	telephone
15	American Civil Liberties Union	4 March	2	in person
16	Hotel representative	15 March; 21 March	½	telephone
17	Clark County	5 March	¾	in person
18	Hotel representative	11 April	1	in person
19	Culinary Workers Union	12 April	½	in person
20	Nevada Department of Transportation	9 May	½	telephone

^a All conducted in 2002.

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