



Las Vegas

Agenda Item No.: 3.

AGENDA SUMMARY PAGE
RECOMMENDING COMMITTEE MEETING OF FEBRUARY 18, 2014

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC

☐ Consent ☒ Discussion

SUBJECT: Bill No. 2013-61 - ABEYANCE TO POSSIBLE ACTION - Amends LVMC 6.50.285 to clarify that the owner of an establishment adjacent to a pedestrian mall that is licensed to conduct nonrestricted gaming and is authorized to sell alcoholic beverages pursuant to a tavern license may operate one or more bars upon such adjacent pedestrian mall. Proposed by: Bradford R. Jerbic, City Attorney

Fiscal Impact

☐ No Impact ☐ Augmentation Required
☐ Budget Funds Available

Amount:

Funding Source:

Dept./Division:

PURPOSE/BACKGROUND:

As part of a recent ordinance updating the City's alcoholic beverage regulations, the City Council adopted a provision authorizing the owner of an establishment adjacent to a pedestrian mall that holds a license for nonrestricted gaming and a tavern license at the same location to operate a temporary or permanent bar upon the mall. This bill clarifies the intent of that provision: to allow one or more such bars to be established rather than establishing a limitation of one bar only.

RECOMMENDATION:

ABEYANCE to 2/18/2014 Recommending Committee meeting by the 2/5/2014 Recommending Committee

First Reading - 12/18/2013 First Publication - 12/26/2013

BACKUP DOCUMENTATION:

1. Bill No. 2013-61
2. Comments from Charleston Neighborhood Preservation by Juanita Clark submitted for the 2/4/2014 Recommending Committee Meeting.

Motion made by STAVROS S. ANTHONY to Deny

Passed For: 3; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

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

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Minutes:

COUNCILMAN BARLOW declared the Public Hearing open.

COUNCILMAN BARLOW indicated to ATTORNEY JAMES J. JIMMERSON, Granite Gaming, LLC, that he preferred having CITY ATTORNEY BRAD JERBIC go forward in giving a brief background on previous litigation between Granite Gaming, LLC and Fremont Street Experience. Initially, the City of Las Vegas (City) was not involved in this litigation, and the dispute at hand was whether or not the term bar meant one or more. Ultimately, the judge disagreed with counsels assertion that the term meant multiple bars, as that belief is the way the City administers licenses. So, as part of a recent ordinance updating the Citys alcoholic beverage regulations, the City Council adopted a provision authorizing the owner of an establishment adjacent to a pedestrian mall who holds a license for non-restricted gaming and a tavern license at the same location to operate a temporary or permanent bar upon the mall. The proposed bill clarifies the intent of the provision, which would allow one or more bars to be established rather than establishing a limitation of one bar only.

ATTORNEY JIMMERSON, 415 South Main Street, Suite 100, appeared with proprietor, MR. BERNSTEIN, and ATTORNEY RAY BROWN, 520 South Main Street, and elaborated on some of the past litigation referred to by CITY ATTORNEY JERBIC. ATTORNEY JIMMERSON agreed with the City Attorneys Office in that the City has the right to control the Fremont Street Experience. Given some of the current issues dealing with alcohol and troublesome tattoo parlors, he asked that the City exercise its discretion and deny the ordinance going forward and permit only one bar. He would like all parties to have an opportunity to work with staff in an effort to reach a resolution that makes sense.

ATTORNEY BROWN commented that he represents MR. BERNSTEIN as well as other proprietors on Fremont Street. He pointed out that an individual cannot walk into a retail store with an open container so this fact may not be the only reason yet sufficient enough to limit bars on Fremont Street Experience.

CITY ATTORNEY JERBIC explained for the Committee that the City Council adopted a blanket encroachment agreement for Downtown Las Vegas, whereby Fremont Street is responsible for maintenance in exchange for complete control over the Pedestrian Mall. There are a few instances that Fremont Street has been allowed encroachment agreements in this mall without having to appear before the City Council.

COUNCILMAN COFFIN queried about the perception that the City approved bars in front of two establishments, to which CITY ATTORNEY JERBIC responded that the Citys Business Licensing Division would be responsible for inspecting such properties; the operation maintenance agreement gives Fremont Street Experience, LLC complete control of the pedestrian mall and the front of properties can be looked upon as space.

KAREN DUDDLESTEN, Business Licensing Manager, explained for COUNCILMAN COFFIN how two area hotels acquired approvals for additional bars. When these two hotels

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were established, there was nothing within the City's liquor code applicable to the additional bars on site. As a result, the liquor code was updated which now requires property owners seeking a bar in their establishments would have to acquire approvals first from Business Licensing and Public Works Departments. COUNCILMAN COFFIN recognized that the language a bar is relatively new and tradition seemed to dictate that these two hotels were allowed to have the additional bars.

COUNCILMAN ANTHONY liked the concept of having outside bars in the mall but was unsure if having more than one bar on some of the establishments was appropriate. He would rather not see the existing ones shut down and believed the City and Fremont Street Experience should have a partnership, as the City has a vested interest on what happens on the Fremont Street Experience and should be a part of the approval process.

CITY ATTORNEY JERBIC commented that the City could view bars just one bar, and if additional ones are desired on an establishment, then the property owner must appear before the City Council for an approval. In addition, the existing bars can be grandfathered in.

COUNCILMAN ANTHONY supported grandfathering in the existing bar and suggested counsel draft an ordinance in line with CITY ATTORNEY JERBIC's comments.

CHIEF DEPUTY CITY ATTORNEY VAL STEED added that the current proposed ordinance clarifies what one bar is without the City Council's input and pointed out that counsel would bring back a newly proposed ordinance if the direction has changed.

COUNCILMAN BARLOW recalled the efforts made by the City and the downtown business owners on the curfew ordinance and given this new issue, he wondered if Pandora's Box would open should a conversation be held on possibly lifting the moratorium on additional liquor stores in this area. He believed a bar means one bar and wanted to move in the direction of what the downtown business owners desired, which is to reduce the number of liquor stores as well as the number of bars. CITY ATTORNEY JERBIC clarified that a district court judge determined a bar means one bar.

COUNCILMAN COFFIN felt that a problem may arise with property owners on the Fremont Street Experience if existing bars were grandfathered in. He could not support the proposed ordinance as written.

For COUNCILMAN COFFIN, MR. BERNSTEIN explained that he is only permitted to have his temporary kiosk on his property due to the master encroachment agreement. He gave some history from 2012 relative to action taken by the City Council, which approved the master encroachment agreement. As a result, there are a few individuals who are now dictating policy for the Fremont Street Experience. JEFF VICTOR, President of Fremont Street Experience, referred to similar incidences where approvals have been granted because of the master encroachment agreement; the approval process happened through the City's Building and Safety Department but not through the City Council, so once again, some property owners did not have the opportunity to weigh in on what happens along the Fremont Street Experience.

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CITY ATTORNEY JERBIC recommended that the Committee recommend denial and let the City Council vote or strike the proposed ordinance. He ascertained that the Committee members had different stances on the proposed ordinance. COUNCILMAN BARLOW believed that the Committee did agree on not approving the ordinance at this time.

ATTORNEY PATRICK RILEY, Fremont Street Experience, appeared with MR. VICTOR and pointed out that it would be prudent to hear MR. VICTOR'S comments, given that some of the information represented at this meeting is inaccurate. COUNCILMAN BARLOW stated that he had not heard some of the previous arguments, but he believes his stance is clear on tavern licenses and packaged licenses. There is a long standing history of who has contributed to Las Vegas experiencing 13 million visitors and those that oppose what happens along Fremont Street Experience should be appreciative of the millions of visitors. Given that the City is part of the lawsuit spoken of by CITY ATTORNEY JERBIC, COUNCILMAN CORBIN believed it was smart for the Committee to be involved. CITY ATTORNEY JERBIC answered that the City is almost a victim of collateral damage, as this dispute is between MR. BENJAMIN and the Fremont Street Experience.

MR. VICTOR gave some examples of previously approved street encroachments in the subject area. He was not aware of the master encroachments agreement that was approved, and in his opinion, includes careless wording. Fremont Street Experience includes multiple bar establishments that have continued to operate in compliance.

Upon giving the motion to deny, COUNCILMAN ANTHONY noted that if the current proposed ordinance is not approved at City Council, then he would like to see an alternate one inclusive of the Committee's feedback.

COUNCILMAN BARLOW declared the Public Hearing closed.