

Informational Memorandum

To: MAYOR CAROLYN G. GOODMAN
MAYOR PRO TEM STAVROS S. ANTHONY
COUNCILMAN BOB BEERS
COUNCILWOMAN LOIS TARKANIAN
COUNCILMAN STEVEN ROSS
COUNCILMAN RICKY Y. BARLOW
COUNCILMAN BOB COFFIN

RECEIVED
CITY CLERK
2014 MAY 19 P 4: 03

From: KAREN DUDDLESTEN, BUSINESS LICENSING MANAGER

CC: Brad Jerbic, City Attorney
Elizabeth Fretwell, City Manager

Date: 5/19/14

Re: **MAY 21, 2014 AGENDA ITEM #17**

Attached are two letters received as comments for the business impact statement for the following item on the May 21, 2014 City Council Agenda.

17. For possible action to approve a business impact statement regarding a proposed ordinance which acts to update various sections of LVMC Title 6 to increase civil penalties for violations of LVMC 6.50 , clarifies that the Director may suspend an alcoholic beverage license on an administrative basis under certain circumstances, add a new condition to LVMC 6.50 to clarify that a licensee's violation, or knowingly permitting an employee to violate a condition of an alcoholic beverage license is a misdemeanor, and creates a zone in the downtown area where the possession of glass or metal containers for the consumption of beverages is prohibited and the consumption of alcoholic beverages in its original packaging is prohibited (Bill No. 2014-34)

These two letters were previously submitted to the Council as part of the business impact statement for Bill No. 2014-29.



April 28, 2014

City of Las Vegas
Planning Department
Business Licensing Division
333 N. Rancho Drive -- Third Floor
Las Vegas, NV 89106

Re: Comments in Response to Proposed 2014 Civil Penalties and Liquor Licensing Update

Dear Ms. Duddleston:

Thank you for the opportunity to provide comments to the draft ordinance regarding alcohol consumption in the City of Las Vegas (Proposed 2014 Civil Penalties and Liquor Licensing Update). On behalf of the Fremont Street Experience and its member properties, the Fremont East Entertainment District and its member properties, the Downtown Las Vegas Alliance and the Las Vegas Metropolitan Police Department, the undersigned submit the following comments and recommendations regarding the draft ordinance.

I. Limit Scope of Ordinance

A. Boundaries

As an initial matter, we believe the ordinance should be limited to Fremont Street and the immediate surrounding area making up what is the tourist and entertainment core of downtown Las Vegas. The uniqueness of this area sets it apart from the rest of the City, while the significant tourist and visitor volumes, coupled with its hospitality, gaming, entertainment and nightlife, drive the need for its own set of rules and regulations. In fact, the City has already recognized this area's uniqueness with its adoption of the curfew zone last fall relating to minors. Our suggested boundaries for the application of the liquor licensing ordinance – Stewart, Eighth, Bridger and the Union Pacific railroad tracks – roughly mirror the curfew zone and encompass the downtown tourism and entertainment area. Importantly, these include the City-designated Casino District, Gateway District and the Fremont East Entertainment District.

Additionally, having one set of rules for this area provides for a more consistent and fair application and enforcement of liquor regulations. This allows visitors to the area (both tourists and locals) to stroll through the area without the rules changing from one district to another, which in turn reduces the likelihood of accidental violation of the law. A consistent set of rules also supports existing businesses in the area and promotes additional business growth by ensuring stability and predictability for entrepreneurs and investors.

B. Packaged Liquor

The proposed ordinance includes numerous **proposed** revisions to the liquor code that, while important, do not directly address the most pressing alcohol-related issue relevant to the downtown tourism and entertainment area: packaged liquor. Packaged liquor sales on Fremont Street are a relatively new phenomenon with all but one of the packaged liquor outlets approved within the last few years. The open container environment on and around Fremont Street (indeed, the entire City) has been in existence for decades if not since the City's existence. However, the combination of packaged liquor in an entertainment district environment wherein numerous tavern and related sales-by-the-glass establishments exist, along with a voluminous visitor volume, has indeed created the problems we all anticipated and attempted to make clear to Council when FSE protested the approval of packaged liquor in the first place.

First and foremost is an inherent inability to enforce the law with respect to packaged liquor. The City code prohibits the opening of packaged liquor within 1,000 feet of its purchase. However, as has been evidenced by Metro and the City Attorney's Office, the City's code is completely unenforceable with respect to this prohibition in the casino and entertainment districts. Consequently, sales by packaged liquor licensees are made to patrons who presume that opening the sealed container is fully permissible. Worse yet, some licensees are complicit in, if not actually encourage, such behavior in full violation of the law. However, once the previously sealed container makes its way into the open container environment, it is virtually impossible for the City or Metro to enforce the law. Notably, the recommended boundaries for this ordinance also roughly mirror the 1,000-foot radius from packaged liquor establishments along Fremont Street.

Additionally, the recent influx of packaged liquor volume in a condensed area on Fremont Street has created great accessibility to large amounts of cheap and high-content alcoholic beverages without the self-regulation inherent within the tavern, serve-by-the-glass model. Moreover, the accessibility of packaged liquor has likewise fueled a homeless and vagrancy population drawn by the accessibility to inexpensive hard alcohol within the existing visitor volumes that provide for greater panhandling opportunities. All of which is a recipe for a deteriorating environment for visitors and a pattern of addiction for some of our homeless citizens.

The result is a strain on the city's budget in the form of repeated 911 calls for service to the downtown Fire Station, which then transports the injured, inebriated parties to UMC where further public cost is incurred. Once no longer in an emergency state, they are transferred to Westcare for further publicly funded services. After 48 hours, these individuals resurface on Fremont Street only to repeat the pattern. It comes as no surprise that almost every other major entertainment district in the United States severely restricts, or in most cases prohibits, the sale of packaged liquor. We should learn from their experience.

II. Packaged Liquor Restrictions

For the above reasons we support many of the restrictions proposed in the draft ordinance relating to packaged liquor. We recommend that the following merit adoption by the City, along with a few additional regulations, only within the boundaries suggested above:

1. Prohibit the granting of any new packaged liquor licenses except for grocery stores.
 - a. More clearly and specifically define "grocery store" in a manner that supports the growth of residential development within the downtown area and in recognition of the nature of small, urban groceries or markets.
 - b. Require an applicant for a packaged liquor license to meet a market-demand burden established by Business Licensing.
2. Excepting grocery stores, adopt the following restrictions for existing packaged liquor licensees:
 - a. Prohibit the sale of packaged liquor between the hours of 6:00 p.m. to 6:00 a.m.
 - b. Prohibit the sale of:
 - i. Individual bottles, can-openers and plastic cups.
 - ii. Containers of alcohol greater than 32 oz.
 - iii. Containers one pint or less except for beer and wine.
 - iv. Any malt or beer beverage with an alcoholic content greater than 8% by volume.
 - c. Require each alcoholic beverage purchase be placed in a colored bag or receptacle clearly marked with the name and address of the establishment.
 - d. Post a sign at each entrance and exit that states: "Alcohol purchased at this location cannot be consumed within the Fremont Street Experience or within 1000 feet of this store."
 - e. Prohibit advertising of alcohol and alcohol prices on the exterior of the establishment or inside the establishment that is visible from outside of the establishment.
 - f. Restrict location of packaged liquor displays to a minimum of 10 feet from any entrance unless further restricted by the land use entitlement.
 - g. Restrict square footage of the packaged liquor display to 10% of the gross retail floor area, or the area authorized by the land use entitlement, whichever is less.
 - h. Adopt licensing fees sufficient to support City administration and enforcement of packaged liquor regulations.
3. Adopt swift and severe penalties for code violations that include:
 - a. Three strikes with increased fines (e.g., \$500, \$1,000, \$5,000).
 - b. Upon third violation, suspension of license pending a show-cause hearing before the City Council regarding license revocation.
4. Limit the sales of Packaged Liquor to a truly incidental or accessory use – the sale of packaged liquor may not exceed 25% of gross sales. All but one of the six gift store currently selling packaged liquor survived well for many years without selling such products.

Thank you again for the opportunity to provide comments on the proposed ordinance. We greatly appreciate the effort of you, your division and the City in proposing thoughtful regulations aimed at creating a safer, more vibrant and more welcoming downtown Las Vegas. As partners with the City in both its rich history and bright future, we look forward to continue working with the City and its Council in achieving that goal.

Sincerely,



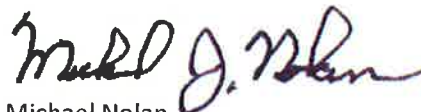
Jeff Victor
President
Fremont Street Experience



Todd Kessler



Cpt. Shawn Andersen
Downtown Area Command
Las Vegas Metropolitan Police Dept.



Michael Nolan
President
Fremont East Entertainment District



Terry Murphy
President
Downtown Las Vegas Alliance

Proposed 2014 Civil Penalties and Liquor Licensing: comments submitted by packaged liquor store owners, Fremont Street Experience

Hand delivered to:

City of Las Vegas - Department of Planning
Development Services Center
333 North Rancho, 3rd Floor
Las Vegas, NV 89106

And via facsimile to: (702) 474-7463

April 28, 2014

The owners of the following businesses: Arelni, LLC DBA Viva Vegas, Crazy ELY Western Village, LLC, G&G Fremont LLC, Three Twenty Two, LLC and 1-2-3-4-5 Inc. DBA Souvenir Super Market, hereinafter 'Owners', collectively oppose the 'Proposed 2014 Civil Penalties and Liquor Licensing amendment', hereinafter 'Proposal' based on the following:

1. The Proposal will impose a direct and significant economic burden upon our businesses.
2. The Proposal will directly restrict the operation and expansion of our businesses
3. The Proposal will deprive us, our families, and our employees of a primary source of income, inevitably resulting in tremendous hardship for hundreds of people.
4. The Proposal is extremely discriminatory in nature and targets our businesses for the benefit of creating a liquor sales monopoly by the casino operators on Fremont Street Experience.
5. The city of Las Vegas, hereinafter: 'City' has been using its legislative powers to limit and restrict our operation with a clear goal of suspending and revoking our liquor licenses.
6. Fremont Street Experience LLC, hereinafter: 'FSE', is a private company owned 100% by the hotel casino on FSE¹ and is the operating entity of Fremont Street Experience, hereinafter, Mall. FSE represents only the interests of the casinos.
7. FSE with the assistance of the Metropolitan Police, hereinafter 'Metro' and City has been deliberately obstructing our businesses and restricting our operation.

In addition to the discrimination and illegality contained in the Proposal, passing the proposed ordinances and execution of such by the City and Metro shall create an unnecessary confusion and anxiety for the visitors², and this in turn will have an adverse affect on the Mall as a whole.

¹ enclosed agreement between FSE and City signed on September 27, 1995

Chapter One: City is not fulfilling its obligations as the governing body of all entities at the Mall

The primary job of the governing body is to protect the rights, interests and well-being of **ALL** the members on whose behalf the organization is working. The governing body as a whole does this by making sure the organization runs smoothly and can achieve the goals and objectives it has promised to deliver to its members.

NRS. 268. 814 defines that the governing body of a pedestrian mall must take into consideration the interests of all governed. *'Upon the adoption of an ordinance creating a pedestrian mall, the governing body shall: Appoint an advisory board for the pedestrian mall consisting of at least seven persons, a majority of whom are owners or occupants of property abutting the pedestrian mall, to advise the governing body in connection with the acquisition, construction, improvement, operation, management or maintenance of the pedestrian mall, or any combination thereof'*

The law goes on to say that said advisory board would choose one entity, either private or public, to be the operating body of Fremont Street. It is clear in the above language, however, that the law did not anticipate the operating body to be a company such as FSE which is owned 100% by Casinos. FSE has taken advantage of a hole in a law that inherently was created to be representative of the diversity of Owners' interests, not simply the interests of Casino.

City as the governing body has not been representing ALL the properties in the mall. **City and FSE present direct competition for our operation in regards to liquor sales on FSE, hence proposing and passing laws that would limit our ability to perform on FSE.** As per James Jimmerson, the attorney for Granite Gaming, "It is a messed-up system that somebody has not thought through: there has been a wholesale abdication of the city's responsibility in favor of a self-serving, self-dealing set of members that is the Fremont Street Experience."

The new direction taken by the city to eradicate the liquor off sales establishments on FSE is a product of connivance of the last two years. Unfortunately, Owners were slow to comprehend the direction and magnitude of this deceptive and deliberative operation.

Around the middle of August 2013 Owners were notified of a meeting to discuss issues of unrest in FSE. When attending, City and casino representatives, hereinafter 'Casinos', accused the packaged liquor licenses of contributing to the unrest in FSE, in particular on events such as First Friday. City did not have any documentation to support this accusation and neither did the attending Sherriff, Sherriff Andersen. For the sake of cooperation, Owners participated in all meetings scheduled and imposed several self -

² Multiple accounts by employees of Owners who have spoken with customers show that the numerous Metro citations, signs, and general strict atmosphere has discouraged them from making plans to return to Fremont Street.

restraining regulations³. Owners were under the impression that their effort would lead to a peaceful co-existence with FSE. The following letter was received from Karen Coyne, Chief Officer, on November 5, 2013, after attending all the meetings with the City:

‘Thank you for attending or sending a representative to participate in the Downtown Stakeholders meetings over the past three months. The goal of these meetings was for our city staff and elected officials to work in partnership with you, our stakeholder representatives, to explore solutions and develop recommendations, for policy action, designed to mitigate challenges, improve safety and enhance the overall experience for those who choose to visit downtown Las Vegas. Your commitment and candidness was greatly appreciated and our dialog, invaluable... As we look ahead and continue to monitor alcohol and safety related issues in downtown Las Vegas, we may call upon you in the future to review, progress, and refine our approach. ... Please accept our most humble and sincere appreciation for your time and active, insightful involvement. ‘

Unfortunately, our hopes were not met with reality: City disregarded any and all such efforts by Owners and on the contrary, did the following:

- A. On September 4, 2013 passed a new ordinance, Ordinance No. 6266 directly affecting store owners **without the official notice required** to store owners (see below). This was a fast process: said ordinances were read at the city council meeting of August 7, 2013, and signed by the mayor on September 4th, 2013. The speed of this process clearly reflects an attempt to exclude Owners from the decision-making process. In fact, the mayor signed this ordinance **while Owners were still in meetings with the City; and owners were NOT notified of this signing during the meetings that were supposedly held for the very purpose of deliberating on such issues.**
- B. In the beginning of April 2014 prepared a new document “Proposed 2014 Civil Penalties and Liquor Licensing Update” which is to be read to the council in the near future, and voted on thereafter.

The purpose of this letter is to request City to cancel the Proposal in all matters related to Owners operation and to request City to amend the portion of the ordinances affecting Owners which were passed September 4, 2013.

Ordinance No 6266:

According to the state of Nevada as below, owners need to be notified when an ordinance may directly affect the business:

NRS 237.080: Prerequisites to adoption of rule by local government.

³ For more information, see letter to Brad Jerbic, City Attorney, Dec. 3, 2013.

1. Before a governing body of a local government adopts a proposed rule, the governing body or its designee must make a concerted effort to determine whether the proposed rule will impose a direct and significant economic burden upon a business or directly restrict the formation, operation or expansion of a business. The governing body of a local government or its designee must notify trade associations or owners and officers of businesses which are likely to be affected by the proposed rule that they may submit data or arguments to the governing body or its designee as to whether the proposed rule will:

(a) Impose a direct and significant economic burden upon a business; or

(b) Directly restrict the formation, operation or expansion of a business.

Notification provided pursuant to this subsection must include the date by which the data or arguments must be received by the governing body or its designee, which must be at least 15 working days after the notification is sent.

Ordinance No. 6266 specifically restricts and targets Owners by changing definitions of liquor licenses, limiting percentages of alcohol allowed in the establishments, changing zoning requirements while at the same time creating favorable terms for casino operated establishments such as allowing hotel gift shops to operate without a packaged liquor license and use the hotel tavern license instead, and permitting the hotels to add more bars and taverns on the pedestrian malls without additional licenses. The new ordinances delete the definition on-off sales, which referred to taverns, and created a new definition, thereby omitting any possible restrictions on the taverns.

Proposed 2014 Civil Penalties and Liquor Licensing Update:

In addition, the City has prepared a new document "Proposed 2014 Civil Penalties and Liquor Licensing Update". This new document is written so that--if passed--will cause a **de facto monopoly** on liquor sales by the casinos, and eventually will cause Owners to be out of business. Owners found out about the new proposals and decided to take part in the two public meetings scheduled by the City and conducted by Ms. Karen Duddleston, Business Licensing Manager, and City of Las Vegas Planning Department. About forty-five concerned Owners and employees were at the public meetings that took place on April 14, and April 17, 2014. The media was also represented by the Las Vegas Sun and Channel 13.

Ms. Karen described the different issues surrounding liquor licenses by attributing, again, crime cases to the liquor stores: According to her: *"One of the social attributes of the availability of low price and abundant liquor is the social impacts it can have on communities"*⁴. Owners provided data contradicting this statement. When it comes to the Mall, it is a fact that the greatest liquor availability growth at FSE has been the additional bars and taverns built by the Casinos. Owners questioned the validity of the City presentation, as the presentation provided was NOT based on any focused or proportional data, and there was NO clear connection between crime at FSE and the liquor off sale stores. Owners also argued that keeping the peace is the sole responsibility of FSE per the agreement signed between City and FSE on September 27, 1995⁵. If there is a security problem, FSE should be held accountable.

Owners also criticized the City for the additional tavern permits which have incentives that include no-upfront fees and little no sales restrictions. In addition, Owners provided Karen with a statistics document prepared by 'Consumer Opinion Services' ordered by Crazy Eli Western Village LLC. The statistics supports owner's position that the problem at FSE, if any, occur first and foremost because of

⁴ '2009-2013: Emerging Alcohol Related issues in the Downtown Area'

⁵ Amended and Restated management Agreement Fremont Street Experience project, 1995

City's liberal permits given to Casinos, and the changes in the laws to allow more Casinos to have outdoor bars. The statistics concluded that:

*"Interviewers were positioned in various locations throughout the Fremont Experience in order to access the full range of visitors to the Experience. A total of 245 interviews were completed on this project and various questions were asked, amongst of them, where did the visitors purchase their drink. The results were: Casinos were the more popular venue for Fremont Street Experience visitors to purchase their alcoholic beverages; 39% of visitors purchased their beverages from casino such as Four Queens, or the Golden Nugget. 25% purchased their beverages from bars, La Bayou being the most popular. An additional 20% purchased their alcoholic beverages from gift or souvenir shops."*⁶

Owners asked Ms. Karen to convey this information to the council and the mayor, together with Owners' opposition to any and all ordinances proposed which are directly related to the off sale stores.

Chapter 2: Fremont Street Experience LLC is not fulfilling its role as the Operating Body

The Pedestrian Mall Act signed in 1993 was created for 'any purpose that will enhance the movement, safety, convenience, enjoyment, entertainment, recreation or relaxation of pedestrian...'. Consequently, a special zone was constructed as Fremont Street Experience. One attraction from the initial days was allowing the area to be a 'party zone' in which visitors will feel safe and will enjoy the entertainment, mixed variety of uses, and the feeling of "What happens in Vegas, stays in Vegas". Open consumption zone was an obvious part of the plan. When looking at the evolution of ordinance 10.76.010 we can see that the ordinance was only enacted in 1998. (Enclosed the evolution of the law) However, the City always waived this requirement for the Mall. Owners such as Souvenir Super Market, that have been at the Mall since 1991, long before the Mall was created, remember that this was one of the arguments FSE used to justify the long construction period with hardly any income to the store. Representatives of FSE reassured Owners that "this will be a great location, the biggest party in town". Businesses were lured into the Mall and were willing to pay a high rent, or a high purchase price in order to be part of this project.

Fremont Street experience is a public-private partnership formed in 1995 between the City of Las Vegas and The Fremont Street Experience Company, LLC and owned by a group of 10 downtown casino/hotels. It is the "duty and responsibility of FSE to operate and maintain the Mall as a "safe, clean and attractive area for residents and visitors of the City of Las Vegas..."⁷ It is specifically noted that; the company shall provide uniformed security guards for the project. In addition, for special events, the company will provide such additional uniformed security guards as are recommended by the Las Vegas Metropolitan Police department⁸

In fact, since the beginning, the relationship between the parties was that of cooperation and peaceful coexistence. Metro used to stop by the stores and greet employees; all was in order. The problems started when around the end of 2011 City and FSE decided that Owners were a competitive threat, and thus illegal abuse started to take place at the Mall. On October 13, 2011 Souvenir Supermart received a citation for not posting the 1000 feet restriction sign. The sign was not posted because to the knowledge

⁶ Fremont Street Experience Visitors' alcohol consumption, February 21-23, 2014

⁷ agreement, 2.1.

⁸ agreement, 2.6 B

of Owners the Mall was exempt from posting such sign. Souvenir Super Market never had the sign posted before--and if it was indeed the law, how can the law not have been conveyed to us from the years of 1995 to 2011?

Consequently, Metro came to the store and provided Owners with the sign. As law-obeying citizens Owners obeyed and placed the sign provided by Metro in the store. The sign provided by Metro reads as follows: *"Notice: Pursuant to LVMC 10.76.010, it is unlawful for a person to drink or possess an open container of alcoholic beverage in the parking lot within 1,000 feet of the premises"*⁹

Metro, directed by FSE, acted illegally for two reasons:

1. This law has not been applied to FSE.
2. Even if Metro presumed that the sign needs to be posted, Metro deliberately enforced its presumed law on Owners only and not on the Casinos. Metro did not provide us with the **correct language** to be posted of municode 10.76.010, and did not enforce the law equally between the entities.

The correct language at the time of the citation read as follows:

'At any of the following locations, it is unlawful for any person to drink an alcoholic beverage or to possess an open container of alcoholic beverage which was purchased in an original sealed or corked container:

- (1) Upon any premises, including the parking lot, of an establishment which is licensed only for the **off sale or the on-off sale** of alcoholic beverages*
- (2) Upon property, other than residential property, located within one thousand feet of an establishment which is licensed for **off sale or on-off sale***

The definition of an 'off-on sale' is any tavern or bar on the Mall. The meaning of this is that the sign was printed by Metro without all the information needed in order to use it unlawfully against Owners, but to "spare" the Casinos. Metro is the executing power of City, and it is helping FSE in controlling and regulating activities in the Mall. Metro, simply, did as it was told.

In the September 4th 2013 amendment signed by the Mayor, the definition of On-Off sale was changed to Tavern, and the words on-off Sale were omitted from the ordinance.

When researching this issue further we can see how the intention of the legislator was all along to have the Mall as an open consumption zone: The Unified Development Code adopted by Mayor Oscar Goodman on 3.16.2011, Chapter 19.12 reads:

** 1. Except as otherwise provided, no beer/wine/cooler off-sale establishment (hereinafter "establishment") shall be located within 400 feet of any church, synagogue, school, child care facility licensed for more than 12 children, or City park. ..The minimum distance requirements set forth in Requirement 1, which are otherwise non waivable under the provisions of LVMC 19.11050(C), may be waived: a. In accordance with the provisions of LVMC 19.12.050(C) for any establishment which is proposed to be located on a parcel within the Downtown Casino Overlay District.*

The law was intact until the recent amendment of September 4, 2013.

The provision of FSE being an exception in regards to distance regulations is correct to this day.

Ordinance 6.50.310 specifically reads:

Off sale or on sale licensee: sign posting. **'Except** for those establishments directly adjacent to or upon a pedestrian mall, a person that is authorized to sell alcoholic beverages pursuant to an off sale license, shall post a sign.....' Fremont Street is defined in the code as a pedestrian mall thus our stores are the exception, and no 1000 feet restriction exists for us; if there will be no sign advising the customers of this law, it would not exist in FSE. However, City and FSE are enforcing this law as well as other non-existing codes in a blunt discrimination against Owners.

⁹ a picture of the sign provided by Metro is enclosed with this letter.

The understanding that the Mall is indeed an exception to the 1000 feet restriction was common knowledge as one can see as late as August 1, 2013:

'With First Friday taking place tonight, there are a lot of questions about the rules of drinking alcohol on Fremont Street. You can buy a drink inside a bar and if they let you walk out with it or put it in a to-go cup for you, you're fine; you're not breaking the law. What is against the law is if you bring your own alcohol, open it yourself and drink it on the streets.

DUI Attorney Garrett Ogata tells us that is absolutely illegal both at the Fremont Street Experience and Fremont East. "Even when you buy from another place, a supermarket and you brown bag it from a supermarket or a 7/11 down the street and you bring your beer walking around Fremont under the canopy on the west side from LVB west on Fremont, that is not legal either. They're not going to allow that, you have to buy your drink from one of the establishments," Ogata said...So just remember, if you're planning to come out to First Friday, just make sure if you're drinking on the street that you buy it from a Fremont Street business. ¹⁰

Besides illegally forcing Owners to post signs and scare visitors, FSE has been deliberately blocking store entrances for long period of time, placing illegal signs in front of our doors and obstructing Owners' visibility and accessibility. Owners complained to FSE and to the City to no avail. Enclosed pictures shall reflect the discrimination experienced by owners

According to the agreement between City and FSE, **"The company's manner of use of the Mall area, as distinct from the mere existence of the project, shall not illegally interfere with any business or constitute an inverse condemnation or taking of any property or business which is operated adjacent to the Mall area"**¹¹

Owners strongly believe that FSE is failing to abide by its covenants and perform its obligations. Furthermore, owners believe that FSE, being owned by the Casinos, and with the help of the City, is causing City to change its laws and ordinances in order to create a monopoly on liquor sales on FSE. The Federal Trade Commission and the Antitrust Division of the US were created to avoid these illegal mergers. The Justice Department is on the watch for potential monopolies and acts to prevent mergers that threaten to reduce competition so severely that consumers could suffer. This would be the case if the amendments proposed shall pass the vote of the council.

Chapter 3: proposed ordinances that must be omitted or changed in the Proposal

The following chapter shall detail the amendments that should be deleted from the text.

Section 1, title 6, chapter 2, section 460: proposed changes to civil penalty (page 2)

"The civil fines for violations that are processed under the provision of...(1) for violation of ordinances governing any licenses issues pending a show cause hearing before the City Council" (c) For the third offense, by a fine of not more than two thousand and by suspension of the license...

We oppose all amendments to this section as they create an ordinance that will legally allow the city to suspend our licenses and thus vote us out of our businesses. Based on our experience in the last few months and the conduct of the inspectors of the City, we've seen that giving us three citations can be

¹⁰ Reported by: Sergio Avila Published: 8/01 11:01 pm LAS VEGAS (KSNV & MyNews3)

¹¹ City FSE agreement, 2.5

done in one day. Inspectors chose to interpret the open container law as the responsibility of the owner to not only prevent customers from drinking from a beverage which was purchased from the store, but also to be responsible for anyone who walks on the Mall and decides to walk in our store and purchase a gift. This, of course, is extremely difficult, especially after the City permitted the hotels to add so many bars on the Malls. Inspectors were positioned in front of our stores waiting for customers to walk in with open containers, and before we had a chance to go to the customer and ask them to leave, the inspectors were citing us. This was caught on tape several times. It became so absurd that even one of the stores that did not sell liquor, got cited because a customer walked in with liquor. This section is designed to simplify the process of getting us out of business without allowing us the right to appeal granted us by the Constitution. We are requesting all the proposed amendments to this section to be deleted. In addition, we are requesting our citations to be reversed and a refund to be issued to owners for any and all illegal and unjust citations.

Section 2, title 6, chapter 50, Section 020

Page 7, lines 16-21:

"Gift shop, resort hotel owned ...may sell alcohol without having to obtain a separate package license..." While limiting our ability to sell liquor, and discussing with us the dangers of alcohol on Fremont Street Experience, the city has changed the codes on September 4th 2013 to allow the gifts shop at the hotels to sell liquor without a package liquor license. Instead, they are now able to sell with a tavern license. This was adopted specifically in order to protect the hotels and target us; and although entitled to, none of us were informed of this change. In addition, in one of the meeting in August 2013 when Jay Brown, lawyer for one of the owners, asked City if the hotel stores shall be abiding by the 1000 feet rule, City has answered that this is true. A few days later the law was changed so that hotel gifts stores will not post this sign. Enclosed with this letter is a letter from one of our employee who visited three stores in the hotels, purchase drinks and asked if she could drink in the mall. No signs were posted, and she was told that she can drink whenever she wants. This section needs to be amended.

Page 8, Lines 24 and 25:

"Liquor by the Drink' means a serving of beer, wine, or drink containing an alcohol beverage that is poured OR PACKAGED FOR SINGLE SERVING INDIVIDUAL CONSUMPTION"

We oppose this new, added, definition of "Liquor by the Drink" as a single packaged alcohol. This smartly hidden changed definition is intended to support regulations that will not allow us to sell single drinks. **It is our right to sell any packaged liquor as long as it was approved for sale by the FDA.**

The following words: "packaged for single serving" should be deleted.

Page 9, line 16-20:

"'Nightclub' means an establishment ...in conjunction with alcoholic sales which is generally operated in the late evening/early morning hours, and includes the operation of bars, lounges..."

The added definition of a 'nightclub' as a broader name which includes bars lounges etc. is designed to protect the bars on FSE and is also connected to the new proposal of 11.68.100 which prohibits glass and metal containers in the mall during the hours of 10 am to 11.59 P.M.

This definition should be deleted.

Page 11, lines 17 and 18:

" 'Temporary Bar' means any bar, table, kiosk, cart or stand that is not a permanent fixture and can be moved from place to place and is considered a bar for fee assessment"

The new definition for a Temporary Bar is designed to allow the casino bars more selling abilities without paying for additional licenses AND place a temporary bar in front of our stores if they would want to, thereby obstructing our ability to operate our businesses.

This definition should be deleted.

Section 3: Title 6, chapter 50, section 170:

We oppose any and all changes in this section. All items below are designed to restrict and eventually take our businesses off the Mall map. All proposed changes specifically target our business by first, making a distinction between us and other stores such as grocery stores, for the benefit of later on defining rules which will allow other business additional freedom. All lines below in this section need to be deleted from the proposal.

Page 12, line 9-18:

(1) "May not advertise any alcoholic beverage or the price of any alcoholic beverage on the outside of their establishment" City is proposing to make it illegal for us to advertise our goods on the outside of our location, but these are our buildings or leased premises, and we have the right to advertise our legally purchased items.

(2) "May only advertise alcoholic beverage without any pricing information..." City is proposing to not allow us to advertise the prices of the alcohol we sell, without any logical or legal reasoning behind why. This move works against general free market principles and, arguably, against the right of commercial speech protected under the First Amendment. For a useful precedent, see *44 Liquormart Inc., v Rhode Island*, 1996.

(3) "May not locate any display of alcoholic beverage within 10 feet of any entrance or exit of the authorized establishment" This is a proposed change to *dictate* the way we display our goods. These are our spaces; we pay our mortgages, taxes and permits. The way we display legal goods in our store is and shall always be our right, and our right only.

(4) "Square footage devoted to the display of alcoholic beverages is limited to the area authorized...or 10% of its gross retail floor area devoted to alcoholic beverage" This is a proposed change to restrict the square footage devoted to our alcohol display. There is no legal ground to stop a business from selling items, just because the business is selling those better than the Casinos, and just because FSE is owned by the casinos, and City is a partner of FSE. This is clearly FSE trying to obtain monopoly on liquor sales, and again is a clear violation of our commercial speech rights.

Page 13, line 5

" Nothing in this section prohibits the holder of a package license from dispensing beer or cider in a container sold by the licensee...subject to the following conditions; the licensee is **not** located directly adjacent to or on the pedestrian mall" . This additional proposed line to the code is unfairly targeting our stores; in other words, every other packaged liquor license Las Vegas **may** dispense drinks to be carried out of the space, except for our businesses. This is discrimination: as mentioned above in "Fremont Street Experience Visitors' alcohol consumption, February 21-23, 2014" **a greater percentage of customers buy their alcohol in casinos rather than in Owners' shops; the "directly adjacent to or on the pedestrian mall" addition is completely arbitrary and unjustified.**

Page 13, line 6 and 7

"(E) A packaged liquor license located directly adjacent to or on a pedestrian mall shall NOT sell any alcoholic beverage between the hours of 7 PM and 6 AM the following morning". This proposed ordinance is absurd as obviously it will be a **death verdict** to all of us; we chose to invest our money and energy in the entrainment capital of the world, and consequently we may decide what hours we want to operate. In a democratic country based on the principles of free market the local government cannot decide to change the operating hours of one type of businesses for the benefit of the other. This change will only benefit the casinos.

6.50.240, lines 12-15

"A tavern license authorizes the sale of ...for consumption on the premises...and off the premises..."

These lines define Tavern as on-off sales. This shows that indeed Metro was incorrect in posting signs on Owners' stores, and citing Owners for alleged non-sign-posting. In fact, if that sign posting was to be executed on FSE, all bars and taverns needed to be cited at that time as well.

Page 13: 6.50.255, line 21:

"from a bar only..." the proposed change is again allowing ONLY bars, owned by the casinos, to sell drinks for consumption on FSE and is thus discriminatory in nature. We have leased or purchased our locations, paying amounts much higher than the average retail prices in Las Vegas, because they were part of the Mall, which was always an open consumption area. The deliberate, illegal, one-sided effort of the city to change the rules is offensive and criminal. The additional words should be deleted.

Page 14, line 3-4:

"Any alcoholic beverage not in sealed or corked container intended for off sale must meet the requirements of 6.50 XXX" : This section takes us to a set of discriminatory regulations regarding packaging of alcohol designed to point at us from a distance. We will oppose all those regulations in a future section.

6.50.410: Page 14, (D), lines 21-24.

"It is the duty of licensee ...to maintain adequate security to ensure compliance with all codes and regulations and provide security for all parking areas, premises and areas over..." The proposed change in this section is requesting us to maintain adequate security for parking areas and common areas. This section should be deleted in its entirety as this is, and always was, the responsibility of FSE per the city code and the agreement between the city of Las Vegas and FSE as provided herein. The other parts of this section limiting our sales should be deleted as well.

Section 7, Title 6, chapter 50, additional new code 6.50.XXX, page 15

All this section MUST BE deleted entirely. This is the utmost representation of discrimination as all this code is intended only for us, the packaged liquor stores on the FSE:

"Any person authorized to sell alcohol beverage pursuant to an off-sale or package license adjacent to or on a pedestrian mall shall:

- (A) "Not sell alcohol beverages in a package or display intended for liquor by the drink..." City is proposing to take our ability to sell **single drinks**, "Liquor by the drink" which it is also redefined in this proposal, page 7, lines 16-21.
- (B) "Not sell ...in any container greater than 32 oz" City proposes to limit the type of items we sell; not to sell drinks that are too big and not to sell drinks that are too small. However, all items are bought legally and approved by the FDA. City cannot force us to stop selling certain items just because it creates competition with the casinos.
- (C) "Not sell any malt or beer beverage with an alcoholic content greater than 8% alcohol by volume" Again, limiting the products we offer for sale by proposing to make the items we sell illegal is unacceptable.
- (D) "Not sell...in container less than one pint..." as above, unacceptable.
- (E) "Shall place each alcoholic beverage in a bag or receptacle of a color approved by the director and clearly marked in a font of at least 36 with the following wording: "This container CANNOT be consumed on the Fremont Street Experience." This proposal is intended to scare our customers and target us further. This is discrimination.
- (F) "Not display any prices for alcoholic beverages at liquor stores in outdoor signage..." This is also a restriction on our advertising ability, and as mentioned above, on our freedom of commercial speech.
- (G) "Not offer for sale any beer...in glass or breakable containers" City wants to restrict almost all alcohol sales this way.

(H) "Not offer for sale any beer...in a single serving size 16 ounces." This is completely unacceptable, as above.

(I)" Post a sign...alcohol purchased in this location CANNOT be consumed on the Pedestrian Mall...sign must: be yellow with black lettering, be at least 14 inches by 20 inches, font size 72..." The signs, the limitations, the specific measurements are all meant to show the visitors that we are second-class citizens, and to refrain from visiting us.

Section 8, Title 6, chapter 50, section 285: (page 16)

Unlike the previous section this section is referring to the new Tavern definitions and allows the taverns to sell packaged drinks for consumption on FSE. The important issue about this section is the development of the unfair selling power of the casino. This is one of the sections discussed above which was unknowingly to us revised On September 4th 2013 to say that an owner of a casino is authorized to sell alcohol and add a bar on the FSE without an additional license.

"(B) Notwithstanding any provision in this Chapter to the contrary, the owner of an establishment licensed to operate non-restricted gaming that is also authorized to sell alcoholic beverages upon the premises of that establishment pursuant to a tavern alcoholic beverage license may locate a temporary or permanent bar upon an adjacent pedestrian mall, provided that such bar is directly adjacent to the premises of that establishment and upon the pedestrian mall".

Now, in this amendment, (C) the City further extends the ability of the casino to sell alcohol that CAN be consumed on the Mall, to post a sign that allows the customers to drink it in the Mall and to package it in a way that will define it so that if any customer will buy a single beer from us, we will be targeted immediately as selling items for consumption, and consequently get notices of violation. We are requesting this change to be deleted in its entirety.

New Section: 6.50. XXX; page 18

(A) "No person shall take any alcoholic beverage or alcoholic beverages outside the boundaries of the pedestrian mall. (B) Signage must be posted at entrances to the common area "Only liquor sold at authorized bars may be consumed on these premises" (C) signage must be posted...provided by the director". This section is extremely irrational: how can you not allow us to sell single drinks, not allow us to sell larger drinks, not allow us to sell drinks in a glass container, not allow our customers to consume the drinks and then not allow the customers to take the beverages with them out of the mall? As 'off sale' licensees we cannot have customers consume ON our premises, so they must be able to consume OFF the premises and take the drinks with them!

All the sections about the signs posting and limitations on drinking in the Mall are going against Nevada State Law, which reads:

NRS 458.260 Intoxication not public offense; exceptions.

1. Except as otherwise provided in subsection 2, **the use of alcohol**, the status of drunkard and the fact of being found in an intoxicated condition **are not:**

(a) **Public offenses and shall not be so treated in any ordinance or resolution of a county, city or town.**

(b) Elements of an offense giving rise to a criminal penalty or civil sanction.

(Added to NRS by 1973, 1060; A 1975, 1145; 1983, 1088; 1997, 333; 1999, 3406; 2005, 169)

As business owners, we technically have no right to tell customers what to do with their alcohol after they leave our location—Nevada state law says that use of alcohol cannot be treated as a public offense by the county, city, or town.

This also needs to be deleted in it's entirety.

11.68.100 page 18,

(A) "The following are prohibited within the Pedestrian Mall: ... (5) Glass and metal beverage containers including, but not limited to, bottles, jugs, drinking glasses, aluminum cans and steel cans, during the hours of 10 a.m. to 11.59 p.m." Originally this ordinance is intended only for "on December 31st, and the hours of twelve a.m. to eight a.m. on January 1st of each year" but the city is trying to make it a permanent rule in order to simply get us out of business.

(10) Prohibition on "The consumption of a packaged, sealed or corked container of alcoholic beverage not sold from an authorized tavern located upon or directly adjacent to the pedestrian mall. The Fremont Street Experience is responsible to post and maintain signs at all entrances and exits that "No outside liquor. Only liquor sold at authorized bars may be consumed on these premises" This is again discrimination intended to get us out of business. This section needs to be deleted in its entirety.

Section 10, Title 6, chapter 50, proposed addition of chapter 455 (page 20)

"No person who holds a license to sell alcoholic beverages by the drink may allow any minor to be on the licensed premises..." This section deals with controlling the presence of minors in establishments who sell liquor by the drink. Since the definition of "liquor by the drink" is proposed in this document to mean a single packaged drink in addition to the traditional definition, we need to delete all this section as it will not allow minors to come to our store and purchase anything without being accompanied by their parents. As the city definition of minor was changed in the recent document to mean someone younger than 21, this is unacceptable because we are, a packaged liquor store, but also a gift store and a convenience store. In addition, City is trying to define the extent of the prohibition based off of percentage by the revenue generated by alcohol (page 21, (4) lines 17-20). We have no legal obligation to report the percentage of our liquor sales to the City.

6.50.360: page 32

"...whenever a permit is required to be obtained for individual alcohol sales or restaurant is required to be maintained pursuant to alcoholic beverage license, each licensee shall include the revenue of all alcohol sales in the calculations or payment of all fees required ..." In this section the words "individual alcohol sales" need to be deleted and replaced with: "on premises" or delete the section.

Summary

In this letter we are urging all City officials to re-think the direction you have been taking Fremont Street Experience to, and the blunt push to eradicate us: we are all fortunate to live here in the United States of America. Small businesses are, and always were, the core of the economy. Competition only makes us better. Free market and democratic principles are, and always were the lights leading our way.

The 'proposed civil penalties and liquor license update' as well as the preceding amendment to ordinance 6266 reflect discrimination, collusion, and a hidden agenda to create a Casino monopoly on liquor sales at the Fremont Street Experience.

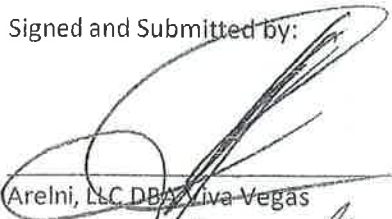
The frequent abuses we are experiencing by city officials, the illegal citations from Metro, and the unfair management practices we encounter from FSE are unheard of; and frankly, leave us all perplexed; whatever caused the city to start treating us like a threat, and how did we become CLASS B citizens?

Owners are asking City to remember that all of us acquired all necessary licenses, including liquor licenses. We are all hard working business owners who were found to be legally eligible by the state to operate a packaged liquor store amongst other businesses. We abide by all rules and regulations, and

some of us have been in the Fremont Street Experience for over than 20 years; is this really the way to treat your loyal tax payers?

Laws are passed by those with power; however, those with power have the moral obligation to have the best interest of all those governed in front of them, and not only the selected few. We are urging City officials to remember what they were elected for, and to do the thing that would be right for all.

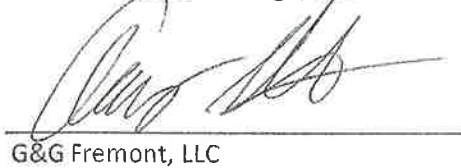
Signed and Submitted by:


Arelni, LLC DBA Viva Vegas

28 Apr '14
Date


Crazy ELY Western Village, LLC

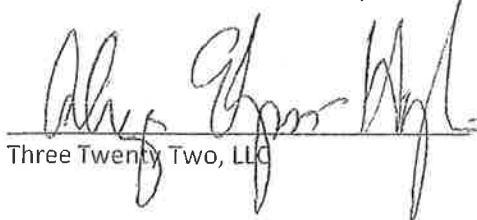
4.28.14
Date


G&G Fremont, LLC

4.28.14
Date

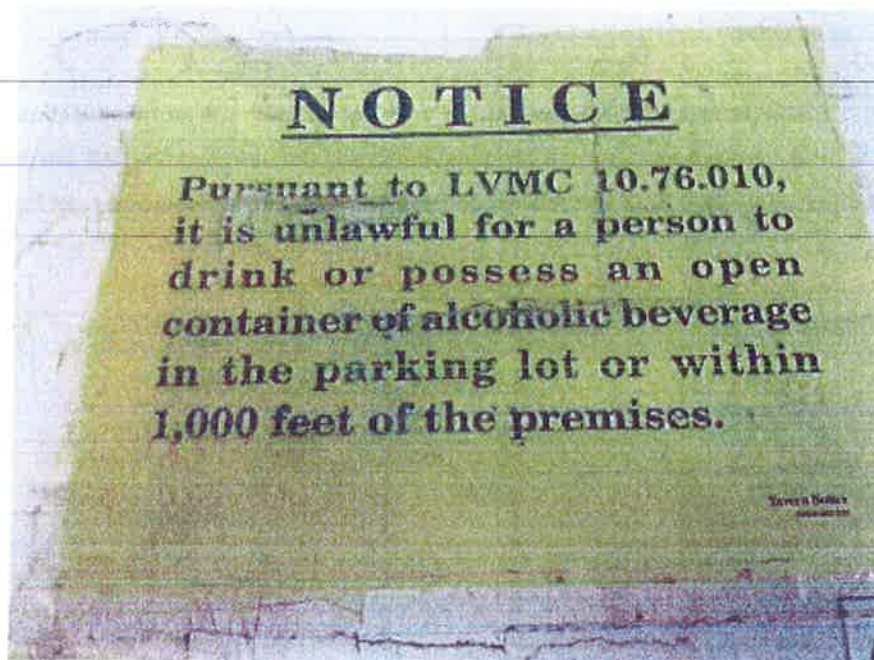

1-2-3-4-5, Inc DBA Souvenir Super Market

4.28.14
Date


Three Twenty Two, LLC

4.28.14.
Date

Sign provided by Metro



Page 1 of 1 711082 Event # 111013-2586

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
NOTICE OF NON-COMPLIANCE

DATE: 10.13.2011 TIME: 1530HRS
DBA: SOUVENIR SUPER MARKET
ADDRESS: 322 FREMONT STREET, LVN, 89101

You are advised that you are in violation of the:
☒ Las Vegas Municipal Code: 6.50.310
☐ Clark County Code:

Violation: OFF SALE DR OR ON OFF SALE LICENSEE - SIGN
POSTING.
SIGN WAS HIGHER THAN SEVEN FEET AT ENTRANCE.

Should you fail or refuse to correct said violation by IMMEDIATELY
(DATE)
you will be subject to arrest, citation and/or administrative sanctions.
To correct this violation you are required to: POST A SIGN NO LOWER
THAN THREE FEET AND NO HIGHER THAN SEVEN FEET
AT EACH SALE COUNTER AND AT EACH ENTRANCE
TO THE PREMISES, PURSUANT TO LVMC 10.76.010.

Served Upon: GILBERTO HERRERA-PIERRO Title: SECURITY
Signature: JUAN CARLOS SANCHEZ Title: MGR
Served By: CP. BEST / J. CLARK PH: 10000/8749

All correspondence should be addressed to:
Las Vegas Metropolitan Police Department
Special Investigations Section
Attn: DET. J. CLARK

No glass on Fremont Street Experience



Casino sells with glass



 **City of Las Vegas**
SPECIAL EVENT PERMIT
FSE FIRST FRIDAY/BIKE FEST

Application/Permit 245595

Event Title: FSE FIRST FRIDAY/BIKE FEST **Audience:** 21 & OVER ONLY

Date: **Setup:** Oct 04 2013 2:00 PM **Tear Down:** Oct 08 2013 6:00 AM

Start: 05-Oct-2013 10:00 pm **Finish:** 05-Oct-2013 4:00 am **Participants:** 100 **Attendees:** 6,000

No notification to area residents and businesses is required.

Location:
425 FREMONT ST
FREMONT STREET EXPERIENCE
The event will be held on both Private and Public Property

Description:

10.76.020 Special events.

(A)

For any special event that will take place on New Years Eve, the fourth of July or at any other time at which more than one thousand spectators or participants are expected to attend, it is unlawful for any person to possess or consume an alcoholic beverage in any glass or metal container during any of the following times if the producer or promotor has complied with the provisions of Subsection (B) of Section 6.78.045:

(1)

Between the hours of 6:00 P.M. on December 31st and 6:00 A.M. on January 1st of each year.

(2)

Between the hours of 6:00 P.M. on July 4th and 6:00 A.M. on July 5th of each year.

(3)

During the period of time beginning two hours before the start of the special event and ending two hours after the special event is over.

(B)

The provisions of Paragraph (3) of Subsection (A) of this Section do not apply to any special event that takes place within the boundaries of the Pedestrian Mall described in LVMC 11.68.040.

(Ord. 5189 § 3, 1999)



‘No glass’ provisions do not apply to Fremont Street Experience



FSE is blocking entrance to gifts stores

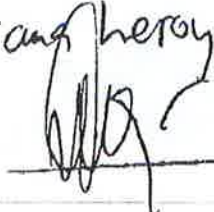


04/17/14

To whom it may concern:

my name is Liang heroyan. I went to purches
beer from 3 gift store at the Casinos on fremont
street (golden nugget, n' Casino Bimians) non of
the store gave me paper bag to cover my beer &
when I ask if I can take my beer & drink it out said
they told me I can.

Non of them told me I need to go 1000 ft. away from the
store & I didn't see any sign that say that as well.

Liang heroyan


04-17-14

The D Shop
301 Fremont St
Las Vegas, NV 89101
4/17/2014 16:37

The D Shop
Check: 509315
Server: shikila
Terminal: 50

Regular Check
1 COORS LIGHT 4.00
071990301033

Subtotal 4.00
Tax 0.32
Total 4.32

Cash 20.00
Change 15.69

GRAND TOTAL 4.32

T50 C472 4/17/2014 16:37

Thank you.
Please come again.

Binton's Gift Shop
4/17/2014 17:01

Gift Shop
Check: 816399
Server: Robert
Terminal: 81

** ORDER#: 176558 **

Regular Check
1 1-12oz Heineken 3.00

Subtotal 3.00
Tax 0.24
Total 3.24

Cash 3.24

GRAND TOTAL 3.24

T61 C1033 4/17/2014 17:01

Thank you for your Business
Take your picture with
\$1,000,000



129 E Fremont
Las Vegas, NV 89101
Phone: (702)385-7111
Sola

<Server Cristina No. 002196>
082000721844 SMIRNOFF ICE 4/6PK\$9.00T11
Subtotal \$9.00
Sales Tax \$0.32
Total \$9.32

Item(s) Sold: 1
Item(s) Voided: 0

Cash \$9.32
Cash Change \$1.00

Store: 0301 Reg: 02 Assoc: 002196
Tran: 050318 Date: 04/17/14 Time: 04:52PM

CRISTINA served you today.

Thank you for shopping at
Golden Nugget!

ALL RETURNS AND/OR EXCHANGES MUST BE
ACCOMPANIED BY ORIGINAL PROOF OF PURCHASE
FOR COMPLETE RETURN POLICY CONTACT
STORE FOR DETAILS



030102050318041714

