



Las Vegas

Agenda Item No.: 3.

AGENDA SUMMARY PAGE
RECOMMENDING COMMITTEE MEETING OF JUNE 16, 2014

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC

☐ Consent ☒ Discussion

SUBJECT:

Bill No. 2014-34 - ABEYANCE ITEM 414: Possible Action - An ordinance amending LVMC 6.02 to increase civil penalties for violations of LVMC 6.50 and clarifying that the director may suspend an alcoholic beverage license on an administrative basis under certain circumstances, adding 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 creating 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, and to provide for other related matters. Proposed by: Bradford R. Jerbic, City Attorney

Fiscal Impact

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No Impact

☐ **Augmentation Required**

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Budget Funds Available

Amount:

Funding Source:

Dept./Division:

PURPOSE/BACKGROUND:

This ordinance will act to increase the fines for a violation of 6.50 to \$500.00, permit the Director to administratively suspend a liquor license where there has been a three criminal convictions or a civil liability adjudications against a liquor licensee in any twelve month period, and create a zone bounded by Stewart Street, Eighth Street, Bridger Street and the UPRR right of way where possession of glass and metal containers for the consumption of beverages is prohibited as well as the consumption of alcoholic beverages in its original packaging.

RECOMMENDATION:

ABEYANCE to 06/16/2014 Recommending Committee Meeting by the 06/02/2014
Recommending Committee

First Reading 05/21/2014; First Publication 05/23/2014

BACKUP DOCUMENTATION:

1. Bill No. 2014-34
2. Testimony and Witness Qualifications for Pamela Erickson, April 2014 Newsletter and 2014 Issue Briefs for States, Safe and Sound Pamphlet by Pamela Erickson, Reduced City of Las Vegas Business License Comments by Frank Hawkins, Letter by Jim DiFiore and Letter by Ernie Cramer submitted at the 6/2/2014 Recommending Committee Meeting

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3. Final Proposed Amendments by Staff submitted at the 6/4/2014 City Council meeting

Motion made by STAVROS S. ANTHONY to Approve as Do Pass as a First Amendment

Passed For: 2; Against: 1; Abstain: 0; Did Not Vote: 0; Excused: 0

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

Minutes:

COUNCILMAN BARLOW declared the Public Hearing open.

KAREN DUDDLESTEN, Business Licensing Manager, said that this bill was discussed at City Council and there are some amendments proposed by staff. The bill increases the civil fines from \$250 to \$500 for initial violations, which would allow the Director to suspend or bring liquor licenses to the City Council after three violations and would establish a zone bound by Stewart Street, Eighth Street, Bridger Avenue and directly west of Main Street which would make it unlawful for a person to open or consume alcoholic beverages in any glass or metal container or its original packaging. Staff wants to make sure they understood the clarifications regarding the amendments from City Council. She asked if it is the act of opening the container or consuming the alcoholic beverage in the zone that is unlawful and COUNCILMAN ANTHONY replied that the discussion revolved around the item being put in a bag, the bag would be stapled shut and the Mayor mentioned stapling the receipt to the bag. If a police officer sees a closed bag, it is okay, however, if they see an unopened or open alcoholic beverage in the zone, that is unlawful; only alcohol in a plastic cup is allowed. The bag allows someone to purchase alcohol in a package liquor store and move through the zone. MS. DUDDLESTEN confirmed that to have an alcoholic beverage outside of a bag, to open it or to have an open container that is package liquor is unlawful.

COUNCILMAN COFFIN wondered how the store owner can attach the receipt to the bag in such a way that would not permit the opening of the bag. COUNCILMAN ANTHONY said that once the store has sealed the bag and put the receipt on it, they have done their job. MS. DUDDLESTEN said that staff's understanding is that it is the obligation of anyone who has an off-sale license to make sure they affix the receipt to the bag.

DEPUTY CITY ATTORNEY JAMES LEWIS said that the onus is on the package liquor licensee to put the alcoholic beverage in the bag, close the bag, staple the bag and staple the purchase receipt over the bag in such a way that when opening it, the receipt rips. There is no language in the bill yet that makes it a violation of the consumer to open the bag in the zone, however, one of the additional alternatives proposes to do that and Title 10, Chapter 76, Section 30, of the Municipal Code would read "It is unlawful for a person to open a bag closed in accordance with LVMC 6.50.475(M) while on the Pedestrian Mall described in LVMC 11.68.040."

DEPUTY CITY ATTORNEY LEWIS said that the other issue is the clarification that makes the possession of an alcoholic beverage in its original packaging in an open condition the crime; the

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way it was previously written was that opening the beverage was the crime. He said that if a motion is made to send this forward, it might include sending it as a First Amendment adding the clarifications in "A" and "B".

DEPUTY CITY ATTORNEY LEWIS said a question had been raised regarding making a consumer liable for opening a beverage on the Fremont Street Experience and giving them fair warning. He said that "C" would say it is a requirement of package liquor licensees to have a sign saying it is illegal to open alcoholic beverages on the Fremont Street Experience; if the Committee is interested in that, he would recommend adding that to the motion as well.

COUNCILMAN COFFIN said that the geographical area exceeds the Fremont Street Experience and wondered how to avoid confusion. DEPUTY CITY ATTORNEY LEWIS said that the area in which alcoholic beverages in glass, metal or original packaging is not allowed is Railroad to Eighth Street and Bridger Avenue to Stewart Street. It is a 32 block area where alcoholic beverages cannot be in anything but a plastic container. The rules regarding package liquor stores only apply to those along the Fremont Street Experience; the new restrictions would not apply to the 7-Eleven on Stewart Street and Las Vegas Boulevard because it is outside of the Fremont Street Experience. COUNCILMAN ANTHONY said that if alcohol is being sold anywhere in the zone, it has to be in something that a law enforcement officer can identify, know was purchased in the store and knows it is being taken out of the zone. He said it does not matter if it is a package liquor store, 7-Eleven or bar; it has to be in something that can be identified as having been purchased there and moved out of the zone. DEPUTY CITY ATTORNEY LEWIS explained that at the last City Council meeting it sounded like there would be additional restrictions on package liquor stores along the Fremont Street Experience to put the alcoholic beverage in the bag, seal it and put a receipt on it; he confirmed that they wish to have the restrictions placed in the 32 block area. COUNCILMAN ANTHONY said that if someone is anywhere in the zone, they should not have in their possession any alcoholic beverage unless it is in a plastic cup or in a sealed container. He said it makes it easy to enforce and if someone walks outside the store and opens the bag, they are in violation.

COUNCILMAN COFFIN agreed, but said it looks like there are two geographical areas and wondered if there would be two sets of rules. DEPUTY CITY ATTORNEY LEWIS said that the City Council was very concerned about package liquor stores along the Fremont Street Experience, so the Business Licensing office provided the City Council with new restrictions for package liquor stores on Las Vegas Boulevard. There has been further discussion since then that maybe there should be a plastic only zone, which are two different concepts. COUNCILMAN COFFIN asked about someone contesting a citation and DEPUTY CITY ATTORNEY LEWIS said that with the clarifications he is offering, the rules can be enforced. COUNCILMAN COFFIN said that the officers are still allowed discretion.

COUNCILMAN BARLOW asked where the amounts for the fines came from and MS. DUDDLESTEN said that the Civil penalties are not on the person, they are for the business violating the Code, and currently, it is \$250 for the first offense and \$500 for any subsequent offense; for businesses who violate the Liquor Code, the first violation would be \$500. She said

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that the plastic zone is in Title 10.

COUNCILMAN BARLOW asked how a business would violate the Liquor Code if they put the alcohol in the bag, staple it and attach the receipt. MS. DUDDLESTEN said that if they were required to post a sign and the officers go to the location and it is not posted, they would be given a courtesy notice; if there is no sign when the officer goes back, they will be assessed a re-inspection fee of \$99; if there is no sign when the officer goes back for the third time, currently there is a \$250 penalty and after that it would be \$500; this would make the liquor first offense \$500.

COUNCILMAN BARLOW asked why the \$99 inspection fee is not part of the ordinance and MS. DUDDLESTEN replied that it is currently part of the procedure and all that is changing is that for violations of just the Liquor Code, the first civil penalty will be \$500 and each subsequent penalty would be \$500. COUNCILMAN BARLOW asked if the Director or staff of Business Licensing have the ability to assess a \$250 fine without the courtesy warning or the \$99 re-inspection fee and MS. DUDDLESTEN replied that if it is considered a severe enough violation, the Director has that authority.

MS. DUDDLESTEN confirmed for COUNCILMAN COFFIN that once the person has stepped out of the business, the onus is no longer on the owner of the store. He asked if there is a clear record of the courtesy call and the \$99 fee when trying to defend a citation and MS. DUDDLESTEN said that there is and the business is also given notice that the officer was at the location, they sign that they understand what the violation is and all of that goes to a Hearing Officer who can reduce the fines. A civil fine is rarely recommended unless it is egregious like serving a minor in front of an officer or if officers have been to a location many times and they are well aware of what they need to do to comply.

COUNCILMAN BARLOW asked for more clarification regarding the zone and DEPUTY CITY ATTORNEY LEWIS explained that this would prohibit persons from having alcoholic beverages in a glass container, a metal container or original packaging. The idea is that if someone wants to drink an alcoholic beverage in the zone, it needs to be in a plastic container or paper cup. COUNCILMAN BARLOW asked if someone would be in violation if they purchased a fifth of liquor, opened it, poured it into a plastic container and threw the original packaging in the trash and DEPUTY CITY ATTORNEY LEWIS replied that the way this is written, it would be a violation; once the beverage is in an acceptable container, it can be possessed and consumed.

COUNCILMAN BARLOW said that people are not being given a choice to purchase alcohol and place it in a plastic container; they are being forced to purchase a plastic container from someone else in order to drink their beverage. He agrees with it being a violation when someone opens the original packaging and drinks from it, but he thinks that it should not be a violation if someone opens the alcohol and transitions it to a plastic container.

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DEPUTY CITY MANAGER ORLANDO SANCHEZ said that the intent was for the tourists and customers who are staying in the downtown area to have the ability to purchase package liquor and carry it back to their hotel room and consume it there. The intent was not for people to purchase package liquor and drink it at the Fremont Street Experience. COUNCILMAN BARLOW understands that but said that is not how it is currently operating and has not been that way for many years. He wants to help get the area cleaned up, but believes there needs to be a transition period and it cannot be done in such an egregious way that tourists and customers will not return to the downtown area.

DEPUTY CITY ATTORNEY LEWIS asked if he is looking for some period of time before the ordinance goes into effect and COUNCILMAN BARLOW replied that it needs to be done incrementally.

COUNCILMAN BARLOW asked if he would be allowed to walk into a liquor store today, purchase an alcoholic beverage, walk 1,000 feet away from the point of sale, open the container, pour the beverage into a plastic container, throw away the original container and drink the beverage. MS. DUDDLESTEN replied that she cannot say what the person can and cannot do, but the Business License Code says that at the entrance of each of the premises for package and off-sale, pursuant to LVMC 10.76.010, it is unlawful for a 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 upon any premises including the parking lot of an establishment which is licensed to sell alcoholic beverages for off-sale basis or upon property other than residential property located within 1,000 feet of an establishment which is licensed to sell alcoholic beverages on an off-sale basis. She confirmed for COUNCILMAN BARLOW that he would be allowed to do that if he is 1,000 feet away from these types of establishments.

COUNCILMAN BARLOW said that this is a turning point because today people are allowed to do that and the ordinance that is recommended says that as long as the drink is in a plastic cup, then it is not a violation; he is asking for reprieve for the patron who chooses to purchase their beverage and transition it into a plastic cup. He does not think it is fair that once the bag is open, the patron is in violation.

DEPUTY CITY ATTORNEY LEWIS said that if the Recommending Committee and the City Council want different language, it can be crafted, but there may be difficulty enforcing language regarding the timing of purchasing and pouring. He said that from the previous meeting regarding this ordinance, it appeared that the thought was to let people be free to purchase from a package liquor store and take it to a private location for consumption. To be sure he understood the desire, he reiterated that someone should be able to walk into a package liquor store within the zone, purchase an alcoholic beverage in its original packaging and be able to pour the beverage into an acceptable container without being in violation of the law.

COUNCILMAN ANTHONY said that defeats the purpose; he said the purpose is for people to purchase package liquor from within the zone and take it out of the zone for consumption. If people are allowed to purchase the package liquor and pour it into a plastic cup in the zone, there

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is no need for the ordinance. He believes the ordinance should read that the only thing that can be in the zone is an alcoholic beverage in an approved plastic container that is purchased within the zone and everything else is not allowed. The only reason for allowing a sealed bag is because after the purchase is made, the customer has to walk into the zone to get out of the store. He said that the liquor in the area is out of control so they are trying to organize it and have allowable cups, keeping the package liquor out of the zone. He also stated that the police officers will use their discretion when enforcing the ordinance and the way the ordinance is written is a good start, gets a handle on the problem, allows the law enforcement agencies to enforce it and will have a positive impact to the area

DEPUTY CITY ATTORNEY LEWIS would like to make a change to "B" and "C" to include the whole zone instead of just the Fremont Street Experience and he pointed out that in the First Amendment, Line 20, there are 3s where 2s should have been so staff will fix that. He confirmed that the Committee agrees with "A" which clarifies that it is the possession of the container in the zone which is prohibited. He also read "B" as amended which will state something close to "It is unlawful for a person to open a bag closed in accordance with LVMC 6.50.450(M) while in the area described at LVMC 10.77.030(A)" which is the zone. He said that "C" would be amended to say "and shall post a sign no lower than three feet and no higher than seven feet at each sale counter and at each entrance and exit of the establishment that states: This Establishment Must Place All Alcoholic Beverages in a Closed Bag and Staple the Receipt to the Bag for Transport within the area described at LVMC 10.77.030(A). It is Illegal for the Customer to Open such Sealed Bag in the area described in the area described in LVMC 10.77.030(A)." He said that LVMC 10.77.030(A) describes the zone.

COUNCILMAN COFFIN said that he is in support of what COUNCILMAN ANTHONY stated and wondered if someone could buy package liquor, go outside the zone and pour the alcoholic beverage into their own insulated plastic container that is under 32 ounces. DEPUTY CITY ATTORNEY LEWIS replied that the person can use their own container that is not glass, metal or the original packaging and the ordinance is not suggesting that businesses with tavern licenses have special plastic containers with their names on them.

COUNCILMAN ANTHONY said that is not the intent; the intent is for someone to go into an establishment, purchase an alcoholic beverage in the establishment marked cup and there should be nothing in the zone that is in a plastic cup that was not purchased and marked from a business in the zone. It defeats the purpose if someone buys a case of beer, parks outside of the zone, fills up cups with beer and brings it back into the zone. He assumes that the properties will purchase plastic cups that have their business names on them.

COUNCILMAN COFFIN said that the purpose is about public safety.

RUSSELL ROWE, Boyd Gaming Corporation, said that the Fremont Street Experience has participated with a group of stakeholders in the downtown area including the Las Vegas Metropolitan Police Department, the Downtown Las Vegas Alliance and the Fremont East Entertainment District. He is thankful to get some reasonable regulations put in place and

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supports what DEPUTY CITY ATTORNEY LEWIS outlined. He said that the law today does not allow someone to open a package liquor container within 1,000 feet from a package liquor establishment; if a 1,000 foot radius was drawn around the establishments, it pretty well matches the boundaries in the ordinance, which is one of the reasons this boundary was drawn. It also matches identically, with the exception of the eastern boundary, the curfew zone that was put in place last fall and matches the Casino Overlay District, the Fremont Street Entertainment District and the Gateway District very well. The boundaries help put consistency in regulation in the broader area and the ordinance is an attempt to provide some enforceability; they are in support.

COUNCILMAN BARLOW asked what the penalties are for an individual who is in violation of opening a container and DEPUTY CITY ATTORNEY LEWIS stated that it is a misdemeanor which is up to a \$1,000 fine and up to six months in jail. COUNCILMAN BARLOW thinks that the penalty is too egregious for opening a stapled bag and DEPUTY CITY ATTORNEY LEWIS stated that in his experience as a lawyer for the City, rarely would a judge assess a \$1,000 fine or six months in jail for opening a bag. COUNCILMAN BARLOW said that a penalty needs to be assigned that matches the violation and DEPUTY CITY ATTORNEY LEWIS said that there are only three penalties under the Municipal Code offered by the State Legislature and those are misdemeanor, gross misdemeanor and felony. The misdemeanor is the least of the crimes and fines available; in the past, amounts of fines have been capped and that is available to the City Council as well. COUNCILMAN BARLOW wondered if confiscation could be put in place.

COUNCILMAN COFFIN asked if there are different classes of misdemeanors and DEPUTY CITY ATTORNEY LEWIS stated that there is a misdemeanor and gross misdemeanor and said that it is along the same level as not walking a dog on a leash.

COUNCILMAN COFFIN said that it is a standard penalty on all infractions of the Municipal Code and there is discretion by the law enforcement officers and there is judicial discretion in the court. He said that this is the lowest possible penalty but the idea of confiscating before penalizing is attractive.

COUNCILMAN ANTHONY understands the concern, but said that speeding is a misdemeanor and between the discretion of the law enforcement, the City Attorney and the judges, it would be almost impossible for a first time offender to get a \$1,000 fine and six months in jail. He said that the unlawful item would be confiscated and booked into evidence in order to be presented in court.

For clarification DEPUTY CITY ATTORNEY LEWIS stated that the First Amendment will act to increase the first penalty of violation of 6.50, the Alcoholic Beverage Code, from \$250 to \$500, it gives the Director the ability to suspend an Alcoholic Beverage license on an administrative basis or to send the licensee to the City Council for a hearing after three violations, it will create the glass prohibition zone which would prohibit an alcoholic beverage in glass, metal or its original packaging, it will require a licensee to place alcoholic beverages in a stapled bag with a receipt stapled to it, it makes the possession of the alcoholic beverage and open container a crime and not just the opening of the container a crime, it will make it unlawful

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to open a closed bag within the zone and it will require a licensee to post a sign saying it is illegal to open a bag within the zone.

COUNCILMAN COFFIN asked if the requirement of a map showing the zone would be useful because the tourists do not know the names of the streets. COUNCILMAN ANTHONY said that the City will be putting something together and DEPUTY CITY ATTORNEY LEWIS said that is his understanding that the Public Works Department will be placing signs on the sidewalks indicating where the zone will be.

COUNCILMAN BARLOW said that he will be opposing the ordinance because he does not believe the crime of opening a stapled paper bag fits the \$1,000 fine or six months in jail penalty in what is being proposed; he also said that the comparison of opening a paper bag to speeding is an apples to oranges comparison because of the damage one can do in relation to speeding on the roadway versus an individual opening a stapled paper bag.

This bill will go to the Full Council with a 2-1 vote and will be eligible for adoption at the June 18, 2014 City Council meeting.

COUNCILMAN BARLOW declared the Public Hearing closed.