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## L E G I S L A T I V E   A C T I O N

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**DATE:** September 5, 2003  
**TO:** City Council Members  
**FROM:** City Council Members Jill Love and Nancy Saxton  
**RE:** Legislative Action Item: Proposal to Allow Brewpubs to Wholesale Beer  
**CC:** Cindy Gust-Jenson, Gary Mumford, Janice Jardine

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We would appreciate the City Council's support for a Legislative Action directing the City Attorney's Office to amend Salt Lake City ordinances to allow Salt Lake City brew pubs to produce and wholesale no more than 500 barrels of beer a year.

The proposal would require amending *City Code* Chapter 6.08, titled *Beer Licenses*, and Chapter 21A.62.040 of the *Zoning Ordinance*. Amending both chapters would involve revising the definition of "brew pubs." The definition of "brew pubs" is identical in both chapters. The proposed amendments would allow brew pubs to wholesale no more than 500 barrels of beer a year. The amendments also would allow brew pubs to package beer in 5-gallon and 3-gallon kegs as well as 15.5 gallon kegs for purposes such as brew fests, special events or events sponsored by charitable organizations.

Given the City Council's discussion September 4, the following appear to be potential motions:

### **POTENTIAL MOTIONS**

**I.** I move the City Council adopt the Legislative Action to amend the definition of "brew pubs" in *City Code* Chapter 6.08, titled *Beer Licenses*, and Chapter 21A.62.040 of the *Zoning Ordinance* to include the following language:

1. The sentence, "Brew pubs may sell beer in keg (15.5 gallons) containers for the following purposes and in the following amounts?" would be amended to read: "Brew pubs may sell beer in keg (15.5, or 5 or 3 gallons) containers for the following purposes and in the following amounts."
2. That a fourth paragraph that reads, "D. No more than five hundred (500) U.S. barrels per year wholesale.," be added to the definition to regulate the amount of beer that brew pubs are allowed to manufacture.

In amending the definition the Administration should address the following issues:

- Other Utah cities' ordinances regulating the amount of beer brew pubs can manufacture.
- The potential impacts of distributing an increase of 500 barrels of beer.

- The impact on ambience on property surrounding brew pubs such as odors created by an increase of 500 barrels of beer, noise, and other potential negative effects.

II. I move that the City Council not adopt the Legislative Action.

## **BACKGROUND**

The current definition in both chapters of the *City Code* reads:

"Brew pub" means a restaurant type establishment that also has a beer brewery, producing beer in batch sizes not less than seven (7) U.S. barrels (31 gallons), on the same property which produces, except as provided in subsection 6.08.081B2 of this Code, only enough beer for sale and consumption on site or for retail carryout sale in containers holding less than two liters (2 l). At least fifty percent (50%) of the beer sold shall be brewed on the premises. Revenue from food sales shall constitute at least fifty percent (50%) of the total business revenues, excluding retail carryout sales of beer and the sales allowed pursuant to subsection 6.08.081B2 of this code. Brew pubs may sell beer in keg (15.5 gallons) containers for the following purposes and in the following amounts:

A. An unlimited number of kegs for "brew fests" which for the purpose of this definition, means events, the primary purpose of which is the exposition of beers brewed by brew pubs and microbreweries, which include the participation of at least three (3) such brewers;

B. No more than one hundred (100) kegs per year to events sponsored by charitable organizations exempt from federal income tax pursuant to 26 USC, section 501(c)(3) or its successor; and

C. No more than one hundred (100) kegs per year to events operating under a single event license from the state and the city where the purpose of the event is not for commercial profit and where the beer is not wholesaled to the event sponsor but is, instead, dispensed by employees of the brew pub.

The proposed amendments to the chapters would insert the following language:

The sentence "Brew pubs may sell beer in keg (15.5 gallons) containers for the following purposes and in the following amounts:" would be amended to read: "Brew pubs may sell beer in keg (15.5, or 5 or 3 gallons) containers for the following purposes and in the following amounts:"

The proposed amendments also would add a fourth paragraph to the amount of beer brew pubs are allowed to manufacture. The proposed amendment reads: "D. No more than five hundred (500) U.S. barrels per year wholesale."

It should be noted that amending the definition of "brew pubs" in Chapter 21A.62.040 is a text change and will require public hearings and action by the Salt Lake City Planning Commission as well as the City Council.

It also should be noted that if the 500-barrel limit were adopted, the total number of kegs allowed to be brewed under the ordinance would be at least 700 kegs – if one includes the allowance to brew 100 kegs "to events sponsored by charitable organizations exempt from federal income" and 100 kegs to "events operating under a single event license from the state and the city where the purpose of the event is not for commercial

profit and where the beer is not wholesaled to the event sponsor but is, instead, dispensed by employees of the brew pub.”

We are proposing the amendments at the request of two Salt Lake City brew pub owners, the Pub Group and the Redrock Brewing Company. The two companies contend that amending the *City Code* would have two beneficial effects for brew pubs. First, it would allow the brew pubs to wholesale market a certain amount of beer manufactured at the two brew pubs statewide. The companies contend that brew pubs in other Utah cities are allowed to wholesale their products. Second, it would allow a brew pub such as the Pub Group’s Desert Edge Brewery to wholesale its beer to its two other Salt Lake City restaurants, Martine and Red Butte Café. Under the current ordinances, the Pub Group is not allowed to wholesale beer to the restaurants it owns.

Some Council Members may recall that in 2001 when Tom Rogan served on the City Council he sponsored a Legislative Action to amend the *City Code* to allow brew pubs to produce and wholesale no more than 10,000 barrels a year. However, the City Council declined to support the Legislative Action. After the Council declined to support Council Member Rogan’s proposal, the owners of the two Salt Lake City breweries met with an advisor and scaled back the proposal. The new proposal has been discussed by the brew pub owners and some Council Members since about the first part of the current calendar year.

Council Members may recall that former Council Member Rogan’s Legislative Action did not receive support because of outstanding questions involving increased truck traffic from beer distributors, suppliers of products used in brewing beer, and the removal of waste by-products. It also was noted that brewing up to 10,000 barrels a year was the equivalent of producing 137,000 cases of beer per year (roughly 3.3 million bottles).

The new proposed Legislative Action would allow brew pubs to produce and wholesale no more than 500 barrels of beer per year. The figure is 5 percent of the previous limit proposed in Council Member Rogan’s Legislative Action and is the equivalent of producing 6,850 cases of beer per year (164,400 bottles). In addition, the new proposal would allow brew pubs to package beer in 5-gallon and 3-gallon kegs as well as 15.5 gallon kegs for purposes such as brew fests, special events or events sponsored by charitable organizations.

The brew pub owners contend that brew pubs outside Salt Lake City are allowed to wholesale beer, which places brew pubs in Salt Lake City at a competitive disadvantage. In addition, the owners contend that previous arguments about the potential effect on traffic and other businesses if the brew pubs are allowed to brew 500 more barrels a year are without merit. According to the attached document provided by the brew pub owners, the effect on traffic and surrounding businesses from producing 500 more barrels per year would be minor.

According to the attachment, one brew pub currently receives a single 20,000 pound delivery of bulk grain every nine months. Amending the *City Code* would increase the delivery of that shipment to once every six months. In addition, one brew pub also receives shipments of specialty grains by truck once every three months. Amending the *City Code* would increase the truck deliveries to once every two months. Grain deliveries at the other brew pub would not be increased, according to the attachment provided by the two businesses. Some other deliveries would increase slightly for both brew pubs, but most would be handled by the current amount of delivery trucks. In addition, the transport of waste by-products from the two brew pubs would not increase “due to the existing additional capacity of the trailers and pick-ups already in use,” according to the attachment provided by the two businesses.

Council staff contacted Mr. Will Hamill, owner of Uinta Brewing Company, in connection with this memorandum. Mr. Hamill opposed the original proposal to allow brew pubs to wholesale 10,000 barrels of beer. Mr. Hamill also raised concerns last March when it appeared that the City Council would discuss the current proposal to allow brew pubs to wholesale 500 barrels of beer.

Mr. Hamill raised two concerns in March pertaining to the proposal. His first concern involved the effects allowing brew pubs to wholesale 500 barrels a year would have in the zoning districts where they are located. Mr. Hamill noted that brew pubs usually are located in “premier zoning districts.” *City Code* chapter 6.08.082 allows brew pubs in commercial C-3 and C-4 zoning districts and all industrial M series zones. Microbreweries are allowed only in industrial M series zones. The cited chapter no longer comports with the *Zoning Ordinance*.

The *Zoning Ordinance* allows brew pubs as permitted or conditional uses in districts zoned as Central Business District, Downtown Support District, Downtown Warehouse/Residential, Secondary Central Business District, Commercial Corridor, Community Shopping, Commercial General and Sugar House Business District. The *Zoning Ordinance* allows microbreweries as a permitted use in General Commercial districts and as a conditional use in areas zoned as Downtown Support District. Brew pubs and microbreweries also are permitted in areas zoned as Light Manufacturing districts.

The second concern Mr. Hamill raised on Tuesday and in March is how the 500-barrel limit would be enforced. Mr. Hamill said the limit seemed “open-ended,” and repeated his concern about enforcement of a limit. That also was a concern raised by Mr. Jeff Polychronis, the owner of Squatter’s brew pub. Mr. Polychronis said he opposed allowing the wholesaling of 500 barrels a year because, historically, the function of brew pubs has been to produce beer sold on premises. He also cited the potential effect on traffic and surrounding businesses by allowing brew pubs to wholesale beer. Mr. Polychronis said he supported allowing brew pubs to wholesale beer to other restaurants owned by a brew pub owner. If that were allowed, he said, Squatters could wholesale its beer to the Squatter’s satellite business at the Salt Lake City International Airport. Mr. Hamill said he also supported allowing a brew pub to wholesale beer to restaurants also owned by the brew pub.

Earlier this year City Council staff reviewed Senate Bill 153 that the Legislature passed to revise Utah’s alcoholic beverage act for potential new requirements involving brew pubs. According to Council staff, Senate Bill 153 did not revise the *Utah State Code* chapter involving brew pubs. (Chapter 32A-8-401, titled *Brewery Licenses*.)