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## M E M O R A N D U M

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**DATE:** September 3, 2004  
**TO:** City Council Members  
**FROM:** Russell Weeks  
**RE:** Public Hearing: Petition No. 400-03-33 – Proposed Amendments to Modify Legal Definitions of “Brew pubs” to Allow for Limited Wholesale Distribution.  
**CC:** Cindy Gust-Jenson, Rocky Fluhart, Lee Martinez, Louis Zunguze, Alison McFarlane, Gary Mumford, Doug Dansie, Janice Jardine

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This memorandum is intended to address issues pertaining to Petition No. 400-03-33. The petition contains proposed amendments that would modify the definition of “brew pubs” in two sections of the *City Code*. The modified definitions would allow those businesses to distribute beer brewed in them as a wholesale item but on a limited basis. The petition originated from a City Council *Legislative Action* that the Council adopted on September 9, 2003. Council Members Jill Love and Nancy Saxton sponsored the *Legislative Action*. This memorandum contains all the information contained in a City Council staff memorandum dated August 20, 2003, plus a section titled “New Developments.”

### OPTIONS

This item is scheduled a City Council public hearing on September 7. After the public hearing, the City Council appears to have three options:

- Adopt the proposed ordinance – including the production limits recommended by the Salt Lake City Planning Commission.
- Adopt the proposed ordinance without the production limits.
- Do not adopt the proposed ordinance.

### POTENTIAL MOTIONS

**For the public hearing:** I move that the City Council close the public hearing.

**For the proposed ordinance:**

- I move that the City Council approve Petition No. 400-03-33 and adopt an ordinance amending the definition of brew pubs to allow for limited, wholesale, off-premises beer sales pursuant to the petition.
- I move that the City Council deny Petition No. 400-03-33.

- I move that the City Council approve Petition No. 400-03-33 and adopt an ordinance amending the definition of brew pubs to allow for limited, wholesale, off-premises beer sales pursuant to the petition with the following amendment – that all references in the ordinance that would limit brew pubs to a total brewing capacity of 2,500 barrels per year be stricken.

## **KEY POINTS**

- Planning Commission recommendations in the proposed ordinance appear aimed at two things: 1.) Maintaining the essential character of brew pubs. 2.) Using total capacity limits to differentiate brew pubs from microbreweries.
- The Planning Commission recommendations also appear to be the result of general accord between brew pub owners and microbrewery owners at an April 7 meeting sponsored by the Administration.
- The proposed ordinance is a result of a City Council *Legislative Action* the Council adopted on September 9, 2003. Council Members Jill Love and Nancy Saxton sponsored the *Legislative Action*.
- Brew pubs are permitted uses in downtown zones D-1, D-2 and D-4, and the Sugar House Business District Zone. Indoor brew pubs also are permitted uses in the downtown D-3 zone and the Gateway Mixed-Use zone. Outdoor brew pubs are conditional uses in the latter two zones. In addition, brew pubs smaller than 2,500 square feet are permitted uses in the Commercial Corridor and Commercial Shopping zones. Brew pubs larger than 2,500 square feet are conditional uses in those two zones.

## **NEW DEVELOPMENTS**

On Thursday, Will Hamill, president of the Uinta Brewing Company, sent the following e-mail to the City Council Comments Mailbox:

“Dear Council Members and Staff:

Thank you for your time spent on **Petition 400-03-33 which would redefine brew pubs** in Salt Lake City.

Uinta Brewing has followed the Planning Commission’s comments and is concerned that the commission has not considered the following implications:

1. How will the implications imposed due to beer distribution be mitigated? We all want Downtown to thrive, and we want the brewpubs to continue their prosperity. There will be implications in the city streets, sidewalks and to their neighbors. **What has the Planning commission done to plan for this change?**
2. The new proposed language that could define a brew pub has many guidelines. **Who would enforce these rules? What are the consequences if they are not followed?**
  - At least 50% of beer sold has to be sold on premise?
  - No more than 500 barrels for wholesale distribution, not including to other restaurants of same ownership?
  - Bottle or canning production is prohibited?
  - Not less than a 7 barrel batch size?

- A maximum of 120 barrels of fermentation capacity or 2,500 barrels maximum sold per year?

It seems that these requirements would not only be hard to enforce, but would impose hardship for these brew pubs and future brew pubs to come. Many brewpubs only have batch sizes of less than 7 barrels. These brew pubs reside in the premier locations of downtown and could negatively effect their own retail business along with their neighbors.

I hope that you would again consider this redefining of brew pubs as a bad deal for Salt Lake City.

Thank you for your time, and please come visit our distributing brewery in Salt Lake.”

City Council staff also received the following e-mail from Doug Dansie, the Planning Division planner assigned to the proposed ordinance:

“I received the attached email from Will Hamill at Unita Brewing late in the day on Thursday September 2.

I called Mr. Hamill back and left a message at his office.

I also called Russell (Weeks) in the Council Office and left a message.

I was able to reach Mr. Hamill on his cell phone and we talked about his concerns. I noted that the ordinance has not been altered from the Planning Commission's recommendation adopted in June, 2004. I faxed him a copy of the ordinance contained in the transmittal.

I have reviewed the history of the of the public process.

The Planning Commission held an issues only hearing on Feb 25, 2004. The issue of community impacts was discussed at this meeting. The issue of monitoring compliance was also discussed. Mr. Hamill spoke at this hearing.

The staff held a meeting with brewpub and microbrewery owners on April 7, 2004. Mr. Hamill was in attendance at that meeting. A draft ordinance was produced based upon comments from that meeting and distributed to interested parties. Mr. Hamill provided a response to that draft on April 29. The response is included in the staff report to the Planning Commission and is within the transmittal.

Records do not indicate Mr. Hamill spoke at the Planning Commission public hearing on June 9, 2004.”

It probably should be noted that the operators of microbreweries consistently have raised concerns about adverse effects on areas around brew pubs if brew pubs are allowed to wholesale beer in greater amounts under the proposed ordinance. It should be noted that the Planning Commission's recommendation to cap each brew pub's total production appears to be an attempt to address that issue.

It also should be noted that microbrewery operators consistently have raised questions about how the proposed ordinance would be enforced. According to Planning Commission minutes attached to the Administration's transmittal, it appears that checking records of federal taxes paid on the actual amount of barrels of beer a brew pub produces would be one way to monitor how much beer a brew pub produces. Council Members may wish to ask how current ordinances regulating brew pubs *and* microbreweries are enforced.

## Discussion/Background

Some Council Members may recall that the late Tom Rogan 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 in 2001. The City Council declined to support Council Member Rogan's *Legislative Action* in part because of the amount of beer and ingredients for beer that brewing 10,000 barrels entails. (At the time, Council staff estimated 10,000 barrels as the equivalent of 137,000 cases of beer or 3.28 million bottles of beer.)

After the Council declined to support Council Member Rogan's proposal, the owners of the two Salt Lake City brew pubs met with an advisor and scaled back the proposal. The group then met with some Council Members in 2003 to propose that each brew pub be allowed to wholesale no more than 500 barrels of beer per year – a figure 95 percent less than the 10,000 barrels per year proposed by Council Member Rogan. Council Members Love and Saxton then sponsored the *Legislative Action*, and the City Council adopted it 6-1. The *Action* became a land use petition because changing the definition of "brew pubs" in *City Code* Chapter 6.08 (titled *Beer Licenses*) also required changing the definition of "brew pubs" in City Code Chapter 21A.62.040 (the *Zoning Ordinance*).

The definition in both locations in the *City Code* currently 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.

Under the proposed ordinance the definition would read:

"Brew pub" means:

1. Restaurant type establishments that also have 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 B2 of this Section, only enough beer for sale and consumption on site or for retail carryout sale in containers holding less than two liters (2 l) **for wholesale as outlined in subsection D and E. Automated bottle or canning production is prohibited.** 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 B2 of this Section. **Brew pubs are limited to a total brewing capacity of 2,500 barrels per year or 120 barrels of fermentation at any one time, whichever is less.**

2. Brew pubs may sell beer in keg (**larger than 2 liters**) containers for the following purposes and in the following amounts:

A. An unlimited number of kegs (**not to exceed 2,500 barrel capacity**) for "brew fests" which for the purpose of this Section, 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 (**not to exceed 2,500 barrel capacity**) 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 (**not to exceed 2,500 barrel capacity**) 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.

**D. Unlimited distribution to other restaurants of same ownership or control (not to exceed 2,500 barrel capacity). Ownership or control means more than 50 % ownership in the actual business or controlling interest in any management partnership.**

**E. No more than five hundred (500) barrels for wholesale distribution (not to exceed 2,500 barrel capacity).**

According to the Administration, the proposed amendments are the result of two things: Planning Commission recommendations and an April 7 meeting involving owners and managers of Salt Lake City brew pubs and microbreweries.

Council Members may recall that during discussions of the *Legislative Action* last year microbrewery owners voiced concerns about allowing brew pubs to wholesale 500 barrels of beer a year in addition to selling beer in brew pubs. (The *City Code* allows microbreweries to produce up to 60,000 barrels a year – in accord with State law.) Microbrewery operators also voiced concerns about the amount of deliveries, waste removal, and distribution vehicles involved in allowing brew pubs to wholesale beer. Brew pub owners voiced their need to distribute beer they brewed at their brew pub locations to other restaurants they may own. Both groups as well as Planning Commissioners raised the same concerns earlier this at an "issues only" Planning Commission briefing. (Please see Planning Commission minutes attached to the Administration's transmittal letter.)

The proposed ordinance amendments are the result of addressing those concerns. Under the proposed amendments, each brew pub's production capacity would be capped at 2,500 barrels a year – roughly the capacity of each brew pub's current brewing equipment. Items allowed under the current ordinance would be counted against the proposed cap. In addition, one proposed amendment would prohibit "automated bottle or canning production" in brew pubs. The proposal probably would reduce the potential for brew pubs to compete with microbreweries in some aspects of the retail market.

The prohibition plus the 2,500 barrel a year cap appears to address not only brew pub's potential competition with microbreweries in facets of the retail market but to address concerns about the potential effects of increased production on areas surrounding brew pubs.

In addition, another proposed amendment appears to address brew pub owners' concerns about wholesaling beer they have brewed in one location to other restaurants they own. Even so, the restaurant distribution would count against the proposed production cap.

It should be noted that the proposed production cap was not part of the City Council's *Legislative Action*, and the Council always has the option of adopting the proposed ordinance without the production cap. However, it appears that brew pub and microbrewery owners concur on the cap.