Provo City Municipal Council
Staff Memorandum
Restaurants with Ancillary Breweries
Hannah Salzl, Policy Analyst

What exactly is being proposed?

The proposal would permit the on-site production of beer only and would not extend to wineries or distilleries. Unless the Council proposes additional restrictions, restaurants with ancillary breweries (brewpubs) would be required to meet the same standards as any restaurant that serves alcohol as set by the Department of Alcoholic Beverage Control (DABC), including:

- making at least 70% of their sales from food\(^1\); and
- using an “approved electronic age verification device to verify proof of age of persons who appear to be 35 years of age or younger;” and
- not permitting patrons to leave with open containers of alcohol; and
- not selling alcohol to a patron who is not also purchasing “food that is prepared, sold and served at the restaurant” (“Licenses & Permits”); and
- not being located within 300 feet measured by ordinary pedestrian level or 200 feet measured in a straight line” of churches, schools, parks, playground, or libraries (“Licensee Handbook”).

Locations

Brewpubs would be permitted in the General Downtown (DT1), Downtown Core (DT2), and Regional Shopping Center (SC3, the Riverwoods and the Provo Towne Centre) zones. Within those zones, legally permissible locations would still be limited by the state-mandated proximity requirements listed above.

Off-Site Sales

Brewpubs would be able to sell their beer only on site under the conditions for a Class B beer license (Provo City Code 6.14.040, see Appendix A on page 5 for full text), which is required for any restaurant that serves beer. If an owner were to want to sell their beer off-site, they would have to propose another text amendment for Council approval. According to Quinn Peterson, Executive

\(^1\) Although the DABC requires a minimum percentage of 70% of sales to come from food, Provo City Code 6.14.040 requires a minimum of only 60%. In order to receive licenses from the state and city, brewpubs in Provo would have to comply with the higher of the two.
Director of Downtown Provo, Inc and Chair of the Downtown Neighborhood. There are no plans to expand to off-site sales at this time.

However, brewing is expensive. In 2004, Salt Lake City amended their code to permit brewpubs to sell their products off site. Proponents’ main argument was that it would allow brewpubs to become more financially competitive. However, brewpubs are still limited to 2,500 barrels annually, compared to the average of 10,000-14,000 barrels produced annually by independent microbreweries (Snyder, 2004).

*What are the anticipated effects?*

The amendment itself would not change how bars or restaurants that sell beer operate. A brewpub would function like a restaurant that serves beer with the exception that the alcohol would be produced in-house.

**Culture and Sales**

Due to the limited possible number of brewpub locations, City staff do not anticipate a major shift in the local drinking culture. “Staff sees no distinction between a restaurant with a microbrewery and any other restaurant with a Class B liquor license” (Planning Commission Staff Report, page 2). Quinn Peterson explained that “This request has nothing to do with bars. We aren’t trying to increase the number of drinking establishments or introduce more alcohol. … Restaurant already qualifying for a license could produce their own.”

It is not anticipated that any of the restaurants that currently serve alcohol will add a microbrewery, according to Quinn Peterson. The cost and space required would prohibit most established restaurants from doing so. Peterson anticipates that any brewpubs would open around the microbrewery, rather than adding one to an existing restaurant.

Of the 78 restaurants in the Downtown area, only 15 have Class B beer licenses to sell alcohol with food. In Peterson’s experience, one of the most common reasons given by prospective clients for not booking the convention center is the lack of a nightlife. He argues that craft beer would fit well with the local artisan scene in the Downtown. Craft breweries have inarguably increased in popularity over the last several decades, from 8 in 1980, to 2,768 in 2013 (Moore, Michael S., et al., 2016), to over 7,000 in 2018 (Pugmire, 2020). Beer tourism has become a lucrative industry.

However, City staff and Downtown Provo, Inc. expect only a modest increase in sales simply because the limited amount of permissible land would limit the number of new brewpubs. Planning staff anticipate that “Adverse impacts on adjacent land owners would be limited to increased traffic if the amendment does, in fact, attract additional business into the City” (Planning Commission Staff Report, page 2).
Sales Tax Revenue

Provo City would collect 0.5% of the sales tax from each beer sold. The sales tax rate in Utah County is 7.25%. The City also receives a small portion of alcohol sales tax back from the state, but the Finance Department was not able to track down this information on short notice.

Prices for draft beers from Strap Tank (Springville, Lehi) and Roosters Brewing (Layton, Ogden) are listed in the table below. Where two sizes are listed under “Menu Items,” the first is from Strap Tank, and the second is from Roosters Brewing. It is anticipated that prices in Provo would be comparable.

<table>
<thead>
<tr>
<th>Menu Item</th>
<th>Strap Tank</th>
<th>Roosters Brewing</th>
<th>0.5% of Sales Tax (Average)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pint of beer</td>
<td>$5.00</td>
<td>$5.00</td>
<td>$0.002</td>
</tr>
<tr>
<td>22 or 24 oz. mug of beer</td>
<td>$7.00</td>
<td>$7.25</td>
<td>$0.003</td>
</tr>
<tr>
<td>3.5 or 2 oz. sample</td>
<td>$0.75</td>
<td>$0.50</td>
<td>$0.0002</td>
</tr>
</tbody>
</table>

Based on the 0.5% sales tax revenue allocated to the City, Provo would receive less than one cent per pint sold, not including the portion that comes back from the state.

Roosters Brewing also sells cans in their “beer store” (separate from the restaurant) for consumption off-site, which would not be permitted under Provo City Code. Prices for canned beer range from $1.35-$1.95 depending on the alcohol percentage.

Public Safety

Neither the Springville nor the Lehi Police Departments reported an increase in instances of driving under the influence or drunk and disorderly conduct after the openings of Strap Tank, which has locations in both cities. In off-the-record conversations, multiple Police Department staff in both cities added that they had never heard of any problems with Strap Tank. Comments include:

- “Our officers almost never get calls out to the restaurant.”
- “They are wonderful community partners. I don’t even drink. They’re just great to work with.”

Chief Craig Martinez of the Springville Police Department reported that officers had some concerns about the effect on public safety when Strap Tank opened, but “nothing happened.” He reported that Strap Tank has been a responsible community partner. “The key thing,” according to Chief Martinez, “is educating them on what the community expects of them and how they can promote safe, responsible drinking.” He added that although he does not drink, he has enjoyed the “business and social diversity” the brewpub brings to the city. “It’s like a mullet. It shows that we how to party, but we also know how to do business.”
How would this affect licensing requirements?

The Administration will propose an amendment to Provo City Code 6.14. They have identified two options:

1. amend the Class B beer license to include restaurants with ancillary breweries or
2. add a new Class F beer license specific to restaurants with ancillary breweries.

The Administration has not identified a preference for either option. If the Council were to approve the proposed text amendment as-is, option one would be the most straightforward and would continue to prohibit off-site sales. If the Council would like to add any new requirements, option two might be the better choice.

Any prospective brewery owner would also need to apply for a license from the Alcoholic Beverage Control Commission.²

Conclusion

Under the proposed amendment, there would be little difference between a brewpub and a restaurant that serves beer except that the beer was produced on site. Prospective brewpubs would also have to meet strict state requirements, including that 70% of their profits come from the sale of food and that alcohol may only be purchased in conjunction with food. City staff anticipate the effect on sales and drinking culture will be minimal, or comparable to the opening of another restaurant that served beer.

None of the police department staff in Lehi or Springville reported any problems with brewpubs in their cities. Police are rarely called to the restaurants. According to Chief Martinez, educating the restaurant and working with the restaurant as a community partner is the key to promoting a safe drinking culture.

Although the proposed amendment would not allow restaurants with ancillary breweries to sell their beer off site, the Council could likely expect a proposed amendment to permit off-site sales within the next few years.

City staff feel that this amendment will benefit Provo. They explained that “Restaurants can already sell and serve alcohol in [the three proposed zones]. This amendment will simply allow for business owners to produce more local goods, maintain a strong business, and have more opportunity for growth and profit” (Planning Commission Staff Report, page 3).

² A list of the factors considered by the Commission can be found here (“Factors for Granting Licenses”).
Appendix A

Full text of Provo City Code 6.14.040 “Class ‘B’ Beer License)

A Class “B” beer license shall entitle the licensee to sell beer for consumption on the premises of a restaurant described in the license. Only bona fide restaurants, where a variety of hot food is prepared and cooked and complete meals are served to the general public in connection with indoor dining accommodations, and at which food sales constitute at least sixty (60) percent of the gross money receipts of the licensee’s restaurant business, shall be entitled to a Class “B” license. Neither dancing, billiards nor bowling shall be permitted on premises for which a Class “B” license has been issued.