

Midway City Council
16 July 2019
Regular Meeting

Corner Restaurant /
Temporary Beer Event Permit



CITY COUNCIL MEETING STAFF REPORT

DATE OF MEETING: July 16, 2019

NAME OF PROJECT: The Corner Restaurant

NAME OF APPLICANT: Bentley Probst

AGENDA ITEM: Temporary Beer Event Permit – Local Consent

LOCATION OF ITEM: 195 West Main

ZONING DESIGNATION: C-2

ITEM: 7

Bentley Probst is applying for a Temporary Beer Event Permit for a Beer Garden at The Corner Restaurant. The event would take place August 30th and 31st and September 1st and 2nd. The Corner Restaurant and is located at 195 West Main Street and is in the C-2 zone.

BACKGROUND:

Bentley Probst is requesting a Temporary Beer Event Permit for a beer garden at The Corner Restaurant. The event would take place during the Labor Day holiday weekend on the dates of August 30th and 31st and September 1st and 2nd. The Corner Restaurant currently has an alcohol license from Midway that was approved on May 9, 2018 and they were also approved by the Department of Alcoholic Beverage Control (DABC). They are licensed as a full-service restaurant that allows for the sale of alcohol with the sale of food. The proposed event would allow for the sale and consumption of beer in the yard area south of the restaurant (see attached site plan) during the indicated dates.

According to information on the Utah State website, a temporary beer event does not require the sale of food with the purchase of alcohol.

Normally, the City's Business License Administrator approves temporary event alcohol licenses, but the code does allow an application to be referred to the City Council. The Municipal Code reads as follows:

Section 7.03.040 Event Permits

Notwithstanding Section 7.03.030, when consent of the local authority is sought in conjunction with an application for a single event permit or temporary beer event permit, the Midway City Business License Administrator may, in his or her discretion: (a) grant local consent; or (b) refer the application to the City Council for a decision on local consent. Midway City reserves and retains the maximum discretion allowed by law to grant or deny consent of the local authority for any reason or type of reason.

Staff found that this application should be reviewed by the City Council for a couple of reasons. First, there will most likely be questions from the residents of Midway about the event and the City Council will most likely receive most of those questions so by reviewing the approval as a City Council the councilmembers will have all the information and will be able to respond to those inquiries, assuming the permit is granted. Second, this also allows the City Council to impose any conditions deemed necessary for the event.

There are some items that should be considered in conjunction with the petition:

- The event will be held on a very busy holiday weekend. Wasatch County Sheriff's Office has voiced concerns about increasing the number and size of events over the Labor Day weekend. With so many events over the weekend, law enforcement is spread thin and they have had to be creative in years past to cover all the community's needs. Every year, police officers and deputies from surrounding communities are brought in to help cover all the events. Wasatch County Sheriff's Office has voiced concerns about making any events larger that would make coverage that much more difficult for law enforcement. Staff did contact Sheriff Jared Rigby about the proposal. He did state that it is a very busy period and his deputies are spread thin. He did feel that it would be manageable, if approved, but he would look at the first year as a trial run. He was also concerned about the hours of operation. He stated that they have better coverage in the afternoon to the evening than they do in the morning (hours of operation are discussed in the next bullet point).

- The City may restrict the hours of operation. The DABC allows beer to be sold and consumed from 10 a.m. to 1 a.m. They are very clear that the local authority may be more restrictive regarding the hours of sale, service, or consumption of beer. Again, local law enforcement has voiced concerns about coverage, especially in the morning hours. They have better coverage in the afternoon to evening hours. There are residences that surround the area of the beer garden and those residences should be considered because of the noise impact that might exist especially in the evening hours.
- Alcohol is already available in two location across the street from Town Square. Café Galleria has a limited restaurant alcohol license and The Corner Restaurant has a full restaurant alcohol license.
- Advertising should be considered. The current alcohol permit for The Corner Restaurant has an advertising restriction which is as follows: “No alcohol related signage would be visible on the exterior of the building or on the inside, visible from the outside including from 200 West.” The City Council can also consider allowing or not allowing advertising for the proposed Beer Garden.
- As per State Code, the approval of the ability to sell alcohol is a legislative act and the City has broad discretion in that decision.

POSSIBLE FINDINGS:

- The proposed license would allow beer to be sold and consumed outside on the south side of The Corner Restaurant
- The event is proposed over the busy Labor Day Weekend
- Law enforcement has voiced concerns about growing and adding new events over the Labor Day Weekend, but they do feel that they event is manageable
- The City may limit advertising and the hours of operation of the event
- The State does regulate this type of alcohol license
- The City has broad discretion regarding the approval of this petition

ALTERNATIVE ACTIONS:

1. Approval (conditional). This action can be taken if the City Council feels that conditions placed on the approval can resolve any outstanding issues.
 - a. Accept staff report
 - b. List accepted findings
 - c. Place condition(s)

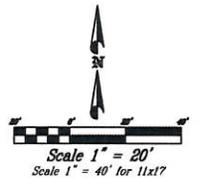
2. Continuance. This action can be taken if the City Council feels that there are unresolved issues.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - d. Date when the item will be heard again

3. Denial. This action can be taken if the City Council feels the request is not in the best interest of the community.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

POSSIBLE CONDITIONS:

1. The beer garden will be limited to hours of operation

2. No beer garden advertising will be allowed



PLANT SCHEDULE

| SYMBOL | QTY | COMMON NAME | SCIENTIFIC NAME | COLL. | COL. |
|--------|-----|---------------------|-------------------------|-------|----------|
| | 3 | Aster Platanifolius | Aster platanifolius | 0.10 | 2' Cal |
| | 4 | Canada Red Elm | Ulmus americana | 0.10 | 2' Cal |
| | 1 | Sweetgum | Liquidambar styraciflua | 0.10 | 2' Cal |
| | 5 | Plantain | Plantago lanceolata | 0.10 | 2' Cal |
| | 8 | Red-tipped Dogwood | Cornus alternifolia | 0.10 | 1.5' Cal |
| | 3 | Blackberry | Rubus occidentalis | 0.10 | R/R |
| | 2 | Spine Cane | Coccoloba spicata | 0.10 | 2' Cal |
| | 1 | Red-tipped Dogwood | Cornus alternifolia | 0.10 | 1.5' Cal |
| | 1 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 12 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 1 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 20 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 4 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 4 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 1 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 1 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 22 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 18 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 1 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 14 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 21 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 5 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 5 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 234 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 18 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 22 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |
| | 22 | Dogwood | Cornus florida | 0.10 | 1.5' Cal |

THIS DOCUMENT IS RELEASED FOR REVIEW ONLY. IT IS NOT INTENDED FOR CONSTRUCTION UNLESS SIGNED AND SEALED.

PAUL S. BERG P.E.
 SERIAL NO. 285588
 DATE: 15 MAR 2018

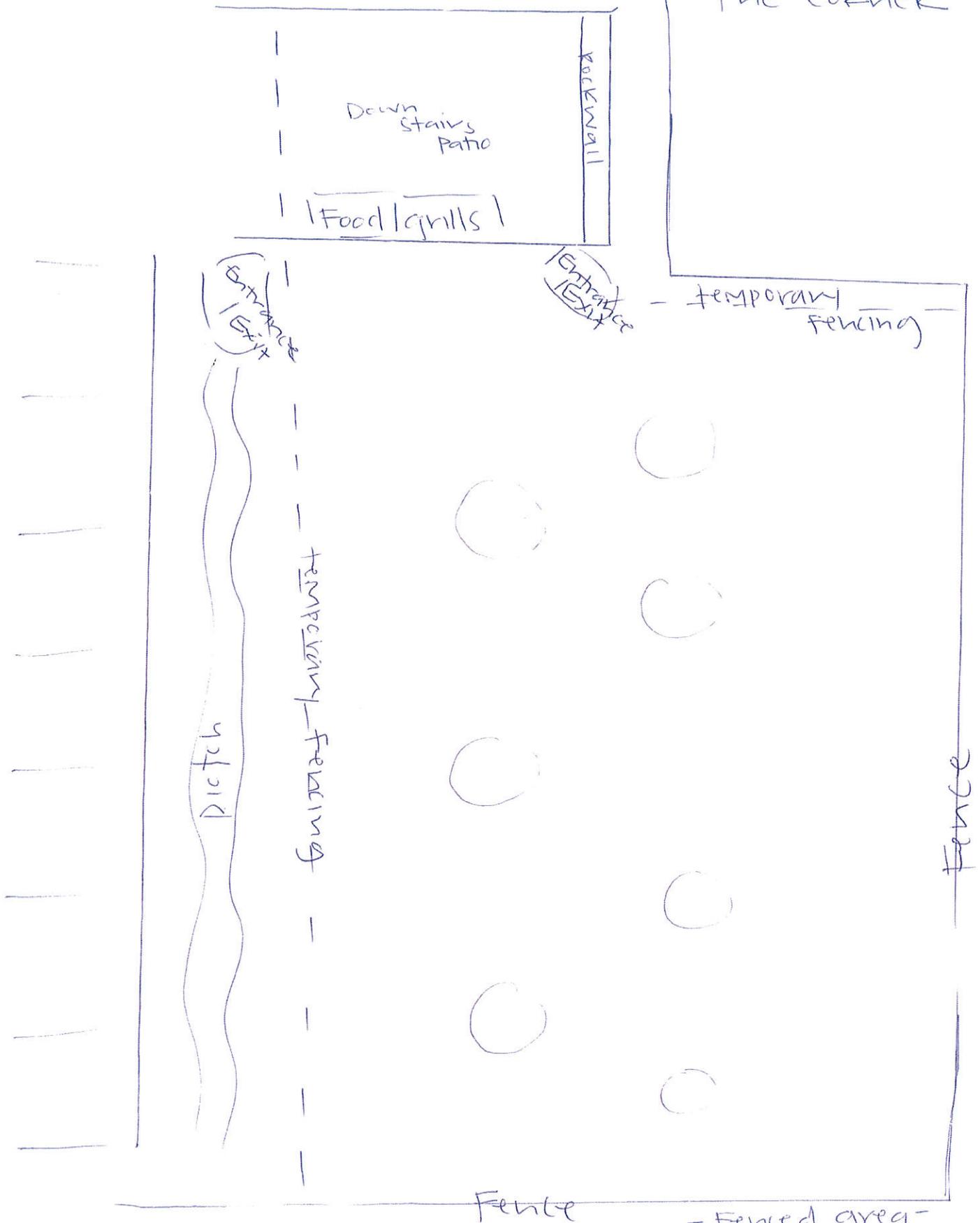
LYTHGOE DESIGN
 THE CORNER

LANDSCAPE PLAN

380 E Main St. Suite 200
 Midway, UT 84049 job: (801) 723-2000

DESIGN BY: CNB DATE: 15 MAR 2018 SHEET: L01
 DRAWN BY: CNB REV

The CORNER



- Fenced area -
- tables
 - lawn games
 - shade tents
 - Food
 - live music
 - Beer tent / ID Station

TEMPORARY EVENT BEER PERMIT SUMMARY

A **Temporary Beer Permit** allows the sale of beer for on premise consumption at a temporary event.



Utah Statute defines beer as 3.2% alcohol by weight. Items purchased at a liquor store, such as heavy beer and flavored malt beverages may not be stored or sold at temporary beer events.

DURATION AND NUMBER

A single permit may authorize the sale of beer for a period not to exceed 30 days.

The sale of beer under a series of permits issued to the same person may not exceed 90 days in any one calendar year.

APPLICATION REQUIREMENTS:

Permits are issued by the DABC Director contingent on review of the Alcoholic Beverage Control Commission. To ensure adequate processing and approval, ***complete applications should be submitted AT LEAST 30 days prior to the event. Applications submitted outside of these guidelines risk non-issuance of a permit. Additionally, due to statutory restrictions, applications received less than seven business days (not counting the day the application is submitted or the day of the event) prior to the event will not be considered.***

QUALIFICATIONS:

- No person who has been convicted of a felony; two or more convictions of driving under the influence of alcohol or drugs within the last five years; or any crime involving the sale, manufacture, distribution, warehousing, adulteration or transportation of alcoholic beverages, or involving moral turpitude may apply for or be granted a temporary beer permit.
- No permit will be issued to any person or business that has had any liquor license or permit revoked within the last three years.
- A minor may not be granted a temporary beer permit.
- If the applicant is a partnership, a minor may not be a partner or managing agent.
- If the applicant is a corporation or limited liability company, a minor may not be a managing agent, officer, director or stockholder who holds at least 20% of the stock of a corporation or owns at least 20% of a limited liability company.

A COMPLETE APPLICATION CONTAINS THE FOLLOWING:

- Completed application form. (See the actual application and checklist for specifics - please follow the checklist carefully).
- A \$100 permit fee.
- A cash or surety bond in the amount of \$500. – Refundable after the event with submission of refund request and a copy of beer purchase receipts.

Each local city, town, or county jurisdiction has its own local beer permit. Apply with them first, early enough to ensure adequate time for processing of the DABC permit.

- Written consent of the local governing authority (city, town, county), or a locally issued temporary permit.
 - Proposed Advertisements - copies and/or links to advertising for the event.
 - A scaled floor plan of the event premises highlighting liquor storage, sales and consumption areas.
- All required control measures as listed in the application must be shown/explained on the floor plan - the director will consider the adequacy of control measures for prevention of consumption by minors and intoxicated persons at the event. Outdoor public events or public events where estimated attendance exceeds 1000 are required to adhere to extra control measures as listed in the application.
 - Evidence of proximity to schools, churches, libraries, playgrounds and/or parks - The commission may consider the general proximity of the event to educational, religious, and recreational facilities in determining whether to grant a permit.
 - If your event includes games of chance (i.e. "Casino Night") in which one must pay to play a game of chance for a possible prize, (either money or something of value) this is considered gambling in Utah, and a permit will not be issued. This includes indirect purchases to play these games, such as an entrance ticket or donation at the door.



- **PLEASE NOTE:** If there is any indication of games at your event that are usually associated with gambling, a letter must be obtained from the city or county attorney where the event is being held, confirming that your games are NOT gambling.

OPERATIONAL REQUIREMENTS

Purchases of Beer

Temporary beer permit holders must purchase, acquire, possess for resale, or sell beer that has been lawfully purchased from:

- A Utah beer wholesaler; or
- A small brewer (manufactures less than 60,000 barrels per year); or
- A licensed Utah beer retailer.

❖ *Please retain receipts for submission to the Department following the event.*



BEER SALES

- Beer may be sold in original containers not exceeding 1 liter, or by the pitcher. No more than 1 liter can be sold to an individual patron or up to two liters to two or more patrons.

LIMITATION ON TOTAL NUMBER OF DRINKS



- Each temporary event attendee may have no more than one alcoholic beverage at a time before the patron.
- A temporary beer permit holder may not sell, offer for sale, or furnish an indefinite or unlimited number of alcoholic products during a set period for a fixed price.
- An exception to this restriction is allowed if alcoholic products are served to a person at a seated event, food is available when the alcohol is furnished, and this exception is not advertised.
- Remember though, you cannot allow a person to become intoxicated, so also make sure you are serving alcohol responsibly for each situation.

SALES HOURS

- Beer may be sold, offered for sale and consumed from 10 a.m. until 1 a.m. No consumption of alcoholic products is allowed after 1 a.m. A local authority may be more restrictive regarding the hours of sale, service, or consumption of beer.



EMPLOYEES

- Any employee who sells, serves, dispenses, or handles beer must be twenty one years of age or older.
- Employees may not consume or be under the influence of alcoholic beverages while on duty. Employees that sell or serve beer do so under the direction and supervision of the temporary beer permit holder.
- All employees who will be checking I.D.'s at your event and at least one server at each alcohol serving station will be required to have completed an approved Alcohol Server Training Program. [GO HERE](#) to link to approved training programs.



No Drinking

DISCOUNTING PRACTICES PROHIBITED

- Discounting practices are prohibited that encourage over-consumption of beer such as reduced prices for certain hours of the event (i.e. "happy hours"), "two for ones", free beer, or selling at less than cost.

NOTE: No alcoholic beverages can be included in the event's promotional activities such as auctions, gift baskets or prize winnings etc.

CONSUMPTION ON THE PREMISES

- Only the permit holder can bring or remove alcohol from the premises of the event.
- An open container primarily used for drinking purposes and containing beer, may not be removed from the premises.
- No "Brown Bagging" - Attendees of an event may not bring any alcoholic beverages onto the premises of the event.

ADVERTISING

- Public advertising of the event may refer to the availability of beer at the event. However beer advertising must comply with the guidelines in Rule R81-1-17.
- [GO HERE](#)

WARNING SIGN

- Each temporary beer permittee shall display, in a prominent place, a "warning" sign. A sign will be provided along with your permit, or you can pick one up at the DABC.



PROHIBITED CONDUCT

- Lewd acts, attire, and sexually oriented conduct of employees and entertainers that are considered contrary to public welfare and morals are prohibited on the premises.
- Gambling – On-Premise Banquet Licensees may not engage in or permit any form of gambling on its premises.
- Illegal drugs or drug paraphernalia - An event permittee may not knowingly allow a person on the licensed premises to sell, distribute, possess, or use a controlled substance; or use, deliver, or possess with the intent to deliver drug paraphernalia.



STILL HAVE QUESTIONS?

- Please Contact us at:

**DABC
1625 SOUTH 900 WEST
SALT LAKE CITY, UT
801-977-6800
ABC.UTAH.GOV**

Note: This is general information only and should not be considered conclusive. For further details, please consult Title 32B of the Utah Code and the Rules of the Commission