

STAFF REPORT

Date: September 19, 2024

To: Mayor and City Council

Through: Jackie Bryant, Interim City Manager

Subject: Staff Report (For Possible Action): Approval of Privileged Business License - Alcohol Catering (Change of Description) - The Par, Ken Foster, Christopher Galli, Adam Kincaid, Mike Sotiriadis, 1041 South Virginia Street.

From: Lance Ferrato, Director of Business Licensing

Department: Business Licensing

Summary:

This is an application (R161803Q-AMD-2024a) by Upshot Brewing Company LLC, located at 1041 South Virginia Street (Exhibit A), to add alcohol catering at The Par. The business is situated in Ward 1 and is zoned under Mixed-Use Midtown Commercial (MU-MC). The Planning Division has recommended approval and police background verifications for the applicants, Ken Foster, Christopher Galli, Adam Kincaid, and Mike Sotiriadis have been approved by the Police Department. Staff recommends Council approve the privileged business license for alcohol catering at The Par.

Alignment with Strategic Plan:

Economic and Community Development

Previous Council Action:

There is no recent Council action relevant to this item.

Background:

Council approval of privileged license applications is required for the licenses to be issued. Reno Municipal Code (RMC) 5.05.008(k) states that license applications for gaming, liquor, medical cannabis establishments, adult-use cannabis establishments, pawnbroker, secondhand merchandise, and escort services must be approved by the Council, as well as other relevant reviewing bodies. Applications must also meet the initial requirements set forth in RMC Titles 4 and 5.

Discussion:

Applications have been processed by the Business Licensing Department and approved by the Planning Division. All required fees have been submitted with the applications.

Overview:

The City has received a quarterly license amendment application for a change of description for The Par, located at 1041 South Virginia Street, to add alcohol catering to the current business activities, which include alcohol manufacturing, alcohol manufacturer's package alcohol, on-premises alcohol, and add-on cabaret. The application, submitted by Ken Foster under the corporate name Upshot Brewing Company LLC, was processed on August 7, 2024. The establishment is situated in Ward 1 within an MU-MC zone.

Zoning and Business Activity:

The Planning Division has recommended approval of this application.

Council and Police Review:

The application is currently under Council review. This step is crucial to ensure the business's alignment with community standards and economic goals. The Police verification has already determined that the applicants are suitable to hold a privileged license.

Conclusion:

In summary, the change of description for The Par is progressing through the necessary regulatory channels. The Planning Division has already recommended approval and the application awaits final review by the Council.

Financial Implications:

No financial implications at this time.

Legal Implications:

Legal review completed for compliance with City procedures and Nevada Law. RMC 5.05.008(k) provides that Council approval is required for gaming, liquor, medical cannabis establishments, adult-use cannabis establishments, pawnbroker, secondhand merchandise, and escort service licenses. Council may deny a license for good cause, which is defined in RMC 5.05.008(j), to include but not be limited to:

- (1) The application is incomplete or contains false, misleading, or fraudulent statements.
- (2) The applicant fails to satisfy any qualification or requirement imposed by this title, local, state or federal law, regulation or administrative policy pertaining to such activities.

- (3) The applicant has been subject, in any jurisdiction, to administrative action of any kind imposing fines or other discipline relating to the operation of a business licensed in the jurisdiction, or denied a license or work card, due to suitability issues.
- (4) The applicant has engaged in deceptive practices upon the public.
- (5) The applicant has, within the five years immediately preceding the date of the application, been convicted of any of the following criminal offenses, regardless of the jurisdiction of the conviction:
 - a. A felony or any crime which, under the laws of this state, would amount to a felony;
 - b. Any crime of which theft, fraud or intent to defraud is an element;
 - c. Unlawfully possessing or distributing a controlled substance;
 - d. Solicitation, prostitution, or pandering;
 - e. Any sex offense requiring the applicant to register under NRS 179D.441 to 179D.470, if the applicant has been classified by the State as a Tier 1 or below; or
- (6) A person who, within the ten years immediately preceding the date of the application, has been convicted of any sex offense requiring the applicant to register under NRS 179D.441 to 179D.470, if the applicant has been classified by the state as a Tier 2 or Tier 3 offender.
- (7) Any cause reasonably related to furtherance of the public welfare.

In addition, under RMC Sec. 5.22.013, Council may, in its discretion, approve, deny, condition, limit, or take such other action with respect to the applications for medical cannabis establishment and adult-use cannabis establishment licenses as it considers appropriate to protect the public health, safety and general welfare of the citizens of the city and to regulate the use of buildings, structures, land use, business and other purposes.

Cases generally construe "good cause" as having two components: 1) the reason for denial must be reasonably related to the public welfare, and 2) the decision must be supported by substantial evidence and not be arbitrary or capricious. Substantial evidence requires more than the mere statements of interested parties and their counsel and the opinions of council members. *Council, Reno v. Travelers Hotel*, 100 Nev. 436 (1984). Accordingly, a sufficient factual record should be developed before a privileged license is denied for "good cause". A delay (continuance) to gather

more information or evidence is permissible provided the delay is not unreasonable in duration or purpose.

Council has asked to conduct its review promptly, even if not all other reviews have been completed. This practice is customer friendly; but it could result in possibly relevant information not being presented to Council in its consideration of "good cause".

Other grounds for denial appear in the RMC Chapters governing specific privileged licenses. Most notably, RMC 5.07.040 provides:

No new on-premises wine and beer licenses, on-premises alcoholic beverage licenses, or cabaret licenses shall be issued authorizing the sale of any alcoholic beverage for consumption on the premises for any location or premises which the Council deems unfavorable or undesirable due to its proximity to any schoolhouse or schoolroom used by any public or common school, or church, or its location in an area that is predominantly residential or, because of the specifics of the proposed use, either detrimental to the surrounding properties or burdensome for police monitoring purposes.

Any denial of a license must be consistent with equal protection limitations. Applicants in similar situations must be treated substantially the same. However, factual differences which rationally support different treatment to further a governmental interest should be upheld.

Recommendation:

Staff recommends Council approve the privileged license application for alcohol catering.

Proposed Motion:

I move to approve the staff recommendation.

Attachments:

Exhibit A - Vicinity Map - The Par