

## STAFF REPORT

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**Date:** July 24, 2024

**To:** Mayor and City Council

**Through:** Jackie Bryant, Interim City Manager

**Subject:** Staff Report (For Possible Action): Approval of Privileged Business License - Add-on Cabaret (Change of Description) - The Fox Brewery & Pub, James Phalan II, 124 Wonder Street.

**From:** Lance Ferrato, Director of Business Licensing

**Department:** Business Licensing

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### **Summary:**

This is an application (R159842Q-AMD-2024a) by Fox Brewery & Pub LLC to add cabaret activity at The Fox Brewery & Pub, located at 124 Wonder Street (Exhibit A). The existing business activities include dining room alcohol and alcohol manufacturing. The business is situated in Ward 3 and is zoned under General Commercial (GC). The Planning Division has recommended approval of the application noting that, per live entertainment standards, outdoor live entertainment may not exceed 10:00 p.m. and indoor live entertainment may not exceed 11:00 p.m. Additionally, a police background check for the applicant, James Michael Phalan II, has been submitted. Staff recommends Council approve the privileged business license for add-on cabaret at The Fox Brewery & Pub.

### **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, pawnbrokers, secondhand merchandise, and escort services must be approved by 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. Council has requested that its review not delay the licensing process, even if not all other relevant reviews have been completed. These reviews may occur concurrently or consecutively based on the completion of applicable inspections. Accordingly, some relevant reviews may not have been completed at this time, and even if Council approves a license, it may still be denied by the Business Licensing Department. Such additional reviewing bodies may include, but are not limited to, building, fire, police, and relevant district, county, and state agencies. All required fees have been submitted with the applications.

Police background checks are often lengthy. Once all other relevant reviews have been completed, an interim license may be issued before the completion of the police background check. However, an interim license is subject to summary revocation if the background check reveals grounds for denial.

***Overview:***

The City of Reno has received a quarterly license amendment application from Fox Brewery & Pub LLC, doing business as The Fox Brewery & Pub, located at 124 Wonder Street. The amendment involves a change of description to include an add-on cabaret for live entertainment. The applicant, James Phalan, has committed to adhering to live entertainment standards, with outdoor live music on the roof patio not exceeding 10:00 p.m. and indoor live music inside the restaurant not exceeding 11:00 p.m. The establishment is situated in a GC zone within Ward 3.

***Zoning and Business Activity:***

The Planning Division has recommended approval for this amendment noting that the addition of live entertainment aligns with the existing use of the property as a full-service restaurant and brew pub. The GC zone supports such activities and the applicant's commitment to comply with live entertainment standards ensures minimal disruption to the surrounding community. The amendment does not involve a change of use and it maintains the current business activities of dining room alcohol and alcohol manufacturing.

***Council and Police Review:***

The application is currently under Council review and Police review. These steps are crucial to ensure that the new ownership meets all regulatory and safety standards set forth by the City of Reno. The Council review will assess the business's alignment with community standards and economic goals, while the Police review will ensure that the applicant is found suitable to hold a privileged license.

***Conclusion:***

In summary, the change of description for The Fox Brewery & Pub is progressing through the necessary regulatory channels. The Planning Division has already recommended approval and the application awaits final reviews by Council and the Police Department.

***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, pawnbrokers, 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 Nevada Revised Statutes (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 the furtherance of the public welfare.

In addition, under RMC Sec. 5.22.013, Council may, at 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. *City 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 that 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 add-on cabaret at The Fox Brewery & Pub subject to the Police review.

**Proposed Motion:**

I move to approve the staff recommendation.

**Attachments:**

Exhibit A - Vicinity Map - The Fox Brewery & Pub