

Memo to City Council

Re: High Alpine Brewery Request (supplement to prior Memo)

From: Kathleen L. Fogo, City Attorney

cc: Mark Achen  
Gail Davidson

Council should consider the distinction between allowing for a time the continuation of a non-code compliant situation and affirmatively blessing an illegal action. Precedence is certainly a concern. Council will have difficulty explaining to the next business owner or homeowner why they are not allowed to violate the City Code. Further, staff is likely to have difficulty in enforcement of Code violations or compliance if people believe code provisions aren't enforced or that they can seek waivers from Council.

Ben Cowan has received a preliminary response from Mountain West Insurance regarding insurance coverage in the event the City moves forward in violation of its Code. Mountain West has confirmed there is no liability coverage if a complaint, enforcement action, claim or suit relating to the water line installation is brought by or on behalf of any federal, state or local governmental regulatory or enforcement agency. However, they are not sure about the coverage if a suit is brought by a private entity or citizen, or whether the Councilors might be exposed to personal liability because the Public Managers Liability is not in force. Ben hopes to have an answer to this request shortly.

The burden should be on the business owner to know whether a location is suitable for their needs and to make the necessary changes if not. This is essentially a private business issue, not one the City should be undertaking and actively brokering an agreement between private citizens.

Questions to be considered are:

- 1) what is going to change within a defined time period that indicates that the Brewery will be able to pay for the proper line installation and termination of the interconnection;
- 2) Have representatives of the Brewery demonstrated financial or other inability to conduct the line installation;
- 3) What other options are available –
  - a. From Ben - In the past, it was common to guarantee loans to private businesses or citizens because of the government's ability to tax lien for delinquent balances. This has become less common because the guarantee, even if the loan is a bank loan, must be recorded as an expense and a liability in the year issued until the guarantee is no longer necessary. This was due to a new GASB pronouncement No. 70, "Accounting and Financial Reporting for Non-Exchange Financial

Guarantees”. Until then, the guarantee makes resources unavailable for spending. Craig Bryant, with GS&L, helped the County craft some of these agreements regarding tap fees that couldn’t be paid by homeowners when the County extended sewer service to existing homes in the North Gunnison Division of the Gunnison County Sewer and Water District.

- b. Bob Drexel noted that High Alpine might be eligible for the Region 10 revolving business loans. Perhaps the City could submit a letter of support for their application?
- c. Temporary change to the business operations pending ability to install a water line sufficient to operate the business as desired.
- d. Other ideas –

If Council wishes to consider a form of agreement to allow for the interconnection with the Treads N’ Threads property, staff suggests the following be required terms:

- 18 months from the date of City approval to complete installation that complies with code or disconnect the interconnection between properties – city manager has authority to adjust this date by no more than seven days solely for the City’s benefit (e.g. special events, etc.)
- Prior to 18 months, if Main Street is opened for any purpose at a point that provides access to a reasonable location for a code compliant tap, HAB shall make this installation immediately not delaying the repair of Main Street more than 24 hours. The City will attempt, but not guarantee, as much advance notice as possible to HAB if it expects such to occur.
- Separate meters & backflow prevention installed by licensed plumber with City inspection and final approval.
- Legal right of entry from Treads N’ Threads for installation, maintenance and repair by HAB.
- Right of the City to physically inspect and read meters on both properties.
- Any material change of use, zoning or ownership of either business or property terminates agreement and requires disconnection of water line.
- Parties agree that the City can shut-off the water in the event of necessary repairs, maintenance, improvements or non-payment by either party, no matter what the cause.
- Owners of both real property & businesses must agree to indemnify, defend and hold harmless the City from any and all claims for damages of any kind or nature.

- Surety bond in the full amount, estimated by City, to install water service line in compliance with City Code. The current tap fee for a  $\frac{3}{4}$ " water line is \$2,500, whereas a 2" tap is \$17,500. For the proper installation, a customer would pay the difference (in this case \$15,000). Bond should be sufficient to cover both the installation costs and the additional tap fee. It should note that the amounts may vary based on the actual water line installed and the then-current tap fee in the event it is increased.
- Agreement to be executed by owners of the real property, each business, and the City.
- Agreement to be drafted by counsel for HAB subject to review and approval by the City Attorney and Council.