

## Nevada Brew Pub Licenses

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Craft beer has become a growing industry in Nevada and throughout the United States. Nevada law promotes the establishment of microbreweries as consumers' beer preferences are quickly moving from large main-market brands to local craft beers.

In Nevada, standard statutory restrictions that prevent breweries from selling their product directly to consumers do not apply to brew pubs. In Nevada, brew pubs may not only brew their own beer and sell it to wholesalers, but they can also sell their beer directly to the general public both for consumption on and off the premises. This may allow the brew pub to sell craft beer at a higher profit margin or at a lower cost to the consumer.

Nevada, like most states, follows a three-tiered system for liquor sales designed at the end of Prohibition. These rules are known in the industry as “tied house” laws. On the first tier are the producers of alcoholic beverages, like breweries, vineyards, or distilleries. On the second tier are the wholesalers who act as an intermediary between the producers and retailers. Finally, on the third tier are the retailers who then sell the alcoholic beverages to the general public whether for on-premises consumption (i.e. a bar or restaurant) or for off-premises consumption (i.e. a liquor store).

Therefore, generally speaking, a producer of alcoholic beverages cannot also sell its beer directly to the public by operating either a bar or liquor store.<sup>1</sup> Similarly, a retailer of alcoholic beverages, like a tavern or restaurant, generally can only sell beer that it purchased from a wholesaler with all attendant upcharges.<sup>2</sup>

In Nevada, this strict three-tier system does not apply to a brew pub. A “brew pub” is defined in Nevada as “an establishment which manufactures malt beverages and sells those malt beverages at retail pursuant to [certain] provisions.”<sup>3</sup> In any county in Nevada, an operator of a brew pub may manufacture and store up to 15,000 barrels of malt beverages each year.<sup>4</sup> The brew pub operator may sell its product to a Nevada licensed wholesaler for distribution.<sup>5</sup> Additionally, unlike a large scale brewery, the brew pub operator may also sell its product directly to the public both for consumption on the premises of the brew pub and in sealed packages for consumption off the premises.<sup>6</sup>

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<sup>1</sup> NRS 369.130.

<sup>2</sup> NRS 369.487.

<sup>3</sup> NRS 597.200(2).

<sup>4</sup> NRS 597.230.

<sup>5</sup> *Id.* at (3)(a).

<sup>6</sup> *Id.* at (3)(b) – (c).

## Requirements for a Nevada Brew Pub License

In order to operate a brew pub in Nevada, the operator must first file a “Brewer’s Notice” and receive approval from the United States Alcohol and Tobacco Tax and Trade Bureau (“TTB”).<sup>7</sup> The “Brewer’s Notice,” includes information about the proposed brewer install, a floorplan detailing areas of the brew pub, and instructions on how the beer will be measured for tax purposes.<sup>8</sup> The TTB additionally, requires the operator of a brew pub to follow specific procedures related to measuring and storing beer for tax purposes.<sup>9</sup>

The Nevada brew pub operator must additionally secure a Nevada brew pub license and a local retail liquor license.<sup>10</sup> In Nevada, liquor licensing is regulated by each local jurisdiction. As a result, the specific local requirements will differ depending on where in Nevada the business will operate. However, any licensee in Nevada must first meet the requirements of both state and federal law.

First, there are several Nevada restrictions on the location of the brew pub itself. Under Nevada law, a person may only operate a brew pub in particular areas designated by the board of county commissioners or governing body of the particular city in which the brew pub will operate.<sup>11</sup> Additionally, the brew pub operator must “conspicuously” identify the premises as a “brew pub.”<sup>12</sup> Local jurisdictions both in Southern Nevada and Northern Nevada may have their own specific restrictions or requirements for a brew pub license.

There are also Nevada store requirements related to the application for a local brew pub license. Each application for a brew pub license must be submitted to the local jurisdiction where the brew pub will operate.<sup>13</sup> Furthermore, Nevada requires a fee of \$75 to be charged for a brew pub license application.<sup>14</sup> Each local jurisdiction in Nevada may require additional fees or licenses to operate a brew pub.<sup>15</sup> For example, in the incorporated city of Las Vegas, among other specific requirements, a brew pub license will only be granted if the operation of the brew pub is “ancillary” to the activities permitted by a “primary” tavern or beer/wine room license.<sup>16</sup> However, in unincorporated Clark County, the operation of a brew pub need not be ancillary to

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<sup>7</sup> 27 C.F.R. § 25.25(a).

<sup>8</sup> *Id.* at (b).

<sup>9</sup> *Id.* at (c).

<sup>10</sup> NRS 369.180(1)(g).

<sup>11</sup> NRS 597.230(1).

<sup>12</sup> *Id.* at (2).

<sup>13</sup> NRS 369.190(1).

<sup>14</sup> NRS 369.300.

<sup>15</sup> NRS 369.320.

<sup>16</sup> Las Vegas, Nevada Code of Ordinances § 6.50.085(B)(2)

other activities, although the operator still must also hold one of the following: 1) a tavern liquor license; 2) a supper club license; or 3) a main bar license in a resort hotel.<sup>17</sup>

There are no special land use limitations on brew pubs on the Las Vegas “Strip” or throughout Clark County that would not otherwise apply to other on-premises alcohol establishments. In fact, the Clark County code specifically contemplates the existence of brew pubs in resort hotels. Generally, in Clark County, a brew pub may not be within 1,500 feet of any other brew pub.<sup>18</sup> However, there is a specific exception to this requirement if the “prospective brew pub will be located in a resort hotel.”<sup>19</sup> Additionally, a “main bar license in a resort hotel” is one of the three possible liquor licenses an applicant must first secure before obtaining a brew pub license in the County (the others are tavern or supper club licenses).<sup>20</sup> The Clark County Development Code restricts the use of a brew pub in the same manner as it does other general on-premises alcohol uses.<sup>21</sup>

Not surprisingly, many operators of microbreweries wish to have the ability to brew more than 15,000 barrels of beer a year while still maintaining its local brew-pub business. It is possible the Nevada legislature may increase the 15,000 barrel per year cap on brew pub production. In the 2015 legislative session, Nevada legislators sought to eliminate the 15,000 barrel per year cap on brew pub production by introducing Senate Bill 139 (“SB 139”). However, SB 139 never made it out of committee. In its only hearing, Senators Farley and Gustavson voiced support for the bill, while no legislators voiced opposition. Based on the context of the floor debate, it is possible that the bill was not voted on so that the Nevada Craft Brewers Association and Nevada Wholesaler Association could spend the interim session negotiating whether an appropriate higher cap of production or elimination of the cap was desirable.<sup>22</sup>

Determining whether to apply for a brew pub license or in what local jurisdiction may be best to operate a brew pub depends on the needs and goals of your business. For more information on Nevada brew pubs, please contact [msaltzman@nvbusinesslaw.com](mailto:msaltzman@nvbusinesslaw.com).

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<sup>17</sup> Clark County, Nevada Code of Ordinances (“CCC”) § 8.20.020.040

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> See CCC at Table 30.44-1

<sup>22</sup> See Minutes of the Senate Committee on Commerce, Labor and Energy. Seventy-Eighth Session, April 8, 2015 at 3 – 12, available at <http://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/CL/Final/828.pdf>.