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October 13, 2010

The Honorable Harvey Skoog and  
Members of the Prescott Valley Town Council  
c/o Prescott Valley Town Clerk's Office  
7501 East Civic Circle  
Prescott Valley, Arizona 86314

*Re: Sam's Club #4977/5757 East Ste Rte 69  
Request for Liquor Sampling Privilege  
Town Council Agenda 10/28/2010*

Dear Mayor Skoog and Members of the Prescott Valley Town Council:

I am writing on behalf of Sam's Club #4977 to provide the Prescott Valley Town Council with some background on a new process that local governing bodies are being asked to consider that addresses "sampling" of beer, wine and spirits in a business that has a liquor license for "off-premise" consumption. I recognize that it is new that the cities are involved in the review of this sampling process and I hope that this information will be helpful to the Council in making its decision.

### **BACKGROUND**

Arizona retail liquor licenses are generally divided into two groups, to wit: (i) licenses that allow consumption of the beverages on the licensed premises and (ii) licenses that allow the sale of beverages that must be removed from the premises for consumption. Restaurants (Series 12), Beer/wine bars (Series 7) and Bars (Series 6) provide for consumption within the licensed area. Liquor Stores (Series 9) and Beer/Wine stores (Series 10) allow for sale of regulated beverages in sealed containers for consumption off-site. The Series 9 liquor license is the license most often held by grocery stores while a Series 10 license is commonly used for smaller, convenience markets.

Prior to 2005, there was no provision in Arizona law that allowed "sampling" of regulated beverages in a store that held an "off-premise" liquor licenses (Series 9 or 10). Arizona's own wine industry had been growing slowly over the years, but local vintners were finding it difficult to "break into" the market and compete with established wines from outside the state. Many local vintners believed that their product could compete with other out-of-state wines based upon taste. However, it



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was difficult for them to have the opportunity to have customers get an opportunity to compare their product with others. As a result, local producers became a key party in urging Arizona to allow “sampling” of regulated beverages where the store held an “off-premise” liquor license.

In 2005 the Arizona Legislature amended its laws to allow “sampling” of regulated beverages for “off-premise” licensees. The 2005 process (i) limited the sampling events to 12 days per year no longer than three hours per day; (ii) only one producer or wholesaler could be offered; (iii) required that the event be conducted by a wholesaler or producer; (iv) required that the sampling take place in a roped off area; and (v) limited a customer to a total of three ounces of beer or one and one-half ounces of wine or one-half ounce of distilled spirits per person per day. Small retailers such as convenience stores (less than 5,000 square feet) were not allowed to conduct sampling events. All other regulations that apply generally to liquor licenses such as limiting samples to persons who were twenty-one years of age and prohibiting employees from sampling also applied to sampling events. At least ten days prior to the events, the licensee filed a form with the Arizona Department of Liquor (AZ DLLC) notifying the AZ DLLC of the event. It is important to note that many states already had provisions that allowed “sampling” of beverages and those regulations were reviewed when this legislation was being considered.

Some retailers, in an effort to allow for “sampling” without all the limitations, simply acquired an additional “on-premise” license for their stores. However, where a store had both on-premise and off-premise privileges at the same location, it was more difficult to regulate “sampling” events at those locations. Indeed, where a retailer had both on and off-premise licenses, customers were allowed twelve ounces of beer or cooler products, six ounces of wine or two ounces of distilled spirits per person per brand. However, it became difficult to determine whether the licensee’s activities were being conducted under its on-premise without limits or its off-premise license with limits.

In 2010, the Arizona Legislature sought to modify the sampling provisions for off-premise licensees and to address the circumstance of holders of both on- and off-premises licenses at a single location and to provide sampling privileges for any Series 9 liquor license holder subject to that licensee following the new procedures. The resulting legislation did not create a “new” sampling privilege for off-premise licensees. Rather they modified the previously existing sampling privileges.

The new regulations and limitations on sampling are as follows:

1. Any open product shall be kept locked by the licensee when the sampling area is not staffed.
2. The licensee is otherwise subject to all other provisions of the law. Licensee is liable for any liquor violations committed in connection with sampling.
3. The licensed retailer shall make all sales of the sampled products from the licensed retail premises.



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4. The licensee shall not charge any customer for the sampling of any products.
5. The sampling shall be conducted under the supervision of an employee of the sponsoring distiller, vintner, brewer wholesaler or retail licensee.
6. Accurate records of sampling products dispensed shall be retained by the licensee.
7. Sampling shall be limited to three ounces of beer or cooler-type product, one ounce of wine and one ounce of distilled product per person, per brand, per day.
8. The sampling shall be conducted only on the licensed premises.

[A.R.S. Section 4-206.01(J)]

In addition, while an off-premise liquor license may be transferable to another party, a sampling privilege must be approved for each new owner.

#### **SAM'S CLUB SAMPLING APPLICATION**

On behalf of Sam's Club, a request for sampling privileges has been submitted for these warehouses. Sam's Club, as well as its related Wal-Mart stores, have exemplary records with respect to the sale of beer, wine and liquor in the State of Arizona. Sam's Club will continue to exercise care and diligence in conducting its sampling activities and will have the following procedures in place in addition to those required by the new law:

1. The sampling area will be roped off from the sales area.
2. Customers will be required to show photo identification/proof of age prior to entering the sampling area.
3. All samples must be finished or disposed of in a trash receptacle within the sampling area before the customer may leave the sampling area.
4. No customer seating will be provided within the sampling area.
5. Sampling will be conducted a third party demonstrator under the supervision of the wholesaler/producer whose product is being offered..
6. Records will be maintained as to the product sampled by each customer.
7. Sampling events will be limited to 4 hours per day.
8. No Sam's Club staff will be permitted to sample any products at any time during their



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work day.

All Sam's Club managers and their staffs are aware of and take seriously the importance of strict adherence to all policies, procedures and requirements with respect to sampling and sale of regulated beverages. That is why they are willing to provide you with these additional conditions and safeguards for your consideration. With these procedures in place, we request your approval of the sampling request. Sam's Club looks forward to its continued good relationship with Prescott Valley. I will be available at your convenience to discuss any of these procedures and I will be present at the upcoming hearing on this application.

Very truly yours,

**Burch & Cracchiolo, P.A.**

A handwritten signature in black ink, appearing to read 'Clare H. Abel'. The signature is fluid and cursive, with a large initial 'C'.

Clare H. Abel  
For the Firm

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