

	AGENDA ITEM EXECUTIVE SUMMARY		Agenda Item number: 4f
	Title:	A Resolution Authorizing the Mayor and City Council to Execute a Temporary License Agreement between the City of St. Charles and Pollyanna Brewing Company (106 Riverside Ave.)	
	Presenter:	Derek Conley, Economic Development Director	
Meeting: Planning & Development Committee		Date: March 11, 2024	
Proposed Cost: \$		Budgeted Amount: \$	Not Budgeted: <input type="checkbox"/>
TIF District: None			
<p>Background:</p> <p>Pollyanna Brewing (106 Riverside Ave.) has expressed interest in continuing use of public space for outdoor café areas during the 2024 season. The license agreement with Pollyanna Brewing would grant access to the city-owned portion of the parking lot directly south of the Pollyanna building for the purpose of providing an outdoor dining patio. The layout of the outdoor dining patio will be the same as 2022 & 2023. The license would be based upon the same timeframe and fees being imposed for use of the First Street plazas (\$40 per seat for entire period).</p>			
<p>Attachments (please list):</p> <p>Draft license agreement (Including Aerial Map – Exhibit C.)</p>			
<p>Recommendation/Suggested Action (briefly explain):</p> <p>Recommendation to Approved a Resolution Authorizing the Mayor and City Council to Execute a Temporary License Agreement between the City of St. Charles and Pollyanna Brewing Company (106 Riverside Ave.)</p>			

City of St. Charles, Illinois

Resolution No. 2024- __

**A Resolution Authorizing the Mayor and City Council to Execute a
Temporary License Agreement between the City of St. Charles and Pollyanna
Brewing Company (106 Riverside Ave.)**

Presented & Passed by the

City Council on _____

BE IT RESOLVED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk are hereby authorized to execute that certain Temporary License Agreement, in substantially the form attached hereto and incorporated herein as Exhibit “A” by and on behalf of the City of St. Chares.

PRESENTED to the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, this ____ day of March, 2024.

PASSED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, this ____ day of March, 2024.

APPROVED by the Mayor of the City of St. Charles, Kane and DuPage Counties, Illinois, this ____ day of March, 2024.

Lora A. Vitek, Mayor

Attest:

City Clerk/Recording Secretary

Voice Vote:

Ayes:

Nays:

Absent:

Abstain:

Exhibit "A"

Temporary License Agreement between the
City of St. Charles and Pollyanna Brewing Company

TEMPORARY LICENSE AGREEMENT

This TEMPORARY LICENSE AGREEMENT (hereinafter the "*Agreement*") is made and entered into as of this ___ day of _____, 2024, by and between the City of St. Charles, an Illinois Municipal Corporation, Kane and DuPage Counties, Illinois (hereinafter "*City*"), and Pollyanna Brewing Company, an Illinois Corporation (hereinafter "*Licensee*"); the City and Licensee are sometimes hereinafter collectively referred to as the Parties ("*Parties*") or individually as the Party ("*Party*").

WITNESSETH:

WHEREAS, the City does own a public parking lot located at the northeast corner of Riverside Avenue and Illinois Avenue ("*City Parking Lot*"), legally described in Exhibit A attached hereto and made a part hereof, both immediately adjacent to 106 S. Riverside Avenue ("*106 S. Riverside Ave.*"), legally described in Exhibit B attached hereto and made a part hereof; and

WHEREAS, Licensee operates the business commonly known as Pollyanna Brewing Company, located at 106 S. Riverside Ave. ("*Licensee Property*"), the southerly property line of which abuts the City Parking Lot; and

WHEREAS, Licensee proposes to install, operate and maintain a temporary outdoor patio area with fencing, tables and chairs ("*Outdoor Patio*"), on the City Parking Lot, as illustrated on Exhibit C;

NOW, THEREFORE, in consideration of the foregoing premises and of the covenants and conditions hereinafter contained, the adequacy and sufficiency of which the Parties hereto hereby stipulate, the Parties hereby agree as follows:

1. The Recitals hereinabove are hereby incorporated into and made a substantive part of this Agreement as though they were fully set forth in this Paragraph.

2. The City, in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration paid to City, the receipt and sufficiency of which is hereby acknowledged, hereby grants to the Licensee, its successors, grantees and assigns, an exclusive temporary license (hereinafter the "*License*") for the purpose of installing, operating and maintaining the Outdoor Patio solely within the City Parking Lot, in the location illustrated on the attached Exhibit C, subject to the terms, conditions and limitations herein specified together with any exhibits attached hereto and incorporated herein by reference.

3. Licensee shall submit for a permit as required under the St. Charles Municipal Code ("*Outdoor Café Permit*"), the fee for which under this Agreement shall be

equal to a One Hundred Twenty-Five Dollar (\$125.00) application fee, plus Forty Dollars (\$40.00) per seat, as depicted by the Outdoor Café Permit site plan.

4. Licensee must install, operate and maintain the Outdoor Patio in full compliance with the permit and all conditions contained herein or attached hereto by reference.

5. The Outdoor Patio shall not in any manner be operated, modified, expanded, or enlarged beyond the extent of described herein and shown in Exhibit C, without the prior written consent of the City.

6. This Agreement shall commence on April 15, 2024 and expire on October 31, 2024, the date the insurance required hereunder expires, or as otherwise provided for in this Agreement, whichever comes first. This Agreement may be renewed only through the action of the City. Licensee may terminate this Agreement immediately by providing written notice to City. Except for the immediate termination in the event of an emergency, as declared by City in its sole discretion, City may terminate this Agreement at any time during the term of this Agreement by notifying Licensee of its intention, with at least three (3) business days prior written notice.

7. Licensee understands and agrees that the Outdoor Patio shall remain in good condition at all times and that the City Parking Lot shall not be compromised in any unsafe or adverse manner, at all times complying with all local codes and ordinances.

8. To the fullest extent permitted by law, Licensee hereby agrees to defend, indemnify and hold harmless the City, its officials, agents, and employee, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, specifically including but not limited to, any claim for damages caused by or to the Outdoor Patio or caused by work performed by the City, or its agents, which may in anywise accrue against the City, its officials, agents, and employees, arising in whole or in part or in consequence of the performance of this Agreement by the Licensee, their agents, invitees, employees, contractors or subcontractors, or which may in anyway result therefrom, except that arising out of the sole legal cause of the City, its agents or employees, the Licensee shall, at their own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in connections therewith, and, if any judgment shall be rendered against the City, its officials, agents and employees, in any such action, the Licensee shall, at its own expense, satisfy and discharge the same. Prior to occupancy, the Licensee shall furnish to the City a certificate of insurance evidencing coverages and limits in conformance to the requirements described herein attached Exhibit D. The insurance policy shall be expressly endorsed to include the City as an additional insured, Such certification of insurance shall require the insurer(s) to provide not less than thirty (30) days advance written notice to the City in the event of any cancellation, non-renewal or change in the policy limits, terms or conditions which would cause them to fail to meet the foregoing requirements. Such insurance shall be fully maintained during the term of the License.

9. The City shall have the right, in its sole and absolute discretion, to promulgate and enforce rules and regulations regarding the use of the Outdoor Patio to protect the health, safety and welfare of the public utilizing the City Parking Lot. The Licensee will provide, at its expense (and the City shall have no obligation to provide or pay for), any and all improvements and/or modifications to the Outdoor Patio to comply with this provision.

10. Licensee accepts the City Parking Lot, “As-Is,” “Where-Is” and in its current condition and the City makes no representations concerning the condition of the Licensed Area. The Licensee further acknowledges and agrees to secure written authorization from STC Morse, LLC to occupy the parking spaces to be utilized pursuant to this Agreement and the Outdoor Café Permit, as identified in that certain Parking Easement Agreement, dated _____, 2023, by and between the City and STC Morse, LLC.

11. If this Agreement is terminated under any of the provisions contained herein, Licensee shall remove the Outdoor Patio within thirty (30) days of termination. The site shall be restored to the same general condition as existed before the Outdoor Patio was installed, unless otherwise agreed to by the City. If the required work is not performed or completed to the City's satisfaction, the City shall have the right to perform or complete such work. Licensee agrees to reimburse the City for performance of such work within thirty (30) days of invoice by the City. Non-payment of invoices shall constitute a lien against the 106 S. Riverside Ave. property.

12. The Outdoor Patio when installed does not become a part of or an interest in the City Parking Lot, the air rights above and below or the underlying property. This Agreement shall not be construed to grant any interest in realty or any other possessory interest beyond the irrevocable, permanent and exclusive license to the Licensee, as provided herein.

13. Licensee is responsible for the cost of installation, maintenance, and removal of such the Outdoor Patio and is responsible for any damage caused to the City Parking Lot resulting from such installation, maintenance, and removal.

14. The terms of this Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns.

15. The parties acknowledge that the licensed area is part of the City Parking Lot and that the City Parking Lot is owned by the City and is currently exempt from any tax assessment for real estate or any other taxes. In the event that the City Property or any part thereof becomes subject to real estate or other taxes arising out of this License Agreement, the Licensee shall be liable for those real estate or other taxes and will pay said taxes as they become due and owing.

16. This Agreement may be enforced either at law or in equity, with the non-breaching Party entitled to injunctive relief and/or monetary damages. If any action for

enforcement of this Agreement is brought, the non-prevailing Party in such action shall reimburse the prevailing Party for its attorneys' fees and related costs in such action.

17. Licensee shall not assign this Agreement or its rights and duties under this License, without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion.

18. This Agreement may be modified or amended only by a written instrument executed by the Parties, or their respective permitted successors or assigns.

19. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

Dated this ____ day of _____, 2024.

Licensee:

Pollyanna Brewing Company
an Illinois Corporation

City:

CITY OF ST. CHARLES,
an Illinois Municipal Corporation

By: _____

By: _____
Mayor

Subscribed and sworn to before me
this ____ day of _____, 2024.

Attest: _____
City Clerk

Notary Public

Subscribed and sworn to before me
this ____ day of _____, 2024.

Notary Public

Exhibit A:
City Parking Lot Legal Description

Lot 5 and 6 (except the northerly 25 feet thereof, and the portion of said Lot 5 dedicated for public right of way) in Block 10 of the Original Town of St. Charles, in the City of St. Charles, Kane County, Illinois.

PIN # 09-27-391-003

Exhibit B:
106 S Riverside Ave. Legal Description

That part of Lots 2, 3, 4, 5, 6 and 7, except the south 1 inch of the northerly 25 feet, 1 inch of the westerly 5 feet of Lot 7, in Block 10 of the Original Town of St. Charles, on the east side of the Fox River, described as follows: Commencing at the northwest corner of said Lot 4; thence southerly along the westerly line of said Block, 56 feet, 7 ½ inches to the center line of a partition wall extending 101 feet, 6 inches, to the east face of the east wall of said building on the northerly part of said Lots 2, 3 and 4; thence northerly along the east face of the said wall 56 feet, 7 ½ inches to the north line of Block 10; thence easterly along the north line of Block 10 aforesaid, 4 feet to the east line of the westerly 5 feet of Lot 2; thence southerly along the easterly line of the westerly 5 feet of Lot 2 to the north line of Lot 7; thence southerly parallel with the west line of Lot 7, a distance of 25 feet, 1 inch; thence westerly parallel with the northerly line of Lots 7, 6 and 5 a distance of 105.6 feet to the westerly line of said Block 10; thence northerly along the westerly line of said Block 69.03 feet to the place of beginning, in the City of St. Charles, Kane County, Illinois.
PIN # 09-27-391-002

Exhibit C:
Outdoor Patio Location Boundary

Exhibit D:
Insurance Requirements

The applicant for an Outdoor Café Permit shall provide at its sole cost and expense, and shall maintain in effect during the entire period of the permit, insurance at a minimum in at least the following manner, or equivalent coverage determined acceptable by the City Administrator:

1. Worker's Compensation Insurance in at least the required statutory limits.
2. Comprehensive General Liability Insurance, including owner's protective liability insurance and contractual liability insurance covering claims for personal injury and property damage with limits of at least two million (\$2,000,000.00) dollars per occurrence, and two million (\$2,000,000.00) dollars for any single injury.
3. Umbrella Liability Insurance with limits of at least one million (\$1,000,000.00) dollars per occurrence.
4. Liquor Liability Coverage for any establishment serving alcohol on public property.
5. Prior to issuance of an Outdoor Café permit, the permittee shall provide the City with copies of the certificates of insurance for the required policies for each type of insurance naming the City as an additional insured party.
6. The required insurance policies shall each provide that they shall not be changed or cancelled during the life of the Outdoor Café Permit until 30 days after written notice of such change has been delivered to the City.