

City Council Agenda Memo

From: Bonnie Foster, City Clerk
Council Meeting: August 8, 2023
Subject: On-Off Sale Malt License Transfer: Ray's Corner
Person(s) Responsible: Bonnie Foster, City Clerk

Summary:

The City of Brookings has received an application to transfer the On-Off Sale Malt License for Ray's Corner, 401 Main Avenue, from Fergen Enterprise, Inc., Mike Fergen, owner, to Icon Investments, Todd Voss, owner. Legal description: Lot 1, Ray's Corner Addition.

Background:

A public hearing and action by the local governing body is required to approve all alcohol license transfers. The On-Off Sale Malt License would be effective upon State Department of Revenue approval and license issuance, and subject to an annual renewal.

This on-sale malt license does not have Video Lottery authorization. If Video Lottery is requested, a public hearing and action by the City Council will be required.

Item Details:

This is a request to transfer the On-Off Sale Malt License for Ray's Corner, 401 Main Avenue, from Fergen Enterprise, Inc., Mike Fergen, owner, to Icon Investments, Todd Voss, owner.

Chapter 6, Article 2, Section 6-42 of the City Code of Ordinances pertains to the Application Review Procedure. The city council shall review all applications submitted to the city for available on-sale alcoholic beverage agreements and for all alcoholic beverage licenses in accordance with SDCL Chapter 35-2 (SDCL 35-2-1 et seq.) and in accordance with the following factors:

- 1) Type of business which applicant proposes to operate. On-sale alcoholic beverage operating agreements and on-sale alcoholic beverage licenses may not be issued to convenience grocery stores, gas stations or other stores where groceries or gasoline are sold unless it can be established that minors do not regularly frequent the establishment.
- 2) Manner in which the business is operated. On-sale alcoholic beverage operating agreements and on-sale alcoholic beverage licenses may not be issued to

establishments which are operated in a manner which results in minors regularly frequenting the establishment.

- 3) Extent to which minors are employed in such a place of business. On-sale alcoholic beverage operating agreements and on-sale alcoholic beverage licenses may not be issued to convenience grocery stores, gas stations or other stores where groceries or gasoline are sold and which regularly employ minors.
- 4) Adequacy of the police facilities to properly police the proposed location. The city council shall inquire of the city manager whether the police department can adequately police the proposed location.
- 5) Other factors. The hours that business is conducted shall be considered by the city council in its review of applications for on-sale alcoholic beverage operating agreements and on-sale alcoholic beverage licenses.

(Code 1996, § 5-20) State Law reference - Local license approval, SDCL 35-2-1.2.

SDCL 35-2-1.2. Applications submitted to local governing body--Fee--Approval or disapproval. Any applicant the transfer of an existing license shall submit an application to the governing body of the municipality in which the applicant intends to operate, The applicant shall submit the required fee with the application. The governing body may approve the transfer of an existing license if the governing body considers the applicant suitable to hold the license and the proposed location is suitable.

The governing body may disapprove an application for the transfer of an existing license issued under subdivision 35-4-2(4), (6), or (13) if:

- 1) The approval of the application permits a person, corporation, or business entity to possess more than one-third of the licenses available to be issued in the jurisdiction; and
- 2) The governing body determines that possession of more than one-third of licenses available is not in the public interest.

Complete City Code and SDCL References are in the attached document.

Legal Consideration:

None

Strategic Plan Consideration:

Economic Growth – established business changing ownership.

Financial Consideration:

License Transfer Fee: \$150 (\$75 to the City / \$75 to the State of South Dakota).

Options and Recommendation:

The City Council has the following options:

1. Approve as presented
2. Amend
3. Deny

4. Refer to a Study Session
5. Discuss / take no action / table

Staff recommends approval.

Supporting Documentation:

Legal Notice

City Code and SDCL References

Location Map