

City Council Agenda Memo

From: Bonnie Foster, City Clerk

Council Meeting: August 8, 2023

Subject: Resolution 23-071: Full Service On-Sale Restaurant Liquor License Operating Agreement – Boss' Pizzeria & Sports Bar

Person(s) Responsible: Bonnie Foster, City Clerk

Summary:

The City of Brookings has received an application to transfer the Full Service On-Sale Restaurant Liquor Operating Agreement for 2515 6th Street, from 25th Avenue LLC, dba The Lodge, Dennis Bielfeldt, owner, to On In 2 LLC, dba Boss' Pizzeria & Sports Bar, Dallas Wilkinson and Darren Newborg, owners. Legal description: Block 12, Telkamp Addition.

Background:

A public hearing and action by the local governing body is required. This Resolution allows the City Manager to enter into the first five years of the 10-year Alcohol Management Agreement effective through 2028. This license would be effective upon State Department of Revenue approval and license issuance, and subject to an annual renewal.

Item Details:

This is a transfer of an existing Full Service On-Sale Restaurant Liquor License from 25th Avenue LLC, dba The Lodge, Dennis Bielfeldt, owner, to On In 2 LLC, dba Boss' Pizzeria & Sports Bar, Dallas Wilkinson and Darren Newborg, owners, for 2515 6th Street. A new Alcohol Management Agreement would be entered into with the City and On In 2 LLC.

On In 2 LLC, dba Boss's Pizzeria, needs to be the holder of the Operating Agreement, as per SD Department of Revenue communications, rather than the hotel.

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) The manner in which the business is operated: on-sale alcoholic beverage operating agreements and alcoholic beverage licenses may not be issued to establishments which are operated in a manner which results in minors regularly frequenting the establishment.
- 3) The 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 for a new retail license, except as set forth in § [35-2-1.1](#), or the transfer of an existing license shall submit an application to the governing body of the municipality in which the applicant intends to operate, or if outside the corporate limits of a municipality, to the governing body of the county in which the applicant intends to operate. The applicant shall submit the required fee with the application. The governing body may approve the application for a new retail license or 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 a new retail license or 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.

Any application for the reissuance of a retail license may be approved by the municipal or county governing body without a hearing unless in the past year the licensee or one or more of the licensee's employees have been subjected to a criminal penalty for violation of the alcoholic beverage control law or the license has been suspended.

Source: SDC 1939, §§ 5.0206, 5.0305; SL 1945, ch 21, § 1; SL 1951, ch 11; SDC Supp 1960, § 5.0204 (14); SL 1961, ch 14; SL 1964, ch 9; SL 1965, ch 12; SDCL §§ 35-4-32, 35-4-33, 35-6-15; SL 1971, ch 211, § 13; SL 2008, ch 37, § 140; SL 2011, ch 171, § 1; SL 2017, ch 164, § 1; SL 2018, ch 213, § 12.

Legal Consideration:

The City Attorney has reviewed the transfer and application language and assisted in the development of the Acceptance Agreement to protect the City's interest.

Strategic Plan Consideration:

Economic Growth – existing business changing ownership.

Financial Consideration:

License Transfer Fee: \$150.

Options and Recommendation:

The City Council has the following options:

1. Approve as presented
2. Amend
3. Deny
4. Move the item to a Study Session
5. Discuss / take no action / table

Staff recommends approval.

Supporting Documentation:

Resolution

Legal Notice

Operating Agreement

Acceptance Agreement

Location Map