

City Council Agenda Memo

From: Bonnie Foster, City Clerk

Council Meeting: December 14, 2021

Subject: On-Off Sale Malt License for Corner Pantry #24, Suite B

Presenter: Bonnie Foster, City Clerk
Steve Britzman, City Attorney

Summary:

The City of Brookings has received a request for an On-Off Sale Malt License, with video lottery, for MG Oil Company, dba Corner Pantry #24, Marlyn Erickson and Troy Erickson, owners, 600 6th Street. Legal description: Lots 5-7, Block 11, Second Addition, Suite B. All required documents have been submitted for this application.

The video lottery request will be handled under separate City Council action.

Background:

MG Oil Company, Marlyn Erickson and Troy Erickson, owners, have submitted a request for an application for an On-Off Sale Malt License, with video lottery, for Corner Pantry #24 located at 600 6th Street.

This item originally came to the City Council on March 23, 2021. The motion on the On-Off Sale Malt Licensed failed, and the video lottery request was removed from the agenda as the alcohol requirement was denied.

City Council Meeting Minutes excerpt March 23, 2021: On-Off Malt License, with Video Lottery. A public hearing was held on a request for an On-Off Sale Malt License for MG Oil Company, dba Corner Pantry #24, Marlyn Erickson and Troy Erickson, owners, 600 6th Street., Suite B, legal description: Lots 5-7, Block 11, Second Addition, Suite B. A motion was made by Council Member Wendell, seconded by Council Member Collins, that the On-Off Malt License be approved. The motion failed by the following vote: Yes: 2 - Wendell, and Tilton Byrne; No: 4 - Corbett, Niemeyer, Bacon, and Collins; Absent: 1 – Brink.

Legal Procedure:

Following the March 23, 2021 Public Hearing and action on the request for an On-Off Sale Malt Beverage License, legal counsel for MG Oil Company objected to the Hearing procedure. Particularly, objection was made that there was no record made as to the reason or reasons for the denial of the request for the On-Off Sale Malt Beverage License.

The City Attorney has determined that there should be a record made in the event a Malt Beverage License is denied. In order to rectify the issue, this Public Hearing and action has been scheduled so that the matter can be fully considered again, and so an appropriate record can be made. Accordingly, it will be appropriate to provide the reasons supporting the individual votes to approve or deny the On-Off Sale Malt Beverage License application. In summary, this Public Hearing and action will be treated as a new application for the On-Off Sale Malt Beverage License, and the action taken will replace the action taken on March 23, 2021 on the original request.

MG Oil Company, Marlyn Erickson and Troy Erickson, owners, purchased the business at 600 6th Street in November 2020. A transfer of the existing On-Off Sale Malt License, with video lottery, was approved by the City Council on November 24, 2020.

The owners want to establish an additional On-Off Malt License for Suite B, for the allowance of up to 10 video lottery machines. Approval would allow for 2 On-Off Malt Licenses at this location, with up to 20 video lottery machines.

A public hearing and action by the local governing body is required to approve all alcohol licenses. The On-Off Sale Malt License would be effective 2022, and is subject to an annual renewal. If approved, and following the issuance of the Occupancy Permit by the Community Development Department, the application would be forwarded to the State Department of Revenue for final action and issuance of the licenses, and would then be subject to annual renewal processes.

Item Details:

MG Oil Company has filed a request for an additional On-Off Sale Malt License, with video lottery, for Suite B, at the 600 6th Street location, allowing up to 10 additional video lottery machines. Any licenses approved would be effective pending occupancy permit issuance and final inspection of the property per the Community Development Department.

This location will undergo some remodeling in order to add Suite B, which will utilize the second On-Off Malt License, with 10 video lottery machines.

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....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 application for a new retail 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...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.

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:

City Attorney Steve Britzman has been working with MG Oil on this item.

Strategic Plan Consideration:

Economic Growth – MG Oil would see economic growth in their business with this addition.

Financial Consideration:

There is a \$150 Annual On-Off Malt License renewal fee, as well as a \$50/machine annual Video Lottery fee.

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:

Memo

City Attorney Opinion on AR 48:02:11:02

Legal Notice

Proposed Building Plans

Location Map