

City Council Agenda Memo

From: Bonnie Foster, City Clerk

Council Meeting: August 8, 2023

Subject: On-Off Sale Malt License, with Video Lottery authorization: 4 Aces Casino, Suite D

Person(s) Responsible: Bonnie Foster, City Clerk

Summary:

The City of Brookings has received an application for an On-Off Sale Malt License, with Video Lottery authorization, from 4 Aces Casino, Suite D, Todd Voss, owner.

Separate action will be held for the Video Lottery authorization request.

Background:

A public hearing and action by the local governing body is required. This license would be effective upon State Department of Revenue approval and license issuance, and subject to an annual renewal.

This business is located at 141 Main Avenue South, is proposed to hold 4 Suites, each with an On-Off Malt License, with 10 video lottery machines in each suite.

City License issuance is dependent upon Occupancy Permit issuance and final inspection per the Community Development Department.

The existing business does not have any alcohol compliance failures for the past five years.

Item Details:

4 Aces Casino, Todd Voss, owner, has applied for an On-Off Sale Malt License for 141 Main Avenue South, Suite D.

This location will be remodeled to add an additional suite (Suite D) for video lottery, holding up to 10 video lottery machines. In order to satisfy State Video Lottery Regulations, there must be separate and distinct physical facilities maintained and utilized for the sale and consumption of alcoholic beverages for each separately described premises.

Their plan indicates the separate spaces have been designated, and sales and consumption of alcoholic beverages are intended to occur at these 4 locations within the

building. This would comply with the video lottery requirements if the City Council approves the additional On-Off Sale Malt License and if the City Council also approves a Video Lottery authorization for this location within the building.

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:

None.

Strategic Plan Consideration:

Economic Growth – expansion of an existing business.

Financial Consideration:

License Fee: \$300 (\$150 to the City / \$150 to the State of SD)

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 requests City Council to make a recommendation.

Supporting Documentation:

Memo

Legal Notice

Video Lottery: SDCL and Administrative Rule

Proposed Building Plans

Location Map