

City Council Agenda Memo

From: Bonnie Foster, City Clerk

Council Meeting: December 14, 2021

Subject: Video Lottery for Corner Pantry #24, Suite B

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

Summary:

The City of Brookings has received a request for 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.

Background:

MG Oil Company, Marlyn Erickson and Troy Erickson, owners, have submitted a request for video lottery, Suite B, at 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 Suite B, for the allowance of up to 10 video lottery machines, linked to the additional On-Off Sale Malt License. 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. If approved, and following the issuance of the Occupancy Permit by the Community Development Department, the application would be forwarded to the State Lottery Office for final action and issuance of the license, and would then be subject to annual renewal processes.

Item Details:

MG Oil Company has applied for an additional On-Off Malt License, with video lottery, for Suite B, allowing up to 10 additional video lottery machines at this location. 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. 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 this separately described premises.

Their plan indicates the separate spaces have been designated, and sales and consumption of alcoholic beverages are intended to occur at this location within the building. This would comply with the video lottery requirements if the City Council approves the additional On-Off Sale Malt Licenses and if the City Council also approves Video Lottery for this location within the building.

SDCL [42-7A-64](#). Additional criteria for on-sale alcoholic beverage licensees in video lottery licensed establishments. A municipality or county may consider, in addition to the criteria for the issuance of an on-sale alcoholic beverage license, the following criteria for authorizing video lottery machine placement in establishments issued an on-sale alcoholic beverage license pursuant to subdivisions 35-4-2(12) and (16):

1. The number of establishments currently licensed for video lottery;
2. The proximity of the business to other establishments licensed for video lottery;
3. The type of business and manner in which the applicant proposes to operate it;

4. The location of the business in relation to other businesses, residential areas, or activities within the same general area;
5. The extent to which minors frequent a business connected to the one proposed; and
6. The effect the proposed business has on economic development.

The governing board shall certify on each application filed with the Department of Revenue for a license granted under subdivisions 35-4-2(12) and (16) whether the business premises is authorized for video lottery machine placement. An existing video lottery license may not be denied renewal or transfer based upon the criteria set forth in this section. The lottery may issue a video lottery license to those establishments certified pursuant to this section. Notwithstanding the above provisions, a county or municipality may not restrict the number of alcoholic beverage licenses issued under subdivisions 35-4-2(12) and (16) and certified for video lottery to a number less than those licensed as video lottery establishments on March 1, 1994.

Source: SL 1994, ch 329, § 1; SL 2003, ch 272 (Ex. Ord. 03-1), § 82; SL 2011, ch 1 (Ex. Ord. [11-1](#)), § 161, eff. Apr. 12, 2011.

Legal Consideration:

City Council action would allow up to 10 Video Lottery machines for each on-sale malt beverage license approved, resulting in up to 20 Video Lottery machines for this location, if approved.

Strategic Plan Consideration:

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

Financial Consideration:

Video Lottery fees: \$50 per machine per year.

Options and Recommendation:

The City Council has the following options:

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

Staff recommends approval.

Supporting Documentation:

Memo

City Attorney Memo on Video Lottery – 2018

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

Video Lottery: SDCL and Administrative Rule

Legal Notice

Proposed Building Plans
Location Map
Current Video Lottery List