

City Council Agenda Memo

From: Bonnie Foster, City Clerk

Council Meeting: August 18, 2020

Subject: Video Lottery

Person(s) Responsible: Bonnie Foster, City Clerk

Summary:

At the July 28th City Council meeting a request was made to have a discussion on Video Lottery at a future Study Session. Staff has prepared a history of South Dakota and Brookings law on the subject for presentation. The existing parameters given by the SD Supreme Court will be outlined for the City Council's awareness when determining approval or denial of future applications.

Background:

South Dakota was the premier state to allow Video Lottery; beginning on October 16, 1989. The SD Supreme Court shut down Video Lottery in the state on August 13, 1994 declaring it unconstitutional. In November 8, 1994, it was brought to a vote of the people and Video Lottery was reinstated and restarted on November 22, 1994. Since then, a vote to repeal video lottery has been brought to a vote of the people two times, ultimately being rejected by the people.

As to the history of Video Lottery in Brookings, we have been unsuccessful in identifying the date the first machines were installed after March 1, 1994, or the quantity of machines within the City of Brookings at that time. The SD Dept. of Revenue was able to provide the attached spreadsheet, which provides a record of the quantity of machines since 2010.

Item Details:

Video Lottery SDCL regulations very closely follow SDCL alcohol regulations. Only on-sale alcohol license holders are eligible for video lottery placement within their business. The number of on-sale alcohol licenses a municipality can issue is regulated in SDCL Chapter 35.

In order to satisfy State Video Lottery Regulations (SDCL Chapter 42), there must be separate and distinct physical facilities maintained and utilized for the sale and consumption of alcoholic beverages for each separately described premises for additional video lottery.

As an example, an applicant applying for 2 additional on-sale malt beverage licenses for sale and consumption within the same building, which if approved, would be eligible for

up to 10 additional video lottery machines each. Each malt beverage license would require separate physical spaces (SDCL 42-7A-37.1) within the same building designated for the sales and consumption of alcoholic beverages.

The Supreme Court decision of *Rick Law vs. City of Sioux Falls vs. SD Lottery* in September 2011, concluded that “the SD Legislative Video Lottery Scheme is sufficiently comprehensive to make reasonable the inference that the Legislature left no room for supplementary regulation of video lottery by municipalities.” However, municipalities may use additional criteria (SDCL 42-7A-64) to authorize video lottery machine placement in establishments issued an on-sale alcoholic beverage license.

The criteria are as follows:

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.

An existing video lottery license may not be denied renewal or transfer based upon the criteria set forth in this section (SDCL 42-7A-64).

Legal Consideration:

Each On-Sale Alcohol License may be granted up to 10 Video Lottery machines. Current applications received by the City of Brookings are asking for an additional 1-2 on-sale alcohol licenses in order to add an additional 10-20 video lottery machines at one physical location.

Financial Consideration:

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

Supporting Documentation:

Memo

City Attorney Memo on Video Lottery – 2018.05.02

City Attorney Opinion on Administrative Rule 48:02:11:02 – 2020.04.24

Video Lottery: SDCL and Administrative Rule

SD Supreme Court decision – 2011

Alcohol & Video Lottery List - Brookings

Video Lottery Counts – SDDOR

Video Lottery History – Brookings

Video Lottery History – South Dakota

Map – Video Lottery establishment locations