

City Council Agenda Memo

From: Bonnie Foster, City Clerk

Council Meeting: March 23, 2021

Subject: Video Lottery for Ray's Corner, Suite B

Person(s) Responsible: Bonnie Foster, City Clerk

Summary:

The City of Brookings has received a request for Video Lottery for Fergen Enterprises, Inc., dba Ray's Corner, Mike Fergen, owner, 401 Main Avenue. Legal description: East 119 feet of Lot 1, Lot 2, Block 6, Original Plat Addition, Suite B. All required documents have been submitted.

Background:

Fergen Enterprises, Inc., Mike Fergen, owner, purchased the adjacent business at 403 Main Avenue in early 2021. The owners plans are to connect the 401 and 403 locations with an internal doorway, and are wanting an additional On-Off Malt License, with video lottery, for Suite B, to add a separate location within with up to 10 video lottery machines. Approval would allow up to 20 video lottery machines at this location.

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:

Mike Fergen 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.

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. Do nothing

Staff recommends approval.

Supporting Documentation:

City Attorney Memo on Video Lottery – 2018.05.02

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

Video Lottery: SDCL and Administrative Rule

Legal Notice

Location Map

Proposed Building Plan

Current Video Lottery List