

# City Council Agenda Memo

**From:** Bonnie Foster, City Clerk

**Council Meeting:** September 14, 2021

**Subject:** On-Off Malt License, with Video Lottery, for Commonwealth Gaming & Holdings Corp, dba Deuces Casino. Location: 223 6<sup>th</sup> Street, Suite 105D

**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, for Commonwealth Gaming & Holdings Corp, dba Deuces Casino, Suite 105D, Bryant Soberg and Kirby Muilenburg, owners. All required documents have been submitted for this application. Pending occupancy permit issuance and final inspection per the Community Development Dept.

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

## **Background:**

A public hearing and action by the local governing body is required to approve all alcohol licenses. If approved, the application would be forwarded to the State Department of Revenue for final action and issuance of the license, and would be subject to annual renewal processes.

This business located at 223 6<sup>th</sup> Street, is proposed to hold 4 Suites, each with an On-Off Malt License, allowing up to 10 video lottery machines in each suite.

Commonwealth Gaming & Holdings Corp, currently has the following alcohol and video lottery licenses at the 223 6<sup>th</sup> Street location:

- Suite 105A – On-Off Sale Malt License, On-Off Sale Wine License, 10 Video Lottery Machines
- Suite 105B – On-Off Sale Malt License, On-Off Sale Wine License, 10 Video Lottery Machines
- Suite 105C – On-Off Sale Malt License, On-Off Sale Wine License, 10 Video Lottery Machines

## **Item Details:**

Commonwealth Gaming & Holdings Corp, currently has 3 On-Off Sale Malt License, with 30 video lottery machines at this location: 223 6<sup>th</sup> Street, Suites 105 A, B, and C.

The owner is remodeling this business to add an additional suite, Suite 105D, for an additional 10 video lottery machines at this location.

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

**Financial Consideration:**

The On-Off Sale Malt License would be effective following state review and approval, and then subject to an annual renewal.

**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. Do nothing

Staff recommends approval.

**Supporting Documentation:**

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

Legal Notice

Location Map

Proposed Building Plan