



Mission Statement

To provide exemplary experiences, services & spaces that create opportunities for everyone to learn, engage and thrive.

YANKTON BOARD OF CITY COMMISSIONERS

Work Session Meeting beginning at 6:00 P.M.

Monday, September 25, 2023

City of Yankton Community Meeting Room

Located at the Career Manufacturing Technical Education Academy formerly known as Technical Education Center • **1200 W. 21st Street • Room 114**

If you would like to watch the City Commission meeting you can do so by accessing the City of Yankton's YouTube Live Channel. <https://www.youtube.com/c/cityofyankton/live>

TV Schedule: Mondays at 7:03 p.m. and Tuesday following meeting at 1:00 p.m.
on Midco Channel 3 and Bluepeak Channel 98.

- 1. Roll Call**
- 2. Public Appearances**
- 3. Video Lottery Licensing Discussion**
- 4. Other Business**

Other business is a time for City Commissioners to address the commission regarding matters not on the agenda. These items will be deliberated by the governing body and will not be acted upon at this time. Items mentioned may be added to a future City Commission meeting or work session for deliberation or action.

- 5. Adjourn the Work Session of September 25, 2023**

To: Yankton City Commission

From: Ross K. Den Herder, City Attorney

Date: September 19, 2023

Re: Cap on Video Lottery Licenses in Yankton

The City Manager received a request from a local citizen for the City to expand the number of video lottery licenses available to the public within the jurisdictional limits. In preparation for submitting this question for the Commission's consideration, the City Manager asked me to prepare a historical background of the City's current licensing regulatory structure for video lottery.

By vote of the public in 1986, the South Dakota constitution was amended to permit a state-run lottery. In 1989, the South Dakota legislature expanded the authorized games to include video lottery. Video lottery licenses were then made available to those who held on-sale liquor, malt beverage, wine, and cider alcohol licenses with a cap of ten (10) video lottery machines permissible for each license. However, when video lottery was introduced into the communities of South Dakota, initially cities did not have any authority to regulate the industry.

As an initial foray into municipal regulation of video lottery, in 1992 the legislature adopted what is now SDCL 35-4-103 which permitted municipalities to charge an optional fee not to exceed \$50.00 per machine, capped at one (1) license per location. In response to the adoption of that statute, in 1992 the Yankton City Commission adopted Ord. 662 (codified as Ordinance Sec. 3-13) which imposed the \$50.00 per machine fee. A copy of that ordinance is attached.

In 1994, the South Dakota legislature adopted what is now SDCL 42-7A-64 which granted municipalities the power to consider "the number of establishments currently licensed for video lottery" when deciding whether to approve the issuance of a wine, cider, or malt beverage license. This is the foundation of the power of municipalities to limit the number of video lottery licenses within its boundaries.

In January of 1998, the Yankton City Commission debated how and whether to limit video lottery as part of a larger debate about limiting the total number of alcohol licenses generally. At that time, staff prepared five (5) different options of ordinances for the Commission to consider. See the attached Memorandum 98-23 with all five draft ordinances attached thereto. At that time, the Commission elected to debate and vote upon an option (specifically "Option 5") that attempted to limit the number of on-off sale malt beverage licenses, on-sale wine licenses, and off-sale malt beverage licenses. If approved, the limitations on the numbers of available licenses would have created a *de facto* limit on video lottery licenses which must be tethered to such alcohol licenses. The ordinance was rejected.

In May of 1998, the Commission again took up the debate. However, the focus at that time was specifically limiting the number of video lottery licenses, rather than limiting the number of

alcohol licenses generally. As shown in the attached Memorandum 98-84, the Commission debated and ultimately voted to approve a revised version of what had previously been proposed by staff in January of that year as “Option 2.” That ordinance (Codified as Ordinance Sec. 3-3) limited the number of video lottery licenses to one (1) for every three hundred fifty (350) citizens as determined by the last official census. At that time, the population limit capped video lottery at 39 licenses.

The population-based framework for limiting video lottery licenses was debated by the Commission again in May of 1999. The Commission adopted a revision to Ord. Sec. 3-3, which maintained the population-based limitation, but only for one more year. The ordinance was drafted to “sunset” after one year, presumably with the intention of forcing the Commission to resume the debate the following year. If the sunset period was allowed to expire, the effect would have been to eliminate the cap on video lottery licenses in Yankton all together.

In May of 2000, the City Commission did, in fact, resume the debate. At that time, attached Memorandum 00-77 reflects staff presented the Commission with four (4) options to consider regarding whether and how to regulate the number of video lottery licenses. At that time, the Commission elected to approve a revision to Ord. Sec. 3-3 that simply capped the number of available video lottery licenses at the then-existing limit of 39; thus, doing away with any population-based license limitation.

The version of Sec. 3-3 adopted in May of 2000 is the current version of the ordinance. It does not appear there has been any effort to change the cap since 2000. The current limit on video lottery licenses remains 39. There are, in fact, 39 active video lottery licenses within the City of Yankton.

The City Commission may reconsider whether there are enough video lottery licenses/establishments currently within the City of Yankton and vote to change its ordinance cap. Prompted by the request from a Yankton citizen, the City Attorney recommends that the Commission discuss whether to modify the cap on the number of available video lottery licenses that may operate within City limits. As you consider this issue, here are a few relevant things to be mindful of:

- (a) Based upon available census data, the City of Yankton has approximately 2,000 more citizens than it did in 2000.
- (b) There are fifteen (15) names of people or businesses that are currently on the City’s waiting list for a video lottery license. Because the list has been maintained for years, it is rather stale. It is unclear how many of these people or businesses remain interested, and there may also be new names to add to the list when word spreads that the Commission is discussing whether to expand the number of available licenses.
- (c) As you debate this issue, it is also important to be mindful that the existing limitation on the number of available video lottery licenses has created a real market value for the existing alcohol licenses to which they are attached. The current local market value for a malt beverage license with a video lottery license endorsement is around \$150,000.00 and

a similar liquor license is running as high as \$350,000.00. Those who have spent real money to acquire a license will argue that increasing the limit of available licenses “waters down” their very real financial investment.

- (d) Alcohol licenses with video lottery endorsements are, in fact, transferring with some regularity between citizens or their businesses as demonstrated by the license transfer requests regularly appearing on the Commission’s meeting agendas.

This request has been brought forward by a private citizen and is rooted in Commission-driven policy. As such, neither I nor staff will make a recommendation in favor or against this request. Any modification of the cap will require a change to the existing ordinance and communication with existing license holders regarding the potential impact.

-Ross K. Den Herder, City Attorney