



CITY OF RAPID CITY

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MEMORANDUM

TO: Mayor and City Council

FROM: Joel P. Landeen, Assistant City Attorney

DATE: 12-8-11

RE: Impact of Casino Buffer Ordinance on Existing Establishments

The proposed ordinance creating a buffer between video lottery casinos and residentially zoned property will have minimal impact on currently licensed businesses. Per state statute, the ordinance only applies to video lottery licenses issued in conjunction with wine and malt beverage retailer alcohol licenses. It also prohibits the City from denying the renewal of an existing license or denying the transfer ownership of the licenses based on the ordinance. Existing casinos will be allowed to continue operations and the owners will be allowed to sell the license(s) to new owners. The prohibition was placed in the chapter of the city code regulating video lottery, so it is not a land use regulation. Therefore, casinos which are currently in existence would not be impacted by the change and would not become legal non-conforming uses. Legal non-conforming uses are created when the underlying zoning of a property is changed and the current use is not allowed in the new zoning district, or the underlying rules applicable within a district are changed and a property no longer complies with the new rules. In this situation the underlying zoning of the property where the casinos are located is not being changed and the rules applicable to the zoning district are not being changed. Since it is not a land use regulation in a traditional sense, the owners could physically alter their businesses without running afoul of city ordinances. While the new ordinance would have minimum impact on existing casinos, it would prevent current casino owners from moving additional video lottery licenses to a current location that was located within the buffer zone in order to increase the number of video lottery machines authorized at that location.

The ordinance is also different from the video lottery ordinance adopted by Sioux Falls which the South Dakota Supreme Court recently struck down. The Sioux Falls ordinance established a video lottery buffer that regulated the location of all video lottery machines without regard to the

alcohol license the video lottery was authorized in conjunction with. Sioux Falls relied on its general police powers in the area of zoning as authority for the regulation. The proposed Rapid City ordinance does not rely on the City's general police power. Instead it relies on the specific statutory authority to regulate the location of video lottery in conjunction with alcohol licenses that are issued to wine and malt beverage retailers that is granted to the City per SDCL 42-7A-64.