



**Special Meeting Agenda
City Council**

12:00 p.m. (Noon) Special Meeting
Friday, October 1, 2021
Jack Powell Conference Room – City Hall
25 Center Street
Vermillion, South Dakota 57069

1. **Roll Call**
2. **Adoption of the Agenda**
3. **Visitors to Be Heard.**
4. **Public Hearings.**
 - a. Public Hearing for Retail (On-Off Sale) Malt Beverage with SD Wine License for HOLLARR LLC at 9 W. Main Street
5. **Adjourn.**

Access the City Council Agenda on the web – www.vermillion.us

Addressing the Council: Persons addressing the Council shall be recognized. Please state your name and address. Presentations are limited to 5 minutes. For those who do not appear on the agenda, no decision is to be expected at this time.

Meeting Assistance: If you require assistance, alternative formats and/or accessible locations consistent with the Americans with Disabilities Act, please contact the City Manager's Office at 677-7050 at least 3 working days prior to the meeting.

Council Meetings: City Council regular meetings are held the first and third Monday of each month at 7:00 p.m. If a meeting falls on a City holiday, the meeting will be scheduled for the following Tuesday.

Live Broadcasts of Council Meetings on Cable Channel: Regular City Council meetings are broadcast live on Cable Channel 3.

As a courtesy to others, we ask that cellular phones and other electronic devices be turned off during the meeting.

Council Agenda Memo

From: Katie Redden, Finance Officer

Meeting: October 1, 2021

Subject: Retail on-off sale malt beverage and SD Farm Wine license for Patrick Masur for HOLLARR, LLC at 9 W. Main Street for the period October 1, 2021 to June 30, 2022

Presenter: Katie Redden

Background: An application was received for a retail on-off sale malt beverage and SD Farm Wine license from Patrick Masur for HOLLARR LLC at 9 W. Main Street. The notice of hearing is included in the packet. The on-off sale malt beverage and SD Farm Wine license is for the licensing period of October 1, 2021 until June 30, 2022.

Discussion: The City Council has the ability to issue a license on two criteria: suitable applicant and suitable location. As to the suitable applicant, Patrick Masur has submitted the information for the DCI and FBI background check. The DCI background check was received by the Police Chief, and his memo states that there is no information to preclude the issuance of the license. With respect to the location criteria, a malt beverage and SD Farm Wine license has been issued to this location in the past. A recent western South Dakota legal ruling defined that other items can impact the location criteria. The character of neighborhoods and businesses tend to change over time and a local governing body has a legitimate interest in managing the alcoholic beverage licensing in its jurisdiction to assess whether an alcohol sales location continues to be suitable. The following are the city ordinances on suitable applicant and suitable location.

§ 112.20 SUITABLE APPLICANT.

(A) South Dakota Codified Law § 35-2-1.2 requires the City Council to determine whether retail alcohol beverage license applicants are suitable before issuing, transferring or renewing said licenses. This determination is required annually for each license the applicant seeks. In order to effectuate a thorough determination of suitable applicant eligibility for license issuance, new applicants must submit to a criminal background check to determine suitability. Each new applicant shall make arrangements with a law enforcement agency and submit to the fingerprinting process. The applicant must also provide to law enforcement payment to the South Dakota Division of Criminal Investigation and FBI in an amount necessary to cover the costs of the criminal record check. These actions must be taken by an applicant prior to publication of hearing notice required by South Dakota law. The applicant's completed application will be attached to the certification of the law enforcement agency when received.

(B) A DISQUALIFYING CRIMINAL RECORD for alcoholic beverage license purposes means any conviction for any felony, a crime of violence as defined in SDCL § 22-1-2(9), a sex offense as defined in SDCL § 22-24B-1, or trafficking in controlled drugs or substances which when and where committed would constitute such in the state of South Dakota. Unpardoned convictions of any crime of moral turpitude as defined by SDCL § 22-1-2(25) which when and where committed would constitute such in the state of South Dakota

may constitute a disqualifying record as determined by the City Council on a case-by-case basis. Any criminal conviction not disclosed by an applicant on his application form may be treated as a disqualifying record. Any criminal conviction may be considered in making license issuance decision. Suspended imposition of sentence will not be considered a conviction.

(C) An applicant subject to this policy shall provide to the law enforcement agency performing the fingerprinting process cash, check, or money order in an amount necessary to cover the costs of fingerprints for the criminal record check.

(D) An applicant or principal in any business entity that is an applicant having any indebtedness to the city must satisfy said indebtedness before the City Council will consider any application for alcoholic beverage license issuance or renewal, except for plan one or two special assessment obligations that are not in arrears.

§ 112.21 SUITABLE LOCATION.

(A) South Dakota Codified Laws § 35-2-1.2 requires the City Council to determine whether retail alcohol beverage license applications propose suitable locations before issuing or renewing said licenses. This determination is required annually for each license the applicant seeks. The following are nonexclusive criteria established to assist in determining suitable location status:

- (1) Identification of a garbage hauler to be utilized by the business and the frequency of the garbage pickup;
- (2) Zoning restrictions, and
- (3) Neighborhood characteristics.

(B) In determining suitable location, the City Council will also utilize factors developed through South Dakota case law. This includes the manner in which the business is operated; the extent to which minors frequent or are employed in such place of business; the adequacy of police facilities to properly police the proposed location, and other factors associated with the sale of alcoholic beverages, such as noise and litter.

§ 112.22 SUITABLE APPLICANT AND SUITABLE LOCATION CONSIDERATION.

(A) South Dakota codified laws and case law support the premise that the decision to issue an alcoholic beverage license is discretionary. Therefore, the city hereby establishes a two-tiered process to evaluate on-sale liquor applications. The first tier will assess the suitability of the applicant or principals and whether the location is suitable according to §§ 112.20 and 112.21 of this chapter.

(B) Upon finding evidence of the suitability of the applicant and location, the City Council will consider second tier criteria. This process can include examining the best location for economic and tourism development, the best ancillary uses (restaurant, etc.) developed with the sale of liquor, the best location in accordance with the city long-range plan, the size of the facility, parking facilities, closeness to existing supplementing businesses, residences, and activities deemed important by the City Council.

Financial Consideration: The fee is \$300 for the retail on-off sale malt beverage license with the City retaining half (\$150) of the license fee for each license.

Conclusion/Recommendations: Following the input from the public hearing, the City Council is asked to make a decision on the approval or denial of the retail on-off sale malt beverage and SD Farm Wine license for Patrick Masur for HOLLARR LLC at 9 West Main Street for the licensing period of October 1, 2021 until June 30, 2022. If a motion is made to deny a license, the reason needs to be included in the motion.

NOTICE OF PUBLIC HEARING OF APPLICATIONS
FOR SALE OF ALCOHOLIC BEVERAGES

NOTICE IS HEREBY GIVEN THAT the Vermillion City Council on the 1st day of October, 2021 at the hour of 12:00 P.M. in the City Hall Jack "John" Powell Conference Room, 25 Center Street, will meet in special session to consider the following application for an alcoholic beverage license to operate within the municipality for the licensing period stated below, which has been presented to the City Council and filed in the Finance Officer's Office:

Retail (On-Sale) Malt Beverage with SD Farm Wine from October 1, 2021 until June 30, 2022:

HOLLARR LLC at 9 West Main Street.

NOTICE IS FURTHER GIVEN THAT any person, persons, or their attorney may appear and be heard at said scheduled public hearing who are interested in the approval or rejection of any such application.

Dated at Vermillion, South Dakota this 15th day of September, 2021.

Katie E Redden, Finance Officer

Publish: September 24, 2021

Published once at the approximate cost of _____.

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September 22, 2021

Attn: Katie Redden, Finance Director

From: Matt Betzen, Chief of Police

A handwritten signature in blue ink, appearing to be "MB", written over the name "Matt Betzen".

Re: New Retail (On-Sale) Malt Beverage with SD Farm Wine from October 1, 2021 Until June 30, 2022:

This is a new Malt Beverage license being requested by the owner of 9 West Main (formally Maya Janes) for a new bar, Hollarr, Inc.

A check of the Vermillion Police Department Records does not show any disqualifying contacted for the new applicant, Patrick Masur.

Mr. Masur submitted his fingerprints to the South Dakota DCI for a background. This background showed there was no record of criminal history in South Dakota.

Mr. Masur has reported he submitted fingerprints to the FBI. I have not received any information from the FBI at this time, which is not unusual as those checks frequently take up to three months.

At this time, I have no information that would preclude the issuance of this license.