

Portland Tribune

Lottery Row fight leads to new rules

Advocates threaten to sue if changes hit strip center business

BY STEVE LAW

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A showdown looms on Oregon State Lottery rules that enabled a retail strip center opposite Jantzen Beach mall to morph into a vice-ridden "Lottery Row" of 12 side-by-side retailers all offering booze and state video lottery gaming.

Fifteen months after state lottery managers promised to put the festering problem "on the front burner," the Oregon Lottery will have a final public hearing Tuesday, May 15, on proposed regulations that would permit no more than half the establishments at any strip center to host lottery terminals. The change in rules could go into effect in 2015, when retailers' master contract with the state lottery comes up for renewal, or, under an alternative proposal, immediately.

The Hayden Island neighborhood association wants the state to step in immediately, which would require the lottery to remove video gambling terminals at six of the 12 bars, restaurants or lottery delis.

"We're saying the problem is immediate; we've got to have immediate relief," said Ron Schmidt, chairman of the Hayden Island Neighborhood Network. "We don't want to see what happens to crime in the next three years. We want our neighborhood back today."

Hayden Island residents have an influential ally in House Democratic Leader Tina Kotek, who represents much of North and Northeast Portland.

"Because of public safety issues in the 'lottery row' area of Hayden Island, including a recent shooting and an overall increase in criminal behavior, it is imperative these rules be implemented immediately," Kotek testified at an April 27 public forum on the proposed rules.

Kotek earlier compiled data from the Portland Police Bureau showing that reported crimes within 1,000 feet of the strip center doubled from 621 in 2005 to 1,224 in 2010. That coincides with the conversion of several retail spaces at the strip center into lottery-oriented businesses.

"I don't believe voters ever intended to allow the kind of over-saturation of video lottery retailers that currently exists on Hayden Island," said Kotek.

Gov. John Kitzhaber wants to see the lottery take action on over-saturation of gambling establishments, said his spokesman, Tim Raphael. The governor has not said when the rules should take effect.



CHRISTOPHER ONSTOTT / TRIBUNE PHOTO
The Oregon State Lottery is considering new regulations to restrict video lottery terminals to no more than half the establishments at a retail strip center. The rule was prompted by "Lottery Row," shown here on Hayden Island, where all 12 businesses host six slot machine-style terminals, creating a mini-casino atmosphere.

Regardless, the state lottery may have a legal fight on its hands.

The Oregon Restaurant and Lodging Association, a powerful trade group representing lottery retailers, threatens to sue if the lottery takes away video lottery terminals from its members.

The rules changes "are rife with legal problems for the lottery," testified Michael Mills, an attorney representing the restaurant association.

Mills said retailers hosting state video lottery terminals should be "grandfathered" in to retain the right to host the terminals. Those rights should be retained if they sell their businesses, he testified.

Retailers argue they've made investments in their businesses to accommodate lottery terminals, and the state would be jeopardizing those investments.

There will be a "legal problem" if the state tries to eliminate some video terminals in 2015, Mills testified. "Who goes and who stays? Will it be based on seniority, most investment, highest income to lottery? Having once granted the right to a location, any 'cut' will certainly be subject to legal challenges," Mills said.

The lottery has no estimate of how many sites might be affected by the strip center rule, said lottery spokesman Chuck Baumann. However, restaurant association lobbyist Bill Perry estimated it might affect 30 to 40 video lottery retailers.

The biggest impact figures to be Hayden Island, or Northeast Portland strip centers close to Interstate 205. That's because they attract traffic from Washington residents, whose state doesn't offer video lottery gaming.

The new regulations would affect any Oregon strip center but not "main streets" where there is a concentration of lottery retailers, such as 82nd Avenue. The clustering of lottery retailers on 82nd is different, though, because most of them began as restaurants or bars and later added six video lottery terminals, the maximum allowed.

In contrast, Lottery Row developed when bar and restaurant owners subdivided their spaces and created clones next door, in an apparent bid to flout the state's limit of six video terminals per site.

A former Mongolian Grill restaurant became three lottery-oriented businesses under the same ownership.

Oregon Restaurant Services, which pioneered the Dotty's "lottery deli" format, operates six of the 12 Lottery Row sites.

Retailers at the strip center also offer cheap cigarettes, food and alcohol, to attract gamblers and assure they don't run afoul of the Oregon Constitutional ban on nontribal casinos.

The lottery has ruled that a business isn't a casino if it collects at least half its gross revenue from non-gambling services, even if it takes subsidized cigarettes and other offerings to reach the 50 percent threshold.

Investigating claims

Representatives of lottery retailers also downplay the crime problem at the Hayden Island strip center. They provided statistics showing other retail sites in Portland with a higher number of reported crimes.

"In reality, Hayden Island has a substantially lower crime rate than other Portland neighborhoods that similarly feature retailers, restaurants and bars in proximity to residential areas," testified Michael Mohr, who represents Oregon Restaurant Services, the largest lottery business in the state.

"No problems have been created by video lottery customers," Perry testified, making the same argument.

Hayden Island residents scoff at such comments, saying they don't feel safe walking past the strip center at night, or allowing their children near the center.

"The crime statistics show that crime is escalating in Jantzen Beach," Schmidt says. "The statistics are very clear that we have gone from a minor problem to a very major problem on Hayden Island."

Two sources who have worked at Lottery Row told the Tribune that one of the lottery's employees encouraged at least one business owner to subdivide the space to enable more lottery terminals. If that's true, that might aid lottery retailers who choose to sue the state.

When informed of that allegation last November, Lottery Commission Chairman Steven Ungar vowed to investigate. It doesn't appear that a formal investigation ever occurred.

Baumann said Lottery Director Larry Niswender made an inquiry to his staff about the charge.

"Based on the results of that inquiry, we have no information or reason to believe that lottery staff encouraged retailers to do this," Baumann wrote in an email.

The lottery did not make Niswender available for an interview.

• **What's next?**

A hearings officer will conduct a formal rulemaking hearing and take testimony on the proposed new regulations on Tuesday, May 15, from 9 a.m. to noon, at the lottery headquarters in Salem, 500 Airport Road S.E.

The Oregon State Lottery Commission could consider adopting the regulation at its upcoming meetings. Its next sessions are on Thursday, May 24, and Friday, June 22.

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