



# City of Grand Island

Tuesday, April 26, 2016

Council Session

## Item E-2

**Public Hearing on Request from Azteca Market, LLC dba The Brick House, 115-117 West 3rd Street for a Class “I” Liquor License**

*Council action will take place under Resolutions item I-3.*

Staff Contact: RaNae Edwards

# Council Agenda Memo

**From:** RaNae Edwards, City Clerk

**Meeting:** April 26, 2016

**Subject:** Public Hearing on Request from Azteca Market, LLC  
dba The Brick House, 115-117 West 3<sup>rd</sup> Street for a Class  
“I” Liquor License

**Presenter(s):** RaNae Edwards, City Clerk

## Background

Section 4-2 of the Grand Island City Code declares the intent of the City Council regarding liquor licenses and the sale of alcohol.

### **Declared Legislative Intent**

It is hereby declared to be the intent and purpose of the city council in adopting and administering the provisions of this chapter:

- (A) To express the community sentiment that the control of availability of alcoholic liquor to the public in general and to minors in particular promotes the public health, safety, and welfare;
- (B) To encourage temperance in the consumption of alcoholic liquor by sound and careful control and regulation of the sale and distribution thereof; and
- (C) To ensure that the number of retail outlets and the manner in which they are operated is such that they can be adequately policed by local law enforcement agencies so that the abuse of alcohol and the occurrence of alcohol-related crimes and offenses is kept to a minimum.

## Discussion

Azteca Market, LLC dba The Brick House, 115-117 West 3<sup>rd</sup> Street has submitted an application for a Class “I” Liquor License. A Class “I” Liquor License allows for the sale of alcohol on sale only inside the corporate limits of the city.

City Council action is required and forwarded to the Nebraska Liquor Control Commission for issuance of all licenses. This application has been reviewed by the Clerk, Building, Fire, Health, and Police Departments. (See attached Police Report).

Also submitted with the application was a request from Maria Garcia, 644 East Meves for a Liquor Manager Designation. Ms. Garcia has completed a state approved alcohol server/seller training program.

The Grand Island Police Department will remain neutral in their recommendation concerning The Brick House. If the Council votes to deny the license, it can be done under Nebraska State Statute 53-125 (2) & (13b); 53-132 (2a), (2b), & (2c); and 010.01 under the Nebraska Liquor Control Commissions Rules and Regulations (see attached).

### **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Approve the application.
2. Forward to the Nebraska Liquor Control Commission with no recommendation.
3. Forward to the Nebraska Liquor Control Commission with recommendations.
4. Deny the application.

### **Recommendation**

Based on the Nebraska Liquor Control Commission's criteria for the approval of Liquor Licenses, City Administration recommends that the Council take into consideration the Police Department Report when making their decision on this application.

### **Sample Motion**

Move to either approve or deny the application for Azteca Market, LLC dba The Brick House, 115-117 West 3<sup>rd</sup> Street for a Class "I" Liquor License contingent upon final inspections and Liquor Manager Designation for Maria Garcia, 644 East Meves.

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City : Grand Island
Occurred after : 08:00:00 03/24/2016
Occurred before : 08:00:00 03/24/2016
When reported : 08:00:00 03/24/2016
Date disposition declared : 04/21/2016
Incident number : L16032600
Primary incident number :
Incident nature : Liquor Lic Inv Liquor Lic Inv
Incident address : 103 3rd St W
State abbreviation : NE
ZIP Code : 68801
Contact or caller :
Complainant name number :
Area location code : PCID Police - CID
Received by : Vitera D
How received :
Agency code : GIPD GIPD Grand Island Police Dept
Responsible officer : Vitera D
Offense as Taken :
Offense as Observed :
Disposition :
Misc. number : RaNae
Geobase address ID : 11227
Long-term call ID :
Clearance Code : CL CL Case Closed
Judicial Status :

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INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
LW	L16032606	04/21/16	Liquor Lic Inv	Related
NM	143546	04/20/16	Garcia, Francisco J JR	Involved
NM	44522	04/19/16	Garcia, Juan Francisco	Maria's Husband
NM	61105	04/19/16	Garcia, Maria Dejesus	Owner/Manager
NM	209335	04/19/16	Azteca Banquet Hall,	Business Involved

LAW INCIDENT CIRCUMSTANCES:

Se	Circu	Circumstance code	Miscellaneous
1	LT12	LT12 Grocery/Supermarket	

LAW INCIDENT NARRATIVE:

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Liquor License Investigation

Azteca Banquet Hall is applying for a Class I (beer, wine, distilled spirits, on sale only) LLC Retail Liquor license. Maria Garcia is applying to be the liquor manager.

----- (lwmain08444303252016)~~

mw

LAW INCIDENT OFFENSES DETAIL:

Se	Offe	Offense code	Arson	Dama
1	AOFF	AOFF Alcohol Offense		0.00

LAW INCIDENT RESPONDERS DETAIL:

Se	Responding offi	Unit n	Unit number
1	Vitera D	318	Vitera D

LAW SUPPLEMENTAL NARRATIVE:

Seq	Name	Date
1	Vitera D	12:45:27 04/19/2016

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Grand Island Police Department  
Supplemental Report

Date, Time: Tue Apr 19 12:45:38 CDT 2016  
Reporting Officer: Vitera  
Unit- CID

Azteca Banquet Hall is applying for a Class I (beer, wine, distilled spirits, on sale only) LLC Retail Liquor license. Maria Garcia is applying to be the liquor manager. Juan Francisco Garcia (Maria's husband) is also listed on the application, but he signed a Spousal Affidavit of Non-Participation form. The LLC is Azteca Market. It looks like Maria Garcia is the sole owner of the company on paper.

The Brick House is also applying for a Class I liquor license, and Maria is applying to be the liquor manager there as well. The LLC for The Brick House is also Azteca Market. Azteca Market LLC owns the property where Azteca Banquet Hall and The Brick House are located. Juan Garcia signed a Spousal Affidavit of Non-Participation form for The Brick House as well. The following report will cover the application for Azteca Banquet Hall and The Brick House.

While perusing the applications, the first thing I noticed is that Juan Francisco Garcia (husband) is listed as someone Maria will share the business profits with. Juan is later listed as a 50% partner in the company. However, Juan's 50% is crossed out, and Maria's 50% is crossed out and has 100% written beside it. The applications also include an additional form which appears to have been sent to the NLCC after the original applications. The additional form is entitled "Assignment of Ownership Interest." The form says that any interest Juan may have in the company is given to Maria.

Then next thing I noticed is the applications say that Maria and Juan have lived in Grand Island since 2003. However, the manager's applications say that Maria and Juan have lived in Grand Island since 1998. The manager's applications also say that a spouse need not fill out question #1, which asks about convictions, if he has filled out a Spousal Affidavit of Non-Participation form. Juan filled out the non-participation form but also listed his convictions.

I checked Maria and Juan through Spillman and NCJIS. According to Spillman, Maria may have an undisclosed traffic violation, and it appears that she currently has a code violation with a broken up sidewalk in front of the Azteca Market. NCJIS shows a speeding conviction and a conviction for not wearing her seatbelt and not having her license on her person. Juan has a couple of traffic violations in Spillman. According to NCJIS, he has an undisclosed DUI from 1996 along with four undisclosed traffic convictions.

Maria and Juan each have a valid Nebraska driver's license, and neither one of them have any outstanding warrants for their arrest. I searched a paid law enforcement-only database which tends to provide personal identifying information and information about civil issues. I found an entry for Maria and Juan and didn't find anything out of the ordinary. I also contacted ICE and was advised that Juan is a Lawful Permanent Resident.

Nebraska State Patrol Investigator Joe Hansen and I met with Maria and Francisco Garcia (Juan & Maria's son) at the Azteca Market on 4/20/16. I went over the Azteca Banquet Hall and The Brick House application with them. I asked Maria

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about Juan being listed on both applications as someone who will share in the business profits and be a 50% owner in the company only to later have his 50% scratched out giving Maria 100% ownership.

Maria said the change was made after her attorney was contacted by the NLCC saying Juan couldn't have ownership in the company because he's not a Citizen of the United States. Maria went on to explain that the Spousal Affidavit of Non-Participation form and the addendum assigning Juan's interest in Azteca Market, LLC were not part of the original application. Since Juan was originally planning on being part of the company, he disclosed some of his criminal convictions even though the instructions say he doesn't have to if he signs a Spousal Affidavit of Non-Participation form.

Later in the afternoon on 4/20/16, I had the opportunity to speak with the attorney (Mark Porto) who helped fill out the applications. I asked Mark about originally having Juan as part owner of the company and then switching all of it to Maria. Mark recalled that the NLCC may have mentioned something about Juan's lack of citizenship, but Mark also said that Juan wanted to be part of the company but also sign a Spousal Affidavit of Non-Participation form. Mark said the NLCC told him that a person who signs a non-participation form can't be part of the company.

I also asked Maria why the liquor license applications state that she and Juan have lived in Grand Island since 2003, and the same question on the liquor manager forms say she and Juan have lived in Grand Island since 1998. Maria advised that the 2003 date is specific to their current address in Grand Island while the 1998 date is just for Grand Island in general. The question is the same. I'm still not clear why Maria and her attorney chose to give different answers.

Even though Maria is the liquor license applicant and liquor manager applicant for the banquet hall and the nightclub, Francisco will be running the club. He advised that he is a DJ and will be responsible for the entertainment and the lighting. When we toured The Brick House, he showed us where he had put up strobe lights above the dance floor and where he had put speakers in the DJ booth. Francisco also told us about all the work he had done stripping and refinishing the floors. Francisco advised that he is trying to attract the younger crowd from twenty-one years old up to about forty years old. I spent a long time warning Francisco and Maria about all of the problems they could encounter if the nightclub isn't run properly. I asked what their plans are for security. Francisco said he has talked to a guy who is a corrections officer here in town about providing security, but Francisco didn't know the guy's name or his phone number. Francisco didn't have a plan as to how many security personnel he would need and what their individual responsibilities would be.

I continued to ask Maria about some information in Spillman regarding her. I found a report in February 2012 where a GIPD officer was called by an employee of the Central District Health Department. Two health department employees had done an inspection at the Azteca Market the day before and seen three different types of antibiotics for sale in a glass display case. One of the employees spoke Spanish. The three antibiotics were Penicillin, Amoxicillin, and Bactrim. According to the health department employee reporting to the police officer, Maria denied having any antibiotics for sale. However, she asked how much trouble she would be in if she were selling them. The health department employees continued with their inspection. Before they left, they walked by the display case where they had seen the antibiotics, and they were gone.

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I asked Maria about the incident in 2012 with the antibiotics and the health department. She acknowledged that she had some antibiotics for sale in the store but didn't know it was illegal. She added that the someone from the health department told her some other drugs she was selling were illegal but later found out they weren't. No criminal action was taken against Maria.

I also found a GIPD arrest report in August of 2013 where Maria's husband (Juan) was arrested for DUI, and Maria was referred to the county attorney on a criminal charge of obstructing a police officer. According to the arresting officer's report, when he stopped the vehicle Juan was driving for an illegal turn, Maria and Juan switched seats to make it look like Maria had been driving. The officer asked Maria if she switched seats with Juan because he had been drinking, she said that she had, and it was her idea. I did not find that Maria was convicted of that charge, but I asked her about it. Maria said Juan had just bought her a brand new car and wanted her to drive it. She told him to drive it first. He told her that he had been drinking, and she should drive. Maria convinced Juan to drive and felt guilty when he got pulled over, so she tried to switch seats with him.

I found another report in Spillman where a GIPD Code Enforcement Officer (CSO) received a complaint about a broken up sidewalk on the east side of Azteca Market. The CSO inspected the sidewalk and found damage. The CSO then called the public works department and gave the information to them. The public works department asked an engineer to look at it. The engineer said the sidewalk would have to be repaired. The CSO went back to Maria on 3/30/16 and told her she has thirty days to repair or replace the damaged portion of the sidewalk. Maria told the CSO that she wouldn't be able to do that because she has to replace the sprinkler system in her building. I contacted the CSO on 4/21/16 and asked him about this complaint. He said he went by Azteca Market on 4/20/16, and the repairs still haven't been made. However, Maria still has eight days to complete the task.

I was also informed by Grand Island Fire Department Division Chief (Fire Marshal) Fred Hotz that about one year ago, he was aware of a complaint about Maria using an unlicensed electrician to do work above the Azteca Market. Division Chief Hotz did an inspection and found construction on the second floor which needed a work permit that Maria did not have. Division Chief Hotz put a stop work order on it. When I spoke with Maria and toured her buildings on 4/20/16, I observed what Division Chief Hotz had described to me. I asked Maria what all the construction was about. She said she was trying to put in apartments but got shut down.

In June of 2015, I did an informational report regarding a conversation I had with Francisco about needing a liquor license or at least a Special Designated License (SDL) for some of the events that were being held at the banquet hall. The reason for the conversation was because I had received an e-mail from a GIPD patrol sergeant who told me there were lots of drunk people coming out of there at night and stumbling around in the streets and impeding traffic. The patrol sergeant asked me if the business had or needed a liquor license. I told him that they didn't have one, but it sounded like they needed one. Francisco told me that his parents own the banquet hall, but he helps them run it. He was receptive to what I had to say, and I didn't get anymore complaints from the patrol sergeant.

While I didn't receive anymore complaints from the patrol sergeant, Division Chief Hotz told me that he had fielded a complaint from a business owner in the area of The Brick House saying that kids were coming out of there, going out to



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their cars and drinking, and going back into The Brick House. When I spoke to Maria on 4/20/16, she mentioned that they used to have some teen dances for middle school and high school kids, but she said they caused a lot of problems. I didn't ask her to describe the problems.

While speaking with Maria on 4/20/16, NSP Investigator Hansen asked her if she is behind on any of her financial obligations. Maria said that her business is supposed to pay \$1,000 a year for downtown parking. She said that bill was due January 1st, but she hasn't paid it. She also said that as part of a Downtown Improvement District, she is supposed to pay an additional \$600 per year for other services of the Downtown Improvement District. That bill was also due on 1/1/16, and she said she has not paid it.

I spoke to the person in the City of Grand Island Finance Department who keeps track of the money collected by the district to confirm Maria's statement, she advised that Azteca Market has paid \$640 to the Downtown Business Improvement District. The money was due on 10/1/15. It was paid on 3/29/16. The \$1,000 that Maria spoke about is for Parking District #1. The fee for Azteca Market is actually \$1,250. It has not been paid, and it was also due on 10/1/15. I was also told by a different person in the City of Grand Island Finance Department that Azteca Market has not paid any of their food and beverage tax since the business has been in operation. He said the finance department will be investigating that issue and attempting to collect three year's worth of the tax plus interest.

All in all, Maria's criminal record does not preclude her from receiving a liquor license. Strictly on criminal record and citizenship, I believe Juan could be part of the company. It also appears that Francisco will be heavily involved in The Brick House, and I don't think his criminal record would preclude him from receiving a liquor license. The concern is Maria's propensity to operate just outside the law which it appears she has done to some degree with little consequence. She sold prescription medication in the Azteca Market and was only warned about it and told not to do it again. She switched seats with her husband in an attempt to prevent him from being arrested for DUI. A criminal charge of obstructing a police officer was referred to the county attorney's office but never prosecuted. It sounds like she used an unlicensed electrician for a building project that at the very least, she didn't have a required permit for.

By her own admission, Maria is behind \$1,250 (she thought \$1,600) on paying the Downtown Business Improvement District. She also has a sidewalk outside her business that she told a CSO she's sure she won't get done or probably even start in the allotted thirty day period. The CSO advised that Maria told him that when she first bought the building where the Azteca Market is located, she was told that it would cost a few thousand dollars to fix or replace the sidewalk.

With the complaint I received from the patrol sergeant and the complaint Division Chief Hotz fielded, the banquet hall was operating without a liquor license when one was needed, and The Brick House had problems with kids which may have included drinking outside the business.

The Grand Island Police Department will remain neutral in our recommendation to the Council concerning The Brick House. If the council votes to deny the license, it can be done under Nebraska State Statute 53-125 (2) & (13b); 53-132 (2a), (2b), & (2c); and 010.01 under the NLCC's Rules and Regulations. The statutes are attached.

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The Azteca Banquet Hall doesn't have bathrooms on the licensed premises, and according to Division Chief Hotz, it still isn't compliant with fire sprinkler requirements (53-125 [14]). Division Chief Hotz is recommending a denial on Azteca Banquet Hall. The GIPD will defer to Division Chief Hotz's expertise on the fire sprinkler issue but will remain neutral for the reasons and statutes listed above if and when the property passes Division Chief Hotz's inspection.

# Nebraska Revised Statute 53-125

Revised Statutes » Chapter 53 » 53-125

53-124.15

|  
53-126

Print Friendly

## **53-125. Classes of persons to whom no license issued.**

No license of any kind shall be issued to (1) a person who is not a resident of Nebraska, except in case of railroad, airline, or boat licenses, (2) a person who is not of good character and reputation in the community in which he or she resides, (3) a person who is not a citizen of the United States, (4) a person who has been convicted of or has pleaded guilty to a felony under the laws of this state, any other state, or the United States, (5) a person who has been convicted of or has pleaded guilty to any Class I misdemeanor pursuant to Chapter 28, article 3, 4, 7, 8, 10, 11, or 12, or any similar offense under a prior criminal statute or in another state, except that any additional requirements imposed by this subdivision on May 18, 1983, shall not prevent any person holding a license on such date from retaining or renewing such license if the conviction or plea occurred prior to May 18, 1983, (6) a person whose license issued under the Nebraska Liquor Control Act has been revoked for cause, (7) a person who at the time of application for renewal of any license issued under the act would not be eligible for such license upon initial application, (8) a partnership, unless one of the partners is a resident of Nebraska and unless all the members of such partnership are otherwise qualified to obtain a license, (9) a limited liability company, if any officer or director of the limited liability company or any member having an ownership interest in the aggregate of more than twenty-five percent of such company would be ineligible to receive a license under this section for any reason other than the reasons stated in subdivisions (1) and (3) of this section, or if a manager of a limited liability company licensee would be ineligible to receive a license under this section for any reason, (10) a corporation, if any officer or director of the corporation or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation would be ineligible to receive a license under this section for any reason other than the reasons stated in subdivisions (1) and (3) of this section, or if a manager of a corporate licensee would be ineligible to receive a license under this section for any reason. This subdivision shall not apply to railroad licenses, (11) a person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee, (12) a person who does not own the premises for which a license is sought or does not have a lease or combination of leases on such premises for the full period for which the license is to be issued, (13) except as provided in this subdivision, an applicant whose spouse is ineligible under this section to receive and hold a liquor license. Such applicant shall become eligible for a liquor license only if the commission finds from the evidence that the public interest will not be infringed upon if such license is granted. It shall be prima facie evidence that when a spouse is ineligible to receive a liquor license the applicant is also ineligible to receive a liquor license. Such prima facie evidence shall be overcome if it is shown to the satisfaction of the commission (a) that the licensed business will be the sole property of the applicant and (b) that such licensed premises will be properly operated, (14) a person seeking a license for premises which do not meet standards for fire safety as established

by the State Fire Marshal, (15) a law enforcement officer, except that this subdivision shall not prohibit a law enforcement officer from holding membership in any nonprofit organization holding a liquor license or from participating in any manner in the management or administration of a nonprofit organization, or (16) a person less than twenty-one years of age.

When a trustee is the licensee, the beneficiary or beneficiaries of the trust shall comply with the requirements of this section, but nothing in this section shall prohibit any such beneficiary from being a minor or a person who is mentally incompetent.

# Nebraska Revised Statute 53-132

Revised Statutes » Chapter 53 » 53-132

53-131.01

|  
53-133

Print Friendly

## **53-132. Retail, craft brewery, or microdistillery license; commission; duties.**

(1) If no hearing is required pursuant to subdivision (1)(a) or (b) of section 53-133 and the commission has no objections pursuant to subdivision (1)(c) of such section, the commission may waive the forty-five-day objection period and, if not otherwise prohibited by law, cause a retail license, craft brewery license, or microdistillery license to be signed by its chairperson, attested by its executive director over the seal of the commission, and issued in the manner provided in subsection (4) of this section as a matter of course.

(2) A retail license, craft brewery license, or microdistillery license may be issued to any qualified applicant if the commission finds that (a) the applicant is fit, willing, and able to properly provide the service proposed within the city, village, or county where the premises described in the application are located, (b) the applicant can conform to all provisions and requirements of and rules and regulations adopted pursuant to the Nebraska Liquor Control Act, (c) the applicant has demonstrated that the type of management and control to be exercised over the premises described in the application will be sufficient to insure that the licensed business can conform to all provisions and requirements of and rules and regulations adopted pursuant to the act, and (d) the issuance of the license is or will be required by the present or future public convenience and necessity.

(3) In making its determination pursuant to subsection (2) of this section the commission shall consider:

- (a) The recommendation of the local governing body;
- (b) The existence of a citizens' protest made in accordance with section 53-133;
- (c) The existing population of the city, village, or county and its projected growth;
- (d) The nature of the neighborhood or community of the location of the proposed licensed premises;
- (e) The existence or absence of other retail licenses, craft brewery licenses, or microdistillery licenses with similar privileges within the neighborhood or community of the location of the proposed licensed premises and whether, as evidenced by substantive, corroborative documentation, the issuance of such license would result in or add to an undue concentration of licenses with similar privileges and, as a result, require the use of additional law enforcement resources;

(f) The existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises;

(g) The adequacy of existing law enforcement;

(h) Zoning restrictions;

(i) The sanitation or sanitary conditions on or about the proposed licensed premises; and

(j) Whether the type of business or activity proposed to be operated in conjunction with the proposed license is and will be consistent with the public interest.

(4) Retail licenses, craft brewery licenses, or microdistillery licenses issued or renewed by the commission shall be mailed or delivered to the clerk of the city, village, or county who shall deliver the same to the licensee upon receipt from the licensee of proof of payment of (a) the license fee if by the terms of subsection (6) of section 53-124 the fee is payable to the treasurer of such city, village, or county, (b) any fee for publication of notice of hearing before the local governing body upon the application for the license, (c) the fee for publication of notice of renewal as provided in section 53-135.01, and (d) occupation taxes, if any, imposed by such city, village, or county. Notwithstanding any ordinance or charter power to the contrary, no city, village, or county shall impose an occupation tax on the business of any person, firm, or corporation licensed under the act and doing business within the corporate limits of such city or village or within the boundaries of such county in any sum which exceeds two times the amount of the license fee required to be paid under the act to obtain such license.

(5) Each license shall designate the name of the licensee, the place of business licensed, and the type of license issued.

**FALSIFICATION OF APPLICATION**

**010.01** No applicant for a liquor license, or partner, principal, agent or employee of any applicant for a liquor license shall provide false or misleading information to the Nebraska Liquor Control Commission, its executive director, or employees. Any violation of this provision may result in denial of application for a liquor license or, in the event that a license has already been issued, suspension, cancellation or revocation of such license.

