



City of Grand Island

Tuesday, February 14, 2017

Council Session

Item E-1

Public Hearing on Request from Salome Bernal dba Rey de Espadas, 1403 S. Eddy Street for a Class “I” Liquor License

Council action will take place under Resolutions item I-1.

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: February 14, 2017

Subject: Public Hearing on Request from Salome Bernal dba Rey de Espadas, 1403 So. Eddy 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

Salome Bernal dba Rey de Espadas, 1403 So. Eddy 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 Department report.

Staff recommends denial of the application based upon the Police Department report and under the Nebraska Liquor Control Commission Rules and Regulations – 010.01 Falsification of Application and Nebraska State Statute 53-125.

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 **deny** this application.

Sample Motion

Move to **deny** the application for Salome Bernal dba Rey de Espadas, 1403 So. Eddy Street for a Class "I" Liquor License based on the Police Department report and under the Nebraska Liquor Control Commission Rules and Regulations – 010.01 Falsification of Application and Nebraska State Statute 53-125.

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Grand Island Police Department
LAW INCIDENT TABLE

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City : Grand Island
Occurred after : 09:30:00 01/23/2017
Occurred before : 09:30:00 01/23/2017
When reported : 09:30:00 01/23/2017
Date disposition declared : 01/31/2017
Incident number : L17011899
Primary incident number :
Incident nature : Liquor Lic Inv Liquor Lic Inv
Incident address : 1403 EDDY ST S
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 : ACT Active
Misc. number : RaNae
Geobase address ID : 13842
Long-term call ID :
Clearance Code : CL CL Case Closed
Judicial Status :
=====

INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
NM	17056	02/08/17	Boltz, Roger H	Contacted
NM	65051	02/08/17	Fuentes, Sulma G	Involved
NM	68972	02/08/17	Pedroza-Jimenez, Herber O	Sulma's husband
NM	129736	02/08/17	Rendon, Griselda Griselda	Contacted
NM	216345	01/24/17	Bernal, Salome	Owner
NM	216346	01/24/17	Rey de Espadas,	Business

LAW INCIDENT CIRCUMSTANCES:

Se	Circu	Circumstance code	Miscellaneous
1	LT21	LT21 Restaurant	

LAW INCIDENT NARRATIVE:

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Liquor License Investigation
Grand Island Police Department

Salome Bernal is applying for a Class I (beer, wine, distilled spirits, on sale only) Individual Retail Liquor License for his restaurant called "Rey de Espadas."

Date, Time: 1/24/17, 1020
Reporting Officer: Vitera
Unit- CID

LAW INCIDENT RESPONDERS DETAIL:

Se Responding offi Unit n Unit number

1 Vitera D

LAW SUPPLEMENTAL NARRATIVE:

Seq	Name	Date
1	Vitera D	14:29:42 02/01/2017

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Grand Island Police Department
Supplemental Report

Date, Time: Wed Feb 01 14:29:54 CST 2017
Reporting Officer: Vitera
Unit- CID

I received a copy of a Class I (beer, wine, distilled spirits, on sale only) Individual Retail Liquor License application from Salome Bernal for Rey de Espadas which is located at 1403 S. Eddy. I did a Spanish to English Google translation for Rey de Espadas, and it said, "king of swords." I will ask Salome about that when I interview him.

While perusing the application, I noticed that Salome only disclosed a conviction for going the wrong way on a one way. Salome also said that he's not borrowing money from any source to establish and/or operate the business, and he's never had a liquor license. Salome lived in Lexington from '96 until 2013 and has lived in Grand Island since then. His proposed business will be a bar and grill which will be open Wednesday through Sunday 5:00 PM to 1:00 AM. In his business plan, Salome says the building has a dance floor, and he plans on having a DJ. Besides an accountant and a bookkeeper, Salome says he's going to have Sulma Fuentes (family member) help with the management and then have at least one other full-time and one part-time employee.

I checked on Salome through Spillman and NCJIS. Salome didn't have an entry in Spillman, and I didn't find any undisclosed convictions in NCJIS. I called the Lexington Police Department and found the only contacts they had with Salome were in the capacity of being a victim, being warned on traffic violation and his involvement in a civil dispute.

Salome has a valid driver's license and doesn't have any outstanding warrants for his arrest. I also checked Salome through a law enforcement-only database which tends to provide mostly personal identifying information and information relating to civil matters, and I did not find anything out of the ordinary.

Nebraska State Patrol Investigator Joe Hansen and I met with Salome at the business on 2/3/17 at 0930 hours. Sulma Fuentes and Evelyn Montoya-Carcamo were also present. Salome identified Evelyn as a friend of his, and she acted as a translator. As noted above, Sulma is listed in the business plan of the application as a "family member" who will be involved with the management, yet Salome said Sulma is a friend whom he has only known for about two years. Sulma's husband (verbally identified as Herber Pedroza) was also present for a short time.

First of all, I asked Salome about the name of his business and what it means. He took a while to describe it but said it means "King of Spades." The sign on top of the business has a what appears to be a king sitting on his throne, a shield and two swords beside that, and what appears to be two bottles of beer at the bottom of the sign. When asked how he came up with the name, he said he has seen other businesses with that name and likes it. I didn't ask where he saw these other businesses. Investigator Hansen asked Salome if his business was going to be more of a bar or a restaurant. Salome immediately said, "bar." He advised that he doesn't plan on serving food.

I told Salome that his business plan says he is opening a "bar and grill," and

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he will serve a "variety of fast food options that I promise you will not be disappointed, they will be tasty and fascinating." The business plan goes on to say that they will have a "host who will guide customers to be seated." It also specifically talks about the kitchen where it says, "Currently I have the prep area, a grill, stove, refrigerators and an ice machine." More information about the food says, "The food I will offer will include Mexican food, Salvadorian food and American food..." The business plan says there will also be an "option for carry out" for the food. It goes on to say that Salome has calculated that a platter of food will cost him about \$4.50.

Salome was asked how much money he has invested in the business, and he said about \$8,000. His business plan says he has invested about \$30,000. Sulma interjected and said the \$30,000 figure includes improvements that haven't been completed yet. She also said the bar will offer some food. When Salome was asked why his business plan says the building was built in the 1800's (clearly not the case), Sulma said that number is how much money she thought the business would make in a weekend. I told her that seems pretty unlikely to confuse the year the building was built with the amount of money the business expects to make in a weekend. Salome acted as if he had no idea as to what the business plan said.

It became increasingly clear to me that Sulma had done the business plan and is probably more involved in the business to the point where she should be on the liquor license application. Sulma acknowledged she did the business plan with the assistance of Griselda Rendon who works for the Rural Enterprise Assistance Project (REAP). Sulma said that she and her husband have helped with the remodeling of the business. When asked if Sulma is sharing in the profits of the business, Sulma and Salome each said that she is not. Sulma went on to say that she has a business on 4th Street called "Princess Closet." I clarified that she is the owner of that business, and she said her son owns the business. Her son is 18 years old. She described the business as selling dresses to young girls. Sulma said her son works at an automobile parts store. Princess Closet sounds like Sulma's business except on paper which also appears to be the case with Rey de Espadas. Another example linking Sulma's involvement in the business is the fact that she is from El Salvador, and the business plan referred to selling Salvadorian food. Salome is from Guatemala.

I asked Salome about his security plans. Salome didn't have any. He said he would see how busy he is and decide from there. Investigator Hansen and I told Salome he should be more proactive in that regard and have security lined up ahead of time. Salome was given several examples of how his club could quickly get out of control. We also told him it would be a good idea to have video cameras installed. Salome was warned about the all the criminal, civil, and administrative liability involved with being a liquor license holder. Salome hadn't thought much about any of it.

While speaking with Salome and Sulma, a man walked into the business and identified himself as Roger from Woods Brothers Realty. Roger asked Salome if the rent and utility bills were caught up yet. Salome didn't know, but Sulma said they had been paid. After Roger left, I asked Sulma who paid the utility bill, how much was paid, and in what form the payment was made. Sulma said she paid \$500 to the owner's daughter in cash. She said she received the cash from Salome who told me he just had the cash at his house. It wasn't directly taken out of a bank account for the purpose of paying the bill. When asked why Sulma was paying the bill instead of Salome, Sulma said that since Salome works at night he was unable to make a morning meeting to pay the bill. I told Sulma I found it difficult to believe that someone wanting to collect money wouldn't be

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more flexible and meet in the afternoon.

After Roger left, I told Salome and Sulma that I thought this was a "straw" application where Sulma is the person wanting the liquor license and is unable to get one, so she is using Salome for it since he is a citizen of the U.S. and has a clean record. They each denied this allegation. Before departing the business, I told Salome that I would call Evelyn and let her know if the police department was not going to give them a favorable recommendation to the council.

On 2/7/17, I called Woods Brothers Realty and asked for Roger. I was connected with Roger Boltz who said he was the person who had gone into Rey de Espadas on Friday asking about the rent and utility bills. I identified myself to Roger and explained the reason for my call. Roger couldn't remember the names of the people involved, but he described his involvement with them to me.

Roger advised that he was told that the woman he initially dealt with is in the country with just a work permit and can't get a liquor license on her own (fits the description of Sulma). Roger went on to say that the woman paid the rent for the first month, and after that, he usually dealt with the woman's daughter whom he described as attending GISH and being old enough to drive. Roger then told me that the woman he initially dealt with was on the original lease agreement, but he later received a call from someone he thought was from legal aid (later determined to be Griselda Rendon with REAP) asking that the woman's name be taken off of the lease agreement. Roger consulted with the owner of the building and agreed to take the woman's name off of the lease agreement and just leave the man's name on it. Roger said he would send me a copy of the original lease agreement which I received on 2/9/17. As Roger stated, Sulma Fuentes' name was on the lease along with Salome's.

On 2/8/17, I spoke with Griselda Rendon over the phone about her involvement with Rey de Espadas' liquor license application. Griselda said Sulma had contacted Mirna Delgado at Five Points bank for assistance, and Mirna referred Sulma to Griselda. Griselda said Sulma and Salome were originally going to be partners in the business until Griselda called the Nebraska Liquor Control Commission (NLCC) and found out that Sulma couldn't get a partnership liquor license because of her immigration status. Griselda said that Sulma had been helping clean the building, and Sulma's daughter had helped with the original lease agreement.

Griselda confirmed that Griselda was the person who called the "landlord" and asked that Sulma's name be taken off of the lease agreement. Griselda also said that she provided a template for the business plan that accompanied Rey de Espadas' liquor license application. Griselda said she had about four meetings with Sulma and/or Salome. Griselda didn't think Salome really knew what was going on. She wondered if he was just tired at some of their earlier meetings since he had been working nights.

Also on 2/9/17, I called our local ICE office and checked on Sulma. I was told that Sulma is technically in the country illegally, but she has a valid work permit.

I believe Salome was involved with this application from the beginning but Sulma Fuentes was as well until she was told she can't be on paper. My investigation has revealed that Sulma's involvement in this application is inseparable. To summarize, Sulma answered questions during the interview that Salome couldn't. Sulma and her husband have been cleaning and remodeling the building. Sulma paid the first month's rent. Sulma paid the last utility bill. Sulma did the

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business plan with the help of Griselda. Salome is from Guatemala, yet part of the business plan says Rey de Espadas will serve Salvadorian food. Sulma is from El Salvador. Sulma has a business in her son's name that appears to be Sulma's business.

The Grand Island Police Department's recommendation to the Council is to not give this application local approval. It could be denied under the NLCC Rules and Regulations "Falsification of Application- 010.01" which states:

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.

In addition, Nebraska State Statute 53-125, in part, states: No license of any kind shall be issued to...(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..."

Salome's application is an individual application which requires the applicant to be a citizen of the U.S. In Salome's business plan, he refers to Sulma as being involved with the management. Sulma is not a U.S. citizen.

I called Griselda Rendon on 2/9/17 and asked her (through voicemail) to call Salome and inform him that the police department is recommending a denial.

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.

FALSIFICATION OF INFORMATION

011.01 No licensee or partner, principal, agent or employee of any licensee 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 suspension, cancellation or revocation of such license.

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.

RECEIVED

JAN 17 2017

Introduction and Request for Funds

NEBRASKA LIQUOR

CONTROL COMMISSION

El Rey de Espadas Bar and Grill, is a dream come true. I, Salome Bernal, owner of El Rey de Espadas is pleased to be able to bring to Grand Island this bar and grill, a place where people can come in and enjoy good food and a welcoming atmosphere, a dance floor will be available with the best D.J. music. I have always worked for someone else and have seen them grow and now I have received the opportunity of my life, to be my own boss, to have my own business. I will be offering a variety of fast food options that I promise you will not be disappointed, they will be tasty and fascinating.

I have an invested amount of about \$30,000 in equipment and remodeling of the building where El Rey de Espadas is going to have its home.

Pertinent Business Descriptions

Rey de Espadas is the name of the business to be started in Grand Island, Nebraska. This business will be starting January 1, 2017 by owner Salome Bernal. The business is located at 1403 S Eddy Street, Grand Island, NE 68801.

The building where the restaurant will be, was built in the 1800's. The building was a bar in the past and then a small grocery market but now it will be the home of El Rey de Espadas Bar and Grill. For now the building will be leased on a year to year basis with option to renew contract.

The layout of the facility is as follows. As you walk in the front door the first thing will be a desk for the cashier and the host who will guide customers to be seated. To follow will be tables and chairs against the walls and a bar with stools will be towards the middle of the building where you will also find the dance floor. There will be two bathrooms, male and female, which are located towards the back of the building. The kitchen will be in the back of the building in front of the storage room but behind the bar. Currently I have the prep area, a grill, stove, refrigerators and an ice machine.

To start the legal structure of the business will be of a sole-proprietorship. Currently do not have an attorney but have considered one if need one. I have Yetzira Calvillo for an Accountant to assist with payroll and tax services and will have a family member help with bookkeeping aswell.

Sulma Fuentes, a family member will be involved with the management and she will attend trainings to increase knowledge. Sulma will be the only member to assist, and I plan on having at least one full-time employee and one part-time employee.

Even when unemployment rate is low in this community, I do not foresee running into trouble to find employees. The opening of El Rey de Espadas will create opportunities for local community members to apply for employment.

