



City of Grand Island

Tuesday, December 9, 2014

Council Session

Item E-1

Public Hearing on Request from Estanislao LLC dba La Cocina Mexican Restaurant, 2418 N. Webb Road, Suite A for a Class “I” Liquor License

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: December 9, 2014

Subject: Public Hearing on Request from Estanislao LLC dba La Cocina Mexican Restaurant, 2418 N. Webb Road, Suite A for a Class "I" Liquor License

Item #'s: E-1 & I-1

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

Estanislao LLC dba La Cocina Mexican Restaurant, 2418 N. Webb Road, Suite A has submitted an application for a Class "I" Liquor License. A Class "I" Liquor License allows for the sale of alcohol on sale 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.

Also submitted with the application was a request from Gabriella Gutierrez, 112 West 1st Street, McCook, NE for a Liquor Manager Designation.

After reviewing the Police Department report (see attached) it is recommended that the Council deny this request due to a false application, character and reputation issues with Gemelo Mario Leon-Garcia, spouse of Gabriella Gutierrez, along with hidden ownership.

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 Estanislao LLC dba La Cocina Mexican Restaurant, 2418 N. Webb Road, Suite A for a Class "I" Liquor License and Manager Designation for Gabriella Gutierrez, 112 West 1st Street, McCook, NE based on to a false application, character and reputation issues with Gemelo Mario Leon-Garcia, spouse of Gabriella Gutierrez, along with hidden ownership.

12/04/14
16:03

Grand Island Police Department
LAW INCIDENT TABLE

450
Page: 1

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City : Grand Island
Occurred after : **:**:** **/**/****
Occurred before : **:**:** **/**/****
When reported : 08:00:00 11/14/2014
Date disposition declared : **/**/****
Incident number : L14120145
Primary incident number :
Incident nature : Liquor Lic Inv Liquor Lic Inv
Incident address : 2418 Webb Rd N
State abbreviation : NE
ZIP Code : 68803
Contact or caller :
Complainant name number :
Area location code : PCID Police - CID
Received by :
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 : 4481
Long-term call ID :
Clearance Code : CL CL Case Closed
Judicial Status : NCI Non-criminal Incident

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INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
NM	197109	12/02/14	Gutierrez, Gabriella	Manager
NM	197111	12/02/14	Gutierrez, Estanislao	Owner
NM	197112	12/02/14	La Cocina Mexican Restaurant,	Business
NM	197113	12/02/14	Valdez, Maria de la luz	Estanislao's
Wife				
NM	197115	12/02/14	Leon-Garcia, Gemelo M	Gabriella's
Spouse				

LAW INCIDENT CIRCUMSTANCES:

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Se Circu Circumstance code      Miscellaneous
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1  LT21  LT21 Restaurant

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IMAGE CODES FOR INCIDENT:

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Seq Imag Image code for a users description field
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1  DOC  DOCUMENT      Mobile Report

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LAW INCIDENT NARRATIVE:

Liquor License Investigation
Grand Island Police Department

I Received a Copy of a Class I (Beer, Wine, Distilled Spirits, On Sale Only) LLC Retail Liquor License for "La Cocina Mexican Restaurant" from Estanislao Gutierrez. I also Received a Copy of a Liquor Manager Application from Gabriella Gutierrez for La Cocina.

LAW INCIDENT OFFENSES DETAIL:

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

LAW SUPPLEMENTAL NARRATIVE:

Seq	Name	Date
1	Vitera D	13:29:25 12/02/2014

318

Grand Island Police Department
Supplemental Report

Date, Time: Tue Dec 02 13:29:37 CST 2014
Reporting Officer: Vitera
Unit- CID

I Received a Copy of a Class I (Beer, Wine, Distilled Spirits, On Sale Only) LLC Retail Liquor License for "La Cocina Mexican Restaurant" from Estanislao Gutierrez. I also Received a Copy of a Liquor Manager Application from Gabriela Gutierrez for La Cocina. According to the applications, Estanislao is married to Maria de la luz Valdez. Maria signed a Spousal Affidavit of Non Participation form. Gabriela is married to Gemelo Mario Leon-Garcia. Gemelo did not sign a Spousal Affidavit of Non Participation form. According to ICE, Gemelo is an illegal alien who falls under an executive order by President Obama called DACA, which stands for Deferred Action Childhood Arrival. Under President Obama's order, Gemelo's status hasn't changed. He is still an illegal alien, he is just shielded from deportation while President Obama is in office. A new president could rescind the order.

While perusing the applications, I made the following observations. None of the four people listed on the applications disclosed any convictions. Gemelo lent money to Estanislao to establish and/or operate the business. Gemelo is listed as having access to the business account. The lease agreement for the restaurant was also witnessed by "Gemelo M Leon G." There is a discrepancy in the spelling of Gabriela's name. In most places on the applications, it's spelled "Gabriella." In other places, her name

is spelled, "Gabriela." I found that it's spelled with one "l" on all the accompanying legal identifying documents and in front of a notary where a signature was required. Estanislao moved to McCook, NE in 2010. He bought the La Cocina there and eventually opened a La Cocina in Beatrice and York. The Beatrice store closed. Prior to living in Nebraska, he and the other applicants have lived in Tennessee and Kansas.

I checked all of the people on the applications through Spillman (GIPD database) and the Nebraska Criminal Justice Information System (NCJIS). None of the people were listed in Spillman which isn't surprising since they are relatively new to Nebraska and don't live in Grand Island. According to NCJIS, Gabriela has two convictions for speeding in Nebraska in 2013. Gemelo has an incident where he was convicted of speeding and no operator's license in April of 2014, a conviction for not having insurance, and a second incident of being convicted for not having a driver's license and speeding in 2012. Estanislao just has an entry in NCJIS for having a driver's license. I can't find Maria in NCJIS. I also checked NCJIS for wages earned by running each person's Social Security number. Gabriela is the only person reporting wages earned in Nebraska. None of the applicants have any outstanding arrest warrants that I can find, and it appears that Gabriela and Estanislao are the only applicants with a valid driver's license.

Besides the Spillman and NCJIS checks, I checked on the applicants by using a paid law enforcement-only database. I found all of the applicants, but there was very little information on any of them. I called the McCook Police Department and sent a request for information to the Franklin, Tennessee Police Department. Results of those contacts will be discussed later in this report. Nebraska State Patrol Investigator Dan Fiala and I met with Gabriela and Estanislao at the property for the restaurant on 12/1/14 at 1000 hours. Gabriela said that her husband, Gemelo, is living in York and managing the restaurant there while she has been living in McCook. She said Gemelo does a lot of driving back and forth. It's worth noting again that Gemelo does not have a valid driver's license. Gabriela also said that Gemelo has a twin brother named Ismael. Ismael is supposed to manage the McCook restaurant when Gabriela moves to Grand Island to manage the restaurant here. It was pointed out to Gabriela that none of the people listed on the application disclosed any convictions. She said that they didn't think traffic convictions were supposed to be included. Investigator Fiala went over the application with her and read the question which specifically says, "Include traffic violations." Gabriela advised that her husband (Gemelo) filled out the application.

Gabriela was asked how much money Gemelo lent the business for the Grand Island store. Gabriela looked surprised and asked Estanislao (her father). Neither one of them knew. It seemed odd to me that Gabriela's husband would loan her father money and neither one knew how much. In fact, it appeared that Gabriela didn't know that she and Gemelo were loaning money to the business. In our presence, Estanislao called Gemelo on the phone and asked how much money he lent the business. Estanislao said Gemelo told him that Gemelo lent the business \$20,000. Once again, I found it extremely perplexing that Gabriela (proposed liquor manager) didn't know that her husband lent her father \$20,000, and her father

(owner of the business) didn't know how much money Gemelo contributed. It's also a little odd that Gemelo does not know how to spell his wife's first name.

I asked Gabriela more about her husband and his responsibilities as the manager of the La Cocina in York. She said he does a little bit of everything. However, she added that Andrew Hager is the liquor manager and takes care of everything involving alcoholic beverages. Investigator Fiala and I were also told that "they" had spent \$50,000 buying equipment from the owner of San Pedro (prior business located in the building where La Cocina will be located in G.I.).

Gabriela went on to say that Mary Badel, who is listed as the liquor manager of the McCook La Cocina, lent a total of \$40,000 to the York La Cocina. Money from the York restaurant was used to pay for the equipment in the Grand Island restaurant. Gabriela said that Mary Badel started the La Cocina in McCook and eventually sold it to Estanislao. Investigator Fiala located the York La Cocina application and confirmed that Mary Badel was listed as someone who lent the business money. Investigator Fiala also said that it was obvious by the handwriting that the person who filled out the York application is the same person who filled out the Grand Island application.

I spoke to a detective with the McCook Police Department and asked him about the applicants. I was told that they don't have any documented contacts with Estanislao Gutierrez or Maria de la luz Valdez. They have a record of citing Gabriela for speeding, and they had contact with her and Gemelo during a child abuse investigation in 2012. I also asked about Mary Badel. The detective told me that Mary started the La Cocina in McCook. He also said that they haven't had any documented contacts with her since 2011. In fact, they showed Mary as living in Gering, Nebraska.

According to the Nebraska Liquor Control Commission (NLCC) web site, Mary is currently listed as the liquor manager for the La Cocina in McCook. I looked up Mary Badel in NCJIS and only found one. The address in NCJIS matched the address that the McCook Police Department had. I tried to call Mary using information obtained from the McCook PD. I was only able to leave a voicemail and am not sure if the number I called actually belongs to her. I have not received a return call. I seriously doubt that Mary is a liquor manager for the McCook restaurant if she is still living in Gering.

In addition to the information I got from the McCook PD, I received some information from the Franklin Police Department in Franklin, Tennessee. A records clerk advised that they had no documented contacts with Maria de la luz Valdez or Gabriela Gutierrez. They had traffic contacts with Estanislao and Gemelo. Estanislao was cited for not having proof of a valid registration certificate and driving without headlights. I don't know whether he was convicted of either offense. Gemelo was cited for an improper turn and "squealing tires/excessive noise." Once again, I don't know whether he was convicted of either charge. However, Franklin PD had Gemelo's middle name listed as "Ismael" instead of Mario. I ran the Tennessee driver's license number associated with the citation issued by the Franklin PD. It comes back to Gemelo I. Leon Garcia. I ran the

Tennessee driver's license number provided by Gemelo Mario Leon Garcia, and it comes back as Gemelo M. Leon Garcia. It appears the citations issued by Franklin PD were issued to Ismael, not Mario. I didn't get a chance to ask Gabriela if her husband and her brother-in-law have the same first and last name but different middle names.

On 12/2/14, I received an e-mail from City Clerk RaNae Edwards which included a faxed document from Gabriela documenting traffic convictions in Nebraska for she and Gemelo. She still didn't include any convictions from other states, but I don't know if Estanislao was convicted of the charges in Franklin, Tennessee.

Also on 12/2/14, I called Mary Messman who works in the licensing division at the NLCC. I explained the situation with Gemelo being an illegal alien and lending money to the business, being on the business account, signing the lease agreement as a witness, and filling out the application. Mary said those actions would constitute hidden ownership and make this a false application.

I would also argue that there are character and reputation issues with Gemelo being an illegal alien and not having a license to drive, and not reporting wages in Nebraska while managing a restaurant in York. Through his wife's testimony, his driving record, and his lack of wages associated with his Social Security number, he is flaunting his wanton disregard of the law.

All in all, the Grand Island Police Department recommends that the council not give local approval to this application due to the issues with Gemelo. Gemelo is an illegal alien who can't get a liquor license. However, all of the information stated in this report make Estanislao Gutierrez's application look more like Gemelo Mario Leon Garcia's application.

