



# **City of Grand Island**

**Tuesday, July 13, 2010**

**Council Session**

## **Item E1**

**Public Hearing on Request from La Cabana LLC dba La Cabana,  
1201 South Locust Street, Suite A for a Class "I" Liquor License**

**Staff Contact: RaNae Edwards**

# **Council Agenda Memo**

**From:** RaNae Edwards, City Clerk

**Meeting:** July 13, 2010

**Subject:** Public Hearing on Request from La Cabana LLC dba La Cabana, 1201 South Locust Street, 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**

La Cabana LLC dba La Cabana, 1201 South Locust Street, Suite A has submitted an application for a Class “I” Liquor License. A Class “I” Liquor License allows for the sale of spirits, wine, and beer, 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.

Also submitted with this application was a Liquor Manger Designation request from Alberto Baldovinos, 235 North Custer Street.

Due to the discrepancies in the application that were uncovered during the Police investigation, it is recommended that the City Council deny the application for the liquor license and also the application for Liquor Manager designation.

### **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 La Cabana LLC dba La Cabana, 1201 South Locust Street, Suite A for a Class "I" Liquor License and Liquor Manager designation for Alberto Baldovinos, 235 North Custer Street.

07/06/10  
11:07

Grand Island Police Department  
LAW INCIDENT TABLE

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City : Grand Island  
Occurred after : 13:24:40 06/23/2010  
Occurred before : 13:24:40 06/23/2010  
When reported : 13:24:40 06/23/2010  
Date disposition declared : 06/23/2010  
Incident number : L10063772  
Primary incident number :  
Incident nature : Liquor Lic Inv Liquor License Investigation  
Incident address : 1201 Locust St S; Suite A  
State abbreviation : NE  
ZIP Code : 68801  
Contact or caller :  
Complainant name number :  
Area location code : PCID Police - CID  
Received by : Vitera D  
How received : O Officer Report  
Agency code : GIPD Grand Island Police Department  
Responsible officer : Vitera D  
Offense as Taken :  
Offense as Observed :  
Disposition : ACT Active  
Misc. number :  
Geobase address ID :  
Long-term call ID :  
Clearance Code : O Open Case  
Judicial Status : NCI Non-criminal Incident  
=====

INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
NM	93768	06/28/10	Baldovinos-Garcia, Alberto	Owner/Liquor Manage

LAW INCIDENT CIRCUMSTANCES:

Se	Circu	Circumstance code	Miscellaneous
1	LT03	Bar/Night Club	

LAW INCIDENT NARRATIVE:

I Received a Copy of a Liquor License Application from La Cabana and a Copy of a Liquor Manager Application from Alberto Baldovinos.

LAW INCIDENT RESPONDERS DETAIL:

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

07/06/10  
15:51

Grand Island Police Department  
LAW SUPPLEMENTAL NARRATIVE

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318

Grand Island Police Department  
Supplemental Report

Date, Time: Mon Jun 28 16:02:23 CDT 2010  
Reporting Officer: Vitera  
Unit- CID

I received a copy of a liquor license application from La Cabana and a copy of a liquor manager application from Alberto Baldovinos. La Cabana looks to be a restaurant in the old Godfather's/Doozy's/Deleon's building. According to the application, Alberto has lived in Grand Island and worked at El Toro since 2001.

Alberto disclosed that he has been convicted of a DUI about nine or ten years ago in Missouri, a Third Degree Assault in Hall County in 2009, Carrying a Concealed Weapon (CCW) in Hall County in 2008, no proof of insurance in 2007, and two convictions for speeding. Paperwork was also included that indicated the assault conviction and the CCW conviction were recently "set aside" by the court. The paperwork showed the orders but the judge's signature was not included. I was able to verify through NCJIS that the CCW charge was set aside, but I couldn't find anything on the assault charge. If the CCW charge had not been set aside, or the assault charge is not set aside; either conviction would automatically disqualify Alberto from receiving a liquor license.

On 6/29/10, I spoke to Steve Dowding who is the attorney that assisted Alberto with the application. Steve said he would track down the paperwork on the assault charge that would show the judge's signature. He told me he would get me a copy by the end of the week. I told him that the application is set to go in front of the council on 7/13/10, and packets are prepared for council members the Thursday before. On 7/1/10, I received an e-mail from Steve Dowding that included a signed copy of the order setting aside Alberto's assault conviction in 2009.

While continuing to check NCJIS, I found that Alberto has three undisclosed convictions for speeding. On the application, it clearly asks "Has anyone who is a party to this application, or their spouse, ever been convicted of or plead guilty to any charge. Charge means any charge alleging a felony, misdemeanor, violation of a federal or state law, a violation of a local law, ordinance or resolution."

Alberto's failure to disclose his speeding convictions technically makes the application false according to the Nebraska Liquor Control Act (Part II Chapter 2 Section 010.01). The undisclosed convictions would fall under state law or local ordinance. Either way, the conviction is either an infraction or a misdemeanor that does not rise to the level of a Class I Misdemeanor in a specified crime under Nebraska State Statute Chapter 28 that would automatically nullify the liquor license.

NCJIS also indicates that Alberto is a "Multi-State offender." The status could be solely attributed to his DUI conviction in Missouri, or he could have more criminal history outside the State of Nebraska. As I am not allowed to run criminal histories on liquor license investigations, I don't know if there are more undisclosed convictions out of state.

On 6/30/10, I stopped by U.S. Bank and tried to obtain Alberto's business

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15:51

Grand Island Police Department  
LAW SUPPLEMENTAL NARRATIVE

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account information. I spoke to Sara Anderson and gave her the release from harm form that Alberto signed. At the end of the day, I still had not heard back from U.S. Bank. I called back the next day and was informed that the form Alberto had signed was not sufficient. The bank called Alberto and had him sign one of their forms. I was then able to pick up account information on 7/2/10.

Alberto opened his business account on 5/4/10, and he is the only signer on the account. As of 7/1/10, the balance in the account was \$6811.97. I noticed on the liquor license application, Alberto advised that he had not borrowed any money to establish or operate the business. Exhibit A in the liquor license application states that Alberto has spent \$34,704 on items for the restaurant. His rent is \$1875 per month. I did not see any expenditures for food.

I met with Alberto on 7/2/10. I asked him how he got the money to start his business. Alberto advised that he had an "account" in Mexico that had about \$19,000 in it. When asked why he didn't have an account here, he said that the \$19,00 was money he sent to relatives. They held it and could use it in case of an emergency. I asked where the rest of the money came from. He initially responded by saying that he "borrowed" \$10,000 from his dad in Missouri. I then showed him the spot on the application where it asks if he borrowed any money to establish or operate his business. He had checked the "no" box. Alberto then said that his father gave him the money and didn't necessarily expect repayment. According to Alberto, the understanding between his father and him is that Alberto will repay him only if the restaurant succeeds.

The \$29,000 he accounted for still doesn't explain where he got all the money. When confronted with this, Alberto said the rest of the money was his that he had personally saved. He also told me that the money in the business account is from deposits from sales at the restaurant.

Alberto said that he has hired two waiters, two bus boys, two cooks, and one dishwasher. He may also have a part-time hostess. He has not had to pay for his food yet. Alberto said the restaurant is open from 11A to 10P on weekdays and 11A until 1030P on weekends. Alberto wants to serve alcohol at his restaurant but has no plans to run a bar or bring in entertainment. La Cabana should be similar to El Toro.

I told Alberto that since there is some uncertainty as to whether he "borrowed" money to establish/operate the business when he claimed that he had not, it is very possible that the police department may recommend a denial of the liquor license.

The Grand Island Police Department suggests that the Council recommend a denial of the license to the Nebraska Liquor Control Commission due to the discrepancies in the application that were uncovered during the investigation.

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IN THE COUNTY COURT OF HALL COUNTY, NEBRASKA

STATE OF NEBRASKA,

Plaintiff,

vs.

ALBERTO BALDOVINOS-GARCIA,

Defendant.

FILED  
REYNALDA A CARPENTER  
JUN 2 - 2010  
CLERK MAGISTRATE  
HALL CO COURT

Case No. CR09-1137

AMENDED ORDER SETTING  
ASIDE CONVICTION

ON THIS 25<sup>th</sup> day of May, 2010, this matter came on for hearing before the Court on the Petition filed herein by the Defendant, Alberto Baldovinos-Garcia, by and through his attorney, Steven W. Dowding, to set aside the conviction rendered on the 29<sup>th</sup> day of June, 2010.<sup>-69</sup>

The Court, having examined the Petition on which this Order is made, and being fully advised in the premises, hereby FINDS AND ORDERS AS FOLLOWS:

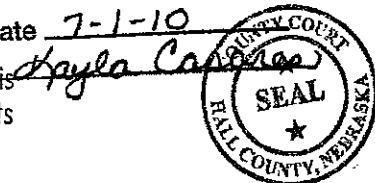
The conviction rendered on the 29<sup>th</sup> day of June, 2009, should be and hereby is set aside and said conviction is hereby nullified.

IT IS FURTHER ORDERED that all civil disabilities imposed as a result of the conviction herein be removed as though a pardon had been issued and that the setting aside of this conviction in accordance with the Nebraska Probation Administration Act shall not:

- (a) Require the reinstatement of any office, employment, position which was previously held and lost or forfeited as a result of the conviction;
- (b) Preclude proof of a plea of guilty whenever such plea is relevant to the determination of an issue involving the rights or liabilities of someone other the offender;
- (c) Preclude proof of the conviction as evidence of the commission of the misdemeanor or felony whenever the

STATE OF NEBRASKA  
COUNTY OF HALL  
I CERTIFY THAT THIS  
IS A TRUE COPY OF THE  
ORIGINAL ON FILE WITH  
THIS COURT.

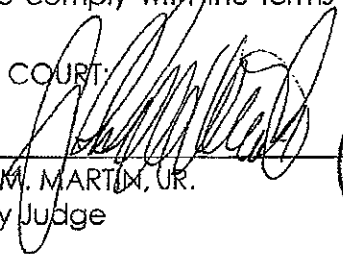
Date 7-1-10



fact of its commission is relevant for the purpose of impeaching the offender as a witness, except that this Order setting aside the conviction may be introduced in evidence;

- (d) Preclude use of the conviction for the purpose of determining sentence on any subsequent conviction of a criminal offense;
- (e) Preclude the proof of the conviction as evidence of the commission of the misdemeanor or felony in the event an offender is charged with a subsequent offense and the penalty provided by law is increased if the prior conviction is proved;
- (f) Preclude the proof of the conviction to determine whether an offender is eligible to have a subsequent conviction set aside in accordance with the Nebraska Probation Administration Act;
- (g) Preclude use of the conviction as evidence of commission of the misdemeanor or felony for purposes of determining whether an application filed for a license issued under sections 71-1901 to 71-1906.01 or the Child Care Licensing Act or a certificate issued under sections 79-806 to 79-815 should be denied, suspended, or revoked;
- (h) Preclude proof of the conviction as evidence whenever the fact of the conviction is relevant to a determination of risk of recidivism under Section 29-4013; or
- (i) Relieve a person who is convicted of an offense for which registration is required under the Sex Offender Registration Act of the duty to register and to comply with the terms of the act.

BY THE COURT:

  
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PHILIP M. MARTIN, JR.  
County Judge



Prepared by:  
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E-mail: [s3dlaw@kdsi.net](mailto:s3dlaw@kdsi.net)



I Alberto Baldovinos aka Alberto Baldovinos Garcia give USbank permission to give any information requested by the Grand Island Police Department-Police Sergeant Dave Vitera regarding my Business account La Cabana, LLC. This request is needed for my application for a Liquor License. Information included but not limited is the following:

When the business account was opened MAY 4, 2010

Who the signers are on the business account Alberto Baldovinos

The Business account balance for any dates needed \$6,811.97 as of 7-1-10

How many business accounts I have -one Account

And any other information needed regarding by business account.

Alberto Baldovinos  
Alberto Baldovinos Garcia

Dated 7/01/10

Came before me Alberto Baldovinos Garcia on July 1, 2010

Sara Anderson 7-1-2010

