



City of Grand Island

Tuesday, October 25, 2011

Council Session

Item E2

**Public Hearing on Request from Simara Y. Rodriguez dba El
Trancazo Bar, 413 West 4th Street for a Class "T" Liquor License**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: October 25, 2011

Subject: Public Hearing on Request from Simara Y. Rodriguez dba El Trancazo Bar, 413 West 4th Street for a Class “I” Liquor License

Item #'s: E-2 & I-2

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

Simara Y. Rodriguez dba El Trancazo Bar, 413 West 4th 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.

After a background check by the Grand Island Police Department (see attached) it is recommended that the City Council deny this application based on Horacio Rodriguez, spouse of Simara Rodriguez undisclosed convictions and not a United States citizen.

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 Simara Y. Rodriguez dba El Trancozo Bar, 413 West 4th Street for a Class 'T' Liquor License based on the Police Department recommendation.

10/20/11
458

Grand Island Police Department

17:34
1

LAW INCIDENT TABLE

Page:

City : Grand Island

Occurred after : **:**:** **/**/****

Occurred before : **:**:** **/**/****

When reported : 08:30:00 10/10/2011

Date disposition declared : 10/12/2011

Incident number : L11101464

Primary incident number :

Incident nature : Liquor Lic Inv Liquor License
Investigation

Incident address : 413 4th 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 : T Telephone

Agency code : GIPD Grand Island Police Department

Responsible officer : Vitera D

Offense as Taken :

Offense as Observed :

Disposition : ACT Active

Misc. number : RaNae
 Geobase address ID : 18196
 Long-term call ID :
 Clearance Code : CL Case Closed
 Judicial Status : NCI Non-criminal Incident

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INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
NM	67168	10/17/11	Rodriguez, Horacio	Simara's Spouse
NM	79558	10/17/11	Rodriguez, Simara Y	Owner
NM	158489	10/17/11	El Trancaso Bar,	Business

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 Simara Rodriguez for El

Trancazo Bar.

LAW INCIDENT RESPONDERS DETAIL:

Se Responding offi Unit n Unit number

1 Vitera D 318 Vitera D

10/20/11
458

Grand Island Police Department

17:34
2

LAW INCIDENT TABLE

Page:

LAW SUPPLEMENTAL NARRATIVE:

Seq Name Date

1 Vitera D 10:02:54 10/17/2011

10/20/11
458

Grand Island Police Department

17:34
3

LAW INCIDENT TABLE

Page:

318

Grand Island Police Department

Supplemental Report

Date, Time: Mon Oct 17 10:03:08 CDT 2011

Reporting Officer: Vitera

Unit- CID

While reviewing the license, I noted that Simara Rodriguez is applying for an

Individual Class I license which means she is asking to sell beer, wine, and

distilled spirits on sale only. According to the application, Simara has never

been convicted of any charge, she is filing for a temporary operating permit (TOP)

and she is not borrowing any money from any source to establish or

operate the business. Simara also listed that she and her spouse (Horacio

Rodriguez) have lived in Grand Island for the last ten years. Horacio signed a

Spousal Affidavit of Non-Participation.

I did some background checks on Simara and Horacio. Neither one of them have

any outstanding warrants, and they each have a valid Nebraska driver's license.

I also checked them through Spillman and NCJIS. According to Spillman, Horacio

has a speeding conviction and possibly a DDS conviction. He has a jail photo in

Spillman for being arrested on a warrant for failing to pay on a DDS conviction.

I confirmed through NCJIS that Horacio has a speeding conviction in Garfield

County in 2007 and a DDS Conviction in Hall County in 2003. I did not find any

potential convictions for Simara in Spillman or NCJIS.

While continuing to look through the application, I noticed that Simara bought

the business and the inventory from Myriam Alvarez on 5/20/11. El Trancaso has

continued to operate and sell alcohol. On 6/17/11, a Grand Island Police Officer issued a citation to a bartender in El Trancaso for serving an intoxicated person. The officer observed the male stumble into the bar. The

officer entered the bar and saw that the male had a cold bottle of Bud Light in

front of him. The bartender said that the male always comes into the bar in a

drunken state but only has one beer. The male tested a .208 on a PBT. Simara's

application shows that she filed for a TOP, but she was denied. It appears that

she has been selling alcohol without a license since 5/20/11. The prior owner

should have relinquished her license at the time she sold the bar.

I Googled Simara and was unable to pinpoint a facebook page for her. Her name

did pop up in the Grand Island Independent as being a volunteer for the State

softball tournament last summer. I also found information that indicates that

she is or used to be a para-educator for GIPS. I searched her through Entersect

(paid police database that includes civil information) and didn't find anything

of interest.

I did the same searches on Horacio and found that there are too many Horacio

Rodriguez's to figure out which one he is. When I searched Entersect, it

appears that it's very possible that Horacio had some financial trouble in

California.

I also checked with ICE on Simara and Horacio and was told that Horacio is a

lawful permanent resident alien from Mexico. Nothing was found on Simara that

would indicate she is not a U.S. citizen.

I tried to set up an interview with Simara and NSP Investigator Lorri Rogers at

the same time. I was unable to make the interview. Investigator Rogers typed a

report on the interview and forwarded it to me. It is attached to this report.

All in all, this license could be denied because Horacio had undisclosed convictions (technically false application), and he is a resident of the United

States as opposed to being a citizen. The liquor laws say that if the spouse of

the applicant can't qualify for a license, then the applicant can't qualify for

a license (53-125). However, if it can be proven to the NLCC that the

ineligible spouse will have nothing to do with the business and the applicant

can conform to all the provisions of the liquor act, an exception can be made.

The license could also be denied based on the citation issued by GIPD in June.

The citation was issued one month after Simara bought the bar and the liquor

inventory. From the date Simara bought the bar, she should have been operating

on a TOP or not operating at all. The TOP was denied, yet the bar was obviously

being operated at the time the citation was issued. Any way you look at it,

Simara owned the bar, she didn't have a license, and a citation was issued under

her ownership. I believe Simara is responsible whether she knew anything about

it or not.

While Investigator Rogers commented that Simara and Horacio are a nice couple,

she has concerns about Horacio being listed as a "multi state offender in NCJIS

and the number of civil judgments against the Rodriguez's over the last nine

years. See her report for more details regarding her interview with Simara.

The Grand Island Police Department recommends that the Council does not give

local approval to this license.

2 Vitera D 15:24:46 10/20/2011

10/20/11
458

Grand Island Police Department

17:34
5

LAW INCIDENT TABLE

Page:

318- NSP Investigator Roger's Report

Grand Island Police Department

Supplemental Report

Date, Time: Thu Oct 20 15:38:20 CDT 2011

Reporting Officer: Vitera

Unit- CID

Inv. Rogers received a background investigation for Simara and Horacio

Rodriguez, DBA El Trancazo Bar, license #I-95851. The bar is located at 413 W

4th Street, Grand Island, NE, and is currently licensed by Myriam Alvarez,

license #I-88393. The Rodriguez's applied for a TOP but were denied by the

NLCC, due to the sale occurring over 90 days prior to the application submittal.

Upon checking at the local level for criminal / civil records, Inv. Rogers

located the following: Horacio Rodriguez Driving During Suspension 6/18/2003,

Speeding 6/29/2007, operator's license was suspended for failure to comply on

3/13/98, reinstated on 3/13/2003, Suspended again for an accident from

3/26/1998, and reinstated on 6/24/2003. Additionally, Horacio's Nebraska State

Patrol Criminal History record located on NCJIS indicates he is a multi state

offender. Due to policy, Inv. Rogers is not able to run an out of state

criminal history check. The fingerprint records will need to be utilized to

determine if there are additional criminal records not located. Inv. Rogers

located no criminal records at the local level on Simara Rodriguez.

Upon checking for civil records, Inv. Rogers located 10 judgments dating from

2002 to 2011 for both of the Rodriguez's. The majority were for General

Collection Bureaus, which were paid off by garnishment of wages. Only one is

outstanding from 6/2011 for \$1,176.85 that is being paid by garnishment at this

time.

Inv. Rogers interviewed both Simara and Horacio Rodriguez at their residence.

Simara will be the one handling the day to day aspects of the license, including

the ordering of alcohol, writing of checks, etc. Horacio has submitted an

affidavit of non participation at this time. Simara advised that although she

is a citizen of the USA, Horacio is a permanent resident alien. She advised that

he is in the process of obtaining citizenship, and they will submit a request to

withdraw upon his citizenship. In the mean time, they both understand and agree

that Horacio will have nothing to do with the business. Simara works days for

the Grand Island Public Schools, and Horacio works at Gibbon Pack. They both

intend to keep their day jobs. Simara plans to operate the bar only on

weekends, from approximately 1900 to 0100. Simara admittedly has no previous

experience in the retail sells and service of alcohol, and has a lot to learn.

She plans to take either the TIPS or RBST training as soon as possible to help

her. Inv. Rogers asked when she had purchased the bar inventory, and she

advised she hasn't yet. Simara advised that although the lease is now in her

name, she has not been paying the rent. She advised that Myriam Alvarez, the

current licensee, is the one still operating the business until Simara is issued

a license. She said that although she has paid the \$3,000 for the inventory,

Myriam has said she will re-inventory upon closing. Inv. Rogers asked who paid

the suspension off from 6/14/2011, and Simara did not know anything about it.

When asked who was working when GIPD contacted the bar on 6/17/2011, again she

had no idea. Simara stated she has not worked in the bar, and is not operating

it now. Simara does not even have a key, and was unable to contact Myriam to

obtain entrance into the bar when Inv. Rogers wanted to conduct the interview at

the premise.

Inv. Rogers asked Simara why the long delay between the purchase of inventory

(May 20, 2011), signing of lease (July 25, 2011), and the submission of the

application (August 8, 2011.) Simara explained that when Myriam first

approached her with the opportunity, she thought it would be an excellent

opportunity for she and her family. She had no idea what all was required.

Simara said she paid the \$3,000, and then they were unable to contact the landlord for some time to obtain the new lease. Simara had to send to Texas for

a copy of her birth certificate, and sent off for her passport. During this

time, Horacio became very ill, and ended up in the hospital for a week. Simara

said this put everything on hold again. She stated that once things settled

down, she got everything together and submitted it. She said this was the first

time she had ever done anything like this, and didn't know how complicated it

was. Simara said she has not hired anyone yet to work, and won't until the

license is issued.

Inv. Rogers asked Simara who had filled out the application, and she stated she

had. When asked why she had not listed the DDS conviction for Horacio, she

advised that it had all been a mistake and was dismissed. Inv. Rogers pointed

out that one DDS had been dismissed, but another had not. The court records

indicated that Horacio had plead guilty, and paid a \$50 fine. Horacio advised

that he had a no operator's license ticket from California, and a speeding one

from South Dakota that he had forgotten all about from 1998. He advised that

when he was cited for the DDS that was subsequently dismissed, it all came to

light. As soon as he found that he still owed, he attempted to pay the ticket

and was told it was no longer on file to pay as it was too old. He contacted

DMV and his license was reinstated. In the meantime the other ticket had come

through and his license was again suspended which he did not know. When he was

cited, he paid the \$50 fine, and was reinstated again. Horacio advised he has

had no other problems since then. When asked about the civil records, they both

advised they were medical bills. Simara stated they have two kids, and both she

and Horacio have had surgeries and illnesses that insurance did not cover all

the costs. They said they have tried hard to get them all paid off, and are

close.

Simara advised she had not intentionally left the information of Horacio's

conviction off of the application, she had just forgotten about it. Simara said

she is a hard worker, and they are trying hard to make things better for their

family. Neither drink or smoke, and Simara thinks she can do a good job with

running the bar. She stated that when the opportunity came up, she knew she

wanted to have a business to help her family. Simara said she can't cook, so

she can't run a restaurant. She is looking forward to the opportunity to help

her family with the future. She wants to provide more for her kids, and their

future education. Simara advised she knows they have owed money, and still owe

some, but she feels the bar

will help to supplement their income and help with the finances. Simara asked

to have the chance.

Simara appears to be willing and able to properly provide the services applied

for. She appears to conform to the requirements of the rules, regulations, and

liquor control act. Horacio has filed an affidavit of non participation, and

agrees to have nothing to do with the business at this time. Although the

omission of the DDS and speeding makes the application technically false, the

convictions do not rise to the level for an automatic disqualification. The

concern that Inv. Rogers has, is the multi state offender notation for Horacio,

and not knowing at this time what all he has been convicted of. The other

concern is the number of civil judgments over the last 9 years. Inv. Rogers

feels the determination to issue the license should be made after the criminal

history information is returned to the NLCC.

The location does comply with statute 53-177, even though there is a church

within the 150' distance requirement. The location has been continuously licensed in the last two years, so the distance is not applicable