



City of Grand Island

Tuesday, February 14, 2012

Council Session

Item E1

**Public Hearing on Request from Baldo, Inc. dba El Farayon
Cantina & Grill, 1403 South Eddy Street for a Class “C” Liquor
License**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: February 14, 2012

Subject: Public Hearing on Request from Baldo, Inc. dba El Farayon Cantina & Grill, 1403 South Eddy Street for a Class "C" 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

Baldo, Inc. dba El Farayon Cantina & Grill, 1403 South Eddy Street has submitted an application for a Class "C" Liquor License. A Class "C" Liquor License allows for the sale of alcohol on and off 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 this application was a Liquor Manager designation for Alberto Baldovinos, 235 North Custer Avenue.

The Police Department completed a background check on Alberto Baldovinos (see attached) and is recommending the City Council remain neutral on this application based on the Nebraska Liquor Control Act 53-125 – Classes of persons to whom no license issued.

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 make no recommendation this application.

Sample Motion

Move to make no recommendation on the application for Baldo, Inc. dba El Farayon Cantina & Grill, 1403 South Eddy Street for a Class "C" Liquor.

02/07/12

Grand Island Police Department

450

09:41

LAW INCIDENT TABLE

Page: 1

City	: Grand Island
Occurred after	: 16:01:18 01/18/2012
Occurred before	: 16:01:18 01/18/2012
When reported	: 16:01:18 01/18/2012
Date disposition declared	: 01/18/2012
Incident number	: L12012128
Primary incident number	:
Incident nature Investigation	: Liquor Lic Inv Liquor License
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	: Viterra D
How received	: T Telephone
Agency code	: GIPD Grand Island Police Department
Responsible officer	: Viterra D
Offense as Taken	:
Offense as Observed	:
Disposition	: ACT Active
Misc. number	: RaNae

Geobase address ID : 13842
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
LW	L10063772	01/27/12	Liquor Lic Inv	Related
NM	93768	01/26/12	Baldovinos-Garcia, Alberto	Owner
NM	173278	01/26/12	El Farayon Cantina & Grill,	Business
NM	125790	01/25/12	Paz Cuevas, Macrina	Spouse

LAW INCIDENT CIRCUMSTANCES:

Se	Circu	Circumstance code	Miscellaneous
1	LT21	Restaurant	

LAW INCIDENT NARRATIVE:

I Received a Copy of a Liquor License Application for the El Farayon Cantina &

Grill and a Copy of a Liquor Manager Application from Alberto Baldovinos.

LAW INCIDENT RESPONDERS DETAIL:

LAW SUPPLEMENTAL NARRATIVE:

Seq	Name	Date
1	Vitera D	14:42:30 01/27/2012

Grand Island Police Department

Supplemental Report

Date, Time: Fri Jan 27 14:42:43 CST 2012

Reporting Officer: Vitera

Unit- CID

I received a copy of a Class C (beer, wine, distilled spirits, on & off sale)

Limited Liability Company (LLC) liquor license application for El Farayon Cantina & Grill and a copy of a liquor manager application from Alberto Baldovinos. Alberto currently owns La Cabana Mexican restaurant and holds a

Class I (beer, wine, distilled spirits, on sale only) liquor license.

When Alberto applied for the liquor license at La Cabana, he did not receive

local approval because of a false application. The major reason was that he did

not disclose (as requested in the application) that he had borrowed money from

his father in Mexico.

While perusing this application, I noticed that Alberto stated he did not borrow

any money for the establishment or operation of El Farayon. He disclosed the

same violations with the addition of some speeding tickets. On the manager's

application, the "no" box was checked on the question asking if he is married.

There is a handwritten note beside that question that says, "per lawyer is

married." Under the spousal information section, Macrina Cuevas is written in

with no Social Security number and a date of birth of 1/21/87. There is also a

handwritten comment that says, "Not a citizen of the US at this time." I found

Macrina in Spillman, and it shows a DOB of 1/21/86 for her. She does not have a

driver's license or any other entry in NCJIS. Homeland Security wasn't able to

find her in their database based on the name and each DOB I gave them. If she

is at least a resident, they should have been able to find documentation of her.

I checked Macrina for warrants and didn't find any using the information provided.

Alberto provided a certificate of Naturalization which was confirmed by Homeland

Security. He doesn't have any warrants for his arrest, and he has a valid

driver's license. I checked him through NCJIS and didn't find any undisclosed

violations. NCJIS shows him as a "multi-state offender." He had this same designation during my last investigation. Apparently, nothing in his criminal

history precluded him from receiving a license. As a reminder, he also

disclosed a carrying a concealed weapon conviction and a third degree assault

conviction last time and this time. Each conviction would normally

automatically disqualify him, but he had a judge set them aside so they can't be held against him.

I used an Internet-based search engine to find information on Alberto and

Macrina. I didn't find anything of interest on Alberto. I could not find any

record of Macrina using every combination of Macrina Cuevas Paz and the two different DOB's.

Macrina's status in the United States is the issue at hand. If she is not a

citizen of the U.S., Alberto can't get a license unless he can convince the NLCC

to give him one. The following Nebraska State Statute explains the situation:

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

No license of any kind shall be issued to ... (3) a person who is not a citizen

of the United States, ... (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...

On 2/2/12, I spoke to Alberto at La Cabana. I met his wife (Macrina) who was

working at the time. I went over the application with Alberto. I asked him

about the name of his cantina and grill. He said that El Farayon is a big rock

in the ocean that sticks out of the water. Alberto saw on the Internet that

some bars in California are named El Farayon. He described the business as a

bar first and a restaurant second. He plans on having a jukebox in the

establishment and having a DJ on Friday and Saturday nights. He has talked to

Trejo security but hasn't hired them. Alberto wants get a feel for the business

after it has been open for awhile to help him determine what he needs for

employees and security. Alberto was adamant that he has not borrowed any money to establish and/or operate El Farayon.

I told Alberto that the issue with his application is that his wife is not a

citizen of the United States. Alberto showed me some paperwork that illustrates

Macrina is applying for residency. Even if Macrina becomes a resident of the

United States, the law says that the spouse of an applicant has to be a citizen.

This law can be overcome by the applicant with a convincing argument to the NLCC.

The Grand Island Police Department recommends that the council remains neutral

on this application. Based on 53-125, it appears that El Farayon is not

eligible for a liquor license, but it is quite possible that the NLCC will grant

one anyway since a Spousal Affidavit of Non-Participation was submitted.

I called Alberto on 2/7/12 and told him about our recommendation. I also called

his attorney to give him some notice before the council meeting.

