

ITEM #: 31  
DATE: 06-11-24  
DEPT: Police

**COUNCIL ACTION FORM**

**SUBJECT: REQUEST FROM THE ALCOHOLIC BEVERAGES DIVISION TO PROVIDE  
A RESPONSE REGARDING THE STATUS OF THE CLASS C RETAIL  
LICENSE - CELAYA, 217 SOUTH DUFF**

**BACKGROUND:**

The Alcoholic Beverages Division of the Iowa Department of Revenue (ABD) is considering the revocation of Celaya's liquor license due to the number of compliance check failures at the restaurant in the last year. As an alternative to revocation, ABD is also considering allowing Celaya to surrender their liquor license for a period of time.

**A review of the police records for past 12 months found four consecutive compliance check failures: September 30, 2023, November 3, 2023, November 17, 2023, and February 23, 2024.** As a reminder, the Police Department conducts compliance checks for establishments who hold liquor licenses in the City of Ames. The compliance checks are completed by taking a person under the legal age to liquor licenses establishments who then attempts to purchase alcohol using their state-issued identification. A business passes the check if the employee asks for identification and rightly refuses the purchase. An establishment fails the compliance check if the employee sells alcohol to the underage person without exercising reasonable care to ascertain whether the person is under legal age.

- On September 30, 2023, two minors entered Celaya and ordered alcoholic drinks which were then served to them. While the waiter asked for IDs, he failed to determine that their IDs showed them to be underage. When officers wrote the citation they also gave the waiter information on our ID talks.
- On November 3, 2023, two minors entered Celaya and ordered alcoholic drinks which were then served to them. While the waiter asked for IDs, he failed to determine their IDs showed them to be underage. The waiter said the restaurant was busy and this contributed to his failure to recognize the IDs showed both to be underage to purchase alcohol.
- On November 17, 2023, two minors entered Celaya and ordered alcoholic drinks which were then served to them. The waiter did not ask for ID nor ask their age.
- On December 13, 2023, after the third failure, police department staff met with the owner, Kevin Fajardo to speak with him about the liquor laws and the consequences of the numerous failed compliance checks. The owner was given the Iowa code sections pertaining to liquor license revocations as well as information on ID trainings provided by the Ames PD and IPACT. Only one employee has attended an ID training provided by Ames PD, but this was over one year ago.
- On February 23, 2024, two minors entered Celaya and ordered alcoholic drinks which were then served to them. The waitress did not ask for IDs nor ask their age.

Celaya did pass the most recent follow-up compliance check on April 12, 2024.

**Due to the four compliance check failures in less than 6 months, ABD is moving forward with**

sanctions. Ownership of Celaya has offered to surrender their license for a period of time. Surrendering their license would allow Celaya to re-apply for a license once the period of surrender has ended rather than serving a two-year revocation period.

**ABD is seeking the City Council's opinion prior to finalizing any settlement with Celaya. ABD is deciding whether to move forward with revocation of Celaya's liquor license as provided in the Iowa Code or allowing a period of surrender. The attorney for Celaya has also requested the City's opinion as to whether the City would allow a renewed license after the surrender period is over and if so, what the City would recommend as a surrender period.**

Iowa Code section 123.50(3)(d) states that: "A fourth violation [involving the sale of alcohol to a person under the legal age] within three years **shall** result in revocation of the license." (emphasis added). Under Iowa Code section 123.40, a revocation would prevent the premises of the license holder from being relicensed for a period of one year. Further, the license holder would not be allowed to hold a liquor license in the state for a period of two years.

Therefore, it is the recommendation of the Chief of Police that the City Council ask ABD to move forward with revocation. Celaya was given ample time and information to make necessary changes to ensure they were not selling or providing alcohol to minors. The City has no duty to educate local businesses regarding liquor laws but do so as an extra service. As a liquor license holder, it is the responsibility of the business to know and understand the laws applicable to their license and follow them. In addition, a recommendation of revocation is consistent with past recommendations of similar businesses in similar situations.

#### **ALTERNATIVES:**

1. The City Council can recommend to the Alcoholic Beverages Division that it move forward with revocation of Celaya's Class C license.
2. The City Council can recommend to the Alcoholic Beverages Division a period of time for surrender of Celaya's Class C license.
3. The City Council can take no action or provide guidance to the Alcoholic Beverages Division on Celaya's Class C license.

#### **CITY MANAGER'S RECOMMENDED ACTION:**

Ames Police Department and ABD conduct compliance checks to ensure liquor license holders are complying with their obligation to not sell alcohol to underage individuals. Celaya, has failed four such compliance checks in less than three years, in fact, less than six months.

Iowa Code section 123.50(3)(d) states that: "A fourth violation within three years **shall** result in revocation of the license." (emphasis added). Under Iowa Code section 123.40, a revocation would prevent the premises of the license holder from being relicensed for a period of one year. Further, the license holder would not be allowed to hold a liquor license in the state for a period of two years. It is consistent with past actions of the City Council for the City Council to recommend that ABD move forward with revocation. **Therefore, it is the recommendation of the City Manager that the City Council support the recommendation of the Chief of Police to approve Alternative No. 1, as noted above.**