

ITEM #:	<u>36</u>
DATE:	<u>08-13-24</u>
DEPT:	<u>POLICE</u>

COUNCIL ACTION FORM

**SUBJECT: MOTION APPROVING/DENYING A CLASS C RETAIL LICENSE - CELAYA,
217 SOUTH DUFF**

BACKGROUND:

State alcoholic beverage licenses and permits must receive approval by the local authority (City Council), before they can be issued by the State. On June 11, 2024, the City Council considered a request made by the Alcoholic Beverages Division (ABD) of the Iowa Department of Revenue for the City's opinion regarding a potential settlement between ABD and Celaya, located at 217 South Duff Avenue. Prior to finalizing any settlement with Celaya, ABD wanted to give City Council the opportunity to provide its opinion as to whether ABD should move forward with revocation of Celaya's liquor license or allow Celaya to surrender its liquor license for a period of time as an alternative to revocation. At that time, the City Council chose to advise ABD to proceed with revocation.

ABD issued an order on June 27, 2024, revoking Celaya's liquor license. Celaya has appealed that order and a hearing should be held before an Administrative Law Judge with the Department of Inspections and Appeals in the next few months. **Celaya has now applied for renewal of a 12-month Class C Retail Alcohol License, which is before the City Council for consideration of local approval.**

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 that 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 regarding Police Department 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, following 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 regarding 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.

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.

In the last year, Celaya failed four compliance checks in less than six months. It is the recommendation of the Chief of Police that the City Council deny the renewal application. Celaya was given ample time and information to make necessary changes to ensure they were not selling or providing alcohol to minors. 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. Deny the renewal application of Celaya's Class C license.
2. Approve the renewal application of Celaya's Class C license.

CITY MANAGER'S RECOMMENDED ACTION:

Ames Police Department and the Department of Revenue 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 deny the renewal application. **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.**