

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 14 Resolution# 10- 198 Council District:

For Meeting of February 2, 2010

(Adoption Date)

A RESOLUTION APPROVING A TRANSFER OF OWNERSHIP (CHANGE IN CORPORATE STRUCTURE ONLY) FOR TRANSMOUNTAIN OIL COMPANY, L.C. D/B/A HOWDY'S FOOD MART STORE #15, LIQUOR LICENSE NO. 0561, LOCATED AT 2210 EAST LOHMAN, LAS CRUCES, NEW MEXICO.

PURPOSE(S) OF ACTION: To approve, disapprove, or not approve the transfer of ownership (change in corporate structure only) for Transmountain Oil Company, L.C. d/b/a Howdy's Food Mart Store #15, for Liquor License No. 0561.

Name of Drafter: Monica Campbell <i>mc</i>		Department: Legal		Phone: 541-2128	
Department	Signature	Phone	Department	Signature	Phone
Originating Department		541-2128	Budget	<i>Richard Yarbrough</i>	541-2107
			Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: Pursuant to state law, a corporation must notify the Alcohol & Gaming Division of the Regulation and Licensing Department of the State of New Mexico ("Alcohol & Gaming") when there is any change in the corporate structure (NMSA 1978, § 60-6B-6). An application for a change of corporate structure of a liquor license must be accompanied by a resolution of the City Council approving of and consenting to the change after a public hearing.

Transmountain Oil Company, L.C. d/b/a Howdy's Food Mart Store #15 applied to Alcohol & Gaming for a transfer of ownership (change in corporate structure only) for Liquor License No. 0561. Alcohol and Gaming granted preliminary approval on December 16, 2009.

The City Council is required to hold a public hearing within 45 days after the date of receipt of the preliminary approval from Alcohol and Gaming. A public hearing to review this issue is scheduled for Tuesday, February 2, 2010, beginning at 1:00 p.m., in the City Council Chambers, City Hall, 200 North Church Street, Las Cruces, New Mexico. Notice of this public hearing was published in the *Las Cruces Sun-News* on January 10 and 17, 2010, and in the *Las Cruces Bulletin* on January 8 and 15, 2010.

Council may approve or disapprove the transfer of ownership (change in corporate structure only). However, Council's disapproval must be based on substantial evidence that the change in corporate structure for the liquor license would adversely affect the

health, safety or welfare of the citizens of the City of Las Cruces. Council may also fail to either approve or disapprove the change. If Council fails to approve or disapprove the change within 30 days after the public hearing, the Director of Alcohol and Gaming may give final approval of the transfer of ownership due to a change in corporate structure for this license.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Resolution with Alcohol and Gaming's preliminary approval and the application attached as Exhibit "A".
2. Notices of Intent to Adopt, Attachments "1" and "2".
3. Traffic Impact Report from the Traffic Engineering Section, Attachment "3".
4. Liquor License Impact Report (zoning) from the Community Development Department, Attachment "4".
5. Liquor License Impact Report (registration and permits) from the Economic Development Department, Attachment "5".
6. Criminal Activity Report from the Las Cruces Police Department, Attachment "6".
7. Fire and Safety Compliance Report from the Las Cruces Fire Department, Attachment "7".

OPTIONS / ALTERNATIVES:

1. Approve the resolution and consent to the change in corporate structure for Liquor License No. 0561, Transmountain Oil Company, L.C. d/b/a Howdy's Food Mart Store #15. Approval will allow Alcohol and Gaming to continue with its application process.
2. Disapprove the resolution. Council's disapproval must be based on substantial evidence that the change in corporate structure for the liquor license would adversely affect the health, safety or welfare of the citizens of the City of Las Cruces.
3. Not approve or disapprove the Resolution. If the Council fails to either approve or disapprove the change in corporate structure for the liquor license, the Director of Alcohol and Gaming may give final approval to said change.

(Continue on additional sheets as required)

RESOLUTION NO. 10-198

A RESOLUTION APPROVING A TRANSFER OF OWNERSHIP (CHANGE IN CORPORATE STRUCTURE ONLY) FOR TRANSMOUNTAIN OIL COMPANY, L.C. D/B/A HOWDY'S FOOD MART STORE #15, LIQUOR LICENSE NO. 0561, LOCATED AT 2210 EAST LOHMAN, LAS CRUCES, NEW MEXICO.

The City Council of the City of Las Cruces is informed that:

WHEREAS, Transmountain Oil Company, L.C. d/b/a Howdy's Food Mart Store #15 applied to the Alcohol and Gaming Division of the Regulation and Licensing Department of the State of New Mexico ("Alcohol and Gaming") for a transfer of ownership of Liquor License No. 0561 due to a change in corporate structure; and

WHEREAS, on December 16, 2009 Alcohol and Gaming granted preliminary approval for the transfer of ownership (change in corporate structure only), as evidenced by its letter with the application attached; and

WHEREAS, pursuant to law, the application for the transfer of ownership (change in corporate structure only) for the liquor license must be accompanied by a resolution of the City Council approving of and consenting to the change after a public hearing upon reasonable public notice of such hearing; and

WHEREAS, the City Council did on this date hold a public hearing after reasonable public notice setting forth the appropriate information concerning the public hearing. The City Council has considered the transfer of ownership (change in corporate structure only) for the liquor license and it has determined that the approval of said transfer is not detrimental to the public health, safety or welfare of the City of Las Cruces.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:

(I)

THAT the transfer of ownership (change in corporate structure only) for Transmountain Oil Company, L.C. d/b/a Howdy's Food Mart Store #15, for Liquor License No. 0561, located at 2210 East Lohman, Las Cruces, New Mexico, is hereby approved.

(II)

THAT a copy of this Resolution shall be conveyed to the Director of the Alcohol and Gaming Division of the Regulation and Licensing Department, Post Office Box 25101, Santa Fe, New Mexico 87504-5101.

(III)

THAT City staff is authorized to do all deeds necessary to accomplish the intent of this Resolution.

DONE AND APPROVED on this 2 day of February 2010.

Mayor

ATTEST:

City Clerk

{SEAL}

Moved by: _____

Seconded by: _____

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:



City Attorney



New Mexico Regulation and Licensing Department
ALCOHOL AND GAMING DIVISION

Toney Anaya Building ▪ 2550 Cerrillos Road ▪ Santa Fe, New Mexico 87505
(505) 476-4875 ▪ Fax (505) 476-4595 ▪ www.rld.state.nm.us/agd

December 16, 2009

Certified Mail No: 7006 3450 0001 4339 7420

Bill Richardson
GOVERNOR

Kelly O'Donnell, Ph.D.
SUPERINTENDENT

Pamelya Herndon
DEPUTY
SUPERINTENDENT

Julie Ann Meade
CHIEF LEGAL COUNSEL

Gary J. Tomada
DIRECTOR

City of Las Cruces
Attn: Ester Martinez, Clerk
PO Box 20000
Las Cruces, NM 88004

Re: License / App. No. Liquor License # 0561 / Application # 620108
Applicant Name: Transmountain Oil Company, L.C.
Doing Business As: Howdy's Food Mart Store #15
Proposed Location: 2210 E. Lohman, Las Cruces

ATTENTION: Department or person responsible for conducting or preparing the public hearing for liquor license transfers or issuance of new liquor licenses. *(Please review the revised instructions for approval or disapproval below.)

Greetings:

The referenced application and is being forwarded to you in accordance with Section 60-6B-4 NMSA of the Liquor Control Act.

Within forty-five days after receipt of a notice from the Alcohol and Gaming Division, the governing body shall hold a public hearing in the question of whether the department should approve the proposed issuance or transfer. Notice of the public hearing required by the Liquor Control Act shall be given by the governing body by publishing a notice of the date, time and place of the hearing at least once a week for two consecutive weeks in a newspaper of general circulation within the territorial limits of the governing body, which requires that two full weeks of publication must be satisfied before a hearing can be conducted. For example, the hearing cannot be conducted until a full week has elapsed after the second publication. The notice shall include: (A) Name and address of the Applicant/Licensee; (B) The action proposed to be taken by the Alcohol and Gaming Division; (C) The location of the licensed premises. The governing body is required to send notice by certified mail to the applicant of the date, time and place of the public hearing. The governing body may designate a hearing officer to conduct the hearing. A record shall be made of the hearing.

The applicant is requesting a Transfer of Ownership (Change in Corporate Structure ONLY) of Liquor License.

The governing body may disapprove the issuance or transfer of the license if:

- 1) The proposed location is within an area where the sale of alcoholic beverages is prohibited by the laws of New Mexico. (The governing body may disapprove if the proposed location is within 300 feet of a church or school unless the license has been located at this location prior to 1981 or unless the applicant/licensee has obtained a waiver from the local option district governing body for the proposed licensed premises.
- 2) The issuance or transfer would be in violation of a zoning or other ordinance of the governing body. The governing body may disapprove if the proposed location is not properly zoned. Because this office is in receipt of a zoning statement from the governing body, this is not a basis for disapproval. Attached is a copy of a zoning statement from the local governing body.

Alcohol and Gaming Division
(505) 476-4875

Boards and Commissions Division
(505) 476-4600

Construction Industries Division
(505) 476-4700

Financial Institutions Division
(505) 476-4885

Manufactured Housing Division
(505) 476-4770

Securities Division
(505) 476-4580

Administrative Services Division
(505) 476-4800

EXHIBIT A

552
3) The issuance would be detrimental to the public health, safety or morals of the residents of the local option district. Disapproval by the governing body on public health, safety or morals must be based on and supported by substantial evidence pertaining to the specific prospective transferee or location and a copy of the record must be submitted to the Alcohol and Gaming Division.

*Within thirty (30) days after the public hearing, the governing body **shall** notify the Alcohol and Gaming Division ***in writing*** as to whether the local governing body has approved or disapproved the issuance of transfer of the license ***and*** by signing the enclosed original Page 1 of the application. ***The letter of approval/disapproval and the Page 1 must be returned together with the notice of publication(s).*** If the governing body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the public hearing, the director may give final approval to the issuance or transfer of the license.

If the governing body disapproves the issuance or transfer of the license, it shall notify the Alcohol and Gaming Division within thirty (30) days setting forth the reasons for the disapproval. A copy of the minutes of the public hearing shall be submitted to the Alcohol and Gaming Division with the notice of disapproval (page 1 of the application page noting disapproval).

Sincerely,


Jackie Gallegos
Hearing Officer

ENCLOSURES: Original Page 1 of Liquor License Application

State Liquor License # 0561

Application Number 620108

Local Option (AGD use) _____



RECEIVED
OCT 16 2009

**REGULATION AND LICENSING
DEPARTMENT
ALCOHOL AND GAMING DIVISION**

STATE OF NEW MEXICO
REGULATION AND LICENSING
DEPARTMENT
ALCOHOL AND GAMING DIVISION
P.O. BOX 25101 Santa Fe,
New Mexico 87504-5101
505-476-4570

Liquor License Application
Non Refundable Application Fee- \$200.00

10/16/09
[Signature]

Record Owner of License Transmountain Oil Company, L.C.
Current D/B/A Name Howdy's Food Mart Store #15

Current Premise Address 2210 E. Lohman
Las Cruces, New Mexico 88011

Application is for: (check one) Change of Stock _____ Change of Officers/Directors _____ Other X Transfer of Ownership of Existing License
Transfer of Ownership and Location _____ Transfer Location _____ Issue New License _____

Applicant is: Individual _____ Corporation _____ Partnership (General or Limited) _____ Limited Liability Company X

NAME OF APPLICANT (company or individual): Transmountain Oil Company, L.C. ADDRESS (INCLUDING CITY, STATE, ZIP) _____ TELEPHONE NUMBER _____
~~& R Distributing, LLC~~ PO Box 17993, El Paso, Texas 79917 915-779-3211
Notice also to: Linda L. Aikin, Esq., 530B Harkle Road, Santa Fe, NM 87505 PH: 505-982-6224 FAX: 505-982-0352

DBA Name to be used: Howdy's Food Mart Store #15 Phone Number for licensed premises 575-527-5564
Physical Address Where License is to be used: 2210 E. Lohman, Las Cruces, New Mexico 88011
LS (Street No./Highway No./State Road/City/County)

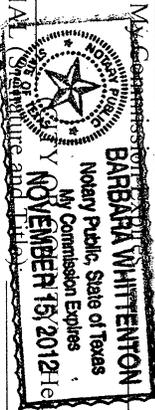
Mailing Address: PO Box 17993, El Paso, Texas 79917
(Street No./P.O. Box/City/State/Zip)
Are alcoholic beverages currently being dispensed at the proposed location? Yes _____ If yes, give license number 0561

I, James A. Cardwell, Jr., as (title) President being first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the contents thereof and that all statements therein contained are true. Applicant(s) agree(s) that if any statements or representations herein are found to be false, the Director may refuse to issue said license or may cause such license to be revoked at any time.

Signature of Applicant(s) [Signature] Date _____
Notary Public Use Only

SUBSCRIBED AND SWORN TO before me this 5th day of October 2009 by James A. Cardwell, Jr. (Name of Person(s) Signing Above)
NOTARY PUBLIC [Signature]

Local Governing Body of: _____ APPROVED _____ DISAPPROVED _____ CITY/COUNTY OFFICIAL _____
PLEASE CHECK ONE: AGD Use Only _____



APPROVED _____ DISAPPROVED _____ DIRECTOR _____ APPROVAL _____ DATE _____



AD FORM

LAS CRUCES SUN NEWS	
CLASSIFIED LEGAL AD	
DATES TO PUBLISH: JANUARY 10 AND 17, 2010	Account No. 720680
CITY CONTACT & PHONE NUMBER: MONICA CAMPBELL 541-2128 FAX: 541-2017	BILL TO: CITY CLERK P O Box 20000 LAS CRUCES, NM 88004
PROOF OF PUBLICATION REQUIRED.	

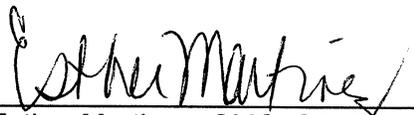
COPY TO PUBLISH:

NOTICE OF INTENT TO ADOPT

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of the **Transfer of Ownership (Change in Corporate Structure Only) of Transmountain Oil Company, L.C. d/b/a Howdy's Food Mart Store #15, for Liquor License No. 0561, located at 2210 East Lohman, Las Cruces, New Mexico.**

The Public Hearing will be held in conjunction with the regular meeting of the Las Cruces City Council to be held on Tuesday, February 2, 2010, at 1:00 p.m. in the City Council Chambers, 200 North Church, City Hall. If passed, the State of New Mexico Regulation & Licensing Department may approve the change.

Witness my hand and seal of the City of Las Cruces on this the 29th of December 2009.



 Esther Martinez, CMC, City Clerk



AD FORM

LAS CRUCES BULLETIN	
CLASSIFIED LEGAL AD	
DATES TO PUBLISH: JANUARY 8 AND 15, 2010	
CITY CONTACT & PHONE NUMBER: MONICA CAMPBELL 541-2128 FAX: 541-2017	BILL TO: CITY CLERK P O Box 20000 LAS CRUCES, NM 88004
PROOF OF PUBLICATION REQUIRED.	

COPY TO PUBLISH:

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 Esther Martinez, CMC, City Clerk



City of Las Cruces[®]
PEOPLE HELPING PEOPLE

**INTER-DEPARTMENTAL
MEMORANDUM**

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TO: Fermin A. Rubio, City Attorney

FROM: Dan Soriano, Traffic Engineer, Public Works *DS*

SUBJECT: Traffic Investigation Report

DATE: December 31, 2009

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As requested, Traffic Engineering has completed a traffic investigation for Howdy's Food Mart Store #15 located at 2210 E. Lohman., Las Cruces., New Mexico. The following information is submitted for review:

- Lohman Avenue at this location carries approximately 36,000 vehicles per day.
- Lohman Avenue is operated as a four lane roadway and primarily serves commercial properties in this area.
- Access to the property in question is off of Lohman Avenue and Walnut Street. No sight distance or operational problems exist.
- The speed limit on Lohman Avenue is 35 mph and Walnut Street is posted at 30 mph.

The approval of a Liquor License Transfer at this location does not appear it will adversely impact traffic operations along this segment of roadway.

Should any additional information be needed, please contact me.



City of Las Cruces

To: Fermin A. Rubio, City Attorney

From: Adam Ochoa, Acting Planner *AO*

Re: Liquor License Impact Report, Transmountain Oil Company, L.C.
d/b/a/ Howdy's Food Mart Store #15

Date: January 05, 2010

M-010-010

Development Services staff has reviewed the request for a transfer of ownership (change in corporate structure) of Liquor License No. 561 for Transmountain Oil Company, L.C. d/b/a/ Howdy's Food Mart Store #15 located at 2210 E. Lohman Avenue. Because this license is a transfer of ownership request and no actual change in the operation/activities at this location will occur, staff recommends approval of the request.

Cc: Cheryl Rodriguez

ECONOMIC DEVELOPMENT REPORT – HOWDY’S #15

From: Christine Logan

Subject: RE: Review of 3 liquor license applications

Each of these 3 businesses have a current city business registration and a current city liquor license.

From: Monica Campbell

Sent: Tuesday, December 29, 2009 9:18 AM

To: Christine Logan

Cc: Vicki Montez

Subject: Review of 3 liquor license applications

Attached are Alcohol & Gaming’s liquor license letters and applications as follows:

1. Howdy’s #15, 2210 E. Lohman, Change in Corporate Structure
2. Howdy’s #16, 1685 E. University, Change in Corporate Structure
3. High Desert Brewing Co., 1201 W. Hadley, Restaurant Liquor License (Beer and Wine)

Please review the applications and report on whether or not each business has obtained applicable licenses and/or permits.

In order to meet the time limits and publication deadlines imposed by law, I would appreciate it if you would submit your report no later than **January 14, 2010**.

Monica Campbell
City Attorney’s Office
541-2128

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LAS CRUCES POLICE DEPARTMENT
PO BOX 20000
217 E. Picacho
Las Cruces, New Mexico 88004

DATE: *January 4,2010*

TO: *Fermin A. Rubio, City Attorney*

From: *Peter Bradley, Interim Chief of Police*

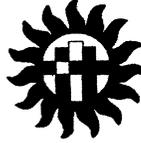
Subject: *HOWDY'S FOOD MART STORE # 15*

I have reviewed all available statistical information obtained from the Las Cruces Police Department Crime Analyst in reference to the attached liquor license application for HOWDY'S FOOD MART STORE #15 at 2210 E. Lohman, Las Cruces, NM 88011.

No anomalies were found that would warrant denial of this license; therefore, I recommend the liquor license application for HOWDY'S FOOD MART to be approved.


Peter Bradley
Interim Chief of Police

561



City of Las Cruces

TO: Fermin A. Rubio, City Attorney

FROM: Lt. Robert P. Gonzales, Prevention Bureau

Lt. R. P. G.

SUBJECT: Liquor License #0561 / Application # 620108

DATE: 12/30/09

FILE #:

Our department has reviewed the liquor license application # 620108 for the Transfer of Ownership (Change in Corporate Structure ONLY) of Liquor License. The applicant for this transfer is Transmountain Oil Company, L. C., d/b/a Howdy's Food Mart Store #15 at 2210 E. Lohman Ave., Las Cruces, NM 88011.

This facility was inspected and found to be in compliance with the 2006 International Fire Code. This facility is in conformance with the requirements for a facility that serves alcoholic beverages.

Please contact me if you have any questions or desire additional information.