

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 10

Ordinance/Resolution# 12-007

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of July 5, 2011
(Adoption Date)

TITLE: A RESOLUTION APPROVING THE ISSUANCE OF A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISE CONSUMPTION ONLY) TO EL TIBURON MARISCOS, LOCATED AT 504 EAST AMADOR AVENUE, LAS CRUCES, NEW MEXICO.

PURPOSE(S) OF ACTION:

To approve, disapprove, or not approve the issuance of a Restaurant Liquor License.

COUNCIL DISTRICT: 4		
<u>Drafter/Staff Contact:</u> Monica Campbell	<u>Department/Section:</u> Legal	<u>Phone:</u> 541-2128
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Pursuant to New Mexico Statutes, an application for the issuance of a Restaurant Liquor License for beer and wine on-premise consumption only must be accompanied by a resolution of the City Council approving of and consenting to the issuance after a public hearing.

El Tiburon Mariscos applied to the Alcohol and Gaming Division of the Regulation and Licensing Department of the State of New Mexico ("Alcohol and Gaming") for the issuance of a Restaurant Liquor License (beer and wine on-premise consumption only) located at 504 East Amador, Las Cruces, New Mexico. Alcohol and Gaming granted preliminary approval on June 2, 2011.

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 during the regular City Council meeting to be held on Tuesday, July 5, 2011, beginning at 1:00 p.m., in the City Council Chambers, City Hall, 700 North Main Street, Las Cruces, New Mexico. Notice of this public hearing was published in the *Las Cruces Bulletin* on June 17 and 24, 2011, and in the *Las Cruces Sun-News* on June 19 and 26, 2011.

Council may approve or disapprove the issuance of the license. However, Council's disapproval must be based on substantial evidence that the issuance of the 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 license. If Council fails to approve or disapprove the license within 30 days after the public hearing, the Director of Alcohol and Gaming may give final approval of the license.

SUPPORT INFORMATION:

1. Resolution.
2. Alcohol and Gaming's letter of preliminary approval with the application, Exhibit "A".
3. Notice of Intent to Adopt – *Las Cruces Bulletin*, Attachment "1".
4. Notice of Intent to Adopt – *Las Cruces Sun-News*, Attachment "2".
5. Traffic Impact Report from the Traffic Engineering Section, Attachment "3".
6. Liquor License Impact Report (zoning) from the Community Development Department, Attachment "4".
7. Economic Development Report (registration and permits), Attachment "5".
8. Criminal Activity Report from the Las Cruces Police Department, Attachment "6".
9. Fire and Safety Compliance Report from the Las Cruces Fire Department, Attachment "7".

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the Fund.
Does this action create any revenue?	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: <u>1015-10180020-520002, Permits-Liquor Licenses</u> in the amount of <u>\$300.00</u> for FY12.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve of and consent to the issuance of a Restaurant Liquor License for beer and wine on-premise consumption only to El Tiburon Mariscos, and Alcohol and Gaming will continue with the application process.
2. Vote "No"; this must be based on substantial evidence that the issuance of the Restaurant Liquor License would adversely affect the health, safety or welfare of the citizens of the City of Las Cruces.
3. Vote to "Amend"; this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.
4. Vote to "Table"; this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.

REFERENCE INFORMATION:

N/A

RESOLUTION NO. 12- 007

A RESOLUTION APPROVING THE ISSUANCE OF A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISE CONSUMPTION ONLY) TO EL TIBURON MARISCOS, LOCATED AT 504 EAST AMADOR AVENUE, LAS CRUCES, NEW MEXICO.

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

WHEREAS, El Tiburon Mariscos, located at 504 East Amador Avenue, Las Cruces, New Mexico, applied to the Alcohol and Gaming Division of the Regulation and Licensing Department of the State of New Mexico ("Alcohol and Gaming") for the issuance of a Restaurant Liquor License (Beer and Wine On-Premise Consumption Only); and

WHEREAS, on June 2, 2011, Alcohol and Gaming granted preliminary approval for the issuance of the license, as evidenced by their letter and the application; and

WHEREAS, pursuant to law, the application for issuance of a liquor license must be accompanied by a resolution of the City Council approving of and consenting to the issuance 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 issuance of the liquor license and it has determined that the approval of said license 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 issuance of a Restaurant Liquor License (Beer and Wine On-Premises Consumption Only) to El Tiburon Mariscos, located at 504 East Amador Avenue, 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 hereby authorized to do all deeds as necessary in the accomplishment of the hereinabove.

DONE AND APPROVED on this 5 day of July 2011.

ATTEST:

APPROVED:

City Clerk

Mayor

(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

Susana Martinez
GOVERNOR

June 2, 2011

J. Dee Dennis, Jr.
SUPERINTENDENT

Certified Mail No.: 7009 1680 0000 1945 5799

Gary J. Tomada
DIRECTOR

City of Las Cruces
Attn: Esther Martinez, Clerk
P.O. Box 20000
Las Cruces, NM 88004-0000

Re: License / App. No.: Application #A-656481
Applicant Name: Guillermo Guadarrama
Doing Business As: El Tiburon Mariscos
Proposed Location: 504 E. Amador Avenue, Las Cruces, NM 88001

ATTENTION: Department or person responsible for conducting or preparing the public hearing for liquor license transfers or issuance of new liquor licenses.

Greetings:

The Director of the Alcohol and Gaming Division has reviewed 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 (45) 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 weeks of publication must be satisfied before a hearing can be conducted. 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; and (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 SEEKING A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISE CONSUMPTION ONLY).

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

Alcohol and Gaming Division
(505) 476-4875

Boards and Commissions Division
(505) 476-4600

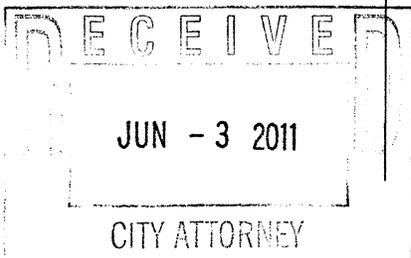
Construction Industries Division
(505) 476-4700

Financial Institutions Division
(505) 476-4885

Manufactured Housing Division
(505) 476-4770

Securities Division
(505) 476-4580

Administrative Services Division
(505) 476-4800



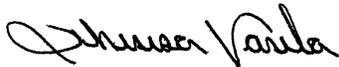
proposed licensed premises¹²⁰).

- 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.
- 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 as to whether the local governing body has approved or disapproved the issuance of transfer of the license by signing the enclosed original Page 1 of the Application. The original Page 1 of the Application 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,



Theresa Varela
Administrative Law Judge

ENCLOSURES

1. **Original Page 1 of the Application (must be signed and returned).**
2. **Copy of Page 2 of the Application.**
3. **Copy of Zoning Statement.**
4. **Copy of Floor Plan (no outdoor areas).**



12/15/10
thruce
ENTERED
200
12/18/20

RECEIVED
DEC 09 2010
ALCOHOL & GAMING DIVISION
RECEIVED
JAN 19 2011
ALCOHOL & GAMING DIVISION

State Liquor License # 1211510
Application Number 656481
Local option (AGD use) LAS CRUCES
Record Owner of Existing License Return 12-27-10. v. Ruiz
Current D/B/A Name RESTAURANT (BEER AND WINE)
Current Premises Address 504 E. AMADOR AVE

Application is for: Change of Stock Change of Officers/Directors Transfer Ownership of Existing License Transfer Ownership and Location Transfer Location Other
Issue New License Type of License being applied for RESTAURANT (BEER AND WINE)
Applicant is: Individual Corporation Partnership (General or Limited) Limited Liability Company

NAME OF APPLICANT (company or individual) GUILLERMO GUADARAMA
ADDRESS (including city, state, zip) 504 E. AMADOR AVE
TELEPHONE NUMBER 575-647-4233

D/B/A name to be used: EL TRIBUNO MARISCOS
LAS CRUCES, N.M. 88001
Phone number for licensed premises: 575-647-4233

Physical location where license is to be used: 504 E. AMADOR AVE LAS CRUCES, N.M. 88001
Mailing address: 504 E. AMADOR AVE LAS CRUCES N.M. 88001
Physical location where license is to be used: Doña Ana County NM 87514-11
(Include street number / highway number / state road, city and county, state, and zip code)

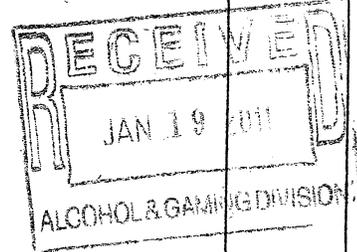
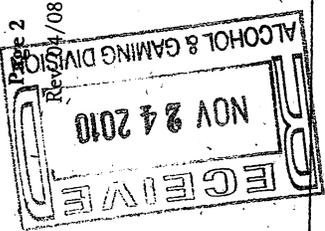
Are alcoholic beverages currently being dispensed at the proposed location? Yes No If yes, give license number and type _____
I, (print name) GUILLERMO GUADARAMA, as (title) OWNER, being first duly sworn upon oath
deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents 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 or renew the license or may cause the license to be revoked at any time.

You sign and date this form in the presence of a notary public.
Signature of Applicant Guillermo Guadarama Date 12-6-2010

SUBSCRIBED AND SWORN TO before me this 6th day of December, 2010 by Guillermo Guadarama - Torres
Notary Public Carla D. Lopez My Commission Expires October 4, 2012

Local Governing Body of: _____ (City or County). Hearing held on _____ 20____
Check one: Approved _____ Disapproved _____ City/County Official _____ (Signature & Title)
Approved _____ Disapproved _____ Director Approval _____ Date _____

For Alcohol and Gaming Division Use Only



PREMISES LOCATION, OWNERSHIP, AND DESCRIPTION
 SS-60-6B-10

1. The land and building which is proposed to be the licensed premises is (check one):

Owned by Applicant _____ Leased by Applicant (attach copy of deed or lease) Other (provide details) _____

2. If the land and building are not owned by Applicant, indicate the following:

A. Owner(s) Guadalupe Acevedo TRUST TX 02-14-11

B. Date and term of lease 5yrs JUNE 15, 2010 TO MAY 31 2015 with 1 5-YEAR RENEWAL OPTION TX 02-14-11

Attach a hand drawn map, zoning map, or other map showing the location of the proposed premises and the main adjacent streets, roads or highways in relation to the closest church and school properties. This map should be drawn on a sheet of paper no larger than 8 1/2 x 11 inches.

3. Premises location is zoned (example C-1) C-2 (Commercial Medium Intensity) TX 02-14-11

If the premises is zoned, attach zoning statement from local government giving location address and type of zone, stating whether alcoholic beverages are allowed at proposed location. If there is no zoning, attach confirmation from local government indicating there is no zoning.

4. Distance from nearest church *(Property line of church to licensed premises—shortest distance).

3 tenths of a mile N, per posting. MISSION - MISSION RD, per posting. ADDRESS UNAVAILABLE, per posting. TX 03-03-11
 Miles/feet 0.7 MILES Name of church LIVING WATERS ASSEMBLY Address/location of church 900 E. BOWMAN AVE LAS CRUCES, N.M. 88001

5. Distance from nearest school *(Property line of school to licensed premises—shortest distance).

5 tenths of a mile W, per posting. CENTRAL ELEMENTARY SCHOOL, per posting. ADDRESS UNAVAILABLE, per posting. TX 03-03-11
 Miles/feet 0.4 MILES Name of school Las Montañas High School Address/location of school 201 E. LOWMAN AVE LAS CRUCES, N.M. 88001

6. Distance from military installation *(Property line of military installation to licensed premises—shortest distance):

Miles 21.7 MILES Name of Military Installation, circle one: Kirtland Air Force Base (Albuquerque), White Sands Missile Range (Las Cruces), Holloman Air Force Base (Alamogordo), Cannon Air Force Base (Clovis).

7. Attach, on a separate sheet, the detailed floor plan for each level (floor) where alcoholic beverages will be sold or consumed. Show exterior walls, doors, and interior walls. This will be the licensed premises. The floor plan should be no larger than 8 1/2 x 11 inches, and must include the total square footage of premises.

*If the distance is beyond 300 feet, but less than 400 feet, a registered engineer or licensed surveyor must complete a Survey Certificate showing the exact distance.

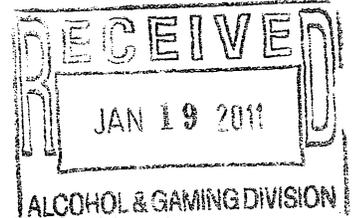
8. Type of Operation:

Lounge _____ Restaurant Package Grocery _____ Racetrack _____ Hotel _____ Other (specify) _____



City of Las Cruces®

STATEMENT OF ZONING



The property located at 504 E. Amador Avenue, and having a Map Code Number or Parcel ID Number of 02-06538, in Las Cruces, New Mexico, is zoned as follows:

C-2 (Commercial Medium Intensity)

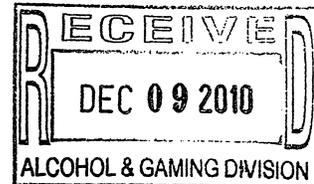
The above described property located in the City of Las Cruces, New Mexico, has been reviewed and found to be zoned as indicated above in accordance with the Las Cruces Zoning Atlas. Accordingly, I do hereby approve and issue this Statement of Zoning.

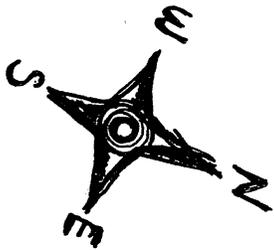
November 30, 2010
Date

Lorenzo Vigil
Planning Technician, Sr.

Comments: The C-2 district facilitates and encourages development of those uses which provide retail and service activities as a convenience to adjacent neighborhoods and whose use generally serves a population of 5,000 to 30,000. Food and beverage establishments with a dispenser's liquor license are permitted uses within this zoning district, providing that all requirements prescribed for liquor establishments by the State of New Mexico are met.

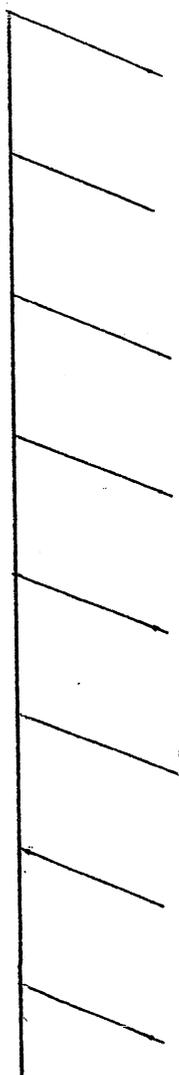
Please be advised that the information presented on this document is taken from the City of Las Cruces Zoning Atlas. Nothing shall prevent the City of Las Cruces from amending this information if review of the Zoning Ordinance shows the Atlas to be in error.



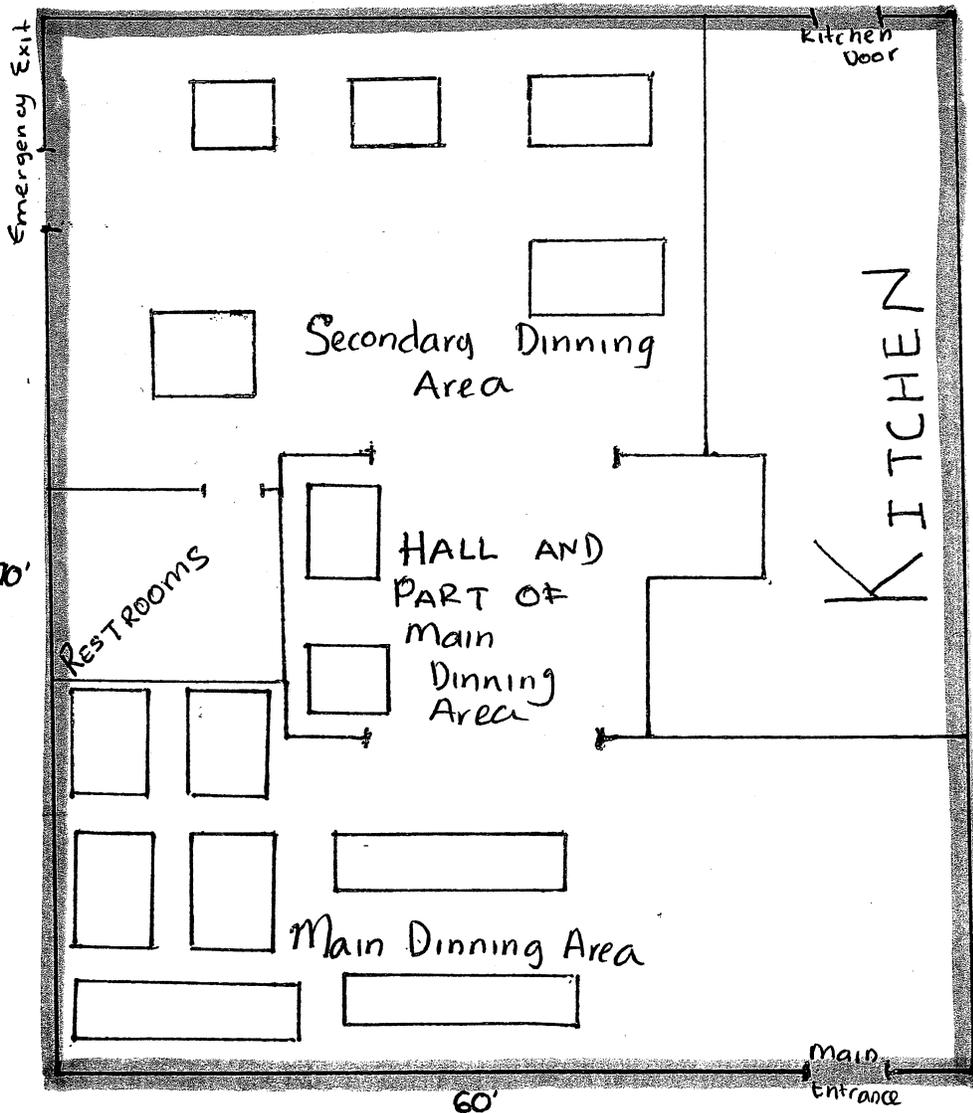


Main Street 

MESQUITE



PARKING AREA



AMADOR

4200 ft²

MAR 9 2011
 ALCOHOL & GAMING DIVISION



AD FORM
LAS CRUCES BULLETIN
LEGAL CLASSIFIED

City contact: Monica Campbell; 541-2014 / 541-2128

Proof of publication/bill to: City Clerk, PO Box 20000, Las Cruces, NM 88004

Dates to Publish: June 17 and 24, 2011

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 issuance of a Restaurant Liquor License (Beer and Wine On-Premise Consumption Only) to El Tiburon Mariscos, at 504 E. Amador Avenue, 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, July 5, 2011, at 1:00 p.m. in the City Council Chambers, 700 North Main Street, City Hall. If passed, the State of New Mexico Regulation & Licensing Department may approve the issuance.

Witness my hand and seal of the City of Las Cruces on this the 10th day of June 2011.



Esther Martinez, CMC, City Clerk



AD FORM
LAS CRUCES SUN NEWS
LEGAL CLASSIFIED

City contact: Monica Campbell; 541-2014 / 541-2128

Account No. 26484 (Bill to City Clerk, PO Box 20000, Las Cruces, NM 88004)

Dates to Publish: June 19 and 26, 2011

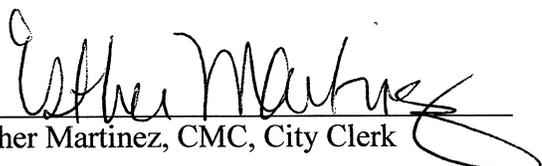
Copy to publish:

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The Public Hearing will be held in conjunction with the regular meeting of the Las Cruces City Council to be held on Tuesday, July 5, 2011, at 1:00 p.m. in the City Council Chambers, 700 North Main Street, City Hall. If passed, the State of New Mexico Regulation & Licensing Department may approve the issuance.

Witness my hand and seal of the City of Las Cruces on this the 10th day of June 2011.


Esther Martinez, CMC, City Clerk



City of Las Cruces®
PEOPLE HELPING PEOPLE

**INTER-DEPARTMENTAL
MEMORANDUM**

=====

TO: Harry "Pete" Connelly, City Attorney

FROM: Dan Soriano, Traffic Engineer, Public Works 

SUBJECT: Traffic Investigation Report

DATE: June 10, 2011

=====

As requested, Traffic Engineering has completed a traffic investigation for El Tiburon Mariscos located at 504 E. Amador Avenue, Las Cruces, New Mexico. The following information is submitted for review:

- East Amador Avenue at this location carries approximately 25612 vehicles per day.
- East Amador Avenue is operated as a four lane roadway and primarily serves commercial properties.
- Access to the property in question is off of East Amador Avenue and Mesquite Street. No potential sight distance or operational problems exist.
- The speed limit on East Amador Avenue is set at 35 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.

JUN 14 2011

CITY ATTORNEY



City of Las Cruces

To: Harry Connelly, Interim City Attorney

From: Adam Ochoa, Planner *AO*

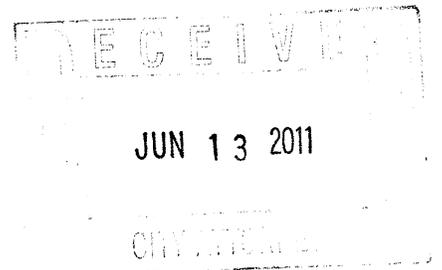
Re: Liquor License Impact Report, Guillermo Guaderrama d/b/a/ El Tiburon Mariscos

Date: June 9, 2011

M-11-126

Development Services staff has reviewed the request for a Restaurant Liquor License (Beer and Wine On-Premises Consumption Only), Application No. A-656481 for Guillermo Guaderrama d/b/a/ El Tiburon Mariscos located at 504 E. Amador Avenue. Because this location has already received an identical license in the past 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-EL TIBURON MARISCOS

From: Vicki Montez**Subject:** RE: Report request - 2 liquor license applications

Both businesses do have business licenses and they are current.

From: Monica Campbell**Sent:** Wednesday, June 08, 2011 1:31 PM**To:** Vicki Montez**Cc:** Cheryl Rodriguez; Christine Logan**Subject:** Report request - 2 liquor license applications

The City has received two liquor license preliminary approval letters from Alcohol & Gaming:

1. El Tiburon Mariscos, 504 E. Amador Avenue, has applied for a Restaurant Liquor License.
2. Wal-Mart #5155, 1550 S. Valley, has applied for a Transfer of Location of a liquor license.

Please review the attached applications and report on the status of each applicant's applicable licenses and permits.

In order to meet the time limits and deadlines imposed by law, please submit the reports no later than **June 17, 2011**.

Monica Campbell
Legal Dept. Operations Analyst
City of Las Cruces
575-541-2014 / 575-541-2128
Fax 575-541-2017



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

DATE: June 20, 2011
TO: Pete Connelly, City Attorney
From: Richard Williams, Chief of Police
Subject: El Tiburon Mariscos

I have reviewed all available statistical information obtained from the Las Cruces Police Department in reference to the attached liquor license application for El Tiburon Mariscos located at 504 E. Amador Avenue, Las Cruces, NM 88001.

No anomalies were found that would warrant denial of this license; therefore, I recommend the liquor license application for El Tiburon Mariscos be approved.

Richard Williams
Chief of Police

FIRE SAFETY AND COMPLIANCE REPORT – EL TIBURON MARISCOS

From: Billy Chaires

Subject: FW: Report request - 2 liquor license applications

These two locations are approved.

From: Monica Campbell

Sent: Wednesday, June 08, 2011 1:32 PM

To: Travis Brown; Steve Mims

Cc: Mary Helen Sarabia

Subject: Report request - 2 liquor license applications

The City has received two liquor license preliminary approval letters from Alcohol & Gaming:

1. El Tiburon Mariscos, 504 E. Amador Avenue, has applied for a Restaurant Liquor License.
2. Wal-Mart #5155, 1550 S. Valley, has applied for a Transfer of Location of a liquor license.

Please review the attached applications and prepare fire and safety compliance reports.

In order to meet the time limits and deadlines imposed by law, please submit the reports no later than **June 17, 2011**.

Monica Campbell
Legal Dept. Operations Analyst
City of Las Cruces
575-541-2014 / 575-541-2128
Fax 575-541-2017