

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 16Ordinance/Resolution# 12-186For Meeting of _____
(Ordinance First Reading Date)For Meeting of May 7, 2012
(Adoption Date)

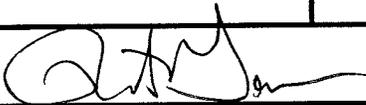
Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING THE ISSUANCE OF A WAIVER OF THE CHURCH/SCHOOL DISTANCE RESTRICTION FOR A RESTAURANT LIQUOR LICENSE TO DH & RH INC. D/B/A ONO GRINDZ HAWAIIAN CUISINE RESTAURANT, LOCATED AT 300 NORTH MAIN STREET, LAS CRUCES, NEW MEXICO.

PURPOSE(S) OF ACTION:

To approve or disapprove a waiver of the church/school distance restriction for the issuance of a Restaurant Liquor License.

COUNCIL DISTRICT: 1		
Drafter/Staff Contact: Monica Campbell	Department/Section: Legal/City Attorney	Phone: 541-2128
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Pursuant to New Mexico Statutes, no license for the sale of alcoholic beverages shall be issued to a premises that is within 300 feet of a church or school unless the governing body of the local option district grants a waiver of the distance restriction.

A waiver is required prior to the issuance of a Restaurant Liquor License because the property line at 300 North Main Street, is located approximately 275 feet from the property line of the Latter Rain Harvest Fellowship church at 401 North Main Street.

The property owners within 300 feet of 300 North Main Street were notified by U. S. Mail of the City Council meeting to approve or disapprove the waiver and the issuance of the liquor license.

The approval or disapproval of the issuance of the Restaurant Liquor License is presented as a separate agenda item and its approval is contingent upon approval of a waiver of the distance restriction. Granting a waiver of the church/school distance restriction will allow Ono Grindz Hawaiian Cuisine Restaurant to proceed to the next step of the application process.

(Continue on additional sheets as required)

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A". Alcohol and Gaming's letter with the application.
3. Attachment "1". Notice of Intent to Issue Waiver published in the *Las Cruces Bulletin*.
4. Attachment "2". Notice of Intent to Issue Waiver published in the *Las Cruces Sun-News*.
5. Attachment "3". Map showing the distance between the property line at 300 North Main Street and the property line at 401 North Main Street.
6. Attachment "4". List of property owners within 300 feet of 300 North Main Street.
7. Attachment "5". Form of letter sent to the property owners.

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 type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$____ for FY_____.
	No	<input checked="" 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 waiver of the church/school distance restriction. Approval will allow Ono Grindz Hawaiian Cuisine Restaurant to continue with the application process.

(Continue on additional sheets as required)

2. Vote "No"; if the Council does not approve the waiver, Alcohol & Gaming will be notified of the reason(s) the waiver was not approved and the Director of Alcohol & Gaming shall not approve the issuance of the Restaurant Liquor License.
3. Vote to "Amend"; any amendments must comply with state statute and/or the requirements of Alcohol & Gaming.
4. Vote to "Table"; if the Council fails to either approve or disapprove the issuance of a waiver, the matter will be submitted to Alcohol & Gaming for further proceedings.

REFERENCE INFORMATION:

N/A

RESOLUTION NO. 12- 186

A RESOLUTION APPROVING THE ISSUANCE OF A WAIVER OF THE CHURCH/SCHOOL DISTANCE RESTRICTION FOR A RESTAURANT LIQUOR LICENSE TO DH & RH INC. D/B/A ONO GRINDZ HAWAIIAN CUISINE RESTAURANT, LOCATED AT 300 NORTH MAIN STREET, LAS CRUCES, NEW MEXICO.

The City Council is informed that:

WHEREAS, according to NMSA 1978, Section 60-6B-10, no license shall be issued for the sale of alcoholic beverages at a licensed premises that is within 300 feet of a church or school; however, in 1997, Section 60-6B-10 was amended to allow for the granting of a waiver of the distance restriction by the local option district governing body for the proposed licensed premises as noted in the letter from Alcohol & Gaming (Exhibit "A"); and

WHEREAS, the approximate distance from the property line at 300 North Main Street to the property line at Latter Rain Harvest Fellowship church at 401 North Main Street is approximately 275 feet; and

WHEREAS, a waiver of the distance restriction is required prior to the approval of the transfer of the liquor license; and

WHEREAS, approving this resolution will allow the applicant to continue to the next step of the application process.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the issuance of a waiver of the church/school distance restriction to DH & RH Inc. d/b/a Ono Grindz Hawaiian Cuisine Restaurant, located at 300 North Main Street, 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 necessary in the accomplishment of the herein above.

DONE AND APPROVED on this _____ day of _____ 2012.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Smith: _____

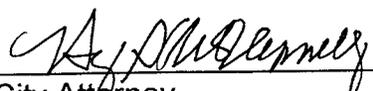
Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

APPROVED AS TO FORM:



City Attorney



372
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

March 19, 2012

Suzanna Martinez
GOVERNOR

J. Dee Dennis, Jr.
SUPERINTENDENT

Steven A. Reinhart, Esq.
ACTING DIRECTOR

Certified Mail No: 7009 1680 0000 1945 5997

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

Re: App. No. 807586
 Applicant Name: DH & RH Inc.
 Doing Business As: Ono Grindz Hawaiian Cuisine Restaurant
 Proposed Location: 300 N. Main, Las Cruces, NM

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 Director of the Alcohol and Gaming Division has granted Preliminary Approval for 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 of preliminary approval 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; (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 Restaurant Liquor License:

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

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

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

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.)

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.

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,



Annette R. Brumley
Hearing Officer

ENCLOSURES: Original Page 1 of Liquor License Application
Copy of page 2 Premises, Location, Ownership & Description of Premises



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

FEB 09 2012

ALCOHOL AND GAMING DIVISION



The land and building which is proposed to be the licensed premises is (check one):
 Leased by Applicant (attach copy of deed or lease) Other (provide details)

Other (provide details) _____

A. Owner(s) LA Esquivia Partnership

B. Date and term of lease 03.11.11 - 02.25.14

Premises location is zoned (example C-1) SEE ZONING STATEMENT + ATTACHED MAPS
 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.

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

Distance from nearest church: 500 FT Name of church EL CALVARIO Address/location of church 300 N. CAMPO ST, Las Cruces, NM 88001

Distance from nearest school: 550 FT Name of school CENTRAL ELEMENTARY Address/location of school 150 N. ALAMEDA BLVD., Las Cruces, NM 88001

Distance from military installation *(Property line of military installation to licensed premises—shortest distance).
 Distance from military installation, circle one: 1.5 mi Name of Military Installation, circle one: White Sands Missile Range (Las Cruces)
1 mi 70 US Army Reserve 1160 El Paso ST. Holloman Air Force Base (Alamogordo), Cannon Air Force Base (Clovis).

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 stairs. 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.

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.
 Type of Operation: Restaurant

Package Grocery Racetrack Hotel Other (specify) _____

Return this form to the Alcohol and Gaming Division, 2550 Cerrillos Road, Santa Fe, New Mexico 87505, if using overnight delivery.

ALCOHOL & GAMING DIVISION
2550 CERRILLOS ROAD 87505
P.O. BOX 25101
SANTA FE, NEW MEXICO 87504-5101

POSTING CERTIFICATE
(ISSUANCE OF NEW LIQUOR LICENSES)

RESTAURANT (BEER/WINE ONLY) _____ WHOLESALER: _____
 MASTER WINEGROWER _____ WINEGROWER OFF-SITE: 1 2 3 (Circle)
 MASTER SMALL BREWER _____ SMALL BREWER OFF-SITE: 1 2 (Circle)
 OTHER: _____

APPLICATION NUMBER: A-807586

APPLICANT NAME: DH & RH INC.

PROPOSED NAME: Ono Grindz Hawaiian Cuisine Restaurant

PROPOSED LOCATION: 300 N. Main, Las Cruces, NM 88001

I CERTIFY THAT I HAVE POSTED THE REQUIRED NOTICE OF LIQUOR LICENSE PURSUANT TO SECTION 60-6B-2, NMSA, AND FURTHER CERTIFY AS FOLLOWS:

1. LOCATION POSTED IS WITHIN CORPORATE LIMITS OF: City of Las Cruces
2. LOCATION POSTED IS IN UNINCORPORATED LIMITS OF: N/A
3. DISTANCE FROM NEAREST CHURCH IS APPROXIMATELY: .15 miles
NAME OF CHURCH IS: Casa de Alabanza
4. DISTANCE FROM NEAREST SCHOOL IS APPROXIMATELY: .20 miles
NAME OF SCHOOL IS: Central Elm school
5. DISTANCE FROM NEAREST MILITARY INSTALLATION IS: N/A

MILES

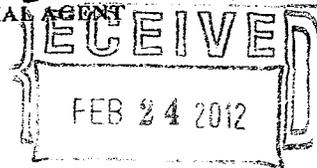
NAME OF INSTALLATION IS: KIRTLAND AIR FORCE BASE (ALBUQUERQUE)
 WHITE SANDS MISSILE RANGE (LAS CRUCES)
 HOLLOMAN AIR FORCE BASE (ALAMOGORDO)
 CANNON AIR FORCE BASE (CLOVIS)

NOTICE POSTED ON: X BUILDING _____ BILLBOARD _____ OTHER: _____

DATE POSTED: 02/14/2012
[Signature]
APPLICANT'S SIGNATURE

EXPIRATION DATE: 03/05/2012 (midnight)

[Signature]
S.I.D. SPECIAL AGENT



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: April 13, 20, 2012

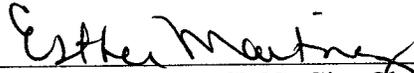
Copy to publish:

NOTICE OF INTENT TO ISSUE WAIVER

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss the issuance of a waiver of the church/school distance restriction for a Restaurant Liquor License to DH & RH Inc. d/b/a Ono Grindz Hawaiian Cuisine Restaurant at 300 North Main Street, Las Cruces, New Mexico.

The Public Hearing will be held in conjunction with the regular meeting of the Las Cruces City Council on Monday, May 7, 2012, beginning 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 11th day of April 2012.



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: April 15 and 22, 2012

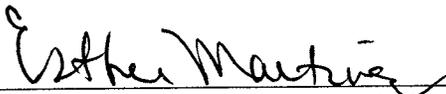
Copy to publish:

NOTICE OF INTENT TO ISSUE WAIVER

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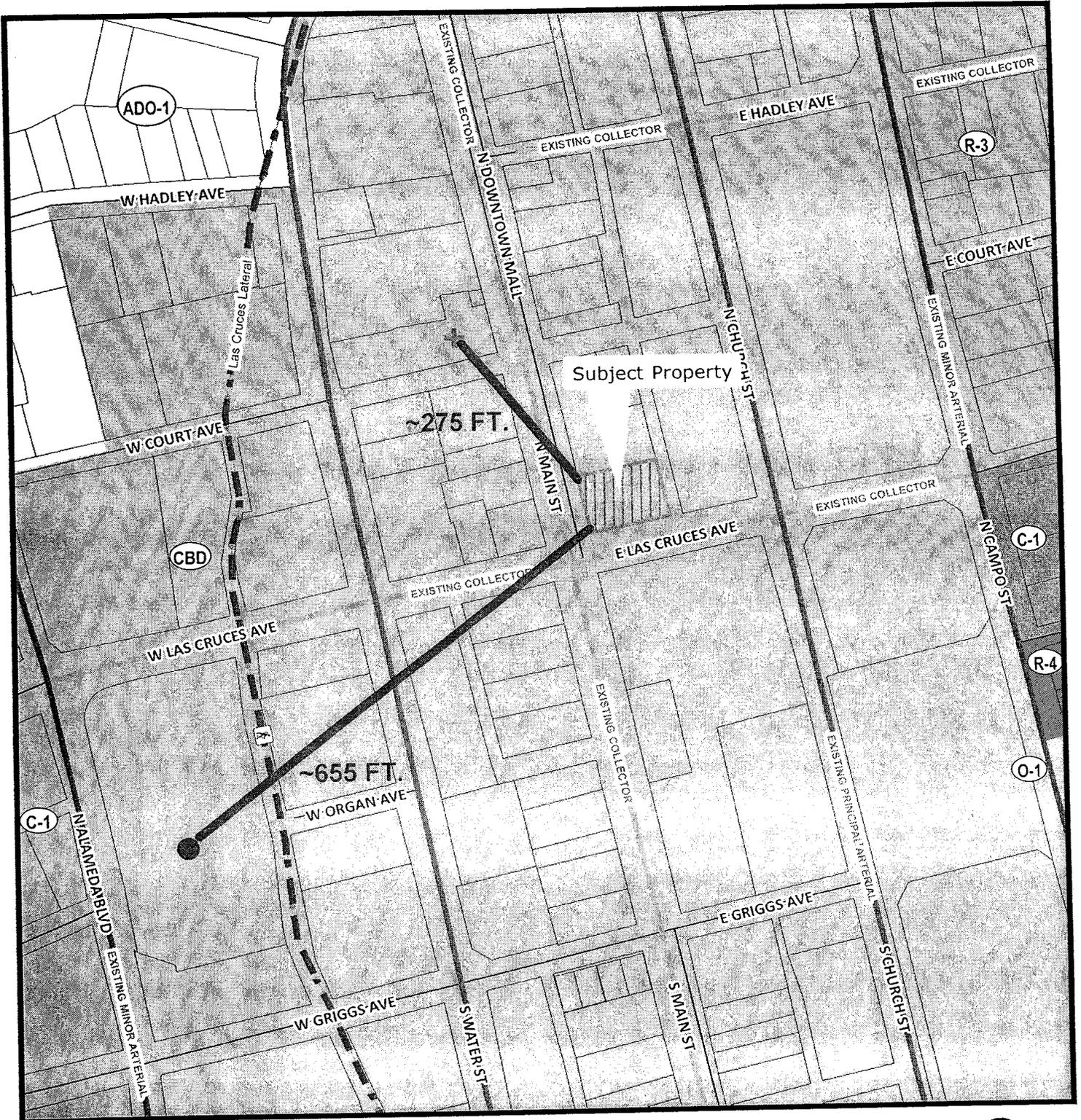
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Witness my hand and seal of the City of Las Cruces on this the 11th day of April 2012.

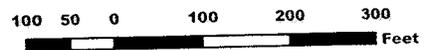


Esther Martinez, CMC, City Clerk

ZONING/VICINITY MAP



○ ZONING ● SCHOOL + CHURCH



300 N. MAIN STREET
PARCEL ID # 02-06026
ZONING: CBD
DISTANCE TO NEAREST SCHOOL: ~655 FEET
DISTANCE TO NEAREST CHURCH: ~275 FEET

Community Development Department
 700 N Main St
 Las Cruces, NM 88001
 (575) 528-3222

This map was created by Community Development to assist in the administration of local zoning regulations. Neither the City of Las Cruces or the Community Development Department assumes any legal responsibilities for the information contained in this map. Users noting errors or omissions are encouraged to contact the City (575) 528-3043.

116 COMMERCIAL PROPERTIES LLC
116 W LAS CRUCES AVE
LAS CRUCES, NM. 88001

380
AVASIL PROPERTIES LLC
406 N MAIN ST
LAS CRUCES, NM. 88001

BANK OF THE WEST
PO BOX 5155
SAN RAMON, CA. 94583-5155

C B SMITH & SONS INC
213 W GRIGGS AVE
LAS CRUCES, NM. 88005

COAS PROPERTIES LLC
317 N MAIN ST
LAS CRUCES, NM. 88001

GIBSON EDWARD & PEGGY R
2990 AVENIDA DE MESILLA
LAS CRUCES, NM. 88005

GUSBUS LLC
116 W LAS CRUCES AVENUE
LAS CRUCES, NM. 88001

HAMILL-BUCKLEY LLC ET AL
1437 FAIRWAY VILLAGE
LAS CRUCES, NM. 88007

LATTER RAIN HARVEST FELLOWSHIP
PO BOX 1927
LAS CRUCES, NM. 88004

LYNER L L C
PO BOX 2274
LAS CRUCES, NM. 88004-2274

OVERMYER CARL R
340 N WATER
LAS CRUCES, NM. 88001

ROSS JEANNE S REV TR
1405 DIANA MAURA
LAS CRUCES, NM. 88001

SANDOVAL GABRIEL C & MINERVA N
2000 E LOHMAN STE C
LAS CRUCES, NM. 88001

ST GENEVIEVE PARISH INC
1280 MED PARK DR
LAS CRUCES, NM. 88005

Z K S STERN
4054 LA PURISIMA DR
LAS CRUCES, NM. 88011

April 18, 2012



Dear Property Owner:

Ono Grindz Hawaiian Cuisine Restaurant, located at 300 North Main Street, Las Cruces, New Mexico, has applied to the Alcohol and Gaming Division of the Regulation and Licensing Department of the State of New Mexico for the issuance of a Restaurant Liquor License. As part of the approval process, the Liquor Control Act ("LCA") requires the applicant to obtain approval for the issuance of the Restaurant Liquor License from the governing body of the City of Las Cruces.

A public hearing to approve or disapprove the Restaurant Liquor License is scheduled before the City Council during its meeting on Monday, May 7, 2012, which begins at 1:00 p.m. The meeting will be held in the City Council Chambers located in City Hall, 700 North Main Street, Las Cruces, New Mexico.

The property line at the location of Ono Grindz Hawaiian Cuisine Restaurant is approximately 275 feet from the property line of the Latter Rain Harvest Fellowship church at 401 North Main Street. The LCA prohibits the sale and consumption of alcoholic beverages within 300 feet of a church or school unless a waiver has been granted to the applicant. A waiver of the church/school distance restriction will be considered at the May 7, 2012 City Council meeting before the public hearing about the Restaurant Liquor License.

If you wish to share your views concerning the impact of the Restaurant Liquor License at 300 North Main Street, please attend the City Council meeting on May 7, 2012, or you may submit your views in writing to the City Attorney's Office, 700 North Main Street, Suite 3200, PO Box 20000, Las Cruces, New Mexico 88004. Letters must be received by 5:00 p.m. on Thursday, May 3, 2012.

If you have any questions or need additional information, please contact Monica Campbell at 575-541-2128.

Sincerely,


Harry S. (Pete) Connolly
City Attorney