

City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 10 Ordinance/Resolution# 13-045

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of September 17, 2012
(Adoption Date)

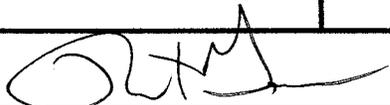
Please check box that applies to this item:

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 ZEFFIRO, LLC D/B/A MAIN STREET BISTRO & ALEHOUSE, LOCATED AT 139 NORTH MAIN STREET, SPACE B, LAS CRUCES, NEW MEXICO.

PURPOSE(S) OF ACTION:

To approve or disapprove a waiver of the church/school distance restriction.

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.

Main Street Bistro & Alehouse is within 300 feet of the Casa de Alabanza church, and within 300-400 feet of Central Elementary School. The property owners within 300 feet of 139 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 Main Street Bistro & Alehouse to proceed to the next step of the application process.

SUPPORT INFORMATION:

1. Resolution.

(Continue on additional sheets as required)

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 139 North Main Street, Space B, and Casa de Alabanza church and Central Elementary School.
6. Attachment "4". List of property owners within 300 feet of 139 North Main Street.
7. Attachment "5". Form of letter sent to the property owners.

SOURCE OF FUNDING:

N/A	Is this action already budgeted?	
	Yes	<input type="checkbox"/>
	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 Main Street Bistro & Alehouse to continue with the application process.
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.

(Continue on additional sheets as required)

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

(Continue on additional sheets as required)

RESOLUTION NO. 13-045

A RESOLUTION APPROVING THE ISSUANCE OF A WAIVER OF THE CHURCH/SCHOOL DISTANCE RESTRICTION FOR A RESTAURANT LIQUOR LICENSE TO ZEFFIRO, LLC D/B/A MAIN STREET BISTRO & ALEHOUSE, LOCATED AT 139 NORTH MAIN STREET, SPACE B, 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; and

WHEREAS, the location of the Main Street Bistro & Alehouse at 139 North Main Street, Space B, is approximately 275 feet from Casa de Alabanza church and within 300-400 feet of Central Elementary School; and

WHEREAS, a waiver of the distance restriction is required prior to the approval of the issuance of the restaurant 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 Zeffiro, LLC d/b/a Main Street Bistro & Alehouse, located at 139 North Main Street, Space B, Las Cruces, New Mexico, as noted in the letter from Alcohol and Gaming, attached hereto as Exhibit "A", 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



234
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

August 1, 2012

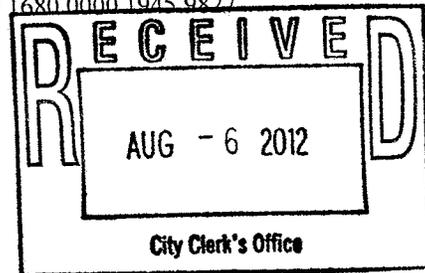
Suzanna Martinez
GOVERNOR

J. Dee Dennis, Jr.
SUPERINTENDENT

Mary Kay Root
DEPUTY
SUPERINTENDENT

Steven A. Reinhart, Esq.
DIRECTOR

Certified Mail No: 7009 1680 0000 1945 9827



City of Las Cruces
Esther Martinez, Clerk
PO Box 20000
Las Cruces, NM 88004

Re: License / App. No. Application #821683
Applicant Name: Zeffiro, LLC
Doing Business As: Main Street Bistro & Alehouse
Proposed Location: 139 N. Main St., Sp. B, 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 "Conditional" 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 Beer & Wine 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 location

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

prior to 1981 or unless the applicant/licensee has obtained a waiver from the local option district governing body for the proposed licensed premises.)

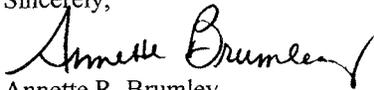
The issuance or transfer would be in violation of a zoning or other ordinance of the governing body. The governing body may disapprove if the proposed location is not properly zoned. Because this office is in receipt of a zoning statement from the governing body, this is not a basis for disapproval.

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, and Ownership & Description of Premises
SID Posting Certificate
Copy of City of Las Cruces Zoning Statement



LIQUOR LICENSE APPLICATION

Application fee - \$200.00 Fees are non-refundable.

State Liquor License # _____
 Application Number 821683
 Local option (AGD use) _____

Record Owner of Existing License _____
 Current D/B/A Name _____
 Current Premises Address _____

Application is for: Change of Stock _____ Change of Officers/Directors _____ Transfer Ownership of Existing License _____ Transfer Ownership and Location _____ Other _____
 Issue New License Type of License being applied for RESTAURANT BEER & WINE Transfer Location _____

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

NAME OF APPLICANT (company or individual) ZEFFIRO, LLC ADDRESS (including city, state, zip) 136 N. WATER ST. SUITE A, LAS CRUCES
NEW MEXICO, 88001 TELEPHONE NUMBER 575-525-6757

D/B/A name to be used: MAIN STREET BISTRO & ALEHOUSE Phone number for licensed premises: 575-650-7437

Physical location where license is to be used: 139 N. MAIN ST. SPACE B, LAS CRUCES, DOÑA ANA COUNTY, NEW MEXICO
 (Include street number / highway number / state road, city and county, state, and zip code) 88001

Mailing address: 972 FLORA VISTA DR., LAS CRUCES, NEW MEXICO, 88007

Are alcoholic beverages currently being dispensed at the proposed location? Yes _____ No If yes, give license number and type _____ as (title) MEMBER/OWNER being first duly sworn upon oath
 I (print name), GARY J. EBERT, as (title) MEMBER/OWNER being first duly sworn upon oath
 deposit and swear that he/she is the applicant of this application; that he/she has read the contents therein contained are true. Applicant(s) agree(s) that
 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 must sign and date this form in the presence of a notary public.
 Signature of Applicant [Signature] Date 6/25/2012

Notary Public Allen R. Ontig My Commission Expires 4/2/2013
 SUBSCRIBED AND SWORN TO before me this 25th day of June, 2012 by Gary J. Ebert
 Notary Public Use Only

Local Governing Body of: _____ (City or County). Hearing held on _____ 20____

Check one: Approved _____ Disapproved _____ City/County Official _____ (Signature & Title)

For Alcohol and Gaming Division Use Only
 Approved _____ Disapproved _____ Director Approval _____ Date _____



COPY

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) RICHARD ROSEN, INC

B. Date and term of lease JUNE 18, 2012; INITIAL TERM OF LEASE EXPIRES NOVEMBER 30, 2015

3. Premises location is zoned (example C-1) CBD (CENTRAL BUSINESS DISTRICT AND MAIN ST. PLAZA OVERLAY)
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).

Miles/feet 275' Name of church CASA DE ALABANZA Address/location of church 100 S. CHURCH STREET LAS CRUCES, NM 88601

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

Miles/feet 385' Name of school CENTRAL ELEMENTARY address/location of school 150 N. ALAMEDA BLVD., LAS CRUCES, NM 88005

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

Miles 11.7 Name of Military Installation, circle one: 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) _____

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-821683
APPLICANT NAME: ZEFFIRO, LLC
PROPOSED NAME: MAIN STREET BISTRO 7 & ALEHSOUSE
PROPOSED LOCATION: . 139 N. MAIN ST., SPACE B. LAS CRUCES. NM

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

- LOCATION POSTED IS WITHIN CORPORATE LIMITS OF: City of Las Cruces
- LOCATION POSTED IS IN UNINCORPORATED LIMITS OF: NA
- DISTANCE FROM NEAREST CHURCH IS APPROXIMATELY: 1 tenth of a mile
NAME OF CHURCH IS: Calvary Chapel
- DISTANCE FROM NEAREST SCHOOL IS APPROXIMATELY: 15 ~~miles~~ tenths of a mile
NAME OF SCHOOL IS: Central Elm. school
- DISTANCE FROM NEAREST MILITARY INSTALLATION IS: NA
MILES

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

NOTICE POSTED ON: BUILDING BILLBOARD OTHER: _____

DATE POSTED: 7/26/2012

EXPIRATION DATE: 07/26/2012 (with 90 days)

APPLICANT'S SIGNATURE: [Handwritten Signature]

S.I.B. SPECIAL AGENT: [Handwritten Signature]
S.I.B. SPECIAL AGENT



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: August 31 and September 7, 2012

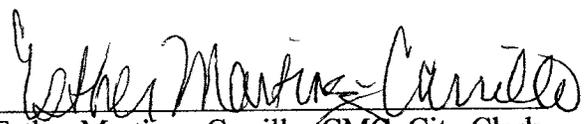
Copy to publish:

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 Zeffiro, LLC d/b/a Main Street Bistro & Alehouse at 139 North Main Street, Space B, Las Cruces, New Mexico.

The Public Hearing will be held in conjunction with the regular meeting of the Las Cruces City Council on Monday, September 17, 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 waiver.

Witness my hand and seal of the City of Las Cruces on this the 21st day of August 2012.



Esther Martinez-Carrillo, CMO, 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: September 2 and 9, 2012

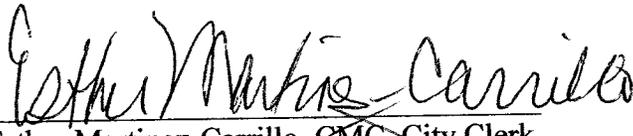
Copy to publish:

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 Zeffiro, LLC d/b/a Main Street Bistro & Alehouse at 139 North Main Street, Space B, Las Cruces, New Mexico.

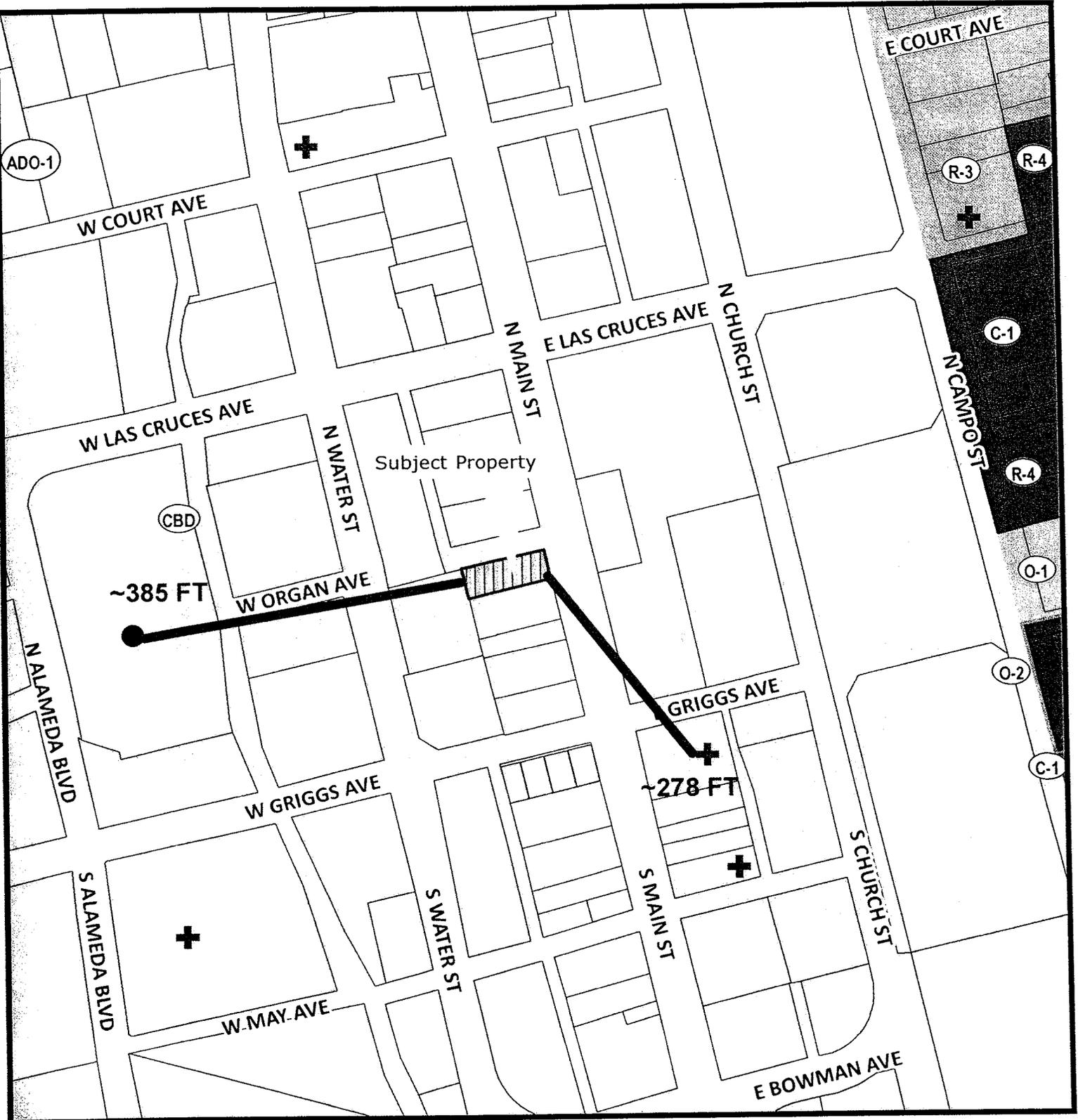
The Public Hearing will be held in conjunction with the regular meeting of the Las Cruces City Council on Monday, September 17, 2012, beginning at 1:00 p.m. in the City Council Chambers, 700 North Main Street, City Hall. If passed, the State of New Mexico Regulation & Licensing Department may approve the waiver.

Witness my hand and seal of the City of Las Cruces on this the 21st day of August 2012.


Esther Martinez-Carrillo, EMC, City Clerk

ZONING/VICINITY MAP

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○ ZONING ● SCHOOL + CHURCH



139 N MAIN STREET
PARCEL ID # 02-05997

ZONING: CBD
DISTANCE TO NEAREST SCHOOL: ~385 FEET
DISTANCE TO NEAREST CHURCH: ~278 FEET

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

242

125 W GRIGGS LLC
125 W GRIGGS
LAS CRUCES, NM. 88001

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

BLEIWEISS MAX P & GAIL A TRUSTEES
1215 VILLITA LP
LAS CRUCES, NM. 88007

CORONADO JOSE R & RUBEN
CORONADO
705 N ALAMEDA
LAS CRUCES, NM. 88004

EL PASO ELECTRIC COMPANY
PO BOX 910
LAS CRUCES, NM. 88001

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

HOUSE OF PRAISE INC
PO BOX 2527
LAS CRUCES, NM. 88004-252

LOPEZ EDGAR & MARY
125 W GRIGGS AVE
LAS CRUCES, NM. 88001

NEW MEXICO DEVELOPMENT
CORPORATION
PO BOX 2049
LAS CRUCES, NM. 88004

POPULAR DRY GOODS COMPANY
306 E OVERLAND
EL PASO, TX. 79901

ROSS JEANNE S REVOCABLE TRUST
1405 DIANA MAURA
LAS CRUCES, NM. 88001

SOUTHERN RIO GRANDE MENTAL
HEALTH
100 W GRIGGS
LAS CRUCES, NM. 88001

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

August 29, 2012



Dear Property Owner:

Zeffiro, LLC d/b/a Main Street Bistro & Alehouse, located at 139 North Main Street, Space B, 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, September 17, 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.

Main Street Bistro & Alehouse is within 300 feet of Casa de Alabanza church and between 300 to 400 feet of Central Elementary School. 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 September 17, 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 139 North Main Street, Space B, please attend the City Council meeting on September 17, 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, September 13, 2012.

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

Sincerely,

A handwritten signature in cursive script that reads "Harry S. (Pete) Connelly".

Harry S. (Pete) Connelly
City Attorney