

419
City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 18

Ordinance/Resolution# 14-047

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of September 3, 2013
 (Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL

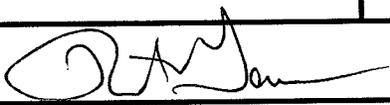
LEGISLATIVE

ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING THE ISSUANCE OF A WAIVER OF THE CHURCH/SCHOOL DISTANCE RESTRICTION FOR A WINEGROWER LIQUOR LICENSE, WITH ON PREMISE CONSUMPTION AND PACKAGE SALES, TO ROADRUNNER BREW HOUSE LLC D/B/A ROADRUNNER BREW HOUSE TO BE LOCATED AT 901 EAST UNIVERSITY AVENUE, BUILDING 945A, LAS CRUCES, NEW MEXICO.

PURPOSE(S) OF ACTION:

To approve the waiver of a distance restriction.

COUNCIL DISTRICT: 2		
<u>Drafter/Staff Contact:</u> Monica Campbell	<u>Department/Section:</u> Legal/City Attorney	<u>Phone:</u> 541-2128
<u>City Manager Signature:</u>		

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 Winegrower Liquor License to Roadrunner Brew House because the distance from the property line at 901 East University Avenue to the property line of New Mexico State University is approximately 80 feet. The property owners within 300 feet of 901 East University Avenue were notified by U. S. Mail of the City Council meeting to consider the waiver and to approve or disapprove the issuance of the liquor license.

The approval of the issuance of the Winegrower Liquor License, with on premise consumption and package sales, 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 Roadrunner Brew House 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". Zoning/Vicinity Map, 901 East University Avenue.
6. Attachment "4". List of property owners within 300 feet of 901 East University, Las Cruces, New Mexico.
7. Attachment "5". Form of letter sent to property owners.

SOURCE OF FUNDING:

N/A	Is this action already budgeted?	
	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 Roadrunner Brew House to continue with the application process.

(Continue on additional sheets as required)

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

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A.

RESOLUTION NO. 14-047

A RESOLUTION APPROVING THE ISSUANCE OF A WAIVER OF THE CHURCH/SCHOOL DISTANCE RESTRICTION FOR A WINEGROWER LIQUOR LICENSE, WITH ON PREMISE CONSUMPTION AND PACKAGE SALES, TO ROADRUNNER BREW HOUSE LLC D/B/A ROADRUNNER BREW HOUSE TO BE LOCATED AT 901 EAST UNIVERSITY AVENUE, BUILDING 945A, 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 governing body of the local option district for the proposed licensed premises; and

WHEREAS, the proposed location of Roadrunner Brew House is approximately 80 feet from the property line of New Mexico State University; and

WHEREAS, a waiver of the distance restriction is required prior to the approval of the issuance of the Winegrower 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 Roadrunner Brew House LLC d/b/a Roadrunner Brew House, to be located at 901 East University Avenue, Building 945A, 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 _____ 2013.

APPROVED:

ATTEST:

Mayor

City Clerk

(SEAL)

VOTE:

Moved by: _____

Mayor Miyagishima: _____

Seconded by: _____

Councillor Silva: _____

Councillor Smith: _____

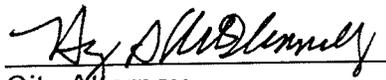
Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

APPROVED AS TO FORM:



City Attorney

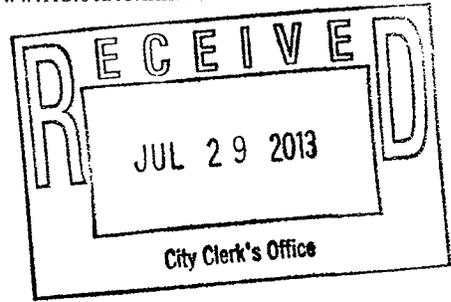


424
New Mexico Regulation and Licensing Department
ALCOHOL AND GAMING DIVISION

Toney Anaya Building ▪ 2550 Cerrillos Road ▪ Santa Fe, New Mexico 87505
PO Box 25101, Santa Fe, NM 87504-5101
(505) 476-4875 ▪ Fax (505) 476-4595 ▪ www.rld.state.nm.us

July 25, 2013

Certified Mail No.: 7009 2250 0000 9393 2773



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

Re: License / Appl. No.: **Appl. No. A-875478**
Applicant Name: **Roadrunner Brew House LLC**
Doing Business As: **Roadrunner Brew House**
Proposed Location: **901 E. University Ave., Bldg. 945A
Las Cruces, New Mexico 88001**

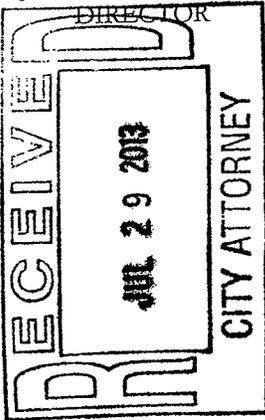
Susana Martinez
GOVERNOR

J. Dee Dennis, Jr.
SUPERINTENDENT

Mary Kay Root
DEPUTY
SUPERINTENDENT

James C. McKay
CHIEF GENERAL
COUNSEL

Jennifer M. Anderson
DIRECTOR



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 granted Preliminary Approval; it 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 WINEGROWER LICENSE WITH ON PREMISE CONSUMPTION AND PACKAGE SALES.

- 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

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.
- 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 or 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,



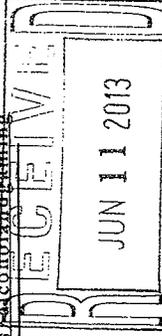
Rose L. Garcia
 Hearing Officer
 NM Regulation & Licensing Dept.
 Alcohol & Gaming Division
 Phone: 505-476-4552
 Fax: 505-476-4595
 Email: rosel.garcia@state.nm.us

Enclosures:

1. Original Page 1 of the Application (must be signed and returned).
2. Copy of Page 2 of the Application.



6/17/13
6/17/13
\$200
RET 1487667



LIQUOR LICENSE APPLICATION

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

Record Owner of Existing License _____
Current D/B/A Name Roadrunner Brew House
Current Premises Address 901 E. University Ave Bldg 915A Las Cruces, NM 88001

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

NAME OF APPLICANT (company or individual) Roadrunner Brew House LLC
ADDRESS (including city, state, zip) 2400 S. Solano Las Cruces NM 88001
TELEPHONE NUMBER 949-351-9988

D/B/A name to be used: Roadrunner Brew House
Physical location where license is to be used: 901 E. University Ave Bldg 915A Las Cruces, Dona Ana, NM 88001
Mailing address: 2400 S. Solano Las Cruces NM 88001
Phone number for licensed premises: 949-351-9988

Are alcoholic beverages currently being dispensed at the proposed location? Yes No If yes, give license number and type _____
I, (print name) Deanna Green as (title) Manager/Member 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 must sign and date this form in the presence of a notary public.
Signature of Applicant Deanna Green Date May 22nd, 2013

SUBSCRIBED AND SWORN TO before me this 22nd day of May, 2013 by Deanna Green
Notary Public Leonora Gonzales My Commission Expires June 27, 2015
Official Seal Leonora Gonzales
Notary Public
State of New Mexico
My Commission Expires 6/27/15

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) Cervantes III LTD. CO

B. Date and term of lease Signed January 17, 2013. Commences upon c/o. 60 month Term

3. Premises location is zoned (example C-1) UD-VAZ/University District - University Avenue Zone
 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 1511.50' Name of church Newman Center Address/location of church 2615 S. Solano, Las Cruces, NM 88501

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

Miles/feet 373.11' Name of school NMSU-Sheen Hall Address/location of school 945 College Ave, Las Cruces NM 88503

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

Miles 25 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) Winegrowers Brewer



STATEMENT OF ZONING

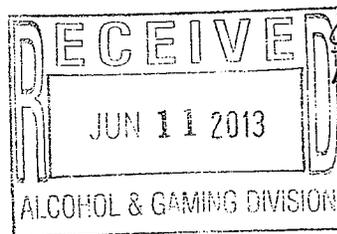
The property located at 901 E. University Avenue, Bldg 945A in Las Cruces, New Mexico, and having a Map Code Number or Parcel Identification Number of 02-40890 is zoned as follows:

UD-UAZ (University District-University Avenue Zone)

Remarks: The UD-UAZ is assigned to land appropriate for an urban neighborhood center with a mix of building types and uses. These lands are generally occupied by attached residential houses, apartment buildings, and commercial or mixed-use buildings. Civic and religious use buildings may also be present. Lands may also be used for playgrounds, squares, and plazas. Two-to-five story buildings are encouraged. Block sizes are limited to create a walkable and well-connected network of streets. Streets are designed to encourage pedestrian activity by generally including on-street parking, curbs and gutters, parkways with street trees, and wide sidewalks. University Avenue shall be the primary frontage for properties on University Avenue. An eating and drinking establishment with an on-site wine grower license for on-premise production, consumption and package sales is a permitted use within the UD-UAZ, provided all requirements as prescribed for liquor establishments by the State of New Mexico are met.

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.

June 10, 2013
Date



Adam Ochoa

Adam Ochoa
Planner

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.



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 9 and 16, 2013

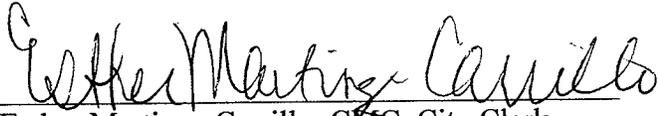
Copy to publish:

NOTICE OF INTENT TO ISSUE WAIVER

Notice is hereby given that the Las Cruces City Council will consider the issuance of a waiver of the church/school distance restriction for a Winegrower Liquor License, with on premise consumption and package sales, to Roadrunner Brew House LLC d/b/a Roadrunner Brew House, to be located at 901 East University Avenue, Building 945A, Las Cruces, New Mexico.

The consideration of the waiver will be held during the regular meeting of the Las Cruces City Council scheduled to begin at 1:00 p.m. on Tuesday, September 3, 2013, in the City Council Chambers at City Hall, 700 North Main Street. If passed, the State of New Mexico Regulation & Licensing Department, Alcohol and Gaming Division, may approve the issuance of the license.

Witness my hand and seal of the City of Las Cruces on this the 1st day of August 2013.



Esther Martinez-Carrillo, 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: August 11 and 18, 2013

Copy to publish:

NOTICE OF INTENT TO ISSUE WAIVER

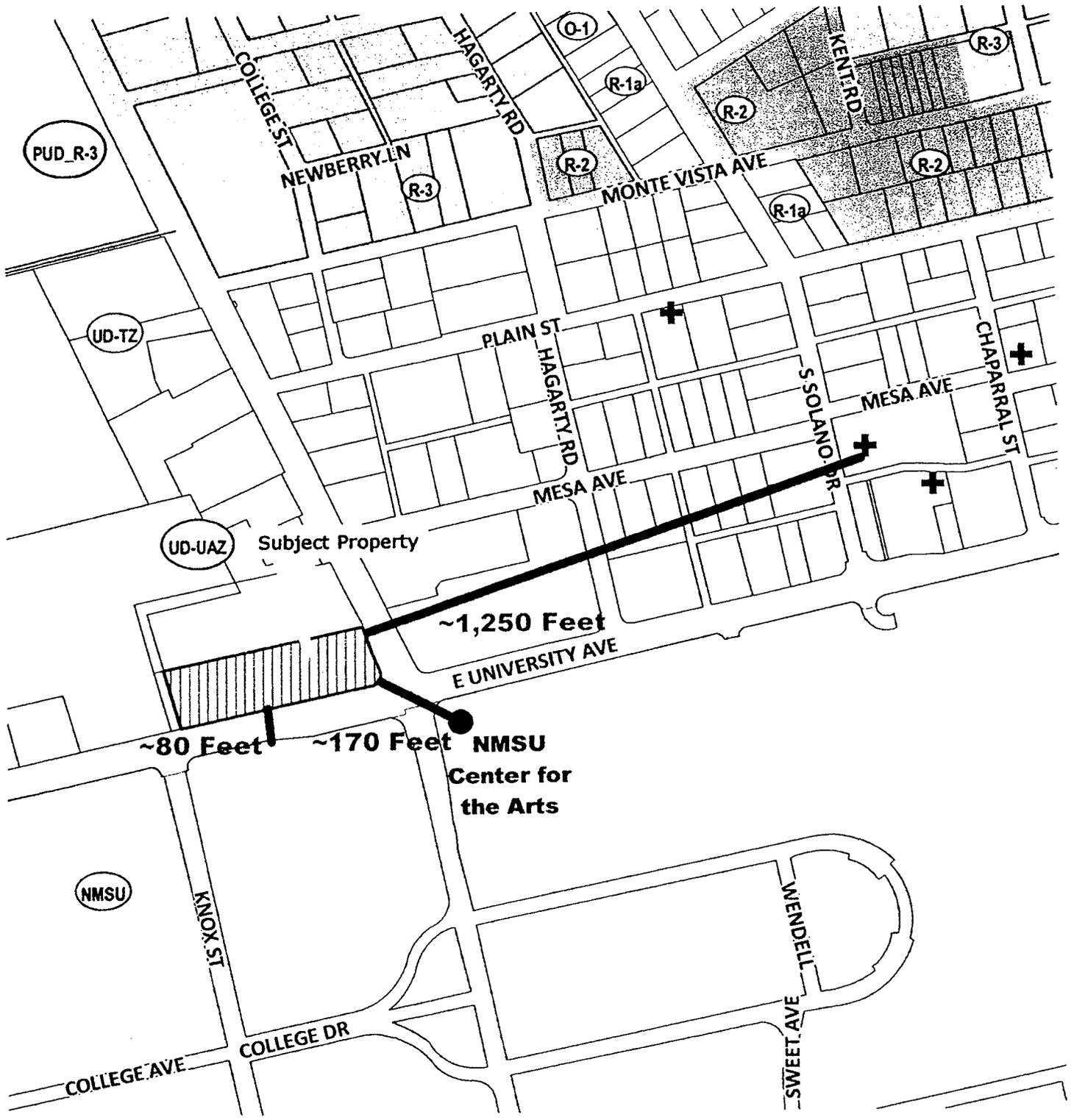
Notice is hereby given that the Las Cruces City Council will consider the issuance of a waiver of the church/school distance restriction for a Winegrower Liquor License, with on premise consumption and package sales, to Roadrunner Brew House LLC d/b/a Roadrunner Brew House, to be located at 901 East University Avenue, Building 945A, Las Cruces, New Mexico.

The consideration of the waiver will be held during the regular meeting of the Las Cruces City Council scheduled to begin at 1:00 p.m. on Tuesday, September 3, 2013, in the City Council Chambers at City Hall, 700 North Main Street. If passed, the State of New Mexico Regulation & Licensing Department, Alcohol and Gaming Division, may approve the issuance of the license.

Witness my hand and seal of the City of Las Cruces on this the 1st day of August 2013.


Esther Martinez-Carrillo, CMC, City Clerk

431
ZONING/VICINITY MAP



○ ZONING ● SCHOOL + CHURCH

901 E. University Avenue
Zoning: UD-UAZ
Parcel ID#: 02-40890
Distance to nearest school: ~80 Feet (NMSU Property)
Distance to nearest school building: ~170 Feet



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



Kenneth W. Anderson
PO Box 700
Boerne, TX 78006

BCF Properties LP
2510 S. Espina #1
Las Cruces, NM 88001

Casa Bandera Investors LLC et al
1443 Washington Blvd., Suite 820
Pasadena, CA 91104

Cervantes III Ltd. Co.
PO Box 158
La Mesa, NM 88044

Cervantes Investments
2610 S. Espina
Las Cruces, NM 88001

Dickerson Holding LLC
PO Box 161
Fairacres, NM 88033

Laules+M Family Rentals LLC
2223 Missouri Ave.
Las Cruces, NM 88001

NM Alpha Gamma Rho
Building Association
PO Box 3031
Las Cruces, NM 88003

New Mexico State University
PO Box 30001
Las Cruces, NM 88003-8001

Bruce Kite, General Counsel
PO Box 30000, MSC 3UGC
Las Cruces, NM 88003-8001

Philippou LLC
PO Box 6190
Las Cruces, NM 88006



August 8, 2013

Dear Property Owner:

Roadrunner Brew House ("the applicant") to be located at 901 East University Avenue, Building 945A, Las Cruces, New Mexico, has applied to the Alcohol and Gaming Division of the State of New Mexico Regulation and Licensing Department for the issuance of a *Winegrower Liquor License*, with on premise consumption and package sales. As part of the approval process, the Liquor Control Act ("LCA") requires the applicant to obtain approval for the issuance of the liquor license from the Las Cruces City Council.

A public hearing to approve or disapprove the *Winegrower Liquor License*, with on premise consumption and package sales, will be held during the regular meeting of the Las Cruces City Council scheduled to begin at 1:00 p.m. on Tuesday, September 3, 2013, in the City Council Chambers at City Hall, 700 North Main Street, Las Cruces, New Mexico.

The property line of the proposed location of Roadrunner Brew House is approximately 80 feet from the property line of New Mexico State University. 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 distance restriction will be considered at the September 3, 2013 City Council meeting before the public hearing about the liquor license.

If you wish to share your views concerning the impact of the *Winegrower Liquor License*, you may attend the City Council meeting, or you may submit your views in writing to the City Attorney's Office, PO Box 20000, Las Cruces, New Mexico 88004. Letters must be received by 5:00 p.m. on Thursday, August 29, 2013.

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

Sincerely,


Harry S. (Pete) Connelly
City Attorney