

City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 13 Resolution #10-117 Council District:

For Meeting of October 19, 2009

(Adoption Date)

A RESOLUTION APPROVING THE ISSUANCE OF A BEER AND WINE RESTAURANT LIQUOR LICENSE TO SMOKEY DICK'S, LLC D/B/A SMOKEY DICK'S BBQ, LOCATED AT 2265 SOUTH MAIN STREET, LAS CRUCES, NEW MEXICO.

PURPOSE(S) OF ACTION: To approve, disapprove, or not approve or disapprove the issuance of a Beer and Wine Restaurant Liquor License to Smokey Dick's BBQ.

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

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: Pursuant to state law, the application for the issuance of a Beer and Wine Restaurant Liquor License must be accompanied by a resolution of the City Council approving of and consenting to the issuance after a public hearing.

Smokey Dick's, LLC d/b/a Smokey Dick's BBQ applied to the Alcohol & Gaming Division of the Regulation and Licensing Department of the State of New Mexico ("Alcohol and Gaming") for a Beer and Wine Restaurant Liquor License at 2265 South Main, Las Cruces, New Mexico. Alcohol and Gaming granted preliminary approval on September 15, 2009.

The City Council is required to hold a public hearing within 45 days after the date of receipt of the preliminary approval from Alcohol and Gaming. A public hearing to review this issue is scheduled for Monday, October 19, 2009, beginning at 1:00 p.m., in the City Council Chambers, City Hall, 200 North Church Street, Las Cruces, New Mexico. Notice of this public hearing was published in the *Las Cruces Sun-News* on September 27 and October 4, 2009, and in the *Las Cruces Bulletin* on September 25 and October 2, 2009.

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 this license.

SUPPORT INFORMATION:

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

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

OPTIONS / ALTERNATIVES:

1. Approve the resolution and consent to the issuance of a Beer and Wine Restaurant Liquor License to Smokey Dick's, LLC d/b/a Smokey Dick's BBQ. Approval will allow Alcohol and Gaming to continue with its application process.
2. Disapprove the resolution. Council's disapproval must be based on substantial evidence that the issuance of the Beer and Wine Restaurant Liquor License would adversely affect the health, safety or welfare of the citizens of the City of Las Cruces.
3. Not approve or disapprove the Resolution. If the Council fails to either approve or disapprove the issuance of the Beer and Wine Restaurant Liquor License, the Director of Alcohol and Gaming may give final approval to said issuance.

RESOLUTION NO. 10-117

A RESOLUTION APPROVING THE ISSUANCE OF A BEER AND WINE RESTAURANT LIQUOR LICENSE TO SMOKEY DICK'S, LLC D/B/A SMOKEY DICK'S BBQ, LOCATED AT 2265 SOUTH MAIN STREET, LAS CRUCES, NEW MEXICO.

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

WHEREAS, Smokey Dick's, LLC d/b/a Smokey Dick's BBQ applied to the Alcohol and Gaming Division of the Regulation and Licensing Department of the State of New Mexico ("Alcohol and Gaming") for a Beer and Wine Restaurant Liquor License at 2265 South Main, Las Cruces, New Mexico; and

WHEREAS, on September 15, 2009 Alcohol and Gaming granted preliminary approval for the issuance of the liquor license, as evidenced by their letter with the application attached; 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 notice of such hearing; and

WHEREAS, the City Council did on this date hold a public hearing after reasonable 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 issuance 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 Beer and Wine Restaurant Liquor License to Smokey Dick's, LLC d/b/a Smokey Dick's BBQ, located at 2265 South Main, Las Cruces, New Mexico, is hereby approved.

(II)

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

(III)

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

DONE AND APPROVED on this 19 day of October 2009.

Mayor

ATTEST:

City Clerk

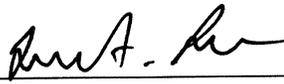
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Moved by: _____

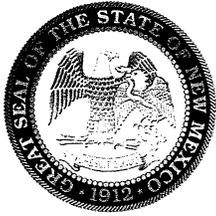
Seconded by: _____

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Archuleta:	_____
Councillor Small:	_____
Councillor Jones:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:



City Attorney



Bill Richardson
GOVERNOR

Kelly O'Donnell, Ph.D.
SUPERINTENDENT

Julie Ann Meade
DEPUTY
SUPERINTENDENT

Randall Cherry
CHIEF GENERAL
COUNSEL

Gary J. Tomada
DIRECTOR

499

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/agd

September 15, 2009

Certified Mail No.: 7006 3450 0000 3001 2559

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

Re: License / App. No.: Application #A-608714
Applicant Name: Smokey Dick's, LLC
Doing Business As: Smokey Dick's BBQ
Proposed Location: 2265 S. Main, Las Cruces, New Mexico

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 BEER & WINE RESTAURANT LIQUOR LICENSE.

EXHIBIT A

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
Administrative Law Judge

Enclosures:

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

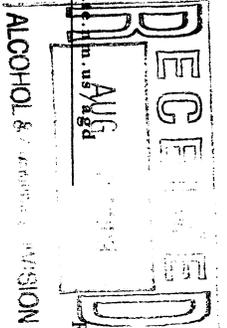


New Mexico Regulation and Licensing Department • Alcohol and Gaming Division
 P. O. Box 25101 • Santa Fe, New Mexico 87504-5101 • (505) 476-4875 • Fax (505) 476-4595 • www.rld.state.nm.us

LIQUOR LICENSE APPLICATION

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

978.5.09
 P. 200



State Liquor License # 6008774
 Application Number 6008774
 Local option (AGD use) _____



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

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

NAME OF APPLICANT (company or individual) Smoky Dicks LLC ADDRESS (including city, state, zip) 2265 S. MAIN LAS CRUCES NM 88005 TELEPHONE NUMBER 575 541 5942
 D/B/A name to be used: Smoky Dicks BBO 2265 S. MAIN LAS CRUCES NM 88005 Phone number for licensed premises: 575 541 5947

501 Physical location where license is to be used: _____ (Include street number / highway number / state road, city and county, state, and zip code)
 Mailing address: 2265 S. MAIN LAS CRUCES NM 88005

Are alcoholic beverages currently being dispensed at the proposed location? Yes _____ No If yes, give license number and type _____
 I, (print name) Adrian Perez, as (title) Governer, 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 _____ Date 07-27-09

SUBSCRIBED AND SWORN TO before me this 27th day of July Notary Public Use Only _____, 2009 by Adrian Perez
 My Commission Expires 11-17-2010
 Notary Public Luisa Montoya

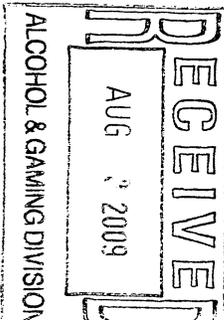
Local Governing Body of: _____ (City or County). Hearing held on _____ 20____
 Check one: Approved _____ Disapproved _____ City/County Official _____ (Signature & Title)

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



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) Christolms LLC

B. Date and term of lease 03-15-09 Three Year lease

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-3 / M-1 / M-2c

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 1,980 Ft Name of church St. James Address/location of church 102 St. James

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

Miles/feet 1,930 Ft Name of school Las Cruces High Address/location of school 1755 El Paseo Rd

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

Miles 20 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) _____



AD FORM

LAS CRUCES SUN NEWS	
CLASSIFIED LEGAL AD	
DATE TO PUBLISH: 09/27/09 & 10/04/09	Account No. 720680
CITY CONTACT & PHONE NUMBER: MONICA CAMPBELL 541-2128 FAX: 541-2017	BILL TO: CITY CLERK P O Box 20000 LAS CRUCES, NM 88004
PROOF OF PUBLICATION REQUIRED.	

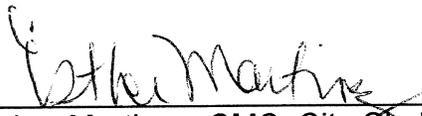
COPY TO PUBLISH:

NOTICE OF INTENT TO ADOPT

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of the **Issuance of a Beer and Wine Restaurant Liquor License to Smokey Dick's, LLC d/b/a Smokey Dick's BBQ, located at 2265 South Main, Las Cruces, New Mexico.**

The Public Hearing will be held at a meeting of the City Council on Monday, October 19, 2009, at 1:00 p.m. in the City Council Chambers, 200 North Church, City Hall. If passed, the State of New Mexico Regulation & Licensing Department, Alcohol and Gaming Division, may approve the issuance of the Restaurant Liquor License.

Witness my hand and seal of the City of Las Cruces on this the 21st day of September 2009.


Esther Martinez, CMC, City Clerk



AD FORM

LAS CRUCES BULLETIN	
CLASSIFIED LEGAL AD	
DATE TO PUBLISH: 09/25/09 & 10/02/09	
CITY CONTACT & PHONE NUMBER: MONICA CAMPBELL 541-2128 FAX: 541-2017	BILL TO: <u>CITY CLERK</u> P O Box 20000 LAS CRUCES, NM 88004
PROOF OF PUBLICATION REQUIRED.	

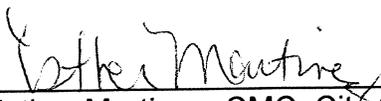
COPY TO PUBLISH:

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Witness my hand and seal of the City of Las Cruces on this the 21st day of September 2009.



 Esther Martinez, CMC, City Clerk



City of Las Cruces®
PEOPLE HELPING PEOPLE

**INTER-DEPARTMENTAL
MEMORANDUM**

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TO: Fermin A. Rubio, City Attorney

FROM: Dan Soriano, Traffic Engineer, Public Works 

SUBJECT: Traffic Investigation Report

DATE: September 22, 2009

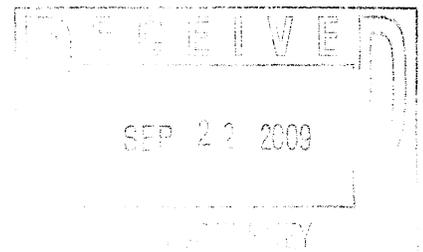
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As requested, Traffic Engineering has completed a traffic investigation for Smokey Dick's BBQ located at 2265 S. Main St., Las Cruces., New Mexico. The following information is submitted for review:

- **S. Main St. at this location carries approximately 11,000 vehicles per day.**
- **S. Main St. is operated as a four lane roadway and primarily serves industrial use.**
- **Access to the property in question is off of S. Main St. No potential sight distance or operational problems exist.**
- **The speed limit on S. Main St. is posted 45 MPH.**

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

Should any additional information be needed, please contact me.



**City of Las Cruces
Community Development Department**

LIQUOR LICENSE IMPACT REPORT

**Restaurant Liquor License Application No. A-608714
(Beer and Wine Only)**

**Smokey Dick's BBQ
2265 S. Main Street**

September 24, 2009

LIQUOR LICENSE IMPACT REPORT
Restaurant Liquor License (Beer and Wine ONLY)

Smokey Dick's BBQ
2265 S. Main Street

The purpose of this report is to review, analyze and determine any possible impacts of a liquor license relating to land use and other planning related issues.

PROPERTY INFORMATION:

Location: 2265 S. Main Street
 Applicant: Smokey Dick's, LLC
 Business Name: Smokey Dick's BBQ

LAND USE AND ZONING INFORMATION:

Subject Property Zoning: C-3C/M-1C/M-2C (Commercial High Intensity – Conditional/Industrial Standard – Conditional)
 (See attached Statement of Zoning and Vicinity Map)

Subject Property Current Land Use:

<u>Adjacent Land Uses</u>	<u>Zoning</u>	<u>Land Use</u>
North	C-3C/M-1C/M-2C	Commercial
South	C-3C/M-1C/M-2C	Commercial
East	R-3	Residential
West	M-1/M-2	Industrial

DISTANCE REQUIREMENTS:

Greater than 300 feet to a school: YES
 Greater than 300 feet to a church: YES
 Greater than 300 feet to a military installation: YES

TRAFFIC COUNT AND ACCESS INFORMATION:

Roadway: Main Street
 Classification: Principal Arterial
 Number of Lanes: 4
 Site Access: 3
 Nearest Intersection: Main St. & Farney Ln.

PARKING REQUIREMENTS:

The 2001 Las Cruces Zoning Code, as amended, requires restaurants to provide one (1) auto parking space per 2-5 seats. However, because the business is in a shopping center, one (1) space for each 200-300 square feet of gross floor area is required. As the center currently exists, there is no apparent change in land use and parking is not an issue.

IMPACT ANALYSIS:

The applicant is requesting a new restaurant liquor license for beer and wine only for this establishment. The subject property is located on Main Street which is designated as a principal arterial and is designed to accommodate moderate to heavy traffic and land uses such as restaurants. Zoning for this property is C-3C/M-1C/M-2C (Commercial High Intensity-Conditional/Industrial Standard-Conditional) which permits this use and uses related to it. In terms of a transportation and land use perspective, this seems to be an appropriate location and request.



STATEMENT OF ZONING

The property located at 2265 S. Main Street, and having a Map Code Number or Parcel ID Number of 02-07714, in Las Cruces, New Mexico, is zoned as follows:

C-3C/M-1C/M-2C (Commercial High Intensity-Conditional / Industrial Standard-Conditional)

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.

September 24, 2009
Date


Adam Ochoa
Associate Planner

Comments: The C-3 district facilitates and encourages development of those uses which provide retail, service, and wholesale activities within the City and a regional market and whose use generally serves a population of over 15,000. The M1/M2 district is intended to provide for industrial uses that consist of full-scale fabrication, manufacturing, packaging and processing of products that can be conducted in a generally clean, quiet, and safe environment with minimal negative impacts on the surrounding environment and uses. Conditions for this zoning designation is listed on Ordinance 2245, passed November 28, 2005. 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.

From: Christine Logan
Sent: Tuesday, September 22, 2009 11:34 AM

The business license for Smokey Dick's BBQ is up to date.

From: Monica Campbell
Sent: Monday, September 21, 2009 10:52 AM
To: Christine Logan
Cc: Vicki Montez
Subject: Review of Liquor License application

Attached is Alcohol & Gaming's letter and application for the issuance of a Beer and Wine Restaurant Liquor License to Smokey Dick's BBQ at 2265 South Main, Las Cruces.

Please review the application and report on whether this business has obtained a business license and permits, if applicable.

In order to meet the time limits and publication deadlines imposed by law, I would appreciate it if you would submit your report no later than **October 2, 2009**.

Monica Campbell
City Attorney's Office
541-2128

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

DATE: *September 22, 2009*

TO: *Fermin A. Rubio, City Attorney*

From: *Harry Romero, Chief of Police*

Subject: *Smokey Dick's BBQ*

I have reviewed all available statistical information obtained from the Las Cruces Police Department Crime Analyst in reference to the attached liquor license application for Smokey Dick's BBQ located at 2265 S. Main, Las Cruces, New Mexico 88005.

No anomalies were found that would warrant denial of this license; therefore, I recommend the liquor license application for Smokey Dick's to be approved.

A handwritten signature in black ink, appearing to read "Harry Romero".

Harry Romero
Chief of Police



Interdepartmental Memorandum

TO: Fermin A. Rubio, City Attorney
FROM: Travis A. Brown, Deputy Chief *TAB*
SUBJECT: Liquor License Review
DATE: October 2, 2009 **FILE #:**

Our department has reviewed the liquor license application for Smokey Dick's, LLC, d/b/a Smokey Dick's BBQ, located at 2265 S. Main, Las Cruces, New Mexico.

This location in question is an existing facility. The building was inspected for compliance with the 2006 International Fire Code (IFC) and was found to be in conformance with the requirements for a facility that serves alcoholic beverages.

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

Attachment 7