City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 7 Ordinance/Resolution# 17-047

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of September 19, 2016 (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 BEER AND WINE LICENSE TO ALAS, LLC D/B/A PASTAGGIO'S ITALIAN, TO BE LOCATED AT 3000 HARRELSON STREET, SUITE 1N, LAS CRUCES, NEW MEXICO.

PURPOSE(S) OF ACTION:

To approve a waiver.

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

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

According to state statute (NMSA 1978, Section 60-6B-10, as amended), a license shall not be issued for the sale of alcoholic beverages within 300 feet of a church or school unless the City Council grants a waiver of the distance restriction.

Alas, LLC d/b/a Pastaggio's Italian has applied for a restaurant beer and wine license at 3000 Harrelson Street, Suite 1N, which is approximately 50 feet from New Mexico State University ("NMSU") property. The property owners within 300 feet of the proposed location of Pastaggio's Italian were notified by U. S. Mail of the City Council meeting to approve or disapprove the waiver and the issuance of the restaurant beer and wine 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 Alas, LLC d/b/a Pastaggio's Italian 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.
4. Attachment "2", Zoning/Vicinity Map.
5. Attachment "3", List of property owners within 3000 Harrelson Street, Suite 1N.
6. Attachment "4", Form of letter sent to the property owners.

SOURCE OF FUNDING:

Is this action already budgeted?			
N/A	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____.
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: _____ in the amount of $____for FY__.
	No	☒	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 Alas, LLC d/b/a Pastaggio's Italian 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 beer and wine license.

(Continue on additional sheets as required)

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:

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

N/A

(Continue on additional sheets as required)

City of Las Cruces®
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COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of September 19, 2016 (Adoption Date)

TITLE: A RESOLUTION APPROVING THE ISSUANCE OF A WAIVER OF THE CHURCH/SCHOOL DISTANCE RESTRICTION FOR A RESTAURANT BEER AND WINE LICENSE TO ALAS, LLC D/B/A PASTAGGIO'S ITALIAN, TO BE LOCATED AT 3000 HARRELSON STREET, SUITE 1N, LAS CRUCES, NEW MEXICO.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes ☐ No ☒

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	Monica Campbell	541-2128	8-18-2016
Department Director		541-2128	19 AUG 2016
Other			
Assistant City Manager /CAO		541-2100	8/25/2016
Management & Budget Manager		541-2100	8/24/16
Assistant City Manager/COO		541-2271	8/26/16
City Attorney		541-2128	19 August 2016
City Clerk		541-2115	9-9-16

Rev. 8/2011

RESOLUTION NO. 17-047

A RESOLUTION APPROVING THE ISSUANCE OF A WAIVER OF THE CHURCH/SCHOOL DISTANCE RESTRICTION FOR A RESTAURANT BEER AND WINE LICENSE TO ALAS, LLC D/B/A PASTAGGIO'S ITALIAN, TO BE LOCATED AT 3000 HARRELSON, SUITE 1N, LAS CRUCES, NEW MEXICO.

The City Council is informed that:

WHEREAS, according to state statute (NMSA 1978, Section 60-6B-10, as amended), no license shall be issued for the sale of alcoholic beverages within 300 feet of a church or school; and

WHEREAS, the proposed location of Pastaggio's Italian at 3000 Harrelson Street, Suite 1N, is approximately 50 feet from property owned by New Mexico State University; and

WHEREAS, a waiver of the distance restriction is required prior to the approval of the issuance of the restaurant beer and wine license; and

WHEREAS, approving this resolution will allow the applicant to continue with 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 Alas, LLC d/b/a Pastaggio's Italian, to be located at 3000 Harrelson Street, Suite 1N, as noted in the letter from Alcohol and Gaming, attached hereto as Exhibit "A" and made a part of this Resolution, is hereby approved.

(II)

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 _____ 2016.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

VOTE:
Mayor Miyagishima: ____
Councillor Gandara: ____
Councillor Smith: ____
Councillor Pedroza: ____
Councillor Eakman: ____
Councillor Sorg: ____
Councillor Levatino: ____

APPROVED AS TO FORM:

_____
City Attorney

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/alcoholandgaming

Susana Martinez
Governor

Robert "Mike" Unthank
Superintendent

David Jablonski
Deputy Superintendent

Claudia Armijo
Deputy General Counsel

Mary Kay Root
Director

August 4, 2016

Certified Mail No.: 9171 9690 0935 0079 1504 81

City of Las Cruces
Linda Lewis, Clerk
PO Box 20000
Las Cruces, NM 88004

Re:	**Lic. No. /Appl. No.:**	**Application No. 1008490**
	Name of Applicant:	Alas, LLC
	Doing Business As:	Pastaggio's Italian
	Proposed Location:	3000 Harrelson Street, Suite 1N Las Cruces, NM 88005

Greetings:

The Director of the Alcohol and Gaming Division has reviewed the referenced Application and granted **Preliminary Approval.** It is being forwarded to you for Local Option District approval or disapproval of the Liquor License Application.

While the law states that "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", we recognize the potential for conflict between the requirement for publication of 30 day notice and the 45 day hearing requirement. Should the Local Governing Body be unable to meet one of these requirements, please send a Request for Waiver/Extension by email to the assigned AGD Hearing Officer listed on page 2.

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 **twice during the 30 days prior to the hearing** in a newspaper of general circulation within the territorial limits of the governing body. **The first notice must be published at least thirty (30) days before the hearing. Both publications must occur 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 & Gaming Division;
(C) The location of the licensed premises.

In addition, if the Local Option District has a website, **the Notice shall also be published on the website.**

The governing body is required to send notice by certified mail to the Applicant of the date, time, and place of the Public Hearing. The governing body may designate a Hearing Officer to conduct the hearing. **A record shall be made** of the hearing.

THE APPLICANT IS SEEKING A RESTAURANT BEER AND WINE LICENSE WITH ON PREMISE CONSUMPTION ONLY AND PATIO SERVICE

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

Within thirty (30) days after the Public Hearing, the governing body shall notify the Alcohol and Gaming Division of their decision to approve or disapprove 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 notices of publication. **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 issue 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, noting disapproval*).

Respectfully,

Charmaine Martinez, Hearing Officer
NM Regulation & Licensing Dept. | Alcohol & Gaming Division
Phone: (505) 476-4804 Fax: (505) 476-4595
Email: charmaine.martinez2@state.nm.us

Enclosures:

1. Original Page 1 of the Application (*must be signed and returned w/notices of publication*)
2. Copy of Page 2 of the Application
3. Copy of Zoning Statement

xc by email: Applicant

Charmaine 6/29/16

New Mexico Regulation and Licensing Department • Alcohol and Gaming Division
PO Box 25101 • Santa Fe, New Mexico 87505-5101 • (505) 476-4875 • Fax (505) 476-4595 • www.rld.state.nm.us/alcoholandgaming

RECEIVED JUN 21 2016 ALCOHOL & GAMING DIVISION

Rev. 08/13

6/22/16 ENTERED 200 18489

LIQUOR LICENSE APPLICATION

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

ate Liquor License # _____ Record Owner of Existing License _____

pplication Number 1008490 Current D/B/A Name _____

cal option (AGD use) _____ Current Premises Address _____

plication is for: Change of Stock _____ Change of Officers/Directors _____ Transfer Ownership of Existing License _____ Transfer Ownership and Location _____ Transfer Location _____ Other _____

Issue New License X Type of License being applied for Restaurant

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

ME OF APPLICANT (company or individual)	ADDRESS (including city, state, zip)	TELEPHONE NUMBER
ALAS, LLC	3000 Harrelson St 1N	575- 522.5522
	Las Cruces, NM 88005	

B/A name to be used: Pastaggio's Italian Phone number for licensed premises: 575- 522.5522

ical location where license is to be used: 3000 Harrelson St 1N, Las Cruces, NM 88005
(Include street number / highway number / state road, city and county, state, and zip code)

iling address: 412 Bason Dr, Las Cruces NM 88005

alcoholic beverages currently being dispensed at the proposed location? Yes _____ No X If yes, give license number and type _____

print name) Lawrence S Liberto, as (title) Owner being first duly sworn upon oath oses 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 ny 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.

ust sign and date this form in the presence of a notary public.

nature of Appplicant Lawrence S. Liberto Date 6-7-16

OFFICIAL SEAL PETER SCHOUTEN NOTARY PUBLIC STATE OF NEW MEXICO My Commission Expires 12/30/2017

Notary Public Use Only

BSCRIBED AND SWORN TO before me this 7 day of June, 20 16 by [signature]

tary Public Peter Schouten My Commission Expires 12/30/2017

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

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

For Alcohol and Gaming Division Use Only

proved _____ Disapproved _____ Director Approval _____ Date _____

RECEIVED
JUN 21 2016
ALCOHOL GAMING DIVISION

PREMISES LOCATION, OWNERSHIP, AND DESCRIPTION

SS-60-6B-10

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) _____

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

A. Owner(s) Lankford Enterprises, LLC

B. Date and term of lease January 1 2016 - Five year lease

Premises location is zoned (example C-1) C-2

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.

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

Miles/feet 345.43' Name of church St. James Episcopal Address/location of church 102 St. James St. Las Cruces, NM 8800
500 Ft - St. James Episcopal Church

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

Miles/feet .09 Miles Name of school ZIA Middle School Address/location of school 1300 W. University Ave, Las Cruces, NM 880
.09 miles - Zia Middle School (475.2 Ft)

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

Miles 32 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).

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 ½ 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.

Type of Operation:

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

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JUL 27 2016
ALCOHOL & GAMING DIVISION

City of Las Cruces®

STATEMENT OF ZONING

The property located at 3000 Harrelson St. Ste 1N., and having a Map Code Number or Parcel ID Number of 02-07800, in Las Cruces, New Mexico, is zoned as follows:

M-1/M-2 (Industrial Standard)

Comments: The M-1/M-2 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. A restaurant with a patio and a beer and wine dispenser's license is a permitted use in the M-1/M-2 zoning district, 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.

July 25, 2016
Date

Lorenzo Vigil
Planning Technician, Sr.

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.

City of Las Cruces®
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AD FORM
LAS CRUCES BULLETIN
LEGAL CLASSIFIED

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

Account No. 977669 (Bill to City Clerk, PO Box 20000, Las Cruces, NM 88004)

Dates to Publish: August 19 and 26, 2016

Copy to publish:

NOTICE OF INTENT TO ISSUE WAIVER

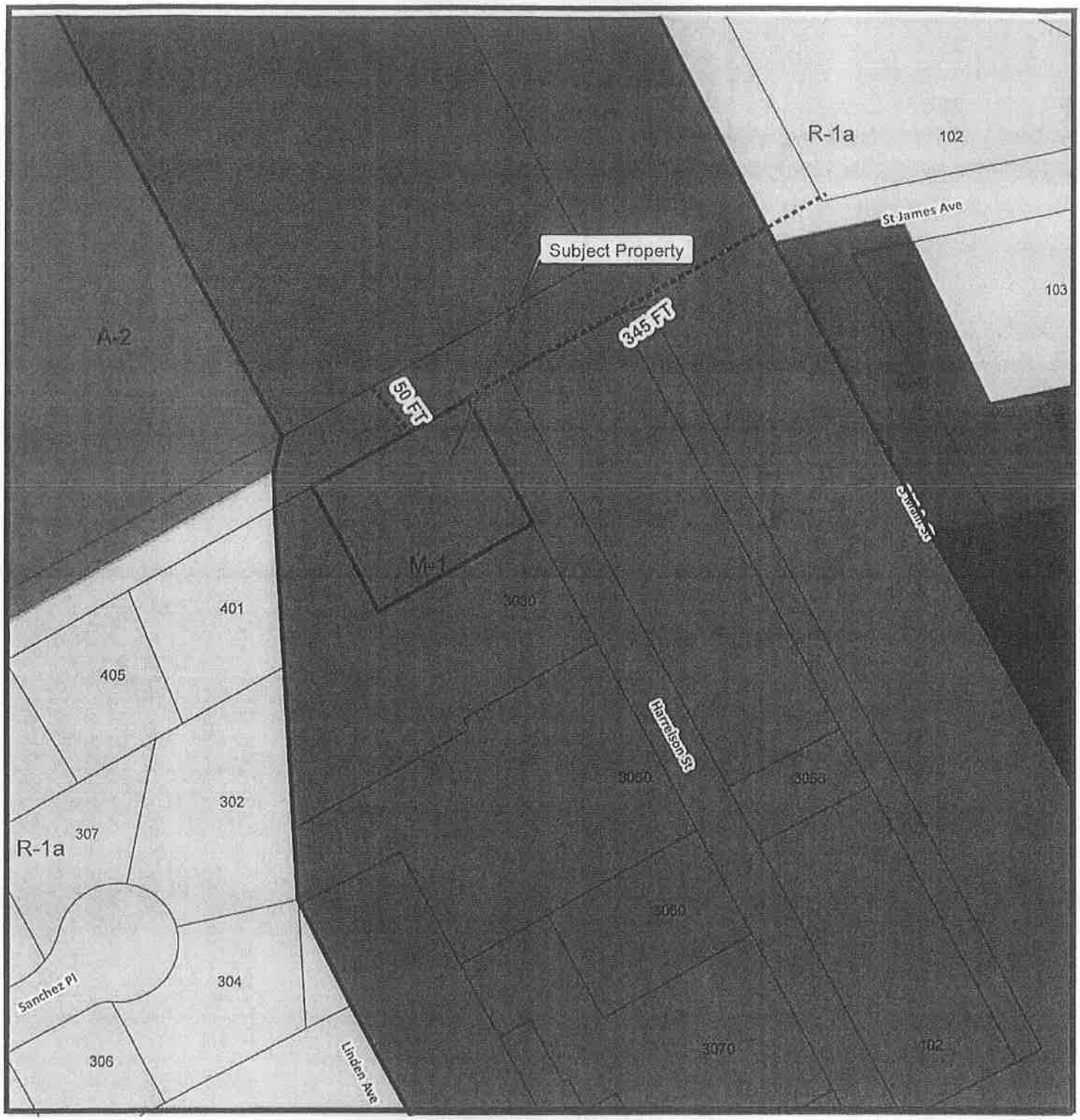
Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss the issuance of a waiver of the church/school distance restriction for a Restaurant Beer and Wine License with on premise consumption and patio service for Alas, LLC d/b/a Pastaggio's Italian, to be located at 3000 Harrelson Street, Suite 1N, Las Cruces, New Mexico.

The Public Hearing will be held in conjunction with the regular meeting of the Las Cruces City Council to be held on Monday, September 19, 2016, 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 15 day of August 2016.

Linda Lewis, CMC, City Clerk

Zoning / Vicinity Map



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.

3000 Harrelson St. Ste. 1N
Zoning M-1
DISTANCE TO THE NEAREST SCHOOL: 50FT
DISTANCE TO THE NEAREST CHURCH: 345FT

Legend

A-2 C-2 R-1a
C-1 M-1 • Property Address Points

150 75 0 Feet

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

BOARD OF REGENTS OF NMSU
PO BOX 30001
LAS CRUCES, NM. 880038001

ESCALANTE JANICE
304 SANCHEZ
LAS CRUCES, NM. 88005-3716

LANKFORD ENTERPRISES LLC
1100 S MAIN STE 104
LAS CRUCES, NM. 88005-2952

MESILLA VALLEY COMMUNITY OF HOPE
999 WEST AMADOR
LAS CRUCES, NM. 88005

NILLO NICHOLAS MD TRUSTEE
307 SANCHEZ PL
LAS CRUCES, NM. 88005-3795

PATTISON EDWIN P & BARBARA P &
3600 CAMINO SECO
LAS CRUCES, NM. 88005

PINON MANUEL M
302 SANCHEZ PL
LAS CRUCES, NM. 88005

ROMERO ROSELLA S
401 COLLEGE AVE
LAS CRUCES, NM. 88005-3734

SCHAUB TANNER M & DEIDRA C
409 W COLLEGE AVE
LAS CRUCES, NM. 88005

Lizbeth G. Ellis, General Counsel Ofc.
MSC 3UGC
New Mexico State University
PO Box 30001
Las Cruces, NM 88003

City of Las Cruces®

August 18, 2016

Dear Property Owner:

Pistaggio's Italian, a restaurant to be located at 3000 Harrelson Street, Suite 1N, Las Cruces, has applied to the Alcohol and Gaming Division of the Regulation and Licensing Department of the State of New Mexico for a restaurant beer and wine license, which will allow beer and wine to be sold and consumed on the restaurant premises including a patio. As part of the approval process, state law requires the applicant to obtain approval from the City Council.

This matter will come before the City Council as part of its regular meeting on Monday, September 19, 2016, which begins at 1:00 p.m. in the City Council Chambers located at City Hall, 700 North Main Street.

You are being sent this letter because property you own is within 300 feet of the location of Pistaggio's Italian. State law prohibits the sale and consumption of alcoholic beverages within 300 feet of a church or school unless a waiver has been granted. New Mexico State University owns property within 300 feet of 3000 Harrelson Street.

If you wish to share your views concerning the restaurant beer and wine license for Pistaggio's Italian, the waiver request and the application to sell alcoholic beverages, you may attend the City Council Meeting on September 19, 2016, or you may submit your views in writing to the City Attorney's Office, P. O. Box 20000, Las Cruces, New Mexico 88004. Letters must be received by 5:00 p.m. on Thursday, September 15, 2016.

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

Sincerely,

CITY OF LAS CRUCES

William R. Babington Jr.
City Attorney

CITY ATTORNEY'S OFFICE

P.O. BOX 20000 . LAS CRUCES . NEW MEXICO . 88004-9002 I 575.541.2000

AN EQUAL OPPORTUNITY EMPLOYER