

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Planning and Economic Development Department

AGENDA DATE: Regular Agenda
Public Hearing: May 1, 2012

CONTACT PERSON/PHONE: Michael McElroy, (915) 541-4238

DISTRICT(S) AFFECTED: 5

SUBJECT:

Discussion and action on a request from Ray Mancera, on behalf of Jose de la Torre, for City Council to grant an exception from the prohibition of the sale of alcoholic beverages within three hundred feet of a daycare for the property located at 2921 George Dieter #F.

BACKGROUND / DISCUSSION:

See attached.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) N/A

FINANCE: (if required) N/A

DEPARTMENT HEAD:

Mathew McElroy, Deputy Director
Planning and Economic Development

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

MEMORANDUM

DATE: April 23, 2012

TO: The Honorable Mayor and City Council
Joyce A. Wilson, City Manager

FROM: Michael McElroy, Planner

SUBJECT: **Appeal of Prohibition of Sale of Alcoholic Beverages – 2921 George Dieter #F**

Jose de la Torre is seeking an exception from the City for an alcoholic beverage license for a proposed location of a packaged liquor store at 2921 George Dieter #F, approximately 170 feet from a commercial day care facility, Flying Colors Learning Academy.

The Planning Division has determined that:

- The property is located in a C-3/sc zone district and that a packaged liquor store is a permitted use
- The location is less than 300 feet from a day care center
- The applicant could request an exception from the City Council to locate a packaged liquor store less than 300 feet from a daycare

The applicant was informed that the Code allows an exception to be granted by City Council from the prohibition of the sale of alcoholic beverages within 300 feet of a daycare after making certain determinations listed in Title 20, Zoning, Supplemental Use Regulations, Alcoholic beverages, Section 20.10.060 B.7.:

The city council may grant an exception from prohibition of the sale of alcoholic beverages within three hundred feet of a church, school, commercial day care or public hospital after notice and public hearing if the council determines that the enforcement of the prohibition in a particular instance:

- a. Is not in the best interest of the public;*
- b. Constitutes waste or the inefficient use of land or other resources;*
- c. Creates an undue hardship on an applicant;*
- d. Does not serve its intended purpose;*
- e. Is not effective or necessary; or*
- f. For any other reason the city council, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community.*

The subject property is located west of George Dieter, approximately 170 feet from the Flying Colors Learning Center located at 2901 George Dieter (measurement is property line to property line). There are no other schools, churches, commercial daycares or public hospitals within 300 feet of the subject property.

A license to sell packaged liquor existed for a business previously at 2921 George Dieter, before the operation of the daycare. Since that original business has ceased, the alcohol license has also expired. As such, all businesses established after the opening of the daycare must comply with the 300 foot prohibition.

Attachment: Application to City Council for exception

Jose de la Torre
12492 Tierra Dulce
El Paso, Texas 79938
(915) 313-2669

April 14, 2012

Mayor and City Council
2 Civic Center Plaza
El Paso, Texas 7990

RE: Appointment of Ray Mancera as Representative

Dear Mayor and Council,

This is to inform you I am appointing Mr. Ray Mancera to represent me in my request for an exception from the prohibition of the sale of alcoholic beverages for a property located at 2921 George Dieter #F.

You may contact me if you have any questions regarding this appointment.

Sincerely,



Jose de la Torre

Jose de la Torre

12492 Tierra Dulce
El Paso, Texas 79938
(915) 313-2669

April 14, 2012

Mayor and City Council
2 Civic Center Plaza
El Paso, Texas 7990

RE: Exception from the Prohibition of the Sale of Alcoholic Beverages

Dear Mayor and Council,

I respectfully request an exception be granted from the prohibition of the sale of alcoholic beverages for a property located at 2921 George Dieter #F. The property is currently zoned C-3 (sc) and is located in a shopping center near the corner of George Dieter and Pebble Hills. .

I plan to lease the above location and operate a beer depot. This is my first venture as a businessman and hope I am successful in order to provide for my family. The reason a certificate of occupancy cannot be obtained is because the property is within 300 feet of a school/day care center. However, Section 20.10.060 B.1. of the municipal code allows City Council to grant an exception. Below are the various determinations (in italics) Council may use in granting an exception. I address each determination and pray you agree with my responses.

- a. *"Is not in the best interest of the public."* It is in the public's best interest because this type of business had previously existed in the proposed location and offered for sale packaged alcohol beverages for off-premise consumption to the neighborhood residents.
- b. *"Constitutes waste or the inefficient use of land or other resources."* The proposed site had been designed and constructed for the sale of packaged alcoholic beverages to include large walk-in coolers and a drive thru. It would be a waste to reconvert these premises for office or other retail related use.
- c. *"Creates an undue hardship on an applicant."* I cleaned, painted, and purchased a computer and register thinking I would not encounter any permit issues since another beer depot had been located there.
- d. *"Does not serve its intended purpose."* Code states where a church or public hospital is located within 300 feet from where the sale of alcohol is to be

conducted the distance is to be "measured along the property lines of the street fronts and from front door to door..." Using this measurement, the distance from the beer depot to the church or hospital would have been **480 feet**, well over the minimum 300 feet. Yet, where a school, daycare center or child-care facility is located the distance is measured "in direct line from the property line to property line. Using this method of calculation the distance only measures 170 feet between the two locations.

- e. *"Is not effective or necessary"*. Fortunately the municipal code allows Council the opportunity to hear cases and grant exceptions on a case by case basis. Space F of the Shopping Center located at 2921 George Dieter was a beer depot previously. The affected property, **Flying Colors Learning Center**, located at 2901 George Dieter, has written a letter to the City stating they **are not opposed** to another beer depot locating in Space F. (See attached letter)
- f. *"For any other reason the city council, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community"*. Another parcel and building currently separates the location of the proposed beer depot from the school/day care center creating a nice buffer between them. In addition, the drive thru pick up window is located at the furthest end of the third building. Thus, drivers will be exiting between buildings two and three and not between buildings two and one where the school/day care center is located. (See attached aerial)

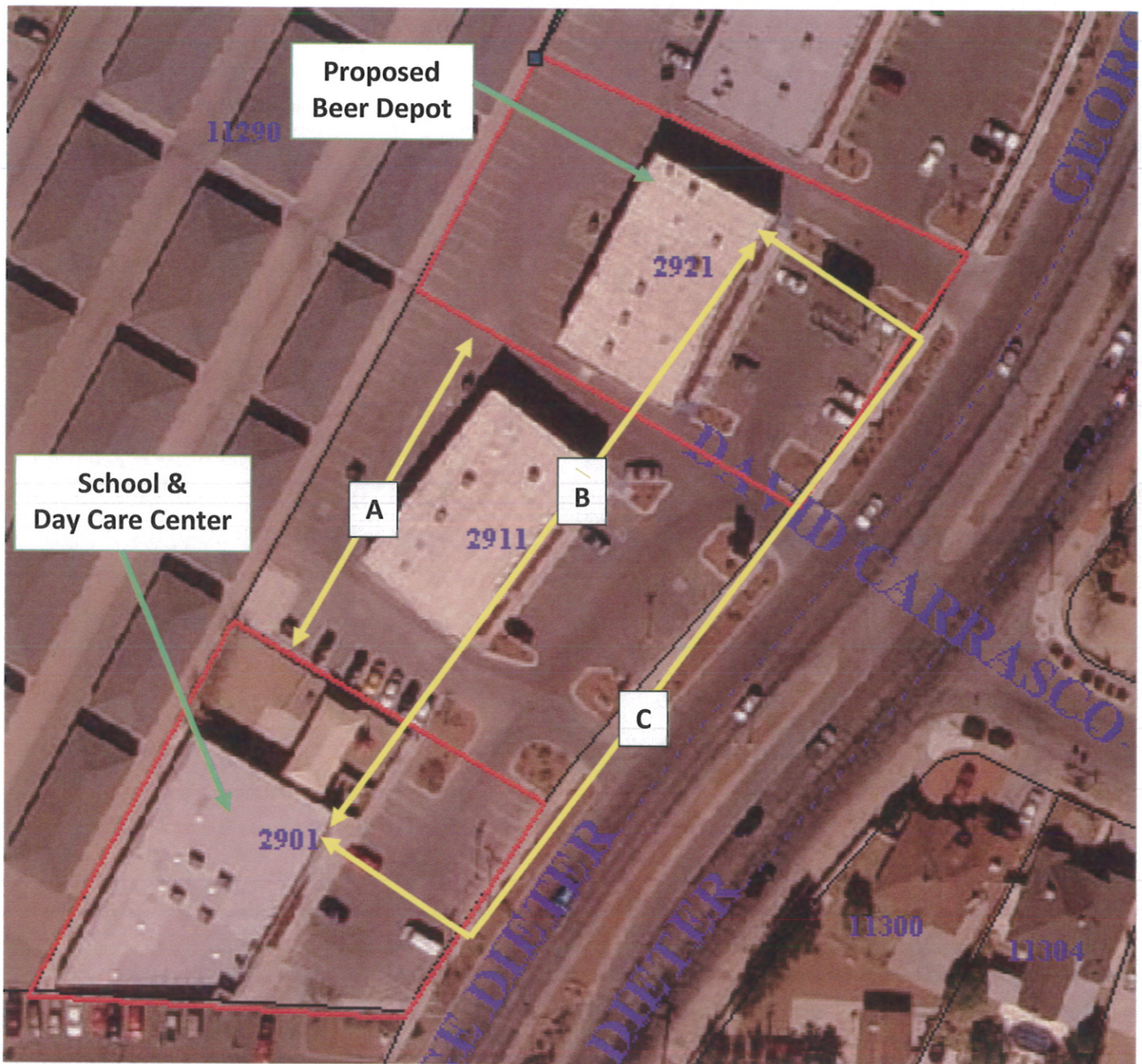
Thank you for any consideration you can give my request. I have given answers to each determination in the best interest of all parties concerned and ask you grant such exception. I look forward to appearing before you in a City Council meeting.

Sincerely,



Jose de la Torre

REQUEST TO GRANT EXCEPTION FOR
2921 George Dieter # F



A. Property Line to Property Line	170 Feet
B. Door to Door (As the crow flies)	330 Feet
C. Door to Sidewalk to Door	480 Feet

Flying Colors Learning Center

**2901 George Dieter
El Paso, Texas 79936
(915) 599-2300
www.flyingcolorslc.com**

April 9, 2012

City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901

RE: Non-Objection to Beer Depot at 2921 George Dieter #F

Dear City Official,

This is to inform you Flying Colors Learning Center has no objection to a beer depot being located at 2921 George Dieter #F. Previously there has been a beer depot at that location and we found it did not affect us. There is a large parcel (2911 George Dieter) separating our properties and their drive thru does not come near our property.

You are welcome to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Hicks', written over a horizontal line.

Michael Hicks
Owner



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Enter information below to search for records.

- Site Address
- Contractor License Information
- Parcel Number
- Record Information
- Contact Information

Use the drop-down list to change the search type.

General Search

General Search

License Number: Record Type: **Alcohol License**

Business Name:

Start Date: 04/18/2007 End Date: 04/16/2012

License Type: **--Select--** State License Number:

First: Last: Name of Business:

Business License #:

Street No.: **2921** Direction: **--Select--** Street Name: **george dieter** Street Type: **--Select--**

Unit Type: **--Select--** Unit No.: Parcel No.:

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Search

4 Record results matching your search results

Click any of the results below to view more details.

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License Number	Date	Record Type	Business Name	Expiration Date	Status	Action
LALC12-00172	03/19/2012	Alcohol License	Marquez Beer Depot		Closed	
BUS10-03385	04/29/2010	Licenses/Alcohol/NA/NA			INS	
BUS09-02333	03/27/2009	Licenses/Alcohol/NA/NA	PARTY AND BEER DEPOT		INS	
BUS08-07562	12/04/2008	Licenses/Alcohol/NA/NA	SUN CITY BEVERAGE		EXA	



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Record BUS09-02333:
Alcohol License

Work Location

2921 GEORGE DIETER
STE F

Record Details

Applicant:

ARMANDO GONZALEZ
PARTY AND BEER DEPOT
2921 GEORGE DIETER
EL PASO, TX, 79936
Home Phone:915/921-6120

Project Description:

TABC / BQ-BEER/WINE OFF PREMISE

Owner:

EP PEBBLE HILLS PROPERTIES LP
1790 LEE TREVINO STE 316
EL PASO TX 79936-0000

More Details

Fees

Inspections

Upcoming

You have not added any inspections.
Click the link above to schedule or request one.

Completed (1)

APPR - 1

APPR 1400 Site Inspection (159082)
Result by: Sergio Melendez on 04/01/2009 at 12:00 AM

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Record BUS10-03385:
Alcohol License

Work Location

2921 GEORGE DIETER
STE F

Record Details

Project Description:

WINE AND BEER RETAILER'S OFF-PREMISES

Owner:

HERNANDEZ, JOSE LUIS
10295 NORTHLOOP
EL PASO TX 79907-0000

► **More Details**

► **Fees**

▼ **Inspections**

Upcoming

You have not added any inspections.
Click the link above to schedule or request one.

Completed (1)

APPR - 1

APPR 1400 Site Inspection (1556560)

Result by: Sergio Melendez on 04/29/2010 at 12:00 AM

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Record BUS08-07562:
Alcohol License



The record was LOCKED on 02/25/2011.
Condition: Expired By Admin Severity: Lock
Total Conditions: 1 (Lock: 1)

[View additional details](#)

Work Location

2921 GEORGE DIETER
STE F

Record Details

Applicant:

ROBERT S AGUERO
SUN CITY BEVERAGES
2921 GEORGE DIETER, STE - F
EL PASO, TX, 79936-2944
Home Phone: 915/867-1870

Project Description:

TABC / BF-BEER OFF PREMISES; P-PACKAGE
STORE; E-LOCAL CARTAGE

Owner:

EP PEBBLE HILLS PROPERTIES LP
1790 LEE TREVINO STE 316
EL PASO TX 79936-0000

More Details

Fees

Inspections

Upcoming

You have not added any inspections.
Click the link above to schedule or request one.

Completed (1)

DONE - 1

DONE 1400 Site Inspection (601470)

Result by: Sonya Cahalan on 11/17/2010 at 12:00 AM

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Record LALC12-00172:
Alcohol License

Work Location

2921 GEORGE DIETER DR
F
EL PASO

Record Details

Applicant:

Jose De La Torre
Marquez Beer Depot
12492 Tierra Dulce
EL PASO, TX, 79938
Home Phone: 9153132669
jnnn82@yahoo.com

Owner:

EP PEBBLE HILLS PROPERTIES LP
2921 GEORGE DIETER DR
EL PASO TX 79936

More Details

Fees

Inspections

Upcoming

You have not added any inspections.
Click the link above to schedule or request one.

Completed (2)

Cancelled - 1; Fail - 1

Cancelled 1400 Site Inspection (2028095)
Cancelled by: Sonya Cahalan on 03/20/2012 at 12:49 PM

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Fail 1400 Site Inspection (2028094)
Result by: Sonya Cahalan on 03/23/2012 at 10:05 AM

[View Details](#)

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