

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

DEPARTMENT: Planning and Economic Development Department

AGENDA DATE: Regular Agenda
Public Hearing: January 11, 2011

CONTACT PERSON/PHONE: Linda Castle, (915) 541-4029

DISTRICT(S) AFFECTED: 2

SUBJECT:

Discussion and action on a request from Micah D. Miller, of Mounce, Green, Myers, Safi, Paxson & Galatzan, on behalf of Quality Licensing Corp., for City Council to grant an exception from the prohibition of the sale of alcoholic beverages within three hundred feet of a school for properties located at 5631 Dyer and 5719 Dyer.

BACKGROUND / DISCUSSION:

See attached.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

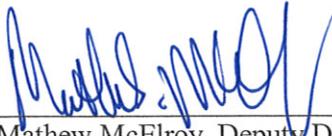
N/A

*****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: January 3, 2011

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

FROM: Linda Castle, Senior Planner

SUBJECT: **Appeal of Prohibition of Sale of Alcoholic Beverages – 5631 Dyer & 5719 Dyer**

Quality Licensing Corp. applied to the City for an alcoholic beverage license (BUS10-06561), and was denied because the proposed location of a new Walmart at 5631 Dyer & 5719 Dyer is within 300 feet of a school, Burnet Elementary School.

The applicant requested a zoning verification of the properties and the Planning Division determined that:

- The property is located in a C-4 (Commercial) zone district and that a supermarket is a permitted use,
- The location is less than 300 feet from a school,
- The applicant can request an exception from the City Council to sell alcoholic beverages at the proposed Walmart located less than 300 feet from a school.

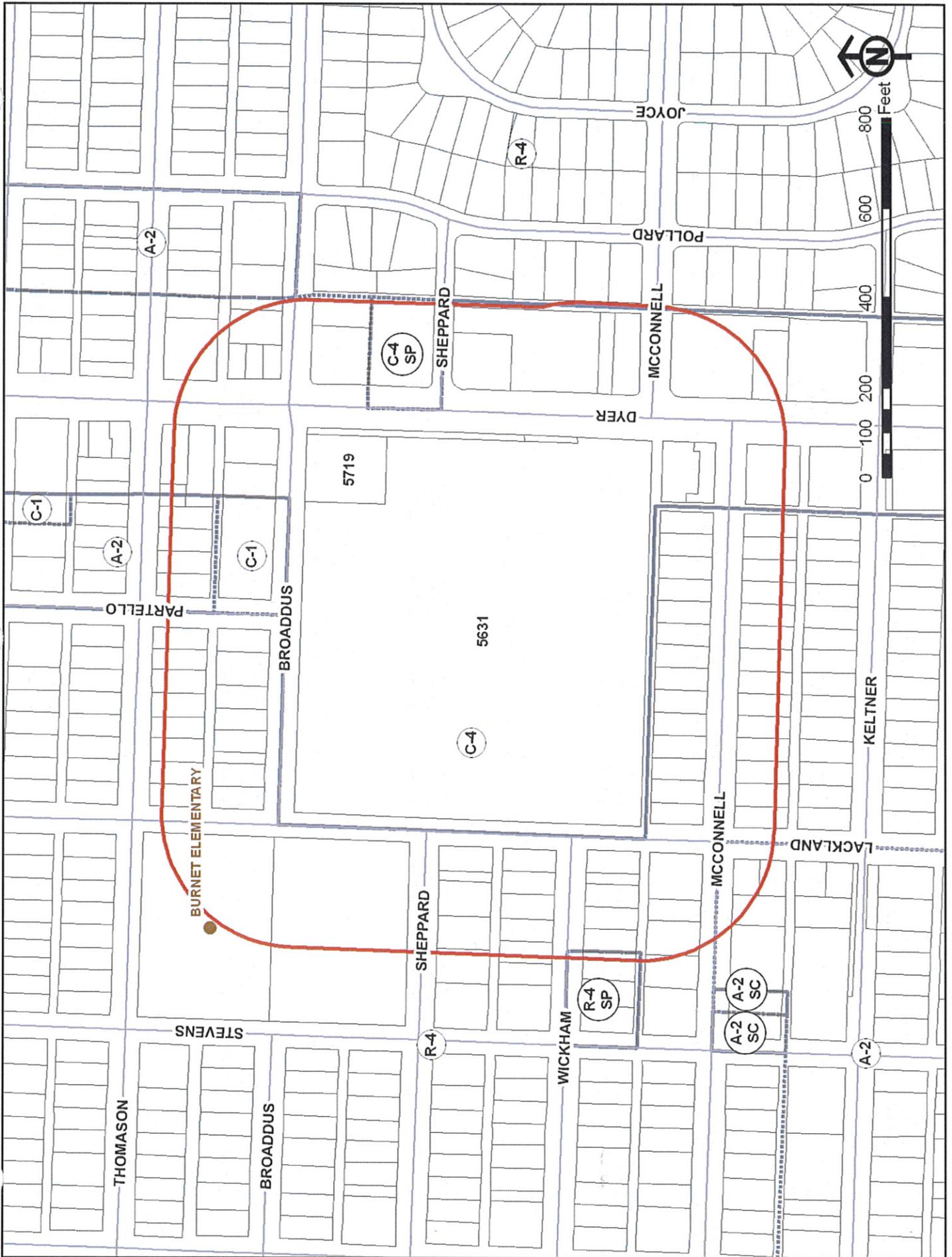
The applicant was informed that the Code allows an exception to be granted by City Council from the prohibition of the sale of alcoholic beverages within 300 feet of a school after making certain determinations listed in Title 20, Zoning, Supplemental Use Regulations, Alcoholic beverages, Section 20.10.060 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 on Dyer, south of Broaddus and east of Lackland. There are no other schools or churches, commercial daycares or public hospitals within 300 feet of the subject property.

Attachments: Location maps of subject property
Application to City Council for exception
Application for alcoholic beverage license



BURNET ELEMENTARY

5719

5631

THOMASON

BROADDUS

STEVENS

SHEPPARD

WICKHAM

MCCONNELL

LACKLAND

KELTNER

PARTELLO

POLLARD

JOYCE

A-2

A-2

C-1

C-1

C-4
SP

R-4

R-4

R-4
SP

A-2
SC

A-2
SC

A-2



800 Feet

600

400

200

0

100

200

300

400

500

600

700

800

JOYCE

POLLARD

MCCONNELL

DYER

5719

5631

PARTELO

BROADDUDUS

BURNET ELEMENTARY

MCCONNELL

LACKLAND

KELTNER

SHEPPARD

STEVENS

WICKHAM

THOMASON

BROADDUDUS

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* ALSO MEMBER OF NEW MEXICO BAR

TELEPHONE: (915) 532-2000

MAILING ADDRESS:
P.O. BOX 1977
EL PASO, TEXAS 79950-1977

STREET ADDRESS:
100 N. STANTON, SUITE 1000
EL PASO, TEXAS 79901-1448

FACSIMILE: (915) 541-1548

WEBSITE: WWW.MGMSG.COM

December 20, 2010

Hand-Delivery

Ms. Kimberly Forsythe
Development Services Department
Permits, Inspections and/or Plan Review Division
City of El Paso
#2 Civic Center Plaza
El Paso, Texas 79901

Re: Denial of Permit Requested Under Case No. BUS10-06561; Wine and Beer
Retailers Off-Premise Permit

Dear Ms. Forsythe:

Please reference our enclosed letter and application of October 13, 2010 and the enclosed record of the City's denial of our Wine and Beer Retailer's Off-Premise Permit. The permit was requested for the property which is legally described in Exhibit "B" of the October 13th letter (the "Property") and was denied because the Property is located within 300 feet of the boundary line of Burnet Elementary School. See Section 20.10.060(B)(1) of the El Paso Municipal Code.

At this time, the applicant, Quality Licensing Corp., would respectfully request your assistance in initiating an appeal from this denial and in requesting an exception from the City Council under 20.10.060(B)(7) of the El Paso City Code. Please set this request for an exemption on the City Council's agenda as soon as possible. We would appreciate a hearing on this matter during the meeting scheduled to occur on January 6, 2011. We have retained the original Wine and Beer Retailer's Off-Premise Permit application for the City Secretary's certification and will forward it to you at such time as the City may instruct us to do so.

If granted an exemption, Quality Licensing Corp., would use the permit in conjunction with the operation of a proposed Wal-Mart to be located on the Property. For your reference,

ALFA
*American
Law Firm
Association*

please see the Architect's rendition of the proposed store which is attached to this letter. We believe Quality Licensing Corp., is entitled to this exception under 20.10.060(B)(7) for the following reasons:

- a. Enforcement of the prohibition is not in the best interest of the public. The structures and other improvements on the Property are in disrepair, unoccupied, and are subject to vandalization. Graffiti and broken windows can be seen on the Property and the parking lot needs considerable rehabilitation. Currently, the Property is unsightly and unsafe. In contrast, Wal-Mart will construct a new building and rehabilitate other improvements on the Property. Further, a Wal-Mart store would bring economic development to the area. Considering aesthetics, safety, and community development, a Wal-Mart store would be a vast improvement upon the status quo of the Property. Therefore, the prohibition is not in the best interest of the public.
- b. Enforcement of the prohibition would constitute waste and inefficient use of land. As mentioned above, most or all the structures on the Property are currently unoccupied and unused. Wal-Mart plans to begin construction of a new store, to otherwise rehabilitate the Property, and to begin operating the store as soon as possible. The sale of beer and wine is an important part of Wal-Mart's business and the level of investment necessary to rehabilitate and restore a property of this size in order to provide for the operation of a commercially successful establishment is quite considerable. Therefore, the prohibition constitutes waste and inefficient use of land comprising the Property.
- c. Enforcement of the prohibition would create an undue hardship on the applicant. 7-Eleven and various restaurants located in the immediate vicinity of the intersection of Broaddus and Dyer sell alcohol under various types of retail permits.
- d. Enforcement of the prohibition would not be effective or necessary. Given that the applicant is applying for a retailer's beer and wine off-premise permit, on-premise consumption of alcohol will not be permitted on the Property and would constitute a violation of the Texas Alcoholic Beverage Code. Beer and wine sales will occur in conjunction with Wal-Mart's grocery sales and should not attract individuals who might engage in drunk and disorderly conduct, which will not be permitted at the location in any event. Therefore, enforcement of the prohibition would not be effective or necessary.
- e. The prohibition will not serve its intended purpose. In this case, the purpose of the prohibition is believed to be the protection of school children from dangers associated with the consumption of alcohol. Again, on-premise consumption will not be permitted on the Property. Moreover, Wal-Mart stores are family-friendly

Ms. Kimberly Forsythe
December 20, 2010
Page 3 of 3

environments and the applicant believes that the Property will be safer for the entire surrounding community once it has been rehabilitated by Wal-Mart. In its current status, the site could attract vandals, vagrants, and could pose an attractive nuisance to school children passing through the area. Because a Wal-Mart store on the Property will improve the overall safety of the surrounding area, the prohibition will not serve its intended purpose of protecting school children.

Please contact me should you have any comments or questions and also to let me know when our appeal and request for City Council exemption has been set on the City Council's agenda. You can reach me directly at (915) 541-1561 or miller@

Very truly yours,

MOUNCE, GREEN, MYERS, SAFI, PAXSON
& GALATZAN
A Professional Corporation

By: 
Micah D. Miller

MDM/gr
Enclosures



September 1, 2010

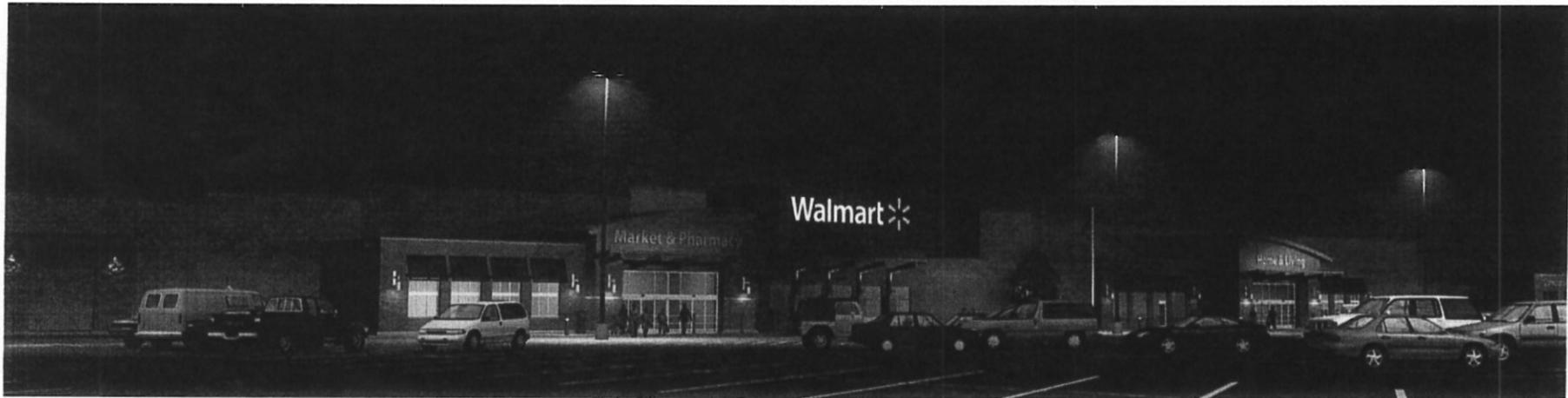
El Paso (North Central), Texas #5947 - New Store

Daryl L. Bray #17200
NOTE: Not for regulatory approval, permitting or construction.

Market & Pharmacy Entrance

3

DESIGN REPRESENTATION ONLY - NOT FOR CONSTRUCTION The building images shown are a representation of the current design intent only. The building images may not reflect variations in color, tone, texture, shading, ambient light intensity, materials, texture, contrast, font style, construction variations required by building codes or inspectors, material availability or final design detailing.



Walmart*



September 1, 2010

El Paso (North Central), Texas #5947 New Store

Daryl L. Bray #17200
NOT A REGISTERED ARCHITECT IN THE STATE OF TEXAS

Overall Perspective

5

DESIGN REPRESENTATION ONLY - NOT FOR CONSTRUCTION The building images shown are a representation of the current design intent only. The building images are not intended to be accurate in color, line, scale, shading, and detail. Extensive materials, textures, contrast, font style, construction variations, and other details are subject to change without notice. The building images are not intended to be used for any other purpose without the written consent of Scott & Goble Architects, PC.



Front Elevation

Sign	Qty.	Type	Color	Height	Illumination	Area (S.F.)	Total S.F.
Walmart	1	Identity	White/Yellow	5'-6 7/8'-0"	Internal	298.00	298.00
Market & Pharmacy	1	Directional	White	2'-6"	Uplighting	102.58	102.58
Home & Living	1	Directional	White	2'-6"	Uplighting	72.62	72.62
Outdoor Living	1	Directional	White	2'-6"	N/A	77.24	77.24
Pharmacy Drive-Thru	1	Additional	White	1'-6"	N/A	39.88	39.88
Enter	1	Traffic	White	1'-0"	N/A	3.23	3.23
Exit	1	Traffic	White	1'-0"	N/A	2.34	2.34

Total Building Signage 595.89



DESIGN REPRESENTATION ONLY - NOT FOR CONSTRUCTION The building images shown are representative of the current design intent only. The building images may not reflect variations in terrain, landscaping, shading, ambient light intensity, materials, texture, contrast, font style, construction variations required by building codes or inspectors, material availability or final design detailing.

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WEBSITE: WWW.MGMSG.COM

October 13, 2010

Planning & Economic Development
Plan Review Division or Proper Department
City of El Paso
Two Civic Center Plaza
El Paso, Texas 79901

RE: Local Alcoholic Beverage Permit for the Sale, Storage or Handling of Alcoholic Beverages

Dear Sir or Madam:

We are attorneys for the applicant for the herein referenced local alcoholic beverage license. The applicant is Quality Licensing Corp., and the license will be used in connection with the operation of a proposed Wal-Mart Supercenter. Please find the attached TABC Pre-Qualification Package upon which we are requesting the "City Secretary's" certification that an alcoholic beverage permit is not prohibited by Title 20 of the El Paso Municipal Ordinances at the property identified by the addresses (the "Property") disclosed on the attached TABC Pre-Qualification Packet and more accurately described in the legal description attached as Exhibit "A" to this letter. The permit for which the applicant is applying is a Wine and Beer Retailer's off-premises permit.

Please see the TABC pre-qualification packet, attached as Exhibit "B". The applicant is requesting the certification of the "City Secretary," (i.e., the Director of the Development Services Department or his or her designated representative according to local ordinance 5.08.020) and would greatly appreciate your prompt attention in this matter and look forward to your response. Again, the form attached as Exhibit "B" is submitted as an application for a local alcoholic beverage under Chapter 5.08 of the El Paso Municipal Code. The general vicinity of the area surrounding the Property is generally as is indicated on the print-out from Google Maps, attached as Exhibit "C", on which you will see the general location of the Property's boundaries marked in red.

We are under the understanding that the attached pre-qualification package is the correct form upon which to apply for a local alcoholic beverage permit. This understanding has been garnered through a number of conversations with employees of the former Development Services Department. Accordingly, if we are mistaken, we would appreciate your expedience in informing us with regard to the correct application process.

009999-001000/MMIL/1026402.1

ALFA
American
Law Firm
Associatic

Please do not hesitate to call me with any comments or questions at (915) 241-1561.

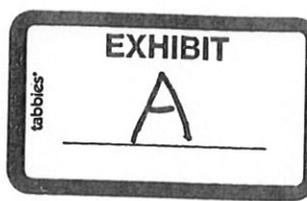
Sincerely,

MOUNCE, GREEN, MYERS, SAFI, PAXSON
& GALATZAN
A Professional Corporation

By:


Micah D. Miller

MDM/th



LEGAL DESCRIPTION OF THE PROPERTY

All of Blocks 50, 51, 58 and 69 and the North Half of Blocks 49 and 70 and the closed street and alley right-of-way adjacent to these Blocks and within the area of the Tract described by metes and bounds hereinbelow in the LOGAN HEIGHTS ADDITION, to the City of El Paso, El Paso County, Texas, and more particularly described by metes and bounds as follows:

BEGINNING at an iron pin at the point of intersection of the South right-of-way line of Broadus Avenue with the West right-of-way line of Dyer Street; said point of intersection also being the Northeast corner of Block 51, of the LOGAN HEIGHTS ADDITION to the City of El Paso, El Paso County, Texas;

(1)

THENCE South $0^{\circ}47'$ East along said West right-of-way line a distance of 780.00 feet to its intersection with the North right-of-way line of an alley 20.00 feet in width;

(2)

THENCE South $89^{\circ}13'$ West along said North right-of-way line a distance of 855.00 feet to its intersection with the East right-of-way line of Lackland Street;

(3)

THENCE North $0^{\circ}47'$ West along said East right-of-way line a distance of 780.00 feet to its intersection with said South right-of-way line of Broadus Avenue;

(4)

THENCE North $89^{\circ}13'$ East along said South right-of-way line a distance of 855.00 feet to the POINT OF BEGINNING, containing 15.318 acres;

Which Tract of land is situated at the Southwest corner of the Dyer Street and Broadus Avenue intersection with its West boundary being formed by Lackland Avenue and its South boundary being formed by a dedicated alley.



Off-Premise Prequalification Packet

L-OFF (1/2009)

Please complete this Prequalification Packet with information concerning your proposed business location for which you are applying to sell alcoholic beverages. This information will be used to obtain your prequalification to hold a license/permit. You will submit this information to the proper governmental entities for certification that your proposed location is legal for the type of license/permit for which you are applying. Permit applicants will also provide this packet to their local newspaper for certification that you have published the required notice.

LOCATION INFORMATION

Type of Off-Premise License/Permit

- | | |
|--|---|
| <input checked="" type="checkbox"/> BQ Wine and Beer Retailer's Off-Premise Permit | <input type="checkbox"/> LP Local Distributor's Permit |
| <input type="checkbox"/> BF Beer Retail Dealer's Off-Premise License | <input type="checkbox"/> E Local Cartage Permit |
| <input type="checkbox"/> P Package Store Permit | <input type="checkbox"/> ET Local Cartage Transfer Permit |
| <input type="checkbox"/> Q Wine Only Package Store Permit | <input type="checkbox"/> PS Package Store Tasting Permit |

Indicate Primary Business at this Location

- | | |
|---|--|
| <input type="checkbox"/> Grocery/Market | <input type="checkbox"/> Convenience Store without Gas |
| <input type="checkbox"/> Liquor Store | <input checked="" type="checkbox"/> Miscellaneous <u>General Merchandise and Groceries</u> |
| <input type="checkbox"/> Convenience Store with Gas | |

Trade Name of Location

Quality Licensing Corp. (Store #5947)

Location Address

5719 Dyer St. and 5631 Dyer St.

City El Paso	County El Paso	State TX	Zip Code 79904
Mailing Address 3345 Bee Cave Road, Ste. 105	City Austin	State TX	Zip Code 78746

Business Phone No. (Pending)	Alternate Phone No. (512) 473-0300	E-mail Address
---------------------------------	---------------------------------------	----------------

OWNER INFORMATION

Type of Owner

- | | | |
|--|--|---|
| <input type="checkbox"/> Individual | <input checked="" type="checkbox"/> Corporation | <input type="checkbox"/> City/County/University |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Limited Partnership | <input type="checkbox"/> Joint Venture | |
| <input type="checkbox"/> Limited Liability Partnership | <input type="checkbox"/> Trust | |

Owner of Business/Applicant

Quality Licensing Corp.

If Applicant Is/Who Must Be Listed Below (attach L-OIC if additional space is needed).

Individual/Individual Owner	Limited Liability Company/All Officers or Managers
Partnership/All Partners	Joint Venture/Venturers
Limited Partnership/All General Partners	Trust/Trustee(s)
Corporation/All Officers	City, County, University/Official

Last Name Roberts	First Name Karen	MI L	Title President
Last Name Cottrell	First Name Lori	MI L	Title VP/Treasurer
Last Name Frost	First Name Kimberly	MI A	Title Asst Secretary

PENGAD-Bayonne, N.

EXHIBIT
"B"

MEASUREMENT INFORMATION

Will your business be located within 300 feet of a church or public hospital? Yes No

NOTE: For churches or public hospitals measure from front door to front door, along the property lines of the street fronts and in a direct line across intersections.

Will your business be located within 300 feet of any private/public school? Yes No

NOTE: For private/public schools measure in a direct line from the nearest property line of the school to the nearest property line of the place of business, and in a direct line across intersections.

NOTE: If located on or above the fifth story of a multistory building: measure in a direct line from the property line of the private/public school to property line of your place of business in a direct line across intersections vertically up the building at the property line to the base of the floor on which your business is located.

Will your business be located within 1,000 feet of a private school? Yes No

Will your business be located within 1,000 feet of a public school? Yes No

WARNING AND SIGNATURE

If Applicant Is/Who Must Sign

Individual/Individual Owner

Corporation/Officer

Partnership/Partner

Limited Liability Company/ Officer or Manager

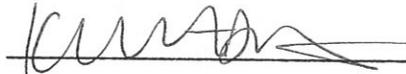
Limited Partnership/General Partner

WARNING: Section 101.69 of the Texas Alcoholic Beverage Code states: "...a person who makes a false statement or false representation in an application for a permit or license or in a statement, report, or other instrument to be filed with the Commission and required to be sworn commits an offense punishable by imprisonment in the penitentiary for not less than 2 nor more than 10 years."

BY SIGNING YOU ARE SWEARING TO ALL INFORMATION AND ATTACHMENTS TO THIS PACKET.

PRINT NAME Kimberly A. Frost

SIGN HERE



TITLE

Asst Secretary

Before me, the undersigned authority, on this 10th day of October, 2010 the person whose name is signed to the foregoing application personally appeared and, duly sworn by me, states under oath that he or she has read the said application and that all the facts therein set forth are true and correct.

SIGN HERE



NOTARY PUBLIC



SEAL

CERTIFICATE OF CITY SECRETARY (FOR P, Q, BF & BQ)

CHECK HERE IF NOT IN CITY LIMITS

I hereby certify on this _____ day of _____, 20____ that the location for which the license/permit is sought is inside the boundaries of this city or town, in a "wet" area for such license/permit, and not prohibited by charter or ordinance in reference to the sale of such alcoholic beverages.

SIGN

HERE _____, TEXAS
City Secretary/Clerk

SEAL

If location can not be certified above, please complete the following:

I hereby certify on this _____ day of _____, 20____, that the location is prohibited by Charter or Ordinance No. _____, in reference to the sale of alcoholic beverages.

SIGN

HERE _____, TEXAS
City Secretary/Clerk

SEAL

CERTIFICATE OF COUNTY CLERK (FOR P, Q & BF)

I hereby certify on this _____ day of _____, 20____, that the location for which the license/permit is sought is in a "wet" area for such license/permit, and is not prohibited by any valid order of the Commissioner's Court.

SIGN
HERE _____ COUNTY
County Clerk

S E A L

CERTIFICATE OF COUNTY CLERK (FOR BQ)

I hereby certify on this _____ day of _____, 20____, that the location for which the license/permit is sought as the place of business is in a "wet" area and is not prohibited by any valid order of the Commissioner's Court for a Wine and Beer Retailer's Off-Premise Permit.

Most current election for given location was held for:

- legal sale of all alcoholic beverages for off-premise consumption
- legal sale of all alcoholic beverages
- legal sale of all alcoholic beverages except mixed beverages
- legal sale of all alcoholic beverages including mixed beverages
- legal sale of mixed beverages
- legal sale of mixed beverages in restaurants by food and beverage certificate holders
- legal sale of wine on the premises of a holder of a winery permit
- legal sale of wine/beer (17%) on-premise or wine/beer off-premise **AFTER** Sept. 1, 1999
- legal sale of wine/beer (14%) on-premise or wine/beer off-premise **BEFORE** Sept. 1, 1999

SIGN
HERE _____ COUNTY
County Clerk

S E A L

COMPTROLLER OF PUBLIC ACCOUNTS CERTIFICATE

This is to certify on this _____ day of _____, 20____, the applicant holds or has applied for and satisfies all legal requirements for the issuance of a Sales Tax Permit under the Limited Sales, Excise and Use Tax Act or the applicant as of this date is not required to hold a Sales Tax Permit.

Sales Tax Permit Number 17106365988 Outlet Number _____

Print Name of Comptroller Employee _____

Print Title of Comptroller Employee _____

SIGN
HERE _____ FIELD OFFICE _____

S E A L

PUBLISHER'S AFFIDAVIT (FOR P & Q)

Name of newspaper	
City, County	
Dates notice published in daily/weekly newspaper (mm/dd/yyyy)	_ / _ / _
<i>Publisher or designee certifies attached notice was published in newspaper stated on dates shown</i>	
Signature of publisher or designee Sworn to and subscribed before me on this date	_ / _ / _
Signature of Notary Public	
S E A L	

**ATTACH PRINTED
COPY OF THE
NOTICE HERE**

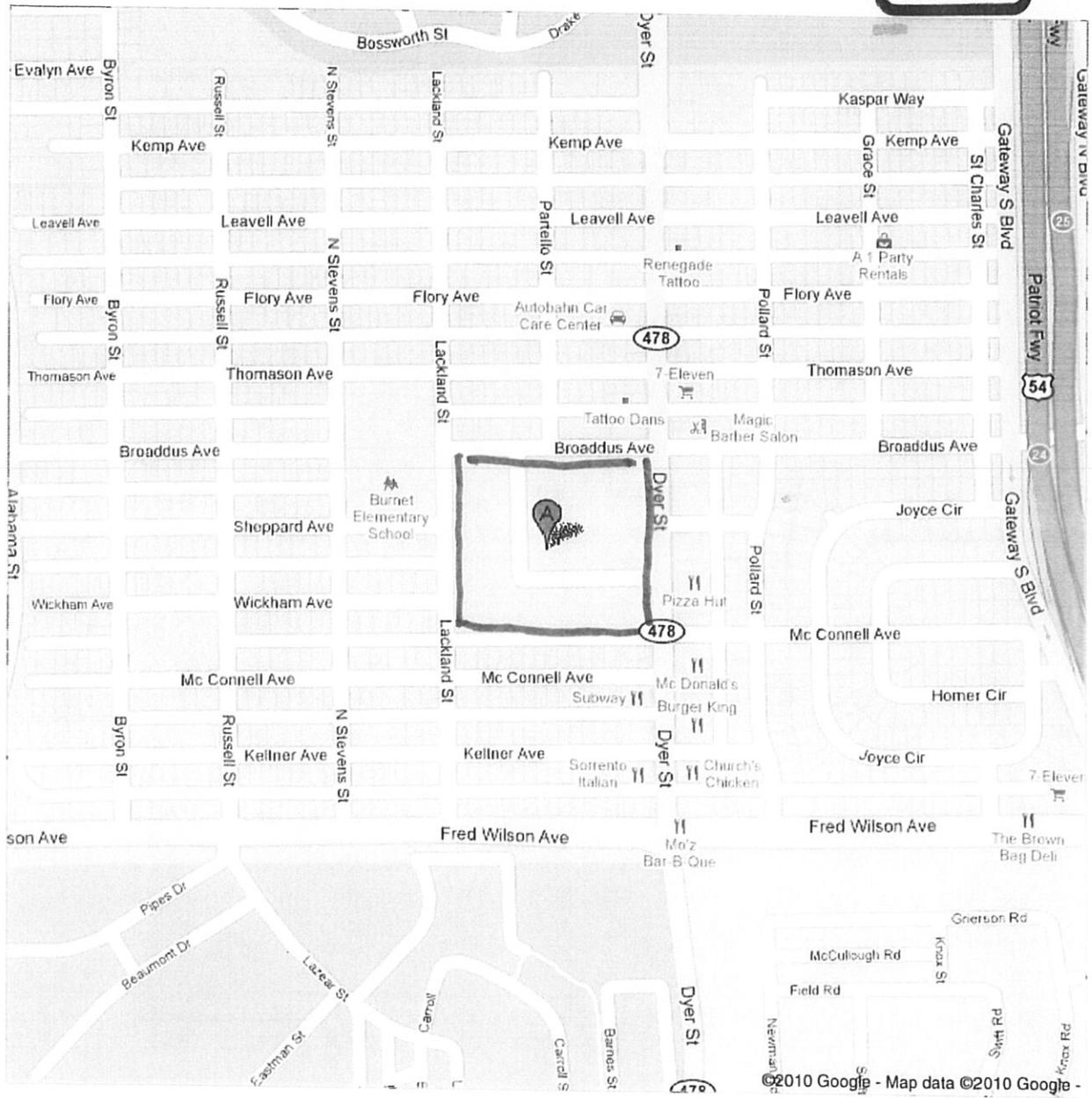
Exhibit "C"

Google maps

Address 5631 Dyer St
El Paso, TX 79904

Notes

Print





[Online Services](#) [Status](#) [Parcel](#) [Department](#) [Help](#)
[Home](#) [Permit Information](#) [What is a Status?](#) [Contact Information](#) [Instructions](#)

View Case Status

The information below summarizes the case you selected.

Case Number: BUS10-06561 **Status:** Inspection

Name:	QUALITY LICENSING CORP
Application Date:	10/26/2010 9:32:09 AM
Address:	5631 DYER ST

Activities

Type	Requested	Scheduled	Completed	Disp (done by)		Notes
BPI Code Compliance Insp	10/26/2010	12/9/2010	11/3/2010	FAIL	SXM	Wine and Beer Retailer's Off-Premise Permit - Burnett Elementary School (3700 Thomason) approximately 60 ft from property line to property line as per GIS map and field inspection. No church, hospitals and commercial daycares within 300ft. Request for license disapproved.
Application Received			10/26/2010		SAP	

Guide Sheets

Type	Notes	Done By	Completed
------	-------	---------	-----------

Fees

Item	Fee Amount	Fee Remaining
------	------------	---------------

Conditions

Title	Id	Tag	Status
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[Back to Search](#)

[Help](#)

[Top of Page](#)

Use this page to view the details of the selected case.

- If your jurisdiction allows you to attach new files to a case, you can click **Upload new document**.
- To pay fees for this case, click **Pay Fees**.
- If your jurisdiction allows you to view parcel information as a map, click **View GIS**.

Version: 3.5.1.20050916.02

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