

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

**DEPARTMENT:** Development Services Department

**AGENDA DATE:** Regular Agenda  
Public Hearing: June 8, 2010

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

**DISTRICT(S) AFFECTED:** 1

**SUBJECT:**

Discussion and action on a request from Chris Malooly, on behalf of Mesa Mountain, LLC, for City Council to grant an exception from the prohibition of the sale of alcoholic beverages within three hundred feet of a school for the property located at 5668 N. Mesa.

**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 of Planning

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

## MEMORANDUM

**DATE:** June 1, 2010

**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 – 5668 North Mesa Street**

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The applicant requested zoning verification from the Development Services Department-Planning Division that a new restaurant that is proposed to occupy an existing building at 5668 North Mesa Street would qualify for an alcoholic beverage license.

The Planning Division determined that

- the location at 5668 North Mesa Street is within 300 feet of a school and
- the location does not qualify for the license under any “grandfathering” provisions in the El Paso City Code.

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 applicant subsequently filed an appeal with the City Clerk of the determination by the Planning Division that the 5668 North Mesa Street location does not qualify for the alcoholic beverage license.

The subject property is approximately 166 feet from Morehead Middle School (measurement is property line to property line); there are no other schools and no churches, commercial daycares or public hospitals within 300 feet of the subject property.

### Attachments

ATTACHMENT 1, pages 1-5: Zoning verification letter file

ATTACHMENT 2, pages 1-4: Appeal form and letter from appellant

Dedicated to Outstanding Customer Service for a Better Community

SERVICE SOLUTIONS SUCCESS

May 25, 2010

Randy Eiland  
3737 Gateway West  
El Paso, TX 79903

Re: 5668 North Mesa Street, El Paso, Texas  
A F MILLER SURV 215 ABST 3599, Tracts 2-A-3, 2-S-4 and 2-T-2, City of Paso, El Paso County, Texas

Dear Mr. Eiland:

In response to your request for zoning verification for the referenced property for the proposed use of a restaurant/lounge serving alcoholic beverages, the following are our findings:

1. The property is zoned C-1/sc (Commercial/Neighborhood Commercial District/special contract). The purpose of these districts is to serve the needs of surrounding residential neighborhoods by providing compatible neighborhood convenience goods and services that serve day-to-day needs. The regulations of the districts will permit location of business and professional offices and retail category uses within adjacent residential areas of medium and high densities. A zoning map is enclosed.
2. A Special Contract imposed conditions on the property. The Special Contract does not restrict the use of a restaurant.
3. The proposed use of a restaurant/lounge serving alcoholic beverages is permitted in the C-1 zone district. Per the El Paso City Code, Title 20, Zoning, Alcoholic beverages, Section 20.10.060 B.5, businesses holding an alcoholic beverage license prior to August 31, 1983, are not prohibited from continuing the sale of alcoholic beverages if they are within 300 feet of a church, school or public hospital. However, the previous restaurant occupying the building at this location was established in 1993 and would not qualify under this provision. Further, a new restaurant occupying the referenced property would be required to apply for a new alcoholic beverage license which would require a new inspection. The property is less than 300 feet from Morehead Middle School and would not qualify for an alcoholic beverage license under Section 20.10.060 B.1., Restrictions
4. This prohibition could be appealed to the El Paso City Council per Section 20.10.060B.7.:

*The city may grant an exception from the 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.*

If you have any questions regarding this letter, please call me at (915) 541-4029.

Sincerely,

  
Linda Castle, Senior Planner

Enclosures: Zoning Map and Section 20.10.060, Alcoholic beverages



Mayor  
John F. Cook

City Council

District 1  
Ann Morgan Lilly

District 2  
Susie Byrd

District 3  
Emma Acosta

District 4  
Carl L. Robinson

District 5  
Rachel Quintana

District 6  
Eddie Holguin Jr.

District 7  
Steve Ortega

District 8  
Beto O'Rourke

City Manager  
Joyce A. Wilson



20.10.060 Alcoholic beverages.

A. Requirements. The sale, storage, or handling of alcoholic beverages for the purpose of sale is permitted only where the use is authorized by and complies with all applicable provisions of this title and the Texas Alcoholic Beverage Code.

1. The sale, storage or handling of alcoholic beverages for the purpose of sale is permitted only where licensed in accordance with Chapter 5.08 of the city code and the Texas Alcoholic Beverage Code.

2. The sale, storage or handling of alcoholic beverages for the purpose of sale is permitted only in approved locations within the interior of buildings or structures that have a valid certificate of occupancy allowing such use.

3. The sale, storage or handling of alcoholic beverages for the purpose of sale is permitted in specific uses in the following zoning districts, subject to the requirements of this chapter:

- a. C-1, C-2, C-3, C-4, and C-5 commercial districts;
- b. P-C planned commercial district;
- c. GMU general mixed use district;
- d. S-D special development district;
- e. U-P union plaza district;
- f. M-1, M-2 and M-3 manufacturing districts;
- g. IMU industrial mixed use district.

4. The sale, storage or handling of alcoholic beverages for the purpose of sale is permitted as an accessory use to specific permitted uses in the following zoning districts, subject to the requirements of this chapter:

- a. R-F ranch and farm district;
- b. R-1, R-2, R-2A, R-3, R-3A, R-4 and R-5 residential districts;
- c. PMD planned mountain development district;
- d. A-1, A-2, A-3 and A-4 apartment districts;
- e. A-O and A-3/O apartment/office districts;
- f. COP commercial office park district;
- g. A-M apartment and manufactured home park district;
- h. RMU residential mixed use district;
- i. PR-1 and PR-II planned residential districts.

5. The sale, storage or handling of alcoholic beverages for the purpose of sale is permitted as an accessory use to specific uses allowed by special permit in the following zoning districts, subject to the requirements of this chapter:

- a. PMD planned mountain development district;
- b. A-1, A-2, A-3 and A-4 apartment districts;
- c. A-O and A-3/O apartment/office districts;
- d. A-M apartment and manufactured home park district.

B. Restrictions.

1. The sale, storage or handling of alcoholic beverages for the purpose of sale is not permitted in any zoning district where the place of business is located within three hundred feet of a church, public or private school, or public hospital unless expressly granted an exception pursuant to the requirements of this section.

2. The sale, storage or handling of alcoholic beverages for the purpose of sale is not permitted in any zoning district where the place of business is located within three hundred feet of a day-care center or a child-care facility as defined in the Texas Human Resources Code § 42.002 and

the permit or license holder does not hold a food and beverage certificate issued by the Texas Alcoholic Beverage Commission, unless expressly varied pursuant to the requirements of this section, except that this provision shall not apply:

- a. If the permit or license holder and the day-care center or child-care facility are located on different stories of a multistory building; or
  - b. If the permit or license holder and the day-care center or child-care facility are located in separate buildings and either the permit or license holder or the day-care center or child-care facility is located on the second story or higher of a multistory building.
3. The distance between the place of business where alcoholic beverages are sold and a church or public hospital shall be measured along the property lines of the street fronts and from front door to front door, and in direct line across intersections.
4. The distance between the place of business where alcoholic beverages are sold and a school, day-care center or child-care facility shall be measured in direct line from the property line of the school, day-care center or child-care facility to the property line of the place of business, and in a direct line across intersections.
5. The prohibition of the sale of alcoholic beverages within three hundred feet of a church, school or public hospital shall not apply to the sale of alcoholic beverages by any business that held a valid license on August 31, 1983, and has remained established and engaged in the sale of alcoholic beverages within three hundred feet of any church, school or public hospital; nor shall the provisions of this section prevent any business legally engaged in the sale of alcoholic beverages on August 31, 1983, and continuing to be so engaged within three hundred feet of any church, school or public hospital from securing a renewal of their license, nor from a new license being issued for such location to any other applicant.
6. The prohibition of the sale of alcoholic beverages within three hundred feet of a commercial day care shall not apply to the sale of alcoholic beverages by any business that held a valid license on June 5, 2007, and has remained established and engaged in the sale of alcoholic beverages within three hundred feet of any commercial day care; nor shall the provisions of this section prevent any business legally engaged in the sale of alcoholic beverages on June 5, 2007, and continuing to be so engaged within three hundred feet of any commercial day care from securing a renewal of their license, nor from a new license being issued for such location to any other applicant.
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.
- (Ord. 16653 § 2 (part), 2007)



ZONING VERIFICATION APPLICATION  
DEVELOPMENT SERVICES DEPARTMENT  
PLANNING DIVISION

City of El Paso, Texas  
2 Civic Center Plaza - 5th Floor  
El Paso, TX 79901-1196  
Phone (915) 541-4024 • Fax (915) 541-4725

1. CONTACT INFORMATION:

NAME: RAMOS FILANO  
ADDRESS: 3737 GATEWAY WEST CITY: EL PASO  
STATE: TX ZIP CODE: 79903  
PHONE: 915-309-6836 FAX: 915-565-0550  
E-MAIL ADDRESS: renegade12@juno.com

2. PARCEL INFORMATION:

STREET ADDRESS OR LOCATION: 5668 N. MESA  
PROPOSED USE: RESTAURANT / LOBBY SAVING ALCOHOLIC BEVERAGES  
LEGAL DESCRIPTION: A HILL 2.50 215 ABST 3599-2-A-3 (1.8792 AC) 2-5-4 (6.103 AC)  
2-T-2 (0.316 AC) C 2.304 (AC)  
Note: If the legal description consists of portions of lots or blocks or if a legal subdivision has not been recorded, a survey or a written, sealed metes and bounds description may be required in order to process this application.  
Central Appraisal District Property Identification Number (PIDN) X 21599900000450

C-1/50

3. I AM REQUESTING THE FOLLOWING INFORMATION (CHECK ALL BOXES THAT APPLY):

- The zoning district designation for this property, including any zoning conditions, special contracts, or special permits.
 

• One parcel with no zoning conditions, special contracts, or special permits . . . .	\$27.00
• Each additional parcel . . . . .	\$6.00
• One parcel with zoning conditions, special contracts, or special permits . . . . .	\$56.00
• Each additional parcel . . . . .	\$12.00
- Permitted uses for this property.
  - Masonry Screening Wall Height Increase above 8 ft. . . . . \$69.00
  - Masonry Screening Wall Requirement Waiver . . . . . \$69.00
  - Classification of use from the Zoning Administrator . . . . . \$42.00
  - Specific zoning request, e.g., requests for certificates of occupancy or site plans.  
An additional fee of \$26.00 plus \$32.00 per each 1/2 hour of staff research may apply.
- Other: \_\_\_\_\_

Note: For any information regarding this application, please contact the Development Services Department at (915) 541-4024. For information regarding building permits, please contact the Building Permits & Inspections Division at (915) 541-4569.

SIGNATURE: [Signature] DATE: 5-18-10

APPLICATION NO.: <u>05-078-10</u>	**OFFICE USE ONLY**	RECEIVED DATE: <u>5/18/10</u>
ACCEPTED BY: <u>X castle</u>		APPLICATION FEE: \$ <u>27.00</u>

rev 09-02-09

APPEAL TO THE CITY COUNCIL

DATE: 5-26-10

HONORABLE MAYOR AND CITY COUNCIL  
CITY OF EL PASO, TEXAS

DEAR MAYOR AND COUNCIL:

<sup>Zoning Determination</sup>  
After a public hearing held on ~~June 8~~ May 25, 2010, the

PLANNING DEPARTMENT denied my request for  
Food & Beverage License

legally described as:

AF Miller SURU 215 ABST 3599 TRACTS 2A-3 25-4; 2-T-2  
CITY OF EL PASO, EL PASO COUNTY, TEXAS  
Addressed as 5668 N. MESA ST

I hereby request the City Council to review the decision of the \_\_\_\_\_

PLANNING DIVISION AND CONSIDER MY REQUEST

SET OUT ABOVE. I AM ATTACHING A LETTER SETTING FORTH MY

REASONS FOR BELIEVING THEIR DECISION TO BE IN ERROR.

CITY CLERK DEPT.  
10 MAY 26 PM 4:33

MESA MOUNTAIN, LLC (Chris Malady)  
APPLICANT

5668 N. MESA  
ADDRESS

915-#27-344  
TELEPHONE NUMBER

Two (2) copies filed in City Clerk's Office on: \_\_\_\_\_

Mesa Mountain, LLC  
Chris Malooly  
3737 Gateway West  
El Paso, TX 79903

re: Request for an exception to El Paso City City Code, Title 20, Zoning, Alcoholic Beverages

To the Honorable Mayor and City Council of the City of El Paso, TX:

I am requesting the City Council discuss and act on my appeal of determination by the Development Services Department that the property located at 5668 N. Mesa St does not qualify for an alcoholic beverage license. Please find below a short history and reasoning for this request.

#### HISTORY

On October 17, 1989 the Mayor and City Council of El Paso approved an exception to allow for the issuance of an alcoholic beverage license for a restaurant to be built on a 2.3 acre parcel of land identified as 5668 N. Mesa. The exception was required because Moorehead Junior High School is located across Mesa St, from the subject site. Subsequently, a 7400 sq ft restaurant building known as Uncle Baos was constructed and opened in 1993 at this location. Uncle Baos operated continuously in the present location with a food and beverage license until sometime in 2008. In the 15+/- years that Uncle Baos was in business there is no history of problems arising from their serving of alcoholic beverages. I am a long time real estate investor/developer in El Paso and bought this property with the sole intention of leasing or re selling it to another full service restaurant.

#### PROBLEM

I now have a contract to sell this property from an 80 year old, well known, and high profile full service seafood restaurant. They serve mixed alcoholic beverages as an incident to the furnishing of meals. This is a necessary part of their successful business plan that allows them to be competitive with similar restaurants. If they are unable to obtain a food and beverage license they will terminate their contract to purchase the property.

#### SOLUTION

Section 20.10.060B.7 of the El Paso City Code allows the El Paso City Council to grant an exception to allow for the issuance of an alcoholic beverage license, specifically a food and beverage license for the following reasons:

Enforcement of the code

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

To this end, I ask the City Council to allow an exception under the above listed reasons because:

1) The sale of 5668 Mesa St to this restaurant not only brings a new full service family restaurant to west El Paso, it also brings successful use to a now vacant property, and of equal importance, will employ 60 +/- people who may currently be unemployed.

2) The economic down turn experienced in 2009 and continuing today has unduly burdened all real estate investors and developers, including me. The projects my family and I have brought to El Paso have always been an improvement for the city including our latest, Glory Road Shopping Centers located on Mesa St in front of UTEP. Granting an exception for 5668 N Mesa St will allow for another successful addition to the city that everyone will be proud of.

3) This property and its improvements were originally designed and planned to be a full service family restaurant that offered alcoholic beverages in addition to the serving of food. A full service restaurant operated successfully at this location for 15+/- years without any known incident. Because the building design is specifically for a full service restaurant, a change in use is nearly cost prohibitive and is counter productive to the original intended use of the building.

I am available for questions or information you might need, and I thank you in advance for your consideration.

Sincerely,

*Chris Malooly*

Chris Malooly for Mesa Mountain, LLC

