

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

**DEPARTMENT:** Planning and Economic Development Department

**AGENDA DATE:** Regular Agenda  
Public Hearing: October 12, 2010

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

**DISTRICT(S) AFFECTED:** 8

**SUBJECT:**

Discussion and action on a request from Ray Mancera, on behalf of Frank Diaz, 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 610 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, Planning and Economic Development

**APPROVED FOR AGENDA:**

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

# MEMORANDUM

**DATE:** October 4, 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 – 610 North Mesa Street**

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Frank Diaz applied to the City for an alcoholic beverage license on September 14, 2010, and was denied because the proposed location of a new bar/nightclub at 610 N. Mesa is approximately 267 feet from a school, Paso del Norte Academy.

The applicant requested a zoning verification of the property at 610 N. Mesa and the Planning Division determined that

- The property is located in a C-5 zone district and that a bar/nightclub is a permitted use
- The location is less than 300 feet from a school
- And that the applicant could request an exception from the City Council to locate a bar/nightclub 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 south of I-10, approximately 266.25 feet from Paso del Norte Academy located north of I-10 at 710 N. Mesa (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. Trinity Methodist Church, 801 N. Mesa, is approximately 411 feet from the subject property.

Attachment: Application to City Council for exception

**Frank Diaz**  
**213 Hadlock**  
**El Paso, Texas 79905**  
**(915) 222-5951**

September 29, 2010

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 310 N Mesa.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank Diaz', with a long horizontal flourish extending to the right.

Frank Diaz

Frank Diaz

213 Hadlock  
El Paso, Texas 79905  
(915) 222-5951

September 28, 2010

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 610 N Mesa. The property is currently zoned C-5 and is located at the corner of Interstate Highway 10 and North Mesa.

The reason a certificate of occupancy cannot be obtained is because the property is within 300 feet of a school. However, Section 20.10.060 B.1. of the municipal code allows City Council to grant such an exception. Below are the various determinations (in italics) Council may find and after each determination I have answered each one accordingly:

- a. *"Is not in the best interest of the public."* It is in the public's best interest because this type of business entertainment is a welcome addition to the downtown's economic, social and cultural redevelopment.
- b. *"Constitutes waste or the inefficient use of land or other resources."* Downtown has suffered economically just like the rest of the nation but downtown has had an added setback because of the drug war happening in Cd. Juarez. The number of Juarez buyers has dwindled to the point buildings are boarded up.
- c. *"Creates an undue hardship on an applicant."* Downtown buildings are too big thus too expensive to rent. This particular building is the right size for my investment budget.
- d. *"Does not serve its intended purpose."* Code says where a church or public hospital is located within 300 feet the distance is "measured along the property lines of the street fronts and from front door to door..." Using this measurement the distance from my door to the nearby school's door is **467 feet**, which is well over the minimum 300 feet. Yet where a school, day-care center or child-care facility is located the 300 feet distance is 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". Using this

method of calculation my location and the school is 266.25 feet away which is only 38 feet short of the minimum 300 feet.

- 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. The original purpose of the nearby school located at 711 N Mesa was office space. On November 1, 2001 the property was sold and converted to a charter school. We wrote a certified letter (attached) to the school asking if they had an issue with a bar locating at 610 N Mesa and there was no response. In this particular case the enforcing the code in its strictest sense is unnecessary.
- 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"*. My proposed location is zoned C-5 meaning no parking is required yet I share an excess of 21 parking spaces with the restaurant located adjacent to my building. They are open only during the day so my patrons will have parking. There are other bars nearby that have opened up and we would like to offer another reason for El Pasoans to visit downtown and socialize.

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,

A handwritten signature in black ink, appearing to read 'Frank Diaz', with a long horizontal flourish extending to the right.

Frank Diaz

CITY CLERK DEPT.

10 OCT -4 PM 1:35

June 7, 2010

Paso Del Norte Academy

711 N Mesa  
El Paso, TX 79902

Phone: (915) 532-7216  
Fax: (915) 532-2251

To whom it may concern:

I, Sonia Soto, would like to inform you that I will be opening a proposed business (a lounge) on the opposite side of the street from your school (610 N Mesa, El Paso, TX 79902). The business hours will be as follows:

Wednesday to Friday from 6 p.m. to 2 a.m.

Saturday and Sunday from 4 p.m. to 2 a.m.

I believe in the successful future of our children, and I know about the excellence of your academy. The lounge, in no way, will interfere with your school.

If you have any questions, please feel free to contact me at the above information.

Thank you for your time and consideration.

Yours sincerely,



Sonia I Soto

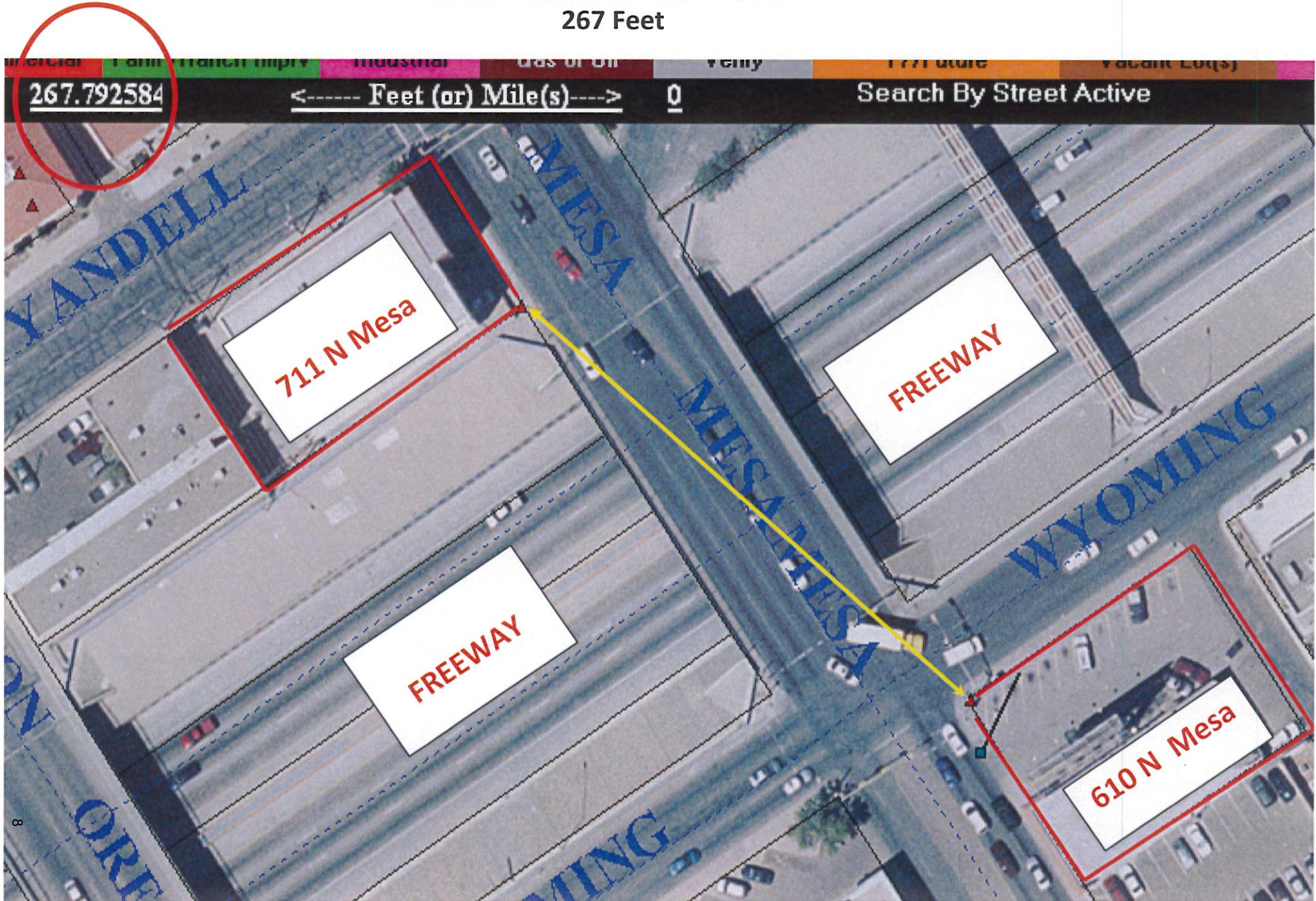
| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                                    | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                        |                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| <ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> | A. Signature<br><input checked="" type="checkbox"/> Agent<br><input checked="" type="checkbox"/> Addressee<br><i>Alejandro San Juan</i>                                                                                                                                  |                     |
| 1. Article Addressed to:<br><br><p style="text-align: center;"><b>Attention: Maria I Vaquera<br/>Paso Del Norte Academy<br/>711 N. Mesa<br/>El Paso, TX 79902</b></p>                                                                                                                                                            | B. Received by ( <i>Printed Name</i> )                                                                                                                                                                                                                                   | C. Date of Delivery |
| 2. Article Number<br><i>(Transfer from service label)</i>                                                                                                                                                                                                                                                                        | D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br>If YES, enter delivery address below: <input type="checkbox"/> No                                                                                                                          |                     |
|                                                                                                                                                                                                                                                                                                                                  | 3. Service Type<br><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. |                     |
|                                                                                                                                                                                                                                                                                                                                  | 4. Restricted Delivery? ( <i>Extra Fee</i> ) <input type="checkbox"/> Yes                                                                                                                                                                                                |                     |
|                                                                                                                                                                                                                                                                                                                                  | 7007 3020 0000 5592 3160                                                                                                                                                                                                                                                 |                     |

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

REQUEST FOR EXCEPTION FOR 610 N Mesa  
Property Line To Property Line  
267 Feet





September 27, 2010

Frank Diaz  
213 Hadlock  
El Paso, TX 79905

Re: 610 North Mesa Street, El Paso, Texas  
Lots 11 to 13 and North 17 feet of 14, Block 247, Campbell, City of Paso, El Paso County,  
Texas

Dear Mr. Diaz:

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

1. The property is zoned C-5 (Commercial/Regional Commercial District). A zoning map is enclosed. The purpose of these districts is to provide for locations for the most intensive commercial uses intended to serve the entire city. It is intended that the district regulations permit heavy commercial uses characterized by automotive and light warehousing. The regulations of the districts are intended to provide a transition from general business areas to industrial and manufacturing uses, and to accommodate major locations of commerce, service and employment activities. Within the central business district, more intensive commercial uses are allowed, the predominant of which are retail trade and service uses, providing less restrictive height and area regulations.
2. The proposed use of a restaurant/lounge serving alcoholic beverages is permitted in the C-5 zone district. However, your application (BUS10-05892) for a license to sell mixed alcoholic beverages has been denied by the City because the property is less than 300 feet from a school (Paso del Norte Academy) and would not qualify for an alcoholic beverage license under Section 20.10.060 B.1., Restrictions.
3. An exception from this prohibition may be granted by the El Paso City Council per 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*



Planning & Economic Development

2 Civic Center Plaza • El Paso, Texas 79901 • (915) 541-4670

Mayor  
John F. Cook

City Council

District 1  
Ann Morgan Lilly

District 2  
Susannah M. 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

Mr. Frank Diaz  
213 Hadlock  
September 27, 2010

*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.*

4. A request for the exception can be applied for through the Planning Division, Planning and Economic Development Department.

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

Sincerely,

*Linda Castle*

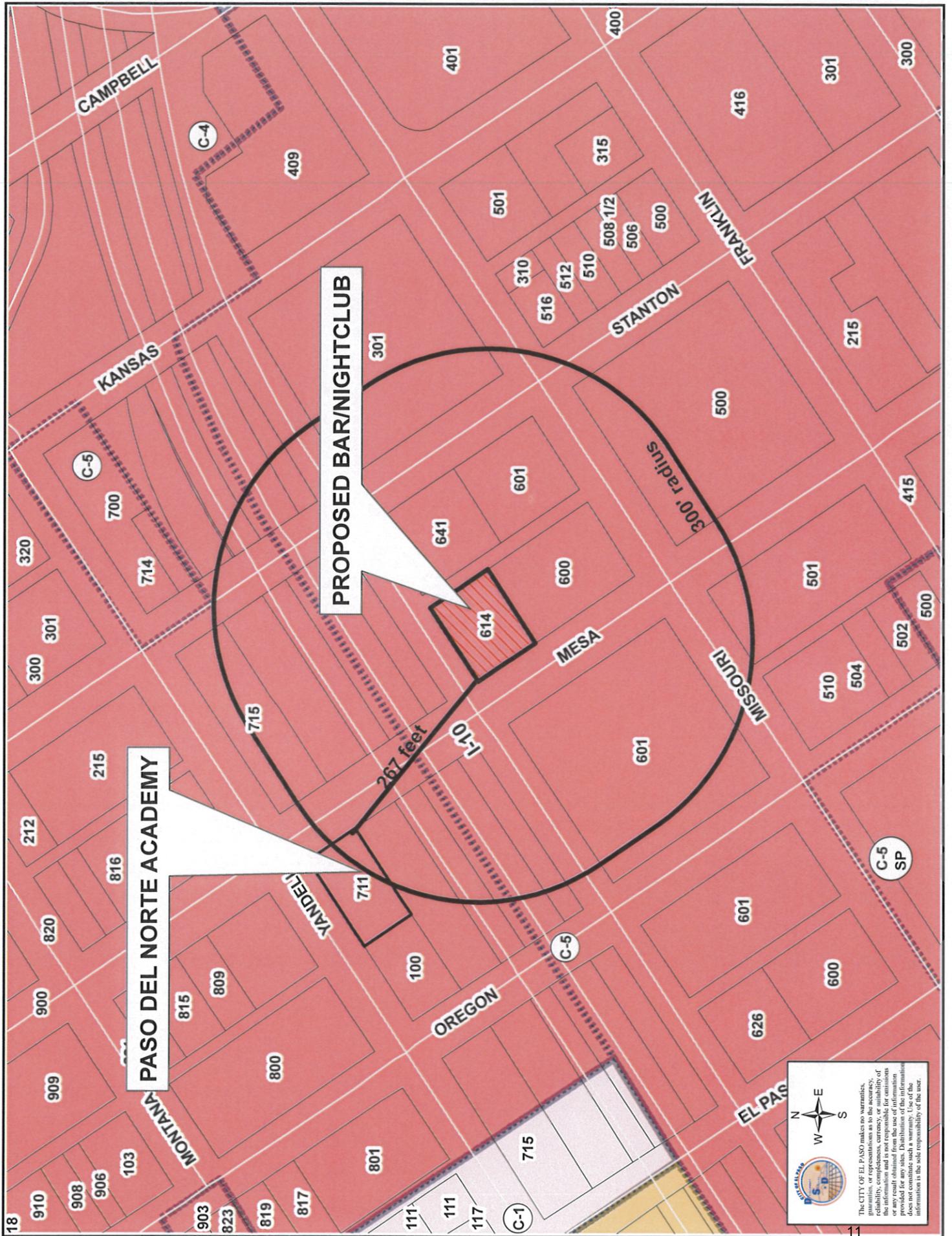
Linda Castle  
Senior Planner

Enclosure: Zoning map



Planning & Economic Development

2 Civic Center Plaza • El Paso, Texas 79901 • (915) 541-4670



**PROPOSED BAR/NIGHTCLUB**

**PASO DEL NORTE ACADEMY**

The CITY OF EL PASO makes no warranties, guarantees, or representations as to the accuracy, reliability, completeness, currency, or suitability of the information and is not responsible for omissions or errors. The user of this information assumes all liability for any use. The use of this information does not constitute such a warranty. Use of the information is the sole responsibility of the user.

**Case Activity Listing**  
**Case #: BUS10-05892**  
610 N MESA ST

| Activity | Description                 | Date 1    | Date 2     | Date 3    | Hold | Disp | Assigned To | Done By | Updated By       | Notes                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------|-----------------------------|-----------|------------|-----------|------|------|-------------|---------|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| BUSA005  | Application Received        |           |            | 9/14/2010 | None |      |             | SAP     | 9/14/2010<br>SAP |                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| BUSD300  | BPI Code<br>Compliance Insp | 9/14/2010 | 10/26/2010 | 9/22/2010 | HwO  | FAIL | SMC         | SMC     | 9/22/2010<br>SMC | Mixed Beverage Late Hours Permit - Paso del Norte school (711 N. Mesa) approximately 266.25 ft from property line to property line per GIS map, Trinity First United Methodist Church (801 N. Mesa) approx. 411 ft from property line to property line per GIS map, no hospitals within 300 ft, no daycares within 300 ft, other alcoholic beverage sales in area includes Chevron (715 N. Mesa) - school within 300 ft, disapproved |



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: FRANK DIAZ  
ADDRESS: 213 HADLOCK CITY: EL PASO  
STATE: TEXAS ZIP CODE: 79905  
PHONE: 915-222-5951 FAX: \_\_\_\_\_  
E-MAIL ADDRESS: \_\_\_\_\_

**2. PARCEL INFORMATION**

STREET ADDRESS OR LOCATION: 610 N. Mesa  
PROPOSED USE: ALCOHOLIC BEVERAGE BAR  
LEGAL DESCRIPTION: Lots 11 to 13 and N17' of Lot 14, Blk 247, Campbell

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) C05099924704500

**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: PA 02/2010

APPLICATION NO.: 09-107-10 \*\*OFFICE USE ONLY\*\*  
ACCEPTED BY: L. Castle RECEIVED DATE: 9/22/10  
APPLICATION FEE: \$ 27.00

