

AN ORDINANCE **2016-02-18-0115**

**WAIVING THE REQUIREMENTS OF SECTIONS 4-6(c)(1), 4-6(c)(2), 4-6(c)(3), 4-6(c)(4), 4-6(d)(1), 4-6(d)(6), AND 4-6(e)(1) OF THE CITY CODE AND AUTHORIZING THE SALE OF ALCOHOLIC BEVERAGES ON LOT 1 AND THE NORTH 10 FEET OF LOT 2, BLOCK 5, NCB 732, GENERALLY LOCATED AT 728 SOUTH PRESA STREET FOR ON-PREMISE CONSUMPTION WITHIN THREE-HUNDRED (300) FEET OF BONHAM ELEMENTARY SCHOOL, A PUBLIC EDUCATION INSTITUTION IN THE SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, LOCATED IN COUNCIL DISTRICT 1.**

\* \* \* \* \*

**WHEREAS**, Section 109.33 of the Texas Alcoholic Beverage Code authorizes the governing board of an incorporated city to enact regulations prohibiting the sale of alcoholic beverages if the place of business is within three hundred feet of any church, public school or public hospital as measured in a direct line from the property line of the public or private school to the property line of the place of business; and

**WHEREAS**, Section 109.33 of the Texas Alcoholic Beverage Code authorizes the governing body of an incorporated city to allow variances to the regulation if the governing body determines that enforcement of the regulation in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason the governing board, 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; and

**WHEREAS**, pursuant to Section 109.33 (a)(1) of the Texas Alcoholic Beverage Code, Chapter 4 of the City Code of the City of San Antonio prohibits the sale of alcoholic beverages if the place of business is within three hundred feet of any church, public school or public hospital; and

**WHEREAS**, the subject property is situated within three hundred (300) feet of the nearest property line of Bonham Elementary School, thus, making the sale of alcoholic beverages a violation; and

**WHEREAS**, Ordinance No. 88724, passed and approved on October 22, 1998, amended the City Code of the City of San Antonio adopting this distance requirement in Chapter 4, Article I, Sec. 4-6, and established a procedure for the granting of a variance to the prohibition; and

**WHEREAS**, staff recommends any approval of the variance request contain the conditions that the authorization for the sale of alcoholic beverages shall be limited to a "restaurant", that alcohol sales shall not exceed 30% of the total revenues of the establishment, that alcohol shall be sold for on-premise consumption of beer and wine only, and that alcohol sales shall not be permitted between the hours of 12:00 a.m. and 6:00 a.m., that such approval not transfer to different owners or different land uses, and that such authorization shall terminate in the event of non-operation or non-use of the identified establishment for a period of twelve (12) or more successive calendar months; **NOW THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The requirements of Sections 4-6(c)(1), 4-6(c)(2), 4-6(c)(3), 4-6(c)(4), 4-6(d)(1), 4-6(d)(6), and 4-6(e)(1) prohibiting on-premise consumption pursuant to the City Code of the City of San Antonio are waived and the variance request of Southtown Pizzeria, LLC, Applicant, to sell alcoholic beverages for on-premise consumption as a restaurant, on Lot 1 and the north 10 feet of Lot 2, Block 5, NCB 732, generally located 728 South Presa Street, as shown on the accompanying map labeled "Attachment 1," within three hundred (300) feet of Bonham Elementary School, is hereby granted. This variance to sell alcoholic beverages for on-premise consumption is based on the following conditions: (a) that this authorization shall be limited to the "restaurant"; (b) that alcohol sales shall not exceed 30% of the total revenues for this establishment; (c) that alcohol shall be limited to wine and beer only, sold for on-premise consumption only; (d) that alcohol sales shall not be permitted between the hours of 12:00 a.m. and 6:00 a.m.; (e) that this authorization shall not transfer to different owners or different uses; (f) that such authorization shall terminate in the event of non-operation or non-use for a period of twelve or more successive calendar months;

**SECTION 2.** This Ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

**PASSED AND APPROVED** this 18<sup>th</sup> day of February, 2016.

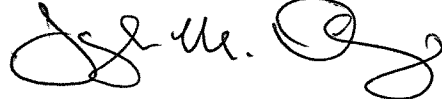


M A Y O R  
Ivy R. Taylor

**ATTEST:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
ON BEHALF OF  
\_\_\_\_\_  
Martha G. Sepeda, Acting City Attorney

|                     |  |                    |            |            |                |               |               |
|---------------------|--|--------------------|------------|------------|----------------|---------------|---------------|
| <b>Agenda Item:</b> | 32 ( in consent vote: 32, Z-3, Z-4, Z-5, P-2, Z-7, Z-9, Z-10, Z-11, Z-12, P-5, Z-14, P-7, Z-16, P-8, Z-18, P-9, Z-19, Z-23, Z-26, P-11, Z-27, P-12, Z-28, P-13, Z-29, Z-30 )   |                    |            |            |                |               |               |
| <b>Date:</b>        | 02/18/2016   |                    |            |            |                |               |               |
| <b>Time:</b>        | 03:14:03 PM  |                    |            |            |                |               |               |
| <b>Vote Type:</b>   | Motion to Approve  |                    |            |            |                |               |               |
| <b>Description:</b> | ALCOHOL VARIANCE # AV2016002 (Council District 1): An Ordinance granting a Variance to City Code Section 4-6 and waiving the requirements of Sections 4-6(c)(1), 4-6(c)(2), 4-6(c)(3), 4-6(c)(4), 4-6(d)(1), 4-6(d)(6) and 4-6 (e)(1) of the City Code and authorizing the sale of alcoholic beverages on Lot 1 and the North 10 feet of Lot 2, Block 5, NCB 732 located at 728 South Presa Street for on-premise consumption within three-hundred (300) feet of Bonham Elementary within the San Antonio Independent School District, a public education institution. |                    |            |            |                |               |               |
| <b>Result:</b>      | Passed   |                    |            |            |                |               |               |
| <b>Voter</b>        | <b>Group</b>   | <b>Not Present</b> | <b>Yea</b> | <b>Nay</b> | <b>Abstain</b> | <b>Motion</b> | <b>Second</b> |
| Ivy R. Taylor       | Mayor  |                    | x          |            |                |               |               |
| Roberto C. Treviño  | District 1   |                    | x          |            |                |               |               |
| Alan Warrick        | District 2   |                    | x          |            |                |               |               |
| Rebecca Viagran     | District 3   |                    | x          |            |                |               |               |
| Rey Saldaña         | District 4   |                    | x          |            |                |               |               |
| Shirley Gonzales    | District 5   |                    | x          |            |                |               |               |
| Ray Lopez           | District 6   | x                  |            |            |                |               |               |
| Cris Medina         | District 7   | x                  |            |            |                |               |               |
| Ron Nirenberg       | District 8   |                    | x          |            |                |               | x             |
| Joe Krier           | District 9   |                    | x          |            |                |               |               |
| Michael Gallagher   | District 10  |                    | x          |            |                | x             |               |