

**THIS IS A PROPOSED DRAFT AND WILL BE REPLACED BY THE FINAL,  
SIGNED ORDINANCE OR RESOLUTION ADOPTED BY THE CITY  
COUNCIL.**

**AN ORDINANCE**

**WAIVING THE REQUIREMENTS OF SECTIONS 4-6(c)(1), 4-6(c)(2), 4-6(c)(3), 4-6(d)(1), AND 4-6(d)(6) OF THE CITY CODE AND AUTHORIZING THE SALE OF ALCOHOLIC BEVERAGES ON LOT 19, NCB 12103, GENERALLY LOCATED AT 3131 NACOGDOCHES ROAD, FOR ON-PREMISE CONSUMPTION WITHIN THREE-HUNDRED (300) FEET OF MACARTHUR HIGH SCHOOL, A PUBLIC EDUCATIONAL INSTITUTION, LOCATED IN THE NORTHEAST INDEPENDENT SCHOOL DISTRICT, WITHIN COUNCIL DISTRICT 10.**

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**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 MacArthur High 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 shall be sold for on-premise consumption only; that alcohol sales shall not exceed 30% of the total revenues of the establishment; that alcohol sales shall not be permitted between the hours of 2:00

a.m. and 6:00 a.m.; that such approval shall 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(d)(1), and 4-6(d)(6), prohibiting on-premise consumption pursuant to the City Code of the City of San Antonio are waived and the variance request of Tacoritos, Inc., Applicant, to sell alcoholic beverages for on-premise consumption, on Lot 19, NCB 12103, generally located 3131 Nacogdoches Road, as shown on the accompanying map labeled "Attachment 1," within three hundred (300) feet of MacArthur High 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 shall be sold for on-premise consumption only; (c) that alcohol sales shall not exceed 30% of the total revenues for this establishment; (d) that alcohol sales shall not be permitted between the hours of 2:00 a.m. and 6:00 a.m.; (e) that this authorization shall not transfer to different owners or different uses; and (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 4<sup>th</sup> day of August, 2016.

M A Y O R  
Ivy R. Taylor

**ATTEST:**

**APPROVED AS TO FORM:**

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Leticia M. Vacek, City Clerk

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Martha G. Sepeda, Acting City Attorney