

**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)(3), AND 4-6(d)(6) OF THE CITY CODE AND AUTHORIZING THE SALE OF ALCOHOLIC BEVERAGES ON LOT 11, BLOCK 43, NCB 652, GENERALLY LOCATED AT 915 SOUTH HACKBERRY STREET, FOR ON-PREMISE CONSUMPTION WITHIN THREE-HUNDRED (300) FEET OF HERFF ELEMENTARY SCHOOL, A PUBLIC EDUCATION INSTITUTION LOCATED IN COUNCIL DISTRICT 2.

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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 Herff 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 "food service establishment"; that alcohol sales shall be limited to beer, wine, and liquor sold for on-premise consumption; that such approval shall not transfer to different owners or different land uses; 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; that alcohol sales for on-premise consumption shall

not be permitted between the hours of 10:00 p.m. and 4:00 p.m.; and that sales of alcohol shall not exceed thirty (30) percent of total revenue; **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)(3), and 4-6(d)(6), prohibiting sales of alcohol for on-premise consumption pursuant to the City Code of the City of San Antonio are waived and the variance request of Tony G's Soul Food, LLC, applicant, to sell alcoholic beverages for on-premise consumption, on Lot 11, Block 43, NCB 652, generally located at 915 South Hackberry Street, as shown on the accompanying map labeled "Attachment 1," within three hundred (300) feet of the Herff 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 a "food service establishment"; (b) that alcohol sales shall be limited to beer, wine, and liquor sold for on-premise consumption; (c) that this authorization shall not transfer to different owners or different uses; (d) that such authorization shall terminate in the event of non-operation or non-use for a period of twelve or more successive calendar months; (e) that alcohol sales shall not be permitted between the hours of 10:00 p.m. and 4:00 p.m.; and (f) that sales of alcohol shall not exceed thirty (30) percent of total revenue;

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 21st day of September, 2017.

M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek, City Clerk

on behalf of Andrew Segovia, City Attorney