



# City of San Antonio

## Agenda Memorandum

**File Number:** 17-3409

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**Agenda Item Number:** 37.

**Agenda Date:** 6/15/2017

**In Control:** City Council A Session

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**DEPARTMENT:** Development Services

**DEPARTMENT HEAD:** Michael Shannon

**COUNCIL DISTRICTS IMPACTED:** Council District 2

**SUBJECT:**

Alcohol Variance Case V2017006

**SUMMARY:**

Consideration of a request granting a Variance to City Code §4-6(c)(1), §4-6(c)(3), §4-6(c)(4), §4-6(d)(6), and §4-6(e)(1) of the City Code and authorizing the sale of alcoholic beverages on the South 60 Feet of Lots 7 and 8, Block 32, NCB 543, located at 621 Chestnut Street for on-premise consumption and off-premise consumption within three-hundred (300) feet of the Healy Murphy Center, a private education institution located in Council District 2.

**BACKGROUND INFORMATION:**

Title 4, Chapter 109, Subchapter B, §109.33(e) authorizes municipalities to establish a variance process if it is determined that the 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 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. Pursuant to this enabling legislation, the provisions of Chapter 4, §4-6(c) of the City Code were established by the City of San Antonio.

The TABC authorizes municipalities to establish variance criteria from the distance requirements and §4-6(c) of San Antonio's City Code states that with City Council authorization, the sale of alcoholic beverages at a location within three hundred (300) feet of a private school may be granted, provided that the City Council makes the following findings:

- 1) The sale of alcoholic beverages had been permitted within the last two (2) years at the location in question;  
*Alcohol has not previously been sold at this location. The applicant is seeking the first license for the proposed Microdistillery use. The applicant will need a variance from this provision.*
- 2) The discontinuance of the sale of alcoholic beverages was not a result of a violation of law;  
*Alcohol has never been sold on the subject property, and, therefore, there was no discontinuance*

*as a result of a violation of the law. A variance is not needed from this provision.*

- 3) A variance is necessary because the manner of measurement, as currently prescribed in V.T.C.A. § 109.33(b), has changed and as a result thereof, the premises in question has been determined to be within three hundred feet (300) feet of a public school;

*The method of measurement has not changed. The applicant will need a variance from the 300 foot distance requirement.*

- 4) The proposed sale of alcoholic beverages would be for on-premise consumption and off-premise consumption and will constitute more than thirty (30) percent of the establishment's annual gross revenues.

*The applicant has stated that alcohol sales will exceed 30% of total revenues. Also, the applicant has indicated that sales of alcoholic beverages will be for on-premise consumption and off-premise consumption. A waiver of these criteria is required.*

The TABC authorizes municipalities to establish variance criteria from the provisions of §4-6 (d).

- 6) The applicant shall on an annual basis submit to the department of building inspections the necessary documentation to verify that no more than thirty (30) percent of the annual gross revenues of the establishment are generated by the sale of alcoholic beverages;

*The applicant would like a waiver of this requirement.*

The TABC authorizes municipalities to establish variance criteria from the provisions of §4-6 (e).

- 1) It shall be a violation of the variance granted by City Council to sell alcoholic beverages for off-premise consumption; For on-premise consumption of alcoholic beverages that exceed more than thirty (30) percent of the annual gross revenues of the establishment, or to violate any other condition imposed by City Council;

*The applicant would like a waiver from both requirements.*

#### **ISSUE:**

Currently, the sale of alcoholic beverages 621 Chestnut Street will violate Chapter 4, §4-6 of the City Code and Title 4, Chapter 109, Subchapter B, §109.33(a)(1) of the Texas Alcoholic Beverage Code. The applicant is requesting a variance to allow the on-premises and off-premise sale of alcohol within three hundred (300) feet of the Healy Murphy Center, which is accredited and recognized by the Texas Commission of Education.

#### **ALTERNATIVES:**

The City may opt not to grant the requested waivers and variance, prohibiting the sale of alcohol for on-premise or off-premise consumption at the Microbrewery, located at 621 Chestnut Street.

#### **FISCAL IMPACT:**

None.

#### **RECOMMENDATION:**

**Staff Analysis:** The analysis includes the following findings and factors:

1. The distance from the door of the Microdistillery to the door of the Healy Murphy Center is approximately 872 feet.

*\*\*\*All listed distances are approximate, were measured in a straight line between nearest points, using the City's online zoning map.\*\*\**

2. The sale of alcohol is for on-premise and off-premise consumption.

Should City Council choose to waive the provisions of §4-6(c)(1), §4-6(c)(3), §4-6(c)(4), §4-6(d)(6), and §4-6(e)(1) of the City Code, staff recommends the following conditions:

- 1) That the sale of alcoholic beverages be limited to the Microdistillery use.
- 2) Alcohol sale will include liquor for on-premises and off-premise consumption.
- 3) That the authorization for the sale of alcoholic beverages shall not transfer to different land uses or owners.
- 4) That such authorization shall terminate in the event of non-operation or non-use of the identified establishments for a period of twelve (12) or more successive months.
- 5) The hours of operation for on-premise sale shall be limited to Monday - Friday 5:00PM to 11:00PM and Saturday - Sunday from 11:00AM - 11:00PM
- 6) The hours of operation for off-premise sale shall be limited to Monday - Saturday 5:00PM to 9:00PM