



# City of San Antonio

## Agenda Memorandum

**File Number:** 18-4610

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**Agenda Item Number:** 27.

**Agenda Date:** 8/16/2018

**In Control:** City Council A Session

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**DEPARTMENT:** Development Services

**DEPARTMENT HEAD:** Michael Shannon

**COUNCIL DISTRICTS IMPACTED:** Council District 1

**SUBJECT:**

Alcohol Variance Case AV2018008

**SUMMARY:**

Consideration of a request waiving the application requirements of City Code Section 4-6 and granting a variance authorizing the sale of alcoholic beverages on 1.065 acres out of NCB 782, located at 812 South Alamo Street for on-premise and off-premise consumption within three-hundred (300) feet of the Bonham Elementary School, a public education institution in the San Antonio Independent School District, in Council District 1.

The applicant is seeking variances and waivers to all Sections of Chapter 4, regarding alcohol sales for on and off premise consumption within 300-feet of Bonham Elementary School. The property owner and proposed tenants are not specifically identified, only proposed uses.

**BACKGROUND INFORMATION:**

The Texas Alcoholic Beverage Code Ann., 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 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;

*According to the applicant alcohol sales have previously been permitted on the property per Ordinance 2014-08-07-0545. Specifically, the previous alcohol variance ordinance permitted off-premise consumption at a "drugstore-apothecary."*

- 2) The discontinuance of the sale of alcoholic beverages was not a result of a violation of law;  
*There are no recorded violations of alcohol sales at the noted property.*
- 3) A variance is necessary because the manner of measurement, as currently prescribed in Tex. Alco Bev. Code Ann. § 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; and  
*The property at 812 South Alamo Street is located within three hundred (300) feet of the property line of the Bonham Elementary School. The applicant has requested a variance from this provision.*
- 4) The proposed sale of alcoholic beverages would be for on-premise and off-premise consumption and constitute no more than thirty (30) percent of the establishment's annual gross revenues.  
*The applicant has stated that alcohol sales may exceed 30% of total revenues. The applicant requests a variance from this provision. Also, the applicant has indicated that sales of alcoholic beverages will be for on-premise consumption and off-premise consumption.*

The Texas Alcoholic Beverage Code Ann §4-6(d)(1) and §4-6(d)(6) authorizes municipalities to establish variance criteria from the provisions of City Code specifically:

§4-6 (d)(1) Requiring the submission of certified documentation from the Texas Alcohol and Beverage Commission establishing that an alcoholic beverage license had been issued for the location where the variance is sought and that the date of expiration of the license was less than two years before the date of the variance request.

*According to the applicant alcohol sales for on-premise consumption has previously been permitted on the property within the past two years, but no documentation was provided.*

*The applicant is seeking a variance to this provision.*

§4-6 (d)(6) Requiring the submission of documentation to verify that no more than thirty (30) percent of the establishment's annual gross revenues are generated by the sale of alcoholic beverages.

*a. The responsibility of providing documentation verifying that no more than thirty (30) percent of the proposed uses annual gross revenues are generated by the sale of alcoholic beverages is the responsibility of the business owner. b. No more than thirty (30) percent of the annual gross revenues are to be generated by the sale of alcohol.*

*The applicant is seeking a variance from this provision.*

Additionally, City Code §4-6(e)(1) includes three activities or actions that would constitute a violation of any granted variance: 1) selling alcoholic beverages for off-premise consumption, 2) selling alcoholic beverages for on-premise consumption of alcoholic beverages that exceed more than thirty (30) percent of the annual gross revenues of the establishment, and 3) violating any other condition imposed by city council.

## **ISSUE:**

Currently, the sale of alcoholic beverages at 812 South Alamo 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-premise and off-premise sale of alcohol within three hundred (300) feet of the Bonham Elementary School, which is accredited and recognized by the Texas Commission of Education.

§4-6(c)(3) mandates that alcohol cannot be sold within three hundred (300) feet of a public school.

*This property is zoned "IDZ" Infill Development Zone with uses permitted in "C-2" Commercial District and is proposed for multiple "C-2" uses, including but not limited to a food hall with accessory uses such as food service establishments without cover charge three (3) or more days a week, wine boutiques, gift shops, grocery stores, variety stores retail, and /or food, mobile food courts permitted within the "C-2" Commercial District. This project is approximately 62 feet from the existing school property, measured property line to property line in accordance with TABC measurement standards.*

§4-6(e)(1) includes three activities or actions that would constitute a violation of any granted variance: 1) selling alcoholic beverages for off-premise consumption, 2) selling alcoholic beverages for on-premise consumption of alcoholic beverages that exceed more than thirty (30) percent of the annual gross revenues of the establishment, and 3) violating any other condition imposed by city council.

*Alcohol will be sold on-premise for on-and-off premise consumption at the proposed multi-purpose retail/commercial development. The applicant has indicated that alcohol will be sold as required by the Texas Alcoholic Beverage Commission (TABC) requirements.*

**ALTERNATIVES:**

The City may opt not to waive the requested waivers and variances, prohibiting the sale of alcohol for on-premise and off-premise consumption at 812 South Alamo Street.

**FISCAL IMPACT:**

None.

**RECOMMENDATION:** Approval of this request is at the discretion of City Council.

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

1. The school property is located across the street from the property and is less than 300 feet from the subject property (approximately 62 feet measured property line to property line in accordance with TABC measurement standards). The measurement from door to door is approximately 158 feet.

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

2. South Alamo Street is a commercial corridor that includes established commercial developments.

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

- 1) That such authorization shall terminate in the event of non-operation or non-use of the property for a period of twelve (12) or more successive calendar months.
- 2) Alcohol will be sold per the authorized hours prescribed by Texas Alcoholic Beverage Commission regulations and licensing requirements.