



# City of San Antonio

## Agenda Memorandum

**File Number:**14-422

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**Agenda Item Number:** 33.

**Agenda Date:** 3/20/2014

**In Control:** City Council A Session

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**DEPARTMENT:** Development Services

**DEPARTMENT HEAD:** Roderick Sanchez

**COUNCIL DISTRICTS IMPACTED:** 3

**SUBJECT:**

Alcohol Variance V2014004

**SUMMARY:**

Consideration of a request for a Variance in accordance with Chapter 4 of the City Code for Iris Ornelas (DBA Luna Rosa Restaurant), Applicant, to sell alcoholic beverages at 2603 Southeast Military Drive, Suite 107, which is located within three hundred (300) feet of the Seidel Learning Center.

Pursuant to Title 4, Chapter 109, Sub-chapter B, §109.33(a)(1) of the Texas Alcoholic Beverage Code (TABC), the sale of alcoholic beverages is prohibited for dealers whose place of business is within three hundred (300) feet of a public or private school 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. The City of San Antonio adopted this distance requirement in Chapter 4, Article 1, §4-6 of the City Code. The State currently relies on local jurisdictions to enforce the distance requirements and the local regulations comply with the regulations established by TABC. The subject property is situated within three hundred (300) feet of the Seidel Learning Center.

**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 distance requirements. §4-6(c) of San Antonio's City Code states the City Council may authorize the sale of alcoholic beverages at a location within three hundred (300) feet of a public school in accordance with the following findings:

1) The sale of alcoholic beverages had been permitted within the last two (2) years at the location in question;

- 2) The discontinuance of the sale of alcoholic beverages was not a result of a violation of law;
- 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; and
- 4) The proposed sale of alcoholic beverages would be for on premise consumption and constitute no more than thirty (30) percent of the establishment's annual gross revenues.

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. However, the applicant has not demonstrated that all the required findings of §4-6 (c) have been met.

The applicant has requested a waiver of the criteria.

§4-6 (d)(6) requires 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. The subject property will operate as a food service establishment and the sale of alcohol may constitute more than thirty (30) percent of the annual gross revenues, therefore this requirement would need to be waived by City Council.

Additionally, §4-6 (e)(1) includes three activities or actions that would constitute a violation of any granted variance:

- ~ to sell alcoholic beverages for off-premise consumption;
- ~ to sell alcoholic beverages 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.

As the applicant's request to allow the sale of alcoholic beverages for on-premise consumption will exceed more than thirty (30) percent of the annual gross revenues of the establishment a portion of the definition of a violation in §4-6 (e)(1) would need to be waived by City Council for the variance to be granted.

**ISSUE:**

Currently, the sale of alcoholic beverages at 2603 Southeast Military Drive, Suite 107 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 waivers and a variance to allow the on-premises sale of alcohol at a proposed restaurant.

**ALTERNATIVES:**

The City Council may deny the requested waivers and variance, prohibiting the sale of alcohol for on-premise consumption at the proposed restaurant located at 2603 Southeast Military Drive, Suite 107.

**FISCAL IMPACT:**

None. The applicant has paid the required alcohol variance application fee.

**RECOMMENDATION:**

The subject property is developed with a retail shopping center which was constructed in 2011. The property is located within 300 feet of the property line of the San Antonio State Hospital, which includes the Seidel

Learning Center, a special educational facility of the San Antonio Independent School District. The state hospital property is approximately 350 acres in size and access to the campus is restricted. The shopping center faces Southeast Military Drive, an established commercial corridor, in the opposite direction of the state hospital property and school facility. Additionally, parking areas, vehicle access ways, and structures intervene between the subject property and the school building. The city council has approved several alcohol sales variances in this area relating to the Seidel Learning Center.

The subject property does not satisfy the four variance criteria of §4-6(c). Should City Council choose to waive the provisions of §4-6(c) as well as §4-6 (d)(6) and a portion of §4-6 (e)(1), staff recommends approval of the variance with the following conditions:

1. This authorization shall not transfer to a land use not listed in the ordinance (proposed restaurant).
2. The authorization shall terminate in the event of non-operation or non-use for a period of twelve (12) or more successive calendar months.

Additionally, staff recommends that the alcohol variance apply only to 2603 Southeast Military Drive, Suite 107.

Staff analysis included the following factors:

1. The school subject property measures approximately 350 acres in size.
2. The school facility is more than 300 feet from the subject property boundary.
3. Southeast Military Drive is a commercial corridor and its intersection with South New Braunfels Avenue includes established commercial developments. The properties northeast, east and south of the subject property are located more than 300 feet from the school's property line. Therefore, these other properties have the potential to offer alcohol sales for on- or off-premise consumption, constituting an unnecessary hardship for the subject property.