



City of San Antonio

Agenda Memorandum

File Number: 15-3359

Agenda Item Number: 75.

Agenda Date: 6/18/2015

In Control: City Council A Session

DEPARTMENT: Development Services

DEPARTMENT HEAD: Roderick Sanchez

COUNCIL DISTRICTS IMPACTED: Council District 2

SUBJECT:

Alcohol Variance Case AV2015006

SUMMARY:

Consideration of a request granting a Variance to City Code Section 4-6 and waiving the requirements of Sections 4-6(c)(1), 4-6(c)(2), 4-6(c)(3), 4-6(c)(4), 4-6(d)(1), 4-6(d)(6) and 4-6 (e)(1) of the City Code and authorizing the sale of alcoholic beverages on a Portion of Lot 11, Lot 12, and Lot 13, Block 24, NCB 534 generally located at 201 Burnet Street for on-premise consumption within a Mobile Food Court, within three-hundred (300) feet of Healy-Murphy Center, a public education institution located in the San Antonio Independent School District within 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 public 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 on this property. This is a new Mobile Food Court development. The applicant has requested a variance to this provision.

- 2) The discontinuance of the sale of alcoholic beverages was not a result of a violation of law;

Alcohol has not previously been sold at this location; therefore, the discontinuance provision is not applicable. The applicant has not requested a variance to 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 property is located within three hundred (300) feet of the property line of the Healy-Murphy Center. The applicant has requested a variance to this provision.

- 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.

The applicant has requested a variance to this provision and self-imposed the following restriction:

a. The applicant has requested that there be no limitation on the percentage of alcohol sales of the establishment's annual gross revenues.

b. The applicant has indicated that no sales of alcoholic beverages will be for off-premise consumption.

The TABC authorizes municipalities to establish variance criteria from the provisions of §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.

Alcohol service and/or sales have not previously occurred at this location this is a new Mobile Food Court Development.

- 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.

The applicant has stated that alcohol sales will exceed 30% of total revenues of each established business. The applicant has requested a variance to this provision.

Additionally, §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) to 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 201 Burnet 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 sale of alcohol within three hundred (300) feet of Healy-Murphy Center, which is accredited and recognized by the Texas Commission of Education.

§4-6(c)(1) requires that the sale of alcohol had been permitted within the past two (2) years at the location.

The proposed Mobile Food Court is a new development that has not previously sold alcohol.

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

The proposed Mobile Food Court will be located between approximately 53 feet and 57 feet of the existing school facility. The properties are across the street from one another.

§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) to 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 not be sold for off-premise consumption; however, the establishment will be selling alcoholic beverages for on-premise consumption which will exceed more than thirty (30) percent of the annual gross revenues of the establishment.

ALTERNATIVES:

The City may opt not to waive the requested waivers and variances, prohibiting the sale of alcohol for on-premise consumption at the proposed Mobile Food Court generally located at 201 Burnet Street.

FISCAL IMPACT:

None.

RECOMMENDATION:

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

1. The school facility is significantly less than 300 feet from the subject properties (the approximate distance ranges between 53 feet and 57 feet). The school and the proposed development are across the street from one another.

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

2. The applicant has self-imposed an additional restriction of no sales of alcohol for off-premise consumption.

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

- 1) That the alcohol sales not be permitted between the hours of 11:00 p.m. and 6 a.m.
- 2) That the authorization for the sale of alcoholic beverages shall not transfer to different land owners or land uses.
- 3) 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 calendar months.