



City of San Antonio

Legislation Details (With Text)

File #: 21-1057
Type: Staff Briefing - Without Ordinance
In control: Board of Adjustment
On agenda: 1/11/2021
Title: BOA-20-10300136: A request by Ben Allen for an Appeal of the revocation of the Certificate of Occupancy, located at 2023 Sable Lane. Staff recommends Denial. (Council District 10) (Zenon Solis, Principal Planner (210) 207-7796, zenon.solis@sanantonio.gov, Development Services Department)
Sponsors:
Indexes:
Code sections:
Attachments: 1. Map and Pictures, 2. Application

Date	Ver.	Action By	Action	Result
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Case Number BOA-20-10300136
Applicant: Ben Allen
Owner: RCI Holdings INC
Council District: 10
Location: 2023 Sable
Legal Description: NCB 12570 BLK LOT 17 & 18
Zoning: "I-1 AHOD" General industrial Airport Hazard Overlay District
Case Manager: Zenon Solis, Principal Planner

Request

A request for an appeal of the Director's decision related to certificate of occupancy revocation as it applies to 10-12(d).

Applicable Code References

Sec. 35-406. - Revocation of Permit or Approval.

Initiation. The city shall investigate alleged violations of imposed condition or conditions. The results of any investigation shall be brought to the attention of the director of development services who shall make a determination whether or not to terminate or suspend (for a specific period) the permit. The director shall provide the permit holder notice of his intent to suspend or revoke a permit for a chapter violation. The notice may specify a reasonable time for compliance with this chapter. If time for compliance is specified in the notice, the director may not suspend or revoke the permit before the time for compliance has expired. No further action shall be taken should the permit holder comply. Should the director determine that the violation has not been abated, the director may revoke the permit by providing the permit holder a notice of termination. This notice shall provide the permit holder with the reason(s) for termination or suspension of the permit(s), at which time the permit holder shall surrender the permit to the director or his/her designee. The process for appeal of the director's decision is set forth in section 35-481

<https://library.municode.com/tx/san_antonio/codes/unified_development_code?nodeId=ARTIVPR_DIV10VAAP_S35-

Sec. 10-5. - Duties and powers of Building Official.

General. The Building Official is authorized and directed to enforce the provisions of this chapter. The building official has the authority to render interpretations of this chapter and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in accordance with the intent and purpose of this chapter. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this chapter. The building official shall have the power to suspend or revoke city issued certificates of license and registration for cause.

Sec. 10-12. - Certificate of occupancy.

(d) Revocation. The building official is authorized to suspend or revoke a certificate of occupancy or completion issued under the provisions of this chapter wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this chapter.

Background

All commercial entities providing goods or services to the public must implement a health and safety policy which requires, at a minimum, that all employees/customers/visitors must wear a cloth face covering as well ensure social distancing is maintained at all times. XTC Cabaret has been placed on notice, in writing, over several occasions that it was in violation of the Ordinance and State laws. Citations were issued on September 11, 2020 for health and safety policy/face mask violation and failure to practice social distancing; October 3, 2020 for failure to practice social distancing; November 6, 2020 for health and safety policy/face mask violation and failure to practice social distancing; and November 7, 2020 for health and safety policy/face mask violation and failure to practice social distancing.

On November 10, 2020, the owners of XTC cabaret were notified by posting and mail of an intent to revoke their certificate of occupancy if additional violations of the public health emergency order were observed. An additional violation of the health and safety policy/face mask violation was observed on November 21, 2020.

In addition to these significant health and welfare violations during the ongoing pandemic, criminal offenses occurred such as, including but not limited to, prostitution on July 28, 2020, prostitution on September 11, 2020, and sale of alcohol without a TABC permit on September 11, 2020. Additionally, since 2019 San Antonio police have received over 125 calls for service for the address which also include: 12 public intoxications, 19 assaults, 5 aggravated assaults with a deadly weapon and 3 discharging of a firearm.

Due to continued violations of health and safety and criminal offenses the certificate of occupancy was revoked on November 24, 2020 by the Director of Development Services.

Appeal History

On December 9, 2020 the owner's attorney, filed an appeal of the director's decision to revoke their certificate of occupancy, Section 10-12. - Certificate of occupancy. The applicant ascertains that the correct decision would have been to maintain XTC certificate of occupancy. Also, the applicant states that the correct decision would have been to not revoke the certificate of occupancy.

Staff Analysis on Section 10-12 Generally:

- Revocation of a business' certificate of occupancy may occur, based on the building official's determination, when the building/structure/or portion thereof is in violation of (1) **any** ordinance; (2) **any** regulation; and/or (3) **any** provision of this chapter. Sec. 10-12 .
- It is the *building official* who has the authority to interpret the meaning of this chapter, including 10-12

- for the revocation of certificates of occupancy. See 10-5 .
- It is the *building official* who sets policies and procedures, in terms of enforcement. See 10-5.
- The long-standing interpretation of 10-12 is to read “any ordinance,” “regulation,” or “any of the provision of this chapter” as each being stand-alone.
 - “Any ordinance,” is read to apply to all of the ordinances in the City code.
 - Any “regulation” is read to apply to all applicable federal, state and local (county and city) laws and regulations
 - “Any ... provisions of this chapter” is read to apply to everything specifically in chapter 10, which is building-specific.
- The department’s long-standing enforcement policy has been to revoke certificates of occupancy for violations of the City’s, and other governmental entities’ (federal, state, county, etc.), laws and regulations, including but not limited to violations from Chapter 10 (Building Related Codes).
 - Examples of other laws, regulations or ordinances which have been led to revocations have been
 - (a) Fire Code violations (Chapter 11); (b) BSB demolition orders (Chapter 6); (c) TABC violations; (d) criminal activity (Texas Penal Code); and most recently for (e) violations of the Emergency Declaration addendums, which have the force of law under Texas Government Code 418.
 - Other businesses which have had their certificate of occupancy pulled in San Antonio for Emergency Declaration violations have been a number of Vape stores and several Planet K’s.

Sec. 10-12. - Certificate of occupancy.



- (a) *Use and occupancy.* No building or structure shall be used or occupied, and no change in the existing use or occupancy classification of a building or structure or portion thereof shall be made, until the building official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval if a violation of the provisions of this chapter or of other ordinances of the city.

Exception: Certificates of occupancy are not required for work exempt from permits under subsection [10-6\(d\)](#).
- (b) *Certificate issued.* After the building official inspects the building or structure and finds no violations of the provisions of this chapter or other laws that are enforced by the department, the building official shall issue a certificate of occupancy that contains the following:
 - (1) The building permit number.
 - (2) The address of the structure.
 - (3) The name and address of the owner or the owner's authorized agent.
 - (4) A description of that portion of the structure for which the certificate is issued.
 - (5) A statement that the described portion of the structure has been inspected for compliance with the requirements of this chapter for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
 - (6) The name of the building official.
 - (7) The edition of the IBC or IRC under which the permit was issued.
 - (8) The use and occupancy, in accordance with the provisions of Chapter Three of the IBC.
 - (9) The type of construction as defined in Chapter Six of the IBC.
 - (10) The design occupant load.
 - (11) If an automatic sprinkler system is provided, whether the sprinkler system is required.
 - (12) Any special stipulations and conditions of the building permit.
- (c) *Temporary occupancy.* The building official is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The building official shall set a time period during which the temporary certificate of occupancy is valid.
- (d) *Revocation.* The building official is authorized to suspend or revoke a certificate of occupancy or completion issued under the provisions of this chapter wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this chapter.

(Ord. No. [2018-06-21-0493](#), § 1, 6-21-18)

Board of Adjustment

The Board of Adjustment is asked to determine the intent of Section 10-12 *Certificate of Occupancy*. In addition, in this case, the *Board of Adjustment* has the authority to review and consider the appeal before it, investigate facts, weigh evidence, and draw conclusions. The *Board* may reverse or affirm, in whole or in part, the administrative decisions brought forward by the appellant and discussed in this report.

Conclusion:

Staff concludes that the decision to revoke the certificate of occupancy was correct, based on the following finding: multiple city code violations continuously observed on the property presents the business as a threat to maintaining health and safety.