



City of San Antonio

Agenda Memorandum

File Number:15-6023

Agenda Item Number: 27.

Agenda Date: 12/3/2015

In Control: City Council A Session

DEPARTMENT: Development Services

DEPARTMENT HEAD: Roderick Sanchez

COUNCIL DISTRICTS IMPACTED: 2

SUBJECT:

Alcohol Variance Case AV2015010

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 at the San Antonio Zoo properties on 42.500 acres of land out of NCB A-52, generally located at 3903 North Saint Mary's Street for on-premise consumption within three-hundred (300) feet of the University of the Incarnate Word, Incarnate Word High School and KIPP-Camino Academy, private and public education institutions located in the San Antonio Independent School District.

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 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 continuously been sold on the property within the last two (2) years. The San Antonio Zoo has sold alcohol by temporary permit only for special events and other related activities. The applicant does not meet the two (2) year location requirement and is requesting a

waiver of this requirement.

- 2) The discontinuance of the sale of alcoholic beverages was not a result of a violation of law;
There is no previous, continuous alcohol service and a waiver of this requirement is also requested.
- 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
The properties generally located at 3903 North Saint Mary's are located within three hundred (300) feet of the property line of the University of the Incarnate Word, Incarnate Word High School and KIPP-Camino Academy. The applicant is requesting 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 noted that the use of the property is the San Antonio Zoo and all sales are for on-premise consumption only.

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.
According to the applicant non-temporary alcohol service for on-premise consumption has not been permitted in the history of the San Antonio Zoo and thus, not within the last 2 years. Expiration is not applicable to this request.
- 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 establishment's annual gross revenues are generated by the sale of alcoholic beverages is the responsibility of the San Antonio Zoo. Thus it is stated as such in this document.*
 - b. *No more than thirty (30) percent of the annual gross revenues are to be generated by the sale of alcohol.*

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 3903 North Saint Mary's 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 off-premise sale of alcohol within three hundred (300) feet of University of the Incarnate Word, Incarnate Word High School and KIPP-Camino Academy, which are accredited institutions and are 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.

The proposed alcohol sales would be in very close proximity of the existing school facilities; directly adjacent, and in some instances within 79 to 93 feet from the schools.

Additionally, the applicant seeks waivers and a variance for three activities that would constitute violations of §4-6(e)(1): 1) selling alcoholic beverages for off-premise consumption, and 2) selling alcoholic beverages for

on-premise consumption that 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 San Antonio Zoo properties generally located at 3903 North Saint Mary's Street.

FISCAL IMPACT:

None.

RECOMMENDATION:

Staff Analysis includes the following findings and factors:

1. The school facility is less than 300 feet from the subject property and in certain instances directly abuts the Zoo properties (the range is respectively from 79.91 feet and 93.79 feet).

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

2. East Hildebrand Avenue is a public road that intersects with a major highway. The San Antonio Zoo has had temporary sales of alcohol and is seeking a beer, wine and liquor license for non-temporary alcohol services on-premise.
3. The variance and waivers are triggered by the City's Code requirements and the sale of alcohol within 300-feet of three (3) schools in the area.

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 sale of alcoholic beverages is to be limited to the San Antonio Zoo properties encompassed by the noted 42.500 acres of land out of NCB A-52.
- 2) Alcohol sales are not to exceed 30% of total revenues of the established business.
- 3) All alcohol sales are for on-premise consumption.
- 4) That the alcohol sales not be permitted between the hours of 2:00 a.m. and 6 a.m.
- 5) That the authorization for the sale of alcoholic beverages shall not transfer to different owners or land uses.
- 6) That such authorization shall terminate in the event of non-operation or non-use of the identified establishment for a period of twelve (12) or more successive calendar months.