



# City of San Antonio

## Agenda Memorandum

**File Number:** 16-1570

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**Agenda Item Number:** 32.

**Agenda Date:** 2/18/2016

**In Control:** City Council A Session

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**DEPARTMENT:** Development Services

**DEPARTMENT HEAD:** Roderick Sanchez

**COUNCIL DISTRICTS IMPACTED:** 1

**SUBJECT:**

Alcohol Variance Case AV2016002

**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 Lot 1 and the North 10 feet of Lot 2, Block 5, NCB 732 located at 728 South Presa Street for on-premise consumption within three-hundred (300) feet of Bonham Elementary within the San Antonio Independent School District, a public school in Council District 1.

**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;  
*According to the applicant alcohol has not previously been sold on the property within the last two (2) years. The property was formerly a bakery. 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 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 property at 728 South Presa Street is located within three hundred (300) feet of the property line of Bonham Elementary and is also in the vicinity of the San Antonio ISD Main Administration Offices. 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 noted that the use of the property will be a family restaurant; Southtown Pizzeria. The sale of alcohol is for on-premise consumption as an additional option for patrons the restaurant.*

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 alcohol sales for on-premise has not occurred on the property. This is a new service that the restaurant would like to provide. 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 business owner. 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, 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, 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 728 South Presa 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 sale of alcohol within three hundred (300) feet of Bonham Elementary, 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.

*The existing building where the proposed restaurant and on-site consumption of alcohol is located is approximately 288 feet from the Bonham Elementary school facility.*

§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, and 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.

*Alcohol is proposed to be sold by the restaurant for on-premise consumption as part of the food sales.*

**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 restaurant located at 728 South Presa 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 (approximately 288 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 Presa is a commercial corridor that includes established retail and commercial developments including, but not limited to, restaurants with sales of alcohol for on-premise consumption, auto services and other similar retail/commercial uses.
3. The variance and waivers are triggered by the City's Code requirements and the sale of alcohol within 300-feet of the school.

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 restaurant.
- 2) Alcohol sales are not to exceed 30% of total revenues of the established business.
- 3) All alcohol sales are for on-premise consumption of beer and wine only.
- 4) That the alcohol sales not be permitted between the hours of 12:00 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.