



# City of San Antonio

## Agenda Memorandum

**File Number:**17-1142

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**Agenda Item Number:** 30.

**Agenda Date:** 1/19/2017

**In Control:** City Council A Session

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**DEPARTMENT:** Development Services

**DEPARTMENT HEAD:** Roderick Sanchez

**COUNCIL DISTRICTS IMPACTED:** Council District 1

**SUBJECT:**

Alcohol Variance Case AV2017001

**SUMMARY:**

Consideration of a request granting a Variance to City Code Section 4-6 and waiving the requirements of Sections 4-6(c)(3), 4-6(c)(4), 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 14 and 15, Block 16, NCB 1705, generally located at 2512 North Main Street for on-premise consumption within a Food Service Establishment, within three-hundred (300) feet of the Keystone School, a private education institution located 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 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 previously been sold on this property. The applicant purchased the building for a Food Service Establishment. The applicant has not 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 previously been sold at this location; no records can be found suggesting that the*

*discontinuation was a result of a violation of the law. 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 Keystone School. 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 restrictions:

- a. *The applicant has stated that alcohol sales could exceed 30% of total 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 previously occurred at this location. However, this is a new Food Service Establishment. The applicant has a copy of the previous license.*

- 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 subject properties will operate as no more than one (1) Food Service Establishment.

- a. *The responsibility of providing documentation verifying that no more than thirty (30) percent of the proposed uses 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. The applicant is seeking a variance to this provision.*
- b. *No more than thirty (30) percent of the annual gross revenues are to be generated by the sale of alcohol. The applicant is seeking a variance to the 30% limitation.*

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.

*The applicant is seeking a variance to this provision.*

## **ISSUE:**

Currently, the sale of alcoholic beverages at 2512 North Main 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 the Keystone School, 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 Food Service Establishment is a new development and alcohol has previously been sold at this location.*

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

*The proposed Food Service Establishment will be located within 300 feet of the existing 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, 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.*

**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 Food Service Establishment, generally located at 2512 North Main Street.

**FISCAL IMPACT:**

None.

**RECOMMENDATION:**

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

1. The distance from the door of the Food Service Establishment to the door of The Keystone School is approximately 841 feet.

*\*\*\*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 additional restriction is in relation to no sales of alcohol for off-premise consumption.

Should City Council choose to waive the provisions of §4-6(c)(3-4), §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 be limited to the Food Service Establishment.
- 2) Alcohol sale will include beer, wine, and liquor for on-premises consumption only.
- 3) Alcohol sales will be restricted to Tuesday - Saturday, 11:00AM - 2:00PM and from 5:00PM - 11:00PM
- 4) That the authorization for the sale of alcoholic beverages shall not transfer to different land uses or owners.
- 5) 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.