



# City of San Antonio

## Agenda Memorandum

**File Number:** 17-1779

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**Agenda Item Number:** 18.

**Agenda Date:** 3/2/2017

**In Control:** City Council A Session

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**DEPARTMENT:** Development Services

**DEPARTMENT HEAD:** Roderick Sanchez

**COUNCIL DISTRICTS IMPACTED:** Council District 10

**SUBJECT:**

Alcohol Variance Case AV2017003

**SUMMARY:**

Consideration of a request granting a Waiver 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), and 4-6 (d)(1) of the City Code and authorizing the sale of alcoholic beverages on a Portion of Lot 1, Block 30, NCB 17728, generally located at 5135 North Loop 1604 East for off-premise consumption within a Convenience Store, within three-hundred (300) feet of the Trinity Christian Academy, a private education institution located in Council District 10.

**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 been previously been sold on this property. The applicant is developing a vacant lot. A variance is needed from this provision.*
- 2) The discontinuance of the sale of alcoholic beverages was not a result of a violation of law;  
*Alcohol has never been sold on the subject property. A variance is needed from 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 method of measurement has not changed. The applicant will need a variance from the 300 foot distance requirement.*

- 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.

*a. The applicant has stated that alcohol sales will not exceed 30% of total revenues.*

*b. The applicant has indicated that sales of alcoholic beverages will be for off-premise consumption. A waiver of criteria b is required.*

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 Convenience Store use. There is no previous copy of an alcohol sales license and the applicant will need a variance from this requirement.*

## **ISSUE:**

Currently, the sale of alcoholic beverages 5135 North Loop 1604 East 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-premises sale of alcohol within three hundred (300) feet of the Trinity Christian Academy, 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 Convenience Store is a new development and alcohol has not previously been sold at this location. The applicant is requesting a variance to this requirement.*

§4-6(c)(2) requires that the discontinuance of the sale of alcohol not be the result of a violation of the law.

*The lot is currently vacant and being developed for the first time. There was no discontinuance in the sale of alcohol. The applicant is requesting a variance to this requirement.*

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

*The proposed Convenience Store will be located within 300 feet of the existing school facility. The applicant is requesting a variance to this requirement.*

§4-6(c)(4) mandates that alcohol is for on-premise sales and will not constitute more than 30% of total revenues.

*The proposed convenience store will sell alcohol for off-premise consumption. The applicant is seeking a variance to that provision. However, alcohol sales will not exceed 30% of annual sales and a variance is not needed to the 30% sales limitation.*

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

*Alcohol had not been sold at this lot within the past two years as the lot was vacant. The applicant is requesting a variance to this requirement.*

## **ALTERNATIVES:**

The City may opt not to waive the requested waivers and variances, prohibiting the sale of alcohol for off-premise consumption at the proposed Convenience Store, generally located at 5135 North Loop 1604 East.

**FISCAL IMPACT:**

None.

**RECOMMENDATION:**

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

1. The distance from the door of the Convenience Store to the door of The Trinity Christian Academy is approximately 1,900 feet.

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

2. The sale of alcohol is for off-premise consumption only.

Should City Council choose to waive the provisions of §4-6(c)(1-3) 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 Convenience Store.
- 2) Alcohol sale will include beer and wine for off-premises consumption only.
- 3) That the authorization for the sale of alcoholic beverages shall not transfer to different land uses or owners.
- 4) 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 months.