



City of San Antonio

Agenda Memorandum

File Number:13-854

Agenda Item Number: 37.

Agenda Date: 11/7/2013

In Control: City Council A Session

DEPARTMENT: Development Services

DEPARTMENT HEAD: Roderick Sanchez

COUNCIL DISTRICTS IMPACTED: Council District 5

SUBJECT:

An ordinance authorizing a variance allowing the sale of alcoholic beverages at 1902 South Flores for on-premise and off-premise consumption within three-hundred (300) feet of Briscoe Academy, San Antonio Independent School District public educational institution located in Council District 5.

SUMMARY:

Consideration of a request for a waiver of the variance criteria listed in Section 4-6(c); Section 4-6(d)(6); and the portion of Section 4-6(e)(1) prohibiting variances for off-premise consumption and request for a variance in accordance with Chapter 4 §4-6(c) of the City Code for 1902, LLC, to sell alcoholic beverages for on-premise and off-premise consumption as a "Micro Distillery" located at 1902 South Flores, within three hundred (300) feet of Briscoe Academy.

Pursuant to Title 4, Chapter 109, Sub-chapter B, §109.33(a)(1) of the Texas Alcoholic Beverage Code (TABC), the sale of alcoholic beverages is prohibited for dealers whose place of business is within three hundred (300) feet of a public or private school as measured in a direct line from the property line of the public or private school to the property line of the place of business. The City of San Antonio adopted this distance requirement in Chapter 4, Article 1, §4-6 of the City Code. The State currently relies on local jurisdictions to enforce the distance requirements and the local regulations comply with the regulations established by TABC. The subject property is situated within three hundred (300) feet of Briscoe Academy.

The applicant has applied for a Type "D" license from the Texas Alcoholic Beverage Code (TABC).

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 distance requirements. §4-6(c) of San Antonio's City Code states the City Council may authorize the sale of alcoholic beverages at a location within three hundred (300) feet of a public school in accordance with the following findings:

- 1) The sale of alcoholic beverages had been permitted within the last two (2) years at the location in question;
- 2) The discontinuance of the sale of alcoholic beverages was not a result of a violation of law;
- 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
- 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.

Should the City Council grant the variance, § 4-6(d)(6) of the City Code requires the applicant submit to the City annual documentation verifying that no more than thirty (30) percent of the establishment's annual gross revenues are generated by the sale of alcoholic beverages.

Should the City Council grant the variance, §4-6(e)(1) of the City Code identifies activities that constitute a violation of any granted variance:

- ~ The sale of alcoholic beverages for off-premise consumption;
- ~ The sale of alcoholic beverages for on-premise consumption that exceeds more than thirty (30) percent of the annual gross revenues of the establishment; or
- ~ To violate any other condition imposed by City Council.

ISSUE:

Currently, the sale of alcoholic beverages at 1902 South Flores 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 requests a variance to allow the sale of alcohol at a proposed micro distillery.

ALTERNATIVES:

The City Council may opt to grant the requested variance by waiving the required findings identified in §4-6(c)(1), §4-6 (d)(6), and the provision in §4-6(e)(1) prohibiting variances for off-premise consumption.

The City Council may deny the variance application, prohibiting the sale of alcohol on the subject property.

FISCAL IMPACT:

None. The applicant has paid the required alcohol variance application fee.

RECOMMENDATION:

The subject property does not satisfy the four variance criteria of §4-6(c), and the variance request involves the sale of alcohol for on-premise and off-premise consumption. Should City Council choose to waive the variance criteria of §4-6(c) and the prohibition of off-premise sales in §4-6 (e)(1), staff recommends approval of the variance request as well as the requested waiver of the annual reporting requirement in §4-6 (d)(6).

Staff recommends the following conditions:

1. That this authorization shall not transfer to different land uses
2. That such authorization shall terminate in the event of non-operation or non-use for a period of twelve or more successive calendar months.

Staff analysis includes the following factors:

1. The property is located along South Flores in an area with a long history of commercial activity. The subject

property is currently being developed as a micro distillery. Due to recent changes in state law, small-scale alcohol manufacturers may now sell a limited amount of their product at the site where the manufacturing occurs.

2. The Briscoe Academy property measures approximately 3 acres in size. The school is located across Flores Street from the subject property. The properties are also separated by railroad tracks.
3. The applicant proposes to limit the hours of alcohol sales on weekdays to not earlier than 4:30 p.m.