



City of San Antonio

Agenda Memorandum

File Number:17-4416

Agenda Item Number: 21.

Agenda Date: 9/7/2017

In Control: City Council A Session

DEPARTMENT: Development Services

DEPARTMENT HEAD: Michael Shannon

COUNCIL DISTRICTS IMPACTED: Council District 8

SUBJECT:

Alcohol Variance Case V2017007

SUMMARY:

Consideration of a request granting a Variance to City Code 4-6(c)(1, 3 and 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 2, Block 110, NCB 16386, located at 23534, 23610, 23702, 23718, and 23814 US IH-10 West for on-premise consumption within three-hundred (300) feet of Leon Springs Elementary School, a public education institution located in Council District 8.

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 previously been sold at this location. The applicant is seeking the first license for multiple prospective tenants.
- 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 not 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.

The applicant would like a variance from this provision to allow alcoholic sales to exceed 30 percent of revenues. The applicant has indicated that sales of alcoholic beverages will be for on-premise consumption.

The TABC authorizes municipalities to establish variance criteria from the provisions of §4-6 (d).

- 1) The applicant shall submit to the city clerk a completed variance request form, certified documentation from the Texas Alcoholic 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), and the variance application fee of one hundred dollars (\$100.00)

The property is currently under construction and a license has not been previously issued for this location.

- 6) The applicant shall on an annual basis submit to the department of building inspections the necessary documentation to verify that no more than thirty (30) percent of the annual gross revenues of the establishment are generated by the sale of alcoholic beverages;

The applicant would like a waiver of this requirement to allow for alcohol sales to exceed 30 percent of revenues.

The TABC authorizes municipalities to establish variance criteria from the provisions of §4-6 (e).

- 1) It shall be a violation of the variance granted by city council to sell alcoholic beverages for off premise consumption; for on premise consumption of alcoholic beverages that exceed more than thirty (30) percent of the annual gross revenues of the establishment, or to violate any other condition imposed by city council.

The applicant would like a waiver of this requirement to allow for alcohol sales to exceed 30 percent of revenues.

ISSUE:

Currently, the sale of alcoholic beverages at 23534, 23610, 23702, 23718, and 23814 US IH-10 West 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 Leon Springs Elementary School, which is accredited and recognized by the Texas Commission of Education.

ALTERNATIVES:

The City may opt not to grant the requested waiver and variances, prohibiting the sale of alcohol for on-premise consumption for multiple future tenants, located at 23534, 23610, 23702, 23718, and 23814 US IH-10 West.

FISCAL IMPACT:

None.

RECOMMENDATION:

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

1. The distance from the parcel of which the multi-tenant establishment will be located to the parcel of

Leon Springs Elementary School is approximately 130 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 on-premise consumption only.

Should City Council choose to waive the provisions of §4-6(c)(1-4), 4-6(d)(1), 4-6(d)(6), and 4-6(e)(1) of the City Code, staff recommends the following conditions:

- 1) Alcohol sales will include beer, wine, and liquor for on-premises consumption only.
- 2) That the authorization for the sale of alcoholic beverages shall not transfer to different land uses or owners.
- 3) 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.
- 4) The hours of operation shall be limited to 6:30AM to 2:00AM, daily.