



# City of San Antonio

## Agenda Memorandum

**File Number:**17-4417

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**Agenda Item Number:** 54.

**Agenda Date:** 9/21/2017

**In Control:** City Council A Session

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**DEPARTMENT:** Development Services

**DEPARTMENT HEAD:** Michael Shannon

**COUNCIL DISTRICTS IMPACTED:** Council District 2

**SUBJECT:**

Alcohol Variance Case AV2017008

**SUMMARY:**

Consideration of a request granting a waiver of Sections 4-6(c)(1 and 3), and a Variance from Section 4-6(d)(6) of the City Code, authorizing the sale of alcoholic beverages on Lot 11, Block 43, NCB 652, located at 915 South Hackberry Street for on-premise consumption within three-hundred (300) feet of Herff Elementary, a public education institution located in Council District 2.

**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 the proposed food service establishment use.*
- 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 has stated that alcohol sales will not exceed 30% of total 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).

- 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.*

### **ISSUE:**

Currently, the sale of alcoholic beverages at 915 South Hackberry 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 Herff 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 at the food service establishment, located at 915 South Hackberry Street.

### **FISCAL IMPACT:**

None.

### **RECOMMENDATION:**

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

1. The distance from the parcel of which the food service establishment will be located to the parcel of Herff Elementary School is approximately 190 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 and 3), and §4-6(d)(6) 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 sales will include beer, wine, and liquor for on-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.
- 5) The hours of operation shall be limited to 4:00PM to 10:00PM, daily.
- 6) The sale of alcohol shall not exceed 30 percent of total revenue.