



# City of San Antonio

## Agenda Memorandum

**File Number:** 14-2604

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**Agenda Item Number:** 23.

**Agenda Date:** 11/6/2014

**In Control:** City Council A Session

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**DEPARTMENT:** Development Services

**DEPARTMENT HEAD:** Roderick Sanchez

**COUNCIL DISTRICTS IMPACTED:** Council District 5

**SUBJECT:**

Alcohol Variance V2014011

**SUMMARY:**

Consideration of a request for a variance in accordance with Chapter 4 of the City Code for MDHR Enterprises, Inc., Applicant, to sell alcoholic beverages at 446 Cupples Road, which is located within three hundred (300) feet of Perales Elementary.

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 Perales Elementary.

**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.

The applicant has not demonstrated that all the required findings of Section 4-6(c) have been met; therefore, a waiver of 4-6(c)(1), 4-6(c)(3) and 4-6(c)(4) has been requested.

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

- 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 for off premise consumption at 446 Cupples Road 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 requested waivers and variance will allow the sale of alcoholic beverages for off-premise consumption at a proposed “Retail - Convenience Store”.

**ALTERNATIVES:**

The City Council may deny the requested waivers and variance, prohibiting the sale of alcohol for off-premise consumption at the proposed “Retail - Convenience Store” located at 446 Cupples Road.

**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). Should City Council choose to waive the provisions of Sections 4-6(c)(1), 4-6(c)(3), 4-6(c)(4) and a portion of 4-6(e)(1), staff recommends approval of the variance with the following conditions:

1. This authorization shall apply only to the proposed “Retail - Convenience Store” and not transfer to different land uses;
2. This 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 subject property is located on Cupples Road between Rocco Street and Merida Street, arterial streets actively developing as a commercial corridor in an area with significant residential development. This arterial supports existing commercial uses, including a retail store, and residential uses.
2. The Perales Elementary School campus, located at 1507 Ceralvo, consists of approximately 12.3 acres. Whereas the subject property lies at the northwest corner of Cupples Road and Ceralvo Street, the elementary school campus is approximately 280 feet from the property line of 446 Cupples Road. However, there is an approximate 850 feet door to door measurement.

All listed distances are approximate and were measured using the City's online zoning map.