



City of San Antonio

Agenda Memorandum

Agenda Date: January 16th, 2025

In Control: City Council

DEPARTMENT: Development Services

DEPARTMENT HEAD: Amin Tohmaz, Interim Director

COUNCIL DISTRICTS IMPACTED: 5

SUBJECT:
ALCOHOL VARIANCE CASE AV-2024-013

SUMMARY:

Consideration of a request granting a Variance to City Code Section 4-6 and waiving the requirements of the City Code and authorizing the sale of alcoholic beverages by AFBA Investment, LLC, operator, and Alrafati Dua, owner on Lot 1, 2, and 3, Block 1, NCB 7120, located at 270 Castroville Road, for off-premises consumption within three-hundred (300) feet of Jubilee Lake View University Preparatory, a public charter education institution.

BACKGROUND INFORMATION:

The operator of this convenience store, “Daniel’s Food Mart”, received a license from the TABC to sell alcoholic beverages for off-premises consumption at this location in 1996. This license expired in February of 2024, and an alcohol variance must be obtained prior to the issuance of a new license.

The Texas Alcoholic Beverage Code Ann. 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 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:

The applicant indicated that the sale of alcoholic beverages for off-premises consumption has been permitted on this property within the last two (2) years.

- 2) The discontinuance of the sale of alcoholic beverages was not a result of a violation of law;

There are no recorded violations of alcohol sales or consumption at the noted property.

- 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

The property at 270 Castroville Road, is located within three hundred (300) feet of the property line of Jubilee Lake View University Preparatory. The applicant has requested a variance from this provision.

- 4) The proposed sale of alcoholic beverages would be for off-premise consumption and constitute no more than thirty (30) percent of the establishment's annual gross revenues.

The sale of alcoholic beverages will not constitute more than thirty (30) percent of annual gross revenues of the convenience store.

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

- 6) Requiring the submission of documentation to verify that no more than thirty (30) percent of the establishment's annual gross revenues are generated by the sale of alcoholic beverages.

a. The responsibility of providing documentation verifying the percentage of the proposed annual gross revenues are generated by the sale of alcoholic beverages is the responsibility of the business owner and is stated as such in this document.

b. No more than thirty (30) percent of the annual gross revenues will be generated by the sale of alcohol and is regulated by the State of Texas for alcohol sales and off-premises consumption of alcohol.

ISSUE:

Currently, the sale of alcoholic beverages at 270 Castroville 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 applicant is requesting a variance to allow the off-premises sale of alcohol within three hundred (300) feet of Jubilee Lake View University Preparatory, a public charter education institution.

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

The proposed convenience store is approximately 72 feet from the existing school property, measured property line to property line in accordance with TABC measurement standards. The properties are separated by the intersection of Castroville Road and Barclay Street.

§4-6(e)(1) includes three activities or actions that would constitute a violation of any granted variance: 1) selling alcoholic beverages for on-premises consumption, 2) selling alcoholic beverages for off-premise consumption of alcoholic beverages that exceed more than thirty (30) percent of the annual gross revenues of the establishment, and 3) violating any other condition imposed by city council.

Alcohol will be sold for off-premises consumption at the convenience store. The application is to sell alcohol as specified by the Texas Alcoholic Beverage Commission (TABC) requirements.

ALTERNATIVES:

The City may opt not to waive the requested waivers and variances, prohibiting the sale of alcohol for on-premises and off-premises consumption at 270 Castroville Road.

FISCAL IMPACT:

None.

RECOMMENDATION: Approval of this request is at the discretion of City Council.

Staff Analysis includes the following findings and factors:

1. The school property is less than 300 feet from the subject property (approximately 72 feet measured property line to property line in accordance with TABC measurement standards).
****All listed distances are approximate and were measured in a straight line between nearest points, using the City's online zoning map.****
2. The door-to-door measurement from the front door of the subject property to the front door of the school is approximately 600 feet.
3. The sale of alcohol is for off-premises consumption.

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

- 1) That the sale of alcoholic beverages is to be limited to the proposed convenience store.
- 2) All alcohol sales are for off-premises consumption (malt beverages and wine).
- 3) The days and hours of operation for alcohol sales are limited to Monday through Friday 7:00a.m. – 12:00a.m., Saturdays 7:00a.m. – 1:00a.m., and Sundays 10:00a.m. – 12:00a.m.
- 4) That the authorization for the sale of alcoholic beverages shall not transfer to different owners or land uses.
- 5) That such authorization shall terminate in the event of non-operation or non-use of the identified establishment for a period of twelve (12) or more successive calendar months.