



City of San Antonio

Agenda Memorandum

Agenda Date: September 21, 2023

In Control: City Council

DEPARTMENT: Development Services

DEPARTMENT HEAD: Michael Shannon

COUNCIL DISTRICTS IMPACTED: 1

SUBJECT:
ALCOHOL VARIANCE CASE AV-2023-016

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 Ricardo Ortiz, Que Chula Sports Cantina, LLC, owner and applicant, on Lot 15, Block 33, NCB 376, at 1503 North Main Avenue for on-premise consumption within three-hundred (300) feet of San Antonio College, public education institution.

BACKGROUND INFORMATION:

This property was formerly Luther's Restaurant and had Alcohol Sales for on-premise consumption. The restaurant closed and is being reopened by a new owner as Que Chula Sports Cantina and the new owner must obtain their own alcohol variance of on-premise consumption of alcohol.

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 there had been on-premise consumption of alcohol, and sales of alcoholic beverages permitted on this property within the last two (2) years (formerly Luther's Restaurant).

- 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 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 1503 North Main Avenue is located within three hundred (300) feet of the property line of San Antonio College. 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 alcohol sales will not exceed 30% of total revenues of the restaurant.

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 on-premise consumption of alcohol.

ISSUE:

Currently, the sale of alcoholic beverages at 1503 North Main Avenue 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 sale of alcohol for on-premise sale of alcohol within three hundred (300) feet of San Antonio College, is recognized by and fully accredited by the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC).

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

The proposed restaurant is approximately 45.1 feet from the existing school property, measured property line to property line in accordance with TABC measurement standards.

§4-6(e)(1) includes three activities or actions that would constitute a violation of any granted variance:

- 1) selling alcoholic beverages for off-premise 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 on-premise consumption. The applicant 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-premise consumption at 1503 North Main Avenue.

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 45.1 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 490 feet.
3. The sale of alcohol is for on-premise consumption.

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) That the sale of alcoholic beverages is to be limited to the Que Chula Sports Cantina Restaurant.
- 2) All alcohol sales are for on-premise consumption (beer, wine and mixed beverage).
- 3) The days and hours of operation for alcohol sales are limited to Monday-Friday 11:00a.m.-2:00a.m. and Saturday and Sunday 10:00a.m.-2:00a.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.