AZJ/mgc
08/07/14
Item No. 29.

AN ORDINANCE 2014-08-07-0546

**WAIVING THE REQUIREMENTS OF SECTIONS 4-6(C), 4-6(D)(6) AND 4-6(E)(1) OF THE CITY CODE AND AUTHORIZING THE SALE OF ALCOHOLIC BEVERAGES AT 2235 THOUSAND OAKS DRIVE SUITE # 105 FOR OFF-PREMISE CONSUMPTION AT A "BEVERAGE RETAIL SALES – LIQUOR STORE" WITHIN THREE-HUNDRED (300) FEET OF THOUSAND OAKS ELEMENTARY, A PUBLIC EDUCATION INSTITUTION IN THE NORTH EAST INDEPENDENT SCHOOL DISTRICT, AND THE FOUNDATION SCHOOL FOR AUTISM (CHARTER SCHOOL), A RESPONSIVE EDUCATION SOLUTIONS PUBLIC EDUCATIONAL INSTITUTION, LOCATED IN COUNCIL DISTRICT 10.**

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**WHEREAS**, Section 109.33 of the Texas Alcoholic Beverage Code authorizes the governing board of an incorporated city to enact regulations prohibiting the sale of alcoholic beverages if the place of business is within three hundred feet of any church, public school or public hospital 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; and

**WHEREAS**, Section 109.33 of the Texas Alcoholic Beverage Code authorizes the governing body of an incorporated city to allow variances to the regulation if the governing body determines that 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 governing board, 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; and

**WHEREAS**, pursuant to Section 109.33 (a) of the Texas Alcoholic Beverage Code, Chapter 4 of the City Code of the City of San Antonio prohibits the sale of alcoholic beverages if the place of business is within three hundred feet of any church, public school or public hospital; and

**WHEREAS**, the subject property is situated within three hundred (300) feet of the nearest property line of Thousand Oaks Elementary, a public educational institution and The Foundation School for Autism (Charter School), a Responsive Education Solutions within the North East Independent School District, thus, making the sale of alcoholic beverages a violation; and

**WHEREAS**, Ordinance No. 88724, passed and approved on October 22, 1998, amended the City Code of the City of San Antonio, Chapter 4, Article I, Sec. 4-6, and established a procedure for the granting of a variance to the prohibition; and

**WHEREAS**, staff recommends any approval of the variance request contain the conditions that 1) the authorization for the sale of alcoholic beverages shall not transfer to different land uses, 2) 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, and 3) the authorization shall apply only to Suite 105; **NOW THEREFORE,**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The requirements of Sections 4-6 (c), 4-6(d)(6) and the portion of 4-6 (e)(1) prohibiting variances for off-premise consumption of the City Code of the City of San Antonio are waived and the variance request of the proposed "Beverage Retail Sales – Liquor Store" located at 2235 Thousand Oaks Drive, Suite 105 for off premise consumption is hereby granted. This variance to sell alcoholic beverages for off premise consumption is based on the following conditions: (a) that this authorization shall not transfer to different land uses; (b) that such authorization shall terminate in the event of non-operation or non-use for a period of twelve or more successive calendar months and (c) the authorization shall apply only to Suite 105.

**SECTION 2.** This Ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

**PASSED AND APPROVED** this 7th day of **August, 2014**.

**M A Y O R**
**Ivy R. Taylor**

**ATTEST:**

**Leticia M. Vacek, City Clerk**

**APPROVED AS TO FORM:**

for **Robert F. Greenblum, City Attorney**

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| **Agenda Item:** | **29** |
| **Date:** | 08/07/2014 |
| **Time:** | 02:19:40 PM |
| **Vote Type:** | Motion to Appr w Cond |
| **Description:** | An Ordinance waiving the requirements of Sections 4-6(c), 4-6(d)(6) and 4-6(e)(1) of the City Code and authorizing the sale of alcoholic beverages at 2235 Thousand Oaks Drive Suite # 105 for off-premise consumption at a "Beverage Retail Sales - Liquor Store" within three-hundred (300) feet of Thousand Oaks Elementary, a public education institution in the North East Independent School District, and The Foundation School for Autism (Charter School), a Responsive Education Solutions public educational institution, located in Council District 10. |
| **Result:** | Passed |

| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
|---|---|---|---|---|---|---|---|
| Ivy Taylor | Mayor | | x | | | | |
| Diego Bernal | District 1 | | x | | | | |
| | District 2 | x | | | | | |
| Rebecca Viagran | District 3 | | x | | | | x |
| Rey Saldaña | District 4 | | x | | | | |
| Shirley Gonzales | District 5 | | x | | | | |
| Ray Lopez | District 6 | | x | | | | |
| | District 7 | x | | | | | |
| Ron Nirenberg | District 8 | | x | | | | |
| Joe Krier | District 9 | | x | | | | |
| Michael Gallagher | District 10 | | x | | | x | |