

# Memorandum



DATE October 30, 2009

TO Members of the Economic Development Committee: Ron Natinsky (Chair), Tennell Atkins (Vice Chair), Jerry R. Allen, Dwaine Caraway, Sheffie Kadane, Ann Margolin, Linda Koop, and Steve Salazar

SUBJECT **Variances to Alcohol Spacing Regulations**

On Monday, November 2, 2009, the Economic Development Committee will be briefed on Variances to Alcohol Spacing Regulations. Briefing material is attached.

Should you have any questions, please contact me at (214) 670-3314.



A.C. Gonzalez  
Assistant City Manager

C: The Honorable Mayor and Members of the City Council  
Mary K. Suhm, City Manager  
Deborah Watkins, City Secretary  
Tom Perkins, City Attorney  
Craig Kinton, City Auditor  
Judge C. Victor Lander, Judiciary  
Ryan S. Evans, First Assistant City Manager  
Jill A. Jordan, P.E., Assistant City Manager  
Forest Turner, Assistant City Manager  
Dave Cook, Chief Financial Officer  
Jeanne Chipperfield, Director, Office of Financial Services  
Karl Zavitkovsky, Director, Office of Economic Development  
Hammond Perot, Assistant Director, Office of Economic Development  
Helena Stevens-Thompson, Assistant to the City Manager

# Variances to alcohol spacing regulations

Briefing to the City Council Economic Development Committee

November 2, 2009



# Background

- The former Lowes property between Haskell and Peak at Capital in CityPlace is being redeveloped with a Kroger. The proposed Kroger is within 300 feet of Spence Middle School.
- Dallas City Code §6-4(g), adopted by Ordinance No. 25465 on December 8, 2003, prohibits the granting of variances.

# Background



# Spacing Regulations

- Alcohol spacing regulations are found at:
  - Texas Alcoholic Beverage Code §109.33, §109.331 and §109.59.
- Alcohol spacing regulations have been adopted in Dallas City Code §6-4.
- Spacing regulations do not apply in the CBD.

# Spacing Regulations

- Sale of alcohol is prohibited within 300 feet of a church, public or private school, or public hospital.
  - Does not apply to the holder of a F&B certificate near private school.
  - Does not apply to liquor store where minors are prohibited from entering near a private school.

# Spacing Regulations

- Sale of alcohol is prohibited within 1,000 feet of certain schools (alcohol-free school zones).
  - Must be initiated by school and created by city council.
  - Does not apply to restaurants (50% on-premise), grocery store (50% off-premise), manufacturers, distributors.
  - Does not apply to caterers license near private school.
  - Does not apply to liquor store where minors are prohibited from entering near private schools.

# Spacing Regulations

- Sale of alcohol is prohibited within 300 feet of a day-care center or child-care facility.
  - Applies only to beer and wine, mixed beverage, private club, retail on-premise license, and brewpub license.
  - Does not apply to the holder of a F&B certificate.
  - Does not apply if the alcohol business and day-care center are on different floors.
  - Does not apply to foster homes.



# Spacing Regulations

- Measurement of spacing
  - Church and hospital: From front door to front door.
  - School, day-care, child-care facilities: From property line to property line. (Except front door to front door for permits issued before 1983.)
  - The city cannot require a different measurement.

# Spacing Regulations

- Grandfathering
  - The alcohol business is grandfathered if it existed before the church, school, hospital, day-care center, or child-care facility.
  - Grandfathering in alcohol-free public school zones can be lost if certain TABC rules are violated.
  - Grandfathering in alcohol-free public school zones is retained only if business is sold to a surviving spouse or child.

# Variations

- Texas Alcoholic Beverage Code 109.33(e) allows the city council to grant variations to spacing regulations if the city council determines that spacing:
  - 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 an alcohol permit;
  - does not serve its intended purpose;
  - is not effective or necessary; or
  - for any other reason that 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.
- Attorney General Opinion No. GA-0120 (2003)
  - Power to grant variations cannot be delegated to a city board.

# Proposed Ordinance

- An application for a variance must include:
  - The name of the property owner.
  - The name and address of the permit applicant.
  - The type of alcohol permit.
  - The name and address of the public or private school.
  - A survey showing the location and distances of the alcohol business and school.
  - A statement of why the variance meets the standards.
  - Any other information the director deems necessary.

# Proposed Ordinance

- Fee.
  - A \$1,200 nonrefundable fee must be paid for an application.

# Proposed Ordinance

- Notification signs
  - Similar to notification requirements for zoning cases.
  - The applicant must post the notification signs.
  - Fee of \$10 per sign.
  - One notification sign for every 500 feet of street frontage. For tracts without street frontage, one notification sign for every five acres. A maximum of five notification signs.
  - Signs must be posted within 14 days after the application.
  - The signs must remain posted until a final decision is made.
  - If signs are not posted, city council can postpone the hearing for four weeks or deny the application. If the hearing is postponed, notification signs must be posted within 24 hours.
  - It is an offense to remove a notification sign.

# Proposed Ordinance

- Hearing.
  - Hearing within 60 days after a complete application.
  - 10 days before the hearing, the director shall:
    - publish notice in the newspaper;
    - provide notice to neighborhood associations for the area; and
    - provide notice to the school.

# Proposed Ordinance

- The city council may, but is not required, to grant variances.
- Standard for approval:
  - must be a wine and beer retailer's off-premise permit;
  - general merchandise or food store use with 50,000 square feet;
  - the front door of the alcohol business does not face the school;
  - the alcohol business is not within 300 feet of the school, measured from front door of alcohol business to property line of the school;
  - alcoholic beverages will not be sold by drive-through service; and
  - the spacing requirements in this 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 an alcohol permit;
    - does not serve its intended purpose;
    - is not effective or necessary; or
    - for any other reason that 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.



# Proposed Ordinance

- Conditions.
  - City council may impose reasonable conditions.
  - City council may require a site plan.
- Renewal and transfer.
  - A variance is valid for renewals of the alcohol permit.
  - A variance may not be transferred to another location or another permit holder.

# Other Cities

- Austin
  - Code does not mention variances.
  - Has not granted any variances in the last 5 years.
- El Paso
  - Code does not mention variances.
  - Has not granted any variances in the last 5 years.
- Fort Worth
  - Code does not mention variances.
  - Has granted 5 variances in the last 5 years.
- Houston
  - Code does not mention variances.
  - Has granted several variances in the past, but none recently.
- San Antonio
  - Code does not mention variances.
  - Has not granted any variances in the last 5 years.

- Questions

ORDINANCE NO. \_\_\_\_\_

An ordinance amending Chapter 6, "Alcoholic Beverages," of the Dallas City Code, as amended; establishing procedures for requests for variances from the distance requirements for alcohol licenses and alcohol permits; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city council, in accordance with the Charter of the City of Dallas, the state law, and the ordinances of the City of Dallas, has given the required notices and has held the required public hearings regarding this amendment to the Dallas City Code; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Subsection (g) of Section 6-4, "Dealers Located Near Churches, Schools, and Hospitals," of Chapter 6, "Alcoholic Beverages," of the Dallas City Code, as amended, is amended to read as follows:

"(g) Variances. The procedures of this subsection must be followed to process and grant an application for a variance to the spacing requirements from a public or private school of Subsection (a) pursuant to Texas Alcoholic Beverage Code Section 109.33(e).

(1) Application. An applicant for a variance shall submit the following information to the director of the department of sustainable development and construction:

(A) The name of the owner of the property where the alcohol business will be located.

(B) The name and address of the applicant for the alcohol permit.

(C) The type of alcohol permit to be applied for.

(D) The name and address of the public or private school that creates the need for the variance.

(E) A survey showing the location and distances of the business where alcohol will be sold, the front door of the business where alcohol will be sold, the location of the public or private school, and the front door of the public or private school.

(F) A statement of why the variance meets the standard of Subparagraph (5)(F).

(G) Any other information the director of the department of sustainable development and construction deems necessary.

(2) Fee. A nonrefundable fee of \$1,200 must be paid to the director of sustainable development and construction when the application for a variance is filed.

(3) Notification signs.

(A) Signs required to be obtained from the city. An applicant is responsible for obtaining the required number of notification signs and posting them on the property that is the subject of the application. Notification signs must be obtained from the director of the department of sustainable development and construction or the building official. An application will not be processed until the fee of \$10 per sign has been paid.

(B) Number of signs required. A minimum of one notification sign is required for every 500 feet or less of street frontage, with one additional notification sign required for each additional 500 feet or less of street frontage. For tracts without street frontage, a minimum of one notification sign is required for every five acres or less, with one additional notification sign required for each additional five acres or less. A maximum of five notification signs are required.

(C) Posting of signs. The applicant shall post the required number of notification signs on the alcoholic beverage premises, as defined in Texas Alcoholic Beverage Code Section 11.49, within 14 days after an application is filed. The signs must be legible and remain posted until a final decision is made on the application. For tracts with street frontage, signs must be evenly spaced over the length of every street frontage, posted at a prominent location adjacent to a public street, and be easily visible from the street. For tracts without street frontage, signs must be evenly posted in prominent locations most visible to the public.

(D) Failure to comply. If the city council determines that the applicant has failed to comply with the provisions of this subsection, it shall take no action on the application other than to postpone the public hearing for at least four weeks or deny the applicant's request. If the hearing is postponed, the required notification signs must be posted within 24 hours after the case is postponed and comply with all other requirements of this subsection.

(E) Illegal removal of signs. A person commits an offense if he intentionally or knowingly removes a notification sign that has been posted pursuant to this subsection. It is a defense to prosecution under this subsection that the sign was no longer required to be posted pursuant to this subsection at the time of its removal.

(4) Hearing. The director of the department of sustainable development and construction shall set a date for a public hearing before the city council within 60 days after a complete application is filed. Not less than 10 days before the public hearing, the director of the department of sustainable development and construction shall:

(A) publish notice of the public hearing in a newspaper of general circulation;

(B) provide notice of the public hearing to all neighborhood associations registered with the department of sustainable development and construction to receive zoning notices for the area in which the alcoholic beverage premises, as defined in Texas Alcoholic Beverage Code Section 11.49, is located; and

(C) provide notice of the public hearing to the public or private school that creates the need for the variance.

(5) Standard for approval. The city council may, but is not required, to allow variances to the spacing requirements of Subsection (a) if the city council finds that:

(A) the application is for a wine and beer retailer's off-premise permit pursuant to Texas Alcoholic Beverage Code Chapter 26;

(B) the application is for a general merchandise or food store use with 50,000 square feet or more of floor area;

(C) the front door of the business where alcoholic beverages will be sold does not face the property of a public or private school;

(D) the business where alcoholic beverages will be sold is not within 300 feet of a public or private school, measured between the front door of the business where alcoholic beverages will be sold and the closest property line of the public or private school along property lines of the street fronts and in a direct line across intersections;

(E) alcoholic beverages will not be sold by drive-in or drive-through service; and

(F) enforcement of the spacing requirements in this particular instance:

(i) is not in the best interest of the public;

(ii) constitutes waste or inefficient use of land or other resources;

(iii) creates an undue hardship on an applicant for an alcohol permit;

(iv) does not serve its intended purpose;

(v) is not effective or necessary; or

(vi) for any other reason that 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.

(6) Conditions. City council may impose reasonable conditions on the granting of a variance and may require development pursuant to a site plan.

(7) Renewal and transfer. A variance granted pursuant to this subsection is valid for subsequent renewals of the alcohol license or alcohol permit. A variance granted pursuant to this subsection may not be transferred to another location or to another alcohol permit holder.

~~[Notwithstanding the authority granted under Section 109.33(e) of the Texas Alcoholic Beverage Code, the city shall not grant any variances to the distance requirements of Subsection (a) of this section.]”~~

SECTION 2. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$500.

SECTION 3. That Chapter 6 of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance.

SECTION 4. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 5. That this ordinance will take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By \_\_\_\_\_  
Assistant City Attorney

Passed \_\_\_\_\_