

CITY OF SAN ANTONIO
DEVELOPMENT SERVICES DEPARTMENT
P.O. BOX 839966 | SAN ANTONIO TEXAS 78283-3966



TO: Development Services Customers

SUBJECT: **INFORMATION BULLETIN 168**

- City of San Antonio's role in the Texas Alcoholic Beverage Commission Applications
- Distance requirement variance procedures

DATE: October 21, 2009, *Revised December 23, 2009/July 1, 2011/
August 1, 2014/October 21, 2015*

CREATED BY: Plan Review Division

Purpose:

As a customer service initiative, the Development Services Department (DSD) created this **revised** bulletin to update Information Bulletin (IB) 168 on the City of San Antonio's role in the Texas alcoholic beverage commission applications and distance requirement variance procedures. This bulletin has been updated to include the new variance application fee for FY 2016.

Scope:

Though alcohol distance requirements have existed since the year 1935, the Department is aware that there are many questions about the certificate of occupancy and variance process. Therefore, the Development Services Department has developed this Information Bulletin to describe and clarify the procedures for obtaining the Certificate of City Secretary on the Texas Alcoholic Beverage Commission's Prequalification as well as the procedures to request a variance from the alcohol distance requirements. These alcohol sales procedures do not include authorization to permit live entertainment as defined in UDC Section 35-A101 nor as established in the permitted use tables of Article III of the UDC.

1. Distance Criteria:

The alcohol sales distance criteria adopted by the City of San Antonio is established by §4-6 of the City Code, which is attached to this Information Bulletin for reference. State

law authorizes municipalities to elect to adopt a 300-foot spacing requirement or a 1,000 foot spacing criteria for the sale of alcoholic beverages from churches, schools and hospitals. The City of San Antonio adopted the 300 feet option in 1977. When a spacing requirement is adopted, the methodology to measure such distances is determined by the State of Texas and the City has no discretion to depart from such methodology.

2. Measurement Methodology:

§109.33 (b) of the Texas Alcoholic Beverage Code prescribes the following method to calculate the required 300 foot distance as follows:

(b) The measurement of the distance between the place of business where alcoholic beverages are sold and the church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections. The measurement of the distance between the place of business where alcoholic beverages are sold and the public or private school shall be:

- (1) in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections; or*
- (2) if the permit or license holder is located on or above the fifth story of a multistory building, in a direct line from the property line of the public or private school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the permit or license holder is located.*

As indicated above, the state law requires measurement of the distance from the front door of a church or public hospital to the front door of the proposed alcohol-sales establishment along the street front.

- **If on the same side of the street**, measurement continues along the along street frontage to a point perpendicular to the front door of the church or public hospital, and then from the street frontage to the front door of the church or public hospital.



- **If a street has to be crossed**, then measurement continues from the street front point that is perpendicular to the front door of the establishment to the nearest intersection, across that intersection in a straight line and then back along the street frontage to a point perpendicular to the front door of the church or public hospital and then from that point to the church or hospital's front door.

Illustration on next page



From the alcohol sales establishment to a school, the calculation is a simple property-line to property line measurement, without respect to the location of the door or the path of

travel. The illustration below uses Fenwick Elementary School as an example, with the buffer line indicating properties located within 300 feet of the school.



3. Exceptions to the Distance Requirement:

In cases where a proposed establishment is unable to comply with the 300-foot distance criteria, the following avenues are available to applicants seeking to conduct alcohol sales:

- A. **Public Hospitals and Churches.** Upon written consent of a public hospital or church, the distance criteria may be waived in accordance with §4-6(a)(3). This written consent shall include authorization of the property owner of the church or public hospital as well as the administrator or official officer of the institution subject to the variance from the distance criteria. If the requestor is unable to obtain the written consent of the public hospital or church, the City of San Antonio cannot permit alcohol sales at the subject location.

- B. **Schools.** In the case of schools, as defined by §4-1, only the City Council of San Antonio may authorize the sale of alcoholic beverages at a location within 300 feet through a variance in accordance with §4-6 (c). To support a variance the City Council must make *all* of the following four 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 table below provides a summary of the distance calculation methodology and the exception process.

Summary of Distance Criteria and Exceptions

<i>Land Use</i>	<i>Method of Measurement</i>	<i>Exception Process</i>
Church or Public Hospital*	Door to Door. 300 feet measured along the property lines of the street fronts and from front door to front door, and in direct line across intersections	Only upon authorization of the property owner of the church or hospital as well as the administrator or official officer of the institution
Public or Private School	Property line to property line. 300 feet in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections	Only upon City Council granting a variance from the distance pursuant to §4-6

**Examples of public hospitals include the University Health System, the VA, the State Hospital and other local, state or federal institutions that meet the definition of hospital in §4-1 of City Code.*

4. Variance Process:

A. Submittal requirements

A request for a variance to sell alcohol within 300 feet of a school shall be made by submitting a completed application form to the City Clerk containing the following information, at a minimum:

1. Name of the requestor,
2. Name and property location of the business subject to the request,
3. Notarized authorization of the property owner consenting to the variance request,
4. Description of the use requiring the variance (i.e. bar, tavern, restaurant, retail grocery, convenience store, etc),
5. Justification for the variance based on the four criteria listed in §4-6(c). If the requestor would like a waiver of any of the four variance criteria in §4-6(c) a detailed justification shall be provided that explains the basis for waiving any of the four criteria.
6. Certified documentation from the Texas Alcoholic Beverage Commission establishing that an alcoholic beverage license had been issued for the location

where the variance is sought and that the date of expiration of the license was less than two years before the date of the variance request or a detailed justification explaining the basis for waiving the requirement of the applicant to submit such documentation, and

7. The nonrefundable variance application fee. The adopted fee for FY2016 is three hundred dollars (\$300.00); the city's fee schedule may change from time to time.

The City Clerk is located on the 2nd Floor of City Hall. Applications by mail may be submitted to P.O. Box 839966; San Antonio, TX 78283-3966. The Development Services Department will perform a completeness review of the application. Staff will not schedule the request for variance for consideration by the City Council until receipt of all items listed above. A copy of the application form is attached to this Information Bulletin.

B. City Council Consideration

Upon receipt of all required items, the variance will be scheduled a minimum of 30 days later for action by the City Council. Requests for alcohol distance variances will be included on the zoning portion of the City Council agenda which is typically "time certain" at 2:00pm on the first and third Thursday of most months.

The affected school facility and school district will be notified of the request for a variance. Citizens may choose to speak at the City Council meeting expressing their support or opposition of the variance request. To facilitate public involvement in the process applicants are encouraged to dialogue with neighboring property owners, occupant tenants, as well as the nearest registered neighborhood association. A map of registered neighborhood associations and a listing of current neighborhood association contacts can be located on the Planning & Community Development Department website at <http://www.sanantonio.gov/Planning/PlanningUrbanDesign/NeighborhoodAssociations.aspx>.

A six-member majority of the eleven member City Council members must affirmatively support the applicant's request in order for the variance to be approved.

5. Certificate of Occupancy Procedures:

A certificate of occupancy permitting alcohol sales is required. A new permit application for a Certificate of Occupancy will be required for an existing building if the existing Certificate of Occupancy does not include alcohol sales. If you need a new Certificate of Occupancy, please submit your application to the One Stop Counter at the Cliff Morton Development & Business Services Center located at 1901 South Alamo Street, San Antonio, Texas 78204 *after* your application to sell alcohol has been approved by the Texas Alcohol Beverage Commission. The following items are required to complete the application process:

- A. Applicants shall submit a certified survey map of the property prepared by a licensed Texas surveyor or state licensed engineer that shows the minimum distances from properties with schools, public hospitals or churches.

- B. Applicants shall complete and submit the attached affidavit stating that they are aware of the locational requirements relating to businesses selling alcohol and affirms that any violations may result in suspension and/or revocation of their certificate of occupancy. Said locational requirements also are attached to this Information Bulletin. In addition, if the owner of the property is not the applicant, the owner will need to complete and sign the Authorization by Property Owner that is on page 2 of the affidavit.
- C. If applicable, the applicant shall also furnish either the written consent of a public hospital or church as specified in section 3A above or the a copy of the City Council ordinance approving the variance in accordance with section 3B above.
- D. Approved Texas Alcohol Beverage Commission license.

6. Annual Reporting Requirement:

In cases where the City Council has approved a variance for alcohol sales within 300 feet of a school, the applicant shall provide an annual report to the Development Services Department with supporting documentation to verify that no more than thirty percent (30%) of the establishment's annual gross revenues are generated by the sale of alcoholic beverages in accordance with §4-6(d)(6). The report shall be filed with the Customer Service staff and linked to the property records.

No annual report is required for properties within the 300-foot distance criteria for public hospitals and churches.

7. Summary:

This information bulletin has been prepared as a courtesy to assist customers who wish to establish alcohol sales. Authorization to conduct alcohol sales does not include live entertainment as defined in UDC Section 35-A101. Notwithstanding the guidance provided in this document, the regulations of the State of Texas and City of San Antonio shall apply in all cases. If you have any questions regarding this Information Bulletin, please call (210) 207-1111.

This Information Bulletin is for informational purposes only.

Prepared by: Michael Dice, Development Services Manager

Reviewed by: Michael Dice, Development Services Manager

Authorized by: Terry Kannawin, Assistant Director

Excerpts from Chapter Section 4 of the City Code of San Antonio

Sec. 4-1. Definitions in this chapter.

In this chapter:

Alcoholic beverage means alcohol and any beverage containing more than one-half of one (1) percent of alcohol by volume which is capable of use for beverage purposes, either alone or when diluted.

School means any public or private institution of learning (kindergarten, elementary school, middle school, junior high school, high school, college or university), not operated for profit, with an accreditation recognized by the commissioner of education.

Hospital means an institution providing health services, primarily for in-patients, and medical or surgical care of the sick or injured, including as an integral part of the institution, such related facilities as laboratories, out-patient departments, training facilities, central service facilities and staff offices.

Sec. 4-2. Alcoholic beverage code adopted.

There is hereby adopted the V.T.C.A. Alcoholic Beverage Code, which code is made a part of this article by reference for all purposes as though fully set out herein.

Sec. 4-3. No vested right conferred; conflict with law not authorized.

The sale of alcoholic beverages is a privilege and this chapter is not intended to give any person a vested right to engage in such business nor is such chapter intended to be in conflict in any manner with the provisions of the Texas Alcoholic Beverage Code.

Sec. 4-6. Distances from church, school or hospital.

(a) *Exceptions to minimum distance requirement.* No alcoholic beverages shall be sold for consumption on or off the premises where sold, when such premises are located within three hundred (300) feet of any church, school or hospital, the measurements to be made in the manner prescribed by [V.T.C.A., Alcoholic Beverage Code, 109.33\(b\)](#), provided this section shall not apply:

- (1) Where the premises for which application is made was being used for the sale of alcoholic beverages for off premises consumption at the time the school, church or hospital was established and such use has been continuous to the date of application; or
- (2) Where the premises for which application is made was being used for the sale of beer or wine for on-premises consumption at the time the school, church or hospital was established and such use has been continuous to the date of application; and
- (3) Where the premises is a church or hospital and the applicant for a beer or wine license is the church or hospital on said premises, or where the applicant has the approval of the church or hospital in writing.

(b) *Method of measurement.* As to any dealer who held a license or permit before September 1, 1983, in a location where a regulation under this section was in effect on that date, for purposes of subsection (a), the measurement of the distance between the place of business or the dealer and the school shall be along the property lines or the street fronts and from front door to front door, and in a direct line across intersections. This subsection applies only as long as the place of business is continuously in operation from that date, whether or not under the same license or permit.

(c) *Variance.* City council may authorize the sale of alcoholic beverages at a location within three hundred (300) feet of a public school, as that distance is determined by the manner of measurement prescribed by V.T.C.A. Alcoholic Beverage Code § 109.33(b), and in effect at the time that such authorization is sought provided that city council makes findings as follows:

- (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.

(d) *Variance procedure.*

- (1) The applicant shall submit to the city clerk a completed variance request form, certified documentation from the Texas Alcoholic Beverage Commission (establishing that an alcoholic beverage license had been issued for the location where the variance is sought and that the date of expiration of the license was less than two years before the date of the variance request), and the variance application fee of three hundred dollars (\$300.00);
- (2) The city clerk shall set the variance for hearing on the first available city council agenda after the passage of thirty (30) days from the date the request is received;
- (3) The city clerk shall forward copies of the variance application and supporting documentation to the director of building inspections who shall make a recommendation to city council regarding the variance request;
- (4) Not later than ten (10) days prior to the date of the hearing, the director of building inspections may send written notice of the variance request to the affected public school;
- (5) If at the conclusion of the public hearing the city council makes affirmative findings, as provided in subsection (c), a variance may be granted; provided that city council may, with the consent of the applicant, place additional conditions on the variance, where such conditions are in the public interest; and
- (6) If the council approves the variance request, the applicant shall on an annual basis submit to the department of building inspections the necessary 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.

(e) *Variance violation.*

- (1) It shall be a violation of the variance granted by city council to sell alcoholic beverages for off premise consumption; for on premise consumption of alcoholic beverages that exceed more than thirty (30) percent of the annual gross revenues of the establishment, or to violate any other condition imposed by city council.
- (2) The director of building inspections may request the city attorney to seek any and all remedies available at law and or equity to assure the conditions imposed on the granting of the variance are enforced, including the discontinuance of the sale of alcoholic beverages.

Sec. 4-7. Certificate authorizing continued sales.

The director of building inspections is hereby directed to issue proper certificates to authorize the continued sale of alcoholic beverages on those premises which were lawfully devoted to such use prior to the zoning ordinance affecting such location or the annexation of the affected location.



**AFFIDAVIT IN SUPPORT OF TEXAS ALCOHOLIC BEVERAGE COMMISSION
PREQUALIFICATION PACKAGE**

Address of Proposed Business (the Property):

By my signature below, I acknowledge that I am aware of the locational requirements related to the sale of alcoholic beverages as specified in Section 4 of the City Code of San Antonio. I further affirm that violations may result in suspension and/or revocation of this certificate of occupancy.

I hereby submit a certified survey map prepared by a state licensed surveyor or state licensed engineer that shows the required minimum distances from properties with protected uses or protected zoning. Said survey map shows the sale of alcoholic beverages on the Property meets the locational requirements of Section 4 of the City Code of San Antonio.

Applicant Signature

Date

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

Before me, the undersign authority, on this day personally appeared _____, the affiant who, after being duly sworn on oath, deposed and states the facts herein set forth are true and correct.

Sworn to and subscribed before me on this the _____ day of _____, 20__.

NOTARY PUBLIC, STATE OF TEXAS

Authorization by Property Owner
(Required if Applicant is not the owner of the subject property)

I, _____, swear and affirm that I am the owner of the
(Property Owner's Name)

Property at _____, San Antonio, Texas.
(Property Address)

As the owner of the property, I give _____ permission to submit all
(Applicant's Name)

necessary documentation in support of Texas Alcoholic Beverage Commission's

Prequalification Package and to serve as my representative for this request. I further affirm that

any violations may result in suspension and/or revocation of this certificate of occupancy.

Property Owner Signature (and title, if
Signing for a Partnership, Corporation or Trust)

Date

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

Before me, the undersigned authority, on this day personally appeared _____, the affiant who, after being duly sworn on oath, deposed and states the facts herein set forth are true and correct.

Sworn to and subscribed before me on this the _____ day of _____, 20____.

NOTARY PUBLIC, STATE OF TEXAS



CITY OF SAN ANTONIO
DEVELOPMENT SERVICES DEPARTMENT
P.O. BOX 839966 | SAN ANTONIO TEXAS 78283-3966



**APPLICATION FOR A VARIANCE FROM THE MINIMUM
DISTANCE REGULATIONS
RELATED TO THE SALE OF ALCOHOLIC BEVERAGES**

*(Applicable to Chapter 4—Alcoholic Beverages
in the City of San Antonio Code of Ordinances)*

Applications shall be submitted to:

The Office of the City Clerk
2nd Floor of City Hall
100 Military Plaza (78205)

Or by mail to:

The Office of the City Clerk
P.O. Box 839966
San Antonio, TX 78283-3966

**SUBMISSION OF THIS APPLICATION AND SUPPORTING
DOCUMENTATION DOES NOT IM- PLY APPROVAL OF THE USE. A
DETERMINATION BY THE CITY COUNCIL WILL BE MADE BASED
ON THE INFORMATION PROVIDED BY THE APPLICANT AND/OR
OTHER RE- SOURCES. FAILURE TO PROVIDE ANY ADDITIONAL
INFORMATION REQUESTED BY CITY STAFF MAY RESULT IN THE
DELAY/REJECTION OF THIS APPLICATION AND NO RE- FUND
SHALL BE GRANTED.**

Application Instructions

This informational page is designed to provide general information about completing the attached application; this information should not be considered legal advice. If you have any questions, or do not understand these instructions, you are encouraged to seek help from a qualified attorney or land use planning expert.

Section 4-6 of City Code includes distance requirements intended to ensure compatible development that is sensitive to churches, schools and hospitals. The regulations outline four criteria that must be met in order for City Council to grant a variance from the distance requirement. The City Council will utilize the criteria below to judge the validity of the variance request.

- (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.

A detailed statement explaining the request and how it conforms to the criteria below is required as part of this application. The burden of proving that the request meets the four conditions is solely the responsibility of the applicant. Additional evidence supporting the request may be submitted along with this application. Failure to attach the required justification statement will result in the application being deemed incomplete. Incomplete applications will not be processed, and will be returned to the applicant without being scheduled for, or considered by, the City Council.

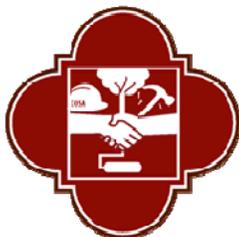
If you do not believe that your request can meet these requirements, you may request a waiver from these criteria. The waiver request and explanation must be explicitly stated in the required justification statement.

Applications may be submitted by mail, but will be subject to a completeness review. Incomplete applications and fees will be returned by mail to the applicant in accordance with City's cash-handling policy.

Submittal Requirements

A request for a variance to sell alcohol within 300 feet of a school shall be made by submitting a completed application to the Office of the City Clerk. Applications must contain the following minimum information to be deemed complete:

- (1) The attached application, including
 - all property and business information
 - statement of variance request
 - notarized applicant signature
 - contact information for property owner, applicant and authorized representative (if applicable)
- (2) Statement of Justification for the variance based on the four criteria listed in §4-6(c). If the request includes a waiver of any of the four variance criteria in §4-6(c), a detailed justification shall be provided that explains the basis for a waiver,
- (3) Certified documentation from the Texas Alcoholic Beverage Commission establishing that an alcoholic beverage license had been issued for the location where the variance is sought and that the date of expiration of the license was less than two years before the date of the variance request or a detailed justification explaining the basis for waiving the requirement of the applicant to submit such documentation, and
- (4) The nonrefundable variance application fee of three hundred dollars (\$300.00).



**Application for a Variance from the Minimum
Distance Regulations Related to the Sale of
Alcoholic Beverages** (Section 4-6 of the Code of
Ordinances)

TO THE HONORABLE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

Property Details

Lot No.: _____ City Council District: _____

Block No.: _____ Property Address: _____

NCB: _____ Zoning: _____

Name of School(s) located within 300 feet of the subject property: _____

Proposed Use: _____

Proposed Hours of Alcohol Sales: _____

_____ On-Premises Consumption _____ Off-Premises Consumption

**The applicant, _____, requests from the City Council of the City of
San Antonio, the variance or waiver detailed below (include the exact measurements in question and an
explanation of how measurements were determined; may submit survey or other supporting documents)**

**Attach a detailed statement explaining the request and how it conforms to the criteria listed below.
Requests must conform to all four criteria in order for City Council to grant the variance.**

- (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.

If the request does not meet these requirements, you may request a waiver from the criteria. In order to have a waiver considered, the above variance request explanation and the attached statement of justification must explicitly include the waivers being requested.

DECLARATIONS

Name _____ **of** _____ **Property** _____ **Owner:** _____

_____ Mailing

address: _____

Telephone (day-time) _____ Email: _____

Name of Applicant: _____ Status: Owner () Agent ()

Mailing Address: _____

Telephone (day-time) _____ Email: _____

Name of Representative: _____

Mailing address: _____

AUTHORIZATION BY PROPERTY OWNER(S)

I, _____, the owner of the property to be considered,
(Property Owner's Printed Name)

hereby authorize _____ to file this request for a variance
(Applicant's Printed Name)

from the requirements of Chapter 4, Section 4-6 of the City of San Antonio Code of Ordinances.

I authorize _____ to serve as my representative in this variance request before the City of
(Representative's Printed Name)

San Antonio City Council.

Property Owner Signature

Date

I have read, examined, and completed this application; and know the information provided to be true and correct. I hereby apply for a variance from the distance requirements in Chapter 4, Section 4-6 of the City of San Antonio Code of Ordinances. I understand that this application, including all submitted documentation, are public information and can be made available through an Open Records Request per the Texas Public Information Act (Texas Government Code, Chapter 552).

Applicant's Printed Name

Applicant Signature

Date

Title

Sworn to and subscribed before me by _____ on this _____ day
of _____ in the year _____, to certify which witness my hand and seal of office.

Notary Public in and for the State of Texas

OFFICE USE ONLY

Case No. _____ HANSEN No. _____

Assigned Planner _____