

Memorandum



CITY OF DALLAS

DATE January 3, 2013

TO Members of the Economic Development Committee:
Tennell Atkins (Chair), Rick Callahan (Vice Chair), Scott Griggs, Adam Medrano, Jerry R. Allen, and Lee Kleinman

SUBJECT Amendments to Variances to Alcohol Spacing Requirements

On Monday, January 6, 2014, the Economic Development Committee will be briefed on possible amendments to the standards for variances to alcohol spacing requirements in Chapter 6 of the City Code. The briefing material is attached for your review.

Please feel free to contact me if you need additional information.

A handwritten signature in black ink, appearing to read 'Theresa O'Donnell'.

Theresa O'Donnell
Interim Assistant City Manager

c: The Honorable Mayor and Members of the City Council
A.C. Gonzalez, Interim City Manager
Rosa Rios, City Secretary
Warren M.S. Ernst, City Attorney
Judge Daniel Solis, Administrative Judge
Craig Kinton, City Auditor
Frank Libro, Public Information Officer
Ryan S. Evans, Interim 1st Assistant City Manager
Forest E. Turner, Assistant City Manager
Jill A. Jordan, P.E., Assistant City Manager
Joey Zapata, Assistant City Manager
Charles M. Cato, Interim Assistant City Manager
David Cossum, Director, Sustainable Development and Construction
Jeanne Chipperfield, Chief Financial Officer
Elsa Cantu, Assistant to the City Manager – Council Office

Amendments to Variances to Alcohol Spacing Requirements

Chapter 6, Alcoholic Beverages

City Council
Economic Development Committee
January 6, 2014



Background

Alcohol-based Zoning Uses

- Dallas has three alcohol-based zoning uses:
 - Alcoholic beverage establishment, which has three subuses:
 - Bar, lounge, tavern
 - Microbrewery, microdistillery, or winery
 - Private-club bar
 - Liquor store
 - Alcoholic beverage manufacturing
- Other zoning uses can have alcohol permits, typically:
 - General merchandise or food store (grocery store, convenience store)
 - Restaurant

Background

Wet Areas

- Dallas now has two wet areas:
 - The historic fully-wet area (northwest Dallas, Downtown, east Dallas, South Dallas) allows all types of alcohol permits.
 - The local option election on November 2, 2010 created a newly wet area (North Dallas, Oak Cliff, Far South Dallas) that allows:
 - Beer and wine for off-premise consumption (grocery stores, convenience stores, liquor stores that sell only beer or wine)
 - Mixed beverages (beer, wine, cocktails) in restaurants with a food and beverage certificate
 - Alcohol manufacturing (brewery, winery, distillery) is allowed in any area that is wet for the sale of that type of alcohol.

Background

Spacing Regulations

- Texas Alcoholic Beverage Code (TABC) 109.33(a) authorizes the City Council to adopt alcohol spacing regulations.
- Dallas City Code 6-4(a) adopts the TABC spacing requirements.
 - Cities are pre-empted from regulating alcohol, except as allowed by the TABC, so our spacing requirements must match the TABC.
 - Section 6-4(a) requires that alcohol businesses be spaced at least 300 feet from churches, public or private schools, public hospitals, day-care centers, and child-care facilities, and spaced 1,000 feet from designated public or private schools.
- TABC Section 109.33(e) allows the City Council to grant variances from these spacing requirements.

Background

Evolution of the Variance Ordinance

- Ordinance No. 25465 (December 8, 2003)
 - Prohibited any variances from the spacing regulations.
- Ordinance No. 27747 (November 9, 2009)
 - Allowed variances only for grocery store with 50,000 square feet of floor area and a BQ wine and beer retailer's off-premise permit.
- Ordinance No. 28444 (October 26, 2011)
 - Reduced floor area for grocery stores from 50,000 square feet to 30,000 square feet.
 - Also allowed variance for:
 - BG wine and beer retailer's permit with a food and beverage certificate
 - MB mixed beverage permit with a food and beverage certificate
 - Restaurant without drive-through

Background

Evolution of the Variance Ordinance (con't)

- Ordinance No. 28565 (February 22, 2012)
 - Exempted Deep Ellum from the alcohol spacing regulations
- Ordinance No. 28799 (September 26, 2012)
 - Reduced floor area for grocery stores from 30,000 square feet to 10,000 square feet
 - Deleted the requirement that the front door of the alcohol business not face the protected use

Background

Current Standards for a Variance

- The application must be for a:
 - wine and beer retailer's permit pursuant to Chapter 25 of the TABC with a food and beverage certificate;
 - wine and beer retailer's off-premise permit pursuant to Chapter 26 of the TABC; or
 - mixed beverage permit pursuant to Chapter 28 of the TABC with a food and beverage certificate,

Background

Current Standards for a Variance (con't)

- The application must be for one of the following uses as defined in the Dallas Development Code:
 - a general merchandise or food store with 10,000 square feet or more of floor area; or
 - a restaurant without drive-in or drive-through service
- Alcoholic beverages may not be sold by drive-in or drive-through service.

Background

Current Standards for a Variance (con't)

- City Council must find that enforcement of 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;

Background

Current Standards for a Variance (con't)

- City Council must find that enforcement of the spacing requirements in this particular instance:
 - 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

Background

Current Standards for a Variance (con't)

- City Council may impose reasonable conditions on the variance.
- A variance is valid for subsequent renewals of the alcohol permit.
- The variance may not be transferred to another location or to another alcohol permit holder.

Background

Variance Applications Processed

- To date, staff has received a total of 21 variance applications.
 - 11 applications were approved for general merchandise or food stores.
 - 6 applications were approved for restaurants.
 - 2 applications are pending January City Council hearings for general merchandise or food stores.
 - 2 general merchandise or food store applications were withdrawn.

Variance Application Process

- The application fee is \$1,200.
- Notification signs must be posted on the property within 14 days after the application is submitted.
- Not less than 10 days before the city council hearing, the director must:
 - publish notice in the newspaper;
 - send notice to neighborhood associations in the area (via email to the department's early notification list); and
 - send notice to the protected use

House Bill 2818

- HB 2818 became effective September 1, 2013.
- Allows the following permits in an area that has the wet-dry status of Dallas' newly wet area if the permit holder also has a food and beverage certificate:
 - BG wine and beer retailer's permit (TABC Chapter 25)
 - Currently eligible for variances
 - BE retail dealer's on-premise license (TABC Chapter 69)
 - Currently not eligible for variances
 - BL retail dealer's on-premise late hours license (TABC Chapter 70)
 - Currently not eligible for variances

Breweries, Distilleries, and Wineries

- Ordinance No. 28700 (June 27, 2012) created a new “microbrewery, microdistillery, or winery” sub-use for facilities 10,000 square feet or less.
 - Allowed in Industrial zoning districts with RAR
 - Allowed in CR, RR, CS, Central Area, Mixed-Use, Urban Corridor, and Walkable Urban Mixed-Use zoning districts only by SUP
- Ordinance No. 28700 also created a new use, “alcoholic beverage manufacturing,” for facilities greater than 10,000 square feet.
 - Allowed in Industrial zoning districts with RAR
 - Allowed in Central Area districts only by SUP
- Currently, any size brewery, distillery, or winery cannot apply for a variance from the alcohol spacing requirements.

Purpose of Briefing

- Determine if City Council wants to add the permits addressed in HB 2818 to be eligible for applying for an alcohol variance.
- Determine if City Council wants to add alcoholic beverage manufacturing permits to be eligible for applying for an alcohol variance.
 - An inquiry was received for a proposed brewery located within 300 feet of an open-enrollment charter school.

Code Amendment Options

1. Amend the spacing requirements to allow variances for the permits allowed by HB 2818.
2. Amend the spacing requirements to allow variances for breweries, distilleries, or wineries.
3. Amend the spacing requirements to allow for variances for any kind of alcohol permit, and let City Council evaluate applications on a case-by-case basis.

Next Steps

- Schedule for City Council consideration