

CITY of ALBUQUERQUE

TWENTY-FIRST COUNCIL

COUNCIL BILL NO. O-15-41 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton, by request

1 ORDINANCE

2 AMENDING THE CITY OF ALBUQUERQUE CODE OF ORDINANCES SECTION
3 13-2-4 PERTAINING TO THE WAIVER OF DISTANCE REQUIREMENT BETWEEN
4 LICENSED PREMISES FOR A LIQUOR LICENSE AND SCHOOL

5 WHEREAS, the State pursuant to Section 60-6B-10 NMSA 1978 restricts
6 the issuance of liquor licenses within three hundred feet of a school, but allows
7 local option districts such as the City of Albuquerque to create criteria and
8 grant waivers to this restriction where appropriate; and

9 WHEREAS, currently the City of Albuquerque strictly limits such waivers to
10 restaurant licenses, small brewer's licenses, and winegrower's licenses, unless
11 the premises is located with the Downtown Arts & Entertainment District; and

12 WHEREAS, infill development, especially in designated activity centers and
13 along transit corridors, that includes alcohol sales as a use may be hampered by
14 the locations of existing post-secondary schools, which are also appropriate
15 uses in these locations; and

16 WHEREAS, redevelopment efforts, most often within and near Metropolitan
17 Redevelopment Areas, often involve alcohol sales as a use, and may be
18 hampered by the locations of existing post-secondary schools; and

19 WHEREAS, changes in the economy and urbanization have led to the
20 placement of post-secondary schools in unusual real estate sites such as
21 shopping centers and office buildings where alcohol sales have traditionally
22 been permitted; and

23 WHEREAS, New Mexico Courts have recognized the purposes of the
24 statutory prohibition on liquor establishments within the three hundred feet of a

1 school as necessary to protect children from the “undesirable influences of a
2 tavern” and to protect a “school, including its yards and grounds, from the
3 inimical milieu associated with establishments selling alcoholic beverages” See
4 Regents of UNM v. Hughes, 1992-NMSC-049, ¶ 33; and

5 WHEREAS, these types of concerns do not apply, or are at least
6 significantly diminished, as they relate to post-secondary schools such as
7 colleges and university which have mature and mostly adult-aged students
8 much less vulnerable or susceptible to any harm that could be associated with
9 physical proximity to a bar or tavern; and

10 WHEREAS, it is desirable to have restaurants and other liquor-licensed
11 businesses in and around the City to promote urban vitality, social gatherings,
12 community revitalization and walkability; and

13 WHEREAS, as a local option district, the City may prescribe the
14 circumstances under which liquor establishments may apply for a waiver from
15 the three-hundred foot separation requirement from post-secondary schools;
16 and

17 WHEREAS, allowing waivers for licenses within three hundred feet of post-
18 secondary schools would still require that such licensees have the appropriate
19 underlying zoning and meet the criteria set forth for considering waivers.

20 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
21 ALBUQUERQUE:

22 Section 1. Section § 13-2-2, DEFINITIONS, is hereby amended to add the
23 following definition:

24 “[POST-SECONDARY EDUCATIONAL INSTITUTION. A school offering
25 primarily post-secondary education, including colleges, universities, and
26 vocational schools.]”

27 Section 2. Section § 13-2-4, WAIVER OF DISTANCE REQUIREMENT
28 BETWEEN LICENSED PREMISES FOR A LIQUOR LICENSE AND CHURCH OR
29 SCHOOL, subsection A, is hereby amended as follows:

1 “(A) The Council may grant a waiver of the prohibition of a licensed
2 premises within 300 feet of a church or school pursuant to Section 60-6B-10
3 NMSA 1978, provided:

4 (1) In all zones that allow the sale or service of alcoholic beverages,
5 other than the Arts and Entertainment District of the downtown core, the
6 waiver is for the operation of a restaurant license, a small brewer’s license, or a
7 winegrower’s license as defined in the state Liquor Control Act;

8 (2) ~~[In t] [T]he Arts and Entertainment District of the downtown core~~
9 ~~as designated in the Downtown 20[10][25] Plan [(as adopted in 2000),] [(or as~~
10 ~~thereafter amended)]~~, a waiver may be requested for the operation of any state
11 license authorized under Chapter 60, Article 6A of the Liquor Control Act; ~~[and~~
12 ~~further provided that;]~~

13 [(3) In all zones that allow the sale or service of alcoholic beverages,
14 where a waiver is required only because of the proposed proximity to a post-
15 secondary educational institution, a waiver may be requested for the operation
16 of any state license authorized under Chapter 60, Article 6A of the Liquor
17 Control Act; and further provided that;]

18 (4) The waiver will not be detrimental to the public health, safety,
19 welfare or morals of the affected neighborhood, including residents;

20 (5) The proposed location for which the waiver is sought will not be
21 within an area where the sale of alcoholic beverages is prohibited by the laws
22 of the state; and

23 (6) The issuance or transfer for which the waiver is sought will not
24 be in violation of a zoning or other ordinance of the city.”

25 Section 3. Severability Clause.

26 If any section, paragraph, sentence, clause, word or phrase of this
27 Ordinance is for any reason held to be invalid or unenforceable by any court of
28 competent jurisdiction, such decision shall not affect the validity of the
29 remaining provisions of this Ordinance. The Council hereby declares that it
30 would have passed this Ordinance and each section, paragraph, sentence,

1 clause, word or phrase thereof irrespective of any provision being declared
2 unconstitutional or otherwise invalid.

3 **Section 4. Compilation.**

4 Sections '1' and '2' of this Ordinance shall amend, be incorporated in, and
5 complied as part of the Revised Ordinances of Albuquerque, New Mexico,
6 1994.

7 **Section 5. Effective Date.** This ordinance shall take effect five days after
8 publication by title and general summary.

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CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

Mayor Richard J. Berry

INTER-OFFICE MEMORANDUM

February 12, 2015

TO: Rey Garduño, President, City Council

FROM: Richard J. Berry, Mayor 

SUBJECT: Amending Section 13-2-4 of the City Code of Ordinances pertaining to the waiver of distance requirement between a licensed premises for a liquor license and school

The City of Albuquerque (the "City") desires to amend Section 13-2-4 of the City Code of Ordinances (the "City Liquor Legislation") to permit the City to consider waivers to allow for any state liquor license for businesses located within three hundred (300) feet of a post-secondary school (the "Proposed Amendment"). Section 60-6B-10 of the NMSA 1978 (the "State Liquor Legislation") restricts the issuance of liquor licenses within three hundred (300) feet of a school while allowing the City to create criteria and grant waivers to this restriction where appropriate. Currently, the City Liquor Legislation strictly limits such waivers to restaurant licenses, small brewer's licenses, and wine grower's licenses, unless the premises are located within the Downtown Arts & Entertainment District. The Proposed Amendment will bring the City's liquor license policy in line with changing real estate conditions, will continue to ensure the protection of school age children from alcohol-related uses, will assist in economic redevelopment efforts, and will not constitute an automatic approval of any state liquor license near a post-secondary school.

Infill redevelopment efforts and other economic considerations have led to the placement of post-secondary schools on sites where alcohol sales have traditionally been permitted (such as a shopping center or office building). When the State Liquor Legislation and City Liquor Legislation (together, the "Original Legislative Actions") were initially crafted, State Legislators and City Councilors likely did not anticipate the

movement of post-secondary schools to these sites. The Proposed Amendment attempts to address the unintended consequences of this change by allowing the City discretion to permit a waiver to allow for any state liquor license to a business near a post-secondary school.

The Original Legislative Actions attempt to protect students from any negative effects of having a business with a liquor license nearby. However, the authors of the Original Legislative Actions likely meant to prevent negative effects of alcohol sales on school age children; post-secondary schools have adult-aged students who do not need such protections. The Proposed Amendment does not change the City Liquor Legislation provisions regarding waivers to allow state liquor license near a school with school age children.

As currently written, the City Liquor Legislation is detrimental to the City's ongoing economic redevelopment efforts. The City believes it to be desirable to have restaurants and other liquor-licensed businesses in sites traditionally zoned for such uses, and the movement of post-secondary schools to these sites has been severely limiting to the business community.

Finally, the Proposed Amendment would not constitute an approval of any state liquor license within three hundred (300) feet of a post-secondary school. The Proposed Amendment would merely allow a business to apply for a waiver if it is within three hundred (300) feet of a post-secondary school (assuming that such use is not in violation of City zoning or other City ordinances). Each waiver application would be examined by the City Council's hearing officer for approval or denial based on the criteria for consideration of such waivers set forth in the City Liquor Legislation.

This Amendment to Section 13-2-4 of the City Code of Ordinances is forwarded to City Council for approval.

Recommended: Suzanne Ubar Date 2/12/15
Suzanne Ubar
Director, Planning Department

Cover Analysis

1. What is it?

This is a request to Amend Section 13-2-4 of the City Code of Ordinances pertaining to the waiver of distance requirement between licensed premises for a liquor license and school.

2. What will this piece of legislation do?

This legislation will allow the City to consider waivers for liquor licenses for businesses located within three hundred (300) feet of a post-secondary school.

3. Why is this project needed?

Infill redevelopment efforts and other economic considerations have led to the placement of post-secondary schools on sites where alcohol sales have traditionally been permitted (such as a shopping center or office building). This amendment will allow consideration by the City of waivers for liquor licenses for businesses located within three hundred (300) feet of a post-secondary school.

4. How much will it cost and what is the funding source?

\$0.00

5. Is there a revenue source associated with this contract? If so, what level of income is projected?

n/a

6. What will happen if the project is not approved?

Infill development, especially in designated activity centers and along transit corridors, that includes alcohol sales as a use, may be hampered by the locations of existing post-secondary schools, which are also appropriate uses in these locations. Without the ability to review a request for a waiver, and potentially approve the waiver, it will be detrimental to the City's ongoing economic redevelopment efforts because restaurants, brew pubs, and other businesses that require liquor licenses will not be allowed to utilize otherwise properly zoned property solely because of the site's proximity to post-secondary schools.

7. Is this service already provided by another entity?

n/a

FISCAL IMPACT ANALYSIS

TITLE: **AMENDMENT TO THE WAIVER OF DISTANCE REQUIREMENT FOR LIQUOR SALES**

R: O:
FUND:

DEPT: Planning

- ☒ No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- ☐ (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	2015	Fiscal Years 2016	2017	Total
Base Salary/Wages	-	-	-	-
Fringe Benefits at	-	-	-	-
Subtotal Personnel	-	-	-	-
Operating Expenses		-		-
Property		-	-	-
Indirect Costs 8.52%	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
<input type="checkbox"/> Estimated revenues not affected				
<input type="checkbox"/> Estimated revenue impact				
Amount of Grant	-	-	-	-
City Cash Match				
City Inkind Match				
City IDOH *8.52%	-	-	-	-
Total Revenue	\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.

* Range if not easily quantifiable.

Number of Positions created 0

COMMENTS ON MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

There is no monetary or fiscal impact from this text change.

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

This is a text amendment to Section 13-2-4 of the City's Code Of Ordinances regarding the waiver of a distance requirement between the point of sale of liquor at a licensed premises and a post-secondary school. The City Council may grant such a waiver of this distance requirement (300-feet) in all zones that allow the sale or service of alcoholic beverages only where a waiver is required because of the proposed proximity to a post-secondary educational institution, if requested, for the operation of a state liquor license.

PREPARED BY:

APPROVED:

FISCAL ANALYST

(date)

Christopher Hyer

PLANNING DIRECTOR

Suzanne Lubar

REVIEWED BY:

BUDGET OFFICER

(date)

Gerald Romero

EXECUTIVE BUDGET ANALYST

(date)

Diolinda Dickson

CITY ECONOMIST

(date)

Jacques Blair