



COPY

ORDINANCE 1136

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF CIBOLO CALLING A SPECIAL ELECTION AND AUTHORIZING THE PLACEMENT ON THE NOVEMBER 3, 2015 ELECTION AN INITIATIVE WHICH, IF SUCCESSFUL WOULD AMEND THE PROHIBITION AGAINST THE SALE OF ALCOHOLIC BEVERAGES NEAR CHURCHES AND PUBLIC AND PRIVATE SCHOOLS BY ALLOWING CITY COUNCIL, AFTER A PUBLIC HEARING, TO CONSIDER VARIANCES THERETO; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Texas Alcoholic Beverage Section 109.33 authorizes City Council to enact regulations, which prohibits the sale of alcoholic beverages within 300 feet of a church or a public or private school; and

Whereas, by ordinance, passed and approved by City Council on August 26, 2013, (Ordinance No. 1066) the City Council authorized the submission of an initiative to the voters at a special election on November 5, 2013; and

WHEREAS, at the special election the voters approved the initiative, which read:

It shall be unlawful for any person to sell or engage in the business of selling alcoholic beverages within the City where the place of business is within 300 feet of any church, public school, or private school. The measurement of the distance between the place of business where alcoholic beverages are sold and the church 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 schools shall be in a direct line from the property line of the public school or private school to the property line of the place of business, and in a direct line across intersections.

Said initiative being codified as Section 6.2 of the City of Cibolo's Code of Municipal Ordinances; and

WHEREAS, since the adoption of Section 6.2; a number of citizens and property owners have advised City Council that the absolute prohibition against the sale of alcoholic beverages near schools and hospitals has prevented the development of national chain restaurants, such as Chili's, grocery stores, such as HEB, drug stores, such as Walgreens, and an upscale microbrewery, due to the proximity of real property conducive to such development to churches and public and private schools; and

WHEREAS, the City Council has taken notice of Texas Alcoholic Beverage Code Section 109.33(e), which authorizes City Council to allow variances to the prohibition against the sale of alcoholic beverages near churches, public and private schools if City Council 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 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; and

WHEREAS, City of Cibolo, City Charter Section 6.15 provides that the City Council, upon its own motion and by the affirmative vote of a majority of the full membership of the City Council, may submit to popular vote, at any election, the adoption of a proposed ordinance; and

WHEREAS, the City Council desires to ask the voters if they wish to allow an amendment to Section 6.15 in order to allow City Council to consider variances to the prohibition against the sale of alcoholic beverages near churches, public and private schools, after a public hearing on such variance requests.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CIBOLO, TEXAS:

SECTION I.

1. A municipal election is hereby ordered to be held on the authorized uniform election date of Tuesday, the 3rd of November, 2015 at which time shall be submitted to the qualified voters of the City the following:

BALLOT LANGUAGE

As authorized by Texas Alcoholic Beverage Code Section 109.33(e), City Council may consider applications for variances to the prohibition against the sale of alcoholic beverages within 300 feet of any church, private school or public school only if City Council first conducts a public hearing on the matter and before the thirtieth day before the date of the public hearing notice is given by: (i) publication in the City's official newspaper; (ii) publication on the City's website; and (iii) letters mailed to each owner of property, as shown on the City's most recent tax rolls, within 300 feet of the property for which the variance is sought.

*For
or
Against*

2. The foregoing municipal election is hereby ordered to be held on Tuesday, the 3rd of November, 2015 in accordance with the laws of Texas, and the provisions of the Charter of the City of Cibolo, and the official ballots for said election shall be prepared in accordance with the Texas Election Code for the election.

3. The election ordered herein shall be held as prescribed by law, at the following locations between the hours of 7:00 am and 7:00 pm;

Election Day Location will be at the following locations from 7:00 am to 7:00 pm

301	Santa Clara City Hall, 1653 N. Santa Clara Rd, Santa Clara
302	William Malish Learning Center, 200 W. Schlather Ln, Cibolo
303	Schertz Elections Office, 1101 Elbel Rd, Schertz
306	Crosspoint Fellowship Church, 2600 Roy Richard Dr, Schertz
403	Knights of Columbus Hall, 509 Schertz Pkwy, Schertz
405-410	St. John's Lutheran Church, 606 S. Center St., Marion
406-407	New Berlin City Hall, 9180 FM 775, New Berlin
409	Elaine S. Schlather Intermediate School, 230 Elaine S. Schlather Pkwy, Cibolo

4. Voting at said election shall be done as determined by the County Elections Officer of Guadalupe County, Texas. The equipment necessary for voting shall be available at the voting sites for the purpose of conducting early voting by personal appearance and at the Election Day voting site established for the purpose of voting by personal appearance on Election Day, Tuesday, November 3, 2015. The County Elections Officer of Guadalupe County, Texas is authorized and charged to perform the functions provided by law in the **casting of early ballots and shall hold such elections, and ballots shall be cast commencing on October 19, 2015 and ending on October 30, 2015**; all in the method, manner and time made and provided by the Statutes of the State of Texas on this subject

Early voting by personal appearance will be conducted at the specified dates, times and locations:

Dates:

Monday, October 19, 2015 through Friday, October 23, 2015 from 8:00 a.m. to 5:00 p.m.

Saturday, October 24, 2015 from 7:00 a.m. to 7:00 p.m.

Sunday, October 25, 2015 from 1:00 p.m. to 6:00 p.m.

Monday October 26, 2015 through Friday, October 30, 2015 from 7:00 a.m. to 7:00 p.m.

Locations:

Guadalupe County Office Building – Election Office, 1101 Elbel Road, Schertz, TX 78154,

Seguin Election Office – 215 So. Milam St, Seguin, TX 78155,

Grace Memorial Church – 3240 FM 725, New Braunfels, TX,

Central Texas Technology Center - 2189 FM 758, New Braunfels, TX,

New Berlin City Hall – 9180 FM 775, New Berlin, TX.

5. The Mayor and City Council shall contract with the Guadalupe County through the Guadalupe County Clerk's Elections Office for the conduct of this election. The Guadalupe County Clerk's Election Department shall appoint the election officers to hold said election, in accordance with State Election Law, including an Early Balloting Board, Signature Verification Committee and the Central Counting Station representatives which shall count and canvass the early ballots cast at said election.

6. Notice of said election shall be given by publishing a substantial copy of this ordinance in a daily newspaper of general circulation published in the City not less than 30 days before the first date of the election.

**SECTION II.
SEVERABILITY**

THAT if any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

**SECTION III.
PUBLIC MEETING**

It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, of the Texas Government Code.

**SECTION IV.
EFFECTIVE DATE**

THIS ordinance will take effect its passage, and approval.

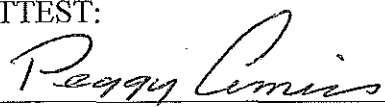
PASSED AND APPROVED this, the 11 day of August 2015.

CITY OF CIBOLO



Lisa M. Jackson, Mayor

ATTEST:



Peggy Cimics, City Secretary

APPROVED AS TO FORM:

DNRBH&Z, CITY ATTORNEY

