



ORDINANCE 1206

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF CIBOLO; AUTHORIZING THE PLACEMENT ON THE NOVEMBER 7, 2017 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.; and

WHEREAS, said initiative was 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 restaurants including national chain restaurants, such as Chili's, grocery stores, such as HEB, or drug stores, such as Walgreens, 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. BALLOT LANGUAGE

THAT there should be placed on the ballot on the election to be held on November 7, 2017, an initiative which proposes an ordinance, and which reads as follows:

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 publication in the City's official newspaper and on the City's website, and after the conclusion of the public hearing at least ¾ of the total membership of City Council find all of the following:

- 1) The proposed sale of alcoholic beverages would constitute no more than _____ percent of the establishment's annual gross revenues; and*
- 2) Prior to the date of the Public Hearing an authorized representative of the affected church, public school, or private school has provided the City Manager with written confirmation that the affected church, public school, or private school has no objection to the granting of the variance;*
- 3) The granting of the variance will not have a negative effect on the health, safety or welfare of the public;*
- 4) On or before March 15 of the year following the granting of a variance, and every March 15 thereafter, the owner of the establishment for which the variance was granted shall submit to the City Secretary all necessary documentation to verify that during the preceding calendar year no more than _____ percent of the establishment's annual gross revenues were generated by the sale of alcoholic beverages; and*
- 5) Violations of the conditions on the Variance are punishable by criminal fine and any and all remedies available at law and or equity including but not limited to revocation of the Variance.*

**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**

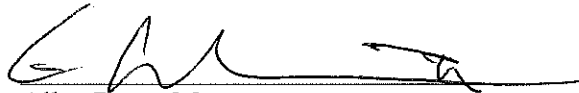
THAT it is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter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

**SECTION IV.
EFFECTIVE DATE**

THAT this ordinance will take effect upon its passage, and approval, by the affirmative vote of a majority of the full membership of the City Council.

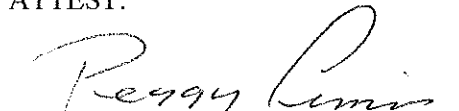
PASSED AND APPROVED this, the 25 day of July 2017.

CITY OF CIBOLO



Allen Dunn, Mayor

ATTEST:


Peggy Cimics, City Secretary

APPROVED AS TO FORM:

DNRBH&Z, CITY ATTORNEY

