

**THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED
ORDINANCE OR RESOLUTION ADOPTED BY CITY COUNCIL.**

AN ORDINANCE

**WAIVING THE REQUIREMENTS OF SECTIONS 4-6(C), 4-6(D) (1),
4-6(D) (6) AND 4-6(E) (1) OF THE CITY CODE AND AUTHORIZING A
VARIANCE REQUEST TO SELL ALCOHOLIC BEVERAGES AT 102
WEST JOSEPHINE STREET FOR ON-PREMISE CONSUMPTION
WITHIN THREE-HUNDRED (300) FEET OF HAWTHORNE ACADEMY,
A PUBLIC EDUCATIONAL INSTITUTION LOCATED IN COUNCIL
DISTRICT 1**

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WHEREAS, Section 109.33 of the Texas Alcoholic Beverage Code authorizes the governing board of an incorporated city to enact regulations prohibiting the sale of alcoholic beverages if the place of business is within three hundred feet of any church, public school or public hospital; and

WHEREAS, Section 109.33 of the Texas Alcoholic Beverage Code authorizes the governing body of an incorporated city to allow variances to the regulation if the governing body 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 governing board, 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, pursuant to Section 109.33 (a) of the Texas Alcoholic Beverage Code, Chapter 4 of the City Code of the City of San Antonio prohibits the sale of alcoholic beverages if the place of business is within three hundred feet of any church, public school or public hospital; and

WHEREAS, the subject property is situated within three hundred (300) feet of the nearest property line of Hawthorne Academy located within the San Antonio Independent School District, thus, making the sale of alcoholic beverages a violation; and

WHEREAS, Ordinance No. 88724, passed and approved on October 22, 1998, amended the City Code of the City of San Antonio, Part 2, Chapter 4, Article I, Sec. 4-6, and established a procedure for the granting of a variance to the prohibition; and

WHEREAS, staff recommends approval of the variance with the condition that the authorization for the sale of alcoholic beverages shall not transfer to future property owners or to different land uses and that such authorization shall terminate in the event of non-operation or non-use of the identified establishment for a period of twelve (12) or more successive calendar months; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The requirements of Sections 4-6 (c), 4-6(D) (1), 4-6(D)(6) and 4-6 (e) (1) of the City Code of the City of San Antonio are waived and the variance request of Brown & Ortiz, P.C., on behalf of property owner Kirststen A. Carabin, for the location at 102 West Josephine Street is hereby granted. This variance to sell alcoholic beverages for off premise consumption is based on the following conditions: (a) that this authorization shall not transfer to future property owners or to different land uses; (b) that such authorization shall terminate in the event of non-operation or non-use of the identified establishment for a period of twelve or more successive calendar.

SECTION 2. This Ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED this _____ day of _____, **2011.**

M A Y O R
Julián Castro

ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek, City Clerk

Michael D. Bernard, City Attorney