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TO: Mayor Wood and City Council

FROM: Michael Florence

DATE: November 4, 2016

RE: Alcohol Code Update

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The City was recently made aware of an issue with its alcohol proximity variance process as outlined in 5.08.115. The primary purpose of the amendment is to repeal language that granted churches the right to give written consent to a proximity request. The consent language essentially gave churches veto power in violation of the Establishment Clause of the Constitution.

The proposed process that the council will follow when considering whether to grant a variance is as follows:

- the city council finds that alternative locations for locating that type of premises in the city are limited;
- a public hearing is held; and
- after giving full consideration to the attending circumstances, including the proximity of an educational, religious, and recreational facility, or any other relevant factor in reaching a decision on a proposed location of a licensee, the city council determines that locating the premises in that location would not be detrimental to the public health, peace, safety, and welfare of the city.

The other amendment to the ordinance is found in 5.08.110. These changes are meant to bring proximity measurement language in conformance with State code by clarifying 600 and 200 foot proximity requirements when located alcohol establishments near a public or private school, church, public library, public playground or public park.

Attached is a redline copy of the ordinance

ORDINANCE NO. 2016-\_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SOUTH SALT LAKE CITY COUNCIL  
AMENDING SECTIONS 5.08.110 AND 5.08.115 OF THE SOUTH SALT LAKE  
CODE REGARDING ALCOHOLIC BEVERAGE ESTABLISHMENT  
PROXIMITY AND VARIANCES; BRINGING THE PROVISIONS INTO  
COMPLIANCE WITH UTAH STATE CODE AND THE ESTABLISHMENT  
CLAUSE**

WHEREAS, the Alcoholic Beverage Control Act as amended and particularly Utah Code Ann. Section 32B-1-202 establishes 600-foot route of travel and 200-foot straight line proximity restrictions for retail licensees, which includes on-premise beer licensees, to community locations, meaning a public or private school, a church, a public library, a public playground, or a public park, and further establishes when and under what circumstances the Alcoholic Beverage Control Commission may grant a variance to reduce the proximity requirement; and

WHEREAS, Utah Code Ann. Section 32B-7-201 allows cities to establish proximity requirements only for premises where beer is sold at retail for off-premise consumption in relation to any public or private school, church, public library, public playground, or public park; and

WHEREAS, Utah Code Ann. Section 32B-1-204 provides that local authorities may not regulate in relation to issues expressly addressed by Title 32B; and

WHEREAS, Sections 5.08.110 and 5.08.115 in the City of South Salt Lake Municipal Code no longer fully comply with the Utah Code in that they allow variances for all establishments selling alcohol and for manufacturers from all community locations, they fail to clarify that the park must be a public park; and they provide that churches must issue written consent for the variance could be in contravention of the Establishment Clause; and

WHEREAS, this council finds it necessary to amend Sections 5.08.110 and 5.08.115 to bring them into compliance with the constitution and State law;

THEREFORE, BE IT ORDAINED by the City Council of the City of South Salt Lake: Section 5.08.110 of the City of South Salt Lake Code is amended to read:

**5.08.110 - Proximity restrictions.**

~~A. No premises requiring a license or consent from the city to sell, serve or distribute alcohol for consumption on premises, such as premises associated with Class B, Class C, and Class MB licenses, shall be located within six hundred (600) feet of any public or private school, church, public library, public playground, or park, as measured from the nearest entrance of the outlet by following the shortest route of either ordinary pedestrian traffic, or where applicable, vehicular travel along public thoroughfares, whichever is the closer, to the property boundary of the public or private school, church, public library, public playground, school playground, or park.~~

~~B. No premises requiring an off-premises beer retailer licensee or manufacturing license shall be established within two hundred (200) feet of any public or private school, church, public library, public playground, or park, measured in a straight line from the nearest entrance of the proposed outlet to the nearest property boundary of the public or private school, church, public library, public playground, or park.~~

Except as otherwise provided in this chapter, the premises of an on-premises consumption licensee such as premises associated with Class B, Class C, and Class MB licenses, and the premises of an establishment selling beer at retail for off-premise consumption may not be located:

A. within 600 feet of a public or private school, church, public library, public playground, or public park, as measured from the nearest entrance of the outlet by following the shortest route of ordinary pedestrian travel to the property boundary of the public or private school, church, public library, public playground, or public park; or

B. within 200 feet of a public or private school, church, public library, public playground, or public park, measured in a straight line from the nearest entrance of the outlet to the nearest property boundary of the public or private school, church, public library, public playground, or public park.

**Comment [DA1]:** Copied from 32B-1-202(2) and includes licenses from old city code. I didn't include the term "community location" because there was no place to define it in either 5.08.110 or 5.08.115..

Section 5.08.115 of the City of South Salt Lake Code is amended to read:

#### **5.08.115 - Proximity restriction variance.**

The restrictions contained in Section 5.08.110 govern unless one of the following exceptions applies:

- ~~A. With respect to the establishment of a premises that sells, serves or distributes alcohol, the city council may authorize a variance that reduces the proximity requirements of Section 5.08.110 and may also authorize the mayor to give the city's consent to the state's alcoholic beverage commission if:
  - ~~— Alternative locations for establishing the premises in the community are limited;~~
  - ~~— A public hearing has been held; and~~
  - ~~— After giving full consideration to all of the attending circumstances, the city council determines that establishing the premises would not be detrimental to the public health, peace, safety, and welfare of the community; or~~~~
- ~~B. With respect to the establishment of a premises in any location, the city council may authorize a variance to reduce the proximity requirements of Section 5.08.110 in relation to a church or community location and may also authorize the mayor to give the city's consent to the state's alcoholic beverage commission if:
  - ~~1. The local governing body of the church or community location in question gives its written consent to the variance;~~
  - ~~2. Following a public hearing; and~~
  - ~~3. After giving full consideration to all of the attending circumstances, it determines that establishing the premises would not be detrimental to the public health, peace, safety, and welfare of the community.~~~~

With respect to the location of an on-premises licensee or the premises of an establishment selling beer at retail for off-premise consumption, the city council may authorize a variance to

reduce the proximity requirement of Section 5.08.110 and may also authorize the mayor to give the city's consent to the state's alcoholic beverage control commission if:

A. when the variance reduces the proximity requirement of subsection 5.08.110B, the location at issue is a public library or a public park;

B. the city council finds that alternative locations for locating that type of premises in the city are limited;

C. a public hearing is held; and

D. after giving full consideration to the attending circumstances, including the proximity of an educational, religious, and recreational facility, or any other relevant factor in reaching a decision on a proposed location of a licensee, the city council determines that locating the premises in that location would not be detrimental to the public health, peace, safety, and welfare of the city.

**Comment [DA2]:** Adapted from 32B-1-202(3)

**Comment [DA3]:** Language is from 32B-1-202(5)

**Comment [DA4]:** Copied from 32B-1-202(3)(e)

Ordinance in conflict herewith are hereby repealed. This ordinance will take effect upon execution by the Mayor or after fifteen days from transmission to the office of the Mayor if neither approved nor disapproved by the Mayor.

(signatures appear on separate page)

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

BY THE CITY COUNCIL:

\_\_\_\_\_  
Deborah A. Snow, Council Chair

ATTEST:

\_\_\_\_\_  
Craig D. Burton, City Recorder

City Council Vote as Recorded:

Beverly \_\_\_\_\_  
Kindred \_\_\_\_\_  
Mila \_\_\_\_\_  
Pender \_\_\_\_\_  
Rapp \_\_\_\_\_  
Siwik \_\_\_\_\_  
Snow \_\_\_\_\_

Transmitted to the Mayor's office on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Craig D. Burton, City Recorder

MAYOR'S ACTION: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Cherie Wood, Mayor

ATTEST:

\_\_\_\_\_  
Craig D. Burton, City Recorder