

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2018-22

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5 AN ORDINANCE

6 AMENDING CHAPTER 4 SFCC 1987 TO DESIGNATE A HEARING OFFICER TO  
7 CONDUCT PUBLIC HEARINGS RELATED TO LIQUOR LICENSE APPLICATIONS AND  
8 WAIVERS OF DISTANCE REQUIREMENTS FROM CHURCHES OR SCHOOLS, WHEN  
9 APPLICABLE, FOR LIQUOR LICENSE APPLICATIONS, SPECIAL DISPENSER  
10 PERMITS AND PUBLIC CELEBRATION PERMITS.

11  
12 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

13 Section 1. Subsection 4-4.3 SFCC 1987 (being Ord, #1968-6, § 3, as amended) is  
14 repealed and a new Subsection 4-4.3 is ordained to read:

15 4-4.3 [NEW MATERIAL] Issuance or transfer of liquor licenses.

16 A. Duties of city clerk. Upon receipt of a letter of preliminary approval or conditional  
17 preliminary approval of the issuance or transfer of a liquor license by the director of the New Mexico  
18 alcohol and gaming division (hereinafter "AGD") the city clerk shall:

19 (1) Set the tentative public hearing date and if necessary, request a waiver or  
20 extension from AGD, if the city is unable to meet either the 45-day public hearing date  
21 requirement or the 30-day publication date requirement.

22 (2) Notify city staff, including, geographic information system mapping (GIS),  
23 code enforcement, fire department and traffic engineering of the request for a city liquor  
24 license, for preparation of reports related to litter, noise and traffic, and ensure that applicant  
25 is in compliance with city fire and land use codes. GIS staff will provide a map indicating

1 whether the proposed licensed premise is within 300 feet of a church or school. This  
2 information shall be provided to the hearing officer.

3 (3) Notify a hearing officer, designated by the governing body in accordance  
4 with Paragraph B., below, of the receipt of the letter of preliminary approval or conditional  
5 preliminary approval for a liquor license issuance or transfer. If the hearing officer is unable  
6 to serve, the city clerk shall notify another hearing officer until a hearing officer has agreed to  
7 conduct the meeting. The city clerk shall also notify the hearing officer of any related request  
8 for a waiver of the 300-foot location restriction between the proposed licensed premise and  
9 any church or school (hereinafter "waiver").

10 (4) Prepare the legal notice of the public hearing in the manner provided by the  
11 New Mexico Liquor Control Act (hereinafter "Liquor Control Act"). The applicant shall pay  
12 the cost of the publication.

13 **B. Designation of hearing officer.**

14 (1) As authorized by Section 60-6B-4(E) NMSA 1978, the governing body may  
15 designate, from a list provided by the city manager, two or more hearing officers to conduct  
16 public hearings.

17 (2) For purposes of this section, a hearing officer shall be a licensed member of  
18 the New Mexico Bar. The city manager shall advertise for the position of hearing officer.  
19 The term of a hearing officer shall be four years.

20 (3) The city clerk shall keep the list of hearing officers designated by the  
21 governing body.

22 **C. Duties of hearing officer.** The hearing officer shall notify the city clerk within two  
23 (2) business days if the hearing officer can serve and shall, within forty-five (45) days of receipt by  
24 the city of the AGD letter of preliminary approval or conditional preliminary approval of a liquor  
25 license issuance or transfer, hold a public hearing regarding the applicant's request.

1           D.     **Waivers.** The hearing officer may recommend to the governing body that it grant or  
2 deny a waiver pursuant to Section 60-6B-10 NMSA 1978.

3           E.     **Procedure at public hearing.**

4                 (1)     The applicant may be represented by an attorney at the public hearing.

5                 (2)     Rules of evidence shall not be followed. The hearing officer may consider  
6 evidence, oral or written, which may be presented if such evidence is relevant.

7                 (3)     The grounds for approval or denial are set forth in the Liquor Control Act.

8                 (4)     Prior to allowing for oral testimony, the hearing officer shall swear in every  
9 person who will provide testimony.

10          F.     **Recommendation of hearing officer.** The hearing officer shall, no later than the  
11 seventh calendar day following any hearing, forward to the city clerk their recommendation of  
12 approval or denial, which shall be supported by findings and conclusions, together with a record,  
13 which shall be made of such hearing as provided by law. The city manager may, upon email request  
14 from the hearing officer, and a showing of good cause and determination that the request can still be  
15 voted on by the governing body in a timely manner, send an email to the hearing officer granting  
16 additional time to provide such recommendation. The city clerk, upon receipt of the  
17 recommendation, shall place it on the next governing body consent calendar agenda.

18          G.     **Duties of governing body.** The governing body, within 30 days after the public  
19 hearing before the hearing officer, shall consider, at a public meeting of the governing body, the  
20 recommendations of the hearing officer, which shall be on the consent calendar.

21                 (1)     If the item is not removed from the consent calendar, the governing body's  
22 vote to approve the consent calendar shall constitute its concurrence with the hearing officer's  
23 recommendation. The city clerk shall notify AGD, on a form prescribed by AGD, of the  
24 governing body's decision, no later than 30 days after the public hearing before the hearing  
25 officer.

1           (2) Any member of the governing body may remove the hearing officer's  
2 recommendation from the consent calendar for discussion. The governing body shall not  
3 take additional evidence or testimony and shall only conduct deliberations of the request  
4 based on the record provided. The governing body shall then vote on the request.

5           (a) If the governing body votes to approve the request, the city clerk  
6 shall notify AGD, on a form prescribed by AGD, of the governing body's decision,  
7 no later than 30 days after the public hearing before the hearing officer.

8           (b) If the governing body, based on the preponderance of the evidence,  
9 votes to disapprove the request, it shall set forth the reasons for the disapproval as  
10 required under the Liquor Control Act. The city clerk shall send to AGD, no later  
11 than 30 days after the public hearing before the hearing officer, a copy of the record  
12 of the public hearing, the minutes of the governing body meeting and the notice of  
13 disapproval on a form prescribed by AGD.

14           (3) If the governing body remands the request back to the hearing officer beyond  
15 the time required in the Liquor Control Act, or does not reach a decision within 30 days after  
16 the public hearing before the hearing officer, the governing body is aware that AGD, pursuant  
17 to the Liquor Control Act, may approve the request prior to the governing body's final  
18 decision on the matter.

19           **H. Appeal.** Any person aggrieved by the decision of the governing body may appeal in  
20 the manner provided by law.

21           **Section 2. Section 4-4.5 SFCC 1987 (being Ord. #1968-6, as amended) is amended**  
22 **to read:**

23           **4-4.5 Special dispenser and public celebration permits.**


24           A. Any person granted a special permit under the provisions of Section 60-6A-12  
25 NMSA 1978 for use within the city, shall pay in advance a fee of twenty-five dollars (\$25.00) per day

1 for each day that the permittee is to dispense liquor.

2 B. If the location of the event is within 300 feet of a church a school, then a designated  
3 hearing officer shall conduct a public hearing, for a waiver, pursuant to the applicable provisions of  
4 Subsection 4-4.3 SFCC 1987.

5 PASSED APPROVED and ADOPTED this 12<sup>th</sup> day of September, 2018.

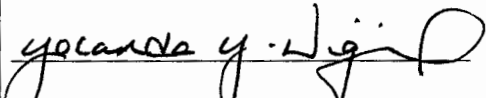
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9 ALAN M. WEBBER, MAYOR

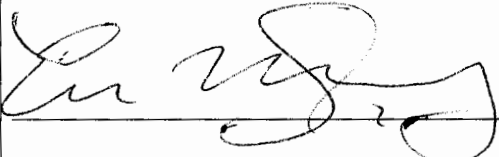
10 ATTEST:

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13 YOLANDA Y. VIGIL, CITY CLERK

14 APPROVED AS TO FORM:



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16  
17 ERIN McSHERRY CITY ATTORNEY

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25 *M/Legislation/Ordinances 2018/2018-22 Liquor Hearing Officer*