



REQUEST FOR COMMISSION ACTION
CITY OF INDEPENDENCE
August 22, 2019

Department Administration

Director Approval Kelly Passauer

AGENDA ITEM Public hearing to consider granting a waiver to Section 6-2 of the City Code relating to a request for a waiver for the restriction on location for the sale of alcoholic beverages for on-premise consumption in the central business district (C-3) at 223 W. Main Street.

SUMMARY RECOMMENDATION City staff recommends approval.

BACKGROUND City staff received a request from Robert Box on February 4, 2019 regarding a request for a waiver from the Commission on the distance to another drinking establishment. When City staff recently searched for the waiver in the minutes, it was determined that this item was not previously added to the agenda.

The relevant language in Section 6-2 includes:

(c) No place of business shall be licensed to sell any alcoholic beverage for on-premises consumption if the place of business:

(2) Is in a central business district (zoned as C-3) and is: a. Within 150 feet of another place of business licensed to sell any alcoholic beverage for on-premises consumption;

The city commission shall grant such a waiver only after the public notice and hearing and a finding by the city commission that the proximity of the place of business is not adverse to the health, welfare and safety of the public.

(e) The distances provided by this section shall be measured from the nearest property line of the place of business seeking a license to the nearest property line of the applicable public or private school, church or other place of business.

Although the Booth Hotel building, which has a drinking establishment license, is 150' away from the 223 W. Main building that will house the brewery, the distances measured go by the nearest property line. Since the Booth Hotel owners also own the adjoining parking lot, the property line is within 150' of 223 W. Main Street.

BUDGET IMPACT N/A

SUGGESTED MOTION I move to grant a waiver to Section 6-2 of the City Code relating to the restriction on location for the sale of alcoholic beverages for on-premise consumption in the central business district (C-3) at 223 W. Main Street.

SUPPORTING DOCUMENTS

1. Section 6-2 with relevant areas highlighted.
2. Request
3. Aerial
4. Consent to waiver of distance requirement signed by the Booth Hotel, LLC.
5. Public Hearing Notice

Sec. 6-2. - Restriction on location.

(a) No place of business shall be licensed to sell any alcoholic beverage for off-premises consumption if the place of business: (1) Is located in areas not zoned for general, commercial or business purposes; (2) Is located within 200 feet of a public or private school or college, or church; except, if any such school, college or church is established within 200 feet of any licensed place of business after such premises shall have been licensed, then such premises shall be an eligible location for such licensing; or (3) Does not conform to the building laws or ordinances of the state or city or, in the absence of such laws or ordinances, is not in good condition structurally, or is in a dilapidated condition.

Provided however, the distances provided by this subsection shall not apply to a place of business which has applied for and has received a waiver of the distance limitation from the city commission. The city commission shall grant such a waiver only after public notice and hearing and a finding by the city commission that the proximity of the place of business is not adverse to the health, welfare or safety of the public.

(b) Notwithstanding subsection (a), any place of business located in a central business district (zoned as C-3) shall be eligible to receive a license for the sale of cereal malt beverages for off-premises consumption.

(c) No place of business shall be licensed to sell any alcoholic beverage for on-premises consumption if the place of business: (1) Is in a neighborhood commercial district (zoned as C-1) or general commercial district (zoned as C-2) and is: a. Within 500 feet of any public or private school or college; or b. Within 300 feet of any church; or (2) Is in a central business district (zoned as C-3) and is: a. Within 150 feet of another place of business licensed to sell any alcoholic beverage for on-premises consumption; or b. Within 200 feet of any area zoned residential as described in the city's zoning ordinance.

Provided however, if any such school, college, church or other place of business is established within the distance specified after such premises shall have been licensed, then such premises shall be an eligible location for such licensing. It is further provided that the distances provided by this subsection shall not apply to a place of business which has applied for and has received a waiver of the distance limitation from the city commission. The city commission shall grant such a waiver only after the public notice and hearing and a finding by the city commission that the proximity of the place of business is not adverse to the health, welfare and safety of the public.

(d) The provisions of subsection (c) shall not apply to food service establishments as defined by K.S.A. 36-501, and amendments thereto, which derive 50 percent or more of their yearly gross receipts from the sale of food consumed on the premises.

(e) The distances provided by this section shall be measured from the nearest property line of the place of business seeking a license to the nearest property line of the applicable public or private school, church or other place of business.

(f) If a place of business licensed to sell cereal malt beverages for on-premises consumption is established in an eligible location under this section, then the location shall be considered an eligible location in the event the place of business converts to a drinking establishment and obtains its city and state drinking establishment license on or before December 31, 1999. (Ord. No. 3793, § 2, 1-20-99; Ord. No. 4017, § 1, 9-25-08)

From: [Robert Box](#)
To: [Kelly Passauer](#)
Subject: Distance Waiver Request
Date: Monday, February 04, 2019 9:18:21 AM

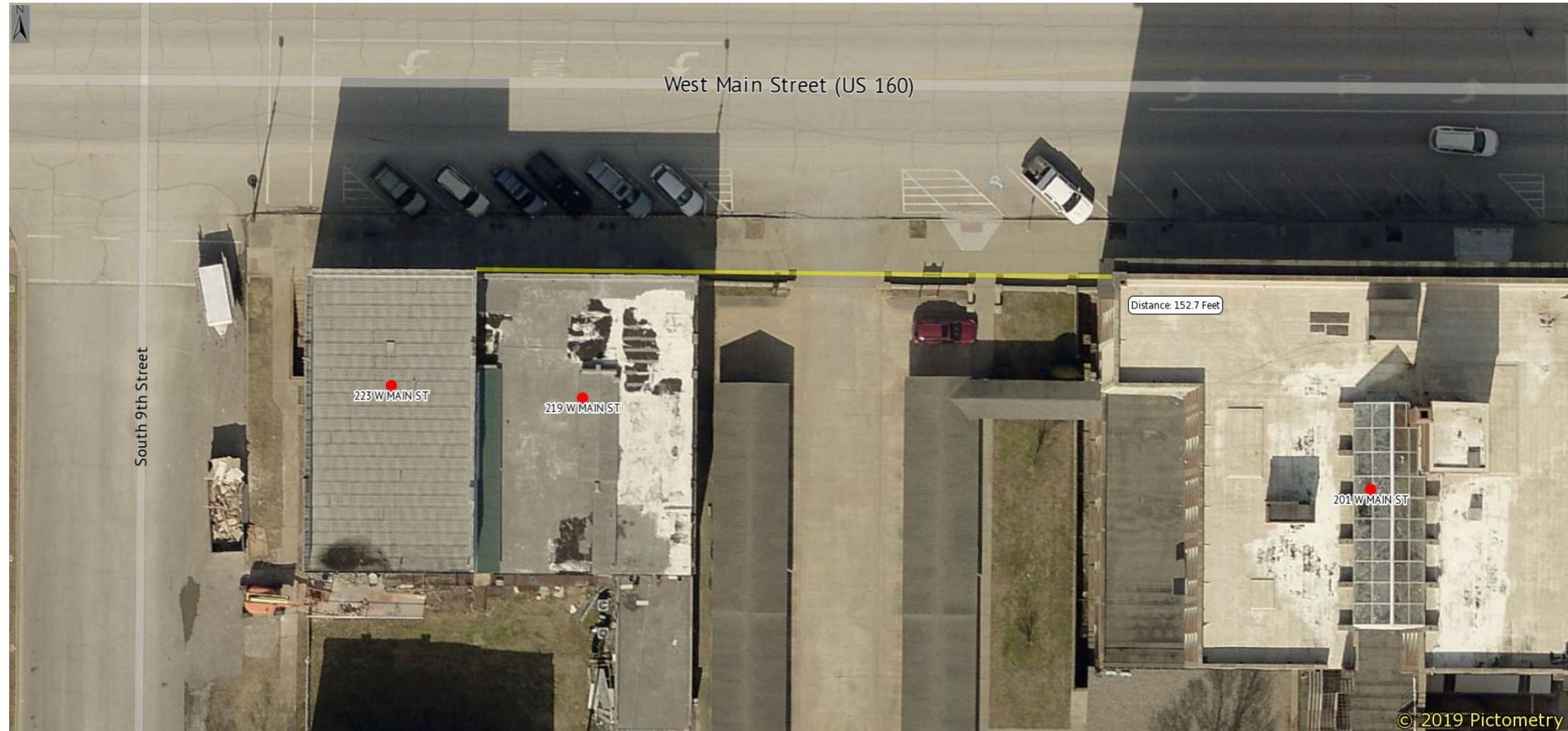
Hey Kelly,

We would like to request a waiver from the Commission on the distance to another drinking establishment, Section 6-2, (C) (2) a. Within 150 feet of another place of business licensed to sell any alcoholic beverage for on-premises consumption for 223 W Main St., Independence, Kansas.

Thank you,
Robert Box

Sent from my iPhone

Distance from Brewery to Booth Hotel



CONSENT TO WAIVER OF DISTANCE REQUIREMENT BY CITY COMMISSION

Comes Now, Booth Hotel, LLC, owner of the real estate located at 201 West Main Street, Independence, Kansas, and states:

1. Booth Hotel, LLC, owns the real estate at 201 West Main Street, Independence, Kansas.
2. Within the structure located at 201 West Main Street, Independence, Kansas, is a bar area that is licensed for sale of alcoholic beverages for consumption on premises.
3. Booth Hotel, LLC, is aware of the distance requirement of 150 feet between establishments selling alcohol for consumption on premises as is currently contained in the Zoning Code for the City of Independence.
4. Booth Hotel, LLC, points out that the building in which its bar area is located is more than 150 feet from the property line of Indy Brew Works, LLC.
5. Booth Hotel, LLC, understands that its parking lot, located on the West side of its property, which services the tenants who rent apartments in the upper floors of the building, is less than 150 feet from Indy Brew Works, LLC, and is the reason that a waiver from the City Commission is required.
6. Booth Hotel, LLC, has no objection whatsoever to the location of Indy Brew Works, LLC, and consents to the City Commission granting a distance waiver

NOTICE OF PUBLIC HEARING

The Independence City Commission will conduct a public hearing on August 22, 2019 at 5:30 p.m. at Memorial Hall, Independence, Kansas to consider granting a waiver to Section 6-2 of the City Code relating to a request for a waiver for the restriction on location for the sale of alcoholic beverages for on-premise consumption in the central business district (C-3) at 223 W. Main Street.

Persons wishing to comment, but who cannot attend this hearing, should provide their written comments to:

Kelly Passauer, Assistant City Manager/Zoning Administrator
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620-332-2506
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