



South River City Citizens Inc.
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September 4, 2024

Mayor Kirk Watson *Via email to bryan.walker@austintexas.gov*
Austin City Council Members

Re: Position Statement by South River City Citizens (“SRCC”) Concerning September 12, 2024,
 Agenda Item #72, Case File No. 24-5526

Dear Mayor Watson and City Council Members,

This letter states SRCC’s opposition to Torchy’s Tacos’ latest application for a waiver of Austin Municipal Code section 4-9-4. This Code section restricts the sale of alcohol at a business within 300 feet of a church, public school, private school, or public hospital. The applicant Torchy’s is located at 1822 S. Congress Avenue, which is less than 300 feet from Lively Middle School. Torchy’s applied for two previous waivers and withdrew both applications after determining that the company lacked sufficient support from the Council.

Now, Torchy’s is back for a third try. SRCC opposes the latest application because our neighborhood association takes a keen interest in our community and its residents. These residents include students and their parents, who expressed concern about allowing alcohol sales across the street from the middle school. Studies have shown that adolescents who live near venues that serve alcohol tend to consume more alcohol. Other studies have found that greater density of alcohol consumption near adolescents’ homes and schools is correlated with heavier and life-long drinking habits. Austin considered these studies when it passed Code section 4-9-4. Torchy’s location on South Congress is a popular place for Lively Middle School students. They eat at Torchy’s before and after school. This is precisely the type of location that Austin considered when it promulgated Section 4-9-4.

Torchy’s was on notice and had knowledge of the alcohol sales prohibition when it purchased 1822 S. Congress. Despite this knowledge, they designed an outdoor bar along the sidewalk and built taps presumably for beer. Nonetheless, while those taps sat dormant, Torchy’s continued to thrive and serve myriad taco options to thousands of happy customers. As such, Torchy’s will not experience any disruption or hardship if the Council denies its application for a waiver. The continued enforcement of the ordinance will merely prevent Torchy’s from capitalizing on profits from alcohol sales.

The only exceptions to Section 4-9-4, as provided in Section 4-9-7, are for transfer of liquor licenses or applications that pre-date the establishment of a church, school, or hospital within the designated 300 feet. The other exceptions for businesses near private schools or establishments that do not allow minors do not apply here. As the Council likely knows, the few businesses that currently sell alcohol near Lively Middle School are permitted to do so because they were assigned previous liquor licenses

or their application for a liquor license pre-dated Section 4-9-4. If the Council were to grant Torchy's a waiver, that waiver could apply to other property owners in perpetuity. For example, the current C-Boys location previously housed Trophy's, which transferred its alcohol waiver to C-Boys. But that property and period during which it was granted are completely different than the conditions facing Torchy's today. Indeed, C-Boys is a bar with a stage for musical acts that encourages drinking and convivial carousing. Most importantly, minors are not allowed to enter. Conversely, Torchy's is an all-ages restaurant serving tacos and queso, where minors are encouraged to enter. Even the mascot is a cherubic devil.

Importantly, to receive a waiver under Section 4-9-5, the Council must find that enforcement of the prohibition:

- (1) is not in the best interest of the public;
- (2) constitutes waste or the inefficient use of land or other resources;
- (3) creates an undue hardship on the applicant;
- (4) does not serve its intended purpose;
- (5) is not effective or necessary; or
- (6) for any reason the 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.

None of these factors is present here. As explained, the prohibition is in the best interests of the public, including the students of Lively Middle School and their parents. There is no waste occurring or inefficient use of land by prohibiting alcohol sales. Torchy's has thrived on South Congress and is a very busy and successful restaurant serving solid fast-casual Mexican food. Likewise, there is no undue hardship on the company - they have over 115 locations in 14 states and received over \$400 million of private equity investment. If they do not fill the South Congress taps with beer, they will do just fine. The prohibition serves its intended purpose by protecting students within 300 feet of Torchy's. It has proven effective as the students continue to patronize Torchy's without incident. The health, safety, and welfare of the public, and the equities, favor prohibiting alcohol sales to protect students and the community. Lessening the immediate risks of impaired middle school students roaming Travis Heights, and the long-term risks associated with multiple alcohol establishments near schools, the City has an obligation to deny the waiver for health, safety, and welfare concerns. Indeed, Austin ISD strictly opposes any waivers because of these negative effects on schools, children, and their surrounding communities. SRCC understands Austin ISD will also submit a letter opposing the waiver. Lively PTSA previously voted to oppose alcohol sales by Torchy's in the past.

Similarly, SRCC has consistently opposed all such waiver requests to avoid setting a bad precedent for all the reasons listed above. We urge you to support our schools, children, educators, families, and neighbors by denying Torchy's request for a waiver.

For further information, please contact Anita Tschurr, Chair, SRCC Planning & Zoning Committee at anitatschurr@gmail.com or 512-705-9430.

Sincerely,

Noah Balch

Noah Balch

President, South River City Citizens Neighborhood Association

cc: SRCC Executive Committee; Amanda Swor; Drenner Group