

## ORDINANCE 3663

**AN ORDINANCE AUTHORIZING A VARIANCE TO THE DISTANCE REQUIREMENTS FOR THE SALE OF ALCOHOL FOR ON-PREMISE CONSUMPTION ON 8.443 ACRES IN THE 9000 BLOCK OF MID-CITIES BOULEVARD AND DESCRIBED IN EXHIBIT "A," NORTH RICHLAND HILLS, TEXAS, PURSUANT TO CHAPTER 6, ARTICLE II, SECTION 6-31, "ALCOHOLIC BEVERAGES ESTABLISHMENTS," OF THE CODE OF ORDINANCES OF THE CITY OF NORTH RICHLAND HILLS; PROVIDING A PENALTY; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** Section 6-31(e) of the North Richland Hills Code of Ordinances authorizes the City Council to grant variances from the alcohol distance requirements prescribed by Section 6-31 of the North Richland Hills Code of Ordinances; and

**WHEREAS,** Convergence Capital, LLC, the owner of 8.443 acres of property in the 9000 block of Mid-Cities Boulevard as described in **Exhibit "A,"** attached hereto and incorporated herein ( the "Property"), has submitted an application to permit on-premise consumption of alcohol pursuant to specific permits allowed by Chapter 26 of the Texas Alcoholic Beverage Code, and is requesting a variance to the alcohol distance requirements for the property on the north side of Mid-Cities Boulevard and north of Birdville High School, a public school; and

**WHEREAS,** City Council, after consideration of the health, safety, and welfare of the public and the equities of the situation, finds that enforcement of the alcohol distance requirements in this 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 an alcohol permit; does not serve its intended purpose; and is not effective or necessary; and

**WHEREAS,** Notice of application was provided to the officials of the affected public school before filing with the City Council, as required by Section 6-31(c) of the North Richland Hills Code of Ordinances; and

**WHEREAS,** City Council acknowledges that the Board of Trustees of the Birdville Independent School District may request a prohibition of the sale of alcoholic beverages when the place of business where alcohol is sold is within one thousand feet of a public school, and that such a request has not been filed with the City of North Richland Hills; and

**WHEREAS,** City Council desires to grant the alcohol distance variance;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH RICHLAND HILLS, TEXAS:**

- SECTION 1:** The City Council hereby finds the recitals above to be true and correct, and such recitals are hereby incorporated into this Ordinance as if written herein.
- SECTION 2:** That the City Council of the City of North Richland Hills hereby grants and authorizes a variance to the alcohol distance requirements prescribed by Section 6-31 of the North Richland Hills Code of Ordinances for Convergence Capital, LLC, for property located on the north side of Mid-Cities Boulevard and north of Birdville High School, a public school, subject to the restrictions and conditions set forth and described in **Exhibit "B"** "Restrictions and Conditions on Variance," attached hereto and incorporated herein.
- SECTION 3.** This variance may be revoked by the City Council in the event the applicant is found to be in violation of this Ordinance, Chapter 6 of the City Code of Ordinances, or Chapter 26 or Chapter 109 of the Texas Alcoholic and Beverage Code.
- SECTION 4:** Any person, firm or corporation violating any provision of this Ordinance as amended hereby shall be deemed guilty of a misdemeanor and upon final conviction thereof fined in an amount not to exceed Two Thousand Dollars (\$2,000.00). Each day any such violation shall be allowed to continue shall constitute a separate violation and punishable hereunder.
- SECTION 5:** This Ordinance shall be cumulative of all provisions of the Code of Ordinances of the City of North Richland Hills, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.
- SECTION 6:** All rights and remedies of the City of North Richland Hills are expressly saved as to any and all violations of the provisions of any ordinances in the Code of Ordinances of the City of North Richland Hills that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.
- SECTION 7:** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment

or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 8:** This Ordinance shall be in full force and effect immediately from and after its passage.

**AND IT SO ORDAINED.**

**PASSED AND APPROVED** on this 14<sup>th</sup> day of September, 2020.

**CITY OF NORTH RICHLAND HILLS**

By: \_\_\_\_\_  
Oscar Trevino, Mayor

**ATTEST:**

\_\_\_\_\_  
Alicia Richardson, City Secretary

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
Maleshia B. McGinnis, City Attorney

**RECOMMENDED:**

\_\_\_\_\_  
Clayton Comstock, Director of Planning

## **EXHIBIT "A"**

### **DESCRIPTION OF THE PROPERTY**

BEGINNING at a TXDOT monument found for the southeast corner of Lot 4, Block C, Brynwyck, recorded in Document Number D208364504 P.R.T.C.T., in the north right-of-way line of Mid-Cities Boulevard (120' R.O.W), and which is the southwest of the herein described tract;

THENCE North 00° 15' 22" West – along the east line of said Brynwyck, passing at 180.02' a 1/2" iron rod with cap stamped "SPRY 5647" found for the northeast corner of said Lot 4, Block C, Brynwyck, continuing along the east line of Block A, Brynwyck, recorded in Document Number D21213656 P.R.T.C.T. for a total distance of 333.41' to a 1/2" iron rod with a cap stamped "SPRY 5647" set for the northwest corner of the herein described tract, from which a 1/2" iron rod with a cap stamped "LBS 3946" bears North 89° 09' East – 0.33';

THENCE North 89° 09' 15" East – 1197.81' to a 1/2" iron rod with cap stamped "HORIZON" found for the northeast corner of the herein described tract, common to the southeast corner of Lot 7, Block 1, of Parkman Addition, recorded in Volume 388-9, Slide 647, P.R.T.C.T. and in the west line of Lot 1R-1, Block A, Home Depot Addition, recorded in Doc No. 202210376, P.R.T.C.T.;

THENCE South 00° 29' 41" East – 304.95' along the west line of said Lot 1R-1, Block A, Home Depot Addition, to a 1/2" iron rod with cap stamped "WAI", found for the southwest corner of said Lot 1R-1, Block A, Home Depot Addition, common to the southeast corner of the herein described tract and in the north right-of-way of said Mid-Cities Boulevard;

THENCE South 89° 40' 08" West – 530.51' along the north right-of-way line of said Mid-Cities Boulevard to a TXDOT monument found for the beginning of a curve to the left, having a central angle of 06° 37' 53", a radius of 5789.58' and a chord bearing and distance of South 86° 18' 38" West – 669.71';

THENCE along said curve to the left, continuing along the north right-of-way line of said Mid-Cities Boulevard, an arc distance of 670.08', to the POINT OF BEGINNING and containing 8.443 acres of land.

## **EXHIBIT “B”**

### **RESTRICTIONS AND CONDITIONS ON VARIANCE**

A variance to the alcohol distance requirements prescribed by Section 6-31 of the North Richland Hills Code of Ordinances for Convergence Capital, LLC, for Property located on the north side of Mid-Cities Boulevard and north of Birdville High School, a public school, is granted, subject to the following conditions:

1. The Property is authorized to be permitted for the sale of alcoholic beverages for on-premise consumption within three hundred (300) feet of a church, public or private school, or public hospital.
2. The variance to the alcohol distance requirements is valid only for the following permit types issued by the Texas Alcoholic Beverage Commission for on-premise consumption:
  - a. Food and Beverage Certificate (FB)
  - b. Mixed Beverage Permit (MB)
  - c. Mixed Beverage Restaurant Permit with FB (RM)
3. The variance to the alcohol distance requirements specifically excludes Mixed Beverage Late Hours Permit (LB) and Wine and Beer Retailer's Permit (BG) and may not be sold between the hours of midnight and 7:00 a.m.
4. The sale of alcohol for on-premise consumption must not exceed thirty percent (30%) of total sales. Such proportion may be audited annually as provided by Section 6-3, Reporting Requirement. Alcohol sales in excess of thirty percent (30%) of total sales may result in suspension or revocation of permits.
5. The variance to the alcohol distance requirements is valid for subsequent renewals of alcohol permits on the Property.
6. The variance to the alcohol distance requirements shall not be transferred to another location, assigned or otherwise transferred to another entity that will have majority ownership interest in the Property without the prior approval of the City Council, which approval may be withheld in the City's sole discretion. In the event a lessee is under a current and valid lease for a location included on the Property at the time of any such transfer of majority ownership interest in the Property, the variance to the distance requirements shall apply for that lessee through the end of the lessee's lease term (including any renewal terms).