



CITY COUNCIL STAFF REPORT

DATE: March 16, 2011 NEW BUSINESS

SUBJECT: REQUEST BY FRESH AND EASY NEIGHBORHOOD MARKET, INC. FOR A RESOLUTION OF PUBLIC CONVENIENCE OR NECESSITY (PCN) TO SELL BEER, WINE AND DISTILLED SPIRITS FOR CONSUMPTION OFF PREMISES (TYPE 21 ALCOHOL LICENSE) AT THE EXISTING NEIGHBORHOOD MARKET LOCATED AT 102 SOUTH SUNRISE WAY.

CASE: 5.1260 – PCN

FROM: David H. Ready, City Manager

BY: Craig Ewing, AICP, Director of Planning Services

SUMMARY

The applicant, Fresh & Easy Neighborhood Market, Inc., is requesting the Council to adopt a Resolution of Public Convenience or Necessity (PCN) for the sale of beer, wine and distilled spirits for off-site consumption (Alcoholic Beverage Control Type 21 license) at the existing neighborhood market store located 102 South Sunrise Way. The store is currently authorized to sell beer and wine for off-site consumption; however, the applicant would like to upgrade their license to offer the sale of distilled spirits.

RECOMMENDATION:

Adopt Resolution No. _____, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, OF PUBLIC CONVENIENCE IN ORDER TO SELL BEER, WINE AND DISTILLED SPIRITS FOR OFF SITE CONSUMPTION (TYPE 21 ALCOHOL LICENSE) AT A NEIGHBORHOOD MARKET STORE LOCATED AT 102 SOUTH SUNRISE WAY."

BACKGROUND:

The applicant has applied for a "Type 21" license through the State of California Department of Alcoholic Beverage Control (ABC) for the existing neighborhood market store located at 102 South Sunrise Way. The "Type 21" license authorizes the sale of beer, wine and distilled spirits for off-site consumption; minors are allowed on the

premises. Because of the “undue concentration” of Type 21 licenses in this particular census tract, the ABC will not issue the license unless the City Council adopts a resolution pursuant to state law, indicating that granting a “Type 21” alcohol license for the subject premises will provide for the public convenience or necessity.

ANALYSIS:

The applicant is applying for a new “Type 21” alcohol license at 102 South Sunrise Way for the sale of beer, wine and distilled spirits for off-site consumption. The Department of Alcoholic Beverage Control is requiring a resolution from the City Council to approve an “undue concentration” of such licenses. In accordance with Section 23958.4 of the Business and Professions Code which took effect on January 1, 1995, “undue concentration” means a property that is located in a census tract (or division) where the ratio of off-sale retail licenses to the population in that tract (or division) exceeds the ratio of off-sale licenses to the population in the subject county. When an undue concentration is determined to exist, the State Department of Alcoholic Beverage Control will not issue a license for the sale of alcohol without a letter or resolution from the City Council which indicates the premises will provide for the public convenience or necessity, by granting such license.

Currently, the State Department of Alcoholic Beverage Control considers the census tract that the proposed license is to be located as having an “undue concentration” of liquor licenses. The subject property is located within Census Tract #0447.01 (see attached census map). This tract is authorized three (3) off-sale licenses and there are currently three (3) active off-sale liquor licenses. The active licenses include the former Vons site at 2315 E. Tahquitz Canyon Way (Type 21), Palm Liquor at 176 S. Sunrise Way (Type 21), Fresh & Easy at 102 S. Sunrise Way (Type 20). State law was enacted to allow local government the opportunity to regulate the number and location of such uses. By making a finding of “Public Convenience or Necessity”, the City Council may determine that the subject premises will provide for the convenient patronage of the public whereby the convenience does not already exist in the immediate area.

Surrounding zoning, general plan land use designations and existing uses are denoted in the following table.

Table 1: Surrounding zones, general plan designations and existing land uses

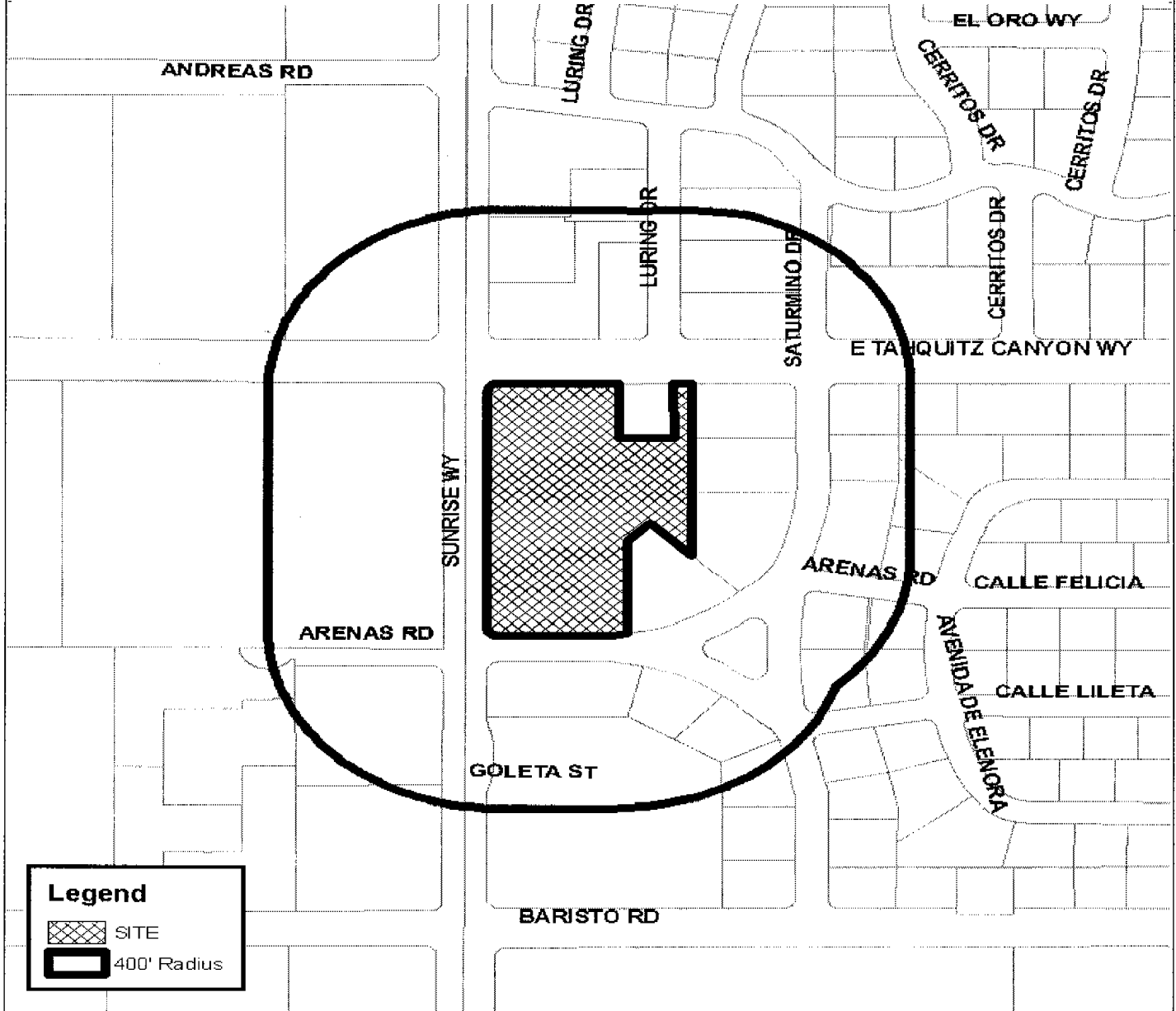
	Zone	General Plan	Land Use
North	C-1-AA (Large-scale Retail Commercial)	NCC (Neighborhood / Community Commercial)	Del Taco Restaurant & Professional Offices
South	R-2 (Limited Multiple-family Residential)	MDR (Medium Density Residential)	Multi-family Residential
East	P (Professional)	NCC (Neighborhood / Community Commercial)	Professional Offices
West	Section 14 Specific Plan – RA (Resort Attraction)	TRC (Tourist Resort Commercial)	Rite Aid Pharmacy & Eisenhower facility

Attachments:

1. 400' Vicinity Map
2. Draft Resolution
3. Letter of Request from Applicant
4. Census Tract Map



Department of Planning Services Vicinity Map



Legend

-  SITE
-  400' Radius

CITY OF PALM SPRINGS

CASE NO: 5.1260 PCN

APPLICANT: Fresh & Easy
Neighborhood Market

DESCRIPTION: To consider a request by Fresh & Easy Neighborhood Market to allow the sale of beer, wine and distilled spirits for off-site consumption from the existing neighborhood market store located at 102 South Sunrise Way, Zoned PD 76, Section 13.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, OF PUBLIC CONVENIENCE IN ORDER TO SELL BEER, WINE AND DISTILLED SPIRITS FOR OFF SITE CONSUMPTION (TYPE 21 ALCOHOL LICENSE) AT A NEIGHBORHOOD MARKET STORE LOCATED AT 102 SOUTH SUNRISE WAY.

WHEREAS, Fresh & Easy Neighborhood Market, Inc. ("Applicant") has requested the adoption of a Resolution of Public Convenience or Necessity (Planning Case No. 5.1260 PCN) for a Type 21 alcohol license to sell beer, wine and distilled spirits for off-site consumption at a store located at 102 South Sunrise Way, APN 502-161-004, Zone PD76, Section 13/T4/R4; and

WHEREAS, the Applicant proposes to sell beer, wine and distilled spirits for off-site consumption as part of a neighborhood market store; and

WHEREAS, the applicant has made an application to the State of California Alcoholic Beverage Control Board for a Type 21 license to sell beer, wine and distilled spirits for consumption off-premises at 102 South Sunrise Way.

WHEREAS, the City Council is being asked to adopt a Resolution of Public Convenience pursuant to the requirements of the Alcoholic Beverage Control Board (ABC); and

WHEREAS, on March 16, 2011, the City Council carefully reviewed and considered all of the evidence presented in connection with the request for a Resolution of Public Convenience or Necessity, including but not limited to the staff report and all written and oral testimony.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council finds that a Type 21 liquor license (beer, wine and distilled spirits) at 102 South Sunrise Way, serves the Public Convenience.

ADOPTED THIS 16th DAY OF MARCH, 2011.

David H. Ready, City Manager

ATTEST:

James Thompson, City Clerk

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. _____ is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

James Thompson, City Clerk
City of Palm Springs, California

5.1260 PCN
RECEIVED

December 23, 2010

DEC 28 2010

Via UPS Ground

**PLANNING SERVICES
DEPARTMENT**

Mr. David Newell, Associate Planner
City of Palm Springs Planning Department
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

RE: **Fresh & Easy Neighborhood Market, Inc.**
102 S. Sunrise Way
Palm Springs, CA 92262
Application for Public Convenience and Necessity

Dear Mr. Newell,

Fresh & Easy Neighborhood Market Inc. has operated their grocery market at 102 S. Sunrise Way in Palm Springs since March 2010. The store currently has a type 20-offsale beer and wine license, and has filed an application with the Department of Alcoholic Beverage Control to upgrade this license to a type 21-offsale full liquor license. This process requires approval by the City of Palm Springs of Public Convenience and Necessity. Please consider the following as justification of **Public Convenience and Necessity**, as well as our explanation of how this store does not interfere with its neighbors' quiet enjoyment of their property for the approval of our application for an off-sale full liquor license at the above location.

Premises Description

The premise, located at 102 S. Sunrise Way, is in the city of Palm Springs. Alcohol sales comprise no more than 15 percent of floor space. Alcohol sales average 5.1% of sales.

Public Convenience or Necessity

First, it is important to emphasize that Business & Professional Code § 23958.4 require a positive finding of public convenience **"or"** necessity in order for an on-site ABC application to be approved. This it is legally sufficient if Fresh & Easy Neighborhood Market (formerly known as Tesco Stores West, Inc.) shows **either** public convenience **or** public necessity. It is **not** legally necessary to show both.

Second, it is only necessary to show public convenience or necessity where there is an "undue concentration" of licensees in the census tract. The term "undue concentration" (also referred to as "over concentration") is specifically defined in Business and Professional Code § 23958.4 as simply a ratio of ***the number of licenses in a census tract*** compared to ***the average number of licenses in a County***, as a whole. It does ***not*** mean that a particular census tract necessarily has too many licenses for the needs of convenience of residents in that tract.

"Over Concentration" also does not mean that the State, or anyone else, has previously looked at this census tract and determined that it has suffered any deleterious effects from the actual number of licenses existing; or that it will suffer if a new license is issued. It merely provides a guideline for making such a determination, in the form of determining whether in a particular situation, the ABC license would serve the "public convenience or necessity".

Thus the fact that the census tract in which the Fresh & Easy Neighborhood Market site is located is statutorily "over concentrated" does not mean that selling a small amount of alcoholic beverages at a grocery store will have adverse impacts. Rather, it simply means that either public convenience or public necessity will be served by the sale of alcoholic beverages at this site.

BASIS FOR SUPPORTING OFFSITE ALCOHOLIC BEVERAGES SALES AS AN INTEGRAL PART OF THE PROPOSED PROJECT.

1. The convenience of Fresh & Easy Neighborhood Market's Concept:

Tesco PLC (dba Fresh & Easy Neighborhood Market) is a premier international supermarket chain. They are the fourth largest retailer in the world. Currently, Tesco operates grocery stores in The United Kingdom, Ireland, China, Czech Republic, France, Hungary, Japan, Malaysia, Poland, Slovakia, South Korea, Thailand, Turkey, and most recently the United States of America. The stores reflect the markets and communities they serve, but everywhere the goal is the same; to bring quality, service, and choice at a competitive price, to the heart of local neighborhoods.

Fresh & Easy Neighborhood Market thinks that fresh, high quality foods should be accessible and affordable in every neighborhood. With clear aisles and simple store layouts, Fresh & Easy Neighborhood Market makes it easy for customers to find all of the products they need without all of the clutter of a traditional supermarket.

Smaller than the traditional supermarket, Fresh & Easy Neighborhood Market shops are easily accessible and offer everything from everyday staples to

gourmet items. Lots of fresh and nutritious food choices, including organic foods and pre-prepared meals, make healthy eating convenient and affordable. In particular, their own "Fresh & Easy" line of products have no added trans fat and no artificial colors or flavors. The simple packaging and labels on their private brand help clients see exactly what they are bringing home to their families.

Although alcoholic beverages comprise only a small percent of the store shelf-space, it is nevertheless necessary in order to provide Fresh & Easy Neighborhood Market customers with a complete range of products. Thus, alcoholic beverages are a key element of the Fresh & Easy Neighborhood Market concept. By providing an assortment of products, including alcoholic beverages, readily available to the consumer at the Fresh & Easy Neighborhood Markets, the public convenience of the area is certainly served. Without it, customers may be obliged to travel to a range of retail outlets in order to complete their weekly shopping.

2. A Good Neighbor:

Fresh & Easy Neighborhood Market thinks it is important to be a neighbor. That is why they keep their stores, parking lots, and backyards clean and tidy, and their deliveries are scheduled to minimize noise and disruption. That means no night deliveries to stores with homes nearby and no driving through school zones during student pickup and drop-off times.

Fresh & Easy Neighborhood Market also recruits their staff from the local area and provides each of their stores with a budget for product donations. This way, Fresh & Easy Neighborhood Market can make sure they are giving back to the community and helping their neighborhood help itself.

3. Security and Control:

Fresh & Easy Neighborhood Market is committed to taking all feasible steps to address law enforcement concerns about the site. In addition, Fresh & Easy Neighborhood Market has an extensive employee-training program and is a responsible retailer of alcoholic beverages. Tesco PLC (dba, Fresh & Easy Neighborhood Market) is a large corporate retailer with an international presence and experience. It certainly has the resources to be a responsible retailer of all types of goods and especially of alcoholic beverages. Moreover, the sale of alcoholic beverages is not their primary purpose.

Fresh & Easy Neighborhood Market facilities are designed to provide a safe environment for patrons and employees. To that end, the following design elements are incorporated into our security plan:

- The storefront includes a significant number of windows so that the interior of the store is visible from the exterior of the building.

- Additional security measures include adequate lighting levels both on the interior and exterior of the store, employee supervision of the facility, closed circuit video monitoring system with cameras located strategically throughout the property, and careful window signage and landscaping placement to avoid obstruction of visibility into and out of the facility.

Fresh & Easy Neighborhood Market understands the importance of maintaining the appearance of a facility to both expanding their customer base and preventing criminal activity. Fresh & Easy Neighborhood Market's property maintenance program includes timely graffiti and litter removal, repairs to structures and replacement of dead or diseased plant material, signs and curb painting to encourage parking in designated parking spaces, and strategic trash receptacle placement.

Fresh & Easy Neighborhood Market is committed to a neighborhood grocery market that allows for safe family oriented shopping. This is achieved by placing large windows along the front of the building so that passing motorists and police have a direct view into the facility. Fresh & Easy Neighborhood Market has integrated the following procedures:

1. A video camera is mounted inside the premises in such a position as to be visible to patrons yet not accessible by reach.
2. Post in English and the predominant language of the facility's clientele and a notice is placed therein that California state law prohibits the sale of alcoholic beverages to persons who are under the age of twenty-one (21) years and no such sales will be made.
3. Ensure no more than 33 percent of the square footage of the windows and clear doors of an off-sale premises shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance.
4. Post and maintain a professional quality sign stating "No loitering is allowed on or in front of these premises."
5. Post and maintain a professional quality sign stating "No open alcoholic beverage containers are allowed on these premises."
6. Restrict any pay phone from receiving incoming calls.

7. The possession of alcoholic beverages in open containers or the consumption of alcoholic beverages are prohibited on the premises.
8. The parking lot of the premises are equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot. Additionally, the position of such lighting shall does disturb the normal privacy and use of any neighboring residences.
9. Any graffiti or marks upon the premises are removed or painted over within 24 hours of discovery thereof.
10. Litter is removed daily from the premises, including adjacent public sidewalks and all parking areas under the control of the licensee.
11. All areas under control of the licensee are swept or cleaned, either mechanically or manually, on a weekly basis to control debris.

In addition, Fresh & Easy Neighborhood Market recognizes the seriousness of loitering, delinquency, crime, and underage drinking. Therefore, Fresh & Easy Neighborhood Market has developed stringent operational standards and training programs to teach techniques for the lawful selling of alcoholic beverages. Also, Fresh & Easy Neighborhood Market requires all employees selling alcoholic beverages to execute an ABC "Clerk's Affidavit" (ABC-299) which contains a review of ABC laws. In addition, Fresh & Easy Neighborhood Market is open to operating conditions that the police department considers appropriate to ameliorate any concerns that do exist.

It is important to note that since the store opening, there have been no incidents related to alcohol or any other issues that have involved law enforcement.

4. The site will not result in an adverse impact on public health, safety, or welfare:

Fresh & Easy Neighborhood Market's acquisition of this has had a positive impact on public health, safety, and welfare. In fact, by providing a new, safe, and convenient location to make grocery purchases, public health, safety, and welfare is advanced by this site. The addition of selling alcoholic beverages has not changed this. But beyond this, it should be noted that Fresh & Easy Neighborhood Market has a very extensive training program for its employees to help ensure that it is a responsible retailer of alcoholic beverages. There are oral, written, and electronic video training aspects to Fresh & Easy Neighborhood Market's training program to ensure that employees understand and implement the procedures imposed by Fresh & Easy Neighborhood Market to comply with ABC laws and regulations.

Fresh & Easy Neighborhood Market realizes that a healthy community translates to healthy business, and is willing to consider any conditions the Planning Department deems necessary in order to ensure that the public health, safety, and welfare are protected. In short, Fresh & Easy Neighborhood Market is committed to protecting the public health, safety, and welfare of the community, and takes appropriate steps to do so. The sale of alcoholic beverages on the site does **not** threaten these important concerns.

5. Community Service and Investment:

Fresh & Easy Neighborhood Market is committed to improving the communities they operate within. Initially, revenues for the construction of this project, including all applicable city permits and fees, have filtered into the city. Moreover, Fresh and Easy Neighborhood Market's investment in the site has increased the property tax base as well as sales tax revenue.

CONCLUSION

Parent Company, Tesco PLC has been a responsible retailer of alcoholic beverages for over 70 years. Permitting the upgrade of beer and wine to full liquor sales at this site will not change this, but will 'round-out' Fresh & Easy Neighborhood Market's concept at this site, providing customers the added convenience to make purchases of alcoholic beverages along with their weekly grocery needs. Fresh & Easy Neighborhood Market, by reason of its location, character, manner, and method of operation, merchandise, and potential clientele, has served the community of Palm Springs and Fresh & Easy Neighborhood Market respectfully requests that they are granted a finding of Public Convenience for the Fresh & Easy Neighborhood Market alcoholic beverage license upgrade.

Thank you for your attention to this matter.

Sincerely,



Rhonda Kindle

For Fresh & Easy Neighborhood Market

