



CITY COUNCIL STAFF REPORT

DATE: NOVEMBER 5, 2008 CONSENT CALENDAR

SUBJECT: REQUEST BY FRESH AND EASY NEIGHBORHOOD MARKET FOR A RESOLUTION OF PUBLIC CONVENIENCE (CASE: 5.1210-PCN) IN ORDER TO SELL BEER AND WINE AT 102 SOUTH SUNRISE WAY.

CASE: 5.1210 – PCN

FROM: David H. Ready, City Manager

BY: Craig Ewing, AICP, Director of Planning Services

SUMMARY

The applicant, Fresh & Easy Neighborhood Market, is requesting that the Council adopt a Resolution of Public Convenience for the off-site sale of beer and wine for the future Fresh & Easy grocery store located at 102 South Sunrise Way.

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 AND WINE AT 102 SOUTH SUNRISE WAY, ZONE CDN, SECTION 13."

BACKGROUND:

The Fresh & Easy grocery store is proposed to be located in the former Jensen's grocery store tenant space at 102 South Sunrise Way. Jensen's has transferred the existing liquor license ("type 21") to its new location at the Smoke Tree Commons shopping center.

The applicant has applied for a Type 20 license through the Department of Alcoholic Beverage Control (ABC) for the Fresh & Easy grocery store located at the southeast corner of Tahquitz Canyon Way and Sunrise Way. The "Type 20" license authorizes the sale of beer and wine for off-site consumption. The ABC will not issue the license

unless the City Council adopts a resolution pursuant to state law, indicating that the premises will provide for the public convenience or necessity.

ANALYSIS:

The applicant is applying for a new liquor license at the location for the sale of beer and wine. 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 on-sale retail licenses to the population in that tract (or division) exceeds the ratio of 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.

Currently the State Department of Alcoholic Beverage Control considers the City of Palm Springs as having an "undue concentration" of liquor licenses – that is, more liquor licenses per capita in Palm Springs than throughout Riverside County. The subject property is located within Census Tract #0447.01. This tract has four active off-sale liquor licenses and zero off-sale licenses pending. Three off-sale licenses are authorized for the tract. 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.

The subject property is in a commercial area. Surrounding uses are as follows:

	General Plan	Zone	Existing Land Use
North	Neighborhood Community Commercial	C-1-AA (Large-Scale Retail Commercial)	Offices, Quick-Service Restaurant & Gas Station
South	Medium Density Residential	R-2 (Limited Multi-Family)	Multifamily Residential
East	Neighborhood Community Commercial	P (Professional)	Offices
West	Neighborhood Community Commercial	RA* (Resort Attraction)	Vacant (Future to Offices & Pharmacy)

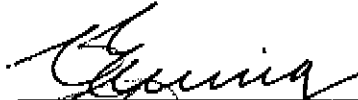
**Section 14 Zoning*

CONCLUSION:


Staff is recommending approval of Case 5.1210-PCN and adoption of a Resolution of Public Convenience for the future Fresh & Easy grocery store to allow issuance of a Type 20 (Off Sale Beer & Wine) Liquor License located at the 102 South Sunrise Way.

FISCAL IMPACT:


None.



Craig A. Ewing, AICP,
Director of Planning Services



Thomas W. Wilson,
Assistant City Manager



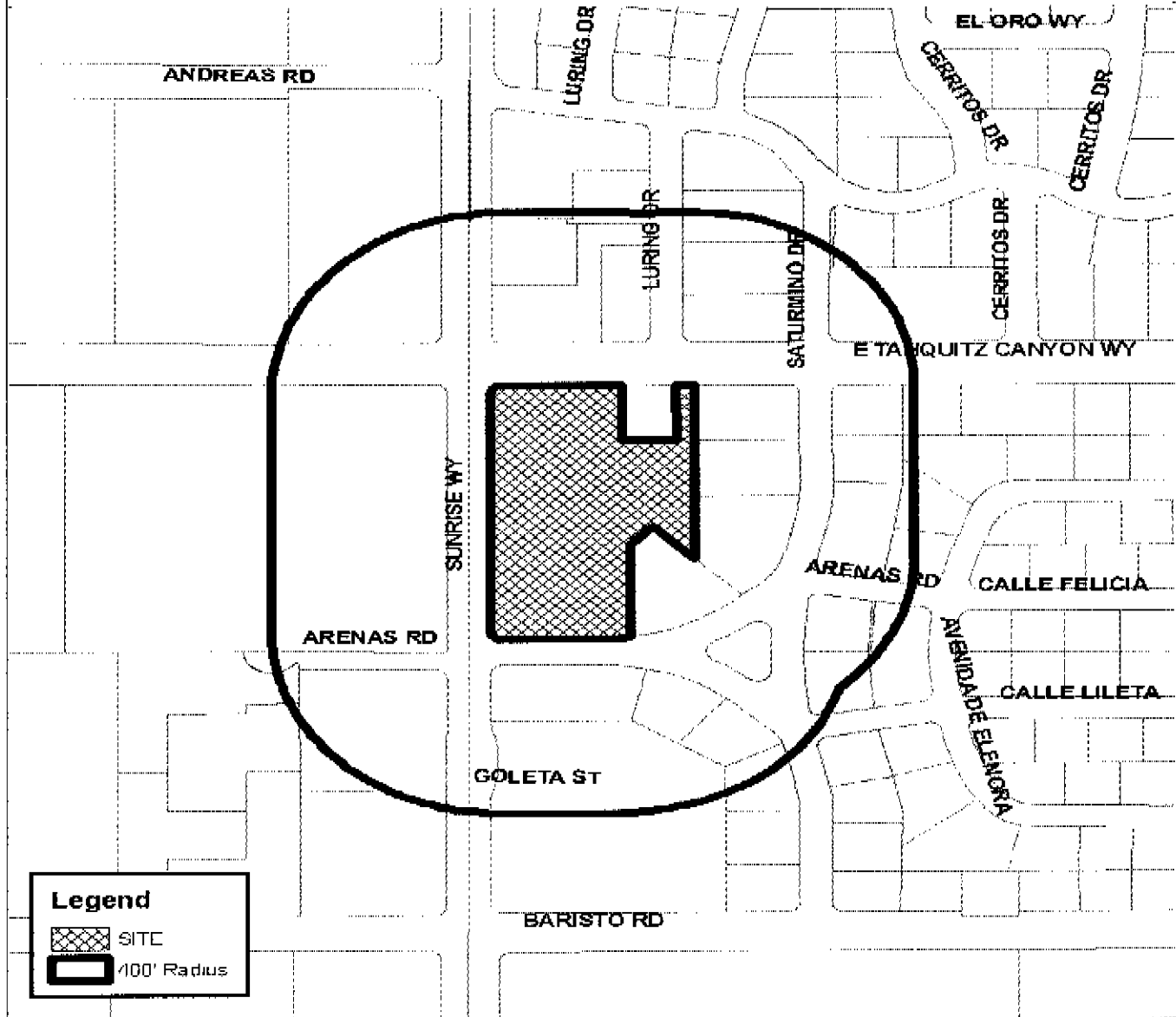
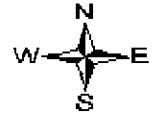
for David H. Ready, City Manager

Attachments:


1. 400' Vicinity Map
2. Letter of Request
3. Draft Resolution



Department of Planning Services Vicinity Map



Legend

-  SITE
-  100' Radius

CITY OF PALM SPRINGS

CASE NO: 5.1210 PCN

APPLICANT: Fresh & Easy
Neighborhood Market

DESCRIPTION: To consider a request by Fresh & Easy Neighborhood Market to allow the sale of beer and wine for off-site consumption from the future Fresh & Easy grocery store at 102 South Sunrise Way, zoned CDN, Section 13.



MATT SLIWINSKI
project manager

13745 Seminole Drive
Chino, California 91710

(909) 548.4020 / P (909) 548.4271 / F
(909) 680.7272 / C (909) 548.4147 / D

mqliwinski@thebergman.com

thebergman.com

LICENSE #436418

August 13, 2008

City of Palm Springs
Department of Planning Services
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92263-2745
Attn: Scott Taschner or Glenn Mlaker

Re: Fresh and Easy Neighborhood Market on the southeast corner of Sunrise Way and Tahquitz Canyon Way (address: 102 S. Sunrise Way), Palm Springs, CA 92317

Dear Sirs:

Please find enclosed the Public Convenience or Necessity justification letter for the proposed Fresh and Easy Neighborhood Market site. Fresh and Easy Neighborhood Market has applied for a Type 20 Off-Sale beer and wine alcohol license and is proposing operating hours from 7:00 a.m. to midnight.

If you have any questions or require additional information, please call me at 909-548-4147 or Karen Rudisill at 909-548-4061.

I appreciate your time and consideration in this matter.

Respectfully,


Matt Sliwinski
Project Manager

BERGMAN
4300 Edison Avenue 909.627.3651 /P
Chino, California 91710 909.627.5425 /F

thebergman.com

LICENSE #436418

S. 1210 PCN
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PLANNING SERVICES
DEPARTMENT



August 13, 2008

City of Palm Springs
Department of Planning Services
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92263-2745
Attn: Scott Taschner or Glenn Mlaker

Re: Fresh and Easy Neighborhood Market on the southeast corner of Sunrise Way and Tahquitz Canyon Way (address: 102 S. Sunrise Way), Palm Springs, CA 92317

Dear Sirs:

We represent Fresh and Easy Neighborhood Market, Inc., which would like to open a grocery store in Palm Springs. It is our understanding that a finding of Public Convenience or Necessity is essential for obtaining a liquor license at the southeast corner of Sunrise Way and Tahquitz Canyon Way (102 S. Sunrise Way) in the City of Palm Springs. We appreciate your time reviewing our justification letter and look forward to your approval.

PREMISES DESCRIPTION

The premises is located on the southeast corner of Sunrise Way and Tahquitz Canyon Way (address: 102 S. Sunrise Way) in the City of Palm Springs, County of Riverside. There is approximately 14,178 square feet of gross leasable floor area in an existing building. Fresh and Easy Neighborhood Market will carry a line of fresh, prepared and packaged grocery and non-food items consistent with the line of products found in full-service grocery stores. Fresh and Easy Neighborhood Market also is proposing that alcohol sales will comprise no more than 10 percent of floor space.

PUBLIC CONVENIENCE OR NECESSITY

First, it is important to emphasize that Business & Professional Code § 23958.4 requires a positive finding of public convenience "*or*" necessity in order for an on-site ABC application to be approved. Thus, it is legally sufficient if Fresh and 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.

BERGMAN
4300 Edison Ave. 909-548-3651 /P
Chino, California 91710 909-627-5425 /F

thebergman.com
LICENSE# 436418

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 & 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 or 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 Fresh and 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 INTERGAL PART OF THE PROPOSED PROJECT.

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

Tesco PLC 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, and Turkey. 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.

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

2. Security and Control

Fresh and Easy Neighborhood Market is committed to taking all feasible steps to address law enforcement concerns about the site. In addition, Fresh and Easy Neighborhood Market has an extensive employee-training program and is a responsible retailer of alcoholic beverages. Tesco PLC (dba, Fresh and 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 and 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 and Easy Neighborhood Market understands the importance of maintaining the appearance of a facility to both expanding their customer base and preventing criminal activity. Fresh and 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 and 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 and Easy Neighborhood Market will integrate the following procedures:

1. A video camera shall be 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 shall be 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 and 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 shall be 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 not disturb the normal privacy and use of any neighboring residences.
9. Any graffiti or marks upon the premises shall be removed or painted over within 24

hours of discovery thereof.

10. Litter shall be 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 shall be swept or cleaned, either mechanically or manually, on a weekly basis to control debris.

In addition, Fresh and Easy Neighborhood Market recognizes the seriousness of loitering, delinquency, crime, and underage drinking. Therefore, Fresh and Easy Neighborhood Market has developed stringent operational standards and training programs to teach techniques for the lawful selling of alcoholic beverages. All store employees are trained with the TIPS (Training for Intervention Procedures) liquor awareness training program. TIPS is a national program and is approved by California's Department of Alcohol Beverage Control. Also, Fresh and Easy Neighborhood Market requires all employees selling alcoholic beverages will execute an ABC "Clerk's Affidavit" (ABC-299). In addition, Fresh and Easy Neighborhood Market is open to operating conditions that the police department considers appropriate to ameliorate any concerns that do exist.

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

Fresh and Easy Neighborhood Market's acquisition of this site will have 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 will be advanced by this site. The addition of selling alcoholic beverages will not change this. But beyond this, it should be noted that Fresh and 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 and Easy Neighborhood Market's training program to ensure that employees understand and implement the procedures imposed by Fresh and Easy Neighborhood Market to comply with ABC laws and regulations.

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

4. Community Service and Investment

Fresh and 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, will filter into the city. Moreover, Fresh and Easy Neighborhood Market's investment of over \$3 million in the site will increase the property tax base as well as sales tax revenue.

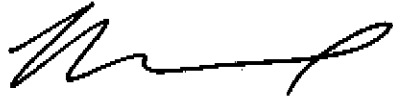
CONCLUSION

Parent Company, Tesco PLC has been a responsible retailer of alcoholic beverages for over 70 years. Permitting the sale of alcoholic beverages at this site will not change this, but will 'round-out' Fresh and 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 and Easy Neighborhood Market, by reason of its location, character, manner, and method of operation, merchandise, and potential clientele, will serve the community of Palm Springs. Fresh and Easy Neighborhood Market respectfully requests that they are granted a finding of Public Convenience for the Fresh and Easy Neighborhood Market alcoholic beverage license.

Thank you for your attention to this matter.

Sincerely,



Michael Volchok
Vice President

MV/kr

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, OF PUBLIC CONVENIENCE IN ORDER TO SELL BEER AND WINE AT 102 SOUTH SUNRISE WAY, ZONE CDN, SECTION 13.

WHEREAS, Fresh & Easy Neighborhood Market ("Applicant") has requested the adoption of a Resolution of Public Convenience (Case No. 5.1210 – PCN) in order to sell beer and wine for off-site consumption from the future grocery store located at 102 South Sunrise Way; and

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

WHEREAS, the City Council has carefully reviewed and considered all of the evidence presented in connection with the Resolution of Public Convenience, including but not limited to the staff report; and

WHEREAS, the applicant has applied with the State of California Alcoholic Beverage Control for a license to sell alcohol: license number 20 (Off-Sale Beer & Wine).

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

SECTION 1. The City Council finds that a Type 20 liquor license (Off Sale Beer & Wine) at 102 South Sunrise Way serves the Public Convenience.

ADOPTED THIS 5th day of November, 2008.

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