



## CITY COUNCIL STAFF REPORT

DATE: November 5, 2008 Consent Calendar

SUBJECT: REQUEST BY JOSEPH BENHAM FOR A RESOLUTION OF PUBLIC CONVENIENCE (CASE: 5.1214-PCN) IN ORDER TO SELL BEER, WINE AND SPIRITS AT 200 NORTH PALM CANYON DRIVE.

CASE: 5.1214 – PCN

FROM: David H. Ready, City Manager

BY: Craig Ewing, AICP, Director of Planning Services

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### SUMMARY

The applicant, Joseph Benham, is requesting that the Council adopt a Resolution of Public Convenience for the sale of beer, wine and distilled spirits for off-site consumption from the future Pete's Wine & Spirits store located at 200 North Palm Canyon Drive.

### 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 & SPIRITS AT 200 NORTH PALM CANYON DRIVE, ZONE CBD, SECTION 15."

### PRIOR ACTIONS:

On October 22, 2008, the Planning Commission reviewed a Conditional Use Permit application to allow the liquor store use and directed staff to prepare a draft resolution of approval for the next regularly scheduled meeting of November 12, 2008.

### BACKGROUND:

The liquor store is proposed to be within an existing multi-tenant commercial building that was constructed in 1963. The total building square footage is approximately 4,736 square feet in size and the proposed store will be in a unit that is approximately 1,231 square feet. The unit was previously occupied by a beauty salon with retail. The use

ITEM NO. 2A

prior to that was a retail t-shirt store. (Further information about the proposed liquor store can be found in the attached Conditional Use Permit Planning Commission Staff Report.)

The applicant has applied for a Type 21 license through the Department of Alcoholic Beverage Control (ABC) for the liquor store located at 200 North Palm Canyon Drive. The "Type 21" license authorizes the sale of beer, wine and spirits 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, wine and distilled spirits. The ABC 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 ABC 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 #0446.01. This tract has 14 active off-sale licenses and one pending off-sale license. Four 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:

	<b>General Plan</b>	<b>Zone</b>	<b>Existing Land Use</b>
North	CBD (Central Business District)	CBD (Central Business District)	Downtown Commercial Shops
South	CBD (Central Business District)	Central Business District	Downtown Commercial Shops
East	CBD (Central Business District)	Central Business District	Downtown Commercial Shops
West	CBD (Central Business District)	Central Business District	Desert Fashion Plaza

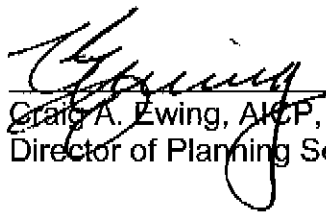
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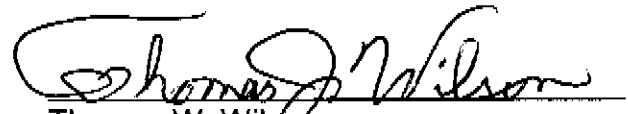
CONCLUSION:


Staff is recommending approval of Case 5.1214-PCN and adoption of a Resolution of Public Convenience for the liquor store to allow issuance of a Type 21 (Off Sale General) Liquor License located at 200 North Palm Canyon Drive.

FISCAL IMPACT:

None.

  
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Craig A. Ewing, AICP,  
Director of Planning Services

  
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Thomas W. Wilson,  
Assistant City Manager

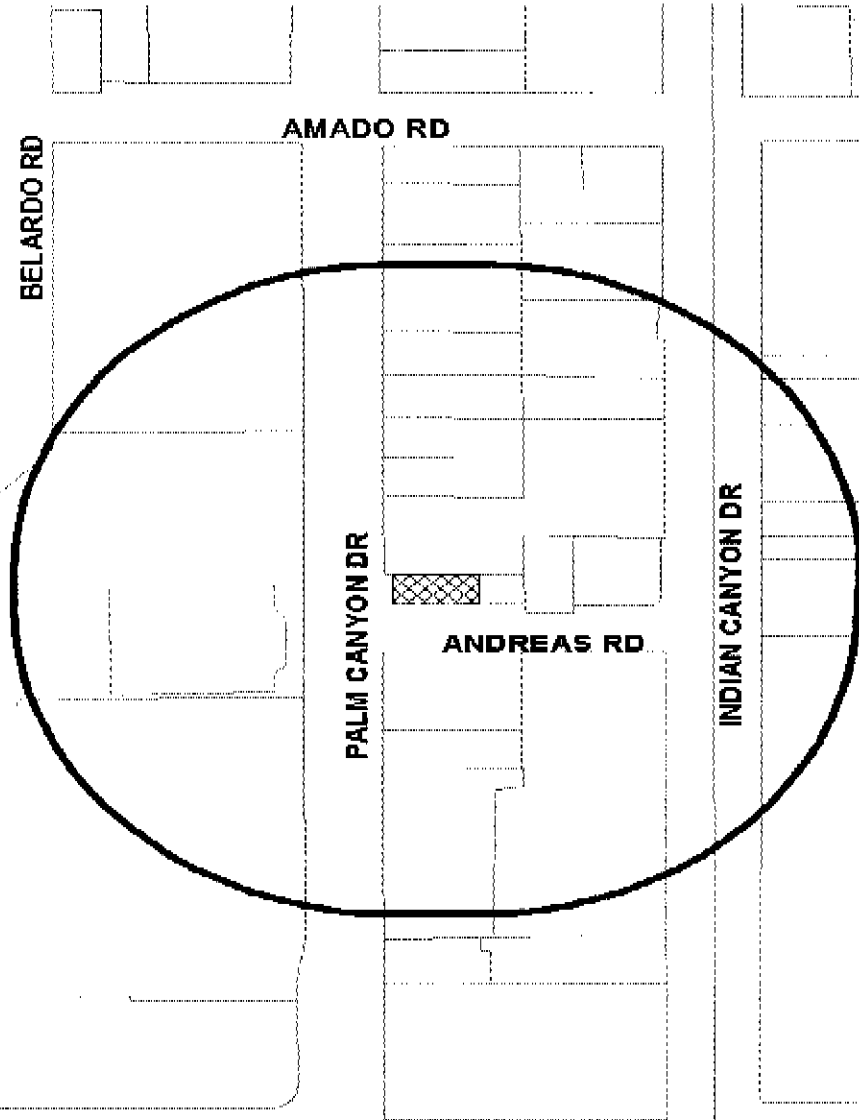
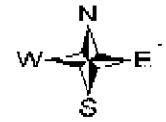
  
\_\_\_\_\_  
for David H. Ready, City Manager

Attachments:

1. 400' Vicinity Map
2. Letter of Request
3. Draft Resolution
4. Conditional Use Permit Planning Commission Staff Report



# Department of Planning Services Vicinity Map



**Legend**

-  Site
-  400' Radius

TAHQUITZ DR

CITY OF PALM SPRINGS

**CASE NO:** 5.1214 PCN

**APPLICANT:** Joseph Behnam  
Pete's Wine & Spirits

**DESCRIPTION:** To consider a request by Joseph Behnam of Pete's Wine & Spirits to allow the sale of beer, wine and spirits for off-site consumption from the future liquor store at 200 North Palm Canyon Drive, zoned C-B-D, Section 15.

September 23, 2008

City of Palm Springs

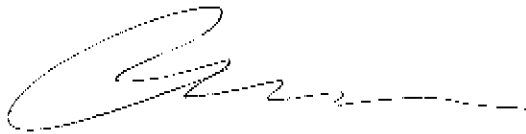
To Whom It May Concern:

My name is Joseph Behnam of Pete's Wine and Spirits, requesting letters of necessity (letters of convenience) for the ABC regarding 200 N. Palm Canyon, Palm Springs, CA 92262.

Please call me to arrange a pick up of the letters upon completion. My phone number is 760-799-6154.

Thank you.

Regards,



Joseph Behnam  
PO Box 114  
Palm Springs, 92263

**RECEIVED**

SEP 25 2008

PLANNING SERVICES  
DEPARTMENT

SEP 25 05

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, OF PUBLIC CONVENIENCE IN ORDER TO SELL BEER, WINE & SPIRITS AT 200 NORTH PALM CANYON DRIVE, ZONE CBD, SECTION 15.

WHEREAS, Joseph Benham ("Applicant") has requested the adoption of a Resolution of Public Convenience (Case No. 5.1214 – PCN) in order to sell beer, wine and distilled spirits for off-site consumption from the future liquor store located at 200 North Palm Canyon Drive; 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 21 (Off-Sale General).

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 (Off Sale General) at 200 North Palm Canyon Drive 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



## Planning Commission Staff Report

Date: October 22, 2008

Case No.: 5.1214 – CUP

Type: Conditional Use Permit

Location: 200 North Palm Canyon Drive

APN: 513-091-008

Applicant: Joseph Benham

General Plan: CBD (Central Business District)

Zone: CBD (Central Business District)

From: Craig A. Ewing, AICP, Director of Planning Services

Project Planner: David A. Newell, Associate Planner

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### **PROJECT DESCRIPTION:**

The applicant is requesting a Conditional Use Permit (CUP) for the operation of a liquor store at an existing commercial building located at 200 North Palm Canyon Drive.

### **RECOMMENDATION:**

That the Planning Commission approve Case 5.1214 – CUP, to allow the operation of a liquor store at an existing commercial building located at 200 North Palm Canyon Drive.

### **PRIOR ACTIONS:**

None.



**BACKGROUND:**

The applicant, Joseph Benham, is requesting an approximately 1,231 square foot liquor store at the northeast corner of North Palm Canyon Drive and Andreas Road (200 North Palm Canyon Drive). With the approval of this CUP application and a Resolution of Convenience or Necessity by City Council, a type 21 liquor license (off-site consumption of beer, wine and spirits) may be issued by the Department of Alcoholic Beverage Control (ABC). The name of the business will be Pete's Wine & Spirits.

The liquor store is proposed to be within an existing multi-tenant commercial building that was constructed in 1963. The total building square footage is approximately 4,736 square feet in size. The liquor store will be located in the suite that is on the first floor and on the southern half of the building. The hours of operation are proposed to be between 8 a.m. and 10 p.m., seven days a week.

**Table 1:** The surrounding General Plan, Zone, Land Uses are below:

	<b>General Plan</b>	<b>Zone</b>	<b>Land Use</b>
North	CBD (Central Business District)	CBD (Central Business District)	Downtown Commercial Shops
South	CBD (Central Business District)	CBD (Central Business District)	Downtown Commercial Shops
East	CBD (Central Business District)	CBD (Central Business District)	Downtown Commercial Shops
West	CBD (Central Business District)	CBD (Central Business District)	Desert Fashion Plaza

**ANALYSIS:**

The subject use is located in the CBD (Central Business District) area of the General Plan. This designation states, *"The CBD serves as the main activity center and cultural core of the community and, as such, theatres, museums, retail, and other entertainment venues are encouraged here. Uses such as grocery stores, hardware stores, and convenience or pharmacy stores that provide services to the Downtown's residential population are also encouraged."* General Plan Land Use Policy LU7.4 states, *"Pursue and attract high-quality retail uses to the City, and specifically to Downtown."* The proposed use will allow a high quality retail use in the downtown area.

The Zoning Code allows liquor stores as a permitted use subject to the approval of a Conditional Use Permit, pursuant to Section 92.09.01(D)(9). The liquor license issued by the Department of Alcoholic Beverage Control (ABC) is for a type 21 license which authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.

### *Parking*

The site is located within the "D" Downtown Parking Combining Zone. Section 92.26.00(C)(5) of the Palm Springs Zoning Code (PSZC) requires that retail uses provide a minimum of one space per 400 square feet of gross floor area. The gross floor area of the unit is approximately 1,231 square feet and is required to provide 3 parking spaces. The site does not currently have any parking off-street parking. However, there are on-street parking spaces adjacent to the building.

Pursuant to Section 92.09.04(A)(1) of the PSZC, "*Where existing structures are to remain or be remodeled without a change of use or an increase in floor area, no additional parking or in-lieu payment will be required.*" The unit was previously occupied by a beauty salon with retail. The use prior to that was a retail t-shirt store. The proposed use is a retail beverage store. Therefore, staff has determined that these businesses are all retail uses and no additional parking or in-lieu payment is required.

### **REQUIRED FINDINGS:**

The Conditional Use Permit process outlined in Section 94.02.00 of the Zoning Code requires the Planning Commission to make a number of findings for approval of the permit. Those findings are analyzed by staff in order below:

- 1) *That the use applied for at the location set forth in the application is properly one for which a conditional use permit is authorized by this Zoning Code.*

Liquor stores are permitted within the Central Business District with the approval of a Conditional Use Permit pursuant to Section 92.09.01(D)(9) of the Palm Springs Zoning Code (PSZC).

- 2) *That the use is necessary or desirable for the development of the community, is in harmony with the various elements of objectives of the general plan, and is not detrimental to existing uses or to future uses specifically permitted in the zone in which the proposed use is to be located.*

The subject use is located in the CBD (Central Business District) area of the General Plan. This designation states, "*The CBD serves as the main activity center and cultural core of the community and, as such, theatres, museums, retail, and other entertainment venues are encouraged here. Uses such as grocery stores, hardware stores, and convenience or pharmacy stores that provide services to the Downtown's residential population are also encouraged.*" General Plan Land Use Policy LU7.4 states, "*Pursue and attract high-quality retail uses to the City, and specifically to Downtown.*" The proposed use will allow a high quality retail use in the downtown area.

- 3) *That the site for the intended use is adequate in size and shape to accommodate such use, including yards, setbacks, walls or fences, landscaping, and other*

*features required in order to adjust such use to those existing or permitted future uses of land in the neighborhood.*

The project does not propose any exterior changes to the site. Minor tenant improvements may be required to conform to the requirements of the Alcoholic Beverage Control license. Any adjustments to the project site will be internal.

- 4) *That the site for the proposed use relates to streets and highways properly designed and improved to carry the type and quantity of traffic to be generated by the proposed use.*

The project site is located along North Palm Canyon Drive, which is designated as a major thoroughfare on the General Plan Circulation Element. The existing streets will be able to accommodate the proposed use, as the previous uses have proven. Therefore, the site for the proposed use in relation to streets is designed and improved to carry the type and quantity of traffic to be generated by the proposed use.

- 5) *That the conditions to be imposed and shown on the approved site plan are deemed necessary to protect the public health, safety and general welfare and may include minor modification of the zone's property development standards. Such conditions may include:*

- a. *Regulation of use*
- b. *Special yards, space and buffers*
- c. *Fences and walls*
- d. *Surfacing of parking areas subject to city specifications*
- e. *Requiring street, service road, or alley dedications and improvements or appropriate bonds*
- f. *Regulation of points of vehicular ingress and egress*
- g. *Regulation of signs*
- h. *Requiring landscaping and maintenance thereof*
- i. *Requiring maintenance of grounds*
- j. *Regulation of noise, vibrations, odors, etc.*
- k. *Regulation of time for certain activities*
- l. *Time period within which the proposed use shall be developed*
- m. *Duration of use*
- n. *Dedication of property for public use*
- o. *Any such other conditions as will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purposes set forth in this Zoning Code, including but not limited to mitigation measures outlined in an environmental assessment.*

At present, there are no changes to the site plan. Staff recommends a condition of approval that will allow the City to reconsider the CUP if there is a significant increase in police or other public services provided to the site following initiation of alcohol sales.

**CONCLUSION:**

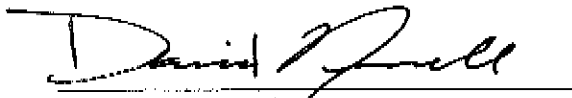
The proposed project is consistent with the use on the site and compatible with the General Plan and Zoning Ordinance land uses. Staff believes that the required findings necessary for the approval of a Conditional Use Permit have been made; therefore recommends approval of Case 5.1214 – CUP.

**ENVIRONMENTAL DETERMINATION:**

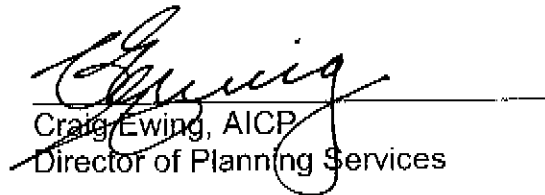
Pursuant to the California Environmental Quality Act (CEQA) Guidelines, the project is Categorically Exempt as a Class I exemption per Section 15301(Existing Facilities).

**NOTIFICATION:**

A notice of this hearing was mailed to all property owners within a four hundred foot radius in accordance with state law. As of the date of writing this staff report, staff has not received any comments.



David A. Newell  
Associate Planner



Craig Ewing, AICP  
Director of Planning Services

**Attachments:**

- 400' Radius Map
- Draft Resolution with Conditions of Approval
- Site Plan