



## CITY COUNCIL STAFF REPORT

DATE: July 3, 2013

Consent Calendar

SUBJECT: REQUEST BY WALGREENS CO. FOR A RESOLUTION OF PUBLIC CONVENIENCE OR NECESSITY (CASE: 5.1242-PCN) IN ORDER TO SELL BEER, WINE AND DISTILLED SPIRITS AT THE WALGREENS DRUGSTORE LOCATED AT 2465 EAST PALM CANYON DRIVE, BUILDING 14, ZONE CSC, SECTION 25.

FROM: David H. Ready, City Manager

BY: Margo Wheeler, AICP, Director of Planning Services

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### SUMMARY

The City Council will consider a request to adopt a Resolution of Public Convenience or Necessity for the sale of beer, wine and distilled spirits from the existing Walgreens drugstore located at 2465 East Palm Canyon Drive, Bldg. 14. Pursuant to Section 23958.4 of the California Business and Professions Code, the local governing body (Palm Springs City Council) must find the public convenience or necessity is served before an additional Alcoholic Beverage Control (ABC) License is issued within a census tract that has an undue concentration.

### RECOMMENDATION:

Adopt Resolution No. \_\_\_\_\_, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADOPTING A RESOLUTION OF PUBLIC CONVENIENCE IN ORDER TO SELL BEER, WINE AND DISTILLED SPIRITS AT THE EXISTING DRUGSTORE LOCATED AT 2465 EAST PALM CANYON DRIVE, BUILDING 14."

### PRIOR ACTIONS:

On April 21, 2010, the City Council approved a Resolution of Public Convenience for a Type 20 ABC License at the subject Walgreens drugstore.  
(City Council Resolution 22701)

**Item No. 2.N.**

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**STAFF ANALYSIS:**

The applicant is applying for a Type 21 license through the State of California Department of Alcoholic Beverage Control (ABC) for the proposed alcohol sales. The ABC summarizes the "Type 21" license as follows:

*OFF SALE GENERAL - (Package Store) Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.*

The proposed liquor license is located within a Census tract that exceeds the amount of on-sale licenses normally permitted; this is known as an "undue concentration" and is specifically defined by Section 23958.4 of the Business and Professions Code:

*As to off-sale retail license applications, the ratio of off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.*

The subject property is located within census tract #0448.07 (see attached census map). This tract currently has five active off-sale liquor licenses. No off-sale licenses are authorized for the tract based on its population. The ABC will only issue the proposed liquor license if the Council determines that the public convenience or necessity would be served.

The site is located along a major thoroughfare, East Palm Canyon Drive, which has a number of businesses that serve resort clientele. According to the CA Department of ABC, the following properties in this census tract offer alcoholic beverage sales for off-site consumption:

1. Ralphps, 1733 E. Palm Canyon Drive
2. Cost Plus World Market, 2465 E. Palm Canyon Drive, Building 4
3. Jensen's Finest Foods, 2465 E. Palm Canyon Drive, Building 7
4. Longs Drug Store, 1733 E. Palm Canyon Drive
5. Walgreens, 2465 E. Palm Canyon Drive

A list of the liquor licenses within this tract is attached to this report with the respective license types and current status.

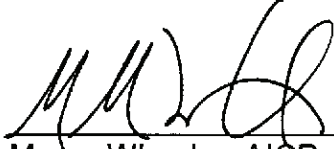
The subject property is located within the CSC Zone, which permits drug and variety stores by right. The accessory sale of alcoholic beverages for consumption off-site is considered incidental to the store. Staff believes that the modification of the off-site license from beer and wine to beer, wine and distilled spirits will not be detrimental to the Census Tract or surrounding neighborhood.

The applicant has provided a justification letter as to why the PCN should be approved (see attached letter). Based on this and the analysis above, staff recommends approval

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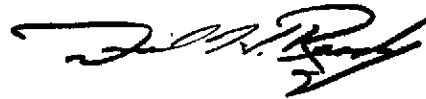
of the proposal as it serves the public convenience. A draft resolution of approval is attached to this report.

FISCAL IMPACT: No fiscal impact.



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Margo Wheeler, AICP,  
Director of Planning Services



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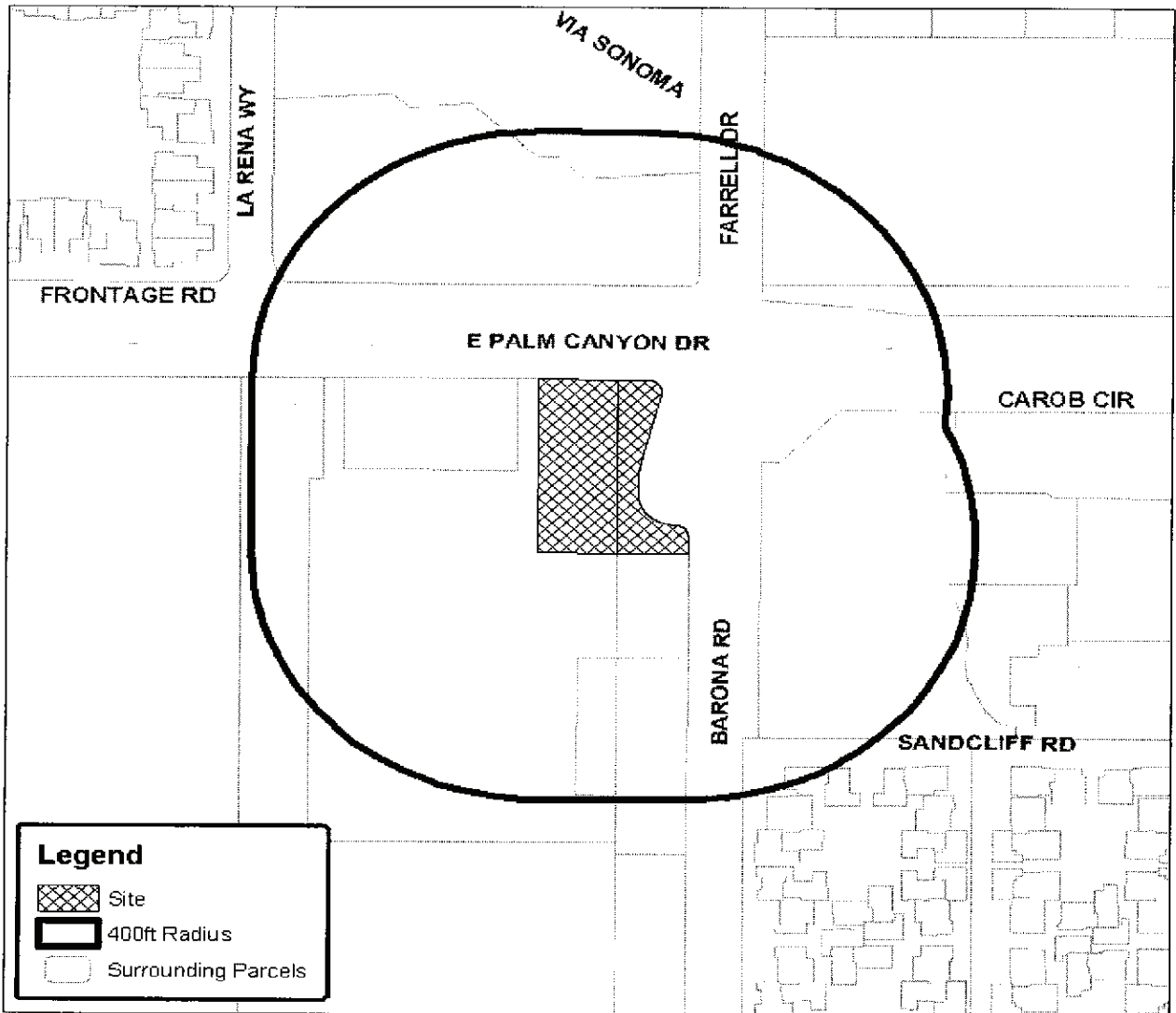
David H. Ready, Ph.D.  
City Manager

Attachments:

1. Vicinity Map
2. Draft Resolution
3. List of Authorized License Types in the Subject Census Tract
4. Census Tract Map
5. Letter of Request



# Department of Planning Services Vicinity Map



## CITY OF PALM SPRINGS

CASE: 5.1242 PCN

APPLICANT: Walgreens Co.

DESCRIPTION: A request by Walgreens Co. for a Resolution of Public Convenience or Necessity for a Type 21 ABC license in order to sell beer, wine & distilled spirits at the existing drugstore located at 2465 E. Palm Canyon Drive, Zone CSC, Section 25.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADOPTING A RESOLUTION OF PUBLIC CONVENIENCE IN ORDER TO SELL BEER, WINE AND DISTILLED SPIRITS AT THE EXISTING DRUGSTORE LOCATED AT 2465 EAST PALM CANYON DRIVE, BUILDING 14.

WHEREAS, Walgreens Co. ("Applicant") has requested the adoption of a Resolution of Public Convenience in order to sell beer, wine and distilled spirits at the existing Walgreens Drugstore located at 2465 East Palm Canyon Drive, Bldg. 14, Zone CSC, Section 25; and

WHEREAS, the Applicant agrees to sell beer, wine and distilled spirits as part of a general retail / drugstore store; and

WHEREAS, the City Council is being asked to adopt a Resolution of Public Convenience or Necessity 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 beer and wine: 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 2465 East Palm Canyon Drive, Bldg. 14, serves the Public Convenience.

ADOPTED THIS 3<sup>rd</sup> day of July, 2013.

\_\_\_\_\_  
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



**California Department of Alcoholic Beverage Control  
For the County of RIVERSIDE - (Off-Sale Licenses)  
and Census Tract = 448.07**

Report as of 6/24/2013

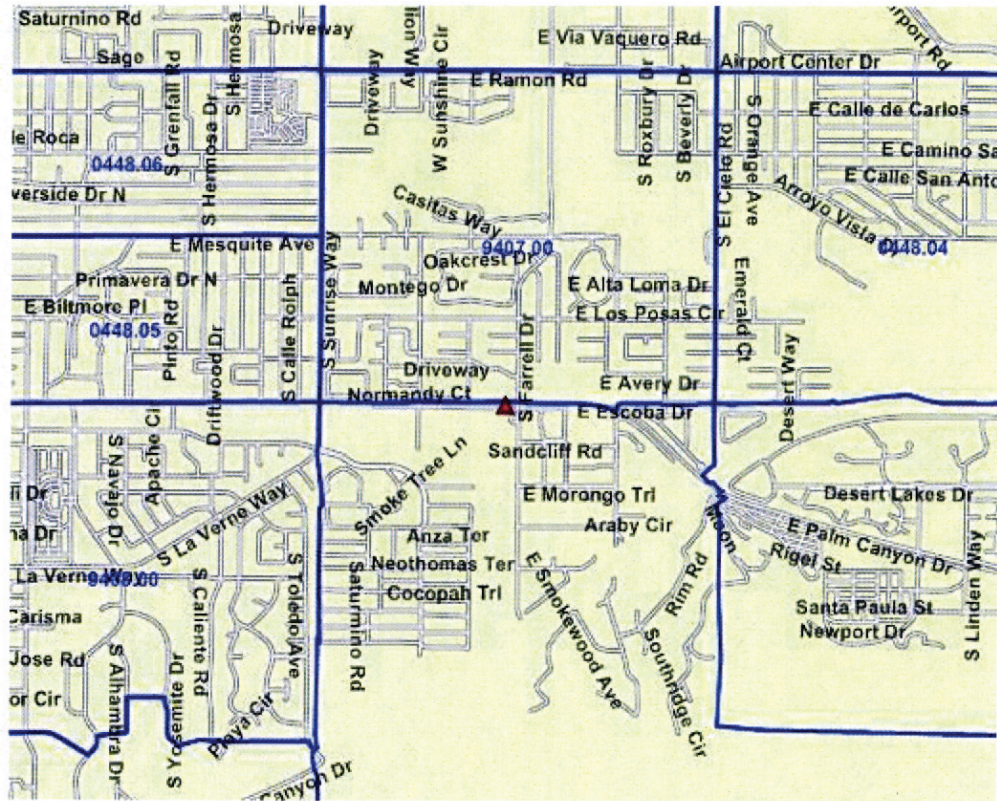
|    | License Number | Status | License Type | Orig. Iss. Date | Expir Date | Primary Owner and Premises Addr.   | Business Name          | Mailing Address   | Geo Code |
|----|----------------|--------|--------------|-----------------|------------|--|------------------------|---|----------|
| 1) | 407436         | ACTIVE | 21           | 1/6/2004        | 6/30/2013  | RALPHS GROCERY COMPANY<br>1733 E PALM CANYON DR<br>PALM SPRINGS, CA 92264<br><br>Census Tract: 0448.07                         | RALPHS 181             | PO BOX 54143<br>LOS ANGELES, CA 90054-0143                      | 3310     |
| 2) | 460873         | ACTIVE | 20           | 5/29/2008       | 6/30/2013  | COST PLUS INC<br>2465 E PALM CANYON DR,<br>BLDG 4<br>PALM SPRINGS, CA 92264<br><br>Census Tract: 0448.07                       | COST PLUS WORLD MARKET | 200 4TH ST,<br>ATTN: RHODA REGALADO<br>OAKLAND, CA 94607-4312   | 3310     |
| 3) | 464249         | ACTIVE | 21           | 11/12/2008      | 2/28/2014  | JENSSENS COMPLETE SHOPPING INC<br>2465 E PALM CANYON DR,<br>BLDG 7<br>PALM SPRINGS, CA 92264-7004<br><br>Census Tract: 0448.07 | JENSSENS FINEST FOODS  | 2465 E PALM CANYON DR,<br>BLDG 7<br>PALM SPRINGS, CA 92264-7004 | 3310     |
| 4) | 477497         | SUREND | 21           | 6/22/2009       | 5/31/2014  | GARFIELD BEACH CVS LLC<br>1785 E PALM CANYON DR<br>PALM SPRINGS, CA 92264-1630   | LONGS DRUG STORE 9806  | 1 CVS DR, MAIL DROP 23062A<br>WOONSOCKET, RI 02895-6146         | 3310     |

|    |        |        |    |                        |           |   |                    |   |      |
|----|--------|--------|----|------------------------|-----------|---|--------------------|---|------|
|    |        |        |    |                        |           | Census Tract:<br>0448.07  |                    |   |      |
| 5) | 485199 | ACTIVE | 20 | 7/7/2010<br>3:14:34 PM | 6/30/2013 | WALGREEN<br>CO<br>2465 E PALM<br>CANYON DR<br>PALM<br>SPRINGS, CA<br>92264-7000<br><br>Census Tract:<br>0448.07 | WALGREENS<br>09885 | PO BOX 901,<br>ATTN: LIQUOR<br>RENEWALS<br>DEERFIELD, IL<br>60015 | 3310 |

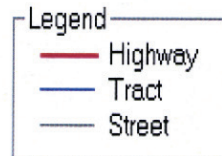
--- End of Report ---

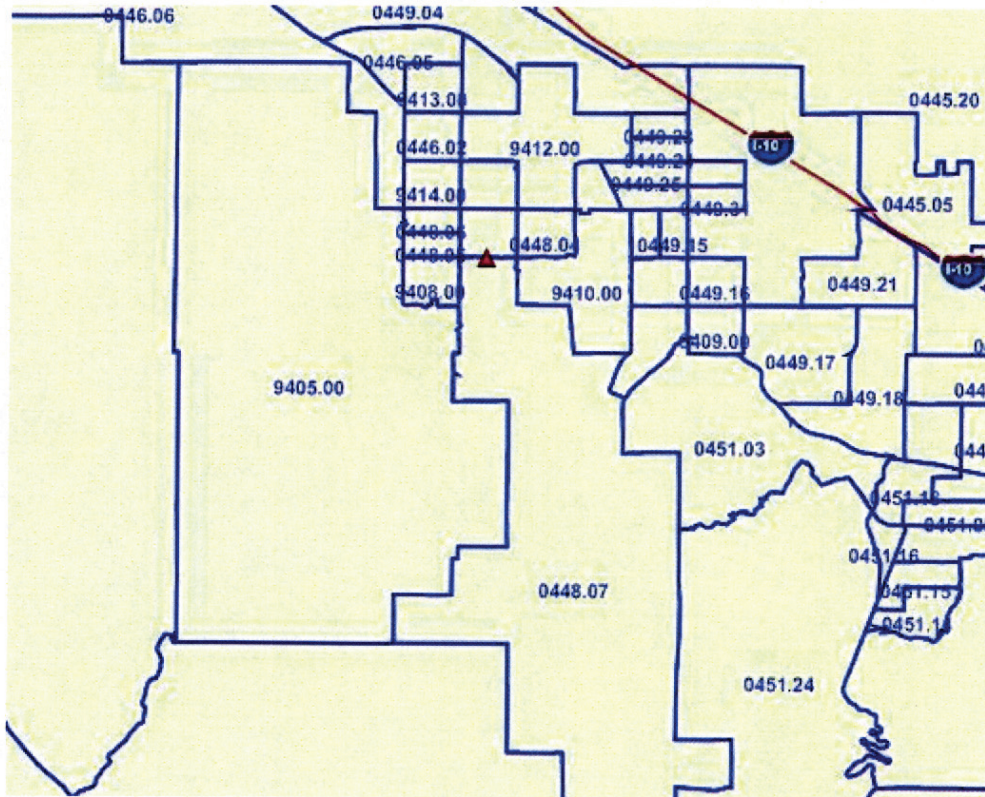
For a definition of codes, view our [glossary](#).





| 2012 Information |                       |
|------------------|-----------------------|
| Street Address   | 2465 E PALM CANYON DR |
| City Name        | PALM SPGS             |
| State Abbr       | CA                    |
| Zip Code         | 92264                 |
| MSA/MD Code      | 40140                 |
| State Code       | 06                    |
| County Code      | 065                   |
| Tract Code       | 0448.07               |





| 2012 Information |                       |
|------------------|-----------------------|
| Street Address   | 2465 E PALM CANYON DR |
| City Name        | PALM SPGS             |
| State Abbr       | CA                    |
| Zip Code         | 92264                 |
| MSA/MD Code      | 40140                 |
| State Code       | 06                    |
| County Code      | 065                   |
| Tract Code       | 0448.07               |

Legend

- Highway
- Tract
- Street



S. 1242-B PLN  
510-820-037  
CJC 251414

April 23, 2013

Via UPSG

Mr. Glenn Mlaker, AICP  
Assistant Planner  
City of Palm Springs  
3200 E Tahquitz Canyon Way  
Palm Springs, CA 92262

**RECEIVED**

APR 24 2013

**PLANNING SERVICES  
DEPARTMENT**

**Re: Walgreen Co.  
DBA Walgreens 9885  
2465 E. Palm Canyon Drive, Bldg. 14  
Palm Springs, CA 92264**

**Re: Finding of Public Convenience or Necessity, regarding Off-Sale  
Alcoholic Beverage License**

Dear Mr. Mlaker,

Our firm represents Walgreen Co. ("Walgreens") in the above-referenced application to upgrade the current Type 20 Beer and Wine off-sale ABC license to a Type 21 Beer, Wine and Distilled Spirits ABC license, and for a determination of Public Convenience or Necessity ("PC or N"). This letter is sent to formally request that the City of Palm Springs make the finding of PC or N regarding Walgreens application to sell beer, wine and distilled spirits at their location at 2465 E. Palm Canyon Drive, Bldg. 14. This open store has been licensed to sell beer and wine license since July 2010.

**Background**

The Department of Alcoholic Beverage Control has determined that the Walgreens store is located within Census Tract 448.07. Pursuant to §23958.4 of the California Business and Professions Code, the Department determined that Census Tract 448.07 is currently over-concentrated, with 5 (five) licenses currently existing; this includes the current beer and wine license for this Walgreens store. Therefore, in order for Walgreens to obtain a Type 21 off-sale liquor license, the City of Palm Springs must make a finding that the proposed use would be a public convenience or necessity. If the Type 21 is approved, Walgreens intends to surrender the existing Type 20 license, and move it outside of the City of Palm Springs, to another store in Riverside County; thus, there will



ultimately be no increase in the census tract with the approval of the Type 21 license.

### Overview and Project Description

Walgreens drug/variety store and pharmacy encompasses 14,820 square feet, with 90 square feet allotted for the alcohol sales area. The store is located at 2465 E. Palm Canyon Drive, in the Smoke Tree Commons shopping center, near the corner of E. Palm Canyon Drive and Barona Rd. This store operates daily between the hours of 7:00 a.m. and 12:00 a.m. Alcohol sales are estimated to make up approximately 5% of total 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. Thus it is legally sufficient if Walgreens 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 Walgreens site is located is statutorily “over concentrated” does not mean that selling a small amount of alcoholic beverages at a drug/variety 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.

It should also be noted that there has been no citizen opposition to Walgreen’s request to upgrade the current alcohol license.

**Basis For Supporting Off-Site Alcoholic Beverage Sales  
As An Integral Part Of The Store**

**Company Overview**

Founded in 1901, Walgreens provides the most convenient access to consumer good and services, and pharmacy, health and wellness services in America. The company has recorded 36 consecutive years of record sales.

Walgreens is continually taking steps to ensure the company's continued success in the fact of a weakening economy, by transforming into a more efficient and customer-focused company. Walgreens has expanded its private brand product offerings, which provide greater value to customers. Walgreens offers competitively priced consumables, whose sales have been very strong, particularly for fast, easy, midweek fill-in needs in conveniently located retail stores.

Walgreens is consistently recognized as a leader in the industry. Fortune magazine ranked Walgreens fourth among food and drugstore companies in March 2011, as one of the worlds most admired companies. In May, 2011, Fortune again ranked Walgreens 32<sup>nd</sup>, among the 500 largest U.S.-based companies overall, and 3<sup>rd</sup> among food and drugstores.

The Walgreens name is very well known, not only in the Palm Springs community, but nationally and world-wide. Its customers rely on Walgreens to provide the goods and services they need, with the convenience that Walgreens is known for.

**A Good Neighbor:**

Since Walgreens was founded in 1901, the company and its employees have recognized the connection between strong communities and good business. To help keep the Walgreens retail network connected to the neighborhoods it serves, the company created a Community Leader position in 2009. These 1,300 Community Leaders now identify and create local events each year. From toy and winter coat drives to fundraising walks and informing neighbors about flu protection, Walgreens is building upon its long-standing tradition of community pharmacy.

Walgreens also understands that they serve their customers best when the workforce reflects the diversity of the community. Walgreens recruits service-oriented, skilled and diverse individuals so that customers find the experience they expect in each Walgreens store.

**Security and Control:**

Walgreens is committed to taking all feasible steps to address any law enforcement concerns about the site. In addition, Walgreens has an extensive employee-training program and is a responsible retailer of alcoholic beverages. Walgreen Co. is a large corporate retailer with 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 the primary purpose.

Walgreens stores are designed to provide a safe environment for patrons and employees. Some of the design elements of the store that facilitate a safe and pleasurable shopping experience 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.

Walgreens understands the importance of maintaining the appearance of a store to both expand their customer base and prevent criminal activity. Walgreens is committed to a store that allows for safe family oriented shopping.

In addition, Walgreens recognizes the seriousness of loitering, delinquency, crime, and underage drinking. Walgreens has developed stringent operational standards and training programs for employees involved with selling of alcoholic beverages. Walgreens is open to operating conditions that the police department considers appropriate to ameliorate any concerns that do exist.

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

Walgreens operation of this store has a positive impact on public health, safety, and welfare. In fact, by providing a safe and convenient location to purchase consumer goods and services, and pharmacy, health and wellness services, public welfare is advanced by this site. The addition of selling distilled spirits will not change this.

Walgreens realizes that a healthy community translates to healthy business, and is willing to consider any conditions the City of Palm Springs deems necessary in order to ensure that the public health, safety, and welfare are protected. In short, Walgreens 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, specifically the addition of distilled spirits does not threaten these important concerns.

### Conclusion

Walgreens Company has been a responsible retailer of alcoholic beverages nationwide for many years. Permitting the addition of distilled spirits at this store will not change this, but will 'round-out' the shopping experience for Walgreens patrons. Walgreens, by reason of its location, character, manner, and method of operation, merchandise, and devoted clientele, has served the community of Stockton well. We respectfully request an approved finding of Public Convenience or Necessity for this store.

Enclosed is a check in the amount of \$1,749.00 for the PC or N processing fee, the ABC-245 form and the required 400' resident mailing labels.

If there is any additional information you need to process this request, please contact me at (951) 698.6868, or via email, at [Rhonda@Calabc.com](mailto:Rhonda@Calabc.com).

Thank you for your consideration of our request.

Sincerely,



Rhonda Kindle  
Alcoholic Beverage Consulting, for Walgreens Company