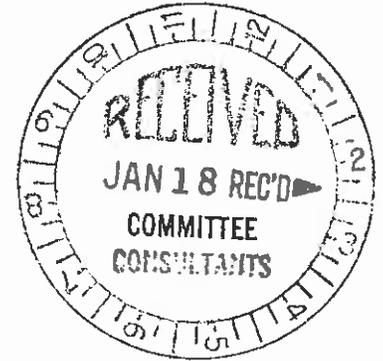


City of San Diego  
Office of the City Clerk  
MEMORANDUM

533-4000



**DATE:** January 14, 2011  
**TO:** Committee Consultant of Public Safety and Neighborhood Services  
Committee and to Ed Ketcham, Council Committee Consultant Assistant  
**FROM:** City Clerk  
**SUBJECT:** Hearing to be Set Before Above Committee

---

The City Clerk's Office has received an appeal from Luce Forward, Attorneys at Law, 600 West Broadway, Suite 2600, San Diego, CA 92101, pursuant to San Diego Municipal Code Section 33.0505 relative to Alcohol Beverage License Permit Denial Hearing, for the existing Walgreens store at 3005 Midway Drive.

A copy of the appeal is attached hereto.

ELIZABETH MALAND  
City Clerk

A handwritten signature in cursive script that reads "Linda Irvin".

By  
Deputy City Clerk  
Linda Irvin

Attachment

cc: Sergeant, Andra E. Brown, Vice Operation, SDPD, MS 710  
Ed Ketcham, (533-3984) Assistant for Council Committees, MS: 3A  
City Clerk file



**APPEAL TO COUNCIL COMMITTEE**

RECEIVED  
CITY CLERK'S OFFICE  
11 JAN 14 PM 4:04  
SAN DIEGO, CALIF.

The Undersigned Walgreen Co.  
(Print or type name of appellant)

does hereby appeal the decision of \_\_\_\_\_  
Administrative Hearing Officer Katherine Jane Morris

pursuant to San Diego Municipal Code Section 33.0505

concerning Denial of a public convenience or public necessity finding for issuance of a Type 20  
(state Case/Permit No. or nature of request)

(off-sale beer and wine) license for an existing Walgreens store at 3005 Midway Drive.

**This appeal is based on the following specific points:**

See attached.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(attach additional sheets if necessary)

Luce Forward, Attn: Jennifer Chavez, Esq.  
(Print or type name)  
600 W. Broadway, Suite 2600  
(Address)  
San Diego, CA 92101

619-236-1414  
(Telephone)  
(If filing as an agent, please  
include name and address of  
client below)

Walgreen Co., Attn: Michael Redstone, Esq.  
(Print or type name)  
104 Wilnot Road, Second Floor, MS#1420  
(Address)  
Deerfield, IL 60015

I certify under penalty of perjury  
that the foregoing, including all  
names and addresses, is true and  
correct.

Jennifer Chavez  
(Signature of Appellant)

1/14/10  
(Date)

BRIAN C. FISH, PARTNER  
DIRECT DIAL NUMBER 619.699.2424  
DIRECT FAX NUMBER 619.645.5395  
EMAIL ADDRESS bfish@luce.com

January 14, 2011

38415-06094

**VIA MESSENGER**

Councilmember Marti Emerald, Chair  
Council Committee on Public Safety and Neighborhood Services  
City Administration Building  
202 C Street, MS #10A  
San Diego, CA 92101

Re: **Walgreens/Appeal of Hearing Officer Decision to Deny PCN Finding for Beer and Wine Sales at 3005 Midway Drive**

Dear Councilmember Emerald:

Walgreens, the nation's largest drug store chain, is requesting that the Committee on Public Safety and Neighborhood Services accept this appeal and overturn the Hearing Officer's decision to deny a finding of public convenience or necessity ("PCN") for issuance of a Type 20 ABC License (off-sale beer and wine sales) to the Walgreens store located at 3005 Midway Drive. The store is located at the southwest corner of the heavily traveled commercial corridors of Midway Drive and Rosecrans Blvd. The site is the perfect location for a modern drug store operation and Walgreens proposes to dedicate a tiny percentage of its existing store to the sale of beer and wine as an additional convenience item for existing and potential customers.

**A. ACCEPTANCE OF THE APPEAL**

Consistent with San Diego Municipal Code section 33.0505, the Committee on Public Safety and Neighborhood Services ("Committee") should accept this appeal for the reasons described below and in the attached materials:

1. Walgreens was denied the opportunity to make a full and complete presentation to the Hearing Officer. Prior to the Hearing Officer hearing, Walgreens representatives asked the Police Department to provide them with any materials the Police Department relied on in denying the PCN. The Police Department provided limited crime statistics and maps consisting of only seven pages. At the start of the Hearing Officer hearing, the Police Department delivered a half-inch stack of materials to the Hearing Office and Walgreens, including more extensive crime statistics, photographs, draft PCN findings and correspondence. As Walgreens was not afforded time to

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review those materials and make a full and complete presentation to the Hearing Officer regarding the same, the Committee should accept the appeal.

2. New evidence is now available that was not available at the time of the Hearing Officer's hearing. Within the next few weeks, Walgreens intends to submit additional evidence that further demonstrates that the sale of beer and wine will serve a public convenience notwithstanding the fact that other retailers in the area also sell alcohol.

3. The Hearing Officer's decision was arbitrary and not supported by the applicable evidence. As described in more detail in Section C of this letter, the Hearing Officer failed to perform the analysis required by state law and the evidence does not support the decision to uphold the Police Department's denial of the PCN.

4. The appeal presents a City-wide issue on which guidance of the Committee is required and the matter is of City-wide significance. It is our understanding and belief that the Police Department routinely and consistently denies PCN requests for new alcohol licenses in census tracts where the number of existing licenses are in excess of the PCN threshold (one off-sale license for every 1,250 inhabitants within the census tract) and the crime rate is 20% above the Citywide average. For all the reasons described in Section B of this letter, such a blanket policy is inconsistent with State law and contrary to the interests of the City as a whole.

## **B. POLICY JUSTIFICATIONS FOR GRANTING THE APPEAL AND MAKING THE PCN DETERMINATION**

The Police Department is implementing a de facto moratorium on new off-sale alcohol licenses throughout the City in areas designated as "high" crime. No justification exists for such a blanket approach to PCN reviews. State law requires the City to perform a project specific analysis to determine whether the public convenience or necessity would be served by issuance of the requested license. The City Council adopted its policy for the Police Department's review of PCN determinations (Resolution No. R-294124) on November 14, 2000. Consistent with State law, that policy identifies some criteria the Police Department should weigh in making its PCN determination and specifically directs that "[e]ach application shall be judged on an individual basis and any one criteria or combination of criteria may be waived as the result of imposed criteria."

Unfortunately, over time, the Police Department's approach has evolved away from a full and balanced consideration of all relevant factors. As this appeal illustrates, the de facto moratorium denies quality operators like Walgreens the chance to provide the City with an additional quality "one-stop" shopping experience that the community wants and deserves. Therefore, Walgreens asks the Committee to make the requested PCN findings and thereby give policy direction to the Police

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Department to give the proper weight to criteria such as (i) the experience and character of the PCN applicant, and (ii) the quality of alcohol sales and security program proposed by the business.

In support of the above, the Committee should note that Walgreens is an experienced and trusted retailer of regulated products (pharmaceuticals, tobacco and alcohol) with decades of experience successfully selling such products as part of its overall retail operations. A store like Walgreens, which will dedicate only a tiny fraction of its floor area to beer and wine sales, will not serve as a source of problems for the community. Large operators like Walgreens have a reputation to uphold. Walgreens knows that people have many retail options and that a poorly run beer and wine program at any one of its stores will deter people from frequenting Walgreens stores elsewhere. As such, Walgreens' successful business model depends on its ability to implement best practices every where it operates.

In addition to the above, Walgreens has the resources to implement a host of security and safety measures. Those measures, which are designed to ensure that alcohol sales will be handled in a manner that will not adversely impact the surrounding community, include:

- Employees at each store undergoing training prior to beer and wine being made available for sale at the store;
- Each cash register clerk submitting a policy acknowledgement as part of the daily log-in and log-out process;
- Each cash register clerk being required to request identification and proof of age for any customer attempting to purchase beer or wine who appears to be under the age of 40. Pre-programmed cash register "prompts" will remind the clerks to request this proof;
- Requiring any under-aged employees to involve the manager or assistant manager for the sale of beer or wine;
- Installing cameras and public view monitors in all Walgreens stores to deter criminal activity and promote security. The digital images captured from these devices are stored for a period of time on a Digital Video Recorder;
- Positioning beer and wine displays on the opposite side of the store from where the entrance is located;
- Not catering to those likely to abuse alcohol by not selling beer by the individual can or bottle. Walgreens will only sell beer in 6 packs, 12 packs, 18 packs and cases.

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Other reasons to support Walgreens requested PCN are outlined below and in the attached materials. Once all the relevant factors are given their proper weight, one can see that Walgreens is exactly the type of company the City wants selling alcohol regardless of the conditions in the surrounding community. In contrast, the moratorium approach taken by the Police Department and the Hearing Officer inappropriately rewards existing alcohol retailers (some of whom may not be as conscientious as Walgreens) by eliminating potential competition from businesses like Walgreens that offer the community safe, clean and a full service retail experience. To give competition a chance to work, and thereby potentially improve conditions and alcohol sales programs in areas with higher crime, the de fact moratorium policy of the Police Department needs to change. The granting of the PCN to Walgreens would be a very good first step toward making that policy change a reality.

### **C. EVIDENTIARY JUSTIFICATION FOR GRANTING THE APPEAL AND MAKING THE PCN DETERMINATION**

The denial of Walgreens' PCN request for 3005 Midway Drive was premised primarily on the arbitrary and unsubstantiated findings described below. Those findings were framed in terms of 10 Guidelines For Determining Public Convenience or Necessity (each a "Guideline") used by the Police Department. The following responds on a Guideline by Guideline basis to illustrate why the Committee should grant the PCN request.

1. *Whether the issuance involves an existing business with a license which is being transferred to a new location, and which will not result in an increase in the total number of off-sale retail liquor licenses or on-sale retail liquor licenses in the census tract in which the business would be located.* It is not clear that this Guideline even applies as Walgreens is not proposing to transfer an existing license to a new location. Nonetheless, the Hearing Officer reached an arbitrary and unsubstantiated conclusion when it denied the PCN because a new license would "impact the number of ABC licenses in the area and will contribute to the over concentration of ABC licenses already existing."

Although the threshold for requiring a PCN determination was triggered in Walgreens' census tract (68.02), and the request will increase the total number of alcohol licenses, the evidence demonstrates that a true overconcentration of ABC Licenses does not exist in the vicinity of Walgreens. The PCN thresholds are based solely on the number of residents within an individual census tract (1 ABC license for every 1,250 residents).<sup>1</sup> Census Tract 68.02 includes relatively few residents. In

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<sup>1</sup> It should also be noted that PCN findings are required based on outdated 2000 census data. According to U.S. census data, the City of San Diego's population increased from 1,223,400 in 2000 to 1,306,300 in 2009. This population increase of 82,900 increases the threshold for PCN determinations by an additional 66 licenses within the City as a whole.

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contrast, the census tract includes three prime commercial arterials, Rosecrans St., Midway Drive and West Point Loma Boulevard, that draw people from an area much larger than just the census tract. The census tract also hosts other regional serving land uses, such as Sharp Healthcare and Kaiser Permanente. In an area such as this one, analysis based on the number of residents within an individual census tract is simply not useful for purposes of determining whether too many alcohol establishments exist or whether a new license will pose problems.

An individual census tract based analysis is also flawed because it assumes that alcohol retailers and household populations will be spread evenly throughout a city. In fact, the City's land use regulations do not permit such a distribution. To the contrary, the City's zoning requirements dictate that alcohol outlets be concentrated in the City's commercial zones and prohibits them in most residential zones. As such, when making a PCN finding, one must consider the broader context. In this case, that means analyzing census tract 68.02 along with the two adjacent, more residentially oriented census tracts (69 and 74) that Walgreens will serve. As evidenced by the census tract information attached hereto, 13 ABC off sale licenses could be issued within this aggregated area without triggering a PCN threshold and only 9 ABC off sale licenses currently exist. In other words, there is no "overconcentration" in the greater Midway area that Walgreens will serve.

2. ***Whether the business, by reason of its location, character, manner or method of operation, merchandise, or potential clientele, will serve a segment of the City's business or residents not presently being served.*** Walgreens, by reason of its location, character, manner and method of operation, merchandise and clientele would serve a segment of the City's residents not presently being served. Ironically, for purpose of this Guideline, the Hearing Officer considered businesses outside Walgreens census tract in making its determination. Setting aside that inconsistency with the approach taken in evaluating whether an overconcentration exists, the Hearing Officer wrongly denied the PCN based on a finding that there are "a large number of similar businesses already licensed to sell alcohol both within census tract 6802 and the two tracts immediately surrounding it."

In reality, the retailers considered by the Hearing Officer are not all that close by and not "the same as or similar to" Walgreens. Those retailers include grocery stores (Henry's, Vons, Barons Marketplace, Smart & Final) and convenience/liquor stores (7-Eleven, BevMo, Midway Wine and Spirits) spread out over more than a mile. None of those other businesses offer residents a retail experience even remotely similar to the "one stop" shopping Walgreens can offer if it is allowed to sell beer and wine. Further, while a nearby CVS exists, the businesses do not truly serve the same clientele. The fact that Walgreens chose just a few years ago to build a brand new store across the street from CVS, a business strategy that Walgreens regularly employs, demonstrates that each company serves a different clientele and each offers a unique operation, character and merchandise not offered by the other. For example, CVS stocks a large selection of distilled spirits and it sells

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single cans of beer; Walgreens will not carry any spirits or singles of beer as its inventory will focus solely on the casual beer and wine drinker. In short, Walgreens customers would not find it convenient to travel to a grocery store, liquor store, convenience store or even CVS to make the purchases they make at Walgreens. Therefore, the facts do not support a finding that residents are already being adequately served by the businesses that exist in the area.

3. ***Whether the business will be located within a 600-foot radius of incompatible facilities, such as public and private schools, day care centers, churches, parks, homeless shelters, and alcohol rehabilitation centers, and facilities designed and operated to serve minors.*** Contrary to the Hearing Officer's findings, Dewey Elementary School is more than 600 feet from Walgreens. By car or by foot, door to door, the distance from Dewey Elementary School to Walgreens is at least 1,275 feet. Even if one measures from property line to property line, by car or on foot, the distance from Dewey Elementary School to Walgreens is 1,060 feet. Of significance, Walgreens is separated from Dewey Elementary by the distances noted above, multiple other stores and Rosecrans Boulevard – a very busy six lane road. More importantly and as discussed above, Walgreens has a number of safety and security procedures in place to ensure that its alcohol sales are handled in a safe and responsible manner that will not have an adverse impact on the surrounding community, including students at Dewey Elementary School.

4. ***Whether the location of the license will be in a crime data area covered by police department statistics, which has a twenty percent greater number of reported crimes than the average number of reported crimes for all crime data areas in the City.*** The Hearing Officer correctly concluded that the applicable census tract technically meets the “high” crime definition with a census tract crime rate of 129.9%, just barely above the “high crime” threshold of 120%. In any event, very few of these crimes and arrests can be attributed to Walgreens. There was only 1 reported crime against Walgreens during the year reviewed by the Police Department. The Memorandum dated 7/30/2010 prepared by the Police Department also reveals that in 2009 there were only 4 arrests at 3005 Midway Drive as compared to 171 arrests within a 0.2-mile radius from the store. Similarly, there were 6 crime cases at 3005 Midway Drive as compared to 170 crime cases within a 0.2-mile radius. In other words, Walgreens was the site of only 2.3% of all arrests and 3.5% of all crime cases within a 0.2-mile radius.

Calls for service are not a factor identified in the Guidelines. Nonetheless, the Police Department submitted information from 2009 indicating that it supposedly responded to 68 calls for service to the store. When one looks behind the numbers, a different story emerges. First, as Walgreens is a “landmark” at a busy intersection, a number of calls likely have nothing to do with Walgreens-related operations, customers, etc. Second, several of these calls for service, were initiated by Walgreens to request assistance with disruptive transients loitering in the area. At the

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recommendation of Police Chief Lansdowne and Councilman Faulconer, Walgreens obtained a "No Trespass Order" from the Superior Court to facilitate removal of transients that disturb customers. Therefore, the high number of calls for service are because Walgreens agreed to work cooperatively with the Police Department to address a larger City wide issue. Finally, the store manager reports that Walgreens' transient-related issues are much improved, though the area generally still has a large transient population.

When reviewing the record, the Committee should recognize that Walgreens' alcohol sales are unlikely to exacerbate the issues the Police Department has with the homeless. Walgreens will not sell beer to intoxicated persons and it will not sell beer in single cans or bottles. Beer will be sold in 6-pack quantities or larger and the stores video monitors discourage shoplifters. As the Walgreens crime statistics illustrate, Walgreens works very hard, and with good success, to provide safe retail opportunities for the community. The store managers have proactively worked with the Police Department and City to address transient and other community issues in the Midway area. Even Sgt. Griffin noted during the Administrative Hearing that Walgreens should be commended for its exemplary operations and for being a good partner with the Police Department and the community in general.

5. ***Whether the issuance of the license involves an existing business, which has been located at a site which has had three or more reported crimes as defined in (4) above within the previous one-year period.*** The Hearing Officer found Walgreens in conflict with this Guideline, even though there was only 1 reported crime (robbery) against the business in 2009, because there were 68 calls for service with at least 8 of those calls specifically referring to a drunk in public or a loitering transient. This is clearly an erroneous application of the Guideline. Walgreens had fewer than three reported crimes against it and therefore is in conformity with this Guideline. Additionally, Walgreens should be commended for having only one reported crime against it in the entire 2009 calendar year; that is extraordinary for a store that is 15,033 square feet in size and sees hundreds of thousands of customers go through its doors each year. The 68 calls for service are addressed in Paragraph #4 above. That some of these 68 calls for service concerned intoxicated persons or loitering transients has little to do with Walgreens' operations or its proposed alcohol sales. Walgreens has worked closely with the local business community, the Police Department and Councilman Faulconer's office to address transient issues. The store manager reports that much progress has been made over the last few months. It is also important to note that, as mentioned above, Walgreens will not sell single cans or bottles of beer that might be attractive to transients or others drinking in public places. Walgreens will only sell beer in 6-pack quantities or larger.

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6. ***Whether the issuance of the license will promote the goals and policies of the City's General Plan, any applicable specific plan, or any similar policies that have been adopted by the City Council.*** The Hearing Officer correctly concluded that the sale of alcohol to law abiding residents/visitors promotes goals of the City. Beer and wine sales at the property is permitted by all applicable land use plans and policies. The Hearing Officer went on to note that issuance of a license to Walgreens would "add to the already over-concentration of licenses in this area." As noted above, however, the area is a busy commercial corridor with a large residential population in adjacent census tracts that can support an additional alcohol retailer like Walgreens. Indeed, those shopping in the area would find it convenient and would also benefit from the competitive environment that would result if Walgreens were permitted to sell beer and wine. Accordingly, Walgreens' application conforms with this Guideline.
7. ***Whether the application is for a premises where a previous license has been revoked within the previous one-year period.*** This Guideline is inapplicable as no license has been revoked from the premises within the past year. Walgreens is applying for a new license and as discussed above, Walgreens has an exemplary record when it comes to the sale of regulated products.
8. ***Whether the applicant has been convicted of a felony.*** Walgreens has not been convicted of a felony. As discussed above, Walgreens has an excellent record in all of its business dealings and has proven to be positive contributor to the community.
9. ***Whether the premises are located within 100 feet of residentially zoned property.*** It is undisputed that this Guideline is inapplicable as Walgreens is not located within 100-feet of a residence or residentially zoned property.
10. ***Whether any other information supplied by the applicant, or other competent evidence shows that the "public convenience or necessity" will be served by issuance of the license.*** The Hearing Officer failed to provide fair consideration of the detailed information provided by Walgreens through testimony at the Administrative Hearing and the letter dated October 28, 2010 (a copy of which is attached hereto). That testimony and correspondence, as well as this appeal, demonstrate that public convenience or necessity would be served by permitting Walgreens to sell beer and wine. Instead of considering that evidence, the Hearing Officer followed the Police Department policy of focusing almost exclusively on the overall crime rate and the number of existing licenses. For all the reasons discussed above, the Committee should overturn that decision and grant the PCN.

# LUCE FORWARD

ATTORNEYS AT LAW • FOUNDED 1873  
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

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## D. CONCLUSION

For all of the reasons discussed above and in the attached letter, the Public Safety and Neighborhood Services Committee should accept Walgreens' appeal and reverse the Hearing Officer decision to deny the PCN finding. The foregoing demonstrates that Walgreens' sale of beer and wine will serve the public convenience or necessity by providing customers with the convenience of "one stop shopping" and also create a more competitive retail environment. Walgreens has also demonstrated that beer and wine sales will be handled in a safe and responsible manner that will not have an adverse impact on police resources or the surrounding community in general. Providing this additional product offering will help Walgreens thrive during tough economic times, which in turn will foster continued stability in the Midway neighborhood it currently serves. As such, we respectfully request that the Safety and Neighborhood Services Committee make the requested PCN finding.

Sincerely,



Brian C. Fish  
of  
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

BCF/  
Enclosures

cc: Michael Redstone, Esq.  
Mr. Dale Malee

JENNIFER LA FOND CHAVEZ, ASSOCIATE  
DIRECT DIAL AND FAX NUMBER 619.699.2537  
EMAIL ADDRESS jchavez@luce.com

October 28, 2010

38415-6094

**VIA E-MAIL AND U.S. MAIL**

Administrative Hearings  
Citizens Review Board on Police Practices  
202 C Street, MS 9A  
San Diego, CA 92101  
Attn: Ms. Denise Sandoval

**Re: Ref No. 1914141113/Appeal of Police Department Decision to Deny Finding of  
Public Convenience or Necessity for Walgreens at 3005 Midway Drive**

Dear Ms. Sandoval:

Pursuant to San Diego Municipal Code section 33.0501, this letter serves as Walgreens' appeal of the San Diego Police Department determination, dated October 18, 2010 and received by us on October 21, 2010, that a finding of public convenience or necessity ("PCN") cannot be made for the issuance of an ABC Type 20 License for the existing Walgreens store at 3005 Midway Drive in San Diego (a copy of which is enclosed for your reference). Walgreens, the nation's largest drug store chain, has decades of experience as a responsible seller of regulated products such as pharmaceuticals, tobacco and alcohol. As the following explains, that experience will be brought to bear if the City approves Walgreens' proposal to dedicate a small percentage of its existing store in the Midway community to the sale of beer and wine for the casual drinker. For those and the other reasons described below, Walgreens respectfully requests that a hearing officer find that issuance of a Type 20 license to Walgreens would serve the public convenience or necessity.

**Public Convenience or Necessity Would be Served By Issuance of A Type 20 License to Walgreens**

State law establishes PCN thresholds, after which, the consent of the relevant local agency is required before the ABC may issue additional off sale licenses within a census tract. That law regarding PCNs does not require a denial of an alcohol license when the threshold is triggered, only an analysis of whether the specific application before the local agency is convenient or necessary. A PCN is required here because of the crime rate and the number of existing off-sale alcohol establishments within the applicable census tract. Walgreens is located in Census Tract 68.02. Based on 2000 population counts, the threshold for requiring a PCN in this census tract is 3 off-sale licenses and 5 licenses currently exist.

The public convenience or necessity would be served by permitting beer and wine sales for off-site consumption at the 3005 Midway Drive Walgreens store. Walgreens is a national chain of retail drugstores selling prescription and over-the-counter medicines as well as a variety of general

Ms. Denise Sandoval

October 28, 2010

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merchandise, sundries and grocery items to the public. Walgreens will dedicate only a very small percentage of the 15,033 square foot store for beer and wine sales. As such, beer and wine sales are expected to account for only a small percentage of overall sales. Further, unlike some other nearby retailers, Walgreens is not requesting a license to sell liquor nor will it sell single bottles or cans of beer or malt liquor as its inventory will only target the casual consumer of beer and wine.

Of equal importance to this appeal, the impetus for the sale of beer and wine is demand from existing Walgreens customers. By adding beer and wine to the other retail items already offered in the store, Walgreens can better serve the surrounding community by providing its customers with the convenience of "one-stop" shopping. Walgreens will also offer the security and crime prevention measures, described in more detail below, not available at other stores in the area. As demonstrated by the attached ABC chart, Walgreens will be the only store with a limited beer and wine inventory that is offering all the above described security and convenience within Census Tract 68.02.

#### **Beer And Wine Sales Will Not Aggravate Existing Police Problems or Otherwise Adversely Impact Police Resources**

As noted above, a PCN is required because Walgreens is located within a census tract with a crime rate that is at least 20% greater than the Citywide average crime rate. Walgreens is an experienced and trusted retailer that has sold regulated products, including pharmaceutical and tobacco, in all types of neighborhoods (including others like the Midway area) and Walgreens will bring that experience to its proposed alcohol sales program. Along those lines, so as to ensure compatibility with surrounding neighborhoods, Walgreens has taken measures to assure that any alcoholic beverage will be sold in a highly responsible and conscientious manner. Detailed, corporate policies and procedures are already in place and will be strictly enforced. The policies and procedures may include requirements such as:

- Employees at each store must undergo training prior to beer and wine being made available for sale at the store;
- Each cash register clerk must submit a policy acknowledgement as part of the daily log-in and log-out process;
- Each cash register clerk must request identification and proof of age for any customer attempting to purchase beer or wine who appears to be under the age of 40. Pre-programmed cash register "prompts" will remind the clerks to request this proof;
- Any under-aged employees will be required to involve the manager or assistant manager for the sale of beer or wine.

Training will be accomplished in part through a Walgreens internal alcohol sales training program, which is required for all cashiers and managers. The training program focuses on recognizing and

Ms. Denise Sandoval

October 28, 2010

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preventing sales of alcohol that may be detrimental to the public welfare (i.e., the sale of alcohol to minors and intoxicated persons). Implementation of this program will help ensure that the sale of alcohol at the store will not be detrimental to residents, shoppers, or other business in the vicinity of this store.

Walgreens also uses a variety of security strategies to ensure the safety of their employees and customers as well as the security of its merchandise. For example, cameras and public view monitors have been installed in all Walgreens stores to deter criminal activity and promote security. The digital images captured from these devices are stored for a period of time on a Digital Video Recorder and can be made available to the Police Department. Beer and wine displays will also be positioned on the opposite side of the store from where the entrance is located. To prevent abuses, Walgreens will also only sell beer in 6 packs, 12 packs, 18 packs and cases. Walgreens will not sell beer by the individual can or bottle. With all of these measures in place, the issuance of a beer and wine license to Walgreens will not have a material and adverse impact on police resources or the community in general.

#### **Census Tract Based Statistics Are In Imprecise Way to Determine Whether a New Off-Sale License Should Be Issued**

The census tract and household population based PCN threshold assumes that alcohol retailers and household populations will be spread evenly throughout a City. That analytical approach fails to consider an individual City's land use and zoning patterns. Census Tract 68.02, for example, is dominated by the busy commercial corridors of Rosecrans Avenue and Midway Drive. As a result of these and other non-residential land uses within the census tract (such as Sharp Healthcare and Kaiser Permanente), the threshold for requiring a PCN is lower than it would be in a predominantly residential census tract of a similar size. Indeed, two adjacent census tracts do not trigger the PCN threshold because they are predominantly residential and/or non-commercial<sup>1</sup>. Walgreens will serve the residential population within all three census tracts as well as others living and working in the surrounding area. When the relevant statistics are combined, the threshold for triggering a PCN within those 3 census tracts would be 12 licenses and only 9 exist.

Finally, the issuance of the ABC license to Walgreens is necessary in order for the community to benefit from competition between Walgreens and the CVS located less than a quarter mile away in Census Tract 66. Currently, Walgreens is at a competitive disadvantage because CVS already sells alcohol pursuant to an existing ABC license. If CVS has to compete on a level playing field with Walgreens, and Walgreens is allowed to provide the same "one stop" shopping experience that people want, each of these national retailers will be encouraged to provide the type of safe and customer oriented environment that the surrounding community expects and deserves. If the PCN finding for Walgreens is withheld, the benefits of true competition are lost and it is the surrounding

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<sup>1</sup> Census Tract 69 and 74.

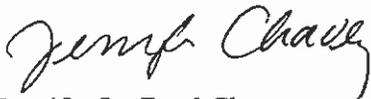
Ms. Denise Sandoval  
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community that suffers in the end. Therefore, the City should find that issuance of an ABC license to Walgreens is appropriate and would serve the public convenience or necessity.

**Conclusion**

The foregoing demonstrates that public convenience and necessity would be served and even enhanced by the sale of beer and wine at this Walgreens store. Such sales would facilitate convenient, "one-stop" shopping for Walgreens' many customers in the City of San Diego. Sales at Walgreens will be conducted in a way that maximizes public safety, minimizes public nuisance and at a location that is very well suited for beer and wine sales. Additionally, the beer and wine sales will allow Walgreens to remain competitive with retailers in the vicinity such as CVS. This competition will not only benefit the community in general, it will help to maintain the up to 43 full time and part time jobs generated by Walgreens. For all of these reasons, the City should make a finding of public convenience or necessity for the proposed sale of beer and wine at Walgreens' 3005 Midway Drive store.

Sincerely,



Jennifer La Fond Chavez  
for  
LUCE, FORWARD, HAMILTON & SCRIPPS LLP  
JLC/

Enclosures

cc: Brian Fish, Esq.  
Michael Redstone, Esq.



THE CITY OF SAN DIEGO

File Copy LHM&S/JSL

OCT 21 2010

RECEIVED

IN REPLYING PLEASE  
GIVE OUR REF.NO.  
1914141113

October 18, 2010

Certified Mail #7008 0150 0002 4313 9579

Ms. Jennifer Chavez  
600 W. Broadway, Ste. 2600  
San Diego, CA 92101  
Reference: PCN Application @ 3005 Midway Drive, San Diego

**THIS LETTER IS TIME SENSITIVE**

Dear Ms. Chavez:

On July 20, 2010, you requested a Public Convenience or Necessity evaluation of the premises located at 3005 Midway Drive, San Diego, California. Your request was to acquire a Type 20 (Off-Sale Beer and Wine) License for an existing Walgreens at that location. In accordance with the standard operations of Walgreens stores nationwide, the store offers a wide range of goods and food items and is seeking to include beer and wine in its inventory.

In accordance with Business and Professions Code, section 23958.4, your application is required to meet standards for public convenience and necessity. Your application, for the described premises, fails to meet those standards for one or more of the following reasons:

- X The premises falls within a crime data area which has a twenty percent greater number of reported crimes than the average number of crimes for all crime data areas in the City (High Crime area).
- X An undue concentration of ABC licenses exist within the census tract.
- X The business will not serve businesses or residents not currently being served by a same or similar business.
- X This license will aggravate existing Police problems.

CITY OF SAN DIEGO POLICE DEPARTMENT  
VICE OPERATIONS  
1401 BROADWAY, SAN DIEGO, CA 92101-5729  
PHONE: (619) 531-2452 FAX: (619) 531-2449





Page 2  
October 18, 2010

**THE CITY OF SAN DIEGO**

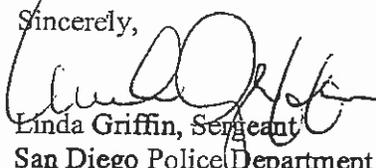
Should you choose to appeal this decision, you may request a hearing by writing to:

Citizen Review Board on Police Practices  
202 C Street, MS 9A  
San Diego, CA 92101

Your request must specifically articulate the basis for the appeal and identify the ways you feel your project may serve the public convenience and/or necessity.

Your request must be made within ten (10) calendar days from receipt of this notice.

Sincerely,

  
Linda Griffin, Sergeant  
San Diego Police Department  
Vice Admin Unit

cc: Alcohol Beverage Control Board

Org: 1914141113

CITY OF SAN DIEGO POLICE DEPARTMENT  
VICE OPERATIONS  
1401 BROADWAY, SAN DIEGO, CA 92101-5729  
PHONE: (619) 531-2452 FAX: (619) 531-2449



**FORM PER SECTION 23958.4 B&P**

**CITY OF SAN DIEGO**  
**For Off-Sale, On-Sale Beer, and Public Premises Licenses**

- 1. PREMISE ADDRESS: 3005 Midway Dr. SD 92110
- 2. LICENSE TYPE: (20) Off-Sale Beer + Wine
- 3. TYPE OF BUSINESS: \_\_\_\_\_

CRIME REPORTING DISTRICT DD68.02

NUMBER OF LICENSES ALLOWED 3 NUMBER EXISTING 6

DISTRICT AVERAGE 267.5 X 120% = 321 = HIGH CRIME

CRIMES IN THIS REPORTING DISTRICT 379 / 141.77

If the above premises are located in an area which has an over-concentration of alcoholic beverage licenses and/or a higher than average crime rate as defined in Section 23958.4 of the Business and Professions Code:

- 4. WILL PUBLIC CONVENIENCE OR NECESSITY BE SERVED BY ISSUANCE OF THIS ALCOHOLIC BEVERAGE LICENSE?  
(This section to be completed by SDPD Vice Section)

YES       NO

LINDA GRIFFIN, SGT.  
Name of SDPD Vice Officer  
(Please print name and title)

6195312349  
Phone Number

[Signature]  
Signature of SDPD Vice Officer

10.18.10  
Date

Under the penalty of perjury, I declare the information in this affidavit is true to the best of my knowledge. I acknowledge that any false or misleading information will constitute grounds for denial of the application for the license or if the license is issued in reliance on information in this affidavit which is false or misleading, then such information will constitute grounds for revocation of the license issued.

APPLICANT'S SIGNATURE: Jennifer Chavez DATE: 7/30/10

(Please Print)  
APPLICANT'S NAME: Jennifer Chavez

MAILING ADDRESS: 600 W. Broadway, Ste. 2600  
San Diego CA 92101

TELEPHONE NUMBER: (619) 699 2537



**California Department of Alcoholic Beverage  
Control  
For the County of SAN DIEGO - (Off-Sale Licenses)**

and Census Tract = 68.02

Report as of 10/28/2010

	License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1)	216764	ACTIVE	21	5/10/1988	6/30/2011	VONS COMPANIES INC THE 3645 MIDWAY DR SAN DIEGO, CA 92110  Census Tract: 0068.02	VONS 2053	PO BOX 29096 PHOENIX, AZ 85038-9096	3710
2)	361020	ACTIVE	20	12/29/1999	6/30/2011	7 ELEVEN INC 2920 ADRIAN ST SAN DIEGO, CA 92110  Census Tract: 0068.02	7 ELEVEN STORE 2121 13642	PO BOX 2245 BREA, CA 92822-2245	3710
3)	412958	ACTIVE	21	6/7/2004	9/30/2011	SHEMRAN INC 4001 W POINT LOMA BLVD SAN DIEGO, CA 92110-5641  Census Tract: 0068.02	BARONS MARKETPLACE		3710
4)	430714	ACTIVE	20	2/16/2006	6/30/2011	7 ELEVEN INC 4101 W POINT LOMA BLVD SAN DIEGO, CA 92110  Census Tract: 0068.02	7 ELEVEN STORE 20100 2121	PO BOX 2245 BREA, CA 92822-2245	3710
5)	451794	ACTIVE	20	6/6/2007	6/30/2011	7 ELEVEN INC 3185 MIDWAY DR, STE A SAN DIEGO, CA 92110-4542  Census Tract: 0068.02	7 ELEVEN 2111 27659	PO BOX 2245 BREA, CA 92822-2245	3710

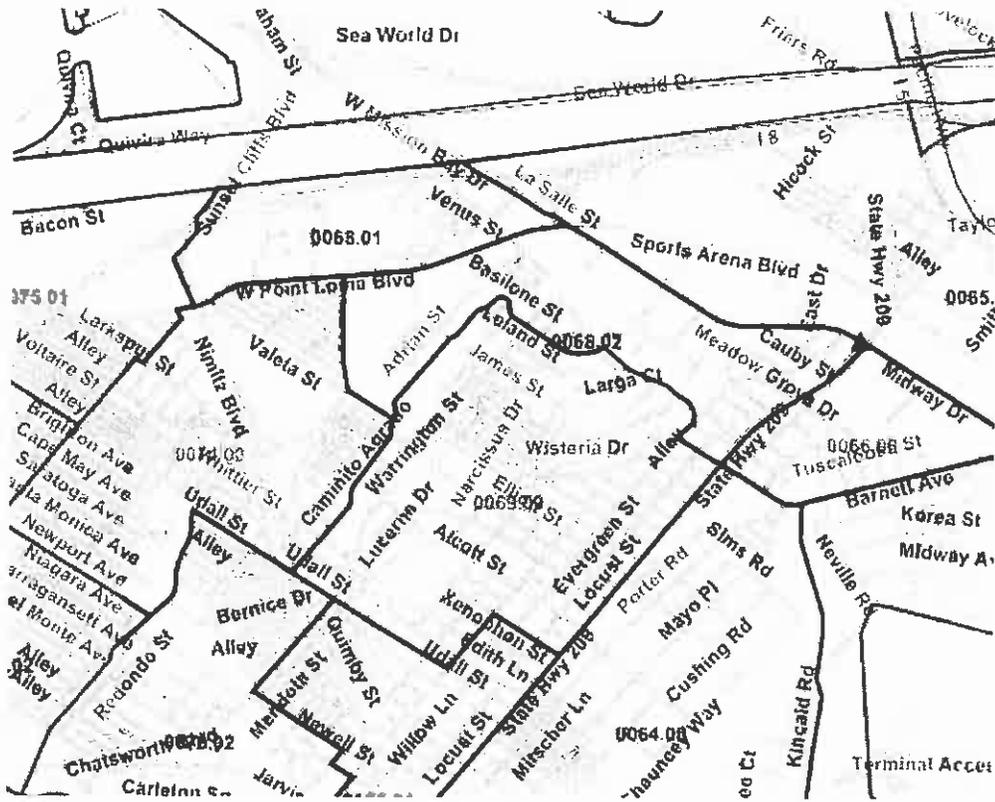
--- End of Report ---

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

**AGGREGATE CENSUS TRACT ANALYSIS  
WALGREENS  
(3005 Midway Drive)**

Attached hereto is a census tract map showing census tracts 68.02 (Walgreens) and two adjacent census tracts to the south (census tract 69) and west (census tract 74), a print out from the ABC website showing the number of off sale licenses existing within each of these census tracts, and a print out showing population data for each census tract from the 2000 census. The attached information demonstrates that census tracts 68.02, 69 and 74 have an combined population of 16,428. That population would support issuance of 13 ABC licenses without a PCN ( $16,428/1,250 = 13$ ) and only 9 licenses actually exist within those three census tracts. As such, there is no true "overconcentration" in the area surrounding Walgreens.

101421813.2



2010 Information	
Street Address	3005 MIDWAY DR
City Name	SAN DIEGO
State Abbr	CA
Zip Code	92110
MSA/MD Code	41740
State Code	06
County Code	073
Tract Code	0068.02





**P1. TOTAL POPULATION [1] - Universe: Total population**

Data Set: Census 2000 Summary File 1 (SF 1) 100-Percent Data

NOTE: For information on confidentiality protection, nonsampling error, definitions, and count corrections see <http://factfinder.census.gov/home/en/datanotes/expsf1u.htm>.

	Census Tract 68.02, San Diego County, California	Census Tract 69, San Diego County, California	Census Tract 74, San Diego County, California
<b>Total</b>	4,817	5,146	6,465

U.S. Census Bureau  
Census 2000

Census count corrections for American Indian and Alaska Native Areas (AIANAs), states, counties, places, county subdivisions, census tracts, and blocks may have been released as a result of an external challenge through the Count Question Resolution Program.

**Standard Error/Variance documentation for this dataset:**

Accuracy of the Data: Census 2000 Summary File 1 (SF 1) 100-Percent Data (PDF 44KB)



**California Department of Alcoholic Beverage  
Control  
For the County of SAN DIEGO - (Off-Sale Licenses)**

**and Census Tract = 68.02**

Report as of 1/14/2011

	License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1)	216764	ACTIVE	21	5/10/1988	6/30/2011	VONS COMPANIES INC THE 3645 MIDWAY DR SAN DIEGO, CA 92110  Census Tract: 0068.02	VONS 2053	PO BOX 29096 PHOENIX, AZ 85038-9096	3710
2)	361020	ACTIVE	20	12/29/1999	6/30/2011	7 ELEVEN INC 2920 ADRIAN ST SAN DIEGO, CA 92110  Census Tract: 0068.02	7 ELEVEN STORE 2121 13642	PO BOX 2245 BREA, CA 92822-2245	3710
3)	412958	ACTIVE	21	6/7/2004	9/30/2011	SHEMRAN INC 4001 W POINT LOMA BLVD SAN DIEGO, CA 92110-5641  Census Tract: 0068.02	BARONS MARKETPLACE		3710
4)	430714	ACTIVE	20	2/16/2006	6/30/2011	7 ELEVEN INC 4101 W POINT LOMA BLVD SAN DIEGO, CA 92110  Census Tract: 0068.02	7 ELEVEN STORE 20100 2121	PO BOX 2245 BREA, CA 92822-2245	3710
5)	451794	ACTIVE	20	6/6/2007	6/30/2011	7 ELEVEN INC 3185 MIDWAY DR, STE A SAN DIEGO, CA 92110-4542  Census Tract: 0068.02	7 ELEVEN 2111 27659	PO BOX 2245 BREA, CA 92822-2245	3710

--- End of Report ---

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



**California Department of Alcoholic Beverage  
Control  
For the County of SAN DIEGO - (Off-Sale Licenses)**

**and Census Tract = 69**

Report as of 1/14/2011

	License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1)	200485	ACTIVE	21	5/28/1987	5/31/2011	BYUN, CHUNG HEE 3790 VOLTAIRE ST SAN DIEGO, CA 92107  Census Tract: 0069.00	RUSHINGS LIQUOR & DELI		3710
2)	224552	ACTIVE	21	4/12/1989	2/28/2011	STUMPS MARKET INC 3770 VOLTAIRE ST SAN DIEGO, CA 92107  Census Tract: 0069.00	STUMPS MARKET		3710

--- End of Report ---

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



**California Department of Alcoholic Beverage  
Control  
For the County of SAN DIEGO - (Off-Sale Licenses)**

**and Census Tract = 74**

Report as of 1/14/2011

	License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1)	215061	ACTIVE	20	7/1/1988	6/30/2011	7 ELEVEN INC 4205 VOLTAIRE ST SAN DIEGO, CA 92107  Census Tract: 0074.00	7 ELEVEN 2121 18824	PO BOX 2245 BREA, CA 92822-2245	3710
2)	406179	ACTIVE	21	3/30/2004	2/28/2011	NAJOR, GEORGE AZIZ 3911 VOLTAIRE ST SAN DIEGO, CA 92107  Census Tract: 0074.00	SUNSHINE LIQUOR & DELI		3710

--- End of Report ---

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