



## Legislation Text

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**File #:** 21-0033, **Version:** 1

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**TO:**

Honorable Mayor and Members of the City Council

**THROUGH:**

Bruce Moe, City Manager

**FROM:**

Steve S. Charelian, Finance Director

**SUBJECT:**

Consideration of Granting Hardship Exemption to 7-Eleven # 24549 Requesting Additional Time to Comply with Ordinance No. 20-0007 Which Prohibits the Retail Sale of Tobacco Products (Finance Director Charelian).

- a) **CONSIDER HARDSHIP EXEMPTION REQUEST**
- b) **ADOPT RESOLUTION NO. 21-0012**

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**RECOMMENDATION:**

Staff recommends that after considering the request, City Council adopt Resolution No. 21-0012 to extend the compliance period with Ordinance No. 20-0007 up to and including June 30, 2021 to 7-Eleven # 24549.

**FISCAL IMPLICATIONS:**

The fiscal implications of the requested extension is difficult to calculate because City revenues derived from such sales are from business license taxes and sales taxes. Neither tax is reported at the product level; rather, businesses report their total sales, which also includes sales of other products that are not the subject of Ordinance No. 20-0007. Thus, the financial implications of a decision to grant or deny an extension request to an applicant, albeit difficult to quantify, is minimal.

**BACKGROUND:**

The City of Manhattan Beach has a long history of recognizing and addressing the dangers to public health arising from the use of tobacco products. The City Council has adopted measures as early as 2004 to prohibit smoking on the City's beach, the Strand, the greenbelt, all other public places, places of employment, and multi-unit residences. These decisions were based upon testimony and evidence provided by numerous experts, including representatives from the Los Angeles County Department of Health Services and the Beach Cities Health District. Beginning in 2016, at duly noticed public meetings, the City Council took a series of steps addressing the retail sale of tobacco product. Throughout this entire process, City staff has invited retailers to participate in meetings to discuss the sale of tobacco products. In 2016 and again in 2019, the City Council adopted ordinances regulating flavored tobacco and vaping products.

At a publicly noticed City Council meeting held on June 4, 2019, the City Council considered a

complete prohibition on the sale of tobacco in Manhattan Beach. After receiving public input, the Council directed staff to schedule further discussion at a future City Council meeting, and to invite all of the businesses in the City that sell tobacco products. Pursuant to such direction, City staff notified all retailers with a City tobacco retail sales permit that the City had scheduled another City Council meeting to discuss a complete ban for the October 1, 2019, meeting, and invited them to provide input.

At the October 1, 2019, meeting the Council entertained several comments from the public regarding a prohibition, including comments from retailers. After a lengthy discussion and careful consideration of all the evidence presented, the Council directed staff to draft two ordinances for future Council consideration: (1) an urgency ordinance to prohibit all vaping products and flavored tobacco; and (2) an ordinance that prohibits the retail sale of all tobacco products with a hardship exemption application process.

A draft ordinance for a complete ban was placed on the December 17, 2019, City Council agenda for further discussion. Prior to taking any action, the Council considered additional input from the public, including: an academic paper entitled "An argument for phasing out sales of cigarettes," authored by Dr. Elizabeth A. Smith from the University of California, San Francisco; presentations by medical doctor Tony Kuo, the Director of the Los Angeles County Department of Health and Safety Chronic Disease and Injury Prevention Division; and University of San Francisco Professor Ruth Malone; and public comments, including from retailers and a consultant who stated she represented all 17 tobacco retailers in the City and 60,000 tobacco retailers nationwide. After the close of public comment, the City Council opted to proceed with the proposed prohibition of retail tobacco sales, and discussed a number of policies that would assist retailers in their transition. The Council directed staff to:

- Provide retailers up until January 1, 2021, to comply with the prohibition;
- Provide a hardship exemption application process so that retailers can apply, at no cost, to extend their compliance periods beyond January 1, 2021; and
- Provide retailers with consulting services, at no cost to the retailer, to assist in the transition.

On February 4, 2020, the City Council introduced Ordinance No. 20-0007. On February 18, 2020, the City Council adopted Ordinance No. 20-0007, prohibiting the retail sale of tobacco in Manhattan Beach. On both dates, the City Council provided the public additional opportunities to comment on the draft ordinance prior to the Council taking action.

Per Council direction, staff has provided, free of charge to the retailers, consulting services in order to help them transition away from tobacco products and comply with the Ordinance. Also, the City adopted October 31, 2020, as the deadline for submitting application for a hardship exemption, providing businesses with ample time to facilitate a transition to non-tobacco products, deplete stock, and assess whether they might need more time to comply with the prohibition.

On January 5, 2021, the City Council approved resolutions to three businesses who had applied for a hardship exemption, providing them with an additional six months to comply with the Ordinance.

## **DISCUSSION:**

As noted above, the ordinance contains a hardship exemption provision, allowing businesses an opportunity to demonstrate the extent to which they are affected by the ordinance. Any tobacco retailer that wishes to continue to sell tobacco after December 31, 2020, could apply for a hardship

exemption. Pursuant to the ordinance, the City Council shall grant a hardship exemption upon making a finding that the denial of the exemption would result in the applicant being deprived of all economically viable use of the property. The Council has the discretion to grant the exemption upon other grounds, even if the ordinance does not deprive an applicant of all economically viable use of the property. The Council has the discretion to provide a hardship exemption for an unlimited period of time.

Prior to the October 31, 2020, deadline, the City received an application from the owner of 7-Eleven # 24549 located 1221 Artesia Boulevard.

The applicant demonstrated that the sale of tobacco products has been declining over the last three years. The main reason for requesting an additional 24 months to comply with the Ordinance is to sell off the store's current inventory and to recoup investment made into the store, as well as to mitigate the impact that COVID-19 has taken on the store volume of cigarette, tobacco, and other products.

The applicant notes that they do have the ability to sell other items, as currently the makeup of the remaining 78% of the store sales is generated by fresh food, packaged foods, snacks, beverages (alcoholic and non-alcoholic), lottery, prepaid cards, health and beauty, household goods, and other items. The applicant states, however, that the sale of the above mentioned products will be impacted since tobacco customers will take their business of non-tobacco items to neighboring cities where there is no tobacco ban. Such a statement is unsupported by empirical data, and is speculative.

The applicant has not provided substantial evidence that the denial of the request would result in the applicant being deprived of all economically viable use of the property containing the retail sale of tobacco. 7-Eleven is a convenience store and sells a variety of retail products. The Council has the discretion to grant requests upon other grounds, even if the prohibition of the sale of tobacco products does not deprive an applicant of all economically viable use of the subject property.

The City Council remains very sympathetic to the applicant. As evidenced by: (1) providing several opportunities for all stakeholders, including tobacco retailers, the tobacco industry and health officials, to provide input as to how to address the health issues associated with tobacco use; (2) extending the compliance time of the ordinance until January 1, 2021; (3) providing no-cost consulting services; and (4) providing an opportunity to retailers to apply for hardship exemptions, the City has demonstrated its efforts to address the significant health dangers created by the use of tobacco while making every effort to help retailers adjust their business model so that they do not rely on the sale of tobacco. Further, during the COVID-19 pandemic, the City has taken a number of steps to help retailers during these difficult times.

Accordingly, based upon all the factors discussed in this report, staff recommends that the City Council extend the compliance date for the applicant until June 30, 2021, by adopting Resolution No. 21-0012. If the Council adopts staff's recommendation, it would mean that the City has provided 7-Eleven over 18 months to comply with the prohibition.

#### **PUBLIC OUTREACH:**

As noted above, staff has communicated frequently with the City retailers in order to assure that the provisions of the ordinance were understood and that the concerns of the retailers were addressed.

These communications included written correspondence, emails, in-person meetings (before the pandemic), and telephonic.

**ATTACHMENT:**

1. Resolution No. 21-0012