



Legislation Details (With Text)

File #: 20-0350 **Version:** 1
Type: Consent - Staff Report **Status:** Agenda Ready
In control: City Council Regular Meeting
On agenda: 12/1/2020 **Final action:** 12/1/2020
Title: Consideration of Granting Hardship Exemptions to Tobacco Retailers Requesting Additional Time to Comply with Ordinance No. 20-0007 Which Prohibits the Retail Sale of Tobacco Products (Finance Director Charelian).
CONSIDER HARDSHIP EXEMPTION REQUESTS

Sponsors:

Indexes:

Code sections:

Attachments: 1. Hardship Application Summary, 2. Notice of Hearing

Date	Ver.	Action By	Action	Result
12/1/2020	1	City Council Regular Meeting	approved	Pass

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 Exemptions to Tobacco Retailers Requesting Additional Time to Comply with Ordinance No. 20-0007 Which Prohibits the Retail Sale of Tobacco Products (Finance Director Charelian).

CONSIDER HARDSHIP EXEMPTION REQUESTS

RECOMMENDATION:

Staff recommends that after considering the requests, City Council direct staff to prepare a resolution to extend the compliance period with Ordinance No. 20-0007 for an additional six months (up to and including June 30, 2021), to four businesses that are seeking hardship extensions to continue selling tobacco products after December 31, 2020.

FISCAL IMPLICATIONS:

The fiscal implications of the requested extensions are 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 four applicants, 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. At least two of the four retailers currently requesting a hardship extension provided information at that time. 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. Based upon the incomplete nature of the requests, staff provided applicants filing applications before the deadline additional time to provide information to support their requests.

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 applications from the following businesses, with various levels of completeness:

<u>Business</u>	<u>Term of Requested Extension</u>
MB Smoke shop	December 31, 2027
Current Events newsstand	June 30, 2021
Aviation Liquor store	Unlimited
United Pacific gas station	June 1, 2021

The applications from Current Events, Aviation Liquor, and United Pacific were incomplete and did not contain all of the information requested in the application forms. As noted above, Staff extended the deadline to Aviation Liquor to November 20, 2020, so that it could provide additional information requested in the application forms. On behalf of Current Events, Kay Nam requested additional time, and staff provided her until November 23, 2020, to complete her application. The deadline was also extended to United Pacific to November 20, 2020. Aviation Liquor and Ms. Nam provided more information. Aviation submitted additional information for its application on November 25, 2020.

As indicated above, United Pacific requested an extension until June 1, 2021. Current Events requested six months to sell off the store's current inventory. MB Smoke requested until December 31, 2027, to coincide with an option period of its lease. MB Smoke submitted a document titled, "Amendment to Lease," dated August 1, 2019, at which time the Tenant (MB Smoke) exercised an option to extend the lease to December 31, 2022. The amendment also includes an additional option under which the Tenant could exercise in the future an option to extend the lease until December 31, 2027. The application also indicates that MB Smoke wants the opportunity to request an additional extension exemption in 2027. Aviation Liquor requested an unlimited extension.

Each application has been considered individually and on its own merits. Below is the analysis with respect to each of them:

- United Pacific provided no evidence that the sale of tobacco products is a significant portion of its sales. On that basis, staff would typically recommend that the Council deny the request.
- Current Events demonstrated that its tobacco sales have steadily been declining over the last three years and is no longer a significant portion of its sales. The owner of Current Events has made a good faith effort to sell off the remaining inventory of tobacco products since the adoption of the Ordinance. However, the store is left with a small amount, supporting the owner's claim that it may take up to six months to deplete. A six-month extension seems reasonable.
- Aviation Liquor states that "while tobacco may be 20%-23% of our overall sales, 75% of our overall sales are derived from patrons who purchase tobacco products." Aviation Liquor's primary argument rests, not on evidence that tobacco products are a significant portion of its sales, but that, out of convenience, persons buying alcohol and other goods will shop "across the street" at a competitor in Redondo Beach if they also want tobacco, instead of making two trips. Such statement is unsupported by any empirical data, and is speculative. Once again, staff would typically recommend that the Council deny the request due to the lack of substantial evidence to support the request.
- MB Smoke Shop completed its application on a timely basis. However, it has provided the City with minimal evidence to support its application for an additional seven years to amortize its business. Most statements and claims in its application are unsupported by any specific evidence, and the application's limited analysis is often quite speculative. In addition, it is far from clear whether MB Smoke Shop has any real intention of transitioning to non-tobacco products: the shop's own business plan, which was submitted as part of the hardship application, conceded that its plan for phasing out tobacco products "is by no means exact." Further, the City has engaged in dialogue with MB Smoke Shop since June of 2019 regarding a ban, providing the owner of the business ample time to amortize the sale of tobacco products. The structure is a standard retail building, and can be readily used for retail sale of numerous non-tobacco products.

In sum, none of the applicants have provided substantial evidence that denial of the requests would result in the applicant being deprived of all economically viable use of the properties containing the retail sales of tobacco. United Pacific is a gas station. Current Events is a newsstand which sells a variety of retail products. Aviation Liquor is a liquor store that sells beer, wine, spirits, and convenience items. MB Smoke Shop is located in a standard retail building that can be used for a wide range of non-tobacco retail items. Nevertheless, 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 each of the applicants. 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 each of the four applicants, until June 30, 2021. If the Council adopts staff's recommendation, it would mean that the City has provided these businesses 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.

ATTACHMENTS:

1. Hardship Applications Summary
2. Notice of Hearing