



## Legislation Details (With Text)

**File #:** 21-0041 **Version:** 1  
**Type:** Gen. Bus. - Staff Report **Status:** Passed  
**In control:** City Council Regular Meeting  
**On agenda:** 1/19/2021 **Final action:** 1/19/2021  
**Title:** Consideration of a Resolution Approving a Hardship Exemption Authorizing MB Smoke to Temporarily Sell Tobacco Products (City Attorney Barrow).  
ADOPT RESOLUTION NO. 21-0010

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Application for Hardship Exemption Submitted November 22, 2019, 2. Application for Hardship Exemption Submitted October 29, 2020, 3. Resolution No. 21-0010

Date	Ver.	Action By	Action	Result
1/19/2021	1	City Council Regular Meeting	approved	Pass

**TO:**

Honorable Mayor and Members of the City Council

**THROUGH:**

Bruce Moe, City Manager

**FROM:**

Quinn Barrow, City Attorney  
Alexandria Latragna, Management Analyst

**SUBJECT:**

Consideration of a Resolution Approving a Hardship Exemption Authorizing MB Smoke to Temporarily Sell Tobacco Products (City Attorney Barrow).

**ADOPT RESOLUTION NO. 21-0010**

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**RECOMMENDATION:**

Staff recommends that the City Council approve Resolution No. 21-0010, authorizing MB Smoke to temporarily sell tobacco products in Manhattan Beach until April 30, 2021.

**FISCAL IMPLICATIONS:**

There are no fiscal implications associated with the recommended action.

**BACKGROUND:**

After a number of publically noticed meetings and extensive solicitation of public input, the City Council adopted Ordinance No. 20-0007, prohibiting the retail sale of tobacco in Manhattan Beach. The ordinance provided retailers up until January 1, 2021, to comply with the prohibition, and provided a hardship exemption application process so that retailers could apply, at no cost, to extend their compliance periods beyond December 31, 2020. Several businesses applied for a hardship exemption, including MB Smoke Shop ("Applicant"), located at 1005 N. Aviation Boulevard (the

“site”).

At a duly noticed Council meeting held on December 1, 2020, City Council considered MB Smoke Shop's hardship application. After receiving input from the applicant's attorney and the public, the Council directed staff to draft a resolution granting Applicant a hardship exemption, allowing it to sell tobacco products until December 31, 2021. The Applicant did not provide substantial evidence that denial of its request would result in a deprivation of all economically viable use of the site. Likewise, the Applicant did not meet its burden of proof in establishing, by a preponderance of the evidence, that the application of Ordinance No. 20-0007 to Applicant's business is unreasonable. Nevertheless, Councilmembers wanted to accommodate the Applicant and directed staff to draft the resolution to allow Applicant to sell tobacco products until December 31, 2021. One or more Councilmembers expressed concerns at that time about whether the Applicant would take measures to comply with the Ordinance, but were willing to consider granting an additional year of tobacco sales, provided the Applicant agreed to conditions demonstrating good faith efforts.

At the Council meeting held on January 5, 2021, City Council considered the draft resolution. Councilmembers expressed concerns about providing additional time to allow Applicant to sell tobacco products in light of whether the Applicant had acted in good faith after the Council had taken certain steps to prohibit the sale of vaping products and tobacco products in Manhattan Beach. In particular, Councilmembers were concerned about: (1) the timing of the lease extension; and (2) the sale of vaping products and e-cigarettes after the Council's adoption, on November 5, 2019, of an ordinance prohibiting the sale of vaping products and electronic cigarettes.

- (1) As part of its hardship exemption application, Applicant submitted a document titled “Amendment to Lease” (the “Lease Amendment”), which indicates that Applicant's lease for the Property was due to expire on October 14, 2019, 14 days after the City Council directed staff to draft ordinances to ban the sale of vaping products and tobacco products. Despite the pendency of the ban, Applicant extended its lease.
- (2) The application also included a list of its inventory, as of October 29, 2020. Under the heading of “Current Products,” the application states “Specialty merchandise sold at MB Smoke include ... “Vape products, Electronic Cigarettes, E Juice/E Liquid...” The sale of such products has been prohibited in Manhattan Beach by the Vaping Products Ban since November 5, 2019.

After a failed motion to adopt the draft resolution on January 5, 2021, the City Council continued the matter to allow the Applicant another opportunity to support its application. The Council directed staff to: visit the site to determine compliance with the Vaping Products Ban; and draft a resolution to provide a 90-day extension. On January 6, 2021, staff visited MB Smoke. Staff observed that the illegal vaping products were on display, as well as a sign that stated that MB Smoke cannot sell such products. Staff observed the operator “turn away” five customers seeking the illegal products. Staff does not know when the sign was placed on the counter. Staff has drafted a resolution for Council consideration.

#### **ATTACHMENTS:**

1. Application for Hardship Exemption Submitted November 22, 2019
2. Application for Hardship Exemption Submitted October 29, 2020
3. Resolution No. 21-0010