



Legislation Text

File #: 20-0018, **Version:** 1

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Steve S. Charelian, Finance Director

Cynthia F. Mickschl, Revenue Services Manager

SUBJECT:

Consider Hardship Extensions to Tobacco Retailers Requesting Additional Time to Comply with Urgency Ordinance No. 19-0016-U Which Prohibits the Sale of Electronic Smoking Devices, Vaping Products, and Flavored Tobacco (Finance Department Charelian).

CONSIDER EXTENSIONS

RECOMMENDATION:

Staff recommends that the City Council consider hardship extensions requested by four tobacco retailers additional time to comply with Ordinance No. 19-0016-U.

FISCAL IMPLICATIONS:

The fiscal implications of the requested extensions 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. 19-0016-U. Thus, the financial implications of a decision to grant or deny an extension request to four applicants, albeit difficult to quantify, is minimal.

BACKGROUND:

On November 5, 2019, City Council adopted Ordinance No. 19-0016-U prohibiting the sale of electronic smoking devices, vaping products and flavored tobacco in the City.

The ordinance contains a hardship extension provision, allowing businesses an opportunity to demonstrate the extent to which they are affected by the ordinance. Any tobacco retailer that wished to continue to sell electronic smoking devices, vaping products or flavored tobacco after the ordinance's effective date could apply for a hardship extension. Pursuant to the ordinance, the City Council shall grant a hardship extension upon making a finding that the denial of the extension would result in the applicant being deprived of all economically viable use of the property. The Council has the discretion to grant the extension upon other grounds, even if the ordinance does not deprive an applicant of all economically viable use of the property.

Staff 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, and in-person meetings.

DISCUSSION:

On or prior to November 25, 2019, the City received a total of five applications for hardship extensions. One applicant (MB Smoke Shop located at 1005 N. Aviation Boulevard) withdrew its application from consideration. The remaining applications were evaluated by the Finance Director and staff sub-committee for adherence to the provisions of the ordinance.

As noted above, the City Council must grant a hardship extension upon making a finding that the denial of the extension would result in the applicant being deprived of all economically viable use of the property. Further, the City Council has the discretion to grant the extension upon other grounds, even if the ordinance does not deprive an applicant of all economically viable use of the property. Without question, a decision to enforce a limited ordinance such as this without granting an extension would not deprive a person of all economically viable use of the property in question. There are no businesses in the City that sell electronic smoking devices, vaping products, and flavored tobacco, exclusively. Accordingly, staff recommends that the City Council consider other factors such as fairness, helping local businesses, a store's existing stock of such products, and the amount of time an applicant has requested.

The applicants provided a narrative explaining why they felt the extension was warranted, a complete inventory of the products prohibited by the ordinance, approximate sales totals for such products, and an implementation plan for compliance. Due to the proprietary nature of the information provided, the applications are not part of the public record.

Each application has been considered individually and on its own merits. Staff evaluated the sales and inventory data provided by the applicants to assess the respective proposals, and found that each request was reasonable. Based upon its review of the individual applications, staff recommends that the City Council consider each applicants request for an extension in the amount of time requested by each applicant, solely for the purpose of deleting stock existing as of November 5, 2019, the effective date of the ordinance:

- Players Liquor, located at 3804 Highland Ave, requested 30 days
- Current Events, located at 1140 Highland Ave, requested 3 months
- Manhattan Beach Market, located at 1111 Manhattan Ave, requested 3 months
- 7 Eleven, located at 1221 Artesia Blvd, requested 6 months

Staff recommends that the Council consider the requested hardship extensions. In that the requests were submitted at the end of November, it is quite possible that the inventory existing as of November 5, 2019 has been depleted.

ATTACHMENT:

1. Hardship Application Recommendations