



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: David Newell, Community Development Director

MEETING DATE: October 22, 2024

SUBJECT: Consideration of Resolution 2024-172, Denying an Appeal Filed by Two Brothers 14 Corporation of the Denial of a Business License to Operate a Tobacco Sales Retailer Located at 300 South Highland Drive #8A; and Making Findings in Support Thereof

RECOMMENDATION:

Adopt Resolution 2024-172.

BACKGROUND:

The subject appeal was submitted by Artemis Law Group on behalf of the business license applicant, Two Brothers & 14 Corporations, Inc. ("Applicant"), in response to the City's denial of a business license application ("Application") seeking approval to operate a tobacco retail store, Heavy Clouds Vapes and More, within the Sun Lakes Village Shopping Center. The Application was submitted online through the City's business license portal on July 8, 2024. The Applicant was notified of an invoice on July 9, 2024. After paying the invoice, a business license certificate ("Certificate") was issued by a City vendor administering licenses in the online portal on July 15, 2024; however, prior to this issuance, the Community Development Department ("Department") hadn't completed its review of the Application. A business license does not allow businesses to operate that are not compliant with the Municipal Code, General Plan, or any Specific Plan.

The tobacco retailer is proposed within a tenant space at 300 S. Highland Drive, which is part of the Sun Lakes Specific Plan. This Specific Plan designates this shopping center as Commercial/Office, and pursuant to the list of permissible uses in Section VI of the Specific Plan, a tobacco retailer is not identified as a permitted use in this zone. A copy of the use table is included as an attachment.

On September 19, 2024, the Applicant was notified by the Department that this business is not identified as a permitted use in the Sun Lakes Specific Plan and the Application was denied. On September 30, 2024, the appeal was filed within fifteen days of the Department's decision, pursuant to Section 5.04.170 of the Banning Municipal Code ("BMC").

JUSTIFICATION:

The City processes business license applications under Title 5 of the Municipal Code. Section 5.04.170 of this Title states, "any person aggrieved by any decision of the license collector or of any other officer of the city made pursuant to the provisions of this chapter may appeal therefrom to the Council within fifteen days...[and] the clerk shall cause the matter to be set for hearing before the council within thirty days...." In response to the Department's denial, the Applicant filed a timely appeal and the City has complied with scheduling the matter for Council consideration. In the attached letter, the Applicant lists five reasons for overturning this decision. Staff has provided a summary of these points and response

below.

1. Inconsistent Issuance. The applicant states that, after applying for the business license, an email was received stating a balance was due and that "*any additional requirements needed for your business type must be completed prior to the issuance of your business license certificate.*" A subsequent email was received requesting a fire inspection and a copy of the tobacco retail license with no indication of any zoning issues. After paying the balance due, a business license certificate was issued and the issuance of this certificate, per BMC Section 5.04.110(B), indicates that the business was in the proper zone.

Staff's Response: Section 5.04.030 states that "*any persons required to pay a business tax for transacting and carrying on any business under this chapter shall...remain subject to the regulatory provisions of other ordinances.*" Furthermore, Section 5.04.010 defines a business license certificate: "*Certificate' means the business tax payment certificate issued to the taxpayer upon the payment of the business tax. It is not a permit to engage in business. It is the document issued upon the payment of the business tax.*" In this case, the Applicant is required to comply with zoning provisions, which do not allow a tobacco retailer at the proposed location. A zoning clearance was not provided at any time and the collection of a business tax does not constitute a right to forego zoning compliance and engage in business.

2.Compliance with Local Ordinances. The Applicant believes the proposed business is fully compliant with all local, state and federal regulations, and there has been no communication that would impact the Applicant's ability to operate at the proposed location. The alleged zoning issue clearly existed when the certificate was originally issued.

Staff's Response: As stated above, a zoning clearance was not provided at any time and the collection of a business tax does not constitute a right to forego zoning compliance and engage in business.

3. Financial and Operational Impact. The Applicant states that the rejection of the business license has caused significant financial strain, due to the reliance on the certificate issued by the city.

4. Improper Internal Procedure to Issue Business Certificate. The Applicant contends that even if a zoning restriction exists, the City should have verified compliance before issuing the certificate.

5. Request for Clarification. The Applicant seeks clarification of any specific concerns, requirements, documentation or adjustment to comply with City regulations, that have arisen since the certificate issuance and notes a willingness to cooperate.

Staff's Response, Items 3, 4 and 5: While understanding of the Applicant's frustration, the City is obligated to uphold the current law and ensure all businesses are properly located based on municipal and zoning requirements. The proposed tobacco retail store is not identified as a permitted use at 300 S Highland Drive, based on Section VI (Permitted Land Uses) of the Sun Lakes Specific Plan. Should they wish to pursue the proposed use in the proposed location, the Applicant may seek and obtain Council's approval of an amendment to the Specific Plan to permit or conditionally permit the use in the Plan area, as provided in BMC Chapter 17.116.

FISCAL IMPACT:

None. The Applicant has paid the appeal filing fee, which cover costs associated with the appeal process.

ALTERNATIVES:

Accept the appeal and direct staff to return with a Resolution approving the business license.

BUDGETED?:

No

CONTRACT/AGREEMENT:

No

ATTACHMENTS:

1. [Resolution 2024-172, Business License Appeal.docx](#)
2. [Appeal Letter - Heavy Clouds Vapes & More.pdf](#)
3. [Sun Lakes Permitted Uses.pdf](#)