

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
GEARY ST PETROLEUM INC,)
Appellant(s))
vs.)
DEPARTMENT OF PUBLIC HEALTH,)
Respondent)

Appeal No. **23-063**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on November 27, 2023, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the **ISSUANCE** on November 9, 2023, of a Notification of Tobacco Permit Denial (**DENIAL** of a Retail Tobacco Sales Permit because the establishment is located within 500 feet of two schools and within 500 feet of two other establishments that have valid Retail Tobacco Sales Permits; no exceptions under the Health Code apply) at 4501 Geary Blvd.

APPLICATION NO. EHD ID No. 121505

FOR HEARING ON January 17, 2024

Address of Appellant(s):

Address of Other Parties:

Geary St. Petroleum Inc, Appellant(s) c/o Moe Hamdi, Agent for Appellant(s) 510 Myrtle Avenue, 209 South San Francisco, CA 94080	N/A
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Date Filed: November 27, 2023

**CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS**

PRELIMINARY STATEMENT FOR APPEAL NO. 23-063

I / We, **Geary St Petroleum Inc.**, hereby appeal the following departmental action: **Notification of Tobacco Permit Denial (EHD ID No. 121505) (Denial of a Retail Tobacco Sales Permit)**, issued by the **Department of Public Health** on **November 9, 2023**, for the property located at: **4501 Geary Blvd.**

BRIEFING SCHEDULE:

Appellant's Brief is due on or before: 4:30 p.m. on **December 28, 2023**, (no later than three Thursdays prior to the hearing date). The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, and henry.lifton@sfcityatty.org.

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **January 11, 2024**, (no later than one Thursday prior to hearing date). The brief may be up to 12 pages in length with unlimited exhibits. It shall be doubled-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, and moe@casynergy.com.

Hard copies of the briefs do NOT need to be submitted to the Board Office or to the other parties.

Hearing Date: **Wednesday, January 17, 2024, 5:00 p.m., Room 416 San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place.**

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any changes to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to boardofappeals@sfgov.org. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at www.sfgov.org/boa. You may also request a hard copy of the hearing materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

The reasons for this appeal are as follows:

See attachment to the Preliminary Statement of Appeal.

Appellant or Agent:

Signature: Via Email

Print Name: Moe Hamdi, agent for appellant

To whom it may concern, I am writing to respectfully appeal the decision regarding the denial of the application for the Retail Tobacco Sales Permit at 4501 Geary Blvd in San Francisco.

While I understand the regulations outlined in Article 19H of the San Francisco Health Code and the Director's Rules and Regulations for Retail Tobacco Sales, I would like to address the specific grounds for denial as outlined in the notification received from the San Francisco Department of Public Health (SFDPH). The notification cites the restrictions imposed on the issuance of new permits in Supervisorial Districts, proximity to educational institutions, and limitations based on the establishment's historical permit status. However, I wish to bring attention to the compliance history and the nature of the establishment in question. The previous permit holder, Will Y Wong, dba Richmond Super Shell, was granted an exemption from the food permit in January 2016 for the sale of non-potentially hazardous food items within a limited floor space. Additionally, the subsequent application in March 2019 by J&W Wong, the Permittee, was approved by SFDPH for the sale of tobacco products within the context of the establishment being classified as a "Gas/Service Station." The constraints and conditions communicated to the Permittee were duly acknowledged and adhered to. The recent application submitted by Geary Blvd Marathon, categorized similarly as a "Gas/Service Station," aligns with the established usage of the premises. It's important to highlight that the intention behind this application is to continue the provision of goods and services consistent with the historical operation of the site. It is also important to realize we have a large amount of financial responsibility and while acquiring this business we took previous financials and our mortgage etc was built into existing sales/Profits. With the current state of the economy we are already struggling. I kindly ask to take a closer look. If the application gets denied we will inherit heavy loss and potentially suffer lots of financial damage. Considering the historical precedence of the permit issuance and the continuity of the establishment's operations within the parameters set forth by SFDPH, I kindly request a reconsideration of the denial decision. Geary Blvd Marathon aims to operate responsibly within the regulations governing tobacco sales, maintaining the standards and limitations outlined by the department. I appreciate your time and attention to this matter and hope for a reconsideration that takes into account the compliance history and the adherence to the specified guidelines.



City and County of San Francisco
London N. Breed, Mayor

San Francisco Department of Public Health

Grant Colfax, MD
Director of Health

Notification of Tobacco Permit Denial

EFFECTIVE DATE: November 9, 2023

FACILITY NAME (DBA): Geary Blvd Marathon
LEGAL OWNER NAME: Geary St Petroleum Inc.

FACILITY ADDRESS & ZIP: 4501 Geary Blvd, 94118
RESPONSIBLE PERSON NAME: Hamdi Alzghoul

Mailing Address, City, State, Zip: 510 Myrtle Ave, #209, South San Francisco, CA, 94080

EHD ID#: 121505 **Supervisorial District:** 1 **Number of Tobacco Permits:** 38

Dear Geary St Petroleum Inc c/o Hamdi Alzghoul:

You are hereby notified that your application for San Francisco Department of Public Health ("SFDPH") Retail Tobacco Sales Permit at 4501 Geary Blvd in San Francisco ("Establishment") has been **denied**, in accordance with Article 19H of the San Francisco Health Code ("SFHC") and San Francisco Department of Public Health Director's Rules and Regulations for Retail Tobacco Sales, on the following basis:

In January 2016, SFDPH received the Food Facility Permit Exemption Form for Prepackaged Non-Potentially Hazardous Food from the Permit Holder, Will Y Wong, dba Richmond Super Shell located at 4501 Geary Blvd in San Francisco. The Permit Holder sells candy, soda, water, chips, and granola displayed on less than 25 square feet of floor space. SFDPH approved the exemption from the food permit (Exhibit A).

In March 2019, SFDPH received the Application for the Sale of Tobacco Products ("Application") from J&W Wong ("Permittee") to amend the SFDPH Tobacco Permit for 4501 Geary Blvd dba Richmond Super Shell. The Permittee completed the Establishment Type as "Gas/Service Station" on the Application. SFDPH approved and issued amended Tobacco Permit # T-99852. Additionally, SFDPH issued to the Permittee a letter indicating that future sales of tobacco products at 4501 Geary Blvd under new ownership are severely restricted (Exhibit B). And, that the Permittee were made aware of the following requirements for any change in ownership:

- No new permit will be issued in a Supervisorial District above 45 retail tobacco permits.
- No new permit will be issued within 500 feet of a school or another retailer with a tobacco permit.
- No permit will be issued to an Applicant operating a tobacco shop, restaurant, bar, or an establishment serving food, beverages, or alcohol for on-site consumption.
- No new permit will be issued at a location that historically never obtained a retail tobacco permit.

On August 3, 2023, SFDPH received an Application from Geary Blvd Marathon ("Applicant"). On the Application, the Applicant completed the Establishment Type as "Gas/Service Station". SFDPH completed the review of the Application on October 26, 2023, and determined that a new tobacco permit may not be issued to the Applicant for the following reasons:

The mission of the San Francisco Department of Public Health is to protect and promote the health of all San Franciscans.

We shall ~ Assess and research the health of the community ~ Develop and enforce health policy ~ Prevent disease and injury ~
~ Educate the public and train health care providers ~ Provide quality, comprehensive, culturally-proficient health services ~ Ensure equal access to all ~

grant.colfax@sfdph.org ♦ (415) 554-2526 ♦ 49 South Van Ness Ave., Ste 600, San Francisco, CA 94103

Reasons for Denial of Retail Tobacco Sales Permit:

1. According to SFHC 19H.4(f)(3), no new permit shall be issued if the Applicant will be within 500 feet of the nearest point of the property line of a School as measured by a straight line from the nearest point of the property line on which a School is located to the nearest point of the property line on which the Applicant's Establishment will be located.
The Establishment is located within 500 feet of two (2) schools (Exhibit C).
2. According to SFHC 19H.4(f)(4), no new permit shall be issued if the Applicant will be located within 500 feet of the nearest point of the property line of an existing Establishment as measured by a straight line from the nearest point of the property line on which the Applicant's Establishment will be located to the nearest point of the property line of the existing Establishment.
The Establishment is located within 500 feet of two (2) other Establishments that have a valid Retail Tobacco Sales Permit (Exhibit C).

Additionally, SFDPH reviewed all exceptions under SFHC Article 19H.6 listed below and has determined that the Applicant does not qualify for any exception.

If you believe that you do qualify for one of the below exceptions, you are able to submit a new Application with the \$120 non-refundable processing fee.

SFHC 19H.6. EXCEPTIONS FOR CERTAIN NEW PERMITS

1. **New Buyer of a Retail Food Store or Tobacco Shop.** Retail Food Store Establishment or Tobacco Shop Owner since January 18, 2010, and with a Tobacco Permit since January 18, 2015, may submit an affidavit to the Director attesting to: (a) their ownership of the Establishment; (b) under the same Tobacco Sale Permit; (c) for at least five (5) consecutive years immediately before the submission of the affidavit; and (d) Direct Negotiations. Upon submission of the Permittee's affidavit, a New Buyer may apply for a Tobacco Sales Permit for the Permittee's Retail Food Store Establishment or Tobacco Shop.
The Establishment is not a retail food store establishment or tobacco shop and therefore, doesn't qualify for the direct negotiation exception.
2. **Subsequent Buyer of a Retail Food Store or Tobacco Shop.** A Retail Food Store Establishment or Tobacco Shop New Buyer may submit an affidavit to the Director attesting to: (a) their ownership of the Establishment; (b) under the same Tobacco Sales Permit; and (c) for at least ten (10) years. Upon submission of the New Buyer's affidavit, a Subsequent Buyer may apply for a Tobacco Sales Permit for the New Buyer's Retail Food Store Establishment or Tobacco Shop. A Subsequent Buyer applying for a new Tobacco Sales Permit must acquire a 100% ownership interest in the Establishment.
The Establishment is not a retail food store establishment or tobacco shop and therefore, doesn't qualify for the direct negotiation exception.

-
3. **Child of a Retail Food Store or Tobacco Shop Permittee.** A child of a Retail Food Store Establishment or Tobacco Shop Permittee may apply for a Tobacco Sales Permit for their parent's Establishment if their parent holds a Tobacco Sales Permit as of January 18, 2015.
The Applicant is not a child of the Permittee of a retail food store establishment or tobacco shop.

 4. **Seismic Retrofitting Relocation.** A Retail Food Store Establishment or Tobacco Shop Permittee as of January 18, 2015, which must relocate from their Establishment due to seismic retrofitting under Chapter 34B of the Building Code may apply for a Tobacco Sales Permit for their Establishment. The Permittee's application is subject to further review including confirmation of seismic retrofitting by the Department of Building Inspection.
The Applicant is not the Permittee of a retail food store establishment or tobacco shop relocating due to seismic retrofitting under Chapter 34B.

 5. **New Buyer of a Tavern.** A Tavern Permittee since January 18, 2010, that seeks to demonstrate previous compliance with Section 1009.23(d) of Article 19F of SFHC (prohibition against smoking in enclosed areas), shall submit a copy of their previously approved SFDPH application which establishes that an area within the Tavern is a historically compliant semi-enclosed smoking room. Additionally, the Tavern Permittee may submit an affidavit to the Director attesting to: (a) their ownership of the Establishment; (b) under the same Tobacco Sale Permit; (c) for at least five (5) consecutive years immediately before the submission of the affidavit; and (d) Direct Negotiations. Upon submission of the Tavern Permittee's affidavit, a New Buyer may apply for a Tobacco Sales Permit for the Permittee's Tavern.
The Establishment is not a Tavern that is a cigar or smoking bar and therefore, doesn't qualify for the direct negotiation of a tavern.

 6. **Subsequent Buyer of a Tavern.** A New Buyer of a Tavern may submit an affidavit to the Director attesting to: (a) their continuous ownership of the Establishment; (b) under the same Tobacco Sales Permit; and (c) for at least ten (10) years. Upon submission of a New Buyer's affidavit, a Subsequent Buyer may apply for a Tobacco Sales Permit for the New Buyer's Tavern. A Subsequent Buyer applying for a new Tobacco Sales Permit must acquire 100% ownership of the Establishment.
The Establishment is not a Tavern that is a cigar or smoking bar and therefore, doesn't qualify for the direct negotiation of a tavern.

 7. **Death or Divorce.** A spouse or domestic partner may acquire the ownership from the Permittee of an Establishment through the death or divorce. The spouse or domestic partner applying for a new Tobacco Sales Permit must have a 100% ownership interest in the Establishment.
The Applicant is not the spouse or domestic partner of the Permittee.

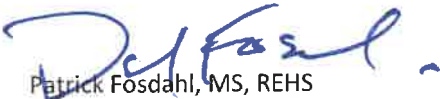
Appeal Process. You have the right to appeal this decision to deny your application for a tobacco retailer permit. *(Pursuant to Section 19H.24 and Article 1 of the San Francisco Business and Tax Regulations Code). Appeals must be filed in person with the San Francisco Board of Appeals within 15 calendar days of the date of this notice. The Board of Appeals is located at: 49 South Van Ness Ave., Suite 1475 (Telephone #: (628) 652-1150).*

The failure to file an appeal will waive your right to a hearing and shall deem SFDPH decision to deny your tobacco permit as final.

Cease and Desist All Tobacco Products Sales. Immediately discontinue the sales of tobacco products, including but not limited to, cigarettes, cigars, cigarillos, tobacco shisha, electronic smoking devices and juices, smokeless tobacco, and nicotine-containing products. No person may engage in or allow tobacco sales in any establishment without a valid SFDPH tobacco sales permit. *(Pursuant to SFHC §§ 19H.3, 19N.3, and 19N.5(a)).*

Imposition of Administrative Fines and Penalties. Selling tobacco products without a valid permit may result in an administrative penalty of up to five hundred dollars (\$500.00) per day for each day that tobacco product sales occur without a valid permit. *(Pursuant to SFHC §§ 19H.17(a), 19H.20, 19N.3(b)).*

Sincerely,



Patrick Fosdahl, MS, REHS
Director of Environmental Health
Environmental Health Branch
SFDPH – Population Health Division

Cc: SFDPH – EHB – Consumer Protection Program
SFDPH – CHEP – Tobacco Free Project
File

H01-010846 / Loc: 176



EXHIBIT A

SF CISCO DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH BRANCH
1390 Market Street, Suite 210, San Francisco, CA 94102
www.sfdph.org/dph/EH/Food/
Phone: (415) 252-3800 Fax: (415) 252-3842

Food Facility Permit Exemption Verification Form for Prepackaged Non-Potentially Hazardous Foods

Applicant must complete and submit this form for exemption evaluation. Accurate information is required. Misleading information may result in denial of the exemption. An approved exemption shall remain as long as the owner and qualifying information on this form remains accurate.

I. EXEMPTION REQUIREMENTS

California Retail Food Code, Section 114289, exempts a permanent food facility from obtaining a Food Permit to Operate from the Department of Public Health if <u>ALL</u> criteria below are met. Verify that you meet all criteria:	Yes	No
1. Foods/beverages that are stored, handled, sold, and/or provided are non-potentially hazardous and prepackaged. (Common potentially hazardous foods: milk, cheese, ice cream, dairy products, eggs, meat, fresh juices/smoothies, cut melons, and perishable foods.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. No food preparation occurs. (Making or dispensing open coffee, popcorn, hot pretzels, hard-boiled eggs, etc. is considered food preparation.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The floor space for the food display area shall be limited to 25 square feet. (No height restriction within floor space.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>

II. PERMANENT FOOD FACILITY INFORMATION

Business Name/DBA: <u>Richmond's Supershell</u>	Owner Name: <u>Will Y Wong</u>
Business Address: <u>4501 Geary Blvd. San Francisco, CA 94118</u>	
Contact Phone: <u>(415) 606-8198</u>	Email: <u>willw318@gmail.com</u>

III. FOOD MENU

List all foods/beverages stored and/or sold at this facility. (Ensure to include any items that contain dairy/eggs/meat, will require refrigeration, or have "perishable" or "keep refrigerated" on the label.)

<u>Candy</u>
<u>Soda</u>
<u>Water</u>
<u>Chips</u>
<u>Arachola</u>

IV. FLOOR PLAN

Draw a diagram to show location and square footage of floor space for food display in the space below. Add up square footage to show that it does not exceed 25 sq. ft.

If preferred, a separate diagram may be attached. Please sign and date attachment.

Example diagram: Total display = 16 sq. ft.

I declare under penalty of perjury that I am an authorized representative of this business entity and that the information contained herein is true and complete to the best of my knowledge and belief. I understand that I will need to obtain a Food Permit to Operate from the SF Department of Public Health when food display exceeds 25 sq. ft. or when potentially hazardous food or non-prepackaged food is stored, handled, sold, or provided. I also understand that any complaints may result in an investigation and/or enforcement action charged at the current hourly rate.

<u>Will Y Wong</u> Owner Name (Print)	<u>[Signature]</u> Owner Signature	<u>1/26/16</u> Date
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EH OFFICE USE ONLY <input checked="" type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED Reason for disapproval: _____		
<u>Amelia Costelli</u> Inspector	<u>[Signature]</u> Principal Inspector	<u>2/3/16</u> Date

EH Office Use:
Reviewed form sent by: [Signature] Date: 03/03/2016



EXHIBIT B

City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH

London N. Breed, Mayor
Greg Wagner, Acting Director of Health
Stephanie K. J. Cushing, MSPH, CHMM, REHS
Director of Environmental Health

San Francisco Department of Public Health Retail Tobacco Permit Tobacco Products Future Sales Restriction Notification

Date: 3/5/2019

According to San Francisco Department of Public Health (SFDPH) – Population Health Division – Environmental Health Branch (EH) records, the following retail tobacco permit was issued as follows:

Permit to Operate #:	T 99852	Permit Issued Date:	June 30, 2004
DBA:	Richmond's Super Shell	Permit Holder:	J&W Wong
LOC ID:	99852	BAN:	1095162
Address, Zip Code:	4501 Geary Blvd, San Francisco, CA 94118		

In December 2014, the City and County of San Francisco amended San Francisco Health Code Article 19H (SFHC 19H) – Permits for the Sale of Tobacco Ordinance to restrict the future sales of tobacco products in supervisorial districts above a density cap. Please review the SFHC 19H ordinance with its corresponding rules and regulations at <https://www.sfdph.org/dph/EH/Tobacco/default.asp>.

Based solely on the permit issuance date, the following may apply to future sales of tobacco products at your establishment:

- | | |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | 1. Future sales of tobacco products at this address under new ownership are severely restricted. The Applicant will need to comply with all criteria established under SFHC 19H.4(f). For example: <ul style="list-style-type: none"> • No new permit will be issued in a supervisorial district above 45 retail tobacco permits • No new permit will be issued within 500 feet of a school or another retailer with a tobacco permit • No permit will be issued to an applicant operating a tobacco shop, restaurant, bar, or an establishment serving food, beverages, or alcohol for on-site consumption • No new permit will be issued at a location that historically never obtained a retail tobacco permit. |
| <input type="checkbox"/> | 2. The permit holder listed above may qualify for a SFHC 19H.6 exception - allowing a one-time basis for a new buyer to obtain a tobacco permit and sell tobacco products. |
| <input type="checkbox"/> | 3. A subsequent buyer may be allowed to sell tobacco products if the new buyer maintains an active and valid tobacco permit for at least 10 years from the new buyer's permit issuance date. |
| <input type="checkbox"/> | 4. Other: |

Please note that whether or not the current permit holder qualifies for a 19H.6 exception, there are other factors that the Director of the San Francisco Department of Public Health may consider in the determination of the issuance of a retail tobacco permit.

This notice is being provided to assist you in making informed decisions regarding the retail tobacco permit at this location. Please be aware any changes to the tobacco permit require you to contact the SF DPH Retail Tobacco and Smoking Program. If you have any questions or concerns, please contact SFDPH staff as provided below.

<u>Uzziel Prado</u>	<u>3/5/2019</u>
DPH Investigator/Inspector	Date
<u>415-252-3873</u>	
Phone Number	Permit Holder or Agent Print Name & Signature

cc: Property Owner, if applicable:
File





DEFINITIONS

Applicant is the person applying for a tobacco permit on behalf of an individual or entity
Change of ownership means a change of 50 percent or more of the ownership of the business within a 12-month period; provided, however, that if the Permittee is a corporation, transfer of 25 percent of the stock ownership of the permittee shall be deemed to be a Change of Ownership.
DBA represents that the name under which an owner is conducting business and is on the face of the tobacco permit.
Density Cap has the same meaning as Cap. Cap means the figure set forth in Section 19H.5 and represents the total number of permitted establishments with tobacco products that may operate in each supervisorial district.
Director means the Director of Health or his or her designee.
Establishment means any store, stand, booth, concession or any other enterprise that engages in the retail sale of Tobacco Products, including stores engaging in the retail sale of food items. Examples include any retail establishment, office, business, store, factory, warehouse, storage facility or other place operated as a commercial venture. The term includes any place where services are provided or goods are manufactured, distributed, processed, assembled, sold or displayed for sale on a wholesale or retail basis, whether owner operated, operated with employees or operated with volunteers. This includes, but is not limited to grocery, specialty, department and other stores which sell goods or merchandise, service stations, and other establishments offering services to the general public.
New Owner is the same as New Buyer. New Buyer is an individual or entity who is purchasing or acquiring the establishment from the Original Owner and is seeking to obtain a permit to continue the sales of tobacco at that location.
New Tobacco Sales Permit is a permit issued after a change of ownership.
Permit Holder has the same meaning as Permittee. The Permittee is a person who has obtained the tobacco sales permit for a specific location pursuant to SFHC 19H.
Permit Issuance Date is the application date, once SFDPH verifies that the retail tobacco permit is valid (Approval Date).
School is a public or private kindergarten, elementary, middle, junior high, or high school, or a school combining some or all of the above school grades.
Subsequent Buyer is an individual or entity who is purchasing or acquiring the establishment from the New Owner. The Subsequent Buyer may obtain a tobacco permit if all conditions are met in accordance with 19H and its rules and regulations including but not limited to, the New Owner maintaining a valid tobacco permit for 10 years.
Tobacco Product means (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, or sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, dipping tobacco, pipe tobacco, bidis or snuff; (2) any device or component, part, or accessory that delivers nicotine alone or combined with other substances to the person using the device including but not limited to electronic cigarettes, cigars, or pipes, whether or not the device or component is sold separately. "Tobacco Product" does not include any product that has been approved by the United States Food and Drug Administration for use as a tobacco cessation product where such product is marketed and sold solely for such an approved purpose.
Tobacco Retailer is any establishment that obtains and maintains a valid tobacco permit. In accordance with SFHC 19H, the tobacco retailer does not have any status or right other than the right to sell tobacco products at the location identified on the face of the permit. Nor does obtaining a tobacco permit in and of itself transform a business into a retail or wholesale tobacco shop within the definition of California Labor Code Section 6404.5.
Tobacco Shop means any tobacco retailer whose principal business is selling Tobacco Products, tobacco paraphernalia, or both, as evidenced by any of the following: 50% or more of floor area and display area is devoted to the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; 70% or more of gross sales receipts are derived from the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; or 50% or more of completed sales transactions include a Tobacco Product or tobacco paraphernalia. At the Director's discretion, retailers whose principal business is selling pipes only shall generally not be considered to meet the definition of a Tobacco Shop and shall generally not be required to obtain a tobacco sales permit.
Valid Tobacco Permit is a permit that is not delinquent and has not been inactive for more than 180 days that was issued by SFDPH to an individual or entity for the sales of tobacco products in San Francisco.

4501 geary blvd

Tobacco Permits
☑ Existing Tobacco Permits

Schools
☑ Schools K-12

- Public or Private School
- Active Tobacco Sales Permit
- Proposed Retail Tobacco Location

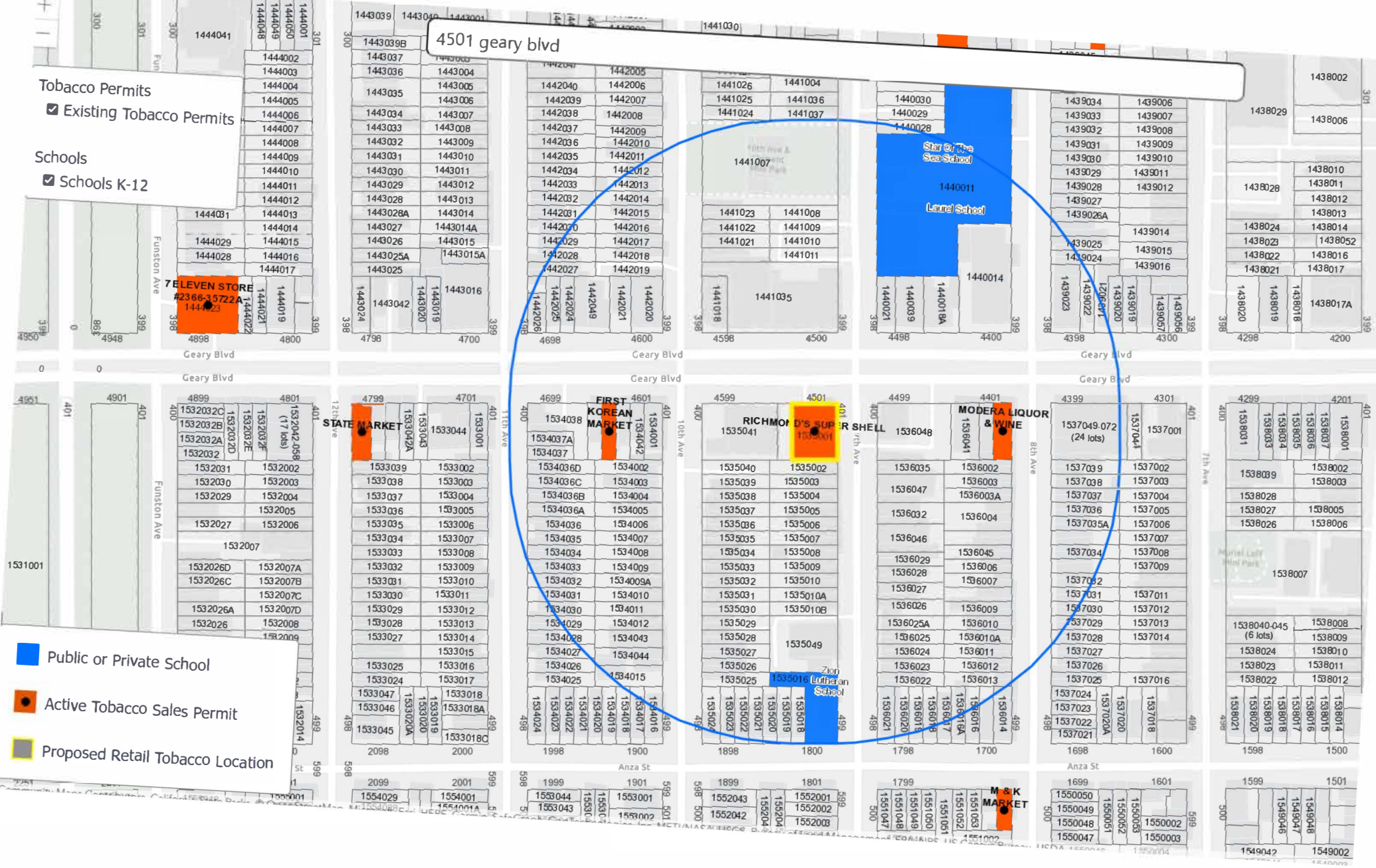


EXHIBIT C

APPELLANT(S) DID NOT SUBMIT A BRIEF

BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)

SAN FRANCISCO
BOARD OF APPEALS

49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103

GEARY ST PETROLEUM INC.,

Appellant,

vs.

DEPARTMENT OF PUBLIC HEALTH,

Respondent.

Appeal No. 23-063

RESPONDENT’S OPPOSITION BRIEF

Hearing Date: January 17, 2024

Time: 5:00 p.m.

Place: City Hall, Room 416

INTRODUCTION

To promote the public health and ensure that San Francisco businesses operate in compliance with applicable tobacco control laws, Respondent, the Department of Public Health (“Department”), is charged with evaluating Tobacco Sales permit applications, conducting thorough investigations to ensure that business operators are qualified to operate Tobacco Sales establishments, and issuing Tobacco Sales permits when such establishments meet all requirements in Article 19H of the San Francisco Health Code (“Health Code”).

In this appeal, Geary St. Petroleum Inc. dba Geary Blvd. Marathon (“Appellant”) applied for a Tobacco Sales permit for a Gas/Service Station located at 4501 Geary Boulevard, San Francisco, California 94118. The Department denied Appellant’s permit application because the Health Code prohibits the Department from issuing a Tobacco Sales permit to an establishment that is located within 500 feet of another permitted tobacco sales establishment and within 500 feet of a school. (Health Code § 19H.4(f)(3)–(4).) Given these restrictions and the fact that no exception applies, neither the Department nor the Board have discretion to issue a permit. For these reasons, the Board must uphold the Department’s denial of the Tobacco Sales permit.

FACTUAL BACKGROUND

1
2 On June 30, 2004, the Department issued a Tobacco Sales permit to J&W Wong dba
3 Richmond's Super Shell to sell tobacco products at the property located at 4501 Geary Boulevard.
4 (*See* Declaration of Janine Young in Support of Respondent's Opposition Brief [hereinafter "Young
5 Decl.,"] ¶ 3; Ex. A.) On June 2, 2015, the Department notified J&W Wong dba Richmond's Super
6 Shell that "new tobacco sales permits may only be issued to grocery stores and tobacco shops." (*Id.*
7 ¶ 4; Ex. B.) On March 5, 2019, J&W Wong dba Richmond's Super Shell applied for an amended
8 tobacco permit, which the Department issued on April 1, 2019. (*Id.* ¶ 5; Ex. C.) As part of the
9 amended tobacco permit application process, the Department issued a letter notifying the permittee of
10 restrictions on issuing new Tobacco Sales permits based on a change in ownership. (*Id.*; Ex. D.)

11 On August 3, 2023, Appellant applied for a new Tobacco Sales permit at 4501 Geary Blvd.
12 (*Id.* ¶ 6; Ex. E.) The Department's Senior Health Inspector, Janine Young, examined Appellant's
13 eligibility for a Tobacco Sales permit, including by reviewing the Department's records, as well as
14 records from the City Office of the Treasurer and Tax Collector, the California Department of Tax and
15 Fee Administration, and the California Secretary of State. (*Id.* ¶ 7.) Inspector Young also determined
16 that Appellant is located in Supervisorial District 1 and that the District had 38 establishments with a
17 Tobacco Sales permit. (*Ibid.*) Inspector Young also consulted the San Francisco Planning
18 Department's Retail Tobacco Sales Density Map GIS tool to determine whether 4501 Geary Blvd. is
19 located within 500 feet of another tobacco sales establishment or school. (*Id.* ¶ 8.) The San Francisco
20 Planning Department map disclosed that 4501 Geary Blvd. is within 500 feet of two permitted tobacco
21 establishments, First Korean Market located at 4625 Geary Blvd. and Modera Liquor & Wine located
22 at 4401 Geary Blvd., and within 500 feet of one school, Zion Lutheran School located at 495 9th
23 Avenue. (*Id.* ¶ 9, Ex. F, at 8.)

24 On November 7, 2023, the Director of the Department's Environmental Health Branch issued a
25 Notification of Tobacco Permit Denial to Appellant. (*Id.* ¶ 10; Ex. F.) The Department denied
26 Appellant's application for a Tobacco Sales permit because Health Code section 19H.4(f) prohibits
27 issuing a permit since Appellant's establishment is located within 500 feet of two establishments with
28

1 a valid Tobacco Sales permit and within 500 feet of one school. (*Id.* ¶ 9.) Appellant did not meet any
2 applicable exceptions under section 19H.6. (*Ibid.*)

3 On November 27, 2023 Appellant filed a Preliminary Statement of Appeal (“Appeal Letter”)
4 challenging the Department’s decision to deny the permit application.

5 ARGUMENT

6 **I. The Department Lacks the Authority to Issue Appellant a Tobacco Sales Permit Under** 7 **Article 19H.**

8 An existing Tobacco Sales permit may not be transferred to a new owner. (Health Code
9 § 19H.8.) As set forth in Business and Tax Regulations Code Section 77, “no license granted or issued
10 under any of the provisions of any ordinance shall be in any manner assignable or transferable, or
11 authorize any person other than is therein mentioned or named to do business or authorize any other
12 business than is therein mentioned or named to be done or transacted, at any place other than is therein
13 mentioned or named.”

14 Here, the Department previously issued a Tobacco Sales permit to J&W Wong dba Richmond
15 Super Shell. (Young Decl. ¶¶ 3, 5, Exs. A, C.) On August 3, 2023, the Department received a
16 Tobacco Sales permit application from a new owner, Geary St. Petroleum Inc. dba Geary Blvd.
17 Marathon. (*Id.* ¶ 6; Ex. E.) Since J&W Wong could not, as a matter of law, transfer its existing
18 Tobacco Sales permit to Appellant, Article 19H required the Department to evaluate Appellant’s
19 application under the criteria for a new Tobacco Sales permit.

20 Health Code Section 19H.4(f) lays out eight separate grounds for which the Department must
21 deny a new permit. The Department determined that two separate provisions in subsection (f) required
22 denial of a new permit.

23 **A. Appellant’s Place of Business is Within 500 Feet of a School.**

24 Health Code section 19H.4(f)(3) provides: “No new permit shall be issued if the Applicant will
25 be within 500 feet of the nearest point of the property line of a School as measured by a straight line
26 from the nearest point of the property line on which a School is located to the nearest point of the
27 property line on which the Applicant’s Establishment will be located.” (Health Code § 19H.4(f)(3).)

28 The San Francisco Planning Department’s map confirmed that there is one school, Zion Lutheran

1 School located at 495 9th Avenue, within 500 feet of Appellant’s place of business.¹ (Young Decl.
2 ¶ 8; Ex. F, at 8.) Appellant has not challenged this finding.

3 **B. Appellant’s Place of Business is Within 500 Feet of Two Existing Tobacco Sales**
4 **Establishments with Valid Tobacco Sales Permits.**

5 Health Code section 19H.4(f)(4) provides: “No new permit shall be issued if the Applicant will
6 be located within 500 feet of the nearest point of the property line of an existing Establishment”
7 (Health Code § 19H.4(f)(4).) The San Francisco Planning Department’s map confirmed that there are
8 two existing permitted tobacco establishments, First Korean Market located at 4625 Geary Blvd. and
9 Modera Liquor & Wine located at 4401 Geary Blvd., within 500 feet of Appellant’s place of business.
10 (Young Decl. ¶ 8; Ex. F, at 8.) Appellant has not challenged this finding.

11 **C. Appellant Does Not Qualify for Any Applicable Exception Under Section 19H.6.**

12 Section 19H.6 outlines certain one-time permit exceptions for new Tobacco Sales permits.
13 (See Health Code § 19H.6.) These exceptions are applicable only to certain establishments, such as
14 retail food store establishments as defined in the Planning Code or Tobacco Shops, which are tobacco
15 retailers whose principal business is selling tobacco products. (See *id.*; see also § 19H.2.) And, the
16 Director has discretion to issue a permit under any applicable exception. (See § 19H.6 [“[T]he
17 Director may issue”].)

18 Here, the Department determined that none of the change of ownership exceptions in Section
19 19H.6(a)–(c) or (e)–(f) applied because the establishment was not a retail food store establishment,
20 Tobacco Shop, Bar or Tavern, or Cigar or Smoking Bar, as those terms are defined in Article 19H.
21 (Young Decl. ¶ 9.) The establishment at 4501 Geary Blvd. is a Gas/Service Station, which is not a
22 retail food store establishment, Tobacco Shop, Bar, or Tavern, or Cigar or Smoking Bar. Since no
23 exception applies, the Director is bound by the requirement in Health Code section 19H.4(f) to deny
24 the Tobacco Sales permit.

25
26 ¹ The Planning Department’s GIS map disclosed two schools, Zion Lutheran School and the
27 Laurel School, within 500 feet of 4501 Geary Blvd. Based on publicly available information on the
28 California Department of Education’s website, it appears that the Laurel School closed on June 30,
2021. Because there are other, independent bases to deny the application, this closure does not affect
the Department’s denial.

1 **II. Appellant’s Appeal Letter Does Not Merit Overturning the Department’s Denial.**

2 Appellant’s Appeal Letter cites two reasons to overturn the Department’s denial of the permit
3 application; neither are meritorious. First, Appellant argues that the new application for Tobacco
4 Sales is consistent with the established usage of the property and the intention behind the application is
5 to continue the provision of goods and services consistent with the historical operation of the site.
6 (Appeal Letter, at 3.) Second, Appellant argues that the establishment will suffer financial damage if
7 not allowed to sell Tobacco Products. Neither reason is a basis to overturn the permit application
8 denial.

9 It does not matter whether a new owner’s usage is consistent with the established usage of a
10 property. As discussed above, an existing permit cannot be transferred to a new owner. (Health Code
11 § 19H.8.) A change of ownership requires a new Tobacco Sales permit application, and requires the
12 Department to evaluate the application under the criteria in Section 19H.4. In March 2019, the
13 Department informed the prior permit holder of this requirement, which Appellant acknowledged in
14 the Appeal Letter. (Appeal Letter, at 3 [“The constraints and conditions communicated to [J&W
15 Wong] were duly acknowledged and adhered to.”].) Although there are limited circumstances in
16 which a change of ownership may be permissible as an exception to the restrictions in Section
17 19H.4(f), none of the circumstances exist here. As the Department informed the prior permit holder in
18 2015, “new tobacco sales permits may only be issued to grocery stores and tobacco shops.” (Young
19 Decl. ¶ 4, Ex. B.) The established usage is as a Gas/Service Station, which is not a permissible
20 exception in Section 19H.6.

21 While the Department is cognizant of the financial burden on small businesses to comply with
22 the requirements of the Health Code, the Department lacks discretion in this instance. Moreover, the
23 Board of Supervisors has found and declared that tobacco use is the leading cause of preventable death
24 in the United States. (Health Code § 19H.1(a).) Higher tobacco retail density encourages smoking by
25 making cigarettes more accessible and available, by normalizing tobacco use, and through increasing
26 environmental cues to smoke. (*Id.* § 19H.1(i).) Accordingly, the Board found that “it is in the City’s
27 interest to reduce the disproportionate exposure to tobacco outlets that exists among supervisorial
28

1 districts and to minimize exposure in all supervisorial districts by limiting the number of new tobacco
2 permits issued.” (*Id.* § 19H.1(k).)


3 In sum, the Board of Appeals is bound by the same laws of the City and County of San
4 Francisco as the Department and may not grant a permit that is not otherwise authorized by the
5 Municipal Code. (*City & Cnty. of San Francisco v. Bd. of Permit Appeals* (1989) 207 Cal. App. 3d
6 1099, 1109–10 [“[T]he board is not a lawmaking body and has no power to disregard or amend the
7 ordinances which define its authority.”].)

8 **CONCLUSION**

9 The Department therefore respectfully requests that the Board uphold the Department’s denial
10 of Geary St. Petroleum Inc.’s application for a Tobacco Sales permit at 4501 Geary Boulevard.

11
12 Dated: January 11, 2024

13 DEPARTMENT OF PUBLIC HEALTH

14
15 By: 
16 JANINE YOUNG
17 Senior Health Inspector
18 Department of Public Health
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PROOF OF SERVICE

I, LILY KANG, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney’s Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On January 11, 2024, I served the following document(s):

RESPONDENT’S OPPOSITION BRIEF

on the following persons at the locations specified:

Geary St Petroleum Inc., Appellant
c/o Moe Hamdi, Agent for Appellant
510 Myrtle Avenue, #209
South San Francisco, CA 94080
moe@casynenergy.com

in the manner indicated below:

BY ELECTRONIC MAIL: Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the person(s) at the electronic service address(es) listed above. Such document(s) were transmitted *via* electronic mail from the electronic address: lily.kang@sfcityatty.org in portable document format ("PDF") Adobe Acrobat.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed January 11, 2024, at San Francisco, California.

Lily Kang

LILY KANG

SAN FRANCISCO
BOARD OF APPEALS

49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103

GEARY ST PETROLEUM INC.,

Appellant,

vs.

DEPARTMENT OF PUBLIC HEALTH,

Respondent.

Appeal No. 23-063

**DECLARATION OF JANINE YOUNG IN
SUPPORT OF RESPONDENT'S OPPOSITION
BRIEF**

Hearing Date: January 17, 2024
Time: 5:00 p.m.
Place: City Hall, Room 416

I, JANINE YOUNG, declare as follows:

1. I have personal knowledge of the facts stated in this declaration, and if called upon to testify, I could and would testify competently as the truth of the facts stated herein.

2. I am an Environmental Health Senior Inspector at the San Francisco Department of Public Health's Environmental Health Branch (the "Department"). I work in the Department's Retail Tobacco and Smoking Program, where I review and process applications for Sale of Tobacco Product Permits and conduct inspections to confirm compliance with Article 19H of the San Francisco Health Code.

3. On June 30, 2004, the Department issued a Tobacco Sales permit to J&W Wong dba Richmond's Super Shell located at 4501 Geary Boulevard, San Francisco, California 94118. A true and correct copy of the Tobacco Sales permit for J&W Wong is attached hereto as **Exhibit A**.

4. On June 2, 2015, the Department notified J&W Wong dba Richmond's Super Shell that "new tobacco sales permits may only be issued to grocery stores and tobacco shops." A true and correct copy of the notice is attached hereto as **Exhibit B**.

1 5. On March 5, 2019, J&W Wong applied for an amended Tobacco Sales permit, which
2 the Department issued on April 1, 2019. A true and correct copy of the amended permit and
3 application is attached hereto as **Exhibit C**. As part of the amended Tobacco Sales permit application
4 process, on March 5, 2019, the Department issued a letter notifying the permittee of restrictions on
5 issuing Tobacco Sales permits to new owners. A true and correct copy of the letter is attached hereto
6 as **Exhibit D**.

7 6. On August 3, 2023, Geary St. Petroleum Inc. dba Geary Blvd. Marathon (“Appellant”)
8 submitted an application for a Tobacco Sales permit to sell tobacco products at a Gas/Service Station
9 located at 4501 Geary Blvd. A true and correct copy of the application is attached hereto as
10 **Exhibit E**.

11 7. I evaluated Appellant’s application for a Tobacco Sales permit at 4501 Geary
12 Boulevard. I personally investigated Appellant’s eligibility for a Tobacco Sales Permit through a
13 review of Department files and other the agencies including files from the City & County of San
14 Francisco’s Office of the Treasurer and Tax Collector, California Department of Tax and Fee
15 Administration, and California Secretary of State. Under the “Density Cap” law enacted by the Board
16 of Supervisors in December 2014, the Department may not issue new tobacco sales permits to
17 businesses that are located in supervisorial districts that have 45 or more existing permitted
18 establishments. I determined that there were 38 establishments with Tobacco Sales permits in
19 Supervisorial District 1, where 4501 Geary Blvd. is located.

20 8. I searched the Retail Tobacco Sales Permit Density Map tool within the San Francisco
21 Planning GIS (available at <https://sfplanninggis.org/tobaccopermits/>) to determine that 4501 Geary
22 Blvd. was within 500 feet of two permitted tobacco establishments, First Korean Market located at
23 4625 Geary Blvd. and Modera Liquor & Wine located at 4401 Geary Blvd. I also used the GIS tool to
24 determine that 4501 Geary Blvd. was within 500 feet of one school, Zion Lutheran School located at
25 495 9th Avenue.

26 9. Based on the GIS tool findings, I determined that Appellant did not meet all of the
27 Tobacco Sales permit requirements since Appellant is within 500 feet of two permitted Tobacco Sales
28 establishments and within 500 feet of a school. I also evaluated whether any exceptions to the

1 “Density Law” rules (Health Code Section 19H.6(a)–(g)) applied and determined that Appellant did
2 not qualify for any exception. Accordingly, I determined that Appellant’s application for a new
3 Tobacco Sales permit must be denied.

4 10. On November 7, 2023, the Department issued a Notification of Tobacco Permit Denial
5 to Appellant because Appellant was disqualified under Health Code Section 19H.4(f)(3) and (4) and
6 no exception applied. A true and correct copy of the denial letter is attached hereto as **Exhibit F**.

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct and that this document was executed on the 11th of January 2024, in San Francisco,
3 California.

4
 Maribel Rodriguez

5 *Janine Young*
6 _____
7 JANINE YOUNG

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EXHIBIT “A”

FRAM AND HANG IN PLAI VIEW

PERMIT TO OPERATE

AND CERTIFICATE OF SANITARY INSPECTION

Issued according to the provisions of the San Francisco Health Code

T-00257

AUTHORIZING conduct of the following class of
TOBACCO PRODUCT SALES ESTABLISHMENT

ISSUED ON:

June 30, 2004

OPERATOR: Will Yin Wong
DBA: Richmond's Super Shell
ADDRESS: 4501 Geary Blvd.
San Francisco, CA 94118

Valid only when accompanied by a receipt from the Tax Collector showing payment of current license fee. THIS PERMIT TO OPERATE MAY BE REVOKED OR SUSPENDED FOR CAUSE AND IS NOT TRANSFERABLE. CHANGE OF OWNERSHIP must be reported immediately.

DEPARTMENT OF PUBLIC HEALTH

Environmental Health Section
City & County of San Francisco

Inspector

Director of Consumer Protection Programs

Principal Inspector

Director of Public Health

HD#2

CT 452

EXHIBIT “B”



DEPARTMENT OF PUBLIC HEALTH

Barbara A. Garcia, MPA, Director of Health

ENVIRONMENTAL HEALTH BRANCH

Richard J. Lee, MPH, CIH, REHS

Acting Environmental Health Director

Date: 6/2/15

DBA: Richmonds Supermarket

Address: 4501 Geary

According to San Francisco Department of Public Health (DPH) records, you obtained a permit to sell retail tobacco from the San Francisco Health Department on 6/30/09. Recent legislation enacted by the San Francisco Board of Supervisors restricts the future sales of retail tobacco products at your location if there is an ownership change. Please review San Francisco (SF) Health Code, Article 19H, regarding recent changes to the law.

Based **solely on the date** you obtained your retail tobacco permit to operate, the following may apply to future sales of retail tobacco at this location regarding an exception available under **SF Health Code Article 19H (6.[a])**:

1. Future sales of retail tobacco products at this location under new ownership are severely restricted.
2. A new owner will be allowed to sell retail tobacco, and must hold their active/valid permit for 10 years in order for the subsequent buyer to sell retail tobacco.
3. Other New tobacco sales permits may only be issued to grocery stores and tobacco shops.

The purpose of this notice is to inform you whether or not you may qualify for that specific exception, based on the length of time you have held your SF retail tobacco permit. There are other factors and exceptions in article 19H that may be relevant to your individual situation. This notice serves only as a general notification to help you to make informed decisions in the future.

Larry Kessler

DPH Employee

252-3841

Phone



EXHIBIT “C”



PERMIT TO OPERATE

AND CERTIFICATE OF SANITARY INSPECTION

Issued according to provisions of the San Francisco Health Code

AUTHORIZING conduct of the following class of

TOBACCO PRODUCT SALES ESTABLISHMENT

Type of Operation: Tobacco Only Shop

Tax Code: H31

T 99852

ISSUED: 4/1/2019

CERT No. : 1095162

Name and Address Below:

Owner: J&W Wong
 DBA: Richmond's Super Shell
 Street Address: 4501 Geary Blvd
 San Francisco, CA 94118

Duplicate

DEPARTMENT OF PUBLIC HEALTH

Bureau of Environmental Health
City and County of San Francisco

Valid only when accompanied by a receipt from the Tax Collector showing payment of current license fee. THIS PERMIT TO OPERATE MAY BE REVOKED OR SUSPENDED FOR CAUSE AND IS NOT TRANSFERABLE. CHANGE OF OWNERSHIP must be reported immediately.

Director of Environmental Health

Display this Permit prominently. This margin may be trimmed for standard 6 x 8 frame.



Retail Tobacco Permit Application Review and Checklist Summary Page

SF Department of Public Health Office Use Only			
Submittal Date: 3/5/2019	Initial Review: 3/21/2019	Final Review: 3/21/2019	Reviewer: JuY/AD
Zoning Referral: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A	Sent:	Received Zoning Referral:	
Incomplete Application Checklist: <input checked="" type="checkbox"/> N/A	Sent:	Received Updated Application:	
Sent: <input checked="" type="checkbox"/> Permit and Authorization to SFTTX	<input checked="" type="checkbox"/> Future Restriction Letter	<input type="checkbox"/> Denial Letter	
Facility/DBA, Address & Zip: Richmond's Super Shell, 4501 Geary Blvd, San Francisco, CA 94118 Phone: 415-221-0424			
Legal Owner/Permit Holder Name: Will Y. Wong and Juliana K. Wong			
Legal Owner Mailing Address (Address, City, State, Zip): 4501 Geary Blvd, San Francisco, CA 94118			
Legal Owner Phone: 415-606-8198		Legal Owner Email: willw318@gmail.com	
Responsible Person (Name, Phone, Email): Will Y. Wong			
BAN #: 1095162	SF H-31 #:	BOE #: 91 - 383436	EHD ID #: 99852
Type of Establishment:	<input type="checkbox"/> Market/Grocery	<input type="checkbox"/> Bar/Tavern	<input checked="" type="checkbox"/> Gas/Service Station
	<input type="checkbox"/> Liquor Store	<input type="checkbox"/> Restaurant	<input type="checkbox"/> Gift/Novelty
	<input type="checkbox"/> Tobacco/Vape	<input type="checkbox"/> Other Food Establishment	<input type="checkbox"/> Smokers' Lounge
Supervisor District #: 1	Number of Tobacco Permits: 52		as of 9/2018
Owner on 01/18/2015: Will Yin Wong			
Applicant Qualifies as:	<input checked="" type="checkbox"/> Original Owner	<input type="checkbox"/> New Owner A	<input type="checkbox"/> Subsequent Buyer B <input type="checkbox"/> Change of Ownership
Rationale to Issue Permit:	<input type="checkbox"/> Name Change (<i>Note: DBA or Legal Owner</i>)	<input type="checkbox"/> Legacy Transfer	<input type="checkbox"/> Qualified Relative (<i>Note: A Child of Permit Holder</i>)
	<input checked="" type="checkbox"/> +/- Partner(s) or Officer(s)	<input type="checkbox"/> Meets All Density Criteria	<input type="checkbox"/> Other:
	<input type="checkbox"/> Death/Divorce		
	<input type="checkbox"/> Relocation due to seismic upgrade		
Permit Type:	<input checked="" type="checkbox"/> AMENDED (<i>Note: Use Original Permit Date</i>)	<input type="checkbox"/> NEW	

PLEASE STAPLE SFPDH TOBACCO PERMIT DUPLICATE ANYWHERE ON PAGE

Cc: Department of Public Health – Community Health Equity and Promotion Branch – Tobacco Free Project and Deemed-Approved Off-Sale Alcohol Program
 Department of Public Health – Environmental Health Branch - Food Safety Program and Weights and Measures Program



**San Francisco Department of Public Health Retail Tobacco Permit
 Tobacco Products Future Sales Restriction Notification**

Date: 3/5/2019

According to San Francisco Department of Public Health (SFDPH) – Population Health Division – Environmental Health Branch (EH) records, the following retail tobacco permit was issued as follows:

Permit to Operate #:	<u>T 99852</u>	Permit Issued Date:	<u>June 30, 2004</u>
DBA:	<u>Richmond's Super Shell</u>	Permit Holder:	<u>J&W Wong</u>
LOC ID:	<u>99852</u>	BAN:	<u>1095162</u>
Address, Zip Code:	<u>4501 Geary Blvd, San Francisco, CA 94118</u>		

In December 2014, the City and County of San Francisco amended San Francisco Health Code Article 19H (SFHC 19H) – Permits for the Sale of Tobacco Ordinance to restrict the future sales of tobacco products in supervisorial districts above a density cap. Please review the SFHC 19H ordinance with its corresponding rules and regulations at <https://www.sfdph.org/dph/EH/Tobacco/default.asp>.

Based solely on the permit issuance date, the following may apply to future sales of tobacco products at your establishment:

- | | |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <p>Future sales of tobacco products at this address under new ownership are severely restricted. The Applicant will need to comply with all criteria established under SFHC 19H.4(f). For example:</p> <ul style="list-style-type: none"> • No new permit will be issued in a supervisorial district above 45 retail tobacco permits • No new permit will be issued within 500 feet of a school or another retailer with a tobacco permit • No permit will be issued to an applicant operating a tobacco shop, restaurant, bar, or an establishment serving food, beverages, or alcohol for on-site consumption • No new permit will be issued at a location that historically never obtained a retail tobacco permit. |
| <input type="checkbox"/> | 2. The permit holder listed above may qualify for a SFHC 19H.6 exception - allowing a one-time basis for a new buyer to obtain a tobacco permit and sell tobacco products. |
| <input type="checkbox"/> | 3. A subsequent buyer may be allowed to sell tobacco products if the new buyer maintains an active and valid tobacco permit for at least 10 years from the new buyer's permit issuance date. |
| <input type="checkbox"/> | 4. Other: |

Please note that whether or not the current permit holder qualifies for a 19H.6 exception, there are other factors that the Director of the San Francisco Department of Public Health may consider in the determination of the issuance of a retail tobacco permit.

This notice is being provided to assist you in making informed decisions regarding the retail tobacco permit at this location. Please be aware any changes to the tobacco permit require you to contact the SF DPH Retail Tobacco and Smoking Program. If you have any questions or concerns, please contact SFDPH staff as provided below.

<u>Uzziel Prado</u>	<u>3/5/2019</u>
DPH Investigator/Inspector	Date
<u>415-252-3873</u>	
Phone Number	Permit Holder or Agent Print Name & Signature

cc: Property Owner, if applicable:
 File

EXHIBIT “D”



**San Francisco Department of Public Health Retail Tobacco Permit
 Tobacco Products Future Sales Restriction Notification**

Date: 3/5/2019

According to San Francisco Department of Public Health (SFDPH) – Population Health Division – Environmental Health Branch (EH) records, the following retail tobacco permit was issued as follows:

Permit to Operate #:	<u>T 99852</u>	Permit Issued Date:	<u>June 30, 2004</u>
DBA:	<u>Richmond's Super Shell</u>	Permit Holder:	<u>J&W Wong</u>
LOC ID:	<u>99852</u>	BAN:	<u>1095162</u>
Address, Zip Code:	<u>4501 Geary Blvd, San Francisco, CA 94118</u>		

In December 2014, the City and County of San Francisco amended San Francisco Health Code Article 19H (SFHC 19H) – Permits for the Sale of Tobacco Ordinance to restrict the future sales of tobacco products in supervisorial districts above a density cap. Please review the SFHC 19H ordinance with its corresponding rules and regulations at <https://www.sfdph.org/dph/EH/Tobacco/default.asp>.

Based solely on the permit issuance date, the following may apply to future sales of tobacco products at your establishment:

- | | |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <p>Future sales of tobacco products at this address under new ownership are severely restricted. The Applicant will need to comply with all criteria established under SFHC 19H.4(f). For example:</p> <ul style="list-style-type: none"> • No new permit will be issued in a supervisorial district above 45 retail tobacco permits • No new permit will be issued within 500 feet of a school or another retailer with a tobacco permit • No permit will be issued to an applicant operating a tobacco shop, restaurant, bar, or an establishment serving food, beverages, or alcohol for on-site consumption • No new permit will be issued at a location that historically never obtained a retail tobacco permit. |
| <input type="checkbox"/> | 2. The permit holder listed above may qualify for a SFHC 19H.6 exception - allowing a one-time basis for a new buyer to obtain a tobacco permit and sell tobacco products. |
| <input type="checkbox"/> | 3. A subsequent buyer may be allowed to sell tobacco products if the new buyer maintains an active and valid tobacco permit for at least 10 years from the new buyer's permit issuance date. |
| <input type="checkbox"/> | 4. Other: |

Please note that whether or not the current permit holder qualifies for a 19H.6 exception, there are other factors that the Director of the San Francisco Department of Public Health may consider in the determination of the issuance of a retail tobacco permit.

This notice is being provided to assist you in making informed decisions regarding the retail tobacco permit at this location. Please be aware any changes to the tobacco permit require you to contact the SF DPH Retail Tobacco and Smoking Program. If you have any questions or concerns, please contact SFDPH staff as provided below.

<u>Uzziel Prado</u>	<u>3/5/2019</u>
DPH Investigator/Inspector	Date
<u>415-252-3873</u>	
Phone Number	Permit Holder or Agent Print Name & Signature

cc: Property Owner, if applicable:
 File





DEFINITIONS

Applicant is the person applying for a tobacco permit on behalf of an individual or entity
Change of ownership means a change of 50 percent or more of the ownership of the business within a 12-month period; provided, however, that if the Permittee is a corporation, transfer of 25 percent of the stock ownership of the permittee shall be deemed to be a Change of Ownership.
DBA represents that the name under which an owner is conducting business and is on the face of the tobacco permit.
Density Cap has the same meaning as Cap. Cap means the figure set forth in Section 19H.5 and represents the total number of permitted establishments with tobacco products that may operate in each supervisorial district.
Director means the Director of Health or his or her designee.
Establishment means any store, stand, booth, concession or any other enterprise that engages in the retail sale of Tobacco Products, including stores engaging in the retail sale of food items. Examples include any retail establishment, office, business, store, factory, warehouse, storage facility or other place operated as a commercial venture. The term includes any place where services are provided or goods are manufactured, distributed, processed, assembled, sold or displayed for sale on a wholesale or retail basis, whether owner operated, operated with employees or operated with volunteers. This includes, but is not limited to grocery, specialty, department and other stores which sell goods or merchandise, service stations, and other establishments offering services to the general public.
New Owner is the same as New Buyer. New Buyer is an individual or entity who is purchasing or acquiring the establishment from the Original Owner and is seeking to obtain a permit to continue the sales of tobacco at that location.
New Tobacco Sales Permit is a permit issued after a change of ownership.
Permit Holder has the same meaning as Permittee. The Permittee is a person who has obtained the tobacco sales permit for a specific location pursuant to SFHC 19H.
Permit Issuance Date is the application date, once SFDPH verifies that the retail tobacco permit is valid (Approval Date).
School is a public or private kindergarten, elementary, middle, junior high, or high school, or a school combining some or all of the above school grades.
Subsequent Buyer is an individual or entity who is purchasing or acquiring the establishment from the New Owner. The Subsequent Buyer may obtain a tobacco permit if all conditions are met in accordance with 19H and its rules and regulations including but not limited to, the New Owner maintaining a valid tobacco permit for 10 years.
Tobacco Product means (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, or sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, dipping tobacco, pipe tobacco, bidis or snuff; (2) any device or component, part, or accessory that delivers nicotine alone or combined with other substances to the person using the device including but not limited to electronic cigarettes, cigars, or pipes, whether or not the device or component is sold separately. "Tobacco Product" does not include any product that has been approved by the United States Food and Drug Administration for use as a tobacco cessation product where such product is marketed and sold solely for such an approved purpose.
Tobacco Retailer is any establishment that obtains and maintains a valid tobacco permit. In accordance with SFHC 19H, the tobacco retailer does not have any status or right other than the right to sell tobacco products at the location identified on the face of the permit. Nor does obtaining a tobacco permit in and of itself transform a business into a retail or wholesale tobacco shop within the definition of California Labor Code Section 6404.5.
Tobacco Shop means any tobacco retailer whose principal business is selling Tobacco Products, tobacco paraphernalia, or both, as evidenced by any of the following: 50% or more of floor area and display area is devoted to the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; 70% or more of gross sales receipts are derived from the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; or 50% or more of completed sales transactions include a Tobacco Product or tobacco paraphernalia. At the Director's discretion, retailers whose principal business is selling pipes only shall generally not be considered to meet the definition of a Tobacco Shop and shall generally not be required to obtain a tobacco sales permit.
Valid Tobacco Permit is a permit that is not delinquent and has not been inactive for more than 180 days that was issued by SFDPH to an individual or entity for the sales of tobacco products in San Francisco.

EXHIBIT “E”



City and County of San Francisco
 Department of Public Health Population Health Division
 Environmental Health Branch
 49 S Van Ness Ave. Suite 600 San Francisco, CA 94103
 (415) 252-3800
<https://www.sfdph.org/dph/EH/Tobacco/default.asp>



Application for the Sale of Tobacco Products

Application Date: 08/03/2023

First Date of Tobacco Sales: 07/05/2023

Business Information

Official correspondence from SFDPH will be sent to the mailing address on record with the San Francisco Office of the Treasurer and Tax Collector (SFTTX)

Business Name (DBA):
 GEARY BLVD MARATHON

San Francisco Business Account # (BAN):
 1147931

Business Address including zip code:
 4501 GEARY BLVD SAN FRANCISCO, CA 94118

CDTFA Cigarette Retailer License #:
 204858656

Establishment Type: a) Grocery/Market b) Liquor Store c) Tobacco/Vape Shop
 d) Gas/Service Station e) Restaurant/Bar f) Gift/Novelty Store g) Other

Legal Owner Information: Legal Owner Structure: Sole Proprietor Partnership Corporation Other

Legal Owner Name:
 GEARY ST PETROLEUM INC

Legal Owner Email Address:
 ABED@CASYNERGY.COM

Legal Owner Address including zip code:
 510 MYRTLE AVE #209, SOUTH SAN FRANCISCO, CA 94080

Legal Owner Phone Number:
 6506348449

List all Owners or Principal Officers and Ownership Percentages: (Print Name(s)) Attach additional sheets if necessary

HAMDI ALZGHOUL	100%		%
	%		%

Main Contact's Name:

Same as Legal Owner Manager Legal Agent
 Other

Main Contact's Email:

Main Contact's Phone Number:
 6506348449

Incomplete applications cannot be processed and will be returned to the Applicant. The application will be deemed abandoned if the Applicant fails to submit a complete and accurate application with all required documentation within 30 days from the date the application is returned to the Applicant. After 30 days, the Applicant will be required to submit a new application and non-refundable processing fee.

Signature of Applicant(s): All Owners and Corporate Officers must sign. Attach additional sheets if necessary.

I/We declare under penalty of perjury the information on this application and in other materials submitted in support of this application are true and correct. I/We hereby consent to all necessary inspections made pursuant to the SF Health Code and incidental to the issuance of any exception, permit, and operation of this business. I/We understand that once submitted, the application processing fee is nonrefundable. I/We acknowledge that I am/we are responsible for complying with all local, state, and federal laws, codes, and rules and regulations relating to tobacco products, tobacco control, and the prohibition of smoking in enclosed establishments and certain unenclosed areas. If SFDPH staff discovers false or misleading information, I/we understand that the tobacco permit may be denied or revoked by SFDPH. **I/We may not sell any tobacco products, including but not limited to, cigarettes, electronic nicotine delivery systems, and nicotine-containing products without first obtaining a valid SFDPH Tobacco Sales Permit.** I/We understand selling tobacco products without a valid SFDPH permit may result in the denial of a SFDPH Tobacco Sales Permit.

Hamdi Alzghoul

Date:
 08/03/2023 X

Date:

Date:
 X

Date:

X

Instructions for the Application for the Sale of Tobacco Products

Application Date: The date the legal owner submits the application.

First Date of Tobacco Sales: The date the legal owner intends to begin selling tobacco products. If tobacco sales have occurred prior to the submittal of the application, put the date of the first tobacco sale. If the applicant is only amending the permit, you may leave this blank.

Legal Owner Information

Legal Owner Structure: If the legal owner structure is not a sole proprietorship (one person owned), the ownership percentages must be disclosed. Legal documentation providing the ownership percentages and signatures of all owners must be submitted with this application. An application will be considered incomplete if this legal documentation is not submitted.

Legal Owner Name: The legal owner is the applicant and the entity that the Permit to Operate will be issued to. The legal owner name must be the same name used with the San Francisco Office of the Treasurer and Tax Collector (SFTTX) and the California Department of Tax and Fee Administration (CDTFA).

Legal Owner Email, Address, and Phone Number: Official correspondence from SFDPH will be sent through these points of contact.

List all Owners or Principal Officers and Ownership Percentages: The owners/principal officers and ownership percentages listed on this application must match with what is on the legal documentation submitted proving the ownership percentages. The list must also match the corporate records filed with the California Secretary of State.

Business Information

Business Name (DBA): The name of the establishment where tobacco sales will take place. The business name must be the same with SFTTX and CDTFA.

Business Address: The address of the establishment where tobacco sales will take place. This address must be the same with SFTTX and CDTFA.

CDTFA Cigarette Retailer License #: To sell tobacco products in the City and County of San Francisco, an establishment must have both a Cigarette Retailer License from the CDTFA and a Permit to Operate a Tobacco Sales Establishment from SFDPH. SFDPH will not issue a Permit to Operate without a valid CDTFA Cigarette Retailer License. **This is not the same as the Seller's Permit from the CDTFA.**

San Francisco Business Account # (BAN): Your account with SFTTX. Once your tobacco permit is approved, SFTTX will bill you through this account to pay for the H31 Tobacco License. The annual H31 Tobacco License validates your SFDPH Tobacco permit.

Establishment Type: Based on the San Francisco Zoning Code, provide the business establishment primary business type and operation.

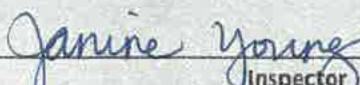

Responsible Person's Name: The primary point of contact between SFDPH and the business.

Relation to Legal Owner: Title of Responsible Person in relation to the Legal Owner.

Responsible Person's Email and Phone Number: Official correspondence from SFDPH will be sent through these points of contact.

Signature of Applicant(s): The application will be signed by all Legal Owners and/or Principal Officers under penalty of perjury that the information provided is complete, true, accurate and correct.

For Department of Public Health Office Use Only

Initial Review	Final Review	Required Items Submitted with Application:		
<input type="checkbox"/>	<input type="checkbox"/>	Non-refundable Processing Fee		
<input type="checkbox"/>	<input type="checkbox"/>	Retail Tobacco Permit Pre-application and Affidavit		
<input type="checkbox"/>	<input type="checkbox"/>	Declaration of Healthy and Safe Working Conditions		
<input type="checkbox"/>	<input type="checkbox"/>	Proof of Partnership or Incorporation with Ownership Percentages and Signatures of Owners (if applicable)		
<input type="checkbox"/>	<input type="checkbox"/>	19H.6 Exception Documentation (if applicable)		
Information from CDTFA and SFTTX match what is on this application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Filing Fee Amount: \$ <u>FF</u>	Payment Date: <u>1 / 1</u>	Receipt Number: <u>N/A</u>
Applicant Qualifies as:	Owner Type: <input type="checkbox"/> Original Owner <input type="checkbox"/> New Owner	<input type="checkbox"/> Subsequent Buyer <input checked="" type="checkbox"/> Owner under Density	Permit Type:	<input type="checkbox"/> Amended Permit <input checked="" type="checkbox"/> New Permit
<p>To the Director of Public Health, after reviewing this application on <u>10/26/2023</u></p> <p><input type="checkbox"/> I recommend the issuance of a Permit to Operate. <input checked="" type="checkbox"/> I disapprove the issuance of a Permit to Operate (Note: See attached review and/or letter).</p>				
 Janine Young Inspector		 Principal Inspector		
Location ID: <u>121505</u>	Permit #: T-	Type of Permit/Classification: <u>H31</u>		



Declaration of Healthy and Safe Working Conditions
Declaración de Condiciones de Trabajo Sanas Y Seguras
健康及安全工作條件聲明
Deklarasyon ng Mabuti at Ligtas na Kondisyon sa Trabaho

The Department of Public Health is responsible for ensuring healthy and safe conditions for those working and living in San Francisco. Establishments permitted by the Department must remain compliant with all laws.

El Departamento de Salud es responsable de asegurar condiciones saludables y seguras para las personas que trabajan y viven en San Francisco. Establecimientos permitidos por el Departamento deben cumplir con todas las leyes.

衛生署是負責確保於三藩市工作及居住的人士有一健康和安全的環境。從衛生署取得許可營運的設施/場所必須保持遵守所有法律。

Ang Kagawaran ng Pamublikong Kalusugan ay may pananagutan para sa pagtiyak ng mabuti at ligtas na mga kondisyon para sa mga nagtatrabaho at naninirahan sa San Francisco. Ang mga establisyemento na pinahihintulutan ng Kagawaran ay dapat manatiling sumusunod sa lahat ng mga batas.

Owner/Operator:	GEARY ST PETROLEUM INC		
DBA/Name of Business:	GEARY BLVD MARATHON		
Business Address:	4501 GEARY BLVD	San Francisco, CA 941 118	

翻譯及你的簽署聲明在本頁後面。

¡Ojo! La traducción y firma de su declaración se encuentra en la parte posterior de esta página.

Ang pagsasalin at paglagda ng iyong deklarasyon ay nasa likod ng pahinang ito.

1. I understand that this business must comply with all local, state, and federal labor laws in order to obtain and maintain a valid Permit To Operate from the Department. I affirm that as an operator of the above business, I am aware of and agree to comply with the following laws when applicable to my business:			
• San Francisco Labor Codes	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
• California Labor Code Division 4—Have and maintain Workers Compensation Insurance or be self-insured)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
• California Labor Code Division 2—Employment Regulation and Supervision	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
• California Labor Code Division 5—Occupational Health and Safety	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
• All other federal, state, and local labor codes	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
2. I will request my provider of Workers Compensation Insurance to designate as a “Certificate Holder” the SF Environmental Health Branch at 49 South Van Ness Ave, #600, San Francisco, CA 94103.			
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

I am the owner or authorized agent of the owner of this business. I declare under penalty of perjury that the information on this Declaration of Healthy and Safe Working Conditions is true and correct.

HAMDY ALZGHOUL

Handwritten Signature

08/03/2023

Print Name

Signature

Date

I acknowledge that failure to comply with all applicable federal, state, and local labor laws may result in suspension or revocation of my Permit To Operate issued by the San Francisco Department of Public Health or a referral to the applicable federal, state, or local agency for enforcement.

HAMDY ALZGHOUL

Handwritten Signature

08/03/2023

Print Name

Signature

Date



Menu

[Home](#) [Verify a permit, license or account](#)

Search Criteria

Which taxable activity type information are you searching for?

Cigarette Retailer License

Identification Number

204-858656

This is a valid Cigarette Retailer License.

Owner Name

GEARY ST PETROLEUM INC

DBA Name

GEARY ST PETROLEUM INC

Address

4501 GEARY BLVD SAN FRANCISCO CA 94118-2916

SH
8/29/23



EXHIBIT “F”



City and County of San Francisco
London N. Breed, Mayor

San Francisco Department of Public Health

Grant Colfax, MD
Director of Health

Notification of Tobacco Permit Denial

EFFECTIVE DATE: November 7, 2023

FACILITY NAME (DBA): Geary Blvd Marathon
LEGAL OWNER NAME: Geary St Petroleum Inc.

FACILITY ADDRESS & ZIP: 4501 Geary Blvd, 94118
RESPONSIBLE PERSON NAME: Hamdi Alzghoul

Mailing Address, City, State, Zip: 510 Myrtle Ave, #209, South San Francisco, CA, 94080

EHD ID#: 121505

Supervisorial District: 1

Number of Tobacco Permits: 38

Dear Geary St Petroleum Inc c/o Hamdi Alzghoul:

You are hereby notified that your application for San Francisco Department of Public Health (“SFDPH”) Retail Tobacco Sales Permit at 4501 Geary Blvd in San Francisco (“Establishment”) has been **denied**, in accordance with Article 19H of the San Francisco Health Code (“SFHC”) and San Francisco Department of Public Health Director’s Rules and Regulations for Retail Tobacco Sales, on the following basis:

In January 2016, SFDPH received the Food Facility Permit Exemption Form for Prepackaged Non-Potentially Hazardous Food from the Permit Holder, Will Y Wong, dba Richmond Super Shell located at 4501 Geary Blvd in San Francisco. The Permit Holder sells candy, soda, water, chips, and granola displayed on less than 25 square feet of floor space. SFDPH approved the exemption from the food permit (Exhibit A).

In March 2019, SFDPH received the Application for the Sale of Tobacco Products (“Application”) from J&W Wong (“Permittee”) to amend the SFDPH Tobacco Permit for 4501 Geary Blvd dba Richmond Super Shell. The Permittee completed the Establishment Type as “Gas/Service Station” on the Application. SFDPH approved and issued amended Tobacco Permit # T-99852. Additionally, SFDPH issued to the Permittee a letter indicating that future sales of tobacco products at 4501 Geary Blvd under new ownership are severely restricted (Exhibit B). And, that the Permittee were made aware of the following requirements for any change in ownership:

- No new permit will be issued in a Supervisorial District above 45 retail tobacco permits.
- No new permit will be issued within 500 feet of a school or another retailer with a tobacco permit.
- No permit will be issued to an Applicant operating a tobacco shop, restaurant, bar, or an establishment serving food, beverages, or alcohol for on-site consumption.
- No new permit will be issued at a location that historically never obtained a retail tobacco permit.

On August 3, 2023, SFDPH received an Application from Geary Blvd Marathon (“Applicant”). On the Application, the Applicant completed the Establishment Type as “Gas/Service Station”. SFDPH completed the review of the Application on October 26, 2023, and determined that a new tobacco permit may not be issued to the Applicant for the following reasons:

The mission of the San Francisco Department of Public Health is to protect and promote the health of all San Franciscans.

We shall ~ Assess and research the health of the community ~ Develop and enforce health policy ~ Prevent disease and injury ~
~ Educate the public and train health care providers ~ Provide quality, comprehensive, culturally-proficient health services ~ Ensure equal access to all ~

grant.colfax@sfdph.org ♦ (415) 554-2526 ♦ 49 South Van Ness Ave., Ste 600, San Francisco, CA 94103

Reasons for Denial of Retail Tobacco Sales Permit:

1. According to SFHC 19H.4(f)(3), no new permit shall be issued if the Applicant will be within 500 feet of the nearest point of the property line of a School as measured by a straight line from the nearest point of the property line on which a School is located to the nearest point of the property line on which the Applicant's Establishment will be located.
The Establishment is located within 500 feet of two (2) schools (Exhibit C).
2. According to SFHC 19H.4(f)(4), no new permit shall be issued if the Applicant will be located within 500 feet of the nearest point of the property line of an existing Establishment as measured by a straight line from the nearest point of the property line on which the Applicant's Establishment will be located to the nearest point of the property line of the existing Establishment.
The Establishment is located within 500 feet of two (2) other Establishments that have a valid Retail Tobacco Sales Permit (Exhibit C).

Additionally, SFDPH reviewed all exceptions under SFHC Article 19H.6 listed below and has determined that the Applicant does not qualify for any exception.

If you believe that you do qualify for one of the below exceptions, you are able to submit a new Application with the \$120 non-refundable processing fee.

SFHC 19H.6. EXCEPTIONS FOR CERTAIN NEW PERMITS

1. **New Buyer of a Retail Food Store or Tobacco Shop.** Retail Food Store Establishment or Tobacco Shop Owner since January 18, 2010, and with a Tobacco Permit since January 18, 2015, may submit an affidavit to the Director attesting to: (a) their ownership of the Establishment; (b) under the same Tobacco Sale Permit; (c) for at least five (5) consecutive years immediately before the submission of the affidavit; and (d) Direct Negotiations. Upon submission of the Permittee's affidavit, a New Buyer may apply for a Tobacco Sales Permit for the Permittee's Retail Food Store Establishment or Tobacco Shop.
The Establishment is not a retail food store establishment or tobacco shop and therefore, doesn't qualify for the direct negotiation exception.
2. **Subsequent Buyer of a Retail Food Store or Tobacco Shop.** A Retail Food Store Establishment or Tobacco Shop New Buyer may submit an affidavit to the Director attesting to: (a) their ownership of the Establishment; (b) under the same Tobacco Sales Permit; and (c) for at least ten (10) years. Upon submission of the New Buyer's affidavit, a Subsequent Buyer may apply for a Tobacco Sales Permit for the New Buyer's Retail Food Store Establishment or Tobacco Shop. A Subsequent Buyer applying for a new Tobacco Sales Permit must acquire a 100% ownership interest in the Establishment.
The Establishment is not a retail food store establishment or tobacco shop and therefore, doesn't qualify for the direct negotiation exception.

-
3. **Child of a Retail Food Store or Tobacco Shop Permittee.** A child of a Retail Food Store Establishment or Tobacco Shop Permittee may apply for a Tobacco Sales Permit for their parent's Establishment if their parent holds a Tobacco Sales Permit as of January 18, 2015. **The Applicant is not a child of the Permittee of a retail food store establishment or tobacco shop.**

 4. **Seismic Retrofitting Relocation.** A Retail Food Store Establishment or Tobacco Shop Permittee as of January 18, 2015, which must relocate from their Establishment due to seismic retrofitting under Chapter 34B of the Building Code may apply for a Tobacco Sales Permit for their Establishment. The Permittee's application is subject to further review including confirmation of seismic retrofitting by the Department of Building Inspection. **The Applicant is not the Permittee of a retail food store establishment or tobacco shop relocating due to seismic retrofitting under Chapter 34B.**

 5. **New Buyer of a Tavern.** A Tavern Permittee since January 18, 2010, that seeks to demonstrate previous compliance with Section 1009.23(d) of Article 19F of SFHC (prohibition against smoking in enclosed areas), shall submit a copy of their previously approved SFDPH application which establishes that an area within the Tavern is a historically compliant semi-enclosed smoking room. Additionally, the Tavern Permittee may submit an affidavit to the Director attesting to: (a) their ownership of the Establishment; (b) under the same Tobacco Sale Permit; (c) for at least five (5) consecutive years immediately before the submission of the affidavit; and (d) Direct Negotiations. Upon submission of the Tavern Permittee's affidavit, a New Buyer may apply for a Tobacco Sales Permit for the Permittee's Tavern. **The Establishment is not a Tavern that is a cigar or smoking bar and therefore, doesn't qualify for the direct negotiation of a tavern.**

 6. **Subsequent Buyer of a Tavern.** A New Buyer of a Tavern may submit an affidavit to the Director attesting to: (a) their continuous ownership of the Establishment; (b) under the same Tobacco Sales Permit; and (c) for at least ten (10) years. Upon submission of a New Buyer's affidavit, a Subsequent Buyer may apply for a Tobacco Sales Permit for the New Buyer's Tavern. A Subsequent Buyer applying for a new Tobacco Sales Permit must acquire 100% ownership of the Establishment. **The Establishment is not a Tavern that is a cigar or smoking bar and therefore, doesn't qualify for the direct negotiation of a tavern.**

 7. **Death or Divorce.** A spouse or domestic partner may acquire the ownership from the Permittee of an Establishment through the death or divorce. The spouse or domestic partner applying for a new Tobacco Sales Permit must have a 100% ownership interest in the Establishment. **The Applicant is not the spouse or domestic partner of the Permittee.**

Appeal Process. You have the right to appeal this decision to deny your application for a tobacco retailer permit. *(Pursuant to Section 19H.24 and Article 1 of the San Francisco Business and Tax Regulations Code). Appeals must be filed in person with the San Francisco Board of Appeals within 15 calendar days of the date of this notice. The Board of Appeals is located at: 49 South Van Ness Ave., Suite 1475 (Telephone #: (628) 652-1150).*

The failure to file an appeal will waive your right to a hearing and shall deem SFDPH decision to deny your tobacco permit as final.

Cease and Desist All Tobacco Products Sales. Immediately discontinue the sales of tobacco products, including but not limited to, cigarettes, cigars, cigarillos, tobacco shisha, electronic smoking devices and juices, smokeless tobacco, and nicotine-containing products. No person may engage in or allow tobacco sales in any establishment without a valid SFDPH tobacco sales permit. *(Pursuant to SFHC §§ 19H.3, 19N.3, and 19N.5(a)).*

Imposition of Administrative Fines and Penalties. Selling tobacco products without a valid permit may result in an administrative penalty of up to five hundred dollars (\$500.00) per day for each day that tobacco product sales occur without a valid permit. *(Pursuant to SFHC §§ 19H.17(a), 19H.20, 19N.3(b)).*

Sincerely,

Patrick Fosdahl, MS, REHS
Director of Environmental Health
Environmental Health Branch
SFDPH – Population Health Division

Cc: SFDPH – EHB – Consumer Protection Program
SFDPH – CHEP – Tobacco Free Project
File

H01-010846 / loc: 176



EXHIBIT A

SF CISCO DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH BRANCH
1390 Market Street, Suite 210, San Francisco, CA 94102
www.sfdph.org/dph/EH/Food/
Phone: (415) 252-3800 Fax: (415) 252-3842

Food Facility Permit Exemption Verification Form for Prepackaged Non-Potentially Hazardous Foods

Applicant must complete and submit this form for exemption evaluation. Accurate information is required. Misleading information may result in denial of the exemption. An approved exemption shall remain as long as the owner and qualifying information on this form remains accurate.

I. EXEMPTION REQUIREMENTS

California Retail Food Code, Section 114289, exempts a permanent food facility from obtaining a Food Permit to Operate from the Department of Public Health if <u>ALL</u> criteria below are met. Verify that you meet all criteria:	Yes	No
1. Foods/beverages that are stored, handled, sold, and/or provided are non-potentially hazardous and prepackaged. (Common potentially hazardous foods: milk, cheese, ice cream, dairy products, eggs, meat, fresh juices/smoothies, cut melons, and perishable foods.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. No food preparation occurs. (Making or dispensing open coffee, popcorn, hot pretzels, hard-boiled eggs, etc. is considered food preparation.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The floor space for the food display area shall be limited to 25 square feet. (No height restriction within floor space.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>

II. PERMANENT FOOD FACILITY INFORMATION

Business Name/DBA: <u>Richmond's Supershell</u>	Owner Name: <u>Will y Wong</u>
Business Address: <u>4501 Geary Blvd. San Francisco, CA 94118</u>	
Contact Phone: <u>(415) 606-8198</u>	Email: <u>willw318@gmail.com</u>

III. FOOD MENU

List all foods/beverages stored and/or sold at this facility. (Ensure to include any items that contain dairy/eggs/meat, will require refrigeration, or have "perishable" or "keep refrigerated" on the label.)

<u>Candy</u>
<u>Soda</u>
<u>Water</u>
<u>Chips</u>
<u>Arachola</u>

IV. FLOOR PLAN

Draw a diagram to show location and square footage of floor space for food display in the space below. Add up square footage to show that it does not exceed 25 sq. ft.

If preferred, a separate diagram may be attached. Please sign and date attachment.

Example diagram: Total display = 16 sq. ft.

I declare under penalty of perjury that I am an authorized representative of this business entity and that the information contained herein is true and complete to the best of my knowledge and belief. I understand that I will need to obtain a Food Permit to Operate from the SF Department of Public Health when food display exceeds 25 sq. ft. or when potentially hazardous food or non-prepackaged food is stored, handled, sold, or provided. I also understand that any complaints may result in an investigation and/or enforcement action charged at the current hourly rate.

<u>Will y Wong</u> Owner Name (Print)	<u>[Signature]</u> Owner Signature	<u>1/26/16</u> Date
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EH OFFICE USE ONLY <input checked="" type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED Reason for disapproval: _____		
<u>Amelia Costelli</u> Inspector	<u>[Signature]</u> Principal Inspector	<u>2/3/16</u> Date

EH Office Use:
Reviewed form sent by: [Signature] Date: 03/03/2016



EXHIBIT B

City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH

London N. Breed, Mayor
Greg Wagner, Acting Director of Health
Stephanie K. J. Cushing, MSPH, CHMM, REHS
Director of Environmental Health

San Francisco Department of Public Health Retail Tobacco Permit Tobacco Products Future Sales Restriction Notification

Date: 3/5/2019

According to San Francisco Department of Public Health (SFDPH) – Population Health Division – Environmental Health Branch (EH) records, the following retail tobacco permit was issued as follows:

Permit to Operate #:	<u>T 99852</u>	Permit Issued Date:	<u>June 30, 2004</u>
DBA:	<u>Richmond's Super Shell</u>	Permit Holder:	<u>J&W Wong</u>
LOC ID:	<u>99852</u>	BAN:	<u>1095162</u>
Address, Zip Code:	<u>4501 Geary Blvd, San Francisco, CA 94118</u>		

In December 2014, the City and County of San Francisco amended San Francisco Health Code Article 19H (SFHC 19H) – Permits for the Sale of Tobacco Ordinance to restrict the future sales of tobacco products in supervisorial districts above a density cap. Please review the SFHC 19H ordinance with its corresponding rules and regulations at <https://www.sfdph.org/dph/EH/Tobacco/default.asp>.

Based solely on the permit issuance date, the following may apply to future sales of tobacco products at your establishment:

<input checked="" type="checkbox"/>	1. Future sales of tobacco products at this address under new ownership are severely restricted. The Applicant will need to comply with all criteria established under SFHC 19H.4(f). For example: <ul style="list-style-type: none"> No new permit will be issued in a supervisorial district above 45 retail tobacco permits No new permit will be issued within 500 feet of a school or another retailer with a tobacco permit No permit will be issued to an applicant operating a tobacco shop, restaurant, bar, or an establishment serving food, beverages, or alcohol for on-site consumption No new permit will be issued at a location that historically never obtained a retail tobacco permit.
<input type="checkbox"/>	2. The permit holder listed above may qualify for a SFHC 19H.6 exception - allowing a one-time basis for a new buyer to obtain a tobacco permit and sell tobacco products.
<input type="checkbox"/>	3. A subsequent buyer may be allowed to sell tobacco products if the new buyer maintains an active and valid tobacco permit for at least 10 years from the new buyer's permit issuance date.
<input type="checkbox"/>	4. Other:

Please note that whether or not the current permit holder qualifies for a 19H.6 exception, there are other factors that the Director of the San Francisco Department of Public Health may consider in the determination of the issuance of a retail tobacco permit.

This notice is being provided to assist you in making informed decisions regarding the retail tobacco permit at this location. Please be aware any changes to the tobacco permit require you to contact the SF DPH Retail Tobacco and Smoking Program. If you have any questions or concerns, please contact SFDPH staff as provided below.

<u>Uzziel Prado</u>	<u>3/5/2019</u>
DPH Investigator/Inspector	Date
<u>415-252-3873</u>	
Phone Number	Permit Holder or Agent Print Name & Signature

cc: Property Owner, if applicable:
File





DEFINITIONS

Applicant is the person applying for a tobacco permit on behalf of an individual or entity
Change of ownership means a change of 50 percent or more of the ownership of the business within a 12-month period; provided, however, that if the Permittee is a corporation, transfer of 25 percent of the stock ownership of the permittee shall be deemed to be a Change of Ownership.
DBA represents that the name under which an owner is conducting business and is on the face of the tobacco permit.
Density Cap has the same meaning as Cap. Cap means the figure set forth in Section 19H.5 and represents the total number of permitted establishments with tobacco products that may operate in each supervisorial district.
Director means the Director of Health or his or her designee.
Establishment means any store, stand, booth, concession or any other enterprise that engages in the retail sale of Tobacco Products, including stores engaging in the retail sale of food items. Examples include any retail establishment, office, business, store, factory, warehouse, storage facility or other place operated as a commercial venture. The term includes any place where services are provided or goods are manufactured, distributed, processed, assembled, sold or displayed for sale on a wholesale or retail basis, whether owner operated, operated with employees or operated with volunteers. This includes, but is not limited to grocery, specialty, department and other stores which sell goods or merchandise, service stations, and other establishments offering services to the general public.
New Owner is the same as New Buyer. New Buyer is an individual or entity who is purchasing or acquiring the establishment from the Original Owner and is seeking to obtain a permit to continue the sales of tobacco at that location.
New Tobacco Sales Permit is a permit issued after a change of ownership.
Permit Holder has the same meaning as Permittee. The Permittee is a person who has obtained the tobacco sales permit for a specific location pursuant to SFHC 19H.
Permit Issuance Date is the application date, once SFDPH verifies that the retail tobacco permit is valid (Approval Date).
School is a public or private kindergarten, elementary, middle, junior high, or high school, or a school combining some or all of the above school grades.
Subsequent Buyer is an individual or entity who is purchasing or acquiring the establishment from the New Owner. The Subsequent Buyer may obtain a tobacco permit if all conditions are met in accordance with 19H and its rules and regulations including but not limited to, the New Owner maintaining a valid tobacco permit for 10 years.
Tobacco Product means (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, or sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, dipping tobacco, pipe tobacco, bidis or snuff; (2) any device or component, part, or accessory that delivers nicotine alone or combined with other substances to the person using the device including but not limited to electronic cigarettes, cigars, or pipes, whether or not the device or component is sold separately. "Tobacco Product" does not include any product that has been approved by the United States Food and Drug Administration for use as a tobacco cessation product where such product is marketed and sold solely for such an approved purpose.
Tobacco Retailer is any establishment that obtains and maintains a valid tobacco permit. In accordance with SFHC 19H, the tobacco retailer does not have any status or right other than the right to sell tobacco products at the location identified on the face of the permit. Nor does obtaining a tobacco permit in and of itself transform a business into a retail or wholesale tobacco shop within the definition of California Labor Code Section 6404.5.
Tobacco Shop means any tobacco retailer whose principal business is selling Tobacco Products, tobacco paraphernalia, or both, as evidenced by any of the following: 50% or more of floor area and display area is devoted to the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; 70% or more of gross sales receipts are derived from the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; or 50% or more of completed sales transactions include a Tobacco Product or tobacco paraphernalia. At the Director's discretion, retailers whose principal business is selling pipes only shall generally not be considered to meet the definition of a Tobacco Shop and shall generally not be required to obtain a tobacco sales permit.
Valid Tobacco Permit is a permit that is not delinquent and has not been inactive for more than 180 days that was issued by SFDPH to an individual or entity for the sales of tobacco products in San Francisco.

4501 Geary Blvd

Tobacco Permits

Existing Tobacco Permits

Schools

Schools K-12



- Public or Private School
- Active Tobacco Sales Permit
- Proposed Retail Tobacco Location

EXHIBIT C

PROOF OF SERVICE

I, LILY KANG, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney’s Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On January 11, 2024, I served the following document(s):

**DECLARATION OF JANINE YOUNG IN SUPPORT OF
RESPONDENT’S OPPOSITION BRIEF**

on the following persons at the locations specified:

Geary St Petroleum Inc., Appellant
c/o Moe Hamdi, Agent for Appellant
510 Myrtle Avenue, #209
South San Francisco, CA 94080
moe@casynenergy.com

in the manner indicated below:

BY ELECTRONIC MAIL: Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the person(s) at the electronic service address(es) listed above. Such document(s) were transmitted *via* electronic mail from the electronic address: lily.kang@sfcityatty.org in portable document format ("PDF") Adobe Acrobat or in Word document format.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed January 11, 2024, at San Francisco, California.

Lily Kang

LILY KANG