

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
ELECTRIC CITY, _____)
Appellant(s))
vs.)
DEPARTMENT OF PUBLIC HEALTH, _____)
Respondent

Appeal No. **24-016**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on February 21, 2024, 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 February 6, 2024, of a Notification Tobacco Permit Denial (Denial of Retail Tobacco Sales Permit for the following reasons: (1) Pursuant to San Francisco Health Code (SFHC) 19H.4(f)(3), no new permit shall be issued if the Applicant will be within 500 feet of a School; the Establishment is located within 500 feet of one School (2) Pursuant to SFHC 19H.4(f)(4), no new permit shall be issued if the Applicant will be located within 500 feet of an existing Establishment; The Applicant's Establishment is located within 500 feet of 4 (four) other Establishments that have valid SFDPH Retail Tobacco Sales Permits; and (3) Pursuant to SFHC 19H.4(f)(5) and 19H.5(a), no new permit shall be issued in any Supervisorial District that has 45 or more Establishments with SFDPH Tobacco Sales Permits; the Establishment is in Supervisorial District 3 which currently has 95 valid SFDPH Retail Tobacco Sales Permits) at 1347 Polk Street.

APPLICATION NO. EHD ID NO. 97731

FOR HEARING ON March 27, 2024

Address of Appellant(s):

Address of Other Parties:

Electric City, Appellant(s) 1347 Polk Street San Francisco, CA 94109	N/A
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Date Filed: February 21, 2024

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

PRELIMINARY STATEMENT FOR APPEAL NO. 24-016

I / We, **Electric City**, hereby appeal the following departmental action: **DENIAL of Tobacco Sales Establishment Permit No. EHD ID NO. 97731** by the **Department of Public Health** which was issued or became effective on: **February 6, 2024**, to: Electric City, for the property located at: **1347 Polk Street**.

BRIEFING SCHEDULE:

Appellant's Brief is due on or before: 4:30 p.m. on **March 7, 2024, (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 **March 21, 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 ahmadsultani84@yahoo.com.

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

Hearing Date: **Wednesday, March 27, 2024, 5:00 p.m., Room 416 San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place**. The parties may also attend remotely via Zoom. Information for access to the hearing will be provided before the hearing date.

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.

Filed in-person at the Board Office by Ahmad Sultani, Agent for Appellant.

I Ahmad Sultawi am here to file an appeal to the decision of denying my Health Permit for tobacco as I was informed upon the leasing of the location that the ~~at~~ 1347 Polk St location had been a grandfathered tobacco sales location and it is pertinent to us remaining in business here in San Francisco due to the loss of business whether the failing economy and the outcome of the corona epidemic our sales have fallen to a all time low and we are relying on this tobacco permit to bring forth some new business and help us remain in business we are part of the community and hope to remain

Ahmad Sultawi

The Establishment is located within 500 feet of 1 (one) School.

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 (See Attachment D).

The Establishment is located within 500 feet of 4 (four) other Establishments that have a valid SFDPH Retail Tobacco Sales Permit.

3. According to SFHC 19H.4(f)(5) and 19H.5(a), no new permit shall be issued in any Supervisorial District that has 45 or more Establishments with SFDPH Tobacco Sales Permits.

The Establishment is in Supervisorial District 3 which currently has 95 valid SFDPH Retail Tobacco Sales Permits.

Additionally, we reviewed all exceptions under SFHC Section 19H.6, where SFDPH 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 tobacco application with the \$120 (one hundred twenty dollars) non-refundable processing fee.

SFHC Section 19H.6. Exceptions for Certain New Permits

1. **New Buyer of a Retail Food Store Establishment or Tobacco Shop.** The owner of a Retail Food Store Establishment or Tobacco Shop who holds a SFDPH Retail Tobacco Sales permit and has been in business at the location continuously from January 18, 2010 through January 18, 2015, submits an affidavit to the Director that attests to (a) ownership of the business at the same location; (b) under the same SFDPH Tobacco Sales permit for five (5) consecutive years immediately preceding submission of the affidavit; and (c) the owner is in negotiations with a specific buyer for the Retail Food Store Establishment or Tobacco Shop at that location, then that buyer ("New Buyer") may apply for, and the Director may issue, a Tobacco Sales permit to the New Buyer for the Retail Food Store Establishment or Tobacco Shop at that location, on a one-time basis.
The previous Permit Holder closed the SFDPH Tobacco Permit in 2015; and therefore, doesn't qualify for the direct negation 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 previous Permit Holder closed the SFDPH Tobacco Permit in 2015; and therefore, doesn't qualify for the direct negation exception.
3. **Child of the Permit Holder ("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 2015.
The Applicant is not the Child of the previous Permit Holder.
4. **Seismic Retrofitting Relocation.** An owner of a retail food store establishment or Tobacco Shop holding a Tobacco Sales permit as of the effective date of this Section 19H.6, who must relocate under Chapter 34B of the Building Code may apply for, and the Director may issue, a new Tobacco Sales permit for the location of the owner's retail food store establishment or Tobacco Shop.
The Applicant is not a Permit Holder who was required to relocate under the Building Code.

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 Applicant is not a Tavern in compliance with SFHC Section 1009.23(d).

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 Applicant is not a Tavern in compliance with SFHC Section 1009.23(d).

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 previous Permit Holder.

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 may be filed with the San Francisco Board of Appeals within 15 calendar days of the date of this notice. Appeals may be filed in-person (by appointment only), by phone ((628) 652-1150) or email (boardofappeals@sfgov.org). The Board's Office is located at 49 South Van Ness Avenue, Suite 1475. More information can be found on the Board's website at: <https://sf.gov/file-appeal-permit-or-decision>.

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 – CHEP Branch
SFDPH – EHB – Health District



PERMIT TO OPERATE

AND CERTIFICATE OF SANITARY INSPECTION

Issued according to provisions of the San Francisco Health Code

T 79241

AUTHORIZING conduct of the following class of

TOBACCO PRODUCT SALES ESTABLISHMENT

ISSUED: 6/16/2014

Type of Operation: Tobacco Only Shop

Tax Code: 131

DPH Code:

CERT No. 489971

Name and Address Below:

Owner: Regal Marketing, Inc.
 DBA: It Is Vapor 13
 Street Address: 1347 Polk St
 San Francisco, CA 94109

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.

DUPLICATE

Inspector

H. White

Principal Inspector

Richard J. Lee

Director of Environmental Health

[Signature]

Director of Public Health



SAN FRANCISCO PLANNING DEPARTMENT

ATTACHMENT B

NOTICE OF ENFORCEMENT

June 08, 2015

Property Owner

Hipyen Limited Partnership
438 23rd Avenue, Apt. 3
San Francisco, CA 94121

Business Owner

Austin Dunn and Waleed Fayzi
It Is Vapor/Vapor City
1347 Polk Street
San Francisco, CA 94109

Site Address:

1347 Polk St

Assessor's Block/ Lot:

0667/ 001

Complaint Number:

2015-005418ENF

Zoning District:

NCD, Polk Street Neighborhood Commercial

Code Violation:

723.69 Tobacco Paraphernalia Establishments

Administrative Penalty:

Up to \$250 Each Day of Violation

Response Due:

Within 15 days from the date of this Notice

Staff Contact:

Binh Nguyen, 415-575-9177, Binh.H.Nguyen@sfgov.org

1650 Mission St
Suite 400
San Francisco, CA 94103-2471

Reception:
415.558.6378

Fax:
415.558.6409

Planning Information:
415.558.6377

The Planning Department has received a complaint that a Planning Code violation exists on the above referenced property that needs to be resolved. As the owner and/or leaseholder of the subject property, you are a responsible party. The purpose of this notice is to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below:

DESCRIPTION OF VIOLATION

Our record indicates that the subject property is currently authorized for commercial use purposes. The violation pertains to the retail establishment known as Vapor City, located on the ground floor at 1347 Polk Street. The complaint alleges that Vapor City is operating as a Tobacco Paraphernalia establishment in the Polk Street Neighborhood Commercial District where this use is not permitted.

Pursuant to Planning Code Section 790.123, Tobacco Paraphernalia is defined as "a retail use where more than 10% of the square footage of occupied floor area or more than 10 linear feet of display area projected to the floor, whichever is less, is dedicated to the sale, distribution, delivery, furnishing or marketing of Tobacco Paraphernalia from one person to another." However, in the Polk Street Neighborhood Commercial District (generally properties along Polk Street between Post & Filbert Streets and along Larkin Street between Post & Sacramento Streets), no retail use selling *any* amount of Tobacco Paraphernalia whatsoever is allowed. In other words, unlike elsewhere in the City, selling even a single smoking device is not allowed.

"Tobacco Paraphernalia" means "paraphernalia, devices, or instruments that are designed or manufactured for the smoking, ingesting, inhaling, or otherwise introducing into the body of tobacco, products prepared from tobacco, or controlled substances as defined in California Health and Safety Code Sections 11054 et seq."

On April 29, 2015, the Planning Department sent you a Notice of Complaint to inform you about the complaint. You did not contact the Planning Department to respond to this notice.

On June 1, 2015 the Planning Department staff conducted a site visit and observed that Tobacco Paraphernalia displayed inside the store occupied more than ten percent of the square footage of the floor area and/or more than 10 linear feet of display area.

Pursuant to Planning Code Section 171 structures and land in any zoning district shall be used only for the purposes listed in this Code as permitted in that district, and in accordance with the regulations established for that district. Further, pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures. Failure to comply with any of Planning Code provisions constitutes a violation of Planning Code and is subject to enforcement process under Code Section 176.

HOW TO CORRECT THE VIOLATION

The Planning Department requires that you immediately proceed to abate the violation by discontinuing the Tobacco Paraphernalia use from the subject property.

The responsible party will need to provide adequate evidence to demonstrate that either no violation exists or that the violation has been abated. If you believe that Tobacco Paraphernalia use at the above property has continued to exist at this location prior to December 2008, please provide such evidence including business registration, lease copy, and any other documents to demonstrate compliance.

TIMELINE TO RESPOND

The responsible party has fifteen (15) days from the date of this notice to contact the staff planner noted at the top of this notice and submit evidence to demonstrate that the corrective actions have been taken to bring the subject property into compliance with the Planning Code. A site visit may also be required to verify the authorized use at the above property. The corrective actions shall be taken as early as possible. Any unreasonable delays in abatement of the violation may result in further enforcement action by the Planning Department.

PENALTIES AND APPEAL RIGHTS

Failure to respond to this notice by abating the violation or demonstrating compliance with the Planning Code within fifteen (15) days from the date of this notice will result in issuance of a Notice of Violation by the Zoning Administrator. Administrative penalties of up to \$250 per day will also be assessed to the responsible party for each day the violation continues thereafter. The Notice of Violation provides appeal processes noted below.

- 1) Request for Zoning Administrator Hearing. The Zoning Administrator's decision is appealable to the Board of Appeals.

- 2) Appeal of the Notice of Violation to the Board of Appeals. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter has been pending either before the Zoning Administrator or before the Board of Appeals.

ENFORCEMENT TIME AND MATERIALS FEE

Pursuant to Planning Code Section 350(c)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations and violations of Planning Commission and Planning Department's Conditions of Approval. Accordingly, the responsible party may be subject to an amount of \$1,238 plus any additional accrued time and materials cost for Code Enforcement investigation and abatement of violation. This fee is separate from the administrative penalties as noted above and is not appealable.

OTHER APPLICATIONS UNDER CONSIDERATION

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any new applications that you may wish to pursue in the future. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until the violation is corrected. We want to assist you in ensuring that the subject property is in full compliance with the Planning Code. You may contact the enforcement planner as noted above for any questions.

中文詢問請電: 558.6378

Para información en Español llamar al: 558.6378



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Registered Business Locations - San Francisco

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SUMMARY

Business Location Id	0489971-01-001	Business End Date	03/31/2015
Business Account Number	0489971	Location Start Date	04/01/2014
Membership Name	Regal Marketing Inc	Location End Date	03/31/2015
Business Name	It Is Vapor 13	Mail Address	
Street Address	1347 Polk St	Mail City	
City	San Francisco	Mail Zipcode	
State	CA	Mail State	
Business Zipcode	94109	NAICS Code	
Business Start Date	04/01/2014	NAICS Code	
		Description	
		Parking Tax	

ATTACHMENT C

Transient	
Occupancy Tax	
LIC Code	
LIC Code	
Description	
Supervisor District	3
Neighborhoods - Analysis Boundaries	Nob Hill
Business Corridor	
Business Location	POINT (-122.4204637789314)
UniqueID	0489971-01-001-0489971-04-01-2014

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BRIEF SUBMITTED BY THE APPELLANT(S)

1 Randall B. Schmidt, Esq. (SBN 191056)
2 Law Offices of Randall B. Schmidt
3 611 Gateway Blvd. #120
4 South San Francisco, CA 94080
5 415-935-5933 phone
6 415-946-3411 fax
7 Email Address: randalls@yahoo.com

8 Attorneys for Ahmad Sultani

9 CITY AND COUNTY OF SAN FRANCISCO

10 BOARD OF APPEALS

11 1347 Polk Street; Ahmad Sultani

12 Appeal No. 24-016

13 **BRIEF ON APPEAL**

14 Date: March 21, 2024

15 Time: 5:00 p.m.

16 Dept: BOA

17 Ahmad Sultani hereby submits his appeal brief regarding the denial of his application
18 for a tobacco health permit. Applicant believes that the December 2023 complaint against him
19 was / were at the behest of Pine Street Gift Shop, which is far closer to the Redding Elementary
20 School. It is right next to Kasa Indian Street Food.

21 Indeed, investigator Janine Young said that she talked to that business first before
22 visiting 1347 Polk Street. Customers of Mr. Sultani have said that the Pine Street Gift shop is
23 selling vape and other equipment "under the table." Applicant herein just wants to follow and
24 comply with the law and get a proper permit in the right way.
25

26 ///

27 ///

1) The Ability to Sell Tobacco Products at 1347 Polk Street Should Be Grandfathered In

Tobacco products at 1347 Polk Street were originally allowed beginning 2014.

Exhibits “A” and “B.” This is 4 years before Appellant purchased the store.

The original owners of the business also sold lottery tickets, sold a winning ticket, and closed up shop and retired in 2016.

For a year and a half, the barber shop “Fresh Cuts” occupied the premises, and then moved across the street to a larger space.

Appellant purchased the business in 2018. He was informed when he signed the lease (by the landlord Mr. Nguyen) that tobacco sales had been grandfathered in at the location. Except for a year hiatus during COVID-19, which turned the world topsy turvy, tobacco products would have been sold on the premises. Appellant purchased the business with the expectation that tobacco sales would be allowed to continue and in good faith relied on the City’s then-current enforcement position.¹ The 2018 health permit Application identifies the belief that tobacco sales were grandfathered in. After remodeling the store, in December 2023, Applicant began selling and then the City shut him down.

Previously, Applicant had run other smoke shops. At the time, he believed that all he needed was the State tobacco license and the local business license. He got the state tobacco license. **Exhibit “C.”** The California Tobacco license was supposed to be good through

¹ Any purported violations by prior owners, and Notice of Enforcement, should not be visited upon Applicant. Applicant submitted the application for a Tobacco Application on September 12, 2018. Instead, SFDPH has held the application in abeyance since then, which predates and post-dates the pandemic.

1 September 2024.

2 2) The Equities Tip in Appellant's Favor

3 Appellant purchased the business prior to COVID.-19. The pandemic and shutdown
4 put a damper on the sales. In addition, the failing San Francisco economy has contributed to a
5 decline in sales, along with a downturn in tourism in the Polk Gulch area. Sales of tobacco
6 products at this location are necessary to keep the business afloat as a permit will bring forth
7 new business. Small businesses, and their survival, should be celebrated and encouraged in
8 San Francisco, especially after the pandemic and decline in tourism.
9

10 The enforcement of this zoning ordinance and the refusal to issue a health permit will be
11 tantamount to a death knell for the business, not to mention selective enforcement vis a viz
12 Pine Street Gift Shop. Applicant has paid the requisite business tax each year. "This
13 principle [due process] limits cities' abilities to close lawfully operating businesses by enacting
14 new ordinances, because cities generally want to avoid questions as to the constitutionality of
15 new ordinances' application to existing uses. Hansen Bros. Enters., Inc. v. Bd. of Supervisors,
16 12 Cal. 4th 533, 550 (Cal. 1996); Bauer v. City of San Diego, 75 Cal. App. 4th 1281, 1291 (Cal.
17 Ct. App. 1999)."

18 Moreover, as stated in Twin Sisters Gun Club v. Emlen, No. 2:17-cv-01526-MCE-GGH,
19 19 (E.D. Cal. Mar. 14, 2018):

20
21 It requires no citation to authority to know that the owner of a legal non-
22 conforming use has a valuable right. Indeed, once an action is prohibited in a
23 certain area, the right to continue such activity in contravention of the prohibition
24 is more valuable than the same freedom was before the prohibition began.
25

26 Here, Mr. Sultani has a valuable right to sell tobacco products even though it is currently
27 non-conforming according to the SFDPH app

28 Applicant intends to submit testimony from the Lower Polk Neighbors Association that

1 he is a valuable contributor the business community.

2 3) Appellant Can Situate the Tobacco Products Such That They are Over 500 Feet
3 From Any School

4 The City obviously has an interest in seeing that children do not segue into addiction by
5 using flavored vape products.

6 Appellant is not aware of any students from Redding Elementary School who have even
7 attempted to enter the store. Applicant upholds the law and insists on identification of anyone
8 under 21 before selling tobacco products. There have been no complaints about underage
9 purchases to Applicantt's knowledge, since he has taken over. Applicant believes that this
10 erstwhile Johnny-Come-Lately Pine Street Gift Shop is the real genesis of this matter.
11

12 Applicant is able to place any and all tobacco products in a position that is recessed from
13 the street (such that they are over 500 feet away from the Redding school), within the confines
14 of the store. He is willing to do so.

15 4) Applicant is Willing to Abide By any Reasonable Restrictions

16 Applicant is willing to abide by any reasonable conditions that the SFDPH imposes
17 including paying all required fees. As stated in the Twin Cities case:

18 Moreover, California courts have acknowledged the particular importance
19 of "the strictest adherence to principles of due process," when "it is clear
20 revocation of a use permit could have the effect of putting the licensee
21 completely out of business." Consequently, "whenever alternative
22 remedies can achieve the same goal, . . . these avenues ought to be pursued
23 if feasible." Bauer v. City of San Diego, 75 Cal. App. 4th 1281, 1294-95
24 (1999).
25

26 Applicant is willing to limit any tobacco paraphernalia sale to less than 10 linear
27 feet or less than 10% of the the total floor space area.
28

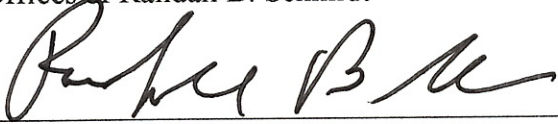
1 Id. At 20. Here it is not so much the revocation of a use permit but rather the
2 refusal to issue a health permit.

3 5) SFDPH should be Estopped

4 The SFDPH has sat on this Application for the Sale of Tobacco Products for almost 4 ½
5 years. Applicant has no record of any response by the City requesting additional information to
6 supplement the September 12, 2018 application and the City has not produced any such
7 information. Applicant, given the 4 ½ years, was lulled into believing there was no problem
8 with the permit. On the application, Applicant specifically stated his belief that he thought the
9 location was grandfathered. He will tell this Board that he never heard back after submitting
10 the application.
11

12 Dated: March 12 2024

Law Offices of Randall B. Schmidt

14 By:  _____

15 Randall B. Schmidt

16 Attorney for Ahmad Sultani

EXHIBIT A



PERMIT TO OPERATE

AND CERTIFICATE OF SANITARY INSPECTION

Issued according to provisions of the San Francisco Health Code

T 79241

AUTHORIZING conduct of the following class of

TOBACCO PRODUCT SALES ESTABLISHMENT

Type of Operation: Tobacco Only Shop

ISSUED: 6/16/2014

Tax Code: 431

DPH Code:

Name and Address Below:

Owner: Regal Marketing, Inc.

DBA: It Is Vapor 13

Street Address: 1347 Polk St

San Francisco, CA 94109

CERT No. 489971

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

Bureau of Environmental Health
City and County of San Francisco

Inspector

Lu. M. f.

Richard J. Lee

Director of Environmental Health

Principal Inspector

B. Smith

Director of Public Health

EXHIBIT B

EXHIBIT C

THIS LICENSE MUST BE DISPLAYED CONSPICUOUSLY AT THE LOCATION ADDRESS FOR WHICH IT IS ISSUED

CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

**CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT OF 2003
RETAILER'S LICENSE**



LICENSE NUMBER

204997632

BUSINESS MAILING ADDRESS:

ELECTRIC CITY
AHMAD S. SULTANI
1347 POLK ST
SAN FRANCISCO CA 94109-4617

EFFECTIVE DATE:

September 5, 2023 - September 3, 2024

LOCATION ADDRESS:

1347 POLK ST
SAN FRANCISCO CA 94109-4617

THIS LICENSE HAS BEEN ISSUED TO YOU UNDER
DIVISION 86 COMMENCING WITH SECTION
22970 OF THE CALIFORNIA BUSINESS AND
PROFESSIONS CODE.

IS HEREBY AUTHORIZED TO ENGAGE IN THE SALE OF CIGARETTES AND
TOBACCO PRODUCTS
THIS LICENSE IS NOT VALID AT ANY OTHER LOCATION ADDRESS.

PLEASE RETAIN THIS DOCUMENT FOR YOUR
RECORDS

THIS LICENSE IS VALID FOR THE EFFECTIVE DATE OR UNTIL SUSPENDED, REVOKED, OR CANCELED, AND IS NOT TRANSFERABLE.
FOR GENERAL TAX QUESTIONS, PLEASE TELEPHONE OUR CUSTOMER SERVICE CENTER AT 1-800-400-7115 (CRS:711).
FOR INFORMATION ON YOUR RIGHTS, CONTACT THE TAXPAYERS' RIGHTS ADVOCATE OFFICE AT 1-888-324-2798.

CDTFA-442-LR REV. 5(8-13)

A MESSAGE TO OUR LICENSE HOLDER

As a licensee, you have certain rights and responsibilities under the Cigarette and Tobacco Products Licensing Act of 2003. For assistance, we offer the following resources:

- Our website at www.cdtfa.ca.gov.
- Our toll-free Customer Service Center at 1-800-400-7115 (CRS:711). Customer service representatives are available Monday through Friday from 7:30 a.m. to 5:00 p.m. (Pacific time), except state holidays.

As a licensee, you are expected to maintain the normal books and records of a prudent businessperson. You are required to maintain these books and records for no less than four years, and make them available for inspection by a California Department of Tax and Fee Administration (CDTFA) representative when requested. In addition, you must keep the records on file at the location identified on your license for at least one year after the date of purchase. Specific requirements are set forth in the Cigarette and Tobacco Products Licensing Act of 2003.

You must notify us if you are buying, selling, or adding a location, or discontinuing your business; adding or dropping a partner, officer, or member; or when you are moving any or all of your business locations. This license is valid only for the business name, type of ownership, and location specified on the license. A person who obtains a license and ceases to do business, or never commenced business, shall notify the CDTFA immediately and surrender the license to the California Department of Tax and Fee Administration, Business Tax and Fee Division, P.O. Box 942879, Sacramento, CA 94279-0088. You may also surrender the license to a CDTFA representative.

If you would like to know more about your rights as a taxpayer, or if you are unable to resolve an issue with the CDTFA, please contact the Taxpayers' Rights Advocate Office for help by calling 1-888-324-2798 or by faxing 1-916-323-3319.

As authorized by law, information provided by an applicant for a license may be disclosed to other government agencies.

BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)

1 DAVID CHIU, State Bar #189542
City Attorney
2 JULIE VAN NOSTERN, State Bar #103579
Chief Attorney, Health & Human Services
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DEPARTMENT OF PUBLIC HEALTH
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9 SAN FRANCISCO

10 BOARD OF APPEALS

11 49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103
12

13 ELECTRIC CITY,

14 Appellant,

15 vs.

16 DEPARTMENT OF PUBLIC HEALTH,

17 Respondent.

Appeal No. 24-016

RESPONDENT'S OPPOSITION BRIEF

Hearing Date: March 27, 2024

Time: 5:00 p.m.

Place: City Hall, Room 416

18
19
20 **INTRODUCTION**

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

27 In this appeal, Ahmad Sultani d/b/a Electric City (“Applicant” or “Appellant”) applied for a
28 Tobacco Sales permit for the business located at 1347 Polk Street, San Francisco, California 94109.

1 The Department denied Applicant’s permit application because the Health Code prohibits the
2 Department from issuing a Tobacco Sales permit to an establishment in a Supervisorial District with
3 more than 45 permitted establishments, that is located within 500 feet of another permitted tobacco
4 sales establishment, and within 500 feet of a school. (Health Code §§ 19H.4(f)(3)–(5), 19H.5(a).)
5 Given these restrictions and the fact that no exception applies, neither the Department nor the Board
6 have discretion to issue a permit. For these reasons, the Board must uphold the Department’s denial of
7 the Tobacco Sales permit.

8 **FACTUAL BACKGROUND**

9 On June 16, 2014, the Department issued a Tobacco Sales permit to a different business, Regal
10 Marketing, Inc. d/b/a It is Vapor 13 (“It is Vapor 13”), to sell tobacco products at the property located
11 at 1347 Polk Street. (*See* Declaration of Janine Young in Support of Respondent’s Opposition Brief
12 [hereinafter “Young Decl.”] ¶ 3, Ex. A.) 1347 Polk Street is located within the Polk Street
13 Neighborhood Commercial District (*id.* ¶ 4), and, the San Francisco Planning Code prohibits
14 businesses in that commercial district from selling any amount of “tobacco paraphernalia.” (Planning
15 Code §§ 723 n.5, 890.123.) On June 8, 2015, the Planning Department notified It is Vapor 13 that it
16 was selling tobacco paraphernalia in violation of the Planning Code and ordered the business to cease
17 and desist selling tobacco paraphernalia. (*Id.* ¶ 5; Ex. B.) Sometime thereafter, It is Vapor 13 decided
18 to close its business and, on November 10, 2015, the Department notified the Tax Collector that It is
19 Vapor 13’s Tobacco Sales permit was terminated. (*Id.* ¶ 6, Ex. C.) The Department had no interaction
20 with 1347 Polk Street in between that termination and September 2018. (*Id.* ¶ 7.)

21 On September 12, 2018, Applicant applied for a new Tobacco Sales permit at 1347 Polk Street.
22 (*Id.* ¶ 8, Ex. D.) Section 19H.4(c) of the Health Code requires the Department to refer applications to
23 the Planning Department, which Senior Health Inspector, Janine Young, Inspector Young did. (*Id.*
24 ¶ 9.) On September 13, 2018, Seema Adina, a Planning Department employee, put the application on
25 hold and emailed Applicant asking him to clarify the type of operation that would occur at 1347 Polk
26 Street. (*Id.* ¶ 10; Ex. E.) On October 10, 2018, Seema Adina informed Inspector Young that she had
27 not heard back from the Applicant and, without Planning Department approval, the Department could
28 not approve the application. (*Id.* ¶ 11; Ex. D at 10.)

1 On December 17, 2023, the Department received an email complaint alleging that the
2 establishment at 1347 Polk Street was selling tobacco products without a permit. (*Id.* ¶ 14, Ex. H.)
3 On December 19, 2023, Inspector Young inspected 1347 Polk Street and observed tobacco products
4 for sale without a permit, including prohibited flavored tobacco and e-cigarette products. (*Id.* ¶ 15,
5 Ex. I.) Mr. Sultani disclosed that he only began selling tobacco products in October 2023. (*Ibid.*)
6 Inspector Young instructed Applicant to discontinue sale of tobacco products until he obtained a
7 permit from the Department and promised to review the pending 2018 application. (*Ibid.*)

8 Inspector Young examined Applicant’s eligibility for a Tobacco Sales permit, including by
9 reviewing the Department’s records, as well as records from the City’s Office of the Treasurer and Tax
10 Collector, the California Department of Tax and Fee Administration, and the California Secretary of
11 State. (*Id.* ¶ 20.) Inspector Young determined that Applicant is located in Supervisorial District 3 and
12 that the District had 95 establishments with a Tobacco Sales permit. (*Ibid.*) Inspector Young also
13 consulted the San Francisco Planning Department’s Retail Tobacco Sales Density Map GIS tool
14 (which was made available to the Department and the public after September 2018) to determine
15 whether 1347 Polk Street is located within 500 feet of another tobacco sales establishment or school.
16 (*Id.* ¶ 21.) The San Francisco Planning Department map disclosed that 1347 Polk Street is within 500
17 feet of four permitted tobacco establishments, Jeet Big Times located at 1444 Polk Street, SF Hookah
18 Palace located at 1216 Polk Street, Royal Liquors located at 1400 Polk Street, and California Tobacco
19 Center located at 1501 Polk Street, and within 500 feet of one school, Redding Elementary School
20 located at 1421 Pine Street. (*Id.* ¶¶ 21–22; Ex. M at 13.)

21 On February 6, 2024, the Director of the Department’s Environmental Health Branch issued a
22 Notification of Tobacco Permit Denial to Applicant. (*Id.* ¶ 23; Ex. M.) The Department denied
23 Applicant’s application for a Tobacco Sales permit because Health Code section 19H.4(f) prohibits
24 issuing a permit since Applicant’s establishment is located in a Supervisorial District with more than
25 45 permitted establishments, within 500 feet of four existing establishments with a valid Tobacco
26 Sales permit, and within 500 feet of one school. (*Ibid.*) Applicant did not meet any applicable
27 exceptions under section 19H.6. (*Ibid.*)

1 On February 21, 2024, Applicant filed a Preliminary Statement of Appeal challenging the
2 Department’s decision to deny the permit application.

3
4 **ARGUMENT**

5 **I. Tobacco Sales Permits May Not Be Transferred**

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

11 Here, the Department previously issued a Tobacco Sales permit to It is Vapor 13. (Young
12 Decl. ¶ 3, Ex. A.) That permit was terminated in November 2015. (*Id.* ¶ 6, Ex. C.) Not only was It is
13 Vapor 13 barred, as a matter of law, from transferring its Tobacco Sales permit to Applicant, It is
14 Vapor 13 ceased doing business and the Tobacco Sales permit terminated nearly three years before
15 Applicant applied for a new permit. Thus, Article 19H required the Department to evaluate
16 Applicant’s application under the criteria for a new Tobacco Sales permit.

17 Applicant argues that his sales of tobacco products should be grandfathered in because tobacco
18 products at 1347 Polk Street were originally allowed beginning in 2014. (Br. at 2.) As discussed, the
19 Health and Business and Tax Regulations Codes clearly prohibit transferring a Tobacco Sales permit
20 to new owners. And, in this case, there was no permit to transfer. As discussed below, none of the
21 exceptions related to change of ownership apply where, as here, no change of ownership occurred.
22 Applicant even admits that there was an intervening business, a barber shop, that apparently sold no
23 tobacco products.

24 In sum, there is no authority under the Health Code to “grandfather” in a tobacco sales permit.

25 **II. The Department Lacks the Authority to Issue Applicant a Tobacco Sales Permit Under**
26 **Article 19H.**

27 Health Code Section 19H.4(f) lays out eight separate grounds for which the Department must
28 deny a new permit. The Department determined that three separate provisions in subsection (f)

1 required denial of a new permit application.

2 **A. Applicant’s Place of Business is Located in a Supervisorial District with more than**
3 **45 Establishments with Tobacco Sales Permits.**

4 Health Code section 19H.4(f)(5) states that “[n]o new permit shall be issued in any
5 supervisorial district that has 45 or more Establishments with Tobacco Sales permits.” (Health Code
6 § 19H.4(f)(5).) Here, the Department determined that, in February 2024, there were 95 establishments
7 with Tobacco Sales permits in Supervisorial District 3, the district in which Applicant is located.
8 (Young Decl. ¶ 20.) The Density Cap allows only forty-five permitted Tobacco Sales Establishments
9 in each supervisorial district and District 3 well exceeds this number. (Health Code § 19H.5(a).) Even
10 if the Department had processed Applicant’s application in 2018, at the time, Supervisorial District 3
11 had 147 permitted Tobacco Sales establishments. (*Id.* ¶ 13, Ex. G.) Applicant has not challenged this
12 finding.

13 **B. Applicant’s Place of Business is Within 500 Feet of a School.**

14 Health Code section 19H.4(f)(3) provides: “No new permit shall be issued if the Applicant will
15 be within 500 feet of the nearest point of the property line of a School as measured by a straight line
16 from the nearest point of the property line on which a School is located to the nearest point of the
17 property line on which the Applicant’s Establishment will be located.” (Health Code § 19H.4(f)(3).)
18 The San Francisco Planning Department’s map confirmed that there is one school, Redding
19 Elementary School located at 1421 Pine Street, within 500 feet of Applicant’s place of business.
20 (Young Decl. ¶ 21, Ex. M, at 13.)

21 Applicant insists that he is not aware of any students from Redding Elementary School
22 attempting to enter the store, that he would not sell to individuals under 21, and can place all tobacco
23 products so they are recessed from the street. (Br. at 4.) Section 19H.4(f)(3) contains no exception for
24 good-faith actors. Moreover, on December 19, 2023, Inspector Young found prohibited flavored
25 tobacco products at 1347 Polk Street, which undermines Applicant’s argument that he “upholds the
26 law.” (Young Decl. ¶ 15, Ex. I.) Nor does it matter if Applicant can somehow place tobacco products
27 more than 500 feet from the school since subsection (f)(4) is measured from the nearest point of the
28 property line.

1 The Board of Supervisors made extensive findings regarding the harms to children from, and
2 the availability of, tobacco products in San Francisco. (*See* Health Code § 19H.1.) The Board
3 concluded that “[m]ore aggressive policies are needed to keep San Francisco’s youth from gaining
4 access to Tobacco Products.” (*Id.* § 19H.1(e).) Excluding tobacco sales within 500 feet of a school is
5 one such policy.

6 **C. Applicant’s Place of Business is Within 500 Feet of Two Existing Tobacco Sales**
7 **Establishments with Valid Tobacco Sales Permits.**

8 Health Code section 19H.4(f)(4) provides: “No new permit shall be issued if the Applicant will
9 be located within 500 feet of the nearest point of the property line of an existing Establishment”
10 (Health Code § 19H.4(f)(4).) The San Francisco Planning Department’s map confirmed that there are
11 four existing permitted tobacco establishments, Jeet Big Times located at 1444 Polk Street, SF Hookah
12 Palace located at 1216 Polk Street, Royal Liquors located at 1400 Polk Street, and California Tobacco
13 Center located at 1501 Polk Street., within 500 feet of Applicant’s place of business. (Young Decl.
14 ¶ 21, Ex. M, at 13.) Applicant has not challenged this finding.

15 **III. Applicant Does Not Qualify for Any Exception Under Section 19H.6.**

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

22 Here, the Department determined that none of the change of ownership exceptions in Section
23 19H.6(a)–(c) or (e)–(f) applied because there was no change of ownership. (Young Decl. ¶ 22.) And,
24 there was no relocation for seismic upgrades, as allowed under Section 19H.6(d). (*Ibid.*) Since no
25 exception applies, the Director is bound by the requirements in Health Code section 19H.4(f) to deny
26 the Tobacco Sales permit. Applicant has not argued that any of these exceptions do, in fact, appl
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28

1 **IV. Applicant’s Remaining Arguments Do Not Merit Overturning the Department’s Denial.**

2 Applicant’s Brief cites four additional reasons to overturn the Department’s denial of the
3 permit application—none are meritorious. First, Applicant argues that the establishment will suffer
4 financial damage if not allowed to sell Tobacco Products and the equities tip in Applicant’s favor. (Br.
5 at 3.) Second, Applicant suggests there has been selective enforcement by the Department. (*Id.*)
6 Third, Applicant states that he is willing to abide by any reasonable restrictions. (*Id.* at 4.) Fourth,
7 Applicant argues that the Department should be estopped because he has no record of any response by
8 the City to his application. (*Id.* at 5.)

9 *First*, while the Department is cognizant of the financial burden on small businesses to comply
10 with the requirements of the Health Code, the Department lacks discretion in this instance. No
11 equitable remedy exists since the Board has not authorized discretion on the part of the Department to
12 approve the application. The Board of Supervisors has found and declared that tobacco use is the
13 leading cause of preventable death in the United States. (Health Code § 19H.1(a).) Higher tobacco
14 retail density encourages smoking by making cigarettes more accessible and available, by normalizing
15 tobacco use, and through increasing environmental cues to smoke. (*Id.* § 19H.1(i).) Accordingly, the
16 Board of Supervisors found that “it is in the City’s interest to reduce the disproportionate exposure to
17 tobacco outlets that exists among supervisorial districts and to minimize exposure in all supervisorial
18 districts by limiting the number of new tobacco permits issued.” (*Id.* § 19H.1(k).)

19 The cases cited by Applicant are inapplicable to the instant case. *Twin Sisters Gun Club v.*
20 *Emlem*, No. 17-cv-1526-MCE-GGH, 2018 WL 1335394, at *1 (E.D. Cal. Mar. 15, 2018), and *Bauer*
21 *v. City of San Diego*, 75 Cal. App. 4th 1281, 1291 (1999), both dealt with a determination that a
22 property was a non-conforming use under applicable zoning laws and attempts by the municipal entity
23 to revoke that non-conforming use. Same with *Hansen Brothers Enterprises, Inc. v. Board of*
24 *Supervisors*, 12 Cal.4th 533, 548 (1996), which dealt with the loss of a vested, nonconforming status
25 for a mine. Unlike those cases, Article 19H of the Health Code is not a zoning ordinance and
26 Applicant has no vested interest in a tobacco sales permit. Applicant appears to be conflating the
27 Planning Department’s separate determination that It is Vapor 13’s sale of tobacco paraphernalia
28 violated the Planning Code.

1 Even if those cases did apply, Applicant has not and cannot demonstrate that he has a vested
2 right or an approved non-conforming use. The Planning Department did not approve a non-
3 conforming use for 1347 Polk Street for either It is Vapor 13 or Applicant. Indeed, on June 8, 2015, it
4 sent a Notice of Enforcement to It is Vapor 13 notifying the business that it was *violating* the Planning
5 code. (Young Decl. ¶ 5, Ex. B.) In short, there was no non-conforming use available for Applicant to
6 be “grandfathered” into.

7 *Second*, there has been no selective enforcement by the Department. Applicant suggests that
8 the complaint against him was at the behest of Pine Street Gift Shop. (Br. at 1.) It was not. Inspector
9 Young received an email complaint regarding 1347 Polk Street and testified that Pine Street Gift Shop
10 did not complain about 1347 Polk Street to her. (Young Decl. ¶¶ 14, 18.) In fact, when Applicant
11 asked what the Department was doing about Pine Street Gift Shop, Inspector Young informed him that
12 she had already visited that location and the Department was taking appropriate enforcement action.
13 (*Id.* ¶¶ 16, 19, Exs. K, L.) This fact also moots any selective enforcement claim—the Department
14 already inspected against Pine Street Gift Shop before inspecting 1347 Polk Street, which led to a
15 notice that Pine Street Gift Shop was in violation of the Health Code. (*Id.* ¶ 19, Ex. L.)

16 *Third*, Applicant’s willingness to abide by reasonable restrictions cannot overcome the
17 Director’s lack of discretion in denying the permit application. The Board of Supervisors has not
18 provided the Director any latitude to impose reasonable restrictions as basis to issue an otherwise
19 impermissible permit. (*See* Health Code § 19H.6 (exceptions for new permits limited to change of
20 ownership and seismic upgrades).) Applicant cites one case, *Twin Cities*, but that is a case about
21 revoking an approved non-conforming use, which is simply not applicable where, as here, there is no
22 approved non-conforming use and the Health Code is not a zoning ordinance.

23 *Fourth*, Applicant’s estoppel argument fails. “Generally speaking, four elements must be
24 present in order to apply the doctrine [of equitable estoppel] . . . (1) the party to be estopped must be
25 apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the
26 party asserting the estoppel had a right to believe it was so intended; (3) the other party must be
27 ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.” (*McGlynn v.*
28 *State of California*, 21 Cal. App. 5th 548, 561 (2018).)

1 Here, Applicant was not ignorant of the true state of facts. The Department was required to
2 refer tobacco sales permit applications to the Planning Department. (Health Code § 19H.4(c).)
3 Contrary to Applicant’s assertion that he has no record of any response by the City requesting
4 additional information, on September 13, 2018—the day after he submitted his application to the
5 Department—the Planning Department requested additional information regarding Applicant’s
6 planned use of 1347 Polk Street. (Young Decl. ¶ 10, Ex. E.) According to the Planning Department,
7 Applicant never responded. (*Id.* ¶ 11, Ex. D at 10.) According to Inspector Young, Applicant never
8 followed up with her regarding the status of his application. (*Ibid.*)

9 Additionally, Applicant has not demonstrated that he relied upon the City’s conduct to his
10 injury. Applicant represented to Inspector Young that he only began selling tobacco products in
11 October 2023, a few months before the denial of his permit application. (*Id.* ¶ 15.) During this period,
12 Applicant has presumably *profited* from his sales of tobacco products that would otherwise not have
13 been allowed had the Department acted sooner. Indeed, had the Department acted in 2018, the same
14 result would have occurred because, at the time, Supervisorial District 3 had well over 45 permitted
15 establishments. (*Id.* ¶ 13, Ex. H.) While Applicant may complain about injury going forward, that is
16 no basis to estop the Department for its past conduct.

17 Finally, the Board of Appeals is bound by the same laws of the City and County of San
18 Francisco as the Department and may not grant a permit that is not otherwise authorized by the
19 Municipal Code. (*City & Cnty. of San Francisco v. Bd. of Permit Appeals* (1989) 207 Cal. App. 3d
20 1099, 1109–10 [“[T]he board is not a lawmaking body and has no power to disregard or amend the
21 ordinances which define its authority.”].)

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1 **CONCLUSION**

2 The Department therefore respectfully requests that the Board uphold the Department’s denial
3 of Applicant’s application for a Tobacco Sales permit at 1347 Polk Street.

4
5 Dated: March 21, 2024

6 DAVID CHIU
7 City Attorney
8 JULIE VAN NOSTERN
9 Chief Attorney, Health & Human Services
HENRY L. LIFTON
Deputy City Attorney

10
11
12 By: /s/ Henry L. Lifton
13 HENRY L. LIFTON
14 Deputy City Attorney
15 Attorneys for Respondent
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1 **PROOF OF SERVICE**

2 I, MOLLY MCDONALD, declare as follows:

3 I am a citizen of the United States, over the age of eighteen years and not a party to the above-
4 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.

5 On March 21, 2024, I served the following document(s):

6 **RESPONDENT'S OPPOSITION BRIEF**

7 on the following persons at the locations specified:

8 Randall B. Schmidt, Esq.
9 Attorney for Applicant
10 Law Offices of Randall B. Schmidt
611 Gateway Blvd., #120
11 South San Francisco, CA 94080
randalls@yahoo.com

12 Electric City, Applicant
13 c/o Ahmad Sultani, Agent for Applicant
27480 Ponderosa Court
Hayward, CA 94545
14 ahmadsultani84@yahoo.com

15 in the manner indicated below:

16
17 **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic
18 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: molly.mcdonald@sfcityatty.org
19 in portable document format ("PDF") Adobe Acrobat.

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

22 Executed March 21, 2024, at San Francisco, California.

23
24 
25 _____
MOLLY MCDONALD

1 DAVID CHIU, State Bar #189542
City Attorney
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DEPARTMENT OF PUBLIC HEALTH
8

9 SAN FRANCISCO

10 BOARD OF APPEALS

11 49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103
12

13 ELECTRIC CITY,

14 Appellant,

15 vs.

16 DEPARTMENT OF PUBLIC HEALTH,

17 Respondent.

Appeal No. 24-016

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

Hearing Date: March 27, 2024
Time: 5:00 p.m.
Place: City Hall, Room 416

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20
21 I, JANINE YOUNG, declare as follows:

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

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

1 3. On June 16, 2014, the Department issued a Tobacco Sales permit to Regal Marketing,
2 Inc. d/b/a It is Vapor 13 (“It is Vapor 13”), located at 1347 Polk Street, San Francisco, California
3 94109. A true and correct copy of the Tobacco Sales permit for It is Vapor 13 is attached hereto as
4 **Exhibit A.**

5 4. Initially, It is Vapor 13 sold tobacco paraphernalia at its location. Tobacco
6 paraphernalia is subject to restrictions in the San Francisco Planning Code. Additionally, 1347 Polk
7 Street is located in the Polk Street Neighborhood Commercial District where the sale of any amount of
8 tobacco paraphernalia is prohibited under the Planning Code.

9 5. On June 8, 2015, the Planning Department sent a Notice of Enforcement to It is Vapor
10 13 notifying the business that it was selling tobacco paraphernalia in violation of the Planning Code
11 and ordering the business to discontinue tobacco paraphernalia sales on the property. A true and
12 correct copy of the Planning Department’s notice is attached hereto as **Exhibit B.**

13 6. At some point after the Planning Department’s Notice of Enforcement, It is Vapor 13
14 decided to close its business. On November 10, 2015, the Department notified the Tax Collector that
15 the Tobacco Sales Permit was terminated because It is Vapor 13 was out of business. A true and
16 correct copy of the Department’s notice to the Tax Collector is attached hereto as **Exhibit C.**

17 7. The Department had no interaction with the property regarding tobacco sales between
18 November 2015 and September 2018.

19 8. On September 12, 2018, the Department received an application from Ahmad Sultani
20 d/b/a Electric City (“Applicant”) for the sale of Tobacco Products at 1347 Polk Street. A true and
21 correct copy of the September 2018 application is attached hereto as **Exhibit D.**

22 9. As required by Article 19H of the Health Code, the Department referred the application
23 to the Planning Department. At the time of the referral, the Planning Department had not publicly
24 published the GIS tool that we currently use to determine whether a property is within 500 feet of a
25 school or existing permitted tobacco sales establishment.

26 10. On September 13, 2018, the Planning Department put Applicant’s application on hold
27 and on that same date, Seema Adina from the Planning Department emailed Ahmad Sultani asking
28

1 him to clarify the type of operation that would occur at 1347 Polk Street. A true and correct copy of
2 the Adina email is attached hereto as **Exhibit E**.

3 11. On October 10, 2018, Seema Adina informed the Department that the Planning
4 Department had not heard back from the Applicant. Without Planning Department approval, the
5 Department could not and did not approve the application. The Department also received no follow up
6 communication from the Applicant. A true and correct copy of the email communications between the
7 Planning Department and me is attached hereto as **Exhibit D**.

8 12. On November 20, 2018, I conducted an inspection of 1347 Polk Street and found that,
9 at the time, the business was only operating as a computer repair store and was not selling any tobacco
10 products or tobacco paraphernalia. A true and correct copy of pictures that I took during my
11 inspection are attached hereto as **Exhibit F**.

12 13. Even if the Department had received approval from the Planning Department, the
13 application still would have been denied in 2018. 1347 Polk Street is located in Supervisorial
14 District 3. In October 2018, Supervisorial District 3 had 147 permitted Tobacco Sales establishments,
15 well over the cap of 45 establishments in the Density Ordinance, enacted in January 2015. A true and
16 correct copy of the number of Tobacco Sales establishments permitted in 2018 is attached hereto as
17 **Exhibit G**.

18 14. On December 17, 2023, the Department received a complaint via email alleging that an
19 establishment was selling tobacco products. A true and correct copy of the complaint is attached
20 hereto as **Exhibit H**.

21 15. On December 19, 2023, I conducted an inspection of 1347 Polk Street. I observed
22 tobacco products available for sale, including prohibited flavored tobacco products and e-cigarette
23 products. I spoke with Mr. Sultani who told me that he began selling tobacco products in October
24 2023. I instructed him to discontinue the sale of tobacco products until he obtained a permit from the
25 Department. I also informed Mr. Sultani that the Department would issue a written decision regarding
26 his September 2018 application. A true and correct copy of my inspection report is attached hereto as
27 **Exhibit I**.

1 16. Mr. Sultani asked me “what about” Pine Street Gift Shop. I informed Applicant that I
2 already inspected Pine Street Gift Shop.

3 17. On December 5, 2023, I received an inspection report, dated December 4, 2023, from
4 Department Inspector Amy Johnson in which she stated that she observed, from the sidewalk, multiple
5 flavored tobacco vapes at Pine Street Gift Shop located at 1487 Pine Street. She ordered the business
6 to cease and desist selling flavored tobacco and to apply for a tobacco permit. A true and correct copy
7 of Inspector Johnson’s inspection report for 1487 Pine Street is attached hereto as **Exhibit J**.

8 18. On December 7, 2023, I conducted a follow up inspection of 1487 Pine Street during
9 which time I ordered the business to remove all e-cigarettes and apply for a tobacco permit. No one
10 from Pine Street Gift Shop has complained to me about Applicant’s business. A true and correct copy
11 of my inspection report for 1487 Pine Street is attached hereto as **Exhibit K**.

12 19. On December 29, 2023, the Department issued a Notice of Initial Determination for
13 1487 Pine Street, notifying Pine Street Gift Shop that it was violating various provision of Article 19H
14 of the Health Code. A true and correct copy of the Notice of Initial Determination is attached hereto
15 as **Exhibit L**.

16 20. I evaluated Applicant’s application for a Tobacco Sales permit at 1347 Polk Street. I
17 personally investigated Applicant’s eligibility for a Tobacco Sales Permit through a review of
18 Department files and other the agencies including files from the City & County of San Francisco’s
19 Office of the Treasurer and Tax Collector, California Department of Tax and Fee Administration, and
20 California Secretary of State. Under the “Density Cap” law enacted by the Board of Supervisors in
21 December 2014, the Department may not issue new tobacco sales permits to businesses that are
22 located in supervisorial districts that have 45 or more existing permitted establishments. I determined
23 that there were 95 establishments with Tobacco Sales permits in Supervisorial District 3, where 1347
24 Polk Street is located.

25 21. I searched the Retail Tobacco Sales Permit Density Map tool within the San Francisco
26 Planning GIS (available at <https://sfplanninggis.org/tobacopermits/>) to determine that 1347 Polk
27 Street is within 500 feet of four permitted tobacco establishments, Jeet Big Times located at 1444 Polk
28 Street, SF Hookah Palace located at 1216 Polk Street, Royal Liquors located at 1400 Polk Street, and

1 California Tobacco Center located at 1501 Polk Street. I also used the GIS tool to determine that 1347
2 Polk Street is within 500 feet of one school, Redding Elementary School located at 1421 Pine Street.

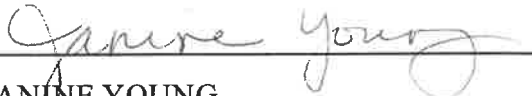
3 22. Based on the GIS tool findings, I determined that Appellant did not meet all of the
4 Tobacco Sales permit requirements since Appellant is within 500 feet of four permitted Tobacco Sales
5 establishments and within 500 feet of a school. I also evaluated whether any exceptions to the
6 “Density Law” rules (Health Code Section 19H.6(a)–(g)) applied and determined that Appellant did
7 not qualify for any exception. Accordingly, I determined that Appellant’s application for a new
8 Tobacco Sales permit must be denied.

9 23. On February 6, 2024, the Department issued a Notification of Tobacco Permit Denial to
10 Appellant because Appellant was disqualified under Health Code Section 19H.4(f)(3), (4), (5), and
11 19H.5(a) and no exception applied. A true and correct copy of the denial letter is attached hereto as

12 **Exhibit M.**

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 March 21, 2024, in San Francisco, California.

3 X
4 Maribel Rodriguez

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6 JANINE YOUNG

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EXHIBIT “A”



PERMIT TO OPERATE

T 79241

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

ISSUED: 6/16/2014

Type of Operation: Tobacco Only Shop

Tax Code: 131

DPH Code:

CERT No. 489971

Name and Address Below:

Owner: Regal Marketing, Inc.
 DBA: It Is Vapor 13
 Street Address: 1347 Polk St
 San Francisco, CA 94109

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.

DUPLICATE

Inspector

h. h. f.

Principal Inspector

Richard J. Lee

Director of Environmental Health

B. Smith

Director of Public Health

EXHIBIT “B”



SAN FRANCISCO PLANNING DEPARTMENT

NOTICE OF ENFORCEMENT

June 08, 2015

Property Owner

Hipyan Limited Partnership
438 23rd Avenue, Apt. 3
San Francisco, CA 94121

Business Owner

Austin Dunn and Waleed Fayzi
It Is Vapor/Vapor City
1347 Polk Street
San Francisco, CA 94109

Site Address:	1347 Polk St
Assessor's Block/ Lot:	0667/ 001
Complaint Number:	2015-005418ENF
Zoning District:	NCD, Polk Street Neighborhood Commercial
Code Violation:	723.69 Tobacco Paraphernalia Establishments
Administrative Penalty:	Up to \$250 Each Day of Violation
Response Due:	Within 15 days from the date of this Notice
Staff Contact:	Binh.Nguyen, 415-575-9177, Binh.H.Nguyen@sfgov.org

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

The Planning Department has received a complaint that a Planning Code violation exists on the above referenced property that needs to be resolved. As the owner and/or leaseholder of the subject property, you are a responsible party. The purpose of this notice is to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below:

DESCRIPTION OF VIOLATION

Our record indicates that the subject property is currently authorized for commercial use purposes. The violation pertains to the retail establishment known as Vapor City, located on the ground floor at 1347 Polk Street. The complaint alleges that Vapor City is operating as a Tobacco Paraphernalia establishment in the Polk Street Neighborhood Commercial District where this use is not permitted.

Pursuant to Planning Code Section 790.123, Tobacco Paraphernalia is defined as "a retail use where more than 10% of the square footage of occupied floor area or more than 10 linear feet of display area projected to the floor, whichever is less, is dedicated to the sale, distribution, delivery, furnishing or marketing of Tobacco Paraphernalia from one person to another." However, in the Polk Street Neighborhood Commercial District (generally properties along Polk Street between Post & Filbert Streets and along Larkin Street between Post & Sacramento Streets), no retail use selling *any* amount of Tobacco Paraphernalia whatsoever is allowed. In other words, unlike elsewhere in the City, selling even a single smoking device is not allowed.

"Tobacco Paraphernalia" means "paraphernalia, devices, or instruments that are designed or manufactured for the smoking, ingesting, inhaling, or otherwise introducing into the body of tobacco, products prepared from tobacco, or controlled substances as defined in California Health and Safety Code Sections 11054 et seq."

On April 29, 2015, the Planning Department sent you a Notice of Complaint to inform you about the complaint. You did not contact the Planning Department to respond to this notice.

On June 1, 2015 the Planning Department staff conducted a site visit and observed that Tobacco Paraphernalia displayed inside the store occupied more than ten percent of the square footage of the floor area and/or more than 10 linear feet of display area.

Pursuant to Planning Code Section 171 structures and land in any zoning district shall be used only for the purposes listed in this Code as permitted in that district, and in accordance with the regulations established for that district. Further, pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures. Failure to comply with any of Planning Code provisions constitutes a violation of Planning Code and is subject to enforcement process under Code Section 176.

HOW TO CORRECT THE VIOLATION

The Planning Department requires that you immediately proceed to abate the violation by discontinuing the Tobacco Paraphernalia use from the subject property.

The responsible party will need to provide adequate evidence to demonstrate that either no violation exists or that the violation has been abated. If you believe that Tobacco Paraphernalia use at the above property has continued to exist at this location prior to December 2008, please provide such evidence including business registration, lease copy, and any other documents to demonstrate compliance.

TIMELINE TO RESPOND

The responsible party has **fifteen (15) days from the date of this notice** to contact the staff planner noted at the top of this notice and submit evidence to demonstrate that the corrective actions have been taken to bring the subject property into compliance with the Planning Code. A site visit may also be required to verify the authorized use at the above property. The corrective actions shall be taken as early as possible. Any unreasonable delays in abatement of the violation may result in further enforcement action by the Planning Department.

PENALTIES AND APPEAL RIGHTS

Failure to respond to this notice by abating the violation or demonstrating compliance with the Planning Code within fifteen (15) days from the date of this notice will result in issuance of a Notice of Violation by the Zoning Administrator. Administrative penalties of up to **\$250 per day** will also be assessed to the responsible party for each day the violation continues thereafter. The Notice of Violation provides appeal processes noted below.

- 1) Request for Zoning Administrator Hearing. The Zoning Administrator's decision is appealable to the Board of Appeals.

- 2) Appeal of the Notice of Violation to the Board of Appeals. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter has been pending either before the Zoning Administrator or before the Board of Appeals.

ENFORCEMENT TIME AND MATERIALS FEE

Pursuant to Planning Code Section 350(c)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations and violations of Planning Commission and Planning Department's Conditions of Approval. Accordingly, the responsible party may be subject to an amount of \$1,238 plus any additional accrued time and materials cost for Code Enforcement investigation and abatement of violation. This fee is separate from the administrative penalties as noted above and is not appealable.

OTHER APPLICATIONS UNDER CONSIDERATION

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any new applications that you may wish to pursue in the future. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until the violation is corrected. We want to assist you in ensuring that the subject property is in full compliance with the Planning Code. You may contact the enforcement planner as noted above for any questions.

中文詢問請電: 558.6378

Para información en Español llamar al: 558.6378

EXHIBIT “C”

EXHIBIT “D”



CITY A JUNTY OF SAN FRANCISCO, DEPARTMENT OF PUE EALTH
 ENVIRONMENTAL HEALTH BRANCH
 1390 Market St., Suite 210, San Francisco, CA 94102
 (415) 252 - 3800



APPLICATION FOR THE SALE OF TOBACCO PRODUCTS AND/OR E-CIGARETTES

Application Date:	09/10/2018		First Date of Tobacco Sales:	09/10/2018	
Planning Department Approval:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Business will operate as a tobacco paraphernalia shop and will obtain Planning Department approval prior to opening establishment (See attachment).				
Establishment Type:	<input type="checkbox"/> Market/Grocery <input type="checkbox"/> Tobacco Shop		<input type="checkbox"/> Gas/Service Station <input checked="" type="checkbox"/> Gift/Novelty Store		<input type="checkbox"/> Vape Shop <input type="checkbox"/> Bar/Tavern <input type="checkbox"/> Restaurant <input type="checkbox"/> Other Type of Establishment
Legal Owner Structure:	<input checked="" type="checkbox"/> Sole Proprietor		<input type="checkbox"/> Partnership		<input type="checkbox"/> Corporation <input type="checkbox"/> Other
Legal Owner Name(s):	(NOTE: This is the same name(s) on the CA Board of Equalization License and SF Business Registration Certificate.) AHMAD SULTANI				
Legal Owner(s) Address:	Attach additional sheets if necessary. 27490 PONDEROSA CT. HAYWARD, CA 94545				
List all Owners or Principal Officer(s) and Ownership Percentage(s):	Attach additional sheets if necessary.				
	AHMAD SULTANI	100 %			%
Legal Owner Email:	ahmadsultani84@yahoo.com		Legal Owner Primary Phone:	Mobile	Home
Business Name (DBA), Address, and Zip Code:	(NOTE: This is the same on the CA Board of Equalization License and SF Business Registration Certificate.) ELECTRIC CITY				
Business Mailing Address, City, State, and Zip Code:	1347 POIK ST. SE. CA. 94109		Business Phone:	510-274-3011	
CA BOE Tobacco License Number:	(NOTE: This is NOT the seller's permit number)		SF Business Account Number (BAN):	104200098	
91 -	2	0	4	9	9
			7	6	3
Responsible Person's Name(s):	Legal Owner	Manager	Other	Responsible Person's Phone:	Mobile
	AHMAD SULTANI			510-274-3011	Home
Responsible Person's Email(s):	ahmadsultani84@yahoo.com				
Indicate which address should be used for official correspondence (Check all that apply):					
Alternate or Agent Contact Name:	Legal Owner Address		Business Mailing Address		
Alternate or Agent Contact Phone:	Mobile	Home			
Alternate or Agent Contact Email(s):					
** SIGNATURE(S) OF APPLICANT(S) **					
<i>All partners in reported partnership must sign. All authorized officer(s) in reported corporation must sign. Attach additional sheets if necessary.</i>					
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. When applicable, I/we have checked with the Planning Department prior to submitting this application to verify that this location is zoned for a tobacco paraphernalia establishment. I/We understand that once submitted, the application processing fee is nonrefundable. I/We acknowledge that the issuance of a permit does not transform the business into a retail tobacco or wholesale within the meaning of California Labor Code Section 6404.5. In order to avoid suspension or revocation of the permit, I/we acknowledge that I am/we are responsible for complying with all local, state, and federal laws, codes, rules and regulations, and guidelines relating to tobacco products, tobacco control, and the prohibition of smoking and/or vaping in enclosed establishments and certain unenclosed areas.					
X					X
X					X
FOR DEPARTMENT OF PUBLIC HEALTH OFFICE USE ONLY					
BOE and SFTTX Match:	Yes	No	Filing Fee & Date Paid:	Receipt Number:	
			#241 / 9/13/18	091318-OTC 2	
Applicant qualifies as:	Original Owner	New owner	Subsequent Buyer	Ownership Change	Amended Permit
				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
To the Director of Public Health, after reviewing this application on <u>December 19, 2013</u> , I recommend the issuance of a Permit to Operate. <input checked="" type="checkbox"/> disapprove the issue of a Permit to Operate (NOTE: See attached review and/or letter).					
Inspector:					Principal Inspector
Location ID:	97731	Permit #:	Type of Permit/Classification:		

Instructions for the Retail Tobacco Permit Application

(NOTE: The Legal Owner may not sell any tobacco products without first obtaining a valid tobacco permit from SFDPH)

Facility/Business Operation Information
Application Date. Provide the date that the Applicant submits a complete SFDPH Tobacco Application, non-refundable processing fee(s), and all required documentation. <i>(Please review and confirm these requirements under the Terms and Conditions section below.)</i>
First Date of Tobacco Sales. The first day that the Legal Owner plans to sell tobacco products at the business physical location within the City and County of San Francisco.
Planning Department Approval. Tobacco paraphernalia establishments must obtain approval from Planning Department prior to opening and/or selling tobacco products. Provide confirmation that the Applicant understands and obtained Planning approval as required.
Establishment Type. Based on the San Francisco Zoning Code, provide the business establishment primary business type and operation.

Legal Owner Information
Legal Owner Structure. Provide the ownership structure of the Applicant as filed with the California Secretary of State (e.g., sole proprietor, limited liability company, joint partnership, S-Corporation, etc.).
Legal Owner Name(s). Provide the name of the individual or business entity that is applying for a permit to sell tobacco products within the City and County of San Francisco. The Legal Owner is considered to be the Applicant as well as the Permittee. The San Francisco Department of Public Health (SFDPH) Permit to Operate a Retail Tobacco Establishment and the San Francisco Office of the Treasurer and Tax Collector H-31 license will be in the name of the Legal Owner. <i>The Legal Owner must be the same individual or business entity on the California Board of Equalization (BOE) and San Francisco Office of the Treasurer and Tax Collector (SFTTX) business registration and account records.</i>
Legal Owner Email. Provide the primary email(s) used by the Legal Owner(s) and/or principal officer(s).
Legal Owner Primary Phone. Provide the primary phone number to contact the Legal Owner(s) and/or principal officer(s).

Facility/Business Information
Business Name (DBA), Address, and Zip Code. Provide the name under which the facility/business will operate ("Doing Business As"), the facility address (i.e., the physical location) within the City and County of San Francisco, and San Francisco Zip Code. <i>The Business Name (DBA) must be the same individual or business entity on the California BOE and SFTTX business registration and account records.</i>
Business Mailing Address, City, State, and Zip Code. Provide the primary address to mail all correspondences, bills, notices, or legal documents. The mailing address may also serve as the address of record.
Business Phone. Provide the primary phone number at the business physical location within the City and County of San Francisco.
BOE Tobacco License Number. The Legal Owner must obtain and maintain a valid California BOE Cigarette and Tobacco Products License. <i>Tobacco products may not be sold in San Francisco without both CA BOE license and SFDPH tobacco permit.</i>
SF Business Account Number (BAN). The Legal Owner must register and obtain a business account with the SFTTX.
Responsible Person's Name(s). Provide the name of the person that is duly authorized, in control, and/or responsible for the daily business operations. (NOTE: The responsible person may be the sole proprietor, any principal officer or partner, operator, manager/supervisor, cashier, spouse or domestic partner.)
Responsible Person's Phone. Provide the primary contact number for the responsible person(s).
Responsible Person's Email(s). Provide the primary email address used by the responsible person.

Indicate Address for Official Correspondence(s): In addition to the business mailing the address, copies of documents may also be mailed to the facility address or Legal Owner(S) address at the request of the Legal Owner(s), principal officer(s), or responsible person(s).

Alternate or Agent Contact Information
Alternate or Agent Contact Name. In the event that the Legal Owner or responsible person is not available, please provide the name of an alternate person or agent that has authority to make decisions and sign documents on behalf of the Legal Owner.
Alternate or Agent Contact Phone. Provide the primary phone number of the alternate person or agent.
Alternate or Agent Contact Email(s). Provide the primary email(s) used by the alternate person or agent.

Signature(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. The signature(s) also acknowledge the responsibility of Legal Owner(s), agents, and employees to comply with all applicable local, state, and federal tobacco products sales and control laws, including but not limited to the prohibition of smoking indoors, payment of Cigarette Litter Abatement fee, etc. *(If necessary, the Applicant may attach additional sheet(s) with signatures to the application)*

Terms and Conditions

Do you acknowledge that the following items must be submitted with this application (Mark "YES" to confirm)?			SFDPH OFFICE USE ONLY	
Yes	N/A		Initial Review	Final Review
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Non-refundable Processing Fee (s) <input checked="" type="checkbox"/> SFDPH Application Fee \$ <input checked="" type="checkbox"/> Zoning Referral Fee \$	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Copy of California Board of Equalization Cigarette and Tobacco Products License	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Copy of San Francisco Business Registration Certificate	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Completed Tobacco Application (with original wet signatures)	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Zoning Referral and Proximity Request Form	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Pre-application/Affidavit for One Time Permit	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	19H.6 Exception Documentation/Proof of Partnership or Incorporation	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Declaration of Healthy and Safe Working Conditions	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Other Information Requested by SFDPH:	<input type="checkbox"/>	<input type="checkbox"/>

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(s).

D. One-Time Permit Exception Affidavit
(Must select only one exception and submit legal documentation as a required by 19H.4(a)(3))

D.1 **Legacy Transfer:** Buyer in negotiation to purchase the store from the retail Tobacco Permit Holder meeting an exception under §§ 19H.6(a), (b), (e), or (f):
 I am the Buyer I am the current owner and retail Tobacco Permit Holder (Seller)


D.2 **Qualified Relative (check one box):**
 I am the current retail Tobacco Permit Holder attesting that my qualified relative is applying for an exception under § 19H.6(c).
 I am a qualified relative applying for an exception under § 19H.6(c)

D.3 **Death/Divorces:**
 I am acquiring the ownership of the Business at the Business Address above through the death of or divorce of my spouse or domestic partner who was also the retail Tobacco Permit Holder under § 19H.6(g).

D.4 **Relocating Store:**
 I am applying for an exception under § 19H.6(d) because I must relocate under Chapter 34B of the Building Code.

**** SIGNATURE(S) OF ALL OWNER(S)/OFFICER(S) REQUIRED ****
All partners in reported partnership must sign. All authorized officer(s) in reported corporation must sign. Attach additional sheets if necessary.


I/We declare under penalty of perjury that the information provided for the affidavit is true and correct. Furthermore, I/we hereby agree to provide and submit additional legal documentation for proof of the exception qualification as required by the San Francisco Department of Public Health. I/We understand that if SFPDH determines that I/we do not qualify for any 19H.6 exception, that within 7 business days of notification, I/we must complete the SF Planning Department Zoning Referral with the non-refundable Zoning processing fee. Otherwise, the tobacco application may be denied on the basis of being abandoned by the Applicant.

X		X	
X		X	

E. San Francisco Planning Department Zoning Referral
**** SIGNATURE(S) OF ALL OWNER(S)/OFFICER(S) REQUIRED ****
All partners in reported partnership must sign. All authorized officer(s) in reported corporation must sign. Attach additional sheets if necessary.

All Owner(s)/Officer(s) must acknowledge the following conditions:

1. I understand that no permit shall be issued in a Supervisorial District with more than 45 tobacco permits.
2. I understand that no permit will be issued to any establishment within 500 feet of (i) a school or (ii) another permitted tobacco retailer.
3. I understand that no permit shall be issued in a site not previously occupied by a business that held a valid SFPDH tobacco permit.
4. I understand that no permit shall be issued to a tobacco shop or any business whose main purpose is offering food or alcoholic beverages with on-site consumption, including but not limited to, Restaurants or Bars.
5. I understand that if any of the above conditions are checked, I am not guaranteed to obtain a tobacco permit.
6. I understand that I may not sell any tobacco products, including but not limited to, cigarettes, electronic smoking devices, nicotine-containing products, and/or e-juices without first obtaining a valid SFPDH retail tobacco permit.
7. I understand that selling tobacco products without a valid SFPDH permit may result in the denial of a SFPDH tobacco permit.
8. I understand that I must pay the non-refundable Zoning processing fee if I wish to continue with the tobacco application process.

X		X	
X		X	

FOR PLANNING DEPARTMENT USE ONLY

Block/Lot: _____

Tobacco Permit Density Requirements:

1. Establishment is located within 500 feet of a school:	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> Map
2. Establishment is located within 500 feet of a retailer with a valid tobacco permit:	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> Map
3. Existing establishment permitted to operate as noted in Section C.2, Business Type:	<input type="checkbox"/> YES	<input type="checkbox"/> NO	

Planner Name & Signature: _____ Contact Number: _____ Date: _____

FOR DEPARTMENT OF HEALTH USE ONLY

Date of Zoning Referral: _____ DPH Receipt for Zoning Processing Fee: _____

Supervisor District: _____ Number of tobacco permits in district: _____

SFPDH – EH Staff: _____ Contact Number: _____

Based on Planning referral and number of permits, tobacco products sales at business: **APPROVE** **DISAPPROVE**



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 Pampublikong 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:	AHMAD SULTANI	
DBA/Name of Business:	ELECTRIC CITY	
Business Address:	1347 POIK ST.	San Francisco, CA 94109

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:	
<ul style="list-style-type: none"> • 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 selfinsured) <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 1390 Market St., #210, San Francisco, CA 94102. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

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.

AHMAD SULTANI		09/10/2018
Print Name	Signature	Date

MUST BE DISPLAYED CONSPICUOUSLY AT LOCATION ADDRESS FOR WHICH ISSUED

CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

**CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT OF 2003
RETAILER'S LICENSE**



LICENSE NUMBER

204997632

BUSINESS MAILING ADDRESS:

ELECTRIC CITY
AHMAD S. SULTANI
1347 POLK ST
SAN FRANCISCO CA 94109-4617

EFFECTIVE DATE:

September 04, 2018 - September 3, 2019

LOCATION ADDRESS:

1347 POLK ST
SAN FRANCISCO CA 94109-4617

*THIS LICENSE HAS BEEN ISSUED TO YOU UNDER
DIVISION 8-6 (COMMENCING WITH SECTION 22970)
OF THE CALIFORNIA BUSINESS AND
PROFESSIONS CODE.*

NOT VALID AT ANY OTHER LOCATION ADDRESS.

IS HEREBY AUTHORIZED TO ENGAGE IN THE SALE
OF CIGARETTES AND TOBACCO PRODUCTS.

THIS LICENSE IS VALID FOR THE EFFECTIVE DATE OR UNTIL SUSPENDED, REVOKED, OR CANCELED, AND IS NOT TRANSFERABLE.
FOR GENERAL TAX QUESTIONS PLEASE TELEPHONE OUR CUSTOMER SERVICE CENTER AT 1-800-400-7115 (TTY:711).
FOR INFORMATION ON YOUR RIGHTS, CONTACT THE TAXPAYERS' RIGHTS ADVOCATE OFFICE AT 1-888-324-2798 OR 1-916-324-2798.

CDTFA-442-LR REV. 4(8-17)

A MESSAGE TO OUR LICENSE HOLDER

As a retailer, you have certain rights and responsibilities under the Cigarette and Tobacco Products Licensing Act of 2003. In order to assist you in your endeavor and to better understand the law, we offer the following informational sources:

- The Cigarette and Tobacco Products Licensing Act of 2003 found under Division 8.6 (commencing with section 22970) of the California Business and Professions Code.
- Our website at www.cdtfa.ca.gov.
- Our toll-free Customer Service Center at 1-800-400-7115 (TTY:711).

As a retailer, you are expected to maintain the normal books and records of a prudent businessperson. You are required to maintain these books and records for no less than four years, and make them available for inspection by a California Department of Tax and Fee Administration (CDTFA) representative when requested. In addition, you must keep the records on file at the location identified on your license for at least one year after the date of purchase. Specific requirements are set forth in the Cigarette and Tobacco Products Licensing Act of 2003.

You must notify us if you are buying, selling, adding a location, or discontinuing your business, adding or dropping a partner, officer, or member, or when you are moving any or all of your business locations. This license is valid only for the type of ownership and location specified on the license. A person who obtains a license as a retailer who ceases to do business, or who never commenced business, or whose license has been suspended or revoked, shall also notify the CDTFA immediately by writing to the California Department of Tax and Fee Administration, Special Taxes and Fees, P. O. Box 942879, Sacramento, CA 94279-0088 in order to make arrangements to surrender the license, or by giving the license to a CDTFA representative.

If you would like to know more about your rights as a taxpayer, or if you are unable to resolve an issue with the CDTFA, please contact the Taxpayers' Rights Advocate office for help by calling, 1-888-324-2798 or 1-916-324-2798. Their fax number is 1-916-323-3319.

License must be displayed at location address for which issued and must be visible to your customers.

CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

Compliance Branch

TTX Cert# 1072000
Current: 8/27/18
ID MAIL
ABOVE FOR OFFICE USE ONLY

STATEMENT IS A PUBLIC RECORD
(SEE REVERSE SIDE FOR LEGAL REQUIREMENTS AND INSTRUCTIONS)
San Francisco County Clerk
1 Dr. Carlton B. Goodlett Place, Room 168
San Francisco, CA 94102-4678
www.sfgov.org/countyclerk

ENDORSED
A-0382852-00
FILED
SAN FRANCISCO County Clerk
AUG 27, 2018

FILING FEE: (See website for methods of payment)
\$51.00 For 1st Business Name and 1st Registrant
\$12.00 For each additional business name or each additional registrant (owner) on SAME statement
ITEMS #1 THROUGH #6 MUST BE LEGIBLE AND FULLY COMPLETED; SUBMIT FORM IN DUPLICATE

by: **SONYA YI**
Deputy County Clerk
Expires: **AUG 27, 2023**

FICTITIOUS BUSINESS NAME STATEMENT

1. Fictitious Business Name(s)/Trade Name (DBA): ELECTRIC CITY

2. 1347 POIK ST. SAN FRANCISCO CA. 94109
Street Address, City, State and Zip code of Principal Place of Business (P.O. Box NOT allowed) **MUST ENTER COUNTY OF FBN ADDRESS:**
▶ SAN FRANCISCO

3. Ahmad Sultani
Full name of registrant/owner #1 (If Corporation or Limited Liability Company, also indicate State of incorporation or organization, e.g. (CA), (DE), etc)
27480 PONDEROSA CT.
Residence Address (P.O. Box NOT allowed)
HAYWARD, CA. 94545
City, State and Zip Code

Full name of registrant/owner #2 (If Corporation or Limited Liability Company, also indicate State of incorporation or organization, e.g. (CA), (DE), etc)
Residence Address (P.O. Box NOT allowed)
City, State and Zip Code

Full name of registrant/owner #3 (If Corporation or Limited Liability Company, also indicate State of incorporation or organization, e.g. (CA), (DE), etc)
Residence Address (P.O. Box NOT allowed)
City, State and Zip Code

Full name of registrant/owner #4 (If Corporation or Limited Liability Company, also indicate State of incorporation or organization, e.g. (CA), (DE), etc)
Residence Address (P.O. Box NOT allowed)
City, State and Zip Code

4. The business is conducted by: an individual a general partnership a corporation a limited partnership
 an unincorporated association other than a partnership a trust co-partners a married couple
 joint venture a limited liability company state or local registered domestic partners a limited liability partnership

5. The registrant commenced to transact business under the fictitious business name or names listed above on: (enter EXACT date OR if future date, enter "not applicable") ▶ 8/27/18

6. I declare that all information in this statement is true and correct. (A registrant who declares as true any material matter pursuant to Section 17913 of the Business and Professions Code that the registrant knows to be false is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).)

If registrant other than Corp. or LLC, sign below
Signed Ahmad Sultani
Printed Name Ahmad Sultani

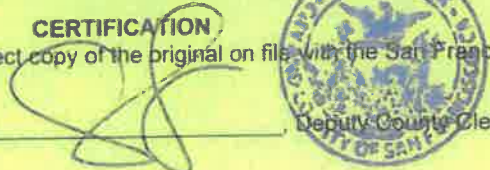
If registrant is a Corporation or Limited Liability Company, sign below
Corporation or LLC Name: _____
Signature _____
Printed Name & Title _____

This statement was filed with the San Francisco County Clerk on date indicated by the file stamp above.

NOTICE—IN ACCORDANCE WITH SUBDIVISION (a) OF SECTION 17920, A FICTITIOUS NAME STATEMENT GENERALLY EXPIRES AT THE END OF FIVE YEARS FROM THE DATE ON WHICH IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK, EXCEPT, AS PROVIDED IN SUBDIVISION (b) OF SECTION 17920, WHERE IT EXPIRES 40 DAYS AFTER ANY CHANGE IN THE FACTS SET FORTH IN THE STATEMENT PURSUANT TO SECTION 17913 OTHER THAN A CHANGE IN THE RESIDENCE ADDRESS OF A REGISTERED OWNER. A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED BEFORE THE EXPIRATION. THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE SECTION 14411 ET SEQ., BUSINESS AND PROFESSIONS CODE).

I hereby certify that the foregoing is a correct copy of the original on file with the San Francisco County Clerk.

By _____, Deputy County Clerk





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

Check/Credit Card Receipt

Date: 09/13/18
 Customer #: 2

R-Team

Thank you for your payment. Please retain for your records.

Business Name/DBA: Ahmad S Sultani
 Location Address: 30917 Tidewater Dr. Union City, CA 94587

	Amount
Application Fee - Massage	\$ -
Application Fee - Body Art	\$ -
Application Fee - Tobacco	\$ 91.00
Plan Check - Massage	\$ -
Plan Check - Body Art	\$ -
Plan Check - Radiation	\$ -
Plan Check - Article 38	\$ -
Noise Program - Misc. Revenue	\$ -
Enforcement	\$ -
Zoning Referral	\$ 150.00
Fire Referral	\$ -
NSF Charge	\$ -

Total Payment:	\$ 241.00
Check #/CC REF #:	1142
Payment type:	OTC Check

Payment Received by: MW

Notes:

SMK09132018	NOTE: for 1347 Polk St., Electric City
-------------	--

Receipt #: 091318-OTC 2

RE: 1347 Polk Street - Electric City (Can You Provide Me Buffer Maps?)

Adina, Seema (CPC) <seema.adina@sfgov.org>

Mon 11/26/2018 1:56 PM

To: Young, Janine (DPH) <janine.young@sfdph.org>

Cc: Callewaert, Jennifer (DPH) <jennifer.callewaert@sfdph.org>

Hi Janine,

Thanks for your email and for the inspection. Unfortunately, anything related to Tobacco paraphernalia is not allowed. Our Planning Code defines this as "devices or instruments that are designed or manufactured for the smoking, ingesting, inhaling, or otherwise introducing into the body of tobacco, products prepared for tobacco, or controlled substance..."

It doesn't include the following: lighters, matches, cigarette holders or devise used to store or preserve tobacco, cigarettes, cigarette papers, cigars, etc.

However, our code indicates if the use is less than 10% of the entire occupied floor area or 10 linear feet of display (whichever is less), then it doesn't count as a tobacco paraphernalia establishment. If they can meet this condition, then they can sell what they are currently proposing to sell (glass smoking devices).

Thank you,

Seema

From: Young, Janine (DPH)

Sent: Wednesday, November 21, 2018 6:47 PM

To: Adina, Seema (CPC) <seema.adina@sfgov.org>

Cc: Watty, Elizabeth (CPC) <elizabeth.watty@sfgov.org>; Callewaert, Jennifer (DPH) <jennifer.callewaert@sfdph.org>

Subject: RE: 1347 Polk Street - Electric City (Can You Provide Me Buffer Maps?)

Importance: High

Good evening Seema,

Yesterday, I conducted a site visit at 1347 Polk St DBA Electric City.

Electric City is a computer and electronic devices sales, repair, buy/trade, and consultation store. Please see attached photos.

The owner was interested in also selling electronic smoking devices.

However, I informed the Owner that electronic smoking devices require a SFDPH tobacco permit and unfortunately, the location is in an area where no new tobacco permits may be issued by the Department.

I advised the Owner, Mr. Ahmad Sultani to contact you directly for assistance about the possibility of selling glass smoking devices without any electronics and/or other paraphernalia.

Mr. Ahmad Sultani said that the best contact number is (510) 274-3011.

I hope that you can move forward with my buffer maps. Please include location names, legends, and provide only the schools and other active tobacco retailers within 500 feet of 1347 Polk St.

Our denials of tobacco permits often end up at the SF Board of Appeals so the buffer maps need to be clear and concise for the Commissioners and our City Attorney's Office.

Please let me know if you need any additional information.

Thanks for your attention to this matter and Happy Thanksgiving,

Janine Young, Senior Health Inspector

Retail Tobacco and Smoking Program

Environmental Health Branch

Population Health Division, San Francisco Department of Public

415.252.3903 (direct)

415.252.3894 (fax)

REACH -for- Results, Equity, and Accountability for Community Health

Our Mission: Drawing upon community wisdom and science, we support and develop evidence-based policies, practices, and partnerships that protect and promote health, prevent disease and injury, and create sustainable environments and resilient communities.

Our Vision: Community-centered leader in public health practice and innovation.

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From: Adina, Seema (CPC)
Sent: Wednesday, October 10, 2018 2:25 PM
To: Callewaert, Jennifer (DPH)
Cc: Young, Janine (DPH); Watty, Elizabeth (CPC)
Subject: RE: 1347 Polk Street -

Hi Jennifer,

Sure, I've placed the project on hold. I contacted the applicant on September 13, 2018 (see attached email), regarding the type of operation they are pursuing. I have not heard from the applicant since.

I am still not certain what type of exact use they are pursuing, but Tobacco Paraphernalia Establishments are not permitted within the Polk Street Neighborhood Commercial District, and within a ¼ mile of this district. If they are pursuing this type of establishment, the recommendation would be unfortunately for denial.

Thank you,

Seema Adina, AICP, Planner
Northeast Team, Current Planning Division
San Francisco Planning Department
1650 Mission Street, Suite 400 San Francisco, CA 94103
Direct: 415.575.8722 | www.sfplanning.org
[San Francisco Property Information Map](#)

From: Callewaert, Jennifer (DPH)
Sent: Wednesday, October 10, 2018 2:21 PM
To: Adina, Seema (CPC) <seema.adina@sfgov.org>
Cc: Young, Janine (DPH) <janine.young@sfdph.org>; Watty, Elizabeth (CPC) <elizabeth.watty@sfgov.org>
Subject: 1347 Polk Street -

Hi Seema,

Would you be able to provide us with a status update on this referral, including the buffer maps? We have a community complaint regarding this location and we need to determine if the permit shall be denied.

Let us know if you have any questions or need further information.

MISCELLANEOUS PERMITS REVIEWED BY THE PLANNING DEPT: [MAP](#)

2018-012601MIS

Seema Adina Tel: 415-575-8722

Misc. Permits-REF (MIS) 1347 Polk Street - Electric City

Health - Retail Tobacco Permit

OPENED	STATUS	ADDRESS	FURTHER INFO
9/13/2018	On Hold 9/13/2018	1347 POLK ST 94109	Related Documents View in ACA

RELATED RECORDS: None

2017-005500MIS

Adina, Seema Tel: 415-575-8722

Sincerely,

Jen Callewaert MS, REHS

Principal Environmental Health Inspector

Radiation, Tobacco, Emergency Response, Article 38, Massage and Body Art and Piercing Programs

Environmental Health Branch

Population Health Division

San Francisco Department of Public Health

1390 Market Street, Suite 210

415-252-3971 (desk)

jennifer.callewaert@sfdph.org

415-252-3894 (fax)

<https://www.sfdph.org/dph/EH/>

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EXHIBIT “E”

Young, Janine (DPH)

From: Adina, Seema (CPC) <seema.adina@sfgov.org>
Sent: Thursday, September 13, 2018 6:03 PM
To: ahmadsultani84@yahoo.com
Subject: 1347 Polk Street - Electric City

Hi Ahmad,

I am the Planner assigned to your Health Referral at 1347 Polk Street. To determine if the use is permitted in the Polk Street Neighborhood Commercial Zoning District, can you please clarify the type of operation proposed here? What type of store is it, are you only selling tobacco products, what other products are being sold?

Thank you,

Seema Adina, AICP, Planner
Northeast Team, Current Planning Division
San Francisco Planning Department
1650 Mission Street, Suite 400 San Francisco, CA 94103
Direct: 415.575.8722 | www.sfplanning.org
[San Francisco Property Information Map](#)

EXHIBIT “F”

Photo 1: Electric City located at 1347 Polk St in San Francisco.

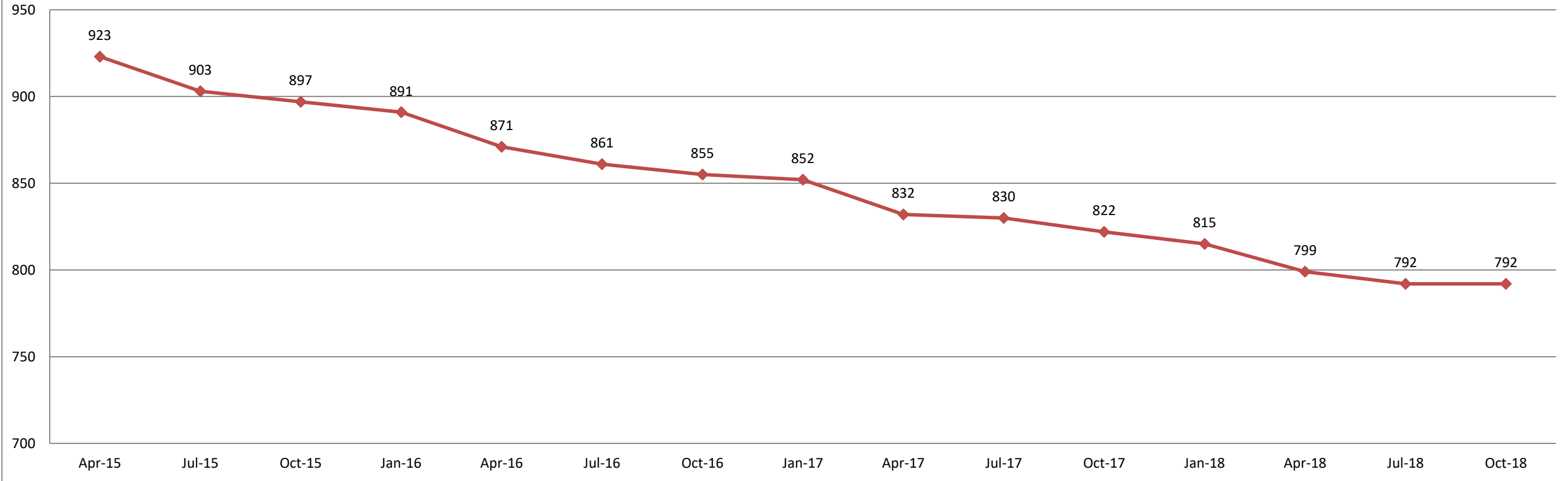


Photos 2 and 3: Electric City sells electronic devices, computers, and provides repair services or consultation for both computers and devices.

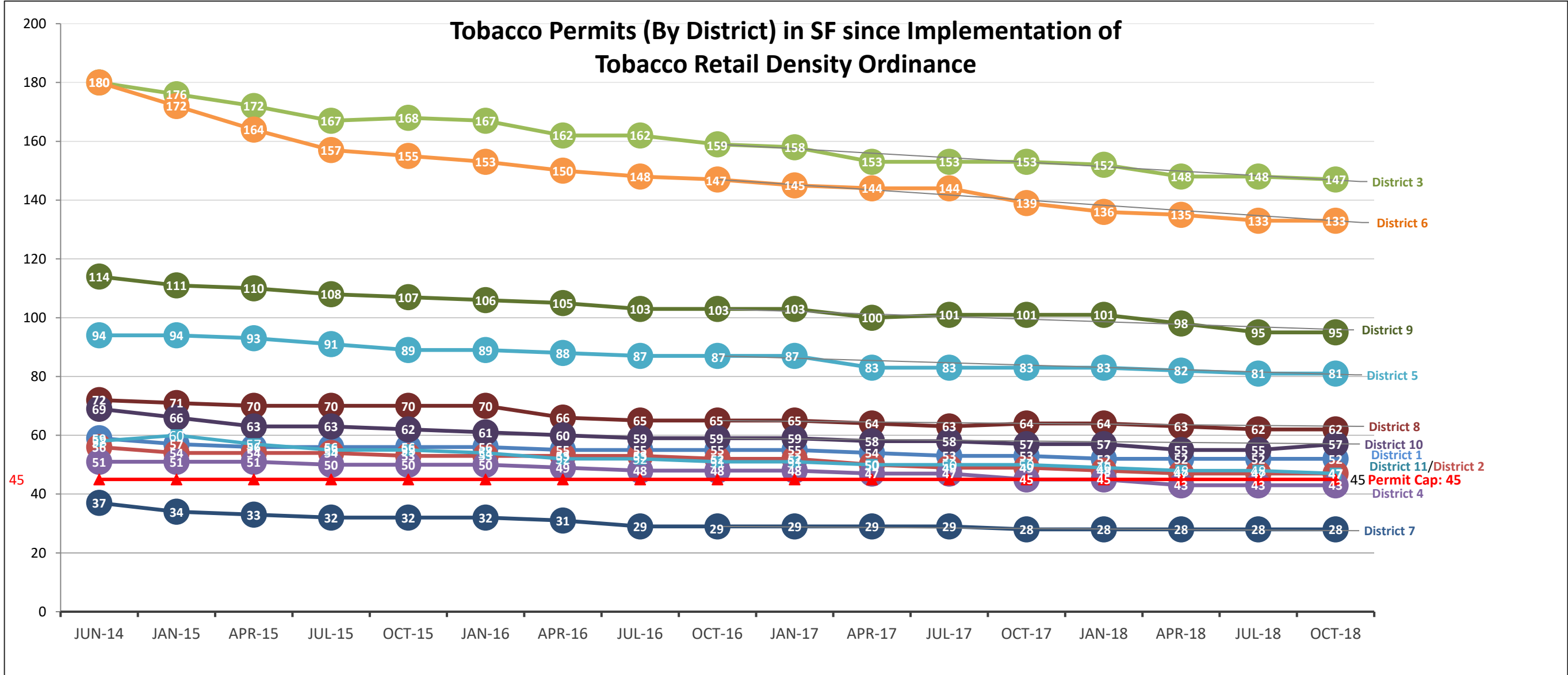


EXHIBIT “G”

Total Tobacco Permits in SF since Implementation of Tobacco Retail Density Ordinance



Tobacco Permits (By District) in SF since Implementation of Tobacco Retail Density Ordinance



District	Jun-14	Jan-15	Apr-15	Jul-15	Oct-15	Jan-16	Apr-16	Jul-16	Oct-16	Jan-17	Apr-17	Jul-17	Oct-17	Jan-18	Apr-18	Jul-18	Oct-18	% Change from 6/2014 to 10/2018
1	59	57	56	56	56	56	55	55	55	55	54	53	53	52	52	52	52	-11.86%
2	56	54	54	54	53	53	53	53	52	52	50	49	49	48	47	47	47	-16.07%
3	180	176	172	167	168	167	162	162	159	158	153	153	153	152	148	148	147	-18.33%
4	51	51	51	50	50	50	49	48	48	48	47	47	45	45	43	43	43	-15.69%
5	94	94	93	91	89	89	88	87	87	87	83	83	83	83	82	81	81	-13.83%
6	180	172	164	157	155	153	150	148	147	145	144	144	139	136	135	133	133	-26.11%
7	37	34	33	32	32	32	31	29	29	29	29	29	28	28	28	28	28	-24.32%
8	72	71	70	70	70	70	66	65	65	65	64	63	64	64	63	62	62	-13.89%
9	114	111	110	108	107	106	105	103	103	103	100	101	101	101	98	95	95	-16.67%
10	69	66	63	63	62	61	60	59	59	59	58	58	57	57	55	55	57	-17.39%
11	58	60	57	55	55	54	52	52	51	51	50	50	50	49	48	48	47	-18.97%
Density Cap	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	0.00%
Total Permits	970	946	923	903	897	891	871	861	855	852	832	830	822	815	799	792	792	-18.35%

EXHIBIT “H”

From:

Sent: Sunday, December 17, 2023 6:59 PM

To: DPH-EHB Tobacco Program <EHB-TobaccoProgram@sfdph.org>; Johnson, Amy (DPH) <amy.johnson@sfdph.org>; Lagman, Brandon (DPH) <brandon.lagman@sfdph.org>; Nguyen, Danny (DPH) <danny.nguyen1@sfdph.org>; Phan, Ivy (DPH) <ivy.phan@sfdph.org>; Young, Janine (DPH) <janine.young@sfdph.org>

Subject: Concerns Regarding Tobacco Licenses in the Polk District

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Sir/Madam,

I hope this email finds you well. I am writing to bring to your attention a matter of concern regarding the issuance of tobacco licenses in the Polk District. Approximately a year ago, I submitted an application to open a smoke shop in the Polk District. Unfortunately, my application was denied on the grounds that there were already sufficient tobacco licenses in the area.

However, I have recently come across a new establishment called "Electric City" located at 1347 Polk Street, San Francisco, CA 94109. Upon visiting the premises, it became evident that "Electric City" is operating as an electrical store, as indicated by the signage. However, I was surprised to find that half of their store is dedicated to tobacco products, including vapes and CBD-related items. This raises concerns about the issuance of new tobacco licenses in the area.

Last year, I was informed that there is a rule in place that considers the proximity of existing tobacco licenses when evaluating new applications. According to this rule, if there is already a smoke shop within a certain radius, new licenses should not be issued for that location. In close proximity to "Electric City," there are two smoke shops, namely "Jeet Big Times" half a block north and "Smoke & Gift Shop" half a block south. I am puzzled as to how "Electric City" obtained a tobacco license and is advertising itself as a vape shop, despite the ban on vapes in San Francisco. This situation raises questions about the fairness and consistency of the licensing process. I kindly

request a clear explanation regarding this matter. If it is determined that "Electric City" does not possess a tobacco license, I urge you to take appropriate action to ensure that they comply with the regulations.

As a responsible taxpayer, I believe it is the duty of your officers to enforce these rules and prevent any discriminatory practices. I appreciate your attention to this matter and look forward to receiving a prompt response. If my concerns are not adequately addressed, I may be compelled to take legal action against the San Francisco Department of Public Health for being discriminative. Thank you for your understanding and cooperation.

Kind regards,

Tax Payer,





EXHIBIT “I”



Inspection Report: Tobacco & Smoking Program
 San Francisco Department of Public Health
 Population Health Division – Environmental Health Branch
 49 South Van Ness Ave. Suite 600 San Francisco, CA 94103
<https://www.sfdph.org/dph/EH/Tobacco/default.asp>

Inspection Date: 12/19/2023
 Time of Inspection: 1 PM - 1:45 PM
 EHD Location #: 97731
 Tobacco Permit #: T- Permit Never Issued

Facility Name (DBA): Electric City Address: 1347 Polk St, 94109

Permit Owner Name: SFDPH Never Issued Permit [Ahmad Sultan] Phone Contact: (510) 274-3011

Email: ahmadsultani84@yahoo.com

Inspection Type:
 Routine Reinspection
 Complaint Consultation

Inspection Report:
 Notice of Correction
 Notice of Violation

Required Action from Permit Owner:
 No further action required
 A. Discontinue the illegal sales/distribution of tobacco products.
 B. Obtain a SF Department of Public Health tobacco permit.
 C. Relocate and sell tobacco products in a manner that requires vendor assistance by the end of the business day.
 D. Request that any person observed smoking in areas where smoking is prohibited refrains from smoking.

Violations: Mark observed violations.
 Code violations cited are on the back page.
 No violations observed
 1. Incomplete/Inaccurate application submitted
 2. Unpaid License fees
 3. Permit/Licenses not displayed
 4. Signage not posted
 5. Right to inspect denied
 6. Tobacco sales without a valid permit
 7. Sale of tobacco products without assistance
 8. Sale of single cigarettes
 9. Sale to minors (person <18 years old)
 10. Sale to persons aged 18, 19, or 20
 11. Sale/Distribution of flavored tobacco products
 12. Smoking in prohibited area
 13. Sale/Distribution of restricted e-cigarette products
 14. Other tobacco control laws violated

Correct By:
 E. Submit a SF Department of Public Health retail tobacco permit application.
 F. Pay all license fees.
 G. Correct information on license(s) and/or permit(s).
 H. Post licenses and permits in a conspicuous location in the store.
 I. Post signage.
 J. Remove ALL tobacco products from display and premises.
 K.

Observations:
SFDPH Tobacco Permit Application submitted 9/12/2018. SF Planning Dept placed "hold" on process until Electric City clarified type of operation. There ~~is~~ no record that Applicant responded to Planning Department inquiry.
On 12/17/2023, SFDPH received complaint of tobacco sales without SFDPH Tobacco Permit. On 12/19/2023, observed tobacco products, including prohibited products for sale. Inventory and photos of prohibited products are part of this report.
Spoke to Applicant (Owner/Operator), tobacco sales started in October 2023.

Additional Documents Attached:
 SFDPH Retail Tobacco Application
 Notice of Abatement Conference
 Complaint Report #
 Compliance Agreement
 SFPD Report #
 Tobacco Retail License Booklet
 Out of Business Form

Self-Verification of Corrected Violation(s): To verify correction of violation(s), send pictures with Facility Name and Address to the Tobacco & Smoking Program's Google Voice Number: (415) 226-9564 or to the below email by end of business day (date):

Inspector Name: J. Young Inspector Signature: J. Young
 Inspector Email: janine.young@sfdph.org Inspector Phone #: (415) 252-3903

Failure to comply may result in a combination of one or more of the following: Reinspection fee at the hourly rate (30 minutes minimum) per site visit; issuance of an abatement order; administrative penalty of up to \$500 per day; permit suspension of up to 365 days; and/or a referral to the City Attorney's Office in order to take civil or criminal action (Pursuant to SF Bus. and Tax Reg. Code, Article 1, Sect 35; SFHC Sections 19H.17, 19H.19, 19H.20, 19N.3(b), 596, and 1009.25). Violations cited are a public nuisance and must be corrected as established in this Notice (19H.18(a)). Furthermore, violations of the retail tobacco permit ordinance are unfair business practices and presumed to damage each and every resident of the community in which the business operates (19H.18(b)).

Received By: (Print) Sent by email, regular mail **Received By: (Signature)**

	[Health Code Section(s)]. Code Description. Correction. Additional Comments.
1a. SFDPH Retail Tobacco Application	[19H.4(a)]. An Application for a Tobacco Sales permit shall be submitted in the name of the person(s) proposing to engage in the sale of Tobacco Products and shall be signed by each person or an authorized agent thereof. A separate application is required for each location where Tobacco Sales are to be conducted. All Applications shall be submitted on a form supplied by the Department. [19N.3(a); 19N.5]. An establishment must have a valid Tobacco Sales permit to sell electronic cigarettes. Submit a complete Application for the Sale of Tobacco Products and/or E-Cigarette by the correction date.
1b. Fraudulent Application	[19H.16]. No person may obtain a tobacco sales permit by fraudulent or willful misrepresentation. Immediately discontinue the sales of tobacco products. SFDPH may suspend, revoke, and/or impose an administrative penalty for submitting a fraudulent application. The City may prosecute for either an infraction or a misdemeanor punishable by a fine of up to \$500 per violation.
2. Fees	[19H.3; 19H.4(a); 19H.7; 19H.13; SF Business and Tax Regulations Code, Article 1, Sec 35]. In order to obtain and maintain a valid SFDPH Tobacco Sales permit, the Applicant, Permittee, Establishment, or Agent is liable for the following fees when due to the appropriate City or State agency: (A) Non-refundable Tobacco Sales Application Fee; (B) Planning Department Zoning Referral Fee; (C) City and County of San Francisco Licenses Fee; (D) California Department of Tax and Fee Administration Annual License Fee; and (E) City and County of San Francisco Cigarette Litter Abatement Fee (in accordance with SF Administrative Code Chapter 105); (F) When the Department provides environmental health inspection services, including but not limited to, training, and consultation; and (G) When the Department finds violations of local, state, or federal law, requiring follow up inspections to determine correction of cited violations, Establishment is liable for payment of fees. Submit proof of payment to SFDPH Retail Tobacco Program. Failure to resolve financial obligations may result in a suspension of tobacco sales permit until proof of payment is provided to SFDPH.
3. Display Permit	[19H.4(e)]. Each Permittee shall display the permit prominently at each location where Tobacco Sales occur. No permit that has been suspended shall be displayed during the period of suspension. A permit that has been revoked is void and may not be displayed. Post Permit to Operate in a prominent location that is visible to the public and available for review by SFDPH staff.
4. Post Signage	[19F Sect. 1009.22(i)(1)]. Post clear and prominent building entryway "No Smoking/Vaping" signs at each entrance to the establishment; [19F Sect. 1009.22(i)(2)]. Post clear and prominent general "No Smoking/Vaping" signs inside the establishment; [19O.6]. Post clear and prominent no smoking/vaping signs that includes "No use of smokeless tobacco products" at each entrance of the athletic venue; [19P.4]. Post a sign or other notice in the establishment, stating that in San Francisco it is unlawful to sell Tobacco Products, including smokeless tobacco and electronic cigarettes, to persons who are 18, 19, or 20 years of age. In accordance with SFDPH Signage Rules and Regulations, clearly post signage in a prominent location that is visible to the public. For building entryway "No Smoking" or "Tobacco 21" signs, please order online at http://sanfranciscotobaccofreeproject.org → Learn More → Signage
5. Right to Inspect	[19H.9]. The Director of SFDPH or a designee may enter and inspect at any time during regular business hours at any Establishment that is engaging in tobacco sales, or is suspected by the Director of engaging in such sales. Allow any authorized agent of SFDPH to enter, inspect, interview staff, and photo document at any establishment at any time during regular business hours of operation. DPH staff must present proper credentials in order to enter and inspect premises at any time during regular business hours.
6. Valid Permit	[19H.3; 19N.3]. No persons may engage in the tobacco sales or allow tobacco sales in any establishment without first obtaining and maintaining a valid tobacco sales permit from the San Francisco Department of Public Health for each location where tobacco sales are conducted. Immediately discontinue sales of tobacco products and submit the required application(s) and non-refundable processing fees by the correction date provided on the previous page.
7. Self-Service	[19H.10; 19D Sect. 1009.1; 19N.5]. Cigarette vending machine found at establishment. [19H.11; SF Police Code 4600.3; 19N.5]. San Francisco Police Department confirmed self-service sale of tobacco products. Display and sell tobacco products in a manner that requires vendor or retailer-assisted sales.
8. Single Sale	[19H.13; CA Penal Code 308.2]. A person may not sell any cigarette except in a sealed manufacturer's package meeting federal labeling requirements. Immediately discontinue opening cigarette packs for the sale, distribution, or furnishing of single cigarettes.
9. Sale to Minors	[19H.14; 19N.5; CA Penal Code 308(a)(1)(A)(i)]. Tobacco product sale to a minor is prohibited. Immediately discontinue sales of tobacco products to anyone under the age of 18. SFDPH is authorized to suspend a tobacco permit for up to 365 days depending upon frequency of the violation.
10. Sale to 18, 19, or 20 Year Olds	[19H.14-1; 19N.5; 19P.3(a); CA Penal Code 308(a)(1)(A)(i)]. Tobacco product sale to a person aged 18, 19, or 20 is prohibited. Immediately discontinue sales of tobacco products to individuals aged 18, 19, or 20.
11. Flavored Tobacco Products	[19Q.2; 19H.14-2; 19Q.3; 19Q.4] The sale or distribution by an Establishment of any Flavored Tobacco Product or any Flavored Cigarette is prohibited. Remove all Flavored Tobacco Products for sale or display from premises. [19S.2(a)] No Person shall sell or distribute any Flavored Tobacco Product to a Person in San Francisco. Discontinue all distribution of Flavored Tobacco Products to anyone in San Francisco.
12a. SF Smoking Prohibition	[19F 1009.22; 19H.12; 19N.4; 19O.3]. No owner of any property, facility or establishment subject to SF Health Code Article 19 shall permit any person to smoke in a prohibited area. Post signage and when observed, request patron or tenant to refrain from smoking in a prohibited area without threat of eviction for a residential tenant and/or physical ejection of a patron from the premises.
12b. CA Workplace Indoor Clean Air	[19H.15; CA Labor Code Sec 6404.5; 19F 1009.22; 19N.4; 19O.3]. An employer or owner-operator of an owner-operated business shall not knowingly or intentionally permit, and a person shall not engage in, the smoking of tobacco products at a place of employment or in an enclosed space. Immediately discontinue smoking or use of electronic cigarette devices in prohibited enclosed areas of the workplace.
13. Restricted E-cigarette Products	[19R.2; 19H.14-3]. Sale or distribution of electronic cigarettes lacking a Food and Drug Administration (FDA) premarket order of approval to any person in San Francisco is prohibited. Remove all restricted e-cigarette products without FDA premarket approval for sale or display. [19S.2(b)] No Person shall Sell or Distribute electronic cigarettes lacking a Food and Drug Administration (FDA) premarket order of approval to any persons in San Francisco. Discontinue all distribution and sales of e-cigarette products without premarket approval to any person in San Francisco. Visit https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product
14. Other tobacco control laws	[19H.13; 19N.5]. No Person, Establishment, Permittee, Permittee's agent or employee may violate any local, state, or federal law applicable to Tobacco Products or Tobacco Sales, including but not limited to: [19J 1009.92; 19N.5]. No person shall sell tobacco products in a pharmacy. Immediately discontinue sales of tobacco products.

DBA: <u>Electric City</u>	Address: <u>1347 Polk St, 94109</u>
Permit Owner Name: <u>SFDPH Permit Never Issued</u>	Inspection Date: <u>12/19/2023</u>
Observations:	
<p>The Applicant (also known as Owner/Operator) was informed that SFDPH will submit the Written decision for the issuance of the SFDPH Tobacco Sales within 3-7 days.</p>	
<p><u>Inventory of prohibited products:</u></p> <ul style="list-style-type: none"> - Swisher Sweets Classic Red - 20 packs - Flum Peeble Tobacco and Clear (unflavored) - 15 e-cigarettes - Djarum Specials - 8 packs 	
<p>Photos taken of tobacco products and other tobacco paraphernalia during inspection</p>	
<p>Discontinue Tobacco Products Sales until you've obtain a SFDPH Tobacco Permit.</p>	
<p>And, contact SF Planning Department to ensure that tobacco paraphernalia sales is allowed at your location:</p>	
<p>SF Planning at (628) 652-7300 or pic email picesf.gov org</p>	
Inspector Name: <u>J. Young</u>	Inspector Signature: <u>J. Young</u>
Received By: (Print) <u>Sent by email, regular mail</u>	Received By: (Signature)

and certified mail # 7022.3330.0000.0547.0112

Electric City

THE GO TO GUYS!

WE FIX
Tablets
Phones
Computers

WE REPAIR ALL ELECTRONICS
COMPUTERS
CELL PHONE
TABLETS

VAPE / SMOKE
SHOP

CLOSED CIRCUIT
TELEVISION
AND
AUDIO MONITORING
ON PREMISES

SMILE
FOR YOUR
CAMERA

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Get more
for \$30.00

All-inclusive
\$50.00

Unlimited
\$80.00

VAPE
SHOP

CBD

SMOKE SHOP

OPEN

135

Electric City
TO GUYS!

WE REPAIR ALL ELECTRONICS
COMPUTERS
CELL PHONE
TABLETS

**VAPE/SMOKE
SHOP**


**VAPE
SHOP**

CBD

VAPE SHOP

WE REPAIR ALL ELECTRONICS
COMPUTERS
CELL PHONE
TABLETS

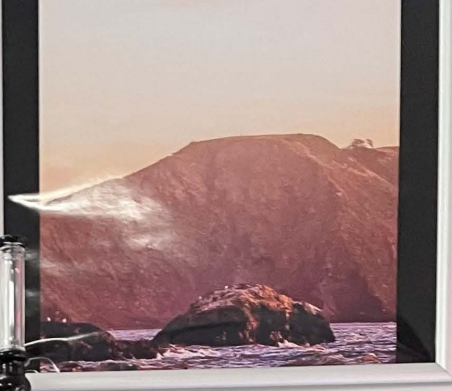
Prepaid

1

**H BLADES
BERSHOP**









WARNING: Cigars are not a safe alternative to cigarettes.

EXHIBIT “J”



Inspection Report: Tobacco & Smoking Program
 San Francisco Department of Public Health
 Population Health Division – Environmental Health Branch
 49 South Van Ness Ave. Suite 600 San Francisco, CA 94103
<https://www.sfdph.org/dph/EH/Tobacco/default.asp>

Inspection Date: 2/4/2023
Time of Inspection: 1:15
EHD Location #:
Tobacco Permit #: T-

Facility Name (DBA): Pine Gift Shop **Address:** 1487 Pine St.

Permit Owner Name: Muaa Mar **Phone Contact:** 415.240.1145

Email: muaamaralmurisi@gmail.com

Inspection Type:
 Routine Reinspection
 Complaint Consultation

Inspection Report:
 Notice of Correction
 Notice of Violation

- Violations:** Mark observed violations.
 Code violations cited are on the back page.
- No violations observed
 - 1. Incomplete/Inaccurate application submitted
 - 2. Unpaid License fees
 - 3. Permit/Licenses not displayed
 - 4. Signage not posted
 - 5. Right to inspect denied
 - 6. Tobacco sales without a valid permit
 - 7. Sale of tobacco products without assistance
 - 8. Sale of single cigarettes
 - 9. Sale to minors (person <18 years old)
 - 10. Sale to persons aged 18, 19, or 20
 - 11. Sale/Distribution of flavored tobacco products
 - 12. Smoking in prohibited area
 - 13. Sale/Distribution of restricted e-cigarette products
 - 14. Other tobacco control laws violated

- Required Action from Permit Owner:**
- No further action required
 - A. Discontinue the illegal sales/distribution of tobacco products.
 - B. Obtain a SF Department of Public Health tobacco permit.
 - C. Relocate and sell tobacco products in a manner that requires vendor assistance by the end of the business day.
 - D. Request that any person observed smoking in areas where smoking is prohibited refrains from smoking.

- Correct By:**
- E. Submit a SF Department of Public Health retail tobacco permit application.
 - F. Pay all license fees.
 - G. Correct information on license(s) and/or permit(s).
 - H. Post licenses and permits in a conspicuous location in the store.
 - I. Post signage.
 - J. Remove _____ tobacco products from display and premises.
 - K. _____

Observations:

Observed multiple (80-100) flavored tobacco vapes for retail sale. *Vapes were removed from display.

Per PTC. Facility has no tobacco permit.

* Immediately discontinue the sale of flavored tobacco and apply for a tobacco permit. Do not sell any tobacco until permit is issued.

- Additional Documents Attached:**
- SFDPH Retail Tobacco Application
 - Notice of Abatement Conference
 - Complaint Report #
 - Compliance Agreement
 - SFPD Report #
 - Tobacco Retail License Booklet
 - Out of Business Form

Self-Verification of Corrected Violation(s): To verify correction of violation(s), send pictures with Facility Name and Address to the Tobacco & Smoking Program's Google Voice Number: (415) 226-9564 or to the below email by end of business day (date):

Inspector Name: A. Johnson **Inspector Signature:** [Signature]

Inspector Email: amy.johnson@sfdph.org **Inspector Phone #:** 415.252.3826

Failure to comply may result in a combination of one or more of the following: Reinspection fee at the hourly rate (30 minutes minimum) per site visit; issuance of an abatement order; administrative penalty of up to \$500 per day; permit suspension of up to 365 days; and/or a referral to the City Attorney's Office in order to take civil or criminal action (Pursuant to SF Bus. and Tax Reg. Code, Article 1, Sect 35; SFHC Sections 19H.17, 19H.19, 19H.20, 19N.3(b), 596, and 1009.25). Violations cited are a public nuisance and must be corrected as established in this Notice (19H.18(a)). Furthermore, violations of the retail tobacco permit ordinance are unfair business practices and presumed to damage each and every resident of the community in which the business operates (19H.18(b)).

Received By: (Print) Hefthallah Amorisi **Received By: (Signature)** [Signature]

	[Health Code Section(s)]. Code Description. Correction. Additional Comments.
1a. SFDPH Retail Tobacco Application	[19H.4(a)]. An Application for a Tobacco Sales permit shall be submitted in the name of the person(s) proposing to engage in the sale of Tobacco Products and shall be signed by each person or an authorized agent thereof. A separate application is required for each location where Tobacco Sales are to be conducted. All Applications shall be submitted on a form supplied by the Department. [19N.3(a); 19N.5]. An establishment must have a valid Tobacco Sales permit to sell electronic cigarettes. Submit a complete Application for the Sale of Tobacco Products and/or E-Cigarette by the correction date.
1b. Fraudulent Application	[19H.16]. No person may obtain a tobacco sales permit by fraudulent or willful misrepresentation. Immediately discontinue the sales of tobacco products. SFDPH may suspend, revoke, and/or impose an administrative penalty for submitting a fraudulent application. The City may prosecute for either an infraction or a misdemeanor punishable by a fine of up to \$500 per violation.
2. Fees	[19H.3; 19H.4(a); 19H.7; 19H.13; SF Business and Tax Regulations Code, Article 1, Sec 35]. In order to obtain and maintain a valid SFDPH Tobacco Sales permit, the Applicant, Permittee, Establishment, or Agent is liable for the following fees when due to the appropriate City or State agency: (A) Non-refundable Tobacco Sales Application Fee; (B) Planning Department Zoning Referral Fee; (C) City and County of San Francisco Licenses Fee; (D) California Department of Tax and Fee Administration Annual License Fee; and (E) City and County of San Francisco Cigarette Litter Abatement Fee (in accordance with SF Administrative Code Chapter 105); (F) When the Department provides environmental health inspection services, including but not limited to, training, and consultation; and (G) When the Department finds violations of local, state, or federal law, requiring follow up inspections to determine correction of cited violations, Establishment is liable for payment of fees. Submit proof of payment to SFDPH Retail Tobacco Program. Failure to resolve financial obligations may result in a suspension of tobacco sales permit until proof of payment is provided to SFDPH.
3. Display Permit	[19H.4(e)]. Each Permittee shall display the permit prominently at each location where Tobacco Sales occur. No permit that has been suspended shall be displayed during the period of suspension. A permit that has been revoked is void and may not be displayed. Post Permit to Operate in a prominent location that is visible to the public and available for review by SFDPH staff.
4. Post Signage	[19F Sect. 1009.22(i)(1)]. Post clear and prominent building entryway "No Smoking/Vaping" signs at each entrance to the establishment; [19F Sect. 1009.22(i)(2)]. Post clear and prominent general "No Smoking/Vaping" signs inside the establishment; [19O.6]. Post clear and prominent no smoking/vaping signs that includes "No use of smokeless tobacco products" at each entrance of the athletic venue; [19P.4]. Post a sign or other notice in the establishment, stating that in San Francisco it is unlawful to sell Tobacco Products, including smokeless tobacco and electronic cigarettes, to persons who are 18, 19, or 20 years of age. In accordance with SFDPH Signage Rules and Regulations, clearly post signage in a prominent location that is visible to the public. For building entryway "No Smoking" or "Tobacco 21" signs, please order online at http://sanfranciscotobaccofreeproject.org → Learn More → Signage
5. Right to Inspect	[19H.9]. The Director of SFDPH or a designee may enter and inspect at any time during regular business hours at any Establishment that is engaging in tobacco sales, or is suspected by the Director of engaging in such sales. Allow any authorized agent of SFDPH to enter, inspect, interview staff, and photo document at any establishment at any time during regular business hours of operation. DPH staff must present proper credentials in order to enter and inspect premises at any time during regular business hours.
6. Valid Permit	[19H.3; 19N.3]. No persons may engage in the tobacco sales or allow tobacco sales in any establishment without first obtaining and maintaining a valid tobacco sales permit from the San Francisco Department of Public Health for each location where tobacco sales are conducted. Immediately discontinue sales of tobacco products and submit the required application(s) and non-refundable processing fees by the correction date provided on the previous page.
7. Self-Service	[19H.10; 19D Sect. 1009.1; 19N.5]. Cigarette vending machine found at establishment. [19H.11; SF Police Code 4600.3; 19N.5]. San Francisco Police Department confirmed self-service sale of tobacco products. Display and sell tobacco products in a manner that requires vendor or retailer-assisted sales.
8. Single Sale	[19H.13; CA Penal Code 308.2]. A person may not sell any cigarette except in a sealed manufacturer's package meeting federal labeling requirements. Immediately discontinue opening cigarette packs for the sale, distribution, or furnishing of single cigarettes.
9. Sale to Minors	[19H.14; 19N.5; CA Penal Code 308(a)(1)(A)(i)]. Tobacco product sale to a minor is prohibited. Immediately discontinue sales of tobacco products to anyone under the age of 18. SFDPH is authorized to suspend a tobacco permit for up to 365 days depending upon frequency of the violation.
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11. Flavored Tobacco Products	[19Q.2; 19H.14-2; 19Q.3; 19Q.4] The sale or distribution by an Establishment of any Flavored Tobacco Product or any Flavored Cigarette is prohibited. Remove all Flavored Tobacco Products for sale or display from premises. [19S.2(a)] No Person shall sell or distribute any Flavored Tobacco Product to a Person in San Francisco. Discontinue all distribution of Flavored Tobacco Products to anyone in San Francisco.
12a. SF Smoking Prohibition	[19F 1009.22; 19H.12; 19N.4; 19O.3]. No owner of any property, facility or establishment subject to SF Health Code Article 19 shall permit any person to smoke in a prohibited area. Post signage and when observed, request patron or tenant to refrain from smoking in a prohibited area without threat of eviction for a residential tenant and/or physical ejection of a patron from the premises.
12b. CA Workplace Indoor Clean Air	[19H.15; CA Labor Code Sec 6404.5; 19F 1009.22; 19N.4; 19O.3]. An employer or owner-operator of an owner-operated business shall not knowingly or intentionally permit, and a person shall not engage in, the smoking of tobacco products at a place of employment or in an enclosed space. Immediately discontinue smoking or use of electronic cigarette devices in prohibited enclosed areas of the workplace.
13. Restricted E-cigarette Products	[19R.2; 19H.14-3]. Sale or distribution of electronic cigarettes lacking a Food and Drug Administration (FDA) premarket order of approval to any person in San Francisco is prohibited. Remove all restricted e-cigarette products without FDA premarket approval for sale or display. [19S.2(b)] No Person shall Sell or Distribute electronic cigarettes lacking a Food and Drug Administration (FDA) premarket order of approval to any persons in San Francisco. Discontinue all distribution and sales of e-cigarette products without premarket approval to any person in San Francisco. Visit https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product
14. Other tobacco control laws	[19H.13; 19N.5]. No Person, Establishment, Permittee, Permittee's agent or employee may violate any local, state, or federal law applicable to Tobacco Products or Tobacco Sales, including but not limited to: [19J 1009.92; 19N.5]. No person shall sell tobacco products in a pharmacy. Immediately discontinue sales of tobacco products.

EXHIBIT “K”



Inspection Report: Tobacco & Smoking Program
 San Francisco Department of Public Health
 Population Health Division – Environmental Health Branch
 49 South Van Ness Ave. Suite 600 San Francisco, CA 94103
<https://www.sfdph.org/dph/EH/Tobacco/default.asp>

Inspection Date: 12/7/2023
Time of Inspection: 11:15 AM
EHD Location #: 122292
Tobacco Permit #: T- Never Permitted

Facility Name (DBA): Pine gift Shop		Address: 1487 Pine St, 94109	
Permit Owner Name: Never Permitted [Pine gift Shop LLC]		Phone Contact:	
Email: muammaralimurisi@gmail.com		Required Action from Permit Owner:	
Inspection Type: <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Reinspection <input type="checkbox"/> Complaint <input type="checkbox"/> Consultation	Inspection Report: <input checked="" type="checkbox"/> Notice of Correction <input type="checkbox"/> Notice of Violation	<input checked="" type="checkbox"/> No further action required <input type="checkbox"/> A. Discontinue the illegal sales/distribution of tobacco products. <input checked="" type="checkbox"/> B. Obtain a SF Department of Public Health tobacco permit. <input type="checkbox"/> C. Relocate and sell tobacco products in a manner that requires vendor assistance by the end of the business day. <input type="checkbox"/> D. Request that any person observed smoking in areas where smoking is prohibited refrains from smoking. Correct By: 12/21/2023 <input checked="" type="checkbox"/> E. Submit a SF Department of Public Health retail tobacco permit application. <input type="checkbox"/> F. Pay all license fees. <input type="checkbox"/> G. Correct information on license(s) and/or permit(s). <input type="checkbox"/> H. Post licenses and permits in a conspicuous location in the store. <input type="checkbox"/> I. Post signage. <input checked="" type="checkbox"/> J. Remove <u>all e-cigarettes</u> tobacco products from display and premises. 12/10/2023 <input type="checkbox"/> K.	

Observations: Joint inspection w/ I. Phan

Observed flavored e-cigarettes boxed behind counter. The Owner plans to return the products to the Distributor, King Wholesale LLC. Owner states that there has not been any e-cigarette sales at the Establishment. Photos taken of shipment receipt and box of e-cigarettes.

Also observed about 60-70% of display shelves dedicated to tobacco paraphernalia. Referral to Planning Department for the tobacco paraphernalia.

Additional Documents Attached: <input checked="" type="checkbox"/> SFDPH Retail Tobacco Application <input type="checkbox"/> Notice of Abatement Conference <input type="checkbox"/> Complaint Report # <input type="checkbox"/> Compliance Agreement <input type="checkbox"/> SFPD Report # <input type="checkbox"/> Tobacco Retail License Booklet <input type="checkbox"/> Out of Business Form	<input type="checkbox"/> Self-Verification of Corrected Violation(s): To verify correction of violation(s), send pictures with Facility Name and Address to the Tobacco & Smoking Program's Google Voice Number: (415) 226-9564 or to the below email by end of business day (date):	
	Inspector Name: J. Young Inspector Email: janine.young@sfdph.org	Inspector Signature: jyoung Inspector Phone #: (415) 252-3903

Failure to comply may result in a combination of one or more of the following: Reinspection fee at the hourly rate (30 minutes minimum) per site visit; issuance of an abatement order; administrative penalty of up to \$500 per day; permit suspension of up to 365 days; and/or a referral to the City Attorney's Office in order to take civil or criminal action (Pursuant to SF Bus. and Tax Reg. Code, Article 1, Sect 35; SFHC Sections 19H.17, 19H.19, 19H.20, 19N.3(b), 596, and 1009.25). Violations cited are a public nuisance and must be corrected as established in this Notice (19H.18(a)). Furthermore, violations of the retail tobacco permit ordinance are unfair business practices and presumed to damage each and every resident of the community in which the business operates (19H.18(b)).

Received By: (Print) Muammar Al murisi **Received By: (Signature)** [Signature]

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14. Other tobacco control laws	[19H.13; 19N.5]. No Person, Establishment, Permittee, Permittee's agent or employee may violate any local, state, or federal law applicable to Tobacco Products or Tobacco Sales, including but not limited to: [19J 1009.92; 19N.5]. No person shall sell tobacco products in a pharmacy. Immediately discontinue sales of tobacco products.



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

London N. Breed, Mayor
 Grant Colfax, M.D., Director of Health
 Patrick Fosdahl, MS, REHS
 Director of Environmental Health

SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH
DIRECTOR HEARING REQUEST

Business Name (DBA)	Pine Gift Shop	Permit Owner	No Permit Issued (Musa Mar)
Permit to Operate #	SFDPH Tobacco Permit Never Issued	Permit Issued Date	Not Applicable
Business Address, Zip Code:	1487 Pine St, SF, 94102		
EH FILE ID #:	122292	SF BAN 1151790	CDTFA Tobacco License #
			Not Applicable

See Notice of Initial Determination


Environmental Health Proposed Enforcement Action: _____

I request that the Department of Public Health, Environmental Health Branch schedule and hold a Director's Hearing regarding the proposed enforcement action. I understand that I will be notified in writing of my scheduled hearing date, time, and location.

OR

I do not wish to request a Director's Hearing for the above case and waive my right to a Director's Hearing. I understand and accept the Environmental Health Enforcement Action listed in the Notice of Initial Determination.

I understand that this declaration is subject to review by the Department of Public Health, Environmental Health Branch. I declare under penalty or 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.

Maamar Almurisi 
 Authorized Agent – Print & Signature

01/19/2024
 Date

(NOTE: If necessary, you may attach additional sheet(s) and/or a brief.)

DIRECTOR'S HEARING INSTRUCTIONS

Within 15 calendar days of receipt of the Notice of Initial Determination, email or mail this completed and signed form to: SFDPH – EH Retail Tobacco Program at EnvHealth.DPH@sfdph.org or Environmental Health, 49 South Van Ness Avenue, Suite 600, SF, CA, 94102.

Failure to submit this request within 15 days will result in the issuance of a final Order from SFDPH Hearing Officer.

DPH Office Use ONLY

Date received: 1/19/2024

District Health Inspector: JANINE YOUNG
 Print Name

49 South Van Ness Avenue, Suite 600, San Francisco, CA 94102 Phone 415-252-3800 | Fax 415-252-3894



EXHIBIT “L”



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

London N. Breed, Mayor
Grant Colfax, MD, Director of Health

Patrick Fosdahl, MS, REHS
Acting Director of Environmental Health

December 29, 2023

Pine Gift Shop LLC
1120 Polk St
San Francisco, CA 94109

RE: Notice of Initial Determination – Pine Gift Shop LLC dba Pine St Gift Shop

Dear Pine St Gift Shop LLC

As the Owner of Pine St Gift Shop at 1487 Pine St in the City and County of San Francisco (“Establishment”) you are hereby notified that your Establishment is in violation of the San Francisco Health Code (SFHC), Article 19H, which was documented on the Inspection Reports dated December 4, and 7, 2023:

1. SFHC Section 19H.3. REQUIREMENT FOR TOBACCO SALES PERMIT

- (a) It shall be unlawful for any person to engage in tobacco sales, or to allow tobacco sales, in any establishment without first obtaining and maintaining a valid tobacco sales permit from the Department for each location where tobacco sales are conducted.

2. SFHC Section 19H.18. OTHER ENFORCEMENT.

- (a) Violations of this Article are hereby declared to be public nuisances and may be enforced as set forth in Section 596 of the San Francisco Health Code.
- (b) Violations of this Article are hereby declared to be unfair business practices and are presumed to damage each and every resident of the community in which the business operates.
- (c) In addition to other remedies provided by this Article or by other law, any violation of this ordinance may be remedied by a civil action brought by the City Attorney, including, for example, administrative or judicial abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The person against whom a successful civil action is brought shall be liable for the costs and attorney's fees incurred by the City and County of San Francisco.

3. Section 19Q.3. SALE OR DISTRIBUTION OF FLAVORED TOBACCO PRODUCTS PROHIBITED.

- (a) The sale or distribution by an Establishment of any Flavored Tobacco Product is prohibited.
- (b) There shall be a rebuttable presumption that a Tobacco Product, other than a Cigarette, is a Flavored Tobacco Product if a Manufacturer or any of the Manufacturer’s agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Tobacco Product has or produces a Characterizing Flavor, including, but not limited to, text, color, and/or images on the product’s Labeling or Packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a Characterizing Flavor.

4. Section 19R.2. Sale or Distribution of Electronic Cigarettes Lacking Food and Drug Administration Premarket Order of Approval Prohibited.

The sale or distribution by an Establishment of an Electronic Cigarette is prohibited where the Electronic Cigarette:

- (a) Is a New Tobacco Product;
- (b) Requires premarket review under 21 U.S.C. § 387j, as may be amended from time to time; and

TOBACCO & SMOKING PROGRAM
49 S Van Ness Ave, San Francisco, CA 94103
Phone 415-252-3800 | Fax 415-252-3894

- (c) Does not have a premarket review order under 21 U.S.C. § 387j(c)(1)(A)(i), as may be amended from time to time.

On December 4, 2023, SFDPH staff observed from the public sidewalk through the glass window electronic cigarettes on shelves located behind the sales counter. SFDPH staff observed and photographed up to 100 flavored e-liquids (“e-cigarettes”) (Attachment A). A Notice of Correction was issued to the Establishment requiring the discontinuation of all tobacco products sales.

Additionally, SFDPH records review indicate that a SFDPH Tobacco Permit has never been issued to any retailer located at 1487 Pine St; the Establishment is located within Supervisorial District #3 which has 95 active tobacco permits; and there are five (5) tobacco retailers and one (1) school within 500 feet of your Establishment (Attachment B). Moreover, the following SFHC 19H.4(f) sections provides grounds for the denial of the SFDPH Tobacco Permit:

(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.

(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.

(5) No new permit shall be issued in any supervisorial district that has 45 or more Establishments with Tobacco Sales permits.

(8) No new permit shall be issued for a location not previously occupied by a permitted Establishment.

On December 7, 2023, SFDPH staff conducted a follow-up inspection and observed that Pine Gift Shop had the flavored e-cigarettes off the shelf and placed in a box. According to the Owner, the Establishment did not sell any tobacco product and the e-cigarettes would be returned to the wholesaler. Additionally, SFDPH staff observed that approximately 60-70% of the display was dedicated to tobacco paraphernalia (Attachment C). An amended Notice of Correction was issued to the Establishment for the removal of the e-cigarettes from the premises by December 10, 2023.

Based on the findings set forth above, the following are required:

1. That, you remove all tobacco products from the Establishment within 24 hours and cease all sales of tobacco products (SFHC 19H.22) and that tobacco products may not be sold at the Establishment without first obtaining the SFDPH Tobacco Permit.
2. That, failure to remove all tobacco products from the Establishment within 24 hours may incur a referral to the City Attorney’s Office to bring an action for injunction to restrain you from selling tobacco products without a valid SFDPH Tobacco Permit, with possible civil and administrative penalties.

Notice of Determination – 1487 Pine St dba Pine St Gift Shop

3. As authorized under 19H.17 and 19H.20, civil and/or administrative penalties may not exceed one hundred dollars (\$100) for the first violation; two hundred dollars (\$200) for the second violation; and five hundred dollars (\$500) for the third and each subsequent violation. For purposes of administrative penalties, each day that tobacco sales occur without a permit shall constitute a separate violation.
4. As authorized by SFHC, Articles 19H and 11, Sections 19H.18 and 596, respectively, if you fail to comply with this Notice, you and the Property Owner may be responsible for engaging in a public nuisance and unfair business practices which are presumed to damage each and every resident of the community in which the Establishment operates.
5. That, you and the Property Owner may be liable for other charges, costs, including administrative costs, expenses incurred by the Department, fines, attorneys' fees, and penalties as provided by the Health Code.
6. That, after all tobacco products have been removed from the Establishment, you may submit a completed SFDPH Application for the Sale of Tobacco Products (19H.4(a)) with the non-refundable one hundred twenty dollars (\$120) application processing fee and all required documentation.
7. That, you understand that the submittal of the SFDPH Application for the Sale of Tobacco Products doesn't guarantee the issuance of the SFDPH tobacco permit to the Establishment.
8. And that tobacco products may not be sold at the Establishment until the Applicant obtains the SFDPH Tobacco Permit and San Francisco Treasurer and Tax Collector's Office H-31 Tobacco License.

You, as the Owner of the Establishment, have the right to request a hearing by submitting the attached Director's Hearing Request Form within 15 days from the date this Notice is received. If no request for a hearing is filed with the Director within the appropriate period, the right to request a hearing shall be deemed waived, and the Director's determination shall become final and effective on the 15th day from the date this Notice was received.

If you have any questions, please contact Senior Health Inspector Janine Young at (415) 252-3903 or janine.young@sfdph.org.

Sincerely,


Patrick Fosdahl, MS, REHS
Director of Environmental Health

Attachment: Director's Hearing Request Form

CC: SFDPH EHB – Consumer Protection Program
SFDPH CHEP – Tobacco Free Project
Property Owner on Record

ATTACHMENT A

1487 Pine Street (DBA: Pine Gift Shop)
LID# 122292

All photos taken on December 4, 2023 by Inspector Amy Johnson at Pine Gift Shop located at 1487 Pine St in San Francisco. The following photos show flavored e-liquids lined a shelf located behind the cashier counter in the public's view. The Establishment Owner began removing the flavored tobacco products and placing them in a box to return to the wholesaler.





1487 Pine St

- Tobacco Permits
 - Existing Tobacco Permits
- Schools
 - Schools K-12

CALIFORNIA TOBACCO CENTER

JEET BIG TIMES

ROYAL LIQUORS & WINES

NOB HILL LIQUORS

CHEVRON STATIONS INC #1522

Not Permitted



Tobacco sales are NOT permitted at this location

SUTTER FINE FOODS

SF HOOKAH PALACE

DISCOUNT GROCERS

BEVERAGES & MORE #71

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

12/7/2023

1487 Pine Street (DBA: Pine Gift Shop)
LID#122292



12/7/2023

1487 Pine Street (DBA: Pine Gift Shop)

LID#122292



EXHIBIT “M”

The Establishment is located within 500 feet of 1 (one) School.

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 (See Attachment D).

The Establishment is located within 500 feet of 4 (four) other Establishments that have a valid SFDPH Retail Tobacco Sales Permit.

3. According to SFHC 19H.4(f)(5) and 19H.5(a), no new permit shall be issued in any Supervisorial District that has 45 or more Establishments with SFDPH Tobacco Sales Permits.

The Establishment is in Supervisorial District 3 which currently has 95 valid SFDPH Retail Tobacco Sales Permits.

Additionally, we reviewed all exceptions under SFHC Section 19H.6, where SFDPH 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 tobacco application with the \$120 (one hundred twenty dollars) non-refundable processing fee.

SFHC Section 19H.6. Exceptions for Certain New Permits

1. **New Buyer of a Retail Food Store Establishment or Tobacco Shop.** The owner of a Retail Food Store Establishment or Tobacco Shop who holds a SFDPH Retail Tobacco Sales permit and has been in business at the location continuously from January 18, 2010 through January 18, 2015, submits an affidavit to the Director that attests to (a) ownership of the business at the same location; (b) under the same SFDPH Tobacco Sales permit for five (5) consecutive years immediately preceding submission of the affidavit; and (c) the owner is in negotiations with a specific buyer for the Retail Food Store Establishment or Tobacco Shop at that location, then that buyer ("New Buyer") may apply for, and the Director may issue, a Tobacco Sales permit to the New Buyer for the Retail Food Store Establishment or Tobacco Shop at that location, on a one-time basis.

The previous Permit Holder closed the SFDPH Tobacco Permit in 2015; 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 previous Permit Holder closed the SFDPH Tobacco Permit in 2015; and therefore, doesn't qualify for the direct negotiation exception.

3. **Child of the Permit Holder ("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 2015.

The Applicant is not the Child of the previous Permit Holder.

4. **Seismic Retrofitting Relocation.** An owner of a retail food store establishment or Tobacco Shop holding a Tobacco Sales permit as of the effective date of this Section 19H.6, who must relocate under Chapter 34B of the Building Code may apply for, and the Director may issue, a new Tobacco Sales permit for the location of the owner's retail food store establishment or Tobacco Shop.

The Applicant is not a Permit Holder who was required to relocate under the Building Code.

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 Applicant is not a Tavern in compliance with SFHC Section 1009.23(d).

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 Applicant is not a Tavern in compliance with SFHC Section 1009.23(d).

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 previous Permit Holder.

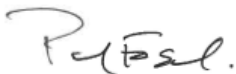
Appeal Process. You have the right to appeal this decision to deny your application for a tobacco retailer permit. (*Pursuant to Section 19H.24 and Article 1 of the San Francisco Business and Tax Regulations Code*). Appeals may be filed with the San Francisco Board of Appeals within 15 calendar days of the date of this notice. Appeals may be filed in-person (by appointment only), by phone ((628) 652-1150) or email (boardofappeals@sfgov.org). The Board's Office is located at 49 South Van Ness Avenue, Suite 1475. More information can be found on the Board's website at: <https://sf.gov/file-appeal-permit-or-decision>.

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 – CHEP Branch
SFDPH – EHB – Health District



PERMIT TO OPERATE

T 79241

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

ISSUED: 6/16/2014

Type of Operation: Tobacco Only Shop

Tax Code: 131

DPH Code:

CERT No. 489971

Name and Address Below:

Owner: Regal Marketing, Inc.
 DBA: It Is Vapor 13
 Street Address: 1347 Polk St
 San Francisco, CA 94109

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.

DUPLICATE

Inspector

1. h. f.

Principal Inspector

Director of Environmental Health

Richard J. Lee

Director of Public Health

B. Smith



SAN FRANCISCO PLANNING DEPARTMENT

NOTICE OF ENFORCEMENT

June 08, 2015

Property Owner

Hipyen Limited Partnership
438 23rd Avenue, Apt. 3
San Francisco, CA 94121

Business Owner

Austin Dunn and Waleed Fayzi
It Is Vapor/Vapor City
1347 Polk Street
San Francisco, CA 94109

Site Address:	1347 Polk St
Assessor's Block/ Lot:	0667/ 001
Complaint Number:	2015-005418ENF
Zoning District:	NCD, Polk Street Neighborhood Commercial
Code Violation:	723.69 Tobacco Paraphernalia Establishments
Administrative Penalty:	Up to \$250 Each Day of Violation
Response Due:	Within 15 days from the date of this Notice
Staff Contact:	Binh.Nguyen, 415-575-9177, Binh.H.Nguyen@sfgov.org

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

The Planning Department has received a complaint that a Planning Code violation exists on the above referenced property that needs to be resolved. As the owner and/or leaseholder of the subject property, you are a responsible party. The purpose of this notice is to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below:

DESCRIPTION OF VIOLATION

Our record indicates that the subject property is currently authorized for commercial use purposes. The violation pertains to the retail establishment known as Vapor City, located on the ground floor at 1347 Polk Street. The complaint alleges that Vapor City is operating as a Tobacco Paraphernalia establishment in the Polk Street Neighborhood Commercial District where this use is not permitted.

Pursuant to Planning Code Section 790.123, Tobacco Paraphernalia is defined as "a retail use where more than 10% of the square footage of occupied floor area or more than 10 linear feet of display area projected to the floor, whichever is less, is dedicated to the sale, distribution, delivery, furnishing or marketing of Tobacco Paraphernalia from one person to another." However, in the Polk Street Neighborhood Commercial District (generally properties along Polk Street between Post & Filbert Streets and along Larkin Street between Post & Sacramento Streets), no retail use selling *any* amount of Tobacco Paraphernalia whatsoever is allowed. In other words, unlike elsewhere in the City, selling even a single smoking device is not allowed.

"Tobacco Paraphernalia" means "paraphernalia, devices, or instruments that are designed or manufactured for the smoking, ingesting, inhaling, or otherwise introducing into the body of tobacco, products prepared from tobacco, or controlled substances as defined in California Health and Safety Code Sections 11054 et seq."

On April 29, 2015, the Planning Department sent you a Notice of Complaint to inform you about the complaint. You did not contact the Planning Department to respond to this notice.

On June 1, 2015 the Planning Department staff conducted a site visit and observed that Tobacco Paraphernalia displayed inside the store occupied more than ten percent of the square footage of the floor area and/or more than 10 linear feet of display area.

Pursuant to Planning Code Section 171 structures and land in any zoning district shall be used only for the purposes listed in this Code as permitted in that district, and in accordance with the regulations established for that district. Further, pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures. Failure to comply with any of Planning Code provisions constitutes a violation of Planning Code and is subject to enforcement process under Code Section 176.

HOW TO CORRECT THE VIOLATION

The Planning Department requires that you immediately proceed to abate the violation by discontinuing the Tobacco Paraphernalia use from the subject property.

The responsible party will need to provide adequate evidence to demonstrate that either no violation exists or that the violation has been abated. If you believe that Tobacco Paraphernalia use at the above property has continued to exist at this location prior to December 2008, please provide such evidence including business registration, lease copy, and any other documents to demonstrate compliance.

TIMELINE TO RESPOND

The responsible party has **fifteen (15) days from the date of this notice** to contact the staff planner noted at the top of this notice and submit evidence to demonstrate that the corrective actions have been taken to bring the subject property into compliance with the Planning Code. A site visit may also be required to verify the authorized use at the above property. The corrective actions shall be taken as early as possible. Any unreasonable delays in abatement of the violation may result in further enforcement action by the Planning Department.

PENALTIES AND APPEAL RIGHTS

Failure to respond to this notice by abating the violation or demonstrating compliance with the Planning Code within fifteen (15) days from the date of this notice will result in issuance of a Notice of Violation by the Zoning Administrator. Administrative penalties of up to **\$250 per day** will also be assessed to the responsible party for each day the violation continues thereafter. The Notice of Violation provides appeal processes noted below.

- 1) Request for Zoning Administrator Hearing. The Zoning Administrator's decision is appealable to the Board of Appeals.

- 2) Appeal of the Notice of Violation to the Board of Appeals. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter has been pending either before the Zoning Administrator or before the Board of Appeals.

ENFORCEMENT TIME AND MATERIALS FEE

Pursuant to Planning Code Section 350(c)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations and violations of Planning Commission and Planning Department's Conditions of Approval. Accordingly, the responsible party may be subject to an amount of \$1,238 plus any additional accrued time and materials cost for Code Enforcement investigation and abatement of violation. This fee is separate from the administrative penalties as noted above and is not appealable.

OTHER APPLICATIONS UNDER CONSIDERATION

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any new applications that you may wish to pursue in the future. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until the violation is corrected. We want to assist you in ensuring that the subject property is in full compliance with the Planning Code. You may contact the enforcement planner as noted above for any questions.

中文詢問請電: 558.6378

Para información en Español llamar al: 558.6378



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Registered Business Locations - San Francisco

Based on [Registered Business Locations - San Francisco](#)

SUMMARY

Location Id 0489971-01-001

Business Account Number 0489971

Ownership Name Regal Marketing Inc

DBA Name It Is Vapor 13

Street Address 1347 Polk St

City San Francisco

State CA

Source Zipcode 94109

Business Start Date 04/01/2014

Business End Date 03/31/2015

Location Start Date 04/01/2014

Location End Date 03/31/2015

Mail Address

Mail City

Mail Zipcode

Mail State

NAICS Code

NAICS Code

Description

Parking Tax

Transient

Occupancy Tax

LIC Code

LIC Code

Description

Supervisor District 3

Neighborhoods - Analysis Boundaries Nob Hill

Business Corridor

Business Location POINT (-122.42046 37.789314)

UniqueID 0489971-01-001-0489971-04-01-2014

ATTACHMENT C



Find in this Dataset

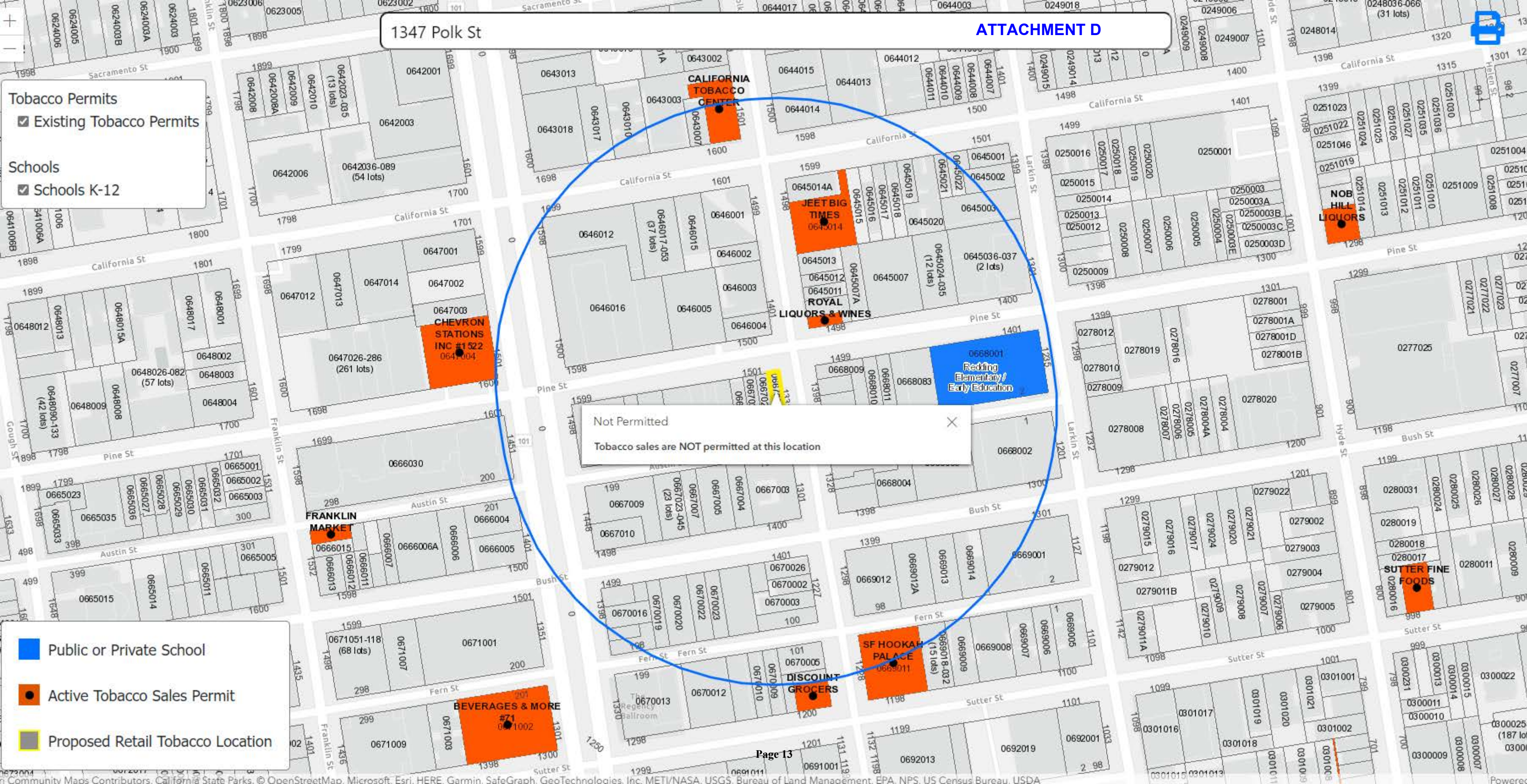
More Views | Filter | Visualize | Export | Discuss ⁸ | Embed | About

1347 Polk St

ATTACHMENT D



- Tobacco Permits
 - Existing Tobacco Permits
- Schools
 - Schools K-12



Not Permitted
Tobacco sales are NOT permitted at this location

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

1 **PROOF OF SERVICE**

2 I, MOLLY MCDONALD, declare as follows:

3 I am a citizen of the United States, over the age of eighteen years and not a party to the above-
4 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.

5 On March 21, 2024, I served the following document(s):

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

8 on the following persons at the locations specified:

9 Randall B. Schmidt, Esq.
10 Attorney for Applicant
11 Law Offices of Randall B. Schmidt
12 611 Gateway Blvd., #120
South San Francisco, CA 94080
randalls@yahoo.com

13 Electric City, Applicant
14 c/o Ahmad Sultani, Agent for Applicant
27480 Ponderosa Court
15 Hayward, CA 94545
ahmadsultani84@yahoo.com

16
17 in the manner indicated below:

18
19 **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic
20 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: molly.mcdonald@sfcityatty.org
21 in portable document format ("PDF") Adobe Acrobat.

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

24 Executed March 21, 2024, at San Francisco, California.

25 *Molly McDonald*
26 _____
27 MOLLY MCDONALD
28