

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
SAN FRANCISCO EAGLE BAR, LLC,)
Appellant(s))
vs.)
DEPARTMENT OF PUBLIC HEALTH,)
Respondent)

Appeal No. **25-009**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on February 19, 2025, 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 DENIAL on February 4, 2025, of a Retail Tobacco Sales Permit (application for a Retail Tobacco Sales Permit has been DENIED for the following reasons: (1) No new permit shall be issued in any supervisorial district that has 45 or more Establishments with Tobacco Sales Permits, the business location is in Supervisorial District 6 which currently has 77 valid Retail Tobacco Sales Permits, (2) No new permit shall be issued if the applicant will be located within 500 feet of an existing Establishment; the business location is located within 500 feet of one other Establishment that has a Retail Tobacco Sales Permit, (3) No new permit shall be issued to any applicant whose main purpose is offering food or alcoholic beverages for sale or consumption on the premises, the business location is permitted as a Bar & Tavern) at 398 12th Street.

APPLICATION NO. EDH ID 110521

FOR HEARING ON April 9, 2025

Address of Appellant(s):

Address of Other Parties:

San Francisco Eagle Bar, LLC, Appellant(s)
c/o Thomas Smurro, Attorney for Appellant(s)
301 Calle Empalme
San Clemente, CA 92672

N/A

City and County of San Francisco



Daniel Lurie
Mayor

Board of Appeals

Julie Lamarre
Executive Director

February 19, 2025

Adam Radtke
Department of Public Health
San Francisco City Attorney's Office
1390 Market Street, 7th Floor
San Francisco, CA 94102
adam.radtke@sfcityattty.org

Appeal No.: 25-009
Appeal Title: San Francisco Eagle Bar, LLC vs. DPH
Subject Property: 398 12th Street
Permit Type: Retail Tobacco Sales Permit
Determination No.: EDH ID 110521

Dear Adam Radtke:

This is to notify you that an appeal has been filed with this office protesting the DENIAL of the above-referenced Retail Tobacco Sales Permit

We are enclosing a copy of the **Preliminary Statement of Appeal** for your information.

The hearing regarding this matter has been scheduled for **April 9, 2025, at 5:00 p.m., and will be held in Room 416 of San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place.** The parties may also attend remotely via the Zoom video platform.

If you have any further questions, you may email this office at boardofappeals@sfgov.org or call (628) 652-1150.

Sincerely,

BOARD STAFF

cc:

San Francisco Eagle Bar, LLC, Appellant(s)
c/o Thomas Smurro, Attorney for Appellant(s)
301 Calle Empalme
San Clemente, CA 92672
tsmurro@yahoo.com



Date Filed: February 18, 2025

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

PRELIMINARY STATEMENT FOR APPEAL NO. 25-009

I / We, **San Francisco Eagle Bar, LLC**, hereby appeal the following departmental action: **Denial of a Retail Tobacco Sales Permit (No. EDH ID 110521)** by the **Department of Public Health** which was issued or became effective on: **February 4, 2025**, for the property located at: **398 12th Street**.

BRIEFING SCHEDULE:

Appellant's Brief is due on or before: 4:30 p.m. on **March 20, 2025, (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.lamarre@sfgov.org, corey.teague@sfgov.org, Natalia.fossi@sfgov.org, and adam.radtke@sfcityatty.org

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **April 3, 2025, (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.lamarre@sfgov.org, corey.teague@sfgov.org, Natalia.fossi@sfgov.org, and tsmurro@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, April 9, 2025, 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 to the preliminary Statement of Appeal.

Appellant or Agent:

Signature: Via Email

Print Name: Thomas Smurro, attorney for appellant

Thomas E. Smurro, Esq.
ATTORNEY AT LAW

301 Calle Empalme
San Clemente, CA 92672
Telephone: 949.874.3555

February 17, 2025

San Francisco Board of Appeals
49 South Van Ness Ave., Suite 1475
San Francisco, CA 94103

Via email only to: boardofappeals@sfgov.org

Re: *San Francisco Eagle Bar*

San Francisco Board of Appeals:

NOTICE IS HEREBY GIVEN: that the San Francisco Eagle Bar (hereinafter "Bar") is appealing the "Notification of Tobacco Permit Denial," (hereinafter "Notification"), dated February 4, 2025, a copy of which is attached hereto.

The Notification bases its denial as if Bar's application, dated June 25, 2021, was one for an applicant under the "New Permit under Density Rules." This is not the case.

Bar is a Legacy Business, officially so designated by the City of San Francisco. This designation requires an establishment to be in business for at least 35 years. Bar has been at the same location, 398 12th St. in San Francisco, since in or about 1981.

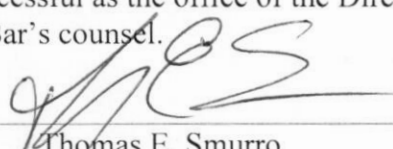
It is believed that Bar has been selling tobacco products at that location since its inception; that it has obtained the necessary licenses from the State of California and the necessary permits from the City of San Francisco since such licenses and permits were required.

Bar, like all bars in San Francisco, was required to close down on or about March 13, 2020 due to Covid, by orders of the Governor and the Mayor of San Francisco. Bar complied with those orders. Bars were allowed to reopen by orders of the Governor and Mayor in June 2021. The application of Bar at issue, dated June 25, 2021, was therefore submitted as soon as it was permitted to reopen.

Bar's application should have been processed as an "Amendment/Update Records (Use original permit date)."

Efforts to communicate this error has been unsuccessful as the office of the Director of Public Health has refused to communicate with Bar's counsel.

February 17, 2025



Thomas E. Smurro
Attorney for San Francisco Eagle Bar



City and County of San Francisco
Daniel Lurie, Mayor

San Francisco Department of Public Health

Naveena Bobba, MD
Acting Director of Health

Notification of Tobacco Permit Denial

EFFECTIVE DATE: February 4, 2025

FACILITY NAME (DBA): San Francisco Eagle Bar, LLC

FACILITY ADDRESS & ZIP: 398 12th St. San Francisco CA 94103

LEGAL OWNER NAME: J A Montiel Urbina

RESPONSIBLE PERSON NAME: J A Montiel Urbina

Mailing Address, City, State, Zip: 398 12TH ST SAN FRANCISCO CA 94103

EHD ID#: 110521

Supervisory District: 6

Number of Tobacco Permits: 77

Dear Jesus Alejandro Montiel Urbina :

You submitted an application for a Retail Tobacco Sales Permit on June 25, 2021. You are hereby notified that your application for San Francisco Department of Public Health (SFDPH) Retail Tobacco Sales Permit at 398 12th St. ("Business Location") has been **denied**, in accordance with Article 19H of the San Francisco Health Code (SFHC) and San Francisco Department of Public Health Director's Rules and Regulations for Retail Tobacco Sales, on the following basis:

Reasons for Denial of Retail Tobacco Sales Permit:

1. According to the SFHC 19H.4(f) and 19H.5(a), no new permit shall be issued in any supervisory district that has 45 or more Establishments with Tobacco Sales Permits.
The Business Location is in Supervisory District 6 which currently has 77 valid Retail Tobacco Sales Permits.
2. According to SFHC 19H.4(f), 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. (Please see the attached map)
The Business Location is located within 500 feet of 1 other Establishments that have a valid Retail Tobacco Sales Permit.
3. According to SFHC 19H.4(f)(6), no new permit shall be issued to any Applicant whose main purpose is offering food or alcoholic beverages for sale or consumption on the premises, including Bars and Restaurants.
The Business location is permitted as a Bar & Tavern.

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

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

naveena.bobba@sfdph.org ♦ (415) 554-2526 ♦ 101 Grove Street, Room 308, San Francisco, CA 94102

In addition, we have reviewed all seven exceptions under SFHC Article 19H.6 listed below, where SFDPH has determined that the applicant does not qualify for any exception. If you believe that you do qualify for one of the below exceptions, you are able to submit a new tobacco application with the \$100 nonrefundable processing fee.

SECTION 2. EXCEPTIONS FOR CERTAIN NEW PERMITS

1. **A Retail Food Store Establishment or Tobacco Shop Permittee since January 18, 2010,** may submit an affidavit to the Director attesting to: (a) their ownership of the Establishment; (b) under the same Tobacco Sale Permit; (c) for at least five (5) consecutive years immediately before the submission of the affidavit; and (d) Direct Negotiations. Upon submission of the Permittee's affidavit, a New Buyer may apply for a Tobacco Sales Permit for the Permittee's Retail Food Store Establishment or Tobacco Shop.
The Permittee (i.e. John Gardiner and Joseph Banks) at the Business Location was issued their Retail Tobacco Permit on June 30, 2004, but did not own and operate continuously from January 18, 2010, to January 18, 2015 and are therefore not considered Tavern Permittee.
2. **Seismic Retrofitting Relocation.** A Retail Food Store Establishment or Tobacco Shop Permittee as of January 18, 2015, which must relocate from their Establishment due to seismic retrofitting under Chapter 34B of the Building Code may apply for a Tobacco Sales Permit for their Establishment. The Permittee's application is subject to further review including confirmation of seismic retrofitting by the Department of Building Inspection.
The Permittee at the Business Location is not relocating due to seismic retrofitting under Chapter 34B.
3. **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 Permittee at the Business Location is not the Original Owner as of January 18, 2015, and therefore cannot be defined as a New Buyer.
4. **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 Permittee (i.e. John Gardiner and Joseph Banks) at the Business Location was issued their Retail Tobacco Permit on June 30, 2004, but did not own and operate continuously

from June 25, 2016, to June 25, 2021, and are therefore not considered Tavern Permittee.

5. **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.

There is no New Buyer of a Tavern permitted at this location, therefore there can be no subsequent buyer of a tavern.

6. **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, Jesus Alejandro Montiel Urbina, is not the spouse or domestic partner of the Permittee.

7. **Child of 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, Jesus Alejandro Montiel Urbina, is not the child of the Permittee.

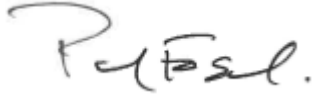
Appeal Process. You have the right to appeal this decision to deny your application for a tobacco retailer permit. (*Pursuant to Section 19H.24 and Article 1 of the San Francisco Business and Tax Regulations Code*). Appeals may be filed with the San Francisco Board of Appeals within 15 calendar days 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 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,

A handwritten signature in black ink, appearing to read "P. Fosdahl".

Patrick Fosdahl, MS, REHS
Director of Environmental
Health
Environmental Health Branch
SFDPH – Population Health Division
Cc: Jennifer Callewaert

BRIEF SUBMITTED BY THE APPELLANT(S)

1 Thomas E. Smurro SBN: 79686

2 301 Calle Empalme

3 San Clemente, CA 92672

4 949 874-3555

5 Attorneys for San Francisco Eagle Bar LLC

7
8 APPEAL FROM THE DECISION OF

9 THE SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH

10
11
12 SAN FRANCISCO EAGLE BAR LLC,

EHD ID# 110521

13
14 Appellant

APPELLANT'S BRIEF

15 vs.

16 SAN FRANCISCO DEPARTMENT OF

Date: 4/9/2025

17 PUBLIC HEALTH,

Time: 5:00 p.m.

18
19 Respondent

Place: Room 416

San Francisco City Hall

1 **I. INTRODUCTION**

2 On June 25, 2021 the San Francisco Eagle Bar (hereinafter “BAR”) applied to the San
3 Francisco Department of Public Health to reactivate its Retail Tobacco Sales Permit. This was
4 immediately after California and the City of San Francisco allowed bars to reopen after the
5 Covid pandemic closed them in early 2020. Its application was denied in a letter dated February
6 4, 2025.

7
8 The grounds for denial stated in that letter do not apply to the facts of BAR’s situation.
9 This application was processed, inexplicably over the course of almost four years, in error, as if
10 BAR was a new business or a new applicant rather than an established business wanting to
11 reactivate its permit after state law and city ordinance allowed it to reopen.
12

13 Both the doctrine of laches and the department’s use of the wrong standard for processing
14 BAR’s application demand reversal.

15 In addition, after appellant was served with this February 4, 2025 denial, multiple
16 attempts by BAR’s counsel, to contact the Department of Health to advise of its obvious error
17 and to discuss the facts behind this application, were frustrated when multiple phone calls, email
18 and correspondence received no response before the deadline to file the instant appeal.
19

20 BAR timely filed its appeal on February 17, 2025.
21

22 **II. BACKGROUND**

23
24 BAR has been located at 398 12th St in San Francisco since 1981. It has gone under
25 various names such as the Eagle, the SF Eagle, the San Francisco Eagle Bar, The Eagle Tavern,
26 etc. but has always been at that specific location, serving the local community, out-of-towners
27
28

1 and international patrons. It has served alcohol and sold tobacco products for decades.

2 (Declaration of Jesus Alejandro Montiel ¶ 3)

3 The property on which BAR is located has been owned continuously by the Nikitopoulos
4 family. Leases with the Nikitopoulos family requires the premises to be used as a “high standard
5 bar.” (Declaration of Jesus Alejandro Montiel ¶ 3)

7 In 2023 the City of San Francisco bestowed the highly esteemed designation of “Legacy
8 Business” on BAR for its value and significance to the community over several decades. Legacy
9 status is only bestowed on businesses that have served San Francisco for a minimum of 35 years.
10 BAR is the opposite of a new business. (Declaration of Jesus Alejandro Montiel ¶ 15)

12 BAR has served as a gathering place for the Bay Area community, as well as for out-of-
13 state and foreign visitors for decades and continues to do so. BAR has sponsored never-ending
14 fund raisers for various non-profit organizations and groups as its contribution and commitment
15 to the City of San Francisco and its residents. (Declaration of Jesus Alejandro Montiel ¶¶ 16, 18)
16 As a courtesy to its customers BAR sells tobacco products. For many years several cigar clubs
17 have made BAR their home base. (Declaration of Jesus Alejandro Montiel ¶ 17)

19 BAR made history in 2022 when Eagle Plaza, adjacent to BAR, became the world’s first
20 plaza dedicated exclusively to the leather community. Its creation had the support of the entire
21 Board of Supervisors and was dedicated by then-Mayor London Breed with a big thank you to
22 BAR for its part in the realization and installation of this iconic plaza. (Declaration of Jesus
23 Alejandro Montiel ¶ 14)

25 BAR is a vital asset to San Francisco and part of its on-going history.

1 **III. OPERATION OF BAR SINCE MARCH 2012**

2 It would be helpful for purposes of this appeal to review the relevant history of BAR
3 since 2012.

4 Mike Leon and Jesus Alejandro (“Alex”) Montiel became operators of BAR in August
5 2012. The bar remained closed from then until March 2013 due to an extensive remodel of
6 BAR. BAR reopened to patrons in March 2013. (Declaration of Jesus Alejandro Montiel ¶ 2)

7 Mr. Leon was responsible, and did apply, for the necessary permits and licenses for
8 BAR’s operation. These included the California License and the San Francisco permit, allowing
9 the retail sale of tobacco products at BAR. In addition, Mr. Leon obtained a San Francisco
10 business license, checking the box that indicated that BAR would be a retail seller of tobacco
11 products. All applicable fees and taxes for selling these items were routinely paid. (Declaration
12 of Jesus Alejandro Montiel ¶¶ 4, 9-10)

13 In March 2020 California and San Francisco prohibited bars from conducting business due
14 to the Covid pandemic. BAR complied with that prohibition. During the Covid shut down BAR
15 did not sell alcoholic or tobacco products. (Declaration of Jesus Alejandro Montiel ¶ 6)

16 In June 2021 California and San Francisco lifted the ban on bars. BAR decided to reopen
17 for business. In that same month, specifically on June 25, 2021, BAR submitted its application
18 for the San Francisco permit to sell tobacco products (the application that is the subject matter of
19 the instant appeal) as BAR wished to reopen for business as it was now legally able to do so.
20 (Declaration of Jesus Alejandro Montiel ¶¶ 7-8)

21 However, the June 25, 2021 application was submitted by Mr. Montiel, not by Mr. Leon.
22 Mr. Leon had recently passed away and this responsibility now fell to Mr. Montiel. (Declaration
23 of Jesus Alejandro Montiel ¶ 7)

1 BAR does not have a copy of the June 25, 2021 application. This item is one of the
2 documents BAR's attorney wished to obtain from the department before this appeal was filed.
3 (Declaration of Thomas E. Smurro ¶ 9) It is presumed that Mr. Montiel may have inadvertently
4 checked the wrong box, or perhaps used the wrong application, to make it appear BAR was
5 applying as a new business rather than asking that BAR's pre-existing permit be reinstated now
6 that bars were allowed to reopen and conduct business.
7

8 9 **IV. THE DENIAL OF THE JUNE 25, 2021 APPLICATION IS BARRED BY LACHES**

10 The application in question was submitted on June 25, 2021. It was denied on February
11 4, 2025.
12

13 Laches occurs when a significant passage of time occurs that prevents the establishment
14 of relevant facts to the detriment of a party. In a legal setting this occurs when the time interval
15 is so significant that a party is prejudiced because relevant evidence can no longer be found or is
16 no longer available, or important witnesses can no longer be found or otherwise are unavailable
17 or when similar circumstances are present.
18

19 Under California law, laches is a complete defense to a cause of action.

20 It is indisputable that:

21 The time interval between when BAR's application was submitted in 2021 and its denial
22 in 2025 is way beyond an extraordinary amount of time. This was another issue that BAR's
23 counsel wished to discuss with Mr. Fosdahl before this appeal was filed. (Declaration of
24 Thomas E. Smurro ¶ 9)
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1 And the time period immediately before the June 2021 application was submitted was
2 the exact two-year time interval when the Covid shutdown of bars made the sale of alcohol or
3 tobacco impossible and, thus, making having a tobacco permit moot. .

4
5 BAR's application to obtain a San Francisco tobacco permit in June 2021 when bars were
6 allowed to reopen was therefore both prompt and reasonable.

7 BAR does not have records going back to 2013 to show copies of the licenses and
8 permits that Mr. Leon obtained for BAR. (Declaration of Jesus Alejandro Montiel ¶ 4) Asking
9 an applicant to produce records that go back so many years is not reasonable.

10
11 Obtaining a declaration from Mr. Leon regarding his activity in applying for, and
12 obtaining, such permits and licenses is not possible since he passed away years ago.

13 These facts constitute a classic case of laches. The Department of Public Health waited
14 almost 4 years to rule on an application when evidence and declarations from a witness
15 supporting the BAR's position are no longer available.

16
17 Appellant cannot conceive of any legitimate reason why the department took so long to
18 rule on the BAR's application. And as a result of this tardiness Bar has been required to retain
19 counsel, and pay for this expense, to appeal this frivolous, time-barred denial.

20 Under all these circumstances, the denial of BAR's application to reinstate its tobacco
21 permit should be reversed due to laches alone.

22
23
24 **V. THE DEPARTMENT OF PUBLIC HEALTH ALSO APPLIED THE WRONG**
25 **STANDARD IN DENYING BAR'S APPLICATION**

26 The February 4, 2025 denial letter is based exclusively on the premise that BAR was
27 applying for a permit as a new business or as a new applicant. This is not the case.

1 BAR is a San Francisco designated Legacy Business, in operation for more than 35 years
2 at the same location. It has served alcoholic products and sold tobacco products at that location
3 during this time period, after obtaining any necessary permits and licenses to do so. (Declaration
4 of Jesus Alejandro Montiel ¶¶ 3,5,10,15) By bestowing the Legacy Business designation on
5 BAR, the City of San Francisco obviously recognizes the San Francisco Eagle Bar as one
6 business.
7

8 The application of Mr. Montiel in June 2021 was intended to be no more than a request to
9 reactivate the tobacco permit that had not been necessary during the Covid shut down of bars.
10 And he did this promptly in June 2021 when bars were finally permitted to reopen.
11

12 Therefore, none of the grounds in the denial letter are either valid or relevant to an
13 established business with a history of the requisite permits and licenses. The San Francisco Eagle
14 Bar was not a new business or a new owner seeking a permit for the first time.
15

16 The denial by the department should be reversed on this ground alone as well.
17

18 **VI. THE DEPARTMENT REFUSED TO DISCUSS ITS DENIAL, OR OTHERWISE**
19 **COOPERATE, WITH COUNSEL BEFORE THE DEADLINE TO FILE AN APPEAL**

20 BAR retained Thomas E. Smurro (hereinafter “ATTORNEY”) to represent Bar in the
21 instant appeal.
22

23 On February 10, 2025, right after being retained, ATTORNEY called Patrick Fosdahl,
24 the Director of Environmental Health and the author of the February 4, 2025 denial letter, to
25 discuss the extraordinary delay in ruling on the application, the error of treating BAR as a new
26 business, to have other questions answered and to obtain records, if necessary, to support BAR’s
27 position if an appeal was still going forward. (Declaration of Thomas E. Smurro ¶¶ 9-10)
28

1 When Mr. Fosdahl did not answer when called at the phone number listed in his letter
2 ATTORNEY left a voicemail for Mr. Fosdahl to return his call. (Declaration of Thomas E.
3 Smurro ¶ 8)

4
5 When ATTORNEY received no response from Mr. Fosdahl, he sent correspondence,
6 dated February 14, 2025, both by email and US mail, asking him to contact ATTORNEY before
7 the appellate deadline. Exhibit C is a copy of that letter. (Declaration of Thomas E. Smurro
8 ¶ 11) This letter still did not generate a response from Mr. Fosdahl. (Declaration of Thomas E.
9 Smurro ¶ 12)

10
11 It is unclear why Mr. Fosdahl never responded particularly after learning in
12 ATTORNEY's letter that BAR's application was not for a new business or for a new applicant
13 but to reactivate a pre-existing permit after the Covid shut down was reversed.

14 Before the appellate deadline occurred, ATTORNEY also called the separate phone
15 number for the Department of Public Health for a similar purpose. These went to voicemail.
16 Only one of those phone calls was returned. That conversation did not go very far. When
17 ATTORNEY asked the representative how he could obtain copies of previous tobacco permits
18 for BAR, the representative refused to tell him and the phone call was disconnected. (Declaration
19 of Thomas E. Smurro ¶ 13)

20
21 It is unclear why neither the Department of Public Health representatives nor its
22 Environmental Health Director were so uncooperative.

23
24 The 15-day interval between when the denial letter is served by email and when the
25 deadline to file an appeal occurs does not leave much time for an appellant to gather the
26 necessary documents to support its position, particularly when it relates to an application that has
27
28

1 gathered mold for four years and when the grounds for the denial are not conveyed to the
2 applicant until days before it is required to file its appeal.

3 To be frank, the department's lack of cooperation after the February 4, 2025 decision was
4 served is consistent with its 4-year lag in processing BAR's application.
5

6
7 **VII. CONCLUSION**

8 The February 4, 2025 denial of the San Francisco tobacco permit to the San Francisco
9 Eagle Bar should be reversed. The denial is barred by laches. San Francisco Eagle Bar is not a
10 new business or a new applicant applying for a tobacco permit for the first time. The San
11 Francisco Eagle Bar should be allowed to purchase a Retail Tobacco Sales Permit and sell
12 tobacco products at its establishment.
13

14 Respectfully submitted.

15 March 20, 2024



16 Thomas E. Smurro
17 Attorney for San Francisco Eagle Bar LLC
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EXHIBIT A

DECLARATION OF JESUS ALEJANDRO MONTIEL

I, Jesus Alejandro Montiel, declare under penalty of perjury of the laws of the State of California as follows:

1. I have personal knowledge of the following facts and could testify truthfully thereto if called to do so.
2. Mike Leon and I became operators of the Eagle Bar in August 2012. The bar remained closed until March 2013 as the bar was being extensively remodeled.
3. The San Francisco Eagle opened in 1981 at 398 12th St in San Francisco. It has undergone various names with the word “Eagle” in it but the property has always belonged to the Nikitopoulos family that requires that the premises be used as a “high standard bar.”
4. Mr. Leon was responsible for obtaining all the license and permits that we needed for the operation of the bar and to make sure that all fees and taxes related to the same were timely paid. The bar does not have records going back to 2013 to show copies of the licenses and permits that Mr. Leon obtained for the bar.
5. Alcohol and tobacco have been sold at the bar for decades.
6. The bar was closed in March 2020 due to California’s and San Francisco’s mandatory closure orders. During this closure no tobacco or alcohol was sold.
7. In June 2021 bars were allowed to reopen. I immediately sent out the necessary applications to what I believed were the correct California and San Francisco departments to obtain the necessary permits and licenses that were required for the operation of the bar. Since Mr. Leon had passed away it was now my responsibility to perform this function.

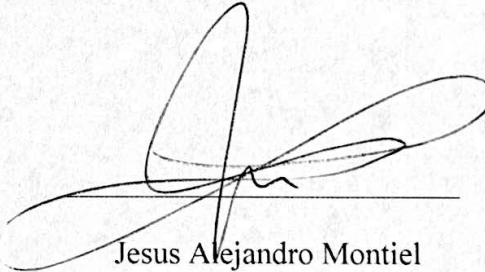
- 1 8. I applied for the permit at issue in this case on June 25, 2021.
- 2 9. With respect to the sale of tobacco products I also applied for, and obtained, the
- 3 necessary license from California, and yearly business permits from San Francisco which
- 4 included checking the box indicating that the bar would be selling tobacco products.
- 5
- 6 10. To the best of my knowledge since the bar reopened in June 2021 the bar has obtained all
- 7 necessary permits and licenses to sell alcohol and tobacco and has paid all fees, taxes and
- 8 “abatement” surcharges related to the same. I am unaware of any outstanding invoice or
- 9 delinquency in payment related to the same.
- 10
- 11 11. Since June 2021, when I submitted the application at issue, I became aware that the
- 12 Department of Public Health sends inspectors to determine if an establishment has a retail
- 13 tobacco sales permit, as one such inspector visited in that month.
- 14
- 15 12. I am unaware of any such inspection at any time between 2013 and the Covid shut down
- 16 in 2020.
- 17
- 18 13. Since my involvement with the bar in 2013 I have always attempted to make sure that it
- 19 complies with all state and local laws dealing with its line of business.
- 20
- 21 14. Mr. Leon and I conceived of the idea of a plaza adjacent to the bar that would be
- 22 dedicated to the leather community. With the endorsement of Mayor Breed and all
- 23 members of the Board of Supervisors, Eagle Plaza became a reality in 2022.
- 24
- 25 15. In 2023 the bar was honored by San Francisco with the distinction of being designated a
- 26 “Legacy Business.” This honor is bestowed upon businesses that have at least an
- 27 upstanding 35- year history of operation in the city.
- 28
16. Since its inception San Francisco Eagle Bar has sponsored fund raisers on continuing
- basis for local non-profit clubs and groups.

1 17. Since its inception San Francisco Eagle Bar has also been the home of several tobacco
2 clubs who meet regularly here. In my opinion it is an important part of gender identity in
3 the modern world.
4

5 18. The Eagle family has opened its arms to welcome Bay Area residents, out-of-towners and
6 foreign visitors for decades. It would be a disservice to patrons of the bar to have the sale
7 of tobacco products discontinued.
8

9 I declare under penalty of perjury under the laws of the State of California that the foregoing
10 is true and correct to the best of my knowledge and belief. This declaration was executed on
11 March 19, 2025 in San Francisco, CA.
12

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Jesus Alejandro Montiel

Declarant

EXHIBIT B

DECLARATION OF THOMAS E. SMURRO

I, Thomas E. Smurro declare under penalty of perjury of the laws of the State of California as follows:

1. I have personal knowledge of the following facts and could testify truthfully thereto if called to do so.
2. I have been a licensed California attorney since 1978.
3. I was retained by the San Francisco Eagle Bar LLC shortly after my client was served with a February 4, 2025 letter from the San Francisco Department of Public Health denying its application to reactivate its retail tobacco sales permit. This letter was authored by Patrick Fosdahl who identified himself as “Director of Environmental Health.”
4. I immediately identified some blatant irregularities in the denial letter.
5. The letter shows the application was submitted on June 25, 2021. Yet the denial ruling occurred almost 4 years later. This was an extraordinarily long interval to rule on an application.
6. The grounds for denial were all based on a new business applying for a retail tobacco permit and/or for a first-time applicant. But the San Francisco Eagle is a San Francisco legacy business and has sold tobacco products for decades.
7. The denial letter states that an appeal of its decision must be filed within 15 days of its service on the applicant. So the time to file an appeal, as opposed to ruling on an application, is of the essence.
8. I therefore called Mr. Fosdahl on February 10, 2025 at the phone number listed on his letter. It went to voicemail. I identified myself and asked him to call back as soon as

possible to discuss this matter. My goal was to make sure his department was aware of the underlying facts of the bar's application, as well as to obtain certain information and documents if an appeal was necessary.

9. I specifically wanted a copy of my client's June 25, 2021 application, all tobacco permits issued to the bar, the dates and specifics of all inspections of the bar by his department, the dates the department contacted San Francisco business licensees who checked retail sales of tobacco on their business license applications, the dates the department contacted establishments that possessed California licenses for the retail sale of tobacco products in San Francisco to ensure they had the necessary city permit, etc. In short, to determine why the department was treating my client as a new business applying for a tobacco permit for the first time when it was at the same location and selling tobacco products for decades. I also wanted to inquire why it had taken four years to rule on my client's application.

10. I hoped by discussing the actual facts with Mr. Fosdahl we could all avoid the time and expense of participating in a needless, frivolous appeal based upon incomplete or erroneous information.

11. When Mr. Fosdahl did not return my phone call, I sent him a letter, dated February 14, 2025. It was sent to the email address listed on his February 4, 2025 letter and a courtesy copy was also sent by US mail. Ex. C to this brief is a true and accurate copy of that letter.

12. Mr. Fosdahl has never responded to me by phone, email or letter or in any other fashion.

13. With the deadline to file an appeal fast approaching, and with silence from Mr. Fosdahl, I reached out to his department at other phone numbers listed on the internet. I left multiple

1 messages over multiple days. Only one of those resulted in a call back. It was a very
2 brief conversation. I asked the representative how a business could obtain copies of its
3 applications for a retail tobacco permit, as well as a history of dates that permits were
4 issued to that business. The representative refused to tell me and the phone was
5 disconnected.
6

7 14. I really don't understand why a department issuing permits would take four years to rule
8 on an application. Nor do I understand why a department would refuse to communicate
9 with an applicant's attorney who is attempting to obtain basic information and
10 documentation in response to a ruling the department just issued.
11

12
13 I declare under penalty of perjury under the laws of the State of California that the foregoing
14 is true and correct to the best of my knowledge and belief. This declaration was executed on
15 March 19, 2025 in San Clemente, CA.
16

17
18 

19 Thomas E. Smurro

20 Declarant
21
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24
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27
28

EXHIBIT C

Thomas E. Smurro, Esq.
ATTORNEY AT LAW

301 Calle Empalme
San Clemente, CA 92672
Telephone: 949.874.3555

February 14, 2025

Via US Mail and email to naveena.hobba@sfdph.org

San Francisco Department of Health
101 Grove Street, Room 308
San Francisco CA 94102
Attn: Patrick Fosdahl

Mr. Fosdahl:

I represent the San Francisco Eagle Bar.

I have a copy of your February 4, 2025 letter to my client entitled "Notification of Tobacco Permit Denial."

I left a message for you to call me on February 10, 2025 at the phone number in your letter. Since I have not heard back from you, I thought it prudent to send this correspondence.

I believe your office has come to an erroneous conclusion based on misinformation or error as to what my client was seeking when it submitted its June 25, 2021 application for a retail tobacco permit.

First of all, my client is a Legacy Property, so designated by the City of San Francisco, for being in business for a minimum of 35 years. It has been at the same location throughout, at 398 12th St. in San Francisco.

I have reason to believe that it has been selling tobacco products at that location since it opened in or about 1981; that it obtained the necessary licenses from California and the necessary permits from the City of San Francisco during the years such licenses and permits were required.

As you know, the Governor of California and the Mayor of San Francisco ordered all bars in San Francisco to close, due to the Covid pandemic, beginning on or about March 13, 2020. My client complied with those orders. As you probably recall, in March 2020 it was unknown how long the closing of bars would be in effect. My client chose not to renew its permit while it was ordered closed.

Both California and San Francisco lifted their ban on mandatory bar closures in June 2021. My client wished to reopen for business in response.

On June 25, 2021 it applied to San Francisco for the necessary tobacco permit.

This was not a new application to sell tobacco at 398 12th St. but a request to have its permit reactivated when it was finally allowed to reopen. It appears my client was directed to fill out an application to reactivate its permit.

This is apparently when the error occurred. As you know, the application has a section entitled "What Track is the Business Applying For?" It appears that the application was improperly reviewed as an application for a "New Permit Under Density Rules" rather than an "Amendment/Update Records (Use Original Permit Date.)"

The basis for denial in the February 4, 2025 letter deals with issues that only apply to a new permit under density rules. My client was NOT applying for such a new permit.

I have independently confirmed with a member of your department that it is perfectly acceptable for a permit holder to pause holding a tobacco retail permit when the business is temporarily not selling tobacco products and then to ask that the permit be reactivated when the business wishes to sell them again.

My client's decision to decline renewing its retail permit when it was forced to close, by state law and local ordinance, was a rational and perfectly acceptable decision. When bars were allowed to reopen in June 2021, my client promptly applied to have its permit reactivated.

I can only assume that your staff were unaware of these circumstances and made the erroneous assumption that an application was being made for a new business that was now subject to density rules.

The San Francisco Eagle Bar is not only a San Francisco Legacy Business, it is also a social gathering place for locals, out-of-staters and international visitors. It was responsible for the installation of the first plaza in the world (appropriately named Eagle Plaza) dedicated to the leather community. Its installation had the support of the entire Board of Supervisors, with Mayor Breed officiating at the plaza's opening.

There is also a good number of cigar clubs that regularly, and for decades, used the San Francisco Eagle Bar as a meeting place. The sale of tobacco products on the premises includes being there for their convenience.

The San Francisco Eagle Bar is, indeed, the opposite of a new business.

I thought it would be helpful for you to be aware of these facts before time and expense is expended on an appeal based on error or on information of which your department might otherwise be unaware.

If I do not hear from you by February 18, 2025, my client will have no choice but to appeal the denial. If you wish to discuss any issue, please let me know.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Smurro', with a long horizontal line extending to the right.

Thomas E. Smurro

1 Thomas E. Smurro SBN: 79686

2 301 Calle Empalme

3 San Clemente, CA 92672

4 949 874-3555

5 Attorneys for San Francisco Eagle Bar LLC

6
7
8 APPEAL FROM THE DECISION OF

9 THE SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH

10
11
12 SAN FRANCISCO EAGLE BAR LLC,

EHD ID# 110521

13
14 Appellant

SUPPLEMENT TO

APPELLANT’S BRIEF

15 vs.

16 SAN FRANCISCO DEPARTMENT OF

Date: 4/9/2025

17 PUBLIC HEALTH,

Time: 5:00 p.m.

18
19 Respondent

Place: Room 416

20 San Francisco City Hall

EXHIBIT D

PETITION

To: The San Francisco Department of Public Health, Tobacco Division

We the undersigned are customers of the San Francisco Eagle Bar family.

We request that the City of San Francisco allow the San Francisco Eagle Bar to continue to sell tobacco products to those customers who wish to purchase and use such products in the appropriate outdoor locations at the bar.

Rover Schaufel

Ryan C LaLonde

Mitch Pike

MARK FORREST

Harrison "Ami" Crenshaw

Eduardo Wagar

Laurie Stalter

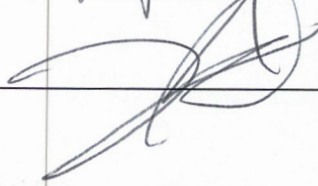
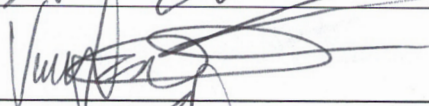
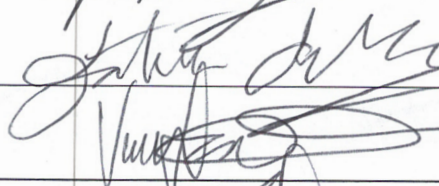
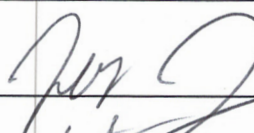
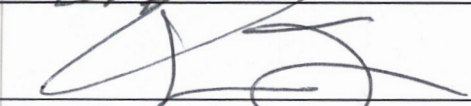
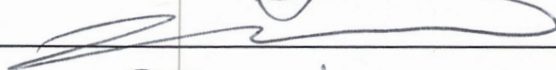
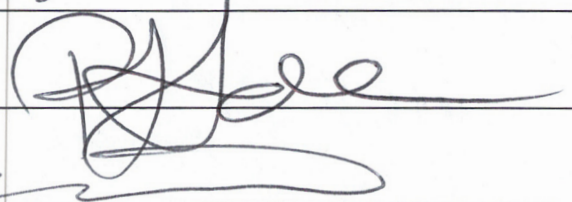
Shane Whitaker
& Kuefner

Jeff Johnson

Fabian Alvarez

Vance Anderson

Jesus Beltran-Robledo



Shawn Andrews

Tom Villanueva

Colin Day

Mitchell Bramfield

John Catapano

Liam Corrie

Leon Maxwell

William Fernandez

Jose Anjos

Havaghan Williams

Curtis Pinta

Kevin Quintore

Ariane Potts

Tuh Dusat

DANDY BUCKLEY

Patrick McCulla

Francisco Martinez

S. A. [Signature]

[Signature]

Tom Coffey

Leon Maxwell

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Jose P.

Havaghan Williams

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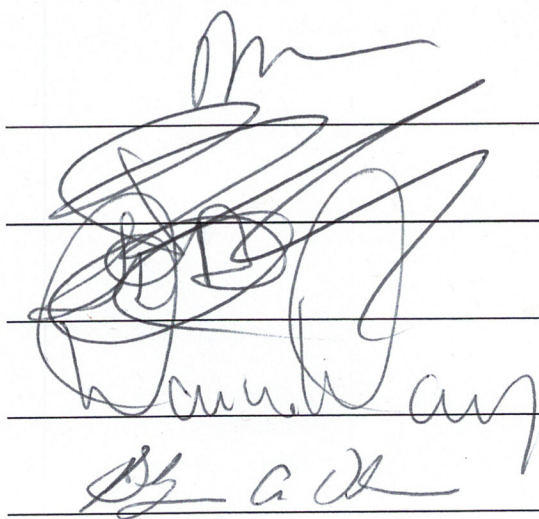
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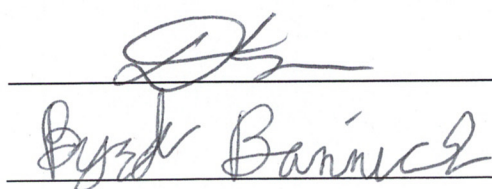
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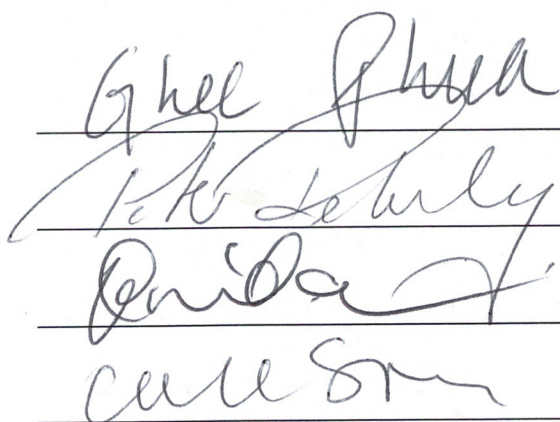
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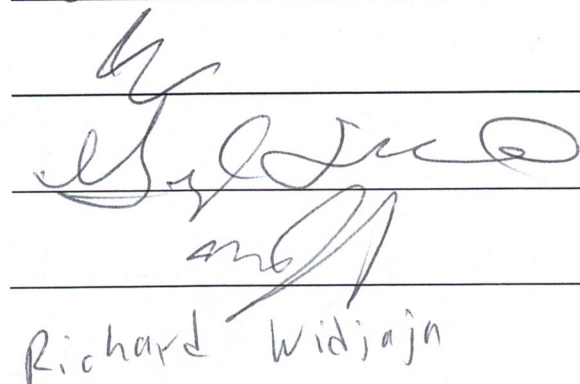
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David Giora


Percy Castellanos


Thomas Bonfigli

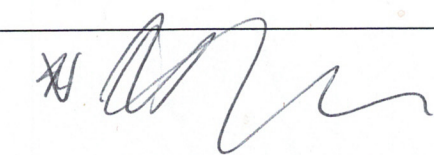

Dave Dandy


Glynn Durham

DAVID GIORA
Percy Castellanos
Thomas Bonfigli
Dave Dandy
Glynn Durham
BRADY DRACULIC
Byrd Bannick

PETER REHBERG
David Ahle
CAUDEN STORM

Austin Fede
Graylin Thorne
Matt Fede


Richard Widjaja

Victor Jino

~~Ben~~ Brian Huynh
A Louis Tang

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KONSTANTINOS VAINAS

Cps
Chris

Craig Watts
Charles Dwyer

P Marc Oute

Mac Dwyer

Rob Fawcett

Rob Fawcett

John Pals
Nigel

John Kite

Rob Callbeck

Billie

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BEN LIKER

Ly Tan

Terry Beredetto

Way

Matthew Moon

Lawson

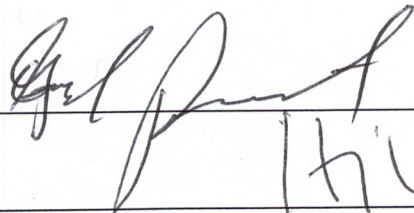
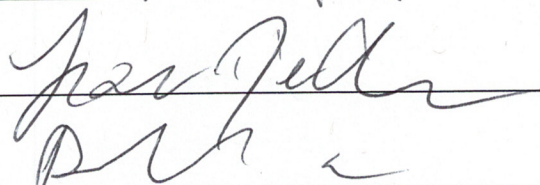



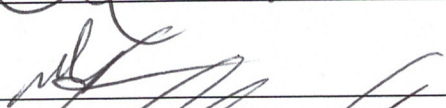



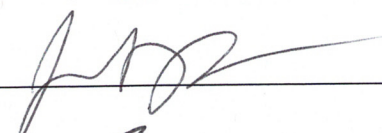

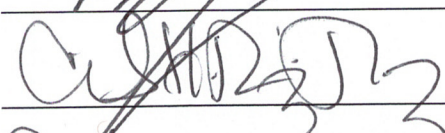


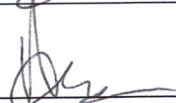
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John

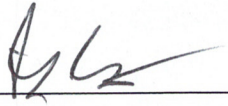
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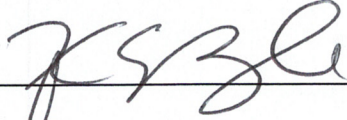
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JAMES ACKILLS

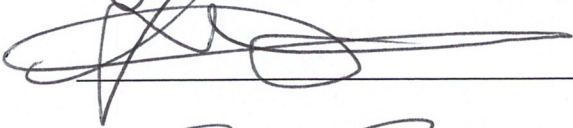
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	Michael Castro-Rivera
	Christian Chirac
	MAMA MILIU
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	Justin Perez
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	Carlos Al-Reiz Wones
	Crystal Mesa
	Scarlet Ghabbari
	Anoop - MALIU

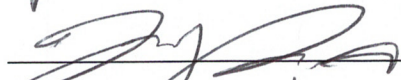
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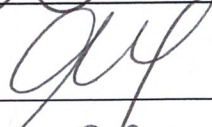


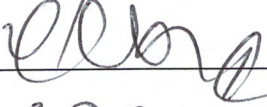


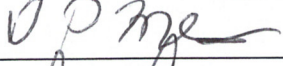

Charles Gault



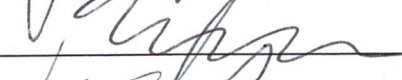





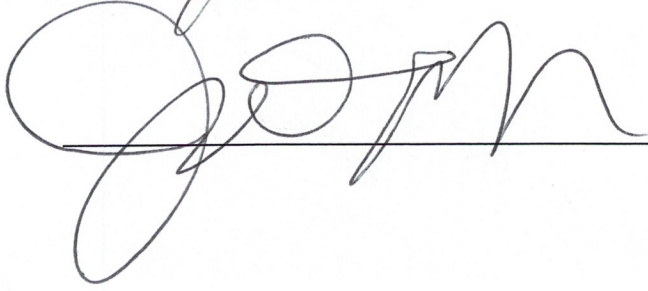












Brian Adams - STADE

Kevin Boyle

David Cronk

Dustin Ocho

Javi Pineda

Christopher Eungelt

R. Alcazar

Anthony Morda

Esteban Camba

Nicholas Chy

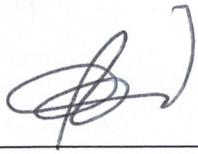
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Tommy Spero

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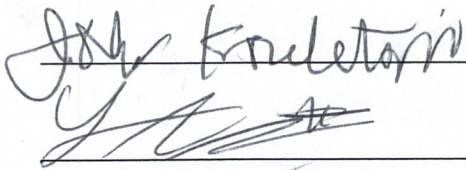
Justin Mack



Richard M...

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Tyson A. Redhouse



JOHN KOWETSI

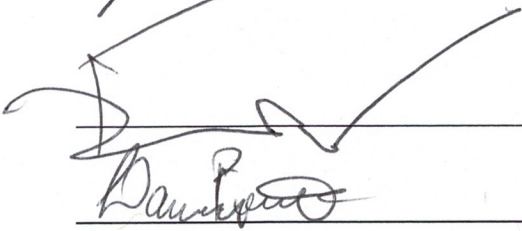
Luis Alencar

by

Kyle Ng

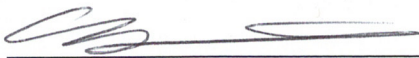


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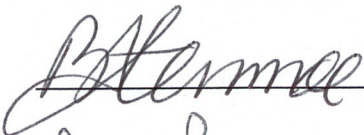


DAVID PIERCE

Laurence Pietrowski



CJ MUSSELMAN



B Stenmo

Ellis Lindsey

ELLIS LINDSEY

Samantha

FERNANDO RAMIREZ

mlp

Mark Jew



Casé DaMorde

Phil Pappas

Ricardo Maya Sanchez

Wili Lote

Eli Cathen

TARIK HARM

PATRICK SANTANA

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Robert Marshall

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George Chateaux

Monofin Morrogianis

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CHRIS CANLAS

Ramiro Colorado

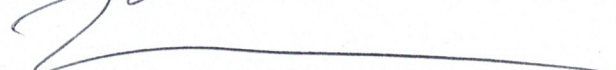
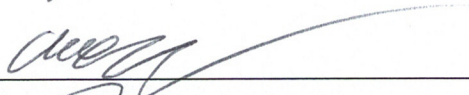
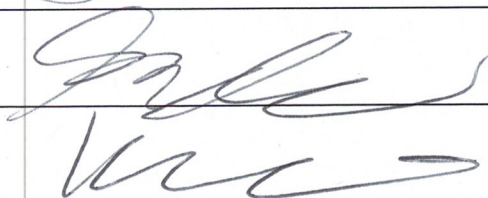
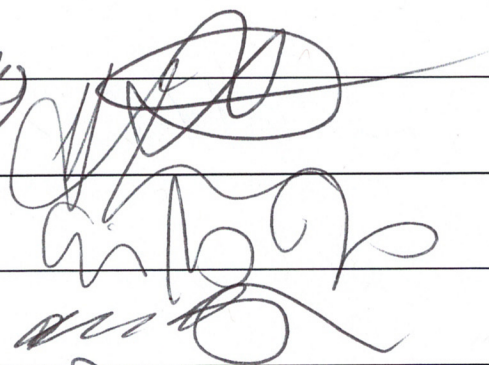
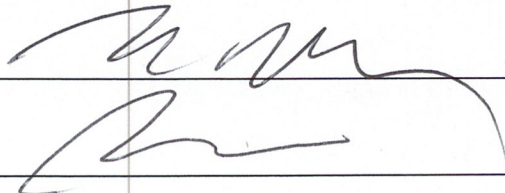
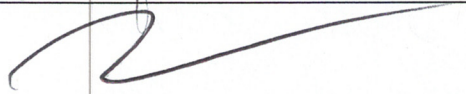
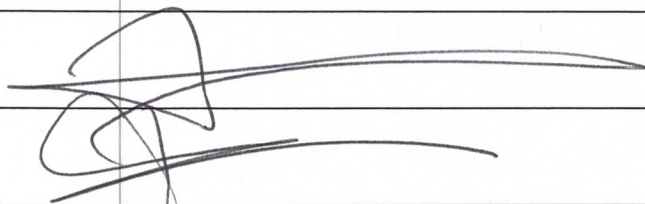
Miles Price

Kevin Raskin

Dylan Bell

Ari Efrom

Paul D M



DEAN WAGMAN

JORGE MALDONADO

~~John~~

GARE FISHER

SAM SAMPSON

~~John~~

CHRISTOPHER VASQUEZ

~~John~~

Kevin Kaefer

~~John~~

Shawn Myers

~~John~~

~~John~~

Scott Andrews

Chris

Connor Houghton

M. Hult

Matthew Hunklee

~~John~~

Andrei

~~John~~

Robert Gates

Robert Mankin

Kevin Stone

Eric Prendergast

Kevin Stone

Kevin Stone

PETITION

To: The San Francisco Department of Public Health, Tobacco Division

We the undersigned are customers of the San Francisco Eagle Bar family.

We request that the City of San Francisco allow the San Francisco Eagle Bar to continue to sell tobacco products to those customers who wish to purchase and use such products in the appropriate outdoor locations at the bar.

Alex Seidel

Ray M

Kenneth Givens

Jim

Abraham DeAlba

Abraham DeAlba

Joshua Van Lee

Joshua Van Lee

Miguel Manzo

Miguel Manzo

Daniel Rdy
RM BANNON

Daniel Rdy
RM BANNON

Timothy J Mooney

Timothy J Mooney

Robert O'Gen

Robert O'Gen

Tim Bland

Tim Bland

Maria Hafer

Maria Hafer

Rebekah Shovel

Rebekah Shovel

Kevin Fitzgerald

Kevin Fitzgerald

JOSEPH MILLER

JOSEPH MILLER

Marcus Wilson

Marcus Wilson

Greg Boyd

Greg Boyd

Christopher Wood

Christopher Wood

Manuel A. Ramirez

Manuel A. Ramirez

Steven G. Kuo

Steven G. Kuo

Christopher Kan

CS

Roberto Alvarez

RA

James Pazar

JP

Robert Roth

RR

David Hyman

DH

BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)

SAN FRANCISCO
BOARD OF APPEALS

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

SAN FRANCISCO EAGLE BAR, LLC,

Appellant,

vs.

DEPARTMENT OF PUBLIC HEALTH,

Respondent.

Appeal No. 25-009

RESPONDENT'S OPPOSITION BRIEF

Hearing Date: April 9, 2025

Time: 5:00 p.m.

Place: City Hall, Room 416

INTRODUCTION

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

In this appeal, Jesus Alejandro Montiel d/b/a San Francisco Eagle Bar LLC ("Appellant") applied for a Tobacco Sales permit for the business located at 398 12th St, San Francisco, California 94103. The Department denied Appellant's permit application because the Health Code prohibits the Department from issuing a Tobacco Sales permit to an establishment in a Supervisorial District with more than 45 permitted establishments, that is located within 500 feet of another permitted tobacco sales establishment, and is a restaurant/bar that serves on-site consumption of food and/or beverages. (Health Code §§ 19H.4(f)(4)-(6), 19H.5(a).) Given these restrictions and the fact that no exception applies, neither the Department nor the Board have discretion to issue a permit. For these reasons, the Board must uphold the Department's denial of the Tobacco Sales permit.

FACTUAL BACKGROUND

On February 25, 2004, John Gardiner applied for a Tobacco Sales permit for a different business, Hole in the Wall Saloon, Inc. d/b/a Eagle Tavern (“Eagle Tavern”), to sell tobacco products at the property located at 398 12th St. (*See* Declaration of Michelle Vega in Support of Respondent’s Opposition Brief [hereinafter “Vega Decl.”] p. 1, Ex. A-B.) The Department issued the Tobacco Sales permit to Eagle Tavern on June 30, 2004. (*Id.*) 398 12th St is located within the SoMA Neighborhood Commercial District. (Vega Decl. p. 2.) Eagle Tavern also had a permit, issued by DPH on December 23, 1997, to operate as a restaurant/bar serving on-site consumption of food and beverages. (*Ibid.*, Ex. C-D.) Eagle Tavern maintained both permits in good standing until the establishment closed in September 2012. (*Ibid.*, Ex. E).

The Eagle Tavern was later acquired by new owners, Appellant and Mike Leon, in August 2012 and reopened with a new name, SF Eagle Bar LLC d/b/a SF Eagle Bar (“SF Eagle Bar”) in March 2013. (Appellant’s Brief at p. 4.) Appellant applied for, and obtained, a food permit from the Department in March 2013. (Vega Decl. p. 2, Ex. F-G.) However, Appellant did not apply for a Tobacco Sales permit until June 14, 2021. (Vega Decl. p. 2, Ex. J.)

On June 9, 2021, Senior Health Inspector, Janine Young, (“Inspector Young”) inspected SF Eagle Bar and observed tobacco products for sale without a permit. (Vega Decl. p. 2, Ex. H.) Appellant confirmed the tobacco sales, and SF Eagle Bar was cited by the Department for selling tobacco products without a valid Tobacco Sales permit and ordered the business to cease and desist selling tobacco paraphernalia. (Vega Decl. p. 2, Ex. H-I) Five days later, Appellant applied for a Tobacco Sales permit. (Vega Decl. p. 2, Ex. J.) On August 5, 2021, Inspector Young emailed Appellant to inform them that their Tobacco Sales permit application was incomplete because Appellant needed to (1) fill in the ownership percentages, (2) submit a copy of the CDTFA Cigarette Retail License number, and (3) change the Legal Owner Name to match the SF Treasurer and Tax Collector’s Office (SFTTX) Business Account. (Vega Decl. p. 3, Ex. K.) Inspector Young requested that Appellant submit a completed Tobacco Sales permit application by the end of business day on September 7, 2021. (*Ibid.*) Appellant was warned that failure to do so would deem the application

1 abandoned and lead to the denial of the application. (*Ibid.*) The application was incomplete and never
2 completed as requested. (Vega Decl. p. 3.)

3 On July 21, 2023, Inspector Young inspected SF Eagle Bar and observed (again) tobacco
4 products for sale without a permit. (Vega Decl. p. 3, Ex. L.) Appellant admitted to selling cigarettes
5 since the change of ownership in 2012, and SF Eagle Bar was cited again by the Department for
6 selling tobacco products without a valid Tobacco Sales permit and again ordered to cease and desist
7 selling tobacco paraphernalia. (*Ibid.*) On that day, Inspector Young issued a Notice of Correction
8 requiring Appellant and SF Eagle Bar to submit a Tobacco Sales permit application no later than
9 August 31, 2023 and pay a \$120 processing fee. (Vega Decl. p. 3, Ex M.) Again, Appellant failed to
10 complete the application as requested. (Vega Decl. p. 3.) On September 6, 2023, Inspector Young
11 encouraged Appellant for a third time to submit a Tobacco Sales permit application and requested that
12 Appellant provide certain documents to support their claim of tobacco sales prior to the City's density
13 law effective date. (Vega Decl. p. 3, Ex M.) Appellant did not submit a new application, respond, or
14 provide any of the requested documents. (Vega Decl. p. 3.)

15 Inspector Young examined Appellant's eligibility for a Tobacco Sales permit, including by
16 reviewing the Department's records, as well as records from the City's Office of the Treasurer and Tax
17 Collector, the California Department of Tax and Fee Administration, and the California Secretary of
18 State. (*Id.* Ex N.) Inspector Young determined that Appellant is located in Supervisorial District 6
19 and that the District had 89 establishments with a Tobacco Sales permit as of November 9, 2023.
20 (*Ibid.*) Inspector Young also determined that Appellant has a DPH permit to operate a restaurant/bar
21 that serves on-site consumption of food and/or beverages. (Vega Decl. p. 4, Ex. F-G) Finally,
22 Inspector Young also consulted the San Francisco Planning Department's Retail Tobacco Sales
23 Density Map GIS tool to determine whether 398 12th St is located within 500 feet of another tobacco
24 sales establishment or school. (*Id.* Ex. N-O.) The San Francisco Planning Department map disclosed
25 that 398 12th St is within 500 feet of four permitted tobacco establishments, Garage Café & Market
26 located at 320 11th Street. (*Ibid.*)

27 On November 9, 2023, the Inspector Young notified Appellant that the Department had re-
28 evaluated Appellant's initial Tobacco Sales permit application and requested that Appellant submit an

1 updated application no later than December 11, 2023 with proof that Appellant qualifies for an
2 exception under Health Code 19H.6(e). (Vega Decl. p. 4, Ex. P.)

3 On February 4, 2025, the Director of the Department's Environmental Health Branch issued a
4 Notification of Tobacco Permit Denial to Appellant. (Vega Decl. p. 4, Ex. Q.) The Department
5 denied Appellant's application for a Tobacco Sales permit because Health Code section 19H.4(f)
6 prohibits issuing a permit since Appellant's establishment is located in a Supervisorial District with
7 more than 45 permitted establishments, within 500 feet of four existing establishments with a valid
8 Tobacco Sales permit, and is restaurant/bar that serves on-site consumption of food and/or beverages.
9 (*Ibid.*) Appellant did not meet any applicable exceptions under section 19H.6. (*Ibid.*)

10 On February 17, 2025, Appellant filed a Preliminary Statement of Appeal challenging the
11 Department's decision to deny the permit application. (Vega Decl. p.5, Ex. R.)

12 ARGUMENT

13 I. Tobacco Sales Permits May Not Be Transferred

14 Tobacco Sales permits may not be transferred to a new owner. (Health Code § 19H.8.) As set
15 forth in Business and Tax Regulations Code Section 77, "no license granted or issued under any of the
16 provisions of any ordinance shall be in any manner assignable or transferable, or authorize any person
17 other than is therein mentioned or named to do business or authorize any other business than is therein
18 mentioned or named to be done or transacted, at any place other than is therein mentioned or named."
19 Here, the Department previously issued a Tobacco Sales permit to Eagle Tavern. (Vega Decl. p. 2,
20 Ex. A-B.) That permit was terminated on September 5, 2012. (*Id.*, Ex. E.) Not only was Eagle
21 Tavern barred, as a matter of law, from transferring its Tobacco Sales permit to Appellant, Eagle
22 Tavern ceased doing business and the Tobacco Sales permit terminated nearly nine years before
23 Appellant applied for a new permit. Thus, Article 19H required the Department to evaluate
24 Appellant's application under the criteria for a new Tobacco Sales permit.
25

26 Appellant argues that Eagle Tavern is not a new business or owner seeking a Tobacco Sales
27 permit, and that their application should be treated as a request to reactive an existing permit because
28 Eagle Tavern is recognized as a Legacy Business that has operated for more than 35 years at the same

1 location, including serving alcoholic products and selling tobacco at the same location. (Appellant’s
2 Brief. at 7.) The Office of Small Business maintains a registry of Legacy Business in San Francisco to
3 recognize “longstanding, community-serving businesses” as a valuable cultural asset to the City and as
4 a tool to provide “educational and promotional assistance to Legacy Business.” (Admin. Code
5 § 2A.242.) The Office of Small Business has also established a Legacy Business Assistance Program
6 to provide grants and financial and business assistance to Legacy Businesses. (Admin. Code § 2A.243
7 – 2A.246.) Legacy Business recognition does not confer the benefit that Appellant argues.
8 Furthermore, Appellant fails to cite to any provision in the Municipal Code to support their argument.
9 Whereas, as discussed further below in Section III, the Health Code already contains exceptions
10 related to how a Tobacco Sales permittee can transfer the permit, and none of those provisions apply.
11 In sum, there is no authority under the Municipal Code to “grandfather” in a tobacco sales permit or
12 treat a Legacy Business as one continuous permittee despite a change in ownership.

13 **II. The Department Lacks the Authority to Issue Appellant a Tobacco Sales Permit Under**
14 **Article 19H.**

15 Health Code Section 19H.4(f) lays out eight separate grounds for which the Department must
16 deny a new permit. The Department determined that three separate provisions in subsection (f)
17 required denial of a new permit application.

18 **A. Appellant’s Place of Business is Located in a Supervisorial District with more than**
19 **45 Establishments with Tobacco Sales Permits.**

20 Health Code section 19H.4(f)(5) states that “[n]o new permit shall be issued in any
21 supervisorial district that has 45 or more Establishments with Tobacco Sales permits.” (Health Code
22 § 19H.4(f)(5).) Here, the Department determined that, as of November 2023, there were 89
23 establishments with Tobacco Sales permits in Supervisorial District 6, the district in which Appellant
24 is located. (Vega Decl. p. 3. Ex N.) The Density Cap allows only forty-five permitted Tobacco Sales
25 Establishments in each supervisorial district and District 6 well exceeds this number. (Health Code
26 § 19H.5(a).) Even if the Department had processed Appellant’s application in 2021, at the time,
27 Supervisorial District 6 still had well in excess of the 45 permitted Tobacco Sales establishments.
28 (Vega Decl. p. 4.) Appellant has not challenged this finding.

1 **B. Appellant’s Place of Business is Within 500 Feet of An Existing Tobacco Sales**
2 **Establishments with Valid Tobacco Sales Permit.**

3 Health Code section 19H.4(f)(4) states that “[n]o new permit shall be issued if the Appellant
4 will be located within 500 feet of the nearest point of the property line of an existing Establishment...”
5 (Health Code § 19H.4(f)(4).) The San Francisco Planning Department’s map confirmed that there is
6 an existing permitted tobacco establishment, Garage Café & Market located at 320 11th Street, within
7 500 feet of Appellant’s place of business. (Vega Decl. p. 4, Ex. O.) Appellant has not challenged this
8 finding.

9
10 **C. Appellant Is A Bar Whose Main Purpose is Offering Food or Alcoholic Beverages**
11 **for Sale for Consumption on Premises.**

12 Health Code section 19H.4(f)(5) states that “[n]o new permit shall be issued to any Appellant
13 whose main purpose is offering food or alcoholic beverages for sale for consumption on the premises,
14 including Bars and Restaurants.” Here, the Department determined that SF Eagle Bar is restaurant/bar
15 that serves on-site consumption of food and/or beverages. (Vega Decl. p. 2, Ex. F-G.) Appellant
16 admits in their brief that they operate as a bar and has not challenged this finding.

17 **III. Appellant Does Not Qualify for Any Exception Under Section 19H.6.**

18 Appellant’s primary legal argument is that the Department applied the wrong legal standard in
19 denying the June 25, 2021 application because SF Eagle Bar is recognized by the City as a Legacy
20 Business and that the Board should treat Eagle Tavern and SF Eagle Bar as one continuous business.
21 (Appellant’s Brief at p. 6-7.) This argument has no support in the Municipal Code and is contrary to
22 the business records that clearly demonstrate that Eagle Tavern held a Tobacco Sales permit until their
23 closure in September 2012. Appellant subsequently acquired the property, renamed it SF Eagle Bar,
24 and applied for, and obtained, a food permit from the Department in March 2013. (Vega Decl. p. 2,
25 Ex. F-G.) SF Eagle Bar could have applied for a Tobacco Sales permit before the City’s density law
26 went into effect almost two years later on January 18, 2015. However, for reasons that Appellant has
27 not explained, Appellant did not apply for a Tobacco Sales permit until after being cited by the
28 Department in June 2021. (*Id.* p. 2, Ex. J.)

1 Health Code Section 19H.6 outlines certain one-time permit exceptions for new Tobacco Sales
2 permits. (*See* Health Code § 19H.6.) All of the exceptions require that the current owner maintain the
3 Tobacco Sales permit. (*Id.*) And, the Director has discretion to issue a permit under any applicable
4 exception. (*See* § 19H.6 “[T]he Director may issue...”). Here, Eagle Tavern’s Tobacco Sales permit
5 was terminated on September 5, 2012. (Vega Decl. p. 2, Ex. F.) Therefore, the current owner had
6 nothing to transfer to Appellant. The Department determined that none of the change of ownership
7 exceptions in Section 19H.6(a)-(c) or (e)-(f) applied. (Vega Decl. p. 2.) And, there was no relocation
8 for seismic upgrades, as allowed under Section 19H.6(d). (*Id.* p. 3-4, Ex. N-O.) Since no exception
9 applies, the Director is bound by the requirements in Health Code section 19H.4(f) to deny the
10 Tobacco Sales permit.

11 **IV. Appellant’s Remaining Arguments Do Not Merit Overturning the Department’s Denial.**

12 Appellant’s Brief cites two additional reasons to overturn the Department’s denial of the permit
13 application—neither are meritorious. First, Appellant argues that the denial of the June 25, 2021
14 application is barred by laches. (Appellant’s Brief at p. 5.) Second, Appellant argues that the
15 Department refused to discuss its denial, or otherwise meet-and-confer with counsel before the
16 deadline to file their appeal. (*Id.* at p. 7)

17 *First*, Appellant argues that the denial of the June 25, 2021 application is barred by laches.
18 However, Appellant fails to provide any legal cases to support their argument. This is because the
19 doctrine of laches does not apply. The doctrine of laches is a legal defense found in common law. (30
20 California Forms of Pleading and Practice--Annotated § 345.40 (2025).) The doctrine only applies as
21 an equitable defense when a plaintiff requests equitable relief. (*Id.* citing *Trail v. Firth* (1921) 186 Cal.
22 68, 69, and *In re Marriage of Dancy* (2000) 82 Cal.App. 4th, 1142, 1150.) The doctrine of laches
23 does not apply when the plaintiff’s action is based upon law or statute. (*Id.* citing *Brownrigg v.*
24 *deFrees* (1925) 196 Cal.534, 539, *United States Capital Corp. v. Nickleberry* (1981) 120 Cal.App 3d
25 864, 867-868, and *In re Marriage of Dancy* (2000) 82 Cal.App.4th 1142, 1148-1149.) Here, the City is
26 not requesting equitable relief, and the decision to deny a Tobacco Sales permit is based upon the
27 Health Code.
28

1 Tobacco Sales permits can only be issued in compliance with Health Code Section 19H. While
2 the Department recognizes that there was a significant delay between the initial application and denial,
3 the City’s decision is based upon Health Code. The Board of Appeals is bound by the same laws of
4 the City and County of San Francisco as the Department and may not grant a permit that is not
5 otherwise authorized by the Municipal Code. (City & Cty. of San Francisco v. Bd. of Permit Appeals
6 (1989) 207 Cal. App. 3d 1099, 1109-10 [“[T]he board is not a lawmaking body and has no power to
7 disregard or amend the ordinances which define its authority.”].) The Board of Supervisors has found
8 and declared as a matter of public health that tobacco use is the leading cause of preventable death in
9 the United States. (Health Code § 19H.1(a).) Higher tobacco retail density encourages smoking by
10 making cigarettes more accessible and available, by normalizing tobacco use, and through increasing
11 environmental cues to smoke. (*Id.* § 19H.1(i).) Accordingly, the Board of Supervisors found that “it
12 is in the City’s interest to reduce the disproportionate exposure to tobacco outlets that exists among
13 supervisorial districts and to minimize exposure in all supervisorial districts by limiting the number of
14 new tobacco permits issued.” (*Id.* § 19H.1(k).)

15 *Second*, Appellant argues that the Department refused to discuss its denial, or otherwise meet-
16 and-confer with counsel before the deadline to file their notice of appeal. Appellant provides no legal
17 authority for the Board of Appeals to grant a permit on this basis. The Department’s response timeline
18 of their response to Appellant is included in Vega Decl. pages 4-5.

19 ///

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27 ///

1 **CONCLUSION**

2 The Department therefore respectfully requests that the Board uphold the Department's denial
3 of Appellant's application for a Tobacco Sales permit at 398 12th St.

4 Dated: April 3, 2025

5 DAVID CHIU
6 City Attorney
7 ADAM RADTKE
8 Deputy City Attorney

9 By: *Adam Radtke*
10 ADAM RADTKE
11 Attorneys for Respondent
12 DEPARTMENT OF PUBLIC HEALTH
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PROOF OF SERVICE

I, LILY KANG, declare as follows:

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

On April 3, 2025, I served the following document(s):

RESPONDENT'S OPPOSITION BRIEF

on the following persons at the locations specified:

San Francisco Eagle Bar, LLC
c/o Thomas Smurro, Esq., Atty for Appellant
301 Calle Empalme
San Clemente, CA 92672
tsmurro@yahoo.com

boardofappeals@sfgov.org

julie.lamarre@sfgov.org

corey.teague@sfgov.org

natalia.fossi@sfgov.org

in the manner indicated below:

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

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

Executed April 3, 2025, at San Francisco, California.

Lily Kang

LILY KANG

SAN FRANCISCO
BOARD OF APPEALS

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

SAN FRANCISCO EAGLE BAR, LLC,

Appellant,

vs.

DEPARTMENT OF PUBLIC HEALTH,

Respondent.

Appeal No. 25-009

**DECLARATION OF MICHELLE VEGA IN
SUPPORT OF RESPONDENT'S OPPOSITION
BRIEF**

Hearing Date: April 9, 2025
Time: 5:00 p.m.
Place: City Hall, Room 416

I, MICHELLE VEGA, declare as follows:

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

2. I am the Principal Environmental Health Inspector at the San Francisco Department of Public Health's Environmental Health Branch (the "Department"). I have been with the Department for 17 years conducting enforcement work in various programs. I work in the Department's Retail Tobacco and Smoking Program, where I oversee a team of 5 employees, including Senior Health Inspectors Janine Young and Mary Joanne Freitas who processes applications and conducts inspection to confirm compliance with Article 19H of the San Francisco Health Code. My work related to the Department's Retail Tobacco and Smoking Program includes reviewing tobacco application approvals, denials, and process tobacco enforcement cases on permitted and non-permitted tobacco retailers. review and process applications for Sale of Tobacco Product Permits and conduct inspections to confirm compliance with Article 19H of the San Francisco Health Code.

3. **Tobacco Sales Permit:** On February 25, 2004, John Gardiner applied for Tobacco Sales permit for Hole in the Wall Saloon, Inc. d/b/a Eagle Tavern ("Eagle Tavern"), located at 398

1 12th St, San Francisco, California 94109. On June 30, 2004, the Department issued a Tobacco Sales
2 permit (T-00907) to Eagle Tavern. A true and correct copy of the Application for the Sale of Tobacco
3 Products and Tobacco Sales permit for Eagle Tavern is attached hereto as **Exhibits A & B**
4 respectively.

5 4. 398 12th St is located within the SoMA Neighborhood Commercial District.

6 5. Eagle Tavern also had applied for and received a permit to operate as a restaurant/bar
7 serving on-site consumption of food and beverages. A true and correct copy of the Application for
8 Permit to Operate or Certificate of Sanitation and Food Preparation and Service Establishment permit
9 for Eagle Tavern is attached hereto as **Exhibit C & D respectively**.

10 6. Eagle Tavern maintained both permits in good standing until the establishment closed
11 in September 2012. A true and correct copy of the Report to Tax Collector for Establishment Out of
12 Business is attached hereto as **Exhibit E**.

13 7. Jesus Alejandro Montiel (“Appellant”) d/b/a San Francisco Eagle Bar LLC (“SF Eagle
14 Bar”) applied for, and received, a food permit from the Department on March 22, 2013. A true and
15 correct copy of the Application for Food Permit to Operate and Certificate of Sanitation and Food
16 Preparation and Service Establishment permit for SF Eagle Bar is attached hereto as **Exhibits F & G**
17 respectively.

18 8. **Health Code Violation:** On June 9, 2021, Senior Health Inspector, Janine Young,
19 (“Inspector Young”) inspected SF Eagle Bar and observed tobacco products for sale without a permit.
20 A true and correct copy of the Inspection Report for SF Eagle Bar is attached hereto as **Exhibit H**.

21 9. On June 11, 2021, Inspector Young emailed Appellant to order that SF Eagle Bar
22 discontinue all tobacco product sales until they had obtained a valid Tobacco Sales permit. A true and
23 correct copy of the Inspector Young’s email communication to SF Eagle Bar, dated June 11, 2021, is
24 attached hereto as **Exhibit I**.

25 10. **Permit Application:** On June 14, 2021, Appellant applied to the Department for
26 Tobacco Sales permit. A true and correct copy of the Application for the Sale of Tobacco Products for
27 SF Eagle Bar is attached hereto as **Exhibit J**.

1 11. On August 5, 2021, Inspector Young emailed Appellant to inform them that their
2 Tobacco Sales permit application was incomplete and requested that Appellant submit a completed
3 Tobacco Sales permit application by the end of business day on September 7, 2021. Appellant was
4 warned that failure to do so would deem the application abandoned and lead to the denial of the
5 application. A true and correct copy of the Inspector Young's email communication to SF Eagle Bar,
6 dated August 5, 2021, is attached hereto as **Exhibit K**.

7 12. The Tobacco Sales permit was never completed as requested.

8 13. **2nd Health Code Violation:** On July 21, 2023, Inspector Young inspected SF Eagle
9 Bar and observed (again) tobacco products for sale without a permit. Appellant admitted to selling
10 cigarettes since the change of ownership in 2012, and SF Eagle Bar was cited again by the Department
11 for selling tobacco products without a valid Tobacco Sales permit and again ordered to cease and
12 desist selling tobacco paraphernalia. A true and correct copy of the Inspection Report for SF Eagle
13 Bar is attached hereto as **Exhibit L**.

14 14. On July 21, 2023, Inspector Young issued a Notice of Correction requiring Appellant
15 and SF Eagle Bar to submit a Tobacco Sales permit application no later than August 31, 2023 and pay
16 a \$120 processing fee. On September 6, 2023, Inspector Young encouraged Appellant for a third time
17 to submit a Tobacco Sales permit application and requested that Appellant provide certain documents
18 to support their claim of tobacco sales prior to the City's density law effective date. A true and correct
19 copy of the Inspector Young's email communication to SF Eagle Bar, dated September 6, 2023, is
20 attached hereto as **Exhibit M**.

21 15. Appellant did not submit a new application, respond, or provide any of the requested
22 documents.

23 16. On November 9, 2023, Inspector Young examined Appellant's eligibility for a Tobacco
24 Sales permit and concluded that SF Eagle Bar was not eligible for a Tobacco Sales permit. A true and
25 correct copy of the Inspector Young's Tobacco Application & Pre-Application Affidavit Review is
26 attached hereto as **Exhibit N**.

1 17. Inspector Young determined that Appellant is located in Supervisorial District 6 and
2 that the District had 89 establishments with a Tobacco Sales permit as of November 9, 2023. (*Ibid.*)
3 Inspector Young also determined that Appellant has a DPH permit to operate a restaurant/bar that
4 serves on-site consumption of food and/or beverages. (*Ibid.*, see also Ex. F-G)

5 18. Inspector Young also consulted the San Francisco Planning Department's Retail
6 Tobacco Sales Density Map GIS tool and determined that 398 12th St is within 500 feet of four
7 permitted tobacco establishments, Garage Café & Market located at 320 11th Street. A true and
8 correct copy of a screenshot from the San Francisco Planning Department's Retail Tobacco Sales
9 Density Map GIS tool is attached hereto as **Exhibit O**.

10 19. On November 9, 2023, the Inspector Young notified Appellant that the Department had
11 re-evaluated Appellant's initial Tobacco Sales permit application and requested that Appellant submit
12 an updated application no later than December 11, 2023 with proof that Appellant qualifies for an
13 exception under Health Code 19H.6(e). A true and correct copy of the Inspector Young's email
14 communication to SF Eagle Bar, dated November 9, 2023, is attached hereto as **Exhibit P**.

15 20. Even if the Department had processed Appellant's application in 2021, at the time,
16 Supervisorial District 6 still had well in excess of the 45 permitted Tobacco Sales establishments.

17 21. **Notice of Tobacco Permit Denial:** On February 4, 2025, the Director of the
18 Department's Environmental Health Branch issued a Notification of Tobacco Permit Denial to
19 Appellant. A true and correct copy of Notification of Tobacco Permit Denial to SF Eagle Bar is
20 attached hereto as **Exhibit Q**.

21 22. On February 13, 2025, Assistant Director Jennifer Callewaert received a voice message
22 from someone who wanted to talk to the Department about SF Eagle Bar. Assistant Director
23 Callewaert forwarded that message to Senior Inspector Mary Joanne Freitas. Senior Inspector Freitas
24 returned the call on the same day. The caller who answered the phone did not identify themselves as
25 legal counsel of the Appellant, nor did they inform Senior Inspector Freitas that they are responding to
26 a permit denial that was recently issued to the Appellant. Senior Inspector Freitas directed the caller to
27 submit a public records request and then the call was abruptly disconnected.

23. On February 14, 2025 Environmental Health Director Patrick Fosdahl forwarded me Mr. Thomas Smurro's letter. Director Fosdahl stated in his email that he did not receive a message on February 10, 2025 and directed me to contact Mr. Smurro. I was not in the office to immediately respond to Mr. Smurro's letter. I called back Mr. Smurro on Tuesday, February 18 after returning from a 3-day President's Day weekend. Mr. Smurro did not pick up my call so I left a message with my contact information but did not receive a return call or email.

24. On February 17, 2025, Appellant filed a Preliminary Statement of Appeal challenging the Department's decision to deny the permit application. A true and correct copy of Notification of Tobacco Permit Denial to SF Eagle Bar is attached hereto as **Exhibit R**.

25. On February 19, 2025, I responded to the Appellant's counsel via email in response to receiving the notice of appeal. I provided a copy of the previous retail tobacco permit # T-00907, which was issued to Hole In the Wall Saloon, INC. In addition, I provided a copy of Food Permit to Operate for a bar tavern with food preparation issued on March 12, 2013 to Appellant in hopes that it would provide some clarity that we did not issue retail tobacco permit for the Appellant in 2013. I offered Appellant's legal counsel the opportunity to submit evidence that could contradict the Department's existing record, but to date I have not received such a response from Appellant's legal counsel.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on the 3rd of April, in San Francisco, California.

Michelle Vega
MICHELLE VEGA

EXHIBIT “A”



CITY AND COUNTY OF SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH SECTION

APPLICATION FOR THE SALE OF TOBACCO PRODUCTS

Date of Application: 2/25/04

Please Check One:

- ☒ This Business Will Be Selling Tobacco Products
☐ This Business Will Not Be Selling Tobacco Products

Please Check One:

- ☒ New Application ☐ Reclassification
☐ Ownership Change ☐ Information Update Only

Business Address: 398 12th ST.

(289 8th ST.)

Cross Street: HARRISON

Business Name: THE EAGLE TAVERN

Type Of Business: BAR

Business Tel. No. 415 626 0880

☐ Sole Owner ☐ Partnership ☒ Corporation

Permit to be issued in the Name(s) of, or if Corporation
(Specify Corporation Name and List Principal Officers)

Hole in the WALL SALOON INC.
JOHN GARDINER
Joseph Banks

Home or Corporation Address (Print):

477 UTAH ST.
SAN FRANCISCO, CA

94110

Contact Person: JOHN GARDINER

Emergency Notification:

Home Tel./ Mobile Tel: 415 552 5669

*SIGNATURE(S) OF APPLICANT(S)

x [Signature]
x [Signature]

x _____
x _____

*If Partnership, all partners must sign. If Corporation, authorized Officer must sign.

Submit the application to the Environmental Health Section, 1390 Market St., Suite 210, SF, CA 94102
to the Attention of: Tobacco Sales Permits, with a check in amount of \$50 payable to: SFDPH

FOR OFFICE USE ONLY

Filing Fee: \$50.

Receipt No. 17656

ENVIRONMENTAL HEALTH SECTION REPORT

After having reviewed this application on _____ 20 _____

I RECOMMEND the issuance of a new Permit For Tobacco Sales ☐

I DISAPPROVE the issuance of a new Permit For Tobacco Sales ☐ for the following reasons:

Principal Inspector [Signature]

Inspector [Signature]

DISTRICT NO.

3

CENSUS TRACT

177

PERMIT NO.

T009054

TYPE / CLASSIFICATION

EXHIBIT “B”

FRAME AND HANG IN PLACE VIEW

PERMIT TO OPERATE

AND CERTIFICATE OF SANITARY INSPECTION

Issued according to the provisions of the San Francisco Health Code

AUTHORIZING conduct of the following class of
TOBACCO PRODUCT SALES ESTABLISHMENT

T- 00907

OPERATOR: Hole In The Wall Saloon, Inc.

DBA: EAGLE TAVERN

ADDRESS: 398 - 12th Street
San Francisco, CA 94103

ISSUED ON:

June 30, 2003

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.

H31-000715

DEPARTMENT OF PUBLIC HEALTH

Environmental Health Section
City & County of San Francisco

Inspector

Director of Consumer Protection Programs

Principal Inspector

Director of Public Health

EXHIBIT “C”

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC HEALTH
BUREAU OF ENVIRONMENTAL HEALTH SERVICES

#4266

APPLICATION FOR PERMIT TO OPERATE
OR CERTIFICATE OF SANITATION

Date of Application: 8/21/97

Type of Business BAR

LOCATION <u>398 12th ST.</u>	TRADE NAME <u>S.F. EAGLE</u> BUS. TEL. NO. <u>626-0880</u>
Permit to be issued in name(s) of, or if Corporation Specify Corporation name and list principal Officers. (Print) <u>HOLE IN THE WALL SALOON, INC.</u> <u>JOSEPH BANKS</u> <u>JOHN GARDINER</u>	Home Address and Home Tel. No. (Print) <u>477 UTAH ST. SE. CA 94110</u> <u>(415) 552 5669</u>

<input type="checkbox"/> Sole Owner	<input type="checkbox"/> Partnership List all names	<input checked="" type="checkbox"/> Corporation List names of Officers	<input checked="" type="checkbox"/> Ownership Change <input type="checkbox"/> New Installation	<input type="checkbox"/> Reclassification <input type="checkbox"/> Record Purpose
PROPOSED OPERATIONS: <input checked="" type="checkbox"/> Retail <input type="checkbox"/> Wholesale <input type="checkbox"/> Manufacturing and/or Processing			PREVIOUS TRADE NAME AND OWNER(S) IF KNOWN: <u>BOB JAY INC.</u>	
Seating Capacity <u>7</u>	No. of Employees, Inc. working Owner: <u>10</u>	Men <u>10</u> Women <u>-</u>	No. of Toilet Facilities Men <u>2</u> Women <u>1</u>	

* SIGNATURE(S) OF APPLICANT(S)
John Gardiner
JOHN GARDINER

*If Partnership, all partners must sign. If Corporation, Authorized Officer must sign

Taken By:

FOR OFFICE USE ONLY

Special Notes

Filing Fee \$675.07 Advertising and Posting Fee 0 Fire Department Referral 9/16/97
\$220.60 DPW Referral 9/24/97 Out of Business Notification 10/8/97

INSPECTOR'S REPORT	
To the Director of Public Health -	
After having made a careful inspection in the above case on <u>October 8</u> , 19 <u>97</u>	
I RECOMMEND the issuance of a New Permit to operate <input checked="" type="checkbox"/>	
I DISAPPROVE the issuance of a New Permit to operate <input type="checkbox"/> for the following reasons:	
<u>W. J. JENS</u> PRINCIPAL INSPECTOR	<u>Melinda Tyler</u> INSPECTOR

DISTRICT NO.	CENSUS TRACT	PERMIT NO.	TYPE OF PERMIT
<u>3</u>	<u>177</u>		<u>Full-Service Bar (1005/H27)</u>

EXHIBIT “D”

PERMIT TO OPERATE AND CERTIFICATE OF SANITARY INSPECTION

Issued according to provisions of the San Francisco Health Code

A 27545

AUTHORIZING conduct of the following class of
FOOD PREPARATION AND SERVICE ESTABLISHMENT

ISSUED

Business: Full-service Bar (1005)

December 23, 1997

Name and Address below:

Hole In The Wall Saloon, Inc.
Joseph Banks, John Gardiner
DBA: S.F. EAGLE
898 - 12th Street
San Francisco, CA 94103

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.

EXPIRES

12/27/143531

DEPARTMENT OF PUBLIC HEALTH

Bureau of Environmental Health
City and County of San Francisco

Inspector

Bureau Director

Principal Inspector

Director of Public Health

DEPARTMENT OF PUBLIC HEALTH - 101 GROVE STREET - SAN FRANCISCO, CALIFORNIA 94102

EXHIBIT “E”

City and County of San Francisco



Department of Public Health
Bureau of Environmental Health Management

REPORT TO TAX COLLECTOR - LICENSE DIVISION

☒ ESTABLISHMENT OUT OF BUSINESS

DATE SENT: 9-5-12

☐ OTHER _____

ACCOUNT No: 431-000715 PERMIT No: T-00907

Facility Address 398-12th St.

Name(s) of Operator Hole in the Wall Saloon, Inc.

DBA SF Eagle Saloon Business Type: Retail Tobacco

District Number

Census Tract

Inspector Kessler

Phone No. 252-3841

Tax Collector Initials MARISSA

Date Entered 09-05-12

WHITE - Tax Collector's Copy

YELLOW - Return to DPH (with signature)

PINK - Interim Copy

EXHIBIT “F”

Application for Food Permit to Operate or Certificate of Sanitation

Applicant or new owner must complete items 1-23. Accurate information is required; false or misleading information may result in delay or denial of the application. Obtain prior approval if you intend to change your food operation.

- Date: 02-06-2013 1. Business Name/DBA: SF EAGLE BAR LLC
2. Business Address: 398 12TH STREET SF, CA 94103 ☒ Yes, mailing address
3. Type of transaction: ☒ Ownership Change ☐ New Installation ☐ Reclassification ☐ Record Purposes
4. Type of ownership: (check one) ☐ Sole Owner ☐ Partnership ☐ Corporation ☒ LLC ☐ LP
5. Name of Owner(s) or Corporation: ALEX MONTIEL / MIKE LEON
- If corp. or LLC, list major officers: ALEX MONTIEL / MIKE LEON
6. Owner Address: 398 12TH STREET SF, CA 94103 ☒ Yes, mailing address
7. Business Phone #: 415-618-7606 8. Home #: 415-424-8044 9. Emergency #: 415-424-8044
10. Email: lex@sf-eagle.com mike@sf-eagle.com 11. Type of Food Business: BAR / TAVERN
12. Prepackaged non-hazardous food sales only? ☐ Yes ☒ No If yes, what is the SQ. FT for all food displays: _____
13. Will this operation prepare food or beverages? ☒ Yes ☐ No 14. Will you be cooking food? ☐ Yes ☒ No
- If yes, list types of cooking equipment: _____
15. Will you warm or reheat food? ☐ Yes ☒ No If yes, list warming equipment: _____
16. Do you have patron seating? ☒ Yes ☐ No If yes, # of seats: 30 17. No. of restrooms: 4
18. Signature(s) of all Owner(s) and Officer(s):*

*Prior to application approval, the applicant shall provide copies of the following:

19. City and County of San Francisco Business Registration Certificate 476394 ✓
20. If preparing food, a menu or listing of all foods served n/a
21. A drawing of premises depicting all rooms with new and existing equipment 2-7-13
22. Certificate of Liability Insurance for Workers' Compensation _____
23. California State Board of Equalization Seller's Permit 2-7-13

For Department of Public Health Office Use Only

Special application or facility notes: _____

Filing Fee: 332.- Zoning Ref. Fee 127.- Out 2/13/13 In 2/26/13 SFD Ref. Fee: 110.- Out 2/13/13 In 8/11/13

Receipt #: 45436 Previous Owner Out of Business Notification: _____ Other: _____

#369- check #1058

Inspector's Report

To the Director of Public Health:

After having made a careful inspection in the above case on March 12, 20 13

I recommend the issuance of a New Permit to operate ☒

I disapprove the issuance of a New Permit to operate ☐ for the following reasons: _____

X

Inspector

X

Principal Inspector

District #	Census Tract	Permit #	Type of Permit/Classification/Limitations	Loc. ID:
<u>3</u>	<u>177</u>	<u>B 71703</u>	<u>H27 Bar/Tavern No Cooking</u>	<u>71703</u>

S L

ORIGINAL
H261

EXHIBIT “G”



PERMIT TO OPERATE

AND CERTIFICATE OF SANITARY INSPECTION

Issued according to provisions of the San Francisco Health Code

B 71703

AUTHORIZING conduct of the following class of

FOOD PREPARATION AND MARKETING ESTABLISHMENT

ISSUED: 3/12/13

Type of Operation: Bar Tavern w/o Prep

H86 - Bar Tavern w/o Prep

Tax Code: H86

DPH Co

CERT No. 476394

Name and Address Below:

Owner: Alex Montiel/Mike Leon

DBA: SF Eagle Bar LLC

Street Address: 398 12th St
San Francisco, CA 94103

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.

Inspector

Director of Environmental Health

Principal Inspector

Director



PERMIT TO OPERATE

AND CERTIFICATE OF SANITARY INSPECTION

Issued according to provisions of the San Francisco Health Code

B 71703

AUTHORIZING conduct of the following class of

FOOD PREPARATION AND MARKETING ESTABLISHMENT

ISSUED: 3/12/2013

Type of Operation: Bar Tavern with Prep

Tax Code: H87

DPH Co

CERT No. 476394

Name and Address Below:

Owner: SAN FRANCISCO EAGLE BAR LL

DBA: SAN FRANCISCO EAGLE BAR

Street Address: 398 12th St

San Francisco, CA 94102

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

DEPARTMENT OF PUBLIC HEALTH

Environmental Health Branch
City and County of San Francisco

Director of Environmental Health

EXHIBIT “H”



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: 06 / 09 / 20 21
Time of Inspection: Non Site Visit
EHD Location #:
Tobacco Permit #: T-NO Permit Issued

Facility Name (DBA): SF Eagle Bar		Address: 398 12th St, 94103	
Permit Owner Name: Owner does not have SFDPH Tobacco Permit		Phone Contact:	
Email: lex@thesfeagle.com		Required Action from Permit Owner:	
Inspection Type: <input type="checkbox"/> Routine <input type="checkbox"/> Reinspection <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Consultation	Inspection Report: <input checked="" type="checkbox"/> Notice of Correction <input type="checkbox"/> Notice of Violation	<input type="checkbox"/> No further action required <input checked="" 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: 06/25/2021 <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 type="checkbox"/> J. Remove _____ tobacco products from display and premises. <input type="checkbox"/> K. _____	
Violations: Mark observed violations. Code violations cited are on the back page. <input type="checkbox"/> No violations observed <input type="checkbox"/> 1. Incomplete/Inaccurate application submitted <input type="checkbox"/> 2. Unpaid License fees <input type="checkbox"/> 3. Permit/Licenses not displayed <input type="checkbox"/> 4. Signage not posted <input type="checkbox"/> 5. Right to inspect denied <input checked="" type="checkbox"/> 6. Tobacco sales without a valid permit <input type="checkbox"/> 7. Sale of tobacco products without assistance <input type="checkbox"/> 8. Sale of single cigarettes <input type="checkbox"/> 9. Sale to minors (person <18 years old) <input type="checkbox"/> 10. Sale to persons aged 18, 19, or 20 <input type="checkbox"/> 11. Sale/Distribution of flavored tobacco products <input type="checkbox"/> 12. Smoking in prohibited area <input type="checkbox"/> 13. Sale/Distribution of restricted e-cigarette products <input type="checkbox"/> 14. Other tobacco control laws violated			
Observations: <u>On June 9, 2021, email from Alex Montiel confirmed tobacco product sales. S.F. Eagle Bar, LLC does not have a valid tobacco permit from San Francisco Department of Public Health.</u> <u>STOP TOBACCO PRODUCTS SALES</u> <u>Before selling tobacco products, you must first obtain the SFDPH Tobacco Permit and the CDEA Tobacco Products License.</u>			
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: Janine Young	Inspector Signature: <i>Janine Young</i>
		Inspector Email: janine.young@sfdph.org	Inspector Phone #: (415) 252-3903
<small>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)).</small>			
Received By: (Print)		Sent by Email	Received By: (Signature)

Referrals: ☒

Page 1 of ____

V8.202103

	[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.

EXHIBIT “I”

Re: SF Eagle - 398 12th Street - Tobacco Product Sales

Alex Montiel <lex@thesfeagle.com>

Wed 6/9/2021 7:41 AM

To: Dang, Alvin (DPH) <alvin.dang@sfdph.org>

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

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

Mr. Dang,

I hope this email finds you well.

The business is closed at the moment, but we were selling cigarettes until the order to close was issued and we are planning to continue selling cigarettes and tobacco products when we reopen when the order is lifted.

Thanks

Lex Montiel

On Jun 2, 2021, at 4:11 PM, Dang, Alvin (DPH) <alvin.dang@sfdph.org> wrote:

Dear SF Eagle Management,

I work for the San Francisco Department of Public Health - Tobacco & Smoking Program. I am contacting you regarding SF Eagle located at 398 12th Street San Francisco, CA 94103. Is your business selling tobacco products such as cigarettes? Please respond to this email whether the answer is yes or no. My phone number is (415) 252-3939.

Alvin Dang, REHS

Public Health Service Trainee

Retail Tobacco & Smoking Program

San Francisco Department of Public Health

Environmental Health Branch

49 South Van Ness Avenue, Suite 600

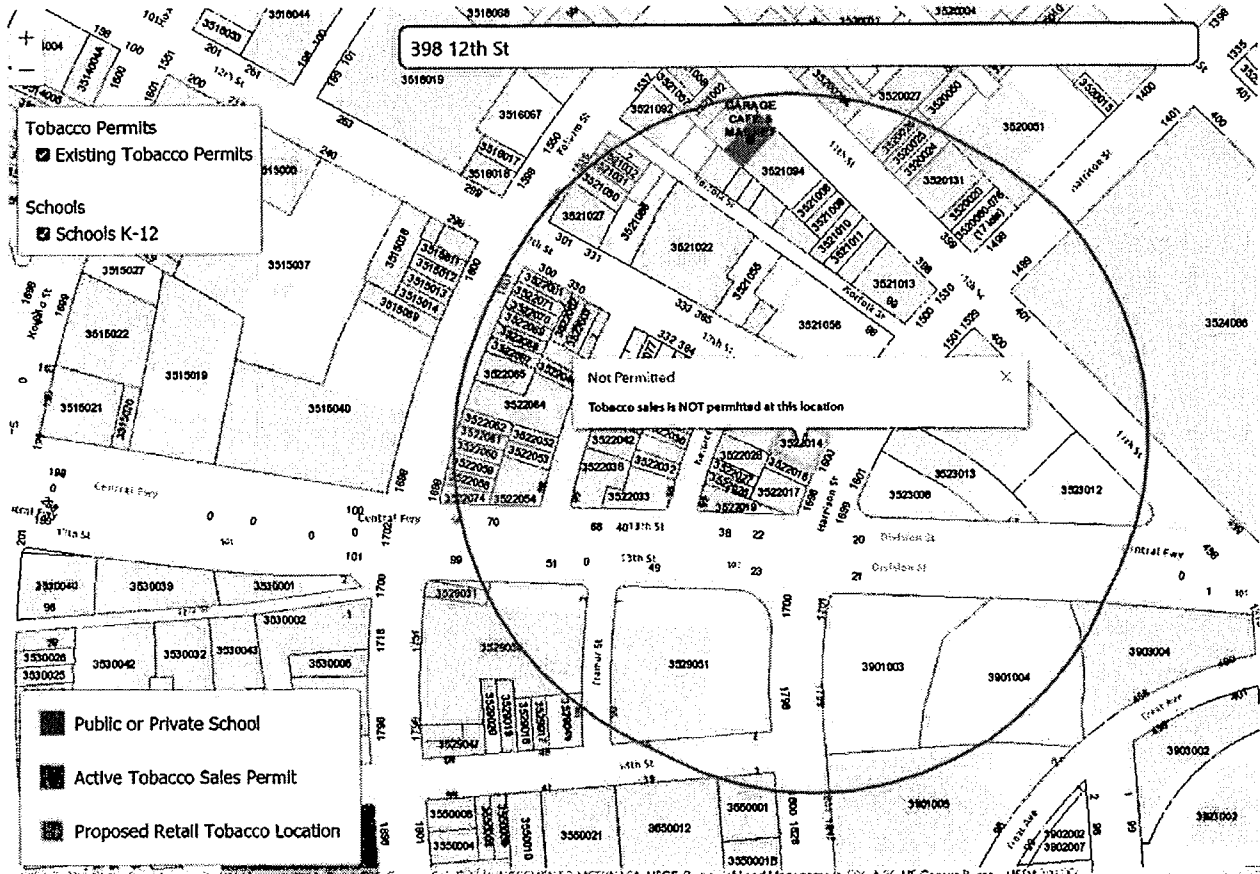
San Francisco, CA 94103

Phone: (415) 252-3939

Fax: 415-252-3894

Sincerely,

Janine Young, Senior Health Inspector
Retail Tobacco and Smoking Program
Office or Field Hours: Tuesday - Friday, 7:30 AM - 6 PM
Environmental Health Branch
Population Health Division, San Francisco Department of Public
49 South Van Ness Ave, Suite 600 | San Francisco, CA 94103
415.252.3903 (direct)
415.252.3984 (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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Discontinue Tobacco Sales at SF Eagle - 398 12th Street

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

Fri 6/11/2021 1:49 PM

To: Alex Montiel <LEX@THESFEAGLE.COM>

Cc: Dang, Alvin (DPH) <alvin.dang@sfdph.org>; lex@SF-Eagle.com <lex@SF-Eagle.com>

📎 2 attachments (4 MB)

398 12th St_Report.pdf; Updated Retail_Tobacco_Application with V5.202004 - Fillable Form.pdf;

Good Afternoon Alex Montiel,

Thank you for your response. Unfortunately, you must stop selling tobacco products until you've obtained the San Francisco Department of Public Health ("SFDPH") Tobacco Permit **and** the California Department of Tax and Fees Administration ("CDTFA") Tobacco License - both in the Legal Owner Name, San Francisco Eagle Bar, LLC and/or San Francisco Eagle Bar, Inc ("SF Eagle Bar, LLC").

As a courtesy, I'm attaching a report that notifies you to **discontinue all tobacco product sales** until a valid SFDPH Permit **and** CDTFA Tobacco License are obtained by SF Eagle Bar, LLC. For the SFDPH Tobacco Permit, attached is the application.

However, before submitting the completed tobacco application with the non-refundable \$111.00 processing fee, please be aware that since 2015, the San Francisco Health Code, Article 19H (SFHC 19H) does not allow the issuance of a new tobacco permit for any of the following reasons:

- Within a Supervisorial District with more than 45 valid tobacco permits;
- Within 500 feet of Retailer with an active tobacco permit;
- Within 500 feet of a K-12 school;
- When the Applicant operates an Establishment with on-site food or beverage consumption (e.g., restaurant or bar); or
- When the Applicant does not have a valid CDTFA Tobacco License for the Establishment.

Based on my brief research and the SF Planning Tobacco Density Map (provided below my signature line), SF Eagle Bar, LLC operates a bar located in District #6, which currently has over 100 active tobacco permits, and there is at least one Retailer that sells tobacco products within 500 feet.

If after reviewing this information, you plan to apply for the SFDPH Tobacco Permit, please complete the attached application and submit the non-refundable \$111.00 processing fee payable to "SFDPH" at:

**Environmental Health Branch
49 South Van Ness Av, Suite 600
Attention: Retail Tobacco Program
San Francisco, CA 94103**

Finally, if you decide to continue selling tobacco products without first obtaining the required permits and/or licenses, our office may take additional enforcement action, including but not limited to, issuance of a Notice of Violation, administrative fines of up to five hundred dollars (\$500.00), and/or referral to the San Francisco City Attorney's Office Code Enforcement.

If you have any questions or concerns, please feel free to contact me directly by email or phone.

Link to Data SF

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

Thu 8/12/2021 3:39 PM

To: Chad Henderson <chad@thesfeagle.com>

<https://data.sfgov.org/Economy-and-Community/Registered-Business-Locations-San-Francisco/g8m3-pdis/data>

Registered Business Locations - San Francisco | DataSF | City and County of San Francisco

This dataset includes the locations of businesses that pay taxes to the City and County of San Francisco. Each registered business may have multiple locations and each location is a single row. The Treasurer & Tax Collector's Office collects this data through business registration applications, account update/closure forms, and taxpayer filings. The data is collected to help enforce the Business and Tax Regulations Code including, but not limited to: Article 6, Article 12, Article 12-A,

data.sfgov.org

Janine Young, Senior Health Inspector
Retail Tobacco and Smoking Program
Office or Field Hours: Tuesday - Friday, 7:30 AM - 6 PM
Environmental Health Branch
Population Health Division, San Francisco Department of Public Health
49 South Van Ness Ave, Suite 600 | San Francisco, CA 94103
415.252.3903 (direct)
415.252.3984 (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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EXHIBIT “J”



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



Application for the Sale of Tobacco Products

Application Date: June 14 2021		First Date of Tobacco Sales:	
Business Information		Official correspondence from SFDPH will be sent to the mailing address on record with the San Francisco Office of the Treasurer and Tax Collector (SFTTX)	
Business Name (DBA): San Francisco Eagle Bar		San Francisco Business Account # (BAN): 1118071	
Business Address including zip code: 398 12th St San Francisco CA 94103		CDTPA Cigarette Retailer License #:	
Establishment Type:			
a) <input type="checkbox"/> Grocery/Market b) <input type="checkbox"/> Liquor Store c) <input type="checkbox"/> Tobacco/Vape Shop			
d) <input type="checkbox"/> Gas/Service Station e) <input checked="" type="checkbox"/> Restaurant/Bar f) <input type="checkbox"/> Gift/Novelty Store g) <input type="checkbox"/> Other			
Legal Owner Information		Legal Owner Structure: <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Other	
Legal Owner Name: Jesus Alejandro Montiel Urbina		Legal Owner Email Address: Lex@thesfeagle.com	
Legal Owner Address including zip code: 584 Castro St. #334 San Francisco CA 94114		Legal Owner Phone Number: 415 618 9606	
List all Owners or Principal Officers and Ownership Percentages: (Print Name(s)) Attach additional sheets if necessary			
		%	%
		%	%
Main Contact's Name: Jesus Alejandro Montiel Urbina		<input type="checkbox"/> Same as Legal Owner <input type="checkbox"/> Manager <input type="checkbox"/> Legal Agent <input type="checkbox"/> Other	
Main Contact's Email: Lex@thesfeagle.com		Main Contact's Phone Number: 415 618 9606	
Incomplete applications cannot be processed and will be returned to the Applicant. The application will be deemed abandoned if the Applicant fails to submit a complete and accurate application with all required documentation within 30 days from the date the application is returned to the Applicant. After 30 days, the Applicant will be required to submit a new application and non-refundable processing fee.			
Signature of Applicant(s): All Owners and Corporate Officers must sign. Attach additional sheets if necessary.			
I/We declare under penalty of perjury the information on this application and in other materials submitted in support of this application are true and correct. I/We hereby consent to all necessary inspections made pursuant to the SF Health Code and incidental to the issuance of any exception, permit, and operation of this business. I/We understand that once submitted, the application processing fee is nonrefundable. I/We acknowledge that I am/we are responsible for complying with all local, state, and federal laws, codes, and rules and regulations relating to tobacco products, tobacco control, and the prohibition of smoking in enclosed establishments and certain unenclosed areas. If SFDPH staff discovers false or misleading information, I/we understand that the tobacco permit may be denied or revoked by SFDPH. I/We may not sell any tobacco products, including but not limited to, cigarettes, electronic nicotine delivery systems, and nicotine-containing products without first obtaining a valid SFDPH Tobacco Sales Permit. I/We understand selling tobacco products without a valid SFDPH permit may result in the denial of a SFDPH Tobacco Sales Permit.			
X		Date: 6/15/21	Date:
X		Date: 6/15/21	Date:

V5.202004

Instructions for the Application for the Sale of Tobacco Products

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

Legal Owner Information
Legal Owner Structure: If the legal owner structure is not a sole proprietorship (one person owned), the ownership percentages must be disclosed. Legal documentation providing the ownership percentages and signatures of all owners must be submitted with this application. An application will be considered incomplete if this legal documentation is not submitted.
Legal Owner Name: The legal owner is the applicant and the entity that the Permit to Operate will be issued to. The legal owner name must be the same name used with the San Francisco Office of the Treasurer and Tax Collector (SFTTX) and the California Department of Tax and Fee Administration (CDTFA).
Legal Owner Email, Address, and Phone Number: Official correspondence from SFDPH will be sent through these points of contact.
List all Owners or Principal Officers and Ownership Percentages: The owners/principal officers and ownership percentages listed on this application must match with what is on the legal documentation submitted proving the ownership percentages. The list must also match the corporate records filed with the California Secretary of State.

Business Information
Business Name (DBA): The name of the establishment where tobacco sales will take place. The business name must be the same with SFTTX and CDTFA.
Business Address: The address of the establishment where tobacco sales will take place. This address must be the same with SFTTX and CDTFA.
CDTFA Cigarette Retailer License #: To sell tobacco products in the City and County of San Francisco, an establishment must have both a Cigarette Retailer License from the CDTFA and a Permit to Operate a Tobacco Sales Establishment from SFDPH. SFDPH will not issue a Permit to Operate without a valid CDTFA Cigarette Retailer License. This is not the same as the Seller's Permit from the CDTFA.
San Francisco Business Account # (BAN): Your account with SFTTX. Once your tobacco permit is approved, SFTTX will bill you through this account to pay for the H31 Tobacco License. The annual H31 Tobacco License validates your SFDPH Tobacco permit.
Establishment Type: Based on the San Francisco Zoning Code, provide the business establishment primary business type and operation.
Responsible Person's Name: The primary point of contact between SFDPH and the business.
Relation to Legal Owner: Title of Responsible Person in relation to the Legal Owner.
Responsible Person's Email and Phone Number: Official correspondence from SFDPH will be sent through these points of contact.
Signature of Applicant(s): The application will be signed by all Legal Owners and/or Principal Officers under penalty of perjury that the information provided is complete, true, accurate and correct.

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

V5.202004



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

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:	Jesus Alejandro Montiel Urbina	
DBA/Name of Business:	San Francisco Eagle Bar	
Business Address:	398 12th St	San Francisco, CA 941 03

翻譯及你的簽名聲明在本頁後面。

¡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• California Labor Code Division 4—Have and maintain Workers Compensation Insurance or be self-insured)• California Labor Code Division 2—Employment Regulation and Supervision• California Labor Code Division 5—Occupational Health and Safety• All other federal, state, and local labor codes	<table><tr><td><input checked="" type="checkbox"/> Yes</td><td><input type="checkbox"/> No</td></tr><tr><td><input checked="" type="checkbox"/> Yes</td><td><input type="checkbox"/> No</td></tr><tr><td><input checked="" type="checkbox"/> Yes</td><td><input type="checkbox"/> No</td></tr><tr><td><input checked="" type="checkbox"/> Yes</td><td><input type="checkbox"/> No</td></tr><tr><td><input checked="" type="checkbox"/> Yes</td><td><input type="checkbox"/> No</td></tr></table>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No										
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No										
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No										
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No										
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No										
2. I will request my provider of Workers Compensation insurance to designate as a "Certificate Holder" the SF Environmental Health Branch at 49 South Van Ness Ave, #600, San Francisco, CA 94103.											
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No											

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

Jesus Alejandro Montiel Urbina

Print Name

Signature

Date

6/15/21

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.

Jesus Alejandro Montiel Urbina

Print Name

Signature

Date

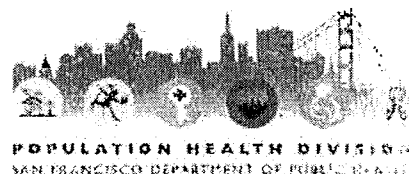
6/15/21

49 South Van Ness Ave, #600, San Francisco, CA 94103

Phone 415-252-3800 | Fax 415-252-3875



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



Application for the Sale of Tobacco Products

Application Date:		First Date of Tobacco Sales:	
Business Information		Official correspondence from SFDPH will be sent to the mailing address on record with the San Francisco Office of the Treasurer and Tax Collector (SFTTX)	
Business Name (DBA): San Francisco Eagle Bar, LLC		San Francisco Business Account # (BAN): 0476394	
Business Address including zip code: 398 12th Street San Francisco CA 94103		CDTFA Cigarette Retailer License #: 09134847	
Establishment Type: a) <input type="checkbox"/> Grocery/Market b) <input type="checkbox"/> Liquor Store c) <input type="checkbox"/> Tobacco/Vape Shop d) <input type="checkbox"/> Gas/Service Station e) <input type="checkbox"/> Restaurant/Bar f) <input type="checkbox"/> Gift/Novelty Store g) <input checked="" type="checkbox"/> Other Bar			
Legal Owner Information Legal Owner Structure: <input type="checkbox"/> Sole Proprietor <input checked="" type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Other			
Legal Owner Name: J A Montiel Urbina		Legal Owner Email Address: Lex@thesfeagle.com	
Legal Owner Address including zip code: 85 Cliffside Dr Daly City CA 94015		Legal Owner Phone Number: 4156189606	
List all Owners or Principal Officers and Ownership Percentages: (Print Name(s)) Attach additional sheets if necessary			
Jesus Alejandro Montiel Urbina		100 %	%
		%	%
Main Contact's Name: <input checked="" type="checkbox"/> Same as Legal Owner <input type="checkbox"/> Manager <input type="checkbox"/> Legal Agent <input type="checkbox"/> Other			
Main Contact's Email:		Main Contact's Phone Number:	
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 application is non-refundable processing fee.			
Signature of Applicant(s): All Owners and Corporate Officers must I/We declare under penalty of perjury the information on this application are true and correct. I/We hereby consent to all necessary incidental to the issuance of any exception, permit, and operation of this application processing fee is nonrefundable. I/We acknowledge that this application and federal laws, codes, and rules and regulations relating to tobacco in enclosed establishments and certain unenclosed areas. If SFDPH understands that the tobacco permit may be denied or revoked by SFDPH but not limited to, cigarettes, electronic nicotine delivery systems, valid SFDPH Tobacco Sales Permit. I/We understand selling tobacco without a denial of a SFDPH Tobacco Sales Permit.			
X		Date: 11/13/2023	X
X		Date:	X

Hello Janine,

Operator made
the payment in 2021.
I updated the application by
and the EHD
LID# 110521

Thank you
Margaret

V6.207108

Instructions for the Application for the Sale of Tobacco Products

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

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

Legal Owner Information
Legal Owner Structure: If the legal owner structure is not a sole proprietorship (one person owned), the ownership percentages must be disclosed. Legal documentation providing the ownership percentages and signatures of all owners must be submitted with this application. An application will be considered incomplete if this legal documentation is not submitted.
Legal Owner Name: The legal owner is the applicant and the entity that the Permit to Operate will be issued to. The legal owner name must be the same name used with the San Francisco Office of the Treasurer and Tax Collector (SFTTX) and the California Department of Tax and Fee Administration (CDTFA).
Legal Owner Email, Address, and Phone Number: Official correspondence from SFDPH will be sent through these points of contact.
List all Owners or Principal Officers and Ownership Percentages: The owners/principal officers must match the corporate records filed with the California Secretary of State.

Business Information
Business Name (DBA): The name of the establishment where tobacco sales will take place. The business name must be the same with SFTTX and CDTFA.
Business Address: The address of the establishment where tobacco sales will take place. This address must be the same with SFTTX and CDTFA.
CDTFA Cigarette Retailer License #: To sell tobacco products in the City and County of San Francisco, an establishment must have both a Cigarette Retailer License from the CDTFA and a Permit to Operate a Tobacco Sales Establishment from SFDPH. SFDPH will not issue a Permit to Operate without a valid CDTFA Cigarette Retailer License. This is not the same as the Seller's Permit from the CDTFA.
San Francisco Business Account # (BAN): Your account with SFTTX. Once your tobacco permit is approved, SFTTX will bill you through this account to pay for the H31 Tobacco License. The annual H31 Tobacco License validates your SFDPH Tobacco permit.
Establishment Type: Based on the San Francisco Zoning Code, provide the business establishment primary business type and operation.
Main Contact's Name: The primary point of contact between SFDPH and the business.
Relation to Legal Owner: Title of Responsible Person in relation to the Legal Owner.
Main Contact's Email and Phone Number: Official correspondence from SFDPH will be sent through these points of contact.
Signature of Applicant(s): The application will be signed by all Legal Owners and/or Principal Officers under penalty of perjury that the information provided is complete, true, accurate and correct.

For Department of Public Health Office Use Only					
Final Review			Required Items Submitted with Application:		
<input type="checkbox"/>			Non-refundable Processing Fee		
<input type="checkbox"/>			Declaration of Healthy and Safe Working Conditions		
<input type="checkbox"/>			Proof of Partnership or Incorporation (if applicable)		
<input type="checkbox"/>			Retail Tobacco Permit Affidavit (if applicable)		
<input type="checkbox"/>			19H.6 Exception Documentation (if applicable)		
Information from CDTFA and SFTTX match what is on this application? <input type="checkbox"/> Yes <input type="checkbox"/> No			Filing Fee Amount:	Payment Date:	Receipt Number:
			\$ 120 -	6/25/2021	062521-OTC1
Applicant Qualifies as:	Owner Type:	<input type="checkbox"/> Original Owner <input type="checkbox"/> New Owner	<input type="checkbox"/> Subsequent Buyer <input type="checkbox"/> Owner under Density	Permit Type:	<input type="checkbox"/> Amended Permit <input type="checkbox"/> New Permit
To the Director of Public Health, after reviewing this application on / /					
<input type="checkbox"/> I recommend the issuance of a Permit to Operate. <input type="checkbox"/> I disapprove the Issuance of a Permit to Operate (Note: See attached review and/or letter).					
Inspector			Principal Inspector		
Location ID: 110521		Permit #: T-		Type of Permit/Classification: H31	

EXHIBIT “K”


Incomplete SFDPH Tobacco Application: San Francisco Eagle Bar, 398 12th St, SF, 94103

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

Thu 8/5/2021 5:28 PM

To: LEX@THESFEAGLE.COM <LEX@THESFEAGLE.COM>

Cc: Prado, Uzziel (DPH) <uzziel.prado@sfdph.org>

 2 attachments (929 KB)

Tobacco Application Review Checklist - 398 12th Street_Incomplete.pdf; Tobacco Permit Application - 398 12th Street with highlights.pdf;

Dear Jesus Urbina,

Attached to this email is the incomplete SFDPH Tobacco Permit Application Checklist and Review for San Francisco Eagle Bar located at 398 12th St, SF, 94103.

Please correct the below items to complete your application (see highlighted areas on the attached application):

1. Fill in the ownership percentages listing you as 100% owner of San Francisco Eagle Bar, Inc.
2. Submit your CDTFA Cigarette Retailer License #.
3. SFDPH will change the Legal Owner Name to San Francisco Eagle Bar, Inc. to match the San Francisco Treasurer and Tax Collector's Office (SFTTX) Business Account.

Submit a completed tobacco permit application by the end of business day 09/07/2021.

If my Office does not receive a completed tobacco permit application by end of business day on **09/07/2021**, this application will be deemed abandoned and will lead to a denial of the application.

Also, for your convenience, the attached checklist provides additional reasons that will lead to the denial of the SFDPH Tobacco Permit.

In accordance with San Francisco Health Code, Article 19H, Section 19H.3, you may not sell tobacco products, including cigarettes, without first obtaining a SFDPH Tobacco Permit.

If you have any questions, please contact Senior Inspector Janine Young at (415) 252-3903 or Senior Inspector Uzziel Prado at (415) 252-3873.

Janine Young, Senior Health Inspector
Retail Tobacco and Smoking Program
Office or Field Hours: Tuesday - Friday, 7:30 AM - 6 PM
Environmental Health Branch
Population Health Division, San Francisco Department of Public
49 South Van Ness Ave, Suite 600 | San Francisco, CA 94103
415.252.3903 (direct)
415.252.3984 (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: Chad Henderson <chad@thesfeagle.com>
Sent: Wednesday, August 11, 2021 3:16 PM
To: Young, Janine (DPH) <janine.young@sfdph.org>
Subject: CDTFA

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

Hi Janine

I spoke to a representative at the CDTFA and they gave me our current permit # 091348008

Please give me a call when you have a chance.

Best
Chad
415 678 9375

EXHIBIT “L”



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: **7 / 21 / 2023**
Time of Inspection: **110521**
EHD Location #:
Tobacco Permit #: **T-None Issued**

Facility Name (DBA): SF Eagle Bar		Address: 398 12th St	
Permit Owner Name: No Permit Issued to SF Eagle Bar		Phone Contact: (415) 618-9606	
Email: LEX@thesFEAGLE.com		Required Action from Permit Owner:	
Inspection Type: <input type="checkbox"/> Routine <input type="checkbox"/> Reinspection <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Consultation		<input type="checkbox"/> No further action required <input checked="" 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: 8/31/2023 <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 type="checkbox"/> J. Remove _____ tobacco products from display and premises. <input type="checkbox"/> K. _____	
Inspection Report: <input checked="" type="checkbox"/> Notice of Correction <input type="checkbox"/> Notice of Violation			
Violations: Mark observed violations. Code violations cited are on the back page. <input type="checkbox"/> No violations observed <input type="checkbox"/> 1. Incomplete/Inaccurate application submitted <input type="checkbox"/> 2. Unpaid License fees <input type="checkbox"/> 3. Permit/Licenses not displayed <input type="checkbox"/> 4. Signage not posted <input type="checkbox"/> 5. Right to inspect denied <input checked="" type="checkbox"/> 6. Tobacco sales without a valid permit <input type="checkbox"/> 7. Sale of tobacco products without assistance <input type="checkbox"/> 8. Sale of single cigarettes <input type="checkbox"/> 9. Sale to minors (person <18 years old) <input type="checkbox"/> 10. Sale to persons aged 18, 19, or 20 <input type="checkbox"/> 11. Sale/Distribution of flavored tobacco products <input checked="" type="checkbox"/> 12. Smoking in prohibited area <input type="checkbox"/> 13. Sale/Distribution of restricted e-cigarette products <input type="checkbox"/> 14. Other tobacco control laws violated			
Observations: Joint Inspection w/ K. Dea. Observed ~ 12 cigarette packs and between 2 bars and ~ 9 cartons located in office/storage area. Observed 1 patron smoking w/in 10 feet of bar window. Reportedly, SF sells cigarette packs @ \$16/pack. SF Eagle Owner stated cigarette sales since change of ownership in 2012. SFDPH has not issued a tobacco permit to SF Eagle. A SFDPH Tobacco Permit Application will be emailed and mailed to location. (STOP SELLING TOBACCO PRODUCTS W/O SFDPH TOBACCO PERMIT)			
Additional Documents Attached: <input 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: JANINE YOUNG Inspector Signature: J. Young Inspector Email: janine.young@sfdph.org Inspector Phone #: (415) 252-39	
<small>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)).</small>			
Received By: (Print) REV Montoya		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.

EXHIBIT “M”

SFDPH Tobacco Application Required: SF Eagle is Selling Tobacco Products without valid SFDPH Tobacco Permit

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

Wed 9/6/2023 4:43 PM

To:tom@thesfeagle.com <tom@thesfeagle.com>

Cc:Dea, Katie (DPH) <katie.dea@sfdph.org>

📎 4 attachments (5 MB)

SFDPH Issued Permits from 2004 to 2023.pdf; Tobacco Application Review Checklist - Incomplete.pdf; New Owner Inspection-2023.0721.pdf; Updated Retail_Tobacco_Application with V6.202108 - Fillable Form.pdf;

Good evening,

I submit the requested files through NextRequest. (See SFDPH Issued Permits from 2004 to 2023) SFDPH only issued one tobacco permit which was closed by the Permit Holder in 2012.

Additionally, SF Eagle didn't apply for a permit until 2021. The application was incomplete and never completed as requested. So, the application was considered abandoned as stated in the Rules and Regulations for the SFDPH Tobacco Permit.

On July 21, 2023, I issued a Notice of Correction (attached) requiring the submittal of the completed SFDPH Tobacco Application with the \$120 processing fee. The application due date was August 31, 2023.

Since 2015, the San Francisco Health Code limits SFDPH ability to issue new tobacco permits. **No new tobacco permits** may be issued to any location meeting one or more of the following criteria:

- In any Supervisorial District with 45 or more active SFDPH tobacco permits;
- Within 500 feet of a retailer with an active SFDPH tobacco permit;
- Within 500 feet of a school;
- Operating a food establishment with on-site food or alcohol consumption (e.g., bar, restaurant, etc.);
- Operating a tobacco shop; or
- SFDPH did not previously issue a tobacco permit at the location.

However, according to Alex, cigarettes have been sold since the bar was purchased in 2012. Therefore, to support the claim of tobacco sales prior to the density law effective date, I requested that the Applicant includes proof that SF Eagle:

- (1) Had a valid CDTFA Tobacco License every year since 2012; and
- (2) SF Eagle paid SFTTX the cigarette litter abatement fee.

Unfortunately, submitting the requested documents doesn't guarantee that SFDPH will be able to issue a tobacco permit to 398 12th St dba SF Eagle. These documents allow me to discuss your case to EHB management team.

Attached is the SFDPH tobacco application. Please let me know when I can expect the requested submittals - the SFDPH tobacco application, \$120 processing fee, and additional documentation.

Sincerely,

Janine Young, Senior Health Inspector
Retail Tobacco and Smoking Program
Office or Field Hours: Tuesday - Friday, 7:30 AM - 6 PM
Environmental Health Branch
Population Health Division, San Francisco Department of Public
49 South Van Ness Ave, Suite 600 | San Francisco, CA 94103
415.252.3903 (direct)
415.252.3984 (fax)

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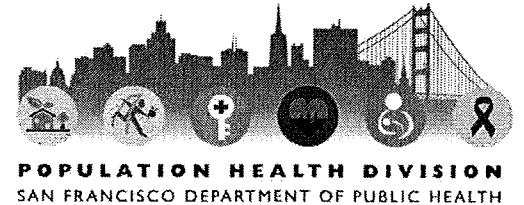
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EXHIBIT “N”







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



Tobacco Application & Pre-Application Affidavit Review

Business/DBA Name: San Francisco Eagle Bar	Date Received: 6/25/2021
Business Address: 398 12th Street	SF BAN #: 1118071
Legal Owner Name: San Francisco Eagle Bar Inc	CDTFA Cigarette Retailer License #:
Main Contact Name: Jesus Alejandro Montiel Urbina	EHD Location ID: 110521
Contact Phone #: 4156189606	Establishment Type: Bar/Tavern
Email Address: lex@thesfeagle.com	Legal Owner Structure: Corporation 

The following information has been reviewed and submitted. All information matches across the Tobacco Application, SF Business Account, & CDTFA License: YES, NO, PENDING, or N/A

<input type="text" value="No"/>	Owner Name, DBA Name, & Business Address
<input type="text" value="No"/>	San Francisco Business Registration Account
<input type="text" value="No"/>	State of California Cigarette Retailer License
<input type="text" value="No"/>	List All Owners & Percentages % of Ownership
<input type="text" value="N/A"/> 	Pre-application Affidavit
<input type="text" value="Yes"/> 	Non-refundable Application Processing Fee
<input type="text" value="Yes"/>	Documents Signed By All Applicants
<input type="text" value="Yes"/>	Declaration of Healthy & Safe Working Conditions, completed, signed & dated
<input type="text" value="Yes"/> 	For LLCs & Corporations, Document from Secretary of State listing the corporate ownership
<input type="text" value="N/A"/> 	Legal documentation of a Direct Negotiation between the Original Owner and New Buyer

NOTE: Change of Ownership means:

1. A change of fifty percent (50%) or more of the ownership of the business within a 12-month period, or
 2. For a corporation, transfer of twenty-five (25%) or more of the stock ownership within a 12-month period.
- New Buyer, Subsequent Buyer, Seismic Retrofit, and A Child Exceptions only applies to Retail Food Establishments or Tobacco Shops.*

Which Track Is the Business Applying For?

☐ **Amendment/Update Records (Use Original Permit Date)**

- ☐ Legal Owner Name
- ☐ DBA
- ☐ Increase/Decrease Partners/Officers
- ☐ Increase/Decrease Stock Percentages
- ☐ Update Contact Information

☐ **New Permit Under One-Time Exception**

- ☐ New Buyer of Retail Food Store or Tobacco shop that was owned and operated from Jan. 18, 2010 to Jan. 18, 2015 AND had a tobacco permit since Jan. 18, 2015.
- ☐ Subsequent Buyer of a Retail Food Store or Tobacco Shop
- ☐ A Child of Original Owner
- ☐ Death or Divorce
- ☐ Seismic Retrofit under Chapter 34 of the Department of Building Code

☒ **New Permit Under Density Rules**

- ☐ Yes ☒ No Is it located within 500 ft. of a school?
- ☒ Yes ☐ No Is it located within 500 ft. of a tobacco permit?
- ☐ Yes ☒ No Does it have a current/previous tobacco permit?
- ☒ Yes ☐ No Is it a tobacco shop or restaurant/bar that serves on-site consumption of food and/or
- ☒ Yes ☐ No beverages? Is it in a Supervisorial District that has 45 or more tobacco permits?

SUPERVISORIAL DISTRICT: 6 ☐ # Of Tobacco Permits: 89 As Of This Date: 11/09/2023

An application will be deemed abandoned if the Applicant fails to submit all required items within 30 days from the date the application form is first submitted to the Department. After 30 days, the Applicant will be required to submit a new application and nonrefundable application fee.

Application Status: Incomplete ☐

Comments:

- 1) Submit proof of CDTFA Cigarette and Tobacco Products Retailer's License with Legal Owner Name, DBA, and Street Address matching SFTTX BAN (Active) and SFDPH Tobacco Permit Application.
- 2) SFTTX BAN #1118071 is "Inactive" according to SFTTX. Provide an "Active" SFTTX BAN with Legal Owner Name, DBA, and Street Address that matches CDTFA Cigarette and Tobacco License and SFDPH Tobacco Permit Application.
- 3) Legal Owner states that tobacco products have been sold with valid CDTFA prior to January 18, 2010. Please submit valid CDTFA Retail Cigarette and Tobacco Products License.

DISCONTINUE ANY TOBACCO PRODUCTS OR CIGARETTES SALES UNTIL YOU FIRST OBTAIN A SFDPH TOBACCO PERMIT (SFHC 19H.3)

☒ Submit Documents By This Date: 11/30/2023

☒ Notification Email/Letter Sent Date: 11/09/2023

Staff Reviewer Name: Janine Young ☐

Initial Review Date: 11/09/2023

Direct Line: (415) - 252-3903

Final Review Date:

Email: janine.young@sfdph.org ☐

Permit Notification Date:

Referral: ☐ Food ☐ Off-Sale Alcohol ☐ Weights & Measures

EXHIBIT “O”

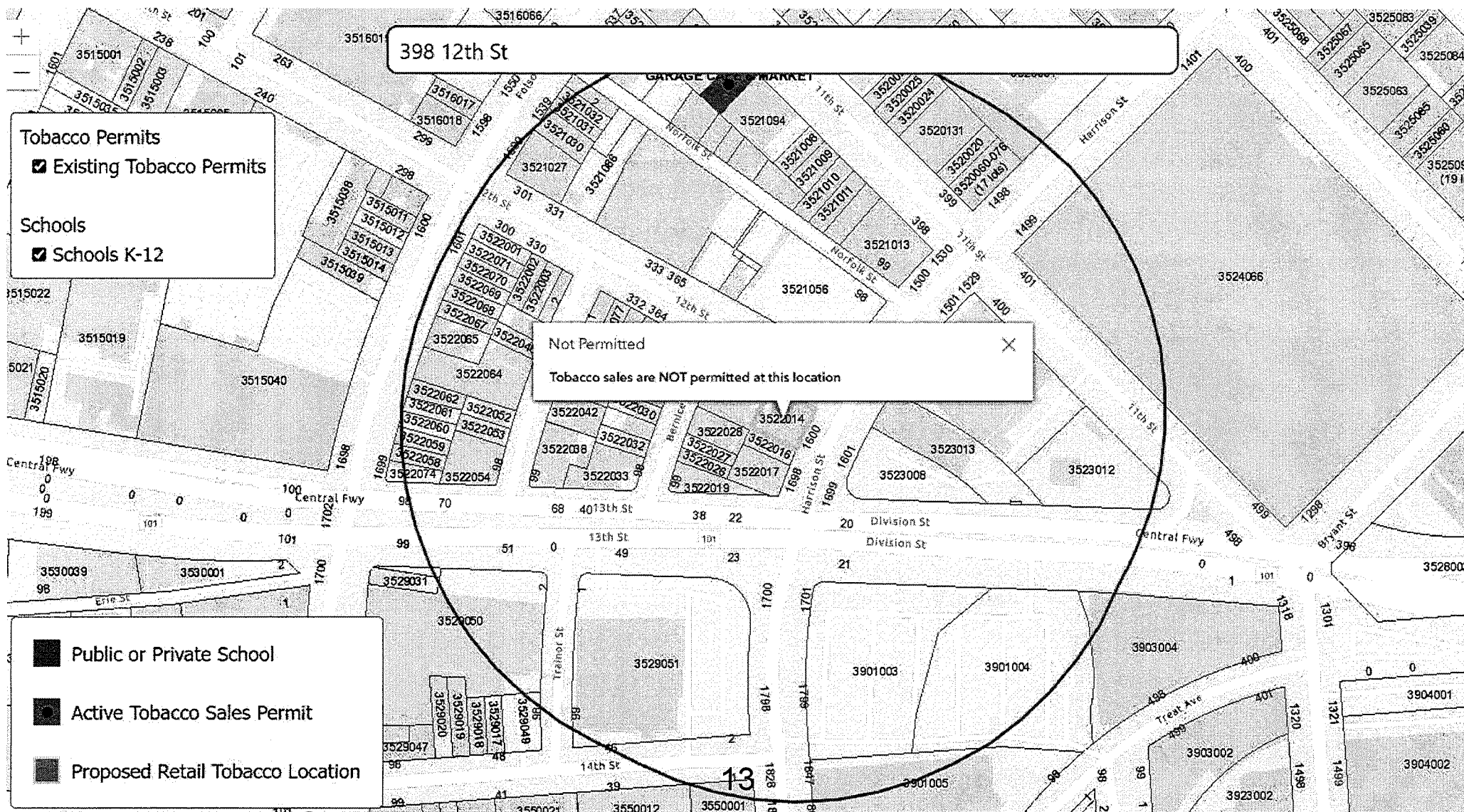


EXHIBIT “P”



Fw: Incomplete SFDPH Tobacco Application: San Francisco Eagle Bar, 398 12th St, SF, 94103

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

Date Thu 11/9/2023 4:53 PM

To tom@thesfeagle.com <tom@thesfeagle.com>; Lex@thesfeagle.com <Lex@thesfeagle.com>

Cc Phan, Ivy (DPH) <ivy.phan@sfdph.org>; Dea, Katie (DPH) <katie.dea@sfdph.org>

 3 attachments (4 MB)

Tobacco Permit Application - 398 12th Street with highlights.pdf; Tobacco Application Review Checklist - Incomplete.pdf; Updated Retail_Tobacco_Application with V6.202108 - Fillable Form.pdf;

Good evening,

On July 21, 2023, I conducted a joint inspection with District Inspector Katie Dea. During the inspection, I observed that your Establishment sells various brands of cigarettes. In order to sell tobacco products, you must first obtain the California Department of Tax and Fee Administration (CDTFA) Retail Tobacco License **and** San Francisco Department of Public Health (SFDPH) Permit to Operate a Retail Tobacco Permit.

After the inspection, I reviewed your file and learned that in 2021, you submitted an incomplete SFDPH Tobacco Application, and SFDPH didn't complete the review process.

Therefore, I re-evaluated your submitted 2021 SFDPH application and provided a blank application to allow you to provide updated information.

Please submit a completed SFDPH application by providing the following information within 30 days, **before close of business day on Monday, December 11, 2023:**

1. Review the attached SFDPH Application Review and Checklist for details.
2. Submit an updated SFDPH application with the following information:

- Legal Owner
- DBA
- Site Address
- Legal documentation of corporate officers and stock ownership
- Active SFTTX BAN
- Valid CDTFA Retail Tobacco License

3. Provide proof of valid BOE or CDTFA Retail Tobacco License from beginning of your operations at 398 12th St dba San Francisco Eagle Bar.

If the required information is not submitted by December 11, 2023, you will be **denied** a SFDPH Tobacco Permit on the basis of the submittal of an incomplete application and one or more reasons provided as grounds for permit denial pursuant to San Francisco Health Code, Section 19H.4(f).

If you have any questions or concerns, please feel free to contact our team by email or phone.

Sincerely,

Janine Young, Senior Health Inspector

(pronouns: she/her)

Office or Field Hours: Monday - Friday, 8:30 AM - 4 PM

Environmental Health Branch

Retail Tobacco and Smoking Program

Population Health Division, San Francisco Department of Public

49 South Van Ness Ave, Suite 600 | San Francisco, CA 94103

415.252.3903 (direct)

415.252.3984 (fax)

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From: Young, Janine (DPH)

Sent: Thursday, August 5, 2021 5:28 PM

To: LEX@THESFEAGLE.COM <LEX@THESFEAGLE.COM>

Cc: Prado, Uzziel (DPH) <uzziel.prado@sfdph.org>

Subject: Incomplete SFDPH Tobacco Application: San Francisco Eagle Bar, 398 12th St, SF, 94103

Dear Jesus Urbina,

Attached to this email is the incomplete SFDPH Tobacco Permit Application Checklist and Review for San Francisco Eagle Bar located at 398 12th St, SF, 94103.

Please correct the below items to complete your application (see highlighted areas on the attached application):

1. Fill in the ownership percentages listing you as 100% owner of San Francisco Eagle Bar, Inc.
2. Submit your CDTFA Cigarette Retailer License #.
3. SFDPH will change the Legal Owner Name to San Francisco Eagle Bar, Inc. to match the San Francisco Treasurer and Tax Collector's Office (SFTTX) Business Account.

Submit a completed tobacco permit application by the end of business day 09/07/2021.

If my Office does not receive a completed tobacco permit application by end of business day on **09/072021**, this application will be deemed abandoned and will lead to a denial of the application.

Also, for your convenience, the attached checklist provides additional reasons that will lead to the denial of the SFDPH Tobacco Permit.

In accordance with San Francisco Health Code, Article 19H, Section 19H.3, you may **not** sell tobacco products, including cigarettes, without first obtaining a SFDPH Tobacco Permit.

If you have any questions, please contact Senior Inspector Janine Young at (415) 252-3903 or Senior Inspector Uzziel Prado at (415) 252-3873.

Janine Young, Senior Health Inspector
Retail Tobacco and Smoking Program
Office or Field Hours: Tuesday - Friday, 7:30 AM - 6 PM
Environmental Health Branch
Population Health Division, San Francisco Department of Public
49 South Van Ness Ave, Suite 600 | San Francisco, CA 94103
415.252.3903 (direct)
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EXHIBIT “Q”



City and County of San Francisco
Daniel Lurie, Mayor

San Francisco Department of Public Health

Naveena Bobba, MD
Acting Director of Health

Notification of Tobacco Permit Denial

EFFECTIVE DATE: February 4, 2025

FACILITY NAME (DBA): San Francisco Eagle Bar, LLC **FACILITY ADDRESS & ZIP:** 398 12th St. San Francisco CA 94103
LEGAL OWNER NAME: J A Montiel Urbina **RESPONSIBLE PERSON NAME:** J A Montiel Urbina
Mailing Address, City, State, Zip: 398 12TH ST SAN FRANCISCO CA 94103
EHD ID#: 110521 **Supervisory District:** 6 **Number of Tobacco Permits:** 77

Dear Jesus Alejandro Montiel Urbina :

You submitted an application for a Retail Tobacco Sales Permit on June 25, 2021. You are hereby notified that your application for San Francisco Department of Public Health (SFDPH) Retail Tobacco Sales Permit at 398 12th St. ("Business Location") has been **denied**, in accordance with Article 19H of the San Francisco Health Code (SFHC) and San Francisco Department of Public Health Director's Rules and Regulations for Retail Tobacco Sales, on the following basis:

Reasons for Denial of Retail Tobacco Sales Permit:

1. According to the SFHC 19H.4(f) and 19H.5(a), no new permit shall be issued in any supervisory district that has 45 or more Establishments with Tobacco Sales Permits.
The Business Location is in Supervisory District 6 which currently has 77 valid Retail Tobacco Sales Permits.
2. According to SFHC 19H.4(f), 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. (Please see the attached map)
The Business Location is located within 500 feet of 1 other Establishments that have a valid Retail Tobacco Sales Permit.
3. According to SFHC 19H.4(f)(6), no new permit shall be issued to any Applicant whose main purpose is offering food or alcoholic beverages for sale or consumption on the premises, including Bars and Restaurants.
The Business location is permitted as a Bar & Tavern.

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

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

naveena.bobba@sfdph.org ♦ (415) 554-2526 ♦ 1029 Grove Street, Room 308, San Francisco, CA 94102

In addition, we have reviewed all seven exceptions under SFHC Article 19H.6 listed below, where SFDPH has determined that the applicant does not qualify for any exception. If you believe that you do qualify for one of the below exceptions, you are able to submit a new tobacco application with the \$100 nonrefundable processing fee.

SECTION 2. EXCEPTIONS FOR CERTAIN NEW PERMITS

1. **A Retail Food Store Establishment or Tobacco Shop Permittee since January 18, 2010**, may submit an affidavit to the Director attesting to: (a) their ownership of the Establishment; (b) under the same Tobacco Sale Permit; (c) for at least five (5) consecutive years immediately before the submission of the affidavit; and (d) Direct Negotiations. Upon submission of the Permittee's affidavit, a New Buyer may apply for a Tobacco Sales Permit for the Permittee's Retail Food Store Establishment or Tobacco Shop.
The Permittee (i.e. John Gardiner and Joseph Banks) at the Business Location was issued their Retail Tobacco Permit on June 30, 2004, but did not own and operate continuously from January 18, 2010, to January 18, 2015 and are therefore not considered Tavern Permittee.
2. **Seismic Retrofitting Relocation.** A Retail Food Store Establishment or Tobacco Shop Permittee as of January 18, 2015, which must relocate from their Establishment due to seismic retrofitting under Chapter 34B of the Building Code may apply for a Tobacco Sales Permit for their Establishment. The Permittee's application is subject to further review including confirmation of seismic retrofitting by the Department of Building Inspection.
The Permittee at the Business Location is not relocating due to seismic retrofitting under Chapter 34B.
3. **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 Permittee at the Business Location is not the Original Owner as of January 18, 2015, and therefore cannot be defined as a New Buyer.
4. **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 Permittee (i.e. John Gardiner and Joseph Banks) at the Business Location was issued their Retail Tobacco Permit on June 30, 2004, but did not own and operate continuously

from June 25, 2016, to June 25, 2021, and are therefore not considered Tavern Permittee.

5. **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.

There is no New Buyer of a Tavern permitted at this location, therefore there can be no subsequent buyer of a tavern.

6. **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, Jesus Alejandro Montiel Urbina, is not the spouse or domestic partner of the Permittee.

7. **Child of 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, Jesus Alejandro Montiel Urbina, is not the child of the Permittee.

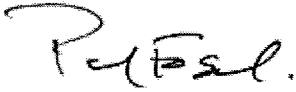
Appeal Process. You have the right to appeal this decision to deny your application for a tobacco retailer permit. (*Pursuant to Section 19H.24 and Article 1 of the San Francisco Business and Tax Regulations Code*). Appeals may be filed with the San Francisco Board of Appeals within 15 calendar days 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 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,

A handwritten signature in black ink, appearing to read "P. Fosdahl".

Patrick Fosdahl, MS, REHS
Director of Environmental
Health
Environmental Health Branch
SFDPH – Population Health Division
Cc: Jennifer Callewaert



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

Daniel Lurie, Mayor
Naveena Bobba, MD, Acting Director of Health
Patrick Fosdahl, MS, REHS
Director of Environmental Health

PROOF OF SERVICE

I, Sandy Chan, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the San Francisco Department of Public Health, Environmental Health Branch, 49 South Van Ness Avenue, Suite 600, San Francisco, CA 94103.

On Feb. 4, 2025, I served the following document(s):

- | | |
|---|---|
| <input type="checkbox"/> Notice of Violation | <input type="checkbox"/> SFDPH Hearing Brief |
| <input type="checkbox"/> Notice of Hearing | <input checked="" type="checkbox"/> Other: <u>Notification of Tobacco Permit Denial</u> |
| <input type="checkbox"/> Director's Hearing Order | |

on the following persons at the locations specified:

SAN FRANCISCO EAGLE BAR LLC
398 12TH ST
SAN FRANCISCO, CA 94103-4330

in the manner indicated below:

☐ **HAND DELIVERY:** I handed the documents to the person whose name and signature are:

Recipient Name _____ Signature _____

☒ **BY U.S. POSTAL SERVICE** Certified Mail 7022 3330 0000 0547 2239

☐ **BY POSTING:** I posted the document(s) in a conspicuous place on the building, structure or property

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


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

Executed Feb. 4, 2025 at San Francisco, California.

Sandy Chan

Sandy Chan

49 South Van Ness Avenue, Suite 600, San Francisco, CA 94103
Phone 415-252-3800 | Fax 415-252-3875

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature </p> <p><input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>SAN FRANCISCO EAGLE BAR LLC 398 12TH ST SAN FRANCISCO, CA 94103-4330</p>		<p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7022 3330 0000 0547 2239</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>			
<p>9590 9402 9083 4122 1682 15</p>			
<p>PS Form 3811, July 2020 PSN 7530-02-000-9053</p>		<p>Domestic Return Receipt</p>	


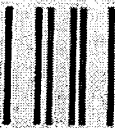
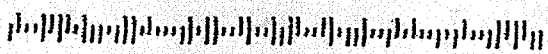
USPS TRACKING #	
<p>SC</p> <p>2/4/25</p> <p></p> <p>9590 9402 9083 4122 1682 15</p>	<p></p> <p>First-Class Mail Postage & Fees Paid USPS Permit No. G-10</p>
<p>United States Postal Service</p> <p>Notification of Tobacco Permit Denial</p>	
<p>* Sender: Please print your name, address, and ZIP+4® in this box*</p> <p>CITY & COUNTY OF SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH ENVIRONMENTAL HEALTH BRANCH 49 South Van Ness Ave, Ste 600 San Francisco, CA 94103</p> <p><i>Attn: Retail Tobacco Program</i></p>	
<p></p>	

EXHIBIT “R”

Thomas E. Smurro, Esq.
ATTORNEY AT LAW

301 Calle Empalme
San Clemente, CA 92672
Telephone: 949.874.3555

February 17, 2025

San Francisco Board of Appeals
49 South Van Ness Ave., Suite 1475
San Francisco, CA 94103

Via email only to: boardofappeals@sfgov.org

Re: *San Francisco Eagle Bar*

San Francisco Board of Appeals:

NOTICE IS HEREBY GIVEN: that the San Francisco Eagle Bar (hereinafter "Bar") is appealing the "Notification of Tobacco Permit Denial," (hereinafter "Notification"), dated February 4, 2025, a copy of which is attached hereto.

The Notification bases its denial as if Bar's application, dated June 25, 2021, was one for an applicant under the "New Permit under Density Rules." This is not the case.

Bar is a Legacy Business, officially so designated by the City of San Francisco. This designation requires an establishment to be in business for at least 35 years. Bar has been at the same location, 398 12th St. in San Francisco, since in or about 1981.

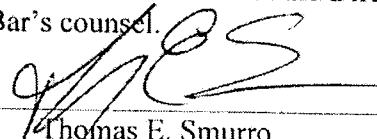
It is believed that Bar has been selling tobacco products at that location since its inception; that it has obtained the necessary licenses from the State of California and the necessary permits from the City of San Francisco since such licenses and permits were required.

Bar, like all bars in San Francisco, was required to close down on or about March 13, 2020 due to Covid, by orders of the Governor and the Mayor of San Francisco. Bar complied with those orders. Bars were allowed to reopen by orders of the Governor and Mayor in June 2021. The application of Bar at issue, dated June 25, 2021, was therefore submitted as soon as it was permitted to reopen.

Bar's application should have been processed as an "Amendment/Update Records (Use original permit date)."

Efforts to communicate this error has been unsuccessful as the office of the Director of Public Health has refused to communicate with Bar's counsel.

February 17, 2025


Thomas E. Smurro
Attorney for San Francisco Eagle Bar



Date Filed: February 18, 2025

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

PRELIMINARY STATEMENT FOR APPEAL NO. 25-009

I / We, **San Francisco Eagle Bar, LLC**, hereby appeal the following departmental action: **ISSUANCE of Denial of a Tobacco Sales Establishment Permit No. EDH ID 110521** by the **Department of Public Health** which was issued or became effective on: **February 4, 2025**, for the property located at: **398 12th Street**.

BRIEFING SCHEDULE:

Appellant's Brief is due on or before: 4:30 p.m. on **March 20, 2025**, (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.lamarre@sfgov.org, corey.teague@sfgov.org, Natalia.fossi@sfgov.org, and adam.radtke@sfcityatty.org

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **April 3, 2025**, (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.lamarre@sfgov.org, corey.teague@sfgov.org, Natalia.fossi@sfgov.org, and tsmurro@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, April 9, 2025, 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 to the preliminary Statement of Appeal.

Appellant or Agent:

Signature: Via Email

Print Name: Thomas Smurro, attorney for appellant

City and County of San Francisco



Daniel Lurie
Mayor

Board of Appeals

Julie Lamarre
Executive Director

February 19, 2025

Adam Radtke
Department of Public Health
San Francisco City Attorney's Office
1390 Market Street, 7th Floor
San Francisco, CA 94102
adam.radtke@sfcityattty.org

Appeal No.: 25-009
Appeal Title: San Francisco Eagle Bar, LLC vs. DPH
Subject Property: 398 12th Street
Permit Type: Tobacco Sales Establishment Permit
Determination No.: EDH ID 110521

Dear Adam Radtke:

This is to notify you that an appeal has been filed with this office protesting the **ISSUANCE** of the above-referenced determination. Pursuant to Article I, §8 of the San Francisco Business & Tax Regulations Code, the determination is hereby **SUSPENDED** until the Board of Appeals decides this matter and releases a notice of decision and order.

We are enclosing a copy of the **Preliminary Statement of Appeal** for your information.

The hearing regarding this matter has been scheduled for **April 9, 2025, at 5:00 p.m., and will be held in Room 416 of San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place.** The parties may also attend remotely via the Zoom video platform.

If you have any further questions, you may email this office at boardofappeals@sfgov.org or call (628) 652-1150.

Sincerely,

BOARD STAFF

cc:

San Francisco Eagle Bar, LLC, Appellant(s)
c/o Thomas Smurro, Attorney for Appellant(s)
301 Calle Empalme
San Clemente, CA 92672
tsmurro@yahoo.com

PROOF OF SERVICE

I, LILY KANG, declare as follows:

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

On April 3, 2025, I served the following document(s):

**DECLARATION OF MICHELLE VEGA IN SUPPORT OF
RESPONDENT'S OPPOSITION BRIEF**

on the following persons at the locations specified:

San Francisco Eagle Bar, LLC
c/o Thomas Smurro, Esq., Atty for Appellant
301 Calle Empalme
San Clemente, CA 92672
tsmurro@yahoo.com

boardofappeals@sfgov.org

julie.lamarre@sfgov.org

corey.teague@sfgov.org

natalia.fossi@sfgov.org

in the manner indicated below:

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

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

Executed April 3, 2025, at San Francisco, California.



LILY KANG