

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

Appeal of  
SMOKING ACES, )  
Appellant(s) )  
vs. )  
DEPARTMENT OF PUBLIC HEALTH, )  
Respondent )

Appeal No. **26-028**

**NOTICE OF APPEAL**

**NOTICE IS HEREBY GIVEN THAT** on May 29, 2026, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on May 14, 2026, to Smoking Aces, of an order by the Director of the Department of Public Health, (20-day suspension of Tobacco Sales Permit for the following violations which occurred on November 5, 2025: (1) sales of e-cigarettes without FDA pre-market authorization (10 day suspension) (SF Health Code Section 19R.2), and (2) sales of flavored tobacco products (10-day suspension) (SF Health Code Section 19 Q.3. )) at 1108 Polk Street.

**DPH CASE NO. 26-3 (Permit No. T-61930)**

**FOR HEARING ON July 8, 2026**

Address of Appellant(s):

Address of Other Parties:

Smoking Aces, Appellant(s) c/o Ola Elsade, Agent for Determination Holder(s) 1108 Polk Street San Francisco, CA 94109	N/A
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Date Filed: May 29, 2026

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

**PRELIMINARY STATEMENT FOR APPEAL NO. 26-028**

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I / We, **Smoking Aces**, hereby appeal the following departmental action: **ISSUANCE** of Director's Hearing Order 26-03 (**SUSPENSION of Tobacco Sales Permit No. T-6193**) by the **Department of Public Health** which was issued or became effective on: **May 14, 2026**, for the property located at: **1108 Polk Street**.

**BRIEFING SCHEDULE:**

Appellant's Brief is due on or before: 4:30 p.m. on **June 18, 2026**, (**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](mailto:boardofappeals@sfgov.org), [julie.lamarre@sfgov.org](mailto:julie.lamarre@sfgov.org), [jennifer.Callewaert@sfdph.org](mailto:jennifer.Callewaert@sfdph.org) and [bess.hanish@sfcityatty.org](mailto:bess.hanish@sfcityatty.org)

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **July 2, 2026**, (**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](mailto:boardofappeals@sfgov.org), [julie.lamarre@sfgov.org](mailto:julie.lamarre@sfgov.org), [bess.hanish@sfcityatty.org](mailto:bess.hanish@sfcityatty.org), and [smokingacesf@gmail.com](mailto:smokingacesf@gmail.com)

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

Hearing Date: **Wednesday, July 8, 2026, 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](mailto: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](http://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.

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**The reasons for this appeal are as follows:**

See attachment to the Preliminary Statement of Appeal.

**Appellant or Agent:**

Signature: Via Email

Print Name: Ola Elsade, agent for appellant

To the board of appeals of sf

My name is Ola Elshade the owner of smoking aces located @1108 Polk sf

In April /16/2026

I heard was held on behave of the health department regarding a sale of vape in my store case  
number 26-03

The hearing officer I think was unfair to me and my business

I would like to to appeal the hearing officer decision regarding my case

In this e mail I will include a copy of the decision and hearing notice if the board allow me please  
contact me if you have any questions



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

**Director's Hearing Order**

Location Address 1108 Polk St San Francisco, CA 94109	Block/Lot 0692/012	Facility Name (DBA) Smoking Aces		
Property Owner 1086 POST LLC		Phone	Email smokingaccessf@gmail.com	
Responsible Party or Parties Smoking Aces c/o Elsadé Ola N	Attended Hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No	Hearing Date 04/16/2026	Program Code SMK	Case Number 26-03

**CODE SECTION(S) and DESCRIPTIONS**

1. Section 19Q.3. Sale or Distribution of Flavored Tobacco Products Prohibited, 2. Section 19H. 14-2. Conduct Violating Health Code Article 19Q (Prohibiting the Sale of Flavored Tobacco Products), 3. SFHC SEC. 19H. 20. Administrative Penalty, 4. Section 19R.2. Sale or Distribution of Electronic Cigarettes Lacking Food and Drug Administration Premarket Order of Approval Prohibited, 5. Section 19H.14-3. Conduct Violating Health Code Article 19R (Prohibiting the Sale or Distribution of Electronic Cigarettes Lacking Food and Drug Administration Premarket Order of Approval.

**HEARING OFFICER DETERMINATIONS:**

After a full and fair consideration of the evidence and testimony received at the hearing on the above date, THE DIRECTOR FINDS AND DETERMINES THE FOLLOWING:

- That notice of the hearing has been duly given as required by law, and
- That your presence at the hearing is correctly designated above, and
- That the findings stated in the Inspection Report(s) are true, and

1. That, you remove all flavored tobacco products and restricted e-cigarettes from the Establishment immediately and cease sales of any flavored tobacco products, including but not limited to flavored e cigarettes in the future.
2. That, as authorized by SFHC, Section 19H. 19 and the San Francisco Tobacco Sales Rules and Regulations, your Permit # T-61930 shall be suspended with no tobacco sales for ten (10) days for the first violation of Section 19Q.3. and for ten (10) days for the first violation of Sec. 19R. 2 that shall both be served consecutively for a total of Twenty (20) days.
3. As authorized by SFHC, Article 19H, Section 19H.20, you shall pay an administrative penalty in the total amount of one thousand dollars (\$1000) for (\$500) for each of the first administrative violations of 19Q. 3, 19R.2 each occurring on November 5, 2025.

This Hearing Order continues on the next page.

**IMPORTANT: Can you read this document? If not, we can have somebody help you read it. For free help, please call Department of Public Health at 415-252-3800.**

请注意： 你是否理解信件的全部内容？如有任何问题,我们提供免费翻译服务,请致电三藩市公共卫生局 415-252-3800.

**¿Puede leer este documento? Sí no puede, alguien lo puede ayudar. Para obtener ayuda gratis llame al Departamento de Salud Pública al (415) 252-3800.**



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

**Director's Hearing Order (continued -- Page 2 of 3 )**

Responsible Party or Parties Smoking Aces c/o Elsade Ola N	Attended Hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No	Hearing Date 04/16/2026	Program Code SMK	Case Number 26-03
Permit Number (if blank, this hearing did not involve a permit) #T-61930.	Permit Decision N/A	Reinspection Fee Applies? <input type="checkbox"/> Yes as authorized by _____ <input type="checkbox"/> No		Reinspection Fee:

4. That, you shall not begin serving the suspension period until the Inspector posts the Notice of Suspension at your business establishment, including the suspension period start and end date.

5. That, upon suspension, you shall cease sales of and remove tobacco products from the shelves including, but not limited to, cigarettes, cigars, cigarillos, electronic smoking devices, liquids that are intended to be vaporized by electronic smoking devices, smokeless tobacco, hookah tobacco shisha, blunts, and any product containing tobacco or nicotine during the suspension period.

6. That, upon suspension, the business may continue to sell non-tobacco herbal hookah shisha, matches, paper wrappers, cases for cigars or cigarettes, ashtrays, tongs, charcoals, and other accessories that do not contain tobacco or nicotine.

7. That, future reoccurrence of flavored tobacco product sales will result in the suspension of your Tobacco Sales Permit for a minimum of 20 days to a maximum of 180 days served consecutively, if applicable.

8. That, future reoccurrence of e-cigarette without FDA pre-market authorization sales will result in the suspension of your Tobacco Sales Permit for a minimum of 20 days to a maximum of 180 days served consecutively, if applicable.

9. That failure to comply as ordered may result in one or a combination of the following:  
 a. The increase of your suspension period up to the maximum time pursuant to Section 19H. 19;  
 and/or  
 b. Revocation of your retail tobacco permit #T-61930.

Should you have any questions, please contact:

Inspector Name: Japjit Deol	Inspector Phone 415 252 3816	Inspector Email japjit.deol@sfdph.org
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The aforementioned is a true copy of the orders issued in the name of the Director of Public Health in the City and County of San Francisco,

Hearing Officer Traci Lawrence	Hearing Officer Signature 	Date 4/30/26
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City and County of San Francisco  
**DEPARTMENT OF PUBLIC HEALTH**  
**ENVIRONMENTAL HEALTH**

**Director's Hearing Order (continued -- Page 3 of 3 )**

Responsible Party or Parties Smoking Aces c/o Elsade Ola N	Attended Hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No	Hearing Date 04/16/2026	Program Code SMK	Case Number 26-03
Permit Number (if blank, this hearing did not involve a permit) #T-61930.	Permit Decision N/A	Reinspection Fee Applies? <input type="checkbox"/> Yes as authorized by _____ <input type="checkbox"/> No		Reinspection Fee:

And Further, if checked, the following conditions are included in this order:

**REINSPECTION FEE**

That the Responsible Party named above pay the reinspection fee as authorized and shown above.

**NUISANCE ABATEMENT**

Failure to abate and remove the nuisance may result in the abatement of the nuisance by the Department of Public Health and the Property Owner shall become indebted to the City and County of San Francisco for the costs, charges, and fees incurred by reason of the abatement and removal of such nuisance upon demand.

**COST RECOVERY**

In accordance with the San Francisco Health Code, the Property Owner shall be indebted to the City and County of San Francisco for costs incurred in abating the effects of the violation, taking other remedial action, or imposing and collecting penalties, including but not limited to administrative costs, costs of issuing an order, inspection or monitoring costs, hearing officer costs, and reasonable attorney fees if sought by the Director in the Notice of Hearing. In any proceedings in which the Director seeks to recover attorney's fees, the prevailing party shall be entitled to reasonable attorney's fees. Failure to pay such costs, charges, and fees may result in a lien against the property.

**APPEAL PROCESS** if the case involves a Health Permit:

Within 15 days of receipt of this letter, you have the right to appeal this decision regarding your permit to the Board of Appeals. 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>.

**APPEAL PROCESS** if the case involves a non-permitted facility and/or a penalty:

This Order is final and you may have the right to petition the Superior Court of San Francisco for judicial review or appropriate relief pursuant to Section 1094.6 of the California Code of Civil Procedures. The filing of a petition with the Superior Court shall not automatically stay the effectiveness of this Order or extend the time period in which you have to abate the violation

**DPH USE ONLY**

Decision Entry Date: 05/14/2026      Hearing Coordinator: ES  
Initial

Should you have any questions, please contact:

Inspector Name: Japjit Deol	Inspector Phone 415 252 3816	Inspector Email japjit.deol@sfdph.org
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The aforementioned is a true copy of the orders issued in the name of the Director of Public Health in the City and County of San Francisco,

Hearing Officer Traci Lawrence	Hearing Officer Signature 	Date 4/30/26
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# BRIEF SUBMITTED BY THE APPELLANT(S)

BRIEFING STATEMENT IN SUPPORT OF REDUCING OR ELIMINATING THE  
PROPOSED SUSPENSION TO THE BOARD OF APPEALS

Appeal No.: 26-028

Appeal Title: Smoking Aces vs. DPH

Subject Property: 1108 Polk Street

Determination Type: Director's Order (20-Day Suspension of Tobacco Sales Permit No.  
T-61930)

DPH CASE NO.: 26-03

Dear Board of Appeal,

We respectfully request that the City consider the full circumstances surrounding this matter before imposing a suspension of our Tobacco Retail License.

First, while the City alleges that flavored tobacco products were sold at our business, our compliance history should be given substantial weight. Our business has never been cited for sales to minors, furnishing tobacco to underage persons, or any other unlawful tobacco sales. We have consistently maintained age-verification procedures and have operated responsibly within the community.

Second, we respectfully request equal treatment under the City's enforcement policies.

We are aware of businesses that were found selling tobacco products without

possessing a Tobacco Retail License and were issued monetary penalties rather than license suspensions. We possess evidence regarding these enforcement actions and are prepared to present it. We believe fairness and consistency require that similar violations be treated similarly. Accordingly, we request that the City consider a monetary penalty or other corrective action in lieu of suspension.

Third, we request consideration of our concerns regarding the enforcement process. Since approximately 2019, our business has experienced repeated enforcement actions and inspections. We believe some of these interactions merit review. In particular, we have concerns regarding an inspection that occurred in or around November 2024 involving entry into non-public areas of the business. We respectfully request that the circumstances of that inspection be examined as part of the overall enforcement record relating to our business.

Additionally, following the flavored tobacco investigation, joint agencies include the city of San Francisco, the State Board of California and inspectors conducted enforcement activity at our business. Despite the significant scope of the inspection, the original concerns that prompted the investigation were not substantiated beyond the flavored tobacco allegation. However, products valued at approximately \$25,000 to \$35,000 were confiscated under a determination that they constituted prohibited enhanceable flavored hemp products.

We dispute that determination and maintain that the products were lawful at the time they were seized. To our understanding, the applicable guidance and product classifications in effect at the time did not identify these products as prohibited. We reserve all rights concerning the legality of the seizure and the classification of those products.

The cumulative effect of these enforcement actions has imposed substantial financial and emotional hardship on the business, its owners, employees, and customers. The loss of inventory, the disruption of operations, and the uncertainty surrounding ongoing enforcement actions have had a significant impact on all parties involved.

For these reasons, we respectfully request that the City decline to impose a suspension and instead consider a monetary fine that would adequately address the City's concerns while allowing the business to continue operating and supporting its employees.

Our business remains committed to compliance and stands ready to cooperate with all lawful regulatory fair and equal requirements going forward.

Any further questions about this briefing please contact us at [smokingaccessf@gmail.com](mailto:smokingaccessf@gmail.com)

Sincerely,

Smoking Aces

# **BRIEF SUBMITTED BY RESPONDENT DEPARTMENT**

1 DAVID CHIU, State Bar #189542  
City Attorney  
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CITY AND COUNTY OF SAN FRANCISCO  
9 DEPARTMENT OF PUBLIC HEALTH

10 SAN FRANCISCO BOARD OF APPEALS

11 OLA ELSADE, DBA SMOKING ACES

Appeal No. 26-028

12 Appellant,

RESPONDENT’S OPPOSITION TO APPEAL

13 vs.

14 CITY AND COUNTY OF SAN FRANCISCO  
15 DEPARTMENT OF PUBLIC HEALTH,

16 Respondent.

17  
18 **INTRODUCTION**

19 On November 5, 2025, Appellant Ola Elsade sold a flavored e-cigarette<sup>1</sup> to an investigator  
20 hired by the San Francisco Department of Public Health (“DPH”) from her store, Smoking Aces.  
21 Following a hearing, a DPH hearing officer issued a Director’s Order finding that the transaction  
22 violated two separate provisions of the San Francisco Health Code prohibiting the sale and  
23 distribution, respectively, of flavored tobacco products and restricted electronic cigarettes. The  
24 Director’s Order suspends Appellant’s tobacco sales permit for only two consecutive 10-day periods—  
25

26 <sup>1</sup> The terms, “e-cigarette”, “electronic cigarette”, and “vape” are collectively defined under  
27 state law as “any device or delivery system sold in combination with nicotine which can be used to  
28 deliver to a person nicotine in aerosolized or vaporized form.” (Cal. Rev. & Tax. Code § 30121, subd.  
(c).) The San Francisco Health Code defines “electronic cigarettes” by reference to section 30121, and  
so these terms are used interchangeably throughout this brief.

1 even though the maximum allowable permit suspension is 180 days—and imposes two \$500  
2 administrative penalties for each violation. Appellant does not deny that the transaction took place or  
3 that she violated the San Francisco Health Code by selling a flavored, restricted e-cigarette. Rather,  
4 Appellant requests that this Board relieve her of the full consequences of these violations by lifting the  
5 20-day suspension. The grounds for Appellant’s request are meritless, and the Director’s Order should  
6 be upheld.

7 **STATEMENT OF FACTS**

8 **I. Appellant Violated the San Francisco Health Code, Resulting in Administrative Penalties.**

9 On November 5, 2025, an investigator hired by DPH entered Smoking Aces and asked for a  
10 vape. (Declaration of Michelle Vega (“Vega Decl.”) Ex. 1 [Environmental Health Basis for Proposed  
11 Enforcement Action Summary] at Ex. G [Nov. 5, 2025 Investigator’s Report], p. 29.) After first asking  
12 whether the investigator was “with the government,” Appellant and Smoking Aces owner, Ola  
13 Elshade<sup>2</sup>, agreed to sell the investigator a Geek Bar flavored vape. (*Id.*) The employee rang up the  
14 purchase at the register, asked the investigator to wait outside the store, and then handed a Geek Bar  
15 Blue Razz Ice e-cigarette to the investigator. (*Id.*) Geek Bar Blue Razz Ice vapes contain nicotine. (*Id.*,  
16 at p. 33.) Geek Bar Blue Razz Ice vapes are a flavored tobacco product. (Vega Decl. Ex. 1 at Ex. I  
17 [Dec. 9, 2025 Notice of Initial Determination], p. 40.) Geek Bar Blue Razz Ice vapes do not have FDA  
18 pre-market authorization and may not be sold in the United States. (*Id.*)

19 The Director’s Hearing took place as noticed on April 16, 2026. (Vega Decl. Ex. 2 [Director’s  
20 Hearing Order].) The DPH investigator was present at the hearing, and he described the November 5,  
21 2025 interaction where Appellant sold him the Geek Bar Blue Razz Ice e-cigarette. (Vega Decl. ¶ 3.)  
22 Appellant and Appellant’s husband appeared and spoke at the Director’s Hearing. (*Id.*) After hearing  
23 from DPH, DPH’s investigator, Appellant, and Appellant’s husband, the hearing officer determined  
24 that the findings stated in the DPH inspection report were true: Appellant sold a flavored, restricted e-  
25 cigarette in violation of San Francisco Health Code sections 19Q.3 and 19R.2. (Vega Decl. Ex. 2, p.

26  
27 <sup>2</sup> The contractor’s written report only states that a Smoking Aces “employee” conducted the  
28 transaction. (Vega Decl. Ex. 1 at Ex. G, p. 29.) At the April 16, 2026 Director’s Hearing, the DPH  
contractor confirmed that the employee was in fact Appellant. (Vega Decl. ¶ 3.)

1 1.) The hearing officer further determined to suspend Appellant’s Permit # T-61930 with no tobacco  
2 sales for ten days for each violation for two consecutive 10-day periods and imposed two \$500  
3 administrative penalties for each violation.

4 **II. Appellant Has a History of Similar Violations.**

5 The November 5, 2025 sale of the Geek Bar Blue Razz Ice e-cigarette to a DPH investigator  
6 that resulted in the penalty and suspension now subject to appeal was not the first time DPH inspectors  
7 or investigators observed Appellant to be in violation of the San Francisco Health Code.

- 8 • During a routine inspection conducted on February 3, 2021, the DPH inspector observed  
9 that Smoking Aces did not have its licenses and permits displayed as required and that  
10 flavored tobacco products were displayed for sale. (Vega Decl. Ex. 1 at Ex. B [Feb. 3, 2021  
11 Inspection Report], p. 13.) Appellant was directed to correct these violations by posting  
12 licenses and permits in a conspicuous location in the store and removing all flavored  
13 tobacco products from display and from the premises. (*Id.*)
- 14 • On March 16, 2024, a DPH-hired investigator observed flavored nicotine products on  
15 display at Smoking Aces and purchased a “GeekBar Mexican Mango” e-cigarette. (Vega  
16 Decl. Ex. 1 at Ex. C [March 16, 2024 Contractor Investigation Report], pp. 15-20.) This  
17 violation resulted in an inspection and Notice of Violation issued on April 23, 2024 (Vega  
18 Decl. Ex. 1 at Ex. D [Apr. 22, 2024 Inspection Report], pp. 21-22), and a Director’s  
19 Hearing held on August 15, 2024 (Vega Decl. Ex. 1 at Ex. F [Sept. 12, 2024 Director’s  
20 Hearing Order], pp. 27-28). Appellant appeared at the Director’s Hearing. (Vega Decl. Ex.  
21 1 at Ex. F, p. 27.) The hearing officer determined that Appellant violated San Francisco  
22 Health Code sections 19Q.3 and 19R.2 for the sale or distribution of a flavored, restricted  
23 e-cigarette. (*Id.*) The hearing officer further determined that “***future flavored tobacco  
24 product sales will result in the suspension of your Tobacco Sales Permit.***” (*Id.* [emphasis  
25 added].)
- 26 • On December 24, 2024, DPH received an anonymous complaint that Smoking Aces was  
27 displaying for sale and selling flavored vapes. (Vega Decl. Ex. 3 [Dec. 24, 2024 Complaint  
28 Report].) DPH conducted an inspection on December 27, 2024, observing a “huge volume

1 of flavored tobacco products on display.” (Vega Decl. Ex. 4 [Dec. 27, 2024 Inspection  
2 Report], p. 5.)

### 3 ARGUMENT

4 Appellant’s violations of San Francisco Health Code sections 19Q.3 and 19R.2 are not in  
5 dispute. Based on these violations, DPH is authorized to impose a suspension of up to 180 days total  
6 and an administrative penalty of up to \$1,000. However, DPH chose to impose only a 20-day  
7 suspension and a \$1,000 administrative penalty. In other words, DPH has already demonstrated  
8 lenience. Furthermore, Appellant’s specific grounds for appeal lack merit. As detailed below, the  
9 Director’s Hearing Order (Vega Decl. Ex.2) should be affirmed in its entirety.

#### 10 **I. The Hearing Officer’s Determination Is Supported by the Facts and Authorized by the** 11 **San Francisco Health Code.**

12 Under Article 19Q of the San Francisco Health Code, “[t]he sale or distribution by an  
13 Establishment of any Flavored Tobacco Product is prohibited.” (SF Health Code § 19Q.3(a).)

14 Separately under Article 19R:

15 The sale or distribution by an Establishment of any Flavored Tobacco Product is  
16 prohibited where the Electronic Cigarette: (a) Is a New Tobacco Product; (b)  
17 Requires premarket review under 21 U.S.C. § 387j, as may be amended from time  
18 to time; and (c) Does not have a premarket review order under 21 U.S.C. §  
19 387j(c)(1)(A)(i), as may be amended from time to time.” (SF Health Code § 19R.2.)

20 The DPH investigator’s report states unequivocally that he purchased a Geek Bar Blue Razz  
21 Ice e-cigarette from Appellant at her store on November 5, 2025. (Vega Decl. Ex. 1 at Ex. G, p. 29.)  
22 Geek Bar Blue Razz Ice e-cigarettes are a flavored tobacco product. (Vega Decl. Ex. 1 at Ex. I, p. 40.)  
23 Additionally, Geek Bar Blue Razz Ice flavored e-cigarettes do not have FDA pre-market authorization  
24 and may not be sold in the United States. (*Id.*) As a flavored tobacco product, Geek Bar Blue Razz Ice  
25 flavored e- cigarettes may not be sold or distributed under Health Code Article 19Q.3. (SF Health  
26 Code § 19Q.3(a).) As a restricted product that has not met the FDA premarket review requirements  
27 under San Francisco Health Code section 19R.2, the sale or distribution of Geek Bar Blue Razz Ice  
28 flavored e-cigarettes is also prohibited under Article 19R. Nowhere in Appellant’s Brief does  
Appellant claim that these violations did not occur.

1 Not only are the violations clearly established, but also DPH’s proposed enforcement action—  
2 affirmed in the Director’s Hearing Order—is well within the discretion of DPH to impose. Each of  
3 these violations is separately enforceable under San Francisco Health Code Article 19H. (SF Health  
4 Code §§ 19Q.6 and 19R.4.) Under Article 19H, conduct violating Articles 19Q or 19R subjects a  
5 permittee to suspension and a monetary administrative penalty. (SF Health Code §§ 19H.14-2,  
6 19H.14-3, 19H.19, and 19H.20.) For a first violation, the DPH Director is authorized to suspend a  
7 permit for up to 90 days (SF Health Code § 19H.19(a)) and impose an administrative penalty of up to  
8 \$500 for each violation (SF Health Code § 19H.20). “Each suspension is an independent sanction and  
9 is served consecutively.” (SF Health Code § 19H.19(e).) In short, the 20-day suspension Appellant  
10 seeks to avoid entirely is already far shorter than the maximum suspension authorized by the Board of  
11 Supervisors. As discussed below, none of the arguments in Appellant’s Brief merit modification of the  
12 Director’s Order.

13 **II. Appellant’s Grounds for Appeal Lack Merit and Should Be Rejected.**

14 **A. Appellant’s Compliance History Does Not Support the Appeal.**

15 Appellant argues that her business’s compliance history should be given “substantial weight”  
16 and claims that it has never been cited “for sales to minors, furnishing tobacco to underage persons, or  
17 any other unlawful tobacco sales.” (Appellant’s Brief, p. 1.) Although Appellant may be correct that  
18 she has never been cited for selling tobacco products to minors, her businesses has engaged in repeated  
19 instances of activities that violate San Francisco retail tobacco laws, including the exact same laws at  
20 issue now. Appellant was cited in 2021 for failing to display permits and licenses and for unlawfully  
21 displaying flavored tobacco products for sale. (Vega Decl. Ex. 1 at Ex. B, p. 13.) Appellant was cited  
22 twice in 2024. One citation in 2024 was for a second violation of prohibition against displaying  
23 flavored tobacco products for sale. (Vega Decl. Ex. 4, p. 5.) The other was for the same violations at  
24 issue now: the sale of a flavored, restricted e-cigarette. (Vega Decl. Ex. 1 at Ex. F, p. 27.)

25 Appellant’s compliance history demonstrates a pattern of violations of San Francisco’s retail  
26 tobacco laws, replete with warnings that continued violations would result in the very suspension at  
27 issue here. (See *Id.* [“future flavored tobacco product sales will result in the suspension of your  
28 Tobacco Sales Permit.”].) Far from mitigating the severity of Appellant’s November 5, 2025 unlawful

1 sale of a flavored, restricted e-cigarette, Appellant’s history of noncompliance underscores the  
2 necessity of imposing a serious consequence such as suspension.

3 **B. Appellant Is Being Treated Fairly.**

4 Appellant argues unfair treatment because she claims to be aware of businesses that were  
5 found to be selling tobacco products without a retail tobacco license that were issued monetary  
6 penalties and not license suspensions. (Appellant’s Brief, p. 2.) This argument is nonsensical—how  
7 can DPH suspend a license that does not exist? Moreover, there is no basis to infer that DPH’s  
8 enforcement activities have unfairly targeted Appellant’s business. The facts related above reflect four  
9 DPH inspections of Smoking Aces across a span of over five years—each resulting in a finding that  
10 Appellant’s business was in violation of at least one retail tobacco permit requirement. Appellant’s  
11 unsupported claims of unfair treatment should be disregarded.

12 **C. Appellant’s Refusal to Allow Inspectors Into Non-Public Areas Is a Permit  
13 Violation, Not a Basis for Leniency.**

14 Appellant’s Brief cites an incident during an inspection “in or around November 2024  
15 involving entry into non-public areas of the business.” (Appellant’s Brief, p. 2.) Based on the  
16 enforcement activities described above, DPH believes this is a reference to the December 27, 2024  
17 inspection in which the DPH inspector observed a “huge volume of flavored tobacco products on  
18 display.” (Vega Decl. Ex. 4, p. 5.) The December 2024 inspection is not the basis for this appeal and  
19 was not part of the case chronology considered by the hearing officer. As such, the circumstances of  
20 the December 2024 inspection are not relevant to any issue before this Board.

21 In any event, the December 2024 inspection simply provides more evidence of Appellant’s  
22 history of noncompliance. Appellant points to the inspector’s attempt to access non-public areas of the  
23 business as though such an attempt is somehow inappropriate. (See Appellant’s Brief, p. 2.) In fact, it  
24 is a condition of every tobacco sales permit that the permit holder allow entry and inspection of any  
25 establishment engaging in tobacco sales. (SF Health Code § 19H.9.) Nothing in the Health Code limits  
26 this authority to the public portions of the establishment, and DPH’s Rules and Regulations for Retail  
27 Tobacco Sales makes clear that DPH inspectors must be allowed to conduct walk-throughs of a  
28 permitted establishment, “including behind the cashier’s counter, kitchen, prep areas, storage rooms,

1 cabinets, restrooms, offices and other rooms associated with the Establishment.” (Vega Decl. Ex. 5, p.  
2 6.) As such, this issue raised by Appellant—apparently to suggest DPH has been unfairly aggressive in  
3 its enforcement efforts—actually demonstrates another aspect of Appellant’s failure to comply with  
4 the requirements of a tobacco sales permit.

5 **D. State Enforcement Actions Are Irrelevant.**

6 Finally, Appellant asserts that State officials confiscated approximately \$25,000 to \$35,000  
7 worth of products during a joint inspection with the City of San Francisco. (Appellant’s Brief, p. 2.)  
8 This assertion relates to a November 10, 2025 inspection conducted jointly between DPH and the  
9 California Department of Tax and Fee Administration. (Vega Decl. Ex. 1 at Ex. H [Nov. 10, 2025  
10 Inspection Report], pp. 35-38.) At the time of this joint inspection, DPH Inspector Japjit Deol issued a  
11 Notice of Violation to Appellant for the November 5, 2025 sale of the Geek Bar Blue Razz Ice e-  
12 cigarette. (*Id.*) However, DPH has no direct involvement in State enforcement of State retail tobacco  
13 laws and regulations, and the November 10, 2025 inspection did not result in any new citations for  
14 local ordinance violations. (See *id.*) Accordingly, this Board should not consider facts related to State  
15 enforcement activities.

16 **CONCLUSION**

17 Because Appellant does not contest that she engaged in violations of the Health Code, and  
18 because DPH has already exercised its discretion to impose a permit suspension of far shorter duration  
19 than the maximum allowed, the Board of Appeals should uphold the April 30, 2026 DPH Director’s  
20 Hearing Order.

21 Dated: July 2, 2026

22  
23 By: /s/ Marc Shapp  
24 MARC SHAPP

25 Attorneys for Respondent  
26 CITY AND COUNTY OF SAN FRANCISCO  
27 DEPARTMENT OF PUBLIC HEALTH  
28

1 DAVID CHIU, State Bar #189542  
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8 Attorneys for Respondent  
CITY AND COUNTY OF SAN FRANCISCO  
9 DEPARTMENT OF PUBLIC HEALTH

10 SAN FRANCISCO BOARD OF APPEALS

11 OLA ELSADE, DBA SMOKING ACES

Appeal No. 26-028

12 Appellant,

DECLARATION OF MICHELLE VEGA IN  
SUPPORT OF RESPONDENT’S OPPOSITION  
TO APPEAL

13 vs.

14 CITY AND COUNTY OF SAN FRANCISCO  
15 DEPARTMENT OF PUBLIC HEALTH,

16 Respondent.

17  
18 I, MICHELLE VEGA, declare as follows:

19 1. I am employed by Environmental Health Branch of the San Francisco Department of  
20 Public Health (“DPH”) as Principal Environmental Health Inspector. I make this declaration in support  
21 of Respondent’s Opposition to Appeal in the above-referenced matter. The facts stated below are  
22 known to me in my capacity as the supervisor overseeing Massage, Retail Tobacco, and Consumer  
23 Protection Program.

24 2. Attached as **Exhibit 1** is a true and correct copy of DPH’s “Environmental Health Basis  
25 for Proposed Enforcement Action Summary” that was submitted to the DPH Hearing Officer and  
26 Appellant prior to the April 16, 2026 Director’s Hearing in this matter.

27 3. I appeared at the April 16 2026 Director’s Hearing, along with DPH Inspector Japjit  
28 Deol and DPH outside investigator Richard Joseph. Appellant Ola Elsade and her husband also

1 appeared at the Director's Hearing. During the Director's Hearing, Richard Joseph described the  
2 November 5, 2025 interaction where a Smoking Aces employee sold him a Geek Bar Blue Razz Ice e-  
3 cigarette. Richard Joseph also confirmed that the employee described in his written investigation  
4 report was in fact Appellant. Appellant and her husband both spoke in Appellant's defense at the  
5 Director's Hearing; however, at no time did either of them deny that the transaction described by  
6 Richard Joseph took place.

7 4. Attached as **Exhibit 2** is a true and correct copy of the April 30, 2026 Director's  
8 Hearing Order in this matter.

9 5. Attached as **Exhibit 3** is a true and correct copy of an anonymous complaint received  
10 by DPH on December 24, 2024 regarding Smoking Aces.

11 6. Attached as **Exhibit 4** is a true and correct copy of an Inspection Report reflecting a  
12 December 27, 2024 inspection of Smoking Aces.

13 7. Attached as **Exhibit 5** is a true and correct copy of DPH's Rules and Regulations for  
14 Retail Tobacco Sales.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
16 true and correct

17 Dated: July 1, 2025

18  
19 

20 \_\_\_\_\_  
21 MICHELLE VEGA  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT 1



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

Daniel Lurie, Mayor  
 Daniel Tsai, Director of Health  
 Jennifer Callewaert, MS, REHS  
 Director of Environmental Health

**Environmental Health Basis for Proposed Enforcement Action Summary**

DATE: March 31<sup>st</sup>, 2026  
 TO: SF DPH Director c/o Hearing Officer  
 THRU (Signature Required): Michelle Vega, Principal Inspector  
 RESPONSIBLE PARTY(IES): Elsade Ola N  
 DBA Smoking Aces  
 ADDRESS 1108 Polk St  
 HEARING DATE: April 16, 2026  
 CASE NUMBER: SMK 26-03

Purpose of Hearing: Purpose:  
 (include proposed enforcement action):

1. Sale/distribution of prohibited flavored tobacco products
2. Sale/distribution of prohibited electronic cigarettes

Proposed Enforcement Action: *See proposed enforcement action (page 6-7) of this document.*

**ENFORCEMENT AUTHORITY AND BASIS OF PENALTY**

*(Environmental Health based the enforcement action and penalty on the following code(s):)*

CODE SECTION	DESCRIPTION
SF Health Code, § 19H.9. Enforcement and Inspections.	Health Inspections may be conducted with or without an appointment as determined by Department staff. Department staff may perform activities to ensure compliance with these Rules and any other applicable laws including, but not limited to: (1) Review valid permits and licenses; (2) Review annual tobacco control training records; (3) Conduct a walk-through of the Establishment including behind cashier’s counter, kitchen, prep areas, storage rooms, cabinets, restrooms, offices and other rooms associated with the Establishment; (4) Take photographs and/or video of tobacco products; (5) In collaboration with the San Francisco Police Department, use decoy operations to verify compliance with age restrictions or type of products sold to customers; (6) Use decoy operations to determine if the Establishment is selling Tobacco Products without a Health Permit or selling Flavored Tobacco Products; (7) Interview any person related to the Establishment including but not limited to the Permittee, employees, or customers; and (8) Issue educational materials, an Inspection Report, Notice of Violation, Notice of Correction, and/or Notice of Initial Determination.
SF Health Code § 19H.13. Conduct Violating Tobacco Control Laws.	(a) If the Director decides that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates local, state, or federal law applicable to Tobacco Products or Tobacco Sales, including Administrative Code Chapter 105 (imposing Cigarette Litter Abatement Fee), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19, impose administrative penalties as set forth in Section 19H.20, or both suspend the permit and impose administrative penalties. (b) The Director shall commence enforcement of this section by serving either a notice of correction under



	Section 19H.21 of this Article or a notice of initial determination under Section 19H.22 of this Article.
SF Health Code, § 19H.18. Other Enforcement.	<p>(a) Violations of this Article are hereby declared to be public nuisances and may be enforced as set forth in Section 596 of the San Francisco Health Code.</p> <p>(b) Violations of this Article are hereby declared to be unfair business practices and are presumed to damage each and every resident of the community in which the business operates.</p> <p>(c) In addition to other remedies provided by this Article or by other law, any violation of this ordinance may be remedied by a civil action brought by the City Attorney, including, for example, administrative or judicial abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The person against whom a successful civil action is brought shall be liable for the costs and attorney's fees incurred by the City and County of San Francisco.</p>
SF Health Code, § 19H.22. Notice of Initial Determination.	When the Director sends a notice of initial determination, the Director shall serve the notice on the permittee or the permittee's agent. The Notice of Initial Determination may require that all tobacco sales cease. The notice shall state the basis for the Department's initial determination, including the alleged acts or failures to act that constitute a basis for suspension, revocation, and/or an administrative penalty as provided in this Article. After affording the permittee an opportunity to provide information contesting the initial determination, the Director shall issue a decision, including an order imposing an administrative penalty, if any. Copies of this decision and related order(s) shall be served upon the party served with the notice of initial determination. If no notice of appeal of the Director's decision is filed within the appropriate period, the decision shall be deemed final and shall be effective 15 days after it was issued.
SF Health Code, § 19N.5. Prohibiting the Sale of Electronic Cigarettes Wherever the Sale of Tobacco Products is Prohibited	<p>(a) The sale of electronic cigarettes is prohibited wherever the sale of tobacco products is prohibited by law, including as prohibited in Articles <a href="#">19 et seq.</a> of the Health Code.</p> <p>(b) The Director may enforce this section pursuant to Articles <a href="#">19 et seq.</a> of the Health Code including but not limited to <a href="#">Article 19J</a>.</p>
SF Health Code, § 19Q.3. Sale or Distribution of Flavored Cigarettes Prohibited.	<p>(a) The sale or distribution by an Establishment of any Flavored Cigarette is prohibited.</p> <p>(b) There shall be a rebuttable presumption that a Cigarette is a Flavored Cigarette if a Manufacturer or any of the Manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Cigarette has or produces a Characterizing Flavor, including, but not limited to, text, color, and/or images on the product's Labeling or Packaging that are used to explicitly or implicitly communicate that the Cigarette has a Characterizing Flavor.</p>
SF Health Code, § 19Q.6. Enforcement.	The Director, or his or her designee, may enforce Sections 19Q.3 and 19Q.4 pursuant to Articles 19 et seq. of the Health Code, including but not limited to Article 19H.
SF Health Code, § 19R. 2. Sale or Distribution of Electronic Cigarettes Lacking Food and Drug Administration Premarket Order of Approval Prohibited.	<p>The sale or distribution by an Establishment of an Electronic Cigarette is prohibited where the Electronic Cigarette:</p> <p>(a) Is a New Tobacco Product;</p> <p>(b) Requires premarket review under 21 U.S.C. § 387j, as may be amended from time to time; and</p> <p>(c) Does not have a premarket review order under 21 U.S.C. § 387j(c)(1)(A)(i), as may be amended from time to time.</p>
SF Health Code §	The Director may enforce Section 19R.2 under Articles 19 et seq. of the Health Code,

19R.4. Enforcement.	including but not limited to Article 19H.										
SF Health Code § 19H.19. Time Period of Suspension of Permit; Permit Revocation	<p>When this <a href="#">Article 19H</a> allows the Director to suspend a permit, the following sanctions may be imposed:</p> <p>(a) The Director may suspend the permit for a maximum of 90 days for the first violation.</p> <p>(b) If a second violation occurs within 24 months of the first violation, the Director may suspend the permit for a maximum of six months.</p> <p>(c) Upon the third violation, if within 24 months of the prior violation, the Director may suspend the permit for a maximum of one year.</p>										
SF Rules and Regulations for Retail Tobacco Sales, Chap 4, § 2	<p>Violations of Article 19Q (Prohibiting the Sale of Flavored Tobacco Products) shall result in a suspension of the Tobacco Sales Permit according to Table 3.</p> <p style="text-align: center;"><b><u>Table 3: Tobacco Sales Permit Suspension Periods for Sales or Distribution of Tobacco Products with a Characterizing Flavor: second or subsequent violations</u></b></p> <table border="1" data-bbox="500 737 1421 1037"> <thead> <tr> <th data-bbox="505 743 1052 821">Number of Times the Violation Occurred</th> <th data-bbox="1057 743 1416 821">Permit Suspension Period</th> </tr> </thead> <tbody> <tr> <td data-bbox="505 827 1052 877">1<sup>st</sup> violation</td> <td data-bbox="1057 827 1416 877">10 days</td> </tr> <tr> <td data-bbox="505 884 1052 934">2<sup>nd</sup> violation</td> <td data-bbox="1057 884 1416 934">20 Days</td> </tr> <tr> <td data-bbox="505 940 1052 991">3<sup>rd</sup> violation</td> <td data-bbox="1057 940 1416 991">40 Days</td> </tr> <tr> <td data-bbox="505 997 1052 1037">4<sup>th</sup> and each violation afterwards</td> <td data-bbox="1057 997 1416 1037">90 Days</td> </tr> </tbody> </table>	Number of Times the Violation Occurred	Permit Suspension Period	1 <sup>st</sup> violation	10 days	2 <sup>nd</sup> violation	20 Days	3 <sup>rd</sup> violation	40 Days	4 <sup>th</sup> and each violation afterwards	90 Days
Number of Times the Violation Occurred	Permit Suspension Period										
1 <sup>st</sup> violation	10 days										
2 <sup>nd</sup> violation	20 Days										
3 <sup>rd</sup> violation	40 Days										
4 <sup>th</sup> and each violation afterwards	90 Days										
SF Health Code § 19H.20. Administrative Penalty.	<p>When this <a href="#">Article 19H</a> allows the Director to impose an administrative penalty, the Director may assess an administrative penalty (1) not exceeding \$500 for a first violation; (2) not exceeding \$750 for a second violation; and (3) not exceeding \$1,000 for the third and each subsequent violation. For purposes of administrative penalties, each day that tobacco sales occur without a permit shall constitute a separate violation.</p>										

**RESPONSIBLE PARTY or PERSON IN CONTROL OF PROPERTY/UNIT/BUSINESS**

*(List the code sections that allows EH to take enforcement action against the Persons named in enforcement documents:)*

CODE SECTION	DESCRIPTION
SF Health Code, § 19H.2. Definitions.	<p>"Establishment" means any store, stand, booth, concession or any other enterprise that engages in the retail sale of Tobacco Products, including stores engaging in the retail sale of food items.</p> <p>"Person" means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.</p> <p>"Tobacco Sales" means sales, or any offer to sell or exchange, for any form of consideration, Tobacco Products to any person by any person who operates an Establishment. "Tobacco Sales" includes any display of Tobacco Products.</p> <p>"Tobacco Shop" means any tobacco retailer whose principal business is selling Tobacco Products, tobacco paraphernalia, or both, as evidenced by any of the following: 50% or more of floor area and display area is devoted to the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; 70% or more of gross sales receipts are derived from the sale or exchange of Tobacco Products,</p>

	tobacco paraphernalia, or both; or 50% or more of completed sales transactions include a Tobacco Product or tobacco paraphernalia.
SF Rules and Regulations for Retail Tobacco Sales, Chap 4, § 3 Paragraph 2(b)	Tobacco Products SFDPH presumes to be Flavored Tobacco Products based on their Labeling, Packaging, or Marketing. SFDPH will presume that a Tobacco Product is a Flavored Tobacco Product if the Manufacturer or any of the Manufacturer’s agents or employees has made a statement or claim directed to consumers or to the public that the Tobacco Product has or produces a Characterizing Flavor, including, but not limited to, text, color, and/or images on the product’s Labeling or Packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a Characterizing Flavor. SFDPH will presume that a Tobacco Product is flavored if its Labeling, Packaging, or Marketing include descriptive terms such as “spicy” and “sweet” that imply or evoke Characterizing Flavors. SFDPH will not presume that a Tobacco Product is a Flavored Tobacco Product if the only descriptors that appear on its Labeling, Packaging, or Marketing are “strong,” “mild,” or “plain,” where those descriptors appear to be referring to the taste of tobacco

**CODE DEFINITIONS** (Other applicable code definitions:)

CODE SECTION	DESCRIPTION
SF Health Code, § 19H.2. Definitions.	"Department" means the Department of Public Health. "Director" means the Director of Health or his or her designee. "Establishment" means any store, stand, booth, concession, or any other enterprise that engages in the retail sale of Tobacco Products, including stores engaging in the retail sale of food items. "Tobacco Product" means (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, or sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, bidis or snuff; (2) any device or component, part, or accessory that delivers nicotine alone or combined with other substances to the person using the device including but not limited to electronic cigarettes, cigars, or pipes, whether or not the device or component is sold separately. "Tobacco Product" does not include any product that has been approved by the United States Food and Drug Administration for use as a tobacco cessation product where such product is marketed and sold solely for such an approved purpose. "Tobacco Sales" means sales, or any offer to sell or exchange, for any form of consideration, Tobacco Products to any person by any person who operates an Establishment. "Tobacco Sales" includes any display of Tobacco Products. "Tobacco Shop" means any tobacco retailer whose principal business is selling Tobacco Products, tobacco paraphernalia, or both, as evidenced by any of the following: 50% or more of floor area and display area is devoted to the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; 70% or more of gross sales receipts are derived from the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; or 50% or more of completed sales transactions include a Tobacco Product or tobacco paraphernalia.
SF Health Code, § 19Q.2. Definitions.	“Characterizing Flavor” means a Distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a Tobacco Product or any byproduct produced by the Tobacco Product. Characterizing Flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a Distinguishable taste or aroma or both, as described in the first sentence of this definition, that constitutes a Characterizing Flavor. “Constituent” means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the

	<p>manufacturer to a Tobacco Product during the processing, manufacture, or packing of the Tobacco Product. “Distinguishable” means perceivable by either the sense of smell or taste. “Establishment” has the meaning set forth in Health Code Section 19H.2. “Flavored Cigarette” means a Cigarette that contains a Constituent that imparts a Characterizing Flavor. “Flavored Tobacco Product” means any Tobacco Product, other than a Cigarette, that contains a Constituent that imparts a Characterizing Flavor. “Labeling” means written, printed, pictorial, or graphic matter upon any Tobacco Product or any of its Packaging. “Packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold or offered for sale to a consumer. “Tobacco Product” has the meaning set forth in Health Code Section 19H.2.</p>
SF Health Code, § 19R.1. Definitions.	<p>“Electronic Cigarette” has the meaning set forth in Section 30121 of the California Revenue and Taxation Code, as may be amended from time to time. “Establishment” has the meaning set forth in Health Code Section 19H.2. “New Tobacco Product” has the meaning set forth in 21 U.S.C. § 387j(a)(1), as may be amended from time to time.</p>
California Revenue and Taxation Code, § 30121. Definitions.	<p>(c) "Electronic cigarettes" means any device or delivery system sold in combination with nicotine which can be used to deliver to a person nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic cigarettes include any component, part, or accessory of such a device that is used during the operation of the device when sold in combination with any liquid or substance containing nicotine. Electronic cigarettes also include any liquid or substance containing nicotine, whether sold separately or sold in combination with any device that could be used to deliver to a person nicotine in aerosolized or vaporized form. Electronic cigarettes do not include any device not sold in combination with any liquid or substance containing nicotine, or any battery, battery charger, carrying case, or other accessory not used in the operation of the device if sold separately. Electronic cigarettes shall not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where that product is marketed and sold solely for such approved use. As used in this subdivision, nicotine does not include any food products as that term is defined pursuant to Section 6359.</p>
21 U.S. Code, § 387j(a)(1). New Tobacco Product.	<p>New tobacco product defined For purposes of this section the term “new tobacco product” means— (A) any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of February 15, 2007 ; or (B) any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007 .</p>

**CODE VIOLATIONS** (Provide the outstanding code violations or the violations that requires the hearing:)

CODE SECTION	DESCRIPTION	VIOLATION DATE(S)
SF Health Code, § 19Q.3(a). Sale or Distribution of Flavored Tobacco Products Prohibited.	The sale or distribution by an Establishment of any Flavored Tobacco Product is prohibited.	11/5/2025
SF Health Code, § 19R.2. Sale or Distribution of E-	The sale or distribution by an Establishment of an Electronic Cigarette is prohibited where the Electronic Cigarette: (a) Is a New Tobacco Product; (b) Requires premarket review under 21 U.S.C. § 387j, as may	11/5/2025

cigarettes Lacking FDA Premarket Order of Approval Prohibited.	be amended from time to time; and (c) Does not have a premarket review order under 21 U.S.C. § 387j(c)(1)(A)(i), as may be amended from time to time.	
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**PROPOSED ENFORCEMENT ACTION** *(For consideration to be included in Director’s decision letter and/or Order:)*

Environmental Health proposes that following enforcement action is taken against the Responsible Party:

1. That, you immediately remove all flavored tobacco products and restricted e-cigarettes from the Establishment and discontinue sales of any flavored tobacco products or unapproved e-cigarette products in the future.
2. As authorized by SFHC, Article 19H, Section 19H.20, you shall **pay an administrative penalty in the total amount of one thousand dollars (\$1000) for (\$500)** for each of the first administrative violations of 19Q.3, 19R.2 each occurring on November 5, 2025
3. As authorized by SFHC, Section 19H.19 and the San Francisco Tobacco Sales Rules and Regulations, your Permit #T61930 shall be suspended with no tobacco sales for ten (10) days for the first violation of Section 19Q.3 and for ten (10) days for the first violation of Sec. 19R.2 that shall be served consecutively for a total of Twenty (20) days.

Violation Code	1 <sup>st</sup> Violation Date	2 <sup>nd</sup> Violation Date	# of suspension days
SFHC 19Q.3	11/5/2025	none	10 days
SFHC 19R.2	11/5/2025	none	10 days
		<b>Total</b>	<b>20 days</b>

4. That, you shall not begin serving the suspension period until the inspector posts the Notice of Suspension at your business establishment including the period start and end date.
5. That, upon suspension, you shall cease sales of and remove tobacco products from the shelves including, but not limited to, cigarettes, cigars, cigarillos, electronic smoking devices, liquids that are intended to be vaporized by electronic smoking devices, smokeless tobacco, hookah tobacco shisha, blunts, and any product containing tobacco or nicotine during the suspension period.
5. That, upon suspension, the business may continue to sell non-tobacco herbal hookah shisha, matches, paper wrappers, cases for cigars or cigarettes, ashtrays, tongs, charcoals, and other accessories that do not contain tobacco or nicotine.
6. That, future reoccurrence of flavored tobacco product sales will result in the suspension of your Tobacco Sales Permit for a minimum of 20 days to a maximum of 180 days served consecutively, if applicable.

7. That, future reoccurrence of e-cigarettes without FDA pre-market authorization sales will result in the suspension of your Tobacco Sales Permit for a minimum of 20 days to a maximum of 180 days served consecutively, if applicable.

Based on the health code, the Director (or Hearing Officer) must include the following language in the decision letter and/or Order:

**NUISANCE ABATEMENT** *(Must be included in Director's decision letter):*

Failure to abate and remove the nuisance may result in the abatement of the nuisance by the Department of Public Health and the Property Owner shall become indebted to the City and County of San Francisco for the costs, charges, and fees incurred by reason of the abatement and removal of such nuisance upon demand.

**COST RECOVERY** *(Must be included in Director's decision letter):*

In accordance with the San Francisco Health Code, the Property Owner shall be indebted to the City and County of San Francisco for costs incurred in abating the effects of the violation, taking other remedial action, or imposing and collecting penalties, including but not limited to administrative costs, costs of issuing an order, inspection or monitoring costs, hearing officer costs, and reasonable attorney fees if sought by the Director in the Notice of Hearing. In any proceedings in which the Director seeks to recover attorney's fees, the prevailing party shall be entitled to reasonable attorney's fees. Failure to pay such costs, charges, and fees may result in a lien against the property.

**APPEAL PROCESS** *(Must be included in Director's decision letter):*

Within 15 days of receipt of this letter, you have the right to appeal this decision to deny, suspend, revoke, or impose administrative sanctions, to the Board of Appeals. The Board of Appeals can be contacted at 1650 Mission Street, Suite 304, San Francisco, CA, telephone number (415) 575-6880 or email [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org).

This Order is final and you may have the right to petition the Superior Court of San Francisco for judicial review or appropriate relief pursuant to Section 1094.6 of the California Code of Civil Procedures. The filing of a petition with the Superior Court shall not automatically stay the effectiveness of this Order or extend the time period in which you have to abate the violation.

**SFDPH CONTACT** *(Must be included in Director's decision letter):*

If you have questions or concerns, you may contact Michelle Vega at 415-252-3803.

Sincerely,

*Michelle Vega*

Michelle Vega, REHS  
Principal Health Inspector  
Retail Tobacco and Smoking Program  
Cc: Responsible Party



**Director's Hearing Case Chronology**

Location Address <b>1108 Polk Street</b>	Block/Lot <b>0692/012</b>	Facility Name (DBA) <b>Smoking Aces</b>	Date of Submittal <b>04/09/26</b>
Property Owner <b>1086 Post LLC</b>	Phone	Email	
Responsible Party or Parties <b>Ola Elshade</b>	Phone	Email <b>smokingaccessf@gmail.com</b>	

On the Hearing Date, Environmental Health shall present this chronology to the Director's Hearing Officer for the Department of Public Health – Population Health Division as evidence of violation of the specified code(s).	Hearing Date <b>04/16/26</b>	Program Code <b>SMK</b>	Case Number <b>26-03</b>
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DATE	CODE SECTION	SUMMARY OF ACTIONS, OBSERVATIONS OR NOTES	EXHIBITS
2010-05-13	SFHC 19H.4(d)	SFDPH issued Permit to Operate Tobacco Product Sales Establishment #T-61930 to Smoking Aces.	A - Permit to Operate T-61930 (Page 12)
2021-02-03	SFHC 19Q.3(a) SFHC 19H.3 & 19H.7	SFDPH staff, Julie Yang, conducted an inspection, and issued a Notice of Correction for the following violations observed:  - Flavored tobacco products observed in establishment were to be removed from premise within 72 hours by 02/06/2021.	B - Inspection Report/Notice of Correction (Pages 13-14)

If checked, chronology continues on supplemental pages.

Based on the facts summarized in this chronology, it is recommended by the undersigned that the Hearing Officer issue the following order:

**Issue order as listed on the EHB Basis of Enforcement under Proposed Action plan which includes a \$1000.00 Administrative penalty and a permit suspension of 20 days of retail tobacco permit #T61930.**

Inspector <b>Japjit Deol</b>	Inspector Signature <i>Japjit Deol</i>
Inspector Email <b>Japjit.deol@sfdph.org</b>	Inspector Phone 415-252-3819
Manager <b>Michelle Vega</b>	Manager Signature <i>Michelle Vega</i>



**Director's Hearing Case Chronology**  
**Supplemental Page 2 of**

Location Address <b>1108 Polk Street</b>	Block/Lot <b>0692/012</b>	Facility Name (DBA) <b>Smoking Aces</b>	Date of Submittal <b>04/09/26</b>
Following is a continuation chronology of events presented at this hearing date:			Hearing Date <b>04/16/26</b>
			Program Code <b>SMK</b>
			Case Number <b>26-03</b>

<b>DATE</b>	<b>CODE SECTION</b>	<b>SUMMARY OF ACTIONS, OBSERVATIONS OR NOTES</b>	<b>EXHIBITS</b>
2024-03-16	SFHC 19Q.3. & 19R.2  SFDPH Rules and Regulations for Retail Tobacco Sales, Ch 2, Sec 6.	A SFDPH contractor conducted a Secret Shopper operation at the Establishment. An employee of the Establishment ("cashier") sold Geek Bar Mexican Mango flavored e-cigarette. Geek Bar Mexican Mango flavored e-cigarette has not received the FDA Pre-market approval.	C - SFDPH Contractor Report (Pages 15-20)
2024-04-22	SFHC 19H.22.	SFDPH staff issued: 1) An inspection report with a Notice of Violation for the following violations: a) Sale/distribution of flavored tobacco products b) Sale/distribution of restricted e-cigarette products With required action from Permit Owner and provided: 2) Notice of Initial Determination 3) Notice to hearing was issued to attend the 8/15/24 director's hearing.  A director's hearing was held on 8/15/24 and Usama Abuelrous (SAM) was present at the hearing to represent DBA Smoking Aces.  A director's hearing order was issued which stated the facility remove any flavored tobacco products and restricted e-cigarettes from the establishment within 24 hours.	D - Inspection Report/ Notice of Violation (Pages 21-22)  E - Notice of Initial Determination (Pages 23-25)  E.1 - Notice of Hearing (Page 26)  F - Director's Hearing Order (Pages 27-28)
2024-09-13			



**Director's Hearing Case Chronology**  
**Supplemental Page 3 of \_\_**

Location Address 1108 Polk Street	Block/Lot 0692/012	Facility Name (DBA) Smoking Aces	Date of Submittal 04/09/26
Following is a continuation chronology of events presented at this hearing date:			Hearing Date 04/16/26
			Program Code SMK
			Case Number 26-03

DATE	CODE SECTION	SUMMARY OF ACTIONS, OBSERVATIONS OR NOTES	EXHIBITS
2025-11-05	SFHC 19Q.3. & 19R.2	A SFDPH contractor conducted a Secret Shopper operation at the Establishment. An employee of the Establishment ("cashier") sold Geek Bar Blue Razz Ice flavored e-cigarette. Geek Bar Blue Razz Ice is a flavored e-cigarette has not received the FDA Pre-market approval.	G - SFDPH contractor report (Pages 29-34)
2025-11-20	SFHC 19Q.3. & 19R.2	SFDPH staff issued a notice of violation for the 11/5/25 violation.	H - Notice of Violation (Pages 35-38)
2025-12-09		A Notice of Initial Determination and Director's hearing request form was issued to the facility Via Email.  On 12/22/2025, A 30 day extension was requested by the business owner via email to submit the request for hearing. The department granted the request.	I - Notice of Initial Determination (Pages 39-41)



**Director's Hearing Case Chronology**  
**Supplemental Page 4 of \_\_**

Location Address 1108 Polk Street	Block/Lot 0692/012	Facility Name (DBA) Smoking Aces	Date of Submittal 04/09/26	
Following is a continuation chronology of events presented at this hearing date:			Hearing Date 04/16/26	Program Code SMK
			Case Number 26-03	

DATE	CODE SECTION	SUMMARY OF ACTIONS, OBSERVATIONS OR NOTES	EXHIBITS
		The department received the completed director hearing request.	J - Director's hearing request (Page 42)

2026-01-21

		SFDPH issued a notice of hearing for March 19th, 2026.	K - Notice of Hearing for April (Page 43)
		The business owner request moving up the hearing date from march to a late date due to medical reasons. The department granted the request.	L- Proof of service for April hearing (Page 44)
		A notice of hearing was issued for April 16, 2026.	

2026-03-18



# PERMIT TO OPERATE AND CERTIFICATE OF SANITARY INSPECTION

**T 61930**

Issued according to provisions of the San Francisco Health Code

## TOBACCO PRODUCT SALES ESTABLISHMENT

Type of Operation: Tobacco Only Shop

AUTHORIZING conduct of the following class of

ISSUED: 5/13/2010

Tax Code: 131 DPH Code:

Name and Address Below:

Owner: Ola Elsade

DBA: Smoking Aces

Street Address: 1108 Polk St

San Francisco, CA 94109

*H31-002025  
7-14-10*

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

## DEPARTMENT OF PUBLIC HEALTH

Bureau of Environmental Health  
City and County of San Francisco

Inspector

Director of Environmental Health

Principal Inspector

Director of Public Health



# Exhibit B

	[Health Code Section(s)]. Code Description. <b>Correction.</b> Additional Comments.
1a. SFDPH Retail Tobacco Application	<b>[19H.4(a)].</b> 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. <b>[19N.3(a); 19N.5].</b> An establishment must have a valid Tobacco Sales permit to sell electronic cigarettes. <b>Submit a complete Application for the Sale of Tobacco Products and/or E-Cigarette by the correction date.</b>
1b. Fraudulent Application	<b>[19H.16].</b> No person may obtain a tobacco sales permit by fraudulent or willful misrepresentation. <b>Immediately discontinue the sales of tobacco products.</b> 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	<b>[19H.3; 19H.4(a); 19H.7; 19H.13; SF Business and Tax Regulations Code, Article 1, Sec 35].</b> 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. <b>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.</b>
3. Display Permit	<b>[19H.4(e)].</b> 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. <b>Post Permit to Operate in a prominent location that is visible to the public and available for review by SFDPH staff.</b>
4. Post Signage	<b>[19F Sect. 1009.22(i)(1)].</b> Post clear and prominent building entryway "No Smoking/Vaping" signs at each entrance to the establishment; <b>[19F Sect. 1009.22(i)(2)].</b> Post clear and prominent general "No Smoking/Vaping" signs inside the establishment; <b>[19O.6].</b> Post clear and prominent no smoking/vaping signs that includes "No use of smokeless tobacco products" at each entrance of the athletic venue; <b>[19P.4].</b> 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. <b>In accordance with SFDPH Signage Rules and Regulations, clearly post signage in a prominent location that is visible to the public.</b> For building entryway "No Smoking" or "Tobacco 21" signs, please order online at <a href="http://sanfranciscotobaccofreeproject.org">http://sanfranciscotobaccofreeproject.org</a> → Learn More → Signage
5. Right to Inspect	<b>[19H.9].</b> 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. <b>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.</b> DPH staff must present proper credentials in order to enter and inspect premises at any time during regular business hours.
6. Valid Permit	<b>[19H.3; 19N.3].</b> 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. <b>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.</b>
7. Self-Service	<b>[19H.10; 19D Sect. 1009.1; 19N.5].</b> Cigarette vending machine found at establishment. <b>[19H.11; SF Police Code 4600.3; 19N.5].</b> San Francisco Police Department confirmed self-service sale of tobacco products. <b>Display and sell tobacco products in a manner that requires vendor or retailer-assisted sales.</b>
8. Single Sale	<b>[19H.13; CA Penal Code 308.2].</b> A person may not sell any cigarette except in a sealed manufacturer's package meeting federal labeling requirements. <b>Immediately discontinue opening cigarette packs for the sale, distribution, or furnishing of single cigarettes.</b>
9. Sale to Minors	<b>[19H.14; 19N.5; CA Penal Code 308(a)(1)(A)(i)].</b> Tobacco product sale to a minor is prohibited. <b>Immediately discontinue sales of tobacco products to anyone under the age of 18.</b> 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	<b>[19H.14-1; 19N.5; 19P.3(a); CA Penal Code 308(a)(1)(A)(i)].</b> Tobacco product sale to a person aged 18, 19, or 20 is prohibited. <b>Immediately discontinue sales of tobacco products to individuals aged 18, 19, or 20.</b>
11. Flavored Tobacco Products	<b>[19Q.2; 19H.14-2; 19Q.3; 19Q.4]</b> The sale or distribution by an Establishment of any Flavored Tobacco Product or any Flavored Cigarette is prohibited. <b>Remove all Flavored Tobacco Products for sale or display from premises. [19S.2] 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.</b>
12a. SF Smoking Prohibition	<b>[19F 1009.22; 19H.12; 19N.4; 19O.3].</b> 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. <b>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.</b>
12b. CA Workplace Indoor Clean Air	<b>[19H.15; CA Labor Code Sec 6404.5; 19F 1009.22; 19N.4; 19O.3].</b> 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. <b>Immediately discontinue smoking or use of electronic cigarette devices in prohibited enclosed areas of the workplace.</b>
13. Restricted E-cigarette Products	<b>[19R.2; 19H.14-3].</b> 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. <b>Remove all restricted e-cigarette products without FDA premarket approval for sale or display. [19S.2] 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.</b> Visit <a href="https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product">https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product</a>
14. Other tobacco control laws	<b>[19H.13; 19N.5].</b> 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: <b>[19J 1009.92; 19N.5].</b> No person shall sell tobacco products in a pharmacy. <b>Immediately discontinue sales of tobacco products.</b>



## Visit details

**Store name:** Smoking Aces

**Address:** 1108 Polk Street San Francisco, Ca

**Store Description:** Smoke Shop

**Date of visit:** 03/16/24

## Product details

**Product(s) purchased:** GeekBar Mexican Mango

**Price of product purchased:**

\$25.00 + \$0 fees = \$25.00

## Observations

**Commentary:** As I entered the store, I was greeted by a male employee. I observed flavored nicotine products on display behind the counter. I stated to the male that I was buying one for my daughter but she wasn't answering the phone, so I didn't know which flavor to get her. He informed me that the GeekBar Mexican Mango was a very popular flavor so I told him I would buy that one. I completed my purchase and left the store.

This establishment can be best described as a smoke shop type establishment with no food or beverage sales.



Photos

**Photo of store exterior:**





Photos of store interior:









**Photos of product purchased:**

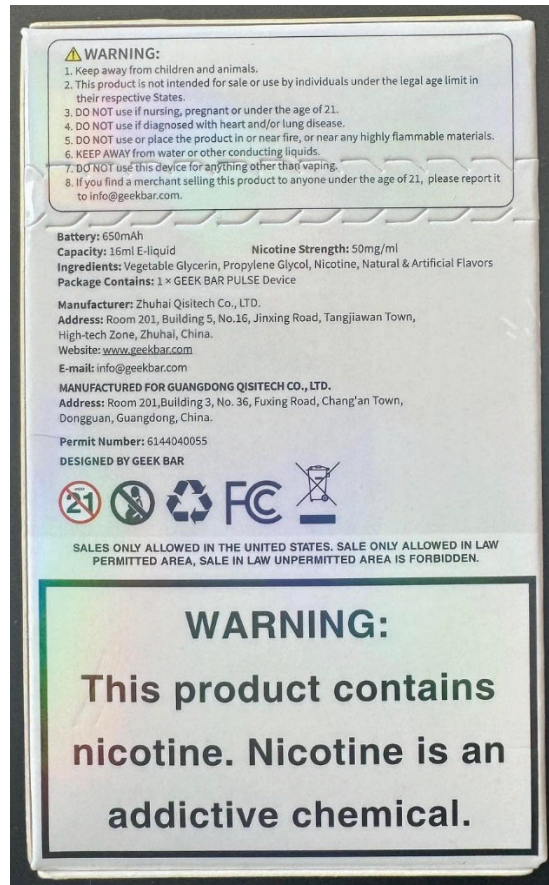


Photo of receipt of purchase: No receipt provided.

End of report.



**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>

# Exhibit D

Inspection Date: 04/22/2024  
 Time of Inspection: 11:40 AM/AM  
 EHD Location #: 61930  
 Tobacco Permit #: T-61930

Facility Name (DBA): Smoking Aces Address: 1108 Polk St. SF CA 94109  
 Permit Owner Name: Ola Elshade Phone Contact: 415-441-4877

Email: Smokingacesst@gmail.com  
 Inspection Type:  
 Routine  Reinspection  
 Complaint  Consultation  
 Inspection Report:  
 Notice of Correction  
 Notice of Violation

**Required Action from Permit Owner:**

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

**Correct By:**

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

**Violations:** Mark observed violations.  
 Code violations cited are on the back page.

No violations observed

1. Incomplete/Inaccurate application submitted  
 2. Unpaid License fees  
 3. Permit/Licenses not displayed  
 4. Signage not posted  
 5. Right to inspect denied  
 6. Tobacco sales without a valid permit  
 7. Sale of tobacco products without assistance  
 8. Sale of single cigarettes  
 9. Sale to minors (person <18 years old)  
 10. Sale to persons aged 18, 19, or 20  
 11. Sale/Distribution of flavored tobacco products  
 12. Smoking in prohibited area  
 13. Sale/Distribution of restricted e-cigarette products  
 14. Other tobacco control laws violated

**Observations:**  
On March 16, 2024, a clerk/cashier sold a flavored restricted e-cigarette product called Geekbar Mexican Mango to a SFDPH contractor at the establishment.  
A notice to attend a Director's Hearing/Abatement Conference was issued to the Person in Charge of this establishment.  
A waiver request form to waive a Director's Hearing and a Notice of Initial Determination was issued to the Person in Charge of this establishment.  
Observed no flavored tobacco & restricted e-cigarettes.

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

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

Inspector Name: Julie Yang Inspector Signature: Julie Y  
 Inspector Email: Julie.Yang@sfdph.org Inspector Phone #: 415-252-3980

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

Received By: (Print) SAM Received By: (Signature) [Signature]

# Exhibit D

	[Health Code Section(s)]. Code Description. Correction. Additional Comments.
1a. SFDPH Retail Tobacco Application	<b>[19H.4(a)].</b> 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. <b>[19N.3(a); 19N.5].</b> An establishment must have a valid Tobacco Sales permit to sell electronic cigarettes. <b>Submit a complete Application for the Sale of Tobacco Products and/or E-Cigarette by the correction date.</b>
1b. Fraudulent Application	<b>[19H.16].</b> No person may obtain a tobacco sales permit by fraudulent or willful misrepresentation. <b>Immediately discontinue the sales of tobacco products.</b> 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	<b>[19H.3; 19H.4(a); 19H.7; 19H.13; SF Business and Tax Regulations Code, Article 1, Sec 35].</b> 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. <b>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.</b>
3. Display Permit	<b>[19H.4(e)].</b> 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. <b>Post Permit to Operate in a prominent location that is visible to the public and available for review by SFDPH staff.</b>
4. Post Signage	<b>[19F Sect. 1009.22(i)(1)].</b> Post clear and prominent building entryway "No Smoking/Vaping" signs at each entrance to the establishment; <b>[19F Sect. 1009.22(i)(2)].</b> Post clear and prominent general "No Smoking/Vaping" signs inside the establishment; <b>[19O.6].</b> Post clear and prominent no smoking/vaping signs that includes "No use of smokeless tobacco products" at each entrance of the athletic venue; <b>[19P.4].</b> 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. <b>In accordance with SFDPH Signage Rules and Regulations, clearly post signage in a prominent location that is visible to the public.</b> For building entryway "No Smoking" or "Tobacco 21" signs, please order online at <a href="http://sanfranciscotobaccofreeproject.org">http://sanfranciscotobaccofreeproject.org</a> → Learn More → Signage
5. Right to Inspect	<b>[19H.9].</b> 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. <b>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.</b> DPH staff must present proper credentials in order to enter and inspect premises at any time during regular business hours.
6. Valid Permit	<b>[19H.3; 19N.3].</b> 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. <b>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.</b>
7. Self-Service	<b>[19H.10; 19D Sect. 1009.1; 19N.5].</b> Cigarette vending machine found at establishment. <b>[19H.11; SF Police Code 4600.3; 19N.5].</b> San Francisco Police Department confirmed self-service sale of tobacco products. <b>Display and sell tobacco products in a manner that requires vendor or retailer-assisted sales.</b>
8. Single Sale	<b>[19H.13; CA Penal Code 308.2].</b> A person may not sell any cigarette except in a sealed manufacturer's package meeting federal labeling requirements. <b>Immediately discontinue opening cigarette packs for the sale, distribution, or furnishing of single cigarettes.</b>
9. Sale to Minors	<b>[19H.14; 19N.5; CA Penal Code 308(a)(1)(A)(i)].</b> Tobacco product sale to a minor is prohibited. <b>Immediately discontinue sales of tobacco products to anyone under the age of 18.</b> 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	<b>[19H.14-1; 19N.5; 19P.3(a); CA Penal Code 308(a)(1)(A)(i)].</b> Tobacco product sale to a person aged 18, 19, or 20 is prohibited. <b>Immediately discontinue sales of tobacco products to individuals aged 18, 19, or 20.</b>
11. Flavored Tobacco Products	<b>[19Q.2; 19H.14-2; 19Q.3; 19Q.4]</b> The sale or distribution by an Establishment of any Flavored Tobacco Product or any Flavored Cigarette is prohibited. <b>Remove all Flavored Tobacco Products for sale or display from premises.</b> <b>[19S.2(a)]</b> No Person shall sell or distribute any Flavored Tobacco Product to a Person in San Francisco. <b>Discontinue all distribution of Flavored Tobacco Products to anyone in San Francisco.</b>
12a. SF Smoking Prohibition	<b>[19F 1009.22; 19H.12; 19N.4; 19O.3].</b> 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. <b>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.</b>
12b. CA Workplace Indoor Clean Air	<b>[19H.15; CA Labor Code Sec 6404.5; 19F 1009.22; 19N.4; 19O.3].</b> 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. <b>Immediately discontinue smoking or use of electronic cigarette devices in prohibited enclosed areas of the workplace.</b>
13. Restricted E-cigarette Products	<b>[19R.2; 19H.14-3].</b> 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. <b>Remove all restricted e-cigarette products without FDA premarket approval for sale or display.</b> <b>[19S.2(b)]</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. <b>Discontinue all distribution and sales of e-cigarette products without premarket approval to any person in San Francisco.</b> Visit <a href="https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product">https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product</a>
14. Other tobacco control laws	<b>[19H.13; 19N.5].</b> 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: <b>[19J 1009.92; 19N.5].</b> No person shall sell tobacco products in a pharmacy. <b>Immediately discontinue sales of tobacco products.</b>



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

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

Patrick Fosdahl, MS, REHS  
Director of Environmental Health

April 22, 2024

Smoking Aces  
Ola Elsade  
1108 Polk Street  
San Francisco, CA 94109

RE: Notice of Initial Determination – Smoking Aces

Dear Ola Elsade:

As the Owner(s) of Smoking Aces located at 1108 Polk Street in the City and County of San Francisco ("Establishment") you are hereby notified that your Establishment is in violation of the San Francisco Health Code ("SFHC"), Articles 19H, 19Q and 19R which was documented on the report dated March 16, 2024:

1. **Section 19Q.3. SALE OR DISTRIBUTION OF FLAVORED TOBACCO PRODUCTS PROHIBITED.**
  - (a) The sale or distribution by an Establishment of any Flavored Tobacco Product is prohibited.
  - (b) There shall be a rebuttable presumption that a Tobacco Product, other than a Cigarette, is a Flavored Tobacco Product if a Manufacturer or any of the Manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Tobacco Product has or produces a Characterizing Flavor, including, but not limited to, text, color, and/or images on the product's Labeling or Packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a Characterizing Flavor.
2. **Section 19H.14-2 Conduct Violating Health Code Article 19Q (Prohibiting the Sale of Flavored Tobacco Products)**
  - (a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates Health Code Section 19Q.3 (Sale or Distribution of Flavored Tobacco Products Prohibited), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19.
3. **Section 19R.2. Sale or Distribution of Electronic Cigarettes Lacking Food and Drug Administration Premarket Order of Approval Prohibited.**

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

  - (a) Is a New Tobacco Product;
  - (b) Requires premarket review under 21 U.S.C. § 387j, as may be amended from time to time; and
  - (c) Does not have a premarket review order under 21 U.S.C. § 387j(c)(1)(A)(i), as may be amended from time to time.
4. **Section 19H.14-3. Conduct Violating Health Code Article 19R (Prohibiting the Sale or Distribution of Electronic Cigarettes Lacking Food and Drug Administration Premarket Order of Approval.**
  - (a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates Health Code Section 19R.2 (Sale or Distribution of Electronic Cigarettes Lacking Food and Drug Administration Premarket Order of Approval Prohibited), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19.

Notice of Determination – 1108 Polk St. – DBA: Smoking Aces

*On February 3<sup>rd</sup>, 2021, San Francisco Department of Public Health (“SFDPH”) staff conducted an inspection, observed and issued a Notice of Correction for the following flavored tobacco products:*

- *Swisher Sweets Red Classic*

*Additionally, permit/licenses not displayed were observed.*

*On February 19, 2021, SFDPH staff conducted a re-inspection and no further action were required.*

*On March 16, 2024, a SFDPH contractor conducted Secret Shopper operation at the Establishment. An employee of the Establishment (“cashier”) sold GeekBar Mexican Mango flavored e-cigarette. GeekBar Mexican Mango flavored e-cigarette has not received the FDA Pre-market approval (See Attachment A).*

*Based on the SFDPH contractor report, on 04-22-2024, SFDPH staff issued a Notice of Violation for the illegal sales of a flavored e-cigarette without FDA pre-market authorization.*

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

1. That, you remove all flavored tobacco products and restricted e-cigarettes from the Establishment within 24 hours and cease sales of any flavored tobacco products, including but not limited to flavored e-cigarettes in the future.
2. That, as authorized by SFHC, Section 19H.19 and the San Francisco Tobacco Sales Rules and Regulations, your Permit #T-75768 shall be suspended with no tobacco sales for 10 days for the repeat violation of Section 19Q.3. *6/13/24*
3. That, you shall not begin serving the suspension period until the Inspector post the Notice of Suspension at your business establishment, including the suspension period start and end date.
4. That, upon suspension, you shall cease sales of and remove tobacco products from the shelves including, but not limited to, cigarettes, cigars, cigarillos, electronic smoking devices, liquids that are intended to be vaporized by electronic smoking devices, smokeless tobacco, hookah tobacco shisha, blunts, and any product containing tobacco or nicotine during the suspension period.
5. That, upon suspension, the business may continue to sell non-tobacco herbal hookah shisha, matches, paper wrappers, cases for cigars or cigarettes, ashtrays, tongs, charcoals, and other accessories that do not contain tobacco or nicotine.
6. That, future reoccurrence of flavored tobacco product sales will result in the suspension of your Tobacco Sales Permit for a minimum of 20 days to a maximum of 180 days served consecutively, if applicable.
7. That, future reoccurrence of e-cigarette without FDA pre-market authorization sales will result in the suspension of your Tobacco Sales Permit for a minimum of 10 days to a maximum of 180 days served consecutively, if applicable.
8. That, failure to comply as ordered may result in one or a combination of the following: a. The increase of your suspension period up to the maximum time period pursuant to Section 19H.19; and/or b. A referral to the City Attorney’s Office with a request to file an injunctive action against you pursuant to Sections 19H.18(c) and 19H.25

Notice of Determination – 1108 Polk St. – DBA: Smoking Aces

9. That, as authorized under 19H.17 and 19H.20, if tobacco products are sold or displayed at the Establishment in the future, administrative penalties may not exceed five hundred dollars (\$500) for the third and each subsequent violation. For purposes of administrative penalties, each day that tobacco sales occur without a permit shall constitute a separate violation.

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

If you have any questions, please contact Health Inspector Julie Yang at (415) 252-3890 or [julie.yang@sfdph.org](mailto:julie.yang@sfdph.org).

Sincerely,



Patrick Fosdahl, MS, REHS  
Director of Environmental Health

Attachment: Director's Hearing Request Form & Notice to Attend Director's Hearing & Notice of Violation



## Notice of Hearing

For a translation of this Notice, please call the inspector's phone number listed below.  
 Para una traducción de este aviso, por favor llame al número de teléfono del inspector que aparece a continuación.  
 欲索取本通知的翻譯本，請打下列電話號碼給檢查員。  
 Para sa isang pagsasalin ng Abiso na ito, mangyaring tagawan ang numero ng telepono ng inspektor na nakalista sa ibaba.

**Date:** \_\_\_\_\_  
**Address of Violation(s):** 1108 Polk St. S.F., CA 94109      **Facility ID#:** 61930  
**DBA:** Smoking Aces  
**Property/Business Owner Name:** \_\_\_\_\_ **Email:** smokingaccessf@gmail.com  
**Address:** 1108 Polk St. S.F., CA 94109

Food     Housing     Massage     Tobacco     Solid Waste     Other: \_\_\_\_\_

**You are hereby ordered to appear at a hearing for failure to comply with the following code section(s):**

SFHC Sec 19Q.3 - Sale or Display of Flavored Products + Sec 19R.2 - Sale of Electronic Cigarettes

**The hearing will be held at 101 Grove St., Room 300, on the following date and time:** August 15, 2024 @ 1:00 PM

Failure to appear may result in one or more of the following: penalties, suspension or revocation of any Permit to Operate, SFDPH initiated refuse collection service, and/or a referral to the San Francisco City Attorney's Office for the above referenced site.

If you would like interpretation services at the Hearing, please inform the Inspector below at least 4 business days before the Hearing.  
 Si usted desea servicios de interpretación en la audiencia, por favor informe al inspector que aparece a continuación por lo menos 4 días hábiles antes de la audiencia.  
 如果您需要在聽證會上得到口譯/傳譯服務，請在聽證會之前至少4個工作日通知下列檢查員。  
 Kung gusto ninyo ng mga serbisyo ng interpretasyon sa Pagdinig, mangyaring ipagbigay-alam sa Inspektor na nakalista sa ibaba ng hindi bababa sa 4 araw ng negosyo bago ang Pagdinig.

Inspector/Investigator: Mary Joanne Freitas  
 Phone: 415-252-3850    Email: mary.freitas@sfdph.org

Grant Colfax, MD  
 Director of Health



# Exhibit F

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

## Director's Hearing Order

Location Address 1108 Polk Street	Block/Lot 0692/012	Facility Name (DBA) Smoking Aces		
Property Owner 1086 Post LLC		Phone 415-441-4877	Email smokingaccessf@gmail.com	
Responsible Party or Parties Ola Elshade	Attended Hearing? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Hearing Date 8/15/2024	Program Code SMK	Case Number SMK-24-23

### CODE SECTION(S) and DESCRIPTIONS

SFHC Article 19Q.3. Sale and distribution of flavored tobacco products; 19R.2. Sale or Distribution of restricted Electronic Cigarettes.

### HEARING OFFICER DETERMINATIONS:

After a full and fair consideration of the evidence and testimony received at the hearing on the above date, THE DIRECTOR FINDS AND DETERMINES THE FOLLOWING:

- That notice of the hearing has been duly given as required by law, and
- That your presence at the hearing is correctly designated above, and
- That the findings stated in the Inspection Report(s) have not been proven by a preponderance of admissible evidence, and

1. That, you remove any flavored tobacco products and restricted e-cigarettes from the Establishment within 24 hours and cease sales of any flavored tobacco products, including but not limited to flavored e-cigarettes.
2. That, failure to comply as ordered may result in one or a combination of the following:
  - a. The suspension pursuant to Section 19H.19;
  - b. Administrative penalties of up to five hundred dollars (\$500.00) pursuant to Section 19H.20; and/or
  - c. A referral to the City Attorney's Office with a request to file an injunctive action against you pursuant to Sections 19H.17 (c) and (d); 19H.18(c); and 19H.25.
3. That, future flavored tobacco product sales will result in the suspension of your Tobacco Sales Permit.

This Hearing Order continues on the next page.

**IMPORTANT: Can you read this document? If not, we can have somebody help you read it. For free help, please call Department of Public Health at 415-252-3800.**

请注意： 你是否理解信件的全部内容？如有任何问题,我们提供免费翻译服务,请致电三藩市公共卫生局 415-252-3800.

**¿Puede leer este documento? Sí no puede, alguien lo puede ayudar. Para obtener ayuda gratis llame al Departamento de Salud Pública al (415) 252-3800.**



# Exhibit F

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

### Director's Hearing Order (continued -- Page 2 of 2 )

Responsible Party or Parties <b>Ola Elsade</b>	Attended Hearing? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Hearing Date <b>8/15/2024</b>	Program Code <b>SMK</b>	Case Number <b>SMK-24-23</b>
Permit Number (if blank, this hearing did not involve a permit) <b>T-01204</b>	Permit Decision <b>N/A</b>	Reinspection Fee Applies? <input type="checkbox"/> Yes as authorized by _____ <input checked="" type="checkbox"/> No		Reinspection Fee: <b>N/A</b>

And Further, if checked, the following conditions are included in this order:

#### REINSPECTION FEE

That the Responsible Party named above pay the reinspection fee as authorized and shown above.

#### NUISANCE ABATEMENT

Failure to abate and remove the nuisance may result in the abatement of the nuisance by the Department of Public Health and the Property Owner shall become indebted to the City and County of San Francisco for the costs, charges, and fees incurred by reason of the abatement and removal of such nuisance upon demand.

#### COST RECOVERY

In accordance with the San Francisco Health Code, the Property Owner shall be indebted to the City and County of San Francisco for costs incurred in abating the effects of the violation, taking other remedial action, or imposing and collecting penalties, including but not limited to administrative costs, costs of issuing an order, inspection or monitoring costs, hearing officer costs, and reasonable attorney fees if sought by the Director in the Notice of Hearing. In any proceedings in which the Director seeks to recover attorney's fees, the prevailing party shall be entitled to reasonable attorney's fees. Failure to pay such costs, charges, and fees may result in a lien against the property.

✓ **APPEAL PROCESS** if the case involves a Health Permit:

Within 15 days of receipt of this letter, you have the right to appeal this decision regarding your permit to the Board of Appeals. 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>.

**APPEAL PROCESS** if the case involves a non-permitted facility and/or a penalty:

This Order is final and you may have the right to petition the Superior Court of San Francisco for judicial review or appropriate relief pursuant to Section 1094.6 of the California Code of Civil Procedures. The filing of a petition with the Superior Court shall not automatically stay the effectiveness of this Order or extend the time period in which you have to abate the violation

#### DPH USE ONLY

Decision Entry Date: 09/13/2024      Hearing Coordinator: ES  
Initial

Should you have any questions, please contact:

Inspector Name: <b>Michelle Vega</b>	Inspector Phone <b>415-252-3803</b>	Inspector Email <b>Michelle.delacruz@sfdph.org</b>
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The aforementioned is a true copy of the orders issued in the name of the Director of Public Health in the City and County of San Francisco,

Hearing Officer <b>Sara Maunder</b>	Hearing Officer Signature 	Date <b>9/12/24</b>
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## Visit details

**Store name:** Smoking Aces

**Address:** 1108 Polk Street San Francisco, Ca

**Store Description:** Smoke/Gift type Shop

**Date of visit:** 11/05/25

## Product details

**Product(s) purchased:** Geek Bar Blue Razz Ice

**Price of product purchased:**

\$Unknown + \$Unknown fees = \$36.05

## Observations

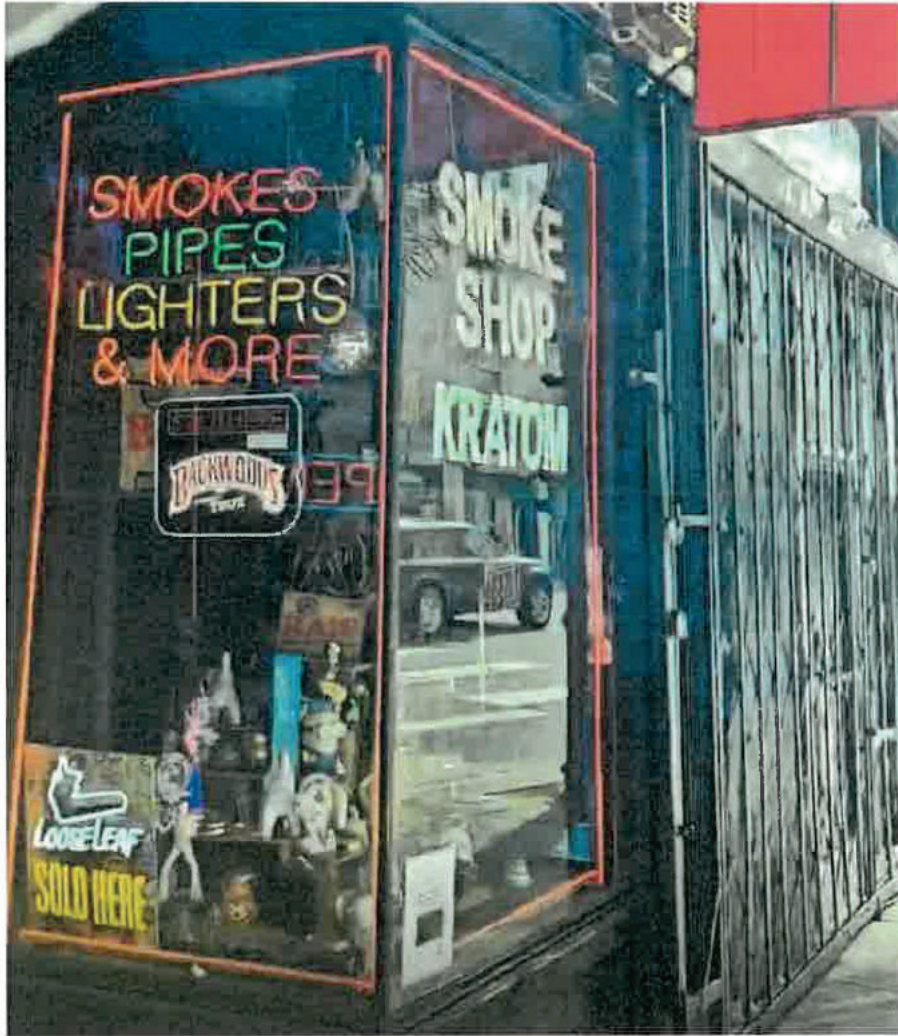
**Commentary:** Upon entering the establishment, my agent asked for a vape. The female Middle Eastern appearing employee asked if he was with the government or the health board and the agent replied "No". The employee agreed to sell the agent the Geek Bar vape product. She rang up the product at the register and had the agent pay. She then stated "ok, I'll be right back, wait outside" and locked up the store by locking the front door. The employee reopened the store front door and handed the vape to the agent with him staying outside of the establishment.

## Photos





Photo of store exterior:







Photos of store interior:



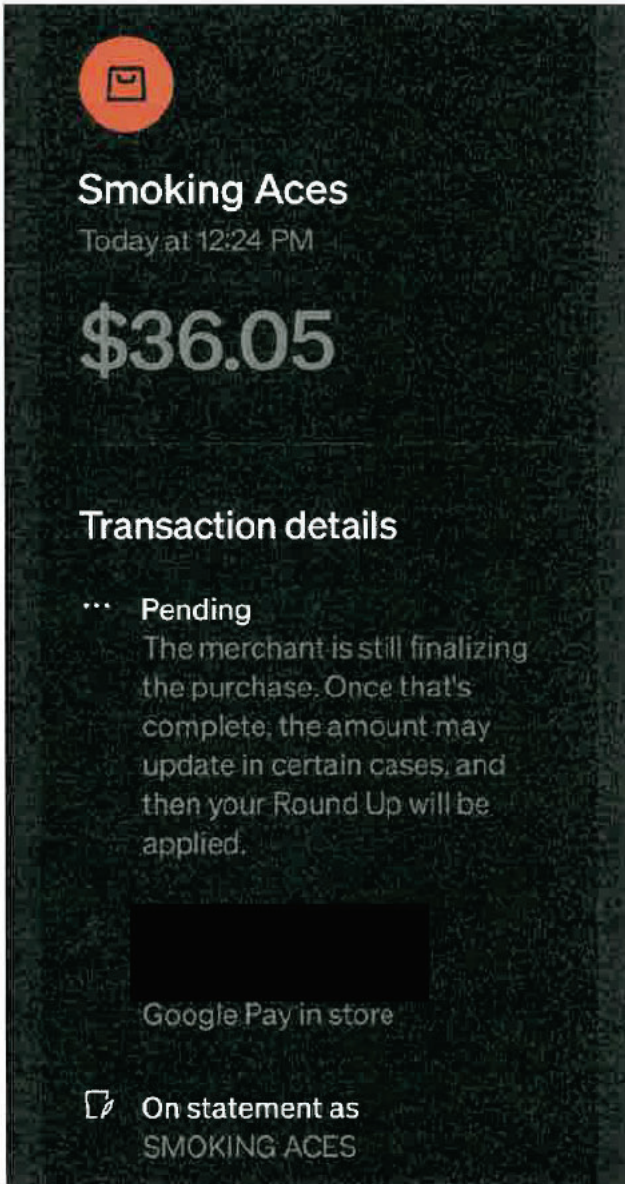


Photos of product purchased:





Online receipt of purchase:





**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>

**Exhibit H**  
 Inspection Date: 11/10/25

Time of Inspection: 03:40 PM

EHD Location #: 0418026-01-001

Tobacco Permit #: T- T 61930

Facility Name (DBA): Smoking Aces

Address: 1108 POLK ST SAN FRANCISCO CA

Permit Owner Name:

Phone Contact:

Email:

Inspection Type:

- Routine  Reinspection  
 Complaint  Consultation

Inspection Report:

- Notice of Correction  
 Notice of Violation

**Violations:** Mark observed violations.

Code violations cited are on the back page.

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

**Required Action from Permit Owner:**

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

**Correct By:**

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

**Observations:**

**NOTES**

Joint inspection with CDTFA. Notice of Violation issued at time of inspection for the 11/5/25 sale to SFDPH contractor. Facility sold a Geek bar blue razz ice to the SFDPH contractor on 11/5/25. NOID to follow.

**11.Sale/distribution of flavored tobacco products**

Status: Yes

Type: Violation

Violation Code: San Francisco Health Code Article 19Q.3-SALE OR DISTRIBUTION OF FLAVORED TOBACCO PRODUCTS PROHIBITED.

Observations: On 11/5/2025, an employee at the establishment sold a Geek bar Blue Razz Ice E-cigarette to a SFDPH contractor. A copy of the report is provided to the person in charge.

**13.Sale/distribution of Restricted E-Cigarette products**

Status: Yes

**Additional Documents Attached:**

- SFDPH Retail Tobacco Application
- Notice of Initial Determination
- Request for Director's Hearing Form
- Compliance Agreement
- SFPD Report # \_\_\_\_\_
- Tobacco Retail License Booklet
- Out of Business Form
- Invoice for Payment Demand

Inspector Name: Japjit Deol

Inspector Signature:

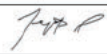

Inspector Email: japjit.deol@sfdph.org

Inspector Phone #: (415) 252-3819

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

Received By: (Print) Ola

Received By: (Signature)

<b>DBA:</b> Smoking Aces	<b>Address:</b> 1108 POLK ST SAN FRANCISCO CA
<b>Permit Owner Name:</b>	<b>Inspection Date:</b> 11/20/2025
<b>Observations:</b> Observations: Facility sold a restricted e cigarettes on 11/5/25 to a SFDPH contractor.	
<b>Inspector Name:</b> Japjit Deol	<b>Inspector Signature:</b> 
<b>Received By: (Print)</b> Ola	<b>Received By: (Signature)</b> 

# Exhibit H

	[Health Code Section(s)]. Code Description. <b>Correction.</b> Additional Comments.
1a. SFDPH Retail Tobacco Application	<b>[19H.4(a)].</b> 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. <b>[19N.3(a); 19N.5].</b> An establishment must have a valid Tobacco Sales permit to sell electronic cigarettes. <b>Submit a complete Application for the Sale of Tobacco Products and/or E-Cigarette by the correction date.</b>
1b. Fraudulent Application	<b>[19H.16].</b> No person may obtain a tobacco sales permit by fraudulent or willful misrepresentation. <b>Immediately discontinue the sales of tobacco products.</b> 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	<b>[19H.3; 19H.4(a); 19H.7; 19H.13; SF Business and Tax Regulations Code, Article 1, Sec 35].</b> 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. <b>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.</b>
3. Display Permit	<b>[19H.4(e)].</b> 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. <b>Post Permit to Operate in a prominent location that is visible to the public and available for review by SFDPH staff.</b>
4. Post Signage	<b>[19F Sect. 1009.22(i)(1)].</b> Post clear and prominent building entryway “No Smoking/Vaping” signs at each entrance to the establishment; <b>[19F Sect. 1009.22(i)(2)].</b> Post clear and prominent general “No Smoking/Vaping” signs inside the establishment; <b>[19O.6].</b> Post clear and prominent no smoking/vaping signs that includes “No use of smokeless tobacco products” at each entrance of the athletic venue; <b>[19P.4].</b> 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. <b>In accordance with SFDPH Signage Rules and Regulations, clearly post signage in a prominent location that is visible to the public.</b> For building entryway “No Smoking” or “Tobacco 21” signs, please order online at <a href="http://sanfranciscotobaccofreeproject.org">http://sanfranciscotobaccofreeproject.org</a> → Learn More → Signage
5. Right to Inspect	<b>[19H.9].</b> 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. <b>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.</b> DPH staff must present proper credentials in order to enter and inspect premises at any time during regular business hours.
6. Valid Permit	<b>[19H.3; 19N.3].</b> 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. <b>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.</b>
7. Self-Service	<b>[19H.10; 19D Sect. 1009.1; 19N.5].</b> Cigarette vending machine found at establishment. <b>[19H.11; SF Police Code 4600.3; 19N.5].</b> San Francisco Police Department confirmed self-service sale of tobacco products. <b>Display and sell tobacco products in a manner that requires vendor or retailer-assisted sales.</b>
8. Single Sale	<b>[19H.13; CA Penal Code 308.2].</b> A person may not sell any cigarette except in a sealed manufacturer’s package meeting federal labeling requirements. <b>Immediately discontinue opening cigarette packs for the sale, distribution, or furnishing of single cigarettes.</b>
9. Sale to Minors	<b>[19H.14; 19N.5; CA Penal Code 308(a)(1)(A)(i)].</b> Tobacco product sale to a minor is prohibited. <b>Immediately discontinue sales of tobacco products to anyone under the age of 18.</b> 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	<b>[19H.14-1; 19N.5; 19P.3(a); CA Penal Code 308(a)(1)(A)(i)].</b> Tobacco product sale to a person aged 18, 19, or 20 is prohibited. <b>Immediately discontinue sales of tobacco products to individuals aged 18, 19, or 20.</b>
11. Flavored Tobacco Products	<b>[19Q.2; 19H.14-2; 19Q.3; 19Q.4]</b> The sale or distribution by an Establishment of any Flavored Tobacco Product or any Flavored Cigarette is prohibited. <b>Remove all Flavored Tobacco Products for sale or display from premises.</b> <b>[19S.2(a)]</b> No Person shall sell or distribute any Flavored Tobacco Product to a Person in San Francisco. <b>Discontinue all distribution of Flavored Tobacco Products to anyone in San Francisco.</b>
12a. SF Smoking Prohibition	<b>[19F 1009.22; 19H.12; 19N.4; 19O.3].</b> 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. <b>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.</b>
12b. CA Workplace Indoor Clean Air	<b>[19H.15; CA Labor Code Sec 6404.5; 19F 1009.22; 19N.4; 19O.3].</b> 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. <b>Immediately discontinue smoking or use of electronic cigarette devices in prohibited enclosed areas of the workplace.</b>
13. Restricted E-cigarette Products	<b>[19R.2; 19H.14-3].</b> 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. <b>Remove all restricted e-cigarette products without FDA premarket approval for sale or display.</b> <b>[19S.2(b)]</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. <b>Discontinue all distribution and sales of e-cigarette products without premarket approval to any person in San Francisco.</b> Visit <a href="https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product">https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product</a>
14. Other tobacco control laws	<b>[19H.13; 19N.5].</b> 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: <b>[19J 1009.92; 19N.5].</b> No person shall sell tobacco products in a pharmacy. <b>Immediately discontinue sales of tobacco products.</b>



### Inspection Report

<b>Facility Address:</b> 1108 POLK ST SAN FRANCISCO CA 94109-5513	<b>Inspection Date:</b> 11/20/2025
<b>Business Name:</b> Smoking Aces	<b>Reinspection Date:</b>
<b>Owner Name(s):</b>	<b>Inspection Type:</b> Routine
<b>Class or Type:</b> H31 - TOBACCO SALES - ANNUAL LICENSE FEE	<b>Phone:</b>

**Sale/distribution of flavored tobacco products**

On 11/5/2025, an employee at the establishment sold a Geek bar Blue Razz Ice E-cigarette to a SFDPH contractor. A copy of the report is provided to the person in charge.

**Sale/distribution of Restricted E-Cigarette products**

Facility sold a restricted e cigarettes on 11/5/25 to a SFDPH contractor.

<b>Inspector:</b> Japjit Deol	<b>Inspector Signature:</b> <i>Japjit Deol</i>
<b>Phone:</b> (415) 252-3819	<b>Received By:</b> Ola



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

Daniel L Lurie, Mayor  
 Daniel Tsai, Director of Health  
 Jennifer Callewaert, MS, REHS  
 Acting Director of Environmental Health

December 9, 2025

Smoking Aces  
 1108 Polk St  
 San Francisco, CA 94109

RE: Notice of Initial Determination – Smoking Aces

Dear Elsade Ola N:

As the Owner of Tobacco Sales Permit # T-61930 (“Permit”), you are hereby notified that Smoking Aces located at 1108 Polk Street in the City and County of San Francisco (“Establishment”) is in violation of the San Francisco Health Code (SFHC), Articles 19Q, and 19R, which were documented on the Notice of Violation Inspection Report dated November 20, 2025:

**1. Section 19Q.3. Sale or Distribution of Flavored Tobacco Products Prohibited.**

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

**2. Section 19H.14-2. Conduct Violating Health Code Article 19Q (Prohibiting the Sale of Flavored Tobacco Products)**

- (a) Upon a decision by the Director that the Permittee or the Permittee’s agent or employee has engaged in any conduct that violates Health Code Section 19Q.3 (Sale or Distribution of Flavored Tobacco Products Prohibited), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19.

**3. SFHC SEC. 19H.20. Administrative Penalty.**

When this Article allows the Director to impose an administrative penalty, the Director may assess an administrative penalty (1) not exceeding **(\$500)** for a first violation; (2) not exceeding **(\$750)** for a second violation; and (3) not exceeding **(\$1000)** for the third and each subsequent violation. For purposes of administrative penalties, each day that tobacco sales occur without a permit shall constitute a separate violation.

**4. Section 19R.2. Sale or Distribution of Electronic Cigarettes Lacking Food and Drug Administration Premarket Order of Approval Prohibited. (See Attachment A)**

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

- (a) Is a New Tobacco Product;

TOBACCO & SMOKING PROGRAM  
 49 S Van Ness Ave. Suite 600, San Francisco, CA 94103  
 Phone 415-252-3800 | Fax 415-252-3894

Notice of Determination – Smoking Aces – 1108 Polk St, San Francisco, CA 94109

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

**5. Section 19H.14-3. Conduct Violating Health Code Article 19R (Prohibiting the Sale or Distribution of Electronic Cigarettes Lacking Food and Drug Administration Premarket Order of Approval.**

- (a) Upon a decision by the Director that the Permittee or the Permittee’s agent or employee has engaged in any conduct that violates Health Code Section 19R.2 (Sale or Distribution of Electronic Cigarettes Lacking Food and Drug Administration Premarket Order of Approval Prohibited), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19.

*On November 5, 2025, an employee at the Establishment sold a Geek Bar Blue Razz Ice flavored electronic cigarette (“vape”) to the SFDPH contractor. (See Attachment A)*

*Geek Bar Blue Razz Ice electronic cigarette is a flavored tobacco product. Additionally, Geek Bar Blue Razz Ice flavored electronic cigarette doesn’t have their FDA pre-market authorization and may not be sold in the United States.*

*On November 20, 2025, a Notice of Violation (NOV) was issued by SFDPH staff for the sale of a flavored tobacco product and unauthorized electronic cigarettes on November 5, 2025. (See Attachment B)*

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

1. That, you remove all flavored tobacco products and restricted e-cigarettes from the Establishment immediately and cease sales of any flavored tobacco products, including but not limited to flavored e-cigarettes in the future.
2. That, as authorized by SFHC, Section 19H.19 and the San Francisco Tobacco Sales Rules and Regulations, your Permit # T-61930 shall be suspended with no tobacco sales for **ten (10) days** for the first violation of Section 19Q.3. and for **ten (10) days** for the second violation of Sec. 19R.2 that shall both be served consecutively for a total of **Twenty (20) days**.
3. As authorized by SFHC, Article 19H, Section 19H.20, you shall **pay an administrative penalty in the total amount of one thousand dollars (\$1000) for (\$500)** for each of the first administrative violations of 19Q.3, 19R.2 each occurring on November 5, 2025.
4. That, you shall not begin serving the suspension period until the Inspector posts the Notice of Suspension at your business establishment, including the suspension period start and end date.
5. That, upon suspension, you shall cease sales of and remove tobacco products from the shelves including, but not limited to, cigarettes, cigars, cigarillos, electronic smoking devices, liquids that are intended to be vaporized by electronic smoking devices, smokeless tobacco, hookah tobacco shisha, blunts, and any product containing tobacco or nicotine during the suspension period.
6. That, upon suspension, the business may continue to sell non-tobacco herbal hookah shisha, matches, paper wrappers, cases for cigars or cigarettes, ashtrays, tongs, charcoals, and other accessories that do not contain tobacco or nicotine.


Notice of Determination – Smoking Aces – 1108 Polk St, San Francisco, CA 94109

7. That, future reoccurrence of flavored tobacco product sales will result in the suspension of your Tobacco Sales Permit for a minimum of 20 days to a maximum of 180 days served consecutively, if applicable.
8. That, future reoccurrence of e-cigarette without FDA pre-market authorization sales will result in the suspension of your Tobacco Sales Permit for a minimum of 20 days to a maximum of 180 days served consecutively, if applicable.
9. That failure to comply as ordered may result in one or a combination of the following:
  - a. The increase of your suspension period up to the maximum time pursuant to Section 19H.19; and/or
  - b. Revocation of your retail tobacco permit #T-61930.

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

If you have any questions, please contact Senior Environmental Health Inspector Japjit Deol at (415) 252-3819 or [japjit.deol@sfdph.org](mailto:japjit.deol@sfdph.org).

Sincerely,

DocuSigned by:  
  
4866F7DAB7E84AD...  
Jennifer Callewaert, MS, REHS  
Acting Director of Environmental Health

Attachments:

- Attachment A: Pink lady Report
- Attachment B: 11/20/25 Inspection Report
- Director's Hearing Request/Waiver Form



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

Daniel Lurie, Mayor  
Daniel Tsai, Director of Health  
Jennifer Callewaert, MS, REHS  
Acting Director of Environmental Health

SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH  
DIRECTOR HEARING REQUEST

Case Number: \_\_\_\_\_ Permit to Operate #: T-61930 Permit Issued Date: 05-13-2010  
 Business Name (DBA): Smoking Aces Permit Holder/Owner: Ola Elsdale  
 Business Address, Zip Code: 1108 Polk St, SF, CA 94109  
 EH LOC ID #: \_\_\_\_\_ SF Business Account Number: \_\_\_\_\_

Environmental Health Proposed Enforcement Action: See Notice of Initial Determination

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

OR

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

I understand that this declaration is subject to review by the Department of Public Health, Environmental Health Branch. I declare under penalty of perjury that I am an authorized representative of this business entity and that the information contained herein is true and complete to the best of my knowledge and belief.

[Signature]  
SAM ARQUEL ROUS  
Authorized Agent - Print & Signature

12/13/2025  
Date

DPH Office Use ONLY

Date received: 1/21/2026

District Health Inspector: Genes Ts Hui  
Print Name





**Notice of Hearing**

For a translation of this Notice, please call the inspector's phone number listed below.  
Para una traducción de este aviso, por favor llame al número de teléfono del inspector que aparece a continuación.  
欲索取本通知的翻譯本，請打下列電話號碼給檢查員。  
Para sa isang pagsasalin ng Abiso na ito, mangyaring tawagan ang numero ng telepono ng inspektor na nakalista sa ibaba.

Date: 3/18/2026

Address of Violation(s): 1108 Polk St

Permit #: T-61930

DBA: Smoking Aces

Property/Business Owner Name: Elsade Ola N Email: smokingaccessf@gmail.com

Address: 1108 Polk St, SF, CA 94109

Food  Housing  Massage  Tobacco  Solid Waste  Other: \_\_\_\_\_

You are hereby ordered to appear at a hearing for failure to comply with the following code section(s):

SFHC, Section 19Q.3 & 19R.2

The hearing will be held at 49 So. Van Ness Ave., Rm. 192/194, on the following date and time: 1:00 pm, April 16, 2026

Failure to appear may result in one or more of the following: penalties, suspension or revocation of any Permit to Operate, SFDPH initiated refuse collection service, and/or a referral to the San Francisco City Attorney's Office for the above referenced site.

If you would like interpretation services at the Hearing, please inform the Inspector below at least 4 business days before the Hearing.  
Si usted desea servicios de interpretación en la audiencia, por favor informe al inspector que aparece a continuación por lo menos 4 días hábiles antes de la audiencia.  
如果您需要在聽證會上得到口譯/傳譯服務，請在聽證會之前至少4個工作日通知下列檢查員。  
Kung gusto ninyo ng mga serbisyo ng interpretasyon sa Pagdinig, mangyaring ipagbigay-alam sa Inspektor na nakalista sa ibaba ng hindi bababa sa 4 araw ng negosyo bago ang Pagdinig.

Inspector/Investigator: Jajjit Deol

Phone: (415) 252-3819 Email: Jajpit.deol@sfdph.org

Daniel Tsai  
Director of Health



**PROOF OF SERVICE**

I, JAPJIT DEOL, 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 3-18-26 I served the following document(s):

- Notice of Violation
- Notice of Hearing
- Director's Hearing Order
- SFDPH Hearing Brief
- Other: \_\_\_\_\_

on the following persons at the locations specified:

*Smoking Accus  
1108 Polk St  
SF, CA 94109*

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**

**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: Smokingaccessf@gmail.com

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

Executed 3-18-26 at San Francisco, California.

*Japjit Deol*

# EXHIBIT 2



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

**Director's Hearing Order**

Location Address 1108 Polk St San Francisco, CA 94109	Block/Lot 0692/012	Facility Name (DBA) Smoking Aces		
Property Owner 1086 POST LLC		Phone	Email smokingaccessf@gmail.com	
Responsible Party or Parties Smoking Aces c/o Elsadé Ola N	Attended Hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No	Hearing Date 04/16/2026	Program Code SMK	Case Number 26-03

**CODE SECTION(S) and DESCRIPTIONS**

1. Section 19Q.3. Sale or Distribution of Flavored Tobacco Products Prohibited., 2. Section 19H. 14-2. Conduct Violating Health Code Article 19Q (Prohibiting the Sale of Flavored Tobacco Products), 3. SFHC SEC. 19H. 20. Administrative Penalty., 4. Section 19R.2. Sale or Distribution of Electronic Cigarettes Lacking Food and Drug Administration Premarket Order of Approval Prohibited., 5. Section 19H.14-3. Conduct Violating Health Code Article 19R (Prohibiting the Sale or Distribution of Electronic Cigarettes Lacking Food and Drug Administration Premarket Order of Approval.

**HEARING OFFICER DETERMINATIONS:**

After a full and fair consideration of the evidence and testimony received at the hearing on the above date, THE DIRECTOR FINDS AND DETERMINES THE FOLLOWING:

- That notice of the hearing has been duly given as required by law, and
- That your presence at the hearing is correctly designated above, and
- That the findings stated in the Inspection Report(s) are true, and

1. That, you remove all flavored tobacco products and restricted e-cigarettes from the Establishment immediately and cease sales of any flavored tobacco products, including but not limited to flavored e cigarettes in the future.
2. That, as authorized by SFHC, Section 19H. 19 and the San Francisco Tobacco Sales Rules and Regulations, your Permit # T-61930 shall be suspended with no tobacco sales for ten (10) days for the first violation of Section 19Q.3. and for ten (10) days for the first violation of Sec. 19R. 2 that shall both be served consecutively for a total of Twenty (20) days.
3. As authorized by SFHC, Article 19H, Section 19H.20, you shall pay an administrative penalty in the total amount of one thousand dollars (\$1000) for (\$500) for each of the first administrative violations of 19Q. 3, 19R.2 each occurring on November 5, 2025.

This Hearing Order continues on the next page.

**IMPORTANT: Can you read this document? If not, we can have somebody help you read it. For free help, please call Department of Public Health at 415-252-3800.**

请注意： 你是否理解信件的全部内容？如有任何问题,我们提供免费翻译服务,请致电三藩市公共卫生局 415-252-3800.

**¿Puede leer este documento? Sí no puede, alguien lo puede ayudar. Para obtener ayuda gratis llame al Departamento de Salud Pública al (415) 252-3800.**



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

**Director's Hearing Order (continued -- Page 2 of 3 )**

Responsible Party or Parties Smoking Aces c/o Elshade Ola N	Attended Hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No	Hearing Date 04/16/2026	Program Code SMK	Case Number 26-03
Permit Number (if blank, this hearing did not involve a permit) #T-61930.	Permit Decision N/A	Reinspection Fee Applies? <input type="checkbox"/> Yes as authorized by _____ <input type="checkbox"/> No		Reinspection Fee:

4. That, you shall not begin serving the suspension period until the Inspector posts the Notice of Suspension at your business establishment, including the suspension period start and end date.

5. That, upon suspension, you shall cease sales of and remove tobacco products from the shelves including, but not limited to, cigarettes, cigars, cigarillos, electronic smoking devices, liquids that are intended to be vaporized by electronic smoking devices, smokeless tobacco, hookah tobacco shisha, blunts, and any product containing tobacco or nicotine during the suspension period.

6. That, upon suspension, the business may continue to sell non-tobacco herbal hookah shisha, matches, paper wrappers, cases for cigars or cigarettes, ashtrays, tongs, charcoals, and other accessories that do not contain tobacco or nicotine.

7. That, future reoccurrence of flavored tobacco product sales will result in the suspension of your Tobacco Sales Permit for a minimum of 20 days to a maximum of 180 days served consecutively, if applicable.

8. That, future reoccurrence of e-cigarette without FDA pre-market authorization sales will result in the suspension of your Tobacco Sales Permit for a minimum of 20 days to a maximum of 180 days served consecutively, if applicable.

9. That failure to comply as ordered may result in one or a combination of the following:  
 a. The increase of your suspension period up to the maximum time pursuant to Section 19H. 19;  
 and/or  
 b. Revocation of your retail tobacco permit #T-61930.

Should you have any questions, please contact:

Inspector Name: Japjit Deol	Inspector Phone 415 252 3816	Inspector Email japjit.deol@sfdph.org
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The aforementioned is a true copy of the orders issued in the name of the Director of Public Health in the City and County of San Francisco,

Hearing Officer Traci Lawrence	Hearing Officer Signature 	Date 4/30/26
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City and County of San Francisco  
**DEPARTMENT OF PUBLIC HEALTH**  
**ENVIRONMENTAL HEALTH**

**Director's Hearing Order (continued -- Page 3 of 3 )**

Responsible Party or Parties Smoking Aces c/o Elside Ola N	Attended Hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No	Hearing Date 04/16/2026	Program Code SMK	Case Number 26-03
Permit Number (if blank, this hearing did not involve a permit) #T-61930.	Permit Decision N/A	Reinspection Fee Applies? <input type="checkbox"/> Yes as authorized by _____ <input type="checkbox"/> No		Reinspection Fee:

And Further, if checked, the following conditions are included in this order:

**REINSPECTION FEE**

That the Responsible Party named above pay the reinspection fee as authorized and shown above.

**NUISANCE ABATEMENT**

Failure to abate and remove the nuisance may result in the abatement of the nuisance by the Department of Public Health and the Property Owner shall become indebted to the City and County of San Francisco for the costs, charges, and fees incurred by reason of the abatement and removal of such nuisance upon demand.

**COST RECOVERY**

In accordance with the San Francisco Health Code, the Property Owner shall be indebted to the City and County of San Francisco for costs incurred in abating the effects of the violation, taking other remedial action, or imposing and collecting penalties, including but not limited to administrative costs, costs of issuing an order, inspection or monitoring costs, hearing officer costs, and reasonable attorney fees if sought by the Director in the Notice of Hearing. In any proceedings in which the Director seeks to recover attorney's fees, the prevailing party shall be entitled to reasonable attorney's fees. Failure to pay such costs, charges, and fees may result in a lien against the property.

✓ **APPEAL PROCESS** if the case involves a Health Permit:

Within 15 days of receipt of this letter, you have the right to appeal this decision regarding your permit to the Board of Appeals. 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>.

**APPEAL PROCESS** if the case involves a non-permitted facility and/or a penalty:

This Order is final and you may have the right to petition the Superior Court of San Francisco for judicial review or appropriate relief pursuant to Section 1094.6 of the California Code of Civil Procedures. The filing of a petition with the Superior Court shall not automatically stay the effectiveness of this Order or extend the time period in which you have to abate the violation

**DPH USE ONLY**

Decision Entry Date: 05/14/2026      Hearing Coordinator: ES  
Initial

Should you have any questions, please contact:

Inspector Name: Japjit Deol	Inspector Phone 415 252 3816	Inspector Email japjit.deol@sfdph.org
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The aforementioned is a true copy of the orders issued in the name of the Director of Public Health in the City and County of San Francisco,

Hearing Officer Traci Lawrence	Hearing Officer Signature 	Date 4/30/26
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# EXHIBIT 3

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## Complaint Report for Location ID 61930 at 1108 Polk St

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ComplaintID: 109936      Assigned to: Mary Joanne Freitas  
Date Entered: 12/24/2024      DBA: Smoking Aces  
CrossStreet1: Post St.      CrossStreet2: Hemlock St.      Address: 1108 Polk St      Unit #:  
Census: 120      Block:      Lot:      District: 13

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Location Type: Tobacco Only Shop      Tobacco      Notice Date: \_\_\_\_\_  
Owner Name: Ola Elsade      Billable Reinspection Date(s): \_\_\_\_\_  
Owner Phone: 650-291-2584      Date Abated: \_\_\_\_\_  
Owner Address: 707 Cedar Ave      Complaint Location Description      Abate Notes:  
Contact Name: Ola Elsade  
Contact Phone: 4154414877

**Complaint Description:**

Complainant reporting that the business is selling rechargeable flavored vapes and do have them displayed on the left hand side behind the counter under the glass, in boxes, please inspect.

Complaint Taken By: Bernard Chan

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## Inspector/Investigator's Report

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**Complaint Notes Entered into EHD:**

# EXHIBIT 4



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

Inspection Date: 12 / 27 / 2024  
 Time of Inspection: 10:23 AM  
 EHD Location #: 61930  
 Tobacco Permit #: T- 61930

Facility Name (DBA): SMOKING ACES SMOKE SHOP Address: 1108 POLK ST.  
 Permit Owner Name: ELSADE OLAN Phone Contact: 415-441-4877

Email: INFO@SBFINANCIALSERVICES.COM  
 Inspection Type:  
 Routine  Reinspection  
 Complaint  Consultation  
 Inspection Report:  
 Notice of Correction  
 Notice of Violation

**Required Action from Permit Owner:**

No further action required

A. Discontinue the illegal sales/distribution of tobacco products.

B. Obtain a SF Department of Public Health tobacco permit.

C. Relocate and sell tobacco products in a manner that requires vendor assistance by the end of the business day.

D. Request that any person observed smoking in areas where smoking is prohibited refrains from smoking.

**Correct By:**

E. Submit a SF Department of Public Health retail tobacco permit application.

F. Pay all license fees.

G. Correct information on license(s) and/or permit(s).

H. Post licenses and permits in a conspicuous location in the store.

I. Post signage. flavored tobacco

J. Remove and e-cigarette tobacco products from display and premises.

K. \_\_\_\_\_

12/30/24

**Violations:** Mark observed violations.  
 Code violations cited are on the back page.

No violations observed

1. Incomplete/Inaccurate application submitted

2. Unpaid License fees

3. Permit/Licenses not displayed

4. Signage not posted

5. Right to inspect denied

6. Tobacco sales without a valid permit

7. Sale of tobacco products without assistance

8. Sale of single cigarettes

9. Sale to minors (person <18 years old)

10. Sale to persons aged 18, 19, or 20

11. Sale/Distribution of flavored tobacco products

12. Smoking in prohibited area

13. Sale/Distribution of restricted e-cigarette products

14. Other tobacco control laws violated

**Observations:** See attach Inspection Report - Complaint  
Violations observed. refer to Complaint Report.

**Additional Documents Attached:**

SFDPH Retail Tobacco Application

Notice of Abatement Conference

Complaint Report # \_\_\_\_\_

Compliance Agreement

SFPD Report # \_\_\_\_\_

Tobacco Retail License Booklet

Out of Business Form

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

Inspector Name: SANDY CHAN Inspector Signature: Sandy Chan

Inspector Email: sandy.h.chan @sfdph.org Inspector Phone #: 415-252-3817

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

**Received By: (Print)** USAMA RYAN **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. <b>Submit a complete Application for the Sale of Tobacco Products and/or E-Cigarette by the correction date.</b>
1b. Fraudulent Application	[19H.16]. No person may obtain a tobacco sales permit by fraudulent or willful misrepresentation. <b>Immediately discontinue the sales of tobacco products.</b> 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. <b>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.</b>
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. <b>Post Permit to Operate in a prominent location that is visible to the public and available for review by SFDPH staff.</b>
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. <b>In accordance with SFDPH Signage Rules and Regulations, clearly post signage in a prominent location that is visible to the public.</b> For building entryway "No Smoking" or "Tobacco 21" signs, please order online at <a href="http://sanfranciscotobaccofreeproject.org">http://sanfranciscotobaccofreeproject.org</a> → 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. <b>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.</b> 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. <b>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.</b>
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. <b>Display and sell tobacco products in a manner that requires vendor or retailer-assisted sales.</b>
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. <b>Immediately discontinue opening cigarette packs for the sale, distribution, or furnishing of single cigarettes.</b>
9. Sale to Minors	[19H.14; 19N.5; CA Penal Code 308(a)(1)(A)(i)]. Tobacco product sale to a minor is prohibited. <b>Immediately discontinue sales of tobacco products to anyone under the age of 18.</b> 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. <b>Immediately discontinue sales of tobacco products to individuals aged 18, 19, or 20.</b>
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. <b>Remove all Flavored Tobacco Products for sale or display from premises.</b> [19S.2(a)] No Person shall sell or distribute any Flavored Tobacco Product to a Person in San Francisco. <b>Discontinue all distribution of Flavored Tobacco Products to anyone in San Francisco.</b>
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. <b>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.</b>
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. <b>Immediately discontinue smoking or use of electronic cigarette devices in prohibited enclosed areas of the workplace.</b>
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. <b>Remove all restricted e-cigarette products without FDA premarket approval for sale or display.</b> [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. <b>Discontinue all distribution and sales of e-cigarette products without premarket approval to any person in San Francisco.</b> Visit <a href="https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product">https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product</a>
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. <b>Immediately discontinue sales of tobacco products.</b>



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

Inspection Date: 12 / 27 / 20 24  
 Time of Inspection: 9:56 AM  
 EHD Location #: 61930  
 Tobacco Permit #: T- 61930

Facility Name (DBA): SMOKING ACES SMOKE SHOP Address: 1108 POLK ST  
 Permit Owner Name: ELSADE OLA N Phone Contact: 415-441-4877

Email: INFO@SB FINANCIAL SERVICES.COM  
 Inspection Type:  
 Routine  Reinspection  
 Complaint  Consultation

Inspection Report:  
 Notice of Correction  
 Notice of Violation

**Required Action from Permit Owner:**

No further action required

A. Discontinue the illegal sales/distribution of tobacco products.

B. Obtain a SF Department of Public Health tobacco permit.

C. Relocate and sell tobacco products in a manner that requires vendor assistance by the end of the business day.

D. Request that any person observed smoking in areas where smoking is prohibited refrains from smoking.

**Correct By:**

E. Submit a SF Department of Public Health retail tobacco permit application.

F. Pay all license fees.

G. Correct information on license(s) and/or permit(s).

H. Post licenses and permits in a conspicuous location in the store.

I. Post signage. flavored tobacco

J. Remove e-cigarette tobacco products from display and premises.

K.

**Violations:** Mark observed violations.  
 Code violations cited are on the back page.

No violations observed

1. Incomplete/Inaccurate application submitted

2. Unpaid License fees

3. Permit/Licenses not displayed

4. Signage not posted

5. Right to inspect denied

6. Tobacco sales without a valid permit

7. Sale of tobacco products without assistance

8. Sale of single cigarettes

9. Sale to minors (person <18 years old)

10. Sale to persons aged 18, 19, or 20

11. Sale/Distribution of flavored tobacco products

12. Smoking in prohibited area

13. Sale/Distribution of restricted e-cigarette products

14. Other tobacco control laws violated

within 72 hours  
12/30/24

**Observations:** Joint inspection with Senior inspector Freitas and 9910 Del Rio

Violations # 11, 13, A and J: Observed flavored tobacco products and e-cigarettes on display on the shelves. Photos taken.

Items included Flum, Geek Bar, and VUSE

Observed copies of flavored tobacco products listed on Menus. photos taken

Action: Stop sale immediately and remove restricted items, by 12/30/24.

Violations # 5: PIC refused entry and inspection of storage room.

provided E-Cigarettes Authorized by FDA and SFDPH Flavored Tobacco List → This document is provided to PIC today during inspection.

**Additional Documents Attached:**

SFDPH Retail Tobacco Application

Notice of Abatement Conference

Complaint Report # \_\_\_\_\_

Compliance Agreement

SFPD Report # \_\_\_\_\_

Tobacco Retail License Booklet

Out of Business Form

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

Inspector Name: SANDY CHAN Inspector Signature: Sandy Chan

Inspector Email: sandy.h.chan@sfdph.org Inspector Phone #: 415-252-3817

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

**Received By: (Print)** Refused to sign **Received By: (Signature)** [Signature]

	[Health Code Section(s)]. Code Description. Correction. Additional Comments.
1a. SFPDPH Retail Tobacco Application	<b>[19H.4(a)].</b> 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. <b>[19N.3(a); 19N.5].</b> An establishment must have a valid Tobacco Sales permit to sell electronic cigarettes. <b>Submit a complete Application for the Sale of Tobacco Products and/or E-Cigarette by the correction date.</b>
1b. Fraudulent Application	<b>[19H.16].</b> No person may obtain a tobacco sales permit by fraudulent or willful misrepresentation. <b>Immediately discontinue the sales of tobacco products.</b> SFPDPH 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	<b>[19H.3; 19H.4(a); 19H.7; 19H.13; SF Business and Tax Regulations Code, Article 1, Sec 35].</b> In order to obtain and maintain a valid SFPDPH 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. <b>Submit proof of payment to SFPDPH Retail Tobacco Program. Failure to resolve financial obligations may result in a suspension of tobacco sales permit until proof of payment is provided to SFPDPH.</b>
3. Display Permit	<b>[19H.4(e)].</b> 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. <b>Post Permit to Operate in a prominent location that is visible to the public and available for review by SFPDPH staff.</b>
4. Post Signage	<b>[19F Sect. 1009.22(i)(1)].</b> Post clear and prominent building entryway "No Smoking/Vaping" signs at each entrance to the establishment; <b>[19F Sect. 1009.22(i)(2)].</b> Post clear and prominent general "No Smoking/Vaping" signs inside the establishment; <b>[19O.6].</b> Post clear and prominent no smoking/vaping signs that includes "No use of smokeless tobacco products" at each entrance of the athletic venue; <b>[19P.4].</b> 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. <b>In accordance with SFPDPH Signage Rules and Regulations, clearly post signage in a prominent location that is visible to the public.</b> For building entryway "No Smoking" or "Tobacco 21" signs, please order online at <a href="http://sanfranciscotobaccofreeproject.org">http://sanfranciscotobaccofreeproject.org</a> → Learn More → Signage
5. Right to Inspect	<b>[19H.9].</b> The Director of SFPDPH 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. <b>Allow any authorized agent of SFPDPH to enter, inspect, interview staff, and photo document at any establishment at any time during regular business hours of operation.</b> DPH staff must present proper credentials in order to enter and inspect premises at any time during regular business hours.
6. Valid Permit	<b>[19H.3; 19N.3].</b> 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. <b>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.</b>
7. Self-Service	<b>[19H.10; 19D Sect. 1009.1; 19N.5].</b> Cigarette vending machine found at establishment. <b>[19H.11; SF Police Code 4600.3; 19N.5].</b> San Francisco Police Department confirmed self-service sale of tobacco products. <b>Display and sell tobacco products in a manner that requires vendor or retailer-assisted sales.</b>
8. Single Sale	<b>[19H.13; CA Penal Code 308.2].</b> A person may not sell any cigarette except in a sealed manufacturer's package meeting federal labeling requirements. <b>Immediately discontinue opening cigarette packs for the sale, distribution, or furnishing of single cigarettes.</b>
9. Sale to Minors	<b>[19H.14; 19N.5; CA Penal Code 308(a)(1)(A)(i)].</b> Tobacco product sale to a minor is prohibited. <b>Immediately discontinue sales of tobacco products to anyone under the age of 18.</b> SFPDPH 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	<b>[19H.14-1; 19N.5; 19P.3(a); CA Penal Code 308(a)(1)(A)(i)].</b> Tobacco product sale to a person aged 18, 19, or 20 is prohibited. <b>Immediately discontinue sales of tobacco products to individuals aged 18, 19, or 20.</b>
11. Flavored Tobacco Products	<b>[19Q.2; 19H.14-2; 19Q.3; 19Q.4]</b> The sale or distribution by an Establishment of any Flavored Tobacco Product or any Flavored Cigarette is prohibited. <b>Remove all Flavored Tobacco Products for sale or display from premises.</b> <b>[19S.2(a)]</b> No Person shall sell or distribute any Flavored Tobacco Product to a Person in San Francisco. <b>Discontinue all distribution of Flavored Tobacco Products to anyone in San Francisco.</b>
12a. SF Smoking Prohibition	<b>[19F 1009.22; 19H.12; 19N.4; 19O.3].</b> 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. <b>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.</b>
12b. CA Workplace Indoor Clean Air	<b>[19H.15; CA Labor Code Sec 6404.5; 19F 1009.22; 19N.4; 19O.3].</b> 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. <b>Immediately discontinue smoking or use of electronic cigarette devices in prohibited enclosed areas of the workplace.</b>
13. Restricted E-cigarette Products	<b>[19R.2; 19H.14-3].</b> 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. <b>Remove all restricted e-cigarette products without FDA premarket approval for sale or display.</b> <b>[19S.2(b)]</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. <b>Discontinue all distribution and sales of e-cigarette products without premarket approval to any person in San Francisco.</b> Visit <a href="https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product">https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product</a>
14. Other tobacco control laws	<b>[19H.13; 19N.5].</b> 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: <b>[19J 1009.92; 19N.5].</b> No person shall sell tobacco products in a pharmacy. <b>Immediately discontinue sales of tobacco products.</b>

DBA: SMOKING ACES SMOKE SHOP

Address: 1108 POLK ST

Permit Owner Name: ELSADE OLA N

Inspection Date: 12/27/24

## Observations:

Observed huge volume of flavored tobacco products on display restricted from sale.

		e-cigarettes
6	Capri - Magenta	Geek Bars Zero Nicotine
Multiple	Backwoods - Black	Pulse multiple items
"	" - Smooth	- Strawberry B-Pop
"	" - White	- Miami Mint
"	" - Aromatic	- <del>Strawberry B-Pop Duplicate</del>
"	Black + Mild - Jazz	- Watermelon Tic Ice
"	" - Casino	
"	" - Royale	- Swisher Sweet - Gold multiple
"	" - Lyric	
"	Looseleaf - Purple Dream	
"	" - Ruby Dream	
"	" - Yellow Dream	
"	" - Amber Dream	
1	Geek Bar - Miami mint	
Multiple	OCB Flavor cards - Fresh Burst Burst	
Multiple	OCB Flavor cards - Mentol	
"	Flum - Tangerine Guava	
1	Flum 6000 Icy Mint	
1	Geek Bar Pulse Capricorn Dragon Melon	
1	Geek Bar Lime Berry Orange	
1	Flum Mellon Blue Razz Icy	

Found empty boxes in trash can

1 - Geek Bar Pulse X Strawberry Watermelon  
1 - Geek Bar Pulse X Lemon Heads

Also observed 4 Menus listing e-cigarettes and flavored tobacco products.

- 1) Flum Pebble Flavor list
- 2) Geek Bar Pulse list
- 3) Geek Bar Pulse X list
- 4) Flum Mellon list.

Inspector Name: Sandy Chan

Inspector Signature: Sandy Chan

Received By: (Print)

USAMA SWEEDY

Received By: (Signature)

Facility Name (DBA): SMOKING ACES SMOKE SHOP  
Permit Owner Name: ELSADE OLA N  
Address: 1108 Polk Street

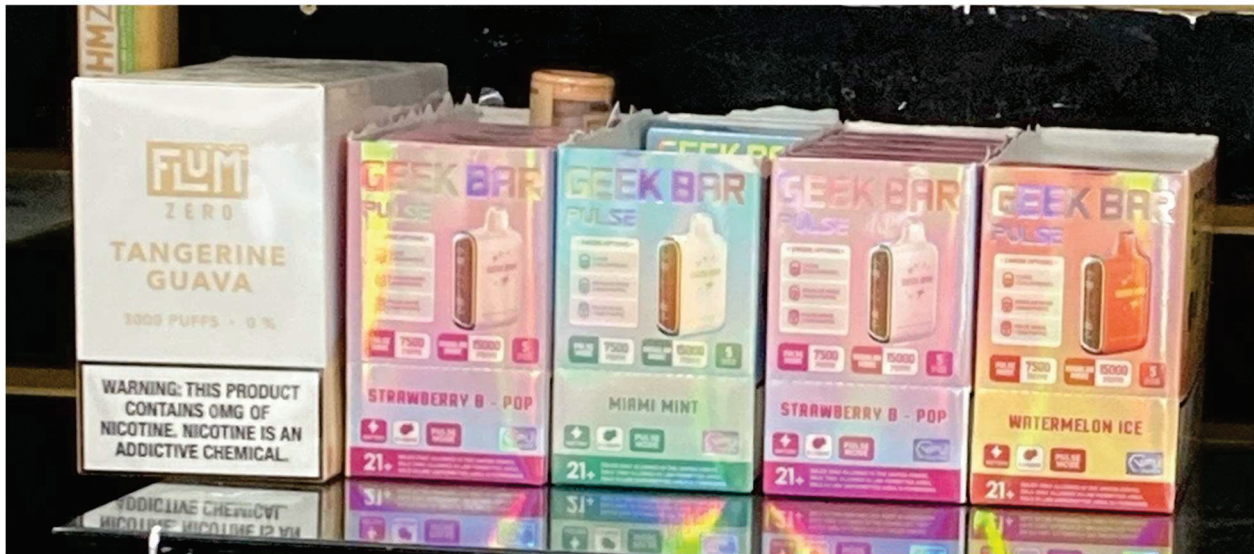
EHD Location #61930  
Tobacco Permit #: T61930  
Prepared by: Sandy Chan

This is a follow to a complaint dated 12/24/24:

“Complainant reporting that the business is selling rechargeable flavored vapes and do have them displayed on the left hand side behind the counter under the glass, in boxes, please inspect.”

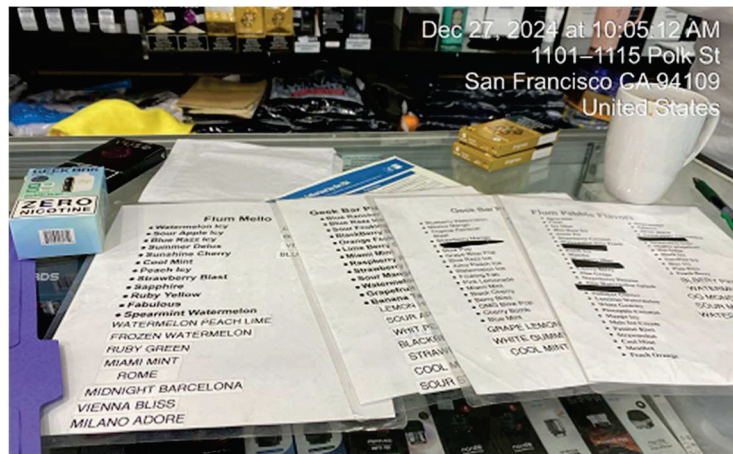
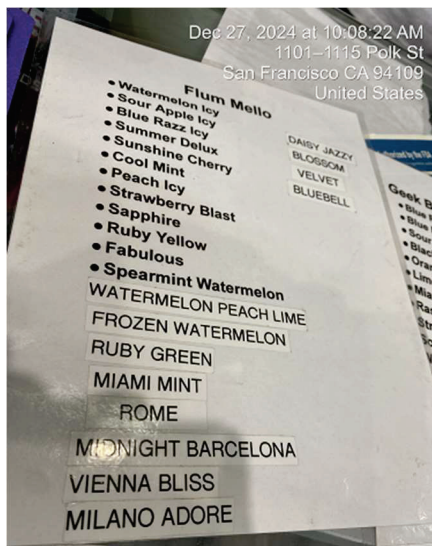
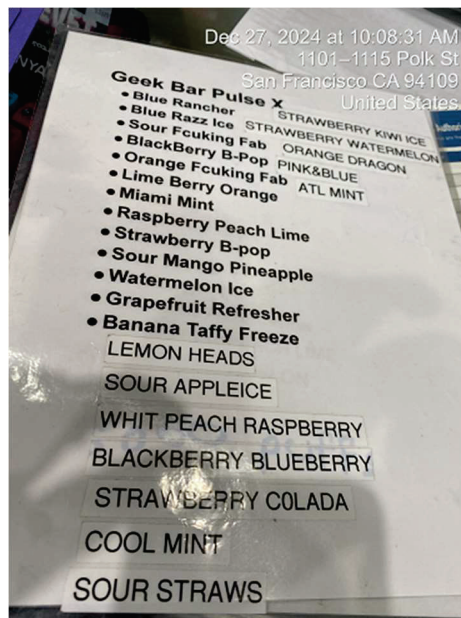
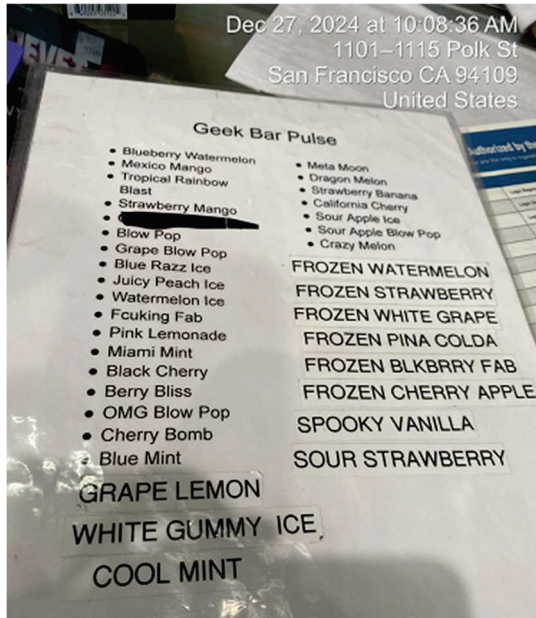
On 12/27/24, I met and informed Usama Abuelrous (PIC) at 1108 Polk Street that this visit was to address the complaint received by the SFDPH and I conducted a routine inspection. (Inspection reports were prepared.)

During the inspection, I observed the following huge volume of flavored tobacco and e-cigarettes on display on the shelves behind the cash register. (photos were taken) I also saw four menus listing numerous flavored tobacco products. (photos were taken)



Facility Name (DBA): SMOKING ACES SMOKE SHOP  
 Permit Owner Name: ELSADE OLA N  
 Address: 1108 Polk Street

EHD Location #61930  
 Tobacco Permit #: T61930  
 Prepared by: Sandy Chan



Facility Name (DBA): SMOKING ACES SMOKE SHOP  
Permit Owner Name: ELSADE OLA N  
Address: 1108 Polk Street

EHD Location #61930  
Tobacco Permit #: T61930  
Prepared by: Sandy Chan



Facility Name (DBA): SMOKING ACES SMOKE SHOP  
Permit Owner Name: ELSADE OLA N  
Address: 1108 Polk Street

EHD Location #61930  
Tobacco Permit #: T61930  
Prepared by: Sandy Chan



# EXHIBIT 5



# San Francisco Department of Public Health Director's Rules and Regulations for Retail Tobacco Sales

January 29, 2020

## **Chapter 1. Authority**

The San Francisco Health Code (SFHC) sets forth laws regulating the sale, distribution, and use of tobacco and tobacco products. Sections 19H.26, 19Q.5, 19R.3, and 19S.3 authorize the Director of the San Francisco Department of Public Health (SFDPH) to adopt rules and regulations to implement Article 19H (permits for the sale of tobacco), Article 19Q (prohibiting the sale of flavored tobacco products), Article 19R (prohibiting the sale of electronic cigarettes lacking Food and Drug Administration premarket approval), and Article 19S (prohibiting the sale and distribution of tobacco products in San Francisco), respectively.

These Rules and Regulations for Retail Tobacco Sales (Rules) shall apply to all Establishments and Persons that sell or distribute Tobacco Products in the City and shall supersede any existing rules and regulations relating to Article 19H, 19Q, 19R, and 19S. The Director may amend these Rules from time to time.

## **Chapter 2. General Permitting**

### **SEC 1. Definitions**

As used in these Rules, the following words or phrases shall have the meanings set forth below.

**"Advertisement"** means a written or visual message dedicated to promoting a specific tobacco product(s) inside the Establishment or on the Establishment's storefront, including but not limited to signage, promotional displays, penny trays, shopping baskets, and any other product identification other than the actual Tobacco Product for sale.

**"Applicant"** means a Business Owner applying for a SFDPH Tobacco Sales Permit to operate in the City and County of San Francisco.

**"Bar"** means an area, whether a separate, stand-alone business or part of a larger business which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is incidental to the consumption of such beverages.

**"Change of Ownership"** means a change of 50 percent or more of the ownership of the business within a 12-month period; provided, however, that if the Permittee is a corporation, transfer of 25 percent or more of the stock ownership of the permittee shall be deemed to be a Change of Ownership.

**"Characterizing Flavor"** means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a Tobacco Product or any byproduct produced by the Tobacco Product. Characterizing Flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A Tobacco Product shall not be

determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma or both, as described in the first sentence of this definition that constitutes a Characterizing Flavor.

**“Displayed”** means in public view.

**“Electronic Cigarette” or “E-cigarette”** means any device with a heating element, a battery, or an electronic circuit that provides nicotine or other vaporized liquids to the user in a manner that simulates smoking tobacco.

**“Employee”** means any person who performs work for a Permittee at an Establishment.

**“Establishment”** means any store, stand, booth, concession or any other enterprise that engages in the retail sale of Tobacco Products, including stores engaging in the retail sale of food items.

**“Labeling”** means written, printed, pictorial, or graphic matter upon any Tobacco Product or any of its Packaging.

**“Packaging”** means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold or offered for sale to a consumer.

**“Permittee”** means a person or business entity who holds a Tobacco Sales Permit from the Department for a specific location.

**“School”** means a public or private preschool, kindergarten, elementary school, middle school, junior high school, high school, or a school combining some or all of the above school grades.

**“Self-service Merchandising”** means the open display of Tobacco Products to which the public has access without the intervention of the vendor or a store employee.

**“Tavern”** means cigar or smoking bar.

**“Tobacco Products”** means (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, or sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, dipping tobacco, pipe tobacco, bidis or snuff; (2) any device or component, part, or accessory that delivers nicotine alone or combined with other substances to the person using the device including but not limited to electronic cigarettes, cigars, or pipes, whether or not the device or component is sold separately. Tobacco Product does not include any product that has been approved by the United States Food and Drug Administration for use as a tobacco cessation product where such product is marketed and sold solely for such an approved purpose.

**“Tobacco Sales Permit”** means a SFDPH permit issued by the Director under Article 19H.

**“Transferable”** means conveyable from one person or entity to another person or entity.

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## **SEC. 2. Permit Application**

An Applicant may request a consultation meeting with the Department before submitting an application to review requirements set forth in these Rules. The Department's consultation fee is based on the inspector's hourly rate, which can be found at:

[https://www.sfdph.org/dph/files/EHSdocs/ehsFees/SF\\_EHB\\_Fees.pdf](https://www.sfdph.org/dph/files/EHSdocs/ehsFees/SF_EHB_Fees.pdf).

A complete Permit Application includes all of the following:

- (a) A Tobacco Sales Permit Pre-Application, Affidavit, and Planning Referral;
- (b) An Application for the Sale of Tobacco Products and/or E-Cigarettes;
- (c) A Copy of the Business Registration Certificate from the San Francisco Office of the Treasurer & Tax Collector;
- (d) A Copy of the California Department of Tax and Fee Administration Retail Tobacco Products License (with a License Number);
- (e) Names of all Owner(s), Principal Officer(s), trust beneficiaries, and Ownership Percentage(s) for each Person identified on the Application;
- (f) Legal documentation listing all the owners of the Establishment;
- (g) Disclosure of any date(s) that the Department suspended or revoked a SFDPH Permit to Operate a Retail Tobacco Establishment issued to any owner or officer disclosed on the application;
- (h) Non-refundable Application Fee;
- (i) A signed copy of the Health and Safety Working Conditions document provided by the Department;
- (j) When applying for an Exception under Article 19H.6, documentation of Direct Negotiations as set forth in Chapter 3, Section 2 of these Rules;
- (k) When applicable, non-refundable Planning Department Zoning Referral Fee; and
- (l) When applicable, Establishment's lease agreement between Establishment's owner and property owner.

An application will be deemed abandoned if the Applicant fails to submit all required items within 30 days from the date SFDPH returns the application to the Applicant. After 30 days, the Applicant will be required to submit a new application and non-refundable application fee or request for a one-time 45 day extension to submit all necessary documents to complete the application.

## **SEC. 3 Change of Ownership**

A Tobacco Sales Permit may not be transferred or assigned.

(1) Upon the sale of an Establishment holding a Tobacco Sales Permit, the Tobacco Sales Permit shall be forfeited and considered null and void.

(2) Any Change of Ownership shall be reported to the Department and shall require the new Establishment owner to apply for a Tobacco Sales Permit with the Department within 30 days.

(3) A completed Tobacco Sales Permit Application must be received by the Department within 30 days of a Change of Ownership.

#### **SEC. 4. Grounds for Permit Denial**

(1) The Department will deny an application for a Tobacco Sales Permit for any of the following reasons:

- (a) The Establishment is located in a Supervisorial District that has 45 or more Establishments with Tobacco Sales Permits;
- (b) The Establishment is within 500 feet of a School;
- (c) The Establishment is within 500 feet of another Establishment who holds a valid Tobacco Sales Permit;
- (d) The Establishment's whose main purpose is offering food or beverage consumption on the premises, including Bars and Restaurants;
- (e) The Establishment is a Tobacco Shop;
- (f) The Department never issued a Tobacco Sales Permit at the Establishment's specific location;
- (g) The Establishment is a Pharmacy;
- (h) The Applicant has submitted fraudulent or misrepresentative information in their Application;
- (i) The current Permittee for whom the applicant is purchasing the business from is delinquent in paying their Tobacco Sales Permit H-31 license fee; or
- (j) The owner at the Establishment is in violations of SFHC Article 19, Police Code Section 4600.3 (regulating the self-service merchandising of Tobacco Products), or the California Labor Code.

(2) Appeal of School and/or Other Tobacco Sales Permit distance determinations

- (a) The Department shall determine the distance between School and Establishment property lines using the San Francisco Planning Department's online GIS mapping system.
- (b) If the Applicant appeals the denial of a permit application because the applicant disputes SFDPH's 's determination of the property's distance to a School or permitted Establishment, the Applicant may request a 30-day Tobacco Sales Permit application extension from the date of the application denial. The Applicant shall submit a report including the experience of the mapping company, surveyor, or individual conducting the analysis; method(s) used to verify distance between properties and data used; and its contents are submitted under penalty of perjury to the Director for approval.

#### **SEC. 5. Permit Conditions**

All Permittees, Permittee's agents, or employees shall comply with all local, state, and federal laws applicable to Tobacco Products and Tobacco Sales.

**(1) Permittee shall pay all Tobacco Sales Permit fees.**

(a) All annual license fees, including the retail tobacco license issued by the San Francisco Office of the Treasurer and Tax Collector and the tobacco products license fee issued by the State of California, must be paid in full.

(b) File and pay to San Francisco Treasurer and Tax Collector's Office on a quarterly basis the Cigarette Litter Abatement Fee as required by Chapter 105 of the San Francisco Administrative Code.

**(2) Permittee shall not sell Tobacco Products to persons under 21 years of age.**

Prevent the sales of tobacco products to all persons under 21 years of age by:

(a) Requesting a current and valid government issued photo identification to comply with state and federal laws.

(b) Posting readable San Francisco and California Tobacco 21 signage in a location near the point of sales for Tobacco Products and visible to all customers.

**(3) Permittee shall not sell Tobacco Products with a Characterizing Flavor.**

**(4) Permittee shall properly display packaged Tobacco Products.**

(a) Keep Tobacco Products out of reach of customers and behind the counter or in locked display cases at all times.

(b) Permittee may not sell any cigarette except in a sealed manufacturer's package that complies with federal labeling requirements. This prohibits the selling of individual cigarettes or "loosies" which is a violation of Federal law, State law, and the local San Francisco permit.

**(5) Permittee shall prohibit indoor smoking.**

No Permittee shall allow indoor smoking of tobacco/nicotine products or any other weed or plant in any enclosed building, including all hookah lounges/bars, restaurants, bars, taverns, and tobacco shops

**(6) No Smoking signage shall be posted on Establishment's storefront and within the Establishment** that is in accordance with Article 19F, Section 1009.22(i).

**(7) Permittee shall designate an on-site employee for complaints or inspections.**

An on-site employee shall be designated for each shift as the contact person for any complaints or inspections related to Tobacco Product Sales.

**(8) Allow inspection.**

Any employee or agent of the Department may enter and inspect the premises of a Permittee during Business hours, without prior notice, if the Department staff has reasonable cause to believe that a public nuisance exists. Upon presentation of proper credentials, the Department staff may enter and inspect at any time during regular business hours any Establishment that is engaging in Tobacco Sales, or is suspected by the Director of engaging in such sales.

**(9) Permittee shall display permits and licenses.**

A Permittee shall display all permits and licenses in a conspicuous place within their Establishment so that the permits and licenses may be readily seen by individuals entering the Establishment.

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## **SEC. 6. Health Inspection**

Health Inspections may be conducted with or without an appointment as determined by Department staff. Department staff may perform activities to ensure compliance with these Rules and any other applicable laws including, but not limited to:

- (1) Review valid permits and licenses;
- (2) Review annual tobacco control training records;
- (3) Conduct a walk-through of the Establishment including behind cashier's counter, kitchen, prep areas, storage rooms, cabinets, restrooms, offices and other rooms associated with the Establishment;
- (4) Take photographs and/or video of tobacco products;
- (5) In collaboration with the San Francisco Police Department, use decoy operations to verify compliance with age restrictions or type of products sold to customers;
- (6) Use decoy operations to determine if the Establishment is selling Tobacco Products without a Health Permit or selling Flavored Tobacco Products;
- (7) Interview any person related to the Establishment including but not limited to the Permittee, employees, or customers; and
- (8) Issue educational materials, an Inspection Report, Notice of Violation, Notice of Correction, and/or Notice of Initial Determination.

## **SEC. 7. Violations and Penalties**

The Director may revoke or suspend a Tobacco Sales Permit, or impose administrative penalties if the Director determines that an Applicant, Permittee, Permittee's agent, or Permittee's employee has engaged in any conduct that violates local, state, or federal law applicable to Tobacco Products and/or Tobacco Sales. SFDPH shall issue a Notice of Violation to the Establishment and follow the Enforcement Procedures as set forth in Appendix A of these Rules.

- (1) Suspension Periods: The Director may suspend the Tobacco Sales Permit set forth in Article 19H section 19H.19:
  - (a) Suspension Periods for Sales of Tobacco Products to Persons under the Age of 21 shall result in a suspension of the Tobacco Sales Permit according to Table 1.

**Table 1: Tobacco Sales Permit Suspension Periods for sales of Tobacco Products to persons under the age of 21**

<b>Number of Times the Violation Occurred</b>	<b>Permit Suspension Period</b>
1 <sup>st</sup> violation	20 days
2 <sup>nd</sup> violation within 1 year of 1 <sup>st</sup> violation	60 days
3 <sup>rd</sup> violation within 1 year of the 2 <sup>nd</sup> violation	180 days
4 <sup>th</sup> violation that occurs within 1 year of 3 <sup>rd</sup> violation	180 days
2 <sup>nd</sup> violation that occurs more than 1 year after the 1 <sup>st</sup> violation	40 days
3 <sup>rd</sup> violation that occurs more than 1 year after the 2 <sup>nd</sup> violation	60 days
4 <sup>th</sup> violation that occurs more than 1 year after the 3 <sup>rd</sup> violation	90 days

(b) Permit suspension periods shown in Table 1 may be reduced upon written agreement with SFDPH through the mitigation strategies shown in Table 2 which may be amended from time to time:

**Table 2: Tobacco Sales Permit Suspension Reduction Mitigations<sup>1</sup> for Violation of sales of Tobacco Products to persons under the age of 21**

<b>Mitigation Strategy</b>	<b>Suspension Reduction Period</b>
1. Training	
1a. The Permittee trains all employees regarding state and local tobacco laws and provides SFDPH proof of training through a sign-in sheet.	-5 days
2. Equipment and Display(s)	
2a. Install a scanner or other age verification device (only applicable for an Establishment without an age verification device when violation occurred).	-5 days
2. Equipment and Display(s) Continued	
2b. Remove all Displayed Tobacco Product advertisements for as long as the Permittee owns the Establishment (only applicable for an Establishment that currently has Tobacco Product Advertisements in the public view prior to when violation occurred).	-10 days

2c.	Cover all Tobacco Products with <b>Permanently Installed Opaque Covering which means a built-in cabinet, shelf, or storage container which cannot be removed easily and does not display tobacco to the public when a tobacco sale is not in progress (only applicable for an Establishment that currently has Tobacco Products in the public view prior to when violation occurred).</b>	-10 days
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<sup>1</sup> The Permittee shall be offered mitigation strategies to reduce a permit suspension only once per year. Each suspension reduction mitigation strategy is available to Permittees once in the lifetime of their Tobacco Sales Permit.

The Equipment and Display Mitigation Strategies shall remain in effect permanently for the life of the Tobacco Sales Permit.

The written agreement will put the Permittee on notice that failure to comply with the agreed upon mitigation strategies will result in a 20-day minimum suspension.

The Permittee shall pay a reinspection fee based on the inspector's hourly rate as noted in Section 1 of these Rules, above, for all inspections and trainings conducted by the Department resulting from any violations.

### **SEC. 8. Permit Decisions: Right to Appeal**

Decisions regarding a permit denial, suspension, revocation, and penalties are subject to appeal under Section 19H.24.

## **Chapter 3. Density Cap Exception**

### **SEC 1. Definitions**

For the purposes of the Density Cap Exceptions in Section 19H.6, the following words or phrases shall have the meanings set forth below.

**"Density Cap Exception"** means the exceptions defined in Article 19 SFHC Section 19H.6.

**"Direct Negotiations"** means an Original Owner is in direct negotiations with a New Buyer OR a New Buyer is in direct negotiations with aimed at reaching an agreement for the sale of the Original Owner's Retail Food Store Establishment, Tobacco Shop, Bar, or Tavern to the New Buyer.

**"Effective Date"** of Section 19H.6 means January 18, 2015.

**"Five Years as of the Effective Date"** means since January 18, 2010.

**"New Buyer"** means an individual or entity who is purchasing or acquiring an Establishment from the Original Owner and is applying for a SFDPH Tobacco Sales Permit seeking to continue the sales of tobacco at the Establishment's specific location.

**"Original Owner"** means an individual or entity who owned an Establishment and was the holder of the SFDPH Tobacco Sales Permit on January 18, 2015 and was in business at the specific location from January 18, 2010 to January 18, 2015.

**“Retail Food Store Establishment”** means an Establishment that sells foods, such as beverages, dairy, dry goods, fresh produce, other perishable items, beer, wine, and/or liquor sales for consumption.

**“Subsequent Buyer”** means an individual or entity who is purchasing an Establishment from a New Buyer and is applying for a SFDPH Tobacco Sales Permit seeking to continue the sales of tobacco at the Establishment’s specific location.

**“Tobacco Shop”** means any tobacco retailer whose principal business is selling Tobacco Products, tobacco paraphernalia, or both, as evidenced by any of the following: 50% or more of floor area and display area is devoted to the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; 70% or more of gross sales receipts are derived from the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; or 50% or more of completed sales transactions include a Tobacco Product or tobacco paraphernalia.

## **SEC 2. Exceptions for Certain New Permits**

The Department will deny an application for a Tobacco Sales Permit for any of the reasons listed in Sections 19H.4(f) and 19.H5. (See Grounds for Permit Denial in Chapter 2, Section 4 of these Rules.)

Notwithstanding Sections 19H.4(f)(3), (4), (5), and (7) and Section 19H.5, the Director is authorized to issue a Tobacco Sales Permit on a one-time basis in the following limited circumstances under Section 19H.6:

- (1) **New Buyer of a Retail Food Store or Tobacco Shop.** 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.
- (2) **Subsequent Buyer of a Retail Food Store or Tobacco Shop.** A Retail Food Store Establishment or Tobacco Shop New Buyer may submit an affidavit to the Director attesting to: (a) their ownership of the Establishment; (b) under the same Tobacco Sales Permit; and (c) for at least ten (10) years. Upon submission of the New Buyer’s affidavit, a Subsequent Buyer may apply for a Tobacco Sales Permit for the New Buyer’s Retail Food Store Establishment or Tobacco Shop. A Subsequent Buyer applying for a new Tobacco Sales Permit must acquire a 100% ownership interest in the Establishment.
- (3) **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 18, 2015. The child applying for a new Tobacco Sales Permit must have a 100% ownership interest in the Establishment.
- (4) **Seismic Retrofitting Relocation.** A Retail Food Store Establishment or Tobacco Shop Permittee as of January 18, 2015, which must relocate from their Establishment due to seismic retrofitting under Chapter 34B of the Building Code may apply for a Tobacco

Sales Permit for their Establishment. The Permittee's application is subject to further review including confirmation of seismic retrofitting by the Department of Building Inspection.

- (5) **New Buyer of a Tavern.** A Tavern Permittee since January 18, 2010, that seeks to demonstrate previous compliance with Section 1009.23(d) of Article 19F of SFHC (prohibition against smoking in enclosed areas), shall submit a copy of their previously approved SFDPH application which establishes that an area within the Tavern is a historically compliant semi-enclosed smoking room. Additionally, the Tavern Permittee may submit an affidavit to the Director attesting to: (a) their ownership of the Establishment; (b) under the same Tobacco Sale Permit; (c) for at least five (5) consecutive years immediately before the submission of the affidavit; and (d) Direct Negotiations. Upon submission of the Tavern Permittee's affidavit, a New Buyer may apply for a Tobacco Sales Permit for the Permittee's Tavern.
- (6) **Subsequent Buyer of a Tavern.** A New Buyer of a Tavern may submit an affidavit to the Director attesting to: (a) their continuous ownership of the Establishment; (b) under the same Tobacco Sales Permit; and (c) for at least ten (10) years. Upon submission of a New Buyer's affidavit, a Subsequent Buyer may apply for a Tobacco Sales Permit for the New Buyer's Tavern. A Subsequent Buyer applying for a new Tobacco Sales Permit must acquire 100% ownership of the Establishment.
- (7) **Death or Divorce.** A spouse or domestic partner may acquire the ownership from the Permittee of an Establishment through the death or divorce. The spouse or domestic partner applying for a new Tobacco Sales Permit must have a 100% ownership interest in the Establishment.

If an owner or entity is applying for an Exception set forth in 19H.6, proof of documentation of a Direct Negotiation is required and shall be submitted with the Permit Application, including but not limited to: escrow documents, notarized letter regarding sale of the business with the Permittee and New Buyer or Subsequent Buyer, and/or alcohol license sales contract. Other documentation may be required by the Department in order to confirm any Exceptions for Certain New Permits listed in Chapter 3, Sec 2.

## **Chapter 4. Favored Tobacco Products (Article 19Q of the SFHC)**

### **SEC 1. Definitions**

As used in these Rules, the following words or phrases shall have the meanings set forth below.

**"Marketing"** means the process or technique of promoting, selling, and distributing a product or service.

### **SEC 2. Penalties for Violation of Article 19Q**

- (1) Abatement opportunity.

For a first time violation of Article 19Q (Prohibiting the Sale of Flavored Tobacco Products), a Permittee will be afforded the opportunity to remove Tobacco Products with a Characterizing Flavor from their Establishment in lieu of a permit suspension or

administrative penalty. Failure to remove such products within 72 hours shall result in the suspension of the Tobacco Sales Permit for 10 days. SFDPH shall issue a Notice of Violation to the Establishment and follow the Enforcement Procedures as set forth in Appendix A of these Rules.

- (2) Violations of Article 19Q (Prohibiting the Sale of Flavored Tobacco Products) shall result in a suspension of the Tobacco Sales Permit according to Table 3.

Table 3: Tobacco Sales Permit Suspension Periods for Sales or Distribution of Tobacco Products with a Characterizing Flavor: second or subsequent violations

<b>Number of Times the Violation Occurred</b>	<b>Permit Suspension Period</b>
1 <sup>st</sup> violation	10 days
2 <sup>nd</sup> violation	20 Days
3 <sup>rd</sup> violation	40 Days
4 <sup>th</sup> and each violation afterwards	90 Days

### **SEC 3. Flavored Tobacco Products List**

- (1) SFDPH will develop and maintain a non-exhaustive Flavored Tobacco Products List to facilitate compliance with and enforcement of Article 19Q. The Flavored Tobacco Products List will be maintained on SFDPH's website:

<https://www.sfdph.org/dph/EH/Tobacco/flavoredtobacco.asp>

- (2) The Flavored Tobacco Products List will include:

- (a) Tobacco Products that SFDPH has determined to be Flavored Tobacco Products based on their taste or aroma.
- (b) Tobacco Products SFDPH presumes to be Flavored Tobacco Products based on their Labeling, Packaging, or Marketing. SFDPH will presume that a Tobacco Product is a Flavored Tobacco Product if the Manufacturer or any of the Manufacturer's agents or employees has made a statement or claim directed to consumers or to the public that the Tobacco Product has or produces a Characterizing Flavor, including, but not limited to, text, color, and/or images on the product's Labeling or Packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a Characterizing Flavor. SFDPH will presume that a Tobacco Product is flavored if its Labeling, Packaging, or Marketing include descriptive terms such as "spicy" and "sweet" that imply or evoke Characterizing Flavors. SFDPH will not presume that a Tobacco Product is a Flavored Tobacco Product if the only descriptors that appear on its Labeling, Packaging, or Marketing are "strong," "mild," or "plain," where those descriptors appear to be referring to the taste of tobacco.
- (c) Tobacco Products that have been found by an administrative law judge to be Flavored Tobacco Products, following an administrative hearing. SFDPH will

update the Flavored Tobacco Products List to include such products within 14 days of the issuance of an administrative decision.

#### **SEC 4. Permittee Inquiry about Flavored Tobacco Products**

A Permittee may inquire of SFDPH whether a Tobacco Product is a Flavored Tobacco Product for purposes of Article 19Q by sending an inquiry to 1390 Market Street, Suite 210, San Francisco, CA 94102 or SF-FlavoredTobacco@sfdph.org. Such inquiry must include the brand, product name, product type, and either (1) a photocopy, photograph, or digital image of the products packaging and labeling, or (2) a web link to digital images of the product's packing and labeling. If SFDPH determines that the Tobacco Product is Flavored based on its aroma or taste, or that it is presumed to be flavored based on its Packaging, Labeling, or Marketing, SFDPH will update the Flavored Tobacco Products List within 45 days of the receipt of the inquiry, and will advise the Permittee of its conclusions within the same time frame.

### **Chapter 5. Electronic Cigarettes that Require but Lack Authorization from the U.S. Food and Drug Administration (Articles 19R and 19S of the SFHC)**

#### **SEC. 1. Background**

On June 25, 2019, the Board of Supervisors passed Ordinance No. 122-19, which amends the SFHC to add new Articles 19R and 19S. These articles prohibit the sale and distribution of Electronic Cigarettes that require premarket review under the federal Family Smoking Prevention and Tobacco Control ("Tobacco Control Act") but have not received a Premarket Tobacco Product Marketing Order from the U.S. Food and Drug Administration ("FDA") authorizing their sale.

In addition, Articles 19Q and 19S of the SFHC prohibit the sale and distribution of Tobacco Products—including Electronic Cigarettes—that contain constituents that impart a characterizing flavor. (See Chapter 4 of these Rules discussing the prohibition on the sale of Flavored Tobacco Products.)

#### **SEC. 2. Definitions**

For purposes of enforcement of Articles 19R and 19S, the following terms shall have the following meanings:

**"Director"** means the Director of Health, or the Director's designee.

**"Distributor"** means any Person other than a common carrier who transfers an Electronic Cigarette or Flavored Tobacco Product, whether domestic or imported, at any point from the original place of manufacture to the Person who sells or distributes the Electronic Cigarette or Flavored Tobacco Product to individuals for personal consumption.

**"Electronic Cigarette"** has the meaning set forth in Section 30121 of the California Revenue and Taxation Code, as may be amended from time to time. As of the date these Rules were last updated (noted on Page 1), Section 30121 defined the term "Electronic Cigarette" to mean:

“any device or delivery system sold in combination with nicotine which can be used to deliver to a person nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic cigarettes include any component, part, or accessory of such a device that is used during the operation of the device when sold in combination with any liquid or substance containing nicotine. Electronic cigarettes also include any liquid or substance containing nicotine, whether sold separately or sold in combination with any device that could be used to deliver to a person nicotine in aerosolized or vaporized form. Electronic cigarettes do not include any device not sold in combination with any liquid or substance containing nicotine, or any battery, battery charger, carrying case, or other accessory not used in the operation of the device if sold separately. Electronic cigarettes shall not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where that product is marketed and sold solely for such approved use. As used in this subdivision, nicotine does not include any food products as that term is defined pursuant to Section 6359.”

Electronic Cigarette includes any device or delivery system sold in combination with nicotine for a single price.

**"Establishment"** means any store, stand, booth, concession or any other enterprise that engages in the retail sale of tobacco products, including stores engaging in the retail sale of food items.

**"Exemption from Substantial Equivalence Marketing Order"** means an order issued by the FDA under the authority of 21 U.S.C. § 387j(a)(2)(A)(ii) that a tobacco product is exempt from the requirements of 21 U.S.C. § 387(e) or pursuant to a regulation issued under 21 U.S.C. § 3873e(j)(3).

**"Flavored Tobacco Product"** shall have the meaning set forth in SFHC Section 19Q.2. -

**"List of Approved Electronic Cigarettes Pending FDA Posting"** means a list to be maintained by SFDPH of tobacco products that are the subject of a Tobacco Product Marketing Order that has been issued by the FDA, but that has not yet been posted on the FDA's website.

**"Manufacturer"** means any Person who manufactures, fabricates, assembles, processes, or labels an Electronic Cigarette or imports a finished Electronic Cigarette for sale or distribution in the United States.

**"New Tobacco Product"** has the meaning set forth in 21 U.S.C. § 387j(a)(1), as may be amended from time to time. As of the date these Rules were last updated (noted on Page 1), Section 387j defined the term "new tobacco product" to mean:

(A) any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of February 15, 2007; or

(B) any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007.

**“Permittee”** means a Person who holds a Tobacco Sales Permit from the Department for a specific location.

**“Person”** means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

**“Premarket Tobacco Product Marketing Order”** means an order issued by the FDA under the authority of 21 U.S.C. § 387j(c)(1)(A)(i) that a tobacco product may be introduced or delivered for introduction into interstate commerce.

**“Sell,” “Sale,” and “to Sell”** means any transaction, including but not limited to transactions over the phone, in person, or online, where, for any consideration, ownership of a Tobacco Product is transferred from one Person to another, including but not limited to any transfer of title or possession for consideration, exchange, or barter, in any manner or by any means.

**“Substantial Equivalence Marketing Order”** means an order issued by the FDA under the authority of 21 U.S.C. § 387j(a)(2)(A)(i) that a tobacco product is substantially equivalent to an eligible predicate tobacco product and in compliance with the requirements of the Tobacco Control Act.

**“Tobacco Product Marketing Order”** means a Substantial Equivalence Marketing Order, an Exemption from Substantial Equivalence Marketing Order, or a Premarket Tobacco Product Marketing Order.

### **SEC. 3. Electronic cigarettes that may lawfully be sold in San Francisco**

Articles 19R and 19S prohibit the sale of Electronic Cigarettes that: (1) are New Tobacco Products; (2) require premarket review under 21 U.S.C. § 387j; and (3) do not have a premarket review order under 21 U.S.C. § 387j(c)(1)(A)(i).

According to the FDA, there are no Electronic Cigarettes on the market today that do not qualify as New Tobacco Products.

Therefore, the only Electronic Cigarettes that may lawfully be sold in San Francisco or to a Person in San Francisco consistent with Articles 19R and 19S of the SFHC are: (1) Electronic Cigarettes that do not require premarket review, as evidenced by the fact that they are the subject of a Substantial Equivalence Marketing Order or an Exemption from Substantial Equivalence Marketing Order; and (2) Electronic Cigarettes that are the subject of a Premarket Tobacco Product Marketing Order.

The FDA posts on its website:

- (1) A list of Substantial Equivalence Marketing Orders issued by the FDA. <https://www.fda.gov/tobacco-products/substantial-equivalence/marketing-orders-se>
- (2) A list of Exemption from Substantial Equivalence Marketing Orders issued by the FDA. <https://www.fda.gov/tobacco-products/exemption-substantial-equivalence/marketing-orders-exemption-se>
- (3) A list of Premarket Tobacco Product Marketing Orders issued by the FDA. <https://www.fda.gov/tobacco-products/premarket-tobacco-product-applications/premarket-tobacco-product-marketing-orders>

In some instances, there may be a delay between the date that the FDA issues a Tobacco Product Marketing Order to a Manufacturer and its posting of such order on the FDA website. A Manufacturer or Distributor that possesses a Tobacco Product Marketing Order that has been issued by the FDA—but that has not yet posted on the FDA's website—may send a true and correct copy of such Tobacco Product Marketing Order to SFDPH. Upon receipt and confirmation that the Tobacco Product Marketing Order is valid, SFDPH shall add the name of the Electronic Cigarette to the List of Approved Electronic Cigarettes Pending FDA Posting. SFDPH will post such list on its website at <https://www.sfdph.org/ecigs>.

**Electronic Cigarettes that do not appear on any one of the FDA's three Marketing Order lists, or on SFDPH's List of Approved Electronic Cigarettes Pending FDA Posting, may not lawfully be sold in San Francisco or to a Person in San Francisco.**

Distributors, retailers, and consumers seeking to confirm whether an Electronic Cigarette may lawfully be sold in San Francisco, or to a Person in San Francisco, must consult these lists.

In addition, Articles 19Q and 19S of the SFHC prohibit the sale and distribution of any and all Tobacco Products that have a Characterizing Flavor as defined in Chapter 2 of these Rules. So, even if an Electronic Cigarette appears on one of the three FDA lists or on the List of Approved Electronic Cigarettes Pending FDA Posting, it may not lawfully be sold or distributed in San Francisco if it has a Characterizing Flavor. (For more information about Flavored Tobacco Products, see Chapters 2 and 4 of these Rules.)

**SEC 4. Penalties for Violation of Article 19R**

(2) Abatement opportunity.

For a first time violation of Article 19R (Prohibiting the Sale of Electronic Cigarettes Lacking FDA Pre-Market Approval), a Permittee will be afforded the opportunity to remove from display and/or its Establishment all Electronic Cigarettes that may not lawfully be sold in San Francisco, in lieu of a permit suspension. Failure to remove such products within 72 hours shall result in the suspension of the Tobacco Sales Permit for 10 days. SFDPH shall issue a Notice of Violation to the Establishment and follow the Enforcement Procedures as set forth in Appendix A of these Rules prior to the imposition of such suspension.

(3) Violations of Article 19R (Prohibiting the Sale of Electronic Cigarettes Lacking FDA Pre-Market Approval) shall result in a suspension of the Tobacco Sales Permit according to Table 4.

Table 4: Tobacco Sales Permit Suspension Periods for Sales or Distribution of Electronic Cigarette in Violation of Article 19R

<b>Number of Times the Violation Occurred</b>	<b>Permit Suspension Period*</b>
1 <sup>st</sup> violation	10 days (unless product(s) have been removed within 72 hours)
2 <sup>nd</sup> violation	20 Days
3 <sup>rd</sup> violation	40 Days
4 <sup>th</sup> and each violation afterwards	90 Days

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**SEC 5. Penalties for Violation of Article 19S**

SFDPH shall issue administrative penalties for violations of Article 19S consistent with Chapter 100 of the Administrative Code. Prior to issuing a citation for a first violation of Article 19S, SFDPH shall issue a Notice of Correction advising the Person of the violation and affording them the opportunity to recall all Electronic Cigarettes and/or Flavored Tobacco Products that they sold or distributed in violation of Article 19S, in lieu of an administrative penalty. If the violator chooses to recall all such Electronic Cigarettes and/or Flavored Tobacco Products, the violator shall submit to SFDPH an affidavit declaring that it has recalled all of the Electronic Cigarettes that it sold or distributed to Persons in San Francisco in violation of Article 19S and will not engage in any future sales or distributions of such products to Persons in San Francisco. If the violator fails or refuses to recall all Electronic Cigarettes and/or Flavored Tobacco Products sold in violation of Article 19S, SFDPH shall issue a citation for administrative penalties and shall make a referral to the City Attorney for enforcement.

# PUBLIC COMMENT

**From:** [Patricia Kopp](#)  
**To:** [BoardofAppeals \(PAB\)](#)  
**Subject:** Appeal No.26-028 1108 Polk St  
**Date:** Thursday, June 25, 2026 12:09:43 PM

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

To Whom It May Concern,

I am writing regarding the suspension notice issued to Smoking Aces, located at 1108 Polk Street.

As a local business owner in operation since 2005, I have personal knowledge of the family who owns this establishment. Given the current economic climate in the Polk corridor, business is extremely slow for all of us. I am concerned that a 20-day suspension of sales would inevitably force the closure of their business, as they may not be able to recover from such a loss.

I would like to respectfully request that you reconsider this penalty. In many instances involving the sale of contraband, businesses receive a fine rather than a full suspension. The owners of Smoking Aces are assets to our community, and I truly hope a more manageable resolution can be reached.

Kind regards,

Tricia Kopp

**From:** [Rita Abraham](#)  
**To:** [BoardofAppeals \(PAB\)](#)  
**Subject:** Public Comment in Support of Appeal No. 26-028  
**Date:** Thursday, July 2, 2026 1:12:56 PM

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

To the Members of the San Francisco Board of Appeals,

I am writing in strong support of the owner of Smoking Aces regarding Appeal No. 26-028.  
1108 Polk street San Francisco

I have known her for approximately four years and can say without hesitation that she is a woman of exceptional character and integrity. She is hardworking, honest, compassionate, and treats every person who walks through her doors with kindness and respect. She has earned the trust of countless customers through her genuine care for people and her commitment to her business.

Over the years, I have witnessed the positive relationships she has built within the community. Many of her customers are regulars who know her by name and return not only because of her business, but because of the warmth, respect, and kindness she consistently shows them. She has become a familiar and valued part of the neighborhood.

I understand the seriousness of complying with all applicable tobacco regulations. At the same time, I respectfully ask the Board to consider the significant impact that a 20-day suspension would have on her small business, her livelihood, and those who depend on the business. For a small, independently owned shop, even a temporary suspension can have lasting financial consequences.

I respectfully ask the Board to consider reducing the penalty or allowing an alternative resolution that promotes compliance while avoiding the severe financial hardship that a lengthy suspension would impose.

I sincerely believe she has learned from this experience and remains committed to operating her business in full compliance with all applicable laws going forward. I respectfully ask that you take her outstanding character, her years of dedication, and her positive impact on the community into consideration when making your decision.

Thank you for your time, consideration, and service.

Respectfully,

Rita Abraham

**From:** [Pricilla Marquez](#)  
**To:** [BoardofAppeals \(PAB\)](#)  
**Subject:** Smoking Aces case number 26-028  
**Date:** Thursday, July 2, 2026 4:16:14 PM

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Dear Members of the San Francisco Board of Appeals,

I am writing to you as a resident of San Francisco to formally express my strong support for Smoking Aces Tobacco and Gift Shop, located at 1108 Polk Street. I am asking the Board to consider an alternative penalty, such as a formal warning or a financial fine, rather than a suspension of their tobacco license.

Since relocating to San Francisco from San Diego nearly a year ago, I have visited this shop on a weekly basis. In my time as a regular customer, the staff has consistently demonstrated the utmost professionalism, warmth, and dedication to customer service. They have built a welcoming, safe, and community-oriented environment—to the point where I frequently stop by just to engage in positive conversation with the operators.

A 20 days suspension and the subsequent total loss of revenue would be absolutely detrimental to a small, family-owned business, particularly given the current economic challenges of operating in San Francisco. Furthermore, as a consumer who relies solely on this establishment for my tobacco products, a suspension would disrupt my routine and cause undue personal stress. Smoking Aces is a responsible, licensed vendor that contributes positively to the neighborhood. It is frustrating to see other unpermitted shops in the area selling illegal products while facing minimal consequences, whereas a compliant, family-operated business faces a penalty that could threaten its survival.

I kindly urge the Board to show leniency and allow Smoking Aces to remain open and operational. Thank you for your time, consideration, and dedication to supporting our city's small business community.

Sincerely,

Pricilla Marquez

A Concerned San Francisco Resident

**From:** [Michael Duff](#)  
**To:** [BoardofAppeals \(PAB\)](#)  
**Subject:** Appeal No. 26-028  
**Date:** Friday, July 3, 2026 5:12:54 PM

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Re: Smoking Aces Appeal No. 26-028  
Smoking Aces Tobacco  
1108 Polk  
San Francisco, CA 94109

To Board of Appeals,

Smoking Aces is a very good neighbor business to have in a challenged neighborhood. There are many empty store fronts on this part of Polk Steet. Penalizing a small independent business for a city infraction seems counterproductive. Any ongoing business helps to fight blight and encourages positive street traffic.

I urge the board to reduce or remove any penalty on Smoking Aces Tobacco.

Sincerely,  
Michael Duff  
San Francisco Resident

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**From:** [Zachary Wolff](#)  
**To:** [BoardofAppeals \(PAB\)](#)  
**Subject:** Support of Opposition - Appeal # 26-028  
**Date:** Friday, July 3, 2026 1:23:28 PM

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To Whom It May Concern,

I am writing to offer my support for my neighbors and the owners of smoking aces smoke shop. While I understand they have been cited for a violation and have accepted responsibility for their mistake, I respectfully ask the Court to consider leniency regarding the suspension of their ability to sell tobacco products.

From my experience as their neighbor, they have consistently been kind, respectful, and positive members of our community. They treat those around them with courtesy, take pride in their business, and have always conducted themselves professionally. I have found them to be honest people who care about their customers and the neighborhood they serve.

I believe it is appropriate that they be held accountable for their actions, and I understand that the citation itself serves that purpose. However, suspending tobacco sales for a business that holds a valid tobacco retail license appears to be an exceptionally severe consequence. Because tobacco sales are a core part of their business, this suspension could have a devastating financial impact that extends well beyond the original violation.

In my opinion, accountability should be balanced with fairness. When business owners acknowledge their mistake, accept responsibility, and demonstrate a willingness to comply with the law moving forward, I believe they should be given the opportunity to correct the issue rather than face a penalty that could jeopardize their livelihood.

I respectfully ask the Court to consider reducing or eliminating the suspension while allowing the citation and any other appropriate penalties to stand. I hope the Court will take into account both their acceptance of responsibility and the positive role they have played in our community.

Thank you for your time and thoughtful consideration.

Respectfully,

Zachary Wolff

Locals Barbershop

1118 Polk street S.F. CA 94109

**From:** [shawnjit sidhu](#)  
**To:** [BoardofAppeals \(PAB\)](#)  
**Subject:** Support of opposition - appeal #26-028  
**Date:** Saturday, July 4, 2026 11:08:20 AM

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Dear Honorable Court,

I am writing to share my support for my neighbors, the owners of Smoking Aces Smoke Shop, and to respectfully ask the Court to consider showing some leniency regarding the suspension of their tobacco sales.

I've known them as neighbors and have always had positive interactions with them. They are friendly, respectful, and genuinely good people who care about their business and the community around them. They have always treated others with kindness and professionalism, and I've never known them to intentionally do anything wrong.

I understand that a mistake was made, and I appreciate that they have accepted responsibility for it. I believe it's important for businesses to be held accountable when violations occur, and I understand why they received a citation. At the same time, I hope the Court will consider that they have acknowledged what happened and are willing to do what is necessary to make sure it doesn't happen again.

My concern is that suspending their ability to sell tobacco products could have a much bigger impact than many people realize. Since tobacco sales are a major part of their business, losing that source of income could make it very difficult for them to stay afloat. It seems like a very serious consequence for a business that has accepted responsibility and wants to move forward in compliance with the law.

Everyone makes mistakes, and I believe people should be given the opportunity to learn from them, especially when they take ownership of what happened and show a willingness to do better. Based on what I've seen, these are hardworking business owners who deserve that chance.

For those reasons, I respectfully ask the Court to consider reducing or removing the tobacco sales suspension while allowing any other appropriate penalties to remain in place. I hope you'll take into account not only this incident, but also the kind of people they have consistently been and the positive presence they have been in our neighborhood.

Thank you for your time and for considering my thoughts.

Shawnjit Sidhu

**From:** [G S](#)  
**To:** [BoardofAppeals \(PAB\)](#)  
**Subject:** Support of opposition - Appeal # 26-028  
**Date:** Saturday, July 4, 2026 11:17:33 AM

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To Whom It May Concern,

I am writing in strong support of my neighbors and the owners of Smoking Aces Smoke Shop — two individuals who mean a great deal to our community.

Beyond running their business, these two genuinely invest in the people around them. They know their neighbors by name, check in on those who are struggling, and consistently show up with kindness, patience, and warmth. In a time when neighborhoods can feel increasingly disconnected, they are the kind of people who bring folks together — diffusing tension, spreading goodwill, and making our block feel like a place where people actually look out for one another. That is not something that can be replaced.

I understand they have accepted responsibility for their violation, and I respect that accountability. However, I respectfully urge the Court to consider the full picture of who these individuals are and what their presence means to this community. Suspending their ability to sell tobacco products — the core of their business — risks causing financial harm far greater than the original mistake warrants.

When people acknowledge wrongdoing, take responsibility, and are genuinely committed to doing better, the spirit of justice is best served by giving them the chance to move forward — not by imposing consequences that could take away the very platform they use to serve and uplift those around them.

I sincerely ask the Court to consider reducing or eliminating the suspension, while allowing all other appropriate penalties to stand. These are good people who make our neighborhood better simply by being in it.

Thank you for your time and compassionate consideration.

Respectfully,

Kind neighbor on Polk St.

**From:** [David Walsh](#)  
**To:** [BoardofAppeals \(PAB\)](#)  
**Subject:** APPEAL No. 26-028 // 1108 Polk Street, San Francisco // Smoking Aces" Tobacco Sales Permit // hearing date: July 8th, 2026  
**Date:** Sunday, July 5, 2026 9:30:43 PM

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**Board of Appeals  
San Francisco  
APPEAL No. 26-028  
Smoking Aces Sales Permit  
1108 Polk Street, SF CA 94109  
hearing date: July 8th, 2026**

Hello,

I've recently learned that the owners of Smoking Aces at 1108 Polk Street in San Francisco have received an issuance of temporary suspension for potential health code violation(s). And I wish to say, **I oppose the issuance of the suspension.**

I have known this business establishment, and the husband & wife that own the business, as a customer for many years. Over the years I have witnessed their dedication to running a successful & lawful business. And I have witnessed their kind presence, and how that kindness has rippled outward to those in the neighborhood and throughout the community. They're a fantastic example of model citizens; kind, gracious, and hard-working. Conscientious in regards to matters, both business and personal. They choose to do what's right, not what's easy. And above all, they are a loving family that makes decisions based on integrity, honesty, and respect.

It is because of who they are and how I've known them that I can honestly say, I believe the owners of Smoking Aces are being wrongly accused, and/or the violation allegations are likely a misinterpretation of the actual truth.

It is in my opinion that these proposed violations should be rescinded, and an investigation should be strongly considered into the allegations brought against them. Including the motivations of those that brought said allegations against them. In a time when there are so many real injustices happening that deserve this amount of attention, I find it a travesty that good, lawfully-minded folks are being wrongfully persecuted.

I hope the court will consider the words and thoughts I have shared during its deliberation. And thank you in advance for your continued support of truth & justice.

Respectfully,  
David Walsh

415.516.5985

[shamanigans143@gmail.com](mailto:shamanigans143@gmail.com)