

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
ALL NITE PIZZA, _____)
Appellant(s))
vs.)
DEPARTMENT OF PUBLIC HEALTH, _____)
Respondent)

Appeal No. **21-093**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on September 16, 2021, 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 SUSPENSION on September 2, 2021, of All Nite Pizza's Retail Tobacco Permit (suspension for 20 days due to illegal sale of flavored tobacco products) at the subject property.

DPH Hearing Case No. SMK-21-01

Permit No. T-76812

FOR HEARING ON November 10, 2021

Address of Appellant(s):

Address of Other Parties:

All Nite Pizza, Appellant(s) c/o Bilal Choudhery, Agent for Appellant(s) 5155 3rd Street San Francisco, CA 94124	N/A
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Date Filed: September 16, 2021

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

PRELIMINARY STATEMENT FOR APPEAL NO. 21-093

I / We, **All Nite Pizza**, hereby appeal the following departmental action: **SUSPENSION of Retail Tobacco Permit #T-76812 (Hearing Case No. SMK-21-01)** by the **Department of Public Health** as set forth in the Director's Hearing Order which was issued or became effective on: **September 2, 2021** for the property located at: **5155 3rd Street**.

BRIEFING SCHEDULE:

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: 4:30 p.m. on **October 21, 2021, (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 should be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org and valerie.lopez@sfcityatty.org.

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **November 4, 2021, (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 double-spaced with a minimum 12-point font. An electronic copy should be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org and ilol.bilal@gmail.com.

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

Only photographs and drawings may be submitted by the parties at the hearing.

Hearing Date: **Wednesday, November 10, 2021, 5:00 p.m.**, via Zoom. Information for access to the hearing will be provided before the hearing date. Please note: Should the City's Health Orders permit in-person hearings, the Board reserves the right to conduct the hearing at SF City Hall. Advance notice will be provided to the parties.

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 change to the briefing schedule.

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

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

The reasons for this appeal are as follows:

Not Submitted

Bilal Choudhery, agent for appellant, submitted this appeal by email.



City and County of San Francisco
 London N. Breed
 Mayor

San Francisco Department of Public Health

Grant Colfax, MD
 Director of Health

Director's Hearing Order

September 02, 2021

DBA: All Nite Pizza

Owner: Mohammad Iqbal & Bilal Choudhery Address: 5155 3rd St SF, CA 94124

Responsible Party: Mohammad Iqbal & Bilal Choudhery

Hearing Date: August 19, 2021 Hearing Case Number: SMK-21-01

Health Code: SF Health Code, Articles 19H and 19Q

Dear Mohammad Iqbal & Bilal Choudhery:

You were cited to appear at the Director of Health Hearing on the above date relevant to the above-referenced Health Code and based on the Inspection Reports dated May 7, 2021 and June 2, 2021.

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

1. That notice of the hearing has been duly given as required by law.
2. That you attended the hearing.
3. That the findings stated in the Inspection Report(s) are true.

Based on the findings set forth above, THE DIRECTOR HEREBY **ORDERS**:

That, as authorized by Section 19H.22, you must cease and desist all sales of any flavored tobacco products, including alcohol (e.g., stout, cognac, wine, bourbon, Russian cream, Black Russian, etc.), fruit (e.g., blueberry, strawberry, apple, etc.), sweet (e.g., honey, sweet aromatic, wood tips, vanilla, etc.), mint (e.g., menthol, frost, spearmint, peppermint, etc.), or spicy (e.g., clover, cinnamon, etc.) flavors at the Establishment.

That, as authorized by Sections 19H.14-2, 19H.19(b), 19H.26, and the Rules and Regulations, your Retail Tobacco Permit # **T- 76812** shall be suspended with no tobacco sales for 20 days.

That, a reoccurrence of any flavored tobacco products found, sold, or displayed at the Establishment, will be considered a 3rd violation. And, as authorized by Sections 19H.19(c) and the Rules and Regulations, shall result in the suspension of your Tobacco Sales Permit for 40 days.

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

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

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

Please note:

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.

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.

This Order is final however you may have the right to appeal as follows:

- Board of Appeals: If this order concerns a permit, the order may be appealed to the Board of Appeals within 15 days of the entry of the order; if notice of the order is provided to the party by mail, then any appeal to the Board of Appeals must be made within 20 days of the order (15 days plus 5 days for mailing). 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.

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

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.



Date 9/2/2021

(Signature)

Tinetta Rockquomore Thompson

(Print Hearing Officer name)

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.

BRIEF SUBMITTED BY THE APPELLANT(S)

October 20, 2021

All Nite Pizza

5155 3rd Street

San Francisco CA 94124

Dear SF Board of Appeals,

I am writing this letter in regards to appeal the suspension decision of my business Retail Tobacco Permit in regards to case SMK-21-01.

Once the flavored tobacco ban was implemented, we had a lot of inventory of the tobacco that we didn't sell, and we stored it away since we were not selling it. When the health inspector mentioned it, we thought it would be best to store it off premises at the adjacent property because we don't sell it anymore, but once the tobacco inspector arrived, they insisted on seeing where the product was, so we willingly showed it to her. Note: at the time of this inspection, we were verbally told that Black and Mild Jazz and Casino were not known to be flavors and that Backwoods dark stout was also not known to be a flavor. The tobacco inspector said that we were told wood-tipped were known to be flavors, but that is not true. We were never told that and we never would have thought that a tip had any flavor in it. One of the things pointed out to us at our final inspection was that we were selling Black & Mild Original Wood Tip, but we did not

know that it was considered a flavor. We stopped selling it once the Tobacco inspector informed us.

I just wanted to also say that the main tobacco wholesalers, such as Business Costco, Pitco and other tobacco wholesalers say that it is okay for SF retailers to sell Swisher Sweet Classic and Black n Mild Wood Tip. Due to this, a lot of stores in San Francisco still have these flavors, while they believe that it is not a flavor. I went to a few stores in SF and I found that they were still selling these flavors such as Swisher Sweet Classic and Black n Mild Wood tip, not knowing that they are flavors because they are misinformed due to the wholesalers saying it's okay. Thus, we also thought it was okay to sell these ones as we were told they are not flavors by the sales representatives.

There is also the issue that the wholesalers continue to sell to the stores that are not allowed to purchase and sell tobacco flavors. The issue should be stopped at the root, where the supply comes from, so there are no mistakes and misunderstandings when there are purchases made at the wholesaler.

During a food safety inspection, my brother told me and my mom to come to the store because the food inspector was here, so we came during the inspection. However, my mom and I were not running the store starting the 11th of December, which is when my brother came to take over, so we can get ready for my wedding in Pakistan. My brother took over the shop for a month and the rest of the family was getting ready for my wedding. My dad had already left to go to Pakistan when the inspector came. My

brother was not aware of the tobacco flavor ban in San Francisco because he goes to Dental school in Portland, so he may have accidentally brought the flavored tobacco into the store without any of us knowing.

We kept selling Dark Stout because we were told that they were not known to be a flavor and we started selling swisher sweets classic because we were told by the swisher sweets customer representatives that they would not be considered flavors because they don't say sweet on it anymore, however, we were told otherwise by the tobacco inspector. We also mentioned that inspector Young told us Dark Stout was not known as a flavor and later on, we were told by another tobacco inspector that "how do you not know that stout is a flavor if it's a drink". We do not drink or consume alcohol thus we do not know it is an alcoholic beverage. Therefore, we did not know that stout was named after an alcoholic beverage. We even asked customers to confirm if there is any flavor and customers would tell us that it doesn't have a flavor, but it is just smoother than the Original Backwoods.

We did not know at the time that wood tipped black and milds are considered flavors and the tobacco inspector later informed us that they are flavors and we cannot sell them. Between the final inspection and the inspection before it, my father bought some black and mild wine by mistake and because of covid and non-refundable policies with wholesalers, we were not able to return them, so we had to sell them to get rid of them. (Side note: We see black and mild wood tipped cigars readily available and sold at Foodsco here in San Francisco, so we thought they would be okay to sell, thus, we

shouldn't be penalized for something that we didn't know about.) Also, why is Foodsco not getting penalized for selling flavored tobacco that is not allowed in San Francisco while other small businesses like us are? The tobacco inspector also found a box of swisher sweets classics. As for the swisher sweet red cigar box, that was not open and was still enclosed in its original packaging, my dad's friend, who has a store, was going to pick up the box of swishers from us because we found one behind the fridge after we got rid of the other swisher sweet red cigars. It was not intended for sale to customers.

FINAL STATEMENT:

We humbly request that the 20 day suspension be changed into a final warning. We have completely stopped selling flavored tobacco of any kind and we do not plan to do so.

Also, if you believe we need to be penalized, then can we ask for a fine instead of a 20 day suspension please? The suspension will have long term negative effects on our small business whereas the fine will be short term loss. We plan to keep serving the community for many more years to come.

We have a small family business and with everything going on in the world, especially with COVID affecting all business, we need to stay open in order to support our family as well as our extended family who is living with us. I will also become a father in around 15 days and I will have a lot more expenses due to the new born baby. This will cause greater financial responsibility on me to keep my business running so I can provide for my growing family.

I understand I have to contact the tobacco department from now on and not rely on the tobacco representative or other establishments.

We would also like to ask if you can do something about all of the people soliciting cigarettes, backwoods, marijuana and other products around our store. These people park in front of our store and in our driveway and sell illegal things throughout the day. There are multiple people who do this. We get complaints from our neighbors, but we are afraid of doing anything in fear of retaliation by the solicitors. We tried a few times to ask them to stop selling in front of our store, or else we will have to call the cops and they threatened us and said they know where we live and who our family members are. If the solicitors continue selling tobacco products and our customers keep going to them to get flavored tobacco instead of purchasing regular non-flavor tobacco from us, our business will be left helpless.

BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)

1 DAVID CHIU, State Bar #189542
City Attorney
2 JULIE VAN NOSTERN, State Bar #103579
Chief Attorney, Health & Human Services
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7 Attorneys for Respondent,
DEPARTMENT OF PUBLIC HEALTH

9 SAN FRANCISCO

10 BOARD OF APPEALS

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

13 ALL NITE PIZZA,

14 Appellant,

15 vs.

16 DEPARTMENT OF PUBLIC HEALTH,

17 Respondent.

Appeal No. 21-093

**RESPONDENT DEPARTMENT OF PUBLIC
HEALTH'S OPPOSITION BRIEF**

Hearing Date: November 10, 2021
Time: 5:00 p.m.
Place: via Zoom video platform

18
19 **INTRODUCTION**

20 Mohammad Iqbal and Bilal Choudhery (“Appellants”) appeal the Department of Public
21 Health’s (“DPH”) 20-day suspension of their retail tobacco sales permit #T-76812 for All Nite Pizza
22 & Foods (“All Nite Pizza”) located at 5155 3rd Street, San Francisco, California 94124. The appeal
23 lacks merit. Appellants concede that they made prohibited sales and do not challenge the suspension
24 process or the length of suspension. Instead, they identify the following grounds for appeal: (1)
25 Appellants did not understand that “Black and Mild Jazz,” “Casino,” “Backwoods dark stout,” and
26 “wood-tipped” items are flavored tobacco; and (2) “tobacco wholesalers” like “Costco” and “Pitco”
27 sell “Swisher Sweet Classic” “and “Black n Mild Wood Tip” products, and other retailers in San
28 Francisco like “Foodsc” sell similar products, so they thought it was “okay” to sell the prohibited

1 products. And, Appellants ask that the 20-day permit suspension be converted to a “final warning” or
2 a “fine.” As discussed below, none of these grounds provides a basis for the Board of Appeals to
3 uphold the appeal or to change the 20-day suspension.

4 PROCEDURAL BACKGROUND

5 **A. Permit:** On November 7, 2013, DPH issued a tobacco sales permit to Appellants for
6 All Nite Pizza. (See **Exh. K, Permit**, to Declaration of Janine Young (“Young Decl.”) at ¶ 3.)

7 **B. Notice of Prohibited Sales:** In August 2018, DPH mailed a fact sheet about the City’s
8 flavored tobacco product sales ban to every tobacco sales permit holder, including Appellants. (See
9 **Exh. J, Fact Sheet**, to Young Decl. at ¶ 4.) The fact sheet included website and contact information
10 with additional flavored tobacco ban information.

11 **C. Health Code Violations:** On December 31, 2018, DPH conducted a compliance check
12 at All Nite Pizza, saw flavored tobacco products, and notified Appellants of the Health Code violation.
13 (See **Exh. I, 12/31/2018 Compliance Check Notification**, to Young Decl. at ¶ 5.) On August 14,
14 2019, DPH conducted a second compliance check at All Nite Pizza, found more prohibited flavored
15 tobacco products, and issued Appellants a Notice of Correction. (See **Exh. H, 8/14/2019 Notice of**
16 **Correction**, to Young Decl. at ¶ 6.) On May 7, 2021, DPH conducted a third compliance check of All
17 Nite Pizza, again found flavored tobacco products, and issued Appellants a Notice of Violation. (See
18 **Exh. E, 5/7/2021 Notice of Violation**, to Young Decl. at ¶ 7.) On June 2, 2021, DPH conducted a
19 further compliance check of All Nite Pizza, again found prohibited flavored tobacco products, and
20 issued Appellants a Notice of Violation. (See **Exh. D, 6/2/2021 Notice of Violation**, to Young Decl.
21 at ¶ 8.)

22 **D. Notice of Initial Determination:** On June 30, 2021, DPH hand delivered a Notice of
23 Initial Determination to Appellants, advising that All Nite Pizza was in violation of San Francisco
24 Health Code, Articles 19H and 19Q, based on the prohibited flavored tobacco findings documented in
25 the May 7 and June 2, 2021 Notices of Violation. (See **Exh. C-1, Notice of Initial Determination**, to
26 Young Decl. at ¶ 9.) On June 30, 2021, Appellants requested a Director’s Hearing regarding the
27 violations. (See **Exh. B, Hearing Request**, to Young Decl. at ¶ 10.)

1 **ARGUMENT**

2 **I. Appellants Do Not Dispute that They Violated San Francisco Health Code Section**
3 **19Q that Prohibits the Sale and Distribution of Flavored Tobacco Products**

4 San Francisco Health Code Section 19Q.3 prohibits the sale or distribution of flavored tobacco
5 products. Appellants do not dispute that they sold or distributed flavored tobacco products in violation
6 of this ban. In December 2018, August 2019, May 2021, and June 2021, DPH conducted compliance
7 checks at All Nite Pizza and each time found prohibited products on site. (See **Exhs. D, E, I & H**, to
8 Young Decl.) Appellants do not challenge the compliance checks. Nor do they deny violating the ban
9 by stocking and selling flavored tobacco products at All Nite Pizza. Since Appellants do not deny
10 stocking and selling banned flavored tobacco products, no evidentiary basis exists for the Board to
11 overturn the Director’s determination that Appellants’ violated San Francisco Health Code Section
12 19Q.3.

13 **II. Appellants’ Alleged Confusion About What Constitutes Flavored Tobacco**
14 **Provides No Basis to Uphold the Appeal**

15 Appellants defend their conduct solely on the basis that they were confused about what
16 constitutes “flavored tobacco.” Their alleged confusion provides no basis to uphold the appeal. DPH
17 explained the flavored tobacco ban to all retail sellers, including Appellants, and repeatedly notified
18 Appellants that they were in violation of the Health Code. In August 2018, DPH gave Appellants a
19 flyer that notified them of the ban, provided examples of banned flavored tobacco products, provided a
20 website, including an FAQ page and contact information, and encouraged all impacted retailers,
21 including Appellants, to ask questions and submit suggestions to the City about the ban. (See **Exh. J,**
22 **Fact Sheet**, to Young Decl.) Then, at each compliance check, DPH gave Appellants every
23 opportunity to ask clarifying questions about the ban and prohibited products.

24 Appellants do not assert that DPH somehow contributed to their confusion. Rather, the
25 evidence reflects that Appellants continued to stock and sell banned products despite repeated
26 reminders by DPH that sale of flavored tobacco products is prohibited.

27 Appellants’ suggestion that the sale of flavored tobacco products by “tobacco wholesalers” like
28 “Costco” and “Pitco” and local retailers like “Foodsco” contributed to their confusion likewise

1 provides no basis to uphold the appeal. The record contains no evidence of prohibited sales by such
2 vendors. And, again, Appellants had every opportunity to ask questions of DPH about the ban, either
3 through the contact information contained in the August 2018 flyer (*see Exh. J, Fact Sheet*, to Young
4 Decl.) or at any of the several compliance checks, when DPH also explained to Appellants what is
5 prohibited.

6 **III. No Grounds Exist to Convert the 20-Day Retail Tobacco Permit Suspension to a**
7 **Final Warning or Fine**

8 San Francisco Health Code Section 19H.14-2(a) authorizes DPH to suspend a retail tobacco
9 sales permit based on a decision that the permittee violated the flavored tobacco ban.¹ Appellants do
10 not challenge DPH’s authority to impose a 20-day permit suspension. Nor do they argue that DPH
11 imposed an excessive suspension or otherwise failed to follow the requisite suspension process.
12 Rather, Appellants ask that the Board of Appeals convert the 20-day suspension to a final warning or a
13 fine. Given that Appellants failed to stop the sale of banned tobacco after repeated notices of violation
14 and before imposition of a suspension, Appellants’ request should be denied.

15 DPH takes seriously its obligation to protect the public from tobacco permittees who flagrantly
16 flaunt City rules. As San Francisco Health Code Section 19Q.1(a) states, “Tobacco use remains the
17 leading cause of preventable death in the United States, killing more than 480,000 people each year.”
18 The Health Code targets flavored tobacco products, in particular, because they “promote youth
19 initiation of tobacco use and encourage young occasional smokers to become daily smokers.” (S.F.
20 Health Code § 19Q.1(c).) Consistent with this public health initiative and to protect the health and
21 safety of City youth, imposition of a 20-day suspension is appropriate. Converting the 20-day
22 suspension to a final warning or a fine would not ensure cessation of prohibited flavored tobacco sales
23 by Appellants at All Nite Pizza given their repeated disregard of DPH’s warnings.

24 ///

25 _____
26 ¹ The Health Code outlines the maximum timeframes in which the Director may suspend a Tobacco Sales permit.
27 Specifically, for a first violation, the Director may suspend a Tobacco Sales permit for a maximum of 90 days; if a second
28 violation occurs within twelve months of the first violation, the Director may suspend the permit for a maximum of six
months; and upon the third violation, if within twelve months of the prior violation, the Director may suspend the permit
for a maximum of one year. (S.F. Health Code Section 19H.19.) The 20-day suspension falls well within the allowed
sanctions.

1 **CONCLUSION**

2 For the reasons set forth above, DPH requests that the Board of Appeals uphold the 20-day
3 suspension of Appellant’s retail tobacco sales permit. No basis exists for the Board to conclude that
4 DPH acted other than in accordance with City law.

5
6 Dated: November 4, 2021

7 DAVID CHIU
8 City Attorney
9 JULIE VAN NOSTERN
Chief Attorney, Health & Human Services

10
11 By: Valerie J. Lopez
12 VALERIE J. LOPEZ
13 Deputy City Attorney
14 Attorneys for Respondent
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PROOF OF SERVICE

I, LILY KANG, declare as follows:

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

On November 4, 2021, I served the following document:

RESPONDENT DEPARTMENT OF PUBLIC HEALTH’S OPPOSITION BRIEF

on the following persons at the locations specified:

boardofappeals@sfgov.org	Board of Appeals
julie.rosenberg@sfgov.org	SF Board of Appeals
ilol.bilal@gmail.com	Appellant

in the manner indicated below:

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

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

Executed November 4, 2021, at San Francisco, California.

Lily Kang

LILY KANG

1 DAVID CHIU, State Bar #189542
City Attorney
2 JULIE VAN NOSTERN, State Bar #103579
Chief Attorney, Health & Human Services
3 VALERIE J. LOPEZ, State Bar #314583
Deputy City Attorney
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1390 Market Street, 5th Floor
5 San Francisco, California 94102-5408
Telephone: (415) 554-3939
6 E-Mail: valerie.lopez@sfcityatty.org

7 Attorneys for Respondent,
DEPARTMENT OF PUBLIC HEALTH

8
9 SAN FRANCISCO
10 BOARD OF APPEALS
11 49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103

13 ALL NITE PIZZA,
14 Appellant,
15 vs.
16 DEPARTMENT OF PUBLIC HEALTH,
17 Respondent.

Appeal No. 21-093
**DECLARATION OF INSPECTOR JANINE
YOUNG IN SUPPORT OF RESPONDENT
DEPARTMENT OF PUBLIC HEALTH'S
OPPOSITION BRIEF**
Hearing Date: November 10, 2021
Time: 5:00 p.m.
Place: via Zoom video platform

19
20
21 I, Janine Young, declare as follows:
22 1. I have personal knowledge of the facts set forth herein. If called upon to testify,
23 I could and would testify competently to the facts contained herein.
24 2. I am an Environmental Health Inspector with the San Francisco Department of
25 Public Health ("DPH"). I have held this position for 28 years. Since August 2010, I have worked in
26 DPH's Tobacco Program, where I review and process applications for tobacco sales permits and
27
28

1 conduct inspections to confirm compliance with Articles 19H (permits for the sale of tobacco) and
2 19Q (prohibiting the sale/distribution of flavored tobacco products) of the San Francisco Health Code.

3 3. **Permit:** On November 7, 2013, DPH issued a tobacco sales permit to
4 Appellants for All Nite Pizza. (*See Exhibit K, Permit.*)

5 4. **Notice of Prohibited Sales:** In August 2018, DPH mailed a fact sheet about the
6 City's flavored tobacco product sales ban to every tobacco sales permit holder including Appellants.
7 (*See Exhibit J, Fact Sheet.*)

8 5. **Health Code Violations:** On December 31, 2018, I conducted a compliance
9 check at All Nite Pizza, saw flavored tobacco products, and notified Appellants of the Health Code
10 violation. (*See Exhibit I, 12/31/2018 Compliance Check Notification.*)

11 6. On August 14, 2019, I conducted a second compliance check at All Nite Pizza,
12 found more prohibited flavored tobacco products, and issued Appellants a Notice of Correction. (*See*
13 **Exhibit H, 8/14/2019 Notice of Correction.**)

14 7. On May 7, 2021, I conducted a third a compliance check of All Nite Pizza,
15 again found flavored tobacco products, and issued Appellants a Notice of Violation. (*See Exhibit E,*
16 **5/7/2021 Notice of Violation.**)

17 8. On June 2, 2021, I conducted a further compliance check of All Nite Pizza,
18 again found prohibited flavored tobacco products, and issued Appellants a Notice of Violation. (*See*
19 **Exhibit D, 6/2/2021 Notice of Violation.**)

20 9. **Notice of Initial Determination:** On June 30, 2021, DPH hand delivered a
21 Notice of Initial Determination to Appellants, advising that All Nite Pizza was in violation of San
22 Francisco Health Code Articles, 19H and 19Q, based on the prohibited flavored tobacco findings
23 documented in the May 7 and June 2, 2021, Notices of Violation. (*See Exhibit C-1, Notice of Initial*
24 **Determination.**)

25 10. On June 30, 2021, Appellants requested a Director's Hearing regarding the
26 Notice of Initial Determination. (*See Exhibit B, Hearing Request.*)

EXHIBIT “A”

Business Address and/or DPH Case #

		<ul style="list-style-type: none"> • 5/7/2021 Notice of Violation; • 6/2/2021 Follow-up Inspection Report; • Photos taken on 8/14/2019, 12/17/2020, 5/7/2021, and 6/1/2021; and • Email response from Swisher Sweets International <p>The Permit Holder and family declined to sign the 5/7/2021 and 6/2/2021 inspection reports stating that they need an opportunity to review the Notices and photos.</p> <p>The family also requested that a digital copy of the 5/7/2021 and 6/2/2021 inspection reports sent to the correct email address fraserss@hotmail.com.</p> <p>Later, the Permit Holder, confirmed never receiving the documentation at the corrected email address.</p>	D
6/1/2021	19Q.3	<p>Senior Inspector Janine Young and Specialist Alvin Dang conducted an unannounced follow-up inspection at establishment to verify the presence of flavored tobacco products.</p> <p>SFDPH staff did not observed any flavored tobacco products in the back storage area. Senior Inspector Young took photos of the back storage area.</p> <p>However, SFDPH staff observed, inventoried, and photographed the following flavored tobacco products stored under the sales window counter:</p> <ul style="list-style-type: none"> • Black & Mild Wine: 16 boxes of 5-pack and 7 singles • Black & Mild Wood tip: 8 boxes of 5-pack and 12 singles • Swisher Sweets Classic Cigarillos: 1 package of 2 boxes <p>The Permit Holder, Bilal Choudhery, confirmed never receiving the 5/7/2021 Notice of Violation and the correct email. The inspection was continued to 6/2/2021.</p>	D
5/14/2021		<p>On or near 5/14/2021, Senior Health Inspector Janine Young delivered an electronic version of the 5/7/2021 Notice of Violation which included photos from 3 site visits and detailed the flavored tobacco products repeatedly observed by SFDPH staff.</p> <p>The Permit Holder, Bilal Choudhery never received the Notice because of an incorrect email address.</p>	
5/7/2021		<p>Senior Inspector Janine Young and Specialist Alvin Dang conducted an unannounced compliance inspection.</p> <p>During the inspection, Senior Inspector Young discussed with the Permit Holder Bilal Choudhery about photos taken in December 2020</p>	E

Business Address and/or DPH Case #

	19Q.3	<p>by Health Inspector Joanna Huber showing flavored tobacco products in three areas:</p> <ol style="list-style-type: none"> 1. Behind the window service counter. 2. A storage area near the window service counter, and 3. A back storage area. <p>The Permit Holder indicated that he did not see the photos taken in August 2019 or December 2020.</p> <p>SFDPH staff observed, inventoried, and photographed the following flavored tobacco products:</p> <ul style="list-style-type: none"> • 45 boxes of Swisher Sweets Classic Cigarillos • 30 boxes of Backwoods Dark Stout Little Cigars <p>SFDPH staff did not observe the Russian Cream, Vanilla, Honey Bourbon, Honey, or Sweet Aromatic flavored tobacco products in any storage area during the inspection.</p> <p>Because SFDPH observed flavored tobacco products on 8/14/2019, 12/17/2020, and 5/7/2021, and because the Permit Holder indicated that he never received any of the photos taken by SFDPH staff, Senior Inspector Young prepared a Notice of Violation that included photos from 3 visits and detailed the following flavored tobacco products that were repeatedly observed by SFDPH staff:</p> <ul style="list-style-type: none"> • Backwoods Honey Bourbon (Observed 8/14/2019 and 12/17/2020) • Backwoods Honey Bourbon (Observed 8/14/2019 and 12/17/2020) • Backwoods Stout (Observed 8/14/2019, 12/17/2020, and 5/7/2021) • Backwoods Russian Cream (Observed 8/14/2019 and 12/17/2020) • Backwoods Sweet Aromatic (Observed 8/14/2019 and 12/17/2020) • Swisher Sweets Classic Red (Observed 8/14/2019 and 5/7/2021) <p>The Notice of Violation was not signed as received by the Permit Holder because the report was emailed on or near 5/14/2021.</p>	E
12/17/2020	19Q.3	<p>Senior Inspector Janine Young received an email with photos from Health Inspector Joanna Huber stating the observation of flavored tobacco products at All Nite Pizza & Foods – 5155 3rd St.</p> <p>The observed flavored tobacco products included Honey, Russian Cream, Vanilla, Sweet Aromatic, Honey Bourbon, and Blueberry.</p> <p>The email also stated that the Permit Holder would be out of the country until January 10, 2021.</p>	F

Business Address and/or DPH Case #

8/19/2019		<p>SFDPH staff, Specialist Olasunkanmi Abass, conducted a follow-up inspection and verified that no flavored tobacco products/menthol products were on the premises.</p> <p>The Permit Holder Bilal Choudhery received the follow-up inspection report.</p>	G
8/14/2019	19Q.3	<p>After receiving a call from Health District Inspector Joanna Huber stating that flavored tobacco products were observed during the Food Safety inspection, SFDPH staff, Senior Health Inspector Janine Young and Specialist Olasunkanmi Abass conducted an unannounced routine compliance inspection.</p> <p>Although Inspector Huber was still present at the site, Specialist Abass and Senior Inspector Young did not observe any flavored tobacco products on the premises or in the outdoor storage room.</p> <p>After discussing with the Permit Holder, Bilal Choudhery, that in accordance with the Rules and Regulations, first time violators would be provided 72-hours to remove flavored tobacco products in lieu of a 10-day suspension period, the Permit Holder disclosed that flavored tobacco products, including menthol cigarettes, were hidden on the adjacent residential property.</p> <p>During the inspection, Specialist Abass completed an inventory of the flavored tobacco products while Senior Inspector Young photographed the flavored tobacco products.</p> <p>Specialist Abass inventoried 40 cartons of menthol tobacco products and 24 cartons of flavored tobacco products, including but not limited to, Swisher Sweets Classic, Honey Bourbon, Sweet Aromatic, Black 'n Sweet, Russian Cream, Honey, Cognac.</p> <p>The Notice of Correction was received by the Permit Holder Bilal Choudhery.</p> <p>At the time, SFDPH Retail Tobacco Program did not determine that wood tip tobacco product as a flavored product. Therefore, the establishment could sell wood tip tobacco products.</p>	H
12/31/2018	19Q.3	<p>Senior Health Inspector Janine Young conducted a compliance check for flavored tobacco products at the establishment. The compliance check verified the observation of flavored tobacco products at the establishment; and informed the Permit Holder that (1) selling flavored tobacco products was a violation of San Francisco Health Code, Article 19Q, (2) non-compliance may result in the suspension of the tobacco permit for up to 90 days for the first violation, 180 days for the second violation, and 365 days for the third and subsequent violation. and (4) provided the establishment to avoid any enforcement by discontinuing all flavored tobacco products sales.</p>	I

Business Address and/or DPH Case #

		<p>The compliance check also provided the Permit Holder an opportunity to avoid any enforcement by (1) discontinuing all flavored tobacco product sales; and (2) texting the following information to (262) 528-6820:</p> <ol style="list-style-type: none">1. Business Name2. Business Address3. Owner Name, and4. "We have stopped selling Flavored Tobacco" <p>The compliance check was received by a cashier named, Zain Chou.</p> <p>According to SFDPH records, All Nite Pizza & Food never sent a text message to indicate the discontinuation of flavored tobacco sales.</p>	I
8/2018		SFDPH Retail Tobacco and Smoking Program mailed a Fact Sheet about the flavored tobacco products sales ban to every tobacco permit holder at the site address and mailing address.	J
11/7/2013		SFDPH Tobacco Product Sales Establishment Permit to Operate # T-76812 was issued to Mohammad Iqbal & Bilal Choudhery.	K

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

1—20-day suspension of SFDPH Tobacco Permit #T-76812

Environmental Health Principal/Program Manager

EXHIBIT "B"



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

(B)

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

SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH
DIRECTOR HEARING REQUEST

Business Name (DBA):	All Nite Pizza & Foods	Permit Owner	Mohammad Iqbal/Bilal Choudhery
Permit to Operate #	T-076812	Permit Issued Date:	
Business Address, Zip Code:	5155 3rd St, 94124		
EH FILE ID #:	76812	SF BAN: 483346	CDTFA Tobacco License #: 091-354545

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 or perjury that I am an authorized representative of this business entity and that the information contained herein is true and complete to the best of my knowledge and belief.

[Signature]
 Authorized Agent – Print & Signature

06/30/21
 Date

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

DIRECTOR'S HEARING INSTRUCTIONS
 Within 15 calendar days of receipt of the Notice of Initial Determination, email or mail this completed and signed form to: SFDPH – EH Retail Tobacco Program at EnvHealth.DPH@sfdph.org or Environmental Health, 49 South Van Ness Avenue, Suite 600, SF, CA, 94102.
Failure to submit this request within 15 days will result in the issuance of a final Order from SFDPH Hearing Officer.

DPH Office Use ONLY
 Date received: 6/30/2021
 District Health Inspector: Janine Young
 Print Name



EXHIBIT “C-1”



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

C-1

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

June 30, 2021

Mohammad Iqbal & Bilal Choudhery
5155 3rd Street
San Francisco, CA 94124

RE: Notice of Initial Determination – All Nite Pizza & Foods – 5155 3rd St, San Francisco

Dear Mohammad Iqbal and Bilal Choudhery,

As the Owner of Tobacco Sales Permit # T-76812 ("Permit"), you are hereby notified that All Nite Pizza & Foods located at 5155 3rd Street in the City and County of San Francisco ("Establishment") is in violation of the San Francisco Health Code (SFHC), Articles 19H and 19Q, which were documented on the Notice of Violation Inspection Reports dated May 7, 2021 and June 2, 2021.

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.

On August 14, 2019, the San Francisco Department of Public Health Consumer Protection inspection was conducted at the Establishment where the district inspector observed flavored tobacco products. The inspector immediately referred the findings to SFDPH Tobacco & Smoking Program where a Tobacco Health Inspection was conducted within an hour of the referral, where the Owner of the Permit disclosed flavored tobacco products that were removed from the Establishment and relocated to an adjacent property to be hidden. SFDPH Inspectors observed, photographed, and/or inventoried the following flavored tobacco products:

- *Dark Stout, Honey, Honey Bourbon, Sweet Aromatic, Black 'n Sweet, Russian Cream; Game Backwoods Leaf Cognac and Sweet Aromatic; Swisher Sweets Classic; Dutch Honey Fusion; and many brands of menthol cigarette cartons, including but not limited to, Camel Blue Crush, Benson & Hedges 100, Fortuna, Kool, Maverick, Marlboro, Capri, Newport, Salem, and Montego.*

On August 19, 2019, a reinspection was conducted by SFDPH to verify the removal of flavored tobacco products from the Establishment. SFDPH staff verified that no flavored tobacco products were displayed or sold at the Establishment.

On December 17, 2020, while conducting a Food Safety Inspection, the SFDPH inspector observed and photographed the following flavored tobacco products stored or displayed at the Establishment:

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

- *Backwoods Dark Stout, Black Russian, Honey Bourbon, Russian Cream, Honey, Sweet Aromatic; O.G. Russian Cream and Vanilla; Swisher Sweets Leaf Wrap Sweet Aromatic; and Zig Zag wraps Blueberry.*

A referral was made to the SFDPH Retail Tobacco Program to conduct a Tobacco Health Inspection. On May 7, 2021, a Tobacco Health Inspection was conducted by SFDPH and inspectors observed, photographed, and inventoried the following flavored tobacco products displayed or stored in a storage area at the Establishment:

- *Backwoods Dark Stout and Swisher Sweets Classic.*

On June 2, 2021, a reinspection was conducted by SFDPH to issue the Notice of Violation and photographs and inspectors observed under the customer service window the following flavored tobacco products:

- *Black & Mild Wine and Wood Tip; and Swisher Sweets Classic.*

Because you repeatedly sold flavored tobacco products at the Establishment on December 17, 2020; May 7, 2021; and June 2, 2021 and based on the findings set forth above, the following are required:

1. That, as authorized by Section 19H.22, you must cease and desist all sales of any flavored tobacco products, including alcohol (e.g., stout, cognac, wine, bourbon, Russian cream, Black Russian, etc.), fruit (e.g., blueberry, strawberry, apple, etc.), sweet (e.g., honey, sweet aromatic, wood tips, vanilla, etc.), mint (e.g., menthol, frost, spearmint, peppermint, etc.), or spicy (e.g., clover, cinnamon, etc.) flavors at the Establishment.
2. That, as authorized by Sections 19H.14-2, 19H.19(b), 19H.26, and the Rules and Regulations, your Retail, Tobacco Permit # T- 76812 shall be suspended with no tobacco sales for 20 days.
3. That, a reoccurrence of any flavored tobacco products found, sold, or displayed at the Establishment, will be considered a 3rd violation. And, as authorized by Sections 19H.19(c) and the Rules and Regulations, shall result in the suspension of your Tobacco Sales Permit for 40 days.

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

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

Sincerely,

Patrick Fosdahl, MS, REHS
Assistant Director of Environmental Health

Attachment: Director's Hearing Request Form

EXHIBIT “D”



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: 6/2/2021
 Time of Inspection: 60 mins
 EHD Location #: 76812
 Tobacco Permit #: T-76812

Facility Name (DBA): All Nite Pizza & Foods Address: 5155 3rd St, 94124

Permit Owner Name: Mohammad Iqbal & Bilal Choudhery Phone Contact:

Email: fraserss@hotmail.com

Inspection Type:
 Routine Reinspection
 Complaint Consultation

Inspection Report:
 Notice of Correction
 Notice of Violation

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

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

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

Observations:
 #11, #A Observed and took photos of Black & Mild Wine-flavored cigarillos and Black and Mild Woodtip. Also, observed and photographed 3 boxes of Swisher Sweets Classic Red. These products were located at front service window and/or beneath service window.

Black & Mild Wine = 1/2 boxes of 5 cigarillos + 1 box of individual
 Black & Mild Woodtip = 8 boxes of 5 cigarillos + 1/2 box of individual
 Swisher Sweets Classic Red = 2 pk of 2 boxes
 Products located in back storage were removed from premises. (See photo).
 Remove all flavored tobacco products, including all alcohol flavored cigarillos and Swisher Sweets Classic Red.

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

Failure to comply may result in a combination of one or more of the following: Reinspection fee at the hourly rate (30 minutes minimum) per site visit; issuance of an abatement order; administrative penalty of up to \$500 per day; permit suspension of up to 365 days; and/or a referral to the City Attorney's Office in order to take civil or criminal action (Pursuant to SF Bus. and Tax Reg. Code, Article 1, Sect 35; SFHC Sections 19H.17, 19H.19, 19H.20, 19H.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) Received By: (Signature)

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

5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed Under Service Window

Flavored Black & Mild cigarillos observed under the customer service window. Flavors included wine and woodtip cigarillos. Photo taken by J. Young.



5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed Under Service Window



Flavored Black & Mild cigarillos – wine (photo above) and woodtip (photo below) - observed under the customer service window. Photo taken by J. Young.



5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed Under Service Window

Approximately 16 boxes of 5-pack and 8 boxes of single wine and 12 single woodtip Black & Mild cigarillos inventoried during inspection. Photo taken by J. Young.

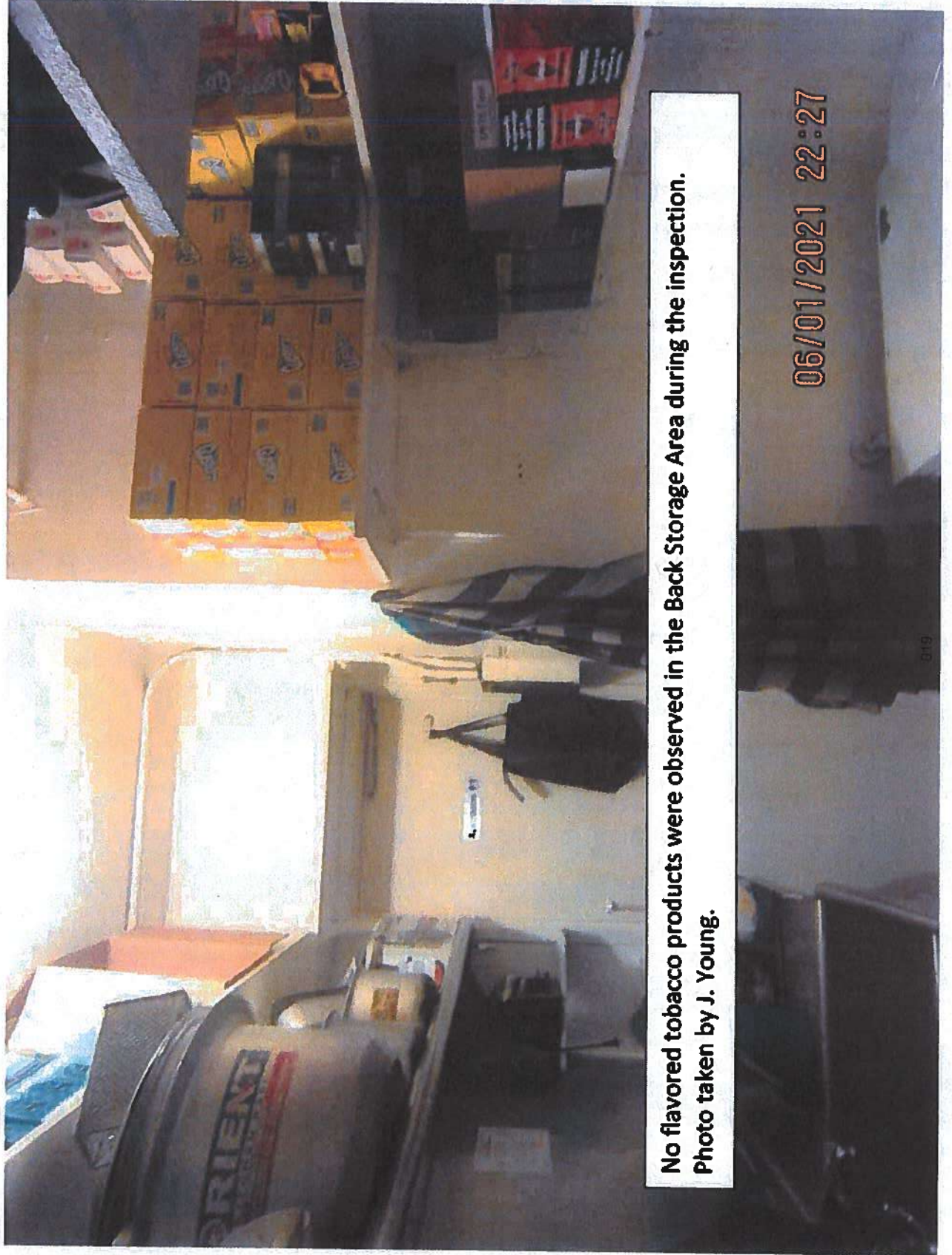


5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed Under Service Window

One box of Swisher Sweets 2-cigarillo packs found beneath service window counter.
Photo taken by J. Young.



**5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Removed from Back Storage Area**



No flavored tobacco products were observed in the Back Storage Area during the inspection.
Photo taken by J. Young.

06/01/2021 22:27

EXHIBIT "E"



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:	5/7/2021
Time of Inspection:	90 mins
EHD Location #:	78812
Tobacco Permit #:	T-78812

Facility Name (DBA): All Nite Pizza & Foods		Address: 5155 3rd St, 94124	
Permit Owner Name: Mohammad Iqbal & Bilal Choudhery		Phone Contact:	
Email: fraserss@hotmail.com		Required Action from Permit Owner:	
Inspection Type: <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Reinspection <input type="checkbox"/> Complaint <input type="checkbox"/> Consultation	Inspection Report: <input type="checkbox"/> Notice of Correction <input checked="" type="checkbox"/> Notice of Violation	<input type="checkbox"/> No further action required <input checked="" type="checkbox"/> A. Discontinue the illegal sales/distribution of tobacco products. <input type="checkbox"/> B. Obtain a SF Department of Public Health tobacco permit. <input type="checkbox"/> C. Relocate and sell tobacco products in a manner that requires vendor assistance by the end of the business day. <input type="checkbox"/> D. Request that any person observed smoking in areas where smoking is prohibited refrains from smoking. Correct By: <input type="checkbox"/> E. Submit a SF Department of Public Health retail tobacco permit application. <input type="checkbox"/> F. Pay all license fees. <input type="checkbox"/> G. Correct information on license(s) and/or permit(s). <input type="checkbox"/> H. Post licenses and permits in a conspicuous location in the store. <input type="checkbox"/> I. Post signage. <input checked="" type="checkbox"/> J. Remove <u>flavored tobacco product</u> tobacco products from display and premises. <input type="checkbox"/> K.	
Violations: Mark observed violations. Code violations cited are on the back page. <input type="checkbox"/> No violations observed <input type="checkbox"/> 1. Incomplete/Inaccurate application submitted <input type="checkbox"/> 2. Unpaid License fees <input type="checkbox"/> 3. Permit/Licenses not displayed <input type="checkbox"/> 4. Signage not posted <input type="checkbox"/> 5. Right to inspect denied <input type="checkbox"/> 6. Tobacco sales without a valid permit <input type="checkbox"/> 7. Sale of tobacco products without assistance <input checked="" type="checkbox"/> 8. Sale of single cigarettes <input type="checkbox"/> 9. Sale to minors (person <18 years old) <input type="checkbox"/> 10. Sale to persons aged 18, 19, or 20 <input checked="" type="checkbox"/> 11. Sale/Distribution of flavored tobacco products <input type="checkbox"/> 12. Smoking in prohibited area <input type="checkbox"/> 13. Sale/Distribution of restricted e-cigarette products <input checked="" type="checkbox"/> 14. Other tobacco control laws violated		72 hours <u>5/10/2021</u>	

Observations:

No e-cigarettes observed during inspection.

Observed cashier later identified as Bilal, selling single cigarette to following:

- Customer #1 in red sweat suit went to window with money and left with 1 cigarette
- Customer #2 went to window with cash and left with 3 cigarettes
- Woman Customer #3 went to window with cash and left with 2 cigarettes

Once cashier noticed me observing the single cigarette sales, the cashier whispered something to next customer who proceeded to give money and left with something in his hands. I was unable to observe what the customer purchased. Then I identified myself as Health Department staff to conduct

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

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

Received By: (Print)	Received By: (Signature)
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Referrals: 6/2/2021 - Permit Holder wants to submit a signed copy after reading the inspection report.

	[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. <u>Submit a complete Application for the Sale of Tobacco Products and/or E-Cigarette by the correction date.</u>
1b. Fraudulent Application	[19H.16]. No person may obtain a tobacco sales permit by fraudulent or willful misrepresentation. <u>Immediately discontinue the sales of tobacco products.</u> 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. <u>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.</u>
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. <u>Post Permit to Operate in a prominent location that is visible to the public and available for review by SFDPH staff.</u>
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. <u>In accordance with SFDPH Signage Rules and Regulations, clearly post signage in a prominent location that is visible to the public.</u> For building entryway "No Smoking" or "Tobacco 21" signs, please order online at http://sanfranciscotobaccofreeproject.org → Learn More → Signage
5. Right to Inspect	[19H.9]. The Director of SFDPH or a designee may enter and inspect at any time during regular business hours at any Establishment that is engaging in tobacco sales, or is suspected by the Director of engaging in such sales. <u>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.</u> 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. <u>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.</u>
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. <u>Display and sell tobacco products in a manner that requires vendor or retailer-assisted sales.</u>
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. <u>Immediately discontinue opening cigarette packs for the sale, distribution, or furnishing of single cigarettes.</u>
9. Sale to Minors	[19H.14; 19N.5; CA Penal Code 308(a)(1)(A)(ii)]. Tobacco product sale to a minor is prohibited. <u>Immediately discontinue sales of tobacco products to anyone under the age of 18.</u> 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)(ii)]. Tobacco product sale to a person aged 18, 19, or 20 is prohibited. <u>Immediately discontinue sales of tobacco products to individuals aged 18, 19, or 20.</u>
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. <u>Remove all Flavored Tobacco Products for sale or display from premises.</u> [19S.2(a)] No Person shall sell or distribute any Flavored Tobacco Product to a Person in San Francisco. <u>Discontinue all distribution of Flavored Tobacco Products to anyone in San Francisco.</u>
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. <u>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.</u>
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. <u>Immediately discontinue smoking or use of electronic cigarette devices in prohibited enclosed areas of the workplace.</u>
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. <u>Remove all restricted e-cigarette products without FDA premarket approval for sale or display.</u> [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. <u>Discontinue all distribution and sales of e-cigarette products without premarket approval to any person in San Francisco.</u> Visit https://www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product
14. Other tobacco control laws	[19H.13; 19N.5]. No Person, Establishment, Permittee, Permittee's agent or employee may violate any local, state, or federal law applicable to Tobacco Products or Tobacco Sales, including but not limited to: [19I 1009.92; 19N.5]. No person shall sell tobacco products in a pharmacy. <u>Immediately discontinue sales of tobacco products.</u>

DBA: All Nite Pizza & Foods	Address: 5155 3rd St, 94124
Permit Owner Name: Mohammad & Bilal	Inspection Date: 5/7/2021
Observations: Iqbal Choudhery	

#8 an inspection. No photos were taken of customers purchasing
 #14 the single cigarette sales. All customers looked over 30 years old.
 #A No one under the age of 21 was observed purchasing single cigarettes during the inspection.

#11 Received email and photos from SFDPH Inspector J. Huber of flavored
 #A tobacco products observed during 12/17/2020 food safety inspection.
 #I Photos taken by J. Huber are included in this inspection report

On 5/7/2021

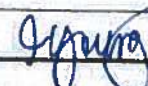
While observing tobacco product sales from corner outside of store, Inspector A. Dang heard customer ask for honey cigarillos. At time of 5/7/2021 inspection, Inspectors J. Young and A. Dang did not observe honey cigarillos in back storage area. We did not observe sales

Inspectors A. Dang and J. Young observed Backwoods Stout in Back Storage Area. A. Dang and J. Young took photos of Back Storage Area which are included as part of this inspection report. Observed and photographed Swisher Sweets Classic Red. SFDPH Retail Tobacco and Smoking Program confirmed by Swisher Sweets International that Swisher Sweets Classic Red is a sweetened tobacco product. Email from Swisher Sweets International is included as part of this inspection report. Inspector A. Dang inventoried Backwood Stout and Swisher Sweets Classic Red on premises (see attached inventory).

On 8/14/2019, Inspectors J. Young and A. Abass issued a Notice of Correction for the sells of flavored tobacco products. These products were hidden on the residential property located next door. Photos of the hidden flavored tobacco products were taken by J. Young and A. Abass. Inspector Abass inventoried the majority of flavored tobacco products. Based on the photos and inventory, the Permit Holder had knowledge and sold repeatedly the following flavored tobacco products:

* Backwoods Honey (observed 8/14/2019 and 12/17/2020)

* Backwoods ^{Honey} Bourbon (observed 8/14/2019 and 12/17/2020)

Inspector Name: J. Young / Alvin Dang	Inspector Signature:  / 
Received By: (Print)	Received By: (Signature)

DBA: <u>All Nite Pizza & Foods</u>	Address: <u>5155 3rd St, 94124</u>
Permit Owner Name: <u>Mohammad & Bilal</u>	Inspection Date: <u>5/7/2021</u>
Observations: <u>Iqbal Choudhery</u>	

- * Backwoods Stout (observed 8/14/2019, 12/17/2020, 5/7/2021)
- * Backwoods Russian Cream (observed 8/14/2019 and 12/17/2020)
- * Backwoods Sweet Aromatic (observed 8/14/2019 and 12/17/2020)
- * Swisher Sweets Classic Red (observed 8/14/2019 and 5/7/2021)

During 5/7/2021 inspection, Inspectors A. Dang and J. Young did not observe in Back Storage Area: O.G Russian Cream or Vanilla flavored cigarettes. An inspection of Storage Area located right of service window was not conducted on 5/7/2021. Also, did not observe Blueberry or Sweet Aromatic Leaf wraps behind ^{service} window.

All Nite Pizza is a repeat violator for the sells of flavored tobacco products and subject to 20-day suspension of the tobacco permit.

Inspector Name: <u>J. Young / Alvin Dang</u>	Inspector Signature: <u>[Signature] / [Signature]</u>
Received By: (Print)	Received By: (Signature)

DBA: All Nite Pizza & Food	Address: 5155 3rd St, 94124
Permit Owner Name: Mohammad Iqbal & Bilal Choudhery	Inspection Date: 5/7/2021

Observations:

Flavored Tobacco products observed at time of inspection.

- Back room

① 22 packages of 2 boxes Swisher Sweets classic cigarillos. (44 packages)

② 28 boxes of Backwoods Dark stout cigars

- Front Room

① 3 boxes Swisher Sweets classic cigarillos

② 2 boxes of Backwoods Dark stout cigars

Inspector Name: J. Young / Alvin Dang

Inspector Signature: *J. Young / Alvin Dang*

Received By: (Print)

Received By: (Signature)

5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays

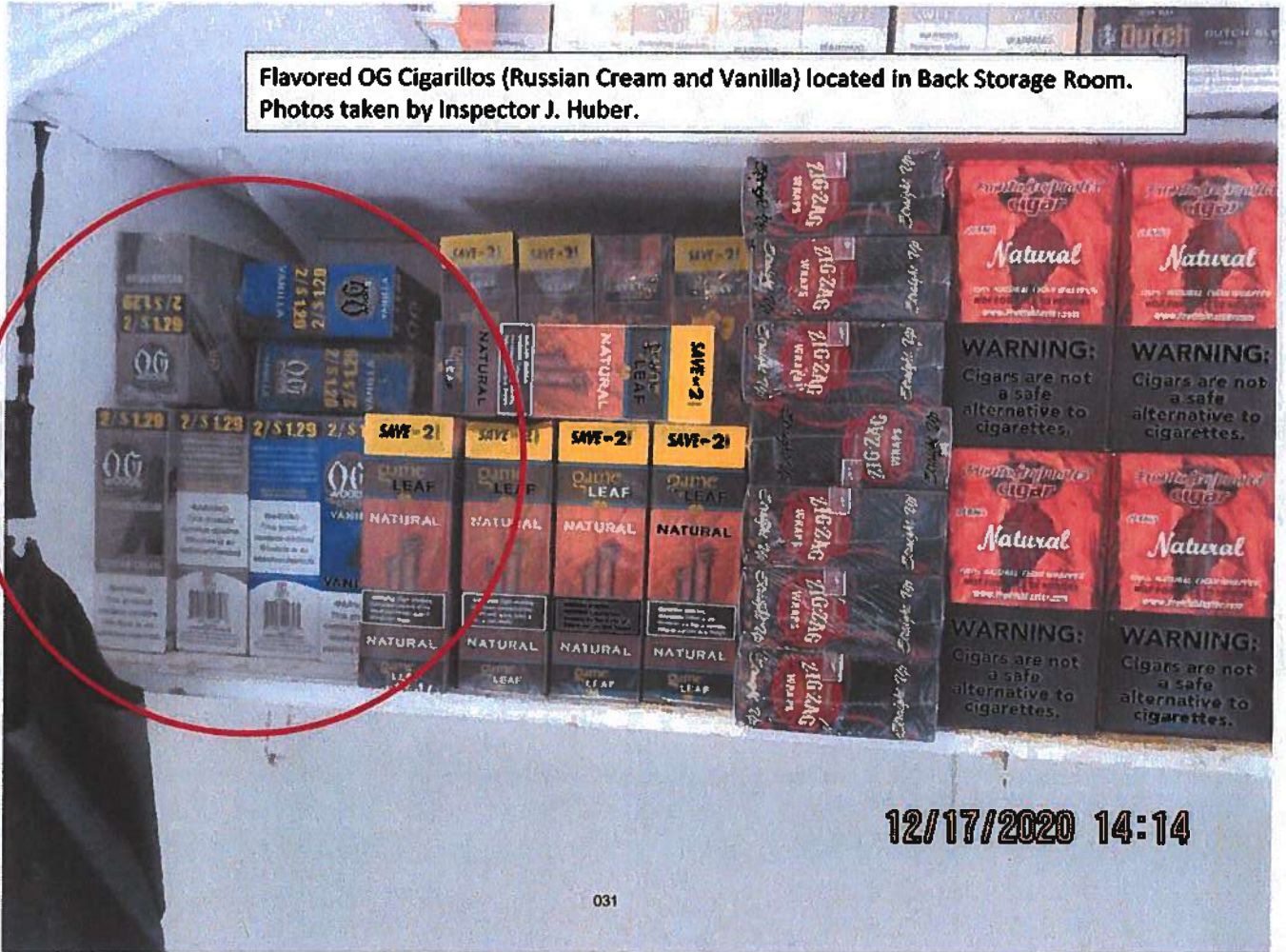


Flavored Backwoods (Stout) and OG located in Back Storage Room.
Photos taken by Inspector J. Huber.

61 fo 9

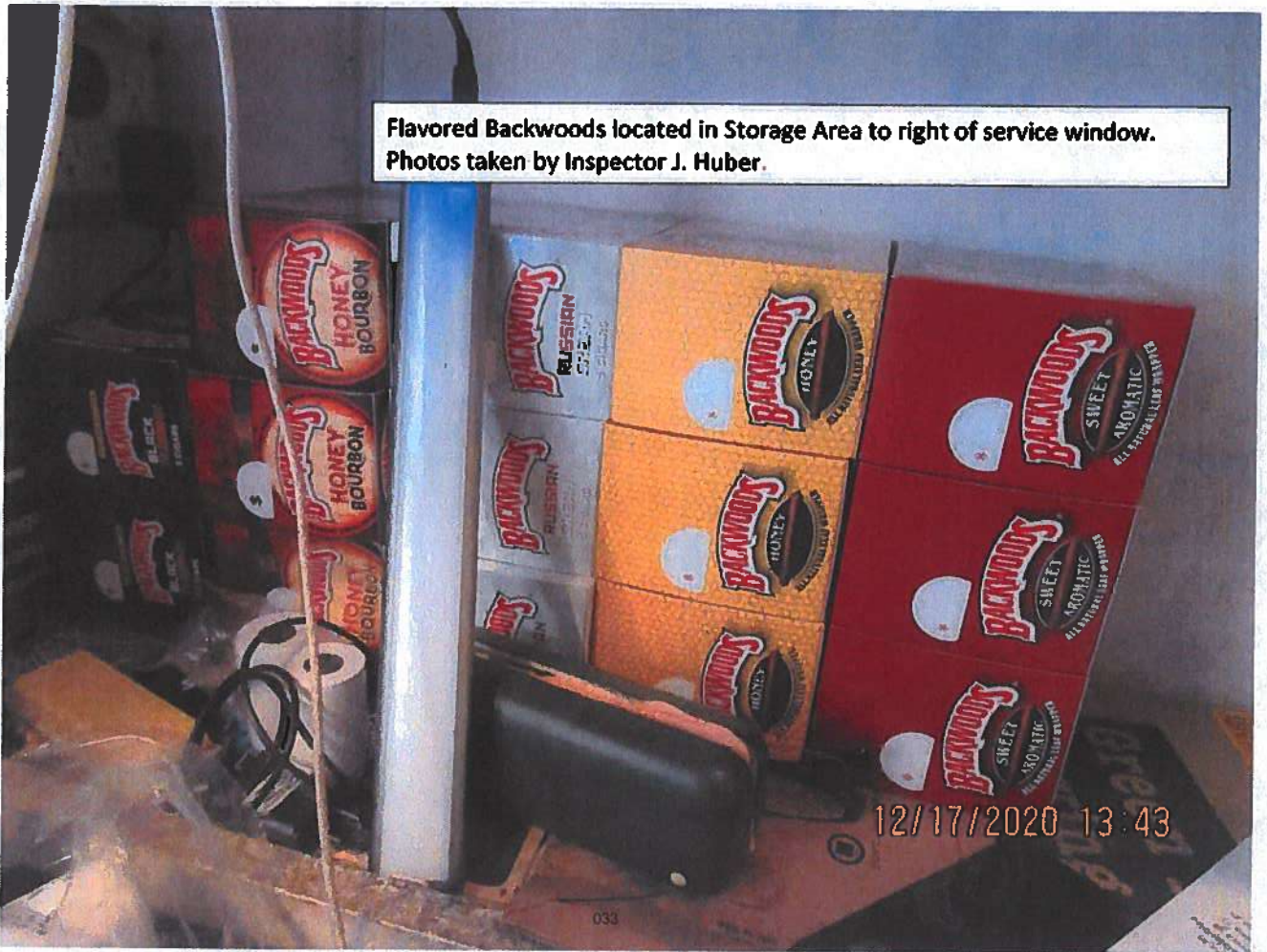
5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays

Flavored OG Cigarillos (Russian Cream and Vanilla) located in Back Storage Room.
Photos taken by Inspector J. Huber.



6 of 10

5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays



Flavored Backwoods located in Storage Area to right of service window.
Photos taken by Inspector J. Huber.

7 of 18

5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays



Flavored Swisher Sweets (Sweet Aromatic) Leaf Wrap displayed behind service window.
Photos taken by Inspector J. Huber.

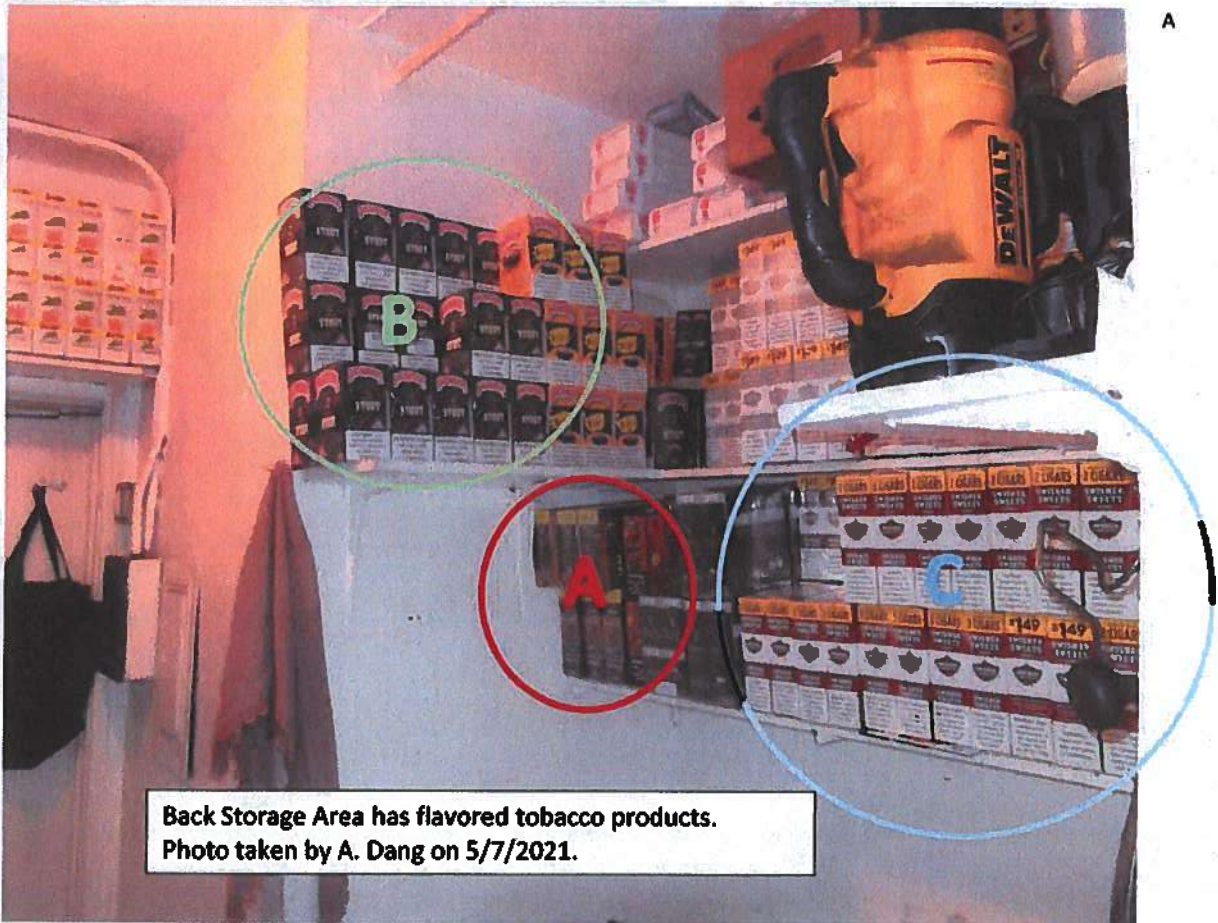
6 of 10

5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays



Flavored Zig Zag (Blueberry) Leaf Wrap displayed behind service window.
Photos taken by Inspector J. Huber.

5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays



01 fo 01

5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays



On 12/17/2020, SFDPH staff observed O.G. Vanilla and Russian Cream flavored cigarillos in this location. These products were not present during the 5/7/2021 inspection (see Area A in previous photo).
Photo taken by A. Dang on 5/7/2021.



5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays



On 5/7/2021, Inspector A. Dang inventoried approximately 30 boxes of Backwoods Dark Stout on the premises (see Area B in previous photo).
Photo taken by A. Dang on 5/7/2021.

12 of 18

5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays



On 5/7/2021, Inspector A. Dang inventoried approximately 47 boxes of Swisher Sweets Classic (Red) on the premises (see Area C in previous photo). Photo taken by A. Dang on 5/7/2021.

13 of 18

From: Swisher Sweets | Support <support@swishersweets.com>
Sent: Tuesday, January 5, 2021 11:52 AM
To: Yang, Julie (DPH) <julie.yang@sfdph.org>
Subject: [Swisher International Inc.] Re: Swisher Sweets Classic (Red) Original

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

Please type out reply above this line.

Your request (43210) has been updated. To add additional comments, reply to this email.

Pat Davis (Swisher Sweets)

Jan 5, 2021, 1:12 PM EST

Swisher Sweets Original is a Sweet product. Unsweet products are Diamonds and Silver Cigarillos.

Regards,
Consumer Relations

Julie Yang

Jan 5, 2021, 1:46 PM EST

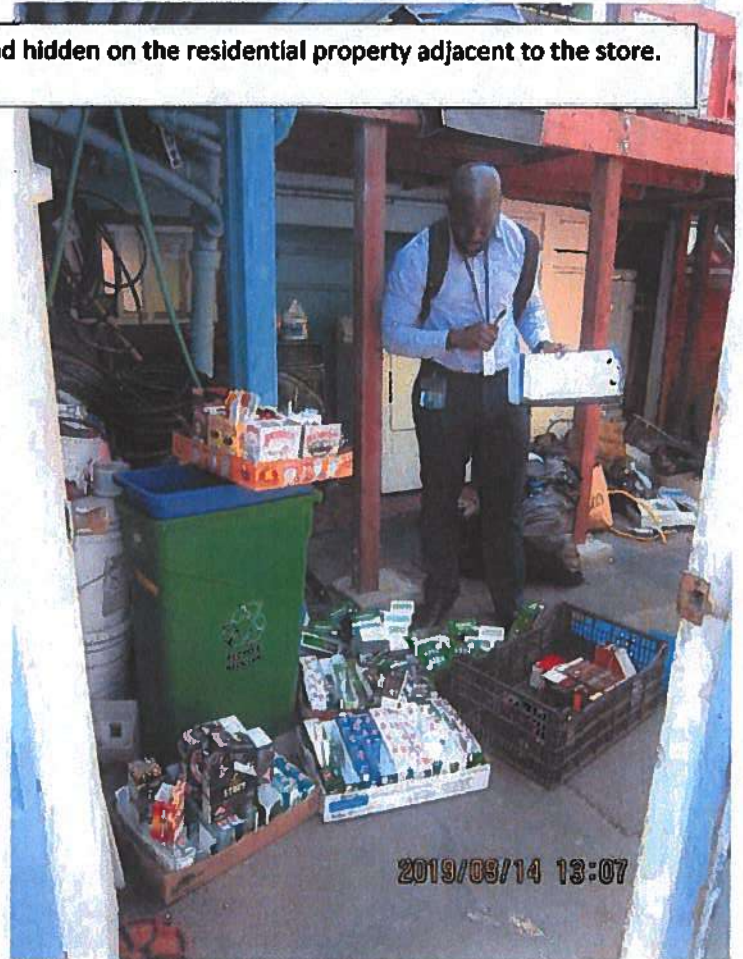
Is this Swisher Sweets Classic (Red) Original a flavored sweet tobacco product or is it unflavored?

Attachment(s)

Swisher Sweets Classic Red.PNG

5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays

Flavored tobacco products were removed from the store and hidden on the residential property adjacent to the store.
Photos taken by Sr. Inspector J. Young.



01 fo 51

5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays

Hidden flavored tobacco products included Backwoods Honey Bourbon, Backwoods Stout, and Backwoods Sweet Aromatic.
Photo taken by Sr. Inspector J. Young.



16 of 19

5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays

Flavored tobacco cigarillo products, including Backwoods Stout, Honey, Honey Bourbon, Black 'n Sweet Aromatic, and Swisher Sweets Classic Red.
Photo taken by Sr. Inspector J. Young.



er fo -11

5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays

Flavored tobacco cigarillo products, including Backwoods Stout (in background), Honey, Honey Bourbon, Black 'n Sweet Aromatic, and Swisher Sweets Classic Red.
Photo taken by A. Abass.



01 30 81

2019/08/14 13:01

055

EXHIBIT "H"

(H)



Tobacco & Smoking Program
 San Francisco Department of Public Health
 Population Health Division – Environmental Health Branch
 1390 Market St. Suite 210, San Francisco, CA 94102
<https://www.sfdph.org/dph/EH/Tobacco/default.asp>
Inspection Report

(H)

(H)

Inspection Date: 08/17/19
EHD Location #: 76812
Tobacco Permit #: T-76812

Site Facility Name (DBA): All Nibe Pizza & Foods		Address: 5155 03rd St	
Permit Owner Name: Mohammed Tabal & Bilal Chaudhry		Phone Contact: 415-822-3973	
Inspection Type: <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Reinspection <input type="checkbox"/> Complaint <input type="checkbox"/> Consultation		Inspection Report: <input checked="" type="checkbox"/> Notice of Correction <input type="checkbox"/> Notice of Violation	
Violations: Mark observed violations Code violations cited are on the back page. <input type="checkbox"/> No violations observed <input type="checkbox"/> 1. Fraudulent application submitted <input type="checkbox"/> 2. Unpaid License fees <input type="checkbox"/> 3. Permit/Licenses not displayed <input checked="" type="checkbox"/> 4. Signage not posted <input type="checkbox"/> 5. Right to inspect denied <input type="checkbox"/> 6. Tobacco sales without a valid permit <input type="checkbox"/> 7. Sale of tobacco products without assistance <input type="checkbox"/> 8. Sale of single cigarettes <input type="checkbox"/> 9. Sale to minors (person <18 years old) <input type="checkbox"/> 10. Sale to persons aged 18, 19, or 20 <input checked="" type="checkbox"/> 11. Sale or Display of flavored tobacco products <input type="checkbox"/> 12. Smoking in prohibited area <input type="checkbox"/> 13. Other tobacco control laws violated		Email: FraserSS@hotmail.com Required Action from Permit Owner: <input type="checkbox"/> No further action required <input checked="" type="checkbox"/> A. Discontinue the illegal sales of tobacco products. <input type="checkbox"/> B. Obtain a valid SF Department of Public Health tobacco permit. <input type="checkbox"/> C. Sell tobacco products in a manner that requires vendor assistance. <input type="checkbox"/> D. Request that any person observed smoking in areas where smoking is prohibited refrain from smoking. Correct By: _____ _____ _____ _____ 08/28/19 08/17/19	

Observations:
 20 cartons of Camel Blue Crush,
 40 cartons of menthol tobacco products (Benson & Hedges 100, Fortuna,
 40 Kool, Maverick, Marlboro, Capri, Newport, Salem, Montage
 24 pack cartons of cigarettes (backwoods; honey bourbon, sweet
 aromatic black n sweet, russian cream, honey Dutch; honey fusion
 game leaf; cognac swisher sweets; classic.

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 2, Sect 35; SFHC Sections 19H.17, 19H.19, 19H.20, 19H.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)).

Self-Verification of Corrected Violation(s):
 Your signature and the date violation(s) corrected indicate that all violation(s) listed in this Notice have been corrected by the establishment. Please be advised that SFDPH retains the right to conduct reinspection(s) at the hourly rate (30 minutes minimum per visit) to verify compliance with the SF Health Code. In addition to reinspection fees, failure to correct the violation(s) may result in additional enforcement action to be taken against the Legal Establishment Owner.

Signature of Legal Establishment Owner or Agent for Legal Establishment Owner		Date Violation(s) Corrected	
Additional Documents Attached: <input type="checkbox"/> Out of Business Form <input type="checkbox"/> Complaint Report # <input type="checkbox"/> Compliance Agreement		<input type="checkbox"/> SFDPH Retail Tobacco Application <input type="checkbox"/> SFPD Report # <input type="checkbox"/> Notice of Abatement Conference <input type="checkbox"/> Tobacco Retail License Booklet	
		Inspector Name/Signature: A. Pappas	
		Inspector Phone #: 415-252-3912	
		Inspector Email: Anthony.Pappas@sfdph.org	
Received By: (Print) Bilal Chaudhry		Received By: (Signature)	

	[Health Code Section(s)]. Code L. <u>ation. Correction. Additional Comments.</u>
1a. SFDPH Retail Tobacco Application.	[19H.4(a)]. An Application for a Tobacco Sales permit shall be submitted in the name of the person(s) proposing to engage in the sale of Tobacco Products and shall be signed by each person or an authorized agent thereof. A separate application is required for each location where Tobacco Sales are to be conducted. All Applications shall be submitted on a form supplied by the Department. [19N.3(a); 19N.5]. An establishment must have a valid Tobacco Sales permit to sell electronic cigarettes. Submit a complete Application for the Sale of Tobacco Products and/or E-Cigarette by the correction date.
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3. Display Permit	[19H.4(e)]. Each Permittee shall display the permit prominently at each location where Tobacco Sales occur. No permit that has been suspended shall be displayed during the period of suspension. A permit that has been revoked is void and may not be displayed. Post Permit to Operate in a prominent location that is visible to the public and available for review by SFDPH staff.
4. Post Signage	[19F Sect. 1009.22(i)(1)]. Post clear and prominent building entryway "No Smoking/Vaping" signs at each entrance to the establishment; [19F Sect. 1009.22(i)(2)]. Post clear and prominent general "No Smoking/Vaping" signs inside the establishment; [19O.6]. Post clear and prominent no smoking/vaping signs that includes "No use of smokeless tobacco products" at each entrance of the athletic venue; [19P.4]. Post a sign or other notice in the establishment, stating that in San Francisco it is unlawful to sell Tobacco Products, including smokeless tobacco and electronic cigarettes, to persons who are 18, 19, or 20 years of age. In accordance with SFDPH Signage Rules and Regulations, clearly post signage in a prominent location that is visible to the public. For building entryway "No Smoking" or "Tobacco 21" signs, please order online at http://sanfranciscotobaccofreeproject.org → Learn More → Signage
5. Right to Inspect	[19H.9]. The Director of SFDPH or a designee may enter and inspect at any time during regular business hours at any Establishment that is engaging in tobacco sales, or is suspected by the Director of engaging in such sales. Allow any authorized agent of SFDPH to enter, inspect, interview staff, and photo document at any establishment at any time during regular business hours of operation. DPH staff must present proper credentials in order to enter and inspect premises at any time during regular business hours.
6. Valid Permit	[19H.3; 19N.3]. No persons may engage in the tobacco sales or allow tobacco sales in any establishment without first obtaining and maintaining a valid tobacco sales permit from the San Francisco Department of Public Health for each location where tobacco sales are conducted. Immediately discontinue sales of tobacco products and submit the required application(s) and non-refundable processing fees by the correction date provided on the previous page.
7. Self-Service	[19H.11; SF Police Code 4600.3; 19N.5]. Self-Service Display: No person, business, tobacco retailer or other establishment subject to this Article shall sell, permit to be sold, offer for sale or display for sale any tobacco product by means of self-service merchandising or by means other than vendor-assisted sales, unless access to the premises by persons under 18 years of age is prohibited by law. Display and sell tobacco products in a manner that requires vendor or retailer-assisted sales.
8. Single Sale	[19H.13; CA Penal Code 308.2]. Single Cigarettes: A person may not sell any cigarette except in a sealed manufacturer's package meeting federal labeling requirements. Immediately discontinue opening cigarette packs for the sale, distribution, or furnishing of single cigarettes.
9. Sale to Minors	[19H.14; 19N.5; CA Penal Code 308(a)]. Tobacco product sale to a minor is prohibited. Immediately discontinue sales of tobacco products to anyone under the age of 18. SFDPH is authorized to suspend a tobacco permit for up to 365 days depending upon frequency of the violation.
10. Sale to 18, 19, or 20 Year Olds	[19H.14-1; 19N.5; 19P.3(a); CA Penal Code 308(a)]. Tobacco product sale to a person aged 18, 19, or 20 is prohibited. Immediately discontinue sales of tobacco products to individuals aged 18, 19, or 20.
11. Flavored Tobacco Products	[19H.2; 19H.14-2; 19Q.3; 19Q.4] The sale or distribution by an Establishment of any Flavored Tobacco Product or any Flavored Cigarette is prohibited. Remove all Flavored Tobacco Products and Flavored Cigarettes for sale or display.
12a. SF Smoking Prohibition	[19F 1009.22; 19H.12; 19N.4; 19O.3]. No owner of any property, facility or establishment subject to SF Health Code Article 19 shall permit any person to smoke in a prohibited area. Post signage and when observed, request patron or tenant to refrain from smoking in a prohibited area without threat of eviction for a residential tenant and/or physical ejection of a patron from the premises.
12b. CA Workplace Indoor Clean Air	[19H.15; CA Labor Code Sec 6404.5; 19F 1009.22; 19N.4; 19O.3]. An employer or owner-operator of an owner-operated business shall not knowingly or intentionally permit, and a person shall not engage in, the smoking of tobacco products at a place of employment or in an enclosed space. Immediately discontinue smoking or use of electronic cigarette devices in prohibited enclosed areas of the workplace.
13. Other tobacco control laws	[19H.18; 19N.3]. 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:
13a. Pharmacies	[19F 1009.92; 19N.5]. No person shall sell tobacco products in a pharmacy. Immediately discontinue sales of tobacco products.

Location Address: 5155 23rd Street	Inspection Date: 08/14/19
Business Name: All Nire Pizza & Foods	Re-inspection Date:

The marked violations are California Retail Food Code violations and must be corrected.
 (Failure To Comply May Result in a Citation and / or Fines)

All Flavored tobacco products picture were taken by Senior Inspector Janine Young. Copies of pictures will be provided by Friday August 16th 2019.

Within 72 hours, 40 cartons of menthol products and 24 cartons of Flavored cigarettes needs to be removed from premises and immediate stop of sale of items mentioned above.

"NO SMOKING" sign not posted inside store. [Abated]

Age Limit sign not posted close to POS system. [Abated]

"CURB SIGN" not posted. [Abated]

REHS:
Received By: 

5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays

Flavored tobacco products were removed from the store and hidden on the residential property adjacent to the store.
Photos taken by Sr. Inspector J. Young.



5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays

Hidden flavored tobacco products included Backwoods Honey Bourbon, Backwoods Stout, and Backwoods Sweet Aromatic.
Photo taken by Sr. Inspector J. Young.



5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays

Flavored tobacco cigarillo products, including Backwoods Stout, Honey, Honey Bourbon, Black 'n Sweet Aromatic, and Swisher Sweets Classic Red.
Photo taken by Sr. Inspector J. Young.



5155 3rd St dba All Nite Pizza & Foods
Flavored Tobacco Products Observed on Premises and/or Displays

Flavored tobacco cigarillo products, including Backwoods Stout (in background), Honey, Honey Bourbon, Black 'n Sweet Aromatic, and Swisher Sweets Classic Red.
Photo taken by A. Abass.

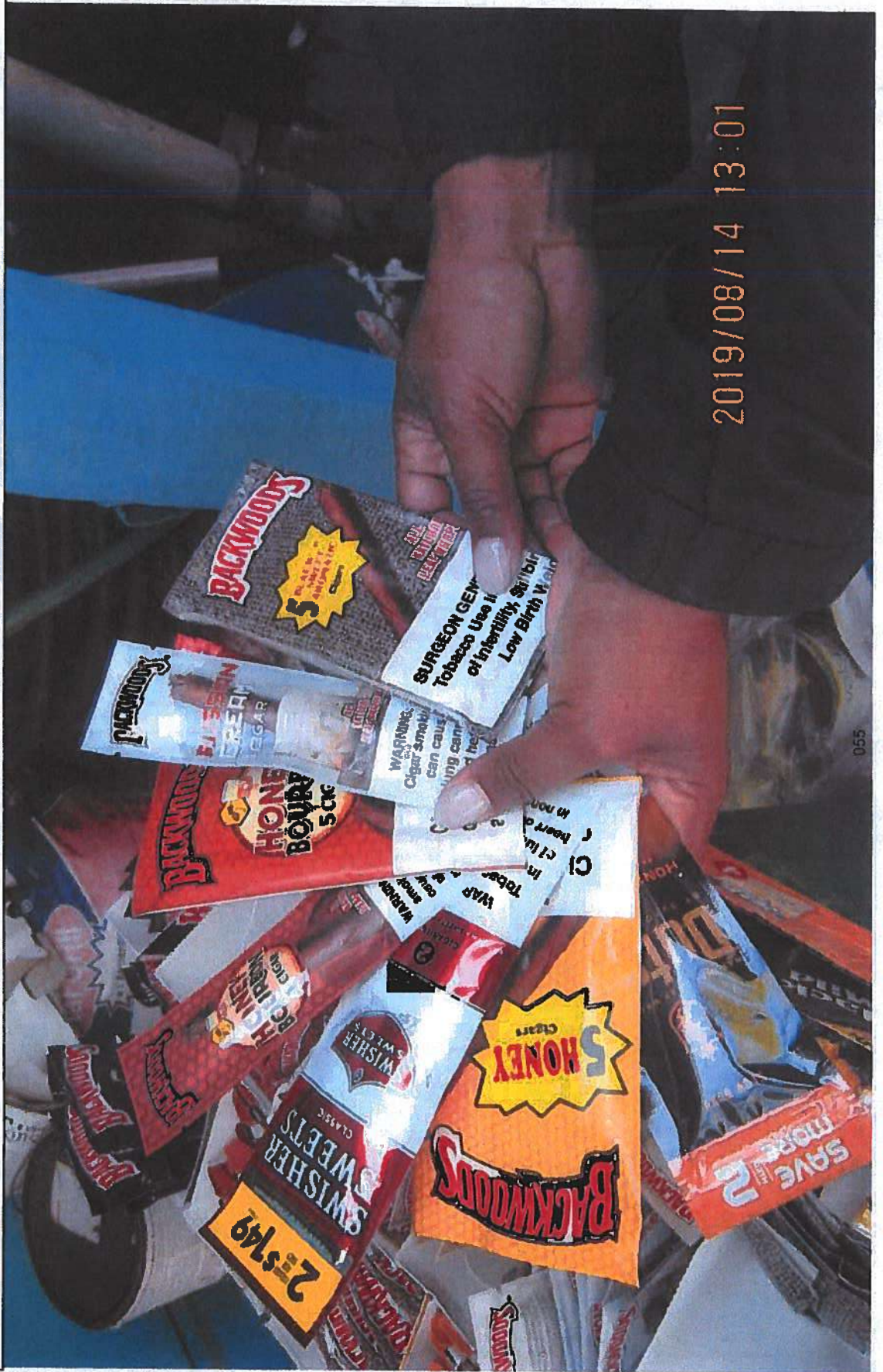
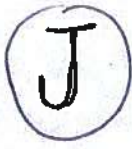
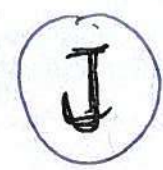


EXHIBIT "I"

EXHIBIT “J”



SAN FRANCISCO'S FLAVORED TOBACCO SALES BAN IS NOW IN EFFECT!



What is the Flavored Tobacco Sales Ban?

The ban prohibits Retail Tobacco Permit Holders from selling any nicotine or tobacco product, including but not limited to smokeless/chew, cigarettes, cigars, cigarillos, vape liquid and hookah tobacco, that is manufactured to have an aroma and/or flavor, such as fruit, sweet, candy, alcohol, mint, spice or menthol.

When is the ban effective and how can I prepare now?

The ban took effect on July 20, 2018. Discontinue ordering and restocking flavored tobacco products now to prevent losing your investment once the rules and regulations are ready to implement.

Will the City help retailers implement the new law?

Yes. Education and outreach efforts will begin in September 2018. Compliance checks will begin in October 2018, where a notice of correction will be issued if flavored tobacco products are observed.

When will the City enforce the new law?

The Rules and Regulations are aimed for completion in January 2019 and enforcement will commence. Avoid permit suspensions of up to 365 days by discontinuing sales of flavored tobacco products now.

How can I stay informed?

Throughout this process, stay informed by visiting our website, <https://www.sfdph.org/dph/BH/Tobacco/flavoredtobacco.asp>.

- We will also invite retailers to meet with City staff to discuss approaches to phase out existing products, technical assistance needs, and improve the retailers' customer experience.
- Read the mailings from the City and pay attention to the website for posting of FAQs and the proposed Rules and Regulations for public comment.
- You are encouraged to ask questions and submit suggestions to San Francisco 311 at (415) 701-2311 or <https://sf311.org>.

Examples of tobacco products now banned from sale in San Francisco:

"Menthol" has a distinguishable taste and aroma.

"Sour Apple" is a fruit flavor; "Mint" has a distinguishable taste and aroma.

"Cherry," "Nectar," "Halo," "Apple," "Raspberry," "Strawberry," "Berry" and "Fruit Medley" are fruit flavors; "Crème Brûlée" and "Vanilla" are candy flavors; "Mint" and "Menthol" have distinguishable tastes and aromas; "Hawaiian Pod" has an image indicating it contains a flavor other than tobacco.

Sold individually and in packs; those that are flavored are banned.

"Strawberry," "White Grape," "Grape," "Peach" and "Blueberry" are fruit flavors.

"Berry" is a fruit flavor; mint has a distinguishable taste and aroma.

"Lemonade" is a fruit flavored beverage; "Raspberry," "Blueberry," "Orange," "Grape," "Cherry" and "Strawberry" are fruit flavors.

Images are shown for educational purposes only.



EXHIBIT “K”



PERMIT TO OPERATE

T 76812

AND CERTIFICATE OF SANITARY INSPECTION

Issued according to provisions of the San Francisco Health Code

AUTHORIZING conduct of the following class of

TOBACCO PRODUCT SALES ESTABLISHMENT

Type of Operation: Tobacco Only Shop

ISSUED: 11/7/2013

Tax Code: 131 DPH Code:

CERT No. 483346

Name and Address Below:

Owner: Mohammad Iqbal & Bilal Choudhery

DBA: All Nite Pizza & Foods

Street Address: 5155 03rd St
San Francisco, CA 94124

DEPARTMENT OF PUBLIC HEALTH

Bureau of Environmental Health
City and County of San Francisco

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

Inspector

Director of Environmental Health

Principal Inspector

Director of Public Health

EXHIBIT “L”



City and County of San Francisco
 London N. Breed
 Mayor

San Francisco Department of Public Health

Grant Colfax, MD
 Director of Health

Director's Hearing Order

September 02, 2021

DBA: All Nite Pizza

Owner: Mohammad Iqbal & Bilal Choudhery Address: 5155 3rd St SF, CA 94124

Responsible Party: Mohammad Iqbal & Bilal Choudhery

Hearing Date: August 19, 2021 Hearing Case Number: SMK-21-01

Health Code: SF Health Code, Articles 19H and 19Q

Dear Mohammad Iqbal & Bilal Choudhery:

You were cited to appear at the Director of Health Hearing on the above date relevant to the above-referenced Health Code and based on the Inspection Reports dated May 7, 2021 and June 2, 2021.

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

1. That notice of the hearing has been duly given as required by law.
2. That you attended the hearing.
3. That the findings stated in the Inspection Report(s) are true.

Based on the findings set forth above, THE DIRECTOR HEREBY ORDERS:

That, as authorized by Section 19H.22, you must cease and desist all sales of any flavored tobacco products, including alcohol (e.g., stout, cognac, wine, bourbon, Russian cream, Black Russian, etc.), fruit (e.g., blueberry, strawberry, apple, etc.), sweet (e.g., honey, sweet aromatic, wood tips, vanilla, etc.), mint (e.g., menthol, frost, spearmint, peppermint, etc.), or spicy (e.g., clover, cinnamon, etc.) flavors at the Establishment.

That, as authorized by Sections 19H.14-2, 19H.19(b), 19H.26, and the Rules and Regulations, your Retail Tobacco Permit # T- 76812 shall be suspended with no tobacco sales for 20 days.

That, a reoccurrence of any flavored tobacco products found, sold, or displayed at the Establishment, will be considered a 3rd violation. And, as authorized by Sections 19H.19(c) and the Rules and Regulations, shall result in the suspension of your Tobacco Sales Permit for 40 days.

The mission of the San Francisco Department of Public Health is to protect and promote the health of all San Franciscans.
 We shall - Assess and research the health of the community - Develop and enforce health policy - Prevent disease and injury -
 - Educate the public and train health care providers - Provide quality, comprehensive, culturally-proficient health services - Ensure equal access to all

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

Please note:

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.

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.

This Order is final however you may have the right to appeal as follows:

- Board of Appeals: If this order concerns a permit, the order may be appealed to the Board of Appeals within 15 days of the entry of the order; if notice of the order is provided to the party by mail, then any appeal to the Board of Appeals must be made within 20 days of the order (15 days plus 5 days for mailing). 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.

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

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.



Date 9/2/2021

(Signature)

Tinetta Rockquomore Thompson

(Print Hearing Officer name)

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? Si no puede, alguien lo puede ayudar. Para obtener ayuda gratis llame al Departamento de Salud Pública al (415) 252-3800.

EXHIBIT "M"

October 20, 2021

All Nite Pizza

5155 3rd Street

San Francisco CA 94124

Dear SF Board of Appeals,

I am writing this letter in regards to appeal the suspension decision of my business Retail Tobacco Permit in regards to case SMK-21-01.

Once the flavored tobacco ban was implemented, we had a lot of inventory of the tobacco that we didn't sell, and we stored it away since we were not selling it. When the health inspector mentioned it, we thought it would be best to store it off premises at the adjacent property because we don't sell it anymore, but once the tobacco inspector arrived, they insisted on seeing where the product was, so we willingly showed it to her. Note: at the time of this inspection, we were verbally told that Black and Mild Jazz and Casino were not known to be flavors and that Backwoods dark stout was also not known to be a flavor. The tobacco inspector said that we were told wood-tipped were known to be flavors, but that is not true. We were never told that and we never would have thought that a tip had any flavor in it. One of the things pointed out to us at our final inspection was that we were selling Black & Mild Original Wood Tip, but we did not

know that it was considered a flavor. We stopped selling it once the Tobacco inspector informed us.

I just wanted to also say that the main tobacco wholesalers, such as Business Costco, Pitco and other tobacco wholesalers say that it is okay for SF retailers to sell Swisher Sweet Classic and Black n Mild Wood Tip. Due to this, a lot of stores in San Francisco still have these flavors, while they believe that it is not a flavor. I went to a few stores in SF and I found that they were still selling these flavors such as Swisher Sweet Classic and Black n Mild Wood tip, not knowing that they are flavors because they are misinformed due to the wholesalers saying it's okay. Thus, we also thought it was okay to sell these ones as we were told they are not flavors by the sales representatives.

There is also the issue that the wholesalers continue to sell to the stores that are not allowed to purchase and sell tobacco flavors. The issue should be stopped at the root, where the supply comes from, so there are no mistakes and misunderstandings when there are purchases made at the wholesaler.

During a food safety inspection, my brother told me and my mom to come to the store because the food inspector was here, so we came during the inspection. However, my mom and I were not running the store starting the 11th of December, which is when my brother came to take over, so we can get ready for my wedding in Pakistan. My brother took over the shop for a month and the rest of the family was getting ready for my wedding. My dad had already left to go to Pakistan when the inspector came. My

brother was not aware of the tobacco flavor ban in San Francisco because he goes to Dental school in Portland, so he may have accidentally brought the flavored tobacco into the store without any of us knowing.

We kept selling Dark Stout because we were told that they were not known to be a flavor and we started selling swisher sweets classic because we were told by the swisher sweets customer representatives that they would not be considered flavors because they don't say sweet on it anymore, however, we were told otherwise by the tobacco inspector. We also mentioned that inspector Young told us Dark Stout was not known as a flavor and later on, we were told by another tobacco inspector that "how do you not know that stout is a flavor if it's a drink". We do not drink or consume alcohol thus we do not know it is an alcoholic beverage. Therefore, we did not know that stout was named after an alcoholic beverage. We even asked customers to confirm if there is any flavor and customers would tell us that it doesn't have a flavor, but it is just smoother than the Original Backwoods.

We did not know at the time that wood tipped black and milds are considered flavors and the tobacco inspector later informed us that they are flavors and we cannot sell them. Between the final inspection and the inspection before it, my father bought some black and mild wine by mistake and because of covid and non-refundable policies with wholesalers, we were not able to return them, so we had to sell them to get rid of them. (Side note: We see black and mild wood tipped cigars readily available and sold at Foodsco here in San Francisco, so we thought they would be okay to sell, thus, we

shouldn't be penalized for something that we didn't know about.) Also, why is Foodsco not getting penalized for selling flavored tobacco that is not allowed in San Francisco while other small businesses like us are? The tobacco inspector also found a box of swisher sweets classics. As for the swisher sweet red cigar box, that was not open and was still enclosed in its original packaging, my dad's friend, who has a store, was going to pick up the box of swishers from us because we found one behind the fridge after we got rid of the other swisher sweet red cigars. It was not intended for sale to customers.

FINAL STATEMENT:

We humbly request that the 20 day suspension be changed into a final warning. We have completely stopped selling flavored tobacco of any kind and we do not plan to do so.

Also, if you believe we need to be penalized, then can we ask for a fine instead of a 20 day suspension please? The suspension will have long term negative effects on our small business whereas the fine will be short term loss. We plan to keep serving the community for many more years to come.

We have a small family business and with everything going on in the world, especially with COVID affecting all business, we need to stay open in order to support our family as well as our extended family who is living with us. I will also become a father in around 15 days and I will have a lot more expenses due to the new born baby. This will cause greater financial responsibility on me to keep my business running so I can provide for my growing family.

I understand I have to contact the tobacco department from now on and not rely on the tobacco representative or other establishments.

We would also like to ask if you can do something about all of the people soliciting cigarettes, backwoods, marijuana and other products around our store. These people park in front of our store and in our driveway and sell illegal things throughout the day. There are multiple people who do this. We get complaints from our neighbors, but we are afraid of doing anything in fear of retaliation by the solicitors. We tried a few times to ask them to stop selling in front of our store, or else we will have to call the cops and they threatened us and said they know where we live and who our family members are. If the solicitors continue selling tobacco products and our customers keep going to them to get flavored tobacco instead of purchasing regular non-flavor tobacco from us, our business will be left helpless.

PROOF OF SERVICE

I, LILY KANG, declare as follows:

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

On November 4, 2021, I served the following document(s):

DECLARATION OF INSPECTOR JANINE YOUNG IN SUPPORT OF RESPONDENT DEPARTMENT OF PUBLIC HEALTH’S OPPOSITION BRIEF

on the following persons at the locations specified:

boardofappeals@sfgov.org	Board of Appeals
julie.rosenberg@sfgov.org	SF Board of Appeals – Executive Director
ilol.bilal@gmail.com	Appellant

in the manner indicated below:

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

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

Executed November 4, 2021, at San Francisco, California.

Lily Kang

LILY KANG

PUBLIC COMMENT

143	Anthony	1478 Placo Av	628-786-0152	
144	Rashida Bb	1571 Thum Av	412	
145	Clifton	1478 Placo Ave	510-688-6885	
146	Jemelle	1556 Shafter	415 710 9032	Jemelle
147	MARERS	1744 Armstrong #16	413 424 6324	
148	Thelma	626 Mission bay H39	510 472-8471	Thelma
149	Mayra	1418 Shafter	—	
150	Pete	4 Reardon	—	Pete
151	Demetris Daler	2600 Aralia R WALKER	1650 630-1116	
152	Yuki Gordon	250 Harbor RD STE 99	914 411 3608 - 2602	
153	Janice Hight	6293 B RR	415-375-2042	Janice
154	NBA Avenue	Kiska rd.	(415) 924-7655	
155	Metanora	Logovii		Metanora

156	Joyce J. 5600 3rd St	405-485-7383	Joyce J.
157	Amber 2nd. 1555 - thomas	415-632-7115	
158	Steve Brown 1325 - HAWES	415-573-6608	
159	Shaw Adams 1799 Palau Ave	415 678-2858	Shaw
160	Merand Lipkins	415 276 3180	Merand
161	Mackey Milla 924 Jamestown Ave	628 267-7006	Mackey
162	Linda 1st Ameloc		Linda
163	Robert Cooper 93 Westbank St	4526 5895	Robert
164	Randy Smith 1603 Main St		Randy
165	Eduardo R 1770 Lasalle	650-2007745	Eduardo
166	Edgar 312 Topeka St	415 590 0227	Edgar
167	Marco 855 Jamestown	(415) 821-7447	Marco
168	Sudley P. 2170 Lasalle	650-208796	Sudley

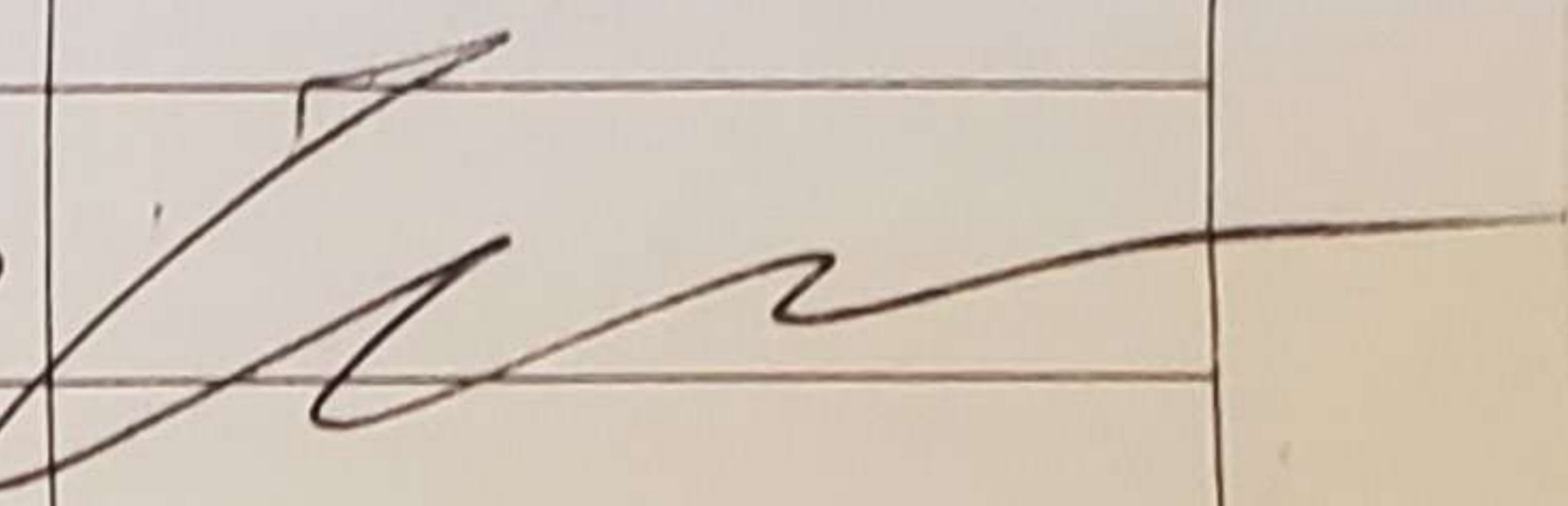
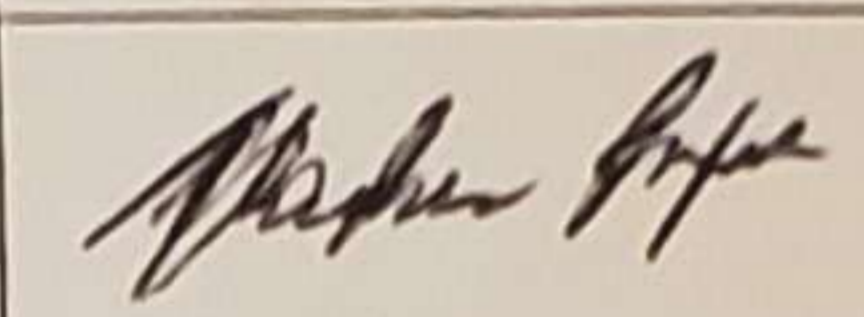
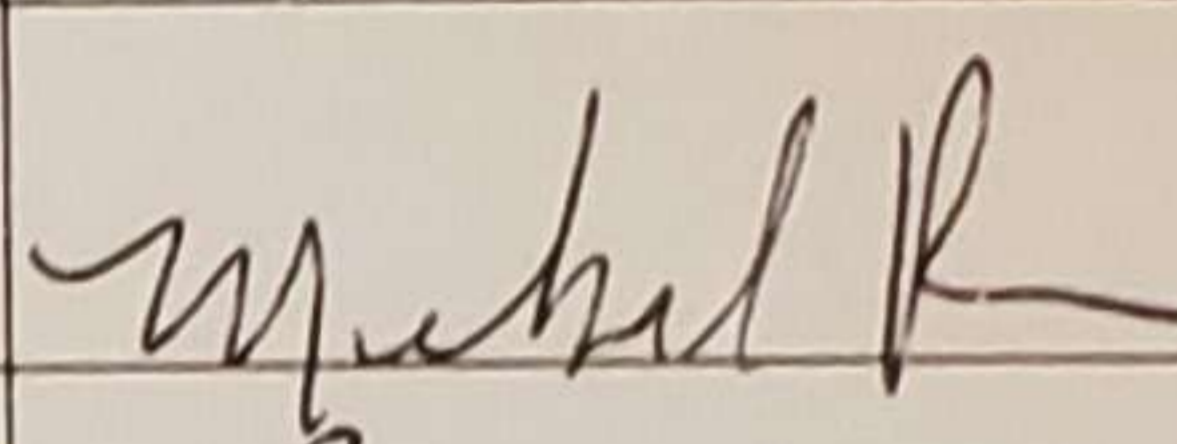
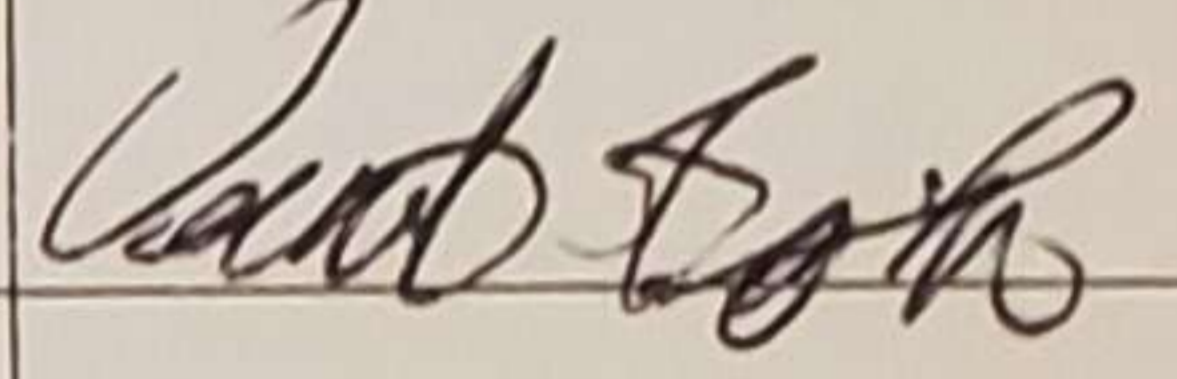
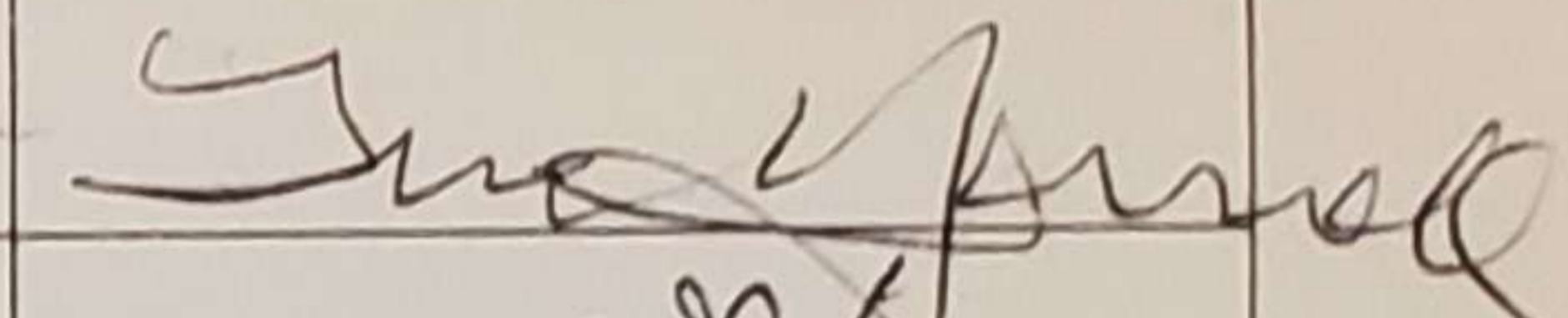
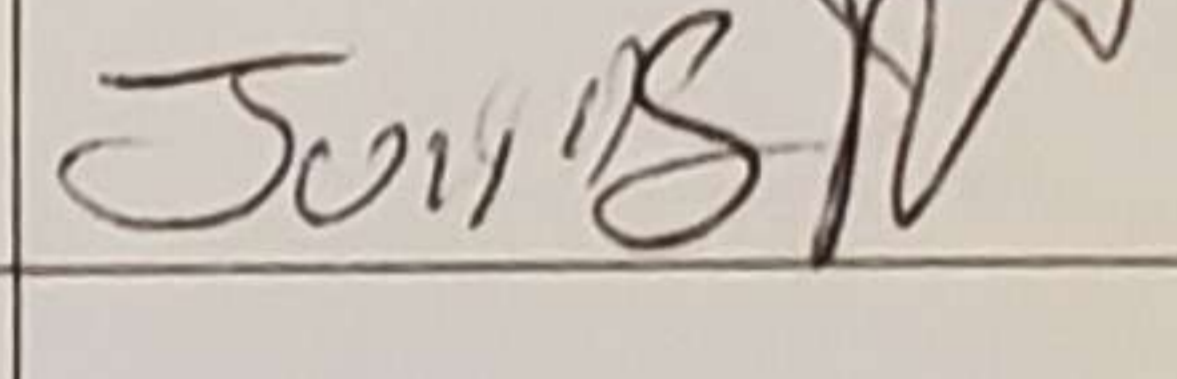
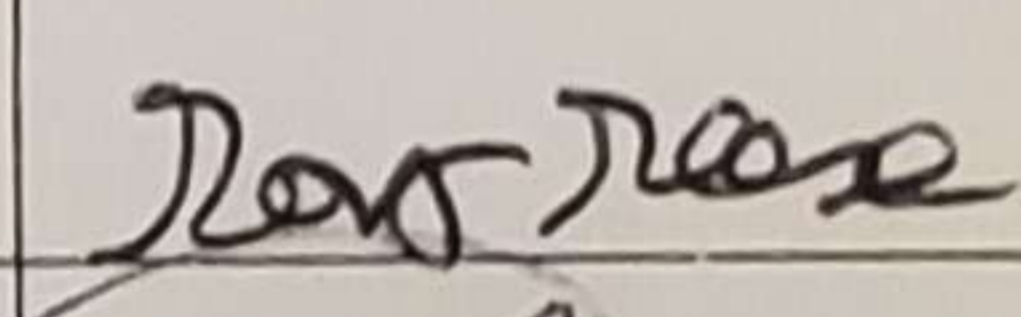
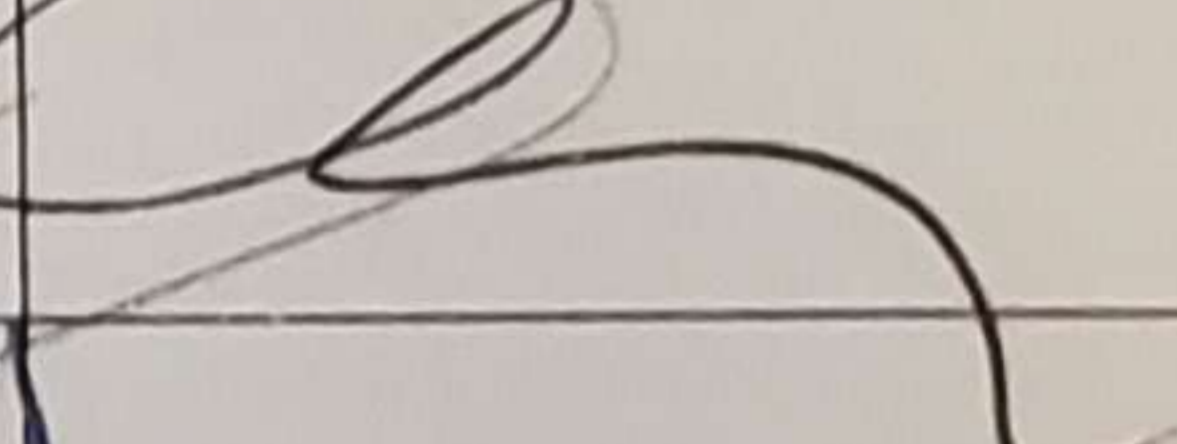
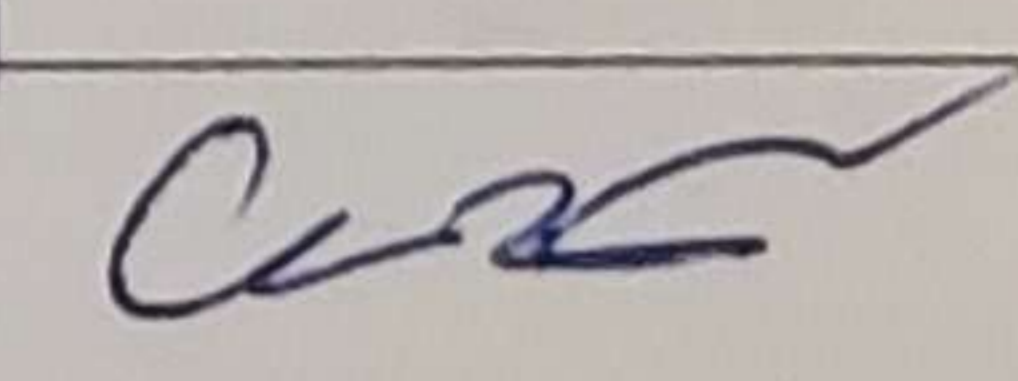
Name

Address

Phone

Sign

169	CHARLY	70 West Point	415) 742-3631	SMALL
170	La Shanda Shambray	1455 LaSalle #218	341-666-3552	Shanda Shambray
171	Kareem Lacayo	818 Hampshire St	415-235-4707	[Signature]
172	Janell Pierre	2500 Arnelius Walker Dr. Apt 327	(415) 756-5805	Janell P
173	Noel Arguello	411 SAN DIEGO AVE	415) 314-5170	Noel Arguello
174	Trevon Nails	25 Latona	416 230 7562	Trevon Nails
175	Jonathan	26a Quesada	(415) 533-6531	[Signature]
176	Rosa Flockard	117 Nautilus Ct.	(415) 336-7387	Rosa
177	Leon McGinnis	130 Kitch rd.	(415) 574-9387	Leon McGinnis
178	Euse Dawson	1543 Shafter Ave	415-822-4421	Euse Dawson
179	Jonathan	1555 Fenwick	415 854-7800	[Signature]
180	Juan Carlos	Costa	415 261 4514	[Signature]
181	EMMA AKINS	1200 Phoebe St		[Signature]

	Name	Phone Number	Address	Signature
182	Willie J. Mathis	364 E. Poy St SF CA 94124	415-513-2813	
183	Bryson Kelley	Holizars St SF CA 94124	(415) 724-1499	
184	Egar	Micest	(415) 932-9098	
185	Klara S.	387 Eddy St SFOA	415 802 5975	
186	T. Roxas	1221 Newhall St SF	415 505-2383	
187	M. Perry	1089 Gilman	415-933-21847	
188	V. Fisher	32 W. Meade		
189	Tim Harnell	425-545 7404	36 Dedman St	
190	Julius Navito	415 571-1754	725 Hillside Blvd	
191	Ross Reese	415 574-5355	9 Northridge	
192	Steve Green	415-305 5709	7 Gamere St	
193	Belinda T	1500 Amelia Ave	415 706-2857	
194	Cassandra	(415) 944-9867		

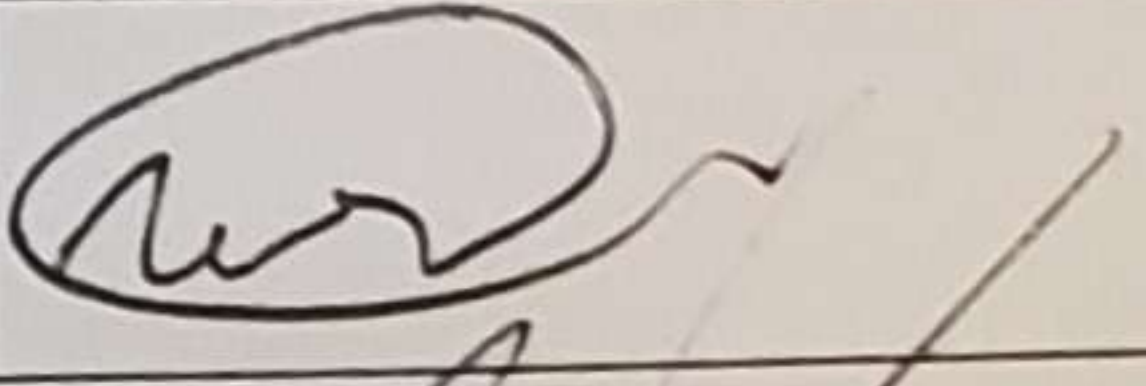
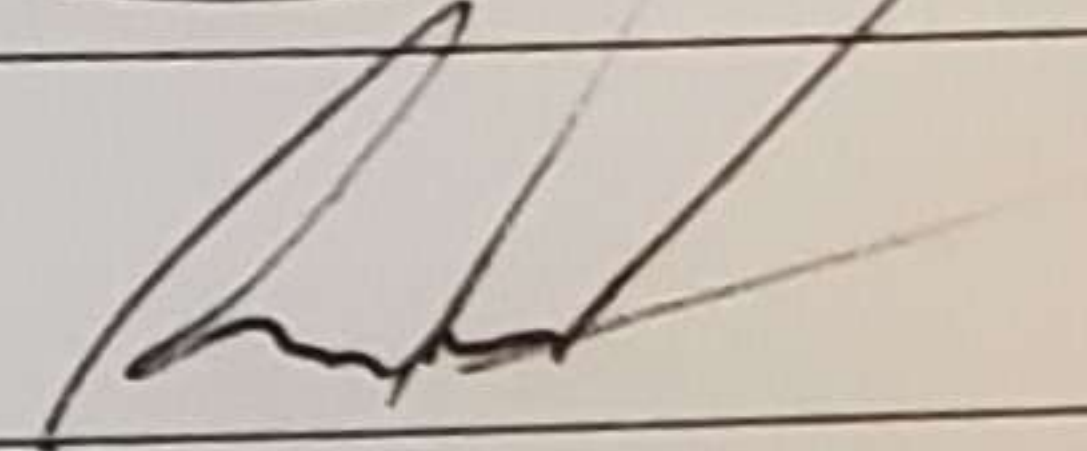
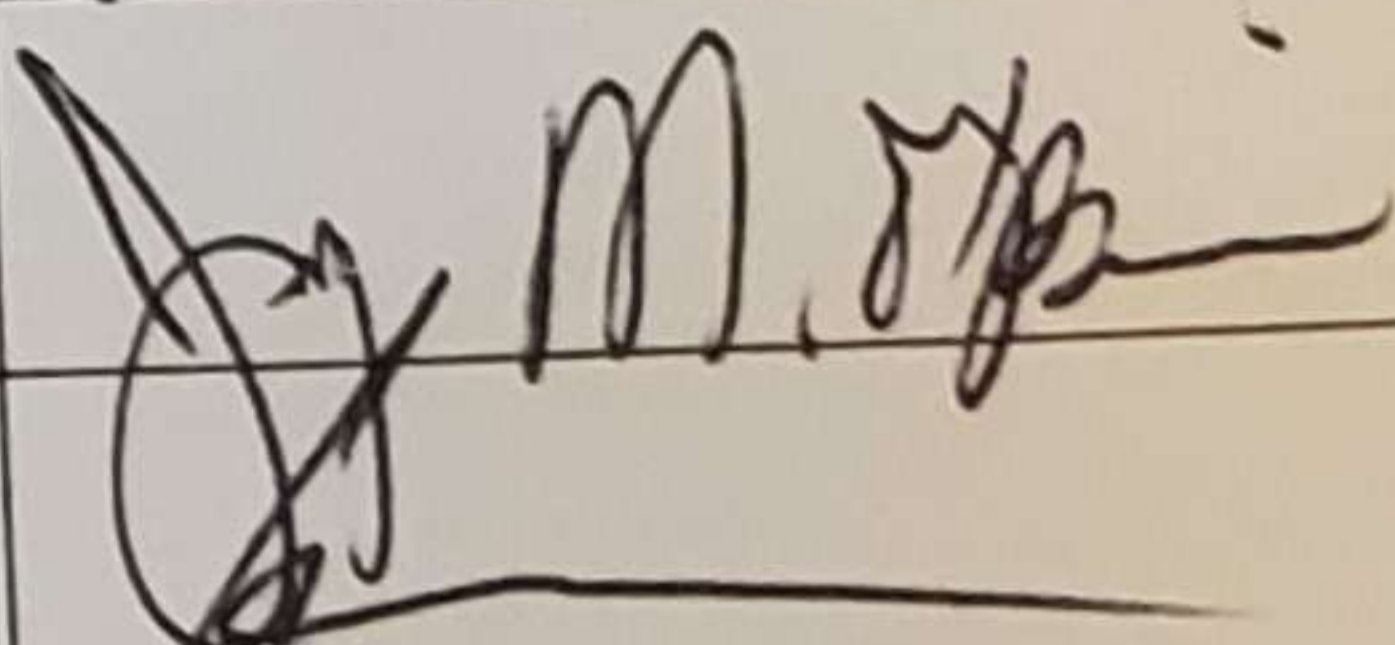
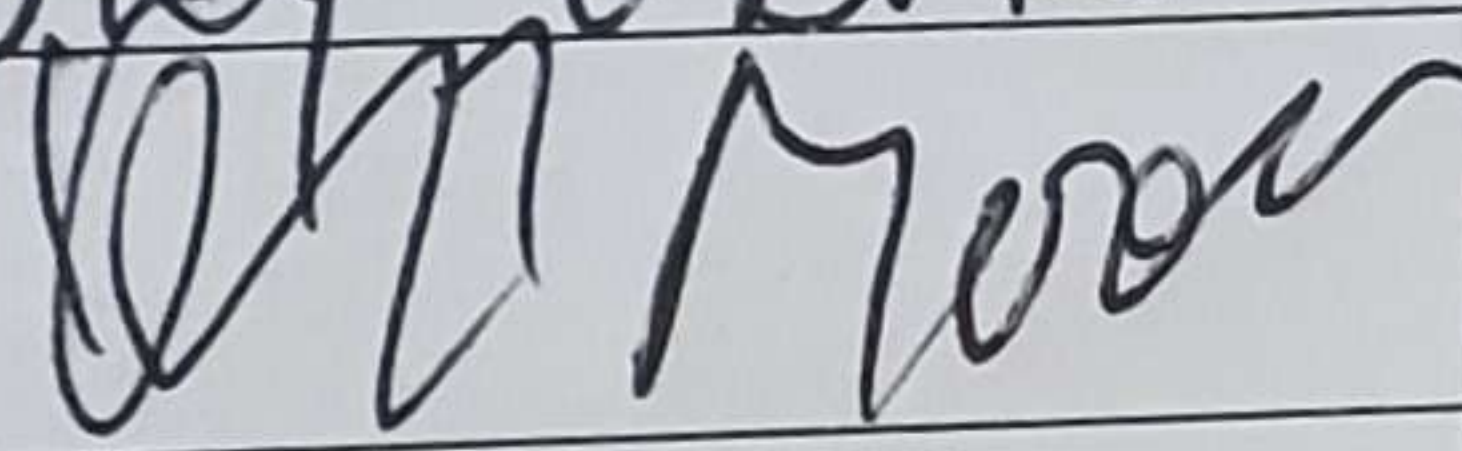
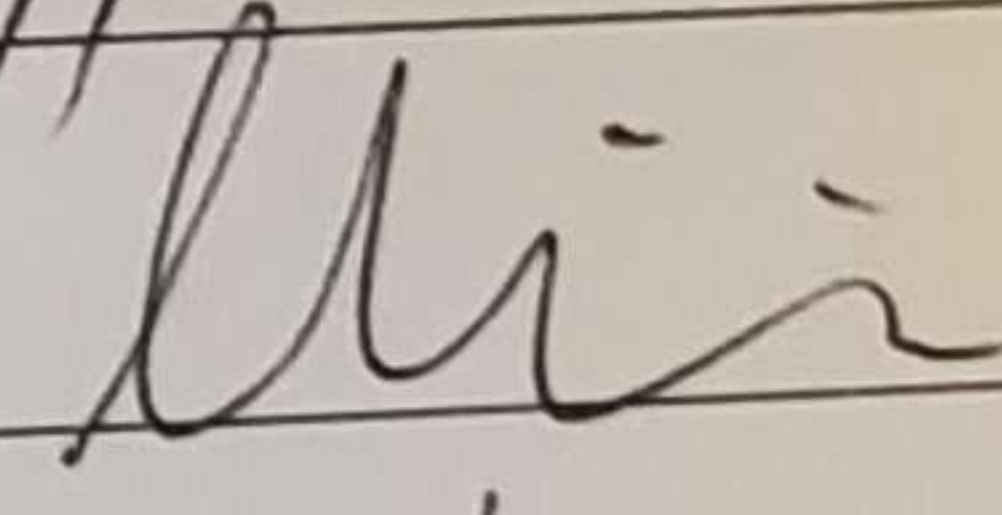
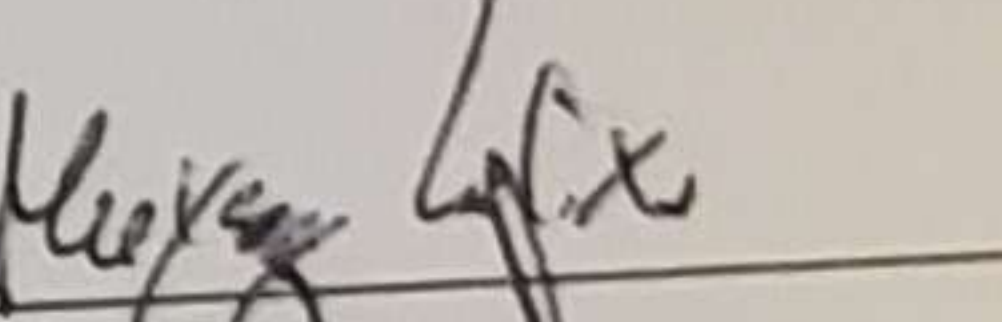
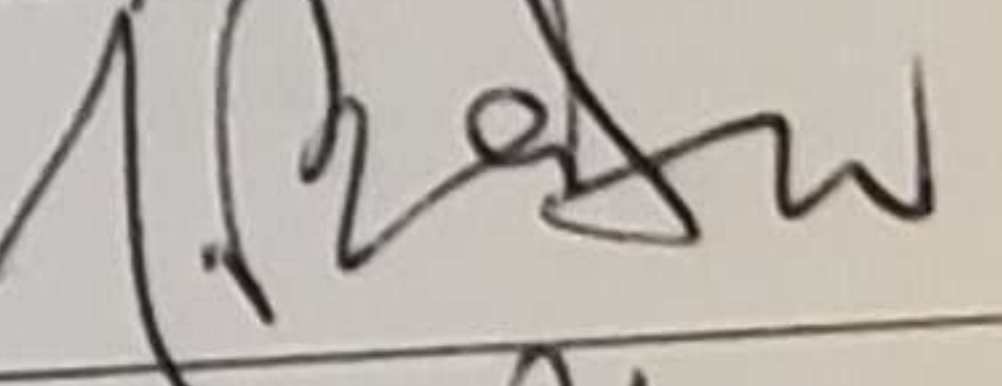
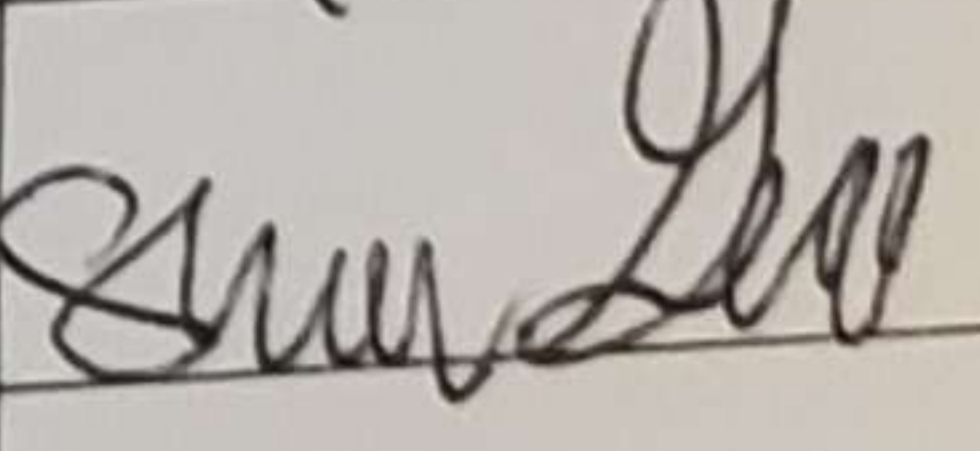
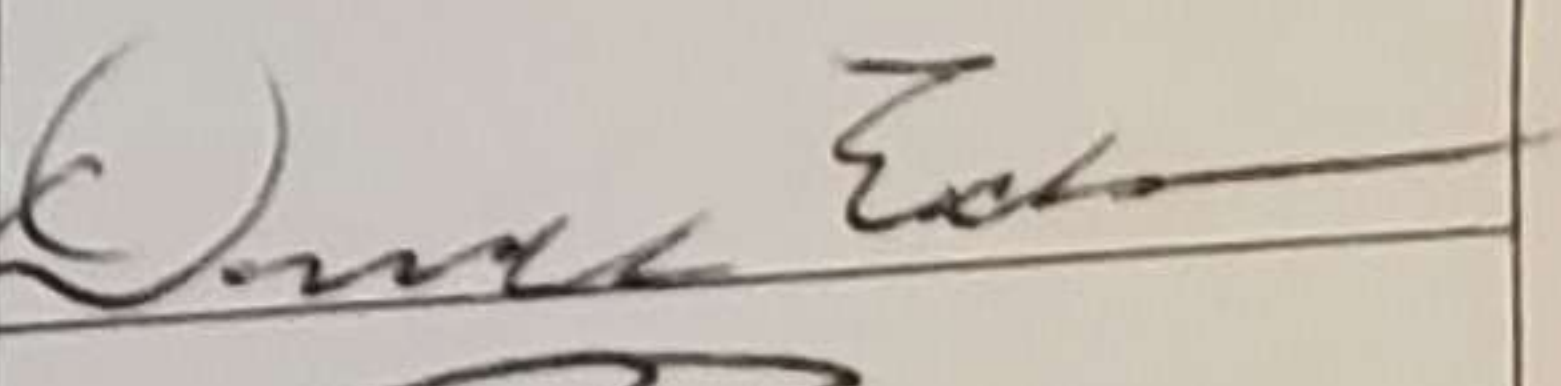
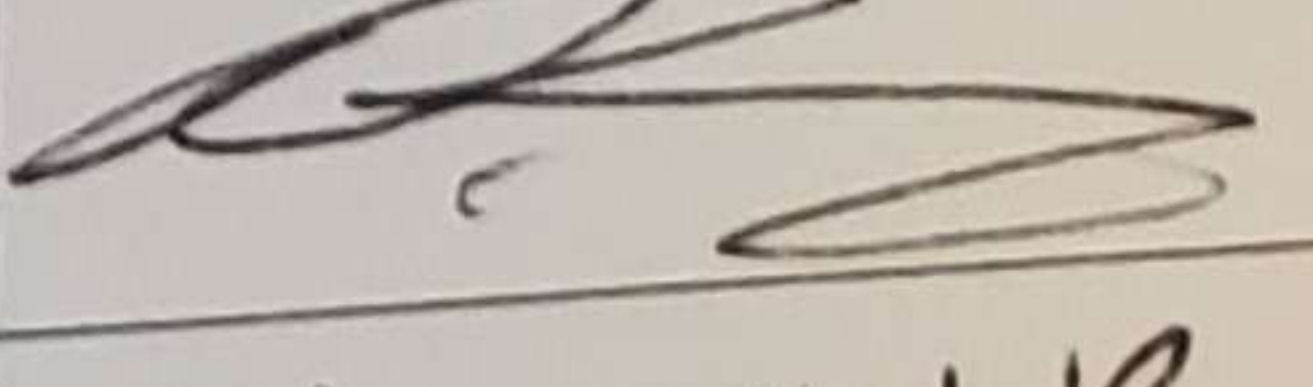
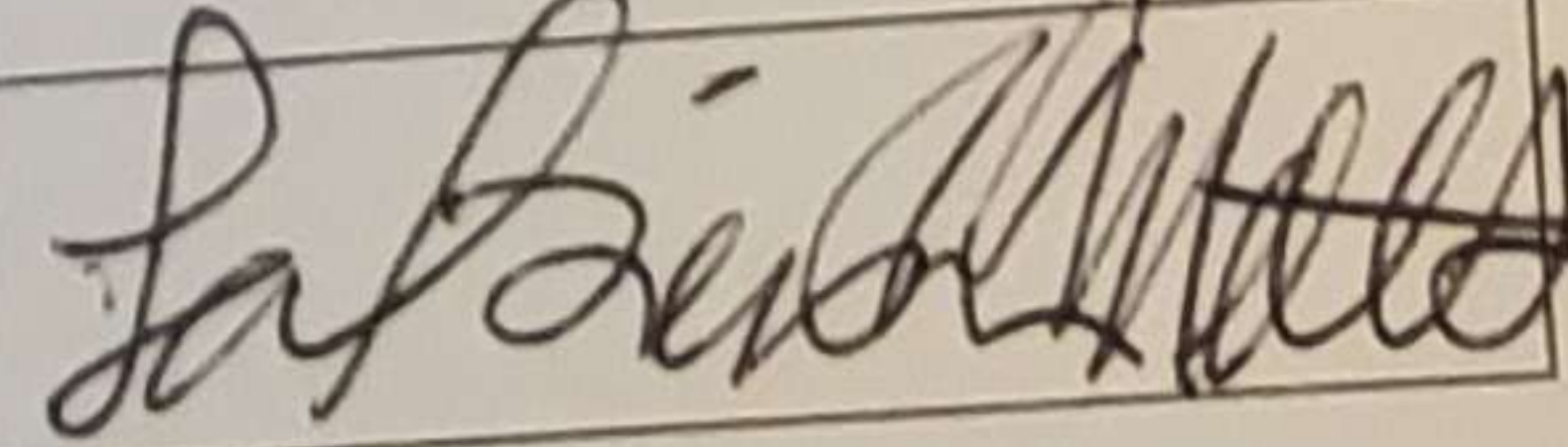
	Name	Phone Number	Address	Signature
195	Jordan N.S	415-942-3371	5880 3rd St SF, CA	Jordan N.S
196	Dezinger R	415 619 8591	770 Jerr old #10	Dezinger R
197	Kayna Fath	415 435 5875	15 Ullman #12	Kayna Fath
198	VONNA COBB	510 200 2428	136 KISKU R	VONNA COBB
199	Raymond	415 879 3674	240 Schurien	Raymond
200	Keisha Garcia	510-435-4621	2620 Oakdale	Keisha
201	Jimmy Woods	925-439-4968	1098 Polow AVE	Jimmy Woods
202	Jimmy Presti	2	255 Fremont St	Jimmy Presti
203	Walt	415 722 8899	1407 Oakdale Ave	Walt
204	Shannon Clark	510 692-2 652	1558 Shafter Ave	Shannon Clark
205	Samuel Johnson			Samuel Johnson
206	Wileen Hunter	415 410 9158	1571 CARROLL ST	WILIE HUNTER
207	Stephanie	510-485-6363	40 OUSALE S.F.	Stephanie

	Name	Address	Phone	Sign
208	Paul Galt	2125 24th St		
209	William Harper	2111 Jennings	415-822-7833	
210	Nicholas Buckley	2111 Jennings St		
211	Mike Harper	2111 Jennings St.	415-675-4583	
212	Greg Lovel	Homeless		
213	Greg Lovel	Homeless		
214	Jennar			
215	Kerry Harris	1791 Carroll Ave #324		
216	James Mack	491 31st Ave #406		
217	Demetrius Young	2111 Jennings St #9121		
218	Phillip Brown	2111 Jennings		
219	Larry Foster			
220	Phill	B2 North 1	415 875-0563	

	Name	Address	Phone #	Sign
221	Jennifer	631 Falor	415 767-8403	Jennifer
222	John	Homeless	_____	_____
223	Bill T	8175 Newcomb	_____	Bill
224	Sam L	1463 McKinnon	_____	Sam L
225	Sally	_____	_____	_____
226	Stephanie	_____	_____	_____
227	Berry Swalls	2785 Weaver	671-1-500	Berry
228	Grady B	2785 Maddox	_____	Grady B
229	R	189 Topeka	_____	R
230	Jane R	2111 Jenner	671-8200	Jane R
231	Rebecca	214 Jenner	_____	Rebecca
232	Hall Mason	2111 Te	767-4280	Hall Mason
233				

	Name	Phone Address Number	Address	Signature
234	Jessica Kramer	(415) 573-8079	1412 Hudson Ave. #1	J. E.
235	Kookie Freeman	510 692-2988	318 105 th Ave Apt 2	[Signature]
236	TeMon Howard	415 988 3319	14 Las Villas Ct Sect	[Signature]
237	Asmire Ephraim	415 745 0425	1203 Egbert Ave	[Signature]
238	Nicole Dacyr	415-532-9068	1388 Shafter Ave	[Signature]
239	Daniel Jones	415 374 1503	935 Ellsworth	[Signature]
240	P. Muth	415 637 5210	Lassalle	[Signature]
241	Betty Sataraka	415-756-7627	1183 Oakdale Ave	[Signature]
242	Tougata Taliaoa	415-377-8056	100 Hawthorn Dr	[Signature]
243	Leanne West	415-240-8810	816 Hawthorne	[Signature]
244	Grace Jones	415 368-2471	41 Osceola Ln	[Signature]
245	Yaqub	415-470-7471	1515 Shafter	[Signature]
246	Carden Butler	415-374-6827	19 Earlington #206	[Signature]

	Name	Phone Number	Address	Signature
247	Shakbha J.	341-529-7186	18 Harbor Rd	
248	Natena Brown	707-209-8880		
249	MAJJA AKIL	(415) 684-0047	WESTBROOK CT.	
250	Angey Gully	(15) 933 4711	42363 _x	
251	Calisto Anhe	415 504 4655	4770m	
252	Andrew T.	415-504-5145	454 Page St.	
253	Andrew L.-S.	(608) 280-8770		
254	Ramona	415 972 9471		
255	Travis Lane	925 287 1887	588 MISSION BAY BLVD	
256	Kareem	N/A	1089 Palou	
257	Edu Mims	415 822 2254	137 Nautilus Dr.	
258	Chamika Silu	415-822-2284	137 Nautilus Ct	
259	Isaac Probst	(415) 240-5352	1250 Shafter	

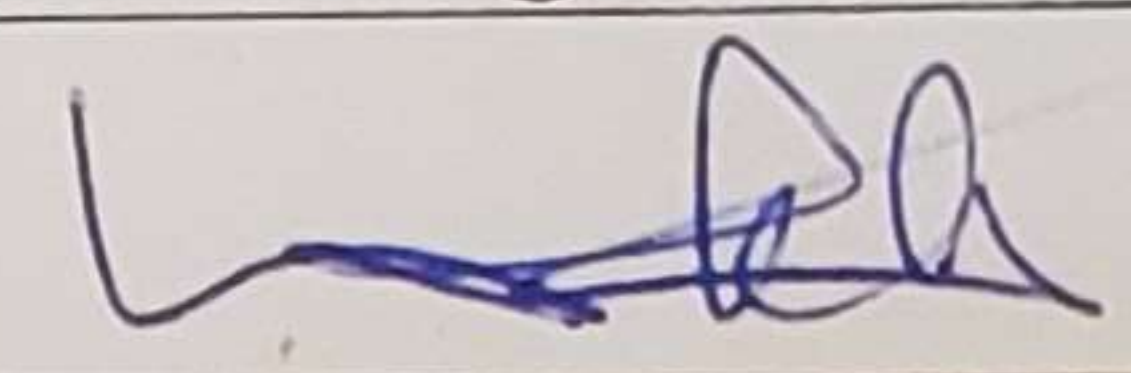
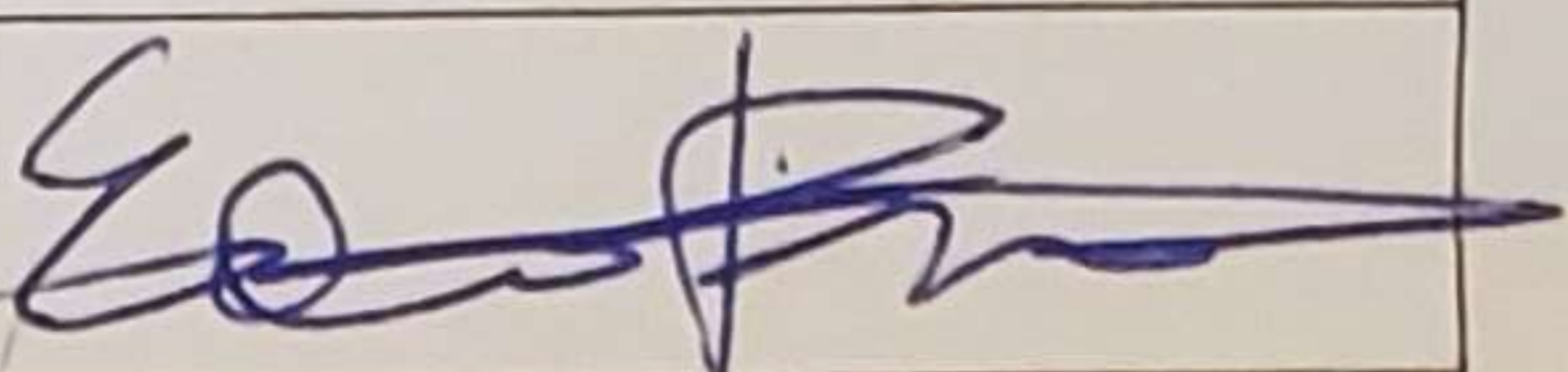
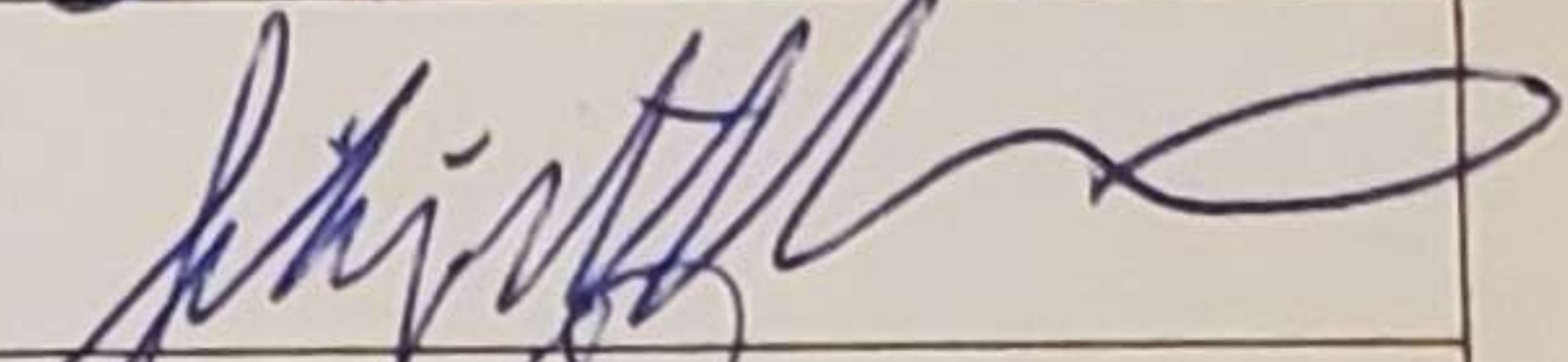
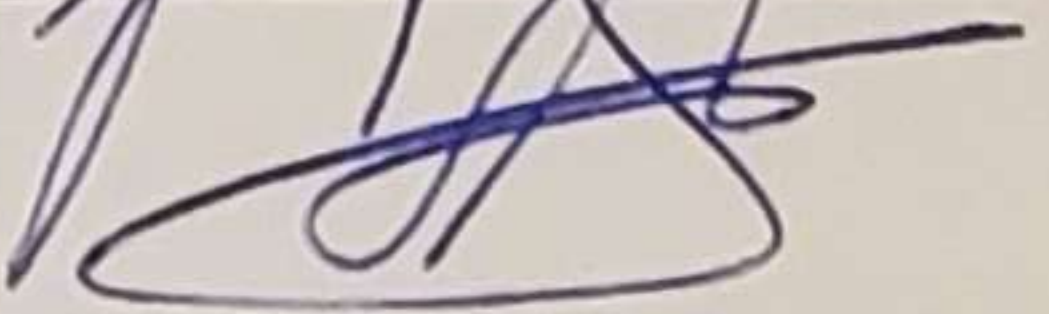
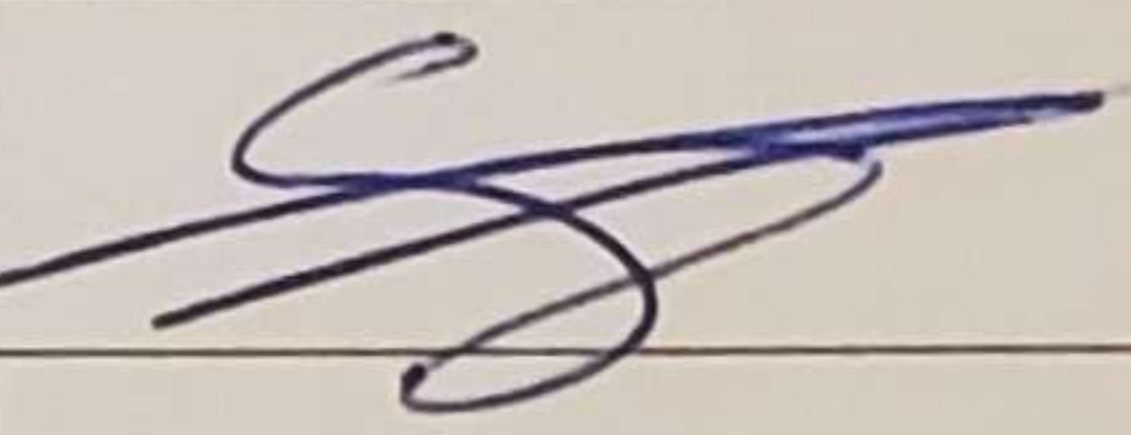

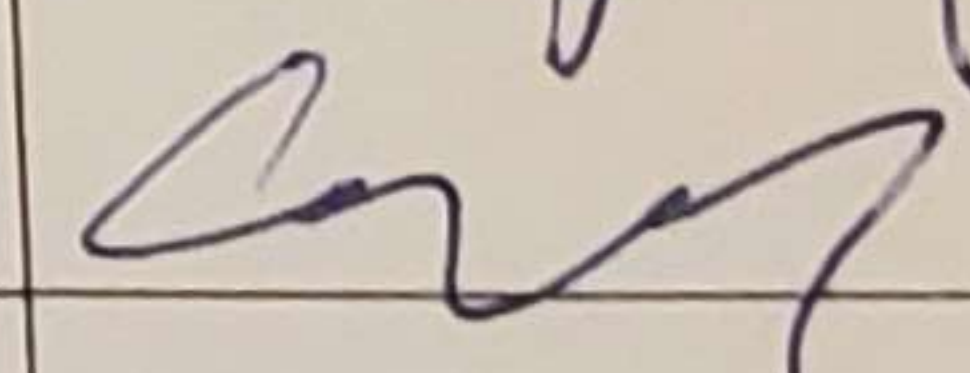
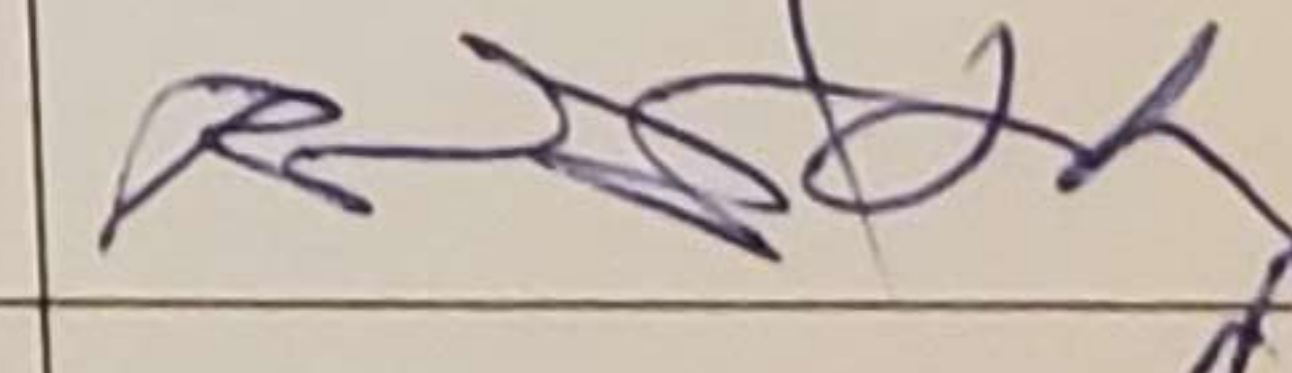
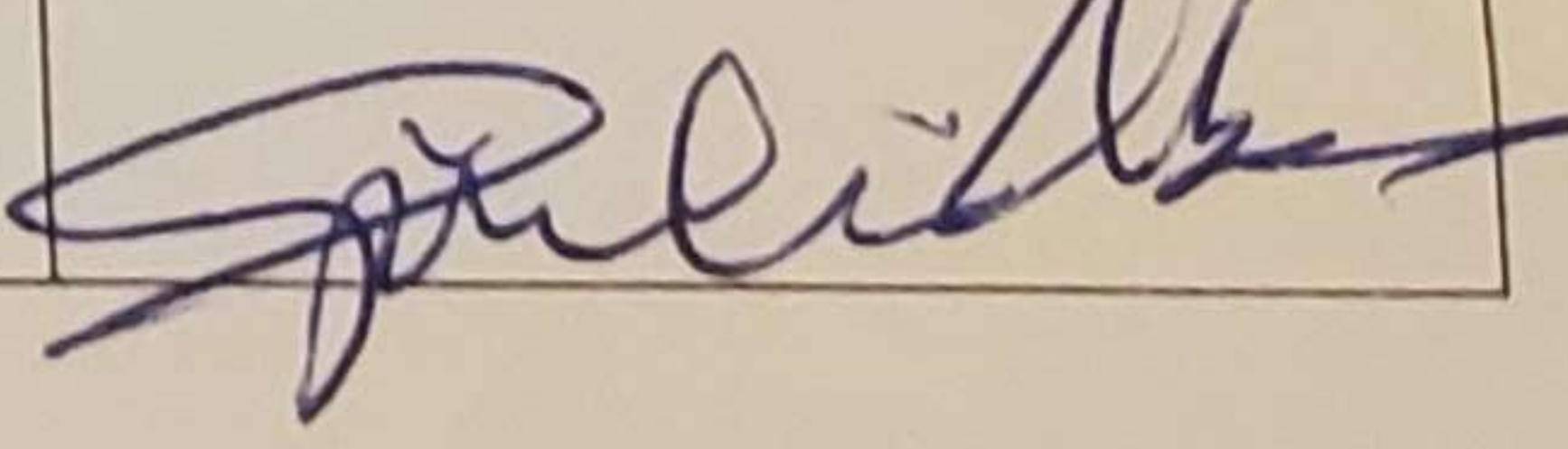
	Name	Phone Number	Address	Signature
260	CURTIS PARKER	510-878-1862	1334 HOBKENT AVE	Curtis Parker
261	EMMANUEL RYAN JESSOP	415-530-7615	1370 PEUERE AVE	
262	Clair Vincent	510 843-9382	1616 Palatine San Fran	
263	Joy O'Brien	415-462-7600	NSA	
264	 W. Moore	415 675-6712		
265	Moses Mikao	408-593-7276	8846 Cassiopeia Way	
266	Muyon Colix	415-913-9373		
267	T. Bartholomew	415 5711523	1455 BRANCKFORD AVE	
268	Shawn GM	415 996 5956	1266 Shelter Ave	
269	Darrell Edmonds	415 570-3593	1227 Hampshire St	
270	Melinda Burns	415 812 9964	76 Hullsonct. SF ca.	
271	CHARITY BEFFAD	415 860-0550	768 Jerrald Ave	Charity B.
272	Lakeisha M	(415) 678-6315	100 Secola Lane	

	Name	Phone Number	Address	Signature
273	Mahhi Powell	626 529 8161	1300 Ebbett Ave	MP
274	Charles A	650-501-2433		Imagdon
275	A. Lynn	415 879 2286	6000	A. Lynn
276	Walter	NYA		
277	Brandon Leon	415 951-1281	1625 Eddy St 412	
278	Heaven Askew	(415) 939-6057	47 Baldwin Ct	
279	Tenisha Frazier	428 786 0211	90 Ardath Ct	Musky
280	LaChandra	(415) 960-5581	72 Westbrook	
281	Diane Vines	415-876-9148	138 Kiska rd	Levi
282	Miguel	415-570-1297	1423 Underwood	
283	Leonard T	415-768-9437	602 Alimony Blvd	
284	LaRaph L.	415) 756-1825	80 Cashmere	Katey L.
285	Lamont M.	415) 484-7235	1713 Newcomb	Lamont

	Name	Phone Number	Address	Signature
286	Chaka Cobb	628-288-0619	80 Osceola Ln	
287	Robt. Carr	415, 879 574	6019 3rd St	
288	Michael Jettan	415 933 7087	722 Rowell	
289	Smith Melli	415-879-1358	640 Larchway	Multitudo
290	Dee Wainwright	415-541-5500	1438 Underwood	
291	Arthur Elton	N/A	252 Forest Ave	
292	Loeshe Smith	413 290 6341	1408 Shaker	Loeshe Smith
293	Terry Earl	415 280-0919	1020 Inacs	
294	Arde Harlow	415-400-9062		
295	Dime Crowder	(415) 330-1900	13366 Van Dyke	
296	Derrick Shaw	(415) 428-8021	1475 Revere Ave	
297	Ermany Johnson	(415) 306-4273	1024 Mendell St	
298	Shawn Thompson	(415) 697-6497	1440 Mission	

Rickey Smith 415 374-4333 48 Harbor Rd

Rayna 823 (415) 583-1231 2600 Avenida Walker Dr. St. CB 94124

	Full Name	Phone Number	Address	Signature
1	Sabrina K Hall	415-637-8468	2055 Palou Ave	
2	EDUARDO FRANQUINI	415-347-3156	2500 Arellano ^{#409} Walker	
3	DROMY	415-886-4623	4913	DROMY
4	Samantha Bennett	415-286-4623	4913 Wagon Peak	Samantha Bennett
5	Schmyreida Williams	415 685 1051	15 Kiske Road	
6	Andres Hortado	628 220 9117	5538 3RD st	
7	Montay Williams	415-734-7221	50 Pear don	
8	WILLIE HOWEN	415-410-6763	78 Montalge rd	
9	IVAN W JACOBK	415-966-5324	1246 Daresada Ave	Ivan W. Jacobk
10	ANNINS	402 8-628-0685	1075 Oak Lake	
11	Beasley Jay	415 336 4552	223 rever st	
12	Gutiérrez	415 375-2724	1430 Oakdale	

	Name	address	Phone	Sign
117	ZEE SHAN.	5165 THIRD STREET	415-606-6339	Zee Shan
118	Jimmy Davis	1594 Thomas ave	(415)-201-4387	Jimmy Davis
119	Monique Harmon	1661 Palau Ave	415-871-4704	Monique Harmon
120	Frank Lee	1094 - bilman	415-933-5250	Frank Lee
121	Calvin Davis	1542 Underwood Ave	415 385 5918	Calvin Davis
122	Elder Aguilera	165 Minerva St	415 412 3106	Elder
123	DUKE BRYANT	680 INDIAN AVE	415 572-8937	Duke Bryant
124	R. Thomas	1555 - Thomas Ave	415-570-1847	R. Thomas
125	Wade	Thomas		
126	Acovene	Acovene	415 - 940-1338	Acovene
127	Marcus Parker	28 Dedman Ct	415-426-0260	Marcus Parker
128	Kenia	Palu	415-261-1903	Kenia Romero
129	Sherrel McGillberg	32 Harbor Road SF, CA 94124	(415) 524-5594	Sherrel McGillberg