

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

Appeal of  
TOBACCO BARN, \_\_\_\_\_ )  
Appellant(s) )  
vs. )  
DEPARTMENT OF PUBLIC HEALTH, \_\_\_\_\_ )  
Respondent )

Appeal No. **22-020**

**NOTICE OF APPEAL**

**NOTICE IS HEREBY GIVEN THAT** on March 21, 2022, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on March 8, 2022, of a DPH Director's Hearing Order (SUSPENSION of Retail Tobacco Permit No. T-75812 for thirty-five days due to the sale of tobacco to minors) at 733 Polk Street.

**DPH Hearing Case Number SMK-22-01**

**FOR HEARING ON May 11, 2022**

Address of Appellant(s):

Address of Other Parties:

Tobacco Barn, Appellant(s) c/o Rashid Aboud, Agent for Appellant(s) 733 Polk Street San Francisco, CA 94109	N/A
--	-----



Date Filed:

BOARD OF APPEALS

MAR 21 2022

APPEAL # 22-020

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

**PRELIMINARY STATEMENT FOR APPEAL NO.**

I / We, **Tobacco Barn**, hereby appeal the following departmental action: **ISSUANCE** of Suspension of a **Tobacco Sales Establishment Hearing Case Number SMK-22-01** by the **Department of Public Health** which was issued or became effective on: **March 8, 2022**, or the property located at: **733 Polk 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 **April 21, 2022, (no later than three Thursdays prior to the hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org), [valerie.lopez@sfcityatty.org](mailto:valerie.lopez@sfcityatty.org)

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **May 5, 2022, (no later than one Thursday prior to hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be doubled-spaced with a minimum 12-point font. An electronic copy shall be emailed to: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org), [rashidaboud@yahoo.com](mailto:rashidaboud@yahoo.com)

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

Hearing Date: **Wednesday, May 11, 2022, 5:00 p.m., in Room 416 of SF City Hall, 1 Dr. Carlton B. Goodlett Place**. The parties may also attend remotely via Zoom. Information for access to the hearing will be provided before the hearing date.

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

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

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

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

35 days is to long for my business to survive.

Appellant or Agent:

Signature:

Print Name:

*[Handwritten Signature]*  
Rashid Aboud



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

# San Francisco Department of Public Health

Grant Colfax, M.D.  
Director of Health

BOARD OF APPEALS

MAR 21 2022

APPEAL # 22-0220

## Director's Hearing Order

March 8, 2022

DBA: Tobacco Barn

Legal Owner: MSN Retail Corporation

Address: 733 Polk Street  
San Francisco, CA 94109

Responsible Party: MSN Retail Corporation

Hearing Date: February 17, 2022

Hearing Case Number: SMK-22-01

Dear MSN Retail Corporation:

Environmental Health issued a Notice of Initial Determination on December 21, 2021. Additionally, on December 29, 2021, you submitted a written request to attend the San Francisco Department of Public Health (SFDPH) Director Hearing, signed by you and dated December 29, 2021. On February 17, 2022, at 1:45 pm, the SFDPH Director's Hearing was held through a Microsoft Teams Meeting, where you were present during the meeting through an audio line. After reviewing the Notice of Initial Determination and evidence presented 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 and presented at the hearing.
3. That, given your admission that you sold cigarettes to a minor, the findings stated in the Notice of Initial Determination are uncontested and true.
4. That you elected to implement one permit suspension reduction strategy (age verification scanner) to prevent future sales to minors.

Therefore, THE DIRECTOR HEREBY **ORDERS:**

1. That, as authorized by SFHC Article 19H.14. CONDUCT VIOLATING CALIFORNIA PENAL CODE SECTION 308 (PROHIBITING THE SALE OF TOBACCO TO MINORS), your Retail Tobacco Permit # T-75812 shall be suspended with no tobacco sales for thirty-five days, beginning no later than 15 calendar days from the effective date of this Order.
2. That you shall not begin serving the suspension period until the Inspector post the Notice of Suspension at your business establishment, including the suspension period start and end date.
3. That, upon suspension, you shall cease sales of and remove from the shelves tobacco products including, but not limited to, cigarettes, cigars, cigarillos, electronic smoking devices, liquids that are intended to be vaporized by electronic smoking devices, smokeless tobacco, hookah tobacco shisha, blunts, and any product containing tobacco or nicotine during the suspension period.

**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

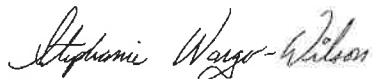
grant.colfax@sfdph.org ♦ (415) 554-2526 ♦ 101 Grove Street, Room 308, San Francisco, CA 94102

4. That, upon suspension, the business may continue to sell non-tobacco herbal hookah shisha, matches, paper wrappers, cases for cigars or cigarettes, ashtrays, tongs, charcoals, and other accessories that do not contain tobacco or nicotine.
5. That, failure to comply as ordered may result in one or a combination of the following:
  - a. The increase of your suspension period up to the maximum time period pursuant to Section 19H.19;
  - b. The addition of an administrative penalty of up to five hundred dollars (\$500.00) pursuant to Section 19H.20; and/or
  - c. A referral to the City Attorney's Office with a request to file an injunctive action against you pursuant to Sections 19H.17(c) and (d); 19H.18(c); and 19H.25.
6. That future reoccurrence of Tobacco Product sales to persons under 21 years of age will result in the suspension of your Tobacco Sale Permit for a minimum of 60 days to a maximum of 180 days.
7. That the suspension reduction strategies shall remain in effect permanently for the life of your Tobacco Sale Permit.
8. That you shall not receive the option of other permit suspension reduction strategies not used if found with a reoccurrence of a sale to a person under 21 years of age within 12 months from the date this Notice is received and the mitigation strategies implemented shall not be available in the future to reduce a permit suspension period.
9. That you may appeal this Order through the Board of Appeals located at 49 South Van Ness Ave, Suite 1475 (14<sup>th</sup> Floor), San Francisco, CA 94103, (628) 652-1150, as prescribed in Article 1 of the San Francisco Business and Tax Regulation Code.
10. That if a notice to appeal this Order is not filed within 15 calendar days of the effective date of this Order, the decision to suspend your permit shall be deemed final and the Inspector shall post the Notice of Suspension inside of your establishment in a conspicuous location visible to the public at all times.

The foregoing 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.

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

Sincerely,



Hearing Officer

San Francisco Department of Public Health

Date: 3/3/2022

BOARD OF APPEALS

MAR 21 2022

APPEAL # 22-020

**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 le puede ayudar. Para obtener ayuda gratis, llame al Departamento de Salud Pública al (415) 252-3800.

APPELLANT(S) DID NOT SUBMIT A BRIEF

**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  
3 HENRY LIFTON, State Bar #319005  
Deputy City Attorneys  
4 Fox Plaza  
1390 Market Street, 5th Floor  
5 San Francisco, California 94102-5408  
Telephone: (415) 554-3915  
6 E-Mail: henry.lifton@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  
12

13 TOBACCO BARN,

14 Appellant,

15 vs.

16 DEPARTMENT OF PUBLIC HEALTH,

17 Respondent.  
18

Appeal No. 22-020

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

Hearing Date: May 11, 2022

Time: 5:00 p.m.

Place: City Hall, Room 416  
1 Dr. Carlton B. Goodlett Place,  
San Francisco, CA 94102

19  
20  
21 **INTRODUCTION**

22 Tobacco use is the leading cause of preventable death in the United States and a large majority  
23 of adult smokers begin smoking before they turn 21. (*See* S.F. Health Code § 19P.1.) Easy access to  
24 retail tobacco is a contributing factor to youth smoking rates. Accordingly, preventing the sale of  
25 tobacco products to San Franciscans under 21 years of age (“under age”) is one of the Department of  
26 Public Health’s (“Department”) strategies to reduce the adverse health effects of tobacco-related  
27 diseases in San Francisco.  
28

1 In the instant appeal, employees at MSN Retail Corporation dba Tobacco Barn (“Appellant”),  
2 located at 733 Polk Street, San Francisco, California 94109, sold a pack of cigarettes to an underage  
3 person on two separate occasions. The San Francisco Police Department (“SFPD”) cited Appellant’s  
4 employee on the first occasion and its owner on the second occasion for violating California Penal  
5 Code section 308(a)(1) (selling tobacco to a person under 21 years of age), a misdemeanor. As a  
6 result, the Director of the Department imposed a forty-day suspension on Appellant’s tobacco sales  
7 permit, which was reduced to thirty-five days because Appellant agreed to a five-day suspension  
8 reduction strategy.

9 Following a Director’s hearing, the Director’s hearing officer upheld Appellant’s thirty-five-  
10 day suspension based on Appellant’s admission that its owner sold cigarettes to a minor and that  
11 Appellant agreed to implement only one suspension reduction strategy. Appellant now appeals the  
12 Director’s Order of March 8, 2022.

### 13 **BACKGROUND**

14 On December 14, 2019, SFPD officers participated in an underage decoy operation at Tobacco  
15 Barn located at 733 Polk Street and cited Appellant’s employee for violating Penal Code section  
16 308(a)(1) (selling tobacco to a person under 21 years of age). On December 20, 2019, Department  
17 Inspector Alvin Dang conducted an inspection of Appellant in response to a complaint that an  
18 employee was cited by the SFPD for selling a pack of cigarettes to a person under age. (Declaration of  
19 Inspector Janine Young in Support of Respondent DPH’s Opposition Brief [hereinafter “Young  
20 Decl.”], ¶ 9, Ex. F.)

21 Appellant’s representative signed a compliance agreement, which would allow Appellant to  
22 reduce its suspension by implementing strategies to prevent repeat violations. Appellant ultimately  
23 agreed to conduct employee training and remove all visible tobacco advertisements, which entitled  
24 Appellant to a 15-day suspension reduction. (*Ibid.*) Appellant’s representative signed and  
25 acknowledged the compliance agreement indicating that the strategies Appellant implemented reduced  
26 its 20-day suspension to five days and waived its right to a hearing. (*Id.* ¶ 10, Ex. F.)

27 On November 28, 2021, SFPD Sergeant (then Officer) Michele Martinez participated in a  
28 decoy operation at Tobacco Barn located at 733 Polk Street. (Declaration of Sergeant Michele A.



1 Martinez in Support of Respondent DPH’s Opposition to Tobacco Barn’s Appeal [hereinafter  
2 “Martinez Decl.”], ¶ 4, Ex. A.) Officer Martinez used a decoy who was 17 years old, which Officer  
3 Martinez verbally verified and checked her California Driver’s License. (*Id.* ¶ 6.)

4 Officer Martinez observed the decoy enter Tobacco Barn and listened as the decoy engaged  
5 Appellant’s owner, Rashid Aref Aboud (“owner”). (*Id.* ¶ 7.) Officer Martinez continued to listen as  
6 the decoy asked the owner for a box of Marlboro cigarettes. (*Ibid.*) The decoy exited the store,  
7 handed Officer Martinez change for the marked City funds and a pack of Marlboro cigarettes. The  
8 decoy told Officer Martinez that she was not asked by the owner for identification. (*Id.* ¶ 8.)  
9 Immediately thereafter, Officer Martinez entered the Tobacco Barn with Officer Tyler and cited the  
10 owner for violating Penal Code section 308(a)(1) (selling tobacco to a person under 21 years of age), a  
11 misdemeanor. (*Id.* ¶ 9.)

12 On December 17, 2021, the Department’s Inspector, Janine Young, conducted an inspection of  
13 Tobacco Barn based on Sergeant Martinez’s incident report. (Young Decl. ¶ 3, Ex. A.) During the  
14 inspection, Inspector Young discussed the importance of checking identification cards for anyone that  
15 appeared to be under 27 years of age and provided Appellant with an informational booklet on the  
16 responsibilities of a tobacco retail license holder and a copy of the Departments compliance  
17 agreement. (*Id.* ¶¶ 3–4, 6, Ex. B, D.) The owner did not dispute that he sold cigarettes to a person  
18 under age. (*Id.* ¶ 3.)

19 Based on the SFPD incident report and because the owner did not dispute that he sold  
20 cigarettes to an underage individual, Inspector Young issued Appellant a notice of violation. (*Ibid.*,  
21 Ex. A.) Because Appellant violated Article 19H of the Health Code for a second time more than a  
22 year after the initial violation, the Department’s rules and regulations required the Department to  
23 impose a 40-day suspension on Appellant. Inspector Young offered Appellant the opportunity to  
24 further reduce its suspension and Appellant agreed to install an age verification device for a five-day  
25 suspension reduction. (*Id.* ¶¶ 6–7, Ex. D.) Appellant chose not to cover all tobacco products with  
26 permanently installed opaque covering, which would have resulted in an additional 10-day suspension  
27 reduction. (*Id.*, Ex. D.)

1 Appellant requested a Director’s hearing (*id.* ¶ 11, Ex. G), and on February 17, 2022, the  
2 hearing officer, acting under the Director’s authority, held a hearing on the notice of violation and  
3 resulting thirty-five-day suspension of Appellant’s tobacco sales permit, (*id.* ¶ 12, Ex. H.) The hearing  
4 officer determined that Appellant violated Section 19H.14 of the Health Code by selling a tobacco  
5 product to a person under age. (*Ibid.*) The hearing officer upheld the thirty-five-day suspension of  
6 Appellant’s tobacco sales permit under Health Code sections 19H.14 and 19H.19. (*Ibid.*)

## 7 ARGUMENT

8 Appellant declined to file a brief and offers only the following rationale in its Preliminary  
9 Statement of Appeal: “35 days is to [sic] long for my business to survive.” (Preliminary Statement of  
10 Appeal, p. 2, Mar. 21, 2022.) The Board of Appeal should reject this appeal for two reasons. First,  
11 the Department offered Appellant the opportunity to reduce its suspension and Appellant elected only  
12 one suspension reduction strategy rather than both strategies available to it. Second, Appellant does  
13 not challenge the Director’s authority to issue a suspension or the process the Department followed to  
14 impose such a suspension.

### 15 **I. Appellant’s Claim of Financial Hardship Is Unpersuasive.**

16 Appellant’s claim of financial hardship is unpersuasive for two reasons. First, the Department  
17 previously cited Appellant for violating Health Code section 19H.14, which Appellant did not dispute  
18 and waived its right to hearing. As part of its compliance agreement, the Department notified  
19 Appellant that a future reoccurrence of tobacco product sales to underage persons would result in a  
20 suspension of at least 40 days (for a second violation that occurs more than one year after first  
21 violation) and as high as 180 days (for a fourth violation that occurs within one year of a third  
22 violation). (Young Decl. ¶ 10, Ex. F.) Thus, Appellant had sufficient notice of both the Health Code’s  
23 requirements and the consequences of continuing to violate the Health Code. In fact, as part of its first  
24 iteration of suspension reduction strategies, Appellant represented to the Department that Appellant  
25 trained its employees on state and local tobacco laws. (*Ibid.*)

26 Second, Appellant had the opportunity to reduce its length of suspension by 15 days and chose  
27 to implement only one suspension reduction strategy reducing the suspension by five days. The  
28 Department’s rules and regulations require the Department to impose a 40-day suspension on second

1 time violators where the second violation occurs more than one year after the first violation. (*Id.* ¶ 5,  
2 Ex. C.) The rules and regulations also provide an opportunity to further reduce the suspension if  
3 certain actions are taken by a permittee to prevent future violations and to improve the health of their  
4 community. (*Ibid.*) Permittees can either voluntarily choose to cancel their tobacco sales permit or  
5 permanently implement one or more of the following actions: (a) retrain employees and provide  
6 written document of training to the Department for a five-day suspension reduction; (b) install a  
7 scanner or other age verification device for a five-day suspension reduction; (c) remove all visible  
8 tobacco and electronic cigarette device advertisements for as long as the Permit holder owns the  
9 establishment for a 10-day reduction; or (d) cover all tobacco products and electronic cigarette devices  
10 with permanently installed opaque covering for a 15-day suspension reduction. (*Ibid.*)

11 Because Appellant already trained its employees and removed all displayed tobacco product  
12 advertisements in connection with its first violation, Appellant was eligible only for the five-day  
13 suspension reduction to install an age verification scanner and the 10-day suspension reduction for  
14 covering all tobacco products with permanently installed opaque covering. (*Id.* ¶ 9, Ex. F.) Appellant  
15 chose to install an age verification device. (*Id.* ¶ 8, Ex. E.) Appellant’s claim of hardship is  
16 undermined by the fact that it could have further reduced its suspension by 10 days and chose not to do  
17 so.

18 Allowing Appellant to further reduce its suspension would undermine the Department’s  
19 interest in eliminating underage tobacco sales. This is especially true when the permittee already  
20 violated the same underage prohibition in the past. Reducing the suspension would also create an  
21 unfair business advantage for establishments that comply with the laws.

22 **II. Appellant Does Not Challenge the Department’s Authority to Impose a Suspension**

23 San Francisco Health Code Section 19H.19 authorizes the Department to suspend a permittee’s  
24 tobacco sales permit for 90-days for the first violation within a year. (Health Code § 19H.19.)  
25 Appellant does not challenge the Department’s authority to impose a suspension. Nor does Appellant  
26 argue that the Department otherwise failed to follow the requisite process to impose a suspension.

27 ///

28 ///

1 **CONCLUSION**

2 The Department respectfully requests that the Board of Appeals uphold the Director’s Order of  
3 March 8, 2022, affirming the thirty-five-day suspension of Appellant’s tobacco sales permit at 733  
4 Polk Street, San Francisco, California 94109.

5  
6 Dated: May 5, 2022

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

10  
11 By: /s/ Henry L. Lifton  
12 HENRY L. LIFTON  
13 Deputy City Attorney  
14 Attorneys for Respondent  
15  
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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 May 5, 2022, I served the following document(s):

**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
rashidaboud@yahoo.com	Appellant, Rashid About

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 May 5, 2022, 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 HENRY LIFTON, State Bar #319005  
Deputy City Attorneys  
4 Fox Plaza  
1390 Market Street, 5th Floor  
5 San Francisco, California 94102-5408  
Telephone: (415) 554-3915  
6 E-Mail: henry.lifton@sfcityatty.org

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 TOBACCO BARN,

14 Appellant,

15 vs.

16 DEPARTMENT OF PUBLIC HEALTH,

17 Respondent.

Appeal No. 22-020

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

Hearing Date: May 11, 2022  
Time: 5:00 p.m.  
Place: City Hall, Room 416  
1 Dr. Carlton B. Goodlett Place,  
San Francisco, CA 94102

22 I, JANINE YOUNG, declare as follows:

23 1. I have personal knowledge of the facts set forth herein. If called upon to testify, I could  
24 and would testify competently to the facts contained herein.

25 2. I am an Inspector with the San Francisco Department of Public Health ("Department").  
26 I have held this position for 28 years. Since May 2010, I have worked in the Department's Retail  
27 Tobacco and Smoking Program, where I review and process applications for tobacco sales permits,  
28 and conduct inspections to confirm compliance with Article 19H of the San Francisco Health Code.

1           3.       The Department’s standard protocol is to conduct an inspection at the location either by  
2 appointment or unannounced. An inspection of Appellant’s Tobacco Barn located at 733 Polk Street  
3 was conducted unannounced on December 17, 2021 (“inspection”). I conducted the inspection in  
4 response to a complaint that the Appellant was admonished by the San Francisco Police Department  
5 for selling a pack of cigarettes to a 17-years old person (“minor”) on November 28, 2021. During my  
6 inspection, Appellant never disputed that he sold cigarettes to a minor. Attached hereto as **Exhibit A**  
7 is a true and correct copy of a notice of violation I provided to Appellant.

8           4.       During my inspection, I discussed the importance of checking IDs for any person that  
9 appears to look under the age of 27. I discussed with Appellant additional strategies to prevent sales to  
10 minors as provided in the booklet titled: Responsibilities of a Tobacco Retail License Holder. The  
11 inspection lasted for approximately half an hour. Attached hereto as **Exhibit B** is a true and correct  
12 copy of a booklet titled: Responsibilities of a Tobacco Retail License Holder that I provided to  
13 Appellant during the inspection.

14           5.       In August 2015, the Department adopted rules and regulations to improve consistency  
15 and equity of the Department’s enforcement of suspension periods for establishments that sell tobacco  
16 to minors. Attached hereto as **Exhibit C** is a true and correct copy of the rules and regulations for the  
17 retail tobacco permit program under Article 19H of the San Francisco Health Code.

18           6.       During my inspection, I discussed with the Appellant the Compliance Agreement for  
19 First Time Violators. For a reduction of the tobacco permit suspension period, the Appellant was  
20 limited to installing an age verification device and/or permanently covering all tobacco products. The  
21 Appellant opted to install the age verification device for a 5 day reduction in the suspension period.  
22 After the Appellant signed the compliance agreement, I provided the Appellant with a copy of the  
23 Compliance Agreement. Attached hereto as **Exhibit D** is a true and correct copy of Appellant’s signed  
24 compliance agreement.

25           7.       Appellant signed and acknowledged the compliance agreement indicating that the  
26 strategies Appellant implemented reduced his 40-day suspension to 35 days (**Exhibit D**).

27           8.       On or around January 6, 2022, I received a photograph of the age verification device  
28 from the Appellant. Attached hereto as **Exhibit E** is a true and correct copy of the photograph.

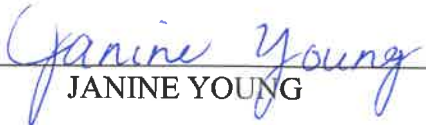
1 9. The Appellant was limited to the implementation of two strategies because the  
2 Appellant used other strategies in 2020 due to a previous sales to minor complaint investigation  
3 conducted on December 20, 2019. I was not the inspector that conducted the sales to minor  
4 investigation on December 20, 2019. Attached hereto as **Exhibit F** is a true and correct copy of the  
5 Appellant's signed compliance agreement in 2019.

6 10. On January 14, 2020, Appellant signed and acknowledged the compliance agreement  
7 indicating that the strategies Appellant implemented reduced his 20-day suspension to five (5) days for  
8 the first sales to minor incident (**Exhibit F**).

9 11. On December 29, 2021, Appellant requested a hearing at the Department of Public  
10 Health. Attached hereto as **Exhibit G** is a true and correct copy of the Appellant's signed hearing  
11 request.

12 12. On February 17, 2022, the Director of the Department held a hearing on Appellant's  
13 35-day suspension. The Director determined that on November 28, 2021, Appellant's establishment  
14 violated Article 19H for selling a tobacco product to an underage person. The Director upheld  
15 Appellant's 35-day suspension. Attached hereto as **Exhibit H** is a true and correct copy of the  
16 Director's Order.

17 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
18 true and correct and that this document was executed on the 4th of May 2022 in San Francisco,  
19 California.

20  
21   
22 JANINE YOUNG  
23  
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# EXHIBIT “A”



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

Inspection Date: 12/17/2021  
 Time of Inspection: 11:30 AM - 12 PM  
 EHD Location #: 75812  
 Tobacco Permit #: T-75812

Facility Name (DBA): Tobacco Barn Address: 733 Polk St  
 Permit Owner Name: MSN Retail Corp Phone Contact: (510) 381-3140

Email: rashidaboude@yahoo.com  
 Inspection Type:  
 Routine  Reinspection  Notice of Correction  
 Complaint  Consultation  Notice of Violation

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

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

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

Observations: Joint inspection with M. Rodriguez and B. Lagman

Based on the SFPD Incident Report #210784608, a pack of "Marlboro" cigarettes were sold to a minor, age 17, by a cashier. The deputy was not asked for identification before being sold the cigarettes.

**Additional Documents Attached:**  
 SFDPH Retail Tobacco Application  
 Notice of Abatement Conference  
 Complaint Report # \_\_\_\_\_  
 Compliance Agreement  
 SFPD Report # 210784608  
 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) 952-3903

**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) Rashid Aboude Received By: (Signature) [Signature]

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

# EXHIBIT “B”



# Responsibilities of a Tobacco Retail License Holder (2020)

**San Francisco Department of Public Health**  
49 South Van Ness Avenue, Suite 600  
**(415) 252-3800**  
[www.sfdph.org/dph/EH/Tobacco](http://www.sfdph.org/dph/EH/Tobacco)



**San Francisco Department of Public Health**  
49 South Van Ness Avenue, Suite 600  
**(415) 252-3800**  
[www.sfdph.org/dph/EH/Tobacco](http://www.sfdph.org/dph/EH/Tobacco)  
Version 4, November 2020

*Disclaimer: San Francisco Department of Public Health (SFDPH) cannot guarantee that the use of this booklet and implementing recommended Federal Food and Drug Administration (FDA) strategies will prevent Tobacco Retail License Holders, owners, managers or staff from selling tobacco products to persons under 21 years of age. Preventing illegal sales of tobacco products requires commitment, diligence, and action by Tobacco Retail License Holders, owners, managers and staff.*



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## WARNING

San Francisco Department of Public Health may suspend a tobacco permit for up to 365 days, depending on the number of repeat violations, for selling tobacco products to anyone under the age of 21 and for chronic repeat violations of health code requirements.

## What is this Guide for?

Stores and retail businesses, like yours, are essential to San Francisco. Your business contributes to the local economy; it is a place where people feel socially connected and can easily buy food and other products.

The San Francisco Department of Public Health wants to support your store by giving you the tools and information you and your employees may need to follow laws related to selling tobacco products. We want to help you prevent your staff and store from penalties and/or permit suspension. We recognize that there are a lot of laws to remember and follow so we hope this guide makes things easier for you.

# What is a Tobacco Product?

Tobacco Products include, but are not limited to, the following: cigarettes, cigars, electronic cigarettes, vaporizers and individual components, smokeless tobacco, snuff, chew, bidi cigarettes, products made or produced from tobacco or tobacco leaf, nicotine-containing products in any form, other devices that simulate smoking, such as rolling paper.

Name	Signature	Date



**Cigarettes**



**Cigars**



**Cigarillos/Little Cigars**



**Blunt Wraps**



**Smokeless Tobacco**



**Electronic Cigarettes**



**Vape Pens & Mods**



**E-Liquids**



**Hookah**

X

Trainer/Owner Signature

# What are the Requirements to Sell Tobacco Products in San Francisco & California?

## Retailers need one (1) permit and two (2) licenses to sell tobacco in San Francisco:

1. San Francisco Tobacco Sales Permit & License
2. California Department of Tax and Fee Administration (CDTFA) Tobacco Retail License

	CITY	STATE
	<b>San Francisco Tobacco Sales Permit &amp; License</b>	<b>California Tobacco Retail License</b>
<b>Apply with</b>	<b>San Francisco Department of Public Health - Environmental Health</b>  <a href="https://www.sfdph.org/dph/files/EHSdocs/Tobacco/Retail_Tobacco_Application.pdf">https://www.sfdph.org/dph/files/EHSdocs/Tobacco/Retail_Tobacco_Application.pdf</a>	<b>California Department of Tax and Fee Administration</b>  <a href="http://cdtfa.ca.gov/services/permits-licenses.htm">http://cdtfa.ca.gov/services/permits-licenses.htm</a>
<b>Fees</b>	<b>One Time Application Fee: \$111*</b>  <b>Annual License Renewal Fee: \$383*</b> <a href="https://www.sfdph.org/dph/files/EHSdocs/ehsFees/SF_EHB_Fees.pdf">https://www.sfdph.org/dph/files/EHSdocs/ehsFees/SF_EHB_Fees.pdf</a>  <b>Board of Appeals surcharge: \$51*</b>	<b>Application Fee: \$265*</b>  <b>Annual Renewal Fee: \$265*</b>
<b>Pay to</b>	San Francisco Department of Public Health (DPH) + Tax Collector's Office (TTX)	California Department of Tax and Fee Administration (CDTFA)

\*All fees are subject to change. Please check agency websites.

# Employee Training Verification Form

I certify that my employer provided training on local laws and preventing sales to those under 21 years old. My employer showed me the location of the posted permits and signs, showed me how to check customer's age on a photo ID and how to refuse tobacco sales.

Name	Signature	Date

**Complete once a year & retain records up to 4 years**



## Become a Healthy Retailer!

San Francisco Department of Public Health believes that small businesses, like yours, are essential to the health of neighborhoods and communities. When you refuse to sell tobacco or alcohol to those under 21 years old, you are improving the health of your neighbors and customers.



To help support small markets and corner store owners like you, the Health Department and the Office of Economic Workforce Development have partnered to establish the HealthyRetailSF Program. This FREE program provides financial assistance, equipment, and other resources to stores that want to make healthy changes and improvements. Stores that have participated in the HealthyRetailSF Program have increased their profits as well as increased the amount of fresh produce, healthy snacks, and groceries available to their customers and community.

Interested? Go to [www.healthyretailsf.org](http://www.healthyretailsf.org) -or-  
Call 415-254-5094

### Daldas Grocery

in the Tenderloin

*"I'm thrilled to welcome the community today to our remodeled store," said Daldas owner Satwinder Multani "I'm proud of the changes we made, and that we will offer our neighbors the opportunity to enjoy a healthier lifestyle with better food and beverage options."*

**BEFORE**



**AFTER**



## San Francisco & California Permits & License

### SF Tobacco Sales Permit

SFDPH Permit Issued Once

Valid as long as Annual License is renewed  
and paid each year.

PERMIT TO OPERATE		T 87168	
AND CERTIFICATE OF SANITARY INSPECTION Issued according to provisions of the San Francisco Health Code			
AUTHORIZING conduct of the following class of		ISSUED: 05/18/2016	
TOBACCO PRODUCT SALES ESTABLISHMENT			
Type of Operation: Tobacco Only Shop			
Name and Address Below:		Tax Code: H31 DPH Code: CERT No.: 1023456	
Owner: Tobaccolandia, Inc.			
DBA: Tobaccolandia			
Street Address: 123 Nicotine Dr. San Francisco, CA 94123			
Valid only when accompanied by a receipt from the Tax Collector showing payment of current license fee. THIS PERMIT TO OPERATE MAY BE REVOKED OR SUSPENDED FOR CAUSE AND IS NOT TRANSFERABLE. CHANGE OF OWNERSHIP must be reported immediately.		DEPARTMENT OF PUBLIC HEALTH Bureau of Environmental Health City and County of San Francisco	
Inspector			Director of Environmental Health
Principal Inspector			Director of Public Health

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

**Permits Do Not Transfer**

## SF Tobacco Retail License & Business Registration Certificate

Renew Every Year (TTX)

Annual Renewal fee must be paid every year to maintain a valid Tobacco Sales Permit.

## California Department of Tax and Fee Administration (CDTFA) Cigarette & Tobacco License

Renew Every Year

Annual Renewal Fee must be paid each year to maintain a valid

**All city and state licenses and permits must be up to date and displayed in your store!**

## Common Mistakes that Lead to Selling to an Underage Customer

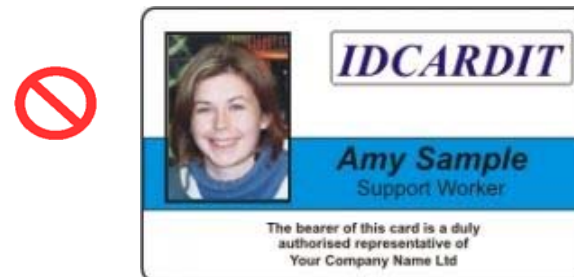
1. Not asking for ID for someone who looks younger than 27 years old.
2. Asking for ID and not checking the age or miscalculating the age.
3. Accepting ID that is not government issued photo ID (for example: school or work ID).
4. Overriding the computerized system for someone who looks under 27 years old.
5. Allowing the sale of tobacco products by untrained employees or employees who have not received their annual training.

**ONLY GOVERNMENT ISSUED IDENTIFICATION ACCEPTED.**

### DO NOT ACCEPT THE FOLLOWING:



**School ID**



**Work ID**

# How to Refuse Sale to Customer Under Age 21

Sales clerk must refuse to sell tobacco products to a person who looks under 27 years old AND does not have an ID or has an expired ID or counterfeit ID.



## What to say when refusing a sale:

- “I’m sorry. I cannot sell tobacco products without a valid ID.”
- “I’m sorry. It’s a store policy to check IDs.”
- “I’m sorry. I could be fined or lose my job if I sell to you. Is there anything else I can do for you?”

# Preventing Sales to Minors

Post Both State and San Francisco Tobacco 21 Stickers in a Visible Place for Cashiers, Clerks and Patrons

## California Sale of Tobacco Products Sticker

The Sale of Tobacco Products to Persons Under 21 Years of Age Is Prohibited by Law and Subject to Penalties

To Report an Unlawful Tobacco Sale Call  
**1-800-5 ASK-4-ID**

### Valid Identification May Be Required

Business and Professions Code Section 22952 21 U.S.C 387f(d)  
This sign must be readable by the consumer and must not be altered, covered or obliterated in whole or in part



- Open camera or QR code reader on your smartphone.
- Hold your smartphone over QR Code so that it's clearly visible within camera screen.
- Look for the notification banner or tap to trigger code's action.

## San Francisco Tobacco 21 Sticker

City and County of San Francisco - Department of Public Health  
San Francisco Health Code Article 19P

**Prohibits the Sale of Tobacco Products**  
including smokeless tobacco and electronic cigarettes  
**to Persons 18, 19 or 20 Years of Age**



In San Francisco  
U.S. Armed Forces active duty personnel with military ID

**Must Be at Least 21 Years of Age**

Valid Identification Required

This sign must be readable by the consumer, unaltered, and fully visible  
Version 1 Printed 2010

San Francisco and the State of California does not exempt military personnel under 21 years of age.



## Requirements to Maintain a San Francisco Tobacco Permit

1. Pay annual fees for both San Francisco and California licenses.
2. Post all valid permits and licenses from San Francisco Department of Public Health, San Francisco Tax Collector, and California Department of Tax and Fee Administration and make visible to employees, cashiers, and customers.
3. Post the **RED State of California** required sticker ([page 7](#)) visible to employees, cashiers, and patrons.
4. Post the **BLUE San Francisco** required Tobacco 21 sticker visible to employees, cashier, and patrons ([page 7](#)).
5. Post **“No Smoking”** signs on the entrance of your building. **Get them here for free:**  
[www.sftobaccofree.org/no-smoking-signs](http://www.sftobaccofree.org/no-smoking-signs)
6. Post one general **“No Smoking / No Vaping”** sign inside business establishment.
7. Comply with local, state and federal laws related to tobacco (pages 9-20), including NEVER selling single cigarettes.
8. Train employees annually on laws and requirements to sell tobacco products. See page 12 for training overview.
9. Check the photo identification of anyone who looks under 27 years old. See pages 21-23 for how to check for valid photo ID and refuse a sale.

## How to Check if Customers are 21 Years or Older

### CALIFORNIA DRIVER LICENSE OR IDENTIFICATION (ID) CARDS MAKE IT EASY!

Anyone under the age of 21 is issued the **VERTICAL (up and down)** card. If the person has a vertical driver's license or ID, they are **NOT ALLOWED** to purchase tobacco products.

Anyone over the age of 21 will have a **HORIZONTAL (sideways)** driver's license or ID. They are allowed to purchase tobacco products.



### Invalid or Counterfeit IDs typically have:

- Expired valid dates
- Altered look
- Photos that do not match the person
- Holes, glue or tape

### Don't forget to check birthdates on other forms of ID:

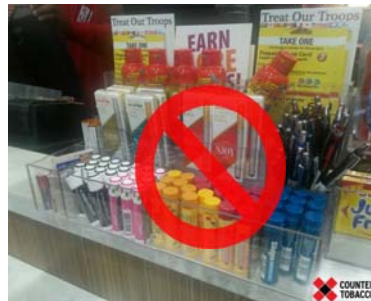
Passports and other State ID cards

**ALWAYS ask for government issued photo ID if someone looks younger than 27 years old.**

## Federal Laws that Impact Tobacco Retailers

### Under the Federal Drug Administration's Family Smoking Prevention and Tobacco Control Act, Stores are NOT allowed to:

1. Sell single cigarettes.
2. Sell flavored cigarettes.
3. Have self-service displays of tobacco products on counter (including e-cigarettes, e-liquids, and tobacco wrappers).
4. Give out free samples of tobacco products.
5. Have vending machines with tobacco products.
6. Sell or distribute cigars or smokeless tobacco without a health warning statement displayed on the package or display case.



### Stores are required to:

1. Check photo IDs of anyone who looks under 27 years old.
2. Sell only child proof packaged electronic cigarettes and e-liquids (effective October 2016).
3. Sell tobacco products in required packaging.

#### FDA's Small Business Assistance

[www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm20082665.htm](http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm20082665.htm)

**Call:** 1-877-287-1373 **Email:** [SmallBiz.Tobacco@fda.hhs.gov](mailto:SmallBiz.Tobacco@fda.hhs.gov)

## San Francisco Laws that Impact Tobacco Retailers

### 1. No Sale of E-Cigarettes allowed

Starting January 29, 2020, stores are prohibited from selling any e-cigarettes without FDA Marketing Orders, including flavored e-cigarettes. For example: cigarettes are: Nicotine Pod or E-liquid (sold without device), Vape Starter Kit with Nicotine (sold together under a single price).



#### More information at SF Dept of Public Health:

<https://www.sfdph.org/dph/EH/tobacco/ecigarettes.asp>

### 2. No Sale of Flavored Tobacco Products allowed

Stores are prohibited 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. [See pages 16-17.](#)



#### More information at SF Dept of Public Health:

[www.sfdph.org/dph/EH/Tobacco/flavoredtobacco.asp](http://www.sfdph.org/dph/EH/Tobacco/flavoredtobacco.asp)

## San Francisco Laws that Impact Tobacco Retailers

### 3. Minimum Age to Purchase Tobacco is 21

Effective June 9, 2016, the minimum age to purchase tobacco products is 21 years of age. [See pages 18-19.](#)

- Anyone attempting to purchase tobacco products must be 21 or older.
- Anyone selling tobacco products must check a valid ID to ensure a buyer is 21 years old or older before selling.



### 4. Abatement Fee

Stores must collect a \$1.00 abatement fee per pack of cigarettes as of January 1, 2020. Abatement fee is paid to the San Francisco Treasurer's office in quarterly installments.

#### More information at the Treasurer's Office:

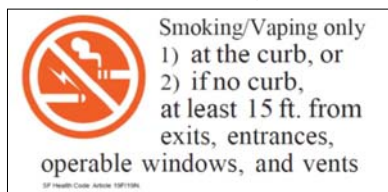
<https://sftreasurer.org/business/taxes-fees/cigarette-litter-abatement-fee-cig>

(SF Administrative Code 105: Cigarette Litter Abatement Fee)

### 5. Smoke Free Environments

- No smoking or vaping inside the store.
- Ask customers to smoke or vape at the curb.
- If no curb, smoking is allowed at least 15 feet from exits, entrances, windows, and vents.

*Sample Sign:*



#### More information about signage at

**SF Dept of Public Health:**

[www.sftobaccofree.org/no-smoking-signs](http://www.sftobaccofree.org/no-smoking-signs)

## State Laws that Impact Tobacco Retailers

### California State Law

1. Minimum age to purchase tobacco, including hookah and electronic cigarettes, is 21 years old or older, effective June 9, 2016.
2. Make sure tax stamps are the new, technology-based stamp that can be read by a scanner.

Current Stamp (non-OPALINE™)



New OPALINE™ Stamp



#### More Information at the CDTF:

<http://www.cdtfa.ca.gov/formspubs/pub403.pdf>

3. **Tobacco Tax:** Effective April, 1 2017, a tax increase to \$2.87 per pack of 20 cigarettes is applied in California. This tax increase is applied to the distributor and not to the retailer.

#### More information at the CDTF:

<http://www.cdtfa.ca.gov/taxes-and-fees/tax-rates-stfd.htm>



## How is this Law Enforced?

California and San Francisco enforcement agencies use under age youth decoys to check and see if stores sell tobacco to anyone under 21 years old.

## What happens if an employee sells to someone under 21?



### Under California Law:

Employee or person selling tobacco products can be subject to:

- Criminal action or misdemeanor;
- Criminal fine of up to \$6000;
- Suspension or revocation of license.

### Under San Francisco Law

Tobacco permit can be suspended up to:

- 90 days for the first violation;
- 180 days for the second violation;
- 365 days (1 year) for the third violation.



**Employers are responsible for everything that happens at their business. Train your employees to follow the law so that your store does not lose customers or profit.**

## San Francisco Laws that Impact Tobacco Retailers

### 6. Tobacco Permit Density Cap

New SFDPH Tobacco Sales Permits can only be approved in San Francisco Supervisorial Districts that contain less than 45 Tobacco Sales Permits and the location meets strict density requirements.

#### More information at SF Dept of Public Health:

[www.sfdph.org/dph/EH/tobacco](http://www.sfdph.org/dph/EH/tobacco)

[www.sftobaccofree.org/density](http://www.sftobaccofree.org/density)

### 7. Storefront Transparency Law

Storefronts must be transparent at eye level between 4 ft to 8 ft in height and be 75% open to view 4 ft inside the store from the window. This keeps you and your customers safe.



#### More information at SF Planning Department:

#### Read the Guidelines:

[http://default.sfplanning.org/publications\\_reports/Guidelines\\_Storefront\\_Transparency-112513.pdf](http://default.sfplanning.org/publications_reports/Guidelines_Storefront_Transparency-112513.pdf)

# How to Train Employees Annually To Comply with Laws

## WHEN SHOULD I TRAIN MY EMPLOYEES?

**New employees: Before they start working at your store and selling products.**

**Existing employees: Once a year.**

Each year in the spring, San Francisco Department of Public Health sends mailings to all tobacco retailers about new and existing laws related to selling tobacco products. We suggest that you train and review with your employees each year after you receive this packet.

**HOW LONG SHOULD THE TRAINING BE?** 30 minutes.

## WHAT SHOULD THE TRAINING COVER?

1. What is a tobacco product ([page 3](#)).
2. Laws that relate to selling tobacco products ([pages 9-20](#)).
3. How to make sure the customer buying tobacco products is 21 years or older ([page 21](#)).
4. How to refuse selling tobacco products to a customer under age 21 ([page 22](#)).
5. Common mistakes people make resulting in selling to an underage customer ([page 23](#)).

## HOW DO I SHOW THAT MY EMPLOYEES ARE TRAINED?

1. Every year after employees complete the training, ask them to sign and date the training verification form on pages 25-26. Maintain this record in your files for up to 4 years.
2. FDA also recommends that the store owner does their own check to make sure your employees are not selling to minors.

# Minimum Age to Purchase Tobacco is 21

In 2016, the minimum age to purchase tobacco products increased from 18 to 21 years of age (Health Code 19P) in San Francisco. Similarly, California State law (SBX17) also raised the minimum age to purchase tobacco products to 21 years of age, effective June 9, 2016. Anyone attempting to purchase tobacco products must be 21 or older. Anyone selling tobacco products must check a valid ID to ensure a buyer is 21 years old or older before selling. **The minimum age to purchase tobacco and alcohol in California is 21 years old.**

**San Francisco and the State of California does not exempt military personnel under 21 years of age**

Tobacco products are the number one cause of death in the United States and worldwide. Tobacco products can lead to all forms of cancer, heart disease, stroke, and many other diseases. All this could be prevented by not using tobacco products.



Almost all (9 out of 10) adult smokers started smoking by the age of 18. Increasing the minimum age to purchase tobacco from 18 to 21 can prevent people from becoming lifelong users of tobacco products. Youth 15-17 years old will have a more difficult time buying tobacco products underage. Raising the minimum age to purchase tobacco protects youth from the harms of tobacco products and ensures that they can have healthier lives that contribute to their family and community.



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

*Images are shown for educational purposes only*



“Menthol” has a distinguishable taste and aroma.



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



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



“Cherry,” “Nectar,” “Melon,” “Apple,” “Raspberry,” “Strawberry,” “Berry” and “Fruit Medley” are fruit flavors; “Crème Brulee” 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.



“Strawberry,” “White Grape,” “Grape,” “Peach,” and “Blueberry” are fruit flavors.



“Sour Apple” 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.

## No Sale of E-Cigarettes

### SF Health Code 19R and 19S Restrict the Sale, Manufacture, and Distribution of Tobacco Products, Including Electronic Cigarettes

The legislation was passed by the San Francisco Board of Supervisors and approved by the Mayor on June 28, 2019. Starting on January 29, 2020 retailers must stop selling or distributing restricted tobacco products.

### How do we define “E-cigarette”?

An E-cigarette is any device or delivery system sold in combination with nicotine for a single price which can be used to deliver to a person nicotine in aerosolized or vaporized form. An E-cigarette may also be known as e-cigar, e-pipe, vape pen, e-hookah or other names. The definition of E-cigarettes includes any liquid or substance containing nicotine, whether sold separately or sold in combination with any device that could be used to deliver to a person nicotine in aerosolized or vaporized form.

### Examples of E-cigarettes are:

- Nicotine Pod or E-liquid (sold without device)
- Vape Starter Kit with Nicotine (sold together under a single price)

### Electronic cigarettes do not include:

- Any device not sold in combination with any liquid or substance containing nicotine (Example – Vape Pen without nicotine).

**More information at SF Dept of Public Health:**  
<https://www.sfdph.org/dph/EH/tobacco/ecigarettes.asp>

## Examples of e-cigarettes now **banned** from sale in San Francisco:

*Images are shown for educational purposes only*



**Vape Starter Kit with Nicotine**



**Sold together under a single price**



**Nicotine Pods or E-liquids**



**Sold without the device**

## As of January 7, 2020, there are **only two** Electronic Cigarettes products approved to be sold in San Francisco:

1. Philip Morris Products S.A., Marlboro Heatsticks
2. Philip Morris Products S.A., IQOS System Holder and Charger



## No Sale of Flavored Tobacco Products

### San Francisco Health Code 19Q prohibits the sale of all flavored tobacco products.

The voters affirmed the decision to prohibit the sale of all flavored tobacco products in San Francisco in 2018.

### What is a flavored tobacco product?

A flavored tobacco product includes menthol cigarettes, flavored e-cigarette liquids, flavored blunt wraps, flavored chewing tobacco, and other flavored tobacco products.

### How can retailers comply?

1. No flavored product should be allowed on the shelf for sale.
2. Selling, displaying, or offering flavored tobacco constitutes a license violation and can result in a suspension.
3. Refuse flavored products from distributors and do not allow flavored products on your premises.
4. Inform customers that San Francisco law does not permit the sale of flavored tobacco. Continue to abide by all other laws and responsibilities of retailers.

Health inspections are conducted annually. Remember that the sale of a flavored tobacco product to anyone under the age of 21 would constitute two violations of San Francisco law, and may result in a suspension.

**Optional:** Post the Flavored Tobacco flyer visible to customers to inform them of the new law.

**More information at SF Dept of Public Health:**

[www.sfdph.org/dph/EH/Tobacco/flavoredtobacco.asp](http://www.sfdph.org/dph/EH/Tobacco/flavoredtobacco.asp)

# EXHIBIT “C”



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

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

January 29, 2020

### **Chapter 1. Authority**

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

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

### **Chapter 2. General Permitting**

#### **SEC 1. Definitions**

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

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

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

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

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

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

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

**“Displayed”** means in public view.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

A complete Permit Application includes all of the following:

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

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

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

A Tobacco Sales Permit may not be transferred or assigned.

- (1) Upon the sale of an Establishment holding a Tobacco Sales Permit, the Tobacco Sales Permit shall be forfeited and considered null and void.
- (2) Any Change of Ownership shall be reported to the Department and shall require the new Establishment owner to apply for a Tobacco Sales Permit with the Department within 30 days.

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

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

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

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

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

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

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

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

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

- (a) All annual license fees, including the retail tobacco license issued by the San Francisco Office of the Treasurer and Tax Collector and the tobacco products license fee issued by the State of California, must be paid in full.
- (b) File and pay to San Francisco Treasurer and Tax Collector's Office on a quarterly basis the Cigarette Litter Abatement Fee as required by Chapter 105 of the San Francisco Administrative Code.

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

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

- (a) Requesting a current and valid government issued photo identification to comply with state and federal laws.
- (b) Posting readable San Francisco and California Tobacco 21 signage in a location near the point of sales for Tobacco Products and visible to all customers.

**(3) Permittee shall not sell Tobacco Products with a Characterizing Flavor.****(4) Permittee shall properly display packaged Tobacco Products.**

- (a) Keep Tobacco Products out of reach of customers and behind the counter or in locked display cases at all times.
- (b) Permittee may not sell any cigarette except in a sealed manufacturer's package that complies with federal labeling requirements. This prohibits the selling of individual cigarettes or "loosies" which is a violation of Federal law, State law, and the local San Francisco permit.

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

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

**(6) No Smoking signage shall be posted on Establishment's storefront and within the Establishment** that is in accordance with Article 19F, Section 1009.22(i).**(7) Permittee shall designate an on-site employee for complaints or inspections.**

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

**(8) Allow inspection.**

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Chapter 3. Density Cap Exception**

**SEC 1. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) **New Buyer of a Retail Food Store or Tobacco Shop.** A Retail Food Store Establishment or Tobacco Shop Permittee since January 18, 2010, may submit an affidavit to the Director attesting to: (a) their ownership of the Establishment; (b) under the same Tobacco Sale Permit; (c) for at least five (5) consecutive years immediately before the submission of the affidavit; and (d) Direct Negotiations. Upon submission of the Permittee’s affidavit, a New Buyer may apply for a Tobacco Sales Permit for the Permittee’s Retail Food Store Establishment or Tobacco Shop.
- (2) **Subsequent Buyer of a Retail Food Store or Tobacco Shop.** A Retail Food Store Establishment or Tobacco Shop New Buyer may submit an affidavit to the Director attesting to: (a) their ownership of the Establishment; (b) under the same Tobacco Sales Permit; and (c) for at least ten (10) years. Upon submission of the New Buyer’s affidavit, a Subsequent Buyer may apply for a Tobacco Sales Permit for the New Buyer’s Retail Food Store Establishment or Tobacco Shop. A Subsequent Buyer applying for a new Tobacco Sales Permit must acquire a 100% ownership interest in the Establishment.
- (3) **Child of Permittee.** A child of a Retail Food Store Establishment or Tobacco Shop Permittee may apply for a Tobacco Sales Permit for their parent’s Establishment if their parent holds a Tobacco Sales Permit as of January 18, 2015. The child applying for a new Tobacco Sales Permit must have a 100% ownership interest in the Establishment.
- (4) **Seismic Retrofitting Relocation.** A Retail Food Store Establishment or Tobacco Shop Permittee as of January 18, 2015, which must relocate from their Establishment due to seismic retrofitting under Chapter 34B of the Building Code may apply for a Tobacco

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

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

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

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

### **SEC 1. Definitions**

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

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

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

- (1) Abatement opportunity.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The FDA posts on its website:

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

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

**Electronic Cigarettes that do not appear on any one of the FDA's three Marketing Order lists, or on SFDPH's List of Approved Electronic Cigarettes Pending FDA Posting, may not lawfully be sold in San Francisco or to a Person in San Francisco.** Distributors, retailers, and consumers seeking to confirm whether an Electronic Cigarette may lawfully be sold in San Francisco, or to a Person in San Francisco, must consult these lists.

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

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

(2) Abatement opportunity.

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

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

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

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

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

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

# EXHIBIT “D”





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

London N. Breed, Mayor  
 Grant Colfax, M.D., Director of Public Health  
 Stephanie K. J. Cushing, MSPH, CHMM, REHS  
 Director of Environmental Health

**Compliance Agreement for First Time Violators of the  
 San Francisco Health Code: Article 19; Section 19H.14 and Section 19H.14-1**

**Business Name:** Tobacco Barn **Business Address:** 733 Polk St  
**Tobacco Permit Owner:** MSN Retail Corporation **Mailing Address:** 733 Polk St  
**Tobacco Permit #: T-** 75812 **SFTTX BAN:** 482458 **EHD ID#:** 75812

Your business establishment has violated Article 19H of the San Francisco Health Code (SFHC) as described in the attached Notice of Violation. The Director of the San Francisco Department of Public Health (SFDPH) is authorized to suspend your Permit to Operate a Tobacco Sales Establishment for up to 90 days for first time violators (SFHC Section 19H.19 (a)). You have the ability to reduce your suspension period by implementing certain mitigation strategies to prevent future violations and improve the health of your community. Based on the SFHC 19H Rules and Regulations, you can choose to permanently implement one or more of these described actions below to reduce the duration of the suspension period.

Mitigation Strategy		Suspension Reduction Period
<b>1. Training</b>		
<input type="checkbox"/>	1a. <del>The Permittee trains all employees regarding state and local tobacco laws and provides SFDPH proof of training through a sign-in sheet.</del>	<del>-5 days</del>
<input type="checkbox"/>	1b. <del>The Permittee or employee who sold to a minor completes the Superior Court of California Community Justice Center, City and County of San Francisco - Online Under Aged Sales Prevention Training by California Alcoholic Beverage Control and provides the certificate of completion to the Department.</del>	<del>-5 days</del>
<b>2. Equipment and Display(s)</b>		
<input checked="" type="checkbox"/>	2a. <del>Install a scanner or other age verification device (only applicable for an Establishment without an age verification device when violation occurred).</del>	<del>-5 days</del>
<input type="checkbox"/>	2b. <del>Remove all Displayed Tobacco Product advertisements for as long as the Permittee owns the Establishment (only applicable for an Establishment that currently has Tobacco Product Advertisements in the public view prior to when violation occurred).</del>	<del>-10 days</del>
<input type="checkbox"/>	2c. <del>Cover all Tobacco Products with Permanently Installed Opaque Covering which means a built-in cabinet, shelf, or storage container which cannot be removed easily and does not display tobacco to the public when a tobacco sale is not in progress (only applicable for an Establishment that currently has Tobacco Products in the public view prior to when violation occurred).</del>	<del>-10 days</del>
<input type="checkbox"/>	Voluntarily cancel the DPH tobacco sales permit with the understanding that the business location will be subject to the permit density requirements and may not qualify for a retail tobacco sales permit in the future.	

Once SFDPH staff has verified that all conditions of this agreement have been met, SFDPH will reduce your suspension period from 40 days to 35 days. If you fail to meet all conditions of this agreement, the opportunity for a reduced suspension period will be null and void and you will serve the baseline suspension period as described in SFHC 19H Rules and Regulations and on the back of this agreement. You may be billed for the verification inspection at the hourly rate. By signing below you agree to complete these mitigation strategies within **30 days of the Agreement Date**.

DPH Representative: Maribel Rodriguez Signature: Janine Young Agreement Date: 12/17/2021  
 Permit Holder or Representative: Janine Young Signature: Rashid Abood Agreement Date: \_\_\_\_\_

Date of Follow-up Inspection: \_\_\_\_\_ Inspection Conducted by: \_\_\_\_\_  
 All agreed upon conditions are met  All agreed upon conditions are not met

Notes/Observations:

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

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

**Examples:**

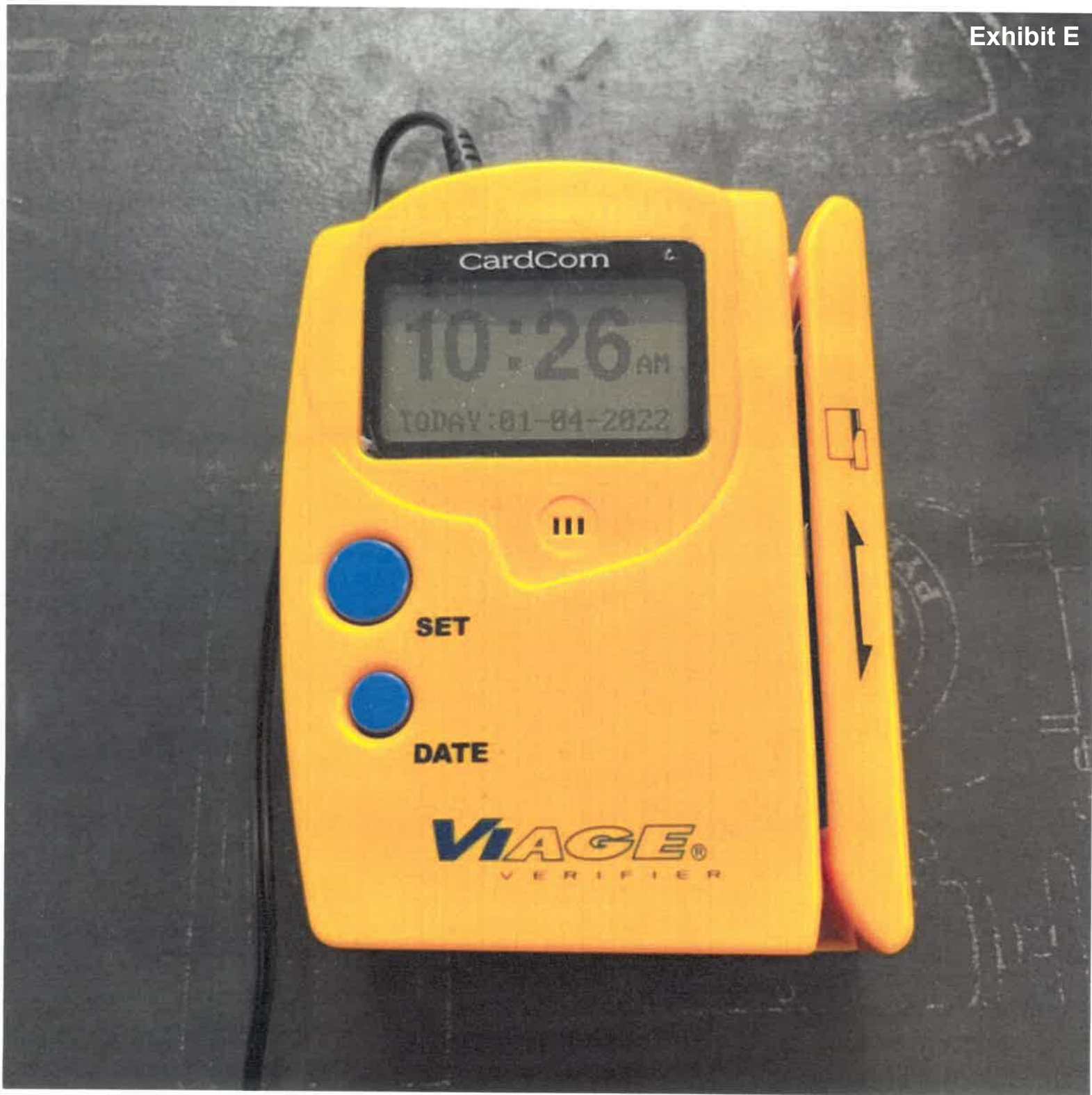
**Example 1:** If a business is a first time offender and chooses to install an age verification scanner that identifies and displays age from an approved picture ID, then the permit suspension period would be reduced from 20 days to 15 days. If the business chooses to also remove all visible tobacco and electronic cigarette device advertisements for as long as the Tobacco Permit holder owns the establishment, the suspension period would be reduced further to 5 days.

**Example 2:** If a second violation occurs more than 1 year after the 1<sup>st</sup> violation, the business can choose to install a permanent opaque covering over their tobacco products such as a cabinet with doors. This would reduce the permit suspension period from 40 days to 30 days.

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

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

# EXHIBIT “E”





# EXHIBIT “F”





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

London N. Breed, Mayor  
 Grant Colfax, M.D., Director of Public Health  
 Stephanie K. J. Cushing, MSPH, CHMM, REHS  
 Director of Environmental Health

**Compliance Agreement for First Time Violators of the  
 San Francisco Health Code: Article 19; Section 19H.14 and Section 19H.14-1**

**Business Name:** Tobacco Barn **Business Address:** 733 Polk St. San Francisco, CA 94109  
**Tobacco Permit Owner:** MSN Retail Corporation **Mailing Address:** 733 Polk St. San Francisco CA 94109  
**Tobacco Permit #: T-** 75812 **SFTTX BAN:** 0482458 **EHD ID#:** 75812

Your business establishment has violated Article 19H of the San Francisco Health Code (SFHC) as described in the attached Notice of Violation. The Director of the San Francisco Department of Public Health (SFDPH) is authorized to suspend your Permit to Operate a Tobacco Sales Establishment for up to 90 days for first time violators (SFHC Section 19H.19 (a)). You have the ability to reduce your suspension period by implementing certain mitigation strategies to prevent future violations and improve the health of your community. Based on the SFHC 19H Rules and Regulations, you can choose to permanently implement one or more of these described actions below to reduce the duration of the suspension period.

Mitigation Strategy		Suspension Reduction Period
<b>1. Training</b>		
<input checked="" type="checkbox"/>	1a. The Permittee trains all employees regarding state and local tobacco laws and provides SFDPH proof of training through a sign-in sheet.	-5 days
<input type="checkbox"/>	1b. The Permittee or employee who sold to a minor completes the Superior Court of California Community Justice Center, City and County of San Francisco - Online Under Aged Sales Prevention Training by California Alcoholic Beverage Control and provides the certificate of completion to the Department.	-5 days
<b>2. Equipment and Display(s)</b>		
<input type="checkbox"/>	2a. Install a scanner or other age verification device (only applicable for an Establishment without an age verification device when violation occurred).	-5 days
<input checked="" type="checkbox"/>	2b. Remove all Displayed Tobacco Product advertisements for as long as the Permittee owns the Establishment (only applicable for an Establishment that currently has Tobacco Product Advertisements in the public view prior to when violation occurred).	-10 days
<input type="checkbox"/>	2c. Cover all Tobacco Products with Permanently Installed Opaque Covering which means a built-in cabinet, shelf, or storage container which cannot be removed easily and does not display tobacco to the public when a tobacco sale is not in progress (only applicable for an Establishment that currently has Tobacco Products in the public view prior to when violation occurred).	-10 days
<input type="checkbox"/>	Voluntarily cancel the DPH tobacco sales permit with the understanding that the business location will be subject to the permit density requirements and may not qualify for a retail tobacco sales permit in the future.	

Once SFDPH staff has verified that all conditions of this agreement have been met, SFDPH will reduce your suspension period from 20 days to 5 days. If you fail to meet all conditions of this agreement, the opportunity for a reduced suspension period will be null and void and you will serve the baseline suspension period as described in SFHC 19H Rules and Regulations and on the back of this agreement. You may be billed for the verification inspection at the hourly rate. By signing below you agree to complete these mitigation strategies within 30 days of the Agreement Date.

DPH Representative: Alvin Dang Signature: [Signature] Agreement Date: 1/14/20  
 Permit Holder or Representative: Rashid Abbae Signature: [Signature] Agreement Date: 1-14-20  
 Date of Follow-up Inspection: 1/14/20 Insp. Conducted by: Alvin Dang  
 All agreed upon conditions are met  All agreed upon conditions are not met

Notes/Observations:

- All tobacco advertisements have been removed.  
 - Training of all employees has occurred

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

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

**Examples:**

**Example 1:** If a business is a first time offender and chooses to install an age verification scanner that identifies and displays age from an approved picture ID, then the permit suspension period would be reduced from 20 days to 15 days. If the business chooses to also remove all visible tobacco and electronic cigarette device advertisements for as long as the Tobacco Permit holder owns the establishment, the suspension period would be reduced further to 5 days.

**Example 2:** If a second violation occurs more than 1 year after the 1<sup>st</sup> violation, the business can choose to install a permanent opaque covering over their tobacco products such as a cabinet with doors. This would reduce the permit suspension period from 40 days to 30 days.

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

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

# EXHIBIT “G”



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

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

**SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH**  
**DIRECTOR HEARING REQUEST**

Business Name (DBA):	Tobacco Barn	Permit Owner	MSN Retail Corporation
Permit to Operate #	T-75812	Permit Issued Date:	8/20/2013
Business Address, Zip Code:	733 Polk St, San Francisco, CA 94109		
EH FILE ID #:	75812	SF BAN: 482458	CDTFA Tobacco License #: 091-348-247

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.

Rashid Abood  
 Authorized Agent – Print & Signature

12-29-2021  
 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](mailto: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: 12/29/2021 District Health Inspector: JANINE YOUNG  
 Print Name





# EXHIBIT “H”





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

## San Francisco Department of Public Health

Grant Colfax, M.D.  
Director of Health

### Director's Hearing Order

March 8, 2022

DBA: Tobacco Barn

Legal Owner: MSN Retail Corporation

Address: 733 Polk Street  
San Francisco, CA 94109

Responsible Party: MSN Retail Corporation

Hearing Date: February 17, 2022

Hearing Case Number: **SMK-22-01**

Dear MSN Retail Corporation:

Environmental Health issued a Notice of Initial Determination on December 21, 2021. Additionally, on December 29, 2021, you submitted a written request to attend the San Francisco Department of Public Health (SFDPH) Director Hearing, signed by you and dated December 29, 2021. On February 17, 2022, at 1:45 pm, the SFDPH Director's Hearing was held through a Microsoft Teams Meeting, where you were present during the meeting through an audio line. After reviewing the Notice of Initial Determination and evidence presented 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 and presented at the hearing.
3. That, given your admission that you sold cigarettes to a minor, the findings stated in the Notice of Initial Determination are uncontested and true.
4. That you elected to implement one permit suspension reduction strategy (age verification scanner) to prevent future sales to minors.

Therefore, THE DIRECTOR HEREBY **ORDERS:**

1. That, as authorized by SFHC Article 19H.14. CONDUCT VIOLATING CALIFORNIA PENAL CODE SECTION 308 (PROHIBITING THE SALE OF TOBACCO TO MINORS), your Retail Tobacco Permit # T-75812 shall be suspended with no tobacco sales for thirty-five days, beginning no later than 15 calendar days from the effective date of this Order.
2. That you shall not begin serving the suspension period until the Inspector post the Notice of Suspension at your business establishment, including the suspension period start and end date.
3. That, upon suspension, you shall cease sales of and remove from the shelves tobacco products including, but not limited to, cigarettes, cigars, cigarillos, electronic smoking devices, liquids that are intended to be vaporized by electronic smoking devices, smokeless tobacco, hookah tobacco shisha, blunts, and any product containing tobacco or nicotine during the suspension period.

**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

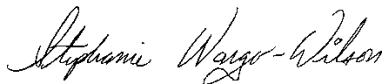
Director's Order – Tobacco Barn - 733 Polk Street

4. That, upon suspension, the business may continue to sell non-tobacco herbal hookah shisha, matches, paper wrappers, cases for cigars or cigarettes, ashtrays, tongs, charcoals, and other accessories that do not contain tobacco or nicotine.
5. That, failure to comply as ordered may result in one or a combination of the following:
  - a. The increase of your suspension period up to the maximum time period pursuant to Section 19H.19;
  - b. The addition of an administrative penalty of up to five hundred dollars (\$500.00) pursuant to Section 19H.20; and/or
  - c. A referral to the City Attorney's Office with a request to file an injunctive action against you pursuant to Sections 19H.17(c) and (d); 19H.18(c); and 19H.25.
6. That future reoccurrence of Tobacco Product sales to persons under 21 years of age will result in the suspension of your Tobacco Sale Permit for a minimum of 60 days to a maximum of 180 days.
7. That the suspension reduction strategies shall remain in effect permanently for the life of your Tobacco Sale Permit.
8. That you shall not receive the option of other permit suspension reduction strategies not used if found with a reoccurrence of a sale to a person under 21 years of age within 12 months from the date this Notice is received and the mitigation strategies implemented shall not be available in the future to reduce a permit suspension period.
9. That you may appeal this Order through the Board of Appeals located at 49 South Van Ness Ave, Suite 1475 (14<sup>th</sup> Floor), San Francisco, CA 94103, (628) 652-1150, as prescribed in Article 1 of the San Francisco Business and Tax Regulation Code.
10. That if a notice to appeal this Order is not filed within 15 calendar days of the effective date of this Order, the decision to suspend your permit shall be deemed final and the Inspector shall post the Notice of Suspension inside of your establishment in a conspicuous location visible to the public at all times.

The foregoing 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.

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

Sincerely,



Hearing Officer

San Francisco Department of Public Health

Date: 3/3/2022

**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 le puede ayudar. Para obtener ayuda gratis, llame al Departamento de Salud Pública al (415) 252-3800.**

**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 May 5, 2022, 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
rashidaboud@yahoo.com	Appellant, Rashid Aboud

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 May 5, 2022, 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 HENRY LIFTON, State Bar #319005  
Deputy City Attorneys  
4 Fox Plaza  
1390 Market Street, 5th Floor  
5 San Francisco, California 94102-5408  
Telephone: (415) 554-3915  
6 E-Mail: henry.lifton@sfcityatty.org

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 TOBACCO BARN,

14 Appellant,

15 vs.

16 DEPARTMENT OF PUBLIC HEALTH,

17 Respondent.

Appeal No. 22-020

**DECLARATION OF SERGEANT MICHELE A.  
MARTINEZ IN SUPPORT OF RESPONDENT  
DEPARTMENT OF PUBLIC HEALTH'S  
OPPOSITION BRIEF**

Hearing Date: May 11, 2022  
Time: 5:00 p.m.  
Place: City Hall, Room 416  
1 Dr. Carlton B. Goodlett Place,  
San Francisco, CA 94102

21  
22 I, MICHELE A. MARTINEZ, declare as follows:

23 1. I have personal knowledge of the facts set forth herein. If called upon to testify, I could  
24 and would testify competently to these facts.

25 2. I am a sergeant with the San Francisco Police Department. I have held this position for  
26 over eight years. Since 2014, I have worked in the San Francisco Police Department's Special  
27 Investigations unit, where I sometimes assist the ABC Liaison Unit conduct minor decoy operations  
28 regarding the sales of tobacco products to minors at various establishments throughout the City.

1           3.       Our decoys are trained to produce a valid California identification card or driver's  
2 license and state their correct age if asked by a clerk.

3           4.       On November 28, 2021, I, along with Sergeant Maricela Sainez, Sergeant Edward  
4 Carew, and Officer John Tyler, participated in a minor decoy operation at the Tobacco Barn located at  
5 733 Polk Street, San Francisco. Attached hereto as **Exhibit A** is a true and correct copy of Police  
6 Incident Report No. 210784608.

7           5.       I, along with Officer Tyler, was the close cover officer for this operation. As the close  
8 cover officer, it was my duty to protect the decoy and to observe any sale of tobacco products to a  
9 person under 21 years of age.

10          6.       The decoy who worked the operation on this date was 17 years old. Prior to the  
11 operation, I verified the decoy's age by verbally confirming the decoy's age and reviewing the decoy's  
12 California identification. The decoy was also provided marked City funds.

13          7.       I observed the decoy enter the Tobacco Barn located at 733 Polk Street. I was nearby  
14 and kept the decoy in my view while the decoy was inside the Tobacco Barn. I listened as the decoy  
15 engage the cashier, Rashid Aref Aboud, and ask for a box of Marlboro cigarettes.

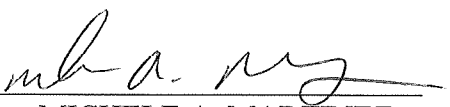
16          8.       I observed the decoy exit the Tobacco Barn. The decoy walked up to me and handed  
17 me the change for the marked City funds along with a cigarette box, which I identified as a pack of  
18 Marlboro cigarettes. The decoy told me that she was not asked by Mr. Aboud for identification.

19          9.       I, along with Officer Tyler, entered the Tobacco Barn and immediately identified  
20 myself as a San Francisco Police Officer. I recovered the marked City funds from Mr. Aboud and  
21 returned the change. Officer Tyler returned the pack of cigarettes to him.

22          10.       Mr. Aboud was issued a citation for violating Penal Code section 308(a)(1) (selling  
23 tobacco to a person under 21 years of age), which he acknowledged that he understood and signed in  
24 my presence.

25          11.       The cigarettes, statement of the decoy, and a copy of the marked funds were booked as  
26 evidence. A photo of the decoy was retained in the case file.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
2 true and correct and that this document was executed on the 2nd of May 2022 in San Francisco,  
3 California.

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MICHELE A. MARTINEZ

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# EXHIBIT “A”

**San Francisco Police Department  
INCIDENT REPORT**

Report Type: **Initial**

**210784608**

INCIDENT	Incident Number 210-784-608	Occurrence From Date / Time 11/28/2021 11:56	Occurrence To Date / Time	Reported Date / Time 11/28/2021 11:56	CAD Number 213321293			
	Type of Incident TOBACCO PRODUCTS, SELLING OR FURNISHING TO MINOR 15031						Retail Theft? <input type="checkbox"/>	
	Location of Occurrence: 733 POLK ST		At Intersection with/Premise Type MISC. BUILDING OR STORE			District NORTHERN		
	Confidential Report? <input type="checkbox"/>	Arrest Made? <input type="checkbox"/>	Suspect Known? <input checked="" type="checkbox"/>	Suspect Unknown? <input type="checkbox"/>	Non-Suspect Incident? <input type="checkbox"/>	Domestic Violence? <input type="checkbox"/>	Use of Force? <input type="checkbox"/>	Reporting Unit 3X108
	Location Sent / On View: 733 POLK ST		At Intersection with			Reporting District NORTHERN		
Crime and Clearance Status 6	Reported to Bureau Name	Star	Date/ Time	Elder Victim <input type="checkbox"/>	Gang Related? <input type="checkbox"/>	Juvenile Subject? <input type="checkbox"/>	Prejudice Based? <input type="checkbox"/>	
Have you reviewed the attached list of procedures required by Department General Order (DGO) 7.04?								

210784608

OFFICIAL REPORT	I declare under penalty of perjury, this report of <u>4</u> pages is true and correct, based on my personal knowledge, or is based on information and belief following an investigation of the events and parties involved.						
	PROP 115 CERTIFIED		5 Year/Post				
	Reporting Officer MARTINEZ, MICHELE A	Star 1208	Station Special Investigations	Watch 1100-2100	Date 11/28/21 17:59		
	Reviewing Officer SAINIZ, MARICELA	Star 139	Station Alcoholic Beverage Control Liaison Unit	Watch 1100-2100	Date 11/28/21 18:09		
	OIC SAINIZ, MARICELA	Star 139	Station Alcoholic Beverage Control Liaison Unit	Watch 1100-2100	Date 11/28/21 18:09		
Related Case --	Related Case --	Re-assigned to Copies to: 3*300	Assigned to 3*300	Add'l Copies	Assigned by MM 1208		

REPORTEE	Code R 1	Name (Last, First Middle)	Alias			Email Refused							
	Day Phone	Type	Home Address		City	State	Zip Code						
	Night Phone	Type	Work Address 1245 3RD ST		City SAN FRANCISCO	State CA	Zip Code 94158-						
	DOB [REDACTED]	Age 17	DOB Unk. <input type="checkbox"/>	or age between and	Race H	Sex F	Height 5'2	Weight 127	Hair Color BRO	Eye Color BRO	ID Type	Jurisd.	ID No.
	Confidential Person <input type="checkbox"/>	Violent Crime Notification <input type="checkbox"/>	293 PC Notification <input type="checkbox"/>	Star	Follow-up Form YES <input checked="" type="checkbox"/>	Statement YES <input checked="" type="checkbox"/>	Relationship to Subject						
	School (if Juvenile)		Injury/Treatment			Other Information/If Interpreter Needed Specify Language SFPD MINOR DECOY							
	Interpreter Needed <input type="checkbox"/>	Language	Language Description (if Other)		Language Line Service/Interpreter ID#		Bilingual Ofc Star#						

San Francisco Police Department  
**INCIDENT REPORT**

Report Type: **Initial**

**210784608**

C I T I E D	Code C 1	Name (Last, First Middle) ABOUD, RASHID AREF				Alias			Email Unknown		
	Day Phone (415) 346-8806		Type Work	Home Address			City		State	Zip Code	
	Night Phone		Type	Work Address 733 POLK ST			City SAN FRANCISCO		State CA	Zip Code 94109-	
	DOB Unknown <input type="checkbox"/>	Date of Birth 01/10/60	Age 61	or age between and		Race U	Sex M	Height 6'2	Weight 240	Hair Color BLK	Eye Color BRO
	SFNO	J/D# (if Juvi)		ID Type/Jurisdiction/Number			ID Type/Jurisdiction/Number			ID Type/Jurisdiction/Number	
	Booking Charge(s)						Booking Location				
	Warrant #		Court#		Action#		Dept#		Enroute to		
	Warrant Violation(s)								Bail (\$)		
	Citation# 023240792		Violation(s) 308(a)(1)(A)(i) PC				Appear Date/time 12/23/2021 09:00		Location of Appearance 850 Bryant St, Room 475		

<input type="checkbox"/> CA Form Booked Copy Attached	Mirandized: Star <input type="checkbox"/>		Date Time		CWB Check		Star	
Book/Cite Approval SGT. SAINZ		Star 139	Mass Arrest Code		M X-Rays <input type="checkbox"/>	School (if Juvenile)		Statement <input type="checkbox"/>
Other Information: Citation/Warrant/Booking Charge(s)/Missing Person-Subject Description; Scars, Marks, Tattoos								
Interpreter Needed <input type="checkbox"/>	Language		Language Description(if Other)			Language Line Service/Interpreter ID#		Bilingual Ofc Star#

P R O P E R T Y	Code/No EVD 1	Item Description STATEMENT				Brand		Model	
	Serial No.		Gun Make	Caliber	Color	Narcotics Lab No.	Quantity 1	Value	
	Seized by (Star) 139		From Where 850 BRYANT ST (ROOM 536)						
	Additional Description/Identifying Numbers STATEMENT WRITTEN BY (R1) Submitted at: 2 -To be Delivered to PCD In Person								

P R O P E R T Y	Code/No EVD 2	Item Description PHOTOS				Brand		Model	
	Serial No.		Gun Make	Caliber	Color	Narcotics Lab No.	Quantity 1	Value	
	Seized by (Star) 1675		From Where 850 BRYANT ST (ROOM 536)						
	Additional Description/Identifying Numbers PHOTO OF MARKED CITY FUNDS USED IN OPERATION. Submitted at: 2 -To be Delivered to PCD In Person								

P R O P E R T Y	Code/No EVD 3	Item Description PHOTOS				Brand		Model	
	Serial No.		Gun Make	Caliber	Color	Narcotics Lab No.	Quantity 3	Value	
	Seized by (Star) 1675		From Where 850 BRYANTS ST (ROOM 536)						
	Additional Description/Identifying Numbers PHOTOS OF (R1) RETAINED AT ALU Submitted at: 5 - Retained for Case File								



San Francisco Police Department  
**INCIDENT REPORT**

Report Type: **Initial**

**210784608**

<b>PROPERTY</b>	<b>E</b>	Code/No EVD 4	Item Description PHOTOS			Brand		Model	
	<b>4</b>	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity 1	Value	
	Seized by (Star) 1675		From Where 733 POLK STREET (FRONT COUNTER)						
	Additional Description/Identifying Numbers PHOTO OF (C1) Submitted at: 2 -To be Delivered to PCD In Person								

<b>PROPERTY</b>	<b>E</b>	Code/No EVD 5	Item Description PHOTOS			Brand		Model	
	<b>5</b>	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity 1	Value	
	Seized by (Star) 1675		From Where 733 POLK STREET (FRONT COUNTER)						
	Additional Description/Identifying Numbers PHOTO OF TOBACCO NOTICE GIVEN TO (C1) Submitted at: 2 -To be Delivered to PCD In Person								

<b>PROPERTY</b>	<b>E</b>	Code/No EVD 6	Item Description PHOTOGRAPHS - PRINTED			Brand		Model	
	<b>6</b>	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity 1	Value	
	Seized by (Star) 139		From Where 850 BRYANT ST (ROOM 536)						
	Additional Description/Identifying Numbers PHOTOCOPY OF CITATION ISSUED TO (C1) Submitted at: 2 -To be Delivered to PCD In Person								

<b>PROPERTY</b>	<b>B</b>	Code/No BWC 1	Item Description BWC FOOTAGE FROM INCIDENT			Brand		Model	
	<b>1</b>	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
	Seized by (Star) 1208		From Where 733 POLK STRET						
	Additional Description/Identifying Numbers								

**NARRATIVE**

On 11/28/2021, Sgt. Sainez #139, Sgt. Carew #36, Ofc. Tyler #1675, (R1) [REDACTED] and I were conducting a "Minor Decoy" operation, regarding the sale(s) of tobacco to a minor. Sgt. Sainez and Sgt. Carew were in full uniform and Ofc. Tyler and I were close cover in plainclothes, wearing our Body Worn Cameras. (R1) [REDACTED] was the minor decoy. Prior to the Minor Decoy operation, I verified (R1)'s age verbally and by her California Driver's License. Ofc. Tyler took three (E) photos of (R1) prior to the start of the operation and one (E) photo of the Marked City Funds (MCF). Sgt. Sainez provided (R1) with the MCF.

At approximately 1155 hours, we arrived at "Tobacco Barn" located at 733 Polk Street. (R1) entered the store with the Marked City Funds we provided to her, as Ofc. Tyler #1675 and I operated as her close cover officers, right outside the store. I listened as (R1) engaged the clerk and asked for a box of Marlboro cigarettes. The clerk was later identified as (C1) Rashid Aref About via [REDACTED]. After a few minutes (R1) exited the store and handed me the change for the MCF along with a pack of Marlboro cigarettes. (R1) told me that she was not asked by (A1) for identification. I entered the store with Ofc. Tyler as Sgt. Carew walked (R1) back to the vehicle. Ofc. Tyler and I identified ourselves as San Francisco Police Officers to (C1) and I informed him that he had just sold cigarettes to a Minor. I retrieved the Marked City Funds from (C1) and returned his change to him, which he placed back in the register. Ofc. Tyler also returned the pack of cigarettes to him. A check of our records for 733 Polk Street revealed that this location was cited in 2019 for prior sales of Tobacco to Minors, refer to case number 190-939-624. (C1) About was issued a (E) citation for 308(a)(1)(A)(i)PC.

Ofc. Tyler took one (E) photo of (C1). Ofc. Tyler explained to (C1) that he was being cited for the sale of tobacco to a Minor, and that the Department of Public Health would be notified. Ofc. Tyler provided (C1) with the (E) citation, and a (E) Department of Public Health, Tobacco Products Sales to Under 21 Notification Letter.

(R1) completed her (E) statement at 850 Bryant Street. All photos of the Minor Decoy will be retained in the ALU case file. This report will be forwarded to the San Francisco Department of Public Health. All evidence booked. (E) BWC footage was uploaded and tagged.

INCIDENT NO. 211071814608

page 1 of 1

NAME (LAST, FIRST, MIDDLE) OF PERSON GIVING STATEMENT

DOB / AGE

RESIDENCE PHONE (DAY/NIGHT)

BUSINESS PHONE (DAY/NIGHT)

RESIDENCE ADDRESS / CITY IF NOT SAN FRANCISCO

ZIP CODE

BUSINESS ADDRESS / CITY IF NOT SAN FRANCISCO

ZIP CODE

DATE OF STATEMENT

TIME STARTED

TIME COMPLETED

LOCATION WHERE STATEMENT TAKEN

11/28/2011

1618

1620

AT SCENE

OTHER:

850 BURLING ST

STATEMENT TAKEN BY (NAME / STAR)

IN PRESENCE OF

M-SANB2139

I entered the business located at 733 Polk St. I purchased a pack of Marlboro from the clerk using money that was provided to me. I received the cigarettes and exited the store. I was met by Sgt. Martinez #1208 who took charge. I was not asked for ID.

DECLARE, UNDER PENALTY OF PERJURY, THIS STATEMENT OF 1 PAGES IS TRUE AND CORRECT, BASED ON MY PERSONAL KNOWLEDGE.

SIGNATURE OF PERSON GIVING STATEMENT



**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 May 5, 2022, I served the following document(s):

**DECLARATION OF INSPECTOR SERGEANT MICHELE A. MARTINEZ  
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
rashidaboud@yahoo.com	Appellant, Rashid About

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 May 5, 2022, at San Francisco, California.

*Lily Kang*

\_\_\_\_\_  
LILY KANG