

**Department of
Conservation and
Development**

30 Muir Road
Martinez, CA 94553

Phone: 1-855-323-2626

**Contra
Costa
County**



John Kopchik
Director

Jason Crapo
Deputy Director

Deidra Dingman
Deputy Director

Ruben Hernandez
Deputy Director

Gabriel Lemus
Deputy Director

STATEMENT OF DECISION

August 6, 2025

Matthew Pourabedin
2849 Doige Avenue
Pinole, CA 94564

Ahmed Dubaih
c/o Smoke Depot
3770 San Pablo Dam Road
El Sobrante, CA 94803

IN THE MATTER OF:

SITE: Smoke Depot
3770 San Pablo Dam Road
El Sobrante, CA 94803
APN: 420-140-035
REF: CDSE22-00009

**STATEMENT OF DECISION
FOLLOWING HEARING ON
REVOCATION OF LEGAL
NONCONFORMING STATUS OF
TOBACCO RETAILING USE**

This matter came for hearing before William R. Nelson, Deputy County Zoning Administrator, on July 7, 2025, at 30 Muir Road, Martinez, California. The purpose of the hearing was to determine whether cause existed to revoke the legal nonconforming status of a tobacco retailing use pursuant to the Contra Costa County Ordinance Code ("Ordinance Code"), Section 26-2.2022.

The following individuals testified on behalf of the responsible party:

- Matthew Pourabedin, owner of the above-referenced real property.

No other individuals testified on the matter.

The following evidence was submitted on the matter:

1. Written statement from Ahmed Dubaih, owner of Smoke Depot, received July 7, 2025.
2. County Staff Report, including Attachments A through H, dated July 7, 2025.

After considering the testimony and evidence, the County Zoning Administrator makes the following findings:

1. The subject property is located at 3770 San Pablo Dam Road in the unincorporated El Sobrante area (“Subject Property”) and is located within a planned unit (P-1) zoning district.
2. The County’s Tobacco Retailer’s License Ordinance, Chapter 445-10 of the County’s Ordinance Code requires tobacco retailers to obtain from the County and maintain a tobacco retailer’s license and enumerates other regulations and standards applicable to the retailing of tobacco products.
3. The County’s Tobacco Retailing Businesses Ordinance, Chapter 88-26 of the County’s Ordinance Code, (the “Ordinance”) was adopted in 2017 to prohibit the concentration and location of tobacco retailing businesses near sensitive receptors. The Ordinance prohibits the establishment or maintenance of a tobacco retailing business within 500 feet of another tobacco retailing business, or within 1,000 feet of a school, park, and playground. (Ord. Code, § 88-26.402(a) and (b).) Under the Ordinance, a tobacco retailing business that was established prior to 2017 and that does not conform to the location restrictions does not violate the Ordinance if all applicable permits and licenses, including a tobacco retailer's license, are maintained in full force and effect, and the nonconforming tobacco retailing is not increased, enlarged, or expanded. (Ord. Code, § 88-26.406.)
4. Smoke Depot is a tobacco retailing business operating on the Subject Property and is located within 500 feet of another tobacco retailing business, and within 1,000 feet of a school, park, and playground. Accordingly, Smoke Depot does not conform with the location requirements of the County’s Tobacco Retailing Businesses Ordinance.

5. Prior to Smoke Depot's operation at the Subject Property, and since approximately 1986, Jasmine Gifts and Tobacco had operated continuously at the Subject Property as a tobacco retailing business.
6. On or around May 20, 2022, Jasmine Gifts and Tobacco was sold to the current owners and renamed to Smoke Depot. Upon the change in ownership, Smoke Depot was required to apply for an obtain a new valid tobacco retailer's license. (Ord. Code, § 445-10.010(c) [tobacco retailer's license is non-transferable].) Smoke Depot did not apply for or obtain a new valid tobacco retailer's license at that time.
7. In January 2023, Smoke Depot applied for and obtained a tobacco retailer's license from the Contra Costa County Health Services Department ("HSD" or "Health Services Department") and Business Licensing Office, subject to zoning verification by the Contra Costa County Department of Conservation and Development ("DCD") that Smoke Depot complied with the County's Tobacco Retailing Business Ordinance. The issued tobacco retailer's license was valid for the remainder of its annual term, through June 30, 2022, at which time Smoke Depot would be required to renew the license.
8. On January 25, 2023, DCD issued a determination letter finding that the retail sale of tobacco products at the Subject Property was considered a legal nonconforming use under Section 88-26.406¹, and cited the conditions necessary to maintain the legal nonconforming status. DCD's legal nonconforming determination ("CDSE22-00009") authorized Smoke Depot to operate at the current location, in accordance with the listed conditions and requirements of Section 88-26.406, despite Smoke Depot's nonconformance with the County's Tobacco Retailing Businesses Ordinance location restrictions.
9. The issued tobacco retailer's license was valid for the remainder of its annual term, through June 30, 2023, at which time Smoke Depot was required to renew the license. (Ord. Code, § 445-10.008(b).) Smoke Depot did not renew its tobacco retail's license after it expired on June 30, 2023, and Smoke Depot has been operating as a tobacco

¹ Unless otherwise noted, any reference to "Section" means a section of the County Ordinance Code.

retailer without a valid tobacco retailer's license since July 1, 2023.

10. Ordinance Code, Section 26-2.022 [Variance, conditional use, and special permits – modification, suspension, and revocation], provides that a permit may be modified, suspended, or revoked on any of the following grounds:

- (a) The failure to comply with any term, limitation, or condition of the permit.

Zoning Administrator Finding: Ordinance Code, Section 88-26.406(b) requires all nonconforming tobacco retailing uses to maintain a valid tobacco retailer's license and prohibits the nonconforming tobacco retailing use from being increased, enlarged, or expanded.

Smoke Depot failed to initially obtain, and then failed to maintain, a tobacco retailer's license. In January 2023, the County Health Services Department issued an Administrative Penalty Notice of Fine, dated January 27, 2023, for Smoke Depot's failure to obtain a new, valid tobacco retailer's license following the transfer of ownership of the tobacco retailing business at the Subject Property. The Health Services Department also issued a Notice of Decision, dated June 26, 2024, following a suspension hearing, in which it found that Smoke Depot had failed to renew and maintain a valid tobacco retailer's license. Smoke Depot does not currently maintain a valid tobacco retailer's license. Failure to obtain and maintain a valid tobacco retailer's license is a failure to comply with the conditions of maintaining a legal nonconforming status for a tobacco retailing use under CDSE22-00009 and Ordinance Code, Section 88-26.406(b).

Additionally, Smoke Depot actively expanded the tobacco products sold onsite to include prohibited items, such as flavored tobacco products, other prohibited tobacco products, and illegal contraband. The Contra Costa County Sheriff's Office ("Sheriff's Office") citations from November 9, 2022, April 18, 2024, March 7, 2025, and April 29, 2025, and the Health Services Department's site inspection records from April 18, 2024, all cite the following violations by Smoke Depot related to products sold at the Subject Property:

- i) *Selling flavored tobacco products, including menthol cigarettes, in violation of Ordinance Code, Section 445-6.006.*
- ii) *Selling small packs of cigars in violation of Ordinance Code, Section 445-6.010.*
- iii) *Selling single cigars in violation of Ordinance Code, Section 445-6.010.*
- iv) *Selling electronic smoking devices in violation of Ordinance Code, Section 445-6.014.*
- v) *Selling drug paraphernalia, including mushrooms, cannabis, and flavored cannabis vaping liquids, in violation of Ordinance Code, Section 445-10.018(a), Title 21, United States Code, Section 863, and California Health and Safety Code, Sections 11364.5 and 11377.*

Each of these violations constitutes a failure to comply with the conditions listed in CDSE22-00009 and Ordinance Code, Section 88-26.406(b), which prohibits expansion of the legal nonconforming tobacco retailing use, and each such failure to comply is cause for revocation of the legal nonconforming status for tobacco retailing use at the Subject Property.

- (b) *The property or portion thereof subject to the permit is used or maintained in violation of any requirement of this code.*

Zoning Administrator Finding: *CDSE22-00009 and Ordinance Code, Section 88-26.406(b), require Smoke Depot to maintain a valid tobacco retailer's license in order to maintain its legal nonconforming status. Evidence submitted by the Health Services Department and the Sheriff's Office indicate that Smoke Depot is operating without a valid tobacco retailer's license and conducting sales of prohibited or illegal tobacco and cannabis products. Smoke Depot, therefore, is in direct violation of Ordinance Code, Section 88-26.406(b).*

Additionally, the Health Services Department and the Sheriff's Office cited Smoke Depot on multiple occasions for violations of the County's Secondhand Smoke

and Tobacco Product Control Ordinance (Ordinance Code, Division 445).

Specifically, Smoke Depot has been cited for the following violations:

- i) Selling flavored tobacco products, including menthol cigarettes, in violation of Ordinance Code, Section 445-6.006.*
- ii) Selling small packs of cigars in violation of Ordinance Code, Section 445-6.010.*
- iii) Selling single cigars in violation of Ordinance Code, Section 445-6.010.*
- iv) Selling electronic smoking devices in violation of Ordinance Code, Section 445-6.014.*
- v) Selling drug paraphernalia, including mushrooms, cannabis, and flavored cannabis vaping liquids, violation of Ordinance Code, Section 445-10.018(a), Title 21, United States Code, Section 863, and California Health and Safety Code, Sections 11364.5 and 11377.*

Each of these violations constitutes a violation of the cited Ordinance Code sections, and each such violation is cause for revocation of the legal nonconforming status for tobacco retailing use at the Subject Property.

- (c) The use for which the permit was granted has been so exercised as to be detrimental to the public health or safety or as to constitute a nuisance.*

Zoning Administrator Finding: Violations of the Ordinance Code may be detrimental to public health and safety, as the Ordinance Code exists to maintain public health and safety by requiring compliance with relevant regulations. Failure to comply with the Ordinance Code may create unsafe situations or public nuisances for members of the public. Smoke Depot was cited numerous times for the following violations of Ordinance Code, Division 445 (the County's Tobacco Retail Sales Ordinance):

- i) Retailing tobacco without a valid tobacco retailer's license – violation of Ordinance Code, Sections 445-10.010(c) and 88-26.406(b).*

- ii) *Flavored Tobacco Products on display and offered for sale – violation of Ordinance Code, Section 445-6.006.*
- iii) *Menthol Cigarettes on display and offered for sale – violation of Ordinance Code, Section 445.6.006.*
- iv) *Electronic smoking devices on display and offered for sale – violation of Ordinance Code, Section 445-6.014.*

Each of the above violations of the County Ordinance Code is detrimental to the public health and safety. The Division 445 of the County Ordinance Code was enacted to maintain the public health and safety and, therefore, each of the above violations of that division is detrimental to public health and safety, and each violation is cause for revocation of the legal nonconforming status for a tobacco retailing use at the Subject Property.

- (d) A license required for the conduct of the business on the premises covered by the permit has been suspended or revoked.

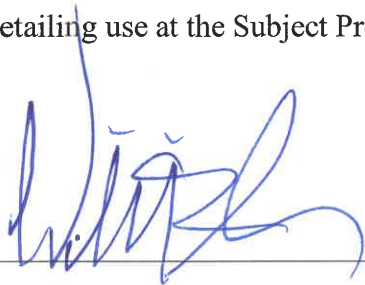
Zoning Administrator Finding: *For a retailer, individual, or entity to conduct tobacco retailing in the unincorporated area of Contra Costa County, the retailer, individual, or entity must first obtain and maintain a valid tobacco retailer's license from the Health Services Department for the location where tobacco retailing is conducted. On April 24, 2024, the Health Services Department issued a Notice of Suspension Hearing for Smoke Depot. The Notice cited multiple violations of the Tobacco Retail Sales Ordinance and informed Smoke Depot that on June 11, 2024, the Health Services Director would hold a license suspension hearing. At the June 11, 2024, license suspension hearing, the Health Services Director and Deputy Health Services Officer determined that Smoke Depot was operating without a new, valid tobacco retailer's license, in direct violation of Ordinance Code, Section 445-10.002. Accordingly, the Health Services Director suspended Smoke Depot's application for a new tobacco retailer's license and ordered immediate cessation of all retailing of tobacco products at the Subject Property. Despite the Health Services Director's order, Smoke Depot continued*

selling tobacco products at the Subject Property.

Operation of a tobacco retailing business in unincorporated Contra Costa County without a valid tobacco retailer's license directly violates County ordinances enacted to protect health and safety and, therefore, is detrimental to public health and safety, and is cause for revocation of the legal nonconforming status for a tobacco retailing use at the Subject Property.

ORDER

Based on the foregoing, the County Zoning Administrator hereby revokes the determination made in CDSE22-00009 and revokes the legal nonconforming status for the tobacco retailing use at the Subject Property.

A handwritten signature in blue ink, appearing to read 'William R. Nelson', is written over a horizontal line.

William R. Nelson
Deputy Zoning Administrator
Contra Costa County