

**FINDINGS FOR REVOCATION FOR COUNTY FILE #CDSE22-00009; AHMED DUBAIH
(BUSINESS OWNER) AND MATTHEW POURABEDIN & ROYA IRANPOUR (OWNER)**

FINDINGS

A. Revocation Findings:

1. The subject property is located at 3 770 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-J0 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, § 445-10.10(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 88-26.496, 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 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) Required Finding: *The failure to comply with any term, limitation or condition of the permit.*

Project 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 County Ordinance Code, Section 445-6.006.
- ii. Selling small pack of cigars in violation of County Ordinance Code, Section 445-6.010.
- iii. Selling single cigars in violation of County Ordinance Code, Section 445-6.010.
- iv. Selling electronic smoking devices in violation of County Ordinance Code, Section 445-6.014.
- v. Selling drug paraphernalia, including mushrooms and cannabis in violation of County Ordinance Code, Section 445-10.018(a); 21 U.S. Code, Section 863; Cal. Health and Saf. 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) Required Finding: The property or portion thereof subject to the permit is used or maintained in violation of any requirement of this code.

Project 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 County Ordinance Code, Section 445-6.006.
- ii. Selling small pack of cigars in violation of County Ordinance Code, Section 445-6.010.
- iii. Selling single cigars in violation of County Ordinance Code, Section 445-6.010.
- iv. Selling electronic smoking devices in violation of County Ordinance Code, Section 445-6.014.
- v. Selling drug paraphernalia, including mushrooms and cannabis in violation of County Ordinance Code, Section 445-10.018(a); 21 U.S. Code, Section 863; Cal. Health and Saf. 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) *Required Finding: The use for which the permit was granted has been so exercised as to be detrimental to the public health or safety as to constitute a nuisance.*

Project 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):

- o Retailing tobacco without a valid tobacco retailer's license – Violation of 445-10.010(c) and 88-26.406(b).
- o Flavored Tobacco Products on display and offered for sale – Violation of 445-6.006.
- o Menthol Cigarettes on display and offered for sale – Violation of 445.6.006.
- o Electronic smoking devices on display and offered for sale – violation of 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) *Required Finding: A license required for the conduct of the business on the premises covered by the permit has been suspended or revoked.*

Project 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.

B. California Environmental Quality Act (CEQA) Findings:

The project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act §15321, Class 21, Enforcement Actions by Regulatory Agencies. Section 15321 exempts actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered by the regulatory agency (County). The County will revoke a land use entitlement in the form of the legal non-conforming status for a tobacco retailing use at the Subject Property.