

Summary of Evidence

Business Information

Business Name: Smokey's Smoke Shop & Gifts

Business Address: 25088 Hesperian Blvd, Hayward, CA 94545

Business Owner Name: Haroon Ahmed

Recommendation

As summarized, this establishment committed its first violation on April 13, 2022. As a courtesy, staff decided to rescind the notice due to "vagueness" of the listed corrective actions. This has not been counted as a violation against the business. The business was inspected again on 07/06/2022 where violations were again observed.

Evidence supporting the violation listed below are included in the Exhibits listed on the following page and includes testimony from various Inspectors as indicated on the Notice of Violation and Case and Inspection Details who witnessed the violations, as well as dated photos of the violations.

Following the issuance of a 2022 Notice of Violation, the business exercised its right to appeal the City's findings through an administrative hearing. After reviewing the evidence and testimony presented by both parties, the Hearing Officer upheld the Notice of Violation and found in favor of the City, affirming that the violation had occurred as documented by City staff. This documentation can be found as an attached exhibit.

Here, the City does not recommend issuance of a lesser penalty due to the business's continued pattern of non-compliance, including the sale of prohibited flavored tobacco products, electronic smoking devices, and mushroom gummies. Despite multiple prior enforcement cases, failed inspections, and repeated educational outreach by the City, the business has continued to engage in unlawful tobacco sales practices.

Violations

Date	Nature of Violation	Municipal Code Violation	Fees
11/17/2025	Flavored tobacco products, prohibited cigarillo packaging and mushroom gummies.	SEC. 10-1.2783	\$1500.00
02/09/2023	Flavored tobacco products, vape products/ electronic smoking devices, hemp products and CBD products.	SEC. 10-1.2783	-
11/17/2022	Flavored tobacco products, vape products/ electronic smoking devices, hemp products and CBD products.	SEC. 10-1.2783	-
08/15/2022	Flavored tobacco products, vape products/ electronic smoking devices, hemp products and CBD products.	SEC. 10-1.2783	-
07/06/2022	Flavored tobacco products, vape products/ electronic smoking devices, hemp products and CBD products.	SEC. 10-1.2783	-

Current Status

2026 case is to be scheduled. \$1500.00 in penalties and fees are still due from failed inspection in 2025 which was closed as resolved.

Appeals

One - Unsuccessful

List of Evidence

Exhibit I: Photos

Exhibit II: Case and Inspection Details (CE-22-0507)

Exhibit III: Case and Inspection Details (CE-TRLENF-2025-00085)

Exhibit IV: Notice of Violation (CE-22-0507)

Exhibit V: Notice of Violation (CE-22-0507)

Exhibit VI: Notice of Violation (CE-22-0507)

Exhibit VII: Notice of Violation (CE-22-0507)

Exhibit VIII: Appeal Decision (CE-22-0507)

Exhibit IX: Administrative Penalty and Fee Notice (CE-TRLENF-2025-00085)



Caption: Flavored tobacco products.



Caption: Flavored tobacco products.



Caption: Flavored tobacco products.



Caption: Mushroom gummies.



Caption: Mushroom gummies.



Caption: Prohibited cigarillo packaging.



Caption: Electronic smoking devices. 08/15/2022



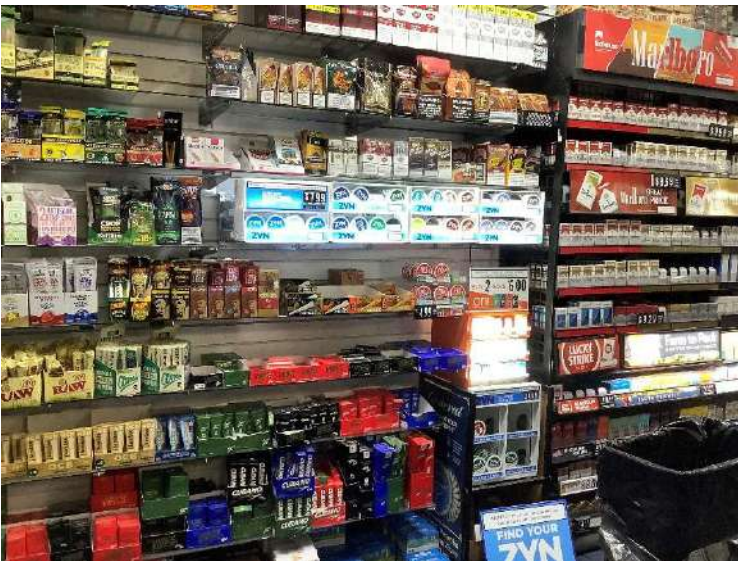
Caption: CBD and hemp products.08/15/2022



Caption: Hemp products. 07/06/2022



Caption: Electronic smoking devices. 07/06/2022



Caption: Flavored tobacco and nicotine products. 07/06/2022



Caption: Flavored tobacco products and hemp products. 04/14/2022



CITY OF HAYWARD CASE AND INSPECTION(S) DETAILS (22-0507)

Code Case

22-0507

Case Type: CH- Tobacco Retail Standards **Open Date:** 03/28/2022

Status: Closed - Resolved **Closed Date:** 03/30/2023

Description: Gogov Topic: Tobacco Retail License - CN:22-0507 - Assigned To: Amber Green

Parcel: 442-0051-034-00 Main **Address:** 25088 Hesperian Blvd,
HAYWARD, CA 94545 **Zone:** Neighborhood Commercial (CN) (Zoning District)

Contacts: Business Owner/Agent: SNA Trading Inc.

Property Owner: LUCAS ANSELMO F & CONCEICAO T ETAL

Activity Type	Comments	User	Created On
Case Notes	Added by Angelica Ventura - Munis records show all TRL fees have been paid to date.	Angelica Ventura	03/29/2022
	Added by Amber Green - Due to administrative hearing requested and currently being scheduled, inspector will not be inspecting the property as scheduled as to not interfere with the hearing.	Amber Green	05/18/2022
	Added by Amber Green - Attorney for Smokey's and PO never received hearing information. Paralegal Hannah Young is requesting a continuance. CAO requests June 29th in the afternoon works. PO email address is Smokeys510@gmail.com	Amber Green	06/07/2022
	Added by Amber Green - Continuance has been granted, next hearing date is scheduled for Wednesday June 29th at 2:30pm.	Amber Green	06/08/2022
	Added by Amber Green - Hearing officer has called for a continuance due to administrative jurisdiction abilities.	Amber Green	06/30/2022
	Added by Amber Green - Inspector will send out TRL NOV after PC 832 training. Schedule has been limited to 4th of July holiday schedule and notices that were sent out.	Amber Green	07/15/2022
	Added by Amber Green - Emailed CE manager TRL notice for review.	Amber Green	08/12/2022
	Added by Amber Green - Inspector was out of the office due to Covid. Delay in the notice going out.	Amber Green	09/01/2022
	Added by Amber Green - Inspector was out of the office due to car accident and health issues. Delay in notice going out.	Amber Green	10/13/2022
	Added by Amber Green - Paralegal Hannah Young 510-333-7996 has reached out requesting an administrative hearing. (Request was left through VM on 10/24/2022).	Amber Green	10/31/2022
	Inspector mailed out Notice of Inspection (template for after administrative hearings that constitute a reinspection). Original was mailed to the PO, and a copy was emailed to business owner and attorney.	Amber Green	03/20/2023
Courtesy Notice Sent	Added by Amber Green - Send to (Owner,Property Location), Extra Days (3), Observation (Dear Property Owner Please be advised – After review of the Notice of Violation provided on 04/18/2022, and consideration of tenant concerns in regards to Code Enforcement Case #22-0507, Staff will be amending the original Notice of Violation provided in an effort to provide additional clarity and direction for compliance. Additionally, to assure results of the required tobacco retail inspection are current, staff will be reaching out to coordinate a new inspection for the purposes updating current conditions. Please be advise all compliance dates associated with the original Notice of Violation will be updated to reflect an adjusted timeline. Should you have any questions please feel free to reach out to me at your convenience.)	Amber Green	07/01/2022

CASE AND INSPECTION(S) DETAILS (22-0507)

Email	<p>Added by Amber Green - From: Hannah Young <hannah@anthonylaw.group> Sent: Thursday, April 28, 2022 11:06 AM To: Mira Hahn <Mira.Hahn@hayward-ca.gov>; Amber Green <Amber.Green@hayward-ca.gov> Cc: James Anthony <james@anthonylaw.group>; Drew Sanchez <drew.sanchez@anthonylaw.group>; Jamila Colbert <jamila@anthonylaw.group>; Theresa Sawyer <theresa@anthonylaw.group> Subject: Questions Re: Administrative Hearing for Smokey's Smoke Shop & Gifts, Case No. CE-22-0507 — 25088 Hesperian Boulevard</p> <p>CAUTION:This is an external email. Do not click on links or open attachments unless you know the content is safe. Greetings,</p> <p>We represent SNA Trading Inc. dba Smokey's Smoke Shop & Gifts in the above matter. I am writing to follow up regarding the voicemails I left for you yesterday, as well as the voicemails you left for me earlier this morning.</p> <p>Pursuant to the instructions on the City's Request for Administrative Hearing Request form, we understand that the completed form and \$946 hearing fee must be submitted to the City of Hayward Code Enforcement Division, 777 B Street, Hayward, CA 94541.</p> <p>Please confirm whether it is possible to return the form electronically (via email), and also provide information concerning payment options for submitting the \$946 fee.</p> <p>Feel free to call me on my cell at 510-333-7996. Thanks in advance.</p> <p>Best, Hannah</p>	Amber Green	04/28/2022
	<p>Added by Amber Green - Provided Administrative Hearing form and instructions on how to reach Revenue for alternative forms of payment</p>	Amber Green	04/28/2022
	<p>Added by Amber Green - Hi Amber/Mira,</p>	Amber Green	04/28/2022
	<p>This is an aside since the documents may be requested for the hearing. I attached the original application and the business name change update for our reference. Also, the license expired 12/31/2020 in case we can use this as ammo in the hearing.</p> <p>I'll let you know Monday once the hearing fee has been paid.</p> <p>Thank you,</p> <p>Forrest Nylander Finance Supervisor City of Hayward – Finance Revenue Division</p>		
	<p>Added by Amber Green - Emailed hearing officer staff report and TRL NOV</p>	Amber Green	06/06/2022
Inspection	<p>Added by Amber Green - At time of inspection met with Kahn 209- 649-3270 and spoke with PO HAROON 408-429-9736. Inspector observed various products not in compliance with new tobacco ordinance. Will allow 30 days for reinspection to observe progress towards compliance.</p>	Amber Green	04/13/2022
	<p>Added by Amber Green - At time of inspection spoke with PO Haroon and inspector took pictures of entire shop.</p>	Amber Green	07/06/2022
	<p>Added by Amber Green - At time of inspection, PO Haroon walked inspector over to each area of the smoke shop to discuss individual items.</p>	Amber Green	08/15/2022
	<p>Owner abated. Closing case.</p>	Amber Green	03/30/2023
Notice of Inspection Sent		Amber Green	03/16/2023
Notice of Violation Letter Sent	<p>Added by Amber Green - Send to (Owner,Property Location), Observation (During scheduled inspection please show progress is being made towards compliance.)</p>	Amber Green	04/18/2022
	<p>Added by Amber Green - Send to (Owner,Property Location), Observation (A progress check will be conducted on Wednesday September 28, 2022 to ensure measures are being taken place to bring the property into compliance.)</p>	Amber Green	08/12/2022

CASE AND INSPECTION(S) DETAILS (22-0507)

Notice of Violation Letter Sent

Added by Amber Green - Send to (Owner,Property Location),
Observation (A progress check will be conducted on Wednesday
November 16, 2022 to ensure measures are being taken place to
bring the property into compliance.)

Amber Green

10/13/2022

Amber Green

02/08/2023

Amber Green

02/09/2023

Amber Green

02/09/2023

CASE AND INSPECTION(S) DETAILS (22-0507)

Other Activity

Added by Amber Green - Contact Made (Yes), Contact Date (04/13/2022), Abated (No), Hearing Type (Admin), Days to Correct (30), Hearing Date (06/08/2022), Abated by (Contractor), Instructions (In accordance with the Tobacco Retail License Program, Code Enforcement conducts annual tobacco inspections to monitor the responsible sales of tobacco products to help eliminate the sale of tobacco products to minors. In July 2020, the City Council adopted Resolution No. 20-13 approving revisions the Tobacco Ordinance to address the nation-wide growing crisis in the accessibility and use of flavored tobacco and vaping devices by the youth. The Ordinance revisions included a ban in the sale all flavored tobacco products, electronic smoking devices, vaping products, parts, etc., and a six-month grace period from the adoption of the Ordinance (July 14, 2020) for tobacco retailers to remove the prohibited tobacco and vaping products to comply by January 14, 2021. Other changes adopted included (but not limited to) minimum tobacco prices and package sizes, increased distances to youth sensitive areas, revocation for repeat violations, etc.

Amber Green

05/26/2022

04/13/2022 At time of inspection Inspector Green met with tenant Kahn and spoke with property owner Haroon on the phone. Inspector Green observed various products not in compliance with the new tobacco ordinance. Inspector Green will allow 30 days for reinspection to observe progress towards compliance.

04/18/2022 Inspector Green sent TRL - Notice of Violation to (Owner,Property Location), Observation (During scheduled inspection please show progress is being made towards compliance.)

04/28/2022 Inspector Green received phone call from attorney James Anthony who is requesting an administrative hearing. Inspector Green left a voicemail advising once the administrative hearing fee is received the administrative hearing can be scheduled.

04/28/2022 Inspector Green received phone call from paralegal Hannah Young requesting an administrative hearing. Inspector Green left voicemail advising once the administrative hearing fee has been rec'd the hearing can be scheduled.

04/28/2022 Inspector Green received email from Hannah Young (paralegal) "Greetings, We represent SNA Trading Inc. dba Smokey's Smoke Shop & Gifts in the above matter. I am writing to follow up regarding the voicemails I left for you yesterday, as well as the voicemails you left for me earlier this morning. Pursuant to the instructions on the City's Request for Administrative Hearing Request form, we understand that the completed form and \$946 hearing fee must be submitted to the City of Hayward Code Enforcement Division, 777 B Street, Hayward, CA 94541. Please confirm whether it is possible to return the form electronically (via email), and also provide information concerning payment options for submitting the \$946 fee. Feel free to call me on my cell at 510-333-7996. Thanks in advance. Best, Hannah"

04/28/2022 Inspector Green provided Administrative Hearing form and instructions on how to reach Revenue for alternative forms of payment

04/28/2022 Inspector Green received email from Forrest Nylander (Senior Customer Account Clerk) stating the administrative hearing fee has been paid for. The original business application and name change for reference. The business license expired in 12/31/2020.

05/18/2022 Due to the administrative hearing requested inspector Green will not be inspecting the property as scheduled as to not interfere with the hearing.

05/18/2022 Inspector Green left a voicemail for tenant Kahn advising no scheduled reinspection will be conducted until after the administrative hearing. Inspector Green spoke with property owner Haroon and advised no scheduled reinspection's will take place until after the administrative hearing.

05/20/2022 Angelica Ventura (Code Enforcement Senior Secretary) received Administrative Hearing Request (see attached). Hearing is set for Wednesday June 8th at 2:00pm via Teams meeting with in-person option. Mailed hearing appointment letter to the address provided on the hearing request form (copy attached)

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CASE AND INSPECTION(S) DETAILS (22-0507)

Other Activity	Added by Amber Green - Contact Made (Yes), Contact Date (08/15/2022), Abated (No), Hearing Type (Admin), Days to Correct (30), Hearing Date (12/08/2022), Abated by (Owner), Instructions (In accordance with the Tobacco Retail License Program, Code Enforcement conducts annual tobacco inspections to monitor the responsible sales of tobacco products to help eliminate the sale of tobacco products to minors. In July 2020, the City Council adopted Resolution No. 20-13 approving revisions to the Tobacco Ordinance to address the nation-wide growing crisis in the accessibility and use of flavored tobacco and vaping devices by the youth. The Ordinance revisions included a ban in the sale all flavored tobacco products, electronic smoking devices, vaping products, parts, etc., and a six-month grace period from the adoption of the Ordinance (July 14, 2020) for tobacco retailers to remove the prohibited tobacco and vaping products to comply by January 14, 2021. Other changes adopted included (but not limited to) minimum tobacco prices and package sizes, increased distances to youth sensitive areas, revocation for repeat violations, etc.)	Amber Green	11/17/2022
Phone Call	Added by Amber Green - Rec'd phone call from attorney James Anthony 510-207-6243 who is requesting an administrative hearing. Left a VM advising once the fee is rec'd we can schedule the hearing.	Amber Green	04/28/2022
	Added by Amber Green - Rec'd phone call from paralegal Hannah Young requesting administrative hearing. Left VM advising once the administrative hearing fee has been rec'd the hearing can be scheduled.	Amber Green	04/28/2022
	Added by Amber Green - Left VM for tenant Kahn 209-649-3270 advising no scheduled inspection will be conducted today. Spoke with PO Haroon and advised no schedule inspection as well.	Amber Green	05/18/2022
	Added by Amber Green - Spoke with PO Haroon and advised the City will amend the original NOV to provide clarity and direction for compliance. Emailed a copy of courtesy notice to PO. Inspector will reinspect property tomorrow.	Amber Green	07/05/2022
	Spoke with Sandra Lucas 925-786-2048 (the daughter of the PO of the building). Sandra has been brought up to speed regarding the hearing and the legalities.	Amber Green	01/18/2023

Violation Code: HMC SEC. 10-1.2783 - TOBACCO RETAIL STANDARDS **Violation Status:** In Progress **Citation Issue Date:** 03/28/2022

Compliance Date: 03/30/2023

Code Description: Violation of Tobacco Retail Requirements and Operational Standards

Resolved Date:

Corrective Action: VIOLATION: NON-COMPLIANCE WITH THE REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS.

SEC. 10-1.2783

C.It shall be a violation of these regulations for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, to possess with intent to sell or offer for sale, or exchange for any form of consideration any:

- 1.Flavored tobacco products, parts, components, or flavored tobacco paraphernalia to include but not limited to: Inspector observed during inspection "Real Leaf Rolls", "Wraps", "ZYN", "Backwoods", etc.
- 2.Electronic smoking devices, electronic nicotine delivery systems (E-cigarettes), vaping devices, including all parts and components to include but not limited to: Inspector observed during inspection "PAX", "Exus", "Vaped Vano", "Volcano", etc.
- 3.Electronic smoking and vaping products, and vaping paraphernalia, including but not limited to, devices, parts and components, e-liquids, concentrates, waxes, etc to include but not limited to: Inspector observed during inspection "Carta", "G", "Backwoods", etc.
- 4.CBD or hemp products, or any products made from, derivative of, or containing any amount of a Cannabis plant intended for human consumption to include but not limited to: Inspector observed during inspection "Hemp2o", "High Hemp Organic Wraps", "Artisanal Hemp Cones", "Organic Hemp Raw Cones", "CBD Edibles", "CBD Lollipops", "PM Hemp", etc.

Corrective Action: Removal of all products that do not comply with the requirements and operational standards for tobacco retail establishments.

CASE AND INSPECTION(S) DETAILS (22-0507)**Inspection(s)****ICODE-002320-2023****Case Type:** Code Enforcement Inspection **Scheduled:** 03/06/2023**Status:** Canceled **Actual Date:** 03/06/2023**Comments:****Address:** 25088 Hesperian Blvd,
HAYWARD, CA 94545**ICODE-002346-2023****Case Type:** Code Enforcement Inspection **Scheduled:** 03/06/2023**Status:** Canceled **Actual Date:** 03/06/2023**Comments:****Address:** 25088 Hesperian Blvd,
HAYWARD, CA 94545**ICODE-002357-2023****Case Type:** Code Enforcement Inspection **Scheduled:** 03/06/2023**Status:** Canceled **Actual Date:** 03/06/2023**Comments:****Address:** 25088 Hesperian Blvd,
HAYWARD, CA 94545**ICODE-004954-2023****Case Type:** Code Enforcement Inspection **Scheduled:** 03/30/2023**Status:** Passed **Actual Date:** 03/30/2023**Comments:****Address:** 25088 Hesperian Blvd,
HAYWARD, CA 94545



CITY OF HAYWARD

CASE AND INSPECTION(S) DETAILS (CE-TRLENF-2025-00085)

Code Case

CE-TRLENF-2025-00085

Case Type: CH- Tobacco Retail Standards **Open Date:** 11/05/2025

Status: Closed - Resolved **Closed Date:** 04/14/2026

Description: 2025 Annual TRL Inspection

Parcel: 442-0051-034-00 Main **Address:** 25088 Hesperian Blvd,
Hayward, CA 94545 **Zone:** 6 (Fire District)
X (Flood Zone)
Code Enforcement Area: 6 (Code Enforcement Area: 6)

Contacts: Business Owner/Agent: SMOKEY'S SMOKE SHOP & GIFTS
Property Owner: LUCAS ANSELMO F & CONCEICAO T ETAL

Activity Type	Comments	User	Created On
Citation Issued	Tobacco inspections occur annually but can occur at anytime throughout the year. To avoid penalty fees and potentially the revocation of the business license, please ensure that SEC. 10-1.2780 - TOBACCO RETAIL SALES ESTABLISHMENTS is being adhered to. Reach out to Code Enforcement at any time with any questions about tobacco laws.	Jesse Prins	12/01/2025
Inspection	<p>On November 17, 2025, I conducted an initial TRL inspection of the business. I entered the store and met with one of the business owners, Haroon. I introduced myself and provided him with my business card.</p> <p>I began my inspection behind the counter and observed multiple violations, including, but not limited to, flavored tobacco wraps, flavored cigarillos, packaging that did not meet minimum cigarillo standards, and imitation mushroom gummies. I explained each violation to Haroon, and he stated that he understood. I informed him that all identified items must be removed before the next reinspection in a couple of weeks.</p> <p>A notice will be sent for correction.</p> <p>On December 10, 2025, I conducted a reinspection for the annual TRL case at this property. At the time of inspection, no prohibited products or packaging were observed in either the front or back areas of the business. All required licenses were current and properly posted.</p> <p>This case is closed as resolved.</p>	Jesse Prins	12/01/2025
		Jesse Prins	04/14/2026

Invoice No.	Fee Name	Fee Amount	Amount Paid
EG25-26377	CE Tobacco Ordinance 1st Offense	\$1,500.00	\$0.00
Total for Invoice Number EG25-26377		\$1,500.00	
Grand Total for Code Case		\$1,500.00	

Violation Code:	HMC SEC. 10-1.2783 - TOBACCO RETAIL STANDARDS	Violation Status:	Resolved	Citation Issue Date:	12/01/2025
Code Description:	Violation of Tobacco Retail Requirements and Operational Standards			Compliance Date:	12/10/2025
Corrective Action:	All Tobacco Retail Sales Establishments shall abide all Federal, State and Local requirements and standards to include but not limited to the following identified violations: Please remove all flavored tobacco products (any product that has or advertises a characterizing flavor i.e. sweet, fruity, grape, watermelon, menthol, mint etc.), all cigarillos and wraps that do not contain the minimum amount (5) per pack, and any products that imitate a drug (mushroom gummies).			Resolved Date:	12/10/2025

Attached Images

CASE AND INSPECTION(S) DETAILS (CE-TRLENF-2025-00085)



Photo Taken 11-17-2025 (1).jpg



Photo Taken 11-17-2025 (2).jpg



Photo Taken 11-17-2025 (3).jpg



Photo Taken 11-17-2025 (4).jpg



Photo Taken 11-17-2025 (5).jpg



Photo Taken 11-17-2025 (6).jpg



Photo Taken 11-17-2025 (7).jpg



Photo Taken 11-17-2025 (8).jpg

CASE AND INSPECTION(S) DETAILS (CE-TRLENF-2025-00085)**Inspection(s)****ICODE-023812-2025**

Case Type: Initial Assessment Inspection **Scheduled:** 11/17/2025
Status: In Violation **Actual Date:** 11/17/2025

Comments:

Address: 25088 Hesperian Blvd,
Hayward, CA 94545

ICODE-023813-2025

Case Type: Code Enforcement Inspection **Scheduled:** 12/10/2025
Status: Passed **Actual Date:** 12/10/2025

Comments:

Address: 25088 Hesperian Blvd,
Hayward, CA 94545



CITY OF HAYWARD
DEVELOPMENT SERVICES DEPARTMENT
CODE ENFORCEMENT DIVISION
777 B Street, Hayward, CA 94541-5007
(510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

NOTICE OF VIOLATION - Tobacco Retail License

April 18, 2022

LUCAS ANSELMO F & CONCEICAO T ETAL
4588 CROW CANYON PL
CASTRO VALLEY, CA 94552

CASE NO: CE-22-0507
LOCATION: 25088 Hesperian Blvd
APN: 442-0051-034-00
INSPECTION DATE: April 13, 2022

The above property is in a CC-C - Central City Commercial Zoning District. An inspection of the location and/or City records identified the following violation(s) of the Hayward Municipal Code (HMC), which must be corrected before the next compliance date of May 18, 2022 to avoid fees, penalties, and license suspension.

Table with 2 columns: CODE SECTION, VIOLATION/CORRECTIVE ACTION. Row 1: HMC 10-1.2783, NON-COMPLIANCE WITH THE REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS. Corrective Action:

During scheduled inspection please show progress is being made towards compliance.

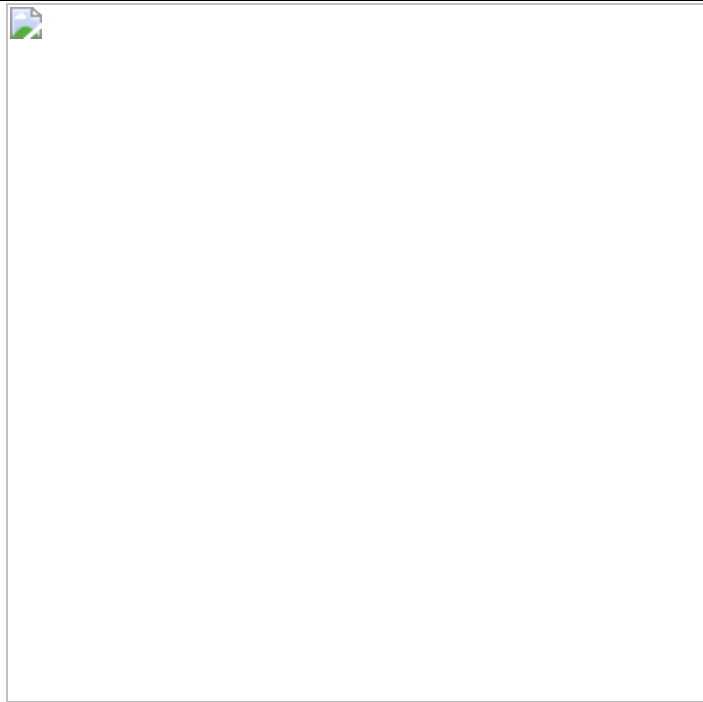
Failure to comply and satisfactorily eliminate all violations by the next compliance date of May 18, 2022 will result in a penalty fee of \$1,500/30-day Tobacco Retail Licensing suspension. Continued violations will result in additional penalty fees and/or other available legal remedies, including revocation of the tobacco retail license and use at this location. Non-payment will result in a lien/special assessment against the property.

You may request an Administrative Hearing within ten (10) calendar days from the date of this letter to dispute the facts of the violations(s) under the Hayward Municipal Code. To request a hearing, please call the inspector at (510) 583-4260 within 10 days from the date of this notice. A \$946 hearing fee is required and must be submitted with any hearing request. If you have any questions regarding this notice, please call (510) 583-4260 as soon as possible and prior to next reinspection date. Your cooperation will be greatly appreciated.

AMBER GREEN
Code Enforcement Inspector I

Encl: Fee Inspection Schedule
Cc: OWNER: LUCAS ANSELMO F & CONCEICAO T ETAL, OCCUPANT: SMOKEY'S SMOKE SHOP & GIFTS

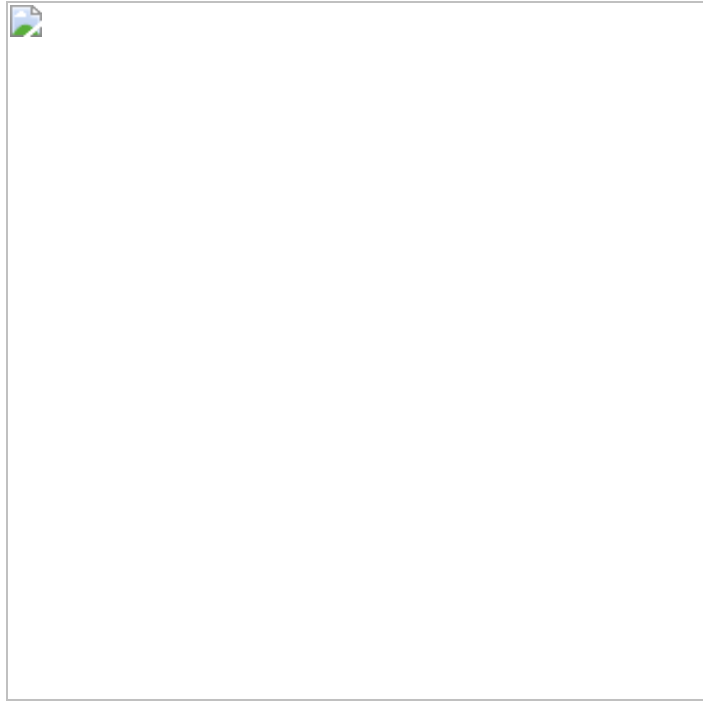
Photographs



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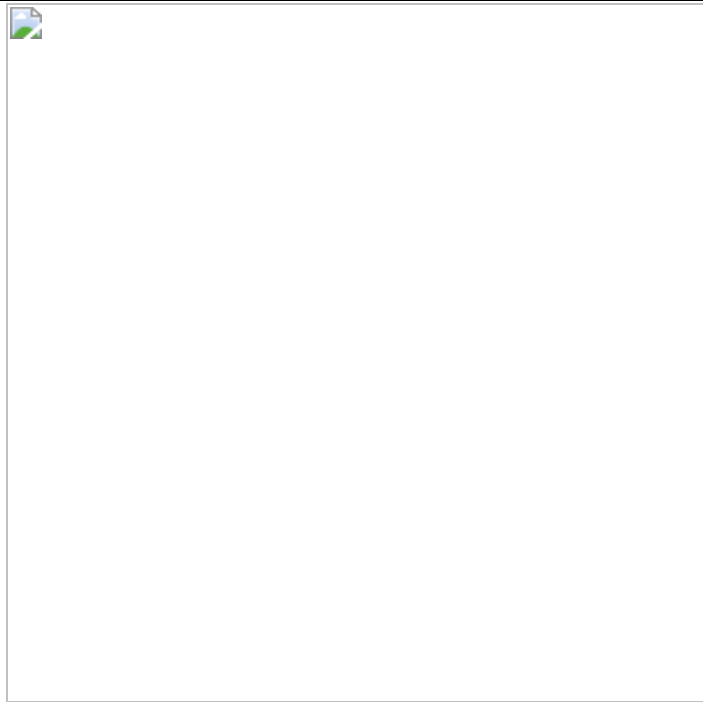
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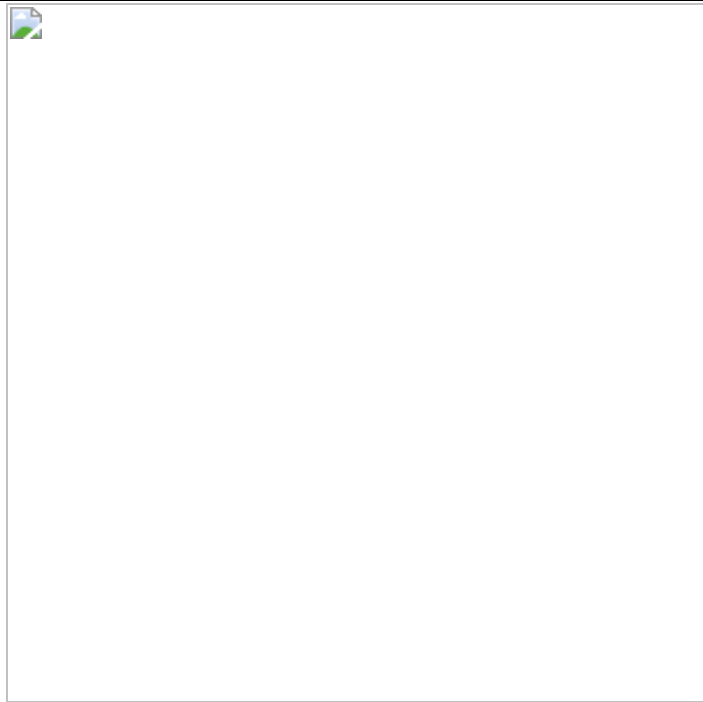
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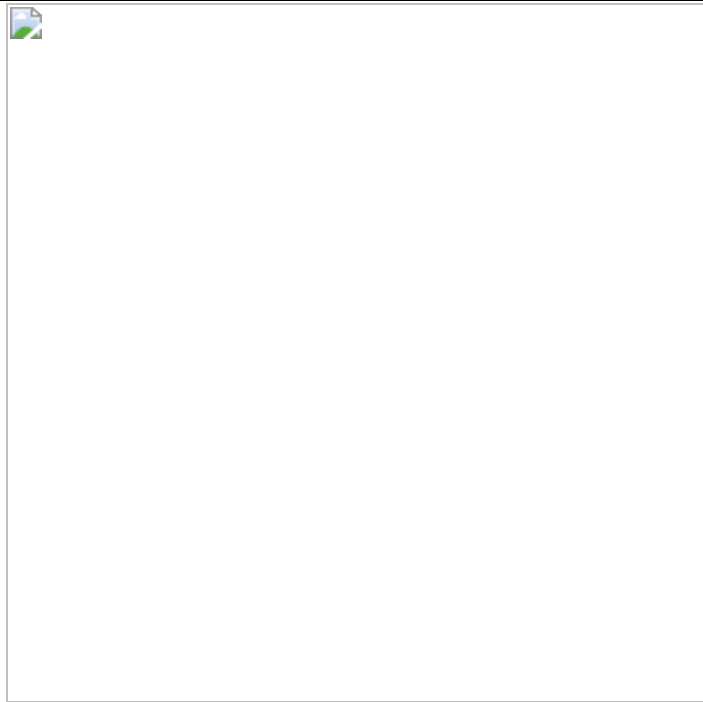
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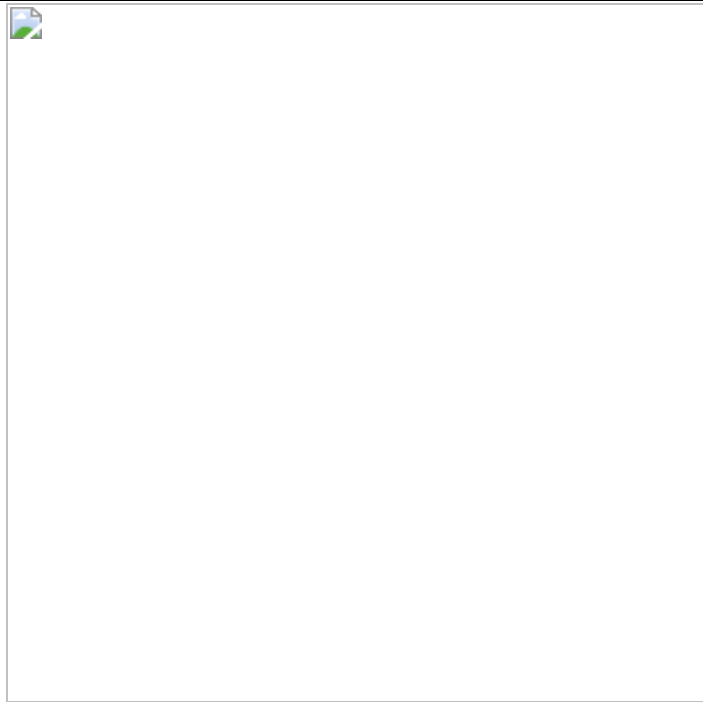
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D15C125D-7297-4A50-8CE7-E5DBA167E673.jpeg



6CC7128E-B5D3-460A-A1A7-E7E0F1FA2AF3.jpeg



52213D31-C2F5-4F97-BE6E-4261E8694BE1.jpeg



AA1F4936-1282-4FCA-9379-D3018A7A19C1.jpeg



CITY OF HAYWARD
DEVELOPMENT SERVICES DEPARTMENT
CODE ENFORCEMENT DIVISION

777 B Street, Hayward, CA 94541-5007
(510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Amber Green, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

On April 18, 2022, I served the following document(s) on the interested parties in this action by sending true copies as shown below for service as designated below:

- 1) TRL - Notice of Violation, APN: 442-0051-034-00, Case #: CE-22-0507

SERVICE BY U.S. MAIL UNDER THE LAWS OF THE STATE OF CALIFORNIA

LUCAS ANSELMO F & CONCEICAO T ETAL
4588 CROW CANYON PL
CASTRO VALLEY, CA 94552

I am familiar with this businessâ€™™ practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

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

Executed on April 18, 2022, at Hayward, California.

AMBER GREEN
Code Enforcement Inspector I



CITY OF HAYWARD
DEVELOPMENT SERVICES DEPARTMENT
CODE ENFORCEMENT DIVISION

777 B Street, Hayward, CA 94541-5007
(510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

NOTICE OF VIOLATION - Tobacco Retail License

April 18, 2022

SMOKEY'S SMOKE SHOP & GIFTS
25088 Hesperian Blvd
HAYWARD, CA 94545

CASE NO: CE-22-0507
LOCATION: 25088 Hesperian Blvd
APN: 442-0051-034-00
INSPECTION DATE: April 13, 2022

The above property is in a CC-C - Central City Commercial Zoning District. An inspection of the location and/or City records identified the following violation(s) of the Hayward Municipal Code (HMC), which must be corrected before the next compliance date of **May 18, 2022** to avoid fees, penalties, and license suspension.

CODE SECTION	VIOLATION/CORRECTIVE ACTION
HMC 10-1.2783	NON-COMPLIANCE WITH THE REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS. Corrective Action:

During scheduled inspection please show progress is being made towards compliance.

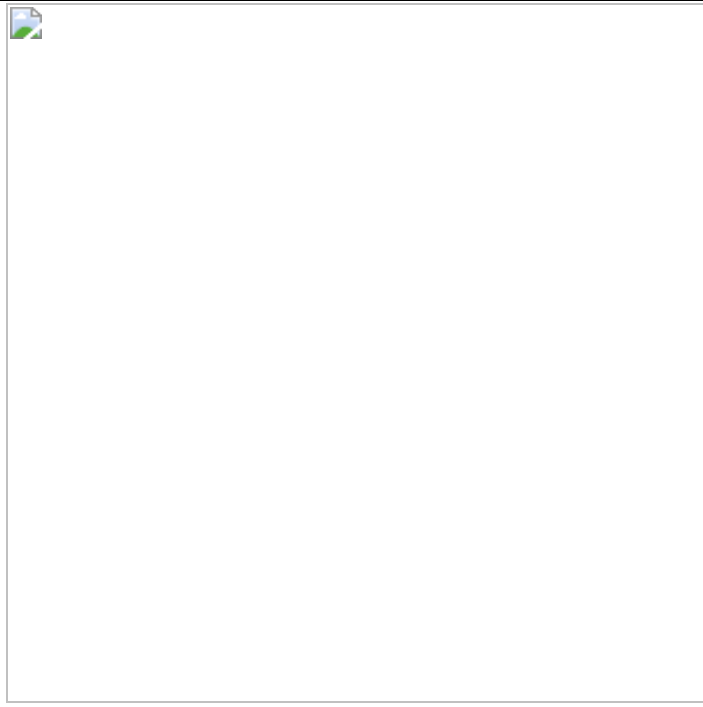
Failure to comply and satisfactorily eliminate all violations by the next compliance date of **May 18, 2022** will result in a **penalty fee of \$1,500/30-day Tobacco Retail Licensing suspension**. Continued violations will result in additional penalty fees and/or other available legal remedies, including revocation of the tobacco retail license and use at this location. Non-payment will result in a lien/special assessment against the property.

You may request an Administrative Hearing within ten (10) calendar days from the date of this letter to dispute the facts of the violations(s) under the Hayward Municipal Code. To request a hearing, please call the inspector at (510) 583-4260 within 10 days from the date of this notice. A \$946 hearing fee is required and must be submitted with any hearing request. If you have any questions regarding this notice, please call (510) 583-4260 as soon as possible and prior to next reinspection date. Your cooperation will be greatly appreciated.

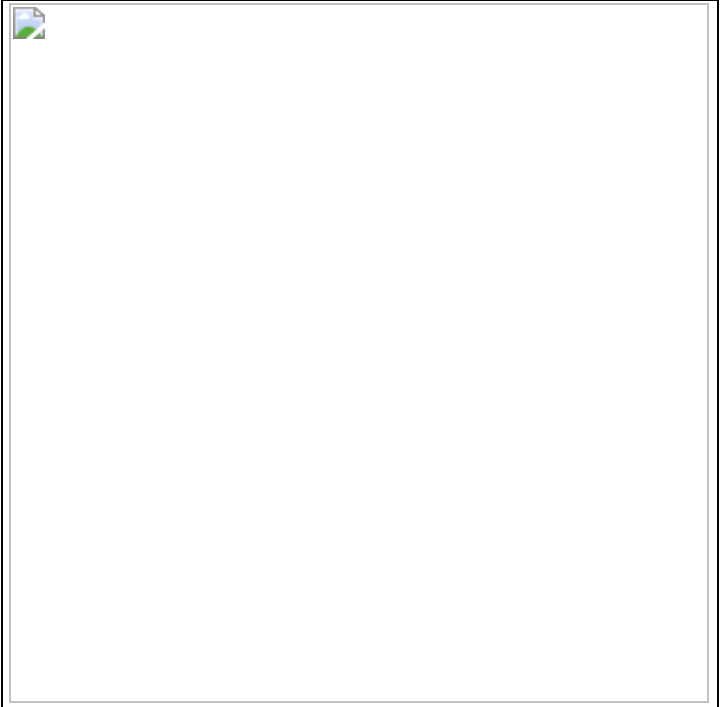
AMBER GREEN
Code Enforcement Inspector I

Encl: Fee Inspection Schedule
Cc: OWNER: LUCAS ANSELMO F & CONCEICAO T ETAL, OCCUPANT: SMOKEY'S SMOKE SHOP & GIFTS

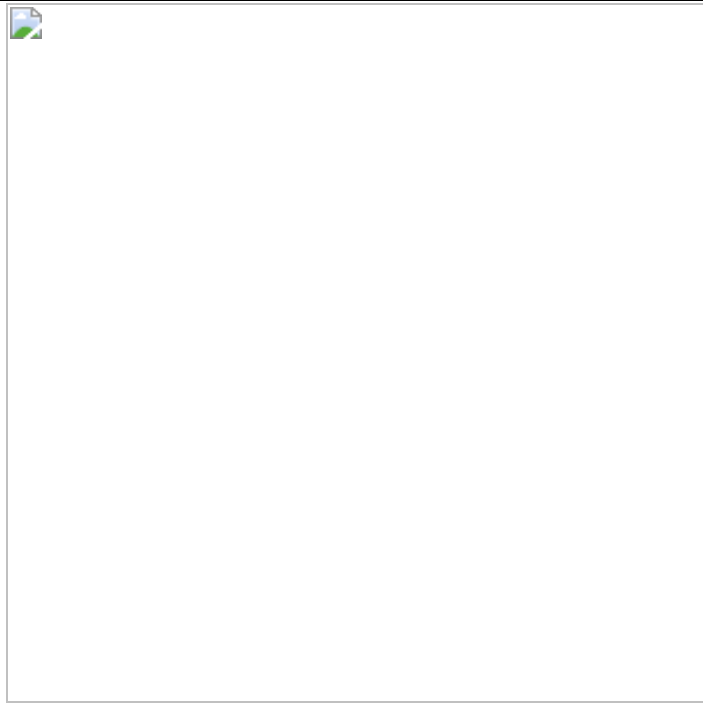
Photographs



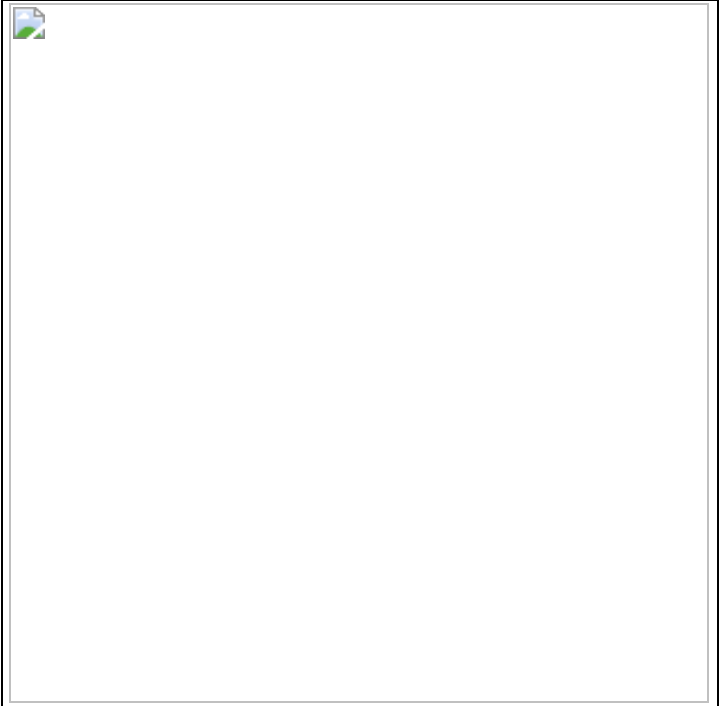
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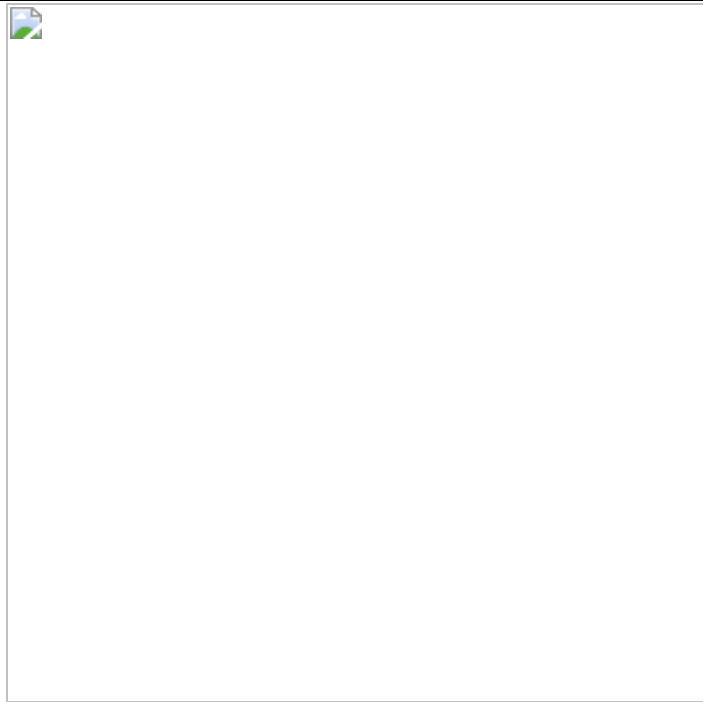
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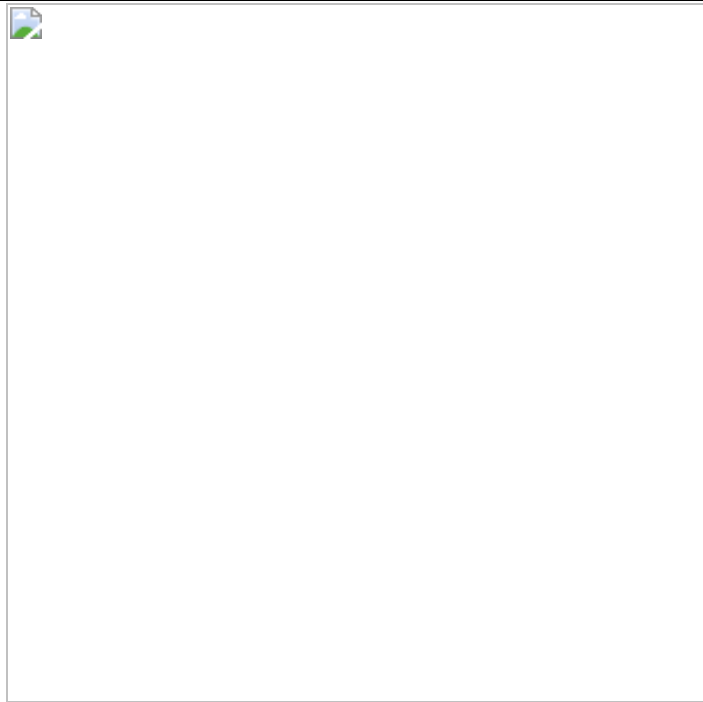
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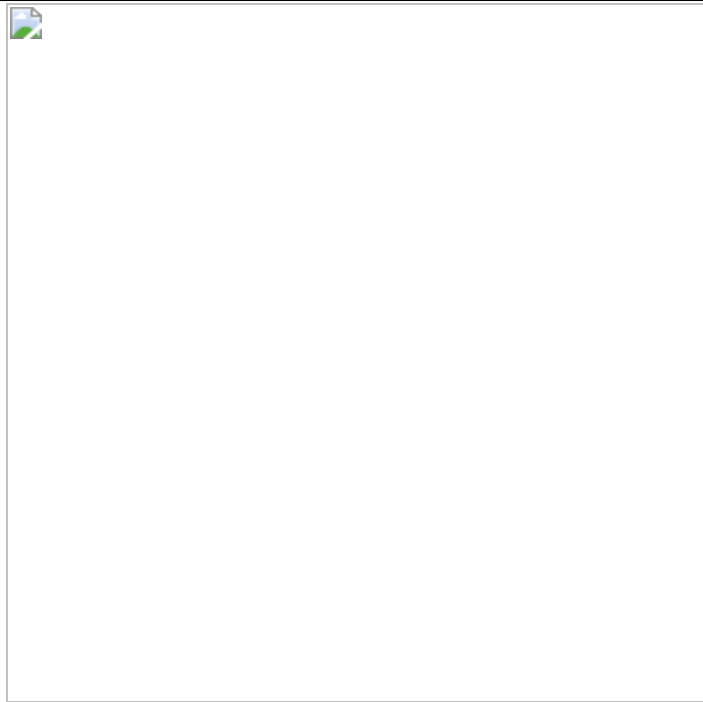
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CITY OF HAYWARD
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NOTICE OF VIOLATION

August 12, 2022

LUCAS ANSELMO F & CONCEICAO T ETAL
 4588 CROW CANYON PL
 CASTRO VALLEY, CA 94552

CASE NO: CE-22-0507
LOCATION: 25088 Hesperian Blvd
APN: 442-0051-034-00
INSPECTION DATE: July 6, 2022

The Code Enforcement Division has received information of violation(s) and/or uses present on your property. Your property is located in a CN - Neighborhood Commercial Zoning District. An inspection of the above referenced property identified the following violation(s) of the Hayward Municipal Code (HMC), California Building Code, and/or other related ordinances. In accordance with HMC Section 5-7.20, violations of adopted codes as identified below are hereby deemed a public nuisance and must be corrected as follows prior to the next compliance date:

CODE SECTION	VIOLATION/CORRECTIVE ACTION
HMC 10-1.2783	<p>VIOLATION: POSSIBLE NON-COMPLIANCE WITH THE REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS. SEC. 10-1.2783 C.It shall be a violation of these regulations for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, to possess with intent to sell or offer for sale, or exchange for any form of consideration any: 1.Flavored tobacco products, parts, components, or flavored tobacco paraphernalia. 2.Bidis or Beedies products. 3.Electronic smoking devices, electronic nicotine delivery systems (E-cigarettes), vaping devices, including all parts and components. 4.Electronic smoking and vaping products, and vaping paraphernalia, including but not limited to, devices, parts and components, e-liquids, concentrates, waxes, etc. 5.CBD or hemp products, or any products made from, derivative of, or containing any amount of a Cannabis plant intended for human consumption. Corrective Action: Removal of all products that do not comply with the requirements and operational standards for tobacco retail establishments.</p>
HMC ZONING CODE	<p>SEC. 10-1.2782 - DEFINITIONS. For purposes of these regulations, certain words and terms have the following meaning: a."Bidis" (also known as beedies) are defined as products containing tobacco wrapped in leaves of the temburni or tendu plants, or products marketed and sold as "bidis" or "beedies."b."CBD" means cannabidiol, a cannabinoid or chemical compound found in cannabis plant and hemp.c."Cannabis" shall mean as defined in Hayward Municipal Code Section 10-1.3500.d."Cigar" means (i) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (ii) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. For the purposes of this subsection, "Cigar" includes, but is not limited to, Tobacco Products known or labeled as "cigar," "cigarillo," "tiparillo," "little cigar," "blunt," "blunt wrap," or "cigar wrap."e."Cigarette"</p>

means any roll of tobacco for smoking of any size or shape, made wholly or in part of tobacco and with a wrapper or cover made of paper or any other material. Tobacco wrapped in tobacco or with a cover made mostly of tobacco (for example, cigars) that weighs more than three (3) pounds per thousand (1,000) sticks are not cigarettes and are defined as Tobacco Products.f."Characterizing Flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted by a tobacco product, either prior to or during consumption, or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, sweetener, sugar, herb, or spice; provided, however, that 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.g."Drug Paraphernalia" is as defined in California Health and Safety Code Section 11014.5, as that section may be amended from time to time.h."Electronic Smoking Device" means:1.Any electronic device that delivers a dose of nicotine or other substances to the person inhaling, including but not limited to, electronic nicotine delivery systems (ENDS) as defined under the United States Food and Drug Administration deeming rule, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vapor cigarette, vape pen, personal vaporizers, or any other product name or descriptor.2.Any component, part, or accessory intended or reasonably expected to be used with an electronic smoking device, whether sold separately, including but not limited to coils, batteries, tanks, cartridges, pods, wicks, atomizers, nicotine concentrates, waxes, E-liquids, or other products and parts.i."Flavored Tobacco Product" means any tobacco product (including but not limited to cigarettes) that imparts a characterizing flavor, including but not limited to mint or menthol cigarettes, flavored little cigars, smokeless tobacco, e-cigarettes and vaping devices. Furthermore, there shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has:1.Made a public statement or claim that the tobacco product has, imparts, or produces a characterizing flavor, including, but not limited to, the explicit or implicit use of text and/or images on the product's labeling or packaging or other advertisement to communicate information about the flavor, taste, or aroma of a tobacco product; and/or 2.Taken actions directed to consumers that would be reasonably expected to result in consumers believing that the tobacco product imparts a characterizing flavor.j."Hemp Blunt Wraps" means a paper or cone-shape wrapper or cover made either in part or wholly from parts of a cannabis plant, also known as, but not limited, CBD blunt wraps.k."Hookah bar" or "hookah lounge" means any facility, building, structure, or location, where customers share tobacco or a similar smoking product from a communal hookah placed throughout the establishment.l."Imitation Tobacco Product" means any edible or non-edible, non-tobacco product designed to resemble a tobacco product that is often intended to be used by children as a toy. Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic smoking device is not an imitation tobacco product. z."Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other items or parts thereof designed or marketed for the smoking, ingestion, preparation, storing, or consumption of tobacco products or other substances.aa."Tobacco Product" means any product containing, made or derived from tobacco or nicotine that is intended for human consumption,

whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. "Tobacco product" includes, but is not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, electronic smoking devices (with or without nicotine), or any component, part, accessory intended or reasonably expected to be used with a Tobacco Product whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose. dd."Vaping device" means as defined in Subsection h. of this section, an electronic smoking device and any device designed to vaporize nicotine or other substances to inhale or exhale vapor, including but not limited to bongs, water pipes, hookah devices, vaporizers, atomizers, bowls, chambers, including any components and substances, or parts thereof. For purposes of these regulations, a vaping device does not include any medically prescribed vaporizer by a licensed physician or practitioner for medical purposes.

A progress check will be conducted on Wednesday September 28, 2022 to ensure measures are being taken place to bring the property into compliance.

A reinspection will be conducted on **September 28, 2022** to verify compliance. Failure to comply and satisfactorily eliminate all violations by this date will result in a **failed inspection and penalty fee of \$1,026**. The City contractor will be ordered to abate all remaining violations on or after this date. The property owner(s) will be billed for all abatement expenses, fees and penalties. Violations of California Building Code Section 105.1 (Permits Required) are subject to an initial 5% code violation fee and two times (2x) the required permit fees in addition to the regular Building Division Permit Fee in accordance with the City of Hayward Master Fee Schedule. To obtain any required building permits, you must present a copy of this Notice of Violation to the Permit Center staff. **Note: When applicable the City will communicate with non-profit agencies to refer homeless individuals to services prior to abatement.**

Partial compliance or continued violations will result in additional inspection and penalty fees, and/or other available legal remedies. Non-payment will result in a lien/special assessment against the property. A subsequent violation will result in an initial inspection and penalty fee of \$1,543.

You may request an Administrative Hearing within ten (10) calendar days from the date of this letter to dispute the facts of the violations(s) under the Hayward Municipal Code. To request a hearing, please call the inspector at (510) 583-4260 within 10 days from the date of this notice. A \$946 hearing fee is required and must be submitted with any hearing request. If you have any questions regarding this notice or wish to schedule an alternate reinspection date before further action is taken, please call (510) 583-4260 as soon as possible and prior to next reinspection date. Your cooperation will be greatly appreciated.

AMBER GREEN
Code Enforcement Inspector I

T: (510) 583-4260
E: Amber.Green@hayward-ca.gov

Encl: Fee Inspection Schedule
Cc: OWNER: LUCAS ANSELMO F & CONCEICAO T ETAL, OCCUPANT: SMOKEY'S SMOKE SHOP & GIFTS

Photographs



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CITY OF HAYWARD
DEVELOPMENT SERVICES DEPARTMENT
CODE ENFORCEMENT DIVISION

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(510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Amber Green, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

On August 12, 2022, I served the following document(s) on the interested parties in this action by sending true copies as shown below for service as designated below:

- 1) Notice of Violation, APN: 442-0051-034-00, Case #: CE-22-0507
- 2) Code Enforcement Fee and Penalty Schedule

SERVICE BY U.S. MAIL UNDER THE LAWS OF THE STATE OF CALIFORNIA

LUCAS ANSELMO F & CONCEICAO T ETAL
4588 CROW CANYON PL
CASTRO VALLEY, CA 94552

I am familiar with this business's™ practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

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

Executed on August 12, 2022, at Hayward, California.

AMBER GREEN
Code Enforcement Inspector I



CITY OF HAYWARD
DEVELOPMENT SERVICES DEPARTMENT
CODE ENFORCEMENT DIVISION

777 B Street, Hayward, CA 94541-5007

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NOTICE OF VIOLATION

August 12, 2022

SMOKEY'S SMOKE SHOP & GIFTS
 25088 Hesperian Blvd
 HAYWARD, CA 94545

CASE NO: CE-22-0507

LOCATION: 25088 Hesperian Blvd

APN: 442-0051-034-00

INSPECTION DATE: July 6, 2022

The Code Enforcement Division has received information of violation(s) and/or uses present on your property. Your property is located in a CN - Neighborhood Commercial Zoning District. An inspection of the above referenced property identified the following violation(s) of the Hayward Municipal Code (HMC), California Building Code, and/or other related ordinances. In accordance with HMC Section 5-7.20, violations of adopted codes as identified below are hereby deemed a public nuisance and must be corrected as follows prior to the next compliance date:

CODE SECTION	VIOLATION/CORRECTIVE ACTION
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HMC ZONING CODE	<p>SEC. 10-1.2782 - DEFINITIONS. For purposes of these regulations, certain words and terms have the following meaning: a."Bidis" (also known as beedies) are defined as products containing tobacco wrapped in leaves of the temburni or tendu plants, or products marketed and sold as "bidis" or "beedies."b."CBD" means cannabidiol, a cannabinoid or chemical compound found in cannabis plant and hemp.c."Cannabis" shall mean as defined in Hayward Municipal Code Section 10-1.3500.d."Cigar" means (i) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (ii) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. For the purposes of this subsection, "Cigar" includes, but is not limited to, Tobacco Products known or labeled as "cigar," "cigarillo," "tiparillo," "little cigar," "blunt," "blunt wrap," or "cigar wrap."e."Cigarette" means any roll of tobacco for smoking of any size or shape, made wholly or in</p>

part of tobacco and with a wrapper or cover made of paper or any other material. Tobacco wrapped in tobacco or with a cover made mostly of tobacco (for example, cigars) that weighs more than three (3) pounds per thousand (1,000) sticks are not cigarettes and are defined as Tobacco Products.f."Characterizing Flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted by a tobacco product, either prior to or during consumption, or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, sweetener, sugar, herb, or spice; provided, however, that 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.g."Drug Paraphernalia" is as defined in California Health and Safety Code Section 11014.5, as that section may be amended from time to time.h."Electronic Smoking Device" means:1.Any electronic device that delivers a dose of nicotine or other substances to the person inhaling, including but not limited to, electronic nicotine delivery systems (ENDS) as defined under the United States Food and Drug Administration deeming rule, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vapor cigarette, vape pen, personal vaporizers, or any other product name or descriptor.2.Any component, part, or accessory intended or reasonably expected to be used with an electronic smoking device, whether sold separately, including but not limited to coils, batteries, tanks, cartridges, pods, wicks, atomizers, nicotine concentrates, waxes, E-liquids, or other products and parts.i."Flavored Tobacco Product" means any tobacco product (including but not limited to cigarettes) that imparts a characterizing flavor, including but not limited to mint or menthol cigarettes, flavored little cigars, smokeless tobacco, e-cigarettes and vaping devices. Furthermore, there shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has:1.Made a public statement or claim that the tobacco product has, imparts, or produces a characterizing flavor, including, but not limited to, the explicit or implicit use of text and/or images on the product's labeling or packaging or other advertisement to communicate information about the flavor, taste, or aroma of a tobacco product; and/or 2.Taken actions directed to consumers that would be reasonably expected to result in consumers believing that the tobacco product imparts a characterizing flavor.j."Hemp Blunt Wraps" means a paper or cone-shape wrapper or cover made either in part or wholly from parts of a cannabis plant, also known as, but not limited, CBD blunt wraps.k."Hookah bar" or "hookah lounge" means any facility, building, structure, or location, where customers share tobacco or a similar smoking product from a communal hookah placed throughout the establishment.l."Imitation Tobacco Product" means any edible or non-edible, non-tobacco product designed to resemble a tobacco product that is often intended to be used by children as a toy. Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic smoking device is not an imitation tobacco product. z."Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other items or parts thereof designed or marketed for the smoking, ingestion, preparation, storing, or consumption of tobacco products or other substances.aa."Tobacco Product" means any product containing, made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed,

or ingested by any other means. "Tobacco product" includes, but is not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, electronic smoking devices (with or without nicotine), or any component, part, accessory intended or reasonably expected to be used with a Tobacco Product whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose. dd."Vaping device" means as defined in Subsection h. of this section, an electronic smoking device and any device designed to vaporize nicotine or other substances to inhale or exhale vapor, including but not limited to bongs, water pipes, hookah devices, vaporizers, atomizers, bowls, chambers, including any components and substances, or parts thereof. For purposes of these regulations, a vaping device does not include any medically prescribed vaporizer by a licensed physician or practitioner for medical purposes.

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AMBER GREEN
Code Enforcement Inspector I

T: (510) 583-4260
E: Amber.Green@hayward-ca.gov

Encl: Fee Inspection Schedule
Cc: OWNER: LUCAS ANSELMO F & CONCEICAO T ETAL, OCCUPANT: SMOKEY'S SMOKE SHOP & GIFTS

Photographs



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CITY OF HAYWARD
DEVELOPMENT SERVICES DEPARTMENT
CODE ENFORCEMENT DIVISION

777 B Street, Hayward, CA 94541-5007
 (510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

NOTICE OF VIOLATION - Tobacco Retail License

October 13, 2022

LUCAS ANSELMO F & CONCEICAO T ETAL
 4588 CROW CANYON PL
 CASTRO VALLEY, CA 94552

CASE NO: CE-22-0507 LOCATION: 25088 Hesperian Blvd APN: 442-0051-034-00 INSPECTION DATE: August 15, 2022

The above property is in a CC-C - Central City Commercial Zoning District. An inspection of the location and/or City records identified the following violation(s) of the Hayward Municipal Code (HMC), which must be corrected before the next compliance date of **November 16, 2022** to avoid fees, penalties, and license suspension.

CODE SECTION	VIOLATION/CORRECTIVE ACTION
HMC 10-1.2783	<p>VIOLATION: POSSIBLE NON-COMPLIANCE WITH THE REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS. SEC. 10-1.2783 C. It shall be a violation of these regulations for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, to possess with intent to sell or offer for sale, or exchange for any form of consideration any:</p> <ol style="list-style-type: none"> 1.Flavored tobacco products, parts, components, or flavored tobacco paraphernalia to include but not limited to: Inspector observed during inspection "Real Leaf Rolls", "Wraps", "ZYN", "Backwoods", etc. 2.Electronic smoking devices, electronic nicotine delivery systems (E-cigarettes), vaping devices, including all parts and components to include but not limited to: Inspector observed during inspection "PAX", "Exus", "Vaped Vano", "Volcano", etc. 3.Electronic smoking and vaping products, and vaping paraphernalia, including but not limited to, devices, parts and components, e-liquids, concentrates, waxes, etc to include but not limited to: Inspector observed during inspection "Carta", "G", "Backwoods", etc. 4.CBD or hemp products, or any products made from, derivative of, or containing any amount of a Cannabis plant intended for human consumption to include but not limited to: Inspector observed during inspection "Hemp2o", "High Hemp Organic Wraps", "Artisanal Hemp Cones", "Organic Hemp Raw Cones", "CBD Edibles", "CBD Lollipops", "PM Hemp", etc. <p>Corrective Action: Removal of all products that do not comply with the requirements and operational standards for tobacco retail establishments.</p>

A progress check will be conducted on Wednesday November 16, 2022 to ensure measures are being taken place to bring the property into compliance.

Failure to comply and satisfactorily eliminate all violations by the next compliance date of **November 16, 2022** will result in a **penalty fee of \$1,500/30-day Tobacco Retail Licensing suspension**. Continued violations will result in additional penalty fees and/or other available legal remedies, including revocation of the tobacco retail license and use at this location. Non-payment will result in a lien/special assessment against the property.

You may request an Administrative Hearing within ten (10) calendar days from the date of this letter to dispute the facts of the violations(s) under the Hayward Municipal Code. To request a hearing, please call the inspector at (510) 583-4260 within 10 days from the date of this notice. A \$946 hearing fee is required and must be submitted with any hearing request. If you have any questions regarding this notice, please call (510) 583-4260 as soon as possible and prior to next reinspection date. Your cooperation will be greatly appreciated.

AMBER GREEN
Code Enforcement Inspector I

Encl: Fee Inspection Schedule

Cc: OWNER: LUCAS ANSELMO F & CONCEICAO T ETAL, OCCUPANT: SMOKEY'S SMOKE SHOP & GIFTS

Photographs



Beverages



Hemp2o - Hemp Beverage



Flavored and Hemp Products



Hemp Products



Flavored Products



Flavored Products



CBD Products



CBD Products



Vape Products



Vape Products



Vape Products



Vape Products



CBD Products



**CITY OF HAYWARD
DEVELOPMENT SERVICES DEPARTMENT
CODE ENFORCEMENT DIVISION**

777 B Street, Hayward, CA 94541-5007
(510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Amber Green, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

On October 13, 2022, I served the following document(s) on the interested parties in this action by sending true copies as shown below for service as designated below:

1) TRL - Notice of Violation, APN: 442-0051-034-00, Case #: CE-22-0507

SERVICE BY U.S. MAIL UNDER THE LAWS OF THE STATE OF CALIFORNIA

LUCAS ANSELMO F & CONCEICAO T ETAL
4588 CROW CANYON PL
CASTRO VALLEY, CA 94552

I am familiar with this business' practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

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

Executed on October 13, 2022, at Hayward, California.

AMBER GREEN
Code Enforcement Inspector I



CITY OF HAYWARD
DEVELOPMENT SERVICES DEPARTMENT
CODE ENFORCEMENT DIVISION

777 B Street, Hayward, CA 94541-5007
 (510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

NOTICE OF VIOLATION - Tobacco Retail License

October 13, 2022

SMOKEY'S SMOKE SHOP & GIFTS
 25088 Hesperian Blvd
 HAYWARD, CA 94545

<p>CASE NO: CE-22-0507 LOCATION: 25088 Hesperian Blvd APN: 442-0051-034-00 INSPECTION DATE: August 15, 2022</p>
--

The above property is in a CC-C - Central City Commercial Zoning District. An inspection of the location and/or City records identified the following violation(s) of the Hayward Municipal Code (HMC), which must be corrected before the next compliance date of **November 16, 2022** to avoid fees, penalties, and license suspension.

CODE SECTION	VIOLATION/CORRECTIVE ACTION
HMC 10-1.2783	<p>VIOLATION: POSSIBLE NON-COMPLIANCE WITH THE REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS. SEC. 10-1.2783 C. It shall be a violation of these regulations for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, to possess with intent to sell or offer for sale, or exchange for any form of consideration any:</p> <ol style="list-style-type: none"> 1.Flavored tobacco products, parts, components, or flavored tobacco paraphernalia to include but not limited to: Inspector observed during inspection "Real Leaf Rolls", "Wraps", "ZYN", "Backwoods", etc. 2.Electronic smoking devices, electronic nicotine delivery systems (E-cigarettes), vaping devices, including all parts and components to include but not limited to: Inspector observed during inspection "PAX", "Exus", "Vaped Vano", "Volcano", etc. 3.Electronic smoking and vaping products, and vaping paraphernalia, including but not limited to, devices, parts and components, e-liquids, concentrates, waxes, etc to include but not limited to: Inspector observed during inspection "Carta", "G", "Backwoods", etc. 4.CBD or hemp products, or any products made from, derivative of, or containing any amount of a Cannabis plant intended for human consumption to include but not limited to: Inspector observed during inspection "Hemp2o", "High Hemp Organic Wraps", "Artisanal Hemp Cones", "Organic Hemp Raw Cones", "CBD Edibles", "CBD Lollipops", "PM Hemp", etc. <p>Corrective Action: Removal of all products that do not comply with the requirements and operational standards for tobacco retail establishments.</p>

A progress check will be conducted on Wednesday November 16, 2022 to ensure measures are being taken place to bring the property into compliance.

Failure to comply and satisfactorily eliminate all violations by the next compliance date of **November 16, 2022** will result in a **penalty fee of \$1,500/30-day Tobacco Retail Licensing suspension**. Continued violations will result in additional penalty fees and/or other available legal remedies, including revocation of the tobacco retail license and use at this location. Non-payment will result in a lien/special assessment against the property.

You may request an Administrative Hearing within ten (10) calendar days from the date of this letter to dispute the facts of the violations(s) under the Hayward Municipal Code. To request a hearing, please call the inspector at (510) 583-4260 within 10 days from the date of this notice. A \$946 hearing fee is required and must be submitted with any hearing request. If you have any questions regarding this notice, please call (510) 583-4260 as soon as possible and prior to next reinspection date. Your cooperation will be greatly appreciated.

AMBER GREEN
Code Enforcement Inspector I

Encl: Fee Inspection Schedule

Cc: OWNER: LUCAS ANSELMO F & CONCEICAO T ETAL, OCCUPANT: SMOKEY'S SMOKE SHOP & GIFTS





Flavored and Hemp Products



Hemp Products



Flavored Products



Flavored Products



CBD Products



CBD Products



Vape Products



Vape Products



Vape Products



Vape Products



CBD Products



CITY OF HAYWARD
Development Services Department
Code Enforcement Division
 777 B Street, Hayward, CA 94541-5007,
 (510)583-4143 - Fax: (510)583-4994 -

<h1>Violation Notice</h1>	Case Number: 22-0507
	Case Type: CH- Tobacco Retail Standards
	Date Case Established: 03/28/2022
	Last Inspection Date:
Compliance Deadline: 03/06/2023	

NOV-001150-2023

Property Owner: LUCAS ANSELMO F & CONCEICAO T ETAL

Mailing Address

LUCAS ANSELMO F & CONCEICAO T ETAL
 4588 CROW CANYON PL
 CASTRO VALLEY , CA 94552

An inspection of the property identified the following violation(s) of the Hayward Municipal Code (HMC), California Health and Safety Code (CHS), California Building Code (CBC), and/or other adopted codes or related ordinances. Violations of adopted codes as identified below are hereby deemed a public nuisance and must be corrected as follows prior to the next compliance date.

Please note: Failure to resolve violations by the compliance deadline as listed above may result in penalties and fees pursuant to the current City of Hayward Master Fee schedule.

Property Location:

Parcel

25088 Hesperian Blvd HAYWARD, CA 94545	442-0051-034-00
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Violation: HMC SEC. 10-1.2783 - TOBACCO RETAIL STANDARDS - Violation of Tobacco Retail Requirements and Operational Standards
 Tobacco Retail License

Corrective Action: VIOLATION: NON-COMPLIANCE WITH THE REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS.

SEC. 10-1.2783

C.It shall be a violation of these regulations for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, to possess with intent to sell or offer for sale, or exchange for any form of consideration any:

- 1.Flavored tobacco products, parts, components, or flavored tobacco paraphernalia to include but not limited to: Inspector observed during inspection "Real Leaf Rolls", "Wraps", "ZYN", "Backwoods", etc.
- 2.Electronic smoking devices, electronic nicotine delivery systems (E-cigarettes), vaping devices, including all parts and components to include but not limited to: Inspector observed during inspection "PAX", "Exus", "Vaped Vano", "Volcano", etc.
- 3.Electronic smoking and vaping products, and vaping paraphernalia, including but not limited to, devices, parts and components, e-liquids, concentrates, waxes, etc to include but not limited to: Inspector observed during inspection "Carta", "G", "Backwoods", etc.
- 4.CBD or hemp products, or any products made from, derivative of, or containing any amount of a Cannabis plant intended for human consumption to include but not limited to: Inspector observed during inspection "Hemp2o", "High Hemp Organic Wraps", "Artisanal Hemp Cones", "Organic Hemp Raw Cones", "CBD Edibles", "CBD Lollipops", "PM Hemp", etc.

Corrective Action: Removal of all products that do not comply with the requirements and operational standards for tobacco retail establishments.

Unit:	Area:	Compliance Date: 03/06/2023
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CITY OF HAYWARD
Development Services Department
Code Enforcement Division
 777 B Street, Hayward, CA 94541-5007,
 (510)583-4143 - Fax: (510)583-4994 -

Violation Notice	Case Number: 22-0507
	Case Type: CH- Tobacco Retail Standards
	Date Case Established: 03/28/2022
	Last Inspection Date:
Compliance Deadline: 03/06/2023	

NOV-001150-2023

You may request an Administrative Hearing within ten (10) calendar days from the date of this letter to dispute the facts of the violation(s) under the Hayward Municipal Code. To request a hearing, please call the inspector at (510) 583-4172 within 10 days from the date of this notice. A \$946 hearing fee is required and must be submitted with any hearing request. If you have any questions regarding this notice or wish to schedule an alternate reinspection date before further action is taken, please call (510) 583-4172 as soon as possible and prior to next reinspection date. Your cooperation will be greatly appreciated.

A reinspection will be conducted on **March 06, 2023** to verify compliance. Failure to comply and satisfactorily eliminate all violations by this date will result in **a failed inspection and penalty fees in accordance with the City of Hayward Master Fee Schedule**. The City contractor will be ordered to abate all remaining violations on or after this date. The property owner(s) will be billed for all abatement expenses, fees and penalties. **Note: When applicable the City will communicate with non-profit agencies to refer homeless individuals to services prior to abatement.**



CITY OF HAYWARD
Development Services Department
Code Enforcement Division
 777 B Street, Hayward, CA 94541-5007,
 (510)583-4143 - Fax: (510)583-4994 -

<h1>Violation Notice</h1>	Case Number: 22-0507
	Case Type: CH- Tobacco Retail Standards
	Date Case Established: 03/28/2022
	Last Inspection Date:
Compliance Deadline: 03/06/2023	

NOV-001150-2023

Partial compliance or continued violations will result in additional inspection and penalty fees, and/or other available legal remedies. If the violations are abated by the City, the property owner(s) will be billed for all abatement expenses, fees and penalties. Non-payment will result in a lien/special assessment against the property.

Egregious Violation Penalties: Tier 1: \$1,500 for first verified violation; Tier 2: \$3,000 for second verified violation; and Tier 3: \$5,000 for third and subsequent verified violation(s).

Vacant Property Ordinance Fees: Registration: \$2,550; Inspection Fees with Violations: Initial Inspection: \$1,500; 2nd Reinspection with violations: \$3,000; 3rd and Subsequent Reinspections with Violations: \$5,000; Reinspections with No Violations Found: \$500; Inspections greater than 3 hours: \$200/hour in addition to other applicable inspection fees.

Violations of California Building Code Section 105.1, and California Residential Code R105.1; Permits Required, are subject to an initial 5% code violation fee and two times (2x) the required permit fees in addition to the regular Building Division Permit Fee in accordance with the City of Hayward Master Fee Schedule.

Identified unsafe conditions resulting in posting of Placards for Condemnation will incur a posting fee of \$164/hour in accordance with the Master Fee Schedule.

Violation(s) of Hayward Municipal Code Section 10-8.10, Grading/Clearing Permit Required, are subject to A \$2,000 code enforcement investigation fee and an initial \$125 illegal project fee in addition to any applicable violation inspection and penalty fees in accordance with the Master Fee Schedule.

In accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code, certain tax deductions may not be allowed in the taxable year for nuisance violations pertaining to substandard housing in the State of California.

HAYWARD MUNICIPAL CODE & OTHER CODE SECTIONS: Copies of the Hayward Municipal Code sections are available for review in the City Clerk's Office or via the internet by accessing the City's website at: www.hayward-ca.gov and searching for "Hayward Municipal Code". To view other department information, search for "Code Enforcement Division".

Sincerely,

Amber Green
 Code Enforcement Inspector I
 510-583-4260
Amber.Green@Hayward-ca.gov



CITY OF HAYWARD
Development Services Department
Code Enforcement Division
777 B Street, Hayward, CA 94541-5007,
(510)583-4143 - Fax: (510)583-4994 -

Violation Notice	Case Number: 22-0507
	Case Type: CH- Tobacco Retail Standards
	Date Case Established: 03/28/2022
	Last Inspection Date:
Compliance Deadline: 03/06/2023	

NOV-001150-2023

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Amber Green, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

On February 9, 2023, I served the following document(s) on the interested parties in this action by sending true copies as shown below for service as designated below:

- 1) Letter to Owner, APN:442-0051-034-00 , Case #: 22-0507

SERVICE BY U.S. MAIL UNDER THE LAWS OF THE STATE OF CALIFORNIA

LUCAS ANSELMO F & CONCEICAO T ETAL
25088 Hesperian Blvd
HAYWARD, CA 94545

I am familiar with this business' practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

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

Executed on February 9, 2023, at Hayward, California.

Amber Green
Code Enforcement Inspector I

1 LANCE BAYER
Attorney at Law
2 State Bar No. 81549
Administrative Hearing Officer
3 c/o Development Services Department
Code Enforcement Division
4 City of Hayward
777 B Street
5 Hayward, CA 94541

6
7

8 ADMINISTRATIVE HEARINGS
9 CITY OF HAYWARD, CALIFORNIA

10 IN THE MATTER OF Case Number: CE-22-0507
11 SNA TRADING INC. DBA SMOKEY’S ADMINISTRATIVE DECISION
12 SMOKE SHIP & GIFTS,
13 Respondent.

14 _____/

15 I
16 STATEMENT OF THE CASE

17 Due notice having been given, this matter came on regularly for hearing before
18 Administrative Hearing Officer Lance Bayer, and was heard on February 2, 2023, at Hayward
19 City Hall, 777 B Street, Hayward.

20 Respondent was represented by attorney James Anthony, Esq.

21 The City of Hayward (“City”) was represented by Deputy City Attorney Amy S. Rothman,
22 Esq.

23 Haroon Ahmed appeared on behalf of Respondent.

24 Code Enforcement Inspector Amber Green and Code Enforcement Division Manager

1 Phillip Nichols appeared on behalf of City.

2 The hearing was held pursuant to City Municipal Code Section 1-7.09,01.b.2: “A violator
3 has the right to appeal both the City's initial determination that he or she has violated an ordinance,
4 and amount of the penalty imposed by the City.”

5 The “Notice of Violation- Tobacco Retail License” dated October 13, 2022 alleged a
6 violation of the Hayward Municipal Code(“HMC”) Section 10-1.2783 pertaining to compliance
7 with the requirements and operational standards for tobacco retail sales establishments occurred at
8 25088 Hesperian Boulevard, Hayward. The notice alleged that Respondent was a tobacco retailer
9 and sold or offered for sale, possessed with intent to sell or offer for sale, or exchanged for any
10 form of consideration: 1.Flavored tobacco products, parts, components, or flavored tobacco
11 paraphernalia; 2..Electronic smoking devices, electronic nicotine delivery systems (E-cigarettes),
12 vaping devices, including all parts and components; 3.Electronic smoking and vaping products,
13 and vaping paraphernalia, including but not limited to, devices, parts and components, e-liquids,
14 concentrates, waxes, etc.; and 4.CBD or hemp products, or any products made from, derivative of,
15 or containing any amount of a Cannabis plant intended for human consumption.

16 Respondent requested a hearing in a timely manner and submitted the hearing fee of
17 \$946.00.

18 In addition to contesting the determination that they violated the code section, Respondent
19 asserted: (1) The ordinance does not apply to them due to the business constituting a legal, non-
20 conforming use; (2) The ordinance is unconstitutional as vague; and (3) In the event the hearing
21 officer finds against Respondent, that the hearing officer order a stay to seek relief in the courts.

22 The hearing officer ruled as follows: (1) The hearing officer will hear and consider
23 evidence regarding whether the ordinance does not apply to Respondent due to the business
24 constituting a legal, non-conforming use, as that issue constitutes an affirmative defense; (2) The

1 hearing officer will not hear evidence regarding the constitutionality of the ordinance on the
2 ground that the issue is beyond the scope of the administrative hearing; and (3) The request for a
3 stay of the hearing officer's order is denied.

4 Respondent's request to have witnesses sworn was denied. The administrative hearing is
5 an informal proceeding and does not require witnesses to be sworn.

6 II

7 WITNESSES AND EVIDENCE

8 Hayward Code Enforcement Inspector Amber Green testified on behalf of the City.

9 Haroon Ahmed testified on behalf of Respondent.

10 The City submitted the following exhibits, which were received as evidence:

- 11 1. Exhibit 1—City's brief, with exhibits including: staff report with photographs, notice
12 of violation dated April 18, 2022 with photographs, courtesy notice dated July 4, 2022,
13 notice of violation dated August 12, 2022 with photographs, notice of violation dated
14 October 13, 2022 with photographs, notice of hearing dated January 12, 2023, email
15 from Amy Rothman to James Anthony dated December 21, 2022 including string of
16 previous emails, notice of hearing dated December 7, 2022, notice of hearing dated
17 November 16, 2022, request for hearing dated October 24, 2022 including copy of
18 check for \$946.00.
- 19 2. Exhibit 2—"New Tobacco Products Sales Law" flyer.

20 City's Exhibit 1 was admitted over Respondent's objection. City's Exhibit 2 was admitted
21 without objection.

22 Respondent submitted the following exhibit, which was received in evidence without
23 objection:

- 24 1. Exhibit 1—Appeal Brief with exhibits including notice of violation dated October 13,

1 based on a legal, non-conforming use analysis is not persuasive.

2

V

3

ORDERS

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1. The allegation that Respondent violated HMC Section 10-1.2783 and was in violation of those sections on the date alleged is found to be TRUE.

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7

2. The administrative hearing fee of \$946 is upheld and shall be paid by Respondent to the City within 30 days from the date of this Order unless previously paid.

8

9

3. By stipulation of the parties, this decision is submitted within 30 days of the date of the hearing.

10

4. This decision is effective and final on the date below.

11

Dated: February 28, 2023

12



13

LANCE BAYER
Administrative Hearing Officer

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This decision is subject to judicial review. To obtain judicial review of this decision a petition for writ of mandate must be filed in the superior court pursuant to California Code of Civil Procedure Section 1094.6 within 90 days after the service of this decision.

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CITY OF HAYWARD
CODE ENFORCEMENT DIVISION
777 B Street, Hayward, CA 94541-5007
(510)583-4175 - Fax: (510)583-4994 - www.hayward-ca.gov

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Angelica Ventura, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

On 3/13/2023, I served the following document(s) on the interested parties in this action by sending true copies as shown below for service as designated below:

1) Administrative Decision for Code Enforcement Case 22-0507

SERVICE BY U.S. MAIL UNDER THE LAWS OF THE STATE OF CALIFORNIA

Anthony Law Group, PC
600 Grand Ave., Unit 204
Oakland, CA 94610

I am familiar with this business' practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

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

Executed on 3/13/2023, at Hayward, California.

A handwritten signature in blue ink, appearing to read 'Angelica Ventura'.

Angelica Ventura
Administrative Assistant II



CITY OF HAYWARD
CODE ENFORCEMENT DIVISION
777 B Street, Hayward, CA 94541-5007
(510)583-4175 - Fax: (510)583-4994 - www.hayward-ca.gov

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Angelica Ventura, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

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1) Administrative Decision for Code Enforcement Case 22-0507

SERVICE BY U.S. MAIL UNDER THE LAWS OF THE STATE OF CALIFORNIA

Smokey's Smoke Shop & Gifts
25088 Hesperian Blvd
Hayward, Ca 94545

I am familiar with this business' practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

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

Executed on 3/13/2023, at Hayward, California.

A handwritten signature in blue ink, appearing to read 'Angelica Ventura', written over a horizontal line.

Angelica Ventura
Administrative Assistant II



CITY OF HAYWARD
CODE ENFORCEMENT DIVISION
777 B Street, Hayward, CA 94541-5007
(510)583-4175 - Fax: (510)583-4994 - www.hayward-ca.gov

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Angelica Ventura, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

On 3/13/2023, I served the following document(s) on the interested parties in this action by sending true copies as shown below for service as designated below:

1) Administrative Decision for Code Enforcement Case 22-0507

SERVICE BY U.S. MAIL UNDER THE LAWS OF THE STATE OF CALIFORNIA

Lucas Anselmo F & Conceicao T ETAL
4588 Crow Canyon Pl
Castro Valley, Ca 94552

I am familiar with this business' practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

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

Executed on 3/13/2023, at Hayward, California.

A handwritten signature in blue ink, appearing to read 'Angelica Ventura'.

Angelica Ventura
Administrative Assistant II



CITY OF HAYWARD
CODE ENFORCEMENT DIVISION
777 B Street, Hayward, CA 94541-5007
(510)583-4175 - Fax: (510)583-4994 - www.hayward-ca.gov

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Angelica Ventura, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

On 3/13/2023, I served the following document(s) on the interested parties in this action by sending true copies as shown below for service as designated below:

1) Administrative Decision for Code Enforcement Case 22-0507

SERVICE BY U.S. MAIL UNDER THE LAWS OF THE STATE OF CALIFORNIA

SNA Trading Inc. DBA Smokey's Smoke Shop & Gifts
3542 Fruitvale Ave #224
Oakland, CA 94602

I am familiar with this business' practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

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

Executed on 3/13/2023, at Hayward, California.

A handwritten signature in blue ink, appearing to read 'Angelica Ventura', written over a horizontal line.

Angelica Ventura
Administrative Assistant II

1 James M. Anthony (203150)
2 James@anthonylaw.group
3 Drew M. Sanchez (277163)
4 Drew.Sanchez@anthonylaw.group
5 **ANTHONY LAW GROUP, PC**
6 600 Grand Avenue, Unit 204
7 Oakland, CA 94610
8 (t): 510-842-3553
9 (f): 510-283-0186

10 Attorneys for Appellant
11 SNA TRADING INC. dba SMOKEY’S SMOKE SHOP & GIFTS

12 ADMINISTRATIVE HEARING

13 SNA TRADING, INC. dba SMOKEY’S
14 SMOKE SHOP & GIFTS,

15 Appellant,

16 vs.

17 HAYWARD CODE ENFORCEMENT,

18 Appellee.

Citation No. CE-22-0507

**ADMINISTRATIVE HEARING
APPEAL BRIEF OF SNA TRADING,
INC. DBA SMOKEY’S SMOKE SHOP &
GIFTS ADMINISTRATIVE APPEAL OF
CITATION NO. CE-22-0507**

Date: February 2, 2023
Time: 2:00 pm
Location: Permit Center

19
20 **I. As an Initial Matter: The Hearing Office Has the Power to Hear Arguments**
21 **both Factual and Legal.**

22 The California Supreme Court has held that procedural due process requires that
23 adjudicatory or quasi-judicial actions taken by a municipality must be supported by factual and legal
24 findings. *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.
25 Thus, the independent Hearing Office sitting in a quasi-judicial capacity has inherent power to
26 decide questions of law and of fact to compose those findings.
27

1 This due process requirement applies despite the City's claim that the Hayward Municipal
2 Code (HMC) says otherwise. And the section cited by the City at line 7, page 2 of its Code
3 Enforcement Brief merely specifies the scope of the hearing without explicitly limiting the Hearing
4 Officer's jurisdictional powers. HMC § 1-7.01(b)(2). Even if it did facially limit due process, it
5 cannot effectively do so. The Hearing Officer has the power to hear and decide legal issues.
6

7 Additionally, Appellant contests and refutes the City's factual allegations—which the City
8 says is all it can do by this appeal. Such factual refutation is detailed below and will be further
9 detailed at hearing.

10 **II. Introduction.**

11 The Appellant corporation, SNA Trading is a small business with a single owner, Haroon
12 Ahmed, and four employees. Mr. Ahmed opened the business at this location in 2011. At that time,
13 no Conditional Use Permit was required and the tobacco retail use was legal. Thus, Mr. Ahmed's
14 business at the location enjoys prior legal non-conforming status. Since then, the City has made
15 major amendments to its tobacco regulations in its Planning Code at least twice: in 2014 and most
16 recently in 2020.
17

18 The 2020 changes are vague and confusing. Even the City is struggling to define what is and
19 is not prohibited at this point. And recent changes in state law coming after these alleged City
20 violations are initially only confusing things. Some of the prohibitions are identical in language, yet
21 are yielding different results. Mr. Ahmed wants to comply with current law, but has yet to receive
22 clear guidance from the City. Whatever the results of this appeal hearing, he looks forward to
23 increased clarity going forward, so that he can operate his business in a straightforward and
24 compliant manner.

25 The legal and factual issues at hand break into two broad product categories, purportedly
26 prohibited and factually violated:
27

1 **1) The “Flavored Tobacco Product” Category (HMC 10-1.2783(c)(1)/NOV**
 2 **Allegation 1).**

3 Factual issues in this category include definitional issues of what is and is not included: what
 4 products are “flavored” and which are not flavored or “regular.” The City’s new law—and for that
 5 matter, the state’s as well—makes it difficult to find the boundary between flavored and regular.
 6 Meanwhile the state law is being implemented with some statewide uniformity by the tobacco
 7 distributors who are simply not offering products to their retailer customers that violate the state
 8 law. In some cases, identical language in the Hayward ban and the State ban are being applied to the
 9 same product differently.

10 Thus, while the City may claim that its Notice of Violation “proves” violations in this
 11 category, it does not. As detailed below, its allegations and evidence remain vague and do not
 12 “bridge the analytic gap between the raw evidence and the ultimate decision or order” as required by
 13 procedural due process. *Topanga*, supra, at 515.

14 Legal issues in this category include Mr. Ahmed’s prior legal nonconforming right to sell the
 15 products legal under state and local law at the time that he commenced operation in 2011 with the
 16 City’s approval.

17 **2) The “Non-Tobacco/Non-Nicotine Products Related to Cannabis, Hemp, and**
 18 **CBD” Products Category (HMC 10-1.2783(c)(3)-(5)/NOV Allegations 2-4).**

19 Factual issues in this category include definitional issues of what is and is not included.
 20 However, it is the legal issues that are most pronounced in this category as argued below.

21 **III. Mr. Ahmed Contests the Factual Allegations: The City Has Not Met its**
 22 **Burden of Proof for the Alleged Factual Violations.**

23 In its 10/13/22 Notice of Violation (Attached with annotations as Appellant’s Exhibit 1),
 24 the City alleges violation of Hayward Municipal Code (HMC) section 10-1.2783(c), specifying four
 25 of its five subsections and listing the names of products that the inspector observed during
 26 inspection. We take up each of the four sections in turn.
 27

NOV ALLEGATION 1:

[1.] Flavored tobacco products, parts, components, or flavored tobacco paraphernalia to include but not limited to: Inspector observed during inspection "Real Leaf Rolls", "Wraps", "ZYN", "Backwoods", etc.

The City Has Not Specifically Alleged How the Observed Products Meet the HMC's Complex Definition of "Flavored Tobacco Products."

Assuming, arguendo, that this law constitutionally applies to Appellant (see Legal Argument, infra, for constitutional argument that it does not), the City has not made factual allegations here sufficient to meet its legal definitions of the operant terms as found at HMC 10-1.2782(i) and (f):

“(i) "Flavored Tobacco Product" means any tobacco product (including but not limited to cigarettes) that imparts a characterizing flavor, including but not limited to mint or menthol cigarettes, flavored little cigars, smokeless tobacco, e-cigarettes and vaping devices.”

Furthermore, there shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has:

1. Made a public statement or claim that the tobacco product has, imparts, or produces a characterizing flavor, including, but not limited to, the explicit or implicit use of text and/or images on the product's labeling or packaging or other advertisement to communicate information about the flavor, taste, or aroma of a tobacco product; and/or

2. Taken actions directed to consumers that would be reasonably expected to result in consumers believing that the tobacco product imparts a characterizing flavor.” (Emphases added.)

“(f) "Characterizing Flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted by a tobacco product, either prior to or during consumption, or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen,

1 sweetener, sugar, herb, or spice; provided, however, that a tobacco product shall not be determined
2 to have a characterizing flavor solely because of the use of additives or flavorings or the provision of
3 ingredient information.” (Emphases added.)

4 To meet this definition, the City must prove that the allegedly “flavored” product “imparts a
5 characterizing flavor” (HMC 10-1.2782(i)) “other than the taste or aroma of tobacco” (HMC 10-
6 1.2782(f)). Or to raise the rebuttable presumption of such, the City must show that the manufacturer
7 publicly stated or claimed such characterizing flavor, including possibly by “explicit or implicit” use
8 of text, images, labelling, packaging, or advertising to communicate about flavor.
9

10 Both the definition and the presumption are so vague and confusing as to raise the
11 possibility that all tobacco products might be considered flavored based on implicit images, and
12 therefore illegal. Presumably the point of singling out some tobacco products as flavored is that
13 some are not flavored or “regular.” This process of distinguishing flavored from regular is still being
14 sorted out, leaving Mr. Ahmed without clear notice of what is and is not a violation.

15 The only information the City provides to meet this nebulous definition is a list of product
16 names that the Inspector observed: ““Real Leaf Rolls”, "Wraps", "ZYN", "Backwoods", etc.” None
17 of these names give the impression of any characterizing flavor. There is certainly no mention of
18 mint or menthol.
19

20 Mr. Ahmed has the following understanding of these specific product names:

21 "Real Leaf Rolls" are unknown, not currently or previously in his inventory, and do not
22 appear in the City's photos.

23 "Wraps" are a generic term for coverings to make hold smokeable materials together, which
24 do not necessarily contain either tobacco or flavoring.

25 "ZYN" is a brand name for a tobacco product that is now only available in a regular
26 unflavored version, as California tobacco distributors only provide regular unflavored tobacco
27

1 products now. Mr. Ahmed now carries only regular unflavored tobacco products to the extent that
2 he understands current state and local law.

3 "Backwoods" is likewise a brand name for a tobacco product that is now only available in a
4 regular unflavored version as California tobacco distributors now only provide regular unflavored
5 tobacco products. Mr. Ahmed now carries only regular unflavored tobacco products to the extent
6 that he understands current state and local law.

7
8 The City labels three of its attached photographs as being "Flavored Products" (numbered 3,
9 5, and 6 on Appellant's Ex. A, an annotated version of the City's Notice of Violation (NOV). These
10 photographs are somewhat illegible, though they do contain some items with some of those names.

11 The City's NOV Allegation 1 is conclusory in that it simply tells us that here is product X
12 which violates this code section. But it does not tell us how each product meets the definitions. This
13 is in no way obvious, and thus the City has not met the burden of production, let alone the burden
14 of proof. The Hearing Officer should find that the City has not proven NOV Allegation 1 and
15 uphold Mr. Ahmed's appeal.

16 **NOV ALLEGATIONS 2-4:**

17
18 2. Electronic smoking devices, electronic nicotine delivery systems (E- cigarettes),
19 vaping devices, including all parts and components to include but not limited to: Inspector observed
20 during inspection "PAX", "Exus", "Vaped Vano", "Volcano", etc.

21 3. Electronic smoking and vaping products, and vaping paraphernalia, including but
22 not limited to, devices, parts and components, e-liquids, concentrates, waxes, etc. to include but not
23 limited to: Inspector observed during inspection "Carta", "G", "Backwoods", etc.

24 4. CBD or hemp products, or any products made from, derivative of, or containing any
25 amount of a Cannabis plant intended for human consumption to include but not limited to:

1 Inspector observed during inspection "Hemp2o","High Hemp Organic Wraps", "Artisanal Hemp
2 Cones", "Organic Hemp Raw Cones", "CBD Edibles", "CBD Lollipops", "PM Hemp", etc.

3 Similarly, it is not clear how the named products fit the definitions in the code. Whether the
4 City can or cannot show that they do, Mr. Ahmed raises the following legal arguments to this new
5 untested Hayward law to the extent that it purports to apply to “Non-Tobacco/Non-Nicotine
6 Products Related to Cannabis, Hemp, and CBD” Products.

8 **IV. City of Hayward Ordinance No 20-13 (Appellant’s Exhibit 2), which also
9 contains HMC 10-1.2783) is Unconstitutional as Applied to Appellant SNA
10 Trading, Inc.**

11 City of Hayward Ordinance No 20-13 was passed in July 2020 and has never before been
12 implemented, enforced, or tested. This hearing is the first time it has ever been applied and
13 subjected to any kind of legal scrutiny. It purports to impose new rules and regulations, not only on
14 tobacco and nicotine sales, but also on legal CBD products, legal hemp products, and legal cannabis
15 devices, including medical devices such as vaporizers for those who physically cannot tolerate
16 inhaling smoke. And it purports to impose these restrictions retroactively through the Planning &
17 Zoning Code (HMC Chapter 10). But this it cannot do. To the extent that the existing legal tobacco
18 retailers, such as Appellant, have been legally selling these products prior to this Ordinance, they
19 have prior legal non-conforming status and the ordinance’s new restrictions cannot apply to them.
20 The new restrictions can apply prospectively only—to new tobacco retailers—but they cannot apply
21 to those that operated legally before the new ordinance. That is black letter law. *Korean American
22 Legal Advocacy v. City of Los Angeles* (1994) 23 Cal.App.4th 376, Fn5 citing *Trans-Oceanic Oil Corp. v.
23 Santa Barbara* (1948) 85 Cal.App.2d 776, 783-195, and *O’Hagen v. Board of Zoning Adjustment* (1971) 19
24 Cal. App. 3d at p. 165.

26 Additionally, as to what we have characterized here as the “Non-Tobacco/Non-Nicotine
27 Products Related to Cannabis, Hemp, and CBD” Products Category (HMC 10-1.2783(c)(3)-

1 (5)/NOV Allegations 2-4), the ordinance lacks even a “rational basis” in that its findings and
2 purpose (HMC 10-1.2780) are “demonstrably irrelevant” to its prohibition on non-tobacco/non-
3 nicotine products. *Nebbia v. New York* (1934) 291 US 502, 539. This is because all four of the
4 enumerated findings in HMC 10-1.278 are related to the harms caused by tobacco and nicotine.
5 Thus, they cannot support a prohibition on non-tobacco and non-nicotine products rendering that
6 prohibition invalid as applied, if not facially.
7

8 Under Section 3 of the ordinance itself (regarding Severance, Exhibit 2), this Hearing Officer
9 has the power to limit the legal application of the Ordinance to only new tobacco retailers and limit
10 its effect so as to preserve the legal right of grandfathered retailers, such as Appellant, to continue to
11 operate legally, although non-conforming with new restrictions. The Hearing Officer should exercise
12 that power and uphold this appeal.

13 **V. Conclusion.**

14 The Hearing Officer can and should uphold the appeal. In the alternative, should the appeal
15 be denied, Appellant respectfully requests that the Hearing Officer stay their decision for 20 days to
16 allow Appellant time to seek relief in the courts.
17

18 Respectfully submitted,

19
20 DATED: February 1, 2023

ANTHONY LAW GROUP, PC

21
22 

23 James Anthony,
24 Drew M. Sanchez,
25 Attorneys for Appellant
26 SNA Trading, Inc. dba Smokey’s Smoke Shop
27 & Gifts

EXHIBIT 1

Appellant's Ex. A: Annotated NOV

CITY OF HAYWARD
DEVELOPMENT SERVICES DEPARTMENT
CODE ENFORCEMENT DIVISION

777 B Street, Hayward, CA 94541-5007
 (510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

NOTICE OF VIOLATION - Tobacco Retail License

October 13, 2022

SMOKEY'S SMOKE SHOP & GIFTS
 25088 Hesperian Blvd
 HAYWARD, CA 94545

CASE NO: CE-22-0507
LOCATION: 25088 Hesperian Blvd
APN: 442-0051-034-00
INSPECTION DATE: August 15,
 2022

The above property is in a CC-C - Central City Commercial Zoning District. An inspection of the location and/or City records identified the following violation(s) of the Hayward Municipal Code (HMC), which must be corrected before the next compliance date of **November 16, 2022** to avoid fees, penalties, and license suspension.

CODE SECTION	VIOLATION/CORRECTIVE ACTION
HMC 10-1.2783	<p>VIOLATION: POSSIBLE NON-COMPLIANCE WITH THE REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS. SEC. 10-1.2783 C. It shall be a violation of these regulations for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, to possess with intent to sell or offer for sale, or exchange for any form of consideration any:</p> <ol style="list-style-type: none"> 1.Flavored tobacco products, parts, components, or flavored tobacco paraphernalia to include but not limited to: Inspector observed during inspection "Real Leaf Rolls", "Wraps", "ZYN", "Backwoods", etc. 2.Electronic smoking devices, electronic nicotine delivery systems (E-cigarettes), vaping devices, including all parts and components to include but not limited to: Inspector observed during inspection "PAX", "Exus", "Vaped Vano", "Volcano", etc. 3.Electronic smoking and vaping products, and vaping paraphernalia, including but not limited to, devices, parts and components, e-liquids, concentrates, waxes, etc to include but not limited to: Inspector observed during inspection "Carta", "G", "Backwoods", etc. 4.CBD or hemp products, or any products made from, derivative of, or containing any amount of a Cannabis plant intended for human consumption to include but not limited to: Inspector observed during inspection "Hemp2o", "High Hemp Organic Wraps", "Artisanal Hemp Cones", "Organic Hemp Raw Cones", "CBD Edibles", "CBD Lollipops", "PM Hemp", etc. <p>Corrective Action: Removal of all products that do not comply with the requirements and operational standards for tobacco retail establishments.</p>

A progress check will be conducted on Wednesday November 16, 2022 to ensure measures are being taken place to bring the property into compliance.

Appellant's Ex. A: Annotated NOV

Failure to comply and satisfactorily eliminate all violations by the next compliance date of **November 16, 2022** will result in a **penalty fee of \$1,500/30-day Tobacco Retail Licensing suspension**. Continued violations will result in additional penalty fees and/or other available legal remedies, including revocation of the tobacco retail license and use at this location. Non-payment will result in a lien/special assessment against the property.

You may request an Administrative Hearing within ten (10) calendar days from the date of this letter to dispute the facts of the violations(s) under the Hayward Municipal Code. To request a hearing, please call the inspector at (510) 583-4260 within 10 days from the date of this notice. A \$946 hearing fee is required and must be submitted with any hearing request. If you have any questions regarding this notice, please call (510) 583-4260 as soon as possible and prior to next reinspection date. Your cooperation will be greatly appreciated.

AMBER GREEN
Code Enforcement Inspector I

Encl: Fee Inspection Schedule

Cc: OWNER: LUCAS ANSELMO F & CONCEICAO T ETAL, OCCUPANT: SMOKEY'S SMOKE SHOP & GIFTS



Appellant's Ex. A: Annotated NOV



Photo 3 of 13 Flavored and Hemp Products



Photo 4 of 13 Hemp Products



Photo 5 of 13 Flavored Products



Photo 6 of 13 Flavored Products

Appellant's Ex. A: Annotated NOV

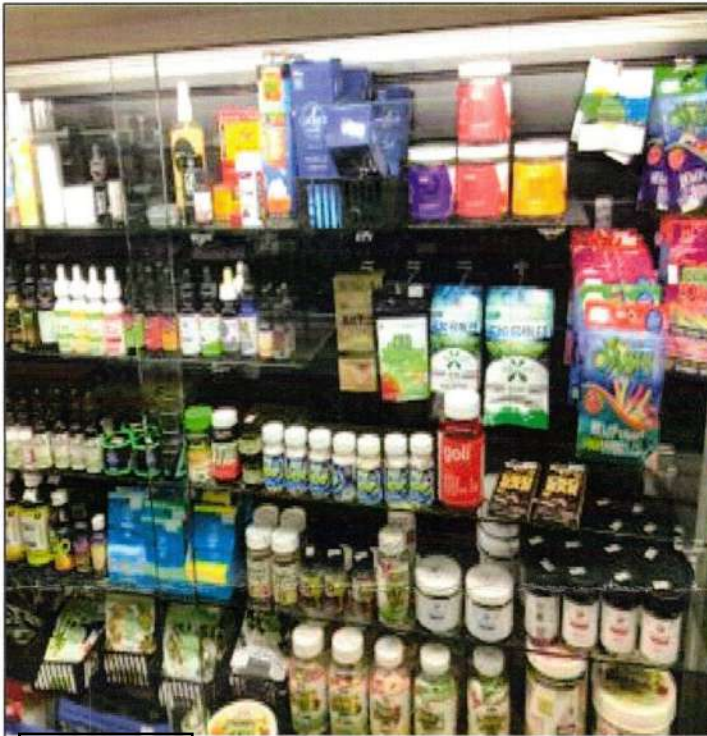


Photo 7 of 13

CBD Products



Photo 8 of 13

CBD Products



Photo 9 of 13

Vape Products



Phot 10 of 13

Vape Products

Appellant's Ex. A: Annotated NOV



Photo 11 of 13 Vape Products



Photo 12 of 13 Vape Products



Photo 13 of 13 CBD Products

EXHIBIT 2

ORDINANCE NO. 20-13ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA,
AMENDING CHAPTER 10 (PLANNING, ZONING, AND
SUBDIVISIONS), ARTICLE 1 (ZONING ORDINANCE), SECTION
10-1.2780 THROUGH 10-1.2797, TOBACCO RETAIL SALES
ESTABLISHMENTS, OF THE HAYWARD MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Provisions. The City Council incorporates by reference the findings contained in Resolution No. 20-120 approving the text changes to the Hayward Municipal Code, Sections 10-1.2780 through 10-1.2797, Tobacco Retail Sales Establishments Ordinance.

Section 2. Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code, which establishes development standards and regulations for all zoning districts within City boundaries, is hereby amended to add certain text (as indicated by underline) and delete certain provisions (as indicated by strikethrough) in the attached Exhibit "A", related to tobacco retail sales establishments, introduced herewith and as specifically shown in this Ordinance.

Section 3. Severance. Should any part of this Ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this Ordinance, which shall continue in full force and effect, provided that the remainder of the Ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. Effective Date. In accordance with the provisions of Section 620 of the City Charter, the Ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward,
held the 7th day of July 2020, by Council Member Mendall.


ADOPTED at a regular meeting of the City Council of the City of Hayward,
held the 14th day of July 2020, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS: Lamnin, Márquez, Mendall, Salinas, Wahab, Zermeño
MAYOR: Halliday

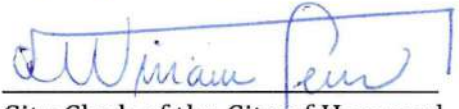
NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

APPROVED: 
Mayor of the City of Hayward

DATE: July 21, 2020

ATTEST: 
City Clerk of the City of Hayward


APPROVED AS TO FORM:

City Attorney of the City of Hayward

EXHIBIT A**CHAPTER 10, PLANNING, ZONING, AND SUBDIVISIONS
ARTICLE 1, ZONING ORDINANCE****SECTION 10-1.2780, TOBACCO RETAIL SALES ESTABLISHMENTS****SEC. 10-1.2780– FINDINGS AND PURPOSE.**

The City finds and declares as follows:

- a. According to the Centers for Disease Control and Prevention, each day about 1,600 U.S. youth under the age of 18 smoke their first cigarette. Each year, nearly half a million Americans die prematurely of smoking or exposure to secondhand smoke. Another 16 million live with a serious illness caused by smoking.
- b. There is local and nation-wide evidence from the California Department of Public Health and the Centers for Disease Control and Prevention that youth consumption and use of flavored tobacco products and electronic smoking devices are on the rise. The use of these products has been identified by the United States Surgeon General to pose significant health and safety risks to community at-large and youth individuals under the age of 18.
- c. The City of Hayward recognizes that the use of tobacco products and electronic smoking devices have devastating and have long-lasting effects on personal and public health. The City further recognizes in accordance with the Centers for Disease Control and Prevention, that tobacco use is the leading cause of preventable disease, disability, and death in the United States.
- d. The purpose of the Tobacco Retail Sales Establishments Ordinance is to promote public health and provide regulatory protection for the City's youth from harmful tobacco and nicotine products. The Ordinance establishes a monitoring program that encourages responsible tobacco retailing and holds businesses accountable for selling and distributing harmful and addictive tobacco and nicotine products to underage individuals. It is intended to supplement relevant provisions of Federal and State law and is not intended nor shall it be interpreted to conflict, expand or

reduce the degree to which the acts regulated by Federal or State law are criminally proscribed or alter the penalties provided therein.

SEC. 10-1.2781 - APPLICABILITY.

These regulations apply to all Tobacco Retail Sales Establishments, including the operation of existing businesses, new businesses, relocating businesses, and the conversion or expansion of an existing business to include the sale of tobacco, tobacco products, or tobacco paraphernalia, as defined herein. Tobacco Retailers legally existing prior to the adoption of these regulations may exist without the approval of a conditional use permit but must otherwise comply with all standards set forth in these regulations.

SEC. 10-1.2782 - DEFINITIONS.

For purposes of these regulations, certain words and terms have the following meaning:

- a. "Bidis" (also known as beedies) are defined as products containing tobacco wrapped in leaves of the temburni or tendu plants, or products marketed and sold as "bidis" or "beedies."
- b. "CBD" means cannabidiol, a cannabinoid or chemical compound found in cannabis plant and hemp.
- c. "Cannabis" shall mean as defined in Hayward Municipal Code Section 10-1.3500.
- d. "Cigar" means (i) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (ii) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. For the purposes of this subsection, "Cigar" includes, but is not limited to, Tobacco Products known or labeled as "cigar," "cigarillo," "tiparillo," "little cigar," "blunt," "blunt wrap," or "cigar wrap."
- e. "Cigarette" means any roll of tobacco for smoking of any size or shape, made wholly or in part of tobacco and with a wrapper or cover made of paper or any other material. Tobacco wrapped in tobacco or with a cover made mostly of tobacco (for example, cigars) that weighs more than three pounds per thousand sticks are not cigarettes and are defined as Tobacco Products.

- f. "Characterizing Flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted by a tobacco product, either prior to or during consumption, or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, sweetener, sugar, herb, or spice; provided, however, that 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.
- g. "Drug Paraphernalia" is as defined in California Health and Safety Code section 11014.5, as that section may be amended from time to time.
- h. "Electronic Smoking Device" means:
1. Any electronic device that delivers a dose of nicotine or other substances to the person inhaling, including but not limited to, electronic nicotine delivery systems (ENDS) as defined under the United States Food and Drug Administration deeming rule, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vapor cigarette, vape pen, personal vaporizers, or any other product name or descriptor.
 2. Any component, part, or accessory intended or reasonably expected to be used with an electronic smoking device, whether sold separately, including but not limited to coils, batteries, tanks, cartridges, pods, wicks, atomizers, nicotine concentrates, waxes, E-liquids, or other products and parts.
- i. "Flavored Tobacco Product" means any tobacco product (including but not limited to cigarettes) that imparts a characterizing flavor, including but not limited to mint or menthol cigarettes, flavored little cigars, smokeless tobacco, e-cigarettes and vaping devices. Furthermore, there shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has:
1. Made a public statement or claim that the tobacco product has, imparts, or produces a characterizing flavor, including, but not limited to, the explicit or implicit use of text and/or images on the product's labeling or packaging

or other advertisement to communicate information about the flavor, taste, or aroma of a tobacco product; and/or

2. Taken actions directed to consumers that would be reasonably expected to result in consumers believing that the tobacco product imparts a characterizing flavor.
- j. "Hemp Blunt Wraps" means a paper or cone-shape wrapper or cover made either in part or wholly from parts of a cannabis plant, also known as, but not limited, CBD blunt wraps.
 - k. "Hookah bar" or "hookah lounge" means any facility, building, structure, or location, where customers share tobacco or a similar smoking product from a communal hookah placed throughout the establishment.
 - l. "Imitation Tobacco Product" means any edible or non-edible, non-tobacco product designed to resemble a tobacco product that is often intended to be used by children as a toy. Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic smoking device is not an imitation tobacco product.
 - m. "Labeling" means written, printed, or graphic matter upon any tobacco product or any of its packaging, or accompanying such tobacco product.
 - n. "Licensee" means the holder of a valid, City-issued Tobacco Retailer License.
 - o. "Manufacturer" means any person, including any re-packer or re-labeler, who manufactures, fabricates, assembles, processes, labels a tobacco product; or imports a finished tobacco product for sale or distribution into the United States.
 - p. "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.
 - q. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

- r. "Pharmacy" and "Drugstore" mean a retail establishment in which the profession of pharmacy is practiced by a pharmacist license by the State of California in accordance with the Business and Professions Code, and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods.
- s. "Property Owner" means any person, persons, organization, or legal entity owning real property and as it appears on the last equalized assessment roll for the City.
- t. "Proprietor" means a person with an ownership or managerial interest in a Tobacco Retail Sales Establishment. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a Tobacco Retail Sales Establishment, other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a Tobacco Retail Sales Establishment.
- u. "Residential District" is any area within City limits that is designated in the City's zoning ordinance as one of the following districts: RS; RNP; RM; RH; RO; MH; SMU; any residential Planned Development; T3, T4, T4-1, T4-2 or T-5 (in the City's Form-Based Code zoning districts); or any subsequently created zoning district whose primary use is residential in character.
- v. "Retail Price" means the price listed for the tobacco product on its packaging or any related shelving, advertising, or display where sold or offered for sale, and includes all applicable taxes and fees.
- w. "Self-Service Display" means the open display of tobacco products, electronic smoking devices or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A vending machine is a form of self-service display.
- x. "Sensitive Receptors" are people that have an increased sensitivity to air pollution or environmental contaminants. For the purpose of this Ordinance, sensitive receptor locations include schools, pre-schools, parks and playgrounds, libraries, and day care facilities.

- y. "Tobacco Retail Sales Establishment" or "Tobacco Retailer" means any establishment that sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, tobacco products, tobacco paraphernalia, or any combination thereof, including retail or wholesale sales.
- z. "Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other items or parts thereof designed or marketed for the smoking, ingestion, preparation, storing, or consumption of tobacco products or other substances.
- aa. "Tobacco Product" means any product containing, made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. "Tobacco product" includes, but is not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, electronic smoking devices (with or without nicotine), or any component, part, accessory intended or reasonably expected to be used with a Tobacco Product whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.
- bb. "Tobacco Retailer License" means the license issued pursuant to Section 10-1.2785 that authorizes tobacco retail or wholesale sales at a certain, fixed approved location and by a certain Tobacco Retailer. Mobile vendors of tobacco products, electronic smoking devices and tobacco paraphernalia are prohibited.
- cc. "Vapor bar" or "vapor lounge" (also referred to as "smoking device bar" or "electronic smoking device lounge") means, but not limited to, any facility, building, structure or location where customers use tobacco products, electronic smoking devices or other apparatuses to deliver an inhaled dose of nicotine or other substance within the establishment.
- dd. "Vaping device" means as defined in Subsection h. of this section, an electronic smoking device and any device designed to vaporize nicotine or other substances to inhale or exhale vapor, including but not limited to bongs, water pipes, hookah

devices, vaporizers, atomizers, bowls, chambers, including any components and substances, or parts thereof, For purposes of these regulations, a vaping device does not include any medically prescribed vaporizer by a licensed physician or practitioner for medical purposes.

SEC. 10-1.2783 - REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS.

- a. All Tobacco Retail Sales Establishments shall abide by all of the following requirements and operational standards:
 1. All Tobacco Retail Sales Establishments shall comply with local, State, and/or Federal laws regarding sales, advertising or display of tobacco products, electronic smoking devices, imitation tobacco products and/or tobacco paraphernalia, including, but not limited to, posting prominently near the cash register or other point of sale and at the entrances to the establishment, the legal age to purchase tobacco products and checking the identification of purchasers to ensure they are of legal age.
 2. All new Tobacco Retail Sales Establishments shall obtain a conditional use permit pursuant to Section 10-1.3200 prior to operation, unless exempt as provided hereinafter, and a Tobacco Retailer License. It shall be unlawful for any Person to operate a Tobacco Retail Sales Establishment without first obtaining a conditional use permit, if one is required, and a Tobacco Retailer License.
 3. All Tobacco Retail Sales Establishments shall display their City of Hayward Tobacco Retail License and California Cigarette and Tobacco and Product Retailer License to sell tobacco products, in a prominent location visible to the public at all times.
 4. It shall be a violation of these regulations for any Tobacco Retailer to violate any local, State, or Federal law applicable to tobacco products, electronic smoking devices or tobacco paraphernalia.

5. It shall be a violation of these regulations for any Tobacco Retail Sales Establishment or any of the Tobacco Retail Sales Establishment's agents or employees to violate any local, State, or Federal law regulating controlled substances or drug paraphernalia, for example, California Health and Safety Code Section 11364.7, except that conduct authorized pursuant to the State law shall not be a violation of these regulations.
6. No Tobacco Retail Sales Establishment shall sell, transfer, or in any form furnish tobacco products or tobacco paraphernalia to an individual under the age of 21 in accordance with the California Penal Code 308, California STAKE Act, or any other applicable local, State or Federal law, or to any individual who appears to be under twenty-seven (27) years of age without first examining the customer's identification to confirm that the customer is at least the minimum age under State and Federal law to purchase and possess tobacco products.
7. No person who is younger than the minimum age established by State or Federal law for the purchase or possession of tobacco products or electronic smoking devices shall engage in the sale of such products.
8. All tobacco products and/or tobacco paraphernalia shall be secured so that only store employees have immediate access to these items. Self-service displays of tobacco products, electronic smoking devices, and tobacco products are prohibited.
9. No Tobacco Retail Establishment shall sell imitation tobacco products or any imitation products that resemble cannabis or any drug or illegal substance.
10. No Tobacco Retail Sales Establishment shall sell tobacco products, or tobacco paraphernalia, at a mobile location, on foot or from vehicles.

11. All sales of tobacco products and tobacco paraphernalia shall be conducted in person at the licensed Tobacco Retail Sales Establishment. No Tobacco Retail Sales Establishment shall offer or provide any delivery of tobacco products or tobacco paraphernalia to a consumer.
- b. Notwithstanding any other provision of law, it shall be a violation of these regulations for any licensee or any of the licensee's agents or employees to sell, offer for sale, or exchange for any form of consideration:
1. Any single cigar, whether or not packaged for individual sale, with a retail price of less than eight (\$8) dollars, including all applicable taxes and fees.
 2. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer.
 3. Any package of cigars unless it contains at least five cigars or units in the manufacturer's original consumer package with a retail price of eight (\$8) dollars or more, including all applicable taxes and fees.
 4. Single cigarettes or cigarettes packages of less than 20 cigarettes.
 5. Cigarette packages of 20 cigarettes with a retail price of less than eight (\$8) dollars per package, including all applicable taxes and fees.
 6. Any tobacco product for less than the retail price by honoring or redeeming discounts, multi-package discounts, free products, or any other form of discount.
 7. Cigarette packages or tobacco products not in compliance with the Revenue and Taxation Code, Section 30165.1, Subdivisions (e)(1), (e)(2) and (e)(3); not listed as approved in the California Tobacco Directory.

The minimum prices established in this section shall be adjusted from time to time in proportion with the Consumer Price Index for the San Francisco/Oakland/Hayward area as reported by the U.S Labor of Statistics and after publicly being posted in the City's website for at least 60 calendar days.

- c. It shall be a violation of these regulations for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, to possess with intent to sell or offer for sale, or exchange for any form of consideration any:
1. Flavored tobacco products, parts, components, or flavored tobacco paraphernalia.
 2. Bidis or Beedies products.
 3. Electronic smoking devices, electronic nicotine delivery systems (E-cigarettes), vaping devices, including all parts and components.
 4. Electronic smoking and vaping products, and vaping paraphernalia, including but not limited to, devices, parts and components, e-liquids, concentrates, waxes, etc.
 5. CBD or hemp products, or any products made from, derivative of, or containing any amount of a Cannabis plant intended for human consumption.
- d. Implementation: All existing legal Tobacco Retail Establishment owners shall have six (6) months from the effective date of these regulations to cease the sales of and remove all: (i) flavored tobacco products, including but not limited to any related flavored tobacco paraphernalia; (ii) electronic smoking devices, electronic nicotine delivery systems; and (iii) vaping devices, products and vaping paraphernalia; including but not limited to, devices, substances, parts and components. However, no grace period will be provided when a legal Tobacco Retail Establishment is sold or transferred. All Tobacco Retail Establishments shall abide by all Tobacco Retail Sales requirements and operational standards set forth herein.
- e. Every Tobacco Retail Sales Establishment shall maintain on the premises the original labeling and packaging provided by the manufacturer for all tobacco products that are sold or offered for sale by the establishment separately from the original packaging designed for retail sale to the consumer.

- f. Compliance with these regulations shall be enforced by the City's Development Services Director or his/her designee, in conjunction with the City's Code Enforcement Division and the Hayward Police Department. The Code Enforcement Manager or his/her designee shall use reasonable efforts to conduct a compliance check visit to each Tobacco Retail Sales Establishment at least once per twelve (12) month period to determine if the Tobacco Retail Sales Establishment is in compliance with these regulations; and any necessary follow-up inspections of non-compliant Tobacco Retailers. The Hayward Police Department shall use reasonable efforts to conduct decoy inspection operations throughout the year to verify the Tobacco Retailers are compliant and are not selling to minors at any time. Nothing in this section shall create a right of action in any Tobacco Retail Sales Establishment or other Person against the City or its agents.

SEC. 10-1.2784 - LARGE-FORMAT TOBACCO RETAILERS.

- a. Retail establishments, such as grocery stores, big-box stores, etc., that have 10,000 square feet or more of floor area and that devote not more than five (5%) percent of such floor area to the sale, display, sale and storage of tobacco products, or tobacco paraphernalia ("Large-Format Tobacco Retailers") are permitted in any zoning district in which retail sales are allowed, without the need to obtain a conditional use permit for tobacco sales, with the exception of subsection "c." of this section.
- b. Large-Format Tobacco Retailers are required to obtain a Tobacco Retailer License as set forth in Section 10-1.2785 and are subject to compliance with all requirements and operational standards as set forth in these regulations.
- c. The sale of tobacco products and tobacco paraphernalia in drugstores and pharmacies is hereby prohibited. Any existing drugstore or pharmacy with a valid City-issued Tobacco Retail License shall have six (6) months from the effective date of these regulations to cease the sales of all tobacco products and tobacco paraphernalia and remove all related products.

SEC. 10-1.2785 - TOBACCO RETAILER LICENSE (TRL).

All new and existing Tobacco Retail Sales Establishments must obtain an annual Tobacco Retailer License (TRL) and comply with all Requirements and Operational Standards for Tobacco Retail Sales Establishments set forth in Section 10-1.2783 above and as follows:

a. Tobacco Retailer License Application Procedure:

1. Application for a Tobacco Retailer License shall be submitted in the name of each Proprietor proposing to conduct tobacco retail sales and shall be signed by each Proprietor or an authorized agent thereof. It is the responsibility of each Proprietor to be informed regarding all laws applicable to tobacco retail sales, including those laws affecting the issuance of a Tobacco Retailer License. No Proprietor may rely on the issuance of a TRL as a determination by the City that the Proprietor has complied with all laws applicable to tobacco retail sales. A TRL issued contrary to these regulations, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor shall be revoked pursuant to Section 10-1.2794 herein. Nothing in these regulations shall be construed to vest in any Person obtaining and maintaining a TRL any status or right to act as a Tobacco Retailer in contravention of any provision of law.
2. After approval of a conditional use permit, a completed and executed application for a TRL shall be submitted on a form supplied by the City and shall contain the following information, but not limited to:
 - i. The name, address, and telephone number, and driver's license or state issued I.D. number of each Proprietor of the business seeking a TRL.
 - ii. The business name, address, e-mail, and telephone number of the single fixed location for which a TRL is sought
 - iii. A single name and mailing address authorized by each Proprietor to receive all communications and notices (the "authorized address"). If an authorized address is not supplied, each

Proprietor shall be understood to consent to the provision of notice at the business address specified in subsection (b)(2).

- iv. The valid state tobacco retailer's license number issued by the California Department of Tax and Fee Administration. A copy of the California Cigarette and Tobacco Products Retailer's License and California Seller's Permit must be provided with the TRL application.
 - v. Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found to have violated, these regulations and, if so, the dates and locations of all such violations within the previous five years.
 - vi. A statement signed by each Proprietor that no drugs or drug paraphernalia is or will be sold at the location for which the TRL is sought.
 - vii. Such other information as the Planning Director or designee deems necessary for the administration or enforcement of these regulations as specified on the application form required by this section, including however not limited to any proposed signage or artwork for the business premises to ensure that the signage/artwork does not encourage youth smoking.
3. All Tobacco Retail Sales Establishments shall inform the Planning Director or his/her designee in writing of any change in the information submitted on an application for a TRL within ten business days of a change.
 4. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 et seq.) or any other applicable law, subject to any applicable exemptions.

- b. Issuance of TRL: Upon the receipt of a complete application for a TRL and the license fee required hereunder, the Planning Director or his/her designee shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:
1. The information presented in the application is incomplete, inaccurate, false or otherwise fails to comply with Section 10-1.2785(a)(2) above. Intentionally supplying inaccurate or false information shall be a violation of these regulations.
 2. The application seeks authorization for tobacco retail sales at a location for which the issuance of a TRL is prohibited under these regulations or does not qualify under any exemptions under these regulations.
 3. The application seeks authorization for tobacco retail sales that is prohibited under these regulations (e.g., mobile vending) or that is unlawful pursuant to this Article, including without limitation, the zoning ordinance, building code, and business license tax ordinance, or that is unlawful pursuant to any other law.
 4. The location for which a TRL is sought lacks a valid state tobacco retailer's license by the California Department of Tax and Fee Administration.
 5. The applicant has been found in violation of three (3) or more of the Operational Standards listed in Section 10-1.2783 of these regulations within the last five years.
- c. TRL Renewal and Expiration:
1. Term and Renewal of TRL. A TRL is invalid if the appropriate fee has not been timely paid in full or if the term of the TRL has expired. The term of a TRL is one year, commencing the first day of each calendar year.
 2. Expiration of TRL. A TRL that is not timely renewed shall expire at the end of its term. To apply for reinstatement of a license that was not timely renewed, the Proprietor must complete all of the following:
 - i. Submit the TRL fee, including any fees for late renewal, and application renewal form.

- ii. Submit a signed affidavit affirming that the Proprietor has not sold and will not sell any tobacco product, or tobacco paraphernalia after the TRL expiration date and before the TRL is renewed.
 - iii. Pay all outstanding fines and resolved any outstanding violations of these regulations, before seeking renewal of the license.
- d. TRL Nontransferable: A TRL may not be transferred from one Person to another or from one location to another. A new TRL is required whenever a Tobacco Retail Sales Establishment has a change in Proprietor(s).
- e. TRL Conveys a Limited, Conditional Privilege: Nothing in these regulations shall be construed to grant any Person obtaining and maintaining a TRL any status or right other than the limited conditional privilege to act as a Tobacco Retail Sales Establishment at the location in the City identified on the face of the license. Nothing in these regulations shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including but not limited to, any provision of the Hayward Municipal Code, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5. A TRL does not make the Tobacco Retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code Section 6404.5.
- f. Fee For TRL: The fees for the annual TRL shall be established by the City Council from time to time in the City's Master Fee Schedule and are payable at the time the establishment obtains or renews its business license. The fee shall be calculated so as to recover the cost of administration and enforcement of these regulations, including but not limited to, issuing the TRL license, Tobacco Retailer inspections and compliance checks, documentation of violations and prosecution of violators. Annual fees shall not be pro-rated or refunded during the course of the calendar year.
- g. Compliance and Monitoring:
 - 1. Compliance with these regulations shall be enforced by the Planning Director, in conjunction with the Code Enforcement Division and Hayward

Police Department. The City Manager may designate any number of additional persons to monitor compliance with these regulations.

2. Compliance checks shall be conducted so as to allow the City to determine, at a minimum, if the Tobacco Retailer is in compliance with all laws regulating sales of tobacco products, electronic smoking devices, tobacco paraphernalia, and imitation tobacco products. City staff shall endeavor to perform compliance check inspections at least annually in addition to follow-up inspections for non-compliance on all Tobacco Retail Sales Establishments.
3. The City shall not enforce any law establishing a minimum age for tobacco product or electronic smoking device purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:
 - i. The youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the City.
 - ii. The youth decoy is acting as an agent of a person designated by the City to monitor compliance with these regulations.
 - iii. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Alameda County Public Health Department or the California Department of Health Services or other governmental agency.

SEC. 10-1.2786 - CONDITIONAL USE PERMIT FOR NEW TOBACCO RETAIL SALES ESTABLISHMENTS.

- a. All new Tobacco Retail Sales Establishments that have less than 10,000 square feet of floor area or devote more than five (5%) percent of their floor area to the sale, display, and storage of tobacco products, or tobacco paraphernalia are only allowed in the General Commercial (CG) Zoning District and shall apply for and obtain approval of a conditional use permit, as set forth in HMC Section 10-1.2815 and any other applicable City regulation, in addition to a Tobacco Retailer License.

- b. New Tobacco Retail Sales Establishments that have less than 10,000 square feet of floor area or devote more than five (5%) percent of their floor area to the sale, display, and storage of tobacco products, or tobacco paraphernalia shall be subject to the following requirements, but not limited to:
1. No new Tobacco Retail Sales Establishments shall be established or located within 1,000 feet from any existing residential district or use, any sensitive receptors, or similar use as determined by the Development Services Director, or within 500 feet of any other approved Tobacco Retail Sales Establishment.
 2. The distances set forth above shall be measured as a radius from property line to property line without regard to intervening structures.
 3. The applicant shall be required to submit:
 - i. A map, drawn to scale, showing how their proposed business location meets the location and separation requirements as part of the conditional use permit application.
 - ii. The true and complete name and address of each lender or shareholder with a five (5) percent or more financial interest in the proposed business or any other Person to whom a share or percentage of the income of the establishment is to be paid.
 - iii. A statement by the applicant indicating whether or not such applicant has at any time been convicted of any crime other than minor traffic offenses and, if so, the nature of the crime for which the applicant was convicted and the date and jurisdiction of the conviction.
 - iv. A plan for demonstrating the means by which the applicant will comply with Section 10-1.2783, Requirements and Operational Standards for Tobacco Retail Sales.
- c. Any Tobacco Retail Sales Establishment legally in existence as of the effective date of these regulations will not be required to obtain a conditional use permit and will be deemed a legal non-conforming use for Zoning purposes as it pertains to the

provisions this Section, 10-1.2786. Such legal non-conforming status will not apply to any other provisions of the Tobacco Retail Sales Establishment Ordinance requirements adopted herein. In order to maintain its legal zoning non-conforming status, each such Tobacco Retail Sales Establishment must comply with all Requirements and Operational Standards Section 2783 and the Non-Conforming Use regulations set forth in Section 10.1.2900 et seq.

SEC. 10-1.2787 - POSTING OF CONDITIONS OF APPROVAL.

A copy of the conditions of approval for the conditional use permit must be kept on the premises of the Tobacco Retail Sales Establishment and posted in a place where it may readily be viewed by the general public.

SEC. 10-1.2788 - FINDINGS.

In making the findings required by Section 10-1.3225 governing conditional use permits, the Planning Director, or the Planning Commission on referral or appeal, shall consider whether the proposed use will result in an undue concentration of Tobacco Retail Sales Establishments in the area. The Planning Commission, or City Council on referral or appeal, shall also consider whether the proposed use will detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the following uses: residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses.

SEC. 10-1.2789 - PROHIBITED LAND USES.

The following uses are prohibited in all zoning districts: vapor bars or vapor lounges; smoking device bars or electronic smoking device lounges; and hookah bars or hookah lounges.

SEC. 10-1.2790 - LIABILITY FOR EXPENSES.

Any Person who is found to have violated the Tobacco Retail Sales Establishments regulations shall be liable for such costs, expenses and disbursements paid or incurred by the City or any of its contractors in the correction, abatement, prosecution of, or

administrative hearing on, the violation. Reinspection and penalty fees, and all costs and expenses to ascertain compliance with previously noticed violations shall be charged to the Proprietor(s) of the Tobacco Retail Sales Establishment, as set by the City Council in the Master Fee Schedule. However, the City reserves the right to recover any and all outstanding enforcement costs and charges incurred by the Tobacco Retail Sales Establishment from the Property Owner for non-compliance or non-payment pursuant to Chapter 5, Article 7 of the Hayward Municipal Code and Section 10-1.2793, or any other available legal remedy.

SEC. 10-1.2791 - INSPECTION AND RIGHT OF ENTRY.

To the extent permissible by law, the Planning Director or his/her designees shall have the right to enter and inspect any Tobacco Retail Sales Establishment for the purpose of ensuring compliance with these regulations, provided that any such entry and inspection shall be conducted in a reasonable manner, or whenever there is reason to suspect a violation of any of the provisions of the Tobacco Retail Sales Establishments regulations. If the licensee or his or her agents refuse permission to enter, inspect or investigate the establishment, the City may seek an inspection warrant pursuant to the provisions of California Code of Civil Procedure Sections 1822.50 et seq., or any successor legislation thereto.

SEC. 10-1.2792 - PUBLIC NUISANCE.

It shall constitute a public nuisance for any Person to operate or allow to operate a Tobacco Retail Sales Establishment in violation of these regulations.

SEC. 10-1.2793 - CUMULATIVE REMEDIES.

Any Person who violates any provision of the Tobacco Retail Sales Establishment regulations is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. The remedies provided in these regulations shall be cumulative and may include administrative citation pursuant to Chapter 1, Article 7 of this Code and/or abatement pursuant to Chapter 5, Article 7 of this Code, in addition to any other procedures provided in the Hayward Municipal Code or by

state law. Administrative action hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such violation. The fines and penalties for violations of the Tobacco Retail Sales Establishments regulations shall be established by the City Council in the Master Fee Schedule.

SEC. 10-1.2794 - REVOCATION OF TOBACCO RETAILER LICENSES AND CONDITIONAL USE PERMITS; APPEALS.

- a. In addition to the remedies set forth in Section 10-1.2793, any Tobacco Retail Sales Establishment in violation of these regulations three (3) times within a five-year period shall be referred to the Planning Commission for review. A third violation within such five-year period shall result in revocation of the Tobacco Retail License or Conditional Use Permit, unless the business can demonstrate by clear and convincing evidence that a lesser penalty is warranted.
- b. For Large-Format Tobacco Retail Sales Establishments, as defined in Section 10-1.2784.a, a written notice containing the effective date of the TRL revocation shall be sent to the address on record for the Tobacco Retail Sales Establishment, along with a description of the process for appealing the TRL revocation. Appeals of the TRL revocation shall observe the process set forth in Chapter 1, Article 7 and/or Chapter 5, Article 7 of the Hayward Municipal Code.
- c. For any Tobacco Retail Sales Establishments found to be in violation of Section 10-1.2794.a operating with a Conditional Use Permit or deemed a legal nonconforming use, a revocation hearing will be scheduled before the Planning Commission in accordance with the procedures set forth in Section 10-1.3260 of the Hayward Municipal Code. Appeals shall be governed by Section 10-1.2845 of the Hayward Municipal Code.

SEC. 10-1.2795 - ANNUAL REPORT.

An annual report shall be provided to the City Council regarding the enforcement of these provisions, including but not limited to, administrative and enforcement compliance data.

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CODE ENFORCEMENT
7

8 ADMINISTRATIVE HEARING
9

10 SNA Trading Inc. dba Smokey’s Smoke Shop &
11 Gifts,

Citation No. CE-22-0507

12 Appellant,

**HAYWARD CODE ENFORCEMENT
BRIEF IN SUPPORT OF CITATION NO.
CE-22-0507**

13 vs.

Date: February 2, 2023
Time: 2:30 p.m.
Location: Permit Center

14 Hayward Code Enforcement,

15 Appellee.
16

17 **I. INTRODUCTION**

18 This appeal is improper, since, pursuant to the Hayward Municipal Code (“HMC”) the
19 Hearing Officer lacks the jurisdiction to hear an appeal regarding the constitutionality of an
20 Ordinance, which are the only issues raised by this Appellant. See HMC § 1-7.01(b)(2) and **Exh**
21 **A**, Code Enforcement Packet, pgs. 94-95 (Request for Administrative Hearing). **As such, this**
22 **appeal must be summarily denied.**

23 Additionally, to the extent the Appellant challenges the constitutionality of Ordinance
24 No. 20-13, which is outside the scope of permissible appeals pursuant to HMC section 1-
25 7.01(b)(2), the City reserves its right to respond to those arguments should those issues be
26 appealed in the proper forum. Moreover, should the hearing officer in this case nonetheless find
27 that it has jurisdiction to hear the Appellant’s constitutional arguments, the City would request an
28

1 opportunity to provide supplemental briefing on the constitutional legal issues raised by
2 Appellant.

3 **II. LEGAL ARGUMENT**

4 **A. The Hearing Officer Lacks Jurisdiction to Hear This Appeal**

5 Article 7 of the HMC provides for administrative citations provided by Government Code
6 § 53069.4. Under § 1-7.01(b)(1), an administrative citation starts the administrative process.
7 Under § 1-7.01(b)(2) **“A violator has the right to appeal both the City’s initial**
8 **determination that he or she has violated an ordinance, and amount of the penalty imposed**
9 **by the City.”** As further instructed under the same section, such “[a]ppeals are heard by a City
10 Hearing Officer (Section 1-7.07), and if desired, the violator can challenge in a court of law the
11 Hearing Officer’s decision.

12 The Appellant’s “Request for Administrative Hearing” (**Exh.A**, pg. 94-95), indicates that
13 Appellant is challenging the above-mentioned citation on the following bases only:

- 14 (1) HMC 10-1.2783 is illegal and unconstitutional because Appellant had a prior right to
15 sell all products being sold at the location;
- 16 (2) The Notice of Violation is unconstitutional because it relies on an ordinance that is
17 unconstitutional;
- 18 (3) HMC 10-1.2783 is unconstitutional since it makes illegal the use and sale of CBD
19 products.

20 There is nothing on the Request for Administrative Hearing indicating that Smokey’s is
21 contesting the fact that it violated HMC 10-1.2783 subsection C, nor the “amount” of the penalty
22 imposed. *See* Exh. A, pg. 52, Notice of Violation indicating penalty fee amount is \$1,500. On
23 the contrary, the only basis for the appeal noted in the Request for Administrative hearing is the
24 Appellants’ contentions that the Ordinance under which the City found a violation, is, itself,
25 unconstitutional. As such, the Hearing Officer lacks jurisdiction to hear this appeal and the
26 appeal must be denied.
27
28

1 Should the Hearing Officer nonetheless find that it does have jurisdiction to hear this
2 appeal challenging the constitutionality of the Ordinance, the City would request the opportunity
3 to provide supplemental legal briefing as to those issues.

4 **B. Notice Was Proper**

5 On the face of the Attachment to the Appellant’s Request for Hearing, Appellant argues
6 in the third paragraph that, “because the Ordinance is unconstitutional, illegal and unenforceable,
7 the Notice of Violation cannot stand and must be rescinded.” Appellant makes no other
8 challenges to Notice here and, as explained above, the Hearing Officer lacks jurisdiction to
9 decide whether the Ordinance was unconstitutional and thus also lacks jurisdiction to decide
10 whether Notice was unconstitutional since it was based on an unconstitutional ordinance.

11 Although the Appellant does not challenge the sufficiency of Notice itself (aside from
12 indicating it was unconstitutional since it relies on an unconstitutional Ordinance), the City
13 would note that Notice here was sufficient for purposes of Due Process. “Due process principles
14 require reasonable notice and opportunity to be heard before governmental deprivation of a
15 significant property interest.” *Mohilef v. Janovici*, 51 Cal. App. 4th 267, 286 (1996) citing, *Horn*
16 *v. County of Ventura* (1979) 24 Cal.3d 605, 612. “However, there is no precise manner of
17 hearing which must be afforded; rather the particular interests at issue must be considered in
18 determining what kind of hearing is appropriate. A formal hearing, with full rights of
19 confrontation and cross-examination is not necessarily required.” *Saleeby v. State Bar* (1985) 39
20 Cal.3d 547, 565.

21 At a previous hearing regarding this violation, Appellant argued that notice was improper
22 since it lacked specific information indicating what subsection of the HMC was violated and the
23 rules for the hearing process. Although Appellant offered no legal authority supporting the
24 contention that due process required such, the City, in a good faith attempt to resolve these
25 issues, agreed to amend the notice. Following the June 30th Administrative Hearing (which was
26 continued), the City re-inspected Smokey’s, which was still in violation of the HMC (see below),
27 and thus issued a new Notice, which provides additional specifications which address the
28 Appellant’s previous issues with Notice. See **Exh. A**, pgs. 2-3 (Notes dated “07/01/2022”

1 through “10/24/2022”), pgs. 52-56 (October 13, 2022, Amended Notice of Violation). The new
 2 notice undoubtedly satisfies Due Process for purposes of providing the Appellant with
 3 “reasonable notice.” It also satisfies the requirements for Notice/”Administrative Citation—
 4 Content” under HMU § 1-7.04.

5 **C. The Violation Was Proven**

6 Even though the Appellant does not contest the actual violation of the Ordinance or
 7 contend that the violation was not proven, for purposes of creating a clear record, the City would
 8 note that the violation here was proven, again.

9 Under HMU § 10-1.2783(c): “It shall be a violation of these regulations for any Tobacco
 10 Retailer or any of the Tobacco Retailer’s agents or employees to sell or offer for sale, to possess
 11 with intent to sell or offer for sale, or exchange for any form of consideration any: (1) flavored
 12 tobacco products, parts, components, or flavored tobacco paraphernalia; (2) Bidis or Beedies
 13 products; (3) Electronic smoking devices, electronic nicotine delivery systems (E-cigarettes),
 14 vaping devices, including all parts and components; (4) Electronic smoking and vaping products
 15 and vaping paraphernalia, including but not limited to, devices parts and components, e-liquies,
 16 concentrates, waxes, etc.; (5) CBD or hemp products, or any products made from derivative of,
 17 or containing any amount of a Cannabis plant intended for human consumption.”

18 Re-Inspections: Following the continuance of the previous, June 30, 2022, administrative
 19 hearing, on July 1, 2022, Inspector Green sent Appellant a Courtesy Notice stating the following:

20 Dear Property owner Please be advised—After review of the Notice of
 21 Violation provided on 04/18/2022, and consideration of tenant concerns in
 22 regards to Code Enforcement Case 22-0507, Staff will be amending the
 23 original Notice of Violation provided in an effort to provide additional clarity
 24 and direction for compliance. Additionally, to assure results of the required
 25 tobacco retail inspection are current, staff will be reaching out to coordinate a
 26 new inspection for purpose of updating the current conditions. Please advise
 all compliance dates associated with the original Notice of Violation will be
 updated to reflect an adjusted timeline. Should you have any questions please
 feel free to reach out to me at your convenience.

27 Exh. A, pgs. 2-3 (Note dated “07/01/2022”), pg. 17-18 (“Courtesy Notice” dated July 4, 2022).
 28

1 On July 5, 2022, Inspector Green spoke with tobacco shop owner, Haroon, and verbally
2 advised the City will amend the original Notice of Violation to provide clarity and direction for
3 compliance. A verbal confirmation was agreed upon, and Inspector Green would inspect the
4 property the following day. **Exh. A**, pg. 3 (Note dated “07/05/2022”).

5 On July 6, 2022, Inspector Green conducted a reinspection with Owner Haroon. She
6 walked through the entire shop with the property owner and took new pictures of items in the
7 shop that violate/were not in compliance with the Tobacco Retail License requirements. **Exh. A**,
8 pg. 3 (Note dated “07/06/2022”). Numerous violations were documented.

9 On August 12, 2022, a Notice of Violation of the numerous violations discovered during
10 the July 6, 2022 inspection, was sent to Appellant providing a detailed explanation of the
11 violations and information about a progress check to verify compliance with the Notice. **Exh. A**,
12 pgs. 34-45).

13 On August 15, 2022, another inspection was conducted for photograph clarity and, again,
14 numerous violations were documented. The Notice of Violation related to this additional
15 inspection was sent to Appellant on October 13, 2022, which, again, detailed the numerous
16 violations and provided information about a progress check to verify compliance with the Notice
17 to avoid penalties. **Exh. A**, pgs. 46-51.

18 On October 24, 2022, Inspector Green received a phone call from Smokey’s
19 representative (attorney) requesting an administrative hearing and thus all further inspections
20 were halted.

21 To date, the City has received no information from Smokey’s that it has come into
22 compliance with HMC 10-1.2783(C).

23 **III. CONCLUSION**

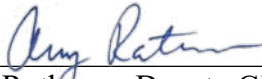
24 Ultimately, notice here was proper, the violation has been proven and the Administrative
25 Hearing Officer lacks jurisdiction to hear the constitutional challenges to the Ordinance, the only
26 bases for this appeal. As such, the Hearing Officer should find that notice was proper, the
27 violation was proven, and direct that Smokey’s has 30 days from the issuance of the Hearing
28

1 Officer's Order to come into compliance with HMC 10-1.2783.(C). Finally, the administrative
2 hearing fee of \$946 should be upheld.

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DATED: January 31, 2023

MICHAEL S. LAWSON, City Attorney

By: 

Amy S. Rothman, Deputy City Attorney
Attorney for City of Hayward

EXHIBIT A



CITY OF HAYWARD
DEVELOPMENT SERVICES DEPARTMENT
CODE ENFORCEMENT DIVISION
 777 B Street, Hayward, CA 94541-5007
 (510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

STAFF REPORT

Administrative Hearing

Property Owner:	LUCAS ANSELMO F & CONCEICAO T ETAL	Hearing Date:	02/02/2023
Site Address:	25088 Hesperian Blvd	Case No:	CE-22-0507
APN:	442-0051-034-00	Amount Due:	\$0.00
Mailing Address:	4588 CROW CANYON PL CASTRO VALLEY, CA 94552		

Violations(s)/HMC Sections(s): HMC 10-1.2783

Date(s) Notices Mailed: 04/18/2022, 07/01/202, 08/12/2022, 10/13/2022

Was contact made with property owner? Yes Date: 08/15/2022

Was violation abated? No

Recommendation: Staff recommends that the above listed property be found in violation with all corrections be completed no later than 30 days after final administrative hearing determination, and that the administrative hearing fee of \$946 be upheld.

Case Summary/Comments:

In accordance with the Tobacco Retail License Program, Code Enforcement conducts annual tobacco inspections to monitor the responsible sales of tobacco products to help eliminate the sale of tobacco products to minors. In July 2020, the City Council adopted Resolution No. 20-13 approving revisions to the Tobacco Ordinance to address the nation-wide growing crisis in the accessibility and use of flavored tobacco and vaping devices by the youth. The Ordinance revisions included a ban in the sale all flavored tobacco products, electronic smoking devices, vaping products, parts, etc., and a six-month grace period from the adoption of the Ordinance (July 14, 2020) for tobacco retailers to remove the prohibited tobacco and vaping products to comply by January 14, 2021. Other changes adopted included (but not limited to) minimum tobacco prices and package sizes, increased distances to youth sensitive areas, revocation for repeat violations, etc.

04/13/2022 At time of inspection Inspector Green met with tenant Kahn and spoke with property owner Haroon on the phone. Inspector Green observed various products not in compliance with the new tobacco ordinance. Inspector Green will allow 30 days for reinspection to observe progress towards compliance.

04/18/2022 Inspector Green sent Tobacco Retail License - Notice of Violation to (Owner,Property Location), Observation (During scheduled inspection please show progress is being made towards compliance.)

04/28/2022 Inspector Green received phone call from attorney James Anthony who is requesting an administrative hearing. Inspector Green left a voicemail advising once the administrative hearing fee is received the administrative hearing can be scheduled.

04/28/2022 Inspector Green received phone call from paralegal Hannah Young requesting an administrative hearing. Inspector Green left voicemail advising once the administrative hearing fee

has been rec'd the hearing can be scheduled.

04/28/2022 Inspector Green received email from Hannah Young (paralegal) "Greetings, We represent SNA Trading Inc. dba Smokey's Smoke Shop & Gifts in the above matter. I am writing to follow up regarding the voicemails I left for you yesterday, as well as the voicemails you left for me earlier this morning. Pursuant to the instructions on the City's Request for Administrative Hearing Request form, we understand that the completed form and \$946 hearing fee must be submitted to the City of Hayward Code Enforcement Division, 777 B Street, Hayward, CA 94541. Please confirm whether it is possible to return the form electronically (via email), and also provide information concerning payment options for submitting the \$946 fee. Feel free to call me on my cell at 510-333-7996. Thanks in advance. Best, Hannah"

04/28/2022 Inspector Green provided Administrative Hearing form and instructions on how to reach Revenue for alternative forms of payment

04/28/2022 Inspector Green received email from Forrest Nylander (Senior Customer Account Clerk) stating the administrative hearing fee has been paid for. The original business application and name change for reference. The business license expired in 12/31/2020.

05/18/2022 Due to the administrative hearing requested inspector Green will not be inspecting the property as scheduled as to not interfere with the hearing.

05/18/2022 Inspector Green left a voicemail for tenant Kahn advising no scheduled reinspection will be conducted until after the administrative hearing. Inspector Green spoke with property owner Haroon and advised no scheduled reinspection's will take place until after the administrative hearing.

05/20/2022 Angelica Ventura (Code Enforcement Senior Secretary) received Administrative Hearing Request (see attached). Hearing is set for Wednesday June 8th at 2:00pm via Teams meeting with in-person option. Mailed hearing appointment letter to the address provided on the hearing request form (copy attached)

06/06/2022 Inspector Green emailed a copy of the Staff Report and Tobacco Retail License Notice of Violation to hearing officer Lance Bayer

06/07/2022 Hearing information was not received by the attorney representing Smokey's Smoke Shop & Gifts. Paralegal Hannah Young requested a continuance. City of Hayward City Attorney's Office requests the continuance for June 29th, 2022.

06/08/2022 Continuance has been granted, the next hearing date is scheduled for Wednesday June 29th at 2:30pm.

06/30/2022 Hearing officer Lance Bayer calls for a continuance due to administrative jurisdiction abilities.

07/01/2022 Inspector Green sent Courtesy Notice that states: Dear Property Owner Please be advised – After review of the Notice of Violation provided on 04/18/2022, and consideration of tenant concerns in regards to Code Enforcement Case #22-0507, Staff will be amending the original Notice of Violation provided in an effort to provide additional clarity and direction for compliance. Additionally, to assure results of the required tobacco retail inspection are current, staff will be reaching out to coordinate a new inspection for the purposes updating current conditions. Please be

advise all compliance dates associated with the original Notice of Violation will be updated to reflect an adjusted timeline. Should you have any questions please feel free to reach out to me at your convenience.

07/05/2022 Inspector Green spoke with property owner Haroon advising that the City will amend the original Notice of Violation to provide clarity and direction for compliance. Inspector emailed a copy of the Courtesy notice to property owner Haroon. Inspector Green is scheduled to reinspect the property tomorrow.

07/06/2022 At time of inspection Inspector Green walked around with property owner Haroon and took new pictures of items in the shop that are not in compliance with the Tobacco Retail License requirements.

07/15/2022 Delay in sending out Tobacco Retail License - Notice of Violation. Inspector Green is out for required Code Enforcement training PC 832: Laws of Arrest. Inspector Green's schedule has been limited due to July 4th holiday schedule and enforcement of fireworks.

08/12/2022 Inspector Green meets with Code Enforcement manager to review Notice of Violation before issuing.

08/15/2022 At time of inspection Inspector Green walked around with property owner Haroon and took new pictures of items in the shop that are not in compliance with the Tobacco Retail License requirements.

09/01/2022 Delay in sending out Tobacco Retail License - Notice of Violation due to Covid.

10/13/2022 Inspector Green sent Tobacco Retail License - Notice of Violation Send to (Owner, Property Location), Observation (A progress check will be conducted on Wednesday November 16, 2022 to ensure measures are being taken place to bring the property into compliance.)

10/24/2022 Inspector Green received phone call and email from paralegal Hannah Young requesting an administrative hearing.

11/09/2022 Angelica Ventura (Code Enforcement Senior Secretary) received Administrative Hearing Request (see attached).

11/16/2022 Hearing is set for Thursday December 8th at 2:00pm.

AMBER GREEN
Code Enforcement Inspector I

Attachments: Notices Sent to Owner and Case Photos

Photographs



Beverages



Hemp2o - Hemp Beverage



Flavored and Hemp Products



Hemp Products



Flavored Products



Flavored Products



CBD Products



CBD Products



Vape Products



Vape Products



Vape Products



Vape Products



CBD Products

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NOTICE OF VIOLATION - Tobacco Retail License

April 18, 2022

LUCAS ANSELMO F & CONCEICAO T ETAL
 4588 CROW CANYON PL
 CASTRO VALLEY, CA 94552

CASE NO: CE-22-0507
LOCATION: 25088 Hesperian Blvd
APN: 442-0051-034-00
INSPECTION DATE: April 13, 2022

The above property is in a CC-C - Central City Commercial Zoning District. An inspection of the location and/or City records identified the following violation(s) of the Hayward Municipal Code (HMC), which must be corrected before the next compliance date of **May 18, 2022** to avoid fees, penalties, and license suspension.

CODE SECTION	VIOLATION/CORRECTIVE ACTION
HMC 10-1.2783	NON-COMPLIANCE WITH THE REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS. Corrective Action:

During scheduled inspection please show progress is being made towards compliance.

Failure to comply and satisfactorily eliminate all violations by the next compliance date of **May 18, 2022** will result in a **penalty fee of \$1,500/30-day Tobacco Retail Licensing suspension**. Continued violations will result in additional penalty fees and/or other available legal remedies, including revocation of the tobacco retail license and use at this location. Non-payment will result in a lien/special assessment against the property.

You may request an Administrative Hearing within ten (10) calendar days from the date of this letter to dispute the facts of the violation(s) under the Hayward Municipal Code. To request a hearing, please call the inspector at (510) 583-4260 within 10 days from the date of this notice. A \$946 hearing fee is required and must be submitted with any hearing request. If you have any questions regarding this notice, please call (510) 583-4260 as soon as possible and prior to next reinspection date. Your cooperation will be greatly appreciated.

AMBER GREEN
 Code Enforcement Inspector I

Encl: Fee Inspection Schedule
 Cc: OWNER: LUCAS ANSELMO F & CONCEICAO T ETAL, OCCUPANT: SMOKEY'S SMOKE SHOP & GIFTS

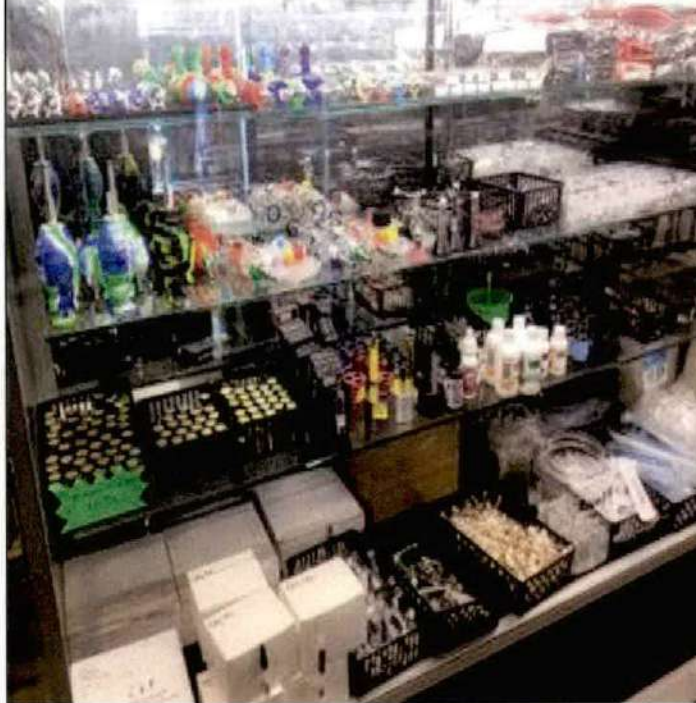
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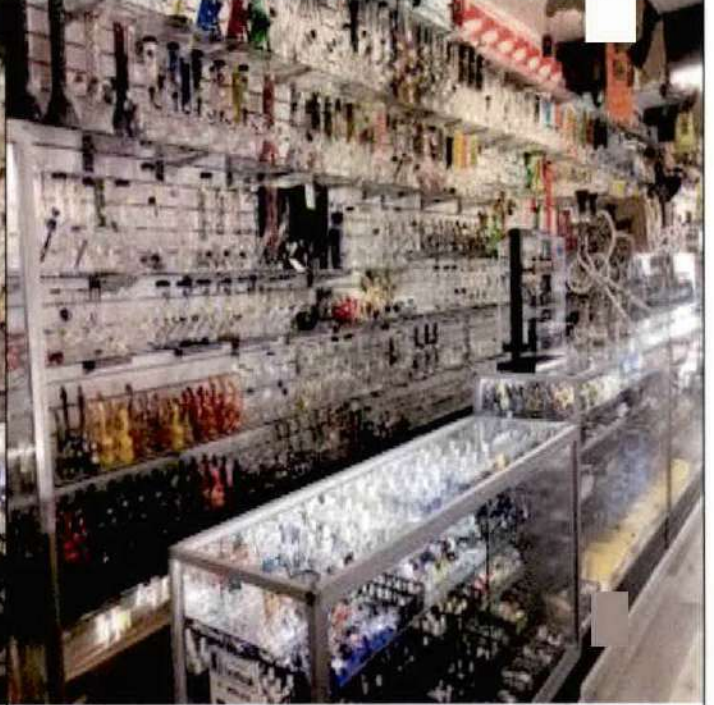
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777 B Street, Hayward, CA 94541-5007
(510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Amber Green, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

On April 18, 2022, I served the following document(s) on the interested parties in this action by sending true copies as shown below for service as designated below:

1) TRL - Notice of Violation, APN: 442-0051-034-00, Case #: CE-22-0507

SERVICE BY U.S. MAIL UNDER THE LAWS OF THE STATE OF CALIFORNIA

LUCAS ANSELMO F & CONCEICAO T ETAL
4588 CROW CANYON PL
CASTRO VALLEY, CA 94552

I am familiar with this business' practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

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

Executed on April 18, 2022, at Hayward, California.

AMBER GREEN
Code Enforcement Inspector I

CITY OF HAYWARD
DEVELOPMENT SERVICES DEPARTMENT
CODE ENFORCEMENT DIVISION

777 B Street, Hayward, CA 94541-5007
(510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

NOTICE OF VIOLATION - Tobacco Retail License

April 18, 2022

SMOKEY'S SMOKE SHOP & GIFTS
25088 Hesperian Blvd
HAYWARD, CA 94545

CASE NO: CE-22-0507 LOCATION: 25088 Hesperian Blvd APN: 442-0051-034-00 INSPECTION DATE: April 13, 2022
--

The above property is in a CC-C - Central City Commercial Zoning District. An inspection of the location and/or City records identified the following violation(s) of the Hayward Municipal Code (HMC), which must be corrected before the next compliance date of **May 18, 2022** to avoid fees, penalties, and license suspension.

CODE SECTION	VIOLATION/CORRECTIVE ACTION
HMC 10-1.2783	NON-COMPLIANCE WITH THE REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS. Corrective Action:

During scheduled inspection please show progress is being made towards compliance.

Failure to comply and satisfactorily eliminate all violations by the next compliance date of **May 18, 2022** will result in a **penalty fee of \$1,500/30-day Tobacco Retail Licensing suspension**. Continued violations will result in additional penalty fees and/or other available legal remedies, including revocation of the tobacco retail license and use at this location. Non-payment will result in a lien/special assessment against the property.

You may request an Administrative Hearing within ten (10) calendar days from the date of this letter to dispute the facts of the violation(s) under the Hayward Municipal Code. To request a hearing, please call the inspector at (510) 583-4260 within 10 days from the date of this notice. A \$946 hearing fee is required and must be submitted with any hearing request. If you have any questions regarding this notice, please call (510) 583-4260 as soon as possible and prior to next reinspection date. Your cooperation will be greatly appreciated.

AMBER GREEN
Code Enforcement Inspector I

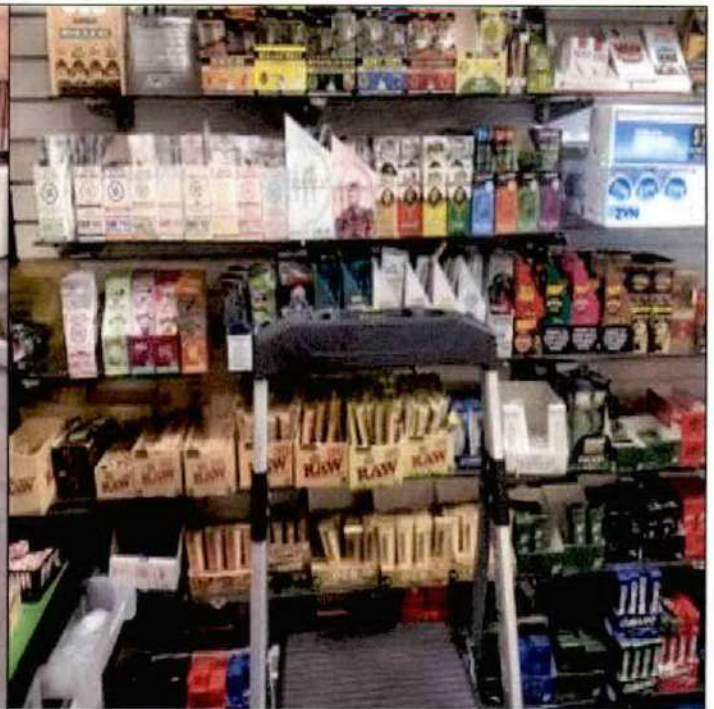
Encl: Fee Inspection Schedule

Cc: OWNER: LUCAS ANSELMO F & CONCEICAO T ETAL, OCCUPANT: SMOKEY'S SMOKE SHOP & GIFTS

Photographs



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 777 B Street, Hayward, CA 94541-5007
 (510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

COURTESY NOTICE

July 4, 2022

LUCAS ANSELMO F & CONCEICAO T ETAL
 4588 CROW CANYON PL
 CASTRO VALLEY, CA 94552

CASE NO: CE-22-0507 LOCATION: 25088 Hesperian Blvd APN: 442-0051-034-00
--

Please note that no violation has been verified at this time. This letter is being sent as a courtesy to allow you to correct should the violation(s) exist.

The Code Enforcement Division has received information that the following condition(s) and/or uses are present on the above referenced property. The Community Preservation Ordinance, HMC Section 5-7.20, Public Nuisance, prohibits the condition(s) specified below. No violation has been verified at this time. A code enforcement inspector has been assigned to investigate. If the conditions are present, the City encourages you to take immediate action to correct as continued violations may result in fees and penalties in accordance to the enclosed fee schedule.

CODE SECTION	VIOLATION/CORRECTIVE ACTION
HMC 10-1.2783	VIOLATION: POSSIBLE NON-COMPLIANCE WITH THE REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS.

Dear Property Owner

Please be advised – After review of the Notice of Violation provided on 04/18/2022, and consideration of tenant concerns in regards to Code Enforcement Case #22-0507, Staff will be amending the original Notice of Violation provided in an effort to provide additional clarity and direction for compliance. Additionally, to assure results of the required tobacco retail inspection are current, staff will be reaching out to coordinate a new inspection for the purposes updating current conditions.

Please be advise all compliance dates associated with the original Notice of Violation will be updated to reflect an adjusted timeline.

Should you have any questions please feel free to reach out to me at your convenience.

The City thanks you if you have taken care of this matter. Please join us in maintaining a clean, safe and attractive neighborhood for all residents. If you have any questions, please call (510) 583-4260.

Note: When applicable, the City will communicate with non-profit agencies to refer homeless individuals to services prior to abatement.

AMBER GREEN
 Code Enforcement Inspector I

T: (510) 583-4260

E: Amber.Green@hayward-ca.gov

Encl: Fee Inspection Schedule

Cc: OWNER: LUCAS ANSELMO F & CONCEICAO T ETAL, OCCUPANT: SMOKEY'S SMOKE SHOP
& GIFTS



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COURTESY NOTICE

July 4, 2022

SMOKEY'S SMOKE SHOP & GIFTS
 25088 Hesperian Blvd
 HAYWARD, CA 94545

CASE NO: CE-22-0507 LOCATION: 25088 Hesperian Blvd APN: 442-0051-034-00
--

Please note that no violation has been verified at this time. This letter is being sent as a courtesy to allow you to correct should the violation(s) exist.

The Code Enforcement Division has received information that the following condition(s) and/or uses are present on the above referenced property. The Community Preservation Ordinance, HMC Section 5-7.20, Public Nuisance, prohibits the condition(s) specified below. No violation has been verified at this time. A code enforcement inspector has been assigned to investigate. If the conditions are present, the City encourages you to take immediate action to correct as continued violations may result in fees and penalties in accordance to the enclosed fee schedule.

CODE SECTION	VIOLATION/CORRECTIVE ACTION
HMC 10-1.2783	VIOLATION: POSSIBLE NON-COMPLIANCE WITH THE REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS.

Dear Property Owner

Please be advised – After review of the Notice of Violation provided on 04/18/2022, and consideration of tenant concerns in regards to Code Enforcement Case #22-0507, Staff will be amending the original Notice of Violation provided in an effort to provide additional clarity and direction for compliance. Additionally, to assure results of the required tobacco retail inspection are current, staff will be reaching out to coordinate a new inspection for the purposes updating current conditions.

Please be advise all compliance dates associated with the original Notice of Violation will be updated to reflect an adjusted timeline.

Should you have any questions please feel free to reach out to me at your convenience.

The City thanks you if you have taken care of this matter. Please join us in maintaining a clean, safe and attractive neighborhood for all residents. If you have any questions, please call (510) 583-4260.

Note: When applicable, the City will communicate with non-profit agencies to refer homeless individuals to services prior to abatement.

AMBER GREEN
 Code Enforcement Inspector I

T: (510) 583-4260

E: Amber.Green@hayward-ca.gov

Encl: Fee Inspection Schedule

Cc: OWNER: LUCAS ANSELMO F & CONCEICAO T ETAL, OCCUPANT: SMOKEY'S SMOKE SHOP
& GIFTS



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NOTICE OF VIOLATION

August 12, 2022

LUCAS ANSELMO F & CONCEICAO T ETAL
 4588 CROW CANYON PL
 CASTRO VALLEY, CA 94552

CASE NO: CE-22-0507
LOCATION: 25088 Hesperian Blvd
APN: 442-0051-034-00
INSPECTION DATE: July 6, 2022

The Code Enforcement Division has received information of violation(s) and/or uses present on your property. Your property is located in a CN - Neighborhood Commercial Zoning District. An inspection of the above referenced property identified the following violation(s) of the Hayward Municipal Code (HMC), California Building Code, and/or other related ordinances. In accordance with HMC Section 5-7.20, violations of adopted codes as identified below are hereby deemed a public nuisance and must be corrected as follows prior to the next compliance date:

CODE SECTION	VIOLATION/CORRECTIVE ACTION
HMC 10-1.2783	VIOLATION: POSSIBLE NON-COMPLIANCE WITH THE REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS. SEC. 10-1.2783 C.It shall be a violation of these regulations for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, to possess with intent to sell or offer for sale, or exchange for any form of consideration any: 1.Flavored tobacco products, parts, components, or flavored tobacco paraphernalia. 2.Bidis or Beedies products. 3.Electronic smoking devices, electronic nicotine delivery systems (E-cigarettes), vaping devices, including all parts and components. 4.Electronic smoking and vaping products, and vaping paraphernalia, including but not limited to, devices, parts and components, e-liquids, concentrates, waxes, etc. 5.CBD or hemp products, or any products made from, derivative of, or containing any amount of a Cannabis plant intended for human consumption. Corrective Action: Removal of all products that do not comply with the requirements and operational standards for tobacco retail establishments.
HMC ZONING CODE	SEC. 10-1.2782 - DEFINITIONS. For purposes of these regulations, certain words and terms have the following meaning: a."Bidis" (also known as beedies) are defined as products containing tobacco wrapped in leaves of the temburni or tendu plants, or products marketed and sold as "bidis" or "beedies."b."CBD" means cannabidiol, a cannabinoid or chemical compound found in cannabis plant and hemp.c."Cannabis" shall mean as defined in Hayward Municipal Code Section 10-1.3500.d."Cigar" means (i) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (ii) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. For the purposes of this subsection, "Cigar" includes, but is not limited to, Tobacco Products known or labeled as "cigar," "cigarillo," "tiparillo," "little cigar," "blunt," "blunt wrap," or "cigar wrap."e."Cigarette" means any roll of tobacco for smoking of any size or shape, made wholly or in part of tobacco and with a wrapper or cover made of paper or any other material. Tobacco wrapped in tobacco or with a cover made

mostly of tobacco (for example, cigars) that weighs more than three (3) pounds per thousand (1,000) sticks are not cigarettes and are defined as Tobacco Products.

f. "Characterizing Flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted by a tobacco product, either prior to or during consumption, or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, sweetener, sugar, herb, or spice; provided, however, that 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.

g. "Drug Paraphernalia" is as defined in California Health and Safety Code Section 11014.5, as that section may be amended from time to time.

h. "Electronic Smoking Device" means:

1. Any electronic device that delivers a dose of nicotine or other substances to the person inhaling, including but not limited to, electronic nicotine delivery systems (ENDS) as defined under the United States Food and Drug Administration deeming rule, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vapor cigarette, vape pen, personal vaporizers, or any other product name or descriptor.
2. Any component, part, or accessory intended or reasonably expected to be used with an electronic smoking device, whether sold separately, including but not limited to coils, batteries, tanks, cartridges, pods, wicks, atomizers, nicotine concentrates, waxes, E-liquids, or other products and parts.

i. "Flavored Tobacco Product" means any tobacco product (including but not limited to cigarettes) that imparts a characterizing flavor, including but not limited to mint or menthol cigarettes, flavored little cigars, smokeless tobacco, e-cigarettes and vaping devices. Furthermore, there shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has:

1. Made a public statement or claim that the tobacco product has, imparts, or produces a characterizing flavor, including, but not limited to, the explicit or implicit use of text and/or images on the product's labeling or packaging or other advertisement to communicate information about the flavor, taste, or aroma of a tobacco product; and/or
2. Taken actions directed to consumers that would be reasonably expected to result in consumers believing that the tobacco product imparts a characterizing flavor.

j. "Hemp Blunt Wraps" means a paper or cone-shape wrapper or cover made either in part or wholly from parts of a cannabis plant, also known as, but not limited, CBD blunt wraps.

k. "Hookah bar" or "hookah lounge" means any facility, building, structure, or location, where customers share tobacco or a similar smoking product from a communal hookah placed throughout the establishment.

l. "Imitation Tobacco Product" means any edible or non-edible, non-tobacco product designed to resemble a tobacco product that is often intended to be used by children as a toy. Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic smoking device is not an imitation tobacco product.

z. "Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other items or parts thereof designed or marketed for the smoking, ingestion, preparation, storing, or consumption of tobacco products or other substances.

aa. "Tobacco Product" means any product containing, made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. "Tobacco product" includes, but is not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, electronic smoking devices (with or without nicotine), or any component, part, accessory intended or reasonably

	<p>expected to be used with a Tobacco Product whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.</p> <p>dd. "Vaping device" means as defined in Subsection h. of this section, an electronic smoking device and any device designed to vaporize nicotine or other substances to inhale or exhale vapor, including but not limited to bongs, water pipes, hookah devices, vaporizers, atomizers, bowls, chambers, including any components and substances, or parts thereof. For purposes of these regulations, a vaping device does not include any medically prescribed vaporizer by a licensed physician or practitioner for medical purposes.</p>
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A progress check will be conducted on Wednesday September 28, 2022 to ensure measures are being taken place to bring the property into compliance.

A reinspection will be conducted on **September 28, 2022** to verify compliance. Failure to comply and satisfactorily eliminate all violations by this date will result in a **failed inspection and penalty fee of \$1,026**. The City contractor will be ordered to abate all remaining violations on or after this date. The property owner(s) will be billed for all abatement expenses, fees and penalties. Violations of California Building Code Section 105.1 (Permits Required) are subject to an initial 5% code violation fee and two times (2x) the required permit fees in addition to the regular Building Division Permit Fee in accordance with the City of Hayward Master Fee Schedule. To obtain any required building permits, you must present a copy of this Notice of Violation to the Permit Center staff. **Note: When applicable the City will communicate with non-profit agencies to refer homeless individuals to services prior to abatement.**

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AMBER GREEN
Code Enforcement Inspector I

T: (510) 583-4260
E: Amber.Green@hayward-ca.gov

Encl: Fee Inspection Schedule
Cc: OWNER: LUCAS ANSELMO F & CONCEICAO T ETAL, OCCUPANT: SMOKEY'S SMOKE SHOP & GIFTS

Photographs



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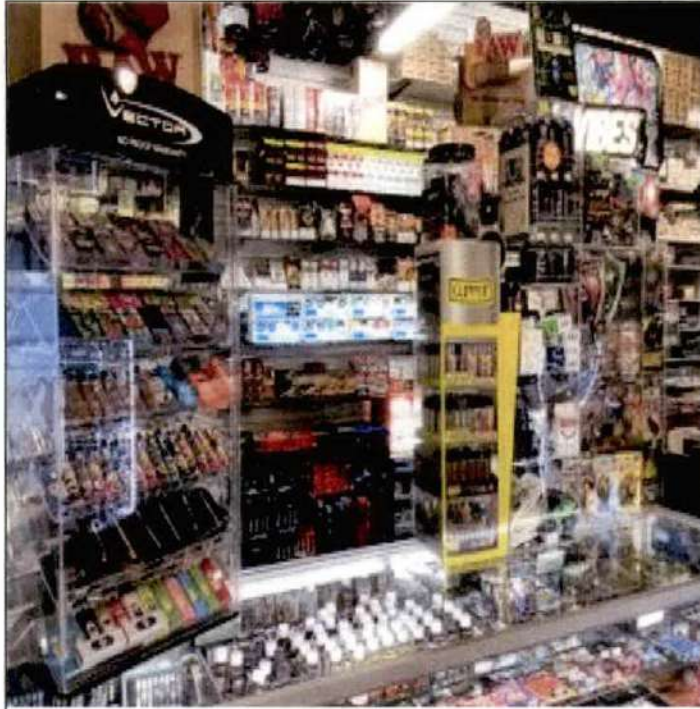
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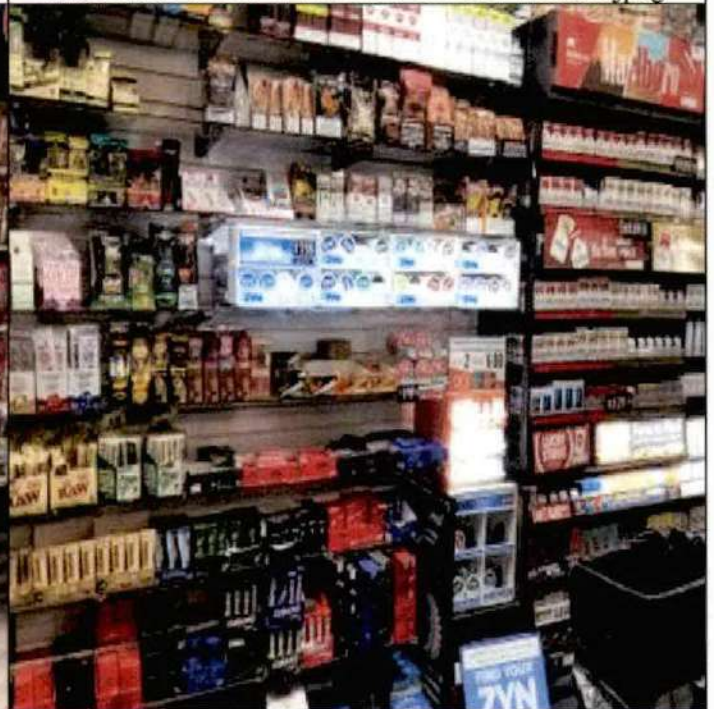
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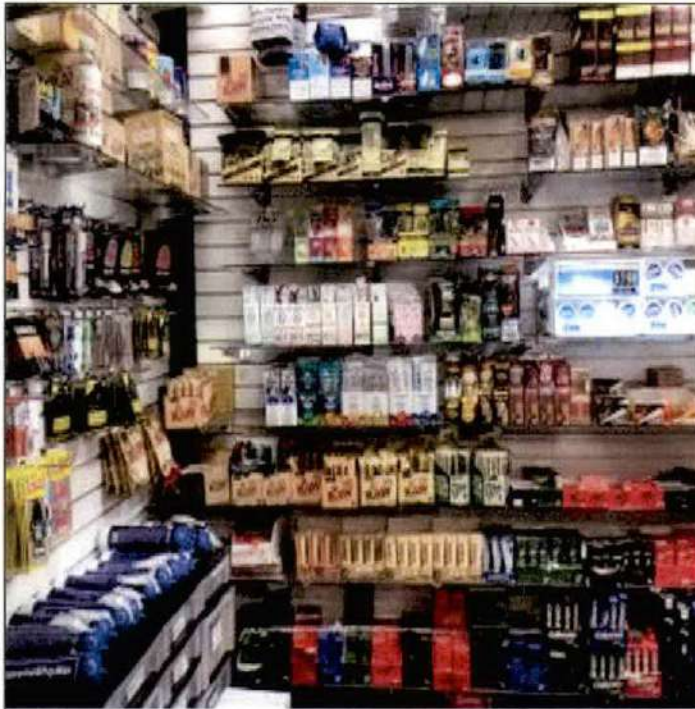
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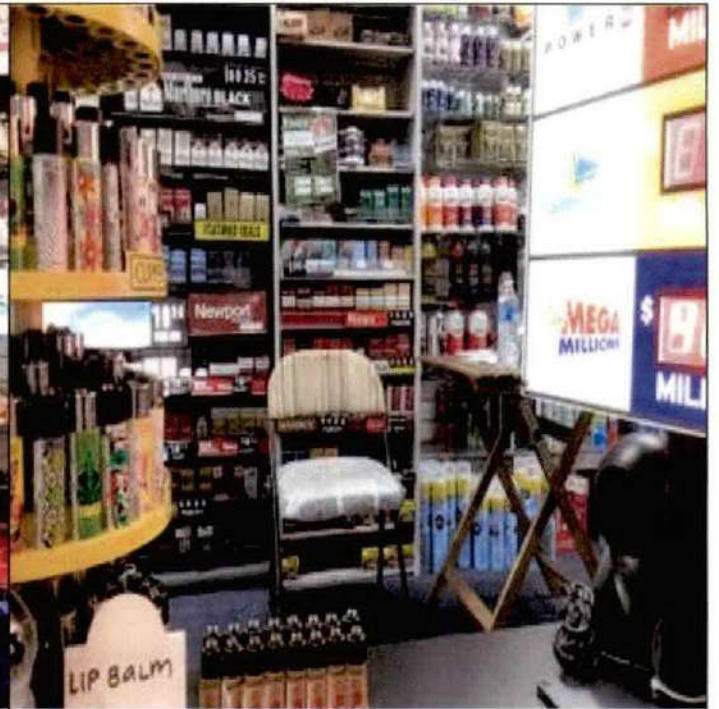
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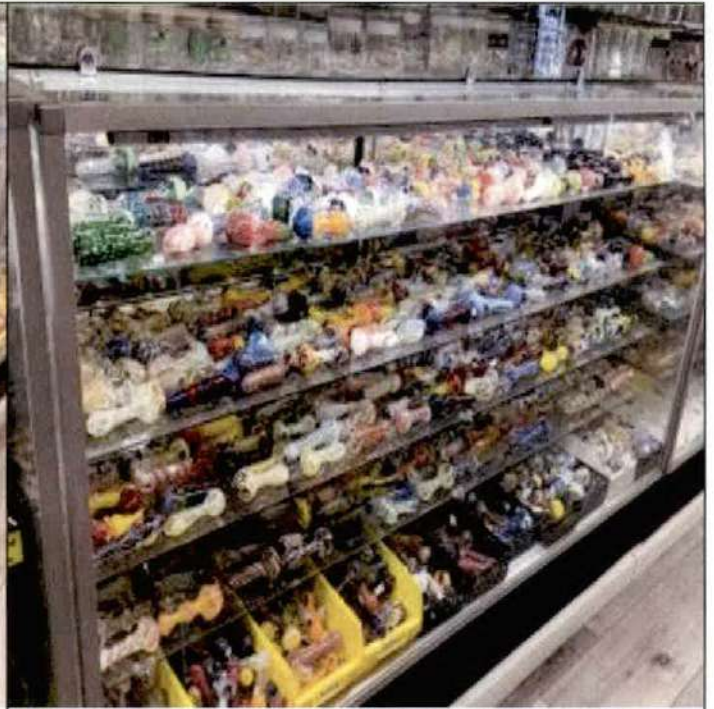
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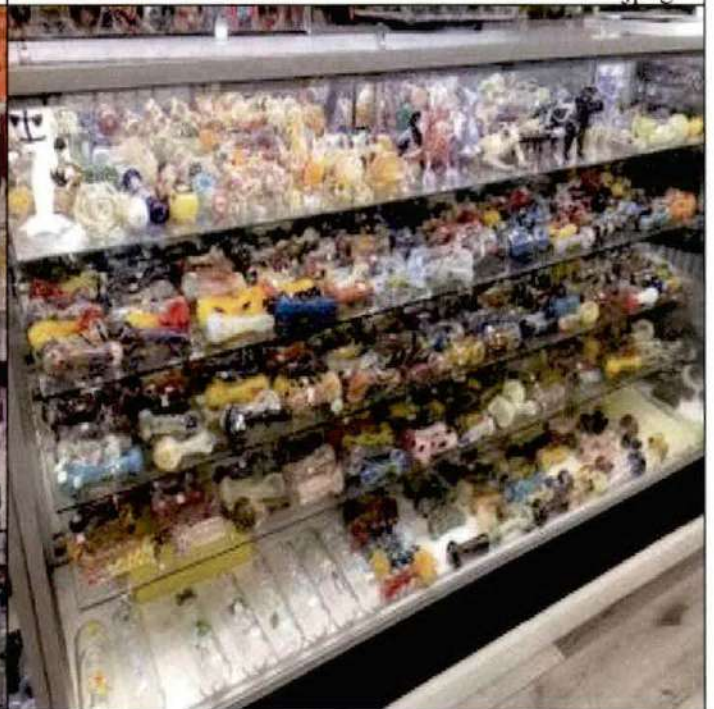
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CITY OF HAYWARD
DEVELOPMENT SERVICES DEPARTMENT
CODE ENFORCEMENT DIVISION
777 B Street, Hayward, CA 94541-5007
(510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Amber Green, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

On August 12, 2022, I served the following document(s) on the interested parties in this action by sending true copies as shown below for service as designated below:

- 1) Notice of Violation, APN: 442-0051-034-00, Case #: CE-22-0507
- 2) Code Enforcement Fee and Penalty Schedule

SERVICE BY U.S. MAIL UNDER THE LAWS OF THE STATE OF CALIFORNIA

LUCAS ANSELMO F & CONCEICAO T ETAL
4588 CROW CANYON PL
CASTRO VALLEY, CA 94552

I am familiar with this business' practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

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

Executed on August 12, 2022, at Hayward, California.

AMBER GREEN
Code Enforcement Inspector I



CITY OF HAYWARD
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NOTICE OF VIOLATION

August 12, 2022

SMOKEY'S SMOKE SHOP & GIFTS
 25088 Hesperian Blvd
 HAYWARD, CA 94545

CASE NO: CE-22-0507
LOCATION: 25088 Hesperian Blvd
APN: 442-0051-034-00
INSPECTION DATE: July 6, 2022

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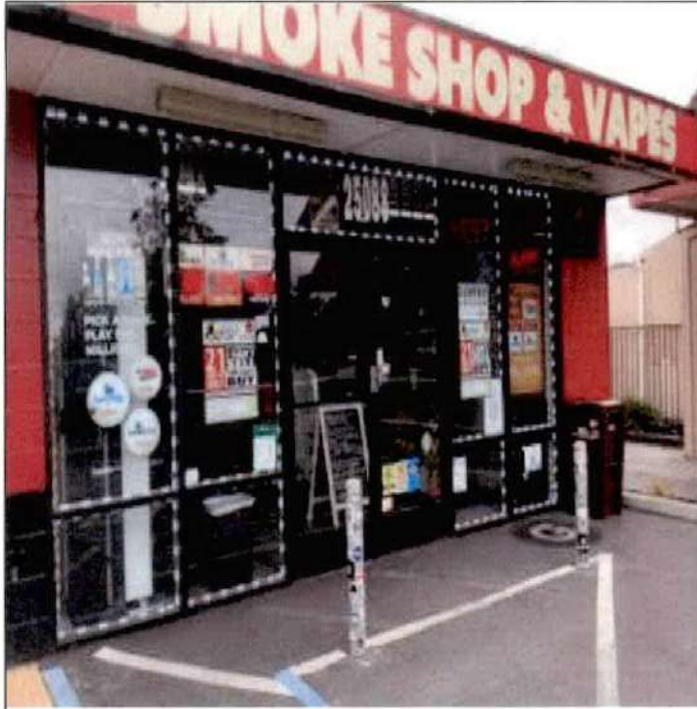
AMBER GREEN
Code Enforcement Inspector I

T: (510) 583-4260
E: Amber.Green@hayward-ca.gov

Encl: Fee Inspection Schedule

Cc: OWNER: LUCAS ANSELMO F & CONCEICAO T ETAL, OCCUPANT: SMOKEY'S SMOKE SHOP & GIFTS

Photographs



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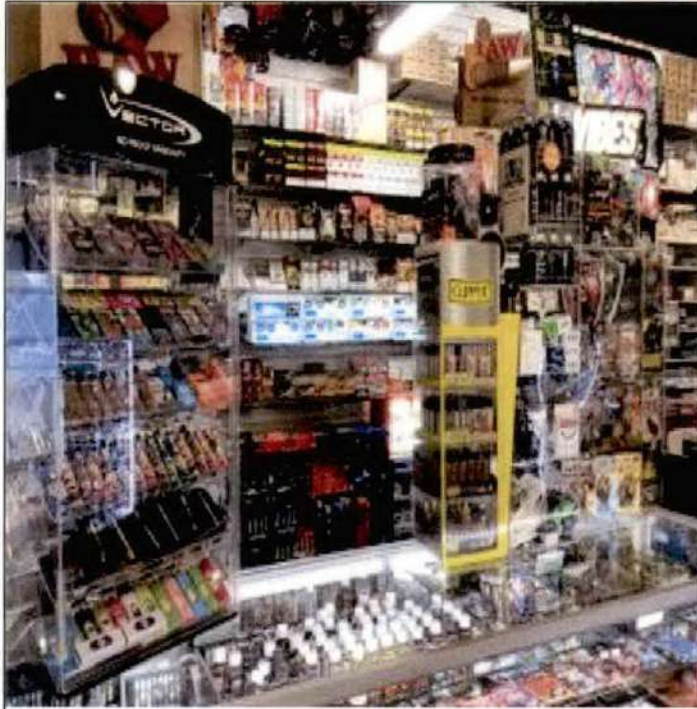
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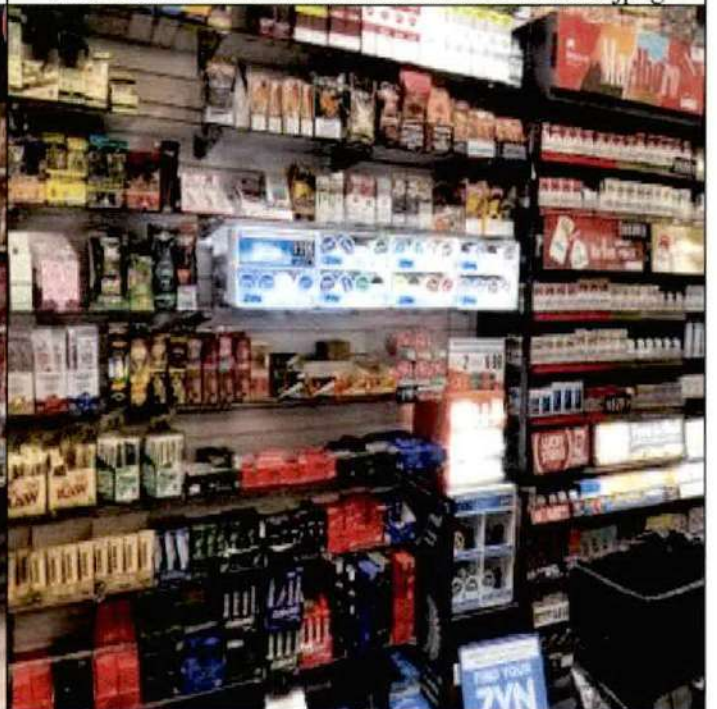
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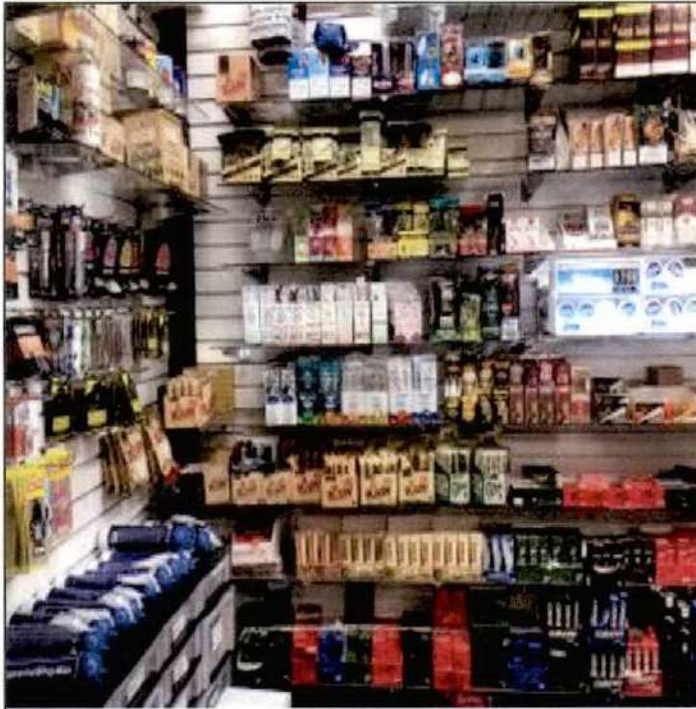
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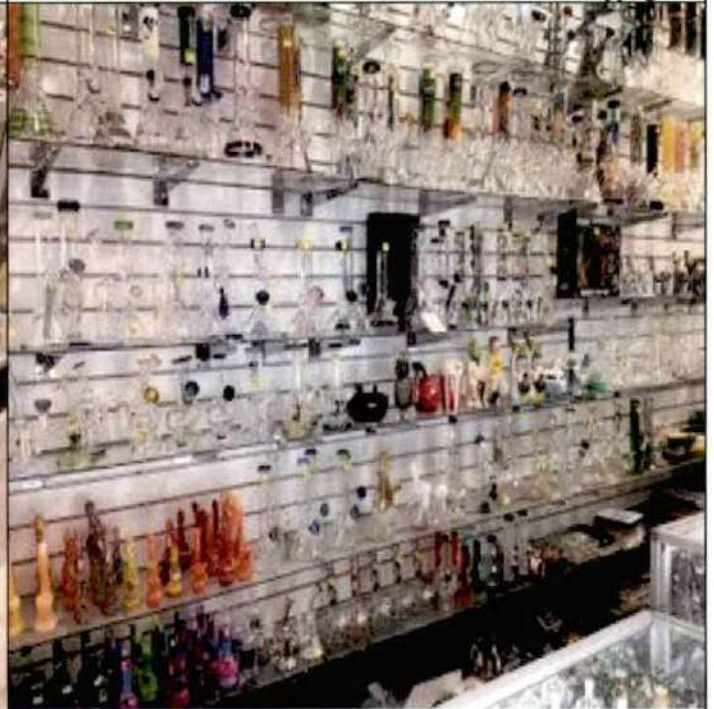
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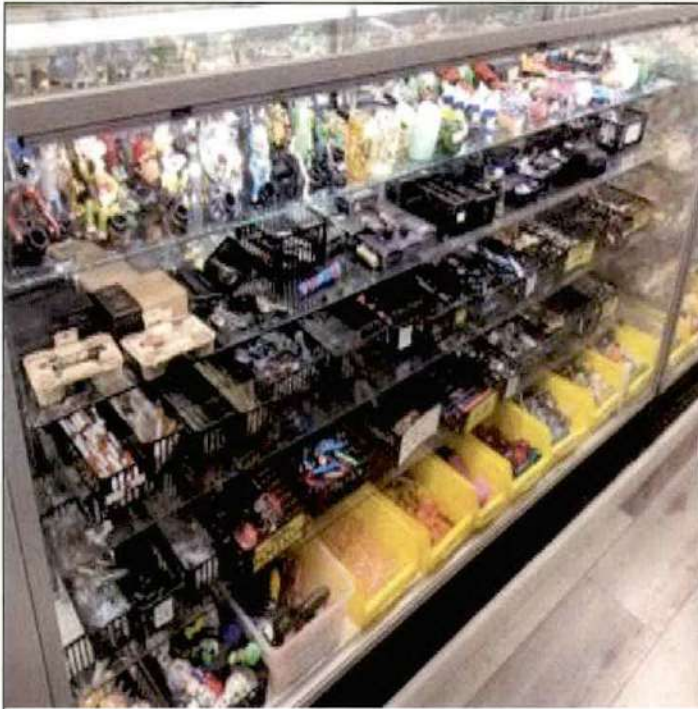
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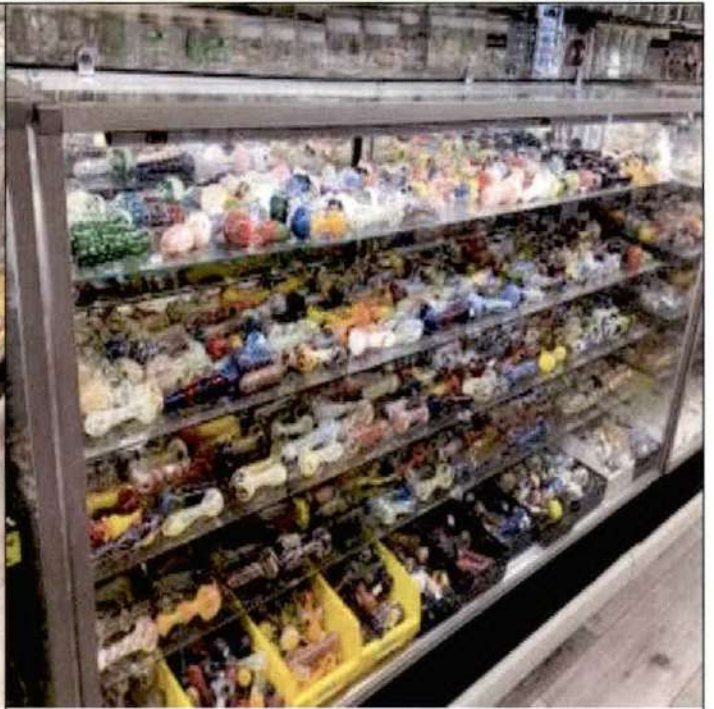
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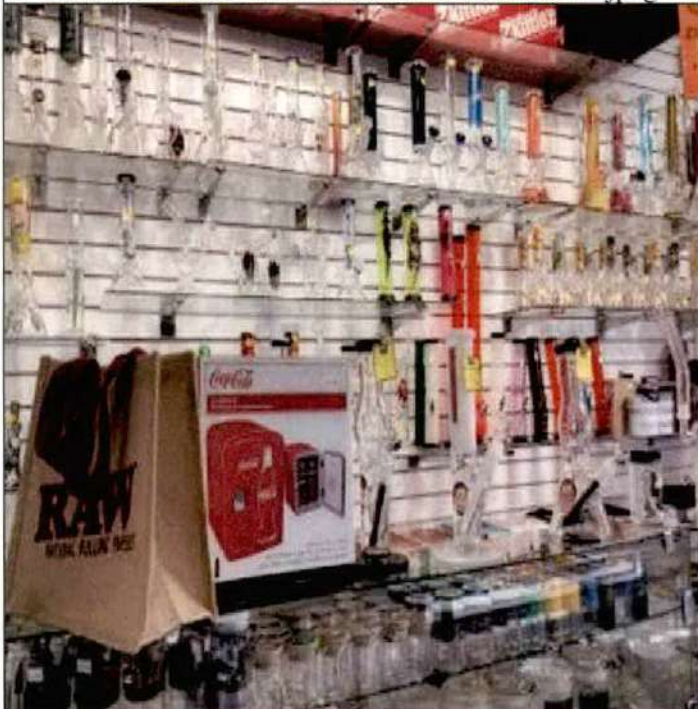
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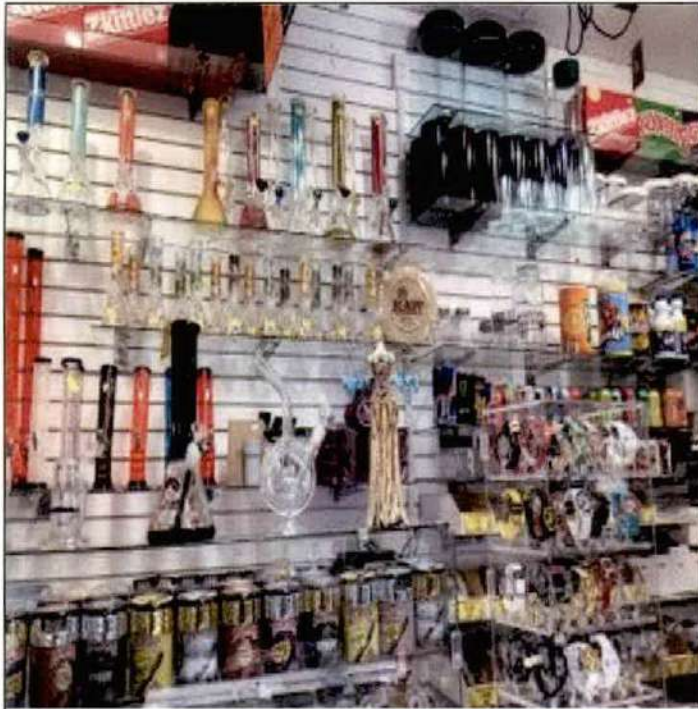
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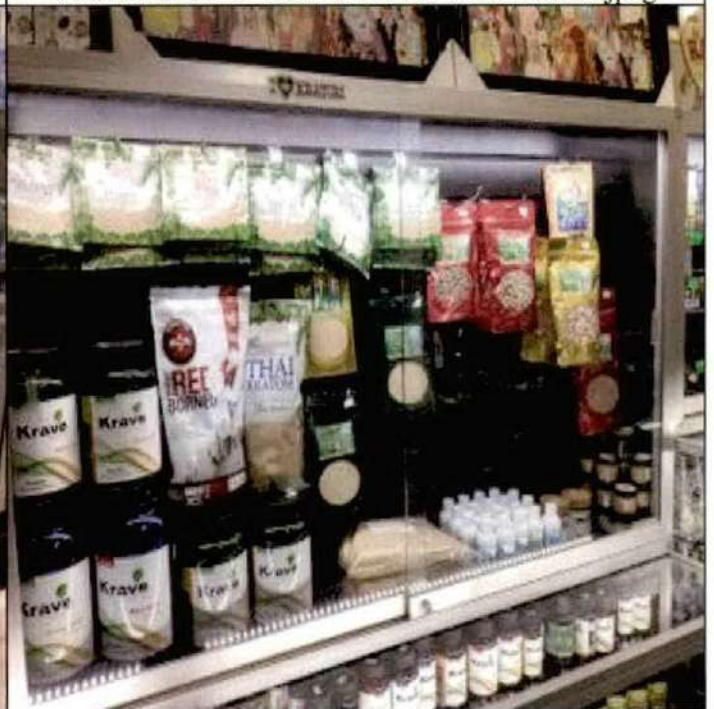
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CITY OF HAYWARD
 DEVELOPMENT SERVICES DEPARTMENT
 CODE ENFORCEMENT DIVISION
 777 B Street, Hayward, CA 94541-5007
 (510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

NOTICE OF VIOLATION - Tobacco Retail License

October 13, 2022

LUCAS ANSELMO F & CONCEICAO T ETAL
 4588 CROW CANYON PL
 CASTRO VALLEY, CA 94552

<p>CASE NO: CE-22-0507 LOCATION: 25088 Hesperian Blvd APN: 442-0051-034-00 INSPECTION DATE: August 15, 2022</p>
--

The above property is in a CC-C - Central City Commercial Zoning District. An inspection of the location and/or City records identified the following violation(s) of the Hayward Municipal Code (HMC), which must be corrected before the next compliance date of **November 16, 2022** to avoid fees, penalties, and license suspension.

CODE SECTION	VIOLATION/CORRECTIVE ACTION
HMC 10-1.2783	<p>VIOLATION: POSSIBLE NON-COMPLIANCE WITH THE REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS. SEC. 10-1.2783 C. It shall be a violation of these regulations for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, to possess with intent to sell or offer for sale, or exchange for any form of consideration any:</p> <p>1. Flavored tobacco products, parts, components, or flavored tobacco paraphernalia to include but not limited to: Inspector observed during inspection "Real Leaf Rolls", "Wraps", "ZYN", "Backwoods", etc. 2. Electronic smoking devices, electronic nicotine delivery systems (E-cigarettes), vaping devices, including all parts and components to include but not limited to: Inspector observed during inspection "PAX", "Exus", "Vaped Vano", "Volcano", etc. 3. Electronic smoking and vaping products, and vaping paraphernalia, including but not limited to, devices, parts and components, e-liquids, concentrates, waxes, etc to include but not limited to: Inspector observed during inspection "Carta", "G", "Backwoods", etc. 4. CBD or hemp products, or any products made from, derivative of, or containing any amount of a Cannabis plant intended for human consumption to include but not limited to: Inspector observed during inspection "Hemp2o", "High Hemp Organic Wraps", "Artisanal Hemp Cones", "Organic Hemp Raw Cones", "CBD Edibles", "CBD Lollipops", "PM Hemp", etc. Corrective Action: Removal of all products that do not comply with the requirements and operational standards for tobacco retail establishments.</p>

A progress check will be conducted on Wednesday November 16, 2022 to ensure measures are being taken place to bring the property into compliance.

Failure to comply and satisfactorily eliminate all violations by the next compliance date of **November 16, 2022** will result in a **penalty fee of \$1,500/30-day Tobacco Retail Licensing suspension**. Continued violations will result in additional penalty fees and/or other available legal remedies, including revocation of the tobacco retail license and use at this location. Non-payment will result in a lien/special assessment against the property.

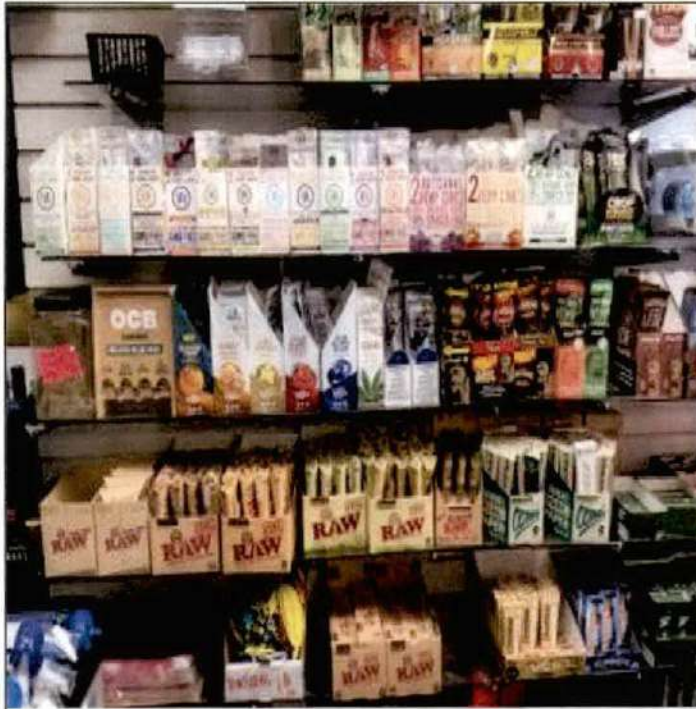
You may request an Administrative Hearing within ten (10) calendar days from the date of this letter to dispute the facts of the violations(s) under the Hayward Municipal Code. To request a hearing, please call the inspector at (510) 583-4260 within 10 days from the date of this notice. A \$946 hearing fee is required and must be submitted with any hearing request. If you have any questions regarding this notice, please call (510) 583-4260 as soon as possible and prior to next reinspection date. Your cooperation will be greatly appreciated.

AMBER GREEN
Code Enforcement Inspector I

Encl: Fee Inspection Schedule

Cc: OWNER: LUCAS ANSELMO F & CONCEICAO T ETAL, OCCUPANT: SMOKEY'S SMOKE SHOP & GIFTS





Flavored and Hemp Products



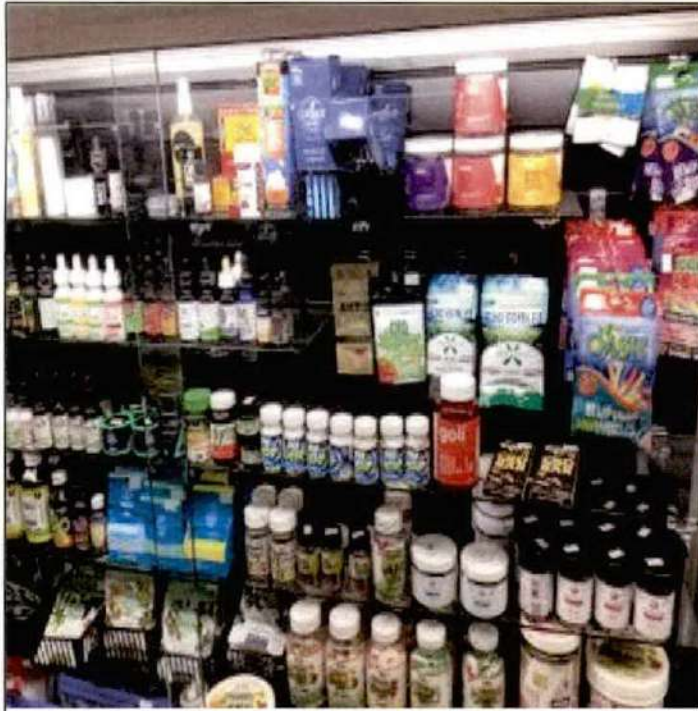
Hemp Products



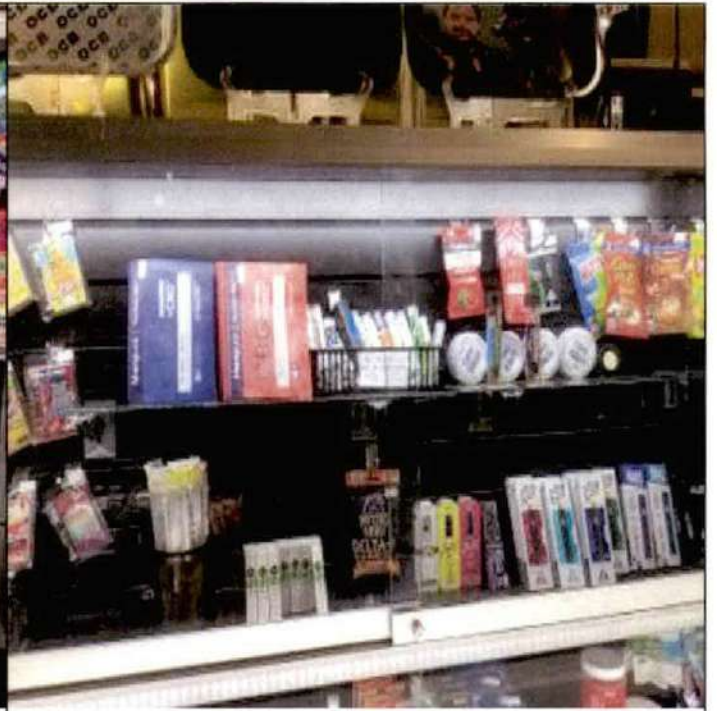
Flavored Products



Flavored Products



CBD Products



CBD Products



Vape Products



Vape Products



Vape Products



Vape Products



CBD Products



CITY OF HAYWARD
DEVELOPMENT SERVICES DEPARTMENT
CODE ENFORCEMENT DIVISION
777 B Street, Hayward, CA 94541-5007
(510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Amber Green, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

On October 13, 2022, I served the following document(s) on the interested parties in this action by sending true copies as shown below for service as designated below:

1) TRL - Notice of Violation, APN: 442-0051-034-00, Case #: CE-22-0507

SERVICE BY U.S. MAIL UNDER THE LAWS OF THE STATE OF CALIFORNIA

LUCAS ANSELMO F & CONCEICAO T ETAL
4588 CROW CANYON PL
CASTRO VALLEY, CA 94552

I am familiar with this business' practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

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

Executed on October 13, 2022, at Hayward, California.

AMBER GREEN
Code Enforcement Inspector I



CITY OF HAYWARD
DEVELOPMENT SERVICES DEPARTMENT
CODE ENFORCEMENT DIVISION

777 B Street, Hayward, CA 94541-5007
 (510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

NOTICE OF VIOLATION - Tobacco Retail License

October 13, 2022

SMOKEY'S SMOKE SHOP & GIFTS
 25088 Hesperian Blvd
 HAYWARD, CA 94545

<p>CASE NO: CE-22-0507 LOCATION: 25088 Hesperian Blvd APN: 442-0051-034-00 INSPECTION DATE: August 15, 2022</p>
--

The above property is in a CC-C - Central City Commercial Zoning District. An inspection of the location and/or City records identified the following violation(s) of the Hayward Municipal Code (HMC), which must be corrected before the next compliance date of **November 16, 2022** to avoid fees, penalties, and license suspension.

CODE SECTION	VIOLATION/CORRECTIVE ACTION
HMC 10-1.2783	<p>VIOLATION: POSSIBLE NON-COMPLIANCE WITH THE REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS. SEC. 10-1.2783 C. It shall be a violation of these regulations for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, to possess with intent to sell or offer for sale, or exchange for any form of consideration any:</p> <p>1. Flavored tobacco products, parts, components, or flavored tobacco paraphernalia to include but not limited to: Inspector observed during inspection "Real Leaf Rolls", "Wraps", "ZYN", "Backwoods", etc. 2. Electronic smoking devices, electronic nicotine delivery systems (E-cigarettes), vaping devices, including all parts and components to include but not limited to: Inspector observed during inspection "PAX", "Exus", "Vaped Vano", "Volcano", etc. 3. Electronic smoking and vaping products, and vaping paraphernalia, including but not limited to, devices, parts and components, e-liquids, concentrates, waxes, etc to include but not limited to: Inspector observed during inspection "Carta", "G", "Backwoods", etc. 4. CBD or hemp products, or any products made from, derivative of, or containing any amount of a Cannabis plant intended for human consumption to include but not limited to: Inspector observed during inspection "Hemp2o", "High Hemp Organic Wraps", "Artisanal Hemp Cones", "Organic Hemp Raw Cones", "CBD Edibles", "CBD Lollipops", "PM Hemp", etc. Corrective Action: Removal of all products that do not comply with the requirements and operational standards for tobacco retail establishments.</p>

A progress check will be conducted on Wednesday November 16, 2022 to ensure measures are being taken place to bring the property into compliance.

Failure to comply and satisfactorily eliminate all violations by the next compliance date of **November 16, 2022** will result in a **penalty fee of \$1,500/30-day Tobacco Retail Licensing suspension**. Continued violations will result in additional penalty fees and/or other available legal remedies, including revocation of the tobacco retail license and use at this location. Non-payment will result in a lien/special assessment against the property.

You may request an Administrative Hearing within ten (10) calendar days from the date of this letter to dispute the facts of the violation(s) under the Hayward Municipal Code. To request a hearing, please call the inspector at (510) 583-4260 within 10 days from the date of this notice. A \$946 hearing fee is required and must be submitted with any hearing request. If you have any questions regarding this notice, please call (510) 583-4260 as soon as possible and prior to next reinspection date. Your cooperation will be greatly appreciated.

AMBER GREEN
Code Enforcement Inspector I

Encl: Fee Inspection Schedule

Cc: OWNER: LUCAS ANSELMO F & CONCEICAO T ETAL, OCCUPANT: SMOKEY'S SMOKE SHOP & GIFTS





Flavored and Hemp Products



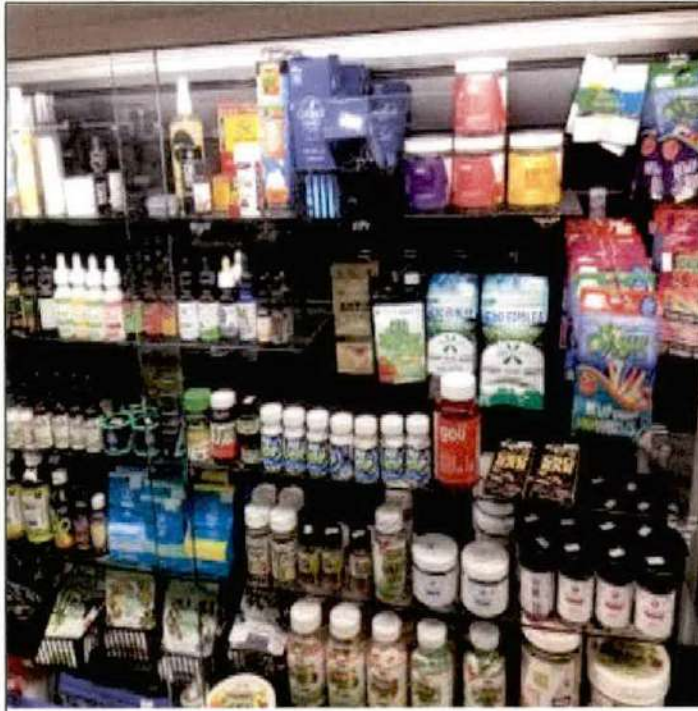
Hemp Products



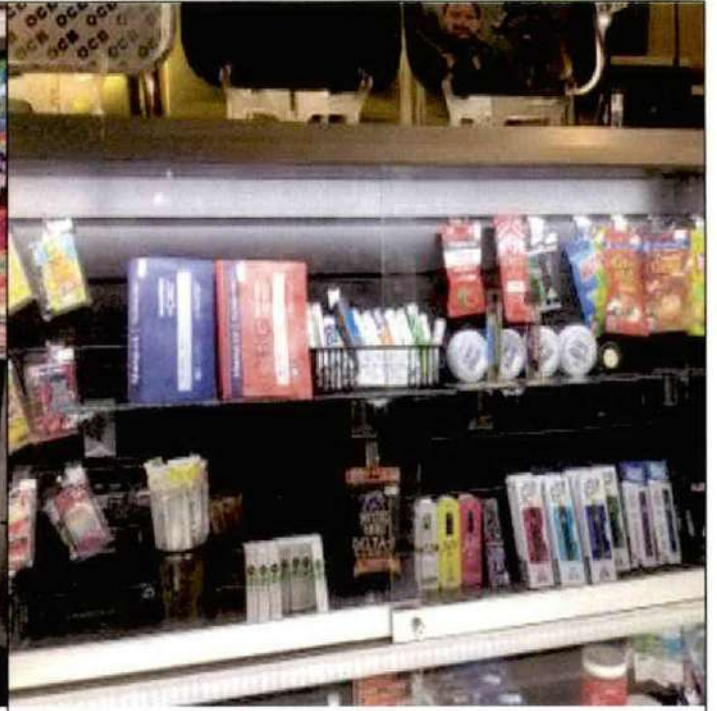
Flavored Products



Flavored Products



CBD Products



CBD Products



Vape Products



Vape Products



Vape Products



Vape Products



CBD Products



January 12, 2023

SNA Trading Inc. DBA Smokey's Smoke Shop & Gifts
3542 Fruitvale Ave #224
Oakland, CA 94602

RE: Administrative Hearing Appointment
Code Enforcement Case # 22-0507

Dear Sir or Madam,

Per your request, the City of Hayward has re-scheduled your Administrative Hearing as follows:

Date: THURSDAY, FEBRUARY 2, 2023
Time: 2:30PM - 3:30pm (approximate time)
Location: City Hall
777 B Street
Hayward, CA 94541
Department: Permit Center, 1st Floor

The hearing officer requests relevant documents from both sides in advance, if possible. You may submit them by mail to: Code Enforcement-Attn: Angelica Ventura, 777 B St., Hayward, CA 94579 or via e-mail to angelica.ventura@hayward-ca.gov

On your hearing date, please report to 777 B Street, Hayward, CA 94541, to the Permit Center located on the 1st Floor prior to your hearing time. Upon arrival, please let the Permit Center receptionist know you are here for a Code Enforcement hearing.

After the hearing, the Hearing Officer will review the findings and send the final decision in writing by US mail. If you have any questions, please call (510) 583-4159.





HAYWARD

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Angelica Ventura, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

On January 12, 2023, I served the following document(s) on the interested parties in this action by sending true copies as shown below for service as designated below:

- 1) Administrative Hearing Appointment letter for CE 22-0507

SERVICE BY U.S. MAIL UNDER THE LAWS OF THE STATE OF CALIFORNIA

SNA Trading Inc. DBA Smokey's Smoke Shop & Gifts
3542 Fruitvale Ave #224
Oakland, CA 94602

I am familiar with this business' practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

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

Executed on January 12, 2023 at Hayward, California.

ANGELICA VENTURA
Administrative Clerk II





January 12, 2023

Lucas Anselmo F & Conceicao T ETAL
4588 Crow Canyon Pl
Castro Valley, Ca 94552

RE: Administrative Hearing Appointment
Code Enforcement Case # 22-0507

Dear Sir or Madam,

Per your request, the City of Hayward has re-scheduled your Administrative Hearing as follows:

Date: THURSDAY, FEBRUARY 2, 2023
Time: 2:30PM - 3:30pm (approximate time)
Location: City Hall
777 B Street
Hayward, CA 94541
Department: Permit Center, 1st Floor

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I, Angelica Ventura, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

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Lucas Anselmo F & Conceicao T ETAL
4588 Crow Canyon Pl
Castro Valley, Ca 94552

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

Executed on January 12, 2023 at Hayward, California.

A handwritten signature in black ink, appearing to read 'Angelica Ventura', written in a cursive style.

ANGELICA VENTURA
Administrative Clerk II





January 12, 2023

Smokey's Smoke Shop & Gifts
25088 Hesperian Blvd
Hayward, Ca 94545

RE: Administrative Hearing Appointment
Code Enforcement Case # 22-0507

Dear Sir or Madam,

Per your request, the City of Hayward has re-scheduled your Administrative Hearing as follows:

Date: THURSDAY, FEBRUARY 2, 2023
Time: 2:30PM - 3:30pm (approximate time)
Location: City Hall
777 B Street
Hayward, CA 94541
Department: Permit Center, 1st Floor

The hearing officer requests relevant documents from both sides in advance, if possible. You may submit them by mail to: Code Enforcement-Attn: Angelica Ventura, 777 B St., Hayward, CA 94579 or via e-mail to angelica.ventura@hayward-ca.gov

On your hearing date, please report to 777 B Street, Hayward, CA 94541, to the Permit Center located on the 1st Floor prior to your hearing time. Upon arrival, please let the Permit Center receptionist know you are here for a Code Enforcement hearing.

After the hearing, the Hearing Officer will review the findings and send the final decision in writing by US mail. If you have any questions, please call (510) 583-4159.





HAYWARD

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Angelica Ventura, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

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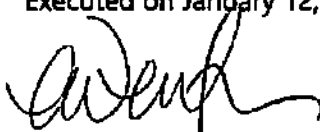
SERVICE BY U.S. MAIL UNDER THE LAWS OF THE STATE OF CALIFORNIA

Smokey's Smoke Shop & Gifts
25088 Hesperian Blvd
Hayward, Ca 94545

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

Executed on January 12, 2023 at Hayward, California.


ANGELICA VENTURA
Administrative Clerk II





January 12, 2023

Anthony Law Group, PC
600 Grand Ave., Unit 204
Oakland, CA 94610

RE: Administrative Hearing Appointment
Code Enforcement Case # 22-0507

Dear Sir or Madam,

Per your request, the City of Hayward has re-scheduled your Administrative Hearing as follows:

Date: THURSDAY, FEBRUARY 2, 2023
Time: 2:30PM - 3:30pm (approximate time)
Location: City Hall
777 B Street
Hayward, CA 94541
Department: Permit Center, 1st Floor

The hearing officer requests relevant documents from both sides in advance, if possible. You may submit them by mail to: Code Enforcement-Attn: Angelica Ventura, 777 B St., Hayward, CA 94579 or via e-mail to angelica.ventura@hayward-ca.gov

On your hearing date, please report to 777 B Street, Hayward, CA 94541, to the Permit Center located on the 1st Floor prior to your hearing time. Upon arrival, please let the Permit Center receptionist know you are here for a Code Enforcement hearing.

After the hearing, the Hearing Officer will review the findings and send the final decision in writing by US mail. If you have any questions, please call (510) 583-4159.





PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Angelica Ventura, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

On January 12, 2023, I served the following document(s) on the interested parties in this action by sending true copies as shown below for service as designated below:

- 1) Administrative Hearing Appointment letter for CE 22-0507

SERVICE BY U.S. MAIL UNDER THE LAWS OF THE STATE OF CALIFORNIA

Anthony Law Group, PC
600 Grand Ave., Unit 204
Oakland, CA 94610

I am familiar with this business' practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

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

Executed on January 12, 2023 at Hayward, California.

ANGELICA VENTURA
Administrative Clerk II



Angelica Ventura

Subject: Administrative Hearing for Code Enforcement case 22-0507((Rescheduled))
Location: Conference Room 1E Code Enforcement

Start: Thu 2/2/2023 2:30 PM
End: Thu 2/2/2023 3:30 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Angelica Ventura
Required Attendees: Amber Green; Lance Bayer; james@anthonylaw.group; drew.sanchez@anthonylaw.group; jamila@anthonylaw.group; Hannah Young; Amy Rothman
Resources: Conference Room 1E Code Enforcement

The hearing officer requests relevant documents from both sides in advance, if possible. You may submit them by mail to: Code Enforcement-Attn: Angelica Ventura, 777 B St., Hayward, CA 94579 or via e-mail to angelica.ventura@hayward-ca.gov

On your hearing date, please report to 777 B Street, Hayward, CA 94541, to the Permit Center located on the 1st Floor prior to your hearing time. Upon arrival, please let the Permit Center receptionist know you are here for a Code Enforcement hearing.

After the hearing, the Hearing Officer will review the findings and send the final decision in writing by US mail. If you have any questions, please call (510) 583-4159.

CC: Anthony Law Group, PC
 600 Grand Ave., Unit.204
 Oakland, CA 94610

Smokey's Smoke Shop & Gifts
 25088 Hesperian Blvd
 Hayward, Ca 94545

Lucas Anselmo F & Conceicao T ETAL
 4588 Crow Canyon Pl
 Castro Valley, Ca 94552

SNA Trading Inc. DBA Smokey's Smoke Shop & Gifts
 3542 Fruitvale Ave #224
 Oakland, CA 94602

Angelica Ventura

Subject: Canceled Administrative Hearing for Code Enforcement case 22-0507
Location: Conference Room 1E; Conference Room 1E Code Enforcement

Start: Wed 1/11/2023 2:30 PM
End: Wed 1/11/2023 3:30 PM
Show Time As: Free

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Angelica Ventura

Required Attendees: Amber Green; Lance Bayer; james@anthonylaw.group; drew.sanchez@anthonylaw.group; jamila@anthonylaw.group; Hannah Young; Amy Rothman

Optional Attendees: Jesse Prins; Phillip Nichols

Resources: Conference Room 1E Code Enforcement

Importance: High

The hearing officer requests relevant documents from both sides in advance, if possible. You may submit them by mail to: Code Enforcement-Attn: Angelica Ventura, 777 B St., Hayward, CA 94579 or via e-mail to angelica.ventura@hayward-ca.gov

On your hearing date, please report to 777 B Street, Hayward, CA 94541, to the Permit Center located on the 1st Floor prior to your hearing time. Upon arrival, please let the Permit Center receptionist know you are here for a Code Enforcement hearing.

After the hearing, the Hearing Officer will review the findings and send the final decision in writing by US mail. If you have any questions, please call (510) 583-4159.

CC: Anthony Law Group, PC
 600 Grand Ave., Unit 204
 Oakland, CA 94610

Smokey's Smoke Shop & Gifts
 25088 Hesperian Blvd
 Hayward, Ca 94545

Lucas Anselmo F & Conceicao T ETAL
 4588 Crow Canyon Pl
 Castro Valley, Ca 94552

SNA Trading Inc. DBA Smokey's Smoke Shop & Gifts
 3542 Fruitvale Ave #224
 Oakland, CA 94602

From: Amy Rothman
Sent: Wednesday, December 21, 2022 3:18 PM
To: James Anthony; Amber Green
Cc: Angelica Ventura; Community Preservation; Drew M. Sanchez; Hannah Young; Jamila Colbert; Phillip Nichols
Subject: RE: Request for Administrative Hearing for City of Hayward Code Enforcement Case CE-22-0507 for SNA Trading Inc. dba Smokey's Smoke Shop & Gifts

Counsel,

Your suggestions that notice was improper and that you have only requested one continuance related to the contested violation are inaccurate and of no assistance here, especially given that the City has been more than accommodating to you and your client throughout this process.

The violation occurred on October 13, 2022. On October 24, 2022, you provided the City a filled-out Request for Hearing form. On that form, you indicated that the "Applicant's Mailing Address" for purposes of receiving information about the hearing, is 3542 Fruitvale Ave. #224, Oakland Ca 94602. On November 16, 2022 the City of Hayward properly sent the Notice of Hearing to the above stated address, as provided on the Request for Hearing form, providing your client notice that the hearing regarding the contested violation would be held on Thursday December 8, 2022 from 2pm – 3pm, in compliance with Hayward Municipal Code ("HMC") Sec. 1-7.09 (hearing shall be held on a date that is "not less than fifteen (15) and not more than thirty (30) days from the date that the request for hearing is filed in accordance with the provisions of this chapter.").

On Monday, December 5, 2022, almost two months after you provided the City your Request for Hearing, you contacted the City of Hayward indicating that you did not receive the Notice of Hearing because you provided the City with an incorrect address. As such, you requested a continuance of the initial hearing date due to your failure to provide the City accurate information. On December 7, 2022, you sent the City a follow up email explicitly writing the following: "Please acknowledge receipt of this request for continuance which I also made verbally to Ms. Amber Green and Angelica Ventura on Monday."

Normally, the City does not provide continuances for issues like this which are the fault of the applicant when hearings are properly noticed and when the continued hearing date would be outside of the requirements of HMC sec. 1-7.09. However, as a courtesy to the applicant and in a good faith attempt to proceed with the hearing on the merits, the City agreed to continue the hearing to January 11, 2022, since you indicated you are not available from January 16-27. You agreed to the January 11, 2022, date, presumably after checking with your client about their availability on that date.

On December 17, 2022, you emailed City Code Enforcement personnel requesting a second continuance of this hearing, again, due to your own miscommunications with your client. More specifically, in this new, second request for a continuance, you informed City staff that after making your first request for a continuance, which the City granted, and after agreeing to the January 11, 2022 date for the new hearing, you apparently then learned that your client would be out of the country for the month of January. As such, you made a second request for a continuance, again, due to your own miscommunications with your client and to a date outside of the scope of HMC 1-7.09.

At this point, while the City will agree to grant this second request for a continuance, regardless of the issues detailed above and your mischaracterization of the facts, the City is putting you on notice that it is not inclined to grant any further continuances to your client for the above stated reasons. Moreover, in the future, if a hearing is properly noticed based on an address provided to the City in a Hearing Request form, the hearing will only be continued on a showing of good cause and will only be continued to a date not more than 30 days after the City received the Request for Hearing form, per the HMC. Otherwise, the City will proceed with the hearing as properly noticed and scheduled.

In terms of your other questions, procedural guidelines and information regarding the hearing officer can be found in the Hayward Municipal Code. Information about the hearing officer should be obtained from the hearing officer, at the discretion of the hearing officer. Finally, the hearing will regard only the issues raised in the Request for Hearing form, which are limited to your contention that the governing ordinance is unconstitutional.

The Code Enforcement division will work with the Hearing Officer to schedule a new hearing date sometime on or after January 25, 2023, and will be in contact with you at the above email address and at the address provided in your December 5, 2022 email: 600 Grand Ave., Unit 204, Oakland, CA 94610.

Regards,

AMY ROTHMAN | DEPUTY CITY ATTORNEY
777 B Street, 4th Floor | Hayward, CA 94541
O: 510.583.4456 | F: 510.583.3660 | E: Amy.Rothman@hayward-ca.gov



www.hayward-ca.gov

PRIVILEGED COMMUNICATION/ATTORNEY-CLIENT PRIVILEGED:

Information and documents contained in this transmission are legally privileged and confidential, intended only for the addressee. Any use, review, dissemination, distribution or copying of this transmission by anyone other than the addressee is strictly prohibited and is not a waiver of any applicable privilege against disclosure. If you have received this message in error, please notify the sender immediately.

From: James Anthony <james@anthonylaw.group>
Sent: Tuesday, December 20, 2022 11:08 AM
To: Amber Green <Amber.Green@hayward-ca.gov>
Cc: Amy Rothman <Amy.Rothman@hayward-ca.gov>; Angelica Ventura <Angelica.Ventura@hayward-ca.gov>; Ankush Agarwal <Ankush.Agarwal@hayward-ca.gov>; Community Preservation <Community.Preservation@hayward-ca.gov>; Drew M. Sanchez <drew.sanchez@anthonylaw.group>; Hannah Young <hannah@anthonylaw.group>; Jamila Colbert <jamila@anthonylaw.group>; Phillip Nichols <Phillip.Nichols@hayward-ca.gov>
Subject: Re: Request for Administrative Hearing for City of Hayward Code Enforcement Case CE-22-0507 for SNA Trading Inc. dba Smokey's Smoke Shop & Gifts

CAUTION:This is an external email. Do not click on links or open attachments unless you know the content is safe.

Dear Ms. Green and Ms. Ventura,

Following up on Mr. Ahmad's 12/15/22 request for a continuance of this hearing. For the record, this is the first continuance request on this hearing. The previous rescheduling of the hearing from December to January was due to a notice failure. We appreciate the City's cooperation in correcting notice procedure which is now working. This first

request for continuance from Mr. Ahmad is based as below on his family and religious travel plans and the Hearing Officer's request that parties be present in person.

Please let us know if the continuance is granted and provide notice of new hearing date. Thank you. Best wishes for the season.

Yours truly,

James Anthony



James Anthony

PRINCIPAL

(510) 842-3553 office

(510) 207-6243 cell

james@anthonylaw.group

On Thu, Dec 15, 2022 at 5:42 PM James Anthony <james@anthonylaw.group> wrote:

Dear Ms. Green and Ms. Ventura:

The appellant and owner of the business, Mr. Haroon Ahmad (now cc-ed on this email thread), just informed me after I gave him the hearing date that he has a family and religious trip planned to Turkey and Jedah, from early January, returning Jan. 24. Given that the hearing officer requests in person presence, I respectfully request a continuance of this matter to allow appellant to attend.

Aside from providing documents in advance, are there any other specific procedural guidelines? Will the hearing officer hear and rule on all legal and factual issues raised by the parties?

Please provide professional biographical data on the specific hearing officer, including past and current employment and contract history with the City of Hayward.

Yours very truly,

James Anthony



James Anthony

PRINCIPAL

(510) 842-3553 office

(510) 207-6243 cell

james@anthonylaw.group

On Wed, Dec 14, 2022 at 7:59 AM James Anthony <james@anthonylaw.group> wrote:

Thank you Amber. Received and on my calendar. James Anthony

On Mon, Dec 12, 2022 at 9:34 AM Amber Green <Amber.Green@hayward-ca.gov> wrote:

Good morning James,

I wanted to provide an update. The hearing has been scheduled for Wednesday January 11th, 2022 at 2:30pm. The notice was mailed out last week, and an invite was sent through email. Also, during the previous hearing, the hearing officer did request all parties be present in person.

Please let me know if there is anything further I may assist with.

Regards,

Amber Green

Code Enforcement Inspector

Phone 510-583-4260 | Email amber.green@hayward-ca.gov

777 B Street, Hayward, CA 94544

Something BIG is Launching...



Learn more on our [website](#).

Please note: While we work on upgrading our system, there may be delays in the processing. We apologize for the inconvenience and thank you for your patience during this transition.

To reach other permit center divisions, please call the numbers below, or e-mail your staff contact directly:

For the Building Division, 510-583-4140

For the Fire Prevention Department, 510-583-4900

For the Planning Division, 510-583-4216 or email: planning.division@hayward-ca.gov

For the Code Enforcement Division, 510-583-4143 or contact your code inspector directly or the telephone number shown on the letter you received.

For more information and updates on COVID-19, please visit: www.hayward-ca.gov/covid-19

From: Amber Green

Sent: Wednesday, December 7, 2022 12:36 PM

To: James Anthony <james@anthonylaw.group>

Cc: Angelica Ventura <Angelica.Ventura@hayward-ca.gov>; Ankush Agarwal <Ankush.Agarwal@hayward-ca.gov>; Phillip Nichols <Phillip.Nichols@hayward-ca.gov>; Community Preservation <Community.Preservation@hayward-ca.gov>; Drew M. Sanchez <drew.sanchez@anthonylaw.group>; Jamila Colbert <jamila@anthonylaw.group>; Hannah Young <hannah@anthonylaw.group>; Amy Rothman <Amy.Rothman@hayward-ca.gov>

Subject: RE: Request for Administrative Hearing for City of Hayward Code Enforcement Case CE-22-0507 for SNA Trading Inc. dba Smokey's Smoke Shop & Gifts

Good afternoon James,

Thank you for speaking with me this morning. As we discussed earlier, the city will grant your request for a continuance. Code Enforcement's Senior Secretary (Angelica Ventura) is currently working on scheduling the hearing. She will notify everyone once the notification has been mailed out. Thank you for your patience.

Regards,

Amber Green

Code Enforcement Inspector

Phone 510-583-4260 | Email amber.green@hayward-ca.gov

777 B Street, Hayward, CA 94544

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Learn more on our [website](#).

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For more information and updates on COVID-19, please visit: www.hayward-ca.gov/covid-19

From: James Anthony <james@anthonylaw.group>
Sent: Wednesday, December 7, 2022 10:02 AM
To: Amber Green <Amber.Green@hayward-ca.gov>
Cc: Angelica Ventura <Angelica.Ventura@hayward-ca.gov>; Ankush Agarwal <Ankush.Agarwal@hayward-ca.gov>; Phillip Nichols <Phillip.Nichols@hayward-ca.gov>; Community Preservation <Community.Preservation@hayward-ca.gov>; Drew M. Sanchez <drew.sanchez@anthonylaw.group>; Jamila Colbert <jamila@anthonylaw.group>; Amy.Rotham@hayward-ca.gov; Hannah Young <hannah@anthonylaw.group>
Subject: Re: Request for Administrative Hearing for City of Hayward Code Enforcement Case CE-22-0507 for SNA Trading Inc. dba Smokey's Smoke Shop & Gifts

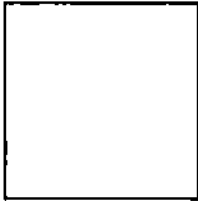
CAUTION: This is an external email. Do not click on links or open attachments unless you know the content is safe.

Dear Ms. Green, Mr, Agarwal, Ms. Rotham,

Please acknowledge receipt of this request for continuance which I also made verbally to Ms. on Monday. As I still have not received timely notice of this hearing and need to file a pre-hearing brief, I am unable to appear. Thank you all for your professional courtesy in this regard.

Yours very truly,

James Anthony



James Anthony

PRINCIPAL

(510) 842-3553 *office*

(510) 207-6243 *cell*

james@anthonylaw.group

On Mon, Dec 5, 2022 at 5:20 PM James Anthony <james@anthonylaw.group> wrote:

Dear Ms. Green, and City Attorney Agarwal (and City Attorney Rotham, added at Ms. Green's suggestion),

Thank you for contacting my office today to inquire about our silence in anticipation of the administrative hearing in this matter apparently noticed for this Thursday 12/8/22.

As Hannah Young in my office explained when you called her around 4:30 pm, and as I said again when I called you at 4:50 pm, we did not receive notice of the hearing. We have moved offices since we filed the appeal in late October,

but we do have mail forwarding and are able to check the old mail in case anything slips through. We did not receive your mailed notice.

As you know, I have a history of requesting continuances when needed and of filing pre-hearing briefs, neither of which I have done in response to this latest hearing date because I was unaware of it.

I just checked with the business owner, Haroon Ahmed, who is at the store every day. He also did not receive the notice. In the past, anytime he has received anything from the City he has called me immediately concerned about the possible consequences of your official communications. He did not call me about this hearing notice. He did not receive it.

When you and I spoke just now, you mentioned that in addition to my old Fruitvale Ave. address and the store address, you also mailed notice to the property owner. Mr. Ahmed did not get any notice from his landlord, so we don't know if that was received or not.

My new address is:

James Anthony

Anthony Law Group, PC

600 Grand Ave., Unit 204
Oakland, CA 94610

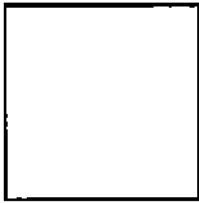
Please send any future notices there. Email to myself and Ms. Young is also acceptable to us as official notice of hearing and other administrative communications.

Due to this unfortunate mishap, I hereby request a continuance of this hearing. Please know that I am not available January 16-27.

Thank you for your understanding.

Yours truly,

James Anthony



James Anthony

PRINCIPAL

(510) 842-3553 *office*

(510) 207-6243 *cell*

james@anthonylaw.group

On Tue, Oct 25, 2022 at 2:43 PM Hannah Young <hannah@anthonylaw.group> wrote:

Greetings,

Please be advised, we will mail a check made payable to the "City of Hayward" for the \$946 administrative hearing fee to the following address:

Attn: Revenue Division

City of Hayward

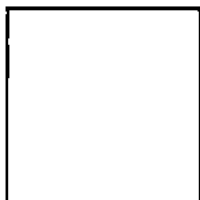
777 B Street

Hayward, CA 94541

If you need anything further to process our request for an administrative hearing, please let us know.
Thank you.

Best,

Hannah



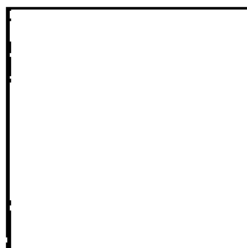
Hannah Young (she/her)

SENIOR PARALEGAL

(510) 842-3553 *office*

(510) 333-7996 *cell*

hannah@anthonylaw.group



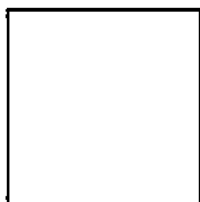
On Mon, Oct 24, 2022 at 5:33 PM Hannah Young <hannah@anthonylaw.group> wrote:

Greetings,

As you may be aware, we represent SNA Trading Inc. in the above matter. Attached please find our client's Request for Administrative Hearing regarding the Notice of Violation issued in the above case on 10/13/22. A hard copy will follow by mail.

Best,

Hannah



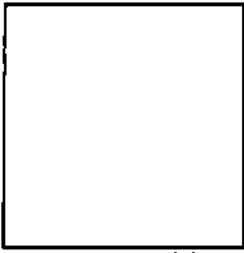
Hannah Young (she/her)

SENIOR PARALEGAL

(510) 842-3553 *office*

(510) 333-7996 *cell*

hannah@anthonylaw.group



--
Best,
James



James Anthony
PRINCIPAL
(510) 842-3553 *office*
(510) 207-6243 *cell*
james@anthonylaw.group



December 7, 2022

Anthony Law Group, PC
600 Grand Ave., Unit 204
Oakland, CA 94610

RE: Administrative Hearing Appointment
Code Enforcement Case # 22-0507

Dear Sir or Madam,

The City of Hayward has scheduled your Administrative Hearing as follows:

Date: WEDNESDAY, JANUARY 11, 2023
Time: 2:30PM – 3:30 PM
Location: City Hall
777 B Street
Hayward, CA 94541
Department: Code Enforcement, 1st Floor

The hearing officer requests relevant documents from both sides in advance, if possible. You may submit them by mail to: Code Enforcement-Attn: Angelica Ventura, 777 B St., Hayward, CA 94579 or via e-mail to angelica.ventura@hayward-ca.gov

On your hearing date, please report to 777 B Street, Hayward, CA 94541, to the Permit Center located on the 1st Floor prior to your hearing time. Upon arrival, please let the Permit Center receptionist know you are here for a Code Enforcement hearing.

After the hearing, the Hearing Officer will review the findings and send the final decision in writing by US mail. If you have any questions, please call (510) 583-4159.





PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Angelica Ventura, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

On December 7, 2022, I served the following document(s) on the interested parties in this action by sending true copies as shown below for service as designated below:

- 1) Administrative Hearing Appointment letter for CE 22-0507

SERVICE BY U.S. MAIL UNDER THE LAWS OF THE STATE OF CALIFORNIA

Anthony Law Group, PC
600 Grand Ave., Unit 204
Oakland, CA 94610

I am familiar with this business' practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

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

Executed on December 7, 2022 at Hayward, California.

A handwritten signature in black ink, appearing to read 'Angelica Ventura', written in a cursive style.

ANGELICA VENTURA
Administrative Clerk II





December 7, 2022

Smokey's Smoke Shop & Gifts
25088 Hesperian Blvd
Hayward, Ca 94545

RE: Administrative Hearing Appointment
Code Enforcement Case # 22-0507

Dear Sir or Madam,

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Smokey's Smoke Shop & Gifts
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Hayward, Ca 94545

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ANGELICA VENTURA
Administrative Clerk II





December 7, 2022

Lucas Anselmo F & Conceicao T ETAL
4588 Crow Canyon Pl
Castro Valley, Ca 94552

RE: Administrative Hearing Appointment
Code Enforcement Case # 22-0507

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Lucas Anselmo F & Conceicao T ETAL
4588 Crow Canyon Pl
Castro Valley, Ca 94552

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ANGELICA VENTURA
Administrative Clerk II





December 7, 2022

SNA Trading Inc. DBA Smokey's Smoke Shop & Gifts
3542 Fruitvale Ave #224
Oakland, CA 94602

RE: Administrative Hearing Appointment
Code Enforcement Case # 22-0507

Dear Sir or Madam,

The City of Hayward has scheduled your Administrative Hearing as follows:

Date: WEDNESDAY, JANUARY 11, 2023
Time: 2:30PM – 3:30 PM
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777 B Street
Hayward, CA 94541
Department: Code Enforcement, 1st Floor

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Gifts
3542 Fruitvale Ave #224
Oakland, CA 94602

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ANGELICA VENTURA
Administrative Clerk II



Angelica Ventura

Subject: Administrative Hearing for Code Enforcement case 22-0507
Location: Conference Room 1E; Conference Room 1E Code Enforcement

Start: Wed 1/11/2023 2:30 PM
End: Wed 1/11/2023 3:30 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Angelica Ventura

Required Attendees: Amber Green; Lance Bayer; james@anthonylaw.group; drew.sanchez@anthonylaw.group; jamila@anthonylaw.group; Hannah Young; Amy Rothman

Optional Attendees: Jesse Prins; Phillip Nichols

Resources: Conference Room 1E Code Enforcement

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CC: Anthony Law Group, PC
 600 Grand Ave., Unit 204
 Oakland, CA 94610

Smokey's Smoke Shop & Gifts
 25088 Hesperian Blvd
 Hayward, Ca 94545

Lucas Anselmo F & Conceicao T ETAL
 4588 Crow Canyon Pl
 Castro Valley, Ca 94552

SNA Trading Inc. DBA Smokey's Smoke Shop & Gifts
 3542 Fruitvale Ave #224
 Oakland, CA 94602

From: James Anthony <james@anthonylaw.group>
Sent: Wednesday, December 7, 2022 10:02 AM
To: Amber Green
Cc: Angelica Ventura; Ankush Agarwal; Phillip Nichols; Community Preservation; Drew M. Sanchez; Jamila Colbert; Amy.Rotham@hayward-ca.gov; Hannah Young
Subject: Re: Request for Administrative Hearing for City of Hayward Code Enforcement Case CE-22-0507 for SNA Trading Inc. dba Smokey's Smoke Shop & Gifts

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Dear Ms. Green, Mr, Agarwal, Ms. Rotham,

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Yours very truly,

James Anthony



James Anthony

PRINCIPAL

(510) 842-3553 office

(510) 207-8243 cell

james@anthonylaw.group

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I just checked with the business owner, Haroon Ahmed, who is at the store every day. He also did not receive the notice. In the past, anytime he has received anything from the City he has called me immediately concerned about the possible consequences of your official communications. He did not call me about this hearing notice. He did not receive it.

When you and I spoke just now, you mentioned that in addition to my old Fruitvale Ave. address and the store address, you also mailed notice to the property owner. Mr. Ahmed did not get any notice from his landlord, so we don't know if that was received or not.

My new address is:

James Anthony
Anthony Law Group, PC
600 Grand Ave., Unit 204
Oakland, CA 94610

Please send any future notices there. Email to myself and Ms. Young is also acceptable to us as official notice of hearing and other administrative communications.

Due to this unfortunate mishap, I hereby request a continuance of this hearing. Please know that I am not available January 16-27.

Thank you for your understanding.

Yours truly,

James Anthony



James Anthony
PRINCIPAL

(510) 842-3553 office

(510) 207-6243 cell

james@anthonylaw.group

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Greetings,

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Attn: Revenue Division
City of Hayward
777 B Street
Hayward, CA 94541

If you need anything further to process our request for an administrative hearing, please let us know. Thank you.

Best,
Hannah



Hannah Young (she/her)

SENIOR PARALEGAL

(510) 842-3553 *office*

(510) 333-7996 *cell*

hannah@anthonylaw.group



On Mon, Oct 24, 2022 at 5:33 PM Hannah Young <hannah@anthonylaw.group> wrote:
Greetings,

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Best,
Hannah



Hannah Young (she/her)

SENIOR PARALEGAL

(510) 842-3553 *office*

(510) 333-7996 *cell*

hannah@anthonylaw.group





November 16, 2022

SNA Trading Inc. DBA Smokey's Smoke Shop & Gifts
3542 Fruitvale Ave. #224
Oakland, CA 94602

RE: Administrative Hearing Appointment
Code Enforcement Case # 22-0507

Dear Sir or Madam,

The City of Hayward has scheduled your Administrative Hearing as follows:

Date: THURSDAY, DECEMBER 8, 2022
Time: 2:00PM – 3:00 PM
Location: City Hall
777 B Street
Hayward, CA 94541
Department: Code Enforcement, 1st Floor

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

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SNA Trading Inc. DBA Smokey's Smoke Shop
& Gifts
3542 Fruitvale Ave. #224
Oakland, CA 94602

I am familiar with this business' practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

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

Executed on November 16, 2022 at Hayward, California.

A handwritten signature in black ink, appearing to read 'Angelica Ventura', with a long, sweeping horizontal line extending to the right.

ANGELICA VENTURA
Administrative Clerk II



From: Hannah Young <hannah@anthonylaw.group>

Sent: Monday, October 24, 2022 5:33 PM

To: Amber Green <Amber.Green@hayward-ca.gov>; Angelica Ventura <Angelica.Ventura@hayward-ca.gov>; Ankush Agarwal <Ankush.Agarwal@hayward-ca.gov>; Phillip Nichols <Phillip.Nichols@hayward-ca.gov>

Cc: James Anthony <james@anthonylaw.group>; Drew M. Sanchez <drew.sanchez@anthonylaw.group>; Jamila Colbert <jamila@anthonylaw.group>

Subject: Request for Administrative Hearing for City of Hayward Code Enforcement Case CE-22-0507 for SNA Trading Inc. dba Smokey's Smoke Shop & Gifts

CAUTION:This is an external email. Do not click on links or open attachments unless you know the content is safe.

Greetings,

As you may be aware, we represent SNA Trading Inc. in the above matter. Attached please find our client's Request for Administrative Hearing regarding the Notice of Violation issued in the above case on 10/13/22. A hard copy will follow by mail.

Best,
Hannah

 ANTHONY LAW GROUP, PC

Hannah Young (she/her)

SENIOR PARALEGAL

(510) 842-3553 *office*

(510) 333-7996 *cell*

hannah@anthonylaw.group



REQUEST FOR ADMINISTRATIVE HEARING

For filing location and instructions, please see the reverse side of this form

Please mark the appropriate box:

- Administrative Citation
- Community Preservation Factual Finding
- Residential Rental Inspection Factual Finding
- Lien/Special Assessment Hearing

Applicant's Name: SNA Trading Inc. dba Smokey's Smoke Shop & Gifts

Mailing Address: 3542 Fruitvale Avenue, #224

City: Oakland State: CA Zip: 94602

Site Address: 25088 Hesperian Boulevard, Hayward, CA 94545

Telephone #: 510-842-3553 Case #: CE-22-0507

Property Owner's Name (Community Preservation or Rental Housing only):

Citation # if applicable: _____ Date Issued: 10/13/2022

Invoice # if applicable: _____

Reason for Requesting a Hearing:

See Attachment 1.

Please submit appropriate documentation to support your request if applicable.

A deposit in the amount of the hearing fee is due when this form is submitted.

I certify under penalty of perjury under the laws of the State of California that the information supplied on this form is true and correct, and that I am eighteen (18) years of age or older.


Signature

10/24/2022

Date

OFFICE USE ONLY

Filing Fee: 946.00

Amount Paid: 946.00

Received by: Rebecca Forrest N
11/3/22

ATTACHMENT 1

The Ordinance No. HMC 10-1.2783 amended by Ordinance 20-13, adopted July 14, 2020, is itself defective, unconstitutional, illegal, and unenforceable. Appellant possesses a prior nonconforming legal right to sell all of the products that have been sold at that location since they first began legally occupying and using the property as a tobacco retailer.

HMC 10-1.2783 ("the Ordinance") is ineffective because it purports to zone backwards in time and make prior legal nonconforming uses illegal presently and going forward for the Appellant, who holds a grandfathered land use right in his possession and use of the property.

Thus, because the Ordinance is unconstitutional, illegal, and unenforceable, the Notice of Violation cannot stand and must be rescinded until such time as the Ordinance has been amended to comport with all legal requirements respecting the constitutionally protected property rights of the citizens of Hayward.

Furthermore, to the extent that the Ordinance purports to apply to and make illegal the use and sale of CBD products, hemp products, and THC delivery devices, ("paraphernalia"), the Ordinance has no factual basis and is therefore irrational, arbitrary, unreasonable, and capricious, and as such is unconstitutional and unenforceable to that extent.

Appellant reserves the right to adduce further legal and factual argument at hearing, or prior to hearing in written briefing.



Hannah Young <hannah@anthonylaw.group>

Request for Administrative Hearing for City of Hayward Code Enforcement Case CE-22-0507 for SNA Trading Inc. dba Smokey's Smoke Shop & Gifts

Hannah Young <hannah@anthonylaw.group>

Mon, Oct 24, 2022 at 5:33 PM

To: amber.green@hayward-ca.gov, Angelica.Ventura@hayward-ca.gov, ankush.agarwal@hayward-ca.gov,
phillip.nichols@hayward-ca.gov

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ANTHONY LAW GROUP PC

Hannah Young (she/her)

SENIOR PARALEGAL

(510) 842-3553 office

(510) 333-7986 cell

hannah@anthonylaw.group

22-10-24 Request for Administrative Hearing w Attachment.pdf
107K

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

Antiboycott Group, PC
10000 UNIVERSITY AVENUE
SAN FRANCISCO, CA 94115

WELLS FARGO BANK, N.A.
750 PULGATE AVENUE
SAN FRANCISCO, CA 94103

1030

10/23/22

PAY TO THE ORDER OF

City of Hayward

\$ 946.00

Nine Hundred Forty-Six and 00/100

DOLLARS

PROTECTED AGAINST FRAUD



ENR Trading Inc. dba Smokey Smoke Shop

METU CASE CE 22 0507

1001010W 151101488 0152018158831

Anthony Law Group, PC
3542 Fruitvale Ave, # 224
Oakland, CA 94602

OAKLAND CA 945

27 OCT 2022 PM 7 L



Attn: Revenue Division
City of Hayward
777 B. Street
Hayward, CA 94541

94541-500777





CITY OF HAYWARD
Development Services Department
Code Enforcement Division
 777 B Street, Hayward, CA 94541-5007,
 (510)583-4143 - Fax: (510)583-4994 -

Case Number: **CE-TRLENF-2025-00085**

Case Type: CH- Tobacco Retail Standards

Date Case Established: 11/05/2025

Failed Inspection Date: 11/17/2025

Next Inspection Date: 10-Dec-2025 10:00 am

CIT-015083-2025

ADMINISTRATIVE PENALTY AND FEE NOTICE

You may request an Administrative Hearing within fifteen (15) calendar days from the date of this letter to dispute the facts of the violation(s) under the Hayward Municipal Code. The completed form and hearing fee must be submitted to the City of Hayward Revenue Division, 777 B St., Hayward, Ca 94541. For additional information please see the City of Hayward website at www.hayward-ca.gov or call (510) 583-4600.

Administrative Hearing Fee: \$1,276.00

An inspection will be conducted on **Wednesday, December 10, 2025 10:00 am**, to verify compliance and determine any necessary corrections. Your presence or that of an adult over the age of 18 is required. Pets must be secured during the inspection. Fees and penalties may apply as noted pursuant to the most recently adopted City of Hayward Master Fee Schedule. **Note: When applicable the City will communicate with non-profit agencies to refer homeless individuals to services prior to abatement.**

Please join us in maintaining a clean, safe and attractive neighborhood for all residents. If you have any questions or wish to schedule an alternate inspection date, please call 510-583-4139.

Sincerely,

Jesse Prins

Code Inspector I

510-583-4139

Jesse.Prins@hayward-ca.gov



CITY OF HAYWARD
Development Services Department
Code Enforcement Division
777 B Street, Hayward, CA 94541-5007,
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ADMINISTRATIVE PENALTY AND FEE NOTICE

CASE IMAGES:

Photo Taken 11-17-2025 (1).jpg



Notes:

Photo Taken 11-17-2025 (4).jpg



Notes:

Photo Taken 11-17-2025 (7).jpg



Notes:

Photo Taken 11-17-2025 (2).jpg



Notes:

Photo Taken 11-17-2025 (5).jpg



Notes:

Photo Taken 11-17-2025 (8).jpg



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Photo Taken 11-17-2025 (3).jpg



Notes:

Photo Taken 11-17-2025 (6).jpg



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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, Jesse Prins, am over the age of 18 and employed by the City of Hayward, 777, "B" Street, Hayward, Alameda County, California 94541.

On December 1, 2025, I served the following document(s) on the interested parties in this action by sending true copies as shown below for service as designated below:

- 1) Letter to Owner, APN:442-0051-034-00 , Case #: CE-TRLENF-2025-00085

SERVICE BY U.S. MAIL UNDER THE LAWS OF THE STATE OF CALIFORNIA

LUCAS ANSELMO F & CONCEICAO T ETAL
4588 CROW CANYON PL
CASTRO VALLEY , CA 94552

I am familiar with this business' practice for collection and processing of correspondence for mailing, and that correspondence will be enclosed in a sealed envelope with postage fully prepaid and deposited with the U.S. Postal Service on the date herein above in the ordinary course of business at Hayward, California.

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

Jesse Prins
Code Inspector I

**INVOICE (EG25-26377)
FOR CITY OF HAYWARD**

LUCAS ANSELMO F & CON

**4588 CROW CANYON PL
CASTRO VALLEY , CA**



INVOICE NUMBER	INVOICE DATE	INVOICE DUE DATE	INVOICE STATUS	INVOICE DESCRIPTION
EG25-26377	12/01/2025	12/31/2025	Due	NONE

CODE CASE NUMBER	FEE NAME	TOTAL
CE-TRLENF-2025-00085	CE Tobacco Ordinance 1st Offense	\$1,500.00
SUBTOTAL		\$1,500.00

REMITTANCE INFORMATION
City of Hayward 777 B St Hayward, CA 94541

TOTAL \$1,500.00

Please write the Invoice Number on Your Check
Make Check payable to: CITY OF HAYWARD

THERE WILL BE A \$25.00 CHARGE FOR EACH RETURNED CHECK.
TO PAY IN ONLINE: Go to <https://www.hayward-ca.gov/epermits> and search for the Invoice number



CITY OF HAYWARD
Development Services Department
Code Enforcement Division
777 B Street, Hayward, CA 94541-5007,
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LUCAS ANSELMO F & CON



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