BZA-04-25-00857
Exhibits 8 - 14

Exhibit 8

4045 Bridge View Drive
North Charleston, SC 29405
Phone: (843) 202-7200
Fax: (843)202-7222

Permit

Permit #. **ZONE-03-25-22114**
Permit Type: **Zoning Permit**
Work Class: **Bldg. - Commercial**
Permit Status: **ACTIVE**

Issue Date: 03/24/2025
Expires:

Project Address	Parcel Number	District
1184 BEES FERRY RD, 103 UNIT **JOHNS ISLAND, SC 29455**	**3010000809** Flood Zone: **X - 0**	**St. Andrews PSD/SAPP** Tax District #: **T.D. 6-2**

Applicant Information	Address	Phone	Cell
SADDAM ADLAILAM	**810 E MAIN ST** **LAURENS, SC 29360**		

Contractor(s)	Address	Phone	Contractor Type

Invoice #	Paytype	Total Fees	Amount Paid	Amount Due
01218216	Credit Card		$50.00	
		$50.00	**$50.00**	**$0.00**

Proposed Construction / Details

ZONING APPROVAL FOR INTERIOR UPFIT ONLY FOR "CHILLAXE VAPOR"; RETAIL SALES WILL INCLUDED VAPE JUICES, VAPE DISPOSABLES, VAPE PODS, VAPE CBD, VAPE DEVICES SUCH AS VARIOUS CARTRIDGES, CBD GUMMIES, INCIDENTAL POINT OF SALE OFFERING SNACKS, NON ALCOHOLIC DRINKS, CANDY, STICKERS, MAGNETS AND T-SHIRTS. NO TOBACCO PRODUCTS WILL BE SOLD. NO SMOKING OF ANY KIND WILL BE ALLOWED ON THE PREMISES. APPLICANT MUST OBTAIN ZONING PERMIT TO ESTABLISH BUSINESS FOLLOWING ISSUE OF CERTIFICATE OF OCCUPANCY FROM BIS AND PRIOR TO OPERATIONS. NO WINDOW SIGNS OR DISPLAYS ARE ALLOWED. WALL SIGNAGE REQUIRES SEPARATE REVIEW/PERMIT. BUILDING SERVICES PERMIT IS REQUIRED. OK PER J. EVANS/A.MELOCIK-WHITE.

Valuation: **$0.00**
Total Sq Ft: **0.00**

THIS WORK WILL BE DONE BY ME, THE OWNER, BY MEMBERS OF MY IMMEDIATE FAMILY OR BY A FULL TIME REGULAR EMPLOYEE NOT HIRED FOR THIS PARTICULAR JOB. WORK DONE BY OTHER THAN ABOVE IS A VIOLATION OF THE LAW AND WOULD VOID THIS PERMIT AND COULD RESULT IN PROSECUTION.

IT IS UNDERSTOOD AND AGREED BY THE UNDERSIGNED THAT THE APPROVAL OF THIS APPLICATION DOES NOT CONSTITUTE A PRIVILEGE TO VIOLATE THE ORDINANCES OF THE COUNTY OF CHARLESTON; AND THAT ANY ALTERATION OR CHANGE FROM THIS APPLICATION WITHOUT THE APPROVAL OF THE BUILDING OFFICIAL SHALL CONSTITUTE SUFFICIENT GROUNDS FOR THE REVOCATION OF ANY PERMIT. THIS PERMIT IS EXPRESSLY CONDITIONED UPON THE ACCURACY OF THE INFORMATION SUBMITTED BY THE APPLICANT. PERMIT WORK WILL BE VOIDED IF WORK IS NOT STARTED WITHIN SIX (6) MONTHS OR IF WORK IS STOPPED FOR A PERIOD OF SIX (6) MONTHS.

DATE: 03/24/2025

SIGNATURE OF OWNER. CONTRACTOR, AGENT

Jael H. Evans

APPROVED BY: PLANNING OFFICIAL

Exhibit 9

Application for Appeal of Administrative Decision

County of Charleston
Board of Zoning Appeals

Public Services Building
Zoning/Planning Department
4045 Bridge View Drive
North Charleston, SC 29405
Phone 843-202-7200
Fax 843-202-7222
www.charlestoncounty.org

CHARLESTON COUNTY
SOUTH CAROLINA

This application must be complete and submitted in person to the Zoning/Planning Department or to bza@charlestoncounty.org, in order to appeal a zoning related decision of the Zoning Administrator. Additional pages may be attached. **A decision of the Zoning Administrator shall be reversed if it is found to be in error, per Section 3.13.8 of the *Charleston County Zoning and Land Development Regulations Ordinance (ZLDR).*** Check made out to "Charleston County", cash, or credit card accepted. The filing fee is $250.

Appellant Name: LaDon Paige c/o Jessica Monsell, Esq.

Mailing Address: Keibler Law Group LLC, PO Box 2867

City, State, ZIP Code: Irmo, SC 29063 Daytime Phone#: 864-999-4181

Email: jessica@keiblerlaw.com

Subject Property Address: 1184 Bees Ferry Rd. Charleston SC 29414

1. Decision which is being appealed:

   See attached Statement of Appeal.

2. Reason(s) appellant believed the decision to be in error:

   See attached Statement of Appeal.

3. Appellant contends that the correct interpretation of the *Charleston County Zoning and Land Development Regulations Ordinance* as applied to the property is:

   See attached Statement of Appeal.

4. Appellant requests the following relief:

   See attached Statement of Appeal.

Jessica S Monsell
Appellant Signature

April 1, 2025
Date

FOR OFFICE USE ONLY:

Application #: BZA-04-25-00857 Zoning District: PD-73E

Date Filed: 4/8/25 Fee Paid ($250): $250 cc

TMS #: 301-00-00-809 Zoning Officer: jji

APPEAL TO THE ZONING BOARD OF APPEALS
CHARLESTON COUNTY

Appellant LaDon Paige, by and through undersigned counsel, hereby appeals the decision of the Charleston County Zoning and Planning Department and/or its Director (collectively, the "Department") to grant a permit concerning 1184 Bees Ferry Road, Unit 103, for the interior upfit for "Chillaxe Vapor" (the "Permit") and respectfully submits this Statement in support to the Zoning Board of Appeals.

STATEMENT OF ISSUES ON APPEAL

Whether the Department's decision to grant the Permit was an abuse of discretion and contrary to the lawful commercial use restrictions of PD-73E.

STATEMENT OF CASE

I. Appellant LaDon Paige ("Paige" or "Appellant") is a citizen and resident of Charleston County, South Carolina. Specifically, Paige owns property within PD-73E, Hunt Club Planned Development (TMS# 301-00-00-034). As an owner of property within the planned development, Appellant has a substantial interest in the enforcement of the Zoning and Planning Department within PD-73E and has standing to bring this appeal pursuant to S.C. Code § 6-29-820. As the Permit was granted by the Department on or around March 24, 2025, this appeal is timely made.

II. Upon information and belief, in the first quarter of 2025, the Department correctly denied an application for the Permit on the grounds that the applicant for the subject commercial property is a seller of tobacco products, which is a nonconforming use for commercial property within PD-73E. Upon information and belief, in March 2025, the Permit was subsequently granted based on an interpretation of the meaning of the word "tobacconist" taken from Webster's Dictionary. However, resorting to a dictionary interpretation of the meaning of "tobacconist" is

unnecessary because the South Carolina Legislature has defined what constitutes "tobacco products" and a "tobacco retail establishment" within the State. S.C. Code Ann. § 16-17-501 states, in relevant part:

> (1) "Distribute" means to sell, furnish, give, provide, or attempt to do so, whether gratuitously or for any type of compensation, tobacco products, including tobacco product samples, cigarette paper, or a substitute for them, to the ultimate consumer.
>
> (2) "Distribution" means the act of selling, furnishing, giving, providing, or attempting to do so, whether gratuitously or for any type of compensation, tobacco products, including tobacco product samples, cigarette paper, or a substitute for them, to the ultimate consumer.
>
> (3) *"Electronic smoking device" means any device that may be used to deliver any aerosolized or vaporized substance, including e-liquid, to the person inhaling from the device including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Electronic smoking device" includes any component, part, or accessory of the device, and also includes any substance intended to be aerosolized or vaporized during the use of the device whether or not the substance includes nicotine.* "Electronic smoking device" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
>
> (4) *"E-liquid" means a substance that:*
> (a) *may or may not contain nicotine;*
> (b) *is intended to be vaporized and inhaled using an electronic smoking device*; and
> (c) is a legal substance under the laws of this State and the laws of the United States.
> "E-liquid" does not include cannabis or CBD as defined under the laws of this State and the laws of the United States unless it also contains nicotine.
>
> (8) "Tobacco product" means:
> (a) any product containing, made of, or *derived from tobacco or nicotine* that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
>
> (b) *any electronic smoking device* as defined in this section and any substances that may be aerosolized or *vaporized* by such device, *whether or not the substance contains nicotine*; or

(c) *any component, part, or accessory of subitem (a) or subitem (b), whether or not any of these contains tobacco or nicotine including, but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes.* Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(9) "Tobacco retail establishment" means *any place of business where tobacco products are available for sale to the general public.* The term includes, but is not limited to, grocery stores, tobacco product shops, kiosks, convenience stores, gasoline service stations, bars, and restaurants.

(10) "Tobacco retailer" means any person, partnership, joint venture, society, club, trustee, trust association, organization, or corporation who owns, operates, or manages any tobacco retail establishment. Tobacco retailer does not mean the nonmanagement employees of any tobacco retail establishment.

S.C. Code Ann. § 16-17-501 (emphasis added).

III. The South Carolina Supreme Court has consistently held that when a statute speaks to an issue that is being regulated and applied by an administrative agency, the Court will reject the agency's interpretation of a regulation if the interpretation is contrary to the plain language of the statute. Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 32-33, 766 S.E.2d 707, 717 (2014). "Where the terms of the statute are clear, the court must apply those terms according to their literal meaning." Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002). When a statute speaks to an issue, a court "cannot construe a statute without regard to its plain meaning and *may not resort to a forced interpretation* in an attempt to expand or limit the scope of a statute." Id. (Emphasis added). In this case, S.C. Code Ann. § 16-17-501 clearly defines "tobacco products" and "tobacco retail establishment," such that inconsistent interpretations are contrary to law.

IV. The plain language of PD-73E prohibits certain nonconforming uses, which were the product of discussion and collaboration over many months among the property developers and

owners within the Planned Development. These regulations and guidelines were ultimately approved by the Department, on or around September 28, 2021. Among those prohibited uses for the commercial space were "tobacconists." Because our State Legislature defined in detail what commercial activity constitutes a "tobacco retail establishment," the Department need not consider definitions beyond what is clear by the plain language of the statute. The Supreme Court of South Carolina disallows interpretations of regulations which resort to a "forced interpretation in an attempt to expand or limit the scope of the statute." Brown, supra.

V. Clearly, the stated commercial activities enumerated in the Permit are those which our Legislature has defined as "tobacco products." S.C. Code Ann. § 16-17-501. When drafting the statute and debating these definitions, our Legislature made the deliberate decision to expressly include within the definition of "tobacco products" **nearly all** the products identified in the Permit. By way of example and without limitation, vape pens, electronic cigarettes, e-liquid, vaporized substances, and products derived from tobacco or nicotine all fall within the statute's definition of tobacco products. What's more, within the definition of "tobacco products," the statute expressly includes a long, yet non-exhaustive list of vape and "vaporized" products and devices, "whether or not the substance contains nicotine," (§ 16-17-501(8)(b)) and includes "rolling papers, blunt or hemp wraps, and pipes." (§ 16-17-501(8)(c)). Finally, the statute defines a "tobacco retail establishment" as "any place of business where tobacco products are available for sale to the general public." (§ 16-17-501(9)). South Carolina law leaves no room for interpretation on the meaning of these words and activities, and the Department cannot disregard the Legislature's literal definitions of the commercial activity proposed in the Permit. The statute is comprehensive and directly addresses what the Permit proposes. (The only products identified in the Permit that would be allowed, such as soft drinks, are admittedly "incidental" by the applicant.) Because the

Department disregarded the meaning given to these words by statute in favor of a fanciful suggestion to defer to an online dictionary, the Department's grant of the Permit notwithstanding the prohibitions of PD-73E amounts to an error of law.

VI. In this case, the Department has resorted to a forced interpretation of the meaning of a commercial use restriction in PD-73E. By granting the Permit, the Department's decision was arbitrary, capricious, and controlled by an error of law, and the decision should be reversed. "A decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." John's Marine Serv. v. Oconee Cty. Bd. of Zoning Appeals, No. 6101, 2025 S.C. App. LEXIS 11, *11 (Ct. App. Feb. 19, 2025). An abuse of discretion occurs when a decision is "unsupported by the evidence or controlled by an error of law." Dewberry 334 Meeting St. v. City of Charleston & Bd. of Zoning Appeals-Zoning, No. 2021-UP-360, 2021 S.C. App. Unpub. LEXIS 429, *8 (Ct. App. Oct. 20, 2021). Appellant is informed and believes that the decision of the Department is controlled by an error of law and an abuse of discretion, rendering it subject to reversal by the Circuit Court. For these reasons, the grant of the Permit should be reversed through this administrative appeal.

VII. Finally, the Department has the authority to prohibit certain commercial activities within a Planned Development. See, e.g., Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals, 440 S.C. 266 (2023) (affirming the constitutionality of a zoning ordinance to prohibit smoke shops and tobacco stores in downtown Myrtle Beach). The plan for PD-73E, including the design, setbacks – and yes, the commercial use restrictions – is the product of a combination of the efforts of those who care most about the community: the developers, the owners, the residents, and the Department itself. The regulations and guidelines of PD-73E cannot be selectively applied; indeed, the commercial regulations and guidelines apply to all the commercial tenants who sought

approval to operate a business *within* the contours of the Planned Development. It is both a privilege and responsibility to operate a business within a well-established, family-oriented Planned Development. If the applicant must operate a business selling "tobacco products" as defined by statute, the applicant should be encouraged to open a shop where such zoning restrictions are not established.[1] PD-73E is not the place. The stakeholders who have invested their hard-earned resources to build their homes and businesses within this Planned Development are counting on the Department to: (1) follow the law; (2) enforce the regulations and guidelines of PD-73E; and (3) decline any invitation to disregard the plain language of a statute that speaks directly to this issue when considering permit applications. To do otherwise amounts to an abuse of discretion that would both harm the community and ultimately be subject to reversal by the Circuit Court.

CONCLUSION

For the forgoing reasons, Appellant LaDon Paige respectfully requests that the decision to grant the Permit to allow a prohibited commercial activity in PD-73E be reversed.

/s/ Jessica L. Monsell
Jessica L. Monsell, SC Bar No. 105232
KEIBLER LAW GROUP LLC
PO Box 2867
Irmo, SC 29063
T: (864) 999-4181
Jessica@KeiblerLaw.com

Attorney for Appellant LaDon Paige

April 1, 2025
Columbia, SC

[1] According to records with the Secretary of State, the Permit applicant already operates several tobacco shops throughout South Carolina, namely: Abbeville Tobacco & Vape LLC (Abbeville, SC); Powdersville Tobacco & Vapor LLC (Piedmont, SC); Emerald City Tobacco & Vapor (Greenwood, SC); Greenwood Tobacco & Vapor LLC (Greenwood, SC); Laurens Tobacco & More LLC (Laurens, SC); Down South Distribution LLC (Greer, SC).

Exhibit 10

Joel H. Evans, AICP. PLA
Zoning & Planning Director

CHARLESTON COUNTY
SOUTH CAROLINA

843.202.7200
1.800.524.7832
Fax: 843.202.7222
Lonnie Hamilton, III
Public Services Building
4045 Bridge View Drive
North Charleston, SC 29405-7464

VIA E-MAIL ONLY
Ross Appel, Esq.
McCullough, Khan, Appel
2036 Ewall Street
Mt. Pleasant, SC 29464
ross@mklawsc.com

April 14, 2025

Re: Appeal of Administrative Decision Filed (BZA-04-25-00857) regarding the issuance of Zoning Permit (ZONE-03-25-22114) for Retail Sales "Chillaxe Vapor" at 1184 Bees Ferry Road, Suite 103 (TMS # 301-00-00-809)

Dear Mr. Appel,

An Application for Appeal of Administrative Decision was filed by Jessica L. Monsell of the Keibler Law Group LLC, Attorney for the Appellant LaDon Paige. The Appeal has been scheduled for the June 2, 2025 BZA Public Hearing. The hearing time will be announced in May.

Charleston County Zoning and Land Development Regulations Ordinance (ZLDR), Chapter 3 Development Review and Procedures, Article 3.13 Appeals of Zoning-Related Administrative Decisions, Sec. 3.13.4 Effect of Filing states,

"Upon filing a Complete Application for an appeal of an Administrative Decision on a zoning-related matter, any permits, decisions, or determinations that are the subject of the appeal shall be temporarily suspended. Any work or performance of any activity that has been undertaken pursuant to an appealed permit, decision or determination, shall be subject to CHAPTER 11, Violations, Penalties, and Enforcement, of this Ordinance.

After a Complete Application for an appeal has been filed, an appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Zoning Appeals, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings may not be stayed other than by a restraining order which may be granted by a court of record, with notice to the officer from whom the appeal is taken, and with due cause shown."

Therefore, pursuant to ZLDR, the **Zoning Permit (ZONE-03-25-22114) issued on March 24, 2025 has been temporarily suspended.**

Sincerely,

Joel Evans

Joel Evans, AICP, PLA
Zoning & Planning Director

cc: Jenny J. Werking, BZA Secretary
Natalie Ham, County Attorney

Attachment

Exhibit 11

APPEAL TO THE ZONING BOARD OF APPEALS
CHARLESTON COUNTY

Appellant LaDon Paige, by and through undersigned counsel, hereby submits this **supplemental argument and attachment** in support of her appeal of the decision of the Charleston County Zoning and Planning Department and/or its Director (collectively, the "Department") to grant a permit concerning 1184 Bees Ferry Road, Unit 103, for the interior upfit for "Chillaxe Vapor" (the "Permit") and respectfully submits this Statement in support to the Zoning Board of Appeals ("Board").

SUPPLEMENTAL ARGUMENT

I. The lengthy negotiations about the permitted commercial uses of the Hunt Club Planned Development took place over many months in 2021 between homeowners, neighboring community members, and the developers. As the Board is well aware, these discussions and communications culminated in PD-73(E), which restricted certain commercial activities, as described earlier in this Appeal. PD-73(E) was finalized on September 28, 2021.

II. Hunt Club Medical, LLC, the current owner of 1184 Bees Ferry Road, Johns Island, SC 29455 (TMS No. 301-00-00-809) (the "Property"), purchased the Property on or around March 29, 2022, after PD-73(E) took effect.

III. According to the Deed conveying the Property from Grantor Hunt Club Properties LLC to Grantee (and current owner) Hunt Club Medical, LLC on or around March 29, 2022, such conveyance was made "SUBJECT TO all applicable easements, reservations, rights of way, restrictive covenants of record affecting the Property as of the date hereof and to all applicable government statutes, ordinances, rules, permits, and regulations (the "Permitted Exceptions"). (See Exhibit A, Deed

recorded by the Charleston County Register of Deeds on March 31, 2022 at Book 1095, Page 783.)

IV. Therefore, as Grantee of the Property, Hunt Club Medical, LLC knew, or through the exercise of due diligence should have known, that the Property was part of a Planned Development – and specifically PD-73(E) – and was subject to restrictive covenants of record affecting the Property on the date of the conveyance, as well as all applicable government statutes, ordinances, rules, permits, and regulations.

V. Just as all homeowners, residents, and commercial tenants within the Hunt Club Planned Development must abide by the restrictions of record in PD-73(E), so must Hunt Club Medical LLC, as stated in the Deed conveying the Property, recorded by the Charleston County Register of Deeds on March 31, 2022.

CONCLUSION

For the reasons stated in her Appeal and in this Supplement to her Appeal and with its Exhibit in support, Appellant LaDon Paige respectfully requests that the decision to grant the Permit to allow a prohibited commercial activity in PD-73E be reversed.

/s/ Jessica L. Monsell
Jessica L. Monsell, SC Bar No. 105232
KEIBLER LAW GROUP LLC
PO Box 2867
Irmo, SC 29063
T: (864) 999-4181
Jessica@KeiblerLaw.com

Attorney for Appellant LaDon Paige

April 25, 2025
Columbia, SC

Exhibit A

Return to:
Hart Norvell LLC
1031 Chuck Dawley Blvd., Ste. 6
Mount Pleasant, SC 29464
Attn: J. Tindal Hart

BP1095783

PGS: 6

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, THAT **HUNT CLUB PROPERTIES, LLC, a South Carolina limited liability company** ("Grantor") in the State aforesaid in consideration of the sum of **ONE MILLION NINE HUNDRED EIGHTY-SIX THOUSAND SIX HUNDRED AND NO/100 ($1,986,600.00) DOLLARS**, good and valuable consideration to the said Grantor in hand paid at and before the sealing of these presents by **HUNT CLUB MEDICAL, LLC, a South Carolina limited liability company** ("Grantee") in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said **HUNT CLUB MEDICAL, LLC, a South Carolina limited liability company**, its successors and assigns, the following described property, to-wit (the "Property"):

ALL that certain lot, piece or parcel of land, together with the buildings and other improvements thereon, if any, situate, lying and being in the County of Charleston, State of South Carolina, containing 6.02 acres, more or less, and being shown and designated as "NEW TRACT C-1-1" on that certain plat entitled "PLAT CREATING NEW TRACT C-1-1 6.02 ACRE PORTION OF TMS# 301-00-00-034 TRACT C OWNED BY HUNT CLUB PROPERTIES LLC LOCATED IN CHARLESTON COUNTY SOUTH CAROLINA" prepared by Michael S. Shulse, S.C. P.L.S. No. 18268, SCPLS No. 18268, dated March 30, 2021, and duly recorded on February 25, 2022, in the Register of Deeds Office for Charleston County, South Carolina in Plat Book L22, at Page 0083; the said property being bounded and having such actual size, shape, location, buttings, boundings, courses and distances as are more particularly shown on said plat (the "Plat").

TOGETHER WITH for the benefit of and use by the Grantee and its successors and assigns, a non-exclusive, perpetual, permanent, transmissible, commercial appurtenant drainage easement for the purposes of directing, piping and channeling stormwater drainage from the Grantee Property over, upon and across that portion of the Grantor's remaining property being shown and designated as "WETLANDS" on the Plat (the "Drainage Easement"), which shall be for the benefit of and shall run with the title to the Property; provided, however that Grantee's use of the Drainage Easement is approved by all required governmental authorities.

SUBJECT TO all applicable easements, reservations, rights of way, restrictive covenants of record affecting the Property as of the date hereof and to all applicable government statutes, ordinance, rules, permits and regulations (the "Permitted Exceptions").

BEING a portion of that property conveyed to Hunt Club Properties, LLC, by Deed from CIS/BEES FERRY ASSOCIATES dated December 5, 2002, and recorded December 6, 2002, in the Register of Deeds Office for Charleston County, South Carolina, in Book K428, at Page 691.

TMS No.: 301-00-00-809

Grantee's Address: 2298 Mount Pleasant Street
Charleston, South Carolina 29403

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Permitted Exceptions, all and singular, the said premises before mentioned unto the said **HUNT CLUB MEDICAL, LLC, a South Carolina limited liability company**, its successors and assigns forever.

AND, subject to the Permitted Exceptions, Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend, all and singular, the said premises unto the said Grantee, its successors and assigns, against it and its successors and assigns lawfully claiming, or to claim the same or any part thereof, by, under or through it, but not otherwise.

[SIGNATURE PAGE TO FOLLOW]

WITNESS Grantor's Hand and Seal, this 29th day of March 2022.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

HUNT CLUB PROPERTIES, LLC,
a South Carolina limited liability company

Witness #1

By: _____ (SEAL)
Calvin R. Nester
Its: Manager

Witness #2

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that the above-named Calvin R. Nester, Manager of Hunt Club Properties, LLC personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 29 day of March 2022.

Notary Public for South Carolina
Printed Name of Notary: William Bobo Jr
My Commission expires: 4/6/2030

WILLIAM BOBO JR NOTARY PUBLIC SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS**
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2 The property being transferred is approximately 6.02 acres, more or less, located on Bees Ferry Road, Charleston, SC 29414, bearing Charleston County Tax Map Number 301-00-00-809, and was transferred by Hunt Club Properties, LLC, a South Carolina limited liability company, to Hunt Club Medical, LLC, a South Carolina limited liability company, on March 30, 2022.

3. Check one of the following: The deed is

(a) __X__ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) _____ exempt from the deed recording fee because (See Information section of affidavit):_____
(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

(a) __X__ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $1,986,600.00.
(b) _____ The fee is computed on the fair market value of the realty which is _____.
(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes_____ or No __X__ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) If "Yes," the amount of the outstanding balance of this lien or encumbrance is:_____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here:	$ 1,986,600.00
(b) Place the amount listed in item 5 above here: (If no amount is listed, place zero here.)	$ 0.00
(c) Subtract Line 6(b) from Line 6(a) and place result here:	$ 1,986,600.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $7,351.90.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantor.

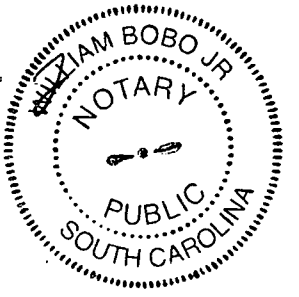
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

HUNT CLUB PROPERTIES, LLC, a South Carolina limited liability company

By: _____ SEAL)
Calvin R. Nester
Its: Manager

SWORN to and subscribed before me this
29 day of March 2022.

_____
Notary (L.S.):
Notary Public for South Carolina
My Commission Expires: 1/2/2030
Notary (printed name): William Bobo



RECORDER'S PAGE

***NOTE*: This page MUST remain with the original document**

Filed By:

HART NORVELL LLC
1031 CHUCK DAWLEY BLVD
SUITE 6
MT PLEASANT SC 29464-4188

MAKER:
HUNT CLUB PROPS LLC

RECIPIENT:
HUNT CLUB MEDICAL LLC

Original Book:

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Jun 03, 2022
Peter J. Tecklenburg
Charleston County Auditor

PID VERIFIED BY ASSESSOR
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Date:	March 31, 2022
Time:	11:17:24 AM

Book	Page	DocType
1095	783	Deed

Michael Miller, Register
Charleston County, SC

# of Pages: 6

Recording Fee	$	15.00
State Fee	$	5,166.20
County Fee	$	2,185.70
Extra Pages	$	-
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Exhibit 12

McCULLOUGH • KHAN • APPEL
ATTORNEYS AT LAW

Ross A. Appel
Phone: (843) 937-9798
Fax: (843) 937-0706
Ross@mklawsc.com

April 25, 2025

VIA E-MAIL ONLY
Joel Evans
Charleston County Planning and Zoning Director
4045 Bridge View Dr.
North Charleston, SC 29405-7464
JEvans@charlestoncounty.org

Re: BZA Case No. 04-25-00857
Letter in Opposition to Administrative Appeal

Dear Joel:

I hope this finds you well. My firm represents Hunt Club Medical, LLC ("HCM"), the owner of 1184 Bees Ferry Road, Johns Island, SC 29455 (TMS No. 301-00-00-809) (the "Property"). HCM's opposes that certain Appeal of Administrative Decision filed by Jessica L. Monsell, Esq. on behalf of LaDon Paige (BZA Case No. 04-25-00857). I understand this appeal will be heard by the BZA on June 2, 2025. Please include this letter in the record before the BZA.

Before addressing the issues raised in the Appeal of Administrative Decision, it is important for the BZA to have a clear understanding of how we got here. On November 11, 2024, HCM entered into a lease agreement with Chillaxe Tobacco and Vapor 3, LLC for Unit 103 on the Property. On November 12, 2024, the Tenant submitted a Letter of Intent to the County for "a tobacco and vape shop" in Unit 103. On November 13, 2024, the County issued a Zoning Permit (Permit No. ZONE-11-24-21013) for this use. The Zoning Permit states, in relevant part, as follows: "ZONING APPROVAL FOR UPFIT OF SUITE 1043 "540 TOBACCO AND VAPE. A RETAIL ESTABLISHMENT ONLY." Subsequently, on or about January 7, 2025, County staff raised potential concerns that a recent amendment to the Hunt Club Planned Development Zoning District eliminated "tobacconist" as an allowed use.[1]

Although the County never formally revoked the Zoning Permit and notwithstanding HCM's position that the recent amendment to the Hunt Club PD did not eliminate the "tobacconist" use, *in the interest of cooperating with the County and the neighborhood,* on or about February 21, 2025 the tenant submitted a revised Letter of Intent. The revised LOI proposed

[1] HCM disputes the Hunt Club PD, as amended, eliminated "tobacconist" as an allowed use.

eliminating all tobacco product retail sales and tobacco use at Unit 103. The revised LOI calls for the retail sale of vape products *only*. After much research and analysis, including reviewing the zoning ordinances from several other jurisdictions around South Carolina to see how they addressed tobacco and vape uses, the County issued a Zoning Permit for this vape-only retail use on or about March 24, 2025.

The County's issuance of the Zoning Permit for a vape-only retail use was legally sound and proper under the Hunt Club PD, as amended, as well as the ZLDR and South Carolina law. Assuming without conceding that "tobacconist" is a prohibited use under the Hunt Club PD, as amended, this *undefined term* must be read strictly in favor of the free exercise of property under South Carolina law. South Carolina has a special rule of statutory construction in the context of zoning and land use regulations, which reads as follows:

> It is a well-founded principle of law that "statutes or ordinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose. It follows that the terms limiting the use of the property must be liberally construed for the benefit of the property owner."

Helicopter Solutions, Inc. v. Hinde, 414 S.C. 1, 13, 776 S.E.2d 753, 759 (Ct. App. 2015) (citing *Purdy v. Moise*, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953)); *Keane v. Hodge*, 292 S.C. 459, 465, 357 S.E.2d 193, 196 (Ct. App. 1987) (holding that while "[l]ocal governments have wide latitude to enact ordinances regulating what people can do with their property," they "must draft their ordinances so that people can have a clear understanding as to what is permitted and what is not. Otherwise, we must construe such ordinances to allow people to use their property so as to realize its highest utility.").

Neither the Hunt Club PD, as amended, nor the ZLDR prohibit vape stores, specifically, as a primary use. Therefore, this use falls under the general "Retail Sales or Services, General" use category, which is allowed by right. Moreover, neither the Hunt Club PD, as amended, nor the ZLDR define "tobacconist." Given the absence of a definition for this use in the County ordinances, Article 12.2 of the ZLDR provides that the Merrian-Webster's Collegiate Dictionary, 11th Edition governs. The dictionary defines "tobacconist" as "a dealer in **tobacco** especially at retail."[2] (emphasis added). E-cigarettes, also known as "vapes," sometimes contain nicotine, but by definition, *never contain tobacco*.[3] Since vapes are, by definition, not tobacco, a "tobacconist" should be read strictly to apply to tobacco products exclusively – not vapes. The County also relied on multiple jurisdictions across South Carolina that either treat tobacco and vape stores differently or specifically address vapes in the text of their ordinances. Again, the Hunt Club PD, as amended, and the ZLDR are all silent on vape shops. Therefore, the County staff correctly issued the Zoning Permit for a vape-only retail use that will not engage in any tobacco sales or use of any kind.

The Appeal of Administrative Decision relies almost exclusively on the definitions of "tobacco products" and "tobacco retail establishment" found in S.C. Code Ann. § 16-17-501.

[2] https://www.merriam-webster.com/dictionary/tobacconist
[3] https://www.cancer.org/cancer/risk-prevention/tobacco/e-cigarettes-vaping.html

These definitions essentially lump together tobacco and e-cigarettes. The reliance on these definitions, however, is fundamentally misplaced. The referenced statutory definition comes from the Omnibus Tobacco Enforcement Act of 2023 (the "Act"). **But the General Assembly made it crystal clear that the Act does not apply to local zoning nor may it be read to influence zoning decisions**. Section 4 of the Act reads as follows: "Nothing in this act shall be construed to interfere with a political subdivision's authority under Chapter 29, Title 6, including, without limitation, with respect to land use regulation, land development regulation, zoning, or permitting." Moreover, Section 3 of the Act contains a broad grandfathering clause for any ordinances in place prior to December 31, 2020. This language precludes the BZA's consideration S.C. Code Ann. § 16-17-501 as a matter of law. The Act does, however, refute the notion that tobacco and vape sales are governed exclusively by zoning. On the contrary, the Act places strict regulations on, among other things, sales to minors and other matters of public concern.

South Carolina's appellate courts have long supported extending "great deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Historic Charleston Found. v. Krawcheck*, 313 S.C. 500, 505, 443 S.E.2d 401, 405 (Ct. App. 1994) (citing Purdy v. Moise, 223 S.C. 298, 75 S.E.2d 605 (1953)). Such deference should be extended to County staff in this case. Therefore, the BZA should defer to the County staff's well-reasoned and well-supported decision to issue the Zoning Permit for vape retail sales only, affirm the issuance of the Zoning Permit on March 24, 2025, and **deny** the Appeal of Administrative Decision at its meeting on June 2, 2025.

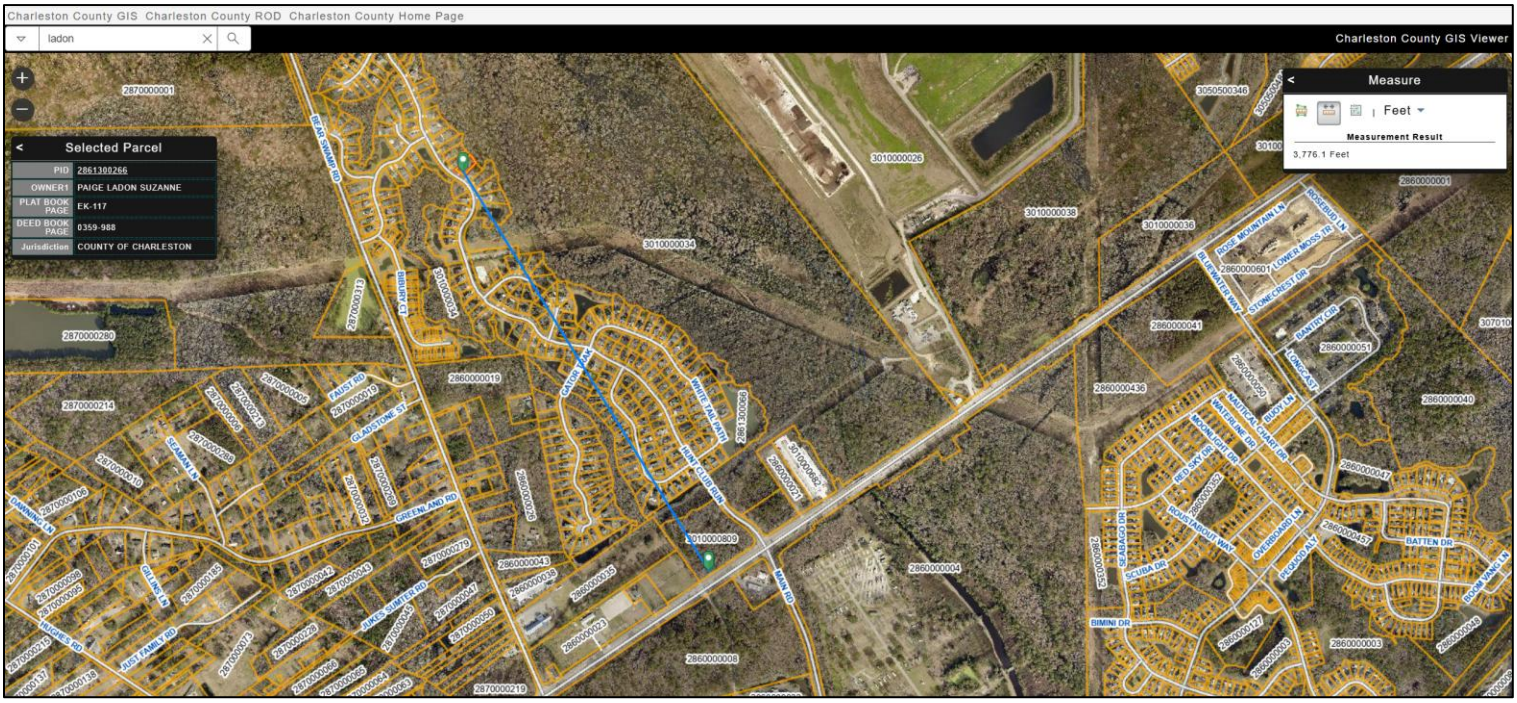
Finally, HCM disputes Ms. Paige possesses standing to bring this Appeal of Administrative Decision. In her filing, Ms. Paige claims a "substantial interest" in the enforcement of the Hunt Club PD, as amended, due to her owning property in the Hunt Club neighborhood. However, this misstates the correct statutory standing test governing appeals to the BZA. It is not a "substantial interest" standard, rather, S.C. Code Ann. § 6-29-800(B) requires an appellant be an "aggrieved" party. This is a much more exacting standard. The South Carolina Supreme Court has long held as follows:

> [A]n aggrieved party is one who is injured in a legal sense; one who has suffered an injury to person or property. . . . [A]n aggrieved party with[in the meaning of the] statute relating to appeals is a person who is aggrieved by the judgment or decree when it operates on his rights of property or bears directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation.

Ralph v. McLaughlin, 432 S.C. 640, 649, 856 S.E.2d 154, 158 (2021) (citing *Cisson v. McWhorter*, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970)).

According to the Charleston County GIS website, Ms. Paige's property (TMS No. 286-13-00-266) is located approximately 3,776 feet (0.72 miles) from the Property, as confirmed by the screen shot below. She does not own property adjacent to or in the vicinity of the Property. Her status as a property owner within the Hunt Club neighborhood, in and of itself, does not rise to the level on an "aggrieved" party under South Carolina law. The Appeal of Administrative Decision does not allege how the opening of a vape shop directly impacts her property rights. A mere interest

in the alleged correct interpretation of the Hunt Club PD, as amended, does not make her an "aggrieved" party. If that were the case, it would open the door to hundreds of property owners similarly situated to file an appeal any time a permit is issued to a business they do not like. It appears Ms. Paige does not like vape shops for personal reasons. This falls far short of what is necessary under South Carolina law to be an "aggrieved" party for purposes of S.C. Code Ann. § 6-29-800(B).

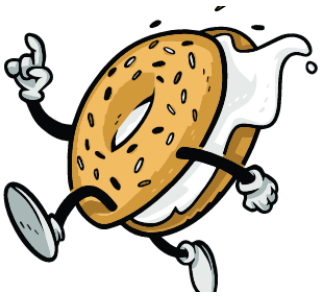


HCM reserves all rights. If you have any questions, please do not hesitate to contact me.

Respectfully,

McCULLOUGH KHAN APPEL

Ross A. Appel



JEFF'S Bagel Run

April 23, 2025

Charleston County

RE: Hunt Club Village – Chillaxe Vapors

To Whom It May Concern,

As the owner and operator of Jeff's Bagel Run at Hunt Club Village, I am reaching out regarding the concerns raised about Chillaxe Vapors, a business facing protests due to its sale of vape products.

While I understand that individuals may hold personal opinions on vaping, it is important to recognize that vape sales are legal. I find it concerning that a lawful business could face obstruction based purely on personal preference rather than legal grounds.

I fully support the County in upholding existing laws and allowing this tenant to operate without undue interference. No business should be prevented from opening if it complies with regulations and operates within the bounds of the law.

Thank you for your time and consideration.

Best regards,

Matt Andrews, Owner/GM

Jeff's Bagel Run SC

CHARLESTON
ORAL and FACIAL SURGERY

Edward R. Strauss, DMD, MD
Aaron P. Sarathy, DMD
A. Drane Oliphant, DMD, MD
D. Graham Lee, DMD
M. Kinon Lecholop, DMD, FACS

April 24, 2025

Charleston County

RE: Hunt Club Village; Chillaxe Vapors

To Whom it May Concern:

I am an owner and operator of Charleston Oral and Facial Surgery. We have 8 locations in the Lowcountry, one location being at Hunt Club Village. It has come to my attention that a business trying to locate within this center is being protested based on its use.

My business partner and I are unequivocally in support of any lawful tenant with a legal use opening within this center and co-existing with us, including the tenant that is in the center of this debate and referenced above. We support the county's pre-established position of support by issuing the permit for this tenant, and the landlord's desire to move forward and allow this tenant to open for business at Hunt Club Village.

Thank you,

Drane Oliphant DMD, MD

Co-Owner, Charleston Oral and Facial Surgery

www.charlestonoralandfacialsurgery.com • Phone: 843-762-9028 • Fax: 843-762-9030

125 C Wappoo Creek Drive, # 1, Charleston, SC 29412
2080 Royle Road, Summerville, SC 29486
75 Baylor Drive, # 280, Bluffton, SC 29910
3070 Hwy 17 North, # 102, Mt. Pleasant, SC 29466
497 W. Butternut Road, Summerville, SC 29483
3700 Ingleside Boulevard, # 101, Ladson SC 29456

1178 Bees Ferry Rd, Ste 102C
Johns Island, SC 29455

HOLY CITY Pharmacy LLC
ESTABLISHED 2018

phone 854-465-6337
fax 854-465-6339

April 22, 2025

Charleston County

RE: Hunt Club Village – Chillaxe Vapors

To Whom It May Concern:

I am the owner and operator of Holy City Pharmacy, LLC, and I have a location at Hunt Club Village. It has come to my attention that a business located in Building A, Chillaxe Vapors, is being protested because they sell vape products. As vape use is not illegal, I find it troubling that a citizen can complain and potentially obstruct the lawful business of another citizen.

I support the County in abiding by the law and allowing this tenant to open in this center. I do not believe anyone should have the right to block a legal business from operating based on personal preference.

Thank you,

Sherry Shea Phillips, PharmD
Owner/Pharmacist
Holy City Pharmacy, LLC

April 22, 2025
Charleston County
RE: Hunt Club Village – Chillaxe Vapors

To Whom it May Concern:
I am a tenant at Hunt Club Village and have learned that one of my neighbors may not be allowed to open here because they plan to sell vape products. I understand the use is legal and support the County in abiding by the law and allowing this tenant to open in this center. I do not vape, but I do not believe it is my right to block a legal business from operating based on my personal preference.
Thank you,

Armando Navarro
Owner, Honeycomb Brunch & Breakfast

4-24-2025

The KICKIN' CHICKEN 1997

April 23, 2025
Charleston County
RE: Hunt Club Village – Chillaxe Vapors

To Whom it May Concern:

I am the owner and operator of The Kickin' Chicken restaurants. We have 6 locations in the greater Charleston area...one location being in the Hunt Club Village. It has come to my attention that a certain business, Chillaxe Vapors, is being protested because they sell vape products. As vape use is not illegal, and I find it troubling that a single citizen can complain and potentially obstruct the lawful business of another citizen.

I fully support Charleston County in abiding by the law and allowing this tenant to open for business in the Hunt Club center. I do not believe any one person should have the right to block a legal business from operating based on their own personal preference. That is not how a democracy works. Thank you for your time.

Best Regards,

Chip Roberts

Chip Roberts
Co-Founder / Co-Owner, The Kickin' Chicken

Re: Hunt Club Village

Date: 04/24/2025

To Whom It May Concern:

I am writing to express my full support for Chillaxe Vapor as they seek to open an additional retail location. Chillaxe Vapor has been a tenant at 9470 B-C US Highway 78, Ladson, SC 29456 since September 2023, and during this time, they have proven to be an exceptional business owner and a valued member of our tenant community.

Their business has been well-maintained, professional, and compliant with all lease terms and regulations. Rent payments have always been made on time, and they have demonstrated a consistent commitment to the upkeep of their space, contributing positively to the overall appearance and reputation of the shopping center.

Furthermore, Chillaxe Vapor has shown respect and professionalism in all dealings with neighboring tenants and management. Their operation has not generated any complaints and has, in fact, contributed to foot traffic and vibrancy in the center.

Based on their performance and reliability, I have every confidence in Chillaxe Vapor's ability to successfully operate an additional location and be an asset to any property owner or landlord they work with. I highly recommend them without hesitation.

If you have any further questions, please feel free to contact me directly.

Sincerely,

Nathaniel Jackson

Owner
Charleston Brace Company, LLC
Office: (843)871-0600
Email: njackson@charlestonbrace.com

ATLANTA COMMERCIAL
REAL ESTATE BROKERS

Re: Hunt Club Village

April 23, 2025

To Whom it May Concern,

I am writing on behalf of my client, Chillaxe Vapor, who is pursuing the lawful establishment of a vapor retail shop within the Hunt Club Village. We understand that there has been some pushback from a community member; however, we respectfully submit this letter to clarify the basis and merit of the business venture.

My colleague & I have represented the owner of Chillaxe Vapors in multiple business transactions in both South Carolina and Georgia over the past two years. The client has always abided by state and local laws and conducted business is a respectful and courteous manner within the communities of their business locations.

It is important to recognize that personal opinions or preferences- while always valid on an individual level - should not be used as grounds to impede a legal business from operating. Our client's use complies fully with current zoning regulations, property guidelines, and municipal codes. In fact, the retail use has already been deemed permissible under existing statutes.

The success of commercial centers relies on a diversity of tenants that attract a borad customer base, without personal judgement and with objectivity and fairness. We request that the matter be evaluated based on factual criteria and regulatory standards rather than subjective sentiment. Our client is committed to operating with integrity, maintaining a clean and professional storefront, and contributing to the community's commercial growth.

Sincerely,

Angie McCanham
Commercial Realtor
Certified Residential Appraiser

Atlanta Commercial
Real Estate Brokers
678-520-1692
Angie@Atlcommercial.net

SOUTHSIDE
Animal Hospital

1188 Bees Ferry Rd

Johns Island, SC 29455

(843) 556-6969

reception@southsideah.org

April 23rd, 2025

Charleston County

RE: Hunt Club Village – Chillaxe Vapors

To Whom it May Concern:

I am the owner of Southside Animal Hospital located at Hunt Club Village. It has come to my attention that a business located in Building A, Chillaxe Vapors, is being protested because they sell vape products. As vape use is not illegal, I find it troubling that a citizen can complain and potentially obstruct the lawful business of another citizen.

I support the County in abiding by the law and allowing this tenant to open in this center. I do not believe anyone should have the right to block a legal business from operating based on personal preference.

Thank you,

W Brock Sauls DVM

Brock Sauls, DVM
Southside Animal Hospital

Exhibit 13

South Carolina General Assembly
125th Session, 2023-2024

Download This Bill in Microsoft Word format

A38, R46, H3681

STATUS INFORMATION

General Bill
Sponsors: Reps. West, Long, Rutherford, Bannister, Bradley, Chumley, Hiott, Hixon, Atkinson and Kilmartin
Companion/Similar bill(s): 414, 3483
Document Path: LC-0123VR23.docx

Introduced in the House on January 12, 2023
Introduced in the Senate on April 6, 2023
Last Amended on May 3, 2023
Currently residing in the House

Summary: Omnibus Tobacco Enforcement Act of 2023

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/12/2023	House	Introduced and read first time (House Journal-page 335)
1/12/2023	House	Referred to Committee on **Medical, Military, Public and Municipal Affairs** (House Journal-page 335)
3/30/2023	House	Committee report: Favorable **Medical, Military, Public and Municipal Affairs** (House Journal-page 15)
4/3/2023		Scrivener's error corrected
4/5/2023	House	Member(s) request name added as sponsor: Atkinson, Kilmartin
4/5/2023	House	Read second time (House Journal-page 212)
4/5/2023	House	Roll call Yeas-90 Nays-2 (House Journal-page 212)
4/6/2023	House	Read third time and sent to Senate (House Journal-page 30)
4/6/2023	House	Roll call Yeas-98 Nays-4 (House Journal-page 31)
4/6/2023	Senate	Introduced and read first time (Senate Journal-page 36)
4/6/2023	Senate	Referred to Committee on **Medical Affairs** (Senate Journal-page 36)
4/27/2023	Senate	Polled out of committee **Medical Affairs** (Senate Journal-page 8)
4/27/2023	Senate	Committee report: Favorable **Medical Affairs** (Senate Journal-page 8)
5/2/2023	Senate	Debate adjourned (Senate Journal-page 34)
5/2/2023	Senate	Roll call Ayes-32 Nays-9 (Senate Journal-page 34)
5/3/2023	Senate	Amended (Senate Journal-page 183)
5/3/2023	Senate	Read second time (Senate Journal-page 183)

Date	Body	Action Description with journal page number
5/3/2023	Senate	Roll call Ayes-26 Nays-16 (Senate Journal-page 183)
5/4/2023	Senate	Read third time and returned to House with amendments (Senate Journal-page 47)
5/4/2023		Scrivener's error corrected
5/10/2023	House	Concurred in Senate amendment and enrolled (House Journal-page 32)
5/10/2023	House	Roll call Yeas-95 Nays-5 (House Journal-page 33)
5/11/2023		Ratified R 46
5/16/2023		Signed By Governor
5/25/2023		Effective date See Act for Effective Date
5/25/2023		Act No. 38

View the latest legislative information at the website

VERSIONS OF THIS BILL

1/12/2023
3/30/2023
4/3/2023
4/27/2023
5/3/2023
5/4/2023

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

(A38, R46, H3681)

AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING SECTION 44-95-45 SO AS TO PROVIDE THAT POLITICAL SUBDIVISIONS OF THIS STATE MAY NOT ENACT ANY LAWS, ORDINANCES, OR RULES PERTAINING TO INGREDIENTS, FLAVORS, OR LICENSING OF CIGARETTES, ELECTRONIC SMOKING DEVICES, E-LIQUID, VAPOR PRODUCTS, OR TOBACCO PRODUCTS AND TO PROVIDE THAT SUCH LAWS, ORDINANCES, AND RULES ENACTED BY A POLITICAL SUBDIVISION PRIOR TO DECEMBER 31, 2020, ARE NOT SUBJECT TO THE PREEMPTION IMPOSED BY THIS ACT; BY AMENDING SECTIONS 16-17-500, 16-17-501, 16-17-502, 16-17-503, 16-17-504, AND 16-17-506, RELATING TO THE PREVENTION OF YOUTH ACCESS TO TOBACCO AND OTHER NICOTINE PRODUCTS, SO AS TO CHANGE THE DEFINITION OF "TOBACCO PRODUCT" AND ADD DEFINITIONS FOR "TOBACCO RETAIL ESTABLISHMENT" AND "TOBACCO RETAILER"; TO PROHIBIT MINORS FROM ENTERING A TOBACCO RETAIL ESTABLISHMENT; TO CHANGE CERTAIN PENALTIES FOR TOBACCO RETAILER VIOLATIONS; TO REQUIRE TOBACCO RETAILERS TO SECURE AND DISPLAY A TOBACCO RETAIL SALES LICENSE FROM THE DEPARTMENT OF REVENUE AND TO ESTABLISH AN ASSOCIATED FEE AND PENALTY FOR VIOLATIONS; TO MAKE TECHNICAL CORRECTIONS; AND FOR OTHER PURPOSES; BY AMENDING SECTION 59-1-380, RELATING TO THE MANDATORY PUBLIC SCHOOL TOBACCO-FREE CAMPUS POLICY, SO AS TO MAKE CONFORMING CHANGES; AND BY ADDING SECTION 12-36-511 SO AS TO REQUIRE RETAILERS TO PROVIDE THE DEPARTMENT OF REVENUE CERTAIN TOBACCO-RELATED INFORMATION IN THEIR RETAIL LICENSE APPLICATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

Citation

SECTION 1. This act may be cited as the "Omnibus Tobacco Enforcement Act of 2023".

Preemption

SECTION 2. Chapter 95, Title 44 of the S.C. Code is amended by adding:

Section 44-95-45.(A) Political subdivisions of this State may not enact any laws, ordinances, or rules pertaining to ingredients, flavors, or licensing, beyond a general business license, related to the sale of the following products:

(1) cigarettes, as defined in Section 12-21-620;

(2) electronic smoking devices, e-liquid, vapor products, or tobacco products, each as defined in Section 16-17-501; or

(3) any other product containing nicotine that can be ingested into the body by chewing, smoking, absorbing, dissolving, inhaling, or by any means.

(B) Nothing in this section shall be construed to interfere with a political subdivision's authority to determine its own public-use policies relating to any of the products referenced in this section.

Preemption exemptions

SECTION 3. Laws, ordinances, or rules enacted by political subdivisions of this State prior to December 31, 2020, pertaining to ingredients, flavors, or licensing, related to the sale of cigarettes, electronic smoking devices, e-liquid, vapor products, tobacco products, or any other products containing nicotine that can be ingested into the body by chewing, smoking, absorbing, dissolving, inhaling, or by any means, and municipal code amendments to said laws, ordinances, or rules, are exempt from the preemption imposed by this act. Nothing in this act shall be construed to interfere with a political subdivision's authority to determine its own public-use policies relating to any of the products referenced in this act.

Land use regulation, local authority

SECTION 4. Nothing in this act shall be construed to interfere with a political subdivision's authority under Chapter 29, Title 6, including, without limitation, with respect to land use regulation, land development regulation, zoning, or permitting.

Tobacco product sale prohibitions, minors

SECTION 5. Section 16-17-500 of the S.C. Code is amended to read:

Section 16-17-500. (A) It is unlawful for an individual to sell, furnish, give, distribute, purchase for, or provide a tobacco product to a minor under the age of eighteen years.

(B) It is unlawful to sell a tobacco product to an individual without a demand of proper proof of age. Failure to demand identification to verify an individual's age is not a defense to an action initiated pursuant to this subsection. Proof that is demanded, is shown, and reasonably is relied upon for the individual's proof of age is a defense to an action initiated pursuant to this subsection.

(C) A person engaged in the sale of tobacco products made through the Internet or other remote sales methods shall perform an age verification through an independent, third-party age verification service that compares information available from public records to the personal information entered by the individual during the ordering process that establishes the individual is eighteen years of age or older and shall use a method of mailing, shipping, or delivery that requires the signature of a person at least eighteen years of age before a

tobacco product will be released to the purchaser, unless the Internet or other remote sales methods employ the following protections to ensure age verification:

(1) the customer creates an online profile or account with personal information including, but not limited to, name, address, social security information, and a valid phone number, and that personal information is verified through publicly available records; or

(2) the customer is required to upload a copy of his government-issued identification in addition to a current photograph of the customer; and

(3) delivery is made to the customer's name and address.

(D) It is unlawful to sell a tobacco product through a vending machine.

(E)(1) An individual who knowingly violates a provision of subsections (A), (B), (C), (D), or (J) in person, by agent, or in any other way is guilty of a misdemeanor and, upon conviction, must be:

(a) for a first offense, fined not less than two hundred dollars and not more than three hundred dollars;

(b) for a second and subsequent offense, fined not less than four hundred dollars and not more than five hundred dollars, imprisoned for not more than thirty days, or both.

(2) In lieu of the fine, the court may require an individual, at the expense of the tobacco retailer or tobacco retail establishment, to successfully complete a Department of Alcohol and Other Drug Abuse Services-approved merchant tobacco enforcement education program.

(3) A tobacco retailer who knowingly violates or permits an employee to violate a provision of subsections (A), (B), (C), (D), or (J) in the tobacco retail establishment is subject to an administrative penalty as follows:

(a) for a first violation, issued a warning;

(b) for a second violation within a thirty-six-month period, fined not less than three hundred dollars;

(c) for a third violation within a thirty-six-month period, fined not less than six hundred dollars;

(d) for a fourth and subsequent violation within a thirty-six-month period, fined not less than one thousand two hundred dollars and the tobacco retailer is prohibited from selling or distributing tobacco products for a period of at least seven days and no greater than thirty days. For purposes of this subsection, a tobacco retailer that knowingly sells or distributes during the period that the tobacco retailer is prohibited from selling or distributing is subject to a fine of not more than two hundred dollars and is prohibited from selling or distributing tobacco products for an additional period of seven days; and

(e) A tobacco retailer or tobacco retail establishment may request a contested case hearing for the fine or for the prohibition from selling or distributing tobacco products in front of the South Carolina Administrative Law Court, pursuant to the South Carolina Administrative Procedures Act, Section 1-23-310 et, seq.

(4) In lieu of the fine and prohibition from selling or distributing tobacco products, the court may require the tobacco retailer or tobacco retail establishment's employees, at the expense of the tobacco retailer or tobacco retail establishment, to successfully complete a Department of Alcohol and Other Drug Services-approved merchant tobacco enforcement education program.

(5) Failure to require identification for the purpose of verifying a person's age is prima facie evidence of a violation of this section.

(6) Local law enforcement and the State Law Enforcement Division may enforce subsections (A), (B), (C), (D), (E), or (J). The Department of Revenue must administer the provisions of subsection (E)(3) and the State Law

Enforcement Division may enforce subsection (E)(3).

(7) A violation of subsection (A), (B), (C), (D), or (J) is prima facie evidence of a violation of subsection (E)(3). The Department of Revenue is authorized to present evidence of a violation of subsection (A), (B), (C), (D), or (J) to establish the violation of subsection (E)(3). Evidence of compliance with a merchant tobacco enforcement education program is an affirmative defense to subsection (E)(3)(a) and (b).

(F)(1)(a) A minor under the age of eighteen years must not present or offer proof of age that is false or fraudulent for the purpose of purchasing or possessing these products.

(b) A minor under the age of eighteen years is prohibited from entering a tobacco retail establishment that has as its primary purpose the sale of tobacco products, unless the minor is actively supervised and accompanied by an adult.

(c) The provisions of this subsection do not apply to a minor under the age of eighteen who is recruited and authorized by a law enforcement agency to test an establishment's compliance with laws relating to the unlawful transfer of tobacco products. The testing must be conducted under the direct supervision of a law enforcement agency, and the law enforcement agency must have the consent of a parent or legal guardian of the minor.

(2) A minor who knowingly misrepresents his age to purchase or attempt to purchase a tobacco product commits a noncriminal offense and is subject to a civil fine of twenty-five dollars.

(3) In lieu of the civil fine, the court may require a minor to successfully complete a Department of Health and Environmental Control-approved smoking cessation or tobacco prevention program, a South Carolina Department of Alcohol and other Drug Abuse Services tobacco prevention program, or to perform not more than five hours of community service for a charitable institution.

(4) A violation of this subsection is not a criminal or delinquent offense and no criminal or delinquent record may be maintained. A minor may not be taken into custody, arrested, placed in jail or in any other secure facility, committed to the custody of the Department of Juvenile Justice, or found to be in contempt of court for a violation of this subsection or for the failure to pay a fine, successfully complete a smoking cessation or tobacco prevention program, or perform community service.

(5) A violation of this subsection is not grounds for denying, suspending, or revoking an individual's participation in a state college or university financial assistance program including, but not limited to, a Life Scholarship, a Palmetto Fellows Scholarship, or a need-based grant.

(6) The uniform traffic ticket, established pursuant to Section 56-7-10, may be used by law enforcement officers for a violation of this subsection, including civil penalties and warnings. A violation of subsection (F) does not constitute a criminal offense. A law enforcement officer issuing a uniform traffic ticket pursuant to this subsection must immediately seize the tobacco product.

(G) This section does not apply to the possession of a tobacco product by a minor working within the course and scope of his duties as an employee or participating within the course and scope of an authorized inspection or compliance check.

(H) Jurisdiction to hear a violation of this section is vested exclusively in the municipal court and the magistrates court. A hearing pursuant to subsection (F) must be placed on the municipal or magistrates court's appropriate docket for traffic violations, and not on the court's docket for civil matters. For the purposes of contesting a tobacco retailer being fined or prohibited from selling or distributing tobacco products under subsection (E)(3), the jurisdiction is vested in the South Carolina Administrative Law Court.

(I) A retail establishment must train all tobacco retail sales employees regarding the unlawful distribution of tobacco products to minors.

(J)(1) A tobacco retail establishment that has as its primary purpose the sale of tobacco products must prohibit minors under the age of eighteen years from entering the tobacco retail establishment, unless the minor is actively supervised and accompanied by an adult, and shall determine whether a person is at least eighteen years of age by requiring proper proof of age in accordance with subsection (B), prior to the sale of a tobacco product.

(2) A tobacco retail establishment described in item (1) must conspicuously post on all entrances to the establishment the following:

(a) a sign in boldface type that states "NOTICE: It is unlawful for a person under eighteen years of age to enter this store, unless the minor is actively supervised and accompanied by an adult. Age will be verified prior to sale.";

(b) a sign printed in letters and numbers at least one-half inch high that displays a toll free number for assistance to callers in quitting smoking, as determined by the Department of Health and Environmental Control.

(3) For purposes of this section, whether a tobacco retail establishment has as its primary purpose the sale of tobacco products must be based on the totality of the circumstances. Facts that must be considered, but not be limited to, are the tobacco retail establishment's business filings, business name and signage, marketing and other advertisements, and the percentage of revenue and inventory directly related to the sale of tobacco products.

(K) Notwithstanding any other provision of law, a violation of this section does not violate the terms and conditions of an establishment's beer and wine permit and is not grounds for revocation or suspension of a beer and wine permit.

Definitions

SECTION 6. Section 16-17-501 of the S.C. Code is amended to read:

Section 16-17-501. As used in this section and Sections 16-17-500, 16-17-502, 16-17-503, 16-17-504, and 16-17-506:

(1) "Distribute" means to sell, furnish, give, provide, or attempt to do so, whether gratuitously or for any type of compensation, tobacco products, including tobacco product samples, cigarette paper, or a substitute for them, to the ultimate consumer.

(2) "Distribution" means the act of selling, furnishing, giving, providing, or attempting to do so, whether gratuitously or for any type of compensation, tobacco products, including tobacco product samples, cigarette paper, or a substitute for them, to the ultimate consumer.

(3) "Electronic smoking device" means any device that may be used to deliver any aerosolized or vaporized substance, including e-liquid, to the person inhaling from the device including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Electronic smoking device" includes any component, part, or accessory of the device, and also includes any substance intended to be aerosolized or vaporized during the use of the device whether or not the substance includes nicotine. "Electronic smoking device" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(4) "E-liquid" means a substance that:

(a) may or may not contain nicotine;

(b) is intended to be vaporized and inhaled using an electronic smoking device; and

(c) is a legal substance under the laws of this State and the laws of the United States.

"E-liquid" does not include cannabis or CBD as defined under the laws of this State and the laws of the United States unless it also contains nicotine.

(5) "Proof of age" means a driver's license or identification card issued by this State or any other state or a United States Armed Services identification card.

(6) "Sample" means a tobacco product distributed to members of the general public at no cost for the purpose of promoting the products.

(7) "Sampling" means the distribution of samples to members of the general public in a public place.

(8) "Tobacco product" means:

(a) any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;

(b) any electronic smoking device as defined in this section and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or

(c) any component, part, or accessory of subitem (a) or subitem (b), whether or not any of these contains tobacco or nicotine including, but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(9) "Tobacco retail establishment" means any place of business where tobacco products are available for sale to the general public. The term includes, but is not limited to, grocery stores, tobacco product shops, kiosks, convenience stores, gasoline service stations, bars, and restaurants.

(10) "Tobacco retailer" means any person, partnership, joint venture, society, club, trustee, trust association, organization, or corporation who owns, operates, or manages any tobacco retail establishment. Tobacco retailer does not mean the nonmanagement employees of any tobacco retail establishment.

Tobacco product samples

SECTION 7. Section 16-17-502 of the S.C. Code is amended to read:

Section 16-17-502. (A) It is unlawful for a person to distribute a tobacco product sample to a person under the age of eighteen years.

(B) A person engaged in sampling shall demand proof of age from a prospective recipient if an ordinary person would conclude on the basis of appearance that the prospective recipient may be under the age of eighteen years.

(C) A person violating this section is subject to the penalties set forth in Section 16-17-500(E).

(D) A tobacco retail establishment violating this section is subject to administrative penalties as provided in Section 16-17-500(E)(3).

Enforcement

SECTION 8. Section 16-17-503 of the S.C. Code is amended to read:

Section 16-17-503. (A) The State Law Enforcement Division may conduct unannounced compliance checks for violations of Sections 16-17-500, 16-17-502, and 16-17-506. A person under the age of eighteen may be recruited and authorized by the State Law Enforcement Division to test the tobacco retail establishment's compliance with Sections 16-17-500, 16-17-502, and 16-17-506. The testing must be under direct supervision of

a law enforcement agency and with the consent of the person's parent or guardian. The State Law Enforcement Division must notify the Department of Revenue of violations under Section 16-17-500(E)(3). The results of compliance checks resulting in a tobacco retailer being prohibited from selling or distributing tobacco products must be published by the Department of Revenue annually and made available to the public upon request. Penalties collected pursuant to Sections 16-17-500, 16-17-502, and 16-17-506 must be used to offset the costs of enforcement.

(B) The Director of the South Carolina Department of Alcohol and Other Drug Abuse Services shall conduct random, unannounced inspections at locations where tobacco products are sold and at locations that have notified the Department of Revenue under Section 12-36-511 that the tobacco retailer sells or distributes tobacco products. A person under the age of twenty-one may be recruited and authorized by a law enforcement agency on behalf of the Department of Alcohol and Other Drug Abuse Services to test a tobacco retail establishment's compliance with federal laws relating to the unlawful sale of tobacco to minors for the purposes of federal reporting requirements. The Director of South Carolina Department of Alcohol and Other Drug Abuse Services shall provide for the preparation of and submission annually to the Secretary of the United States Department of Health and Human Services the report required by Section 1926 of the federal Public Health Service Act (42 U.S.C. 300x-26) and otherwise is responsible for ensuring the state's compliance with that provision of federal law and implementing regulations promulgated by the United States Department of Health and Human Services.

Enforcement

SECTION 9. Section 16-17-504 of the S.C. Code is amended to read:

Section 16-17-504. (A) Sections 16-17-500, 16-17-502, 16-17-503, and 16-17-506 must be enforced to ensure the eligibility for and receipt of federal funds or grants the State receives or may receive relating to the sections. Any laws, ordinances, or rules enacted pertaining to tobacco products may not supersede state law or regulation. Nothing in this section affects the right of any person having ownership or otherwise controlling private property to allow or prohibit the use of tobacco products on the property.

(B) Smoking ordinances in effect before the effective date of this act are exempt from the requirements of subsection (A).

E-liquid containers

SECTION 10. Section 16-17-506 of the S.C. Code is amended to read:

Section 16-17-506. (A) For purposes of this section, "container" means a bottle or other container of any kind that contains e-liquid and is offered for sale, sold, or otherwise distributed, or intended for distribution to consumers, but that does not include a cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the customer.

(B) It is unlawful to sell, hold for sale, or distribute a container of e-liquid unless:

(1) the container satisfies the requirements of 21 C.F.R. 1143.3, if applicable, for the placement of labels, warnings, or any other information upon a package of e-liquid that is to be sold within the United States;

(2) the container complies with child-resistant effectiveness standards under 16 C.F.R. 1700.15(b)(1) when tested in accordance with the requirements of 16 C.F.R. 1700.20; and

(3) the container complies with federal trademark or copyright laws.

(C) A person who knowingly sells, holds for sale, or distributes e-liquid containers in violation of subsection (B) is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than three years or fined not more than one thousand dollars, or both.

(D) In addition to the other penalties provided by law, law enforcement may seize and destroy or sell to the manufacturer, for export only, any containers in violation of this section.

(E) Any tobacco retailer or tobacco retail establishment that permits an employee to violate or knowingly violates subsection (B) is subject to the penalties in Section 16-17-500(E)(3).

Tobacco-free school campus policy

SECTION 11. Section 59-1-380 of the S.C. Code is amended to read:

Section 59-1-380. (A) Every local school district in the State shall implement and enforce a written policy prohibiting at all times the use of any tobacco product by any person in school buildings, in school facilities, on school campuses, and in or on any other school property owned or operated by the local school administrative unit. The policy also must prohibit the use of any tobacco product by persons attending a school-sponsored event at a location not listed in this subsection when in the presence of students or school personnel or in an area where smoking or other tobacco use is otherwise prohibited by law.

(B) The policy must include at least all of the following elements:

(1) adequate notice to students, parents or guardians, the public, and school personnel of the policy;

(2) posting of signs prohibiting at all times the use of tobacco products by any person in and on school property; and

(3) requirements that school personnel enforce the policy, including appropriate disciplinary action.

(C) Disciplinary actions for violating the policy may include, but not be limited to:

(1) for students: administrator and parent or legal guardian conference, mandatory enrollment in tobacco prevention education or cessation programs, community service, in-school suspension, suspension for extracurricular activities, or out-of-school suspension;

(2) for staff: verbal reprimand, written notification in personnel file, mandatory enrollment in tobacco prevention education, voluntary enrollment in cessation programs, or suspension;

(3) for contract or other workers: verbal reprimand, notification to contract employer, or removal from district property; and

(4) for visitors: verbal request to leave district property or prosecution for disorderly conduct for repeated offenses.

(D) The local school district shall collaborate with the Department of Health and Environmental Control, the Department of Alcohol and Other Drug Abuse Services, and the South Carolina Department of Education, as appropriate, to implement the policy, including as part of tobacco education and cessation programs and substance use prevention efforts.

(E) The policy may permit tobacco products to be included in instructional or research activities in public school buildings if the activity is conducted or supervised by the faculty member overseeing the instruction or research and the activity does not include smoking, chewing, inhaling, or otherwise ingesting the tobacco product.

(F) For purposes of this section "tobacco product" has the same meaning as defined in Section 16-17-501.

Disclosure, sale of tobacco products by retailer

SECTION 12. Chapter 36, Title 12 of the S.C. Code is amended by adding:

Section 12-36-511. A retailer must submit whether it sells tobacco, tobacco products, including electronic smoking devices or e-liquid, as defined in Section 16-17-501(3) and (4), or any other product used for smoking with its retail application. A retailer not previously designated as a tobacco retail establishment, as defined in Section 16-17-501, shall notify the department in the manner prescribed by the department prior to selling tobacco products. For the purposes of this section, tobacco retailers and tobacco retail establishments that have a retail license must supplement their retail license application to notify the department that they sell or distribute tobacco or tobacco products. For the purposes of this section, a retailer that sells tobacco, tobacco products, or any other product used for smoking that does not disclose on their initial retail application or supplement their retail license application is subject to a fine of not more than two hundred dollars and must file within fifteen days of notification of a failure to file. A retailer that fails to file within fifteen days after the notification is subject to a fine of two thousand dollars.

Time effective

SECTION 13. This act takes effect ninety days after approval by the Governor except SECTION 2, SECTION 3, and SECTION 4 which take effect upon approval by the Governor.

Ratified the 11th day of May, 2023.

Approved the 16th day of May, 2023.

This web page was last updated on June 14, 2023 at 3:55 PM

Exhibit 14

No. 23-330

In The
Supreme Court of the United States

ANI CREATION, INC. D/B/A RASTA; ANI CREATION, INC. D/B/A WACKY T'S; BLUE SMOKE, LLC D/B/A DOCTOR VAPE; BLUE SMOKE, LLC D/B/A BLUE SMOKE VAPE SHOP; ABNME, LLC D/B/A BEST FOR LESS; KORETZKY, LLC D/B/A GRASSHOPPER; RED HOT SHOPPE, INC.; E.T. SPORTSWEAR, INC. D/B/A PACIFIC BEACHWEAR; MYRTLE BEACH GENERAL STORE, LLC; I AM IT, INC. D/B/A T-SHIRT KING; AND BLUE BAY RETAIL, INC. D/B/A SURF'S UP,

Petitioners,

v.

CITY OF MYRTLE BEACH BOARD OF ZONING APPEALS AND KEN MAY, ZONING ADMINISTRATOR FOR CITY OF MYRTLE BEACH,

Respondents.

On Petition For Writ Of Certiorari To The South Carolina Supreme Court

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

CITY OF MYRTLE BEACH BOARD OF ZONING APPEALS AND KEN MAY ZONING ADMINISTRATOR FOR THE CITY OF MYRTLE BEACH are not publicly held corporations.

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The South Carolina Supreme Court published Opinion affirming the Circuit Court opinion denying Petitioners' Appeal from the Board of Zoning Appeals for the City of Myrtle Beach. *Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals*, 440 S.C. 266, 890 S.E.2d 748 filed April 22, 2023, refiled substituted opinion June 28, 2023.

Ani Creation, Inc., et al. v. City of Myrtle Beach Board of Zoning Appeals, et al., Case No. 2020CP2600785, Horry County Court of Common Pleas, filed April 22, 2021.

Ani Creation, Inc., et al. v. Ken May, Zoning Administrator for the City of Myrtle Beach, Board of Zoning Appeals for the City of Myrtle Beach, filed January 16, 2020.

Ani Creation, Inc., et al. v. City of Myrtle Beach, et al., Case No. 4:18-cv-03517, United States District Court, District of South Carolina, Florence Division, Order filed Jan. 15, 2019; Order filed Aug. 17, 2020.

JURISDICTIONAL STATEMENT

Respondents do not dispute this Court's jurisdiction over this case pursuant to 28 U.S.C. § 1254(1) but deny that the case satisfies the standard set forth in Supreme Court Rule 10. Petitioner filed his Petition for Writ of Certiorari on September 28, 2023.

COUNTERSTATEMENT OF THE CASE

The case does not involve a matter of first impression. The exclusionary zoning issues and amortization zoning issues in the present case have been addressed by the courts. *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926); *Bugsy's, Inc. v. City of Myrtle Beach*, 340 S.C. 87, 530 S.E.2d 890 (2000); and *Centaur, Inc. v. Richland Cnty.*, 301 S.C. 374, 392 S.E.2d 165 (1990). Petitioners have misinterpreted South Carolina statutes and the City of Myrtle Beach's ordinances in connection with their zoning laws and procedures. The case does not conflict with the decision of another state court of last resort or of a United States Court of Appeals. The cases cited by Petitioners are inapposite or may be distinguished on their facts.

The present case arises from Petitioners' appeal to the City's board of zoning appeals (BZA) of a determination made by the City's zoning administrator that Petitioners' use of their stores to sell drug paraphernalia, CBD consumables, and sexually oriented merchandise in the City's Ocean Boulevard Entertainment Overlay District (OBEOD) violated a city zoning ordinance. The BZA's jurisdiction is limited to granting variances and to correcting factual or legal errors made by the zoning administrator. The BZA does not have the authority to determine the constitutionality of City ordinances. When Petitioners attacked the validity of the City's ordinance on constitutional grounds, the BZA did permit Petitioners and their attorney to proffer any evidence they had in support of their

claims that the ordinance violated Petitioners' constitutional rights. Petitioners made their proffer on the record through documents and the testimony of witnesses. Petitioners' proffer also included the deposition and cross examination of the zoning administrator.

After the BZA hearing adjourned, the BZA affirmed the zoning administrator and determined they did not have jurisdiction to determine the constitutionality of City ordinances. Petitioners then chose to appeal the BZA's order directly to the South Carolina Circuit Court. Petitioners' proffer was made part of Petitioners' record on appeal.

Petitioners could have attacked the zoning administrator's determination by attacking the zoning ordinance directly in the circuit court pursuant to S.C. Code Ann. § 6-29-840(B). That statute permits Petitioners to have a jury trial to assert any pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of appeals. Such a trial could have included a hearing consistent with the takings tests set forth in *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978). Instead of seeking such a trial, Petitioners chose the path of an appeal from the BZA order without seeking a *Penn Central* hearing. After the Circuit Court affirmed the BZA's order, Petitioners appealed that decision to the S.C. Supreme Court.

In their appeal to the S.C. Supreme Court Petitioners did raise a takings claim in a petition for rehearing. The Court examined the evidence proffered

by Petitioners at the BZA hearing and found the evidence was insufficient to establish a takings claim. See *Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals*, 440 S.C. 266, 890 S.E.2d 748 (2023).

Prior to the BZA appeal, Petitioners had filed a separate takings claim in a federal district court action when the zoning ordinance in question was enacted. However, the federal takings claim was dismissed without prejudice on the ground that the claim was not ripe. See *Ani Creation et al. v City of Myrtle Beach, et al.*, C/A No. 4:2018-cv-03517-SAL ECF #41. The district court cited *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985) as part of its authority. *Williamson* has now been overruled by *Knick v. Twp. of Scott, Pennsylvania*, 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019). Respondents contend that if the U.S. district court erred in dismissing Petitioners' takings claim, Petitioners' remedy is in federal district court.

Petitioners claim the zoning ordinance's amortization period was unreasonable. Petitioners' amortization claim is moot. In the present case Petitioners had nearly five years to come into compliance with the ordinance but failed to do so. The S.C. Supreme Court found that the amortization period in the zoning ordinance was reasonable. See *Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals*, 440 S.C. 266, 890 S.E.2d 748 (2023).

REASONS FOR DENYING THE PETITION

I. PETITIONERS' DUE PROCESS RIGHTS WERE NOT VIOLATED.

The present case originated on an appeal of an order from the City's BZA. Petitioners chose to appeal the City zoning administrator's determination of Petitioners' zoning violation directly to the City's BZA. Petitioners could have challenged the zoning administrator's determination by challenging constitutional validity of the ordinance in circuit court. § 6-29-840(B). The City's BZA does not have the jurisdiction to declare the ordinance enacted by a city council unconstitutional. Even though the BZA did not have jurisdiction to decide Petitioners' takings claims, it permitted Petitioners to make for the appellate record a proffer of their evidence in support of their takings claims. After considering Petitioners' takings claim in a Petition for a Rehearing, the South Carolina Supreme Court examined Petitioners' claim in the light of the tests in *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978). The Court determined that the evidence was not sufficient to establish a takings claim. *Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals*, 440 S.C. 266, 890 S.E.2d 748 (2023).

Petitioners claim South Carolina law prohibits Petitioners from presenting a constitutional takings claim before the City's BZA. Petitioners' claim is incorrect and misses the point. Petitioners did present their takings claim to the BZA and they were permitted to

proffer evidence to support their claim to create a record on appeal to the circuit court. However, the BZA only functions to grant variances and to correct errors made by the zoning administrator in applying the City's zoning ordinances. The BZA cannot create new ordinances and it cannot nullify existing ordinances. The BZA found that it did not have jurisdiction to decide Petitioners' constitutional claims. Petitioners' proffer was preserved for Petitioners' appeals to the law courts.

Petitioners did attack the OBEOD ordinance on constitutional grounds in circuit court. However, Petitioners did not request a separate hearing to examine whether the application of the OBEOD ordinance to Petitioners constituted a taking under *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978). Instead, Petitioners claimed the circuit court ignored the evidence on constitutional issues that they presented to the BZA.

II. *HORNE V. DEP'T OF AGRIC.*, IS INAPPOSITE TO THE PRESENT CASE.

In *Horne v. Dep't of Agric.*, 576 U.S. 350, 352, 135 S. Ct. 2419, 2422, 192 L. Ed. 2d 388 (2015) the Court found that a clear physical taking occurred by the reserve requirement imposed by the Raisin Committee of the Department of Agriculture. When there has been a physical appropriation, the courts do not ask whether it deprives the owner of all economically valuable use of the item taken. *Tahoe-Sierra*

Preservation Council, 535 U.S., at 323, 122 S. Ct. 1465; see *id.*, at 322, 122 S. Ct. 1465. When the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner, regardless of whether the interest that is taken constitutes an entire parcel or merely a part thereof. *Id.*

In the present case Petitioners claim the ordinance effected a regulatory taking of their property without just compensation, specifically citing the three-factor test set forth by the United States Supreme Court in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978) (explaining that, in regulatory takings cases, courts should examine (1) the economic impact of the regulation on the affected property; (2) the extent to which the regulation interfered with the property owner's investment-backed expectations; and (3) the character of the government action).

Regulatory takings claims are "essentially ad hoc, factual inquiries" that "depend largely upon the particular circumstances in that case." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 322, 336, 122 S. Ct. 1465, 152 L. Ed. 2d 517 (2002) (cleaned up); see also *Dunes W. Golf Club, L.L.C. v. Town of Mt. Pleasant*, 401 S.C. 280, 314, 737 S.E.2d 601, 619 (2013) (explaining the question of whether a taking has occurred is a question of law that this Court must review de novo). After reviewing Petitioners' proffer, the Court found Petitioners had not proffered any of the facts necessary to support a takings claim.

For example, Petitioners did not quantify the economic impact of the ordinance on their properties—the first *Penn Central* factor. See *Penn Central*, 438 U.S. at 124, 98 S. Ct. 2646. Rather, Petitioners merely claimed the impact is a "significant amount" that is "dire" and "severe."

The S.C. Supreme Court was left to speculate about the facts necessary to support Petitioners' takings claim. The Court rejected Petitioners' claim that the ordinance took their property without just compensation in violation of the Fifth Amendment to the United States Constitution. *Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals*, 440 S.C. 266, 289–90, 890 S.E.2d 748, 760 (2023). The Court's analysis and decision in connection with Petitioners' takings claim was correct. *Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 737 S.E.2d 601 (2013).

Petitioners cite *Helena Sand and Gravel, Inc. v. Lewis & Clark Cnty. Plan. & Zoning Comm'n*, 290 P. 3d 691, 699-700 (Mont. 2012), cert. denied, 569 U.S. 1017, 133 S. Ct. 2768 (2013) in support of their claim that the S.C. Supreme Court should have remanded the case to the circuit court for a takings claim. Respondents contend *Helena Sand* can be distinguished because it did not involve a proffer of evidence in support of a takings claim and a finding by the Montana Supreme Court that the proffered evidence did not support a takings claim.

III. THE OBEOD DOES NOT VIOLATE EQUAL PROTECTION AND IS NOT A TAKING.

Petitioners claim the ordinance violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Specifically, Petitioners claim the creation of the OBEOD was unfair to them because they cannot sell certain merchandise that similar stores can continue selling in other areas of the city. Petitioners claim the creation of the OBEOD was arbitrary and capricious because it treated them differently from other, similarly situated businesses throughout the city. *Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals*, 440 S.C. 266, 281, 890 S.E.2d 748, 755–56 (2023). The S.C. Supreme analyzed Petitioners' claims in depth and found Petitioners failed to demonstrate the ordinance violated their right to equal protection and affirmed the circuit court's decision on this basis. Respondents adopt the Court's findings as their response to Petitioners' claims.

Petitioners cite the cases of *Walgreens Co. v. City & Cty. of San Francisco*, 185 Cal. App. 4th 424, 110 Cal. Rptr. 3d 498 (2010) as authority for their equal protection claim. Respondents contend that the case is distinguishable on its facts. In *Walgreens*, the City & County of San Francisco enacted an ordinance that prohibited businesses such as Walgreens that were licensed as pharmacies with accessory sales from selling tobacco products throughout the city. However, the ordinance exempted from the tobacco prohibition "big

box" stores such as Costco or supermarkets such as Safeway.

Both Costco and Safeway contained licensed pharmacies in their stores. In the appeal, the City & County of San Francisco admitted that businesses such as Walgreens that were licensed as pharmacies and "big box" stores such as Costco or supermarkets such as Safeway that contained licensed pharmacies were similarly situated. The California Court of Appeals indicated that the different treatment of licensed pharmacies and general stores which contained licensed pharmacies could be found to be a distinction without a difference.

Petitioners in the OBEOD are not similarly situated to other businesses in other zones. Unlike the ordinance in *Walgreens* which may have impacted similar businesses throughout the city, the present case involves one different overlay zoning district. The city contends the OBEOD area is different from other areas in the city because the historic family friendly amenities and pedestrian activities that exist in the OBEOD make the OBEOD a distinguishable asset for the City's tourism economy.

Petitioners also cite *Safeway Inc. v. City & Cty. of San Francisco*, 797 F. Supp. 2d 964 (N.D. Cal. 2011). However, that case holds that San Francisco's zoning ordinance did not violate equal protection or the 14th Amendment due process clause. Respondents contend the case supports their position that the OBEOD zoning ordinance is constitutional.

IV. PETITIONERS' SUBSTANTIVE DUE PROCESS RIGHTS CLAIM THAT THE OBEOD ZONING ORDINANCE IS HARSH, OPPRESSIVE, ARBITRARY, OR IRRATIONAL RETROACTIVE LEGISLATION IS INCORRECT.

The retroactive aspects of economic legislation, as well as the prospective aspects, must meet the test of due process: a legitimate legislative purpose furthered by rational means. *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 191, 112 S. Ct. 1105, 1112, 117 L. Ed. 2d 328 (1992). The S.C. Supreme Court examined in depth the City of Myrtle Beach's legislative purpose and the rationality of how the OBEOD ordinance furthered that purpose. The Court found that the OBEOD ordinance met the tests of due process. *Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals*, 440 S.C. 266, 281, 890 S.E.2d 748, 755–56 (2023).

The S.C. Supreme Court found that the OBEOD zoning ordinance was not harsh, oppressive, arbitrary, or irrational. The Court examined the Purpose and Intent stated by City in enacting the OBEOD ordinance. The Court found that in creating the OBEOD, the ordinance extensively set forth its purpose and intent, emphasizing, among other things, the importance of fostering more family tourism and discouraging things that were "repulsive" to families, including "unhealthy tobacco use, crudity and the stigma of drug use and paraphernalia." § 1807 Code of Ordinances of City of Myrtle Beach. As a result, the city council found the displacement of smoke shops and tobacco stores from the historic downtown area was "in the interests of the public health, safety, and general welfare." *Id.*

Likewise, the city council stated the presence of smoke shops and tobacco stores heightened the risk of "negative aesthetic impacts, blight, and loss of property values of residential neighborhoods and businesses in close proximity to such uses." *Id.* Finally, the city council noted that despite the creation of the OBEOD, there were numerous other locations throughout the city available for the continued operation of smoke shops and tobacco stores. *Id.* The Court found that Petitioners had not met their burden of proof showing that the ordinance was enacted for an illegitimate legislative purpose furthered by irrational means.

CONCLUSION

Respondents request that Petitioners' Petition for Certiorari be denied.

Respectively submitted,

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