

ATTACHMENT 2

RESOLUTION NO. R2020-__

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, APPROVING A USE PERMIT TO OPERATE A NINE-TABLE CARD ROOM AT 505 LINCOLN AVENUE AND DETERMINING THAT THE ACTIONS AUTHORIZED BY THIS RESOLUTION ARE EXEMPT FROM CEQA

WHEREAS, on December 28, 2018, Polvora Inc. ("Applicant"), submitted an application (PL18-0135) for a use permit pursuant to Napa Municipal Code ("NMC") Chapter 17.60 ("Use Permit") to operate a card room with 13 tables at the property identified as 505 Lincoln Avenue ("Site") (APN: 044-220-008) (collectively, the "Project"); and

WHEREAS, as part of the Project, the Applicant requests amendments to Napa Municipal Code (NMC) Chapter 5.16 (Card Rooms) to increase the maximum number of card tables from 5 to 9, to increase the allowable number of patrons for each table from 10 to 15, and remove the restriction prohibiting the consumption of alcohol in a card room. In addition, the Applicant requested approval of zoning text amendments to NMC Chapters 17.10 (Commercial District Regulations) and 17.52 (Site and Use Regulations) to add "card rooms" as a conditionally allowable use within the Community Commercial Zoning District; and

WHEREAS, in accordance with California Business and Professions Code Section 19961.1, City Staff submitted the Applicant's proposed amendments to NMC Chapters 5.16, 17.10 and 17.52 ("Card Room Ordinance Amendments") to the California Department of Justice, Bureau of Gambling Control (the "Bureau") for review and comment, and the Bureau indicated in a letter dated June 4, 2020, that the proposed amendments appear permissible; and

WHEREAS, on September 19, 2019, the Planning Commission held a noticed public hearing on the revised application in accordance with NMC Section 17.66.090 and recommended approval of the proposed Card Room Ordinance Amendments and Use Permit to the City Council; and

WHEREAS, the City Council has considered all information related to the Use Permit Application, as presented at the public meetings of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Napa as follows:

Section 1. The City Council hereby finds that the facts set forth in the recitals to this Resolution are true and correct and establish the factual basis for the City Council's adoption of this Resolution.

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Section 2. The City Council hereby determines that the Project is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines (Categorical Exemptions; Class 1), which exempts operations of existing structures involving no or negligible expansion of existing or former use; and in accordance with Section 15303 of the CEQA Guidelines which exempts the conversion of existing small structures from one use to another where only minor modifications are made to the exterior of the structure.

The proposed use would operate within an existing facility which formerly housed a similar use (restaurant) that exhibited a similar level of intensity and function. No expansion of the building footprint is proposed. In addition, the zoning text amendments requested by the Applicant would merely add a card room as a conditionally allowed use within the Community Commercial District and increase the number of permitted tables from 5 to 6. Under the Project, the number of card rooms allowed within the City would continue to be limited to one and no additional card room permits would be issued beyond the existing permit that would be transferred to the Applicant.

The exceptions to categorical exemptions identified in Section 15300.2 of the CEQA Guidelines are inapplicable because the Site is in an urbanized area with no environmentally sensitive habitats or species of concern on the Site, there has been no successive effort to intensify land uses in the area, and no unusual circumstances exist that would pose a reasonable possibility of having a significant effect on the environment, and the Project would not impact a historic resource. Based on this analysis, no significant environmental effects would result from the Project and the use of categorical exemptions is appropriate.

Section 3. The City Council hereby approves a Use Permit for the Polvora Card Room as defined on the plans dated August 28, 2019 (with revisions dated February 25, 2020) and submitted as a part of the subject application and as amended by this Resolution and approves the wagering limits contained in Exhibit "A" attached hereto and incorporated herein pursuant to NMC Section 5.16.130 and makes the following findings in support of the approvals:

- A. *The proposed use is in accord with the General Plan, applicable specific plans, the objectives of the Zoning Ordinance and the purposes of the district and overlay district in which the site is located.*

The Site is located within the CC-482 – Community Commercial General Plan Designation which provides for commercial/retail establishments including entertainment uses. The operation of a card room within the CC Land Use District would be consistent with the mix of uses envisioned for the District and would comply with applicable development standards.

- B. *The proposed use, together with the conditions applicable thereto, will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the City.*

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As conditioned, the operation of the card room would not generate impacts that would be detrimental to the public health, safety, or welfare. The proposed use would be appropriately located in a commercial area that is not directly proximate to residential or other sensitive uses. The card room operation would be confined to the interior of the building with some restaurant seating located outdoors consistent with past restaurant operations. In addition, State and Local oversight of the gaming operation and the provision of an approved security plan will ensure that the card room would operate in a manner that limits any impacts. Accordingly, as conditioned, the Project would not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the City.

C. The proposed use complies with each of the applicable provisions of the Zoning Ordinance.

The proposed use would comply with the applicable provisions of the Zoning Ordinance, as proposed to be amended. The proposed zoning text amendment to NMC Chapter 17.10 requested by the Applicant would add card rooms as a conditionally permitted use in the Community Commercial District. Staff has reviewed the application for compliance with the applicable provisions of the Zoning Code and found that it meets all applicable regulations.

Section 4. The City Council's approval of the Use Permit for the Project is subject to the following conditions:

1. This Use Permit authorizes the Applicant to operate a 9-table card room on the Site in accordance with the plans dated August 28, 2019 (with revisions dated February 25, 2020), and submitted as a part of the subject application, as amended by these conditions of approval. The Applicant may install a total of 12 tables; however, no more than 9 tables shall be operational at one time.
2. The Applicant shall make an annual presentation to the Planning Commission following each of the first three years of operation, to demonstrate compliance with the obligations under this Use Permit.
3. The Applicant shall obtain a permit from the Police Chief to operate a card room in accordance with Section 5.16.020 of the Municipal Code prior to commencing card room operations on the Site.
4. The Applicant shall comply with all provisions of NMC Chapter 5.16, the card room permit issued by the Police Chief, the conditions of this Use Permit, the California Gambling Control Act, the regulations of the California Gambling Control Commission, any gambling licenses issued by the California Gambling Control Commission and all other applicable laws governing card rooms.

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5. The Applicant shall obtain the required licenses and other approvals from the California Gambling Control Commission (CGCC) prior to commencing gaming operations on the Site.
6. The Applicant shall comply with the rules for wagering limits approved by the City Council, attached to this Resolution as Exhibit "A" and shall post such rules at each table in accordance NMC Section 5.16.130.
7. The card room is authorized to operate on the Site 24 hours a day, 7 days a week.
8. A full service restaurant shall be in operation at all times when the card room is in operation.
9. The eastern deck shall be closed to customers no later than 10:00pm.
10. Consistent with NMC Section 5.16.140, the maximum number of card tables that may be in use on the Site at any one time is nine (9). The maximum number of tables allowed on the Site is twelve (12). The number of patrons at each card table shall not exceed ten (10), except that two (2) tables may have up to fifteen (15) patrons.
11. Any card table not in active operation shall be covered and prominently labeled as being non-operational. The cover and sign shall be approved in writing in advance by the Chief of Police prior to commencement of any gaming operations on the Site.
12. Tables not in use shall be under 24-hour video surveillance with IP based cameras. The Napa Police Department shall be given permission for remote viewing of the camera(s). Minimum requirements for the camera(s) are:
 - a. IP Based
 - b. Password protected
 - c. Accessed from the internet
 - d. Use File Transfer Protocol (FTP)
 - e. The system shall maintain recordings for 7 days
13. All gaming activities and card tables shall be confined to the interior of the building in the areas designated on the approved plans for gaming. No such activities shall be conducted outside on the deck/ outdoor seating areas or in any other area not designated for gaming on the approved plans.
14. Security shall be provided at all times when the business is in operation in accordance with the Ace & Vine Security Plan (dated December 2018) as submitted with the Use Permit application and as amended by this Resolution and on file with the Planning Division.
15. The Applicant shall amend the Ace & Vine Security Plan (dated December 2018) to include the revisions requested in the letter from Police Lieutenant Gary Pitkin dated

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May 31, 2019 and shall submit the revised plan to the Police Chief for review and approval prior to commencing gaming operations on the Site.

16. All persons engaged in or assisting with the sales or service of alcoholic beverages on the Site shall complete an approved course on Responsible Beverage Service (RBS) or LEAD (ABC certified) prior to engaging in or assisting in the sales of alcohol.
17. No alcoholic beverages shall be sold to any obviously intoxicated person or to a person under the age of 21.
18. All sellers/servers shall check the identification of any purchaser of alcoholic beverages suspected of being under the age of 25. Forms of government identification with photograph such as a driver's license or identification card are accepted forms of identification.
19. No alcoholic beverage may be served on the premises between 1:30 AM to 6:00AM, and no alcoholic beverages may be consumed on the premises after 2:00 AM.
20. The Applicant shall prohibit loitering in the parking lot and in front of the building entrance at all times.
21. The Applicant shall keep the parking lot and other outdoor areas free of litter and trash at all times.
22. The Applicant shall make every effort to assist patrons that are intoxicated in acquiring alternative safe transportation such as a cab or sober driver.
23. This Use Permit shall be subject to review for potential enforcement, modification, or revocation, in accordance with NMC Chapter 17.72.
24. All conditions of approval shall be printed verbatim on one of the first three pages of all the working drawing sets used for issuance of Building Permits (architectural, structural, electrical, mechanical and plumbing) and shall be referenced in the sheet index. The minimum font size utilized for printed text shall be 12 point.
25. All exterior lighting on the Site shall be properly shielded and directed downward to preclude glare conditions that might impact adjacent properties or public streets.
26. Prior to issuance of a Building Permit (if applicable), the Applicant shall pay all applicable fees at the rates in effect at the time of payment for the Project involved, including but not limited to:
 - a. Affordable Housing Impact Fee; and
 - b. Public Art Contribution (or compliance with the public art installation pursuant to NMC Section 15.108), if applicable.

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27. Additional Approvals Required:
- a. Approval of this Use Permit is subject to the Napa Sanitation District approving any required sanitary sewer improvements.
 - b. Approval of this Use Permit is subject to the Environmental Health Division of the County of Napa approving any required food facility permits.
28. As documented by the Applicant in its letter to the City dated October 24, 2019, the Applicant has modified the Project to incorporate the payment of a Supplemental Table Fee as described in this Condition No. 28. In addition to the Applicant's obligation to pay the City a business license tax in accordance with NMC Chapter 5.04 (in particular the tax of \$500 per year per table, as set forth in NMC Section 5.04.370(D)), the Applicant shall pay the City a Supplemental Table Fee of \$10,000 per year per table. As used in this Section, the number of tables for which the Supplemental Table Fee is owed shall equal the number of tables which the Applicant is permitted to have in operation in accordance with this resolution, which is nine. To illustrate the payment of the Supplemental Table Fee, the nine tables authorized by this resolution will generate a total of \$90,000 to the City every year. At the request of either party, both parties shall negotiate in good faith to execute a written agreement to implement the payment of the Supplemental Table Fee, in accordance with this Section. The Applicant shall pay the Supplemental Table fee to the City at the same time as the business license tax required by NMC Chapter 5.04.

City General Conditions:

29. Consistent with the City's Sign Ordinance, no portable (e.g. A-frame, portable, rotating, flashing, animated, moving or having the appearance of moving, inflatable) signs are permitted on the site.
30. No outdoor speakers are approved as a part of the Use Permit.
31. The plans submitted for a Building Permit shall identify the locations of all mechanical and utility equipment, including transformers and backflow devices.
32. All mechanical and utility equipment, including transformers and backflow devices must be screened and/or integrated into a building structure. Screens shall not be used where they would disproportionately increase the mass of the building or introduce elements that are inconsistent with the high level of design quality reviewed as part of the Use Permit. Because transformers and backflow prevention devices are regularly maintained and tested, screening is required to meet certain criteria for the accessibility and visibility. Landscaping and screening of devices must be installed prior to issuance of a Certificate of Occupancy for the Project.
33. Construction activities shall be limited to 7:00 a.m. to 7:00 p.m. Monday through Friday and 8:00 a.m. to 4:00 p.m. on weekends or legal holidays, unless a permit is first secured from the City Manager (or his/her designee) for additional hours. There

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will be: no start-up of machines nor equipment prior to 8:00 a.m., Monday through Friday; no delivery of materials nor equipment prior to 7:30 a.m. nor past 5:00 p.m., Monday through Friday; and no servicing of equipment past 6:45 p.m., Monday through Friday.

34. Unless otherwise specifically provided, each condition of approval shall be satisfied prior to issuance of a building permit, or if a building permit is not required, prior to the commencement of use. Each condition of approval related to the operation of the Project (including the card room and restaurant) shall be ongoing for the term of this Use Permit.
35. No use authorized by this Use Permit may commence until the Applicant has executed any agreement required by these conditions of approval.
36. Applicant shall pay all applicable fees and charges at the required time and at the rate in effect at time of payment (in accordance with the City's Master Fee Schedule; see individual departments regarding the timing of fee payment requirements).
37. Applicant shall design and construct all improvements and facilities shown on any approved tentative map, site plan, plans and specifications, or other approved documents, to comply with the General Plan, any applicable Specific Plan, the NMC, City ordinances and resolutions, the "Standard Specifications" of the Public Works and Fire Departments, and the approved tentative map, site plan, plans and specifications, and other approved documents.
38. The time limit within which to commence any lawsuit or legal challenge to this Use Permit is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.
39. To the full extent permitted by law, the Applicant shall indemnify, defend, release and hold City (including its officers, elected or appointed officials, employees, volunteers, and agents) harmless from and against any and all liability or claims (including actions, demands, damages, injuries, settlements, losses, or costs [including legal costs and attorney's fees]) (collectively, "Liability") by any person, including Applicant, of any nature, arising out of, pertaining to, or relating to the processing, conditioning or approval of any application submitted by Applicant relating to the Site or to Applicant's operations on the Site pursuant to these Project approvals, including without limitation (1) any such application or action relating to the Site; (2) any failure to comply with all applicable laws and regulations; or (3) the design, installation or operation of Project improvements and regardless whether the actions or omissions are alleged to be caused by City or Applicant. City shall promptly notify Applicant of any such Claim and shall reasonably cooperate in the defense of any such claim or action. City grants these Project approvals in express reliance on Applicant's acceptance of the obligations described in this paragraph.

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Applicant's breach of any obligation described in this paragraph shall entitle City to injunctive relief, money damages, and is grounds for revocation of these Project approvals.

40. If the Applicant is not the owner of the Site, all agreements required to be executed by this Resolution must be executed by the Owner(s) as well as the Applicant.
41. The conditions of approval of this Use Permit set forth herein include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to Government Code Section 66020(d)(1), these conditions (and mitigations) constitute written notice of the statement of the amount of such fees and a description of the dedications, reservations, and other exactions. You are hereby notified that the 90-day period in which you may protest those fees, the amount of which has been identified herein, dedications, reservations and other exactions required in connection with this Use Permit has begun. If you fail to file a protest complying with all the requirements of Section 66020, you will be legally barred from later challenging such exaction.
42. Violation of any term, condition, mitigation measure or Project description relating to this Use Permit is unlawful, prohibited and a violation of the Napa Municipal Code and can result in revocation or modification of this Use Permit and/or the institution of civil and/or criminal enforcement and/or abatement proceedings.
43. This Use Permit would not have been granted but for the applicability and validity of each and every one of the specified mitigations and conditions, and if any one or more of such conditions and mitigations is found to be invalid by a court of law, this Use Permit would not have been granted without requiring other valid conditions and/or mitigations consistent with achieving the purpose and intent of such approval.
44. This resolution shall become effective immediately upon adoption. The Use Permit shall be effective thirty (30) days after the City Council's adoption of an ordinance amending NMC Section 17.10 to add cardrooms as a conditionally permitted use in the Community Commercial District and amending NMC Chapter 5.16 to increase the maximum number of card tables from 5 to 9, to increase the allowable number of patrons for each table from 10 to 15, and remove the restriction prohibiting the consumption of alcohol in a card room. The Use Permit is subject to the expiration provisions of NMC Section 17.68.170 and may be extended in accordance with the requirements of NMC Section 17.68.130.

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I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the City Council of the City of Napa at a public meeting of said City Council held on the 16th day of June, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____
Tiffany Carranza
City Clerk

Approved as to form:

Michael W. Barrett
City Attorney