



## Staff Reports Details (With Text)

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**Title:** Polvora Card Room

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**Attachments:** 1. ATCH 1 - Ordinance, 2. ATCH 2 - Resolution, 3. ATCH 2 - Exhibit A - Wagering Limits Schedule, 4. ATCH 3 - PC Report - Minutes - PC Communications, 5. ATCH 4 - Proposed Amendments, 6. ATCH 5 - Project Description and Plans, 7. ATCH 6 - Applicant letter offering table fee, 8. ATCH 7 - June 4, 2020 DOJ Letter, 9. ATCH 8 - Letter from CostaLaw

Date	Ver.	Action By	Action	Result
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6/16/2020	1	CITY COUNCIL OF THE CITY OF NAPA		
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3/17/2020	1	CITY COUNCIL OF THE CITY OF NAPA		
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**To:** Honorable Mayor and Members of City Council

**From:** Vincent Smith, Community Development Director

**Prepared By:** Michael Allen, Senior Planner

### TITLE:

Polvora Card Room

### RECOMMENDED ACTION:

(1) Approve the first reading and introduction of an ordinance amending Napa Municipal Code Chapters 5.16, 17.10, and 17.52 to authorize a card room as a conditionally permitted use in the Community Commercial District, to increase the number of card tables permitted in the City from five to nine, to increase the allowable number of patrons at a card table from 10 to 15 and to allow alcohol to be consumed in a card room and determining that the actions authorized by this ordinance are exempt from CEQA; and (2) adopt a resolution approving a Use Permit to operate a nine-table card room at 505 Lincoln Avenue and determining the actions authorized by this resolution are exempt from CEQA.

### DISCUSSION:

#### OVERVIEW

The Applicant, Polvora, Inc., requests approval of a Use Permit, Zoning Amendment and amendments to Napa Municipal Code Chapter 5.16 (Card Rooms) to operate a nine-table card room at the former Compadres Bar and Grill located at 505 Lincoln Avenue. Under the California

Gambling Control Act (the “Act,” California Business and Professions Code Sections 19800, *et seq.*), the City is required to submit any amendments to its card room ordinance to the California Department of Justice, Bureau of Gambling Control (DOJ) for review and comment prior to adoption. The Act also requires the Applicant to obtain approval from the California Gambling Control Commission (Commission) to operate the requested number of tables. Therefore, while the DOJ reviews the City’s proposed ordinance to advise whether the Act permits the proposed increase in card tables without voter approval, the Commission ultimately decides how many card tables the Applicant may operate. However, the Commission may not authorize the Applicant to operate more tables than permitted by the City’s ordinance.

Under the Act, as a general rule, the City is not authorized to adopt an ordinance that would result in an increase in the maximum number of tables permitted in the City unless the ordinance is approved by the voters. However, the Act also provides a list of somewhat confusing exceptions to this general rule, that authorize the City Council to adopt an ordinance to permit an increase in the number of tables in a city without voter approval. Some of the exceptions in the Act authorize an increase in the maximum number of tables permitted in the City’s jurisdiction, and some of the exceptions in the Act authorize an increase in the maximum number of tables permitted within a particular cardroom. The Act clearly authorizes the City to increase the number of tables in the jurisdiction from five (the current limit under Napa Municipal Code Section 5.16.140) to six. However, in order to justify an increase to nine tables, the City must rely on portions of the Act that authorize increases in the number of tables within the entire jurisdiction of the City with portions of the Act that authorize increases in the number of tables within a cardroom . While the DOJ has indicated that this combined approach appears permissible and the Commission has applied this combined approach to approve cardroom licenses in other jurisdictions , the combined approach has been rejected by a Sacramento Superior Court, which found that a city’s authority to increase the number of tables in its jurisdiction is limited to the portions of the Act that apply to the entire jurisdiction.

## PROJECT DESCRIPTION

The Project Applicant, Polvora Inc., is proposing the operation of a nine-table card room/restaurant to provide a combined food and entertainment experience at the former Compadres Bar and Grill location at 505 Lincoln Avenue. The existing building would be divided up such that 4,715 square feet would be devoted to a restaurant use and 2,192 square feet to a card room use.

The card room component would offer card games such as pai-gow, poker, Texas hold’em, baccarat, and blackjack. While the Applicant proposes to operate a maximum of nine card tables, to allow for a variation of games requiring different tables it requests approval to install a total of 12 card tables, with the remaining three tables covered, prominently labeled as being non-operational, and under constant video surveillance when not in active operation. For each table, there will be a maximum ten patrons; however, two of the tables may have up to 15 patrons. The card room and restaurant would employ up to 23 employees during peak operation. Of the 23 employees, food & beverage would account for ten of the employees and the gaming operations would account for 13 employees, including nine dealers and security personnel. Proposed hours of operation for the card room and restaurant would be 24 hours/day, 7 days/ week.

The Applicant seeks approval of text amendments to Napa Municipal Code (NMC) Chapter 5.16 (Card Rooms) to increase the maximum number of card tables from five to nine, to increase the allowable number of patrons for each table from 10 to 15, and to remove the restriction prohibiting the consumption of alcohol in a card room. In addition, the Applicant seeks approval of text amendments to amend NMC Chapters 17.10 and 17.52 to allow “card rooms” as a conditionally allowable use within the Community Commercial Zoning District. Lastly, a Use Permit is requested to operate a nine-table card room pursuant to NMC Chapter 5.16 and in accordance with NMC Sections 17.52.070 (as proposed to be amended) and 17.60.070.

The project approvals requested as a part of this application include:

1. An Ordinance amending NMC Chapters 5.16, 17.10 and 17.52 to conditionally allow card rooms in the Community Commercial Zoning District and to increase the maximum number of allowable card tables in the city from five to nine, to increase the allowable number of patrons for each table from 10 to 15, and to remove the restriction prohibiting the consumption of alcohol in a card room.
2. A Use Permit to authorize the operation of a nine-table card room pursuant to NMC Section 5.16 and in accordance with NMC Sections 17.52.070 (as proposed to be amended) and 17.60.070.

## PROJECT CONTEXT AND BACKGROUND

The project site is a 1.76-acre property on the south side of Lincoln Avenue. The property is improved with two existing buildings, a principal building of 6,283 square feet and an accessory building of 624 square feet for a total square footage of 6,595 square feet. The principal building formerly operated as Compadres Bar and Grill until its closure in February of 2019. A total of 130 parking spaces are located at the site. The site features landscape improvements at the site’s Lincoln Avenue frontage and within the parking lot. Surrounding land uses include Lincoln Avenue to the north, the Napa River to the east, Silverado Towing Company to the south, and Wall Street to the west, with North Bay Plywood on the opposite side of Wall Street.

## PROJECT HISTORY

Only one cardroom, Hemphill’s Card Room, has operated in the City of Napa over the last 35 years. The former Hemphill’s Card Room was located at 3385 California Boulevard and operated from 1983 until 2005. Hemphill’s was approved in May 1983 after the City Council approved a General Plan amendment and rezoning to allow card room operations at 3385 California Boulevard. The Planning Commission approved issuance of a Use Permit to operate a card room at 3385 California Boulevard, consistent with the regulations in place at the time, and the Police Department approved a card room permit pursuant to NMC Chapter 5.16, allowing up to five card tables.

Subsequently, in August 1983, the City Council adopted Ordinance 2838 eliminating card rooms as a permitted or conditionally permitted use within the City, thereby making the Hemphill’s Card Room a legal non-conforming use only a few months after being approved. In July 1988 the card room received a Use Permit for a small expansion.

On October 6, 2005 the Planning Commission approved a Use Permit authorizing the relocation of Hemphill's to an existing building located at 1144 Jordan Lane. Following this approval, the state gambling permit holder passed away and the Hemphill's Card Room ceased operation. The relocation/use approved under the 2005 Use Permit never commenced and the permit expired. In 2014, the state gambling license(s) previously held by the licensee, Bill Long, were transferred to his son, Tim Long. Tim Long subsequently transferred the rights to the Hemphill's state gambling licenses to the Applicant, and such licenses will be formally issued by the State to the Applicant if the Applicant secures City approval of the card room at the proposed Lincoln location.

NMC Chapter 5.16 prohibits the issuance of new card room permits. However, it allows for the transfer of previously issued permits. Therefore, in connection with the requested entitlements, the Applicant has submitted an application to the Police Department requesting the transfer of the former Hemphill's Card Room permit, which was issued by the Police Chief in 1983 in accordance with NMC Section 5.16.020, from the former Hemphill's owner to the Applicant. The Police Department has reviewed the transfer application and has indicated that it is ready to issue the card room permit if the requested entitlements are approved by the City Council.

In addition to obtaining the state gambling licenses and the City of Napa card room permit pursuant NMC Chapter 5.16, the Applicant must also obtain approval of a zoning text amendment to authorize a card room in the CC Zoning District since the City Council eliminated card rooms as a conditionally permitted use in the City in 1983, and obtain approval of a use permit allowing for the operation of said card room.

## ANALYSIS

### A. GENERAL PLAN

The property has a General Plan designation of CC-482, Community Commercial, which provides for commercial uses serving the entire community, including retail and service uses including restaurants, banks, entertainment, and service uses. The proposed zoning text amendments and proposed operation of one card room within the Community Commercial land use district may be found to comply with the general intent of the District and would provide for entertainment/restaurant use which aligns with the mix of uses envisioned for the District. More specifically, the proposed project could be found to meet the following applicable General Plan Goals and Policies:

Land Use Element Goal LU-5 encourages attractive, well-located commercial development to serve the needs of Napa residents, workers and visitors.

The proposed project would strengthen and diversify recreational and entertainment opportunities for residents and visitors through the introduction of a cardroom/ restaurant use which would be a unique use within the current mix of commercial/recreational businesses in the City of Napa.

Land Use Element Policy LU-5.1 states the City shall seek to improve the character and viability of commercial areas and allow for a range of goods and services convenient to Napa residents through planning and zoning incentives.

The proposed project would enhance the commercial viability of the property. According to the Applicant, with more restaurants and hotels concentrated in the Downtown area and little foot traffic along Lincoln Avenue, previous uses on the property have had challenges operating solely as a

restaurant and attracting the level of local and visitor business that such a large property demands. Approval of the proposed project would allow for greater recreational and entertainment opportunities for the public by introducing a unique use within the city limits and would help to improve the viability of the commercial property.

Land Use Element Policy LU-5.6 suggests free-standing or clustered tourist commercial uses (e.g., entertainment, commercial recreation, lodging, fuel) shall be located in areas where traffic patterns are oriented to major arterial streets and highways and/or where expansion or development will not adversely affect existing residential, office, or neighborhood commercial developments.

The proposed project would be located proximate to Lincoln Avenue, which serves as a major arterial street. Given the surrounding land uses which are largely commercial/industrial in nature, there is no expectation that the proposed use would adversely affect existing residential, office, or neighborhood commercial developments within the City of Napa. It should be noted that input from the Police Department indicates that during the operation of the previous (Hemphill's) card room, neighbors never raised any complaints about the card room's operations or any adverse effects to its neighbors. Police records do not indicate there ever being a high frequency of incident reports related to the card room use.

Economic Development Element Policy ED-1 seeks to maximize the use of Napa's limited non-residential land supply for employment-generating and revenue-generating uses.

The proposed project would maximize the revenue generating uses of an underutilized commercially-zoned parcel. According to the Applicant, the parcel would be prohibitively expensive to redevelop or wholly repurpose (outside of recreational and entertainment uses) due to its location within the floodplain. In addition to the challenges of rebuilding on the site, commercial operations on the property have struggled generating enough revenue to offset the costs for operating within the existing building due its large size and the large size of the property, relative to other restaurants. However, the existing building's footprint and property layout is ideally suited for the restaurant/card room use that the project proposes. The project would expand the recreational opportunities on the property and its appeal to the greater public. In doing so, the operations would be expected to generate more tax revenue for the City compared with the previous restaurants that have operated on the property

Economic Development Element Goal ED-4 seeks to help local businesses capture visitor dollars that are not currently finding their way to the City of Napa, thereby increasing revenue to local businesses and the City.

The proposed project would diversify recreational and entertainment opportunities for residents and visitors through the creation of a modern restaurant/card room. Since Napa's previous card room closed its doors, locals and visitors have had to travel outside of the City (American Canyon, Rohnert Park, etc.) to play poker, blackjack, and other card games. Approval of the project would provide an opportunity for card room patrons to attend a local venue instead of traveling to nearby cities.

## B. ZONING

The property is located within the Community Commercial Zoning District (CC). The CC zoning designation allows a broad range of community-serving commercial uses including retail and service uses, restaurants, banks, entertainment and offices. Within this Zoning District restaurant and

entertainment uses may be allowed; however, card rooms are not explicitly addressed or permitted under this zoning designation. For that reason, the Applicant requests text amendments to NMC chapters 17.10 (Commercial Zoning District), and 17.52 (Site and Use Regulations). The proposed amendments would clarify that one (1) card room may be conditionally allowed within the Community Commercial Zoning District pending consistency with required findings and add card rooms to NMC Section 17.52 (Site and Use Regulations) which currently regulates, “cocktail lounges, bars, nightclubs, billiard parlors, pool halls, video arcades or any similar commercial place of entertainment.”

#### C. ZONING AMENDMENTS TO NMC 17.10 (COMMERCIAL DISTRICTS) AND 17.52 (SITE AND USE REGULATIONS)

As card rooms were eliminated from the list of permitted or conditionally permitted uses in the Zoning Code in 1983, a Zoning Amendment is necessary to authorize card rooms as a conditionally permitted use within the Community Commercial (CC) District of NMC 17.10. The Planning Commission staff report (Attachment 3) and (Attachment 4) contain the table depicting the proposed text amendments to the Land Use Regulations table from NMC Section 17.10.020. associated with the card room use. The following depict the proposed amendments to NMC Section 17.52 highlighted in bold, red font, italicized and underlined:

### Chapter 17.52 SITE AND USE REGULATIONS

#### 17.52.070 Cocktail lounges, bars and commercial recreation facilities.

A. Purpose. To assure that cocktail lounges, bars, **card rooms** and commercial recreation facilities are appropriately sited and will be designed to operate with minimal impacts on the surrounding neighborhood.

B. Use Permit Review Criteria. The following items shall be taken into consideration in evaluating a use permit application for cocktail lounges, bars, nightclubs, billiard parlors, pool halls, video arcades, **card rooms** or any similar commercial place of entertainment.

1. Comments from the Napa Police Department;
2. Appropriate hours of operation;
3. Potential for loitering;
4. Adequate lighting for security purposes;
5. Distance to public/private schools;
6. Distance to areas used and zoned for residential use;
7. Potential for serving alcoholic beverages;
8. Potential need for annual review of use permit;
9. Other information deemed necessary on a case-by-case basis.

#### D. AMENDMENT TO NMC CHAPTER 5.16 (CARD ROOMS)

Card rooms are further governed by NMC Chapter 5.16 (Card Rooms). NMC Section 5.16.020 (A), specifies that no new permits for card rooms shall be issued under this Chapter, but pursuant to NMC Section 5.16.030 permits previously used under this chapter may be transferred subject to the transferee complying with NMC Section 5.16.020. As stated above, the Applicant has submitted an

application to transfer the original permit issued in 1983. The Police Department has indicated that the Applicant has complied with the requirements for transfer of the permit and is ready to approve the transfer. A condition of approval has been included in the draft resolution approving the Use Permit for the card room requiring that the Applicant obtain approval of the permit transfer from the Police Chief prior to operating the card room. In addition, the Applicant is requesting amendments to NMC Chapter 5.16 to increase the maximum number of card tables from five to nine, 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 proposed amendments to NMC Chapter 5.16 are highlighted below in **bold, red font, italicized and underlined** with deletions struck through.

#### **5.16.050 Number of tables.**

It is unlawful for any person to maintain operate for use by at any time in any card room a greater number of tables than set forth in the application for a permit: **Any person conducting, carrying on or managing a card room shall not have more card tables in active operation in any room or combination of rooms than allowed under its use permit. Any card table not in active operation shall be covered and prominently labeled as being non-operational and under continuous recorded video surveillance. The cover and sign shall be approved in writing in advance by the Chief of Police.**

#### **5.16.060 Intoxicants **Intoxicated persons** prohibited.**

A. It is unlawful for the owner, operator, tenant or person in control of any room or enclosure where a card table or tables are maintained, or while any game is being played, or for any person within any room or enclosure where any such table or tables are maintained or used, whether or not a participant at such table or in any game placed there at, to consume any intoxicating liquor or alcoholic beverage.

B. It is unlawful for any owner, operator, tenant, or other person to permit any person to consume any intoxicating liquor or alcoholic beverage within any card room or enclosure where any card tables are maintained, used or played at. It is unlawful for any owner, tenant, operator or other such person in charge or control of any such card room, enclosure, game or tables, to permit any person while under the influence of intoxicating liquor or alcoholic beverage to participate either directly or indirectly in any game played at any such table or within such room or enclosure: **to enter into a card room or play at any card table while such person is obviously intoxicated by alcoholic beverages, narcotics, or other drugs.**

#### **5.16.070 Minors prohibited.**

No proprietor or person having charge of any card room shall suffer or permit any person under the age of 18 years to enter, be in, remain in or visit such establishment **permit or allow any person under the age of 21 years old to be within a card room or enclosure at any time; provided, however, persons under the age of 21 years old may be allowed in the restaurant section or related patio areas of a gambling establishment if the restaurant or patio areas are accessible from either the inside or outside of the building without requiring passage through a card room or enclosure, and the restaurant and access thereto are visually separate from the card room or enclosure.**

## 5.16.140 Limitations on authorized tables.

No more than five nine card tables shall be permitted to be in operation at any one time in a card room. No more than nine card tables shall be permitted to be in operation at any one time in each card room. No more than five card tables shall be permitted in the City of Napa. Any card tables in excess of the maximum prescribed in this section shall be prominently labeled as being non-operational. The total number of card tables permitted on the premise shall be as approved by Use Permit. No card table shall accommodate in excess of 40 15 patrons at one time.

### E. MAXIMUM NUMBER OF PATRONS AT A TABLE

The Applicant requests amending the regulations to allow a maximum of 15 patrons at each table instead of 10 as the Applicant anticipates having Baccarat tables with the capacity for 15 patrons each. While the ordinance amendment would allow 15 patrons at each table, a condition has been included in the draft Use Permit resolution, which would only allow two of the nine tables to have capacity for 15 patrons. The remaining seven tables would be restricted to 10 patrons each.

### F. WAGERING LIMITS

Pursuant to NMC Section 5.16.130, the Council must approve the rules for wagering limits before the card room can begin operations. The attached schedule (ATTACHMENT 7) is the list of wagering and buy-in options for each game that the Applicant would make available depending on the players in the card room on that particular day. If players want to play Limit Texas Hold'em at the \$4-8 range, the card room would open tables at the Option No. 2 schedule. If a group wants to play higher limits, there will be tables that operate under one of the higher schedule options. The limits for each option would be maintained as long as those players remain at the table-i.e. they can't increase in the middle of a game or a hand. The Applicant would be required to post the wagering limits at each of the tables which would prevent someone who wants to play \$3-6 Limit Texas Hold'em from accidentally joining a \$100-200 table.

### G. USE PERMIT

The purpose of the Use Permit requirement in the CC district is to ensure compatibility with adjacent uses given this district's intent to provide a broad range of community-serving commercial uses including retail and service uses, restaurants, banks and entertainment uses. The card room provides a recreational and entertainment activity for locals and visitors alike. Given the project's location which is sited a great distance away from the street frontage, adjacency to heavy commercial uses and the Napa River, with substantial distance to any residential uses, the proposed use appears to be compatible with surrounding uses.

Should the proposed Zoning and Municipal Code text amendments be approved, one card room would be conditionally allowed within the City of Napa CC Zoning District insofar as the use is found consistent with Use Permit Findings enumerated in NMC Section 17.60.070 and Section 17.52.070. If Zoning Text Amendments are approved, the following additional items would be required to be taken into consideration in evaluating a Use Permit application for a card room:

#### 1. Comments from the Napa Police Department



The Police Department has reviewed the card room application and is in receipt of the application for the transfer of ownership of the card room permit previously issued by the Police Chief to Hemphill's. It is prepared to approve the transfer of the permit should the amendments to NMC Chapter 5.16 and Title 17 and the Use Permit be approved. The Police Department has indicated it is satisfied with the security plan provided with the application and has provided provisional conditions which have been incorporated into the Use Permit resolution.

2. Appropriate hours of operation

The Community Commercial district allows 24-hour operation for most uses by right. The card room and restaurant propose to provide 24-hour operation. Given the site's slightly remote location and proximity to surrounding land uses which are largely commercial/industrial in nature, there is no expectation that the 24-hour operation would adversely affect existing residential, office, or neighborhood commercial developments within the vicinity.

3. Potential for loitering

The security plan submitted with the application identifies 5 to 10 trained California registered security guards who would patrol inside and outside the building 24 hours a day and would be trained to address loitering issues. It should be noted that Staff's research of card rooms in other municipalities surfaced no loitering issues related to these card rooms.

4. Adequate lighting for security purposes

The parking lot is adequately illuminated and although landscaped, provides good visibility.

5. Distance to public/private schools

There are no schools in the immediate vicinity of the project site. The nearest school, Alta Heights Magnet School, is approximately 1 mile away.

6. Distance to areas used and zoned for residential use

The project site is separated from any residential zones by the Napa River. There are a few small apartment complexes and rural residential properties separated by approximately 500 feet, along Silverado Trail.

7. Potential for serving alcoholic beverages

Alcoholic beverages have historically been served by the previous restaurant and the card room intends to continue alcohol service. The project will be subject to the Department of Alcoholic Beverage Control (ABC) and has been conditioned to comply with ABC's "Responsible Service of Alcoholic Beverages" criteria as well as requiring employees who serve alcohol to receive "Responsible Beverage Service" training.

8. Potential need for annual review of use permit

A condition is recommended that the Applicant will be required to make an annual presentation to the Planning Commission for the first three years of operation, to demonstrate compliance with the

obligations under the requirements of the Use Permit. If the Applicant is not in compliance, the Use Permit is subject to revocation or modification, under NMC Chapter 17.72.

9. Other information deemed necessary on a case-by-case basis

No other information has been deemed necessary.

As detailed in the Draft Use Permit Resolution (ATTACHMENT 2), the application appears to reasonably meet the Use Permit findings. The Police Department has not identified any concerns or reservations regarding the use, the hours of operation are not expected to impact the neighborhood given the location removed from residential/other sensitive uses, lighting and security would be provided in an approved security plan and the use would not be proximate to any schools. The Applicant has requested that alcohol be served both in the restaurant and card room. Any potential issues related to the consumption of alcohol in the card room area would be addressed both by the security plan provisions and the Conditions of Approval. The City may impose a condition requiring the annual review of the Use Permit if deemed necessary, which has been included in the Use Permit resolution. Staff did not identify any concerns when considering the project against the additional criteria prescribed by NMC Section 17.52.070.

Staff reached out to the cities of American Canyon, Petaluma, Colma and Citrus Heights to inquire about their experience with the operation of card rooms in their respective jurisdictions. The City of American Canyon did not identify any issues with the operation of the Napa Valley Casino. Neither the Planning Director nor Code Enforcement officer noted any issues or concerns, or major code enforcement violations, related to the card rooms operations. Likewise, the City of Petaluma did not cite any issues or concerns regarding their card room, Parkwest Casino. They noted that the cardroom is in a relatively removed location outside of the principal commercial area which may contribute to the lack of issues or concerns. Neither Petaluma Planning Department nor Code Enforcement highlighted any issues. The cities of Colma and Citrus Heights mirrored the other two cities' comments and cited no concerns with their card rooms (Lucky Chances and Stone's Gambling Hall).

It is also worth noting that the City of Napa Code Enforcement/ Police Department have not highlighted any issues or noted any complaints regarding the operations of the former Hemphill's Card Room. In addition, during the Police Department's review of the requested transfer of the local card room permit to the Applicant, the Department investigated other municipalities with card rooms and found no negative information relating to card room operations within these cities. The various municipal law enforcement agencies cited no negative impacts or high volume of calls for service generated by their local card rooms.

## H. PARKING

No site modifications or expansion of the subject building is proposed under this application. The Site currently provides 130 parking spaces. If the application is approved, the subject site would include 2,192 square feet of card room area and 4,719 square feet of restaurant area. Per NMC Section 17.54.040, food and beverage service establishments (restaurants) require 1 parking space per 100 square feet for the first 3,000 square feet plus 1 parking space per 150 square feet over 3,000 square feet. Therefore, the parking demand for the restaurant portion would be 41 spaces. There is no use classification in the Parking Requirements section for a card room, but the closest classification would be a "commercial recreation facility." Parking for a commercial recreation facility is to be

determined by the decision making body. Since the card room has a fixed number of seats with no additional room for any other activities, Staff recommends requiring one parking space per seat. The card room would have 12 tables, each with up to 10 seats. However, no more than 9 tables could be in use at any one time and not more than 2 tables could have up to 15 seats. Assuming maximum occupancy and considering 6 tables with 9 seats, 2 tables with 7 seats and 1 table with 5 seats, the total number of parking spaces per seat would be 73 spaces. Combined with the 41 spaces for the restaurant the total parking demand would be 114 spaces. Therefore, the parking demand would continue to be met by the 130 spaces on site.

## I. PLANNING COMMISSION MEETING

The Planning Commission held a public hearing on September 19, 2019. The Commission heard a report from Staff, followed by a presentation by the Applicant team. The Commission heard from fourteen members of the public who spoke during public comment. Most of the speakers spoke in opposition to the project with concerns ranging from dangerous elements associated with a card room, economic benefits, increasing homelessness, noise impacts, increased traffic, issues with gambling addiction and alcohol. A few speakers were supportive and suggested the proposed card room provides a new form of recreation to the City. The Commission asked several questions regarding the security plan and how habitual gamblers, alcohol consumption and table limits would be monitored and controlled. They discussed whether the building and parking lot would be upgraded/enhanced. One Commissioner spoke to the extensive information that the Applicant provided, referencing the security plan and his appreciation of it, appreciation of the eclectic mix of people that card rooms bring, and a desire to reject stereotypes about card rooms. Another Commissioner discussed the success of the American Canyon Casino, noting that it has not created a dangerous environment and that Napa's card room will be significantly nicer.

The Planning Commission unanimously recommend approval of the project with the following additional conditions:

- The Use Permit shall be reviewed annually by the Planning Commission for the first three years.
- Only two tables at one time may have up to 15 seats.
- Applicant shall limit the hours that the eastern deck may be operated. An operation plan shall be submitted to the Planning Manager for review and approval prior to occupancy of the card room.
- A full service restaurant shall be in operation at all times when the card room is in operation.

## J. DOJ REVIEW OF PROPOSED AMENDMENTS TO NMC CHAPTER 5.16

The Gambling Control Act, California Business and Professions Code Section 19800 *et seq.* (Act), requires the City to submit any amendments to its card room ordinance to the California Department of Justice, Bureau of Gambling Control (DOJ) for review and comment prior to adoption. The Act also requires the Applicant to obtain approval from the California Gambling Control Commission (Commission) to operate the requested number of tables. Therefore, while the DOJ reviews the

City's proposed ordinance to advise whether the Act permits the proposed increase in card tables within the City without voter approval, the Commission ultimately decides how many card tables the Applicant may operate. However, the Commission may not authorize the Applicant to operate more tables than permitted by the City's ordinance.

Under the Act, as a general rule, the City is not authorized to adopt an ordinance that would result in an increase in the maximum number of tables permitted in the City unless the ordinance is approved by the voters. However, the Act also provides a list of somewhat confusing exceptions to this general rule, that authorize the City Council to adopt an ordinance to permit an increase in the number of tables in a city without voter approval. Some of the exceptions in the Act authorize an increase in the maximum number of tables permitted in the City's jurisdiction, and some of the exceptions in the Act authorize an increase in the maximum number of tables permitted within a cardroom. The Act clearly authorizes the City to increase the number of tables in the jurisdiction from five (the current limit under Napa Municipal Code Section 5.16.140) to six. However, in order to justify an increase to nine tables, the City must rely on portions of the Act that authorize increases in the number of tables within the entire jurisdiction of the City combined with portions of the Act that authorize increases in the number of tables within a cardroom.

In accordance with the Act, the City submitted the proposed amendments to NMC Chapter 5.16 to the DOJ for review. The DOJ confirmed that the Act authorizes the City to increase the number of tables in its jurisdiction from five to six, and in its June 4, 2020 letter (Attachment 7), DOJ concluded that it an increase from five to nine appears permissible under the Act based on the combined approach outlined above. In addition, the Commission has recently applied the combined approach to approve table increases. However, a non-binding Sacramento Superior Court case (*Yang v. State of California*) has rejected this combined approach. The Court in *Yang* found that a city's authority to increase the number of tables in its jurisdiction is limited to the portions of the Act that apply to the entire jurisdiction and that a city cannot rely on the portions of the act allowing increases to the number of tables within a cardroom to authorize more tables within its jurisdiction.

As discussed in the Project Description section above, the Applicant proposes a total of 12 card tables (with no more than 9 in operation at one time), which means that, if approved as requested, the Applicant would have 3 more tables than the number authorized to be in operation at one time. Staff had conversations with DOJ staff regarding a card room having more tables than it is authorized to operate. DOJ indicated that it was not unusual for a card room to have more tables to allow for variations in the type of card games being played. The non-operational tables must be covered and monitored by a video camera so that no more tables than the total authorized could be in use. Staff is supportive of allowing the Applicant to have 3 non-operational tables. Therefore, Staff recommends a condition authorizing a total of 12 tables within the cardroom, with no more than 9 tables to be in operation at any time.

#### K. TABLE FEE

Pursuant to NMC Chapter 5.04, the City imposes a business license tax on card rooms in the amount of \$500 per table per year. In a letter dated October 24, 2019 (ATTACHMENT 6), the Applicant modified its Project application to incorporate an annual payment to the City of a "Supplemental Table Fee" in the amount of \$10,000 per table per year. The Applicant requested that the City include a condition in the draft resolution approving the Use Permit requiring the Applicant to pay the

Supplemental Table Fee. Staff has included such a condition in the draft resolution per the Applicant's request.

#### L. COSTALAW LETTER

On March 12, 2020, the City Clerk's Office received a late communication from an attorney (Joseph P. Costa, ATTACHMENT 8) which identifies ongoing litigation between Polvora Inc., and BVK Gaming, Inc., regarding entitlement of the State Gambling License originally held by Hemphill's Cardroom (Timothy Long). Specifically, BVK Gaming, who owns the Napa Valley Casino in American Canyon asserts it has a priority of right to the former Hemphill's State Gambling License. Regardless of this ongoing litigation, which is a civil matter between the two parties, Staff has received correspondence from the Commission dated October 19, 2018, (which was a year after the lawsuit was filed), indicating its approval of the transfer of Hemphill's license to Polvora, pending approval of a new card room location. As the litigation is a civil matter between the two parties, it does not impact the City Council's decision on the Use Permit. Nevertheless, the draft Use Permit resolution includes a condition of approval requiring the Applicant to obtain the required licenses from the Commission prior to commencing gaming operations. Therefore, if the court were to determine that the Applicant did not have rights to the former Hemphill's State Gambling Licenses, the Applicant would be prohibited from operating the card room under the Use Permit.

#### **FINANCIAL IMPACTS:**

No direct financial impacts to the General Fund have been identified with this application.

#### **CEQA:**

City staff recommends that the City Council determine that the potential environmental effects of the Recommended Action are exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Section 15301 of the CEQA Guidelines (Categorical Exemptions; Class 1), which exempts the operations of existing private structures which involves negligible or no expansion of the existing or former use; and in accordance with Section 15061(b)(3) of the CEQA Guidelines which exempts an activity that does not have the potential to cause a significant effect on the environment.

The City Council further determines that the exceptions to categorical exemptions identified in Section 15300.2 of the CEQA Guidelines are inapplicable because the land is in an urbanized area with no environmentally sensitive habitats or species of concern on the property, 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. Based on this analysis, no significant environmental effects would result from this project and the exemptions are appropriate.

The proposed use would operate within an existing structure which formerly housed a similar use (a restaurant) that exhibited a similar level of intensity and function. No expansion of the building footprint is proposed. In addition, the amendments to the NMC proposed by the project would merely clarify that a card room is a conditionally allowed use within the Community Commercial District and slightly expand operational characteristics to be consistent with State Law. 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 which would be transferred to the Applicant.

**DOCUMENTS ATTACHED:**

ATCH 1 - Draft Ordinance approving text amendments to Napa Municipal Code  
ATCH 2 - Draft Resolution approving a Use Permit for the operation of a card room  
ATCH 2 - Exhibit A - Wagering Limits schedule  
ATCH 3 - Planning Commission Staff Report (attachments removed to avoid duplication),  
communications and minutes excerpts  
ATCH 4 - Proposed text amendments in red font, italicized and underlined  
ATCH 5 - Project description and plans  
ATCH 6 - Applicant's letter offering a table fee  
ATCH 7 - June 4, 2020 DOJ Letter  
ATCH 8 - CostaLaw Letter

**NOTIFICATION:**

Notice of the scheduled public hearing was provided on June 5, 2020 by US Postal Service to all property owners within a 500-foot radius of the subject property. Notice of the public hearing was also published in the Napa Valley Register on June 5, 2020 and provided to people previously requesting notice on the matter at the same time notice was provided to the newspaper for publication. The Applicant was also provided a copy of this report and the associated attachments in advance of the public hearing on the project.