

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT FOR THE OPERATION OF A TOBACCO SPECIALTY BUSINESS (MR. V SMOKE SHOP) LOCATED AT 120 NATIONAL CITY BLVD. CASE FILE NO. 2022-14 CUP APN: 555-020-14

WHEREAS, the City Council of the City of National City considered a Conditional Use Permit for the operation of a tobacco specialty business (Mr. V Smoke Shop) located at 120 National City Blvd. at a duly advertised public hearing held on September 6, 2022, at which time oral and documentary evidence was presented; and,

WHEREAS, at said public hearing the City Council considered the staff report contained in Case File No. 2022-14 CUP maintained by the City and incorporated herein by reference along with evidence and testimony at said hearing; and,

WHEREAS, the Planning Commission of the City of National City considered the Conditional Use Permit application at a duly advertised public hearing held on July 18, 2022, at which time the Commission recommended approval of the Conditional Use Permit; and,

WHEREAS, this action is taken pursuant to all applicable procedures required by State law and City law; and,

WHEREAS, the action hereby taken is found to be essential for the preservation of the public health, safety and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of National City, California, that the evidence presented to the City Council at the public hearing held on September 6, 2022, support the following findings:

1. The proposed use is allowable within the applicable zoning district pursuant to a Conditional Use Permit and complies with all other applicable provisions of the Land Use Code, because the use is permitted within Development Zone 1A of the Downtown Specific Plan pursuant to a CUP and the proposed use meets the required standards in the Land Use Code for a tobacco specialty business, as discussed in the staff report.
2. The proposed use is consistent with the General Plan and any applicable specific plan, because tobacco specialty businesses are permitted, subject to a CUP, by the Land Use Code, which is consistent with the General Plan.

Commercial businesses are a permitted use in Development Zone 1A of the Downtown Specific Plan.

3. The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity, because no expansion of the building is proposed. The proposal involves an existing commercial space, which was previously analyzed for traffic impacts when it was constructed.
4. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints, because the site has sufficient access to streets and highways that are adequate in width and pavement type of traffic generated by the proposed use, since National City Boulevard is classified as an arterial street in the Circulation Element, and the use will be within an existing retail suite and thus is not expected to result in an appreciable increase in traffic.
5. Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zone in which the property is located, because the proposed use will not have an adverse effect upon adjacent or abutting properties, since the proposed retail use is compatible with nearby businesses; and since the proposed use will be subject to conditions that limit the sale and display of tobacco products and/or electronic cigarettes to minors.
6. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA) and is not considered a project under CEQA, as no development is proposed. In addition, the proposed use is similar to other commercial uses in the area, which are permitted in Development Zone 1A.

BE IT FURTHER RESOLVED that the application for Conditional Use Permit is approved subject to the following conditions:

General

1. This Conditional Use Permit authorizes the sale of tobacco and tobacco related products and paraphernalia at a retail store (Mr. V Smoke Shop) located at 120 National City Blvd. Plans submitted for permits associated with this project shall conform to Exhibit A, Case File No. 2022-14 CUP, dated 2/22/2022.

2. Before this Conditional Use Permit shall become effective, the applicant and the property owner shall both sign and have notarized an Acceptance Form, provided by the Planning Division, acknowledging and accepting all conditions imposed upon the approval of this permit. Failure to return the signed and notarized Acceptance Form within 30 days of its receipt shall automatically terminate the Conditional Use Permit. The applicant shall also submit evidence to the satisfaction of the Planning Division that a Notice of Restriction on Real Property is recorded with the County Recorder. The applicant shall pay necessary recording fees to the County. The Notice of Restriction shall provide information that conditions imposed by approval of the Conditional Use Permit are binding on all present or future interest holders or estate holders of the property. The Notice of Restriction shall be approved as to form by the City Attorney and signed by the Director of Community Development prior to recordation.
3. This permit shall become null and void if not exercised within one year after adoption of the resolution of approval unless extended according to procedures specified in the Municipal Code.
4. This permit shall expire if the use authorized by this resolution is discontinued for a period of 12 months or longer. This permit may also be revoked, pursuant to provisions of the Land Use Code, if discontinued for any lesser period of time.
5. This Conditional Use Permit may be revoked if the operator is found to be in violation of any Conditions of Approval.

Building

6. Building plans and permits shall be required to meet the 2019 California Building, Mechanical, Electrical, Plumbing, Accessibility, Green, Energy and Fire Codes if submitted prior to the end of the City working calendar year.

Fire

7. Project shall be designed to code.
8. The National City Fire Department utilizes all current codes and ordinances. Currently, we are using the 2019 editions of NFPA, CFC, and the current edition of the CCR.
9. No smoking shall be allowed inside of business at any time per, California law.
10. Where there is conflict between a general requirement and a specific requirement, the specific requirement shall be applicable. Where, in a specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern.

Planning

11. No tobacco sales are permitted until the applicant has been issued a Cigarette and Tobacco Products Retailer's License from the California Department of Tax and Fee Administration.
12. The sale of tobacco and tobacco related products and paraphernalia shall only be permitted between the hours of 10:00 a.m. and 10:30 p.m. daily.
13. The business shall not permit persons under the age of 21 to be on the premises.
14. The operator of the business shall maintain an active business license and ensure that the business license is renewed annually.
15. Excepting business identification signage, exterior advertising and signs of all types, promoting or indicating the availability of electronic cigarettes (e-cigarettes), personal vaporizers (PV), or electronic nicotine delivery systems (ENDS), collectively known as electronic cigarettes, flavored tobacco products, or traditional tobacco products, including advertising/signs directed to the exterior from within, are prohibited. Interior displays of electronic cigarettes, flavored tobacco products and signs, which are clearly visible to the exterior, shall constitute a violation of this condition
16. No sales of tobacco products, electronic cigarettes, personal vaporizers, or any other electronic or non-electronic nicotine delivery systems are permitted to minors.
17. No alcohol or food may be sold on the premises.
18. No products containing tetrahydrocannabinol (THC), or any other cannabinoid, may be sold on the premises.
19. No employee of the business may smoke within 20 feet of the main entrance.
20. The business shall comply with all requirements of the U.S. Food and Drug Administration (FDA) related to electronic cigarettes (e-cigarettes), personal vaporizers (PV), electronic nicotine delivery systems (ENDS), or any tobacco or tobacco-related products sold at the store.
21. The permittee shall comply with a regulatory provisions of the Business and Professions Code that pertain to the sale, display and marketing or merchandising of tobacco products.

BE IT FURTHER RESOLVED that this Resolution shall become effective, final, and conclusive on the day following the City Council meeting where this Resolution is adopted. The time within which judicial review of this decision may be sought is governed by the provisions of Code of Civil Procedures Section 1094.6.

PASSED and ADOPTED this 6th day of September, 2022.

Alejandra Sotelo-Solis, Mayor

ATTEST:

Luz Molina, City Clerk

APPROVED AS TO FORM:

Barry J. Schultz
Interim City Attorney