



DEVELOPMENT SERVICES DEPARTMENT

**Planning Division**

*Director Determinations*

<b>DATE</b>	March 10, 2021
<b>APPLICANT</b>	Roy Kwon
<b>PROPERTY</b>	261 South Thomas Street
<b>DISTRICT</b>	Downtown Pomona Specific Plan ("DPSP"), Mixed-Use Central Business District ("MU-CBD")
<b>PERMIT REQUEST</b>	MINCUP-14925-2020 & Substantial Conformance A request for Substantial Conformance for a proposed land use ("cigar lounge") and Minor Conditional Use Permit to establish cigar lounge.
<b>DECISION</b>	Approved
<b>APPEAL</b>	20 calendar days March 30, 2021
<b>CONTACT</b>	Ata Khan, Supervising Planner 909-620-3765, <a href="mailto:ata_khan@ci.pomona.ca.us">ata_khan@ci.pomona.ca.us</a>

Dear Applicant:

The Planning Division has completed a review of **MINCUP-14925-2020 and Substantial Conformance**. The request has been **approved**. The approval is subject to the following conditions:

- 1. Approval & Expiration:** The Minor Conditional Use Permit shall be used in a manner consistent with the interior layout stamped and approved by the Planning Division as part of this approval and as further defined in the conditions of approval. Any minor modification that does not affect the overall intent of the approved use may be reviewed and approved by the Director of Development Services. The approval of this Minor Conditional Use Permit shall lapse and become void if the privilege authorized is not utilized within one year from the date of this approval (March 9, 2022). The Planning Division may grant a Time Extension for one (1) year provided that a written request by the applicant is submitted to the Planning Division within thirty (30) days prior to the expiration date. If plans are submitted to the Building and Safety division or a Business License application is filed within one year from the date of approval, the proposed action shall be considered active.
- 2. Indemnification:** The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the any action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall



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promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.

3. **Land Use Approved:** The approval shall be for a "cigar lounge," defined as follows:

*A wholesale tobacco shop, the sole and main purpose of which is the sale of cigars, and a private smokers' lounge dedicated to the consumption of cigars.*

*"Sole and main purpose" shall further be defined to mean that the wholesale tobacco shop shall only engage in the sale of cigars and cigar-related accessories through a subscription-based method, and/or through the electronic (internet-based) wholesaling of cigars, and shall not in any form, or on any level of percentage of sales, engage in any in-person, point-of-sale retail of cigars or any other tobacco product or accessory that is not subscription-based.*

*"Dedicated to" shall further be defined to mean that the private smokers' lounge shall only provide for consumption of cigars on premises, and shall not sell or serve for consumption food, alcohol, or any other tobacco product beyond cigars, which shall include, but is not limited to, cigarettes, vapes, flavored cigarettes, and flavored tobacco;*

Furthermore, the definition shall not allow for any land use aside from a cigar lounge, as defined, on any portion of the premises. Special events, classes, or other artistic or educational endeavors explicitly involving the consumption of cigars on premises shall be permitted, subject to review and approval of a Temporary Use Permit by the Director of Development Services.

The cigar lounge may operate between the hours of 8:00 A.M. to 2:00 A.M. seven days a week. The interior layout of the cigar lounge shall substantially conform to the layout provided and stamped and approved by the Planning Division as part of this approval. The storefront entry shall only be for the cigar lounge and not for any other business. At no point shall the private smoker's lounge be primarily used as a wholesale retail tobacco shop, and the wholesale tobacco shop and private smokers' lounge must always exist together and never apart.

4. **Odor & Ventilation:** The cigar lounge shall be furnished with a ventilation system that is independent of any other ventilation system for all adjacent businesses and independent living units. Furthermore, the cigar lounge shall mitigate the odor from the consumption of cigars so as to not be a nuisance to the general public in the exterior of the premises.

Prior to the issuance of a business license and certificate of occupancy, an odor control plan shall be submitted to the Development Services Department for review and approval that includes:

- Potential sources of odor and/or odor emitting activities.
- Description of odor control devices and techniques employed to ensure that odors from cigars are not detectable beyond the licensed premises and odor control maintenance activities, frequency, and role/title of personnel performing such activities.
- Description of administrative controls, such as staff training procedures and recordkeeping systems and forms associated to the odor control system.
- Evidence of odor control system capable of being certified by Professional Engineer or Certified Industrial Hygienist as sufficient to effectively mitigate odor sources.



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At no times shall the windows and doors of the structure be kept open while consumption takes place. Complaints made about odors emanating from the inside to the outside related to the cigar lounge may be grounds for enforcement (See **Enforcement**).

5. **Security:** No persons under the age of 21 shall be allowed on premises at any time. Interior and exterior site video surveillance equipment shall be provided with signage advising customers that video recording devices are in use. Recordings shall be digital and recorded in high-definition, kept a minimum of ninety (90) days and shall record all activity on surrounding public right-of-ways as well as the subject site. Prior to installation of the video surveillance equipment, a video surveillance plan shall be submitted for review and the privileges afforded under this resolution shall not be enjoyed prior to approval of such video surveillance plan by the Pomona Police Department. All crimes occurring inside and outside of the location shall be reported to the Police Department at the time of the occurrence. At any time when the licensee is absent from the premises, a responsible party shall be designated who can respond to any inquiries from City officials. The business shall provide a list annually of no less than three employees who can be contacted twenty-four hours a day, to the Pomona Police Department's Records Bureau. The list of names will be used to facilitate a Police response to the location in the event of an emergency or other problem that requires entry into the location during non-business hours. The property owner shall remove any graffiti on the project site within 24 hours of discovery. The paint utilized to cover the graffiti must substantially match the existing structure. In the event that the paint finish of the abated areas is noticeable distinguishable from the rest of the structure, the property owner shall paint portion of the building to minimize the disparity, subject to the approval of the Development Services Director. Original surface materials installed and designed to not accept paint material such as stone, metal, brick, faux stone, veneers, etc. shall be restored to original finish with methods accepted and agreed to by the Development Services Director. No temporary signs related to any activity on the premise shall be placed or allowed to remain within landscape areas, public right-of-way areas adjacent to the subject site (e.g. telephone poles, traffic signs, and city trees) or other portion on the exterior of the building. The only temporary signs allowed shall be properly permitted banners signs by permit per the City's sign ordinance. Signs placed in any window of the premises shall comply with the City's sign ordinance, and all other conditions under this Minor Conditional Use Permit. The property owner shall provide regular maintenance and cleaning of all exterior walkways, patios, sidewalks, and landscaped parkways in compliance with Pomona City Code 62-351 et seq. There shall be adequate lighting around the property at all times (minimum of 1-foot candle). This shall be done in such a fashion that persons standing outdoors at night are easily identifiable by law enforcement personnel. Lighting shall be screened so that no spillover occurs on the adjacent properties. Complaints related to the security may be grounds for enforcement (See **Enforcement**).
6. **Promotion:** There shall be no visible exterior evidence on the site suggesting the sale, use, or promotion of tobacco products or accessories, with the exception of signage identifying the name of the business. All exterior windows shall be clear glass with no tinting or window coverings either interior or exterior. All interior window signage and exterior signage of any kind, which advertises the sale or availability of tobacco, shall be prohibited. Complaints related to promotion may be grounds for enforcement (See **Enforcement**).
7. **Licensing:** Applicant shall obtain a Business License from the City of Pomona for the cigar lounge. Said license shall only authorize the cigar lounge as defined. No other business licenses shall be granted for any other land use activity proposed within the same premises



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without first seeking a modification of this Minor Conditional Use Permit and/or any other relevant entitlement or permit. Evidence of improper licensing may be grounds for enforcement (See **Enforcement**).

8. **Smoking/Tobacco Laws:** The cigar lounge shall at all times comply with California Labor Code Section 6404.5, and all applicable Federal, State, County, and City regulations pertaining to the sale and consumption of tobacco. Evidence of violation of smoking and tobacco law may be grounds for enforcement (See **Enforcement**).
9. **Audit:** On an annual basis, the City shall request evidence from the established business license operator to determine that the cigar lounge is operating as defined. This may include a request for financial statements, gross receipts, or other relevant documents. Evidence of operating outside the definition of a cigar lounge contained herein may be grounds for enforcement (See **Enforcement**).
10. **Enforcement:** In case of violation of any of the conditions of approval and/or City law, the property owner and tenant will be issued a Notice of Correction. If said violation is not remedied within a reasonable period of time and/or a subsequent violation of the conditions of approval and/or City law occurs within ninety (90) days of any Notice of Correction, the property owner shall be held responsible to reimburse the City for all staff time directly attributable to enforcement of the conditions of approval and/or City law, including, but not limited to, revocation of the herein Minor Conditional Use Permit, based upon the findings for revocation as listed in the Pomona Zoning Ordinance.

#### **FINDINGS OF FACT (SUBSTANTIAL CONFORMANCE)**

This decision is being made by the Director of Development Services through **Section 1.7 of the Downtown Pomona Specific Plan (DPSP), "Substantial Conformance,"** and is based on the following findings of fact:

##### **1. The proposed project substantially complies with the Downtown Pomona Specific Plan.**

The proposed "cigar lounge" is similar enough to the "bars/night clubs/lounges" land use definition within "eating and drinking establishments," defined as: "businesses serving beverages for consumption on the premises as a primary use and including on-sale service of alcohol including beer, wine, and mixed drinks. This use includes micro-breweries where alcoholic beverages are sold and consumed on site and any food service is subordinate to the sale of alcoholic beverages." While the cigar lounge is not "primarily engaged in serving prepared food and/or beverages," and in fact is explicitly prohibited from selling food and beverages, the consumption of a cigar as a product on premises is similar in experience to the consumption of food or alcohol on premises and is also similarly regulated by County and State public health laws. Therefore, the establishment of a cigar lounge as similar to a bar, night club, or lounge serving food and/or alcohol qualifies as requiring a Minor Conditional Use Permit, and substantially complies with the Downtown Pomona Specific Plan.

##### **2. The proposed project will not adversely affect public health and safety.**

The establishment of a cigar lounge as similar to bars/night clubs/lounges does not in of itself allow for such a use by right, but instead establishes it as requiring a Minor Conditional Use Permit. Therefore, the proposed action would not adversely affect public health and safety as the use would



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still be subject to findings of fact to protect public health and safety through a subsequent discretionary action.

#### **3. The proposed project will not adversely affect adjacent properties.**

The establishment of a cigar lounge as similar to bars/night clubs/lounges would not in of itself allow for such a use by right, but instead establishes it as requiring a Minor Conditional Use Permit. Therefore, the proposed action would not adversely affect adjacent properties as the use would still be subject to findings of fact to prevent adverse impacts on adjacent properties through a subsequent discretionary action.

#### **FINDINGS OF FACT (MINOR CONDITIONAL USE PERMIT)**

This decision is being made by the Director of Development Services, acting on behalf of the Planning Division, through **Section 2.3 of the Downtown Pomona Specific Plan (DPSP), "Minor Conditional Use Permit,"** and is based on the following findings of fact:

#### **1. That the proposed project is in compliance with the California Environmental Quality Act (CEQA).**

Pursuant to the Guidelines for Implementation of the California Environmental Quality Act (CEQA), the proposed project is Categorically Exempt under Section 15301 (Class 1—Existing Facilities) in that the proposed project involves licensing and minor alteration of an existing building. The proposed use does not involve the construction of any new structure. The proposed use may involve odors emanating from the consumption of cigars, but as proposed would constitute a less than significant impact on the environment, and is further conditioned to ensure sufficient separation of ventilation from adjacent uses and establishes a mechanism for enforcement of any impacts related to odor.

#### **2. That the proposed use at the particular location will contribute to the general wellbeing of the neighborhood or community.**

The proposed cigar lounge will be located within the Mixed-Use Central Business District of the Downtown Pomona Specific Plan. The MU-CBD intent is to "support a vibrant, pedestrian-friendly urban environment by providing a variety of employment, entertainment, cultural, and shopping opportunities for both residents and non-residents of Pomona." The cigar lounge would provide entertainment within Downtown, and be available to local residents and non-residents. Its location on Thomas Street would re-activate a long-shuttered existing commercial structure and increase the likelihood of pedestrian and commercial activity along Thomas and Second Streets, in addition to the potential activation of the adjacent alley connecting Thomas and Main Streets, while also increasing the likelihood of broader regional interest in improving the Downtown neighborhood by placing newfound attention to this district. Therefore, the proposed use contributes to the general wellbeing of the neighborhood or community.

#### **3. That such use will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, or general welfare of persons residing or working in the vicinity or detrimental to the use, valuation or enjoyment of property or improvements in the vicinity.**

California Labor Code Section 6404.5 exempts a "private smokers' lounge" from the definition of "place of employment." Private smoker's lounge is defined as "any enclosed area in or attached to a



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retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes.” Furthermore, “retail or wholesale tobacco shop” is defined as “any business establishment, the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.” Based on data submitted by the Applicant, the Planning Division has determined that the proposed operation may constitute a “wholesale tobacco shop” while still not triggering the “retail tobacco shop” definition in the Pomona Zoning Ordinance, as tobacco sales are based on membership and wholesale receipts, with less than 20% of in-store sales of tobacco. As the State does not establish percentage thresholds for sale of tobacco, their definition may still be relied upon for the proposed cigar lounge.

The Los Angeles County Department of Public Health has provided the Planning Division with guidance on the Labor Code provisions and indoor smoking laws, and has advised that the cigar lounge may not permit the consumption of food or alcohol, and that any proposed food or any other use other than a cigar lounge may only be permitted with separate walls, exterior entry, and independent air circulation systems. Further guidance from a joint analysis conducted by the City Attorney’s offices of San Francisco, Los Angeles, and San Jose recommend separate entrances, enclosures and business licenses for a tobacco shop distinct from any bar, restaurant, or other type of retail establishment to ensure compliance with the California Labor Code exemptions. Such guidance has been incorporated as conditions of approval, including establishing local definitions of “main purpose” and “dedicated to” as stated in the California Labor Code Section 6404.5 to provide an abundance of clarity to local code and law enforcement related to this use.

Furthermore, to ensure that the cigar lounge does not change operations over time to function as a retail tobacco shop, as opposed to a wholesale tobacco shop, thereby triggering Pomona Zoning Ordinance requirements, conditions of approval have been added to reduce the likelihood of operations akin to retail tobacco, including advertising, walk-in clientele, age verification, hours of operation, and provisions for annual audits of gross receipts separated by in-person point-of-sale and electronic (or wholesale) point-of-sale.

Therefore, the proposed use, as conditioned, will not be detrimental to the health, safety, peace, or general welfare of persons residing or working in the vicinity or detrimental to the use, valuation, or enjoyment of property or improvements in the vicinity.

- 4. That the site for the proposed use is of adequate topography, size, and shape to accommodate said use, as well as yards, spaces, walls, fences, parking, loading, landscaping, and any other features necessary to allow said use with the land and uses in the neighborhood and make it compatible thereto.**

The proposed use will occupy an existing interior tenant space located at 261 South Thomas Street. Per records from the Los Angeles County Assessor’s Office, the lot is approximately 1,885 square feet with a 3,900 square foot, two story building with mezzanine constructed in 1907, with an effective year built of 1930. The building has an existing storefront entrance fronting Thomas Street, and is adjacent to a public alley connecting Thomas and Main Streets. Thomas Street is a fully developed public street with existing off-street parking spaces, pedestrian sidewalk, and street lighting and sanitation facilities. Therefore, the proposed site is sufficient to accommodate the proposed use.

- 5. That the site abuts streets and highways adequate in width and improvements to carry traffic generations typical of the propose use.**



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The proposed use will occupy an existing interior tenant space located at 261 South Thomas Street, which abuts Thomas Street and a public alley connecting Thomas and Main Streets, which are developed. Furthermore, the propose location is within a half-mile proximity to the Downtown Pomona Metrolink transit station and is otherwise located in a pedestrian-oriented, short-block patterned district which encourages multi-modal transportation. Therefore, the site abuts streets adequate in width and improvements to carry traffic generations from the proposed use.

- 6. That the granting of such conditional use permit will not adversely affect the General Plan of the city, or any other adopted plan of the city and conforms to the provisions of the zoning ordinance.**

Goal 6B.G6 of the 2014 Pomona General Plan states: "Cultivate Downtown as the "heart of the city," where residential, shopping, employment, educational, art, cultural, and civic activities are supported by transit, parks, parking, and walkable environment." The proposed cigar lounge would be located along Thomas Street and function as a source of leisure and entertainment in the center of Downtown Pomona, and would re-activate a long-shuttered existing tenant space. Granting the Minor Conditional Use Permit would not adversely affect the General Plan or Downtown Pomona Specific Plan and would conform to the provisions of the Pomona Zoning Ordinance and would be subject to a specific set of conditions of approval along with standard ordinance regulations, along with County and State regulations.

#### **APPEALS**

This decision will become final on March 29, 2021, unless an appeal is filed with the Planning Division by this date. The applicant or any member of the Planning Commission may file an appeal. Appeals may be filed with the contact listed in this letter.

Sincerely,

**Anita D. Gutierrez, MPL, AICP**  
Development Services Director

# Mi Havana Cigar House

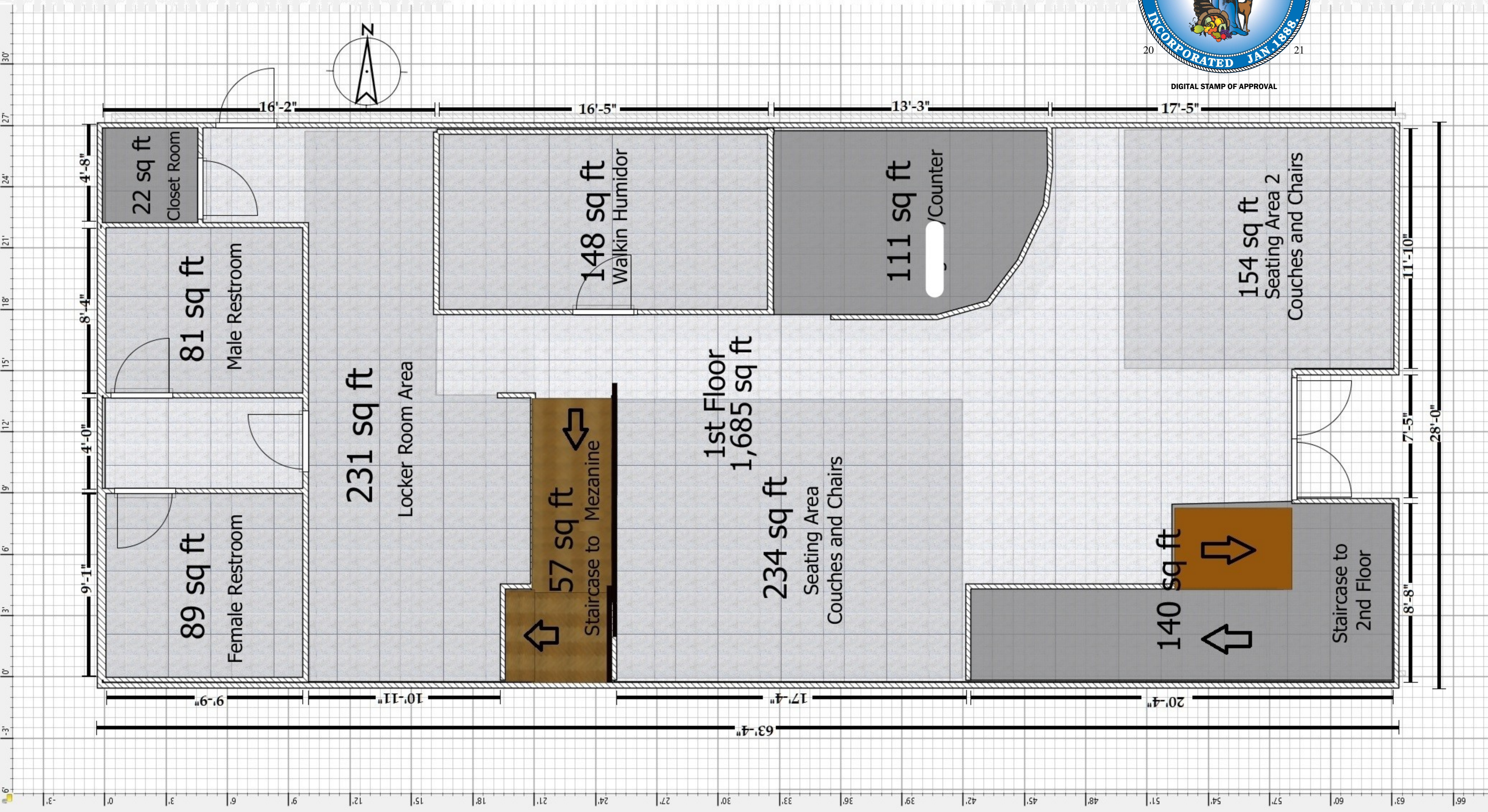
CIGAR SHOP-CIGAR CRAFTING-CIGAR LOUNGE

261 South Thomas Street Pomona CA 91766



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DIGITAL STAMP OF APPROVAL



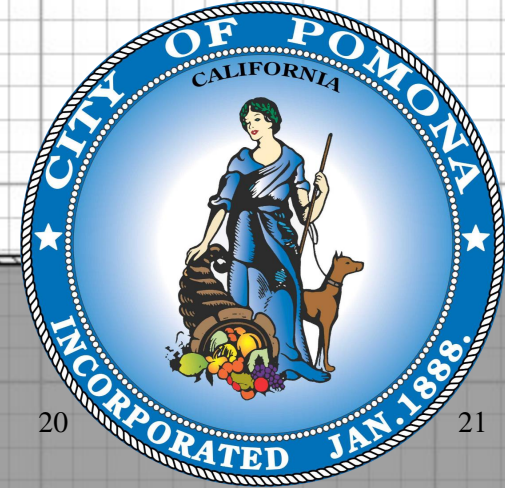


# Mi Havana Cigar House

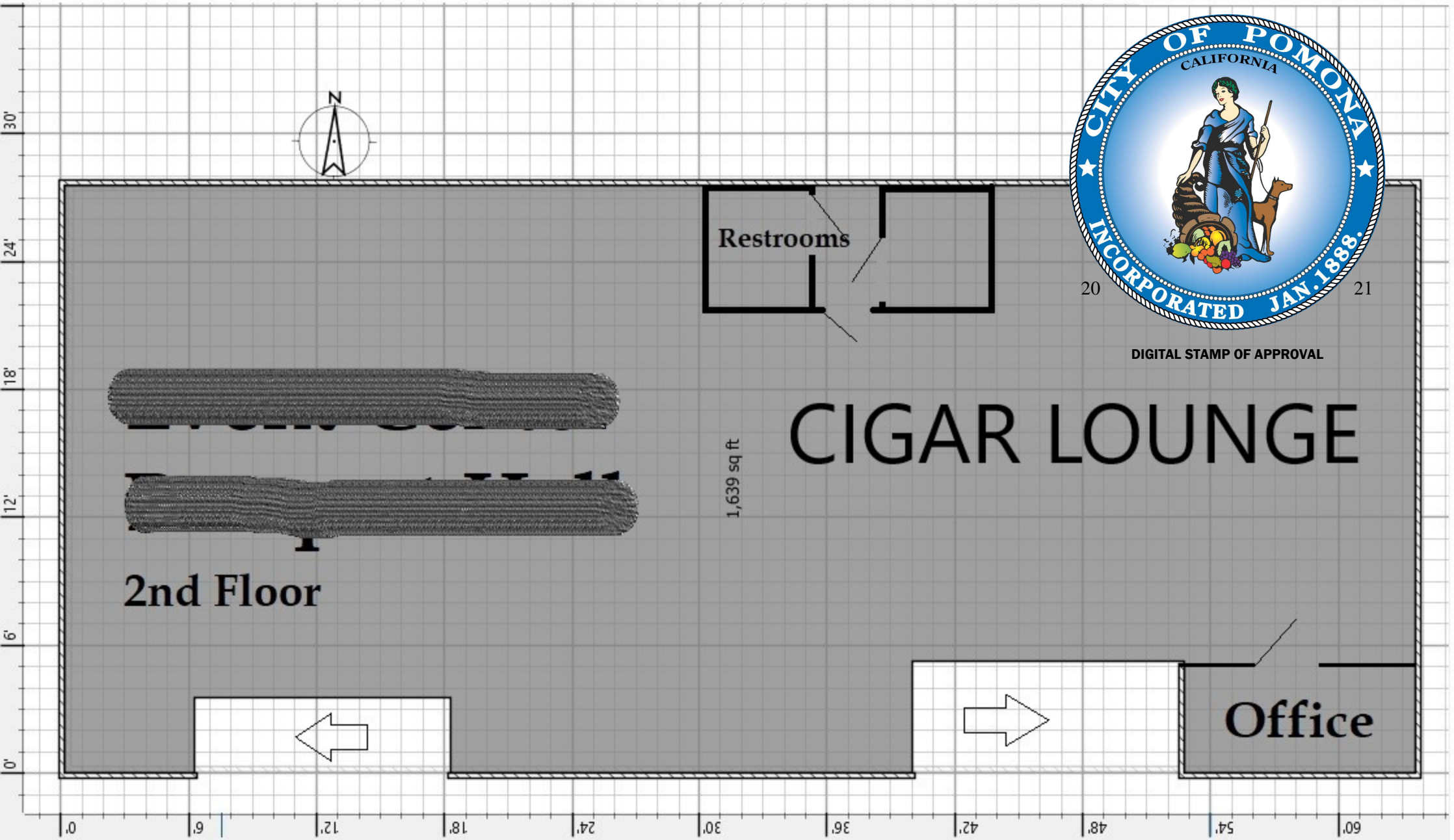
CIGAR SHOP-CIGAR CRAFTING-CIGAR LOUNGE

261 South Thomas Street Pomona CA 91766

PLANNING



DIGITAL STAMP OF APPROVAL



2nd Floor

1,639 sq ft

Restrooms

CIGAR LOUNGE

Office

# Mi Havana Cigar House

CIGAR SHOP-CIGAR CRAFTING-CIGAR LOUNGE

261 South Thomas Street Pomona CA 91766

