

RESOLUTION NO. 17-2024

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, AMENDING RESOLUTION 14-2023 AND RECOMMENDING ISSUANCE OF A DOWNTOWN ALCOHOLIC BEVERAGE PERMIT PURSUANT TO I.C. 7.1-3-20-16(g)

Whereas, IND. CODE § 7.1-3-20-16(g) allows the Indiana Alcohol and Tobacco Commission ("IATC") to issue fifteen (15) on-premises alcoholic beverage permits, without regard to the quota provisions of IND. CODE § 7.1-3-22, within the historic district (as defined within the Enabling Statute) of the City of Valparaiso; and

WHEREAS, on **December 14, 2015**, the Common Council of the City of Valparaiso adopted Ordinance 29-2015, which approved the *Amended Criteria for License Allocation and Applicant Compliance Requirements* that was initially approved by Resolution 15-2005; and

WHEREAS, on **August 28, 2023**, the Common Council passed Ordinance 11-2023 which adopted the *Second Amended Criteria for License Allocation and Applicant Compliance*; and

WHEREAS, on **November 27, 2023**, the City Council held public presentations by applicants for an on-premises alcoholic beverage permit.

WHEREAS, on **December 11, 2023**, the City Council adopted Resolution 14-2023. Such resolution inaccurately identified the applicant.

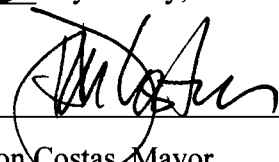
NOW THEREFORE BE IT RESOLVED by the Common Council of the City of Valparaiso, Indiana, that:

1. **NWI Business Group Inc. d/b/a Smoketown Blues**, should be, and is, hereby recommended for a 3-Way on-premises alcoholic beverage permit. Such recommendation being conditioned upon full compliance with the objectives and criteria contained in the *Second Amended Criteria for License Allocation and Applicant Compliance* and pursuant to Indiana Code §§ 7.1-3-19-17 and 7.1-3-20-16(g).

2. That upon written request by the City Council, representatives from **NWI Business Group Inc. d/b/a Smoketown Blues**, shall appear and provide a report as to its activities and answer questions relating to any complaints/problems.

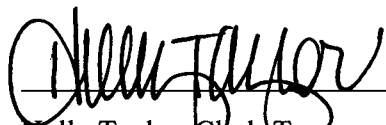
3. At all times **NWI Business Group Inc. d/b/a Smoketown Blues** shall comply with the executed Written Commitment.

PASSED AND ADOPTED by the Common Council of the City of Valparaiso, Porter County, Indiana, by a 7-0 vote of all members present and voting, this 22nd day of July, 2024.



Jon Costas, Mayor

ATTEST:



Holly Taylor, Clerk-Treasurer

Formal Written Commitment

This *Formal Written Commitment and Use Agreement* (“Commitment”) is entered into this 22nd day of July, 2024, by and between the **Common Council of the City of Valparaiso** (“City”) and **NWI Business Group Inc. d/b/a Smoketown Blues** (“Holder”).

Whereas, IND. CODE § 7.1-3-20-16(g) (“Enabling Statute”) allows the Indiana Alcohol and Tobacco Commission (“IATC”) to issue **fifteen (15)** additional on-premises alcoholic beverage permits, without regard to the quota provisions of IND. CODE § 7.1-3-22, within the downtown historic district (as defined within the Enabling Statute) of the City of Valparaiso, (“District Permits”);

Whereas, pursuant to IND. CODE § 7.1-3-19-17(a) (“Local Approval Statute”), the Common Council of the City of Valparaiso adopted **Ordinance 29-2015**, as amended by **Ordinance 11-2023** (collectively “Ordinance”) requiring a formal written commitment as a condition of eligibility for all Holders of a District Permit;

Whereas, subject to the Enabling Statute, the Local Approval Statute, *Second Amended Criteria for License Allocation and Applicant Compliance Requirements* and the Ordinance, Holder is required to enter into this Commitment regarding the character and type of business that will be conducted on the Permit Premises (as defined below);

Whereas, Holder acknowledges that the cost of the District Permit is substantially below the cost of a 3-Way Liquor License and that the reduction in cost is meant, in part, to allow the Holder to expend greater resources on food offerings; and

Whereas, the intent of this Commitment is to: i) ensure that the Holder operates a restaurant within the downtown historic district that provides a food-oriented dining experience and is consistent with the Holder’s representations to the City; ii) prevent Holder from operating a bar or similar establishment; and iii) ensure that Holder honors the representations and commitments made to the City.

Now, therefore, in consideration of receiving favorable continued support from the City for its District Permit, Holder agrees to the following requirements, covenants, and restrictions:

Section 1. Recitals. The Recitals set forth above are hereby fully incorporated in and made a part of this Commitment by reference.

Section 2. Location. The location where alcoholic beverages will be dispensed is **66 Lincolnway, Valparaiso, Indiana** (“Permit Premises”). A District Permit may not be transferred to a new location without the written consent of the City. Any attempt to transfer the District Permit to a new location, without written consent, shall be void and shall constitute a violation of this Commitment, which could cause the District Permit to be revoked by the IATC. Any change in location renders this Commitment voidable at the sole discretion of the City. The City

may publicly advise against the renewal of the District Permit in lieu of formally voiding this Commitment.

- Section 3. Ownership and Management.** A District Permit may not be transferred to a new owner without the written consent of the City. Any attempt to transfer a District Permit, without written consent, shall be void and shall constitute a violation of this Commitment, which could cause the District Permit to be revoked by the IATC. As provided in the *Second Amended Criteria for License Allocation and Applicant Compliance Requirements*, any Holder that is a business entity is required to disclose a list of all owners. **To the extent that any change in ownership occurs, Holder must provide written notice to the City within thirty (30) days of the effective date.** Any material change in the equity ownership or management of the Holder renders this Commitment voidable at the sole discretion of the City. The City may publicly advise against the renewal of the District Permit in lieu of formally voiding this Commitment. For purposes of this Commitment, “material change” shall include, but not be limited to, any change that alters the ownership structure as represented in **Appendix C**.
- Section 4. Permit Application and Renewals.** Holder will provide the City with its IATC Application for Permit. All additional renewals, forms, applications, questionnaires, and disclosures that Holder submits to the IATC, at any time, must be submitted to the City of Valparaiso Mayor’s Office with a copy to the City Attorney within **ten (10) days** following submission to the IATC.
- Section 5. Character and Uses.** Holder shall use the Permit Premises for the operation of a full-service **BBQ and dessert restaurant with quality homemade bbq sauces, dry rubs and desserts**; meaning, a restaurant where food and drink orders are primarily taken from, and served to, seated customers at tables, by wait staff that are not bartenders. The menu and offerings of the Permit Premises shall be primarily designed to provide a food-oriented dining experience to the public. The Holder shall, at all times of operation, provide to the public its full menu from its kitchen facility. The Holder shall operate (at a minimum) **Tuesday – Saturday 11:30 am – 8:00 pm**. The City may void this Commitment or publicly advise against the renewal of Holder’s District Permit if the use of the Permit Premises is merely designed to provide customers with an alcohol consumption experience (e.g., a majority of sales or transactions occur at the bar counter). If the Holder desires to change or amend its use of the Permit Premises, Holder must first receive City’s written consent, which shall become a part of this Commitment. Any unauthorized change in use renders this Commitment voidable at the sole discretion of the City. The City may publicly advise against the renewal of the permit in lieu of formally voiding this Commitment.
- Section 6. Additional Obligations.** Holder covenants the following:

- (a) All representations and commitments written in **Appendix B** of this Commitment, as amended or supplemented over time, are full and binding obligations of Holder.
- (b) Permit Premises shall be fully non-smoking and Holder must operate the Permit Premises in strict compliance with the City's Smoking Ordinance.
- (c) Holder must be a full and current dues paying contributor to the Downtown Dining Marketing Fund at all times it possesses a District Permit.
- (d) Both Holder and the Permit Premises must remain in compliance with all State and City laws and ordinances, including, but not limited to, all building, health, and zoning laws, as well as all architectural standards established by the City of Valparaiso. The burden of evidencing compliance is on the Holder.
- (e) Holder agrees to comply with the Enabling Statute, the Local Approval Statute, and the Ordinance, as amended, regardless of whether such provisions are specifically expressed in this Commitment.
- (f) Holder has received a copy of the *Second Amended Criteria for License Allocation and Applicant Compliance Requirements*. Such is incorporated by reference into this Commitment. Holder accepts the terms and agrees to be bound by its provisions.
- (g) Holder acknowledges that the City has adopted rules for outdoor dining on public walkways/easements/property. The rules, in large part, balance the desire to provide outdoor dining options with the need to assure that all pedestrians have sufficient space to safely move in the downtown area. Holder agrees to abide by all such rules relating to outdoor dining.
- (h) Holder acknowledges the benefit of collaboration with other restaurants in the Valparaiso downtown. Holder shall be an active member of the Valpo Downtown Dining group (if such exists) and shall make reasonable best efforts to attend group meetings and participate in group promotional activities.
- (i) Any breach of the foregoing covenants renders this Commitment voidable at the sole discretion of the City. The City may publicly advise against the renewal of the District Permit in lieu of formally voiding this Commitment.

Section 7. General Provisions. The Parties agree as follows:

- (a) This Commitment shall extend to and be binding upon the heirs, personal representatives, and successors of the Holder.
- (b) This Commitment may not be modified or amended unless agreed upon in writing and signed by the Parties.
- (c) This Commitment may be executed in counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.
- (d) This Commitment and its Appendices constitute the entire agreement of the Parties with respect to this matter, and it supersedes all prior negotiations, representations, or agreements, either written or oral, between the Parties.
- (e) The Commitment shall be governed by and interpreted in accordance with the laws of the State of Indiana. Any proceeding seeking to enforce any provision of this Commitment may only be brought in a court sitting in Porter County, Indiana.
- (f) The IATC and its associated Local Board have independent regulatory authority over these matters and the City of Valparaiso cannot be held liable or responsible for any act of the IATC. Furthermore, the City of Valparaiso has no duty or responsibility to advocate or intervene in any proceeding before the IATC or its associated Local Board.

Section 8. **Notice.** Whenever any notice, statement or other communication is required under this Commitment, it shall be sent by first class mail or via an established courier or delivery service to the following addresses, unless otherwise specifically advised.

Notices to the City shall be sent to:

City of Valparaiso
166 W. Lincolnway
Valparaiso, IN 46383
Attn: City Attorney

Notices to the Holder shall be sent to:

NWI Business Group Inc. d/b/a Smoketown Blues
c/o Mireya Rodriguez
66 Lincolnway
Valparaiso, Indiana 46383

- Section 9. Term.** The Commitment shall become effective upon approval by the City and shall remain effective so long as the Holder continues to hold an active unexpired District Permit with the IATC.
- Section 10. Breach and Remedies.** Notwithstanding anything to the contrary, the City shall have the right to seek legal, injunctive, or other equitable relief from a court of competent jurisdiction in the event of a breach. All rights and remedies provided in this Commitment are cumulative and not exclusive of any other rights or remedies that may be available herein. The City is not required to exhaust remedies with the IATC before proceeding against Holder in event of breach.
- Section 11. Authorized Party.** Each individual executing this Commitment represents that he/she has the requisite authority to sign this Commitment.
- Section 12. Additional Commitments.** See Attached **Appendix B**. Any violation of the Additional Commitments shall constitute a violation of this Commitment, which could cause the District Permit to be revoked by the IATC. The City may publicly advise against the renewal of the District Permit in lieu of formally voiding this Commitment.

All of this having been agreed to by the Parties on the date first indicated above and memorialized by the signatures contained herein.

**Holder: NWI Business Group Inc. d/b/a
Smoketown Blues**

By: Charles Ashford
Printed Name: Charles Ashford
Title: Vice President
Date: JULY 22, 2024

Valparaiso Common Council

By: Robert Cotton
Printed Name: ROBERT COTTON
Title: President
Date: JULY 22, 2024

Appendix A

Application for District Permit

[To be added once Filed]

Appendix B
Additional Commitments

Holder appeared before the City Council on **November 27, 2023** and made a presentation as to the proposed restaurant and its request for a District Permit. During Holder's presentation, certain representations and commitments were offered. These representations and commitments distinguished Holder's application and presentation. As a material condition to this Agreement, Holder commits to the following:

1. **Name of restaurant will remain the same.** If Holder decides to rename/rebrand the restaurant, Holder must provide written notice to the City for approval.
2. **Offer a full-service menu for dinner a minimum of five (5) days per week.** Notwithstanding the preceding, it is acknowledged that Holder's restaurant may be closed to the public for holidays and occasional private events. Should Holder intend to reduce scheduled operations to less than five (5) days per week, Holder must contact the City. Depending on the specifics of the revised schedule, the City may require Holder to seek an amendment to this Agreement.
3. **Employ a minimum of 5 FTE and 9 PTE that work at Holder's restaurant.** It is understood that all 14 Employees will not be working simultaneously. Upon request of the City, Holder shall provide documentation that it employs a minimum of 30 Employees at its restaurant.
4. **The Permit Premises will meet all Unified Development Ordinance requirements.**
5. **Holder's Application is attached as Appendix C. Except as otherwise provided in this Commitment, the statements and representations contained in the Application are included in this Commitment.**

Appendix C

Holder’s Application & Ownership Information