



CITY OF NEWARK

Planning Commission

City Hall, City Council Chambers

37101 Newark Boulevard, Newark, CA 94560 | (510) 578-4330 | E-mail: planning@newark.org

AGENDA

Tuesday, April 23, 2024
7:00 P.M.

A. ROLL CALL

B. MINUTES

- B.1 Approval of Minutes of the regular Planning Commission meeting of March 12, 2024.**

(MOTION)

C. WRITTEN COMMUNICATIONS

D. ORAL COMMUNICATIONS

Members of the public are invited to address the Planning Commission on any item not listed on the agenda. Public Comments are generally limited to 5 minutes per speaker. Please note that State law prohibits the Commission from acting on non-agenda items.

E. PUBLIC HEARINGS

- E.1. Public Hearing to consider APPC2024-001, an appeal to the Community Development Director's approval of DR2022-008 and MUP2022-022, a Design Review and Minor Use Permit for the exterior façade improvements, addition of a new cash and pick-up window, modification to the existing drive-through, addition of a new second drive-through, and associated on-site improvements for McDonald's located at 35192 Newark Boulevard (APN 92A-720-10). The subject site is zoned CC: Community Commercial and has a General Plan Land-Use designation of Community Commercial.**

F. STAFF REPORTS**G. COMMISSION MATTERS****G.1 Report on City Council actions.****H. PLANNING COMMISSIONER COMMENTS****I. ADJOURNMENT****MEETING INFORMATION**

Members of the public may attend the meeting in person, watch online, or watch on Cable Channel 26. The ability to observe online or on Cable Channel 26 is predicated on those technologies being available and functioning without technical difficulties. Should those platforms not be available, or become non-functioning, or should the Planning Commission otherwise encounter technical difficulties that make those platforms unavailable, the Planning Commission will proceed with business in person unless otherwise prohibited by law.

How to view the meeting remotely:

YouTube Livestream: <https://www.youtube.com/@cityofnewark3077/streams>

Copy/paste the YouTube URL into your browser if the link does not automatically open.

Cable Channel 26 - if the meeting does not broadcast live, please contact your service provider, and request the City of Newark channel lineup.

Zoom will no longer be available for public participation unless required by Assembly Bill 2449. Should a Planning Commission Member attend the meeting via Zoom pursuant to Assembly Bill 2249, then the Webinar **ID 87063252816** will be activated. The Planning Commissioner Chairperson will make an announcement at the beginning of the meeting that the Planning Commission will be allowing public comment via Zoom. Raise your virtual hand to notify the Clerk that you would like to speak during the item that you wish to speak on.

Submission of Public Comments: Public comments received by 4:00 p.m. on the Planning Commission meeting date will be provided to the Planning Commission and considered before Planning Commission action. Comments may be submitted by email to planning@newark.org.

No question shall be asked of a Planning Commissioner, city staff, or an audience member except through the Chairperson. No person shall interrupt the meeting. Any person who refuses to carry out instructions given by the Chairperson for the purpose of maintaining order may be guilty of an infraction and may result in removal from the meeting.

Commission Meeting Access/Materials:

The agenda packet is available for review at [Agendas and Minutes](#). The packet is typically posted to the City website the Friday before the meeting, but no later than 72 hours before the meeting.

Pursuant to Government Code 54957.5, supplemental materials distributed less than 72 hours before this meeting, to a majority of the Planning Commission, will be made available for public inspection at this meeting and will be posted at <https://www.newark.org/departments/city-manager-s-office/agendas-minutes> and will concurrently be made available for public inspection during regular business hours at City Hall, 37101 Newark Boulevard, Newark CA. Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection. For those persons who require special accommodations, please contact the Administrative Support Specialist at least two days prior to the meeting at planning@newark.org or 510-578-4330.



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MINUTES

Tuesday, March 12, 2024
7:00 P.M.

A. ROLL CALL

Chair Fitts called the meeting to order at 7:00 pm. All members of the Planning Commission were present: Chair Fitts, Vice Chair Aguilar, Commissioner Becker, Commissioner Bogisich, and Commissioner Catancio.

Election of Officers

Chair Fitts initiated the election process, emphasizing the annual rotation of the chairman and vice-chair positions. Chair Fitts nominated Commissioner Jeff Aguilar as the next chairman for 2024, a motion seconded by Commissioner Becker. The motion passed - **5 AYES.**

Subsequently, Chair Fitts proposed a vote for the vice-chair position. Commissioner Aguilar nominated Commissioner Bogisich; a motion seconded by Chair Fitts. The motion passed - **5 AYES.**

Chair Fitts expressed gratitude for serving as chair over the past year. He commended the Commission for its dedication, punctuality, and discussion engagement. He highlighted the positive relationship between Staff and the community. Chair Fitts then passed the gavel to the new Chairman, Jeff Aguilar.

B. MINUTES

B1. Approval of Minutes of the regular Planning Commission meeting of January 23, 2024.

MOTION APPROVED

Chair Aguilar requested a motion. Commissioner Bogisich moved, and Commissioner Fitts seconded, to approve the Minutes of the regular Planning Commission meeting on January 23, 2024. The motion passed – **5 AYES.**

C. WRITTEN COMMUNICATIONS

None.

D. ORAL COMMUNICATIONS

Members of the public are invited to address the Planning Commission on any item not listed on the agenda. Public Comments are generally limited to 5 minutes per speaker. Please note that State law prohibits the Commission from acting on non-agenda items.

None.

E. PUBLIC HEARINGS

None.

F. STAFF REPORTS**F.1. Housing Legislation Overview – A review of important state legislation affecting local jurisdictions regarding residential development requirements and housing production.**

Community Development Director (CDD) Steven Turner began the meeting by outlining the state legislation affecting housing production in Newark and statewide. He emphasized the State's initiatives to promote increased housing production, particularly in the scope of affordable housing, through various legislative measures. Acknowledging the complexity of the legislative landscape, CDD Turner mentioned over 200 new laws under consideration that could potentially influence Newark's housing and land use policies.

Following CDD Turner's introduction, Attorney Alex Mog from Meyers Nave, representing the City on legal matters, started a presentation. Attorney Mog began by emphasizing the abundance of legislative activity, noting that multiple bills often cover similar topics, requiring careful examination to recognize their distinctions. He offered a high-level overview of the subject matter to familiarize the Commission with the general concepts and welcomed any questions from the attendees.

Attorney Mog elaborated on the Housing Accountability Act, emphasizing its significance in California's legal agenda and its increasing application in recent years. He explained that the Act prohibits cities from rejecting a housing project or approving it at a lower density if it complies with all applicable objective standards at the time of the application's completeness. Attorney Mog explained that while the City can still impose conditions of approval, excessively heavy conditions could effectively amount to project denial. He delineated between objective and subjective standards, highlighting that only the former could be used to deny a project.

He further detailed an explanation of the legal standards applicable to urban planning. He highlighted the distinction between objective and subjective standards, with examples including height limits and neighborhood character, respectively. Attorney Mog emphasized that project approval or denial centers on evidence of specific adverse effects on public health or safety. He noted the difficulty of meeting denial criteria and potential fines for violations. Additionally, Attorney Mog mentioned the discretionary review process and the imposition of conditions of approval, which are subject to CEQA review.

Vice Chair Bogisich inquired regarding the potential adverse impact of traffic due to inadequate parking space, and its implication on the number of units allowed.

In response, Attorney Mog clarified that parking issues are not considered adverse impacts on public health or safety, even though they may pose inconveniences. Therefore, they do not affect the permitted number of units.

Attorney Mog continued his presentation by discussing SB 330, also known as the Housing Crisis Act, enacted by the State in 2019. He emphasized its main provision: the creation of a preliminary application that locks in standards early in the process, preventing last-minute rule changes by cities. Attorney Mog detailed the timelines and requirements for

preliminary and completed applications, as well as the limitations on fee adjustments and project changes.

Additionally, he addressed SB 330's provisions prohibiting changes to parcels allowing residential use to less intensive uses and limiting demolition of existing residential units.

He further discussed SB 35, which mandates a ministerial review process for qualifying projects, with no need for discretionary approvals or public hearings. Attorney Mog explained the affordability requirements for larger projects under SB 35 and its applicability to cities not meeting their regional housing needs.

Vice Chair Bogisich asked whether zoning decisions are at the city's discretion or controlled by the State.

Attorney Mog clarified that SB 330 does not require changes in zoning but prevents actions from decreasing housing intensity. He also highlighted SB 35's streamlined process and its implications for developers, including prevailing wage requirements for larger projects.

CDD Turner stated that in the previous cycle, Newark exceeded the threshold for market-rate unit production compared to the RHNA allocation. Therefore, developers must provide at least 50% of units meet affordability levels in their projects to qualify for ministerial action.

Chair Aguilar sought clarification on SB 35's implementation timeline, to which Attorney Mog responded that it would likely occur midway through the housing cycle and emphasized the need for prompt entitlement actions by the city due to the streamlined process allowed in the law.

Attorney Mog introduced SB 4, known as YIGBY (Yes In God's Backyard), a newly effective law creating a streamlined process for affordable housing projects on religious or educational institution-owned land. These projects evade local zoning regulations, with maximum density set at 30 units per acre and height limitations. The law requires 100% affordability to low-income households and adherence to SB 35's site-specific and labor standards.

Vice Chair Bogisich inquired about the application of SB 4 in Berkeley's People's Park project, which Attorney Mog clarified did not occur due to state exemptions for building on state university-owned land.

Attorney Mog then discussed the Density Bonus Law, highlighting its increasing implementation and the entitlement of developers to density bonuses for providing affordable units. He explained how deeper affordability yields greater bonuses and detailed incentives or concessions available under the law, including parking requirements.

CDD Turner emphasized the value of concessions under the Density Bonus Law, noting developers' interest in reducing parking, and setbacks, and increasing heights to enhance project feasibility.

Attorney Mog stated that a waiver might waive any criteria that would physically prevent the project from being built at the authorized density. He stated that there were certain restrictions on this in the past, but courts have recently ruled that the project should go as envisioned, making it very impossible to deny a waiver.

Vice Chair Bogisich expressed concern about the perceived leniency, to which Attorney Mog clarified that waivers can only be refused under specific adverse health and safety impacts or legal violations.

Chair Aguilar questioned the number of waivers developers could obtain, with Attorney Mog stating it is unlimited, clarifying the distinction between concessions and waivers.

CDD Turner questioned whether the number of waivers relates to the proportion of affordable units, to which Attorney Mog confirmed unlimited waivers, while concessions have limits.

Attorney Mog also discussed the AB 684 Law, also known as the Missing Middle Law, targeting smaller homeownership opportunities without mandating affordable housing. He outlined the regulations for parcel maps and housing construction projects in multi-family zoning districts.

Next, Attorney Mog highlighted AB 2011 and SB 6, similar laws enabling housing development on sites primarily used for office, retail, or parking. AB 2011 provides a

streamlined ministerial approval process, exempting projects from CEQA evaluations, while SB 6 subjects projects to the Housing Accountability Act (HAA) and CEQA evaluations. Both laws mandate minimum density levels and adherence to development standards.

Attorney Mog then discussed SB 1490, a new law facilitating the repurposing of existing residential or commercial structures into additional residential units, exclusively for low-income individuals.

CDD Turner inquired about its applicability to office building reuse, to which Attorney Mog clarified it is limited to facilities that allow temporary occupations, such as a hotel or motel.

Attorney Mog talked about SB 9, mandating ministerial approval for 2-lot subdivisions or two-unit development projects in single-family residential zones. He outlined requirements, including parcel size, limitations, and restrictions on short-term rentals.

He then provided updates on ADU laws, mentioning provisions for separate ADU sales, pre-approved ADU designs by 2025, and amended height limits based on location and type of ADU.

Commissioner Fitts inquired about the distinction between streamlined and ministerial approvals. Attorney Mog clarified that while streamlined implies shorter timeframes, ministerial decisions are made at the staff level without discretion.

Commissioner Fitts also discussed pre-approved ADU plans and their impact on process efficiency, with CDD Turner noting potential resource-sharing opportunities but acknowledging homeowners' preferences for their own designs.

Vice Chair Bogisich inquired about the sale of an ADU.

Attorney Mog responded that in the past ADUs could not be sold separately from the main home, but the new law allows a city to permit the sale of an ADU separately. He believes that the legislation wants to create more homeownership opportunities.

Commissioner Becker asked about ADU conversion into a two-unit townhome complex, while Vice Chair Bogisich raised concerns about property tax implications for ADU sales, which Attorney Mog affirmed.

Commissioner Fitts inquired about ADU use for short-term rentals, with Attorney Mog confirming permissibility and city discretion to prohibit such rentals.

Vice Chair Bogisich sought clarification on ADU setback requirements, with Attorney Mog explaining flexibility up to the fence line, subject to existing structures and replacement scenarios.

Chair Aguilar inquired about any additional questions and commended Attorney Mog's comprehensive presentation.

(INFORMATIONAL)

G. COMMISSION MATTERS

G.1 Report on City Council actions.

CDD Turner reported that the City Council had reviewed the Housing Element presentation in January, with non-substantive changes for HCD approval. No additional State comments were received, and the City remains certified. Staff is focused on implementing the new Housing Element and upcoming programs. Additionally, CDD Turner mentioned a forthcoming City Council presentation on past and future bi-annual budgets.

H. PLANNING COMMISSIONER COMMENTS

Commissioner Catancio appreciated the comprehensive presentation, particularly following her recent attendance at the Planning Commissioners' Academy.

Vice Chair Bogisich showed appreciation for the informative and comprehensible presentation, even though expressing sadness about its content.

Commissioner Fitts commended the presentation and expressed anticipation for another term under Chair Aguilar's guidance.

Commissioner Becker appreciated the presentation and expressed frustration with new housing laws, while also thanking Commissioner Fitts for his service last year.

I. ADJOURNMENT

Chair Aguilar adjourned the meeting at 8:15 p.m.

DRAFT



DATE: April 23, 2024

TO: Planning Commission

FROM: Joseph Balatbat, Associate Planner

SUBJECT: Motion to continue the public hearing to consider APPC2024-001, an appeal to the Community Development Director’s approval of DR2022-008 and MUP2022-022, a Design Review and Minor Use Permit for the exterior façade improvements, addition of a new cash and pick-up window, modification to the existing drive-through, addition of a new second drive-through, and associated on-site improvements for McDonald’s located at 35192 Newark Boulevard (APN 92A-720-10) to May 14, 2024

Due to availability issues, the appellant (Maurice Ladrech) of APPC2024-001 is requesting a continuance of the Planning Commission public hearing for this agenda item. The applicant (Robert Preece, Design UA, Inc) and property owner (McDonald’s USA, LLC) of the McDonald’s project have been notified and do not object to a continuance of this item. Both parties have agreed to continue the Planning Commission public hearing of the appeal to May 14, 2024.

Since the April 23, 2024, Planning Commission public hearing notice had already been published, it is recommended that the Planning Commission open the public hearing, receive public comment, then continue the public hearing to May 14, 2024.

