



CITY OF NEWARK

Planning Commission

City Hall, City Council Chambers

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

AGENDA

Tuesday, February 8, 2022
7:30 P.M.

THIS IS A MEETING BY VIRTUAL TELECONFERENCE ONLY THAT WILL BE CONDUCTED PURSUANT TO ASSEMBLY BILL 361 (2021). THE CITY COUNCIL CHAMBERS WILL NOT BE OPEN. REFER TO THE END OF THE AGENDA TO REVIEW OPTIONS FOR PARTICIPATING IN THE MEETING REMOTELY OR TO SUBMIT PUBLIC COMMENTS VIA EMAIL.

A. ROLL CALL

B. MINUTES

B.1 Approval of Minutes of the regular Planning Commission meeting of December 14, 2021.

(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 Hearing to consider Night Co., a Conditional Use Permit to allow a restaurant with live entertainment within a shopping center facility at 39055 Cedar Blvd. #198 (APN 901-0188-001-00). The subject site is zoned NC: Neighborhood Commercial

and has a General Plan Land-Use designation of Neighborhood Commercial –
Shaveta Sharma, Contract Planner

(RESOLUTION)

F. STAFF REPORTS

G. COMMISSION MATTERS

G.1 Report on City Council actions.

G.2 Election of Officers

G.3 Amend Meeting Time in Planning Commission By-Laws

H. ADJOURNMENT

IMPORTANT NOTICE REGARDING PLANNING COMMISSION MEETING

Due to the COVID-19 pandemic, the City of Newark made changes related to Planning Commission meetings to protect the public's health and prevent the disease from spreading locally. As a result of the COVID-19 public health emergency and pursuant to Assembly Bill 361 (2021), **the City Council Chambers will be closed to the public.** Members of the public should attempt to observe and address the Planning Commission using the below technological processes.

This meeting is being conducted utilizing teleconferencing and electronic means as allowed by California Assembly Government Code 54953(e).

Chairperson Aguilar, and Commissioners Becker, Fitts, Otterstetter, Bogisich will be attending this meeting via teleconference. Teleconference locations are not open to the public. All votes conducted during the teleconferencing session will be conducted by roll call vote.

How to view the meeting remotely:

Livestream online at YouTube – [Streaming Meetings](#)

How to participate in the meeting remotely, via Zoom Webinar:

From a PC, Mac, iPad, iPhone or Android device: <https://us06web.zoom.us/j/88574229267>

From a telephone dial 1 669 900 9128, Webinar ID 885 7422 9267

Provide live, remote public comments when the Chairperson calls for comments. Use the raise your hand feature in Zoom to be called upon to speak.

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. Comments may also be submitted via e-mail to planning@newark.org at any time prior to closure of the public comment portion of the item(s) under consideration.

Reading of Public Comments: The Administrative Support Specialist will read aloud email comments received during the meeting that include the subject line "FOR THE RECORD" as well as the item number for comment, provided that the reading shall not exceed five (5) minutes, or such other time as the Planning Commission may provide, consistent with the time limit for speakers at a Planning Commission meeting and consistent with all applicable laws. Matters brought before the Planning Commission that require Council action may be either referred to staff or placed on a future Planning Commission agenda.

Commission Meeting Access/Materials:

The agenda packet is available for review at [Agenda 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, if time allows, at [Agendas and Minutes](#). 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.



CITY OF NEWARK

Planning Commission

City Hall, City Council Chambers

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

MINUTES

Tuesday, December 14, 2021

A. ROLL CALL

Chairperson Aguilar called the meeting to order at 7:30pm. Present were Commissioners Fitts, Otterstetter and Becker.

B. MINUTES

B.1 Approval of Minutes of the regular Planning Commission meeting of Tuesday, November 16, 2021

MOTION APPROVED

Commissioner Fitts moved, Commissioner Becker seconded, to approve the Minutes of the regular Planning Commission meeting on November 16. The motion passed 4 AYES.

C. WRITTEN COMMUNICATIONS

None.

D. ORAL COMMUNICATIONS

None.

E. PUBLIC HEARINGS

E.1 Public Scoping Session to receive public comments for the Notice of Preparation of an Environmental Impact Report for the Mowry Village Subdivision project located southwest of the Mowry Avenue intersection including three parcels (APN 537-0850-001-

11, 537- 0850-001-13, and 537-0850-002-00) – from Deputy Community Development Director Interiano.

Deputy Community Development Director (DCDD) Interiano provided an overview of the project proposal including proposed site plans. The proposed project includes a 203 single family subdivision on a 29 acre property along Mowry Ave. The project request would include entitlements such as an amendment to the Area 3 & 4 Specific Plan, Rezoning, Planning Overlay District and a Tentative Map Amendment. The single family lots would be in the size range of 3,375 sf to 4,000 sf. The project would also provide 4.89 acres of open and common open space. In terms of public improvements, the project would require improvements to Mowry Avenue, including widening of the right-of-way, bicycle lanes and sidewalks.

Stantec consultants Anna Radonich and Kaela Johnson presented the Environmental Impact Report (EIR) process. The consultants described how their role is to work with City staff to prepare a technical document that analyzes the environmental impacts of the proposed project, identify ways to lessen impacts, and which clarifies the environmental issues and choices. The consultants described how the NOP and scoping meeting are the first step in the process of approximately 8 months. The NOP was distributed for public review on November 30th and will close on January 3rd. The purpose of the scoping meeting is to inform the public that the City of Newark is evaluating a project under CEQA and to solicit public comments regarding the type and extent of environmental analyses to be undertaken. Following the close of the NOP comment period, a draft focused EIR will be prepared. The draft EIR will be released for public review and comment for a required 45-day review period. After tonight's meeting there will be two additional opportunities for public input, during the Draft EIR and the Final EIR.

Chairman Aguilar opened a question period for Planning Commissioners.

Commissioner Becker commented that he would like transportation access addressed in the study and expressed concern for sea level rise. He asked what sources will be used to obtain a sea level rise number when determining if the project is viable.

Anna Radonich, Stantec, commented that sea level rise will be addressed in the hydrology section for surface flooding, FEMA thresholds and other thresholds. She commented that safety is looked at in the transportation section of the report.

Commissioner Becker noted that he believes the City of Newark is undertaking a Quiet Zone study and asked if there is a connection between that study and the noise study for this project. DCDD Interiano commented that he will discuss with the City of Newark Public Works Department and report back.

Commissioner Fitts inquired about pedestrian access and if it would be addressed in the transportation study.

Commissioner Otterstetter commented she would like environmental hazards from the current Pick-N-Pull site addressed in the EIR.

Chairperson Aguilar opened the public hearing.

Josh Sonnenfeld, representing nine agencies: Greenbelt Alliance, Sierra Club San Francisco Bay Chapter, Citizens Community to Complete the Refuge, Center for Biological Diversity, San Francisco Bay Keeper, Santa Clara Audubon Society, Ohlone Audubon Society, Alameda Creek Alliance and Mission Peak Conservancy, read his letter on behalf of the organizations regarding overall concern for the project, specifically highlighting sea level rise and environmental concerns.

Telephone caller William Yragei, City of Fremont resident expressed his concerns representing significant threat over sea level rise.

Zoom speaker Kelly Abrillo, City of Fremont resident commented that residents of the proposed development would be at risk from sea level rise and liquefaction, and questioned who is liable for problems with subdivisions when liquefaction occurs.

Chairperson Aguilar closed the public hearing.

Chairperson Aguilar recapped the main issues raised in speaker comments, including accessibility, liquefaction, sea level rise, traffic, noise, preservation of the land, contamination and urban sprawl.

Commissioner Fitts asked when the item will be brought back to the Planning Commission. DCDD Interiano noted that the draft EIR public hearing would be the next step. Stantec clarified approximately as soon as 8-9 months.

F. STAFF REPORTS

None.

G. COMMISSION MATTERS

G.1 Report on City Council actions.

CDD Turner reported that at the City Council meeting on December 9, 2021, staff presented staff recommendation for an affordable housing preference policy study. A Local Preference Policy study is an item that appears on the affordable housing work plan adopted by City Council in May 2021. The intent is to provide the Newark community with a first opportunity to rent units at specific affordable housing developments in Newark. City Council was supportive of staff recommendations for a live/work preference policy. A displacement study and disparate impact analysis will need to be conducted to ensure the preference policy will not have the unintended consequences of excluding other protected groups.

Planning Commissioner applications to fill the seat vacated by former Commissioner Bridges closed last week. The mayor will review the applications and the city council will appoint a new commissioner. Staff hopes this will take place in January so the Planning Commission will have a new Commissioner in February.

A few items that will be addressed in upcoming Planning Commission meetings will be appointing a new Chair and Vice Chair for the Commission, amending the Planning Commission by laws to change the Planning Commission start time from 7:30 pm to 7:00 pm. The next

expected Planning Commission meeting will be on January 11 to bring forward a Conditional Use Permit for an entertainment use at a restaurant.

H. ADJOURNMENT

Chairperson Aguilar adjourned the regular Planning Commission meeting at 8:20 pm.

Respectfully submitted,

STEVEN TURNER
Secretary



- E. 1 Hearing to consider U-21-04, a Conditional Use Permit to allow a restaurant with live entertainment within a shopping center facility at 39055 Cedar Blvd. #198 (APN 901-0188-001-00). The subject site is zoned NC: Neighborhood Commercial and has a General Plan Land-Use designation of Neighborhood Commercial – Shaveta Sharma, Contract Planner**

(RESOLUTION)

Background/Discussion

The city has received an application for a Conditional Use Permit (CUP) to allow a restaurant with live entertainment at 39055 Cedar Boulevard #198. Per Newark Municipal Code (NMC) § 17.09.020, a conditional use permit is required for Live Entertainment uses associated with any use in the Neighborhood Commercial zoning district. The applicant, Eddie Lu of NightCo, is proposing to use an existing suite for a restaurant with live entertainment business. The request would allow the property to have live entertainment acts for patrons at their restaurant. Per the application, NightCo is intended to feature live acts alongside Asian and Asian-fusion cuisine for dinner only.

Project Context and Proposal

The project site has a General Plan Land-Use designation of Neighborhood Commercial and is zoned NC: Neighborhood Commercial. Generally, the NC district is intended to meet the needs of a variety of commercial service uses. It serves as a transition between Community and Regional Commercial centers and residential neighborhoods. Typical uses include service and retail operators. The project is located within a 5,886 square foot suite with a seating capacity for up to 175 persons. The hours of operation are evenings only and will be from 5:00 p.m. to midnight, seven days a week. The proposed hours for live entertainment are 5:00 p.m. to 11:00 p.m.

The subject property is within an existing shopping center and is surrounded by properties that are zoned Regional Commercial to the northeast, and single-family residential (RS-6000) along the other sides. The suite for NightCo is approximately 110 feet from the residential area, and as such is subject to the noise requirements for a residential area, pursuant to NMC, Chapter [17.24.100](#). Although the live entertainment use would require a conditional use permit, this is an existing suite within the shopping center and is allowed to continue to be a restaurant, aside from the proposed request for live entertainment.

Per NMC [Chapter 17.23, Parking and Loading](#), Live Entertainment uses don't have a specific requirement for parking, however the city determines this use to fall under the category of Commercial Entertainment and Recreation which requires one parking space for each four permanent seats or one for every 40 square feet of assembly area. Based on 175 seating capacity of the restaurant with live entertainment use, the required parking would be 44 parking space. Given that the restaurant is part of a larger shopping center (Lyons Shopping Center), staff analyzed the parking demands of the entire shopping center to ensure that it would meet the city's parking standards. Based on the required parking of the proposed use and the assumption of the

most intense permitted use (restaurant) on the site, it was determined (see Table 1) that there is sufficient parking in the shopping center to accommodate the proposed use.

Table 1. Required Parking

Use	Required	Provided
Commercial Entertainment and Recreation (1 space per every 4 seats)	44	
Restaurant (86,614 sq.ft.)	577	
Total Parking	621	638

Community Participation

As part of the public noticing requirements, the details of this application were mailed to all owners within a 500-foot radius. On January 28, 2022, staff received a response from a member of the public expressing concern with potential noise issues from the business. Staff has discussed the issues with the applicant and they are incorporating soundproofing and insulation in their tenant improvements. They would like to continue to operate the live entertainment until 11:00 p.m., however staff recommends that due to the close proximity of adjacent residential uses and the noise ordinance restrictions (section 17.24.100), it would be best to cease live entertainment at 9 p.m. on a daily basis.

Requested Entitlements

Pursuant to [NMC §17.08.020, Land-Use Regulations](#), “Live Entertainment” uses in the NC zoning district are subject to a CUP. The use permit review and approval process is intended to apply to uses that are generally consistent with the purposes of the zoning district where they are proposed but require special consideration to ensure that they can be designed, located, and operated in a manner that will not interfere with the use and enjoyment of surrounding properties. Therefore, per NMC [§17.35.030](#), the Planning Commission shall approve or conditionally approve the CUP request based on the findings required by NMC [§17.35.060](#):

- A. *The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this title [NMC Title 17] and all other titles of the Municipal Code;*
- B. *The proposed use is consistent with the general plan and any applicable specific plan;*
- C. *The proposed use will not be adverse to the public health, safety, or general welfare of the community, nor detrimental to surrounding properties or improvements;*
- D. *Tax revenue generated by the development will exceed the city's cost of the service demand as a result of the development or a compelling community benefit will be provided;*
- E. *The proposed use complies with any design or development standards applicable to the zoning district or the use in question unless waived or modified pursuant to the provisions of this title [NMC Title 17];*
- F. *The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and*
- G. *The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints.*

The inability to make one or more of the findings is grounds for denial of an application. Based on staff's analysis, the CUP findings for the proposed Project can be made in the affirmative and are provided in Attachment 2 of this report.

California Environmental Quality Act (CEQA)

A [Class 1, Existing Facilities, Categorical Exemption](#) relieves this project from the California Environmental Quality Act (CEQA) provisions. Per [CEQA §15301\(e\)\(2\)](#), environmental review is not required because:

- a. The proposed project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan; and
- b. The area in which the project is located is not environmentally sensitive.

Furthermore, the proposed Project is exempt from environmental review under State CEQA Guidelines [§15061\(b\)\(3\), Common Sense Exemption](#). CEQA Guidelines [§15061\(b\)\(3\)](#) states that a project is exempt from CEQA if: "The activity is covered by the common sense exemption that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

Based on the Project description, the proposed use will not result in a physical change in the environment. The subject property is occupied by an existing shopping center which will continue to operate with a variety of retail and service uses. Approval of the requested CUP does not involve the expansion of the existing building, nor does it disturb the physical environment. Any future development of the site would be subject to review under NMC Title 17 and CEQA. Therefore, no further environmental review is required.

Action

Staff recommends that the Planning Commission approve, by resolution, Conditional Use Permit U-21-04, as requested by the project applicant, based on the findings provided in Attachment 1, Draft Resolution.

Attachment(s)

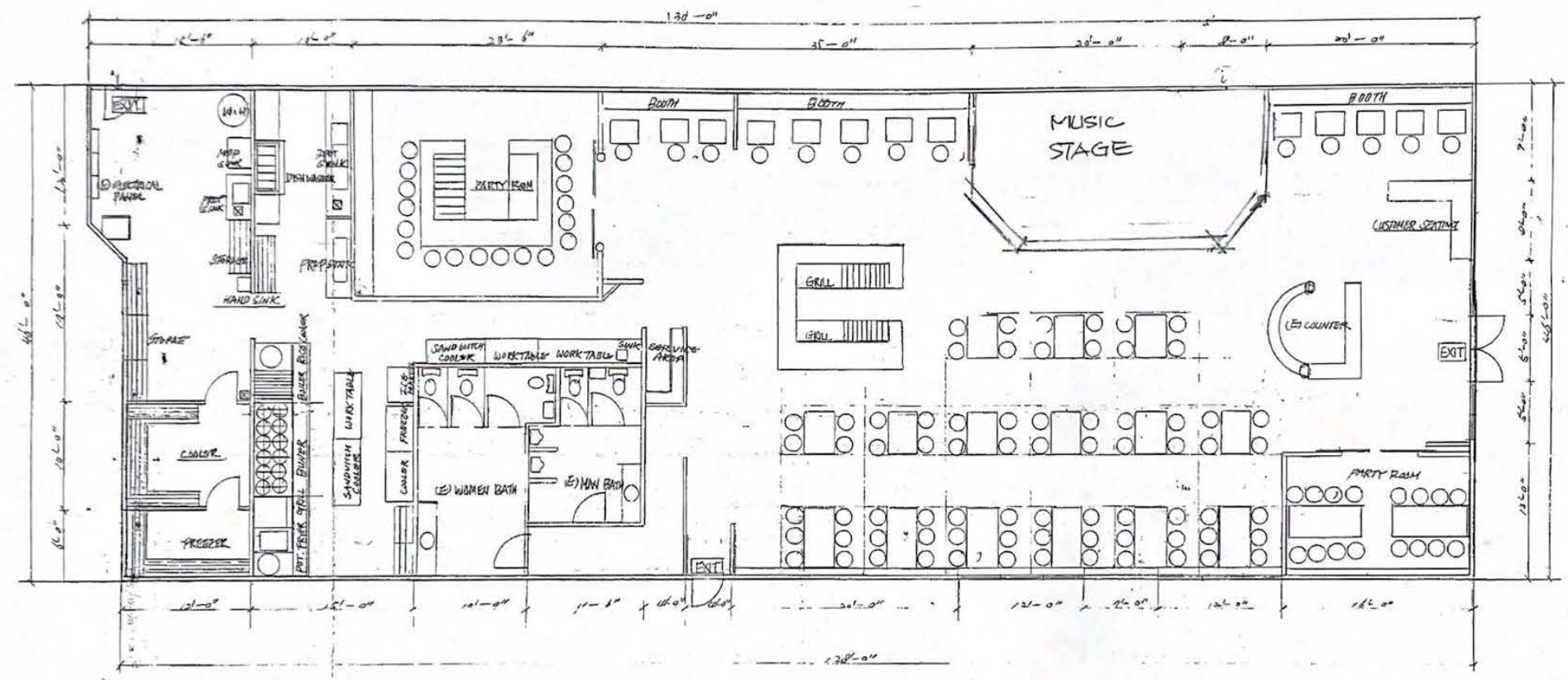
1. Exhibit A (Project Plans)
2. Draft Resolution
 - a. Exhibit A – Findings of Fact
 - b. Exhibit B – Conditions of Approval

THE ASIAN “ONE OF A KIND” EXPERIENCE

NIGHT CO.

39055 CEDAR BLVD. NEWARK CA 94560

39055 CEDAR BL. NEWARK CA 94560



TOTAL FLOOR AREA: 5886 S/F

(NEW) FLOOR PLAN

OCCUPANCY: 182 PEOPLE

Night Co. Asian cuisine is a unique service oriented casual concept that is positioned in an ethnic, rich, and diverse global cuisine marketplace off 880 behind Newpark Mall.

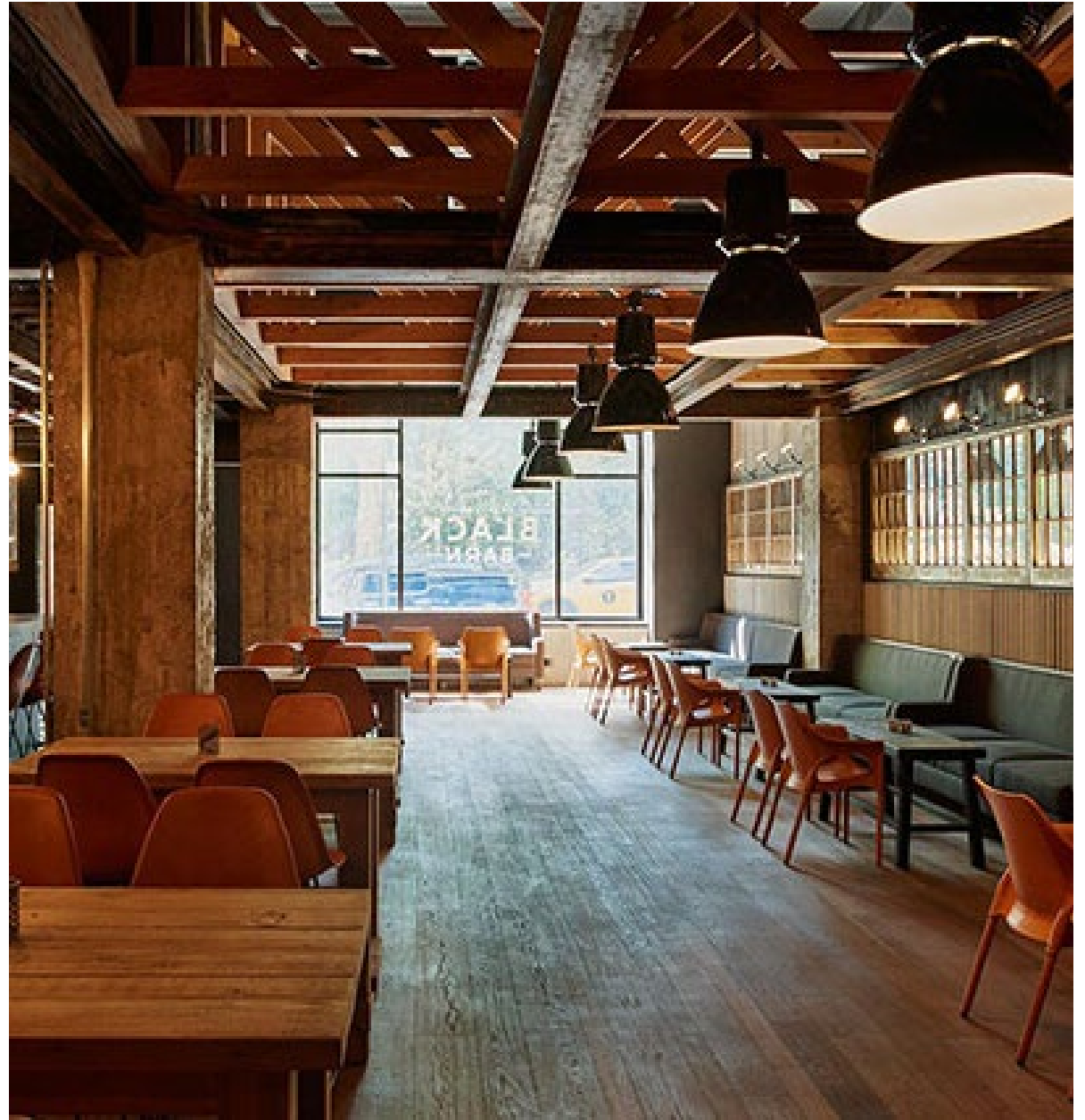
The concept appeals to a wide range of working professionals between the ages of 21 and 80. Night Co. Asian cuisine delivers sit down service, entertainment, comfort food, this is truly a place to get away and relax with friends and family.

This venue is unlike others in that it will provide a place for large or small gatherings with occasional live entertainment and a full-service menu. Multiple private dining areas, stage for entertainers, and full sit-down service that will accommodate business gatherings, family get togethers and socializing with friends.

Design strategy is to keep a clean and simple design, easy to clean furniture, streamlined elements, modern with pops of color. Acoustic control will be focused on during schematic design, there are many products on the market these days that will be used to ensure the sound level stays within comfortable range.

The branding is carried out throughout the design concept as well as the food.

Night Co. is one of the only large gathering place with Asian cuisine in this area. Everything will be coordinated, and every detail will be accounted for including signage and colors.



RESOLUTION NO. _____

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWARK APPROVING A CONDITIONAL USE PERMIT FOR LIVE ENTERTAINMENT ASSOCIATED WITH A PROPOSED RESTAURANT AT 39055 CEDAR BLVD. #198 (APN: 901-0188-001-00)

WHEREAS, Eddie Lu, on behalf of NightCo (the “Applicant”), has filed with the City of Newark an application for a Conditional Use Permit for Live Entertainment associated with a proposed restaurant building located at 39055 Cedar Blvd. #198 (APN: 901-0188-001-00) (the “Project”); and

WHEREAS, the property at 39055 Cedar Blvd. #198 (the “Project Site”) has a General Plan Land-Use designation of Neighborhood Commercial and is currently zoned NC: Neighborhood Commercial; and

WHEREAS, pursuant to Newark Municipal Code (“NMC”) §17.08.020, Live Entertainment uses in the NC: Neighborhood Commercial district are subject to a Conditional Use Permit; and

WHEREAS, the Project Site is comprised of a 2.3 acre lot consisting of four existing one-story buildings for a total of 92,500 square feet and 638 on-site parking spaces; and

WHEREAS, the Project does not propose any exterior modifications to the existing building. No site improvements are proposed as part of this application; and

WHEREAS, the Project is categorically exempt from the California Environmental Quality Act (“CEQA”) pursuant to [CEQA Guidelines, Article 19, §15301](#) for Existing Facilities that involves minor alterations and negligible expansion of use; and

WHEREAS, pursuant to NMC [§17.31.060](#) and [§17.35.050](#), a public hearing notice was published in The Tri City Voice on February 1, 2022February 1, 2022 and mailed as required for a public hearing and the Planning Commission held a meeting on said application at 7:30 p.m. on February 8, 2022; and

WHEREAS, the Planning Commission fully considered the Project application and entitlements, the Applicant’s statements, staff report, findings of fact, conditions of approval, public comments, and all other testimony and evidence presented at the public hearing; and

WHEREAS, the Planning Commission finds that the staff report, Categorical Exemptions from CEQA, and standards for approval reflects the City’s independent judgement and analysis of the Project; and

WHEREAS, the Planning Commission finds that the Project satisfies the requisite findings of fact necessary for approval as further explained in the staff report and the findings of fact associated with this Resolution, as identified in “Exhibit A” attached to this Resolution; and

WHEREAS, the City’s General Plan and the Zoning Code are incorporated herein by reference and are available for review at City Hall during normal business hours and on the City’s website.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Newark as follows:

Section 1. That the forgoing recitals are true and correct and made part of this Resolution.

Section 2. That the Planning Commission hereby makes the necessary findings and determinations required by NMC [§17.35.060](#) to approve the requested Conditional Use Permit for a Live Entertainment at 39055 Cedar Blvd. #198, as further explained in the staff report and findings of fact for approval as set forth in “Exhibit A” attached hereto and incorporated herein by this reference.

Section 3. Based on the findings and determinations, the Planning Commission hereby approves Conditional Use Permit for U-21-04, allowing for a Live Entertainment use at 39055 Cedar Blvd. #198, subject to the Conditions of Approval, as further set forth in “Exhibit B” attached hereto and incorporated herein by this reference.

This Resolution was introduced at the City of Newark Planning Commission’s February 8, 2022 regular meeting by Commissioner _____, seconded by Commissioner _____, and passed as follows:

AYES:

NOES:

ABSENT:

STEVEN TURNER, Secretary

JEFF AGUILAR, Chairperson

Exhibit A

FINDINGS OF FACT

U-21-04

39055 Cedar Blvd. #198

Alameda County Assessor's Parcel Number 901-0188-001-00

Conditional Use Permit (Newark Municipal Code [NMC] Chapter 17.35)

- A. The proposed use is conditionally allowed within the applicable zoning district and complies with all other applicable provisions of this title [NMC Title 17] and all other titles of the Municipal Code.

The Project Site is zoned NC: Neighborhood Commercial. Pursuant to NMC Section 17.08.020, Live Entertainment use in the NC zoning district are subject to a Conditional Use Permit (CUP). Therefore, the proposed use is allowed through the issuance of a CUP in order to be consistent with the existing zoning. The proposed use has been evaluated and found to be consistent with the NMC Title 17, Zoning, and other titles of the NMC. This finding can be made in the affirmative.

- B. The proposed use is consistent with the general plan and any applicable specific plan.

The Project Site has a General Plan Land-Use designation of Neighborhood Commercial. This designation is provided to meet the needs of a variety of retail and commercial service uses. It serves as a transition between more intense commercial activities and residential neighborhoods. Typical uses include retail and general services. The application is also supported by GP Policy ED-2.3, by supporting the existing shopping center with a variety of businesses that meet the need of the local community. The proposed Project is a new restaurant which will incorporate live acts for dining patrons. The proposed use is consistent with the type of uses recommended for this type of zoning district.

The proposed use is not part of a specific plan area. This finding can be made in the affirmative.

- C. The proposed use will not be adverse to the public health, safety, or general welfare of the community, nor detrimental to surrounding properties or improvements.

The proposed use will occupy the existing building located at 39055 Cedar Blvd. #198. Historically, the building has been occupied by restaurant and service type businesses, therefore the proposed use is similar. The proposed use involves minor tenant improvements with no material changes to the exterior of the existing building and no site improvements. As such, the use, as conditioned, will not generate additional glare, radiation, heat, odor, safety hazards, or air and water pollution nor will the proposed use will have an adverse effect on the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements. This finding can be made in the affirmative.

Exhibit A: Findings of Fact

- D. Tax revenue generated by the development will exceed the City's cost of the service demand as a result of the development or a compelling community benefit will be provided.

The proposed business, in addition to property taxes, will provide services that will provide sales tax and likely generate additional patrons to the area. The restaurant owners operate two existing businesses, and with this proposal, intend to meet the desire for residents to experience live acts within a venue that provides additional entertainment acts. Since acts will rotate this allows the patrons to enjoy a new experience with every visit. This finding can be made in the affirmative.

- E. The proposed use complies with any design or development standards applicable to the zoning district or the use in question unless waived or modified pursuant to the provisions of this title [NMC Title 17].

The proposed live entertainment use will have limited impacts to the vehicular parking and circulation of the parking lot and meets current development standards and provides for sufficient parking spaces. This finding can be made in the affirmative.

- F. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity.

The subject site is in the NC: Neighborhood Commercial zoning district, which is intended to meet the needs of a variety of commercial service uses. The proposed use does not interfere with operations/businesses in the NC zoning district and will not impact any residential uses. The operations shall mainly include live acts for dinner patrons within an existing suite of a shopping center. There are currently no zoning changes or specific plans recommendations existing for this area. Therefore, the design, location, size, and operating characteristics of the proposed use are compatible with the existing and foreseeable future land uses in the vicinity.

- G. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints.

The proposed business will occupy an existing suite and all utilities and on-site improvements are in place. The improvements proposed are not expected to be out of character with other uses in the area and what is typically allowed by the NC zoning district. The proposed use does not involve an expansion of the existing building, nor does it propose a high-intensity use. The City's parking requirements would be satisfied, and the site is physically suitable for the proposed use type. Therefore, this finding can be made in the affirmative.

California Environmental Quality Act Categorical Exemption Findings

The Project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Article 19, Section 15301, as it is an Existing Facility that involves minor alterations and negligible expansion of use; is in an area where all public services and facilities are available to allow for maximum development; and is not located in an environmentally sensitive area.

Exhibit A: Findings of Fact

Exhibit B

CONDITIONS OF APPROVAL

U-21-04

39055 Cedar Blvd. #198

Alameda County Assessor's Parcel Number 901-0188-001-00

Planning Division

- a. Approval of this use permit shall supersede and revoke any previous approval at this location.
- b. Live entertainment shall cease to operate at 9pm daily.
- c. The tenant improvements plans shall include adequate soundproofing and insulation to ensure the live entertainment in consistent with the City's noise ordinance.
- d. All project conditions of approval shall be printed in on the building-permit plans, as applicable.
- e. All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission review and, if so decided, said changes shall be submitted for the Commission's review and decision. The developer shall pay the prevailing fee for each additional separate submittal of development exhibits requiring Planning Commission review and approval.
- f. Prior to commencing business activity, the operator of the subject facility shall obtain a [Business License](#) with the City of Newark.
- g. Prior to commencing business activity, the operator of the subject facility shall obtain any and all necessary federal, state, or county approvals. Failure to obtain the necessary approvals shall make the subject use permit null and void.
- h. If any complaint regarding parking and/or noise is received, a parking/noise study shall be prepared at the discretion of the Community Development Director and at the cost of the applicant. The applicant shall mitigate any problems identified by the study(s).
- i. Prior to the installation of any signage for the proposed facility, the property owner/applicant shall obtain a Sign Permit and any necessary building permits through the City of Newark.
- j. All lighting shall be directed on-site so as not to create glare off-site, as required by the Community Development Director.
- k. The site and its improvements shall be maintained in a neat and presentable condition, to the satisfaction of the Community Development Director. This shall include, but not be limited to, repainting surfaces damaged by graffiti and site clean-up.

Exhibit B: Conditions of Approval

- l. The applicant and/or developer hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.
- m. The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to [Government Code §66020\(d\)\(1\)](#), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and other exactions. The developer is hereby further notified that the 90-day approval period in which the developer may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code §66020(a), has begun. If the developer fails to file a protest within this 90-day period complying with all of the requirements of §66020, the developer will be legally barred from later challenging such exactions.

Building Inspection Division

- n. Tenant improvement plans shall be submitted during building permit review.

From: [Shaveta Sharma - 4leaf consultant](#)
To: [ART INTERIANO](#); [LINA TRAN](#)
Subject: FW: 39055 Cedar Blvd, #198 Conditional Use Permit
Date: Friday, January 28, 2022 11:14:16 AM

Public comment on NightCo received and should be included in the packet we send to the Commissioners.

Best,
Shaveta Sharma

From: [K Kam](#)
Sent: Friday, January 28, 2022 11:09 AM
To: [Shaveta Sharma - 4leaf consultant](#)
Subject: 39055 Cedar Blvd, #198 Conditional Use Permit

Planning Commission
City of Newark, CA

RE: 39055 Cedar Blvd, #198 Conditional Use Permit

I am writing to provide comments in related to a Conditional Use Permit at 39055 Cedar Blvd, #198 Location. I would like Planning Commission to consider the following during the review process -

1. Live Entertainment – must be conducted Indoors. Outdoors should be prohibited.
2. Hours – must adhere to “Dinner” hours and must end before 9pm.
3. Noise – noise level must comply with CA standards. Also suggest permit should be granted only if Applicant has installed sound-proof door/glass at the location. In addition, all doors must be able to close automatically to avoid noise leak from open door. This should include store-front entrance but also the BACK door/escape/rest area.
4. Enforcement – if any conditions is placed on the use permit, active checking/enforcement by the City must be in place for a minimum duration and suggest a yearly review on permit for compliance..
5. Noise buffer – City or Applicant should be responsible to plant trees (with minimum height requirements) in the buffer area that separates the requested location and residential area.

Thank you Planning Commissioners for your consideration.

Regards,
Karl Kam
39017 Alpine Street