



# CITY OF NEWARK PLANNING COMMISSION

37101 Newark Boulevard, Newark, California 94560-3796 □ 510/578-4330 □ FAX 510/578-4265

City Administration Building  
7:30 p.m.  
City Council Chambers

## **AGENDA** Tuesday, April 28, 2015

### **A. ROLL CALL**

### **B. MINUTES**

**B.1 Approval of Minutes of the regular Planning Commission meeting of Tuesday, April 14, 2015. (MOTION)**

### **C. WRITTEN COMMUNICATIONS**

**D. ORAL COMMUNICATIONS (Anyone wishing to address the Commission on any planning item not on the Agenda may take the podium and state his/her name and address clearly for the recorder.)**

### **E. PUBLIC HEARINGS**

**E.1 Hearing to consider the request by LOV (League of Volunteers), for P-15-11, a planned unit development, and U-15-12, a conditional use permit, to have a circus at the NewPark Mall parking lot (APNs: 901-111-20 & 21) with performances from September 3 through September 7, 2015 – from Assistant City Manager Grindall. (RESOLUTION)**

**E.2 Continued Hearing to consider whether the Planning Commission should revoke Conditional Use Permit (CUP) No. U-84-14, issued to E-Z 8 Motel, on the grounds that E-Z 8 Motel is not complying with the conditions of the permit and is violating applicable provisions of Title 17 of the City of Newark Municipal Code – from Assistant City Manager Grindall. (CONTINUED FROM JULY 2, 2014) (MOTION)**

### **F. STAFF REPORTS**

### **G. COMMISSION MATTERS**

**G.1 Report on City Council actions.**

### **H. ADJOURNMENT**

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 at the Planning Division Counter located at 37101 Newark Boulevard, 1st Floor, during normal business hours. 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.

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# CITY OF NEWARK PLANNING COMMISSION

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City Administration Building  
7:30 p.m.  
City Council Chambers

## MINUTES

Tuesday, April 14, 2015

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### A. ROLL CALL

At 7:31 p.m., Chairperson Fitts called the meeting to order. All Planning Commissioners were present.

### B. MINUTES

#### B.1 Approval of Minutes of the regular Planning Commission meeting of Tuesday, March 24, 2015.

Commissioner Otterstetter moved, Vice-Chairperson Aguilar seconded, to approve the Minutes of March 24, 2015. The motion passed 5 AYES.

### C. WRITTEN COMMUNICATIONS

None.

### D. ORAL COMMUNICATIONS

None.

### E. PUBLIC HEARINGS

#### E.1 Hearing to consider: (1) adopting a resolution approving P-15-5, a planned unit development, and U-15-6, a conditional use permit for: (a) reduced side and front yard setbacks for certain unit plans; and (b) the number of garage facades fronting one street to exceed what is allowed by the Form Based Codes, and ASR-15-9, an Architectural and Site Plan Review for the project building elevations and finding that Vesting Tentative Map 8085 is in substantial conformance; and (2) adopting a resolution approving the second Addendum to the Dumbarton TOD Specific Plan EIR (State Clearinghouse Number 2010042012) for development of 542 residential units within the Dumbarton Transit-Oriented Development (TOD) Specific Plan Area.

Assistant City Manager Grindall gave the staff report.

Answering Vice-Chairperson Aguilar, ACM Grindall described the original location of the wetland areas and confirmed the new proposal would increase the land mass of the wetlands by over an acre.

Answering Vice-Chairperson Aguilar, ACM Grindall stated when an Addendum versus a Supplemental Environmental Impact Review process is warranted.

Answering Chairperson Fitts, ACM Grindall stated the proposed park will be a Community Park.

Answering Commissioner Bridges, ACM Grindall stated, based on Flood Assessment Studies and safeguard measures, this project will not be subject to flooding nor would it create any flooding conditions to any other parts of the City.

Chairperson Fitts opened the Public Hearing.

Mr Scott Hilk, William Lyon Homes, Inc. 2603 Camino Ramon, Suite 450, San Ramon, CA 94583, described the project's amenities and stated the Community Park will be approximately 1 acre in size.

Mr. Hilk mentioned the Club House/Recreation Facility will mainly benefit Homeowners within this development but the Homeowners Association will ultimately decide whether to offer it to the whole Community.

Mr. Hilk stated he has read and agrees with conditions listed in Resolutions 1906 and 1907.

Answering Chairperson Fitts, Mr. Hilk stated they intend to build and sell all 5 sections of the project simultaneously.

Commissioner Bridges commented how much she likes the Project's design.

Discussion ensued on chair lifts and first-floor living suites.

Answering Commissioner Otterstetter, Mr. Hilk confirmed the existence and location of the dog park.

Answering Commissioner Nillo, Mr. Hilk stated no extra provisions were made to address wind conditions but stated all construction will be built to Code.

Discussion ensued on possible odor issues.

Vice-Chairperson Aguilar commended the Applicant for working with the various Agencies in order to move this project forward.

Answering Chairperson Fitts, Mr. Hilk estimated 3-4 months to complete the application process; infrastructure construction to begin in the fall; and next Spring to early Summer 2016 to begin construction on the Model Homes.

Mr. John Bradley, 4958 Bosworth Court, Newark, CA 94560, asked City staff to work with the Applicant to ensure that the plants used in their proposed Community Park is not “weedy”. Mr. Bradley cited the Brass Button which is on the Plant Pallet List is identified as a weed in his book “Weeds of California”.

Answering Vice-Chairperson Aguilar, ACM Grindall confirmed all access road requirements for firetrucks and emergency vehicles are met.

ACM Grindall stated all improvements including in-ground and parks are paid and maintained by the Developer, but the trails will be publicly maintained.

ACM Grindall stated all new construction projects are encouraged by the City to follow the “Bay Friendly Plant Guidelines”.

Chairperson Fitts closed the Public Hearing.

Motion made by Commissioner Nillo, seconded by Commissioner Bridges, to adopt Resolution 1906 approving P-15-5, a planned unit development, and U-15-6, a conditional use permit for: (a) reduced side and front yard setbacks for certain unit plans; and (b) the number of garage facades fronting one street to exceed what is allowed by the Form Based Codes; and ASR-15-9, an Architectural and Site Plan Review for the project building elevations and finding that Vesting Tentative Map 8085 is in substantial conformance; and to adopt Resolution 1907 approving the second Addendum to the Dumbarton TOD Specific Plan EIR (State Clearinghouse Number 2010042012), for development of 542 residential units within the Dumbarton Transit-Oriented Development (TOD) Specific Plan area. Motion passed 5 AYES.

## **F. STAFF REPORTS**

None.

## **G. COMMISSION MATTERS**

### **G.1 Report on City Council actions.**

None.

#### Commissioners’ Comments

Chairperson Fitts requested that tonight’s meeting be adjourned in honor of former Planning Commissioner Joseph Maes who served 28 years on the Planning Commission.

Chairperson Fitts thanked City Clerk Sheila Harrington and Administrative Assistant II Roxanne Müller for researching and compiling the master list of all City of Newark Planning Commissioners.

Commissioner Otterstetter encouraged the public to see Stage One's production of Jesus Christ Superstar.

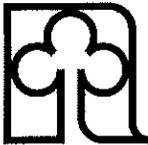
All Commissioners sent their condolences to the family of Joseph Maes.

#### **H. ADJOURNMENT**

At 8:07 p.m., Chairperson Fitts adjourned the regular Planning Commission meeting of Tuesday, April 14, 2015 in honor of Joseph Maes.

Respectfully submitted,

  
TERRENCE GRINDALE  
Secretary



**E.1 Hearing to consider the request by LOV (League of Volunteers), for P-15-11, a planned unit development, and U-15-12, a conditional use permit, to have a circus at the NewPark Mall parking lot (APNS: 901-111-20 & 21) with performances from September 3 through September 7, 2015 – from Assistant City Manager Grindall. TG  
(RESOLUTION)**

**Background/Discussion** – LOV (League of Volunteers) has submitted an application to have a fund-raising circus, Circus Vargas, at the NewPark Mall parking lot with performances from September 3 (Thursday) through September 7 (Monday), 2015. Attached is Exhibit A, pages 1 through 4.

NewPark Mall is zoned CR (Regional Commercial). If approved, this would be the tenth time LOV has received conditional use permit and planned unit development approvals for a circus to be held at the NewPark Mall parking lot. Circus Vargas held performances at the Mall parking lot from 2009 through 2011; before then, Circus Chimera held performances from 2004 through 2007. LOV intends to use these funds that would be raised from the circus for their Thanksgiving Day Meal, Holiday Toy Drive, and Adopt-a-Family programs.

Per the applicant, “Circus Vargas is a one-ring extravaganza with spectacular acts, lighting and music, all inside a tent.” The circus would have no animals. The circus location would be southwest of Burlington Coat factory, which is the same location as in previous years. Next to the main entrance to the “Big Top” tent, which is about 45 feet high, would be a food trailer (no alcoholic beverage sales). Ten 1-1/2 hour shows are requested with expected attendance between 300 and 500 per performance. Circus management provides in-house security guards and management carries cell phones in case of a 911 Emergency. The security can use cell phones to contact local law enforcement if the need exists.

The proposed project is categorically exempt from the California Environmental Quality Act per Section 15304, Class 4(e), minor temporary use of land having negligible or no permanent effects on the environment.

**Attachment**

**Action** – It is recommended that the Planning Commission, by resolution, with Exhibit A, pages 1 through 3, approve the request by LOV (League of Volunteers), for P-15-11, a planned unit development, and U-15-12, a conditional use permit, to have a circus at the NewPark Mall parking lot (APNS: 901-111-20 & 21) with performances from September 3 through September 7, 2015.

RESOLUTION NO.

RESOLUTION APPROVING P-15-11, A PLANNED UNIT DEVELOPMENT, AND U-15-12, A CONDITIONAL USE PERMIT, TO HAVE A CIRCUS AT THE NEWPARK MALL PARKING LOT (APNS: 901-111-20 & 21) WITH PERFORMANCES FROM SEPTEMBER 3 THROUGH SEPTEMBER 7, 2015

WHEREAS, LOV (League of Volunteers) has filed with the Planning Commission of the City of Newark application for P-15-11, a planned unit development, and U-14-12, a conditional use permit, to have a circus at the NewPark Mall parking lot with performances from September 3 through September 7, 2015; and

PURSUANT to Municipal Code Section 17.72.060, a public hearing notice was published in The Argus on April 17, 2015, and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on April 28, 2015 at the City Administration Building, 37101 Newark Boulevard, Newark, California; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby approve this application as shown on Exhibit A, pages 1 through 4, subject to compliance with the following conditions:

Planning Division

- a. This approval shall be for ten (10) shows commencing on September 3, 2015, and concluding on September 7, 2015.
- b. All sound equipment and speakers associated with this project shall be inside the circus tent. The volume levels of all sound equipment and speakers associated with this project shall not exceed levels determined to be acceptable by the Community Development Director.
- c. All lighting shall be directed on-site so as not to create glare off-site.
- d. Parking lot cleaning with sweeping or vacuum equipment shall not be permitted between 11:00 p.m. and 7:00 a.m.
- e. Garbage and recycling pick-up shall be coordinated with Republic, Inc. so that a sufficient number of dumpsters are available on-site and picked-up to ensure no refuse, garbage or recycling is stored outdoors except within the approved trash and recycling dumpsters. Prior to the first circus performance, the developer shall submit written evidence of Republic, Inc.'s approval.

- f. 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. Graffiti removal/repainting and site clean-up shall occur on a continuing, as needed basis. Any vehicle or portable building brought on the site shall remain graffiti free.
- g. Construction equipment, including compressors, generators and mobile equipment shall be fitted with heavy-duty mufflers designed to reduce noise impacts.
- h. The circus staff shall, as necessary, direct patrons to park their vehicles in the NewPark Mall parking lot.
- i. Prior to the first circus performance, the circus staff shall submit evidence of approval from the County Health Department for the proposed food and beverage sales. There shall be no alcoholic beverage sales.
- j. Within 24 hours of the conclusion of the final performance on September 7, 2015, all structures and improvements brought to the subject site associated with this project shall be removed and the site returned to its original, pre-circus condition, to the satisfaction of the Community Development Director.

#### Engineering Division

- k. The circus staff shall implement all applicable Best Management Practices (BMPs) from the California Best Management Practice Handbook for Construction Activities to prevent the pollution or contamination of storm water runoff from the project area. Additional BMPs may be required by the City Engineer, as necessary, to minimize the pollution of storm water runoff from the project area. The following notes shall be added to the final plans:
  - 1. Any stockpiled materials with the potential to pollute storm water runoff shall be properly contained and covered to prevent any such pollution.
  - 2. The parking lot and drive aisles shall be cleaned daily or as required by the City Engineer to remove accumulated trash and debris generated from the project area. Migration of trash and debris into the public right-of-way is prohibited and will be strictly enforced.
  - 3. Water-tight waste receptacles shall be placed around the site, as necessary, to minimize litter, to the satisfaction of the City Engineer.
  - 4. Any liquid spills associated with the proposed project must be cleaned immediately and prevented from entering the storm drain system.

5. Temporary sanitary facilities shall be managed and maintained at all times, placed away from drainage facilities and traffic circulation, and secured to prevent overturning.
6. All applicable Best Management Practices from the California Storm Water Quality Best Management Practices Handbook for Construction Activities shall be implemented, as necessary, to minimize storm water pollution to the satisfaction of the City Engineer.

#### Fire Department

- l. Prior to the start of the event, the circus operator shall obtain a Fire Code permit from the Alameda County Fire Department-Newark Fire Prevention, and shall pass all required inspections.
- m. The circus shall comply with all fire code requirements in effect at the time of the event.

#### Police Department

- n. The circus staff shall implement a security program to protect circus patrons and staff before, during, and after each circus show, to the satisfaction of the Police Chief. This shall include, but not be limited to, the developer providing 24-hour security staff to protect the tent and all circus equipment before, during, and after the event. The developer shall provide the Police Department with the names and mobile telephone numbers of security staff and/or managers, along with the contact name, mobile telephone number, and office telephone number of the on-site person in charge.

#### General

- o. All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission and City Council review and, if so decided, said changes shall be submitted for the Commission's and Council's review and decision. The developer shall pay the prevailing fee for each additional separate submittal of development exhibits requiring Planning Commission and/or City Council review and approval.
- p. If any condition of this planned unit development and conditional use permit be declared invalid or unenforceable by a court of competent jurisdiction, this planned unit development and conditional use permit shall terminate and be of no force and effect, at the election of the City Council on motion.
- q. This planned unit development and conditional use permit shall be given a public hearing before the City Council for the Council's review and approval.
- r. All conditions of approval for this project, as approved by the City Council, shall be posted at the site and distributed to circus personnel.

- s. The 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.
  
- t. The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to Government Code Section 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 Section 66020(a), has begun. If the developer fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the developer will be legally barred from later challenging such exactions.

The Commission makes the findings prescribed in Newark Municipal Code Sections 17.40.050 and 17.72.070, and directs a Notice of Decision be mailed to the applicant and filed with the City Clerk who shall present said Notice to the City Council pursuant to Newark Municipal Code Section 17.72.080.

This Resolution was introduced at the Planning Commission's April 28, 2015 meeting by Commissioner, seconded by Commissioner and passed as follows:

AYES: .

NOES:

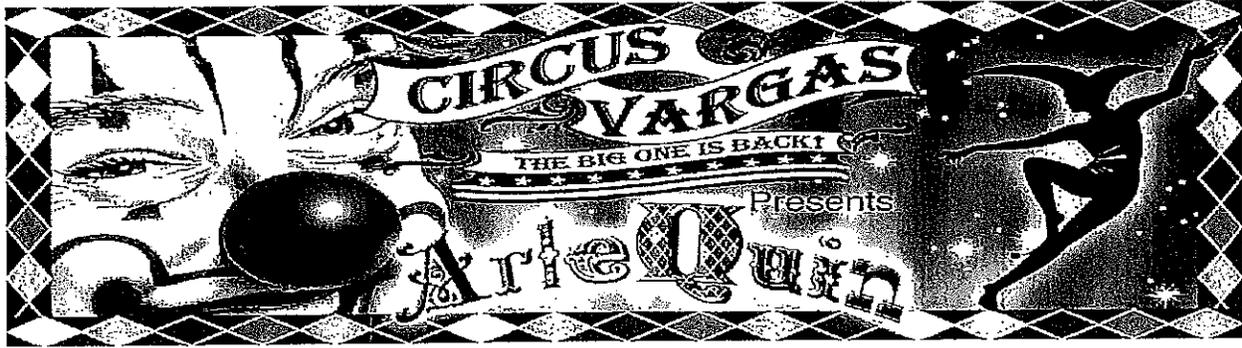
ABSENT:

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TERRENCE GRINDALL, Secretary

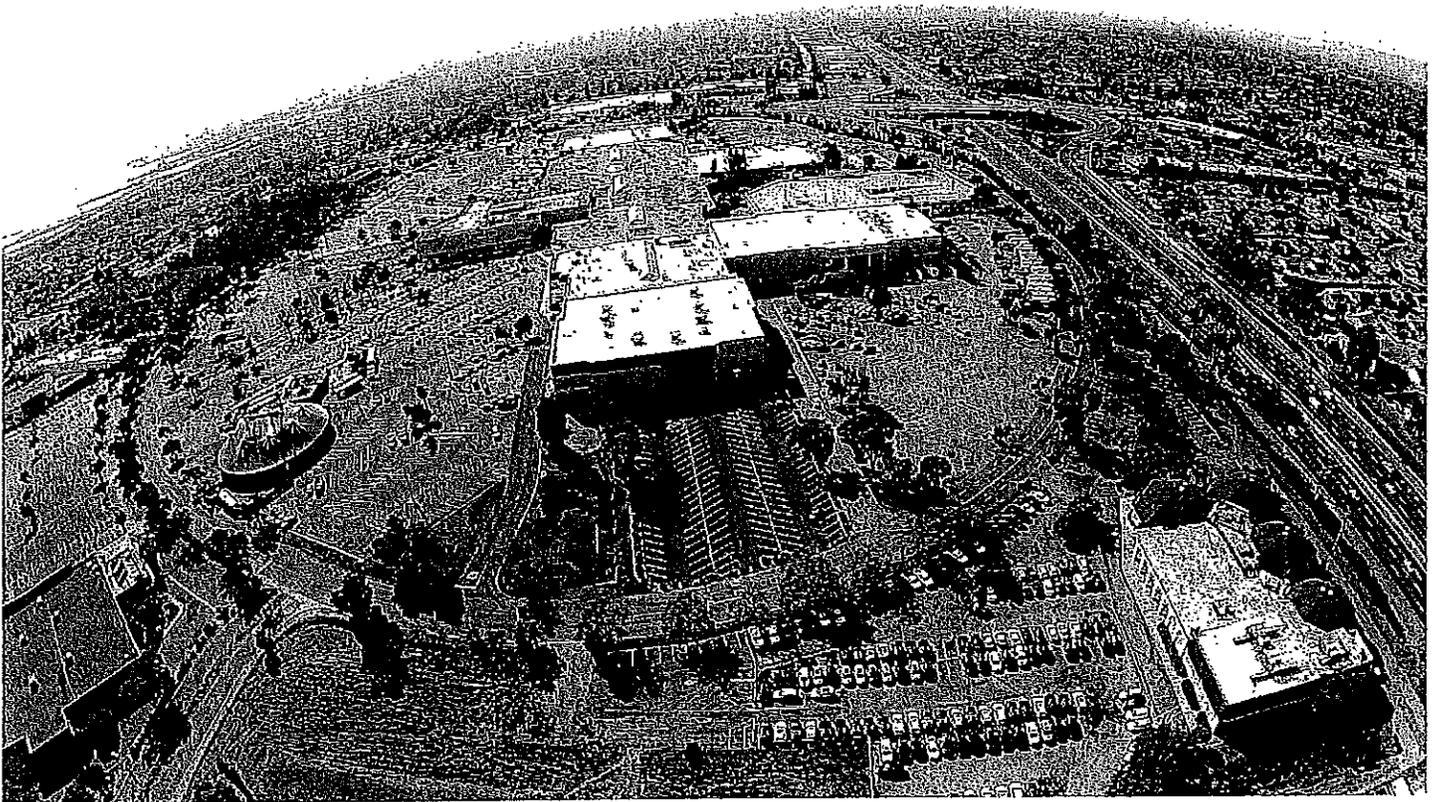
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WILLIAM FITTS, Chairperson



Circus Vargas 2015 at NewPark Mall

Circus Vargas aerial view from 2014 at NewPark Mall



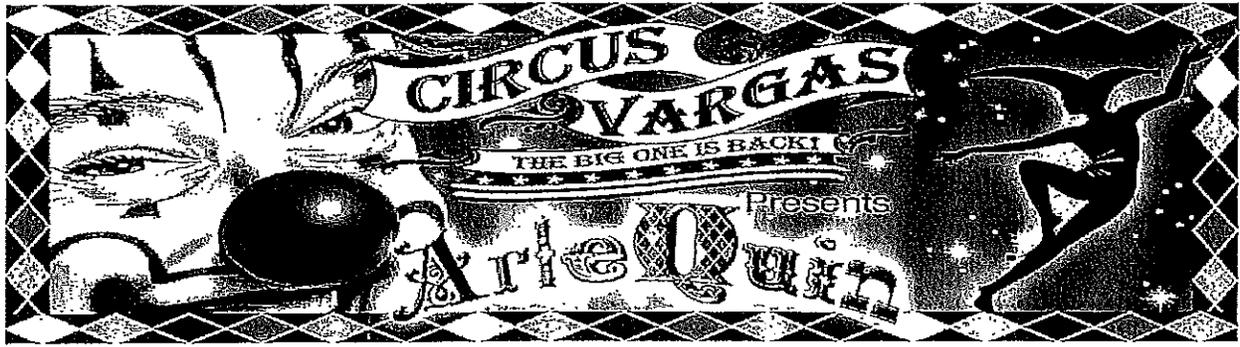
Angelina Quevedo - Tabares Entertainment, Inc. 992 Blue Lantern Dr. Henderson, NV 89015

Phone: 281-570-5758

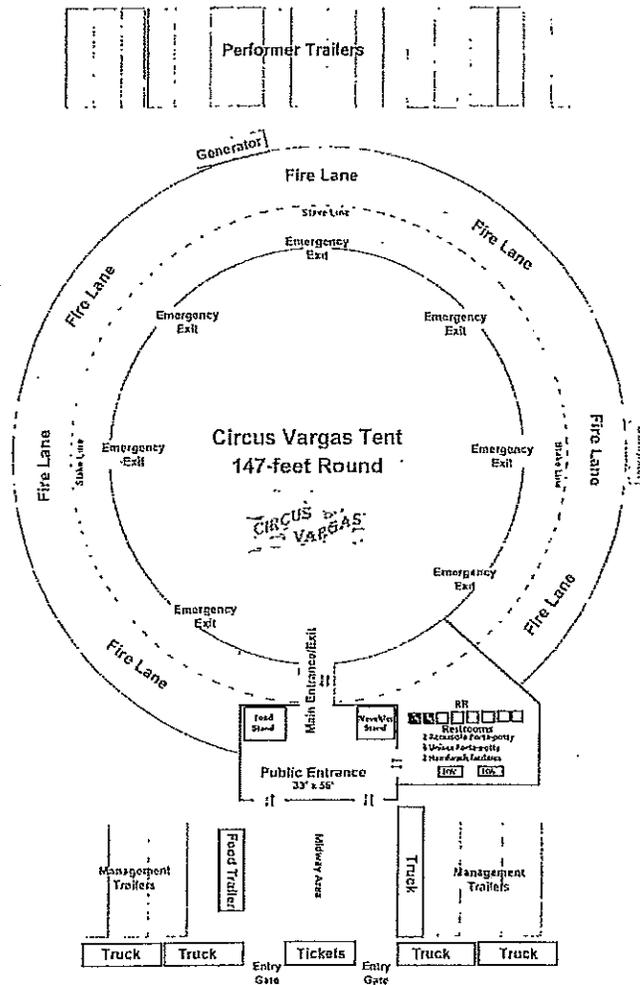
E-Mail: [aquevedo@circusvargas.com](mailto:aquevedo@circusvargas.com)

[WWW.CIRCUSVARGAS.COM](http://WWW.CIRCUSVARGAS.COM)

**EXHIBIT** A, 1



Circus Vargas 2015 at NewPark Mall



CIRCUS VARGAS GENERIC LOT LAYOUT

Specific layout may be modified for the location where the show is set up. This sheet is provided to show the entire operation and approximate location of items to be set up.  
 Water is obtained from a local Hydrant and all used water (J) is held in tanks until pumped by a local company

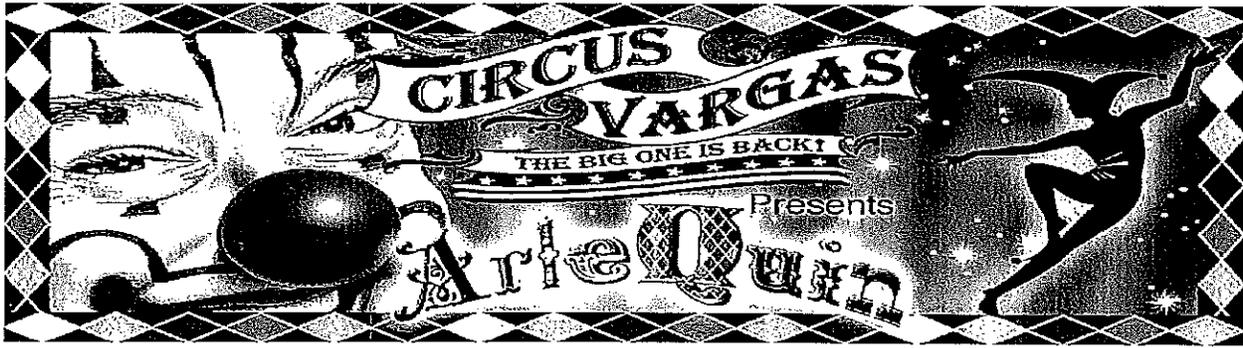
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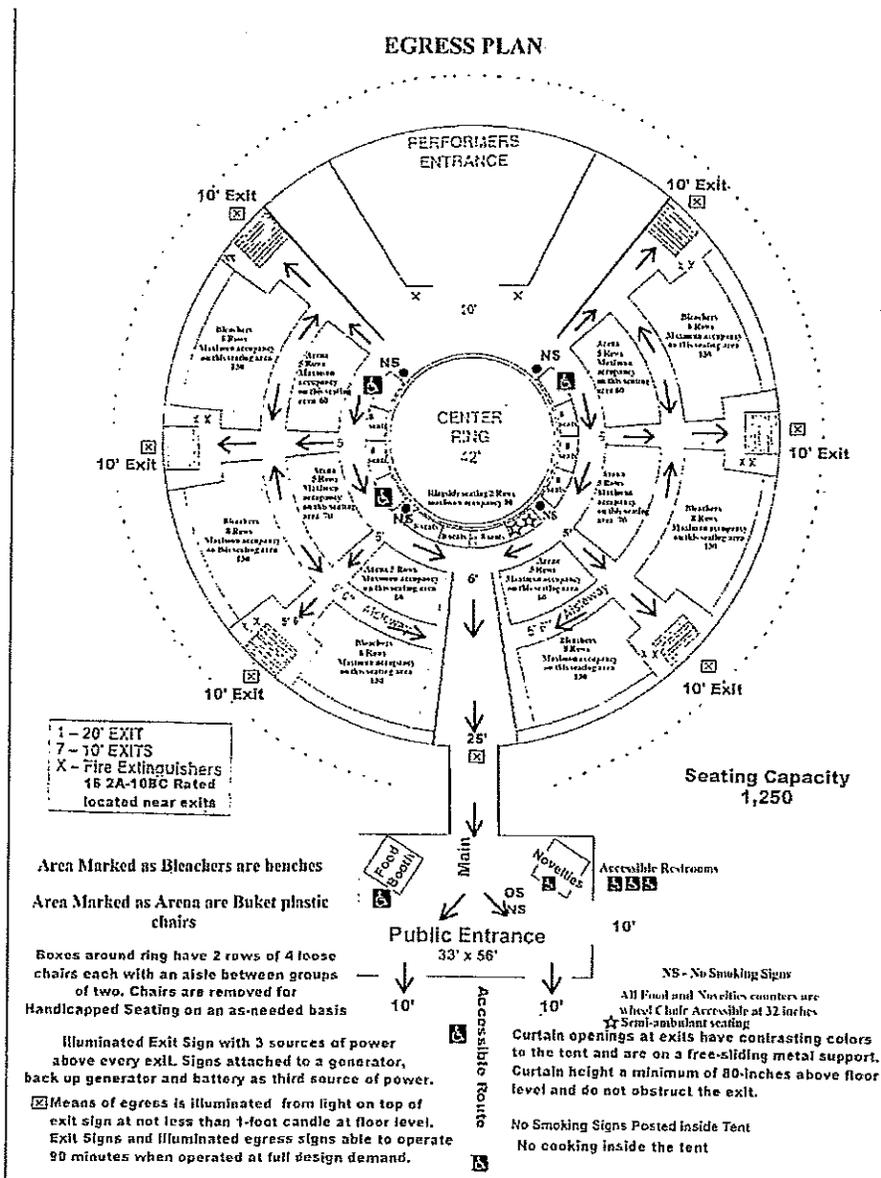
E-Mail: [aquevedo@circusvargas.com](mailto:aquevedo@circusvargas.com)

[WWW.CIRCUSVARGAS.COM](http://WWW.CIRCUSVARGAS.COM)

**EXHIBIT** A,2



## Circus Vargas 2015 at NewPark Mall



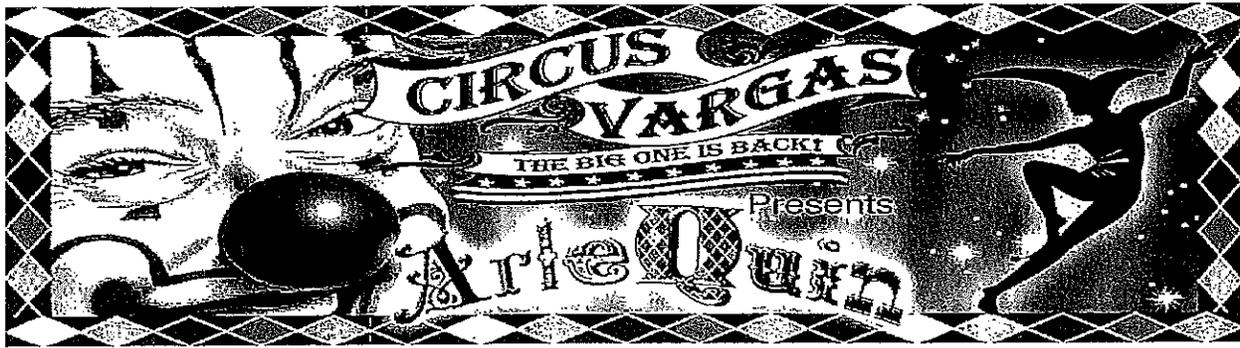
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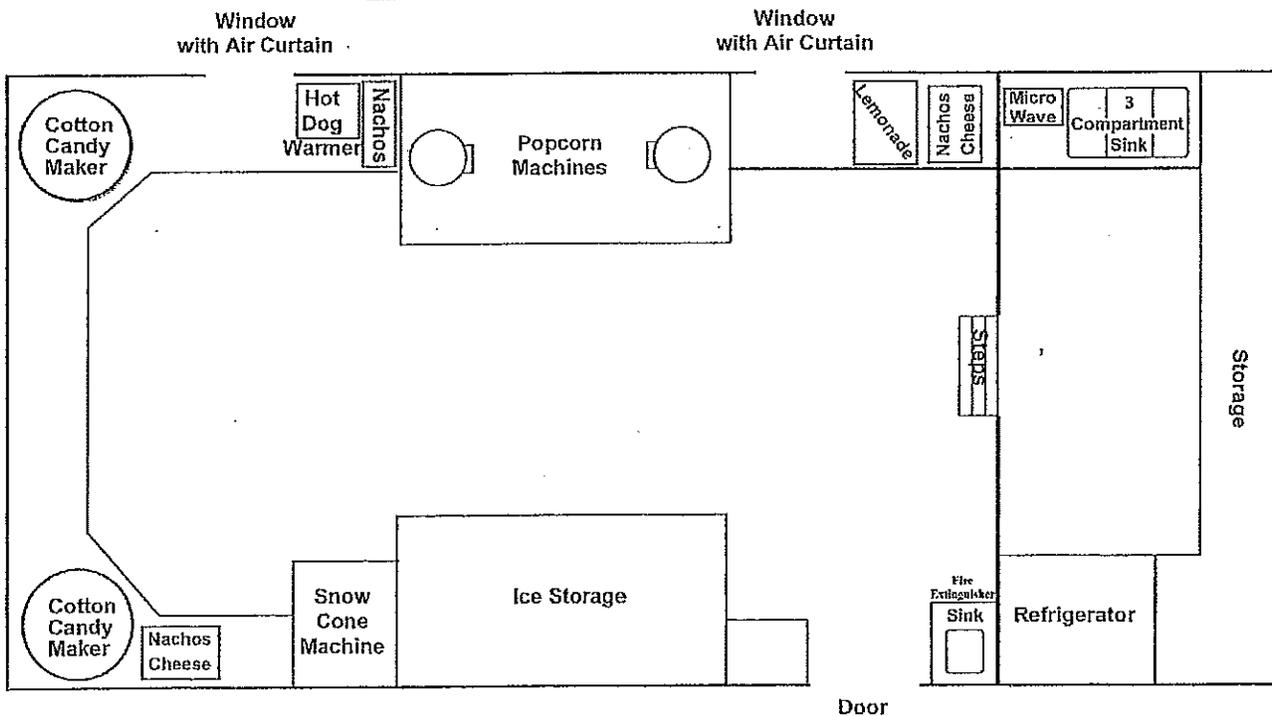
**EXHIBIT A,3**



Circus Vargas 2015 at NewPark Mall



Concession Food Trailer  
Floor Plan



**Notes:**  
 No Flames or cooking inside trailer. All items are electric.  
 Fire Extinguisher Inside.  
 All used water (J) is held in trailer holding tank until pumped by local company each morning of event period.

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**EXHIBIT A4**



**E.2 Continued Hearing to consider whether the Planning Commission should revoke Conditional Use Permit (CUP) No. U-84-14, issued to E-Z 8 Motel, on the grounds that E-Z 8 Motel is not complying with the conditions of the permit and is violating applicable provisions of Title 17 of the City of Newark Municipal Code – from Assistant City Manager Grindall. (CONTINUED FROM JULY 2, 2014) (MOTION)**

**Background/Discussion** – On July 26, 1984, the Newark City Council adopted Resolution No. 4565, granting the application for Conditional Use Permit U-84-18 (“CUP”) in an ML Limited Industrial District, at 5555 Cedar Court, to E-Z Newark, LLC. The City Council made several findings in granting the permit, including “[t]hat the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.” (City of Newark Municipal Code Section 17.72.070.)

On April 28, 2014, the City, pursuant to City of Newark Municipal Code Section 17.72.130, issued an Order to Show Cause Why Conditional Use Permit No. U-84-18, Issued to E-Z 8 Motel, Should Not Be Revoked (“OSC”). The OSC and supporting documents contend that the level of criminal activity at E-Z 8 Motel constitutes a violation of the conditions on which the CUP was granted and, therefore, warrants revocation of the CUP. Those documents have been available on the City’s website since April 29, 2014.

On July 2, 2008, the Planning Commission held a Special Meeting and opened a Public Hearing to consider revocation of the CUP and received considerable amount of testimony from City staff and the Police Department, E-Z 8 owners and their legal representative, and members of the public. Public comment focused primarily on three issues: (1) the negative impact that the Motel use has on the surrounding neighborhood; (2) the extraordinary Police resources that are required due to the Motel’s operation; and (3) the role the E-Z 8 Motel plays in providing housing for people facing homelessness and/or on limited income.

At that hearing, staff recommended that the Commission continue the public hearing so as to allow E-Z 8 motel operators sufficient time to implement certain measures with the hope that it would reduce the criminal activity at the Motel and keep the surrounding community safe. The Planning Commission adopted staff’s recommendation and continued the Public Hearing.

In consideration for staff’s recommendation to continue the matter, E-Z 8 agreed in writing to adhere to its current security measures, as well as implement additional policies and procedures by specified deadlines (“Agreement”). Those enhanced measures include, in summary:

- (1) Requiring every person who visits a motel room to provide a government-issued photo identification and for the Motel to keep a photocopy of the ID for at least 72 hours;
- (2) Installation of a permanent electronically controlled gate at the entrance to the property;
- (3) Retention of a licensed, bonded, and insured security guard during specified hours;
- (4) Installation of an upgraded security camera system that provides nighttime acuity and complete coverage of the property;
- (5) Installation of signs indicating that the Motel actively cooperates with the Police Department and that the Motel shares its registry with the Police;
- (6) Retention of a security advisor who is a retired member of law enforcement; and
- (7) Maintain and enforce an active “no rent” list.

E-Z 8 owners agreed to implement most of these security measures by September, 2014, but needed an additional month to install the gate and upgrade the security camera surveillance system.

The intent of the agreement was to set specific goals and deadlines for E-Z 8 to meet in order to demonstrate their commitment in providing a safer environment for Motel patrons and the surrounding neighborhood. The intent of the continuance was to allow time to review the effectiveness of the agreed upon security measures and the impact, if any, on resolving the nuisance conditions and CUP violations.

At the December 9, 2014, Planning Commission meeting, staff provided an update as to the status of E-Z 8's compliance with the Agreement. The staff report attached a letter from the City to E-Z 8, dated December 2, 2014, articulating E-Z 8's failure to comply with express terms of the Agreement, including: (1) failing to keep a photocopy of the ID for every guest or visitor entering the motel; (2) failing to install the gate by October 5th; (3) failing to increase security guard hours; (4) failing to install all agreed upon signage; and (5) failing to retain the services of a retired member of law enforcement to act as a security advisor.

In response, E-Z 8 wrote a letter dated December 9, 2014, denying many of the allegations and specifically contending that all signs have been installed, that they had “difficulty” in obtaining City approval for installation of the gate, and that they would change the hours of the security guard. The Motel owners also alleged that they had hired a security advisor and represented that they were “puzzled” by allegations that security procedures are not always followed.

After the December 9<sup>th</sup> meeting, staff responded in a letter dated December 23, 2014. A copy of that letter is attached to this staff report. The letter addresses the need to have the security advisor present at meetings with Newark PD as well as increasing security guard hours. Above all, the letter refuted E-Z 8's excuses for not having installed the gate and even stated: “Going forward we hope you will quickly install the gate ... using as much energy as you put in to manufacturing excuses for this failure to meet the agreed upon time frame.”

As of today's date, the City has **not** received a response to this letter.

The Agreement contractually obligates E-Z 8 to: "Take all steps commercially reasonable to have an operating gate installed" by October 5, 2014. However, it is staffs' understanding that, as of today's date, the gate has been installed, but it is **not operational**.

While staff appreciates E-Z 8's efforts in implementing some of the enhanced security measures, staff remains disheartened that E-Z 8 has not complied with **all** of the security measures. Staff's concerns are summarized as follows:

**E-Z 8's Failure to Install an Operational Gate by October 5th**

First, E-Z 8 has still not provided an operational gate, despite the representation to both the Commission and the public that it would be operational by October of last year – approximately 7 months ago. Staff views this as very troubling and problematic since installation of an operational gate was one of the more aggressive security measures to be implemented. Staff is at a loss as to why the gate has not been installed despite the passage of so much time.

**E-Z 8's Failure to Comply with Security Guard Hours and License Requirements**

Second, while E-Z 8 provided documentation purporting that E-Z 8 had provided increased hours for a security guard, unfortunately E-Z 8 did not provide a security guard for the **all** of the agreed upon hours, specifically from 1:00 p.m. through 5:00 a.m. (They claimed to have a different "interpretation" of the Agreement that required a security guard for a shorter time period.)

In any event, E-Z 8 agreed to all of the increased hours in December and represented that they would be in full compliance immediately. However, Newark Police has responded to calls for service after E-Z 8 allegedly increased security guard hours and Officers on multiple occasions did not recall seeing a security guard on the premises during agreed upon times. In fact, a security guard recently admitted to falling asleep on the job for approximately 45 minutes, which explained why a patron came on the premises without registering.

**E-Z 8's Failure to Photocopy All Motel Patrons ID's**

Third, Newark Police Officers have responded to recent calls for service and discovered persons in the motel room who were not registered with the Motel and whose government issued ID were not photocopied.

**Security Consultant**

Fourth, while E-Z 8 claims to have retained a security advisor who is a retired member of law enforcement, unfortunately E-Z 8 has not arranged for the purported security advisor to consult with Newark PD despite staff's written suggestion to do so back in December.

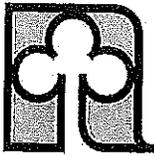
### **Summary**

In summary, as a result of E-Z 8's failure to comply with the terms of the Agreement and implement all of the security measures within the required timeframe, staff cannot meaningfully evaluate the crime statistics at the Motel and determine whether the additional security measures have had a considerable impact on the safety of Motel patrons and the surrounding community and whether the nuisance conditions have been appropriately resolved. As a result, staff recommends that the Commission continue the matter for three (3) months so as to allow sufficient time to elapse so that staff can properly evaluate whether the agreed upon security measures have had any impact on public safety.

**Recommendation-** Staff recommends the Commission re-open the Public Hearing and, after receiving testimony from the public, continue the matter for approximately three months so as to allow a full assessment of the agreed upon enhanced security measures.

### **Attachment**

**Action-** The Planning Commission should: (1) Re-open the public hearing and receive testimony; and; (2) consider a motion to continue the public hearing for approximately three (3) months.



**CITY OF NEWARK, CALIFORNIA**

37101 Newark Boulevard • Newark, California 94560-3796 • (510) 578-4000 • FAX (510) 578-4306

**VIA U.S. MAIL & E-MAIL**  
([jerryc@ez8motels.com](mailto:jerryc@ez8motels.com))

December 23, 2014

E-Z 8 Newark, LLC  
Attn: Mr. Leslie M. Crouch & Mr. Jerry M. Cannon  
2484 Hotel Circle Place  
San Diego, CA 92108

**Re: Agreement between City of Newark and E-Z 8 Newark, LLC**

Dear Mr. Crouch and Mr. Cannon:

I am writing in response to your December 9th letter. I wish to respond to some of your concerns and also correct some of your inaccurate statements.

First and foremost, it appears that you may have misunderstood the reason for my December 2, 2014 letter. It was merely intended to notify you that you have failed to comply with some of the material forms of the Agreement and ask that you immediately comply with the Agreement. It was not intended as an overarching judgment as to whether the operation of your motel constitutes a nuisance and is in violation of your use permit.

To reiterate, our concern at this point is your failure to comply with the terms of the agreement you made with the City that had clear tasks and deadlines.

In that regard, your letter is full of excuses and alleged mitigating factors, the truth of many of which are in dispute, for example:

### **Security Advisor**

Section 2(b)(9) of the Agreement obligates you to, within 90 days, "retain the services of a retired member of law enforcement and who shall be present at any meeting" between the City and E-Z 8. The truth is that you met with the Newark Police Department on October 14th, as you so acknowledge in your letter, but you never brought any security adviser to discuss any of

the many security issues that were addressed during that meeting, nor was the advisor on any of the multiple telephone conversations you had with Commander Carroll. I recommend that any future meeting with the City include your security advisor, as required under the Agreement.

### **Security Guard until Gate is Installed**

Thank you for your acknowledgement of an error regarding the security guard hours and your commitment to follow the agreement in the future.

### **Gate Approval**

You were given conditions on the building permit on September 30. Leaving a few voice messages and having a few informal phone conversations to clarify what were originally very clear comments does not justify over 70 days of delay. Further, contrary to what your letter indicates, we did not ever provide "conceptual approval" of anything nor did we ever indicate that we would grant the permit "over the counter" without first reviewing the plans to see that the comments were fully addressed. That review required just a single day. Going forward we hope you will quickly install the gate in compliance with the permit using as much energy as you put in to manufacturing excuses for this failure to meet the agreed upon time frame.

### **Conclusion**

The issue at hand is your compliance with the agreed upon provisions that you had represented to the Planning Commission would lead to a safer business operation. Your failure to meet some of the provisions has not even allowed us to fully assess their effect on the nuisance conditions and use permit violations.

Please contact me directly if you have further issues that cause your compliance to be delayed.

Finally, I wish to bring to your attention that the continued Planning Commission public hearing that was set for January 7<sup>th</sup>, 2015, will need to be rescheduled due to a lack of quorum. I will notify you once I learn of the new hearing date.

Sincerely,



*(Mr. Clay Colvin on behalf of)*

TERRENCE GRINDALL

Assistant City Manager

cc: Mr. James Leal, Newark Police Chief  
Mr. Michael Carroll, Newark Police Commander