



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, December 8, 2015

A. ROLL CALL

B. MINUTES

B.1 Approval of Minutes of the regular Planning Commission meeting of Tuesday, November 10, 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: (1) Adopting a resolution making certain findings and recommending City Council adoption of a Supplemental Environmental Impact Report (E-14-46) to the Environmental Impact Report (State Clearinghouse No. 2010042012) for the Dumbarton Transit Oriented Development; (2) Approving a resolution recommending rezoning (RZ-14-48) an approximately 41-acre area (APNs 537-852-9, 537-852-10, and 537-852-11) from MT-1 (High Technology Park District) to MDR-FBC (Medium Density Residential – Form Based Codes) and HDR-FBC (High Density Residential – Form Based Codes); (3) Approving a resolution for P-14-49, a planned unit development and U-14-50, a conditional use permit, for a 589-unit residential project (Gateway Station West) located within the Dumbarton Transit Oriented Development Specific Plan area at the western edge of the City of Newark; (4) By motion, recommending that the City Council approve TM-14-47, Vesting Tentative Map 8099, to construct approximately 589 residential units; (5) By motion, approving ASR-14-51, an Architectural and Site Plan Review – from Assistant City Manager Grindall. (RESOLUTIONS - 3)(MOTIONS-2)

E.2 Hearing to consider U-15-30, a Conditional Use Permit, for a preschool (Little Scholar's Preschool) to locate at 5472A Central Avenue (Palms on Central Shopping Center) – from Assistant City Manager Grindall. (RESOLUTION)

E.3 Hearing to consider Z-15-33, a text amendment to Title 17 (Zoning) of the Newark Municipal Code to add Section 17.04.050 “Permissive Code” to Chapter 17.04 “General Provisions” – from Assistant City Manager Grindall. (RESOLUTION)

E.4 Hearing to consider whether the Planning Commission should revoke Conditional Use Permit (CUP) No. U-84-18, 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; consider a Resolution to: (1) Dismiss an Order to Show Cause; (2) Find that E-Z 8 Motel is presently in compliance with Conditional Use Permit (U-84-18); and (3) Amend City Council Resolution No. 4565 by adding condition “rr” – from Assistant City Manager Grindall. (CONTINUED FROM OCTOBER 27, 2015) (RESOLUTION)

F. STAFF REPORTS

F.1 Proposed changes to the City of Newark Street Names Theme Map to allow for a “Bay Features” theme for the Dumbarton Transit Oriented Development area and a “Bay Animals” theme for the areas known as Sanctuary and Area 4 in the General Plan – from Assistant City Manager Grindall. (RESOLUTION)

G. COMMISSION MATTERS

G.1 Election of Officers.

G.2 Cancellation of the regularly scheduled Planning Commission Meeting of Tuesday, December 22, 2015.

G.3 Report on City Council actions.

H. ADJOURNMENT to Tuesday, January 12, 2016 at 7:30 p.m. in the City Council Chambers.

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.

CITY OF NEWARK

PLANNING COMMISSION

37101 Newark Boulevard, Newark, CA 94560-3796 • 510-578-4330 • FAX 510-578-4265

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

MINUTES

Tuesday, November 10, 2015

A. ROLL CALL

At 7:30 p.m., Chairperson Fitts called the meeting to order. All Planning Commissioners were present except Commissioner Otterstetter (personal).

B. MINUTES

B.1 Approval of Minutes of the regular Planning Commission meeting of Tuesday, October 27, 2015.

Commissioner Nillo moved, Commissioner Bridges seconded, to approve the Minutes of October 27, 2015. The motion passed 4 AYES.

C. WRITTEN COMMUNICATIONS

None.

D. ORAL COMMUNICATIONS

None.

E. PUBLIC HEARINGS

E.1 Hearing to consider (1) Adopting a resolution recommending City Council approval of RZ-15-28, a rezoning for an approximately 68.55 acre portion of Vesting Tentative Tract Map 8270 from R-6000 (Low Density Residential) to LDR-FBC (Low Density Residential – Form Based Codes) and approximately 3 acres from R-6000 (Low Density Residential) to POS-FBC (Parks and Open Space – Form Based Codes); (2) Adopting a resolution recommending the City Council approve TM-15-27, Vesting Tentative Tract Map 8270 for 386 single family units; and (3) by motion, approving ASR-15-29, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 15.

Assistant City Manager Grindall gave the staff report and informed the Planning Commission that the Architectural Site Plan and Elevation drawings are conceptual and any minor deviations would be subject to his approval, but any major deviations such as changing to 3-story units would require Planning Commission approval.

ACM Grindall emphasized that a site for a school and a park has been dedicated by the Developer. The Newark Unified School District has seven years from the date of issuance of the first building permit to build a school. In the event that a school is not built, the Developer would be able to reclaim the property and build additional housing units.

Answering Vice-Chairperson Aguilar, ACM Grindall explained the dedication process for giving ownership of land to the NUSD and stated although the School District must go through the State for their Architectural approval process, the City will also work closely with the School District on the Architectural design.

Answering Commissioner Bridges, ACM Grindall estimated construction to begin in a year with complete build out to occur within three years.

Answering Commissioner Bridges, ACM Grindall stated the park adjacent to the school site would be City owned and would be available to both the school and to the Community.

Chairperson Fitts opened the Public Hearing.

Mr. Paul Lettieri, Guzzardo Partnership, representing the applicant Sobrato Development Company, gave a Powerpoint presentation and indicated that he has read and is in agreement with the Conditions listed in Resolutions 1916 and 1917.

Answering Chairperson Fitts, Mr. Lettieri stated it may be possible to add a Gateway feature such as a sign element to the landscaped area at the intersection of Stevenson Boulevard and Cherry Street.

Ms. Jan Crocker, 37866 Lobelia Drive, Newark, CA 94560, stated she is the President of the NUSD Board of Education and would like to see cooperation between the City and the State to help the School District financially in getting a school built at this site,

Answering Ms. Crocker, ACM Grindall stated due to the distance of the railroad tracks to the proposed school site, no sound wall or additional noise buffers are needed.

Chairperson Fitts closed the Public Hearing.

ACM Grindall clarified that there are four, not six, different elevations as mentioned in the staff report.

Chairperson Fitts commented that he liked the executive-style two-story house design.

All Planning Commissioners commented favorably on the proposed project.

Motion made by Commissioner Bridges, seconded by Commissioner Nillo, to: (1) Adopt Resolution 1916, recommending City Council approval of RZ-15-28, a rezoning for an approximately 68.55 acre portion of Vesting Tentative Tract Map 8270 from R-6000 (Low Density Residential) to LDR-FBC (Low Density Residential – Form Based Codes) and approximately 3 acres from R-6000 to POS-FBC (Parks and Open Space – Form Based Codes); (2) Adopt Resolution 1917 recommending the City Council approve TM-15-27, Vesting Tentative Tract Map 8270 for 386 single family units; and (3) Approve ASR-15-29, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 15. Motion passed 4 AYES.

This item will be heard at the December 10, 2015 City Council Meeting.

F. STAFF REPORTS

None.

G. COMMISSION MATTERS

G.1 Report on City Council actions.

None.

ACM Grindall informed the Planning Commission that an RFQ has been sent out to update the Zoning Code.

Commissioners' Comments

Chairperson Fitts thanked staff for keeping the Planning Commission informed on upcoming projects.

Commissioner Nillo wished a Happy Birthday to the U.S. Marine Corp., and thanked all Veterans for their services, and wished the public a Happy Thanksgiving.

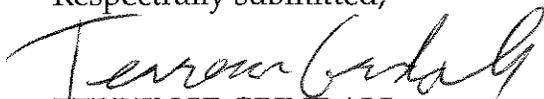
Vice-Chairperson Aguilar echoed Chairperson Fitts' comments in thanking staff.

Chairperson Fitts suggested the public hug a Veteran.

H. ADJOURNMENT

At 8:08 p.m., Chairperson Fitts adjourned the regular Planning Commission meeting of Tuesday, November 10, 2015.

Respectfully submitted,



TERRENCE GRINDALL

Secretary



E.2 Hearing to consider U-15-30, a Conditional Use Permit, for a preschool (Little Scholar's Preschool) to locate at 5472A Central Avenue (Palms on Central Shopping Center) – from Assistant City Manager Grindall. TG (RESOLUTION)

Background/Discussion – Ms. Cheryl Figone and Ms. Sonu Sidhu have made an application to locate a preschool at 5472A Central Avenue. This tenant space is within the Palms on Central Shopping Center. The space is in the rear building and adjacent to Timber Street.

Ms. Figone and Ms. Sidhu noted that their mission is to design a program for preschoolers that will allow them to grow their creativity and develop intellectually, emotionally, and socially. The program will consist of child-directed and teacher-guided activities based on individual child and family needs. Along with structured classes, they will be providing on-site childcare and after school programs for children up to the 6th Grade.

The facility will be able to support up to 25 children and will operate Monday through Friday from 8:30 a.m. to 6:30 p.m. On Saturday they will open from 10:30 a.m. to 3:30 p.m. There will be one full-time Director, two part-time teachers, and a part-time assistant.

The proposed project is categorically exempt from the California Environmental Quality Act per Section 15301, Class 1, "Existing Facilities".

Attachment

Action – It is recommended that the Planning Commission, by resolution, with Exhibit A, pages 1 through 4, approve U-15-30, a Conditional Use Permit, for a preschool (Little Scholar's Preschool) to locate at 5472A Central Avenue (Palms on Central Shopping Center).

RESOLUTION NO.

RESOLUTION APPROVING U-15-30, A CONDITIONAL USE PERMIT, FOR A PRESCHOOL FACILITY (LITTLE SCHOLARS PRESCHOOL) AT 5472A CENTRAL AVENUE (PALMS ON CENTRAL SHOPPING CENTER)

WHEREAS, Ms. Cherryl Figone and Ms. Sonu Sidhu have filed with the Planning Commission of the City of Newark, an application for U-15-30, a Conditional Use Permit, for a preschool at 5472A Central Avenue in the Palms on Central Springs Shopping Center; and

PURSUANT to Municipal Code Section 17.72.060, a public hearing notice was published in The Tri-City Voice on November 24, 2015, and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on December 8, 2015 at the City Administration Building, 37101 Newark Boulevard, Newark, California.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby approves this application as shown on Exhibit A, subject to compliance with the following conditions:

Planning Division

- a. This project shall be subject to the conditions of Planning Commission Resolution No. 1591, unless otherwise amended herein.
- b. Based on the existing parking spaces provided at the Shopping Center, the number of employees shall not exceed seven (7) on-site.
- c. All operations associated with this proposal, other than an outdoor play area, shall be conducted within an entirely enclosed structure. If any complaint regarding noise is received, a noise analysis shall be prepared at the direction of the Community Development Director and at the cost of the Applicant. The Applicant shall mitigate any problems identified by the noise study. If the Applicant does not mitigate these problems, the Use Permit revocation procedures, as defined in Section 17.72.130 of the Newark Municipal Code, shall be initiated and all operations shall cease within 60 days of formal notification.
- d. If any complaint, regarding parking, on-site circulation, and/or traffic is received, a parking, on-site circulation and/or traffic analysis shall be prepared at the discretion of the Community Development Director and at the cost of the Applicant. The Applicant and/or owner shall mitigate any problems identified by the parking, on-site circulation and/or traffic study. If the Applicant/owner does not mitigate these problems, the Use Permit revocation procedures, as defined in Section 17.72.130 of the Newark Municipal

Code, shall be initiated and all operations shall cease within 60 days of formal notification.

- e. All lighting shall be directed on-site so as not to create glare off-site.
- f. No refuse, garbage or recycling shall be stored outdoors except within the approved trash and recycling enclosures.
- g. Signage shall comply with the Sign Program for this Center.

Engineering Division

- h. The contractor shall implement all applicable Best Management Practices (BMPs) from the California Best Management Practices Handbook for Construction Activities for the duration of all work activity. Additional BMPs may be required by the City Engineer as necessary to minimize the pollution of storm water runoff from the project area. A note to this effect shall appear on the plans.

General

- i. 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 Applicant shall pay the prevailing fee for each additional separate submittal of development exhibits requiring Planning Commission and/or City Council review and approval. All time-extensions for this Conditional Use Permit shall be approved by the Planning Commission and City Council.
- j. If any condition of this Conditional Use Permit be declared invalid or unenforceable by a court of competent jurisdiction, this Conditional Use Permit shall terminate and be of no force and effect, at the election of the City Council on motion.
- k. This Conditional Use Permit shall be given a public hearing before the City Council for the Council's review and approval.
- l. The Applicant 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 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 Applicant is hereby further notified that the 90-day approval period in which the Applicant may protest these fees, dedications, reservations and other exactions, pursuant to Government Code Section 66020(a), has begun. If the Applicant fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the Applicant will be legally barred from later challenging such exactions.

The Planning Commission makes the findings prescribed in Newark Municipal Code Section 17.20.040.C.1. regarding day care facilities and Section 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 December 8, 2015 meeting by Commissioner , seconded by Commissioner , and passed as follows:

AYES:

NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

WILLIAM FITTS, Chairperson



E.3 Hearing to consider Z-15-33, a text amendment to Title 17 (Zoning) of the Newark Municipal Code to add Section 17.04.050 “Permissive Code” to Chapter 17.04 “General Provisions” – from Assistant City Manager Grindall. ¹⁶ (RESOLUTION)

Background/Discussion – The “Newark Zoning Ordinance”, which is Title 17 of the Newark Municipal Code, governs the use and development of individual property within the City of Newark. The Zoning Ordinance is a collection of regulations established to promote desired and mutually compatible patterns of land use within the City. While the comprehensive Zoning Ordinance was adopted 1965, it has been subsequently amended many times by the City Council. The review and revision of the Zoning Ordinance is an ongoing project within the Community Development Department.

Typically, there are three types of zoning ordinances:

- **Prohibitive** - a prohibitive ordinance is one that lists uses that are not permitted. It is presumed that everything that is not prohibited is permitted in that district. This is illustrative of the very earliest zoning ordinances.
- **Permissive** - a permissive ordinance lists all the uses that are permitted within a given district. Everything that is not specifically listed is prohibited in that district. This type of zoning ordinance is the most common type of ordinance.
- **Performance** - a pure performance ordinance would have no districts. It would argue that any two uses are compatible with each other if the correct combination of lot sizes, setbacks, buffers, noise regulations, light regulations, etc., are applied.

The Newark Zoning Ordinance is a “permissive” zoning code. It was adopted as a permissive zoning code in 1965 and has been operating as such continuously up through the present. Like most California cities, the Newark Zoning Ordinance contains various Chapters for each zoning district that outlines all permitted uses, including those permitted with conditions and those without conditions. The result is that if the use is not specifically included in the zoning district, then such use is unlawful for that district.

Experts understand what a “permissive” zoning code is and that the Newark Zoning Ordinance is permissive. However, members of the general public unfortunately sometimes do not fully understand these concepts. In order to facilitate and promote a better understanding of the Newark Zoning Code with the public, staff recommends that the Planning Commission recommend the City Council adopt an ordinance adding a section to the Newark Zoning Code that expressly declares that the Newark Zoning Ordinance is a “permissive” zoning code and make it clear that if the use is not permitted then such use is unlawful.

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) under Section 5060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15061(b)(3) (General Rule that CEQA only applies to project which have the potential to cause a significant effect on the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3.

Attachment

Action – It is recommended that the Planning Commission, by resolution, recommend that the City Council approve Z-15-33, a text amendment to Title 17 (Zoning) of the Newark Municipal Code to add Section 17.04.050 “Permissive Code” to Chapter 17.04 “General Provisions”.

RESOLUTION NO.

RESOLUTION RECOMMENDING APPROVAL OF Z-15-33, A
TEXT AMENDMENT TO TITLE 17 (ZONING) OF THE
NEWARK MUNICIPAL CODE TO ADD SECTION 17.04.050
“PERMISSIVE CODE” TO CHAPTER 17.04 “GENERAL
PROVISIONS”

WHEREAS, an amendment to Chapter 17.04 (General Provisions) has been initiated to add Section 17.040.050 “Permissive Code” to Chapter 17.04 “General Provisions; and

PURSUANT to Municipal Code Section 17.72.060, a public hearing notice was published in the Tri-City Voice on November 24, 2015 and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on December 8, 2015 at the City Administration Building, 37101 Newark Boulevard, Newark, California.

NOW, THEREFORE, the Planning Commission resolves as follows:

- a. That Chapter 17.04 (General Provisions) shall be amended to add Section 17.04.050 (Permissive Code).
- b. That the City Council amend Title 17 (Zoning) of the Newark Municipal Code as set forth in Exhibit A, attached hereto and made part hereof by reference.
- c. That a copy of the minutes be forwarded to the City Council as a summary of the hearing.
- d. That the text amendment herein shall be added to the appropriate sections of the Newark Municipal Code, after review and approval by the City Council, when it is next published, with the notation of the date when the amendment became effective.

This Resolution was introduced at the Planning Commission’s December 8, 2015 meeting by Commissioner _____, seconded by Commissioner _____, and passed as follows:

AYES:

NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

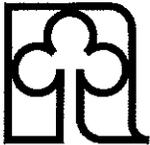
WILLIAM FITTS, Chairperson

EXHIBIT A

Chapter 17.04 (General Provisions) of Title 17 (Zoning) of the Newark Municipal Code is hereby amended to read as follows (strikeout denotes deletions, underline denotes additions):

17.04.050 Permissive code.

“The Newark zoning ordinance is a permissive zoning code. Any use of land that is not specifically permitted is unlawful, except where otherwise authorized under this Title 17.”



- E.4 Hearing to consider whether the Planning Commission should revoke Conditional Use Permit (CUP) No. U-84-18, 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; consider a Resolution to: (1) Dismiss an Order to Show Cause; (2) Find that E-Z 8 Motel is presently in compliance with Conditional Use Permit (U-84-18); and (3) Amend City Council Resolution No. 4565 by adding condition “rr” – from Assistant City Manager Grindall. 16 (CONTINUED FROM OCTOBER 27, 2015) (RESOLUTION)**

Background/Discussion – On July 2, 2014, the Planning Commission held a Public Hearing to consider revocation of the CUP for the E-Z 8 Motel. There was extensive public comment at the Hearing, 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 played in providing housing for people facing homelessness.

EZ-8 representatives committed to implement certain additional security measures to reduce the criminal activity at the motel. The Planning Commission continued the Public Hearing to a future date so that the impact of the agreed upon security measures could be fully analyzed. On April 28, 2015, the Planning Commission re-opened the continued Public Hearing. At that hearing the slower than expected implementation of the agreed upon measures was discussed and the Public Hearing was again continued to July 28, 2015, to allow enough time to assess the effectiveness of the agreed upon measures.

Those security measures include, in part:

1. Having an on-site Resident Manager living on the Motel property.
2. Requiring the Resident Manager and all Motel employees to cooperate with the Police Department by providing access to E-Z 8’s guest register upon request.
3. Storing motel revenues in a time-locked safe to minimize opportunities for robbery.
4. Locking the motel lobby and transact all business through the night window at or around dusk.
5. Requiring all registered guests to be at least 18 years of age.
6. Restricting anyone from access to a registered guest’s room other than a guest and/or visitor who has provided government-issued photo ID to the front desk at check-in. The ID shall be photocopied by the motel and stored for at least 72 hours.
7. Providing for “quiet hours” on the motel premises between 10:00 p.m. and 7:00 a.m.
8. Maintain and enforce a policy of guests staying a maximum of 21 days.
9. Maintain and enforce a policy that the minimum time period room rental is 24 hours.
10. Install and maintain a permanent electronically controlled gate at the entrance to the guest parking area. The gate shall only admit persons possessing a valid and active room key or a visitor/vendor temporary pass issued by a motel employee.

11. The motel shall have a licensed, bonded and insured, security guard patrolling the premises between the hours of 6:00 p.m. and 2:00 a.m.
12. The motel shall maintain a security camera system which provides night time acuity and complete coverage of the motel premises.
13. Maintain and enforce the policy that there shall be no more than 2 adult guests and 2 children under 13 years of age per single room and no more than 4 adults and 4 children under 13 years of age per double room.
14. Install and maintain on the front lobby counter and on the front of the building, signs that indicate cooperation with the Newark Police Department.
15. Maintain and enforce the policy that there shall be no cooking in any of the guest rooms.
16. Maintain and enforce an active "no rent" list which flags guests who have acted inappropriately in a prior stay. The motel shall place any persons requested by the Police Department on the "no rent" list.
17. The on-site Manager or other E-Z 8 employees will notify the Police Department of any known violation of the law on the E-Z 8 premises.

Newark Police have been in contact with E-Z 8 and their security consultant and have reviewed the crime statistics associated with the operation of the motel. It appears that the security measures have led to a decrease in the negative consequence of the motel operations on the neighborhood and Police resources. However, staff is concerned that these criminal issues could resurface if this matter is not appropriately addressed. Throughout the thirty year history of the operation of this Motel, it has been staff's experience that the level of criminal activity occurring at the Motel is cyclical in nature. In other words, as the crime rates and nuisance activities increase, staff intervenes to address public safety concerns, the crime activity reduces in response to that intervention, but then, after a period of time, the criminal activity resurfaces. Staff would like to see a permanent resolution of this matter by having these nuisance activities forever cease.

At the continued Public Hearing on July 28, 2015, the Planning Commission recommended that an amendment to the Conditional Use Permit be drafted in consultation of the E-Z 8 Motel operators and brought before the Planning Commission for consideration. The Planning Commission held several continued Public Hearings, including those on August 25, September 8, and October 27. During this time, staff was discussing a resolution with the Motel operators.

Staff can now report that an agreement has now been reached with representatives of the E-Z 8 Motel. The Settlement Agreement was signed by an E-Z 8 Motel representative and the City Manager. The Settlement Agreement contractually obligates the Motel to maintain and enforce *twenty-five (25) separate and independent security measures and procedures indefinitely*. In exchange for these security measures, staff recommends that the Planning Commission make a finding that the Motel is presently in compliance with the Agreement and that the Order to Show Cause be dismissed. If there is a breach of the Agreement then the parties are required to meet and confer before a subsequent revocation hearing commences.

Although the Agreement is signed by the parties, it is only effective if the Planning Commission adopts a resolution amending the existing use permit by adding condition "rr", which essentially requires the

Motel to comply with the Settlement Agreement. The Settlement Agreement is attached to the Resolution.

Recommended Actions- Approve a Resolution to: (1) Dismiss the Order to Show Cause; (2) Find that E-Z 8 Motel is presently in compliance with Conditional Use Permit (U-84-18); and (3) Amend Use Permit U-84-18 (approved by City Council Resolution No. 4565) by adding condition “rr” as follows:

“Developer agrees to operate its motel in such a manner that it complies with the Settlement Agreement with the City dated December 8, 2015, a copy of which is attached hereto.”

Action- After opening the Public Hearing on this matter the Planning Commission should consider approving the attached resolution: (1) Dismissing the Order to Show Cause; (2) Finding that E-Z 8 Motel is presently in compliance with Conditional Use Permit (U-84-18); and (3) Amending Use Permit U-84-18 (approved by City Council Resolution No. 4565) by adding condition “rr”.

RESOLUTION NO.

RESOLUTION OF THE CITY OF NEWARK PLANNING COMMISSION TO: (1) DISMISS AN ORDER TO SHOW CAUSE; (2) FIND THAT THE E-Z 8 MOTEL IS PRESENTLY IN COMPLIANCE WITH CONDITIONAL USE PERMIT (U-84-18); AND (3) AMEND CITY COUNCIL RESOLUTION NO. 4565 BY ADDING CONDITION "RR"

WHEREAS, on July 26, 1984, the Newark City Council adopted Resolution No. 4565, granting the application for Conditional Use Permit U-84-18 ("CUP") at 5555 Cedar Court to E-Z 8 ("E-Z 8" or "Motel"); and

WHEREAS, on April 28, 2014, the City of Newark, pursuant to 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"), alleging that the level of criminal activity at the Motel, in addition to draining City and Police Department resources, constitutes a violation of the conditions on which the CUP was granted; and

WHEREAS, the Motel denies any and all allegations made by the City in the OSC; and

WHEREAS, a Public Hearing on the OSC was set before the Newark Planning Commission on July 2, 2014, at the Newark City Council Chambers located at 37101 Newark Blvd, 6th Floor, Newark, California; and

WHEREAS, prior to that Public Hearing, the City and E-Z 8 entered into the July 2, 2014 Agreement in which E-Z 8 agreed to implement certain security measures intended to address the City's public safety concerns at the Motel and, in exchange, City staff agreed to recommend that the Planning Commission continue the Public Hearing; and

WHEREAS, the Public Hearing was continued from July 2, 2014, to April 28, 2015, and, again, to July 28, 2015, all at the same location; and

WHEREAS, at the continued Public Hearing on July 28, 2015, City staff reported to the Planning Commission that there is some indication that E-Z 8's implementation of the agreed upon security measures has led to a reduction of negative consequences in the surrounding neighborhood and that E-Z 8 reported to the Planning Commission that it was not seeing any security problems at the Motel; and

WHEREAS, the City and E-Z 8 have entered into a written agreement in which E-Z 8 has agreed to maintain and enforce twenty-five (25) itemized security measures and procedures, provided that the Planning Commission dismisses the pending OSC and make a finding that the Motel is presently operating in compliance with its use permit.

NOW, THEREFORE, in exchange for the City's dismissal of the OSC and mutual waivers of litigation and/or claims, E-Z 8 agrees to an amendment to the CUP that references the attached Settlement Agreement; and

THEREFORE, the Planning Commission makes the finding that E-Z 8 is presently in compliance with the CUP and the OSC is dismissed.

NOW, THEREFORE, BE IT RESOLVED, the Planning Commission amends City Council Resolution No. 4565, to add condition "rr" as follows:

rr. "Developer agrees to operate its motel in such a manner that it complies with the Settlement Agreement with the City dated December 8, 2015, a copy of which is attached hereto."

This Resolution was introduced at the Planning Commission's December 8, 2015 meeting by Commissioner , seconded by Commissioner , and passed as follows:

AYES:

NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

WILLIAM FITTS, Chairperson

**SETTLEMENT AGREEMENT BETWEEN
CITY OF NEWARK AND E-Z 8 NEWARK, LLC**

This Settlement Agreement ("Settlement Agreement"), effective December 8, 2015, is entered between the CITY OF NEWARK, a California municipal corporation ("City") and E-Z 8 Newark, a California Limited Liability Company, ("E-Z 8" or "Motel"), collectively referred to as "Parties". It is intended to supersede and restate that certain agreement between the Parties dated July 2, 2014, and its amendment (the "July 2 Agreement").

RECITALS

- A. On July 26, 1984, the Newark City Council adopted Resolution No. 4565, granting the application for Conditional Use Permit U-84-18 ("CUP") at 5555 Cedar Court to E-Z 8. 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." (Newark Municipal Code Section 17.72.070)
- B. E-Z 8 has operated the Motel on said property continuously and without interruption for approximately 30 years.
- C. On April 28, 2014, City, pursuant to 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 basis of the OSC is that the City alleges that the level of criminal activity at the Motel, in addition to draining City and Police Department resources, and particularly when compared to the levels of criminal activity at other hotels and motels operating in the City, constitutes a violation of the conditions on which the CUP was granted.
- D. E-Z 8 asserts that the Motel is properly operated and denies any and all allegations made by the City in the OSC.
- E. A public hearing on the OSC was set before the City Planning Commission on July 2, 2014, at the Newark City Council Chambers located at 37101 Newark Blvd, 6th Floor, Newark, California.
- F. Prior to that hearing, the Parties entered into the July 2 Agreement in which E-Z 8 agreed to implement certain security measures intended to address the City's public safety concerns at the Motel and, in exchange, City staff agreed to recommend that the Planning Commission continue the public hearing.
- G. The public hearing was continued from July 2, 2014, to April 28, 2015, and, again, to July 28, 2015, all at the same location. At the continued public hearing on July 28, 2015, City staff reported to the Commission that there is some indication that E-Z 8's implementation of the

agreed upon security measures has had a positive impact on motel operations and has led to a reduction of negative consequences in the surrounding neighborhood. E-Z 8 reported to the Commission that it was not seeing any security problems at the motel.

- H. In exchange for the City's dismissal of the OSC and mutual waivers of litigation and/or claims, E-Z 8 agrees to an amendment to the CUP that references this Settlement Agreement.

SETTLEMENT AGREEMENT

SECTION 1. SECURITY MEASURES

(A) E-Z 8 Motel agrees to maintain and enforce the following security measures and procedures:

1. Having an on-site Resident Manager living on the Motel property.
2. Requiring the Resident Manager and all Motel employees to cooperate with the NPD, by providing access to E-Z 8's guest register upon request.
3. Storing Motel revenues in a time-locked safe to minimize opportunities for the Motel to be robbed.
4. Locking the Motel lobby and transacting all business through the night window at or around dusk each day.
5. To the extent permitted by law, requiring all registered guests (other than accompanying minors/juveniles) to be at least 18 years of age.
6. Posting and enforcing a curfew on use of the pool and spa between the hours of 10 p.m. and 9 a.m. daily with summer hours of 11 p.m. – 9 a.m. daily.
7. Not allowing anyone, other than a guest who has provided appropriate ID to the front desk at check-in, access to a registered guest's room. When a registered guest requires a replacement key, the room will be re-keyed.
8. Not allowing large dogs on the premises if there is reason to believe the dog will be a safety threat. Current policies provide that pets are to be on leashes, not left unattended in rooms and not in the lobby or pool area. The Motel will continue to accommodate service dogs.
9. Providing for "Quiet Hours" on the Motel premises which shall be from 10:00 p.m. to 7:00 a.m. daily.
10. Not allowing any more than two (2) adult guests and two (2) children under the age of 13 in any single room, and no more than four (4) adults and four (4) children under the age of 13 in any double room.
11. Continuing the current policy of guests staying a maximum of 21 days.
12. Continuing the current policy that the minimum time period for renting a room is 24 hours.
13. Requiring every person, whether guest or visitor or vendor, to the E-Z 8, to provide a government-issued photo ID which shall be photocopied by the Motel and maintained for no less than 72 hours after completion of the guest's or visitor's stay.

14. Limiting access to the Motel property by maintaining a permanent, electronically controlled gate at the entrance to the property (after check-in parking). The gate shall only admit persons possessing a valid and active room key or a visitor/ vendor temporary pass which has been issued by a Motel employee after the visitor/ vendor enters the lobby, provides appropriate identification, and registers as a visitor/ vendor.
15. Requiring all visitors/vendors to the Motel, after showing a valid form of picture ID and registering as a visitor/vendor with the Motel, to indicate what room he or she will be visiting, the name(s) of the person(s) he or she will be visiting, and the purpose of his or her visit.
16. Employing one security guard to patrol the premises every day between the hours of 6 p.m. and 2 a.m., or for an alternative eight (8) hour shift, as agreed upon by the parties. Any security guard hired by E Z-8 shall be licensed, bonded and insured.
17. Operating a security camera system at the Motel which provides night time acuity and complete coverage of the Motel premises. NPD will be provided access to the camera-images within 24 hours of a request from NPD.
18. Keeping posted on the front lobby counter and on the front of the building signs that read as follows: "WE ACTIVELY COOPERATE WITH THE NEWARK POLICE DEPARTMENT TO DISCOURAGE ANY FORM OF ILLEGAL ACTIVITY ON THESE PREMISES. WE SHARE OUR REGISTRY WITH THE NEWARK POLICE DEPARTMENT. NO ILLEGAL ACTIVITY WILL BE ALLOWED ON THIS PROPERTY AND IF WE OBSERVE SUCH ACTIVITY THE NEWARK POLICE WILL BE IMMEDIATELY CALLED AND ANYONE INVOLVED IN SUCH ACTIVITY WILL BE EVICTED FROM THE PREMISES AND NOT ALLOWED TO RETURN".
19. Keeping posted signs at the entrance to the property that will read: "ALL PERSONS ENTERING THIS PROPERTY MUST REGISTER AT THE FRONT DESK, GIVE THEIR VEHICLE LICENSE NUMBER AND RECEIVE AND DISPLAY A PARKING PERMIT. VIOLATORS OF THIS POLICY WILL BE ASKED TO LEAVE AND VEHICLES MAY BE TOWED WITHOUT FURTHER NOTICE".
20. Retaining the services of a person with law enforcement experience to act as a Security Advisor to the Motel and who shall participate in formally scheduled meetings described in Paragraph 1(C) below.
21. Continuing a policy that there shall be no cooking in any of the Motel guest rooms. No cooking apparatus, including a stove top, butane cooking unit, or barbeque, shall be allowed in any E-Z 8 room.
22. Continuing a policy requiring that all guests, visitors, and vendors with vehicles on the Motel property provide the license plate number of their vehicles to the front desk.
23. Continuing a policy of issuing parking permits to each registered guest, visitor, or vendor and requiring that they put the parking permit on their front dashboard. The parking permit shall include the following statement: "WE SHARE OUR REGISTRY WITH THE NEWARK POLICE DEPARTMENT". Vehicles of all guests will be subject to the same requirement.
24. Continuing to keep an active "no rent" list which flags in the Motel's computer system all guests who have acted inappropriately in a prior stay. The Motel shall place any persons

reasonably requested by the NPD on the "no rent" list. The Motel shall thereafter refuse to rent to persons on the "no rent" list.

25. Continuing a policy that the on-site Manager or other E-Z 8 employees will continue to notify the NPD of any known violation of the law on the E-Z 8 premises.

(B) Definitions. For the purposes of this Settlement Agreement, the following terms shall have their respective definitions ascribed to them:

"Guest" shall mean "a person is who paying to rent a motel room at E-Z 8 or who registers with the person who is paying to rent the room, and intends to stay in the room (e.g. spouse or family member)".

"Visitor" shall mean "a person who is not paying to rent a motel room, but is visiting a guest at E-Z 8".

"Vendor" shall mean "a person who is on the E-Z 8 premises for the purpose of providing goods or services".

"Single Room" shall mean "a room with one queen size bed, refrigerator, cable TV, air conditioning, shower tub, toilet and vanity, one desk table with two chairs".

"Double Room" shall mean "a room with two queen size beds, refrigerator, cable TV, air conditioning, shower tub, toilet and vanity, one dresser and one chair".

"Register" shall mean "to provide the front desk with a valid, government issued ID or, if a juvenile accompanied by an adult and under the age of 18, the juvenile's name and date of birth".

(C) Meetings. The City and E-Z 8 representatives shall meet from time to time to discuss the status and success of these security measures, the level of criminal activity documented by the NPD as occurring on the property, and options for addressing any issues that may arise. Also upon reasonable request and as appropriate, the City will provide E-Z 8 with statistics of calls, arrests, criminal and police activity at the Motel. These meetings shall be attended by, at minimum, a representative from the Newark Police Department, the E-Z 8 Site Manager, and the E-Z 8 Security Advisor. The E-Z 8 Security Advisor may participate by telephone if participation in that form is reasonable given the circumstances of the meeting.

(D) Waiver of *City of Los Angeles v. Patel*. The Parties are aware of the recent United States Supreme Court decision in *City of Los Angeles v. Patel*, 576 U.S. ____ (2015), decided June 22, 2015 (hereinafter "*City of Los Angeles*"), wherein the U.S. Supreme Court invalidated a Los Angeles City Ordinance that authorized warrantless searches of hotel registries by law enforcement. City contends that the holding in *City of Los Angeles* is inapplicable to any of the

security measures herein, including, but not limited to Section 1(A)(2) above because by execution of this Settlement Agreement E-Z 8 consents to the search of its registry and other such security terms. Notwithstanding the foregoing, even if the holding of *City of Los Angeles* (or any successor case) is applicable to situations involving consent, E-Z 8 knowingly and intelligently waives the applicability of the *City of Los Angeles* holding to this present situation and knowingly and intelligently agrees to all of the security terms above, including, but not limited to sharing its registry with Newark PD under Section 1A(2) above.

SECTION 2. AMENDMENT TO CONDITIONAL USE PERMIT U-84-14

- (A) Adoption of Resolution Amending CUP. The City agrees to recommend that the Planning Commission adopt a Resolution amending the CUP to include condition "rr" as follows:

"Developer agrees to operate its motel in such a manner that it complies with the Settlement Agreement with the City dated December 8, 2015, a copy of which is attached hereto."

- (B) Consent. E-Z 8 consents to the inclusion of the above terms and conditions in its CUP subject to the following terms and conditions:

1. Dismissal: The Planning Commission shall make a finding that E-Z 8 is presently in compliance with the CUP and the OSC is dismissed:
2. Notice of Breach and Opportunity to Cure. If either party believes that the other party is in material breach of any term of this Settlement Agreement or the CUP, as amended, the non-defaulting party shall submit to the defaulting party a notice in writing indicating which provisions herein are believed to be in breach and an explanation thereof. The defaulting party shall provide a written response within 30 days, indicating why it is not in breach or, if it is in breach, an explanation of how and when the breach will be cured. If there is a breach, the breach shall be cured within 30 days of providing the written reply, or, if the breach requires more than 30 days to cure, the cure shall be commenced within 30 days and diligently completed. Motel shall be in compliance as long as there is no material, uncured breach of this Agreement.
3. Notices: Any notices required under this Settlement Agreement, including those identified in Section 2 (C) 2. above, shall be sent by U.S. Postal Service first class mail and e-mail to the following:

E-Z 8 Motel
Attn: Director of Operations
2484 Hotel Circle Place

City of Newark
Attn: Community Development Director
37101 Newark Boulevard

San Diego, CA 92018
dbarger@ez8motels.com

Newark, CA 94560

With a copy to:
John Wynne, Esq.
Duckor, Spradling
3043 Fourth Ave.
San Diego, CA 92103-5801
Newark, CA 94560
wynne@dsmw.com

With copy to:
City of Newark
Attn: City Attorney
37101 Newark Boulevard

With a copy to:
General Manager
E-Z 8 Newark
5555 Cedar Court
Newark, CA 94560-4812

- (C) Public Hearing Date. Upon E-Z 8's execution of this Settlement Agreement, City staff shall take reasonable steps to have a proposed Resolution adding condition "rr" scheduled for a public hearing before the Planning Commission as soon as practically possible.
- (D) No Contest. E-Z 8 agrees to support the proposed Resolution and in no way shall it contest, challenge, or file litigation against the City in regards to the adoption of the proposed Resolution, either directly by itself or indirectly by supporting any third party.

SECTION 3. MUTUAL RELEASES

- (A) Release. For the consideration herein, both Parties hereby and for their respective heirs, executors, administrators, successors, agents, partnerships, subsidiaries, associations, planning commission, boards, other agents and employees, as well as their respective assigns forever release acquit and discharge the other Party and any and all of its agents, employees, managers, officers, partners, members, servants, successors, heirs, executors, administrators and all other persons, firms, corporations associations ,partnerships or affiliated business agencies of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of business, expenses, and compensation whatsoever in regards to the OSC or for any liability for prior nuisance or arising from the matters claimed or described in the City's OSC application.
- (B) Denial of Liability. It is understood and agreed that this mutual release is the compromise of mutual claims and that execution of this Settlement Agreement is not to be construed as an admission of liability on part of the Party or Parties hereby released, and that said released deny liability therefore and intend merely to avoid litigation and buy their peace.

- (C) Waiver of Section 1542. It is further understood and agreed that all rights under Section 1542 of the Civil Code of California and any similar law of any State or territory are hereby waived. Section 1542 of the Civil Code of California provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

SECTION 4. EFFECTIVE DATE

- (A) Effective Date. This Settlement Agreement shall become effective as of December 8, 2015, if, and only if, all of the following four conditions occur: (i) E-Z 8 consents to the amended CUP as required under Section 2 herein; (ii) the Planning Commission issues said amended CUP; (iii) the OSC is dismissed; and (iv) all of the deadlines and/or statutes of limitations to appeal and/or challenge such actions have passed. If any of these conditions are not satisfied, then this Settlement Agreement shall be null and void.
- (B) Superseding and Restating Previous Agreement. Immediately upon this Settlement Agreement taking effect, the July 2 Agreement shall be superseded by this Settlement Agreement.

SECTION 5 . GENERAL PROVISIONS

- (A) Signatures. The individuals executing this Settlement Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Settlement Agreement on behalf of the respective legal entities. This Settlement Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.
- (B) Entire Agreement. This Settlement Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the Parties. This Settlement Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral.
- (C) Severability. If any term of this Settlement Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Settlement Agreement shall be construed as not containing that term, and the remainder of this Settlement Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the Parties' intent under this Settlement Agreement.

(D) Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Settlement Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Settlement Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda or United States District Court with jurisdiction over that county.

(E) Interpretation. The terms of this Settlement Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Settlement Agreement. Paragraph headings used herein are for convenience only and shall not be deemed to be a part of such paragraphs and shall not be construed to change the meaning thereof.

(F) Amendments. This Settlement Agreement can be modified by the Parties in writing at any time.

CITY OF NEWARK / "CITY"

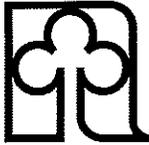
E-Z 8 Newark, LLC / "E-Z 8" or "Motel"

Mr. John Becker, City Manager

Mr. Jerry M. Cannon
For Pasatiempo Management, LLC

Attest:

Ms. Sheila Harrington, City Clerk



F.1 Proposed changes to the City of Newark Street Names Theme Map to allow for a “Bay Features” theme for the Dumbarton Transit Oriented Development area and a “Bay Animals” theme for the areas known as Sanctuary and Area 4 in the General Plan – from Assistant City Manager Grindall.  (RESOLUTION)

Background/Discussion – In 1963, the Planning Commission approved a policy for the systematic naming of streets, adopting certain categories and names for various geographic sections of the City in the form of a Street Name Themes Map which delineates street name themes for each area. In 1983, the City Council modified this policy by authorizing industrial and commercial developers to use street names to aid in marketing their properties.

There has been a considerable amount of development approved in the past two years. The majority of this development has been residential subdivisions located in the Dumbarton Transit Oriented Development (TOD) area. This area will be comprised of multiple subdivisions that have an opportunity to bring a distinct identity to this area. The various developers of this area have indicated a willingness to coordinate the naming of streets within each subdivision in order to provide consistency, improve their marketing, and to ultimately bring a sense of place to this developing region.

Although the approved theme for this area is currently “Trees”, the proximity of the Dumbarton TOD to the San Francisco Bay lends itself more to “Bay” or “Water” themed streets. The developers of the Torian parcel have proposed “Bayshores” as the name of their development, so similar themed street names for the remainder of the area would be appropriate. As such, staff is recommending that “Bay Features” be the street name theme for this area.

Plans for the Sanctuary (formerly known as Area 3) development are currently being processed through the Planning Commission and City Council. Although no development plans have been submitted for the Area 4 development, it’s appropriate to establish an appropriate street name theme for both areas at this time. The current theme approved for this area is “California History”. Staff feels again that a Bay theme best captures the feel of this area and is recommending “Bay Animals” for street names. The developers for all of these parcels have been consulted on these themes and they agree on their usage.

Attachment

Action – It is recommended that the Planning Commission, by resolution, with attachment, approve a change to the Street Names Theme Map to allow for a “Bay Features” theme for the Dumbarton Transit Oriented Development area and a “Bay Animals” theme for the areas known as Sanctuary and Area 4 in the General Plan.

RESOLUTION NO.

RESOLUTION APPROVING CHANGES TO THE CITY OF
NEWARK STREET NAMES THEME MAP

WHEREAS, the City adopted a Street Names Theme Map in 1963; and

WHEREAS, the Map adopted certain categories and names for various geographic regions of the City, delineating street name themes for each area; and

WHEREAS, the Dumbarton Transit Oriented District will be comprised of multiple subdivisions, all of which have a geographical connection to the San Francisco Bay; and

WHEREAS, a “Bay Features” theme for this area would be better suited for the area than the original “Trees” theme and would help to bring a distinct identity to this area; and

WHEREAS, Sanctuary (formerly Area 3) and General Plan Area 4 have a similar connection to the San Francisco Bay and its wildlife and therefore a “Bay Animals” theme would provide the appropriate sense of place to this region.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby approves the changes to the Street Names Theme Map as shown on the attached map.

This Resolution was introduced at the Planning Commission’s December 8, 2015 meeting by Commissioner , seconded by Commissioner , and passed as follows:

AYES:

NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

WILLIAM FITTS, Chairperson

CITY OF NEWARK STREET NAME THEMES MAP

