



CITY OF NEWARK CITY COUNCIL

37101 Newark Boulevard, Newark, CA 94560-3796 • 510-578-4266 • E-mail: city.clerk@Newark.org

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

AGENDA

Thursday, June 12, 2014

CITY COUNCIL:

Alan L. Nagy, Mayor
Ana M. Apodaca, Vice Mayor
Luis L. Freitas
Sucy Collazo
Robert Marshall

CITY STAFF:

John Becker
City Manager

Terrence Grindall
Assistant City Manager

Susie Woodstock
Administrative Services Director

Sandy Abe
Human Resources Director

Peggy A. Claassen
Public Works Director

Jim Leal
Police Chief

David Zehnder
Recreation and Community
Services Director

David J. Benoun
City Attorney

Sheila Harrington
City Clerk

Welcome to the Newark City Council meeting. The following information will help you understand the City Council Agenda and what occurs during a City Council meeting. Your participation in your City government is encouraged, and we hope this information will enable you to become more involved. The Order of Business for Council meetings is as follows:

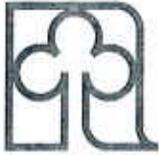
- | | |
|-------------------------------------|-------------------------|
| A. ROLL CALL | I. COUNCIL MATTERS |
| B. MINUTES | J. SUCCESSOR AGENCY |
| C. PRESENTATIONS AND PROCLAMATIONS | TO REDEVELOPMENT AGENCY |
| D. WRITTEN COMMUNICATIONS | K. ORAL COMMUNICATIONS |
| E. PUBLIC HEARINGS | L. APPROPRIATIONS |
| F. CITY MANAGER REPORTS | M. CLOSED SESSION |
| G. CITY ATTORNEY REPORTS | N. ADJOURNMENT |
| H. ECONOMIC DEVELOPMENT CORPORATION | |

Items listed on the agenda may be approved, disapproved, or continued to a future meeting. Many items require an action by motion or the adoption of a resolution or an ordinance. When this is required, the words **MOTION**, **RESOLUTION**, or **ORDINANCE** appear in parenthesis at the end of the item. If one of these words does not appear, the item is an informational item.

The attached *Agenda* gives the *Background/Discussion* of agenda items. Following this section is the word *Attachment*. Unless "none" follows *Attachment*, there is more documentation which is available for public review at the Newark Library, the City Clerk's office or at www.newark.org. Those items on the Agenda which are coming from the Planning Commission will also include a section entitled *Update*, which will state what the Planning Commission's action was on that particular item. *Action* indicates what staff's recommendation is and what action(s) the Council may take.

Addressing the City Council: You may speak once and submit written materials on any listed item at the appropriate time. You may speak once and submit written materials on any item **not** on the agenda during **Oral Communications**. To address the Council, please seek the recognition of the Mayor by raising your hand. Once recognized, come forward to the lectern and you may, but you are not required to, state your name and address for the record. Public comments are limited to five (5) minutes per speaker, subject to adjustment by the Mayor. Matters brought before the Council which require an action may be either referred to staff or placed on a future Council agenda.

No question shall be asked of a council member, city staff, or an audience member except through the presiding officer. No person shall use vulgar, profane, loud or boisterous language that interrupts a meeting. Any person who refuses to carry out instructions given by the presiding officer for the purpose of maintaining order may be guilty of an infraction and may result in removal from the meeting.



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Thursday, June 12, 2014

A. ROLL CALL

B. MINUTES

- B.1 Approval of Minutes of the special and regular City Council meetings of Thursday, May 22, 2014. (MOTION)**

C. PRESENTATIONS AND PROCLAMATIONS

C.1 Introduction of employee.

Background/Discussion – Newly hired Information Systems Specialist, Larry Kezar will be at the meeting to be introduced to the Council.

C.2 Presentation of the Newark Unified School District Certificated Employee of the Year. (PRESENTATION)

Background/Discussion – The Newark Unified School District has selected Nancy Kuei as Certificated Employee of the Year. The Newark Rotary Club will present Ms. Kuei with a certificate at the City Council meeting.

C.3 Commendation to Police Officer of the Year. (COMMENDATION)

Background/Discussion – Ryan Johnson has been named Police Officer of the Year. A commendation has been prepared and Officer Johnson will accept it at the meeting.

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

- E.1 Hearing to consider adoption of Master Fee Schedule for Fiscal Year 2014-2015 – from Senior Accountant Del Rosario. (RESOLUTION)**

Background/Discussion – The City's Master Fee Schedule (MFS) is reviewed annually. The proposed MFS for Fiscal Year 2014-2015 is based on an analysis of

both direct and indirect costs for the delivery of certain City programs and services. Market factors were also considered in establishing the proposed fees. The proposed MFS is the result of input from all City departments.

The City Attorney has advised that as a result of a December 22, 2005, California Supreme Court case (Barratt-American, Inc. vs. City of Rancho Cucamonga), the reenactment of previously existing fees without change nullifies the applicable statute of limitations and, thus, reopens those fees to legal challenge. It is recommended that the Council amend only those sections of the Master Fee Schedule that staff is suggesting be changed. The sections adopted, deleted, or amended by Council will then be editorially merged with the unchanged portions of the Master Fee Schedule as adopted by the City Council in Resolution No. 10094 on June 13, 2013.

Attachment

Action - It is recommended that the City Council, by resolution, amend the Master Fee Schedule for Fiscal Year 2014-2015.

E.2 Hearing to consider the request by LOV (League of Volunteers), for P-14-12, a planned unit development, and U-14-13, a conditional use permit, to have a circus at the NewPark Mall parking lot (APNS: 901-111-20 & 21) with performances from August 7 through August 11, 2014; and authorization to waive the application fee – from Assistant City Manager Grindall. (MOTIONS-2)

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 August 7 (Thursday) through August 11 (Monday), 2014. 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). Seven 1-1/2 hour shows are requested with expected attendance between 500 and 700 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 applicant, a non-profit organization, has also requested a fee waiver.

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

Update – At its meeting of May 13, 2014, the Planning Commission approved Resolution No. 1873, with Exhibit A, pages 1 through 3, approving the request by LOV (League of Volunteers), for P-14-12, a planned unit development, and U-14-13, a conditional use permit, to have a circus at the NewPark Mall parking lot (APNS: 901-111-20 & 21) with performances from August 7 through August 11, 2014.

Attachment

Action - It is recommended that the City Council, by motions: (1) approve Resolution No. 1873 with Exhibit A, pages 1 through 3, the request by LOV (League of Volunteers), for P-14-12, a planned unit development, and U-14-13, a conditional use permit, to have a circus at the NewPark Mall parking lot (APNS: 901-111-20 & 21) with performances from August 7 through August 11, 2014; and (2) authorize a waiver of the application fee.

- E.3 Hearing to consider an 85-unit residential townhome development (Integral Communities) on an approximately 4.28 acre site (APN: 901-0195-039) on the northeast corner of Cedar Boulevard and Mowry School Road: (1) resolution making certain findings and approving an Initial Study/Mitigated Negative Declaration for the Cedar Townhomes project; (2) resolution approving a General Plan Amendment to change the land use designation from CC (Community Commercial) to HR (High Density Residential); (3) Introduction of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code and Section 17.44.010 “Zoning Map” by rezoning all that real property shown on Vesting Tentative Tract Map 8166 and approving a rezoning from CC (Community Commercial) to R-1,500 (High Density Residential – 1,500); (4) resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and authorizing the Mayor to sign the attached Affordable Housing Implementation Agreement; (5) resolution authorizing the Mayor to sign a Community Financing Agreement with Newark Atrium Project Owner, LLC (6) resolution approving Tentative Tract Map 8166; and (7) By motion, approving an Architectural and Site Plan Review – from Assistant City Manager Grindall.**

(RESOLUTIONS-5)(INTRODUCTION OF AN ORDINANCE)(MOTION)

Background/Discussion – Integral Communities, Inc. has submitted an application for the development of 85 townhomes on a vacant lot located at 39850 and 39888 Cedar Boulevard (northeast corner of Cedar Boulevard and Mowry School Road). Attached is Exhibit A, pages 1 to 33.

The 4.28+/- acre site has a CC (Community Commercial) zoning and General Plan land use designation. Approval of the project would require an amendment to both designations to accommodate the residential use. It is proposed to rezone the site to R-1,500 (High Density Residential – 1,500) and change the General Plan land use

designation to HR (High Density Residential). Surrounding land uses include a 2.5 acre condominium complex across the street on Cedar Boulevard (Murieta condos), the Towne Place Suites to the north, the Balentine Park office complex to the east, and the Balentine Plaza shopping center to the south. In 2007, City Council approved a retail/office complex at this site but the project was never built.

Project Description

The proposed project includes the construction of eleven three and four-story buildings, with each building containing between seven to eleven units. Dwellings would front onto both Cedar Boulevard and Mowry School Road, while the remainder of the units along the perimeter would be sited near the property line of the adjoining Balentine Park office complex. Five rows of dwellings would be centrally constructed on the interior of the site in an approximate east-west direction.

Vehicular access to the project site would be via the existing office complex driveway off of Mowry School Road. A series of private drives would provide on-site access and would serve to each homes' two-car garage. Approximately three-fourths of the dwellings would have side-by-side garages, while the remaining homes would have tandem garages. A children's tot-lot is proposed in the southeast corner of the site.

The attached townhomes would consist of two to four bedrooms, varying with five different plan types. Three and four-story dwellings would be constructed and would range from 1,486 to 2,114 square feet of living space in size. A total of ten four-story dwellings accommodating a game room and balcony on the top floor are proposed. Building elevations would reflect a Spanish design, incorporating architectural elements such as arches, balconies, ornamental iron work, an off-white and tan color exterior and terracotta roof tiles. Additional decorative features include awnings, wood trellises and stone veneer on the ground elevations.

Neighborhood Meeting

The developer held a neighborhood meeting on April 16, 2014 at the Newark Hilton Hotel. Notices of the meeting were sent to 363 property owners within a 300-foot radius of the project site, including to the Murieta condominium complex across from the project site. Thirteen members of the public attended the meeting, including various residents of the condo complex. During the meeting, the public raised questions about the project, including parking, access to the site, timing of the project, and pricing of the proposed homes. The developer explained project specifics for an approximate 45-minute meeting duration and in the end, solicited contact information from those who wished to receive future project information.

Affordable Housing

Chapter 17.18 of the Newark Municipal Code (NMC) mandates that all housing developments of five units or more make available a minimum of 15% of the total number of units to very low, low and moderate income households. Of the fifteen percent affordable units required, nine percent are to be set aside for moderate income households which earn 110% or less of the median income while six percent are to be

reserved for lower income households earning 80% or less of the median income. A total of thirteen affordable units would be required to comply with the ordinance. However, the NMC also allows developers to meet the affordable housing requirement through other forms of compliance, such as land dedication, payment of in-lieu fees, or an alternative housing program. In this case, the developer proposes to meet the affordable housing requirement by providing the affordable units off-site as an alternative method of compliance. The affordable units would be provided at the SHH project site located within the Dumbarton TOD that was approved by City Council on April 24, 2014 and is also being developed by Integral Communities. In lieu of providing the required fifteen percent affordable units, the developer would provide ten percent, or nine units, for lower income households that earn 60% or less of the median income. Although fewer units would be provided, staff supports the alternative proposal as the lower income bracket would benefit persons in greater need of affordable housing.

Community Financing Agreement

The aforementioned land use changes from commercial to residential necessary to implement the project would reduce the opportunity for the development of a hotel on the property, which would potentially provide transient occupancy taxes. Staff is nevertheless in support of the project, as the property has been vacant for various years and is not considered to be a prime commercial site. Furthermore, the applicant and the City have agreed on a financial contribution payable to the City to ameliorate the reduction of potential transient occupancy taxes, in the amount of \$20,000 per dwelling unit.

Environmental Analysis

An Initial Study/Mitigated Negative Declaration was prepared for this project in order to identify any potential environmental impacts that would result in implementing the project. The environmental factors analyzed were aesthetics, agricultural resources, air quality, biological and cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use planning, mineral resources, noise, population and housing, public services, recreation, transportation and circulation and utilities. The environmental study concluded that the proposed project would not have a significant adverse impact on overall environmental quality, including biological resources with adherence to the mitigation measures listed in the Initial Study. The project site is vacant and is located in an urban, developed area. Although a pond is located on the project site, the environmental analysis indicates that no wetlands have been identified and the site does not contain significant mature trees that could provide nesting habitat to birds. Additional traffic as a result of the project would have an effect on local streets and regional streets; however the impacts can be reduced to a less-than-significant level with adherence to mitigation measures. The analysis also indicates that increased air pollutant emissions would also result in a less-than-significant impact to the environment.

The review period for the IS/MND ended on April 17, 2014. Staff did not receive any letters from the public.

Update – At its meeting of May 27, 2014, the Newark Planning Commission: 1) approved Resolution 1876 making certain findings and recommending City Council approval of E-14-6, an Initial Study/Mitigated Negative Declaration; (2) approved Resolution 1877 recommending City Council approval of GP-14-7, a General Plan Amendment to change the land use designation from CC (Community Commercial) to HR (High Density Residential); (3) approved Resolution 1878 recommending City Council approval of RZ-14-8, a rezoning from CC (Community Commercial) to R-1,500 (High Density Residential – 1,500); (4) approved Resolution 1879 making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and recommending the City Council approve an Affordable Housing Implementation Agreement.

On May 27, 2014 the Newark Planning Commission also by Motion:

(5) recommended City Council approval of TTM-14-11, Tentative Tract Map 8166; and (6) recommended City Council approval of ASR-14-9, an Architectural and Site Plan Review, with Exhibit A, pages 1 to 33, to construct a 85-unit residential townhome development (Integral Communities) on an approximately 4.3 acre site (APN: 901-0195-039) on the northeast corner of Cedar Boulevard and Mowry School Road.

Attachments

Action – It is recommended that the City Council, by motion:

- (1) Adopt a resolution making certain findings and adopting an **Initial Study/Mitigated Negative Declaration** for the Cedar Townhomes project;
- (2) Adopt a resolution approving an amendment to the Land Use Element of the General Plan to change land use designation from CC (Community Commercial) To HR (High Density Residential);
- (3) Introduce an ordinance amending Title 17 (Zoning) of the Newark Municipal Code and Section 17.44.010 “Zoning Map” by rezoning all that real property shown on Vesting Tentative Tract Map 8166 from CC (Community Commercial) to R-1,500 (High Density Residential – 1,500);
- (4) Adopt a Resolution approving an alternative means of compliance with the Inclusionary Housing Ordinance for the Cedar Townhomes Project; making findings related to the use of an Alternative Means Of Compliance; and authorizing the Mayor to sign the Affordable Housing Obligation Satisfaction Agreement;
- (5) Adopt a resolution authorizing the Mayor to sign a Community Financing Agreement with Newark Atrium Project Owner, LLC;
- (6) Adopt a resolution approving Vesting Tentative Tract Map 8166; and

(7) By motion, approve ASR-14-9, an Architectural and Site Plan Review, with Exhibit A pages 1 to 33.

- E.4 Hearing to consider the development of 15 single family lots with construction of a detached dwelling on each lot (Mission Peak Homes) at 38517 Birch Street, on the west side of Birch Street north of Moores Avenue (APN: 092A-2356-037). A private road would provide access to each lot. The existing church complex would be demolished: (1) Adopting a resolution making certain findings and approving E-13-30, an Initial Study/Mitigated Negative Declaration; (2) adopting a resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance; approving the Affordable Housing Implementation Agreement for the Birch Street project and authorizing the Mayor to sign the Affordable Housing Implementation Agreement; (3) By motion, approving P-13-29, a planned unit development, and U-13-28, a conditional use permit, and (4) adopting a resolution approving TTM-13-27, Tentative Tract Map 8165.– from Assistant City Manager Grindall. (RESOLUTIONS-3)(MOTION)**

Background/Discussion – Mission Peak Homes has submitted an application for the development of 15 single-family detached homes at 38517 Birch Street. Attached is Exhibit A, pages 1-24.

Project Description

The 1.82 acre site is currently developed with the Bay Area Baptist Church. The proposed project would require the demolition of the church buildings. The project site and its surrounding neighborhood have an R-7,000 (minimum lot size 7,000 square feet) zoning designation. The applicant's proposal to create 4,022 square-foot lots (average) would, therefore, require approval of a planned unit development and conditional use permit. The homes would range in size between approximately 1,900 and 2,500 square feet.

Vehicle access to the project site would be through a private court that would terminate in a cul-de-sac. Although the court is a private street, it has been designed to be consistent with City street standards. The court would be accessible to the public and would be maintained by the project's homeowners' association. Resident parking would be provided by a two-car attached garage at each home. A driveway apron would also be provided in front of each garage to provide two additional parking spaces for each dwelling. In addition, four uncovered parking spaces would be provided at the terminus of the cul-de-sac.

Architectural and Site Plan Review

Three floor plan types and two architectural styles are proposed for the dwellings, including two plan variations with enhancements and larger wrap porches for the

homes closest to Birch Street. The two styles are “A” Craftsman and “B” Americana. The “A” Craftsman style offers classic Craftsman details such as corbels at gabled roofs and cantilevered areas, decorative columns at porches, and stylized window treatments with trim and window grids. The “B” Americana style offers hipped roofs, accent siding at roof gables, decorative columns at porches, and stylized window treatments with trim, window grids and shutters. The colors are rich and earthy and offer variety with two schemes between the three plans.

Neighborhood Meetings

The applicant held two well attended neighborhood meetings. Notification of the meetings was sent to all property owners with a 500-foot radius of the project site. Staff attended both of the neighborhood meetings. The first meeting, held on September 4, 2013, involved the presentation of concept development plans in the applicant’s effort to obtain ideas and feedback from the community. The applicant then held a second follow up meeting on January 14, 2014 with the presentation of detailed plans and exhibits closely resembling the attached final plans (Exhibit A).

Affordable Housing

Chapter 17.18 of the Newark Municipal Code (NMC) mandates that all housing developments of five units or more make available a minimum of 15% of the total number of units to very low, low and moderate income households. A total of two affordable units would be required to comply with the ordinance. However, the NMC also allows developers to meet the affordable housing requirement through other forms of compliance, such as land dedication, payment of in-lieu fees, or an alternative housing program. In this case, the developer proposes to meet the affordable housing requirement by paying an in-lieu fee as the alternate method of compliance. Staff supports this proposal because the fees would provide an avenue for the City to compile funding for the acquisition of property that can be made available to low-income residents in Newark.

Environmental Analysis

An Initial Study/Mitigated Negative Declaration was prepared for this project in order to identify any potential environmental impacts that would result in implementing the project. The environmental factors analyzed were aesthetics, agricultural resources, air quality, biological and cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use planning, mineral resources, noise, population and housing, public services, recreation, transportation and circulation and utilities. The environmental study concluded that the proposed project would not have a significant adverse impact on overall environmental quality, including biological resources with adherence to the mitigation measures listed in the Initial Study. Additional traffic as a result of the project would have an effect on local streets and regional streets; however the impacts can be reduced to a less-than-significant level with adherence to mitigation measures. The analysis also indicates that increased air pollutant emissions would also result in a less-than-significant impact to the environment.

The review period for the IS/MND ended on April 28, 2014. Staff did not receive any letters from the public.

Update – At its meeting of May 13, 2014, the Newark Planning Commission approved Resolution 1874, making certain findings and recommending City Council approval of E-13-30, an Initial Study/Mitigated Negative Declaration; and approved Resolution 1875 recommending that the City Council approve an alternative means of compliance with the Inclusionary Housing Ordinance for the Birch Street Project and making findings supporting the use of an alternative means of compliance.

On May 13, 2014 the Newark Planning Commission also passed by Motion: P-13-29, a planned unit development, and U-13-28, a conditional use permit with Exhibit A, pages 1-24; and recommended the City Council approve TTM-13-27, Tentative Tract Map 8165.

Attachments

Action – It is recommended that the City Council, by motion:

- (1) Adopt a resolution making certain findings and adopting an Initial Study/Mitigated Negative Declaration for the Birch Street Residential Project;
- (2) Adopt a resolution approving an alternative means of compliance with the Inclusionary Housing Ordinance for the Birch Street Project; making findings supporting the use of an alternative means of compliance, and authorizing the Mayor to sign the Affordable Housing Implementation Agreement;
- (3) By motion, approve P-13-29, a planned unit development, and U-13-28, a conditional use permit, and
- (4) Adopt a resolution approving Tentative Tract Map 8165.

F. CITY MANAGER REPORTS

(It is recommended that Items F.1 through F.11 be acted on simultaneously unless separate discussion and/or action is requested by a Council Member or a member of the audience.)

CONSENT

- F.1 Approval of plans and specifications, acceptance of bid and award of contract to Ghilotti Bros., Inc. for 2014 Asphalt Concrete Street Overlay Program, Project 1063 – from Associate Civil Engineer Tran.**

(MOTION)(RESOLUTION)

Background/Discussion – This project will provide localized patch paving, pavement grinding, surfacing paving, and re-striping on various City streets.

Bids for the project were opened on May 27, 2014 with the following results:

Bidder	Amount
Ghilotti Bros., Inc.	\$ 893,333.00
G. Bortolotto & Company, Inc.	933,444.39
Goodfellow Top Grade Construction, LLC.	942,885.00
MCK Services, Inc.	971,561.25
O'Grady Paving, Inc.	975,238.00
Gallagher & Burk, Inc.	987,654.00
C. F. Archibald Paving, Inc.	1,063,824.00
ALB, Inc.	1,149,256.50*
RGW Construction, Inc.	1,152,694.00
A. Teichert & Son, Inc. dba Teichert Construction	1,156,099.25
Interstate Grading & Paving, Inc.	1,371,126.50
Engineer's Estimate	\$ 935,000.00

**Corrected for minor mathematical error*

The 2012-2014 Biennial Budget includes funding for this project in Fiscal Year 2013-2014. This project will be funded through Alameda County Measure B Sales Tax funds, Vehicle Registration Fee funds, and the Traffic Congestion Relief Fund.

Staff recommends that this project be awarded to the lowest responsible bidder, Ghilotti Bros., Inc.

Attachment

Action – It is recommended that the City Council, by motion, approve the plans and specifications and by resolution, accept the bid and award the contract to Ghilotti Bros., Inc. for 2014 Asphalt Concrete Street Overlay Program, Project 1063.

F.2 Authorization for the Police Chief to sign an amendment to the agreement with All City Management Services for the contracting of school crossing guards, extending the term of said agreement – from Police Chief Leal.

(RESOLUTION)

Background/Discussion – On June 13, 2013, the City Council approved an amendment agreement for the extension of school crossing guard services through June 30, 2014. The latest amendment agreement extending their services for two years, through June 30, 2016, was received and reviewed by the City Attorney. All provisions of the original contract will remain in effect, except for a 6.65 percent increase in the crossing guards' hourly rate. Due to the upcoming California Minimum Wage increases in July 2014 and January 2016, the current rate of \$15.50/hr. will adjust to \$16.53/hr. commencing with the 2014-2015 school year.

Attachment

Action - It is recommended that the City Council, by resolution, authorize the Police Chief to sign an amendment to the agreement with All City Management Services for the contracting of school crossing guards, extending the term of said agreement.

F.3 Establishment of the Fiscal Year 2014-2015 Appropriations Limit – from Senior Accountant del Rosario. (RESOLUTION)

Background/Discussion – State law requires the adoption of the Appropriations Limit by resolution prior to the beginning of each fiscal year and a recorded vote of the Council regarding which of the annual adjustment factors have been selected to calculate the Appropriations Limit each fiscal year. On June 27, 2013, the City Council adopted Resolution No. 10114 establishing the Fiscal Year 2013-2014 Appropriations Limit to \$292,503,881.

The State Constitution specifies the annual adjustment factors that the City may choose to calculate the Appropriations Limit. These adjustment factors are comprised of: (1) either the California per capita income or the percentage change in the local assessment roll due to the addition of local nonresidential construction in the City and (2) either the city's population growth or the population growth of the entire county. The two percentage increases are multiplied together to determine the final percentage by which the prior year's limit is increased.

The City chooses to use the percentage change in California personal income for the inflationary adjustment. Local assessment roll data necessary to calculate the percentage change in the nonresidential assessed valuation is generally not available from the County Assessor's Office until well into the fiscal year. In the absence of final information on this important factor, it is recommended that the known California per capita personal income of -0.23 percent be adopted for Fiscal Year 2014-2015. For the population adjustment factor, it is recommended that the County's percentage change in population of 1.50 percent be adopted for Fiscal Year 2014-2015 since the higher percentage change in the County's population is most advantageous to the City.

Based on the above information, the proposed Fiscal Year 2014-2015 Appropriations Limit is \$296,208,589. The 2014-2015 Biennial Budget contains appropriations subject to the limit and the budget is well below that limit.

Attachment

Action - It is recommended that the City Council, by resolution, establish the Fiscal Year 2014-2015 Appropriations Limit and select the California per capita personal income and County of Alameda's population change as the annual adjustment factors.

F.4 Establishment of amount of revenue from property taxes necessary to support City departments for Fiscal Year 2014 - 2015 – from Senior Accountant del Rosario. (RESOLUTION)

Background/Discussion – Section 51508 of the Government Code of the State of California requires that each fiscal year the City Council fixes the amount of revenue from property taxes that is necessary to support all City departments.

The resolution necessary to meet the requirement of this law has been prepared. The resolution establishes the amount allocated from property tax revenues for the support of City departments for Fiscal year 2014-2015 in the amount of \$9,853,000. This figure was derived based on information provided by the Alameda County Auditor-Controller and represents the City's share of the County tax rate, which is distributed according to legislative provisions.

Attachment

Action – It is recommended that the City Council, by resolution, establish the amount of revenue from property taxes necessary to support all City departments for Fiscal Year 2014 - 2015.

F.5 Approval of Investment Policy – from Senior Accountant del Rosario. (RESOLUTION)

Background/Discussion – State law requires that the City's Investment Policy be reviewed and approved by the City Council at least annually. The City's current Investment Policy provides for all of the standard and material issues that an Investment Policy should include. The Investment Policy's primary objective is safety of principal with liquidity and return in investment as second and third priorities respectively. No changes are being proposed from last years adopted policy.

Attachment

Action - It is recommended that the City Council, by resolution, approve the City's Investment Policy.

F.6 Acceptance of contract with Pacheco Brothers Gardening, Inc., for Jerry Raber Ash Street Park Turf Renovation, Project 1067– from Maintenance Supervisor Carey. (RESOLUTION)

Background/Discussion – On December 12, 2013 the City Council awarded a contract to Pacheco Brothers Gardening, Inc., for turf renovation services. All work on this project is now complete.

Attachment

Action - It is recommended that the City Council, by resolution, accept the contract with Pacheco Brothers Gardening, Inc., for Jerry Raber Ash Street Park Turf Renovation, Project 1067.

F.7 Authorization for the City Attorney to sign a Certification and Mutual Indemnification Agreement with the County of Alameda – from Senior Accountant del Rosario and City Attorney Benoun. (RESOLUTION)

Background/Discussion – The City currently has an agreement with Alameda County which authorizes the collection of various taxes, assessments, and fees on the secured property tax roll. Since the passage of Proposition 218 in 1996, the County has required that each agency or district sign an annual statement certifying that each assessment, fee, and/or special tax placed on the tax rolls meets the requirements of Proposition 218.

Staff has reviewed each of the City's taxes, assessments, and fees to ensure compliance with the proposition. It is the opinion of the City Attorney that the City's taxes, assessments, and fees are in compliance with Proposition 218 requirements and the City is able to sign the certification.

Attachment

Action – It is recommended that the City Council, by resolution, authorize the City Attorney to sign a Certification and Mutual Indemnification Agreement with the County of Alameda.

F.8 Authorization for the purchase of updated and supplemental geographic information system software licenses and installation support services, and to declare Environmental Systems Research Institute, Inc. as the single source vendor– from Senior Engineer Fajeau. (RESOLUTION)

Background/Discussion- The Southern Alameda County Geographic Information System Authority (SACGISA) is a collaborative effort among local jurisdictions and utility districts to provide mapping, utility, and other public asset identification services. Staff uses SACGISA's web-based interface on a daily basis to research land-based data, develop mailing lists, assist with public inquiries, and perform a variety of other functions. Staff also uses an internal GIS software package to, among other tasks, develop new GIS data sets, prepare maps and exhibits, and help design project specifications. The original formation of SACGISA included a competitive process for selection of hardware and software for the collective GIS services, including the original purchase of the City's existing internal software package, ArcGIS. Environmental Systems Research Institute, Inc. (ESRI) is the sole vendor who can provide the necessary updated and supplemental licenses and software support services for the ArcGIS software that is currently used by both SACGISA and the City of Newark.

For the last fifteen years, Building Inspection, Engineering, Planning, and Code Enforcement have utilized a variety custom-developed software programs to track activities related to permit issuance. The City approved a contractual software and services agreement and a software maintenance agreement with CRW Systems, Inc. for a comprehensive Building Inspection Permit Tracking Software System. It is necessary for the City to update its internal GIS in order to make existing and future land-based data available for consumption by the new permit system. ESRI will provide an updated ArcGIS Desktop Advanced Concurrent Use License, an ArcGIS for Server Enterprise Standard (Windows) up to Four Cores License, and associated installation support. This will provide all the necessary updated and supplemental licenses as well as installation support services for compatibility with the comprehensive Building Inspection Permit Tracking Software System provided by CRW Systems, Inc.

As technology continues to evolve additional compatible upgrades, subscription and maintenance costs will continue to be required through ESRI for the City's GIS to operate.

Single Source Exemption: Per the City Purchasing Ordinance and Resolution No. 9816 which revised the Single Source Exemption in the Purchasing Rules and Regulations, formal bidding procedures are not required in the event the City Council, by resolution, makes certain findings and declarations. These are:

- a. Formal bids would work an incongruity and would be unavailing in affecting the final results; and
- b. Formal bids would not produce an advantage to the City; or,
- c. It is practically impossible to obtain what is required through the formal bidding process; or,
- d. The product sought, or a significant portion thereof, is the subject of a patent and cannot be purchased from any source other than the holder of the patent.

The single source exemption is appropriate for this purchase under paragraphs a., b., and d. There is only one vendor (ESRI) to provide the updated and supplemental licenses and necessary support services for the City's existing ArcGIS software. Since that is the case, it is incongruous, or not appropriate, to require a formal bid since only one bidder could bid and it would be useless (unavailing), failing to achieve the desired result (i.e. competitive, multiple bid assuring the best use of public funds). Because ESRI is the only software provider, normal bids would not produce an advantage to the City; rather it would be an extraneous use of public funds. The software product sought is the subject of a copyright patent held by ESRI and cannot be purchased from any source other than ESRI.

The City has received a proposal from ESRI to provide the necessary licenses and services for the upgrade of the existing ArcGIS software in the amount of \$41,429.90 (including tax). This purchase will be funded under the previously approved Citywide Geographic Information System project. Therefore, no additional funding is required.

Action - It is recommended that the City Council, by resolution, authorize the purchase of updated and supplemental geographic information systems software licenses and installation support services, and declare Environmental Systems Research Institute, Inc. as the single source vendor.

**F.9 Authorization for the purchase of a new Street Sweeper from Municipal Maintenance Equipment, Inc. – from Maintenance Superintendent Costa.
(RESOLUTION)**

Background/Discussion- The City of Newark’s Street Sweeper is due for replacement through the City’s Equipment Replacement Program. Approximately 300 curb miles are swept monthly, which includes monthly residential sweeping and semi-monthly commercial/industrial sweeping. In addition, 68 hours of additional passes are built in to the sweeping schedule during the fall and winter months to reduce leaf build-up in our storm drain system.

Bids for a replacement sweeper were advertised and opened on March 18, 2014. The specification for the bid was based on a 2015 Elgin Crosswind Sweeper with provisions for a substitution of the specified sweeper upon approval of the City’s Project Manager. The proposed cost includes the sweeper, all specified attachments, license fee, shipping, California tire fee and tax.

Two bids were received for the sweeper:

Municipal Maintenance Equipment, Inc.	\$212,017.68
Owen Equipment Sales	\$245,347.00
Engineer’s Estimate	\$250,000

Owen Equipment Sales is proposing to provide the 2015 Elgin “Crosswind” Sweeper as specified. Municipal Maintenance Equipment, Inc. (MME) is proposing a substitution of “equal” materials as allowed by the specifications.

MME has successfully demonstrated that the 2014 Schwarze A7 Tornado effectively meets the requirements of the specification. Fifty two items were compared to the Elgin and references were provided to show that the sweepers appear to be equal in quality, utility, reliability, and durability. Both are six wheel regenerative street sweepers used by both private and public municipalities. The Elgin currently meets Tier 4 emission standards. Tier 4 emission standards are not required for street sweepers at this time but most likely will be required during its useful life (estimated at 10 years). The 2014 Schwarze A7 Tornado would need to be retrofitted at some point at an estimated cost of \$10,000 if the Tier 4 emission standards are mandated.

Lease: The bid proposal requested terms and conditions of lease/purchase options, if available. MME provided three options for a three, four or five year lease-purchase type of financing. The acquisition of this street sweeper will occur through a lease-purchase

agreement through Leasing 2, Inc. as MME's leasing agent. Leasing 2, Inc. has provided acceptable leasing terms and documents for a five year lease.

Attachment

Action - It is recommended that the City Council, by resolution, authorize the purchase of a new street sweeper from Municipal Maintenance Equipment, Inc. and authorize the City Manager to enter into a five year lease agreement with Lease 2, Inc.

F.10 Authorization for the Mayor to sign an agreement with *The Argus* for legal advertising services for Fiscal Year 2014-2015 – from City Clerk Harrington. (RESOLUTION)

Background/Discussion – California Government Code requires the City of Newark (City) to print legal notices in an adjudicated newspaper of general circulation. An adjudicated newspaper of general circulation does not exist in the City and the City is legally required to use an adjudicated newspaper that is published nearest the City.

The Argus is the only newspaper that currently meets the legal requirements for publishing legal notices. *The Argus* submitted a proposal for the publication of legal advertising for Fiscal Year 2014-2015. *The Argus* quoted \$.78 per line with a column size of .937 inches. This new proposal calls for a modest increase of \$.02 per line. Additionally, the Argus is no longer charging the \$10 fee to post legal ads on their website.

The *Tri City Voice* recently started the process to seek adjudication for the City of Fremont. Staff contacted the *Tri City Voice* and requested a proposal if they were adjudicated for the City of Fremont. The *Tri-City Voice* submitted a proposal; however, as of the writing of this staff report, they have not received the legal adjudication necessary through the courts and their proposal is considered non responsive.

Staff recommends awarding the contract to *The Argus*.

Attachment

Action - It is recommended that the City Council, by resolution, authorize the Mayor to sign an agreement with *The Argus* for legal advertising services for Fiscal Year 2014-2015.

F.11 Adoption of the 2014-2016 Biennial Budget and Capital Improvement Plan – from Administrative Services Director Woodstock. (RESOLUTION)

Background/Discussion – Staff is submitting the 2014-2016 Biennial Budget and Capital Improvement Plan to the City Council for adoption. This document was prepared pursuant to the Strategic and Budget Plan adopted in the Five-Year Forecast 2014-2019. The City Council held a work session on May 22, 2014, and conducted a review and discussion of

the 2014-16 Biennial Budget and Capital Improvement Plan. The proposed resolution adopting the 2014-2016 Biennial Budget and Capital Improvement Plan provides for expenditures by specific appropriations.

Attachment

Action - It is recommended that the City Council, by resolution, approve and adopt a budget and a capital improvement plan for the City Of Newark for Fiscal Years 2014-2015 and 2015-2016 and providing for the post-auditing of paid demands certified or approved as conforming to such approved budget.

NONCONSENT

F.12 Direction to file Annual Reports and intention to order improvements for Landscaping and Lighting District Nos. 11, 13, 15, 16, and 17 and setting date of public hearing – from Senior Civil Engineer Fajeau. (RESOLUTIONS-2)

Background/Discussion – The City Council has previously created Landscaping and Lighting District Nos. 11, 13, 15, 16, and 17 to provide for the operation and maintenance of certain landscaping and lighting improvements. These districts are as follows:

Landscaping and Lighting District No. 11: Edgewater Drive medians - Provides for the maintenance of landscaped medians on Edgewater Drive.

Landscaping and Lighting District No. 13: Citation Homes and Bren Development/Thornton Avenue - Provides for maintenance of the landscaping and lighting irrigation systems for Thornton Avenue, Cedar Boulevard, Willow Street, and other streets within these subdivisions. This district was relieved from the responsibility for maintenance of median landscaping on Thornton Avenue in May 1997. This district is therefore now an inactive district.

Landscaping and Lighting District No. 15: Robertson Avenue at Iris Court - Provides for the maintenance of the landscaping and irrigation systems on Robertson Avenue at Iris Court.

Landscaping and Lighting District No. 16: Kiote Drive in Tract 6671 - The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement along the street frontage of Kiote Drive in Tract 6671 and the landscaping, irrigation system, recreation facilities, and storm drainage pump station and filtration system for the mini-park common area.

Landscaping and Lighting District No. 17: Newark Boulevard and Mayhews Landing Road in Tract 7004 – The maintenance of landscaping and the landscape irrigation system

within the public right-of-way of the Newark Boulevard and Mayhews Landing Road frontages of Tract 7004.

In the opinion of bond counsel, Brown Act amendments requiring two hearings for increasing assessments do not apply to the annual budget hearings unless there is an addition to the improvements or a change in the formula for allocating the cost among benefited properties. Neither of these cases applies for each of the above districts and the annual public hearings are simply to adopt a budget for the upcoming year.

Upon conclusion of the annual public hearings, the assessments for the cost of the work are added to the tax bills for those property owners included within the boundaries of the particular Landscaping and Lighting District. Excess funds, or funds collected for which no work was done, can be carried over from one year to the next.

Attachment

Action - It is recommended that the City Council, by resolutions, direct the filing of annual reports for Landscaping and Lighting District Nos. 11, 13, 15, 16, and 17 in accordance with the provisions in the Landscaping and Lighting Act of 1972 and confirm the intent to order the improvements by setting the date for the annual public hearings for these districts for July 10, 2014.

- G. CITY ATTORNEY REPORTS**
- H. ECONOMIC DEVELOPMENT CORPORATION**
- I. CITY COUNCIL MATTERS**
- J. CITY COUNCIL ACTING AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY**
- K. ORAL COMMUNICATIONS**
- L. APPROPRIATIONS**

M. CLOSED SESSION

N. ADJOURNMENT

Pursuant to Government Code 54957.5: Supplemental materials distributed less than 72 hours before this meeting, to a majority of the City Council, will be made available for public inspection at this meeting and at the City Clerk's Office located at 37101 Newark Boulevard, 5th 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.

For those persons requiring hearing assistance, please make your request to the City Clerk two days prior to the meeting.