



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, March 27, 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 | K. TO REDEVELOPMENT AGENCY |
| D. WRITTEN COMMUNICATIONS | L. ORAL COMMUNICATIONS |
| E. PUBLIC HEARINGS | M. APPROPRIATIONS |
| F. CITY MANAGER REPORTS | N. CLOSED SESSION |
| G. CITY ATTORNEY REPORTS | O. 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.



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, March 27, 2014

A. ROLL CALL

B. MINUTES

- B.1 Approval of Minutes of the regular City Council meeting of Thursday, March 13, 2014. (MOTION)**

C. PRESENTATIONS AND PROCLAMATIONS

- C.1 Presentation by the Alameda County Transportation Commission regarding the 2014 Transportation Expenditure Plan. (PRESENTATION)**

Background/Discussion – The Alameda County Transportation Commission (Alameda CTC) will provide a presentation regarding the 2014 Alameda County Transportation Expenditure Plan. The Transportation Expenditure Plan (TEP) supports a potential November 4, 2014 ballot measure that would augment and extend the existing half-cent sales tax for transportation in Alameda County, for a 30-year term to fund the transportation programs and projects described in the 2014 Plan. The Alameda CTC is seeking the support of all local jurisdictions for the TEP and the ballot measure. A formal action may be considered by the City Council at a future meeting.

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

- E.1 Hearing to consider the development of approximately 217 residential units (Trumark Homes) on an approximately 21.4 acre project site (Jones Hamilton property) generally located on the south side of Enterprise Drive east of Willow Street: (1) Adoption of a resolution making certain findings and adopting the Supplemental Environmental Impact Report (E-12-30) to the Environmental Impact Report (State Clearinghouse No. 2010042012) for the Dumbarton Transit Oriented Development Specific Plan; (2) 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 Map 8098 from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); (3) adoption of a resolution making findings supporting the use of an alternative means of compliance with the inclusionary housing ordinance and approving the affordable housing implementation agreement for the Jones Hamilton Project; (4) adoption of a resolution authorizing the Mayor to sign a Community Financing Agreement with Newark Enterprise Joint Venture, LLC; (5) adoption of a resolution authorizing the Mayor to sign a Park Agreement with Newark Enterprise Joint Venture LLC; (6) adoption of a resolution approving TM-12-32, Vesting Tentative Map 8098; (7) By motion, approving ASR-12-33, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 69; and 8) By motion, approving Exhibit B, Schedule of Impact Fees – from Assistant City Manager Grindall.

(RESOLUTIONS- 5)(INTRODUCTION OF ORDINANCE)(MOTIONS-2)

Background/Discussion – Trumark Homes has submitted an application for the development of 217 single-family residential homes. The project site is an approximately 21.4-acre parcel located within the City’s Dumbarton Transit-Oriented Development Specific Plan Area. The currently vacant site formerly contained various industrial and chemical land uses and as a result, will be remediated in order to accommodate the proposed residences. Specifically, the applicant proposes to rezone the site and obtain approval for a tentative map and an Architectural and Site Plan Review. The proposal also involves the approval of the Supplemental Environmental Impact Report (SEIR) for the Dumbarton Transit-Oriented Development Specific Plan and associated agreements necessary to execute the project.

Plan Conformance

The proposed project is consistent with the objectives, policies, and vision of the Dumbarton Transit-Oriented Development Specific Plan. Approved in 2007, the Plan has comprehensive guidelines aimed to foster the development of a sustainable, economically-viable community with a strong sense of place. At approximately 21.4-acres, the project site represents about one-tenth of the approximately 205-acres of land that comprises the Plan area. The complete project area, located on the south side of Enterprise Drive east of Willow Street, is at a half-mile distance and ten minute walk from the proposed Dumbarton Rail train station.

In 2013, the City Council approved a Vesting Tentative Tract Map for 547 residential units on the west side of Willow Street at the terminus of Central Avenue, located southwest of the subject site. Staff has received concurrent applications for residential and commercial development near the project site and anticipates that more proposals will follow and thus, facilitate the growth of the planned community.

It is proposed to rezone the site area from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Code) to be consistent with the Specific Plan.

The Architectural and Site Plan Review

Two and three-story single-family detached homes are proposed, consisting of three different products, nine floor plans and multiple designs. The number and layout of the three home types will be divided almost equally throughout the project site. The homes will include three and four bedrooms and range from 1509 square feet to 2312 square feet in size. Larger homes will provide additional living area and will include a den, loft, or a bonus room. All homes will provide two-car covered parking; the three-story homes will provide rear loaded two-car garages. On-street guest parking will also be scattered throughout the site.

Outdoor amenities for the project include picnic tables, barbeque grills, benches, a shaded sitting area and a children's play structure. In addition, a large recreational turf area will be sited alongside the children's play structure. All of the amenities will be centrally located within the site.

Affordable Housing

Chapter 17.18 of the Newark Municipal Code requires developers to make a portion of their units affordable in order to make them available to low-income families. Specifically, the inclusionary housing ordinance mandates that 15% of the total number of dwelling units in a project be reserved for qualifying families. The ordinance also allows for an alternative means of compliance with the City's Affordable Housing Program (AHP), including land dedication, payment of in-lieu fees, or approval of an alternative housing program consisting of any combination of alternative means of compliance. As such, the Developer will pay to the City, an in-lieu fee in the amount of \$25,000 for each unit within the project.

The alternative means of compliance fulfills the purposes of the Inclusionary Housing Ordinance, and will further affordable housing opportunities in the City to an equal or greater extent than compliance with the requirements of the Ordinance. The alternative means of compliance would better address the City's needs than other means of compliance because the funding available would allow for the acquisition of property or contribution to programs to maintain the safety and quality of housing occupied by lower income households. This flexibility will allow for a much greater and more effective approach to addressing the most pressing affordable housing needs in the community. The alternative means of compliance will not unduly concentrate below market rate housing in one geographic area, because no particular project is now envisioned and the Planning Commission and City Council can monitor this concern when particular affordable housing developments are proposed.

Community Financing and Park Agreements

The Dumbarton TOD Specific Plan contains critical elements necessary to implement the plan. To ensure that the city's fiscal health is sustained, developers are required to contribute to the provision of public improvements and city services in the Plan area. As such, the applicant has agreed to enter into the attached Community Financing Agreement. In addition, in order to realize the Plan's goal of reducing automobile trips and the creation of pedestrian-friendly environments, another required Plan element is

the construction of neighborhood parks. The applicant has agreed to develop the Gallade property, north of the subject site and adjacent to Tract 8110, as a park. The public park will provide essential outdoor recreational space for both residents and visitors of the neighborhood and enhance the overall character of the Plan area. The attached Park Agreement will guarantee the provision of the park.

The Supplemental Environmental Impact Report (SEIR)

An Environmental Impact Report (EIR) was prepared in 2011 to evaluate the impacts from the adoption of the Dumbarton TOD Specific Plan. The Newark City Council certified the environmental document on September 8, 2011. Because the EIR did not evaluate project-level impacts at the proposed site, a Supplemental Environmental Impact Report (SEIR) has been prepared to determine if the proposed residential development would result in new significant impacts not addressed in the EIR.

The SEIR analyzed potential environmental impacts with respect to air quality, biological resources, cultural resources, greenhouse gases, hazards and hazardous materials, and noise. The document concluded that the only new significant impacts involve biological resources and hazardous material impact. As described in Section 4.2 of the SEIR, *Biological Resources*, the project would impact both seasonal wetlands and Cogdon's tarplant at the site. The tarplant impact would be mitigated to a less than significant extent by planting at an off-site mitigation site and/or planting on-site after remediation. Mitigation measures for wetland impacts include the purchase of off-site mitigation credits, with lost wetlands being replaced at a minimum one acre to one acre ratio. Section 4.5, *Hazards and Hazardous Materials*, of the SEIR explains that future residents of the project would be affected by an accidental release from industrial facilities located approximately one mile from the project. It's important to note that chemicals in the quantities evaluated for the project are routinely transported by rail and truck on public roadways, including Interstate 880 and State Route 84. The potential risk to the site from the accidental release of hazardous materials is, therefore, similar to that of other areas in Newark near industrial or transportation facilities.

The review period for the SEIR ended on February 7, 2014. The City received letters from both the Alameda County Water District and the Department of Toxic Substances Control (DTSC). These letters have been addressed in the Final SEIR.

Update – At its meeting of March 11, 2014, the Planning Commission: 1) Adopted Planning Commission Resolution No. 1860 making certain findings and recommending City Council adoption of a Supplemental Environmental Impact Report to the Environmental Impact Report (State Clearinghouse No. 2010042012) for the Dumbarton Transit Oriented Development; (2) adopted Planning Commission Resolution No. 1861 recommending rezoning (RZ-12-31) a 21.4-acre area (APN's 092-0116-058, 092-0116-059, 092-0116-060) from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); 3) adopted Planning Commission Resolution No. 1862 making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and recommend the

City Council approve the attached Affordable Housing Implementation Agreement; 4) By motion recommended that the City Council, with minor amendments, approve TM-12-32, Vesting Tentative Map 8098; 5) By motion, recommended that the City Council approve ASR-12-33, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 69; and 6) By motion approved Exhibit B, Schedule of Impact Fees.

Attachments

Action – It is recommended that the City Council: 1) Adopt a resolution making certain findings and adopting the Supplemental Environmental Impact Report (E-12-30) to the Environmental Impact Report (State Clearinghouse No. 2010042012) for the Dumbarton Transit Oriented Development Specific Plan; 2) 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 Map 8098 from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); 3) Adopt a resolution making findings supporting the use of an alternative means of compliance with the inclusionary housing ordinance and approving the affordable housing implementation agreement for the Jones Hamilton Project; 4) Adopt a resolution authorizing the Mayor to sign a Community Financing Agreement with Newark Enterprise Joint Venture, LLC; 5) Adopt a resolution authorizing the Mayor to sign a Park Agreement with Newark Enterprise Joint Venture LLC; 6) Adopt a resolution approving TM-12-32, Vesting Tentative Map 8098; 7) By motion, approving ASR-12-33, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 69; and 8) By motion, approving Exhibit B, Schedule of Impact Fees.

- E.2 Hearing to consider the development of approximately 27 residential units (Trumark Homes) on an approximately 2.14-acre project site (Enterprise Property) generally located on the north side of Enterprise Drive east of Willow Street: (1) Adoption of a resolution making certain findings and adopting a Supplemental Environmental Impact Report (E-12-30) to the Environmental Impact Report (State Clearinghouse No. 2010042012) for the Dumbarton Transit Oriented Development Specific Plan; (2) 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 map 8110 from MI (limited industrial) to MDR-FBC (medium density residential – form based codes); (3) adoption of a resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and approving the Affordable Housing Implementation Agreement for the Enterprise Drive Project; 4) adoption of a resolution approving TM-12-28, Vesting Tentative Map 8110; 5) adopt a resolution authorizing the Mayor to sign a Community Financing Agreement with Enterprise Drive, LLC; 6) By motion, approving ASR-12-29, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 29; and 7) By motion, approving Exhibit B, Schedule of Impact Fees – from Assistant City Manager Grindall.**

(RESOLUTIONS- 4)(INTRODUCTION OF ORDINANCE) (MOTIONS-2)

Background/Discussion – In collaboration with the landowners, the City of Newark began a planning effort in the Fall of 2007 to explore potential development around the planned Newark Dumbarton Rail Station. The Project Area includes approximately 205 acres of land that has previously contained various industrial, manufacturing, and chemical processing land uses since the early twentieth century. Most of the land is currently vacant.

In early 2013, the City Council approved a Vesting Tentative Tract Map on what is known as the “Torian Property”. This 42+ acre site was the first parcel in the Dumbarton Transit Oriented Development (TOD) area and was approved for approximately 547 residential units.

Enterprise Drive, LLC has now submitted a proposed Vesting Tentative Map and building plans for 27 units to be located on approximately 2.14 acres along Enterprise Drive. The Vesting Tentative Map includes numerous conditions and includes a requirement for the Gallade Chemical property to be acquired and developed as a park. It is proposed to rezone a portion of the Dumbarton TOD to be consistent with the Specific Plan. RZ-12-27 is a rezoning of an approximately 2.14-acre area (Assessor’s Parcel Number 092-0140-006); an area generally located on the north side of Enterprise Drive east of Willow Street. The rezoning would be from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Code which is consistent with the Specific Plan.

The Architectural and Site Plan Review

Three building designs are proposed, each with three different floor plans. All three designs will accommodate three stories that provide two covered parking spaces, a mid-level living area with dining room, family room, and kitchen, and a third story living area with three bedrooms. The ground floor will provide either a media/living room and/or an option for an additional bedroom.

Although these homes are somewhat narrow (22-feet wide), they provide a nice variation in design and offer balconies, dormers, several window treatments, recessed features, and wall treatments. The average lot size in this development is 2,177 square feet.

Park

A conceptual park plan has been submitted showing extensive planting, large turf areas, and children’s play area with equipment. The final design of this park will be subject to the review and approval of the Community Development Director. The acquisition of this parcel is required prior to the issuance of a Certificate of Occupancy for any of the proposed homes.

Affordable Housing

Chapter 17.18 of the Newark Municipal Code generally requires developers to set-aside a minimum of 15% of the total number of dwelling units in a project as inclusionary units for very low, low, and moderate income households. The Code also authorizes alternative means of compliance with the City’s Affordable Housing

Program, including land dedication, payment of in-lieu fees, or approval of an alternative housing program consisting of any combination of alternative means of compliance. Enterprise Drive LLC intends to comply with the City's Affordable Housing Program and to satisfy the agreed affordable housing obligations for the Project and Properties by entering into an "Affordable Housing Implementation Agreement". As such, the Developer will pay to the City, an in-lieu fee in the amount of \$25,000 for each unit within the Project.

The alternative means of compliance fulfills the purposes of the Inclusionary Housing Ordinance, and will further affordable housing opportunities in the City to an equal or greater extent than compliance with the requirements of the Ordinance. The alternative means of compliance would better address the City's needs than other means of compliance because the funding available would allow for the acquisition of property or contribution to programs to maintain the safety and quality of housing occupied by lower income households. This flexibility will allow for a much greater and more effective approach to addressing the most pressing affordable housing needs in the community. The alternative means of compliance will not unduly concentrate below market rate housing in one geographic area, because no particular project is now envisioned and the Planning Commission and City Council can monitor this concern when particular affordable housing developments are proposed.

The Supplemental Environmental Impact Report (SEIR)

The SEIR prepared for this project and the adjacent Jones-Hamilton property project was completed by David J. Powers & Associates, Inc. The key issues analyzed by the SEIR were air quality, biological resources, cultural resources, greenhouse gas emissions, hazards and hazardous materials, and noise.

Of these six issues, the only new significant impacts resulting from this project would include biological impacts and hazardous material impact. These represent project-specific impacts that are specific to the location of the project sites and the development proposed by the project.

As described in Section 4.2 of the SEIR, *Biological Resources*, the project would result in impacts to seasonal wetlands and Cogdon's tarplant. These impacts would be mitigated to less than significant levels through mitigation measures identified in the SEIR, specifically the purchase of off-site mitigation credits for habitat impacts (or alternatively, on-site propagation of Cogdon's tarplant on the Jones-Hamilton project site).

As described in Section 4.5 of the SEIR, *Hazards and Hazardous Materials*, the project could be affected by airborne hazardous substances in the event of an accidental release from facilities located approximately one mile from the project. Given the extensive area potentially impacted by a hazardous substance release, and the lack of feasible protective measures for single-family homes in the affected area, there is no feasible mitigation measure to protect future residents of the project from the hazard. This potential impact is therefore considered significant and unavoidable. It's

important to note that chemicals in the quantities evaluated for the project are routinely transported by rail and truck on public roadways, including Interstate 880 and State Route 84. The potential risk to the site from the accidental release of hazardous materials is, therefore, similar to that of other areas in Newark near industrial or transportation facilities.

The review period for the SEIR ended on February 7, 2014. The City received letters from both the Alameda County Water District and the Department of Toxic Substances Control (DTSC). These letters have been addressed in the Final SEIR.

Update – At its meeting of March 11, 2014, the Planning Commission : 1) Adopted Planning Commission Resolution No. 1857 making certain findings and recommending City Council adoption of a Supplemental Environmental Impact Report to the Environmental Impact Report (State Clearinghouse No. 2010042012) for the Dumbarton Transit Oriented Development; (2) adopted Planning Commission Resolution No. 1858 recommending rezoning (RZ-12-27) a 2.14-acre area (APN 92-140-6) from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); 3) adopted Planning Commission Resolution No. 1859 making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and recommend the City Council approve the attached Affordable Housing Implementation Agreement; 4) By motion recommended that the City Council, with minor amendments, approve TM-12-28, Vesting Tentative Map 8110; 5) By motion, recommended that the City Council approve ASR-12-29, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 29; and 6) By motion approved Exhibit B, Schedule of Impact Fees.

Action – It is recommended that the City Council: (1) Adopt a resolution making certain findings and adopting a Supplemental Environmental Impact Report (E-12-30) to the Environmental Impact Report (State Clearinghouse No. 2010042012) for the Dumbarton Transit Oriented Development Specific Plan; (2) 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 Map 8110 from ML (limited industrial) to MDR-FBC (medium density residential – form based codes); (3) Adopt a resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and approving the Affordable Housing Implementation Agreement for the Enterprise Drive Project; 4) Adopt a resolution approving TM-12-28, Vesting Tentative Map 8110; 5) Adopt a resolution authorizing the Mayor to sign a Community Financing Agreement with Enterprise Drive, LLC; 6) By motion, approve ASR-12-29, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 29; and 7) By motion approve Exhibit B, Schedule of Impact Fees.

F. CITY MANAGER REPORTS

(It is recommended that Items F.1 through F.3 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 Acceptance of work with Marina Landscape, Inc. for Lakeshore Park Irrigation Renovation, Project 753 – from Senior Civil Engineer Fajeau. (RESOLUTION)

Background/Discussion – On March 14, 2013, the City Council authorized award of a contract to Marina Landscape, Inc. for Lakeshore Park Irrigation Renovation, Project 753. The scope of work included installation of a new 6-inch irrigation mainline around the entire park with a new centralized controller, new remote control, isolation, and air relief valves, and other system components. All work on this project was completed within the original approved budget.

Attachment

Action - It is recommended that the City Council, by resolution, accept the work with Marina Landscape, Inc. for Lakeshore Park Irrigation Renovation, Project 753.

F.2 Approval of plans and specifications for the 2014 Weed Abatement Program, and award the contract to JJ Landscape Management, Inc. – from Maintenance Supervisor Carey. (MOTION) (RESOLUTION)

Background/Discussion – The annual weed abatement program abates weeds on vacant commercial and industrial properties not maintained by the property owners as directed by the Fire Marshal. The abatement work consists of tractor mowing, supplemented with manual labor to clear weeds abutting wooden fences and debris removal to facilitate the tractor work.

The lowest responsive bid was determined by adding the hourly rate for three items: tractor mowing, manual labor and debris removal.

Bids for this project were opened on Tuesday March 11, 2014, with the following results:

<u>Company</u>	<u>Combined Hourly Rate</u>
JJ Landscape Management, Inc.	\$120.00 per hour
Bayscape Landscape Management	\$135.00 per hour
Solorzanos Landscape Construction	\$167.00 per hour
Mike Davis Landscape Services	\$167.50 per hour
Los Loza Landscaping	\$180.00 per hour

Pacheco Brothers Gardening, Inc. \$185.00 per hour

Engineer’s Estimate \$195.00 per hour

Funds were retained in the 2013-2014 Biennial Budget and Capital Improvement Plan to complete this project. The Landscape Parks Division recommends awarding the 2014 Weed Abatement Program to JJ Landscape Management, Inc., as they are the lowest responsible bidder.

The contract shall commence on or about April 1, 2014. The contract may be extended for no more than two consecutive one-year period upon mutual consent of both parties.

Attachment

Action - It is recommended that the City Council, by motion approve the one-year contract for the 2014 Weed Abatement Program, and by resolution award the contract to JJ Landscape Management, Inc.

F.3 Accepting the bid of Group Mobile for the purchase of five Panasonic Toughbooks to replace the public safety mobile data computers, Project No. ERB0114 – from Information Systems Manager Towne. (RESOLUTION)

Background/Discussion – As part of the City’s ongoing equipment replacement process five (5) ruggedized public safety mobile data computers (MDCs) were found to be in need of replacement due to one or more of the following reasons: inadequate performance; lack of parts availability, inability to upgrade; or failure.

In February Information Systems staff developed a Request for Quotes (RFQ), Project No. ERB0114, with a specification for the replacement equipment desired. This RFQ was distributed to a number of Panasonic Toughbook (MDC) resellers. As of the deadline of March 7, 2014, three vendors had responded with quotes – CDW Government; Group Mobile; and Mooring Tech.

The total cost of each quote is reflected in the table below.

CDWG	GROUP MOBILE	MOORING TECH
\$22,082	\$21,424	\$18,942

The bid provided by Mooring Tech did not meet the specification required by the RFQ and quoted a system in limited supply that may not be available at the time of purchase. For this reason it is recommended that the second lowest total cost bid, provided by Group Mobile for the Panasonic Toughbook equipment, be accepted as the lowest responsible bid. The Group Mobile quote was for \$21,424, which is available through the City’s existing equipment replacement budget.

Attachment

Action - It is recommended that the City Council, by resolution, accept the bid of Group Mobile and authorize the purchase of five Panasonic Toughbooks, Project No. ERB0114.

NONCONSENT

F.4 Resolution approving an Economic Incentive Agreement with NewPark Mall, LP, confirming the non-applicability of the California Environmental Quality Act, and authorizing the Mayor to sign the Agreement. – from Assistant City Manager Grindall. (RESOLUTION)

Background/Discussion- NewPark Mall is the major retail center in Newark. It was constructed in the late 1970's and was the preeminent shopping location in Southern Alameda County. Changing shopper trends, increased competition from shopping areas in neighboring cities and lack of maintenance by previous property owners has led to significant reductions in retail sales at the mall. The decline of the mall has also had significant negative impacts on the retail areas that surround the mall. There are now large numbers of vacant buildings on the surrounding parcels, including the former Mervyns parcel, the former Cinedome Theater parcel, and NewPark Plaza (former location of Toys-R-Us and TJ Maxx). The decline of the mall is a major factor in the sluggishness of the reuse of these and other properties surrounding the mall.

General Growth Properties owned the mall for decades and did little to keep the mall current. The mall saw a steady decline in retail sales and occupancy levels. In the "Great Recession", General Growth Properties entered and ultimately emerged from bankruptcy. In 2012, General Growth Properties spun off the NewPark Mall, along with 30 other malls, to create Rouse Properties. Rouse Properties is now a publically traded, independent entity. Since Rouse Properties took over the mall, some improvement in mall maintenance and a reduction in vacancy rates have been seen. However, retail sales continue to decline, driven by shopping trends, negative perceptions, and accelerating competition. It is important to note that Rouse Properties does not own the key anchor stores. Macy's and Sears own their own buildings and parking areas. Burlington and J.C. Penny's have long term leases and control of their parking areas. Rouse Properties controls only the in-line mall stores and the former Target store. The various property owners and tenants have detailed and complicated agreements that govern the operation and improvements to the mall. The separate but entwined property ownership may be a contributing factor to the stagnation at the mall.

The City has initiated the Greater NewPark Master Plan process to develop a vision and tools to lead to the revitalization of the mall area. The plan is in development, but early results of the analysis indicate the critical importance of a vibrant and modern mall to anchor the commercial area, draw shoppers, and create a sense of vibrancy. The analysis indicates that the mall should be repositioned to respond to modern trends and existing demographics by highlighting entertainment and restaurant uses.

Therefore, while the Master Plan analysis is proceeding, staff has been concurrently working with the Rouse Properties to encourage major investment in the mall that will return it to vibrancy.

The recently adopted General Plan included key policies to guide the revitalization of the NewPark Mall area. The environmental studies of the General Plan included an analysis of the environmental impacts for more intense development in the greater mall area.

The key General Plan Goals and Policies are:

- LU-9: Strengthen NewPark Mall and its environs as a community showcase and quality environment for shopping and other compatible uses.
- LU 4.4: Greater NewPark Area. Modernize the Greater NewPark Area to create a vibrant regional retail location which provides urban amenities and gathering places. A mixture of higher density housing, office, hotel, entertainment, civic, and other uses should be encouraged, to the extent that these uses enhance regional retail as the primary use and assist in the area's revitalization.
- LU 9.1: Greater NewPark Area Land Use Mix. Diversify the mix of uses in the NewPark Mall vicinity to sustain and expand its role as the premiere shopping and entertainment destination in Southern Alameda County.

After significant discussions with City Staff over the past two years, Rouse Properties is now proposing a comprehensive renovation of the NewPark Mall. Rouse Properties has agreed to complete the renovation, if Newark provides economic incentives.

The renovation is expected to require an investment of between \$40 to \$50 Million Dollars. It would include:

- A high end multi-screen theater
- High end restaurants
- A 60,000 square foot restaurant with family entertainment
- Renovation of the entire in-line portion of the mall
- Modernization of the food court
- Remodeled mall entrances
- Remodeled Signage.

These improvements are to be approved administratively in accordance with our development regulations. Rouse is also contemplating the expansion of the Mall by an additional 30,000 Square Feet. Such expansion would be subject to City review and approval.

This revitalization effort is expected to draw significantly more people to the mall and to lead to national/international chains locating in the mall and to greater sales in the in-line portion of the mall and in the anchor stores as well.

In order to spur this revitalization the City is requested to enter into an Economic Incentive Agreement with the Mall owner. Under the proposed Economic Incentive Agreement, future sales tax revenue increases from the in-line mall stores and the former Target location would be shared with the Property owner. Eighty percent of this increased revenue would be provided as an economic incentive to the mall owner. Under this agreement the City would continue to receive all of the sales tax presently received from the Mall area and ALL of the increased revenue from the anchor stores. The property tax revenues would be unaffected and would continue to be allocated to the City and other governmental entities.

Key Provisions:

- No upfront City incentives would be provided, only future revenue would be used to incentivize the renovation.
- There would be no sharing of sales tax generated from the anchor stores.
- If a theater is not substantially completed within 3 years, unless delayed by circumstances outside of the control of the property owner, economic incentives would be terminated.
- The sales tax sharing would be triggered by either the opening of a theater or the completion of 75,000 square feet of major renovation. The sales tax sharing would continue for 18 years beyond the triggering event.
- The total amount of sales taxes provided as an incentive would not exceed 75% of the cost of the renovations.
- The City agrees to expeditious processing of the building plans and permits for the renovation project.

Staff believes that this renovation will create new life for the mall and help attract high quality retailers. The renovated in-line stores and theater will create substantial greater retail sales at the mall anchor stores and at stores that surround the mall. Without a major renovation the mall would be expected to continue to decline, dragging the entire area down. Since the sharing is limited to increased revenue on the inline and Target store portion of the mall, it is expected that despite the sharing of future revenue the city would receive a net increase in revenue due to increased sales at the anchor stores and surrounding properties and result in property tax revenue increases.

If the Economic Incentive Agreement is approved, the property owner will proceed with designing, financing and construction of the mall renovation. Construction is proposed to begin on the first elements this year. It is hoped that the movie theater would open in 2015. Staff will work with the property owners to encourage quality tenants in the Mall. The Greater NewPark Master Plan would continue with a focus on the surrounding properties and a long term land use vision for the area.

California Environmental Quality Act

City staff has analyzed the proposed Economic Incentive Agreement in the context of the applicant's proposed revitalization of the Newpark Mall to determine whether the proposed activities would constitute a "project" subject to further or more detailed environmental review under the California Environmental Quality Act ("CEQA") at California Public Resources Code section 21000 et seq., and if so, to recommend the appropriate means of conducting such review. Under the applicable definition of a "project" under CEQA, neither the proposed Agreement nor the proposed activities on the site (separately or cumulatively) would constitute a "project" requiring further CEQA review, and it is recommended that the Council make a determination to that effect.

CEQA applies to an activity that would be carried out, supported by, or authorized by discretionary acts of public agency which may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. (Pub. Res. Code sec. 21065; CEQA Guidelines sec. 15378.) CEQA applies only to "discretionary projects proposed to be carried out or approved by" public agencies. (Pub. Res. Code sec. 21080(a).)

CEQA is not applicable to governmental fiscal decisions, unless the proposed decision is both "discretionary" and commits the agency to a specific project that may result in a potentially significant physical impact on the environment (CEQA Guidelines 15378(b)(4).) Those factors are not present here. While the proposed Economic Incentive Agreement would require discretionary Council consideration and approval, the Agreement itself is a mere fiscal agreement, and does not obligate the City to undertake any action other than to provide economic incentives or financial assistance for the proposed revitalization program upon certain conditions described in the Agreement, nor does it obligate the City to grant any further discretionary approvals for the revitalization work.

There is no substantial evidence indicating that the revitalization project as presented would cause significant physical changes in the environment that have not already been considered by the City. The revitalization work contemplated by the applicant will take place within the footprint of the existing Mall, will be performed on or within existing structures, and/or will require only ministerial City permits (e.g., demolition, tenant improvement, building permits) for performance of work consistent with City codes and established standards. The proposed revitalization of the existing Mall will continue and enhance the existing and approved uses of the site, consistent with established City land use plans and policies, with no evidence that it would cause a physical change in the environment of the type contemplated by CEQA. The proposed activities would be of the same type as reviewed in previously-certified environmental reviews for the development of the Mall, and there is no substantial evidence of any significant new or different adverse impacts on the environment. Accordingly, the Council may properly determine that no further CEQA review is appropriate or required.

Attachments

Action – It is recommended that the City Council, approve a resolution approving the Economic Incentive Agreement with NewPark LP, confirming the non-applicability of the California Environmental Quality Act, and authorizing the Mayor to sign the agreement.

- 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.