



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, September 25, 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. ORAL COMMUNICATIONS |
| D. WRITTEN COMMUNICATIONS | L. APPROPRIATIONS |
| E. PUBLIC HEARINGS | M. CLOSED SESSION |
| F. CITY MANAGER REPORTS | N. ADJOURNMENT |
| G. CITY ATTORNEY REPORTS | |
| 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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- A. ROLL CALL
- B. MINUTES
 - B.1 Approval of Minutes of the regular City Council meeting of Thursday, September 11, 2014. (MOTION)
- C. PRESENTATIONS AND PROCLAMATIONS
 - C.1 Commending Newark Sister City Advisory Committee. (COMMENDATION)

Background/Discussion – A commendation has been prepared to thank the members of the Newark Sister City Advisory Committee for their service. The commendation will be presented at the City Council meeting.
- D. WRITTEN COMMUNICATIONS
- E. PUBLIC HEARINGS
- F. CITY MANAGER REPORTS

(It is recommended that Items F.1 through F.7 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 Amendment to Resolution No. 2505, Employee Classification Plan, to create one new class specification entitled Recycling Assistant; Amendment to Resolution No. 10127, the 2013-2015 Memorandum of Understanding between the City of Newark and the Newark Association of Miscellaneous Employees to add one new classification entitled Recycling Assistant; Amendment to Resolution No. 10235, the 2014-2016 Biennial Budget to add and delete certain classifications – from Human Resources Director Abe. (RESOLUTIONS-3)

Background/Discussion - The responsibility for oversight of the City's recycling program was recently transferred from the Community Development Department to the Administrative Services Department. Recycling requirements were previously administered with the assistance of an outside consultant.

As a result of 2012 Alameda County ordinances, requirements for City recycling and diversion programs are changing. The Administrative Services Department believes that the new requirements can be best implemented by an existing staff member rather than a consultant. Staffing this function internally provides coordination between recycling efforts and related waste disposal contract requirements which are also overseen by Administrative Services. As proposed, recycling program functions will be assigned to the Cashier position in addition to the incumbent's existing responsibilities. With the preponderance of the position's duties and responsibilities shifting from cashiering to recycling, Human Resources is recommending the reallocation of the Cashier position to a newly established classification of Recycling Assistant.

The Recycling Assistant's duties, responsibilities and job requirements are comparable to the Accounting Assistant II level and the recommended salary range is set accordingly. As proposed, the total cost to reallocate the existing Cashier position to Recycling Assistant is \$7,772 per year. The full cost of the Recycling Assistant is covered by existing Cashier position funding along with Measure D monies previously expended on outside consulting services.

Attachment

Action - It is recommended that the City Council, by resolutions, approve an amendment to Resolution No. 2505, Employee Classification Plan, to create one new class specification entitled Recycling Assistant; an amendment to Resolution No. 10127, the 2013-2015 Memorandum of Understanding Between the City of Newark and the Newark Association of Miscellaneous Employees to add one new classification entitled Recycling Assistant; and an amendment to Resolution No. 10235, the 2014-2016 Biennial Budget to add and delete certain classifications.

F.2 Confirmation of the use of Measure B Bicycle and Pedestrian Local Pass-Through funds for the repair and replacement of sidewalk, curb, and gutter as adopted as part of the 2014-2016 Capital Improvement Plan – from Associate Civil Engineer Tran. (RESOLUTION)

Background/Discussion – In November 2000, a 20-year extension to the one-half cent sales tax for transportation was approved by the voters in Alameda County (Measure B). The extension continued many of the programs included in the original Measure B as well as funding for a number of new programs and projects. The average annual funding for the City of Newark's Bicycle and Pedestrian Local Pass-Through funds is \$120,000, but varies depending on the amount of sales tax collected.

In accordance with the Master Program Agreement between the City of Newark and the Alameda County Transportation Commission, a list of locally prioritized bicycle and pedestrian projects must be developed and adopted by the City. This is a prerequisite for

the City to receive its Bicycle and Pedestrian Local Pass-Through funds. Bicycle and pedestrian safety improvements were reviewed as part of the 2014-2016 Capital Improvement Plan and this funding source will be used for Citywide sidewalk, curb, and gutter repair and replacement.

Attachment

Action - It is recommended that the City Council, by resolution, confirm the use of Measure B Bicycle and Pedestrian Local Pass-Through funds for the repair and replacement of sidewalk, curb, and gutter as adopted as part of the 2014-2016 Capital Improvement Plan.

F.3 Amendment of the 2014-2016 Biennial Budget and Capital Improvement Plan for Fiscal Year 2014-2015 Capital Budget Rollover – from Administrative Services Director Woodstock. (RESOLUTION)

Background/Discussion – During the annual review of capital projects for Fiscal Year 2014-2015, a need has been identified to amend the 2014-2016 Biennial Budget and Capital Improvement Plan. The Fiscal Year 2013-2014 appropriations have lapsed at year-end and projects that are ongoing or works in progress need to be re-appropriated for the Fiscal Year 2014-2015.

The capital budget amendments include rolling over \$8,479,183 of previously approved capital projects appropriations, including streets and roadway projects, and street trees and landscape maintenance projects. This amount is projected based on the estimated costs to complete the approved projects.

Exhibit A outlines all capital projects that require rollover of appropriations from Fiscal Year 2013-2014 to Fiscal Year 2014-2015.

Attachment

Action - It is recommended that the City Council, by resolution, amend the 2014-2016 Biennial Budget and Capital Improvement Plan for Fiscal Year 2014-2015 Capital Budget Rollover.

F.4 Second reading and adoption of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code to remove the reference to the Dumbarton Transit-Oriented Development Specific Plan Area in Chapter 17.37 (Form Based Codes), Section 17.37.010 (Applicability) – from City Clerk Harrington. (ORDINANCE)

Background/Discussion – On September 11, 2014, the City Council introduced an ordinance for a text amendment to Title 17 (Zoning) of the Newark Municipal Code to remove the reference to the Dumbarton Transit-Oriented Development Specific Plan Area in Chapter 17.37 (Form Based Codes), Section 17.37.010 (Applicability). This amendment

would allow the applicability of the Form Base Codes be expanded to other areas of Newark beyond the Transit- Oriented Development Specific Plan Area.

Attachment

Action - It is recommended that the City Council adopt the ordinance for a text amendment to Title 17 (Zoning) of the Newark Municipal Code to remove the reference to the Dumbarton Transit-Oriented Development Specific Plan Area in Chapter 17.37 (Form Based Codes), Section 17.37.010 (Applicability).

F.5 Amendment to the Conflict of Interest Code for Nonelected Officials and Designated Employees – from City Clerk Harrington. (RESOLUTION)

Background/Discussion – The Political Reform Act of 1974 requires local government agencies to review its Conflict of Interest Code biennially. On July 24, 2014, the City Council, as the Code reviewing body, notified nonelected officials and designated employees to review their Conflict of Interest Code.

The Conflict of Interest Code lists each employee position that makes or participates in the making of governmental decisions. Employees in these positions are identified as “designated employees.” Consultants that make or participate in making governmental decisions on behalf of the City must also file disclosure forms.

The review has been completed and there is a need to amend Appendix A, Designated Positions and Disclosure Categories, because of organizational changes that have occurred since the 2010 review. In addition to the organizational changes, Governor Brown signed into law Assembly Bill 1x26 which suspended operations for all Redevelopment Agencies in California. The City Council has designated itself the Successor Agency to the former Redevelopment Agency. As prescribed by AB 1x26 a seven member Oversight Board has been established to assist in the close out of the redevelopment agency. The Fair Political Practices Commission has concluded that the City Council may be the code reviewing body for the Successor Agency and Oversight Board and may update the Conflict of Interest Code to add these agencies.

Appendix A to the Code shows the recommended changes with strikeout formatting for deletions and underscore formatting for additions.

Attachment

Action - It is recommended that the City Council, by resolution, amend the City’s Conflict of Interest Code for Nonelected Officials and Designated Employees.

F.6 Approval of Amendment to Agreement with Ray Morgan, LLC for Multifunction Device Services – from Administrative Services Director Woodstock. (RESOLUTION)

Background/Discussion – The Agreement for Multifunction Device Service was awarded on July 24, 2014 to supply multifunctional copier/scanner/printers and provide

maintenance and repair services for the equipment. The approved agreement mistakenly omitted the term of the contract. The attached amendment to that Agreement adds the term of three (3) years with the option to extend up to four (4) more years. The amendment also adds language that allows the City Manager to approve any future minor amendments.

Attachment

Action – It is recommended that the City Council, by resolution, approve the First Amendment to the Agreement with Ray Morgan, LLC for Multifunction Device and Services.

F.7 Accepting the bid of Mooring Tech for the purchase of eight Panasonic Toughbooks to replace the public safety mobile data computers, Project No. ERB01B14 – from Information Systems Manager Towne. (RESOLUTION)

Background/Discussion – As part of the City’s ongoing equipment replacement process eight (8) 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 August Information Systems staff developed a Request for Quotes (RFQ), Project No. ERB01B14, 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 September 9, 2014, two vendors had responded with quotes – Mooring Tech and Rugged Depot.

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

RUGGED DEPOT		MOORING TECH
\$30,721		\$26,030

It is recommended that the lowest total cost bid, provided by Mooring Tech for the Panasonic Toughbook equipment, be accepted as the lowest responsible bid. The Mooring Tech quote was for \$26,030, 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 Mooring Tech for the purchase of eight Panasonic Toughbooks, Project No. ERB01B14.

NONCONSENT**F.8 Authorizing the Mayor to sign the First Amended Agreement for Restriction on use of Real Property for Development of Affordable Housing with SHH, LLC – from Assistant City Manager Grindall. (RESOLUTION)**

Background/Discussion- As a part of the development of the Dumbarton Transit Oriented Development and other development in Newark, developers have agreed to meet their affordable housing obligation through the provision of senior housing in the area. An agreement to develop senior affordable housing was entered into in November of 2012 as a part of the approvals of the Torian project. At that time, since the site of the affordable housing was undefined, the restriction was placed on the entire SHH property to guarantee performance of the agreement.

The City Council has since approved development on the SSH project for residential townhomes and senior apartments with a defined site for each. This logical progression of development in the area requires that the Agreement for Restriction and Use of Real Property be amended to account for the division of property that is necessary to develop the senior affordable units and townhomes. Under the terms of the amendment, the actual approved site of the affordable units will include the restriction. This change will allow for the development of the SSH project and maintain the requirement that the developer provide for affordable senior housing in the area.

This agreement must reference a parcel that is in the process of being formally created through a lot line adjustment. As a result, there are blanks in the agreement where the property information is indicated. Staff is recommending that the Mayor be authorized to sign the agreement when the appropriate description of the parcel is included in the document.

Attachment

Action – It is recommended that the City Council, approve a resolution authorizing the Mayor to sign the First Amended Agreement for Restriction on use of Real Property for Development of Affordable Housing with SHH, LLC.

F.9 Authorizing the Mayor to sign the First Amendment to the Grocery Store Agreement with the SHH Project Owner – from Assistant City Manager Grindall. (RESOLUTION)

Background/Discussion- As a part of the Development of the Dumbarton Transit Oriented Development, developers have agreed to provide for the development of a grocery store in the area. An agreement to develop a grocery store was entered into in November of 2012 as a part of the approvals of the Torian project. The SHH parcel was designated as the guarantee of performance under the agreement.

The City Council has since approved development of residential townhomes and senior apartments on the SHH project. This logical progression of development in the area does require that the Grocery Store Agreement be amended to adjust for the progress that is being made. Under the terms of the amendment, a bond for \$1.6 million dollars will be provided, by the developer, in place of the land security. This change will allow for the development of the SHH project and maintain the requirement that the developer provide for a grocery store in the area.

Attachments

Action – It is recommended that the City Council, approve a resolution authorizing the Mayor to execute the attached First Amendment to Grocery Store Agreement with the SHH Project Owner.

G. CITY ATTORNEY REPORTS

G.1 Claim of Pacific Gas & Electric – from City Clerk Harrington. (MOTION)

Background/Discussion – On August 22, 2014, the City received a claim from Pacific Gas & Electric in the amount of \$14,386 alleging a City of Newark truck drove over and damaged a lid/box.

The claim and all relevant information were forwarded to ABAG Plan, the City's insurance administrator, who recommends that it be denied.

Attachment – None

Action - It is recommended that the City Council, by motion, deny the claim and authorize staff to inform the claimant of such denial.

G.2 Claim of Myron H. Reece – from City Clerk Harrington. (MOTION)

Background/Discussion – On August 26, 2014, the City received a claim from Myron H. Reece in the amount of \$6,000 alleging damages due to an inaccurate/incomplete police report.

The claim and all relevant information were forwarded to ABAG Plan, the City's insurance administrator, who recommends that it be denied.

Attachment – None

Action - It is recommended that the City Council, by motion, deny the claim and authorize staff to inform the claimant of such denial.

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
 - M.1 **Closed session pursuant to Government Code Section 54957
Public Employee Performance Evaluation
Title: City Attorney.**

Background/Discussion – City Attorney Benoun has requested that the City Council convene in closed session pursuant to Government Code Section 54957 for a performance evaluation.
- 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.