

# CITY OF NEWARK CITY COUNCIL

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

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

## AGENDA

**Thursday, April 23, 2015**

### CITY COUNCIL:

*Alan L. Nagy, Mayor*  
*Sucy Collazo, Vice Mayor*  
*Luis L. Freitas*  
*Michael K. Hannon*  
*Mike Bucci*

### 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:

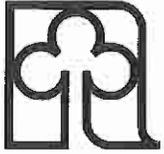
- |                                     |                            |
|-------------------------------------|----------------------------|
| A. ROLL CALL                        | I. COUNCIL MATTERS         |
| B. MINUTES                          | J. SUCCESSOR AGENCY        |
| C. PRESENTATIONS AND 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](http://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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City Administration Building  
7:30 p.m.  
City Council Chambers

## AGENDA

Thursday, April 23, 2015

**A. ROLL CALL**

**B. MINUTES**

- B.1 Approval of Minutes of the regular City Council meeting of Thursday, April 9, 2015. (MOTION)**

**C. PRESENTATIONS AND PROCLAMATIONS**

- C.1 Commending Farmaan Judge. (COMMENDATION)**

**Background/Discussion** – Farmaan Judge, a senior at Newark Memorial High School, founded Education 2 Future to raise funds to provide educational assistance for children. Ms. Judge was recently inducted into the Alameda County Women’s Hall of Fame in the Youth Category.

- C.2 Introduction of employee.**

**Background/Discussion** – Newly hired Public Works Maintenance Supervisor Tonya Connolly will be at the meeting to be introduced to the City Council.

- C.3 Proclaiming May 8 - 17, 2015, as Affordable Housing Week in Newark. (PROCLAMATION)**

**Background/Discussion** – May 8-17, 2015, has been designated Affordable Housing Week in Newark. A proclamation has been prepared and a representative from the East Bay Housing Organizations will accept it at the meeting.

- C.4 Proclaiming May as National Water Safety Month in Newark. (PROCLAMATION)**

**Background/Discussion** – In recognition of the popularity of swimming and other water-related recreational activities in the United States, and the resulting need for ongoing public education on safer water practices, including swim lessons, the buddy system, parental supervision, following the posted rules, and always being “water aware,” the month of May 2015 has been designated as National Water Safety Month.

Recreation and Community Services staff will be at the meeting to accept the proclamation.

**C.5 Proclaiming May 17-23, 2015, as National Public Works Week in Newark.  
(PROCLAMATION)**

**Background/Discussion** – May 17-23, 2015, has been designated National Public Works Week in Newark. A member of the Public Works Department will be at the meeting to accept the proclamation.

**C.6 Proclaiming May 17-23, 2015, as National Emergency Medical Services Week in Newark.  
(PROCLAMATION)**

**Background/Discussion** – May 17-23, 2015, has been designated National Emergency Medical Services Week in Newark. A member of the Alameda County Fire Department will be at the meeting to accept the proclamation.

**C.7 Proclaiming May 10-16, 2015, as National Police Week in Newark.  
(PROCLAMATION)**

**Background/Discussion** – May 10-16, 2015, has been designated National Police Week in Newark. A member of the Police Department will be at the meeting to accept the proclamation.

**D. WRITTEN COMMUNICATIONS**

**E. PUBLIC HEARINGS**

- E.1 Hearing to consider the development of approximately 27 residential units (Trumark Homes) on a 2.14 acre site (Enterprise Property) located on the north side of Enterprise Drive east of Willow Street by: (1) Adopting a resolution making certain findings and adopting a Supplemental Environmental Impact Report to the Environmental Impact Report for the Dumbarton Transit Oriented Development; (2) Introducing an Ordinance rezoning (RZ-12-27) a 2.14-acre area (APN 092-0140-006) from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); (3) Adopting a resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and approve the Affordable Housing Implementation Agreement; (4) By resolution, authorize the Mayor to sign a Community Financing Agreement with Enterprise Drive, LLC; (5) By resolution, approving TM-12-28, Vesting Tentative Map 8110 to construct approximately 27 residential units; (6) By motion, approving an Architectural and Site Plan Review; and (7) By motion, approving Exhibit B, Schedule of Impact Fees – from Assistant City Manager Grindall.**

**(CONTINUED FROM MAY 8, 2014)  
(RESOLUTIONS- 4)(INTRODUCTION OF ORDINANCE)(MOTIONS-2)**

**Background/Discussion** – This project proposes 27 housing units as outlined in the Dumbarton Transit Oriented Development Specific Plan. The project is consistent with the Specific Plan and meets the Specific Plan’s requirements for public improvements that support a walkable, transit friendly neighborhood. The project assists the replacement of an incompatible industrial use, Gallade Chemical, with a 2.3 acre public park as designated in the Specific Plan. Together with the adjacent Jones/Hamilton project, the Gallade Chemical property will be acquired, cleaned of soil contamination and constructed as a public park. This particular 27 unit project will not be allowed to be occupied until the Gallade Chemical use permanently ceases.

This project was on the City Council agenda on May 8, 2014, at that time the item was continued in order to allow the developer and the Gallade property owner time to work out issues for the acquisition of the site. It is understood that the developer and property owner have reached an understanding that will allow the project to proceed. The project will result in the removal of the incompatible use without cost to the public or contention.

Enterprise Drive, LLC has submitted a proposed Vesting Tentative Map and building plans for 27 units to be located on approximately 2.14 acres along Enterprise Drive. 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 Codes which is consistent with the Specific Plan.

The contamination on this property would be remediated to the satisfaction of the relevant agencies prior to occupancy.

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.

Community Financing Agreement

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. As such, the applicant has agreed to enter into the attached Community Financing Agreement. Under the terms of the agreement a contribution of \$2,500 per unit is required. However, due to the extraordinary cost of acquiring and building the public park, the developer would be allowed to utilize this fee, if necessary, to offset the cost of park acquisition and development.

Affordable Housing

Chapter 17.18 of the Newark Municipal Code (NMC) generally required developers to set-aside a minimum of 15% of the total number of dwelling units. This has now been superseded by the Affordable Housing Fee. This project's application preceded the effectiveness of the new fee and thus is subject to the provisions of the now superseded ordinance. The Chapter 17.18 authorized alternative means of compliance with the City's Affordable Housing Program. An alternative means of compliance was negotiated with the developers of this project which requires the payment of a \$25,000 fee for each unit within the Project. Enterprise Drive LLC intends to meet its affordable housing obligations by entering into an "Affordable Housing Implementation Agreement".

The fee will allow the City to address the need for affordable housing more effectively than compliance with the ordinance. The fee will allow for the purchase of property in appropriate locations and the flexibility to leverage the funds with public and private sources to provide the type of housing that the community most needs. Generally regional, State and Federal affordable housing funding or financing programs need an identified site to be competitive in the funding process. Without resources to acquire appropriate properties it is highly unlikely that the City would be able to effectively compete for these funds. This fee would allow the City to focus our housing efforts on areas of particular need in the community and to tailor the level of housing affordability to have the greatest positive impact on those needing housing assistance. Furthermore, the funding provided by this development would allow the City to advance project readiness of potential sites thus further improving the likelihood of receiving funding from Regional, State and Federal sources. 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 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 development of the Gallade parcel as a public park was analyzed in the TOD Specific Plan EIR. The approval and execution of the Community Financing Agreement, and conditions related to development of a neighborhood park are further approvals related to the development of the Gallade Parcel as a public park as anticipated by the TOD EIR. As explained in the FEIR (e.g., Response to Comment A-3) and the staff report's attachment, staff has determined that there is no new information, changes in the development contemplated in the TOD Specific Plan EIR, or changes in circumstances since the certification of the TOD Specific Plan EIR that would require further environmental review under CEQA of the potential development of the Gallade parcel as a public park. As is true for other portions of the TOD Specific Plan, further CEQA review may be appropriate if and when future discretionary actions by the City or other agency occur related to the development of the Gallade parcel as a public park, including the required rezoning of the Gallade Parcel or the removal of the Department of Toxic Substances Control (DTSC) covenant encumbered on the property, if any of the thresholds found in CEQA Guideline § 15162 is met at the time of that potential future approval. No further environmental review is required prior to the City's approval of the Projects Conditions and Community Financing Agreement.

The review period for the SEIR ended on February 7, 2014. During the review period, 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 provided to the Planning Commission previously. In addition, the City received a letter via email on March 27, 2014 from legal counsel representing the Gallade Property. Though there is no obligation to respond to comments submitted after the close of the comment period on the SEIR, a response to this letter is nonetheless included in the attachments.

### **Attachment**

**Update** – At their April 22, 2014 meeting, the Planning Commission: 1) Adopted Planning Commission Resolution No. 1857 making certain findings and recommending City Council adoption of a Supplemental Environmental Impact Report (E-12-30) 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 092-0140-006) 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 recommending the City Council approve the attached Affordable Housing Implementation Agreement; 4) By motion recommended that the City Council approve TM-12-28, Vesting Tentative Map 8110 to construct approximately 27 residential units; 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 adopt 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 rezoning (RZ-12-27) a 2.14-acre area (APN 092-0140-006) 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 approve the Affordable Housing Implementation Agreement; (4) By resolution, authorize the Mayor to sign a Community Financing Agreement with Enterprise Drive, LLC; (5) By resolution, approve TM-12-28, Vesting Tentative Map 8110 to construct approximately 27 residential units; (6) By motion, approve ASR-12-29, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 29; (7) By motion, approve Exhibit B, Schedule of Impact Fees.

## **E.2 Hearing to consider the development of approximately 217 residential units (Trumark Homes) on a 21.4 acre site (Jones Hamilton) located on**

**the south side of Enterprise Drive east of Willow Street by: (1) Adopting a resolution making certain findings and adopting a Supplemental Environmental Impact Report to the Environmental Impact Report for the Dumbarton Transit Oriented Development; (2) Introducing an ordinance rezoning (RZ-12-31) a 21.4 acre area (092-0116-058; 092-0116-059; 092-0116-060; and 092-0116-014) from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); (3) Adopting a resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and approve the Affordable Housing Implementation Agreement; (4) By resolution, authorize the Mayor to sign a Community Financing Agreement with Newark Enterprise Joint Venture, LLC; (5) By resolution, approving Vesting Tentative Map 8098 to construct approximately 217 residential units; (6) By motion, approving an Architectural and Site Plan Review; (7) By motion, approving Exhibit B, Schedule of Impact Fees – from Assistant City Manager Grindall. (CONTINUED FROM MAY 8, 2014)  
(RESOLUTIONS- 4) (INTRODUCTION OF ORDINANCE) (MOTIONS-2)**

**Background/Discussion** – This project proposes 217 housing units as outlined in the Dumbarton Transit Oriented Development Specific Plan. The project is consistent with the Specific Plan and meets the Specific Plan’s requirements for public improvements that support a walkable, transit friendly neighborhood. The project includes the replacement of an incompatible industrial use, Gallade Chemical, with a 2.3 acre public park as designated in the Specific Plan. Together with the adjacent Enterprise project, the Gallade Chemical property will be acquired, cleaned of soil contamination and constructed as a public park. No unit will be allowed to be occupied until the Gallade Chemical use permanently ceases and the park must be completed and offered for dedication to the City before the 121<sup>st</sup> unit of this development is occupied.

This project was on the City Council agenda on May 8, 2014, at that time the item was continued in order to allow the developer and the Gallade property owner time to work out issues for the acquisition of the site. It is understood that the developer and property owner have reached an understanding that will allow the project to proceed. The project will result in the removal of the incompatible use without cost to the public or contention.

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 applicant proposes to rezone the site in order to be consistent with the Specific Plan and obtain approval for a tentative map and an Architectural and Site Plan Review. The rezoning would be from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes).

The contamination on this property would be remediated to the satisfaction of the relevant agencies prior to occupancy.

#### 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, barbecue grills, benches, a shaded sitting area and a children's play structure. In addition, a large recreational turf area will be adjacent to the children's play structure. All of the amenities will be centrally located within the site.

#### Community Financing Agreement

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. As, such, the applicant has agreed to enter into the attached Community Financing Agreement. Under the terms of the agreement a contribution of \$2,500 per unit is required. However, due to the extraordinary cost of acquiring and building the public park, the developer would be allowed to utilize this fee, if necessary, to offset the cost of park acquisition and development.

#### Affordable Housing

Chapter 17.18 of the Newark Municipal Code (NMC) generally required developers to set-aside a minimum of 15% of the total number of dwelling units. This has now been superseded by the Affordable Housing Fee. This project's application preceded the effectiveness of the new fee and thus is subject to the provisions of the now superseded ordinance. The Chapter 17.18 authorized alternative means of compliance with the City's Affordable Housing Program. An alternative means of compliance was negotiated with the developers of this project which requires the payment of a \$25,000 fee for each unit within the Project. Enterprise Drive LLC intends to meet its affordable housing obligations by entering into an "Affordable Housing Implementation Agreement".

The fee will allow the City to address the need for affordable housing more effectively than compliance with the ordinance. The fee will allow for the purchase of property in appropriate locations and the flexibility to leverage the funds with public and private sources to provide the type of housing that the community most needs. Generally regional, State and Federal affordable housing funding or financing programs need an identified site to be competitive in the funding process. Without resources to acquire appropriate properties it is highly unlikely that the City would be able to effectively compete for these funds. This fee would allow the City to focus our housing efforts on areas of particular need in the community and to tailor the level of housing affordability to have the greatest positive impact on those needing housing assistance. Furthermore the funding provided by this development would allow the City to

advance project readiness of potential sites thus further improving the likelihood of receiving funding from Regional, State and Federal sources. 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 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 development of the Gallade parcel as a public park was analyzed in the TOD Specific Plan EIR. The approval and execution of the Community Financing Agreement and conditions related to the development of a neighborhood park are further approvals related to the development of the Gallade Parcel as a public park as anticipated by the TOD EIR. As explained in the FEIR (e.g., Response to Comment

A-3) and the staff report's attachment, staff has determined that there is no new information, changes in the development contemplated in the TOD Specific Plan EIR, or changes in circumstances since the certification of the TOD Specific Plan EIR that would require further environmental review under CEQA of the potential development of the Gallade parcel as a public park. As is true for other portions of the TOD Specific Plan, further CEQA review may be appropriate if and when future discretionary actions by the City or other agency occur related to the development of the Gallade parcel as a public park, including the required rezoning of the Gallade Parcel or the removal of the Department of Toxic Substances Control (DTSC) covenant encumbered on the property, if any of the thresholds found in CEQA Guideline § 15162 is met at the time of that potential future approval. No further environmental review is required prior to the City's approval of the Projects Conditions and Community Financing Agreement.

The review period for the SEIR ended on February 7, 2014. During the review period, 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 provided to the Planning Commission previously. In addition, the City received a letter via email on March 27, 2014 from legal counsel representing the Gallade Property. Though there is no obligation to respond to comments submitted after the close of the comment period on the SEIR, a response to this letter is nonetheless included in the attachments.

### **Attachments**

**Update** – At its meeting of April 22, 2014, the Planning Commission: 1) Adopted Planning Commission Resolution No. 1870 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. 1871 recommending rezoning (RZ-12-31), a 21.4-acre area (APN's 092-0116-058, 092-0116-059, 092-0116-060; and 092-0116-014) from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); 3) adopted Planning Commission Resolution No. 1872 making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and recommended City Council approve the attached Affordable Housing Implementation Agreement; 4) By motion, recommended that the City Council approve TM-12-32, Vesting Tentative Map 8098 to construct approximately 217 residential units; 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.

**Action** – It is recommended that the City Council: (1) Adopt a resolution making certain findings and adopt 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

rezoning (RZ-12-31) a 21.4 acre area (092-0116-058; 092-0116-059; 092-0116-060; and 092-0116-014) 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 approve the Affordable Housing Implementation Agreement for the Jones Hamilton Project; (4) By resolution, authorize the Mayor to sign a Community Financing Agreement with Newark Enterprise Joint Venture, LLC; (5) By resolution approve TM-12-32, Vesting Tentative Map 8098 to construct approximately 217 residential units on the Jones Hamilton Property; (6) By Motion, approve ASR-12-33, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 79; and (7) By motion, approve Exhibit B, Schedule of Impact Fees.

## **F. CITY MANAGER REPORTS**

**(It is recommended that Items F.1 through F.5 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 Resolution authorizing the Annual Program Submittal for Measures B and BB funding of paratransit services – from Recreation and Community Services Director Zehnder. (RESOLUTION)**

**Background/Discussion** – The Alameda County Transportation Commission (ACTC) administers the distribution of Measure B and Measure BB, a combined one cent transportation sales tax which provides funding to the City of Newark to provide paratransit services for the elderly and disabled. Each year the City is required to submit an application for funding and a budget to ACTC outlining the paratransit services to be offered in the upcoming fiscal year.

ACTC forecasts that the City of Newark will receive approximately \$181,524.05 in Measure B sales tax revenue and \$112,133.06 in Measure BB sales tax revenue for Fiscal Year 2015-2016.

In 2013, the City of Newark amended the Joint Powers Agreement with the City of Fremont enabling Fremont to provide paratransit services to eligible Newark residents. Fremont Paratransit provides door-to-door wheelchair accessible service for Newark seniors ages 70 and older and for people with disabilities, ages 18 and older. Fremont's robust, reliable, and efficient paratransit service provides Newark riders with the following services:

- Service hours – Monday through Friday, 8:00am – 6:00pm, Saturday and Sunday, 9:00am – 3:00pm
- Service area – service is provided to all parts of Fremont, Union City and Newark

- Reservation and dispatch system – Monday through Friday, 8:00am – 5:00pm, Saturday and Sunday, 9:00am – 3:00pm

In addition to these paratransit services, Newark riders also receive access to supplemental transportation services offered through the Fremont Human Services Department:

- Tri-City Travel Training Program
- Senior Clipper Card Distribution Program
- Tri-City Mobility Management Program

For these services, the City of Newark will reimburse the City of Fremont at a cost to not exceed \$185,000. This includes a cost per trip billing for all one-way trips as well as monthly administrative fees. The remainder of the funds will be transferred to operational reserves. Should rider demand be greater than projected, the City of Newark has sufficient Measure B and Measure BB Operational Reserves which can be used to offset additional service costs.

The City will also utilize Measure BB funding to subsidize the Life Eldercare, Inc., Meals on Wheels service, which provides over 13,000 home-delivered meals annually to Newark residents. The proposed level of funding for Fiscal Year 2015-2016 will remain at \$7,000.

#### **Attachment**

**Action** – It is recommended that the City Council, by resolution, approve the annual program submittal for Measure B and Measure BB funding for paratransit services for Fiscal Year 2015-2016.

#### **F.2 Authorization for the Mayor to execute an agreement with artist Dennis Smith for replacement of the Summer Series “Pitcher” sculpture and to revise the 2014-2016 biannual budget – from Recreation and Community Services Director David Zehnder. (RESOLUTION)**

**Background/Discussion** – Staff has received a quote from artist Dennis Smith for the replacement of the *Summer Games Series “Pitcher”* sculpture which was stolen from the Sportsfield softball complex in June of 2014. This sculpture will be a re-creation of the sculpture by the same artist of the original sculpture. This sculpture was replaced once before after a previous theft of multiple sculptures at this same location as well as in front of the Silliman Activity Center entrance.

Sculpture replacement costs are expected to be approximately \$22,500 which includes a 10% discount, delivery, and coordinated installation with our Maintenance Services staff. Funding for this project will be from insurance (\$16,500) and the Art in Public Places account (\$6,000). Since this artwork can only be reproduced by the original artist, this single source purchase is allowable under our purchasing rules and

regulations. Upon execution of the attached agreement, one half of the purchase price will be remitted to the artist with the second half due upon delivery and installation of the sculpture.

Previous security measures were put in place to make it much more difficult for thieves to remove these sculptures. This included improved accent lighting to increase public visibility of the sculptures, installation of dedicated video surveillance cameras (Summer Series only) and posting of signs indicating that the sculptures are under 24-hour video surveillance. Unfortunately these measures failed to protect the Pitcher sculpture which by design, is mounted with only one footing to the cement pedestal. To reduce the possibility of another theft of the sculpture, the artist has proposed installing a stainless steel rod in the leg of the sculpture as well as a stainless steel pipe in the cement pedestal. This should make it extremely difficult to remove the sculpture.

**Attachment**

**Action** – It is recommended that the City Council, by resolution, authorize the Mayor to execute an agreement with Dennis Smith for replacement of the Summer Series “Pitcher” sculpture and to revise the 2014-2015 biannual budget.

**F.3 Approval of plans and specifications for the 2015 Weed Abatement Program, and award the contract to New Image Landscape Company – 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 Monday, April 13, 2015, with the following results:

<u>Company</u>	<u>Combined Hourly Rate</u>
New Image Landscape Company	\$260.00 per hour
Engineer’s Estimate	\$195.00 per hour

Although only one bid was received for this project, the proposed price is reasonable and within industry standards for this type of work. The lack of bids could be attributable to the relatively small size of the project. New Image Landscape is a responsible and responsive bidder qualified to perform the work.

Funds were retained in the 2014-2015 Biennial Budget and Capital Improvement Plan to complete this project. The Landscape Parks Division recommends awarding the 2015 Weed Abatement Program to New Image Landscape Company, Inc., as they are the lowest responsible bidder.

The contract shall commence on or about May 1, 2015. The contract may be extended for no more than two consecutive one-year periods upon mutual consent of both parties.

#### **Attachment**

**Action** - It is recommended that the City Council, by motion approve the plans and specifications, and by resolution accepting the bid and awarding the contract to New Image Landscape Company for the 2015 Weed Abatement Program.

#### **F.4 Declaration of intent to abandon a portion of Hickory Street right-of-way north of Perrin Avenue and establishment of May 28, 2015, as the date for a public hearing - from Assistant City Engineer Fajeau. (RESOLUTION)**

**Background/Discussion** – The City has received a request from William Lyon Homes, Inc., owner of the 42.2-acre property on the west side of Willow Street at the terminus of Central Avenue (Torian Site), to abandon a portion of the Hickory Street right-of-way located near the southwestern corner of the site. The proposed abandonment would be limited to the 40-foot wide western half of the existing Hickory Street right-of-way between the Alameda County Flood Control and Water Conservation District (District) property located immediately north of Perrin Avenue to a point approximately 400 feet north of the District boundary. This right-of-way has never been improved to public street standards, is not currently used as a public street, and is not needed for future street purposes.

The requested abandonment is consistent with Vesting Tentative Tract Map 8085, TTM-12-25, originally approved by the City Council on November 29, 2012, and as amended on February 28, 2013. As part of the wetlands mitigation work associated with the project, conditions of approval require abandonment of the unused right-of-way prior to the start of construction activities.

If abandoned, this portion of the Hickory Street right-of-way would revert back to William Lyon Homes, Inc., the adjacent property to the west. Utility providers with services in this general area have been notified of a potential right-of-way abandonment. It is anticipated that utility easements will be reserved over portions of the right-of-way. The westerly half of the right-of-way would remain in place and is currently utilized by an adjoining property owner as a haul route.

Staff is recommending that the City Council proceed with abandonment proceedings under the provisions of Part 3, Division 9 of the Streets and Highways Code of the

State of California. A legal description and plat showing the area proposed to be abandoned are attached to Exhibit A of the Resolution of Intent.

**Attachment**

**Action** - It is recommended that the City Council, by resolution, declare its intention to abandon a portion of Hickory Street right-of-way north of Perrin Avenue and establish May 28, 2015, as the date for the public hearing.

**F.5 Authorization for the Mayor to sign a License Agreement with NewPark Mall for the Police Department to use space as a static display and temporary office – from Police Chief Leal. (RESOLUTION)**

**Background/Discussion** – Since February 2014, the City of Newark has occupied a space in the NewPark Mall for police officer use and community outreach. The location of the space made available to the City within the Mall has changed. Rouse Properties has asked that the City enter into a License Agreement for the City to occupy space and conduct business at the shopping center. The proposed License Agreement expires March 31, 2016 and is subject to extension by mutual agreement. The City is charged no fee in order to occupy the space made available to it. Staff believes the presence of the Police Department static display within the shopping center provides a presence within NewPark Mall that has a positive effect on the shopping center and the community. Additionally, staff believes that the ability to have temporary office space available on site at the shopping center allows for more effective policing of the Mall.

**Attachment**

**Action** - It is recommended that the City Council, by resolution, authorize the Mayor to sign a License Agreement with NewPark Mall for use of Police Department space for static display and temporary office.

**G. CITY ATTORNEY REPORTS**

**G.1 Claim of Bernadette Jolivet – from City Clerk Harrington. (MOTION)**

**Background/Discussion** – On March 18 2014, the City received an amended claim from Bernadette Jolivet for an unspecified amount alleging bodily injury due to tripping on an uneven sidewalk.

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**

**I.1 Consideration of City Council's summer meeting recess during the month of August 2015 – from Mayor Nagy. (MOTION)(RESOLUTION)**

**Background/Discussion** – Since 1994 the City Council has approved a summer meeting recess during the month of August. This is because of the lack of any major City business during August and because several Council Members plan vacations during that month. Mayor Nagy would like the City Council to consider a summer recess again this year during August for the same reasons.

The City Council may authorize the City Manager, or his designee, to approve any administrative matters that might occur during the month of August that cannot be deferred until September for City Council action. The general types of administrative matters that might require action are:

- Acceptance of completion of work on City projects
- Approval of agreements as needed for budgeted projects and services
- Approval of plans and specifications
- Award of contracts for budget projects
- Denial of claims

The City Manager would report all such actions taken during the month of August to the City Council at the first regular meeting in September.

**Attachment**

**Action** - It is recommended that the City Council, by motion, approve a City Council summer meeting recess during the month of August 2015 and, by resolution, authorize the City Manager, or his designee, to take action on certain administrative matters on behalf of the City of Newark during the recess.

**J. CITY COUNCIL ACTING AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY**

**K. ORAL COMMUNICATIONS**

**L. APPROPRIATIONS**

**Approval of Audited Demands for the City Council meeting of April 23, 2015. (MOTION)**

**M. CLOSED SESSION**

**M.1 Closed session for conference with Labor Negotiators pursuant to California Government Code Section 54957.6. Agency designated representatives: Human Resources Director Abe and Community Development Director Grindall; Employee Groups: the Newark Police Association, the Newark Association of Miscellaneous Employees; City Officials and the Management, Supervisory, and Professional Employee Group; and the Confidential Employee Group – from City Attorney Benoun and Human Resources Director Abe.**

**Background/Discussion** – The City Attorney has requested a closed session to discuss labor negotiations.

**M.2 Closed Session for Conference with Legal Counsel pursuant to Government Code Section 54956.9(a), Anticipated Litigation (6 cases) – from City Attorney Benoun.**

**Background/Discussion** – The City Attorney has requested a closed session to discuss anticipated litigation (6 cases).

**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, 5<sup>th</sup> 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.