



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, February 26, 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 | TO REDEVELOPMENT AGENCY |
| D. WRITTEN COMMUNICATIONS | K. ORAL COMMUNICATIONS |
| E. PUBLIC HEARINGS | L. APPROPRIATIONS |
| F. CITY MANAGER REPORTS | M. CLOSED SESSION |
| G. CITY ATTORNEY REPORTS | N. ADJOURNMENT |
| H. ECONOMIC DEVELOPMENT CORPORATION | |

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

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

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

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



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A. ROLL CALL

B. MINUTES

- B.1 Approval of Minutes of the regular City Council meeting of Thursday, February 12, 2015. (MOTION)**

C. PRESENTATIONS AND PROCLAMATIONS

C.1 Introduction of employees.

Background/Discussion – Recently hired Public Safety Dispatcher Heidi Horner, Police Officer Natasha Stone, and Public Safety Clerk Wendy Walker will be at the meeting to be introduced to the City Council.

C.2 Proclaiming March as American Red Cross Month in Newark. (PROCLAMATION)

Background/Discussion – President Barack Obama has proclaimed March as American Red Cross Month across the United States. Helen Knudson, chair of the American Red Cross Leadership Council, will accept the City of Newark proclamation at the meeting.

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

- E.1 Hearing to consider: U-88-42, an amendment to a conditional use permit, for a remodel to the Salvation Army building at 36700 Newark Boulevard – from Assistant City Manager Grindall. (RESOLUTION)**

Background/Discussion – Mr. Michael Buschow, on behalf of the Salvation Army, has submitted an application for a remodel of the Salvation Army building located 36700 Newark Boulevard.

The subject site is zoned CN (Neighborhood Commercial) and has an OC (Office Commercial) General Plan land use designation. It is located on the east side of Newark Boulevard between Mayhews Lading Road and Fair Avenue. The Salvation Army obtained conditional use permit approval on July 14, 1988 to operate a church, classrooms, offices and provide community services to Newark residents and the Tri-Cities area. The applicant proposes to demolish the existing building and construct a new 11,513 square foot building occupying the same general footprint of the existing structure. The new facility would include a chapel, multipurpose room, commercial kitchen, classrooms, computer lab, teenage game room, social services offices, administrative offices, covered outdoor space, basketball courts and public restrooms. Proposed new services include a senior lunch program, emergency disaster services, nutrition, computer, and English as-a-second language classes.

The new building would have a contemporary design with a building mass that is broken up with wall articulation, varying rooflines, colored columns, and a decorative tower with a cross. Exterior materials include glass, concrete plaster, and metal and fiberglass panels. The facility is proposed to be LEED silver-certified with natural lighting, water efficiency, recycled materials, and thermal comfort incorporated within the building design. The existing wireless telecommunications facility pole at the front of the property will be removed and a monopine (cellular tower resembling a tree) would replace it at the rearmost corner of the parking lot. Access to the site would continue along Newark Boulevard and the parking lot would be reconfigured in coordination with the new building design.

On October 28, 2014, the applicant held a community meeting to discuss the project. Notices were sent to approximately 95 property owners within 300 feet of the project site. The four neighbors who attended the meeting raised questions regarding lighting, construction hours, maintenance and security of the property. Specific issues raised by the neighbors were: (a) if parking lot lighting would create glare onto the backyards of residences; (b) the time and duration construction would take place; (c) ensuring food remains from the food distribution program would not be left on property grounds; (d) ensuring overgrown trees wouldn't encroach onto adjacent properties; and (e) continuing to provide pedestrian access from the end of Birch Street onto the site. The applicant clarified that shielded lights, which project downward, would be used for building and parking lot lighting and thus, would not be a direct light source onto neighboring properties. Neighbors were informed that construction would take place Monday through Friday from 8:00 a.m. to 6:00 p.m, as required by the City, for approximately ten months. To address the security concern over access to the site, the applicant informed neighbors that a security gate would be provided at the driveway on the north end of the property. The applicant informed neighbors that Salvation Army staff would take measures to ensure that food remains are not left on-site after food distribution. Staff believes that the project is configured to allow pedestrian access. A

condition of approval has been incorporated into the resolution to ensure the site remains in a presentable condition.

Environmental Determination

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) per Section 15301, Class 1, alteration of existing facilities.

Attachment

Update – At its meeting of February 10, 2015, the Planning Commission: approved Resolution No. 1899, for an amendment to a conditional use permit (U-88-42) for a remodel to the Salvation Army building at 36700 Newark Boulevard.

Action - It is recommended that the City Council, by resolution, approve an amendment to a conditional use permit (U-88-42) for a remodel to the Salvation Army building at 36700 Newark Boulevard.

- E.2 Hearing to consider REPEAL of: Resolution No. 9745 certifying the Environmental Impact Report for the Newark Area 3 and 4 Specific Plan Project and approving the Mitigation Monitoring and Reporting Program; Resolution No. 9746 approving and adopting the Newark Area 3 and 4 Specific Plan Project and related General Plan Amendment; Ordinance No. 442 approving and adopting the Newark Area 3 and 4 Specific Plan Development Agreement; and Ordinance No. 443 approving Z-10-17, a Map Amendment to Title 17 of the Newark Municipal Code rezoning parcels to be consistent with the proposed Newark Area 3 and 4 Specific Plan – from Assistant City Manager Grindall and City Attorney Benoun.
(RESOLUTIONS-2) (INTRODUCTION OF ORDINANCES-2)**

Background/Discussion – In 2010, the City Council approved a development project known as the “Area 3 and 4 Specific Plan Project”. The project included approximately 1,260 housing units, five or more acres of parks, a school site, approximately 200 acres of open space, transportation improvements, and development of a golf course or other recreational amenity.

To implement the project, the Council, by a unanimous vote, adopted and enacted the following:

- Resolution No. 9745, which certified the Environmental Impact Report (“EIR”) for the Newark Area 3 and 4 Specific Plan Project and approved the Mitigation Monitoring and Reporting Program;
- Resolution No. 9746, which approved and adopted the Newark Area 3 and 4 Specific Plan and related General Plan Amendment.

- Ordinance No. 442, which approved and adopted the Newark Area 3 and 4 Specific Plan Project Development Agreement.
- Ordinance No. 443, which approved and adopted Z-10-17, a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code rezoning parcels to be consistent with the Proposed Newark Area 3 & 4 Specific Plan.

In response to the project approval, the Citizen's Committee to Complete the Refuge, a non-profit public benefit corporation, filed a legal challenge in Alameda County Superior Court, naming the City, the City Council, and the Planning Commission as the Respondents, as well as the applicant, Newark Partners, LLC. (Alameda County Superior Court Case No. RG10530015.)

The basis of the lawsuit, in summary, is that the environmental disclosures associated with the project failed to comply with the California Environmental Quality Act ("CEQA") and that the City's police powers were improperly contracted away in the Development Agreement. The case had a lengthy history, including several rounds of briefings and hearings with the trial court, as well as intervention from the California Court of Appeal. After nearly 4.5 years of litigation, the case has reached a final conclusion.

On October 17, 2014, the trial court Judge, the Honorable Evelio Grillo, issued a Statement of Decision, addressing and disposing all of the substantive points raised in the case by the Citizen's Committee. That Decision is attached to this staff report (Attachment 1). The issues raised by the Committee included allegations of improper baseline for traffic analysis, lack of discussion regarding construction traffic, lack of disclosure and analysis of the cumulative impacts of the project, deferral of mitigation of impacts, and others.

As to the CEQA component of the case, the Court sided with the City on the majority of the claims. However, the Court found merit in three arguments, specifically: (1) the EIR was not clear as to which portions of the project would require further environmental review and those that would not; (2) the EIR improperly deferred mitigation of impacts to trees; and (3) the EIR improperly deferred mitigation of impacts to sensitive habitats and special status species.

As to the Development Agreement (DA) component of the case, the Court denied all of the Citizen's claims, except the Court found merit in the argument that the last sentence in Section 4.02 unlawfully contracts away the City's police power. ("City shall not support, adopt, or enact any City Law, or take any other action which would violate the express provisions or intent of the Project Approvals or Subsequent Approvals.") The Court ruled that last sentence is unenforceable, but also found that the remainder of the DA is enforceable. (See Page 4 of the Decision.)

On November 25, 2014, the Court entered a Final Judgment (Attachment 2) and the Clerk of the Court issued a Peremptory Writ of Mandate (Attachment 3). Although the Court denied the majority of the Citizen's claims, the Judgment and Writ command the City to, within 90 days, void all of the resolutions and ordinances approving the project, including

the ones that approve the DA and certify the EIR. Staff therefore recommends that the Council repeal the resolutions and ordinances that approved the project, specifically Resolutions 9745 and 9746 and Ordinances 442 and 443.

Attachments

Update – At its meeting on February 10, 2015, the Planning Commission, by unanimous vote, approved a Resolution that rescinded the Planning Commission certification of the EIR for the Area 3 and 4 Specific Plan (E-10-12) and recommended that the City Council repeal Resolutions 9745 and 9746 and Ordinances 442 and 443.

Action – Staff recommends that the City Council REPEAL the previous approvals by approving the following: 1) Resolution repealing Resolution No. 9745 certifying the Environmental Impact Report for the Newark Area 3 and 4 Specific Plan Project and approving the Mitigation Monitoring and Reporting Program; 2) Resolution repealing Resolution No. 9746 approving and adopting the Newark Area 3 and 4 Specific Plan Project and related General Plan Amendment; 3) Ordinance repealing Ordinance No. 442 approving and adopting the Newark Area 3 and 4 Specific Plan Development Agreement; and 4) Ordinance repealing Ordinance No. 443 approving Z-10-17, a Map Amendment to Title 17 of the Newark Municipal Code rezoning parcels to be consistent with the proposed Newark Area 3 and 4 Specific Plan.

- E.3 MOTION TO CANCEL Public Hearing to consider: 1) Certifying a Recirculated Final Environmental Impact Report addressing and disclosing the Environmental Impacts of the Newark Areas 3 and 4 Specific Plan Project and approving a Mitigation Monitoring and Reporting Program; 2) Approving the Newark Specific Plan: Areas 3 and 4 of the General Plan and related General Plan amendments: A map amendment to the General Plan Diagram to change the General Plan land use designations for certain parcels of land; 3) Introducing an Ordinance approving the Newark Areas 3 and 4 Specific Plan Project Development Agreement and; 4) Introducing an Ordinance approving a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code Rezoning Parcels to be Consistent with the Newark Specific Plan: Areas 3 and 4 of the General Plan – from Assistant City Manager Grindall.**

(MOTION TO CANCEL PUBLIC HEARING)

Background/Discussion – Staff is in the process of further reviewing the Areas 3 and 4 Specific Plan Project. At this time, staff anticipates that the project will be finalized and presented to the City Council in March or April at a duly noticed public hearing.

Action – Staff recommends that the City Council, by motion, CANCEL the public hearing.

E.4 Hearing to consider adoption of a resolution clarifying the City Council’s intent in certifying the 2013 General Plan Tune Up Environmental Impact Report – from Assistant City Manager Grindall. (RESOLUTION)

Background/Discussion – In December 2013, the City Council held a public hearing to consider adopting resolutions approving the update to the Newark General Plan and certification of the General Plan Tune Up Environmental Impact Report (“EIR”). After having received a considerable amount of testimony from the public, the Council, by a unanimous vote, adopted Resolution No. 10,145 approving the update to the General Plan and Resolution No. 10,146 certifying the EIR.

In response to the City’s action, in January 2014 the Citizen’s Committee to Complete the Refuge filed a legal challenge alleging that the EIR failed to comply with the California Environmental Quality Act (Alameda County Superior Court Case No. RG14709701). The only allegation in the lawsuit is that the City improperly referred to and relied upon prior environmental documents for the Area 3 and 4 Specific Plan Project that was approved by the City Council in 2010. (Those project approvals and environmental analysis were also subject to litigation from the Citizen’s Committee in Alameda County Superior Court Case No. RG10530015.) The City denies the allegation and the court case has not been resolved.

The staff report to the City Council for the General Plan Update and EIR clearly stated that adoption of the General Plan Update “does not provide approval” for the Area 3 and 4 Project. Nonetheless, the Citizen’s Committee filed the lawsuit referenced above and the City has been forced to defend itself in Court and incur defense costs.

In hopes of resolving this litigation, staff recommends that the Council adopt a Resolution that would clarify the intent of the resolutions approving the General Plan Tune Up EIR as follows: (1) that the adoption of the General Plan Tune Up EIR was not intended to provide environmental disclosure or compliance with CEQA or clearance for the Specific Plan Area 3 and 4 project; (2) that nothing contained in the General Plan Tune Up EIR was intended to affect, limit, or circumvent the then-judicial review of the Specific Plan Area 3 and 4 Project EIR; and (3) that the Specific Plan Area 3 and 4 Project does not rely on the General Plan Tune Up EIR to comply with CEQA.

Update – At its meeting on February 10, 2015, the Planning Commission, by unanimous vote, approved a Resolution that recommended that the City Council adopt a resolution clarifying the Council’s intent in certifying the 2013 General Plan Tune Up Environmental Impact Report (EIR).

Action – Staff recommends that the City Council adopt a resolution clarifying the City Council’s intent as to the certification of the City of Newark 2013 General Plan Tune Up Environmental Impact Report.

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 Initiation of the 2015 Weed Abatement Program and setting a date for a public hearing - from Fire Marshal Guier/ Maintenance Supervisor Carey.
(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 fences and remove debris to facilitate the tractor work. There are 151 industrial, residential and commercial parcels that have large areas of vacant ground that host seasonal weeds that could become a fire hazard. These parcels are located throughout the City.

Property owners have the option to make their own arrangements for weed and debris removal. They must get the work completed prior to the schedule set for the City's contractor. The City's contractor is scheduled to perform weed abatement work in May and June. Property owners will be asked to return a pre-paid postcard to the City indicating that they will abate their own weeds. Alameda County Fire Department staff will inspect the properties prior to the abatement of the weeds. This provides sufficient opportunity for the property owners to perform their own work. All properties that the City performs the abatement work on will be assessed the full cost of that work, including administration costs.

If necessary, an additional fall program will be scheduled to abate seasonal weeds, like tumbleweeds and re-growth of weeds that occur during the summer months. Prior to any supplemental fall weed abatement work, the City will provide written notices to the affected property owners. A second public hearing for the fall program is not required.

Attachment

Action - It is recommended that the City Council, by resolution, initiate the 2015 Weed Abatement Program and set April 9, 2015, as the date for the public hearing.

F.2 Second reading and adoption of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code, Section 17.44.010 "Zoning Map" by rezoning all that real property shown on Vesting Tentative Map 8212 (APN: 92A-775-46) from R6000 (Single Family Residential) to LDR-FBC

**(Low Density Residential-Form Based Code) – from City Clerk Harrington.
(ORDINANCE)**

Background/Discussion – On February 12, 2015, the City Council introduced an ordinance amending Title 17 (Zoning) of the Newark Municipal Code, Section 17.44.010 “Zoning Map” by rezoning all that real property shown on Vesting Tentative Map 8212 (APN: 92A-775-46) from R6000 (Single Family Residential) to LDR-FBC (Low Density Residential-Form Based Code). The zoning change is for 36120 Ruschin Drive (the former Ruschin Elementary School).

Attachment

Action –Staff recommends that the City Council adopt an ordinance amending Title 17 (Zoning) of the Newark Municipal Code, Section 17.44.010 “Zoning Map” by rezoning all that real property shown on Vesting Tentative Map 8212 (APN: 92A-775-46) from R6000 (Single Family Residential) to LDR-FBC (Low Density Residential-Form Based Code).

F.3 Approval of the 2014-2015 Pavement Maintenance Program and authorization to advertise for bids for 2015 Street Patch Paving Program, Project 1092; 2015 Street Asphalt Concrete Overlay Program, Project 1093; and 2015 Street Slurry Seal Program, Project 1094 – from Assistant City Engineer Fajeau. (MOTION)

Background/Discussion – The 2014-2016 Biennial Budget for the 2014-2015 Pavement Maintenance Program includes \$1,000,000 for this year’s patch paving, asphalt concrete overlay, and slurry seal projects. Based on the current Pavement Condition Index (PCI) determined by visual assessment of the streets in the City, staff recommends the following scope of work for these three projects.

2015 Street Patch Paving Program, Project 1092

Patch paving consists of the removal and replacement of localized pavement failures. The project includes work on streets that will be resurfaced with slurry seal. It also includes streets where a failure is too severe to correct with a surface (skin) patch, but the entire street does not need structural upgrading with an asphalt concrete overlay. This year’s work locations are shown on the attached location map. There may be additional locations requiring repair work that will be revealed as this rainy season progresses. If necessary, these locations will be added to the project before it is advertised for bids in April. The Preliminary Engineer’s Estimate for this project is \$100,000.

Staff recommends combining the 2015 Street Patch Paving Program with the 2015 Street Asphalt Concrete Overlay Program to result in better unit prices.

2015 Street Asphalt Concrete Overlay Program, Project 1093

Asphalt concrete overlays involve the placement of an additional layer of asphalt concrete on those streets showing a relatively uniform distress pattern over most of the pavement surface. This condition indicates that the pavement needs structural upgrading to

accommodate current and future traffic loads. A structural upgrade will prevent complete failure of the street pavement and avoid the very expensive process of complete reconstruction. The increased structural strength extends the life of the streets at least ten years.

The streets recommended for asphalt concrete overlay this year are shown on the attached location map. The Preliminary Engineer's Estimate for this project is \$650,000.

Bid results will be presented to the City Council in May or June 2015, with the actual work anticipated to be done in July and August 2015.

2015 Street Slurry Seal Program, Project 1094

Slurry seal is the application of a thin layer of sand, aggregate, and asphalt emulsion mixture to those streets that show surface wear and minor cracking. This surface seal is not a structural upgrade but minimizes water intrusion into the pavement base, thereby extending the life of the street. This preventative maintenance process is a cost-effective measure to prolong the life of City streets and maximize the value of previous investments. Work locations for 2015 are shown on the attached location map. The inclusion of a street in this project depends on the extent of surface wear or other distress conditions. The preliminary Engineer's Estimate for this project is \$250,000.

Bid results will be presented to the City Council in June 2015, with the actual resurfacing work to be done during August 2015.

Approval of the plans and specifications for each project will be requested at the time the bid results are presented to the City Council. As in previous years the restriping of pavement center and lane lines, crosswalks, and pavement legends will be included in the slurry seal contract. The restriping will again be an application of thermoplastic material, sprayable for striping and extruded for crosswalks and legends.

Attachment

Action - It is recommended that the City Council, by motion, approve the 2014-2015 Pavement Maintenance Program and authorize advertising for bids for 2015 Street Patch Paving Program, Project 1092; 2015 Street Asphalt Concrete Overlay Program, Project 1093; and 2015 Street Slurry Seal Program, Project 1094.

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**

- 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 with 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 pursuant to California Government Code Section 54957.6.

Action - It is recommended that the City Council hold a closed session to discuss labor negotiations with the employee groups.

- M.2 Closed session for conference with Legal Counsel on existing litigation *Henneberry v. City of Newark, et al.* United States District Court, Northern District of California Case No. C13-5238 MEJ pursuant to Section 54956.9(a) of the California Government Code: – from City Attorney Benoun.**

Background/Discussion – The City Attorney has requested a closed session to discuss existing litigation: *Henneberry v. City of Newark, et al.*; United States District Court, Northern District of California Case No. C13-5238 MEJ.

Action - It is recommended that the City Council hold a closed session to discuss the existing litigation.

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.