

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, May 14, 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:

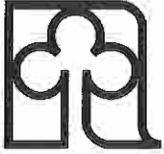
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|-------------------------------------|----------------------------|
| A. ROLL CALL | I. COUNCIL MATTERS |
| B. MINUTES | J. SUCCESSOR AGENCY |
| C. PRESENTATIONS AND PROCLAMATIONS | K. TO REDEVELOPMENT AGENCY |
| D. WRITTEN COMMUNICATIONS | L. ORAL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

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

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

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

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



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AGENDA

Thursday, May 14, 2015

- A. ROLL CALL
- B. MINUTES
 - B.1 Approval of Minutes of the regular City Council meeting of Thursday, April 23, 2015. (MOTION)
- C. PRESENTATIONS AND PROCLAMATIONS
- D. WRITTEN COMMUNICATIONS
- E. PUBLIC HEARINGS
 - E.1 Hearing to consider a request by the League of Volunteers (LOV), for P-15-11, a planned unit development, and U-15-12, a conditional use permit, to have a circus at the NewPark Mall parking lot (APNS: 901-111-20 & 21) with performances from September 3 through September 7, 2015; and authorization to waive the application fee – from Assistant City Manager Grindall. (RESOLUTION)(MOTION)

Background/Discussion – The League of Volunteers (LOV) has submitted an application to have a fund-raising circus, Circus Vargas, at the NewPark Mall parking lot with performances from September 3 (Thursday) through September 7 (Monday), 2015. Per the applicant, “Circus Vargas is a one-ring extravaganza with spectacular acts, lighting and music, all inside a tent.” The circus would have no animals. The circus location would be southwest of Burlington Coat factory, which is the same location as in previous years. Next to the main entrance to the “Big Top” tent, which is about 45 feet high, would be a food trailer (no alcoholic beverage sales). Ten 1-1/2 hour shows are requested with expected attendance between 300 and 500 per performance. Circus management provides in-house security guards and management carries cell phones in case of a 911 Emergency. The security can use cell phones to contact local law enforcement if the need exists.

The applicant, a non-profit organization, has also requested a waiver of the application fee.

The proposed project is categorically exempt from the California Environmental Quality Act per Section 15304, Class 4(e), minor temporary use of land having negligible or no permanent effects on the environment.

Attachment

Update – At its meeting of April 28, 2014, the Planning Commission approved Resolution No. 1908 with Exhibit A, pages 1 through 4, the request by LOV (League of Volunteers), for P-15-11, a planned unit development, and U-15-12, a conditional use permit, to have a circus at the NewPark Mall parking lot (APNS: 901-111-20 & 21) with performances from September 3 through September 7, 2015.

Action - It is recommended that the City Council: (1) by resolution, approve a request by the League of Volunteers (LOV) with Exhibit A pages 1 through 4, for P-15-11, a planned unit development, and U-15-12, a conditional use permit, to have a circus at the NewPark Mall parking lot (APNS: 901-111-20 & 21) with performances from September 3 through September 7, 2015; and (2) by motion, authorize a waiver of the application fee.

F. CITY MANAGER REPORTS

(It is recommended that Items F.1 through F.6 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 Second reading and adoption of two ordinances approving the rezoning of property from Limited Industrial to Medium Density Residential – Form Based Codes for the Trumark Dumbarton Transit Oriented Development Residential Project– from City Clerk Harrington. (ORDINANCES-2)**

Background/Discussion – On April 23, 2015, the City Council introduced two ordinances related to the Trumark Dumbarton Transit Oriented Development Residential Project.

Introduction of an ordinance amending Title 17, Section 17.44.010 of the Newark Municipal Code being the City Of Newark Zoning Ordinance by changing the zoning of a specified area in the City Of Newark from ML (Limited Industrial) To MDR-FBC (Medium Density Residential –Form Based Codes) for the development of 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.

AND

Introduction 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 the Vesting Tentative Map 8098 From ML (Limited Industrial) To MDR-FBC (Medium Density Residential – Form Based Codes) for the development of 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.

Attachment

Action - It is recommended that the City Council adopt two ordinances: 1) amending Title 17, Section 17.44.010 of the Newark Municipal Code being the City of Newark Zoning Ordinance by changing the zoning of a specified area in the City Of Newark from ML (Limited Industrial) To MDR-FBC (Medium Density Residential – Form Based Codes) and; 2) amending Title 17 (Zoning) of the Newark Municipal Code Section 17.44.010 “Zoning Map” by rezoning all that real property shown on the Vesting Tentative Map 8098 From ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes)

F.2 Authorization for the City Manager, or Designee, to Sign a Tolling and Relocation Agreement with Gallade Enterprises, LLC and to Review and Comment on Gallade Enterprises’ Proposed Allocation of Relocation Expenses – from City Attorney Benoun and Assistant City Manager Grindall. (RESOLUTION)

Background/Discussion – At the meeting held on April 23, 2015, the Council gave preliminary approvals for Trumark Homes to develop up to 27 residential homes on a 2.14 acre site (Enterprise Property), as well as to develop up to 217 residential homes on a 21.4 acre site (Jones Hamilton). A Tolling and Relocation Agreement (“Agreement”) would further implement both projects. Generally speaking, the Agreement has two primary components: (i) the Tolling of the Statute of Limitations and Gallade Enterprises’ waiver of litigation against the City; and (ii) authorizing the City to review and comment on Gallade Enterprises’ relocation expenses.

Approvals for the project require the developer to acquire and demolish the Gallade property and to construct a park on the site currently owned and occupied by Gallade Enterprises. With respect to the tolling and waiver aspect, the Agreement provides that in the event the developer purchases the Gallade site, Gallade forever waives any and all causes of actions and claims against the City related to the project approvals. In the meantime, the statute of limitations for any potential causes of action challenging the project approvals would be tolled from now and until the close of escrow. Gallade has agreed to not file any litigation during this tolling period, pending the close of escrow

on its sale to Trumark, and upon close of escrow to permanently waive any claims against the City.

In regards to the relocation aspect of the Agreement, paragraph 2 obligates Gallade to submit to the City by December 15, 2015, a series of documents, including estimates of reasonable costs of relocating Gallade's personal property, a spreadsheet indicating the appraised fair market value of the personal property, and declarations by Gallade personnel attesting to the costs of transportation of persons and property. The City would then have seven days to review and comment on the expenses. None of the above expenses would be paid for by the City – rather the monies would be paid by the developer as part of the purchase fees toward the acquisition of the Gallade site.

In light of the limited timeframe to review and comment on the proposed allocation of relocation expenses and the fact that no monies are paid by the City in connection with this transaction, staff recommends that the City Council grant the authority to the City Manager, or designee, to review and comment on the relocation expenses under paragraph 2 of the Agreement.

Attachment

Action - It is recommended that the City Council adopt a Resolution authorizing the City Manager to sign a Tolling and Relocation Agreement with Gallade Enterprises, LLC, and to review and comment on Gallade Enterprises' proposed allocation of relocation expenses.

F.3 Ordinance to Commit Funds for Managing Waste and Recycling – Administrative Services Director Woodstock (INTRODUCTION OF AN ORDINANCE)

Background/Discussion – In 2011, the Governmental Accounting Standards Board (GASB) enacted and the City complied with GASB Statement 54 to enhance the usefulness of fund balance information in financial reporting. The statement established the classifications to be used in reporting of fund balance as non-spendable, restricted, assigned, unassigned and committed. The first four categories relate directly to old classifications, the new titles were intended to provide a more intuitive description. The committed classification was introduced with GASB 54. The committed classification allows the City Council to obligate funds for a certain purpose perpetually. A Council action is required to un-commit the funds.

While implementing GASB 54, it was determined that the funds in the Waste Augmentation Fund, Fund 023, did not qualify as restricted even though these funds were collected in relation to the garage service rates. The Waste Augmentation Fund is intended to be used to manage waste and recycling contracts, ensure compliance with waste related regulations and other activities related to the City's obligations for waste and recycling. The action to define these funds for that specific use is to commit

them. At the end of this fiscal year there will be approximately \$600,000 remaining in the Waste Augmentation Fund.

Attachment

Action - It is recommended that the City Council, by ordinance, commit funds for managing waste and recycling.

F.4 Authorization for the City Manager to sign a Measure BB Master Programs Funding Agreement between the Alameda County Transportation Commission and the City of Newark – from Assistant City Engineer Fajeau. (RESOLUTION)

Background/Discussion – On November 4, 2014, Alameda County voters approved Measure BB, the 2014 Transportation Expenditure Plan (TEP), authorizing the extension of the existing transportation sales tax and augmenting it by one-half percent to fund transportation projects and programs. Direct distributions to local fund recipients, including the City of Newark, account for 53.55% of the total Measure BB net revenues. The first direct local distribution payments are expected in June or July of 2015 after the Alameda County Transportation Commission (Alameda CTC) receives the first revenues from the Board of Equalization. In order to receive the Measure BB direct local distribution funds, the voter-approved TEP requires each recipient to enter into a Master Programs Funding Agreement with the Alameda CTC.

The Alameda CTC approved a draft Master Programs Funding Agreement on February 26, 2015. This is intended as an initial master agreement to authorize disbursement of the direct local distribution Measure BB funding collected between April 1, 2015 and June 30, 2016. This initial period will allow Alameda CTC staff sufficient time to develop the necessary policies and procedures for long term implementation of Measure BB funds. Similar to Measure B, investment categories for the Measure BB direct local distribution funding include Local Streets and Roads, Paratransit, and Bicycle and Pedestrian Infrastructure and Safety. The projected Measure BB combined revenues for the City of Newark in all three investment categories are \$141,000 for the final quarter of fiscal year 2015-16 and \$646,000 for fiscal year 2016-17.

Attachment

Action - It is recommended that the City Council, by resolution, authorize the City Manager to sign a Measure BB Master Programs Funding Agreement between the Alameda County Transportation Commission and the City of Newark

F.5 Acceptance of work with Chrisp Company for 2012-2013 Citywide Thermoplastic Street Striping, Project 1036 – from Associate Civil Engineer Tran. (RESOLUTION)

Background/Discussion – On September 18, 2013, the Public Works Director signed the first one-year renewal with Chrisp Company for 2012-2013 Citywide Thermoplastic Street Striping, Project 1036. This project installed thermoplastic striping and markings, and replaced missing or damaged pavement markers throughout the City. All the work is now complete within the project budget.

Attachment

Action - It is recommended that the City Council, by resolution, accept the work with Chrisp Company for 2012-2013 Citywide Thermoplastic Street Striping, Project 1036.

F.6 Acceptance of work with Rosas Brothers Construction for 2014 Curb, Gutter and Sidewalk Replacement, Project 1065 – from Assistant City Engineer Fajeau. (RESOLUTION)

Background/Discussion – On April 11, 2013, the City Council authorized award of a contract to Rosas Brothers Construction for the 2013 Curb, Gutter, and Sidewalk Replacement, Project 1042 with options to renew annually for up to three additional years. On July 16, 2014, the Public Works Director, as authorized under the original project specifications, exercised renewal of the contract with Rosas Brothers Construction for the 2014 Curb, Gutter and Sidewalk Replacement, Project 1065. The scope of work included replacement of damaged curb and gutter, damaged sidewalk, and other concrete repairs on a Citywide basis. All work on this project is now complete.

Attachment

Action - It is recommended that the City Council, by resolution, accept the work with Rosas Brothers Construction 2014 Curb, Gutter, and Sidewalk Replacement, Project 1065.

NONCONSENT

F.7 Award of contract to SoftResources, LLC to provide Integrated Financial Information System Consulting Services and authorize the City Manager to sign an amendment to implement Phase 3 of the scope of work – from Administrative Services Director Woodstock. (RESOLUTION)

Background/Discussion – On March 10, 2015, Staff issued a Request for Proposals (RFP) for professional services to assist with an assessment of the existing finance

system and to provide assistance with upgrading or replacing the existing system. The existing financial system is over twenty years old, has limited customer service agents that can provide support and is not user friendly to most users outside of the Finance Department. There are a large number of vendors that offer government financial systems with an assortment of modules and functions and the costs can range from \$25,000 to \$1.5 million. The professional services proposed will provide the knowledge of how more modern systems operate and evaluate our functions relative to those systems to find the product that is appropriate for our needs. These professional services must be independent from all financial system vendors. Their assessment and recommendations will be based on our needs and their knowledge of the financial system industry.

Staff received proposals from four consultants, reviewed and rated the proposals and interviewed three consultants. Based on the proposal evaluations and the interviews, Staff rated SoftResources, LLC as the most qualified for this project. SoftResources has performed similar services for multiple other clients and demonstrated an understanding of the assessment techniques and assistance required for this project.

Phase 1 of the project is the assessment of the existing system and needs. This will result in a report that will provide recommendations on whether we should upgrade our existing system or issue an RFP to procure a new system. Phase 1 will cost \$42,813. Phase 2 deliverables will depend upon the recommendation in Phase 1. This phase will cost either \$28,223 or \$52,087. Phase 3 is assistance with implementation and transition to the new software. The scope of this phase depends on the system selected and the cost will be negotiated based on the needed assistance. The not to exceed cost of the contract of \$250,000 includes an estimate for Phase 3. It is recommended to authorize the City Manager to sign an amendment to implement Phase 3 as long as the negotiated costs stay within the not to exceed amount of the contract.

It is expected to take up to two years to fully transition to a new system. The 2014-2016 Biennial Budget includes \$1,250,000 for replacement of the financial system which included this professional service.

Attachments

Action - It is recommended that the City Council, by resolution, award a contract to SoftResources, LLC to provide Integrated Financial Information System Consulting Services and authorize the City Manager to sign an amendment to implement Phase 3 of the scope of work.

G. CITY ATTORNEY REPORTS**G.1 Claims of Moises Torres, Allstate Insurance Company, James McThorn, and Luis Torres – from Deputy City Clerk Slafter. (MOTION)**

Background/Discussion – The City received the following four claims alleging damage to property as a result of a large City tree that fell on December 30, 2014. The names of the claimants, the requested amounts, and their respective date of submittals are as follows:

- Moises Torres in the amount of \$8,450, received on January 7, 2015;
- Allstate Insurance Company as subrogee of Augstin Borjon in the amount of \$78,551.78, received February 2, 2015;
- James McThorn in the amount of \$13,408.33, received on February 10, 2015; and
- Luis Torres in the amount of \$8,450, received March 10, 2015.

These claims total \$108,860.11.

The claims and all relevant information were forwarded to ABAG Plan, the City's insurance administrator, who recommends that they 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 Leroy and Diane Higgins – from Deputy City Clerk Slafter. (MOTION)

Background/Discussion – On December 1, 2014, the City received a claim from Leroy and Diane Higgins in the amount of \$400 alleging damages when a large section of a City tree fell on their backyard fence.

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.3 Claim of 21st Century Insurance – from Deputy City Clerk Slafter. (MOTION)

Background/Discussion – On February 9, 2015, 21st Century Insurance as subrogee of Edward Lyden submitted a claim for \$11,128 alleging damages when a City tree branch fell on his vehicle.

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.4 Claim of Richard Brower – from Deputy City Clerk Slafter. (MOTION)

Background/Discussion – On January 20, 2015, the City received a claim from Richard Brower in the amount of \$450 alleging damages to sewer line from City tree roots.

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

Approval of Audited Demands for the City Council meeting of May 14, 2015. (MOTION)

M. CLOSED SESSION

N. ADJOURNMENT

Pursuant to Government Code 54957.5: Supplemental materials distributed less than 72 hours before this meeting, to a majority of the City Council, will be made available for public inspection at this meeting and at the City Clerk's Office located at 37101 Newark Boulevard, 5th Floor, during normal business hours. Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection.

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