CITY OF NEWARK
CITY COUNCIL

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

AGENDA

Thursday, January 9, 2014

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

CITY COUNCIL:

Alan L. Nagy, Mayor

Ana M. Apodaca, Vice Mayor

Luis L. Freitas

Sucy Collazo

Robert Marshall

CITY STAFF:

John Becker
City Manager

Terrence Grindall
Assistant City Manager

Susie Woodstock
Administrative Services Director

Sandy Abe
Human Resources Director

Peggy A. Claassen
Public Works Director

Jim Leal
Police Chief

David Zehnder
Recreation and Community Services Director

David J. Benoun
City Attorney

Sheila Harrington
City Clerk

Welcome to the Newark City Council meeting. The following information will help you understand the City Council Agenda and what occurs during a City Council meeting. Your participation in your City government is encouraged, and we hope this information will enable you to become more involved. The Order of Business for Council meetings is as follows:

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

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.

City Council Members act as Board Members of the ***Economic Development Corporation.*** When there is business to discuss, the Council will adjourn and then reconvene as the Economic Development Corporation. When the City Council acts as the ***Successor Agency to the Redevelopment Agency***, it is winding up the former Redevelopment Agency's obligations.

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 state your name 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 will be either referred to staff or placed on a future Council agenda.

City Council meetings are cablecast live on government access channel 26 and streamed at http://newarkca.pegsteam.com.
Agendas are posted pursuant to Government Code Section 54954.2. Supporting materials are available at the Newark Library, in the City Clerk's office or at www.newark.org on the Monday preceding the meeting. For those persons requiring hearing assistance, or other special accommodations, please contact the City Clerk two days prior to the meeting.

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

AGENDA

Thursday, January 9, 2014

A. ROLL CALL

B. MINUTES

B.1 Approval of Minutes of the regular City Council meeting of Thursday, December 12, 2013. (MOTION)

C. PRESENTATIONS AND PROCLAMATIONS

C.1 Introduction of Assistant City Manager Grindall.

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

E.1 Hearing to consider an extension of a conditional use permit (U-07-32) and planned unit development (P-07-33) for the continued operation of a farmers' market (Agricultural Institute of Marin) in the NewPark Mall parking lot, (NewPark Mall is bounded, generally, to the north by Mowry Avenue, to the west by Cedar Boulevard, to the south by Balentine Drive, and to the east by Interstate 880 [Nimitz Freeway]) and authorization to waive the application fee – from Assistant Planner Jimenez. (MOTIONS-2)

F. CITY MANAGER REPORTS

(It is recommended that Item F.1 be acted on 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 an Ordinance to amend the contract between the Board of Administration of the California Public Employees Retirement System and the City Council of the City of Newark to provide Section 20516 (Employees Sharing Additional Cost) of 3.468% for new

local miscellaneous members and 1.5% for new local safety members – from City Clerk Harrington. (ORDINANCE)

G. CITY ATTORNEY REPORTS

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

I.1 Reappointment of William Spinola to the Alameda County Mosquito Abatement District – from Mayor Nagy. (RESOLUTION)

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

K. ORAL COMMUNICATIONS

L. APPROPRIATIONS

M. CLOSED SESSIONS

M.1 Closed session for conference with Legal Counsel on existing litigation pursuant to Section 54956.9(a) of the California Government Code: Mendoza v. City of Newark, et al., Alameda County Superior Court Case No. RG13664482 – from City Attorney Benoun.

M.2 Closed session pursuant to Government Code Section 54957
Public Employee Performance Evaluation
Title: City Manager.

M.3 Closed session pursuant to Government Code Section 54957.6
Conference with Labor Negotiator
Agency Negotiator: Mayor Alan L. Nagy
Unrepresented Employee: City Manager.

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.

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Minutes **Thursday, December 12, 2013**

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

A. ROLL CALL

Mayor Nagy called the meeting to order at 7:30 p.m. Present were Council Members Collazo, Freitas, Marshall, and Vice Mayor Apodaca.

B. MINUTES

B.1 Approval of Minutes of the regular City Council meeting of Thursday, November 14, 2013.

Council Member Freitas moved, Council Member Marshall seconded, to approve the Minutes of the regular City Council meeting. The motion passed, 5 AYES.

C. PRESENTATIONS AND PROCLAMATIONS

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

E.1 Public Hearing on the General Plan Update and Environmental Impact Report; approval of resolutions 1) certifying the Program Environmental Impact Report for the General Plan Tune Up, and 2) approving General Plan Amendment GP-13-21 General Plan Update.

RESOLUTION NO. 10145
RESOLUTION NO. 10146

Community Development Director Grindall gave a brief history of the meetings and work over the last two years that have led to this presentation.

Barry Miller highlighted the changes made to the General Plan Update as a result of input received from various sources.

Andrew Hill discussed the Draft Environmental Impact Report and the project alternatives that were considered.

Community Development Director Grindall reviewed the previously approved Area 3 and 4 Specific Plan which will be incorporated into the General Plan Update.

Mayor Nagy opened the public hearing at 8:15 p.m.

Dan Ondrasek, Friends of Coyote Hills, requested that the City Council opt for the Restricted Growth Alternative. He stated that facts and realities of the General Plan have changed since 1992. He noted that the BCDC predicts sea level rising and the City could be liable if homes were destroyed in floods. There was no guarantee that a school would be built and that there was no money in golf.

Carin High, Citizens Committee to Complete the Refuge, stated that an update should be completed, not a tune up. The plan is clinging to a 1990s vision and times have changed. Golf courses are being repurposed. Area 4 not appropriate for development, the area should be preserved for its restoration potential. (Letter on file with the City Clerk).

Paul Rea stated he agreed with the previous speakers. He stated that the Plan did not address water shortages, the vulnerability of the wetlands, climate change nor the salt ponds. He stated that the plan is out of date and that the City needed new ways of thinking.

Wynn Grcich stated that the Alameda County Water District has to buy extra water for storage in anticipation of a drought. She did not think the golf course would happen and questioned Cargill's environmental record citing past brine spills.

Josh Sonnenfield, Save the Bay, stated that the development of the Bay shoreline was a regional issue. Area 4 is historic baylands that could be restored and expanded into the Don Edwards National Wildlife Refuge. Area 4 is in a hundred year floodzone and provides a habitat for existing species. He stated that State and Federal regulatory agencies have not stated they will provide permits.

Margaret Lewis requested that the City Council take no action because she did not believe that there was enough information on the City website, that she had difficulty obtaining documents and because she did not know how to obtain the case law cited in the Master Response. (Letter on file with the City Clerk).

Lenore Marcello stated that the Memorandum of Understanding between the City and Newark Partners, LLC allows the Partners to build homes if they build a golf course. She thought that Newark Partners land value would increase with the approval of the General Plan Update. She stated that it appeared to be "backscratching" between developers and politicians. She requested that the City Council reject the Plan and designate Area 4 for public access and habitat restoration.

John Bradley stated he agreed with the previous speakers and did not want Area 4 developed with what has been proposed. He stated the direct and indirect impacts to Area 4 needed to reviewed and preferred the restricted growth alternative.

Gregg Scott stated the 1992 General Plan was flawed, lacked vision, and was shortsighted from a regional perspective. He cited the retail flight as an example. He stated that sea level rise will be felt locally. He stated it will take decades to mitigate the toxics near the Torian property.

Richard Dominguez stated that his home was built on wetlands and he would not have a home in Newark if the City planning had been restricted at that time. He stated the City did not need a golf course, but needed more housing.

Martin Doyle cited a case where housing was built below the Sacramento River line. FEMA remapped the area resulting in mandatory flood insurance for the homeowners. Taxes in that city were raised twice to repair the area. He didn't think building in Area 4 made sense and that sea level rising could cause a similar situation in Newark.

Jana Sokale stated that much of the General Plan is infeasible and will hurt the City financially. Numerous regulatory agencies have indicated that the plan is inadequate to support the permits necessary for the projects in the Plan. She stated they took the City to court over Areas 3 and 4 Plan to allow the City more time to reconsider the actions taken relative to Area 4.

Mary Alice Bonilla, Joaquin Murietta, questioned if the City could afford the infrastructure expenditures associated with an increase in the population projected in the Plan. She stated that there is a direct correlation between the quality of the community and the ratio of open space to population. She did not see sufficient open space for the projected population increase.

John Olenchalk stated that he is an industrial/commercial real estate broker who represents BioMed Realty Trust, owner of the Pacific Research Center. He stated that workers are looking for executive homes, parks/open space and school improvements. He encouraged the adoption of the General Plan Update.

Paul Shephard, Cargill stated that he reviewed the General Plan Update and it carefully balanced land use in the City. He encouraged the City Council to adopt the General Plan Update.

Mayor Nagy closed the public hearing at 9:19 p.m.

Council Member Marshall moved, Council Member Collazo seconded, by resolution, to certify an Environmental Impact Report for the Newark General Plan, including a Statement of Overriding Considerations and the approval of a Mitigation Monitoring and Reporting Program. The motion passed, 5 AYES.

Council Member Marshall moved, Council Member Collazo seconded, by resolution, to approve the General Plan Update GP-13-21 with the exception of the Housing Element. The motion passed, 5 AYES.

Mayor Nagy called a recess at 9:30 p.m. The meeting reconvened at 9:42 p.m.

F. CITY MANAGER REPORTS

Council Member Collazo moved, Council Member Marshall seconded, to approve Consent Calendar Items F.1 through F.9, that the resolutions be numbered consecutively, and that reading of the titles suffice for adoption of the resolutions. The motion passed, 5 AYES.

CONSENT

F.1 Approval of the Project Specific Funding Agreement with Alameda County Transportation Commission for the Preliminary Engineering/Environmental, and the Final Design (Plan, Specification and Estimate) Phases of the Central Avenue Overpass, Project 1014.
RESOLUTION NO. 10147
CONTRACT NO. 130138

F.2 Cancellation of the December 26, 2013, City Council meeting.
MOTION APPROVED

F.3 Acceptance of work with G. Bortolotto & Company, Inc. for 2013 Asphalt Concrete Street Overlay Program, Project 1040. RESOLUTION NO. 10148

F.4 Amendment to Resolution No. 2505, Employee Classification Plan, to revise the Information Systems Specialist classification.
RESOLUTION NO. 10149

F.5 Approval of Side Letter Agreements with the Newark Police Association and the Newark Association of Miscellaneous Employees, and Side Letters to the Compensation and Benefit Plans for Confidential Employees, and City Officials, Management, Supervisory, and Professional Employees to provide additional compensation for health care expenses. **RESOLUTION NO. 10150**

F.6 Acceptance of the Annual Report on Newark Development Impact Fees for Fiscal Year 2012-2013 in accordance with Government Code Section 66006(b). **MOTION APPROVED**

F.7 Approval of plans and specifications, acceptance of bid and award of contract to Pacheco Brothers Gardening, Inc., for Jerry Raber Ash Street Park Turf Renovation, Project 1067.
MOTION APPROVED
RESOLUTION NO. 10151
CONTRACT NO. 13039

F.8 Authorization for Conditional Payment to BLT Enterprises, Authorization for City Manager to sign interim agreement and approval of amendment to the 2012-2014 Biennial Budget for Fiscal Year 2013-2014.
RESOLUTION NO. 10152

F.9 Approval of purchase of body worn camera system from Vievu LLC for the Police Department
RESOLUTION NO. 10153

NONCONSENT

F.10 Approval of an Affordable Housing Implementation Agreement with Trumark Development to provide for alternative compliance with the Inclusionary Housing Ordinance for the Timber Street Project (TTM-13-15, P-08-11 and U-08-10).
RESOLUTION NO. 10154
CONTRACT NO. 13040

Community Development Director Grindall stated that the approved Timber Street project included a condition that the project would comply with the City's Inclusionary Housing Ordinance. The ordinance requires developers to restrict the sale price of housing on 15% of the units produced. He proposed that the developer pay an affordable housing fee of $25,000 per unit as an alternative means of compliance with the ordinance. The City would receive $4.1 million dollars towards the development or preservation of affordable housing.

Council Member Freitas moved, Council Member Marshall seconded, by resolution, to approve an alternative means of compliance with the Inclusionary Housing Ordinance for the Timber Street Project and make findings related to the use of an alternative means of compliance. The motion passed, 5 AYES.

F.11 Approval of a Contractual Services Agreement with Keyser Marston Associates Inc. to conduct a Residential Nexus Study, prepare documentation for an Affordable Housing Impact Fee Ordinance, provide other supportive services and amending the 2012-14 Biennial Budget for this expenditure.
RESOLUTION NO. 10155
CONTRACT NO. 13041

Community Development Director Grindall stated that the Inclusionary Housing Program requires a percentage of housing units that are developed be price restricted and reserved for lower income households. There are a number of issues with

inclusionary housing programs and he recommended that the program be replaced with an Affordable Housing Impact Fee.

He recommended that Keyser Marston Inc. conduct a study to determine the nexus between the fee and the impact. After the study is completed, the City Council would decide if the impact fee would be adopted.

Vice Mayor Apodaca moved, Council Member Collazo seconded, by resolution, to authorize the Mayor to sign a Contractual Services Agreement with Keyser Marston Associates Inc. to conduct a Residential Nexus and amending the 2012-2014 Biennial Budget for this expenditure. The motion passed, 5 AYES.

F.12 Adoption of an Urgency Ordinance and first reading of an Ordinance to amend the contract between the Board of Administration of the California Public Employees Retirement System and the City Council of the City of Newark to provide Section 20516 (Employees Sharing Additional Cost) of 3.468% for new local miscellaneous members and 1.5% for new local safety members.

URGENCY ORDINANCE NO. 472-U
ORDINANCE INTRODUCED

Human Resources Director Abe stated that this action would amend the contract with the California Public Employees Retirement System (CalPERS) to provide for Section 20516 (Employees Sharing Additional Cost) of 3.468% for new local miscellaneous members and 1.5% for new local safety members. An urgency ordinance is needed for the timely reporting of employee retirement contributions to employee accounts.

Council Member Freitas moved, Council Member Collazo seconded to 1) adopt an urgency ordinance to amend the contract between the Board of Administration of the California Public Employees Retirement System (CalPERS) and the City Council of the City of Newark to provide Section 20516 (Employees Sharing Additional Cost) of 3.468% for new local miscellaneous members and 1.5% for new local safety members; and 2) introduce an ordinance to amend the contract between the Board of Administration of the California Public Employees Retirement System (CalPERS) and the City Council of the City of Newark to provide Section 20516 (Employees Sharing Additional Cost) of 3.468% for new local miscellaneous members and 1.5% for new local safety members. The motion passed, 5 AYES.

G. CITY ATTORNEY REPORTS

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

I.1 Appointment of Mayor Pro Tempore; authorization for the Mayor Pro Tempore to sign and endorse checks, warrants, and other instruments; and appointments to agencies, boards, commissions, and committees.

MOTION APPROVED MAYOR PRO TEM
RESOLUTION NO. 10156 SIGN AND ENDORSE
RESOLUTION NO. 10157 APPOINTMENTS

Council Member Freitas moved, Council Member Marshall seconded, to re-appoint Council Member Apodaca as Mayor Pro Tempore. The motion passed, 5 AYES.

Council Member Freitas moved, Council Member Marshall seconded, by resolution, to authorize the Mayor and Mayor Pro Tempore to sign and endorse checks, warrants, and other instruments. The motion passed, 5 AYES.

Mayor Nagy announced that he would replace Vice Mayor Apodaca on the Dumbarton Rail Policy Advisory Committee. The City Council assignments are as follows:

Alameda County Fire Advisory Commission	Council Members Apodaca and Collazo – delegate and alternate
Alameda County Library Advisory Commission	Council Members Collazo and Mayor Nagy – delegate and alternate
Alameda-Contra Costa Transit District Policy Advisory Committee	Council Members Marshall and Apodaca – delegates
Alameda County Transportation Commission	Council Members Freitas and Collazo – delegate and alternate
Alameda County Waste Management Authority Board/Stopwaste.org	Council Members Freitas and Marshall – delegate and alternate
Association of Bay Area Governments (ABAG)	Council Member Apodaca and Mayor Nagy – delegate and alternate
Community Development Advisory Committee	Mayor Nagy and Council Member Freitas – delegates
Dumbarton Rail Policy Advisory Committee	Mayor Nagy and Freitas – delegate and alternate
Newark City Council –Board of Education Joint Task Force on Youth Issues	Council Members Apodaca and Collazo – delegates

Political Action Council/Senior Action Plan	Mayor Nagy delegate
Senior Citizen Standing Advisory Committee	Mayor Nagy delegate and chairperson
Sister Cities Advisory Committee	Council Member Marshall and Mayor Nagy – chairperson and vice chairperson
Southern Alameda County Geographic Information System Authority	Mayor Nagy delegate
Tri-City Waste Facility Financing Authority	Mayor Nagy and Council Member Freitas – delegates

Council Member Freitas moved, Vice Mayor Apodaca seconded, by resolution, to approve appointments to the various agencies, boards, commissions, and committees. The motion passed, 5 AYES.

I.2 Reappointment of Bernie Nillo to the Planning Commission and declaration of a vacancy. RESOLUTION NO. 10158 MOTION APPROVED

Mayor Nagy recommended a four year reappointment for Planning Commissioner Bernie Nillo. He stated that a vacancy needed to be declared on the Planning Commission due to the resignation of Theresa Ballard Dias.

Vice Mayor Apodaca moved, Council Member Freitas seconded, by resolution, to approve the reappointment of Bernie Nillo to the Newark Planning Commission, for a term to expire on December 31, 2017 and by motion declare a vacancy on the Planning Commission and direct the City Clerk to post a vacancy notice. The motion passed, 5 AYES.

I.3 Approval of appointment of Planning Commissioner Hannon to the Community Development Advisory Committee. RESOLUTION NO. 10159

Mayor Nagy recommended appointing Planning Commission Michael Hannon to the Planning Commission seat on the CDAC recently vacated by Theresa Ballard Dias.

Council Member Freitas moved, Council Member Marshall seconded, by resolution, to appoint Planning Commissioner Michael Hannon to the Community Development Advisory Committee. The motion passed, 5 AYES.

I.4 Approval of the 2014 Local Appointments List. MOTIONS(3) APPROVED

City Clerk Harrington announced the local appointments that would expire in the next calendar year.

Council Member Freitas moved, Council Member Marshall seconded to, by motions: (1) approve the 2014 Local Appointments List, (2) designate the Newark Public Library as the library to receive a copy of the list, and (3) direct staff to post the Local Appointments List. The motion passed, 5 AYES.

I.5 Vice Mayor Apodaca stated that open enrollment for health insurance through the Affordable Care Act runs through March 1, 2014. She noted that insurance applications need to be submitted by December 23 for people who wanted to be covered beginning on January 1, 2014

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

K. ORAL COMMUNICATIONS

K.1 Mary Alice Bonilla, NewPark Village Townhome Association, stated that the Republic Waste contract would result in an additional $23,000 charge for the bins to be pulled and pushed on pick up days.

City Manager Becker stated that staff was aware of the issue and would make sure it was resolved. Mayor Nagy requested that staff follow up with Ms. Bonilla.

K.2 Wynn Grcich stated there was an outburst in the audience earlier in the meeting and the City needed to escort out people who caused fear in the audience. She stated the additives in drinking water were poisonous. She noted that the Alameda County Water District will be raising rates and spending $25 million on a fish ladder.

K.3 John Henneberry discussed the Utility User Tax. He requested that Council Member Marshall resign and Police Officer Neithercutt should be fired.

K.4 Eric Royce stated that he too had issues with Republic Waste that were recently resolved. He suggested having a truck stop rest area in the Tri-cities. He stated that he would like a race track built in the City instead of a golf course.

L. APPROPRIATIONS

City Clerk Harrington read the Register of Audited Demands: Check numbers 099915 to 100183.

Council Member Freitas moved, Council Member Marshall seconded, to approve the Register of Audited Demands. The motion passed, 5 AYES.

M. CLOSED SESSION

N. ADJOURNMENT

At 10:33 p.m., Mayor Nagy adjourned the meeting.

C.1 Introduction of Assistant City Manager Grindall.

Background/Discussion – Newly promoted Assistant City Manager Terrence Grindall will be at the meeting to be recognized by the City Council.

E.1 Hearing to consider an extension of a conditional use permit (U-07-32) and planned unit development (P-07-33) for the continued operation of a farmers' market (Agricultural Institute of Marin) in the NewPark Mall parking lot, (NewPark Mall is bounded, generally, to the north by Mowry Avenue, to the west by Cedar Boulevard, to the south by Balentine Drive, and to the east by Interstate 880 [Nimitz Freeway]) and authorization to waive the application fee – from Assistant Planner Jimenez. (MOTIONS-2)

Background/Discussion – Agricultural Institute of Marin has submitted a request to allow for the continued operation of a farmers' market in the NewPark Mall parking lot. The City Council, on the recommendation of the Planning Commission, originally approved a conditional use permit (CUP) and a planned unit development (PUD) for the weekly farmers' market located in the westerly portion of the mall parking lot between Sear's and Macy's in 2007. The farmers' market is open every Sunday, rain or shine, from 9:00 a.m. to 1:00 p.m.

The initial approval was for a one-year time period, however, on three occasions – 2009, 2010 and 2011 – the Council, on the recommendation of the Planning Commission, approved one-year extensions of the CUP and PUD for the farmers' market to continue operating. Because there were no reported problems after three years of operation, the City Council approved a two-year extension for the farmers' market in 2012. As the applicant would like to continue having the farmers' market here, a fifth extension request has been filed. City departments and divisions involved in the development review process do not object to granting another extension. Further, as mentioned above, staff has not received any negative feedback from the community regarding the farmers' market. Staff, thus, recommends the applicant's extension request be approved for a four-year time period as this would allow the City to again ensure the market is compatible with the mall and not conflict with possible future changes to the mall. The applicant, a nonprofit organization, has also requested a fee waiver.

Environmental Review

The continued operation of the farmers' market is categorically exempt from the California Environmental Quality Act per Section 15301, Class 1, operation of existing private structures involving negligible or no expansion of use beyond that existing.

Attachment

Update – At its meeting of December 10, 2013, the Planning Commission approved Resolution No. 1855 with Exhibit C, pages 1 through 4, for an extension of a conditional use permit (U-07-32) and planned unit development (P-07-33) for the continued operation of a farmers' market (Agricultural Institute of Marin) in the NewPark Mall parking lot (NewPark Mall is bounded, generally to the north by Mowry Avenue, to the west by Cedar Boulevard, to the south by Balentine Drive, and to the east by Interstate 880 [Nimitz Freeway]).

Action – It is recommended that the City Council, by motions: (1) approve Resolution No. 1855 with Exhibit C, pages 1 through 4, for an extension of a conditional use permit (U-07-32) and planned

unit development (P-07-33) for the continued operation of a farmers' market (Agricultural Institute of Marin) in the NewPark Mall parking lot (NewPark Mall is bounded, generally to the north by Mowry Avenue, to the west by Cedar Boulevard, to the south by Balentine Drive, and to the east by Interstate 880 [Nimitz Freeway]) and (2) authorize a waiver of the application fee.

RESOLUTION NO. 1855

RESOLUTION APPROVING AN EXTENSION OF A CONDITIONAL USE PERMIT (U-07-32) AND A PLANNED UNIT DEVELOPMENT (P-07-33) FOR THE CONTINUED OPERATION OF A FARMERS' MARKET (AGRICULTURAL INSTITUTE OF MARIN) IN THE NEWPARK MALL PARKING LOT (NEWPARK MALL IS BOUNDED, GENERALLY, TO THE NORTH BY MOWRY AVENUE, TO THE WEST BY CEDAR BOULEVARD, TO THE SOUTH BY BALENTINE DRIVE, AND TO THE EAST BY INTERSTATE 880 [NIMITZ FREEWAY])

WHEREAS, Agricultural Institute of Marin has filed with the Planning Commission of the City of Newark application for an extension of a conditional use permit (U-07-32) and a planned unit development (P-07-33) for the continued operation of a farmers' market in the NewPark Mall parking lot (NewPark Mall is bounded, generally, to the north by Mowry Avenue, to the west by Cedar Boulevard, to the south by Balentine Drive, and to the east by Interstate 880 [Nimitz Freeway]); and

PURSUANT to Municipal Code Section 17.72.060, a public hearing notice was published in The Argus on November 29, 2013, and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on December 10, 2013 at the City Administration Building, 37101 Newark Boulevard, Newark, California; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby approve this application as shown on Exhibit C, pages 1 through 4, subject to compliance with the following conditions:

Planning Division

a. This project is subject to the conditions of Planning Commission Resolution Nos. 1706, 1743, 1772, 1800 and 1822, unless otherwise amended herein.

b. This extension of a conditional use permit and planned unit development shall expire four (4) years from the date of City Council approval unless otherwise extended by the Planning Commission and City Council. In conjunction with any future extension(s), the City Council shall have the right, as it sees fit, to add, delete, or modify the conditions of approval. The developer shall pay the prevailing fee for any future extension(s).

Should the developer desire another extension, the application requesting the extension shall be submitted no later than 46 months following this extension approval by the City Council to provide staff sufficient time to process another extension.

c. At the discretion of the Community Development Director, this extension of a conditional use permit and planned unit development shall be returned to the Planning Commission and City Council if sufficient complaints, as determined by the Community Development Director, are received regarding this operation. The City Council shall have the right, as it sees fit, and at the conclusion of its review, to add, delete, or modify the conditions of approval. The developer shall pay the prevailing fee for this review.

d. The Community Development Director shall have the discretion to initiate revocation of this extension of a conditional use permit and planned unit development in accordance with the provisions of the zoning ordinance if sufficient complaints, as determined by the Community Development Director, are received regarding this operation.

e. This extension of a conditional use permit and planned unit development shall be subject to review before the Planning Commission and City Council if the NewPark Mall is redeveloped in the future.

General

f. If any condition of this extension of a conditional use permit and a planned unit development be declared invalid or unenforceable by a court of competent jurisdiction, this extension of a conditional use permit and a planned unit development shall terminate and be of no force and effect, at the election of the City Council on motion.

g. This extension of a conditional use permit and a planned unit development shall be given a public hearing before the City Council for the Council's review and approval.

h. The developer hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.

i. The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. The developer is hereby further notified that the 90-day approval period in which the developer may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If the developer fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the developer will be legally barred from later challenging such exactions.

The Commission makes the findings prescribed in Newark Municipal Code Sections 17.40.050 and 17.72.070, and directs a Notice of Decision be mailed to the applicant and filed with the City Clerk who shall present said Notice to the City Council pursuant to Newark Municipal Code Section 17.72.080.

This Resolution was introduced at the Planning Commission's December 10, 2013 meeting by Commissioner Bridges, seconded by Vice-Chairperson Nillo, and passed as follows:

AYES: Bridges, Drews, Fitts, Hannon, Nillo and Otterstetter.

NOES: None.

ABSENT: None.

s/Terrence Grindall
TERRENCE GRINDALL, Secretary

s/William Fitts
WILLIAM FITTS, Chairperson

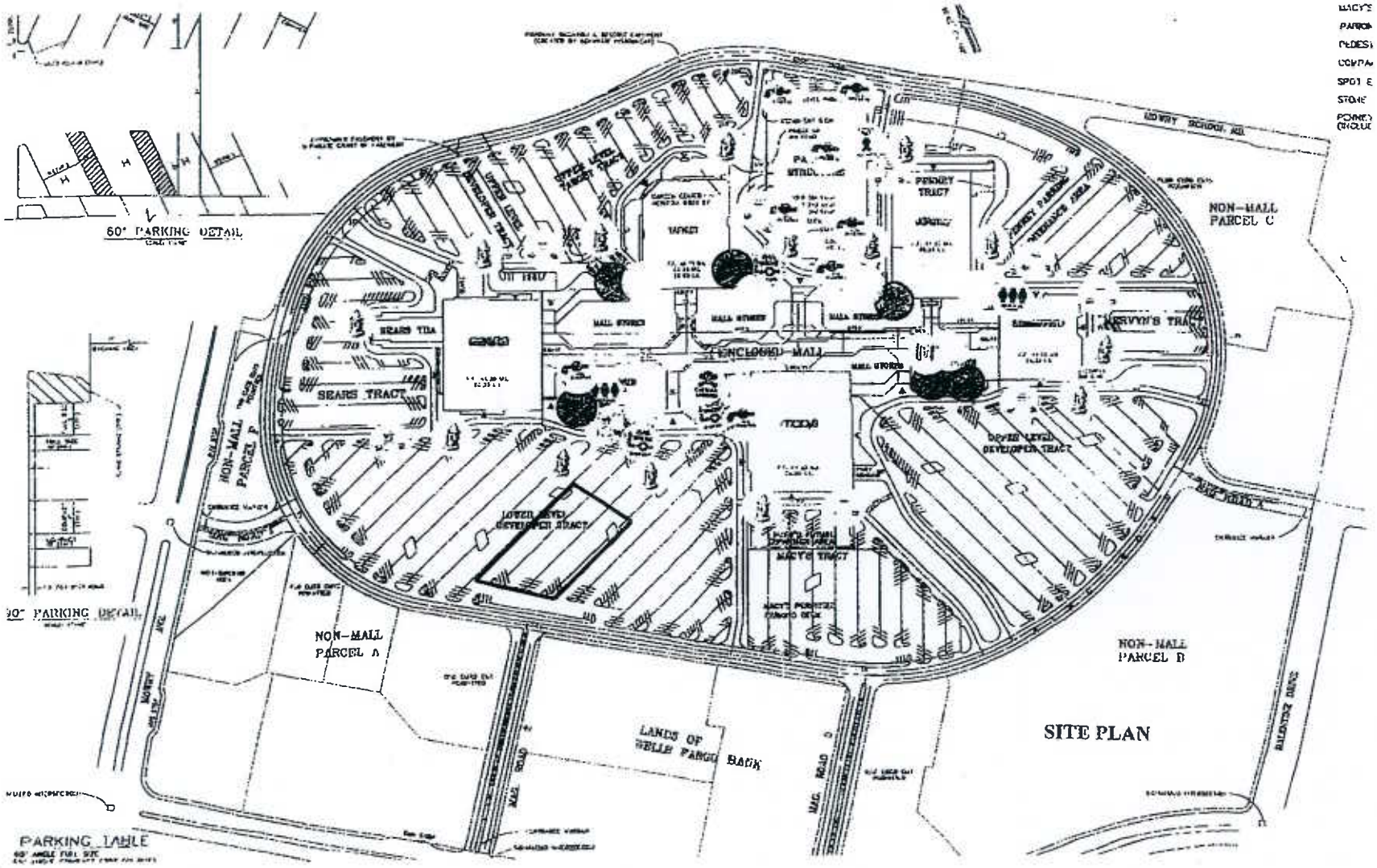
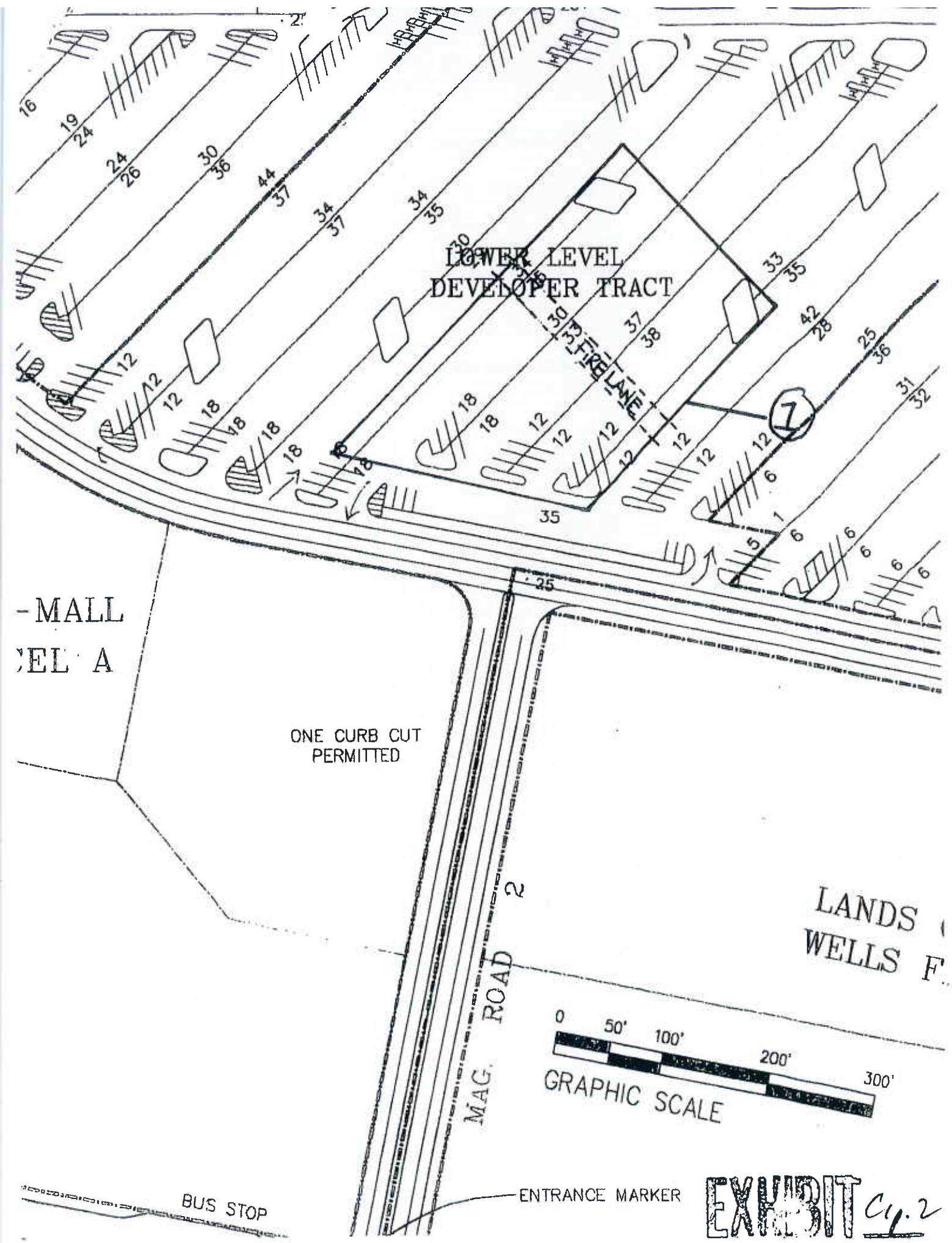

60° PARKING DETAIL
90° PARKING DETAIL
PARKING TABLE
SEARS TRACT
ENCLOSED MALL
LOWER LEVEL DEVELOPER TRACT
UPPER LEVEL DEVELOPER TRACT
MACY'S TRACT
NON-MALL PARCEL A
NON-MALL PARCEL B
NON-MALL PARCEL C
NON-MALL PARCEL D
LANDS OF WELLS FARGO BANK
SITE PLAN

EXHIBIT 1.1


LOWER LEVEL
DEVELOPER TRACT
FIRE LANE
ONE CURB CUT
PERMITTED
MAG. ROAD
-MALL
EL A
LANDS
WELLS F
0 50' 100' 200' 300'
GRAPHIC SCALE
BUS STOP
ENTRANCE MARKER
EXHIBIT C4.2

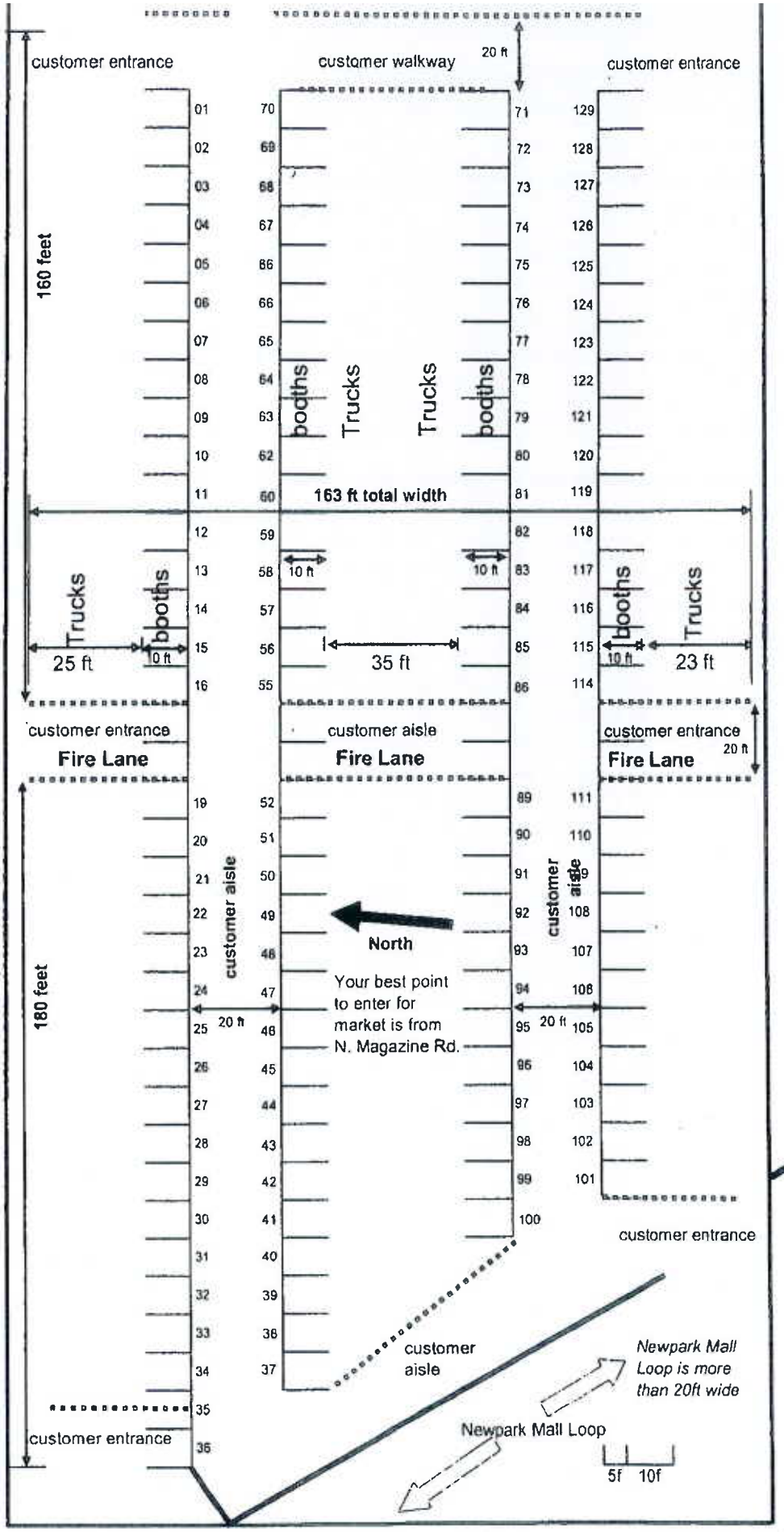

customer entrance
customer walkway
20 ft
customer entrance
160 feet
163 ft total width
booths
Trucks
Trucks
booths
Trucks
booths
booths
Trucks
25 ft
10 ft
35 ft
10 ft
10 ft
10 ft
23 ft
customer entrance
Fire Lane
customer aisle
Fire Lane
customer entrance
Fire Lane
20 ft
180 feet
customer aisle
customer aisle
North
Your best point to enter for market is from N. Magazine Rd.
20 ft
20 ft
customer entrance
customer aisle
Newpark Mall Loop is more than 20ft wide
Newpark Mall Loop
5f 10f
customer entrance

EXHIBIT C1.3

NEWARK farmers market

Market Date: 00/00/10

Cancellations

Notes

New / Returning

Space available

EOW:

Music:

Artisans:

2nd Certs:

Charlie's Corn cooks with LPG
Asian Cuisine cooks with LPG
Tamales Place warms with LPG
Gold Rush cooks with LPG
Chronic BBQ cooks with charcol
Crepe Escape cooks with LPG

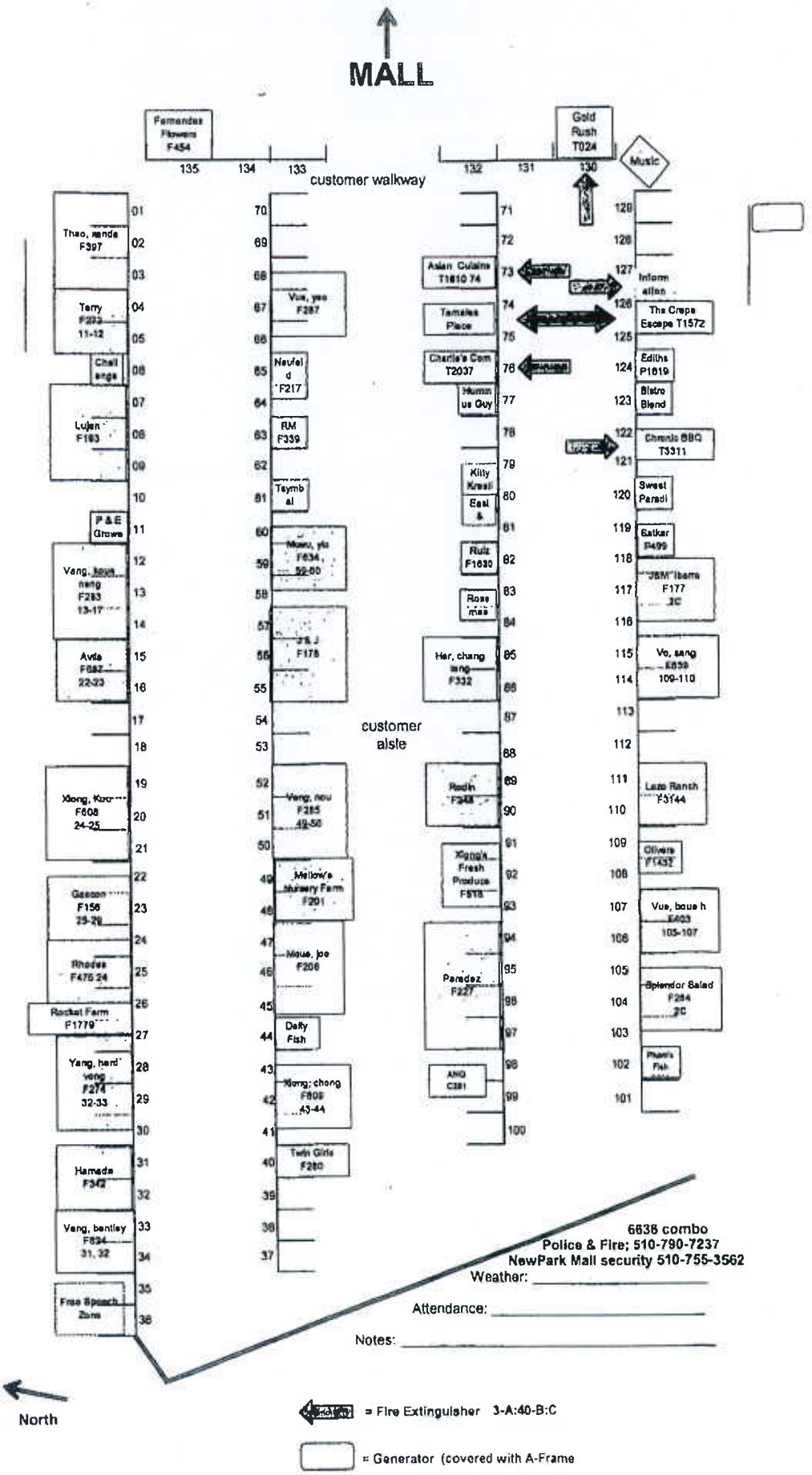


EXHIBIT C1.4

F.1 Second reading and adoption of an Ordinance to amend the contract between the Board of Administration of the California Public Employees Retirement System and the City Council of the City of Newark to provide Section 20516 (Employees Sharing Additional Cost) of 3.468% for new local miscellaneous members and 1.5% for new local safety members – from City Clerk Harrington. (ORDINANCE)

Background/Discussion – At the December 12, 2013 City Council meeting the City Council adopted an urgency ordinance and held the first reading of a regular ordinance to amend the contract with the California Public Employees Retirement System (CalPERS) to provide for Section 20516 (Employees Sharing Additional Cost) of 3.468% for new local miscellaneous members and 1.5% for new local safety members.

The urgency ordinance took effect immediately in order to allow for the timely and appropriate reporting of employee retirement contributions to employee accounts and to avoid an additional 60 day processing delay. A second reading is necessary for the regular ordinance which will be effective 30 days after the second reading.

Attachment

Action – It is recommended that the City Council adopt the ordinance to amend the contract between the Board of Administration of the California Public Employees Retirement System (CalPERS) and the City Council of the City of Newark to provide Section 20516 (Employees Sharing Additional Cost) of 3.468% for new local miscellaneous members and 1.5% for new local safety members

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING AN AMENDMENT TO THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS) AND THE CITY COUNCIL OF THE CITY OF NEWARK TO PROVIDE SECTION 20516 (EMPLOYEES SHARING ADDITONAL COST) OF 3.468% FOR NEW LOCAL MISCELLANEOUS MEMBERS AND 1.5% FOR NEW LOCAL SAFETY MEMBERS.

The City Council of the City of Newark does ordain as follows:

Section 1. An amendment to the contract between the City Council of the City of Newark and the Board of Administration of the California Public Employees Retirement System (CalPERS) is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part hereto as though herein set out in full.

Section 2. The Mayor of the City of Newark is hereby authorized, empowered, and directed to sign said amendment for and on behalf of said Agency.

Section 3. Effective Date. This ordinance shall take effect thirty days from the date of its passage. Before expiration of fifteen days after its passage, this ordinance shall be published in The Argus, a newspaper of general circulation published and printed in the County of Alameda and circulated in the City of Newark.

CalPERS

EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Newark

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective July 1, 1959, and witnessed July 2, 1959, and as amended effective September 1, 1965, October 16, 1969, October 25, 1969, January 16, 1970, September 24, 1978, January 1, 1980, October 1, 1980, September 15, 1986, January 16, 1987, January 1, 1988, August 13, 1989, October 15, 1989, September 13, 1991, October 15, 2000, January 26, 2001, February 11, 2002, July 1, 2003, January 1, 2004, November 16, 2004, July 1, 2005 and July 16, 2006 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

A. Paragraphs 1 through 14 are hereby stricken from said contract as executed effective July 16, 2006, and hereby replaced by the following paragraphs numbered 1 through 15 inclusive:

1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.

PLEASE DO NOT SIGN "CONFORMED"

2. Public Agency shall participate in the Public Employees' Retirement System from and after July 1, 1959 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.

3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:

   (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.

   (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas

   (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.

4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:

   a. Local Fire Fighters (herein referred to as local safety members);

   b. Local Police Officers (herein referred to as local safety members);

   c. Employees other than local safety members (herein referred to as local miscellaneous members).

PLEASE DO NOT SIGN

5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

NO ADDITIONAL EXCLUSIONS

6. From and after October 25, 1969, those members who were hired by Public Agency on a temporary and/or seasonal basis not to exceed 6 months were excluded from PERS membership by contract. Government Code Section 20336 superseded this contract provision by providing that any such temporary and/or seasonal employees are excluded from PERS membership subsequent to January 1, 1975. Legislation repealed and replaced said Section with Government Code Section 20305 effective July 1, 1994.

7. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member in employment before and not on or after January 1, 2004 shall be determined in accordance with Section 21354 of said Retirement Law (2% at age 55 Full).

8. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member in employment on or after January 1, 2004 shall be determined in accordance with Section 21354.4 of said Retirement Law (2.5% at age 55 Full).

9. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full)

10. Public Agency elected and elects to be subject to the following optional provisions:

    a. Section 21574.5 (Indexed Level of 1959 Survivor Benefits).

    b. Section 21024 (Military Service Credit as Public Service).

    c. Section 20965 (Credit for Unused Sick Leave).

    d. Section 20042 (One-Year Final Compensation).

    e. Section 21548 (Pre-Retirement Option 2W Death Benefit).

f. Section 20516 (Employees Sharing Cost of Additional Benefits):

Section 21354.4 (2.5% @ 55 Full formula) effective January 1, 2004 for classic local miscellaneous members.

The employee cost sharing contributions are not to exceed 3.468%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond December 31, 2023. Thereafter, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 1.351% of payroll.

Section 21362.2 (3% @ 50 Full formula) effective January 1, 2003 for classic local safety members.

The employee cost sharing contributions are not to exceed 11.182%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond June 30, 2023. Thereafter, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 4.418% of payroll.

g. Section 20516 (Employees Sharing Additional Cost):

3.468% for new local miscellaneous members.

1.5% for new local safety members.

11. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on September 24, 1978. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.

12. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.

13. Public Agency shall also contribute to said Retirement System as follows:

a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574.5 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members and local safety members.

b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.

c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.

14. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

15. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY_____
KAREN DE FRANK, CHIEF

CUSTOMER ACCOUNT SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF NEWARK

BY_____
PRESIDING OFFICER

_____
Witness Date

Attest:

_____
Clerk

I.1 Reappointment of William Spinola to the Alameda County Mosquito Abatement District – from Mayor Nagy. (RESOLUTION)

Background/Discussion – William Spinola is the City's appointed representative on the Alameda County Mosquito Abatement District. Mr. Spinola has requested reappointment for a two year term ending January 1, 2016.

Attachment

Action - It is recommended that the City Council, by resolution, approve the reappointment of William Spinola to the Alameda County Mosquito Abatement District, for a term to expire on January 1, 2016.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING THE REAPPOINTMENT OF WILLIAM SPINOLA TO THE ALAMEDA COUNTY MOSQUITO ABATEMENT DISTRICT

WHEREAS, William Spinola, serves as the City's appointed representative on the Alameda County Mosquito Abatement District; and

WHEREAS, the Mayor of the City of Newark has reappointed William Spinola to said position on the Alameda County Mosquito Abatement District for a term expiring January 1, 2016;

NOW, THEREFORE, BE IT RESOLVED that said appointment is hereby approved by the City Council of the City of Newark.

Shr1

M.1 Closed session for conference with Legal Counsel on existing litigation pursuant to Section 54956.9(a) of the California Government Code: Mendoza v. City of Newark, et al., Alameda County Superior Court Case No. RG13664482 – from City Attorney Benoun.

Background/Discussion – The City Attorney has requested a closed session to discuss existing litigation: Mendoza v. City of Newark, et al., Alameda County Superior Court Case No. RG13664482.

M.2 Closed session pursuant to Government Code Section 54957 Public Employee Performance Evaluation Title: City Manager.

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

M.3 Closed session pursuant to Government Code Section 54957.6
Conference with Labor Negotiator
Agency Negotiator: Mayor Alan L. Nagy
Unrepresented Employee: City Manager.

Background/Discussion – A closed session is requested for the City Council to confer with Labor Negotiator Mayor Alan L. Nagy pursuant to Government Code Section 54957.6.