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

ADJOURNMENT NOTICE

Notice is hereby given that the Newark City Council meeting of Thursday, June 26, 2014, was adjourned to an adjourned regular meeting of the City Council on Monday, June 30, 2014 at 7:30 p.m. in the City Council Chambers, 6th Floor, City Administration Building, 37101 Newark Boulevard, Newark, CA, for the following purpose:

To consider all the items on the June 26, 2014 agenda and any and all business which may properly come before the Newark City Council at any regular meeting.

Sheila Harrington
City Clerk

I, Sheila Harrington, City Clerk of the City of Newark, do hereby swear that I posted the above notice on the First Floor Bulletin Board, City Administration Building, 37101 Newark Boulevard, Newark, CA, by 5 p.m., Friday, June 27, 2014.

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AGENDA

Monday, June 30, 2014

City Administration Building
7:30 p.m. Adjourned Meeting
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.

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.

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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AGENDA

Monday, June 30, 2014

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

A. ROLL CALL

B. MINUTES

B.1 Approval of Minutes of the regular City Council meeting of Thursday, June 12, 2014. (MOTION)

C. PRESENTATIONS AND PROCLAMATIONS

D. WRITTEN COMMUNICATIONS

D.1 Planning Commission referral of a review of a conditional use permit (U-82-48) and a planned unit development (P-82-49) for a trellis feature to be added to an existing building (Isla Restaurant) at 5720 Mowry School Road – from Assistant Planner Jimenez. (MOTION)

E. PUBLIC HEARINGS

E.1 Hearing to consider annual levy of assessment in conjunction with Landscaping and Lighting District No. 1 – from Senior Civil Engineer Fajeau. (RESOLUTION)

E.2 Hearing to consider annual levy of assessment in conjunction with Landscaping and Lighting District No. 2 – from Senior Civil Engineer Fajeau. (RESOLUTION)

E.3 Hearing to consider annual levy of assessment in conjunction with Landscaping and Lighting District No. 4 – from Senior Civil Engineer Fajeau. (RESOLUTION)

E.4 Hearing to consider annual levy of assessment in conjunction with Landscaping and Lighting District No. 6 – from Senior Civil Engineer Fajeau. (RESOLUTION)

E.5 **Hearing to consider annual levy of assessment in conjunction with Landscaping and Lighting District No. 7 – from Senior Civil Engineer Fajeau. (RESOLUTION)**

E.6 **Hearing to consider annual levy of assessment in conjunction with Landscaping and Lighting District No. 10 – from Senior Civil Engineer Fajeau. (RESOLUTION)**

E.7 **Hearing to consider property owners' objections and confirmation of the Superintendent of Streets' report concerning weed abatement assessments – from Maintenance Supervisor Carey. (MOTION)(RESOLUTION)**

F. CITY MANAGER REPORTS

(It is recommended that Items F.1 through F.5 be acted on simultaneously unless separate discussion and/or action is requested by a Council Member or a member of the audience.)

CONSENT

F.1 **Second reading and adoption of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code and Section 17.44.010 "Zoning Map" by rezoning all that real property shown on Vesting Tentative Tract Map 8166 from CC (Community Commercial) to R-1,500 (High Density Residential – 1,500) – from City Clerk Harrington. (ORDINANCE)**

F.2 **Authorization for the City Manager to sign a lease agreement with Child, Family, & Community Services, Inc. for use of the Jerry Raber Ash Street Park Building #2 for the operation of a Head Start Preschool Program – from Recreation and Community Services Director Zehnder. (RESOLUTION)**

F.3 **Authorization for the Mayor to sign a Lease Agreement with Viola Blythe Community Service Center of Newark, Inc. for use of the Jerry Raber Ash Street Park Building #1 for the operation of a food and clothing distribution center – from Recreation and Community Services Director Zehnder. (RESOLUTION)**

F.4 **Authorization for the Mayor to sign Task Order No. 8 to the Joint Powers Agreement with the City of Fremont for Case Management services – from Recreation and Community Services Director Zehnder. (RESOLUTION)**

F.5 **Amendment of the 2012-2014 Biennial Budget and Capital Improvement Plan for Fiscal Year 2013-2014 for General Revisions – from Senior Accountant del Rosario. (RESOLUTION)**

NONCONSENT

F.6 **Calling and giving notice of the holding of a General Municipal Election on Tuesday, November 4, 2014, for the election of certain officers of the City of Newark – from City Clerk Harrington. (MOTION)(RESOLUTION)**

F.7 **Adoption of a resolution placing an extension of the existing City of Newark Utility Users Tax on the November 4, 2014 Election Ballot for voter consideration and related election procedures and consideration of the Ballot Measure language and participation in Ballot Arguments – from City Manager Becker. (RESOLUTION)**

F.8 **Approval of First Amendment to the Transfer Services Agreement between the Cities of Newark and Union City and BLT Enterprises of Fremont, LLC, and associated budget amendments – from Administrative Services Director Woodstock. (RESOLUTION)**

F.9 **Approval of First Amendment to the Collection of Solid Waste and Collection and Processing of Source Separated Recyclable Materials, Organic Materials and Construction and Demolition between the City of Newark and Allied Waste Services of North America LLC – from Administrative Services Director Woodstock. (RESOLUTION)**

G. CITY ATTORNEY REPORTS

G.1 **Claim of Meher Homi Press – from City Clerk Harrington. (MOTION)**

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

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, June 12, 2014

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, and Vice Mayor Apodaca. Council Member Marshall was noted absent.

B. MINUTES

B.1 Approval of Minutes of the special and regular City Council meetings of Thursday, May 22, 2014. MOTION APPROVED

Council Member Collazo moved, Council Member Freitas seconded, to approve the Minutes of the special and regular City Council meetings. The motion passed, 3 AYES, 1 ABSTENTION (Apodaca), 1 ABSENT (Marshall).

C. PRESENTATIONS AND PROCLAMATIONS

C.1 Introduction of employee.

Mayor Nagy introduced newly hired Information Systems Specialist, Larry Kezar.

C.2 Presentation of the Newark Unified School District Certificated Employee of the Year.

Mayor Nagy and Rotary Club Representative David Zehnder presented a certificate to the Newark Unified School District Certificated Employee of the Year Nancy Kuei.

C.3 Commendation to Police Officer of the Year.

Mayor Nagy presented the commendation to Ryan Johnson.

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

E.1 Hearing to consider adoption of Master Fee Schedule for Fiscal Year 2014-2015. RESOLUTION NO. 10217

City Manager Becker gave the staff report recommending approval of the amendments to the Master Fee Schedule.

Mayor Nagy opened the public hearing at 7:40 p.m.

There was no public testimony.

Mayor Nagy closed the public hearing at 7:41 p.m.

Council Member Freitas moved, Vice Mayor Apodaca seconded to, by resolution, amend the Master Fee Schedule for Fiscal Year 2014-2015. The motion passed, 4 AYES, 1 ABSENT (Marshall).

E.2 Hearing to consider the request by LOV (League of Volunteers), for P-14-12, a planned unit development, and U-14-13, a conditional use permit, to have a circus at the NewPark Mall parking lot (APNS: 901-111-20 & 21) with performances from August 7 through August 11, 2014; and authorization to waive the application fee. MOTIONS-2 APPROVED

City Manager Becker gave the staff report recommending approval.

Mayor Nagy opened the public hearing at 7:43 p.m.

Shirley Sisk, representing the League of Volunteers, said that she had read Planning Commission Resolution No. 1873 and agreed to the conditions in the resolution.

Mayor Nagy closed the public hearing at 7:45 p.m.

Council Member Freitas moved, Council Member Collazo seconded to by motions: (1) approve Planning Commission Resolution No. 1873 with Exhibit A, pages 1 through 3, the request by LOV (League of Volunteers), for P-14-12, a planned unit development, and U-14-13, a conditional use permit, to have a circus at the NewPark Mall parking lot (APNS: 901-111-20 & 21) with performances from August 7 through August 11, 2014; and (2) authorize a waiver of the application fee. The motion passed, 4 AYES, 1 ABSENT (Marshall).

E.3 Hearing to consider an 85-unit residential townhome development (Integral Communities) on an approximately 4.28 acre site (APN: 901-0195-039) on the northeast corner of Cedar Boulevard and Mowry School Road: (1) resolution making certain findings and approving an Initial Study/Mitigated Negative Declaration for the Cedar Townhomes project; (2) resolution approving a General Plan Amendment to change the land

use designation from CC (Community Commercial) to HR (High Density Residential); (3) Introduction of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code and Section 17.44.010 "Zoning Map" by rezoning all that real property shown on Vesting Tentative Tract Map 8166 and approving a rezoning from CC (Community Commercial) to R-1,500 (High Density Residential – 1,500); (4) resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and authorizing the Mayor to sign the attached Affordable Housing Implementation Agreement; (5) resolution authorizing the Mayor to sign a Community Financing Agreement with Newark Atrium Project Owner, LLC (6) resolution approving Tentative Tract Map 8166; and (7) By motion, approving an Architectural and Site Plan Review.

RESOLUTION NO. 10218
RESOLUTION NO. 10219
ORDINANCE INTRODUCED
RESOLUTION NO. 10220
RESOLUTION NO. 10221
RESOLUTION NO. 10222
MOTION APPROVED

Assistant City Manager Grindall gave the staff report recommending approval for Integral Communities, Inc. to develop 85 townhomes on a vacant lot at 39850 and 39888 Cedar Boulevard (northeast corner of Cedar Boulevard and Mowry School Road).

Vice Mayor Apodaca requested that the Codes Covenants and Restrictions (CCRs) include education about garbage and recycling. She stated that she was concerned with the aesthetics of the project and requested that the developer discuss the design during the public hearing.

Council Member Freitas agreed with Vice Mayor Apodaca's comment on the aesthetics.

Mayor Nagy opened the public hearing at 7:53 p.m.

Kevin Fryer, Integral Communities, stated that he read the resolutions and agreed to the conditions. He stated that the exhibits do not fully represent the project design. He reviewed the exhibits and noted that they have received a good response from their home building partners.

Council Member Collazo cited the Dusterberry project in Fremont as an example of the design that she would like to see for this project.

Margaret Lewis stated that she was concerned with the affordable housing units that would be built at the SHH location within the Dumbarton Transit Oriented

Development. The site need to be cleaned up and she had concerns about the safety of the roundabout. She did not believe that housing would work at that location.

Mayor Nagy closed the public hearing at 8:04 p.m.

The City Council discussed design enhancements for the project.

Assistant City Manager Grindall suggested that the City Council approve the project with the exception of the Architectural and Site Plan Review. The applicant could make modifications to the design and return at a future City Council meeting for separate approval.

Kevin Fryer stated that he agreed with the suggestion and would work with staff on the design.

Council Member Freitas moved, Council Member Collazo seconded to, by motion:

(1) Adopt a resolution making certain findings and adopting an Initial Study/Mitigated Negative Declaration for the Cedar Townhomes project;

(2) Adopt a resolution approving an amendment to the Land Use Element of the General Plan to change land use designation from CC (Community Commercial) To HR (High Density Residential);

(3) Introduce an ordinance amending Title 17 (Zoning) of the Newark Municipal Code and Section 17.44.010 "Zoning Map" by rezoning all that real property shown on Vesting Tentative Tract Map 8166 from CC (Community Commercial) to R-1,500 (High Density Residential – 1,500);

(4) Adopt a Resolution approving an alternative means of compliance with the Inclusionary Housing Ordinance for the Cedar Townhomes Project; making findings related to the use of an Alternative Means Of Compliance; and authorizing the Mayor to sign the Affordable Housing Obligation Satisfaction Agreement;

(5) Adopt a resolution authorizing the Mayor to sign a Community Financing Agreement with Newark Atrium Project Owner, LLC;

(6) Adopt a resolution approving Vesting Tentative Tract Map 8166; and

(7) By motion, the Architectural and Site Plan Review will be revised and considered at a future City Council meeting. The motion passed, 4 AYES, 1 ABSENT (Marshall).

E.4 Hearing to consider the development of 15 single family lots with construction of a detached dwelling on each lot (Mission Peak Homes) at 38517 Birch Street, on the west side of Birch Street north of Moores Avenue (APN: 092A-2356-037). A private road would provide access to each lot. The existing church complex would be demolished: (1) Adopting a resolution making certain findings and approving E-13-30, an Initial Study/Mitigated Negative Declaration; (2) adopting a resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance; approving the Affordable Housing Implementation Agreement for the Birch Street project and authorizing the Mayor to sign the Affordable Housing Implementation Agreement; (3) By motion, approving P-13-29, a planned unit development, and U-13-28, a conditional use permit, and (4) adopting a resolution approving TTM-13-27, Tentative Tract Map 8165.

RESOLUTION NO. 10223
RESOLUTION NO. 10224
MOTION APPROVED
RESOLUTION NO. 10225

Assistant City Manager Grindall gave the staff report recommending approval for Mission Peak Homes to develop 15 single-family detached homes at 38517 Birch Street.

Vice Mayor Apodaca requested that the Codes Covenants and Restriction (CCR) that are approved administratively by staff include education on garbage and recycling.

Assistant City Manager Grindall stated that all future CCRs will include the education requested by Vice Mayor Apodaca.

Mayor Nagy opened the public hearing at 8:22 p.m.

Tom Quaglia Mission Peak Homes stated that he had read the resolutions and agreed to the conditions.

Mayor Nagy closed the public hearing at 8:25 p.m.

Vice Mayor Apodaca moved, Council Member Collazo seconded to, by motion:

(1) Adopt a resolution making certain findings and adopting an Initial Study/Mitigated Negative Declaration for the Birch Street Residential Project;

(2) Adopt a resolution approving an alternative means of compliance with the Inclusionary Housing Ordinance for the Birch Street Project; making findings supporting the use of an alternative means of compliance, and authorizing the Mayor to sign the Affordable Housing Implementation Agreement;

(3) By motion, approve P-13-29, a planned unit development, and U-13-28, a conditional use permit, and

(4) Adopt a resolution approving Tentative Tract Map 8165. The motion passed, 4 AYES, 1 ABSENT.

F. CITY MANAGER REPORTS

John Henneberry requested that Consent Calendar Item F.5 be removed for separate consideration.

Vice Mayor Apodaca moved, Council Member Collazo seconded, to approve Consent Calendar Items F.1 through F.4 and F.6 through F.11 that the resolutions be numbered consecutively, and that reading of the titles suffice for adoption of the resolutions. The motion passed, 4 AYES, 1 ABSENT.

CONSENT

F.1 Approval of plans and specifications, acceptance of bid and award of contract to Ghilotti Bros., Inc. for 2014 Asphalt Concrete Street Overlay Program, Project 1063.
MOTION APPROVED
RESOLUTION NO. 10226
CONTRACT NO. 14021

F.2 Authorization for the Police Chief to sign an amendment to the agreement with All City Management Services for the contracting of school crossing guards, extending the term of said agreement.
RESOLUTION NO. 10227
CONTRACT NO. 11029

F.3 Establishment of the Fiscal Year 2014-2015 Appropriations Limit.
RESOLUTION NO. 10228

F.4 Establishment of amount of revenue from property taxes necessary to support City departments for Fiscal Year 2014 - 2015 RESOLUTION NO. 10229

F.6 Acceptance of contract with Pacheco Brothers Gardening, Inc., for Jerry Raber Ash Street Park Turf Renovation, Project 1067. RESOLUTION NO. 10230

F.7 Authorization for the City Attorney to sign a Certification and Mutual Indemnification Agreement with the County of Alameda.

RESOLUTION NO. 10231
CONTRACT NO. 14022

F.8 Authorization for the purchase of updated and supplemental geographic information system software licenses and installation support services, and to declare Environmental Systems Research Institute, Inc. as the single source vendor. **RESOLUTION NO. 10232**

F.9 Authorization for the purchase of a new Street Sweeper from Municipal Maintenance Equipment, Inc. **RESOLUTION NO. 10233**
CONTRACT NO. 14023

F.10 Authorization for the Mayor to sign an agreement with *The Argus* for legal advertising services for Fiscal Year 2014-2015. **RESOLUTION NO. 10234**
CONTRACT NO. 14024

F.11 Adoption of the 2014-2016 Biennial Budget and Capital Improvement Plan.
RESOLUTION NO. 10235

NONCONSENT

F.5 Approval of Investment Policy. **RESOLUTION NO. 10236**

John Henneberry outlined his research on the Newark Betterment Corporation. He asked how much the City has invested or given funding to the Newark Betterment Corporation (NBC).

City Manager Becker stated that no money from the General Fund has been used for NBC. NBC receives contributions from a variety of sources.

Council Member Freitas moved, Council Member Collazo seconded to, by resolution, approve the City's Investment Policy. The motion passed, 4 AYES, 1 ABSENT.

F.12 Direction to file Annual Reports and intention to order improvements for Landscaping and Lighting District Nos. 11, 13, 15, 16, and 17 and setting date of public hearing. **RESOLUTION NO. 10237-10238**

Council Member Collazo announced that she would recuse herself from this item since she owns property in Landscaping and Lighting District No. 11. She left the City Council Chamber.

City Manager Becker gave the staff report recommending approval.

Vice Mayor Apodaca moved, Council Member Freitas seconded to by resolutions, direct the filing of annual reports for Landscaping and Lighting District Nos. 11, 13, 15, 16, and 17 in accordance with the provisions in the Landscaping and Lighting Act of 1972 and confirm the intent to order the improvements by setting the date for the annual public hearings for these districts for July 10, 2014. The motion passed, 3 AYES, 1 RECUSED (Collazo), 1 ABSENT (Marshall).

Council Member Collazo returned to the City Council Chambers.

G. CITY ATTORNEY REPORTS

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

I.1 Mayor Nagy stated that he would adjourn the meeting in memory of Clark Redeker who served on the first Newark City Council and was the third Mayor for the City.

I.2 Mayor Nagy stated that he would also adjourn the meeting in memory of Vice Mayor Apodaca's father, Dan Apodaca.

I.3 The City Council extended their condolences to both families.

I.4 Vice Mayor Apodaca thanked everyone for their support.

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

K. ORAL COMMUNICATIONS

K.1 Dean Lewis requested that the City Council look into the billing practices of Republic Services. His invoice dated May 28 was not received until June 9 and was due on June 17, 2014. He stated that the location off Central that he suggested for the Dumbarton Transit Oriented Development was being turned into a storage facility. He thought the City Council would regret not using that location.

K.2 Sandra Mascardo stated a number of reasons why she thought that fireworks should be banned in Newark.

K.3 John Henneberry shared his thoughts on attempting to contact the City auditors, the Newark Betterment Corporation funding, the Library league, expanding library hours, city salaries, Council Member Marshall, and Officer Neithercutt.

K.4 Tim Jones stated that illegal fireworks are the problem and not the Safe and Sane type that that City allows to be sold for community group fundraisers. He stated that Mr. Henneberry's allegations regarding NBC had no proof. He requested that Mr. Henneberry quit being rude in the City Council Chambers. He stated that the library participates in National Night Out and always does a nice job.

L. APPROPRIATIONS

City Clerk Harrington read the Register of Audited Demands: Check numbers 101545 to 101736.

Council Member Freitas moved, Council Member Collazo seconded, to approve the Register of Audited Demands. The motion passed, 4 AYES, 1 ABSENT (Marshall).

M. CLOSED SESSION

N. ADJOURNMENT

At 8:57 p.m. Mayor Nagy adjourned the meeting in memory of Dan Apodaca and Clark Redeker.

D.1 Planning Commission referral of a review of a conditional use permit (U-82-48) and a planned unit development (P-82-49) for a trellis feature to be added to an existing building (Isla Restaurant) at 5720 Mowry School Road – from Assistant Planner Jimenez. (MOTION)

Background/Discussion - Mr. Richard Lyttle, on behalf of Isla Restaurant, has submitted an application to construct a trellis feature at 5720 Mowry School Road. Isla Restaurant is a Filipino restaurant located within the Balentine Plaza Shopping Center which is zoned CC (Community Commercial).

The owners of the restaurant feel that the addition of the trellis "accentuates the atmosphere and culture" of the Philippines and that it will make for a more authentic dining experience. The trellis is purely decorative and is not an area intended for outdoor dining. The wood trellis will be constructed along the south side of the restaurant. The support columns will be relocated an additional two feet from the curb from what is shown on the exhibits in order to accommodate the required two-foot vehicle overhang.

The proposed project is categorically exempt from the California Environmental Quality Act per Section 15311, Class 11(a), construction of minor structures accessory to existing commercial facilities.

Attachment

Update – At its meeting of June 10, 2014, the Planning Commission approved Resolution No. 1880 with Exhibit B, pages 1 through 4, for a review of a conditional use permit (U-82-48) and a planned unit development (P-82-49) for a trellis feature to be added to an existing building (Isla Restaurant) at 5720 Mowry School Road.

Action - It is recommended that the City Council, by motion, approve Planning Commission Resolution No. 1880, with Exhibit B, page 1 through 4, for a review of a conditional use permit (U-82-48) and a planned unit development (P-82-49) for a trellis feature to be added to an existing building (Isla Restaurant) at 5720 Mowry School Road.

RESOLUTION NO. 1880

RESOLUTION REDCOMMENDING APPROVAL OF A REVIEW OF A CONDITIONAL USE PERMIT (U-82-48) AND A PLANNED UNIT DEVELOPMENT (P-82-49) FOR A TRELLIS FEATURE TO BE ADDED TO AN EXISTING BUILDING (ISLA RESTAURANT) AT 5720 MOWRY SCHOOL ROAD

WHEREAS, Richard Lyttle has filed with the Planning Commission of the City of Newark application for a review of a conditional use permit (U-82-48) and a planned unit development (P-82-49) for a trellis feature to be added to an existing building (Isla Restaurant) at 5720 Mowry School Road; and

WHEREAS, the Planning Commission considered said application at 7:30 p.m. on June 10, 2014 at the City Administration Building, 37101 Newark Boulevard, Newark, California.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby recommend the City Council approve this application as shown on Exhibit A, pages 1 through 3, subject to compliance with the following conditions:

Planning Division

a. This project is subject to the conditions of Planning Commission Resolution No. 1079, unless otherwise amended herein.

b. The site and its improvements shall be maintained in a neat and presentable condition, to the satisfaction of the Community Development Director. This shall include, but not be limited to, repainting surfaces damaged by graffiti and site clean-up. Graffiti removal/repainting and site clean-up shall occur on a continuing, as needed basis. Any vehicle or portable building brought on the site during construction shall remain graffiti free.

c. Prior to the issuance of a building permit, the applicant must revise and submit the rendered photo (parking lot view of the existing building) and applicable cross-sectional details to show the proposed trellis/handrail posts set at least two (2) feet back from the face of curb to accommodate existing allowable overhang of the adjacent parking spaces. The plans must also identify the remaining clear space width between the building and posts on the cross-section.

d. Outdoor seating/dining shall not be allowed.

e. The property owner shall be responsible for removing the trellis and restoring the elevation occupied by the trellis to a neat and presentable condition, to the satisfaction of the Community Development Director, when the applicant leaves the site. This shall include, but not be limited to, repainting surfaces damaged by the trellis.

Engineering Division

f. The contractor shall implement all applicable Best Management Practices (BMPs) from the California Stormwater Quality Association's Best Management Practice Handbook for Construction for the duration of all work activity. Additional BMPs may be required by the City Engineer as necessary to minimize the pollution of storm water runoff from the project area. A note to this effect shall appear on the project plans.

g. The contractor shall repair any damage to the existing through-curb drain system.

Building Inspection Division

h. Construction for this project can occur only between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday. The developer may make a written request to the Building Official for extended working hours and/or days. In granting or denying any request, the Building Official will take into consideration the nature of the construction activity which would occur during extended hours/days, the time and duration of the request, the proximity to residential neighborhoods, and input by affected neighbors. All approvals will be done so in writing.

General

i. All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission and City Council review and, if so decided, said changes shall be submitted for the Commission's and Council's review and decision. The developer shall pay the prevailing fee for each additional separate submittal of development exhibits requiring Planning Commission and/or City Council review and approval.

j. If any condition of this review of a conditional use permit and a planned unit development be declared invalid or unenforceable by a court of competent jurisdiction, this review 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.

k. This review of a conditional use permit and a planned unit development shall be referred to the City Council for the Council's review and approval.

l. Prior to the submittal for building permit review, all conditions of approval for this project, as approved by the City Council, shall be printed on the plans.

m. 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.

n. The Conditions of Project Approval set forth herein 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.

This Resolution was introduced at the Planning Commission's June 10, 2014 meeting by Commissioner Fitts, seconded by Commissioner Drews, and passed as follows:

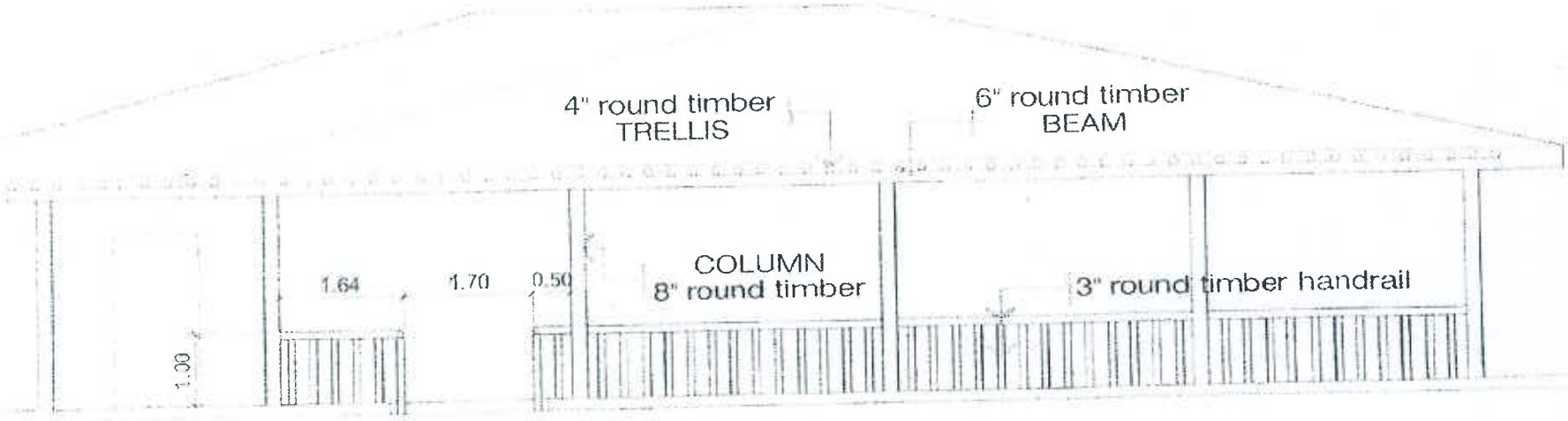
AYES: Aguilar, Drews, Fitts, Hannon, Nillo and Otterstetter

NOES: None.

ABSENT: Bridges.

s/Terrence Grindall
TERRENCE GRINDALL, Secretary

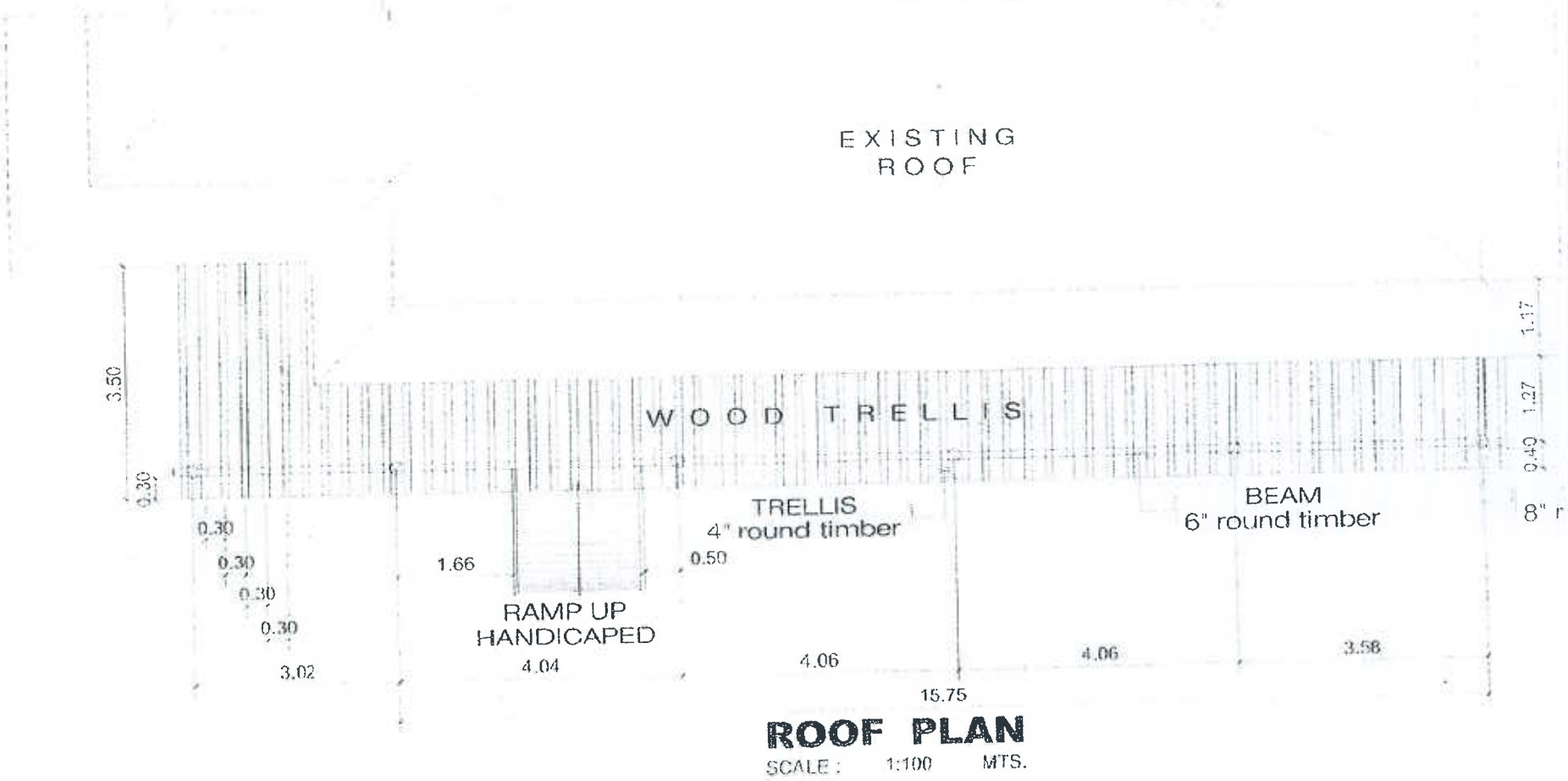
s/Bernie Nillo
BERNIE NILLO, Chairperson



FRONT ELEVATION

SCALE : 1:100 MTS.

Approved



ROOF PLAN

SCALE : 1:100 MTS.

A2

MEDIUM
SMALL
LARGE
ISLA NEWARK TRELLIS
7 LARGE VERTICAL POSTS
9 MEDIUM HORIZONTAL POSTS
54 SMALL HORIZONTAL POSTS

EXHIBIT Ap3

E.1 Hearing to consider annual levy of assessment in conjunction with Landscaping and Lighting District No. 1 – from Senior Civil Engineer Fajeau. (RESOLUTION)

Background/Discussion – The City Council has set June 26, 2014, as the date for the public hearing for the annual levy of assessments in conjunction with Landscaping and Lighting District No. 1. This district includes properties which abut Central Avenue between Filbert Street and Willow Street and provides for the maintenance of median landscaping on Central Avenue between Filbert Street and Willow Street, and buffer landscaping adjacent to the Alameda County flood control channel immediately west of Filbert Street. Maintenance and operation of median street lights along this portion of Central Avenue are also included in this district. An annual public hearing is necessary to adopt the Engineer's Report to provide funds for this district.

The total assessment for this district as provided in the Engineer's Report is $42,100 for the 2014-2015 fiscal year.

Attachment

Action - Upon conclusion of the public hearing, it is recommended that the City Council, by resolution, approve the diagram and assessment and levy the annual assessment for Landscaping and Lighting District No. 1 for the 2014-2015 fiscal year.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK CONFIRMING DIAGRAM AND ASSESSMENT AND LEVYING ASSESSMENT FOR FISCAL YEAR 2014-2015

ASSESSMENT DISTRICT NO. 1
(Pursuant to the Landscaping and Lighting Act of 1972)

The City Council of the City of Newark resolves:

1. Pursuant to Chapter 3 of the Landscaping and Lighting Act of 1972, the City Council directed the City Engineer, Engineer of Work for Assessment District No. 1, to prepare and file an annual report for Fiscal Year 2014-2015.

2. The Engineer of Work filed the annual report on May 8, 2014, and the City Council adopted its resolution of intention to levy and collect assessments within the Landscaping and Lighting District for Fiscal Year 2014-2015 and set a public hearing to be held on June 26, 2014, in the meeting place of the City Council, 37101 Newark Boulevard, Newark, California, 94560. Notice of the hearing was given in the time and manner required by law.

3. At the public hearing, the City Council afforded to every interested person an opportunity to make a protest to the annual report either in writing or orally, and the City Council has considered each protest.

4. The City Council hereby confirms the diagram and assessment as set forth in the annual report of the Engineer of Work and hereby levies the assessment set forth therein for Fiscal Year 2014-2015.

E.2 Hearing to consider annual levy of assessment in conjunction with Landscaping and Lighting District No. 2 – from Senior Civil Engineer Fajeau. (RESOLUTION)

Background/Discussion – The City Council has set June 26, 2014, as the date for the public hearing for the annual levy of assessments in conjunction with Landscaping and Lighting District No. 2. This district provides for the maintenance of median and in-tract buffer landscaping on Jarvis Avenue adjacent to and within the boundaries of Tract 5232, Dumbarton Technology Park, on Jarvis Avenue at Lido Boulevard, as well as the Newark Boulevard medians fronting the Raley's and Safeway shopping centers. An annual public hearing is necessary to adopt the Engineer's Report to provide funds for this district.

The total assessment for this district as provided in the Engineer's Report is $27,100 for the 2014-2015 fiscal year.

Attachment

Action - Upon conclusion of the public hearing, it is recommended that the City Council, by resolution, approve the diagram and assessment and levy the annual assessment for Landscaping and Lighting District No. 2 for the 2014-2015 fiscal year.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK CONFIRMING DIAGRAM AND ASSESSMENT AND LEVYING ASSESSMENT FOR FISCAL YEAR 2014-2015

ASSESSMENT DISTRICT NO. 2
(Pursuant to the Landscaping and Lighting Act of 1972)

The City Council of the City of Newark resolves:

1. Pursuant to Chapter 3 of the Landscaping and Lighting Act of 1972, the City Council directed the City Engineer, Engineer of Work for Assessment District No. 2, to prepare and file an annual report for Fiscal Year 2014-2015.

2. The Engineer of Work filed the annual report on May 8, 2014, and the City Council adopted its resolution of intention to levy and collect assessments within the Landscaping and Lighting District for Fiscal Year 2014-2015 and set a public hearing to be held on June 26, 2014, in the meeting place of the City Council, 37101 Newark Boulevard, Newark, California, 94560. Notice of the hearing was given in the time and manner required by law.

3. At the public hearing, the City Council afforded to every interested person an opportunity to make a protest to the annual report either in writing or orally, and the City Council has considered each protest.

4. The City Council hereby confirms the diagram and assessment as set forth in the annual report of the Engineer of Work and hereby levies the assessment set forth therein for Fiscal Year 2014-2015.

E.3 Hearing to consider annual levy of assessment in conjunction with Landscaping and Lighting District No. 4 – from Senior Civil Engineer Fajeau. (RESOLUTION)

Background/Discussion – The City Council has set June 26, 2014, as the date for the public hearing for the annual levy of assessments in conjunction with Landscaping and Lighting District No. 4. This district provides for the maintenance of median landscaping on Stevenson Boulevard from the Nimitz Freeway to Eureka Drive (west) and on Cherry Street between Stevenson Boulevard and the Sportsfield Park. An annual public hearing is necessary to adopt the Engineer's Report to provide funds for this district.

The total assessment for this district as provided in the Engineer's Report is $48,100 for the 2014-2015 fiscal year.

Attachment

Action - Upon conclusion of the public hearing, it is recommended that the City Council, by resolution, approve the diagram and assessment and levy the annual assessment for Landscaping and Lighting District No. 4 for the 2014-2015 fiscal year.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK CONFIRMING DIAGRAM AND ASSESSMENT AND LEVYING ASSESSMENT FOR FISCAL YEAR 2014-2015

ASSESSMENT DISTRICT NO. 4
(Pursuant to the Landscaping and Lighting Act of 1972)

The City Council of the City of Newark resolves:

1. Pursuant to Chapter 3 of the Landscaping and Lighting Act of 1972, the City Council directed the City Engineer, Engineer of Work for Assessment District No. 4, to prepare and file an annual report for Fiscal Year 2014-2015.

2. The Engineer of Work filed the annual report on May 8, 2014, and the City Council adopted its resolution of intention to levy and collect assessments within the Landscaping and Lighting District for Fiscal Year 2014-2015 and set a public hearing to be held on June 26, 2014, in the meeting place of the City Council, 37101 Newark Boulevard, Newark, California, 94560. Notice of the hearing was given in the time and manner required by law.

3. At the public hearing, the City Council afforded to every interested person an opportunity to make a protest to the annual report either in writing or orally, and the City Council has considered each protest.

4. The City Council hereby confirms the diagram and assessment as set forth in the annual report of the Engineer of Work and hereby levies the assessment set forth therein for Fiscal Year 2014-2015.

E.4 Hearing to consider annual levy of assessment in conjunction with Landscaping and Lighting District No. 6 – from Senior Civil Engineer Fajeau. (RESOLUTION)

Background/Discussion – The City Council has set June 26, 2014, as the date for the public hearing for the annual levy of assessments in conjunction with Landscaping and Lighting District No. 6. This district provides for the maintenance of median and greenbelt landscaping and the irrigation systems in the area formerly known as Redevelopment Area No. 2. The area is the property generally bounded by Balentine Drive, Cedar Boulevard, Stevenson Boulevard, and the Nimitz Freeway.

For many years all expenses for Landscaping and Lighting District No. 6 were paid out of the reserves deposited by the original developer and there has never been an assessment levied on any of the properties in the district. These reserves have been depleted and a deficit now exists. A special election would need to be held as required by Proposition 218 to increase the assessments of all properties in the district based on the district's original method of assessment, but to date a majority of the affected property owners of have objected to an assessment. Applications for development on the vacant property within the district boundary have been made and new development could provide sufficient votes to increase assessments. Staff will continue to minimize expenditures for landscape maintenance in this district until assessments can be increased.

All property owners in this district will receive a "zero" assessment for 2014-2015.

Attachment

Action - Upon conclusion of the public hearing, it is recommended that the City Council, by resolution, approve the diagram and assessment and levy the annual assessment for Landscaping and Lighting District No. 6 for the 2014-2015 fiscal year.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK CONFIRMING DIAGRAM AND ASSESSMENT AND LEVYING ASSESSMENT FOR FISCAL YEAR 2014-2015

ASSESSMENT DISTRICT NO. 6
(Pursuant to the Landscaping and Lighting Act of 1972)

The City Council of the City of Newark resolves:

1. Pursuant to Chapter 3 of the Landscaping and Lighting Act of 1972, the City Council directed the City Engineer, Engineer of Work for Assessment District No. 6, to prepare and file an annual report for Fiscal Year 2014-2015.

2. The Engineer of Work filed the annual report on May 8, 2014, and the City Council adopted its resolution of intention to levy and collect assessments within the Landscaping and Lighting District for Fiscal Year 2014-2015 and set a public hearing to be held on June 26, 2014, in the meeting place of the City Council, 37101 Newark Boulevard, Newark, California, 94560. Notice of the hearing was given in the time and manner required by law.

3. At the public hearing, the City Council afforded to every interested person an opportunity to make a protest to the annual report either in writing or orally, and the City Council has considered each protest.

4. The City Council hereby confirms the diagram and assessment as set forth in the annual report of the Engineer of Work and hereby levies the assessment set forth therein for Fiscal Year 2014-2015.

E.5 Hearing to consider annual levy of assessment in conjunction with Landscaping and Lighting District No. 7 – from Senior Civil Engineer Fajeau. (RESOLUTION)

Background/Discussion – The City Council has set June 26, 2014, as the date for the public hearing for the annual levy of assessments in conjunction with Landscaping and Lighting District No. 7. This district provides for the maintenance of Rosemont Square Shopping Center buffer landscaping and the landscape irrigation system within the public right-of-way and easement areas on Jarvis Avenue, Newark Boulevard, and Cedar Boulevard.

The total assessment for this district as provided in the Engineer's Report is $25,600 for the 2014-2015 fiscal year.

Attachment

Action - Upon conclusion of the public hearing, it is recommended that the City Council, by resolution, approve the diagram and assessment and levy the annual assessment for Landscaping and Lighting District No. 7 for the 2014-2015 fiscal year.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK CONFIRMING DIAGRAM AND ASSESSMENT AND LEVYING ASSESSMENT FOR FISCAL YEAR 2014-2015

ASSESSMENT DISTRICT NO. 7
(Pursuant to the Landscaping and Lighting Act of 1972)

The City Council of the City of Newark resolves:

1. Pursuant to Chapter 3 of the Landscaping and Lighting Act of 1972, the City Council directed the City Engineer, Engineer of Work for Assessment District No. 7, to prepare and file an annual report for Fiscal Year 2014-2015.

2. The Engineer of Work filed the annual report on May 8, 2014, and the City Council adopted its resolution of intention to levy and collect assessments within the Landscaping and Lighting District for Fiscal Year 2014-2015 and set a public hearing to be held on June 26, 2014, in the meeting place of the City Council, 37101 Newark Boulevard, Newark, California, 94560. Notice of the hearing was given in the time and manner required by law.

3. At the public hearing, the City Council afforded to every interested person an opportunity to make a protest to the annual report either in writing or orally, and the City Council has considered each protest.

4. The City Council hereby confirms the diagram and assessment as set forth in the annual report of the Engineer of Work and hereby levies the assessment set forth therein for Fiscal Year 2014-2015.

E.6 Hearing to consider annual levy of assessment in conjunction with Landscaping and Lighting District No. 10 – from Senior Civil Engineer Fajeau. (RESOLUTION)

Background/Discussion – The City Council has set June 26, 2014, as the date for the public hearing for the annual levy of assessments in conjunction with Landscaping and Lighting District No. 10. This district is a consolidated district which includes miscellaneous developments at several locations. These locations and the work involved are as follows:

10a. The maintenance of Jarvis Avenue and Lido Boulevard median-island and street landscaping, and lighting adjacent to the boundaries of Tract 5318, Lexington Square.

10b. Maintenance of landscaping and the landscape irrigation system within easement areas adjacent to the public right-of-way on the north side of Central Avenue between the Nimitz Freeway and Timber Street.

10c. Maintenance of landscaping and the landscape irrigation system within easement areas adjacent to the public right-of-way on Morton Avenue for Geomax.

10d. Maintenance of landscaping and the landscape irrigation system within easement areas adjacent to the public right-of-way on Enterprise Court and Enterprise Drive for Parcel 1 of Tentative Parcel Map 5109.

10e. Maintenance of landscaping and the landscape irrigation system adjacent to Cedar Boulevard south of Mowry Avenue for Jiffy Lube.

10f. Maintenance of landscaping and the landscape irrigation system for the apartment complex at the intersection of Rich Avenue and Magnolia Street.

10g. Maintenance of landscaping and the landscape irrigation system within easement areas on Smith Avenue and Cedar Boulevard for the Cedar Boulevard Neighborhood Church.

10h. Maintenance of landscaping and the landscape irrigation system within easement areas for the parcel adjacent to Eucalyptus Grove Park.

10i. Maintenance of landscaping and the landscape irrigation system within easement areas and the public right-of-way on Cherry Street for Thoro Systems.

10j. Maintenance of landscaping and the landscape irrigation system within the public right-of-way and easement areas for the King & Lyons development at Thornton Avenue and Willow Street.

10k. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Central Avenue for Bay Mirror.

10l. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and easement areas on Cedar Boulevard near Moores Avenue for Empire Tractor.

10m. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Mowry Avenue for the property at the northeast corner of Mowry Avenue and Cedar Boulevard.

10n. The maintenance of street lighting within the public right-of-way and landscaping and the landscape irrigation system within the public right-of-way and easement areas adjacent to the public right-of-way on Cedar Boulevard and Balentine Drive for TJ Maxx.

10o. The maintenance of street lighting within the public right-of-way and landscaping and the landscape irrigation system within the public right-of-way and the easement areas adjacent to the public right-of-way on Newark Boulevard and Cedar Boulevard for Lido Faire Shopping Center.

10p. The maintenance of street lighting within the public right-of-way and landscaping and the landscape irrigation system within the public right-of-way on Sycamore Street for B.K. Mills.

10q. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Magnolia Street for the Moose Lodge.

10r. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Central Avenue at the Southern Pacific railroad right-of-way for Leslie Salt Company.

10s. The maintenance of landscaping and the landscape irrigation system within landscape easement areas on Cedar Boulevard at Central Avenue for Parcel 1 of Parcel Map 4073.

10t. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Cedar Boulevard north of Lake Boulevard for Lot 5 of Tract 5361.

10u. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Magnolia Street south of Graham Avenue for Parcel 1 of Parcel Map 6178.

10v. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Smith Avenue west of Cherry Street for Parcel 4 of Parcel Map 1425.

10w. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Cedar Boulevard and Mowry Avenue for Parcels 1, 2, 3, and 6 of Parcel Map 3028.

10x. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on the cul-de-sac of Enterprise Court at 37569 Enterprise Court.

10y. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Magnolia Street and Graham Avenue at 37088 Magnolia Street (formerly 6963 Graham Avenue).

10z. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on the Thornton Avenue and Locust Street frontage of 37010 Locust Street.

10aa. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Enterprise Drive and Hickory Street at 8610 Enterprise Drive.

10ac. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Thornton Avenue and Sycamore Street at 7275 Thornton Avenue.

10ad. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Thornton Avenue at 6152 Thornton Avenue.

10ae. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Cedar Boulevard south of Mowry Avenue.

10af. The maintenance of landscaping, the landscape irrigation system, and the concrete block wall within the public right-of-way and adjacent easement areas on Mowry Avenue and Cedar Boulevard for the shopping center that includes 5789 Mowry Avenue.

10ag. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Hickory Street at 37137 Hickory Street.

10ah. The maintenance of median-island landscaping and lighting, and street frontage landscaping up to 30 feet in width along all streets within the boundaries of Bridgeway Technology Park on Fircrest Street.

10ai. The maintenance of lighting within public right-of-way and landscaping and landscape irrigation system within easement areas adjacent to the public right-of-way along Dairy

Avenue, Newark Boulevard, and Thornton Avenue for the Foxwood condominium project.

10aj. The maintenance of lighting within public right-of-way and landscaping and landscape irrigation system within easement areas adjacent to the public right-of-way on Magnolia Street, Graham Avenue, and Sycamore Street for the Summerhill Apartments.

10ak. The maintenance of lighting within public right-of-way and landscaping and landscape irrigation system within easement areas adjacent to the public right-of-way on Cherry Street and Dairy Avenue for the Summerhill Apartments.

10al. Maintenance of landscaping, landscape irrigation and lighting within the entire street right-of-way of Potrero Avenue; the easterly portion of Cherry Street, Buena Vista Drive and Parada Street contiguous to Tract 5869; and the easterly portion of Parada Street contiguous to Tract 5810; and the northerly portion of Stevenson Boulevard contiguous to Tract 5810, excluding the median islands within Cherry Street and Stevenson Boulevard.

10am. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and easement areas on Smith Avenue for the Oatey Company.

10an. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Thornton Avenue at Cedar Boulevard for Newark Square shopping center.

10ao. The maintenance and/or construction of landscaping and the irrigation system within the public right-of-way and adjacent easement areas on the Mowry School Road frontage of the property to the rear of Fremont Ford.

10ap. The construction and maintenance of landscaping and an irrigation system within the public right-of-way and adjacent easement areas on Morton Avenue for Morton Salt.

10aq. Construction and maintenance of landscaping and the landscape irrigation system within the public right-of-way and easement areas on the Cedar Boulevard frontage of the shopping center on the northwest corner of Newark Boulevard and Cedar Boulevard.

10ar. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Central Avenue and on Clark Avenue for Matheson Gas.

10as. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Smith Avenue at 6565 Smith Avenue.

10at. The construction and/or maintenance of the Art in Public Places Element required in accordance with Newark City Council Resolution No. 5682 within the public right-of-way and/or adjacent easement areas on Parcels 1 and 2 of Tract 5343.

10au. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Newark Boulevard at 35193 Newark Boulevard.

10av. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Cedar Boulevard at 37300 Cedar Boulevard.

10aw. The maintenance and/or construction of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Fircrest Street at Assessor's Parcel No. 537-460-12-3.

10ax. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Enterprise Drive and Willow Street at 8400 Enterprise Drive.

10ay. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Mowry Avenue and Cherry Street.

10az. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Balentine Drive at Parcel 1 of Parcel Map 6692.

10ba. The maintenance and/or construction of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Cherry Street north of Thornton Avenue.

10bb. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Jarvis Avenue and Newark Boulevard.

10bc. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Cherry Street south of Robertson Avenue.

10bd. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Filbert Street and Central Avenue.

10be. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement along the street frontage on Balentine Drive.

Since this district is for properties responsible for their own maintenance, all property owners for all subdistricts in this district will receive a "zero" assessment for 2014-2015.

Attachment

Action - Upon conclusion of the public hearing, it is recommended that the City Council, by resolution, approve the diagram and assessment and levy the annual assessment for Landscaping and Lighting District No. 10 for the 2014-2015 fiscal year.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK CONFIRMING DIAGRAM AND ASSESSMENT AND LEVYING ASSESSMENT FOR FISCAL YEAR 2014-2015

ASSESSMENT DISTRICT NO. 10
(Pursuant to the Landscaping and Lighting Act of 1972)

The City Council of the City of Newark resolves:

1. Pursuant to Chapter 3 of the Landscaping and Lighting Act of 1972, the City Council directed the City Engineer, Engineer of Work for Assessment District No. 10, to prepare and file an annual report for Fiscal Year 2014-2015.

2. The Engineer of Work filed the annual report on May 8, 2014, and the City Council adopted its resolution of intention to levy and collect assessments within the Landscaping and Lighting District for Fiscal Year 2014-2015 and set a public hearing to be held on June 26, 2014, in the meeting place of the City Council, 37101 Newark Boulevard, Newark, California, 94560. Notice of the hearing was given in the time and manner required by law.

3. At the public hearing, the City Council afforded to every interested person an opportunity to make a protest to the annual report either in writing or orally, and the City Council has considered each protest.

4. The City Council hereby confirms the diagram and assessment as set forth in the annual report of the Engineer of Work and hereby levies the assessment set forth therein for Fiscal Year 2014-2015.

E.7 Hearing to consider property owners' objections and confirmation of the Superintendent of Streets' report concerning weed abatement assessments – from Maintenance Supervisor Carey. (MOTION)(RESOLUTION)

Background/Discussion – The Superintendent of Streets' report on the 2014 Weed Abatement Program is submitted pursuant to Resolution No. 10,173 adopted by the City Council on February 27, 2014. The report showing the assessments for the fall 2013 and the spring 2014 weed abatement has been posted as required. Owners whose properties are subject to an assessment may protest at this meeting or submit their objections prior to the hearing. As of June 12, 2014, no written objections have been received.

On April 10, 2014, the City Council directed the Superintendent of Streets to abate weeds on 151 parcels of land. Subsequent to notification, private property owners cleared 139 parcels and the City's contractor cleared 12 parcels. This year, the assessments ranged from $77 to $1,133. The lowest cost is for a vacant property that requires minimal work. The highest cost was for the San Mateo County Transit District property, where mowing, extensive handwork and trash removal was necessary. There were no supplemental lot clearings for the 2013 fall abatement work included in this year's assessments.

Attachment

Action - It is recommended that the City Council, by motion, act upon any objections by property owners for assessments on their parcels for the 2014 Weed Abatement Program and, by resolution, confirm the Superintendent of Streets' report concerning weed abatement assessments.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK CONFIRMING THE REPORT OF THE SUPERINTENDENT OF STREETS CONCERNING WEED ABATEMENT ASSESSMENTS

WHEREAS, the City Council of the City of Newark, by Resolution No. 10,173, ordered certain rubbish, refuse, dirt, and weeds to be abated in the manner provided by Sections 39560 and 39586 inclusive, of the Government Code of the State of California; and

WHEREAS, the Superintendent of Streets has caused said rubbish, refuse, dirt, and weeds to be abated. Nuisances abated and an accounting of the cost of abatement in front of or on each separate parcel of land has been set forth in a report entitled "Exhibit A – 2014 City of Newark Weed Abatement – Total Assessment" and attached hereto;

NOW, THEREFORE, BE IT RESOLVED that the report of the Superintendent of Streets attached hereto and made a part hereof as Exhibit A is hereby confirmed;

BE IT FURTHER RESOLVED that the cost of abating the nuisance for each respective parcel is set forth in said report under the column entitled "Total Assessment";

BE IT FURTHER RESOLVED that there is hereby levied a special assessment against each parcel of land described in said report in the amount of $4,036 as shown in said column "Total Assessment";

BE IT FURTHER RESOLVED that the costs levied as a special assessment against the parcels of land described in said report shall become a lien upon the property.

2013 Fall/2014 Spring
Combined Work Including Multiplier

WEED ABATEMENT - TOTAL ASSESSMENTS

MAP NO.	APN	LOCATION	TOTAL ASSESSMENT
4	092-0021-015-03	Sycamore Street	340
8	092-0030-014-03	6717 Thornton Avenue	148
11	92A-1105-014-00	SP Railroad R-O-W	352
13	92A-2588-008-03	38959 Timber Street	288
16	92A-0919-010-02	6249 Thornton Avenue	253
34	092-0126-019-00	SMCTD Railroad R-O-W	1,133
45	092-0125-010-00	7843 Railroad Avenue	215
49	092-0135-023-00	Walnut Street	109
59	901-0195-039-00	39888 Cedar Blvd,	340
60	92A-2165-013-01	6590 Central Avenue	447
63	92A-0623-043-00	36569 Newark Blvd.	225
69	092-0030-013-00	36951 Mulberry Street	77
70	92A-2588-007-04	Timber Street	109
		Total	$4,036

F.1 Second reading and adoption of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code and Section 17.44.010 "Zoning Map" by rezoning all that real property shown on Vesting Tentative Tract Map 8166 from CC (Community Commercial) to R-1,500 (High Density Residential – 1,500) – from City Clerk Harrington. (ORDINANCE)

Background/Discussion – On June 12, 2014, the City Council introduced an ordinance Second reading and adoption of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code and Section 17.44.010 "Zoning Map" by rezoning all that real property shown on Vesting Tentative Tract Map 8166 from CC (Community Commercial) to R-1,500 (High Density Residential – 1,500). This applies to the development of 85 townhomes on a vacant lot located at 39850 and 39888 Cedar Boulevard (northeast corner of Cedar Boulevard and Mowry School Road)

Attachment

Action - It is recommended that the City Council adopt the ordinance amending Title 17 (Zoning) of the Newark Municipal Code and Section 17.44.010 "Zoning Map" by rezoning all that real property shown on Vesting Tentative Tract Map 8166 from CC (Community Commercial) to R-1,500 (High Density Residential – 1,500).

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK AMENDING TITLE 17 (ZONING) OF THE NEWARK MUNICIPAL CODE AND SECTION 17.44.010 "ZONING MAP" BY REZONING ALL THAT REAL PROPERTY SHOWN ON VESTING TENTATIVE TRACT MAP 8166 FROM CC (COMMUNITY COMMERICAL) TO R-1,500 (HIGH DENSITY RESIDENTIAL -1,500)

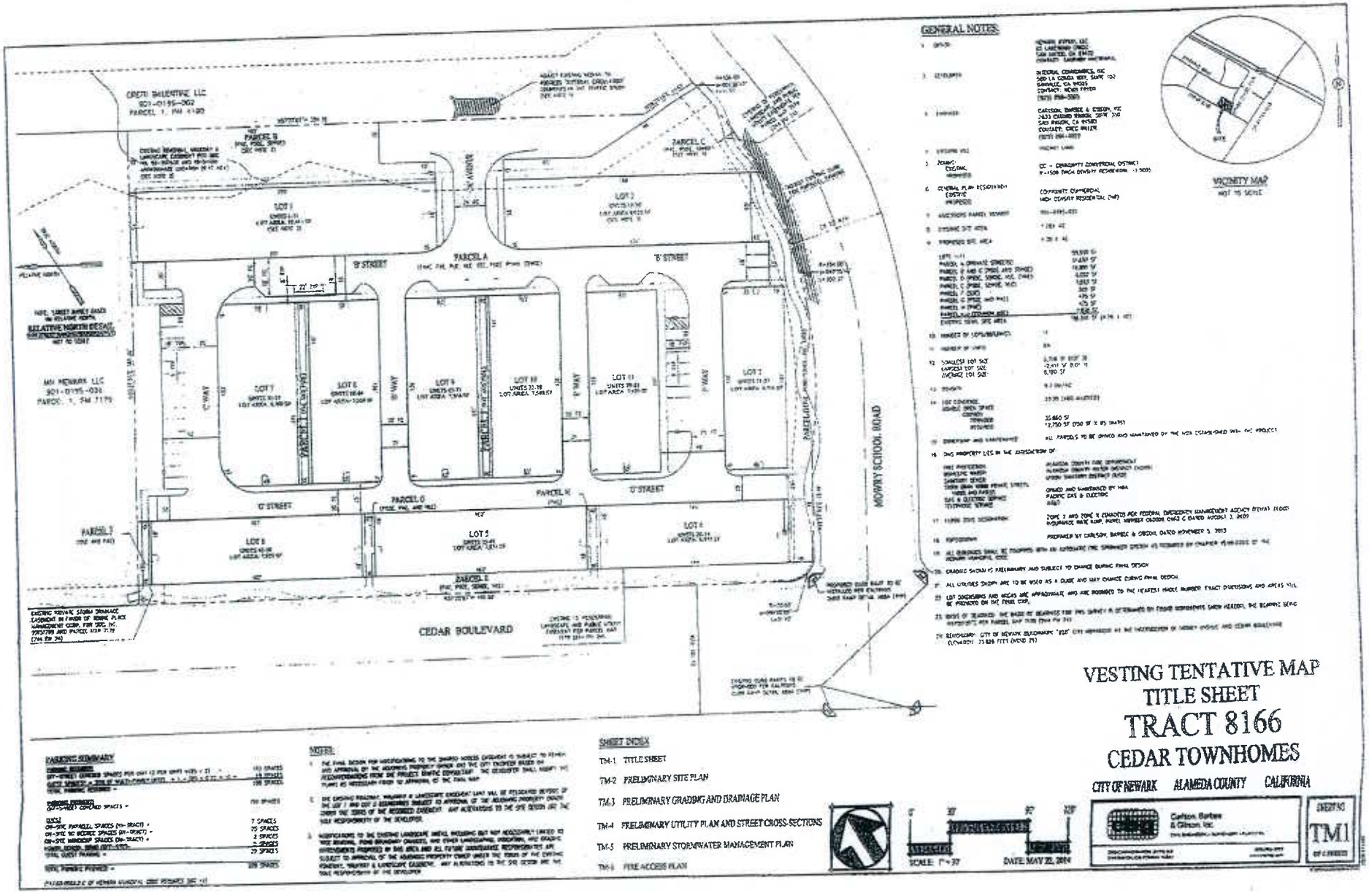
The City Council of the City of Newark does ordain as follows:

Section 1: Pursuant to Section 17.80.070 of Title 17 (Zoning) of the City of Newark Municipal Code, the City Council of the City of Newark does hereby find that the zoning change embodied in this ordinance is necessary and desirable to achieve the purposes of Title 17 (Zoning) of the Newark Municipal Code; is consistent with the policies, goals, and objectives of the General Plan; and promotes the public health, safety, morals, comfort, convenience, and general welfare of the residents of the City of Newark.

Section 2: Title 17 (Zoning) and Section 17.44.010 "Zoning Map" thereof, being the City of Newark Zoning Regulations, are hereby amended by rezoning and redistricting the territory in the City of Newark, County of Alameda, State of California, from CC (Community Commercial) to R-1,500 (High Density Residential – 1,500), hereinafter described as follows:

> All that real property designated as Vesting Tentative Tract Map 8166 in the City of Newark, County of Alameda, State of California as shown on Exhibit A attached hereto and incorporated herein by reference

Section 3: Effective Date. This ordinance shall take effect thirty (30) days from the date of its passage. Before expiration of fifteen (15) 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.



VESTING TENTATIVE MAP
TITLE SHEET
TRACT 8166
CEDAR TOWNHOMES

CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

EXHIBIT A

F.2 Authorization for the City Manager to sign a lease agreement with Child, Family, & Community Services, Inc. for use of the Jerry Raber Ash Street Park Building #2 for the operation of a Head Start Preschool Program – from Recreation and Community Services Director Zehnder. (RESOLUTION)

Background/Discussion – The current lease agreement for use of the Jerry Raber Ash Street Park Building #2 by the Child, Family & Community Services, Inc. is due to expire in June. Child, Family, & Community Services, Inc. wishes to enter into a new one-year agreement. A new lease agreement has been prepared, the conditions of which remain essentially the same as in the past. A share of the utility cost will be paid on a biannual basis. Child, Family, & Community Services, Inc. provides a valuable Head Start Preschool program to the community and staff recommends that the City Council authorize an extension of the lease for an additional year, through June 5, 2015, at an annual rental fee of $1 per year.

Attachment

Action - It is recommended that the City Council, by resolution, authorize the City Manager to sign a lease agreement with Child, Family, & Community Services, Inc. for use of the Jerry Raber Ash Street Park Building #2 for the operation of a Head Start Preschool program.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO SIGN A LEASE AGREEMENT WITH CHILD, FAMILY AND COMMUNITY SERVICES, INC. FOR USE OF JERRY RABER ASH STREET PARK BUILDING #2 FOR THE OPERATION OF A HEAD START PRESCHOOL PROGRAM.

WHEREAS, the current lease agreement for the Child, Family, and Community Services, Inc. for use of Jerry Raber Ash Street Park Building #2 will expire in June; and

WHEREAS, it is recommended that an extension be authorized for an additional year, through June 5, 2015, for a rental fee of $1 per year;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the City Manager of the City of Newark is hereby authorized to sign a lease agreement with Child, Family, and Community Services, Inc., for the operation of a Head Start Preschool program, said agreement on file in the Office of the City Clerk.

Dzr2

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this _____ day of June, 2014, by and between the CITY OF NEWARK, CALIFORNIA, a municipal corporation hereinafter referred to as "CITY," and the CHILD, FAMILY AND COMMUNITY SERVICES, INC., a California Non-Profit Public Benefits Corporation, hereinafter called respectively, the Lessor and Lessee, without regard to number or gender.

IT IS AGREED between the parties hereto as follows:

1. DESCRIPTION OF PREMISES

The Lessor hereby leases to Lessee, and Lessee hires from Lessor, on the terms and conditions hereinafter set forth, those certain premises with the appurtenances, situated in the City of Newark, County of Alameda, State of California, and commonly known and described as 37365 Ash Street, Building #2, Newark, California.

2. TERMS

Said lease shall be for a period of one (1) school year commencing August 18, 2014, and ending on June 5, 2015. A school year consists of the months starting with September 1, 2014 and ending May 29, 2015.

3. RENT

The rent is One Dollar ($1.00) per year payable on the first day of September, 2014.

4. USE

The premises are hereby leased to the Lessee for the purpose of providing a pre-school program for Head Start. Agreement to this use in this lease shall not be deemed a waiver of compliance with any ordinance of the City of Newark now in force or hereafter enforced.

5. WASTE, QUIET CONDUCT

Lessee shall not commit, or suffer to be committed, any waste upon the said premises, or any nuisance, or other act or thing which may disturb the quiet enjoyment of any other tenant.

6. ALTERATIONS, MECHANICS' LIENS

Lessee shall not make or suffer to be made, any alterations of the said premises, or any part thereof without the written consent of Lessor first had and obtained, and any additions to, or alterations of, the said premises, except moveable furniture and trade fixtures, shall become at once a part of the realty and belong to Lessor. Lessee shall keep

the demised premises and the property in which the demised premises are situated free from any liens arising out of any work performed, material furnished, or obligations incurred by Lessee.

Lessee further grants Lessor the right to inspect the premises to assure compliance with the provision of this paragraph and all other provisions of this lease.

7. UTILITIES

Lessee shall obtain and pay for all telephone service to the building. Lessee shall pay the City of Newark 75% of the City's total Ash Street Park electrical service bills. Lessor shall obtain and be responsible for water service.

8. JANITORIAL SERVICES

Lessee shall, at its own cost, provide janitorial services as needed to keep the interior of the leased premises in good and sanitary order.

9. ACCEPTANCE OF PREMISES AS IS. SURRENDER AT END OF TERM

By entry hereunder, Lessee accepts the premises as being in good and sanitary order, condition and repair and agrees on the last day of said term, or sooner termination of this lease, to surrender unto Lessor all and singular said premises with said appurtenances in the same condition as when received, reasonable use and wear thereof and damage by fire, Act of God or by the elements excepted, and to remove all of Lessee's signs from said premises.

10. COMPLIANCE WITH LAW

Lessee shall, at its sole cost and expense, comply with all of the requirements of all Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the said premises, and shall faithfully observe in the use of the premises all applicable Municipal ordinances and State and Federal statutes now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceeding against Lessee, whether Lessor be a part thereto or not, that Lessee has violated any such ordinance or statute in the use of the premises shall be conclusive of the fact as between Lessor and Lessee.

No narcotics or drugs as defined by the Health and Safety Code as being illegal, and no alcoholic beverages of any kind, shall be permitted on the premises.

Lessee shall not use the premises in any manner which constitutes a public or private nuisance by statute or common law.

Lessee further grants the Police Department the right to inspect the premises and surrounding areas at any time to assure compliance with law.

11. CITY TO BE HELD HARMLESS

Lessee, as a material part of the consideration to be rendered to Lessor, hereby waives all claims against Lessor for damages to goods, wares, and merchandise, in, upon or about said premises and for injuries to Lessee, his agents or third persons in or about said premises from any cause arising at any time, and Lessee will hold Lessor exempt and harmless from any damage or injury to any person, or to the goods, wares, and merchandise of any person, arising from the use of the premises by Lessee, or from the failure of Lessee to keep the premises in good condition and repair, as herein provided, excepting therefrom any and all claims, liability, loss against Lessor for damages resulting from the intentional and/or negligent acts or omissions of Lessor, its officers, employees, and agents.

12. NON-LIABILITY FOR DAMAGES

This lease is made upon the express condition that Lessor is to be free from all liability and claim for damages by reason of any injury to any person or persons, including Lessee, or property of any kind whatsoever and to whomsoever belonging, including Lessee, from any cause or causes whatsoever while in, upon, or in any way connected with said demised premises or the said sidewalks adjacent thereto during the term of this lease or any extension hereof or any occupancy hereunder, Lessee hereby covenanting and agreeing to indemnify and save harmless Lessor from all liability, loss, cost, and obligations on account of or arising out of any such injuries or losses however occurring.

13. INSURANCE

Lessee shall acquire and maintain Workers' Compensation, employer's liability, and commercial general liability insurance coverage relating to the activities of Lessee, its agents, representatives, employees, or sub lessees in, on, upon, or relating to the premises leased herein covering City's risks in form subject to the approval of the City Attorney.

The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event, shall be as follows:

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the occupancy of the premises.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

Workers' Compensation insurance as required by the State of California and Employer's Liability Coverage.

Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. General Liability: (including operations, products and completed operations, as applicable.)	**$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Employer's Liability:	**$1,000,000** per accident for bodily injury or disease.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Lessee shall furnish City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

Other Insurance Provisions

The commercial general liability and employee liability policies are to contain, or be endorsed to contain, the following provisions:

Additional Insureds. The City, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Lessee.

Primary Insurance. For any claims related to this project, the Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Lessee's insurance and shall not be contribute with it.

Notice of Cancellation. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after ten (10) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Civil Code § 2782. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

Qualifications. All insurance companies providing coverage to Lessee shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

Waiver of Subrogation. With respect to Workers' Compensation, the insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees, and volunteers for losses arising from work performed on the premises by Lessee.

Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 12 is a material element of this lease and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this lease.

Variation. The Risk Manager of City may approve a variation in those insurance requirements upon a determination that the coverage, scope, limits and form of such insurance are either not commercially available or that the City's interest are otherwise fully protected.

Licensor shall maintain real property insurance on said premises which shall include coverage for and against loss or damage to the real property caused in whole or in part by Licensee. Licensee shall not be responsible or liable for the loss of or damage to said premises of Licensor. Licensee shall maintain personal property insurance to insure its own personal property against loss or damage which shall include coverage for and against loss or damage to Licensee's personal property caused in whole or in part by Licensor.

14. ASSIGNMENT OR SUBLETTING

Lessee shall not assign this lease, or any interest therein, and shall not sublet the said premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of Lessee excepted) to occupy or use the said premises, or any portion thereof, without the written consent of Lessor first had and

obtained, and a consent to one assignment, subletting, occupation, or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of the Lessor, terminate this lease.

This lease shall not, nor shall any interest therein, be assignable, as to the interest of Lessee, by operation of law, without the written consent of Lessor.

15. INDEMNITY OF CITY AND ITS OFFICERS

Lessee hereby acknowledges that it is not in any way connected with the City of Newark, in its operation of the pre-school program (Head Start) and does hereby indemnify and hold City, its officers, officials, councils, commissions, volunteers, and employees harmless from any and all liability from the operation of the pre-school program (Head Start) and does further agree to defend any and all litigation arising out of Lessee's operation of the pre-school program on the Premises and in which the City of Newark is named as a defendant, excepting therefrom any and all claims, liability, or loss against Lessor for damages resulting from the intentional and/or negligent acts or omissions of Lessor, its officers, officials, volunteers, and employees. Lessee does hereby further agree to endorse City of Newark as an additional insured to its policies and to provide the City of Newark with a certificate of insurance acceptable to the City Attorney.

16. RELATIONSHIP OF LESSEE/LESSOR

The relationship between Child, Family and Community Services, Inc. and the City of Newark is that of Lessee/Lessor and Child, Family and Community Services, Inc. is not the employee, servant or agent of the City of Newark.

17. NOTICES

Written notices required or convenient hereunder shall be delivered personally or by depositing the same with the United States Postal Service, first class (or equivalent), postage prepaid and addressed to:

Lessor:

City Manager City of Newark 37101 Newark Boulevard Newark, CA 94560	and	City Attorney City of Newark 37101 Newark Boulevard Newark, CA 94560

Lessee:
Executive Director
Child, Family and Community Services, Inc.
32980 Alvarado Niles Road, Suite 846
Union City, CA 94587

18. HOLDING OVER

Any holding over after the expiration of the term or notice of termination shall be at a monthly rental of $1.00 and shall otherwise be on the terms and conditions herein specified, so far as applicable.

19. TERMINATION

The Lessor or Lessee may terminate this lease at any time upon thirty (30) days written notice.

20. NON-DISCRIMINATION

CHILD, FAMILY AND COMMUNITY SERVICES agrees that no person in the United States shall on the grounds of race, color, religious creed, national origin, sex, age, physical disability, mental disability, medical condition, marital status, sexual orientation, or any other basis, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity carried out in whole or in part within the premises. CHILD, FAMILY AND COMMUNITY SERVICES shall not, on any basis as defined in California Civil Code Section 51:

a. Deny any service or other benefit provided by the program or activity; or

b. Provide any service or other benefit which is different or is provided in a different form from that provided to others under the program activity; or

c. Subject to segregated or separate treatment in any facility or in any manner or process related to receipt of any service or benefit under the program or activity; or

d. Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the program or activity; or

e. Treat an individual differently from others in determining the admission, enrollment, eligibility, membership, or other requirements or conditions which individuals must meet in order to be provided any service or other benefits provided under the program or activity.

21. AMENDMENTS

This lease shall be amended only by written agreement of the parties hereto.

22. ENTIRE AGREEMENT

This instrument constitutes the entire agreement between CITY and CHILD, FAMILY AND COMMUNITY SERVICES relative to the premises and this lease, and may be altered only by an instrument in writing signed by both CITY and CHILD, FAMILY

AND COMMUNITY SERVICES. CITY and CHILD, FAMILY AND COMMUNITY SERVICES agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the premises are merged in or revoked by this lease.

23. SEVERABILITY

If any term or provision of the lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the lease shall not be affected thereby, and each term and provision of the lease shall be valid and be enforceable to the fullest extent permitted by law.

24. HEADINGS

The headings used in this lease are not a part of this lease and shall have no effect upon the construction or interpretation of any part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

CHILD, FAMILY AND
COMMUNITY SERVICES, INC.

By Karen Deshayes
Executive Director

PLEASE SEE ATTACHED
ACKNOWLEDGEMENT
FROM NOTARY PUBLIC

CITY OF NEWARK

By_____
City Manager, City of Newark

Attest

_____
City Clerk, City of Newark

Approved as to form:

_____
City Attorney, City of Newark

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA }

County of Alameda

On June 18, 2014 (Date) before me, Cindy R. Tunchez (Insert Name of Notary exactly as it appears on the official seal), Notary Public,

personally appeared Karen Deshayes — (Name(s) of Signer(s)),

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

OFFICIAL SEAL
CINDY R. TUNCHEZ
NOTARY PUBLIC - CALIFORNIA
Commission #1930924
County of Alameda
My Commission expires Mar. 31, 2015
PG-01 PG-01

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____ (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of the form to another document.

Description of Attached Document

Title or Type of Document: Lease Agreement

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

F.3 Authorization for the Mayor to sign a Lease Agreement with Viola Blythe Community Service Center of Newark, Inc. for use of the Jerry Raber Ash Street Park Building #1 for the operation of a food and clothing distribution center – from Recreation and Community Services Director Zehnder. (RESOLUTION)

Background/Discussion – The current Lease Agreement for use of the Jerry Raber Ash Street Park Building #1 by the Viola Blythe Community Service Center of Newark is due to expire on June 30, 2014. Viola Blythe Community Service Center wishes to enter into a new one-year Agreement. A new Lease Agreement has been prepared, the conditions of which remain essentially the same as in the past. A share of the utility cost will be paid on a bi-annual basis. The Center provides a valuable service to the community and staff recommends that the City Council authorize an extension of the lease for an additional year, through June 30, 2015, at an annual rental fee of $1 per year.

Attachment

Action - It is recommended that the City Council, by resolution, authorize the Mayor to sign a Lease Agreement with Viola Blythe Community Service Center of Newark, Inc. for lease of the Ash Street Park Building #1 for the operation of a food and clothing distribution center.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE MAYOR TO SIGN A LEASE AGREEMENT WITH VIOLA BLYTHE COMMUNITY SERVICE CENTER FOR USE OF JERRY RABER ASH STREET PARK BUILDING #1 FOR THE OPERATION OF A FOOD AND CLOTHING DISTRIBUTION CENTER

WHEREAS, the current lease agreement for the Viola Blythe Community Service Center of Newark for use of Jerry Raber Ash Street Building #1 will expire on June 30, 2014; and

WHEREAS, it is recommended that an extension be authorized for an additional year, through June 30, 2015, and for a rental fee of $1 per year; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the Mayor of the City of Newark is hereby authorized to sign a lease agreement with Viola Blythe Community Service Center for the operation of a food and clothing distribution center, said agreement on file in the Office of the City Clerk.

Dzr1

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this 12th day of June, 2014, by and between the CITY OF NEWARK, CALIFORNIA, a municipal corporation hereinafter referred to as "CITY," and the VIOLA BLYTHE COMMUNITY SERVICE CENTER OF NEWARK, Inc., a California not for profit Corporation, hereinafter called respectively, the Lessor and Lessee, without regard to number or gender.

IT IS AGREED between the parties hereto as follows:

1. DESCRIPTION OF PREMISES

The Lessor hereby leases to Lessee, and Lessee hires from Lessor, on the terms and conditions hereinafter set forth, those certain premises with the appurtenances, situated in the City of Newark, County of Alameda, State of California, and commonly known and described as 37365 Ash Street, Building #1 Newark, California.

2. TERMS

Said lease shall be for a period of one (1) year commencing July 1, 2014, and ending on June 30, 2015.

3. RENT

The rent is One Dollar ($1.00) per year payable on the first day of July, 2014.

4. USE

The premises are hereby leased to the Lessee for the purpose of providing a Community Service Center. Agreement to this use in this lease shall not be deemed a waiver of compliance with any ordinance of the City of Newark now in force or hereafter enforced.

5. WASTE, QUIET CONDUCT

Lessee shall not commit, or suffer to be committed, any waste upon the said premises, or any nuisance, or other act or thing which may disturb the quiet enjoyment of any other tenant.

6. ALTERATIONS, MECHANICS' LIENS

Lessee shall not make or suffer to be made, any alterations of the said premises, or any part thereof without the written consent of Lessor first had and obtained, and any additions to, or alterations of, the said premises, except moveable furniture and trade fixtures, shall become at once a part of the realty and belong to Lessor. Lessee shall keep the demised premises and the property in which the demised premises are situated free from any liens arising out of any work performed, material furnished, or obligations incurred by Lessee.

Lessee further grants Lessor the right to inspect the premises to assure compliance with the provision of this paragraph and all other provisions of this lease.

7. UTILITIES

a. Lessee shall obtain and pay for all telephone service and shall pay the City of Newark 25% of the City's total Ash Street Park electrical bills not to exceed $110 per month. Payment shall be made twice annually: on January 1, 2015, for electric services for the months of July through December 2014; and on July 1, 2015 for electric services for the months of January through June 2015.

b. Lessor shall provide water service at no additional cost to Lessee.

8. JANITORIAL

Lessee shall, at its own cost, provide janitorial services as needed to keep the interior in good and sanitary order.

9. ACCEPTANCE OF PREMISES AS IS. SURRENDER AT END OF TERM

By entry hereunder, Lessee accepts the premises as being in good and sanitary order, condition and repair and agrees on the last day of said term, or sooner termination of this lease, to surrender unto Lessor all and singular said premises with said appurtenances in the same condition as when received, reasonable use and wear thereof and damage by fire, Act of God or by the elements excepted, and to remove all of Lessee's signs from said premises.

10. COMPLIANCE WITH LAW

Lessee shall, at its sole cost and expense, comply with all of the requirements of all Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the said premises, and shall faithfully observe in the use of the premises all applicable Municipal ordinances, local law, and State and Federal statutes now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceeding against Lessee, whether Lessor be a part thereto or not, that Lessee has violated any such ordinance or statute in the use of the premises shall be conclusive of the fact as between Lessor and Lessee.

No narcotics or drugs as defined by the Health and Safety Code as being illegal, and no alcoholic beverages of any kind, shall be permitted on the premises.

Lessee shall not use the premises in any manner which constitutes a public or private nuisance by statute or common law.

Lessee further grants the Police Department the right to inspect the premises and surrounding areas at any time to assure compliance with law.

11. CITY TO BE HELD HARMLESS

Lessee, as a material part of the consideration to be rendered to Lessor, hereby waives all claims against Lessor for damages to goods, wares, and merchandise, in, upon or about said premises and for injuries to Lessee, its agents or third persons in or about said premises from any cause arising at any time, and Lessee will hold Lessor exempt and harmless from any damage or injury to any person, or to the goods, wares, and merchandise of any person, arising from the use of the premises by Lessee, or from the failure of Lessee to keep the premises in good condition and repair, as herein provided, excepting therefrom any and all claims, liability, loss against Lessor for damages resulting from the intentional and/or negligent acts or omissions of Lessor, its officers, employees, and agents.

12. NON-LIABILITY FOR DAMAGES

This lease is made upon the express condition that Lessor is to be free from all liability and claim for damages by reason of any injury to any person or persons, including Lessee, or property of any kind whatsoever and to whomsoever belonging, including Lessee, from any cause or causes whatsoever while in, upon, or in any way connected with said demised premises or the said sidewalks adjacent thereto during the term of this lease or any extension hereof or any occupancy hereunder, Lessee hereby covenanting and agreeing to indemnify and save harmless Lessor from all liability, loss, cost, and obligations on account of or arising out of any such injuries or losses however occurring.

13. INSURANCE

Lessee shall acquire and maintain Workers' Compensation, employer's liability, and commercial general liability insurance coverage relating to the activities of Lessee, its agents, representatives, or employees in, on, upon, or relating to the premises leased herein covering City's risks in form subject to the approval of the City Attorney.

The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event shall be as follows:

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the occupancy of the premises.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).

Workers' Compensation insurance as required by the State of California, including Employer's Liability Coverage.

Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. **General Liability (GCL):** (including operations, products and completed operations, as applicable.)	**$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Employer's Liability:**	**$1,000,000** per accident for bodily injury or disease.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Lessee shall furnish City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

Additional Insureds. The City, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Lessee.

Primary Insurance. For any claims related to this project, the Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Lessee's insurance and shall not be contribute with it.

Notice of Cancellation. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after ten (10) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Civil Code § 2782. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

Qualifications. All insurance companies providing coverage to Lessee shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

Waiver of Subrogation. With respect to Workers' Compensation, the insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees, and volunteers for losses arising from work performed on the premises by Lessee.

Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 13 is a material element of this lease and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this lease.

Variation. The Risk Manager of City may approve a variation in those insurance requirements upon a determination that the coverage, scope, limits and form of such insurance are either not commercially available or that the City's interest are otherwise fully protected.

Licensor shall maintain real property insurance on said premises which shall include coverage for and against loss or damage to the real property caused in whole or in part by Licensee. Licensee shall not be responsible or liable for the loss of or damage to said premises of Licensor. Licensee shall maintain personal property insurance to insure its own personal property against loss or damage which shall include coverage for and against loss or damage to Licensee's personal property caused in whole or in part by Licensor.

14. ASSIGNMENT OR SUBLETTING

Lessee shall not assign this lease, or any interest therein, and shall not sublet the said premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of Lessee excepted) to occupy or use the said premises, or any portion thereof, without the written consent of Lessor first had and

obtained, and a consent to one assignment, subletting, occupation, or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of the Lessor, terminate this lease.

This lease shall not, nor shall any interest therein, be assignable, as to the interest of Lessee, by operation of law, without the written consent of Lessor.

15. INDEMNITY OF CITY AND ITS OFFICERS

Lessee hereby acknowledges that it is not in any way connected with the City of Newark, in its operation of the Community Service Center and does hereby indemnify and hold City, its officers, officials, councils, commissions, volunteers, and employees harmless from any and all liability from the operation of the Community Service Center and does further agree to defend any and all litigation arising out of Lessee's operation of the Community Service Center on the Premises and in which the City of Newark is named as a defendant, excepting therefrom any and all claims, liability, or loss against Lessor for damages resulting from the intentional and/or negligent acts or omissions of Lessor, its officers, officials, volunteers, and employees. Lessee does hereby further agree to endorse City of Newark as an additional insured to its policies and to provide the City of Newark with a certificate of insurance acceptable to the City Attorney.

16. RELATIONSHIP OF LESSEE/LESSOR

The relationship between Viola Blythe Community Service Center of Newark, Inc. and the City of Newark is that of Lessee/Lessor and Viola Blythe Community Service Center of Newark, Inc. is not the employee, servant or agent of the City of Newark.

17. NOTICES

Written notices required or convenient hereunder shall be delivered personally or by depositing the same with the United States Postal Service, first class (or equivalent), postage prepaid and addressed to:

Lessor:
City Manager
City of Newark
37101 Newark Boulevard
Newark, CA 94560

and

City Attorney
City of Newark
37101 Newark Boulevard
Newark, CA 94560

Lessee:
President of the Board
Viola Blythe Community Service Center of Newark, Inc.
37365 Ash Street, Building #1
Newark, CA 94560

18. HOLDING OVER

Any holding over after the expiration of the term or notice of termination shall be at a monthly rental of $1.00 and shall otherwise be on the terms and conditions herein specified, so far as applicable.

19. TERMINATION

The Lessor may terminate this lease at any time upon thirty (30) days written notice.

20. NON-DISCRIMINATION

VIOLA BLYTHE agrees that no person in the United States shall on the grounds of race, color, religious creed, national origin, sex, age, physical disability, mental disability, medical condition, marital status, sexual orientation, or any other basis, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity carried out in whole or in part within the premises. VIOLA BLYTHE shall not, on any basis as defined in California Civil Code Section 51:

a. Deny any service or other benefit provided by the program or activity; or

b. Provide any service or other benefit which is different or is provided in a different form from that provided to others under the program activity; or

c. Subject to segregated or separate treatment in any facility or in any manner or process related to receipt of any service or benefit under the program or activity; or

d. Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the program or activity; or

e. Treat an individual differently from others in determining the admission, enrollment, eligibility, membership, or other requirements or conditions which individuals must meet in order to be provided any service or other benefits provided under the program or activity.

21. AMENDMENTS

This lease shall be amended only by written agreement of the parties hereto.

22. ENTIRE AGREEMENT

This instrument constitutes the entire agreement between CITY and VIOLA BLYTHE relative to the premises and this lease, and may be altered only by an instrument in writing signed by both CITY and VIOLA BLYTHE. CITY and VIOLA BLYTHE agree hereby that all prior or contemporaneous oral agreements between and among themselves

and their agents or representatives relative to the leasing of the premises are merged in or revoked by this lease.

23. SEVERABILITY

If any term or provision of the lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the lease shall not be affected thereby, and each term and provision of the lease shall be valid and be enforceable to the fullest extent permitted by law.

24. HEADINGS

The headings used in this lease are not a part of this lease and shall have no effect upon the construction or interpretation of any part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

VIOLA BLYTHE COMMUNITY
SERVICE CENTER OF NEWARK, INC.

By Debra Rodriguez
Executive Director

CITY OF NEWARK

By _____
City of Newark

Attest _____
City Clerk, City of Newark

Approved as to form:

_____
City Attorney, City of Newark

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda

On June 3, 2014 (Date) before me, Kathleen L. Slafter, Notary Public (Here Insert Name and Title of the Officer),

personally appeared Debra Rodriquez (Name(s) of Signer(s)),

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

KATHLEEN L. SLAFTER
Commission # 1998162
Notary Public - California
Alameda County
My Comm. Expires Dec 11, 2016

Kathleen L. Slafter
Commission No. 1998162
Expires December 11, 2016

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kathleen L. Slafter (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Lease Agreement

Document Date: June 12, 2014 Number of Pages: 9

Signer(s) Other Than Named Above: Alan L. Nagy, Mayor of the City of Newark

Capacity(ies) Claimed by Signer(s)

Signer's Name: Debra Rodriguez

☐ Individual
☒ Corporate Officer — Title(s): Executive Director
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer Is Representing: Viola Blythe Community Service Center

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name:

☐ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

©2007 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 • www.NationalNotary.org Item #5907 Reorder: Call Toll-Free 1-800-876-6827

F.4 Authorization for the Mayor to sign Task Order No. 8 to the Joint Powers Agreement with the City of Fremont for Case Management services – from Recreation and Community Services Director Zehnder. (RESOLUTION)

Background/Discussion – Case Management is a vital component of the services offered through the City of Newark Senior Services program. It targets frail, homebound Newark seniors, striving to keep the elder person in their own home rather than being institutionalized. An assessment is made of the senior's overall well-being, including health (physical and mental), financial, transportation and/or housing needs, personal safety issues, and the ability to care for themselves, either on their own or with assistance. If appropriate, a care plan for services is begun to assist the client with whatever services are needed and to provide ongoing monitoring of the client and the services put in place.

The Case Management Program receives referrals from the Police and Fire Departments. As first responders they encounter elderly that need assistance on many levels. The case manager is the answer to many of these referrals. Case Management services often result in the elimination of repeated callouts for the Police and Fire Departments as a crisis situation receives prompt intervention. This allows safety personnel to focus on other business within the City, thereby not straining the City's safety resources. With ever-increasing demands on City staff, it is reassuring to know that assistance is available for the City's most vulnerable residents.

The City has contracted for Case Management services with the City of Fremont since July 1, 1997. The Fiscal Year 2013-2014 agreement was in the amount of $5,000 and provided one and one half hours of Case Management services per week. Due to continued budget constraints, staff is recommending that the Case Management funding for Fiscal Year 2014-2015 remain at $5,000. Based on the number of cases opened during the current fiscal year, it appears that one and one half hour of service per week will be sufficient to meet the needs of Newark clients. If demand exceeds the available funding, new clients may be placed on a waiting list or directed to other fee-based agencies until the case load can accommodate them.

City staff and the City Attorney have reviewed the agreement and recommend that it be approved.

Attachment

Action - It is recommended that the City Council, by resolution, authorize the Mayor to sign Task Order No. 8 to the Joint Powers Agreement with the City of Fremont for Case Management services.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE MAYOR TO SIGN TASK ORDER NO. 8 TO THE JOINT POWERS AGREEMENT WITH THE CITY OF FREMONT FOR CASE MANAGEMENT SERVICES

WHEREAS, the City entered into an agreement entitled Joint Powers Agreement between the City of Newark and the City of Fremont on August 17, 2009; and

WHEREAS, the City of Fremont agreed to preform services in accordance with Task Orders issued by the City of Newark; and

WHEREAS, the City of Newark wishes to request Case Management services for the 2014-2015 program year;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the Mayor of the City of Newark be and is hereby authorized to sign Task Order No. 8 to the Joint Powers Agreement with the City of Fremont for Case Management services, said agreement on file in the Office of the City Clerk.

Dzr1

F.5 Amendment of the 2012-2014 Biennial Budget and Capital Improvement Plan for Fiscal Year 2013-2014 for General Revisions – from Senior Accountant del Rosario. (RESOLUTION)

Background/Discussion – As a part of the year-end closing, a number of general revisions are proposed to the annual budget. These revisions are for savings which are realized when there are staffing vacancies or reduction in services/supplies expenditures, and for deficiencies as a result of unforeseen increases in cost or need for services or supplies. A typical situation having no fiscal impact on the overall budget but requires a budget revision or amendment, is a reallocation of resources from one activity to another. Budget amendments are also proposed for those activities that have received grant funding.

Through mid-June 2014, there were significant revenue sources that were not anticipated or are higher than originally budgeted for:

- Police Overtime Reimbursement for Special Events and the NewPark Mall policing
- Vehicle In-Lieu Fees
- Sales Tax Triple Flip
- Transient Occupancy Tax
- Developer Contributions for City conducted Planning reviews and contractual work
- Grant Funding from Alameda County for the Park Pathways and Repair Project
- City Attorney legal fee reimbursements due to the increase in legal cases handled

Collectively, the above revenue increases will fund overages in actual over budgeted expenditure in legal fees expenditures (due to the increase in legal cases being handled), Police Overtime (which in part is reimbursed, but also attributable to department attrition), economic incentive payments, and planning professional services for increased development activity which is covered by developer contributions. Savings were also realized for Fire contractual services coming in under budget.

Exhibit A lists the various adjustments to the budget to accommodate the above modifications. Also included are budget amendments for other Special Revenue Funds which have received grant funding.

The City will perform the annual financial audit and year-end closing in September. At that time the final revenues and expenditures will be determined and any transfer of funds necessary to balance the budget will be identified.

Attachment

Action - It is recommended that the City Council, by resolution, amend the 2012-2014 Biennial Budget and Capital Improvement Plan for Fiscal Year 2013-2014.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AMENDING THE 2012-2014 BIENNIAL BUDGET AND CAPITAL IMPROVEMENT PLAN FOR THE CITY OF NEWARK FOR FISCAL YEAR 2013-2014

BE IT RESOLVED by the City Council of the City of Newark that the certain document entitled "2012-2014 Biennial Budget and Capital Improvement Plan of the City of Newark" for Fiscal Year 2013-2014 was adopted by Resolution No. 9998 on June 28, 2012, and amended by Resolution No. 10071 (March 14, 2013), Resolution No. 10121 (June 27, 2013), Resolution No. 10144 (November 14, 2013), Resolution No. 10152 (December 12, 2013), Resolution No. 10163 (January 23, 2014), Resolution No. 10168 (February 13, 2014), and Resolution No. 10170 (February 13, 2014) is hereby amended as set forth in Exhibit A.

Exhibit A

Budget Amendments for Fiscal Year 2013-14

General Fund:

Fund No.	Description	To:	From:
010	Legal fees	$ 318,000	-
010	Police Patrol Overtime/Part time salaries	534,000	-
010	Police Investigations Temporary Overstaffing	197,000	-
010	Police Records & Communications Overtime	112,000	-
010	Economic Incentive Payments	235,400	-
020	Planning Professional and Special Service	190,000	-
010	City Attorney Legal Fees Reimbursements	-	148,000
010	Police Overtime Reimbursement	-	76,000
010	Fire Contractual Services	(300,000)	-
010	Vehicle In-lieu	-	246,000
010	Sales Tax Triple Flip	-	387,000
010	Transient Occupancy Tax	-	239,400
020	Planning Miscellaneous Income (Developer Contributions)	-	190,000
		$ 1,286,400	$ 1,286,400
			-

Special Funds:

012	Justice Assistance Grant Supplies	1,000	-
012	Justice Assistance Grant - Fund Balance	-	1,000
014	California Law Enforcement Equipment	1,500	-
014	California Law Enforcement - Fund Balance	-	1,500
025	Community Development Maint. Fees Professional Svcs.	1,000	-
025	Community Development Maint. Fees Fund Balance		1,000
035	Traffic Grants/Tow Fund Overtime	15,800	-
035	Traffic Grants/Tow Fund Supplies	4,000	-
035	Traffic Grants/Tow Fund Professional & Special Service	19,000	-
035	Traffic Grants/Tow Fund Overtime Reimbursement	-	15,800
035	Traffic Grants/Two Fund - Fund Balance	-	23,000
109	Hazardous Materials Contractual Services	15,000	-
109	Hazardous Materials - Fund Balance	-	15,000
401	CIP Project for Police Department Flooring	8,000	-
010	General Fund - Fund Balance	-	8,000
402	Community Development Act - Park Pathways & Repair Pro.	450,186	-
402	Community Development Act - County/Federal Funding	-	450,186
701	Equipment Operations - Bearcat Vehicle Maintenance	6,000	-
701	Equipment Operations - Fund Balance	-	6,000
711	Equipment Replacement - Department Equipment	150,000	-
711	Equipment Replacement - Fund Balance	-	150,000
		$ 671,486	$ 671,486

Transfers:

010	General Fund	$ 374,000	$ 869,500
301	Debt Service Fund - 2002 COP Interest	114,500	-

302	Debt Service Fund - 2012 COP Principal & Interest	755,000	-
001	Paramedics Tax	-	229,000
003	Alameda County Fire Fees	-	145,000
		$ 1,243,500	$ 1,243,500

F.6 Calling and giving notice of the holding of a General Municipal Election on Tuesday, November 4, 2014, for the election of certain officers of the City of Newark – from City Clerk Harrington. (MOTION)(RESOLUTION)

Background/Discussion – The City's next General Municipal Election will be held on November 4, 2014. A Mayor will be elected for a two-year term and two Council Members will be elected for four-year terms. Candidates may file nomination papers from July 14, 2014, through August 8, 2014. Should an incumbent fail to file, then the nomination period would extend to August 13, 2011 for that incumbent's elective office. The incumbent who did not file would not be eligible to file during the extended period.

The Alameda County Registrar of Voters (ROV) establishes polling places, secures precinct workers, prepares sample and official ballots, provides absentee voting, and tabulates the votes. In order for the ROV to render these services, the City must adopt a resolution requesting the services of the ROV through the Alameda County Board of Supervisors.

The Registrar's estimate for election services is between $4.00 and $6.00 per registered voter. Based on Newark's current voter registration of 20,213, the estimated cost for the November 4, 2014, election will be between $80,852 and $121,278, plus other publication printing, translation, and supply costs borne directly by the City. Funds to cover the services provided by the County and other vendors were estimated to be $144,000 and are included in the 2014-2015 fiscal year budget.

Resolution No. 7400 requires the City Clerk to estimate the cost and collect the deposit for the optional Candidate Statement of Qualifications. Candidates are responsible for the actual costs associated with their Statement of Qualifications. Based on the number of registered voters and a 200 word statement, staff has estimated an approximate cost of $600 per statement. The candidate will be refunded any overage or billed for any additional costs within 30 days of the final invoice from the ROV.

Attachment

Action - It is recommended that the City Council, by motion, approve the estimated cost of $600 to be paid by each candidate at the time nomination papers are filed for his/her Statement of Qualifications and, by resolution calling for the holding of a General Municipal Election to be held on Tuesday, November 4, 2014, for the election of certain officers; requesting the Alameda County Board of Supervisors to consolidate the General Municipal Election with the General Election to be held on November 4 2014; and request services of the Registrar of Voters.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK CALLING FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4, 2014, FOR THE ELECTION OF CERTAIN OFFICERS; REQUESTING THE ALAMEDA COUNTY BOARD OF SUPERVISORS TO CONSOLIDATE THE GENERAL MUNICIPAL ELECTION WITH THE GENERAL ELECTION TO BE HELD NOVEMBER 4, 2014; AND REQUESTING SERVICES OF THE REGISTRAR OF VOTERS

WHEREAS, under the provisions of the laws relating to general law cities in the State of California, a General Municipal Election shall be held on November 4, 2014, for the purpose of electing one Mayor for a full term of two years and two Members of the City Council for full terms of four years; and

WHEREAS, it is desirable that the General Municipal Election be consolidated with the General Election to be held on the same date and that within the City the precincts, polling places, and election officer of the two elections be the same, and that the Registrar of Voters of the County of Alameda canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby declare, determine, and order as follows:

Section 1: That pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Newark, California, on Tuesday, November 4, 2014, a General Municipal Election for the purpose of electing one Mayor for the full term of two years and two Members of the City Council for the full term of four years.

Section 2: That the ballots to be used at the election shall be in the form and content as required by law.

Section 3: That the polls for the election shall be open at 7:00 a.m. of the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same day when the polls shall be closed.

Section 4: That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 5: That the Board of Supervisors of the County of Alameda is hereby requested to consent and agree to the consolidation of the General Municipal Election with the General Election on Tuesday, November 4, 2014.

Section 6: That the Board of Supervisors is requested to issue instructions to the Registrar of Voters to take any and all steps necessary for the holding of the consolidated election.

Section 7: That the City of Newark recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County based on the County's established consolidation rate.

Section 8: That notice of the time and place of holding the election is given and that the City Clerk is authorized to give additional notice of the election in time, form, and manner as required by law.

Section 9: The City Council authorizes the City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

Section 10: That the City Clerk is directed to forward a certified copy of this resolution to the Board of Supervisors of Alameda County and the Registrar of Voters of Alameda County.

F.7 Adoption of a resolution placing an extension of the existing City of Newark Utility Users Tax on the November 4, 2014 Election Ballot for voter consideration and related election procedures and consideration of the Ballot Measure language and participation in Ballot Arguments – from City Manager Becker (RESOLUTION)

Background/Discussion – In November 2010, Newark voters approved Measure U, a temporary 3.5% Utility User Tax (UUT) within the City of Newark. The tax is applied to electricity, natural gas, telecommunications, and cable television services and includes exemptions for low income residents and senior citizens over the age of 70. The UUT is scheduled to sunset on December 31, 2015. In early 2011, the City Council adopted a Restoration Plan to use the UUT revenue to reinstate previously cut services and to begin to rebuild City reserves. The Restoration Plan included:

- Reopening the Senior Center
- Adding 2 Police Officers including a Detective and a School Resource Officer
- Reinstating the Neighborhood Watch Program and expanding a police volunteer program
- Increasing park and landscape maintenance throughout the City
- Increasing street sweeping from once every two months to once per month
- Reinstating the Ash Street Summer Program which serves at-risk youth
- Reinstating the School Crossing Guard Program
- Adding Community Preservation staffing
- Rebuilding the City's fiscal reserves.

As discussed during the February and May City Council budget work-sessions, budget projections indicate that there will be significant operating budget deficits in the years following the December 31, 2015 expiration of the City's Utility User Tax.

The UUT supports a number of critical programs and services in the City including public safety staffing, parks and street maintenance, the Senior Center, programs for at-risk youth, community preservation, and school crossing guards. Despite the recent improvement in the economy, the UUT revenue continues to make up a vital portion of the City's operating revenue. The UUT is expected to generate $3.5 million in revenue for the City in the current fiscal year. This represents approximately nine percent (9%) of the City's total operating revenue.

Despite the City's continued conservative budget balancing measures, revenue growth is not projected to keep up with projected expenditures. In order to balance future budgets it is anticipated that reductions or elimination of programs and services would have to be made. Projections also indicate that the City's operating budget reserve funds, which were built after the passage of the UUT, would be quickly exhausted bridging the projected budget deficits.

As a result of this information, the City Council directed staff to facilitate a public opinion poll to evaluate possible public support for an extension of the existing City of Newark Utility User Tax to address the projected operating budget deficits. On March 13, 2014, the City Council authorized the Mayor to sign an agreement with Godbe Research to prepare and conduct public opinion sampling and evaluation of possible public support for the extension of the existing City Utility User Tax.

Godbe Research completed their work and presented the survey results to the City Council during the May 8, 2014 City Council meeting. In summary, the results indicated strong support for a 5-year extension of the UUT at the current and/or a slightly lower tax rate. This support was tied to maintaining existing critical City services that are currently being supported by the UUT revenue and maintaining the current exemptions for seniors 70 years of age and older and low income residents. The results also indicated that a significant majority of those polled had a favorable opinion of the job the City of Newark is doing in providing City services and in managing and spending taxpayer dollars.

At the end of the presentation, the City Council accepted the results of the survey and directed staff to return at a future City Council meeting with the necessary actions to place a measure on the November 4, 2014 ballot to extend the City of Newark Utility User Tax beyond the current sunset date.

Election Actions

In order to place a proposed UUT Extension Ordinance on the ballot for the November 4, 2014 election, there are five matters that require Council direction. First, Council needs to approve the language for the ballot question. Second, Council needs to consider a resolution requesting the services of the Registrar of Voters of Alameda County to place the Utility Users Tax Ordinance on the November 4, 2014, ballot. Third, Council needs to direct the City Attorney to submit an impartial analysis to the City Clerk. Fourth, Council needs to determine the process for submission of an argument in favor of the measure. Fifth, Council needs to determine if rebuttals to arguments will be allowed and determine the process for submission of rebuttal arguments.

Ballot Question

The State Elections Code requires the ballot measure to be printed in the ballot pamphlet in the form of a "yes or no" ballot question of no more than 75 words. The ballot question must include a true and impartial statement of the nature of the ballot measure. The ballot question for City Council consideration, which is exactly at the 75-word limit, is as follows:

"*To maintain critical City services, including neighborhood patrols, crime prevention, anti-drug/ gang-prevention programs, 9-1-1 emergency response, fire protection services, City streets, repairing potholes, keeping the Senior Center open, maintaining school police officers, parks/ recreation programs, and other city services, shall the City of Newark extend the existing, voter-approved utility users tax for 5 years, reducing the rate from 3.5% to 3.25%, exempting seniors and low-income residents, requiring independent audits, with no money for Sacramento?*"

Ballot Impartial Analysis, Arguments, and Rebuttals

The State Elections Code provides for the City Council to direct the City Attorney to prepare an impartial analysis of no more than 500 words, showing the effect of the measure on existing law. This must be submitted to the City Clerk, as the Elections Official, by 4:00 p.m. on Monday, July 14, 2014.

The State Elections Code allows the City Council to determine its interest in authoring an argument in favor of the ballot measure. Arguments of no more than 300 words each for and against the ballot measure can then be included in the Voters Sample Ballot. The arguments must be submitted to the City Clerk, as the Elections Official, by 4:00 p.m. on Monday, July 14, 2014.

The State Elections Code also allows the City Council to determine its interest in allowing rebuttals. Any rebuttals, of no more than 250 words, must be submitted to the City Clerk, as the Elections Official, no later than ten days after arguments are due. The rebuttals must be submitted to the City Clerk, as the elections Official, by Thursday, July 24, 2014 at 4:00 p.m. If there is no argument put forward in opposition to the ballot measure, then there will be no rebuttal.

The arguments can be authored by a maximum of five eligible voters. The code also requires that only one argument for and one argument against each ballot measure will be accepted by the Elections Official, and provides for an orderly process in determining who is eligible to submit a statement. If more than one argument for or more than one argument against the measure is received by the deadline, per the Elections Code, the City Clerk must select only one argument for and one argument against, giving preference and priority in the following order to:

1. The legislative body, or member or members of the legislative body authorized by that body.
2. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
3. Bona fide associations of citizens.
4. Individual voters who are eligible to vote on the measure.

The City Council has several options regarding the preparation of ballot arguments. In order for the City Council to authorize an argument to be given preference, as identified above, the Council may either: (1) author an argument in favor of the measure as a whole body (subject to the Brown Act considerations in the next paragraph) or (2) authorize up to two Council members to author and sign the argument on behalf of the entire City Council. If the second option is chosen the argument could also be signed by community members eligible to vote in the election as long as the total number of signatures does not exceed five. If the Council chooses option (2) the Council will have delegated full authority to the identified Council Member(s) to author the measure and it would not be necessary to return to the whole Council at a special meeting to finalize the language of the argument. Alternatively, the City Council may choose to have other members of the Newark community author the argument, in which case the second priority

position for acceptance. Staff recommends repeating the process used for the 2010 election ballot and select the second option and authorize the Mayor to sign the argument on behalf of the City Council along with four other community members of his choosing.

Recommendation

It is recommended the City Council approve the ballot language as presented and place an ordinance on the November 4, 2014 ballot extending the existing Utility Users Tax. The tax rate would be reduced from 3.5% to 3.25% effective January 1, 2016. Based on current revenue levels, this will result in a reduction of approximately $250,000 per year in UUT revenue. This reduction will not have a significant impact on the City's operating budget. The tax would be extended for a period of 5 years and will expire on December 31, 2020. An exemption will be provided for other governmental bodies, for low-income residents based on qualification for the PG&E CARE Program, and seniors age 70 and older. The City Attorney will be directed to prepare the impartial analysis of the measure. The Mayor will be designated to author and sign a ballot argument on behalf of the City Council for the measure along with four other community members who are proponents. Rebuttal arguments will be allowed and, if there is an argument submitted in opposition to the measure, the Mayor will be authorized to author and sign a rebuttal argument, along with four other community members who are proponents.

Attachment

Action - It is recommended that the City Council, by resolution, take the following actions:

1. Approve the ballot question language.
2. Submit a Utility Users Tax Extension Ordinance to the voters at the November 4, 2014 election, identifying the language of the ballot question, requesting the Board of Supervisors of the County of Alameda to authorize the Alameda County Registrar of Voters to place the ordinance on the ballot.
3. Direct the City Attorney to prepare the impartial analysis of the measure.
4. Authorize the Mayor to author and sign, on behalf of the City Council, the ballot argument and include the signatures of four other community members who are proponents of the measure.
5. Allow rebuttal arguments and authorize the Mayor to author and sign, on behalf of the City Council, a rebuttal if an argument in opposition to the ballot measure is submitted and include the signatures of four other community members who are proponents of the measure.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK DIRECTING THE SUBMISSION TO THE VOTERS OF THE CITY OF NEWARK A QUESTION RELATING TO THE EXTENSION OF THE UTILITY USERS TAX AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2014

WHEREAS, on November 2, 2010 the voters of the City of Newark approved Measure U a 3.5% Utility Users Tax for five years; and

WHEREAS, the Utility Users Tax will expire on December 31, 2015; and

WHEREAS, the City Council desires to submit to the voters at the election a question relating to the extension of the Utility Users Tax; and

WHEREAS, pursuant to Elections Code Section 9222, the City Council may submit to the qualified electors of the City a proposition, without petition therefore, by ordinance or resolution; and

WHEREAS, by Resolution No. the City Council of the City of Newark has called a General Municipal Election to be held on November 4, 2014, for the purpose of the election of the Mayor and two Members of the City Council, to be consolidated with the Alameda County General Election to be held on the same date; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby declare, determine, and order as follows:

Section 1: That the City Council, pursuant to its right and authority, submits to the voters at the General Municipal Election the following question:

"*To maintain critical City services, including neighborhood patrols, crime prevention, anti-drug/ gang-prevention programs, 9-1-1 emergency response, fire protection services, City streets, repairing potholes, keeping the Senior Center open, maintaining school police officers, parks/ recreation programs, and other city services, shall the City of Newark extend the existing, voter-approved utility users tax for 5 years, reducing the rate from 3.5% to 3.25%, exempting seniors and low-income residents, requiring independent audits, with no money for Sacramento?*" YES/NO?

Section 2: That the Board of Supervisors of the County of Alameda is requested to authorize the Alameda County Registrar of Voters to submit to the voters the complete text of the "Initiative Ordinance of the Voters of the City of Newark Extending a Utility Users Tax on Utility Services (Electricity, Gas, Telecommunications, and Video)

and Amending Title 3, Revenue and Finance, by amending Chapter 3.18 of the Newark Municipal Code" attached as Exhibit A.

Section 3: That the City Council direct the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure. The impartial analysis shall be filed by 4:00 p.m. on Monday, July 14, 2014, with the City Clerk.

Section 4: Pursuant to Elections Code 9282, the City Council authorizes the Mayor to author and sign, on behalf of the City Council, the not to exceed 300 words ballot argument and the not to exceed 250 words rebuttal arguments. The Mayor is further authorized to include the signatures of four other community members on the ballot argument and rebuttal arguments who are proponents of the measure.

Section 5: The provisions of Election Code 9285 providing for the filing of rebuttal arguments are hereby adopted for the election to be held on Tuesday, November 4, 2014.

Section 6: The City Clerk shall observe and give due notice as required by the law of the following argument periods for the Utility Users Tax Measure:

A. Argument period begins July 1, 2014
B. Period for filing direct arguments in favor of the measure and direct arguments in opposition to the measure ends at 4:00 p.m. on Monday, July 14, 2014
C. Period to file argument rebuttals ends at 4:00 p.m. on Thursday, July 24, 2014.

Section 7: The City Clerk is directed to forward a certified copy of this resolution to the Board of Supervisors of Alameda County requesting that the Alameda County Registrar of Voters be authorized to place the ordinance on the November 4, 2014 ballot.

Exhibit A

CITY OF NEWARK UTILITY USERS TAX ORDINANCE

Redline version of ordinance showing proposed amendments

ORDINANCE NO. 446

AN INITIATIVE ORDINANCE OF THE VOTERS OF THE CITY OF NEWARK EXTENDING ~~ADOPTING~~ ~~A THREE AND ONE-HALF PERCENT (3.5%)~~ A UTILITY USERS TAX ON UTILITY SERVICES (ELECTRICITY, GAS, TELECOMMUNICATIONS, AND VIDEO) AND AMENDING TITLE 3, REVENUE AND FINANCE, BY ~~THE ADDITION OF~~AMENDING CHAPTER 3.18, ~~"UTILITY USERS TAX" TO~~OF THE NEWARK MUNICIPAL CODE

NOW THEREFORE THE PEOPLE OF THE CITY OF NEWARK DO ORDAIN AS FOLLOWS:

Section 1

Chapter 3.18 of Title 3, REVENUE AND FINANCE, of the Newark Municipal Code is hereby amended to ~~add Chapter 3.18 entitled "Utility Users Tax" to~~ read in full as follows

Chapter 3.18
Utility Users Tax

3.18.010 Ordinance title
3.18.020 Definitions
3.18.030 Exemptions
3.18.040 Telecommunications users tax
3.18.050 Video users tax
3.18.060 Electricity users tax
3.18.070 Gas users tax
3.18.080 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity
3.18.090 Bundling taxable items with non-taxable items
3.18.100 Substantial Nexus/Minimum Contacts
3.18.105 Duty to Collect—Procedures
3.18.110 Collection penalties—Service suppliers
3.18.120 Actions to collect
3.18.130 Deficiency determination and assessment—Tax application errors
3.18.140 Administrative remedy—Non-paying service users
3.18.150 Additional powers and duties of the Tax Administrator
3.18.160 Records
3.18.170 Refunds
3.18.180 Appeals
3.18.190 No Injunction/Writ of Mandate
3.18.200 Notice of changes to ordinance
3.18.210 Effect of state and federal reference—Authorization
3.18.220 Independent audit

3.18.230 Remedies cumulative
3.18.240 Termination of Utility Users Tax

3.18.010 Ordinance title

This chapter shall be known as the "Utility Users Tax" of the City of Newark.

3.18.020 Definitions

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

"Ancillary telecommunication services" mean services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to the following services:

(1) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(2) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(3) "Directory assistance" means an ancillary service of providing telephone number information and/or address information.

(4) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(5) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

"Ancillary video services" mean services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, search functions, recording services, or other interactive services or communications that are associated with or incidental to the provision, use or enjoyment of video services.

"Billing address" means the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

"City" means the City of Newark.

"City Manager" shall mean the City Manager, or his or her authorized representative.

"Gas" means natural or manufactured gas or any alternate hydrocarbon fuel that may be substituted therefore.

"Mobile telecommunications service" means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations and as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations there under.

~~the meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations established therewith.~~

"Month" means a calendar month.

"Non-utility service supplier" means the following:

1. A service supplier, other than a provider of electric distribution services to all or a significant portion of the City that generates electricity for sale to others, including, but not limited to, any publicly-owned electric utility, investor-owned utility, co-generator, distributed generation provider, exempt wholesale generator, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity.

2. An electric service provider (ESP), electricity broker, marketer, aggregator (including a community choice aggregator), pool, operator, or other electricity supplier other than a provider of electric distribution services to all or a significant portion of the City that sells or supplies electricity or supplemental services to electricity users within the City.

3. A gas service supplier, aggregator, marketer or broker, other than a provider of gas distribution services to all or a significant portion of the City that sells or supplies gas or supplemental services to gas users within the City.

"Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

"Person" means, without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, joint power authority, limited liability company, corporation (including foreign, domestic, and non-profit), municipal district or municipal corporation (other than the City), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

"Place of primary use" means the street address where the customer's use of a taxable service primarily occurs, which must be the residential street address or the primary business street address of the customer.

"Post-paid telecommunication service" means the telecommunication service obtained by making a payment on a telecommunication -by- telecommunication basis either through the use of a payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

"Prepaid telecommunication service" (including prepaid mobile telecommunication service) means the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed.

~~"Prepaid telecommunication service" means the right to access telecommunication services, which must be paid for in advance and which enables the origination of telecommunications using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.~~

"Private telecommunication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (*i.e.,* the location where the customer either inputs or receives the communications).

"Service address" means the residential street address or the business street address of the service user. For a telecommunication service user, "service address" means either:

(1) The location of the service user's communication equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or,

~~a.~~ (2) If the location in subsection (1) of this definition is unknown (*e.g.,* mobile telecommunications service or VoIP service), the service address means the location of the service user's place of primary use.

(3) For prepaid telecommunication service, "service address" means the point of sale of the services where the point of sale is within the City, or if unknown, the known address of the service user (*e.g.,* billing address or location associated with the service number), which locations shall be presumed to be the place of primary use.

~~For prepaid telecommunication service, "service address" means the location associated with the service number or, if not known, the point of sale of the services.~~

"Service supplier" means any entity or person, including the City, that provides telecommunication, video, gas, electrical, or refuse collection and disposal service to a user of such service within the City.

"Service user" means a person required to pay a tax imposed under the provisions of this chapter.

"Tax Administrator" means the finance director of the City or his or her designee.

"Telecommunications Service" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term "telecommunications services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or ~~—~~data services that is functionally integrated with "telecommunication services". "Telecommunications services" include, but are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; intrastate, interstate, and international telecommunication services; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to pre-recorded or live service).

"Video programming" means those programming services commonly provided to subscribers by a "video service supplier" including but not limited to basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

"Video services" mean video programming and any and all services related to the providing, recording, delivering, use or enjoyment of video programming (including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video) using one or more channels by a "video service supplier," regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services, data services, telecommunication services, or interactive communication services that are functionally integrated with video services.

"Video service supplier" means any person or service that provides or sells ~~one or more channels of~~ video programming, or provides or sells the capability to receive ~~one or more channels of~~ video programming, including any telecommunications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or telecommunications. A "video service supplier" includes, but is not limited to, multi-channel video programming distributors (as defined in 47 U.S.C.A. Section 522(13); open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television; multi-channel multipoint distribution services (MMDS); video services using Internet Protocol (e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on demand), direct broadcast satellite to the extent

federal law permits taxation of its video services, now or in the future; and other suppliers of video services (including two-way communications), whatever their technology.

"VoIP (Voice over Internet Protocol) means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

"800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877" or "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

"900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the telecommunications services to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission for pay for services calls.

3.18.030 Exemptions

A. **Consistency with State and Federal Law.** Nothing in this chapter shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in violation of a federal or state statute, the Constitution of the United States or the Constitution of the state of California.

B. **Exemption Application.** Any service user that is exempt pursuant to subsection (A) from any tax imposed by this chapter pursuant shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision (such as a public school district or a community college district) with a commonly recognized name for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts declared under penalty of perjury which qualify the applicant for an exemption and shall include the names of all utility service suppliers serving that service user. If deemed exempt by the Tax Administrator such service user shall give the Tax Administrator timely written notice of any change in utility service suppliers so that the Tax Administrator can properly notify the new utility service supplier of the service user's tax exempt status. A service user that fails to apply and obtain an exemption pursuant to ~~comply with~~ this Section shall not be entitled to a refund of utility user taxes collected and remitted to the Tax Administrator from such service user as a result of such noncompliance. The decision of the Tax Administrator maybe appealed pursuant to Section 3.18.180A of this Chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3.18.180B of this Chapter is a prerequisite to a suit thereon.

C. **The City.** Nothing in this chapter shall be construed as imposing a tax upon the City of Newark.

D. **Low Income Exemption.** A residential service user shall be exempt from the gas and electric tax of this chapter if he or she is qualified and is enrolled in Pacific Gas & Electric Company's (PG&E) CARE Program ("California Alternate Rates for Energy" program). Individuals receiving the exemption granted by this subsection must reside at the location receiving the service; the exemption shall not apply to any nonresidential service location. A residential service user that is qualified and is enrolled in the CARE Program shall be exempted from the tax on telecommunication and/or video services by providing the Tax Administrator with the names of the current utility service providers who provide his or her telecommunication and video services, and any other information required by the Tax Administrator. The Tax Administrator will advise such utility service providers of the exempt status of its customer, and the exemption shall become effective on the beginning of the second regular billing period which commences after the Tax Administrator has notified the service supplier that an exemption has been granted. Upon a showing of hardship by a service supplier, the Tax Administrator may, as an alternative, implement this Section by requiring the exempt person to pay the tax and seek a refund under Section 3.18.170. The Tax Administrator shall provide a refund claim form for this purpose.

E. **Senior Citizen Exemption.** 1) An exemption from any tax imposed under this chapter shall be granted to any residential service user who is seventy (70) years of age or older if such service user resides alone or if he or she shares his or her residence with a spouse or a registered domestic partner, and at least one spouse or partner meets the age criteria for the exemption.

2) Any service user seeking an exemption pursuant to this subsection (E) from any tax imposed by this chapter shall file an application with the Tax Administrator for an exemption. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all service suppliers serving that service user. A Driver License or Identification (ID) Card issued by the California Department of Motor Vehicles shall be *prima facie* proof of age. Tax Administrator shall within sixty (60) days of receipt of an application for exemption determine whether the exemption is granted, and if so notify the service supplier. The exemption shall apply from the date of the Tax Administrator's determination that the household qualifies.

3) The exemption granted to a person pursuant to this subsection (E) shall become effective on the beginning of the second regular billing period which commences after the Tax Administrator has notified the service supplier that an exemption has been granted. Upon a showing of hardship by a service supplier, the Tax Administrator may, as an alternative implement this Section by requiring the exempt person to pay the tax and seek a refund under Section 3.18.170. The Tax Administrator shall provide a refund claim form for this purpose.

F. **Application Processing.** 1) The Tax Administrator shall within sixty (60) days of receipt of an application for exemption determine whether the exemption is granted, and if so notify the service supplier. The exemption shall apply from the date of the Tax Administrator's determination that the household qualifies.

2) If the Tax Administrator determines that an application for exemption is faulty, that the applicant has failed to truthfully set forth facts, or that the facts do not support the application for exemption. the application shall be denied in writing to the applicant. The applicant shall thereafter have a right to file an amended application, or to appeal the Tax Administrator's decision to the city manager within a ten-day period after the mailing date of the Tax Administrator's notification. In the case of an appeal, the city manager shall review the facts in consultation with the city attorney, and shall render a final determination on such appeal.

G. **Effective Date of Exemption**. The exemption granted to a person pursuant to this Section shall become effective on the beginning of the first regular billing period which commences after the Tax Administrator has notified the service supplier that an exemption has been granted. Upon a showing of hardship by a service supplier, the Tax Administrator may, as an alternative implement this Section by requiring the exempt person to pay the tax and seek a refund under Section 3.18.170. The Tax Administrator shall provide a refund claim form for this purpose.

H. **Continuing Eligibility**. The Tax Administrator in his or her sole discretion may require annual written verification from the service user of his or her continuing eligibility for any exemption granted under this Section. Any person deemed eligible for exemption under subsections D and E of Ordinance No. 446 on the effective date of this Chapter 3.18 shall be deemed eligible for exemption under subsections D and E hereof upon the effective date of this Chapter 3.18.

3.18.040 Telecommunications users tax

A. **~~Establishment of~~ Telecommunications Users Tax Rate.** There is hereby imposed a tax upon every person in the City using telecommunication services. The tax imposed by this section shall be at the rate of three and one-half (3.5%) percent of the charges made for such services and shall be collected from the service user by the telecommunication services supplier or its billing agent. Effective January 1, 2016, and thereafter, the rate shall be reduced to three and one-quarter percent (3.25%). There is a rebuttable presumption that telecommunication services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries and such services are subject to taxation under this chapter. There is also a rebuttable presumption that prepaid telecommunication services sold within the City are used, in whole or in part, within the City and are therefore subject to taxation under this Chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunication services.

B. **Sourcing Rules.** "Mobile telecommunications service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124). The Tax Administrator may issue and disseminate to communication service suppliers, which are subject to the tax collection requirements of this Chapter, sourcing rules for the taxation of other communication services, including but not limited to post-paid

communication services, prepaid communication services, VoIP and private communication services. In promulgating any sourcing rules hereunder the Tax Administrator shall take into account but shall not be legally bound by custom and common practice that furthers administrative efficiency and minimizes taxation by more that one state of the same service usage, commonly referred to as multi-jurisdictional taxation. In doing so the Tax Administrator may refer to and/or rely upon the Streamlined Sales and Use Tax Agreement, and/or any other reasonable precedent or resource.

C. **Authority for Administrative Rulings.** The Tax Administrator may issue and disseminate to telecommunication service suppliers which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those telecommunication services, or charges therefore, that are subject to the tax of subsection (A) above.

D. **Specific Inclusions in Telecommunication Services.** As used in this section, the term "telecommunication services" shall include, but are not limited to, charges for the following: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification, and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; all fees, charges and surcharges, including those mandated by state or federal regulatory agencies to fund such agencies or various mandated programs (whether such charges or surcharges are imposed on the service supplier or the customer); local number portability charges; and text and instant messaging.

E. **Specific Exclusions from Telecommunications Services.** As used in this Section, "telecommunications services" shall not include digital downloads that are not ancillary telecommunications services such as books, music, ringtones, games, and similar digital products.

F. **Multi-Jurisdictional Taxation**. To prevent actual multi-jurisdictional taxation of telecommunication services subject to tax under this section, any service user, upon proof to the Tax Administrator that the service user has previously paid the same tax in another state or local jurisdiction on such telecommunication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or local jurisdiction; provided, however, the amount of credit shall not exceed the tax owed to the City under this section.

G. **Collection of Telecommunication Users Tax.** The telecommunication user tax imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

3.18.050 Video users tax

A. ~~**Establishment of**~~ **Video Users Tax Rate**. There is hereby imposed a tax upon every person in the City using video services from a video provider. The tax imposed by this

section shall be at the rate of three and one-half (3.5%) percent of the charges made for such services and shall be collected from the service user by the video service supplier or its billing agent. Effective January 1, 2016, and thereafter, the rate shall be reduced to three and one-quarter percent (3.25%). There is a rebuttable presumption that video services that are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

B. **Video Charges.** As used in this section, the term "charges" shall include, but is not limited to, charges for the following:

1. Regulatory fees and surcharges, franchise fees, and access fees (e.g., "PEG" fees), whether designated on the customer's bill or not, or whether they are imposed on the service provider or the customer.

.

2. Initial installation of equipment necessary for provision and receipt of video services.

3. Late fees, collection fees, bad debt recoveries, and return check fees.

4. Activation fees, reactivation fees, and reconnection fees.

5. Video programming and video services.

6. Ancillary video services (e.g., electronic program guide services, recording functions, search functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of video services).

7. Equipment leases (e.g., remote, recording or search devices, converters, remote devices).

8. Service calls, service protection plans, name changes, changes of services, and special services.

C. **Charges Further Defined.** As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the video services.

D. **Authority for Administrative Rulings.** The Tax Administrator may issue and disseminate to video service suppliers which are subject to the tax collection requirements of this Chapter an administrative ruling identifying those video services or charges therefor that are subject to or not subject to the tax of subsection (A) above

E. **Collection of Video Users Tax.** The tax imposed by this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service (e.g., an apartment owner), unless such service is resold to individual

users, in which case the service user shall be the ultimate purchaser of the video service. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

3.18.060 Electricity users tax

A. ~~**Establishment of**~~ **Electricity Users Tax Rate.** There is hereby imposed a tax upon every person in the City using electricity. The tax imposed by this section shall be at the rate of three and one-half (3.5%) percent _of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service users that are provided by a service supplier or non-utility service supplier to a service user. Effective January 1, 2016, and thereafter, the rate shall be reduced to three and one-quarter percent (3.25%).

B. **Electricity Charges.** As used in this section, the term "charges" shall include, but is not limited to, the following charges:

1. Energy charges.

2. Distribution or transmission charges.

3. Metering charges.

4. Stand-by, reserves, firming, ramping, voltage support, regulation, emergency or other similar minimum charges for services.

5. Customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees, or surcharges which are necessary for or common to the receipt use or enjoyment of electric service; and,

6. Charges, fees, or surcharges for electric services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.~~.~~

C. **Electricity Charges Further Defined**. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity.

D. **Survey of Electricity Service Suppliers—Authority for Administrative Rulings**. The Tax Administrator shall, from time to time, survey the electric service suppliers in the City to identify the various unbundled billing components of the electric retail service that are being offered to customers within the City, and the charges therefore, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric

service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items that are: (1) necessary for or common to the receipt, use and enjoyment of electric service; or (2) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (A) above.

E. **"Using Electricity" Further Defined**. As used in this Section the term "using electricity" shall not include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the City for resale.

F. **Collection of Electricity Users Tax.** The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section 3.18.080 of this Chapter. All other taxes on charges for electricity imposed by this Section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month provided that such person shall submit an adjusted payment or request for credit as appropriate within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

3.18.070 Gas users tax

A. ~~**Establishment of**~~ **Gas Users Tax Rate.** There is hereby imposed a tax upon every person in the City using gas that is delivered through a distribution system or by mobile transport. The tax imposed by this section shall be at the rate of three and one-half (3.5%) percent of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas, and shall apply to all uses of gas, including but not limited to, heating, electricity generation, or the use of gas as a component of a manufactured product. Effective January 1, 2016, and thereafter, the rate shall be reduced to three and one-quarter percent (3.25%).

B. **Gas Charges.** As used in this section, the term "charges" shall apply to all services components and items for gas service that are [1] necessary for or common to the receipt, use, or enjoyment of gas service; or, [2] currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

1. The commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunk-line, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system or by mobile transportation.

2. Gas transportation charges (including interstate charges to the extent not included in commodity charges).

3. Storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction.

4. Capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges, which are necessary or common to the receipt, use and enjoyment of gas service.

5. Charges, fees, or surcharges for gas services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.~~.~~

C. **Gas Charges Further Defined**. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas.

D. **Survey of Gas Service Suppliers; Authority for Administrative Rulings**. The Tax Administrator from time to time may survey the gas suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City and the charges therefore, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: [1] necessary for or common to the receipt use or enjoyment of gas service, or, [2] currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (A) above.

E. **Exclusion for Resale.** There shall be excluded from the calculation of the tax imposed in this Section charges made for gas which is to be resold and delivered through a pipeline distribution system.

F. **Collection of Gas Users Tax**. The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section 3.18.080 of this Chapter. All other taxes on charges for gas imposed by this Section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit

the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month provided that such person shall submit an adjusted payment or request for credit as appropriate within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

3.18.080 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity

A. **Report to Tax Administrator.** Any service user subject to the tax imposed by Sections 3.18.060 or 3.18.070 that produces gas or electricity for self-use, that receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this chapter, or that, for any other reason, is not having the full tax collected and remitted by its service supplier, a non-utility service supplier, or its billing agent on the use of gas or electricity, including any related supplemental services, in the City, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

B. **Investigation.** The Tax Administrator may require said service user to identify its non-utility service supplier and provide, subject to audit, invoices, books of account or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City. The rate schedule for this purpose shall be available from the City.

3.18.090 Bundling taxable items with non-taxable items

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation of the taxable and non-taxable services.

3.18.100 Substantial Nexus/Minimum Contacts.

For purposes of imposing a tax or establishing a duty to collected and remit a tax under this Chapter, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any telecommunication service (including VoIP) used by a person with a service address in the City which service is capable of terminating a call to another person on the general telephone network shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax or establishing a duty to collect and remit a tax under this Chapter. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include but are not limited to any of the following maintains or has within the City directly or through an agent, affiliate, or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents, or other representatives; solicits business in the City on a continuous regular, seasonal, or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the City or distributed from a location within the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of services that are subject to a tax under this Chapter.

3.18.105 Duty to Collect—Procedures

A. **Collection by Service Suppliers.** The duty of service suppliers to collect and remit the taxes imposed by the provisions of this Chapter shall be performed as follows:

(1) The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a

service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 3.18.140 shall apply.

(2) The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this Chapter. Where a service user receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

B. **Filing Return and Payment.** Each person required by this Chapter to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator, on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this Chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the Public Records Act.

3.18.110 Collection penalties—Service suppliers

A. **Due Date for Taxes—Delinquencies.** Taxes collected from a service user are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on the following business day.

B. **Failure to Collect or Remit.** If the person required to collect and/or remit a tax imposed pursuant to this chapter fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen percent (15%) of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of and 75/100ths percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

C. **Penalties for Fraud or Gross Negligence in Reporting or Remitting.** The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the provisions of this chapter for fraud or gross negligence in reporting or remitting at the rate of fifteen percent (15%) of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

D. **Penalties Due as Tax.** For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.

E. **Authority to Modify Due Dates**. Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by other public agencies imposing a utility users tax, or otherwise legally established, to create a central payment location or mechanism.

3.18.120 Actions to collect

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this chapter, along with any collection costs incurred by the City as a result of the person's noncompliance with this chapter, including, but not limited to, reasonable attorneys' fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under 11 U.S.C.A. Section 507(a)(8)(C). Service suppliers who seek to collect charges for service in bankruptcy proceedings shall also include in any such claim the amount of taxes due the City for those services, unless the Tax Administrator determines that such duty is in conflict with any federal or state law, rule, or regulation or that such action would be administratively impractical.

3.18.130 Deficiency determination and assessment—Tax application errors

A. **Tax Deficiency Determinations.** The Tax Administrator shall make a deficiency determination if he or she determines that any service user or service supplier required to pay or collect taxes pursuant to the provisions of this chapter has failed to pay, collect, and/or remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this section if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. **Notice of Deficiency.** The Tax Administrator shall mail a notice of such deficiency determination to the person or entity allegedly owing the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of 75/100ths percent (0.75%) per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of service of such notice, the person or entity allegedly owing the tax may request in writing to the Tax Administrator a hearing on the matter.

C. **Hearing on Deficiency.** If the person or entity allegedly owing the tax fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City. If such

person or entity requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

D. **Determination after Hearing.** At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person or entity owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.18.180 of this chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3.18.180 of this chapter is a prerequisite to a suit thereon.

E. **Delinquencies.** Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this chapter shall commence from the date of delinquency as provided in this subsection.

F. **Notice of Delinquency.** All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

3.18.140 Administrative remedy—Non-paying service users

A. **Administrative Remedies for the Obligation to Collect Tax.** Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this chapter from certain named service users for specific billing periods. To the extent the service user has failed to pay the amount of tax owed for a period of two or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this chapter. Nothing herein shall require that the Tax Administrator institute proceedings under this section if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. **Delinquency Penalty.** In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of fifteen percent (15%) of the total tax that is owed, and shall pay

interest at the rate of 75/100ths percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

C. **Notice to Non-Paying Service User.** The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

D. **Additional Penalties.** If the service user fails to remit the tax to the Tax Administrator within thirty (30) days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of fifteen percent (15%) of the amount of the total tax that is owed.

3.18.150 Additional powers and duties of the Tax Administrator

A. **Enforcement by Tax Administrator.** The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this chapter.

B. **Administrative Regulations Regarding Payment.** The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this Chapter for the purpose of interpreting, clarifying, carrying out, and enforcing the payment, collection, and remittance of the taxes herein imposed. A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office. To the extent that the Tax Administrator determines that the tax imposed under this Chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of Government Code Section 53750 or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of Government Code Section 53750, and the City does not waive or abrogate its ability to impose the utility users tax in full as a result of promulgating administrative rulings or entering into agreements.

C. **Administrative Agreements Regarding Billing Procedures**. Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this chapter and thereby: (1) conform to the billing procedures of a particular service supplier so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter; or (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and are voidable by the Tax Administrator or the City at any time.

D. **Compliance Audits.** The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this chapter, of any person required to collect and/or remit a tax pursuant to this chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the

Tax Administrator may make a deficiency determination pursuant to Section 3.18.130 of this chapter for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

E. **Extension of Time**. Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of 75/100ths percent (0.75%) per month, prorated for any portion thereof.

F. **Eligibility for Exemption.** The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this chapter.

G. **Waiver of Penalties and Interest.** Notwithstanding any provision in this Chapter 3.18 to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this Chapter 3.18 if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, or whether the person offers to voluntarily disclose its tax liability. The Tax Administrator may also participate with other utility users tax public agencies in conducting coordinated compliance reviews with the goal of achieving administrative efficiency and uniform tax application determinations, where possible. To encourage voluntary full disclosure and on-going cooperation on tax collection and remittance, the Tax Administrator, and its agents, may enter into agreements with the tax-collecting service providers and grant prospective only effect on any changes [SM1]regarding the taxation of services or charges that were previously deemed by the service provider, in good faith and without gross negligence, to be non-taxable. In determining whether the non-collection was in good faith and without gross negligence, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, and whether the disclosure was voluntarily made by the service provider or its agent.

~~Notwithstanding any provision in this chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this chapter, or require prospective application of the tax, if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedents. The Tax Administrator may also participate with other UUT public agencies in conducting coordinated compliance reviews with the goal of achieving administrative efficiency and uniform tax application determinations, where possible. To encourage full disclosure and on-going cooperation on annual compliance reviews, the Tax Administrator, and its agents, may enter into agreements with the tax collecting service providers and grant prospective only effect on any changes regarding the taxation of services or charges that were previously deemed by the service provider, in good faith and without gross negligence, to be non-taxable. In determining whether~~

~~the non-collection was in good faith and without gross negligence, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence.~~

3.18.160 Records

A. **Retention of Necessary Tax Records.** It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at a reasonable time.

B. **Administrative Subpoenas.** The City through the City Council may issue an administrative subpoena to compel a person to deliver to the Tax Administrator copies of all records deemed necessary by the Tax Administrator to establish compliance with this chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the City on or before the due date, provided that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

C. **Non-Disclosure Agreements**. The Tax Administrator is authorized to execute a non-disclosure agreement approved by the city attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Sections 7284.6 and 7284.7.

D. **Use of Billing Agents.** If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: (1) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and (2) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

E. **Access to Necessary Records**. If any person subject to record-keeping under this section unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of five hundred dollars ($500.00) on such person for each day following: (1) the initial date that the person refuses to provide such access; or (2) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Chapter.

3.18.170 Refunds

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this chapter from a person or service supplier, it may be refunded as provided in this section as follows:

A. **Tax Administrator Authority.** The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter from a service user or service supplier provided that no refund shall be paid under the provisions of this Section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one (1) year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. To the extent allowed by law, n~~N~~othing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim under penalty of perjury as provided by this subsection.

B. **Action on Claim for Refund.** The Tax Administrator, where the claim is within his or her settlement authority as established by ordinance or by resolution of the City Council from time to time, or the City Council where the claim is in excess of that amount, shall act upon the refund claim within forty-five (45) calendar days of the initial receipt of the refund claim. Said decision shall be final. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the forty-five (45) calendar day period, the claim shall be deemed to have been rejected by the Tax Administrator/City Council on the forty-fifth (45th) day. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in Government Code Section 913.

C. **Written Claim for Refund.** The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the City pursuant to this Section shall be subject to the provisions of Government Code Section 945.6 and 946.

D. **Refunds to Service Suppliers**. Notwithstanding subsections (A) through (C) above, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this Chapter, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator, provided that: [1] such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; [2] the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, [3] in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

3.18.180 Appeals

A. **Administrative Appeals**. The provisions of this Section apply to any decision (other than a decision relating to a refund pursuant to Section 3.18.170 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section

3.18.170 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this Section. Compliance with this Section shall be a prerequisite to a suit thereon. (See Government Code Section 935[b]). To the extent allowed by law, n~~N~~othing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

B. **Appeal to City Manager.** If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.18.170 of this chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, he or she may appeal to the city manager by filing a notice of appeal with the city clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved said person.

C. **Scheduling of Administrative Appeal Hearing**. The matter shall be scheduled for hearing before an independent hearing officer selected by the city manager, no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

D. **Notice of Decision**. Based upon the submission of such evidence and the review of the City's files, the hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6.

E. **Manner of Notice**. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third (3rd) calendar day following the date of mailing, as established by a proof of mailing.

3.18.190 No Injunction/Writ of Mandate

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected and/or remitted.

3.18.200 Notice of changes to ordinance

If a tax under this chapter is added repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of California Public Utilities Code Section 799.

3.18.210 Effect of state and federal reference—Authorization

Unless specifically provided otherwise, any reference to a state or federal statute in this chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease (as a result of excluding all or a part of a utility service, or charge therefore, from taxation). Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the City's authorization to collect or impose any tax imposed under this chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter.

3.18.220 Independent audit

The City shall annually verify that the taxes owed under this chapter have been properly applied, collected, and remitted in accordance with this chapter, and properly expended according to applicable law. The annual verification shall be performed by a qualified, independent third party, and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be received.

3.18.230 Remedies cumulative

All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

3.18.240 Termination of Utility Users Tax

The levy of taxes as provided in this Chapter shall expire on December 31, 2020~~15~~ unless re-enacted by a separate ordinance approved by a vote of the People of the City of Newark conducted pursuant to law. The termination of the levy of taxes as provided herein shall not terminate the obligation to pay taxes levied on services used prior to such date. Taxes levied prior to December 31, 2020~~15~~ shall remain a debt payable to the City. All provisions of this Chapter except those relating to the levy of taxes shall continue in full force and effect after such date.

Section 2

Severability. If any section subsection sentence clause phrase or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The People hereby declare that they would have adopted each section subsection sentence clause phrase or portion of this Ordinance irrespective of the fact that any one or more sections subsections sentences clauses phrases or portions of this Ordinance be declared invalid or unenforceable.

Section 3

Amendment or Repeal Chapter 3.18 of Title 3 of the Newark Municipal Code may be repealed or amended by the City Council without a vote of the people. However as required by Article XIII C of the California Constitution voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance. The People of the City of Newark affirm that the following actions shall not constitute an increase of the rate of a tax

A. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance if the City Council has acted to reduce the rate of the tax;

B. An action that interprets or clarifies the methodology of the tax or any definition applicable to the tax so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance;

C. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception other than the discontinuation of an exemption or exception specifically set forth in this Ordinance; and,

D. The collection of the tax imposed by this Ordinance even if the City had for some period of time failed to collect the tax.

Section 4

Effective Date This Chapter shall become effective immediately upon the date that this Ordinance is adopted by voters of the City of Newark at the election of November 4~~2~~, 2014~~0~~.

Section 5. Execution. The Mayor is hereby authorized to attest to the adoption of the Ordinance by the voters of the City by signing where indicated below.

Ordinance incorporating the proposed amendments

ORDINANCE NO.

AN INITIATIVE ORDINANCE OF THE VOTERS OF THE CITY OF NEWARK EXTENDING A UTILITY USERS TAX ON UTILITY SERVICES (ELECTRICITY, GAS, TELECOMMUNICATIONS, AND VIDEO) AND AMENDING TITLE 3, REVENUE AND FINANCE, BY AMENDING CHAPTER 3.18, OF THE NEWARK MUNICIPAL CODE

NOW THEREFORE THE PEOPLE OF THE CITY OF NEWARK DO ORDAIN AS FOLLOWS:

Section 1

Chapter 3.18 of Title 3, REVENUE AND FINANCE, of the Newark Municipal Code is hereby amended to read in full as follows

Chapter 3.18
Utility Users Tax

3.18.010 Ordinance title
3.18.020 Definitions
3.18.030 Exemptions
3.18.040 Telecommunications users tax
3.18.050 Video users tax
3.18.060 Electricity users tax
3.18.070 Gas users tax
3.18.080 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity
3.18.090 Bundling taxable items with non-taxable items
3.18.100 Substantial Nexus/Minimum Contacts
3.18.105 Duty to Collect—Procedures
3.18.110 Collection penalties—Service suppliers
3.18.120 Actions to collect
3.18.130 Deficiency determination and assessment—Tax application errors
3.18.140 Administrative remedy—Non-paying service users
3.18.150 Additional powers and duties of the Tax Administrator
3.18.160 Records
3.18.170 Refunds
3.18.180 Appeals
3.18.190 No Injunction/Writ of Mandate
3.18.200 Notice of changes to ordinance
3.18.210 Effect of state and federal reference—Authorization
3.18.220 Independent audit
3.18.230 Remedies cumulative

3.18.240 Termination of Utility Users Tax

3.18.010 Ordinance title

This chapter shall be known as the "Utility Users Tax" of the City of Newark.

3.18.020 Definitions

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

"Ancillary telecommunication services" mean services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to the following services:

(1) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(2) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(3) "Directory assistance" means an ancillary service of providing telephone number information and/or address information.

(4) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(5) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

"Ancillary video services" mean services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, search functions, recording services, or other interactive services or communications that are associated with or incidental to the provision, use or enjoyment of video services.

"Billing address" means the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

"City" means the City of Newark.

"City Manager" shall mean the City Manager, or his or her authorized representative.

"Gas" means natural or manufactured gas or any alternate hydrocarbon fuel that may be substituted therefore.

"Mobile telecommunications service" means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations and as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations there under.

"Month" means a calendar month.

"Non-utility service supplier" means the following:

1. A service supplier, other than a provider of electric distribution services to all or a significant portion of the City that generates electricity for sale to others, including, but not limited to, any publicly-owned electric utility, investor-owned utility, co-generator, distributed generation provider, exempt wholesale generator, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity.

2. An electric service provider (ESP), electricity broker, marketer, aggregator (including a community choice aggregator), pool, operator, or other electricity supplier other than a provider of electric distribution services to all or a significant portion of the City that sells or supplies electricity or supplemental services to electricity users within the City.

3. A gas service supplier, aggregator, marketer or broker, other than a provider of gas distribution services to all or a significant portion of the City that sells or supplies gas or supplemental services to gas users within the City.

"Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

"Person" means, without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, joint power authority, limited liability company, corporation (including foreign, domestic, and non-profit), municipal district or municipal corporation (other than the City), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

"Place of primary use" means the street address where the customer's use of a taxable service primarily occurs, which must be the residential street address or the primary business street address of the customer.

"Post-paid telecommunication service" means the telecommunication service obtained by making a payment on a telecommunication -by- telecommunication basis either through the use of a payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

"Prepaid telecommunication service" (including prepaid mobile telecommunication service) means the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization

code, whether manually or electronically dialed.

"Private telecommunication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (*i.e.,* the location where the customer either inputs or receives the communications).

"Service address" means the residential street address or the business street address of the service user. For a telecommunication service user, "service address" means either:

(1) The location of the service user's communication equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or,

(2) If the location in subsection (1) of this definition is unknown (*e.g.,* mobile telecommunications service or VoIP service), the service address means the location of the service user's place of primary use.

(3) For prepaid telecommunication service, "service address" means the point of sale of the services where the point of sale is within the City, or if unknown, the known address of the service user (*e.g.,* billing address or location associated with the service number), which locations shall be presumed to be the place of primary use.

"Service supplier" means any entity or person, including the City, that provides telecommunication, video, gas, electrical, or refuse collection and disposal service to a user of such service within the City.

"Service user" means a person required to pay a tax imposed under the provisions of this chapter.

"Tax Administrator" means the finance director of the City or his or her designee.

"Telecommunications Service" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term "telecommunications services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that is functionally integrated with "telecommunication services". "Telecommunications services" include, but are not limited to the following services, regardless of the manner or basis on which such services are calculated or

billed: ancillary telecommunication services; intrastate, interstate, and international telecommunication services; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to pre-recorded or live service).

"Video programming" means those programming services commonly provided to subscribers by a "video service supplier" including but not limited to basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

"Video services" mean video programming and any and all services related to the providing, recording, delivering, use or enjoyment of video programming (including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video) using one or more channels by a "video service supplier," regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services, data services, telecommunication services, or interactive communication services that are functionally integrated with video services.

"Video service supplier" means any person or service that provides or sells video programming, or provides or sells the capability to receive video programming, including any telecommunications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or telecommunications. A "video service supplier" includes, but is not limited to, multi-channel video programming distributors (as defined in 47 U.S.C.A. Section 522(13); open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television; multi-channel multipoint distribution services (MMDS); video services using Internet Protocol (e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on demand), direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video services (including two-way communications), whatever their technology.

"VoIP (Voice over Internet Protocol) means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

"800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877" or "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

"900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the telecommunications services to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission for pay for services calls.

3.18.030 Exemptions

A. **Consistency with State and Federal Law.** Nothing in this chapter shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in violation of a federal or state statute, the Constitution of the United States or the Constitution of the state of California.

B. **Exemption Application.** Any service user that is exempt pursuant to subsection (A) from any tax imposed by this chapter pursuant shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision (such as a public school district or a community college district) with a commonly recognized name for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts declared under penalty of perjury which qualify the applicant for an exemption and shall include the names of all utility service suppliers serving that service user. If deemed exempt by the Tax Administrator such service user shall give the Tax Administrator timely written notice of any change in utility service suppliers so that the Tax Administrator can properly notify the new utility service supplier of the service user's tax exempt status. A service user that fails to apply and obtain an exemption pursuant to this Section shall not be entitled to a refund of utility user taxes collected and remitted to the Tax Administrator from such service user as a result of such noncompliance. The decision of the Tax Administrator maybe appealed pursuant to Section 3.18.180A of this Chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3.18.180B of this Chapter is a prerequisite to a suit thereon.

C. **The City.** Nothing in this chapter shall be construed as imposing a tax upon the City of Newark.

D. **Low Income Exemption.** A residential service user shall be exempt from the gas and electric tax of this chapter if he or she is qualified and is enrolled in Pacific Gas & Electric Company's (PG&E) CARE Program ("California Alternate Rates for Energy" program). Individuals receiving the exemption granted by this subsection must reside at the location receiving the service; the exemption shall not apply to any nonresidential service location. A residential service user that is qualified and is enrolled in the CARE Program shall be exempted from the tax on telecommunication and/or video services by providing the Tax Administrator with the names of the current utility service providers who provide his or her telecommunication and video services, and any other information required by the Tax Administrator. The Tax Administrator will advise such utility service providers of the exempt status of its customer, and the exemption shall become effective on the beginning of the second regular billing period which commences after the Tax Administrator has notified the service supplier that an exemption has

been granted. Upon a showing of hardship by a service supplier, the Tax Administrator may, as an alternative, implement this Section by requiring the exempt person to pay the tax and seek a refund under Section 3.18.170. The Tax Administrator shall provide a refund claim form for this purpose.

E. **Senior Citizen Exemption.** 1) An exemption from any tax imposed under this chapter shall be granted to any residential service user who is seventy (70) years of age or older if such service user resides alone or if he or she shares his or her residence with a spouse or a registered domestic partner, and at least one spouse or partner meets the age criteria for the exemption.

2) Any service user seeking an exemption pursuant to this subsection (E) from any tax imposed by this chapter shall file an application with the Tax Administrator for an exemption. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all service suppliers serving that service user. A Driver License or Identification (ID) Card issued by the California Department of Motor Vehicles shall be *prima facie* proof of age. Tax Administrator shall within sixty (60) days of receipt of an application for exemption determine whether the exemption is granted, and if so notify the service supplier. The exemption shall apply from the date of the Tax Administrator's determination that the household qualifies.

3) The exemption granted to a person pursuant to this subsection (E) shall become effective on the beginning of the second regular billing period which commences after the Tax Administrator has notified the service supplier that an exemption has been granted. Upon a showing of hardship by a service supplier, the Tax Administrator may, as an alternative implement this Section by requiring the exempt person to pay the tax and seek a refund under Section 3.18.170. The Tax Administrator shall provide a refund claim form for this purpose.

F. **Application Processing.** 1) The Tax Administrator shall within sixty (60) days of receipt of an application for exemption determine whether the exemption is granted, and if so notify the service supplier. The exemption shall apply from the date of the Tax Administrator's determination that the household qualifies.

2) If the Tax Administrator determines that an application for exemption is faulty, that the applicant has failed to truthfully set forth facts, or that the facts do not support the application for exemption, the application shall be denied in writing to the applicant. The applicant shall thereafter have a right to file an amended application, or to appeal the Tax Administrator's decision to the city manager within a ten-day period after the mailing date of the Tax Administrator's notification. In the case of an appeal, the city manager shall review the facts in consultation with the city attorney, and shall render a final determination on such appeal.

G. **Effective Date of Exemption**. The exemption granted to a person pursuant to this Section shall become effective on the beginning of the first regular billing period which commences after the Tax Administrator has notified the service supplier that an exemption has been granted. Upon a showing of hardship by a service supplier, the Tax Administrator may, as an alternative implement this Section by requiring the exempt person to pay the tax and seek a

refund under Section 3.18.170. The Tax Administrator shall provide a refund claim form for this purpose.

H. **Continuing Eligibility**. The Tax Administrator in his or her sole discretion may require annual written verification from the service user of his or her continuing eligibility for any exemption granted under this Section. Any person deemed eligible for exemption under subsections D and E of Ordinance No. 446 on the effective date of this Chapter 3.18 shall be deemed eligible for exemption under subsections D and E hereof upon the effective date of this Chapter 3.18.

3.18.040 Telecommunications users tax

A. **Telecommunications Users Tax Rate.** There is hereby imposed a tax upon every person in the City using telecommunication services. The tax imposed by this section shall be at the rate of three and one-half (3.5%) percent of the charges made for such services and shall be collected from the service user by the telecommunication services supplier or its billing agent. Effective January 1, 2016, and thereafter, the rate shall be reduced to three and one-quarter percent (3.25%). There is a rebuttable presumption that telecommunication services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries and such services are subject to taxation under this chapter. There is also a rebuttable presumption that prepaid telecommunication services sold within the City are used, in whole or in part, within the City and are therefore subject to taxation under this Chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunication services.

B. **Sourcing Rules.** "Mobile telecommunications service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124). The Tax Administrator may issue and disseminate to communication service suppliers, which are subject to the tax collection requirements of this Chapter, sourcing rules for the taxation of other communication services, including but not limited to post-paid communication services, prepaid communication services, VoIP and private communication services. In promulgating any sourcing rules hereunder the Tax Administrator shall take into account but shall not be legally bound by custom and common practice that furthers administrative efficiency and minimizes taxation by more that one state of the same service usage, commonly referred to as multi-jurisdictional taxation. In doing so the Tax Administrator may refer to and/or rely upon the Streamlined Sales and Use Tax Agreement, and/or any other reasonable precedent or resource.

C. **Authority for Administrative Rulings.** The Tax Administrator may issue and disseminate to telecommunication service suppliers which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those telecommunication services, or charges therefore, that are subject to the tax of subsection (A) above.

D. **Specific Inclusions in Telecommunication Services.** As used in this section, the term "telecommunication services" shall include, but are not limited to, charges for the following: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification, and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; all fees, charges and surcharges, including those mandated by state or federal regulatory agencies to fund such agencies or various mandated programs (whether such charges or surcharges are imposed on the service supplier or the customer); local number portability charges; and text and instant messaging.

E. **Specific Exclusions from Telecommunications Services.** As used in this Section, "telecommunications services" shall not include digital downloads that are not ancillary telecommunications services such as books, music, ringtones, games, and similar digital products.

F. **Multi-Jurisdictional Taxation**. To prevent actual multi-jurisdictional taxation of telecommunication services subject to tax under this section, any service user, upon proof to the Tax Administrator that the service user has previously paid the same tax in another state or local jurisdiction on such telecommunication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or local jurisdiction; provided, however, the amount of credit shall not exceed the tax owed to the City under this section.

G. **Collection of Telecommunication Users Tax.** The telecommunication user tax imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

3.18.050 Video users tax

A. **Video Users Tax Rate**. There is hereby imposed a tax upon every person in the City using video services from a video provider. The tax imposed by this section shall be at the rate of three and one-half (3.5%) percent of the charges made for such services and shall be collected from the service user by the video service supplier or its billing agent. Effective January 1, 2016, and thereafter, the rate shall be reduced to three and one-quarter percent (3.25%). There is a rebuttable presumption that video services that are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

B. **Video Charges.** As used in this section, the term "charges" shall include, but is not limited to, charges for the following:

1. Regulatory fees and surcharges, franchise fees, and access fees (e.g., "PEG" fees), whether designated on the customer's bill or not, or whether they are imposed on the service provider or the customer.

2. Initial installation of equipment necessary for provision and receipt of video services.

3. Late fees, collection fees, bad debt recoveries, and return check fees.

4. Activation fees, reactivation fees, and reconnection fees.

5. Video programming and video services.

6. Ancillary video services (e.g., electronic program guide services, recording functions, search functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of video services).

7. Equipment leases (e.g., remote, recording or search devices, converters, remote devices).

8. Service calls, service protection plans, name changes, changes of services, and special services.

C. **Charges Further Defined.** As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the video services.

D. **Authority for Administrative Rulings.** The Tax Administrator may issue and disseminate to video service suppliers which are subject to the tax collection requirements of this Chapter an administrative ruling identifying those video services or charges therefor that are subject to or not subject to the tax of subsection (A) above

E. **Collection of Video Users Tax.** The tax imposed by this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service (e.g., an apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the video service. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

3.18.060 Electricity users tax

A. **Electricity Users Tax Rate.** There is hereby imposed a tax upon every person in the City using electricity. The tax imposed by this section shall be at the rate of three and one-half (3.5%) percent of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service users that are provided by a service supplier or non-utility service supplier to a service user. Effective January 1, 2016, and thereafter, the rate shall be reduced to three and one-quarter percent (3.25%).

B. **Electricity Charges.** As used in this section, the term "charges" shall include, but is not limited to, the following charges:

1. Energy charges.

2. Distribution or transmission charges.

3. Metering charges.

4. Stand-by, reserves, firming, ramping, voltage support, regulation, emergency or other similar minimum charges for services.

5. Customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees, or surcharges which are necessary for or common to the receipt use or enjoyment of electric service; and,

6. Charges, fees, or surcharges for electric services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

C. **Electricity Charges Further Defined**. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity.

D. **Survey of Electricity Service Suppliers—Authority for Administrative Rulings**. The Tax Administrator shall, from time to time, survey the electric service suppliers in the City to identify the various unbundled billing components of the electric retail service that are being offered to customers within the City, and the charges therefore, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items that are: (1) necessary for or common to the receipt, use and enjoyment of electric service; or (2) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (A) above.

E. **"Using Electricity" Further Defined**. As used in this Section the term "using electricity" shall not include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the City for resale.

F. **Collection of Electricity Users Tax.** The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section 3.18.080 of this Chapter. All other taxes on charges for electricity imposed by this Section shall be collected from the service user

by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month provided that such person shall submit an adjusted payment or request for credit as appropriate within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

3.18.070 Gas users tax

A. **Gas Users Tax Rate.** There is hereby imposed a tax upon every person in the City using gas that is delivered through a distribution system or by mobile transport. The tax imposed by this section shall be at the rate of three and one-half (3.5%) percent of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas, and shall apply to all uses of gas, including but not limited to, heating, electricity generation, or the use of gas as a component of a manufactured product. Effective January 1, 2016, and thereafter, the rate shall be reduced to three and one-quarter percent (3.25%).

B. **Gas Charges.** As used in this section, the term "charges" shall apply to all services components and items for gas service that are [1] necessary for or common to the receipt, use, or enjoyment of gas service; or, [2] currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

1. The commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunk-line, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system or by mobile transportation.

2. Gas transportation charges (including interstate charges to the extent not included in commodity charges).

3. Storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction.

4. Capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges, which are necessary or common to the receipt, use and enjoyment of gas service.

5. Charges, fees, or surcharges for gas services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

C. **Gas Charges Further Defined**. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas.

D. **Survey of Gas Service Suppliers; Authority for Administrative Rulings**. The Tax Administrator from time to time may survey the gas suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City and the charges therefore, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: [1] necessary for or common to the receipt use or enjoyment of gas service, or, [2] currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (A) above.

E. **Exclusion for Resale.** There shall be excluded from the calculation of the tax imposed in this Section charges made for gas which is to be resold and delivered through a pipeline distribution system.

F. **Collection of Gas Users Tax**. The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section 3.18.080 of this Chapter. All other taxes on charges for gas imposed by this Section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month provided that such person shall submit an adjusted payment or request for credit as appropriate within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

3.18.080 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity

A. **Report to Tax Administrator.** Any service user subject to the tax imposed by Sections 3.18.060 or 3.18.070 that produces gas or electricity for self-use, that receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this chapter, or that, for any other reason, is not having the full tax collected and remitted by its service supplier, a non-utility service supplier, or its billing

agent on the use of gas or electricity, including any related supplemental services, in the City, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

B. **Investigation.** The Tax Administrator may require said service user to identify its non-utility service supplier and provide, subject to audit, invoices, books of account or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City. The rate schedule for this purpose shall be available from the City.

3.18.090 Bundling taxable items with non-taxable items

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation of the taxable and non-taxable services.

3.18.100 Substantial Nexus/Minimum Contacts.

For purposes of imposing a tax or establishing a duty to collected and remit a tax under this Chapter, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any telecommunication service (including VoIP) used by a person with a service address in the City which service is capable of terminating a call to another person on the general telephone network shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax or establishing a duty to collect and remit a tax under this Chapter. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include but are not limited to

any of the following maintains or has within the City directly or through an agent, affiliate, or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents, or other representatives; solicits business in the City on a continuous regular, seasonal, or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the City or distributed from a location within the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of services that are subject to a tax under this Chapter.

3.18.105 Duty to Collect—Procedures

A. **Collection by Service Suppliers.** The duty of service suppliers to collect and remit the taxes imposed by the provisions of this Chapter shall be performed as follows:

(1) The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 3.18.140 shall apply.

(2) The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this Chapter. Where a service user receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

B. **Filing Return and Payment.** Each person required by this Chapter to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator, on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this Chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the Public Records Act.

3.18.110 Collection penalties—Service suppliers

A. **Due Date for Taxes—Delinquencies.** Taxes collected from a service user are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging

monies between financial accounts, made by a service supplier in satisfaction of its obligations under this subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on the following business day.

B. **Failure to Collect or Remit.** If the person required to collect and/or remit a tax imposed pursuant to this chapter fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen percent (15%) of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of and 75/100ths percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

C. **Penalties for Fraud or Gross Negligence in Reporting or Remitting.** The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the provisions of this chapter for fraud or gross negligence in reporting or remitting at the rate of fifteen percent (15%) of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

D. **Penalties Due as Tax.** For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.

E. **Authority to Modify Due Dates**. Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by other public agencies imposing a utility users tax, or otherwise legally established, to create a central payment location or mechanism.

3.18.120 Actions to collect

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this chapter, along with any collection costs incurred by the City as a result of the person's noncompliance with this chapter, including, but not limited to, reasonable attorneys' fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under 11 U.S.C.A. Section 507(a)(8)(C). Service suppliers who seek to collect charges for service in bankruptcy proceedings shall also include in any such claim the amount of taxes due the City for those services, unless the Tax Administrator determines that such duty is in conflict with any federal or state law, rule, or regulation or that such action would be administratively impractical.

3.18.130 Deficiency determination and assessment—Tax application errors

A. **Tax Deficiency Determinations.** The Tax Administrator shall make a deficiency determination if he or she determines that any service user or service supplier required to pay or collect taxes pursuant to the provisions of this chapter has failed to pay, collect, and/or remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this section if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. **Notice of Deficiency.** The Tax Administrator shall mail a notice of such deficiency determination to the person or entity allegedly owing the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of 75/100ths percent (0.75%) per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of service of such notice, the person or entity allegedly owing the tax may request in writing to the Tax Administrator a hearing on the matter.

C. **Hearing on Deficiency.** If the person or entity allegedly owing the tax fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City. If such person or entity requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

D. **Determination after Hearing.** At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person or entity owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.18.180 of this chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 3.18.180 of this chapter is a prerequisite to a suit thereon.

E. **Delinquencies.** Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this chapter shall commence from the date of delinquency as provided in this subsection.

F. **Notice of Delinquency.** All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

3.18.140 Administrative remedy—Non-paying service users

A. **Administrative Remedies for the Obligation to Collect Tax.** Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this chapter from certain named service users for specific billing periods. To the extent the service user has failed to pay the amount of tax owed for a period of two or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this chapter. Nothing herein shall require that the Tax Administrator institute proceedings under this section if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. **Delinquency Penalty.** In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of fifteen percent (15%) of the total tax that is owed, and shall pay interest at the rate of 75/100ths percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

C. **Notice to Non-Paying Service User.** The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

D. **Additional Penalties.** If the service user fails to remit the tax to the Tax Administrator within thirty (30) days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of fifteen percent (15%) of the amount of the total tax that is owed.

3.18.150 Additional powers and duties of the Tax Administrator

A. **Enforcement by Tax Administrator.** The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this chapter.

B. **Administrative Regulations Regarding Payment.** The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this Chapter for the purpose of interpreting, clarifying, carrying out, and enforcing the payment, collection, and remittance of the taxes herein imposed. A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office. To the extent that the Tax Administrator determines that the tax imposed under this Chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing

methodology for purposes of Government Code Section 53750 or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of Government Code Section 53750, and the City does not waive or abrogate its ability to impose the utility users tax in full as a result of promulgating administrative rulings or entering into agreements.

C. **Administrative Agreements Regarding Billing Procedures**. Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this chapter and thereby: (1) conform to the billing procedures of a particular service supplier so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter; or (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and are voidable by the Tax Administrator or the City at any time.

D. **Compliance Audits.** The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this chapter, of any person required to collect and/or remit a tax pursuant to this chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 3.18.130 of this chapter for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

E. **Extension of Time**. Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of 75/100ths percent (0.75%) per month, prorated for any portion thereof.

F. **Eligibility for Exemption.** The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this chapter.

G. **Waiver of Penalties and Interest.** Notwithstanding any provision in this Chapter 3.18 to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this Chapter 3.18 if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, or whether the person offers to voluntarily disclose its tax liability. The Tax Administrator may also participate with other utility users tax public agencies in conducting coordinated compliance reviews with the goal of achieving administrative efficiency and uniform tax application determinations, where possible. To encourage voluntary

full disclosure and on-going cooperation on tax collection and remittance, the Tax Administrator, and its agents, may enter into agreements with the tax-collecting service providers and grant prospective only effect on any changes regarding the taxation of services or charges that were previously deemed by the service provider, in good faith and without gross negligence, to be non-taxable. In determining whether the non-collection was in good faith and without gross negligence, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, and whether the disclosure was voluntarily made by the service provider or its agent.

3.18.160 Records

A. **Retention of Necessary Tax Records.** It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at a reasonable time.

B. **Administrative Subpoenas.** The City through the City Council may issue an administrative subpoena to compel a person to deliver to the Tax Administrator copies of all records deemed necessary by the Tax Administrator to establish compliance with this chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the City on or before the due date, provided that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

C. **Non-Disclosure Agreements**. The Tax Administrator is authorized to execute a non-disclosure agreement approved by the city attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Sections 7284.6 and 7284.7.

D. **Use of Billing Agents.** If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: (1) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and (2) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

E. **Access to Necessary Records**. If any person subject to record-keeping under this section unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of five hundred dollars ($500.00) on such person for each day following: (1) the initial date that the person refuses to provide such access; or (2) the due

date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Chapter.

3.18.170 Refunds

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this chapter from a person or service supplier, it may be refunded as provided in this section as follows:

A. **Tax Administrator Authority.** The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter from a service user or service supplier provided that no refund shall be paid under the provisions of this Section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one (1) year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. To the extent allowed by law, nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim under penalty of perjury as provided by this subsection.

B. **Action on Claim for Refund.** The Tax Administrator, where the claim is within his or her settlement authority as established by ordinance or by resolution of the City Council from time to time, or the City Council where the claim is in excess of that amount, shall act upon the refund claim within forty-five (45) calendar days of the initial receipt of the refund claim. Said decision shall be final. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the forty-five (45) calendar day period, the claim shall be deemed to have been rejected by the Tax Administrator/City Council on the forty-fifth (45th) day. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in Government Code Section 913.

C. **Written Claim for Refund.** The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the City pursuant to this Section shall be subject to the provisions of Government Code Section 945.6 and 946.

D. **Refunds to Service Suppliers**. Notwithstanding subsections (A) through (C) above, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this Chapter, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator, provided that: [1] such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; [2] the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, [3] in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

3.18.180 Appeals

A. **Administrative Appeals**. The provisions of this Section apply to any decision (other than a decision relating to a refund pursuant to Section 3.18.170 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.18.170 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this Section. Compliance with this Section shall be a prerequisite to a suit thereon. (See Government Code Section 935[b]). To the extent allowed by law, nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

B. **Appeal to City Manager.** If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.18.170 of this chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, he or she may appeal to the city manager by filing a notice of appeal with the city clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved said person.

C. **Scheduling of Administrative Appeal Hearing**. The matter shall be scheduled for hearing before an independent hearing officer selected by the city manager, no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

D. **Notice of Decision**. Based upon the submission of such evidence and the review of the City's files, the hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6.

E. **Manner of Notice**. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third (3rd) calendar day following the date of mailing, as established by a proof of mailing.

3.18.190 No Injunction/Writ of Mandate

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected and/or remitted.

3.18.200 Notice of changes to ordinance

If a tax under this chapter is added repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of California Public Utilities Code Section 799.

3.18.210 Effect of state and federal reference—Authorization

Unless specifically provided otherwise, any reference to a state or federal statute in this chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease (as a result of excluding all or a part of a utility service, or charge therefore, from taxation). Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the City's authorization to collect or impose any tax imposed under this chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter.

3.18.220 Independent audit

The City shall annually verify that the taxes owed under this chapter have been properly applied, collected, and remitted in accordance with this chapter, and properly expended according to applicable law. The annual verification shall be performed by a qualified, independent third party, and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be received.

3.18.230 Remedies cumulative

All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

3.18.240 Termination of Utility Users Tax

The levy of taxes as provided in this Chapter shall expire on December 31, 2020 unless re-enacted by a separate ordinance approved by a vote of the People of the City of Newark conducted pursuant to law. The termination of the levy of taxes as provided herein shall not

terminate the obligation to pay taxes levied on services used prior to such date. Taxes levied prior to December 31, 2020 shall remain a debt payable to the City. All provisions of this Chapter except those relating to the levy of taxes shall continue in full force and effect after such date.

Section 2

Severability. If any section subsection sentence clause phrase or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The People hereby declare that they would have adopted each section subsection sentence clause phrase or portion of this Ordinance irrespective of the fact that any one or more sections subsections sentences clauses phrases or portions of this Ordinance be declared invalid or unenforceable.

Section 3

Amendment or Repeal Chapter 3.18 of Title 3 of the Newark Municipal Code may be repealed or amended by the City Council without a vote of the people. However as required by Article XIII C of the California Constitution voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance. The People of the City of Newark affirm that the following actions shall not constitute an increase of the rate of a tax

A. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance if the City Council has acted to reduce the rate of the tax;

B. An action that interprets or clarifies the methodology of the tax or any definition applicable to the tax so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance;

C. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception other than the discontinuation of an exemption or exception specifically set forth in this Ordinance; and,

D. The collection of the tax imposed by this Ordinance even if the City had for some period of time failed to collect the tax.

Section 4

Effective Date This Chapter shall become effective immediately upon the date that this Ordinance is adopted by voters of the City of Newark at the election of November 4, 2014.

Section 5. Execution. The Mayor is hereby authorized to attest to the adoption of the Ordinance by the voters of the City by signing where indicated below.

F.8 Approval of First Amendment to the Transfer Services Agreement between the Cities of Newark and Union City and BLT Enterprises of Fremont, LLC, and associated budget amendments – from Administrative Services Director Woodstock. (RESOLUTION)

Background/Discussion – In 2007, the City signed a Transfer Service Agreement ("Agreement") with BLT Enterprises of Fremont, LLC ("BLT"), the operators of the Fremont Transfer Station ("Transfer Station"), to accept and transfer waste to the landfill. (The City has a separate contract with the franchisee – previously Waste Management and now Republic – for collection of waste and collecting and processing of recycling material.) The Agreement is in effect until 2037.

In mid-2012, BLT contacted the City and expressed concerns regarding the City's delivery obligations under the Agreement. The chief concern was the interpretation of the definition of recyclable material and repercussion of a load not meeting the disputed definition. Other concerns were in regards to diversion of food scraps and non-franchise dumpsters being used within the City that were not disposing of their waste at the Transfer Station. On these issues, the City has taken the position that the existing Agreement is part ambiguous and part silent.

Staff has had extensive discussions with BLT since the initial contact in 2012, as well as three private mediation sessions with a retired Superior Court Judge. The proposed resolution relieves the City of any past liability and clarifies the City and BLT's obligations under the Agreement going forward.

Key Contract Provisions

- For the purposes of delivery obligations, material that is designated by the generator as recyclable or organic material shall be deemed as such – regardless of the amount of waste contamination in the container – and shall be delivered to the franchisee's recycling facility for processing.
- In consideration for resolution on the definition of recyclable and organic materials, the City shall pay BLT a Service Charge Fee of $11 per ton for garbage disposal at the Transfer Station delivered by the franchisee.
- Construction and Demolition Waste shall be deemed a recycling material. This waste will be processed at the recycling facility and the waste contamination from the processing shall be hauled to the Transfer Station for disposal as garbage.
- Base Cost of Service was established as the minimum threshold of garbage tonnage delivered to the Transfer Station will be 27,000 tons.

The amendment to the Transfer Agreement will allow the City to pursue diversion of residential and commercial organics to comply with the Stopwaste ordinance; will allow the City to expand the list of recyclable materials to match the abilities of the franchisee's recycling facility; reduces staff time needed to oversee the waste contracts; and it will encourage the construction and demolition waste producers to recycle or reuse.

This settlement is estimated to increase rates by approximately 4%, which equates to $1.13 per month increase for a 35-gallon residential customer. Staff is proposing to pay for the increase for calendar year 2014 from the Waste Augmentation Fund. This fund was established to offset or smooth rate increases. The estimated total for 2014 is $298,000. The settlement costs or a fraction thereof will be included in the rate setting process for 2015 calendar year rates. There are sufficient funds available in the unallocated fund balance of the Waste Augmentation Fund for this payment.

The settlement cost is based on an estimate of 27,100 tons being delivered to BLT in 2014. This tonnage amount is based on tonnage delivered year to date along with a forecast for the remainder of the year based on past volumes. If the tons delivered fall below 27,000, the City would be obligated to compensate BLT for the full 27,000 tons. At the current tip fee rate, for every 500 tons below the 27,000 ton threshold, the City would pay BLT approximately $42,000. This translates to an additional $0.16 per 35-gallon residential customer. Staff has analyzed the tonnage history and, considering the anticipated housing developments, the disposal tonnage is projected to stay above 27,000. This estimate does not include any increase in industrial/construction debris. Those waste streams will contribute to the threshold tonnage.

Due to the extended negotiations, the effective date of the Service Charge Fee and the Base Cost of Service portion of the Amendment is January 1, 2014. The effective date of the construction and demolition provision is July 1, 2014.

Staff recommends amending the 2012-2014 Biennial Budget for Fiscal Year 2013-2014 to authorize payment of the Service Charge Fee for the estimated amount of $143,000 (with the actual amount being determined once the June tonnage information is received by the City) from the unallocated fund balance of the Waste Augmentation Fund. Staff also recommends an amendment to the 2014-2016 Biennial Budget for Fiscal Year 2014-2015 for the remaining amount of the estimated $153,000 (with the actual amount being determine by the actual tonnage delivered to the Transfer Station during the months of July to December 2014), also from the unallocated fund balance of the Waste Augmentation Fund.

Attachment

Action – It is recommended that the City Council, by resolution, (1)authorize the Mayor to sign the First Amendment to the Service Agreement between the Cities of Newark and Union City and BLT Enterprises of Fremont, LLC, and (2) approve a budget amendment to the 2012-2014 Biennial Budget for Fiscal Year 2013-2104 and (3) approve a budget amendment to the 2014-2016 Biennial Budget for Fiscal Year 2014-2015.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK (1) AUTHORIZING THE MAYOR TO SIGN THE FIRST AMENDMENT TO THE SERVICE AGREEMENT BETWEEN THE CITIES OF NEWARK AND UNION CITY AND BLT ENTERPRISES OF FREMONT, LLC (2) APPROVE A BUDGET AMENDMENT TO THE 2012-2014 BIENNIAL BUDGET FOR FISCAL YEAR 2013-2014 AND (3) APPROVE AN AMENDMENT TO THE 2014-2016 BIENNIAL BUDGET FOR FISCAL YEAR 2014-2016

BE IT RESOLVED by the City Council of the City of Newark that the Mayor of the City of Newark be and is hereby authorized to sign the First Amendment to the Service Agreement between the Cities of Newark and Union City and BLT Enterprises of Fremont, LLC.

BE IT FURTHER RESOLVED that the 2012-2014 Biennial Budget for Fiscal Year 2013-2014 be amended as follows:

From		
023-0000-2991	Unallocated Waste Augmentation Fund	$143,000
To		
023-2011-5280	Waste Management Contract Services	$143,000

BE IT FURTHER RESOLVED that the 2014-2016 Biennial Budget for Fiscal Year 2014-2015 be amended as follows:

From		
023-0000-2991	Unallocated Waste Augmentation Fund	$153,000
To		
023-2011-5280	Waste Management Contract Services	$153,000

F.9 Approval of First Amendment to the Collection of Solid Waste and Collection and Processing of Source Separated Recyclable Materials, Organic Materials and Construction and Demolition between the City of Newark and Allied Waste Services of North America LLC – from Administrative Services Director Woodstock. (RESOLUTION)

Background/Discussion – In 2013, the City signed a Franchise Agreement with Allied Waste Services of North America LLC ("Republic Services") to collect waste and collect and process recycling and organic materials. The Franchise Agreement is in effect until 2023.

In mid-2012, BLT Enterprises, the operator of the Fremont Transfer Station, contacted the City and expressed concerns regarding the City's delivery obligations under the Transfer Station Agreement. The chief concern was the interpretation of the definition of recyclable material and repercussion of a load not meeting the disputed definition. Other concerns were in regards to diversion of food scraps and non-franchise dumpsters being used within the City that were not disposing of their waste at the Transfer Station. The City has proposed a settlement to these issues under a separate agenda item.

The existing Franchise Agreement included language that would allow the City to implement the items proposed in the BLT settlement, but the Franchise Agreement has the opportunity to be amended to function more efficiently.

The First Amendment to the Franchise Agreement will establish the Construction and Demolition (C&D) processing procedures and the hauling of C&D residue to the Transfer Station. The Amendment will change the residue level for all materials from a required 10% residue level to a goal of a 10% residue level.

The amendment to the Franchise Agreement will not add additional cost to the overall rates, but does allow for adjustment to the C&D rates based on the residue levels in the waste stream. If any adjustment is necessary, it will occur during the annual rate adjustments.

The effective date of this Amendment will be July 1, 2014.

Attachment

Action – It is recommended that the City Council, by resolution, authorize the Mayor to sign the First Amendment to the Agreement for Collection of Solid Waste and Collection and Processing of Source Separated Recyclable Materials, Organic Material and Construction and Demolition between the City of Newark and Allied Waste Services of North America LLC.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE MAYOR TO SIGN THE FIRST AMENDMENT TO THE AGREEMENT FOR COLLECTION OF WASTE AND COLLECTION AND PROCESSING OF SOURCE SEPARATED RECYCLABLE MATERIALS, ORGANIC MATERIAL AND C&D BETWEEN THE CITY OF NEWARK AND ALLIED WASTE OF NORTH AMERICA, LLC

BE IT RESOLVED by the City Council of the City of Newark that the Mayor of the City of Newark be and is hereby authorized to sign the First Amendment to the Agreement for Collection of Solid Waste and Collection and Processing of Source Separated Recyclable Materials, Organic Material and C&D between the City of Newark and Allied Waste of North America, LLC.

(06262014 swr2)

First Amendment to Franchise Agreement

This First Amendment to the Franchise Agreement is made as of June 26, 2014, by and between Allied Waste Services of North America , LLC, a California limited liability company ("Contractor"), and the City of Newark, a political subdivision of the State of California ("City").

RECITALS

A. Contractor and City are parties to that certain Franchise Agreement Between the City of Newark and Allied Waste Services of North America, LLC, for Collection of Solid Waste and Collection and Processing of Source Separated Recyclable Materials, Organic Materials, and C&D, dated January 15, 2013 ("Franchise Agreement"); and

B. The parties wish to amend the "Franchise Agreement" so as to remove the penalty provisions of the failure of Contractor to achieve a residue level of less than 10% and instead replace said provisions with a section requiring Contractor to regularly characterize Residue from processing C&D and haul Equivalent Residue to the Transfer Station on a monthly basis.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, Contractor and City hereby agree as follows:

1. Effective July 1, 2014, EXHIBIT Q to the Franchise Agreement is hereby deleted in its entirety and replaced with REVISED EXHIBIT Q, a true and correct copy of which is attached hereto and incorporated herein as **ATTACHMENT A**.

2. All capitalized terms in this Amendment, including ATTACHMENT A, not otherwise defined shall have the respective meanings ascribed to them in the Franchise Agreement.

3. All other terms and provisions of the Franchise Agreement shall remain in full force and effect.

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IN WITNESS HWEREOF, the parties have executed this Amendment as of the first date written above.

CONTRACTOR:

Allied Waste Services of North America , LLC

By: Michael Caprio

Name: Michael Caprio

Title: Area President

CITY OF NEWARK

By:_____

Name: ALAN L. NAGY

Title: Mayor, City of Newark

Attest:

_____

SHEILA HARRINGTON, City Clerk, City of Newark

Date:_____

ATTACHMENT A

REVISED EXHIBIT Q
PROTOCOL FOR MANAGEMENT OF RESIDUE

1. Characterization Process

Contractor shall, at the time intervals required and further specified herein, conduct Characterizations of Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separated Recyclable C&D to determine the Residue Level. At the Contractor's discretion, the Characterizations may be conducted using either Contractor's "magic table" method or a method that uses the Contractor's Processing line to sort the materials (hereinafter "Characterization"). The Characterizations shall be conducted for three (3) material streams: Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separated Recyclable C&D, and each stream may, at the Contractor's discretion, be analyzed in subsets, including, with limitation, commercial, residential, and/or multi-family. A Characterization for a material stream and/or any such subset thereof must be a representative sample of the material stream and/or any such subset thereof, which means that a representative sample shall include materials from multiple loads, on varying days or routes. Each Characterization shall be certified by authorized personnel or officer of the Approved Facility.

Contractor shall provide the City written notice three (3) Business Days in advance of the Characterizations and the City shall be allowed to attend and observe the Characterizations. The results of the Characterizations shall be delivered to the City within two (2) week of the date the Characterization was performed. The results of the Characterizations shall be used to determine the Residue Level for each material stream, and/or any such subset thereof, until the next Characterization is performed.

The first set of Characterizations shall be performed by September 30, 2013. At a minimum, Contractor shall conduct Characterizations of each material stream annually. The Contractor may, at its discretion, perform Characterizations at any time.

2. Residue Level Less than Ten Percent

Contractor shall begin Processing all Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separated Recyclable C&D it Collects in the City upon the Commencement Date. The Residue Level goal is to be less than ten percent (10%) for all material streams.

3. Construction & Demolition Residue Hauling

Effective July 1, 2014, Contractor shall collect all construction & demolition containers and shall Process the material using reasonable commercial efforts to remove as much Recyclable Material as possible. The remaining residue shall be considered MMW and Equivalent Residue shall be hauled to the Approved Transfer Facility. The MMW shall be calculated and hauled on at least a monthly basis.

Contractor shall annually characterize a representative sample of each of the following Construction and Demolition streams:

1. Remodel/Tenant Improvements
2. New Construction
3. Wood
4. Dirt
5. Concrete

The annual Characterization shall determine the Residue for each stream for the following year and Equivalent Residue shall be hauled to the Transfer Facility as provided above, unless Contractor performs a subsequent characterization as provided below, in which case the Residue in the subsequent characterization shall be used for the remaining balance of the year. The annual Characterization shall take place between May 15 and November 15 and Contractor shall give the City the same notice required under section 1 of this Exhibit Q. At either party's request, Contractor may perform an additional Characterization, provided at least 4 months have elapsed since the last Characterization.

At the Contractor's option, if a construction site requests an evaluation for LEED Certified purposes, the Contractor may make a minimum of two (2) site visits, but maybe more, to review at least 10% of the cubic yardage from the site, and, perform an onsite audit of their waste stream, using industry standard methods, to create a site specific residue level for that job.

The additional cost of the hauling shall be borne by Contractor. Subject to approval by the City as part of the rate setting process, the Contractor shall be allowed to increase rates at the next rate setting to include the residue rate collected as an MMW rate. For example, if the residue rate is 20%, the recyclable C&D base rate is 82.83 per ton and the C&D Waste rate is 104.26 per ton: the new rate for C&D recyclable may be adjusted to:

[(82.83 *index*80%)+(104.26*index*20%)]=Adjusted C&D Recycling Rate

Each subsequent rate adjustment shall be calculated on the Base Rate, not the Adjusted Rate.

4. City's Option to Direct Equivalent Residue to Approved Transfer Facility

Upon execution of this Agreement, the City reserves the right to exercise the option to direct Contractor to haul Equivalent Residue from any of the Processing of Source Separated Recyclable Materials and/or

Source Separated Organic Materials, or any subset thereof such as multi-family, residential, or commercial, to the Approved Transfer Facility as Solid Waste. The Contractor shall comply within one week upon receipt of the City's direction to transport Equivalent Residue to the Approved transfer Facility. The Equivalent Residue shall be hauled on a monthly basis and shall be calculated on a monthly basis. The Equivalent Residue shall be equal to the Residue Level for each material stream Processed by Contractor (i.e., , Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separated Recyclable C&D, or any subset thereof as directed by the City.) multiplied by the monthly Tonnage of material Processed. For example, if the Residue Level for Single-Family Source Separated Recyclable Materials is 6.5% and 80 Tons of Single-Family Source Separated Recyclable Materials were Processed in a particular month, the amount of Residue to be transported to the Approved Transfer Facility would equal 5.2 Tons (e.g., 6.5% x 80 Tons). The Contractor shall pay the cost of transporting and Disposing of the Residue as calculated below. The City and Contractor agree that the Contractor's compensation for Equivalent Residue transportation and Disposal Costs shall equal the per-Ton amount specified in the table below subject to annual CPI adjustment(s) using the methodology described in Exhibit D1. In the event the City exercises this option, this shall not be construed as either Party's request for a Cost-Based Rate Adjustment Methodology as described in Exhibit D2. Any request for compensation for Equivalent Residue transportation and Disposal Costs shall be processed in a timely manner by the City.

Residue Transport and Disposal Cost (Valid for Rate Period One)

	$ per Ton
Transport cost	$19.33
Disposal cost at Approved Transfer Facility (e.g., Fremont Recycling and Transfer Station)	$83.41
Avoided Disposal cost at Approved Processing Facility (e.g., Newby Island landfill)	($31.00)
Total	$71.74

The supporting assumptions and calculations that served as the basis for the agreed upon per-Ton cost adjustment is presented in the following table.

Description	Single-Family Recyclables	Single-Family Organics	Commercial/ Multi-Family Recyclables	Roll-Off Recyclables	Totals	$ per Ton
Gross Tonnage per Year	4,222	5,122	1,692	367	11,403	
Estimated Residual %	8%	4%	8%	4%	6%	
Estimated Residual Tons	338	205	135	15	693	
Backhaul Tons Per Load	15	15	15	15		
Backhaul Loads Required	22.52	13.66	9.02	0.98		
Transport Hrs Per Load	2	2	2	2		
Transport Hourly Cost	$ 145.00	$ 145.00	$ 145.00	$ 145.00		
Annual Transport Cost	**$ 6,530**	**$ 3,961**	**$ 2,617**	**$ 284**	**$ 13,392**	**$ 19.33**
Annual Residue Tonnage	338	205	135	15	693	
BLT Tip Fee	$ 83.41	$ 83.41	$ 83.41	$ 83.41		**$ 83.41**
Newby Tip Fee	$ (31.00)	$ (31.00)	$ (31.00)	$ (31.00)		**$ (31.00)**
Differential	$ 52.41	$ 52.41	$ 52.41	$ 52.41		
Added Disposal Cost	**$ 17,702**	**$ 10,738**	**$ 7,094**	**$ 769**	**$ 36,303**	**$ 52.41**
Total Additional Cost					$ 49,695	**$ 71.74**

City may exercise this option for Contractor to transport Equivalent Residue to the Approved Transfer Facility at any time during the Term of this Agreement, provided Contractor receives thirty (30) days written notice. City also reserves the right to rescind this Option at any time, provided Contractor receives seven (7) days written notice. If at any time City exercises this option, but then subsequently rescinds said option, this rescission shall not be construed as a waiver of any future right by the City to re-exercise said option at which point the costs described above shall be reinstated pursuant to the above terms.

G.1 Claim of Meher Homi Press – from City Clerk Harrington. (MOTION)

Background/Discussion – On April 7, 2014, the City received a claim from Meher Homi Press for an unspecified amount alleging bodily damage when she tripped on a sidewalk.

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

Attachment – None

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