



CITY OF NEWARK CITY COUNCIL

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

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

AGENDA

Thursday, January 23, 2014

CITY COUNCIL:

Alan L. Nagy, Mayor
Ana M. Apodaca, Vice Mayor
Luis L. Freitas
Suey 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 | I. COUNCIL MATTERS |
| B. MINUTES | J. SUCCESSOR AGENCY |
| C. PRESENTATIONS AND PROCLAMATIONS | TO REDEVELOPMENT AGENCY |
| D. WRITTEN COMMUNICATIONS | K. ORAL COMMUNICATIONS |
| E. PUBLIC HEARINGS | L. APPROPRIATIONS |
| F. CITY MANAGER REPORTS | M. CLOSED SESSION |
| G. CITY ATTORNEY REPORTS | N. ADJOURNMENT |
| H. ECONOMIC DEVELOPMENT CORPORATION | |

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

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

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

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



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AGENDA

Thursday, January 23, 2014

A. ROLL CALL

B. MINUTES

- B.1 Approval of Minutes of the regular City Council meeting of Thursday, January 9, 2014. (MOTION)**

C. PRESENTATIONS AND PROCLAMATIONS

- C.1 Introduction of employees.**

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

F. CITY MANAGER REPORTS

(It is recommended that Items F.1 through F.3 be acted on simultaneously unless separate discussion and/or action is requested by a Council Member or a member of the audience.)

CONSENT

- F.1 Approval of a Resolution Establishing Settlement Authority in the amount not to exceed Twenty-Five Thousand Dollars (\$25,000) for the City Manager in Workers Compensation Claims – From Human Resources Director Abe. (RESOLUTION)**
- F.2 Acceptance of contract with Bayscape Management, Inc., for the 2013 Weed Abatement Program – from Maintenance Supervisor Carey. (RESOLUTION)**

- F.3 Approval of sponsorship of the Chamber of Commerce’s 2014 “Summerfest” and “Tri-City Motor Rally” to promote recycling in Newark and amendment to the 2012-2014 Biennial Budget for Recycling Promotion Sponsorships – from Administrative Services Director Woodstock. (RESOLUTION)**

G. CITY ATTORNEY REPORTS

- G.1 Claim of Rajnesh Kumar – from City Clerk Harrington. (MOTION)**
- G.2 Claim of Susan and Thomas Jimenez – from City Clerk Harrington. (MOTION)**

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

- I.1 Approving leave credit for City Manager Becker – from Mayor Nagy. (RESOLUTION)**

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

K. ORAL COMMUNICATIONS

L. APPROPRIATIONS

M. CLOSED SESSION

- M.1 Closed session for conference with Legal Counsel pursuant to Government Code Section 54956.9(b), Anticipated Litigation: Two cases – from Assistant City Manager Grindall and City Attorney Benoun.**

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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City Administration Building
7:30 p.m.
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Minutes

Thursday, January 9, 2014

A. ROLL CALL

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

B. MINUTES

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

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

C. PRESENTATIONS AND PROCLAMATIONS

C.1 Introduction of Assistant City Manager Grindall.

Mayor Nagy introduced recently promoted Assistant City Manager Terrence Grindall.

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

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

City Manager Becker gave the staff report recommending approval of the applicant's request for a four-year extension and fee waiver.

Mayor Nagy opened the public hearing at 7:37 p.m.

Peter Healy representing the Agricultural Institute of Marin, said that he had read the Planning Commission resolution and agreed to the conditions.

Mayor Nagy closed the public hearing at 7:39 p.m.

Council Member Marshall moved, Council Member Collazo seconded, by motions: (1) approve Planning Commission Resolution No. 1855 with Exhibit C, pages 1 through 4, for an extension of a conditional use permit (U-07-32) and planned unit development (P-07-33) for the continued operation of a farmers' market (Agricultural Institute of Marin) in the NewPark Mall parking lot (NewPark Mall is bounded, generally to the north by Mowry Avenue, to the west by Cedar Boulevard, to the south by Balentine Drive, and to the east by Interstate 880 [Nimitz Freeway]) and (2) authorize a waiver of the application fee. The motion passed, 5 AYES.

F. CITY MANAGER REPORTS

Council Member Marshall moved, Council Member Collazo seconded, to approve Consent Calendar Item F.1 and that reading of the title suffice for adoption of the ordinance. The motion passed, 5 AYES.

CONSENT

- F.1 Second reading and adoption of an Ordinance to amend the contract between the Board of Administration of the California Public Employees Retirement System and the City Council of the City of Newark to provide Section 20516 (Employees Sharing Additional Cost) of 3.468% for new local miscellaneous members and 1.5% for new local safety members.**
ORDINANCE NO. 472

G. CITY ATTORNEY REPORTS

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

- I.1 Reappointment of William Spinola to the Alameda County Mosquito Abatement District.**
RESOLUTION NO. 10160

Mayor Nagy requested that the City Council reappoint William Spinola to the Alameda County Mosquito Abatement District for a two year term.

Vice Mayor Apodaca moved, Council Member Collazo seconded, by resolution, approve the reappointment of William Spinola to the Alameda County Mosquito Abatement District, for a term to expire on January 1, 2016. The motion passed, 5 AYES.

- I.2 Mayor Nagy complimented the 2014 Newark Library calendar featuring children's artwork.
- I.3 Council Member Collazo noted the recent newspaper article on the increased enrollment at the city's preschool program. She congratulated the parents and teachers for their efforts.
- I.4 Vice Mayor Apodaca invited the public to attend the Dr. Martin Luther King, Jr. Commemoration at the First Presbyterian Church on January 12. She extended her condolences to the Harris family on their recent loss.
- I.5 Council Member Freitas announced that the Alameda County Transportation Commission received a AAA credit rating.
- I.6 Council Member Marshall congratulated Assistant City Manager Grindall on his recent promotion.

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

K. ORAL COMMUNICATIONS

No one came forward to speak.

L. APPROPRIATIONS

City Clerk Harrington read the Register of Audited Demands: Check numbers 100184 to 100327.

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

M. CLOSED SESSIONS

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

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

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

At 7:48 p.m. the City Council recessed to the closed sessions.

At 7:53 p.m. the City Council convened in closed session.

At 9:15 p.m. the City Council reconvened in open session with all Council Members present.

N. ADJOURNMENT

At 9:15 p.m. Mayor Nagy adjourned the regular City Council meeting.

C.1 Introduction of employees.

Background/Discussion – Newly promoted employees, Landscape/Parks Maintenance Worker II Jason Avery and Landscape/Parks Maintenance Worker I Jose Rodriguez, will be at the meeting to be recognized by the City Council.

F.1 Approval of a Resolution Establishing Settlement Authority in the amount not to exceed Twenty-Five Thousand Dollars (\$25,000) for the City Manager in Workers Compensation Claims – From Human Resources Director Abe. (RESOLUTION)

Background/Discussion – The City of Newark is a member of the Local Agencies Workers' Compensation Excess Joint Powers Authority ("LAWCX JPA"), which provides excess coverage for workers compensation claims. The City currently has a self-insured retention of \$350,000. The LAWCX JPA authorizes members to enter into contracts with third party claims administrators, provided they comply with performance standards – one of which is that all settlements must be approved by the member agency.

The City currently does not have a policy that allows staff to settle workers compensation claims. Accordingly, all workers compensation claims require approval from the City Council. Staff recommends that this be modified to allow staff to settle claims up to certain amounts.

California Government Code Section 935.4 currently authorizes general law cities to settle claims up to \$50,000 (enacted in 1963 and set at \$5,000; amended in 1981 and set at \$20,000; and amended in 1989 and set at \$50,000). For comparison and context, it is staffs' understanding that the Cities of Union City and Fremont currently authorize staff to settle claims up to the maximum amount of \$50,000.

For efficiency reasons, staff recommends that the Council authorize the City Manager, or designee, to allow, deny, or compromise workers compensation claims in the amount not to exceed twenty-five thousand dollars (\$25,000). For the purposes of the settlement authority authorized under the attached proposed resolution, claims for future medical expenses incurred by the claimant would not be included as part of the settlement amount. The City Manager, or designee, would have authority to allow claims for future medical expenses since defendants in workers compensation cases have a continuing obligation to provide reasonable and necessary medical treatment to injured workers with accepted industrial injuries pursuant to California Labor Code Section 4600 et seq.

Attachment

Action - It is recommended that the City Council, by resolution, establish settlement authority in the amount not to exceed twenty-five thousand dollars (\$25,000) for the City Manager in workers compensation claims.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK ESTABLISHING SETTLEMENT AUTHORITY IN
THE AMOUNT NOT TO EXCEED TWENTY-FIVE
THOUSAND DOLLARS (\$25,000) FOR THE CITY MANAGER
IN WORKERS COMPENSATION CLAIMS

WHEREAS, the City of Newark is a member of the Local Agencies Workers' Compensation Excess Joint Powers Authority ("LAWCX JPA") pursuant to Resolution No. 6910;

WHEREAS, the City of Newark has a self-insured retention in the amount of \$350,000;

WHEREAS, the City of Newark contracts with JT2 for Workers Compensation claims administration pursuant to Resolution No. 9033;

WHEREAS, the LAWCX permits claims administrators to settle workers compensation claims, conditioned upon member agencies' authorization;

WHEREAS, California Government Code § 935.4 authorizes local public entities to allow its employees to allow, compromise, or settle claims, except that only those entities that are organized by charter may allow, compromise, or settle claims in excess of \$50,000;

WHEREAS, the City Council of the City of Newark desires to authorize its City Manager, or designee, to allow, settle, or compromise workers compensation claims in the amount not to exceed twenty-five thousand dollars (\$25,000).

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the City Manager, or designee, is hereby authorized to allow, deny, allow in part, settle, or compromise any claims for workers compensation against the City of Newark in the amount not to exceed twenty-five thousand dollars (\$25,000). Further, the City Manager, or designee, shall have authority to allow claims for future medical expenses since defendants in workers compensation cases have a continuing obligation to provide reasonable and necessary medical treatment to injured workers with accepted industrial injuries pursuant to California Labor Code Section 4600 et seq.

F.2 Acceptance of contract with Bayscape Management, Inc., for the 2013 Weed Abatement Program – from Maintenance Supervisor Carey. (RESOLUTION)

Background/Discussion – On March 24, 2011 the City Council awarded a contract to Coast Landscape Management, Inc., for providing weed abatement services.

The 2011 Weed Abatement contract was previously completed and accepted by City Council. An option for contracting up to two additional years of work was included in the 2011 project specifications, and could be implemented upon mutual consent by the City and the contractor. Approval was granted for extending services for the 2013 Weed Abatement Program. All work on the 2013 project is now complete.

Coast Landscape Management, Inc., is now providing service under the corporation of Bayscape Management, Inc.

Attachment

Action - It is recommended that the City Council, by resolution, accept the contract with Bayscape Management, Inc., for the 2013 Weed Abatement Project.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK ACCEPTING THE 2013 CONTRACT WITH
BAYSCAPE MANAGEMENT, INC., FOR 2013 WEED
ABATEMENT PROGRAM

WHEREAS, the City of Newark has entered into a 2011 contract with Coast Landscape Management, Inc., pursuant to Resolution No. 9819, in accordance with plans and specifications for the contract; and

WHEREAS, said Contractor is no longer doing business as Coast Landscape Management, Inc., and instead continuing to provide service under the corporation of Bayscape Management, Inc.; and

WHEREAS, said work has been completed in conformance with the plans and specifications of the 2013 rollover of the contract herein above referred to and the conditions thereof;

NOW, THEREFORE, BE IT RESOLVED that said 2013 contract is hereby accepted and the City Council does hereby authorize the release of bonds guaranteeing completion of work, the filing of a Notice of Completion, and payment to the contractor pursuant to the contract.

F.3 Approval of sponsorship of the Chamber of Commerce’s 2014 “Summerfest” and “Tri-City Motor Rally” to promote recycling in Newark and amendment to the 2012-2014 Biennial Budget for Recycling Promotion Sponsorships – from Administrative Services Director Woodstock. (RESOLUTION)

Background/Discussion – Newark has received funds from Alameda County Measure D to promote recycling. These funds must be used to promote recycling in Newark and are not available for other uses. The Chamber of Commerce will once again be holding Summerfest in July and their annual Tri-City Motor Rally in May. These events offer sponsorship opportunities that provide an excellent avenue to promote recycling in Newark.

For \$20,000 for Summerfest and \$10,000 for the Tri-City Motor Rally, Newark Recycles will be positioned prominently in all marketing and on the day of each event. Both events will have a staffed informational booth and will offer recycling opportunities.

Attachment

Action - It is recommended that the City Council, by resolution, approve sponsorship of “Summerfest, and the Tri-City Motor Rally” and amend the 2012-2014 Biennial Budget for Fiscal Year 2013-2014 for Recycling Promotion Sponsorships.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPROVING SPONSORSHIP OF "SUMMERFEST,
AND THE TRI-CITY MOTOR RALLY" AND AMENDING THE
2012-2014 BIENNIAL BUDGET FOR FISCAL YEAR 2013-2014
FOR RECYCLING PROMOTION SPONSORSHIPS

WHEREAS, the City of Newark has received funds from Alameda County Measure D to promote recycling within the City; and

WHEREAS, a budget amendment is necessary to transfer the funds to the appropriate account; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark to approve a \$20,000 sponsorship for the 2014 Summerfest, and a \$10,000 sponsorship for the Tri-City Motor Rally.

BE IT FURTHER RESOLVED by the City Council of the City of Newark that the certain document entitled "Biennial Budget 2012-2014" is hereby amended for Fiscal Year 2013-2014 as follows:

Transfer from:

Fund No.		Amount
033-0000-2991	Unallocated Fund Balance	\$30,000

Transfer to:

Fund No.		Amount
033-1050-5480	Other Charges	\$30,000

G.1 Claim of Rajnesh Kumar – from City Clerk Harrington.

(MOTION)

Background/Discussion – On October 23, 2013, the City received a claim from Rajnesh Kumar in the amount of \$226 alleging damage to his sewer line from City tree roots.

The claim and all relevant information were forwarded to ABAG Plan, the City's insurance administrator, who recommends that it be denied.

Attachment – None

Action - It is recommended that the City Council, by motion, deny the claim and authorize staff to inform the claimant of such denial.

G.2 Claim of Susan and Thomas Jimenez – from City Clerk Harrington. (MOTION)

Background/Discussion – On September 20, 2013, the City received a claim from Susan and Thomas Jimenez in the amount of \$9,543 or \$5,524 (the amount of the claim is unclear) alleging damage to his house when a City tree fell on it.

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.

I.1 Approving leave credit for City Manager Becker – from Mayor Nagy.
(RESOLUTION)

Background/Discussion – On January 9, 2014, the City Council met in closed session to evaluate the City Manager’s performance for the previous year and found his performance to be favorable. The Council also met with its agency negotiator to discuss the City Manager’s compensation.

In July, labor agreements were approved with the Newark Association of Miscellaneous Employees, the Newark Police Association, and the Management and Confidential employees. In lieu of on-going compensation increases, one-time non-pensionable leave time was granted. Full-time employees received 41.6 hours of leave time which may be taken as leave time or cashed out at the employee’s base pay rate. In addition, full-time employees received 23 hours of leave time that has no cash value and may not be cashed out. This leave was granted for the current Fiscal Year 2013 – 2014 and the next Fiscal Year 2014 – 2015.

I recommend that the City Council award the same leave that was previously granted to the various employee groups to City Manager Becker for current Fiscal Year 2013-2014 and the next Fiscal Year 2014-2015. Additionally, I recommend that the City Council also award Mr. Becker 56 hours of Management Leave, per fiscal year, for both Fiscal Years 2013-2014 and 2014-2015. Management Leave is given in recognition of the extra hours of work required for which overtime pay is not provided. Management leave may not be converted to pay nor carried over between fiscal years.

All other compensation shall remain unmodified.

Attachment

Action - It is recommended that the City Council, by resolution, approve the leave credit for City Manager Becker.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPROVING LEAVE CREDIT FOR CITY
MANAGER BECKER

WHEREAS, on January 9, 2014, the City Council met in closed session to evaluate City Manager John Becker's performance for the previous year and found his performance to be favorable; and,

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby approves the following leave credit for City Manager John Becker:

- I. 41.6 hours of leave time which may be taken as leave time or cashed out at the employee's base pay rate;
- II. 23 hours of leave time that has no cash value and may not be cashed out;
- III. 56 hours of Management Leave, that has no cash value and may not be carried over between fiscal years.

BE IT FURTHER RESOLVED, that the aforementioned leave credit is hereby granted for the current Fiscal Year of 2013-2014 and the next Fiscal Year 2014-2015.

M.1 Closed session for conference with Legal Counsel pursuant to Government Code Section 54956.9(b), Anticipated Litigation: Two cases – from Assistant City Manager Grindall and City Attorney Benoun.

Background/Discussion – City Attorney Benoun has requested that the City Council convene in closed session pursuant to Government Code Section 54956.9(b), Anticipated Litigation: Two cases.