



CITY OF NEWARK CITY COUNCIL

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

Minutes

Thursday, February 26, 2015

A. ROLL CALL

Mayor Nagy called the meeting to order at 7:34 p.m. Present were Council Members, Hannon, Freitas, Bucci, and Vice Mayor Collazo.

B. MINUTES

B.1 Approval of Minutes of the regular City Council meeting of Thursday, February 12, 2015.

Council Member Freitas moved, Vice Mayor 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 employees.

Mayor Nagy introduced Public Safety Dispatcher Heidi Horner, Police Officer Natasha Stone, and Public Safety Clerk Wendy Walker.

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

Mayor Nagy presented the proclamation to Helen Knudson, Chair of the American Red Cross Leadership Council.

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

E.1 Hearing to consider: U-88-42, an amendment to a conditional use permit, for a remodel to the Salvation Army building at 36700 Newark Boulevard.

RESOLUTION NO. 10322

City Manager Becker stated that the Salvation Army proposes to demolish the existing building and construct a new 11,513 square foot building occupying the same footprint of the existing structure. The new facility would include a chapel, multipurpose room,

commercial kitchen, classrooms, computer lab, teenage game room, social services offices, administrative offices, covered outdoor space, basketball courts and public restrooms. Proposed new services include a senior lunch program, emergency disaster services, nutrition, computer, and English as-a-second language classes. The flagpole telecommunication facility will be replaced with a monopine in the back.

Mayor Nagy opened the public hearing at 7:48 p.m.

Captain Dan Williams, representing the Salvation Army, stated that the current facility is not adequate for their needs.

In response to City Council questions, Captain Williams stated that they will provide services at a temporary facility during the construction of the building. The new building will have space for people inside the building while they wait for services such as food distribution.

Captain Williams stated that he read and agreed to the conditions in the resolution.

Keel Turner stated that his home borders the parking lot of the Salvation Army. He did not want the monopine moved to the back because he was concerned that the structure would be maintained at night. Mr. Turner was also concerned that the construction workers would park in his neighborhood.

City Manager Becker stated that staff would work with the Salvation Army to encourage the workers to park on Newark Boulevard.

Captain Williams stated that he will encourage the construction workers to not park on Birch Street. He also noted that the equipment for the monopine will be on the left side of the facility away from Mr. Turner's home. He stated that he would bring up Mr. Turner's concerns with AT&T.

Council Member Hannon requested that Captain Williams modify condition F to prevent truck deliveries from 6 pm and 7 am instead of 11 pm and 7 am.

Captain Williams agreed to modify Condition F to prevent truck deliveries from 8 pm and 7 am.

Mayor Nagy closed the public hearing at 8:07 p.m.

Council Member Collazo moved, Council Member Bucci seconded to by resolution, approve an amendment to a conditional use permit (U-88-42) for a remodel to the Salvation Army building at 36700 Newark Boulevard. The motion passed, 5 AYES.

Mayor Nagy noted that that the resolution included the revisions provided by staff before the meeting (construction hours to start at 8 am instead of 7 am, updated page 1 of Exhibit A) and the modification to condition F as discussed at the meeting.

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

**RESOLUTION NO. 10323
RESOLUTION NO. 10324
INTRODUCTION OF ORDINANCES-2**

City Attorney Benoun stated that in 2010, the City Council approved the Area 3 and 4 Specific Plan Project. The project included housing, parks, a school site, open space, transportation improvements, and a golf course or other recreational amenity.

The Citizen's Committee to Complete the Refuge filed a legal petition in Alameda County Superior Court alleging that environmental disclosures associated with the project failed to comply with the California Environmental Quality Act ("CEQA") and that the City's police powers were improperly contracted away in the Development Agreement.

In November 2014, the Court entered a Final Judgment and a Peremptory Writ of Mandate was issued. Although the Court denied the majority of the Citizen's claims, the Judgment and Writ command the City to void the resolutions and ordinances approving the project.

Mayor Nagy opened the public hearing at 8:14 p.m.

No one came forward to speak.

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

Council Member Freitas moved, Vice Mayor Collazo seconded to approve: 1) Resolution repealing Resolution No. 9745 certifying the Environmental Impact Report for the Newark Area 3 and 4 Specific Plan Project and approving the Mitigation Monitoring and Reporting Program; 2) Resolution repealing Resolution No. 9746 approving and adopting the Newark Area 3 and 4 Specific Plan Project and related General Plan Amendment; 3) Ordinance repealing Ordinance No. 442 approving and adopting the Newark Area 3 and 4 Specific Plan Development Agreement; and 4) Ordinance repealing Ordinance No. 443 approving Z-10-17, a Map Amendment to Title 17 of the Newark Municipal Code rezoning parcels to be consistent with the proposed Newark Area 3 and 4 Specific Plan. The motion passed, 5 AYES.

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

City Manager Becker stated that staff is in the process of further reviewing the Areas 3 and 4 Specific Plan Project. He requested that the City Council cancel this hearing. A duly noticed public hearing will be held at a future date.

Council Member Freitas moved, Council Member Bucci seconded to, by motion, cancel the public hearing. The motion passed, 5 AYES.

- E.4 Hearing to consider adoption of a resolution clarifying the City Council's intent in certifying the 2013 General Plan Tune Up Environmental Impact Report.**
- RESOLUTION NO. 10325**

City Attorney Benoun stated that in December 2013, the City Council approved the update to the Newark General Plan and certification of the General Plan Tune Up Environmental Impact Report ("EIR").

The Citizen's Committee to Complete the Refuge filed a petition alleging that the EIR failed to comply with the California Environmental Quality Act. The lawsuit alleges that the City improperly referred to and relied upon prior environmental documents for the 2010 Area 3 and 4 Specific Plan Project.

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

He noted that the resolution has been amended to remove a reference to the canceled public hearing E.3.

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

Carin High, Citizens Committee to Complete the Refuge, requested that the City Council defer action on the resolution. She stated that the proposed resolution did not go to the heart of the lawsuit which in her opinion was that the General Plan Tune Up EIR improperly relied on the Area 3 and 4 Specific Plan EIR.

City Attorney Benoun stated that the City Council’s certification of the 2013 General Plan EIR completely satisfied CEQA. This action would confirm this by stating they were not relying on the 2010 Specific Plan EIR when adopting the 2013 General Plan EIR.

Mayor Nagy closed the public hearing at 8:27 p.m.

Mayor Nagy noted that the resolution to be voted on was the revised version as described by City Attorney Benoun earlier.

Council Member Collazo moved, Council Member Hannon seconded to adopt a resolution clarifying the City Council’s intent as to the certification of the City of Newark 2013 General Plan Tune Up Environmental Impact Report. The motion passed, 5 AYES.

F. CITY MANAGER REPORTS

Council Member Hannon requested that staff provide a list of the street names that will be impacted by the paving project for item F.3. City Manager Becker agreed with the request.

Council Member Bucci moved, Vice Mayor Collazo seconded, to approve Consent Calendar Items F.1 through F.3, that the resolution and ordinance be numbered consecutively, and that reading of the titles suffice for adoption. The motion passed, 5 AYES.

CONSENT

- F.1 Initiation of the 2015 Weed Abatement Program and setting a date for a public hearing. RESOLUTION NO. 10326**
- F.2 Second reading and adoption of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code, Section 17.44.010 “Zoning Map” by rezoning all that real property shown on Vesting Tentative Map 8212 (APN: 92A-775-46) from R6000 (Single Family Residential) to LDR-FBC (Low Density Residential-Form Based Code). ORDINANCE NO. 480**

- F.3 Approval of the 2014-2015 Pavement Maintenance Program and authorization to advertise for bids for 2015 Street Patch Paving Program, Project 1092; 2015 Street Asphalt Concrete Overlay Program, Project 1093; and 2015 Street Slurry Seal Program, Project 1094. MOTION APPROVED**

G. CITY ATTORNEY REPORTS

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

Vice Mayor Collazo encouraged the public to donate blood. She pointed out that one pint helps three people.

Council Member Bucci wished his wife Megan a Happy Birthday.

Council Member Freitas announced that the Newark Senior Center would be open on Fridays starting next month. He stated that four Newark schools would be participating in the Golden Sneakers contest. In March, students will walk or bike to school for a chance to win prizes. He congratulated the Building Department on the high grade it received in the Insurance Services Office report.

Mayor Nagy congratulated Administrative Services Director Woodstock for the clean audit results.

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

K. ORAL COMMUNICATIONS

Gregory Lemos stated that his foot went through an opening in the sidewalk. He reported the problem to the Public Works Department and complimented them for the quick response.

L. APPROPRIATIONS

City Clerk Harrington read the Register of Audited Demands: Check numbers 103890 to 104026.

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

M. CLOSED SESSION

- M.1 Closed session for conference with Labor Negotiators pursuant to California Government Code Section 54957.6. Agency designated representatives: Human Resources Director Abe and Community Development Director Grindall; Employee Groups: the Newark Police Association, the Newark Association of Miscellaneous Employees; City Officials and the Management, Supervisory, and Professional Employee Group; and the Confidential Employee Group – from City Attorney Benoun and Human Resources Director Abe.**
- M.2 Closed session for conference with Legal Counsel on existing litigation Henneberry v. City of Newark, et al. United States District Court, Northern District of California Case No. C13-5238 MEJ pursuant to Section 54956.9(a) of the California Government Code: – from City Attorney Benoun.**

At 8:42 p.m. the City Council recessed to the closed sessions.

At 8:49 p.m. the City Council convened in closed session.

At 11:03 p.m. the City Council reconvened in open session with all Council Members present.

N. ADJOURNMENT

At 11:03 p.m. Mayor Nagy moved, Vice Mayor Collazo seconded to adjourn the City Council meeting. The motion passed, 5 AYES.

SHEILA HARRINGTON
City Clerk