



# CITY OF NEWARK CITY COUNCIL

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

## Minutes

Thursday, April 23, 2015

### A. ROLL CALL

Mayor Nagy called the meeting to order at 7:30 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, April 9, 2015.

Vice Mayor Collazo moved, Council Member Bucci seconded, to approve the Minutes of the regular City Council meeting. The motion passed, 4 AYES, 1 ABSTENTION (Hannon).

### C. PRESENTATIONS AND PROCLAMATIONS

#### C.1 Commending Farmaan Judge.

Mayor Nagy presented a commendation to Farmaan Judge who was inducted into the Alameda County Women's Hall of Fame in the Youth Category.

#### C.2 Introduction of employee.

Mayor Nagy introduced Public Works Maintenance Supervisor Tonya Connolly.

#### C.3 Proclaiming May 8 - 17, 2015, as Affordable Housing Week in Newark.

Mayor Nagy presented the proclamation to Thuy Fontelera of the East Bay Housing Organizations.

#### C.4 Proclaiming May as National Water Safety Month in Newark.

Mayor Nagy presented the proclamation to Senior Recreation Supervisor Peter Beireis.

#### C.5 Proclaiming May 17-23, 2015, as National Public Works Week in Newark.

Mayor Nagy presented the proclamation to Assistant City Engineer Soren Fajeau.

**C.6 Proclaiming May 17-23, 2015, as National Emergency Medical Services Week in Newark.**

Mayor Nagy presented the proclamation to Captain Ernie Morua of the Alameda County Fire Department.

**C.7 Proclaiming May 10-16, 2015, as National Police Week in Newark.**

Mayor Nagy presented the proclamation to Police Chief Leal.

**D. WRITTEN COMMUNICATIONS**

**E. PUBLIC HEARINGS**

**E.1 Hearing to consider the development of approximately 27 residential units (Trumark Homes) on a 2.14 acre site (Enterprise Property) located on the north side of Enterprise Drive east of Willow Street by: (1) Adopting a resolution making certain findings and adopting a Supplemental Environmental Impact Report to the Environmental Impact Report for the Dumbarton Transit Oriented Development; (2) Introducing an Ordinance rezoning (RZ-12-27) a 2.14-acre area (APN 092-0140-006) from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); (3) Adopting a resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and approve the Affordable Housing Implementation Agreement; (4) By resolution, authorize the Mayor to sign a Community Financing Agreement with Enterprise Drive, LLC; (5) By resolution, approving TM-12-28, Vesting Tentative Map 8110 to construct approximately 27 residential units; (6) By motion, approving an Architectural and Site Plan Review; and (7) By motion, approving Exhibit B, Schedule of Impact Fees.**

**(CONTINUED FROM MAY 8, 2014)**

**RESOLUTION NO. 10335  
ORDINANCE INTRODUCED  
RESOLUTION NO. 10336  
CONTRACT NO. 15009  
RESOLUTION NO.10337  
CONTRACT NO. 15010  
RESOLUTION NO. 10338  
MOTION APPROVED  
MOTION APPROVED**

Assistant City Manager Grindall stated that items E.1 and E.2 were related projects with the same developer and a shared Environmental Impact Report. These projects would acquire the Gallade Chemical property and convert it into a park. The contamination clean up has started and regulatory agency approvals would be needed before residential units could be built.

Assistant City Manager Grindall reviewed the fees that the City would receive and noted that the project was a net positive on City resources. He stated that the Newark Unified School District has indicated that they have room in the local schools to accommodate the children who will live in the area.

Mayor Nagy opened the public hearing at 8:01 p.m.

Veronica Vargas, representing Trumark Homes, said that she had read the resolutions and agreed to the conditions.

Ricardo Corte submitted a petition against both projects (On file with the City Clerk). Mr. Corte stated that he was against the development due to the chemical contaminants in the soil and groundwater. He requested that the City consider an alternate plan such as rezoning the land for technology parks.

Wynn Greich stated that whatever was built on that property would contaminate the aquifers. She discouraged building new homes during the drought.

Margaret Lewis stated that a human health risk for the proposed park has not been performed. She noted that the homes east of Gallade have had air monitoring for the past 25 years. She stated that full restoration will take years and development should not be considered until after the completion of the restoration.

John Henneberry read aloud from the Environmental Impact Report for the project. He stated that the proposed development was bad for Newark now and in the future. He requested that the City Council vote no.

Lad Cahoun outside environmental counsel for Trumark Homes stated that both projects will improve environmental conditions on the sites and facilitate remediation of the contamination. He quoted from an email written by Mark Johnson of the Regional Water Quality Control Board “the clean up plans, when fully implemented, will render the property safe for future residential uses.”

In response to Council Member Bucci, Peter Lantry, Cornerstone Earth Group, described the measures that will be taken to prevent vapor intrusion and the testing that will be performed as the homes are constructed.

Angela Karin stated that she is a mechanical engineer with extensive experience in the clean up of contaminated sites. She stated that California has strong environmental

regulations for the clean up of this project. She lives in Newark and would like to see the area developed to add value to the City.

Mayor Nagy closed the public hearing at 8:35 p.m.

Assistant City Manager Grindall stated that the San Francisco Public Utilities Commission submitted a letter today requesting emergency vehicle access lane. The developer will provide an easement across the property as shown on the project map.

Vice Mayor Collazo moved, Council Member Bucci seconded to: (1) Adopt a resolution making certain findings and adopt a Supplemental Environmental Impact Report (E-12-30) to the Environmental Impact Report (State Clearinghouse No. 2010042012) for the Dumbarton Transit Oriented Development Specific Plan; (2) Introduce an Ordinance rezoning (RZ-12-27) a 2.14-acre area (APN 092-0140-006) from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); (3) Adopt a resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and approve the Affordable Housing Implementation Agreement; (4) By resolution, authorize the Mayor to sign a Community Financing Agreement with Enterprise Drive, LLC; (5) By resolution, approve TM-12-28, Vesting Tentative Map 8110 to construct approximately 27 residential units; (6) By motion, approve ASR-12-29, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 29; (7) By motion, approve Exhibit B, Schedule of Impact Fees. The motion passed, 5 AYES.

- E.2 Hearing to consider the development of approximately 217 residential units (Trumark Homes) on a 21.4 acre site (Jones Hamilton) located on the south side of Enterprise Drive east of Willow Street by: (1) Adopting a resolution making certain findings and adopting a Supplemental Environmental Impact Report to the Environmental Impact Report for the Dumbarton Transit Oriented Development; (2) Introducing an ordinance rezoning (RZ-12-31) a 21.4 acre area (092-0116-058; 092-0116-059; 092-0116-060; and 092-0116-014) from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); (3) Adopting a resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and approve the Affordable Housing Implementation Agreement; (4) By resolution, authorize the Mayor to sign a Community Financing Agreement with Newark Enterprise Joint Venture, LLC; (5) By resolution, approving Vesting Tentative Map 8098 to construct approximately 217 residential units; (6) By motion, approving an Architectural and Site Plan Review; (7) By motion, approving Exhibit B, Schedule of Impact Fees.  
(CONTINUED FROM MAY 8, 2014)**

**RESOLUTION NO. 10339  
ORDINANCE INTRODUCED  
RESOLUTION NO. 10340**

**CONTRACT NO. 15011  
RESOLUTION NO.10341  
CONTRACT NO. 15012  
RESOLUTION NO. 10342  
MOTION APPROVED  
MOTION APPROVED**

Assistant City Manager Grindall noted that a portion of this project has a capped pond that was used as a settlement pond for a large industrial plant. This development will remove the capped materials. This project will result in fees to the City and the developer is responsible for the clean up of the project.

Mayor Nagy opened the public hearing at 8:44 p.m.

Veronica Vargas, representing Trumark Homes, said that she had read the resolutions and agreed to the conditions. She described the development of the property and the fees that both the City and School District will receive. She estimated that they would break ground in 2017 and the homes would sell at the market rate at that time.

Wynn Greich stated that Newark residents have to sacrifice their water usage for this project. She noted the water rates have increased recently. She was concerned with the additives in the water and their potential health effects.

Margaret Lewis asked who would pay for the long term monitoring costs of the developments.

Assistant City Manager Grindall stated that the City is not responsible for the monitoring. The party responsible for the original contamination is responsible for the monitoring costs.

John Henneberry read from the Environmental Impact Report. He described the process to transport the contaminated materials from the site. He requested that City Council vote no.

Mayor Nagy closed the public hearing at 8:57 p.m.

Assistant City Manager Grindall responded to Council Member Freitas' question regarding the Dumbarton Rail project status. Funding for the rail project was diverted. There is interest in a bus hub at that location.

In response to Council Member Bucci, Peter Lantry, Cornerstone Earth Group, described the safety measures during the excavation of the capped pond.

Council Member Freitas moved, Vice Mayor Collazo seconded to: (1) Adopt a resolution making certain findings and adopt a Supplemental Environmental Impact Report (E-12-30) to the Environmental Impact Report (State Clearinghouse No.

2010042012) for the Dumbarton Transit Oriented Development Specific Plan; (2) Introduce an Ordinance rezoning (RZ-12-31) a 21.4 acre area (092-0116-058; 092-0116-059; 092-0116-060; and 092-0116-014) from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); (3) Adopt a resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and approve the Affordable Housing Implementation Agreement for the Jones Hamilton Project; (4) By resolution, authorize the Mayor to sign a Community Financing Agreement with Newark Enterprise Joint Venture, LLC; (5) By resolution approve TM-12-32, Vesting Tentative Map 8098 to construct approximately 217 residential units on the Jones Hamilton Property; (6) By Motion, approve ASR-12-33, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 79; and (7) By motion, approve Exhibit B, Schedule of Impact Fees. The motion passed, 5 AYES.

## **F. CITY MANAGER REPORTS**

Council Member Hannon requested that item F.1 be removed for separate consideration.

Vice Mayor Collazo moved, Council Member Bucci seconded, to approve Consent Calendar Items F.2 through F.5, that the resolutions be numbered consecutively, and that reading of the titles suffice for adoption of the resolutions. The motion passed, 5 AYES.

## **CONSENT**

- F.2 Authorization for the Mayor to execute an agreement with artist Dennis Smith for replacement of the Summer Series “Pitcher” sculpture and to revise the 2014-2016 biannual budget.**  
**RESOLUTION NO. 10343**  
**CONTRACT NO. 15013**
- F.3 Approval of plans and specifications for the 2015 Weed Abatement Program, and award the contract to New Image Landscape Company.**  
**MOTION APPROVED**  
**RESOLUTION NO. 10344**  
**CONTRACT NO. 15014**
- F.4 Declaration of intent to abandon a portion of Hickory Street right-of-way north of Perrin Avenue and establishment of May 28, 2015, as the date for a public hearing.**  
**RESOLUTION NO.10345**

- F.5 Authorization for the Mayor to sign a License Agreement with NewPark Mall for the Police Department to use space as a static display and temporary office. RESOLUTION NO. 10346**

**NONCONSENT**

- F.1 Resolution authorizing the Annual Program Submittal for Measures B and BB funding of paratransit services. RESOLUTION NO. 10347**

Council Member Hannon discussed the importance of funding paratransit services for the community.

Council Member Hannon moved, Council Member Freitas seconded to approve the resolution authorizing the annual program submittal for Measures B and BB funding of paratransit services. The motion passed, 5 AYES.

**G. CITY ATTORNEY REPORTS**

- G.1 Claim of Bernadette Jolivet. MOTION APPROVED**

City Attorney Benoun gave the staff report recommending denial of the claim.

Council Member Freitas moved, Vice Mayor Collazo seconded to deny the claim and authorize staff to inform the claimant of such denial. The motion passed, 5 AYES.

**H. ECONOMIC DEVELOPMENT CORPORATION**

**I. CITY COUNCIL MATTERS**

- I.1 Consideration of City Council's summer meeting recess during the month of August 2015 . MOTION APPROVED RESOLUTION NO. 10348**

Mayor Nagy recommended that the City Council declare a summer recess during the month of August and authorize the City Manager to take administrative actions on behalf of the City Council during the recess.

Council Member Freitas moved, Vice Mayor Collazo seconded to, by motion, approve a City Council summer meeting recess during the month of August 2015 and, by resolution,

authorize the City Manager, or his designee, to take action on certain administrative matters on behalf of the City of Newark during the recess. The motion passed, 5 AYES.

Council Member Hannon encouraged the public to attend Stage 1's production of Jesus Christ Superstar.

Council Member Freitas commended the Mayor's State of the City speech.

Council Member Bucci stated that the Rotary and Optimist Clubs were holding a pancake breakfast on May 2 to benefit Relay for Life.

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

**K. ORAL COMMUNICATIONS**

Wynn Greich stated she would be marching against chemtrails at the Ferry Building in San Francisco on Saturday. She spoke about the additives in water and the health impact to people. She noted that Sonoma recently voted against fluoridating their water.

John Henneberry requested that the City open the library daily by paying Alameda County for an additional 26 hours per week. He cited his poll on city salaries and questioned how the Utility Users Tax funds were used by the city. He shared his opinion on the abilities of the Executive Team and requested that Officer Neithercutt be fired.

**L. APPROPRIATIONS**

**Approval of Audited Demands for the City Council meeting of April 23, 2015.**

City Clerk Harrington read the Register of Audited Demands: Check numbers 104367 to 104484.

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

**M. CLOSED SESSION**

City Attorney Benoun stated that after the April 23, 2015, agenda was prepared and posted, the need to take action on the following matter arose:

Closed Session for Conference with Legal Counsel pursuant to Government Code Section 54956.9(d)(1), Existing Litigation, Citizens Committee to Complete the Refuge v. City Council of the City of Newark et al., Alameda County Superior Court Case No. RG14709701.

City Attorney Benoun stated that the Brown Act allows the item to be added to the agenda if two-thirds of the City Council determines that the need to take action arose subsequent to the agenda being posted and votes to add it to the agenda.

Vice Mayor Collazo moved, Council Member Bucci seconded to add to the agenda item M.3 Closed Session for Conference with Legal Counsel pursuant to Government Code Section 54956.9(d)(1), Existing Litigation, Citizens Committee to Complete the Refuge v. City Council of the City of Newark et al., Alameda County Superior Court Case No. RG14709701. The motion passed, 5 AYES.

- 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 Assistant City Manager 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 pursuant to Government Code Section 54956.9(a), Anticipated Litigation (6 cases) – from City Attorney Benoun.**
  
- M.3 Closed Session for Conference with Legal Counsel pursuant to Government Code Section 54956.9(d)(1), Existing Litigation, Citizens Committee to Complete the Refuge v. City Council of the City of Newark et al., Alameda County Superior Court Case No. RG14709701 – from City Attorney Benoun.**

At 9:30 p.m. the City Council recessed to a closed session.

At 9:37 p.m. the City Council convened in closed session.

At 10:37 p.m. the City Council reconvened in open session with all Council Members present.

City Attorney Benoun announced that there were no reportable actions for Closed Session M. 1 and M.2.

City Attorney Benoun announced for Closed Session M.3 that the City Council authorized and directed the City Manager to execute a Settlement Agreement by and between Newark Partners, LLC, and Citizens Committee to Complete the Refuge, the material terms of which require the City to enter into a Stipulated Judgment that contains the following: (1) The CEQA allegations made by Citizens Committee to Complete are DENIED; (2) Newark Partners, LLC, shall wholly pay Petitioner's attorney's fees, with no contribution from the City; (3) City shall provide clarifying language in all copies of the Stipulated Judgment of the City's General Plan and General Plan Tune Up EIR maintained at City libraries and offices that shall state that, in summary, that all references to the Area 3 and 4 Specific Plan EIR in the General Plan Tune Up Program EIR shall be deemed to refer to the Areas 3 and 4 Specific Plan Project Recirculated Environmental Impact Report; and (4) that such documents shall also be provided on the City's website.

#### **N. ADJOURNMENT**

At 10:37 p.m. Vice Mayor Collazo moved, Council Member Bucci seconded to adjourn the City Council meeting. The motion passed, 5 AYES.