



# CITY OF NEWARK CITY COUNCIL

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**Various Virtual  
Teleconference Locations  
7:30 p.m.**

## **AGENDA**

**Thursday, May 28, 2020**

**THIS IS A MEETING BY TELECONFERENCE ONLY. THE CITY COUNCIL CHAMBERS WILL NOT BE OPEN. REFER TO THE END OF THE AGENDA TO REVIEW OPTIONS FOR PARTICIPATING IN THE MEETING REMOTELY OR TO SUBMIT PUBLIC COMMENTS VIA EMAIL. PLEASE NOTE THE START TIME FOR THIS SPECIAL MEETING.**

**A. ROLL CALL**

**B. MINUTES**

- B.1 Approval of Minutes of the City Council meetings of May 14, 2020. (MOTION)**

**C. PRESENTATIONS AND PROCLAMATIONS**

**D. WRITTEN COMMUNICATIONS**

**E. PUBLIC HEARINGS**

- E.1 Hearing to consider property owners' objections to the 2020 Weed Abatement Program and instruction to the Superintendent of Streets to abate the public nuisances - from Deputy Fire Marshal Lee and Assistant Maintenance Superintendent Hornbeck. (MOTION)**

**Background/Discussion** - On April 23, 2020, the City Council adopted Resolution No. 11,041 initiating the 2020 Weed Abatement Program and setting a public hearing for May 28, 2020. The annual weed abatement program abates weeds on vacant commercial and industrial properties not maintained by the property owners as directed by the Fire Marshal. Property owners may object in person by attending this hearing or by letter.

Notices were mailed to the property owners after the April 23 City Council meeting. The property owners were provided until May 29, 2020 to advise the City if they would abate the weeds themselves. The City enclosed a postage paid notice for the property owners to return to the City. As of May 21, 2020, no written objections have been received. Several owners have notified staff that

they will perform the work themselves. If the weeds on these parcels are not abated in a timely manner, the City’s contractor will perform the work later in June. This will provide these owners ample time to complete the abatement.

If objections are received prior to or during the public hearing, the Council should consider the objections; and then, by motion, allow or overrule the objections. The Council may then instruct the Superintendent of Streets to abate the public nuisance on the parcels remaining in the program.

**Attachment – List of Properties**

**Action** – Staff recommends that the City Council, by motion, act upon any objections by property owners to the 2020 Weed Abatement Program, and instruct the Superintendent of Streets to abate the public nuisances.

**E. 2 Hearing to consider an Appeal of the Planning Commission’s decision to approve a Conditional Use Permit to allow Fitness 19, a physical fitness center located at 6203 Jarvis Avenue (APN: 537-521-37) – from Deputy Community Development Director Interiano. (RESOLUTION)**

**Background/Discussion** –Mitch Gardner, on behalf of Fitness 19, applied for a Conditional Use Permit (CUP) to allow an “indoor sports and recreation” use at 6203 Jarvis Avenue (Fitness 19). A CUP is required for this use because it is located in the Community Commercial zoning district. The Planning Commission unanimously approved the CUP at a public hearing held on February 11, 2020. The adjacent property owner, VN Investment Group LLC, has appealed the decision of the Planning Commission.

Fitness 19 is a physical fitness center/health club, which offers free-weights and cardio and strength equipment. Fitness 19 offers classes such as aerobics, Zumba, yoga, and Pilates. Fitness 19 has over 100 locations nationally. The proposed location in Newark would employ approximately 35-40 employees, mostly part-time, with 5-6 full-time staff.

**Planning Commission and Appeal**

The application for Fitness 19 was originally heard by the Planning Commission on January 11, 2020 . Following the public hearing, the Planning Commission continued the matter to February 11, 2020 to allow staff time to research and address pertinent questions raised during the meeting. After considering the matter at the February 11<sup>th</sup> Planning Commission Meeting, the Planning Commission unanimously voted to approve the CUP.

The adjacent property owner, VN Investment Group LLC, opposes the application for three main reasons: a) the fitness use should not be exempt from CEQA as stated by the Community Development Department; and b) the parking study

submitted by Fitness 19 did not take into account the peak use times of the shopping center; and c) there are Covenants, Conditions, and Restrictions (CC&R's) which state that the adjacent property owner must approve the recreational use before it could be allowed at the location. The appellant also opposes the application on the grounds that it would seriously impact the viability of Anytime Fitness which is located on the appellant's property. The following documents were submitted in support of the opposition to the project:

- The neighboring business owner, Matt Morales of Anytime Fitness, submitted a petition of neighboring businesses that recommend denial of the Fitness 19 application (Attachment #6).
- The adjacent property owner's attorney, Nossaman LLP, submitted a letter in opposition of the application (Attachment #7).
- The adjacent property owner and appellant, Long V. Nguyen, also submitted an extensive list of business owners in the shopping center who were opposed to the application (Attachment #8).

### **Analysis**

In the past, the Community Development Department has been very reluctant to support any non-retail use at this location. Staff's earlier reluctance was premised on the concept that the nearby Sprouts would support cross-store spending opportunities that a non-retail use would not provide. The property owner has, over the past four years, made extensive efforts to attract a retail tenant to the existing space without success. It does not appear that a retail tenant is viable at this location at this time.

The Fitness 19 application is categorically exempt from CEQA as a Class 1 exemption (15301- Existing Facilities) as there are no exterior improvements proposed and the use will occupy an existing tenant space. Notably, the City has issued two other conditional use permits at this shopping center for both Anytime Fitness and Curves, with both projects also deemed exempt from CEQA on the same basis (15301 - Existing Facilities).

Additionally, an independent traffic engineer reviewed Fitness 19's parking analysis which resulted in the recommendation of an additional parking demand survey to be conducted during the lunch-time hours of 11:00AM to 1:00PM. The additional survey reveals that no additional parking impacts would occur.

As it relates to the CC&R's between the applicant and appellant, such provisions are not within the purview of the City and must be resolved by the property owners that are subject to the CC&R's.

In regards to the specific zoning standards, the proposed use is consistent with the site development regulations of the CC zoning district. The proposed use would not result in any exterior building modifications, with the exception of a future

sign, which has not been requested at this time. In general, interior modifications as shown on the floor plans include the main gym area, exercise rooms, small retail area and reception area. Staff required a parking analysis to consider the parking demands of the proposed use and the applicant provided a parking analysis, which evaluated all existing businesses in conjunction with the proposed fitness center use. The analysis revealed that there is sufficient parking to support the proposed use. Based on the results of the study and the additional survey of mid-day hours, staff included a condition for Fitness 19 employees to park on those least-accessible parking spaces which are not convenient, readily visible or easily accessible, that are located on the north west and south of the subject building .

The following documents associated with this application (that were also distributed at both Planning Commission meetings) were submitted to support the applicant:

- The applicant submitted supporting documents which describe the operations and merits of having a Fitness 19 location (Attachment #2).
- The applicant submitted a parking analysis in support of the application completed by Abrams Associates dated June 21, 2019 (Attachment #3).
- The property owner submitted a petition in support of the application, which is signed by surrounding businesses (Attachment #4).
- The property owner's attorney, Bowles & Verna, have submitted three letters in support and justification for approving the Fitness 19 application (Attachment #5(a,b & c))

In addition to the above documents, the property owner's attorney submitted an additional letter after the Planning Commission meeting dated March 16, 2020 (Attachment 5.d). The letter further summarizes the merits of the project and furthers the arguments which include (1) The Fitness 19 project is Categorical Exempt from CEQA; (2) The Abrams Parking Analysis adequately addresses the impact of Fitness 19; (3) Substantial evidence supports the required CUP findings in favor of Fitness 19, and (4) Any restriction regarding the CC&R's and adjacent property owners is irrelevant to the consideration of the application.

Staff believes that the proposed business is complimentary to the shopping center and complies with the CUP findings described below and therefore recommends approval.

#### **Required Findings**

- A. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Ordinance and all other titles of the Municipal Code;  
*Response: The proposed use is allowed through the issuance of a CUP to be consistent with the existing zoning. The application for a fitness center has been evaluated and found to be consistent with the type of uses found in the Community Commercial zoning district and be compatible with the surrounding commercial uses in the shopping center. This finding can be made in the affirmative.*

- B. The proposed use is consistent with the General Plan and any applicable specific plan;  
*Response: The proposed use is consistent with the GP Policy LU-1.1 Balance of Uses that states, “Maintain a reasonable balance of land uses in the city so that residents can live close to where they work and satisfy their shopping, educational, personal, health, entertainment, and recreational needs close to home”. The proposed use is also consistent with GP Policy LU-1.6 Strengthening the Retail Base that states “Diversify the retail base of the city to create jobs, generate tax revenue to support City services, and enable residents and workers to find the goods and services they need without leaving Newark.” This finding can be made in the affirmative.*
- C. The proposed use will not be adverse to the public health, safety, or general welfare of the community, nor detrimental to surrounding properties or improvements;  
*Response: The proposed business would not have an adverse effect to public health, safety, or general welfare of the community or surrounding properties. Automobile parking, provided in the existing parking area at the shopping center, is sufficient for the proposed use and the other nearby uses. The proposed use would occupy a vacant commercial space in an existing shopping center that has complementary uses. Therefore, this finding can be made in the affirmative.*
- D. Tax revenue generated by the development will exceed the City’s cost of the service demand as a result of the development or a compelling community benefit will be provided;  
*Response: The proposed use will occupy an existing commercial storefront that has been vacant for approximately four years within an existing shopping center and is not expected to result in a substantial change in the shopping center’s cost of service to the City. A portion of the indoor sports and recreation use will contain a retail area, which is expected to generate sales-tax revenue. This finding can be made in the affirmative.*
- E. The proposed use complies with any design or development standards applicable to the zoning district or the use in question unless waived or modified pursuant to the provisions of this Ordinance;  
*Response: There are no planned improvements to the exterior of the building, therefore no design or development standards apply to this application. This finding can be made in the affirmative.*
- F. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity;  
*Response: The operating characteristics of the proposed use are expected to be compatible with the existing commercial tenants and would provide additional services for the shopping center customers. This finding can be made in the affirmative.*
- G. The site is physically suitable for the type, density and intensity of use being proposed, including access, utilities, and the absence of physical constraints.  
*Response: The proposed is physically suitable for the type, density, and intensity of use being proposed, in that it would occupy an existing vacant space in the existing Sprouts center that is accessible, is served by utilities, and is without physical constraints. This finding can be made in the affirmative.*

**CEQA** - This project is exempt from CEQA per 15301 Existing Facilities in that the proposed use would be located in an existing building where only minor alterations are proposed.

**Attachments –**

1. Planning Commission Resolution
2. Fitness 19 Site Plan & Supplemental Information (December 27, 2019)
3. Abrams Associates Parking Analysis (June 21, 2019)
4. Petition in Support from Surrounding Business Owners (submitted by Steven Mavromihalis) December 5, 2019
5. Letter in Support from property owner’s Attorney, Bowles & Verna
  - a) December 5, 2019
  - b) January 3, 2020
  - c) February 4, 2020
  - d) March 16, 2020
6. Petition in Opposition from Matt Morales and surrounding businesses, October 5, 2019
7. Letter in Opposition from VN Investment Group LLC’s attorney, Nossaman LLP, dated January 14, 2020.
8. Petition in Opposition Surrounding Business Owners (submitted by Long V. Nguyen), dated January 27-28, 2020

**Action** – Staff recommends that the City Council adopt a resolution upholding the decision of the Planning Commission approving Conditional Use Permit (U-20-1), subject to conditions of approval.

**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 Removal of the voter registration requirement for City appointed Boards, Commissions, and Committees members – from City Clerk Harrington and Interim City Attorney Kokotaylo. (ORDINANCE INTRODUCTION) (RESOLUTION)**

**Background/Discussion** – On October 12, 2019, Governor Newsom signed into law Senate Bill 225 (SB 225) providing that a person, regardless of citizenship or immigration status, is eligible to hold an appointed civil office if the person is 18 years of age and a resident of the state. The bill also provides that a person appointed to civil office, regardless of citizenship or immigration status, may receive any form of compensation that the person is not otherwise prohibited from receiving pursuant to federal law, including but not limited to, any stipend, grant, or reimbursement of personal expenses that is associated with carrying out the duties of that office.

Under the new law, for residents to qualify to serve on a local board, commission, or committee, they must be 18 and a resident of the City of Newark, they do not have to be a United States citizen. SB 225 does not apply to the City Council; voter registration is still required for elected office.

The City of Newark Local Appointments currently consists of the Planning Commission, Senior Citizen Standing Advisory Committee, Community Development Advisory Committee, and the Measure GG Tax Oversight Committee. Staff has reviewed the formation of these Committees and Commission. Voter registration requirements were found in The Guidelines and Procedures for the Senior Citizen Standing Advisory Committee and Newark Municipal Code Section 2.12.020 Qualifications for Planning Commissioners. The remaining committees did not require voter registration.

The Guidelines and Procedures for the Senior Citizen Standing Advisory Committee (Guidelines) has been revised to remove the voter registration requirement. Staff is recommending a few additional revisions to the Guidelines since they were last reviewed in 2011. Section VIII Brown Act Compliance, Paragraph B, should be updated to reflect that the Senior Citizen Standing Advisory Committee Agendas are posted at the Clark W. Redeker Newark Senior Center, in addition to the postings at City Hall, the Silliman Center, and the Newark Library. The Affidavits of Postings will also be kept within the timeframe established by the City of Newark Citywide Records Retention Schedule (two years). Redlined copies of the proposed revisions are attached.

An ordinance has been prepared removing the voter registration requirement for Planning Commissioners from Newark Municipal Code Section 2.12.020 Qualifications.

**Attachments** – Resolution, Ordinance, Senate Bill 225

**Action** – Staff recommends that the City Council introduce an ordinance amending Section 2.12.020, “Qualifications” of the Newark Municipal Code amending the qualification requirements for Planning Commissioners and, by resolution, approve the revised Guidelines and Procedures for the Senior Citizen Standing Advisory Committee.

**F.2 Award an Agreement and Authorization for the City Manager to execute an agreement with the *Tri-City Voice* for legal advertising services for Fiscal Year 2020-2021 – from City Clerk Harrington. (RESOLUTION)**

**Background/Discussion** – The California Government Code requires the City of Newark (City) to print legal notices in an adjudicated newspaper of general circulation. The Argus and Tri-City Voice are the only newspapers that currently meet the legal requirements for publishing legal notices. Quotes were requested and received from each newspaper for Fiscal Year 2020-2021.

Both newspapers presented a quote for the same typical public hearing notice with rates that would apply for the next fiscal year. The Argus quoted \$63.24 per typical ad size and The Tri-City Voice quoted \$67.50 per typical ad size. For the current fiscal year, the City has spent approximately \$3,000 on legally mandated advertising. Based on the quotes, the 6 percent price difference is a nominal amount of approximately \$180.

Although cost is one of the evaluating factors, the City is not bound to award the contract based on price alone as held by California case law: "In a given city, there may be two newspapers of general circulation, one a daily with a tremendous circulation, the other a weekly with a very small circulation. While the latter might be able to publish legal notices much cheaper than the former, it would be far more in the interests of the public that the city's legal notices be published in the paper of larger circulation. At least, in awarding a contract, the City Council should be permitted to weigh the consideration against the matter of cost, and unless the council abuses its discretion, its determination should stand." (Cyr v. White (1947) 83 Cal.App. 2d 22, 27) The same case also holds that the City Council has the discretion to determine which bid is better, taking into account "other matters affecting the value to the public".

The Tri-City Voice has a circulation of 4,500 newspapers within the City of Newark. These are distributed mainly through free stacks/racks placed around the City and paid subscriptions. The Argus has 1,097 paid subscriptions within the City of Newark.

The Tri-City Voice has been awarded the agreement for the last five fiscal years and has provided excellent service. The last time the Argus submitted a bid was for the 2016-2017 fiscal year. Although the Argus provided a lower bid, the City Council awarded the agreement to the Tri-City Voice due to the larger circulation numbers.

The City has a strong desire to provide easy and transparent access to matters affecting the community and the price difference between the quotes is nominal. For the reasons explained above, staff recommends that the City Council award the legal advertising agreement to the Tri-City Voice for fiscal year 2020-2021.

**Attachments** – Resolution, Contractual Services Agreement

**Action** – Staff recommends that the City Council, by resolution, award an agreement to, and authorize the City Manager to execute an agreement with, *What's Happening's Tri-City Voice* For Legal Advertising Services for Fiscal Year 2020-2021.

**F.3 Acceptance of work with Bond Blacktop, Inc. for the 2019 Street Slurry Seal Program, Project 1228 – from Assistant Engineer Carmen. (RESOLUTION)**

**Background/Discussion** – On August 5, 2019, the City Manager, acting on behalf of the City Council during the August recess, awarded a contract to Bond Blacktop, Inc. for the 2019 Street Slurry Seal Program, Project 1228. The project included the application of a sand, aggregate and asphalt emulsion mixture, and pavement restriping on various streets throughout the City, including Biddle Avenue, Braidburn Avenue, Conestoga Place, Dalewood Drive, Flanders Place, Lafayette Avenue (Newark Boulevard to Cherry Street), Locust Street (Thornton Avenue to Sunset Avenue and the segment south of the Union Pacific Railroad near Wells Avenue), Mayhews Landing Road (Newark Boulevard to Cherry Street and the Union Pacific Railroad to Spruce Street), Ravenwood Avenue, Robertson Avenue (Cedar Boulevard to Birch Street), and Vinewood Street.

This project was completed within the original budget using Vehicle Registration Fee funds. Staff has reviewed and inspected the entire scope of work which has now been satisfactorily completed in accordance with the approved project plans and specifications and all applicable standards. Pursuant to the State of California Public Contract Code, formal acceptance of the work by the City Council is now recommended.

**Attachment** – Resolution

**Action** – Staff recommends that the City Council, by resolution, accept the work with Bond Blacktop, Inc. for the 2019 Street Slurry Seal Program, Project 1228.

**F.4 Acceptance of work with Pavement Coatings Company for the 2018 Street Slurry Seal Program, Project 1180 – from Senior Civil Engineer Tran. (RESOLUTION)**

**Background/Discussion** – On August 14, 2018, the City Manager, acting on behalf of the City Council during the August recess, awarded a contract to Pavement Coatings Company for the 2018 Street Slurry Seal Program, Project 1180. This project provided an application of a sand, aggregate and asphalt emulsion mixture, and pavement restriping on various City streets, including Chapman Drive, Gateway Boulevard, Hebrides Court, Lundy Drive, Magnolia Street (Dairy Avenue to Thornton Avenue), Mayhews Landing Road (Cherry Street to the Union Pacific Railroad crossing), Mulberry Street, Oak Street, Olive Street, and Orkney Court. The project punch list items included restoration of the staging area which had to be deferred for an extended period of time to ensure that the contractor's method of restoration was acceptable to staff.

This project was completed within the original budget using a combination of Alameda County Measure B/BB Sales Tax funds, Vehicle Registration Fee funds, SB1 Road Maintenance and Rehabilitation Account funds, and Highway Users Tax funds. Staff has reviewed and inspected the entire scope of work which has now been satisfactorily completed in accordance with the approved project plans and specifications and all applicable standards. Pursuant to the State of California

Public Contract Code, formal acceptance of the work by the City Council is now recommended.

**Attachment** – Resolution

**Action** – Staff recommends that the City Council, by resolution, accept the work with Pavement Coatings Company for the 2018 Street Slurry Seal Program, Project 1180.

**F.5 Approval of partial release of security bonds for Tract 8208 (Continental Residential, Inc.) – from Public Works Director Fajeau. (RESOLUTION)**

**Background/Discussion** – Continental Residential, Inc. entered into a Subdivision Agreement with the City of Newark to construct improvements associated with Tract 8208, the Prima residential project. Continental Residential, Inc. provided a Performance Bond in the amount of \$8,875,000 and a Materials Bond in the amount of \$4,438,000 to guarantee completion of the tract improvements. This includes in-tract improvements on the private streets and all improvements within the adjoining public rights-of-way.

The collective improvements are more than 80% complete and, in accordance with authority contained in §66499.7 of the Government Code, these bonds may be reduced upon receipt of bond riders sufficient to guarantee the completion of the remaining improvements. The amounts of the bond riders will be equal to twenty percent (20%) of the original bond amounts.

The replacement bonds will be adequate to guarantee the construction of the remaining improvements of Tract 8208, which are limited to landscaping improvements on Cedar Boulevard north of the San Francisco Public Utilities Commission (SFPUC) right-of-way, pavement resurfacing on Cedar Court and Cedar Boulevard, and other minor punchlist items. The final phase of work on Cedar Court and Cedar Boulevard requires formal approval from the SFPUC. This approval is pending and is expected to be confirmed in June 2020. All in-tract improvements in common areas and all other traffic signal, underground utility, and landscaping working within the public right-of-way has been satisfactorily completed in accordance with the approved plans and all applicable standards.

Ownership of all tract improvements will remain with Continental Residential, Inc. until formal acceptance of the improvements by the City.

**Attachment** – Resolution, Subdivision Improvement Agreement

**Action** – Staff recommends that the City Council, by resolution, approve the partial release of security bonds for Tract 8208 (Continental Residential, Inc.).

## NONCONSENT

**F.6 Presentation by Godbe Research on the results of public opinion research assessing community interest for an extension of the existing City of Newark Utility Users Tax and direction regarding same – from City Manager Benoun. (MOTION)**

**Summary** – The City of Newark has a Utility Users Tax (“UUT”) that is set to expire at the end of December, 2020. The tax rate is 3.25% and currently generates between \$2.7 million to \$3 million per year. Earlier this year, the Council directed the City Manager to retain a consulting firm to conduct a public opinion poll to gauge community interest in a ballot measure that would extend the UUT without raising rates in order to maintain funding for local critical services. The firm, Godbe Research, will provide the results of the public opinion poll to the Council. After the presentation, staff will solicit direction from the Council on whether the City should proceed with taking necessary steps to place a UUT extension measure on the ballot in the November General Election for voter consideration.

**Background/Discussion** – On February 13, 2020 – approximately one month before the Local Emergency due to the COVID-19 pandemic was declared – the Council held a City Council Work Session to discuss the 2020-2022 Biennial Budget, including a review of budget projections for subsequent fiscal years. At that time, budget projections for a baseline forecast (which assumed a steady and slow growth) showed a \$1.5 million operating *deficit* prior to making contributions to various reserves for the second year of the upcoming budget cycle if the City stopped receiving revenue from the City of Newark Utility Users Tax (“UUT”).

After receiving this information, the City Council directed staff to commission independent public opinion research to evaluate community interest for extending the UUT to address the projected operating budget deficits. Shortly thereafter, the City signed an agreement with Godbe Research, a recognized leader in revenue measure feasibility public opinion research and previous consultant of the City, to conduct research to gauge the community’s interest and priorities for local funding.

Godbe Research conducted the public opinion and collected data via landline, cell phone, and with text messages and emails containing links to online interviews. Godbe Research will present the results of the survey to the City Council during the meeting.

At the end of the presentation, staff will be asking the City Council for direction on whether to return at a future City Council meeting with the necessary actions to place a measure on the November 3, 2020, ballot to extend the City of Newark Utility Users Tax beyond this year.

The UUT funding supports a number of critical programs and services in the City including public safety staffing, parks and street maintenance, programs for at-risk youth and seniors, community preservation, and school crossing guards. This was true prior to the COVID-19 pandemic and certainly remains true now.

Prior to the pandemic, the UUT generated \$3.29 million in revenue in fiscal year 2018-2019, which reflected approximately four and nine-tenths percent (4.9%) of the City's total operating revenue.

After the COVID-19 pandemic, the need for renewing the UUT appears to be even more critical. On April 23, 2020 – over a month after the declaration of the Local Emergency – City staff provided to the Council an overview of budget projections for Fiscal Year 2019-2020. That report showed significant declines in general fund revenues as a result of the COVID-19 pandemic, including reductions in sales tax and Transient Occupancy Tax (“TOT”) revenue and a reduction in charges for services, licenses, and permits. Together, these revenues total an estimated \$6.3 million in revenues less than what were projected at the work session held on February 13, 2020.

At a special budget work session scheduled to occur on May 28, 2020 (and immediately before the regular Council meeting in which the Council receives this report), staff will present to the Council updated forecasts to plan for the 2020-2022 Biennial Budget. These forecasts show multi-million deficits, regardless of whether the UUT is renewed.

Based on information presented to the Council in the recent budget work sessions, it appears there is a continued need for UUT revenue in order to avoid a long-term deficit without additional and significant cuts in services to the community.

**Attachment** – none (presentation will be provided at the City Council meeting)

**Action** - Staff recommends that the City Council, by motion, accept the results of the public opinion polling and provide direction to staff regarding an extension of the existing City of Newark Utility User Tax to address the projected operating budget deficit.

**F.7 Adoption of a Resolution authorizing a one-time exception to the systematic decrease in the maximum allowable number of safe and sane fireworks booths permits as a result of the COVID-19 pandemic – from City Manager Benoun and Interim City Attorney Kokotaylo. (RESOLUTION)**

**Background/Discussion** – The City of Newark is one of three cities in Alameda County that allows the sale and use of safe and sane fireworks to celebrate the

Fourth of July holiday. The Newark Municipal Code contains regulations that govern the sale and use of fireworks including the dates that fireworks booths can sell and when individuals can use fireworks.

In the early 2000's, in response to increasing illegal fireworks activity that was taking place within Newark at the time, the City Council directed the formation of a Fireworks Task Force. The Task Force developed an Action Plan that included several measures aimed at reducing the use of illegal fireworks, including closing parks on July 4<sup>th</sup> after 7:30 p.m., activating a Firework's hotline, increased police staffing levels, and adopting a Zero Tolerance policy. Despite these efforts, illegal fireworks use persisted in the 2000's, which prompted the Council to adopt a resolution in 2007 establishing a process whereby the total number of fireworks booth permits would decrease through attrition. Specifically, the rules in the resolution provide that the total number of fireworks booths permits decrease whenever an organization chooses to not renew a previously issued permit, is deemed ineligible for a fireworks booth permit, or no longer meets the requirements for issuance of a fireworks booth permit. This action was taken in order to reduce the use of illegal fireworks and eliminate the possibility of additional nonprofit organizations from becoming reliant upon fireworks sales as a revenue source. At the time there were 13 booths selling fireworks in the City. Now there are 10 fireworks booth permits authorized within the City.

As a result of the COVID-19 pandemic, the following governmental agencies and officials have declared an emergency: the United States Department of Public Health and Human Services Secretary, the Governor of the State of California, the Alameda County Health Officer, the President of the United States, and the Newark Director of Emergency Services.

Both the Alameda County Health Officer and the Governor of California have issued orders directing the public to shelter at their place of residence except under certain limited circumstances. It is still unclear as to whether the sale of safe and sane fireworks will be permitted under these two orders. Additionally, organizations with a fireworks booth permit may not feel comfortable selling safe and sane fireworks depending on how the circumstances surrounding the COVID-19 pandemic evolve.

In light of the uncertainty surrounding the COVID-19 pandemic and the shelter in place orders, some organizations may wish to not sell safe and sane fireworks in 2020.

Establishing a one-time exception to the requirement that the total number of fireworks booth permits decrease where an organization chooses to not renew a permit in 2020 will allow to avoid the uncertainty surrounding the COVID-19 pandemic and shelter in place orders without the risk of losing a permit. This will give permitted organizations the option of cancelling sales for this year in the event that the shelter in place orders prohibit this activity come the end of June or in the

event that members of the organization are not comfortable with sales this year due to the health risks associated with the COVID-19 pandemic.

**Attachments** –Proposed Resolution, Resolutions 7106 and 9269

**Action** – Staff recommends that the City Council, by resolution, authorize a one-time exception to the systematic decrease in the maximum allowable number of safe and sane fireworks booth permits as a result of the COVID-19 pandemic.

**F.8 Oral Update on the City’s response to the COVID-19 Local Emergency – from City Manager Benoun and Interim City Attorney Kokotaylo.**

**G. CITY ATTORNEY REPORTS**

**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**

Approval of Audited Demands.

**(MOTION)**

**M. CLOSED SESSION**

**N. ADJOURNMENT**

**IMPORTANT NOTICE REGARDING CITY COUNCIL MEETING**

Due to the COVID-19 pandemic, the City of Newark is making several changes related to City Council meetings to protect the public's health and prevent the disease from spreading locally. As a result of the COVID-19 public health emergency, including the Alameda County Health Officer and Governor's directives for everyone to shelter in place, **the City Council Chambers will be closed to the public**. Members of the public should attempt to observe and address the Council using the below technological processes.

This meeting is being conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic. In accordance with Executive Order N-29-20, the public may only view the meeting on television and/or online.

Mayor Nagy, Vice Mayor Freitas, and Council Members Collazo, Hannon, and Bucci will be attending this meeting via teleconference. Teleconference locations are not open to the public. All votes conducted during the teleconferencing session will be conducted by roll call vote.

**How to view the meeting remotely:**

Live television broadcast - Comcast Channel 26

Livestream online at- <https://www.newark.org/departments/city-manager-s-office/agendas-minutes/live-streaming-meetings>

**How to participate in the meeting remotely:**

Provide live remote public comments, when called upon by the City Clerk:

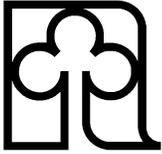
From a PC, Mac, iPad, iPhone or Android device: <https://zoom.us/j/98073508956>

Webinar ID 980 7350 8956 (to supplement a device without audio, or to just call in, please also join by phone: US: +1 669 900 6833, same Webinar ID 980 7350 8956.)

**Submission of Public Comments:**

Public comments received by 4:00 p.m. on the Council meeting date will be provided to the City Council and considered before Council action. Comments may be submitted by email to [City.clerk@newark.org](mailto:City.clerk@newark.org). Comments may also be submitted via e-mail to [city.clerk@newark.org](mailto:city.clerk@newark.org) at any time prior to closure of the public comment portion of the item(s) under consideration.

Reading of Public Comments: The City Clerk will read aloud email comments received during the meeting that include the subject line "FOR THE RECORD" as well as the item number for comment, provided that the reading shall not exceed five (5) minutes, or such other time as the Council may provide, consistent with the time limit for speakers at a Council meeting and consistent with all applicable laws.



# CITY OF NEWARK CITY COUNCIL

Virtual Meeting, Newark, CA 94560-3796 • 510-578-4266 • E-mail: [city.clerk@Newark.org](mailto:city.clerk@Newark.org)

**Various Virtual  
Teleconference Locations  
7:30 p.m.**

## AGENDA

**Thursday, May 28, 2020**

### CITY COUNCIL:

*Alan L. Nagy, Mayor*  
*Luis L. Freitas, Vice Mayor*  
*Sucy Collazo*  
*Michael K. Hannon*  
*Mike Bucci*

### CITY STAFF:

*David J. Benoun*  
*City Manager*  
  
*Lenka Hovorka*  
*Assistant City Manager*  
  
*Gina Anderson*  
*Police Chief*  
  
*Soren Fajeau*  
*Public Works Director*  
  
*David Zehnder*  
*Recreation and Community  
Services Director*  
  
*Kristopher J. Kokotaylo*  
*Interim City Attorney*  
  
*Krysten Lee*  
*Finance Director*  
  
*Steven M. Turner*  
*Community Development Dir.*  
  
*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:

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

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](http://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.