



# CITY OF NEWARK CITY COUNCIL

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City Administration Building  
7:30 p.m.  
City Council Chambers  
Revised 1/13/2016

## AGENDA

Thursday, January 14, 2016

**A. ROLL CALL**

**B. MINUTES**

- B.1 Approval of Minutes of the regular City Council meeting of Thursday, December 10, 2015. (MOTION)**

**C. PRESENTATIONS AND PROCLAMATIONS**

**C.1 Introduction of employees.**

**Background/Discussion** – The following newly hired or promoted city employees will be introduced at the City Council meeting:

Senior Equipment Mechanic Brian Lewis  
Maintenance Supervisor Neal Hornbeck  
Associate Civil Engineer Diana Cangco  
Senior Accountant Krysten Lee  
Police Officer Timothy Prakash.

**C.2 Commending William Spinola for his service on the Alameda County Mosquito Abatement District.**

**Background/Discussion** – William M. Spinola has served as Newark's representative on the Alameda County Mosquito Abatement District since the early 1980s. A commendation has been prepared thanking Mr. Spinola for his 33 years of service.

**C.3 Presentation on City Service.**

**Background/Discussion** – A brief presentation will be made on the benefits of city service.

**C.4 Union Sanitary District presentation on their services and proposed rate changes.**

**Background/Discussion** – The Union Sanitary District serves the cities of Fremont, Newark, and Union City by collecting and treating over eight billion gallons of sewage per year. General Manager Paul Eldredge will provide a general overview of the

District and its services as well as information regarding currently proposed rate increases.

## **D. WRITTEN COMMUNICATIONS**

### **D.1 Notice of Planning Commission’s decision to amend the E-Z 8 Motel Conditional Use Permit to include a Settlement Agreement condition – from Assistant City Manager Grindall. (REVIEW OPTIONAL)**

**Summary** – Approximately a year and a half ago, City staff issued a notice to E-Z 8 Motel requiring the owners to appear at a Planning Commission public hearing to explain why their existing use permit should not be revoked because of the high level of criminal activity occurring at the Motel. City staff and E-Z 8 representatives engaged in extensive discussions in an attempt to arrive at a solution that did not require revocation of the use permit. After further negotiations and a series of public hearings spanning a year and a half, the Planning Commission adopted a resolution amending the use permit granted to E-Z 8 Motel by adding condition “rr”. This new condition requires E-Z 8 Motel to comply with the terms of a Settlement Agreement between E-Z 8 and the City. The essential terms require E-Z 8 to enact and maintain numerous independent security measures and in exchange for these measures the Planning Commission dismissed the Order to Show Cause.

Review of the Planning Commission’s action to amend the use permit is optional. Pursuant to the Municipal Code, the Council could either: (1) call the matter for review, which would effectively require a public hearing at a future Council meeting at which point the Council would be free to reverse, affirm, or modify the Commission’s decision; or (2) decline to review the matter, which would effectively let the amendment to the use permit stand.

**Background/Discussion** – In 1984, E-Z 8 Newark submitted an application for a conditional use permit to operate a motel in an ML Limited Industrial District, specifically at 5555 Cedar Court. The Planning Commission denied the application and the applicant appealed to the City Council. On a 4-1 vote, the City Council overturned the Planning Commission’s denial and issued the use permit by adopting Resolution No. 4565.

The Council made several findings in granting the permit, including “[t]hat the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.” (Newark Municipal Code Section 17.72.070)

Approximately ten years later, criminal activity at the Motel had increased to unacceptable levels and culminated with SWAT teams exchanging fire with a wanted murderer who was hiding out at E-Z 8. In response, the Council created a task force consisting of representatives from staff, the Council, the police department, the Motel,

and the surrounding neighborhood. The task force held several meetings and adopted a “Security Plan” that included increased lighting, a security guard, and required guests to show government-issued identification (ID) before check-in, among others.

While there was a decrease in criminal activity in response to these measures, that respite was short-lived. Criminal activity subsequently resurfaced after E-Z 8 abandoned the measures agreed to in the Security Plan. Between 2008 and 2012, there was an extremely high amount of criminal activity occurring at E-Z 8 Motel, as evidenced by the following statistics:

- 760 arrests within an approximate five year period (average of 13 arrests per month)
- 753 police reports taken within an approximate four year period (average of 16 reports per month)
- 2,422 calls for police and/or emergency service within an approximate four year period (average of 53 calls for service per month)

In response to this widespread criminal activity, in April 2013 the City Attorney issued a notice of illegal activity to both E-Z 8 Motel and the landowner, informing them of the grossly disproportionate amount of crime at the Motel, the various types of crime occurring at the Motel (from rape to battery to drugs to prostitution), as well as highlighting some of the crimes specifically victimizing children, including child prostitution and lewd acts with minors. The City threatened various civil remedies, including civil litigation, administrative prosecution, imposition of extraordinary police fees, and/or use permit revocation.

City staff and E-Z 8 Motel exchanged correspondence and attempted to resolve the matter informally. Unfortunately, the settlement discussions were unfruitful and criminal activity persisted at unacceptable levels.

#### Use Permit Revocation

Consequently, on April 28, 2014, the City issued an Order to Show Cause Why E-Z 8’s Use Permit Should Not Be Revoked (“OSC”). The City alleged in the OSC that the level of criminal activity at E-Z 8, in addition to draining City and Police Department resources, and particularly when compared to the levels of criminal activity at other hotels and motels operating in the City, constitutes a violation of the conditions on which the CUP was granted and therefore warrants revocation of the CUP. The OSC is rather extensive as it attaches hundreds of pages of police reports, as well as declarations from various City personnel.

The matter was calendared for hearing on May 28, 2014, and was continued to July 2, 2014, at the request of E-Z 8. During this time period City staff and E-Z 8 engaged in settlement discussions in hopes of arriving at a mutually agreeable solution. Those efforts resulted in an agreement that required E-Z 8 to implement a variety of enhanced security measures, including installation of an auto entry gate, enhanced video surveillance, maintaining a “no rent” list, and longer security guard hours to be

provided from a licensed and bonded security company. In exchange for implementing these measures, City staff agreed to recommend to the Planning Commission that it continue the public hearing for six months to allow enough time for the security measures to be implemented and for the Police Department to assess the effectiveness of those measures.

This agreement was presented to the Commission at a special meeting held on July 2<sup>nd</sup>. The meeting lasted 3.5 hours and the Commission received considerable testimony from residents and the public. The majority of the testimony focused on three issues: (1) the negative impact that the Motel use has on the surrounding neighborhood; (2) the extraordinary Police resources that are required due to the Motel's operation; and (3) the role that E-Z 8 Motel plays in providing housing for people facing homelessness. The Commission ultimately adopted staff's recommendation and continued the public hearing.

On December 9, 2014, in response to the Commission's request, staff provided the Commission with an update on the status of the implementation of the agreed upon security measures. Staff expressed concern that E-Z 8 failed to comply with some of the material terms of the agreement, including failing to increase security guard hours and failure to install gates to control auto entry. E-Z 8 denied the allegations.

On April 28, 2015, the Commission re-opened the public hearing. Staff again expressed concern regarding the failure to implement some of the security measures. Staff was also concerned that because of E-Z 8's failure to fully comply with the agreement, staff was unable to meaningfully evaluate the crime levels at the Motel and determine whether the additional security measures had any considerable impact. E-Z 8 denied any breach of the contract and represented to the Commission that the measures had been implemented. At staff's request, the Commission continued the matter so to allow sufficient time to elapse so that staff could properly evaluate whether the agreed upon security measures positively impacted public safety.

At the continued public hearing on July 28, 2015, staff advised the Commission that: (1) Newark Police was in contact with E-Z 8 and their security consultant; (2) crime statistics associated with the operation of the motel were exchanged and analyzed; (3) based on the data, there was a decrease in the negative consequence of the motel operations on the neighborhood and police resources. However, staff expressed its concern that these criminal issues could resurface if these security matters were not appropriately addressed. Staff also reported on the cyclical history of the Motel's thirty year operation. In other words, as the crime rates and nuisance activities increase, staff intervenes to address public safety concerns and the crime activity reduces in response to that intervention, but after a period of time the criminal activity resurfaces. Accordingly, staff recommended that the Commission direct staff to negotiate with E-Z 8 to amend the use permit to incorporate the security measures so that the nuisance activities stop permanently. The Commission accepted staff's recommendation and continued the public hearing.

The public hearings were re-opened again on August 28, September 8, and October 27, 2015. At each of those hearings, staff reported that additional time was needed to negotiate and prepare the appropriate amendment for the Commission's consideration.

#### Settlement Agreement

On December 8, 2015, staff reported to the Commission that an agreement had been reached. The Agreement contractually obligates E-Z 8 to maintain and enforce a host of stringent security measures and procedures indefinitely.

The security measures include, in part:

1. Having an on-site Resident Manager living on the Motel property.
2. Requiring the Resident Manager and all Motel employees to cooperate with the Police Department by providing access to E-Z 8's guest register upon request.
3. Storing motel revenues in a time-locked safe to minimize opportunities for robbery.
4. Locking the motel lobby and transact all business through the night window at or around dusk.
5. Requiring all registered guests to be at least 18 years of age.
6. Restricting anyone from access to a registered guest's room other than a guest and/or visitor who has provided government-issued photo ID to the front desk at check-in. The ID shall be photocopied by the motel and stored for at least 72 hours.
7. Providing for "quiet hours" on the motel premises between 10:00 p.m. and 7:00 a.m.
8. Maintain and enforce a policy of guests staying a maximum of 21 days.
9. Maintain and enforce a policy that the minimum time period room rental is 24 hours.
10. Install and maintenance of a permanent electronically controlled gate at the entrance to the guest parking area. The gate shall only admit persons possessing a valid and active room key or a visitor/vendor temporary pass issued by a motel employee.
11. The motel shall have a licensed, bonded and insured security guard patrolling the premises between the hours of 6:00 p.m. and 2:00 a.m.
12. The motel shall maintain a security camera system which provides night time visual sharpness and complete coverage of the motel premises.
13. Maintain and enforce the policy that there shall be no more than 2 adult guests and 2 children under 13 years of age per single room and no more than 4 adults and 4 children under 13 per double room.
14. Install and maintain on the front lobby counter and on the front of the building signs that indicate cooperation with the Newark Police Department.
15. Maintain and enforce the policy that there shall be no cooking in any of the guest rooms.
16. Maintain and enforce an active "no rent" list which flags guests who have acted inappropriately in a prior stay. The motel shall place any persons requested by the Police Department on the "no rent" list.
17. The on-site Manager or other E-Z 8 employees will notify the Police Department of any known violation of the law on the E-Z 8 premises.

In exchange for these security measures, the Commission made a finding that the Motel is presently in compliance with the Agreement and that the Order to Show Cause is dismissed.

E-Z 8 additionally agreed to an amendment to its use permit. The amendment requires E-Z 8 to comply with the Settlement Agreement. The amendment, known as condition “rr”, states as follows:

“Developer agrees to operate its motel in such a manner that it complies with the Settlement Agreement with the City dated December 8, 2015.”

Summary – After holding eight meetings and receiving hours of testimony from the public, the Commission resolved this matter by adopting a Resolution that dismisses the Order to Show Cause and requires E-Z 8 to comply with the Settlement Agreement that includes several security measures. Staff believes that the nuisance activity at E-Z 8 Motel has been abated, but, more importantly, staff believes that modification to the use permit enhances public safety because it requires E-Z 8 to maintain a host of stringent security measures indefinitely. In other words, staff believes that the likelihood of this motel being a safe haven for criminals has been diminished. If, however, E-Z 8 breaches the Agreement staff will be quick to intervene for the safety of the public and community.

**Attachments** – Planning Commission Resolution No. 1922 adopted December 8, 2015  
Settlement Agreement between City of Newark and E-Z 8 Newark, LLC  
Minutes from Planning Commission meetings held on:  
July 2, 2014;  
December 9, 2014;  
April 28, 2015;  
July 28, 2015;  
August 25, 2015;  
September 8, 2015;  
October 27, 2015; and  
December 8, 2015.

**Action** – Review of this item is optional. The Council should decide to either: (1) call this matter for review, which would then require that this matter be calendared for a duly noticed public hearing, at which point the Council could either affirm, reverse, or modify the Commission’s decision; or (2) decline to review this matter, which would effectively let the Commission’s decision stand and the use permit modified accordingly.

**D.2 Planning Commission referral of proposed changes to the City of Newark Street Names Theme Map to allow for a “Bay Features” theme for the Dumbarton Transit Oriented Development area and a “Bay Animals” theme for the areas known as Sanctuary and Area 4 in the General Plan –**

**from Assistant City Manager Grindall.**

**(RESOLUTION)**

**Background/Discussion** – In 1963, the Planning Commission approved a policy for the systematic naming of streets, adopting certain categories and names for various geographic sections of the City in the form of a Street Name Themes Map which delineates street name themes for each area. In 1983, the City Council modified this policy by authorizing industrial and commercial developers to use street names to aid in marketing their properties.

There has been a considerable amount of development approved in the past two years. The majority of this development has been residential subdivisions located in the Dumbarton Transit Oriented Development (TOD) area. This area will be comprised of multiple subdivisions that have an opportunity to bring a distinct identity to this area. The various developers of this area have indicated a willingness to coordinate the naming of streets within each subdivision in order to provide consistency, improve their marketing, and to ultimately bring a sense of place to this developing region.

Although the approved theme for this area is currently “Trees”, the proximity of the Dumbarton TOD to the San Francisco Bay lends itself more to “Bay” or “Water” themed streets. The developers of the Torian parcel have proposed “Bayshores” as the name of their development, so similar themed street names for the remainder of the area would be appropriate. As such, staff is recommending that “Bay Features” be the street name theme for this area.

Plans for the Sanctuary (formerly known as Area 3) development have recently been approved by the Planning Commission and City Council. Although no development plans have been submitted for the Area 4 development, it’s appropriate to establish an appropriate street name theme for both areas at this time. The current theme approved for this area is “California History”. Staff feels again that a Bay theme best captures the feel of this area and is recommending “Bay Animals” for street names. The developers for all of these parcels have been consulted on these themes and they agree on their usage.

#### **Attachment**

**Update** – At its December 8, 2015 meeting, the Planning Commission approved Resolution 1924, with Exhibit A, approving a change to the Street Names Theme Map to allow for a “Bay Features” theme for the Dumbarton Transit Oriented Development area and a “Bay Animals” theme for the areas known as Sanctuary and Area 4 in the General Plan.

**Action** – It is recommended that the City Council, by resolution, with Exhibit A, approve a change to the Street Names Theme Map to allow for a “Bay Features” theme for the Dumbarton Transit Oriented Development area and a “Bay Animals” theme for the areas known as Sanctuary and Area 4 in the General Plan.

## **E. PUBLIC HEARINGS**

**E.1 Public Hearing to consider Z-15-33, a text amendment to Title 17 (Zoning) of the Newark Municipal Code to add Section 17.04.050 “Permissive Code” to Chapter 17.04 “General Provisions” - from Assistant City Manager Grindall. (INTRODUCTION OF ORDINANCE)**

**Background/Discussion** – The “Newark Zoning Ordinance”, which is Title 17 of the Newark Municipal Code, governs the use and development of individual property within the City of Newark. The Zoning Ordinance is a collection of regulations established to promote desired and mutually compatible patterns of land use within the City. While the comprehensive Zoning Ordinance was adopted 1965, it has been subsequently amended many times by the City Council. The review and revision of the Zoning Ordinance is an ongoing project within the Community Development Department.

Typically, there are three types of zoning ordinances:

- **Prohibitive** - a prohibitive ordinance is one that lists uses that are not permitted. It is presumed that everything that is not prohibited is permitted in that district. This is illustrative of the very earliest zoning ordinances.
- **Permissive** - a permissive ordinance lists all the uses that are permitted within a given district. Everything that is not specifically listed is prohibited in that district. This type of zoning ordinance is the most common type of ordinance.
- **Performance** - a pure performance ordinance would have no districts. It would argue that any two uses are compatible with each other if the correct combination of lot sizes, setbacks, buffers, noise regulations, light regulations, etc., are applied.

The Newark Zoning Ordinance is a “permissive” zoning code. It was adopted as a permissive zoning code in 1965 and has been operating as such continuously up through the present. Like most California cities, the Newark Zoning Ordinance contains various chapters for each zoning district that outlines all permitted uses, including those permitted with conditions and those without conditions. The result is that if the use is not specifically included in the zoning district, then such use is unlawful for that district.

Experts understand what a “permissive” zoning code is and that the Newark Zoning Ordinance is permissive. However, members of the general public unfortunately sometimes do not fully understand these concepts. In order to facilitate and promote a better understanding of the Newark Zoning Code with the public, it is recommended that the City Council adopt an ordinance adding a section to the Newark Zoning Code that expressly declares that the Newark Zoning Ordinance is a “permissive” zoning code and make it clear that if the use is not permitted then such use is unlawful.

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) under Section 5060(c)(2) (the activity will not result in a direct or reasonably



foreseeable indirect physical change in the environment) and Section 15061(b)(3) (General Rule that CEQA only applies to project which have the potential to cause a significant effect on the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3.

**Update** – At its meeting of December 8, 2015, the Planning Commission approved Resolution No. 1923, with Exhibit A, recommending that the City Council approve Z-15-33, a text amendment to Title 17 (Zoning) of the Newark Municipal Code to add Section 17.04.050 “Permissive Code” to Chapter 17.04 “General Provisions”.

**Attachment**

**Action** – It is recommended that the City Council introduce an ordinance amending Chapter 17.04 (General Provisions) of Title 17 (Zoning) by adding Section 17.04.050 (Permissive Code) to the Newark Municipal Code.

**E.2 Public Hearing to consider U-15-30, a Conditional Use Permit, for a preschool (Little Scholar’s Preschool) at 5472A Central Avenue (Palms on Central Shopping Center) – from Assistant City Manager Grindall.**  
**(RESOLUTION)**

**Background/Discussion** – Ms. Cheryl Figone and Ms. Sonu Sidhu have made an application to locate a preschool at 5472A Central Avenue. This tenant space is within the Palms on Central Shopping Center. The space is in the rear building and adjacent to Timber Street.

Ms. Figone and Ms. Sidhu noted that their mission is to design a program for preschoolers that will allow them to grow their creativity and develop intellectually, emotionally, and socially. The program will consist of child-directed and teacher-guided activities based on individual child and family needs. Along with structured classes, they will be providing on-site childcare and after school programs for children up to the 6<sup>th</sup> grade.

The facility will be able to support up to 25 children and will operate Monday through Friday from 8:30 a.m. to 6:30 p.m. On Saturday they will open from 10:30 a.m. to 3:30 p.m. There will be one full-time Director, two part-time teachers, and a part-time assistant.

The proposed project is categorically exempt from the California Environmental Quality Act per Section 15301, Class 1, “Existing Facilities”.

**Update** – At its meeting of December 8, 2015, the Planning Commission approved Resolution No. 1921, with Exhibit A, U-15-30, a Conditional Use Permit, for a preschool (Little Scholar’s Preschool) to locate at 5472A Central Avenue (Palms on Central Shopping Center).

**Attachment**

**Action** – It is recommended that the City Council, by resolution, approve U-15-30, a Conditional Use Permit, for a preschool (Little Scholar’s Preschool) to locate at 5472A Central Avenue (Palms on Central Shopping Center).

- E.3 CANCELLED Public Hearing to consider Gateway Station West, a 589-unit residential project within the Dumbarton Transit Oriented Development Specific Plan area located at the western edge of the City. The City Council will consider: (1) by resolution, adopting a Supplemental Environmental Impact Report to the Environmental Impact Report for the Dumbarton Transit Oriented Development Specific Plan; (2) by introduction of an ordinance, approving rezoning for an approximately 41-acre area (APNs: 537-852-9, 537-852-10 and 537-852-11) from MT-1 (High Technology Park District) to MDR-FBC (Medium Density Residential – Form Based Codes) and HDR-FBC (High Density Residential – Form Based Codes); (3) by resolution, approving a planned unit development and a conditional use permit; (4) by resolution, approving Vesting Tentative Map 8099; (5) by motion, approving an Architectural and Site Plan Review; (6) by resolution, authorizing the Mayor to sign a Community Financing Agreement with Dumbarton Area 2, LLC – from Assistant City Manager Grindall.**  
**(RESOLUTIONS- 4)(INTRODUCTION OF ORDINANCE)(MOTIONS-1)**

**CANCELLATION UPDATE:** This public hearing has been cancelled. A new public hearing notice will be published and distributed when a new hearing date is set.

**Background/Discussion** – In collaboration with the landowners, the City of Newark began a planning effort in the Fall of 2007 to explore potential development around the planned Newark Dumbarton Rail Station. The Project Area includes approximately 205 acres of land that has previously contained various industrial, manufacturing, and chemical processing land uses since the early twentieth century. Most of the land is currently vacant.

Integral Communities has now submitted a proposed Vesting Tentative Map and building plans for 589 units to be located on approximately 41 acres along Willow Street at the western edge of the City. This project is consistent with the Specific Plan’s vision of a vibrant pedestrian oriented community. The project will provide important amenities, including a segment of bay-side trail that will be eligible for Bay Trail designation and a small, neighborhood dog park. The cost of these amenities is to be provided by the developer. Although a total of 15.75 acres of wetlands are on-site, the project will only affect a total of 6.1 acres of these wetlands; and the applicant will purchase sufficient qualifying wetland mitigation credits for this impact. The applicant will also permanently preserve 3.67 acres of wetlands on-site. Additionally, as a separate voluntary measure, the applicant has donated 6 acres that includes 5.98 acre of wetlands, to a non-profit conservation organization.

It is proposed to rezone a portion of the Dumbarton Transit Oriented Development to be consistent with the Specific Plan. RZ-14-48 is a rezoning of an approximately 41-acre area that is generally located on the west side of Willow Street. The rezoning would be from MT-1 (High Technology Park District) to MDR-FBC (Medium Density Residential – Form Based Codes) and HDR-FBC (High Density Residential – Form Based Codes) which is consistent with the Specific Plan.

In addition to providing amenities, the project will also provide significant impact fee revenue including: \$16,718,800 in Affordable Housing fees; \$4,393,940 in Park fees; \$1,195,641 in Public Safety fees; \$1,051,110 in Community Services/Facilities fees; and \$380,401 in Transportation Impact fees. The project will also pay an Art in Public Places fee of \$159,030 and a \$1,472,500 Fiscal Impact fee which is envisioned to support the Central Avenue Railroad Overcrossing project. Collectively, the estimated total of impact fee revenue is \$25,371,422. The project will also pay \$4,053,000 in school fees to the Newark Unified School District.

#### Community Financing Agreement

The Dumbarton TOD Specific Plan contains critical elements necessary to implement the Plan. To ensure that the City's fiscal health is sustained, developers are required to contribute to the provision of public improvements and city services. As such, the applicant has agreed to enter into the attached Community Financing Agreement. Under the terms of the agreement, a contribution of \$2,500 per dwelling unit is required.

#### The Architectural and Site Plan Review

Gateway Station West features six different home types providing a community diverse in scale, streetscape and architectural character. Several coordinated styles such as Classic Agrarian, Contemporary Agrarian, Farmhouse and Craftsman, are proposed to provide architectural variety across the 41-acre site. The homes are designed for flexibility, with ground floor living spaces or optional dens or recreation rooms. In addition to the Bay-Side Trail, a one acre park and several smaller parks are scattered throughout the community. Landscaped pedestrian paseos between buildings and landscaped water bio-treatment and retention areas, which are available for recreation when not inundated, are linked with walkways resulting in a walkable community.

The residential home types are summarized below:

Single Family Homes 132 Traditional front-loaded single family detached homes – These three-story detached homes feature minimum lot sizes that are 35 feet wide by 50 feet in depth and offer three floor plans ranging from 2,299 square feet to 2,541 square feet. These plans offer up to 4 bedrooms and 3.5 bathrooms and will be available in all three Farmhouse, Craftsman, and Agrarian architectural styles.

119 Rear-loaded single family detached homes – These three-story detached homes feature landscaped paseos in the front and have lots that are 35 feet wide by 55 feet in depth. Three floor plans are offered, ranging from 2,491 square feet to 2,710 square feet. These plans offer up to six bedrooms and 3.5 bathrooms and will be available in the Farmhouse and Craftsman architectural styles.

70 Motor court cluster single family detached homes – These three-story detached homes offer four floor plans ranging from 1,541 square feet to 2,159 square feet. These plans offer up to 4 bedrooms and 3 bathrooms and will be available in the Farmhouse and Craftsman architectural styles.

#### Town Homes:

98 “Loft Split” traditional row town homes – These three-story town homes offer four distinct floor plans ranging from 1,486 square feet to 2,089 square feet within 6-plex and 7-plex building configurations. These plans offer up to 4 bedrooms and 3.5 bathrooms and will be available in the Contemporary Agrarian and Classic Agrarian architectural styles.

80 “P9 Cluster” motor court style town homes – These three-story town homes offer five distinct floor plans ranging from 1,582 square feet to 2,193 square feet and up to 4 bedrooms and 3 bathrooms designed in a Classic Agrarian style.

90 “Flats style” town homes – These three-story buildings offer four distinct floor plans ranging from 1,445 square feet to 2,193 square feet and up to 3 bedrooms and 3.5 bathrooms. This product offers all living space on a single floor or two floors. The buildings are arranged in a 6-plex designed in the Contemporary Agrarian style.

#### The Supplemental Environmental Impact Report (SEIR)

The SEIR prepared for this project was completed by Helix Environmental Planning. Of the issues analyzed, the only new significant impacts resulting from this project would include air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology/water quality, noise, and transportation/traffic biological impacts and hazardous material impact.

Table S-1 *Summary of Significant Effects*, notes mitigation measures that have already been accounted for in the original Dumbarton TOD EIR as well as new, project-specific mitigation measures developed for Gateway Station West. The following is a synopsis of the new mitigation measures.

#### ***Air Quality***

Impact: Construction-period project emissions would exceed the Bay Area Air Quality Management District’s (BAAQMD) significance threshold for NO<sub>x</sub>. Mitigation Measure: Prior to issuance of any Grading Permit, the Public Works Director and the Building Official shall confirm that the Grading Plan, Building Plans, and specifications stipulate that all diesel-powered off-road equipment used during the grading phase shall meet Tier 4 final off-road emission standards.

***Biological Resources***

Impact: Potentially significant impacts may occur to habitats regulated by the California Department of Fish and Wildlife (CDFW) pursuant to Section 1600 *et seq.* of the California Fish and Game Code. Mitigation Measure: A Streambed Alteration Agreement shall be obtained for impacts to habitats regulated by CDFW pursuant to section 1600 *et seq.* of the California Fish and Game Code.

Impact: In order to adequately implement the on-site open space preserve area, a management plan must be developed to monitor the progress of the on-site wetland mitigation and associated biological values. Mitigation Measure: The open space area shall be set aside in perpetuity, either through deed restrictions or conservation easements. Because the open space area contains waters under jurisdiction of the United States Army Corps of Engineers (USACE) and Regional Water Quality Control Board (RWQCB), and potentially suitable habitat for species regulated by the CDFW, the plan shall be developed in coordination with these agencies.

***Geology and Soils***

Impact: Potentially significant geologic hazards associated with seismic ground shaking, liquefaction and related effects, manufactured slope instability, geologic/soil instability, shallow bedrock groundwater, and expansive soils may be associated with the project. Mitigation Measure: A site-specific geotechnical investigation shall be conducted by a qualified engineer or engineering geologist to verify that the final project plans and/or construction operations incorporate applicable regulatory/industry requirements, recommendations contained within the project geotechnical investigations, plan review, and field observations/testing.

***Hazardous Materials***

Impact: Proposed project site development could result in disturbances of soils or demolition of structures that could potentially release contaminants, as well as impacting existing groundwater monitoring wells (for an off-site remediation effort). Mitigation Measure 1: A qualified hazardous materials specialist shall review final project grading and development plans prior to approval to verify related conditions and assumptions in the project Phase I and Phase II Environmental Site Assessments or to identify modified and/or additional requirements. Mitigation Measure 2: After completion of final project grading and development plans, but prior to issuance of grading or building permits, a Hazardous Materials Remediation Plan (HMRP) shall be prepared by a qualified hazardous materials specialist. Mitigation Measure 3: All project dewatering operations, subsurface activities related to on-site remediation of liquefaction hazards and other pertinent activities, shall confirm with application related requirements in the ACWD Groundwater Protection Act.

***Noise***

Impact: Location of ground-mounted heating, ventilation and air conditioning equipment (HVAC) within 25 feet of adjacent residential property lines could result in a potentially significant direct impact. Mitigation Measure 1: For residences located

within 25 feet of ground-mounted HVAC equipment, attenuation of exterior HVAC noise levels to 45A- weighted decibels equivalent sound levels shall be ensured prior to issuance of a Certificate of Occupancy. Mitigation Measure 2: Prior to the issuance of building permits, the project applicant shall coordinate with the City's Public Works Director to change the posted speed limit along Enterprise Drive (between Hickory Street and Willow Street) to 25 mph. Mitigation Measure 3: Prior to the approval of building permits for residences along Enterprise Drive between Hickory Street and Willow Street, a site-specific acoustic analysis shall be conducted to ensure exterior and interior sound levels are equal to or less than the applicable allowable limits.

The review period for the SEIR ended on September 16, 2015. During the review period, the City received four comment letters from public agencies and the general public. Letters were received from the California Department of Transportation, the State Public Utilities Commission, Cargill, Inc., and Ashland, Inc. These letters have been addressed in the attached Final SEIR.

### **Attachments**

**Update** – At its meeting of December 8, 2015, the Planning Commission approved Resolutions 1918, 1919 and 1920 and by motion recommended that the City Council approve TM-14-47, Vesting Tentative Map 8099 and by motion approved ASR-14-51, an Architectural and Site Plan Review.

**Action** – It is recommended that the City Council: (1) Adopt a resolution making certain findings and adopt a Supplemental Environmental Impact Report (E-14-46) to the Environmental Impact Report (State Clearinghouse No. 2010042012) for the Dumbarton Transit Oriented Development Specific Plan; (2) Introduce an ordinance rezoning (RZ-14-48) an approximately 41-acre area (APN's: 537-852-9; 537-852-10; 537-852-11) from MT-1 (High-Technology Park District) to MDR-FBC (Medium Density Residential – Form Based Codes) and HDR-FBC (High Density Residential – Form Based Codes); (3) By resolution, approve P-14-49, a planned unit development and U-14-50, a conditional use permit, for a 589-unit residential project (Gateway Station West) located within the Dumbarton Transit Oriented Development Specific Plan area at the western edge of the City of Newark; (4) Adopt a resolution approving TM-14-47, Vesting Tentative Map 8099, to construct approximately 589 residential units; (5) By motion, approve ASR-14-51, an Architectural and Site Plan Review; and (6) By resolution, authorize the Mayor to sign a Community Financing Agreement with Dumbarton Area 2, LLC.

## **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 Authorization for the purchase of four (4) new, replacement vehicles for the Public Works Department from Wondries Fleet Group – from Maintenance Supervisor Connolly. (RESOLUTION)**

**Background/Discussion** – The 2014 – 2016 Biennial Budget for Fiscal Year 2015 – 2016 includes funding for the replacement of four (4) vehicles currently used by the Public Works Department as a part of the Equipment Replacement Budget.

Authorization is requested to participate in an intergovernmental procurement process for the purchase of four (4) 2016 Ford SUV Escapes.

An intergovernmental procurement process (also known as a “piggyback”) is an alternative option to Newark’s formal bidding process. By piggybacking onto another agency’s contract, the City would save the cost and time associated with the formal bid process but be able to be assured of competitive set prices established by another agency’s formal bidding process.

Upon completion of a formal bidding process, the State of California entered into a master contract and a procurement contract with Wondries Fleet Group for the purchase of vehicles. This contract is in effect through February 2, 2016 and includes a provision to allow other agencies to participate.

The competitive process used by the State of California has been reviewed by the Public Works Department and satisfies the City of Newark’s requirements for the proposed vehicle purchases.

Based upon the State of California contract with Wondries Fleet Group, the vehicles will cost \$107,811.89.

**Action** - It is recommended that the City Council, by resolution, authorize the purchase of four (4) new 2016 Ford SUV Escapes from Wondries Fleet Group for \$107,811.89 through the intergovernmental procurement process.

**F.2 Second reading and adoption of an ordinance rezoning 68.55 acres of Vesting Tentative Tract Map 8270 from R-6000 (Low Density Residential) to LDR-FBC (Low Density Residential – Form Based Codes) and 3 acres from R-6000 (Low Density Residential) to POS-FBC (Parks and Open Space – Form Based Codes) for the Sanctuary Project, 386 single family units at the northwest corner of Cherry Street and Stevenson Boulevard – from Assistant City Manager Grindall and City Clerk Harrington. (ORDINANCE)**

**Background/Discussion** – On December 10, 2015, the City Council introduced an ordinance amending Title 17 (Zoning) of the Newark Municipal Code being the City of Newark Zoning Ordinance by changing the zoning of a specified area in the City of

Newark. This ordinance will rezone approximately 68.55 acres in Vesting Tentative Tract Map 8270 from R-6000 (Low Density Residential) to LDR-FBC (Low Density Residential – Form Based Codes) and approximately 3 acres from R-6000 (Low Density Residential) to POS-FBC (Parks and Open Space – Form Based Codes). This rezoning is for the Sanctuary Project consisting of 386 single family units at the northwest corner of Cherry Street and Stevenson Boulevard

#### **Attachment**

**Action** - It is recommended that the City Council, by an ordinance amend Title 17 (Zoning) of the Newark Municipal Code being the City of Newark Zoning Ordinance by changing the zoning of a specified area in the City of Newark.

### **F.3 Acceptance of work with VSS International, Inc. for 2015 Street Slurry Seal Program, Project 1094 – from Associate Civil Engineer Tran. (RESOLUTION)**

**Background/Discussion** – On August 17, 2015, the City of Newark awarded a contract to VSS International, Inc. for the 2015 Street Slurry Seal Program, Project 1094. This project provided an application of sand, aggregate, and asphalt emulsion mixture and pavement re-striping on various City streets.

This project was completed on time and within the original budget using Alameda County Measure B Sales Tax funds, Vehicle Registration Fee funds, and the Traffic Congestion Relief Fund.

#### **Attachment**

**Action** - It is recommended that the City Council, by resolution, accept the work with VSS International, Inc. for 2015 Street Slurry Seal Program, Project 1094.

### **F.4 Acceptance of the Comprehensive Annual Financial Report (CAFR) for the period ending June 30, 2015 – from Administrative Services Director Woodstock. (MOTION)**

**Background/Discussion** – As part of the year-end closing process, staff presents the audited Comprehensive Annual Financial Report (CAFR) for the fiscal year ending June 30, 2015. The financial statements included in this report provide information on the City's year-end financial condition and the results of operation for the Fiscal Year 2014-2015. The report was audited by our independent auditors, Badawi & Associates, who have issued an unqualified opinion on the report.

The City's financial statements were prepared according to the requirements of the Government Accounting Standards Board (GASB). The two government-wide financial statements provide a broad view of the City's financial position and activities in a manner similar to the private sector business reporting. The Statement of Net Position provides information about the financial position of the City, including all assets and liabilities.



The Statement of Activities provides information about the City’s revenues and expenses. In the Transmittal Letter and Management Discussion and Analysis, the Administrative Services Director provides a narrative overview and analysis of the City’s financial activities and performance during the fiscal year.

Copies of the CAFR have been provided to the City Council. A copy has also been placed in the Newark Library.

**Attachment**

**Action** - It is recommended that the City Council, by motion, accept the Comprehensive Annual Financial Report (CAFR) for the period ending June 30, 2015.

**F.5 Acceptance of bid and award of contract to Kimberlite Corporation DBA Sonitrol for the Silliman Activity and Family Aquatic Center Video Surveillance System and associated budget amendment – from Recreation and Community Services Director Zehnder. (RESOLUTION)**

**Background/Discussion** – The existing security camera system at the Silliman Activity and Family Aquatic Center is antiquated and functionally obsolete. Only four of the existing eight cameras are functional at this time. In addition, only one of the two servers is currently operational and capable of limited storage of video feeds. This project will result in the replacement and upgrading of the security camera system at the Silliman Activity and Family Aquatic Center.

Requests for Proposals were issued to six vendors. Bids for the project were opened on October 27, 2015 with the following results:

<b>Bidder</b>	<b>Installation/Equipment</b>	<b>Monthly Service</b>
Kimberlite Corporation D.B.A. Sonitrol	\$ 33,694.00	\$ 424.00
Tyco Integrated Security	\$ 55,318.60	\$ 740.83

After proposals were received, staff determined that the building security recordings would need to be retained for a minimum of one year to comply with the current government code. Low bidder Kimberlite Corporation D.B.A. Sonitrol was asked to submit a revised proposal to include a server capable of meeting these storage requirements. The revised proposal received for a 42TB rack-mounted server is \$8,688.00 with an additional monthly service fee of \$188.00. This brings the revised installation/Equipment cost to \$42,382.00 with a monthly service fee of \$612.00; well below the other bid received by Tyco Integrated Security.

Based on the two bids received with the revised proposal to meet the requirement for additional data storage, staff recommends an Agreement for Services with Kimberlite

Corporation D.B.A. Sonitrol. Sonitrol will install and maintain up to thirteen (13) IP 1080P cameras per agreed upon indoor and outdoor locations, covering entry and exit points, portions of the parking lots, front desk operations, Fitness Area and Preschool Patio (proposed site location map attached); one 34TB rack-mounted server with remote viewing via OS and android compatible devices; Uninterrupted Power Supply (UPS) with thirty minute run time; eighteen channel Power Over Ethernet Switch, and all new cabling and camera mounts. The agreement will also include a monthly service contract for one (1) year to include servicing and replacement or repair of all video components and systems.

As a result of this new system, the Citywide Records Retention Schedule will need to be revised to address the retention and destruction of the videos. The City Clerk will submit an updated Schedule at a future City Council meeting.

Funding for the video surveillance system is available through the Fiscal Year 2015-2016 Equipment Replacement Program. A budget amendment in the amount of \$2,500 is requested for Fiscal Year 2015-2016. The budget amendment is needed for the monthly service fee.

#### **Attachment**

**Action** - It is recommended that the City Council, by resolution, accept the bid and revised proposal and award a contract to Kimberlite Corporation D.B.A. Sonitrol for the Silliman Activity and Family Aquatic Center Video Surveillance System and approving a budget amendment to the 2014-2016 Biennial Budget for Fiscal Year 2015-2016.

## **NONCONSENT**

### **F.6 Declaration of emergency expenditure for replacement of heater for Lazy River at Silliman Activity and Family Aquatic Center – from Maintenance Supervisor Connolly. (RESOLUTION)**

**Background/Discussion** – Over the holiday furlough, the heater equipment for the Lazy River at the Silliman Activity and Family Aquatic Center failed and cannot be repaired. The original unit will need to be replaced. The Lazy River is used by aquatic exercise classes in addition to recreational use on a regular basis. It is anticipated the cost of replacing the heater will be \$32,000 to \$40,000 and will take approximately 6 to 10 weeks to build and install. The City of Newark's Purchasing Ordinance and the Public Contract Code require expenditure for a repair of this magnitude to follow a competitive formal bid process. The formal bid process would add two to three months to a build and install.

A public works contract can be awarded without competitive bidding, provided that the legislative body makes a finding and passes a resolution by four-fifths vote that an emergency exists. Such an emergency would mean that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property. In the interest of public convenience and safety, it is recommended the City Council make a finding and adopt a resolution that an emergency exists as a result of the equipment failure of the heater for the Lazy River at Silliman Activity and Family Aquatic Center. Adoption of this resolution will

allow staff to proceed with a quotation and negotiation process to have the repairs completed in a timely manner. Funding is available in the Equipment Replacement Fund for the repair.

#### **Attachment**

**Action** - It is recommended that the City Council, make a finding and adopt a resolution declaring an emergency exists as a result of equipment failure of the heater for the Lazy River at Silliman Activity and Family Aquatic Center and the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property and authorize the City Manager to sign documents necessary for the repair.

#### **F.7 Introduction of an Ordinance amending Chapter 5.36 (Medical Marijuana Dispensaries) to Title 5 (Business Licenses and Regulations) of the Newark Municipal Code Clarifying and Affirming that Commercial Cultivation of Medical Marijuana is Prohibited in the City of Newark – from City Manager Becker and City Attorney Benoun. (INTRODUCTION OF ORDINANCE)**

**Summary** – Recent changes in state law force local public agencies to determine whether to regulate or ban commercial cultivation of medical marijuana prior to March 1, 2016. The City Council expressly banned medical marijuana dispensaries in 2011. With respect to commercial cultivation of medical marijuana, the Newark Zoning Ordinance currently does not authorize it as it is neither a permitted use nor conditionally permitted use in any zoning district. However, in an abundance of caution, staff recommends that the Council introduce an ordinance making it clear that commercial cultivation of medical marijuana is prohibited. This would serve to eliminate the potential negative side effects resulting from medical marijuana cultivation, including risk of criminal activity such as burglary, trespass and robbery, potential fire hazards, and environmental degradation.

Cultivation for non-commercial, personal purposes by qualified patients and primary caregivers would be permitted by this proposed ordinance. Both qualified patients and primary caregivers would be allowed to grow medical marijuana within a limited confined area defined by the new State law. This amounts to a 100 square feet area for patients and 500 square feet for a primary caregiver who has a maximum of 5 patients. The patients and primary caregivers could only use the marijuana for their own personal medical use and cannot give or sell marijuana to anybody else.

**Background/Discussion** – Last fall, Governor Brown signed into law three bills collectively known as the Medical Marijuana Regulation and Safety Act (“MMSRA”). The MMSRA establishes a State licensing scheme for commercial medical marijuana activities, including dispensaries and cultivation. At the same time, the MMSRA protects local control by allowing cities to either ban or regulate medical marijuana dispensaries and cultivation. However, there is a looming deadline for cities to address medical marijuana cultivation: each city must make this decision prior to *March 1, 2016*, otherwise the State will be the “sole licensing authority for medical marijuana cultivation applicants” in that city.

### Legislative History of Marijuana

Marijuana has been illegal under Federal law since the enactment of the Controlled Substances Act in 1970. The Act defined marijuana as having no accepted medical use and made it illegal to import, manufacture, distribute, possess, or use marijuana in the United States.

In 1996, California voters approved Proposition 215, commonly known as the Compassionate Use Act (“CUA”). The CUA creates limited exemptions from State criminal liability for seriously ill, qualified patients who are in need of medical marijuana for specified purposes and who obtain and use marijuana under limited, specified circumstances.

In 2004, the California State Legislature enacted the Medical Marijuana Program Act (“MMPA”), which clarified the scope of the CUA and allowed cities to adopt and enforce medical marijuana regulations.

### Case Law Regarding Medical Marijuana

In 2013, the California Supreme Court held that neither the CUA nor the MMPA limit local regulation of land use for medical marijuana. Other California Appellate Courts have similarly recognized that local regulation of medical marijuana, including the prohibition of cultivation of all marijuana within a city, does not conflict with either the CUA or MMPA. Additionally, both State and Federal Courts recognize local concerns about illegal non-medical marijuana use by persons claiming to be patients and caregivers in connection with the CUA and MMPA.

### Medical Marijuana in Newark – Ban on Dispensaries Adopted in 2011

In 2006, City staff received numerous inquiries from persons interested in opening medical marijuana dispensaries. Staff indicated that such a use is neither permitted nor conditionally permitted in any zoning district and further indicated that staff would not recommend approval of such a use because both the possession and sale of marijuana is illegal under Federal law. Nonetheless, the inquiries persisted. As a result, the Newark City Council adopted an ordinance making it clear that the City will not issue any entitlements, licenses, or permits for a use that is illegal under State or Federal law. (Section 1.04.100 of the Newark Municipal Code.)

In spite of taking such action, a medical marijuana dispensary opened in the City – even after staff notified the operator that dispensaries are illegal under the Municipal Code. Staff prosecuted the dispensary administratively and the hearing officer’s decision (imposition of a \$48,500 fine) was upheld by the California Court of Appeal. The dispensary ultimately closed after a criminal investigation led by the Southern Alameda County Major Crimes Task Force resulted in the seizure of multiple firearms and a substantial amount of cash and marijuana.

During this administrative process and after a second illegal dispensary opened, the City Council adopted Ordinance No. 450, making it expressly clear that medical marijuana dispensaries are prohibited in the City. Ordinance No. 450 was not intended to be a “new” ordinance, but instead was merely a “clarification” that existing zoning laws do not authorize medical marijuana dispensaries.

### Effects of Cultivation

The City of Newark, along with other California cities and counties, has experienced negative impacts associated with the cultivation of medical marijuana. The Newark Police Department reports that it receives 3 to 5 complaints per month from citizens, including everything from offensive odors to excessive foot traffic and excessive (and typically erratic) driving.

Newark Police have also investigated several illegal cultivation operations in Newark, including an investigation last month in December that resulted in the seizure of nearly 300 marijuana plants at a residential location on Munyan Street. Newark Police discovered unpermitted and unsafe building and structural modifications to support marijuana growth, including rebuilt walls and exposed electrical wires. These modifications pose significant public safety concerns.

Additionally, it is not uncommon for landlords to file property loss reports with Newark PD complaining about damaged residential properties. The complaints stem from tenants who abandon the property and leave behind evidence of substantial marijuana growth, including heat lamps, unpermitted and exposed electrical wiring, and sometimes firearms. In one such circumstance at a residential location in Union City, police investigated a home that had been abandoned, but the tenants had left the heat lamps on. One wall was heated to 142 degrees.

Furthermore, marijuana cultivation can also potentially attract criminal activity in the form of home burglaries given the value of marijuana being grown. The cost of marijuana production can be expensive due to the rising costs of electricity. This either results in the theft of marijuana by a burglar and/or the grower installing an electric bypass that illegally steals power.

Firearms are often associated with marijuana cultivation as Newark Police have seized firearms (including shotguns) from marijuana cultivators. These concerns extend beyond Newark, as Hayward Police seized over fifty (50) firearms during one investigation in Hayward, most of which were found in a warehouse.

Marijuana cultivation can also lead to the establishment of “Butane Honey Oil conversion labs”, which pose significant public safety concerns. Some cultivators use butane to heat or cook dry marijuana, which converts the cannabis into liquid form, thus raising the concentration of THC, which, in turn, increases profits. Butane gas can be used as a safe ignition source to fuel fires, but can be a dangerous gas if not ventilated carefully as it has

the potential to ignite. For example, a few years ago a Butane Honey Oil conversion lab led to an explosion in an apartment complex in Walnut Creek that severely damaged the building.

Butane Honey Oil conversion labs are not unheard of in Newark. Just last year Newark Police investigated one such lab that was found in a garage in a residential neighborhood off of Bettencourt Street. The case resulted in an arrest for five felony counts of child endangerment as children were residing in the house.

### Proposed Ordinance

The Newark Municipal Code currently does not authorize commercial cultivation of medical marijuana anywhere in the City based on two facts. First, commercial cultivation of medical marijuana is not listed as a permitted or conditionally permitted use in any zoning district. Second, the Newark Municipal Code expressly states that the City will not issue a license for a use that is inconsistent with Federal law. Since the manufacturing and possession of marijuana is illegal under the Controlled Substances Act, the Newark Municipal Code would not authorize the City to issue any permit for marijuana cultivation.

However, in abundance of caution and in light of deleterious effects commercial cultivation has on our residents and community, staff recommends that the Council introduce an ordinance clarifying and confirming that commercial cultivation of medical marijuana is not permitted under the Municipal Code and that the City shall not issue any licenses to any potential operators. Staff believes this ordinance will alleviate concerns regarding potential illegal activity, reduce nuisance complaints and the need for police service calls, and will facilitate and promote the safety and well-being of our residents.

Finally, while staff has concerns about large scale commercial cultivation, staff does not share the same concerns for small scale *personal* cultivation by “qualified patients” who have a legitimate medical condition. The proposed ordinance would authorize both “qualified patients” and “primary caregivers” to cultivate medical marijuana under limited and specified circumstances established by the new State law. The City would allow this personal cultivation but, like the State, would not issue licenses for such activity.

Qualified patients are people who have a legitimate medical condition and who receive written authorization from a medical professional to use medical marijuana. The ordinance would authorize them to grow medical marijuana only for their own personal consumption and in an area no greater than 100 square feet. They would not be allowed to sell or give the marijuana to any other person and would have to comply with all other State requirements.

Primary caregivers, as defined by State law, are individuals who have assumed the responsibility for the health and safety of qualified patients. Primary caregivers would be allowed to cultivate marijuana in an area no greater than 500 square feet and have a maximum of five patients. Primary caregivers would likewise not be allowed to sell or

distribute the marijuana to anybody other than their patients and comply with all other State requirements.

**Attachment**

**Action** – For the reasons outlined above, staff recommends that the City Council introduce an ordinance amending Chapter 5.36 (Medical Marijuana Dispensaries) of Title 5 (Business Licenses and Regulations) of the Newark Municipal Code to clarify and affirm the prohibition of commercial cultivation of medical marijuana.

**G. CITY ATTORNEY REPORTS**

**H. ECONOMIC DEVELOPMENT CORPORATION**

**I. CITY COUNCIL MATTERS**

**I.1 Appointment of Eric Hentschke to the Alameda County Mosquito Abatement District – from Mayor Nagy. (RESOLUTION)**

**Background/Discussion** – William M. Spinola has served as Newark’s representative to the Alameda County Mosquito Abatement District since the early 1980s. Mr. Spinola’s appointment expires this month and he is not seeking reappointment.

Longtime Newark resident Eric Hentschke has agreed to serve as Newark’s appointment to the Alameda County Mosquito Abatement District.

**Attachment**

**Action** - It is recommended that the City Council, by resolution, approve the appointment of Eric Hentschke to the Alameda County Mosquito Abatement District, for a term to expire on January 31, 2018.

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

**J.1 Resolution of the City of Newark acting as the Successor Agency to the Newark Redevelopment Agency adopting and endorsing the Recognized Obligation Payment Schedule for the period of July 2016 to June 2017 (ROPS 16-17) – from Administrative Services Director Woodstock. (RESOLUTION)**

**Background/Discussion** – Assembly Bill (AB) 1x26 and the subsequent amendment, AB 1484, require agencies to adopt a Recognized Obligation Payment Schedule (ROPS) for each six (6) month period in which the Successor Agency is closing out the obligations of the former Newark Redevelopment Agency.

The Successor Agency and the Oversight Board previously have approved several ROPSs for periods between January 2012 and June 2016.

The only obligation remaining from the dissolution of the Newark Redevelopment Agency is the loan from the City to the Newark Redevelopment Agency. In 2012, the Governor signed AB 1484 which updated the procedures for the dissolution of the redevelopment agencies and indicated that a loan can be considered an obligation if the Agency obtains a Finding of Completion and the Oversight Board approves the loan as an obligation. The State Department of Finance issued a Finding of Completion to the Successor Agency and the Oversight Board approved the loan.

The outstanding debt on the loan is \$356,235. Per Health and Safety Code (HSC) Section 34191.4 (b) (2), the Agency can request \$153,326 in Fiscal Year 2016-2017 for repayment of the loan. Per HSC 34171 (b), the City can be reimbursed for administrative costs up to 3% of the property tax allocated to the Successor Agency which is \$9,464 in Fiscal Year 2016-2017. New for Fiscal Year 2016-2017 is that there will only be one ROPS for the whole year that contains both 6-month periods.

Upon approval by the Successor Agency, the ROPS 16-17 will be presented to the Oversight Board for consideration.

#### **Attachment**

**Action** - It is recommended that the City Council acting as the Successor Agency to the Newark Redevelopment Agency, by resolution, adopt and endorse the Recognized Obligation Payment for the period of July 2016 to June 2017 (ROPS 16-17).

### **K. ORAL COMMUNICATIONS**

### **L. APPROPRIATIONS**

**Approval of Audited Demands for the City Council meeting of January 14, 2016. (MOTION)**

### **M. CLOSED SESSION**

- M.1 Closed session pursuant to Government Code Section 54957  
Public Employee Performance Evaluation  
Title: City Manager.**



**Background/Discussion** – City Manager Becker has requested that the City Council convene in closed session pursuant to Government Code Section 54957 for a performance evaluation.

**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, 5<sup>th</sup> 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.