



# CITY OF NEWARK CITY COUNCIL

37101 Newark Boulevard, Newark, CA 94560-3796 • 510-578-4266 • E-mail: [city.clerk@newark.org](mailto:city.clerk@newark.org)

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

## AGENDA

Thursday, May 26, 2016

**A. ROLL CALL**

**B. MINUTES**

- B.1 Approval of Minutes of the regular City Council meeting of Thursday, May 12, 2016. (MOTION)**

**C. PRESENTATIONS AND PROCLAMATIONS**

- C.1 Presentation of Awards for Students, Teacher, and Classified Employee of the Year. (PRESENTATION)**

**Background/Discussion** – The Newark Unified School District has selected a Student of the Year from each of our local schools. The District has selected a Teacher and Classified Employee of the Year. The Newark Rotary Club will present each individual with a certificate.

- C.2 Proclaiming June as Celebrating Business Month in Newark.(PROCLAMATION)**

**Background/Discussion** – June is Celebrating Business Month in the City of Newark. Chamber President/CEO Valerie Boyle and members of the Newark Chamber of Commerce will accept the proclamation at the meeting.

**D. WRITTEN COMMUNICATIONS**

**E. PUBLIC HEARINGS**

**F. CITY MANAGER REPORTS**

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

**CONSENT**

- F.1 Authorize the Administrative Services Director to submit applications for payment programs and related authorizations through the Department of Resources Recycling and Recovery (CalRecycle) – from Recycling Assistant Oeverndiek. (RESOLUTION)**

**Background/Discussion** – Pursuant to Public Resources Code sections 48000 et seq., 14581, and 42023.1(g), the Department of Resources Recycling and Recovery (CalRecycle) has established various payment programs available to qualifying jurisdictions. Averaging \$11,250 per year for the City of Newark, these payments are used to help promote beverage container recycling. Eligible uses of the funds include litter prevention and cleanup where the waste stream includes beverage containers that will be recycled, public education promoting beverage container recycling, and the purchase of multi-recycling bins that include beverage container recycling. A revision to the program now requires the City Council to declare, by resolution, certain authorizations related to the administration of the payment program and reporting requirements on use of the funds received.

**Attachment**

**Action** - It is recommended that the City Council, by resolution, authorize the Administrative Services Director to submit applications for payment programs and related authorizations through the Department of Resources Recycling and Recovery (CalRecycle).

- F.2 Authorization for the City Manager to sign an Agreement with the Newark Chamber of Commerce for promotional services and for the rental of office space at 35501 Cedar Boulevard – from Assistant City Manager Grindall. (RESOLUTION)**

**Background/Discussion** – The current Agreement for rental of office space by the Newark Chamber of Commerce and promotional services expires on June 30, 2016. The Newark Chamber of Commerce wishes to renew the Agreement and continue to receive funding for its promotion of businesses marketing. A new Agreement has been prepared, the conditions of which remain essentially the same as in the past. The Chamber provides valuable expertise in industrial and commercial development for our community and staff recommends that the City Council authorize renewal of the lease and funding, through June 30, 2017, at a rental fee of \$1 per month.

**Attachment**

**Action** - It is recommended that the City Council, by resolution, authorize the City Manager to sign an Agreement with the Newark Chamber of Commerce for promotional services and for the rental of office space at 35501 Cedar Boulevard.

**F.3 Authorization for the Mayor to sign an agreement with *The Tri-City Voice* for legal advertising services for Fiscal Year 2016-2017 – from City Clerk Harrington. (RESOLUTION)**

**Background/Discussion** – California Government Code requires the City of Newark (City) to print legal notices in an adjudicated newspaper of general circulation. An adjudicated newspaper of general circulation does not exist in the City and the City is legally required to use an adjudicated newspaper that is published nearest the City. The Public Contract Code requires the City to invite bids for legal advertising and award the contract on a fiscal year basis; however, unlike public works projects, the City is not obligated to select the lowest bidder in selecting legal advertising services. *The Argus* and *Tri-City Voice* are the only newspapers that currently meet the legal requirements for publishing legal notices. Quotes were requested from each newspaper.

*Tri-City Voice* has a circulation of 4,000 newspapers within the City of Newark. These are distributed mainly through free stacks/racks placed around the City and paid subscriptions. *The Argus* has 2,437 paid subscriptions within the City of Newark and does not provide free newspapers.

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 \$72.50 and *The Tri-City Voice* quoted \$83.75. *Tri-City Voice* provided the same rate as last year's quote. For the current fiscal year, the City has spent approximately \$2,500 on legally mandated advertising. Based on the quotes, the price difference is nominal.

Although cost is one of the evaluating factors, the City is not bound to award the contract based on price alone. An Appellate Court case explains it this way: "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*, 83 Cal App 2d 22 (1947) at 27) The same case also holds that the Council has discretion to determine which bid is better, taking into account "other matters affecting the value to the public".

The City has a strong desire to provide easy and transparent access to matters affecting the City and community. *Tri-City Voice* has a significantly larger circulation within the City than *The Argus*. Given the larger circulation of *Tri-City Voice*, staff recommends awarding the agreement to *Tri-City Voice*.

**Attachment**

**Action** - It is recommended that the City Council, by resolution, authorize the Mayor to sign an agreement with *Tri-City Voice* for legal advertising services for Fiscal Year 2016-2017.

**NONCONSENT****F.4 Direction to file Annual Reports and intention to order improvements for Landscaping and Lighting District Nos. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, and 18 and setting June 23, 2016 for the public hearing – from Public Works Director Fajeau. (RESOLUTIONS-2)**

**Background/Discussion** – The City Council has previously created Landscaping and Lighting District Nos. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17 and 18 to provide for the operation and maintenance of certain landscaping and lighting improvements. These districts are as follows:

Landscaping and Lighting District No. 1: Central Avenue between Filbert Street and Willow Street - Provides for the maintenance of median landscaping on Central Avenue between Filbert Street and Willow Street and buffer landscaping adjacent to the Alameda County Flood Control channel immediately west of Filbert Street, and for the maintenance and operation of median street lights along this portion of Central Avenue.

Landscaping and Lighting District No. 2: Jarvis Avenue and Newark Boulevard adjacent to Dumbarton Technology Park and Four Corners shopping centers - Provides for the maintenance of Jarvis Avenue and Newark Boulevard median island and in-tract buffer landscaping and landscape irrigation systems adjacent to and within the boundaries of Tract 5232, the Dumbarton Industrial Park, and the Four Corners shopping centers.

Landscaping and Lighting District No. 4: Stevenson Boulevard and Cherry Street adjacent to New Technology Park - Provides for the maintenance of Stevenson Boulevard median island landscaping from the Nimitz Freeway to the railroad tracks west of Cherry Street and maintenance of median island and up to 50 feet of greenbelt landscaping adjacent to Cherry Street and the future interior loop streets within the boundaries of New Technology Park, and the maintenance of landscaping across the Newark Unified School District property on Cherry Street.

Landscaping and Lighting District No. 6: Cedar Boulevard, Duffel Redevelopment Area No. 2 - Provides for the maintenance of all street landscaping within the public right-of-way, and landscaping and landscape irrigation systems within easement areas and developed properties in Redevelopment Area No. 2 at Cedar Boulevard and Stevenson Boulevard plus the Stevenson Station Shopping Center.

Landscaping and Lighting District No. 7: Newark Boulevard, Rosemont Square Shopping Center - Provides for the maintenance of buffer landscaping and the landscape irrigation system within the public right-of-way and easement areas for Rosemont Square Shopping Center.

Landscaping and Lighting District No. 10: Consolidated District - Provides for the maintenance of landscaping and landscape irrigation systems within the right-of-way and easement areas for all of the Inactive Subdistricts.

Landscaping and Lighting District No. 11: Edgewater Drive medians - Provides for the maintenance of landscaped medians on Edgewater Drive.

Landscaping and Lighting District No. 13: Citation Homes and Bren Development/Thornton Avenue - Provides for maintenance of the landscaping and lighting irrigation systems for Thornton Avenue, Cedar Boulevard, Willow Street, and other streets within these subdivisions. This district was relieved from the responsibility for maintenance of median landscaping on Thornton Avenue in May 1997. This district is therefore now an inactive district.

Landscaping and Lighting District No. 15: Robertson Avenue at Iris Court - Provides for the maintenance of the landscaping and irrigation systems on Robertson Avenue at Iris Court.

Landscaping and Lighting District No. 16: Kiote Drive in Tract 6671 - The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement along the street frontage of Kiote Drive in Tract 6671 and the landscaping, irrigation system, recreation facilities, and storm drainage pump station and filtration system for the mini-park common area.

Landscaping and Lighting District No. 17: Newark Boulevard and Mayhews Landing Road in Tract 7004 – The maintenance of landscaping and the landscape irrigation system within the public right-of-way of the Newark Boulevard and Mayhews Landing Road frontages of Tract 7004.

Landscaping and Lighting District No. 18: Cedar Boulevard median on the frontage of Tract 8130 – The maintenance of landscaping and the landscape irrigation system within the Cedar Boulevard median area along the frontage of Tract 8130 between Central Avenue and Smith Avenue.

In the opinion of bond counsel, Brown Act amendments requiring two hearings for increasing assessments do not apply to the annual budget hearings unless there is an addition to the improvements or a change in the formula for allocating the cost among benefited properties. Neither of these cases applies for each of the above districts and the annual public hearings are simply to adopt a budget for the upcoming year.

Upon conclusion of the annual public hearings, the assessments for the cost of the work are added to the tax bills for those property owners included within the boundaries of the particular Landscaping and Lighting District. Excess funds, or funds collected for which no work was done, can be carried over from one year to the next.

#### **Attachment**

**Action** - It is recommended that the City Council, by resolutions, direct the filing of annual reports for Landscaping and Lighting District Nos. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, and 18 in accordance with the provisions in the Landscaping and Lighting Act of 1972 and confirm the intent to order the improvements by setting the date for the annual public hearings for these districts for June 23, 2016.

- 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 for the City Council meeting of May 26, 2016. (MOTION)**

**M. CLOSED SESSIONS**

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

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

- M.2 Closed Session for Conference with Legal Counsel pursuant to Government Code Section 54956.9(d)(1), Existing Litigation, Allstate v. City of Newark, Alameda County Superior Court Case No. HG15794244 – from City Attorney Benoun.**

**Background/Discussion** – The City Attorney has requested a closed session to discuss existing litigation: Allstate v. City of Newark, Alameda County Superior Court Case No. HG15794244.

**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.