



CITY OF NEWARK CITY COUNCIL

37101 Newark Boulevard, Newark, CA 94560-3796 • 510-578-4266 • E-mail: city.clerk@Newark.org

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

AGENDA

Thursday, December 13, 2018

CITY COUNCIL:

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

CITY STAFF:

John Becker
City Manager

Terrence Grindall
Assistant City Manager

Sandy Abe
Human Resources Director

Soren Fajeau
Public Works Director

Michael Carroll
Police Chief

David Zehnder
Recreation and Community
Services Director

David J. Benoun
City Attorney

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:

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

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. 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.



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A. ROLL CALL

B. MINUTES

- B.1 **Approval of Minutes of the special and regular City Council meetings of November 8, 2018. (MOTION)**

C. PRESENTATIONS AND PROCLAMATIONS

- C.1 **Presentation of election certificates and administration of Oath of Office – from City Clerk Harrington. (PRESENTATION)**

Background/Discussion – California Elections Code Section 10229 allows for the appointment to office of the persons nominated if there are not more candidates than offices to be elected. On August 20, 2018, the City Council of the City of Newark adopted Resolution No. 10,837, canceling the city election and providing for appointment of Mayor Alan L. Nagy to a two-year term, and Council Members Michael K. Hannon and Mike Bucci to four-year terms.

The Election Code states that the persons appointed shall take office and serve exactly as if elected at a municipal election for their office. Certificates of Election will be presented and the Oath of Office administered at the City Council meeting.

- C.2 **Commending City Manager John Becker on his retirement. (COMMENDATION)**

Background/Discussion – John Becker was hired by the City of Newark in April 1991 as an Administrative Assistant for the Fire Department. He was subsequently promoted to the positions of Senior Administrative Analyst, Finance/Information Systems Manager, Finance Director, Administrative Services Director, and Assistant City Manager. Mr. Becker has served as Newark's City Manager since January 1, 2006 and has announced his retirement effective December 28, 2018.

A commendation will be presented to Mr. Becker at the City Council meeting in honor of his retirement.

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

- E.1 Hearing to consider adopting the California Environmental Quality Act (CEQA) Initial Study and Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program (MMRP) for the ‘Cargill Plummer Slough Bridge Project’, for a clear span bridge over Plummer Slough within Cargill, Incorporated’s solar salt production facility at 7220 Central Avenue – from Assistant City Manager Grindall. (RESOLUTION)**

Background/Discussion – Cargill, Incorporated (Cargill) operates a solar salt production facility located at 7220 Central Avenue where salt is produced using bay water and evaporation. The only existing access road used by Cargill related vehicles for operations is located immediately adjacent to a new residential development that is currently under construction. The purpose of the proposed project is to provide an alternate and direct access route across Cargill’s facility for Cargill-operations related vehicles, further away from the new residential development under construction. The new access route would be in addition to the existing access route that runs just outside the southern boundary of the new residential development. The installation of the bridge and provision of an alternate access route will improve public safety and public health, as well as permit Cargill to move equipment across Plummer Slough (which divides Cargill’s plant site) and streamline operations.

Surrounding land uses near the project site include open space to the north, diked salt marsh to the east, and salt ponds to the south and west. The project site is located within an operational salt production facility. All nearby roads are levee access roads. The nearest public access areas (San Francisco Bay Trail, Hickory Street, and Central Avenue) are located approximately 0.4 mile northeast of the project site. The new residential area under development is located approximately 0.4 mile to the northeast of the project site at the northeast intersection of Hickory Street and Central Avenue.

Bridge Installation: The project includes the placement of a 24-foot-wide, 61-foot-long concrete bridge supported by cement wingwalls across the span of Plummer Slough. The bridge would consist of six precast, prestressed, concrete panels that would then be topped with a cast-in-place, reinforced concrete topping slab. The abutments on either side of Plummer Slough would each be supported by five, 26-inch-diameter Tubex pilings. A 3 foot 6 inch concrete barrier would be installed on either side of the proposed bridge. All construction of the permanent structures would be conducted within the upland levee areas on-site.

Limited Levee Roadway Improvements: The project includes limited levee roadway improvements on the existing access roads on each side of the proposed bridge approaches. A culvert would be also placed under the roadway within an existing brine channel.

Site Access and Equipment Staging: The current haul route used by Cargill vehicles makes use of an access road that is connected to the Cargill facility circulation system,

runs parallel and to the south of Central Avenue, and runs directly adjacent and to the north of Cargill crystallizer beds. Cargill vehicles follow this road as it bends right and then east along Plummer Slough until it ends at Willow Street. From Willow Street, Cargill vehicles turn left onto Central Avenue, right onto Hickory Street, and then left onto another unmarked access road in order to access their western salt ponds. The proposed project would install a clear span bridge over Plummer Slough adjacent to Cargill's salt ponds, creating an alternative access route that would allow Cargill to bring within its property traffic that would otherwise run through public streets and adjacent to residential development. Once implemented, Cargill vehicles would be able to follow the access road from Cargill's main operations facility to the western salt ponds along one connected access road. During construction, the site would continue to be accessed by construction workers and equipment via the current access route. The construction equipment staging areas would be placed along the current access roads, entirely within the man-made levees.

Construction Schedule and Timing: It is anticipated that construction of the proposed project would require approximately six months. The proposed hours of construction would not exceed what is stipulated by City of Newark, which allows construction activities to take place between the hours of 8:00 a.m. to 7:00 p.m. Monday through Friday.

Initial Study/Mitigated Negative Declaration (IS/MND)

A Draft IS/MND (Attachment 1A) was prepared by WRA, Inc. for the proposed project dated June 2018 (State Clearinghouse No. 2018062017). It was circulated in accordance with the California Environmental Quality Act (CEQA) for 30 days to State and other reviewing agencies/jurisdictions, and interested parties, from June 12, 2018 – July 12, 2018.

The IS/MND finds that the following resources could be potentially impacted by this proposed project: Air Quality, Biological Resources, Cultural Resources, and Geology and Soils. However, mitigation measures are proposed that would ensure the potential impacts would be less than significant.

The proposed mitigation measures are typical for a modern construction project and detailed within the Mitigation Monitoring and Reporting Program (Attachment 1B), and summarized below:

1. Implementation of Bay Area Air Quality Management District (BAAQMD) construction best management practices to reduce air quality impacts associated with grading and new construction;
2. Biological mitigation measures designed to protect any nesting birds, small mammals, or other special-status wildlife species that may be on site;
3. Compliance with relevant federal, state, and regional permitting requirements, including obtaining an amendment to the existing BCDC Permit;
4. Archaeological and/or paleontological evaluation in the case of accidental discovery of resources;
5. Geological mitigation measures designed to protect construction workers and the future structural integrity of the bridge from seismic ground shaking; and

6. Best management practices to control stormwater during construction and post-construction.

These required mitigation measures will be incorporated into the project through a Condition of Approval requiring compliance with the IS/MND mitigation measures.

Comments on the IS/MND

The 30-day comment period on the Draft IS/MND closed on July 12, 2018. One comment letter was received during the comment period from Brian Wines of the San Francisco Bay Regional Water Quality Control Board (Water Board) on July 10, 2018 (Attachment 1C). A response to the Water Board's comment letter is also provided in Attachment 1C. As explained below, during the time since the City prepared the IS/MND and later submitted its response to the Water Board's comment letter, confusion regarding the U.S. Army Corps of Engineers' ("Corps") review of the project design arose. Cargill and the Corps are discussing this issue to ensure the Corps' approval was based on the project design as presented in the IS/MND. The Corps' approval of this project, either by concurring that the project is non-jurisdictional, that the project is already authorized by Cargill's current permit, or by issuing a permit amendment, will be a Condition of Approval of this project.

The comments on the Draft IS/MND did not identify any new or substantially more severe impacts overlooked in the Draft Initial Study/Proposed Mitigated Negative Declaration and the response to comments did not rely on changes to the project that might have a new or substantially more severe impact. Therefore, in accordance with CEQA Guidelines Section 15073.5, recirculation of a Draft Initial Study/Proposed Mitigated Negative Declaration was not required.

General Plan Consistency

The project site has a City of Newark General Plan designation of Conservation-Open Space and Salt Harvesting, Refining, and Production. The Conservation-Open Space designation allows for a limited number of recreational improvements, such as trails and interpretive nature centers; however, the primary purpose of this designation is to facilitate the restoration and enhancement of native habitat. The Salt Harvesting, Refining and Production designation allows man-made crystallizer beds used for salt crystallization, as well as related buildings, facilities, and operations for salt harvesting, stacking, sizing, packaging, and/or distribution. The proposed project, with mitigation and BMPs incorporated, is therefore consistent with the City's general vision as put forth in their General Plan.

Zoning Consistency

The project site is zoned RP-OS (Resource Production/Open Space) in the City of Newark Zoning Code. The RP designation, for the eastern side of the bridge, allows for General Industry, as well as uses ancillary to salt harvesting, refining, and production. The OS designation, for the western side of the bridge, allows for Park and Recreation Facilities. The proposed project conforms to the permitted uses and development standards for the RP designation as laid out in Chapter 17.11 of the City's

Zoning Code but does not conform to the permitted uses for the OS designation as laid out in Chapter 17.10. However, the degree of work within OS-designated land is minor, and additional mitigation and permitting will be required pursuant to the Bay Conservation and Development Commission (BCDC) non-material amendment (as discussed below). The project is generally consistent with zoning regulations.

External Agency Review

The Cargill facility currently operates pursuant to a 1995 permit issued by BCDC, as amended and extended. Cargill is preparing a non-material amendment request for that existing permit concurrently with this report. The bridge is designed to be cantilevered across Plummer Slough such that the entire structure remains above the high tide line. The 391 square feet (0.009 acre) of shading created by the bridge will be mitigated via in-kind replacement at a 1:1 ratio, or other methods deemed acceptable by BCDC.

Cargill has also previously applied and received regulatory permits from the Army Corps of Engineers (Corps) and the Regional Water Quality Control Board (RWQCB) to operate and maintain the salt ponds surrounding the project site. These permits were issued in 2010. In 2017 and 2018, Cargill provided the RWQCB and Corps with initial project plans. RWQCB made a determination the project is outside of its jurisdiction. The Corps determined that the potentially jurisdictional portions of the project were covered by Cargill's current permit. In September 2018, however, during the course of the CEQA process, Cargill realized the project plans reviewed by these agencies had been updated to those presented in the IS/MND. The major changes between the plans presented to the agencies and those evaluated in the IS/MND are: 1) removal of sheet piling from the design and 2) additional fill.

Because RWQCB had already determined the project was outside its jurisdiction, this change in project plans would not impact that determination. Cargill and the Corps are in communications regarding the limited portion of the project site that the Corps determined is jurisdictional. The project will be contingent on obtaining the Corps' approval of the project as either non-jurisdictional or permitted.

Cargill is also obtaining the approvals from the following agencies: Alameda County Flood Control District (encroachment permit), City of Newark (grading and structural permits), Alameda County Water District (drilling permit), California Department of Fish and Wildlife (Streambed Alteration Agreement).

If the City Council approves the Mitigated Negative Declaration, staff will review and consider approving a Grading and Structural permit for the construction of the Bridge.

Recommendation

The proposed bridge and minor roadway improvements will help to improve the circulation efficiency of the existing Cargill facilities and will reduce traffic, along with associated air and noise emissions, near the new residential development adjacent to Cargill's current access route. The project is generally consistent with the existing land use approvals for the site, the General Plan designation, zoning, and development

standards. Thus, staff recommends adoption of the IS/MND and approval of the proposed project.

At their November 13, 2018 regular meeting, the City of Newark Planning Commission recommended by resolution that the City Council: 1) adopt the CEQA IS/MND and MMRP for the Cargill Plummer Slough Bridge Project; and 2) approve the Grading Permit and Structural Permit for the Cargill Plummer Slough Bridge Project.

Attachments

Action - It is recommended that the City Council, by resolution, adopt the California Environmental Quality Act (CEQA) Initial Study and Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program (MMRP) for the Cargill Plummer Slough Bridge Project.

F. CITY MANAGER REPORTS

(It is recommended that Items F.1 through F.6 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 Second reading and adoption of an ordinance amending Newark Municipal Code Section 17.03.020 “Official Zoning Map and District Boundaries” to rezone the real property on Vesting Tentative Map 8459 for the Compass Bay residential project located at 8610 Enterprise Drive - from Associate Planner Mangalam. (ORDINANCE)**

Background/Discussion – On November 8, 2018, the City Council approved an application to develop Compass Bay, a 138-unit residential development at 8610 Enterprise Drive. The project requires rezoning to a residential district and the City Council introduced an ordinance to amend Newark Municipal Code Section 17.03.020 “Official Zoning Map and District Boundaries” by rezoning all that real property shown on the Vesting Tentative Map 8459 from Business and Technology Park (BTP) to Residential Medium Density with Form Based Code (RM-FBC) and Planned Development Overlay District (PD) APN 092-0115-005-02. A second reading of the ordinance is required for adoption.

Attachment

Action - Staff recommends that the City Council, by ordinance, amend Title 17 (Zoning) of the Newark Municipal Code Section 17.03.020 “Official Zoning Map And District Boundaries” by rezoning all that real property shown on the Vesting Tentative

Map 8459 from Business and Technology Park (BTP) to Residential Medium Density with Form Based Code (RM-FBC) and Planned Development Overlay District (PD) APN 092-0115-005-02.

F.2 Approval of the 2019 Local Appointments List – from City Clerk Harrington. (MOTIONS-3)

Background/Discussion – Section 54970 et. seq. of the Government Code is commonly known as the Maddy Act or Local Appointments List. Section 54972 requires that on or before December 31 of each year, each legislative body in the state shall cause to be prepared and posted a Local Appointments List of all regular and ongoing boards, commissions, and committees, which are appointed by the legislative body of the local agency. The Local Appointments List is to be made available to the public and must contain the following information:

- A list of all appointive terms, which will expire during the calendar year, with the names of the incumbent appointee, the date of the appointment, and the date the term expires.
- A list of all boards, commissions, and committees whose members serve at the pleasure of the legislative body and the necessary qualifications for each position.

Legislation also requires that the City Council designate the public library with the largest service population within its jurisdiction to receive a copy of the list.

The Measure GG Tax Oversight Committee and the Community Development Advisory Committee do not have term expirations in 2019 and are not included on the 2019 Local Appointments List. Members of the City’s Planning Commission and Senior Citizen Standing Advisory Committee are appointed by the City Council and are on the Local Appointments List. Those terms that expire in 2019 are:

Planning Commission

Debbie Otterstetter, term expires December 2019

William Fitts, term expires December 2019

Senior Citizen Standing Advisory Committee

Glen Wickizer, term expires April 2019

Kathleen Lemos, term expires April 2019

Miranda Miller, term expires April 2019

Eileen McDonald, term expires April 2019

Attachment

Action - It is recommended that the City Council, by motions: (1) approve the 2019 Local Appointments List, (2) designate the Newark Public Library as the library to receive a copy of the list, and (3) direct staff to post the Local Appointments List.

F.3 Approval of Measure D (Recycling Funds) Expenditure Plan and Amendment of the 2018-2020 Biennial Budget and Capital Improvement Plan for Fiscal Years 2018-2019 and 2019-2020 – from Administrative Analyst Khuu-Seeman. (RESOLUTION)

Background/Discussion – The Alameda County Waste Reduction and Recycling Initiative (Measure D) allows for a surcharge on solid waste disposed of at landfills and distributes half of the revenue to Alameda County jurisdictions. Disbursements are based on population and are for the purpose of continuation and expansion of municipal recycling programs. The City of Newark receives approximately \$150,000 of Measure D funds annually.

There is a cap for unspent Measure D funds for each Alameda County jurisdiction. The Measure D threshold for unspent funds is calculated by multiplying eight dollars (\$8) by the population. Using this formula, the threshold for Newark in fiscal year 2018-2019 is \$379,736 (\$8 x 47,467). Once this threshold is surpassed, the Alameda County Waste Management Authority (StopWaste) requires an expenditure plan in order for a jurisdiction to continue to receive Measure D funds.

The City of Newark’s Measure D fund balance currently exceeds the unspent threshold. This balance was intentionally established for the purpose of using the funds to implement the new commercial organics collection program that began last year. However, before the City was able to use the funds for this purpose, it was determined that language in the contract between the City and the City’s franchise hauler made the use of Measure D funds ineligible.

Staff has been in close coordination with StopWaste staff to discuss potential uses of Newark’s Measure D funds. After identifying eligible Measure D expenses, staff recommends the following two-year expenditure plan:

Fiscal Year 2018-2019	
Approximate Measure D Fund Balance	\$564,147
Estimated Measure D Funds Received	\$150,000
Estimated Interest Earned	\$4,000
TOTAL Measure D Balance =	
	\$718,147
Ongoing/Annual Expenditures	
Newark Staff Salary (time spent on Measure D)	\$32,000 annually
Promotional/outreach items	\$15,000 annually
Measure D/Bay Friendly Trainings	\$500 annually
One-Time Projects	
Consultant (implementation of long-term diversion plan – remainder for current contract)	\$135,000
Green Halo online waste management software system (initial set-up fees and fees for first year)	\$6,000

Skate Park, Artificial Turf Fields, and Dog Park Recycled Content Furniture (such as benches, picnic tables, and trash receptacles)	\$60,000
Three-Stream Trash Receptacles for Police (amount shown reflects the 2/3 that are covered by Measure D funds)	\$3,700
TOTAL Proposed Expenditures =	
Measure D Balance - Proposed Expenditures	\$252,200
$\$718,147 - \$252,200 =$	\$465,947

Fiscal Year 2019-2020	
Approximate Measure D Fund Balance	\$465,947
Estimated Measure D Funds Received	\$150,000
Estimated Interest Earned	\$4,000
TOTAL Measure D Balance =	
Ongoing/Annual Expenditures	
Newark Staff Salary (time spent on Measure D; includes staff time for collection of recycling at parks)	\$40,000 annually
Green Halo online waste management software system	\$3,000 annually
Measure D/Bay Friendly Trainings	\$500 annually
Promotional/outreach items	\$15,000 annually
One-Time Projects	
Consultant for Cost-Based Analysis Rate Review	\$30,000
New Civic Center LEED Certification (Silver)	\$50,000
New Civic Center Bay Friendly Landscaping	\$100,000
New Civic Center Recycled Content Furniture/Furnishings (carpet tiles, office chairs, etc.)	\$150,000
TOTAL =	
Measure D Balance - Proposed Expenditures	\$388,500
$\$619,947 - \$388,500 =$	\$231,447

At the end of this two-year period, the anticipated Measure D balance of \$231,447 would be below the unspent funds threshold. Staff intends to present this expenditure plan to the Recycling Board at its January meeting and will continue to closely monitor the Measure D fund balance.

Action - It is recommended that the City Council, by resolution, approve the Measure D Expenditure Plan and amend the 2018-2020 Biennial Budget and Capital Improvement Plan for Fiscal Years 2018-2019 and 2019-2020.

F.4 Approval of reclassification of the Associate Planner to a Senior Planner and the Assistant Planner to an Associate Planner by amending the 2018-2020 Biennial Budget - from Human Resources Director Abe and Assistant City Manager Grindall. (RESOLUTION)

Background/Discussion – The Community Development Department is recommending the reclassification of the Associate Planner to a Senior Planner and the Assistant Planner to an Associate Planner.

The Planning Division is responsible for ensuring the City Council’s vision for short and long range development growth is followed. Among other responsibilities, the Division maintains the General Plan and the Zoning Code, processes discretionary approvals, reviews business licenses, reviews environmental and special studies.

In the last few years, the Division began reviewing more development applications than in the last 20 years. The current construction boom will increase the residential housing stock by at least 25% or more if it continues and the changes are visually evident by the projects nearing completion. As part of that, the current planners have maintained high volume workloads and performed at a very high level. The skills and experience level of both planners exceed their present classifications and are in line with the next higher classification in the planning series. The recommended reclassification would be consistent with the City’s desire to retain in-house talent and support upward mobility within the organization, when warranted.

The proposed reclassification of the Associate Planner to a Senior Planner and an Assistant Planner to an Associate Planner would result in an annual budget increase of \$41,000 and would require a budget amendment.

Attachment

Action – It is recommended that the City Council approve by resolution: (1) Amend the 2018-2020 Biennial Budget to reclassify an Associate Planner to a Senior Planner, reclassify an Assistant Planner to an Associate Planner and delete an Assistant Planner position.

F.5 Approval to add one Community Engagement Manager position by amending the Employee Classification Plan, and the Compensation and Benefit Plan for City Officials, Management, Supervisory and Professional Employees – from Human Resources Director Abe. (RESOLUTIONS – 2)

Background/Discussion – The Police Department’s Community Engagement programs enhance community involvement, safety and aesthetics by providing a variety of public education and community outreach services. Newark programs include:

- Neighborhood, Business, and Dog Walker Watch
- On-line Community Notification through NIXLE

- Graffiti Abatement
- Citizen’s Police Academy, and
- RAVENs (Ready and Active Volunteers Engaged in Newark)

Each of these largely volunteer services have greatly expanded in the last few years. Until recently, a Special Assistant whose position was vacated due to retirement coordinated these programs. This staffing transition provides an opportunity for continued program growth and marketing. In addition to managing a full complement of community outreach services, the Community Engagement Manager will serve as the Police Department’s lead spokesperson, social media manager, and will host and facilitate community meetings.

Based on internal salary relationships and regional total compensation surveys, the proposed salary range for Community Engagement Manager is Range 10, \$7,054 to \$10,230 per month (the same salary as Police Communications Supervisor). All related staffing costs will be incurred in the Police Department’s existing budget.

Attachments

Action - It is recommended that the City Council approve by resolutions: (1) amend Resolution No. 2505, Employee Classification Plan, to create one new class specification entitled Community Engagement Manager, and (2) amend Resolution No. 10678, the Compensation and Benefit Plan for City Officials, Management, Supervisory and Professional Employees to add the classification, entitled Community Engagement Manager.

F.6 Consideration of a resolution declaring a shelter crisis in the City of Newark – pursuant to California Government Code Section 8698 et seq and authorizing participation in the Homeless Emergency Aid Program (HEAP) as authorized by Senate Bill 850 - from City Manager Becker.

(RESOLUTION)

Summary – In June 2018, Governor Brown signed into law Senate Bill (SB) 850 and initiated the Homeless Emergency Aid Program (HEAP) to provide a one-time \$500 million block grant program designed to provide direct assistance to cities and counties to address the homelessness crisis throughout California. Pursuant to Government Code Section 8692, et seq., to be eligible for HEAP funds, a local jurisdiction must declare a shelter crisis.

According to the 2017 Alameda County Homeless Point-In-Time Count and Survey, Newark had 42 “sheltered” and 28 “unsheltered” homeless individuals. This represents approximately 2.1% of the Counties total homeless population. The executive summary of the 2017 Point-In-Time Count is included as Attachment 2. Government Code Section 8698, et seq., allows a City Council to declare a shelter crisis based upon the existence of a situation in which a significant number of persons are without the ability to obtain shelter, resulting in a threat to their health and safety. After declaring a shelter crisis, funding such as the HEAP funds may be made available from the State to assist local jurisdictions efforts to combat homelessness.

Discussion – The California Homeless Coordinating and Financing Council administers the HEAP funding. HEAP funds are intended to provide jurisdictions with funding to provide immediate emergency assistance to people experiencing homelessness. Eligible uses include, but are not limited to the following:

- Homelessness prevention activities;
- Criminal justice diversion programs for homeless individuals with mental health needs;
- Establishing or expanding services meeting the needs of homeless youth or youth at risk of homelessness; and
- Emergency aid

The parameters of the program are intentionally broad to allow local communities to be creative and craft programs that meet their specific needs.

HEAP funding will be allocated to the local Continuum of Care (CoC), which is an affiliation of agencies and stakeholders committed to ending homelessness. EveryOne Home and Alameda County Housing and Community Development (HCD) are the primary organizations that oversee the Alameda County CoC responsible for implementing HUD-funded homeless strategies and programs. Consequently, Alameda County has been designated as the Administrative Entity eligible to apply for \$16,192,000 of HEAP funds.

City staff was recently contacted by the Human Services Director for the City of Fremont requesting that Newark partner with Fremont on programs to assist the homeless population in the two cities. Under the proposal, Newark would allocate its eligible share of HEAP funds to implement new or enhance existing homeless assistance programs. These programs would be administered by Fremont and would be available to Newark residents. Based on Newark's average homeless population, the City is eligible to receive up to \$229,000 in HEAP funding. The City of Fremont is eligible to receive up to \$1,850,000.

The programs that Fremont is proposing for HEAP funding include:

- Expanding Warming Center hours,
- Expanding "Homeless Navigation" services,
- Development of a site for the safe parking of recreational vehicles and vans
- Offering time limited housing subsidies.

The City of Newark has successfully partnered with Fremont on a number of social service programs and staff believes that these proposed programs would provide a significant benefit to Newark's homeless population.

A list of proposed programs/activities to combat homelessness in Alameda County (including the programs listed above) was included in the County's HEAP application

which was recently approved by the Board of Supervisors. In order to be eligible to receive its share of HEAP funding, the City of Newark is required to adopt a Shelter Crisis Resolution prior to December 31, 2018. It is anticipated that matching funds in the range of 10 to 30 percent will be required as part of the grant process. The Alameda County Board of Supervisors deferred a decision regarding the specific matching fund requirement pending a recommendation from the Alameda County City Managers Association. This is expected to occur in early 2019.

Attachment

Action - It is recommended that the City Council by resolution: declare a shelter crisis in the City of Newark pursuant to California Government Code Section 8698 et seq., and authorize participation in the Homeless Emergency Aid Program (HEAP) as authorized by Senate Bill 850.

NONCONSENT

- F.7 Approval to reclassify, add and delete a variety of position classifications in the Building Inspection Division and Maintenance Division of the Public Works Department by amending the Employee Classification Plan, amending various compensation and benefit plans and memorandums of understanding, and amending the 2018-2020 Biennial Budget – from Public Works Director Fajeau. (RESOLUTIONS-5)**

Background/Discussion - With the current vacancy in the Assistant Building Official position and the recent retirement of the previous Maintenance Superintendent, management staff has evaluated the potential for structural reorganizations of both the Building Inspection Division and Maintenance Division. These reorganizations would be consistent with the ongoing effort to appropriately fill vacancies, assist in long-term succession planning, and gain flexibility to improve overall service delivery in the Public Works Department.

The Department continues to be busier than ever with private development activity expected to remain at unprecedented levels for the foreseeable future, significant demand for project delivery through the Capital Improvement Plan that totals over \$123M in value, increased expectations for street, park and infrastructure maintenance, compliance with ongoing and increased regulatory requirements, and the addition of management of the City's solid waste contracts. Staff feels that the proposed changes outlined below will contribute significantly to the department's ability to deliver on its mission statement and complete the key objectives outlined in the 2018-2020 Biennial Budget and Capital Improvement Plan.

Building Inspection Division

The Assistant Building Official position was added to the Building Inspection Division in early 2017 with the intent of relieving the Chief Building Official/City Architect of many day-to-day duties related to plan review and division management in order to

allow him to focus on delivery of the New Civic Center project. Based on direct experience with the initial hiring process for this position, participation on oral board panels for related positions in other jurisdictions, and an overall assessment of current market conditions, staff feels that it will be very difficult to fill the current vacancy with a qualified candidate.

An alternative approach is proposed that would include elimination of the Assistant Building Official position in favor of a Plan Check Engineer position. Staff believes that the lower-level Plan Check Engineer position will have more technically qualified candidates available with architectural and structural design/review educational backgrounds and experience, but not necessarily the long-term experience expected for the Assistant Building Official position. It is anticipated that the Plan Check Engineer would take on the bulk of more complicated plan reviews as well as some management responsibilities. In addition, other duties would be formally distributed to key incumbent personnel within the division. Based on several individual reclassification studies associated with this analysis, many of these duties are already being performed by staff members working out of class in the administrative support positions of Administrative Assistant and Senior Administrative Support Specialist. Incumbents in these positions are performing above their respective class specifications and are capable of handling increased duties that will assist the Chief Building Official/City Architect with delivery of the New Civic Center project and day-to-day business operations. Staff is proposing that the Administrative Assistant and Senior Administrative Support Specialist be reclassified to Project/Administrative Assistant and Permit Technician, respectively.

As part of this reorganization in the Building Inspection Division, it is essential from staff's perspective that two of the three temporary Building Inspector positions be converted to permanent full-time positions. The maximum three-year timeframes associated with these temporary positions are coming to a close and need to be retained on a permanent basis in order to keep pace with current development activity. It is anticipated that the need for these two additional permanent inspectors will remain for the foreseeable future. With this process, staff is proposing a two-tier Building Inspector model with the Building Inspector I classification retaining all of the current Building Inspector duties and the Building Inspector II classification having increased plan review and inspection assignment responsibilities. Staff anticipates a single Building Inspector I/II position that could be filled at either level, two Building Inspector I regular full-time positions, and retaining the remaining temporary Building Inspector I (PST-X) position through the current three-year term. Internal competitive processes would be implemented for the permanent Building Inspector I positions and the Building Inspector I/II position.

These changes would result in a total estimated maximum budget increase of \$11,600 annually based on the top of range and top step for each reclassified position. Actual increased costs will likely be well below this maximum, assuming the vacant Plan Check Engineer position is filled below the top of range. Assuming a starting pay at the midrange for this position, the actual projected change in expenditures for the first

full fiscal year, FY 2019-2020 (barring undetermined compensation plan adjustments), is projected to be an annual savings of \$13,200.

Maintenance Division

As noted, the City's previous long-time Maintenance Superintendent recently retired. While that vacancy has been filled, staff has evaluated the current Maintenance Supervisor vacancy and the overall management structure of the division for opportunities to increase efficiency and improve service delivery at no additional cost to the City.

Staff believes that the two existing Maintenance Supervisor positions that report directly to the Maintenance Superintendent can be eliminated in favor of a single Assistant Maintenance Superintendent position with a variety of non-management duties distributed to other staff members, including a proposed reclassification of the Landscape Inspector position to a Senior Landscape Inspector position. The cost savings proposed with this adjustment would allow for the creation of an additional Landscape and Park Maintenance Worker I position and an increase in the hours for the current part-time Senior Administrative Support Specialist position.

The total maximum estimated budget impact based on top range or step for each modified position would not result in any budget increases. Based on the projected salaries for the employees impacted by the proposed reorganization, the actual expenditures for the next two fiscal years would be significantly less than the projected budget.

The focus for the Maintenance Division with this reorganization is to increase efficiency and improve overall service delivery to the public. The City Council has identified ongoing street and parks trash/debris clean-up and landscape beautification as high priorities. Staff believes that the additional Landscape and Park Maintenance Worker I position will help to provide some of the increased resources necessary for visible improvements in these areas.

With the proposed shift of resources from management to line staff, the Assistant Maintenance Superintendent and Senior Landscape Inspector reclassifications are critical to this approach. Staff is confident that the management duties of the division can reside with the Maintenance Superintendent and Assistant Maintenance Superintendent without the need for a third management position. The upper-level Maintenance Supervisor duties for the Building Maintenance and Equipment (Fleet) Maintenance sections would remain with the Maintenance Superintendent, while those same duties for the Landscape-Parks Maintenance and Streets Maintenance sections would remain with the Assistant Maintenance Superintendent.

The Senior Landscape Inspector position would acquire many of the day-to-day duties previously completed by the prior Maintenance Superintendent and Maintenance Supervisor for Landscape-Parks/Streets that would include, but not necessarily be limited to contract management of contractual services agreements for tree and

landscape maintenance, broad responsibility for landscape inspection of capital improvement and development projects, administration of landscape-based capital improvement projects, tree removal/replacement permit review and issuance, and increased oversight of day-to-day street and maintenance operations. Many current hands-on tree trimming, clean-up and traffic control duties performed by the Landscape Inspector would be absorbed by other staff, including the new Landscape and Parks Maintenance Worker I.

Shifting the duties outlined above to the Senior Landscape Inspector will allow the Assistant Maintenance Superintendent to focus more on direct assistance of the Maintenance Superintendent as well as contract management, capital improvement project coordination, public coordination and outreach, ongoing training needs, and other higher level duties. Many day-to-day administrative duties for both the Maintenance Superintendent and Assistant Maintenance Superintendent can also be transferred to the Senior Administrative Support Specialist with the proposed increase in hours from half-time to three-quarter-time for that support position.

Staff believes that this proposed reorganization will benefit the Public Works Department in terms of service delivery and efficiency and will provide short-term savings with minimal long-term increased costs. The reclassifications also help ensure that talented and dedicated team members see the opportunities for advancement based on their own excellent performance levels.

Attachment

Action - It is recommended that the City Council, by resolutions: 1) amend Resolution No. 2505, Employee Classification Plan to add seven new classifications entitled Assistant Maintenance Superintendent, Senior Landscape Inspector, Plan Check Engineer, Building Inspector I, Building Inspector II, Project/Administrative Assistant, and Permit Technician; 2) amend Resolution No. 10675, the Memorandum of Understanding between the City of Newark and the Newark Association of Miscellaneous Employees to add four new classifications entitled Senior Landscape Inspector, Building Inspector I, Building Inspector II, and Permit Technician; 3) amend Resolution No. 10677, the Compensation and Benefit Plan for the City of Newark Confidential Employee Group to add one new classification entitled Project/Administrative Assistant; 4) amend Resolution No. 10678, the Compensation and Benefit Plan for City Officials and the Management, Supervisory, and Professional Group to add two new classifications entitled Assistant Maintenance Superintendent and Plan Check Engineer; and 5) amend the 2018-2020 Biennial Budget to reclassify a Maintenance Supervisor to an Assistant Maintenance Superintendent, reclassify a Landscape Inspector to a Senior Landscape Inspector, reclassify a Building Inspector/Zoning Enforcement Officer to a Building Inspector I/II, reclassify two Building Inspector (PST-X) positions to two regular full-time Building Inspector I positions, reclassify an Administrative Assistant to a Project/Administrative Assistant, reclassify a Senior Administrative Support Specialist to a Permit Technician, add one Landscape and Park Maintenance Worker I position, add one Plan Check Engineer position, delete two Maintenance Supervisor positions, delete one Landscape Inspector position, delete one Assistant Building Official

position, delete one Building Inspector/Zoning Enforcement Officer position, delete two Building Inspector (PST-X) positions, delete one Administrative Assistant position, delete one Senior Administrative Support Specialist position, and increase one regular part-time Senior Administrative Support Specialist position from 0.5-time to 0.75-time.

G. CITY ATTORNEY REPORTS

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

I.1 Appointment of David J. Benoun as City Manager effective December 29, 2018, and authorization for Mayor Nagy to execute an employment agreement – from outside legal counsel Kristopher Kokotaylo. (RESOLUTION)

Background/Discussion – Earlier this year, City Manager John Becker announced his retirement from the City of Newark effective December 28, 2018.

The City Council met in closed session to consider the appointment of a new City Manager, including Mr. David J. Benoun. An offer to serve as the new City Manager was made to and accepted by Mr. Benoun, who currently serves as the City Attorney.

An employment agreement has been drafted that contains the terms of Mr. Benoun's employment as City Manager ("Agreement"). If approved, Mr. Benoun would become the City Manager, effective December 29, 2018, and vacate the office of the City Attorney that same day. A copy of the Agreement is attached to this staff report.

Mr. Benoun's employment as City Manager under the Agreement would continue until terminated by either Mr. Benoun or the City. Mr. Benoun's employment would be "at-will" meaning that the City Council can dismiss Mr. Benoun at any time and without any particular reason consistent with the Agreement and the requirements of the Newark Municipal Code. Termination of Mr. Benoun as the City Manager would be subject to potential severance pay as discussed below.

The Agreement would establish Mr. Benoun's compensation at a monthly rate of \$20,341, which equates to \$244,092 per year. This reflects an 11% increase above his existing salary and would be 4.4% lower than Mr. Becker's salary. Mr. Benoun would be entitled to receive periodic salary adjustments equal to those negotiated with the City's management employees. Any potential merit increases would be in the sole discretion of the City Council and only offered after a performance evaluation. Any adjustments or merit increases would need approval in open session consistent with the Brown Act. Mr. Benoun would be an exempt employee under the Agreement and therefore would not receive any overtime compensation.

Under the Agreement, Mr. Benoun would be entitled to receive the same benefits that are received by all Department Heads which are provided to participants in the Compensation and Benefit Plan for City Officials and the Management, Supervisory, and Professional Employee Group (“The Plan”). This includes a contribution of 6% of earnings towards a 401(A) plan, health and welfare benefits (currently at \$ 785 per month), City paid life insurance coverage of \$20,000, a \$100 contribution towards a Retirement Health Savings Plan, an automobile allowance of \$400 per month, and holidays, general leave, bereavement leave, birthday leave, and recreation benefits.

In addition, because Mr. Benoun would not be entitled to payment of any overtime, the Agreement calls for Mr. Benoun to receive an annual allotment of 56 hours per year of Management Leave in recognition of the numbers of hours worked after nonworking hours, consistent with The Plan. Further, in light of extraordinary efforts in transitioning from the City Attorney role to the City Manager position, the Agreement confers an additional 45 hours of Management Leave on a one-time basis for Fiscal Year 2018-19.

Under the Agreement, the City would also pay for reasonable expenses associated with Mr. Benoun’s attendance at professional conferences, such as those hosted by the International City Management Association and the League of California Cities.

If approved, the Agreement would require the City Council to define goals and performance objectives for Mr. Benoun’s role as City Manager within the first three (3) months of employment and evaluate him based off those goals and performance objectives within six (6) months of employment. Mr. Benoun’s performance as City Manager would then be reviewed annually by the City Council.

The Agreement can be terminated by voluntary resignation of Mr. Benoun (which would require Mr. Benoun to give 60 days’ notice) or the Agreement can be terminated by the City for any reason (which would require the City to pay 6 months’ salary to Mr. Benoun, but only after signing a release of all claims against the City). If Mr. Benoun is convicted of a crime involving an abuse of his office or position as defined under State law, then Mr. Benoun would not be entitled to any cash settlement.

Finally, the Agreement contains standard contract provisions, including a hold harmless and indemnification provision, a severability clause, and an attorneys’ fees recovery provision.

To the extent this Agreement is consistent with the offer made to and accepted by Mr. Benoun, it is recommended that the City Council adopt the attached resolution appointing Mr. Benoun and authorizing the Mayor to sign the Agreement.

Attachments – Employment Agreement and Proposed Resolution

Action - It is recommended that the City Council, by resolution, appoint David J. Benoun as City Manager effective December 29, 2018, and authorize Mayor Nagy to execute a city manager employment agreement.

I.2 Appointment of Kristopher J. Kokotaylo as Interim City Attorney effective December 29, 2018, and authorization for Mayor Nagy to execute an agreement for legal services with the law firm of Meyers, Nave, Riback, Silver & Wilson – from City Attorney Benoun. (RESOLUTION)

Summary – On December 29, 2018, there will be a vacancy in the Office of the City Attorney as a result of the City Attorney transitioning to the position of City Manager. It would be difficult to conduct a recruitment to hire a permanent City Attorney due to time constraints and the holiday season. As a result, the City should appoint an Interim City Attorney to serve until such a time when the City can engage in a recruitment process and hire a permanent City Attorney. In the meantime, staff recommends that the City enter into an agreement with Meyers, Nave, Riback, Silver & Wilson (“Meyers Nave”) for general municipal legal services and appoint Mr. Kristopher J. Kokotaylo as Interim City Attorney.

Background/Discussion – The City currently has an existing contract with the law firm of Meyers Nave to perform a variety of general municipal legal services, including serving as acting City Attorney in the absence of the City Attorney. Meyers Nave is well-established, having represented hundreds of cities, counties, special districts, and other public agencies over the past thirty years. Meyers Nave has a twenty-plus attorney team that focuses on general municipal law, as well as practice groups that specialize in various fields, including employment, land use, and environmental law.

On November 8, the City Council met in closed session with Mr. Kristopher J. Kokotaylo and Mr. Richard D. Pio Roda, both attorneys employed by Meyers Nave. At the conclusion of the meeting, the Council directed staff to negotiate an agreement with Meyers Nave for interim city attorney services. An agreement has been drafted that memorializes the negotiated terms, a copy of which is attached to the proposed resolution.

The agreement names Mr. Kokotaylo as Interim City Attorney. Mr. Kokotaylo is an experienced and respected attorney who currently serves as the City Attorney for Union City and Assistant City Attorney for San Leandro. Mr. Kokotaylo has provided various legal services to Newark in the past, including attending prior City Council meetings during the City Attorney’s absence. In addition to practicing general municipal law, Mr. Kokotaylo specializes in land use, real estate, construction, constitutional law, code enforcement, the Public Records Act, and the Brown Act.

The agreement identifies Mr. Richard D. Pio Roda as the Assistant City Attorney. Mr. Pio Roda would serve in the absence of Mr. Kokotaylo. Currently, Mr. Pio Roda serves as the City Attorney for San Leandro and previously served as the Assistant City Attorney for the cities of Milpitas and Oakley.

The contract requires a lawyer to work at City Hall 2 to 3 days per week (or as needed), update the City Council and City Manager on all major projects handled by the City Attorney’s office or by outside firms contracted to do work for the City, respond to emails from City staff within several hours, and aim to complete routine contracts and assignments within 24 hours. This agreement would continue until the City hires a permanent City Attorney.

Fiscal Impact – The exact cost associated with the agreement will depend upon the level of legal services that are needed; however, staff anticipates it will cost between \$15,000 – \$20,000 per month based on the proposed number of office hours and estimated workload. These costs will be absorbed within the City Attorney’s Office and Public Liability budgets due to savings associated with the vacancy of the in-house City Attorney position. It should be noted that the proposed hourly rates under the agreement are lower than the City’s existing agreement with Meyers Nave.

Attachments – Proposed Resolution and Agreement

Action - It is recommended that the City Council, by resolution, appoint Kristopher J. Kokotaylo as Interim City Attorney effective December 29, 2018, and authorize Mayor Nagy to execute an agreement for legal services with the law firm of Meyers, Nave, Riback, Silver & Wilson.

I.3 Appointment of Vice Mayor and authorization for the Vice Mayor to sign and endorse checks, warrants, and other instruments – from Mayor Nagy. (MOTION)(RESOLUTION)

Background/Discussion – During the latter part of the year, the City Council reorganizes by appointing one of its members to serve as Vice Mayor. After the Vice Mayor has been selected, a resolution authorizing the Vice Mayor to sign and endorse checks, warrants, and other instruments will need to be approved by the City Council.

Attachment

Action - It is recommended that the City Council: (1) by motion, appoint one of its members as Vice Mayor; and (2) by resolution, authorize the new Vice Mayor to sign and endorse checks, warrants, and other instruments.

I.4 Appointments of City Council Members to agencies, boards, commissions, and committees – from Mayor Nagy. (RESOLUTION)

Background/Discussion – On a yearly basis, the Mayor appoints City Council Members to various agencies, boards, commissions, and committees. The current appointments are listed for reference. The City Council should review the assignments and decide if they would like to make any changes for the upcoming year.

Alameda County Fire Advisory Commission

Council Members Bucci and Collazo – delegate and alternate

Alameda County Library Advisory Commission

Council Members Collazo and Mayor Nagy – delegate and alternate

Alameda-Contra Costa Transit District Policy Advisory Committee	Council Members Bucci and Hannon – delegates
Alameda County Transportation Commission	Council Members Freitas and Collazo – delegate and alternate
Alameda County Waste Management Authority Board/Stopwaste.org	Council Members Hannon and Freitas – delegate and alternate
Association of Bay Area Governments (ABAG)	Council Member Bucci and Mayor Nagy – delegate and alternate
Community Development Advisory Committee	Mayor Nagy and Council Member Freitas – delegates
Dumbarton Rail Policy Advisory Committee	Mayor Nagy and Council Member Bucci – delegate and alternate
Newark City Council –Board of Education Committee	Council Members Hannon and Collazo – delegates
Tri-City Elder Coalition	Mayor Nagy - delegate
Senior Citizen Standing Advisory Committee	Mayor Nagy delegate and chairperson
Southern Alameda County Geographic Information System Authority	Mayor Nagy - delegate Council Member Bucci - alternate
Tri-City Waste Facility Financing	Mayor Nagy and Council Member Hannon –Authority delegates

In addition to these assignments, Council Member Hannon is the City’s representative to the Housing Authority of Alameda County. This multi-year appointment, made by the Alameda County Board of Supervisors, expires in 2021 and is not included on the annual list.

Attachment

Action - It is recommended that the City Council, by resolution, approve the appointments to the various agencies, boards, commissions, and committees.

I.5 Declaring a vacancy on the Community Development Advisory Committee and authorizing the City Clerk to post a notice of vacancy – from Mayor Nagy. (MOTION)

Background/Discussion – The Community Development Advisory Committee (CDAC) is an appointed committee that provides recommendations to the City Council for the use of Community Development Block Grant funds and to the Assistant City Manager on priorities for the use of Housing funds.

The CDAC membership consists of Mayor Nagy, Council Member Freitas, Planning Commissioners Fitts and Nillo, and Community Members Kathleen Vennemeyer, Eric Hentschke, and Jeffrey Lucia. Kathleen Vennemeyer, who served on the Committee for many years, passed away in November. A vacancy should be declared and the City Clerk authorized to post a notice of vacancy.

Action - It is recommended that the City Council, by motion, declare a vacancy on the Newark Community Development Advisory Committee and authorize the City Clerk to post a notice of vacancy.

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

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, 5th 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.