

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, January 9, 2020

- A. ROLL CALL
- B. MINUTES
- C. PRESENTATIONS AND PROCLAMATIONS
- D. WRITTEN COMMUNICATIONS
- E. PUBLIC HEARINGS
 - E.1 Hearing to consider an Appeal of the Planning Commission denial of a Minor Use Permit for a 10-foot tall, electrified perimeter fence at 6565 Smith Avenue – from Deputy Community Development Director Interiano. (RESOLUTION)

Background/Discussion- Electric Guard Dog LLC (the Applicant) submitted an application to install a 10-foot tall electrified fence at 6565 Smith Avenue. Equipment Share, a construction equipment supplier, currently leases the General Industrial (GI) zoned property. The Applicant requested approval of the tall, electrified fence citing security reasons.

Applicant Proposal:

The Applicant submitted an application for a fully electrified fence that is ten feet in height to be installed around the entire 5 acre property, approximately 6-12 inches within an existing chain link fence (see attached site plan). The property at 6565 Smith Avenue is surrounded by Industrial zoned properties and is located in a street which ends in a cul-de-sac. There are five other properties, which are located in the cul-de-sac of Smith Avenue, and three of those properties have a 6 foot tall chain link fence with barbed wire. The property without barbed wire is adjacent to the subject property. The existing chain link fences with barbed wire are considered legal nonconforming since they were in place before the City's new zoning regulations took effect in 2018.

Newark Municipal Code Requirements and Staff Analysis:

As part of the adopted 2018 Zoning Ordinance, the City made a concerted effort to amend development regulations to reduce visual impacts of all types of uses including industrial uses by measures such as prohibiting chain link fences, barbwire and restricting the use of hazardous materials on fences. The application does not meet the requirements of the NMC for an MUP as further described below.

Location of Fencing Materials:

An application for the use of hazardous fencing materials, which includes electrified fencing, requires a Minor Use Permit (MUP) pursuant to NMC section 17.17.040(B)(1) which states:

Prohibition on Hazardous Fencing Materials. The use of barbed wire, razor wire, ultra-barrier, electrified, and other hazardous fencing is not permitted unless such fencing is required by any law or regulation of the City, the State of California, Federal Government, or other public agency.

- a. ***Exception.*** The Planning Commission may approve an exception to this standard for sites in Employment Districts, provided the hazardous fencing materials are located at the top portion of a fence which is at least six feet in height where the Planning Commission finds such fencing is necessary for security purposes.

Per the plain language of the Code, NMC section 17.17.040(B)(1) only allows for the placement of hazardous fencing materials *on the top portion of a fence* that is at least 6 feet tall. In this instance, the Applicant seeks to install a fully electrified fence for the entirety length of the fence itself. Thus, by the plain language of NMC section 17.17.040(B)(1), such fence is prohibited by the NMC.

Maximum Height and Required Findings:

Pursuant to Newark Municipal Code (NMC) section 17.17.040(A)(2), an application for a fence greater than 6 feet in height on a nonresidential property requires an MUP. An MUP for a fence greater than 6 feet in height must meet the requirements NMC section 17.17.040(A)(1)(a)(i)(3) and NMC section 17.17.040(A)(1)(a)(ii) which states (emphasis added in *italics*):

- i. Maximum Height.

(3) Materials. The Director *may only approve additional fence height for fences made of masonry block, precast concrete, wood, or metal wrought iron.* Vertical or horizontal extensions to an existing fence or wall shall be of the same material and design as the existing fence or wall.

- ii. Review and Required Findings. In approving additional fence height, the Director shall make the following findings.

(1) The additional fence height will not impair the provision of adequate light, air, circulation, and visual openness around adjacent residential structures.

(2) The additional fence height will not detract from the overall appearance of the neighborhood.

(3) The additional fence height is not detrimental to the health, safety, and welfare of people living in the neighborhood.

Staff has not historically approved fence heights over 6 feet, with the exception of 8 foot tall walls along arterial roadways for noise related mitigation. In this instance, the Applicant is proposing a 10 foot tall electrified fence. Pursuant to NMC section 17.17.040(A)(1)(a)(i)(3) the City can only grant an MUP for a fence that is greater than 6 feet in height where the additional fence height is made of masonry block, precast concrete, wood, or metal wrought iron and where any vertical or horizontal extensions to an existing fence or wall is of the same material and design as the existing fence or wall. Here, the proposed electrified fence that runs 10 feet tall would violate the plain terms of this provision. Additionally, the proposed fence would detract from the overall appearance of the area.

In addition to concerns regarding aesthetics, the Police Department and Alameda County Fire Department have opined that an electrified fence would pose an unnecessary and unsafe condition for firefighters, officers, and other first responders and to the public in general during calls for service to the location. Specifically, first responders may be unable to access the premises due to the electrified fence and the process of de-electrifying the fence may negatively impact response times during the potential need for critical services.

Staff recommends that the City Council deny the appeal because the proposed electrified fence does not comply with the NMC and the existing process does not provide the City with the ability to grant the application.

Planning Commission Meeting on November 12, 2019

The Planning Commission held a public hearing on this item and determined that the proposed application could not be approved because there were two findings required in the Zoning Code relating to fencing materials and fence height that could not be made. The zoning regulations, as written do not permit the type of fence as proposed by the Applicant. The Planning Commission voted to deny the application by a vote of 4-0 (Commissioner Otterstetter was absent).

Attachments –

- 1. Resolution**
- 2. Appendix A-Supporting Docs**
- 3. Justification for Appeal by Electric Guard Dog LLC**
- 4. Planning Commission Resolution No. 1984**
- 5. Draft Planning Commission Minutes November 12, 2019**

Action – Staff recommends that the City Council, by resolution, deny the appeal and uphold the Planning Commission’s denial of U-19-8, a Minor Use Permit for a 10-foot tall electrified fence at 6565 Smith Avenue.

F. CITY MANAGER REPORTS

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

CONSENT

F.1 Approval of a Second Amendment to a Contractual Services Agreement with Management Partners for Community Development, Human Resources and Financial Consulting Services – from City Manager Benoun and Interim City Attorney Kokotaylo. (RESOLUTION)

Background/Discussion – The City Manager previously executed a contract with Management Partners for a compensation total not to exceed amount of \$50,000 to provide assistance with community development matters. This assistance was necessary when the City’s previous community development director left for a position in another jurisdiction. Subsequently, the City Manager executed a first amendment to the contract during the City Council August Recess to increase the compensation total not to exceed amount to \$132,000 and to expand the scope of work to include human resources and financial consulting assistance. This augmentation was necessary to provide staff with expert advice on various labor and employment matters and various budget and financial planning matters for the City. Staff continues to have an immediate and future need for the additional services as a result of the volume of work and complex issues facing the community development, human resources and finance departments.

The proposed resolution authorizes an increase in the total not to exceed compensation by \$80,000 to \$212,000 in order to allow Management Partners to continue providing assistance related to community development, human resources and financial consulting matters. This will provide sufficient funding for Management Partners to continue providing the necessary augmentation to for the City to move forward with crucial projects necessary to meet imminent needs.

Attachments – Resolution, Second Amendment to the Contractual Services Agreement

Action – Staff recommends that the City Council adopt a resolution authorizing the City Manager to Execute a Second Amendment to the Contractual Services Agreement with Management Partners to Provide Professional Community Development, Human Resources and Financial Consulting Services.

NONCONSENT**F.2 Consideration of recommendations to the Alameda County Waste Management Authority (WMA) Board regarding a potential Reusable Food Ware Ordinance – from Senior Administrative Analyst Khuu-Seeman. (MOTION)**

Background/Discussion – The Alameda County Waste Management Authority (WMA) Board is seeking input from member agencies regarding potential implementation of a Reusable Food Ware Ordinance as a means of reducing waste generation from eating and drinking establishments, including all restaurants, food trucks, and third-party delivery services. Plastic single-use food ware items such as plates, bowls, cups, utensils, condiment cups and straws provide consumers and businesses with short-term convenience at relatively little expense, but collectively, these items arguably create a long lasting and significant impact on the environment. The WMA Board’s current consideration of this issue is the result of a priority setting process that StopWaste completed approximately one year ago, during which member representatives voiced concerns from county residents regarding the proliferation of plastic waste in local communities, particularly from single-use food ware. The WMA Board is requesting feedback from each jurisdiction through the respective Board members at the scheduled WMA January 22, 2020 meeting.

There are currently 16 Reusable Food Ware Ordinances either in place or in development in California, including 9 adopted ordinances in the Bay Area. These ordinances advance environmental policy objectives such as waste reduction, toxics reduction, and development of reuse infrastructure. A key aspect of any strategy to meet these objectives is to successfully promote and implement a switch from single-use plastics to durable, reusable food ware and accessories. However, another option includes providing customers single-use products at nominal charges (\$0.25 to \$0.50).

StopWaste has identified two potential implementation approaches. One is to develop a countywide ordinance that could be implemented in phases over time with increasingly more complex elements. The other option is to develop a model ordinance that could be customized and implemented by individual member agencies. The relative benefits (+) and drawbacks (-) of these implementation approaches are cited by StopWaste as follows:

Model Ordinance	Countywide Ordinance
+ Provides greatest flexibility to member agencies	+ Provides greatest waste reduction impact
+ StopWaste provides the ordinance language, menus of elements, and messaging templates	+ StopWaste coordinates technical assistance and outreach/promotion and manages contracts
+ Best option if one size doesn't fit all	+ Requires consistency across the county
- Could result in inconsistent implementation and confusion across jurisdictions	+/- Enforcement with complaint-based approach versus more rigorous ongoing inspections
- Member agencies take enforcement lead and potentially use their own personnel for inspections	- Would require StopWaste to shift resources away from other priorities; may require member agency funding support

For both ordinance options, StopWaste would provide the environmental review, promotional messaging templates and infrastructure support and development. Both ordinance options would potentially take resources away from the considerable effort needed from both StopWaste and member agency staff for compliance with the new regulations forthcoming from SB 1383 – the Short-Lived Climate Pollutant Plan. SB 1383 regulates solid waste by directing the California Air Resources Board to reduce methane emissions by 40% by 2025. Additionally, SB 1383 directs CalRecycle to divert 75% of organics from landfills by 2025 statewide (compared to a 2014 baseline) and to recover 20% of edible food for human consumption statewide. Jurisdictions are ultimately responsible for the implementation and enforcement of SB 1383, starting January 1, 2022. Direct impacts to Newark are yet to be determined since the finalized SB 1383 language is expected to be published at the beginning of 2020.

In terms of cost, StopWaste estimates that Ordinance Development in 2019-2020 will be approximately \$430,000 for either a countywide ordinance or a model ordinance approach. If a countywide ordinance is pursued, additional development costs are estimated at \$768,000 in 2020-2021, with ongoing annual costs of \$300,000 to \$400,000 thereafter. StopWaste would assume the role of enforcement and technical assistance lead with member agencies providing funding support through Measure D or other funds. In contrast, development of a model ordinance is estimated at an additional \$450,000 in 2020-2021. Ongoing annual costs for a model ordinance are not yet known and would be highly dependent on the level of enforcement required. Member agencies would assume the enforcement and technical assistance lead in this scenario.

The WMA Board poses several key questions related to a potential Reusable Food Ware Ordinance to individual member agencies for consideration, as follows:

1. Is this an important issue for your community?
2. If important, do you think it should be a countywide ordinance implemented by StopWaste, or a model ordinance that can be customized and implemented directly by cities?
3. Are these three basic ordinance elements something your jurisdiction would adopt?
 - Reusable food service ware required for all dine-in establishments
 - Single-use food ware must be BPI-certified compostable fiber (non-plastic)
 - Single-use accessories available only on demand or self-service
4. If a countywide ordinance is implemented, would your jurisdiction be willing to contribute resources to StopWaste in order to implement?
5. If a model ordinance works better, is your jurisdiction able to take on its implementation/enforcement along with the requirements of SB 1383?

Staff requests that the City Council provide feedback on this issue to the WMA Board through the City's representative, Council Member Hannon. If the Council is in favor of a Reusable Food Ware Ordinance, staff has the following recommendations for the City Council to consider as part of this feedback:

- A countywide model ordinance appears to be the most beneficial option because it provides a consistent approach for all jurisdictions and allows StopWaste to take the primary lead for technical assistance, outreach/promotion, and enforcement measures. Where possible, flexibility should be built into the countywide ordinance.
- Requiring reusable food service ware for all dine-in establishments and for any single-use food ware to be BPI-certified compostable fiber and only available upon request are ordinance elements the City should consider the relative costs and challenges to affected local business owners. Also, there should be sufficient flexibility to phase-in these elements over reasonable timeframes for businesses.
- A thorough economic analysis of a countywide ordinance should be completed in advance of proposed ordinance adoption and any contribution of additional resources from member agencies.
- Given that the impacts associated with full implementation and enforcement of SB 1383 are still uncertain, it is difficult for the City to definitively identify the cumulative impact on resources of an additional local ordinance for Reusable Food Ware. Significant resource impacts are anticipated, though not yet quantified for both SB 1383 and any ordinance for Reusable Food Ware. The costs for these impacts will ultimately have to be borne by the consumer.

Attachments – Reusable Food Ware Ordinance Topic Brief, November 2019 (StopWaste); Reusable Food Ware Ordinance: Options and Impacts presentation (StopWaste)

Action – Staff recommends that the City Council consider providing, by motion, recommendations to the Alameda County Waste Management Authority (WMA) Board regarding a potential Reusable Food Ware Ordinance.

G. CITY ATTORNEY REPORTS

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

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

K. ORAL COMMUNICATIONS

L. APPROPRIATIONS

Approval of Audited Demands.

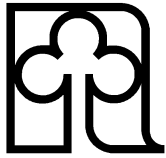
(MOTION)

M. CLOSED SESSION

N. ADJOURNMENT

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.



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AGENDA

Thursday, January 9, 2020

CITY COUNCIL:

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

CITY STAFF:

David J. Benoun
City Manager

Michael Carroll
Interim Police Chief

Soren Fajeau
Public Works Director

David Zehnder
Recreation and Community Services Director

Helen Que-Garcia
Acting Human Resources Dir.

Kristopher J. Kokotaylo
Interim City Attorney

Krysten Lee
Finance Manager

Steven M. Turner
Community Development Dir.

Sheila Harrington
City Clerk

Welcome to the Newark City Council meeting. The following information will help you understand the City Council Agenda and what occurs during a City Council meeting. Your participation in your City government is encouraged, and we hope this information will enable you to become more involved. The Order of Business for Council meetings is as follows:

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