



CITY OF NEWARK CITY COUNCIL

Various Locations, Newark, CA 94560-3796 • 510-578-4266 • E-mail: city.clerk@newark.org

**Various Virtual
Teleconference Locations
6:00 p.m.**

AGENDA

Special Meeting

Tuesday, June 16, 2020

THIS IS A SPECIAL MEETING BY TELECONFERENCE ONLY. THE CITY COUNCIL CHAMBERS WILL NOT BE OPEN. REFER TO THE END OF THE AGENDA TO REVIEW OPTIONS FOR PARTICIPATING IN THE MEETING REMOTELY OR TO SUBMIT PUBLIC COMMENTS VIA EMAIL. PLEASE NOTE THE 6:00 P.M. START TIME FOR THIS SPECIAL MEETING.

A. ROLL CALL

B. NEW BUSINESS

- B.1 Adoption of an Urgency Ordinance authorizing the Community Development Director to issue Covid-19 Minor Use Permits and Waive Requirements of the Zoning Code to Facilitate Business Operations Impacted by Covid-19 – from Community Development Director Turner and Interim City Attorney Kokotaylo. (URGENCY ORDINANCE)**

Members of the public are welcome to address the City Council, before the City Council takes action on this item. Please see the important notice section to review options. Once recognized, you will be given an opportunity to speak once on the item under discussion. Public comments are limited to five (5) minutes per speaker, subject to adjustment by the Mayor.

C. ADJOURNMENT

IMPORTANT NOTICE REGARDING THE CITY COUNCIL MEETING

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

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

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

How to view the meeting remotely:

Live television broadcast - Comcast Channel 26

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

How to participate in the meeting remotely:

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

From a PC, Mac, iPad, iPhone or Android device: <https://zoom.us/j/97879621906>

Webinar ID 978 7962 1906 (to supplement a device without audio, or to just call in, join by phone: US: +1 669 900 6833, same Webinar ID 978 7962 1906.)

Submission of Public Comments:

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

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

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 on the city website www.newark.org. 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.

**B.1 Adoption of an Urgency Ordinance authorizing the Community Development Director to issue Covid-19 Minor Use Permits and Waive Requirements Of The Zoning Code To Facilitate Business Operations Impacted By Covid-19 – from Community Development Director Turner and Interim City Attorney Kokotaylo.
(URGENCY ORDINANCE)**

Background –The California Governor and the Alameda County Health Officer both declared public health emergencies in response to the COVID-19 pandemic. The City Manager proclaimed a local emergency on March 16, 2020, and that declaration was ratified by the City Council on March 17.

The Alameda County Health Officer issued a legal order directing all residents of the County to shelter at home beginning March 17, 2020. The order limited activity, travel, and business functions to only the most essential needs. That order has been extended in Alameda County, although some restrictions have been lifted. For example, the Alameda County Health Officer issued a health order allowing certain businesses to partially resume operations with certain safety precautions, such as retail stores for curbside or storefront pickup only. Also, last week, the Health Officer further announced that starting Friday, June 19th, outdoor dining can resume.

The State Public Health Officer has articulated a four-stage framework to allow for gradually resuming various activities while preserving public health. On May 4, 2020, the Governor of California issued an Executive Order ordering all individuals within the State of California to comply with the State Public Health Officer’s framework unless stricter local regulations exist.

Stage 2 of the State Public Health Officer’s roadmap for reopening is split into an earlier stage and later stage 2 (“Stage 2B”). During Stage 2B, dine-in restaurants and in-person retail shopping are allowed to occur, with certain safety precautions. During Stage 3 of the State Public Health Officer’s roadmap for reopening, personal services such as hair and nail salons, gyms, and fitness studios, as well as hospitality services will be allowed to operate. The reopening process will be gradual and not occur uniformly throughout the state.

It is anticipated that this week the Alameda County Health Officer will issue health orders allowing additional businesses to resume operations in a manner similar to Stage 2b and Stage 3 of the State Public Health Officer’s roadmap for reopening, including guidelines on outdoor dining. At the time of this writing it is unknown what specific restrictions will be placed on businesses allowed to reopen.

During this time of shelter in place and other social distancing, many businesses are experiencing substantial declines in business income as a result of business closures or the loss of hours, which threatens businesses ability to pay rent, maintain payroll, and continue operating. Staff has been considering options to help businesses operate once they are allowed to reopen under applicable health orders.

Discussion – As Shelter-In-Place orders are lifted, it is expected that certain businesses, especially restaurants and retail businesses, will continue to be affected by social distancing

requirements and similar health orders. These restrictions will impact the businesses' ability to operate in the same manner as they did prior to the beginning on the COVID-19 pandemic. For example, the State Department of Public Health's guidelines for restaurants specifically recommend prioritizing outdoor seating and curbside pickup to minimize cross flow of customers in enclosed environments, and guidelines for other industries contain similar recommendations and requirements.

The Newark Zoning Code contains various regulations that may hinder the ability of businesses to successfully operate while also complying with health orders. For example, the Zoning Code contains regulations and restrictions regarding outdoor sales, displays and seating. These activities can sometimes require a business to obtain a special permit from the City or may be prohibited altogether. Furthermore, the issuance of a permit for these types of activities often requires compliance with certain procedures, which can be time consuming and delay the issuance of a permit. Complying with these procedures could be a significant burden on businesses facing significant economic impacts from COVID-19.

Local businesses are a critical part of Newark's economy and community. Staff has explored ways to help facilitate the continued operation of businesses impacted by COVID-19. A number of cities across the Bay Area have adopted policies or ordinances allowing staff to administratively issue permits for allowing outdoor seating or other adjustments to normal business operations. Some cities are broadly authorizing staff to waive any applicable requirement of the Zoning Code, while other cities are providing narrow authorization.

Businesses with outdoor space can accommodate seating in those private areas. Businesses may be able to locate tables or merchandise on the sidewalk in front of their property. Additionally, businesses with off-street parking spaces may be able to use those areas for seating rather than parking.

Unfortunately, not every business will be able to provide outdoor seating. While some businesses have private space that can be used for that purpose, many do not. Similarly, the sidewalk adjacent to some businesses is wide enough to accommodate outdoor seating, while in some locations the sidewalk is too narrow. Any use of the sidewalk or any other publically owned property will require the applicant to receive an encroachment permit from the City, and obtain and maintain appropriate insurance. Use of the sidewalk or other publically owned property cannot be authorized if such operations will interfere with the ADA accessible path of travel or cause other safety hazards.

The urgency ordinance broadly authorizes the Community Development Director to issue a COVID-19 minor use permit and temporarily waive any requirement of the Zoning Code in order to facilitate business operations impacted by COVID-19 and applicable health orders. This broad temporary authority will enable the City to also assist businesses that might not benefit from more flexible policies for outdoor seating. Because staff is not able to anticipate every possible request a business may make, the urgency ordinance broadly authorizes the Community Development Director to evaluate and accommodate all requests on a case by case basis. While the Community Development Director will have the authority to waive requirements of the

Zoning Code, the City does not have the ability to waive any state law or applicable health orders, including both COVID-19 specific orders and health regulations generally applicable to food service providers.

Importantly, this broad authority is not intended to suggest that the Community Development Director will waive every exception requested by each business. Each request will be evaluated individually based on the specific location of the business and the appropriateness of the request. The Community Development Director may be able to waive a specific requirement for some businesses, but not other businesses based on different circumstances. For example, outdoor seating may be allowed for a business with a back patio in a commercial area, but not allowed for a business with a back patio directly adjacent to residential properties (or might only be allowed during limited hours). Additionally, the City cannot allow sidewalk seating under any circumstances if it will interfere with required ADA accessible paths of travel.

The urgency ordinance will allow businesses to obtain COVID-19 minor use permits to engage in certain activities without following the normal procedures required to obtain such a permit. These COVID-19 minor use permits would not be issued to authorize wholly new businesses, but rather only to facilitate the continued operation of existing businesses in compliance with applicable health orders. Under the proposed urgency ordinance, a COVID-19 minor use permit will be valid for the duration of the urgency ordinance unless otherwise specified by the Community Development Director. The Community Development director is also authorized to revoke the COVID-19 minor use permit without cause.

In order to support economic activity in the City during this critical time, staff does not recommend requiring application fees for COVID-19 minor use permits and encroachment permits issued pursuant to the urgency ordinance. Regular fees will continue to apply for other permit applications. No notice or public hearing would be required for the issuance of a COVID-19 minor use permit under the urgency ordinance.

All COVID-19 minor use permits will contain appropriate conditions in order to preserve the public health, safety, and welfare, such as conditions regarding hours of operation for outdoor seating. The City can revoke the COVID-19 minor use permit of any business that fails to comply with the applicable conditions.

If adopted by a four-fifths (4/5) vote of the City Council, the urgency ordinance will go into effect immediately. Staff would notify the community of using traditional outreach methods, as well as directly contacting the Chamber of Commerce and commercial property owners.

Attachments – Urgency Ordinance, presentation will be provided at the City Council meeting

Action – Staff recommends that the City Council adopt an urgency ordinance that authorizes the Community Development Director to issue COVID-19 minor use permits and waive requirements of the Zoning Code to facilitate business operations impacted by COVID-19.

**AN URGENCY ORDINANCE OF THE CITY OF NEWARK
AUTHORIZING THE COMMUNITY DEVELOPMENT
DIRECTOR TO ISSUE COVID-19 MINOR USE PERMITS
AND WAIVE REQUIREMENTS OF TITLE 17 TO
FACILITATE BUSINESS OPERATIONS IMPACTED BY
NOVEL CORONAVIRUS (COVID-19)**

WHEREAS, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease named “coronavirus disease 2019” (“COVID-19”); and

WHEREAS, COVID-19 is easily transmissible from person to person, and community spread of the diseases has occurred throughout the United States and California, including in Alameda County; and

WHEREAS, on January 31, 2020, the Secretary of the United States Department of Health and Human Services declared a public health emergency for the entire United States to aid the nation’s healthcare community in responding to COVID-19; and

WHEREAS, on March 1, 2020, the Alameda County Health Officer declared a public health emergency throughout the County of Alameda regarding COVID-19, which was ratified by the Alameda County Board of Supervisors on March 10, 2020; and

WHEREAS, on March 4, 2020, the Governor of California proclaimed a state of emergency regarding COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national state of emergency in response to the spread of COVID-19 within the United States of America; and

WHEREAS, on March 16, 2020, due to an escalating increase in the number of COVID-19 cases in Alameda County, the City Manager, acting as Director of Emergency Services, found that the conditions related to the COVID-19 pandemic were of extreme peril to the safety of persons and property within the territorial limits of the City and thus proclaimed a local emergency pursuant to Newark Municipal Code Section 2.16.060 and Government Code Section 8558; and

WHEREAS, on March 17, 2020, at a special meeting, the City Council of the City of Newark ratified the Director of Emergency Services’ proclamation of a local emergency related to the COVID-19 pandemic; and

WHEREAS, on March 16, 2020, the Alameda County Health Officer, along with six other health officers within six Bay Area counties, took a unified step to slow the spread of COVID-19 and preserve critical health care capacity across the region by issuing a legal order directing their respective residents to shelter at home beginning March 17, 2020. The order in Alameda County limited activity, travel, and business functions to only the most essential needs. The guidance comes after substantial input from the CDC and best practices from other health officials around the world; and

WHEREAS, on March 19, 2020, the Governor of California issued Executive Order N-33-20 ordering all individuals within the State of California to stay home or at their place of residence, except as needed

to maintain continuity of operation of the federal critical infrastructure sectors, critical government services, schools, childcare, and construction; and

WHEREAS, on May 14, 2020, the Newark City Council adopted a resolution confirming the continued existence of local emergency due to COVID-19; and

WHEREAS, the Alameda County Health Officer has issued multiple orders extending the shelter in place order; and

WHEREAS, the State Public Health Officer has articulated a four-stage framework to allow for gradually resuming various activities while continuing to preserve public health; and

WHEREAS, On May 4, 2020, the Governor of California issued Executive Order N-60-20 ordering all individuals within the State of California to comply with the State Public Health Officer's framework unless stricter local regulations exists; and

WHEREAS, the Alameda County Health Officer has issued a revised health order allowing certain businesses to partially resume operations with certain safety precautions, while some businesses remain closed; and

WHEREAS, stage 2 of the State Public Health Officer's roadmap for reopening is split into an earlier and later stage 2 ("Stage 2b"); and

WHEREAS, during Stage 2b, dine in restaurants and in-person retail shopping are allowed to occur, with certain safety precautions; and

WHEREAS, during Stage 3 of the State Public Health Officer's roadmap for reopening personal services such as hair and nail salons, gyms and fitness studios, as well as hospitality services will be allowed to operate; and

WHEREAS, it is anticipated that in the coming weeks or months the Alameda County Health Officer will issue health orders allowing additional business to resume operations in a manner similar to Stage 2b and Stage 3 of the State Public Health Officer's roadmap for reopening; and

WHEREAS, businesses allowed to reopen will be subject to health and safety guidelines to minimize the risk of spread of COVID-19, such as increased physical distance between tables, required use of face coverings by staff, frequent cleaning of high touch surfaces, suspended use of shared food items such as condiment bottles and reusable menus, and similar restrictions; and

WHEREAS, the State Department of Public Health's guidelines for restaurants specifically recommend prioritizing outdoor seating and curbside pickup to minimize cross flow of customers in enclosed environments, and guidelines for other industries contain similar recommendations and requirements; and

WHEREAS, during this time of shelter in place and other social distancing, many businesses are experiencing substantial declines in business income as a result of business closures or the loss of hours, which threatens businesses ability to pay rent, maintain payroll, and continue operating; and

WHEREAS, many businesses may face layoffs or permanent closure as a result of the pandemic; and

WHEREAS, even as certain shelter in place restrictions begin to ease, many local businesses will continue to be affected by social distancing requirements; and

WHEREAS, businesses are an integral part of the economy and community of Newark; and

WHEREAS, local businesses are a significant source of jobs, tax revenue and essential services for the community; and

WHEREAS, business closures will negatively impact the local economy by laying off employees and ceasing to provide services to residents of the City, and negatively impact local health by reducing the number of retail and commercial spaces available to provide essential services while maintaining social distancing, and will decrease tax revenues available to the City to respond to COVID-19 and other public health and safety concerns; and

WHEREAS, the Zoning Code contains various requirements regarding for outdoor seating, outdoor display of merchandise, off-street parking, and similar restriction; and

WHEREAS, to assist businesses that are experiencing, and will continue to experience, severe negative economic impacts due to the COVID-19 pandemic, the City desires to authorize the Community Development Director to approve temporary waivers from the strict application of the Zoning Code to facilitate a return to business operations; and

WHEREAS, California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the public health, safety, and general welfare, of their citizens; and

WHEREAS, California Government Code Section 36937 authorizes the City Council to introduce and adopt an ordinance that it declares to be necessary as an urgency measure to preserve the public peace, health, and safety at one and the same meeting if passed by at least four-fifths affirmative votes; and

WHEREAS, COVID-19 and the public health orders designed to reduce the virus's spread have had a significant impact on the economy of the City, requiring the closure of numerous business, and this Urgency Ordinance will facilitate the prompt reopening of businesses impacted by COVID-19 in a manner consistent with anticipated public health orders thereby minimizing negative economic impacts; and

WHEREAS, the Urgency Ordinance is designed to reduce and slow the transmission of COVID-19 by facilitating required social distancing between and among patrons and employees; and

WHEREAS, the Urgency Ordinance is designed to promote economic business stability and prevent business closures during the COVID-19 pandemic by streamlining the process for a business to obtain a waiver of Zoning Code requirements to enable business operations in a manner that complies with social distancing orders and protocols, thereby serving the public peace, health, safety, and public welfare; and

WHEREAS, the City Council finds and determines that allowing the Community Development Director to waive certain requirements of the Zoning Code to facilitate business operations impacted by COVID-19 in compliance with applicable health orders is essential to support economic development, prevent layoffs, and maintain tax revenue in the City and thereby serve the public peace, health, and safety; and

WHEREAS, an urgency ordinance that is effective immediately is necessary to avoid the immediate threat to public peace, health, and safety as failure to adopt this urgency ordinance could result in the avoidable closure of local businesses.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NEWARK, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings The City Council of the City of Newark finds that all of the above Recitals are true and correct and incorporated herein by reference. The provisions of the Governor’s “resilience roadmap for state reopening” as published on the State of California’s official COVID-19 website, www.covid.ca.gov, are incorporated herein as if fully set forth.

SECTION 2. CEQA

Approval of the amendments is exempt from environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 3. Urgency Findings

The City Council of the City of Newark hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency ordinance, which finding is based upon the facts stated in the recitals above, and in the staff report dated June 25, 2020, as well as any oral and written testimony at the June 25, 2020 City Council meeting. This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the City Council.

SECTION 4. Ordinance

The City Council hereby makes the findings contained herein and hereby adopts the uncodified Ordinance to read as follows:

ORDINANCE AUTHORIZING COMMUNITY DEVELOPMENT DIRECTOR TO WAIVE REQUIREMENTS OF TITLE 17 DUE TO COVID-19.

Section 1. Authority of Community Development Director

The Community Development Director shall have the authority to issue a COVID-19 minor use permit waiving any requirements and/or standards of Title 17, Zoning, of the Newark Municipal Code to facilitate business operations affected by public-health orders of the federal, state, or county government designed to slow the transmission of the Novel Coronavirus (COVID-19). The Community Development Director may condition the issuance of a COVID-19 minor use permit on compliance with any conditions he or she determines appropriate. Failure to comply with such conditions may result in the revocation of the COVID-19 minor use permit.

Without limiting the foregoing, COVID-19 minor use permits may waive requirements related to outdoor seating, outdoor merchandise displays, required off-street parking, signage and similar restrictions, including conditions contained in existing permits. COVID-19 minor use permits shall not be issued pursuant to this Ordinance to authorize wholly new businesses, but rather only to facilitate the continued operation of existing businesses in compliance with applicable health orders.

Section 2. Duration of COVID-19 Minor Use Permit

A COVID-19 minor use permit issued by the Community Development Director pursuant to this Ordinance, unless otherwise specified by the Community Development Director in his or her sole discretion, shall remain in effect for the duration of this Ordinance. Additionally, the Community Development Director, in his or her sole discretion, may revoke a COVID-19 minor use permit without cause.

Section 3. Procedures

An individual or entity seeking a COVID-19 minor use permit must submit an application on a form designated by the Community Development Director, along with any other documentation or information required by the Community Development Director. No public hearings or notices are required prior to the issuance of a COVID-19 minor use permit. There shall be no fee for the submittal of an application for a COVID-19 minor use permit pursuant to this Ordinance.

Section 4. Use of Right-of-Way

Any individual or entity seeking to use the public sidewalk or other public property for their business operations must obtain an encroachment permit from the City, and must obtain and maintain appropriate insurance as required by the City Engineer. There shall be no fee for the submittal of an application for an Encroachment Permit pursuant to this Ordinance. Business operations shall not be permitted on the sidewalk or other public property if such operations will interfere with the ADA accessible path of travel or cause other safety hazards.

Section 5. Termination

This Ordinance shall take effect immediately and shall remain in effect until the expiration of the declaration of local emergency by the City Council of the City of Newark or unless earlier rescinded by a majority vote of the City Council.

SECTION 5. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Newark hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 6. Effective Date

Following adoption by at least a four-fifths vote of the City Council, this Ordinance shall be effective immediately upon adoption pursuant to Government Code Section 36937. The City Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

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