

CITY OF NEWARK CITY COUNCIL

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

**Various Virtual
Teleconference Locations
7:30 p.m.**

AGENDA

Thursday, July 9, 2020

THIS IS A 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.

A. ROLL CALL

B. MINUTES

- B.1 Approval of Minutes of the City Council meeting of June 25, 2020.
(MOTION)**

C. PRESENTATIONS AND PROCLAMATIONS

C.1 Introduction of employee.

Background/Discussion – Associate Planner Mayank Patel will be introduced at the City Council meeting.

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

F. CITY MANAGER REPORTS

(It is recommended that Items F.1 through F.4 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 Acceptance of work with OC Jones & Sons, Inc. for Sportsfield Park Synthetic Turf Fields and Newark Skate Park at Sportsfield Park, Project Nos. 1192 and 1193 – from Assistant City Engineer Imai. (RESOLUTION)

Background/Discussion – On April 25, 2019, the City Council awarded a contract to OC Jones & Sons, Inc. for Sportsfield Park Synthetic Turf Fields and Newark Skate Park at Sportsfield Park, Project Nos. 1192 and 1193. The synthetic turf fields and skate park at Sportsfield Park are firsts in the City of Newark and were both identified as high priority projects in the Citywide Parks Master Plan. The project has received multiple awards including the California Park and Recreation Society 2019 Award of Excellence in Design Park Planning, the California Park and Recreation Society District 3 Outstanding Park Award and the American Public Works Association 2020 Public Works Project Award for Structures.

The project was completed on time and within budget using Park Improvement and Capital funds. Staff has confirmed that all work has been completed in accordance with the plans and specifications.

Attachment - Resolution

Action – Staff recommends that the City Council, by resolution, accept the work with OC Jones & Sons, Inc. for Sportsfield Park Synthetic Turf Fields and Newark Skate Park at Sportsfield Park, Project Nos. 1192 and 1193.

F.2 Confirmation of the Continued Existence of a Local Emergency due to COVID-19 – from City Manager Benoun and Interim City Attorney Kokotaylo. (RESOLUTION)

Background/Discussion – The City Council ratified a proclamation of local emergency on March 17, 2020 as a result of the COVID-19 pandemic. The City Council on May 14, 2020 confirmed the continued existence of the local emergency due to the COVID-19 pandemic in accordance with state law. City staff recommends that the City Council confirm the continued existence of the local emergency.

On March 16, 2020, the City Manager, acting as Director of Emergency Services, proclaimed a local emergency pursuant to California Government Code Section 8630 and Newark Municipal Code Chapter 2.16. The emergency declaration was based on conditions of extreme peril to the safety of persons and property within the City as a consequence of the global spread of novel coronavirus 2019 ("COVID-19"), including confirmed cases in Alameda County. On March 17, 2020, the City Council adopted a resolution ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services.

On May 14, 2020, the City Council adopted a resolution confirming the continued existence of the local emergency due to the COVID-19 pandemic.

Pursuant to Government Code Section 8630, the City Council must review and confirm the continued existence of a local emergency at least once every sixty (60) days.

In recent weeks, there has been progress in mitigating the spread of COVID-19. However, the conditions that prompted the original declaration of a local emergency continue to exist and health officials are still learning more information regarding the nature of COVID-19 and how it is transmitted. Community transmission of COVID-19 continues to occur, and the number of cases within Alameda County continues to rise. At the time of this writing there are now over 6,000 cases within the County, and over 135 deaths. This displays a precipitous rise in the infection and death rates over the past month. On June 18, 2020, the Alameda County Health Officer extended the order for all residents to shelter at home until the health order is rescinded, superseded, or amended. Public health and safety concerns for persons and property within the City as a consequence of the global spread of COVID-19 continue to exist.

Declaring a state of emergency provides local governments with the power necessary to coordinate and implement plans aimed at protecting the community and property during a disaster. For example, a declaration of emergency is often necessary to secure mutual disaster aid from local, state, and federal agencies. This will also permit the Director of Emergency Services to promulgate orders and regulations necessary for the protection of life and property and ensures that the City and its officials and employees are immune from liability when exercising their official duties during this emergency.

If adopted, the declaration of emergency will continue to remain in place until the emergency conditions have ended. However, the City Council will be required to continue to review the declaration at least every 60 days.

Attachment – Resolution

Action – Staff recommends that the City Council, by resolution, confirm the continued existence of the local emergency due to COVID-19.

F.3 Authorization for the City Manager to sign a License Agreement with Newark Unified School District for use of MacGregor School Playfields – from City Manager Benoun. (RESOLUTION)

Background/Discussion – In 1987, the City of Newark (“City”) and Newark Unified School District (“District”) signed a “School Playfield Development and Maintenance Agreement”. The agreement allowed the City to construct and maintain what is now commonly known as the “MacGregor School Playfields” and, in exchange, the District leased to the City the property for a dollar per year for a period of twenty years. The purpose of the agreement was to provide “wholesome recreation facilities for the residents of Newark”.

City and District staff prepared a new “License Agreement” that would continue the mutually beneficial relationship between the City and the District and also reaffirm the shared commitment to providing recreational amenities to the Newark community. The final draft is attached to this staff report.

In summary, the District would rent the MacGregor School Playfields to the City for a dollar per year for the next three and a half years and, in exchange, the playfields would be managed by the City and would be used by Newark residents and community sports organizations for recreational activities, as well as serve as the venue for Newark Days.

The material provisions include the following:

- **Term:** This agreement would last until the end of 2023 and would automatically be extended for a three year term if not cancelled.
- **Rent:** The City would rent the site from the District for a dollar per year. The site includes the MacGregor School Playfields as well as the adjacent parking lot located off Cedar Blvd.
- **Use of Playfields:** The City would be responsible for scheduling of use of the playfields. The playfields would be used by residents and community sports organizations for recreational purposes, as well as by Newark Days and by the District.
- **Maintenance:** The City would continue its obligation to maintain the playfields, including mowing, irrigation, and weed management.
- **Utilities:** The City would be solely obligated to pay for water and electric utilities. This would be a new obligation for the City to assume as the previous agreement required the District to solely pay the cost of utilities. The District has provided the City with invoices and, based on a review of the invoices, staff anticipates that it will cost approximately \$60,000 annually. Staff recommends that the City pay the utilities because the MacGregor School Playfields is a recreational amenity for all City residents and organizations and not just District students.

The License Agreement has been reviewed and approved by the City-NUSD Liaison Committee. It was also approved by the District’s Board of Trustees at a meeting held in February of this year.

Fiscal Impact – As discussed, the City would be responsible for payment of utilities. Staff anticipates these costs to be \$60,000 per year. However, these anticipated costs were included in the 2020-2022 biennial budget that was recently adopted.

Attachments – (1) Proposed Resolution;
(2) Draft License Agreement; and
(3) “School Playfield Development and Maintenance Agreement” (1987).

Action – Staff recommends that the City Council, by resolution, authorize the City Manager to sign a License Agreement with Newark Unified School District for use of MacGregor School Playfields.

F.4 Approval of a Third Amendment to a Contractual Services Agreement with Management Partners for Community Development, Human Resources, and Financial Consulting Services – from City Manager Benoun. (RESOLUTION)

Background/Discussion – The City signed a contract with Management Partners in March of 2019 for a compensation total 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. The first amendment to the contract was signed in August of 2019 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. In January 2020, the City Council approved a second amendment authorizing an increase in the total not to exceed compensation by \$80,000 to \$212,000 in order to allow Management Partners to continue providing the aforementioned assistance related to community development, financial consulting matters, and expert human resources assistance.

Staff continues to have an immediate and future need for continued services as a result of the volume of work and complex issues facing the community development, human resources and finance departments. There is also a need for assistance due to the following vacancies that will not be filled due to budget cuts: one human resources technician, one senior planner, and two accountants.

The current balance on the existing agreement (as amended) is approximately \$19,000. Based on anticipated needs in these departments, staff recommends increasing the total not to exceed compensation by \$76,200 to \$288,200.

The anticipated breakdown for each Department’s anticipated and respective costs is outlined below:

Community Development:	\$64,000
Finance:	\$20,000
Human Resources:	\$11,200

This will provide sufficient funding for Management Partners to continue providing expert assistance to the City and for the City to move forward with crucial projects necessary to meet imminent needs.

In particular, Management Partners will provide Mr. Patrick O’Keeffe for project management services to assist the Community Development Department with the

implementation of the NewPark Place Specific Plan and the first phase of residential development at the Mall. City staff is negotiating with the owners of NewPark Mall to sign a reimbursement agreement that would require reimbursement to the City for costs associated with Mr. O’Keeffe’s proposed project management work.

Attachment - Resolution, Third Amendment to the Contractual Services Agreement

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

NONCONSENT

F.5 Introduction of an Ordinance Amending the Requirements Related To Holding City Council Meetings and Agendas, Adoption of Resolutions Establishing Regular Meeting Schedule For the Remainder of 2020 and designating locations for the posting of agendas and notices – from City Manager Benoun, City Clerk Harrington and Interim City Attorney Kokotaylo. (ORDINANCE) (RESOLUTIONS-2)

Background – The Newark Municipal Code (the “Code”) currently establishes a set time, date and location for regular meetings of the City Council. Additionally the Code establishes a set list of topics and items for City Council consideration in an established order.

Establishing these procedures in the Code pursuant to an ordinance makes it difficult for the City Council and staff to be flexible in response to changing conditions and circumstances. For example, during the COVID-19 pandemic, City Hall has been closed to members of the public and City staff has found that it may be helpful to slightly modify the regular meeting schedule date and time. However, because certain activities (for example, the adoption of an ordinance) must occur at a regular meeting, neither City staff nor the City Council could modify the regular meeting schedule without amending the Code. Furthermore, the Code establishes the location for regular meetings of the City Council and provides that regular meetings cannot be held elsewhere except as a result of emergencies. There may be circumstances where the City Council wants to hold regular meetings at a different location such as at a larger meeting space to account for public interest in a particular item.

Additionally, the Code provides for set topics and an order for businesses on the City Council agenda. Similar to the Code provisions establishing a set time, date and location for regular meetings, this cannot be revised without amending the Code by ordinance and can make it difficult to vary the agenda as relevant topics and items change.

Discussion – Sections 2.08.010, “Regular meetings,” 2.08.030 “Agenda,” and 2.08.070 “Order of business,” of the Code establish the set meeting time, date, and location of the regular City Council meetings and the agenda topics and order for City Council consideration at each meeting.

Having the regular meeting date, time and location established in the Code limits the ability of the City Council to make adjustments based on need or circumstances. Any adjustments to the Code require two readings and thirty days after adoption to become effective. By removing these requirements from the Code, the City Council can make adjustments by resolution, which take effect immediately, and can shift or modify the date, time and location for regular meetings as circumstances necessitate.

Similarly, establishing the agenda and order of business within the Code greatly restricts the City Council’s ability to adjust to changed circumstances or situations. For example, the agenda includes items for economic development corporation, successor agency and written communications. The economic development corporation no longer exists and the City Council rarely conducts business as the successor agency. Removing these provisions from the Code will allow the City Council and staff to establish a regular agenda that allows the City Council to efficiently and effectively consider relevant topics and items. The proposed ordinance will now provide that there are certain items which must be considered at regular meetings but does not set an established order or include other topics that are now irrelevant.

In addition to the proposed ordinance amending the Code, a resolution is attached for the City Council’s consideration that will establish the City Council meeting dates and times for the remainder of 2020. At the last meeting in 2020, staff will bring to the City Council a resolution to establish the regular meeting dates and times for 2021.

Staff also recommends updating where City notices and agendas are posted. Section 1.12.010 of the Newark Municipal Code states that the posting places for public notices shall be set by the City Council from time to time by resolution. For the last 10 years, the official locations have been the City Administration Building, the Silliman Activity and Family Aquatic Center, and the Library. Due to the COVID-19 Pandemic, the Silliman Center and Newark Library have been closed to the public. Staff has been taping the required notices and agendas to the front door of these buildings. The Ralph M. Brown Act requires postings at one physical location and the city website. Staff is recommending the agendas and notices be posted at the City Administration Building, the City Website, and any meeting location when the meeting is not held at the City Administration Building. For example, the Senior Citizens Standing Advisory Committee meetings are held at the Clark W. Redeker Newark Senior Center. Agendas and notices for those meetings would be posted at that location, in addition to the City Administration Building and the City website. The proposed resolution states staff may post agendas and notices at other city facilities, but it would no longer be a legal requirement.

Attachments – Ordinance, Resolutions

Action – Staff recommends that the City Council: 1) waive full reading and introduce by title only an ordinance related to the requirements related to holding City Council Meetings; and 2) adopt a resolution establishing the regular meeting schedule for the remainder of 2020; and 3) adopt a resolution designating public places for posting city notices and agendas.

G. CITY ATTORNEY REPORTS**H. ECONOMIC DEVELOPMENT CORPORATION****I. CITY COUNCIL MATTERS****I.1 Consideration of City Council’s summer meeting recess during the month of August 2020 – from Mayor Nagy. (MOTION)(RESOLUTION)**

Background/Discussion – Since 1994 the City Council has approved a summer meeting recess during the month of August. Mayor Nagy would like the City Council to consider a summer recess again this year during August.

The City Council may authorize the City Manager, or his designee, to approve any administrative matters that might occur during the month of August that cannot be deferred until September for City Council action. The general types of administrative matters that might require action are:

- Acceptance of completion of work on City projects
- Approval of agreements as needed for budgeted projects and services
- Approval of plans and specifications
- Award of contracts for budget projects
- Denial of claims

The City Manager would report all such actions taken during the month of August to the City Council at the first regular meeting in September.

Attachment - Resolution

Action - It is recommended that the City Council, by motion, approve a City Council summer meeting recess during the month of August 2020 and, by resolution, authorize the City Manager, or his designee, to take action on certain administrative matters on behalf of the City of Newark during the recess.

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****IMPORTANT NOTICE REGARDING 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/92778317161>

From a telephone or to supplement a device without audio, dial+1 669 900 6833, [Webinar ID: 927 7831 7161](https://www.zoom.us/j/92778317161)

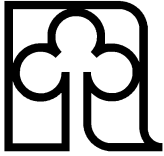
Submission of Public Comments:

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. 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 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.



CITY OF NEWARK CITY COUNCIL

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

**Various Virtual
Teleconference Locations
7:30 p.m.**

AGENDA

Thursday, July 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

Lenka Hovorka
Assistant City Manager

Gina Anderson
Police Chief

Soren Fajeau
Public Works Director

David Zehnder
*Recreation and Community
Services Director*

Kristopher J. Kokotaylo
Interim City Attorney

Krysten Lee
Finance Director

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.