

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 12, 2017

CITY COUNCIL:

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

CITY STAFF:

John Becker
City Manager
Terrence Grindall
Assistant City Manager
Susie Woodstock
Administrative Services Director
Sandy Abe
Human Resources Director
Soren Fajeau
Public Works Director
Jim Leal
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:

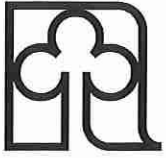
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|-------------------------------------|-------------------------|
| A. ROLL CALL | I. COUNCIL MATTERS |
| B. MINUTES | J. SUCCESSOR AGENCY |
| C. PRESENTATIONS AND PROCLAMATIONS | TO REDEVELOPMENT AGENCY |
| D. WRITTEN COMMUNICATIONS | K. ORAL COMMUNICATIONS |
| 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.



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AGENDA

Thursday, January 12, 2017

- A. ROLL CALL

- B. MINUTES
 - B.1 Approval of Minutes of the regular and special City Council meetings of December 8 and 13, 2016. (MOTION)

- C. PRESENTATIONS AND PROCLAMATIONS

- D. WRITTEN COMMUNICATIONS

- E. PUBLIC HEARINGS
 - E.1 Hearing to Consider Adoption of an Urgency Ordinance and Introduction of a Zoning Text Amendment Ordinance Amending Newark Municipal Code Chapters 17.08 (“Definitions”) and 17.16 (“R Residential Districts”) to Comply with Recent Amendments to State Law Regarding Accessory Dwelling Units – from Assistant City Manager Grindall.
(ADOPTION OF URGENCY ORDINANCE)(INTRODUCTION OF ORDINANCE)

Summary – Staff is proposing to amend Title 17 (Planning and Zoning) of the Newark Municipal Code to respond to recent State legislation and to implement policies in the General Plan Housing Element. Senate Bill (SB) 1069, Assembly Bill (AB) 2299, and AB 2406 were all signed by Governor Brown in late September, requiring that cities and counties in California adopt conforming regulations for Accessory Dwelling Units (ADU). The new State regulations are intended to make it easier to create ADUs on single-family residential properties, thereby addressing the shortage of affordable rental units in California. On December 13th, the Planning Commission considered the proposed Zoning Text Amendment and voted unanimously to recommend approval to the City Council.

Background – Accessory Dwelling Units (ADUs), previously known as secondary units, and also known as in-law apartments, or granny flats, are an important housing resource in California. ADUs are typically created through the construction of a detached structure in the rear yard, the conversion of existing living space in a single-family home to a separate dwelling unit, or the addition of space to an existing home.

Over the last two decades, the State has adopted a number of laws that encourage ADUs and limit the requirements that may be imposed by cities on such units. ADUs are generally regarded as an effective way to increase housing options without changing neighborhood character. They can effectively provide affordable housing for renters, a source of income for homeowners, and a housing resource for extended families, seniors, college students, and others.

Newark currently permits ADUs in all residential zoning districts, subject to rules relating to size, location, parking, height, lot size, and other physical features. These rules include limiting the maximum size of the units to 275 square feet and the required addition of a parking space to the property. Staff believes that these requirements have impeded the development of secondary units in Newark.

The new State laws requires that the Cities regulations be relaxed and that ADUs meeting the City's regulations be ministerial approved—in other words, approved by staff without a public hearing and not subject to a discretionary action. The Housing Element of the Newark General Plan recognizes ADUs as a key part of the City's rental housing supply.

On September 27 and 28, 2016, Governor Brown signed three pieces of legislation into law that require California cities and counties to substantially revise their ADU regulations. Copies of the legislation are attached to this staff report. The specific provisions of the legislation are described below:

- **SB 1069**, sponsored by State Senator Wieckowski (D-Fremont), was signed by the Governor on September 27, 2016. The bill requires that:
 - Municipal code references to “secondary dwelling unit” be replaced with the term “accessory dwelling unit” so as to have uniform Statewide definitions.
 - Local ordinances must state that ADU applications will be approved or disapproved within 120 days after a complete application is received.
 - ADUs up to 1,200 square feet or up to 50 percent of the living area in an existing dwelling may be permitted.
 - Cities cannot require more than one parking space per bedroom.
 - Cities must allow off-street parking requirements to be met through tandem parking or within required setback areas (as well as through covered parking or extended driveways).
 - Cities must waive parking requirements for ADUs that are entirely contained within existing structures, or that are within one-half mile of public transit, one block of a car-share vehicle, or in a historic district.
 - Fire sprinklers can only be required for the ADU if they would be required for an equivalent addition to the primary residence.
 - Additional streamlined requirements (relating to setbacks and other development standards) apply to ADUs that are contained entirely within existing structures.
 - Cities are given an opportunity to limit the use of ADUs as short-term rentals.
 - Local agencies may not collect water and sewer connection fees for ADUs that do

not add habitable floor space, and must structure fees for other types of ADUs so they are proportional to the impacts on service demand.

- **AB 2299**, sponsored by Assemblyman Bloom (D-Santa Monica), was signed by the Governor on September 27, 2016. The bill features many of the same provisions as SB 1069, including prohibitions on requiring additional parking for ADUs in certain circumstances.
- **AB 2406**, sponsored by Assemblyman Thurmond (D-Richmond), was signed by the Governor on September 28, 2016. The bill creates a new class of ADUs called Junior Accessory Dwelling Units that are entirely contained within the footprint of existing homes. Junior ADUs must incorporate an existing bedroom, include an efficiency kitchen, have a door leading directly to the outside of the house, and be less than 500 square feet. The new law requires that Junior ADUs be permitted without an off-street parking space and without utility connection charges.

Discussion – In order to comply with recently adopted legislation, staff recommends replacing various provisions of the Newark Zoning Code (NMC Title 17). All cities and counties in California must make similar changes. These changes include replacing definitions and references to “second units” with “accessory dwelling units”, as well as providing new regulations governing their design and use. Staff also recommends deleting Section 17.08.143 (“Efficiency Unit”) as it would now be redundant because of the new State regulations.

New Definitions of ADUs / Types of ADUs

The proposed new regulations are organized into four sections described as follows:

- Definition of terms, including “Standard Accessory Dwelling Unit” (SADU) and “Junior Accessory Dwelling Unit” (JADU)
- Regulations that apply to all Accessory Dwelling Units (ADU).
- Regulations that apply only to Standard Accessory Dwelling Units (SADU)
- Regulations that apply only to Junior Accessory Dwelling Units (JADU)

The proposed text amendment defines two types of ADUs in the City consistent with State law: Standard ADUs (SADUs) and Junior ADUs (JADUs). **SADUs** are units that result in a net increase in habitable floor area on a parcel. Examples would be new detached units in the rear yard, new units above a garage, conversion of unfinished attic or basement space into habitable space, or major home additions with second kitchens and new bathrooms. On the other hand, **JADUs** are created through the conversion of an existing bedroom within an existing single-family home. By State law, JADUs may be no larger than 500 square feet, are not separately metered (for utilities), and involve no net increase in habitable floor area on the property.

Regulations Applicable to All ADUs

The changes indicate that an application for an ADU must be approved in a ministerial fashion (e.g., without discretionary action or a hearing) within 120 days of submission of a complete application. It maintains existing requirements that requires a building permit for an ADU, and review for ADUs that involve exterior alterations.

The State regulations explicitly allow the City to collect fees for any permits associated with ADU creation (building permit, design review, etc.). However, as required by SB 1069, the City cannot adopt special service charges or fees that apply only to homes with ADUs but not to homes without them.

The proposed text amendment carries forward the existing requirement that only one ADU is permitted per property. ADUs continue to be subject to the same height, setback, and lot coverage requirements that apply to single-family homes in the same zoning district.

The proposed text amendment also adds new provisions, including the requirement that the owner reside on the property (either in the principal residence or in the ADU), as well as the requirement that a deed restriction be filed with Alameda County that limits the sale of the ADU separate from the principal residence. It is also required that the unit is architecturally compatible with the principal residence, and that any exterior stairs (to any upper floor unit) be in the rear or side yards, and that ADUs be on a permanent foundation is carried forward.

New language has been added addressing fire sprinklers. Sprinklers may only be required where they would also be required for a principal residence under the Newark Fire Code. Typically, a new detached ADU would require sprinklers (just as a new residence would require sprinklers), but the conversion of interior space in an existing house to an ADU would not.

New language has also been added that would prohibit the rental of ADUs for terms shorter than 30 days. This is a reiteration of city wide regulations.

Regulations Applicable to Standard ADUs

Standard ADUs have the potential to be more impactful than Junior ADUs. They are typically larger and result in a net increase in habitable floor space on a property.

The proposed text amendment adds a requirement that ADUs must be separated from other habitable structures on the site by at least 10 feet. The regulations incorporate the following new requirements, which are specifically required by SB 1069:

- The City cannot require a continuous passageway (e.g., a path) from the street to the front door of the ADU.
- An existing garage may be converted to an ADU, even if it is in the required setback area, provided the applicant still meets all off-street parking requirements after the ADU is completed.

The most substantial changes required by SB 1069 relate to off-street parking. Currently, one off-street parking space is required per bedroom for an ADU. This continues to be the case under the proposed revisions, but, per State law, off-street parking cannot be required for units meeting any of the following criteria:

- The unit is within one-half mile of public transit
- The unit is within a designated historic district
- The unit is entirely within the principal residence and results in no net increase in habitable floor area on the property
- The unit is in an area where on-street permit parking is required, but such permits are not available to the tenant
- The unit is within one block of a car-share vehicle

The proposed text amendment defines “public transit” as transit service adequate to facilitate area residents’ reliance on transit for their primary mobility. The criteria used to determine adequacy would include ridership, routing, frequency, and reliability. Based on these criteria no area of Newark presently meets the definition of adequate transit. Staff recommends that the Council review this determination with each Housing Element update.

Where off-street parking is required, SB 1069 further limits the City’s ability to specify how and where it must be sited. The proposed regulations allow ADU parking requirements to be met in conventional garages or carports, uncovered paved areas such as an extended driveway, tandem parking in an existing driveway, or parking on other locations on the property, including the front setback. The City can prohibit parking in required setbacks if it finds that such parking is not feasible due to life safety conditions.

The existing 275 square foot maximum size of a second unit is not consistent with the new State legislation. Thus the proposed ordinance limits the maximum size of a SADU to 600 square feet.

The recent State legislation also limits the ability of “local agencies” to collect water and sewer connection fees for new ADUs. However, it defines “local agencies” as cities and counties, and does not directly regulate independent water and sewer districts. In 2016, the Alameda County Water District (ACWD) connection fee for a new ADU was \$4,111, while the Union Sanitary District sewer connection fee was \$5,129.50. The high cost of connection fees is a major obstacle to ADU construction. Because the City itself does not regulate these fees, the draft regulations do not impact them.

The proposed text amendment notes that other fees for ADUs should be proportionate to the burden of the proposed ADU, and must not treat an ADU as if it were a new principal residence.

Regulations Applicable to Junior ADUs

As noted earlier, Junior ADUs are units that repurpose a bedroom in an existing residence into an independent living unit. They are less impactful than SADUs since they result in no increase in habitable space. Creating a JADU would typically require constructing a door from a bedroom to the exterior of the home, installing an efficiency kitchen, and installing a double door that separates this living space from the rest of the home. Consistent with AB 2406, JADUs may not exceed 500 square feet in floor area.

The proposed ordinance requires JADU's to have an efficiency kitchen with a counter no less than six feet long, a sink, and electrical service. JADUs may have their own bathrooms, or they may share bathroom space with the principal residence. Under AB 2406, the City cannot impose parking requirements on JADUs. However, such units would only be permitted in residences that already meet off-street parking requirements for single-family homes.

Urgency Ordinance – The State legislation was signed by the Governor on September 27th and 28th and requires cities to enact local regulations by January 1, 2017. If cities do not enact regulations within this narrow timeframe, then cities will be required to ministerially approve an ADU and apply basic standards contained in the Government Code. Staff recommends that the Council adopt an urgency ordinance so as to immediately enact the local regulations discussed above. Under the Government Code, cities may enact urgency ordinances by a four-fifths vote of the City Council if there is an immediate need to protect public peace, health, or safety. Staff recommends adopting the attached urgency ordinance immediately because if the ordinance were instead to become effective thirty days after its second reading, then there could be ambiguity and confusion regarding the applicability of the City's accessory dwelling unit standards that could result in inconsistent and unfair results for City residents.

Environmental Review – Pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), “the adoption of an ordinance regarding second units in a single-family or multifamily zone by a city or county to implement the provisions of Sections 65852.a and 65852.2 of the Government Code” relating to “granny” housing and “second unit ordinances” are exempt from the requirements of CEQA. Similarly, the ministerial approval of ADUs would not be a “project” for CEQA purposes, and environmental review would not be required prior to approving individual applications.

Planning Commission Update – The Planning Commission considered this matter on December 12, 2016, and unanimously recommended adoption of a Zoning Text Amendment.

Attachments

1. Proposed Urgency Ordinance
2. Proposed Zoning Text Amendment Ordinance

3. Senate Bill 1069 (Wieckowski)
4. Assembly Bill 2299 (Bloom)
5. Assembly Bill 2406 (Thurmond)

Action - It is recommended that the that the City Council open a public hearing, receive testimony from the public, and consider staff's recommendation to adopt an Urgency Ordinance and introduce a Zoning Text Amendment Ordinance amending Newark Municipal Code Chapters 17.08 ("Definitions") and 17.16 ("R Residential Districts") to comply with recent amendments to State law regarding Accessory Dwelling Units.

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 Acceptance of work with Bond Blacktop, Inc. for 2016 Street Slurry Seal Program, Project 1117 – from Associate Civil Engineer Tran. (RESOLUTION)

Background/Discussion – On July 14, 2016, the City of Newark awarded a contract to Bond Blacktop, Inc. for 2016 Street Slurry Seal Program, Project 1117. This project provided an application of sand, aggregate, and asphalt emulsion mixture and pavement re-striping on various City streets.

This project was completed on time and within the original budget using Alameda County Measure B Sales Tax funds, Vehicle Registration Fee funds, and the Traffic Congestion Relief Fund.

Attachment

Action - It is recommended that the City Council, by resolution, accept the work with Bond Blacktop, Inc. for 2016 Street Slurry Seal Program, Project 1117.

G. CITY ATTORNEY REPORTS

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS**J. CITY COUNCIL ACTING AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY****J.1 Resolution of the City of Newark acting as the Successor Agency to the Newark Redevelopment Agency adopting and endorsing the Recognized Obligation Payment Schedule for the period of July 2017 to June 2018 (ROPS 17-18) and approving the Last and Final ROPS – from Administrative Services Director Woodstock. (RESOLUTION)**

Background/Discussion – Assembly Bill (AB) 1x26 and the subsequent amendment, AB 1484, require agencies to adopt a Recognized Obligation Payment Schedule (ROPS) for the Successor Agency to close out the obligations of the former Newark Redevelopment Agency. Health and Safety Code (HSC) also allows the Successor Agency to file for a Last and Final ROPS which lists all the requested payments to fully complete the payment schedule.

The Successor Agency and the Oversight Board have previously approved several ROPSS for periods between January 2012 and June 2017.

The only obligation remaining from the dissolution of the Newark Redevelopment Agency is the loan from the City to the Newark Redevelopment Agency. The State Department of Finance issued a Finding of Completion to the Successor Agency and the Oversight Board approved the repayment of the loan.

The outstanding debt on the loan is \$215,696. Per HSC section 34191.4 (b) (2), the Agency can request \$62,894 in Fiscal Year 2017-2018 for repayment of the loan. The Last and Final ROPS allows the Agency to list the estimated requested amounts for future years until the obligation is fully paid. The estimated amount used for each future year is the calculated amount for ROPS 17-18. The obligation will be completed in ROPS 20-21A (July –December 2020). The Oversight Board will not have to approve an annual resolution, but will need to meet one final time to approve the dissolution of the Successor Agency. Annual ROPS must be submitted until the Last and Final ROPS is approved which may take up to one hundred (100) days.

Upon approval by the Successor Agency, ROPS 17-18 and the Last and Final ROPS will be presented to the Oversight Board for consideration.

Attachment

Action - It is recommended that the City Council acting as the Successor Agency to the Newark Redevelopment Agency, by resolution, adopt and endorse the Recognized Obligation Payment Schedule for the period of July 2017 to June 2018 (ROPS 17-18) and approve the Last and Final Recognized Obligation Payment Schedule.

K. ORAL COMMUNICATIONS

L. APPROPRIATIONS

Approval of Audited Demands for the City Council meeting of January 12, 2017. (MOTION)

M. CLOSED SESSION

**M.1 Closed session pursuant to Government Code Section 54957
Public Employee Performance Evaluation
Title: City Manager.**

Background/Discussion – City Manager Becker has requested that the City Council convene in closed session pursuant to Government Code Section 54957 for a performance evaluation.

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.