

# CITY OF NEWARK CITY COUNCIL

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

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

## AGENDA

Thursday, June 8, 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:

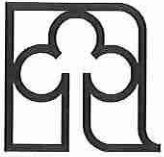
- |                                     |                         |
|-------------------------------------|-------------------------|
| A. ROLL CALL                        | I. COUNCIL MATTERS      |
| B. MINUTES                          | J. SUCCESSOR AGENCY     |
| C. PRESENTATIONS AND PROCLAMATIONS  | 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](http://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, June 8, 2017

**A. ROLL CALL**

**B. MINUTES**

- B.1 Approval of Minutes of the regular City Council meeting of Thursday, May 25, 2017. (MOTION)**

**C. PRESENTATIONS AND PROCLAMATIONS**

**C.1 Introduction of employees.**

**Background/Discussion** – Aquatics Coordinator Samantha Fallon, Administrative Support Specialist II Katie Dennis, Assistant Building Official Mike Wayne, Human Resources Technician Helen Garcia, Police Officer Christi Wallace and Police Officer Joe Rivera will be introduced at the City Council meeting:

**C.2 Proclaiming June as Elder Abuse Awareness Month. (PROCLAMATION)**

**Background/Discussion** – June is Elder Abuse Awareness Month. Members of the Alameda County Adult Protective Services Agency and the District Attorney's office will accept the proclamation at the City Council meeting.

**D. WRITTEN COMMUNICATIONS**

- D.1 Appeal of Planning Commission Decision to approve an amendment to a planned unit development and a conditional use permit to rebuild an existing McDonald's restaurant at 35192 Newark Boulevard – from Associate Planner Mangalam. (MOTION)**

**Background/Discussion** - Stantec Architecture, Inc., on behalf of McDonald's Corporation, filed an application to rebuild an existing McDonald's restaurant located at 35192 Newark Boulevard. On April 11, 2017, the Planning Commission held a public hearing to consider an amendment to P-74-1, a planned unit development, and U-74-1, a conditional use permit to rebuild an existing McDonald's restaurant at 35192 Newark Boulevard. As a result of letters of objection received from Miller Starr Regalia law firm representing the adjacent property owners, the item was continued to

April 25 and May 9, 2017, in order to give staff the time to review the objections. On May 9, 2017, staff presented a revised site plan recommending relocating the entry/exit point from the main drive aisle to the Shopping Center. That evening, the Planning Commission approved Resolution No. 1941 to rebuild existing McDonald's restaurant at 35192 Newark Boulevard.

On May 16, 2017, the City received a letter dated May 15, 2017, from the Miller Starr Regalia law firm, appealing the Planning Commission's action to the City Council.

The Newark Municipal Code provides that within twenty-five days following the filing of the notice of appeal, the City Council shall review the action of the Planning Commission and may do any of the following:

- (a) Refer the matter back to the planning commission for further consideration;
- (b) The City Council may affirm the decision of the Planning Commission and dismiss the appeal; or
- (c) The City Council may set the matter for a public hearing and may, at that public hearing, reverse or affirm, wholly or partly, or modify any decision of the Planning Commission.

Because the Planning Commission's resolution approving the amendments to the use permit and planned unit development are conditioned upon City Council approval, this matter is scheduled for a public hearing before the City Council under Item E.1 for this meeting. In other words, there is no need for the Council to decide whether it should schedule the matter for public hearing since a public hearing has already been scheduled. The staff report for Item E.1 responds to the comments raised by the law firm representing the adjacent property owner and also attaches the letter for the Council to review and consider.

Staff therefore recommends that the Council dismiss the appeal.

**Action** – It is recommended that the City Council, by motion, dismiss the appeal because a public hearing has already been scheduled under Item E.1 to consider amendments to P-74-1, a planned unit development, and U-74-1, a conditional use permit in order to rebuild an existing McDonald's restaurant at 35192 Newark Boulevard (APN: 92A-720-10).

## **E. PUBLIC HEARINGS**

- E.1 Hearing to consider an amendment to a planned unit development and a conditional use permit to rebuild an existing McDonald's restaurant at 35192 Newark Boulevard – from Associate Planner Mangalam. (RESOLUTION)**

**Background/Discussion** - Stantec Architecture, Inc., on behalf of McDonald's Corporation, has filed an application to rebuild an existing McDonald's restaurant located at 35192 Newark Boulevard.

The existing 5,191 square foot building (including basement) with capacity of 86 seats is located on the east side of Newark Boulevard midway between Jarvis Avenue and Cedar Boulevard. The existing McDonald's restaurant has one drive-thru lane that supports stacking/queuing of seven vehicles. The existing building is to be removed and rebuilt with a completely updated structure of approximately 4,532 square feet with 80 seats, thus a decrease of 659 square feet of floor area and with 6 fewer seats. The proposed building includes a two-lane drive-thru layout and improvements include an additional customer order display and ordering kiosk; an additional menu board speaker; and a separate payment window and order pick-up window.

The existing building has a frontage of approximately 72 feet and 6 inches including the play space and rises up to approximately 20 feet. The proposed building will have a frontage of approximately 102 feet and a proposed height of 18 feet and 9.5 inches with a decorative arch element extending on some parts up to 23 feet and 4 inches.

McDonald's Corporation is in the process of re-imagining stores in North America. The proposed redesign of the store is an arcade concept to break up the scale of the building with a palate of earth tone colors as shown on the proposed exterior elevations. The proposed exterior wall is cement plaster and tile finish with new aluminum trellis above all windows.

The existing retaining wall to the southwest corner of the site would be extended and improved with stucco finish and decorative cap to help screen cars using the drive-thru as viewed from Newark Boulevard. The Landscape Planting Plan shows upgraded landscaping, including additional trees, shrubs, vines, and perennials.

Proposed signage consists of two building wall signs on front and drive-thru facades; four channel wall logos; directional signs for drive-thru; and address identification and re-facing of the existing monument sign. In addition, there would be two menu boards, two canopy signs and window banners for 'pick-up here and pay here' needed for the drive-thru.

#### **Planning Commission Action – April 11, 2017**

On April 11, 2017, the Planning Commission held a Public Hearing to consider an amendment to a Planned Unit Development and Conditional Use Permit to replace the McDonald's restaurant. City Staff had prepared an analysis of the proposal and a report recommending approval with proposed findings as provided by the Newark Municipal Code.

A letter dated April 11, 2017, was received from the Miller Starr Regalia law firm, representing members of the Ladrech family, the owners of former Mi Pueblo grocery store in the Rosemont Shopping Center, raising issues about the proposed project. In summary, the letter raised the following issues or objections: (a) that the proposed findings

in the draft resolution would be conclusory, and not supported by substantial evidence; (b) that the proposed determination that the project is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the “Class 2” categorical exemption of CEQA Guidelines Section 15302 (“Replacement or Reconstruction”) would be improper; and (c) that a private agreement among landowners would be violated by the project.

The item was continued in order to allow staff and the applicant time to review the issues raised by that letter. Staff carefully considered the aforementioned issues and objections. Staff ultimately concluded that none of those objections have merit for the reasons identified in the subsequent Planning Commission staff report and summarized below:

### **Adequacy of the Proposed Findings**

The proposed resolution would include findings pursuant to Section 17.40.050 (Permit Procedure) and Section 17.72.070 (Action by Planning Commission) of the Newark Municipal Code. The proposed findings and the bases for the proposed findings are set forth below:

- a. *That the proposed location of the planned unit development is in accord with the objectives of the zoning title and the purposes of the district in which the site is located.*  
The zoning for the site is CC – Community Commercial. Section 17.20.020 of Newark Municipal Code states the purpose of that zoning district is: “The community commercial zone reserves appropriately located areas for commercial uses which serve the comparison shopping needs of the community. These prime commercial areas are intended for uses which support the economic diversity and future financial well-being of the city through generation of substantial amounts of revenue.” Restaurants and drive-thru restaurants are a permitted use in this district per Section 17.20.030.
- b. *That the proposed location of the planned unit development and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*  
The proposed project would involve the replacement/reconstruction of an existing drive-thru restaurant with a new building for the same use, of similar size and capacity on the same property, which is a commercial site on a major street. There is no substantial evidence indicating any reason to anticipate any detrimental or injurious effects of the project.
- c. *That the standards of population density, site areas and dimensions, site coverage, yard spaces, heights of structures, distances between structures, usable open space, off-street parking and off-street loading facilities and landscaped areas will produce an environment of stable and desirable character consistent with the objectives of the zoning title.*  
Numerous conditions of approval are incorporated into the permit in order to ensure the desired environment of stable and desirable character for the site and the project.
- d. *That the standards of population density, site area and dimensions, site coverage, yard spaces, heights of structures, distances between structures, usable open space, and off-*

*street parking and off-street loading facilities will be such that the development will not generate more traffic than the streets in the vicinity can carry without congestion and will not overload utilities.*

The new restaurant building is not expected to generate more traffic than the existing restaurant. Existing utilities are adequate for the project, which will not require utility usage above that of the existing restaurant.

- e. *That the combination of different dwelling types and/or the variety of land uses in the development will complement each other and will harmonize with existing and proposed land uses in the vicinity.*

The restaurant is part of an existing shopping center, which is expected to continue to be devoted to compatible commercial uses after the project is in operation.

- f. *That the proposed location of the conditional use is in accord with the purposes of the zoning title and the purposes of the district in which the site is located.*

The proposed amendment of the existing permit would accommodate the continued use of the property for restaurant purposes, in accord with the purposes of the zoning for the site, which is CC – Community Commercial. Restaurants and drive-thru restaurants are a permitted use in this district.

- g. *That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

This is a replacement of an existing restaurant with a new one of similar size and capacity on the same property, which is a commercial site on a major street. There is no substantial evidence indicating any reason to anticipate any detrimental or injurious effects of the project. Numerous conditions of approval are incorporated into the permit in order to ensure the desired environment of stable and desirable character for the site and the project.

- h. *That the proposed conditional use will comply with each of the applicable provisions of Chapter 17.72 (Use Permits).*

Numerous conditions of approval are incorporated into the permit in order to ensure that the construction and operation of the restaurant will be in compliance with city code requirements.

### **California Environmental Quality Act (CEQA) Exemption**

Staff's review of the proposed project concluded that it should be deemed exempt from CEQA as a replacement of an existing structure. The CEQA Guidelines identify various categories or classes of projects that have been determined not to have a significant effect on the environment, and which are therefore exempt from the requirements of CEQA. Currently, the California Secretary of Resources has listed 32 classes of projects that are deemed not to have a significant effect on the environment and those types of projects therefore have been designated as "categorically exempt" from CEQA. (CEQA Guidelines, §§ 15300-15349). Staff's analysis of this proposed project determined that it is categorically exempt from CEQA, as a replacement or reconstruction of an existing

structure, pursuant to CEQA Guidelines Section 15302 (“Class 2 – replacement or reconstruction of existing structures”)

CEQA Guidelines Section 15302 provides: “Class 2 [of categorically exempt projects] consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced...” This exemption specifically applies to “replacement of a commercial structure with a new structure of substantially the same size, purpose and capacity.” (Section 15302, sub. (b).) This exemption does not require that the new or replacement structures be constructed on the exact same footprint as the structures being replaced; instead, it simply requires that the new structure be placed on the same lot on which the existing structure is built. (See, *Dehne v. County of Santa Clara* (1981) 115 Cal.App.3d 827, 837.) Further, the requirement that the new building have “substantially” the same purpose and capacity “speaks only to the productive purpose and capacity” of the structure and “does not demand minute scrutiny of each of the individual components” of the new structure. (*Id.* at p. 839.)

Substantial evidence supports staff’s determination that the project is exempt from CEQA analysis. (See *Dehne v. County of Santa Clara* (1981) 115 Cal.App.3d 827, 844.) CEQA Guidelines Section 15384 defines “substantial evidence” as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”

The project is located on the same parcel of land as the existing drive-thru restaurant. The project will replace the existing structure with one of substantially the same size, purpose and capacity. The replacement building will be approximately the same size as the existing one. In fact, the new building is actually smaller than the existing structure, when taking into account the size of the existing basement. Further, there are a total of 86 seats in the existing restaurant and the proposed restaurant will have 80 seats. The project does not alter ingress and egress into the surrounding shopping center.

The letter of April 11, 2017, contended that the project should not be deemed to be categorically exempt because of the “unusual circumstances” exception to that exemption. However, the unusual circumstances exception does not apply unless it is shown that there is “a reasonable probability” that a proposed project will have “a significant effect on the environment due to unusual circumstances.” (CEQA Guidelines Section 15300.2 subd. (c).) For a project that meets the requirements of a categorical exemption, as this project does, a claim that unusual circumstances creates an “exception” must present substantial evidence that the project will actually have a significant effect on the environment. (See *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1106.) Staff considered that claim of “unusual circumstances” but did not find substantial evidence sufficient to support the claim.

The letter stated that the new second drive-thru lane should be viewed as an “unusual circumstance.” The addition of a second lane is not shown to be likely to cause any unusual environmental effects; and it should be noted that there will still be only one drive-thru window. The second lane will reduce queuing or stacking problems, thus

improving traffic flow around the site. It does not constitute “unusual circumstances” that would justify invoking Guidelines Section 15300.2 or to overcome the evidence demonstrating that the normal categorical exemption in Section 15302 should apply to this project. Reconstruction or relocation of a driveway is not an “unusual” aspect of a project involving reconstruction of a building. No change is proposed for ingress or egress to or from the shopping center. The letter fails to demonstrate any actual (or even ‘reasonably probable’) significant effect on the environment as a result of the second drive-thru lane. Accordingly, the exception to the Class 2 exemption does not apply.

A similar set of issues – involving the reconstruction of a “Kentucky Fried Chicken” (KFC) restaurant and the addition of a new drive-thru capacity – was addressed by the California Court of Appeal in the case of *Sanders v. City of Pleasant Hill* (2008) 2008 Cal.App. Unpub. LEXIS 9632. The Court there affirmed the City of Pleasant Hill’s approval of a use permit and a Section 15302 categorical exemption for the reconstruction and replacement of the KFC restaurant, on a 0.53 acre site surrounded by other retail businesses. The existing KFC restaurant was 2971 square feet in size and did not include any drive-thru capacity. The new replacement structure was to be 3052 square feet in size and would add a new drive-thru lane. The restaurant was also to be “double-branded” (KFC and A & W Root Beer). Seating capacity in the new building would be reduced from 63 to 55 seats. Staff determined that the Section 15302 exemption should apply to this replacement project. Sanders objected, and raised issues specifically relating to the new drive-thru facility and reduced parking, and the absence of any traffic study. Sanders argued also that there were “unusual circumstances” which precluded the City’s reliance on the categorical exemption.

The City’s Planning Commission and the City Council both rejected Sanders objections and approved the project and the CEQA exemption. The Contra Costa Superior Court upheld the City actions, and the Court of Appeal affirmed the City’s decisions as well. The Court of Appeal pointed out that the restaurant would not substantially change its size or purpose, and that “the capacity of the restaurant does not change with the modernization of the facility,” and therefore the City had properly relied on the CEQA exemption. The Court also held that the City had properly rejected Sanders’ claim of “unusual circumstances” involved in the project. The Court noted that another Court of Appeal had rejected similar arguments in *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4<sup>th</sup> 1243, which affirmed the City’s approval of a small, 5800 sq.ft., building project under a categorical exemption (“Class 3”) project and affirmed the City’s determination that alleged impacts on urban parking and traffic were not “unusual” for such projects.

Finally, the letter raised an issue that the project would violate a provision of an agreement among property owners regarding use of the shopping center site. This is a private matter involving a contract or covenant between land owners, and should not enter into the City’s decision on the requested permits.

The matter was continued for hearing to April 25, 2017, and Staff prepared a new report, which also included a traffic study.



**Continued Planning Commission Hearing – April 25, 2017**

At the continued Public Hearing on April 25, 2017, Mr. Brian Wenter from Miller Starr Regalia raised an additional issue of the access to the proposed McDonald's restaurant from the main drive aisle and the concern that the cars on the right lane entering McDonald's site would have to swing slightly into the left lane to adequately make 180 degree turn, thus affecting the left lane to the shopping center. Also at certain periods of time, the queuing will spill over to the main drive aisle affecting the operation of the shopping center.

The public hearing was closed and deliberation was continued to May 9, 2017.

**Continued Planning Commission Hearing – May 9, 2017**

After reviewing the site plan and having conversations with the owners of the former Mi Pueblo, staff recommended relocating the entry/exit point from the main drive aisle to the Shopping Center and the Applicant presented a revised Site Plan on May 9, 2017. The configuration is similar to the existing McDonald's restaurant where customer vehicles can enter the site through either: (a) a private two-way shared driveway to the east of the site, or (b) a shared parking lot to the north side of the site. The proposed relocation of the entry/exit point will prevent the stacking of the vehicles entering into McDonald's restaurant onto the main drive aisle as well as keep the traffic flow same as existing. The revised site plan was appreciated by the Planning Commission as well as the owners of the former Mi Pueblo grocery store.

At its meeting of May 9, 2017, the Planning Commission approved Resolution No. 1941, an amendment to P-74-1, a planned unit development, and U-74-1, a conditional use permit to rebuild an existing McDonald's restaurant at 35192 Newark Boulevard Exhibit A, pages 1 through 26.

**Update and Appeal**

On May 16, 2017, the City received a letter dated May 15, 2017, from the Miller Starr Regalia law firm on behalf of the owners of the former Mi Pueblo grocery store, appealing the Planning Commission's action to the City Council. (A copy of that appeal letter is attached to this report.)

The appeal letter notes that the revised site plan for the McDonald's project, as approved by the Planning Commission on May 9, 2017, "is vastly superior to the original proposal." The letter states that, nevertheless, the appellants "continue to have significant concerns regarding the project." The letter states those concerns as: (a) the new building would increase the "building massing" facing Newark Boulevard and allegedly impair visibility to the appellants' property from the street, which in turn would not be consistent with General Plan Policy LU-I.10 (encouraging the development of Newark's remaining vacant sites); (b) insufficient consideration of "impacts on the future operation of the Shopping Center;" (c) insufficient findings; (d) insufficient environmental analysis; and (e) the proposed conditions of approval regarding traffic circulation are insufficient to ensure that the drive-thru operation will not impact the main driveway to the Shopping Center.

Staff has considered the points raised by the appellants in the letter of May 15, 2017, and again concludes that they are without merit. These are in large part objections that have been previously addressed by the applicant, City staff, and the Planning Commission in the revised site plan and the conditions of approval included in Resolution No. 1941.

The appellants cite no ordinance or law obligating the City to ensure or protect any particular “visibility” of appellants’ property from the street. State law generally does not recognize any protectable private right to a view or visibility. The project would not be inconsistent with any applicable general plan policy or zoning. Further, the General Plan Policy cited in the appeal letter applies to “vacant” and “underutilized” sites, rather than to existing and developed shopping centers.

The appellants have also not provided any substantial evidence to support the argument that the project may create unspecified adverse impacts on any particular future operations at the Shopping Center. The sufficiency of the findings has already been discussed and demonstrated above. The propriety of the exemption from CEQA has also been addressed, and the letter of May 15, 2017, makes no new arguments in that regard. The Planning Commission specifically considered the claimed impacts of the drive-thru on traffic circulation and the revised site plan and conditions of approval for the project adequately addresses those issues.

The appeal letter of May 15, 2017 provided no new or substantial evidence detracting from the Planning Commission’s findings and the Commission’s approval of the project, subject to specified conditions of approval.

**Action** – It is recommended that the City Council, by resolution, with Exhibit A, pages 1 through 26, approve an amendment to P-74-1, a planned unit development, and U-74-1, a conditional use permit to rebuild an existing McDonald’s restaurant at 35192 Newark Boulevard (APN: 92A-720-10).

#### **Attachments**

1. Proposed Resolution of Approval
2. Drawings by Stantec Architecture Inc., dated May 19, 2017
3. Signage drawings by Superior Electrical Advertising Inc., dated July 01, 2016
4. Traffic Study by Stantec Consulting Services Inc., dated May 19, 2017
5. Letter of appeal, dated May 15, 2017, from Miller Starr Regalia law firm

## **F. CITY MANAGER REPORTS**

**(It is recommended that Items F.1 through F.5 be acted on simultaneously unless separate discussion and/or action is requested by a Council Member or a member of the audience.)**

**CONSENT**

- F.1 Second reading and adoption of an ordinance repealing Newark Municipal Code Chapter 3.24 and adding a new Chapter 3.24 entitled Development Impact Fees – from City Clerk Harrington and Assistant City Manager Grindall. (ORDINANCE)**

**Background/Discussion** – On May 25, 2017 the City Council introduced an ordinance repealing and replacing Newark Municipal Code Chapter 3.24 entitled Development Impact Fees. A second reading is required for the ordinance.

**Attachment**

**Action** –Staff recommends that the City Council adopt an ordinance repealing Newark Municipal Code Chapter 3.24 and adding a new Chapter 3.24 (“Development Impact Fees”).

- F.2 Second reading and adoption of an ordinance repealing Urgency Ordinance No. 496-U and amending Newark Municipal Code Chapters 17.08 (“Definitions”) and 17.16 (“R Residential Districts”) pertaining to accessory dwelling units – from City Clerk Harrington and Assistant City Manager Grindall. (ORDINANCE)**

**Background/Discussion** – On May 25, 2017 the City Council introduced an ordinance repealing and replacing Urgency Ordinance No. 496-U with a regular ordinance amending Newark Municipal Code Chapter 17.08 (“Definitions”) and 17.16 (“R Residential Districts”) to comply with recent amendments to state law regarding accessory dwelling units. A second reading is required for the ordinance.

**Attachment**

**Action** –Staff recommends that the City Council adopt an ordinance repealing Urgency Ordinance No. 496-U and 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.3 Authorization for the Police Chief to sign an amendment to the agreement with All City Management Services for the contracting of school crossing guards – from Police Chief Leal. (RESOLUTION)**

**Background/Discussion** – The City of Newark has maintained an agreement with All City Management Services for school crossing guards since August 2011. On June 9, 2016, the City Council approved an amendment agreement for the extension of school crossing guard services through June 30, 2017. The latest amendment agreement extends their services for one year, through June 30, 2018. All provisions of the original contract will remain in effect, except for an 8.75 percent increase in the crossing guards’ hourly rate. The California Legislature has mandated annual increases to minimum wage with a target

rate of \$15.00/hr. by 2022. The current rate of \$17.10/hr. will adjust to \$18.60/hr. commencing with the 2017-2018 school year due to the passage of this mandate.

#### **Attachment**

**Action** - It is recommended that the City Council, by resolution, authorize the Police Chief to sign an amendment to the agreement with All City Management Services for the contracting of school crossing guards, extending the term of said agreement.

#### **F.4 Authorization for the City to apply for a California Governor's Office of Emergency Services (Cal OES) Law Enforcement Support Office (LESO) Grant for a specialized response vehicle – from Police Chief Leal.**

**(RESOLUTION)**

**Background/Discussion** – Recent incidents around the country and here locally have highlighted the need for local law enforcement to be well prepared to respond rapidly to critical incidents which pose a substantial threat to public safety. Our officers are trained to handle a variety of potential incidents with the goal of containing threats, protecting life and property, and resolving situations through crisis negotiations rather than use of force whenever possible. The department continually reviews and assesses our equipment to ensure we have what we need to keep the public safe, as well as our officers. Specialized response vehicles provide law enforcement with a unique tool to better protect themselves and the public. The Police Department has identified the need for a secondary specialized response vehicle specifically designed to carry multiple persons inside while offering armored protection.

Specialized response vehicles are generally used to safely deliver officers, medical personnel, and life-saving equipment to those areas where in-progress shootings or threats involving the use of firearms and other deadly weapons are present; however, it could also be instrumental in enabling the officers to safely engage and stop the threat posed by heavily armed suspects. This vehicle can also be used to provide rapid response of a team of officers directly into a danger zone in order to evacuate members of the public, contain a hostile or violent situation, allow officers a safe area to begin immediate crisis communications with suspects in order to diffuse a situation and, in extreme cases, rescue injured members of the public or officers during incidents involving active shootings. In essence it is nothing more than a personnel carrier that is protective in nature and used in a responsive manner.

The proposed vehicle would complement our existing Armored Rescue Vehicle (ARV) during the need for a larger response to an act of violence. It can also be used as a primary rescue vehicle should the ARV becomes disabled or unavailable during these incidents. At minimum, it would lessen the need to have multiple patrol vehicles respond into residential areas, which creates a certain level of community concern and logistical problems by closing and blocking streets further away from the actual incident, as well as making those vehicles unavailable to other patrol officers who are working calls for service throughout the city. We have successfully used our ARV as

a first line of defense during most critical incidents in and around the tri-city area over the past several years. However, because it becomes immediately stationed at the incident in order to provide protection to surrounding residents or for officers conducting negotiations from inside, it is not available for other tasks mentioned above and, as a result, a second ARV is almost always requested from a neighboring city to assist and address this need.

The proposed specialized response vehicle, a used High Mobility Multipurpose Wheeled Vehicle (HMMWV), is commonly known as a Humvee and is very similar in size, stance, and nature to the civilian version with the exception of the exterior panels which provide armored protection.

Because the vehicle has had limited use and mileage, it is anticipated that annual maintenance costs would be minimal and any items that could potentially need replacing such as tires or body panels would be absorbed by the existing vehicle maintenance or police department budget. In addition, because this is a donated vehicle not purchased through city funds, it is understood that it will not be added to the city's equipment replacement list and if the vehicle suffers a major mechanical failure it will not be replaced.

#### **Attachment**

**Action** - It is recommended that the City Council, by resolution, authorize the City to apply for a California Governor's Office of Emergency Services (Cal OES) Law Enforcement Support Office (LESO) Grant for a specialized response vehicle.

**F.5 Authorization to file a request to the Metropolitan Transportation Commission for the allocation of fiscal year 2017-18 Transportation Development Act Article 3 Pedestrian and Bicycle project funding for Citywide Accessible Pedestrian Ramps, Project 1167, and designation of the Alameda County Transportation Commission Bicycle and Pedestrian Advisory Committee to serve as the Bicycle Advisory Committee for the City of Newark – from Assistant City Engineer Imai. (RESOLUTIONS - 2)**

**Background/Discussion** – The City is in position to receive \$157,624 from the Transportation Development Act Article 3 (TDA Article 3) program to be used toward the 2018 Citywide Accessible Pedestrian Ramps Project, Project No. 1167. Project 1167 will install and upgrade pedestrian ramps located on various street throughout the City to meet current ADA standards. TDA Article 3 is a funding source administered by the Metropolitan Transportation Commission that is available annually to local agencies to use for bicycle and pedestrian projects. Local distributions are determined based on population and may either be used in the fiscal year in which they are distributed, or rolled over and combined with previous and future distributions.

The requested allocation of \$157,624 reflects a total of TDA Article 3 distributions to the City of Newark for fiscal years 2014-15 (\$35,957), 2015-16 (\$38,287), 2016-17 (\$41,198) and 2017-18 (\$42,182). Staff recommends that the TDA Article 3 distribution for fiscal year 2017-18 be combined with distributions from the previous three fiscal years to fund a

single, more sizeable project, allowing for a more efficient and effective use of the awarded funds.

In order to be eligible to receive the TDA Article 3 funding, the City Council must adopt a resolution authorizing the filing of an application for the TDA Article 3 funds and providing the City's assurance to complete the project.

Prior to receiving TDA Article 3 funds, MTC also requires all proposed projects to be reviewed by a Bicycle Advisory Committee (BAC). In June 2010, City Council approved (Resolution No. 9743) the formation of a Bicycle and Pedestrian Advisory Committee (BPAC) for the sole purpose of advising staff during the preparation of the Newark Pedestrian and Bicycle Master Plan. As stated in the adopted Guidelines for the Newark BPAC, the term of office was for the duration of preparation of the Newark Pedestrian and Bicycle Master Plan, which was approved by City Council on February 23, 2017 (Resolution No. 10,596). Therefore, Newark no longer has its own BAC. However, MTC allows jurisdictions without a local BAC to designate and use the Alameda County Transportation Commission's (Alameda CTC) Bicycle and Pedestrian Advisory Committee (BPAC) as their local BAC if approved by City Council resolution. The Alameda CTC BPAC is made up of eleven members appointed for a two-year term as follows:

- One per County Supervisor
- One per County Supervisorial District – appointed by the Mayor's Conference
- One to represent transit agencies – appointed by the Alameda CTC

Staff recommends that City Council designate the Alameda CTC BPAC as the City of Newark's local BAC and assign the Alameda CTC BPAC members appointed by the County Supervisor from District 2 and the Alameda County Mayor's Conference for District 2 as its representatives.

#### **Attachments**

**Action** – It is recommended that the City Council, by resolutions: 1) authorize the filing of a request to the Metropolitan Transportation Commission for the allocation of fiscal year 2017-18 Transportation Development Act Article 3 Pedestrian and Bicycle project funding for Citywide Accessible Pedestrian Ramps Project No. 1167; and 2) designate the Alameda County Transportation Commission Bicycle and Pedestrian Advisory Committee to serve as the Bicycle Advisory Committee for the City of Newark.

#### **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 for the City Council meeting of June 8, 2017. (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, 5<sup>th</sup> 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.