

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, November 9, 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

Michael Carroll
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:

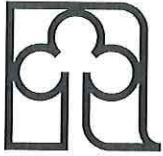
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|-------------------------------------|-------------------------|
| A. ROLL CALL | I. COUNCIL MATTERS |
| B. MINUTES | J. SUCCESSOR AGENCY |
| C. PRESENTATIONS AND PROCLAMATIONS | TO REDEVELOPMENT AGENCY |
| D. WRITTEN COMMUNICATIONS | K. ORAL COMMUNICATIONS |
| 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, November 9, 2017

A. ROLL CALL

B. MINUTES

- B.1 Approval of Minutes of the City Council meeting of October 26, 2017.
(MOTION)**

C. PRESENTATIONS AND PROCLAMATIONS

C.1 Introduction of employees.

Background/Discussion – Newly hired Police Officers Marc Palacio, Jenna Quinonez, and Anthony Piquette will be at the meeting to be introduced to the City Council.

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

- E.1 Public Hearing and tabulation of ballots for annexation of Tract 8098 to Zone 4 – Glass Bay Landscaping and Lighting District No. 19 and, if no majority protest exists, approve the Final Engineer's Report and the annexation of Tract 8098 to Zone 4 – Glass Bay of Landscaping and Lighting District No. 19 – from Assistant City Engineer Imai. (RESOLUTION)**

Background/Discussion – TH-HW Newark, LLC (Trumark Homes), developers of Tract 8098, located on the southeastern corner of the intersection of Willow Street and Enterprise Drive, submitted a petition requesting annexation to Landscaping and Lighting District No. 19. On September 14, 2017, City Council adopted Resolution No. 10,705 initiating proceedings for the annexation of Tract 8098 to Zone 4 – Glass Bay of Landscaping and Lighting (L&L) District No. 19, approving the Preliminary Engineer's Report, and declaring its intention to order annexation of Tract 8098 to the assessment district and to levy and collect assessments.

The Landscaping and Lighting Act of 1972 instituted procedures for the annexation to established maintenance districts for the purpose of financing the costs and expenses of landscaping and lighting of public areas. In 1996, California voters approved Proposition 218 which, in part, established new procedural requirements related to the annexation to Landscaping and Lighting Maintenance Districts. These procedural requirements include holding a public hearing, mailing of notices to all affected property owners in advance of the public hearing, the balloting process, and the tabulation of ballots.

At its meeting on September 14, 2017, City Council provided notice of a Public Hearing set for November 9, 2017 for the annexation of Tract 8098 to Zone 4 – Glass Bay of L&L District No. 19 and directed ballots be mailed to all affected property owners.

In accordance with the procedural requirements of Proposition 218, notices of the Public Hearing and ballots were sent to all property owners subject to the proposed assessment at least 45 days prior to the date of the Public Hearing for the annexation of Tract 8098 to Zone 4 – Glass Bay of L&L District No. 19. During the Public Hearing, all interested parties will have the opportunity to hear and have heard, all comments regarding the proposed assessment and ballot proceedings. Property owners have until the close of the Public Hearing to submit a completed ballot. At the conclusion of the Public Hearing, ballots will be opened, tabulated and weighted by the proposed assessment amount on each affected property and the results will be announced.

A majority protest exists if the weighted number of ballots received in opposition to the proposed assessment exceed the weighted number of ballots in favor of the assessment. If a majority protest does not exist, City Council may consider adopting a resolution approving the annexation of Tract 8098 to Zone 4 – Glass Bay of L&L District No. 19.

If approved, Zone 4 – Glass Bay of L&L District No. 19 would generate an estimated \$19,777.38 for Fiscal Year 2017-18, which equates to a maximum assessment of \$91.14 per single-family residence. However, because of the timing for the annexation, the first levy and collection of assessments would occur in Fiscal Year 2018-19. At that time, and in all future years, the rate of assessment may be increased annually based on the Consumer Price Index or three percent (3%), whichever is greater.

Attachment

Action – It is recommended that the City Council, (1) hold a Public Hearing for the annexation of Tract 8098 to Zone 4 – Glass Bay of Landscaping and Lighting District No. 19, (2) after conclusion of the public input portion of the public hearing, close the balloting period and direct the City Clerk to tabulate all ballots received, (3) hear and accept the tabulation results from the City Clerk for the proposed assessment of Zone 4 – Glass Bay of Landscaping and Lighting District No. 19, and (4) if a majority protest does not exist, by resolution, approve the Final Engineer’s Report and approve the annexation of Tract 8098 to Zone 4 – Glass Bay of Landscaping and Lighting District No. 19.

F. CITY MANAGER REPORT

(It is recommended that Items F.1 through F.3 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 Introduction of an Ordinance amending Chapter 2.16 (Disaster Council) to conform with California Office of Emergency Services requirements; and (2) Adoption of a Resolution pertaining to Workers Compensation Benefits for Disaster Service Worker Volunteers – from City Manager Becker and City Attorney Benoun.**

(INTRODUCTION OF ORDINANCE)(RESOLUTION)

Background/Discussion – In 1972, the City of Newark established its first “Disaster Council”. The City’s Disaster Council is responsible for developing plans for meeting any condition that constitutes a local emergency or state of emergency including, but not limited to, earthquakes, natural or manmade disasters specific to the City, or a state of war emergency. The plans provide for the effective mobilization of resources necessary to respond to such emergencies. The membership of the Disaster Council currently consists of the Mayor (who acts as Chair), the City Manager (Vice Chair), the Assistant City Manager, certain City Department Heads who have specific roles during emergencies, and representatives from various public agencies, civic, and business organizations. The Disaster Council currently meets at least once per year.

The California Department of Emergency Services has issued recommendations for updating local Disaster Council Ordinances to comply with changes in legislation governing disaster response. The proposed update includes minor revisions and clarifications to the current language and ensures that the Ordinance conforms to the latest State law and regulations issued by California Office of Emergency Services. The proposed ordinance is attached with the specific changes redlined.

Disaster Service Workers

State legislation has long provided a state-funded program of workers’ compensation benefits for Disaster Service Worker volunteers who contribute their services to protect the health and safety of residents during emergencies. These benefits are provided to registered Disaster Service Worker volunteers who are injured while participating in authorized disaster related activities, including pre-approved training and actual disaster service activities. The program also provides immunity from liability for cities and volunteers during these activities.

Without this protection, volunteers could potentially go directly to the City seeking coverage for their losses and or injuries. With this protection in place, the State of

California provides coverage to the City for its registered Disaster Service Worker Volunteers.

The State of California requires adoption of a resolution indicating agreement with the most current rules and regulations adopted by the California Office of Emergency Services (Cal OES) related to Disaster Service Worker volunteers. The proposed Resolution contains all of the required provisions established by Cal OES. Upon adoption, the Resolution will be submitted to the California Office of Emergency Services.

The amended Disaster Council Ordinance and the Disaster Service Worker Resolution were reviewed by the City’s Disaster Council at their last meeting and recommended their approval by the City Council.

Attachments

Action – Staff recommends that the Council, by motion: (1) introduce an ordinance amending Chapter 2.16 (Disaster Council) to conform with California Office of Emergency Services requirements; and (2) Adopt a Resolution pertaining to Workers Compensation Benefits for Disaster Service Worker Volunteers.

F.2 Approval of plans and specifications, acceptance of bid and award of contract to Western Water Features, Inc. for Silliman Aquatic Center Improvements, Project 1114 and amendment of the 2016-2018 Biennial Budget and Capital Improvement Plan for Fiscal Year 2017-2018 – from Public Works Director Fajeau. (MOTION)(RESOLUTION)

Background/Discussion – This project involves the re-plastering of the Silliman Aquatic Family Center’s lazy river pool, activity pool, and lap pool as well as related tile, drain, and accessibility improvements. The project will also include electrical and mechanical system infrastructure upgrades along with the activity pool play structure and flume slide replacements. Purchases of the play structure and slide were previously approved by the City Council. The work is scheduled to take place between December 2017 and February 2018.

Bids for the project were opened on October 27, 2017 with the following results:

Bidder	Amount
Western Water Features, Inc.	\$ 679,000.00
California Commercial Pools, Inc.	\$ 889,000.00
Engineer’s Estimate	\$ 795,000.00

This project will require amendment of the 2016-2018 Biennial Budget and Capital Improvement Plan for the full scope of work proposed. It is recommended that this amendment include the contract bid price, plus 10% contingency, for a total project budget of \$747,000.

Staff recommends that the project be awarded to the lowest responsible bidder, Western Water Features, Inc.

Attachment

Action – It is recommended that the City Council, by motion, approve the plans specifications and by resolution, accept the bid and award the contract to Western Water Features, Inc. for Silliman Aquatic Center Improvements, Project 1114 and amend the 2016-2018 Biennial Budget and Capital Improvement Plan for Fiscal Year 2017-2018.

F.3 Approval of the Final Map and Subdivision Improvement Agreement for Tract 8270 - Sanctuary, a large-lot subdivision in General Plan Area 3 at the intersection of Cherry Street and Stevenson Boulevard – from Assistant City Engineer Imai. (RESOLUTION)

Background/Discussion – On December 10, 2015, the City Council approved Vesting Tentative Tract Map 8270 for a 386-unit residential subdivision at the northwest corner of Cherry Street and Stevenson Boulevard. The Final Map for Tract 8270 divides the subject property into five large-lot “neighborhood” parcels for future residential development. Subsequent Final Maps will be recorded to further divide these large-lot “neighborhoods” into the smaller residential lots shown on Vesting Tentative Tract Map 8270. The developers, Arroyo Cap III, LLC, and LS-Newark, LLC have submitted the required fees, bonds, and other documents for approval of the Final Map for Tract 8270.

The Final Map for Tract 8270 dedicates public street rights-of-way for Sea Turtle Avenue, Brush Rabbit Avenue, Dragonfly Street, Tomcod Street and Spadefoot Avenue. The developer has executed a Subdivision Improvement Agreement and has posted a Performance Bond in the amount of \$8,647,000 and a Materials Bond in the amount of \$4,323,500. The bonds will guarantee construction of the new public street rights-of-way and improvements on Cherry Street and Stevenson Boulevard.

The Final Map for Tract 8270 has been reviewed and found to be in conformance with Vesting Tentative Tract Map 8270 and the Conditions of Approval, and is now ready for City Council approval. Recording of the Final Map and issuance of subsequent permits and approvals for construction activity will be at the discretion of the City Engineer.

Attachment

Action – It is recommended that the City Council, by resolution, approve the Final Map and Subdivision Improvement Agreement for Tract 8270 - Sanctuary, a large-lot subdivision in General Plan Area 3 at the intersection of Cherry Street and Stevenson Boulevard.

NONCONSENT

F.4 Approval of solid waste collection and recycling services maximum rates for 2018 with an increase of 3.9% over 2017 and approval of the Second Amendment to the Franchise Agreement to establish a Commercial Organics Collection Program – from Administrative Services Director Woodstock. (RESOLUTION)

Background/Discussion – The City’s agreements with Republic Services, Inc., for solid waste collection and recycling and with BLT Enterprises of Fremont for waste transfer services, include provisions for an annual adjustment set by formula based on relevant consumer price indices. The City sets the maximum limits for the rates and the final rates are set by Republic Services.

Relevant indices are applied to different portions of the rate to calculate the annual contractual rate adjustment. These price indices include (1) A Consumer Price Index for Garbage and Trash Collection which was 1.93% for the period between August 2016 and August 2017; (2) A Compressed Natural Gas Service Index which was 8.18% for the same period; and (3) An increase on the disposal costs at the Fremont Transfer Station (BLT), which will be 4.5% for this rate period. Most of the BLT adjustment (3.5% of the 4.5%) is a result of the pending Extraordinary Rate Review (ERR) that allowed BLT to adjust for the costs of ILWU salary increases, the increases in haul costs to the landfill and the increase in costs related to clean air rules for diesel motors. The amount related to the BLT ERR will be paid to the City until an amendment is finalized with BLT. The resulting total rate increase with each index applied to the appropriate part of the rate and the BLT adjustment equates to a rate increase of 3.9% effective January 1, 2018.

Approximately 75% of residential households subscribe to the 32-gallon cart size and will see a \$1.18 per month increase. Commercial customers with the average 3-yard bin with a once-a-week pick-up will see an increase of \$12.65 per month. Approximately 33% of commercial customers use this size bin with varying pick-up frequency.

The attached table, “New Exhibit L”, shows all the rates for 2018. The following is a sample of the difference between the 2017 and 2018 rates:

Service	2017 Rates	2018 Rates
Residential 32-Gallon Cart	\$30.37	\$31.55
Residential 64-Gallon Cart	\$53.79	\$55.89
Commercial 3 Yd/ 1 per week	\$325.58	\$338.23
Commercial 2 Yd/ 2 per week	\$469.78	\$488.10

California Assembly Bill 1826 requires commercial customers to divert organics from the landfill by subscribing to collection service. The City is also subject to the Alameda County Waste Management Authority Ordinance 2012-01 – Mandatory Commercial Recycling Ordinance. Both of these statutes have a goal of reducing material that is delivered to landfills. Staff has negotiated with Republic Services to add Commercial Organics Collection as a service option in the attached rate tables. The organic services were negotiated as a standalone program and therefore the costs could not be offset by other aspects of the rates. Other municipalities have offset the cost of the organics program by increasing the refuse rates or subsidizing the rates with general fund money. Due to the lack of subsidizing, the organic collection rates are close to the refuse rates. The new Commercial Organics rates are shown in the attached Exhibit L as Table F. The expectation of the program is that commercial customers will be able to downsize their refuse service to offset most of the cost of the adding the organics service as illustrated in the following table.

Sample:

Existing Service		Proposed Service	
Refuse 4 Yd / 1 per week	\$443.26	Refuse 3 Yd/ 1 per week	\$338.28
		Organic 1 Yd/ 1 per week	\$123.08
Total:	\$443.26		\$461.36

The City and Republic Services will be sending out multi-lingual pamphlets on the new program with information about how to begin diverting organics and the exceptions that are available. The City will also be pursuing other outreach methods such as use of the City’s time on the electronic billboards, information on the City website, information in the quarterly newsletter and possibly installing banners onto the street light posts. The Republic Services Recycling Coordinator will be working closely with commercial customers to ensure compliance and answer any questions as they arise.

Attachments

Action - It is recommended that the City Council, by resolution, establish the maximum limit for rates for solid waste collection and recycling services for Calendar Year 2018 and direct the Mayor to sign the Second Amendment to the Franchise Agreement to add Commercial Organic Collection Services.

G. CITY ATTORNEY REPORTS**G.1 Claim of Allstate Insurance – from City Clerk Harrington. (MOTION)**

Background/Discussion – On October 11, 2017, the City received a claim from Allstate Insurance as subrogee of Joanne Schaak in the amount of \$1,950.00 alleging damage to her roof and other property when a City tree fell on it during a storm.

The claim and all relevant information were forwarded to ABAG Plan, the City's insurance administrator, who recommends that it be denied.

Attachment – None

Action - It is recommended that the City Council, by motion, deny the claim and authorize staff to inform the claimant of such denial.

H. ECONOMIC DEVELOPMENT CORPORATION**I. CITY COUNCIL MATTERS****I.1 Reappointment of Bernie Nillo to the Planning Commission – from Mayor Nagy. (RESOLUTION)**

Background/Discussion – Planning Commissioner Bernie Nillo's term will expire in December. Commissioner Nillo has requested a four year reappointment.

Attachment

Action - It is recommended that the City Council, by resolution, approve the reappointment of Bernie Nillo to the Planning Commission, for a term to expire on December 31, 2021.

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 November 9, 2017. (MOTION)

M. CLOSED SESSION

**M.1 Conference with Legal Counsel – Anticipated Litigation
Government Code Section 54956.9(d)(4) (Initiation of Litigation)
Number of Potential Cases: 2**

Background/Discussion – The City Attorney has requested that the City Council convene in closed session pursuant to Government Code Section 54956.9(d)(4).

**M.2 Conference with Labor Negotiator
Government Code Section 54957.6
Agency Designated Representative: Mayor Nagy
Unrepresented employee: City Attorney**

Background/Discussion – A closed session has been scheduled pursuant to Government Code Section 54957.6.

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.