



## SUMMARY OF AN ORDINANCE TO BE ADOPTED BY THE NEWARK CITY COUNCIL

NOTICE IS HEREBY GIVEN that the City Council of the City of Newark, at its City Council meeting of Thursday, January 11, 2024, at or near 7:00 p.m. in the Council Chambers, David W. Smith City Hall, 37101 Newark Boulevard, Newark, California, will consider the second reading and adoption of the following:

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK ADDING CHAPTER 17.15 TO THE NEWARK MUNICIPAL CODE TO ESTABLISH THE BY RIGHT HOUSING (-BRH) OVERLAY DISTRICT, REZONING CERTAIN PROPERTY INTO THE -BRH OVERLAY DISTRICT AND MAKING RELATED MISCELLANEOUS AMENDMENTS TO TITLE 17, ZONING, OF THE NEWARK MUNICIPAL CODE

The Housing Element update identified sites that could be developed with housing. Some of these sites were "reused" sites from prior housing elements. State law provides that these "reused" sites be rezoned to allow residential uses "by right" without discretionary review if the project complies with objective standards and at least 20 percent of the residential units are designated as affordable to lower-income households. The "reused" sites are: 6765 Thornton Ave, 6717 Thornton Ave, 6749 Thornton Ave, 6781 Thornton Ave, 6733 Thornton Ave, 6825 Thornton Ave, 36965 Olive St, 36601 Newark Blvd, 36976 Mulberry St, 6537 Thornton Ave, 6625 Thornton Ave, 6609 Thornton Ave, 6716 Thornton Ave, 6553 Thornton Ave, 36937 Cherry St, 6788 Thornton Ave, 37900 Cedar Blvd, 37750 Timber St, 37640 Cedar Blvd, 5545 Cedar Ct, 37053 Cherry St, 37200 Sycamore St, 38290 Cedar Blvd, 37257 Filbert St, 37243 Filbert St, and Filbert St APN 92-131-1-9

The City desires to amend the Zoning Code by adding Chapter 17.15, By Right Housing (-BRH) Overlay District, to implement the Housing Element and more specifically identify the applicability standards for residential development that may be developed by-right without discretionary review.

The City also desires to amend the Newark Zoning Map by applying the By Right Housing (-BRH) Overlay District to specific parcels throughout the City and making other miscellaneous related changes.

The proposed ordinance is available for public inspection on the City website at <https://www.newark.org/departments/city-manager-s-office/agendas-minutes>, or in the Office of the City Clerk, David W. Smith City Hall, 37101 Newark Boulevard, Newark, California, during regular business hours on weekdays. All interested parties may attend the meeting and be heard.

Sheila Harrington, City Clerk



I, Sheila Harrington, City Clerk of the City of Newark, State of California, hereby certify under penalty of perjury the foregoing Instrument to be a full, true and correct copy of the original now on file in my office.

Date: 12/21/2023   
Sheila Harrington – City Clerk

ORDINANCE NO. 9 pages  Deputy City Clerk

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK ADDING CHAPTER 17.15 TO THE NEWARK MUNICIPAL CODE TO ESTABLISH THE BY RIGHT HOUSING (-BRH) OVERLAY DISTRICT, REZONING CERTAIN PROPERTY INTO THE -BRH OVERLAY DISTRICT AND MAKING RELATED MISCELLANEOUS AMENDMENTS TO TITLE 17, ZONING, OF THE NEWARK MUNICIPAL CODE.

WHEREAS, The City Council of the City of Newark adopted Resolution No. 9684 adopting a Housing Element Update for the 4<sup>th</sup> Cycle period between 2009 and 2014 (the 4<sup>th</sup> Cycle Housing Element), which identified housing sites that would accommodate the City’s Regional Housing Needs Allocation (RHNA); and

WHEREAS, The City Council of the City of Newark adopted Resolution No. 10361 approving the amendment to the General Plan by replacing the Housing Element with the Housing Element Update 2015 (for the period between 2015 and 2023), which identified housing sites that would accommodate the City’s Regional Housing Needs Allocation (RHNA); and

WHEREAS, the California Legislature has found that “California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state’s environmental and climate objectives” (Gov. Code Section 65589.5); and

WHEREAS, State Housing Element Law (Government Code Sections 65580 et seq.) requires that the City Council adopt a Housing Element for the eight-year period 2023-2031 to accommodate the City of Newark’s (City) RHNA of 1,874 housing units, comprised of 464 very-low-income units, 268 low-income units, 318 moderate-income units, and 824 above moderate-income units; and

WHEREAS, to comply with State Housing Element Law, the City has prepared the 2023-2031 Housing Element (the Housing Element) in compliance with State Housing Element Law which establishes the framework for housing goals, policies, and programs and has identified sites that can accommodate housing units meeting the City’s RHNA; and

WHEREAS, on October 24, 2023, the Planning Commission adopted Resolution No. 2009, recommended that the City Council adopt a general plan amendment to repeal the Fifth Cycle Housing Element for the period of 2015-2023 and adopt the Housing Element of the General Plan

for the Period of 2023-2031 and adopt the Safety Element of the General Plan, in compliance with State Housing Element Law; and

WHEREAS, on October 26, 2023, the City Council adopted Resolution No. 11,575, adopting a general plan amendment to repeal the Fifth Cycle Housing Element for the period of 2015-2023 and adopt the Housing Element of the General Plan for the Period of 2023-2031 and adopt the Safety Element of the General Plan, in compliance with State Housing Element Law; and

WHEREAS, certain housing sites identified in the Housing Element Update 2015 were not developed with residential uses during the period between 2015-2022 and it is the City's desire to "carry over" these certain sites to the Housing Element 2023-2031 to be used as sites that can accommodate housing units meeting the City's RHNA.

WHEREAS, Government Code Section 65583.2(c) provides that if a nonvacant site identified in the Housing Element Update 2015, or a vacant site identified in both the both the 4<sup>th</sup> Cycle Housing Element and Housing Element Update 2015, was not developed with a residential use, that site may only be included in the Housing Element if the City rezones the site within a specified period of time to allow residential use by right for housing developments in which at least 20% of the units are affordable to lower income households; and

WHEREAS, the Housing Element includes 26 sites that would be carried over from the Housing Element Update 2015 and identified as sites to accommodate the City's RHNA.

WHEREAS, the identified carry-over sites are capable to be developed with residential uses having densities of at least 20 units per acre; and

WHEREAS, the City desires to amend the Zoning Code by adding Chapter 17.15, By Right Housing (-BRH) Overlay District, to implement the Housing Element and more specifically identify the applicability standards for residential development that may be developed by-right without discretionary review; and

WHEREAS, the City also desires to amend the Newark Zoning Map by applying the By Right Housing (-BRH) Overlay District to specific parcels throughout the City and making other miscellaneous related changes; and

WHEREAS, the adoption of Chapter 17.15, By Right Housing (-BRH) Overlay District and an amendment of the Newark Zoning Map, and other miscellaneous related changes are collectively referred to as the "Project"; and

WHEREAS, a staff report dated November 14, 2023, and incorporated herein by reference, described and analyzed the Project for the Planning Commission; and

WHEREAS, on November 14, 2023, the Planning Commission reviewed the staff report at a noticed public hearing on the Project, at which time all interested parties had the opportunity to be heard; and

WHEREAS, following the public hearing, the Planning Commission considered the staff recommendation as provided in the staff report, adopted Resolution 2009 incorporated herein by reference, and transmitted the resolution to the City Council; and

WHEREAS, a staff report dated December 14, 2023, and incorporated herein by reference described and analyzed the Project for City Council; and

WHEREAS, on December 14, 2023, the City Council reviewed the staff report at a duly noticed public hearing on the Project, at which time all interested parties had the opportunity to be heard; and

WHEREAS, pursuant to Newark Municipal Code section 17.31.060 and pursuant to State law, the City published a public hearing notice in The Tri City Voice on November 28, 2023 and mailed as required for a public hearing before the City Council at 7:00 p.m. on December 14, 2023; and

WHEREAS, the City Council fully considered the Project at the public hearing; and

WHEREAS, the City Council finds that the Project meets the requisite findings of fact necessary for approval as further explained in the staff report and the recommended findings of fact and determinations associated with this Ordinance, as identified in "Exhibit A" attached to this Ordinance; and

WHEREAS, the location and custodian of the Project application and other documents that constitute a record of proceedings for the Project is the City of Newark, 37101 Newark Blvd., Newark, CA 94560; and

WHEREAS, the City's General Plan, Zoning Code, and Municipal Code are incorporated herein by reference, and are available for review at City Hall during normal business hours and on the City's website.

NOW, THEREFORE, the City Council of the City of Newark does ordain as follows:

Section 1. That the forgoing recitals are true and correct and made part of this Ordinance.

Section 2. The Project is exempt from further environmental review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) since the proposed amendments to the Zoning Code and Zoning Map have no potential for causing a significant effect on the environment. The proposed changes to the Zoning Code and Zoning Map do not provide entitlements for any land use development projects, nor do they change the allowed uses of land or the intensity of any previously authorized use of land. Therefore, it can be seen with certainty that adoption of the proposed Zoning Code and Zoning Map amendments will have no significant effect on the environment.

Section 3: Pursuant to NMC Sections 17.39.070 and 17.39.080, the City Council of the City of Newark does hereby make the findings of fact and determinations required by the City of Newark Municipal Code as further explained in the staff report and set forth in "Exhibit A" attached hereto and incorporated herein by this reference.

Section 4: Title 17. Zoning, of the Newark Municipal Code is hereby amended to add Chapter 17.15, By Right Housing (-BRH) Overlay District, and to make other miscellaneous regulated changes as identified in "Exhibit B", attached hereto and incorporated herein by reference.

Section 5: The City Council hereby approves an amendment to the Newark General Plan land use and Zoning Map by applying the By Right Housing (-BRH) Overlay District to specific parcels, as identified in "Exhibits C & D", attached hereto and incorporated herein by reference.

Section 6: If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Newark hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

Section 7: Effective Date. This ordinance shall take effect thirty (30) days from the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance shall be published in The Tri-City Voice, a newspaper of general circulation published and printed in the County of Alameda and circulated in the City of Newark.

## Exhibit A

### Findings of Fact

Pursuant to Newark Municipal Code Sections 17.39.0760 and 17.39.080, the City Council of the City of Newark does hereby make the findings of fact and determinations required by the City of Newark Municipal Code.

The City Council shall not approve a zoning amendment unless the proposed amendment meets the following criteria:

A. The amendment is consistent with the general plan, in that on October 26, 2023, the City Council of the City of Newark adopted Resolution No. 11,575, adopting a general plan amendment to repeal the Fifth Cycle Housing Element for the period of 2015-2023 and adopt the Housing Element of the General Plan for the Period of 2023-2031 and adopt the Safety Element of the General Plan, in compliance with State Housing Element Law. The 2023-2031 Housing Element contains the following policy related to the recommended action:

*POLICY H3.1: Allow By-Right Approval of Projects with 20 Percent Affordable Units on "Reused" Sites. Pursuant to AB 1397, amend the Zoning Ordinance to require by-right approval of housing development that includes 20 percent of the units as housing affordable to lower-income households, on sites being used to meet the 6th Cycle RHNA that represent "reuse sites" previously identified in the 4th and 5th Cycles Housing Element, and on sites that are subject to a text amendment to accommodate the lower-income RHNA.*

B. Any change in district boundaries is necessary to achieve the balance of land uses desired by the city, consistent with the general plan, and to increase the inventory of land within a given zoning district. There are no changes to district boundaries proposed as part of the action.

C. The amendment will promote the growth of the city in an orderly manner and to promote and protect the public health, safety, peace, comfort and general welfare, in that the proposed action is necessary to comply with State law and may result in the production of additional housing that is affordable to lower-income households throughout the community.

**Exhibit B**

**Amendments to Title 17 of the City of Newark Municipal Code**

Additions to Title 17 are shown in redline

Chapter 17 ZONING ORDINANCE

17.03.010 - Districts established.

The city shall be classified into districts or zones, the designation and regulation of which are set forth in this title and as follows:

- A. Base Zoning Districts. Base zoning districts into which the city is divided are established as shown in Table 17.03.010, Base and Overlay Zoning Districts.
- B. Overlay Zoning Districts. Overlay zoning districts, one or more of which may be combined with a base district, are established as shown in Table 17.03.010, Base and Overlay Zoning Districts.

<b>TABLE 17.03.010: BASE AND OVERLAY ZONING DISTRICTS</b>		
<b>Zoning District Symbol</b>	<b>Zoning District Name</b>	<b>General Plan Land Use Designation Implemented by Zoning District</b>
<b>Residential Districts</b>		
RS	Residential Single Family	Low Density Residential
RL	Residential Low Density	Low-Medium Density Residential
RM	Residential Medium Density	Medium Density Residential
RH	Residential High Density	High Density Residential
<b>Commercial and Mixed Use Districts</b>		
NC	Neighborhood Commercial	Neighborhood Commercial
CMU	Commercial Mixed Use	Commercial Mixed Use
CR	Commercial Retail	Community Commercial
CC	Community Commercial	Community Commercial
RC	Regional Commercial	Regional Commercial
<b>Employment Districts</b>		
PO	Professional Office	Office Commercial
BTP	Business and Technology Park	Special Industrial
LI	Limited Industrial	Limited Industrial
GI	General Industrial	General Industrial

Public and Semi-Public Districts		
PF	Public Facilities	Public-Institutional
TS	Transit Station	Public-Institutional
PK	Park	Parks and Recreation Facilities
OS	Open Space	Conservation-Open Space
Resource Production District		
RP	Resource Production	Salt Harvesting, Refining, and Production
Overlay District		
-FBC	Form Based Code	Not Applicable
-PD	Planned Development	Not Applicable
-OT	Old Town	Not Applicable
<u>-BRH</u>	<u>By-Right Housing</u>	<u>Not Applicable</u>

### Chapter 17.15 – BY-RIGHT HOUSING (-BRH) OVERLAY DISTRICT

#### 17.15.010 - Purpose.

This overlay district provides supplementary land use, affordable housing requirements, and review procedures for base districts located within the City of Newark. The overlay district implements requirements of state law regarding streamlined review procedures for residential projects identified in the city’s adopted General Plan Housing Element that have been “carried over” from previously adopted housing elements. This district does not modify permitted uses, nor does it restrict property owners from developing projects consistent with the requirements provided in this Title for the base or underlying zone district.

#### 17.15.020 - Applicability.

The standards and regulations of this chapter apply to the planning area designated with the -BRH extension on the Zoning Map. Except as provided in this chapter, all new structures and development, as well as alterations to existing structures, shall comply with the requirements of the base zoning district.

#### 17.15.030 – Permitted Uses.

Any use permitted in the underlying District that is combined with an -BRH Overlay District shall be allowed subject to the procedures of the underlying District, as modified by the -AH district.

#### 17.15.040 – Procedures.

A. Residential Uses Allowed By-Right. Residential projects that comply with all applicable objective standards and criteria of the underlying District, include a minimum of 20 dwelling units per acre, and provide 20 percent of the units in the project as affordable to lower-income households do not require discretionary review under this Title. Lower-income shall have the same meaning as in Health and Safety Code section 50079.5. Qualifying projects are still subject to Design Review, except that such Design Review



shall be ministerial, notwithstanding anything in NMC Chapter 17.35 to the contrary.

B. Requirements for Affordable Units. The developer of a residential project under this chapter shall comply with the provisions of NMC 17.18.060 for the residential units designated as affordable to lower-income households, consistent with applicable requirements in state law. Where the requirements of state law conflict with the requirements of this Title, state law shall prevail.

### Exhibit C

#### Parcels to be Rezoned with the By Right Housing (-BRH) Overlay District

92-30-17-2	6765 THORNTON AVE NEWARK 94560
92-30-14-3	6717 THORNTON AVE NEWARK 94560
92-30-16-2	6749 THORNTON AVE NEWARK 94560
92-30-18-4	6781 THORNTON AVE NEWARK 94560
92-30-15-2	6733 THORNTON AVE NEWARK 94560
92-31-16-2	6825 THORNTON AVE NEWARK 94560
92-31-15	36965 OLIVE ST NEWARK 94560
92A-900-1-2	36601 NEWARK BLVD NEWARK 94560
92-29-20-2	36976 MULBERRY ST NEWARK 94560
92-29-16-2	6537 THORNTON AVE NEWARK 94560
92-29-19-2	6625 THORNTON AVE NEWARK 94560
92-29-18-2	6609 THORNTON AVE NEWARK 94560
92-51-5-3	6716 THORNTON AVE NEWARK 94560
92-29-17-2	6553 THORNTON AVE NEWARK 94560
92-29-13	36937 CHERRY ST NEWARK 94560
92-51-2-3	6788 THORNTON AVE NEWARK 94560
92A-2125-17	37900 CEDAR BLVD NEWARK 94560
92A-2125-11-2	37750 TIMBER ST NEWARK 94560
92A-2125-13	37640 CEDAR BLVD NEWARK 94560
92A-2585-32	5545 CEDAR CT NEWARK 94560
92-50-13	37053 CHERRY ST NEWARK 94560
92-255-11	37200 SYCAMORE ST NEWARK 94560
92A-2375-32	38290 CEDAR BLVD NEWARK 94560
92-131-3	37257 FILBERT ST NEWARK 94560
92-131-2-4	37243 FILBERT ST NEWARK 94560
92-131-1-9	FILBERT ST NEWARK 94560