



CITY OF NEWARK

CITY COUNCIL

City Administration Building, City Council Chambers

37101 Newark Boulevard, Newark, CA 94560 | (510) 578-4266 | E-mail: city.clerk@newark.org



AGENDA

Thursday, April 11, 2024
7:00 P.M.

A. ROLL CALL

B. PRESENTATIONS

1. Introduction of employee(s)
2. Proclaim April as Fair Housing Month

C. PUBLIC COMMENT

The public is invited to address the City Council on any item not listed on the agenda. Public Comments are generally limited to 5 minutes per speaker. Please note that State law prohibits the Council from acting on non-agenda items.

D. CONSENT CALENDAR

Consent Calendar items are considered to be routine and may be approved by one motion. There will be no separate discussion on these items unless there is a request by a Council Member, a staff member, or a member of the public to remove an item for separate discussion and action.

1. Approval of Audited Demands
2. Approval of March 28, 2024, minutes
3. Adopt a resolution establishing the number of residents in the City of Newark for the purpose of determining the voluntary expenditure ceiling for the November 5, 2024, Municipal Election
4. Adopt a resolution authorizing the submittal of an application to CalRecycle for Local Assistance Grant Program funding in the amount of \$130,984 and amending the 2022-2024 Biennial Budget and Capital Improvement Plan

5. Adopt a Resolution approving the First Amendment to the Memorandum of Understanding with the Alameda County Department of Environmental Health (ACDEH) for inspections of Tier 1 and Tier 2 Edible Food Recovery Facilities
6. Waive full reading, conduct a second reading by title only, and adopt an ordinance repealing and replacing Chapter 15.40 "Construction in Flood Hazard Areas" of the Newark Municipal Code

E. PUBLIC HEARINGS

F. OTHER BUSINESS

1. Adopt a Resolution initiating proceedings for the levy and collection of assessments for Landscaping and Lighting District Nos. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, 18, and 19 for Fiscal Year 2025

G. CITY COUNCIL MATTERS

City Council Members report on attendance at intergovernmental agency meetings, conferences, and seminars since the last meeting. City Council Members may also announce upcoming events and coordinate attendance; report on local events attended since the last meeting; and make brief comments on issues of concern.

H. CITY MANAGER UPDATES

I. CLOSED SESSION

J. ADJOURNMENT

MEETING INFORMATION

Members of the public may attend the meeting in person, watch online, or watch on Cable Channel 26. The ability to observe online or Cable Channel 26 is predicated on those technologies being available and functioning without technical difficulties. Should those platforms not be available, or become non-functioning, or should the City Council otherwise encounter technical difficulties that make those platforms unavailable, the City Council will proceed with business in person unless otherwise prohibited by law.

How to view the meeting remotely:

Livestream online at YouTube: <https://www.youtube.com/@cityofnewark3077/streams>

Copy/paste the YouTube URL into your browser if the link does not automatically open.

Cable Channel 26 - if the meeting does not broadcast live, please contact your service provider and request the City of Newark channel lineup.

Zoom will no longer be available for public participation unless required by Assembly Bill 2449. Should a Council Member or the Mayor attend the meeting via Zoom pursuant to Assembly Bill 2249, then the [Webinar ID: 836 4174 9884](#)

will be activated. The Mayor will make an announcement at the beginning of the meeting that the City will be

allowing public comment via Zoom. Raise your virtual hand to notify the City Clerk that you would like to speak during the item that you wish to speak on.

How to submit written Public Comment:

Send an email to [City Clerk](#) by 3:00 p.m. the day of the meeting. Please identify the agenda item number in the subject line of your email. Emails will be compiled into one file and will be distributed to the City Council before the meeting.

No question shall be asked of a council member, city staff, or an audience member except through the Mayor. No person shall interrupt the meeting. Any person who refuses to carry out instructions given by the Mayor for the purpose of maintaining order may be guilty of an infraction and may result in removal from the meeting.

Council Meeting Access/Materials:

The agenda packet is available for review at [Agendas and Minutes](#). The packet is typically posted to the City website the Friday before the meeting, but no later than 72 hours before the meeting.

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 will be posted at <https://www.newark.org/departments/city-manager-s-office/agendas-minutes> and will concurrently be made available for public inspection during regular business hours at the David W. Smith City Hall, 37101 Newark Boulevard, Newark CA. 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 who require special accommodations, please contact the City Clerk at least two days prior to the meeting at [City Clerk](#) or 510-578-4266.



STAFF REPORT

Item B. 1.

DATE 04/11/2024
TO Honorable Mayor and City Council Members
FROM Sheila Harrington, City Clerk
SUBJECT Introduction of employee(s)

The following employee(s) will be introduced at the City Council meeting:

Kevin DeFranco, Recreation and Community Services Supervisor I
Ryan Perez, Street Maintenance Worker I
Josue Duenas, Street Maintenance Worker I
Ray Ruiz, Landscape and Parks Maintenance Worker I
Gabe Gonzales, Landscape and Parks Maintenance Worker I
Mohammed Shuib, Equipment Mechanic I



STAFF REPORT

Item B. 2.

DATE 04/11/2024
TO Honorable Mayor and City Council Members
FROM Sheila Harrington, City Clerk
SUBJECT Proclaim April as Fair Housing Month

This year is the 56th anniversary of the passage of the Fair Housing Act, the landmark civil rights law signed by President Lyndon B. Johnson that made discrimination in housing transactions unlawful. The Fair Housing Act prohibits discrimination in housing because of race, color, national origin, religion, sex (including gender identity and sexual orientation), disability, and familial status. A proclamation has been prepared proclaiming April as Fair Housing Month and will be presented to a member of the Bay East Association of REALTORS®.

Attachments

Proclamation No. 1912

PROCLAMATION NO. 1912

PROCLAIMING APRIL 2024 AS FAIR HOUSING MONTH

WHEREAS, the Fair Housing Act, enacted into federal law on April 11, 1968, established a national policy of fair housing with a goal of eliminating racial segregation and ending housing discrimination for all who live in the United States; and

WHEREAS, the Fair Housing Act prohibits discrimination based on race, color, religion, sex, disability, familial status, and national origin; and

WHEREAS, fair housing is a positive community good, benefitting the environment and our social fabric; and

WHEREAS, the City of Newark is a community of inclusion strengthened by its diversity, and acts of housing discrimination and barriers to equal housing opportunity violate our shared values of decency and fairness; and

WHEREAS, fair housing is integral to the ethical commitment of members of the National Association of REALTORS® and the Bay East Association of REALTORS® and is critical to the ability of all real estate professionals to serve their clients, customers and communities;

NOW, THEREFORE, I, Michael K. Hannon, Mayor of the City of Newark, on behalf of the Newark City Council, do hereby proclaim April 11, 2024, as

FAIR HOUSING MONTH

in Newark and recognize the City of Newark as an inclusive community committed to fair housing and further advocate for equal housing opportunities for all residents and prospective residents of Newark.

IN WITNESS THEREOF, I have hereunto set forth my hand and caused the Official Seal of the City of Newark, State of California, to be affixed this Eleventh Day of April, Two Thousand Twenty-four.

MICHAEL K. HANNON
Mayor



STAFF REPORT

Item D. 1.

DATE 04/11/2024
TO Honorable Mayor and City Council Members
FROM Krysten Lee, Finance Director
SUBJECT Approval of Audited Demands

Attachments

Audited Demands 03.14.24

Audited Demands 03.21.24

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Payment Batch Register

Bank Account: AP - ZBA ACCOUNTS PAYABLE
Batch Date: 03/14/2024

Type	Date	Number Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE					
Check	03/14/2024	10690 Accounts Payable	ALAMEDA COUNTY WATER DISTRICT		39,371.38
	Invoice	Date	Description	Check Sort Code	Amount
	1223-030424	02/26/2024	ACWD CITYWIDE WATER 12/23-03/04/24		39,371.38
Check	03/14/2024	10691 Accounts Payable	ALLIED AUTO STORES INC		921.89
	Invoice	Date	Description	Check Sort Code	Amount
	FEB' 24	02/29/2024	ALLIED-FLEET SUPPLIES 02/07-02/28/24		921.89
Check	03/14/2024	10692 Accounts Payable	ARI INVESTIGATIONS INC.		3,731.14
	Invoice	Date	Description	Check Sort Code	Amount
	23-135	02/01/2024	PROFESSIONAL SERVICES RENDERED 08/15 THROUGH 10/19/23		3,731.14
Check	03/14/2024	10693 Accounts Payable	AT&T		91.89
	Invoice	Date	Description	Check Sort Code	Amount
	2300-01012024	01/01/2024	CAPTION LISTING - 01/01-01/31/2024		91.89
Check	03/14/2024	10694 Accounts Payable	BAILEY FENCE COMPANY INC		13,444.00
	Invoice	Date	Description	Check Sort Code	Amount
	86074	12/28/2023	SERVICE CENTER GATE PROJ 1362 12/28/23		10,944.00
	86075	12/28/2023	SERVICE CENTER LOCK AND PANIC BAR		2,500.00
Check	03/14/2024	10695 Accounts Payable	BATTERY SYSTEMS INC		484.98
	Invoice	Date	Description	Check Sort Code	Amount
	28690207241110	02/20/2024	BATTERIES		51.13
	35312402131009	02/20/2024	BATTERIES		433.85
Check	03/14/2024	10696 Accounts Payable	BUREAU VERITAS NORTH AMERICA INC.		1,280.00
	Invoice	Date	Description	Check Sort Code	Amount
	RI 24005497	02/14/2024	BI FIELD INSPECTION AND RELATED PROFESSIONAL SERVICES 02/24		615.00
	RI 24005496	02/14/2024	BI FIELD INSPECTION AND RELATED PROFESSIONAL SERVICES 01-02/24		665.00
Check	03/14/2024	10697 Accounts Payable	ECS IMAGING, INC.		23,481.67
	Invoice	Date	Description	Check Sort Code	Amount
	18428	01/14/2024	2024 LASERFICHE RENEWAL		23,481.67
Check	03/14/2024	10698 Accounts Payable	FIDELITY SECURITY LIFE INSURANCE/EYEMED		2,262.64
	Invoice	Date	Description	Check Sort Code	Amount

	166185779	03/07/2024	EYEMED - MARCH 2024 PREMIUMS		2,262.64
Check	03/14/2024	10699 Accounts Payable	FITGUARD, INC		201.35
	Invoice	Date	Description	Check Sort Code	Amount
	0000210907	02/22/2024	TREADMILL BELT DRIVE REPAIR 02/19/24		201.35
Check	03/14/2024	10700 Accounts Payable	FOLGERGRAPHICS, INC		2,793.59
	Invoice	Date	Description	Check Sort Code	Amount
	138830	02/21/2024	POSTCARDS FOR SPRING/SUMMER GUIDE		2,793.59
Check	03/14/2024	10701 Accounts Payable	FREMONT FORD		3,282.23
	Invoice	Date	Description	Check Sort Code	Amount
	428858	02/22/2024	FORD SERVICE-2020 FORD INTERCEPTOR		3,282.23
Check	03/14/2024	10702 Accounts Payable	FRONTIER BUILDING PRODUCTS PACIFIC, INC		404.00
	Invoice	Date	Description	Check Sort Code	Amount
	8-29-906718	08/29/2023	FIRE STATION 27 DOOR SERVICE 8/29/23		404.00
Check	03/14/2024	10703 Accounts Payable	GRAINGER		177.37
	Invoice	Date	Description	Check Sort Code	Amount
	9011306892	02/06/2024	BLDG HAND SOAP DISPENSER		92.39
	9012403383	02/07/2024	COMMUNITY PARK HID BD17 MEDIUM SCREW		84.98
Check	03/14/2024	10704 Accounts Payable	MICHELLE GRIESE		376.06
	Invoice	Date	Description	Check Sort Code	Amount
	0204-020924EXP	03/07/2024	COMMAND COLLEGE, SESSION 2		376.06
Check	03/14/2024	10705 Accounts Payable	HDL SOFTWARE, LLC		2,660.20
	Invoice	Date	Description	Check Sort Code	Amount
	SIN035889	01/31/2024	UUT RETURNS PROCESSED - JAN 2024		1,460.20
	SIN035056	12/31/2023	UUT RETURNS PROCESSED - DEC 2023		1,200.00
Check	03/14/2024	10706 Accounts Payable	FRANK HERBERT		36.58
	Invoice	Date	Description	Check Sort Code	Amount
	022624EXP	03/07/2024	MILEAGE REIMBURSEMENT 02/26/24		36.58
Check	03/14/2024	10707 Accounts Payable	HOME DEPOT CREDIT SERVICES		2,118.05
	Invoice	Date	Description	Check Sort Code	Amount
	FEB '24	02/13/2024	HOME DEPOT CC PURCHASE 01/12/24-01/31/24		2,118.05
Check	03/14/2024	10708 Accounts Payable	KBA DOCUMENT SOLUTIONS, LLC		2,362.62
	Invoice	Date	Description	Check Sort Code	Amount
	55Y1435872	02/21/2024	COPIER LEASE YEAR 2 OF 5 - OVERAGES 01/21-02/20/24		2,362.62
Check	03/14/2024	10709 Accounts Payable	NAPA AUTO PARTS		1,040.91
	Invoice	Date	Description	Check Sort Code	Amount
	FEB' 24	02/29/2024	NAPA-FLEET SUPPLIES FEBRUARY 2024		1,040.91
Check	03/14/2024	10710 Accounts Payable	LOOMIS		368.72
	Invoice	Date	Description	Check Sort Code	Amount
	13447595	02/29/2024	ARMORED CAR SERVICE - 02/24		368.72

Check	03/14/2024	10711 Accounts Payable	MIKE YORKS INVESTIGATIONS	900.00
	Invoice	Date	Description	Check Sort Code
	2023-64	01/30/2024	BACKGROUND INVESTIGATIONS 12/19-01/30/24	900.00
Check	03/14/2024	10712 Accounts Payable	VERONICA MORA	911.04
	Invoice	Date	Description	Check Sort Code
	0128-013124EXP	03/01/2024	PC832 FIREARMS	818.58
	0226-030124EXP	03/07/2024	MILEAGE REIMBURSEMENT 02/26-03/01/24	92.46
Check	03/14/2024	10713 Accounts Payable	NOWDOCS INTERNATIONAL	398.70
	Invoice	Date	Description	Check Sort Code
	69508	02/22/2024	CHECK STOCK - BLUE BOTTOM	398.70
Check	03/14/2024	10714 Accounts Payable	PAKPOUR CONSULTING GROUP, INC.	24,651.38
	Invoice	Date	Description	Check Sort Code
	4364	02/05/2024	PRJ MANAGEMENT SVCS - CENTRAL AVE OVERPASS PRJ 01/01-01/31/24	23,409.75
	4363	02/05/2024	ON-CALL CIVIL ENGINEERING PLAN REVIEW SERVICES 01/01-01/31/24	1,241.63
Check	03/14/2024	10715 Accounts Payable	CONSOLIDATED ENGINEERING LABORATORIES	1,960.20
	Invoice	Date	Description	Check Sort Code
	216965	02/20/2024	MATERIAL TESTING FOR PROJECT 1300 08/04-08/21/23	1,960.20
Check	03/14/2024	10716 Accounts Payable	RUTAN & TUCKER, LLP	3,360.00
	Invoice	Date	Description	Check Sort Code
	985234	02/22/2024	AREA 4 CEQA - SVCS THRU 1/31/24	3,360.00
Check	03/14/2024	10717 Accounts Payable	SFPUC	6,801.45
	Invoice	Date	Description	Check Sort Code
	64386	02/21/2024	SFPUC RENT WATER AC#3642 02/21/24	970.17
	64415	02/21/2024	SFPUC RENT WATER AC#2866 02/21/24	5,831.28
Check	03/14/2024	10718 Accounts Payable	LINCOLN AQUATICS	368.80
	Invoice	Date	Description	Check Sort Code
	SL045665	02/07/2024	POOL CHEMICALS	368.80
Check	03/14/2024	10719 Accounts Payable	SEDGWICK	6,080.00
	Invoice	Date	Description	Check Sort Code
	BRS-0020573	02/21/2024	REMOTE RISK CONTROL-JANUARY 2024	6,080.00
Check	03/14/2024	10720 Accounts Payable	SESAC	1,176.39
	Invoice	Date	Description	Check Sort Code
	10704275	01/01/2024	MUSIC PERFORMANCE LICENSE 01/01-01/31/24	1,176.39
Check	03/14/2024	10721 Accounts Payable	SMITH & SONS ELECTRIC, INC.	2,200.00
	Invoice	Date	Description	Check Sort Code
	24009	03/07/2024	CITY HALL CUBICLE CIRCUITS ISSUE 3/7/24	2,200.00
Check	03/14/2024	10722 Accounts Payable	CENTERVILLE LOCKSMITH	41.43
	Invoice	Date	Description	Check Sort Code
	337529	02/29/2024	TUBULAR STEEL KEYS	15.51
	337481	02/27/2024	SILLIMAN KEYS	25.92

Check	03/14/2024	10723	Accounts Payable	STATE OF CALIFORNIA	416.58
	Invoice		Date	Description	Check Sort Code
	PPE 3.2.24		03/07/2024	GARNISH - CASE 569116649 - 2/18/24-3/2/24	416.58
Check	03/14/2024	10724	Accounts Payable	SYSERCO, INC	680,437.50
	Invoice		Date	Description	Check Sort Code
	21448		01/30/2024	STREETLIGHTS 01/30/24	680,437.50
Check	03/14/2024	10725	Accounts Payable	THE ED JONES CO INC	668.21
	Invoice		Date	Description	Check Sort Code
	55467		01/09/2024	668 CAP PC	668.21
Check	03/14/2024	10726	Accounts Payable	THE GOODYEAR TIRE & RUBBER COMPANY	1,024.63
	Invoice		Date	Description	Check Sort Code
	184-1100460		02/22/2024	TIRE REPAIR 2/22/24	1,024.63
Check	03/14/2024	10727	Accounts Payable	THE TACTICAL ADVANTAGE POLICE SUPPLY	1,748.95
	Invoice		Date	Description	Check Sort Code
	7607		10/21/2023	BULLETPROOF VESTS G. ARROYO; APPROVAL #2024-03	1,748.95
Check	03/14/2024	10728	Accounts Payable	JENNIFER TRAN	37.92
	Invoice		Date	Description	Check Sort Code
	0201-022224EXP		02/29/2024	MILEAGE REIMBURSEMENT 02/01-02/22/24	37.92
Check	03/14/2024	10729	Accounts Payable	TRUE NORTH COMPLIANCE SERVICES, INC.	12,127.50
	Invoice		Date	Description	Check Sort Code
	24-01-01-032		02/01/2024	BI FIELD INSPECTION AND RELATED PROFESSIONAL SERVICES 01/24	12,127.50
Check	03/14/2024	10730	Accounts Payable	UNIVERSAL BUILDING SERVICES & SUPPLY CO.	5,846.00
	Invoice		Date	Description	Check Sort Code
	521754		01/31/2024	JANITORIAL SERVICES - LIBRARY JANUARY 2024	5,846.00
Check	03/14/2024	10731	Accounts Payable	URBAN PLANNING PARTNERS, INC.	2,598.75
	Invoice		Date	Description	Check Sort Code
	22002-240131		02/19/2024	PROJECT MGMT SVCS - LEPAKSHI @ THORNTON - SVCS 1/31/24	2,598.75
Check	03/14/2024	10732	Accounts Payable	VERDE DESIGN INC	705.00
	Invoice		Date	Description	Check Sort Code
	5-2319400		03/07/2024	CITYWIDE PARK SIGNAGE & DOCUMENTATION 01/26-02/25/24	705.00
Check	03/14/2024	10733	Accounts Payable	WEISSMAN'S DESIGNS FOR DANCE	1,497.85
	Invoice		Date	Description	Check Sort Code
	244247954		02/21/2024	COSTUMES FOR DANCE REVUE	1,497.85
Check	03/14/2024	10734	Accounts Payable	WEST COAST ARBORISTS INC	3,126.50
	Invoice		Date	Description	Check Sort Code
	211650		02/22/2024	MIRABEAU PARK TREE REMOVAL 02/22/24-02/22/24	3,126.50
EFT	03/14/2024	926	Accounts Payable	CLIENTFIRST TECHNOLOGY CONSULTING 122037760 / 001064667052	33,091.78

		Invoice	Date	Description	Check Sort Code	Amount
		16075	01/31/2024	VIDEO PROJECT 1/1-1/31/24		18,159.28
		16117	01/31/2024	TECHNOLOGY MASTER PLAN 1/1-1/31/24		14,932.50
EFT	03/14/2024	927 Accounts Payable		SPECTRUM SMALL BUSINESS SERVICES, LLC	325084426 / 5348560846	1,306.25
		Invoice	Date	Description	Check Sort Code	Amount
		02292024-GENERAL	02/29/2024	STARTUP SPACE COORDINATION & NEWARK TEAM MEETINGS - 2/24		687.50
		02292024-ARPA	02/29/2024	SMALL BUSINESS SUPP - OLD TOWN BUSINESS ASSOC. - ARPA - 2/24		618.75
AP ZBA ACCOUNTS PAYABLE Totals:				Transactions: 47		\$894,374.08
Checks:		45		\$859,976.05		
EFTs:		2		\$34,398.03		

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Payment Batch Register

Bank Account: AP - ZBA ACCOUNTS PAYABLE
Batch Date: 03/21/2024

Type	Date	Number Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE					
Check	03/21/2024	10735 Accounts Payable	ABC FIRE PROTECTION, INC.		921.47
	Invoice	Date	Description	Check Sort Code	Amount
	65741	02/20/2024	FIRE EXTINGUISHER MAINTENANCE 2/20/24		921.47
Check	03/21/2024	10736 Accounts Payable	ACCESS		100.00
	Invoice	Date	Description	Check Sort Code	Amount
	10785709	02/29/2024	SHREDDING SVCS FEBRUARY 2024		100.00
Check	03/21/2024	10737 Accounts Payable	HEALTH AND HUMAN RESOURCE CENTER, INC		247.86
	Invoice	Date	Description	Check Sort Code	Amount
	E0313437	03/01/2024	EMPLOYEE ASSISTANT PROGRAM (EAP)-APRIL 2024		247.86
Check	03/21/2024	10738 Accounts Payable	AIRGAS USA, LLC		87.63
	Invoice	Date	Description	Check Sort Code	Amount
	5506461552	02/29/2024	CYL ACETYLENE RENTAL 02/29/24		87.63
Check	03/21/2024	10739 Accounts Payable	ALAMEDA COUNTY FIRE DEPARTMENT		1,093,290.00
	Invoice	Date	Description	Check Sort Code	Amount
	2023-24-189	02/27/2024	CONTRACT FIRE SERVICES - 02/24		1,093,290.00
Check	03/21/2024	10740 Accounts Payable	ALTA LANGUAGE SERVICES, INC.		66.00
	Invoice	Date	Description	Check Sort Code	Amount
	IS703072	02/29/2024	LISTENING & SPEAKING TEST 02/24		66.00
Check	03/21/2024	10741 Accounts Payable	BAVCO		1,517.50
	Invoice	Date	Description	Check Sort Code	Amount
	259554	02/26/2024	BACKFLOW SUPPLIES		1,517.50
Check	03/21/2024	10742 Accounts Payable	BLAISDELL'S BUSINESS PRODUCTS		185.53
	Invoice	Date	Description	Check Sort Code	Amount
	FEB'24	03/01/2024	OFFICE SUPPLIES 02/01-02/28/24		185.53
Check	03/21/2024	10743 Accounts Payable	CARLOS TORRES		605.97
	Invoice	Date	Description	Check Sort Code	Amount
	0130-020224EXP	03/18/2024	OTS CONFERENCE 01/30-02/02/24		605.97
Check	03/21/2024	10744 Accounts Payable	CITY OF UNION CITY		13,965.47
	Invoice	Date	Description	Check Sort Code	Amount

	2024-0339	11/01/2023	50% OF EMERGENCY SERVICES COORDINATOR SALARY NOVEMBER 2023		7,525.07
	2024-0340	12/01/2023	50% OF EMERGENCY SERVICES COORDINATOR SALARY DECEMBER 2023		6,440.40
Check	03/21/2024	10745 Accounts Payable	CLASSIC GRAPHICS		649.00
	Invoice	Date	Description	Check Sort Code	Amount
	49158	02/28/2024	DECALS		649.00
Check	03/21/2024	10746 Accounts Payable	COUNTY OF ALAMEDA		2,230.00
	Invoice	Date	Description	Check Sort Code	Amount
	FEBRUARY '24	03/06/2024	CITATION PROCESSING FEES - FEBRUARY '24		2,230.00
Check	03/21/2024	10747 Accounts Payable	ALAMEDA COUNTY ENVIRONMENTAL HEALTH		1,392.00
	Invoice	Date	Description	Check Sort Code	Amount
	IN0353272	03/07/2024	SB1383 EDIBLE FOOD RECOVERY INSPECTION SVCS 7/1-12/20/23		1,392.00
Check	03/21/2024	10748 Accounts Payable	CSMFO		35.00
	Invoice	Date	Description	Check Sort Code	Amount
	200018979	10/11/2023	2024 CSMFO WEDNESDAY NIGHT EVENT - K. LEE		35.00
Check	03/21/2024	10749 Accounts Payable	CYNTHIA M. KIRBY		4,550.00
	Invoice	Date	Description	Check Sort Code	Amount
	2402013	02/02/2024	POLYGRAPH TESTING SERVICES - 10/10/23 - 1/1/24		4,550.00
Check	03/21/2024	10750 Accounts Payable	DEPARTMENT OF JUSTICE		608.00
	Invoice	Date	Description	Check Sort Code	Amount
	718982	03/04/2024	FINGERPRINTING FEES- 02/24		608.00
Check	03/21/2024	10751 Accounts Payable	ENVIRONMENTAL LOGISTICS		381.25
	Invoice	Date	Description	Check Sort Code	Amount
	122641	03/11/2024	SHARPS CONTAINERS		381.25
Check	03/21/2024	10752 Accounts Payable	ESA		4,925.25
	Invoice	Date	Description	Check Sort Code	Amount
	194203	03/13/2024	HOUSING ELEMENT UPDATE PREPARATION - SVCS 1/29/24 TO 2/29/24		4,925.25
Check	03/21/2024	10753 Accounts Payable	FRANK BONETTI PLUMBING INC		358.00
	Invoice	Date	Description	Check Sort Code	Amount
	48409	02/28/2024	SR CTR RESTROOM SERVICE 02/20/24		358.00
Check	03/21/2024	10754 Accounts Payable	FREMONT FORD		4,359.54
	Invoice	Date	Description	Check Sort Code	Amount
	222469	02/28/2024	FLEET SUPPLIES-TPMS SENSOR KIT		138.92
	429910	02/14/2024	FLEET SERVICE #11 1/11/24		4,220.62
Check	03/21/2024	10755 Accounts Payable	GACHINA LANDSCAPE MANAGEMENT, INC.		23,597.81
	Invoice	Date	Description	Check Sort Code	Amount
	E 216479B	03/01/2024	MAINTENANCE CONTRACT-CH, PD, LIB MARCH 2024		3,689.00
	E 216479A	03/01/2024	MAINTENANCE CONTRACT MARCH 2024		19,908.81
Check	03/21/2024	10756 Accounts Payable	GHD INC.		578.75

	Invoice	Date	Description	Check Sort Code	Amount
	380-0046658	02/27/2024	ON-CALL TRAFFIC ENGINEERING SERVICES (THROUGH 02/24/24)		578.75
Check	03/21/2024	10757 Accounts Payable	GOOD CITY COMPANY		11,670.00
	Invoice	Date	Description	Check Sort Code	Amount
	3504	02/29/2024	GENERAL PLANNING SERVICES - SVCS 02/01 - 02/29/24		11,670.00
Check	03/21/2024	10758 Accounts Payable	GRAINGER		420.41
	Invoice	Date	Description	Check Sort Code	Amount
	9017130312	02/12/2024	SILLIMAN CFL 2-PIN		73.65
	9018832304	02/13/2024	SILLIMAN CLASSROOM LOCK BODY		346.76
Check	03/21/2024	10759 Accounts Payable	GROUP 4 ARCHITECTURE RESEARCH + PLANNING, INC.		19,898.75
	Invoice	Date	Description	Check Sort Code	Amount
	12146	02/29/2024	REIMBURSABLES AND PROFESSIONAL SERVICES RENDERED THRU 2/29/24		11,515.00
	12109	01/31/2024	REIMBURSABLES AND PROFESSIONAL SERVICES RENDERED THRU 1/31/24		8,383.75
Check	03/21/2024	10760 Accounts Payable	HDL SOFTWARE, LLC		2,080.00
	Invoice	Date	Description	Check Sort Code	Amount
	SIN036298	02/29/2024	UUT SUPPORT & INDUSTRY MONITORING - FEB 2024		2,080.00
Check	03/21/2024	10761 Accounts Payable	RECREONICS		4,986.24
	Invoice	Date	Description	Check Sort Code	Amount
	0014222077-001	02/16/2024	SILLIMAN POOL GRATES		4,986.24
Check	03/21/2024	10762 Accounts Payable	HILLYARD		2,109.23
	Invoice	Date	Description	Check Sort Code	Amount
	605365843	01/18/2024	SILLIMAN TISSUE, TOWEL AND LINERS		2,109.23
Check	03/21/2024	10763 Accounts Payable	HINDERLITER DE LLAMAS & ASSOCIATES		3,873.18
	Invoice	Date	Description	Check Sort Code	Amount
	SIN036139	02/29/2024	SALES TAX AUDIT SERVICES Q3/2023		3,873.18
Check	03/21/2024	10764 Accounts Payable	LSL CPAs		4,530.00
	Invoice	Date	Description	Check Sort Code	Amount
	61773	02/29/2024	AUDITING SERVICES - 2023 SINGLE AUDIT PROGRESS BILL		4,530.00
Check	03/21/2024	10765 Accounts Payable	TERENCE LAU		92.46
	Invoice	Date	Description	Check Sort Code	Amount
	0226-030124EXP	03/18/2024	MILEAGE REIMBURSEMENT - 5 TRIPS		92.46
Check	03/21/2024	10766 Accounts Payable	GOVERNMENT TECHNOLOGY GROUP, LLC		22,503.00
	Invoice	Date	Description	Check Sort Code	Amount
	174	02/26/2024	BROADBAND MASTER PLAN/SMART CITY PAYMENT #8 NOV 2023 - MAR 2024		22,503.00
Check	03/21/2024	10767 Accounts Payable	LEXISNEXIS RISK SOLUTIONS FL INC		50.00
	Invoice	Date	Description	Check Sort Code	Amount
	1845802-20240229	02/29/2024	INVESTIGATIVE INFO RESEARCH - 2/29/24		50.00

Check	03/21/2024	10768	Accounts Payable	LPC SERVICES, INC.		582.00
	Invoice		Date	Description	Check Sort Code	Amount
	73534		03/01/2024	PEST SERVICES - COMMUNITY CENTER #102700 3/1/24		95.00
	73609		03/01/2024	PEST SERVICES - CITY HALL #102699 3/1/24		267.00
	73533		03/01/2024	PEST SERVICES - FIRE STATION #2 #102709 3/1/24		220.00
Check	03/21/2024	10769	Accounts Payable	LYNX TECHNOLOGIES INC		1,650.00
	Invoice		Date	Description	Check Sort Code	Amount
	10086		02/05/2024	GIS PROFESSIONAL SERVICES 10/16/23-01/31/24		1,650.00
Check	03/21/2024	10770	Accounts Payable	MIKE YORKS INVESTIGATIONS		750.00
	Invoice		Date	Description	Check Sort Code	Amount
	2024-02		02/26/2024	BACKGROUND INVESTIGATIONS 02/15-02/26/24		750.00
Check	03/21/2024	10771	Accounts Payable	PACIFIC GAS & ELECTRIC		87,845.82
	Invoice		Date	Description	Check Sort Code	Amount
	7578-031124		03/11/2024	CITYWIDE ELECTRICAL 3/11/24		87,845.82
Check	03/21/2024	10772	Accounts Payable	PREFERRED ALLIANCE INC		195.00
	Invoice		Date	Description	Check Sort Code	Amount
	0194265-IN		02/09/2024	RANDOM & NON-RANDOM DRUG TESTING - FEB '24		195.00
Check	03/21/2024	10773	Accounts Payable	REDFLEX TRAFFIC SYSTEMS, INC.		17,400.00
	Invoice		Date	Description	Check Sort Code	Amount
	INV0071797		02/29/2024	REDLIGHT CAMERA MONITORING FEBRUARY 2024		17,400.00
Check	03/21/2024	10774	Accounts Payable	TRACY DEWAYNE ROLES		828.38
	Invoice		Date	Description	Check Sort Code	Amount
	0228-030224EXP		03/05/2024	EXPENSE REIMBURSEMENT- POLICE CHIEF RECRUITMENT 02/28-03/02/24		828.38
Check	03/21/2024	10775	Accounts Payable	RSG, INC.		481.25
	Invoice		Date	Description	Check Sort Code	Amount
	I011590		03/13/2024	RSG3518 - NEWARK INTERIM CHAMBER CEO - 2/26/24-2/29/24		481.25
Check	03/21/2024	10776	Accounts Payable	CENTERVILLE LOCKSMITH		16.28
	Invoice		Date	Description	Check Sort Code	Amount
	337143		02/05/2024	BLDG ILLINOIS KEY BLANK		16.28
Check	03/21/2024	10777	Accounts Payable	STANDARD INSURANCE COMPANY		2,811.03
	Invoice		Date	Description	Check Sort Code	Amount
	BILLING-DEC 23		12/01/2023	EMPLOYEE LIFE INSURANCE AND AD&D COVERAGE PREMIUMS-12/1-12/31/23		933.01
	BILLING-JAN 24		01/01/2024	EMPLOYEE LIFE INSURANCE AND AD&D COVERAGE PREMIUMS-1/1-1/31/24		927.01
	BILLING-FEB 24		02/01/2024	EMPLOYEE LIFE INSURANCE AND AD&D COVERAGE PREMIUMS-2/1-2/29/24		951.01
Check	03/21/2024	10778	Accounts Payable	STAPLES		513.27
	Invoice		Date	Description	Check Sort Code	Amount
	8073426847		02/29/2024	OFFICE SUPPLIES 2/12-2/23/24		513.27
Check	03/21/2024	10779	Accounts Payable	STATE OF CALIFORNIA		416.58

	Invoice	Date	Description	Check Sort Code	Amount
	PPE 3.16.24	03/22/2024	GARNISH - CASE 569116649 - 3/3/24-3/16/24		416.58
Check	03/21/2024	10780 Accounts Payable	STRATEGIC ECONOMICS INC		15,000.00
	Invoice	Date	Description	Check Sort Code	Amount
	2401.02	02/29/2024	ASSESS CONDITIONS IN INDUSTRIAL AREAS & PREP ZONING RECOMM 02/24		15,000.00
Check	03/21/2024	10781 Accounts Payable	YSERCO, INC		239.35
	Invoice	Date	Description	Check Sort Code	Amount
	14123	02/29/2024	CITY HALL POWERSUPPLY		239.35
Check	03/21/2024	10782 Accounts Payable	YSERCO, INC		79,631.09
	Invoice	Date	Description	Check Sort Code	Amount
	21466	02/29/2024	STREETLIGHTS 02/29/24		79,631.09
Check	03/21/2024	10783 Accounts Payable	TEMPERATURE TECHNOLOGY INC.		471.00
	Invoice	Date	Description	Check Sort Code	Amount
	I3041	02/28/2024	CITY HALL HVAC SERVICE 2/27/24		471.00
Check	03/21/2024	10784 Accounts Payable	THE ECOHERO SHOW LLC		3,000.00
	Invoice	Date	Description	Check Sort Code	Amount
	2546	02/29/2024	RECYCLING AND WASTE REDUCTION OUTREACH TO SCHOOLS 01/25-02/27/24		3,000.00
Check	03/21/2024	10785 Accounts Payable	TRUE NORTH COMPLIANCE SERVICES, INC.		13,365.00
	Invoice	Date	Description	Check Sort Code	Amount
	24-02-01-032	03/01/2024	BI FIELD INSPECTION AND RELATED PROFESSIONAL SERVICES 02/24		13,365.00
Check	03/21/2024	10786 Accounts Payable	TURBO DATA SYSTEMS, INC		700.00
	Invoice	Date	Description	Check Sort Code	Amount
	42349	02/29/2024	E-CITATION HARDWARE AND TRAFFIC PROCESSING SERVICES FEB '24		700.00
Check	03/21/2024	10787 Accounts Payable	STEVEN TURNER		835.44
	Invoice	Date	Description	Check Sort Code	Amount
	030624-030824EXP	03/11/2024	PC ACADEMY-HOTEL ACCOMM. & FLIGHT TO LONG BEACH		835.44
Check	03/21/2024	10788 Accounts Payable	UNIVERSAL BUILDING SERVICES & SUPPLY CO.		6,086.00
	Invoice	Date	Description	Check Sort Code	Amount
	522618	02/29/2024	JANITORIAL SERVICES - LIBRARY FEBRUARY 2024		5,846.00
	523436	02/29/2024	JANITORIAL SERVICES - COMMUNITY CENTER 2/26/24		240.00
Check	03/21/2024	10789 Accounts Payable	UTILITY TELECOM GROUP, LLC		21,360.55
	Invoice	Date	Description	Check Sort Code	Amount
	MAR '24	03/16/2024	TELEPHONE & NETWORK PROVIDER - MAR '24		21,360.55
Check	03/21/2024	10790 Accounts Payable	VERIZON WIRELESS		13,733.42
	Invoice	Date	Description	Check Sort Code	Amount
	9956969577	02/18/2024	WIRELESS SERVICE 01/19-02/18/24		13,733.42
Check	03/21/2024	10791 Accounts Payable	VSS INTERNATIONAL, INC.		19,183.38

	Invoice	Date	Description	Check Sort Code	Amount
	20019775	02/23/2024	CHERRY ST CLASS IV SEPARATED BIKEWAYS, PRJ 1254 01/01-02/23/24		19,183.38
Check	03/21/2024	10792 Accounts Payable	WEST COAST ARBORISTS INC		75,134.65
	Invoice	Date	Description	Check Sort Code	Amount
	211985	02/29/2024	PARK TREE MAINTENANCE 02/16/24-02/29/24		8,450.00
	211452	02/15/2024	STREET TREE MAINTENANCE 02/01/24-02/15/24		46,179.60
	211983	02/29/2024	STREET TREE MAINTENANCE 02/16/24-02/29/24		20,505.05
Check	03/21/2024	10793 Accounts Payable	WEX BANK		911.04
	Invoice	Date	Description	Check Sort Code	Amount
	95638301	03/06/2024	CHEVRON CC 03/06/24		911.04
Check	03/21/2024	10794 Accounts Payable	ORION SECURITY		2,599.20
	Invoice	Date	Description	Check Sort Code	Amount
	125660	03/09/2024	UNARMED, UNIFORMED SECURITY GUARD 3/4/24 - 3/8/24		1,444.00
	125726	03/16/2024	UNARMED, UNIFORMED SECURITY GUARD 3/11/24 - 3/14/24		1,155.20
Check	03/21/2024	10795 Accounts Payable	BERLOGAR STEVENS & ASSOCIATES		1,000.00
	Invoice	Date	Description	Check Sort Code	Amount
	0222-2825	03/18/2024	ENCP2021-0384 RFND		1,000.00
Check	03/21/2024	10796 Accounts Payable	E R PLUMBING AND CONSTRUCTION INC		1,000.00
	Invoice	Date	Description	Check Sort Code	Amount
	2022-5111	03/18/2024	ENCP2022-0094 RFND		1,000.00
Check	03/21/2024	10797 Accounts Payable	ENGEO INCORPORATED		1,000.00
	Invoice	Date	Description	Check Sort Code	Amount
	2023-0542	03/18/2024	ENCP2022-0171 RFND		1,000.00
Check	03/21/2024	10798 Accounts Payable	GLOVER , ROBERT		1,000.00
	Invoice	Date	Description	Check Sort Code	Amount
	2023-0134	03/18/2024	ENCP2022-0160 RFND		1,000.00
Check	03/21/2024	10799 Accounts Payable	JAUREGUI , EULALIO		1,000.00
	Invoice	Date	Description	Check Sort Code	Amount
	2023-0424	03/18/2024	ENCP2023-0025 RFND		1,000.00
Check	03/21/2024	10800 Accounts Payable	KING KONG PLUMBING SERVICES		1,000.00
	Invoice	Date	Description	Check Sort Code	Amount
	2023-0325	03/18/2024	ENCP2022-0281 RFND		1,000.00
Check	03/21/2024	10801 Accounts Payable	LARRIETA SANITATION CONSTRUCTION		1,000.00
	Invoice	Date	Description	Check Sort Code	Amount
	2023-0421	03/18/2024	ENCP2023-0030 RFND		1,000.00
Check	03/21/2024	10802 Accounts Payable	STORMWIND LLC		4,140.00
	Invoice	Date	Description	Check Sort Code	Amount
	55377	02/22/2024	IT DEPARTMENT ONLINE TRAINING 02/22/24		4,140.00
EFT	03/21/2024	942 Accounts Payable	SPECTRUM SMALL BUSINESS SERVICES, 325084426 / 5348560846 LLC		650.00

	Invoice	Date	Description	Check Sort Code	Amount
	03132024-GENERAL	03/13/2024	SM BUS SUPPORT - SUBCONTRACTED PRGM MGMT 03/24		650.00
EFT	03/21/2024	943 Accounts Payable	PET BENEFIT SOLUTION	021000021 / 238821802	42.00
	Invoice	Date	Description	Check Sort Code	Amount
	156273	03/13/2024	TOTAL PET PLAN - MARCH 2024 PREMIUMS		42.00
EFT	03/21/2024	944 Accounts Payable	SUMMIT UNIFORMS, LLC	121000358 / 325183513607	984.38
	Invoice	Date	Description	Check Sort Code	Amount
	9582B	02/28/2024	RECRUITMENT UNIFORMS AND ACCESSORIES		984.38
AP ZBA ACCOUNTS PAYABLE Totals:			Transactions: 71		\$1,605,421.41
	Checks:	68	\$1,603,745.03		
	EFTs:	3	\$1,676.38		



STAFF REPORT

Item D. 2.

DATE 04/11/2024
TO Honorable Mayor and City Council Members
FROM Sheila Harrington, City Clerk
SUBJECT Approval of March 28, 2024, minutes

Attachments

Minutes



CITY OF NEWARK

CITY COUNCIL

City Administration Building, City Council Chambers

37101 Newark Boulevard, Newark, CA 94560 | (510) 578-4266 | E-mail: city.clerk@newark.org



Draft

**Thursday, March 28, 2024
7:00 P.M.**

A. ROLL CALL

Mayor Hannon called the meeting to order at 7:00 p.m. Vice Mayor Freitas, Council Members Collazo, and Jorgens were present. Council Member Bucci was noted absent.

B. PRESENTATIONS

1. Proclaiming March 28, 2024 as Arbor Day in Newark

Mayor Hannon presented the Arbor Day proclamation to Senior Landscape Inspector Cianciarulo.

C. PUBLIC COMMENT

Noel Doot reported several areas near the unfinished section of Cedar Boulevard with street lights that are not working, or need street lights installed.

She stated that she looked forward to an Arts Grant update and the suggestion of the beautification of power boxes.

Mayor Hannon requested that City Manager Benoun look into the issues raised by Mrs. Doot.

D. CONSENT CALENDAR

Council Member Collazo requested the removal of D.4 for separate consideration.

Vice Mayor Freitas moved, Council Member Collazo seconded, to approve Consent Calendar items D.1 to D.3, and D.5, that the resolutions be numbered consecutively, and that reading of the titles suffice for adoption. The motion passed, 4 AYES, 1 ABSENT.

1. Approval of Audited Demands
2. Approval of March 14, 2024, special and regular meeting minutes
3. Adopt a resolution approving Amendment No. 1 to the Contractual Services Agreement with Francisco & Associates, Inc. for the administration of the City's Landscaping and Lighting Districts and other Special Financing District Administration Services
Resolution No. 11624
Contract No. 23010
4. Pulled from the Consent Calendar - Adopt a resolution approving a second amendment to the Contractual Services Agreement with Gachina Landscape Management, Inc. to increase the contractual not-to-exceed amount for additional landscape maintenance services through the term of the contract and amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan

5. Adopt a resolution authorizing the City Manager to execute a three-year contract with Siemens Industry, Inc. for fire life safety program support at the Newark Civic Center and at all City-owned facilities
Resolution No. 11625
Contract No. 24027

NONCONSENT

4. Adopt a resolution approving a second amendment to the Contractual Services Agreement with Gachina Landscape Management, Inc. to increase the contractual not-to-exceed amount for additional landscape maintenance services through the term of the contract and amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan
Resolution No. 11626
Contract No. 21011

Council Member Collazo suggested that the Civic Center landscaping include colorful plants and stepping stones in the landscaping in the parking lot near the police station.

City Manager Benoun stated that staff would look into her suggestions.

No one from the public requested to speak.

Council Member Collazo moved, Council Member Jorgens seconded, to adopt a resolution approving a second amendment to the Contractual Services Agreement with Gachina Landscape Management, Inc. to increase the contractual not-to-exceed amount for additional landscape maintenance services through the term of the contract and amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan. The motion passed 4 AYES, 1 ABSENT.

E. PUBLIC HEARINGS

F. OTHER BUSINESS

1. Waive full reading and introduce by title only an ordinance repealing and replacing Chapter 15.40 Construction In Flood Hazard Areas of Title 15 of the Newark Municipal Code to align with the updated FEMA National Flood Insurance Program requirements
Ordinance Introduced

Chief Building Official Farrell stated that Newark Municipal Code Chapter 15.40, Construction in Flood Hazard Areas, in combination with flood protection provisions of the 2022 California Building Standards, governs all proposed development and construction located within flood hazard areas identified by the Federal Emergency Management Agency (FEMA). Over the last several years, FEMA has updated the location of specific flood proofing requirements within various chapters of the 2022 California Building Standards. The City's current flood plain ordinance has become outdated according to the National Flood Insurance Program (NFIP) administered by FEMA. He recommended that the City Council introduce the ordinance which would amend the Newark Municipal Code to align entirely with the new FEMA requirements for local jurisdictions.

No one requested to speak.

Council Member Collazo moved, Vice Mayor Freitas seconded to waive full reading and introduce by title an ordinance repealing and replacing in its entirety Newark Municipal Code Chapter 15.40 to adopt a new Construction In Flood Hazard Areas; to adopt Flood Hazard Maps; to designate a floodplain administrator; and for other purposes. The motion passed 4 AYES, 1 ABSENT.

2. Presentation of the Technology Master Plan

Mayor Hannon announced that this item would be rescheduled for a future City Council meeting.

3. Presentation of the 2023 Community Survey Results

Senior Management Analyst Roya Gonzalez introduced the consultant.

Ryan Murray, Assistant Director of Community Research, ETC Institute gave the presentation. Presentation on file with City Clerk. The survey gathered feedback on the delivery of city services . The results help the city determine priorities and improve existing programs and services. The City performed well in the survey and resident satisfaction. Staff should focus on additional analysis to help determine priorities.

No one from the public requested to speak.

Mayor Hannon requested that Mr. Murray provide neighborhood outreach resources from other communities.

In response to Council Member Freitas, Mr. Murray stated that he would provide the dates when the survey was conducted.

This item was informational only.

G. CITY COUNCIL MATTERS

1. Resolution approving the reappointment of Senior Advisory Committee Members
Resolution No. 11627

Mayor Hannon announced that he would reappoint Sandra Arellano, Rick Arellano, and Olga Borjon to the Senior Advisory Committee. He thanked outgoing member Stanley Keiser for his service.

No one requested to speak.

Council Member Collazo thanked Committee Member Rick Arellano who has many years of service on the Committee.

Council Member Collazo moved, Council Member Jorgens seconded to adopt a resolution approving the reappointments of Sandra Arellano, Rick Arellano, and Olga Borjon to the Senior Advisory Committee. The motion passed, 4 AYES, 1 ABSENT.

Council Member Jorgens stated that Family Day at the Park was a great event. He thanked the Recreation and Community Services Department for efforts.

Council Member Collazo stated that she wore purple for National Women's' History Month and thanked the women in her life. Shop Newark and a Happy Easter.

Vice Mayor Freitas thanked the Senior Advisory Committee members who were reappointed. He thanked staff for the LED Lights being installed throughout the City. He thanked the Public Works Department for the Arbor Day Tree Planting held before the meeting. He congratulated Mary Gorman who was named the Volunteer of the Year. He wished everyone a Happy Easter. He congratulated Jonathan Arguello for his upcoming appointment as police chief.

Mayor Hannon thanked staff for organizing the Volunteer of the Year event and encouraged youth category nominations.

Mayor Hannon stated that Viola Blythe Community Services will hold a fundraiser at Panda Express on April 17. He attended National Choking Awareness Day hosted by Washington Hospital. He stated he would adjourn the meeting in memory of Kiko Rodriguez who unexpectedly passed away as a result of a choking incident.

H. CITY MANAGER UPDATES

City Manager Benoun announced the Old Town Newark Streetscape Exhibition and the Mayor's State of the City Address would be held on Saturday, April 27, 2024. The event will be located on Thornton Avenue between Magnolia and Sycamore Streets between 11 am to 3 pm.

I. CLOSED SESSION

J. ADJOURNMENT

Mayor Hannon adjourned the meeting at 8:19 pm in memory of Kiko Rodriguez.



STAFF REPORT

Item D. 3.

DATE 04/11/2024
TO Honorable Mayor and City Council Members
FROM Sheila Harrington, City Clerk
SUBJECT Adopt a resolution establishing the number of residents in the City of Newark for the purpose of determining the voluntary expenditure ceiling for the November 5, 2024, Municipal Election

Pursuant to Newark Municipal Code Section 2.11.010, Voluntary Expenditure Ceiling, the City has a voluntary campaign expenditure ceiling for elections to City offices at one dollar (\$1) per resident of the City. In 1997, the Voluntary Expenditure Ceiling Code Section also established limits on the amount of funds an individual or group could contribute to a candidate's campaign. Those contribution limits were later increased in 2007 and remain in place today. The current contribution limit for any candidate who accepts the voluntary expenditure ceiling is \$500. The contribution limit for any candidate who does not accept the voluntary expenditure ceiling is \$100.

Newark Municipal Code Section 2.11.010 requires the City Council, prior to each election for a City elective office, to adopt a resolution that establishes the number of residents in the City. City elective office means the offices of mayor and of members of the city council. The most recent data from the State of California, Department of Finance, E-1 Population Estimates for Cities, Counties and the State with Annual Percent Change — January 1, 2022 and 2023 Sacramento, California, May 2023, finds that there are 47,459 residents. Therefore, the amount of the voluntary expenditure ceiling for campaigns for City elective office will be \$47,459 for the November 5, 2024, Municipal Election.

City Staff recommends that the City Council, by resolution, establish the number of residents in the City of Newark for the purpose of determining the voluntary expenditure ceiling for the November 5, 2024, Municipal Election.

Attachments

Resolution
Population Data, State of CA

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK ESTABLISHING THE NUMBER OF RESIDENTS IN
THE CITY OF NEWARK FOR THE PURPOSE OF
DETERMINING THE VOLUNTARY EXPENDITURE CEILING
FOR THE NOVEMBER 5, 2024, MUNICIPAL ELECTION

WHEREAS, City of Newark Municipal Code Section 2.11.010 (the “Code”) established a voluntary expenditure ceiling for campaigns for City elective office. City elective office is defined in the Code as “the offices of mayor and of member of the city council”; and

WHEREAS, pursuant to the Code, the voluntary expenditure ceiling was established at an amount equal to one dollar (\$1) per resident of the City for each election to City elective office; and

WHEREAS, pursuant to the Code, the City Council is required to establish, by resolution, the number of residents in the City prior to each election for City elective office.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that, for the sole and exclusive purpose of determining the exact amount of the voluntary expenditure ceiling for campaigns for City elective office, the City Council hereby finds that there are 47,459 residents of the City of Newark, as reflected in the most recent data provided from the State of California, Department of Finance, *E-1 Population Estimates for Cities, Counties and the State with Annual Percent Change — January 1, 2022 and 2023 Sacramento, California, May 2023*.

BE IT FURTHER RESOLVED, that, as established by the Code, the amount of the voluntary expenditure ceiling for campaigns for City elective office is \$47,459 for the November 5, 2024, Municipal Election.

BE IT FURTHER RESOLVED that the determination herein shall apply only to the voluntary expenditure ceiling established in the City of Newark Municipal Code 2.11.010 and shall have no bearing on any other matter.

State of California, Department of Finance, *E-1 Population Estimates for Cities, Counties and the State with Annual Percent Change — January 1, 2022 and 2023*. Sacramento, California, May 2023.

[About the Data](#)

E-1: City/County Population Estimates with Annual Percent Change

January 1, 2022 and 2023

State/County/City	Total Population		Percent Change
	1/1/2022	1/1/2023	
California	39,078,674	38,940,231	-0.4
Alameda	1,644,248	1,636,194	-0.5
Alameda	77,437	77,287	-0.2
Albany	21,524	21,401	-0.6
Berkeley	123,188	123,562	0.3
Dublin	72,374	71,750	-0.9
Emeryville	12,478	12,610	1.1
Fremont	229,122	229,467	0.2
Hayward	160,081	159,800	-0.2
Livermore	85,870	84,793	-1.3
Newark	47,150	47,459	0.7
Oakland	421,806	419,556	-0.5
Piedmont	10,913	10,793	-1.1
Pleasanton	77,524	76,459	-1.4
San Leandro	88,075	87,497	-0.7
Union City	67,702	66,754	-1.4
Balance of County	149,004	147,006	-1.3
Alpine	1,191	1,184	-0.6
Amador	40,108	39,837	-0.7
Amador	195	193	-1.0
Ione	8,809	8,772	-0.4
Jackson	4,983	4,938	-0.9
Plymouth	1,051	1,062	1.0
Sutter Creek	2,616	2,590	-1.0
Balance of County	22,454	22,282	-0.8
Butte	206,582	205,592	-0.5
Biggs	1,966	1,990	1.2
Chico	105,633	107,394	1.7
Gridley	7,473	7,548	1.0
Oroville	19,405	19,409	0.0
Paradise	7,367	9,142	24.1
Balance of County	64,738	60,109	-7.2
Calaveras	45,012	44,890	-0.3
Angels City	3,559	3,542	-0.5
Balance of County	41,453	41,348	-0.3
Colusa	21,819	21,771	-0.2
Colusa	6,417	6,428	0.2
Williams	5,576	5,568	-0.1
Balance of County	9,826	9,775	-0.5
Contra Costa	1,151,798	1,147,653	-0.4
Antioch	114,362	115,442	0.9
Brentwood	64,219	64,513	0.5
Clayton	10,782	10,666	-1.1
Concord	123,102	122,074	-0.8



STAFF REPORT

Item D. 4.

DATE 04/11/2024
TO Honorable Mayor and City Council Members
FROM James Scanlin, Environmental Services Manager
SUBJECT Adopt a resolution authorizing the submittal of an application to CalRecycle for Local Assistance Grant Program funding in the amount of \$130,984 and amending the 2022-2024 Biennial Budget and Capital Improvement Plan

SUMMARY AND RECOMMENDATION

The California Department of Resources Recycling and Recovery (CalRecycle) is administering a Local Assistance Grant Program to provide funding to implement the regulations adopted by CalRecycle pursuant to Senate Bill 1383, Short-lived Climate Pollutants (SB 1383). Submittal of an application for the SB 1383 Local Assistance Grant Program would secure \$130,984 for the City of Newark. Funds would be used to assist with the implementation of the Edible Food Recovery and the Compost and Mulch Procurement requirements of SB 1383.

Staff recommends that the City Council, by resolution, authorize the submittal of an application for the SB 1383 Local Assistance Grant Program administered by CalRecycle for five years, authorize the City Manager or designee to execute funding agreements with CalRecycle, and amend the 2022-2024 Biennial Budget and Capital Improvement Plan.

BACKGROUND

Public Resources Code sections 48000 et seq., 14581, and 42023.1(g), authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various grant and payment programs in furtherance of the State of California's (state) efforts to reduce, recycle and reuse solid waste generated in the state thereby preserving landfill capacity and protecting public health and safety and the environment.

CalRecycle is administering a grant program meant to provide aid in the implementation of regulations adopted by CalRecycle pursuant to SB 1383: Short-lived Climate Pollutants. This non-competitive grant program provides funding to local jurisdictions to assist with the implementation of requirements associated with SB 1383. The total funding available through the program is \$109,590,543 and the funds are allocated to cities, counties, special districts, and joint powers authorities based on population. The City of Newark's allocation through this program is \$130,984.

The process to obtain these funds is initiated by the City Council's adoption of a Resolution authorizing the City Manager to apply to the program for funding of projects that meet the program criteria. Adoption of the Resolution expresses the City's agreement with the general program guidelines and delegates the authority to the City Manager or their designee to sign and submit all documents that may be necessary for the grant scope.

DISCUSSION/ANALYSIS

Short-lived climate pollutants, such as methane, create a warming influence on the climate that is many times more potent than carbon dioxide, and the decomposition of organic material in landfills is the largest man-made source of methane in the atmosphere. SB 1383 requires the development and implementation of programs to significantly reduce the quantity of organic material disposed of in landfills. The SB 1383 Local Assistance Grant Program is intended to assist with implementing these programs.

Two requirements of SB 1383 that are intended to increase the diversion of organic material from the landfill are the implementation of an edible food recovery program and the procurement of SB1383-compliant compost and mulch. These Local Assistance Grant funds would be used to assist with further implementation of these programs for the City of Newark.

FISCAL IMPACT

An amendment of the 2022-2024 Biennial Budget and Capital Improvement Plan is needed to accept the \$130,984 grant funding as revenue to Fund 492, Miscellaneous State Grants, and to authorize expenditure of that grant funding. The funds would be used to assist with implementing the Edible Food Recovery Program and to meet the compost and mulch procurement targets required by SB 1383. No matching funds are required and there is no fiscal impact to the City's General Fund.

REVIEW AND APPROVAL

Prepared by - James Scanlin, Environmental Services Manager

Reviewed by - Soren Fajeau, Public Works Director

Reviewed by - Krysten Lee, Finance Director

Reviewed by - Kristopher J. Kokotaylo, City Attorney

Approved by - Lenka Hovorka, Assistant City Manager

Attachments

972_LAG_Resolution

RESOLUTIONNO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF NEWARK AUTHORIZING SUBMITTAL OF AN
APPLICATION TO THE SB 1383 LOCAL ASSISTANCE
GRANT PROGRAM ADMINISTERED BY THE
CALIFORNIA DEPARTMENT OF RESOURCES
RECYCLING AND RECOVERY FOR FIVE YEARS,
AUTHORIZING THE CITY MANAGER OR DESIGNEE
TO EXECUTE ASSOCIATED FUNDING
AGREEMENTS AND AMENDING THE 2022-2024
BIENNIAL BUDGET AND CAPITAL IMPROVEMENT
PLAN

WHEREAS, Public Resources Code sections 48000 et seq., 14581, and 42023.l(g), authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various grant and payment programs in furtherance of the State of California's (State) efforts to reduce, recycle and reuse solid waste generated in the state thereby preserving landfill capacity and protecting public health and safety and the environment; and

WHEREAS, in furtherance of this authority, CalRecycle is required to establish procedures governing the administration of the payment programs; and administration of the application, awarding, and management of the grant programs; and

WHEREAS, CalRecycle's procedures for administering payment and grant programs require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of the payment and grant program.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark authorizes the submittal of an application to CalRecycle for the SB 1383 Local Assistance Grant Program.

BE IT FURTHER RESOLVED that the City Manager, or designee, is hereby authorized and empowered to execute in the name of the City of Newark all documents, including but not limited to, applications, agreements, amendments and requests for payment, necessary to secure funds and implement the approved grant or payment project.

BE IT FURTHER RESOLVED that these authorizations are effective from the date of adoption through January 31, 2029.

BE IT FURTHER RESOLVED that the 2022-2024 Biennial Budget and Capital Improvement Plan is hereby amended with SB 1383 Local Assistance Grant Program funding distributed as follows:

FR:	492.60.063.631.4792	SB 1383 State Grant	\$130,984
TO:	492.60.063.631.6120	SB 1383 Special Department Supplies	\$110,984
	492.60.063.631.6220	SB 1383 Consultant/Professional Services	\$ 20,000



STAFF REPORT

Item D. 5.

DATE 04/11/2024
TO Honorable Mayor and City Council Members
FROM James Scanlin, Environmental Services Manager
SUBJECT Adopt a Resolution approving the First Amendment to the Memorandum of Understanding with the Alameda County Department of Environmental Health (ACDEH) for inspections of Tier 1 and Tier 2 Edible Food Recovery Facilities

SUMMARY AND RECOMMENDATION

On May 12, 2022, City Council adopted Resolution No. 11346 authorizing the City Manager to execute a Memorandum of Understanding (MOU) with the Alameda County Department of Environmental Health (ACDEH) for inspections of food facilities within the City to ensure compliance with the Edible Food Recovery requirements of SB 1383 through March 1, 2024. An amendment to the MOU is required to provide a two-year extension and fund \$20,000 for inspection fees through March 1, 2026, and includes other minor modifications. Staff recommends that the City Council adopt a Resolution authorizing the City Manager to execute the First Amendment to the MOU with ACDEH.

BACKGROUND

California Senate Bill 1383, the Short-Lived Climate Pollutant Reduction Act of 2016 (SB1383), has established aggressive targets to achieve a 75 percent reduction in the statewide disposal of organic waste beginning in 2025. To assist the City with meeting its requirements under SB 1383, the City Council adopted Ordinance No. 533 on November 18, 2021. Ordinance No. 533 added Chapter 8.40, the Organics Reduction and Recycling Ordinance (ORRO), to the Newark Municipal Code. The ORRO authorized the Alameda County Waste Management Authority (WMA) to implement various aspects of SB 1383 on behalf of the City. Section 8.40.060 of the ORRO established requirements for Commercial Edible Food Generators (CEFGs). WMA has entered into a Memorandum of Understanding (MOU) with the Alameda County Department of Environmental Health (ACDEH) to authorize ACDEH to conduct inspection and outreach at CEFGs within Alameda County that are currently permitted and inspected by ACDEH. Adopting this resolution would allow the City to utilize the services of ACDEH to conduct inspection, outreach, and reporting related to SB 1383 CEFG requirements at facilities within the City.

DISCUSSION/ANALYSIS

California Senate Bill 1383, the Short-Lived Climate Pollutant Reduction Act of 2016, is the most significant waste reduction regulation in the last 30 years. SB 1383 requires a 75% reduction in the disposal of organic waste and recovery for human consumption of 20% of the edible food that is currently disposed of by 2025. SB 1383 requires local jurisdictions to implement the following actions:

1. Provide organic waste collection services to all organic waste generators.
2. Procure recycled content paper and recovered organic waste products (e.g., compost and mulch) at levels prescribed by the State.
3. Perform education and outreach to all affected parties.
4. Establish required enforcement protocols that include a schedule of fines for non-compliance.
5. Implement an edible food for human consumption recovery program that recovers edible food that would otherwise be discarded.

The edible food for human consumption recovery program requires that all Tier 1 CEFG facilities, defined as grocery stores and supermarkets over 10,000 square feet, recover the maximum amount of surplus edible food that would otherwise be disposed of (as compost or landfill) to feed people starting on January 1, 2022. Tier 2 CEFG facilities, defined as a restaurant with over 250 seats or a facility of over 5,000 square feet, need to implement an edible food recovery program starting on January 1, 2024. The City is required to ensure that all Tier 1 and Tier 2 facilities are implementing a compliant food-recovery program. The most efficient approach to conducting the required inspections and outreach at this time is by utilizing ACDEH inspectors. The MOU stated that ACDEH would track the costs incurred for these inspections in 2022. ACDEH has determined that the average cost of each inspection is \$348. In January 2023, eight known Tier 1 CEFGs and eleven Tier 2 facilities operated in the City. Both Tier 1 and 2 facilities were permitted and inspected by ACDEH.

FISCAL IMPACT

Using the average cost of \$378 per inspection, \$20,000 is the estimated cost to inspect nineteen facilities in 2024, 2025, and 2026 (during the MOU extension period) to cover expenses related to Alameda County Department of Environmental Health inspections of Tier 1 and Tier 2 facilities. The 2022-2024 Biennial Budget and Capital Improvement Plan includes sufficient funding for this program, therefore no budget amendment is needed.

REVIEW AND APPROVAL

Prepared by - James Scanlin, Environmental Services Manager

Reviewed by - Soren Fajeau, Public Works Director

Reviewed by - Krysten Lee, Finance Director

Reviewed by - Kristopher J. Kokotaylo, City Attorney

Approved by - Lenka Hovorka, Assistant City Manager

Resolution and Amendment
ACDEH MOU

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF NEWARK APPROVING THE FIRST
AMENDMENT TO THE MEMORANDUM OF
UNDERSTANDING BETWEEN THE CITY OF
NEWARK AND THE ALAMEDA COUNTY
DEPARTMENT OF ENVIRONMENTAL HEALTH
TO IMPLEMENT THE SB 1383 EDIBLE FOOD
RECOVERY PROGRAM

WHEREAS, the **City of Newark** and ACDEH entered into a Retail Food Facility Memorandum of Understanding for SB 1383 Edible Food Recovery (the “MOU”) whereas ACDEH agreed to provide certain services to **City of Newark** for certain Food Facilities and **City of Newark** agreed to pay ACDEH for providing those services, starting in January 2023; and

WHEREAS, the **City of Newark** desires for ACDEH to continue to conduct inspections on their behalf at certain permitted Retail Food Facilities related to edible food recovery requirements as set forth in this agreement and ACDEH is willing to continue to conduct those inspections;

Now therefore the **City of Newark** and ACDEH hereby amended the MOU as follows:

- I. Section A, Definitions, is amended by adding the following definitions:

Tier One Commercial Edible Food Generator or Tier One means a commercial edible food generator that is one of the following (14 CCR 18982 (73)):

- (A) Supermarket.
- (B) Grocery store with a total facility size equal to or greater than 10,000 square feet.
- (C) Food service provider
- (D) Food distributor.
- (E) Wholesale food vendor.

Tier Two Commercial Edible Food Generator or Tier Two means a commercial edible food generator that is one of the following (14 CCR 18982 (74)):

- (A) Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- (B) Hotel with an on-site food facility and 200 or more rooms.
- (C) Health facility with an on-site food facility and 100 or more beds.
- (D) Large venue.
- (E) Large event.
- (F) A state agency with a cafeteria with 250 or more seats or a total cafeteria facility size equal to or greater than 5,000 square feet.

(G) A local education agency with an on-site food facility.

- II. Section E, Enforcement Assistance to Member Agency, is revised by deleting Paragraph 4, Notices of Violation, and replacing it with the following:

Notices of Violation. Starting in January 2024, ACDEH, during its inspections, will identify in the inspection report violations by checking the box marked “NOV” signifying Notices of Violations for a Permitted CEF, pursuant to Section 18995.4 (a)(1).

- a. ACDEH shall conduct a follow up with the Permitted CEF to verify compliance required by the Notice of Violation. The follow up may be conducted in person or virtually, through submission of pictures, documentation or other materials or methods.
- b. ACDEH shall document compliance with the NOV or report that there has been failure to comply in a Follow Up report (identified on the report type as “FU”) and provide relevant documentation to the **City of Newark** and WMA but is not responsible for any further enforcement actions.
- c. The efforts and time spent by ACDEH on the items in this section, Notices of Violation, is included in the inspection flat rate up to the issuance of the Follow Up report. If the Follow Up report continues to identify a violation, such as checking the box marked NOV, it is the responsibility of **City of Newark** for any enforcement actions.
- d. Any requests for ACDEH to support or assist with enforcement after the Follow Up Report is issued are at the discretion of ACDEH and all costs are the responsibility of **City of Newark**, including ACDEH hourly rate for any support or assistance provided.

- III. Section H, Cost, is deleted and replaced with the following:

1. **Inspections.**

- a. **Inventory.** Attached hereto as **Exhibit A** is an inventory list, as of January 2023, for **Permitted Tier One Commercial Edible Food Generators in City of Newark** (the “**Inventory**”). The Inventory is subject to change based on the addition of new facilities, closure of facilities and changed operations of facilities and will be updated in the fourth quarter of 2023 to include **Permitted Tier Two Commercial Edible Food Generators in City of Newark** and may request an updated inventory list from time to time and ACDEH shall provide one within thirty (30) days of any written request.
- b. **Flat Rate.** **City of Newark** shall pay to ACDEH a flat rate of \$348.00 for each SB1383 inspection of a Permitted CEF. The flat rate is based on the ACDEH hourly rate of \$174.00, as approved by the Alameda County Board of

Supervisors, multiplied by two hours, the average time spent in 2022 on each SB1383 CEFG inspection, technical assistance and consultation and the related administrative work such as uploading inspections results and providing report copies to the Member Agency and WMA. The hourly rate may change as approved by the County of Alameda Board of Supervisors at a public meeting. The flat rate may change if the average time spend at each facility increase or decreases. Member Agencies will be notified if the approved hourly rate or flat rate is changed, with Member Agencies having an opportunity to terminate this MOU if they no longer wish for ACDEH to perform the services in the MOU.

- c. **Invoicing and Payment.** ACDEH will invoice each Member Agency for the inspection(s) completed during a specific period. It is anticipated that invoicing will be sent approximately every three months.
- d. **Estimated Annual Costs.** Typically, for purposes of efficiency, an SB 1383 inspection is conducted once a year at the time of a Tier One Permitted CEFGs routine food facility inspection, when possible. A Member Agency may estimate annual cost by multiplying the flat rate of \$348.00 for each of the facilities identified on the Inventory. This estimate is subject to change based the number of actual inspections, changes to the current flat rate or any increase or decrease in facilities. No later than December 15 each year **City of Newark** shall inform ACDEH if it wishes ACDEH to inspect only a subset of the Permitted CEFGs listed in the Inventory in the following calendar year, and if so, the criteria to be used to select facilities for inspection.
- e. **Enforcement.** Enforcement Assistance to Member Agency (see MOU Section E, as revised above) performed by ACDEH is NOT included in the inspection flat rate. Enforcement Assistance, if requested by **City of Newark** and agreed to by ACDEH, shall be charged at the ACDEH hourly rate, as identified above.

- IV. Section I, General, paragraph 1 is amended by extending the end date of the MOU for two years, from March 1, 2024 to March 1, 2026, unless extended in writing or terminated early.

- V. Except as expressly modified by this First Amendment, all of the terms and conditions of the MOU are and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this MOU on the dates appearing below their respective signatures.

City of Newark

By: _____ Date: _____

Name: _____

Title: _____

ALAMEDA COUNTY DEPARTMENT OF ENVIRONMENTAL HEALTH

By: _____ Date: _____

Name: Ronald Browder

Title: Director

Approved as to Form:
Donna R Ziegler, County Counsel

By: _____
Kathleen Pacheco, Senior Deputy County Counsel

1702058.2

ATTACHMENT "A" CITY OF NEWARK FACILITIES

City of Newark Tier 1	
FACILITY NAME	SITE ADDRESS
99 RANCH MARKET	35219 NEWARK BLVD #B
ARTEAGAS FOOD CENTER	5524 THORNTON AVE
FOOD MAXX #462	39966 CEDAR BLVD
LION FOOD CENTER	39055 CEDAR BLVD
MEXICO TORTILLA FACTORY & DELI	7015 THORNTON AVE.
NEWARK GROCERY OUTLET	36601 NEWARK BLVD 19-25
SAFEWAY #1224	5877 JARVIS AVE
SPROUT'S MARKET	6399 JARVIS AVE

CITY OF NEWARK TIER 2	
Facility Name	Site Address
CHANDINI	5748 MOWRY SCHOOL RD
CHUCK E CHEESE'S PIZZA	39839 MOWRY SCHOOL RD
LAZY DOG RESTAURANT & BAR	3100 NEWPARK MALL
BOMBAY GARDEN	5995 MOWRY AVE
JACK'S RESTAURANT	1029 NEWPARK MALL
NEWARK SAIGON SEAFOOD HARBOR	35219 NEWARK BLVD A
BJ'S RESTAURANT & BREWHOUSE	5699 MOWRY AVE
URBAN SPICE	36665 CEDAR BLVD
DEL TACO	6160 JARVIS AVE
SPRINGHILL SUITES NEWARK FREMONT	6100 NEWPARK MALL RD
DOUBLE TREE BY HILTON NEWARK-FREMONT	39900 BALENTINE DR

RESOLUTION NO. 11,346

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPROVING A MEMORANDUM OF
UNDERSTANDING BETWEEN THE CITY OF NEWARK
AND THE ALAMEDA COUNTY DEPARTMENT OF
ENVIRONMENTAL HEALTH TO IMPLEMENT THE SB
1383 EDIBLE FOOD RECOVERY PROGRAM

WHEREAS, California Senate Bill 1383 of 2016, the Short-lived Climate Pollutant Reduction Act of 2016 (which added Sections 39730.5, 39730.6, and 39730.8 to the California Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code), took effect on January 1, 2017, setting Statewide Organic Waste disposal reduction targets of 50 percent by 2020 and 75 percent by 2025, and requiring the California Department of Resources Recycling and Recovery (“CalRecycle”) to develop regulations to reduce organics in landfills as a source of methane; and

WHEREAS, in November 2020, CalRecycle finalized the Short-lived Climate Pollutants Organic Waste Reductions Regulations (the SLCP Regulations) which establish the regulatory requirements for jurisdictions, generators, haulers, solid waste facilities, and other entities which are contained in Title 14 of the California Code of Regulations (14 CCR); and

WHEREAS, by January 1, 2022, all city, county, and special district jurisdictions that provide solid waste collection services are required to implement measures necessary to comply with the regulations; and

WHEREAS, the City of Newark (“City”) is an incorporated city within Alameda County; and

WHEREAS, the Alameda County Department of Environmental Health (ACDEH) is the local enforcement agency which oversees retail food programs in Alameda County for the protection of public health and safety. ACDEH inspects Retail Food Facility operations and issues permits to operate those facilities under the authority granted through the California Retail Food Code (California Health and Safety Code §113700 et seq.); and

WHEREAS, the Alameda County Waste Management Authority (“WMA”) is a joint powers agency established by all the cities in Alameda County, the County, and two sanitary districts (the “Member Agencies” as more specifically defined below); and

WHEREAS, the Joint Exercise of Powers Agreement for Waste Management (“JPA”) entered into by Member Agencies grants the WMA the power, duty, and responsibility to prepare, adopt, revise, amend, administer, enforce, and implement the County Integrated Waste Management Plan; and

WHEREAS, the WMA on July 28, 2021 adopted the Organics Reduction and Recycling Ordinance (“ORRO”) to implement various measures required by the SLCP Regulations,

including regulation of commercial edible food generators, which will apply within the boundaries of any Member Agency that opts into the ordinance; and

WHEREAS, City has adopted its own ordinance which opts into the WMA Organics Reduction and Recycling Ordinance to meet the SLCP Regulations; and

WHEREAS, compliance with its responsibilities under the SB 1383 Regulations is the sole responsibility of City; however, a jurisdiction may designate a public or private entity to assist with fulfilling certain of its responsibilities under the SLCP Regulations; and

WHEREAS, designations by a jurisdiction must be made through agreements such as MOUs with other jurisdictions, entities, regional agencies as defined in Public Resources Code Section 40181, or other government entities, including environmental health departments, or through contracts with haulers or other private entities; and

WHEREAS, SLCP Regulation 14 CCR 18991.1 requires jurisdictions to implement edible food recovery programs and 14 CCR 18991.3 requires commercial edible food generators to recover the maximum amount of food that would otherwise be disposed; and

WHEREAS, SLCP Regulation 14 CCR 18995.1(a)(2) requires jurisdictions to conduct inspections of commercial edible food generators for compliance with the food recovery regulations starting with Tier One facilities beginning on January 1, 2022 and for Tier Two facilities beginning on January 1, 2024; and

WHEREAS, SLCP Regulation 14 CCR 18984.10(c) requires that commercial businesses provide or arrange for access to their properties during all inspections conducted pursuant to the SLCP Regulations; and

WHEREAS, ACDEH currently permits and conducts routine inspections of certain commercial edible food generators which are Retail Food Facilities, and it would be efficient for ACDEH to also conduct the inspections for compliance with certain SLCP Regulations related to edible food recovery and provide services to assist in educating these facilities on edible food recovery; and

WHEREAS, WMA and ACDEH have entered an MOU discussing SB 1383 Edible Food Recovery, including tasks related to gathering and compiling information in areas of Alameda County related to the SLCP Regulations and may terminate or modify their agreement at any time, without consultation to City; however, WMA has agreed to provide notice of any termination to its Member Agencies; and

WHEREAS, for commercial edible food generators that are described as Tier One and Tier Two in the SLCP Regulations and have a current ACDEH issued Retail Food Facility permit, ACDEH is willing to provide services to City as set forth in this MOU; and

WHEREAS, the City desires to authorize ACDEH to conduct inspections on its behalf at certain permitted Retail Food Facilities related to edible food recovery requirements as set forth in this agreement.

NOW, THEREFORE, BE IT RESOLVED that the City and ACDEH agree:

A. DEFINITIONS

The following abbreviations and definitions shall apply to this MOU:

Alameda County means all of the geographical area located within the incorporated and unincorporated areas of Alameda County whereas “County of Alameda” or “County” refers to the public entity, a body corporate and politic of the State of California.

ACDEH means the Alameda County Department of Environmental Health.

City means the City of Newark.

City Boundaries means the area in which City is responsible for compliance with SB 1383 Regulations related to edible food (the geographical area in which the City is responsible for solid waste collection services). This does not include any portion of the City that is within the Oro Loma Sanitary District or Castro Valley Sanitary District.

Commercial Edible Food Generators (CEFG) has the same meaning as in the SLCP Regulations. If they have an ACDEH issued Retail Food Facility permit that is current at the time services are being provided pursuant to this MOU they are a **Permitted CEFG**.

Education Materials means the documents created and published by WMA related to the CalRecycle SLCP Regulations, the Federal Bill Emerson Good Samaritan Food Donation Act, California Good Samaritan Food Donation Act and other food donation resources. These include materials for general use as well as materials designed for CEFGs that are not in compliance with SLCP Regulations. In addition, City may create and distribute additional materials.

FRO&S means **Food Recovery Organizations** and **Food Recovery Services** as defined in the SLCP Regulation 14 CCR 18982.

Jurisdiction means the cities, county, and sanitary districts within the geographical boundaries of Alameda County that provide solid waste collection services. For areas that are in a sanitary district located within a city and/or the unincorporated County, the jurisdiction for purposes of this MOU is the sanitary district.

Member Agencies means the individual parties to the WMA JPA. Current member agencies are the County of Alameda; the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, and Union City; and the Castro Valley and Oro Loma Sanitary Districts. Each of the foregoing is a **Member Agency**.

Member Agency Jurisdiction means, for purposes of this MOU, the geographical area for which the Member Agency is responsible for solid waste collection services.

Notice of Violation (NOV) means a notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties.

Permitted CEFG means a Commercial Edible Food Generator that has an ACDEH issued Retail Food Facility permit that is current at the time services are being provided pursuant to this MOU.

Retail Food Facility means a food facility as defined in the California Retail Food Code, located at Health and Safety Code (H&SC) §13700 et seq., which generally is an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption at the retail level (see H&SC §113789).

Retail Food Facility MOU means the MOU that a Member Agency and ACDEH enter into in which (1) ACDEH agrees to perform certain services related to SB 1383 Edible Food Recovery Requirements at Permitted CEFG facilities within that Member Agency's Jurisdiction (the geographical area for which the Member Agency is responsible for solid waste collection services) and (2) the Member Agency designates and delegates authority to ACDEH to do so.

SB 1383 means Senate Bill 1383 Short-lived climate pollutants: methane emissions: dairy and livestock: organic waste: landfills (Lara, Chapter 395 Statutes of 2016).

SB 1383 Edible Food Recovery Inspection Report (SB 1383 EFR Inspection Report) means the form created by ACDEH, which may be amended from time to time in consultation with the WMA, that documents an inspection of a Permitted CEFG for compliance with the SLCP Regulations and may also be referred to as the SB 1383 EFR Report.

SLCP Regulations means the Short-lived Climate Pollutants: Organic Waste Reductions Regulations that were promulgated by CalRecycle pursuant to SB 1383, located in Title 14 of the California Code of Regulations, also referred to as the "SB 1383 Regulations" or "Organic Waste Reductions Regulations".

Waste Management Authority (WMA) means the Alameda County Waste Management Authority that is a joint powers agency comprised of all the cities in Alameda County, the County, and two sanitary districts, which are the Member Agencies.

B. INSPECTIONS AND EDUCATION OF PERMITTED COMMERCIAL EDIBLE FOOD GENERATORS

1. **ACDEH Responsibilities.** ACDEH shall perform SB 1383 Edible Food Recovery inspections and related services at Permitted CEFG facilities within City Boundaries as contained in the MOU. ACDEH services for Tier One Permitted CEFGs will begin on January 1, 2022 and for Tier Two Permitted CEFGs on January 1, 2024.

2. **SB 1383 Edible Food Recovery Inspection Report.** ACDEH has created a template SB 1383 Edible Food Recovery Inspection Report form (SB 1383 EFR Report), which will be used to document the inspection of a Permitted CEFG within the City Boundaries.
3. **Inspections, Education and Documentation.**
 - a. **Inspections.** During ACDEH routine inspections conducted at a Permitted CEFG in City, ACDEH shall also conduct an inspection for compliance with the SLCP Regulations. ACDEH staff will document their observations using the SB 1383 EFR Inspection Report form.
 - b. **Distribution of Education Materials and Technical Assistance.** During routine inspections of a Permitted CEFG, ACDEH will:
 - i. Starting in 2022, provide Education Materials to the Permitted CEFG.
 - ii. Starting in year 2023 and until December 31, 2023, provide Education Materials related to requirements with which, in the reasonable judgment of ACDEH staff, the Permitted CEFG does not appear to be in compliance. These may include (a) Education Materials prepared by the WMA and/or (b) providing the Permitted CEFG with a copy of the SB 1383 EFR Inspection Report as determined by ACDEH staff.
 - iii. During the routine inspections of Permitted CEFG, ACDEH staff will provide technical assistance to the Permitted CEFG related to the SLCP regulations, including standard food handling and operating procedures related to commercial edible food generators on safe food handling for food recovery and donations. ACDEH may also provide Educational Materials during any routine inspection.
 - c. **Documentation for Member Agency and WMA**
 - i. ACDEH staff will document the inspection on the SB 1383 EFR Inspection Report. The report will include the date and listing of Education Materials provided to the Permitted CEFG together with the name of the Permitted CEFG and identification of the food facility staff that accepted the Education Materials or a copy of the report.
 - ii. If there is any mass distribution of Education Materials through emailing, or other format such as general food permit correspondence, a notice will be provided to WMA and City. The notice will include a listing, or copy, of what was provided, the date it was provided, the manner it was distributed, and the list of recipients provided with the Education Materials. The copy of the materials may be provided by including WMA and a Member Agency on the distribution list.
 - iii. The SB 1383 EFR Inspection Reports from each Permitted CEFG will be provided to WMA and City by email in an electronic format. The Inspection Reports will be sent in batches and provided no less frequently than once a month

- iv. Efforts will be made by ACDEH to create a summary report that can be utilized in Microsoft Excel (e.g., an Excel file or file that can be imported into Excel) or alternate format(s) agreeable to ACDEH and the City.

C. Wholesale Food Facilities and Food Recovery Organizations and Services

Wholesale food facilities, food recovery organizations, and food recovery services are not permitted by ACDEH and ACDEH is not responsible for performing any SLCP Regulation related services or activities to or for wholesale facilities, food recovery organizations, and food recovery services. For any wholesale facilities, food recovery organizations, and food recovery within the City Boundaries that are also a Permitted CEFG, and for which ACDEH conducts any inspection, City will be notified and provided a copy of the SB 1383 EFR Inspection Report.

D. Complaints

1. **Investigation.** ACDEH will investigate any complaints received regarding non-compliance with SLCP Regulations by a Permitted CEFG in City Boundaries. The determination from the investigation and any follow up by ACDEH, such as providing Education Materials or technical assistance will be documented on a SB 1383 EFR Inspection Report form or another format that records information related to the complaint and provided to the City and WMA.
2. **Referral.** If ACDEH receives a complaint related to a facility not covered in paragraph 1 of this section, but located in City boundaries, ACDEH will refer the individual making the complaint to WMA and City and/or forward the complaint to the City and WMA.
3. **Assistance.** If requested, ACDEH staff will accompany City and/or WMA staff to investigate complaints at Permitted CEFG facilities within City Boundaries.

E. Enforcement Assistance to Member Agency

1. **Record Keeping.** ACDEH will document observations and forward the SB 1383 EFR Inspection Reports to City for recordkeeping pursuant to 14 CCR 18991.2, enforcement pursuant to 14 CCR 18995.4, and assessing penalties pursuant to 14 CCR 18997.2.
2. **Responsibility.** In accordance with 14 CCR Section 18981.2(c), City shall remain ultimately responsible for compliance with its responsibilities in the SLCP Regulations within City Boundaries.
3. **Timing.** 14 CCR 18995.4 requires that City take enforcement action on violations of SLCP Regulations beginning January 1, 2024. ACDEH is not and shall not be responsible for any enforcement actions required of City except as specifically set forth in this Retail Food Facility MOU.
4. **Notices of Violation.** Starting in January 2024, ACDEH will issue Notices of Violations to a Permitted CEFG, pursuant to Section 18995.4 (a)(1).

- a. ACDEH shall conduct follow up with the Permitted CEFEG to verify compliance required by the Notice of Violation. The follow up may be conducted in person or virtually, through submission of pictures, documentation or other materials or methods.
 - b. ACDEH shall document compliance with the NOV or report that there has been failure to comply and provide relevant documentation to the City and WMA but is not responsible for any further enforcement actions.
 - c.
- 5. **Testimony.** If requested, ACDEH staff will be available for testimony in any enforcement action brought by WMA or City and any appeal proceedings.
 - a. City will provide as much advance notice as possible for any hearing date.
 - b. City will conduct at least one preparation meeting with any ACDEH staff that is needed to testify which, by mutual agreement, may be done in person, virtually or by telephone.
- 6. **Responsibility.** Other than the assistance identified in this MOU, City has full responsibility for its responsibilities in the SLCP Regulations, including but not limited to issuing any Notices of Violation, conducting compliance follow up, enforcement actions, due process, hearings, assessments, and collection of penalties, and/or other remedies.

F. Educational Materials and Webpage

Compliance with its responsibilities in the SB 1383 Regulations is the sole responsibility of City.

- 1. **Creation.** Creating and printing of Education Materials is the responsibility of the City. City will provide, or arrange for the provision of, printed copies of the Education Materials to ACDEH for distribution in accordance with this MOU.
- 2. **Webpage.** ACDEH will create and maintain a webpage with general information about SLCP Regulations, Edible Food Recovery, and a list of Food Recovery Organizations and Services (FRO&S) operating in Alameda County. City may request that ACDEH provide information specifically related to City (such as contact information), however, nothing in this agreement obligates ACDEH to include information on the webpage at the request of or specific to City.

G. Training

ACDEH shall provide training to its ACDEH inspectors who conduct Retail Food Facility inspections on the requirements of the SLCP Regulations, completing the SB 1383 EFR Inspection Report, handling complaints and issuing Notices of Violation.

H. Costs

1. Starting with compliance inspections in 2022, ACDEH will track its time and costs spent on SB 1383 inspections and follow-up activities over the first year and then coordinate with WMA and Member Agencies to consider appropriate reimbursement moving forward after 2022, or as ACDEH or the City determines is needed. ACDEH will track the time that is spent on services and activities provided under this MOU and related activities. No reimbursement of time and costs will be required for services in 2022; however, City will be responsible for costs of services provided under this MOU and will coordinate with ACDEH for appropriate reimbursement from the Member Agencies beginning in 2023. City agrees to cooperate with this coordination and understands that as the entity responsible for compliance with SB 1383 Regulations in City Boundaries it is responsible for costs beginning in 2023. For purposes of clarification, City is responsible only for costs of services provided related to Permitted CEFGs that are within City Boundaries. City will be provided notice prior to any request for direct reimbursement.
2. Beginning on January 1, 2023, ACDEH will charge an average flat rate for each SB 1383 inspection of a Permitted CEFG (SB 1383 Inspection Cost). The flat rate will be based on the average time spent on SB 1383 inspection and technical assistance while at each Permitted CEFG, and the related administrative work such as uploading inspections results and providing report copies to Member Agencies and WMA during 2022. It is estimated that the average time will be one to two hours for a cost of \$174.00- \$348.00 per facility inspection. ACDEH will provide notice to Member Agencies and WMA on or prior to November 1, 2022 of the SB 1383 Inspection Cost and City will have until December 31, 2022 to provide notice if it wishes to terminate this MOU effective January 1, 2023. As NOV's and enforcement are not required until 2024, the costs related to such work will be provided by ACDEH on or prior to November 1, 2023. Services related to issuing NOVs and providing testimony will be provided at the same hourly cost on which the inspection cost is based.

I. General Provisions

1. **Term.** This MOU is effective beginning on the date that both parties have executed the agreement (the Effective Date) and shall terminate on March 1, 2024, unless extended in writing or terminated early.
2. **Termination.** Except as provided in Section H.2., City may terminate this MOU with forty-five (45) days written notice to ACDEH. ACDEH may terminate this MOU with forty-five (45) days written notice to City.
3. **Conflict.** In the event of any conflicts between this Retail Food Facility MOU with the MOU between WMA and ACDEH, this Retail Food Facility MOU shall control for services provided to City.
4. **Compliance Responsibility.** In accordance with 14 CCR Section 18981.2(c), each City shall remain ultimately responsible for compliance with its responsibilities in the SLCP Regulations within City Boundaries.

5. **Notice.** All notices, requests, demands, or other communications under this MOU shall be in writing and provided by one of the following manners: (1) Personal delivery which shall be effective on delivery; (2) First Class Mail which shall be effective five calendar days after deposit in a United States Postal Service office or mailbox; (3) Certified Mail, return receipt requested, which shall be effective on receipt, if delivery is confirmed by a return receipt; or (4) Overnight Delivery, with charges prepaid or charged to the sender's account, which shall be effective on delivery, if delivery is confirmed by the delivery service. Addresses for purpose of giving notice are as follows:

To ACDEH: Alameda County Department of Environmental Health
1131 Harbor Bay Parkway
Alameda, CA 94502
Attn: Director of Dept. of Environmental Health

To City: City of Newark
37101 Newark Boulevard
Newark, CA 94560
Attn: Environmental Services Manager

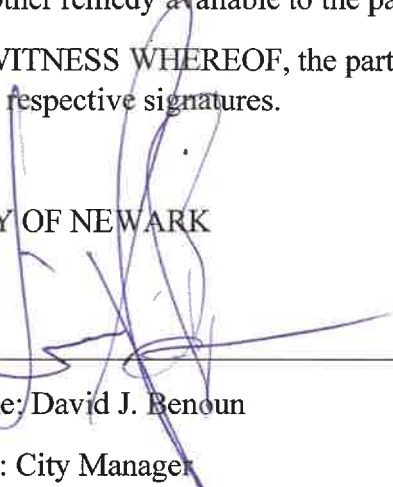
Any party may change its address by giving the other party notice of the change in any manner permitted by this MOU. Any notice by email is considered a courtesy notice but shall not be effective until provided by US mail, personal service, or overnight delivery.

6. **Entire Agreement.** This MOU, including the recitals, all attachments, exhibits, and any other documents specifically incorporated into this MOU, shall constitute the entire agreement between ACDEH and City relating to the subject matter of this MOU. This MOU supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The MOU may not be modified except by a written document signed by both parties. No supplement, amendment, or modification of this MOU shall be binding unless it is in writing and signed by authorized representatives of both parties.
7. **Heading.** Headings herein are for convenience of reference only and shall in no way affect interpretation of the MOU.
8. **Severability.** If a court of competent jurisdiction holds any provision of this MOU to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this MOU would be defeated by the loss of the illegal, unenforceable, or invalid provision.

9. This MOU shall be governed and interpreted using the laws of the State of California. The venue of any suit filed by any party to this MOU shall be vested in the state courts of the County of Alameda. The pursuit by any party of any specific remedy shall not exclude any other remedy available to the party.

IN WITNESS WHEREOF, the parties have executed this MOU on the dates appearing below their respective signatures.

CITY OF NEWARK

By: 

Date: 5-19-12

Name: David J. Benoun

Title: City Manager

Approved as to Form:

By: _____
Jennifer Faught, Special Counsel

ALAMEDA COUNTY DEPARTMENT OF ENVIRONMENTAL HEALTH

By: 

Date: 06-17-2012

Name: RONALD BROWDER

Title: DIRECTOR

Approved as to Form:

Donna R Ziegler, County Counsel

By: 
Kathleen Pacheco, Senior Deputy County Counsel

I HEREBY CERTIFY the foregoing resolution was introduced at a regular meeting of the City Council of the City of Newark held on May 12, 2022, by Council Member Collazo who moved its adoption and passage, which motion was carried after being duly seconded, and passed by the following vote:

AYES: Council Members Bucci, Collazo, Freitas, Vice Mayor Hannon, and Mayor Nagy

NOES: None

ABSENT: None

SECONDED: Vice Mayor Hannon

APPROVED:



s/ALAN L. NAGY
Mayor

ATTEST:



s/SHEILA HARRINGTON

City Clerk

APPROVED AS TO FORM:



s/KRISTOPHER J. KOKOTAYLO

City Attorney



STAFF REPORT

Item D. 6.

DATE 04/11/2024
TO Honorable Mayor and City Council Members
FROM Matthew Farrell, Chief Building Official
SUBJECT Waive full reading, conduct a second reading by title only, and adopt an ordinance repealing and replacing Chapter 15.40 "Construction in Flood Hazard Areas" of the Newark Municipal Code

At its March 28, 2024, meeting, the City Council introduced an ordinance repealing and replacing Chapter 15.40 "Construction in Flood Hazard Areas" of the Newark Municipal Code. A second reading of the ordinance is required prior to adoption. The proposed ordinance will result in a comprehensive update of Chapter 15.40 to clarify the locations of requirements for construction within flood hazard areas and ensure consistency with the National Flood Insurance Program. The ordinance will take effect 30 days after the second reading.

Attachments

Ordinance - Floodplain Management

Exhibit A - Chapter 15.40

Redline Version of Chapter 15.40

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK REPEALING AND REPLACING IN ITS ENTIRETY NEWARK MUNICIPAL CODE CHAPTER 15.40 TO ADOPT A NEW CONSTRUCTION IN FLOOD HAZARD AREAS; TO ADOPT FLOOD HAZARD MAPS; TO DESIGNATE A FLOODPLAIN ADMINISTRATOR; AND FOR OTHER PURPOSES

WHEREAS, the Legislature of the State of California has, in Government Code Sections 65302, 65560, and 65800, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the City of Newark (the "City") and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, the City was accepted for participation in the National Flood Insurance Program in June 1978 and the City Council desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

WHEREAS, pursuant to the California Health and Safety Code, Division 13, Part 1.5 and Part 2.5, the City is required to administer and enforce the California Building Standards Code, and such building codes contain certain provisions that apply to the design and construction of buildings and structures in flood hazard areas; and

WHEREAS, the City Council has determined that it is in the public interest to adopt the proposed floodplain management regulations that are coordinated with the California Building Standards Code.

THE CITY COUNCIL OF THE CITY OF NEWARK DOES ORDAIN AS FOLLOWS:.

SECTION 1. Recitals.

The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. Municipal Code Amendment.

Newark Municipal Code Chapter 15.40, Construction in Flood Hazard Areas, is repealed and replaced in its entirety as contained in Exhibit A, attached hereto and incorporated herein.

SECTION 3. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Newark hereby declares that it would have passed each section, subsection, subdivision,

paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 4. CEQA.

Approval of the ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions that do not authorize any new activity, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 5. Publication and effective date.

Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Newark, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

Exhibit A

CHAPTER 15.40 – CONSTRUCTION IN FLOOD HAZARD AREAS

15.40.010 - Title.

These regulations, in combination with the flood provisions of California Code of Regulations Title 24, the *California Building Standards Code* (hereinafter “building codes,” consisting of the Part 2 (building), Part 2.5 (residential), Part 10 (existing building), and related codes), shall be known as the *Floodplain Management Regulations of City of Newark* (hereinafter “these regulations”).

15.40.011 - Statutory authority.

Legislature of the State of California has, in Government Code Sections 65302, 65560, and 65800, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

15.40.012 - Scope.

The provisions of these regulations, in combination with the flood provisions of the building codes, shall apply to all proposed development entirely or partially in flood hazard areas established in 15.40.022 of these regulations.

15.40.013 – Purposes and objectives.

The purposes and objectives of these regulations and the flood load and flood resistant construction requirements of the building codes are to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific flood hazard areas through the establishment of comprehensive regulations for management of flood hazard areas, designed to:

- A. Minimize unnecessary disruption of commerce, access, and public service during times of flooding.
- B. Require the use of appropriate construction practices in order to prevent or minimize future flood damage.
- C. Manage the alteration of natural floodplains, stream channels and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain.
- D. Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential.
- E. Prevent or regulate the construction of flood barriers which will divert floodwater or increase flood hazards.
- F. Contribute to improved construction techniques in the floodplain.
- G. Minimize damage to public and private facilities and utilities.
- H. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas.

- I. Minimize the need for rescue and relief efforts associated with flooding.
- J. Ensure that property owners, occupants, and potential owners are aware of property located in flood hazard areas.
- K. Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events.
- L. Meet the requirements of the National Flood Insurance Program for community participation as set forth in Title 44 Code of Federal Regulations, Section 59.22.

15.40.014 - Coordination with *California Building Standards Code*.

Pursuant to the requirement established in State statute that the **City of Newark** administer and enforce the *California Building Standards Code*, the **city council** of **City of Newark** hereby acknowledges that the building codes contain certain provisions that apply to the design and construction of buildings and structures in flood hazard areas. Therefore, these regulations are intended to be administered and enforced in conjunction with the building codes.

15.40.015 - Warning.

The degree of flood protection required by these regulations and the building codes is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. Enforcement of these regulations and the building codes does not imply that land outside the special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring this community to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with these regulations.

15.40.016 - Disclaimer of liability.

These regulations shall not create liability on the part of **city council**, any officer or employee thereof, the State of California, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made hereunder. The Floodplain Administrator and any employee charged with the enforcement of these regulations, while acting for the community in good faith and without malice in the discharge of the duties required by these regulations or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of these regulations shall be defended by a legal representative of the community until the final termination of the proceedings. The Floodplain Administrator and any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of these regulations.

15.40.017 - Other laws.

The provisions of these regulations shall not be deemed to nullify any provisions of local, State or federal law.

15.40.018 - Abrogation and greater restrictions.

These regulations supersede any ordinance in effect in flood hazard areas. However, these regulations are not intended to repeal, abrogate or impair any existing ordinances including land development regulations, subdivision regulations, zoning ordinances, stormwater management regulations, or building codes, nor any existing easements, covenants, or deed restrictions. In the event of an overlap or conflict between these regulations and any other ordinance, code, regulation, easement, covenant, or deed restriction, the more restrictive shall govern.

15.40.020 GENERAL APPLICABILITY

15.40.021 - General applicability.

These regulations, in conjunction with the building codes, provide minimum requirements for development located in flood hazard areas, including the subdivision of land; filling, grading and other site improvements; installation of utilities; installation, placement and replacement of manufactured homes; placement of recreational vehicles; installation of tanks; temporary structures and temporary or permanent storage; utility and miscellaneous Group U buildings and structures; certain building work exempt from permit under the building codes; and flood control projects.

15.40.022 - Establishment of flood hazard areas.

The Flood Insurance Study for **Alameda County**, California and Incorporated Areas dated **February 22, 1974** and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are hereby adopted by reference as a part of these regulations and serve as the basis for establishing flood hazard areas. Where the building code establishes flood hazard areas, such areas are established by this section. Additional maps and studies, when specifically adopted, supplement the FIS and FIRMs to establish additional flood hazard areas. Maps and studies that establish flood hazard areas are on file at the **Building Inspection Division, City Hall, 37101 Newark Blvd., Newark Ca 94560.**

15.40.023 - Interpretation.

In the interpretation and application of these regulations, all provisions shall be:

- A. Considered as minimum requirements.
- B. Liberally construed in favor of the governing body.
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

15.40.030 DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

15.40.031 - Designation.

The **Chief Building Official** is designated the Floodplain Administrator. The Floodplain Administrator shall have the authority to delegate performance of certain duties to other employees.

15.40.032 - General authority.

The Floodplain Administrator is authorized and directed to administer and enforce these regulations. The Floodplain Administrator shall have the authority to render interpretations of these regulations and to establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be consistent with the intent and purpose of these regulations and the flood provisions of the building code and shall not have the effect of waiving specific requirements without the granting of a variance pursuant to Article 107 of these regulations. The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by these regulations but that are not required to be prepared by a qualified California (CA) Licensed Land Surveyor or Civil Engineer when it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with these regulations.

15.40.033 - Coordination.

The Floodplain Administrator shall coordinate with and provide comments to the Building Official to administer and enforce the flood provisions of the building code and to ensure compliance with the applicable provisions of these regulations. The Floodplain Administrator and the Building Official have the authority to establish written procedures for reviewing applications and conducting inspections for buildings and for administering and documenting determinations of substantial improvement and substantial damage made pursuant to 15.40.035 of these regulations.

15.40.034 - Duties.

The Floodplain Administrator, in coordination with other pertinent offices of the community, shall:

- A. Review all permit applications and plans to determine whether proposed development is located in flood hazard areas.
- B. Review all applications and plans for development in flood hazard areas for compliance with these regulations.
- C. Review, in coordination with the Building Official, required design certifications and documentation of elevations specified by the building code to determine that such certifications and documentations are complete.

- D. Review applications and plans for modification of any existing development in flood hazard areas for compliance with these regulations.
- E. Require development in flood hazard areas to be reasonably safe from flooding and to be designed and constructed with methods, practices and materials that minimize flood damage.
- F. Interpret flood hazard area boundaries and provide available flood elevation and flood hazard information.
- G. Determine whether additional flood hazard data shall be obtained from other sources or developed by the applicant.
- H. Complete the appropriate section of the Department of Housing and Community Development Floodplain Ordinance Compliance Certification for Manufactured Home/Mobile home Installations when submitted by applicants.
- I. Review requests submitted to the Building Official seeking approval to modify the strict application of the flood load and flood resistant construction requirements of the building code, to determine whether such requests require consideration as a variance pursuant to Article 107 of these regulations.
- J. Coordinate with the Building Official and others to identify and investigate damaged buildings located in flood hazard areas and inform owners of the requirement to obtain permits for repairs.
- K. Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps when the analyses indicate changes in base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available.
- L. Require applicants who propose alteration of a watercourse to notify adjacent communities and the NFIP State Coordinating Agency, and to submit copies of such notifications to the Federal Emergency Management Agency (FEMA).
- M. Inspect development in accordance with Article 106 of these regulations and inspect flood hazard areas to determine when development is undertaken without issuance of permits.
- N. Prepare comments and recommendations for consideration when applicants seek variances for development other than buildings in accordance with Article 107 of these regulations.
- O. Cite violations in accordance with Article 108 of these regulations.
- P. Notify FEMA when the corporate boundaries of **City of Newark** have been modified and provide a map and legal description of the changes in the corporate boundaries.

15.40.035 - Substantial improvement and substantial damage determinations.

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- A. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
- B. Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, when applicable, to the market value of the building or structure.
- C. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.
- D. Notify the applicant when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant when it is determined that work does not constitute substantial improvement or repair of substantial damage.

15.40.036 – Department records.

In addition to the requirements of the building code and these regulations, and regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of these regulations and the flood provisions of the building codes, including Flood Insurance Studies and Flood Insurance Rate Maps; documents from FEMA that amend or revise FIRMs; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required certifications and documentation specified by the building codes and these regulations; notifications to adjacent communities, FEMA, and the State related to alterations of watercourses; assurance that the flood carrying capacity of altered waterways will be maintained; documentation related to variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to these regulations and the flood resistant provisions of the building codes.

15.40.040 PERMITS FOR FLOODPLAIN DEVELOPMENT

15.40.041. - Permits required.

Any person, owner or authorized agent who intends to conduct any development in a flood hazard area shall first make application to the Floodplain Administrator and shall obtain the required permit for floodplain development. No permit shall be issued until compliance with the requirements of these regulations and all other applicable codes and regulations has been satisfied. No building permit shall be issued based on Conditional Letters of Map Revision issued by FEMA. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine a permit for floodplain development is required in addition to a building permit.

15.40.042 - Application for permit.

The applicant shall file an application in writing on a form furnished by the Floodplain Administrator. The information provided shall:

- A. Identify and describe the development to be covered by the permit.
- B. Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitely locate the site.
- C. Indicate the use and occupancy for which the proposed development is intended.
- D. Be accompanied by a site plan and construction documents as specified in Article 105 of these regulations, including grading, excavation and filling plans and other information deemed appropriate by the Floodplain Administrator.
- E. State the valuation of the proposed work.
- F. Be signed by the applicant or the applicant's authorized agent.
- G. Include such other data and information required by the Floodplain Administrator to demonstrate compliance with these regulations.

15.40.043 - Validity of permit.

The issuance of a permit for floodplain development under these regulations or the building codes shall not be construed to be a permit for, or approval of, any violation of these regulations, the building code, or any other ordinance of the community. The issuance of a permit for floodplain development based on submitted documents and information shall not prevent the Floodplain Administrator from requiring the correction of errors and omissions. The Floodplain Administrator is authorized to prevent occupancy or use of a structure or site which is in violation of these regulations.

15.40.044 - Other permits required.

The applicant shall obtain all other required state and federal permits prior to initiating work authorized by these regulations and shall provide documentation of such permits to the Floodplain Administrator. Such permits include but are not limited to:

- A. California Coastal Commission or certified Local Coastal Program, if applicable, for activities subject to the Coastal Development Permit requirements and policies of the California Coastal Act (Public Resources Code, Division 20).
- B. California State Water Resources Control Board for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.

15.40.045 - Expiration.

A permit for floodplain development shall become invalid when the proposed development is not commenced within 180 days after its issuance, or when the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions shall be requested

in writing and justifiable cause demonstrated. The Floodplain Administrator is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each unless FEMA has issued notification of revision to the Flood Insurance Rate Study and Flood Insurance Rate Maps that alter the flood hazard area or floodway boundaries, flood zones, or base flood elevations, in which case the permit is invalid.

15.40.046. - Suspension or revocation.

The Floodplain Administrator is authorized to suspend or revoke a permit for floodplain development issued under these regulations wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of these regulations or any ordinance or code of this community.

15.40.047 - Appeals of decisions.

When it is alleged there is an error in any decision or determination made by the Floodplain Administrator in the interpretation or enforcement of these regulations, such decision or determination may be appealed to the **City Manager** by filing a written appeal setting forth the reasons of the appeal.

15.40.050 SITE PLANS AND CONSTRUCTION DOCUMENTS

15.40.051 - Information for development in flood hazard areas.

The site plan or construction documents for any development subject to the requirements of these regulations shall be drawn to scale and shall include, as applicable to the proposed development:

- A. Delineation of flood hazard areas; floodway boundaries and flood zone(s); base flood elevation(s); ground elevations; proposed filling, grading, and excavation; and drainage patterns and facilities when necessary for review of the proposed development.
- B. Where base flood elevations or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with 15.40.052 or 15.40.053 of these regulations.
- C. Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with 15.40.052(B) of these regulations.
- D. Location of the proposed activity and proposed structures; locations of water supply, sanitary sewer, and other utilities; and locations of existing buildings and structures.
- E. Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
- F. Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
- G. Extent of any proposed alteration of sand dunes, provided such alteration is approved by the California Coastal Commission or certified Local Coastal Program, if applicable.

H. Existing and proposed alignment of any proposed alteration of a watercourse.

15.40.052. - Information in flood hazard areas without base flood elevations (approximate Zone A).

Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been provided, the Floodplain Administrator is authorized to require one of the following:

- A. Require the applicant to include base flood elevation data prepared by a qualified CA Licensed Civil Engineer in accordance with currently accepted engineering practices. Such analyses shall be performed and sealed by a qualified CA Licensed Civil Engineer. Studies, analyses and computations shall be submitted in sufficient detail to allow review and approval by the Floodplain Administrator. The accuracy of data submitted for such determination shall be the responsibility of the applicant.
- B. Obtain, review, and provide to applicants base flood elevation and floodway data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation and floodway data available from a federal or state agency or other source.
- C. Where base flood elevation and floodway data are not available from another source, where the available data are deemed by the Floodplain Administrator to not reasonably reflect flooding conditions, or where the available data are known to be scientifically or technically incorrect or otherwise inadequate:
 - 1. Require the applicant to include base flood elevation data in accordance with 15.40.052(A) of these regulations; or
 - 2. Specify that the base flood elevation is two (2) feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than two (2) feet.
- D. Where the base flood elevation data are to be used to support a request for a Letter of Map Change from FEMA, advise the applicant that the analyses shall be prepared by a qualified CA Licensed Civil Engineer in a format required by FEMA, and that it shall be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.

15.40.053 - Additional analyses and certifications.

As applicable to the location and nature of the proposed development activity, and in addition to the requirements of these regulations, the applicant shall have the following analyses signed and sealed by a qualified professional engineer for submission with the site plan and construction documents:

- A. For development activities proposed to be located in a floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in 15.40.054 of these regulations and shall submit the Conditional Letter of Map Revision, when issued by FEMA, with the site plan and construction documents.
- B. For development activities proposed to be located in a riverine flood hazard area where

base flood elevations are included in the effective Flood Insurance Study or on the effective FIRM but floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.

- C. For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices that demonstrates the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity. The applicant shall submit the analysis to FEMA as specified in 15.40.054 of these regulations. The applicant shall notify the chief executive officer of adjacent communities and the California Department of Water Resources. The Floodplain Administrator shall maintain a copy of the notification in the permit records and shall submit a copy to FEMA.
- D. For activities that propose to alter sand dunes in coastal high hazard areas (Zone V/VE) and Coastal A Zones, an engineering analysis that demonstrate the proposed alteration will not increase the potential for flood damage.

15.40.054 - Submission of additional data.

When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a qualified CA Licensed Civil Engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant. Provided FEMA issues a Conditional Letter of Map Revision, construction of proposed flood control projects and land preparation for development are permitted, including clearing, excavation, grading, and filling. Permits for construction of buildings shall not be issued until the applicant satisfies the FEMA requirements for issuance of a Letter of Map Revision.

15.40.060 INSPECTIONS

15.40.061 - Inspections, in general.

Development for which a permit for floodplain development is required shall be subject to inspection. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of these regulations or the building code. Inspections presuming to give authority to violate or cancel the provisions of these regulations or the building code or other ordinances shall not be valid.

15.40.062 - Inspections of development other than buildings and structures.

The Floodplain Administrator shall make or cause to be made, inspections of all development other than buildings and structures that is authorized by issuance of a permit for floodplain development under these regulations. The Floodplain Administrator shall inspect flood hazard

areas from time to time to determine when development is undertaken without issuance of a permit.

15.40.063 - Inspections of manufactured homes installations.

The Floodplain Administrator shall make or cause to be made, inspections of installation, replacement, substantial improvements of manufactured homes in flood hazard areas authorized by issuance of a permit for floodplain development under these regulations. Upon installation of a manufactured home and receipt of the elevation certification required in 15.40.141 of these regulations the Floodplain Administrator shall inspect the installation or have the installation inspected.

15.40.064 - Buildings and structures.

The Building Official shall make or cause to be made, inspections for buildings and structures in flood hazard areas authorized by permit, in accordance with the building code:

- A. **Lowest floor elevation.** Upon placement of the lowest floor, including the basement, and prior to further vertical construction, certification of the elevation required in the building code shall be prepared by a California Licensed Land Surveyor or Civil Engineer and submitted to the building official. For new or substantially improved non-residential buildings and structures, FEMA's floodproofing certification should be required prior to final inspection.
- B. **Final inspection.** Prior to the final inspection, certification of the elevation required in the building code shall be prepared by a California Licensed Land Surveyor or Civil Engineer and submitted to the building official.

15.40.070 VARIANCES

15.40.071 - Nature of variances.

The considerations and conditions for variances set forth in this article are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be issued for a parcel of property with physical characteristics so unusual that complying with the requirements of these regulations would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners. The issuance of a variance is for floodplain management purposes only. Federal flood insurance premium rates are determined by the National Flood Insurance Program according to actuarial risk and will not be modified by the granting of a variance.

It is the duty of the **city council** to promote public health, safety and welfare and minimize losses from flooding. This duty is so compelling and the implications of property damage and the cost of insuring a structure built below flood level are so serious that variances from the elevation or other requirements in the building codes should be quite rare. The long term goal of preventing and reducing flood loss and damage, and minimizing recovery costs, inconvenience, danger, and suffering, can only be met when variances are strictly limited. Therefore, the variance requirements in these regulations are detailed and contain multiple provisions that must be met before a variance can be properly issued. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

15.40.072 – Variances; general.

The **Floodplain Ad-hoc Committee** which consists of the **Community Development Director, the City Engineer and the Chair of the planning Commission, or their designees**, shall hear and decide requests for variances from the strict application of these regulations.

15.40.073 - Limitations on authority.

The **Floodplain Ad-hoc Committee** shall base its determination on technical justifications submitted by applicants, the considerations and conditions set forth in this article, the comments and recommendations of the Floodplain Administrator and Building Official, as applicable, and has the right to attach such conditions to variances as it deems necessary to further the purposes and objectives of these regulations and the building code.

15.40.074 - Records.

The Floodplain Administrator shall maintain a permanent record of all variance actions, including justification for issuance, and report such variances issued to the Federal Emergency Management Agency upon request.

15.40.075 - Historic structures.

A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic structure upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the structure's continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure. When the proposed work precludes the structure's continued designation as a historic structure, a variance shall not be granted and the structure and any repair, improvement, and rehabilitation shall be subject to the requirements of the building code in conjunction with the provisions of this Ordinance.

15.40.076 - Restrictions in floodways.

A variance shall not be issued for any proposed development in a floodway when any increase in flood levels would result during the base flood discharge, as evidenced by the applicable analyses required in 15.40.053 (A) of these regulations.

15.40.077 - Functionally dependent uses.

A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use provided the criteria in Section 1612 of the building code (CCR Title 24 Part 2) or Section R322 of the residential code (CCR Title 24 Part 2.5) are met, as applicable, and the variance is the minimum necessary to allow the construction or substantial improvement, and that all due consideration has been given to use of methods and materials that minimize flood damages during the base flood and create no additional threats to public safety.

15.40.078 - Agricultural structures.

A variance is authorized to be issued for the construction or substantial improvement of agricultural structures that are not elevated or dry floodproofed, provided the requirements of this section are satisfied and:

- A. A determination has been made that the proposed agricultural structure:
 - 1. Is used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, or storage of tools or equipment used in connection with these purposes or uses, and will be restricted to such exclusive uses.
 - 2. Has low damage potential.
 - 3. Does not increase risks and pose a danger to public health, safety, and welfare if flooded and contents are released, including but not limited to the effects of flooding on manure storage, livestock confinement operations, liquified natural gas terminals, and production and storage of highly volatile, toxic, or water-reactive materials.
 - 4. Is not located in a coastal high hazard area (Zone V/VE), except for aquaculture structures dependent on close proximity to water.
 - 5. Complies with the wet floodproofing construction requirements of 15.40.078 (B), below.

- B. Wet floodproofing construction requirements.

- 1. Anchored to resist flotation, collapse, and lateral movement.
 - 2. When enclosed by walls, walls have flood openings that comply with the flood opening requirements of ASCE 24, Chapter 2.
 - 3. Flood damage-resistant materials are used below the base flood elevation.
 - 4. Mechanical, electrical, and utility equipment are elevated above the base flood elevation.
 - 5. FEMA's floodproofing certificate is required for new or substantially improved agricultural structures.

15.40.079 - Considerations for issuance of variances.

In reviewing applications for variances, all technical evaluations, all relevant factors, all other requirements of these regulations and the building code, as applicable, and the following shall be considered:

- A. The danger that materials and debris may be swept onto other lands resulting in further injury or damage.
- B. The danger to life and property due to flooding or erosion damage.
- C. The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners.
- D. The importance of the services provided by the proposed development to the community.

- E. The availability of alternate locations for the proposed development that are not subject to flooding or erosion and the necessity of a waterfront location, where applicable.
- F. The compatibility of the proposed development with existing and anticipated development.
- G. The relationship of the proposed development to the comprehensive plan and floodplain management program for that area.
- H. The safety of access to the property in times of flood for ordinary and emergency vehicles.
- I. The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwater and the effects of wave action, if applicable, expected at the site.
- J. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets, and bridges.
- K. Necessity to the facility of a waterfront location, where applicable.
- L. Variances shall not be issued within any effective regulatory floodway if any increase in flood levels during the base flood discharge would result.
- M. Variances may be issued for new construction, substantial improvement, and other proposed new development to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structure constructed below the design flood level, providing that the procedures of this ordinance have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

15.40.080 - Conditions for issuance of variances. Variances shall only be issued upon:

- A. Submission by the applicant of a showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site limit compliance with any provision of these regulations or renders the elevation standards of the building code inappropriate.
- B. A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable.
- C. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or future property owners, or conflict with existing local laws or ordinances.
- D. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- E. When the request is to allow construction of the lowest floor of a new building or substantial improvement of a building below the design flood elevation, notification to the applicant in writing over the signature of the Floodplain Administrator specifying the difference between the design flood elevation and the proposed elevation of the lowest floor, stating that issuance of a variance to construct below the elevation required in the building code will result in increased premium rates for federal flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and that such construction below the required elevation increases risks to life and property.

15.40.090 VIOLATIONS

15.40.091 - Violations.

Any development in any flood hazard area that is being performed without an issued permit or that is in conflict with an issued permit shall be deemed a violation. A building or structure without the documentation of the elevation of the lowest floor, other required design certifications, or other evidence of compliance required by these regulations or the building code, is presumed to be a violation until such time as required documentation is submitted. Violation of the requirements shall constitute a misdemeanor.

15.40.092 - Authority.

The Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of property involved, to the owner's agent, or to the person or persons doing the work for development that is not within the scope of the building codes, but is regulated by these regulations and that is determined to be a violation.

15.40.093 - Unlawful continuance.

Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by law.

15.40.100 DEFINITIONS

15.40.101 - General.

The following words and terms shall, for the purposes of these regulations, have the meanings shown herein. Where terms are not defined in these regulations and are defined in the building code (CCR Title 24 Part 2) and used in the residential code (CCR Title 24 Part 2.5), such terms shall have the meanings ascribed to them in those codes. Where terms are not defined in these regulations or the building code, such terms shall have ordinarily accepted meanings such as the context implies.

15.40.102 - Definitions

“Accessory Structure” means a structure on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For floodplain management purposes, the term includes only accessory structures used

- A. solely for the parking of no more than 2 cars; or
- B. A small, low cost shed for limited storage, less than 150 square feet and \$1,500 in value.

“Agricultural Structure” means a walled and roofed structure used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, including aquatic organisms. Structures that house tools

or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

“Alteration of a watercourse” means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

“ASCE 24” means the standard *Flood Resistant Design and Construction*, referenced by the building code, developed and published by the American Society of Civil Engineers, Reston, VA. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the building code.

“Base flood” means the flood having a 1-percent chance of being equaled or exceeded in any given year. [Also defined in CCR Title 24 Part 2.]

“Base flood elevation” means the elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in CCR Title 24 Part 2.]

“Basement” means, for the purpose of floodplain management, the portion of a building having its floor subgrade (below ground level) on all sides. [Also defined in CCR Title 24 Part 2.]

“Breakaway walls” are any type of walls, could be solid or lattice, and or constructed of concrete, masonry, wood, metal, plastic or any other suitable building material which is not part of the structural support of the building. A breakaway wall shall be designed to break away under abnormally high tides or wave action without causing any damage to the structural integrity of the building on which they are used, or any buildings to which they might be carried by flood waters.

A breakaway wall shall have a safe design loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls must be certified by California Civil Engineer and shall meet the following conditions:

- A. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
- B. The elevated portion of the building shall not incur any structural damage due to the effects of wind and water loads acting simultaneously in the event of the base flood.

“Building code” means California Code of Regulations Title 24, the *California Building Standards Code*, the family of building codes specifically adopted by the State of California and composed of:

- A. Part 2, applicable to buildings and structures other than dwellings within the scope of this part.
- B. Part 2.5, applicable to one- and two-family dwellings and townhouses not more than three stories, and accessory structures.
- C. Part 10, applicable to existing buildings (as defined in that code).
- D. Other specified codes.

“Coastal A Zone” means a special flood hazard area, landward of a V zone or landward of an open coast without mapped coastal high hazard areas. In a coastal A zone, the principal source of flooding must be astronomical tides, storm surges, seiches or tsunamis, not riverine flooding.

During the base flood conditions, the potential for breaking wave height shall be greater than or equal to 1 ½ feet (457 mm). The inland limit of the coastal A zone is (a) the Limit of Moderate Wave Action if delineated on a FIRM, or (b) designated by the authority having jurisdiction. [Also defined in CCR Title 24 Part 2.]

”Coastal high hazard area” means the area within the special flood hazard area extending from offshore to the inland limit of a primary dune along an open coast and any other area that is subject to high-velocity wave action from storms or seismic sources, and shown on a Flood Insurance Rate Map (FIRM) or other flood hazard map as velocity Zone V, VO, VE or V1-30. [Also defined in CCR Title 24 Part 2.]

“Design flood” means the flood associated with the greater of the following two areas: [Also defined in CCR Title 24 Part 2.]

- A. Area with a flood plain subject to a 1-percent or greater chance of flooding in any year.
- B. Area designated as a flood hazard area on a community’s flood hazard map, or otherwise legally designated.

“Design flood elevation” means the elevation of the “design flood,” including wave height, relative to the datum specified on the community’s legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building’s perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where a depth number is not specified on the map, the depth number shall be taken as being equal to 2 feet (610 mm). [Also defined in CCR Title 24 Part 2.]

“Development” means any manmade change to improved or unimproved real estate, including but not limited to, buildings or other structures, temporary structures, temporary or permanent storage of materials, mining, dredging, filling, grading, paving, excavations, drilling operations, flood control projects, and other land-disturbing activities.

“Encroachment” means the placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

"Exceptional hardship" means, for the purpose of variances from these regulations or the building code, the exceptional difficulty that would result from a failure to grant a requested variance. Mere economic or financial hardship is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors do not, as a rule, qualify as exceptional hardships. All of these circumstances can be resolved through other means without granting variances, even when the alternatives are more expensive or require the property owner to build elsewhere or put the parcel to a different use than originally intended.

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before **July 14th, 1988**

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the

manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

“Flood or flooding” means a general and temporary condition of partial or complete inundation of normally dry land from:

- A. The overflow of inland or tidal waters.
- B. The unusual and rapid accumulation or runoff of surface waters from any source.
- C. Mudslides (i.e., mudflows) which are proximately caused by flooding.

“Flood control project” means a dam or barrier design and constructed to keep water away from or out of a specified area, including but not limited to levees, floodwalls, and channelization.

“Flood damage-resistant materials” means any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in CCR Title 24 Part 2.]

“Flood hazard area” means the greater of the following two areas: [Also defined in CCR Title 24 Part 2.]

- A. The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.
- B. The area designated as a flood hazard area on the community’s flood hazard map, or otherwise legally designated.

“Flood Insurance Rate Map (FIRM)” means an official map of a community on which the Federal Emergency Management Agency (FEMA) has delineated both the special flood hazard areas and the risk premium zones applicable to the community. [Also defined in CCR Title 24 Part 2.]

“Flood Insurance Study” means the official report provided by the Federal Emergency Management Agency containing the Flood Insurance Rate Map (FIRM), the Flood Boundary and Floodway Map (FBFM), the water surface elevation of the base flood and supporting technical data. [Also defined in CCR Title 24 Part 2.]

“Floodplain Administrator” means the community official designated by title to administer and enforce the floodplain management regulations.

“Floodway” means the channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. (not to exceed one foot, as set by the National Flood Insurance Program.) [Also defined in CCR Title 24 Part 2.]

“Fraud or victimization” means, for the purpose of variances from these regulations or the building code, the intentional use of deceit to deprive another of rights or property, making a victim of the deprived person or the public. As it pertains to buildings granted variances to be constructed below the elevation required by the building code, future owners or tenants of such buildings and the community as a whole may bear the burden of increased risk of damage from floods, increased cost of flood insurance, and increased recovery costs, inconvenience, danger,

and suffering.

“Functionally dependent use” means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities necessary for the loading or unloading of cargo or passengers, and shipbuilding or ship repair facilities. The term does not include long-term storage, manufacture, sales or service facilities.

“Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

“Historic structure” means any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; Individually listed on the inventory of historic places maintained by the California Office of Historic Preservation; or Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the secretary of the Interior or directly by the Secretary of the Interior or directly by the Secretary of the Interior in states without approved program. **“Letter of Map Change (LOMC)”** means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

1. Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
2. Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
3. Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community’s floodplain management regulations and the standards set forth by Title 44 Code of Federal Regulation Sections 59,60,65, and 70
4. Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

“Light-duty truck” means, as defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of forty-five (45) square feet or less, which is:

- A. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- B. Designed primarily for transportation of persons and has a capacity of more than twelve (12) persons; or
- C. Available with special features enabling off-street or off-highway operation and use.

“Limit of Moderate Wave Action (LiMWA)” means a line shown on FIRMs to indicate the inland extent of the 1 1/2-foot breaking wave height during the base flood. [Also defined in CCR Title 24 Part 2.]

“Lowest floor” means the lowest floor of the lowest enclosed area, including basement, but excluding any unfinished or flood-resistant enclosure, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the building codes. [Also defined in CCR Title 24 Part 2.]

“Manufactured home” means a structure that is transportable in one or more sections, built on a permanent chassis, designed for use as a single-family dwelling with or without a permanent foundation when connected to the required utilities, and constructed to the Manufactured Home Construction and Safety Standards promulgated by the U.S. Department of Housing and Urban Development. Also see definitions in Health and Safety Code sections 18000.(a)(2) and 18001.(a). For the purposes of floodplain management, the term also includes mobile homes and recreational vehicles, park trailers, travel trailers and similar transportable structures that are placed on a site for 180 consecutive days or longer.

“Manufactured home park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Market value” means the price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in these regulations, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by one of the following methods: (1) Actual Cash Value (replacement cost depreciated for age and quality of construction), (2) tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser, or (3) a qualified independent appraiser.

“New construction”, for floodplain management purposes, means structures for which the “start of construction” commenced on or after June 1978 and includes any subsequent improvements to such structures.

“New manufactured home park or subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed on or after **June 1978**.

“Nuisance” means that which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Permit for floodplain development” means an official document or certificate issued by the community, or other evidence of approval or concurrence, which authorizes performance of specified development activities that are located in flood hazard areas and that are determined to be compliant with these regulations.

“Recreational vehicle” means a vehicle that is built on a single chassis, 400 square feet (37.16 m²) or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light-duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. A recreational vehicle is ready for highway use when it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions. Also see definitions in Health and Safety Code section 18010.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"Sand dunes" mean naturally occurring accumulations of sand in ridges or mounds landward of the beach.

"Special flood hazard area (SFHA)" means the land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE, or V1-30. [Also defined in CCR Title 24 Part 2.]

“Start of construction” includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufacture home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building that is principally above ground; this includes a gas or liquid storage tank or a manufactured home.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. [Also defined in CCR Title 24 Part 2.]

“Substantial improvement” means any repair, reconstruction, rehabilitation, alteration, addition or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. When the structure has sustained substantial damage, any repairs are considered substantial

improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in CCR Title 24 Part 2.]

- A. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- B. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

“Utility and Miscellaneous Group U” means buildings and structures of an accessory character and miscellaneous structure not classified in any special occupancy, as described in the building code.

“Variance” means a grant of relief from the requirements of these regulations which permits construction in a manner otherwise prohibited and where specific enforcement would result in exceptional hardship.

“Violation” means a development that is not fully compliant with these regulations or the flood provisions of the building code, as applicable.

“Watercourse” means a river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

15.40.110 FLOOD RESISTANT DEVELOPMENT FOR BUILDINGS AND STRUCTURES

15.40.111 - Requirements for buildings and structures in flood hazard areas.

Applications for building and structures within the scope of the building code that are proposed in flood hazard areas shall comply with the applicable requirements of the building code and the floodplain development requirements of this Ordinance.

15.40.112 – Detached garages and accessory storage structures.

Detached garages and accessory storage structures used only for parking or storage are permitted below the base flood elevation provided the garages and accessory storage structures:

- A. Detached garages and accessory storage structures, **with the exception of small, low cost sheds as defined in 15.40.102**, are one story and not larger than **600 square feet** in area when located in special flood hazard areas other than coastal high hazard areas.
- B. All new construction and substantial improvement shall have the space below the lowest floor free of obstructions or constructed with breakaway walls as defined in 15.40.102 of this ordinance. Such enclosed space shall not be used for human habitation and will be usable solely for parking of vehicles, building access or storage.
- C. Are anchored to resist flotation, collapse or lateral movement resulting from flood loads.
- D. Have flood openings in accordance with the building code.
- E. Have flood damage-resistant materials used below the base flood elevation.
- F. Have mechanical, plumbing and electrical systems, including plumbing fixtures, elevated to or above the base flood elevation.

- G.) The accessory structure or detached garage must comply with floodplain encroachment provisions in 15.40.134

15.40.113 - Utility and Miscellaneous Group U.

Utility and miscellaneous Group U includes buildings that are accessory in character and miscellaneous structures not classified in any specific occupancy in the building code, including, but not limited to, agricultural buildings, aircraft hangars (accessory to a one- or two-family residence), barns, carports, fences more than 6 feet (1829 mm) high, grain silos (accessory to a residential occupancy), greenhouses, livestock shelters, private garages, retaining walls, sheds, stables, and towers. In addition to the building code requirements for fire and life safety, the following shall apply to utility and miscellaneous Group U buildings and structures in flood hazard areas:

- A. New construction and substantial improvement of such buildings and structures shall be anchored to prevent flotation, collapse or lateral movement resulting from flood loads, including the effects of buoyancy, during conditions of the design flood.
- B. New construction and substantial improvement of such buildings and structures, when fully enclosed by walls, shall be elevated such that the lowest floor, including basement, is elevated to or above the design flood elevation in accordance with ASCE 24 or shall be dry floodproofed in accordance with ASCE 24.
- C. Unless dry floodproofed, fully enclosed areas below the design flood elevation shall be constructed in accordance with ASCE 24 and limited to parking, storage, and building access.
- D. When fully enclosed by walls, flood openings shall be installed in accordance with ASCE 24.
- E. Flood damage-resistant materials shall be used below the design flood elevation.
- F. Mechanical, plumbing, heating/cooling, ventilation and electrical systems, including plumbing fixtures, shall be located or installed in accordance with ASCE 24.

15.40.120 SUBDIVISIONS

15.40.121 - Minimum requirements. Subdivision proposals in flood hazard areas, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:

- A. Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding.
- B. All public utilities and facilities, such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage in accordance with 15.40.132 and 15.40.133 of these regulations, as applicable, and appropriate codes.
- C. Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwater around and away from proposed structures.

15.40.122 - Subdivision requirements. In addition to the requirements of 15.40.121 of these regulations, where any portion of proposed subdivisions, including proposals for manufactured

home parks and subdivisions, lies within a flood hazard area, the following shall be required:

- A. The flood hazard area, including floodways, coastal high hazard areas, and Coastal A Zones, as appropriate, shall be delineated on preliminary subdivision plats.
- B. Where the subdivision has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with 15.40.052 (A) of these regulations.
- C. When, as part of a proposed subdivision, fill will be placed to support buildings, the fill shall be placed in accordance with the building code and approval of the subdivision shall require submission of as-built elevations for each filled pad certified by a California Licensed Land Surveyor or Civil Engineer

15.40.130 SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS

15.40.131 - Minimum requirements. All proposed development in flood hazard areas shall be reviewed to determine that:

- A. Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding.
- B. Where the proposed development has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with 15.40.052 (A) of these regulations.
- C. All public utilities and facilities, such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage.
- D. Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwater around and away from proposed structures.

15.40.132 - Sanitary sewer facilities.

All new and replaced sanitary sewer facilities, private sewage treatment plants (including all pumping stations and collector systems) and on-site waste disposal systems shall be designed in accordance with Chapter 7, ASCE 24, to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.

15.40.133 - Water supply facilities.

All new and replaced water supply facilities shall be designed in accordance with the provisions of Chapter 7, ASCE 24, to minimize or eliminate infiltration of floodwaters into the systems.

15.40.134 - Development in floodways.

Development, site improvements and land disturbing activity involving fill or regrading shall not be authorized in the floodway unless the floodway encroachment analysis required in 15.40.053 (A) of these regulations demonstrates the proposed work will not result in any increase in the base flood level during occurrence of the base flood discharge.

15.40.135 - Limitations on placement of fill.

Subject to the limitations of these regulations, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, when intended to support buildings and structures, fill shall comply with the requirements of the building code. The placement of fill intended to change base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs shall be subject to the requirements of 15.40.054 of these regulations.

14.40.136 Location and fill in coastal high hazard areas (Zone V/VE) and Coastal A Zones.

In coastal high hazard areas and Coastal A Zones:

- A. New buildings shall only be authorized landward of the reach of mean high tide.
- B. The use of fill for structural support of buildings is prohibited.

15.40.137 - Nonstructural fill or alteration of sand dunes in coastal high hazard areas Zone V/VE and Coastal A Zones.

Nonstructural fill or alteration of sand dunes in coastal high hazard areas (Zone V/VE) and Coastal A Zones shall be permitted only when authorized by appropriate federal, state or local authorities. Where permitted, such fill or alterations shall comply with the following, as applicable:

- A. Minor grading and the placement of minor quantities of nonstructural fill shall be permitted for landscaping, and for drainage purposes under and around buildings.
- B. Nonstructural fill with finished slopes that are steeper than one unit vertical to five units horizontal shall be permitted only when an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runoff and wave reflection that would increase damage to adjacent buildings and structures.
- C. Alteration of sand dunes shall be permitted only when the engineering analysis required by 15.40.053 (D) of these regulations demonstrates that the proposed alteration will not increase the potential for flood damage.
- D. Sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runoff and wave reflection when the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.

15.40.138 - Other site improvements in coastal high hazard areas (Zone V/VE) and Coastal A Zones.

Development and site improvement activities other than buildings and structures, where located in coastal high hazard areas (Zone V/VE) and Coastal A Zones, shall be permitted only when authorized by appropriate federal, state or local authorities. In addition, development and site improvement activities shall be permitted when located outside the footprint of, and not structurally attached to, buildings and structures and when analyses prepared by qualified CA License Civil design professionals demonstrate no harmful diversion of floodwaters or wave runoff and wave reflection that would increase damage to adjacent buildings and structures.

Such development and site improvement activities include but are not limited to:

- A. Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures.
- B. Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the base flood or otherwise function to avoid obstruction of floodwaters.
- C. On-site sewage treatment and disposal systems, including mound systems.

15.40.140 INSTALLATION OF MANUFACTURED HOMES

15.40.141 - Installation.

All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to the Business and Professions Code and shall comply with the requirements of the Department of Housing and Community Development (HCD) and the requirements of these regulations. In addition to permits pursuant to these regulations, permits from the HCD are required where the HCD is the enforcement agency for installation of manufactured homes. Upon completion of installation and prior to the final inspection by the Floodplain Administrator, the installer shall submit certification of the elevation of the manufactured home, prepared by a California Licensed Land Surveyor or Civil Engineer, to the Floodplain Administrator.

15.40.142 - Foundations.

All new and replacement manufactured homes, including substantial improvement of manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that:

- A. In flood hazard areas other than coastal high hazard areas and Coastal A Zones, are designed in accordance with the foundation requirements of Section R322.2 of the residential code (CCR Title 24 Part 2.5) and these regulations. Foundations for manufactured homes subject to 15.40.145 of these regulations are permitted to be reinforced piers or other foundation elements of at least equivalent strength.
- B. In coastal high hazard areas (Zone V/VE) and Coastal A Zones, are designed in accordance with the foundation requirements of Section R322.3 of the residential code (CCR Title 24 Part 2.5) and these regulations.

15.40.143 - Anchoring.

All new and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Methods of anchoring are authorized to include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind loads and seismic loads.

15.40.144 - General elevation requirement.

Unless subject to the requirements of 15.40.145 of these regulations, all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision;

(c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the lowest floor, or bottom of the lowest horizontal member of the lowest floor, as applicable to the flood hazard area, is at or above the base flood elevation.

15.40.145 - Elevation requirement for certain existing manufactured home parks and subdivisions.

Manufactured homes that are not subject to 15.40.144 of these regulations, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as a result of flooding has occurred, shall be elevated such that either the:

- A. Lowest floor, or bottom of the lowest horizontal structural member, as applicable to the flood hazard area, is at or above the base flood elevation.
- B. Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.

15.40.146 - Flood damage-resistant materials.

Materials below elevated manufactured homes shall comply with the flood-damage resistant materials requirements of Section R322 of the residential code (CCR Title 24 Part 2.5).

15.40.147 - Enclosures. Fully enclosed areas below elevated manufactured homes shall comply with the enclosed area requirements of Section R322 of the residential code (CCR Title 24 Part 2.5).

15.40.148 - Protection of mechanical equipment and outside appliances.

Mechanical equipment and outside appliances such as but not limited to air conditioners, furnaces, propane tanks, water heating equipment and electrical services boxes shall be elevated to or above the lowest floor or bottom of the lowest horizontal structural member of the manufactured home, as applicable to the flood hazard area.

Exception. Where such equipment and appliances are designed and installed to prevent water from entering or accumulating within their components and the systems are constructed to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding up to the elevation required by 15.40.134 or 15.40.135, as applicable, the systems and equipment shall be permitted to be located below that elevation. Electrical wiring systems shall be permitted below the design flood elevation provided they conform to the provisions of NFPA 70 (National Electric Code).

15.40.150 RECREATIONAL VEHICLES

15.40.151 - Temporary placement.

Recreational vehicles in flood hazard areas, shall be placed on a site for less than 180 consecutive days or shall be fully licensed and ready for highway use. Ready for highway use means the recreational vehicle is on wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions, such as rooms, stairs, decks and porches.

15.40.152 - Permanent placement.

Recreational vehicles that do not meet the limitations in 15.40.151 for temporary placement shall meet the requirements of 15.40.140 for manufactured homes.

15.40.160 OTHER DEVELOPMENT

15.40.161 - General requirements for other development.

All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in these regulations or the building code, shall:

- A. Be located and constructed to minimize flood damage.
- B. Meet the limitations of 15.40.134 of these regulations when located in a regulated floodway.
- C. Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.
- D. Be constructed of flood damage-resistant materials.
- E. Have mechanical, plumbing, heating/cooling, ventilation, and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of the building code for wet locations.

15.40.162 - Tanks.

Tanks that serve buildings shall comply with the requirements of the building code. Underground and above-ground tanks that serve other purposes shall be designed, constructed, installed and anchored in accordance with ASCE 24.

15.40.163. - Requirements for temporary structures and temporary storage in flood hazard areas.

Temporary structures shall be erected for a period of less than 180 consecutive days and temporary storage of goods and materials shall be permitted for a period of less than 180 days. Extensions may be granted in accordance with 15.40.045 of these regulations. In addition, the following apply:

- A. Temporary structures shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood. Fully enclosed temporary structures shall have flood openings that are in accordance with ASCE 24 to allow for the automatic entry and exit

of flood waters.

- B. Temporary stored materials shall not include hazardous materials.
- C. The requirements of 15.40.134 of these regulations, when located in floodways.

15.40.164 - Fences in floodways.

Fences in floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of 15.40.134 of these regulations.

15.40.165 - Oil derricks.

Oil derricks located in flood hazard areas shall be designed in conformance with flood loads required by the building code.

15.40.166 - Retaining walls, sidewalks and driveways in floodways.

Retaining walls and sidewalks and driveways that involve placement of fill in floodways shall meet the limitations of 15.40.134 of these regulations and the requirements for site grading in Chapter 18 of the building code.

15.40.167 - Roads and watercourse crossings in floodways.

Roads and watercourse crossings that encroach into floodways or riverine waterways with base flood elevations where floodways have not been designated, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side shall meet the limitations of 15.40.134 of these regulations. Alteration of a watercourse that is part of work proposed for a road or watercourse crossing shall meet the requirements of 15.40.053 of these regulations.

15.40.168 - Swimming pools. Above-ground swimming pools, on-ground swimming pools, and in-ground swimming pools that involve placement of fill in floodways shall meet the requirement of 15.40.134 of these regulations. Swimming pools in coastal high hazard areas and Coastal A Zones shall be designed and constructed in accordance with ASCE 24.

15.40.170 FLOOD CONTROL PROJECTS

15.40.171 - Flood control projects; general.

In addition to applicable Federal, State and other local permits, a permit for floodplain development is required for construction of flood control projects. The purpose for the permit is to examine the impact on flood hazard areas, floodways, and base flood elevations shown on the FIRM. Unless otherwise authorized by separate regulations, issuance of this permit does not address the sufficiency of the structural elements of the proposed flood control project. Permits for floodplain development and building permits in areas affected by proposed flood control projects shall not be issued based on Conditional Letters of Map Revision issued by FEMA.

15.40.172 - Flood control projects; applications.

Applications for permits for flood control projects shall include documentation including but not limited to:

- A. Site plan or document showing the existing topography and the boundaries of the flood hazard areas, floodway boundaries, and base flood elevations shown on the FIRM.
- B. Site plan or document showing the proposed topography and the proposed changes to the boundaries of the flood hazard areas, floodway boundaries, and base flood elevations.
- C. The documentation submitted to FEMA for a Conditional Letter of Map Revision (CLOMR) and, if issued, the Conditional Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant. A CLOMR is required when a proposed flood control project alters a floodway and increases base flood elevations more than greater than 0.00 feet, or alters a watercourse a riverine flood hazard area for which base flood elevations are included in the Flood Insurance Study or on the FIRM and floodways have not been designated and increases base flood elevations more than 1.0 foot.

CHAPTERChapter 15.40 — CONSTRUCTION IN FLOOD HAZARD AREAS¹

Sections:

15.40.010 - Title.

~~These regulations, in combination with the flood provisions~~ Statutory authorization, findings of California Code of Regulations Title 24, the California Building Standards Code (hereinafter “building codes,” consisting of the Part 2 (building), Part 2.5 (residential), Part 10 (existing building), fact, purpose, and related codes), shall be known as the Floodplain Management Regulations of City of Newark (hereinafter “these regulations”). ~~methods.~~

15.40.011 - Statutory authority.

~~The following Sections 15.40.011 through 15.40.013 set out statutory authorization, findings of fact, purpose, and methods for this chapter.~~
(Ord. No. 435, § 1, 6-25-2009)

15.40.011 Statutory authorization.

~~The legislature~~ of the State of California has, in Government Code Sections 65302, 65560, and 65800, conferred upon local governments ~~the government units~~ authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. ~~Therefore, the city council of the City of Newark does hereby adopt the following floodplain management regulations.~~

~~(Ord. No. 435, § 1, 6-25-2009)~~

15.40.012 - Scope. Findings of fact.

The provisions of these regulations, in combination with the flood provisions of the building codes, shall apply to all proposed development entirely or partially in flood hazard areas established in 15.40.022 of these regulations.

~~A. The flood hazard areas of the city are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.~~

~~B. These flood losses are caused by the cumulative effect of obstructions in special~~

¹~~Editor's note(s) Ord. No. 435, § 1, adopted June 25, 2009, amended Ch. 15.40 to read as set out herein. Former Ch. 15.40 pertained to similar subject matter and derived from Ord. 237, adopted 1988; and Ord. No. 283, §§ 7(A), (B), adopted 1992.~~

~~flood hazard areas which increase flood heights and velocities and, when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, or otherwise protected from flood damage, also contribute to the flood loss.~~

~~(Ord. No. 435, § 1, 6-25-2009)~~

15.40.013 – Purposes and objectives. ~~Statement of purpose.~~

~~The purposes and objectives of these regulations and the flood load and flood resistant construction requirements of the building codes are It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific flood hazard areas through the establishment of comprehensive regulations for management of flood hazard areas, designed to:~~ areas by provisions designed:

~~Minimize unnecessary disruption of commerce, access,~~ A. ~~To protect human life and health;~~

~~B. To minimize expenditure of public service during times of money for costly flood control projects;~~

~~A. C. To minimize the need for rescue and relief efforts associated with flooding, and generally undertaken at the expense of the general public;~~

~~Require the D. To minimize prolonged business interruptions;~~

~~E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in special flood hazard areas;~~

~~B. F. To help maintain a stable tax base by providing for the second use and development of appropriate construction practices in order to prevent or special flood hazard areas so as to minimize future flood damage, blight areas;~~

~~Manage G. To ensure that potential buyers are notified that property is in a special flood hazard area; and~~

~~H. To ensure that those who occupy the special flood hazard areas assume responsibility for their actions.~~

~~(Ord. No. 435, § 1, 6-25-2009)~~

15.40.014 ~~Methods of reducing flood losses.~~

~~In order to accomplish its purposes, this chapter includes methods and provisions for:~~

~~A. Restricting or prohibiting uses which are dangerous to health, safety and property due to water hazards, or which result in damaging increases in erosion or flood heights or velocities;~~

~~B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;~~

~~C. C. Controlling the alteration of natural floodplains, stream channels and shorelines to minimize the impact of development on the, and natural and~~

beneficial functions of the floodplain, protective barriers, which help accommodate or channel floodwaters;

D. ManageD.—Controlling filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential.; ~~and~~

E. PreventE.—Preventing or regulateregulating the construction of flood barriers, which will unnaturally divert floodwaterfloodwaters or which may increase flood hazards.

F. Contribute to improved construction techniques in the floodplain.

G. Minimize damage to public and private facilities and utilities.

H. Help maintain a stable tax base by providing for the sound use and development of flood hazard other areas.

I. Minimize the need for rescue and relief efforts associated with flooding.

J. Ensure that property owners, occupants, and potential owners are aware of property located in flood hazard areas.

K. Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events.

L. Meet the requirements of the National Flood Insurance Program for community participation as set forth in Title 44 Code of Federal Regulations, Section 59.22.

15.40.014 - Coordination with California Building Standards Code.

Pursuant to the requirement established in State statute that the City of Newark administer and enforce the California Building Standards Code, the city council of City of Newark hereby acknowledges that the building codes contain certain provisions that apply to the design and construction of buildings and structures in flood hazard areas. Therefore, these regulations are intended to be administered and enforced in conjunction with the building codes.

15.40.015 - Warning.

The degree of flood protection required by these regulations and the building codes is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. Enforcement of these regulations and the building codes does not imply that land outside the special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management

Agency, requiring this community to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with these regulations.

15.40.016 - Disclaimer of liability.

These regulations shall not create liability on the part of **city council**, any officer or employee thereof, the State of California, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made hereunder. The Floodplain Administrator and any employee charged with the enforcement of these regulations, while acting for the community in good faith and without malice in the discharge of the duties required by these regulations or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of these regulations shall be defended by a legal representative of the community until the final termination of the proceedings. The Floodplain Administrator and any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of these regulations.

15.40.017 - Other laws.

The provisions of these regulations shall not be deemed to nullify any provisions of local, State or federal law.

15.40.018 - Abrogation and greater restrictions.

These regulations supersede any ordinance in effect in flood hazard areas. However, these regulations are not intended to repeal, abrogate or impair any existing ordinances including land development regulations, subdivision regulations, zoning ordinances, stormwater management regulations, or building codes, nor any existing easements, covenants, or deed restrictions. In the event of an overlap or conflict between these regulations and any other ordinance, code, regulation, easement, covenant, or deed restriction, the more restrictive shall govern.

(Ord. No. 435, § 1, 6-25-2009)

15.40.020 ~~GENERAL APPLICABILITY~~ Definitions.

15.40.021 - General applicability.

These regulations, in conjunction with the building codes, provide minimum requirements for development located in flood hazard areas, including the subdivision of land; filling, grading and other site improvements; installation of utilities; installation, placement and replacement of manufactured homes; placement of recreational vehicles; installation of tanks; temporary structures and temporary or permanent storage; utility and miscellaneous Group U buildings and structures; certain building work exempt from permit under the building codes; and flood control projects.

15.40.022 - Establishment of flood hazard areas.

The Flood Insurance Study for **Alameda County**, California and Incorporated Areas dated **February 22, 1974** and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are hereby adopted by reference as a part of these regulations and serve as the basis for establishing flood hazard areas. Where the building code establishes flood hazard areas, such areas are established by this section. Additional maps and studies, when specifically adopted, supplement the FIS and FIRMs to establish additional flood hazard areas. Maps and studies that establish flood hazard areas are on file at the **Building Inspection Division, City Hall, 37101 Newark Blvd., Newark Ca 94560.**

15.40.023 - Interpretation.

In the interpretation and application of these regulations, all provisions shall be:

- A. Considered as minimum requirements.
- B. Liberally construed in favor of the governing body.
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

15.40.030 DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

15.40.031 - Designation.

The **Chief Building Official** is designated the Floodplain Administrator. The Floodplain Administrator shall have the authority to delegate performance of certain duties to other employees.

15.40.032 - General authority.

The Floodplain Administrator is authorized and directed to administer and enforce these regulations. The Floodplain Administrator shall have the authority to render interpretations of these regulations and to establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be consistent with the intent and purpose of these regulations and the flood provisions of the building code and shall not have the effect of waiving specific requirements without the granting of a variance pursuant to Article 107 of these regulations. The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by these regulations but that are not required to be prepared by a qualified California (CA) Licensed Land Surveyor or Civil Engineer when it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with these regulations.

15.40.033 - Coordination.

The Floodplain Administrator shall coordinate with and provide comments to the Building Official to administer and enforce the flood provisions of the building code and to ensure compliance with the applicable provisions of these regulations. The Floodplain Administrator and the Building Official have the authority to establish written procedures for reviewing applications and conducting inspections for buildings and for administering and documenting determinations of substantial improvement and substantial damage made pursuant to 15.40.035 of these regulations.

15.40.034 - Duties.

The Floodplain Administrator, in coordination with other pertinent offices of the community, shall:

- A. Review all permit applications and plans to determine whether proposed development is located in flood hazard areas.
- B. Review all applications and plans for development in flood hazard areas for compliance with these regulations.
- C. Review, in coordination with the Building Official, required design certifications and documentation of elevations specified by the building code to determine that such certifications and documentations are complete.
- D. Review applications and plans for modification of any existing development in flood hazard areas for compliance with these regulations.
- E. Require development in flood hazard areas to be reasonably safe from flooding and to be designed and constructed with methods, practices and materials that minimize flood damage.

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- F. Interpret flood hazard area boundaries and provide available flood elevation and flood hazard information.
 - G. Determine whether additional flood hazard data shall be obtained from other sources or developed by the applicant.
 - H. Complete the appropriate section of the Department of Housing and Community Development Floodplain Ordinance Compliance Certification for Manufactured Home/Mobile home Installations when submitted by applicants.
 - I. Review requests submitted to the Building Official seeking approval to modify the strict application of the flood load and flood resistant construction requirements of the building code, to determine whether such requests require consideration as a variance pursuant to Article 107 of these regulations.
 - J. Coordinate with the Building Official and others to identify and investigate damaged buildings located in flood hazard areas and inform owners of the requirement to obtain permits for repairs.
 - K. Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps when the analyses indicate changes in base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available.
 - L. Require applicants who propose alteration of a watercourse to notify adjacent communities and the NFIP State Coordinating Agency, and to submit copies of such notifications to the Federal Emergency Management Agency (FEMA).
 - M. Inspect development in accordance with Article 106 of these regulations and inspect flood hazard areas to determine when development is undertaken without issuance of permits.
 - N. Prepare comments and recommendations for consideration when applicants seek variances for development other than buildings in accordance with Article 107 of these regulations.
 - O. Cite violations in accordance with Article 108 of these regulations.
 - P. Notify FEMA when the corporate boundaries of **City of Newark** have been modified and provide a map and legal description of the changes in the corporate boundaries.

15.40.035 - Substantial improvement and substantial damage determinations.

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

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- A. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
 - B. Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, when applicable, to the market value of the building or structure.
 - C. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.
 - D. Notify the applicant when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant when it is determined that work does not constitute substantial improvement or repair of substantial damage.

15.40.036 – Department records.

In addition to the requirements of the building code and these regulations, and regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of these regulations and the flood provisions of the building codes, including Flood Insurance Studies and Flood Insurance Rate Maps; documents from FEMA that amend or revise FIRMs; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required certifications and documentation specified by the building codes and these regulations; notifications to adjacent communities, FEMA, and the State related to alterations of watercourses; assurance that the flood carrying capacity of altered waterways will be maintained; documentation related to variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to these regulations and the flood resistant provisions of the building codes.

15.40.040 PERMITS FOR FLOODPLAIN DEVELOPMENT

15.40.041. - Permits required.

Any person, owner or authorized agent who intends to conduct any development in a flood hazard area shall first make application to the Floodplain Administrator and shall obtain the required permit for floodplain development. No permit shall be issued until compliance with the requirements of these regulations and all other applicable codes and regulations has been satisfied. No building permit shall be issued based on Conditional Letters of Map Revision issued by FEMA. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain

Administrator may determine a permit for floodplain development is required in addition to a building permit.

15.40.042 - Application for permit.

The applicant shall file an application in writing on a form furnished by the Floodplain Administrator. The information provided shall:

- A. Identify and describe the development to be covered by the permit.
- B. Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitely locate the site.
- C. Indicate the use and occupancy for which the proposed development is intended.
- D. Be accompanied by a site plan and construction documents as specified in Article 105 of these regulations, including grading, excavation and filling plans and other information deemed appropriate by the Floodplain Administrator.
- E. State the valuation of the proposed work.
- F. Be signed by the applicant or the applicant's authorized agent.
- G. Include such other data and information required by the Floodplain Administrator to demonstrate compliance with these regulations.

15.40.043 - Validity of permit.

The issuance of a permit for floodplain development under these regulations or the building codes shall not be construed to be a permit for, or approval of, any violation of these regulations, the building code, or any other ordinance of the community. The issuance of a permit for floodplain development based on submitted documents and information shall not prevent the Floodplain Administrator from requiring the correction of errors and omissions. The Floodplain Administrator is authorized to prevent occupancy or use of a structure or site which is in violation of these regulations.

15.40.044 - Other permits required.

The applicant shall obtain all other required state and federal permits prior to initiating work authorized by these regulations and shall provide documentation of such permits to the Floodplain Administrator. Such permits include but are not limited to:

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- A. California Coastal Commission or certified Local Coastal Program, if applicable, for activities subject to the Coastal Development Permit requirements and policies of the California Coastal Act (Public Resources Code, Division 20).
 - B. California State Water Resources Control Board for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.

15.40.045 - Expiration.

A permit for floodplain development shall become invalid when the proposed development is not commenced within 180 days after its issuance, or when the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions shall be requested in writing and justifiable cause demonstrated. The Floodplain Administrator is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each unless FEMA has issued notification of revision to the Flood Insurance Rate Study and Flood Insurance Rate Maps that alter the flood hazard area or floodway boundaries, flood zones, or base flood elevations, in which case the permit is invalid.

15.40.046. - Suspension or revocation.

The Floodplain Administrator is authorized to suspend or revoke a permit for floodplain development issued under these regulations wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of these regulations or any ordinance or code of this community.

15.40.047 - Appeals of decisions.

When it is alleged there is an error in any decision or determination made by the Floodplain Administrator in the interpretation or enforcement of these regulations, such decision or determination may be appealed to the **City Manager** by filing a written appeal setting forth the reasons of the appeal.

15.40.050 SITE PLANS AND CONSTRUCTION DOCUMENTS

15.40.051 - Information for development in flood hazard areas.

The site plan or construction documents for any development subject to the requirements of these regulations shall be drawn to scale and shall include, as applicable to the proposed development:

- A. Delineation of flood hazard areas; floodway boundaries and flood zone(s); base flood elevation(s); ground elevations; proposed filling, grading, and excavation; and drainage patterns and facilities when necessary for review of the proposed development.

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- B. Where base flood elevations or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with 15.40.052 or 15.40.053 of these regulations.
 - C. Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with 15.40.052(B) of these regulations.
 - D. Location of the proposed activity and proposed structures; locations of water supply, sanitary sewer, and other utilities; and locations of existing buildings and structures.
 - E. Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
 - F. Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
 - G. Extent of any proposed alteration of sand dunes, provided such alteration is approved by the California Coastal Commission or certified Local Coastal Program, if applicable.
 - H. Existing and proposed alignment of any proposed alteration of a watercourse.

15.40.052. - Information in flood hazard areas without base flood elevations (approximate Zone A).

Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been provided, the Floodplain Administrator is authorized to require one of the following:

- A. Require the applicant to include base flood elevation data prepared by a qualified CA Licensed Civil Engineer in accordance with currently accepted engineering practices. Such analyses shall be performed and sealed by a qualified CA Licensed Civil Engineer. Studies, analyses and computations shall be submitted in sufficient detail to allow review and approval by the Floodplain Administrator. The accuracy of data submitted for such determination shall be the responsibility of the applicant.
- B. Obtain, review, and provide to applicants base flood elevation and floodway data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation and floodway data available from a federal or state agency or other source.
- C. Where base flood elevation and floodway data are not available from another source, where the available data are deemed by the Floodplain Administrator to

not reasonably reflect flooding conditions, or where the available data are known to be scientifically or technically incorrect or otherwise inadequate:

1. Require the applicant to include base flood elevation data in accordance with 15.40.052(A) of these regulations; or
2. Specify that the base flood elevation is two (2) feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than two (2) feet.

D. Where the base flood elevation data are to be used to support a request for a Letter of Map Change from FEMA, advise the applicant that the analyses shall be prepared by a qualified CA Licensed Civil Engineer in a format required by FEMA, and that it shall be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.

15.40.053 - Additional analyses and certifications.

As applicable to the location and nature of the proposed development activity, and in addition to the requirements of these regulations, the applicant shall have the following analyses signed and sealed by a qualified professional engineer for submission with the site plan and construction documents:

- A. For development activities proposed to be located in a floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in 15.40.054 of these regulations and shall submit the Conditional Letter of Map Revision, when issued by FEMA, with the site plan and construction documents.
- B. For development activities proposed to be located in a riverine flood hazard area where base flood elevations are included in the effective Flood Insurance Study or on the effective FIRM but floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.
- C. For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices that demonstrates the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity. The applicant shall submit the analysis to FEMA as specified in 15.40.054 of these regulations. The applicant

shall notify the chief executive officer of adjacent communities and the California Department of Water Resources. The Floodplain Administrator shall maintain a copy of the notification in the permit records and shall submit a copy to FEMA.

- D. For activities that propose to alter sand dunes in coastal high hazard areas (Zone V/VE) and Coastal A Zones, an engineering analysis that demonstrate the proposed alteration will not increase the potential for flood damage.

15.40.054 - Submission of additional data.

When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a qualified CA Licensed Civil Engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant. Provided FEMA issues a Conditional Letter of Map Revision, construction of proposed flood control projects and land preparation for development are permitted, including clearing, excavation, grading, and filling. Permits for construction of buildings shall not be issued until the applicant satisfies the FEMA requirements for issuance of a Letter of Map Revision.

15.40.060 INSPECTIONS

15.40.061 - Inspections, in general.

Development for which a permit for floodplain development is required shall be subject to inspection. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of these regulations or the building code. Inspections presuming to give authority to violate or cancel the provisions of these regulations or the building code or other ordinances shall not be valid.

15.40.062 - Inspections of development other than buildings and structures.

The Floodplain Administrator shall make or cause to be made, inspections of all development other than buildings and structures that is authorized by issuance of a permit for floodplain development under these regulations. The Floodplain Administrator shall inspect flood hazard areas from time to time to determine when development is undertaken without issuance of a permit.

15.40.063 - Inspections of manufactured homes installations.

The Floodplain Administrator shall make or cause to be made, inspections of installation, replacement, substantial improvements of manufactured homes in flood hazard areas authorized by issuance of a permit for floodplain development under these

regulations. Upon installation of a manufactured home and receipt of the elevation certification required in 15.40.141 of these regulations the Floodplain Administrator shall inspect the installation or have the installation inspected.

15.40.064 - Buildings and structures.

The Building Official shall make or cause to be made, inspections for buildings and structures in flood hazard areas authorized by permit, in accordance with the building code:

- A. **Lowest floor elevation.** Upon placement of the lowest floor, including the basement, and prior to further vertical construction, certification of the elevation required in the building code shall be prepared by a California Licensed Land Surveyor or Civil Engineer and submitted to the building official. For new or substantially improved non-residential buildings and structures, FEMA's floodproofing certification should be required prior to final inspection.
- B. **Final inspection.** Prior to the final inspection, certification of the elevation required in the building code shall be prepared by a California Licensed Land Surveyor or Civil Engineer and submitted to the building official.

15.40.070 VARIANCES

15.40.071 - Nature of variances.

The considerations and conditions for variances set forth in this article are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be issued for a parcel of property with physical characteristics so unusual that complying with the requirements of these regulations would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners. The issuance of a variance is for floodplain management purposes only. Federal flood insurance premium rates are determined by the National Flood Insurance Program according to actuarial risk and will not be modified by the granting of a variance.

It is the duty of the **city council** to promote public health, safety and welfare and minimize losses from flooding. This duty is so compelling and the implications of property damage and the cost of insuring a structure built below flood level are so serious that variances from the elevation or other requirements in the building codes should be quite rare. The long term goal of preventing and reducing flood loss and damage, and minimizing recovery costs, inconvenience, danger, and suffering, can only be met when variances are strictly limited. Therefore, the variance requirements in these regulations are detailed and contain multiple provisions that must be met before a variance can be properly issued. The criteria are designed to screen out those

situations in which alternatives other than a variance are more appropriate.

15.40.072 – Variances; general.

The Floodplain Ad-hoc Committee which consists of the Community Development Director, the City Engineer and the Chair of the planning Commission, or their designees, shall hear and decide requests for variances from the strict application of these regulations.

15.40.073 - Limitations on authority.

The Floodplain Ad-hoc Committee shall base its determination on technical justifications submitted by applicants, the considerations and conditions set forth in this article, the comments and recommendations of the Floodplain Administrator and Building Official, as applicable, and has the right to attach such conditions to variances as it deems necessary to further the purposes and objectives of these regulations and the building code.

15.40.074 - Records.

The Floodplain Administrator shall maintain a permanent record of all variance actions, including justification for issuance, and report such variances issued to the Federal Emergency Management Agency upon request.

15.40.075 - Historic structures.

A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic structure upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the structure's continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure. When the proposed work precludes the structure's continued designation as a historic structure, a variance shall not be granted and the structure and any repair, improvement, and rehabilitation shall be subject to the requirements of the building code in conjunction with the provisions of this Ordinance.

15.40.076 - Restrictions in floodways.

A variance shall not be issued for any proposed development in a floodway when any increase in flood levels would result during the base flood discharge, as evidenced by the applicable analyses required in 15.40.053 (A) of these regulations.

15.40.077 - Functionally dependent uses.

A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use provided the criteria in Section 1612 of the building code (CCR Title 24 Part 2) or Section R322 of the residential code (CCR Title 24 Part 2.5) are met, as applicable, and the variance is the minimum necessary to allow the construction or substantial improvement, and that all due consideration has been given to use of methods and materials that minimize flood damages during the base flood and create no additional threats to public safety.

15.40.078 - Agricultural structures.

A variance is authorized to be issued for the construction or substantial improvement of agricultural structures that are not elevated or dry floodproofed, provided the requirements of this section are satisfied and:

A. A determination has been made that the proposed agricultural structure:

1. Is used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, or storage of tools or equipment used in connection with these purposes or uses, and will be restricted to such exclusive uses.
2. Has low damage potential.
3. Does not increase risks and pose a danger to public health, safety, and welfare if flooded and contents are released, including but not limited to the effects of flooding on manure storage, livestock confinement operations, liquified natural gas terminals, and production and storage of highly volatile, toxic, or water-reactive materials.
4. Is not located in a coastal high hazard area (Zone V/VE), except for aquaculture structures dependent on close proximity to water.
5. Complies with the wet floodproofing construction requirements of 15.40.078 (B), below.

B. Wet floodproofing construction requirements.

1. Anchored to resist flotation, collapse, and lateral movement.
2. When enclosed by walls, walls have flood openings that comply with the flood opening requirements of ASCE 24, Chapter 2.
3. Flood damage-resistant materials are used below the base flood elevation.
4. Mechanical, electrical, and utility equipment are elevated above the base flood elevation.
5. FEMA's floodproofing certificate is required for new or substantially improved agricultural structures.

15.40.079 - Considerations for issuance of variances.

In reviewing applications for variances, all technical evaluations, all relevant factors, all other requirements of these regulations and the building code, as applicable, and the following shall be considered:

- A. The danger that materials and debris may be swept onto other lands resulting in further injury or damage.
- B. The danger to life and property due to flooding or erosion damage.
- C. The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners.
- D. The importance of the services provided by the proposed development to the community.
- E. The availability of alternate locations for the proposed development that are not subject to flooding or erosion and the necessity of a waterfront location, where applicable.
- F. The compatibility of the proposed development with existing and anticipated development.
- G. The relationship of the proposed development to the comprehensive plan and floodplain management program for that area.
- H. The safety of access to the property in times of flood for ordinary and emergency vehicles.
- I. The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwater and the effects of wave action, if applicable, expected at the site.
- J. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets, and bridges.
- K. Necessity to the facility of a waterfront location, where applicable.
- L. Variances shall not be issued within any effective regulatory floodway if any increase in flood levels during the base flood discharge would result.
- M. Variances may be issued for new construction, substantial improvement, and other proposed new development to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structure constructed below the design flood level, providing that the procedures of this ordinance have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

15.40.080 - Conditions for issuance of variances. Variances shall only be issued

upon:

- A. Submission by the applicant of a showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site limit compliance with any provision of these regulations or renders the elevation standards of the building code inappropriate.
- B. A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable.
- C. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or future property owners, or conflict with existing local laws or ordinances.
- D. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- E. When the request is to allow construction of the lowest floor of a new building or substantial improvement of a building below the design flood elevation, notification to the applicant in writing over the signature of the Floodplain Administrator specifying the difference between the design flood elevation and the proposed elevation of the lowest floor, stating that issuance of a variance to construct below the elevation required in the building code will result in increased premium rates for federal flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and that such construction below the required elevation increases risks to life and property.

15.40.090 VIOLATIONS

15.40.091 - Violations.

Any development in any flood hazard area that is being performed without an issued permit or that is in conflict with an issued permit shall be deemed a violation. A building or structure without the documentation of the elevation of the lowest floor, other required design certifications, or other evidence of compliance required by these regulations or the building code, is presumed to be a violation until such time as required documentation is submitted. Violation of the requirements shall constitute a misdemeanor.

15.40.092 - Authority.

The Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of property involved, to the owner's agent, or to the person or persons doing the work for development that is not within the scope of the building codes, but is regulated by these regulations and that is determined to be a violation.

15.40.093 - Unlawful continuance.

Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by law.

15.40.100 DEFINITIONS

15.40.101 - General.

The following words and terms shall, for the purposes of these regulations, have the meanings shown herein. Where terms are not defined in these regulations and are defined in the building code (CCR Title 24 Part 2) and used in the residential code (CCR Title 24 Part 2.5), such terms shall have the meanings ascribed to them in those codes. Where terms are not defined in these regulations or the building code, such terms shall have ordinarily accepted meanings such as the context implies.

15.40.102 - Definitions

“Accessory Structure” means a structure on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For floodplain management purposes, the term includes only accessory structures used

- A. solely for the parking of no more than 2 cars; or
- B. A small, low cost shed for limited storage, less than 150 square feet and \$1,500 in value.

“Agricultural Structure” means a walled and roofed structure used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, including aquatic organisms. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

“Alteration of a watercourse” means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

“ASCE 24” means the standard *Flood Resistant Design and Construction*, referenced by the building code, developed and published by the American Society of Civil

Engineers, Reston, VA. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the building code.

~~“Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application. Definitions set forth below are limited to this chapter and shall not be used to modify definitions set forth in other parts of this code or common usage unless otherwise provided. As used in this chapter:~~

~~“Area of shallow flooding” means a designated AO Zone on the Flood Insurance Rate Map (FIRM), where the base flood depths range from one to three feet, a clearly defined channel does not exist, the path of flooding is unpredictable and indeterminate, and velocity flow may be evident.~~

~~“Base flood” means the flood having a 1-~~one~~ percent chance of being equaled or exceeded in any given year. [Also defined in CCR Title 24 Part 2.] (also called the “one-hundred-year flood”).~~

“Base flood elevation” means the elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in CCR Title 24 Part 2.]

“Basement” means, for the purpose of floodplain management, the portion of a building “Basement” means any area of the building having its floor subgrade (below ground level) on all sides. [Also defined in CCR Title 24 Part 2.]

“Breakaway walls” are any type of walls, ~~could be whether~~ solid or lattice, and ~~or whether~~ constructed of concrete, masonry, wood, metal, plastic or any other suitable building material which is not part of the structural support of the building. A breakaway wall shall be and which is designed to break away under abnormally high tides or wave action without causing any damage to the structural integrity of the building on which they are used, or any buildings to which they might be carried by flood waters. ~~A breakaway wall shall have a safe design loading resistance of not less than ten and no more than twenty pounds per square foot. Use of breakaway walls must be certified by a registered engineer or architect and shall meet the following conditions:~~

A breakaway wall shall have a safe design loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls must be certified by California Civil Engineer and shall meet the following conditions:

A. A.—Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and

B. B.—The elevated portion of the building shall not incur any structural damage due to the effects of wind and water loads acting simultaneously in the event of the base flood.

“Building code” means California Code of Regulations Title 24, the California Building Standards Code, the family of building codes specifically adopted by the State of

California and composed of:

- A. Part 2, applicable to buildings and structures other than dwellings within the scope of this part.
- B. Part 2.5, applicable to one- and two-family dwellings and townhouses not more than three stories, and accessory structures.
- C. Part 10, applicable to existing buildings (as defined in that code).
- D. Other specified codes.

“Coastal A Zone” means a special flood hazard area, landward of a V zone or landward of an open coast without mapped coastal high hazard areas. In a coastal A zone, the principal source of flooding must be astronomical tides, storm surges, seiches or tsunamis, not riverine flooding. During the base flood conditions, the potential for breaking wave height shall be greater than or equal to 1 ½ feet (457 mm). The inland limit of the coastal A zone is (a) the Limit of Moderate Wave Action if delineated on a FIRM, or (b) designated by the authority having jurisdiction. [Also defined in CCR Title 24 Part 2.]

“Coastal high hazard area” means the area within the special flood hazard area extending from offshore to the inland limit of a primary dune along an open coast and any other area that is subject to high-velocity wave action from storms or seismic sources, and shown on a Flood Insurance Rate Map (FIRM) or other flood hazard map as velocity Zone V, VO, VE or V1-30. [Also defined in CCR Title 24 Part 2.]

“Design flood” means the flood associated with the greater of the following two areas: [Also defined in CCR Title 24 Part 2.]

- A. Area with a flood plain subject to a 1-percent or greater chance of flooding in any year.
- B. Area designated as a flood hazard area on a community’s flood hazard map, or otherwise legally designated.

“Design flood elevation” means the elevation of the “design flood,” including wave height, relative to the datum specified on the community’s legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building’s perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where a depth number is not specified on the map, the depth number shall be taken as being equal to 2 feet (610 mm). [Also defined in CCR Title 24 Part 2.]

“Development” means any manmade change to improved or unimproved real estate, including but not limited to, buildings or other structures, temporary structures, temporary or permanent storage of materials, mining, dredging, filling, grading, paving, excavations, excavation or drilling operations, flood control projects, and other land-disturbing activities.-

“Encroachment” means the placement of fill, excavation, buildings, permanent

structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

"**Exceptional hardship**" means, for the purpose of variances from these regulations or the building code, the exceptional difficulty that would result from a failure to grant a requested variance. Mere economic or financial hardship is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors do not, as a rule, qualify as exceptional hardships. All of these circumstances can be resolved through other means without granting variances, even when the alternatives are more expensive or require the property owner to build elsewhere or put the parcel to a different use than originally intended.

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before July 14th~~August 14, 1988.~~

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Flood or flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. ~~The~~(1) the overflow of inland or tidal flood-waters.
- B. ~~The~~; (2) the unusual and rapid accumulation or runoff of surface waters from any source.
- C. Mudslides (i.e., mudflows) which are proximately caused by flooding.

"Flood control project" means a dam or barrier design; and constructed to keep ~~for~~ (3) the collapse or subsidence of land along the shore of a lake or other body of water away from or out of a specified area, including but not limited to levees, floodwalls, and channelization.

"Flood damage-resistant materials" means any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in CCR Title 24 Part 2.]

"Flood hazard area" means the greater of the following two areas: [Also defined in CCR Title 24 Part 2.]

- A. The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.

B. The area designated as a flood hazard area on the community's flood hazard map, result of erosion or undermining caused by waves or otherwise legally designated.

"Flood Insurance Rate Map (FIRM)" means currents of water exceeding anticipated cyclical levels or suddenly caused by an official map of a community unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.

"Flood Boundary and Floodway Map (FBFM)" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of flood hazard and the floodway.

"Flood Insurance Rate Map (FIRM)" (Also referred to as DFIRM or Digital Flood Insurance Rate Map) means the official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration has delineated both the special flood hazard areas and the risk premium zones applicable to the community. [Also defined in CCR Title 24 Part 2.]

"Flood Insurance Study" means the official report provided by the Federal Emergency Management Agency containing the Flood Insurance Rate Map (Administration that includes flood profiles, the FIRM), the Flood Boundary and Floodway Map (FBFM), the water surface elevation of the base flood and supporting technical data. [Also defined in CCR Title 24 Part 2.]

"Floodplain Administrator" means the chief building official of the city.

"Floodplain or flood-prone area" means any land area susceptible to being inundated by water from any source (see definition of "flooding").

"Floodplain management" means the community official designated by title to administer operation of an overall program of corrective and enforce the preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

"Floodplain management regulations" means zoning chapters, subdivision regulations, building codes, health regulations, special purpose chapters (such as floodplain chapter, grading chapter and erosion control chapter) and other applications of police power. The term describes such state or local regulations in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

"Floodway" means the channel of the river, creek or other watercourse and the

adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. (not to exceed one foot, as set by the National Flood Insurance Program.) [Also defined in CCR Title 24 Part 2.]~~one foot. Also referred to as "regulatory floodway."~~

"Fraud and victimization" means that the ~~variance granted must not cause fraud on or victimization~~ means, for the purpose of variances from these regulations or the the public. In examining this requirement, the floodplain administrator shall consider the fact that every newly constructed building code, the intentional use of deceit adds to deprive another of rights or property, making a victim of the deprived person or the public. As it pertains governmental responsibilities and remains a part of the community for fifty to buildings granted variances one hundred years. Buildings that are permitted to be constructed below the base flood elevation required by the building code, are subject during all those years to increased risk of damage from floods, while future owners or tenants of such buildings of the property and the community as a whole may bear are subject to all the burden of increased risk of damage from floods, increased cost of flood insurance, and increased recovery costs, inconvenience, danger, and suffering, that these increased flood damages bring.

"Functionally dependent use" means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities necessary for the loading or unloading of cargo or passengers, and shipbuilding or ship repair facilities. The term does not include long-term storage, manufacture, sales or service facilities.

~~"Hardship" means an exceptional hardship would result from a failure to grant a requested variance. The variance shall be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of adjacent property owners does not qualify as exceptional.~~

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

"Historic structure" means any and structure that is:

- A. A.—Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B.—Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C.—Individually listed on the a state inventory of historic places maintained in states with historic preservation programs which have been approved by the California Office Secretary of Historic Preservation the Interior; or

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the [secretary of the Interior or directly by the Secretary of the Interior](#) or directly by the Secretary of the Interior in states without approved [program](#). **“Letter of Map Change (LOMC)”** means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

1. [Letter of Map Amendment \(LOMA\): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.](#)
2. [Letter of Map Revision \(LOMR\): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.](#)
3. [Letter of Map Revision Based on Fill \(LOMR-F\): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community’s floodplain management regulations and the standards set forth by Title 44 Code of Federal Regulation Sections 59,60,65, and 70](#)
4. [Conditional Letter of Map Revision \(CLOMR\): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.](#)

“Light-duty truck” means, as defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of forty-five (45) square feet or less, which is:

- A. [Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or](#)
- B. [Designed primarily for transportation of persons and has a capacity of more than twelve \(12\) persons; or](#)
- C. [Available with special features enabling off-street or off-highway operation and use.](#)

“Limit of Moderate Wave Action (LiMWA)” means a line shown on FIRMs to indicate the inland extent of the 1 1/2-foot breaking wave height during the base flood. [\[Also defined in CCR Title 24 Part 2.\]](#)

~~“Levee” means a man-made structure; usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.~~

~~“Levee system” means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accord with sound engineering practices.~~

“Lowest floor” means the lowest floor of the lowest enclosed area, ~~(including basement, but excluding any) An unfinished or flood-resistant enclosure, usable solely for vehicle parking of vehicles, building access or limited storage storage in an area other than a basement area is not considered a building's lowest floor;~~ provided, that such enclosure is not built so as to render the structure in violation of the ~~non-elevation applicable nonelevation design~~ requirements of ~~the building codes. [Also defined in CCR Title 24 Part 2.]this chapter.~~

“Manufactured home” means a structure ~~that is,~~ transportable in one or more sections, ~~which is~~ built on a permanent chassis, ~~and is~~ designed for use ~~as a single-family dwelling~~ with or without a permanent foundation when connected to the required utilities, ~~and constructed to the Manufactured Home Construction and Safety Standards promulgated by the U.S. Department of Housing and Urban Development. Also see definitions in Health and Safety Code sections 18000.(a)(2) and 18001.(a). For the purposes of floodplain management, For floodplain management purposes~~ the term “manufactured home” also includes ~~mobile homes and recreational vehicles, park trailers, travel trailers and other similar transportable structures that are vehicles~~ placed on a site for ~~180 greater than one hundred eighty consecutive days or longer.~~

“Manufactured home park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for ~~sale or rent or sale.~~

“Market value” means the price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in these regulations, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by one of the following methods: (1) Actual Cash Value (replacement cost depreciated for age and quality of construction), (2) tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser, or (3) a qualified independent appraiser.

~~“Mean sea level” means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.~~

“New construction”, ~~means,~~ for floodplain management purposes, ~~means~~ structures for which the ~~“start of construction”~~ commenced on or after ~~June 1978 August 14, 1988,~~ and includes any subsequent improvements to such structures.

~~similar violations, or reducing federal financial exposure with regard to the structure or other development.~~

"Special flood hazard area (SFHA)" means ~~the land an~~ area ~~subject to having special flood hazards,~~ and shown on a Flood Insurance Rate Map or other flood hazard map ~~FIRM~~ as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE, or V1-30. [Also defined in CCR Title 24 Part 2.]~~A1-A30.~~

"Start of construction" includes substantial improvement and other proposed new development, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within ~~180~~one hundred eighty days from the date of the permit ~~date.~~ The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufacture~~manufactured~~ home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means, ~~for floodplain management purposes,~~ a walled and roofed building that is principally above ground; this includes, ~~including~~ a gas or liquid storage tank or, ~~that is principally aboveground, as well as~~ a manufactured home.

"Substantial damage" ~~improvement.~~

- A. ~~"Substantial improvement"~~ means damage of any origin sustained by a repair, reconstruction, or improvement of structure whereby, the cost of restoring the structure to its before-damaged condition would equal or exceed 50~~which equals or exceeds fifty~~ percent of the market value of the structure ~~either:~~
- ~~1. Before the improvement or repair is started; or~~
 - ~~2. If the structure has been damaged, and is being restored, before the damage occurred.~~ [Also defined in CCR Title 24 Part 2.]

"Substantial improvement" means any repair, reconstruction, rehabilitation, ~~B. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration,~~ addition of any wall, ceiling, floor, or other ~~improvement~~structural part of a building or structure, the cost of which equals or exceeds 50 percent of the ~~market value~~commences, whether or not that alteration affects the external dimensions of the structure before the improvement or repair is started. When the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include

either: [Also defined in CCR Title 24 Part 2.]

- A. 1. Any project for improvement of a building required structure to correct comply with existing state or local health, sanitary or safety code violations identified by the building official and that are the minimum specifications which are solely necessary to assure safe living conditions; or
2. Any alteration of a historic structure provided that listed on the alteration will not preclude National Register of Historic Places or the structure's continued designation as State Inventory of Historic Places.
- B. "Violation" means the failure of a historic structure, or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

"Utility and Miscellaneous Group U" means buildings and structures of an accessory character and miscellaneous structure not classified in any special occupancy, as described in the building code.

"Variance" means a grant of relief from the (Ord. No. 435, § 1, 6-25-2009)

15.40.030 General provisions.

The following Sections 15.40.031 through 15.40.037 set out general provisions for this chapter.

(Ord. No. 435, § 1, 6-25-2009)

15.40.031 Lands to which chapter applies.

This chapter shall apply to all special flood hazard areas within the jurisdiction of the city.

(Ord. No. 435, § 1, 6-25-2009)

15.40.032 Basis for establishing special flood hazard areas.

The special flood hazard areas, identified by the Federal Emergency Management Agency or the Federal Insurance Administration in a scientific and engineering report entitled "Flood Insurance Study for the City of Newark," dated June 1978, including any subsequent amendments and/or revisions thereto, with an accompanying Flood Insurance Rate Map, is adopted by reference and declared to be a part of this chapter. This flood insurance study is on file in the office of the city clerk at 37101 Newark Boulevard, Newark, California. This flood insurance study is the minimum area of applicability of this chapter and may be supplemented by studies for other areas which allow implementation of this chapter and which are recommended to the city council by the floodplain administrator.

(Ord. No. 435, § 1, 6-25-2009)

~~15.40.034 Abrogation and greater restrictions.~~

~~This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another chapter, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
(Ord. No. 435, § 1, 6-25-2009)~~

~~15.40.035 Interpretation.~~

~~In the interpretation and application of this chapter, all provisions shall be:
A. Considered as minimum requirements of these regulations which permits ;
B. Liberally construed in favor of the governing body; and
C. Deemed neither to limit nor repeal any other powers granted under state statutes.~~

~~(Ord. No. 435, § 1, 6-25-2009)~~

~~15.40.036 Warning and disclaimer of liability.~~

~~The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the special flood hazard areas, or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.~~

~~(Ord. No. 435, § 1, 6-25-2009)~~

~~15.40.037 Severability.~~

~~This chapter and the various parts thereof are declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.~~

~~(Ord. No. 435, § 1, 6-25-2009)~~

~~15.40.040 Administration.~~

~~The following Sections 15.40.041 through 15.40.043 set out provisions for administering this chapter.~~

~~(Ord. No. 435, § 1, 6-25-2009)~~

15.40.041 Requirement for building permit.

~~A building permit shall be obtained before any person starts construction in a manner otherwise prohibited and where specific special flood hazard area established by Section 15.40.032. Requests for permits shall be made on the "Application for Building Permit" form furnished by the building official. Information to be submitted may include, but not be limited to: plans drawn to scale showing the nature, location, dimensions, and elevation of the area in question; existing or proposed structures, fill, storage of materials, equipment, drainage facilities; and the location of the foregoing. Specifically, the following information is required:~~

- ~~A. Proposed elevation, in relation to mean sea level, of the lowest floor (including basement) of all structures; in Zone AO, elevation of highest adjacent grade and proposed elevation of lowest floor of all structures;~~
- ~~B. Proposed elevation in relation to mean sea level, to which any structure will be floodproofed;~~
- ~~C. All appropriate certifications listed in Section 15.40.043(D) of this chapter; and~~
- ~~D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.~~
- ~~E. Proposed locations of water supply, sanitary sewer, and other utilities.~~
- ~~F. Grading information showing existing and proposed contours, any proposed fill, and drainage facilities.~~
- ~~G. Location of regulatory floodway when applicable.~~
- ~~H. Base flood elevation information.~~
- ~~I. Certification from a registered civil engineer or architect that the nonresidential floodproofed building meets the floodproofing criteria in Section 15.40.051.~~
- ~~J. For a crawl-space foundation, location, and total net area of foundation openings as required in Section 15.40.051 and detailed in FEMA Technical Bulletins 1-93 and 7-93.~~

~~(Ord. No. 435, § 1, 6-25-2009)~~

15.40.042 Designation of the floodplain administrator.

~~The building official is hereby appointed to administer and implement this chapter by granting or denying building permits in accordance with its provisions.~~

~~(Ord. No. 435, § 1, 6-25-2009)~~

15.40.043 Duties and responsibilities of the building official.

~~The duties and responsibilities of the building official shall include, but not be limited to:~~

- ~~A. Permit Review.~~
 - ~~1. Review all development permits to determine that the permit requirements of this chapter have been satisfied;~~
 - ~~2. The site is reasonably safe from flooding;~~
 - ~~3. The proposed development does not adversely affect the carrying capacity of~~

-
- areas where base flood elevations have been determined, but a floodway has not been designated. For purposes of this chapter, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point.
- ~~4. Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.~~
 - ~~5. All Letters of Map Revision (LOMRs) for flood control projects are approved prior to the issuance of building permits. Building permits shall not be issued based on Conditional Letters of Map Revision (CLOMRs). Approved CLOMRs allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition.~~
- ~~B. Use of Other Base Flood Data:~~
- ~~1. When base flood elevation data has not been provided in accordance with Section 15.40.032, the building official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer Section 15.40.050.~~
 - ~~2. Prior to issuance of any building permit, all such information shall be approved by the city council.~~
- ~~C. Whenever a watercourse is to be altered or relocated:~~
- ~~1. Notify adjacent communities and the California Department of Water Resources prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;~~
 - ~~2. Require that the flood-carrying capacity of the altered or relocated portion of said watercourse is maintained.~~
- ~~D. Base Flood Elevation changes due to physical alterations:~~
- ~~1. Within six months of information becoming available or project completion, whichever comes first, the building official shall submit or assure that the permit applicant submits technical or scientific data to FEMA for a Letter of Map Revision (LOMR).~~
 - ~~2. All LOMRs for flood control projects are approved prior to the issuance of building permits. Building permits shall not be issued based on Conditional Letters of Map Revision (CLOMRs). Approved CLOMRs allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition.~~
 - ~~3. Such submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates, and floodplain management requirements are based on current data.~~
- ~~E. Obtain and maintain for public inspection and make available as needed:~~
- ~~1. The certification required in Section 15.40.051(C)(1) (floor elevations);~~
 - ~~2. The certification required in Section 15.40.051(C)(2) (elevations in areas of shallow flooding);~~
 - ~~3. The certification required in Section 15.40.051(C)(3)(c) (elevation or~~

floodproofing of nonresidential structures);

~~4. The certification required in Section 15.40.051(C)(4)(a) or 15.40.051(C)(4)(b) (wet floodproofing standard);~~

~~5. The certified elevation required in Section 15.40.053(B) (subdivision standards);~~

~~6. The certification required in Section 15.40.055(A) (floodway encroachments).~~

~~E. Make interpretations for development permits where needed, as to the exact location of the boundaries for the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions).~~

~~F. Take action to remedy violations of this chapter as specified in Section 15.40.033 herein.~~

~~G. Maintain a record of all variance actions, including justification for their issuance and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency.~~

(Ord. No. 435, § 1, 6-25-2009)

~~15.40.044 Appeals.~~

~~As per Chapter 15.04.030 shall hear and decide appeal when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement of administration of this chapter.~~

(Ord. No. 435, § 1, 6-25-2009)

~~15.40.045 Variances.~~

~~A. The Floodplain Administrator may grant variances for new construction, substantial improvement, and other proposed new development on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level provided the following standards are met:~~

~~1. Failure to grant the variance would result in exceptional hardship to the applicant; and~~

“Violation” means a development that is not fully compliant with these regulations or the flood provisions of the building code, as applicable.

“Watercourse” means a river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

15.40.110 FLOOD RESISTANT DEVELOPMENT FOR BUILDINGS AND STRUCTURES

15.40.111 - Requirements for buildings and structures in flood hazard areas.

Applications for building and structures within the scope of the building code that are proposed in flood hazard areas shall comply with the applicable requirements of the building code and the floodplain development requirements of this Ordinance.

15.40.112 – Detached garages and accessory storage structures.

Detached garages and accessory storage structures used only for parking or storage are permitted below the base flood elevation provided the garages and accessory storage structures:

- A. Detached garages and accessory storage structures, with the exception of small, low cost sheds as defined in 15.40.102, are one story and not larger than 600 square feet in area when located in special flood hazard areas other than coastal high hazard areas.
- 2. Granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance condition, cause fraud, and victimization of the public, or conflict with existing local ordinances or state laws.

~~(Ord. No. 435, § 1, 6-25-2009)~~

~~15.40.050 Provisions for flood hazard reduction.~~

~~The following Sections 15.40.051 through 15.40.055 set out provisions for flood hazard reduction.~~

~~(Ord. No. 435, § 1, 6-25-2009)~~

~~15.40.051 Standards of construction.~~

~~In all special flood hazard areas except for Zones V, V1-30, and VE, the following standards are required:~~

~~A. Anchoring.~~

- ~~1. All new construction and substantial improvements of structures, including manufactured homes, shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.~~
- ~~2. All manufactured homes shall meet the anchoring standards of Section 15.40.054.~~

~~B. Construction Materials and Methods.~~

- ~~1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.~~
- ~~2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.~~
- ~~3. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of~~

flooding.

4. ~~Require within Zone AO, adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.~~

~~C. Elevation and Floodproofing.~~

1. ~~New construction and substantial improvement of any structure shall have the lowest floor, including basement, elevated to or above the base flood elevation. Residential structures shall be elevated to or above the base flood elevation or to a minimum of six inches above the building pad which shall be at a minimum elevation of eleven and one-quarter feet on the National Geodetic Vertical Datum (NGVD) or the equivalent North America Vertical Datum (NAVD), whichever affords the greater degree of flood damage protection. Nonresidential structures may meet the standards in subdivision (C)(3) of this section. Upon the completion of the structure the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor to be properly elevated. Such certification shall be provided to the building official.~~
2. ~~New construction and substantial improvement of any structure in Zone AO shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM, or at least two feet if no depth number is specified. Nonresidential structures may meet the standards in subdivision (C)(3) of this section. Upon the completion of the structure the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor, to be properly elevated. Such certification shall be provided to the building official.~~
3. ~~Nonresidential construction shall either be elevated in conformance with subdivisions (C)(1) or (C)(2) of this section or together with attendant utility and sanitary facilities:~~
 - a. ~~Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;~~
 - b. ~~Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and~~
 - c. ~~Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the building official.~~
4. ~~Require, for all new construction and substantial improvements, that fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:~~
 - a. ~~Either a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided and the bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers,~~

~~valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters; or~~

~~b. Be certified to comply with a local floodproofing standard approved by the Federal Insurance Administration.~~

~~5. Manufactured homes shall also meet the standards in Section 15.40.054. (Ord. No. 435, § 1, 6-25-2009)~~

~~15.40.052 Standards for utilities.~~

~~A. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the system into floodwaters.~~

~~B. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.~~

~~(Ord. No. 435, § 1, 6-25-2009)~~

~~15.40.053 Standards for subdivisions.~~

~~A. All subdivisions shall identify the flood hazard area and the elevation of the base flood and conform to the requirements of Title 16, Subdivisions, of this code.~~

~~B. All final subdivision plans will provide the elevation of proposed structure(s) and pads. If the site is filled above the base flood, the final pad elevation shall be certified by a registered professional engineer or surveyor and provided to the building official.~~

~~C. All subdivision proposals shall be consistent with the need to minimize flood damage.~~

~~D. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.~~

~~E. All subdivisions shall provide adequate drainage to reduce exposure to flood hazards.~~

~~F. If the site is filled above the base flood elevation, the following as-built information for each structure shall be certified by a registered civil engineer or licensed land surveyor and provided as part of an application for a Letter of Map Revision based on Fill (LOMR-F) to the building official:~~

~~1. Lowest floor elevation.~~

~~2. Pad elevation.~~

~~3. Lowest adjacent grade.~~

~~(Ord. No. 435, § 1, 6-25-2009)~~

~~15.40.054 Standards for manufactured homes.~~

~~All new and replacement manufactured homes and substantial improvements to manufactured homes shall:~~

~~A. Be elevated so that the lowest floor is at or above the base flood elevation; and~~

~~B. Be securely anchored to a permanent foundation system to resist flotation,~~

~~collapse or lateral movement.~~

~~C. Shall not be placed in any coastal high hazard area.
(Ord. No. 435, § 1, 6-25-2009)~~

~~15.40.055 Standards for coastal high hazard areas.~~

~~Within coastal high hazard areas, Zones V, V1-30, and VE, as established under Chapter 15.40.032, the following standards shall apply:~~

- ~~A. All new residential and nonresidential construction, including substantial improvements, shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level. The pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those set forth in the California Building Code.~~

- ~~B. All new construction and other development shall be located on the landward side of the reach of mean high tide.~~

- ~~B. C. All new construction and substantial improvement shall have the space below the lowest horizontal structural member of the lowest floor free of obstructions or constructed with breakaway walls as defined in Chapter 15.40.102 of this ordinance020. Such enclosed space shall not be used for human habitation and willshall be useableused solely for parking of vehicles, building access, or storage.~~

- ~~C. Are anchored to resist flotation, collapse or lateral movement resulting from flood loads.~~

- ~~D. Have flood openings in accordance with the building code.~~

- ~~E. Have flood damage-resistant materials used below the base flood elevation.~~

- ~~F. Have mechanical, plumbing and electrical systems, including plumbing fixtures, elevated to or above the base flood elevation.~~

- ~~G.) The accessory structure or detached garage must comply with floodplain encroachment provisions in 15.40.134~~

15.40.113 - Utility and Miscellaneous Group U.

Utility and miscellaneous Group U includes buildings that are accessory in character and miscellaneous structures not classified in any specific occupancy in the building code, including, but not limited to, agricultural buildings, aircraft hangars (accessory to a one- or two-family residence), barns, carports, fences more than 6 feet (1829 mm) high,

grain silos (accessory to a residential occupancy), greenhouses, livestock shelters, private garages, retaining walls, sheds, stables, and towers. In addition to the building code requirements for fire and life safety, the following ~~Basements~~ shall apply to utility and miscellaneous Group U buildings and structures in flood hazard areas:

- A. New construction and substantial improvement of such buildings and structures shall be anchored to prevent flotation, collapse or lateral movement resulting from flood loads, including the effects of buoyancy, during conditions of the design flood.
- B. New construction and substantial improvement of such buildings and structures, when fully enclosed by walls, shall be elevated such that the lowest floor, including basement, is elevated to or above the design flood elevation in accordance with ASCE 24 or shall be dry floodproofed in accordance with ASCE 24.
- C. Unless dry floodproofed, fully enclosed areas below the design flood elevation shall be constructed in accordance with ASCE 24 and limited to parking, storage, and building access.
- D. When fully enclosed by walls, flood openings shall ~~not~~ be installed in accordance with ASCE 24.~~coastal high hazard areas.~~
- E. Flood damage-resistant materials ~~D.~~ Fill shall ~~not~~ be used below the design flood elevation.
- F. Mechanical, plumbing, heating/cooling, ventilation and electrical systems, including plumbing fixtures, shall be located or installed in accordance with ASCE 24.

15.40.120 SUBDIVISIONS

15.40.121 - Minimum requirements. Subdivision proposals in flood hazard areas, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:

- A. Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding.
- B. All public utilities and facilities, such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage in accordance with 15.40.132 and 15.40.133 of these regulations, as applicable, and appropriate codes.
- C. Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwater around and away from proposed structures.

15.40.122 - Subdivision requirements. In addition to the requirements of 15.40.121 of these regulations, where any portion of proposed subdivisions, including proposals for

manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

- A. The flood hazard area, including floodways, coastal high hazard areas, and Coastal A Zones, as appropriate, shall be delineated on preliminary subdivision plats.
- B. Where the subdivision has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with 15.40.052 (A) of these regulations.
- C. When, as part of a proposed subdivision, fill will be placed to support buildings, the fill shall be placed in accordance with the building code and approval of the subdivision shall require submission of as-built elevations for each filled pad certified by a California Licensed Land Surveyor or Civil Engineer

15.40.130 SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS

15.40.131 - Minimum requirements. All proposed development in flood hazard areas shall be reviewed to determine that:

- A. Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding.
- B. Where the proposed development has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with 15.40.052 (A) of these regulations.
- C. All public utilities and facilities, such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage.
- D. Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwater around and away from proposed structures.

15.40.132 - Sanitary sewer facilities.

All new and replaced sanitary sewer facilities, private sewage treatment plants (including all pumping stations and collector systems) and on-site waste disposal systems shall be designed in accordance with Chapter 7, ASCE 24, to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.

15.40.133 - Water supply facilities.

All new and replaced water supply facilities shall be designed in accordance with the provisions of Chapter 7, ASCE 24, to minimize or eliminate infiltration of floodwaters into the systems.

15.40.134 - Development in floodways.

Development, site improvements and land disturbing activity involving fill or regrading shall not be authorized in the floodway unless the floodway encroachment analysis required in 15.40.053 (A) of these regulations demonstrates the proposed work will not result in any increase in the base flood level during occurrence of the base flood discharge.

15.40.135 - Limitations on placement of fill.

Subject to the limitations of these regulations, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, when intended to support buildings and structures, fill shall comply with the requirements of the building code. The placement of fill intended to change base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs shall be subject to the requirements of 15.40.054 of these regulations.

14.40.136 Location and fill in coastal high hazard areas (Zone V/VE) and Coastal A Zones.

In coastal high hazard areas and Coastal A Zones:

- A. New buildings shall only be authorized landward of the reach of mean high tide.
- B. The use of fill for structural support of buildings is prohibited.-

15.40.137 - Nonstructural fill or~~E. — Man-made alteration of sand dunes in coastal high hazard areas Zone V/VE and Coastal A Zones. , which would increase potential flood damage, is prohibited.~~

Nonstructural fill or alteration of sand dunes in coastal high hazard areas (Zone V/VE) and Coastal A Zones shall be permitted only when authorized by appropriate federal, state or local authorities. Where permitted, such fill or alterations shall comply with the following, as applicable:

- A. Minor grading and the placement of minor quantities of nonstructural fill shall be permitted for landscaping, and for drainage purposes under and around buildings.
- B. Nonstructural fill with finished slopes that are steeper than one unit vertical to five units horizontal shall be permitted only when an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures.

-
- C. Alteration of sand dunes shall be permitted only when the engineering analysis required by 15.40.053 (D) of these regulations demonstrates that the proposed alteration will not increase the potential for flood damage.
 - D. Sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runup and wave reflection when the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.

15.40.138 - Other site improvements in coastal high hazard areas (Zone V/VE) and Coastal A Zones.

Development and site improvement activities other than buildings and structures, where located in coastal high hazard areas (Zone V/VE) and Coastal A Zones, shall be permitted only when authorized by appropriate federal, state or local authorities. In addition, development and site improvement activities shall be permitted when located outside the footprint of, and not structurally attached to, buildings and structures and when analyses prepared by qualified CA License Civil design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such development and site improvement activities include but are not limited to:

- A. Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures.
- B. Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the base flood or otherwise function to avoid obstruction of floodwaters.
- C. On-site sewage treatment and disposal systems, including mound systems.

15.40.140 INSTALLATION OF MANUFACTURED HOMES

15.40.141 - Installation.

All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to the Business and Professions Code and shall comply with the requirements of the Department of Housing and Community Development (HCD) and the requirements of these regulations. In addition to permits pursuant to these regulations, permits from the HCD are required where the HCD is the enforcement agency for installation of manufactured homes. Upon completion of installation and prior to the final inspection by the Floodplain Administrator, the installer shall submit certification of the elevation of the manufactured home, prepared by a California Licensed Land Surveyor or Civil Engineer, to the Floodplain Administrator.

15.40.142 - Foundations.

All new and replacement manufactured homes, including substantial improvement of manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that:

- A. In flood hazard areas other than coastal high hazard areas and Coastal A Zones, are designed in accordance with the foundation requirements of Section R322.2 of the residential code (CCR Title 24 Part 2.5) and these regulations. Foundations for manufactured homes subject to 15.40.145 of these regulations are permitted to be reinforced piers or other foundation elements of at least equivalent strength.
- B. In coastal high hazard areas (Zone V/VE) and Coastal A Zones, are designed in accordance with the foundation requirements of Section R322.3 of the residential code (CCR Title 24 Part 2.5) and these regulations.

15.40.143 - Anchoring.

All new and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Methods of anchoring are authorized to include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind loads and seismic loads.

15.40.144 - General elevation requirement.

Unless subject to the requirements of 15.40.145 of these regulations, all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the lowest floor, or bottom of the lowest horizontal member of the lowest floor, as applicable to the flood hazard area, is at or above the base flood elevation.

15.40.145 - Elevation requirement for certain existing manufactured home parks and subdivisions.

Manufactured homes that are not subject to 15.40.144 of these regulations, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as a result of flooding has occurred, shall be elevated such that either the:

-
- A. Lowest floor, or bottom of the lowest horizontal structural member, as applicable to the flood hazard area, is at or above the base flood elevation.
 - B. Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.

15.40.146 - Flood damage-resistant materials.

Materials below elevated manufactured homes shall comply with the flood-damage resistant materials requirements of Section R322 of the residential code (CCR Title 24 Part 2.5).

15.40.147 - Enclosures. Fully enclosed areas below elevated manufactured homes shall comply with the enclosed area requirements of Section R322 of the residential code (CCR Title 24 Part 2.5).

15.40.148 - Protection of mechanical equipment and outside appliances.

Mechanical equipment and outside appliances such as but not limited to air conditioners, furnaces, propane tanks, water heating equipment and electrical services boxes shall be elevated to or above the lowest floor or F. — At the conclusion of construction a registered engineer or architect shall certify that the structure complies with Chapter 15.50.055 and shall provide the elevation of the bottom of the lowest horizontal structural member of the manufactured home, as applicable to the flood hazard area lowest floor.

Exception. Where such equipment and appliances are designed and installed to prevent water from entering or accumulating within their components and the systems are constructed to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding up to the elevation required by 15.40.134 or 15.40.135, as applicable, the systems and equipment shall be permitted to be located below that elevation. Electrical wiring systems shall be permitted below the design flood elevation provided they conform to the provisions of NFPA 70 (National Electric Code).

15.40.150 RECREATIONAL VEHICLES

15.40.151 - Temporary placement.

Recreational vehicles in flood hazard areas, shall be (Ord. No. 435, § 1, 6-25-2009)

15.40.056 Standards for recreational vehicles.

A. All recreational vehicles placed in Zones A1-30, AH, AE, V1-30, and VE shall:

1. Be on the site for less than 180 consecutive one hundred eighty days in any one year period; or shall be
2. Be fully licensed and ready for highway use. Ready for highway use means the recreational vehicle is on ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has not permanently attached additions, such as rooms, stairs, decks and porches.

(Ord. No. 435, § 1, 6-25-2009)

15.40.152 - Permanent placement. 057 Floodways.

Recreational vehicles that do not meet the limitations in 15.40.151 for temporary placement shall meet the requirements of 15.40.140 for manufactured homes.

15.40.160 OTHER DEVELOPMENT

15.40.161 - General requirements for other development.

All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in these regulations or the building code, shall:

- A. Be located and constructed to minimize flood damage.
- B. Meet the limitations of 15.40.134 of these regulations when located in a regulated floodway.
- C. Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.
- D. Be constructed of flood damage-resistant materials.
- E. Have mechanical, plumbing, heating/cooling, ventilation, and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of the building code for wet locations.

15.40.162 - Tanks.

Tanks that serve buildings shall comply with the requirements of the building code. Underground and above-ground tanks that serve other purposes shall be designed, constructed, installed and anchored in accordance with ASCE 24.

15.40.163. - Requirements for temporary structures and temporary storage in flood hazard areas.

Temporary structures shall be erected for a period of less than 180 consecutive days and temporary storage of goods and materials shall be permitted for a period of less than 180 days. Extensions may be granted in accordance with 15.40.045 of these regulations. In addition, the following apply:

- A. Temporary structures shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood. Fully enclosed temporary structures shall have flood openings that are in accordance with ASCE 24 to allow for the automatic entry and exit of flood waters.
- B. Temporary stored materials shall not include hazardous materials.
- C. The requirements of 15.40.134 of these regulations, when located in floodways.

15.40.164 - Fences in floodways.

Fences in floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of 15.40.134 of these regulations.

15.40.165 - Oil derricks.

Oil derricks located in flood hazard areas shall be designed in conformance with flood loads required by the building code.

15.40.166 - Retaining walls, sidewalks and driveways in floodways.

Retaining walls and sidewalks and driveways that involve placement of fill in floodways shall meet the limitations of 15.40.134 of these regulations and the requirements for site grading in Chapter 18 of the building code.

15.40.167 - Roads and watercourse crossings in floodways.

Roads and watercourse crossings that encroach into floodways or riverine waterways with base flood elevations where floodways have not been designated, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side shall meet the limitations of 15.40.134 of these regulations. Alteration of a watercourse that is part of work proposed for a road or watercourse crossing shall meet the requirements of 15.40.053 of these regulations.

15.40.168 - Swimming pools. Above-ground swimming pools, on-ground swimming pools, and in-ground swimming pools that involve placement of fill in floodways shall

meet the requirement of 15.40.134 of these regulations. Swimming pools in coastal high hazard areas and Coastal A Zones shall be designed and constructed in accordance with ASCE 24.

15.40.170 FLOOD CONTROL PROJECTS

15.40.171 - Flood control projects; general.

In addition to applicable Federal, State and other local permits, a permit for floodplain development is required for construction of flood control projects. The purpose for the permit is to examine the impact on flood hazard areas, floodways, and base flood elevations shown on the FIRM. Unless otherwise authorized by separate regulations, issuance of this permit does not address the sufficiency of the structural elements of the proposed flood control project. Permits for floodplain development and building permits in areas affected by proposed flood control projects shall not be issued based on Conditional Letters of Map Revision issued by FEMA.

15.40.172 - Flood control projects; applications.

Applications for permits for flood control projects shall include documentation including but not limited to:

- A. Site plan or document showing the existing topography and the boundaries of the flood hazard areas, floodway boundaries, and base flood elevations shown on the FIRM.
- B. Site plan or document showing the proposed topography and the proposed changes to the boundaries of the flood hazard areas, floodway boundaries, and base flood elevations.
- C. The documentation submitted to FEMA for a Conditional Letter of Map Revision (CLOMR) and, if issued, the Conditional Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant. A CLOMR is required when a proposed flood control project alters a floodway and increases base flood elevations more than greater than 0.00 feet, or alters a watercourse a riverine flood hazard area for which base flood elevations are included in the Flood Insurance Study or on the FIRM and floodways have not been designated and increases base flood elevations more than 1.0 foot.

~~Located within special flood hazard areas established in Section 15.40.032 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:~~

- ~~A. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any~~

~~increase in flood levels during the occurrence of the base flood discharge.~~
~~B. If Section 15.40.055(A) is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of Section 15.40.050.~~
~~(Ord. No. 435, § 1, 6-25-2009)~~

~~15.40.060 Violation unlawful and deemed infraction.~~

~~It is unlawful for anyone to construct, locate, extend, convert, or alter any structure or land without complying with the provisions of this chapter in their entirety. Violations of the provisions of this chapter, including failure to comply with any of the requirements (including violations of conditions and safeguards established in connection with conditions), shall constitute an infraction and, upon conviction thereof, shall be punishable in accordance with the provisions set forth in Chapter 1.16 of this code.~~
~~(Ord. No. 435, § 1, 6-25-2009)~~

~~15.40.062 Violation declared nuisance—Abatement.~~

~~It is found and declared that the existence of a violation of any of the sections of this chapter within the city is a public nuisance and dangerous to the public health and safety of persons within the city, and, in addition to any other remedies provided by law, the building official or appropriate legal officer is authorized and directed to investigate any such nuisance, to notify any person or persons maintaining such nuisance to abate the same in conformance with the provisions of this chapter, and, upon failure to comply, to enter upon the premises, public or private, wherein the nuisance exists and summarily abate the same.~~

~~(Ord. No. 435, § 1, 6-25-2009)~~



STAFF REPORT

Item F. 1.

DATE 04/11/2024
TO Honorable Mayor and City Council Members
FROM Brett Oeverndiek, Management Analyst II
SUBJECT Adopt a Resolution initiating proceedings for the levy and collection of assessments for Landscaping and Lighting District Nos. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, 18, and 19 for Fiscal Year 2025

SUMMARY AND RECOMMENDATION

The City of Newark previously completed all necessary proceedings to establish Landscaping and Lighting District Nos. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, 18 and 19 (collectively "Districts") to fund ongoing landscaping and lighting maintenance and improvements at various locations in the City. For each upcoming fiscal year, it is necessary for the City Council to initiate proceedings for the levy and collection of assessments for the Districts. This includes providing staff with direction to prepare and file annual Engineer's Reports detailing such assessments for the City Council's consideration in advance of required public hearings for each district. For the upcoming fiscal year there are no changes to existing improvements nor are there any items being added to the list of improvements for the Districts.

Staff recommends that the City Council, by resolution, initiate proceedings for the levy and collection of assessments for Landscaping and Lighting District Nos. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, 18 and 19 in accordance with the provisions of the Landscaping and Lighting Act of 1972 for Fiscal Year 2025.

BACKGROUND

The City previously created the Districts to provide for the operation and maintenance of certain landscaping and lighting improvements pursuant to the Landscaping and Lighting Act of 1972. The areas and improvements maintained by each district generally include but are not limited to:

Landscaping and Lighting District No. 1: Central Avenue between Filbert Street and Willow Street - Provides for the maintenance of median landscaping on Central Avenue between Filbert Street and Willow Street and buffer landscaping adjacent to the Alameda County Flood Control channel immediately west of Filbert Street, and for the maintenance and operation of median streetlights along this portion of Central Avenue.

Landscaping and Lighting District No. 2: Jarvis Avenue and Newark Boulevard adjacent

to Dumbarton Technology Park and Four Corners shopping centers – Provides for the maintenance of Jarvis Avenue and Newark Boulevard median island and in-tract buffer landscaping and landscape irrigation systems adjacent to and within the boundaries of Tract 5232, the Dumbarton Industrial Park, and the Four Corners shopping centers.

Landscaping and Lighting District No. 4: Stevenson Boulevard and Cherry Street adjacent to New Technology Park - Provides for the maintenance of Stevenson Boulevard median island landscaping from the Nimitz Freeway to the railroad tracks west of Cherry Street and maintenance of median islands and up to 50 feet of greenbelt landscaping adjacent to Cherry Street and the interior loop streets within the boundaries of Stevenson Point Technology Park, the maintenance of landscaping across from the Newark Unified School District property on Cherry Street, and the street lighting maintenance, trash capture device maintenance, and neighborhood park maintenance related to Benefit Zone No. 2 (Sanctuary).

Landscaping and Lighting District No. 6: Cedar Boulevard and Duffel Redevelopment Area No. 2 – Authorized to provide for the maintenance of all street landscaping within the public right-of-way, and landscaping and landscape irrigation systems within easement areas and developed properties in Redevelopment Area No. 2 at Cedar Boulevard and Stevenson Boulevard, plus the Stevenson Station Shopping Center. The district is inactive at this time because all the improvements are privately maintained to City standards. Should the improvements not be maintained to City standards, the district may be activated, so funding is available for the City to maintain the improvements.

Landscaping and Lighting District No. 7: Newark Boulevard and Rosemont Square Shopping Center – Provides for the maintenance of buffer landscaping and the landscape irrigation system within the public right-of-way and easement areas for Rosemont Square Shopping Center.

Landscaping and Lighting District No. 10: Various locations throughout the City – Authorized to provide for the maintenance of street lighting, landscaping and landscape irrigation systems within public right-of-way and easement areas located throughout the City. A benefit zone has been established for each maintenance area. All benefit zones are inactive at this time because the improvements are privately maintained to City standards. Should the improvements not be maintained to City standards, the applicable benefit zone may be activated, so funding is available for the City to maintain the improvements.

Landscaping and Lighting District No. 11: Edgewater Drive - Provides for the maintenance of landscaped medians on Edgewater Drive.

Landscaping and Lighting District No. 13: Citation Homes and Bren developments on Thornton Avenue – Authorized to provide for maintenance of the landscaping and irrigation systems for Thornton Avenue, Cedar Boulevard, Willow Street, and other streets within these subdivisions. This district was relieved from the responsibility for maintenance of median landscaping on Thornton Avenue in May 1997. The district is inactive at this time because all the improvements are privately maintained to City

standards. Should the improvements not be maintained to City standards, the district may be activated, so funding is available for the City to maintain the improvements.

Landscaping and Lighting District No. 15: Robertson Avenue at Iris Court - Provides for the maintenance of the landscaping and irrigation systems on Robertson Avenue at Iris Court.

Landscaping and Lighting District No. 16: Kiote Drive in Tract 6671 – Provides for the maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement along the street frontage of Kiote Drive in Tract 6671, along with the landscaping, irrigation system, recreation facilities associated with the mini-park common area and any related appurtenant improvements.

Landscaping and Lighting District No. 17: Newark Boulevard and Mayhews Landing Road in Tract 7004 – Provides for the maintenance of landscaping and the landscape irrigation system within the public right-of-way of the Newark Boulevard and Mayhews Landing Road frontages of Tract 7004.

Landscaping and Lighting District No. 18: Cedar Boulevard along the frontage of Tract 8130 – Provides for the maintenance of landscaping and the landscape irrigation system within the Cedar Boulevard median area along the frontage of Tract 8130 between Central Avenue and Smith Avenue.

Landscaping and Lighting District No. 19: Willow Street and Enterprise Drive in the Bayside Newark Transit Oriented Development – Provides for the maintenance of landscaping and the landscape irrigation system within the Willow Street and Enterprise Drive medians and traffic circles, maintenance of public street lighting systems, and maintenance of other improvements related to each benefit zone associated with the Bayside Newark Transit Oriented Development.

DISCUSSION/ANALYSIS

There are no new proposed improvements or substantial changes to existing improvements associated with any of the Districts for Fiscal Year 2025. With the City Council's direction, staff will prepare Engineer's Reports for the City Council's consideration which detail the proposed levy and collection of annual assessments for each district for Fiscal Year 2025.

In accordance with the Landscaping and Lighting Act of 1972 and the Government Code, at subsequent meetings following adoption of the resolution initiating proceedings, the City Council is required to consider and approve the completed annual Engineer's Reports, schedule a public hearing for the proposed annual assessments related to each district, direct the publishing of a notice of public hearing, conduct the public hearing, confirm the diagrams and annual assessments for each district, and direct placement of the annual assessments for each district on the Alameda County annual property tax bills.

FISCAL IMPACT

The recommended action by the City Council is anticipated to have no fiscal impact to the 2022-2024 Biennial Budget and Capital Improvement Plan. Pursuant to the Landscaping and Lighting Act of 1972, in order to levy assessments for the Districts for Fiscal Year 2025, additional action will be required by the City Council at subsequent meetings to establish the respective budget allocations for each District.

REVIEW AND APPROVAL

Prepared by - Brett Oeverndiek, Management Analyst II

Reviewed by - Soren Fajeau, Public Works Director

Reviewed by - Krysten Lee, Finance Director

Reviewed by - Kristopher J. Kokotaylo, City Attorney

Approved by - Lenka Hovorka, Assistant City Manager

Attachments

Resolution - L&L Proceedings

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK INITIATING PROCEEDINGS FOR THE LEVY AND
COLLECTION OF ASSESSMENTS FOR LANDSCAPING AND
LIGHTING DISTRICT NOS. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, 18
AND 19 (PURSUANT TO THE LANDSCAPING AND
LIGHTING ACT OF 1972)

WHEREAS, the City Council of the City of Newark previously completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (the “Act”) to establish Landscaping and Lighting District Nos. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, 18 and 19 (the “Districts”) in order to fund ongoing maintenance and improvements authorized under the Act; and

WHEREAS, there are no proposed new improvements or any substantial changes to existing improvements in any of the Districts; and

WHEREAS, Section 22620, et seq. of the Act provides for the levy of annual assessments after formation of the Districts; and

WHEREAS, the City designates the City Engineer to prepare and file reports in accordance with Section 22565, et seq., of the Act (the “Engineer’s Reports”); and

WHEREAS, pursuant to Section 22622 of the Act, the City Council wishes to initiate proceedings to provide for the levy of assessments for Fiscal Year 2025 in order to provide for the necessary costs and expenses pertaining to the maintenance of the improvements within the Districts.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that:

1. Engineer’s Reports: The City Council hereby orders the City Engineer to prepare and file with the City Clerk the annual Engineer’s Reports concerning the levy and collection of assessments within the Districts for the fiscal year commencing July 1, 2024, and ending June 30, 2025, in accordance with Section 22565, et seq., of the Act.
2. New Improvements or Changes to Existing Improvements: There are no changes to existing improvements, nor are there any items being added to the list of improvements for the Districts.